



THE TAX INSTITUTE  
AT H&R BLOCK

## **Tax Return Preparer Standards:**

*An Important Tool to Improve Tax Return Accuracy,*

*Combat Fraud, & Protect Consumers*

April 2014

© 2014 The Tax Institute at H&R Block

### **ABOUT THE TAX INSTITUTE AT H&R BLOCK**

The Tax Institute at H&R Block is the go-to source for objective insights on federal and state tax laws affecting the individual. It provides nonpartisan information and analysis on the real world implications of tax policies and proposals to policymakers, journalists, experts and tax preparers. The Institute's experts include CPAs, Enrolled Agents, tax attorneys and former IRS agents. Building off more than 10 years of research and analysis from a specialized tax research group at H&R Block, the company launched The Tax Institute in 2007.

### **STAFF ACKNOWLEDGEMENTS**

The following staff made key contributions to this report: Kathy Pickering, Theresa Pattara, Gil Charney, Betsy Keane, and Ben Deneka with special thanks to Julie Rushin and Benson Goldstein for their review and comments.

### **CONTACT INFORMATION**

[mediadesk@hrblock.com](mailto:mediadesk@hrblock.com)

(816) 854-4287

@HRBlockNews

[www.newsroom.hrblock.com](http://www.newsroom.hrblock.com)

**Table of Contents**

- I. Executive Summary.....1**
- II. Overview of Consumer Use of Compensated Tax Return Preparers .....2**
- III. Overview of Federal Preparer and e-file Rules and Penalties .....3**
  - a. Compensated Return Preparer Registration ..... 3
  - b. Electronic Filing (*e-file*) Mandate ..... 4
  - c. Electronic Return Originator Oversight and Penalties ..... 5
  - d. Internal Revenue Code Preparer Penalties ..... 6
  - e. Treasury Circular 230 Oversight..... 6
- IV. Why Additional Federal Standards & Oversight Are Needed.....7**
  - a. Studies Suggest Preparers May File Returns with Errors..... 8
  - b. Studies & Enforcement Efforts Indicate that Consumers are Victims of Fraudulent Return Preparers..... 8
  - c. It is Too Easy to Be a Tax Return Preparer ..... 10
  - d. Consumers Should Be Empowered to Identify Potentially Fraudulent Preparers before They Become Victims..... 12
  - e. Consumers Who Use Volunteer Preparers Are Better Served & Protected ..... 12
  - f. Fifty State Strategy Could Be More Confusing and Burdensome for Consumers..... 13
- V. Stakeholder Support for Additional Standards and Oversight.....13**
  - a. Support from Consumer Advocates..... 14
  - b. Congressional Support ..... 14
  - c. Consumer Support ..... 15
  - d. Internal Revenue Service Return Preparer Review..... 15
- VI. Elements of Federal Legislation .....16**
  - a. Registration ..... 16
  - b. Examination ..... 17
  - c. Continuing Tax Education ..... 18
  - d. Background Screening..... 18
  - e. Limitation on Fees..... 19
  - f. Certification of Non-Treasury Programs ..... 19
  - g. Enforcement & Oversight: Penalties for Noncompliance ..... 19
  - h. Annual Report to Congress ..... 20
- VII. Non-Legislative Recommendations.....20**
  - a. Implement Voluntary Standards Until Legislation Is Enacted ..... 20
  - b. Conduct Education & Outreach to Return Preparers ..... 21
  - c. Convene Working Group to Determine Standards for Tax Return Preparation Software ..... 22
- Appendix A H&R Block Standards and Certification.....24**
- Appendix B Paid Preparer Penalties in the Internal Revenue Code.....28**
- Appendix C Mystery Shopping Reports .....30**

**Appendix D Volunteer Income Tax Assistance Minimum Standards .....31**  
**Appendix E U.S. Congressional Legislation .....32**  
**Appendix F Minimum Standards Comparison .....35**

## I. Executive Summary

For many consumers, filing their tax return may be their most important financial transaction of the year. Almost 60 percent of the approximately 142 million consumers who file an individual income tax return with the Internal Revenue Service (IRS) seek the assistance of a compensated tax return preparer. Yet, the majority of tax return preparers are not subject to minimum testing or education standards nor are they subject to oversight by either the federal government or most states.

The IRS's most recent statistics on federal tax return preparers indicate that there are almost 680,000 compensated tax return preparers, but only about 40 percent of these preparers have professional credentials. The other 60 percent of compensated return preparers, or almost 400,000 preparers, generally are not subject to minimum testing or education standards, exceptions being those operating in California, Maryland, New York, and Oregon which have implemented standards.

Requiring such minimum standards for and oversight of compensated tax return preparers has been debated and discussed for many years. Various stakeholders have expressed support for such standards and oversight. These stakeholders include nonprofit consumer advocacy organizations, practitioner groups, the IRS Taxpayer Advocate, state agencies, and Members of Congress.

Minimum education and testing standards for and oversight of compensated tax return preparers will result in better service and protection for consumers. This is because such standards and oversight increase overall competency, knowledge, and expertise of compensated tax return preparers and may also reduce the filing of fraudulent tax returns. In addition, they may also help to reduce the EITC improper payment rate, which appears largely to be caused by the complex eligibility rules.

The IRS attempted to implement a program to oversee non-credentialed compensated tax return preparers by issuing regulations. However, the IRS's authority to implement this program was challenged in court and the courts—both the trial court in 2013 and the appellate court in 2014—ruled against the IRS, holding that Congress must first provide the IRS with authority for such a program.

The appellate court's decision focused on whether the IRS had the *authority* to implement its program and not whether the IRS *should* oversee compensated tax return preparers. In fact, the opinion stated that such a program might "be wise as a policy matter."

The permanent injunction against the IRS's program creates a situation where the majority of consumers are receiving assistance from compensated return preparers who are not subject to any minimum testing or education standards. This is an interesting result since even the volunteers who prepare returns through the IRS-funded Volunteer Income Tax Assistance (VITA) and Tax Counseling for the Elderly programs are subject to minimum testing and education standards.

At H&R Block, our purpose is to look at life through the lens of tax and find ways to help. We are anchored in a set of values summed up as, "we do the right thing." H&R Block has supported efforts to better serve and protect consumers through minimum standards for and oversight of all tax return preparers. Simply put, we believe the "right thing" to do is to protect consumers from potentially incompetent or unscrupulous tax preparers. Our company has long required very stringent standards for tax return preparers working at our offices. See Appendix A for a description of such standards.

In this paper, we

- provide an overview of consumer use of compensated tax return preparers;
- provide an overview of current federal standards and penalties for return preparers;
- explain why additional federal standards and oversight are needed;
- highlight stakeholder support for such additional standards and oversight; and,
- present both legislative and non-legislative recommendations for such standards and oversight.

## II. Overview of Consumer Use of Compensated Tax Return Preparers

As Figure 1 below indicates, according to IRS data, for the past five tax years, the ratio of consumers seeking the assistance of a compensated tax return preparer versus those who self-prepare has remained close to 60 percent.

**Figure 1: IRS Data Showing Trends in Return Preparation Method Overall<sup>1</sup>**

Tax Season	2008	2009	2010	2011	2012
<b>Paid-Preparer</b>	86,515,114 (58%)	82,817,612 (60%)	81,040,615 (60%)	81,527,629 (59%)	82,192,985 (58%)
<b>Self-Prepared</b>	61,820,528 (42%)	55,149,802 (40%)	54,726,080 (40%)	56,659,609 (41%)	59,256,931 (42%)

The IRS, through its requirements for who must obtain a Preparer Tax Identification Number (PTIN), essentially defines a compensated tax return preparer as “all enrolled agents as well as all tax return preparers who are compensated for preparing, or assisting in the preparation of, all or substantially all of any U.S. federal tax return, claim for refund, or other tax form submitted to the IRS,” with certain forms excepted.<sup>2</sup> Volunteers, friends, or family members who assist with tax preparation are not required to obtain PTINs as they are not compensated.

The 670,000 current PTIN holders reported by the IRS<sup>3</sup> does not accurately reflect the total number of compensated tax return preparers as it does not include “ghost preparers.” While there is not an official definition for a ghost preparer, a ghost preparer is generally understood to be a preparer who receives compensation for assisting in the preparation of a tax return, but does not sign the tax return as a preparer. Since “ghost preparers” do not have PTINs, they are extremely difficult to track for enforcement purposes.

---

<sup>1</sup> I.R.S. Pub. 4822, *Taxpayer Filing Attribute Report*, <http://www.irs.ustreas.gov/pub/irs-prior/p4822--2010.pdf> (Apr. 2011) and [http://www.irs.ustreas.gov/pub/irs-utl/Pub\\_4822\\_Sept\\_2013.pdf](http://www.irs.ustreas.gov/pub/irs-utl/Pub_4822_Sept_2013.pdf) (Rev. Jan. 2013).

<sup>2</sup> I.R.S. Frequently Asked Questions: Do I Need a PTIN? <http://www.irs.gov/Tax-Professionals/Frequently-Asked-Questions:-Do-I-Need-a-PTIN%3F> (last visited Mar. 18, 2014).

<sup>3</sup> I.R.S. Return Preparer Office Federal Tax Return Preparer Statistics, <http://www.irs.gov/Tax-Professionals/Return-Preparer-Office-Federal-Tax-Return-Preparer-Statistics> (last visited April 4, 2014).

As of April 1, 2014, the IRS indicates that, of the almost 680,000 PTIN holders, only about 40 percent, or 290,000, of these preparers have professional credentials.<sup>4</sup> The remaining 60 percent, or 390,000, are generally not subject to any minimum testing or education standards. However, the IRS statistics do not break down PTIN holders by state, so it is unclear how many compensated return preparers are in states that have imposed such minimum standards. An estimate of preparers subject to minimum standards in Oregon, California, Maryland and New York are, respectively, 4,000, 80,000, 3,900, and 40,000.<sup>5</sup>

In her most recent annual report to Congress, National Taxpayer Advocate Nina Olson indicates that, for tax year 2011 returns, 42 million consumers used a tax return preparer that was either non-credentialed or not subject to state oversight and minimum standards.<sup>6</sup> That is roughly half the number of consumers who used a compensated tax return preparer for tax year 2011.

Ms. Olson estimates that consumers who claim the Earned Income Tax Credit (EITC) use non-credentialed, compensated tax return preparers in greater numbers than non-EITC filers. The report indicates, “over 76 percent of preparers who prepared returns claiming EITC were [non-credentialed].”<sup>7</sup>

### **III. Overview of Federal Preparer and e-file Rules and Penalties**

Current rules and penalties include preparer registration requirements, the electronic filing (*e-file*) mandate and related Electronic Return Originator (ERO) rules, Internal Revenue Code Preparer Penalties, and Treasury Circular 230 rules.

#### **a. Compensated Return Preparer Registration**

The IRS has long required compensated tax return preparers to sign the tax return in addition to the taxpayer. Until the year 2000 tax season, tax return preparers were required to sign by providing their Social Security Numbers (SSN). Due to privacy considerations, the IRS implemented the PTIN program for the year 2000 tax season as an alternative to providing SSNs.<sup>8</sup> From tax season 2000 through tax season 2010, return preparers could use either their SSN or a PTIN.

---

<sup>4</sup> *Id.* Credentialed preparers include attorneys, certified public accountants, enrolled actuaries, enrolled agents, and enrolled retirement plan agents.

<sup>5</sup> Or. Board of Tax Practitioners, *General Information Booklet for Tax Consultant & Tax Preparer Applicants*, at 2 (Sept. 2013) [http://www.oregon.gov/OBTP/docs/form/gen\\_info.pdf](http://www.oregon.gov/OBTP/docs/form/gen_info.pdf); Ca. Tax Educ. Council Press Release, *New Law Targets Questionable Tax Preparers* (Dec. 30, 2013) <http://www.ctec.org/preparer/content.aspx?contentid=29> (follow “New Law Targets Questionable Tax Preparers” hyperlink); Md. Dept. of Labor, Licensing and Regulation, Public Meeting Minutes (Nov. 2013) <http://dlr.maryland.gov/license/min/taxprepmin.shtml>; N.Y. State Dept. of Tax’n and Fin. Press Release, *Governor Cuomo Announces New Regulations to Protect Consumers Who Hire Tax Preparers* (Mar. 3, 2014) <http://www.governor.ny.gov/press/03032014-new-regulations-tax-preparers>.

<sup>6</sup> National Taxpayer Advocate, 2013 Annual Report to Congress, Vol. I, at 61 (citing I.R.S., Compliance Data Warehouse, Individual Returns Transaction File and Return Preparer and Provider Database, TY 2011)[hereinafter NTA 2013 Annual Report]; The total number of returns prepared by unregulated preparers also includes returns that had a PTIN that could not be matched in the Return Preparers and Providers database.

<sup>7</sup> NTA 2013 Annual Report, *supra* note 6, at 65.

<sup>8</sup> I.R.S. News Release IR-1999-72 (Aug. 24, 1999) <http://www.irs.gov/pub/irs-news/ir-99-72.pdf>.

As part of the IRS's Registered Tax Return Preparer (RTRP) program, beginning January 1, 2011, the IRS mandated that all compensated tax return preparers use a PTIN.<sup>9</sup> After the trial court enjoined the IRS from implementing the RTRP program,<sup>10</sup> the IRS sought clarification on whether it was also enjoined from mandating PTINs. As a result, the court modified its order on February 1, 2013 to clarify that IRS could continue to require PTINs.<sup>11</sup>

When applying for a PTIN, registrants must attest to any felony convictions in the past ten years and to being in full compliance with federal tax laws. A felony conviction will not necessarily disqualify an applicant from receiving a PTIN, but "crimes related to federal tax matters and also those involving dishonesty or a breach of trust will be considered grounds for denial or termination of a PTIN." Full compliance with federal tax laws includes filing all individual and business returns that are due (or having requested an extension) and paying or making payment arrangements for all taxes due.<sup>12</sup> However, IRS published guidance does not indicate that non-filing or non-payment of taxes is a bar to preparing returns.

### **b. Electronic Filing (*e-file*) Mandate**

In the IRS Restructuring and Reform Act of 1998, Congress required that IRS achieve an 80 percent *e-file* rate by 2007,<sup>13</sup> a goal which IRS achieved regarding individual income tax returns in 2012.<sup>14</sup> For tax season 2013, the *e-file* rate for individual tax returns was approximately 83 percent.<sup>15</sup>

In 2009, the Worker, Homeownership, and Business Assistance Act amended Internal Revenue Code (IRC) section 6011 to mandate that all specified tax return preparers must electronically file all income tax returns.<sup>16</sup> A specified tax return preparer is any tax return preparer (or a preparer's firm in aggregate) that reasonably expects to file more than 10 individual income tax returns during such calendar year.<sup>17</sup> Prior to this amendment to section 6011, the threshold for mandated *e-filing* was 250 returns.<sup>18</sup>

To electronically file returns, specified preparers must apply for and obtain an Electronic Filing Identification Number (EFIN) from the IRS. As part of the application for an EFIN, preparers who were not certified or licensed, i.e. not an attorney, certified public accountant, or enrolled agent, must provide fingerprints to the IRS and pass a suitability check.

---

<sup>9</sup> 26 C.F.R. § 1.6109-2 (2014).

<sup>10</sup> *Loving v. IRS*, 917 F. Supp. 2d 67 (D.D.C. Jan. 18, 2013).

<sup>11</sup> *Loving v. IRS*, 920 F. Supp. 2d 108 (D.D.C. 2013).

<sup>12</sup> I.R.S., Instructions for Form W-12, *IRS Paid Preparer Tax Identification Number (PTIN) Application and Renewal*, at 2, (Rev. Jan. 2013).

<sup>13</sup> H.R. 2676, 105<sup>th</sup> Cong. § 2001 (codified at 26 U.S.C. § 6011 note) (1998).

<sup>14</sup> I.R.S. Oversight Board, *Electronic Filing 2012 Annual Report to Congress*, at 5 (Dec. 2012)

<http://www.treasury.gov/irsob/reports/2013/IRSOB~E-File%20Report%202012.pdf>.

<sup>15</sup> I.R.S. News Release IR-2013-94 (Dec. 4, 2013) <http://www.irs.gov/uac/More-than-122-million>Returns-eFiled-in-2013>.

<sup>16</sup> H.R. 3548, 111<sup>th</sup> Cong. § 17 (codified at I.R.C. § 6011) (2009).

<sup>17</sup> *Id.*

<sup>18</sup> Omnibus Budget Reconciliation Act of 1989, H.R. 3299, 101<sup>st</sup> Cong. § 7713 (1989).

This may include a criminal background check, a credit history check, a tax compliance check, and a check for prior non-compliance with IRS *e-file* requirements.<sup>19</sup>

### c. Electronic Return Originator Oversight and Penalties

An ERO is an authorized IRS *e-file* Provider that originates the electronic submission of a return to the IRS.<sup>20</sup> An ERO must apply for and obtain an EFIN and is therefore subject to a suitability and background check.

An ERO must, as part of its responsibility to safeguard the IRS *e-file* program, diligently identify, prevent, and report fraud and abuse of the IRS *e-file* program. EROs are required to confirm taxpayer identities and Taxpayer Identification Numbers (TINs), monitor for altered taxpayer information documents, and exercise due diligence in the preparation of returns involving the Earned Income Tax Credit (EITC).<sup>21</sup>

An ERO is not a return preparer if his or her services are limited to “typing, reproduction, or other mechanical assistance in the preparation of a return or claim for refund.”<sup>22</sup> If an ERO, intermediate service provider, transmitter, or software product alters the return in a way other than “mechanical assistance,” penalties that apply to an income tax return preparer can apply.<sup>23</sup>

The following types of penalties can be applied to an ERO:

1. **Level One Infractions.** Violations that have little or no impact on the integrity of the *e-file* program or the quality of electronically filed returns are subject to a letter of reprimand.<sup>24</sup> IRS reviews each Level One infraction case based on its own specific facts and circumstances. An example of a Level One infraction is when “[t]here is a history of defaulted installment agreement, but issues were addressed or self-corrected with no reasonable cause or explanation.”<sup>25</sup>
2. **Level Two Infractions.** Violations that “have an adverse impact upon the quality of electronically filed returns, or on IRS *e-file*,” including continued level one infractions after the *e-file* provider has been notified of the infraction may result in restricted participation or suspension from the *e-file* program for the remainder of the calendar year plus the next calendar year.<sup>26</sup> An ERO could be subject to a Level Two infraction if he or she, among other conduct, is incarcerated, defaults on an installment agreement without reasonable cause or explanation, or is missing two tax returns from the last six years without reasonable cause or explanation.<sup>27</sup>

---

<sup>19</sup> I.R.S. Pub. 3112, *IRS e-file Application and Participation*, at 8 (Rev. May. 2013) [hereinafter *I.R.S. e-file Application*].

<sup>20</sup> *I.R.S. e-file Application*, *supra* note 30, at 5.

<sup>21</sup> I.R.S. Pub. 1345, *Handbook for Authorized I.R.S. e-File Providers of Individual Tax Returns*, at 16-18 (Rev. Mar. 2009) [hereinafter *Handbook for e-File Providers*].

<sup>22</sup> *Handbook for e-File Providers*, *supra* note 33, at 48.

<sup>23</sup> *Id.* at 49.

<sup>24</sup> *I.R.S. e-file Application*, *supra* note 30, at 27.

<sup>25</sup> I.R.S. Internal Revenue Manual 3.42.10.23.11.1, *Levels of Infraction – Level One* (Rev. Oct. 1, 2012).

<sup>26</sup> *I.R.S. e-file Application*, *supra* note 30, at 27.

<sup>27</sup> I.R.S. Internal Revenue Manual 3.42.10.23.11.2, *Levels of Infraction – Level Two* (Rev. Oct. 1, 2012).

3. **Level Three Infractions.** Violations that “have a significant adverse impact on the quality of electronically filed returns or on IRS *e-file*,” including continued level two infractions after the *e-file* provider has been notified of the infraction may result in suspension for the remainder of the calendar year plus the next two calendar years.<sup>28</sup> A Level Three infraction may involve fraud, disreputable conduct, criminal conduct, or non compliance with Form 8453, *U.S. Individual Income Tax Transmittal for an IRS e-file Return*.<sup>29</sup> Fraudulent or criminal conduct may result in expulsion.

In addition to the possible application of return preparer penalties, an ERO may be suspended or barred from submitting returns. Suspension or expulsion can occur prior to review of level three infractions.<sup>30</sup>

#### **d. Internal Revenue Code Preparer Penalties**

Although many penalties apply primarily to taxpayers, several IRC penalties apply specifically to paid preparers. Codified penalties apply to all compensated return preparers, including those who are not credentialed.

Under IRC section 6694, preparers may be subject to penalties for understatement of income on a taxpayer’s return. If understatement on a taxpayer’s return was based on an unreasonable position, the penalty is the greater of \$1,000 or 50 percent of the income derived by the preparer with respect to the return or claim. If the understatement was due to willful or reckless conduct, the penalty is \$5,000 or the amount of income derived by the preparer with respect to the return or claim for refund, whichever is greater.<sup>31</sup>

IRC section 6109(a)(4) requires compensated tax return preparers to sign and provide their PTIN on any return or claim for refund that they prepare. If a preparer fails to sign or provide his or her PTIN on a return or claim for refund he or she may be subject to a \$50 penalty for each failure, capped at \$25,000 per year.<sup>32</sup>

Other preparer penalties range from a \$50 penalty for failing to provide a copy of the return to the taxpayer to fines and imprisonment for fraudulent activity. For a complete listing of preparer penalties under the IRC, see Appendix B.

#### **e. Treasury Circular 230 Oversight**

Treasury Circular 230 (Circ. 230) contains rules that govern attorneys, certified public accountants, enrolled agents, and other persons who represent clients in matters before the IRS. Circ. 230 includes rules relating to the authority to practice before the IRS, the duties and restrictions relating to such practice, and the sanctions for violating the regulations.

---

<sup>28</sup> *I.R.S. e-file Application*, *supra* note 30, at 27.

<sup>29</sup> I.R.S. Internal Revenue Manual 3.42.10.23.11.3, *Levels of Infraction – Level Three* (Rev. Aug. 28, 2013).

<sup>30</sup> *I.R.S. e-file Application*, *supra* note 30, at 27.

<sup>31</sup> I.R.C. §§ 6694(a)-(b) (2014).

<sup>32</sup> I.R.C. §§ 6695(b)-(c) (2014).

The enabling legislation for Circ. 230 regulations appears in title 31, United States Code, section 330, which, among other authority, grants the Treasury the power to, “regulate the practice of representatives of persons before the Department of Treasury.”

According to Circ. 230:

*Practice before the IRS comprehends all matters connected with a presentation to the Internal Revenue Service . . . relating to a client’s rights, privileges, or liabilities under laws or regulations administered by the Internal Revenue Service. Such presentations include . . . preparing documents; filing documents; corresponding and communicating with the Internal Revenue Service . . . and representing a client at conferences, hearings and meetings.*<sup>33</sup>

The IRS Office of Professional Responsibility (OPR) enforces regulations governing practice before the IRS.<sup>34</sup> Under Circ. 230, OPR may suspend, disbar, or censure individuals subject to Circ. 230 for disreputable conduct or for failure to comply with the practice requirements.<sup>35</sup>

As part of the IRS’s implementation of the RTRP program, Circ. 230 was modified in 2011 to include Registered Tax Return Preparers.<sup>36</sup> However, given the appellate court’s ruling in the *Loving* case that practice before Treasury does not include tax return preparation,<sup>37</sup> it is reasonable to assume that Circ. 230 will be modified again to remove the inclusion of Registered Tax Return Preparers.

#### **IV. Why Additional Federal Standards & Oversight Are Needed**

The tools available to the IRS are not sufficient to improve tax return accuracy, combat fraud and protect consumers. For example, the EFIN and ERO requirements, are clearly are not deterring fraudulent tax return preparers as the majority of those returns filed by the preparers subject to DOJ enforcement action are also participating in *e-file*.

In addition,

- Studies suggest that preparers may file returns with errors;
- Studies and enforcement efforts indicate that consumers are victims of fraudulent return preparers;
- The complexity of tax laws and the frequency of changes to it suggest that minimum standards should be imperative;
- Requiring such standards and informing consumers about them would empower consumers;
- Consumers who use credentialed preparers or volunteer preparers may be better served and protected than the majority of consumers who use non-credentialed preparers; and
- A patchwork of state laws and regulations, while preferable in absence of any standards, may be burdensome and confusing to consumers

---

<sup>33</sup> 31 C.F.R. § 10.2 (a)(4) (Jul. 1, 2013).

<sup>34</sup> 31 C.F.R. § 10.1 (a)(1) (Jul. 1, 2013).

<sup>35</sup> 31 C.F.R. § 10.50 (a) (Jul. 1, 2013).

<sup>36</sup> 31 C.F.R. § 10.0 (a) (Jul. 1, 2011).

<sup>37</sup> *Loving v. I.R.S.*, No. 13-5061 (D.D.C Feb. 11, 2014).

#### **a. Studies Suggest Preparers May File Returns with Errors**

For more than a decade, various stakeholders have completed studies and issued reports on the conduct of compensated tax return preparers as well as volunteer preparers. These stakeholders include the Government Accountability Office (GAO), the Treasury Inspector General for Tax Administration (TIGTA), and consumer advocacy nonprofit groups. See Appendix C for a list of such reports.

In general, these stakeholders “mystery shopped” compensated tax return preparers, including both independent preparers and those employed by chain tax preparation companies, by posing as consumers seeking to have tax returns prepared. The sample sizes are generally small and their non-representative nature precludes results from being generalized across all preparers. However, the results suggest that tax preparers frequently make errors in preparing tax returns and that the errors could both be favorable or unfavorable to the consumer.

Examples of errors and lack of knowledge include:

- Failing to include income, sometimes even when the consumer has declared income;
- Failing to utilize all deductions and credits for which a consumer may be eligible; and
- Inability to properly report or complete certain schedules and forms.

In general, while these studies provide valuable anecdotes of preparer misconduct, they do not provide a comprehensive review of return preparers. The studies are not based on statistically valid, geographically balanced samples of return preparers and do not properly weigh independent preparers versus those employed by retail offices. They also do not include a comparison and analysis of preparers subject to minimum standards, either as a result of state laws or as a condition of employment or volunteer eligibility, versus those that are not.

#### **b. Studies & Enforcement Efforts Indicate that Consumers are Victims of Fraudulent Return Preparers**

The studies referenced supra IV.a, as well as Ms. Olson’s 2012 Annual report to Congress, also indicate that some tax return preparers clearly engage in fraudulent behavior.

Examples of fraud from the studies referenced above include:

- Advising consumers not to report income;
- Intentionally claiming or inflating frivolous or unsubstantiated expenses; and,
- Filing a return without authorization from the consumer and directing refunds to the preparer’s accounts.

Examples from Ms. Olson’s report include:

- Altering a tax return to inflate the refund after the consumer authorizes filing and retaining the excess refund; and
- Altering direct deposit bank account information after consumer authorizes e-filing so that consumer receives no refund.<sup>38</sup>

In her 2013 report to Congress, Ms. Olson also reported on the harm experienced by consumers whose refunds are delayed due to preparer fraud. As of December 16, 2013, some of the 107 preparer fraud victims that enlisted the help of the Taxpayer Advocate Services (TAS) were still waiting for refunds from their 2008 tax returns. Other victims, “have been waiting an average of more than two years to receive their refunds.”<sup>39</sup>

Information about preparer fraud is also available from the the United States Department of Justice’s Tax Division (DOJ) ongoing enforcement efforts.<sup>40</sup> DOJ has shut down hundreds of fraudulent tax return preparers in more than a decade of enforcement.<sup>41</sup>

DOJ’s efforts have targeted both national and regional retail offices as well as independent preparers. Examples of enforcement against retail offices include Mo’ Money Taxes, a Memphis, Tennessee-based firm with 300 offices in 18 states, ITS Financial LLC, the national franchisor of Instant Tax Service, which had hundreds of offices in 34 states, and a rogue Jackson Hewitt franchisee who owned, in whole or in part, five corporations that operated 125 offices.<sup>42</sup>

The actions against these individuals and corporations largely stemmed from the fact that the preparers were trained and encouraged to file fraudulent and incorrect returns, as well as sell deceptive loan products.

---

<sup>38</sup> National Taxpayer Advocate, 2012 Annual Report to Congress, Vol. I, at 68-69 (Dec. 31, 2012).

<sup>39</sup> NTA 2013 Annual Report, *supra* note 6, at 94-102.

<sup>40</sup> U.S. Dep’t of Justice News Release, *Justice Department Highlights Ongoing Efforts to Protect the Public and Shut Down Fraudulent Tax Return Preparers and Promoters Nationwide* (Feb. 11, 2014) <http://www.justice.gov/opa/pr/2014/February/14-tax-145.html>.

<sup>41</sup> See U.S. DOJ Tax Division Press Releases for 2001–2014, <http://www.justice.gov/tax/taxpress2001.htm>.

<sup>42</sup> U.S. DOJ Press Release, *Tennessee Federal Court Bars the Owners of Mo’ Money Taxes from Owning, Operating, Licensing or Franchising a Tax Return Preparation Business and Preparing Tax Returns for Others* (Sept. 18, 2013) <http://www.justice.gov/opa/pr/2013/September/13-tax-1042.html>; U.S. DOJ Press Release, *Federal Court in Ohio Shuts Down Nation’s Fourth-Largest Tax-Preparation Firm and Bars CEO from Tax-Preparation Business* (Nov. 7, 2013) <http://www.justice.gov/opa/pr/2013/November/13-tax-1196.html>; U.S. DOJ Press Release, *U.S. Government Sues Jackson Hewitt Tax Preparation Franchises in Four States, Alleging Pervasive Fraud* (Apr. 3, 2007) <http://www.justice.gov/tax/txdv07215.htm>.

DOJ enforcement efforts against independent preparers include similar issues. In cases where courts shut down or imprisoned fraudulent preparers, the courts found examples of preparer misconduct that resulted in understated federal tax liabilities for consumers included:

1. Selling other people's identifying information to consumers to then be claimed as dependents on those consumers' tax returns;<sup>43</sup>
2. Urging a consumer to lie to an IRS agent to forestall an IRS audit;<sup>44</sup>
3. Creating wholly fictitious business income and expenses;<sup>45</sup>
4. Claiming the First Time Home Buyer Credit for taxpayers who did not purchase homes;<sup>46</sup>
5. Inflating deductions for legitimate businesses to claim losses for otherwise profitable enterprises;<sup>47</sup>
6. Fabricating and inflating charitable deductions;<sup>48</sup> and
7. Claiming false and exaggerated education credits.<sup>49</sup>

### c. It is Too Easy to Be a Tax Return Preparer

Arguably, the lack of minimum standards for, and oversight of return preparers empowers individuals and business to become compensated tax return preparers with relative ease and minimal costs. NCLC highlights the issue of "fringe preparers":

*Fringe preparers include businesses that are historically associated with the exploitation of consumers, such as payday loan stores, check cashers, and used car dealers. Some retailers, such as jewelry and furniture stores, also act as fringe preparers. Many of these preparers encourage clients to use their tax refunds for large purchases.<sup>50</sup>*

---

<sup>43</sup> U.S. Dep't of Justice News Release, *Former Georgia Tax Return Preparers Sentenced for Tax Fraud* (Aug. 9, 2013) <http://www.justice.gov/tax/2013/txdv13902.htm>.

<sup>44</sup> U.S. Dep't of Justice News Release, *Texas Tax Preparer is Permanently Barred from Tax Preparation for Allegedly Falsifying Returns for Overseas Customers and Impeding Audits* (Aug. 23, 2013) <http://www.justice.gov/tax/2013/txdv13955.htm>.

<sup>45</sup> U.S. Dep't of Justice News Release, *Former Washington D.C.-Area Accountant Sentenced to Prison for Tax Fraud* (Dec. 11, 2013) <http://www.justice.gov/tax/2013/txdv131309.htm>.

<sup>46</sup> U.S. Dep't of Justice News Release, *Federal Court Shuts Down Atlanta-Area Tax Preparer* (Dec. 11, 2013) <http://www.justice.gov/tax/2013/txdv131306.htm>.

<sup>47</sup> *Id.*

<sup>48</sup> U.S. Dep't of Justice News Release, *Federal Court Bars Kansas City, Mo., Man from Preparing Tax Returns for Others* (Sept. 26, 2013) <http://www.justice.gov/tax/2013/txdv131084.htm>.

<sup>49</sup> U.S. Dep't of Justice News Release, *Federal Court Permanently Bars Texas Tax Preparer from Preparing Tax Returns for Others* (Sept. 4, 2013) <http://www.justice.gov/tax/2013/txdv13990.htm>.

<sup>50</sup> Chi Chi Wu, National Consumer Law Center, *Riddled Returns: How Errors and Fraud by Paid Tax Preparers Put Consumers at Risk and What States Can Do*, at 4 (2014).

This lack of standards and oversight is in stark contrast to many other professions, including hairdressers. “In 46 states, there are more regulatory requirements for hairdressers than tax preparers.”<sup>51</sup>

Given that the filing of a tax return may be a consumer’s most significant financial transaction every year, a more relevant comparison may be other financial services providers. For example, stock brokers and certified public accountants are respectively subject to standards governed by the Securities and Exchange Commission or state boards of accountancy.

The complexity of federal, state, and local tax laws and regulations, as well as the sensitive financial information divulged to a tax return preparer, suggests that it would be reasonable for consumers utilizing compensated tax return preparation to expect those preparers to meet some minimum standard.

In addition to the lack of minimum standards and oversight, the wide-spread availability of relatively low-cost tax return preparation software allows any individual with a computer to become a compensated tax return preparer. For tax year 2011, of the 82,192,985 million returns filed by paid preparers, only 875,567 (or 1 percent) of those returns were filed on paper without using any software.<sup>52</sup>

Most tax return preparation software uses plain-English interview questions and data entry to facilitate the preparation of a tax return. This may cultivate dependence by software users as it eliminates the need for tax return preparers to understand the tax law driving those interview questions. NCLC points out the fact that one software provider’s marketing strategy is to highlight that no tax experience is required to use their software.<sup>53</sup>

Tax Max, a software provider that markets to car dealers, in response to the frequently asked question “I have no tax experience at all. Will I be able to participate in this program?” states:

*Yes. There is no experience required, and our web-based program was designed for use by someone who knows nothing about taxes. Also, our customer packets have a checklist inside to walk you through the whole process.*<sup>54</sup>

Requiring some minimum standards for tax return preparers, such as testing and continuing education, may reduce the number of tax return preparers who are incompetent, or lack knowledge and expertise of the tax laws, including fringe preparers. In addition, the implementation of minimum standards could help alleviate the effect of dependence on software.

---

<sup>51</sup> Wu, *supra* note 51, at 3 (citing Bureau of Labor Statistics, U.S. Dept. of Labor, *Occupational Outlook Handbook*, Barbers, Hairdressers, and Cosmetologists, <http://www.bls.gov/ooh/personal-care-and-service/barbers-hairdressers-and-cosmetologists.htm>) (last visited March 18, 2014).

<sup>52</sup> I.R.S. Pub. 4822, *Taxpayer Filing Attribute Report*, [http://www.irs.ustreas.gov/pub/irs-utl/Pub\\_4822\\_Sept\\_2013.pdf](http://www.irs.ustreas.gov/pub/irs-utl/Pub_4822_Sept_2013.pdf) (Rev. Jan. 2013).

<sup>53</sup> Wu, *supra* note 51, at 5.

<sup>54</sup> Tax Max, Tax Refund Services, <https://www.taxmax.com/TRSTaxMax/FAQ.aspx> (last visited March 16, 2014).

**d. Consumers Should Be Empowered to Identify Potentially Fraudulent Preparers before They Become Victims**

The IRS's annual press release on the "Dirty Dozen" tax scams for 2014 includes return preparer fraud.<sup>55</sup> In a concurrent release, the IRS issues tips on "How to Choose a Tax Preparer."<sup>56</sup> The following language is an excerpt from a bullet point in the latter release titled "Check the preparer's history":

*Check with the Better Business Bureau to see if the preparer has a questionable history. Check for disciplinary actions and for the status of their licenses. For enrolled agents, check with the IRS Office of Enrollment. (Enrolled agents are licensed by the IRS and are specifically trained in federal tax planning, preparation and representation.) For certified public accountants, check with the state board of accountancy. For attorneys, check with the state bar association.*

While such third party resources can provide some comfort to consumers who utilize credentialed compensated tax return preparers, the tens of millions who use non-credentialed preparers are not afforded the same resources. Some consumers may not think to check with the Better Business Bureau, or if they do, they may not be able to obtain relevant information because many preparers listed are not rated, and businesses are not required to seek accreditation from the Better Business Bureau.

Requiring compensated return preparers to meet minimum standards and then educating consumers about such standards would empower consumers to become informed about their return preparer.

**e. Consumers Who Use Volunteer Preparers Are Better Served & Protected**

VITA preparers are subject to minimum standards in the form of annual training and testing. Each year, volunteer preparers must complete Volunteer Standards of Conduct, intake and interview awareness, and quality review training. Volunteer preparers must also pass an annual, four-hour competency examination with a score of 80 percent or higher. VITA provides its volunteers with optional education both in person and online through the third party vendor Link and Learn Taxes. This training contains problems and exercises as well as practice returns using tax software.<sup>57</sup> For a summary of requirements for VITA certification, see Appendix D.

Arguably, compensated tax return preparers should be subject to at least the same standards as VITA volunteers.

---

<sup>55</sup> I.R.S. News Release IR-2014-16 (Feb. 19, 2014), <http://www.irs.gov/uac/Newsroom/IRS-Releases-the-%E2%80%9CDirty-Dozen%E2%80%9D-Tax-Scams-for-2014;-Identity-Theft,-Phone-Scams-Lead-List>.

<sup>56</sup> I.R.S. News Release FS-2014-5 (Feb. 2014) <http://www.irs.gov/uac/Newsroom/IRS-Offers-Advice-on-How-to-Choose-a-Tax-Preparer>.

<sup>57</sup> I.R.S. Pub. 4012, *VITA/TCE Volunteer Resource Guide* (Rev. Oct. 2013); I.R.S. Pub. 4961, *Volunteer Standards of Conduct – Ethics Training* (Rev. Oct. 2013); VITA/TCE Central website, <https://www.linklearncertification.com>; I.R.S. Volunteer Training Resources, <http://www.irs.gov/Individuals/Volunteer-Training-Resources>.

#### **f. Fifty State Strategy Could Be More Confusing and Burdensome for Consumers**

At the state level, four states require minimum standards for and oversee compensated preparers: Oregon and California began oversight of paid preparers effective in the 1970s<sup>58</sup>, and Maryland and New York began overseeing them more recently, in 2008<sup>59</sup> and 2010,<sup>60</sup> respectively.

While state standards and enforcement of those standards would better protect consumers in the absence of any standards, a state-focused strategy could create more confusion and burden. It is unclear whether and how a consumer would be aware of a preparer's state certification if he or she moves between states or lives and works in different states with different standards. For example, a consumer who lives in New Jersey but works in New York City may need to file both New Jersey and New York returns. If the consumer chooses a return preparer in New Jersey, he or she may not be aware that the preparer may need to meet New York standards in order to prepare the consumer's New York return.

In addition, it is unclear whether states with no income tax would require standards for federal income tax returns. Currently, the IRS lists nine states as having no income tax.<sup>61</sup> Interestingly, Florida, one of those nine, is one of the largest sources of fraudulent returns.<sup>62</sup>

#### **V. Stakeholder Support for Additional Standards and Oversight**

The President's budget for fiscal year 2015 includes a legislative proposal to provide Treasury with the authority to set minimum standards for return preparers.<sup>63</sup> In addition, there has been longstanding support for such standards and oversight of paid preparers from various stakeholders including consumer advocates, the National Taxpayer Advocate, Members of Congress, and even consumers themselves. Many of these stakeholders participated in the IRS's Return Preparer Review conducted in 2009.

---

<sup>58</sup> Government Accountability Office, GAO-08-781, *Oregon's Regulatory Regime May Lead to Improved Federal Tax Return Accuracy and Provides for a Possible Model for National Regulation*, at 9 (2008); *Cal. SB 229* (Figueroa, Stats. 2005, Ch. 658) (In 1997, the State legislature transferred responsibility for registering individuals as tax preparers, certifying the education of tax preparers, approving tax schools, and educating California taxpayers on the selection of tax professionals from the California Department of Consumer Affairs to The California Tax Education Council, a non-profit corporation).

<sup>59</sup> Md. Individual Tax Preparers Act, 2008 MD S 817, ch. 623, § 3.

<sup>60</sup> N.Y. L. 2009, c. 59, Part VV, § 2 (as amended by L. 2009, c. 503, Part F, § 1; L. 2010, c. 242, § 1; L. 2012, c. 488, § 1).

<sup>61</sup> I.R.S. States Without a State Income Tax, <http://www.irs.gov/uac/States-Without-a-State-Income-Tax> (last visited Apr. 4, 2014).

<sup>62</sup> U.S. Dep't of Justice News Release, *25 Defendants Charged in Separate Schemes that Resulted in Thousands of Identities Stolen and Millions of Dollars in Identity Theft Tax Filings* (April 3, 2014)

<http://www.justice.gov/usao/fls/PressReleases/140403-01.html>.

<sup>63</sup> Office of Mgmt. and Budget, Fiscal Year 2015 Budget of the U.S. Gov't, at 193 (2014) <http://www.whitehouse.gov/sites/default/files/omb/budget/fy2015/assets/budget.pdf>.

### **a. Support from Consumer Advocates**

National Taxpayer Advocate, Nina Olson, has been advocating for oversight and minimum standards of paid preparers as a consumer protection measure since 2002, claiming that return preparer fraud “creates significant challenges for the IRS, harms innocent taxpayers, and undermines trust in our tax system.”<sup>64</sup> According to Olson, minimum standards and oversight would reduce preparer-facilitated noncompliance because it would ensure preparers are, “competent, visible, and accountable.”<sup>65</sup>

The National Consumer Law Center (NCLC) also supports oversight and minimum standards for preparers and has proposed a Model Act for states to adopt.<sup>66</sup> Key components of the Model Act include:

- Minimum formal education requirement of a high school diploma or equivalent;
- Registration with the designated state agency unless exempt;
- Completing 60 hours of entry-level education;
- Passing a basic competency examination;
- 15 hours of continuing education per year; and
- A background check.

The Model Act also would require preparers to provide a standardized disclosure of fees to improve transparency with tax preparation fees.

### **b. Congressional Support**

Members of Congress have introduced numerous bills, one as recently as 2013, to give the IRS express authority to oversee and require minimum standards for tax return preparers. See Appendix E for a summary of these bills.

Former New Mexico Senator Jeff Bingaman’s introductory remarks for the Taxpayer Protection and Assistance Act of 2005 sheds light on his opinion of minimum standards for and oversight of preparers:

*For those taxpayers who use a paid tax practitioner, compliance with the tax laws hinges on the practitioners competence and ethical standards. The IRS’s lack of oversight over such practitioners therefore contributes to noncompliance. Further, improving the accuracy of tax returns at the front end of the process should reduce government burden and intrusion on taxpayers through enforcement.*<sup>67</sup>

---

<sup>64</sup> National Taxpayer Advocate, 2002 Annual Report to Congress, at 216-230; NTA 2013 Annual Report, *supra* note 6, at 61-74, 94.

<sup>65</sup> NTA 2013 Annual Report, *supra* note 6, at 61.

<sup>66</sup> Wu, *supra* note 51, at 20.

<sup>67</sup> 109 Cong. Rec. S.4102 (2005) (statement of Sen. Bingaman for S. 832, later incorporated into S. 1321).

More recently, the Senate Committee on Finance Staff expressed support for providing the IRS with clear statutory authority to oversee compensated tax return preparers. Providing such authority was included as a tool to reduce to the tax gap in one of the Staff's tax reform discussion drafts.<sup>68</sup>

### **c. Consumer Support**

The IRS Oversight Board released the 2013 Taxpayer Attitude Survey on February 18, 2014. The survey of 1,000 male and female U.S. adults indicated that 96 percent of all taxpayers believe it is either very or somewhat important that preparers be required to meet minimum standards, including 80 percent which said it was very important.<sup>69</sup>

In addition, The Tax Institute at H&R Block worked with ORC International to field a national survey to gauge consumer awareness and attitudes on tax fraud. An overwhelming majority of respondents, over 86 percent, expressed support for requiring tax return preparers to meet minimum standards.<sup>70</sup>

### **d. Internal Revenue Service Return Preparer Review**

IRS included in its strategic plan for years 2009 through 2013 the objective of "[ensuring] that all tax practitioners, tax preparers, and other third parties in the tax system adhere to professional standards and follow the law."<sup>71</sup> To achieve this objective, IRS launched a comprehensive six-month study of the paid tax return preparer industry.<sup>72</sup> The IRS issued a report on its findings: Pub. 4832, *Return Preparer Review* (Review).

In conducting the Review, the IRS sought input from internal and external stakeholders through three public forums, written comments, and meetings with advisory groups.<sup>73</sup> As the Review indicates, there was overwhelming support for minimum standards for and oversight of preparers, and the proposals in the Review were the basis of the Registered Tax Return Preparer (RTRP) program.<sup>74</sup>

---

<sup>68</sup> Staff of Senate Comm. on Fin., 113<sup>th</sup> Cong., *Simplifying the Tax System for Families and Businesses*, at 3 (Mar. 21, 2013)

<http://www.finance.senate.gov/imo/media/doc/032113%20Tax%20Administration%20Options%20Paper%20for%20Member%20Meeting%20.pdf>.

<sup>69</sup> I.R.S. Oversight Board, *2013 Taxpayer Attitude Survey*, Figure 12, at 10 (Feb. 18, 2014).

<sup>70</sup> The Tax Institute at H&R Block, *Consumer Tax Fraud: Sources & Solutions*, at 4 (2014).

<sup>71</sup> I.R.S. Pub. 3744, *2009-2013 I.R.S. Strategic Plan*, at 23-24 (Rev. Apr. 2009), <http://www.irs.gov/pub/irs-pdf/p3744.pdf>.

<sup>72</sup> I.R.S. Pub. 4832, *Return Preparer Review*, at 32 (2009) <http://www.irs.gov/pub/irs-pdf/p4832.pdf> [hereinafter *Return Preparer Review*].

<sup>73</sup> *Return Preparer Review*, *supra* note 70, at 25-26.

<sup>74</sup> *See Id.* Review participants that supported a framework of minimum standards and oversight included the U.S. Government Accountability Office (GAO), Treasury Inspector General for Tax Administration (TIGTA), National Association of Enrolled Agents (NAEA), American Institute of Certified Public Accountants (AICPA), American Bar Association (ABA), National Society of Accountants (NSA), National Association of Tax Professionals (NATP), National Community Tax Coalition (NCTC), Center on Budget and Policy Priorities (CBPP), American Association of Retired Persons (AARP), Consumer Federation of America (CFA), Community Tax Law Project (CTLP), Oregon State

## VI. Elements of Federal Legislation

H&R Block supports legislation that would set minimum standards for compensated tax return preparers. Such legislation should incorporate the standards contemplated by the IRS in its RTRP program, including codifying the registration requirement, as well as provisions to minimize burden on return preparers.

The core components of the proposal include:

- Registration;
- Testing with reasonable exceptions for experienced professionals;
- Continuing education;
- Background screening;
- Limiting fees charged to preparers to implement the program (limited to IRS's costs for administering annual registration and examination);
- Certification of non-Treasury programs;
- Nonmonetary penalties for noncompliance; and
- Annual reports to Congress.

### a. Registration

Being able to identify compensated return preparers is the first—and critical—step in combating incorrect and fraudulent returns. Registration should increase visibility and provide data on return preparers. In its 2009 Return Preparer Review, the IRS indicated that it did not know the precise number of tax return preparers. However, it estimated that there were between 900,000 and 1.2 million compensated tax return preparers.<sup>75</sup> For tax season 2014, the actual number is closer to 670,000.<sup>76</sup>

Although the U.S. Court of Appeals for the District of Columbia affirmed the IRS's ability to maintain the PTIN component of the RTRP program,<sup>77</sup> codifying the requirement will protect against future challenges. For example, in addition to the injunction requested in the *Loving* case, another preparer challenged the PTIN requirement and associated user fee.<sup>78</sup>

It is important to note that registration alone will not lead to better service or protections for consumers. Examination, continuing education and background screenings must also accompany registration. However, more stringent enforcement actions may be necessary to address ghost preparers as they are not likely to register.

---

Board of Tax Practitioners, California Franchise Tax Board, California Tax Education Council (CTEC), Comptroller of Maryland Revenue Administration Division, and New York Department of Taxation and Finance.

<sup>75</sup> *Return Preparer Review*, *supra* note 70, at 1.

<sup>76</sup> I.R.S., Return Preparer Office Federal Tax Return Statistics, <http://www.irs.gov/Tax-Professionals/Return-Preparer-Office-Federal-Tax-Return-Preparer-Statistics> (last visited March 18, 2014).

<sup>77</sup> *Loving v. IRS*, 920 F. Supp. 2d 108 (D.D.C. Feb. 1, 2013).

<sup>78</sup> *Brannen v. U.S.*, 682 F. 3d 1316 (11<sup>th</sup> Cir. 2012) (holding that the regulation imposing a user fee to obtain a PTIN was correctly established in accordance with I.R.C. § 9701).

Most, if not all, consumer tax return preparation software for self-preparers contains restrictions on the use of its software in its End User Licensing Agreement (EULA). Because software companies' data and statistics would likely identify ghost preparers more quickly and efficiently than the IRS, the IRS should study ways in which they might be able to partner with software companies to identify ghost preparers.

#### **b. Examination**

An entry-level examination is a hallmark of many standard-setting organizations and government programs and should be a reasonable requirement for compensated tax return preparers. Under the IRS's RTRP program, the number of testing sites available to return preparers was extremely limited, and the fee to take the examination was \$116.

This limited availability of test administration sites imposed a significant burden on some preparers. For example, one H&R Block franchisee located on a Hawaiian island incurred costs in excess of \$21,000 in travel costs and examination fees to fly his 51 tax return preparers to the main island since a testing site was not available on the island where the office was situated (an average of over \$400 per preparer to take the examination, not including PTIN registration and continuing education fees).

To minimize burden and maximize the number of compensated return preparers available to consumers, an online testing option should be made available. In addition, in order to maximize testing accessibility, Treasury should also consider designating existing third party testing service providers and their examinations. This should include allowing compensated preparers to access the VITA Basic certification examination, for a fee, online through third-party vendor Link and Learn, as well as on paper at participating VITA sites.

Since third party providers would not be government contractors, utilizing such providers for examinations program should not be subject to government procurement rules or budgetary constraints. Rather, designation of existing tax testing service providers and their examinations would be similar to procedures that were developed for certifying continuing education providers under the RTRP program.

The IRS's RTRP examination was a multiple choice test. It is worth noting that a multiple choice test may not be an effective method to test competence. Instead, a test that requires completion of a tax return based on scenarios that include mock information returns and other documents may identify gaps in knowledge or competence more accurately.

Any new examination requirement, regardless of method, would mean thousands of competent and experienced tax return preparers would be subject to examination fees and possibly expenses for traveling to a testing site. To incentivize these preparers to remain preparers and to ensure consumers are afforded as many options as possible, Treasury should "grandfather" or provide reasonable exceptions to the examination for competent and experienced preparers.

In addition, the thousands of preparers who passed the examination the IRS implemented as part of its RTRP program should be exempt from any new examination requirements.

### **c. Continuing Tax Education**

Continuing education is a critical component of any framework of minimum standards for tax return preparers, as registration and examination procedures in of themselves may not reduce the error rate by incompetent or negligent preparers or deter fraudulent return preparers. Given the complexity of and frequent changes made to the Internal Revenue Code as well as the rules and regulations governing tax law, continuing education requirements could encourage preparers to remain current on and expand their knowledge of tax laws.

Continuing education requirements would also serve as a vehicle for educating preparers on properly claiming credits and deductions. This could help ensure that consumers receive all credits and deductions to which they are entitled while also reducing the amount of credits and deductions improperly claimed. Specifically, continuing education could be used to educate preparers on EITC requirements in order to reduce improper EITC claims resulting from complexity.

To that end, it should be reasonable to require a minimum continuing education curriculum of no less than 15 hours including a minimum of two hours of instruction on professional ethics and IRS procedures as well as at least three hours on federal tax law updates. Unlike testing services, there are hundreds of continuing education providers, including the National Association of Enrolled Agents (NAEA), American Institute of Certified Public Accountants (AICPA), and National Association of Tax Professionals (NATP).<sup>79</sup> Access to VITA's Link & Learn program, for a fee, should also be an option.

### **d. Background Screening**

Another challenge with IRS's implementation of the RTRP program was its implementation of a background screening process. Under the RTRP program, a preparer was to be subject to digital fingerprinting to facilitate a background check of the preparer.

However, the results of the background check would not have been shared with the registrant or the registrant's employer. In addition, employers of paid preparers were not permitted to supply a background check in lieu of this requirement, nor were they able to use a single, certifiable source to provide background checks for both parties. This caused unnecessary burden and costs to those employers of compensated return preparers who had their own background screening procedures.

In order to minimize burden and reduce costs to return preparers, Treasury should adhere to a uniform set of guidelines, such as those prescribed by the National Association of Professional Background Screeners (NAPBS). In addition, similar to certifying third party examination and continuing education providers, Treasury should certify the background screening procedures used by employers of return preparers as long as they are consistent with NAPBS standards.

---

<sup>79</sup> I.R.S., Approved Continuing Education Providers, <https://ssl.kinsail.com/partners/irs/publicListing.asp#> (last visited Mar. 18, 2014).

#### **e. Limitation on Fees**

Under the IRS's RTRP program, the IRS incurred significant—and unnecessary—costs to implement and administer both the registration system and examination. These costs were passed on to return preparers who were charged both registration and examination fees.

While it is reasonable for return preparers to bear some of the costs of registration and examination as is common with other professional certifications, high costs may discourage individuals and businesses from being tax return preparers and discourage, not promote, compliance with the standards. Charges for compensated tax return preparers should be limited to the costs of administering and implementing a registration and examination system.

#### **f. Certification of Non-Treasury Programs**

Registration, examination, and continuing education costs should be viewed holistically with the understanding that compensated tax return preparers are likely to pass these costs along to their clients as part of their tax preparation fees. As discussed above, certifying third party service providers, particularly for examination and background screening services, should reduce the government's costs for implementing standards and oversight of return preparers. Additionally, such certification should also reduce return preparer costs which would minimize additional costs to consumers.

#### **g. Enforcement & Oversight: Penalties for Noncompliance**

If the chief objective of setting minimum standards for compensated tax return preparers is to better serve and protect consumers, some enforcement of those standards and oversight is required. Without it, consumers may incorrectly assume that the preparer they have chosen is in compliance. A lack of enforcement may also lead compliant preparers to lose confidence in the system, thus decreasing the incentive to comply. These concerns were also presented by most commenters during the IRS Return Preparer Review process.<sup>80</sup>

Suspension of eligibility to prepare tax returns is consistent with IRS's current sanctions for EROs. As with current ERO rules, such suspension ultimately harms the consumer if the consumer does not become aware of such suspension until after a return is attempted to be filed with the IRS but rejected due to suspension of the preparer.

The IRS proposed "to recommend that period of limitations under section 6696(d) for assessing a penalty under sections 6694(a), 6695 and 6695A be extended."<sup>81</sup> However, the IRS did not recommend any new penalties or an increase in penalty amounts until it had an opportunity to study whether additional penalties were needed.<sup>82</sup> Since it does not seem that the IRS had sufficient opportunity to study this, proposed legislation should not include any new monetary penalties or increases to existing penalties.

---

<sup>80</sup> *Return Preparer Review*, *supra* note 70, at 37.

<sup>81</sup> *Return Preparer Review*, *supra* note 70, at 38.

<sup>82</sup> *Id.*

## **h. Annual Report to Congress**

In order to monitor the effectiveness of these provisions in reducing errors, improving accuracy and combating fraud, it is important that appropriate metrics for success are determined and shared with Congress and the general public. This provision requires GAO to assist the IRS in determining those metrics and issuing an annual report to publish results.

As discussed above, one of the major flaws of past mystery shopping and investigative audits of return preparers is that sample sizes were not always statistically valid. In addition, some studies only included chain preparers. Metrics for review of implementation and enforcement of these standards should provide for statistically valid samples of both chain and independent tax return preparers as well as volunteer preparers and credentialed versus non-credentialed preparers, including those subject to state standards.

As a result, the annual report should contain the results of an annual, statistically valid review of all return preparers, both compensated and volunteer. It should also contain the results of annual IRS preparer education and enforcement efforts.

Finally, the report should contain data on taxpayer migration between paid return preparation and self-preparation. In the past, the IRS published this information in its *Taxpayer Attribute Report*. However, it appears due to budget cuts the IRS will no longer be publishing this report.

## **VII. Non-Legislative Recommendations**

### **a. Implement Voluntary Standards Until Legislation Is Enacted**

In her 2013 annual report to Congress, the National Taxpayer Advocate proposed a voluntary examination and continuing education certificate for non-credentialed<sup>83</sup> preparers as part of a six-part strategy to protect consumers.<sup>84</sup> In order to incentivize voluntary compliance, non-credentialed preparers would then be prohibited from representing taxpayers in audits of returns they prepared if they did not meet the voluntary examination and continuing education requirements and from being named as a Third Party Designee on the Form 1040.<sup>85</sup>

In addition, the NTA recommends that IRS “mount a consumer protection campaign to educate taxpayers about the need to select competent preparers who can demonstrate competency” and “develop a research-driven, Servicewide preparer compliance strategy.”<sup>86</sup>

In the wake of the recent court decision enjoining the IRS from implementing the RTRP program, IRS Commissioner, John Koskinen, has voiced support for a voluntary certification program.<sup>87</sup>

---

<sup>83</sup> While the National Taxpayer Advocate uses the term “unenrolled,” the term “non-credentialed” is used here to be consistent with Return Preparer Office Federal Tax Return Statistics, *supra* note 74.

<sup>84</sup> NTA 2013 Annual Report, *supra* note 6, at 62.

<sup>85</sup> *Id.*

<sup>86</sup> NTA 2013 Annual Report, *supra* note 6, at 62.

A voluntary program could be quickly implemented. The PTIN registration program is now well established. As part of its RTRP program, the IRS planned “to introduce a searchable database of tax return preparers who have met the required standards on its website after the initial registration and examination period have been completed.”<sup>88</sup> The IRS should maintain such a database for those preparers it designates as having met the voluntary standards and ensure easy access to the public. However, IRS should take necessary precautions to protect the privacy of the tax return preparers listed in the database.

The key components left to implement would be the examination, continuing education and background screening procedures. As argued above, because the IRS already certifies third party continuing education providers, it should be able to certify third party testing and background screening providers without the significant additional costs of developing and implementing its own testing and background screening procedures. In addition, a low cost alternative for the examination as well as continuing education would be to allow compensated preparers to take the VITA Basic certification examination for a fee through Link and Learn Taxes online or at VITA sites that offer examinations.

The success of a voluntary program will hinge on IRS’s education and outreach efforts to consumers. The IRS currently conducts limited direct-to-consumer outreach through its annual “Dirty Dozen” and “How to Select a Return Preparer” press releases. Should a voluntary program be implemented, however, IRS should conduct, “the extensive public awareness campaign,” that it originally contemplated would, “utilize a full range of social media, public service announcements and paid advertising, if authorized, to provide taxpayers with information on what standards the IRS requires of tax return preparers and how they can determine whether their tax return preparer has met these standards.”<sup>89</sup>

#### **b. Conduct Education & Outreach to Return Preparers**

As discussed above, the current range of tools in IRS’s toolbox is very limited, with tax code penalties being limited to those situations where preparer error resulted in a consumer understating his or her tax liability by understating income or overstating deductions or credits. However, many of the errors identified by GAO, TIGTA, and consumer advocate groups related to mistakes and omissions that may have been favorable to the taxpayer (and unfavorable to the IRS).<sup>90</sup>

The current tax reform debate includes discussions on using the tax code to improve income mobility or reduce income inequality.<sup>91</sup> There is general consensus that certain tax deductions and credits do just that, especially the EITC.

---

<sup>87</sup> Greater Washington Society of CPAs, *IRS’s New Commissioner Favors Voluntary Tax Preparer Certification* (Jan. 6, 2014) [http://www.gwscpa.org/news/313-irss\\_new\\_commissioner\\_favors\\_voluntary\\_tax\\_preparer\\_certification](http://www.gwscpa.org/news/313-irss_new_commissioner_favors_voluntary_tax_preparer_certification).

<sup>88</sup> *Return Preparer Review*, *supra* note 70, at 41.

<sup>89</sup> *Return Preparer Review*, *supra* note 70, at 41.

<sup>90</sup> See reports listed in Appendix B.

<sup>91</sup> See *A Progress Report on the War on Poverty: Expanding Economic Opportunity. Hearing Before the H. Comm. on the Budget*, 113<sup>th</sup> Cong. (Jan. 28, 2014).

However, while there are proposals to expand or restructure the EITC, there does not appear to be much attention paid to the fact that the EITC is not claimed by all of those who are eligible to claim it. The same is likely true for other deductions and credits.

While it is possible—and likely—that some individuals may affirmatively choose not to claim certain deductions or credits, the mystery shopping visits indicate that errors and omissions may occur due to incompetence, lack of preparer knowledge or fraud. The IRS already has implemented a rigorous education and outreach campaign for compensated tax return preparers focused on improper claims of refundable credits, particularly the EITC and the American Opportunity Tax Credit.

In order to reduce errors and omissions, particularly those favorable to consumers, IRS should conduct an education and outreach campaign similar to the one implemented for refundable credits.

**c. Convene Working Group to Determine Standards for Tax Return Preparation Software**

When the IRS launched its Return Preparer Review in 2009, it reported that, “for 2007 and 2008, over 80 percent of all federal income tax returns were prepared by paid tax return preparers or by taxpayers using consumer tax preparation software.”<sup>92</sup> Recent IRS data, provided in Figure 2 below, indicates that figure is now closer to 94 percent.

**Figure 2. IRS Data Showing Tax Year 2011 Taxpayer Filing Trends<sup>93</sup>**

	<b>Paid Preparer</b>	<b>Self-Prepared</b>	<b>Total</b>	
<b>e-filed</b>	74,992,044	43,827,647	118,819,691	84.00%
<b>v-coded</b>	6,325,374	7,575,052	13,900,426	9.83%
<b>paper not v-coded</b>	875,567	7,854,232	8,729,799	6.17%
			<b>141,449,916</b>	

For the 2009 filing season, consumers self-prepared and *e-filed* 32 million returns using consumer tax preparation software and compensated return preparers used commercial tax preparation software to prepare and *e-file* 61.8 million returns.<sup>94</sup> For tax season 2013, those numbers are 45,247,000 and 77,268,000 respectively.<sup>95</sup>

<sup>92</sup> *Return Preparer Review*, *supra* note 70, at 1.

<sup>93</sup> I.R.S., Pub. 4822, *Taxpayer Attribute Report*, [http://www.irs.ustreas.gov/pub/irs-utl/Pub\\_4822\\_Sept\\_2013.pdf](http://www.irs.ustreas.gov/pub/irs-utl/Pub_4822_Sept_2013.pdf) (Rev. Jan. 2013).

<sup>94</sup> *Return Preparer Review*, *supra* note 70, at 9.

<sup>95</sup> I.R.S., 2014 and Prior Year Filing Season Statistics, <http://www.irs.gov/uac/2014-and-Prior-Year-Filing-Season-Statistics> (follow “12/27/13” hyperlink).

As discussed above, mistakes and omissions that could be considered to have been caused by human error or misrepresentation or misunderstanding of the tax laws may be due in part to advances in tax preparation software. Recognizing the need, “to assess the risks of a high level dependence on consumer and commercial tax preparation software,” the IRS indicated that it planned to form a task force to “explore the possibility of establishing industry standards.”<sup>96</sup> The task force was supposed to, “seek the input of industry representatives, state governments, and other impacted stakeholders.”<sup>97</sup>

Given the high rate of use of software both by consumers who self-prepare and file their own returns and by compensated tax return preparation, establishing standards for tax return preparation software seems imperative. Convening a task force or working group should be the first step and this should be done without any further delay.

---

<sup>96</sup> *Return Preparer Review*, *supra* note 70, at 39.

<sup>97</sup> *Id.*

## **Appendix A**

### **H&R Block Standards and Certification<sup>98</sup>**

To become an H&R Block tax professional, graduation from high school or an equivalent degree is required in Delaware, Maryland, New Jersey, Ohio and Texas. If a tax professional is under 18, the signature of a parent or guardian is required.

H&R Block tax professionals are required to have a valid Federal Preparer Tax Identification Number (PTIN).

H&R Block tax professionals are required to complete a minimum of 15 hours of continuing education courses, plus any additional hours required under state law.<sup>99</sup> The minimum continuing education required consists of:

- 10 hours on federal tax law,
- 3 hours on federal tax law updates, and
- 2 hours on ethics.

Continuing education courses may be taken through any IRS-approved CE provider or through the H&R Block Tax Training School (TTS). H&R Block Tax Professionals may take as many TTS courses as desired during the remainder of the year for an annual enrollment fee of \$20. To earn continuing education credit, tax professionals must complete the course, take the course examination, and obtain a minimum score of 80 percent.

#### **First-Year Tax Professionals**

To be hired as an H&R Block tax professional, individuals must pass either entry-level education or entry-level testing. First-year tax professionals must complete 35 hours of paid skills training once hired.

#### Entry Level Education

In most states, new preparers must complete a 75-hour Income Tax Course (ITC).<sup>100</sup> The ITC includes a blend of 42 hours of instructor-led classroom sessions, 21 hours of web-based training, and 12 hours of software practice designed to teach tax professionals the technical knowledge and ethical standards to prepare income tax returns. The course is designed to teach tax theory and law, how to conduct a thorough client interview, how to offer tax advice and explanations to clients, and preparation of tax returns using software.

---

<sup>98</sup> As independent business owners, H&R Block franchisees may require their return preparers to meet different standards.

<sup>99</sup> California tax professionals must complete an additional five hours of continuing education courses on California tax law. Oregon tax professionals must complete at least 30 hours of continuing education each year. Maryland tax professionals must complete at least 16 hours of continuing education every two years, including at least 4 hours of Maryland tax-related subjects.

<sup>100</sup> In Oregon and California, the ITC consists of 81 and 87.5 hours of instruction, respectively.

Participants may not miss or fail to complete more than eight hours of any instructor-led or practice sessions. Participants must complete all of the 21 hours of required web-based training.

Course fees vary based upon location and range from \$199 to \$299. In most cases, course fees include books and materials; however in some states the cost of books and materials is separate.

ITC participants must pass the course with a cumulative minimum score of 70 percent and score 70 percent or above on the final ITC examination to successfully complete the course. A participant's cumulative score is determined by the following in addition to the final examination:

- Four open-book, multiple choice quizzes where the user works through a tax return problem using software to arrive at the correct answer,
- Three graded reviews of practice returns completed on paper, and
- An open-book, cumulative midterm examination including a practice tax return completed on paper.

The midterm and final examinations are weighted. The comprehensive, open-book final examination consists of 20 multiple-choice questions and requires the participant to complete a tax return using H&R Block software based on a set of facts and tax documents. The return involves, among other topics, dependency rules, self-employment income, adjustments, credits, rental real estate, various investment transactions, and itemized deductions. The midterm and final examinations

ITC participants must complete three additional hours of continuing education courses on federal tax law updates after completing the course but are not required to complete additional ethics and federal tax law continuing education, which are covered in the ITC.

### Entry Level Testing

In lieu of the ITC, experienced tax return preparers may pass H&R Block's Tax Knowledge Assessment (TKA) with a score of 80 percent or higher. The TKA is a 90 minute, open book examination consisting of 50 multiple choice questions. Preparers are limited to three attempts to achieve a passing score. There is no fee required to take the TKA.

The TKA includes questions on the following topics:

- Filing requirements
- Filing status
- Itemized deductions
- Credits and Earned Income Tax Credit
- Military Returns

Tax professionals that pass the TKA must complete the minimum 15 continuing education hours described above. Tax professionals that pass the TKA must also successfully complete the Introduction to Tax Preparation course which covers the software application and tax interview skills. The Introduction to Tax Preparation course is paid training available only to individuals who have passed the TKA.

## **Prior-Year Tax Professionals**

Tax professionals that worked for H&R Block in a previous year, or prior-year tax professionals, are required to complete 15 hours of continuing education courses, plus any additional hours required under state law. Course fees for continuing education total \$20.

Prior-year tax professionals are required to take at a minimum, the following amounts of continuing education:

- 10 hours on federal tax law,
- 3 hours on federal tax law updates, and
- 2 hours on ethics.

Prior-year tax professionals must complete 20 hours of paid skills training each year.

## **Certification**

H&R Block strongly encourages its tax professionals to exceed minimum standards by offering a Certification Advancement Program and a Specialty Certification Program. H&R Block offers courses at no additional fee designed to teach the knowledge and skills needed to pass each certification examinations and specialty certification examination.

### Certification Advancement Program

The Certification Advancement Program is designed to increase a tax professional's tax expertise. Franchise associates must pass either the ITC or TKA to be eligible to participate in the Certification Advancement Program. H&R Block offers 14 certification levels:

- Tax Associate
- Tax Specialist I-III
- Tax Advisor I-IV
- Senior Tax Advisor I-V
- Master Tax Advisor

The first certification level, Tax Associate, is obtained by meeting the minimum standards described above. Tax professionals may achieve higher certification levels by passing an examination at the succeeding certification level. Tax professionals may not skip certification levels. The highest certification level, Master Tax Advisor, requires the individual to be certified under Circular 230 as an enrolled agent.

Certification level examinations consist of 50 multiple choice questions that include completion of relevant forms and schedules using tax preparation software. The examinations are open book and open resources. There is no time limit on the examinations, but must be administered in a tax office or training center.

### Specialty Certification Program

The Specialty Certification Program is designed to enhance a tax professional's tax knowledge in a specific area of expertise. Before an individual is classified as a specialist, he or she must pass an assessment demonstrating his or her tax theory knowledge and software application skills around the topic.

Specialty certifications are valid for three years from the date the examination is passed and are available in the following areas of expertise:

- Small Business
- Retirements
- Military
- Investment

### **Circular 230 Professionals**

Circular 230 Professionals, including Enrolled Agents, certified public accountants, and attorneys, have specific requirements under their licensing authority. Maintaining a current license requires these professionals to meet the continuing education requirements and all other requirements of the licensing authority. Circular 230 Professionals exempt from the H&R Block annual enrollment fee, but must submit proof of their professional designation (a copy of the license and proof of payment) to H&R Block's Operations Center of Excellence.

**Appendix B**  
**Paid Preparer Penalties in the Internal Revenue Code**

<b>Code §</b>	<b>Description</b>	<b>Penalty</b>	<b>Abatement/Exception</b>
6694(a)	Understatement of tax liability due to unreasonable position. Position not disclosed or no reasonable basis for position.	Greater of \$1,000 or 50 percent of the income derived (or to be derived) by the tax return preparer.	Reasonable cause and preparer acted in good faith.
6694(b)	Willful or reckless conduct, understatement of taxpayer's tax liability.	Greater of \$5,000 or 50 percent of the income derived (or to be derived) by the tax return preparer.	Penalty is reduced to extent a penalty is paid under § 6694(a).
6695(a)	Failure to furnish a completed copy of a return or claim to the taxpayer. (IRC § 6107(a))	\$50 per failure, not to exceed \$25,000 per calendar year.	Reasonable cause. No willful neglect.
6695(b)	Failure to sign return.	\$50 per failure, not to exceed \$25,000 per calendar year.	Reasonable cause. No willful neglect.
6695(c)	<p>Failure to comply with requirement to furnish identifying number as outlined in § 6109(a)(4))</p> <p>(4) Furnishing identifying number of tax return preparer</p> <p>Any return or claim for refund prepared by a tax return preparer shall bear such identifying number for securing proper identification of such preparer, his employer, or both, as may be prescribed. For purposes of this paragraph, the terms "return" and "claim for refund" have the respective meanings given to such terms by section 6696(e).</p>	\$50 per failure, not to exceed \$25,000 per calendar year.	Reasonable cause. No willful neglect.
6695(d)	Failure to retain a copy of the tax return. (IRC § 6107(b))	\$50 per failure, not to exceed \$25,000 per calendar year.	Reasonable cause. No willful neglect.
6695(e)	Failure to file correct information returns. (IRC § 6060)	\$50 per failure, not to exceed \$25,000 per calendar year.	Reasonable cause. No willful neglect.
6695(f)	Negotiation of check.	\$500 per check.	Deposit of check into account held for benefit of the taxpayer.
6695(g)	Failure to be diligent in determining eligibility for Earned Income Tax Credit (EITC).	\$500 per failure.	Considering all the facts and circumstances, the preparer's normal office procedures are reasonably designed and

			routinely followed to ensure compliance and the failure was isolated and inadvertent.
6696(d)	Periods of limitation	Provides a 3 year statute of limitations from date of filing for penalties under §§ 6694(a) and 6695  Provides that there is no statute of limitations for a penalty under § 6694(b)	
6700	Promoting a tax shelter.	Lesser of \$1,000 or 100 percent of the gross income derived (or to be derived) from the activity. 50% of gross income if related to a statement regarding allowability of a tax benefit that the preparer knows or has reason to know is false or fraudulent as to any material matter.	Reasonable basis and made in good faith.
6701	Aiding and abetting the understatement of tax liability.	\$1,000 (\$10,000 for corporate returns or documents).	Burden of proof is on the IRS.
6713	Improper disclosure or use of information furnished for or in connection with tax prep.	\$250 per disclosure or use, not to exceed \$10,000 in any calendar year.	Same as exceptions for §7216.
7206	Fraud and false statements.	Misdemeanor—up to \$100,000 (\$500,000 for corporations), 3 years imprisonment, or both.	
7207	Fraudulent returns, statements, or other documents.	Misdemeanor—up to \$10,000 (\$50,000 for corporations), 1 year imprisonment, or both.	
7216	Improper disclosure or use of tax return information	Misdemeanor—up to \$1,000, 1 year imprisonment, or both.	Does not apply if disclosure is allowed under any other provision or pursuant to a court order.
7407	Action to enjoin tax return preparers.	Federal district court can enjoin individual from engaging in certain proscribed conduct, or in extreme cases, from acting as a tax return preparer.	
7408	Action to enjoin specified conduct related to tax shelters and reportable transactions.	Federal district court can enjoin individual from engaging in certain proscribed conduct.	

## Appendix C Mystery Shopping Reports

Government Accountability Office, GAO-06-563T, *Paid Tax Return Preparers: In a Limited Study, Chain Preparers Made Serious Errors* (Apr. 4, 2006) <http://www.gao.gov/new.items/d06563t.pdf>

Treasury Inspector General for Tax Administration Ref. No. 2008-40-171, *Most Tax Returns Prepared by a Limited Sample of Unenrolled Preparers Contained Significant Errors* (Sept. 3, 2008) <http://www.treasury.gov/tigta/auditreports/2008reports/200840171fr.pdf>

Chi Chi Wu, et al., National Consumer Law Center, Community Reinvestment Association of NC, and Community Legal Services of Philadelphia, *Tax Preparers Take a Bite Out of Refunds: Mystery Shopper Test Exposes Refund Anticipation Loan Abuses in Durham and Philadelphia* (Apr. 2008) [http://www.nclc.org/images/pdf/high\\_cost\\_small\\_loans/ral/shopper\\_report.pdf](http://www.nclc.org/images/pdf/high_cost_small_loans/ral/shopper_report.pdf)

Chi Chi Wu, et al., National Consumer Law Center, Arkansans Against Abusive Payday Lending, New Economy Project (formerly NEDAP), Community Reinvestment Association of NC, *Tax Preparers Out of Compliance: Mystery Shopper Testing Exposes Violations of Refund Anticipation Loan Laws in Arkansas, New York and North Carolina* (Apr. 2010) [http://www.nclc.org/images/pdf/high\\_cost\\_small\\_loans/ral/mystery\\_ral\\_report.pdf](http://www.nclc.org/images/pdf/high_cost_small_loans/ral/mystery_ral_report.pdf)

Chi Chi Wu, et al., NCLC, New Economy Project (formerly NEDAP), Community Reinvestment Association of NC, *Tax Time 2011: Mystery Shopper Testing in New York and North Carolina Finds Continuing Problems with Tax Preparers* (Apr. 2011) <http://www.nclc.org/images/pdf/pr-reports/report-mystery-ral-shopper-2011.pdf>

First Nations Development Institute, *Tax Time Troubles: Mystery Shopper Testing Exposes Poor Quality Tax Preparation and Refund Anticipation Check Abuses* (May 4, 2011) <http://www.nmlegis.gov/lcs/handouts/IAC%20092412%20FNDI%20Taxtime%20Mystery%20Shopper.pdf>

First Nations Development Institute, *More Tax Time Troubles: Mystery Shopper Testing Exposes Refund Anticipation Loans in Reservation Border Towns* (2012) <http://www.nmlegis.gov/lcs/handouts/IAC%20092412%20FNDI%20Taxtime%20V3.pdf>

Treasury Inspector General for Tax Administration Ref. No. 2013-40-110, *Inconsistent Adherence to Quality Requirements Continues to Affect the Accuracy of Some Tax Returns Prepared at Volunteer Sites* (Sept. 16, 2013) <http://www.treasury.gov/tigta/auditreports/2013reports/201340110fr.pdf>

**Appendix D**  
**Volunteer Income Tax Assistance Minimum Standards**

VITA, TCE, and LITC volunteers are specifically excluded from the definition of “tax return preparer” under Treasury Regulations § 301.7701-15(f)(ii-vii).

VITA/TCE Volunteer Requirements

- All volunteers must be 18 years old, but no prerequisite education is necessary
- All volunteers (whether paid or unpaid workers) must complete Volunteer Standards of Conduct (VSC) Training and pass the VSC test with a score of 80 percent or higher
- All Tax Return Preparers, Quality Reviewers, Instructors, and Site Coordinators must complete the Intake/Interview & Quality Review training
- Annual Certification Examination
  - Tax Return Preparers and Quality Reviewers must achieve an 80 percent score on the Basic or Advanced certification examination annually (see Table 1 below for Basic and Advanced certification competencies)
    - Basic Certification
      - 30-question, open book multiple choice test
      - Estimated completion time: 4 hours
      - Covers wage earner type returns
      - Includes EITC training
    - Advanced Certification
      - 40-question, open book multiple choice test
      - Estimated completion time: 4 hours
      - Includes the Basic topics, as well as pensions, self-employment, and other topics
  - Optional Certification Courses/Examinations
    - Health Savings Accounts – requires Basic certification
    - Military – requires Advanced certification
    - International – requires Advanced certification
    - Cancellation of Debt – requires Advanced certification
- Training
  - Not required to take certification examinations
  - All training may be taken in either a classroom setting or online through a third party vendor’s Link & Learn Taxes
  - Training includes comprehensive problems and practice exercises and an online practice lab to complete exercises, practice returns, and test scenarios using tax software
- Tax Preparers must have:
  - At least Basic Certification
  - A designated or peer-to-peer reviewer review 100 percent of the returns they prepare
- Quality Reviewers must have:
  - At least Basic Certification, or higher based on the complexity of the return
  - Three years tax preparation experience

**Appendix E**  
**U.S. Congressional Legislation**

1. **Low Income Taxpayer Protection Act of 2001**, [S. 802](#), 107<sup>th</sup> Cong.  
Sponsor: Jeff Bingaman (D-NM)  
Introduced and referred to Senate Finance Committee Apr. 30, 2001

Sec. 2. Regulation of Income Tax Return Preparers and Refund Anticipation Loan Providers

2. **Low Income Taxpayer Protection Act of 2003**, [S. 685](#), 108<sup>th</sup> Cong.  
Sponsor: Jeff Bingaman (D-NM)  
Cosponsors: Daniel Akaka (D-HI)  
Introduced and referred to Senate Finance Committee Mar. 21, 2003

Sec. 2. Regulation of Income Tax Return Preparers and Refund Anticipation Loan Providers

3. **Tax Administration Good Government Act**, [H.R. 1528](#), 109<sup>th</sup> Cong.  
Incorporating *Tax Administration Good Government Act*, S. 882  
Sponsor: Rob Portman (R-OH)  
Introduced and referred to Ways and Means Committee Apr. 1, 2003  
[Reported by Ways and Means Committee](#) Apr. 3, 2003  
Passed House June 19, 2003  
Included into S.882 (no. 4 infra) May 19, 2004

Sec. 141. Regulation of Federal Income Tax Return Preparers and Refund Anticipation Loan Providers, and Payroll Agents

4. **Tax Administration Good Government Act**, [S. 882](#), 108<sup>th</sup> Cong. (incorporated no. 3 above)  
Sponsor: Max Baucus (D-MT)  
Cosponsors: Charles “Chuck” Grassley (R-IA), Orrin Hatch (R-UT), Dianne Feinstein (D-CA), John “Jay” Rockefeller IV (D-WV), Gordon Smith (R-OR), John Breaux (D-LA)  
Introduced and referred to Senate Finance Committee April 10, 2003  
[Reported by Senate Finance Committee](#) Feb. 02, 2004  
Incorporated H.R. 1528 (no. 3 supra) May 19, 2004  
Passed Senate with changes May 19, 2004  
Differences were never resolved

Sec. 141. Regulation of Federal Income Tax Return Preparers and Refund Anticipation Loan Providers, and Payroll Agents

5. **Low Income Taxpayer Protection Act of 2004**, [H.R. 3983](#), 108<sup>th</sup> Cong. (re-introduction of no. 2 supra)  
Sponsor: Xavier Becerra (D-CA 31<sup>st</sup>)  
Cosponsors: Sherrod Brown (D-OH 13<sup>th</sup>), Jonas “Martin” Frost (D-TX 24<sup>th</sup>), James “Jim” McGovern (D-MA 3<sup>rd</sup>)  
Introduced and referred to House Ways and Means Committee Mar. 17, 2004

Sec. 2. Regulation of Income Tax Return Preparers and Refund Anticipation Loan Providers

- 6. Taxpayer Protection and Assistance Act of 2005, [S. 832](#)**, 109<sup>th</sup> Cong.  
 Sponsor: Jeff Bingaman (D-NM)  
 Cosponsors: Daniel Akaka (D-HI), Max Baucus (D-MT), Charles “Chuck” Grassley (R-IA), Mark Pryor (D-AR), Charles “Chuck” Schumer (D-NY), Gordon Smith (R-OR), James “Jim” Talent (R-MO), John Kerry (D-MA), Richard Durbin (D-IL), Joseph Lieberman (D-CT), Diane Feinstein (D-CA)  
 Introduced and referred to Senate Finance Committee Apr. 18, 2005  
 Included into S. 1321 (no. 7 infra) June 28, 2006
- [Sec. 4. Regulation of income tax return preparers](#)  
[Sec. 5. Contract authority for examinations of preparers](#)
- 7. Telephone Excise Tax Repeal Act of 2005, [S. 1321](#)**, 109<sup>th</sup> Cong. (incorporated no. 6 supra)  
 Sponsor: Rick Santorum (R-PA)  
 Michael Crapo (R-ID), Chalres “Chuck” Hagel (R-NE), Gordon Smith (R-OR), John Ensign (R-NV), George Allen (R-VA), Thomas Coburn (R-OK), John Thune (R-SD), Saxby Chambliss (R-GA), Wayne Allard (R-CO), Jefferson “Jeff” Sessions (R-AL), Thad Cochran (R-MS), John “Johnny” Isakson (R-GA), Larry Craig (R-ID), Orrin Hatch (R-UT), Samuel “Sam” Brownback (R-KS), James “Jim” Talent (R-MO), Jon Kyl (R-AZ)  
 Introduced and referred to Senate Finance Committee June 28, 2005  
[Reported by Senate Finance Committee](#) June 28, 2006  
[Senate Finance Committee report](#), Sept. 15, 2006
- [Sec. 203. Regulation of Federal tax return preparers](#)  
[Sec. 204. Contract authority for examinations of preparers](#)
- 8. Taxpayer Protection and Assistance Act of 2007, [S. 1219](#)**, 110th Cong. (re-introduction of no. 6 supra)  
 Sponsor: Jeff Bingaman (D-NM)  
 Cosponsors: Daniel Akaka (D-HI), Richard Durbin (D-IL), John Kerry (D-MA), Joseph Lieberman (I-CT), Gordon Smith (R-OR), Charles “Chuck” Schumer (D-NY), Mark Pryor (D-AR)  
 Introduced and referred to Senate Finance Committee Apr. 25, 2007
- [Sec. 4. Regulation of Federal Tax Return Preparers](#)  
[Sec. 5. Contract authority for examination of preparers](#)
- 9. Taxpayer Bill of Rights Act of 2008, [H.R. 5716](#)**, 110th Cong.  
 Sponsor: Xavier Becerra (D-CA 31<sup>st</sup>)  
 Cosponsors: Lloyd Doggett (D-TX 25<sup>th</sup>), Bill Pascrell (D-NJ 8<sup>th</sup>), Fortney “Pete” Stark (D-CA 13<sup>th</sup>), Charles “Charlie” Gonzalez (D-TX 20<sup>th</sup>), John Lewis (D-GA 5<sup>th</sup>), John Conyers (D-MI 14<sup>th</sup>), Janice “Jan” Schakowsky (D-IL 9<sup>th</sup>), Mazie Hirono (D-HI 2<sup>nd</sup>), Eddie Johnson (D-TX 30<sup>th</sup>), Neil Abercrombie (D-HI 1<sup>st</sup>), Corrine Brown (D-FL 3<sup>rd</sup>), Jim McDermott (D-WA 7<sup>th</sup>)  
 Introduced and referred to House Ways and Means Apr. 8, 2008
- [Sec. 4. Regulation of Federal Tax Return Preparers](#)  
[Sec. 6. Preparer Penalties with respect to preparation of returns and other submissions](#)

**10. Taxpayer Bill of Rights Act of 2010, [S. 3215](#) and [H.R. 5047](#), 111<sup>th</sup> Cong. (re-introduction of no. 9 supra)**

S. 3215 Sponsor: Jeff Bingaman (D-NM)

S. 3215 Cosponsors: Daniel Akaka (D-HI), Sherrod Brown (D-OH), Christopher Dodd (D-CT), Richard Durbin (D-IL), John Kerry (D-MA), Joseph Lieberman (D-CT), Robert “Bob” Menéndez (D-NJ), Jeff Merkley (D-OR), Mark Pryor (D-AR), Charles “Chuck” Schumer (D-NY), Tom Udall (D-NM), Thomas Carper (D-DE)

H.R. 5047 Sponsor: Xavier Becerra (D-CA 31<sup>st</sup>)

S. 3215 introduced and referred to Senate Finance Committee Apr. 15, 2010

H.R. 5047 introduced and referred to House Ways and Means Committee Apr. 15, 2010.

Sec. 202. Regulation of Federal income tax return preparers

Sec. 204. Preparer penalties with respect to preparation of returns and other submissions

**11. Taxpayer Bill of Rights Act of 2012, [S. 3355](#) and [H.R. 6050](#), 112<sup>th</sup> Cong. (re-introduction of no. 10 supra)**

S. 3355 Sponsor: Jeff Bingaman (D-NM)

S. 3355 Cosponsors: Daniel Akaka (D-HI), Sherrod Brown (D-OH), Richard Durbin (D-IL), John Kerry (D-MA), Joseph Lieberman (D-CT), Robert “Bob” Menéndez (D-NJ), Mark Pryor (D-AR), Tom Udall (D-NM), Thomas Carper (D-DE)

H.R. 6050 Sponsor: Xavier Becerra (D-CA 31<sup>st</sup>)

H.R. 6050 Cosponsors: Timothy Bishop (D-NY 1<sup>st</sup>), Corrine Brown (D-FL 3<sup>rd</sup>), Bob Filner (D-CA 51<sup>st</sup>), Michael “Mike” Honda (D-CA 15), John Lewis (D-GA 5<sup>th</sup>), Jim McDermott (D-WA 7<sup>th</sup>), Eleanor Norton (D-DC 0), Charles “Charlie” Rangel (D-NY 15<sup>th</sup>), Fortney “Pete” Stark (D-CA 13<sup>th</sup>), Janice “Jan” Schakowsky (D-IL 9<sup>th</sup>)

S. 3355 introduced and referred to Senate Finance Committee June 28, 2012

H.R. 6050 introduced and referred to House Ways and Means Committee June 28, 2012

Sec. 202. Regulation of Federal income tax return preparers

Sec. 204. Preparer penalties with respect to preparation of returns and other submissions

**12. Taxpayer Protection and Preparer Fraud Prevention Act of 2013, [H.R. 1570](#), 113<sup>th</sup> Cong.**

Sponsor: Cedric Richmond (D-LA 2<sup>nd</sup>)

Introduced and referred to House Ways and Means Committee Apr. 15, 2013

Sec. 2. Regulation of tax return preparers

Sec. 3. Authority to impose a fee for licensing

**Appendix F**  
**Minimum Standards Comparison**

	<b>NCLC State Legislative Proposal</b>	<b>VITA/TCE</b>	<b>Oregon</b>	<b>California</b>	<b>Maryland</b>	<b>New York</b>
Registration	Biannual registration	Annual Certification	Annual Registration	Annual Registration	Biannual Registration	Annual Registration
Minimum Education	60-hour basic income tax law course  High school diploma or GED	Income tax course	80-hour basic income tax law course  High school diploma or GED	60-hour qualifying education course	High school diploma or GED	High school diploma or GED
Entry Level Testing	Yes	Yes	Yes <sup>101</sup>	No	Yes <sup>102</sup>	Yes <sup>103</sup>
Continuing Education	15 hours annually	N/A	30 hours annually	20 hours annually	16 hours biannually	4 or 16 hours annually <sup>104</sup>
Background Check	No	Not required <sup>105</sup>	No	No	No	No
Credentialed Preparer Exemption	Yes	No	Yes	Yes	Yes	Yes

---

<sup>101</sup> Two exams are offered depending on level of certification.

<sup>102</sup> Maryland does not require registrants to pass an exam before December 31, 2014.

<sup>103</sup> Commercial Tax Return Preparers (generally, a preparer who prepares 10 or more New York State returns for a fee) will be required to pass a New York State Competency exam by the third calendar year after the exam is made available.

<sup>104</sup> First-year registrants with less than three years of experience must complete 16 hours. All other registrants must complete four hours.

<sup>105</sup> Some sponsoring organizations may perform background checks on their volunteers.