

**UNITED STATES DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE**

TELECONFERENCE PUBLIC HEARING ON PROPOSED REGULATIONS

**"USER FEES RELATING TO ENROLLED AGENTS AND ENROLLED RETIREMENT
PLAN AGENTS"**

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PROCEEDINGS

(10:00 a.m.)

MR. SHURTLIFF: Okay, good morning. I'm Mark Shurtliff with Branch 1, Office of the Associate Chief Counsel (Procedure and Administration). Today our public hearing involves proposed regulations issued on March 1, 2022, titled, "User Fees Relating to Enrolled Agents and Enrolled Retirement Plan Agents." The government panel consists of myself, and Natasha Goldvug an attorney-advisor with the Office of Tax Policy at the Department of Treasury, Pat Trice, deputy associate chief counsel in Procedure and Administration, Melissa Avrutine, special counsel in Procedure and Administration and Hollie Marx, senior technician reviewer with Branch 1, Procedure and Administration. We have two speakers presenting. The first speaker is Eva Rosenberg and the second speaker is Megan Killian, executive vice president of the National Association of Enrolled Agents. As Regina said, our speakers will have 10 minutes to present. Regina will then interject into the discussion at eight minutes to announce that two minutes remain and then ask to end at ten minutes. Participants other than speakers will be automatically muted for the duration of the hearing. Ms. Rosenberg, you may begin.

MS. ROSENBERG: Thank you very much. I really appreciate the opportunity to do this. I'd like to address two parts of the seed. The initial application for new enrolled agents and the renewal fee. Excuse me for a second. Okay. Let me just give you a bit of a foundation from my concerns for the New Enrolled Agents. I teach a course to help tax preparers become enrolled agents, and I am probably the most active and annoying advocate for the rights of these special enrollment examination candidates. And let me tell you why. Other than the fact that I'm going to tell you all about the problems we've been having for a Prometric, but we have about 723,000 PTIN holders. Over 400,000 of them are not EA, CPs and attorneys and we really need to get them into the program because, as you know, Congress never seems to pass a law giving the IRS the authority to regulate tax professionals. You already know that there are only three states in the Union that actually require continued education, California, Oregon, and — testing, California, Oregon, and Maryland and only New York also covers a required continuing education, leaving 46 states and the territories with nothing, okay. So, I don't need to belabor that point, but I will point out that we are not generating a lot of new EAs. I was looking at the PTIN statistics. In March 2020 there were only 56,777 of them, an increase of only about 2,200 since 2018, and currently as of the latest, you know, statistics you posted, we have a decrease of over 3,800 EAs. You already know about the exam and how difficult it is so I don't need to go into the details on that, but even without COVID-19 there were several barriers to becoming an enrolled agent aside from the vast amount of knowledge that's needed. One, of course, is the high cost of each individual exam, which is now up to \$203 and I didn't get to protest before that happened but that's okay.

The difficulty in scheduling the exam date with Prometric, having to drive vast distances to a testing site, even to fly to another state because Prometric keeps closing site locations or making them unavailable, Prometric cancelling exam appointments sometimes on the day of or the day before the exam after the pro has taken the day off from work, driven a couple of hundred miles, checked into a hotel which can cost that person hundreds of dollars and cost an opportunity cost which can't be recouped because Prometric isn't reimbursing that, and then it takes them forever to get the reimbursement from Prometric for the exam that was cancelled. What's even worse is it turns out that Prometric has to have a specially trained proctor that meets IRS standards and not all of their locations have such a person. And I don't understand why the IRS has to have a special proctor. Prometric administers the exams for CPAs, police, medical professionals and personnel, and other sensitive professions. So, why do we need a special requirement above and beyond that. I'd really like to get that cleared up. The other thing is even before COVID-19, Prometric has been cancelling appointments without notice, they don't respond to people. You know how hard it is to reach the IRS at the 800-TAX-1040 number? It takes even longer for Prometric. So, why am I bringing this up here, since this relates to Prometric rather, the renewal fee or the new fee. I'm bringing this up because IRS refuses to assign anyone to intercede on behalf of the candidates. As I said, some of whom have driven 200 miles and to help these people become enrolled agents. If IRS is not willing to budget for an advocate in the Return Preparer Office to help tax professionals become enrolled agents, why should new enrolled agents have to pay such an increase in fees for the initial application. They aren't getting any benefits and they are investing and wasting hundreds of dollars in billable time to take each exam, not counting the hundred or two hundred hours they might spend preparing to take the exam, only to be turned away at the last minute.

Now, please understand that when this whole process started back in 2006 with Susan Powell and Thompson, which is now Prometric, Brian Downing was director of practice and Stan Oshinsky was our liaison with Prometric, we had a really great person. Ever since then working with us, helping us whenever there were problems. We could contact Stan Oshinsky and he would solve the problem, he would get people — we had one student in Hawaii where they just flat out closed the place without notice, and there was no one, you know, who would administer her exam. Stan got them to have somebody come to Hawaii and actually give her the exam. So, as long as he was around that was great but he retired in July. We expected — he said that there would be a replacement. There isn't. So, as long as the potential EAs are not getting any help, I really don't think they need to pay that fee. Now, some — in fact the higher seed for some people might expire in one year instead of three because of the last digit of their Social Security numbers. The other point I want to make about new EAs, some of them aren't doing this for money. Some of them are just studying this so that they can do better as their VITA volunteer program, and my conclusion on the initial fee to become an EA is since new EAs barely get any assistance from the IRS, not only do I feel that they should not be paying \$140, I feel that their initial fees should drop back down to \$30, which it was two years ago. That's my objection to the initial fee. As far as the new fee, well, frankly it's not a huge burden, I mean it's less than \$50 a year and any tax professional who can't earn that isn't really a professional, but we're not getting the kinds of services that we need to be getting from the IRS.

We do need more tools to allow tax pros to upload responses to notices directly within the tax preparer portals, more stakeholder liaison staff to help us get in touch with key managers or staff

when cases are stalled or not worked for months, faster operations at the cast unit so that people can get their powers of attorney validated sooner, instead of weeks and weeks, and the Practitioner Priority Service — you guys remember when they were the cream of the service. They were the smartest, best, most-experienced people and they were really helpful. Today they're little more than clerks who barely know how to pull transcripts and to upload them into the e-services and e-mailboxes. Some of them are really helpful but some of them get frustrated and they just hang up. So, we've had a lot of issues with that and I would really like to see good people back in there or really good supervisors who can be referred to when people have an issue. In addition, I would dearly like to see one team assigned to fixing IRS websites at pages and publication pages. I live on the IRS website because I'm teaching, I'm constantly pulling information and very often I find errors, printing errors, outdated stuff, and I send them to my stakeholder liaison, my IMRS Team and then it takes forever to get them fixed. It's one thing I've been trying to get updated and revised for six years. If we had, and there used to be a link where we could just send it to someone, and back then they used to fix it in about two days. So, I would really like to see that.

And I have one last issue and that arose this week. Somebody had a problem because he kind of missed his renewal, and he says, you know, I didn't see the IRS renewal notice. Well, guess what, IRS isn't —

MS. JOHNSON: A minute left.

MS. ROSENBERG: Thank you. IRS isn't sending out the renewal notices anymore. So, I don't see why we can't have IRS use the PTIN system to send out an email the way they do for the CE notices telling people that they have a message in their PTIN account and in the PTIN account put a notice that they need to renew. And that's all I have to say. Thank you very, very much for the time.

MR. SHURTLIFF: Thank you for your comments, Ms. Rosenberg. Does anyone on the panel have any questions for the speaker?

SPEAKER: I do not.

MR. SHURTLIFF: All right. If no one has any questions, Ms. Killian you may now begin.

MS. KILLIAN: Hello. Thank you for allowing me the opportunity to provide input on the proposed rule that would increase user fees related to enrolled agents. My name is Megan Killian and I am the executive vice president of the National Association of Enrolled Agents or NAEA. I am here today on behalf of nearly 57,000 enrolled agents that NAEA represents. Before I get into my specific comments regarding this issue, I do want to share or echo that we share Eva's concern regarding access to the exam. She and I have had several conversations about that and our concerns about that access and any solutions that we can make, can make this an easier process and more acceptable for those who are wishing to become EAs. But for over 50 years NAEA has been the voice of enrolled agents. We are uniquely positioned to offer an informed and practical perspective on increased user fees and what they need for the profession and by extension for tax administration. NAEA believes the proposed rule, if adopted, would be,

unwarranted increase in the renewal fees that charges the tax professionals who voluntarily hold themselves to the IRS' highest standards as set forth in Circular 230. NAEA opposes the proposed rule for these reasons. First, IRS failed to explain any meaningful changes since the last fee increase took place in 2019, any added benefit for services to EAs, any justification of the reallocation of certain labor costs. The recently proposed rule vaguely points to increased labor, benefits, and overhead costs, as well as additional staffing to justify the increase from \$67 to \$140. As recently as 2019 the user fee was \$30. That is over a 466 percent increase since that time. Since so much rides on the calculation of actual cost to the Return Preparer Office for registering an old agent, NAEA filed a FOIA re-cost for the documents pertaining to the calculation that went into justifying this increase. So, we've only had a very short time to assess over 280 pages of documents. A cursory review raises a number of concerns that we urged the IRS management to revisit. First, while the Return Preparer Office claims a total of 17 FTEs per rank-and-file employees. They assigned three FTEs from high level management. This one manager per approximately 5.66 rank-and-file employees ratio seems excessive on its face. Second, without explanation, RPO assigns 5.94 unspecified FTEs to the 11 FTEs dedicated especially — specifically to enrollment activities. Well, NAEA has been very public in our statements that Congress has consistently over time underfunded the IRS. We would urge the agency to avoid passing any budgetary shortfalls directly onto enrolled agents. The FTEs applying specifically to enrollment activities need to be closely scrutinized and adjusted downward is not found to be justified. This is not the only fee increase that has been imposed on EAs in recent months. The IRS also increased special enrollment exam fees from \$81 to \$99, and it is worth noting that the enrolled agent exams are administered by an outside vendor and are paid for separately by the candidate.

Simply put, the IRS did not do its due diligence or properly explain its justification for such a large fee increase. The proposed rule also states the fee increase will affect individuals and not small businesses which would make the Regulatory Flexibility Act not applicable. The IRS also states that an increased user fee is unlikely to present a significant aspect economic impact. We disagree, because many EAs are small business owners, they're sole proprietors, LLCs, partnerships, franchisees, and employers, i.e., small business owners. Additionally, we all know that small businesses have experienced many challenges in the last two years and are feeling the impact of cost increases across our economy. More than doubling the EA user fee and increasing it 466 percent since 2019 clearly constitutes a significant economic impact to these small businesses. If the proposed rule has a significant economic impact on a substantial number of small entities, which we assert it does, then the IRS is required under RSA to prepare and initial regulatory analysis to ensure that the agency has considered all reasonable regulatory alternatives that would minimize the role of economic burden or increase its benefits for the affected small entity. We also question why the IRS would want to add financial barriers to those who wish to obtain an EA license. Enrolled Agents are exactly the professionals the IRS needs in a tax administration system. These individuals have demonstrated knowledge, continuing education requirements, and high ethical standards. In addition, the representing tax preparers for the IRS, EAs often perform invaluable tax preparation services. In fact, there are many EAs that only perform tax preparation services and are not required to become an EA. But the skills and experience EAs bring to our tax system contribute to a more effective and efficient system. Creating a barrier of any sort for enrolled agents will only serve to disincentivize people from either becoming or continuing to work as EAs. Lastly, on a more technical note, we question

how IRS is applying OMB Circular A-25. First, OMB Circular A-25 clearly states no charge should be made for a service on the identification of the specific beneficiary as it appears and service can be considered primarily as benefitting broadly the general public. Clearly, the enrolled agents, active administration system, and the general public all benefit from the existence of federally licensed tax practitioners who are tested and required to complete annual registration. Also, OMB Circular A-25 allows for exceptions to the user fee requirement.

NAEA believes this exception should be put in place. Ultimately, this increase would be bad for the profession, bad for taxpayers who need professionals that they can trust and afford, and bad for the tax administration system. While we know the IRS, under tremendous pressure to perform with a constrained budget, the proposed enrolled agent fee increase is neither an appropriate nor a justified response to these issues. Thank you for considering our comments. I'm pleased to answer any questions and NAEA will gladly work with you as you consider how best to proceed.

MR. SHURTLIFF: Thank you for your comments, Ms. Killian. Does anyone on the panel have any questions for the speaker?

SPEAKER: I do not.

MR. SHURTLIFF: If there are no questions, I conclude today's public hearing. Thank you to all of our panelists, speakers, and those who called in for your participation.

(Whereupon, at 10:21 a.m., the PROCEEDINGS were adjourned.)

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