February 24, 2025

REG-116610-20
Internal Revenue Service
1111 Constitution Ave, NW
Washington, DC 20224
Electronic Submission

RE: Regulations Governing Practice Before the Internal Revenue Service (REG-116610-20)

The National Association of Enrolled Agents (NAEA) appreciates the opportunity to comment on the proposed rule, "Regulations Governing Practice Before the Internal Revenue Service (REG-116610-20)." While many of the topics related to Circular 230 that are addressed in the proposed rules have been issues that tax professionals have long needed clarity on, there are a few particular areas of concern in the proposed rule that NAEA believes must be addressed.

NAEA is the nation's leading community for tax practitioners – from aspiring enrolled agents to experts with decades of experience. Representing approximately 67,000 enrolled agents (EAs), NAEA is uniquely positioned to offer an informed and practical perspective on how the proposed rules will impact tax professionals and the taxpayers they serve.

Enrolled agents were originally created by statute, back in 1884 as part of the Horse Act. Licensed to represent citizens making claims before the U.S. government, enrolled agents have been a valued and valuable partner in tax administration for decades.

For over a decade, several issues in Circular 230, which the proposed rules address, have been ambiguous and have needed clarity. These issues along with others have been long overdue to be addressed, therefore NAEA appreciates the IRS's work on the proposed rules.

Nevertheless, there are several items in the proposed rule that we do not agree with and believe must be addressed. Our primary concern is Section 10.7, and the proposed changes to "limited practice." The expansion of rights includes allowing non-credentialed tax preparers to "represent a client before revenue agents, customer service representatives, or similar officers and employees of the Internal Revenue Service, including Taxpayer Advocate Service…"

This sweeping modification strays far from the current Circular 230 provisions and Rev. Proc. 81-38, which allow unlicensed tax preparers to represent a client in the audit of a tax return they

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prepared and specifically allows that representation can only occur in an IRS office exam, not in a field audit or correspondence exam.

According to the National Taxpayer Advocate, non-credentialed preparers generally are not subject to competency requirements or ethical standards, and *notably, the majority of individual income tax returns are prepared by non-credentialed return preparers*. As discussed in more detail in her "Return Preparer Oversight Most Serious Problem" in the 2023 Annual Report to Congress, about 60 percent (over 300,000) of unique Preparer Tax Identification Numbers (PTINs) recorded on tax year 2022 individual income tax returns belonged to non-credentialed return preparers.

In the Taxpayer Advocate's 2024 Purple Book, she cites that credentialed return preparers, including attorneys, certified public accountants, and enrolled agents, are generally required to pass competency tests and take continuing education courses. Equally as important, credentialed return preparers are subject to the ethical duties and restrictions relating to practice before the IRS set forth in Circular 230.

Another concern for the entire industry is the change to Due Diligence requirements. In a desire to remove tax preparation from these rules, it appears to be an invitation to play the "audit lottery" and may encourage preparers to take the chance of being audited into account to determine whether to include a questionable position on a tax return.

Additionally, NAEA submits that Sections 10.6(e)(2) and (f) should be modified to allow up to four hours of practice management as an option within the 72 hours required to renew enrollment for Enrolled Agents. This education option has been adopted by the AICPA to develop skills in the areas of business management, information technology, client privacy, and computer software / applications for CPAs. Furthermore, attorneys are required, in certain states, to complete continuing legal education credits that include Cybersecurity, Privacy, and Data Protection courses. Accepting four hours of practice management courses, as continuing education credits for Enrolled Agents, will enhance their abilities to effectively manage taxpayers' data and efficiently represent them before the IRS.

Our last concern is the changes for contingent fee arrangements. Instead of clarifying and bringing principles-based guidance on the issue, the proposed rule removes the entire section on fees and places a broad prohibition, terming most contingent fees "disreputable behavior." Practitioners have weighed in on both sides of this proposed change and some note that the move may still be an overreach, based on *Ridgely*.

NAEA would like to thank the IRS and Treasury Department for working with us over the years on a wide range of issues that not only benefit taxpayers but the whole tax system. As always, we are willing to collaborate with the IRS and Treasury to secure a better tax system for American taxpayers and tax professionals. We appreciate your consideration of NAEA's key recommendations for strengthening Circular 230 on behalf of enrolled agents:

- Retaining the current rules in §10.7 limiting non-credentialed preparer representation;
- Rewriting the due diligence section to clarify the IRS's enforcement stance;
- Consider accepting practice management courses as qualified continuing education;
- Revisiting contingent fee rules with a principles-based approach instead of a blanket ban.

If you have any further questions, please contact Michelle McCaughey at (202) 822-6232.

Sincerely,

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