

**SUPPORTING STATEMENT
NOTICE OF PROPOSED RULEMAKING
REG-138637-07**

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

The Notice of Proposed Rulemaking will amend regulations under 31 CFR Part 10 (Circular 230) to modify the general standard the general standards of practice before the IRS and the standards with respect to tax returns. This collection of information is necessary to implement and administer the provisions of Circular 230.

Section 10.6 requires a registered tax return preparer to maintain records and educational materials regarding the completion of the required qualifying continuing education credits. Section 10.9 also requires providers of qualifying continuing education programs to maintain records and educational material concerning these programs and the individuals who attend them. Continuing education providers also obtain approval of each program as a qualified continuing education program.

The IRS and the Department of Treasury anticipate that final Circular 230 regulations will be published by December 31, 2010. The IRS and Treasury Department also anticipate issuing other final regulations concerning the application for a preparer tax identification number and payment of user fees.

2. USE OF DATA

The information collected will be used to ensure that individuals authorized to prepare tax returns are informed of the latest developments in Federal tax practice.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

We have no plans to require maintenance of records electronically. IRS publication, regulations, notices and letters are to be electronically enabled as a practicable basis in accordance with the IRS reform and Restructuring Act of 1998.

Tax return preparers currently apply for a PTIN either online at www.irs.gov or by submitting to the IRS a completed Form W-7P, "Application for Preparer Tax Identification Number." The IRS intends to implement a new online registration system that will replace the current platform and the Form W-7P. The new

system will include, for at least a temporary period, a paper version of the online process for tax return preparers who are unable to apply online.

4. EFFORTS TO IDENTIFY DUPLICATION

The IRS will attempt to eliminate duplication wherever possible. In particular, to the extent the process to become a registered tax return preparer overlaps with the process to apply for or renew a PTIN, the IRS will make all reasonable efforts to identify and eliminate duplication in the collection of information from tax return preparers.

5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES

The provisions in the regulations and the contemplated requirements in subsequent published guidance may burden small entities. There will likely be an impact on self-employed tax return preparers and on small businesses that employ tax return preparers. Some tax return preparation businesses, including small businesses, may choose, for example, to pay user fees incurred by employees to obtain or renew a PTIN. The IRS and Treasury Department have considered but are not aware of any methods to further minimize any burden on small entities.

6. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES

The IRS will require registered tax return preparers and providers of qualifying continuing education programs to maintain records and educational materials. The IRS and Treasury have determined that requiring the maintenance of these materials is necessary to ensure the ongoing competency of tax return preparers and that they continue to meet the highest ethical standards. Less frequent renewal, and thus a less frequent collection of information, could jeopardize the IRS's effective oversight of tax return preparers, with adverse consequences for tax compliance and tax administration and damage to the confidence of taxpayers and the public that the IRS's regulation of tax return preparers is working properly.

7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)

Not applicable.

8. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON

AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS

A notice of proposed rulemaking is being published in the Federal Register, which will afford the public a 60-day period within which to review and provide comments relating to any aspect of the regulations, including comments on the collection of information . A public hearing will be held with respect to the notice of proposed rulemaking.

Additionally, the NPRM was preceded by an extensive review by the IRS of the tax return preparation industry as described in Publication 4832, *Return Preparer Review* (the Report), issued in December 2009. The proposed regulations implement recommendations set forth in the Report. The IRS conducted the review with the objectives of (1) strengthening partnerships with tax practitioners and tax return preparers, among others, to advance effective tax administration and (2) ensuring that all tax practitioners, tax return preparers, and other third parties involved in the federal tax system adhere to professional standards and legal requirements. The Report noted that the review process was an open and transparent discussion of issues with the industry, consumer advocacy groups, and the public. The IRS sponsored three public forums and also issued Notice 2009-60, 2009-32 I.R.B. 181, requesting comments. The IRS considered the input received, which overwhelmingly expressed support for proposed requirements such as increased oversight of tax return preparers, in developing the recommendations in the Report.

9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS

Not applicable.

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Generally, the information collected is confidential as required by the Privacy Act of 1974, 5 U.S.C. § 552a.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

Because an individual must be authorized to practice before the IRS (as an attorney, certified public accountant, enrolled agent, or registered tax return preparer), the information is also needed to determine eligibility to practice before the IRS and for registration. By authorizing tax return preparers to practice and by classifying tax return preparers who are not attorneys, certified public accountants, or enrolled agents as registered tax return preparers, there

will be heightened expectations as to the integrity of preparers and their fitness to prepare returns and refund claims. Tax return preparers have access to highly sensitive and confidential taxpayer information and are responsible for compliance with the internal revenue laws.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

The IRS and Treasury Department estimate that there are 600,000 tax return preparers who are potentially subject to the proposed regulations with an estimated annual average burden of 30 minutes to 1 hour (54 minute average). The IRS and Treasury Department estimate that there are 1,900 continuing education providers with an estimated annual average burden of five to 5,000 hours (average of 500 hours). The currently approved burden of 50,000 hours would increase due to new requirements under this proposed rule to 1,760,000 hours.

The IRS and Treasury Department estimate the total annual costs resulting from these requirements will be \$9,880,000 for all affected tax return preparers and \$38,632,500 for all affected continuing education providers.

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

The proposed regulations request public comments on estimates of capital or start-up costs and the costs of operation, maintenance, and purchase of services to provide information. Estimates of the annualized cost to respondents for the time spent maintaining records are not available at this time.

14. ESTIMATED ANNUAL COST TO THE FEDERAL GOVERNMENT

Not applicable.

15. REASONS FOR CHANGE IN BURDEN

The total annual burden of this collection of information is an increase from the burden in the current regulations because the IRS and Treasury Department are expanding the rules in Circular 230 to cover all registered tax return preparers in addition to attorneys, certified public accountants, and enrolled agents.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS, AND PUBLICATION

Not applicable.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS

INAPPROPRIATE

Displaying the expiration date of an OMB control number is inappropriate because it could cause confusion by leading tax return preparers and the public to believe that the regulations sunset as of the expiration date. Tax return preparers and the general public are unlikely to be aware that the IRS intends to request renewal of the OMB approval and to obtain a new expiration date before the approval expires.

18. EXCEPTIONS TO THE CERTIFICATION REQUIREMENT OF OMB FORM 83-I

Not applicable.

Note: The following paragraph applies to collections of information in this submission:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax information are confidential, as required by 26 U.S.C. 6103.