NAEA Oral Testimony, March 6,2025

Good morning. Thank you for holding this hearing and allowing the National Association of Enrolled Agents to testify today. I am Jennifer MacMillan, EA, and I am the President-Elect of NAEA. I also served three years on the Internal Revenue Service Advisory Council's OPR subgroup and had the honor of serving as Chair of the IRSAC in 2016.

NAEA is the only national association dedicated to protecting and promoting the Enrolled Agent credential. There are currently over 66,000 active enrolled agents, assisting millions of taxpayers each year with tax filing and planning, along with post-filing advice and interactions with the IRS.

Enrolled Agents are the only tax professionals who were created by federal statute and who earn their credential from the U.S. Treasury. The three-part EA exam is rigorous and passing it demonstrates the expertise necessary to represent taxpayers before the IRS, giving enrolled agents the same practice rights as CPAs and attorneys.

As indicated in our written comments and as evidenced by the numerous NAEA members who took time out of a *very busy* tax season to echo this concern, our primary concern is over the proposed changes to section 10.7 regarding "limited practice" rights for non-credentialled tax preparers.

The proposed language in 10.7 is an extreme departure from the current rule and would allow tax preparers to practice without earning a credential. At this time, all tax preparers who voluntarily agree to abide by *some* sections of Circular 230 are allowed to represent their clients in audits of returns they prepared, but only in Office Examinations. They do not have rights to represent their clients in field exams or on collections matters and currently are not even permitted to handle customer service communications with the IRS, unless those matters are covered by the "Check The Box" provisions on form 1040.

The current rules in Circular 230 and Revenue Procedure 81-38 allow unlicensed tax preparers - who have not proven expertise in tax law by way of an exam or otherwise

demonstrated fitness to practice – to represent taxpayers, but only within this narrow set of circumstances.

The proposed changes to the rules in Circular 230, if finalized, would allow unlicensed tax preparers to hold even footing with enrolled agents in nearly all aspects of taxpayer representation.

The proposed language states:

An individual who possesses a current Annual Filing Season Program (AFSP) Record of Completion may represent a client before revenue agents, customer service representatives, or similar officers and employees of the Internal Revenue Service, including the Taxpayer Advocate Service, during an examination of a tax return or claim for refund or credit that the individual prepared and signed.

This language goes too far and will likely result in inferior service to taxpayers when they need it most and violate their rights.

We know from experience that the IRS has used multiple, interchangeable definitions of "examination" over time. With the expansion of what constitutes "math error" authority over the years, the term "exam" has often been used in relation to these adjustments. In the current world of cutbacks and increased automation, it is not hard to envision an IRS that sees all outward facing, frontline employees as customer service representatives and Notices may become interchangeable with examinations. The personnel in the ACS call centers could also be considered customer service representatives, and if related to a challenge of an assessment, it follows that arguing a deficiency could make collections representation fair game for non-credentialled preparers as well.

The unintended consequences of expanding limited practice are also of critical concern. Expansion of limited practice also raises the question of whether audit reconsiderations filed under a Power of Attorney constitute an exam, and if not, will it be redefined as an exam in the future, as more tasks become automated? Should the taxpayer disagree with a determination, does that also open up representation before the Appeals division to non-credentialled tax preparers?

In addition, **privilege**, which is a guaranteed right of taxpayers in IRC §7525 applies only to "federally authorized tax practitioners" and does not extend to non-credentialled tax preparers.

In all of these potential situations, taxpayers' rights may be compromised by arbitrarily increasing the representation rights of tax preparers.

Enrolled agents deserve the status we have earned. We work hard to attain and maintain the EA designation. We feel the IRS and Treasury should acknowledge that and embrace and protect the high level of service and expertise that enrolled agents provide taxpayers.

There are no real repercussions for non-credentialled tax preparers who provide incompetent or fraudulent representation, outside of Title 26, which applies to everyone. Tax preparers who merely hold a PTIN and check a box, agree to abide by certain parts of Circular 230, but what do they have to lose if they violate those provisions? Enrolled agents are bound by Circular 230 by virtue of earning and maintaining our licenses, so we respectfully request that this new language in §10.7 be revised or omitted in the Final Regulations.

Our second concern is the change in due diligence requirements.

We are aware of the implications of the Loving and Ridgely decisions and understand that these proposed regulations attempt to delineate tax preparation from representation.

While we do not have a specific recommendation or solution to offer, our concern is that the proposed language in sections 10.22 and 10.34 encourages "playing the audit lottery" and may be conducive to fraudulent tax preparation.

Holding that due diligence is only required for tax preparation in conjunction with a representation engagement seems odd, at best.

In the interest of good tax administration, being silent on the issue might be the best option, if the goal truly ***IS*** to omit the tax preparation process from all parts of Circular 230.

We also join with many of our partner associations in requesting that "practice management" courses be included as qualified for Continuing Education credit. Today's tax practice requires attention to much more than the tax practice of the 20th century, including the necessity of maintaining technological competence as well as business best practices that fall outside of the strictly focused "federal tax law" of the current regulations. We support the final regulations reflecting rules similar to the 2024 IRSAC recommendation and the AICPA Code of Professional Conduct as they relate to qualifying CE.

Our final concern is regarding fees and specifically the rules on contingent fees. These rules have been confusing in the past and the proposed changes seem equally awkward.

There are certainly good arguments for constraints on the use of contingent fee arrangements, especially in the filing of original or amended returns and claims for refund, but should be clarified or qualified.

The arguments put forth in the written comments from the ABA Tax Section and AICPA are reasonable and we urge that clear exceptions be incorporated into a revised section 10.27.

Considering that one of the overriding goals of the proposed regulations is to remove tax preparation from the rules, consistent with the court in Ridgely, we suggest that the new section 10.51(b)(2) be abandoned.

Thank you again for the opportunity to comment and we look forward to a continued dialogue with IRS and Treasury on these and other matters.