

# NAEA

NATIONAL ASSOCIATION  
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**Oral Statement of Robert Kerr  
Senior Director, Government Relations  
National Association of Enrolled Agents  
Regarding Special Enrollment Examination  
User Fee Proposed Regulations (REG-134122-15)  
February 25, 2016**

Thank you for the opportunity to testify before you this morning. My name is Bob Kerr and I have the pleasure of serving the National Association of Enrolled Agents (NAEA) as Senior Director, Government Relations

NAEA represents the interests of 50,000 enrolled agents. Our organization is entirely EA focused. We have worked for many years with the agency to advance the IRS's highest credential, to distinguish Circular 230 practitioners from those who hold faux credentials, and to protect the rights of taxpayers worldwide. This organization is uniquely positioned to offer observations on the increased user fees and what they mean for the profession and, by extension, for tax administration.

At the onset, though, I thank the agency for publishing proposed regulations, which allow for comment before the agency changes fees, rather than temporary regulations, which would have increased the fees and then asked for comment. The order matters a lot.

We have submitted separate, formal comments for the record in which we provide detailed concerns. I will limit my comments this morning to its size, how the agency calculated the increase, what efforts the Service has taken to minimize costs, and OMB Circular A-25 rules.

Speaking simply, we cannot see how IRS arrived at this enormous fee increase. Shortly after IRS promulgated the proposed regs, we requested by letter for the agency's cost analysis. We spoke with the head of the return preparer office,

who was unfailingly courteous, but the conversation did not produce the level of detail necessary and NAEA did not receive the cost analysis. We have therefore submitted a FOIA request for IRS' costing models and/or methodology.

We're left with the text of the proposed regs. According to the proposed regulation, IRS claims three increased costs:

- 1) "The cost for background checks...for individuals working at the contractor's testing centers increased by \$270,000 per year";
- 2) A significant reduction in the number of parts of the SEE that will be administered annually (from 34,000 to 20,000); and
- 3) "IRS' costs of verifying contractor's compliance with [IT] security requirements."

IRS also suggests five tasks it didn't include in the original cost estimate, including:

- a) Review and approval of materials the developer uses to develop the SEE
- b) Review of surveys of existing enrolled agents;
- c) Composition of potential SEE questions in coordination with the contractor's external law experts;
- d) Office of Chief Counsel review and revision of potential questions;
- e) Analysis of the answers and raw scores...to determine...a passing score.

The explanation raises as many questions as it is supposed to answer. For instance, how much work is reviewing surveys? And isn't the professional testing organization writing potential SEE questions? I'd be shocked were it otherwise.

I am reminded of Judge Learned Hand's thoughts on Title 26: "[the words] were no doubt written with a passion of rationality; but one cannot help wondering whether to the reader they have any significance save that the words are strung together with syntactical correctness!"

So let's get on a little more solid ground and address the math. An increase from \$11 per part to \$99 per part would nearly double the cost of each section of the

SEE and explode the cost of taking each section to just south of \$200. If a candidate passes each of three parts on her first attempt—and that is far from assured—she will spend nearly \$600, more than half of which will accrue to IRS for services we cannot easily divine and the balance to the organization that develops the exam and administers it at a network of thousands of secure test centers in more than 160 countries<sup>ii</sup>.

As we await a response, here's a back-of-the-envelope on the math: The increase in cost is \$88 per part (\$99 proposed fee - \$11 current fee). IRS anticipates 20,000 parts administered per year. The total increase in revenue to the agency is \$1,760,000—annually.

Let's generously assume the background check increase of \$270,000 is simply passed on fees from elsewhere. That leaves \$1,490,000 in revenue, or roughly 15 full-time equivalent employees. We cannot imagine IRS requires an office the size of NAEA's entire staff to meet the increased costs and costs omitted from its initial cost estimate. The fact that IRS omitted so much from its initial costing, frankly, is not confidence inspiring.

**We would like to know what IRS is doing with the equivalent of 15 GS-12 and GS-13 staff and we do not. We are not alone, however. No one outside the agency knows. We're not even sure who inside the agency really knows.**

Further, we have no idea how IRS is managing these costs, what it is doing to drive down the costs, and whether the costs IRS is incurring are necessary. We trust the approach isn't equivalent to shrugging one's shoulders and saying "it costs what it costs."

I submit that we have not only a numerator problem, but also a denominator problem. If IRS increased the number of SEE parts administered in any given year, then, all things being equal, the agency's user fee per part would decrease. To that end, we wonder what IRS has done to grow the number of

aspiring tax professionals who elect to take the SEE. Again, we wonder how IRS is trying to drive down the costs of program administration.

Here's what we know. We live in a world in which taxpayers desperately need some assurance that the person they are hiring to prepare their tax returns is at least minimally competent. We submit that those who pass all three parts of the SEE will exceed that hurdle.

Unfortunately, we also know in the wake of the *Loving* decisions the agency launched an annual filing season program record of completion effort. Our opposition to that program is well documented. It confuses the marketplace—both taxpayers and tax preparers—and leaves many with the impression that the “qualification” (such as it is) is a meaningful credential. We know IRS doesn't charge the 55,000 annual filing season program record of completion participants and has given to those participants the right to limited practice without any requirement whatsoever to demonstrate representation skills. IRS could double the number of exams administered if only 36 percent of the program participants took one part of the SEE.

We believe IRS is in possession of an asset that it is grossly underleveraged. Doubling the cost of demonstrating competency is a move in the wrong direction and cannot help the Service take advantage of this tremendous asset.

Moving on to [OMB Circular A-25](#), which establishes Federal policy regarding fees assessed for Government services. First and foremost, OMB Circular A-25 requires the agency in question to determine when special benefits exist. We do not know how IRS concluded that special benefits exist, particularly given that it charges user fees inconsistently. It doesn't charge taxpayers for toll-free telephone service. It doesn't charge those who make estimated income tax payments. It doesn't charge for walk-in service. It doesn't charge for the annual filing season program record of completion. (For the record, we're not suggesting it *should* charge for any of these.)

Finally, OMB Circular A-25 allows for exceptions to the user fee requirement. During a time in which the agency (and so many others) are interested in minimum standards for return preparers, is it good public policy to increase so significantly the barriers to entry to Circular 230? One of my favorite things about the profession is that it is an egalitarian one: those who want to hold themselves to the high standards of Circular 230 and therefore provide a broad suite of services to the taxpaying public merely need to demonstrate they are broadly proficient. We don't believe doubling the cost of the SEE will help encourage aspiring tax professionals to take this next step. That's bad for the profession, bad for taxpayers who want to consult someone they can trust and afford, and bad for the tax administration system, particularly in a world in which IRS' reputation is taking a beating.

As your partners in tax administration and as a profession that cares deeply about taxpayer rights and effective tax administration we ask you to reconsider the proposed user fee increase and to explore an OMB Circular A-25 exception.

We urge the agency to withdraw the proposed regulations until such time as interested parties—and no party is more interested than the National Association of Enrolled Agents—are able to review and understand the costing methodology, until the agency is better able to articulate what it is doing to drive down costs and drive up participation, and until the public policy questions this significant price increase raises are addressed.

Thank you once again. This concludes my testimony.

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<sup>i</sup> From Learned Hand, Eulogy of Thomas Walter Swan, 57 Yals L.J. 167, 169 (1947), quoted in *Welder v. United States*, 329 F. Supp. At 741-42 (S.D. Tex. 1971)

<sup>ii</sup> <https://www.prometric.com/en-us/about-prometric/pages/global-network-strength.aspx>