



## **Comments on the Regulations Governing Practice Before the Internal Revenue Service**

April 11, 2006

31 CFR Part 10  
REG-122380-02

The American Society of Pension Professionals & Actuaries (ASPPA) and the National Institute of Pension Administrators (NIPA) appreciate this opportunity to comment on the proposed modifications of the proposed regulations governing practice before the Internal Revenue Service (IRS) (Circular 230). ASPPA and NIPA are dedicated to the professionalism and education of the retirement plan community and strongly support the establishment of the Enrolled Retirement Plan Agent (ERPA) program under Circular 230. Such a program would ensure expertise and compliance within the retirement plan community by allowing such individuals and firms to practice before the IRS on certain retirement plan matters.

ASPPA is a national society of retirement plan professionals that has carefully tracked the changing needs of the retirement plan industry. Its membership consists of almost 6,000 actuaries, plan administrators, consultants, attorneys, CPAs and other retirement plan experts, who design, implement and maintain qualified retirement plans covering tens of millions of American workers. ASPPA serves to educate retirement plan and benefits professionals and preserve and enhance the employer-sponsored retirement system. In pursuit of these goals, ASPPA offers extensive educational opportunities for its members—from professional credentialing to continuing education.

NIPA is a national association representing the retirement and employee benefit plan administration profession. NIPA programs benefit its members, the industry and the public by providing information about retirement and employee benefit plan administration. NIPA brings professional benefit administrators and other interested parties together to encourage dialogue, cooperation and educational opportunities. NIPA is non-profit professional organization acting on behalf of more than 1,000 members.

## Background

There are four main categories of practitioners authorized to practice before the IRS<sup>1</sup>: (1) Attorneys; (2) Certified Public Accountants (CPAs); (3) Enrolled Actuaries; and (4) Enrolled Agents. While attorneys and CPAs have no specific IRS enrollment process, they must be licensed to practice their profession. Enrolled Actuaries are governed by the regulations of the Joint Board for the Enrollment of Actuaries (JBEA), while Enrolled Agents must complete three separate administrative steps: examination, enrollment and renewal. Currently, the IRS' Office of Professional Responsibility (OPR) is responsible for administering the Enrolled Agents' qualification process.

Prior to 1998, many retirement plan professionals, including third party administrators (TPAs) and benefit consultants, not otherwise authorized to practice before the IRS could be designated on Form 2848 as a representative for their clients. Pursuant to the IRS Restructuring and Reform Act of 1998, Form 2848 was revised to prohibit its use by any individual not otherwise authorized to practice before the IRS.

In effect, these changes now prevent many retirement plan professional members, many of whom are TPAs and benefit consultants, from being able to represent their clients before the IRS for qualified retirement plan matters, such as determination letter requests, Voluntary Compliance Program submissions and IRS audits. These professionals, who are highly competent in their field, used to play an active and critical role in representing employers before the IRS on retirement plan matters. The inability to continue doing so is a loss to all parties, including the plan sponsors and the IRS.

## Enrolled Retirement Plan Agent

As proposed by the IRS' Advisory Committee on Tax Exempt and Government Entities (ACT), the ERPA designation would address the needs of a significant number of retirement plan professionals who are currently not authorized to practice before the IRS, yet have the most familiarity with a plan's operations.

Many qualified plans, particularly those of small employers, are drafted and administered by highly qualified TPAs and benefits consultants that do not employ professionals that can be designated on Form 2848 (*e.g.*, attorneys, accountants, Enrolled Actuaries or Enrolled Agents).<sup>2</sup> Such TPAs and consultants, many of whom are ASPPA and NIPA members, are generally the primary point of contact between the plan sponsor and the IRS. Among other things, they prepare IRS tax forms and submissions, assist with IRS audits, update plan documents and implement changes in plan procedures to reflect

---

<sup>1</sup> Except as otherwise limited by Circular 230, "practice before the IRS" includes all matters connected with presentations relating to a taxpayer's rights, privileges or liabilities under laws or regulations administered by the IRS.

<sup>2</sup> According to the Executive Summary of the Fourth Report of ACT, in 2003 there were over 787,000 Form 5500 filings for defined contribution plans with less than 100 participants. Many of the sponsors of such plans, especially very small employers, probably do not have an authorized representative.

changes to IRS law and regulation. Plan sponsors rely on the valuable and necessary services provided by these professionals.

IRS representatives are now obligated, under current procedures, to interact with either plan sponsors or individuals who are authorized to practice before the IRS. In many cases, however, these individuals are not familiar with the specific operations of the qualified plan being reviewed or with the specific technical and compliance issues associated with it. The time spent on these reviews inherently increases. The establishment of an ERPA designation will allow those best qualified to represent their client's plans before the IRS and inevitably expedite problem resolution.

ASPPA and NIPA agree that the ERPA examinations and designation should be limited to sections of the Internal Revenue Code (Code) that are intrinsic in the establishment and the maintenance of qualified retirement plans. We concur that there is no need to expand the area of expertise of the ERPA designation beyond qualified retirement plan issues.

### **Qualified Plan Expertise Needed**

The ERPA designation process should result in a broad base of knowledge necessary for every TPA or consultant to establish an expertise in retirement plan terminology and concepts of a traditional and daily pension administration practice. Consistent with the current Enrolled Agent and Enrolled Actuary processes, ERPA candidates should be subject to an examination, enrollment and renewal process.

In accordance with the IRS Strategic Plan Objectives,<sup>3</sup> we agree that ERPA should be consistent with the requirements of other professional groups that are currently permitted to practice before the IRS. In fact, many ASPPA and NIPA retirement plan professionals already hold professional designations that include a renewal and continuing education program similar to what ERPA would require.

We fully support the creation of a new ERPA credentialing program sponsored by the IRS that would require certain courses of study and the completion of one or more examinations. We agree that the scope of an ERPA to practice before the IRS should be limited to certain delineated sections of the Internal Revenue Code relating to retirement plan matters under Title 26 of the Employee Retirement Income Security Act (ERISA) and would include preparing and filing requests for initial determination letters on the qualified status of retirement plans; preparing and filing requests for determination on plan termination; preparing and filing requests for the extension of filing Form 5500; preparing and filing annual reports on Form 5500; preparing and filing excise tax returns; preparing and filing or assisting in filing requests under voluntary compliance programs (EPCRS); and representing qualified retirement plans in audits by the IRS or other government agencies. The scope of the ERPA exam should be similarly limited.

---

<sup>3</sup> The IRS Strategic Plan for 2005 through 2009 provides the following: (1) ensure that attorneys, accountants and other tax professionals adhere to the professional standards and follow the law; and (2) detect and deter abuse within tax-exempt and governmental entities and misuse of such entities by third parties for tax avoidance or other unintended purposes.

Similar to existing credentialing programs and the current Enrolled Agent and Enrolled Actuary processes, candidates who have satisfied the ERPA designation should also be subject to continuing education requirements. This requirement will ensure continued expertise and increase compliance within the retirement plan practitioner community. The continuing education requirements are also essential to the maintenance of professional standards of practice. In addition, we would expect and support that individuals with the ERPA designation would be subject to all the professional requirements under Circular 230 that are applicable to other enrollment categories.

ASPPA and NIPA currently maintain credentialing programs for many professionals that will likely obtain the ERPA credential. If necessary, we could clearly expand these existing programs to provide conference materials necessary for practitioners to meet their continuing education needs.

## **Conclusion**

ASPPA and NIPA applaud the efforts of the IRS and fully support and encourage the creation of the ERPA designation for qualified retirement plan practitioners under Circular 230. It will encourage practitioners proficient in compliance of qualified retirement plans to become subject to the jurisdiction of the IRS and enhance the IRS' ability to monitor the performance of these retirement plan professionals. The entire retirement plan community will be better served by this oversight with potential for sanctions against those involved in misconduct.

Sincerely,

Brian H. Graff, Esq., APM  
ASPPA Executive Director/CEO  
4245 North Fairfax Drive, Suite 750  
Arlington, VA 22203  
703.516.9300

Laura J. Rudzinski  
NIPA Executive Director  
4001 North Michigan Avenue  
Chicago, IL 60611  
800.999.6472