

[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 300

[REG-116284-11]

RIN 1545-BK24

User Fees Relating to the Registered Tax Return Preparer Competency Examination and Fingerprinting Participants in the Preparer Tax Identification Number, Acceptance Agent, and Authorized E-File Provider Programs.

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed amendments to the user fee regulations.

The proposed regulations would establish a new user fee for individuals to take the registered tax return preparer competency examination and a new user fee for certain persons to be fingerprinted in conjunction with the preparer tax identification number, acceptance agent, and authorized e-file provider programs. The proposed regulations also would redesignate §300.12, Fee for obtaining a preparer tax identification number, as §300.13. The proposed regulations affect individuals who take the registered tax return preparer competency examination and applicants and certain participants in the preparer tax identification number, acceptance agent, or authorized e-file provider programs. The charging of user fees is authorized by the Independent Offices Appropriations Act of 1952. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by October 27, 2011.

Outlines of topics to be discussed at the public hearing scheduled for October 7, 2011, at 10 a.m. must be received by October 4, 2011.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-116284-11), room 5205, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-116284-11), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov/> (IRS REG-116284-11). The public hearing will be held in the Auditorium at the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Emily M. Lesniak at (202) 622-4570; concerning cost methodology, Eva J. Williams at (202) 435-5514; concerning submission of comments, the public hearing, and/or to be placed on the building access list to attend the public hearing, Richard A. Hurst at Richard.A.Hurst@irsounsel.treas.gov or (202) 622-7180 (not toll-free numbers).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background and Explanation of Provisions**

In June 2009, the IRS launched a Tax Return Preparer Review with the intent to propose a comprehensive set of recommendations that would increase taxpayer compliance and ensure uniform and high ethical standards of conduct for tax return preparers. In December 2009, the IRS made findings and recommendations based upon this review that would increase oversight of the federal tax return preparer

community. The findings and recommendations were published in Publication 4832, “Return Preparer Review” (the Report), which was published on January 4, 2010. In part, the Report recommended registering all tax return preparers with the IRS and requiring tax return preparers who are not attorneys, certified public accountants, or enrolled agents to pass a competency examination before they are eligible to prepare a tax return or claim for refund. The Treasury Department and the IRS have published several documents implementing the recommendations in the Report, three of which are relevant to these proposed regulations.

First, on September 30, 2010, the Treasury Department and the IRS published final regulations under I.R.C. section 6109 (75 FR 60309) providing that for returns or claims for refund filed after December 31, 2010, the identifying number of a tax return preparer is the individual’s preparer tax identification number (PTIN) or such other number prescribed by the IRS in forms, instructions, or other appropriate guidance. The section 6109 final regulations require a tax return preparer who prepares all or substantially all of a tax return or claim for refund after December 31, 2010 to have a PTIN. These regulations further provide that only attorneys, certified public accountants, enrolled agents, and registered tax return preparers are eligible to obtain a PTIN. Section 1.6109-2(h) of the regulations states, however, that the IRS can provide exceptions to the §1.6109-2 regulations through forms, instructions, or other appropriate guidance.

Second, on December 30, 2010, the Treasury Department and the IRS published Notice 2011-6 (2011-3 IRB 315) that, in part, creates exceptions under §1.6109-2(h), allowing two additional classes of individuals to obtain a PTIN (provided all tax

compliance and suitability checks are passed) and prepare all or substantially all of a tax return or claim for refund for compensation. Section 2a. of Notice 2011-6 permits specified individuals who are supervised by the attorney, certified public accountant, enrolled agent, enrolled retirement plan agent, or enrolled actuary who signs the tax return or claim for refund prepared by the individual to obtain a PTIN. These supervised individuals may not sign a tax return or claim for refund. Section 2b. of Notice 2011-6 provides that individuals who certify that they do not prepare or assist in the preparation of all or substantially all of any tax return or claim for refund that is covered by a competency examination will be able to obtain a PTIN. This exception recognizes that the initial registered tax return preparer competency examination will be limited to individual income tax returns (Form 1040 series returns and accompanying schedules).

Third, on June 3, 2011, the Treasury Department and the IRS published final regulations amending the regulations governing practice before the IRS (76 FR 32286). These regulations are found in 31 CFR part 10 and have been reprinted as Treasury Department Circular No. 230 (Circular 230). The amendments to Circular 230, in part, provide that practice before the IRS includes preparing for compensation a tax return, claim for refund, or other document submitted to the IRS and include registered tax return preparers as practitioners under Circular 230. Registered tax return preparers must demonstrate the necessary qualifications and competency by passing a minimum competency examination, completing annual continuing education requirements, and complying with any other applicable procedures relating to the application for registration and renewal of registration established and published by the IRS. Registered tax return preparers may prepare and sign tax returns, claims for refund, and other documents as

provided in forms, instructions, or other appropriate guidance. Registered tax return preparers also may represent taxpayers before revenue agents, customer service representatives, or similar officers and employees of the IRS during an examination if the registered tax return preparer signed the tax return or claim for refund for the time period under examination. Registered tax return preparers may not represent taxpayers before appeals officers, revenue officers, Counsel, or similar officers or employees of the IRS or the Department of the Treasury.

### **User Fee to Take the Registered Tax Return Preparer Competency Examination**

To become a registered tax return preparer, applicants will be required to pass a competency examination. Proposed §300.12 establishes a \$27 user fee to take the registered tax return preparer competency examination. This user fee must be paid each time the applicant takes the competency examination and is in addition to any reasonable fee charged by the third-party vendor that is approved by the IRS.

Applicants who pass the competency examination generally will not, however, be required to re-take the examination in the future years.

There are costs to the IRS for administering the registered tax return preparer competency examination. The user fee to take the registered tax return preparer competency examination will recover these costs. These costs include the personnel, administrative, management, and information technology costs to the IRS for developing and reviewing the competency examination, overseeing the competency examination, validating the competency examination results, and establishing a review procedure for applicants who contest any portion of the competency examination. The user fee also

recovers the cost to conduct background checks on employees of the third-party vendor who are involved in the administration of the examination.

Individuals who pay the competency examination user fee and become registered tax return preparers will receive a special benefit from the IRS that is not received by the general public. Passing the competency examination enables registered tax return preparers to prepare and sign Form 1040 series returns (and accompanying schedules) for compensation. Registered tax return preparers also are able to represent taxpayers before revenue agents, customer service representatives, or similar officers and employees of the IRS during examination if the registered tax return preparer signed the tax return for the period under examination. That representation does not include practice before appeals officers, revenue officers, Counsel, or similar officers or employees of the IRS or the Department of the Treasury. Because the competency examination initially will cover only the Form 1040 series returns, only attorneys, certified public accountants, enrolled agents, or registered tax return preparers will be able to sign a Form 1040 series return. While tax return preparers who are supervised will be able to prepare all or substantially all of a Form 1040 series tax return or claim for refund, they will not be able to sign the return or claim for refund and are not able to represent the taxpayers before the IRS. Any individual with a PTIN, however, can prepare and sign a tax return or claim for refund that is not part of the Form 1040 series.

**User Fee to be Fingerprinted as Part of the PTIN, Acceptance Agent, and Authorized E-File Provider Programs**

The IRS intends to collect fingerprints as part of the PTIN, acceptance agent, and authorized e-file provider programs to assist in evaluating the suitability of applicants and participants in these programs. Individuals who have been or are fingerprinted in

conjunction with their participation in any one of these programs after June 8, 2009, however, will not have to be re-fingerprinted to participate in these programs.

Proposed §300.13 establishes a \$33 user fee on individuals who will be fingerprinted in conjunction with their application to participate or participation in these programs. This user fee is in addition to any reasonable fee charged by a third-party vendor that is approved by the IRS. The third-party vendor fee will cover the costs for obtaining the fingerprints and transmitting the fingerprints to the Federal Bureau of Investigation (FBI), where the fingerprints will be run through the FBI identification records database. The IRS fingerprinting user fee recovers the costs to the IRS to transfer the fingerprints and the results of the FBI search to the IRS; perform background checks on third-party vendor employees; modify the database used to receive, record, and store the search results; evaluate the results received from the search of the FBI database; provide internal review of circumstances when an individual is determined not to be suitable to participate in a program; and process appeals by individuals who are denied the ability to participate in a program because the individual failed this suitability check.

Additionally, under the current proposed regulations any participant in the PTIN, acceptance agent, or authorized e-file provider programs who resides and is employed outside of the United States will not have to be fingerprinted to participate in these programs. Such persons, however, must comply with all other elements of the suitability check. In addition, the Treasury Department and the IRS continue to study what additional requirements should apply to such persons. Any additional requirements would be set forth in future guidance.

Individuals who are fingerprinted as part of their application or participation in the PTIN, acceptance agent, or authorized e-file provider programs receive a special benefit that is not received by the general public. Individuals who participate in the PTIN program receive the special benefit of being able to prepare all or substantially all of a tax return or claim for refund for compensation. Individuals with a PTIN can charge for their tax preparation services. The regulations under section 6109 require tax return preparers to have a PTIN if they prepare all or substantially all of a tax return or claim for refund for compensation. Passing a suitability check is a prerequisite for receiving a PTIN. For most PTIN applicants, the suitability check includes, but is not limited to, fingerprinting and processing the fingerprints through the FBI identification records database. The IRS, however, does not intend to fingerprint attorneys, certified public accountants, enrolled agents, enrolled retirement plan agents, and enrolled actuaries who apply for a PTIN at this time. The Treasury Department and the IRS specifically request comments on whether these individuals should be exempt from the fingerprinting process.

Participants in the acceptance agent program, which includes certifying acceptance agents, also receive a special benefit from participation in the program. As provided in Revenue Procedure 2006-10 (2006-1 CB 293), acceptance agents facilitate and expedite the issuance of individual taxpayer identification numbers (ITINs) and employer identification number (EINs) by verifying the identity and foreign status of applicants. An individual who wants to obtain an ITIN must submit a Form W-7, "Application for IRS Individual Taxpayer Identification Number," and documentation that evidences the individual's identity and status as an alien. An EIN applicant must submit



a Form SS-4, "Application for Employer Identification Number," and any required supplementary statements. Section 301.6109-1(d)(3)(iv) provides that ITIN and EIN applicants may submit the application and accompanying information directly to the IRS or may use an acceptance agent. When a certifying acceptance agent is used to apply for an ITIN, the ITIN applicant is not required to submit documentation proving the applicant's identity or status as an alien because the certifying acceptance agent certifies to these facts. This certification procedure is not available to EIN applicants. The certification is submitted to the IRS as part of the ITIN application.

To become an acceptance agent, applicants must pass a suitability check. As part of the suitability check, most applicants will be fingerprinted for processing through the FBI identification records database. Successful applicants receive the special benefit of being able to facilitate and expedite ITIN and EIN applications and verify the applicants' identity and status as an alien. Certifying acceptance agents receive the additional benefit of being able to certify ITIN applicants' identity and status as an alien, which enables ITIN applicants to retain their identification and foreign status documentation. Acceptance agents can charge a fee for their services.

All individuals who apply to become an acceptance agent and who are required to be fingerprinted must pay the fingerprinting user fee. As of June 8, 2009, the IRS began storing the fingerprints of all acceptance agent applicants electronically. Prior to that time, the fingerprints of acceptance agent applicants generally were not stored electronically. Fingerprints that are not stored electronically deteriorate over time. The IRS, therefore, may require acceptance agents who were fingerprinted prior to June 8,

2009, and who are currently required to be fingerprinted, to be re-fingerprinted and pay the associated user fee.

All individuals who apply to become authorized e-file providers also must pass a suitability check. As part of the suitability check, most applicants will be fingerprinted for processing through the FBI identification records database. The guidelines for participation in this program are in Revenue Procedure 2007-40 (2007-1 CB 1488) and numerous publications that are tailored to specific tax or information returns. Successful applicants receive an electronic filing identification number (EFIN). Multiple persons associated with an applicant may use the same EFIN to electronically file tax and information returns. Authorized e-file providers receive the special benefit of being able to electronically file specified tax and information returns with the IRS. Some e-file providers charge a fee for performing this service.

All individuals who apply to become an authorized e-file provider and who are required to be fingerprinted must pay the fingerprinting user fee. Additionally, similar to the process for acceptance agents described earlier in this preamble, authorized e-file providers who were fingerprinted before June 8, 2009, the date the IRS began digitally storing all fingerprints, and are required to be fingerprinted, may be re-fingerprinted and required to pay the associated user fee.

If the IRS has an individual's fingerprints digitally stored due to the individual's application to participate or participation in the PTIN, acceptance agent, or authorized e-file provider programs, the individual will not have to be fingerprinted again to participate in one of the other programs.

The IRS did not charge a user fee for acceptance agents or authorized e-file providers to be fingerprinted previously because an unduly large part of the user fee would have been the cost of collecting a user fee. With the addition of many PTIN applicants as individuals who also must be fingerprinted (the number of persons being fingerprinted will increase to approximately 460,000), the cost of collecting the user fee has decreased relative to the costs associated with fingerprinting. Because the cost of collecting a user fee is no longer an unduly large part of the user fee, the IRS has determined that a user fee is now appropriate and will charge a user fee to recover the cost of fingerprinting the applicants and certain participants in the PTIN, acceptance agent, and authorized e-file provider programs.

The proposed regulations also would redesignate §300.12, Fee for obtaining a preparer tax identification number, as §300.13.

### **Authority**

The charging of user fees is authorized by the Independent Offices Appropriations Act (IOAA) of 1952, which is codified at 31 U.S.C. 9701. The IOAA authorizes agencies to prescribe regulations that establish charges for services provided by the agency. The charges must be fair and must be based on the costs to the government, the value of the service to the recipient, the public policy or interest served, and other relevant facts. The IOAA provides that regulations implementing user fees are subject to policies prescribed by the President; these policies are currently set forth in the Office of Management and Budget Circular A-25, 58 FR 38142 (July 15, 1993) (the OMB Circular).

The OMB Circular encourages user fees for government-provided services that confer benefits on identifiable recipients over and above those benefits received by the

general public. Under the OMB Circular, an agency that seeks to impose a user fee for government-provided services must calculate the full cost of providing those services. In general, a user fee should be set at an amount that allows the agency to recover the full cost of providing the special service, unless the Office of Management and Budget grants an exception.

Pursuant to the guidelines in the OMB Circular, the IRS has calculated its cost of providing services for the registered tax return preparer competency examination and for fingerprinting applicants and certain participants in the PTIN, acceptance agent, and authorized e-file provider programs. The government will charge the full cost of administering these services and will implement the proposed user fees under the authority of the IOAA and the OMB Circular.

#### **Proposed Effective/Applicability Date**

The Administrative Procedure Act provides that substantive rules generally will not be effective until thirty days after the final regulations are published in the **Federal Register** (5 U.S.C. 553(d)). Final regulations may be effective prior to thirty days after publication if the publishing agency finds that there is good cause for an earlier effective date.

This regulation is part of the IRS's continued effort to implement the recommendations in the "Return Preparer Review." The recently published amendments to Circular 230 established registered tax return preparers as practitioners under Circular 230 and required that individuals must pass a competency examination, among other requirements, to become a registered tax return preparer. Before the competency examination can be offered, the competency examination user fee must be in place. As

part of the recent amendments to the section 6109 regulations, the IRS established a requirement to pass a suitability check prior to obtaining a PTIN. To fully implement the suitability check, the regulations establishing a user fee to be fingerprinted must be finalized so the IRS can begin fingerprinting required applicants. Further, the competency examination and the fingerprinting user fees must be finalized significantly before the 2012 filing season to enable the IRS to have these aspects of the new regulatory program in place for the 2012 filing season.

Thus, the Treasury Department and the IRS find that there is good cause for these regulations to be effective upon the publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

### **Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563.

It has been determined that an initial regulatory flexibility analysis under 5 U.S.C. 603 is required for this final rule. The analysis is set forth under the heading, "Initial Regulatory Flexibility Analysis."

Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### **INITIAL REGULATORY FLEXIBILITY ANALYSIS**

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (5 U.S.C. chapter 6) (RFA) requires the agency "to prepare and make available for public

comment an initial regulatory flexibility analysis” that will “describe the impact of the proposed rule on small entities.” See 5 U.S.C. 603(a). Section 605 of the RFA provides an exception to this requirement if the agency certifies that the proposed rulemaking will not have a significant economic impact on a substantial number of small entities. A small entity is defined as a small business, small nonprofit organization, or small governmental jurisdiction. See 5 U.S.C. 601(3) through (6). The IRS and the Treasury Department conclude that the proposed rule, if promulgated, will have a significant economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is required.

Description of the reasons why action by the agency is being considered

Based upon the finding in the Report, the IRS and the Treasury Department are implementing regulatory changes that increase the oversight of the tax return preparer industry. These regulatory changes include requiring persons who prepare all or substantially all of a tax return or claim for refund for compensation to obtain a PTIN and creating a new category of Circular 230 practitioner called registered tax return preparers. Individuals who wish to become a registered tax return preparer must pass a competency examination. Individuals who pass the competency examination and become a registered tax return preparer will receive a special benefit that the general public does not receive because a registered tax return preparer is allowed to prepare and sign Form 1040 series returns (and accompanying schedules) for compensation. Under the new PTIN and Circular 230 guidance (including Notice 2011-6), only attorneys, certified public accountants, enrolled agents, or registered tax return preparers can prepare and sign all or substantially all of a Form 1040 series return for

compensation. There are costs to the IRS associated with overseeing the registered tax return preparer competency examination and providing the special benefits associated with being a registered tax return preparer. These proposed regulations implement a user fee for taking the registered tax return preparer competency examination to recover these costs.

PTIN holders, acceptance agents, and e-file providers also receive a special benefit from participation in the PTIN, acceptance agent, and authorized e-file provider programs. PTIN holders receive the special benefit of being able to prepare all or substantially all of a tax return or claim for refund for compensation. Acceptance agents receive the special benefit of being able to facilitate and expedite ITIN and EIN applications by validating the applicant's identity and status as a foreign person. Certifying acceptance agents also receive the special benefit of being able to certify an ITIN applicant's identity and status as an alien. Authorized e-file providers receive the benefit of being able to electronically file tax and information returns with the IRS. As a prerequisite for participation in these programs, applicants and certain participants must pass a suitability check. As part of the suitability check, most applicants will be fingerprinted for processing through the FBI identification record database. There are costs to the IRS to administer and review the processing of applicant's and certain participant's fingerprints as part of the suitability check. These proposed regulations implement a user fee for certain individuals to be fingerprinted as part of the PTIN, acceptance agent, or authorized e-file provider programs to recover these costs.

A succinct statement of the objectives of, and legal basis for, the proposed rule

Regarding the registered tax return preparer program, the objective of the proposed regulations is to recover the costs to the government associated with the registered tax return preparer competency examination. This user fee will be in addition to any reasonable fee charged by the third-party vendor that is approved by the IRS for administering the competency examination. The costs to the government include the personnel, administrative, management, and information technology costs to develop and review the competency examination, oversee the competency examination, validate the competency examination results, and establish review procedures for persons who contest the competency examination. All individuals who are not attorneys, certified public accountants, or enrolled agents and want to prepare and sign Form 1040 series tax returns (and accompanying schedules) for compensation will be required to become a registered tax return preparer and pass the competency examination. Individuals who pass the competency examination and become a registered tax return preparer will receive the special benefit of being able to prepare and sign Form 1040 series returns for compensation. Registered tax return preparers also will receive the benefit of being able to represent taxpayers before revenue agents, customer service representatives, or similar officers and employees of the IRS during examination if the registered tax return preparer signed the tax return for the period under examination. These regulations recover the costs to the government that are associated with providing this special benefit.

Regarding the fingerprinting user fee to participate in the PTIN, acceptance agent, or authorized e-file provider programs, the purpose of the user fee is to recover the costs to the government for providing the special benefits associated with these programs.



This user fee will be in addition to any user fee charged by the third-party vendor, which will be approved by the IRS, and covers the costs for obtaining the fingerprints and transmitting the fingerprints to the FBI. The fingerprinting user fee recovers the costs to the IRS to transfer the fingerprints and the results of the FBI database search to the IRS; perform background checks on third-party vendor employees; modify the database used to receive, record, and store the search results; evaluate the results received from the search of the FBI database; provide internal review of circumstances where an individual is found not suitable to participate in the respective program; and process appeals by individuals who are denied the ability to participate in their respective program because the individuals failed the suitability check. Individuals who participate in the PTIN program receive the special benefit of being able to prepare all or substantially all of a tax return or claim for refund for compensation. Individuals who participate in the acceptance agent program receive the special benefit of being able to facilitate and expedite the issuance of ITINs and EINs by verifying the applicant's identity and status as an alien; certifying acceptance agents receive the additional benefit of being able to certify an ITIN applicant's identity and status as an alien. Persons who participate in the authorized e-file provider program receive the special benefit of being able to electronically file tax and information returns.

The legal basis for establishing a user fee is contained in section 9701 of title 31.

A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply

The proposed regulations affect all individuals who want to become registered tax return preparers under the new oversight rules in Circular 230. Only individuals, not businesses, can practice before the IRS or become a registered tax return preparer.

Thus, the economic impact of these regulations on any small entity generally will be a result of applicants owning a small business or a small entity employing applicants. The NAICS code that relates to tax preparation services (NAICS code 541213) is the appropriate code for the registered tax return preparer program. Entities identified as tax preparation services are considered small under the Small Business Administration size standards (13 CFR 121.201) if their annual revenue is less than \$7 million. The IRS estimates that approximately 350,000 individuals will become registered tax return preparers. The IRS estimates that approximately 70 to 80 percent of the individuals who apply to become registered tax return preparers are operating as or employed by small entities.

The proposed regulations affect certain individuals who have or want to obtain a PTIN. Only individuals, not businesses, can obtain a PTIN. Thus, the economic impact of these regulations on any small entity generally will be a result of an individual tax return preparer who is required to obtain a PTIN owning a small business or a small business otherwise employing an individual tax return preparer who is required to apply for or renew a PTIN to prepare all or substantially all of a tax return or claim for refund. The appropriate NAICS codes for applicants or participants in the PTIN program who will have to be fingerprinted relates to tax preparation services (NAICS code 541213). The IRS estimates that approximately 450,000 individuals who receive a PTIN will be required to pay the fingerprinting user fee. Entities identified as tax preparation services and offices of lawyers are considered small under the Small Business Administration size standards if their annual revenue is less than \$7 million. The IRS estimates that

approximately 70 to 80 percent of the individuals required to be fingerprinted are operating as or employed by small entities.

The proposed regulations also affect individuals who are or want to become an acceptance agent. Only an individual can become an acceptance agent; thus, the regulations will economically impact any small entity that is owned by or employs an acceptance agent. The NAICS code that relates to tax preparation services (NAICS code 541213) is the appropriate code for the acceptance agent program. Entities identified as tax preparation services are considered small under the Small Business Administration size standards if their annual revenue is less than \$7 million. The IRS estimates that 3,500 individuals who are not required to obtain a PTIN will be fingerprinted as part of the acceptance agent program. The IRS estimates that 80 to 90 percent of acceptance agents are operating as or employed by small entities.

Finally, the proposed regulations will affect any person that is an authorized e-file provider or applies to become an authorized e-file provider. Small businesses can be authorized e-file providers. The NAICS code that relates to authorized e-file providers is data processing, hosting, and related services (NAICS code 518210). Entities identified as data processing, hosting, and related services are considered small under the Small Business Administration size standards if their annual revenue is less than \$25 million. The IRS projects that 6,500 persons who are not required to obtain a PTIN will be fingerprinted as part of the authorized e-file provider program. The IRS estimates that 99 percent of authorized e-file providers are operating as small businesses.

A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record

No reporting or recordkeeping requirements are projected to be associated with this proposed regulation.

An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule

The IRS is not aware of any federal rules that duplicate, overlap, or conflict with the proposed rule.

A description of any significant alternatives to the proposed rule, which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities

The IOAA authorizes the charging of user fees for agency services, subject to policies designated by the President. The OMB Circular implements presidential policies regarding user fees and encourages user fees when a government agency provides a special benefit to a member of the public. As Congress has not appropriated funds to the registered tax return preparer, PTIN, acceptance agent, or authorized e-file provider programs, there are no viable alternatives to the imposition of user fees.

While the IRS previously did not charge a user fee to recover its costs in conjunction with the fingerprinting of applicants to the acceptance agent and authorized e-file programs, the number of applicants in these programs was small enough that the cost of collecting a user fee to fingerprint applicants in these programs would represent an unduly large portion of the user fee. The addition of the PTIN applicants as a group of individuals who also are required to be fingerprinted increased the number of persons required to be fingerprinted to approximately 460,000. Because the population of individuals to be fingerprinted substantially increased, the cost of collecting a user fee for

fingerprinting acceptance agents and authorized e-file providers is no longer an unduly large portion of the user fee.

### **Comments and Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for October 7, 2011 beginning at 10:00 am in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **“FOR FURTHER INFORMATION CONTACT”** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments and an outline of the topics to be discussed and the time to be devoted to each topic by October 4, 2011. A period of 10 minutes will be allocated to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of

charge at the hearing.

### **Drafting Information**

The principal author of these regulations is Emily M. Lesniak, Office of the Associate Chief Counsel (Procedure and Administration).

### **List of Subjects in 26 CFR Part 300**

Reporting and recordkeeping requirements, User fees.

### **Proposed Amendments to the Regulations**

Accordingly, 26 CFR Part 300 is proposed to be amended as follows:

#### **Part 300 - - USER FEES**

Paragraph 1. The authority citation for part 300 continues to read in part as follows:

Authority: 31 U.S.C. 9701.

Par. 2. Section 300.0 is amended by:

1. Redesignating paragraph (b)(12) as paragraph (b)(13).
2. Adding new paragraph (b)(12).
3. Adding paragraph (b)(14).

The additions and revisions read as follows:

#### §300.0 User fees; in general.

\* \* \* \* \*

(b) \* \* \*

(12) Taking the registered tax return preparer examination.

\* \* \* \* \*

(14) Fingerprinting to apply for, or participate, in the preparer tax identification number, authorized e-file provider, or acceptance agent programs.

Par. 3. Redesignate §300.12 as §300.13.

**§300.12 [Redesignated as §300.13]**

Par. 4. Adding new §300.12 to read as follows:

§300.12 Registered tax return preparer competency examination fee.

(a) Applicability. This section applies to the competency examination to become a registered tax return preparer pursuant to 31 CFR 10.4(c).

(b) Fee. The fee for taking the registered tax return preparer competency examination is \$27, which is the government cost for overseeing the examination and does not include any fees charged by the administrator of the examination.

(c) Person liable for the fee. The person liable for the competency examination fee is the applicant taking the examination.

(d) Effective/applicability date. This section is applicable on the date the final regulations are published in the **Federal Register**.

Par. 5. Section 300.14 is added to read as follows:

§300.14 Fingerprinting fee to participate in the preparer tax identification number, acceptance agent, or authorized e-file provider programs.

(a) Applicability. This section applies to applicants and participants in the preparer tax identification number, acceptance agent, and authorized e-file provider programs who are required to be fingerprinted as prescribed by forms, instructions, or other appropriate guidance. This section does not apply, however, to individuals who reside and are employed outside of the United States.

(b) Fee. The fee to be fingerprinted is \$33, which is the cost to the government for processing the fingerprints and does not include any fees charged by the vendor.

(c) Person liable for the fee. The person liable for the fingerprinting fee is the person being fingerprinted.



(d) Effective/applicability date. This section is applicable on the date the final regulations are published in the **Federal Register**.

Steven T. Miller  
Deputy Commissioner for Services and Enforcement.