

[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 300

[REG-124018-10]

RIN 1545-BJ65

User Fees Relating to Enrolled Agents and Enrolled Retirement Plan Agents

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed amendments to the regulations relating to the imposition of user fees for enrolled agents and enrolled retirement plan agents.

The proposed regulations separate the enrolled retirement plan agent user fees from the enrolled agent user fees and lower the initial enrollment and renewal of enrollment fees for enrolled agents and enrolled retirement plan agents. The proposed regulations affect individuals who are or apply to become enrolled agents or enrolled retirement plan agents. The charging of user fees is authorized by the Independent Offices Appropriations Act of 1952.

DATES: Written or electronic comments must be received by January 10, 2011.

Outlines of topics to be discussed at the public hearing scheduled for January 14, 2011, at 10 a.m. must be received by January 5, 2011.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-124018-10), 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-124018-10), 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-124018-10). The public hearing will be held in the IRS Auditorium, 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, or to be placed on the building access list to attend the public hearing, Richard A. Hurst at [Richard.A.Hurst@irs.counsel.treas.gov](mailto:Richard.A.Hurst@irs.counsel.treas.gov) or (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

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

Section 330 of title 31 of the United States Code authorizes the Secretary of the Treasury to regulate the practice of representatives before the Treasury Department. Pursuant to section 330 of title 31, the Secretary has published regulations governing practice before the IRS in 31 CFR part 10 and reprinted the regulations as Treasury Department Circular No. 230 (Circular 230). Circular 230 is administered by the IRS Office of Professional Responsibility (OPR).

Section 10.4(a) of Circular 230 authorizes the Director of OPR to grant status as an enrolled agent to applicants who demonstrate special competence in tax matters by passing a written examination administered by, or administered under the oversight of, the Director of OPR and who have not engaged in any conduct that would justify suspension or disbarment under Circular 230. Every year OPR develops and

administers a Special Enrollment Examination (SEE) that individuals must pass to become an enrolled agent through examination.

Section 10.4(b) of Circular 230 authorizes the Director of OPR to grant status as an enrolled retirement plan agent to applicants who demonstrate special competence in qualified retirement plan matters by passing a written examination administered by, or under the oversight of, the Director of OPR and who have not engaged in any conduct that would justify suspension or disbarment under Circular 230. Every year OPR develops and administers an Enrolled Retirement Plan Agent Special Enrollment Examination (ERPA–SEE) that individuals must pass to become an enrolled retirement plan agent through examination.

Section 10.4(b) also authorizes the Director of OPR to grant full or limited enrollment as an enrolled agent or full enrollment as an enrolled retirement plan agent to a former IRS employee if the former employee has not engaged in any conduct that would justify the suspension or disbarment of any practitioner under the provisions of Circular 230 and the employee meets certain other requirements. These requirements include minimum length of employment with the IRS and substantive tax expertise. Application for enrollment based on former employment with the IRS must be made within three years from the date of separation from such employment and the applicant is not required to pass the SEE or the ERPA–SEE, unless a former employee who previously was granted limited enrollment status wants to qualify for full enrollment.

Once eligible for enrollment as an enrolled agent or enrolled retirement plan agent, whether by examination or former employment with the IRS, an individual must file an application for enrollment with the Director of OPR. An individual granted status

as an enrolled agent or enrolled retirement plan agent as provided in §10.6(d) must renew enrollment every three years to maintain active enrollment and be able to practice before the IRS. In order to qualify for renewal, an applicant must certify the completion of the continuing education requirements set forth in §10.6(e) of Circular 230 and compliance with certain ethical standards in Circular 230 and state regulatory agencies.

As part of the application to become an enrolled agent or enrolled retirement plan agent, an individual must currently pay a nonrefundable user fee of \$125. This user fee is authorized under §300.5. An individual also must pay a \$125 nonrefundable user fee to renew enrollment, which is authorized under §300.6. An individual must renew enrollment every three years. In addition, a user fee of \$11 per part is currently imposed to take the SEE or the ERPA–SEE. The user fee to take the SEE and ERPA–SEE is currently authorized under §300.4.

The proposed regulations coordinate the user fees imposed on enrolled agents and enrolled retirement plan agents with the new user fee to apply for or renew a preparer tax identification number (PTIN). The Treasury Department and the IRS are implementing recommendations in Publication 4832, “Return Preparer Review,” which was published on January 4, 2010. Based on these recommendations, the Treasury Department and the IRS recently published final regulations under section 6109 (TD 9501, 75 FR 60309, September 30, 2010) that require tax return preparers who prepare all or substantially all of a tax return or claim for refund for compensation to obtain a PTIN. Individuals applying for or renewing a PTIN are required to pay a \$50 IRS user

fee and a \$14.25 vendor fee. The final regulations establishing the IRS user fee to apply for or renew a PTIN were published on September 30, 2010 (TD 9503).

The process for reviewing an enrolled agent or an enrolled retirement plan agent initial enrollment or renewal of enrollment application is, in some ways, duplicative of the new process for reviewing a PTIN application. For example, the tax compliance checks and suitability checks conducted as part of a PTIN application are the same tax compliance checks and suitability checks currently performed as part of the process for becoming an enrolled agent or enrolled retirement plan agent. To avoid any potential duplication and unnecessary expense for individuals applying to become an enrolled agent or an enrolled retirement plan agent, the Treasury Department and the IRS intend to require all enrolled agents and enrolled retirement plan agents to obtain a PTIN. The Treasury Department and the IRS further intend to eliminate the tax compliance checks and suitability checks from the initial enrollment and renewal of enrollment process for enrolled agents and enrolled retirement plan agents because these checks will be performed as part of the requirement to obtain a PTIN. Thus, the Treasury Department and the IRS are eliminating the portion of the initial enrollment and renewal of enrollment user fees that recover the costs to perform the tax compliance checks and suitability checks (and any other review conducted as part of the PTIN application process).

Accordingly, the proposed regulations separate the initial enrollment and renewal of enrollment user fees imposed on enrolled agents from the initial enrollment and renewal of enrollment user fees imposed on enrolled retirement plan agents, which are all currently imposed in §§300.5 and 300.6. (The proposed regulations also separate

the user fee to take the ERPA-SEE to become an enrolled retirement plan agent from the user fee to take the SEE to become an enrolled agent, which are both currently imposed in §300.4.)

The proposed regulations also reduce both the enrolled agent and enrolled retirement plan agent initial enrollment and renewal of enrollment user fees to reflect that the review procedures (including tax compliance checks and suitability checks), previously conducted as part of the enrolled agent and enrolled retirement plan agent initial enrollment and renewal of enrollment processes, will now be conducted as part of the PTIN application and renewal process. In particular, the proposed regulations amend §300.5 to reduce the enrolled agent initial enrollment user fee to \$30 and §300.6 to reduce the enrolled agent renewal of enrollment user fee to \$30. The enrolled retirement plan agent initial enrollment user fee is found in proposed §300.10 and is \$30. The enrolled retirement plan agent renewal of enrollment user fee is found in proposed §300.11 and also is \$30.

The initial enrollment and renewal of enrollment user fees imposed on enrolled agents and enrolled retirement plan agents in the proposed regulations reflect only the costs of the review processes that are not conducted as part of the PTIN application or renewal processes. The costs include processing the enrolled agent and enrolled retirement plan agent initial enrollment and renewal of enrollment applications, processing the accompanying user fees, and conducting a search for any violations of professional rules and standards of conduct.

### **Authority**

The Independent Offices Appropriations Act (IOAA) of 1952, which is codified at 31 U.S.C. 9701, authorizes agencies to prescribe regulations that establish charges for services provided by the agency, which includes charging user fees. 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 under the enrolled agent and enrolled retirement plan agent program and PTIN application process. The full cost of administering these programs will be charged and the proposed user fees will be implemented under the authority of the IOAA and the OMB Circular.

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

The Administrative Procedure Act provides that substantive rules 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.

The Treasury Department and the IRS recently finalized regulations that require all tax return preparers who prepare all or substantially all of a tax return or claim for refund for compensation to use a PTIN as their identifying number (TD 9501). The Treasury Department and the IRS also finalized regulations that require tax return preparers to pay a \$64.25 user fee to apply for or renew a PTIN (TD 9503, 75 FR 60316, September 30, 2010). Tax return preparers who prepare all or substantially all of a tax return or claim for refund must obtain or renew their PTIN for the 2011 tax season.

Circular 230 requires that, to maintain active enrollment to practice before the IRS, enrolled agents must renew enrollment every third year after initial enrollment is granted. The renewal schedules are staggered with approximately one third of enrolled agents renewing every year. Enrolled agents with social security numbers or tax identification numbers ending in 4, 5, or 6 are currently scheduled to renew their enrollment beginning on November 1, 2010 and ending on January 31, 2011. To enable these enrolled agents to renew their enrollment at the reduced fee, the IRS issued Announcement 2010-81 on October 14, 2010, which delayed the renewal period for enrolled agents with social security numbers or tax identification numbers ending in 4, 5, or 6. The renewal process cannot be reinstated until this regulation is finalized; otherwise, these enrolled agents will pay twice for the IRS to perform the compliance and suitability checks. To minimize the disruption to the enrolled agent program caused

by the delay of renewal, the renewal process must be reinstated as quickly as possible. 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. It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This certification is based upon the information that follows. The proposed regulation does not place an additional filing requirement on enrolled agents or enrolled retirement plan agents and decreases the enrollment costs already in effect. Thus, this regulation should reduce the economic impact imposed by the current enrolled agent and enrolled retirement plan agent user fees.

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.

### **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 Treasury Department and the IRS 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 January 14, 2011, beginning at 10:00 a.m. 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 January 5, 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)(9) as paragraph (b)(12).
2. Adding new paragraph (b)(9).
3. Adding paragraphs (b)(10) and (b)(11).

The additions and revisions read as follows.

#### §300.0 User fees; in general.

\* \* \* \* \*

(b) \* \* \*

(9) Taking the special enrollment examination to become an enrolled retirement plan agent.

(10) Enrolling an enrolled retirement plan agent.

(11) Renewing the enrollment of an enrolled retirement plan agent.

\* \* \* \* \*

Par. 3. Section 300.4 is amended by revising the heading to read as follows:

#### §300.4 Enrolled agent special enrollment examination fee.

\* \* \* \* \*

Par. 4. Section 300.5 is amended by revising paragraphs (b) and (d) to read as follows:

§300.5 Enrollment of enrolled agent fee.

\* \* \* \* \*

(b) Fee. The fee for initially enrolling as an enrolled agent with the IRS Office of Professional Responsibility is \$30.

\* \* \* \* \*

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

Par. 5. Section 300.6 is amended by revising paragraphs (b) and (d) to read as follows:

§300.6 Renewal of enrollment of enrolled agent fee.

\* \* \* \* \*

(b) Fee. The fee for renewal of enrollment as an enrolled agent with the IRS Office of Professional Responsibility is \$30.

\* \* \* \* \*

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

§ 300.9 [Redesignated as §300.12]

Par. 6. Redesignate §300.9 as §300.12.

Par. 7 Add new § 300.9 to read as follows:

§ 300.9 Enrolled retirement plan agent special enrollment examination fee.

(a) Applicability. This section applies to the special enrollment examination to become an enrolled retirement plan agent pursuant to 31 CFR 10.4(b).

(b) Fee. The fee for taking the enrolled retirement plan agent special enrollment examination is \$11 per part, which is the cost to the government 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 enrolled retirement plan agent special enrollment examination fee is the applicant taking the examination.

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

Par. 7. Section 300.10 is added to read as follows:

§300.10 Enrollment of enrolled retirement plan agent fee.

(a) Applicability. This section applies to the initial enrollment of enrolled retirement plan agents with the IRS Office of Professional Responsibility pursuant to 31 CFR 10.5(b).

(b) Fee. The fee for initially enrolling as an enrolled retirement plan agent with the IRS Office of Professional Responsibility is \$30.

(c) Person liable for the fee. The person liable for the enrollment fee is the applicant filing for enrollment as an enrolled retirement plan agent with the IRS Office of Professional Responsibility.

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

Par. 8. Section 300.11 is added to read as follows:

§300.11 Renewal of enrollment of enrolled retirement plan agent fee.

(a) Applicability. This section applies to the renewal of enrollment of enrolled retirement plan agents with the IRS Office of Professional Responsibility pursuant to 31 CFR 10.5(b).

(b) Fee. The fee for renewal of enrollment as an enrolled retirement plan agent with the IRS Office of Professional Responsibility is \$30.

(c) Person liable for the fee. The person liable for the renewal of enrollment fee is the person renewing enrollment as an enrolled retirement plan agent with the IRS Office of Professional Responsibility.

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

Steven T. Miller,  
Deputy Commissioner for Services and Enforcement.