



October 12, 2021

All United States Senators
United States Capitol
Washington, DC 20510

Re: Please OPPOSE H.R. 4184 and All New Tax Preparer Licensing Mandates

Dear Senator:

We write to urge you to *oppose* all proposals, including H. R. 4184 and similar legislation that may be introduced in the Senate, that would impose unprecedented licensing requirements on hundreds of thousands of “mom and pop” tax preparers who help fellow Americans file their tax returns. This proposal is cloaked in the language of consumer protection, but, in reality, it is just a rent-seeking ploy by multi-billion-dollar tax preparation companies and their allies in the certified public accountant lobby. Their goal is simple: raise costs of compliance, drive smaller competitors out of business, and force taxpayers to use their more expensive services. ***Please oppose this bill and any efforts to include it in “must-pass” legislation such as Budget Reconciliation or an end-of-year omnibus bill.***

H.R. 4184 rests on the false premise that tax preparers today are unregulated, and that only through a new licensing regime can the IRS prevent fraud and protect taxpayers. This claim is demonstrably incorrect, as tax preparers are already subject to extensive federal regulation. For example, existing law requires all persons preparing tax returns for a fee to register with the IRS and obtain a unique “Preparer Tax Identification Number” (“PTIN”). That PTIN must be included on all returns the preparer files. Dozens of federal laws then regulate the conduct of those registered preparers, and failure to comply with those laws can result in serious penalties, including fines up to \$100,000 and years in prison.¹ Those registered tax preparers also must undergo “suitability checks” that screen individuals based on felony convictions and their own past tax compliance,² and if they e-file (which is mandatory if they prepare more than 10 returns), the suitability check is even more robust, including a credit review.³ And the IRS imposes even greater due-diligence obligations for those who prepare EITC or other refundable credit tax returns.⁴

That legal framework—registration, suitability checks, and hefty penalties—gives the IRS the tools to identify any “bad apples” who file fraudulent returns for a fee, whether those persons work through multi-billion-dollar tax preparation companies, as certified public accountants, or as independent tax preparers. PTIN registration enables the IRS to identify and analyze all returns filed by particular tax preparers, and if it finds a pattern of fraud or abuse linked to a particular PTIN, it can pursue that preparer.

The proposed tax preparer licensing system directly undermines these anti-fraud tools by encouraging the growth of “ghost preparers” who prepare returns on the black market.⁵ Ghost preparers do not sign the returns they prepare—typically the taxpayer files under his own name, and no preparer is identified, nor any PTIN given—and the IRS has no way of tracking these preparers. If licensing is imposed, many registered PTIN holders can be expected to drift into that “ghost preparer” category to avoid the higher costs and burdens. No PTINs will be on their returns and the IRS will lose track of the preparers. This inevitable result is precisely the opposite of the bill supporters’ professed purpose.

The reality is that tax preparer licensing mandates are not designed to protect taxpayers or fight fraud, but to drive independent tax preparers out of business. Many of these preparers are the quintessential “mom and pop” businesses, often working from their kitchen tables to help extended family, friends, and neighbors who want to work with individuals they trust, and at lower prices. Tax preparer licensing would drive up compliance costs through new fees to the IRS, ongoing “continuing education” obligations, and additional regulatory burdens that come

¹ See, e.g., 26 U.S.C. §§ 6694, 6695, 6700, 6701, 6702, 6707A, 6713, 7201, 7206, 7207, 7213, 7216, and 7407.

² See IRS, IRM 25.20.3, Tax Professional Oversight and Support, Return Preparer Suitability, available at https://www.irs.gov/irm/part25/irm_25-020-003r.

³ See IRS, Become an Authorized E-File Provider, available at <https://www.irs.gov/e-file-providers/become-an-authorized-e-file-provider>.

⁴ See IRS, Due Diligence Law, available at <https://www.eitc.irs.gov/tax-preparer-toolkit/preparer-due-diligence/due-diligence-law/eitc-due-diligence-law-and-regulation>.

⁵ See IRS, Taxpayers should beware of ghost preparers, available at <https://www.irs.gov/newsroom/taxpayers-should-beware-of-ghost-preparers>

along with government-imposed licensing, causing tens of thousands of tax preparers to shut down. Industry experts and analysts have estimated that as much as twenty percent of the industry would be forced to close up shop due to new compliance burdens.⁶ It is clear that this bill, like previous failed schemes to mandate tax preparer licensing, is fundamentally hostile to small businesses and entrepreneurship.

The damage is not just to the preparers, but to the taxpayers themselves. As the number of tax preparers declines due to the new government-imposed barriers to entry, the price of tax preparation will become more expensive. It is axiomatic that reduced competition leads to higher prices. Moreover, those tax preparers who do remain in business will pass along the higher compliance costs to their customers.⁷ Congress should be protecting the rights of taxpayers to work with the tax preparers they prefer, not pass new laws that will destroy business relationships and relationships of trust.

We urge you to oppose H.R. 4184 and any other legislation that would impose new licensing requirements on those who prepare tax returns for a fee. The IRS has the tools it needs to address fraud under current law, and all the new licensing will do is harm taxpayers and small businesses alike. Congress should not be abetting this naked rent-seeking, and should instead protect taxpayers' rights to choose which tax preparers will serve them.

If you have questions, please contact Dan Alban, Senior Attorney at the Institute for Justice, at dalban@ij.org.

Sincerely,

Institute for Justice
American Commitment
Americans for Prosperity
Campaign for Liberty
Center for a Free Economy
Competitive Enterprise Institute

Goldwater Institute
Heritage Action for America
Independent Women's Voice
National Taxpayers Union
Niskanen Center
R Street Institute

⁶ See, e.g., "Guides Through the Swamp," *The Economist*, March 24, 2012, available at <https://www.economist.com/business/2012/03/24/guides-through-the-swamp>.

⁷ Roger Russell, "Tax Preparer Shortage on the Way," *Accounting Today*, September 6, 2012, available at <https://www.accountingtoday.com/news/tax-preparer-shortage-on-the-way>; Editorial, "H&R Blockheads; the IRS wants to save you from your rogue tax accountant," *Wall Street Journal*, January 7, 2010, available at <https://www.wsj.com/articles/SB10001424052748703436504574640572196836150>.