ASEA

4401 N. Fairfax Drive | Suite 600 | Arlington, VA 22203
P 703.516.9300 | F 703.516.9308 | customercare@asppa.org

American Society of Enrolled Actuaries

December 19, 2022

Internal Revenue Service
CC:PA:LPD:PR / Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044
*via Federal rulemaking Portal at www.regulations.gov*

**Re Proposed User Fees for Enrolled Actuaries–REG—100719021**

Dear Internal Revenue Service,

The American Society of Enrolled Actuaries (ASEA) appreciates the opportunity to comment on the Internal Revenue Service's (IRS') proposed amendment to the regulations imposing user fees for enrolled actuaries (Proposal).[1] The ASEA believes that while an increase in the user fee – the first since 2007 – may be merited, we disagree with the magnitude of the increase as proposed by the IRS. As explained in the following, we dispute elements of the cost analysis used by IRS to justify the amount of the increase.

The ASEA is one of five affiliate organizations[2] under the umbrella of the American Retirement Association (ARA). Together, these five affiliate organizations underlying the ARA represent the full spectrum of professionals supporting America's private retirement system. ARA's members include organizations of all sizes and industries across the nation who sponsor and/or support retirement saving plans and are dedicated to expanding on the success of employer sponsored plans. In addition, ARA has nearly 35,000 individual members who provide consulting and administrative services to the sponsors of retirement plans.

An individual who is enrolled as an actuary by the Joint Board of Enrolled Actuaries (JBEA) is conferred the special benefits of being authorized to perform actuarial services under ERISA and to practice before the IRS. These benefits are not available to the general public. To account for its costs of providing enrolled actuary enrollment and renewal of enrollment services, the IRS charges a user fee to applicants for enrollment and to renew enrollment as an enrolled actuary at the appropriate time. Fees for enrollment and renewal of an enrolled actuary, which are collected by the JBEA, are intended to cover the costs to the Federal government of providing the services which

[1] 87 Fed. Reg. 60347 (Oct. 5, 2022).
[2] The other four affiliate organizations of the ARA are the American Society of Pension Professionals and Actuaries (ASPPA), the National Association of Plan Advisors (NAPA), the National Tax-Deferred Savings Association (NTSA), and the Plan Sponsor Council of America (PSCA).

4401 N. Fairfax Drive | Suite 600 | Arlington, VA 22203
P 703.516.9300 | F 703.516.9308 | customercare@asppa.org

ASEA
American Society of Enrolled Actuaries

confer the special benefit accruing to an individual whom the JBEA approves as a new or renewing enrolled actuary.

Final regulations published in the Federal Register on December 21, 2007[3], established the current $250 user fee for the enrollment application and renewal of enrollment application processes for enrolled actuaries. At that time, the Treasury Department and the IRS had determined that a $250 user fee per application to enroll or to renew enrollment as an enrolled actuary would recover the full direct and indirect costs the government would incur to administer the enrollment and renewal of enrollment processes. The Proposal would increase the amount of the user fee from $250 per enrollment application or renewal application to $680 per enrollment application or renewal application.[4] As explained in the preamble to the Proposal, the user fee is intended to cover the work of the JBEA staff's responsibilities to administer the enrollment and renewal of enrollment processes for the JBEA.[5]

We understand that since the time the current user fee was established by regulation in 2007, the IRS has reviewed it biennially. Agencies are required to review user fees biennially and update the fees as necessary to reflect changes in the cost of providing the underlying services. During the review, an agency is required to calculate the full cost of providing each service, considering all direct and indirect costs to any part of the U.S. government. Under the applicable rules, the full cost of providing a service includes, but is not limited to, an appropriate share of overhead for salaries, medical insurance and retirement benefits, management costs, and physical overhead, and other indirect costs, including rents, utilities, and travel associated with providing the service. Until this year, these reviews either resulted in a user fee calculation of approximately $250 or otherwise did not result in an increase of the fee.

### *The Proposal's Cost Estimate*

Insofar as estimating IRS' costs attributable to enrolled actuary enrollment and reenrollment, the Proposal explains that four IRS employees devote an average of 65 percent of their time over the three-year cycle to enrollments and renewals activities and that prior biennial review costing analyses understated IRS' cost by only taking into account an average of forty percent of such time.[6] For the reasons explained in the following, the ASEA believes this 65 percent average may be overstated and asks the IRS to review this assumption.

The cycle of renewals of enrollment is not uniform. The Proposal reflects this, noting that the number of applicants in 2018-2020 were as follows:

[3] 72 Fed. Reg. 72606-01 (Dec. 21, 2007).
[4] 87 Fed. Reg. 60359-60.
[5] *Id.*
[6] *Id.*

4401 N. Fairfax Drive | Suite 600 | Arlington, VA 22203
P 703.516.9300 | F 703.516.9308 | customercare@asppa.org
American Society of Enrolled Actuaries

| Year | Applicants |
|---|---|
| 2018 | 214 |
| 2019 | 132 |
| 2020 | 3,584 |

As this data shows, the number of applicants in the last year of the cycle (2020) is more than 20 times greater than average enrollments and renewals in the first two years of the cycle. Indeed, IRS notes the "historical norm of most renewals of enrollment occurring every third year."[7] Given this unevenness in enrollments and renewals, it seems obvious that the percentage of time IRS employees spend working on enrollment activities would similarly be uneven.

According to the Proposal's Preamble, IRS estimated the percentage of time employees devote to conducting enrolled actuary enrollment and renewal of enrollment activities based on their knowledge of actual program assignments. It explained that four employees devote an average of ***sixty-five percent of their time over the three-year enrollment cycle*** to enrolled actuary enrollment or renewal of enrollment activities. We can apply this average to the actual volume of applications IRS reports for 2018, 2019, and 2020,[8] thusly:

> If, for example, we treat 2020, the last year of the cycle, as a year in which four IRS employees worked 100% of their time on enrollment activities (the year in which renewals are highest), that would mean that they spent an average of 47.5 percent of their time on enrollment activities in 2018 and 2019. But according to Preamble data, in 2018 and 2019, an average of 1/20th of the number of applications we processed.

The ASEA believes that it does not seem likely that the four IRS employees would spend almost half of their time in 2018 and 2019 on about 1/20th the number of enrollment activities. Taking all of this into account, we believe that the formula for the estimate for 2022, 2023, and 2024 could include an error. ASEA respectfully asks the IRS to revisit its calculation of the amount of time dedicated to enrollment activities over the 3-year cycle, ensuring that the decreased amount of activity in certain years of the 3-year cycle is appropriately considered.

* * *

---

[7] *Id.* at 60361.
[8] *Id.*

ASEA
4401 N. Fairfax Drive | Suite 600 | Arlington, VA 22203
P 703.516.9300 | F 703.516.9308 | customercare@asppa.org
American Society of Enrolled Actuaries

The ASEA would welcome the opportunity to discuss this further with you. Please feel free to contact Allison Wielobob, Executive Director, at AWielobob@USARetirement.org or (703) 516-9300. Thank you for your time and consideration.

/s/ Allison Wielobob
Executive Director
American Society of Enrolled Actuaries