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August 16, 2011

Department of the Treasury
Attn: CC:PA:LPD:PR (Notice 2011-61)
Room 5205
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Re: Comments Regarding Approval of Continuing Education Providers and Programs under Circular 230 as Requested in IRS Notice 2011-61

Dear Sir or Madam:

The American Society of Pension Professionals & Actuaries (“ASPPA”), the National Institute of Pension Administrators (“NIPA”) and the American Institute of Retirement Education, LLC (“AIRE”) (collectively, the “organizations”) are writing to provide comments on the procedures and standards for approval of continuing education providers and programs under Circular 230.

ASPPA is a national professional organization of more than 7,500 retirement plan professionals who provide consulting and administrative services for qualified retirement plans covering millions of American workers. ASPPA members are retirement professionals of all disciplines, including consultants, investment professionals, administrators, actuaries, accountants and attorneys. Our large and broad-based membership gives ASPPA unique insight into current practical applications of ERISA and qualified retirement plans, with a particular focus on the issues faced by small- to medium-sized employers. ASPPA’s membership is diverse but united by a common dedication to the employer-based retirement plan system.

NIPA is a national professional association of over 1200 members representing the retirement and employee benefit plan administration profession. It was founded in 1983 with the idea of bringing together professional benefit administrators and other interested parties to encourage greater dialogue, cooperation and educational opportunities. NIPA’s mission and vision is to enhance professionalism in the retirement plan industry by being a leading provider of educational programs for retirement plan professionals. NIPA provides opportunities for professional growth by offering relevant, comprehensive, quality programs and designations, and by promoting and supporting chapters in order to allow networking benefits on a local basis. NIPA’s goal is to improve the quality and efficiency of plan administration.

AIRE is the organization responsible for administering the study program and examination process for the Enrolled Retirement Plan Agent (“ERPA”) Special Enrollment Examination. It is an exclusive relationship between ASPPA and NIPA, two retirement plan associations with extensive and principal experience in all aspects of the retirement plan industry. AIRE is directed

by a Board of Managers encompassing key leadership from ASPPA and NIPA. Both ASPPA and NIPA have been offering examinations leading to credentials for retirement plan professionals for more than 70 years combined.

Summary

ASPPA, NIPA and AIRE recognize and support the interest by the Internal Revenue Service (“IRS”) in ensuring that continuing education programs are of the highest quality. In order to ensure that such programs are both high quality and timely, we strongly urge the IRS, in practice, to retain the current approach under which an approved sponsor’s programs would not be individually subject to an approval process, even if it has the discretion to do so.

In order to ensure the timely delivery of “fresh” course content, it is critical that the process of assigning program numbers to the individual programs must operate in an efficient and effective manner. We recommend that an internet-based registration process be used to allow a qualifying sponsor to immediately receive a continuing education program number when registering a particular course or products. A more effective use of IRS resources would be to periodically review or audit courses by these qualifying sponsors as part of the process of retaining and renewing the sponsor’s approved status, rather than trying to pre-approve individual course offerings.

Discussion

I. ASPPA, NIPA, and AIRE Educational Programs

As part of their mission, ASPPA and NIPA both sponsor extensive professional credentialing programs for administrators, actuaries, consultants, attorneys, financial advisors, and other professionals who work with tax-qualified retirement plans. The credentialing programs include a rigorous course of study, comprehensive examinations and mandatory continuing education requirements.

In addition, both ASPPA and NIPA offer an array of ongoing educational services for their members and other interested individuals. Educational programs include webcourses, webcasts, national and regional conferences (many of which are co-sponsored by the IRS) as well as review classes for the Enrolled Actuary examination. ASPPA and NIPA are both dedicated to providing practical and scholastic education programs which address the legal, legislative and regulatory changes affecting the pension system and the work of retirement plan professionals.

As mentioned previously, ASPPA and NIPA are also partners in AIRE. In addition to administering the ERPA enrollment examination, AIRE offers ERPA candidates preparatory materials and review classes to assist with their pursuit of the ERPA designation. AIRE also sponsors an annual 2-day conference focused specifically on the professional educational needs of ERPAs. AIRE was selected for this role, in no small part, because of the extensive experience of its partners in administering professional education programs.

ASPPA, NIPA and AIRE are uniquely positioned to provide input with regard to the approval process for continuing education providers and programs under Circular 230. The organizations

have been and continue to be very supportive of IRS initiatives to improve the training, professionalism, and competency of tax professionals.

II. Approval of Continuing Education Providers and Programs

A. Background

Comment has been requested with respect to the supplemental procedures and standards for approval of Continuing Education Providers under Circular 230.¹ Circular 230 states that continuing education providers must be:

- (i) An accredited educational institution;
- (ii) Recognized for continuing education purposes by the licensing body of any State, territory, or possession of the United States, including a Commonwealth, or the District of Columbia;
- (iii) Recognized and approved by a qualifying organization as a provider of continuing education on subject matters within section 10.6(f) of Circular 230 ; or
- (iv) Recognized by the Internal Revenue Service as a professional organization, society, or business whose programs include offering continuing professional education opportunities in subject matters within section 10.6(f) of Circular 230.

Circular 230 contains conditions that must be satisfied for an educational program to qualify for continuing education credit.² In addition to criteria relating to the instructor, subject matter, teaching materials and attendance verification, the program must also satisfy the continuing education provider and program requirements.³ Thus the process for approval of programs and providers is very much interwoven.

B. Provider Approval Process

ASPPA and NIPA are presently approved program sponsors for ERPA continuing professional education credit. AIRE has also received continuing education program approval for the annual ERPA conference it sponsors, which is focused on advancing the professional education of ERPAs. The process of approval in each case was facilitated by the use of IRS Form 8498-EP, *Program Sponsor Agreement for Continuing Education for Enrolled Retirement Plan Agents*. We believe this approach should be continued.⁴

¹ 31 C.F.R. §10.9.

² 31 C.F.R. § 10.6(f).

³ 31 C.F.R. §10.9.

⁴ Form 8498-EP requires program sponsors to certify that the program that it plans to offer satisfies certain requirements and acknowledge that its records are subject to review and that the failure to comply with necessary standards may result in its program sponsor agreement being terminated.

The category of provider most relevant to the organizations is a professional organization, society, or business whose programs include offering continuing professional education opportunities as defined in §10.9(a)(1)(iv).⁵ The information necessary to approve the provider under this newly added section of Circular 230 is similar, if not identical, to that previously needed under former §10.6(g)(2) and (4). Therefore, the agreement provisions of Form 8498-EP, coupled with supplementary information to verify the status of the provider as a professional or business organization which provides educational programs containing appropriate subject matter, should be all that is necessary to be submitted under the new rules. Providers have become familiar with the existing process, which has worked well and does not appear to have led to any abuses.

With regard to the criteria that should be used to evaluate whether an applicant meets the requirements of Circular 230, it would appear that is dictated by the regulation itself. Consequently, a provider which is a professional society recognized as tax-exempt under the Internal Revenue Code should be judged based on the standard found in §10.9(a)(1)(iv). In the case of a professional organization, approval should be given if it can be verified that the provider is a professional society that provides educational opportunities on qualifying subject matter. As part of the information submitted for the approval process, a representative sample of the educational opportunities offered by the professional organization could be solicited.

With regard to providers that are not professional organizations, it may be necessary to look more closely at the organization's experience and expertise before granting sponsor approval. Again, a representative sample of prior educational offerings may be solicited to demonstrate that the provider has the ability to ensure that the continuing education programs being offered will satisfy the requirements for qualification. For new providers, details on the actual programs planned could form the basis for this evaluation.

It should be noted that presently, the Form 8498-EP submission results in the program sponsor entering into an agreement regarding its educational programs and the manner in which they will be offered. Essentially the sponsor agrees to abide by the conditions set forth in Circular 230 which must be met in order for a sponsor and/or program to qualify. If the sponsor fails to abide by the agreement, their sponsorship approval can be terminated. Section 10.9(a)(1)(iv) indicates that the IRS "may" require such agreements under the new rules. A sponsor's willingness to sign such an agreement should be further indication of the organization's professionalism and eligibility to be a qualifying sponsor.

With regard to the information required for renewal of an organization's status as a qualifying sponsor, it would appear that the IRS will already have a list of the programs offered by the sponsor during the previous cycle by virtue of the new mandate of

⁵ See, 31 C.F.R. §10.9(a)(1)(iv) (stating "A continuing education provider must...Be recognized by the Internal Revenue Service as a professional organization, society, or business whose programs include offering continuing professional education opportunities in subject matters within §10.6(f) of this part. The Internal Revenue Service, at its discretion, may require such professional organizations, societies, or businesses to file an agreement and/or obtain Internal Revenue Service approval of each program as a qualified continuing education program in appropriate forms, instructions or other appropriate guidance.").

individual program numbers. Consequently, the only information that should be required for renewal is a reaffirmation by the sponsor that the requirements to be qualifying provider are still being met.

The actual renewal cycle should continue to be a three-year period and existing cycles should be maintained. This is consistent with current practice and also corresponds to the renewal cycle for ERPAs and other tax practitioners under Circular 230. The time period for renewal has been the three-month period running from May 1st to July 31st with the effective date of renewal being the first day of the third month following the close of the renewal period. This time period has worked well and should be continued in the future.

Comments were requested on “The level of detail that continuing education providers must provide to the IRS regarding changes in continuing education programs offered and the mechanism for notifying the IRS about these changes...”⁶ The level of detail that would need to be provided will depend on the degree of change in any particular program. It is also not clear whether this is meant only to address changes in a program associated with a change in the law which would allow continued use of the same program number under §10.9(a)(4)(ii). If so, the notification should simply apprise the Internal Revenue Service of the particular law change and the program(s) that will be updated in accordance with §10.9(a)(4)(ii).

With respect to publication of approved continuing education providers, the IRS currently maintains a list on its website of approved ERPA providers. Unfortunately, it is not very well publicized and it is difficult, at best, to find unless an individual already knows where to look. But at least it is there. It is absolutely necessary that a current list of approved sponsors continue to be published on the IRS website and that those seeking continuing professional education be allowed to rely on that posting. Updating the list is most important if a sponsor has had its approved status terminated. Since it is important that practitioners be permitted to rely on the list, it is equally important that non-qualifying sponsors be removed as quickly as possible after their approved status has been revoked. For this reason, the list should be immediately updated when a sponsor is to be removed. However, quarterly updates should be sufficient if the purpose is to add a newly approved sponsor(s).

Comment was also requested on the date by which continuing education providers should receive approval to be able to offer programs by January 1, 2012. Unfortunately, this request raises a number of issues with respect to the manner in which existing approved continuing education providers will be affected by the change to the new rules. Both ASPPA and NIPA were approved as qualifying sponsors in 2009 for the normal 3 year cycle which would require renewal in 2012. It is not clear whether the question being raised relates only to the new requirement of program numbers or whether the IRS expects to require an entirely new approval process before January 1, 2012 for sponsors whose normal renewal period would begin only 4 months later.

⁶ IRS Notice 2011-61, p.3.

It would be extremely disruptive to the educational pursuits of ERPAs and other tax professionals if there is not a clear and smooth transition to the new rules. To lessen the potential for disruption, continuing education providers who had previously been approved as qualifying providers as of the effective date of the new rules should maintain that status through their existing sponsor enrollment cycle. In no event should the qualifying status of an approved sponsor be invalidated during whatever transition period it takes to put the new procedures in place. This includes the ability of qualifying sponsors to offer educational programs without the need for a program number until such time that the IRS has in place an efficient and effective system for assigning such numbers. Both ASPPA and NIPA already have educational programs and conferences scheduled throughout the rest of the year and well into 2012. It would be unconscionable to deny practitioners continuing education credit for these programs because of disruptions caused in transitioning to the new rules.

C. Program Registration and Approval

In addition to being offered by a qualifying sponsor, each educational program is subject to certain requirements to qualify for continuing professional education credit under Circular 230. Section 10.9(a)(4) imposes a requirement that each continuing education program be registered and receive a program number. The proposed regulation would have required that each program also be individually approved to qualify for credit. The final regulation indicated that approval of individual programs may still be required, at the discretion of the IRS. This seems to be inconsistent with the statement in the regulatory assessment section of the preamble to the regulation which suggests that preapproval of individual programs was entirely eliminated.

The requirement of individual program numbers for an approved sponsor as well as the potential for an approval mandate is a significant change from the prior rules which permitted a qualifying sponsor to provide qualifying educational programs without having each individual program registered (or approved). We are concerned that this registration process, and potential need for approval at the discretion of the IRS, will greatly impede the ability to provide timely and up-to-date information to those needing continuing education. The laws relating to retirement plans are frequently amended by Congress and are heavily regulated by the IRS, Department of Labor, Pension Benefit Guaranty Corporation and others (such as the Securities and Exchange Commission). When changes are made in the law or regulations, it is often critical that practitioners are brought up-to-date as quickly as possible. This may be done by adding the topic to an existing, previously scheduled conference, or in many cases, scheduling a new educational program focused on that specific change in the law or regulation. For example, the Small Business Jobs Act was signed into law on September 27, 2010. It contained a significant change to the Internal Revenue Code with respect to converting a pre-tax 401(k) plan account into an after-tax “Roth” account. Nevertheless, 3 weeks later, this topic was covered at ASPPA’s annual conference. Delays attributable to the registration and approval process could make it very difficult to schedule a program on a late-breaking development in a timely manner. The unintended result would likely be “stale” and less meaningful program content.

ASPPA, NIPA and AIRE strongly urge the IRS, in practice, to retain the current approach under which an approved sponsor's programs would not be individually subject to an approval process, even if it has the discretion to do so. Additionally, the process of assigning program numbers to the individual programs must operate in an efficient and effective manner to ensure timely delivery of "fresh" course content. We would suggest an internet based registration process so that a qualifying sponsor could register a particular course and immediately receive a continuing education program number. We believe a better use of IRS resources would be to periodically review or audit courses by these qualifying sponsors as part of the process of retaining and renewing the sponsor's approved status, rather than trying to pre-approve individual course offerings.



ASPPA, NIPA and AIRE appreciate the opportunity to provide these supplemental comments on this very important matter. Please contact Craig Hoffman, General Counsel and Director of Regulatory Affairs at ASPPA, at (703) 516-9300 ext. 128, if you would like any further information or otherwise have any questions about the matters discussed herein.

Respectfully submitted on behalf of

ASPPA, NIPA and AIRE,

/s/

Craig P. Hoffman, Esq., APM
General Counsel /
Director of Regulatory Affairs
ASPPA