

The Role Tax Preparers Play in Taxpayer Compliance: An Empirical Investigation with Policy Implications

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INTRODUCTION

Each year, tens of millions of taxpayers turn to tax professionals and agencies to prepare their returns. A 2011 report by the Treasury Inspector General for Tax Administration found that “more than one-half of all [U.S.] taxpayers pay someone else to prepare their Federal income tax returns.”¹ In calendar year 2008, the Internal Revenue

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1. TREASURY INSPECTOR GEN. FOR TAX ADMIN., MORE TAX RETURN PREPARERS ARE FILING ELECTRONICALLY, BUT BETTER CONTROLS ARE NEEDED TO ENSURE ALL ARE COMPLYING WITH THE NEW PREPARER REGULATIONS 1 (2011) [hereinafter TIGTA (2011)]. Earlier reports similarly indicate that approximately seventy-two million taxpayers in 2001 and seventy-three million taxpayers in 2002 paid professional tax preparers to complete returns on their behalf. U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-04-70, TAX ADMINISTRATION: MOST TAXPAYERS BELIEVE THEY BENEFIT FROM PAID TAX PREPARERS, BUT OVERSIGHT FOR IRS IS A CHALLENGE 2 (2003) [hereinafter GAO (2003)]; see also Kim M. Bloomquist et al., *Evaluating Preparation Accuracy of Tax Practitioners: A Bootstrap Approach*, IRS RESEARCH BULLETIN 77 (2007) (citing paid preparer usage data

Service (IRS) processed approximately 86.9 million individual federal income tax returns prepared by paid preparers.² This represents an upward trend of more than 4% from the 83 million paid prepared returns filed in 2007.³ According to a Government Accountability Office (GAO) survey, the majority of taxpayers who use a paid tax preparer believe they benefit from doing so and are confident they do not pay more in taxes than they legally owe.⁴ It is not surprising, therefore, that 87% of taxpayers who participated in the GAO survey confirmed they are likely to return to a paid preparer in the future.⁵

Despite overwhelming evidence of the key role tax preparers assume in tax administration, prior to August 2011 the IRS did not provide oversight or set national standards for preparers.⁶ Similarly, little data has been collected and examined on tax preparers in a manner that would enable assessment of preparers' effect on taxpaying

for Tax Years 1996–2005). Preparation services are not limited to complicated returns. In fact, for Form 1040EZ—which is extremely simple and only one page long—21.1% of the ten and a half million returns filed in 2001 were signed by a preparer, representing over two million taxpayers. *See* Marsha Blumenthal & Charles Christian, *Tax Preparers*, in *THE CRISIS IN TAX ADMINISTRATION* 201, 201 (Henry J. Aaron & Joel Slemrod eds., 2004).

2. TREASURY INSPECTOR GEN. FOR TAX ADMIN., *INADEQUATE DATA ON PAID PREPARERS IMPEDES EFFECTIVE OVERSIGHT* 1 (2009) [hereinafter TIGTA (2009)].

3. *Id.* *See also* Eric Toder, *Changes in Preparation Methods, 1993–2003*, 107 *TAX NOTES* 759, 759 (2005) (showing that from 1993 to 2003, paid tax preparer filing grew by about 26.4% in the United States, compared with an overall growth of approximately 13.7% in the number of returns filed). The associated cost involved in third party tax assistance is not trivial. *See, e.g.*, GAO (2003), *supra* note 1, at 1 (estimating the cost of third party tax assistance at \$14.7 billion for individual taxpayers for Tax Year 2000); Blumenthal & Christian, *supra* note 1, at 203 (estimating the cost of practitioner-prepared returns at \$10 billion for 2002).

4. GAO (2003), *supra* note 1, at 4 (indicating that 77% of taxpayers who submitted their 2002 tax returns using a preparer reported they believe they benefited from this service).

5. *Id.* at 4-5.

6. TIGTA (2011), *supra* note 1, at 2 (“Anyone, regardless of training, experience, skill, or knowledge, was allowed to prepare Federal income tax returns for others for compensation.”).

behavior and administration.⁷ This Article aims to address this deficiency.

In January 2010, the IRS recommended extensive increases in oversight of the tax return preparer industry.⁸ As a result of these recommendations, effective August 2011 all tax return preparers who charge a fee for their services are required to register and obtain a unique Preparer Tax Identification Number (PTIN) that must be used to sign every return they prepare.⁹ In view of this and other regulatory measures expected in coming years, this Article suggests taking a step back before contemplating further steps. It explores existing data to shed light on tax preparers and their effect on the tax system and its administration. Key issues to investigate include the nature of the service taxpayers receive from preparers and whether noncompliant returns can be linked more to preparers, or particular types of preparers, than to their taxpaying clients.

Using the method of stratified random sampling detailed in Appendix A, the Article empirically analyzes tax return information collected from 3457 returns of filers who, in the process of completing their 1999 tax returns, claimed the Earned Income Tax Credit (EITC or EIC) and were consequently selected for the IRS 2000 Study on EITC Compliance.¹⁰

7. TIGTA (2009), *supra* note 2, at 3 (“[P]reparers use multiple identifying numbers when dealing with the IRS, data on preparers is decentralized to more than 20 different systems, and the systems are not integrated. Foremost, the IRS cannot determine the population of preparers, which tax returns they prepared, or which taxpayers they represent. Additionally, it cannot determine if the preparers are compliant with their own tax obligations, as well as compliant with all tax laws and regulations.”).

8. INTERNAL REVENUE SERV., RETURN PREPARER REVIEW (2009), available at <http://www.irs.gov/pub/irs-pdf/p4832.pdf> [hereinafter RETURN PREPARER REVIEW].

9. 31 C.F.R. § 10.3 (2011) (increasing the oversight of paid tax preparers).

10. *The 2000 Earned Income Tax Credit Compliance Study*, INTERNAL REVENUE SERV. (on file with author) [hereinafter *The 2000 Earned Income Tax Credit Compliance Study*]. Of the 3457 returns selected, there were 191 cases in which the taxpayer did not appear for audit or subsequent review. These cases are different from unlocatable taxpayers in that the IRS had a valid address for the taxpayer, but the taxpayer ultimately failed to respond or appear for the appointment. These 191 cases of “no show” were excluded from the analysis

The EITC is a type of transfer subsidy administered through the tax system.¹¹ Supplementing the income of individuals and families who work and earn relatively low wages, EITC means more money in the pockets of low-to-moderate income households.¹² Enacted in 1975 as an initially modest credit, the EITC program has greatly expanded over the years to presently encompass more than twenty-six million recipients.¹³ However, as early as the 1980s, the IRS reported significant challenges with EITC compliance, suggesting that approximately 29 to 37% of

since any EITC amount claimed by the taxpayer was automatically disallowed with no further information captured in the database. *Id.*

11. The EITC represents one of the largest antipoverty tools in the United States. In 2004 alone, over twenty-two million households received more than forty billion dollars in refunds through the EITC, lifting more than five million households above the poverty line. See *Earned Income Tax Credit Statistics*, INTERNAL REVENUE SERV., available at <http://www.irs.gov/individuals/article/0,,id=177571,00.html> (last updated Dec. 16, 2011).

12. The credit reduces the amount of tax EITC recipients owe the government and allows for a refund when eligible taxpayers do not reach the minimum tax threshold. See *EITC Homepage: It's Easier Than Ever to Find Out if You Qualify for EITC*, INTERNAL REVENUE SERV., available at <http://www.irs.gov/individuals/article/0,,id=96406,00.html> (last updated Apr. 09, 2012).

13. See *EITC Statistics*, EITC CENTRAL, available at <http://www.eitc.irs.gov/central/eitcstats/> (citing Tax Year 2010) (last updated Jan. 23, 2012). For Tax Year 2010 an EITC claimant with one qualifying child is entitled to receive a maximum credit of \$3050. *2010 EITC Income Limits, Maximum Credit Amounts and Tax Law Changes*, INTERNAL REVENUE SERV., available at <http://www.irs.gov/individuals/article/0,,id=215764,00.html> (last updated Dec. 6, 2011) [hereinafter *2010 EITC Income Limits*]. For two or more qualifying children, the credit reaches up to \$5036. *Id.* A qualifying child must be nineteen or younger at the end of the tax year, twenty-four or younger if a full-time student (attends school full-time for a full semester or the equivalent), or any age if classified as “permanently and totally disabled” for one year or more. *EITC, Earned Income Tax Credit, Qualifying Child Rules*, INTERNAL REVENUE SERV., available at <http://www.irs.gov/individuals/article/0,,id=96466,00.html#QA2> (last updated Mar. 30, 2012). In addition to biological parents, grandparents, aunts, uncles, and siblings can also claim a qualified child if they shared residency with the child for more than six months of the year. *Id.* A foster child also counts if he or she has been officially placed by an agency or court. *Id.* at n.2. A maximum credit of \$457 is available for persons and couples without children. *2010 EITC Income Limits*, *supra* note 13. For more details, see *Earned Income Credit (EIC): For Use in Preparing 2011 Returns*, INTERNAL REVENUE SERV., available at <http://www.irs.gov/pub/irs-pdf/p596.pdf> (last updated Jan. 12, 2012).

total EITC dollars allocated to taxpayers were claimed in error.¹⁴ Studies for Tax Years 1993–1994 and 1997–1999 generated similar findings, with the IRS estimating an overpayment rate of about 27 to 32% of EITC dollars for Tax Year 1999.¹⁵

In an effort to better understand and address EITC noncompliance, the IRS launched a series of comprehensive studies during the 1990s. The 2000 EITC Compliance Study, which generated the database used in this Article, is the most recent and comprehensive of all EITC studies.¹⁶ It is also particularly detailed and thorough when compared with other data gathering ventures the IRS has undertaken over the past three decades.¹⁷ The study draws from Tax Year 1999 returns where EITC was claimed and a thorough audit and review was subsequently performed. Each return was initially audited by IRS district examination staff, calling for at least one face-to-face meeting with the taxpayer. The initial audits were later reviewed by IRS tax examiners with the Cincinnati Service Center. All initial audits and their reviews were then sent to the appropriate district office and assigned within the IRS examination division.¹⁸ Importantly, the EITC Compliance Study is the only statistical database to collect information on preparer type and usage since the conclusion of the Taxpayer

14. George K. Yin et al., *Improving the Delivery of Benefits to the Working Poor: Proposals to Reform the Earned Income Tax Credit Program*, 11 AM. J. TAX POL'Y 225, 247-48 (1994) (discussing TCMP studies for Tax Years 1982, 1985, and 1988).

15. *The 2000 Earned Income Tax Credit Compliance Study*, *supra* note 10, at 12 (the higher-bound figure assumes all “no show” cases which over claimed the EITC credit, while the lower-bound figure assumes “no show” compliance was the same as that exhibited by the rest of the EITC claimants in the study). The 1999 estimates represent about \$8.7 to \$9.9 billion in improper EITC payments for that year alone. *Id.* at 10.

16. Discussions with IRS EITC assigned personal.

17. In particular, the National Research Program (NRP) conducted by the IRS since 2001 does not offer full audits for all returns selected for the program, but rather uses a screening mechanism to review only those (seemingly) most problematic returns. Robert E. Brown & Mark J. Mazur, *The National Research Program: Measuring Taxpayer Compliance Comprehensively*, 51 KAN. L. REV. 1255 (2003) (reviewing the NRP program).

18. See *The 2000 Earned Income Tax Credit Compliance Study*, *supra* note 10.

Compliance Measurement Program (TCMP) in the late 1980s.¹⁹ This information is indispensable for this Article when exploring the effect of preparation mode and characteristics on taxpayer compliance and administration.

Utilizing Statistical Analysis System (SAS) software, this Article employs two independent variables: (1) tax return characteristics: by line item and type of return; and (2) preparation mode: whether the return was self prepared, or, if prepared by someone other than the taxpayer, by type of preparer. The Article examines compliance trends and patterns by looking at preparer type, sorted by group as provided in the 2000 EITC Compliance Study.²⁰ These types include: (1) Certified Public Accountant (CPA), (2) Attorney, (3) Enrolled Agent, (4) Large National Chain,²¹ (5) Other Professional Tax Preparer, (6) Friend/Relative, (7) IRS/VITA/TCE,²² (8) Other, and (9) Taxpayer.²³ Information collected on preparer type nonetheless remains limited, with two categories—Large National Chain and Other Professional Tax Preparer—making up approximately 56% of all returns examined.²⁴ The low number of returns in the

19. The TCMP ran for about two decades until the late 1980s. It provides an incredibly detailed pull of data for that time. The newer NRP was initiated in early 2001 and in some respects provides a narrower array of data than the TCMP. Among others, the NRP has yet to collect information on the use and distribution of paid preparers other than indicating whether a return is paid or self-prepared. This limited scope of data is not expected to change for at least a few more years, until the funding and successful implementation of enforcement and data gathering mechanisms to correspond with the 2011 preparer regulation.

20. See *The 2000 Earned Income Tax Credit Compliance Study*, *supra* note 10.

21. This category includes, specifically, H&R Block and Jackson Hewitt.

22. The IRS offers free assistance with tax return preparation and tax counseling using specially trained volunteers. Particularly, the Volunteer Income Tax Assistance (VITA) and Tax Counseling for the Elderly (TCE) programs assist seniors, individuals with low to moderate incomes, those with disabilities, and those for whom English is a second language. See *Free Tax Return Preparation for You by Volunteers*, INTERNAL REVENUE SERV., available at <http://www.irs.gov/individuals/article/0,,id=107626,00.html> (last updated May 30, 2012).

23. The preparation mode of “Taxpayer,” as used in this Article, refers to taxpayers who self prepare their own tax returns.

24. See *The 2000 Earned Income Tax Credit Compliance Study*, *supra* note 10.

Attorney and CPA categories made it necessary to group them together for the analysis.²⁵

The third variable this Article utilizes—a dependent variable—is the compliance or noncompliance of the return. Compliance was assessed by comparing the information the taxpayer or preparer reported on the original tax return with the information IRS auditors recorded following their audit and review.²⁶

The Article examines two primary groups of returns: the first represents the simpler Form 1040 family of returns; the second is the more complicated and legally ambiguous Schedule C Form returns, involving information reported on profit or loss from sole proprietorships. In each family of returns, several line items are explored, including: Adjusted Gross Income, Total Tax, EITC, and Filing Status.²⁷ A breakdown of returns claiming itemized and standard deductions and the rate of electronic filing among preparation types are also provided in the appendices.

While the mode of analysis of this Article is exploratory in nature, several predictions emerge from literature to suggest areas that require special attention. For example, consideration is given to whether different types of preparers play different roles as facilitators of taxpayer compliance and noncompliance.²⁸ Specifically, the Article examines whether returns filed by preparers who are professionally licensed and trained, such as lawyers and

25. *Id.*

26. The “Exam Recommended Amount” from the examined returns was used for this Article (e.g., the “Best and Final” audit and review results). One key qualification, however, is that IRS perception of the taxpayer’s liability may not be the only plausible interpretation of the application of the law. This might be particularly true when more experienced preparers, such as CPAs and Attorneys, are involved. *See infra* 1131-32.

27. For Tax Year 1999, \$2750 was subtracted from adjusted gross income for each eligible exemption (spouse or dependent).

28. *See, e.g.,* Robert Kidder & Craig McEwen, *Taxpaying Behavior in Social Context: A Tentative Typology of Tax Compliance and Noncompliance*, 2 TAXPAYER COMPLIANCE: SOCIAL SCIENCE PERSPECTIVES 47, 69-70 (Jeffery A. Roth & John T. Scholz, eds., 1989) (offering a typology of preparers in the compliance context); *see also* Yuka Sakurai & Valerie Braithwaite, *Taxpayers’ Perceptions of Practitioners: Finding One Who is Effective and Does the Right Thing?*, 46 J. BUS. ETHICS 375, 384-85 (2003) (positioning preparers on a compliance scale based on their inclination to facilitate taxpayer noncompliance).

CPAs, indicate greater noncompliance in legally ambiguous filing circumstances where the law can be more creatively interpreted. Similarly, the Article explores whether other types of preparers, such as friends and relatives of the taxpayer, who are not licensed professionals or otherwise regulated, make compliance discrepancies in less complicated filing circumstances. In this case, such discrepancies may be explained, at least partially, by deficiencies in knowledge or skill, rather than intentional tax planning. Finally, the Article examines whether compliance differences exist among returns filed by preparers as a group, as opposed to self-prepared returns and, in this case, whether other, more nuanced categories emerge.

By understanding the types of compliance discrepancies associated with preparer mode and filing characteristics, we may better understand the taxpayer-preparer relationship and how this relationship influences taxpaying behavior and administration. For example, noncompliance driven by creative interpretation of ambiguous parts of the tax code may suggest the need for rules that emphasize greater oversight and less tolerance for noncompliance, as illustrated in the 2011 preparer regulation.²⁹ Furthermore, consistent with the fact that until August 2011 the IRS did not impose mandatory registration or affiliation requirements on paid preparers, many of the returns analyzed in this Article were prepared by unregulated preparers. Accordingly, significant variance among the kinds of errors made on returns completed by regulated and unregulated preparers could bear important implications for tax administration. Such implications may either strengthen or, alternatively, cast doubts on the 2011 preparer regulation and other proposed steps. These include not only the rules and regulations for individuals and firms offering preparation aid, but also to preparation software, which has come to dominate the tax preparation industry and is presently absent from the 2011 regulation.³⁰ The

29. See 31 C.F.R. § 10.3 (2011).

30. For an acknowledgement of the increasing role of preparation software in tax compliance and administration see, for example, RETURN PREPARER REVIEW, *supra* note 8, at 9 (“The consumer and commercial tax software industry is one of the largest and fastest growing industries associated with tax return preparation. Taxpayers self-prepared and electronically filed 32 million tax returns using consumer tax preparation software during filing season 2009.

targeted use of professional guilds could also emerge as a solution if consistency materializes in the errors tax preparers make.

I. TAX PREPARERS: ROLES AND USAGE

Taxpayers turn to tax assistance for a variety of reasons. With the growing complexity of the tax code, many taxpayers do not understand their filing requirements and face significant difficulties completing tax forms by themselves.³¹ Accordingly, a key motivation for taxpayers to obtain tax assistance is to meet their legal obligations and file accurate, compliant returns.³² Additional motives include lack of time and patience to self prepare;³³ the belief that tax preparers minimize due taxes and facilitate the

These taxpayers rely on tax software to answer their tax law questions and to assist them in the preparation of accurate returns. . . . Professional tax return preparers also use commercial tax preparation software to prepare and electronically file returns for their clients. During the 2009 filing season, tax return preparers used preparation software to prepare 61.8 million tax returns.”); *see also id.* at 9-10.

31. *See, e.g., Historical Trends in Income and Revenue: Hearing Before the Comm. On Fin.*, 111th Cong. (2010) (remarks prepared for delivery by Mark J. Mazur, Deputy Assistant Secretary, Tax Analysis, Dep’t. of Treasury) (describing the various measures by which the U.S. tax system has become increasingly complex in recent decades. Among others, “the instruction book for the primary individual income tax form has grown from 52 pages for 1980 to 174 pages for 2009. The income tax regulations have doubled, from less than 7,500 pages in 1980 to nearly 15,000 pages today.”). *See id.*

32. *See* Julie H. Collins et al., *Factors Associated with Household Demand for Tax Preparers*, 12 J. AM. TAX’N ASS’N 9, 11 (1990); Peggy A. Hite & Gary A. McGill, *An Examination of Taxpayer Preference for Aggressive Tax Advice*, 45 NAT’L TAX J. 389, 389-90 (1992). For further insight into the complexity taxpayers face and its impact on their compliance with the tax law see, for example, *Bridging the Tax Gap: Hearing Before the Comm. On Fin.*, 108th Cong. 146 (2004) (statement of Mark W. Everson, Commissioner, Internal Revenue Service) (“We believe . . . that a significant factor contributing to the tax gap is the enormous complexity of our tax laws. For taxpayers, complexity makes it harder to understand and apply the tax laws.”).

33. *See* GAO (2003), *supra* note 1, at 8 (“[F]or example, a mother of four who operates her own business part-time and is finishing her degree at night said she simply does not have the time to do her own taxes.”).

receipt of larger or quicker refunds,³⁴ and the idea that preparers save taxpayers money more generally—for example, by reducing the probability of an audit or penalty in the event of an actual audit.³⁵

When taxpayers seek tax return filing assistance, they face a rather heterogeneous selection of preparers. Based on their professional disposition, paid tax preparers belong to one of three key affiliations.³⁶ The first group includes licensed professionals such as Attorneys and CPAs.³⁷ The second group includes Enrolled Agents.³⁸ Registered Tax Return Preparers comprise the third group.³⁹ Comparing these three groups of preparers, licensed professionals prescribe to a heightened degree of scrutiny and training, as they are professionally regulated and registered by state licensing agencies.⁴⁰ Enrolled Agents are preparers who are not professionally licensed, but earn IRS authorization to prepare returns and practice before it by passing an examination on tax matters or demonstrating past IRS employment experience.⁴¹ Finally, pursuant to the 2011

34. See, e.g., INTERNAL REVENUE SERV., SURVEY OF TAX PRACTITIONERS AND ADVISERS (1987); Frances L. Ayres et al., *The Economic Benefits of Regulation: Evidence from Professional Tax Preparers*, 64 ACCT. REV. 300, 302 (1989).

35. See Anne L. Christensen, *Evaluation of Tax Services: A Client and Preparer Perspective*, 14 J. AM. TAX'N ASS'N 60, 61 (1992); Hite & McGill, *supra* note 32, at 390.

36. 31 U.S.C. § 330(a)(1) (2006) (authorizing the secretary of the treasury to regulate the practice of representatives before the Department of the Treasury). These regulations are published as “Regulations Governing Practice” before the Internal Revenue Service. See 31 C.F.R. § 10.3 (2011) (detailing the different groups of authorized paid tax preparers. The title indicates two additional preparer categories that are not addressed in this Article: Enrolled Actuaries and Enrolled Retirement Plan Agents. See 31 C.F.R. § 10.3(d),(e)).

37. 31 C.F.R. § 10.3(a),(b).

38. *Id.* § 10.3(c).

39. *Id.* § 10.3(f).

40. *Id.* § 10.3(a); TIGTA (2009), *supra* note 2, at 1.

41. 31 C.F.R. § 10.4(a),(d). Until the 2011 preparer regulation, Enrolled Agents were the only taxpayer representatives who received their right to practice from the federal government. See TIGTA (2009), *supra* note 2, at 1 (“Enrolled agents. These professionals pass an IRS examinations or present evidence of qualifying experience as former IRS employee and have been issued an enrollment card. Enrolled Agents are the only taxpayer representatives who receive their right to practice from the Federal Government.”).

preparer regulation, all other paid tax preparers—previously unregulated—are now required to register and remain in compliance with the status of Registered Tax Return Preparer.⁴² To become a Registered Tax Return Preparer, a preparer must: (1) pass a one-time competency examination, (2) pass a suitability check, and (3) obtain a unique PTIN and pay the amount required in the PTIN User Fee regulations.⁴³

In addition to the variance in the regulatory requirements detailed above, preparers may offer their services in a variety of capacities and can accordingly adhere to different industry norms and regulations. These include, among others, preparers who offer tax assistance in large-to-mid-size accounting or law firms, national preparation chain services, a mom-and-pop type tax shop, or in the context of personal acquaintance (friends or relatives of the taxpayer).⁴⁴ According to the TCMP database, for Tax Year 1988, about 30% of taxpayers using a paid tax return preparer turned to CPAs, 17% hired national tax services, and 2% employed attorneys, while most taxpayers (52%) engaged other preparers.⁴⁵ As of March 2006, several hundred thousand CPAs and attorneys were authorized to

42. 31 C.F.R. § 10.3(f) (defining who is a registered tax return preparer); § 10.4(d) (defining eligibility requirements to become an enrolled agent, enrolled retirement plan agent, or registered tax return preparer). Note, however, that the new preparer regulation addresses only those preparers who offer their services for a fee. *Id.* § 10.3 (2011). This is as opposed, for example, to friends and relatives of the taxpayer who may offer preparation services for free and remain unaffected by the new regulation.

43. *Id.* § 10.4(d). “To allow preparers a transition period to pass the competency examination, and because the competency examination was not available at the time the final regulations were published, individuals who obtain a provisional PTIN before the competency examination [was] offered may prepare for compensation any tax return or claim for refund until December 31, 2013, as long as the individuals renew their PTIN, pass a suitability check, and pay the applicable user fee.” TIGTA (2011), *supra* note 1, at 3.

44. See, e.g., GAO (2003), *supra* note 1, at 2; U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-06-563T, PAID TAX RETURN PREPARERS: IN A LIMITED STUDY, CHAIN PREPARERS MADE SERIOUS ERRORS 1 (2006) [hereinafter GAO (2006)].

45. The more accurate distribution for TY 1988 was CPAs: 29%; Large National Chains: 17%; Attorneys: 2%; Other preparers: 52%. Blumenthal & Christian, *supra* note 1, at 205 (citing Charles W. Christian, *Voluntary Compliance with the Individual Income Tax Results from the 1988 TCMP Study*, IRS RES. BULL. 35, 38 tbl. 7 (1994)).

practice before the IRS, and there were about 41,000 active Enrolled Agents.⁴⁶ Information about unregulated preparers—who represented the main source of preparation tax services until the 2011 regulation—is more obscure because these preparers generally did not partake in an official registries. However, according to a National Taxpayer Advocate Report, the number of unregulated preparers ranged from 300,000 to 600,000 in 2003.⁴⁷ Since tax return data suggests an upward trend of preparer usage, these numbers have likely increased over the years.⁴⁸

II. TAX PREPARERS AS GATE KEEPERS: PROMISES AND CAVEATS

With the growing numbers of taxpayers who turn to third party preparation assistance, tax preparers have become critical gatekeepers for the tax system and its administration.⁴⁹ Nevertheless, relying on preparers to provide competent or otherwise reliable service has not been without challenges. In 2003, the GAO reported that taxpayers tend to believe their preparers exercise sufficient due diligence to ensure accurate and compliant returns.⁵⁰ Approximately 91% of taxpayers believed they provided their preparers adequate information about their filing circumstances to allow preparers to complete accurate

46. GAO (2006), *supra* note 44, at 1 (citing “IRS Officials” as a source of reference).

47. U.S. DEP’T OF THE TREASURY, PUBL’N NO. 2104, NATIONAL TAXPAYER ADVOCATE: 2003 ANNUAL REPORT TO CONGRESS 270 (2003) (refraining from citing a source of reference for the estimates).

48. *See, e.g., supra* notes 1-5 and accompanying text (discussing the upward trend in preparer usage).

49. A survey of the IRS Oversight Board identified that the two key sources of reliance for taxpayers are: (1) IRS representatives, and (2) Paid Tax Professionals. Interestingly, in both cases taxpayers show identical rates of overall reliance (83%) with minor adjustments when it comes to the degree of reliance: whether taxpayers feel the service provided was very valuable (IRS Representatives—52%; Paid Tax Professionals—51%) or somewhat valuable (IRS Representatives—31%; Paid Tax Professionals—32%). *See* IRS OVERSIGHT BD., ANNUAL REPORT 16, ix app. (2004) (quoting IRS OVERSIGHT BD. 2003 IRS OVERSIGHT BD. TAXPAYER ATTITUDE SURVEY (2003)).

50. GAO (2003), *supra* note 1, at 4-6.

returns.⁵¹ An estimated 88% of these taxpayers stated their preparers asked them to present supporting documentation.⁵² Despite these reassuring indications, numerous deficiencies identified on paid-prepared returns suggest reasons for concern.

At least two million taxpayers overpaid their 1998 taxes by approximately \$945 million because they claimed the standard deduction when it was more beneficial to itemize.⁵³ About half of these taxpayers used a paid tax preparer.⁵⁴ Similarly, in about 230,000 returns filed by preparers in 2001, taxpayers appeared eligible for an Additional Child Tax Credit they did not claim.⁵⁵ And, in Tax Year 1999, some taxpayers claimed about \$11 billion more in EITC than they were legally entitled to while others underclaimed \$710 million.⁵⁶ Paid tax preparers filed approximately two-thirds of all EITC returns.⁵⁷

In an effort to collect more information on tax preparers and the quality of service they offer their clients, the GAO conducted a field study in 2007.⁵⁸ In this study, GAO employees visited nineteen chain-affiliated tax preparers.⁵⁹ Using two hypothetical case scenarios drawn from everyday tax circumstances, the GAO employees represented themselves to preparers as if they were ordinary taxpayers shopping for tax preparation assistance.⁶⁰ Strikingly, nearly

51. *Id.*

52. *Id.*

53. U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-02-509, TAX DEDUCTIONS: FURTHER ESTIMATES OF TAXPAYERS WHO MAY HAVE OVERPAID FEDERAL TAXES BY NOT ITEMIZING 3, 6 (2002).

54. *Id.* at 3.

55. TREASURY INSPECTOR GEN. FOR TAX ADMIN., No. 2003-40-046, ANALYSIS OF STATISTICAL INFORMATION FOR RETURNS WITH POTENTIALLY UNCLAIMED ADDITIONAL CHILD TAX CREDIT 1-2 (2003).

56. INTERNAL REVENUE SERV., COMPLIANCE ESTIMATES FOR EARNED INCOME TAX CREDIT CLAIMED ON 1999 RETURNS 10 (2002).

57. Janet Holtzblatt & Janet McCubbin, *Issues Affecting Low-Income Filers*, in THE CRISIS IN TAX ADMINISTRATION 148, 159 (Henry J. Aaron & Joel Slemrod eds., 2004) (citing unpublished IRS data).

58. See GAO (2006), *supra* note 44.

59. See *id.* at 3 (explaining that GAO staff focused on several commercial chain preparers in a major metropolitan area).

60. *Id.*

all of the returns completed by preparers during the GAO site visits were incorrect to some extent.⁶¹ Some of the most serious deficiencies involved incidents where preparers failed to report side income (ten out of nineteen cases), did not itemize deductions at all or failed to claim available deductions (seven out of nine cases), did not ask where a child lived or ignored relevant information and claimed an ineligible child for EITC (five out of ten cases), and failed to take the most advantageous postsecondary education tax benefits (three out of nine cases).⁶² These deficiencies translated to unwarranted refunds of up to nearly \$2000 in five instances, while in two cases they cost the taxpayer over \$1500.⁶³ Further, many of the issues identified in the GAO study put the preparer, taxpayer, or both at risk of IRS enforcement actions for violations such as negligence or willful or reckless disregard of tax rules.⁶⁴

Until the 2011 preparer regulation, chain-affiliated preparers were not held to state or federal licensing or other external training requirements, which may explain some of the deficiencies identified in the GAO study.⁶⁵ Chain preparers, however, are not the only group of preparers to exhibit disconcerting behavior. Using the TCMP database for Tax Year 1979, Erard found that noncompliance occurs more on paid-prepared, rather than self-prepared, returns.⁶⁶ Further, Erard predicted the highest mean level of noncompliance for returns filed by the greater regulated and trained preparer types of CPAs and Attorneys.⁶⁷ Specifically, if a taxpayer's preparation mode changed from self-prepared to CPA- or Attorney- prepared, noncompliance increased by a factor of about 4.5.⁶⁸ In contrast, the

61. *Id.* at 5 (detailing the various errors identified during the GAO study).

62. *Id.* at 5, 16-21.

63. *Id.* at 5, 14.

64. *Id.* at 14.

65. See INTERNAL REVENUE SERV., PUBL'N 2014, NATIONAL TAXPAYER ADVOCATE : FY 2002 ANNUAL REPORT TO CONGRESS 1, 228 (2002). (recommending Congress establish a minimum threshold of paid preparer competency in order to improve preparation services and enhance taxpayer compliance).

66. Brian Erard, *Taxation With Representation: An Analysis of the Role of Tax Practitioners in Tax Compliance*, 52 J. PUB. ECON. 163, 191 (1993).

67. *Id.*

68. *Id.*

noncompliance of a taxpayer switching from self-prepared to a different type of preparer rose by only 15%.⁶⁹

More generally, the GAO utilized the National Research Program (NRP) database to report a higher error rate on paid-prepared returns (56%), as compared with self-prepared filing (47%).⁷⁰ Introduced by the IRS in 2001, the NRP caters to the IRS's research needs after the conclusion of the more intrusive and costly TCMP.⁷¹ Unlike the latter, NRP has yet to collect return information regarding different categories of preparers; it considers only whether tax returns are self- or paid-prepared. Utilizing the simpler self- or paid-preparer metric, the GAO found the disparity in error rates between the two preparation modes translated to significant differences in the dollar amount taxpayers owe after audit.⁷² For Tax Year 2001, taxpayers filing paid-prepared returns were liable for a median of \$363 after audit; those who self-prepared owed a median of about half that amount.⁷³

69. *Id.* Unfortunately, Erard's analysis does not offer a coherent theory for its findings nor can it be interpreted to suggest clear insights for a typology of noncompliance among different categories of preparers, assuming such a typology exists. *See also* SURVEY OF TAX PRACTITIONERS AND ADVISERS, *supra* note 34, at 2 (discussing the categories of preparers); Ayres et al., *supra* note 34, at 306-07 (discussing compliance in the context of CPA-and non-regulated tax preparers). *But cf.* Richard G. Broody & John J. Masselli, *Tax Preparers: Whose Team Are They On?*, NAT'L PUB. ACCT. 18, 20 (1996); Andrew D. Cuccia, *The Effects of Increased Sanctions on Paid Tax Preparers: Integrating Economic and Psychological Factors*, 16(1) J. AM. TAX'N ASS'N. 41, 58-59 (1994) (noting tax preparers can help prevent noncompliance by "reducing the aggressiveness of their recommendations").

70. GAO (2006), *supra* note 44, at 27 (explaining that the error rates identified are applicable across income groups).

71. *See, e.g., A Closer Look at the Size and Source of the Tax Gap: Hearing Before the Comm. On Fin.* (2006) (testimony of Mark J. Mazur, Director, Research, Analysis, and Statistics, Internal Revenue Service) (explaining that the IRS tax estimations for taxpayer compliance were based on the TCMP program which consisted of line by line audits of random sample of returns and was both extremely burdensome on taxpayers and expensive to administer).

72. GAO (2006), *supra* note 44, at 27-28.

73. Specifically, self-prepared returns were liable to a median of \$185 after audit, compared with a median of \$363 for paid prepared returns. *Id.* at 28. The disparity in taxes owed was identified for every income level except for the \$40,000-60,000 and \$60,000-80,000 ranges, in which the differences were not statistically significant. *Id.*

With the growing scope of and reliance on tax preparer assistance, even a small number of the millions of taxpayers who are aided by tax preparers and end up filing erroneous returns may amount to large sums of unwarranted tax payments. More troubling than any associated short-term dollar loss are the long-term repercussions of such filing patterns. The characteristics of tax noncompliance are pestilential; a few bad apples, either on the preparer or taxpayer end, can easily affect the broader taxpaying community, generating a much larger compliance problem in both quality and breadth.⁷⁴

III. THE INSTIGATOR(S) OF NONCOMPLIANCE: MIXED EVIDENCE AND ONE HYPOTHESIS

Despite circumstantial evidence suggesting disconcerting tax filing behavior, research to date remains inconclusive regarding who instigates aggressive tax dispositions—the taxpayer or the preparer. To a large

74. See JOHN BRAITHWAITE, *MARKETS IN VICE MARKETS IN VIRTUE* 137-43 (2005). Braithwaite explains the role of tax advisors as the driving force behind what started as a supply-side tax shelter industry in Australia and the United States during the 1980s. He demonstrates how advisors fueled this industry well into the twenty-first century. Particularly, Braithwaite describes the epidemic-like effect of aggressive tax practices on the taxpayer community, as noncompliance spread from tax advisors to taxpayers through the shaping of compliance attitudes and behaviors. See *id.* Braithwaite's insight is consistent with Hite, who found that taxpayers relying on professional tax assistance during IRS office audits exhibit more negative attitudes toward the tax system than those who self-prepare. See Peggy A. Hite, *The Preparer Effect on IRS Customer Satisfaction*, 14 *ADVANCES IN TAX'N* 159, 176 (2002); see also Loretta J. Stalans et al., *Listening to Different Voices: Formation of Sanction and Taxpaying Norms*, 21 *J. APPLIED SOC. PSYCHOL.* 119, 123, 130-36 (1991) (finding that third party involvement, especially mass media, can increase negative attributes). One key question is whether causation exists between third party involvement and either an increase in negative taxpayer attitudes and/or actual behavior toward compliance, or whether the link consists of correlation only. For additional research into the plague-like characteristics of tax noncompliance in the context of tax transactions and schemes, see also S. COMM. ON FINANCE ON TAX GAP AND TAX SHELTERS A-1-A-5 (2004) (written testimony of Nina Olson, National Taxpayer Advocate) (discussing the need for reform to prevent the spread of noncompliance as perpetuated by overly aggressive tax planning); cf. James Andreoni et al., *Tax Compliance*, 36 *J. ECON. LITERATURE* 818, 845-46 (1998) (reporting that individuals with negative attitudes toward the tax administration generally have higher rates of tax evasion).

extent, this lack of clarity is due to a shortage in relevant tax return information and, accordingly, a notable deficiency in empirical studies in this area. Relying on survey information, Hite and McGill find that taxpayers are likely to agree with their preparer's advice, whether conservative or aggressive, even though they may prefer conservative counsel.⁷⁵ Hite and McGill not only underscore the heavy reliance taxpayers place on their preparers, but they also suggest tax preparers are likely to be the source of aggressive tax planning.⁷⁶ In contrast, Schisler suggests it is the taxpayer who instigates aggressive tax dispositions.⁷⁷ Schisler finds that taxpayers are generally more belligerent with taxes due, have lower equity perceptions of the tax system, and are particularly aggressive when ambiguous tax issues are involved.⁷⁸

The inconclusiveness of existing findings appears less surprising when taking a closer look at the intricacies of the taxpayer-preparer relationship. Tax preparers bear a duty to act in their client's interest while also upholding the law. This often leads preparers to a dual agency problem. The manner in which preparers address this tension and whether they provide service that aggressively challenges the tax law—as opposed to more conservative and possibly compliant counsel—depends on various factors.⁷⁹ Over the years, much of the modern literature on taxpayer-preparer

75. See Hite & McGill, *supra* note 32, at 390 (finding that, on average, taxpayers do not have a preference for aggressive tax advice).

76. *Id.* See also Lin Mei Tan, *Taxpayers' Preference for Type of Tax Advice from Tax Practitioners: A Preliminary Examination*, 20 J. ECON. PSYCHOL. 431, 432, 443 (1999) (surveying a group of business taxpayers in New Zealand to confirm Hite and McGill's findings from 1992).

77. Dan L. Schisler, *Equity, Aggressiveness, Consensus: A Comparison of Taxpayers and Tax Preparers*, ACCT. HORIZONS, 74, 84-86 (1995).

78. See *id.*; see also Ayres et al., *supra* note 34, at 306-07; Cuccia, *supra* note 69, at 53-59 (providing results of behavioral studies).

79. The tax literature identified more than two-dozen factors that potentially affect the aggressiveness of tax assistance. These include, among others, client payment status, client aggressiveness, preparer risk preference, client age, preparer age, client gender, preparer gender, perceived audit probability, importance of client, preparer experience level, and previous success in revenue negotiations. See, e.g., Valerie C. Milliron, *A Conceptual Model of Factors Influencing Tax Preparers' Aggressiveness*, in CONTEMPORARY TAX RESEARCH 1, 2-4 (Shane Moriarity and Julie H. Collins eds., 1988) (reviewing literature).

compliance emphasized, in particular, the role of legal ambiguity. Specifically, according to the seminal work of Klepper and Nagin and Klepper et al., tax professionals exploit the law when the legal nature of items on their client's returns is ambiguous, but enforce the law when it is relatively clear.⁸⁰ This Article revisits this hypothesis while adding the nuanced factor of preparer type. Accordingly, looking at different categories of preparers, the Article examines tax return compliance in legally ambiguous filing circumstances—specifically, Schedule C Form returns—compared with more legally clear-cut cases, such as the determination of taxpayers' filing status. Intermediate cases, including compliance on the Adjusted Gross Income, Total Tax, and EITC line items, are also explored to provide a broader and more thorough perspective.

IV. DATA ANALYSIS

A. *Adjusted Gross Income (AGI)*

The analysis begins with a breakdown of tax return compliance results according to preparer type, looking initially at compliance on the Adjusted Gross Income (AGI) line item. These results are documented in Table 1 and Figure 1. Surprisingly, Enrolled Agent, the only preparer type directly regulated and trained by the IRS until the

80. Steven Klepper et al., *Expert Intermediaries and Legal Compliance: The Case of Tax Preparers*, 34 J.L. ECON. 205, 218, 227-28 (1991); Steven Klepper & Daniel Nagin, *The Role of Tax Preparers in Compliance*, 22 POL'Y SCI. 167, 168-69 (1989). Some suggest, however, the enforcer-exploiter thesis falls short of adequately capturing the full range of the taxpayer-tax preparer relationship. This may be especially the case with regard to line items where the application of the law is generally clear—for example, income reported by sole-proprietors or the claiming of various tax credits, such as the EITC. Available compliance data suggests that sole-proprietor underreporting accounts for about \$68 billion of the tax gap and that close to one-third of the dollar amount claimed for EITC is in error. While the law governing these two categories is complex, it is also generally unambiguous. See LESLIE BOOK, NAT'L TAXPAYER ADVOC. ANN. REP. TO CONG., STUDY OF THE ROLE OF PREPARERS IN RELATION TO TAXPAYER COMPLIANCE WITH INTERNAL REVENUE LAWS 48-49 (2007) (citing Leslie Book, *Preventing the Hybrid from Backfiring*, WIS. L. REV. 1103, 1110-14 (2006)). According to Book, in such circumstances efforts to increase compliance by imposing heightened requirements of legal certainty may not have much effect if noncompliance is not related to the exploitation of legal ambiguity. *Id.* at 48.

2011 regulation,⁸¹ exhibits the highest number of returns with change to AGI after IRS audit and review: 61%. Enrolled Agent is followed by CPA/Attorney, at 49.2% of returns with change; IRS/VITA/TCE, at 45.1%; and Other Professional Preparer, with 44.5% change.

When the analysis examines the rate of change (either negative or positive) from claimed AGI among returns with change—as well as the net change on all returns—similar results emerge with the highest change rates identified on returns prepared by: Other Preparer, with 36.3% change among returns with change and 14.7% net change; Other Professional Preparer, with 33.5% change among returns with change and 13.4% net change; CPA/Attorney, with 32.2% change among returns with change and 14.2% net change; and Enrolled Agent, with 27.1% change among returns with change and 15.4% net change. Together, these results reveal high levels of error among returns filed both by professionally licensed and regulated preparers (CPAs/Attorneys and Enrolled Agents) and by those who, until the 2011 preparer regulation, mostly operated under the regulatory radar (particularly, Other Professional Preparers and Other Preparers).

Interestingly, the preparation mode to exhibit relatively consistent and compliant results is the Taxpayer, with 34% of self-prepared returns with change to AGI after IRS audit and review, 23.7% change from claimed AGI among returns with change, and 8.6% net change to AGI among self-prepared returns generally. However, the weighted average change of the dollar amount claimed in the Taxpayer category is not trivial, amounting to \$3444.⁸²

Looking at the rate of change from claimed AGI, both net and among returns with change, the preparation modes that show the most compliant results are IRS/VITA/TCE and Large National Chain, both displaying about half the rate of change from claimed AGI compared with the categories of CPA/Attorney and Enrolled Agent.⁸³ Exploring

81. See *supra* note 41.

82. See *infra* Table 1.

83. IRS/VITA/TCE returns show 15.1% change among returns with change and 6.4% net change; Large National Chain returns show 19.8% change among returns with change and 6.9 net change. See *infra* Table 1. However, considering the relatively lower number of returns filed in the IRS/VITA/TCE category (408,495 returns out of 16,944,452 returns total), coupled with the

the rate of change from claimed AGI among returns with change, the returns filed by Other Preparers appear least compliant: 36.3% rate of change. Returns submitted by Other Preparers are also second least compliant on the net change category, with 14.7%; and show the highest weighted average change to AGI, at \$4506.⁸⁴

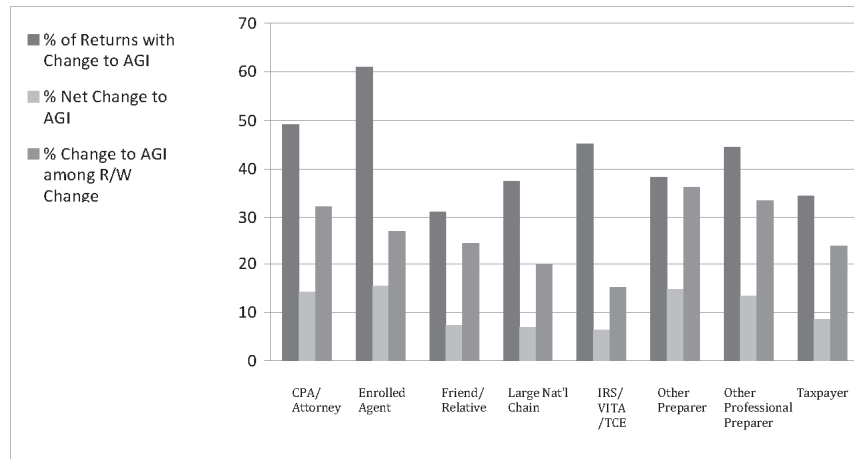
Table 1

Type of Preparer	Weighted Returns	% of Returns with Change to AGI	% Change from Claimed AGI (Net)	% Change from Claimed AGI (Ret w/Change)	Weighted Average Change
CPA/Attorney	897,341	49.2%	14.2%	32.2%	\$4191
Enrolled Agent	307,637	61.0%	15.4%	27.1%	\$3875
Friend/Relative	1,656,610	31.1%	7.4%	24.3%	\$2742
Large National Chain	4,542,802	37.5%	6.9%	19.8%	\$2653
IRS/VITA/TCE	408,495	45.1%	6.4%	15.1%	\$1493
Other Preparer	641,660	38.3%	14.7%	36.3%	\$4506
Other Professional Tax Preparer	5,905,418	44.5%	13.4%	33.5%	\$3990
Taxpayer	2,584,490	34.4%	8.6%	23.7%	\$3444
Total	16,944,452				

lower associated dollar value of weighted average change in the category (\$1493), the higher identified rates of change for IRS/VITA/TCE (both net and among returns with change) may be outliers.

84. See *supra* Table 1.

Figure 1



The AGI analysis findings may be explained, at least partially, by the complexity of the returns examined. The financial circumstances of EITC claimants are generally rather intricate.⁸⁵ This complexity may influence how well preparers are able to interpret and apply the law. Further, paid preparer usage is more likely among taxpayers with complicated returns, which may contribute to the higher rates of change on returns filed by preparers as opposed to self-prepared returns.⁸⁶ Increases in the complexity of returns might be particularly relevant for taxpayers who turn to the most trained and experienced preparers, such as CPAs, Attorneys, or Enrolled Agents.

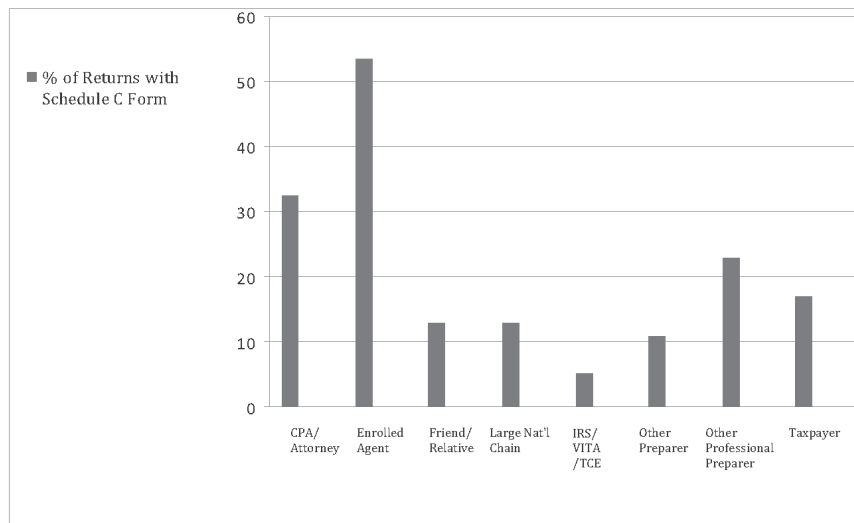
This hypothesis is explored below by examining the breakdown of preparer mode across the more complicated Schedule C Form returns. As Figure 2 illustrates, CPAs/Attorneys and Enrolled Agents complete a larger

85. See, e.g., Stephen D. Holt, *Keeping it in Context: Earned Income Tax Credit Compliance Treatment of the Working Poor*, 6 CONN. PUB. INT. L.J. 183, 197-98 (2007) (discussing, among others, the issue of frequent job and family transitions affecting EITC recipients and their tax filing circumstances).

86. See, e.g., Erard, *supra* note 66, at 187 (noting that taxpayers with complex returns were more likely to seek tax preparation assistance); see also Jeffrey A. Dubin et al., *The Demand for Tax Return Preparation Services*, REV. OF ECON. & STAT. 74, 75-82 (1992) (describing the groups more likely to choose a form of paid or unpaid tax preparation service).

percentage of Schedule C Form returns relative to the total number of returns they prepare. The increased share of Schedule C Form returns may contribute to the legal complexity and hence the risk of error in these categories.⁸⁷

Figure 2



To account for the effect of legal complexity, the analysis narrows on Schedule C Form returns only and examines whether exclusively looking at more complicated filing circumstances across preparation modes alters compliance results. The findings of this manipulation are documented in Table 2 and Figure 3.

Looking exclusively at schedule C Form returns, the rate of returns with change to AGI emerges as consistently high among all preparer types, with some decrease in the IRS/VITA/TCE category.⁸⁸ Further narrowing the analysis

87. See also *infra* Appendix C (exploring the finer-tuned itemized, as opposed to standard, deductions returns, and offering similar results for the distribution of these more complicated filing circumstances across preparation types).

88. The reduced error rate in the IRS/VITA/TCE category is especially evident in the rate of change from claimed AGI among returns with change (4.2%) and net change (2.9%). This could be explained by considering the relatively low weighted average change in the IRS/VITA/TEC category narrowed to Schedule C Form returns (\$1132) as well as the lower number of returns filed by this category, compared with other preparation types (20,860

to explore the rate of change from claimed AGI, particularly among returns subject to change (that is, returns identified as noncompliant after IRS audit and review), the returns completed by CPAs/Attorneys and Enrolled Agents do not appear significantly more problematic than those filed by other types of preparers. In fact, subsequent to IRS/VITA/TCE, CPAs/Attorneys exhibit the second lowest rate of returns with change to AGI and net change from claimed AGI, with Large National Chains and Friends/Relatives following closely behind.⁸⁹ Enrolled Agents, while not radically different from other preparation types, perform rather poorly: they show the second highest change rate from claimed AGI (net as well as among returns with change) and the highest weighted average change (\$6035).⁹⁰ In addition, when limiting the analysis to explore Schedule C Form returns, the Taxpayer category is not more compliant than other preparation types, with the weighted average dollar adjustment ranking among the highest, at \$5248.⁹¹

The results of the AGI analysis narrowed to Schedule C Form returns can be read as consistent with Klepper and Nagin and Klepper et. al., in suggesting that legally ambiguous filing circumstances, such as those associated with Schedule C Form returns, correlate with increases in noncompliance.⁹² Noncompliance appears in our database in the form of change to the line item explored after IRS audit and review (here, AGI). Increases in the rates and scope of change, however, are not limited to certain types of preparation modes. They are evident across all preparation categories, as shown in Table 2 and Figure 3. In fact, the rate of returns with change to AGI is particularly high among self-preparing taxpayers, second by only 0.2% to Friends/Relatives and Other Preparers, where the rate of returns with change is highest (78.7%).⁹³ Further, the

Schedule C Form returns filed by IRS/VITA/TCE compared with a total of 3,125,243 Schedule C returns filed generally). *See infra* Table 2, Figure 3.

89. *See infra* Table 2, Figure 3.

90. *See id.*

91. *See id.*

92. *See* Klepper et al., *supra* note 80 and accompanying text; Klepper & Nagin, *supra* note 80 and accompanying text.

93. *See infra* Table 2.

financial implications of IRS audit and review of self-prepared returns is also among the highest, showing a weighted average change of \$5248.⁹⁴

Notably, when considering AGI reported on Schedule C Form returns, the CPA/Attorney mode, as well as Relative/Friend, Large National Chain, and IRS/VITA/TCE categories are associated with more compliant returns, compared with the Taxpayer. These findings may indicate a mitigating effect of these preparation types on taxpayer noncompliance in the context of Schedule C Form returns. Conversely, use of some preparation modes, such as Other Professional Preparer and Enrolled Agent under these circumstances, may lead to greater noncompliance than self-preparation in terms of financial gain of noncompliance, measured by the weighted average dollar change, even though the actual rate or incidences of change may in fact be lower in these categories.⁹⁵

Although the Taxpayer category is second highest on the rate of returns subject to change in the AGI analysis narrowed to Schedule C Form returns, the actual rate of change to AGI (net as well as among returns with change) does not differ significantly from other preparation categories. In fact, the categories of Other Professional Preparer and Enrolled Agent, for example, both display greater rates of change to AGI, compared with self-prepared returns. This may suggest that at least some errors on self-prepared returns do not result in financial benefits to the taxpayer compared with returns filed by potentially better informed or more sophisticated preparers, such as Other Professional Preparers and Enrolled Agents. In this case, lower preparation skills on the taxpayer end, rather than intentional tax planning, might be the reason for such errors.⁹⁶

94. *See id.*

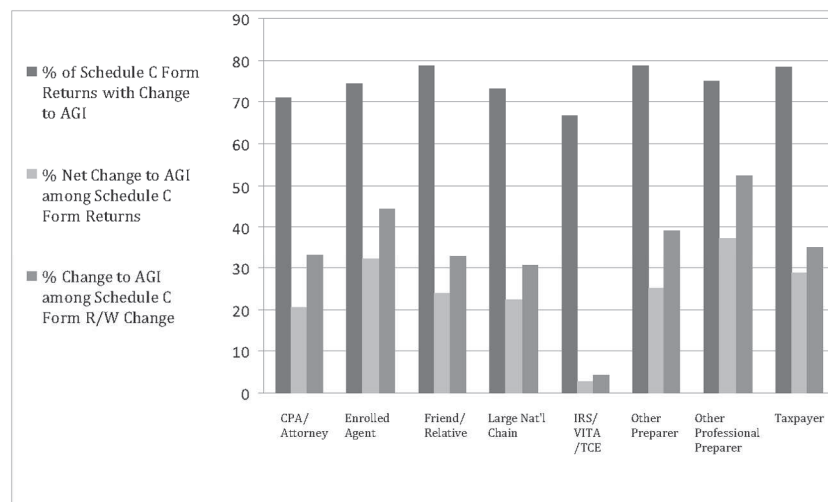
95. *See id.*

96. Future analysis should look into the distribution and extent to which adjustments made on tax returns after IRS audit and review result in tax increase or decrease in the tax liability of the taxpayer. This is helpful in order to better assess the reasons for the discrepancies between the information reported on the original tax returns and the information concluded after IRS audit and review as well as the effective mechanisms to enhance taxpayer compliance more generally.

Table 2

Type of Preparer	Weighted Returns With Sched C	% of Returns with a Schedule C	% of Returns with Change to AGI	% Change from Claimed AGI (Net)	% Change from Claimed AGI (Ret w/Change)	Weighted Average Change
CPA/Attorney	291,801	32.5%	71.1%	20.4%	33.3%	\$4035
Enrolled Agent	164,479	53.5%	74.5%	32.0%	44.5%	\$6035
Friend/Relative	213,033	12.9%	78.7%	23.9%	32.9%	\$3009
Large National Chain	585,008	12.9%	73.1%	22.2%	30.5%	\$3614
IRS/VITA/TCE	20,860	5.1%	66.7%	2.9%	4.2%	\$1132
Other Preparer	69,813	10.9%	78.7%	25.0%	39.2%	\$4260
Other Professional Tax Preparer	1,343,677	22.8%	74.9%	37.5%	52.3%	\$5519
Taxpayer	436,572	16.9%	78.5%	28.8%	35.1%	\$5248
Total	3,125,243	18.4%				

Figure 3



B. *Total Tax*

To build on the AGI findings, the analysis moves to examine return compliance on the line item of Total Tax. These results are displayed in Table 3 and Figure 4. Analysis of compliance results across preparation types reveals that the categories CPA/Attorney and Enrolled Agent again exhibit the highest rates of returns where IRS examiners recommended change to the amount originally claimed—at 46.7 and 57.4%, respectively. However, the magnitude of the change made to Total Tax on returns prepared by CPAs/Attorneys and Enrolled Agents, measured as the percentage change from the amount which was determined after IRS audit and review, was among the lowest, with only returns prepared by the Taxpayer showing a smaller percentage change (118.3, 112, and 111.5% adjustment among returns with change; and 71.2, 73.7 and 64.1% net change, respectively).⁹⁷

Other Preparers and Other Professional Preparers perform most poorly on the magnitude of change, both net and among returns with change: 305 and 195.4% change among returns with change; and 164.4 and 110.4% net change, in that order.⁹⁸ This significantly exceeds the adjustments made on returns prepared by CPAs/Attorneys, Enrolled Agents, and the Taxpayer. Friends/Relatives and Large National Chain returns are in the middle of the compliance results, at 84.3 and 92.8% net change; and 147.6 and 174.2% change among returns with change, respectively.⁹⁹

97. Compliance in the self-preparation mode initially appears more pronounced on the Total Tax than AGI analysis. *See supra* Table 1, Figure 1 (AGI analysis); *infra* Table 3, Figure 4 (Total Tax analysis).

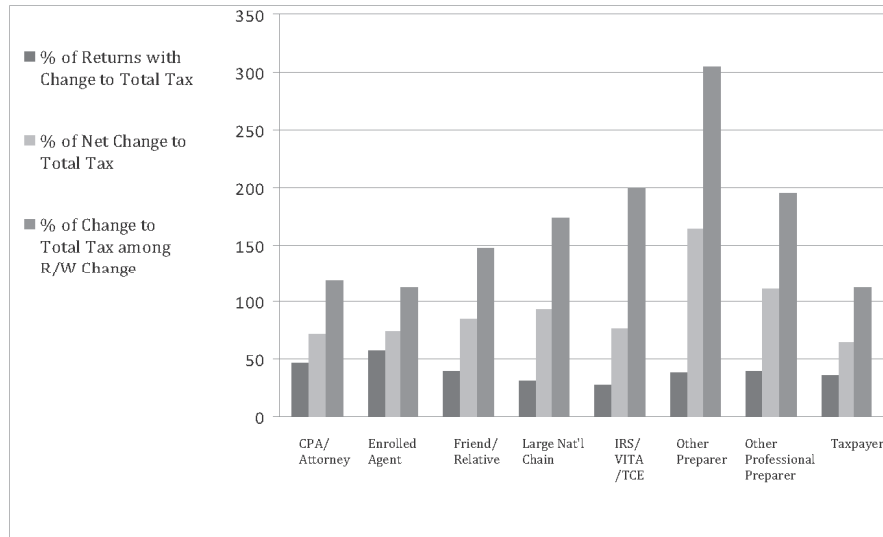
98. *See infra* Table 3, Figure 4.

99. *Id.*

Table 3

Type of Preparer	Weighted Returns	% of Returns with Change to Total Tax	% Change to Total Tax (Net)	% Change to Total Tax (Among Returns w/change)	Weighted Average Change (Among Returns w/change)
CPA/Attorney	897,341	46.7%	71.2%	118.3%	\$794
Enrolled Agent	307,637	57.4%	73.7%	112.0%	\$1003
Friend/Relative	1,656,610	39.0%	84.3%	147.6%	\$509
Large National Chain	4,542,802	31.5%	92.8%	174.2%	\$769
IRS/VITA/TCE	408,495	27.5%	76.6%	200.0%	\$393
Other Preparer	641,660	37.6%	164.4%	305.0%	\$881
Other Professional Tax Preparer	5,905,418	38.7%	110.4%	195.4%	\$976
Taxpayer	2,584,490	36.0%	64.1%	111.5%	\$666
Total	16,944,452				

Figure 4



When the Total Tax analysis narrows to focus on legally ambiguous Schedule C Form returns, as documented in Table 4 and Figure 5, the compliance of returns filed by CPAs/Attorneys and Enrolled Agents is, again, much better. Here, the rate of returns with change and the change amount from what was originally claimed are among the lowest (more so for returns filed by CPAs/Attorneys than for returns completed by Enrolled Agents), with the returns prepared by IRS/VITA/TCE being most compliant.¹⁰⁰

When limited to Schedule C Form returns, self-prepared returns are most likely to have a change to Total Tax.¹⁰¹ Further, self-prepared Schedule C Form returns also display the largest change to Total Tax as a percentage of the original amount claimed (both net and among returns with change).¹⁰² The Taxpayer category is followed by

100. After narrowing the Total Tax analysis to Schedule C Form returns, IRS/VITA/TCE returns show 43% of returns with change to Total Tax; 25.6% net change and 32.7% change among returns with change. See *infra* Table 4, Figure 5.

101. See *id.* (showing the rate of returns with change in the Taxpayer category at 72.8%).

102. See *id.* (showing 212.6% net change to Total Tax among returns with change and 166.6% net change for self-prepared Schedule C Form returns).

Friend/Relative and Large National Chain, both performing less compliantly than with the general Total Tax analysis.¹⁰³ The mode third most likely to file noncompliant returns in this category is Other Professional Preparer.¹⁰⁴

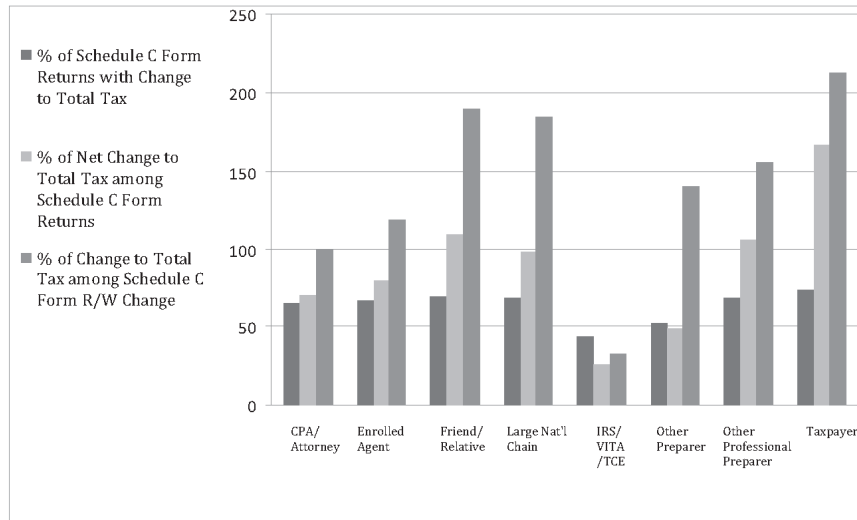
Table 4

Type of Preparer	Weighted Returns With Sched C	% of Returns with a Schedule C	% of Returns with Change to Total Tax	% Change to Total Tax (Net)	% Change to Total Tax (Ret w/change)	Weighted Average Change
CPA/Attorney	291,801	32.5%	64.5%	69.5%	100.0%	\$1010
Enrolled Agent	164,479	53.5%	66.4%	78.8%	119.1%	\$1387
Friend/Relative	213,033	12.9%	69.3%	109.6%	189.3%	\$852
Large National Chain	585,008	12.9%	68.0%	98.8%	184.7%	\$807
IRS/VITA/TCE	20,860	5.1%	43.0%	25.6%	32.7%	\$418
Other Preparer	69,813	10.9%	51.7%	48.2%	140.6%	\$776
Other Professional Tax Preparer	1,343,677	22.8%	67.7%	106.1%	155.5%	\$1364
Taxpayer	436,572	16.9%	72.8%	166.6%	212.6%	\$1327
Total	3,125,243	18.4%				

103. *See id.*

104. *See id.* (showing, for example, the rate of change to Total Tax among Schedule C Form returns at 67.7% for Other Professional Preparer, preceded by the Taxpayer, Friend/Relative and Large National Chain returns at 72.8, 69.3 and 68% of returns with change, respectively. The Other Professional Preparer category also has the third highest weighted average change to Total Tax for Schedule C Form returns, at \$1364).

Figure 5



C. Earned Income Tax Credit (EITC)

The analysis now turns to explore tax return compliance on the line item of EITC, the provision that generated the EITC Compliance Studies and database analyzed in this Article.¹⁰⁵ The results of the EITC findings are documented in Table 5 and Figure 6. Here, the CPA/Attorney (in particular), Large National Chain, and IRS/VITA/TCE categories display the lowest percentage of returns with change following IRS audit and review.¹⁰⁶ The results remain fairly consistent when looking at the rate of change from claimed EITC, particularly the net change.¹⁰⁷ These findings are in line with Holtzblatt and McCubbin,

105. *See supra* Introduction, pp. 1081-84 (discussing EITC Compliance Study and subsequent creation of the EITC database).

106. The CPA/Attorney category shows 45.2% of returns with change to EITC; Large National Chain shows 46.3% of returns with change to EITC; and IRS/VITA/TCE exhibits 46.9% of returns with change to EITC. *See infra* Table 5, Figure 6.

107. *See id.* (showing 17.4% net change and 37% change to EITC among returns with change for CPA/Attorney returns; 22.5% net change and 47.9% change to EITC among returns with change for Large National Chain returns; and 19.8% net change and 56.8% change to EITC among returns with change for IRS/VITA/TCE returns).

who concluded the 1999 overclaim rate among EITC recipients using preparation services was 34.6%, while the overclaim rate among self-preparing taxpayers was higher, 37.8%.¹⁰⁸ Such evidence indicates a higher level of compliance among taxpayers aided by preparers, as opposed to taxpayers filing for themselves. According to Holtzblatt and McCubbin, paid prepared returns were more compliant than self-prepared returns, particularly when the preparer was a greater trained and supervised Attorney, CPA, Enrolled Agent, or other nationally recognized preparer.¹⁰⁹ In these cases, the EITC overclaim rate was a low 25.2%, compared with a 36.2 rate for all other types of preparers.¹¹⁰

Similarly, a study by Hite and Hasseldine analyzed data from a random sample of 1997–1998 IRS office audits to find that tax returns prepared with CPA assistance had fewer audit adjustments and penalties than self-prepared returns.¹¹¹ CPA-prepared returns were also associated with fewer audit adjustments than returns filed by other paid preparers.¹¹² These findings may offer evidence in contrast with Erard, who suggested an increased rate of noncompliance on CPA/Attorney prepared returns.¹¹³ Alternatively, CPAs and other well trained and regulated preparers could be more compliant in certain problematic filing circumstances, such as those involving Schedule C Form returns, EITC, or office audits, which are more likely to generate heightened IRS and public scrutiny.¹¹⁴

Despite increased scrutiny and IRS supervision, the analysis reveals that the preparation mode of Enrolled

108. Holtzblatt & McCubbin, *supra* note 57, at 170.

109. *Id.* at 171.

110. *Id.*

111. Office audits target those returns identified by the IRS as particularly problematic. See Peggy A. Hite & John Hasseldine, *Tax Practitioner Credentials and the Incidence of IRS Audit Adjustments*, ACCT. HORIZONS, 1, 7-13 (2003).

112. *Id.* at 7, 10, 12-13.

113. Erard, *supra* note 66, at 163, 191. Erard analyzed data that is already three decades old. *Id.* at 164. Accordingly, it is possible his findings may be outdated.

114. This argument suggests that certain problematic line items or return types can pose a higher risk of detection and/or punishment for taxpayers. In these cases, more sophisticated and better-trained preparers may be more likely or capable to take proper care to avoid enforcement repercussions.

Agent exhibits the highest rate of returns subject to change in EITC, 71.6%.¹¹⁵ Returns filed by Enrolled Agents also show the second highest rate of net change from EITC originally claimed, 43.9%; the third highest change among returns subject to change, 59.5%; and second highest average weighted change, \$1099.¹¹⁶

The analysis results for returns completed by preparers who were previously unregulated add to the problematic findings for Enrolled Agents. Specifically, the categories of Other Preparer, Other Professional Preparer, and Friend/Relative exhibit high rates of returns subject to EITC change, at 58.5, 57, and 56.6%, respectively; Other Preparer and Friend/Relative display the highest rates of change to EITC among returns with change, 73.8 and 62.2%, respectively.¹¹⁷ These are followed by Enrolled Agent, at 59.5%, and Other Professional Preparer, at 57.4%.¹¹⁸ The preparer type with the highest weighted average change to EITC originally claimed is Other Preparer, at \$1199, with Enrolled Agent, Other Professional Preparer, Large National Chain, and Friend/Relative following closely behind (at \$1099, \$983, \$939, \$919 respectively).¹¹⁹ The preparer type of CPA/Attorney displays the lowest weighted average change to EITC, only \$497, with IRS/VITA/TCE and the Taxpayer also showing relatively moderate changes at \$539 and \$623, respectively.¹²⁰

115. *See infra* Table 5, Figure 6.

116. *See id.*

117. *See id.*

118. *See id.*

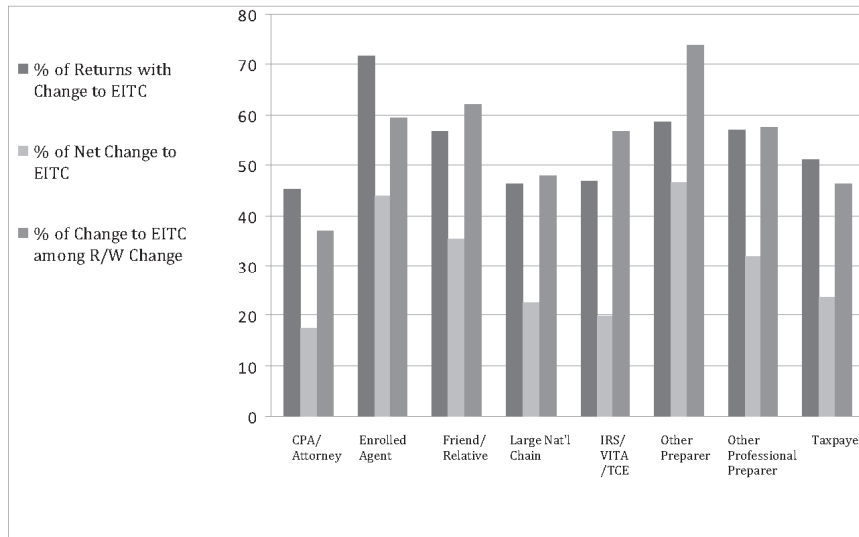
119. *See id.*

120. *See infra* Table 5 (last column).

Table 5

Type of Preparer	Weighted Returns	% of Returns with Change to EITC	% Change from Claimed EITC (Net)	% Change from Claimed EITC (Ret w/change)	Weighted Average Change
CPA/Attorney	897,341	45.2%	(17.4%)	(37.0%)	(\$497)
Enrolled Agent	307,637	71.6%	(43.9%)	(59.5%)	(\$1099)
Friend/Relative	1,656,610	56.6%	(35.4%)	(62.2%)	(\$919)
Large National Chain	4,542,802	46.3%	(22.5%)	(47.9%)	(\$939)
IRS/VITA/TCE	408,495	46.9%	(19.8%)	(56.8%)	(\$539)
Other Preparer	641,660	58.5%	(46.5%)	(73.8%)	(\$1199)
Other Professional Tax Preparer	5,905,418	57.0%	(31.8%)	(57.4%)	(\$983)
Taxpayer	2,584,490	51.0%	(23.6%)	(46.3%)	(\$623)
Total	16,944,452				

Figure 6



Narrowing the EITC line item analysis to focus on legally ambiguous Schedule C Form returns, as displayed in Table 6 and Figure 7, Enrolled Agents still exhibit problematic results, with the categories of Friend/Relative, Other Professional Preparer, and Other Preparer following closely behind. The preparation modes of IRS/VITA/TCE (in particular), CPA/Attorney, and Large National Chain offer the most accurate filing, as identified by IRS examiners.¹²¹

Compared with the line items of AGI¹²² and Total Tax,¹²³ self-prepared returns are now not significantly less compliant than returns other types of preparers file. The Taxpayer results are between those categories that are most

121. See *infra* Table 6, Figure 7 (showing that IRS/VITA/TCE Schedule C Form returns have 66.7% of returns with change to EITC, 3.8% net change and 27% change among returns with change from claimed EITC; CPA/Attorney Schedule C Form returns have 71.1% of returns with change to EITC, 18.7% net change and 30% change from claimed EITC among returns with change; Large National Chain Schedule C Form returns have 73.1% of returns with change to EITC, 15.7 net change and 22.2% change among returns with change to EITC. The weighted average change is \$76 for IRS/VITA/TCE, \$370 for CPA/Attorney, and \$455 for Large National Chain).

122. See *supra* Table 2, Figure 3.

123. See *supra* Table 4, Figure 5.

compliant in their EITC filings (IRS/VITA/TCE, CPA/Attorney, and Large National Chain) and those that have higher rates of change to EITC originally claimed (Enrolled Agent, Friend/Relative, Other Professional Preparer, and Other Preparer).¹²⁴ The relative compliance of self-prepared returns in this context could be attributed to the complexity of EITC tax planning, which requires legal and administrative skills many taxpayers may lack. Alternatively, these results could emerge from taxpayer efforts to make compliant, risk-free filing on this more enforcement prone line item. In this context, generally only the returns of the IRS/VITA/TCE, Large National Chain, and CPA/Attorney categories are more compliant than self-prepared returns, with most categories indicating similarly high rates of returns with change to EITC, yet varying on the magnitude of change from EITC originally claimed.¹²⁵

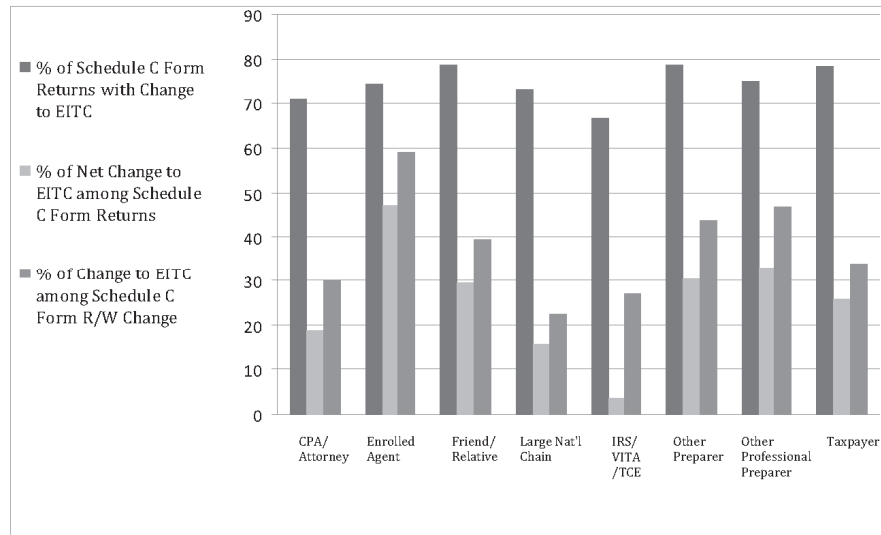
Table 6

Type of Preparer	Weighted Returns With Sched C	% of Returns with a Schedule C	% of Returns with Change to EITC	% Change from Claimed EITC (Net)	% Change from Claimed EITC (Ret w/Change)	Weighted Average Change
CPA/Attorney	291,801	32.5%	71.1%	(18.7%)	(30.0%)	(\$370)
Enrolled Agent	164,479	53.5%	74.5%	(47.1%)	(59.0%)	(\$1342)
Friend/Relative	213,033	12.9%	78.7%	(29.5%)	(39.4%)	(\$655)
Large National Chain	585,008	12.9%	73.1%	(15.7%)	(22.2%)	(\$455)
IRS/VITA/TCE	20,860	5.1%	66.7%	3.8%	27.0%	\$76
Other Preparer	69,813	10.9%	78.7%	(30.3%)	(43.8%)	(\$886)
Other Professional Tax Preparer	1,343,677	22.8%	74.9%	(33.1%)	(46.7%)	(\$814)
Taxpayer	436,572	16.9%	78.5%	(25.8%)	(34.1%)	(\$538)
Total	3,125,243	18.4%				

124. See *infra* Table 6, Figure 7.

125. See *id.*

Figure 7



D. Filing Status

Finally, the analysis considers the line item of filing status. Unlike compliance with other line items explored in this Article, determining the appropriate filing status of the taxpayer is a fairly straightforward and legally unambiguous task. It accordingly does not leave much room for manipulation. The person completing the tax return must follow a checklist of several key questions to conclude whether the relevant taxpayer is entitled to claim the advantageous Head of Household option, or another, less beneficial, filing status.¹²⁶ Accordingly, discrepancies on the filing status line items can more easily be detected and explained as filing errors resulting from lack of knowledge

126. The Head of Household filing status, as defined in Tax Year 1999, "is for unmarried people who paid over half the cost of keeping up a home for a qualifying person, such as a child or parent. Certain married people who lived apart from their spouse for the last 6 months of 1999 may also be able to use this status." INTERNAL REVENUE SERV., 1999 1040 INSTRUCTIONS, 18 (1999), available at <http://www.irs.gov/pub/irs-prior/i1040gi--1999.pdf>. The difference in the standard deduction for a person filing as a Head of Household v. Single in 1999 was \$2050 (\$6350 vs. \$4300). See *id.* at 2-3; see also *EITC Statistics*, INTERNAL REVENUE SERV., available at <http://www.eitc.irs.gov/central/eitcstats/> (Tax Year 1999).

or due diligence, as opposed to sophisticated tax planning behavior.

Figure 8 illustrates that while 21% of returns prepared by Enrolled Agents claimed an incorrect filing status generally, the rate more than doubles to 48.4% for returns erroneously claiming the more beneficial Head of Household status. This rise in mistaken election of Head of Household, compared with other statuses, is also evident in the CPA/Attorney and Taxpayer categories and, to a lesser degree, across all other preparation types.¹²⁷ Such a trend could indicate rational gaming behavior across preparation categories intended to reap the favorable financial implications of the Head of Household filing status.

Exploring the rate of change in filing status generally, the CPA/Attorney and Taxpayer categories exhibit the most compliant tax returns, with 11.4 and 16.9% change rate, respectively. These results illustrate fairly compliant filing patterns in returns prepared by the Taxpayer and CPAs/Attorneys when the law is relatively clear and simple to apply. Consistent with other results detailed in this Article, returns filed by Other Preparers, Other Professional Preparers, and Friends/Relatives perform most poorly, with change rates about double those of the CPA/Attorney and Taxpayer categories: 37.6, 30.7, and 29.9%, respectively. However, these high rates of mistakenly-elected filing status by Other Preparers, Other Professional Preparers, and Relatives/Friends are not motivated by clear financial incentives, compared with the Head of Household status. Accordingly, they could indicate, for example, lower levels of preparation skills, due diligence, or even misguided taxpayer information rather than intentional tax planning behavior.

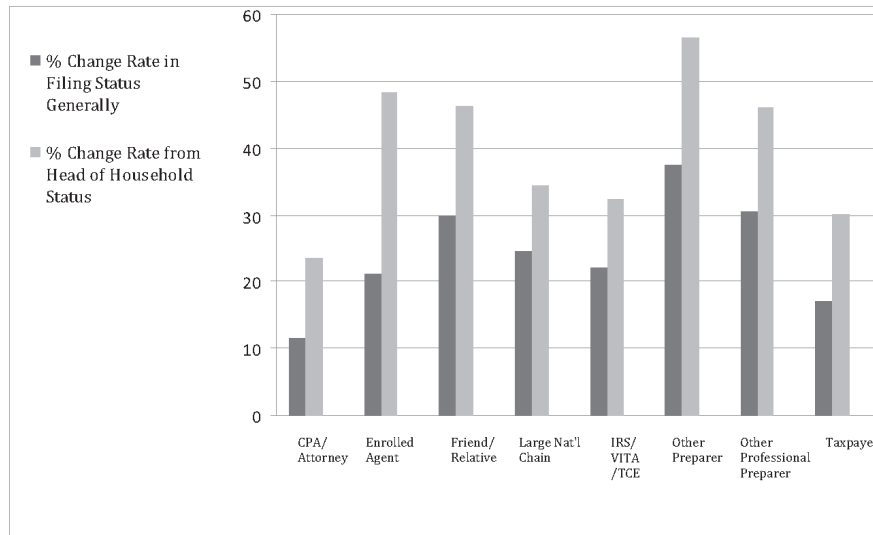
Examining returns originally claiming the more advantageous Head of Household status, the preparation mode of Other Preparer still displays the highest rate of change compared with other preparation types (56.6%), with CPA/Attorney-prepared returns being most compliant, at 23.6% change.¹²⁸ The returns of taxpayers filing for themselves remain fairly compliant as well, with a 30.3% change rate. Enrolled Agent returns display the second

127. See *infra* Figure 8, Appendix D.

128. See *id.*

least compliant findings, with 48.4% change. This is closely followed by returns filed by Friends/Relatives and Other Professional Preparers, at 46.3 and 46.2% change, respectively.¹²⁹

Figure 8



V. DISCUSSION

Taking the above analysis into full view, several compliance patterns emerge among returns submitted by different categories of preparers. Particularly, there are indications of different filing behaviors among better trained and regulated preparers (especially CPAs/Attorneys and IRS/VITA/TCE); preparers who generally operated under the regulatory radar until the 2011 preparer regulation (particularly Other Preparers and Other Professional Preparers); and Taxpayers filing for themselves. Among these different groups of preparers, the categories of Friend/Relative, Enrolled Agent, and Large National Chain provide less clear-cut but nonetheless interesting results.

129. *See id.*

A. *IRS/VITA/TCE and CPAs/Attorneys*

The data analysis section of this Article suggests that, compared with other preparer types, IRS/VITA/TCE and CPAs/Attorneys generate some of the most compliant tax return filings, the former generally more than the latter. The main exception concerns Filing Status, in which CPA/Attorney returns perform notably better than IRS/VITA/TCE.¹³⁰ More specifically, the IRS/VITA/TCE category generates more compliant returns than other preparation modes on almost every line item explored. While the AGI line item indicates a relatively high rate of returns with change after IRS audit and review, the magnitude of change (both net and among returns with change) is lowest in the IRS/VITA/TCE category, as well as the weighted average change.¹³¹ When narrowing the AGI analysis to focus on Schedule C Form returns, IRS/VITA/TCE returns are still most compliant, this time on all parameters explored.¹³² IRS/VITA/TCE returns also indicate the lowest rate of returns with change and lowest weighted average change to Total Tax.¹³³ A rather high (200%) adjustment to Total Tax among returns with change could be attributed to the relatively low weighted average change in this category.¹³⁴

Likewise, in the Total Tax analysis narrowed to Schedule C Form returns, IRS/VITA/TCE returns are once more most compliant on all parameters explored.¹³⁵

130. *See infra* Figure 8; *infra* Appendix D (showing CPA/Attorney returns with 11.4% change rate in filing status generally and 23.6% change rate from the Head of Household status; IRS/VITA/TCE returns have 22.2% change rate in filing status generally and 32.5% change rate from the Head of Household status).

131. *See supra* Table 1, Figure 1 (showing 6.4% net change and 15.1% change among returns with change to AGI in the IRS/VITA/TCE category. The weighted average change is \$1439).

132. *See supra* Table 2, Figure 3.

133. *See supra* Table 3, Figure 4 (showing 27.5% of returns with change to Total Tax in the IRS/VITA/TCE category and \$393 weighted average change after IRS audit and review).

134. *See supra* Table 3 (last two columns).

135. *See supra* Table 4, Figure 5 (showing 43% of Schedule C Form returns with change to Total Tax in the IRS/VITA/TCE category, 25.6% net change,

IRS/VITA/TCE returns also perform well on the EITC line item, with only returns submitted by CPAs/Attorneys displaying better results and Large National Chain returns following closely behind.¹³⁶ Narrowing the EITC analysis to focus on Schedule C Form returns, the returns filed by IRS/VITA/TCE are again most compliant.¹³⁷ Notably, when examining the Filing Status line item, the returns of CPA/Attorney, Taxpayer, and Enrolled Agent perform better on the change rate generally, while only the CPA/Attorney and Taxpayer categories surpass IRS/VITA/TCE's compliance on the change rate from the more advantageous Head of Household status.¹³⁸

Although CPA/Attorney returns indicate particularly high rates of returns with change to the AGI¹³⁹ and, to a lesser extent, Total Tax,¹⁴⁰ once accounting for the higher rate of Schedule C Form returns in the CPA/Attorney category,¹⁴¹ filing results appear significantly more

32.7% change among returns with change and \$418 weighted average change after IRS audit and review).

136. *See supra* Table 5, Figure 6 (showing, for example, the rate of returns with change to EITC at 46.9% for IRS/VITA/TCE, 46.3% for Large National Chain, and 45.2% for CPA/Attorney. The magnitude of change to EITC—both net and among returns with change—is: 17.4 and 37% for CPA/Attorney, respectively; 19.8 and 56.8% for IRS/VITA/TCE, respectively; and 22.5 and 47.9% for Large National Chain, respectively. The weighted average change to EITC is \$497 for CPA/Attorney, \$539 for IRS/VITA/TCE and \$939 for Large National Chain).

137. *See supra* Table 6, Figure 7 (showing 66.7% of Schedule C Form returns with change to EITC in the IRS/VITA/TCE category; 3.8% net change; 27% change among returns with change; and \$76 weighted average change after IRS audit and review).

138. *See supra* Figure 8, *infra* appendix D (showing the change rate in filing status generally at 22.2% for IRS/VITA/TCE and at 32.5% from the Head of Household status).

139. *See supra* Table 1, Figure 1 (showing 49.2% of returns with change to AGI in the CPA/Attorney category).

140. *See supra* Table 3, Figure 4 (showing 46.7% of returns with change to Total Tax in the CPA/Attorney category).

141. *See supra* Figure 2 (showing 32.5% of CPA/Attorney returns are Schedule C Form returns. In contrast, only 12.9% of the returns filed by Friends/Relatives and Large National Chains are Schedule C Form returns, while IRS/VITA/TCE returns include 5.1% Schedule C Form returns and the Taxpayer 16.9%).

compliant. The results for CPA/Attorney returns are only second to those of IRS/VITA/TCE and Large National Chain in the AGI line item,¹⁴² and IRS/VITA/TCE and, to some extent, Other Preparer for Total Tax.¹⁴³ Accordingly, accounting for its higher incidences of legally ambiguous filing circumstances, the CPA/Attorney category does not show less compliant returns and, in fact, performs more compliantly than most other preparation types.

Further, the magnitude of change in the Total Tax analysis generally, but not for the AGI line item, is among the lowest for CPAs/Attorneys.¹⁴⁴ Returns submitted by CPAs/Attorneys are also among the most compliant when exploring the EITC line item, displaying the lowest rate of returns with change, lowest rate of change (both net as well as among returns with change), and lowest weighted average change.¹⁴⁵ Results for the EITC analysis narrowed to Schedule C Form returns remain rather compliant, albeit now preceded by IRS/VITA/TCE and Large National Chains.¹⁴⁶ On the Filing Status line item, CPA/Attorney prepared returns illustrate the smallest change rate generally, as well as from Head of Household status.¹⁴⁷

142. *See supra* Table 2, Figure 3.

143. *See supra* Table 4, Figure 5.

144. *See supra* Table 3, Figure 4 (showing 71.2% net change and 118.3% change among returns with change to Total Tax in the CPA/Attorney category); Table 1, Figure 1 (showing 14.2% net change and 32.2% change among returns with change to AGI in the CPA/Attorney category).

145. *See supra* Table 5, Figure 6 (showing 45.2% of returns with change to EITC in the CPA/Attorney category, 17.4% net change, 37% change among returns with change and \$497 weighted average change after IRS audit and review).

146. *See supra* Table 6, Figure 7 (showing, for example, the magnitude of change to EITC among Schedule C Form returns at 3.8% net change and 27% change among returns with change for IRS/VITA/TCE; at 15.7% net change and 22.2% change among returns with change for Large National Chains; and at 18.7% net change and 30% change among returns with change for CPAs/Attorneys).

147. *See supra* Figure 8; *infra* Appendix D (showing 11.4% change in filing status generally and 23.6% change from the Head of Household status for CPAs/Attorneys).

B. *Other Preparers and Other Professional Preparers*

Compared with CPAs/Attorneys and IRS/VITA/TCE, which consistently file relatively compliant returns, Other Preparers and Other Professional Preparers are on the lower end of compliance. These preparers file returns that more often indicate greater incidences and scope of adjustments after IRS audit and review. Specifically, the returns filed by Other Preparers and Other Professional Preparers exhibit lower compliance on the AGI and EITC line items, both generally¹⁴⁸ and when focusing on Schedule C Form returns.¹⁴⁹ When exploring the AGI line item, Other Preparer returns show the second and first highest magnitude of adjustment after IRS audit and review (net and among returns with change, in that order), while returns Other Professional Preparers file have the fourth and second highest rates of change.¹⁵⁰ These two categories also display the highest and third highest weighted average change.¹⁵¹

148. *See supra* Table 1, Figure 1 (showing, for example, 14.7 net change to AGI and 36.6% change among returns with change for Other Preparers; and 13.4% net change to AGI and 33.5% change among returns with change for Other Professional Preparers); Table 5, Figure 6 (showing, for example, 46.5% net change to EITC and 73.8% change among returns with change for Other Preparers; and 31.8% net change to EITC and 57.4% change among returns with change for Other Professional Preparers).

149. *See supra* Table 2, Figure 3 (showing, for example, 25% net change to AGI in Schedule C Form returns and 39.2% change among returns with change for Other preparers; and 37.5% net change to AGI in Schedule C Form returns and 52.3% change among returns with change for Other Professional Preparers); Table 6, Figure 7 (showing, for example, 30.3% net change to EITC in Schedule C Form returns and 43.8% change among returns with change for Other Preparers; and 33.1% net change to EITC in Schedule C Form returns and 46.7% change among returns with change for Other Professional Preparers).

150. *See supra* Table 1, Figure 1.

151. *See id.* (showing \$4506 weighted average change to AGI for Other Preparers and \$3990 weighted average change to AGI for Other Professional Preparers). When narrowing the AGI analysis to Schedule C Form returns, the returns Other Preparers and Other Professional Preparers file still generate disconcerting results. Returns of Other Preparers show the highest rate of returns with change (tied with Friends/Relatives); the fourth highest net change; the third highest change rate among returns with change; and the fourth highest weighted average change. *See supra* Table 2, Figure 3. Similarly, returns Other Professional Preparers complete indicate the third highest rate of

The results for Other Preparers and Other Professional Preparers in the Total Tax analysis are also among the least compliant.¹⁵² This is especially true when narrowing the analysis to Schedule C Form returns in the Other Professional Preparer category.¹⁵³ In analyzing EITC, Other Preparer and Other Professional Preparer returns again display some of the least compliant findings both generally¹⁵⁴ and when focusing on Schedule C Form returns.¹⁵⁵ Finally, Filing Status results are also highly problematic: Other Preparer returns indicate the highest change rate—both generally and from Head of Household status—while Other Professional Preparer returns show the second highest change rate from Filing Status generally and fourth highest change rate from Head of Household status.¹⁵⁶

returns with change; the highest magnitude of change (both net and among returns with change); and the second highest weighted average change. *See id.*

152. *See supra* Table 3, Figure 4 (showing that while returns of Other Preparers and Other Professional Preparers display the fifth and fourth highest rates of returns with change to Total Tax—at 38.7% and 37.6%, respectively—both categories perform worse on the magnitude of change. Other Preparer returns display the highest rate of change to Total Tax, both net and among returns with change—at 164.4% net change and 305% change among returns with change—and third highest weighted average change, at \$881. Other Professional Preparer returns show second highest net change and average weighted change, at 110.4% and \$976, respectively. Returns filed by Other Professional Preparers also have the third highest rate of change among returns with change, at 195.4%).

153. *See supra* Table 4, Figure 5.

154. *See supra* Table 5, Figure 6 (showing that the returns filed by Other Preparers have the second highest rate of returns with change, at 58.5%, and the highest magnitude of change, both net and among returns with change, at 46.5% and 73.8%, respectively. Other Preparer returns also show the highest weighted average change to EITC, at \$1199. Returns of Other Professional Preparers have the third highest rate of returns with change, at 57%, net change and weighted average change, at 57.4% and \$983, respectively. Returns filed by Other Professional Preparers also show fourth highest change rate among returns with change, at 31.8%).

155. *See supra* Table 6, Figure 7 (showing, for example, that in the EITC analysis narrowed to Schedule C Form returns, Other Professional Preparer returns display the second highest magnitude of change, both net and among returns with change, at 31.1 and 46.7%, respectively, and third highest weighted average change, at \$814).

156. *See supra* Figure 8; *infra* Appendix D.

C. *Enrolled Agents*

Some of the more interesting results of the analysis concern Enrolled Agent returns. Enrolled Agents, the only taxpayer representative to receive its authorization to practice from the IRS at the time of this study,¹⁵⁷ occasionally generate among the most problematic filing results. Specifically, Enrolled Agent returns show some of the least compliant findings on the AGI line item, with the highest rate of returns with change to AGI and net change from AGI originally claimed.¹⁵⁸ Unlike the CPA/Attorney category, when the analysis narrows to focus on the legally ambiguous Schedule C Form returns, Enrolled Agents still yield some of the most problematic findings, including the highest weighted average change and second highest rate of change, both net and among returns with change.¹⁵⁹ Here, only Other Preparer and Other Professional Preparer returns perform worse on compliance (the latter more than the former) with the results for self-prepared returns following closely behind.¹⁶⁰

The Total Tax analysis is somewhat less clear: Enrolled Agent returns display the highest rate of returns with change and the highest weighted average change; but third and second lowest magnitude of change, net and among returns with change, respectively.¹⁶¹ Focusing on Schedule C Form returns, Enrolled Agent returns yield slightly better results: they now fall in the middle of the compliance scale compared with other preparer types.¹⁶² However, Enrolled

157. *See supra* note 41.

158. *See supra* Table 1 (showing 61% of returns with change to AGI and 15.4% net change for Enrolled Agent returns).

159. *See supra* Table 2, Figure 3 (showing the weighted average change to AGI in Schedule C Form returns of Enrolled Agents at \$6035, and the net change and change among returns with change at 32 and 44.5%, respectively).

160. *See id.*

161. *See supra* Table 3, Figure 4 (showing that the rate of change to Total Tax in the Enrolled Agent category at 57.4%, and net change and change rate among returns with change at 73.7 and 112%, respectively. The weighted average change to Total Tax in the Enrolled Agent category is the highest, at \$1003).

162. When focusing on Schedule C Form returns, Enrolled Agents show the fourth lowest rate of returns with change and net change to Total Tax and third lowest rate of change among returns with change. *See supra* Table 4, Figure 5.

Agent returns show some of the worst compliance results in the EITC line item, especially when focusing on Schedule C Form returns.¹⁶³

While remaining more compliant than several other preparation modes, compliance on the Filing Status line item in Enrolled Agent returns is, again, not very good. Enrolled Agent returns exhibit the third lowest rate of change from Filing Status generally, but the second highest rate of change from the more advantageous Head of Household status, preceded only by Other Preparer.¹⁶⁴

D. Taxpayer: Self-Preparation

Self-prepared returns are unique in that they exhibit some of the most compliant findings on the one hand, while also displaying among the least arguable results on the other. Specifically, when exploring line items generally and without focusing on the legally ambiguous Schedule C Form returns, the Taxpayer category tends to generate compliant returns. This is more so in the Total Tax than the AGI line item. For example, self-prepared returns indicate the second lowest rate of returns with change to AGI.¹⁶⁵ The rate of change, both net and among returns with change, is also among the lowest, although the weighted average change to AGI is not insignificant.¹⁶⁶

On the Total Tax line item, self-prepared returns show the third lowest rate of returns with change, preceded by

163. See *supra* Table 5, Figure 6 (showing, for example, the highest rate of returns with change to EITC, at 71.6%, and second highest weighted average change, at \$1099 for Enrolled Agents); Table 6, Figure 7 (showing, for example, the highest magnitude of change to EITC among Schedule C Form returns, both net and among returns with change, for Enrolled Agents, at 47.1 and 59%, respectively. Enrolled Agent Schedule C Form returns also show the highest weighted average change to EITC, at \$1342).

164. See *supra* Figure 8; *infra* Appendix D (showing 21% change rate in filing status generally for Enrolled Agents and 48.4% change rate from the Head of Household status).

165. See *supra* Table 1, Figure 1 (showing the rate of returns with change to AGI for the Taxpayer at 34.4%).

166. See *id.* (showing the net change to AGI in the Taxpayer category at 8.6%, the rate of change to AGI among returns with change at 23.7%, and the weighted average change to AGI in the Taxpayer category at \$3444).

IRS/VITA/TCE and Large National Chain.¹⁶⁷ The magnitude of change, both net and among returns with change to Total Tax, is the lowest, followed by CPAs/Attorneys and Enrolled Agents, with a relatively low weighted average change as well.¹⁶⁸

Notably, once focusing on the legally ambiguous Schedule C Form returns, self-prepared returns are significantly less compliant: the results are worse on all parameters explored, especially in the Total Tax line item.¹⁶⁹ When the AGI analysis narrows to Schedule C Form returns, the Taxpayer category exhibits some of the highest rates of returns with change.¹⁷⁰ The Taxpayer rate of change is lower only marginally than the rate of change of Other Preparers and Friends/Relatives, which file the least compliant returns.¹⁷¹ The Taxpayer category also has the third highest net change and weighted average change.¹⁷² However, the magnitude of change among returns with change is not significantly worse in the Taxpayer category than other preparer modes, with Other Professional Preparer, Enrolled Agent, and Other Preparer returns filing less compliant returns.¹⁷³ Exploring Total Tax among Schedule C Form returns, self-prepared returns again indicate the highest rate of returns with change, the highest magnitude of change—both net and among returns with

167. *See supra* Table 3, Figure 4 (showing the rate of returns with change to Total Tax in the Taxpayer category at 36%, while the rates of returns with change to Total Tax in the IRS/VITA/TCE and Large National Chains are 27.5 and 31.5%, respectively).

168. *See id.* (showing the weighted average change to Total Tax in the taxpayer category at \$666, preceded by IRS/VITA/TCE at \$393 and Friends/Relatives at \$509).

169. *See supra* Table 4, Figure 5 (showing, for example, that only Enrolled Agent and Other Professional Preparer returns generate greater adjustments in the weighted average change to Total Tax).

170. *See supra* Table 2, Figure 3 (showing the rate of returns with change to AGI in the AGI narrowed to Schedule C Form returns analysis at 78.5% for self-prepared returns, preceded only by Other Preparer and Friend/Relative returns at 78.7%).

171. *See id.*

172. *See id.* (showing the net change to AGI among Schedule C Form returns in the Taxpayer category at 28.8%, while the weighted average change is \$5248).

173. *See id.*

change—and, by a margin, the third highest weighted average change (preceded by returns filed by Enrolled Agents and Other Professional Preparers).¹⁷⁴

On the EITC line item, the Taxpayer category generates fairly compliant results, even when focusing on Schedule C Form returns.¹⁷⁵ However, compared with other preparer types, the results in the Taxpayer category are not most compliant and generally rank below those of CPAs/Attorneys, Large National Chains, and IRS/VITA/TCE (not necessarily in that order).¹⁷⁶ Self-prepared returns also indicate the second lowest change rate, both generally and from the Head of Household status, on the legally clear-cut Filing Status line item (second only to the returns filed by CPAs/Attorneys).¹⁷⁷

E. *Large National Chains*

The returns submitted by the preparer type of Large National Chain, while not the most compliant, indicate rather compliant patterns generally. This is particularly the case with regard to AGI and EITC, where returns filed by Large National Chains exhibit some of the most compliant

174. *See supra* Table 4, Figure 5 (showing the rate of returns with change to Total Tax among Schedule C Form returns in the Taxpayer category at 72.8%, the net change at 106.1%, and the rate of change among returns with change at 155.5%. The weighted average change to Total Tax among Schedule C Form returns in the Taxpayer category is \$1327).

175. *See supra* Table 5, Figure 6 (showing, for example, the rate of returns with change to EITC in the Taxpayer category to be second lowest, at 46.3%, and the weighted average change third lowest, at \$623); Table 6, Figure 7 (showing, for example, the rate of returns with change to EITC among Schedule C Form returns and the weighted average change in the Taxpayer category to be fourth lowest, at 34.1% and \$538, respectively).

176. On the EITC line item, the rate of returns with change in the Taxpayer category does not differ much from other preparation categories, with the magnitude of change (net and among returns with change) and the weighted average change among the lowest. *See supra* Table 5, Figure 6. When narrowing the EITC analysis to Schedule C Form returns, the magnitude of change (both net and among returns with change) is again comfortably in the middle of the compliance scale (preceded by IRS/VITA/TCE, Large National Chains, and CPAs/Attorneys). *See supra* Table 6, Figure 7.

177. *See supra* Figure 8; *infra* Appendix D (showing the change rate in filing status generally for the Taxpayer at 16.9% and at 30.3% from the Head of Household status).

results, generally preceded only by IRS/VITA/TCE and CPAs/Attorneys.¹⁷⁸ However, more problematic patterns emerge in the Total Tax and Filing Status analysis: Large National Chain returns are less complaint, but are still generally more compliant than returns submitted by Other Preparers, Other Professional Preparers, Friends/Relatives, and, at times, Enrolled Agents.¹⁷⁹ Specifically, in the AGI analysis, Large National Chains display the third lowest rate of returns with change.¹⁸⁰ Returns filed by Large National Chains show the second lowest magnitude of change, both net and among returns with change, and second lowest weighted average change.¹⁸¹ Narrowing the AGI analysis to focus on Schedule C Form returns, Large National Chains still display results that are relatively compliant.¹⁸²

When considering the Total Tax line item, Large National Chain returns appear less compliant than in the AGI analysis, with results that fall in the middle of the compliance scale compared with other preparer types. For example, while Large National Chain returns indicate the second lowest rate of returns with change to Total Tax (second only to IRS/VITA/TCE), they show the third highest rate of net change, fourth highest rate of change among

178. *See supra* Table 1, Figure 1 (showing, for example, the second lowest net change and rate of change among returns with change to AGI for Large National Chains, at 6.9 and 19.8%, respectively); Table 5, Figure 6 (showing, for example, the third lowest net change and rate of change among returns with change to EITC for Large National Chains, at 22.5 and 47.9%, respectively).

179. *See supra* Table 3, Figure 4 (showing, for example, the second lowest rate of returns with change to Total Tax for Large National Chains, at 31.5%. Large National Chains, however, have the third and fourth highest net change and rate of change among returns with change to Total Tax, at 92.8 and 174.2%, respectively); Figure 8 (showing, for example, the forth highest and forth lowest rates of change in filing status generally and from the Head of Household status for Large National Chains, at 24.7 and 34.5%, respectively).

180. *See supra* Table 1, Figure 1 (showing the rate of returns with change to AGI for Large National Chains at 37.5%, preceded by Friends/Relatives at 31.1% and the Taxpayer, at 34.4% of returns with change to AGI).

181. *See id.*

182. *See supra* Table 2, Figure 3 (showing, for example, the third lowest net change and average weighted change to AGI among Schedule C Form returns for Large National Chains, at 22.2% and \$3614 respectively).

returns with change, and fourth lowest weighted average change.¹⁸³

Large National Chain returns are again much more compliant on the EITC line item, both before and after focusing on Schedule C Form returns. The category of Large National Chain displays the second lowest rate of returns with change to EITC; and the second and third lowest magnitude of change, among returns with change and net change, respectively.¹⁸⁴ However, the results for Large National Chain returns are not very compliant on the Filing Status line item: here, Large National Chain returns fall in the middle of the compliance scale compared with other preparer types.¹⁸⁵ Large National Chain returns exhibit, for example, the fourth highest (or fifth lowest) change rate in Filing Status generally and fourth lowest (or fifth highest) change rate from the more beneficial Head of Household status.¹⁸⁶

F. *Friends/Relatives of the Taxpayer*

Similar to Large National Chains, the returns filed by Friends/Relatives of the taxpayer generally do not exhibit the least compliant results. However, even more than Large

183. *See supra* Table 3, Figure 4. Narrowing the Total Tax analysis to Schedule C Form returns does not change the results much. Large National Chain returns now display the third highest rate of returns with change (preceded by the Taxpayer and Friends/Relatives), the fourth highest rate of net change (preceded by the Taxpayer, Friends/Relatives and Other Professional Preparers), the third highest rate of change among returns with change (preceded by the Taxpayer and Friends/Relatives) and third lowest weighted average change (preceded by IRS/VITA/TCE and Other Preparers). *See supra* Table 4, Figure 5.

184. *See supra* Table 5, Figure 6. However, the weighted average change in the EITC analysis is not insignificant; it ranks fourth highest compared with other preparer categories (preceded by Other Preparers, Enrolled Agents and Other Professional Preparers). Results for EITC narrowed to Schedule C Form returns for Large National Chains remain rather compliant. Large National Chain returns show the second lowest net change and lowest rate of change among returns with change, at 15.7 and 22.2%, respectively. *See supra* Table 6, Figure 7. Large National Chain returns also show the third lowest weighted average change, at \$455. *See id.*

185. *See supra* Figure 8; *infra* Appendix D.

186. *See id.* (showing the change rate in filing status generally for Large National Chains at 24.7%, and from the Head of Household status at 34.5%).

National Chains, the Friend/Relative category tends to fall on the lower end of compliance. Friend/Relative returns display particularly problematic results when focusing on Schedule C Form returns, but are also consistently less compliant on the EITC and the legally simpler Filing Status line items. Specifically, while Friend/Relative filings show the lowest rate of returns with change to AGI, the magnitude of change and weighted average change are ranked the third lowest compared with other preparer types.¹⁸⁷ These results do not change significantly when exploring Schedule C Form returns, except that the rate of returns with change in the Friend/Relative category is now tied for the highest with Other Preparers.¹⁸⁸

When considering the Total Tax line item, Relative/Friend returns indicate the third highest rate of returns with change, preceded only by Enrolled Agents and CPAs/Attorneys,¹⁸⁹ both of which prepare a larger share of legally ambiguous Schedule C Form and itemized deduction returns.¹⁹⁰ Friend/Relative returns also indicate the fourth highest and fifth lowest magnitude of change, both net and among returns with change, respectively, but only the second lowest weighted average change.¹⁹¹ When focusing on Schedule C Form returns, the Relative/Friend category indicates worse compliance results yet again, with the

187. *See supra* Table 1, Figure 1 (showing the rate of returns with change to AGI in the Friend/Relative category at 31.1%, the rate of change among returns with change to AGI at 24.3% and weighted average change at \$2742).

188. *See supra* Table 2, Figure 3 (showing the rate of returns with change in the AGI analysis narrowed to Schedule C Form returns at 78.7% for Friends/Relatives).

189. *See supra* Table 3, Figure 4 (showing the rate of returns with change to Total Tax for the Friend/Relative category at 39%, preceded by Enrolled Agents at 57.4%, and CPAs/Attorneys at 46.7% of returns with change to Total Tax).

190. *See supra* Figure 2; *infra* Appendix C (showing that Friend/Relative returns include 12.9% Schedule C Form returns, while the share of Schedule C Form returns filed by CPAs/Attorneys and Enrolled Agents is 32.5 and 53.5%, respectively).

191. *See supra* Table 3, Figure 4 (showing the weighted average change to Total Tax in the Friend/Relative category at \$509, second only to IRS/VITA/TCE at \$393).

second highest rate of returns with change and magnitude of change, net and among returns with change.¹⁹²

As with other line items in this category, the results for EITC are consistently not very compliant, but also are not least compliant compared with other preparer types. Friend/Relative returns indicate the fourth highest rate of returns with change and fourth lowest weighted average change to EITC originally claimed.¹⁹³ The magnitude of change to EITC is the third and second highest, net and among returns with change, respectively.¹⁹⁴ Similar results emerge when focusing on Schedule C Form returns, within the EITC line item analysis,¹⁹⁵ as well as the Filing Status line item.¹⁹⁶

G. Caveats and Policy Inferences

Three decades ago, Kidder and McEwen theorized that two broad types of tax professionals exist: professionals who facilitate taxpayer compliance and those who are more likely to be associated with noncompliance.¹⁹⁷ More recently, Sakurai and Braithwaite drew from a 2000 nationwide

192. See *supra* Table 4, Figure 5. One possible explanation for this result is that lower preparation skills on the Friend/Relative end lead to tax filing errors that are not in the taxpayer's favor (financially or otherwise). Alternatively, if the taxpayer whose return is filed initially has lower income, the financial implication of errors identified by the IRS examiner may not be large compared with those made on the returns of taxpayer aided by other preparers. Note that compared with the AGI narrowed to Schedule C Form returns analysis, this time the weighted average change in the Friend/Relative category is not among the highest. Rather, the weighted average change is fourth lowest compared with other preparation modes. *Id.*

193. See *supra* Table 5, Figure 6.

194. See *id.*

195. Here, Friend/Relative returns show the fourth highest magnitude of change (net and among returns with change) and weighted average change to EITC originally claimed. See *supra* Table 6, Figure 7.

196. See *supra* Figure 8; *infra* Appendix D (showing that Friend/Relative returns have the third highest rate of change in filing status, both generally and from Head of Household status at 29.9 and 46.3%, respectively).

197. Robert Kidder & Craig McEwen, *Taxpaying Behavior in Social Context: A Tentative Typology of Tax Compliance and Noncompliance*, 2 TAXPAYER COMPLIANCE: SOCIAL SCIENCE PERSPECTIVE 47, 69-72 (Jeffery Roth et al. eds., 1989).

survey of Australian taxpayers and placed tax advisors on a hypothetical compliance scale based on their inclination to facilitate taxpayer noncompliance, as opposed to more accurate and conservative tax reporting.¹⁹⁸ Building on these studies, the empirical analysis undertaken in this Article indicates that some compliance patterns are more likely for certain types of preparers than others.

Specifically, most of the compliance findings detailed in this Article differ for professionally regulated and trained preparers and those that, at the time the data used for this Article was drawn, operated outside the reach of the tax administration. In particular, returns Other Preparers and Other Professional Preparers file consistently exhibit poor compliance results.¹⁹⁹ In contrast, the categories of CPA/Attorney and IRS/VITA/TCE, both of which subscribe to clearer and professionally heightened regulatory standards, display some of the most compliant filings.²⁰⁰ That being said, the available data is still far from suggesting well-defined compliance trends for preparer filings across the board. Surprisingly, Enrolled Agents, the only taxpayer representatives directly regulated and supervised by the IRS at the time of this study, exhibit rather unfortunate findings, at times displaying the least compliant results.²⁰¹ Additionally, Large National Chains, which were mainly held to guild-regulated norms and oversight until the 2011 preparer regulation,²⁰² perform rather well, in many cases surpassing the compliance of Enrolled Agent returns.²⁰³

198. Sakurai & Braithwaite, *supra* note 28, at 375, 384-85 (suggesting that, on one end of the compliance scale are professionals who are honest and risk-adverse, and those who are creative and aggressive on the other. A third group, in the middle, includes cautious tax minimizers. Sakurai & Braithwaite argue that even though the aggressive advisor type is the least popular in terms of taxpayer preference, it is of a particular concern for the tax authority).

199. *See supra* Part V.B (discussing Other Preparers and Other Professional Preparers).

200. *See supra* Part V.A (discussing IRS/VITA/TCE and CPAs/Attorneys).

201. *See supra* Part V.C (discussing Enrolled Agents).

202. *See supra* notes 36-43 and accompanying text (discussing preparer oversight prior to the 2011 preparer regulation).

203. *See supra* Part V.E (discussing Large National Chains).

However, no study is without its qualifications, especially for an empirical undertaking. The analysis in this Article is of no exception. One key qualification is the limited amount of data available for the analysis and the fact that it is restricted to the EITC population. Given these restrictions, it becomes empirically tenuous to conclusively establish specific compliance traits for different types of preparers. First and foremost, like previous scholarship in this area, the analysis undertaken here does not prove whether the instigator of tax noncompliance is the taxpayer or, rather, the preparer. Errors identified on returns filed by someone other than the taxpayer do not necessarily mean they are the result of preparer's misconduct. In advising clients and completing returns on their behalf, preparers must rely on the information their clients provide.²⁰⁴ If this information is incomplete or incorrect, the returns preparers file will not reflect the taxpayer's true tax liability.²⁰⁵

Further, the analysis carried out in this Article relies on IRS audit and review to establish whether information reported on tax returns is compliant. At times, however, what the IRS may interpret as noncompliance may more accurately be defined as a difference of opinions—between the taxpayer or preparer and the IRS examiner—about the tax law and its application. Moreover, IRS examiners may be reluctant to challenge the judgment of the preparer in some cases, such as those involving CPAs and Attorneys, as

204. James Tackett et al., *Profiling Fictitious Tax Data*, 116 TAX NOTES 953, 954 (2007).

205. *Id.* At times, some indicators may point to who is leading the taxpayer-preparer relationship and, accordingly, possible acts of noncompliance. For example, some adjustments on returns made after IRS audit and review can suggest more advanced tax planning skills and knowledge. In such cases, tax preparers are more likely to be the cause, or at least facilitators, of noncompliance, compared with the taxpayer. An example of this could be incorrectly claiming Head of Household filing status. On the other end, errors identified on tax returns that show no financial gain to the taxpayer (or cost the taxpayer an increased liability) could indicate lower preparation skills, negligence, or innocent mistakes, as opposed to aggressive tax planning activities. An example of this could be incorrectly claiming a filing status other than the Head of Household when Head of Household status is applicable. However, existing data offers no reliable method to identify whether such tax filing errors are intentional efforts to exploit the law or, rather, the result of confusion and innocent mistakes in its application.

opposed to other preparers, such as friends and relatives of the taxpayer, who lack an authoritative (i.e., professional) stance. This could be the case, particularly, in legally ambiguous filing circumstances where the application of the law is unclear. Accordingly, what may appear as noncompliance in the analysis may in fact reflect an inherent bias in the database. However, as most tax audits end with IRS judgment (compared, for example, with court rulings), no better alternative for readily assessing tax return compliance is currently available.

One of the valuable insights the Sakurai and Braithwaite analysis offers is that taxpayers are inclined to seek out advisors who share their views on compliance.²⁰⁶ This thesis is consistent with Karlinsky and Bankman, who find that sole proprietors interested in minimizing their tax liability turn to tax professionals who may facilitate such aspirations.²⁰⁷ In this view, more compliance- or noncompliance-motivated taxpayers are likely to reach out to preparers who they believe are in a position to advance their tax planning inclination. This proposition, as well as the challenges in identifying the instigator(s) of noncompliance, clarify that the taxpayer and preparer arrive at the tax filing platform as one interconnected unit.

Accordingly, an effective approach to better understanding and enhancing taxpayer compliance is not necessarily the traditional two-player metric, where the tax administration and the taxpayer are the sole, or even key, parties.²⁰⁸ Rather, what is at issue is a three-player game. In this game, the taxpayer, preparer, and tax administration are initially positioned on a level playing field.²⁰⁹ However, the regulatory scene that existed prior to August 2011—where some preparers were able to operate outside the

206. Sakurai & Braithwaite, *supra* note 28, at 375-76.

207. Stuart Karlinsky & Joseph Bankman, *Developing a Theory of Cash Businesses Tax Evasion Behavior and the Role of their Tax Preparers*, THE 5TH INT'L CONF. ON TAX ADMIN. PROC. 164 (2002).

208. For the leading piece originating much of the modern economic analysis of tax compliance, see Michael G. Allingham & Agnar Sandmo, *Income Tax Evasion: A Theoretical Analysis*, 1 J. PUB. ECON. 323 (1972) (adapting Gary Becker's economic analysis of crime and compliance to the area of tax).

209. For studies advancing the three-player proposition see, for example, Cuccia, *supra* note 69, at 42-43 and Klepper & Nagin, *supra* note 80, at 168-69 (1989).

reach of the tax administration—set the stage for the administration to serve the role of the third, disadvantaged wheel. Read in this light, the heightened scrutiny and regulatory standards of the new preparer regulation can be a boon to tax compliance. As the relationship between the tax administration and preparers becomes closely knit and better regulated, more accurate and compliant filings can be expected, at least in those situations under the preparer's (compared with the taxpayer's) control.

In addition to the qualifications concerning the empirical findings discussed in this Article, the database used gives rise to two more limitations. Specifically, notwithstanding the many benefits of the 2000 EITC Compliance Study database, it includes information of only those taxpayers who claimed the EITC and were subsequently selected for audit and review. For this reason, some of the compliance trends and patterns identified in this Article may be endemic to the entire tax system, while others could be unique to EITC recipients. While there is evidence to suggest that many of the predicaments involving EITC noncompliance illustrate problems characteristic of the entire tax system,²¹⁰ it is difficult to draw firm conclusions without additional information.²¹¹

Finally, prior to the 2011 preparer regulation, no standard preparer identification number existed.²¹²

210. See, e.g., *Waste, Fraud, and Abuse: Hearing Before the H. Comm. on Ways and Means*, 108th Cong. 95-96 (2003) (statement of Leonard E. Burman Senior Fellow, Urban Institute, Co-Director, Tax Policy Center, and Research Professor, Georgetown Public Policy Institute).

211. Compliance with tax credits, deductions and allowances other than the EITC is generally *not* verified by the IRS. Hence, it is difficult to conclude that EITC compliance is inherently different (e.g., greater or lower) than compliance with other provisions in the tax code. Accordingly, research efforts should continue to explore taxpayer compliance with other provisions in order to provide for a more comprehensive tax compliance assessment.

212. Until the 2011 preparer regulation, three different identification numbers existed for paid preparers. These included: (1) preparer social security number (SSN), (2) employer identification number (EIN), and (3) preparer identification number (PTIN). Preparers could have used any of these three numbers to identify themselves on the returns they prepared. However, the 2011 regulation requires all paid preparers to register and obtain a PTIN number for them to use. For the background efforts to establish a system for an all inclusive preparer identification number, see TIGTA (2009), *supra* note 2, at 3, 4, 19; INTERNAL REVENUE SERV., PUBL'N 4832, RETURN PREPARER REV. 33 (2009)

Accordingly, return information often did not reveal the precise identity of the preparer involved and, therefore did not allow assessment of the effect this particular preparer had on taxpayer compliance, based on the returns he or she filed.²¹³ Therefore, the analysis undertaken in this Article utilizes the group-based preparer types provided in the 2000 EITC compliance study.

However, the analysis and deficiencies identified in returns preparers file (as well as in self-prepared returns) only crystallize the urgent need to administer a uniform system of preparer identification numbers. This is important not only for ensuring the integrity of the tax system when identifying problematic patterns of preparer filing, but also in protecting innocent taxpayers and the broader preparation industry against those who undermine this important profession. For this reason, the mandatory PTIN requirement established in the 2011 preparer regulation is a welcome advancement. This requirement may serve a key function in effectively facilitating further administrative mechanisms in the coming years, including advancing preparer and taxpayer outreach and oversight.

CONCLUSION

This Article empirically explores the strengths and challenges of tax preparer usage and, particularly, the role preparers play in taxpayer compliance and administration. Considering the obligation U.S. taxpayers face yearly in filing their returns and the significant rise in the complexity of the tax code, it is not surprising that the majority of taxpayers choose to rely on third-party preparation services. What is both surprising and disconcerting is the extensive lack of data and research in this area. Without basic information on matters such as the experience level, professional affiliation, and past filing behavior of preparers, the tax administration, taxpayers, and policy

(indicating that the IRS lacks resources to offer a unified preparer system and progress in that direction will have to be gradual).

213. This deficiency has hindered important compliance efforts, including identifying unscrupulous preparers, keeping preparers in check as a matter of routine administration practice, and taking appropriate enforcement actions against relevant preparers to ensure the integrity of professional aid on the one hand, and of tax administration at large on the other.

officials remain ill-informed of the strengths and deficiencies involved in preparation services. Furthermore, the system of taxation, which greatly depends on an honor system of self-reporting, becomes critically susceptible to abuse from within. Future works should therefore continue to explore this area of taxpayer compliance, including the growing use of preparation software and the political role the preparer industry plays in software regulation, or lack thereof.²¹⁴

On the theoretical-policy spectrum, it is beneficial to further explore the proposition of a three-player game metric. In this context, audit and review formulas, for example, may not only track problematic taxpayers but could also focus on flagging unscrupulous professionals and setting clear standards for industry operation. All preparers should be held accountable for their service. The disconcerting evidence regarding Enrolled Agents does not necessarily mean that regulating preparers is an ineffective policy alternative, a point that can be illustrated by the generally compliant filing results for CPA/Attorney and IRS/VITA/TCE returns. However, IRS standards and supervision of Enrolled Agents might be seriously deficient and should be thoroughly reexamined, particularly in light of the expanded registration and competency requirements set by the new preparer regulation. On the other hand, the compliant filing results for Large National Chains suggest that internal industry or guild standards, when properly applied, could serve as a complementary tool for ensuring a reliable and compliance-enhancing preparation industry, albeit still not as effectively as when external standards are applied and monitored.

214. See, e.g., RETURN PREPARER REVIEW, *supra* note 8, at 9-10 (“Despite large volumes of returns prepared using consumers and commercial tax preparation software, quality control over these products rests exclusively with the software publishers. There are approximately 80 preparation software packages available for purchase in the U.S. currently. . . . While the number of tax software providers appears robust, four companies dominate the market, accounting for 80% of the tax returns filed electronically over the last two years.”).

Appendix A

Preparer Type	Number of Returns*
CPA/Attorney	314
Enrolled Agent	117
Friend/Relative	257
Large National Chain	707
IRS/VITA/TCE	52
Other Preparer	105
Other Professional Preparer	1226
Taxpayer	488
Null	191
Total	3457

* Detailing the number and distribution of returns audited for the 2000 EITC compliance study. Any discrepancy in the amount claimed on the returns originally filed and that which the IRS determined after audit and review was multiplied by the weighting factor identified in the random sample to infer results for the entire EITC population.

Appendix B

Preparer	% Electronic Filers
CPA/Attorney	32.1%
Enrolled Agent	29.9%
Friend/Relative	17.8%
Large National Chain	94.2%
IRS/VITA/TCE	46.1%
Other Preparer	43.2%
Other Professional Preparer	53.0%
Taxpayer	27.0%

Appendix C

Preparer	% with Schedule C	% with Itemized Deductions
CP/Attorney	32.5%	11.83%
Enrolled Agent	53.5%	13.84%
Friend/Relative	12.9%	5.51%
Large National Chain	12.9%	1.85%
IRS/VITA/TCE	5.1%	3.89%
Other Preparer	10.9%	4.56%
Other Professional Preparer	22.8%	6.86%
Taxpayer	16.9%	5.09%

Appendix D

Percentage of Tax Returns with a Change in Filing Status		
Type of Preparer	Change Rate in Filing Status	Change Rate When Originally Claiming Head of Household
CPA/Attorney	11.4%	23.6%
Enrolled Agent	21.0%	48.4%
Friend/Relative	29.9%	46.3%
Large National Chain	24.7%	34.5%
IRS/VITA/TCE	22.2%	32.5%
Other Preparer	37.6%	56.6%
Other Professional Preparer	30.7%	46.2%
Taxpayer	16.9%	30.3%