Chapter 1: Ethics

Note. Corrections for all of the chapters are available at **TaxSchool.illinois.edu.** For clarification about terms used throughout this chapter, see the **Acronyms and Abbreviations** section following the index.

For your convenience, in-text website links are also provided as short URLs. Anywhere you see **uofi.tax/xxx**, the link points to the address immediately following in brackets.

About the Author

Chris Korban, CPA, is a Tax Materials Specialist at the University of Illinois Tax School. He joined Tax School in 2023 with nine years of experience in public accounting. Chris earned both his Bachelor's Degree in Accounting and Master of Accounting Science from the University of Illinois.

Other chapter contributors and reviewers are listed at the front of this book.

As a consequence of working with confidential and highly sensitive information, tax practitioners are responsible for conducting themselves and their practices in an ethical manner. Circular 230, a publication issued by the Department of the Treasury, lays the foundation of the governing rules for those practicing before the IRS. Among its contents, Circular 230 establishes ethical standards for tax practitioners. However, practitioners may find themselves in situations where an issue may not be as cut and dry as the scenarios and examples included in Circular 230. Often, a degree of judgement and consideration is involved in assessing such situations and navigating a path forward in how best to proceed and handle them.

Alicia Hutchinson is a fictional CPA with 15 years of experience working for an accounting firm of 50 employees, Hermann & Trout. While she prepares tax returns for individuals and small businesses, she also specializes in fiduciary taxation, preparing tax returns for estates and trusts. This chapter follows Alicia through a typical day in early March and examines several ethical situations she faces.

FEES

As Alicia arrives at her office, her phone is ringing. When she answers the phone, a client, Reed Barker, for whom she had prepared Form 1040, U.S. Individual Income Tax Return, begins angrily complaining about the invoice he received for Alicia's services for preparing his return. Specifically, Reed is surprised at the amount he is being billed for the tax preparation services, stating that the invoiced $500 is higher than the $400 he was expecting to pay. Alicia recalls that she spent additional time calculating Reed's basis in some shares of stock he sold during the tax year that was not reported on Form 1099-B, Proceeds from Broker and Barter Exchange Transactions, and that Reed did not know what the correct amount was at the time of the sale. Alicia calmly explains that the additional amount invoiced to Reed is for the time that she spent reviewing the historical pricing of the sold stock and calculating the basis after the stock-splits and reinvested dividends occurring after the date of acquisition.

While Reed understands and recalls Alicia's conversation with him during the preparation process when she explained she would need to spend time to calculate the basis for the sold stock, he is upset that Alicia did not explicitly tell him there would be an increase to the tax preparation fee and the amount of such an increase. Alicia points out that the engagement letter Reed signed contains a provision that additional work Alicia provides related to incomplete or unprovided information would result in higher fees. This explanation does not appease Reed.

UNCONSCIONABLE FEES

Circular 230, §10.27, provides ethical guidance pertaining to charging fees in connection to matters raised before the IRS, including tax return preparation. Section 10.27(a) states, generally, practitioners are prohibited from charging unconscionable fees. No additional guidance follows pertaining explicitly to unconscionable fees. Moreover, §10.27(c), which provides definitions for §10.27, does not include a definition or general characteristics of an unconscionable fee.

A definition is provided for **contingent fees,** and §10.27(b) provides rules practitioners must adhere to in regards to contingent fees. Notably, a contingent fee is a fee based wholly or in part on the outcome of a tax position. Generally, practitioners are prohibited from charging contingent fees. However, exceptions apply to fees for services pertaining to an IRS examination of original tax returns or certain amended returns, claims of credit related to IRS-assessed interest or penalties, and judicial proceedings arising from the Code.

Within the context of the Circular 230 section, while contingent fees in general may be considered unconscionable fees, the publication does not state nor indicate that unconscionable fees are solely contingent fees. As Circular 230 does not define what is or what is not unconscionable, practitioners are left to best interpret what the IRS or the Department of the Treasury considers as such. In general, "unconscionable" is defined as shockingly unfair or unjust, excessive, unreasonable, and not guided by conscience.[1] From this definition, an interpreted guideline to adhere to the Circular 230 provisions pertaining to charging fees may include that a practitioner must charge a fee that is fair and reasonable. While what may constitute as fair or reasonable can vary from person to person, a practitioner could use documented reasoning, time spent on the return, and other contributing factors to defend and justify an invoiced fee.

According to the American Institute of Certified Tax Planners, a guiding factor to ensure practitioners are not charging unconscionable fees is that "the fee should represent a fair exchange of value."[2] A client could be upset over an invoiced fee due to a lack of perceived value. While that client may appreciate that their practitioner's time is valuable, perhaps they do not find the benefit received for that time to be of net benefit. For example, in the absence of supporting documentation or a reasonable method to calculate an asset's basis, the IRS will treat an asset's basis as zero.[3] If the basis a practitioner calculated resulted in a tax benefit that was less than the additional cost invoiced to their client for the practitioner's time in making the calculation as opposed to reporting the client's basis as zero, the client may understandably find the additional cost to them lacking in value.

CLEAR COMMUNICATION

Circular 230 identifies best practices relating to communication from practitioners to their clients. Section 10.33(a)(1) advocates clear communication between the parties pertaining to the terms of the engagement. A client should understand the type and scope of services to be rendered by the practitioner, as well as the fee structure for such services. Practitioners should communicate the engagement scope and terms in a written engagement letter and have clients sign the document to acknowledge they read, understood, and agree with the described terms.

Practitioner Planning Tip

Practitioners should consider the timing of communicating their fee structure to aid them in ensuring their expectations align with their client's. Ideally, such an understanding occurs before a practitioner begins preparing a client's tax return so the client can make an informed decision about proceeding with the engagement. This may present a challenge to practitioners who structure their fees based on the time it takes them to complete preparing a return. In addition to the written communication disclosed in an engagement letter, it may be beneficial for practitioners to verbally relay such fee structures to their clients, particularly in cases where a client is engaging with the practitioner for the first time. Practitioners should exercise caution if providing an estimate or range for their preparation time and resulting fee to avoid unrealistic expectations by the client.

1. *Unconscionable*. 2024. Merriam-Webster. [www.merriam-webster.com/dictionary/unconscionable] Accessed on Jan. 26, 2024.
2. *Ethical Considerations for Tax Professionals: Determining Fees*. Molina, Dominique. Sep. 13, 2022. American Institute of Certified Tax Planners. [certifiedtaxcoach.org/ethical-considerations-for-tax-professionals-determining-fees] Accessed on Jan. 30, 2024.
3. *Cost Basis Basics — Here's What You Need to Know*. 2024. FINRA. [www.finra.org/investors/insights/cost-basis-and-your-taxes] Accessed on Jan. 30, 2024.

Written and verbal communication of the practitioner's fee structure alone may not alleviate a client's confusion about charges for additional work. While it may seem obvious to practitioners that additional time spent on work outside the scope of an engagement would result in additional charges, clients may not be aware of the existence or amount of additional time spent obtaining or calculating missing information. If practitioners explicitly tell a client there would be an increase in their tax preparation fee at the time they let the client know that additional work is necessary, the client is aware and can anticipate a higher fee. Additionally, such communication allows the client to weigh their options against the additional cost for their practitioner to incur additional work. For example, in the case of missing basis, such options may include the client reaching out to their broker to see if the broker could determine the basis, researching and calculating the basis themselves, or opting to report the basis for the asset sold as zero. Further explanation from practitioners may allow the client to make a more informed decision on how best to proceed when the issue is first raised by the practitioner.

DISCUSSION

What ethical considerations should be taken into account in this situation, and what actions, if any, should Alicia have taken to mitigate the misunderstanding and disappointment her client experienced? _____

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Did Alicia charge Reed an unconscionable fee? Why or why not? _____

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How could Alicia more clearly communicate her fee structure? At what time during the engagement could this communication be more effective? _____

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What are some effective ways to disclose a practice's fee structure? What type of communication successfully conveys when additional work needed will result in additional charges for services rendered? _____

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DISCLOSING INFORMATION

Five minutes after ending her call with Reed, Alicia begins prepping for her meeting with a longtime client, Holly Lynn, a young professional with a high-earning position at a national consulting firm. Holly arrives at the meeting on time and brings her tax documents for Alicia to prepare her tax return. After they discuss the prior tax year, Holly explains that she is in the process of purchasing her first home and that her mortgage broker needs copies of her last two years' tax returns as part of the prequalification process. Holly asks Alicia if she could please send the copies of the returns directly to the mortgage broker.

PERMISSABLE DISCLOSURE

Practitioners are required to comply with strict provisions of the Code and law when disclosing sensitive data such as a taxpayer's tax return or tax return information. Section 10.51(a)(15) of Circular 230 identifies the willful disclosure or use of a taxpayer's tax return or tax return information not in accordance with provisions of the Code as a sanctionable act of incompetence and disreputable conduct. Therefore, before disclosing a tax return or tax return information to another party, practitioners must be familiar with the provisions of the Code and Treasury Regulations regarding disclosure of such information with and without the taxpayer's consent.

Disclosure with Taxpayer Consent

Treas. Reg. §301.7216-3 allows practitioners to disclose tax return information provided they obtain **written** consent from the taxpayer prior to the disclosure. Generally, such written consent must contain the following.

1. The name of the taxpayer and the name of the tax return preparer
2. The purpose and intended recipients of the disclosure
3. A description of the tax return information that the tax return preparer will disclose
4. The taxpayer's signature and date

Practitioners must obtain written consent from the taxpayer **before** they disclose tax return information. This means that practitioners are prohibited from receiving retroactive consent after disclosing tax return information. Retroactive consent fails to fulfill the permission timing requirements as specified by the regulations.[4] While the taxpayer may specify the duration of the consent, the default duration is one year from the date of the taxpayer's signature if the consent is silent on the matter of duration.[5] The following is an example of sufficient written consent that a practitioner may receive from their client who is requesting their preparer provide the prior two years tax returns to a mortgage broker to assist them with the prequalification process for approving a loan.[6]

4. Treas. Reg. §§301.7216-3(b)(1) and (2).
5. Treas. Reg. §301.7216-3(b)(5).
6. Example adapted from Rev. Proc. 2013-14, 2013-3 IRB 283.

Consent to Disclose Tax Return Information

Federal law requires this consent form be provided to you. Unless authorized by law, we cannot disclose your tax return information to third parties for purposes other than the preparation and filing of your tax return without your consent. If you consent to the disclosure of your tax return information, Federal law may not protect your tax return information from further use or distribution.

You are not required to complete this form to engage our tax return preparation services. If we obtain your signature on this form by conditioning our tax return preparation services on your consent, your consent will not be valid. If you agree to the disclosure of your tax return information, your consent is valid for the amount of time that you specify. If you do not specify the duration of your consent, your consent is valid for one year from the date of signature.

You have indicated that you wish to have copies of your two most recent tax returns sent to [name of third party] to determine qualification for a mortgage loan. If you would like [name of practitioner] to disclose your tax return information to [name of third party], please check the corresponding box for the service in which you are interested, provide the information requested below, and sign and date your consent to the disclosure of your tax return information.

☐ I, [name of client], authorize [name of practitioner] to disclose to [name of third party] my tax return information for [applicable years] as part of the prequalification process to approve me for a mortgage loan.

Signature: _____

Date: _____

If you believe your tax return information has been disclosed or used improperly in a manner unauthorized by law or without your permission, you may contact the Treasury Inspector General for Tax Administration (TIGTA) by telephone at 1-800-366-4484, or by email at complaints@tigta.treas.gov.

Alternatively, if a practitioner maintains a policy of not providing tax return information to third parties (even if requested by the client), a practitioner may offer to prepare a copy of the requested returns for the client to then give to the third party. The practitioner could explain this approach to ensure that the client has complete ownership over the disclosure of her tax return information.

Practitioner Planning Tip

Practitioners should consider offering a secure client portal to avoid any disclosure issues and for the taxpayer to have ready access to their tax documents.

Disclosure Without Taxpayer Consent

Treas. Reg. §301.7216-2 provides specific situations where a tax practitioner may release or may be required to disclose taxpayer information without the taxpayer's consent. These permitted disclosures do not result in sanctions (civil or criminal). The following are examples of permitted disclosures.

- **Disclosure** pursuant to any other Code section or Treasury regulation
- **Disclosure** to the IRS
- **Disclosure** pursuant to a court order
- **Use** of a client's tax return information when updating tax preparation/filing software
- **Use** of and **disclosure** to tax return preparers located within the same firm **inside** the United States for tax preparation or auxiliary services for that client
- **Use** of and **disclosure** to tax return preparers located within the same firm **outside** the United States for tax return preparation or auxiliary services for that client (with the client's written consent)
- **Use** of and **disclosure** between tax return preparers when both preparers are located within the same firm **outside** the United States if the information was originally provided to the firm by the taxpayer
- **Disclosure** to tax return preparation software/equipment contractors **only to the extent necessary** to provide contracted services
- **Disclosure** and **use** for certain related taxpayers
- **Disclosure** when securing legal advice, or during Treasury investigations or court proceedings concerning the preparer
- **Use** and **disclosure** to other members of the preparer firm for other tax, legal, or accounting services to the client

PENALTIES FOR IMPROPER DISCLOSURE

Under IRC §7216, a tax return preparer generally may not use or provide a taxpayer's **return information** to another party, unless:[7]

- The **use** or **disclosure** is specifically permitted by §7216 or Treas. Reg. §301.7216-2, or
- The tax return preparer obtains valid consent from the taxpayer.

IRC §6713 imposes civil penalties starting at $250 for each unauthorized or improper use or disclosure of tax return information. The penalties increase to $1,000 per event if the disclosure is made in connection with identity theft crime. The maximum annual fines imposed by these provisions are $10,000 and $50,000, respectively.

Disclosures made **knowingly or recklessly** are also subject to criminal penalties of up to $1,000 per event and up to one year in prison. Violations in connection with identity theft crimes are subject to fines of up to $100,000 each.[8]

7. IRC §7216(a)(1); Treas. Reg. §301.7216-3.

8. IRC §7216(a)(2).

DISCUSSION

What allowable actions can Alicia take to address Holly's request? Is Alicia legally obligated to turn over Holly's return? _____

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Why might Hermann & Trout maintain a policy of not providing tax return information to third parties, even upon client request? What alternative actions could the firm's practitioners take to address such requests? _____

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How do you handle requests for sending tax return information to third parties in your practice? What factors influence your approach in addressing such requests? _____

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COMPETENCE

Alicia receives an email from one of Hermann & Trout's tax associates who has been with the firm for just over two years, with this filing period being his third tax season. The associate, Ben, is assisting Alicia with the preparation of Form 1065, U.S. Return of Partnership Income, for one of Alicia's partnership clients. The email contains a list of questions, mostly pertaining to procedural applications of preparing the return instead of client-specific questions that Ben may not be privy to. Alicia is somewhat surprised at some of the questions she is receiving from Ben, as she would normally expect an associate at his level to know the information he is seeking. Ben works remotely, and only seldomly comes into the office. Alicia wonders whether Ben has the necessary competence to work on this partnership return, and whether Ben can obtain competence effectively considering his working environment.

Section 10.35 of Circular 230 requires practitioners to possess the "appropriate level of knowledge, skill, thoroughness, and preparation necessary" to engage in practice before the IRS. While it goes on to state that practitioners may obtain competence by consulting with experts or conducting research, Circular 230 does not provide specific criteria or examples of what would constitute an appropriate level of competence. As such, practitioners may need to look to other publications or sources in determining a framework to evaluate and assess competency, bearing in mind that such alternative resources **do not** necessarily provide protection or a defense against a challenge of competency by the IRS.

Many professional organizations maintain a professional code of conduct to help define competency. For example, the code of professional conduct for the American Institute of Certified Public Accountants (AICPA) includes competency requirements and criteria for its members. The AICPA's code identifies competency as the level of knowledge required to provide services with an aptitude for the subject matter and exercise sound judgement in performing the necessary duties.[9] The code clarifies that competency is obtained through a combination of education and experience, with both aspects being a continuous process through the duration of a practitioner's career.[10] The following are provisions addressed specially to AICPA members who practice public accounting.[11]

1. Professional competency includes knowledge on standards of the profession, technical matter of the engagement, and exercising sound judgement in the application of such knowledge in practice.
2. Members accepting engagements do so with the implication they possess the ability to apply the necessary level of knowledge and skill **diligently and with reasonable care**. Such acceptance, however, does not imply infallibility of knowledge or judgement.
3. A member may obtain the necessary knowledge for performing an engagement through research and consultation during the performance of the engagement.
4. A member who does not have or is unable to obtain the level of competency necessary for an engagement should advise the client to engage with someone who possesses the necessary competence to perform the engagement.

Such criteria provide practitioners with more insight and guidance to possess and maintain competency in performing public accounting services, including practicing before the IRS, compared to the brief provision in Circular 230. Both Circular 230 and the AICPA code of professional conduct identify that practitioners are allowed to obtain competency during the performance of an engagement, and that not possessing such knowledge does not preclude them from accepting engagements. Therefore, obtaining knowledge or having access to resources such as research software or colleague expertise is an integral part of developing and maintaining competency. In developing new staff and fostering their growth in building skills and forming technical knowledge, firm management should be mindful of their staff's access to these critical resources. The working environment, whether it be in an office or a remote work arrangement, can therefore be a factor in fostering or hindering growing one's competency.

INCOMPETENCE AND DISREPUTABLE CONDUCT

Circular 230, §10.51, identifies actions deemed incompetent and exhibiting disreputable conduct. The consequences for such offenses can be severe, as the provision carries forward from §10.50, which addresses sanctions such as the ability of the Office of Professional Responsibility to censure, suspend, or disbar a practitioner. Circular 230, §10.51(a) illustrates a series of potentially actionable offenses that constitute incompetence and disreputable conduct.

- Criminal convictions
- Felony convictions resulting in the practitioner being unfit to represent taxpayers before the IRS
- Giving false or misleading testimony or helping others to give false or misleading testimony to IRS or Treasury employees
- False, misleading, or deceptive advertising practices
- Practitioners not filing their own returns or paying the tax they owe
- Assisting or suggesting ways a taxpayer may violate the law

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9. See §0.300.060 of *AICPA Code of Professional Conduct*. Jun. 2020. AICPA. [us.aicpa.org/content/dam/aicpa/research/standards/codeofconduct/downloadabledocuments/2014-december-15-content-asof-2020-June-20-code-of-conduct.pdf] Accessed on Feb. 12, 2024.
10. Ibid.
11. See §1.300.010 of *AICPA Code of Professional Conduct*. Jun. 2020. AICPA. [us.aicpa.org/content/dam/aicpa/research/standards/codeofconduct/downloadabledocuments/2014-december-15-content-asof-2020-June-20-code-of-conduct.pdf] Accessed on Feb. 12, 2024.

- Taking funds from a taxpayer intended to pay tax obligations and using them personally
- Attempting to bribe Treasury officials
- Disbarment from practice by their state governing authority
- Assisting disbarred persons to practice before the IRS
- Rude, abusive, or threatening treatment of IRS employees
- Taking misleading positions known to be contrary to law
- Intentionally failing to sign returns prepared by the practitioner
- Unauthorized disclosure of taxpayer information
- Failing to maintain records of returns prepared
- Preparation of returns without a valid preparer tax identification number (PTIN)

DISCUSSION

In what ways could remote working limit Ben's ability to develop knowledge and skills? What are some ways Hermann & Trout can address deficiencies in competency in their newer staff or remote employees?_____

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Whose responsibility is it to ensure that Ben is competent: Alicia, the firm, or Ben? _____

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How do you or your firm evaluate a practitioner's competency? Should firms develop evaluation criteria based on a practitioner's number of years of experience, or through some other metrics? _____

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While a practitioner may obtain necessary competency after accepting an engagement, what factors should they consider when determining whether to accept or decline an engagement? _____

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PRACTICE OF LAW

Alicia meets with a long-time client, Barbara, to deliver her tax documents and discuss her current-year tax situation. Barbara explains how she and her neighbor, Maci, are planning on forming a limited liability company (LLC) to start a business together. The plan is for Maci to work 40 hours per week while Barbara contributes 75% of the start-up funds necessary to establish the business. Maci will contribute the remaining 25% of start-up funds from a previous business. Barbara asks if Alicia could form the LLC by drafting an operating agreement and filing the necessary papers with the secretary of state. Alicia would then prepare the LLC's income tax returns going forward. Barbara explains that she and Maci feel it is much more efficient if one person, such as Alicia, facilitates these tasks. Barbara further divulges that Maci is interested in Alicia preparing her individual tax return as well, making Alicia a one-stop shop for Barbara and Maci's accounting needs. As enticing as this proposed increase in business is to Alicia, she hesitates and wonders if she could or should accept the entirety of work that Barbara is requesting.

UNAUTHORIZED PRACTICE OF LAW[12]

Circular 230, §10.32, stipulates the duties and responsibilities of practicing before the IRS. Such duties and responsibilities **do not** give practitioners or any other persons who are not members of the bar the authority to practice law. Indeed, practitioners must be mindful regarding what activities constitute the practice of law to avoid unauthorized engagement in such practices. As a general principle, the interpretation of law constitutes the practice of law. However, practitioners are allowed to interpret tax law for engagements provided the interpretation does not extend beyond tax law. This distinction may be somewhat blurred when it comes to engagements involving the formation of business entities. A general rule for practitioners to follow in these situations is to advise clients on the tax ramifications of an entity selection rather than other legal implications, such as personal liability exposure, that would constitute practicing law. Additionally, the drafting of documents such as articles of incorporation are also practices of law.[13] When tax issues involve legal principles extending beyond tax law, practitioners must involve an attorney or rely on the counsel provided by members of the bar.

RELIANCE ON OUTSIDE ADVICE

Practitioners may find it necessary to rely on the advice of legal counsel. As discussed earlier in this chapter, a practitioner's lack of competence may also require the involvement and advice of another party who possesses such competence. Circular 230 provides provisions practitioners must adhere to when relying on the advice of others, allowing practitioners such reliance only when the advice is reasonable and in good faith with the surrounding facts and circumstances. Section §10.37(b) identities situations in which reliance does not meet the reasonableness standard.

1. Practitioner is either aware or should be aware that they should not rely on the opinion provided by the outside party.
2. Practitioner is either aware or should be aware the outside party lacks competence on the subject matter or does not have the qualifications to advise on the subject matter.
3. Practitioner is either aware or should be aware that the outside party has a conflict of interest (described later).

While practitioners are allowed to rely on the advice of outside parties, they must consider who is providing the advice. Practitioners must exercise due diligence in assessing the competence and qualifications of the person providing the advice and consider any potential conflicts of interest that exist or may arise before relying on outside advice.

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12. *Recognize and Avoid Unauthorized Practice of Law*. Ziss, Jonathan. Jun 1, 2011. Thomson Reuters. [casetext.com/analysis/recognize-and-avoid-unauthorized-practice-of-law] Accessed on Feb. 15, 2024.

13. *Model Definition Definition.* Sep. 18, 2002. American Bar Association. [americanbar.org/groups/professional_responsibility/task_force_model_definition_practice_law/model_definition_definition] Accessed on Feb. 15, 2024.

DISCUSSION

What services do Barbara and Maci request from Alicia that constitute or could be considered a practice of law? ___

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If any of the services Barbara requests are practices of law, what options does Alicia have in proceeding with providing services to Barbara? _____

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What ethical practices other than the unauthorized practice of law must Alicia consider before determining what services she can provide to Barbara? _____

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CONFLICTS OF INTEREST

Terrance and Margo Smythe were new clients for Alicia last year. Alicia enjoyed working with the couple, and the tax preparation process went smoothly. In meeting with the Smythes to deliver and go over the current year tax filing season documents, Alicia notices a stark difference. Both Terrance and Margo are openly hostile with each other, even on matters of little importance. When Terrance excuses himself during the meeting to visit the restroom, Margo openly complains about him to Alicia. At one point, Margo comments that Terrance's financial decisions regarding his partnership interest were made haphazardly and with little to no consideration of future consequences. Alicia cannot help taking particular interest in this comment, as she prepares the partnership return as well as the other partners' individual income tax returns. As Margo leafs through her notebook to let Alicia know about certain questions she has regarding her Schedule C, Profit or Loss From Business, Margo accidentally drops a business card of a well-known divorce attorney in town. She hurriedly picks up the business card, offering no further comment or explanation. Terrance returns to the meeting shortly after. Alicia feels uncomfortable for the duration of the meeting.

When working with multiple people in a tax preparation and consulting context, issues involving conflicting interests are likely to occur. Building or maintaining relationships with others have the potential for a person or a firm to lack objectivity when dealing with one client versus another. A potential conflict of interest may arise when a practitioner fails to exercise impartiality to any and all engaged parties. Circular 230, §10.29, identifies the following situations as conflicts of interest.

1. The representation of one client is directly adverse to another client.
2. There is significant risk that the representation of one client will be limited by the practitioner's responsibilities to another client, a former client or a third person, or by the personal interest of the practitioner.

If a conflict of interest exists, a tax professional does not necessarily have to terminate the engagement or refrain from engaging with a client. In fact, §10.29(b) states that a practitioner may still represent a client, even when a conflict exists, when the following conditions are all met.

1. The practitioner reasonably believes they will be able to **diligently represent** each affected client competently.
2. There is no law preventing the practitioner from representing the client.
3. Each client affected by a potential conflict of interest has been informed of the conflict and gives **written consent** to proceed, acknowledging the potential conflict of interest.

When situations occur where a conflict of interest exists or potentially exists, the practitioner must disclose such conflict to the impacted parties. The impacted parties must provide written consent to proceed no later than 30 days after the practitioner disclosed the conflict of interest.[14] Practitioners must retain the written consents for at least 36 months from the date the affected client's representation ended. Practitioners must provide the written representations to the IRS upon request.[15]

DISCUSSION

What potential conflict of interests arise from Alicia's meeting with Terrance and Margo? _____

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Is Alicia obligated or allowed to disclose Margo's comments regarding Terrance's business decisions to the other partners in the partnership who are Alicia's clients? Does this situation change if the comments are not hearsay from Margo and an observation made by Alicia?_____

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What actions should or may Alicia take in response to her suspicions that Margo plans to divorce Terrance? Would there be a difference if Margo actually confirmed that she plans to divorce Terrance?_____

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If Margo and Terrance get divorced, is Alicia able to continue to serve both of them as their tax practitioner? What are some steps Alicia can take to ensure she can serve both Margo and Terrance? If she is unable to do so, should she serve one or neither of them? _____

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14. Circular 230, §10.29(b)(3).
15. Circular 230, §10.29(c).

HANDLING TAX RETURNS AND DOCUMENTS

Next, Alicia meets with one of her S corporation clients, Hi-C Securities. Alicia discovers that an external company has secured an employee retention credit (ERC) for Hi-C. This is the first time that Alicia has heard of this matter, as Hi-C Securities did not inform her they amended their 2021 Forms 941, Employer's Quarterly Federal Tax Return, to claim the credit. Consequently, neither Alicia nor any other practitioner prepared an amended 2021 Form 1120-S, U.S. Income Tax Return for an S Corporation, to reflect the decrease in deductible wages resulting from the ERC. When broaching the subject, Alicia notices that the client appears reluctant to have an amended return prepared. Faced with this prickly situation, Alicia considers her obligations, and her options on how to proceed.

STANDARDS FOR TAX RETURNS AND DOCUMENTS

Circular 230, §10.34, covers standards regarding tax returns, documents, affidavits, and other papers. It emphasizes that practitioners may not sign tax returns or claims for refund nor advise clients when they are aware or should be aware of positions lacking reasonable basis or willful attempts to understate the tax liability under willful or reckless conduct. This concept stresses the importance of establishing and documenting a reasonable case for tax positions, especially those resulting in decreases to tax liabilities.

Regarding documents, affidavits, and other papers submitted to the IRS, practitioners may advise clients on positions contained therein only when those positions are not frivolous. While Circular 230 does not define what a frivolous position is, previously proposed rules have identified the term frivolous to mean clearly improper.[16] Within this context, similarly to tax returns, practitioners should refrain from advising on positions contained in other documents submitted to the IRS when such positions lack merit and are unreasonable.

Section 10.34(c) mandates that practitioners advise clients on potential penalties arising from positions taken on tax returns or documents, affidavits, or other papers submitted to the IRS that the practitioners either prepared or signed, or on which the practitioners provided advice. Furthermore, practitioners must also inform clients of the existence of and the means to avoid such penalties. This could include adequate disclosures to the IRS.

> **Caution.** Practitioners maintain responsibility to inform clients of potential penalties even when the **practitioner** is not subject to a penalty with respect to a position. The focus of this responsibility is on the **taxpayer** being potentially subject to a penalty regarding a position.[17]

Section 10.34(d) states that while practitioners may generally rely on information and documents clients provide when taking a position on or signing a tax return without verification, they may not ignore implications of the information. In instances where the information appears incorrect, incomplete, or inconsistent with facts and expectations, practitioners must inquire about such information to either address or understand the implications in question.

Circular 230, §10.21, mandates practitioners who identify a client's omission or error in a return, affidavit, or other document furnished to the IRS to advise the client of such findings and relay the associated consequences in a timely manner. As such, the practitioner has a responsibility to the client in communicating discovered errors or omissions. Practitioners should also communicate possible actions to remedy such omissions or errors to mitigate the consequences of noncompliance, whether or not intended.

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16. *Regulations Governing Practice Before the Internal Revenue Service*. Sep. 26, 2007. Federal Register. [www.federalregister.gov/documents/2007/09/26/E7-18919/regulations-governing-practice-before-the-internal-revenue-service] Accessed on Feb. 20, 2024.

17. Circular 230, §10.34(c)(3).

Practitioner Planning Tip

Circular 230 does not explicitly mandate that practitioners file amended returns to correct errors or noncompliant positions. Rather, the practitioner is responsible for communicating the error to the taxpayer and explaining the consequences of not addressing the error. While practitioners may recommend or relay the benefit of filing an amended return, the decision to do so is ultimately up to the client.[18]

Note. For more information on a practitioner's responsibility to amend ERC claims, see the 2023 *University of Illinois Federal Tax Workbook,* Chapter 11: New Developments.

DISCUSSION

What are Alicia's ethical responsibilities, if any, pertaining to Hi-C taking the ERC? _____

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While Alicia was not aware of Hi-C considering and eventually taking the ERC when preparing the 2021 return, what are Alicia's responsibilities for amending the return? What options are available to Alicia in proceeding to engage with Hi-C? _____

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If Hi-C is averse to amending their 2021 tax return, what courses of action can or should Alicia take? If Hi-C were your client, how would you approach the situation, and what factors would inform your decision? _____

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[18] See, for example, *Professional Responsibility and the Employee Retention Credit.* Mar. 7, 2023. IRS. [www.irs.gov/pub/irs-utl/2023-02-professional-responsibility-and-the-employee-retention-credit-R2-508-compliant.pdf] Accessed on Mar. 7, 2024.

ACCURACY

Alicia meets with a new S corporation client, Aeronautical Innovations, to go over the current year filings. The company is five years old and previously used a small accounting firm to prepare its tax returns. However, due to the increased complexity of its tax return filings as its business grows, Aeronautical Innovations decides to hire Hermann & Trout for its current and future tax return preparation. When glancing through the company's previous two tax returns, Alicia notices that Schedule L, Balance Sheet per Books, was not completed. Alicia is used to completing the schedule for all Forms 1120-S she prepares, as is Hermann & Trout's standard protocol. When Alicia asks about the company's financial statements, they tell her the prior accountant used a summary statement of income and expenses when preparing their tax returns, as Aeronautical Innovations does not prepare a formal balance sheet or income statement. After hearing this, Alicia suspects this engagement is more involved than initially anticipated.

DUE DILIGENCE

Section 10.22 of Circular 230 calls upon practitioners to take reasonable steps to ensure the contents of any tax filings the practitioner preparers, approves, or files with the IRS are correct. Additionally, practitioners must exercise this same diligence in their written or oral representations to the Department of the Treasury. While practitioners may rely on the work of others and are deemed to exercise due diligence in such situations, practitioners must use reasonable care when engaging with, supervising, training, and evaluating the other party.

Practitioner Planning Tip

In cases where Schedule L is not presented, the practitioner or their client may want to reach out to the previous preparer for a balance sheet.

Practitioner Planning Tip

It may help to review client-provided documents under a similar approach to what the IRS utilizes when it reviews tax returns by identifying large or unusual items or high variances between tax years.[19] Reviewing financial record detail or questioning items or variances may help to uncover errors or misclassifications.

[19] *Exercising Due Diligence*. Preusch, Nicholas. Jun. 1, 2015. Journal of Accountancy. [www.journalofaccountancy.com/issues/2015/jun/circular-230-due-diligence.html] Accessed on Feb. 25, 2024.

ACCURACY CONSIDERATIONS CONCERNING SCHEDULE L

Schedule L comprises the book balance sheet of a filing organization. This schedule is included in Forms 1120, *U.S. Corporation Income Tax Return*, 1120-S, and 1065. Corporations and S corporations must complete Schedule L when receipts **or** total assets are $250,000 or more for the tax year.[20] For example, partnerships must complete Schedule L if any of the following apply.[21]

- Receipts for the tax year are $250,000 or more.
- Total assets at the end of the tax year were at least $1 million.
- Schedules K-1 (Form 1065), *Partner's Share of Income, Deductions, Credits, etc.*, are not filed with the return and furnished to the partners by the due date (including extensions).
- The partnership is required to file Schedule M-3 (Form 1065), *Net Income (Loss) Reconciliation for Certain Partnerships.*

A copy of Schedule L follows for reference.

Reconciliation 18 ... total amounts ... From the result, subtract the sum of the amounts on lines 11 through 12d and 16f 18

Schedule L	Balance Sheets per Books	Beginning of tax year		End of tax year	
	Assets	**(a)**	**(b)**	**(c)**	**(d)**
1	Cash				
2a	Trade notes and accounts receivable				
b	Less allowance for bad debts	( )		( )	
3	Inventories				
4	U.S. government obligations				
5	Tax-exempt securities (see instructions)				
6	Other current assets (attach statement)				
7	Loans to shareholders				
8	Mortgage and real estate loans				
9	Other investments (attach statement)				
10a	Buildings and other depreciable assets				
b	Less accumulated depreciation	( )		( )	
11a	Depletable assets				
b	Less accumulated depletion	( )		( )	
12	Land (net of any amortization)				
13a	Intangible assets (amortizable only)				
b	Less accumulated amortization	( )		( )	
14	Other assets (attach statement)				
15	Total assets				
	Liabilities and Shareholders' Equity				
16	Accounts payable				
17	Mortgages, notes, bonds payable in less than 1 year				
18	Other current liabilities (attach statement)				
19	Loans from shareholders				
20	Mortgages, notes, bonds payable in 1 year or more				
21	Other liabilities (attach statement)				
22	Capital stock				
23	Additional paid-in capital				
24	Retained earnings				
25	Adjustments to shareholders' equity (attach statement)				
26	Less cost of treasury stock		( )		( )
27	Total liabilities and shareholders' equity				

Form **1120-S** (2023)

20. Instructions for Form 1120 and Form 1120-S.

21. Instructions for Form 1065.

Practitioner Planning Tip

Even if not required, practitioners may consider completing Schedule L for business returns they prepare. An analysis of a balance sheet can lead to the discovery of additions to a client's fixed assets, which may result in depreciation expenses the client did not calculate or miscalculated. In analyzing the liabilities section, practitioners may notice liability balances remaining the same, which could potentially uncover liability payments recorded on the income statement instead of a portion reducing the liability on the balance sheet. Of significant importance is analyzing a client's retained earnings and ensuring that it rolls forward from the prior year's balance. In doing so, practitioners can identify prior period adjustments made by the client after the filing of a prior period tax return that should be incorporated into the current year tax return.

Tax practitioners should analyze the balance sheet in the preparation process to ensure accuracy of the reported income. Some tax preparation software incorporates the practitioner-entered income into the calculation of the current-year retained earnings on Schedule L. When the schedule does not balance, the software may provide diagnostic messages to alert the practitioner of a potential input error for income and expenses, or that retained earnings is not rolling forward. Catching such errors helps ensure the accuracy of the financial information disclosed in the return.

DISCUSSION

What concerns may Alicia have after discovering Aeronautical Innovations does not prepare and maintain a formal set of financial statements? _____

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What are the benefits of Alicia assisting Aeronautical Innovations in preparing a balance sheet? What are some hurdles she may experience in doing so, particularly during tax season? _____

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What are the benefits of Alicia completing Schedule L on Aeronautical Innovations' Form 1120-S as opposed to keeping workpapers showing the balance sheet in the practitioner's client folder?_____

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DIGITAL SECURITY BREACHES

Alicia likes to end her work day by catching up on emails. While looking through them, she finds a message that appears to be addressed from one of the partners, requesting an invoice to be paid in the amount of $1,200. There is an attachment to the email titled "Invoice No. 135-84." Alicia finds this message to be somewhat odd. She has never received an email from anyone within the firm requesting her to pay invoices, as these tasks are normally handled by the administration department. Furthermore, Alicia is confident that the partner knows that Alicia does not perform such administrative functions. As she takes pause, Alicia is strongly suspicious of the email she received. Unfortunately, the partner is already gone for the day, and she cannot ask them about it.

PERSONALLY IDENTIFIABLE INFORMATION[22]

Personally identifiable information (PII) consists of information where the identity of an individual can be known or inferred. PII may be non-sensitive, such as a person's name, business address, and occupation, while other PII may be sensitive, such as a social security number, medical information, tax return information, and other data elements that may result in harm if compromised. In the context of this chapter, the term PII refers to sensitive PII that practitioners are responsible for protecting when in their possession under Circular 230, §10.51, discussed later.

THREATS TO DIGITAL PII

The rise of digital communication and information storage and delivery has led to an increase in emerging cybersecurity threats. The accounting profession, which heavily involves sensitive information and PII, is a target for cybersecurity attacks. Identifying and containing cybersecurity breaches is both a timely and costly endeavor but is critical in mitigating potential harm inflicted on clients whose data is compromised. Consequently, practitioners should be aware of cybersecurity threats and develop practices and procedures to avoid and address them.[23]

Phishing Attacks[24]

Phishing attacks attempt to steal PII by enticing the recipient of an email into surrendering information. These attacks generally use email to initiate communication with an unsuspecting victim. One estimate holds that 3.4 billion phishing messages are sent **each day.**[25] The volume of emails is such that an individual message may not receive the scrutiny it needs for its recipient to discern it as fraudulent. In other cases, the fraudulent message may appear on social media or arrive by text or phone. Individuals with fraudulent intent may use phone calls in conjunction with phishing attacks to gain the confidence of unsuspecting employees, resulting in them providing passwords over the phone or surrendering other valuable information.

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22. *How To Safeguard Personally Identifiable Information*. May 2011. Department of Homeland Security. [www.dhs.gov/xlibrary/assets/privacy/privacy-safeguarding-pii-factsheet.pdf] Accessed on Feb. 24, 2024.

23. *Cybersecurity for Tax Professionals (Advanced Session)*. Jun. 29, 2023. IRS. [www.irs.gov/pub/taxpros/2023ntf-12-cybersecurity-for-tax-professionals.pdf] Accessed on Feb. 24, 2024.

24. *Report Phishing and Online Scams*. Jan. 20, 2023. IRS. [www.irs.gov/privacy-disclosure/report-phishing] Accessed on Feb. 22, 2024.

25. *How Many Phishing Emails Are Sent Daily in 2023? (New Stats)*. Campbell, Stefan. Dec. 3, 2022. The Small Business Blog. [thesmallbusinessblog.net/how-many-phishing-emails-are-sent-daily] Accessed on Feb. 22, 2024.

The objective of phishing attacks is not always the direct theft of PII. Phishing attacks can also attempt to install malware on computers, later subjecting them to a less detectable form of data theft.[26] The malware could be ransomware, which renders the computer inoperable. A barrage of email messages may attempt to contact as many individuals as possible at once in the hope that one recipient, who is not careful, triggers the mechanism that installs malware or releases PII. Another strategy is to closely emulate an expected email message so that even a relatively cautious recipient mistakes the fraud for a legitimate email message. Because the fraudulent sender of this type of message usually directs it at specific individuals, it has earned the dubious distinction of its own name, specifically "spear phishing."[27] Such tactics may include the impersonation of an individual known to the recipient, such as a boss or colleague, to feign legitimacy.

Practitioner Planning Tip

One method to potentially identify a phishing email is to scrutinize the email address of the sender. Commonly in phishing emails, the uniform resource locator (URL) of the email address differs from the official source. For example, an email from a governmental authority is likely sent from an email address ending in **.gov**, while the phishing email may use an address ending in **.com**. Identifying deviations (extra letters, characters, or other punctuation) from trusted emails can significantly help in detecting phishing emails that appear to be sent from a known source, such as a boss or colleague.

Tax practitioners who receive messages that they believe may be phishing attempts should follow these steps.[28]

- If the message claims to be from the IRS, tax practitioners should verify it actually originated at the IRS before replying to it.
- Emails requesting information from Forms W-2, *Wage and Tax Statement,* should be reported to the Internet Crime Complaint Center at **www.ic3.com.**
- If a tax practitioner falls victim to a request for PII, especially Form W-2 information, they should report this to **dataloss@irs.gov.**
- Tax practitioners should report unsolicited email messages referencing the IRS or tax matters to **phishing@irs.gov.**
- Tax practitioners should report unsolicited **fax** messages referencing the IRS both to the Treasury Inspector General for Tax Administration at **www.tigta.gov/hotline** and to the IRS at **phishing@irs.gov.**
- Suspicious phishing email messages that do not claim to be from the IRS can be reported by forwarding the messages to **reportphishing@antiphishing.org.**
- An individual may receive a suspicious email message which they suspect carries malware or other malicious code, but which does not claim to be from the IRS. If they have clicked on a link in the message or downloaded an attachment, they should visit **OnGuardOnline.gov,** where they can get up-to-date information from the Federal Trade Commission on action to be taken.

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26. *How to Recognize, Remove, and Avoid Malware*. May 2021. Federal Trade Commission. [consumer.ftc.gov/articles/how-recognize-remove-avoid-malware] Accessed on Feb. 22, 2024.

27. *Spear phishing targets tax pros and other businesses*. Jun. 30, 2022. IRS. [www.irs.gov/newsroom/spear-phishing-targets-tax-pros-and-other-businesses] Accessed on Feb. 22, 2024.

28. *Report Phishing and Online Scams.* Jan. 20, 2023. IRS. [www.irs.gov/privacy-disclosure/report-phishing] Accessed on Feb. 22, 2024.

Smishing Attacks[29]

Some enterprising hackers have turned text messages into devices for pilfering PII, using the same strategy as phishing emails. The name smishing is a combination of "SMS" (short message service) and "phishing." Because text messages generally come from individuals the recipient already knows, they receive more credibility. The IRS requests that individuals report tax-related smishing attacks to the agency via email. Individuals should send the email to **phishing@irs.gov,** including the caller ID (number or email address) from the incoming message, the date and time of the message, and the recipient's phone number.

Keyloggers[30]

Keyloggers intercept messages or passwords as computer users enter them on a keyboard. Malicious keystroke software may get access to the system via:

- Downloads by the user from hostile emails or websites,
- USB devices innocuously plugged into the back of a computer,
- Software running on the low-level firmware of a computer or even on a nearby smartphone, or
- Sensors receiving electromagnetic emissions that are triggered when a typist presses specific keys on a keyboard.

Practitioner Planning Tip

Practitioners can put preventative measures in place to help mitigate against keyloggers, including:

- Using a virtual screen keyboard to enter login information such as user name and passwords, or
- Storing login information in a secured password manager.

Both of these methods eliminate the keystrokes sought by keyloggers. Efforts to combat keyloggers should be included in a practitioner's written information security plan (WISP).

Caution. All practitioners are now required to have a WISP. For more information on the WISP requirements and security concepts, see the 2023 *University of Illinois Federal Tax Workbook,* Chapter 1: Written Information Security Plans and Protecting Client Data.

29. *Dirty Dozen: IRS urges tax pros and other businesses to beware of spearphishing; offers tips to avoid dangerous common scams.* Mar. 29, 2023. IRS. [www.irs.gov/newsroom/dirty-dozen-irs-urges-tax-pros-and-other-businesses-to-beware-of-spearphishing-offers-tips-to-avoid-dangerous-common-scams] Accessed on Feb. 22, 2024.

30. *Tax Security 2.0 — A "Taxes-Security-Together" Checklist — Step 3.* Jan. 31, 2023. IRS. [www.irs.gov/newsroom/tax-security-2-0-a-taxes-security-together-checklist-step-3] Accessed on Mar. 24, 2023; *Keystroke Logging*. Oct. 13, 2022. Wikipedia. [en.wikipedia.org/wiki/Keystroke_logging] Accessed on Feb. 22, 2024.

Ransomware[31]

Ransomware removes the ability to access a victim's data by covertly encrypting it and offering to decrypt it after the victim pays a ransom. Thus, users still have their proprietary data but cannot see it, interact with it, or use it because it is encrypted. This attack devastates a tax practice because it removes the practitioner's ability to prepare tax returns for their clients. The hackers do not have access to the practitioner's data but instead request untraceable funds transfers as ransom. The Treasury Department announced that the losses associated with 2021 ransomware attacks exceeded $1 billion.[32]

The federal Cybersecurity and Infrastructure Security Agency (CISA) publishes best practices for ransomware prevention, which may assist tax practitioners in preventing ransomware attacks on their businesses. It suggests the following actions.[33]

- Backup data, system images and configurations, keeping the backups offline
- Update and patch systems
- Ensure that security solutions are up to date
- Review and exercise (or practice) the business's incident response plan
- Pay attention to other ransomware events, applying lessons learned

Local Copy vs. Cloud Copy[34]

In the past, many small businesses used local backups, as slow Internet connection speeds did not make storing PII on the cloud practical. While this was useful, storing PII on a detachable storage device in a practitioner's possession did not protect data from a regional disaster.

The preference for Internet-based (cloud) backups changed when Internet connection speed increased. It became practical to store data on remote storage in another part of the country, far removed from the same threat of regional disaster as the tax practice might face. Thus, it is now common for small tax practices to store backups of their data securely on remote devices. However, there may be circumstances when **local** data is still preferred. If a tax practice receives a ransomware attack during tax season, it may be possible to restore data from the Internet without paying a ransom, but it potentially takes a long time. Data restoration from a local device may be a more practical means of restoring the data during tax season. Thus, tax practices may consider a network-attached storage device for local data backup. Fraudsters may encrypt PII possessed by the tax practice in a ransomware attack. In that case, restoration from a network-attached storage device stored in the server room may enable recovery from a ransomware attack within a few hours and without paying a ransom.

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31. IRS Pub. 4557, *Safeguarding Taxpayer Data; Ransomware Guide.* Sep. 2020. Cybersecurity & Infrastructure Security Agency. [www.cisa.gov/stopransomware/ransomware-guide] Accessed on Feb. 22, 2024.

32. *Reported Ransomware Incidents, Costs Soared in 2021, Treasury Says*. Rundle, James. Nov. 4, 2022. Wall Street Journal. [www.wsj.com/articles/reported-ransomware-incidents-costs-soared-in-2021-treasury-says-11667513649?mod=Searchresults_pos2&page=1] Accessed on Feb. 22, 2024.

33. *CISA INSIGHTS: Ransomware Outbreak.* Aug. 21, 2019. Cybersecurity & Infrastructure Security Agency. [www.cisa.gov/uscert/sites/default/files/2019-08/CISA_Insights-Ransomware_Outbreak_S508C.pdf] Accessed on Feb. 22, 2024.

34. *What is Cloud Backup? Cloud vs Local Backup Comparison*. Jan. 20, 2023. Acronis International GmbH. [acronis.com/en-us/blog/posts/cloud-vs-local-backup] Accessed on Mar. 26, 2023; See *Disaster Recovery*. Jan. 14, 2023. Wikipedia. [en.wikipedia.org/wiki/Disaster_recovery] Accessed on Feb. 22, 2024.

CIRCULAR 230[35]

Circular 230 indirectly addresses practitioners' responsibilities for data security and client confidential information.

- **§10.35 — Competence.** A practitioner's overall competence includes technological competence.
- **§10.36 — Procedures to ensure compliance.** Practitioners who have or share the principal authority and responsibility for a firm's tax practice must have adequate procedures to ensure compliance by its members, associates, employees, and contractors.
- **§10.33 — Best practices for tax practitioners.** A practitioner should follow best practices when providing advice and preparing or assisting in the preparation of documents to the IRS, including compliance with the Circular 230 standards of practice and the obligation to maintain client confidences.

DISCUSSION

What red flags are present regarding the email Alicia received?_____

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What are some ways Alicia can verify the legitimacy of the email? _____

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What action should Alicia take to address the email? What should Alicia specifically **not** do, to ensure that a breach of security does not occur? _____

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PHYSICAL SECURITY BREACHES

After a long day, Alicia is getting ready to go home and call it a night. Typical for an evening during filing season, Alicia is one of several employees to leave the office after 5:00 pm. As she is heading out, she notices that there are printed papers in the printing tray of the office copying machine, and some other documents left on the top of filing cabinets surrounding the copier. Some of these documents appear to be copies of a tax return. Alicia pauses because she recalls Hermann & Trout's policy of securing physical documents containing client PII. Someone must have been in a hurry to leave the office that evening and neglected to remove the documents from the open space and secure them. Hearing the sound of a vacuum cleaner just then, Alicia remembers that today is one of the two days per week a cleaning company comes to clean the office, which they typically do between 6:00 pm and 8:00 pm. With the presence of an outside party in the office, Alicia is feeling increasingly concerned about leaving the office with the exposed documents.

35. *Careful WISP(er) — Professional Responsibility and Data Security: Practitioners' Obligation to Have a Written Information Security Plan.* Nov. 14, 2023. IRS. [www.irs.gov/pub/irs-utl/2023-10-careful-wisp%28er%29-professional-responsibility-and-data-security.pdf] Accessed on Mar. 7, 2024.

SECURING PHYSICAL PII

While security threats to digital data and PII has been an increasingly prevalent area of concern to accounting firms, the protection of physical data and PII should not be overlooked. Potential break-ins of offices are not the sole concern. The presence of non-personnel in offices, such as clients and vendors, may result in the possibility of PII being stolen or compromised. For example, a client who is able to see another client's tax information on a practitioner's computer screen or lying on a desk is an unintended disclosure of such information. Best practices of protecting physical PII from the Department of Homeland Security include the following.[36]

1. PII should not be left on desks, printers, copiers, or other common areas unattended.
2. When not in use, PII should be secured in locked filing cabinets, desks, or other such secure storage options.
3. When in use, PII should be kept in controlled-access areas, limiting such space to people with a need-to-know basis.

Such best practices stress the importance of having security measures and practices in place to prevent unauthorized access to physical PII. Otherwise, disclosure of taxpayer information without client consent may constitute as an act of incompetence and disreputable conduct under Circular 230, §10.51(a)(15). Even in otherwise secure areas such as a practitioner's office, leaving documents containing PII on a desk could result in another client seeing the documents when attending their own meetings or cleaning personnel viewing the documents when cleaning the office during or after regular business hours. Consequently, even if such exposure may be brief, practitioners should be in the habit of securing such documents when other parties are present.

The consequences for practitioners failing to safeguard taxpayer data may be severe. IRC §7216 sanctions tax return preparers who knowingly or recklessly disclose client information. While the terms knowingly and recklessly are neither defined in the Code nor the associated Treasury Regulations, Treas. Reg. §301.7216-1(b)(5) states that "the term disclosure means the act of making tax return information known to any person in any manner whatever." Such violations may result in fines not exceeding $1,000 per misdemeanor, prosecution costs, and imprisonment not exceeding one year.[37]

The disposal of PII is another important consideration in preventing disclosure of taxpayer information without their consent. Practitioners should not throw away documents containing PII in the garbage or a recycling bin, as third parties could potentially retrieve such documents after they have been discarded. Instead, practitioners should either shred or burn paper records to ensure the PII may not be recovered. While the AICPA identifies burning documents as the most effective method of disposing PII, they identify that shredding documents is the most common practice.[38]

DISCUSSION

What is Alicia's responsibility for the documents she found lying on the copying machine? What actions, if any, should Alicia take before leaving the office? _____

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36. *How To Safeguard Personally Identifiable Information*. May 2011. Department of Homeland Security. [www.dhs.gov/xlibrary/assets/privacy/privacy-safeguarding-pii-factsheet.pdf] Accessed on Feb. 22, 2024.

37. IRC §7216(a)(2).

38. *Records Management: Integrating Privacy Using Generally Accepted Privacy Principles*. 2009. AICPA. [us.aicpa.org/content/dam/aicpa/interestareas/informationtechnology/resources/privacy/downloadabledocuments/10252-346-records-management-pro.pdf] Accessed on Feb. 22, 2024.

How should Alicia handle reporting the violation of Hermann & Trout's document policy? What suggestions can she make to help ensure such violations are mitigated and do not reoccur? _____

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What are the most common threats to physical PII in your practice? How do you address them? _____

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AI CONSIDERATIONS

At home, Alicia logs in to her work email. She received an email from a client asking about filing thresholds for a nonresident state from which they received income. Desiring to quickly respond to the client to avoid having to spend time out of her busy schedule the next day researching the thresholds, Alicia uses an artificial intelligence (AI) program to draft an email to answer the client's question. In less than ten seconds, the program generates an email draft providing residency information and income thresholds for the state in question. Alicia quickly reads over the draft to see if she needs to correct any grammatical errors or linguistic abnormalities, copies the entirety of the text to send from her email, and sends the email to the client before logging off for the evening.

USE OF AI PROGRAMS

AI technology generally encompasses computer programs and applications that algorithmically process large amounts of data to recognize patterns to perform requested tasks. This simulated "learning" allows programs to perform functions for which they were not explicitly programmed.[39] The recent surge in AI program development and its subsequent use as a tool has permeated through a variety of businesses and industries, with the accounting profession being no exception. Accounting firms use AI programs for a multitude of tasks including drafting client communication, performing data analysis, and conducting tax research.[40] The use of these programs results from the effort of its users to perform such tasks quickly and reliably.

While AI programs' performance of requested tasks is quick, the reliability of the performance is inconsistent. **AI hallucinations** refer to a phenomenon where a program's perception of patterns yield an inaccurate or false response.[41] For example, a user prompting an AI program to provide a court case illustrating a specific concept or providing precedent on a certain topic could receive a list of court cases that, upon inspection, do not contain the information the user was searching. In some cases, the program could provide the name of a court case that does not exist. Additionally, some AI programs have access to data or receive training on data that is only as current as of a **cutoff date,** and therefore may not be able to perform functions that are accurate as of the time they are requested.[42] For example, a user attempting to do tax research may be using an AI program whose data cutoff date does not contain information on tax legislation Congress passed after the aforementioned cutoff date, potentially resulting in the program providing outdated information.

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39. *How Do Machines Learn? A Beginners Guide*. Wolfewixz, Arne. Nov. 16, 2022. Levity. [levity.ai/blog/how-do-machines-learn] Accessed on Apr. 15, 2024.

40. *How do different accounting firms use AI?* Feb. 21, 2024. Thomson Reuters. [tax.thomsonreuters.com/blog/how-do-different-accounting-firms-use-ai] Accessed on Apr. 15, 2024.

41. *What are AI hallucinations?* 2024. IBM. [www.ibm.com/topics/ai-hallucinations] Accessed on Apr. 15, 2024.

42. *Demystifying Knowledge Cutoff: Why it Matters for AI Models.* Jan. 8, 2024. Toolify.ai. [www.toolify.ai/ai-news/demystifying-knowledge-cutoff-why-it-matters-for-ai-models-396770] Accessed on Apr. 19, 2024.

There are many ethical concerns regarding the use of AI programs, but the IRS and other professional organizations such as the AICPA have not yet provided any guidance.[43] While not explicitly stated in Circular 230, tax practitioners who use information from AI programs that may provide incorrect information could result in an accuracy issue if the user is not diligent in verifying the information the program outputs. This could be a violation of the §10.22 due diligence requirements. Additionally, reliance on such programs may result in deficiencies of competence under §10.35, where the appropriate level of knowledge and skill is relegated to the program instead of its user.

Furthermore, when AI programs are used to communicate advice to clients, Circular 230, §10.37 may come into play concerning ethical practices. Section 10.37 provides the following requirements practitioners must follow regarding written advice concerning tax matters.

- Base written advice on reasonable factual and legal assumptions.
- Consider relevant facts and circumstances the practitioner is, or should reasonably be, aware of.
- Reasonably attempt to identify and understand relevant facts regarding the subject matter.
- Provide applicable law and facts.
- Do **not** rely on representations, statements, or findings of others to an unreasonable extent.
- Do **not** assume a tax return or representation will not be audited when evaluating tax matters.

Based on the mandated practices required by §10.37, a practitioner bears responsibility for performing reasonable research and making sound considerations when providing written advice to clients. However, §10.37 does permit practitioners to rely on others when providing written advice as long as such reliance is **reasonable.** The section identifies the following as unreasonable reliance.[44]

- The practitioner is aware or should have been aware that the other person's opinion should not be relied on.
- The practitioner is aware or should have been aware that the other person lacks the necessary competence and qualifications.
- The practitioner is aware or should have been aware of potential conflicts of interest arising from reliance on the other person.

While §10.37 does not explicitly identify AI programs as an other individual or party, a takeaway is the practitioner must exercise due diligence when relying on opinions or statements of fact when providing written advice. Accordingly, a practitioner is prohibited from taking an opinion or statement of fact at face value. If under review, the IRS will assess the reasonableness of a practitioner's reliance on others by applying a reasonable practitioner standard.[45]

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43. *Employees 'unsure' of company ethics guidelines for AI.* Brown, Steph. Jan. 2, 2024. AICPA & CIMA. [fm-magazine.com/news/2024/jan/employees-unsure-of-company-ethics-guidelines-for-ai.html] Accessed on Apr. 16, 2024.
44. Circular 230, §10.37(b).
45. Circular 230, §10.37(c)(1).

Practitioner Planning Tip

Considering the infancy of the technology and complexity of how such technology analyzes data in performing tasks, it is unlikely the IRS will determine a reasonable practitioner would rely on data output from an AI program without verifying its accuracy. As a best practice, practitioners should research and check that an AI program's output is accurate before including the advice in the practitioner's communication with their client. Documenting such practices and steps taken can help practitioners defend their reliance and positions if challenged by the IRS.

Note. In the absence of clear and authoritative guidance on the use of AI programs in the accounting profession, practitioners must ensure that the use of such programs does not result in the breach of provisions and requirements of compliance and regulatory standards. Practitioners should also be mindful of firm standards of conduct and culture when using AI technology to avoid breaches of firm practices and its mission statement.

Practitioner Planning Tip

To prevent an unauthorized disclosure, practitioners should avoid entering PII or client-specific data when using AI programs to compose email correspondence with clients. While there is significant uncertainty as to what data AI programs store and how it is used when generating content or performing requested tasks, practitioners should nevertheless exercise caution when writing prompts into the AI programs by avoiding the disclosure of details containing client PII. By using general language, the practitioner can use the AI program as a blueprint for client communication to be tailored specifically to the client when the practitioner drafts the communication outside of the AI program.

DISCUSSION

What are some ethical considerations arising from Alicia's use of AI technology in responding to her client? _____

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_____

_____

Did Alicia practice due diligence by checking the program's output for grammatical issues instead of technical accuracy? Should Alicia limit her use of AI technology to either administrative or technical tasks? Why or why not?

_____

_____

_____

Is Alicia's reliance on the AI program's technical accuracy reasonable? What steps or processes should a reasonable practitioner follow when using AI programs in providing written advice to clients?_____

_____

_____

_____

What are some arguments for or against Alicia having a responsibility to disclose her use of AI technology in preparing an email response to her client? _____

_____

_____

_____

What should Hermann & Trout include in their firm policy regarding the use of AI technology and programs? How should the firm proceed in its use of AI programs in areas such as tax research, client communication, and data analysis? _____

_____

_____

_____

Paragraph 1. The authority citation for 31 CFR, part 10 continues to read as follows:

Authority: Sec. 3, 23 Stat. 258, secs. 2-12, 60 Stat. 237 et. seq.; 5 U.S.C. 301, 500, 551-559; 31 U.S.C. 321; 31 U.S.C. 330; Reorg. Plan No. 26 of 1950, 15 FR 4935, 64 Stat. 1280, 3 CFR, 1949-1953 Comp., p. 1017.

§ 10.0 Scope of part.

(a) This part contains rules governing the recognition of attorneys, certified public accountants, enrolled agents, enrolled retirement plan agents, registered tax return preparers, and other persons representing taxpayers before the Internal Revenue Service. Subpart A of this part sets forth rules relating to the authority to practice before the Internal Revenue Service; subpart B of this part prescribes the duties and restrictions relating to such practice; subpart C of this part prescribes the sanctions for violating the regulations; subpart D of this part contains the rules applicable to disciplinary proceedings; and subpart E of this part contains general provisions relating to the availability of official records.

(b) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

Subpart A — Rules Governing Authority to Practice

§ 10.1 Offices.

(a) *Establishment of office(s).* The Commissioner shall establish the Office of Professional Responsibility and any other office(s) within the Internal Revenue Service necessary to administer and enforce this part. The Commissioner shall appoint the Director of the Office of Professional Responsibility and any other Internal Revenue official(s) to manage and direct any office(s) established to administer or enforce this part. Offices established under this part include, but are not limited to:

(1) The Office of Professional Responsibility, which shall generally have responsibility for matters related to practitioner conduct and shall have exclusive responsibility for discipline, including disciplinary proceedings and sanctions; and

(2) An office with responsibility for matters related to authority to practice before the Internal Revenue Service, including acting on applications for enrollment to practice before the Internal Revenue Service and administering competency testing and continuing education.

(b) Officers and employees within any office established under this part may perform acts necessary or appropriate to carry out the responsibilities of their office(s) under this part or as otherwise prescribed by the Commissioner.

(c) *Acting.* The Commissioner will designate an officer or employee of the Internal Revenue Service to perform the duties of an individual appointed under paragraph (a) of this section in the absence of that officer or employee or during a vacancy in that office.

(d) *Effective/applicability date.* This section is applicable beginning August 2, 2011, except that paragraph (a)(1) is applicable beginning June 12, 2014.

§ 10.2 Definitions.

(a) As used in this part, except where the text provides otherwise —

(1) *Attorney* means any person who is a member in good standing of the bar of the highest court of any state, territory, or possession of the United States, including a Commonwealth, or the District of Columbia.

(2) *Certified public accountant* means any person who is duly qualified to practice as a certified public accountant in any state, territory, or possession of the United States, including a Commonwealth, or the District of Columbia.

(3) *Commissioner* refers to the Commissioner of Internal Revenue.

(4) *Practice before the Internal Revenue Service* comprehends all matters connected with a presentation to the Internal Revenue Service or any of its officers or employees relating to a taxpayer's rights, privileges, or liabilities under laws or regulations administered by the Internal Revenue Service. Such presentations include, but are not limited to, preparing documents; filing documents; corresponding and communicating with the Internal Revenue Service; rendering written advice with respect to any entity, transaction, plan or arrangement, or other plan or arrangement having a potential for tax avoidance or evasion; and representing a client at conferences, hearings, and meetings.

(5) *Practitioner* means any individual described in paragraphs (a), (b), (c), (d), (e), or (f) of §10.3.

(6) A *tax return* includes an amended tax return and a claim for refund.

(7) *Service* means the Internal Revenue Service.

(8) *Tax return preparer* means any individual within the meaning of section 7701(a)(36) and 26 CFR 301.7701-15.

(b) *Effective/applicability date.* This section is applicable on August 2, 2011.

§ 10.3 Who may practice.

(a) *Attorneys.* Any attorney who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Internal Revenue Service by filing with the Internal Revenue Service a written declaration that the attorney is currently qualified as an attorney and is authorized to represent the party or parties. Notwithstanding the preceding sentence, attorneys who are not currently under suspension or disbarment from practice before the Internal Revenue Service are not required to file a written declaration with the IRS before rendering written advice covered under §10.37, but their rendering of this advice is practice before the Internal Revenue Service.

(b) *Certified public accountants.* Any certified public accountant who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Internal Revenue Service by filing with the Internal Revenue Service a written declaration that the certified public accountant is currently qualified as a certified public accountant and is authorized to represent the party or parties. Notwithstanding the preceding sentence, certified public accountants who are not currently under suspension or disbarment from practice before the Internal Revenue Service are not required to file a written declaration with the IRS before rendering written advice covered under §10.37, but their rendering of this advice is practice before the Internal Revenue Service.

(c) *Enrolled agents.* Any individual enrolled as an agent pursuant to this part who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Internal Revenue Service.

(d) *Enrolled actuaries.*

(1) Any individual who is enrolled as an actuary by the Joint Board for the Enrollment of Actuaries pursuant to 29 U.S.C. 1242 who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Internal Revenue Service by filing with the Internal Revenue Service a written declaration stating that he or she is currently qualified as an enrolled actuary and is authorized to represent the party or parties on whose behalf he or she acts.

(2) Practice as an enrolled actuary is limited

to representation with respect to issues involving the following statutory provisions in title 26 of the United States Code: sections 401 (relating to qualification of employee plans), 403(a) (relating to whether an annuity plan meets the requirements of section 404(a) (2)), 404 (relating to deductibility of employer contributions), 405 (relating to qualification of bond purchase plans), 412 (relating to funding requirements for certain employee plans), 413 (relating to application of qualification requirements to collectively bargained plans and to plans maintained by more than one employer), 414 (relating to definitions and special rules with respect to the employee plan area), 419 (relating to treatment of funded welfare benefits), 419A (relating to qualified asset accounts), 420 (relating to transfers of excess pension assets to retiree health accounts), 4971 (relating to excise taxes payable as a result of an accumulated funding deficiency under section 412), 4972 (relating to tax on nondeductible contributions to qualified employer plans), 4976 (relating to taxes with respect to funded welfare benefit plans), 4980 (relating to tax on reversion of qualified plan assets to employer), 6057 (relating to annual registration of plans), 6058 (relating to information required in connection with certain plans of deferred compensation), 6059 (relating to periodic report of actuary), 6652(e) (relating to the failure to file annual registration and other notifications by pension plan), 6652(f) (relating to the failure to file information required in connection with certain plans of deferred compensation), 6692 (relating to the failure to file actuarial report), 7805(b) (relating to the extent to which an Internal Revenue Service ruling or determination letter coming under the statutory provisions listed here will be applied without retroactive effect); and 29 U.S.C. § 1083 (relating to the waiver of funding for nonqualified plans).

(3) An individual who practices before the Internal Revenue Service pursuant to paragraph (d) (1) of this section is subject to the provisions of this part in the same manner as attorneys, certified public accountants, enrolled agents, enrolled retirement plan agents, and registered tax return preparers.

(e) *Enrolled retirement plan agents —*

(1) Any individual enrolled as a retirement plan agent pursuant to this part who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Internal Revenue Service.

(2) Practice as an enrolled retirement plan agent is limited to representation with respect to issues involving the following programs: Employee Plans Determination Letter program; Employee Plans Compliance Resolution System; and Employee Plans Master and Prototype and Volume Submitter program. In addition, enrolled retirement plan agents are generally permitted to represent taxpayers with respect to IRS forms under the 5300 and 5500 series which are filed by retirement plans and plan sponsors, but not with respect to actuarial forms or schedules.

(3) An individual who practices before the Internal Revenue Service pursuant to paragraph (e) (1) of this section is subject to the provisions of this part in the same manner as attorneys, certified public accountants, enrolled agents, enrolled actuaries, and registered tax return preparers.

(f) *Registered tax return preparers.*

(1) Any individual who is designated as a registered tax return preparer pursuant to §10.4(c) of this part who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Internal Revenue Service.

(2) Practice as a registered tax return preparer is limited to preparing and signing tax returns and claims for refund, and other documents for submission to the Internal Revenue Service. A registered tax return preparer may prepare all or substantially all of a tax return or claim for refund of tax. The Internal Revenue Service will prescribe by forms, instructions, or other appropriate guidance the tax returns and claims for refund that a registered tax return preparer may prepare and sign.

(3) A registered tax return preparer may represent taxpayers before revenue agents, customer service representatives, or similar officers and employees of the Internal Revenue Service (including the Taxpayer Advocate Service) during an examination if the registered tax return preparer signed the tax return

or claim for refund for the taxable year or period under examination. Unless otherwise prescribed by regulation or notice, this right does not permit such individual to represent the taxpayer, regardless of the circumstances requiring representation, before appeals officers, revenue officers, Counsel or similar officers or employees of the Internal Revenue Service or the Treasury Department. A registered tax return preparer's authorization to practice under this part also does not include the authority to provide tax advice to a client or another person except as necessary to prepare a tax return, claim for refund, or other document intended to be submitted to the Internal Revenue Service.

(4) An individual who practices before the Internal Revenue Service pursuant to paragraph (f)(1) of this section is subject to the provisions of this part in the same manner as attorneys, certified public accountants, enrolled agents, enrolled retirement plan agents, and enrolled actuaries.

(g) *Others.* Any individual qualifying under paragraph §10.5(e) or §10.7 is eligible to practice before the Internal Revenue Service to the extent provided in those sections.

(h) *Government officers and employees, and others.* An individual, who is an officer or employee of the executive, legislative, or judicial branch of the United States Government; an officer or employee of the District of Columbia; a Member of Congress; or a Resident Commissioner may not practice before the Internal Revenue Service if such practice violates 18 U.S.C. §§ 203 or 205.

(i) *State officers and employees.* No officer or employee of any State, or subdivision of any State, whose duties require him or her to pass upon, investigate, or deal with tax matters for such State or subdivision, may practice before the Internal Revenue Service, if such employment may disclose facts or information applicable to Federal tax matters.

(j) *Effective/applicability date.* Paragraphs (a), (b), and (g) of this section are applicable beginning June 12, 2014. Paragraphs (c) through (f), (h), and (i) of this section are applicable beginning August 2, 2011.

§ 10.4 Eligibility to become an enrolled agent, enrolled retirement plan agent, or registered tax return preparer.

(a) *Enrollment as an enrolled agent upon examination.* The Commissioner, or delegate, will grant enrollment as an enrolled agent to an applicant eighteen years of age or older who demonstrates special competence in tax matters by written examination administered by, or administered under the oversight of, the Internal Revenue Service, who possesses a current or otherwise valid preparer tax identification number or other prescribed identifying number, and who has not engaged in any conduct that would justify the suspension or disbarment of any practitioner under the provisions of this part.

(b) *Enrollment as a retirement plan agent upon examination.* The Commissioner, or delegate, will grant enrollment as an enrolled retirement plan agent to an applicant eighteen years of age or older who demonstrates special competence in qualified retirement plan matters by written examination administered by, or administered under the oversight of, the Internal Revenue Service, who possesses a current or otherwise valid preparer tax identification number or other prescribed identifying number, and who has not engaged in any conduct that would justify the suspension or disbarment of any practitioner under the provisions of this part.

(c) *Designation as a registered tax return preparer.* The Commissioner, or delegate, may designate an individual eighteen years of age or older as a registered tax return preparer provided an applicant demonstrates competence in Federal tax return preparation matters by written examination administered by, or administered under the oversight of, the Internal Revenue Service, or otherwise meets the requisite standards prescribed by the Internal Revenue Service, possesses a current or otherwise valid preparer tax identification number or other prescribed identifying number, and has not engaged in any conduct that would justify the suspension or disbarment of any practitioner under the provisions of this part.

(d) *Enrollment of former Internal Revenue Service employees.* The Commissioner, or delegate, may

grant enrollment as an enrolled agent or enrolled retirement plan agent to an applicant who, by virtue of past service and technical experience in the Internal Revenue Service, has qualified for such enrollment and who has not engaged in any conduct that would justify the suspension or disbarment of any practitioner under the provisions of this part, under the following circumstances:

(1) The former employee applies for enrollment on an Internal Revenue Service form and supplies the information requested on the form and such other information regarding the experience and training of the applicant as may be relevant.

(2) The appropriate office of the Internal Revenue Service provides a detailed report of the nature and rating of the applicant's work while employed by the Internal Revenue Service and a recommendation whether such employment qualifies the applicant technically or otherwise for the desired authorization.

(3) Enrollment as an enrolled agent based on an applicant's former employment with the Internal Revenue Service may be of unlimited scope or it may be limited to permit the presentation of matters only of the particular specialty or only before the particular unit or division of the Internal Revenue Service for which the applicant's former employment has qualified the applicant. Enrollment as an enrolled retirement plan agent based on an applicant's former employment with the Internal Revenue Service will be limited to permit the presentation of matters only with respect to qualified retirement plan matters.

(4) Application for enrollment as an enrolled agent or enrolled retirement plan agent based on an applicant's former employment with the Internal Revenue Service must be made within three years from the date of separation from such employment.

(5) An applicant for enrollment as an enrolled agent who is requesting such enrollment based on former employment with the Internal Revenue Service must have had a minimum of five years continuous employment with the Internal Revenue Service during which the applicant must have been regularly engaged in applying and interpreting the provisions of the Internal Revenue Code and the regulations relating to income, estate, gift, employment, or excise taxes.

(6) An applicant for enrollment as an enrolled retirement plan agent who is requesting such enrollment based on former employment with the Internal Revenue Service must have had a minimum of five years continuous employment with the Internal Revenue Service during which the applicant must have been regularly engaged in applying and interpreting the provisions of the Internal Revenue Code and the regulations relating to qualified retirement plan matters.

(7) For the purposes of paragraphs (d)(5) and (6) of this section, an aggregate of 10 or more years of employment in positions involving the application and interpretation of the provisions of the Internal Revenue Code, at least three of which occurred within the five years preceding the date of application, is the equivalent of five years continuous employment.

(e) *Natural persons*. Enrollment to practice may be granted only to natural persons.

(f) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

§ 10.5 Application to become an enrolled agent, enrolled retirement plan agent, or registered tax return preparer.

(a) *Form; address.* An applicant to become an enrolled agent, enrolled retirement plan agent, or registered tax return preparer must apply as required by forms or procedures established and published by the Internal Revenue Service, including proper execution of required forms under oath or affirmation. The address on the application will be the address under which a successful applicant is enrolled or registered and is the address to which all correspondence concerning enrollment or registration will be sent.

(b) *Fee.* A reasonable nonrefundable fee may be charged for each application to become an enrolled agent, enrolled retirement plan agent, or registered tax return preparer. See 26 CFR part 300.

(c) *Additional information; examination.* The Internal Revenue Service may require the applicant, as a condition to consideration of an application, to file

additional information and to submit to any written or oral examination under oath or otherwise. Upon the applicant's written request, the Internal Revenue Service will afford the applicant the opportunity to be heard with respect to the application.

(d) *Compliance and suitability checks.*

(1) As a condition to consideration of an application, the Internal Revenue Service may conduct a Federal tax compliance check and suitability check. The tax compliance check will be limited to an inquiry regarding whether an applicant has filed all required individual or business tax returns and whether the applicant has failed to pay, or make proper arrangements with the Internal Revenue Service for payment of, any Federal tax debts. The suitability check will be limited to an inquiry regarding whether an applicant has engaged in any conduct that would justify suspension or disbarment of any practitioner under the provisions of this part on the date the application is submitted, including whether the applicant has engaged in disreputable conduct as defined in §10.51. The application will be denied only if the results of the compliance or suitability check are sufficient to establish that the practitioner engaged in conduct subject to sanctions under §§10.51 and 10.52.

(2) If the applicant does not pass the tax compliance or suitability check, the applicant will not be issued an enrollment or registration card or certificate pursuant to §10.6(b) of this part. An applicant who is initially denied enrollment or registration for failure to pass a tax compliance check may reapply after the initial denial if the applicant becomes current with respect to the applicant's tax liabilities.

(e) *Temporary recognition.* On receipt of a properly executed application, the Commissioner, or delegate, may grant the applicant temporary recognition to practice pending a determination as to whether status as an enrolled agent, enrolled retirement plan agent, or registered tax return preparer should be granted. Temporary recognition will be granted only in unusual circumstances and it will not be granted, in any circumstance, if the application is not regular on its face, if the information stated in the application, if true, is not sufficient to warrant granting the application to practice, or the Commissioner, or delegate, has information indicating that the statements in the application are untrue or that the applicant would not otherwise qualify to become an enrolled agent, enrolled retirement plan agent, or registered tax return preparer. Issuance of temporary recognition does not constitute either a designation or a finding of eligibility as an enrolled agent, enrolled retirement plan agent, or registered tax return preparer, and the temporary recognition may be withdrawn at any time.

(f) *Protest of application denial.* The applicant will be informed in writing as to the reason(s) for any denial of an application. The applicant may, within 30 days after receipt of the notice of denial of the application, file a written protest of the denial as prescribed by the Internal Revenue Service in forms, guidance, or other appropriate guidance. A protest under this section is not governed by subpart D of this part.

(f) *Effective/applicability date.* This section is applicable to applications received on or after August 2, 2011.

§ 10.6 Term and renewal of status as an enrolled agent, enrolled retirement plan agent, or registered tax return preparer.

(a) *Term.* Each individual authorized to practice before the Internal Revenue Service as an enrolled agent, enrolled retirement plan agent, or registered tax return preparer will be accorded active enrollment or registration status subject to renewal of enrollment or registration as provided in this part.

(b) *Enrollment or registration card or certificate.* The Internal Revenue Service will issue an enrollment or registration card or certificate to each individual whose application to practice before the Internal Revenue Service is approved. Each card or certificate will be valid for the period stated on the card or certificate. An enrolled agent, enrolled retirement plan agent, or registered tax return preparer may not practice before the Internal Revenue Service if the card or certificate is not current or otherwise

valid. The card or certificate is in addition to any notification that may be provided to each individual who obtains a preparer tax identification number.

(c) *Change of address.* An enrolled agent, enrolled retirement plan agent, or registered tax return preparer must send notification of any change of address to the address specified by the Internal Revenue Service within 60 days of the change of address. This notification must include the enrolled agent's, enrolled retirement plan agent's, or registered tax return preparer's name, prior address, new address, tax identification number(s) (including preparer tax identification number), and the date the change of address is effective. Unless this notification is sent, the address for purposes of any correspondence from the appropriate Internal Revenue Service office responsible for administering this part shall be the address reflected on the practitioner's most recent application for enrollment or registration, or application for renewal of enrollment or registration. A practitioner's change of address notification under this part will not constitute a change of the practitioner's last known address for purposes of section 6212 of the Internal Revenue Code and regulations thereunder.

(d) *Renewal.*

(1) *In general*. Enrolled agents, enrolled retirement plan agents, and registered tax return preparers must renew their status with the Internal Revenue Service to maintain eligibility to practice before the Internal Revenue Service. Failure to receive notification from the Internal Revenue Service of the renewal requirement will not be justification for the individual's failure to satisfy this requirement.

(2) *Renewal period for enrolled agents.*

(i) All enrolled agents must renew their preparer tax identification number as prescribed by forms, instructions, or other appropriate guidance.

(ii) Enrolled agents who have a social security number or tax identification number that ends with the numbers 0, 1, 2, or 3, except for those individuals who received their initial enrollment after November 1, 2003, must apply for renewal between November 1, 2003, and January 31, 2004. The renewal will be effective April 1, 2004.

(iii) Enrolled agents who have a social security number or tax identification number that ends with the numbers 4, 5, or 6, except for those individuals who received their initial enrollment after November 1, 2004, must apply for renewal between November 1, 2004, and January 31, 2005. The renewal will be effective April 1, 2005.

(iv) Enrolled agents who have a social security number or tax identification number that ends with the numbers 7, 8, or 9, except for those individuals who received their initial enrollment after November 1, 2005, must apply for renewal between November 1, 2005, and January 31, 2006. The renewal will be effective April 1, 2006.

(v) Thereafter, applications for renewal as an enrolled agent will be required between November 1 and January 31 of every subsequent third year as specified in paragraph (d)(2)(i), (d)(2)(ii), or (d)(2)(iii) of this section according to the last number of the individual's social security number or tax identification number. Those individuals who receive initial enrollment as an enrolled agent after November 1 and before April 2 of the applicable renewal period will not be required to renew their enrollment before the first full renewal period following the receipt of their initial enrollment.

(3) *Renewal period for enrolled retirement plan agents.*

(i) All enrolled retirement plan agents must renew their preparer tax identification number as prescribed by the Internal Revenue Service in forms, instructions, or other appropriate guidance.

(ii) Enrolled retirement plan agents will be required to renew their status as enrolled retirement plan agents between April 1 and June 30 of every third year subsequent to their initial enrollment.

(4) *Renewal period for registered tax return preparers.* Registered tax return preparers must renew their preparer tax identification number and their status as a registered tax return preparer as prescribed by the Internal Revenue Service in forms, instructions, or other appropriate guidance.

(5) *Notification of renewal.* After review and approval, the Internal Revenue Service will notify

the individual of the renewal and will issue the individual a card or certificate evidencing current status as an enrolled agent, enrolled retirement plan agent, or registered tax return preparer.

(6) *Fee*. A reasonable nonrefundable fee may be charged for each application for renewal filed. See 26 CFR part 300.

(7) *Forms.* Forms required for renewal may be obtained by sending a written request to the address specified by the Internal Revenue Service or from such other source as the Internal Revenue Service will publish in the Internal Revenue Bulletin (see 26 CFR 601.601(d)(2)(ii)(b)) and on the Internal Revenue Service webpage (www.irs.gov).

(e) *Condition for renewal*: continuing education. In order to qualify for renewal as an enrolled agent, enrolled retirement plan agent, or registered tax return preparer, an individual must certify, in the manner prescribed by the Internal Revenue Service, that the individual has satisfied the requisite number of continuing education hours.

(1) *Definitions*. For purposes of this section —

(i) *Enrollment year* means January 1 to December 31 of each year of an enrollment cycle.

(ii) *Enrollment cycle* means the three successive enrollment years preceding the effective date of renewal.

(iii) *Registration year* means each 12-month period the registered tax return preparer is authorized to practice before the Internal Revenue Service.

(iv) *The effective date of renewal* is the first day of the fourth month following the close of the period for renewal described in paragraph (d) of this section.

(2) *For renewed enrollment as an enrolled agent or enrolled retirement plan agent —*

(i) *Requirements for enrollment cycle*. A minimum of 72 hours of continuing education credit, including six hours of ethics or professional conduct, must be completed during each enrollment cycle.

(ii) *Requirements for enrollment year*. A minimum of 16 hours of continuing education credit, including two hours of ethics or professional conduct, must be completed during each enrollment year of an enrollment cycle.

(iii) *Enrollment during enrollment cycle —*

(A) *In general*. Subject to paragraph (e)(2)(iii)(B) of this section, an individual who receives initial enrollment during an enrollment cycle must complete two hours of qualifying continuing education credit for each month enrolled during the enrollment cycle. Enrollment for any part of a month is considered enrollment for the entire month.

(B) *Ethics*. An individual who receives initial enrollment during an enrollment cycle must complete two hours of ethics or professional conduct for each enrollment year during the enrollment cycle. Enrollment for any part of an enrollment year is considered enrollment for the entire year.

(3) *Requirements for renewal as a registered tax return preparer*. A minimum of 15 hours of continuing education credit, including two hours of ethics or professional conduct, three hours of Federal tax law updates, and 10 hours of Federal tax law topics, must be completed during each registration year.

(f) *Qualifying continuing education —*

(1) *General —*

(i) *Enrolled agents*. To qualify for continuing education credit for an enrolled agent, a course of learning must —

(A) Be a qualifying continuing education program designed to enhance professional knowledge in Federal taxation or Federal tax related matters (programs comprised of current subject matter in Federal taxation or Federal tax related matters, including accounting, tax return preparation software, taxation, or ethics); and

(B) Be a qualifying continuing education program consistent with the Internal Revenue Code and effective tax administration.

(ii) *Enrolled retirement plan agents*. To qualify for continuing education credit for an enrolled retirement plan agent, a course of learning must —

(A) Be a qualifying continuing education program designed to enhance professional knowledge in qualified retirement plan matters; and

(B) Be a qualifying continuing education program consistent with the Internal Revenue Code and effective tax administration.

(iii) *Registered tax return preparers*. To

qualify for continuing education credit for a registered tax return preparer, a course of learning must —

(A) Be a qualifying continuing education program designed to enhance professional knowledge in Federal taxation or Federal tax related matters (programs comprised of current subject matter in Federal taxation or Federal tax related matters, including accounting, tax return preparation software, taxation, or ethics); and

(B) Be a qualifying continuing education program consistent with the Internal Revenue Code and effective tax administration.

(2) *Qualifying programs* —

(i) *Formal programs*. A formal program qualifies as a continuing education program if it —

(A) Requires attendance and provides each attendee with a certificate of attendance;

(B) Is conducted by a qualified instructor, discussion leader, or speaker (in other words, a person whose background, training, education, and experience is appropriate for instructing or leading a discussion on the subject matter of the particular program);

(C) Provides or requires a written outline, textbook, or suitable electronic educational materials; and

(D) Satisfies the requirements established for a qualified continuing education program pursuant to §10.9.

(ii) *Correspondence or individual study programs (including taped programs)*. Qualifying continuing education programs include correspondence or individual study programs that are conducted by continuing education providers and completed on an individual basis by the enrolled individual. The allowable credit hours for such programs will be measured on a basis comparable to the measurement of a seminar or course for credit in an accredited educational institution. Such programs qualify as continuing education programs only if they —

(A) Require registration of the participants by the continuing education provider;

(B) Provide a means for measuring successful completion by the participants (for example, a written examination), including the issuance of a certificate of completion by the continuing education provider;

(C) Provide a written outline, textbook, or suitable electronic educational materials; and

(D) Satisfy the requirements established for a qualified continuing education program pursuant to §10.9.

(iii) *Serving as an instructor, discussion leader or speaker*.

(A) One hour of continuing education credit will be awarded for each contact hour completed as an instructor, discussion leader, or speaker at an educational program that meets the continuing education requirements of paragraph (f) of this section.

(B) A maximum of two hours of continuing education credit will be awarded for actual subject preparation time for each contact hour completed as an instructor, discussion leader, or speaker at such programs. It is the responsibility of the individual claiming such credit to maintain records to verify preparation time.

(C) The maximum continuing education credit for instruction and preparation may not exceed four hours annually for registered tax return preparers and six hours annually for enrolled agents and enrolled retirement plan agents.

(D) An instructor, discussion leader, or speaker who makes more than one presentation on the same subject matter during an enrollment cycle or registration year will receive continuing education credit for only one such presentation for the enrollment cycle or registration year.

(3) *Periodic examination*. Enrolled Agents and Enrolled Retirement Plan Agents may establish eligibility for renewal of enrollment for any enrollment cycle by —

(i) Achieving a passing score on each part of the Special Enrollment Examination administered under this part during the three year period prior to renewal; and

(ii) Completing a minimum of 16 hours of qualifying continuing education during the last year of an enrollment cycle.

(g) *Measurement of continuing education coursework*.

(1) All continuing education programs will be measured in terms of contact hours. The shortest recognized program will be one contact hour.

(2) A contact hour is 50 minutes of continuous participation in a program. Credit is granted only for a full contact hour, which is 50 minutes or multiples thereof. For example, a program lasting more than 50 minutes but less than 100 minutes will count as only one contact hour.

(3) Individual segments at continuous conferences, conventions and the like will be considered one total program. For example, two 90-minute segments (180 minutes) at a continuous conference will count as three contact hours.

(4) For university or college courses, each semester hour credit will equal 15 contact hours and a quarter hour credit will equal 10 contact hours.

(h) *Recordkeeping requirements*.

(1) Each individual applying for renewal must retain for a period of four years following the date of renewal the information required with regard to qualifying continuing education credit hours. Such information includes —

(i) The name of the sponsoring organization;

(ii) The location of the program;

(iii) The title of the program, qualified program number, and description of its content;

(iv) Written outlines, course syllibi, textbook, and/or electronic materials provided or required for the course;

(v) The dates attended;

(vi) The credit hours claimed;

(vii) The name(s) of the instructor(s), discussion leader(s), or speaker(s), if appropriate; and

(viii) The certificate of completion and/or signed statement of the hours of attendance obtained from the continuing education provider.

(2) To receive continuing education credit for service completed as an instructor, discussion leader, or speaker, the following information must be maintained for a period of four years following the date of renewal —

(i) The name of the sponsoring organization;

(ii) The location of the program;

(iii) The title of the program and copy of its content;

(iv) The dates of the program; and

(v) The credit hours claimed.

(i) *Waivers*.

(1) Waiver from the continuing education requirements for a given period may be granted for the following reasons —

(i) Health, which prevented compliance with the continuing education requirements;

(ii) Extended active military duty;

(iii) Absence from the United States for an extended period of time due to employment or other reasons, provided the individual does not practice before the Internal Revenue Service during such absence; and

(iv) Other compelling reasons, which will be considered on a case-by-case basis.

(2) A request for waiver must be accompanied by appropriate documentation. The individual is required to furnish any additional documentation or explanation deemed necessary. Examples of appropriate documentation could be a medical certificate or military orders.

(3) A request for waiver must be filed no later than the last day of the renewal application period.

(4) If a request for waiver is not approved, the individual will be placed in inactive status. The individual will be notified that the waiver was not approved and that the individual has been placed on a roster of inactive enrolled agents, enrolled retirement plan agents, or registered tax return preparers.

(5) If the request for waiver is not approved, the individual may file a protest as prescribed by the Internal Revenue Service in forms, instructions, or other appropriate guidance. A protest filed under this section is not governed by subpart D of this part.

(6) If a request for waiver is approved, the individual will be notified and issued a card or certificate evidencing renewal.

(7) Those who are granted waivers are required to file timely applications for renewal of enrollment or registration.

(j) *Failure to comply*.

(1) Compliance by an individual with the requirements of this part is determined by the Internal Revenue Service. The Internal Revenue Service will provide notice to any individual who fails to meet the continuing education and fee requirements of eligibility for renewal. The notice will state the basis for the determination of noncompliance and will provide the individual an opportunity to furnish the requested information in writing relating to the matter within 60 days of the date of the notice. Such information will be considered in making a final determination as to eligibility for renewal. The individual must be informed of the reason(s) for any denial of a renewal. The individual may, within 30 days after receipt of the notice of denial of renewal, file a written protest of the denial as prescribed by the Internal Revenue Service in forms, instructions, or other appropriate guidance. A protest under this section is not governed by subpart D of this part.

(2) The continuing education records of an enrolled agent, enrolled retirement plan agent, or registered tax return preparer may be reviewed to determine compliance with the requirements and standards for renewal as provided in paragraph (f) of this section. As part of this review, the enrolled agent, enrolled retirement plan agent or registered tax return preparer may be required to provide the Internal Revenue Service with copies of any continuing education records required to be maintained under this part. If the enrolled agent, enrolled retirement plan agent or registered tax return preparer fails to comply with this requirement, any continuing education hours claimed may be disallowed.

(3) An individual who has not filed a timely application for renewal, who has not made a timely response to the notice of noncompliance with the renewal requirements, or who has not satisfied the requirements of eligibility for renewal will be placed on a roster of inactive enrolled individuals or inactive registered individuals. During this time, the individual will be ineligible to practice before the Internal Revenue Service.

(4) Individuals placed in inactive status and individuals ineligible to practice before the Internal Revenue Service may not state or imply that they are eligible to practice before the Internal Revenue Service, or use the terms enrolled agent, enrolled retirement plan agent, or registered tax return preparer, the designations "EA" or "ERPA" or other form of reference to eligibility to practice before the Internal Revenue Service.

(5) An individual placed in inactive status may be reinstated to an active status by filing an application for renewal and providing evidence of the completion of all required continuing education hours for the enrollment cycle or registration year. Continuing education credit under this paragraph (j)(5) may not be used to satisfy the requirements of the enrollment cycle or registration year in which the individual has been placed back on the active roster.

(6) An individual placed in inactive status must file an application for renewal and satisfy the requirements for renewal as set forth in this section within three years of being placed in inactive status. Otherwise, the name of such individual will be removed from the inactive status roster and the individual's status as an enrolled agent, enrolled retirement plan agent, or registered tax return preparer will terminate. Future eligibility for active status must then be reestablished by the individual as provided in this section.

(7) Inactive status is not available to an individual who is the subject of a pending disciplinary matter before the Internal Revenue Service.

(k) *Inactive retirement status*. An individual who no longer practices before the Internal Revenue Service may request to be placed in an inactive retirement status at any time and such individual will be placed in an inactive retirement status. The individual will be ineligible to practice before the Internal Revenue Service. An individual who is placed in an inactive retirement status may be reinstated to an active status by filing an application for renewal and providing evidence of the completion of the required continuing education hours for the enrollment cycle or registration year. Inactive retirement status is not available to an individual who is ineligible to practice before the Internal Revenue Service or an individual who is the subject of a pending disciplinary matter under this part.

(l) *Renewal while under suspension or disbarment.* An individual who is ineligible to practice before the Internal Revenue Service by virtue of disciplinary action under this part is required to conform to the requirements for renewal of enrollment or registration before the individual's eligibility is restored.

(m) *Enrolled actuaries.* The enrollment and renewal of enrollment of actuaries authorized to practice under paragraph (d) of §10.3 are governed by the regulations of the Joint Board for the Enrollment of Actuaries at 20 CFR 901.1 through 901.72.

(n) *Effective/applicability date.* This section is applicable to enrollment or registration effective beginning August 2, 2011.

§ 10.7 Representing oneself; participating in rulemaking; limited practice; and special appearances.

(a) *Representing oneself.* Individuals may appear on their own behalf before the Internal Revenue Service provided they present satisfactory identification.

(b) *Participating in rulemaking.* Individuals may participate in rulemaking as provided by the Administrative Procedure Act. See 5 U.S.C. § 553.

(c) *Limited practice —*

(1) *In general.* Subject to the limitations in paragraph (c)(2) of this section, an individual who is not a practitioner may represent a taxpayer before the Internal Revenue Service in the circumstances described in this paragraph (c)(1), even if the taxpayer is not present, provided the individual presents satisfactory identification and proof of his or her authority to represent the taxpayer. The circumstances described in this paragraph (c)(1) are as follows:

(i) An individual may represent a member of his or her immediate family.

(ii) A regular full-time employee of an individual employer may represent the employer.

(iii) A general partner or a regular full-time employee of a partnership may represent the partnership.

(iv) A bona fide officer or a regular full-time employee of a corporation (including a parent, subsidiary, or other affiliated corporation), association, or organized group may represent the corporation, association, or organized group.

(v) A regular full-time employee of a trust, receivership, guardianship, or estate may represent the trust, receivership, guardianship, or estate.

(vi) An officer or a regular employee of a governmental unit, agency, or authority may represent the governmental unit, agency, or authority in the course of his or her official duties.

(vii) An individual may represent any individual or entity, who is outside the United States, before personnel of the Internal Revenue Service when such representation takes place outside the United States.

(2) *Limitations*.

(i) An individual who is under suspension or disbarment from practice before the Internal Revenue Service may not engage in limited practice before the Internal Revenue Service under paragraph (c)(1) of this section.

(ii) The Commissioner, or delegate, may, after notice and opportunity for a conference, deny eligibility to engage in limited practice before the Internal Revenue Service under paragraph (c)(1) of this section to any individual who has engaged in conduct that would justify a sanction under §10.50.

(iii) An individual who represents a taxpayer under the authority of paragraph (c)(1) of this section is subject, to the extent of his or her authority, to such rules of general applicability regarding standards of conduct and other matters as prescribed by the Internal Revenue Service.

(d) *Special appearances*. The Commissioner, or delegate, may, subject to conditions deemed appropriate, authorize an individual who is not otherwise eligible to practice before the Internal Revenue Service to represent another person in a particular matter.

(e) *Fiduciaries*. For purposes of this part, a fiduciary (for example, a trustee, receiver, guardian, personal representative, administrator, or executor) is considered to be the taxpayer and not a representative of the taxpayer.

(f) *Effective/applicability date*. This section is applicable beginning August 2, 2011.

§ 10.8 Return preparation and application of rules to other individuals.

(a) *Preparing all or substantially all of a tax return*. Any individual who for compensation prepares or assists with the preparation of all or substantially all of a tax return or claim for refund must have a preparer tax identification number. Except as otherwise prescribed in forms, instructions, or other appropriate guidance, an individual must be an attorney, certified public accountant, enrolled agent, or registered tax return preparer to obtain a preparer tax identification number. Any individual who for compensation prepares or assists with the preparation of all or substantially all of a tax return or claim for refund is subject to the duties and restrictions relating to practice in subpart B, as well as subject to the sanctions for violation of the regulations in subpart C.

(b) *Preparing a tax return and furnishing information*. Any individual may for compensation prepare or assist with the preparation of a tax return or claim for refund (provided the individual prepares less than substantially all of the tax return or claim for refund), appear as a witness for the taxpayer before the Internal Revenue Service, or furnish information at the request of the Internal Revenue Service or any of its officers or employees.

(c) *Application of rules to other individuals*. Any individual who for compensation prepares, or assists in the preparation of, all or a substantial portion of a document pertaining to any taxpayer's tax liability for submission to the Internal Revenue Service is subject to the duties and restrictions relating to practice in subpart B, as well as subject to the sanctions for violation of the regulations in subpart C. Unless otherwise a practitioner, however, an individual may not for compensation prepare, or assist in the preparation of, all or substantially all of a tax return or claim for refund, or sign tax returns and claims for refund. For purposes of this paragraph, an individual described in 26 CFR 301.7701-15(f) is not treated as having prepared all or a substantial portion of the document by reason of such assistance.

(d) *Effective/applicability date*. This section is applicable beginning August 2, 2011.

§ 10.9 Continuing education providers and continuing education programs.

(a) *Continuing education providers —*

(1) *In general*. Continuing education providers are those responsible for presenting continuing education programs. A continuing education provider must —

(i) Be an accredited educational institution;

(ii) Be recognized for continuing education purposes by the licensing body of any State, territory, or possession of the United States, including a Commonwealth, or the District of Columbia;

(iii) Be recognized and approved by a qualifying organization as a provider of continuing education on subject matters within §10.6(f) of this part. The Internal Revenue Service may, at its discretion, identify a professional organization, society or business entity that maintains minimum education standards comparable to those set forth in this part as a qualifying organization for purposes of this part in appropriate forms, instructions, and other appropriate guidance; or

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

(2) *Continuing education provider numbers —*

(i) *In general*. A continuing education provider is required to obtain a continuing education provider number and pay any applicable user fee.

(ii) *Renewal*. A continuing education provider maintains its status as a continuing education provider during the continuing education provider cycle by renewing its continuing education provider number as prescribed by forms, instructions or other appropriate guidance and paying any applicable user fee.

(3) *Requirements for qualified continuing education programs*. A continuing education provider must ensure the qualified continuing education program complies with all the following requirements —

(i) Programs must be developed by individual(s) qualified in the subject matter;

(ii) Program subject matter must be current;

(iii) Instructors, discussion leaders, and speakers must be qualified with respect to program content;

(iv) Programs must include some means for evaluation of the technical content and presentation to be evaluated;

(v) Certificates of completion bearing a current qualified continuing education program number issued by the Internal Revenue Service must be provided to the participants who successfully complete the program; and

(vi) Records must be maintained by the continuing education provider to verify the participants who attended and completed the program for a period of four years following completion of the program. In the case of continuous conferences, conventions, and the like, records must be maintained to verify completion of the program and attendance by each participant at each segment of the program.

(4) *Program numbers* —

(i) *In general*. Every continuing education provider is required to obtain a continuing education provider program number and pay any applicable user fee for each program offered. Program numbers shall be obtained as prescribed by forms, instructions or other appropriate guidance. Although, at the discretion of the Internal Revenue Service, a continuing education provider may be required to demonstrate that the program is designed to enhance professional knowledge in Federal taxation or Federal tax related matters (programs comprised of current subject matter in Federal taxation or Federal tax related matters, including accounting, tax return preparation software, taxation, or ethics) and complies with the requirements in paragraph (a)(2)of this section before a program number is issued.

(ii) *Update programs*. Update programs may use the same number as the program subject to update. An update program is a program that instructs on a change of existing law occurring within one year of the update program offering. The qualifying education program subject to update must have been offered within the two year time period prior to the change in existing law.

(iii) *Change in existing law*. A change in existing law means the effective date of the statute or regulation, or date of entry of judicial decision, that is the subject of the update.

(b) *Failure to comply*. Compliance by a continuing education provider with the requirements of this part is determined by the Internal Revenue Service. A continuing education provider who fails to meet the requirements of this part will be notified by the Internal Revenue Service. The notice will state the basis for the determination of noncompliance and will provide the continuing education provider an opportunity to furnish the requested information in writing relating to the matter within 60 days of the date of the notice. The continuing education provider may, within 30 days after receipt of the notice of denial, file a written protest as prescribed by the Internal Revenue Service in forms, instructions, or other appropriate guidance. A protest under this section is not governed by subpart D of this part.

(c) *Effective/applicability date*. This section is applicable beginning August 2, 2011.

Subpart B — Duties and Restrictions Relating to Practice Before the Internal Revenue Service

§ 10.20 Information to be furnished.

(a) *To the Internal Revenue Service.*

(1) A practitioner must, on a proper and lawful request by a duly authorized officer or employee of the Internal Revenue Service, promptly submit records or information in any matter before the Internal Revenue Service unless the practitioner believes in good faith and on reasonable grounds that the records or information are privileged.

(2) Where the requested records or information are not in the possession of, or subject to the control of, the practitioner or the practitioner's client, the practitioner must promptly notify the requesting Internal Revenue Service officer or employee and the practitioner must provide any information that the practitioner has regarding the identity of any person who the practitioner believes may have possession or control of the requested records or information. The practitioner must make reasonable inquiry of his or her client regarding the identity of any person who may have possession or control of the requested records or information, but the practitioner is not required to make inquiry of any other person or independently verify any information provided by the practitioner's client regarding the identity of such persons.

(3) When a proper and lawful request is made by a duly authorized officer or employee of the Internal Revenue Service, concerning an inquiry into an alleged violation of the regulations in this part, a practitioner must provide any information the practitioner has concerning the alleged violation and testify regarding this information in any proceeding instituted under this part, unless the practitioner believes in good faith and on reasonable grounds that the information is privileged.

(b) *Interference with a proper and lawful request for records or information.* A practitioner may not interfere, or attempt to interfere, with any proper and lawful effort by the Internal Revenue Service, its officers or employees, to obtain any record or information unless the practitioner believes in good faith and on reasonable grounds that the record or information is privileged.

(c) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

§ 10.21 Knowledge of client's omission.

A practitioner who, having been retained by a client with respect to a matter administered by the Internal Revenue Service, knows that the client has not complied with the revenue laws of the United States or has made an error in or omission from any return, document, affidavit, or other paper which the client submitted or executed under the revenue laws of the United States, must advise the client promptly of the fact of such noncompliance, error, or omission. The practitioner must advise the client of the consequences as provided under the Code and regulations of such noncompliance, error, or omission.

§ 10.22 Diligence as to accuracy.

(a) *In general.* A practitioner must exercise due diligence —

(1) In preparing or assisting in the preparation of, approving, and filing tax returns, documents, affidavits, and other papers relating to Internal Revenue Service matters;

(2) In determining the correctness of oral or written representations made by the practitioner to the Department of the Treasury; and

(3) In determining the correctness of oral or written representations made by the practitioner to clients with reference to any matter administered by the Internal Revenue Service.

(b) *Reliance on others.* Except as modified by §§10.34 and 10.37, a practitioner will be presumed to have exercised due diligence for purposes of this section if the practitioner relies on the work product of another person and the practitioner used reasonable care in engaging, supervising, training, and evaluating the person, taking proper account of the nature of the relationship between the practitioner and the person.

(c) *Effective/applicability date.* Paragraph (a) of this section is applicable on September 26, 2007. Paragraph (b) of this section is applicable beginning June 12, 2014.

§ 10.23 Prompt disposition of pending matters.

A practitioner may not unreasonably delay the prompt disposition of any matter before the Internal Revenue Service.

§ 10.24 Assistance from or to disbarred or suspended persons and former Internal Revenue Service employees.

A practitioner may not, knowingly and directly or indirectly:

(a) Accept assistance from or assist any person who is under disbarment or suspension from practice before the Internal Revenue Service if the assistance relates to a matter or matters constituting practice before the Internal Revenue Service.

(b) Accept assistance from any former government employee where the provisions of § 10.25 or any Federal law would be violated.

§ 10.25 Practice by former government employees, their partners and their associates.

(a) *Definitions.* For purposes of this section —

(1) *Assist* means to act in such a way as to advise, furnish information to, or otherwise aid another person, directly, or indirectly.

(2) *Government employee* is an officer or employee of the United States or any agency of the United States, including a special Government employee as defined in *18 U.S.C. 202(a)*, or of the District of Columbia, or of any State, or a member of Congress or of any State legislature.

(3) *Member of a firm* is a sole practitioner or an employee or associate thereof, or a partner, stockholder, associate, affiliate or employee of a partnership, joint venture, corporation, professional association or other affiliation of two or more practitioners who represent nongovernmental parties.

(4) *Particular matter involving specific parties* is defined at 5 CFR 2637.201(c), or superseding post-employment regulations issued by the U.S. Office of Government Ethics.

(5) *Rule* includes Treasury regulations, whether issued or under preparation for issuance as notices of proposed rulemaking or as Treasury decisions, revenue rulings, and revenue procedures published in the Internal Revenue Bulletin (see *26 CFR 601.601(d)(2)(ii)(b)*).

(b) *General rules —*

(1) No former Government employee may, subsequent to Government employment, represent anyone in any matter administered by the Internal Revenue Service if the representation would violate *18 U.S.C. 207* or any other laws of the United States.

(2) No former Government employee who personally and substantially participated in a particular matter involving specific parties may, subsequent to Government employment, represent or knowingly assist, in that particular matter, any person who is or was a specific party to that particular matter.

(3) A former Government employee who within a period of one year prior to the termination of Government employment had official responsibility for a particular matter involving specific parties may not, within two years after Government employment is ended, represent in that particular matter any person who is or was a specific party to that particular matter.

(4) No former Government employee may, within one year after Government employment is ended, communicate with or appear before, with the intent to influence, any employee of the Treasury Department in connection with the publication, withdrawal, amendment, modification, or interpretation of a rule the development of which the former Government employee participated in, or for which, within a period of one year prior to the termination of Government employment, the former government employee had official responsibility. This paragraph (b)(4) does not, however, preclude any former employee from appearing on one's own behalf or from representing a taxpayer before the Internal Revenue Service in connection with a particular matter involving specific

parties involving the application or interpretation of a rule with respect to that particular matter, provided that the representation is otherwise consistent with the other provisions of this section and the former employee does not utilize or disclose any confidential information acquired by the former employee in the development of the rule.

(c) *Firm representation* —

(1) No member of a firm of which a former Government employee is a member may represent or knowingly assist a person who was or is a specific party in any particular matter with respect to which the restrictions of paragraph (b)(2) of this section apply to the former Government employee, in that particular matter, unless the firm isolates the former Government employee in such a way to ensure that the former Government employee cannot assist in the representation.

(2) When isolation of a former Government employee is required under paragraph (c)(1) of this section, a statement affirming the fact of such isolation must be executed under oath by the former Government employee and by another member of the firm acting on behalf of the firm. The statement must clearly identify the firm, the former Government employee, and the particular matter(s) requiring isolation. The statement must be retained by the firm and, upon request, provided to the office(s) of the Internal Revenue Service administering or enforcing this part.

(d) *Pending representation.* The provisions of this regulation will govern practice by former Government employees, their partners and associates with respect to representation in particular matters involving specific parties where actual representation commenced before the effective date of this regulation.

(e) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

§ 10.26 Notaries.

A practitioner may not take acknowledgments, administer oaths, certify papers, or perform any official act as a notary public with respect to any matter administered by the Internal Revenue Service and for which he or she is employed as counsel, attorney, or agent, or in which he or she may be in any way interested.

§ 10.27 Fees.

(a) *In general.* A practitioner may not charge an unconscionable fee in connection with any matter before the Internal Revenue Service.

(b) *Contingent fees* —

(1) Except as provided in paragraphs (b)(2), (3), and (4) of this section, a practitioner may not charge a contingent fee for services rendered in connection with any matter before the Internal Revenue Service.

(2) A practitioner may charge a contingent fee for services rendered in connection with the Service's examination of, or challenge to —

(i) An original tax return; or

(ii) An amended return or claim for refund or credit where the amended return or claim for refund or credit was filed within 120 days of the taxpayer receiving a written notice of the examination of, or a written challenge to the original tax return.

(3) A practitioner may charge a contingent fee for services rendered in connection with a claim for credit or refund filed solely in connection with the determination of statutory interest or penalties assessed by the Internal Revenue Service.

(4) A practitioner may charge a contingent fee for services rendered in connection with any judicial proceeding arising under the Internal Revenue Code.

(c) *Definitions.* For purposes of this section —

(1) *Contingent fee* is any fee that is based, in whole or in part, on whether or not a position taken on a tax return or other filing avoids challenge by the Internal Revenue Service or is sustained either by the Internal Revenue Service or in litigation. A contingent fee includes a fee that is based on a percentage of the refund reported on a return, that is based on a percentage of the taxes saved, or that otherwise depends on the specific result attained. A contingent fee also includes any fee arrangement in which the practitioner will reimburse the client for all or a portion of the client's fee in the event

that a position taken on a tax return or other filing is challenged by the Internal Revenue Service or is not sustained, whether pursuant to an indemnity agreement, a guarantee, rescission rights, or any other arrangement with a similar effect.

(2) *Matter before the Internal Revenue Service* includes tax planning and advice, preparing or filing or assisting in preparing or filing returns or claims for refund or credit, and all matters connected with a presentation to the Internal Revenue Service or any of its officers or employees relating to a taxpayer's rights, privileges, or liabilities under laws or regulations administered by the Internal Revenue Service. Such presentations include, but are not limited to, preparing and filing documents, corresponding and communicating with the Internal Revenue Service, rendering written advice with respect to any entity, transaction, plan or arrangement, and representing a client at conferences, hearings, and meetings.

(d) *Effective/applicability date.* This section is applicable for fee arrangements entered into after March 26, 2008.

§ 10.28 Return of client's records.

(a) In general, a practitioner must, at the request of a client, promptly return any and all records of the client that are necessary for the client to comply with his or her Federal tax obligations. The practitioner may retain copies of the records returned to a client. The existence of a dispute over fees generally does not relieve the practitioner of his or her responsibility under this section. Nevertheless, if applicable state law allows or permits the retention of a client's records by a practitioner in the case of a dispute over fees for services rendered, the practitioner need only return those records that must be attached to the taxpayer's return. The practitioner, however, must provide the client with reasonable access to review and copy any additional records of the client retained by the practitioner under state law that are necessary for the client to comply with his or her Federal tax obligations.

(b) For purposes of this section — Records of the client include all documents or written or electronic materials provided to the practitioner, or obtained by the practitioner in the course of the practitioner's representation of the client, that preexisted the retention of the practitioner by the client. The term also includes materials that were prepared by the client or a third party (not including an employee or agent of the practitioner) at any time and provided to the practitioner with respect to the subject matter of the representation. The term also includes any return, claim for refund, schedule, affidavit, appraisal or any other document prepared by the practitioner, or his or her employee or agent, that was presented to the client with respect to a prior representation if such document is necessary for the taxpayer to comply with his or her current Federal tax obligations. The term does not include any return, claim for refund, schedule, affidavit, appraisal or any other document prepared by the practitioner or the practitioner's firm, employees or agents if the practitioner is withholding such document pending the client's performance of its contractual obligation to pay fees with respect to such document.

§ 10.29 Conflicting interests.

(a) Except as provided by paragraph (b) of this section, a practitioner shall not represent a client before the Internal Revenue Service if the representation involves a conflict of interest. A conflict of interest exists if —

(1) The representation of one client will be directly adverse to another client; or

(2) There is a significant risk that the representation of one or more clients will be materially limited by the practitioner's responsibilities to another client, a former client or a third person, or by a personal interest of the practitioner.

(b) Notwithstanding the existence of a conflict of interest under paragraph (a) of this section, the practitioner may represent a client if —

(1) The practitioner reasonably believes that the practitioner will be able to provide competent and diligent representation to each affected client;

(2) The representation is not prohibited by law; and

(3) Each affected client waives the conflict of

interest and gives informed consent, confirmed in writing by each affected client, at the time the existence of the conflict of interest is known by the practitioner. The confirmation may be made within a reasonable period of time after the informed consent, but in no event later than 30 days.

(c) Copies of the written consents must be retained by the practitioner for at least 36 months from the date of the conclusion of the representation of the affected clients, and the written consents must be provided to any officer or employee of the Internal Revenue Service on request.

(d) *Effective/applicability date.* This section is applicable on September 26, 2007.

§ 10.30 Solicitation.

(a) *Advertising and solicitation restrictions.*

(1) A practitioner may not, with respect to any Internal Revenue Service matter, in any way use or participate in the use of any form of public communication or private solicitation containing a false, fraudulent, or coercive statement or claim; or a misleading or deceptive statement or claim. Enrolled agents, enrolled retirement plan agents, or registered tax return preparers, in describing their professional designation, may not utilize the term "certified" or imply an employer/employee relationship with the Internal Revenue Service. Examples of acceptable descriptions for enrolled agents are "enrolled to represent taxpayers before the Internal Revenue Service," "enrolled to practice before the Internal Revenue Service," and "admitted to practice before the Internal Revenue Service." Similarly, examples of acceptable descriptions for enrolled retirement plan agents are "enrolled to represent taxpayers before the Internal Revenue Service as a retirement plan agent" and "enrolled to practice before the Internal Revenue Service as a retirement plan agent." An example of an acceptable description for registered tax return preparers is "designated as a registered tax return preparer by the Internal Revenue Service."

(2) A practitioner may not make, directly or indirectly, an uninvited written or oral solicitation of employment in matters related to the Internal Revenue Service if the solicitation violates Federal or State law or other applicable rule, e.g., attorneys are precluded from making a solicitation that is prohibited by conduct rules applicable to all attorneys in their State(s) of licensure. Any lawful solicitation made by or on behalf of a practitioner eligible to practice before the Internal Revenue Service must, nevertheless, clearly identify the solicitation as such and, if applicable, identify the source of the information used in choosing the recipient.

(b) *Fee information.*

(1)(i) A practitioner may publish the availability of a written schedule of fees and disseminate the following fee information —

(A) Fixed fees for specific routine services.

(B) Hourly rates.

(C) Range of fees for particular services.

(D) Fee charged for an initial consultation.

(ii) Any statement of fee information concerning matters in which costs may be incurred must include a statement disclosing whether clients will be responsible for such costs.

(2) A practitioner may charge no more than the rate(s) published under paragraph (b)(1) of this section for at least 30 calendar days after the last date on which the schedule of fees was published.

(c) *Communication of fee information.* Fee information may be communicated in professional lists, telephone directories, print media, mailings, and electronic mail, facsimile, hand delivered flyers, radio, television, and any other method. The method chosen, however, must not cause the communication to become untruthful, deceptive, or otherwise in violation of this part. A practitioner may not persist in attempting to contact a prospective client if the prospective client has made it known to the practitioner that he or she does not desire to be solicited. In the case of radio and television broadcasting, the broadcast must be recorded and the practitioner must retain a recording of the actual transmission. In the case of direct mail and e-commerce communications, the practitioner must retain a copy of the actual communication, along with a list or other description of persons to whom the

communication was mailed or otherwise distributed. The copy must be retained by the practitioner for a period of at least 36 months from the date of the last transmission or use.

(d) *Improper associations.* A practitioner may not, in matters related to the Internal Revenue Service, assist, or accept assistance from, any person or entity who, to the knowledge of the practitioner, obtains clients or otherwise practices in a manner forbidden under this section.

(e) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

(Approved by the Office of Management and Budget under Control No. 1545-1726)

§ 10.31 Negotiation of taxpayer checks.

(a) A practitioner may not endorse or otherwise negotiate any check (including directing or accepting payment by any means, electronic or otherwise, into an account owned or controlled by the practitioner or any firm or other entity with whom the practitioner is associated) issued to a client by the government in respect of a Federal tax liability.

(b) *Effective/applicability date.* This section is applicable beginning June 12, 2014.

§ 10.32 Practice of law.

Nothing in the regulations in this part may be construed as authorizing persons not members of the bar to practice law.

§ 10.33 Best practices for tax advisors.

(a) *Best practices.* Tax advisors should provide clients with the highest quality representation concerning Federal tax issues by adhering to best practices in providing advice and in preparing or assisting in the preparation of a submission to the Internal Revenue Service. In addition to compliance with the standards of practice provided elsewhere in this part, best practices include the following:

(1) Communicating clearly with the client regarding the terms of the engagement. For example, the advisor should determine the client's expected purpose for and use of the advice and should have a clear understanding with the client regarding the form and scope of the advice or assistance to be rendered.

(2) Establishing the facts, determining which facts are relevant, evaluating the reasonableness of any assumptions or representations, relating the applicable law (including potentially applicable judicial doctrines) to the relevant facts, and arriving at a conclusion supported by the law and the facts.

(3) Advising the client regarding the import of the conclusions reached, including, for example, whether a taxpayer may avoid accuracy-related penalties under the Internal Revenue Code if a taxpayer acts in reliance on the advice.

(4) Acting fairly and with integrity in practice before the Internal Revenue Service.

(b) *Procedures to ensure best practices for tax advisors.* Tax advisors with responsibility for overseeing a firm's practice of providing advice concerning Federal tax issues or of preparing or assisting in the preparation of submissions to the Internal Revenue Service should take reasonable steps to ensure that the firm's procedures for all members, associates, and employees are consistent with the best practices set forth in paragraph (a) of this section.

(c) *Applicability date.* This section is effective after June 20, 2005.

§ 10.34 Standards with respect to tax returns and documents, affidavits and other papers.

(a) *Tax returns*.

(1) A practitioner may not willfully, recklessly, or through gross incompetence —

(i) Sign a tax return or claim for refund that the practitioner knows or reasonably should know contains a position that —

(A) Lacks a reasonable basis;

(B) Is an unreasonable position as described in section 6694(a)(2) of the Internal Revenue Code (Code) (including the related regulations and other published guidance); or

(C) Is a willful attempt by the practitioner to understate the liability for tax or a reckless or intentional disregard of rules or regulations by the practitioner as described in section 6694(b)(2) of the Code (including the related regulations and other published guidance).

(ii) Advise a client to take a position on a tax return or claim for refund, or prepare a portion of a tax return or claim for refund containing a position, that —

(A) Lacks a reasonable basis;

(B) Is an unreasonable position as described in section 6694(a)(2) of the Code (including the related regulations and other published guidance); or

(C) Is a willful attempt by the practitioner to understate the liability for tax or a reckless or intentional disregard of rules or regulations by the practitioner as described in section 6694(b)(2) of the Code (including the related regulations and other published guidance).

(2) A pattern of conduct is a factor that will be taken into account in determining whether a practitioner acted willfully, recklessly, or through gross incompetence.

(b) *Documents, affidavits and other papers* —

(1) A practitioner may not advise a client to take a position on a document, affidavit or other paper submitted to the Internal Revenue Service unless the position is not frivolous.

(2) A practitioner may not advise a client to submit a document, affidavit or other paper to the Internal Revenue Service —

(i) The purpose of which is to delay or impede the administration of the Federal tax laws;

(ii) That is frivolous; or

(iii) That contains or omits information in a manner that demonstrates an intentional disregard of a rule or regulation unless the practitioner also advises the client to submit a document that evidences a good faith challenge to the rule or regulation.

(c) *Advising clients on potential penalties* —

(1) A practitioner must inform a client of any penalties that are reasonably likely to apply to the client with respect to —

(i) A position taken on a tax return if —

(A) The practitioner advised the client with respect to the position; or

(B) The practitioner prepared or signed the tax return; and

(ii) Any document, affidavit or other paper submitted to the Internal Revenue Service.

(2) The practitioner also must inform the client of any opportunity to avoid any such penalties by disclosure, if relevant, and of the requirements for adequate disclosure.

(3) This paragraph (c) applies even if the practitioner is not subject to a penalty under the Internal Revenue Code with respect to the position or with respect to the document, affidavit or other paper submitted.

(d) *Relying on information furnished by clients.* A practitioner advising a client to take a position on a tax return, document, affidavit or other paper submitted to the Internal Revenue Service, or preparing or signing a tax return as a preparer, generally may rely in good faith without verification upon information furnished by the client. The practitioner may not, however, ignore the implications of information furnished to, or actually known by, the practitioner, and must make reasonable inquiries if the information as furnished appears to be incorrect, inconsistent with an important fact or another factual assumption, or incomplete.

(e) *Effective/applicability date.* Paragraph (a) of this section is applicable for returns or claims for refund filed, or advice provided, beginning August 2, 2011. Paragraphs (b) through (d) of this section are applicable to tax returns, documents, affidavits, and other papers filed on or after September 26, 2007.

§ 10.35 Competence.

(a) A practitioner must possess the necessary competence to engage in practice before the Internal Revenue Service. Competent practice requires the appropriate level of knowledge, skill, thoroughness, and preparation necessary for the matter for which the practitioner is engaged. A practitioner may become competent for the matter for which the practitioner has been engaged through various methods, such

as consulting with experts in the relevant area or studying the relevant law.

(b) *Effective/applicability date.* This section is applicable beginning June 12, 2014.

§ 10.36 Procedures to ensure compliance.

(a) Any individual subject to the provisions of this part who has (or individuals who have or share) principal authority and responsibility for overseeing a firm's practice governed by this part, including the provision of advice concerning Federal tax matters and preparation of tax returns, claims for refund, or other documents for submission to the Internal Revenue Service, must take reasonable steps to ensure that the firm has adequate procedures in effect for all members, associates, and employees for purposes of complying with subparts A, B, and C of this part, as applicable. In the absence of a person or persons identified by the firm as having the principal authority and responsibility described in this paragraph, the Internal Revenue Service may identify one or more individuals subject to the provisions of this part responsible for compliance with the requirements of this section.

(b) Any such individual who has (or such individuals who have or share) principal authority as described in paragraph (a) of this section will be subject to discipline for failing to comply with the requirements of this section if—

(1) The individual through willfulness, recklessness, or gross incompetence does not take reasonable steps to ensure that the firm has adequate procedures to comply with this part, as applicable, and one or more individuals who are members of, associated with, or employed by, the firm are, or have, engaged in a pattern or practice, in connection with their practice with the firm, of failing to comply with this part, as applicable;

(2) The individual through willfulness, recklessness, or gross incompetence does not take reasonable steps to ensure that firm procedures in effect are properly followed, and one or more individuals who are members of, associated with, or employed by, the firm are, or have, engaged in a pattern or practice, in connection with their practice with the firm, of failing to comply with this part, as applicable; or

(3) The individual knows or should know that one or more individuals who are members of, associated with, or employed by, the firm are, or have, engaged in a pattern or practice, in connection with their practice with the firm, that does not comply with this part, as applicable, and the individual, through willfulness, recklessness, or gross incompetence fails to take prompt action to correct the noncompliance.

(c) *Effective/applicability date.* This section is applicable beginning June 12, 2014.

§ 10.37 Requirements for written advice.

(a) *Requirements.*

(1) A practitioner may give written advice (including by means of electronic communication) concerning one or more Federal tax matters subject to the requirements in paragraph (a)(2) of this section. Government submissions on matters of general policy are not considered written advice on a Federal tax matter for purposes of this section. Continuing education presentations provided to an audience solely for the purpose of enhancing practitioners' professional knowledge on Federal tax matters are not considered written advice on a Federal tax matter for purposes of this section. The preceding sentence does not apply to presentations marketing or promoting transactions.

(2) The practitioner must—

(i) Base the written advice on reasonable factual and legal assumptions (including assumptions as to future events);

(ii) Reasonably consider all relevant facts and circumstances that the practitioner knows or reasonably should know;

(iii) Use reasonable efforts to identify and ascertain the facts relevant to written advice on each Federal tax matter;

(iv) Not rely upon representations, statements, findings, or agreements (including projections, financial forecasts, or appraisals) of the taxpayer or any other person if reliance on them would be unreasonable;

(v) Relate applicable law and authorities to facts; and

(vi) Not, in evaluating a Federal tax matter, take into account the possibility that a tax return will not be audited or that a matter will not be raised on audit.

(3) Reliance on representations, statements, findings, or agreements is unreasonable if the practitioner knows or reasonably should know that one or more representations or assumptions on which any representation is based are incorrect, incomplete, or inconsistent.

(b) *Reliance on advice of others.* A practitioner may only rely on the advice of another person if the advice was reasonable and the reliance is in good faith considering all the facts and circumstances. Reliance is not reasonable when—

(1) The practitioner knows or reasonably should know that the opinion of the other person should not be relied on;

(2) The practitioner knows or reasonably should know that the other person is not competent or lacks the necessary qualifications to provide the advice; or

(3) The practitioner knows or reasonably should know that the other person has a conflict of interest in violation of the rules described in this part.

(c) *Standard of review.*

(1) In evaluating whether a practitioner giving written advice concerning one or more Federal tax matters complied with the requirements of this section, the Commissioner, or delegate, will apply a reasonable practitioner standard, considering all facts and circumstances, including, but not limited to, the scope of the engagement and the type and specificity of the advice sought by the client.

(2) In the case of an opinion the practitioner knows or has reason to know will be used or referred to by a person other than the practitioner (or a person who is a member of, associated with, or employed by the practitioner's firm) in promoting, marketing, or recommending to one or more taxpayers a partnership or other entity, investment plan or arrangement a significant purpose of which is the avoidance or evasion of any tax imposed by the Internal Revenue Code, the Commissioner, or delegate, will apply a reasonable practitioner standard, considering all facts and circumstances, with emphasis given to the additional risk caused by the practitioner's lack of knowledge of the taxpayer's particular circumstances, when determining whether a practitioner has failed to comply with this section.

(d) *Federal tax matter.* A Federal tax matter, as used in this section, is any matter concerning the application or interpretation of---

(1) A revenue provision as defined in section 6110(i)(1)(B) of the Internal Revenue Code;

(2) Any provision of law impacting a person's obligations under the internal revenue laws and regulations, including but not limited to the person's liability to pay tax or obligation to file returns; or

(3) Any other law or regulation administered by the Internal Revenue Service.

(e) *Effective/applicability date.* This section is applicable to written advice rendered after June 12, 2014.

§ 10.38 Establishment of advisory committees.

(a) *Advisory committees.* To promote and maintain the public's confidence in tax advisors, the Internal Revenue Service is authorized to establish one or more advisory committees composed of at least six individuals authorized to practice before the Internal Revenue Service. Membership of an advisory committee must be balanced among those who practice as attorneys, accountants, enrolled agents, enrolled actuaries, enrolled retirement plan agents, and registered tax return preparers. Under procedures prescribed by the Internal Revenue Service, an advisory committee may review and make general recommendations regarding the practices, procedures, and policies of the offices described in §10.1.

(b) *Effective date.* This section is applicable beginning August 2, 2011.

Subpart C — Sanctions for Violation of the Regulations

§ 10.50 Sanctions.

(a) *Authority to censure, suspend, or disbar.* The Secretary of the Treasury, or delegate, after notice and an opportunity for a proceeding, may censure, suspend, or disbar any practitioner from practice before the Internal Revenue Service if the practitioner is shown to be incompetent or disreputable (within the meaning of §10.51), fails to comply with any regulation in this part (under the prohibited conduct standards of §10.52), or with intent to defraud, willfully and knowingly misleads or threatens a client or prospective client. Censure is a public reprimand.

(b) *Authority to disqualify.* The Secretary of the Treasury, or delegate, after due notice and opportunity for hearing, may disqualify any appraiser for a violation of these rules as applicable to appraisers.

(1) If any appraiser is disqualified pursuant to this subpart C, the appraiser is barred from presenting evidence or testimony in any administrative proceeding before the Department of Treasury or the Internal Revenue Service, unless and until authorized to do so by the Internal Revenue Service pursuant to §10.81, regardless of whether the evidence or testimony would pertain to an appraisal made prior to or after the effective date of disqualification.

(2) Any appraisal made by a disqualified appraiser after the effective date of disqualification will not have any probative effect in any administrative proceeding before the Department of the Treasury or the Internal Revenue Service. An appraisal otherwise barred from admission into evidence pursuant to this section may be admitted into evidence solely for the purpose of determining the taxpayer's reliance in good faith on such appraisal.

(c) *Authority to impose monetary penalty —*

(1) *In general.*

(i) The Secretary of the Treasury, or delegate, after notice and an opportunity for a proceeding, may impose a monetary penalty on any practitioner who engages in conduct subject to sanction under paragraph (a) of this section.

(ii) If the practitioner described in paragraph (c)(1)(i) of this section was acting on behalf of an employer or any firm or other entity in connection with the conduct giving rise to the penalty, the Secretary of the Treasury, or delegate, may impose a monetary penalty on the employer, firm, or entity if it knew, or reasonably should have known of such conduct.

(2) *Amount of penalty.* The amount of the penalty shall not exceed the gross income derived (or to be derived) from the conduct giving rise to the penalty.

(3) *Coordination with other sanctions.* Subject to paragraph (c)(2) of this section —

(i) Any monetary penalty imposed on a practitioner under this paragraph (c) may be in addition to or in lieu of any suspension, disbarment or censure and may be in addition to a penalty imposed on an employer, firm or other entity under paragraph (c)(1)(ii) of this section.

(ii) Any monetary penalty imposed on an employer, firm or other entity may be in addition to or in lieu of penalties imposed under paragraph (c)(1)(i) of this section.

(d) *Authority to accept a practitioner's consent to sanction.* The Internal Revenue Service may accept a practitioner's offer of consent to be sanctioned under §10.50 in lieu of instituting or continuing a proceeding under §10.60(a).

(e) *Sanctions to be imposed.* The sanctions imposed by this section shall take into account all relevant facts and circumstances.

(f) *Effective/applicability date.* This section is applicable to conduct occurring on or after August 2, 2011, except that paragraphs (a), (b)(2), and (e) apply to conduct occurring on or after September 26, 2007, and paragraph (c) applies to prohibited conduct that occurs after October 22, 2004.

§ 10.51 Incompetence and disreputable conduct.

(a) *Incompetence and disreputable conduct.* Incompetence and disreputable conduct for which a practitioner may be sanctioned under §10.50 includes, but is not limited to —

(1) Conviction of any criminal offense under the Federal tax laws.

(2) Conviction of any criminal offense involving dishonesty or breach of trust.

(3) Conviction of any felony under Federal or State law for which the conduct involved renders the practitioner unfit to practice before the Internal Revenue Service.

(4) Giving false or misleading information, or participating in any way in the giving of false or misleading information to the Department of the Treasury or any officer or employee thereof, or to any tribunal authorized to pass upon Federal tax matters, in connection with any matter pending or likely to be pending before them, knowing the information to be false or misleading. Facts or other matters contained in testimony, Federal tax returns, financial statements, applications for enrollment, affidavits, declarations, and any other document or statement, written or oral, are included in the term "information."

(5) Solicitation of employment as prohibited under §10.30, the use of false or misleading representations with intent to deceive a client or prospective client in order to procure employment, or intimating that the practitioner is able improperly to obtain special consideration or action from the Internal Revenue Service or any officer or employee thereof.

(6) Willfully failing to make a Federal tax return in violation of the Federal tax laws, or willfully evading, attempting to evade, or participating in any way in evading or attempting to evade any assessment or payment of any Federal tax.

(7) Willfully assisting, counseling, encouraging a client or prospective client in violating, or suggesting to a client or prospective client to violate, any Federal tax law, or knowingly counseling or suggesting to a client or prospective client an illegal plan to evade Federal taxes or payment thereof.

(8) Misappropriation of, or failure properly or promptly to remit, funds received from a client for the purpose of payment of taxes or other obligations due the United States.

(9) Directly or indirectly attempting to influence, or offering or agreeing to attempt to influence, the official action of any officer or employee of the Internal Revenue Service by the use of threats, false accusations, duress or coercion, by the offer of any special inducement or promise of an advantage or by the bestowing of any gift, favor or thing of value.

(10) Disbarment or suspension from practice as an attorney, certified public accountant, public accountant, or actuary by any duly constituted authority of any State, territory, or possession of the United States, including a Commonwealth, or the District of Columbia, any Federal court of record or any Federal agency, body or board.

(11) Knowingly aiding and abetting another person to practice before the Internal Revenue Service during a period of suspension, disbarment or ineligibility of such other person.

(12) Contemptuous conduct in connection with practice before the Internal Revenue Service, including the use of abusive language, making false accusations or statements, knowing them to be false, or circulating or publishing malicious or libelous matter.

(13) Giving a false opinion, knowingly, recklessly, or through gross incompetence, including an opinion which is intentionally or recklessly misleading, or engaging in a pattern of providing incompetent opinions on questions arising under the Federal tax laws. False opinions described in this paragraph (a)(l3) include those which reflect or result from a knowing misstatement of fact or law, from an assertion of a position known to be unwarranted under existing law, from counseling or assisting in conduct known to be illegal or fraudulent, from concealing matters required by law to be revealed, or from consciously disregarding information indicating that material facts expressed in the opinion or offering material are false or misleading. For purposes of this paragraph (a)(13), reckless conduct is a highly unreasonable omission or misrepresentation involving an extreme departure from the standards of ordinary care that a practitioner should observe under the circumstances. A pattern of conduct is a factor that will be taken into account in determining whether a practitioner acted knowingly, recklessly, or through gross incompetence. Gross incompetence

includes conduct that reflects gross indifference, preparation which is grossly inadequate under the circumstances, and a consistent failure to perform obligations to the client.

(14) Willfully failing to sign a tax return prepared by the practitioner when the practitioner's signature is required by Federal tax laws unless the failure is due to reasonable cause and not due to willful neglect.

(15) Willfully disclosing or otherwise using a tax return or tax return information in a manner not authorized by the Internal Revenue Code, contrary to the order of a court of competent jurisdiction, or contrary to the order of an administrative law judge in a proceeding instituted under §10.60.

(16) Willfully failing to file on magnetic or other electronic media a tax return prepared by the practitioner when the practitioner is required to do so by the Federal tax laws unless the failure is due to reasonable cause and not due to willful neglect.

(17) Willfully preparing all or substantially all of, or signing, a tax return or claim for refund when the practitioner does not possess a current or otherwise valid preparer tax identification number or other prescribed identifying number.

(18) Willfully representing a taxpayer before an officer or employee of the Internal Revenue Service unless the practitioner is authorized to do so pursuant to this part.

(b) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

§ 10.52 Violations subject to sanction.

(a) A practitioner may be sanctioned under §10.50 if the practitioner —

(1) Willfully violates any of the regulations (other than §10.33) contained in this part; or

(2) Recklessly or through gross incompetence (within the meaning of §10.51(a)(13)) violates §§ 10.34, 10.35, 10.36 or 10.37.

(b) *Effective/applicability date.* This section is applicable to conduct occurring on or after September 26, 2007.

§ 10.53 Receipt of information concerning practitioner.

(a) *Officer or employee of the Internal Revenue Service*. If an officer or employee of the Internal Revenue Service has reason to believe a practitioner has violated any provision of this part, the officer or employee will promptly make a written report of the suspected violation. The report will explain the facts and reasons upon which the officer's or employee's belief rests and must be submitted to the office(s) of the Internal Revenue Service responsible for administering or enforcing this part.

(b) *Other persons*. Any person other than an officer or employee of the Internal Revenue Service having information of a violation of any provision of this part may make an oral or written report of the alleged violation to the office(s) of the Internal Revenue Service responsible for administering or enforcing this part or any officer or employee of the Internal Revenue Service. If the report is made to an officer or employee of the Internal Revenue Service, the officer or employee will make a written report of the suspected violation and submit the report to the office(s) of the Internal Revenue Service responsible for administering or enforcing this part.

(c) *Destruction of report*. No report made under paragraph (a) or (b) of this section shall be maintained unless retention of the report is permissible under the applicable records control schedule as approved by the National Archives and Records Administration and designated in the Internal Revenue Manual. Reports must be destroyed as soon as permissible under the applicable records control schedule.

(d) *Effect on proceedings under subpart D*. The destruction of any report will not bar any proceeding under subpart D of this part, but will preclude the use of a copy of the report in a proceeding under subpart D of this part.

(e) *Effective/applicability date*. This section is applicable beginning August 2, 2011.

Subpart D — Rules Applicable to Disciplinary Proceedings

§ 10.60 Institution of proceeding.

(a) Whenever it is determined that a practitioner (or employer, firm or other entity, if applicable) violated any provision of the laws governing practice before the Internal Revenue Service or the regulations in this part, the practitioner may be reprimanded or, in accordance with §10.62, subject to a proceeding for sanctions described in §10.50.

(b) Whenever a penalty has been assessed against an appraiser under the Internal Revenue Code and an appropriate officer or employee in an office established to enforce this part determines that the appraiser acted willfully, recklessly, or through gross incompetence with respect to the proscribed conduct, the appraiser may be reprimanded or, in accordance with §10.62, subject to a proceeding for disqualification. A proceeding for disqualification of an appraiser is instituted by the filing of a complaint, the contents of which are more fully described in §10.62.

(c) Except as provided in §10.82, a proceeding will not be instituted under this section unless the proposed respondent previously has been advised in writing of the law, facts and conduct warranting such action and has been accorded an opportunity to dispute facts, assert additional facts, and make arguments (including an explanation or description of mitigating circumstances).

(d) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

§ 10.61 Conferences.

(a) *In general.* The Commissioner, or delegate, may confer with a practitioner, employer, firm or other entity, or an appraiser concerning allegations of misconduct irrespective of whether a proceeding has been instituted. If the conference results in a stipulation in connection with an ongoing proceeding in which the practitioner, employer, firm or other entity, or appraiser is the respondent, the stipulation may be entered in the record by either party to the proceeding.

(b) *Voluntary sanction —*

(1) *In general.* In lieu of a proceeding being instituted or continued under §10.60(a), a practitioner or appraiser (or employer, firm or other entity, if applicable) may offer a consent to be sanctioned under §10.50.

(2) *Discretion; acceptance or declination.* The Commissioner, or delegate, may accept or decline the offer described in paragraph (b)(1) of this section. When the decision is to decline the offer, the written notice of declination may state that the offer described in paragraph (b)(1) of this section would be accepted if it contained different terms. The Commissioner, or delegate, has the discretion to accept or reject a revised offer submitted in response to the declination or may counteroffer and act upon any accepted counteroffer.

(c) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

§ 10.62 Contents of complaint.

(a) *Charges*. A complaint must name the respondent, provide a clear and concise description of the facts and law that constitute the basis for the proceeding, and be signed by an authorized representative of the Internal Revenue Service under §10.69(a)(1). A complaint is sufficient if it fairly informs the respondent of the charges brought so that the respondent is able to prepare a defense.

(b) *Specification of sanction*. The complaint must specify the sanction sought against the practitioner or appraiser. If the sanction sought is a suspension, the duration of the suspension sought must be specified.

(c) *Demand for answer*. The respondent must be notified in the complaint or in a separate paper attached to the complaint of the time for answering the complaint, which may not be less than 30 days from the date of service of the complaint, the name and address of the Administrative Law Judge with whom the answer must be filed, the name and address of the person representing the Internal Revenue Service to whom a copy of the answer must be served, and

that a decision by default may be rendered against the respondent in the event an answer is not filed as required.

(d) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

§ 10.63 Service of complaint; service of other papers; service of evidence in support of complaint; filing of papers.

(a) *Service of complaint.*

(1) *In general.* The complaint or a copy of the complaint must be served on the respondent by any manner described in paragraphs (a) (2) or (3) of this section.

(2) *Service by certified or first class mail.*

(i) Service of the complaint may be made on the respondent by mailing the complaint by certified mail to the last known address (as determined under section 6212 of the Internal Revenue Code and the regulations thereunder) of the respondent. Where service is by certified mail, the returned post office receipt duly signed by the respondent will be proof of service.

(ii) If the certified mail is not claimed or accepted by the respondent, or is returned undelivered, service may be made on the respondent, by mailing the complaint to the respondent by first class mail. Service by this method will be considered complete upon mailing, provided the complaint is addressed to the respondent at the respondent's last known address as determined under section 6212 of the Internal Revenue Code and the regulations thereunder.

(3) *Service by other than certified or first class mail.*

(i) Service of the complaint may be made on the respondent by delivery by a private delivery service designated pursuant to section 7502(f) of the Internal Revenue Code to the last known address (as determined under section 6212 of the Internal Revenue Code and the regulations there under) of the respondent. Service by this method will be considered complete, provided the complaint is addressed to the respondent at the respondent's last known address as determined under section 6212 of the Internal Revenue Code and the regulations thereunder.

(ii) Service of the complaint may be made in person on, or by leaving the complaint at the office or place of business of, the respondent. Service by this method will be considered complete and proof of service will be a written statement, sworn or affirmed by the person who served the complaint, identifying the manner of service, including the recipient, relationship of recipient to respondent, place, date and time of service.

(iii) Service may be made by any other means agreed to by the respondent. Proof of service will be a written statement, sworn or affirmed by the person who served the complaint, identifying the manner of service, including the recipient, relationship of recipient to respondent, place, date and time of service.

(4) For purposes of this section, *respondent* means the practitioner, employer, firm or other entity, or appraiser named in the complaint or any other person having the authority to accept mail on behalf of the practitioner, employer, firm or other entity or appraiser.

(b) *Service of papers other than complaint.* Any paper other than the complaint may be served on the respondent, or his or her authorized representative under §10.69(a)(2) by:

(1) mailing the paper by first class mail to the last known address (as determined under section 6212 of the Internal Revenue Code and the regulations thereunder) of the respondent or the respondent's authorized representative,

(2) delivery by a private delivery service designated pursuant to section 7502(f) of the Internal Revenue Code to the last known address (as determined under section 6212 of the Internal Revenue Code and the regulations thereunder) of the respondent or the respondent's authorized representative, or

(3) as provided in paragraphs (a)(3)(ii) and (a)(3)(iii) of this section.

(c) *Service of papers on the Internal Revenue Service.* Whenever a paper is required or permitted to be served on the Internal Revenue Service in

connection with a proceeding under this part, the paper will be served on the Internal Revenue Service's authorized representative under §10.69(a)(1) at the address designated in the complaint, or at an address provided in a notice of appearance. If no address is designated in the complaint or provided in a notice of appearance, service will be made on the office(s) established to enforce this part under the authority of §10.1, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224.

(d) *Service of evidence in support of complaint.* Within 10 days of serving the complaint, copies of the evidence in support of the complaint must be served on the respondent in any manner described in paragraphs (a)(2) and (3) of this section.

(e) *Filing of papers.* Whenever the filing of a paper is required or permitted in connection with a proceeding under this part, the original paper, plus one additional copy, must be filed with the Administrative Law Judge at the address specified in the complaint or at an address otherwise specified by the Administrative Law Judge. All papers filed in connection with a proceeding under this part must be served on the other party, unless the Administrative Law Judge directs otherwise. A certificate evidencing such must be attached to the original paper filed with the Administrative Law Judge.

(f) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

§ 10.64 Answer; default.

(a) *Filing.* The respondent's answer must be filed with the Administrative Law Judge, and served on the Internal Revenue Service, within the time specified in the complaint unless, on request or application of the respondent, the time is extended by the Administrative Law Judge.

(b) *Contents.* The answer must be written and contain a statement of facts that constitute the respondent's grounds of defense. General denials are not permitted. The respondent must specifically admit or deny each allegation set forth in the complaint, except that the respondent may state that the respondent is without sufficient information to admit or deny a specific allegation. The respondent, nevertheless, may not deny a material allegation in the complaint that the respondent knows to be true, or state that the respondent is without sufficient information to form a belief, when the respondent possesses the required information. The respondent also must state affirmatively any special matters of defense on which he or she relies.

(c) *Failure to deny or answer allegations in the complaint.* Every allegation in the complaint that is not denied in the answer is deemed admitted and will be considered proved; no further evidence in respect of such allegation need be adduced at a hearing.

(d) *Default.* Failure to file an answer within the time prescribed (or within the time for answer as extended by the Administrative Law Judge), constitutes an admission of the allegations of the complaint and a waiver of hearing, and the Administrative Law Judge may make the decision by default without a hearing or further procedure. A decision by default constitutes a decision under §10.76.

(e) *Signature.* The answer must be signed by the respondent or the respondent's authorized representative under §10.69(a)(2) and must include a statement directly above the signature acknowledging that the statements made in the answer are true and correct and that knowing and willful false statements may be punishable under 18 U.S.C. §1001.

(f) Effective/applicability date. This section is applicable beginning August 2, 2011.

§ 10.65 Supplemental charges.

(a) *In general*. Supplemental charges may be filed against the respondent by amending the complaint with the permission of the Administrative Law Judge if, for example —

(1) It appears that the respondent, in the answer, falsely and in bad faith, denies a material allegation of fact in the complaint or states that the respondent has insufficient knowledge to form a belief, when the respondent possesses such information; or

(2) It appears that the respondent has knowingly

introduced false testimony during the proceedings against the respondent.

(b) *Hearing.* The supplemental charges may be heard with other charges in the case, provided the respondent is given due notice of the charges and is afforded a reasonable opportunity to prepare a defense to the supplemental charges.

(c) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

§ 10.66 Reply to answer.

(a) The Internal Revenue Service may file a reply to the respondent's answer, but unless otherwise ordered by the Administrative Law Judge, no reply to the respondent's answer is required. If a reply is not filed, new matter in the answer is deemed denied.

(b) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

§ 10.67 Proof; variance; amendment of pleadings.

In the case of a variance between the allegations in pleadings and the evidence adduced in support of the pleadings, the Administrative Law Judge, at any time before decision, may order or authorize amendment of the pleadings to conform to the evidence. The party who would otherwise be prejudiced by the amendment must be given a reasonable opportunity to address the allegations of the pleadings as amended and the Administrative Law Judge must make findings on any issue presented by the pleadings as amended.

§ 10.68 Motions and requests.

(a) *Motions —*

(1) *In general.* At any time after the filing of the complaint, any party may file a motion with the Administrative Law Judge. Unless otherwise ordered by the Administrative Law Judge, motions must be in writing and must be served on the opposing party as provided in §10.63(b). A motion must concisely specify its grounds and the relief sought, and, if appropriate, must contain a memorandum of facts and law in support.

(2) *Summary adjudication.* Either party may move for a summary adjudication upon all or any part of the legal issues in controversy. If the non-moving party opposes summary adjudication in the moving party's favor, the non-moving party must file a written response within 30 days unless ordered otherwise by the Administrative Law Judge.

(3) *Good Faith.* A party filing a motion for extension of time, a motion for postponement of a hearing, or any other non-dispositive or procedural motion must first contact the other party to determine whether there is any objection to the motion, and must state in the motion whether the other party has an objection.

(b) *Response.* Unless otherwise ordered by the Administrative Law Judge, the nonmoving party is not required to file a response to a motion. If the Administrative Law Judge does not order the nonmoving party to file a response, and the nonmoving party files no response, the nonmoving party is deemed to oppose the motion. If a nonmoving party does not respond within 30 days of the filing of a motion for decision by default for failure to file a timely answer or for failure to prosecute, the nonmoving party is deemed not to oppose the motion.

(c) *Oral motions; oral argument —*

(1) The Administrative Law Judge may, for good cause and with notice to the parties, permit oral motions and oral opposition to motions.

(2) The Administrative Law Judge may, within his or her discretion, permit oral argument on any motion.

(d) *Orders.* The Administrative Law Judge should issue written orders disposing of any motion or request and any response thereto.

(e) *Effective/applicability date.* This section is applicable on September 26, 2007.

§ 10.69 Representation; ex parte communication.

(a) *Representation*.

(1) The Internal Revenue Service may be represented in proceedings under this part by an attorney or other employee of the Internal Revenue Service. An attorney or an employee of the Internal

Revenue Service representing the Internal Revenue Service in a proceeding under this part may sign the complaint or any document required to be filed in the proceeding on behalf of the Internal Revenue Service.

(2) A respondent may appear in person, be represented by a practitioner, or be represented by an attorney who has not filed a declaration with the Internal Revenue Service pursuant to §10.3. A practitioner or an attorney representing a respondent or proposed respondent may sign the answer or any document required to be filed in the proceeding on behalf of the respondent.

(b) *Ex parte communication*. The Internal Revenue Service, the respondent, and any representatives of either party, may not attempt to initiate or participate in ex parte discussions concerning a proceeding or potential proceeding with the Administrative Law Judge (or any person who is likely to advise the Administrative Law Judge on a ruling or decision) in the proceeding before or during the pendency of the proceeding. Any memorandum, letter or other communication concerning the merits of the proceeding, addressed to the Administrative Law Judge, by or on behalf of any party shall be regarded as an argument in the proceeding and shall be served on the othe party.

(c) *Effective/applicability date*. This section is applicable beginning August 2, 2011.

§ 10.70 Administrative Law Judge.

(a) *Appointment.* Proceedings on complaints for the sanction (as described in §10.50) of a practitioner, employer, firm or other entity, or appraiser will be conducted by an Administrative Law Judge appointed as provided by *5 U.S.C. 3105*.

(b) *Powers of the Administrative Law Judge.* The Administrative Law Judge, among other powers, has the authority, in connection with any proceeding under §10.60 assigned or referred to him or her, to do the following:

(1) Administer oaths and affirmations;

(2) Make rulings on motions and requests, which rulings may not be appealed prior to the close of a hearing except in extraordinary circumstances and at the discretion of the Administrative Law Judge;

(3) Determine the time and place of hearing and regulate its course and conduct;

(4) Adopt rules of procedure and modify the same from time to time as needed for the orderly disposition of proceedings;

(5) Rule on offers of proof, receive relevant evidence, and examine witnesses;

(6) Take or authorize the taking of depositions or answers to requests for admission;

(7) Receive and consider oral or written argument on facts or law;

(8) Hold or provide for the holding of conferences for the settlement or simplification of the issues with the consent of the parties;

(9) Perform such acts and take such measures as are necessary or appropriate to the efficient conduct of any proceeding; and

(10) Make decisions.

(c) *Effective/applicability date.* This section is applicable on September 26, 2007.

§ 10.71 Discovery.

(a) *In general.* Discovery may be permitted, at the discretion of the Administrative Law Judge, only upon written motion demonstrating the relevance, materiality and reasonableness of the requested discovery and subject to the requirements of §10.72(d)(2) and (3). Within 10 days of receipt of the answer, the Administrative Law Judge will notify the parties of the right to request discovery and the timeframe for filing a request. A request for discovery, and objections, must be filed in accordance with §10.68. In response to a request for discovery, the Administrative Law Judge may order —

(1) Depositions upon oral examination; or

(2) Answers to requests for admission.

(b) *Depositions upon oral examination —*

(1) A deposition must be taken before an officer duly authorized to administer an oath for general purposes or before an officer or employee of the Internal Revenue Service who is authorized to administer an oath in Federal tax law matters.

(2) In ordering a deposition, the Administrative Law Judge will require reasonable notice to the opposing party as to the time and place of the deposition. The opposing party, if attending, will be provided the opportunity for full examination and cross-examination of any witness.

(3) Expenses in the reporting of depositions shall be borne by the party at whose instance the deposition is taken. Travel expenses of the deponent shall be borne by the party requesting the deposition, unless otherwise authorized by Federal law or regulation.

(c) *Requests for admission.* Any party may serve on any other party a written request for admission of the truth of any matters which are not privileged and are relevant to the subject matter of this proceeding. Requests for admission shall not exceed a total of 30 (including any subparts within a specific request) without the approval from the Administrative Law Judge.

(d) *Limitations.* Discovery shall not be authorized if —

(1) The request fails to meet any requirement set forth in paragraph (a) of this section;

(2) It will unduly delay the proceeding;

(3) It will place an undue burden on the party required to produce the discovery sought;

(4) It is frivolous or abusive;

(5) It is cumulative or duplicative;

(6) The material sought is privileged or otherwise protected from disclosure by law;

(7) The material sought relates to mental impressions, conclusions, of legal theories of any party, attorney, or other representative, or a party prepared in the anticipation of a proceeding; or

(8) The material sought is available generally to the public, equally to the parties, or to the party seeking the discovery through another source.

(e) *Failure to comply.* Where a party fails to comply with an order of the Administrative Law Judge under this section, the Administrative Law Judge may, among other things, infer that the information would be adverse to the party failing to provide it, exclude the information from evidence or issue a decision by default.

(f) *Other discovery.* No discovery other than that specifically provided for in this section is permitted.

(g) *Effective/applicability date.* This section is applicable to proceedings initiated on or after September 26, 2007.

§ 10.72 Hearings.

(a) *In general —*

(1) *Presiding officer.* An Administrative Law Judge will preside at the hearing on a complaint filed under §10.60 for the sanction of a practitioner, employer, firm or other entity, or appraiser.

(2) *Time for hearing.* Absent a determination by the Administrative Law Judge that, in the interest of justice, a hearing must be held at a later time, the Administrative Law Judge should, on notice sufficient to allow proper preparation, schedule the hearing to occur no later than 180 days after the time for filing the answer.

(3) *Procedural requirements.*

(i) Hearings will be stenographically recorded and transcribed and the testimony of witnesses will be taken under oath or affirmation.

(ii) Hearings will be conducted pursuant to *5 U.S.C. 556*.

(iii) A hearing in a proceeding requested under §10.82(g) will be conducted de novo.

(iv) An evidentiary hearing must be held in all proceedings prior to the issuance of a decision by the Administrative Law Judge unless —

(A) The Internal Revenue Service withdraws the complaint;

(B) A decision is issued by default pursuant to §10.64(d);

(C) A decision is issued under §10.82 (e);

(D) The respondent requests a decision on the written record without a hearing; or

(E) The Administrative Law Judge issues a decision under §10.68(d) or rules on another motion that disposes of the case prior to the hearing.

(b) *Cross-examination.* A party is entitled to present his or her case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct cross-examination, in the presence of the Administrative Law Judge, as may be required for a full and true disclosure of the facts. This

paragraph (b) does not limit a party from presenting evidence contained within a deposition when the Administrative Law Judge determines that the deposition has been obtained in compliance with the rules of this subpart D.

(c) *Prehearing memorandum.* Unless otherwise ordered by the Administrative Law Judge, each party shall file, and serve on the opposing party or the opposing party's representative, prior to any hearing, a prehearing memorandum containing —

(1) A list (together with a copy) of all proposed exhibits to be used in the party's case in chief;

(2) A list of proposed witnesses, including a synopsis of their expected testimony, or a statement that no witnesses will be called;

(3) Identification of any proposed expert witnesses, including a synopsis of their expected testimony and a copy of any report prepared by the expert or at his or her direction; and

(4) A list of undisputed facts.

(d) *Publicity —*

(1) *In general.* All reports and decisions of the Secretary of the Treasury, or delegate, including any reports and decisions of the Administrative Law Judge, under this subpart D are, subject to the protective measures in paragraph (d)(4) of this section, public and open to inspection within 30 days after the agency's decision becomes final.

(2) *Request for additional publicity.* The Administrative Law Judge may grant a request by a practitioner or appraiser that all the pleadings and evidence of the disciplinary proceeding be made available for inspection where the parties stipulate in advance to adopt the protective measures in paragraph (d)(4) of this section.

(3) *Returns and return information —*

(i) *Disclosure to practitioner or appraiser.* Pursuant to *section 6103(l)(4) of the Internal Revenue Code,* the Secretary of the Treasury, or delegate, may disclose returns and return information to any practitioner or appraiser, or to the authorized representative of the practitioner or appraiser, whose rights are or may be affected by an administrative action or proceeding under this subpart D, but solely for use in the action or proceeding and only to the extent that the Secretary of the Treasury, or delegate, determines that the returns or return information are or may be relevant and material to the action or proceeding.

(ii) *Disclosure to officers and employees of the Department of the Treasury.* Pursuant to *section 6103(l)(4)(B) of the Internal Revenue Code* the Secretary of the Treasury, or delegate, may disclose returns and return information to officers and employees of the Department of the Treasury for use in any action or proceeding under this subpart D, to the extent necessary to advance or protect the interests of the United States.

(iii) *Use of returns and return information.* Recipients of returns and return information under this paragraph (d)(3) may use the returns or return information solely in the action or proceeding, or in preparation for the action or proceeding, with respect to which the disclosure was made.

(iv) *Procedures for disclosure of returns and return information.* When providing returns or return information to the practitioner or appraiser, or authorized representative, the Secretary of the Treasury, or delegate, will —

(A) Redact identifying information of any third party taxpayers and replace it with a code;

(B) Provide a key to the coded information; and

(C) Notify the practitioner or appraiser, or authorized representative, of the restrictions on the use and disclosure of the returns and return information, the applicable damages remedy under *section 7431 of the Internal Revenue Code*, and that unauthorized disclosure of information provided by the Internal Revenue Service under this paragraph (d)(3) is also a violation of this part.

(4) *Protective measures —*

(i) *Mandatory protection order.* If redaction of names, addresses, and other identifying information of third party taxpayers may still permit indirect identification of any third party taxpayer, the Administrative Law Judge will issue a protective order to ensure that the identifying information is available to the parties and the Administrative Law Judge for purposes of the proceeding, but is not

disclosed to, or open to inspection by, the public.

(ii) *Authorized orders.*

(A) Upon motion by a party or any other affected person, and for good cause shown, the Administrative Law Judge may make any order which justice requires to protect any person in the event disclosure of information is prohibited by law, privileged, confidential, or sensitive in some other way, including, but not limited to, one or more of the following —

(1) That disclosure of information be made only on specified terms and conditions, including a designation of the time or place;

(2) That a trade secret or other information not be disclosed, or be disclosed only in a designated way.

(iii) *Denials.* If a motion for a protective order is denied in whole or in part, the Administrative Law Judge may, on such terms or conditions as the Administrative Law Judge deems just, order any party or person to comply with, or respond in accordance with, the procedure involved.

(iv) *Public inspection of documents.* The Secretary of the Treasury, or delegate, shall ensure that all names, addresses or other identifying details of third party taxpayers are redacted and replaced with the code assigned to the corresponding taxpayer in all documents prior to public inspection of such documents.

(e) *Location.* The location of the hearing will be determined by the agreement of the parties with the approval of the Administrative Law Judge, but, in the absence of such agreement and approval, the hearing will be held in Washington, D.C.

(f) *Failure to appear.* If either party to the proceeding fails to appear at the hearing, after notice of the proceeding has been sent to him or her, the party will be deemed to have waived the right to a hearing and the Administrative Law Judge may make his or her decision against the absent party by default.

(g) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

§ 10.73 Evidence.

(a) *In general.* The rules of evidence prevailing in courts of law and equity are not controlling in hearings or proceedings conducted under this part. The Administrative Law Judge may, however, exclude evidence that is irrelevant, immaterial, or unduly repetitious.

(b) *Depositions.* The deposition of any witness taken pursuant to §10.71 may be admitted into evidence in any proceeding instituted under §10.60.

(c) *Requests for admission.* Any matter admitted in response to a request for admission under §10.71 is conclusively established unless the Administrative Law Judge on motion permits withdrawal or modification of the admission. Any admission made by a party is for the purposes of the pending action only and is not an admission by a party for any other purpose, nor may it be used against a party in any other proceeding.

(d) *Proof of documents.* Official documents, records, and papers of the Internal Revenue Service and the Office of Professional Responsibility are admissible in evidence without the production of an officer or employee to authenticate them. Any documents, records, and papers may be evidenced by a copy attested to or identified by an officer or employee of the Internal Revenue Service or the Treasury Department, as the case may be.

(e) *Withdrawal of exhibits.* If any document, record, or other paper is introduced in evidence as an exhibit, the Administrative Law Judge may authorize the withdrawal of the exhibit subject to any conditions that he or she deems proper.

(f) *Objections.* Objections to evidence are to be made in short form, stating the grounds for the objection. Except as ordered by the Administrative Law Judge, argument on objections will not be recorded or transcribed. Rulings on objections are to be a part of the record, but no exception to a ruling is necessary to preserve the rights of the parties.

(g) *Effective/applicability date.* This section is applicable on September 26, 2007.

§ 10.74 Transcript.

In cases where the hearing is stenographically reported by a Government contract reporter, copies of the transcript may be obtained from the reporter at rates not to exceed the maximum rates fixed by contract between the Government and the reporter. Where the hearing is stenographically reported by a regular employee of the Internal Revenue Service, a copy will be supplied to the respondent either without charge or upon the payment of a reasonable fee. Copies of exhibits introduced at the hearing or at the taking of depositions will be supplied to the parties upon the payment of a reasonable fee (Sec. 501, Public Law 82-137) (65 Stat. 290) (31 U.S.C. § 483a).

§ 10.75 Proposed findings and conclusions.

Except in cases where the respondent has failed to answer the complaint or where a party has failed to appear at the hearing, the parties must be afforded a reasonable opportunity to submit proposed findings and conclusions and their supporting reasons to the Administrative Law Judge.

§ 10.76 Decision of Administrative Law Judge.

(a) *In general —*

(1) *Hearings.* Within 180 days after the conclusion of a hearing and the receipt of any proposed findings and conclusions timely submitted by the parties, the Administrative Law Judge should enter a decision in the case. The decision must include a statement of findings and conclusions, as well as the reasons or basis for making such findings and conclusions, and an order of censure, suspension, disbarment, monetary penalty, disqualification, or dismissal of the complaint.

(2) *Summary adjudication.* In the event that a motion for summary adjudication is filed, the Administrative Law Judge should rule on the motion for summary adjudication within 60 days after the party in opposition files a written response, or if no written response is filed, within 90 days after the motion for summary adjudication is filed. A decision shall thereafter be rendered if the pleadings, depositions, admissions, and any other admissible evidence show that there is no genuine issue of material fact and that a decision may be rendered as a matter of law. The decision must include a statement of conclusions, as well as the reasons or basis for making such conclusions, and an order of censure, suspension, disbarment, monetary penalty, disqualification, or dismissal of the complaint.

(3) *Returns and return information.* In the decision, the Administrative Law Judge should use the code assigned to third party taxpayers (described in §10.72(d)).

(b) *Standard of proof.* If the sanction is censure or a suspension of less than six months' duration, the Administrative Law Judge, in rendering findings and conclusions, will consider an allegation of fact to be proven if it is established by the party who is alleging the fact by a preponderance of the evidence in the record. If the sanction is a monetary penalty, disbarment or a suspension of six months or longer duration, an allegation of fact that is necessary for a finding against the practitioner must be proven by clear and convincing evidence in the record. An allegation of fact that is necessary for a finding of disqualification against an appraiser must be proved by clear and convincing evidence in the record.

(c) *Copy of decision.* The Administrative Law Judge will provide the decision to the Internal Revenue Service's authorized representative, and a copy of the decision to the respondent or the respondent's authorized representative.

(d) *When final.* In the absence of an appeal to the Secretary of the Treasury or delegate, the decision of the Administrative Law Judge will, without further proceedings, become the decision of the agency 30 days after the date of the Administrative Law Judge's decision.

(e) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

§ 10.77 Appeal of decision of Administrative Law Judge.

(a) *Appeal*. Any party to the proceeding under this subpart D may appeal the decision of the Administrative Law Judge by filing a notice of appeal with the Secretary of the Treasury, or delegate deciding appeals. The notice of appeal must include a brief that states exceptions to the decision of Administrative Law Judge and supporting reasons for such exceptions.

(b) *Time and place for filing of appeal*. The notice of appeal and brief must be filed, in duplicate, with the Secretary of the Treasury, or delegate deciding appeals, at an address for appeals that is identified to the parties with the decision of the Administrative Law Judge. The notice of appeal and brief must be filed within 30 days of the date that the decision of the Administrative Law Judge is served on the parties. The appealing party must serve a copy of the notice of appeal and the brief to any non appealing party or, if the party is represented, the non-appealing party's representative.

(c) *Response*. Within 30 days of receiving the copy of the appellant's brief, the other party may file a response brief with the Secretary of the Treasury, or delegate deciding appeals, using the address identified for appeals. A copy of the response brief must be served at the same time on the opposing party or, if the party is represented, the opposing party's representative.

(d) *No other briefs, responses or motions as of right*. Other than the appeal brief and response brief, the parties are not permitted to file any other briefs, responses or motions, except on a grant of leave to do so after a motion demonstrating sufficient cause, or unless otherwise ordered by the Secretary of the Treasury, or delegate deciding appeals.

(e) *Additional time for briefs and responses*. Notwithstanding the time for filing briefs and responses provided in paragraphs (b) and (c) of this section, the Secretary of the Treasury, or delegate deciding appeals, may, for good cause, authorize additional time for filing briefs and responses upon a motion of a party or upon the initiative of the Secretary of the Treasury, or delegate deciding appeals.

(f) *Effective/applicability date*. This section is applicable beginning August 2, 2011.

§ 10.78 Decision on review.

(a) *Decision on review.* On appeal from or review of the decision of the Administrative Law Judge, the Secretary of the Treasury, or delegate, will make the agency decision. The Secretary of the Treasury, or delegate, should make the agency decision within 180 days after receipt of the appeal

(b) *Standard of review.* The decision of the Administrative Law Judge will not be reversed unless the appellant establishes that the decision is clearly erroneous in light of the evidence in the record and applicable law. Issues that are exclusively matters of law will be reviewed de novo. In the event that the Secretary of the Treasury, or delegate, determines that there are unresolved issues raised by the record, the case may be remanded to the Administrative Law Judge to elicit additional testimony or evidence.

(c) *Copy of decision on review.* The Secretary of the Treasury, or delegate, will provide copies of the agency decision to the authorized representative of the Internal Revenue Service and the respondent or the respondent's authorized representative.

(d) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

§ 10.79 Effect of disbarment, suspension, or censure.

(a) *Disbarment*. When the final decision in a case is against the respondent (or the respondent has offered his or her consent and such consent has been accepted by the Internal Revenue Service) and such decision is for disbarment, the respondent will not be permitted to practice before the Internal Revenue Service unless and until authorized to do so by the Internal Revenue Service pursuant to §10.81.

(b) *Suspension*. When the final decision in a case is against the respondent (or the respondent has offered his or her consent and such consent has been accepted by the Internal Revenue Service)

and such decision is for suspension, the respondent will not be permitted to practice before the Internal Revenue Service during the period of suspension. For periods after the suspension, the practitioner's future representations may be subject to conditions as authorized by paragraph (d) of this section.

(c) *Censure*. When the final decision in the case is against the respondent (or the Internal Revenue Service has accepted the respondent's offer to consent, if such offer was made) and such decision is for censure, the respondent will be permitted to practice before the Internal Revenue Service, but the respondent's future representations may be subject to conditions as authorized by paragraph (d) of this section.

(d) *Conditions*. After being subject to the sanction of either suspension or censure, the future representations of a practitioner so sanctioned shall be subject to specified conditions designed to promote high standards of conduct. These conditions can be imposed for a reasonable period in light of the gravity of the practitioner's violations. For example, where a practitioner is censured because the practitioner failed to advise the practitioner's clients about a potential conflict of interest or failed to obtain the clients' written consents, the practitioner may be required to provide the Internal Revenue Service with a copy of all consents obtained by the practitioner for an appropriate period following censure, whether or not such consents are specifically requested.

(e) *Effective/applicability date*. This section is applicable beginning August 2, 2011.

§ 10.80 Notice of disbarment, suspension, censure, or disqualification.

(a) *In general*. On the issuance of a final order censuring, suspending, or disbarring a practitioner or a final order disqualifying an appraiser, notification of the censure, suspension, disbarment or disqualification will be given to appropriate officers and employees of the Internal Revenue Service and interested departments and agencies of the Federal government. The Internal Revenue Service may determine the manner of giving notice to the proper authorities of the State by which the censured, suspended, or disbarred person was licensed to practice.

(b) *Effective/applicability date*. This section is applicable beginning August 2, 2011.

§ 10.81 Petition for reinstatement.

(a) *In general*. A practitioner disbarred or suspended under §10.60, or suspended under §10.82, or a disqualified appraiser may petition for reinstatement before the Internal Revenue Service after the expiration of 5 years following such disbarment, suspension, or disqualification (or immediately following the expiration of the suspension or disqualification period, if shorter than 5 years). Reinstatement will not be granted unless the Internal Revenue Service is satisfied that the petitioner is not likely to engage thereafter in conduct contrary to the regulations in this part, and that granting such reinstatement would not be contrary to the public interest.

(b) *Effective/applicability date*. This section is applicable beginning June 12, 2014.

§ 10.82 Expedited suspension.

(a) *When applicable.* Whenever the Commissioner, or delegate, determines that a practitioner is described in paragraph (b) of this section, the expedited procedures described in this section may be used to suspend the practitioner from practice before the Internal Revenue Service.

(b) *To whom applicable.* This section applies to any practitioner who, within 5 years prior to the date that a show cause order under this section's expedited suspension procedures is served:

(1) Has had a license to practice as an attorney, certified public accountant, or actuary suspended or revoked for cause (not including a failure to pay a professional licensing fee) by any authority or court, agency, body, or board described in §10.51(a)(10).

(2) Has, irrespective of whether an appeal has been taken, been convicted of any crime under title

26 of the United States Code, any crime involving dishonesty or breach of trust, or any felony for which the conduct involved renders the practitioner unfit to practice before the Internal Revenue Service.

(3) Has violated conditions imposed on the practitioner pursuant to §10.79(d).

(4) Has been sanctioned by a court of competent jurisdiction, whether in a civil or criminal proceeding (including suits for injunctive relief), relating to any taxpayer's tax liability or relating to the practitioner's own tax liability, for —

(i) Instituting or maintaining proceedings primarily for delay;

(ii) Advancing frivolous or groundless arguments; or

(iii) Failing to pursue available administrative remedies.

(5) Has demonstrated a pattern of willful disreputable conduct by—

(i) Failing to make an annual Federal tax return, in violation of the Federal tax laws, during 4 of the 5 tax years immediately preceding the institution of a proceeding under paragraph (c) of this section and remains noncompliant with any of the practitioner's Federal tax filing obligations at the time the notice of suspension is issued under paragraph (f) of this section; or

(ii) Failing to make a return required more frequently than annually, in violation of the Federal tax laws, during 5 of the 7 tax periods immediately preceding the institution of a proceeding under paragraph (c) of this section and remains noncompliant with any of the practitioner's Federal tax filing obligations at the time the notice of suspension is issued under paragraph (f) of this section.

(c) *Expedited suspension procedures.* A suspension under this section will be proposed by a show cause order that names the respondent, is signed by an authorized representative of the Internal Revenue Service under §10.69(a)(1), and served according to the rules set forth in §10.63(a). The show cause order must give a plain and concise description of the allegations that constitute the basis for the proposed suspension. The show cause order must notify the respondent —

(1) Of the place and due date for filing a response;

(2) That an expedited suspension decision by default may be rendered if the respondent fails to file a response as required;

(3) That the respondent may request a conference to address the merits of the show cause order and that any such request must be made in the response; and

(4) That the respondent may be suspended either immediately following the expiration of the period within which a response must be filed or, if a conference is requested, immediately following the conference.

(d) *Response*. The response to the show cause order described in this section must be filed no later than 30 calendar days following the date the show cause order is served, unless the time for filing is extended. The response must be filed in accordance with the rules set forth for answers to a complaint in §10.64, except as otherwise provided in this section. The response must include a request for a conference, if a conference is desired. The respondent is entitled to the conference only if the request is made in a timely filed response.

(e) *Conference*. An authorized representative of the Internal Revenue Service will preside at a conference described in this section. The conference will be held at a place and time selected by the Internal Revenue Service, but no sooner than 14 calendar days after the date by which the response must be filed with the Internal Revenue Service, unless the respondent agrees to an earlier date. An authorized representative may represent the respondent at the conference.

(f) *Suspension—*

(1) *In general.* The Commissioner, or delegate, may suspend the respondent from practice before the Internal Revenue Service by a written notice of expedited suspension immediately following:

(i) The expiration of the period within which a response to a show cause order must be filed if the respondent does not file a response as required by paragraph (d) of this section;

(ii) The conference described in paragraph (e) of this section if the Internal Revenue Service finds that the respondent is described in paragraph (b) of this section; or

(iii) The respondent's failure to appear, either personally or through an authorized representative, at a conference scheduled by the Internal Revenue Service under paragraph (e) of this section.

(2) *Duration of suspension.* A suspension under this section will commence on the date that the written notice of expedited suspension is served on the practitioner, either personally or through an authorized representative. The suspension will remain effective until the earlier of:

(i) The date the Internal Revenue Service lifts the suspension after determining that the practitioner is no longer described in paragraph (b) of this section or for any other reason; or

(ii) The date the suspension is lifted or otherwise modified by an Administrative Law Judge or the Secretary of the Treasury, or delegate deciding appeals, in a proceeding referred to in paragraph (g) of this section and instituted under §10.60.

(g) *Practitioner demand for §10.60 proceeding.* If the Internal Revenue Service suspends a practitioner under the expedited suspension procedures described in this section, the practitioner may demand that the Internal Revenue Service institute a proceeding under §10.60 and issue the complaint described in §10.62. The demand must be in writing, specifically reference the suspension action under §10.82, and be made within 2 years from the date on which the practitioner's suspension commenced. The Internal Revenue Service must issue a complaint demanded under this paragraph (g) within 60 calendar days of receiving the demand. If the Internal Revenue Service does not issue such complaint within 60 days of receiving the demand, the suspension is lifted automatically. The preceding sentence does not, however, preclude the Commissioner, or delegate, from instituting a regular proceeding under §10.60 of this part.

(h) *Effective/applicability date*. This section is generally applicable beginning June 12, 2014, except that paragraphs (b)(1) through (4) of this section are applicable beginning August 2, 2011.

Subpart E — General Provisions

§ 10.90 Records.

(a) *Roster*. The Internal Revenue Service will maintain and make available for public inspection in the time and manner prescribed by the Secretary, or delegate, the following rosters —

(1) Individuals (and employers, firms, or other entities, if applicable) censured, suspended, or disbarred from practice before the Internal Revenue Service or upon whom a monetary penalty was imposed.

(2) Enrolled agents, including individuals —

(i) Granted active enrollment to practice;

(ii) Whose enrollment has been placed in inactive status for failure to meet the requirements for renewal of enrollment;

(iii) Whose enrollment has been placed in inactive retirement status; and

(iv) Whose offer of consent to resign from enrollment has been accepted by the Internal Revenue Service under §10.61.

(3) Enrolled retirement plan agents, including individuals —

(i) Granted active enrollment to practice;

(ii) Whose enrollment has been placed in inactive status for failure to meet the requirements for renewal of enrollment;

(iii) Whose enrollment has been placed in inactive retirement status; and

(iv) Whose offer of consent to resign from enrollment has been accepted under §10.61.

(4) Registered tax return preparers, including individuals —

(i) Authorized to prepare all or substantially all of a tax return or claim for refund;

(ii) Who have been placed in inactive status for failure to meet the requirements for renewal;

(iii) Who have been placed in inactive retirement status; and

(iv) Whose offer of consent to resign from their status as a registered tax return preparer has been accepted by the Internal Revenue Service under §10.61.

(5) Disqualified appraisers.

(6) Qualified continuing education providers, including providers —

(i) Who have obtained a qualifying continuing education provider number; and

(ii) Whose qualifying continuing education number has been revoked for failure to comply with the requirements of this part.

(b) *Other records.* Other records of the Director of the Office of Professional Responsibility may be disclosed upon specific request, in accordance with the applicable law.

(c) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

§ 10.91 Saving provision.

Any proceeding instituted under this part prior to June 12, 2014, for which a final decision has not been reached or for which judicial review is still available is not affected by these revisions. Any proceeding under this part based on conduct engaged in prior to June 12, 2014, which is instituted after that date, will apply subpart D and E of this part as revised, but the conduct engaged in prior to the effective date of these revisions will be judged by the regulations in effect at the time the conduct occurred.

§ 10.92 Special orders.

The Secretary of the Treasury reserves the power to issue such special orders as he or she deems proper in any cases within the purview of this part.

§ 10.93 Effective date.

Except as otherwise provided in each section and Subject to §10.91, Part 10 is applicable on July 26, 2002.

John Dalrymple,
Deputy Commissioner for Services and Enforcement

Approved: June 3, 2014
Christopher J. Meade,
General Counsel

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