

**Michigan Society of Enrolled Agents
MiSEA**

presents

**Ethics for the Tax Professional
in 2017 and
Circular 230 Issues**

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I. Ethics and Circular 230 Issues

A. Introduction to the Responsibility of Ethics

1. The Junior Dictionary by E.L. Thorndike and Clarence L. Barnhard defines “ethics” as:
 - a. the study of standards of right and wrong,
 - b. the part of philosophy dealing with moral conduct, duty and judgment, and
 - c. formal or professional rules of right and wrong.
2. They use the following as an example to illustrate the meaning: *It is against medical ethics for doctors to repeat a patient’s confidences.*
3. It would be ethically wrong for a doctor to talk to someone outside of the inner circle about a patient’s case or medical condition. However, to a particular doctor he or she may believe that it may not be morally wrong.
4. One of the issues that professionals and people in general have to discuss in their own minds is the distinction, if any, between ethics and morals. Some people and professionals, while able to be moral, do not always use good professional and/or personal judgement. Others while able to make sound professional and/or personal judgement, may not be able to make the correct moral decisions.
5. The other issue that has to be distinguished is one’s personal view and belief on an issue versus the professional responsibility to properly perform the duty they were engaged to do.
6. It is safe to state that the profession of *doctors* can be easily replaced with any profession, job or position of trust. Let’s use *tax preparer* and *tax professional* in its’ place. A child’s dictionary is able to zero in on the general concept and yet some adults continue to act as if ethics is abstract. Probably had the individuals who were involved in activities like the Enron scandal performed based on the teachings and lessons taught to them by their parents the scandal would never have happened. Instead, the consequences of the actions and inactions of those involved ruined millions of individuals and families.

7. The issue which needs to be addressed is the fact that some people in today's world believe that half truths and incomplete answers are acceptable behavior. Once one begins to live their life this way the lies and deceit mount up to something big and tragic.
8. As a tax professional, one needs to be able to perform a balancing act between being an advocate for a client an performing the service for which they have been trained and engaged to do and at the same time be able to work within the system that has been designed to administer the tax law and collect the proper revenue for the Treasury and the country. As a result, one finds themself being a human being struggling with the daily responsibility of being morally good; being a tax professional and serving the occupation that provides a livelihood and survival for them and their family and the system which dictates policy which at times appears unfair, broken and disorganized.
9. As tax professionals, the ethical standards by which we perform our duties include:
 - a. exercise of due diligence,
 - b. best practices,
 - c. standards, and
 - d. procedures
10. The Treasury Department's **Circular 230** addresses rules for those who may "practice before the IRS." The issue is that anyone who prepares a tax return should, before holding themselves out as qualified to prepare a return, be familiar with the document since now anyone who prepares a tax return is included under the standards of practice and the enforcement provisions of the document.

B. Introduction to the Issues Addressed in Circular 230

1. Effective June 12, 2014, revised Treasury Department **Circular 230** is titled "Regulations Governing Practice before the Internal Revenue Service." Circular 230 applies to EAs, CPAs, Attorneys and others including Certified Retirement Plan Agents, Appraisers and RTRPs.

2. Circular 230 sets out the standards of practice that specified tax professionals must follow in order to be able to “practice before the IRS.” The document clearly describes who specifically is *allowed* to practice before the IRS. However, we need to address the issue of the **Loving** court case and the removal of the **RTRP** as a “regulated” professional. In addition, it describes what “practicing before the IRS” means and the rules to follow.
3. Also, Circular 230 includes standards that must be met when advising clients and the consequences of failing to meet those standards and other practices necessary in order to continued to be able to practice.

Tax Professional Note: As a result of the Loving case the Regulations under Circular 230 do not apply to those who passed the once required RTRP examination and those other non CPAs, EAs, Attorneys, etc. However, the *ethical issues* are still very important for those “tax preparers” who previously were not regulated under the pre August 2, 2011 Circular 230 who should now be removed from the document. Ethics and government regulations are and should be two separate standards.

C. Issues Outside of Circular 230: Separating Personal and Business Relationships

1. The tax professional must be aware that the relationship with a client should be a *professional relationship* which requires that emotion needs to be set aside in order to properly keep a balance in the role being played by the professional.
2. There is no doubt that as a professional learns more about the client personally, the human emotion toward that person kicks in, whether it is favorable or unfavorable.

If the tax professional finds that they enjoy working with the client then they could find themselves not questioning transactions which might require more due diligence but fail to do so because they take for granted that the person would not hold back information or not provide full disclosure.

On the other side, a tax professional could find that they do not like the client and therefore they do not provide the full professional service that they should be providing because it is easier to just get them out the door so that they do not have to deal with them anymore.

Both of these situations can be dangerous and can lead to missing important issues that impact the final tax liability. The bottom line is that the tax professional needs to always be professional no matter how much they like or dislike the client. If they do not like the client then the tax professional should remove themselves from the engagement.

3. The professional must be aware that in situations where a personal relationship already exists and that person becomes a client, the relationship has changed forever. Balancing the business side of the newly established role is critical. In many situations the new client could expect special treatment in fees and/or positions taken on a tax return. The tax professional could find that they have stepped into a mine field, which could destroy both the professional and personal relationship.
4. Where a business relationship exists first, common interests could lead to a personal relationship. It is critical that the professional be alert to drawing a line in the sand which keep the personal side from clouding up the business side.
5. The tax professional cannot get emotionally involved in the amount of the taxpayer's liability. Once the professional knows that every possible legal position has been explored, evaluated and applied to that client's return, then the net result has been reached and it is what it is!

D. The Scope of Circular 230

1. **§10.0 of Circular 230** contains rules governing the recognition of attorneys, CPAs, EAs, enrolled retirement plan agents, registered tax return preparers* and other persons "representing" taxpayers before the IRS.
2. Subpart **A** sets forth rules relating to the authority to practice before IRS.
3. Subpart **B** prescribes the duties and restrictions relating to such practice.
4. Subpart **C** prescribes the sanctions for violating the regulations.
5. Subpart **D** contains the rules applicable to disciplinary proceedings.
6. Subpart **E** contains general provisions including provisions relating to the availability of official records.

***Tax Professional Note:** The status of the Registered Tax Return Preparer (**RTRP**) because of the *Loving* court case ruling which has issued an injunction against the IRS, to prevent the IRS, to require that anyone take an exam in order to be allowed to prepare an income tax return needs to be addressed in the context of Circular 230. Although, at this time, the IRS and Treasury do not have jurisdiction over the non Attorney, Non CPA, Non EA, Circular 230 has not been amended to reflect the issue at hand. Also, it is important to remember that in addition to the Court ruling that an exam was not required to be taken and passed in order to prepare federal income tax returns, the court also ruled that the requirement that all income tax preparers holding a valid PTIN cannot be required to fulfill the 15 hours of continuing professional education as required under Circular 230 as a condition of obtaining and renewing a **PTIN**. The ethical issues now become more important for those “tax preparers” who are not regulated under Circular 230. They will need to perform based on what they believe ethics should be.

E. Subpart A: Rules Governing Authority to Practice

1. **§10.1** now provides for the establishment of the Director of the office of Professional Responsibility (**OPR**) and *any other* office(s) within the Internal Revenue Service necessary to administer and enforce **Circular 230**.
2. **OPR** is established inside the IRS and under the revised rules the Director is appointed by the Commissioner of the IRS instead of the Secretary of the Treasury. Currently this position is held by Steven Whitlock, who has been in the position since July 2015 and was appointed by the Commissioner of the IRS, John Koskinen.
3. The revised rules now state that the Commissioner shall appoint *any other* Internal Revenue official(s) to manage and direct any office(s) established to administer or enforce the revised **Circular 230**. It goes on to state that offices established under the revised **Circular 230** include, not only **OPR** which shall generally have responsibility for matters related to practitioner conduct and discipline, including disciplinary proceedings and sanctions, but also *other offices* will be established under **Circular 230** which will include 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 IRS and administering competency testing and continuing education. (This used to be a duty of **OPR**.)

Tax Professional Note: The office that has been created is called the IRS Return Preparer Office (**RPO**). Their jurisdiction is the processing of the **W-12** forms for obtaining and renewing **PTINs** and administration of **CPE**. The current director of **RPO** is Carol Campbell.

4. The **OPR** shall generally have responsibility for matters related to practitioner conduct and discipline including disciplinary proceedings and sanctions.
5. **§10.2** provides the definitions of:
 - a. an Attorney
 - b. CPA
 - c. Commissioner of IRS
 - d. Practice before the IRS
 - e. Practitioner
 - f. a tax return
 - g. the Service
6. **§10.2(a)(4)** states that “practice before the IRS” comprehends all matters connected with a presentation to the IRS or any of its officers or employees relating to a taxpayer’s rights, privileges, or liabilities under laws or regulations administered by the IRS.
7. Such presentations include, but are not limited to:
 - a. preparing and filing documents,
 - b. corresponding and communicating with the IRS,
 - c. rendering written advice with respect to any entity, transaction plan or arrangement, or any other plan or arrangement having a potential for tax avoidance or evasion, and
 - d. representing a client at conferences, hearing and meetings.
8. **§10.3** defines who may “practice” and the June 12, 2014 amendment still includes registered tax return preparers. This designation no longer exists and the Treasury failed to remove it when updated.

9. **§10.3(f)(2)** states that 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.

Tax Professional Note: Since the RTRP designation no longer exists the unenrolled preparer is in the same status as they were prior to August 2, 2011 under Circular 230.

10. **§10.3(f)(3)** states a registered tax return preparer may represent taxpayers before revenue agents, customer service representatives, or similar officers and employees of the IRS (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.

Note: This is no different than the rights prescribed prior to August 2, 2011 so even with the removal of the designation an unenrolled preparer can still represent their client if they prepared and signed the return. Note, however, that this is true only through **December 31, 2015** because the Return Preparer Office has now created the Annual Filing Season Program. See the Supplemental Material on this topic.

11. 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 IRS or the Treasury Department.

Note: There is no difference from pre-August 2, 2011 or the post Loving ruling.

12. 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 IRS.

Note: Since the designation is removed, an unenrolled preparer can in fact provide tax advice.

13. **§10.4** addresses *eligibility* for enrollment as an EA or enrolled retirement plans agent; and enrollment of former IRS employees.

14. §10.5 addresses *application* for enrollment as an EA and an enrolled retirement plan agent.
15. §10.5 states that the applicant must pay a fee for the application process, the IRS may require the applicant to furnish any additional information necessary in the process and the applicant must be in Federal tax compliance and must be able to pass suitability checks. If the applicant does not pass the tax and suitability check then they will not be issued an enrollment or registration card or certificate. Anyone initially denied may reapply if they become current with respect to tax liabilities after being notified of denial. The applicant may file a written protest within **30** days after receipt of notice.
16. §10.6 discusses continued requirements for *retaining* the title of **EA** and enrolled retirement plan agent.

Note: Although 10.6 specifies a **RTRP**, it no longer applies to a registered tax return preparer.

17. §10.6 also addresses:
 - a. the term of *enrollment* or *registration*
 - b. enrollment or registration card or certificate
 - c. change of address
 - d. renewal period of enrollment or registration
 - e. fees and required forms
 - f. conditions of enrollment
 - g. qualifying continuing education
 - h. sponsors who present qualifying education programs
 - i. measurement of continuing education course work
 - j. Record keeping requirements for renewal
 - k. waivers from continuing education requirements for a given period

- l. failure to comply with eligibility for renewal of enrollment
- m. inactive retirement status
- n. renewal while under suspensions or disbarment
- o. verification by the *designated office* within the IRS to review the continuing education records of an EA, registered tax return preparer or qualified sponsor deemed to be appropriate to determine compliance with the requirements and standards for renewal of enrollment.

Note: While the noncredentialed professional is not required to comply with any annual continuing education requirements, all CPE credits are still required to be reported to the IRS by the recognized IRS qualified sponsors (**NSTP**).

- 18. **§10.7(c)(1)** addresses the issues dealing with *limited* practice before the IRS by an individual who is not a practitioner. It states that the individual may represent a taxpayer before the IRS in limited situations even if the taxpayer is not present. The individual must present satisfactory identification and proof of his or her authority to represent the taxpayer.
- 19. The circumstances in which the individual may represent the taxpayer are as follows:
 - a. An individual may represent a member of his or her **immediate family**.
 - b. A regular full-time employee of an individual employer may represent **the employer**.
 - c. A general partner or a regular full-time employee of a partnership may represent the **partnership**.
 - d. 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.
 - e. A **regular full-time employee** of a trust, receivership, guardianship, or estate may represent the trust, receivership, guardianship or estate.

- f. An **officer** or a **regular employee** or a governmental unit, agency, or authority may represent the governmental unit, agency, or authority in the course of his or her official duties.
 - g. 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.
 - h. An individual who prepares and signs a taxpayer's tax return as the preparer, or who prepares a tax return but is not required (by the instructions to the tax return or regulations) to sign the tax return, may represent the taxpayer before revenue agents, customer service representatives or similar officers and employees of the IRS during an examination of the taxable year or period covered by that tax return, but, 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 IRS or the Department of Treasury.
20. **§10.7(c)(2)** now states that an individual who is under suspension or disbarment from practice before the Internal Revenue Service may not engage in limited practice before the IRS. In addition, the Commissioner, or delegate, after notice and opportunity for a conference, may deny eligibility to engage in limited practice before the IRS to any individual who has engaged in conduct that would justify a sanction under **§10.50**.
21. An individual who represents a taxpayer under the authority of the limited practice is subject, to the extent of his or her authority, to such rules of general applicability regarding standards of conduct and other matters prescribed by the IRS.
22. **§10.7(d)** has been amended and states under the category called "special appearances," the Commissioner or delegate may, subject to such conditions as is deemed appropriate, authorize an individual who is not otherwise eligible to practice before the IRS to represent another person in a particular matter.

23. **§10.7(e)** states under the category of “preparing tax returns and furnishing information” that any individual may prepare a return, appear as a witness for the taxpayer before the IRS, or furnish information at the request of the IRS or any of its officers or employees. It also states that a fiduciary is considered to be the taxpayer and not a representative of the taxpayer.
24. The important issue that must be reviewed is who is not subject to the provisions of **Circular 230**.

EXAMPLE: Don is a CPA who prepares 200 income tax returns each year. The returns include **Forms 1040, 1041, 1065, 1120 and 1120S**. Don signs all returns and never has to correspond with the IRS about any of the 200 returns. Because Don’s *preparation* of income tax returns is not “representation before the IRS,” Circular 230 does not apply because the preparation of a tax return is not the “presentation of a case” before the IRS.

Note: This was the issue of the Loving case.

F. §10.8 Return Preparation and Application of Rules to Other Individuals: Preparing All or Substantially All of a Tax Return

1. *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. **(PTIN)** 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. **(Reminder:** RTRP is no longer a designation for purposes of Circular 230.)
2. *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**.

Note: This would not apply to the unenrolled preparer *unless* the preparer receives the Annual Filing Season Program Record of Completion.

3. 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.
4. 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 IRS 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**.
5. 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.

G. Subpart B: Duties and Restrictions Relating to Practice Before the IRS

1. Information to be Furnished: **§10.20** states if the IRS makes a lawful request for information, then practitioners generally are obliged to turn over the information unless he or she believes in good faith and on reasonable grounds that the material is privileged. The practitioner's belief must be in good faith and it must be reasonable.
2. A practitioner should promptly respond to a proper request for documents by either:
 - a. submitting the information, or
 - b. explaining why the information cannot be provided to the IRS. When the information requested is not within the control of the practitioner, the practitioner is required to ask the client to submit the information requested.
3. In situations where neither the practitioner nor the client can produce the requested information, the practitioner is required to make a reasonable inquiry of his or her client regarding the identify of any person(s) who may have possession or control of the requested information.

4. However, the practitioner is not required to inquire of any person other than the practitioners' client, nor is the practitioner required to independently verify any information provided by the client regarding the identify of such person(s).
5. 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.
6. **Knowledge of Client's Omission:** §10.21 states that practitioners must promptly advise their clients of any noncompliance with the tax laws that the practitioner discovers. The client must also be informed if the practitioner subsequently discovers an error or omission that affects the client. The practitioner must also inform the client of the consequences of the noncompliance, error, or omission The rules of **Circular 230** only require that the practitioner inform the client of the problem and of its potential consequences. It does not require the practitioner to correct the problem nor dos it require that the practitioner inform the IRS that a problem exists.
7. **Diligence as to Accuracy:** §10.22 states that practitioners must exercise due diligence in:
 - a. Preparing or assisting in the preparation of, approving and filing tax returns, documents, affidavits and other papers relating to matters with the IRS;
 - b. Determining the correctness of oral or written representations made by the practitioner to the Department of the Treasury and the IRS; and
 - c. Determining the accuracy of oral or written representations made to clients.
 - d. **Reliance on Others:** A practitioner is presumed to have exercised due diligence if the practitioner relies on the work product of another and the practitioner uses reasonable care in engaging, supervising, training and evaluating that person, taking proper account of the nature of the relationship between the practitioner and the person. There are exceptions under §§10.34, 10.35 and 10.37.

8. **§10.23** states that a practitioner may not unreasonably delay the prompt disposition of any matter before the IRS.
9. Assistance from or to a disbarred or suspended person(s). **§10.24** states that a practitioner may not knowingly and directly or indirectly accept assistance from or assist any person who is under disbarment or suspension from practicing before the IRS if the assistance relates to a matter(s) constituting practice before the IRS.
10. Also, a practitioner may not accept assistance from former government employees in matters in which the former employee personally and substantially participated in the particular matter when employed by the government as directed under **§10.25**.

H. §10.27 Fees

1. **§10.27(a)** provides that in general a practitioner may not charge an unconscionable fee in connection with any matter before the Internal Revenue Service.
2. **§10.27(b)(1)** provides that *except* as provided in paragraphs **(b)(2)**, **(3)**, and **(4)**, a practitioner may not charge a contingent fee for services rendered in connection with any matter before the Internal Revenue Service.
3. The exception **in (b)(2)** provides that a practitioner may charge a contingent fee for services rendered in connection with the Service's examination of, or challenge to:
 - a. an original tax return; or
 - b. 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.

Tax Professional Note: As a result of the Ridgely v. Lew case, the U.S. District Court ruled on July 16, 2014 that contingent fees are also permitted on the original submission of an amended return or claim for refund.

4. The exception in **(b)(3)** provides that 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.
5. The exception in **(b)(4)** provides that a practitioner may charge a contingent fee for services rendered in connection with any judicial proceeding arising under the Internal Revenue Code.
6. **§10.27(c)** provides that a *contingent fee* is defined as 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
7. A contingent fee also includes any fee arrangement in which the practitioner will reimburse the client for all or a portion of the clients' 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.
8. *A 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.

I. §10.28 Return of Client's Records

1. 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.

2. 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.
3. 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
4. For purposes of this section - Records of the client include:
 - a. all documents or written or electronic materials provided to the practitioner, or
 - b.. 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.
5. 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.
6. 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.
7. 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 clients' performance of its contractual obligation to pay fees with respect to such document.

J. §10.30 Solicitation

1. **§10.30(a)(1)** addresses the issues pertaining to advertising and solicitation restrictions.

2. 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.
3. 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.
4. 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.”
5. 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.”
6. According to Circular 230 an example of an acceptable description for registered tax return preparers is “designated as a registered tax return preparer by the Internal Revenue Service.” However, since the IRS no longer acknowledges this designation it should be removed from Circular 230.
7. 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.
8. 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.
9. **§10.30(b)** addresses the issues pertaining to fee information.

10. 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.
11. 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.
12. 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.
13. **§10.30(c)** addresses the issues pertaining to communication of fee information.
14. 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.
15. 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.
16. In the case of radio and television broadcasting, the broadcast must be recorded and the practitioner must retain a recording of the actual transmission.
17. 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.

18. **§10.30(d)** addresses the issues pertaining to improper associations.
19. 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.

K. §10.33 Best Practices for Tax Advisors.

1. **§10.33(a)** addresses the issues pertaining to best practices.
2. 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.
3. In addition to compliance with the standards of practice provided elsewhere in this part, best practices include the following:
 - a. 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.
 - b. 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.
 - c. 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.
 - d. Acting fairly and with integrity in practice before the Internal Revenue Service.
4. **§10.33(b)** addresses the issues pertaining to procedures to ensure best practices for tax advisors.

5. 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 **under §10.33(a)**.

L. §10.34(a) Standards for Tax Returns and Documents, Affidavits and Other Papers

1. The IRS has determined that the professional standards in Reg. **§10.34(a)** generally should be consistent with the civil penalty standards in **§6694** for tax return preparers. As a result, the standards for tax returns were repropoed to provide broad guidelines that are more appropriate for professional ethics standards.
2. Under the final regulations a practitioner could not willfully, recklessly, or through gross incompetence, sign a tax return or claim for refund, that he knows or reasonably should know contains a position that:
 - a. lacks a reasonable basis;
 - b. is an unreasonable position as described in **§6694(a)(2)** (including 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)** (including related regulations and other published guidance).
3. Also, a practitioner could not willfully, recklessly, or through gross incompetence, 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 is described in a.-c. above, for signing a return or claim for refund.

4. These final ethical guidelines will loosely mirror the civil penalty standards in **§6694** with only a few minor differences as follows:

- a. A position on a return or claim for refund would *always* have to meet the minimum threshold standards of reasonable basis. There would be no exception merely because there is a final determination that no understatement of liability for tax exists. By contrast, under **§6694(d)**, IRS must abate (or refund) a preparer penalty any time there is a final administrative determination or a final judicial decision that there was no understatement of liability by the taxpayer.

Tax Professional Issue: As a result, a practitioner could still be subject to **Circular 230** discipline for a position on a tax return or claim for refund even if other positions on the same tax return or claim for refund eliminate the understatement of liability.

- b. **§6694** provides that a practitioner would be subject to discipline only after willful, reckless, or grossly incompetent conduct. A single, unintentional error that is not willful, reckless, or grossly incompetent may result in a **§6694(a)** penalty. Similarly, a return preparer may claim a reasonable cause defense to the imposition of **§6694** penalties.

Tax Professional Issue: Circular 230 does not provide such a defense but rather relies on the requirement that a practitioner must have acted willfully, recklessly, or through gross incompetence to ensure that sanctions are not imposed on a practitioner who acts reasonable and in good faith.

- c. Multiple practitioners from the same firm could be disciplined if their conduct in connection with the same act(s) does not comply with the standard of conduct required under **Reg. §10.34**. By contrast, only one person within a firm is subject to the **§6694** penalty.

- d. A pattern of conduct would be a factor taken into account in determining whether a practitioner acted willfully, recklessly, or through gross incompetence for **Reg. §10.34** purposes. By contrast, under **§6694**, a penalty is imposed based on a single act in violation of the applicable provisions.

§10.34 in Circular 230 vs. IRC 6694

<u>Circular 230 §10.34</u>	<u>IRC §6694</u>
● Always needs to meet minimum standard	● 6694(d) final determination of no understatement
● Single unintentional error: not willful	● Willful, reckless or grossly incompetent
● Multiple practitioners can be disciplined	● Only one person subject to the penalty
● Pattern of conduct to determine willful, reckless or gross incompetence	● Single Act of willful, reckless or incompetence

M. Other Changes

1. Other changes made by the amended regulations include:
 - a. **§10.36** Expanding procedures to ensure compliance to include practice involving tax return preparation activities.
 - b. **§10.51(a)(16)** Providing that disreputable conduct includes willfully failing to file on magnetic or other electronic media a tax return prepared by the practitioner when he is required to do so by the federal tax laws (unless the failure is due to reasonable cause and not due to willful neglect).
 - c. Providing that disreputable conduct also includes willfully preparing all or substantially all of, or signing as a compensated tax return preparer, a tax return or claim for refund when the practitioner does not possess a current or otherwise valid **PTIN** or other prescribed identifying number. (**§10.51(a)(17)**)
 - d. Willfully representing a taxpayer before an officer or employee of the IRS unless the practitioner is authorized to do so pursuant to Circular 230. (**§10.51(a)(18)**)

N. Six Changes to Circular 230 in Final Regulations Effective June 12, 2014 and Former Director of OPR's Position on the Loving Case Decision

1. **§10.31** Electronic Negotiations of Taxpayer Refunds (adds to rules discussion negotiation of taxpayer checks): 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.
2. **§10.35** Covered Opinions was rescinded and revoked and replaced with an unrelated provision.
3. **New §10.35 General Standard of Competence**

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.

4. **§10.36 Procedures to Ensure Compliance**

This addresses that a practitioner who shares the responsibility for tax practice of a firm has an obligation to take reasonable steps to ensure everyone in the firm is aware of their duties under **Circular 230** and adheres to them. The final regulations deleted **§10.36(a)** which relates to the old **§10.35** rule on covered opinions.

5. **§10.37 Internal Revenue Service, Requirements for Written Advice**

This is similar to **§10.36** and clarifies that a “reasonableness” standard applies to written advice given by practitioners. Former Director of OPR Karen Hawkins stated in a June 17, 2014 Webcast that “a practitioner must make reasonable efforts” to determine the relevant facts. A practitioner must use “reasonable skill” to match up the facts and the law. “A practitioner may **not** use information provided by the taxpayer or another practitioner if this reliance is not reasonable.”

6. **§10.32 Expedited Suspension Procedures**

This section authorizes the Office of Professional Responsibility to use expedited proceedings to suspend a noncompliant practitioner from practice under certain limited circumstances. These circumstances include when that practitioner has shown a pattern of willful disreputable conduct by either failing to file four out of five tax returns for the five tax years immediately preceding the institution of an expedited suspension proceeding or failing to file five out of seven quarters' of employment tax returns for the seven tax periods immediately before the institution of an expedited suspension proceedings.

Former Director of OPR, Karen Hawkins noted in her June 17, 2014 Webcast that a safe harbor provision exists under **§10.82**.

“If you manage to get your tax returns or employment tax returns filed before OPR moves forward with actual suspension, OPR will back off from using expedited procedures.” However, this does not mean that OPR will not proceed with a suspension action using the regular process.”

OPR’s Position on Loving Case Decision

In her June 17, 2014 Webcast former OPR Director Karen Hawkins mentioned the outcome of the **Loving** case, which upheld a District Court’s injunction against the IRS’s planned program to regulate registered tax return preparers.

She stated that she and the **Office of Professional Responsibility** will interpret the ruling of **Living** as narrowly as possible without violating the injunction. She said that, if a person is a mere tax return preparer, then they would clearly not be subject to **Circular 230**. In the webcast she stated, If you choose to represent one of your taxpayers, whose return you have prepared and signed, before the IRS exam division, the national taxpayer advocate or IRS customer service, you have just turned yourself into a practitioner under **Circular 230** as far as I am concerned, and I have jurisdiction over you.”

Editor’s Note: With the retirement of Director Hawkins and the succession by Steven Whitlock there seems to have been a change in OPR’s approach to this issue.

O. Issues of the PTIN and the Paid Preparer and the Steele Case

1. The IRS launched an online application system for compensated tax return preparers. Return preparers need to obtain, or reapply for, a Preparer Tax Identification Numbers (**PTIN**) and pay a user fee.
2. All preparers were required to be registered on a new on-line registration system and need to obtain a **PTIN** *before* filing any return *after* December 31, 2010.
3. The system includes a series of steps planned to increase oversight of federal tax return preparation.
4. Under the regulations the requirement to sign up on the system applies to **all** compensated tax return preparers of federal tax returns regardless of whether they currently possess a **PTIN**. Return preparers who already have a **PTIN** generally are reassigned the same number.
5. Individuals who plan to prepare all or substantially all of a tax return for compensation have to obtain a **PTIN** even if they were not subject to the testing and continuing education requirements that would be required under **Circular 230**. Access to the online application system is through the Tax Professionals page of <http://www.irs.gov>.
6. The IRS issued paper **Form W-12 IRS Paid Preparer Identification Number (PTIN) Application**. The application system requires that the required fee is included with the request or it will be rejected. It is to be made payable to: IRS TAX PRO PTIN Fee.
7. Under the regulations, compensated tax return preparers are required to acquire or renew their **PTINs** *annually* and pay the associated user fee.

Tax Professional Note: The IRS has been ordered to cease assessing a fee for the right to have a PTIN.
8. The application does inquire as to whether an applicant is current on both individual and federal taxes including any corporate and employment tax obligations. In addition, it requires the applicant to respond to the reason why they have never filed a U.S. individual return if one has never been filed.
9. There is also a question asking if the application has been convicted of a felony in the past 10 years and requires an explanation if the response is yes.

10. The application requires the normal identification data including:
 - a. name,
 - b. address,
 - c. SSN,
 - d. birth date,
 - e. e-mail address,
 - f. filing status and tax year of last tax return filed,
 - g. business name and address with EIN and EFIN,
 - h. business telephone number and website address,
 - i. CAF number, and
 - j. professional credentials, if any, with license number if applicable.

Tax Professional Note: The form requires a signature under penalties of perjury.

11. The IRS has also issued **Form 8945** *PTIN Supplemental Application for U.S. Citizens Without a Social Security Number Due to Conscientious Religious Objection*. The **Form 8945** is to be used by U.S. Citizens who are members of certain recognized religious groups, which are defined in the instructions, that want to prepare tax returns for compensation.
12. The **Form 8945** is to be filed with the **Form W-12** and the fee is now no longer permitted to be charged due to the ruling in the Steele case which the IRS is appealing. In addition to the applicant's signature, the signature of an Authorized Representative of the religious group must certify that the applicant is a member of that group.

Supplement: Sample Engagement Letter

Your Firm Name Here

(Date)

Re: Engagement Letter for Year **20XX** Income
Tax Preparation and Consultation Services

Dear :

Please read, sign and return this engagement letter as soon as possible. The purpose of this letter is to confirm our understanding of the terms and objectives of our engagement and the nature and limitations of our services.

We will prepare your **20XX** federal and state income tax returns in compliance with the Internal Revenue Code and state laws based upon written and oral information you provide. Please provide this information to us as soon as possible. The due date for your federal tax return is **April 15, 2015**. However, because of the time requirements for processing returns, **no returns will be processed after April 8, 2015**, thereupon, **all** returns will be put on **extension** and processed **after** April 15, 2015. If we do not receive your information by **(Date)**, then your return will most likely be put on **extension**.

We are furnishing you with a **tax organizer** which is composed of questions and worksheets to guide you in gathering the necessary information. Your use of our forms will assist us in keeping your fee to a minimum. If you use a different format, then it generally requires more preparation time and higher fees.

Our **minimum** fee for preparation of your federal and state returns is **\$X**. A retainer fee of **\$Y** is due at the time you first submit your information to us. The balance is due at the time we present you with the completed returns. The hourly fee is **\$Z**. The fee for this engagement does not include any fees incurred after the preparation of the return is completed such as responses to IRS and/or state inquires and audit issues.

The proper preparation of an income tax return and consultation services sometimes requires research given the fact that each taxpayer's financial circumstances differ. If services beyond those covered by this letter are required, then the extent of such services and the basis for additional fees will be discussed with you in advance of the performance of such work.

We appreciate the confidence which you have placed in us and we will be pleased to discuss with you any aspect of our services.

Sincerely,

Your Name

Approved:

By: X_____

Date: X_____

Supplemental Material on the Annual Filing Season Program

The Internal Revenue Service announced on June 30, 2014 a *voluntary* program designed to encourage education and filing season readiness for paid tax return preparers. The program was put in place to help taxpayers beginning with the 2015 filing season.

The Annual Filing Season Program (AFSP) allows unenrolled return preparers to obtain a “record of completion” when they *voluntarily* complete a required *amount* of continuing education (CE), including a course in basic tax filing issues and updates, ethics and other federal tax law courses.

“This voluntary program will be a step to help protect taxpayers during the 2015 filing season,” said IRS Commissioner John Koskinen. “About 60 percent of tax return preparers operated without any type of oversight or education requirements. Our program will give unenrolled return preparers a way to stay up-to-date on tax laws and changes, which we believe will improve service to taxpayers.”

Tax return preparers who *elect* to participate in the program and receive a “record of completion” from the IRS will be included in a database on IRS.gov that become available each January to help taxpayers determine return preparer qualifications.

The database contains information about practitioners with recognized credentials and higher levels of qualification and practice rights. These include attorneys, certified public accountants (CPAs), enrolled agents, enrolled retirement plan agents (ERPAs) and enrolled actuaries who are registered with the IRS.

“It’s also important to note this program is not to replace the important tax work done by certified public accountants, enrolled agent and attorneys,” Koskinen said. “Tax professionals with recognized credentials will be publicly listed on IRS.gov, and we plan to help inform taxpayers about the professional options available.”

Anyone who prepares all, or substantially all, of any federal tax return or refund claim for compensation is required to obtain a preparer tax identification number (PTIN). Tax return preparers with a valid PTIN who do not obtain a “record of completion” as part of the Annual Filing Season Program, or are not an attorney, CPA, enrolled agent, ERPA or enrolled actuary, may still prepare tax returns, but will not be included in the public directory.

Annual Filing Season Program: “Record of Completion” Requirements

In general, non-exempt return preparers with a valid PTIN for the program year will need to complete **18** hours of CE annually from IRS-approved CE providers to obtain an IRS For Purpose of Record of Completion. The CE hours will need to include:

- a. 6 hours of federal tax filing season refresher course (**with a required comprehension test at completion**)
- b. 10 hours of federal tax law topics
- c. 2 hours of ethics

The IRS began issuing records of completion to those who met the requirements in mid-October 2014 after the 2015 PTIN renewal season started.

Consent to Circular 230 Restrictions

As a prerequisite to receiving a record of completion, an individual will be required to consent to the duties and restrictions relating to practice before the IRS in **§10.8** subpart **B** and **§10.51** of Treasury Department Circular No. 230.

Modification to Limited Practice Permissions

The program also states that effective for tax returns and claims for refunds prepared or signed *after* December 31, 2015, *only* unenrolled tax return preparers who have a “record of completion” under the Annual Filing Season Program for the calendar year of preparation and the calendar year of representation will be permitted to **represent taxpayers before the IRS during an examination of a return that they signed or prepared**. Attorneys, CPAs and enrolled agents will continue to have unlimited representation rights and can represent clients before any office of the IRS.

A complete description of the AFSP is available in **Rev. Proc. 2014-42**.

Ethics Questions

Multiple Choice Questions: Mark the answer sheet with the answer which is most correct.

1. The regulations under current **Circular 230** governs which of the following persons except:
 - a. CPA's
 - b. Registered Tax Return Preparers
 - c. Key punch data entry clerks
 - d. Enrolled agent
 - e. Both b and c

2. **Circular 230** §10.0 contains rules governing the recognition of all of the following persons except:
 - a. CPA's
 - b. Registered Tax Return Preparers
 - c. Attorneys
 - d. Enrolled Agents
 - e. None of the above

3. **Circular 230** regulations are enforced by which division of the IRS:
 - a. Collections
 - b. Small Business/Self Employed
 - c. Office of Professional Responsibility (OPR)
 - d. Appeals
 - e. None of the above

4. Ethics includes which of the following characteristics:
 - a. Standards of practice
 - b. Moral conduct, duty and judgement
 - c. Formal or professional standards of right and wrong
 - d. All of the above except moral conduct
 - e. All of the above

5. As tax professionals, the ethical standards by which we perform our duties include:
 - a. Exercise of due diligence
 - b. Best practices
 - c. Standards
 - d. Procedures
 - e. All of the above

6. Subpart B of **Circular 230** relates to which of the following:
 - a. Disciplinary proceedings
 - b. Duties and restrictions relating to practice
 - c. Sanctions for violating the regulations
 - d. Rules relating to the authority to practice
 - e. All of the above

7. **Circular 230 §10.34** states that a practitioner cannot do the following:
 - a. act recklessly in preparing a tax return
 - b. willfully understate the liability on a tax return
 - c. advise a client to take a position on a return that lacks a reasonable basis
 - d. take an unreasonable position as described in **§6694(a)(2)** of the Code
 - e. all of the above

8. If a CPA who prepares 1,000 returns did not represent a taxpayer before the IRS then:
 - a. Circular 230 applies to the preparation of the returns
 - b. Circular 230 does not apply
 - c. The CPA can be disciplined by OPR
 - d. Both a and b
 - e. None of the above

9. **Circular 230** provides that practitioners who are aware of client omissions on a tax return must take which of the following actions:
 - a. Call the IRS before the statute of limitations has closed for the return in question
 - b. Prepare an amended return and tell the client to sign and submit to the IRS
 - c. Promptly advise the client of any noncompliance and the responsibility to pay the proper tax
 - d. Fire the client
 - e. All of the above

10. According to **Circular 230** practitioners must exercise due diligence in:
 - a. Collecting fees
 - b. Determining accuracy of any oral or written representations made to the government
 - c. Delaying disposition of matters with the IRS
 - d. All of the above
 - e. None of the above