AMERICAN BAR ASSOCIATION
Tax Section

1050 Connecticut Avenue, NW, Suite 400
Washington, DC 20036
202-662-8670
tax@americanbar.org
americanbar.org/tax

February 24, 2025

Douglas O'Donnell
Acting Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

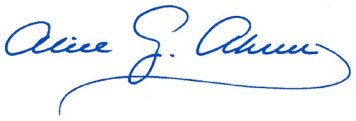
Re: Comments on Proposed Amendments to Circular 230

Dear Acting Commissioner O'Donnell:

Enclosed please find comments on the proposed amendments to Circular 230 and regulations governing practice before the Internal Revenue Service. These comments are submitted on behalf of the Section of Taxation and have not been reviewed or approved by the House of Delegates or the Board of Governors of the American Bar Association. Accordingly, they should not be construed as representing the position of the American Bar Association.

The Section of Taxation would be pleased to discuss these comments with you or your staff.

Sincerely,



Alice G. Abreu
Chair, Section of Taxation

Enclosure

cc: Shelley Leonard, Acting Deputy Assistant Secretary (Tax Policy), Department of the Treasury
Krishna P. Vallabhaneni, Tax Legislative Counsel, Department of the Treasury
Natasha Goldvug, Deputy Tax Legislative Counsel, Department of the Treasury
Jarrett Jacinto, Associate Tax Legislative Counsel, Department of the Treasury
William M. Paul, Acting Chief Counsel, Principal Deputy Chief Counsel and Deputy Chief Counsel (Technical), Internal Revenue Service
Elizabeth Kastenberg, Acting Director, Office of Professional Responsibility, Internal Revenue Service
Paul Butler, Associate Chief Counsel (Procedure & Administration), Internal Revenue Service
William Prater, Senior Attorney, Office of Associate Chief Counsel (Procedure & Administration), Internal Revenue Service

AMERICAN BAR ASSOCIATION
SECTION OF TAXATION

Comments on Proposed Amendments to Circular 230 and Regulations Governing Practice Before the Internal Revenue Service

These comments ("Comments") are submitted on behalf of the American Bar Association Section of Taxation (the "Section") and have not been reviewed or approved by the House of Delegates or Board of Governors of the American Bar Association. Accordingly, they should not be construed as representing the position of the American Bar Association ("ABA").

Principal responsibility for preparing these Comments was exercised by Michelle F. Schwerin, Aaron M. Esman, and Sarah Green, on behalf of the Standards of Tax Practice Committee of the Section of Taxation. Substantial contributions were made by Elliott Barber, Jed Bodger, Samuel L. Braunstein, Seamus Bresnahan, Garrett L. Brodeur, Lorra Brown, Matt Cooper, James Creech, Nia Crosley, E. Martin Davidoff, Zain Devshi, Dennis Drapkin, Stephen J. Dunn, Janice Feldman, Linda Galler, Andrew L. Gradman, Jonathan D. Grossberg, Peter Haukebo, Karen Hawkins, Lawrence M. Hill, Rochelle Hodes, Matthew F. Kadish, Robert Kantowitz, Howard N. Kaplan, Zachary Lyda, Starling Marshall, Matt McClintock, Luke Meenach, Mark Mesler, Nicholas R. Metcalf, Alena Miles, Deanne Morton, Al Odige, J. Leon Peace Jr., David Polashuk, Robert D. Probasco, Christopher Rizek, Richard Sapinski, Sarah E. Sexton Martinez, Cory Stigile, Mai Chao Thao, Eleanor S. VanderMeulen, and James Wade. These comments have been reviewed by Alexandra Minkovich and John Colvin of the Committee on Government Submissions of the Section, and Michael Desmond, Vice Chair for Government Relations of the Section.

Although members of the Section may have clients who might be affected by the Federal tax principles addressed by these Comments, no member who has been engaged by a client (or who is a member of a firm or other organization that has been engaged by a client) to make a government submission with respect to, or otherwise to influence the development or outcome of one or more specific issues addressed by, these Comments has participated in the preparation of the portion (or portions) of these Comments addressing those issues. Additionally, while the Section's diverse membership includes government officials, no such official was involved in any part of the drafting or review of these Comments.

Contacts: Michelle F. Schwerin
(314) 949-1866
schwerin@nsbpc.com

Aaron M. Esman
(646) 215-7537
aaron.esman@mooretaxlawgroup.com

Sarah Green
(256) 518-3616
sarah.green@dentons.com

Date: February 24, 2025

EXECUTIVE SUMMARY

These Comments respond to proposed amendments to Treasury Department Circular No. 230 ("Circular 230") at 31 C.F.R. Part 10 and its regulations governing practice before the Internal Revenue Service ("Service") ("Proposed Regulations")[1] issued by the U.S. Department of the Treasury ("Treasury") and the Service pursuant to 31 U.S.C. § 330.[2] If finalized, the Proposed Regulations would eliminate provisions related to tax return preparation outside of practice before the Service, classify the use of certain contingent fee arrangements by practitioners as disreputable conduct, impose upon practitioners a requirement of technological competence, establish new standards for appraisals and the disqualification of appraisers, and update various standards of practice.

As noted in the Preamble to the Proposed Regulations, current Circular 230 has not been amended since 2014 and many of its provisions have become obsolete or require an update to account for changes in the law and the evolving nature of tax practice. The Preamble further provides that Treasury and the Service drafted the Proposed Regulations to align Circular 230 with current law and not to "impose new standards or burdens on practitioners or appraisers."[3] We respectfully suggest that some of the proposed changes do, significantly, impose new standards.

The Section commends Treasury and the Service for proposing a long overdue update to the standards governing tax practitioners, including Enrolled Agents ("EA"), Enrolled Retirement Plan Agents ("ERPAs"), attorneys, Certified Public Accountants ("CPAs"), and Annual Filing Season Program ("AFSP") participants who practice before the Service, as well as appraisers who submit appraisals in administrative proceedings.

Below is a brief overview of our recommendations concerning the Proposed Regulations, followed by a more detailed discussion. Our recommendations are intended to assist Treasury and the Service in updating Circular 230, consistent with current law and in a manner that is practical, protects taxpayers and the public, and is not unduly restrictive on tax practitioners. While we have addressed some of the proposed changes that do not directly impact attorney tax practitioners, our comments and recommendations are focused on the concerns of attorney tax practitioners.

---

[1] 89 Fed. Reg. 104915 (Dec. 26, 2024).

[2] Unless otherwise indicated, references to a "§" are to a section of Circular 230 or 31 C.F.R. Part 10; all references to a "Code section" are to the Internal Revenue Code of 1986, as amended (the "Code"); and all "Treas. Reg. §" and "Prop. Treas. Reg. §" references are to the Treasury Regulations promulgated under the Code, all as in effect (or, in the case of proposed regulations that remain outstanding, as proposed) as of the date of these Comments.

[3] 89 Fed. Reg. 104923.

We generally recommend that Treasury and the Service should:

1. Recognize that contingent fees, in general, are not presumptively disreputable conduct. The benefits of contingent fees outweigh the risks and provide greater access to professional services. Contingent fees that are "unconscionable", like any other fee arrangement, are disreputable conduct.

2. Remove entirely proposed § 10.51 and add to § 10.50 language that contingent fees shall not be charged in connection with the filing of original tax returns.

3. Adjust current § 10.27 to clearly allow contingent fee arrangements (other than those involving the preparation of original returns or "unconscionable fees") and provide guidance to ensure such arrangements are in writing and unambiguous.

4. Make clear in the Preamble to the Proposed Regulations that the best practices in § 10.33 are aspirational and not intended to establish an enforceable standard of conduct.

5. Adjust the language of current § 10.33(a) to specify in subsection (3) that it is a best practice for tax practitioners to advise clients regarding any Federal tax penalties that are reasonably likely to apply to the client with respect to the practitioner's advice.

6. Reconsider the elimination of current § 10.33(b) in the Proposed Regulations, because it is inequitable to establish a set of best practices for practitioners in § 10.33, while imposing an enforceable standard of conduct on firms under proposed § 10.36.

7. Move the language added by proposed § 10.35 into § 10.33 (which sets out aspirational best practices), because the language of proposed § 10.35 is too vague as currently drafted to provide adequate notice of an enforceable standard of conduct.

8. Alternatively, if the language added by proposed § 10.35 is not moved into § 10.33, revise § 10.35 language to allow practitioners to "take reasonable steps" toward technological competence or expanded to provide adequate notice of an enforceable standard of conduct.

9. Adjust the language of proposed § 10.37(c) concerning the "reasonable practitioner" standard to require a reasonable inquiry into the client's circumstances.

10. Adjust proposed §§ 10.37(d)(1) and (d)(2) to avoid duplication.

11. Clarify the standard for a "willful" determination when assessing whether a practitioner has violated proposed § 10.50(a)(19).

12. Remove proposed § 10.50(b) from the Proposed Regulations.

13. Leave Circular 230 "as is" insofar as it regulates appraisers.

14. Clarify that any subsequent investigation of a disciplined practitioner under proposed § 10.99 must be limited to professional acts constituting practice before the Service under Circular 230.

Table of Contents

BACKGROUND

On December 20, 2024, Treasury and the Service released proposed amendments to Circular 230 and its rules for certain tax professionals who practice before the Service. If finalized, the proposed amendments would adjust Circular 230 to account for changes in the law and the evolving nature of tax practice.

The following detailed discussion includes the Section's comments on the proposed amendments and provides recommendations to assist Treasury and the Service in issuing final rules. The membership of the Section is largely comprised of practicing attorneys, so the views expressed herein are primarily drawn from the experience of lawyers practicing tax law.

DETAILED DISCUSSION

I. Amendment Regarding the Regulation of Contingent Fees (Current § 10.27 and Proposed § 10.51)

A. Background on Provisions

Current § 10.27 prohibits practitioners from entering into contingent fee arrangements for services rendered in connection with a ''matter before the [Service],'' which is defined in § 10.27(c)(2) to include assisting with filing tax returns or claims for refund or credit and ''all matters connected with a presentation to the [Service] . . . relating to a taxpayer's rights, privileges, or liabilities under the laws and regulations administered by the [Service].''

The Proposed Regulations would remove current § 10.27 (in subpart B) and, under proposed § 10.51 (in subpart C), define disreputable conduct to include both charging contingent fees in connection with the preparation of an original or amended tax return or claim for refund or credit, and charging fees that, under the facts and circumstances, are unconscionable fees. The preamble to the Proposed Regulations explains that "[c]harging a contingent fee for the preparation of an original return, amended return, or claim for refund or credit prepared prior to the examination of a tax return is disreputable conduct because [such] circumstances encourage evasion or abuse of Federal tax laws by incentivizing practitioners to take unduly aggressive tax positions for their clients, which would increase their clients' reported tax benefits, thus resulting in personal gain for the practitioner."[4]

The background information in the notice of proposed rulemaking suggests that the movement of contingent fee guidance from subpart B to subpart C is required by the *Loving* and *Ridgely* decisions. *Loving* concluded that preparing an original tax return did

[4] 89 Fed. Reg. 104918.

not constitute practice before the Service for purposes of 31 U.S.C. § 330(a).[5] *Ridgely* concluded that the Service lacked the authority to treat the preparation of a refund claim prior to the examination of the tax return for the year in question as practice before the Service for purposes of 31 U.S.C. § 330(a).[6] Given this precedent, we understand the decision to move the contingent fees provision from subpart B to subpart C, although this move presents concerns, which are discussed below. We also agree in principle with the prohibition of contingent fees arrangements for the preparation of original tax returns. We do not, however, find it appropriate to include the additional restrictions on contingent fee arrangements, including those used in connection with amended returns or refund claims, in subpart C.

B. Comments and Recommendations

The Section believes subpart C is not a good fit for regulations concerning contingent fees for two reasons. First, the Proposed Regulations under subpart C apply to individuals who do not practice before the Service (many of whom offer contingent fees)[7] but the primary sanctions available under 31 U.S.C. 330(c) are suspending or disbarring a representative from practice before the IRS. Thus, it may fail to fully combat any incompetence or disreputable conduct involving contingent fees by return preparers who are not attorneys, CPAs, or enrolled agents. Second, the Proposed Regulations treat contingent fees as *per se* disreputable, without examination of the surrounding facts and circumstances. This is inconsistent with other provisions in subpart C, which require greater culpability for incompetence or disreputable conduct. For example, some provisions under current § 10.51(a) require the disbarment by another licensing jurisdiction or a criminal conviction.[8] Others require "willful" conduct.[9] Notwithstanding these overarching concerns with the Proposed Regulations,[10] the Section makes the following comments and recommendations regarding current § 10.27 and proposed § 10.51:

---

[5] *Loving v. IRS*, 917 F.Supp.2d 67 (D.D.C. 2013), *aff'd* 742 F.3d 1013 (D.C. Cir. 2014).

[6] *Ridgely v. Lew*, 55 F. Supp. 3d 89 (D.D.C. 2014).

[7] Subpart B is authorized by 31 U.S.C. 330(a), which authorizes regulation of practice before the IRS. Subpart C is authorized by 31 U.S.C. 330(c), which is not limited to regulation of practice before the IRS and therefore avoids the issues of the *Loving* and *Ridgely* decisions.

[8] *See, e.g.*, § 10.51(a)(1) (requiring "Conviction of any criminal offense under the Federal tax laws" for disreputable conduct).

[9] *See, e.g.*, §§ 10.51(a)(6), (7).

[10] The Section also believes proposed § 10.51 is overbroad and unnecessary. If the proposed regulations are intended to curb "unduly aggressive tax positions," as stated in the preamble (89 Fed. Reg. 104918), the Service already has very strong language in Code section 6694 that prohibits tax return preparers from taking unreasonable positions or acting recklessly in the preparation of tax returns.

1. Contingent fees generally should not be considered disreputable conduct and any final regulations should specify that contingent fee arrangements that are not specifically prohibited shall be allowed.

Charging contingent fees, in general, should not be considered disreputable conduct or "incompatible with ethical practice,"[11] because the benefits of contingent fee arrangements outweigh the risks and provide greater access to professional services. Contingent fee arrangements also serve important policy goals by encouraging efficient, high-quality work and by balancing the scales between the Service and individual taxpayers, who may lack access to effective representation.[12] Therefore, with the exception of contingent fee arrangements for the preparation of original returns (discussed below), the Section disagrees[13] with statements in the Proposed Regulations that charging a contingent fee is "disreputable conduct."

In addition, any final regulations on this topic should clarify that contingent fee arrangements that are not specifically prohibited shall be allowed. Below, we list services that enhance taxpayers' access to professional tax services, but would appear to be "disreputable" under the Proposed Regulations if a practitioner charged contingent fees.

- The abatement and/or refund of penalties and/or interest arising out of the Code. Such services shall include, but not be limited to, the filing of amended returns and/or claims for refunds and/or abatements.
- All services in connection with the collection of taxes previously assessed (including representation in offers in compromise and the filing of amended returns).
- Services rendered in connection with any claims made pursuant to Code section 6015 with respect to innocent spouse matters.
- Representation of a taxpayer in responding to all notices by the Service and inquiries which propose the assessment of additional taxes. This shall include responses to substitute for return notices and the filing of related amended returns and claims for refund.

[11] The Section believes that allegedly unethical behavior must be evaluated by the Office of Professional Responsibility ("OPR") on a case-by-case basis, guided by existing and developing case law.

[12] We note that the ABA Model Rules of Professional Conduct, which form the basis for the enforceable ethics rules adopted by state supreme courts, permit contingent fees. Under Rules 1.5 (c) and (d), contingent fee agreements are not presumed unethical or disreputable per se. They are subject to the same standard of reasonableness as other fee agreements, subject to the requirements in (c) and prohibited circumstances in (d). Reasonableness depends on facts and circumstances.

[13] The assumption underlying the proposed blanket prohibition of contingent fees appears to be that there are a significant number of Circular 230 practitioners who are preparing faulty amended returns on a contingent basis that avoid Service scrutiny. We are aware of no quantitative evidence in this regard.

- Services with respect to the filing of amended returns that are provided directly to a Revenue Agent, a Revenue Officer, or an Appeals Officer or anyone in the management chain above such positions.
- Representation and the filing of relevant amended returns and/or claims for refund in connection with proposed and actual assessments of the Trust Fund Recovery Penalty pursuant to Code section 6672.

In addition to the services above, contingent fee arrangements are also beneficial in situations involving amended returns, because they provide taxpayers greater access to tax services and pose minimal risk to the government. The following scenario was set forth in the testimony on previous amendments to Circular 230 by the National Association of Enrolled Agents on April 28, 2006:

> Upon reviewing a return, an EA determines a taxpayer has reflected a position on her return that may not have been as taxpayer-favorable as possible. Upon researching the issue, the EA is convinced the taxpayer has more than a realistic possibility of success if challenged should the new position be advanced. The taxpayer, however, is reluctant to change her return if the professional fee comes without some form of guarantee. While the taxpayer may not want to attempt to correct a return that is in the government's favor because of the professional fee involved, she would be willing to apply for what she was entitled to if she could be assured that the fees to obtain that correction would not exceed the potential benefit to be gained.

The Section respectfully suggests that a contingent fee arrangement for the filing of amended returns to correct a taxpayer's tax liability is an appropriate transaction and not disreputable conduct.[14] As further support for our conclusion, we note that in civil rights litigation, courts have recognized that contingent fee arrangements further the purpose of ensuring adequate representation for plaintiffs, as seen in *Wells v. Sullivan*.[15] This principle is equally applicable to tax refund claims, where the financial burden of legal fees can otherwise deter taxpayers from pursuing legitimate claims and/or entirely preclude taxpayers from access to professionals to obtain advice and services. Prohibiting contingent fee arrangements could also undermine the remedial goals of tax laws designed to protect taxpayers' rights. Like the Fair Labor Standards Act ("FLSA"), which

[14] Our members frequently find errors in new clients' previous years' tax returns that would result in a tax refund if corrected (e.g., the omission of allowable deductions or carryovers or the inclusion of non-taxable items as gross income). These clients, however, may be unwilling to pay even a fixed fee without some assurance that the fee would be refunded if the Service denies the claim made on an amended return. Prohibiting practitioners from offering contingency fee arrangements under these circumstances "chills" public access to tax services. Some of our members also offer clients the choice of hourly rates or a contingency fee arrangement in situations where the client has what appears to be a strong tax position, but where the client is reluctant to advance or raise their tax position with the Service. In these circumstances, contingency fee arrangements allow the more knowledgeable practitioner to assume the risk in lieu of the taxpayer.

[15] 907 F.2d 367 (2d Cir. 1990).

aims to ensure fair compensation for workers and encourages legal representation through fee awards, tax laws should facilitate access to legal services for taxpayers. As highlighted in *Fisher v. SD Prot. Inc.*,[16] imposing limitations on attorneys' fees can discourage attorneys from taking cases with lower potential damages, thereby impeding important policy goals. The prohibition on contingent fee compensation can also preclude some taxpayers from filing refund claims with the Service altogether,[17] as they may be unable to afford the upfront costs of hiring a tax practitioner.

2. The sole prohibition for contingent fee arrangements should be for those charged in connection with the filing of original tax returns.

From 1994 until 2007, Circular 230 prohibited the use of contingent fee arrangements for preparing original income tax returns, but allowed such arrangements in the context of preparing an amended return or a claim for a refund. That is essentially what we recommend here. The sole prohibition for contingent fee arrangements should be for those charged in connection with the filing of original tax returns. A general prohibition against "unconscionable fees" will capture contingent fee arrangements for both preparers and representatives, as well. Accordingly, we recommend not adding proposed § 10.51 and instead adjusting § 10.50 to include two new provisions.

First, a new § 10.50(a)(20), which would read as follows:

(20) Charging an unconscionable fee.

Second, a new § 10.50(c), which would read as follows:

(c) Contingent fees for the filing of original tax returns. Charging a contingent fee in connection with the preparation of an original tax return shall be considered unconscionable.

3. Adjust current § 10.27 to clearly allow contingent fee arrangements (other than those involving the preparation of original returns or "unconscionable fees") and provide guidance to ensure such arrangements are in writing and unambiguous.

Our position is that contingent fee arrangements generally should be allowed. Accordingly, we recommend including new and simplified language in current § 10.27 that will generally allow contingent fee arrangements and provide guidance to ensure that such agreements are in writing and that such writings are clear. Specifically, § 10.27 should be amended to read in its entirety as follows:

[16] 948 F.3d 593 (2d Cir. 2020).

[17] *Ryan, LLC v. Lew*, 934 F. Supp. 2d 159 (D.D.C. 2013).

A fee may be contingent upon the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by § 10.50. A contingent fee agreement shall be signed by the taxpayer in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the practitioner in the event of a successful resolution; other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the taxpayer of any expenses for which the taxpayer will be liable whether or not the taxpayer is the prevailing party. Upon the conclusion of a contingent fee matter, the practitioner shall provide the taxpayer with a written statement of the outcome of the matter and, if there is a successful resolution, showing the remittance to the taxpayer and the method of its determination.

II. Knowledge of Error or Omission (Proposed § 10.21)

A. Background on Provisions

The current version of §10.21 focuses on a practitioner's knowledge of a client's "noncompliance, error, or omission." If a practitioner learns of their client's "noncompliance, error, or omission" pertaining to "any return, document, affidavit, or other paper" submitted to the Service, the practitioner "must advise the client of the consequences as provided under the Code and regulations of such noncompliance, error, or omission."

B. Comments and Recommendations

We recommend revisions to § 10.21, as articulated below, to reflect current professional ethical standards, including the ABA's Model Rules of Professional Conduct ("MRPC"), and other practical considerations. The proposed language mandating specific advice (e.g., a "practitioner must advise") and requiring a specific course of action (e.g., "practitioner should request the client's agreement to disclose") with respect to an error or omission are deeply problematic to the legal community.

As an initial matter, we respectfully note that the law does not impose an affirmative obligation on a taxpayer to file an amended return or to disclose an error, and it is improper for Treasury and the Service to attempt to effectively create one for represented taxpayers through obligations imposed by Circular 230.[18]

The obligations imposed by proposed § 10.21 are fundamentally incompatible with a lawyer's duties and obligations as a counselor, advisor, and advocate for the client

[18] *See, e.g., Badaracco v. Commissioner*, 464 U.S. 386 (1984).

as articulated by the MRPC and required by state law.[19] While it might be appropriate in some circumstances to advise a taxpayer to file an amended or delinquent return or form, or to disclose an earlier error, there are other situations in which such advice is not appropriate or is one of several options that a competent and diligent practitioner should discuss (along with the potential consequences of each option) with the client.

The adoption of this proposed standard would create an impossible situation for practitioners who represent clients under criminal investigation or with a significant risk of criminal exposure. With respect to those representations, requiring a practitioner to advise the taxpayer to disclose an error or omission is most likely advising them to admit to a crime (or at least a significant element of a crime). Lawyer-tax-practitioners cannot be constrained by these proposed obligations and also satisfy their ethical obligations articulated by the state supreme courts, that adopt and enforce these professional conduct rules including the duties of competence, diligence, communication, etc. Additionally, placing an affirmative obligation on the practitioner to advise a taxpayer to file an amended return or disclosure has a very real potential to create conflict between the practitioner and the client.

Finally, we suggest that Treasury and the Service consider whether the proposed provisions are consistent with the rules set forth in *Loving* and *Ridgely*, in that identifying and advising a client with respect to an error or omission is not and does not constitute the practitioner's representation of the client before the Service. Instead, the proposed language generates a very real likelihood of infringing on the attorney-client relationship outside of the actions taken and representations made to or with the Service.

1. Adjustments to proposed § 10.21 language

We propose revising proposed § 10.21 to the following:

(a) In general. A practitioner who, while representing a client in a matter before the Internal Revenue Service, knows that either the client, the practitioner, or a prior practitioner has not complied with the revenue laws of the United States and regulations, or has *made a material error or omission with respect to* any return, document, affidavit, or other paper that the client submitted or executed under the revenue laws of the United States and regulations, *should* advise the client promptly of the fact of such noncompliance, error, or omission. The practitioner *must* advise the client of the *possible* consequences of the noncompliance, error, or omission, as provided under the internal revenue laws of the United States and regulations.

[19] We recognize that the language of the proposed standards is similar to language found in prior versions of the AICPA's Statement on Standards for Tax Services ("SSTS"). We note that the AICPA has since updated it SSTS. Furthermore, and more important with respect to this Comment, the standards for accountants and the standards for lawyers in this area are different. The AICPA also recognizes the differentiation, as its own SSTS's recommend accountants advise their clients to consult with an attorney in certain circumstances. *See, e.g.,* SSTS No. 1, Section 1.2.9 (effective January 1, 2024).

The practitioner *must discuss with the client possible options for addressing the error or omission.*

(b) *Future representations. The practitioner should also* take reasonable steps to ensure *that the practitioner's actions and advice will not contribute to a continuation of* the noncompliance, error, or omission *in subsequent submissions to the Internal Revenue Service.*

This subsection (b) applies only to those practitioners who are part of the taxpayer's tax preparation or tax advisory team for tax periods going forward from past errors.

The italicized language (along with certain deleted sentences) highlights our suggested adjustments.

2. Proposed addition to § 10.21 language

We respectfully request that the Treasury and Service consider adding to proposed § 10.21 that the obligations set forth within this section do not supplant a lawyer's duties under the MRPC, as adopted by the state supreme court governing the lawyer's practice (e.g., duties of confidentiality, competency, zealous representation of client's best interests).

III. Best Practices for Tax Practitioners (Proposed § 10.33)

A. Background on Provisions

Current § 10.33 provides "best practices" for practitioners related to client representation.

Proposed § 10.33 would replace the words "tax advisors" with "tax practitioners" to better align § 10.33 with other provisions in Circular 230. In addition, proposed § 10.33(a)(4) provides that it is a best practice for practitioners to create a data security policy to protect client information and establish a plan and procedures for responding to data breaches. Proposed § 10.33(a)(5) provides that it is a best practice for practitioners to identify, evaluate, and address a mental impairment arising out of, or related to, age, substance abuse, a physical or mental health condition, or some other circumstance that could adversely impact a practitioner's ability to effectively represent a client before the Service. Lastly, proposed § 10.33(a)(6) provides that it is a best practice for practitioners to establish a business continuity and succession plan that includes procedures and safeguards related to both the cessation of a practitioner's practice or the occurrence of an outside event, such as a natural disaster or cyberattack.

B. Comments and Recommendations

The Section makes the following recommendations regarding proposed § 10.33:

1. Make clear in the Preamble to the Proposed Regulations that the best practices in § 10.33 are aspirational and not intended to establish an enforceable standard of conduct.

The Preamble to the Proposed Regulations states that § 10.33 provides best practices for practitioners related to client representation. If the Proposed Regulations are adopted, the Preamble should be amended to clarify explicitly that the best practices in § 10.33 are *aspirational* and not intended to establish an enforceable. standard of conduct.

Enforcement of the best practices set forth in proposed § 10.33 would be very difficult, if not impossible. For example, proposed § 10.33(a)(5) provides that it is a "best practice" for practitioners to identify, evaluate, and address a mental impairment that could adversely impact their ability to effectively represent a client before the Service. What qualifies as a "mental impairment"? When does a mental impairment adversely impact one's ability to effectively represent a client before the Service? The answers to these questions are indeterminate and highlight ambiguities that would make enforcement of any standards based on these "best practices" difficult. In addition, some practitioners suffering from mental impairment may be unaware of, or otherwise unable to address, their condition. To the extent that the proposed regulations could be read to urge practitioners (who are not experts in mental impairment) to actively seek out information about other practitioners, absent any triggering event that might raise concerns, the Section believes that this may be counterproductive: it risks stigmatizing people who may need help, and discourage them from seeking that help. The Preamble to the Proposed Regulations explains that the purpose of proposed § 10.33(a)(5) is to *encourage* (not require) practitioners suffering from a mental impairment to seek or obtain assistance or treatment. Clarifying explicitly that proposed § 10.33 is aspirational and does not seek to impose enforceable standards comports with the Proposed Regulations' stated purpose.

2. Adjust the language of current § 10.33(a) to specify in subsection (3) that it is a best practice for tax practitioners to advise clients regarding any Federal tax penalties that are reasonably likely to apply to the client with respect to the practitioner's advice.

Current § 10.33(a)(3) provides that best practices include "[a]dvising 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."

For added clarity and to better align current § 10.33(a)(3) with surrounding provisions containing stronger language, *see, e.g.*, § 10.33(a) ("Tax advisors *should* provide clients with the highest quality representation concerning Federal tax issues…") (emphasis added), current § 10.33(a)(3) should be amended to provide that best practices

include "[a]dvising the client regarding the import of the conclusions reached. For example, a practitioner should advise the client regarding any Federal tax penalties that are reasonably likely to apply to the client with respect to the practitioner's advice."

3. Reconsider the elimination of current § 10.33(b) in the Proposed Regulations, because it is inequitable to establish a set of best practices for practitioners in § 10.33, while imposing an enforceable standard of conduct on firms under proposed § 10.36.

Proposed § 10.33 would eliminate current § 10.33(b), which provides steps to ensure that a firm's procedures are consistent with best practices. Instead, the concept is included under proposed § 10.36 requiring practice group leaders to ensure a firm engaged in tax representation is compliant with subparts A, B, and C of part 10, including the best practices under proposed § 10.33(a).

We urge Treasury and the Service to retain current § 10.33(b), encouraging firms to ensure their practitioners' compliance with best practices set forth in that section. Through this structure, the aspirational best practices of § 10.33 are recommended in a consistent manner with respect to both individual practitioners and firms involved in tax representation.

IV. Duty to Maintain Technological Competence (Proposed § 10.35)

A. Background on Provisions

Current § 10.35 provides that a practitioner must be competent when engaged in practice before the Service by possessing the appropriate level of knowledge, skill, thoroughness, and preparation necessary for the matter for which they are engaged.

Today, competence also includes maintaining familiarity with the risks and benefits of technological tools used to represent a client. The MRPC, for example, acknowledge the importance of technological competency.[20] Therefore, proposed § 10.35 should define competency to specifically include understanding the benefits and risks associated with relevant technology used by the practitioner, any third party service providers, and the client, in connection with the representation, or to store or transmit confidential information, including tax return information.

B. Comments and Recommendations

The Section makes the following recommendations regarding proposed § 10.35:

[20] *See* MRPC 1.1, Comment 8 ("To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject."). It is our understanding that the majority of other credentialed practitioners must meet similar technological competency standards.

1. Move the language added by proposed § 10.35 into § 10.33 (which sets out aspirational best practices), because the language of proposed § 10.35 is too vague as currently drafted to provide adequate notice of an enforceable standard of conduct.

Current § 10.35 establishes an enforceable standard of conduct by providing that a tax practitioner *must* be competent in practice before the Service. Proposed § 10.35 would add a sentence to specify that competence includes "understanding the benefits and risks associated with relevant technology used by the practitioner to provide services to clients or to store or transmit confidential information." However, proposed § 10.35 does not define what it means to "understand" the benefits and risks associated with relevant technology or the types of technology at issue, and thus does not provide adequate notice to practitioners of the standards governing their conduct.

If the language in proposed § 10.35 is adopted, it should be moved into § 10.33, which sets out aspirational best practices, because the language is too vague to provide practitioners notice of an enforceable standard of conduct.

2. If the language added by proposed § 10.35 is not moved into § 10.33, IRS and Treasury should clarify the scope of technological competence.

In the alternative, proposed § 10.35 should be expanded with an additional sentence to specify what is required for practitioners to "understand" the relevant technology in their practice in order to be considered "technologically competent." For example, ABA Formal Opinion 512 provides that "lawyers should consider reading about [generative AI] tools targeted at the legal profession, attending relevant continuing legal education programs, and . . . consulting others who are proficient in GAI technology."[21] Similarly, ABA Formal Opinion 498 provides that "lawyers must make reasonable efforts to prevent inadvertent or unauthorized disclosures of information relating to the representation and take reasonable precautions when transmitting such information."[22]

V. Regulation of Written Tax Advice (Proposed § 10.37)

A. Background on Provisions

Treasury may regulate written advice "with respect to any entity, transaction plan or arrangement, or other plan or arrangement, which is of a type which the Secretary determines as having a potential for tax avoidance or evasion."[23] Under that authority,

[21] ABA Formal Opinion 512, at 3 (July 29, 2024); *see also, e.g.*, New York County Lawyers Ass'n Prof'l Ethics Comm. Op. 749 (2017) (emphasizing that "[l]awyers must be responsive to technological developments as they become integrated into the practice of law").

[22] ABA Formal Opinion, 498, at 1 (March 10, 2021).

[23] 31 USC § 330(e).

current § 10.37(b) provides that "[a] practitioner may only rely on the advice of another person if the advice was reasonable and the advice is in good faith considering all the facts and circumstances." Proposed § 10.37(b)(2) would provide that reliance is not reasonable when "[t]he practitioner knows or reasonably should know that the other person is not competent or lacks the necessary qualifications to provide the advice*, or is unaware of all relevant facts and circumstances*." [Emphasis added.] The italicized language is new. The revised language is consistent with the practitioner's duty of diligence.

Proposed § 10.37(c) would eliminate current § 10.37(c)(2), concerning tax shelters, and read as follows:

> 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, the practitioner's knowledge of the client's particular circumstances, and the type and specificity of the advice sought by the client.

Proposed § 10.37(d) provides:

> (d) Federal Tax Matter. A Federal tax matter, as used in this section, is any *transaction, plan, arrangement, or other matter (whether prospective or completed), which is of a type that the Internal Revenue Service determines as having a potential for tax avoidance or evasion, concerning the application or interpretation of,—*
>
> (1) A revenue provision as defined in section 6110(i)(1)(B);
>
> (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, *ability to take a specific return position (whether prospective or completed),* or obligation to file returns; or
>
> (3) Any other law or regulation administered by the Internal Revenue Service.

[Emphasis added.] The italicized language is new.

B. Comments and Recommendations

The Section makes the following recommendations regarding proposed § 10.37:

1. Adjust the language of proposed § 10.37(c) concerning the "reasonable practitioner" standard to require a reasonable inquiry into the client's circumstances.

As currently drafted, proposed § 10.37(c) could excuse a practitioner's ignorance of a client's particular circumstances. A "reasonable practitioner" standard should require the practitioner to make reasonable inquiry into the client's circumstances. We propose revising proposed § 10.37(c) to the following:

> 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, the practitioner's knowledge of the client's particular circumstances *and the client's tax sophistication*, and the type and specificity of the advice sought by the client. *A reasonable practitioner will make a reasonable inquiry into the client's particular circumstances and attempt to understand the client's level of sophistication in connection with rendering written advice on Federal tax matters.*

The italicized language is our proposed addition. It clarifies that a practitioner's lack of knowledge as to the client's actual circumstances is reasonable only where the practitioner has made reasonable inquiry.

Our proposed addition also requires a reasonable practitioner to consider a client's sophistication in providing written advice to the client. A practitioner should endeavor to provide written advice that is clear, direct, and easily accessible.

2. Adjust proposed §§ 10.37(d)(1) and (d)(2) to avoid duplication.

Proposed § 10.37(d)(2) is duplicative of proposed § 10.37(d)(1). To avoid duplication between the two provisions, proposed § 10.37(d)(2) should be revised as follows:

> (d) Federal tax matter. A Federal tax matter, as used in this section, is any transaction, plan, arrangement, or other matter (whether prospective or completed), which is of a type that the Internal Revenue Service *publicly announces as having a potential for tax avoidance or evasion*, concerning the application or interpretation of—
>
> . . . .
>
> (2) *A person's obligations under, or compliance with,* the internal revenue laws or regulations, including but not limited to a *person's obligation to file timely, complete, truthful tax returns or information returns, and timely pay tax lawfully due*; or

. . . .

The italicized language is our proposed modification.

VI. Incompetence or Disreputable Conduct (Proposed § 10.50, § 10.51)

A. Background on Provisions

Current § 10.51 provides a list of conduct subject to discipline, including conviction of any criminal offense under the Federal tax laws or involving dishonesty or breach of trust, and conviction of any felony for which the conduct involved renders the practitioner unfit to practice before the Service.

The proposed revisions would renumber § 10.51 as § 10.50 and provide that actions can be sanctionable "regardless of whether those actions are connected to a presentation to the Service as defined under § 10.2(a)(4)." The proposal will add new § 10.50(a)(19), which provides that sanctionable conduct includes "[w]illfully failing to follow any Federal tax law," and proposed § 10.50(b), which provides that a practitioner violates this section if a penalty is assessed against them for willfully attempting to understate tax liabilities, aiding or abetting in the understatement of tax liabilities, being careless, reckless, or intentionally disregarding applicable rules or regulations under Code section 6662(b)(1), or promoting abusive tax shelters.

B. Comments and Recommendations

The Section makes the following recommendations regarding proposed § 10.51:

1. Clarify the standard for a "willful" determination when assessing whether a practitioner has violated proposed § 10.50(a)(19).

Proposed § 10.50(a)(19) should clarify the standard for a "willful" determination when assessing a practitioner's failure to follow Federal tax law.

We recognize that Treasury has taken differing positions with respect to the standard of "willfulness" across various areas of tax enforcement. We respectfully seek clarity and suggest Treasury and the Service consider articulating a specific standard of "willfulness" for purposes of (a)(19). While certain of the specified acts of incompetence and disreputable conduct set out in Proposed § 10.50(a)(1)-(19) can be satisfied by "reckless" conduct,[24] other acts clearly require intentional conduct.[25] Given the catchall nature of Proposed § 10.50(a)(19) ("willfully failing to follow *any* Federal tax law"), we

[24] *See, e.g.*, Proposed 10.50(a)(13), (14), (15), (16), and (17).

[25] See. e.g., Proposed 10.50(a)(1), (2), (6), (7), (9), (11), and (12).

suggest that intentional conduct should be required. We further suggest that the appropriate standard is: a "voluntary, intentional violation of a known legal duty."

2. Remove proposed § 10.50(b) from the Proposed Regulations.

Proposed § 10.50(b) should be removed from the Proposed Regulations for two reasons. First, the wording of proposed § 10.50(b) allows for the imposition of penalties for pre-representation conduct, including return preparation, but the regulation for pre-representation activities is not permitted under *Ridgely*.[26]

Second, the amendments in the Proposed Regulations do not meaningfully enhance §10.50(b). The current wording allows for discipline against a practitioner upon the Service's determination to make an assessment of certain penalties, even if all penalties are dropped or the practitioner prevails in court. Furthermore, under 31 U.S.C. § 330(a), OPR has its own authority and responsibility to look into underlying conduct outside of the assessment or imposition of penalties. Treasury should, therefore, remove this section and leave enforcement of underlying behavior (regardless of the examination division's investigation or assessment of penalties) to OPR.

VII. Appraiser Standards (Proposed § 10.61)

A. Background on Provisions

The Proposed Regulations would incorporate new subpart D, which provides definitions related to appraisers and standards for the disqualification of appraisers.[27]

Current § 10.60(b) provides that proceedings to disqualify appraisers can be instituted whenever a penalty has been assessed against an appraiser under the Code and the Service determines that the appraiser acted willfully, recklessly, or through gross incompetence with respect to the conduct at issue. The background to the Notice of Proposed Rulemaking explains that this penalty prerequisite "limits the [Service]'s ability to respond to misconduct under Circular 230 when the misconduct is not covered by a specific penalty, an applicable penalty is not imposed, or a proposed penalty assessment has not yet been made." The Proposed Regulations would eliminate the penalty prerequisite under current § 10.60(b) because it provides an unnecessary barrier to address misconduct. Consistent with current § 10.60(b), however, § 10.61(c) would provide that an appraiser who has been assessed a penalty under Code sections 6694, 6695A, 6700, or 6701, for which it is determined that the appraiser acted willfully, recklessly, or through gross incompetence with respect to the proscribed conduct, may be disqualified for engaging in disreputable conduct.

---

[26] 55 F. Supp. 3d 89, 95-98 (D.D.C. 2014).

[27] Current § 10.50(b) references the authority of the Secretary, or the Secretary's delegate, and the Service to disqualify appraisers from presenting evidence or testimony in any administrative proceeding before Treasury or the Service. Current Circular 230, however, does not provide a separate definition of appraisers or what constitutes an administrative proceeding for purposes of disqualification.

Proposed § 10.61, under new subpart D, would also require appraisals submitted in an administrative proceeding before the Service to conform to the substance and principles of the Uniform Standards of Professional Appraisal Practice ("USPAP") and or the International Valuation Standards ("IVS") and would thus ensure that appraisals submitted in an administrative proceeding generally conform to broadly applicable standards without requiring strict compliance with such standards. Appraisers who willfully fail to meet these standards may be subject to disqualification under Circular 230.

In addition, proposed § 10.61(b)(2) would provide that appraisers who know or reasonably should know that an appraisal will be used in an administrative proceeding by taxpayers to contest the Service's assertion of a substantial valuation misstatement under Code section 6662(e), a substantial estate or gift tax valuation understatement within the meaning of section 6662(g), or a gross valuation misstatement pursuant to Code section 6662(h), would be subject to disqualification if they act willfully, recklessly, or through gross incompetence.

B. Comments and Recommendations

The Section recommends leaving Circular 230 "as is" insofar as it regulates appraisers and not adopting proposed subpart D for several reasons:

1. Subpart D's proposed language is unnecessary because the Service already has the power to disallow appraisers from issuing opinions in proceedings before the Service.

The Service already has the power under Code section 7408 to enjoin appraisers who make, furnish, or cause another person to make or furnish a gross valuation overstatement as to any material matter. For example, under Code section 7408 the Service has permanently barred appraisers from directly or indirectly preparing appraisals that will be used in connection with Federal taxes, organizing or advising others with respect to charitable contribution deductions, and other similar conduct. The procedures under Code section 7408 provide independent safeguards for appraisers given that an injunction must be issued by a District Court.

2. Subpart D is overly broad.

Section 10.60(a) of the proposed regulations defines appraiser as "any individual who determines the market value of any asset to support a position taken on a tax return or in an administrative proceeding. Appraisers include, but are not limited to, individuals who meet the definition of a 'qualified appraiser' under section 170(f)(11)(E) of the Internal Revenue Code."

Section 10.60(b) defines an administrative proceeding as including "any matter or other action before the Department of the Treasury or the Internal Revenue Service that

involves the presentation of documents, testimony, or other evidence. Administrative proceedings include, but are not limited to, investigations, examinations, appeals, and collection actions."

Section 10.61(b) provides that "(1) All appraisals submitted in an administrative proceeding should conform to the substance and principles of generally accepted appraisal standards as evidenced by the Uniform Standards of Professional Appraisal Practice ("USPAP") promulgated by the Appraisal Standards Board of the Appraisal Foundation or the International Valuation Standards ("IVS") promulgated by the International Valuation Standards Council ("IVSC")."

Thus, as written the provisions contemplate that any valuation provided in just about any context to the Service will be subject to OPR's oversight and that unless the appraisal conforms to the USPAP or IVS standards, OPR may discipline or sanction the person providing the valuation.

This overly broad regime is troubling and inconsistent with the Service's current practice, as the Service and taxpayers regularly rely on valuations that do not conform to the USPAP or IVS standards ("Non-USPAP-IVS Valuations") to resolve many tax controversies. The individuals providing these valuations may lack formal training as they are not licensed appraisers and are not schooled in using the USPAP or IVS standards. Nevertheless, these Non-USPAP-IVS Valuations provide the Service with useful information that assist in resolving taxpayer cases.

3. Covering all valuations used in proceedings involving the Service does not account for assets that present unique valuation questions and will have a chilling effect on Non-USPAP-IVS Valuations, which facilitate the resolution of proceedings.

By their nature, estate and gift tax returns present many valuation issues, but requiring a USPAP appraisal for every valuation issue is not a viable solution. Fine art, antique cars, jewelry, coins, baseball cards and other collectibles present difficult valuation questions for which USPAP may not be the best answer. Valuing fine art, for instance, is often best done by an auction house while a coin collector expert may be the best source to value a coin collection. Mandating a USPAP appraisal (if one is available) may be a detriment to tax administration in certain situations. In addition, the language of the Proposed Regulations does not add to the Service's existing ability to distinguish between types of appraisals and apportion them the weight to which they are appropriately entitled.

The Proposed Regulations' valuation standards may also have an outsized chilling effect on low income taxpayers. For example, Non-USPAP-IVS Valuations are often used during the offer in compromise ("OIC") process.[28] In most cases, the Service will calculate the reasonable collection potential ("RCP") to determine an acceptable offer

[28] Code section 7122.

amount. The RCP includes the value that can be realized from the taxpayer's assets, such as real property, automobiles, bank accounts, and other property. Often in these situations, a real estate agent at no charge will provide an opinion as to the value of a taxpayer's home. The agent is not a licensed appraiser, but the Service will consider the real estate agent's report in determining RCP, because the Service understands that, although not an appraisal that meets USPAP or IVS standards, the agent's report may still be probative of the property's value. Often in these situations, taxpayers would not have the financial resources to hire a licensed appraiser to value their residence. If the proposed regulations were adopted, the individuals providing Non-USPAP-IVS Valuations would likely decline to provide those valuations as they would likely be subject to discipline by OPR for not complying with the relevant appraisal standards. Even if a taxpayer does have the financial resources to hire a licensed appraiser, we respectfully suggest that such an expenditure is not a good use of taxpayer resources.

4. Fundamental Fairness and Lack of Objectivity

Fundamental fairness is implicated by new Subpart D as well. Section 10.62(a) provides, "If an officer or employee of the Internal Revenue Service has reason to believe an appraiser has violated § 10.61(b)(1) [appraisals to be in compliance with USPAP] … the officer or employee will promptly make a written report of the suspected violation." The most likely reporter will be an examiner or engineer who disagrees with the taxpayer's appraisal. Thus, there is an inherent lack of objectivity. Moreover, Service employees who critique appraisals or provide their own are not subject to the same rules. That is, there is no duty placed upon Service officers or employees to provide work product in compliance with USPAP/IVS.

VIII. Effect of Disbarment, Suspension, or Censure (Proposed § 10.99)

A. Background on Provisions

Current § 10.79, titled "Effect of disbarment, suspension, or censure," discusses the consequences of a decision for disbarment, suspension, or censure, as well as imposition of conditions in future representations designed to promote high standards of conduct.

The proposed revisions would renumber § 10.79 to § 10.99. The Proposed Regulations also add proposed § 10.99(e), which clarifies the Service's jurisdiction to investigate compliance with censure, suspension, or disqualification:

> A practitioner or appraiser who is censured, suspended, or disqualified under § 10.61(a), § 10.70, or § 10.102 will be considered a practitioner or appraiser for the purpose of investigating whether the practitioner or appraiser is in compliance with the terms of their censure, suspension, or disqualification. Censured, suspended, or disqualified practitioners or appraisers may face additional sanctions or disbarment for any violation.

The Proposed Regulations also add proposed § 10.99(f), which provides information on the Service's jurisdiction to investigate disbarred practitioners and non-practitioners.

B. Comments and Recommendations

The Section makes the following recommendation regarding proposed § 10.99:

1. Clarify that any subsequent investigation of a disciplined practitioner must be limited to professional acts constituting practice before the Service under Circular 230.

We agree that OPR should have the ability to investigate and potentially further sanction previously disciplined practitioners. Similarly, we agree that the proposed regulations should clarify that OPR can investigate a disbarred or non-practitioner to determine whether they are wrongly holding themselves out as a practitioner. It is vital to the integrity of the tax system that OPR can ensure bad actors do not further harm the government and taxpayers. OPR's authority to do so should not weigh entirely upon the practitioner in question being in good standing before OPR. We, therefore, believe that once a practitioner has availed themselves of being a Circular 230 practitioner, they should not be able to avoid subsequent OPR discipline because they were suspended or disqualified for some earlier act.

We recognize, however, that the court in *Sexton v. Hawkins*,[29] held otherwise, and the *Loving*, *Ridgely*, and *Sexton* progeny specifically differentiate between practice before the Service and tax preparation. Unless legislation is passed,[30] we recommend that the Proposed Regulations clarify that any subsequent investigations of disciplined practitioners must be limited to professional acts constituting practice before the Service under Circular 230 and activities for which the practitioner was originally sanctioned rather than a broader standard of "disreputable acts."

IX. Expedited Suspension (Proposed § 10.102)

A. Background on Provisions

Current § 10.82, "Expedited suspension," describes an expedited procedure by which the Service can issue an order to show cause ("OSC") to suspend a practitioner from practice before the Service.

The proposed revisions would renumber current § 10.82 to § 10.102 and rename the provision "Expedited suspension or disqualification." Proposed § 10.102 would also

[29] 119 A.F.T.R. 2d 2017-1187 (D. Nev. 2017).

[30] *See, e.g.*, Proposed Taxpayer Assistance and Service Act, Senate Bill, January 2025, *available at* https://www.finance.senate.gov/ranking-members-news/crapo-wyden-issue-discussion-draft-to-improve-irs-administration.

add more criteria by which a practitioner can be eligible for an OSC and clarifies the process by which suspension or disqualification may be lifted, including details on how the practitioner may show "good cause."

B. Comments

The Section supports the explanation under proposed § 10.102 concerning the process by which practitioners or appraisers who have received an expedited suspension or disqualification can petition for reinstatement. It is appropriate to allow practitioners or appraisers to be reinstated upon a showing of "good cause."