[4830-01-p]

DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 10

[TD 9359]

RIN 1545-BA72

Regulations Governing Practice Before the Internal Revenue Service

AGENCY: Office of the Secretary, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations revising the regulations governing practice before the Internal Revenue Service (Circular 230). These regulations affect individuals who practice before the Internal Revenue Service (IRS). The amendments modify the general standards of practice before the IRS.

DATES: Effective Date: These regulations are effective September 26, 2007.

Applicability Date: For dates of applicability, see §§10.1(d), 10.2(b), 10.3(i), 10.4(e), 10.5(f), 10.6(p), 10.7(g), 10.22(c), 10.25(e), 10.27(d), 10.29(d), 10.30(e), 10.34(f), 10.50(e), 10.51(b), 10.52(b), 10.53(e), 10.60(d), 10.61(c), 10.62(d), 10.63(f), 10.65(c), 10.68(e), 10.70(c), 10.71(g), 10.72(g), 10.73(g), 10.76(e), 10.77(c), 10.78(d), 10.82(h), 10.90(b), and 10.91.

FOR FURTHER INFORMATION CONTACT: Matthew Cooper at (202) 622-4940.

SUPPLEMENTARY INFORMATION:

Background

Section 330 of title 31 of the United States Code authorizes the Secretary of the

Treasury to regulate the practice of representatives before the Treasury Department. The Secretary is authorized, after notice and an opportunity for a proceeding, to censure, suspend or disbar from practice before the Treasury Department those representatives who are incompetent, disreputable, or who violate regulations prescribed under section 330 of title 31. The Secretary also is authorized to impose a monetary penalty against these individuals or seek an injunction under section 7408 of the Internal Revenue Code.

The Secretary has published regulations governing the practice of representatives before the IRS in Circular 230 (31 CFR part 10). These regulations authorize the Director of the Office of Professional Responsibility to act upon applications for enrollment to practice before the IRS, to make inquiries with respect to matters under the Office of Professional Responsibility's jurisdiction, to institute proceedings to impose a monetary penalty or to censure, suspend or disbar a practitioner from practice before the IRS, to institute proceedings to disqualify appraisers, and to perform other duties necessary to carry out these functions.

On December 19, 2002 (67 FR 77724), the Treasury Department and the IRS issued an advance notice of proposed rulemaking (2002 ANPRM) requesting comments on amendments to the regulations relating to the Office of Professional Responsibility, unenrolled practice, eligibility for enrollment, sanctions and disciplinary proceedings, contingent fees and confidentiality agreements. On February 8, 2006, the Treasury Department and the IRS published in the **Federal Register** (71 FR 6421) proposed amendments to the regulations (REG-122380-02) reflecting consideration of the comments received in response to the 2002 ANPRM and reflecting amendments to

section 330 of title 31 made by the American Jobs Creation Act of 2004, Public Law 108-357 (118 Stat. 1418) (the Jobs Act). A public hearing was held on these proposals on June 21, 2006. Written public comments responding to the proposed regulations were received. After consideration of the public comments, the proposed regulations are adopted as revised by this Treasury decision.

Summary of Comments and Explanation of Revisions

Over 30 written comments were received in response to the notice of proposed rulemaking. All comments were considered and are available for public inspection upon request. A number of these comments are summarized in this preamble. The scope of these regulations is limited to practice before the IRS. These regulations do not alter or supplant ethical standards that are otherwise applicable to practitioners.

Definitions--Practice Before the Internal Revenue Service

Section 10.2(a)(4) of the final regulations adopts the proposed change without modification. The final regulations provide 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. Consistent with the Jobs Act amendment to section 330 of title 31, the final regulations provide that practice includes rendering written advice with respect to any entity, transaction, plan or arrangement, or other plan or arrangement having a potential for tax avoidance or evasion. Several commentators stated that, notwithstanding the clarification provided by the Jobs Act, the rendition of tax advice is not, in and of itself, an act constituting practice before the IRS. The Treasury Department and IRS conclude that the rendering of written advice is practice before the

IRS subject to Circular 230 when it is provided by a practitioner.

Who May Practice

Sections 10.3(a) and (b) of these final regulations clarify that an attorney or CPA is not required to file a Form 2848, “Power of Attorney and Declaration of Representative”, with the IRS before rendering written advice covered under §10.35 or §10.37. As stated earlier in this preamble, the rendering of this advice is practice before the IRS when provided by a practitioner. Any practice before the IRS other than the rendering of written advice covered under §10.35 or §10.37 continues to require the attorney or CPA to file a Form 2848 with the IRS.

The notice of proposed rulemaking invited comments on a proposal from the Advisory Committee for Tax Exempt/Governmental Entities recommending that individuals who provide technical services to plan sponsors to maintain the tax qualified status of their retirement plans (retirement plan administrators) be authorized to practice provided they demonstrate the competency to do so.

The commentators supported this proposal provided that practice is limited to representing taxpayers with respect to qualified retirement plan issues. In light of the favorable comments and the immediate need for this program, the final regulations under §10.3(e) establish an enrolled retirement plan agent designation, subject to the limitations identified in these regulations.

These regulations generally limit the practice of enrolled retirement plan agents to representation with respect to issues arising under the following employee plan programs: (1) Employee Plans Determination Letter program; (2) Employee Plans Compliance Resolution System; and (3) Employee Plans Master and Prototype and

Volume Submitter program. Enrolled retirement plan agents also are permitted to represent taxpayers generally with respect to IRS forms under the 5300 and 5500 series, which are filed by retirement plans and plan sponsors, but not with respect to actuarial forms or schedules.

The Advisory Committee recommended the implementation of procedures for enrollment similar to the current enrolled agent program. The Treasury Department and IRS adopt that recommendation. Enrolled retirement plan agents will be subject to an examination to determine competency, a renewal process and continuing professional education requirements.

Enrollment Procedures

Sections 10.4, 10.5 and 10.6 of the regulations set forth the applicable procedures relating to the enrollment and renewal of enrollment of an enrolled agent. The final regulations adopt the proposed changes in these sections with one modification. Sections 10.5(b) and 10.6(d)(6) are revised to reflect the publishing of TD 9288 (71 FR 58740), which establishes user fees for enrollment and renewal of this enrollment in 26 CFR part 300, on October 5, 2006. The procedures in §§10.4, 10.5, and 10.6 also are expanded to include the enrollment and renewal of enrollment for the new category of enrolled retirement plan agents.

Limited Practice Before the IRS

The final regulations do not adopt the provisions governing limited practice as proposed under §10.7. Accordingly, the authorization in §10.7(c)(viii), which allows an individual, who was not otherwise a practitioner, to represent a taxpayer during an examination if that individual prepared the return for the taxable period under

examination, is retained. An unenrolled return preparer who prepared the taxpayer's return for the year under examination, therefore, may continue to negotiate with the IRS on behalf of that taxpayer during an examination or bind that taxpayer to a position during an examination. The unenrolled return preparer, however, may still not represent a taxpayer before any other office of the IRS, including Collection or Appeals; execute closing agreements, claims for refund, or waivers; or otherwise represent taxpayers before the IRS unless authorized by §10.7(c)(1)(i) through (vii).

These final regulations do not adopt one commentator's suggestion that payroll reporting agents be allowed to represent taxpayers on a limited basis with respect to Federal tax deposits made by the payroll agents on behalf of their clients. Payroll agents have not demonstrated their qualifications to practice before the IRS as required under section 330(a)(2) of title 31. Payroll agents may assist, however, in the exchange of information with the IRS regarding a taxpayer's return if the taxpayer specifically authorizes the payroll agent to receive confidential tax information from the IRS through the use of a tax information authorization.

Practice by Former Government Employees, Their Partners and Their Associates

The final regulations adopt the proposed amendments to §10.25, with modification. The final regulations modify §10.25(b)(4) to prohibit, for a period of one year after Government employment is ended, former employees from appearing before, or communicating with the intent to influence, an employee of the Treasury Department with respect to a rule in which they were involved in developing. This modification is consistent with the scope of activities covered by 18 U.S.C. 207(a) and 207(c). Commentators generally supported the changes to §10.25 governing the restrictions on

the practice of former Government employees, their partners, and their associates with respect to matters that the former Government employees participated in during the course of their Government employment.

Contingent Fees

The final regulations adopt the amendments as proposed in §10.27, with several modifications. Most commentators opposed further limitations on contingent fees under §10.27 and supported the withdrawal or significant modification of this section. Specifically, several commentators stated that the proposed rules were overly broad, improperly interfered with the practitioner-client relationship, and prohibited some small and middle market taxpayers from appropriately requesting refunds. Another group of commentators requested that contingent fees be allowed in situations in which IRS review of the taxpayer's position is probable and the fees do not provide an incentive for abuse (including interest and penalty reviews, private letter rulings, pre-filing agreements, advance pricing agreements, and requests for relief under section 9100).

The Treasury Department and the IRS continue to believe that a rule restricting contingent fees for preparing tax returns supports voluntary compliance with the Federal tax laws by discouraging return positions that exploit the audit selection process. In particular, the Treasury Department and IRS are concerned with the use of contingent fee arrangements in connection with claims for refund or amended returns filed late in the examination process. Balancing these concerns with the appropriate use of contingent fee arrangements in other situations, the final regulations permit a practitioner to charge a contingent fee for services rendered in connection with the IRS examination of, or challenge, to (i) an original tax return, or (ii) an amended return or claim for refund or credit

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

Based on comments received, the final regulations also permit the use of contingent fees for interest and penalty reviews because there is no exploitation of the audit lottery in these situations as they are generally completed on a post-examination basis. A practitioner, therefore, may charge a contingent fee for services rendered in connection with a claim for credit or refund filed in connection with the determination of statutory interest or penalties assessed by the Internal Revenue Service.

Finally, the final regulations adopt the amendment in proposed §10.27 which allows a practitioner to charge a contingent fee for services rendered in connection with any judicial proceeding arising under the Internal Revenue Code.

To eliminate any adverse impact that the adoption of these final regulations could have on pending or imminent transactions, §10.27(d), as amended, will apply to fee arrangements entered into after March 26, 2008.

Conflicting Interests

The final regulations adopt the proposed amendments found in §10.29 with modification. Under the final regulations, a practitioner is required to obtain consent to the representation from each affected client in writing in order to represent the conflicting interests. The written consent may vary in form. The practitioner may prepare a letter to the client outlining the conflict, as well as the possible implications of the conflict, and submit the letter to the client for the client to countersign. Unlike American Bar Association model rule 1.7, which permits affected clients to provide

informed consent verbally if the consent is contemporaneously documented by the practitioner in writing, a verbal consent followed by a confirmatory letter authored by the practitioner will not satisfy §10.29 unless the confirmatory letter is countersigned by the client. A number of commentators opposed the proposed rules on the grounds that it is arguably broader than American Bar Association model rule 1.7. The Treasury Department and IRS, however, conclude that the language in the final regulations is appropriate to protect taxpayer interests and protect settlements from future collateral attack. In order to provide greater flexibility to both the practitioner and client, the Treasury Department and IRS have revised the final regulations to allow the confirmation to be made within a reasonable period after the informed consent, but in no event later than 30 days. It is not the intent of the Treasury Department and IRS to sanction minor technical violations of this final §10.29 when there is little or no injury to a client, the public, or tax administration. For example, if a client fails to return the confirmatory writing to the practitioner, notwithstanding the practitioner's documented good faith effort to obtain the client's signature, the practitioner would not be subject to a sanction or monetary penalty provided the practitioner promptly withdrew from representation upon the failure to receive the client's written confirmation within a reasonable period.

Standards With Respect to Tax Returns and Documents, Affidavits and Other Papers

Section 10.34 sets forth standards applicable to advice with respect to tax return positions and applicable to preparing or signing returns. These final regulations adopt §10.34 as proposed, with modifications.

On May 25, 2007, the President signed into law the Small Business and Work Opportunity Tax Act of 2007, Public Law 110-28 (121 Stat. 190), which amended several provisions of the Code to extend the application of the income tax return preparer penalties to all tax return preparers, alter the standards of conduct that must be met to avoid imposition of the penalties for preparing a return that reflects an understatement of liability, and increase applicable penalties. On June 11, 2007, the IRS released Notice 2007-54, 2007-27 IRB 1 (see §601.601(d)(2)(ii)(b)), providing guidance and transitional relief for the return preparer provisions under section 6694 of the Code, as recently amended. The standards with respect to tax returns under §10.34(a) in these final regulations do not reflect amendments to the Code made by the Small Business and Work Opportunity Tax Act of 2007. Rather, the Treasury Department and the IRS are reserving §10.34(a) and (e) in these final regulations and are simultaneously issuing a notice of proposed rulemaking proposing to amend this part to reflect these recent amendments to the Code.

Several commentators requested that the Treasury Department and the IRS clarify the rule concerning advising a client to submit a document that contains or omits information in a manner that demonstrates an intentional disregard of a rule or regulation and a taxpayer's right to offer a good faith challenge to a rule or regulation. The language under §10.34(b)(2)(iii) now provides that a practitioner may not advise a client to submit a document to the IRS that contains or omits information in a manner that demonstrates an intentional disregard of a rule or regulation unless the practitioner also advises the client to submit a document showing a good faith challenge to the rule or regulation.

Sanctions

The final regulations adopt the amendments under §10.50 authorizing the imposition of a monetary penalty in addition to, or in lieu of, any other sanction in accordance with section 822(a) of the Jobs Act. The Treasury Department and the IRS released Notice 2007-39, 2007-20 IRB 1243 (see §601.601(d)(2)(ii)(b)), on April 23, 2007, which provides guidance for practitioners, employers, firms, and other entities that may be subject to monetary penalties. In addition, the Notice requests comments from the public regarding rules and standards relating to the imposition of the monetary penalty. The regulations also contain conforming amendments to other provisions relating to sanctions, including modifications made by section 1219 of the Pension Protection Act of 2006, Public Law 109–280 (120 Stat. 780). The Secretary of Treasury, or delegate, after due notice and opportunity for hearing, may now disqualify an appraiser who violates Circular 230 with or without the assessment of a section 6701 penalty against the appraiser.

Incompetence and Disreputable Conduct

Section 10.51 of the regulations defines disreputable conduct for which a practitioner may be sanctioned. A number of commentators stated that inclusion of "failure to sign a tax return" as a type of disreputable conduct is inappropriate unless the rule clarifies how the practitioner should appropriately handle competing duties, including section 6694 of the Internal Revenue Code or §10.34 of Circular 230. The Treasury Department and the IRS agree that there might be instances in which the failure to sign a return should not lead to discipline. Therefore, §10.51(a)(14) of the final regulations is modified to provide that failure to sign a return is not disreputable conduct

if the failure is due to reasonable cause and not due to willful neglect. This change is consistent with the standard applied under section 6695(b) of the Code.

Conferences

The final regulations adopt the proposed rule in §10.61(a) relating to the ability of the Director of the Office of Professional Responsibility to confer with a practitioner, employer, firm or other entity, or an appraiser concerning allegations of misconduct irrespective of whether a proceeding has been instituted. Commentators suggested that the practitioner, employer, firm or other entity, or an appraiser be provided with a right to a conference with the Office of Professional Responsibility. The commentators' suggestion was not adopted in light of the Office of Professional Responsibility's policy that it will not deny a first request for conference made by a practitioner, employer, firm or other entity, or an appraiser regarding allegations of misconduct. The Office of Professional Responsibility may conduct a conference by telephonic means or in person.

Service of Complaint

The final regulations adopt the rules related to service of the complaint as proposed. Proposed regulations in §10.63(d) provide that within 10 days of serving the complaint, copies of the evidence in support of the complaint must be served on the respondent in any manner provided by regulations. Commentators requested that the Director of the Office of Professional Responsibility furnish evidence not solely in support of the complaint, but also additional evidence collected during the course of investigating the conduct of the respondent, including any exculpatory evidence. Although not formalized in the regulations or the Internal Revenue Manual currently, the

current practice of the Office of Professional Responsibility is to provide to the respondent upon request a copy of what informally is understood as the "OPR administrative file" prior to the filing of a complaint under §10.60. In general, the OPR administrative file contains material that the Office of Professional Responsibility considered in the course of determining whether to issue a final complaint. Some material related to the case, including but not limited to legal memoranda provided to the Office of Professional Responsibility by the Office of Chief Counsel will not be included in the OPR administrative file. The Treasury Department and IRS intend for the practice of releasing the OPR administrative file upon request to continue. This practice addresses in part commentators' concern that documents included in the investigatory file, including releasable exculpatory evidence, be provided to the respondent. The IRS expects to issue Internal Revenue Manual provisions in the near future pertaining to the Office of Professional Responsibility's procedures for investigations. It is expected that those provisions will formalize the definition of the OPR administrative file and the current practice of providing it to the respondent upon request. In order to help ensure that a respondent has access to the evidence in support of OPR's position, as well as other evidence included in the investigatory file, the Treasury Department and IRS are considering ways in which the existing practice relating to the OPR administrative file can be formalized, and will consider addressing this issue in future published guidance.

Supplemental Charges

The final regulations adopt the rules on supplemental charges as proposed with minor revisions. Section 10.65 of the regulations provides that the Director of the Office

of Professional Responsibility may file supplemental charges against a practitioner or appraiser by amending the complaint to reflect the additional charges if the practitioner or appraiser is given notice and an opportunity to prepare a defense to the supplemental charges.

Discovery, Hearings, and Publicity of Proceedings

The final regulations adopt the proposed changes to §§10.68, 10.71, and 10.72(a) through (c) without modification. Most commentators supported expanding the use of discovery in disciplinary proceedings. Most commentators also supported providing further procedural protections such as a guarantee of the right to cross-examine witnesses. Section 10.71(f) of the final regulations provides that no discovery other than that specifically provided in that section is permitted.

Section 10.72(d) regarding the publicity of disciplinary proceedings is adopted with modification. These final regulations provide that reports and decisions of the ALJ and appellate authority will be available for public inspection within 30 days after the agency's decision becomes final, subject to procedures to protect the identities of any third-party taxpayers. This publicity will provide greater transparency to the disciplinary process.

Although most commentators do not oppose disclosure if a sanction is imposed, commentators raised concerns about disclosure before the Secretary's decision is final. The concerns are that premature public disclosure will unfairly tarnish practitioners' reputations and that IRS proceedings lack the independent review and system of checks and balances found in State bar disciplinary proceedings. Several

commentators specifically requested that an independent party outside of the IRS make a probable cause determination prior to disclosure.

Attorneys in the Office of Professional Responsibility review every allegation received by the office. If an allegation warrants investigation, the practitioner is provided with an opportunity to confer with the Office of Professional Responsibility regarding the allegation against the practitioner. After the conference, the Office of Professional Responsibility may close their investigation without action, or, if a violation of Circular 230 has occurred, attempt to reach an agreement with the practitioner on an appropriate sanction. If an agreement is not reached, the Office of Professional Responsibility sends the case to the Office of the Associate Chief Counsel (General Legal Services) for further action. An attorney in the Office of the Associate Chief Counsel (General Legal Services) thoroughly reviews the case file, and, if a violation of Circular 230 has occurred, the practitioner is offered one more opportunity to discuss the merits and settlement of the case before a formal complaint is filed. Only after the case has been reviewed by the Office of the Associate Chief Counsel (General Legal Services) and the practitioner has been offered this second opportunity to discuss and settle the case is a formal complaint filed.

In light of the concerns raised by commentators that premature public disclosure could potentially tarnish practitioners' reputations, the final regulations require that disclosure of the disciplinary decision be delayed until after the decision becomes final. This modification ensures that there is no potential premature tarnishing of a practitioner's reputation.

Decision of Administrative Law Judge

The final regulations do not adopt the proposed rules under §§10.77 and 10.78, which provided for a more streamlined process for deciding appeals of the Administrative Law Judges' decisions. The intent of this streamlined process was to provide a more timely process for deciding appeals. Numerous concerns were raised with the streamlined process, and, after consideration of the concerns, these final regulations keep the current rules under §§10.77 and 10.78 in effect. But to achieve a more timely review of any appeal, the regulations now provide that the Secretary of the Treasury, or delegate, should make the agency decision within 180 days after receipt of the appeal. The failure of the Secretary of the Treasury, or delegate, to meet this timeframe, as well as any other discretionary timeframe in subpart D, does not create a right of action for the practitioner.

Expedited Suspension

The final regulations adopt, with modification, the proposed amendments to §10.82. Final §10.82 expands the authority of the Office of Professional Responsibility to institute expedited suspension proceedings against practitioners who advance frivolous or obstructionist positions (after a sanction by a court of competent jurisdiction). The Treasury Department and the IRS continue to believe that the expedited suspension process is equitable and appropriate in the limited listed circumstances. The Office of Professional Responsibility completes an investigation of the issues prior to instituting an expedited proceeding and practitioners are entitled to a conference with the Office of Professional Responsibility upon request.

Several commentators expressed concern that expanding the authorized use of the expedited procedures to compliance cases further erodes a practitioner's rights to due process. After further consideration of this issue, final §10.82 does not expand the

authority of the Office of Professional Responsibility to institute expedited suspension proceedings against practitioners who are not in compliance with their own Federal tax obligations (failure to file or pay a tax in 3 of the preceding 5 years, or in 4 of the preceding 7 periods).

Special Analyses

It has been determined that this final rule is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required.

It is hereby certified, under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), that these regulations will not have a significant economic impact on a substantial number of small entities. Persons authorized to practice have long been required to comply with certain standards of conduct when practicing before the Internal Revenue Service. These regulations do not alter the basic nature of the obligations and responsibilities of these practitioners. These regulations merely clarify those obligations in response to public comments, replace certain terminology to conform with the terminology used in 18 U.S.C. 207, and 5 CFR parts 2637 and 2641 (or superseding regulations), make modifications to reflect amendments to section 330 of title 31 made by the Jobs Act, and make other modifications to reflect concerns about greater independence, transparency and due process. These regulations will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. A regulatory flexibility analysis, therefore, is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for

Advocacy of the Small Business Administration for comment on the regulations' impact on small businesses.

Drafting Information

The principal author of these regulations is Matthew S. Cooper of the Office of the Associate Chief Counsel (Procedure and Administration).

List of Subjects in 31 CFR Part 10

Accountants, Administrative practice and procedure, Lawyers, Reporting and recordkeeping requirements, Taxes.

Adoption of Amendments to the Regulations

Accordingly, 31 CFR part 10 is amended to read as follows:

PART 10 – PRACTICE BEFORE THE INTERNAL REVENUE SERVICE

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

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

Par. 2. In Part 10, remove the language "Director of Practice" where it appears and add, in its place, the language "Director of the Office of Professional Responsibility" in each of the following sections and paragraphs:

Section 10.5(c), (d) and (e);

Section 10.6(a)(5), (b), (g)(2)(iii), (g)(2)(iv), (g)(4), (j)(1), (j)(2), (j)(4), (k)(1), (k)(2) and (n);

Section 10.7(c)(2)(iii) and (d);

Section 10.20(b) heading, (b) and (c);

Section 10.60(b);

Section 10.63(c) heading, (c);

Section 10.64(a);

Section 10.66;

Section 10.69(a)(1) and (b);

Section 10.73(a);

Section 10.79(a), (b), (c) and (d);

Section 10.80;

Section 10.81;

Section 10.82(a), (c) introductory text, (c)(3), (d), (e), (f)(1) and (g).

Par. 3. Section 10.1 is revised to read as follows:

§10.1 Director of the Office of Professional Responsibility.

(a) Establishment of office. The Office of Professional Responsibility is established in the Internal Revenue Service. The Director of the Office of Professional Responsibility is appointed by the Secretary of the Treasury, or delegate.

(b) Duties. The Director of the Office of Professional Responsibility acts on applications for enrollment to practice before the Internal Revenue Service; makes inquiries with respect to matters under the Director's jurisdiction; institutes and provides for the conduct of disciplinary proceedings relating to practitioners (and employers, firms or other entities, if applicable) and appraisers; and performs other duties as are necessary or appropriate to carry out the functions under this part or as are otherwise prescribed by the Secretary of the Treasury, or delegate.

(c) Acting Director of the Office of Professional Responsibility. The Secretary of the Treasury, or delegate, will designate an officer or employee of the Treasury Department to act as Director of the Office of Professional Responsibility in the absence of the Director or during a vacancy in that office.

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

Par. 4. Section 10.2 is revised to read as follows:

§10.2 Definitions.

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

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

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

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

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

potential for tax avoidance or evasion, and representing a client at conferences, hearings and meetings.

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

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

(7) Service means the Internal Revenue Service.

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

Par. 5. Section 10.3 is amended by:

(1) Revising paragraphs (a) and (b).

(2) Redesignating paragraphs (e), (f), and (g) as paragraphs (f), (g), and (h) respectively.

(3) Adding new paragraphs (e) and (i).

The revisions and additions read as follows:

§10.3 Who may practice.

(a) Attorneys. Any attorney who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Internal Revenue Service by filing with the Internal Revenue Service a written declaration that the attorney is currently qualified as an attorney and is authorized to represent the party or parties. Notwithstanding the preceding sentence, attorneys who are not currently under suspension or disbarment from practice before the Internal Revenue Service are not required to file a written declaration with the IRS before rendering written advice covered under §10.35 or §10.37, but their rendering of this advice is practice before the

Internal Revenue Service.

(b) Certified public accountants. Any certified public accountant who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Internal Revenue Service by filing with the Internal Revenue Service a written declaration that the certified public accountant is currently qualified as a certified public accountant and is authorized to represent the party or parties. Notwithstanding the preceding sentence, certified public accountants who are not currently under suspension or disbarment from practice before the Internal Revenue Service are not required to file a written declaration with the IRS before rendering written advice covered under §10.35 or §10.37, but their rendering of this advice is practice before the Internal Revenue Service.

* * * * *

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

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

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

* * * * *

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

Par. 6. Section 10.4 is revised to read as follows:

§10.4 Eligibility for enrollment as enrolled agent or enrolled retirement plan agent.

(a) Enrollment as an enrolled agent upon examination. The Director of the Office of Professional Responsibility may grant enrollment as an enrolled agent to an applicant who demonstrates special competence in tax matters by written examination administered by, or administered under the oversight of, the Director of the Office of Professional Responsibility and who has not engaged in any conduct that would justify the censure, suspension, or disbarment of any practitioner under the provisions of this part.

(b) Enrollment as a retirement plan agent upon examination. The Director of the Office of Professional Responsibility may grant enrollment as an enrolled retirement plan agent to an applicant who demonstrates special competence in qualified retirement plan matters by written examination administered by, or administered under the oversight of, the Director of the Office of Professional Responsibility and who has not engaged in any conduct that would justify the censure, suspension, or disbarment of any practitioner under the provisions of this part.

(c) Enrollment of former Internal Revenue Service employees. The Director of the Office of Professional Responsibility may grant enrollment as an enrolled agent or

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

(1) The former employee applies for enrollment to the Director of the Office of Professional Responsibility on a form supplied by the Director of the Office of Professional Responsibility and supplies the information requested on the form and such other information regarding the experience and training of the applicant as may be relevant.

(2) An appropriate office of the Internal Revenue Service, at the request of the Director of the Office of Professional Responsibility, will provide the Director of the Office of Professional Responsibility with a detailed report of the nature and rating of the applicant's work while employed by the Internal Revenue Service and a recommendation whether such employment qualifies the applicant technically or otherwise for the desired authorization.

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

Service will be limited to permit the presentation of matters only with respect to qualified retirement plan matters.

(4) Application for enrollment as an enrolled agent or enrolled retirement plan agent based on an applicant's former employment with the Internal Revenue Service must be made within 3 years from the date of separation from such employment.

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

(6) An applicant for enrollment as an enrolled retirement plan agent who is requesting such enrollment based on former employment with the Internal Revenue Service must have had a minimum of 5 years continuous employment with the Internal Revenue Service during which the applicant must have been regularly engaged in applying and interpreting the provisions of the Internal Revenue Code and the regulations relating to qualified retirement plan matters.

(7) For the purposes of paragraphs (b)(5) and (b)(6) of this section, an aggregate of 10 or more years of employment in positions involving the application and interpretation of the provisions of the Internal Revenue Code, at least 3 of which occurred within the 5 years preceding the date of application, is the equivalent of 5 years continuous employment.

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

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

Par. 7. Section 10.5 is amended by revising the section heading and paragraphs (a), (b) and adding paragraph (f) to read as follows:

§10.5 Application for enrollment as an enrolled agent or enrolled retirement plan agent.

(a) Form; address. An applicant for enrollment as an enrolled agent or enrolled retirement plan agent must apply as required by forms or procedures established and published by the Office of Professional Responsibility, including proper execution of required forms under oath or affirmation. The address on the application will be the address under which a successful applicant is enrolled and is the address to which all correspondence concerning enrollment will be sent.

(b) Fee. A reasonable nonrefundable fee will be charged for each application for enrollment as an enrolled agent filed with the Director of the Office of Professional Responsibility in accordance with 26 CFR 300.5. A reasonable nonrefundable fee will be charged for each application for enrollment as an enrolled retirement plan agent filed with the Director of the Office of Professional Responsibility.

* * * * *

(f) Effective/applicability date. This section is applicable to enrollment applications received on or after September 26, 2007.

Par. 8. Section 10.6 is amended by:

1. Revising the section heading.

2. Removing paragraph (a).

3. Redesignating paragraph (c) as paragraph (a).

4. Adding new paragraphs (c) and (p).

5. Revising paragraphs (d) introductory text, (d)(4), (d)(5), (d)(6), (d)(7), (e), (f)(1), (f)(2)(iv)(A), (g)(5), (k)(4), (k)(7) and (l).

The revisions and additions read as follows:

§10.6 Enrollment as an enrolled agent or enrolled retirement plan agent.

* * * * *

(c) Change of address. An enrolled agent or enrolled retirement plan agent must send notification of any change of address to the address specified by the Director of the Office of Professional Responsibility. This notification must include the enrolled agent's or enrolled retirement plan agent's name, prior address, new address, social security number or tax identification number and the date.

(d) Renewal of enrollment. To maintain active enrollment to practice before the Internal Revenue Service, each individual is required to have the enrollment renewed. Failure to receive notification from the Director of the Office of Professional Responsibility of the renewal requirement will not be justification for the individual's failure to satisfy this requirement.

* * * * *

(4) Thereafter, applications for renewal as an enrolled agent will be required between November 1 and January 31 of every subsequent third year as specified in paragraph (d)(1), (2) or (3) of this section according to the last number of the individual's social security number or tax identification number. Those individuals who receive initial enrollment as an enrolled agent after November 1 and before April 2 of the applicable

renewal period will not be required to renew their enrollment before the first full renewal period following the receipt of their initial enrollment. Applications for renewal as an enrolled retirement plan agent will be required of all enrolled retirement plan agents between April 1 and June 30 of every third year period subsequent to their initial enrollment.

(5) The Director of the Office of Professional Responsibility will notify the individual of the renewal of enrollment and will issue the individual a card evidencing enrollment.

(6) A reasonable nonrefundable fee will be charged for each application for renewal of enrollment as an enrolled agent filed with the Director of the Office of Professional Responsibility in accordance with 26 CFR 300.6. A reasonable nonrefundable fee will be charged for each application for renewal of enrollment as an enrolled retirement plan agent filed with the Director of the Office of Professional Responsibility.

(7) Forms required for renewal may be obtained by sending a written request to the Director of the Office of Professional Responsibility, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224 or from such other source as the Director of the Office of Professional Responsibility will publish in the Internal Revenue Bulletin (see 26 CFR 601.601(d)(2)(ii)(b)) and on the Internal Revenue Service webpage (www.irs.gov).

(e) Condition for renewal: continuing professional education. In order to qualify for renewal of enrollment, an individual enrolled to practice before the Internal Revenue Service must certify, on the application for renewal form prescribed by the Director of

the Office of Professional Responsibility, that he or she has satisfied the following continuing professional education requirements.

(1) Definitions. For purposes of this section--

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

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

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

(2) For renewed enrollment effective after December 31, 2006--(i) Requirements for enrollment cycle. A minimum of 72 hours of continuing education credit must be completed during each enrollment cycle.

(ii) Requirements for enrollment year. A minimum of 16 hours of continuing education credit, including 2 hours of ethics or professional conduct, must be completed during each enrollment year of an enrollment cycle.

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

(B) Ethics. An individual who receives initial enrollment during an enrollment cycle must complete 2 hours of ethics or professional conduct for each enrollment year during the enrollment cycle. Enrollment for any part of an enrollment year is considered

enrollment for the entire year.

(f) Qualifying continuing education--(1) General. (i) Enrolled agents. To qualify for continuing education credit for an enrolled agent, a course of learning must--

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

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

(C) Be sponsored by a qualifying sponsor.

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

(i) Be a qualifying program designed to enhance professional knowledge in qualified retirement plan matters;

(ii) Be a qualifying program consistent with the Internal Revenue Code and effective tax administration; and

(iii) Be sponsored by a qualifying sponsor.

(2) * * *

(iv) Credit for published articles, books, etc. (A) For enrolled agents, continuing education credit will be awarded for publications on Federal taxation or Federal tax related matters, including accounting, tax preparation software, and taxation or ethics, provided the content of such publications is current and designed for the enhancement of the professional knowledge of an individual enrolled to practice before the Internal

Revenue Service. The publication must be consistent with the Internal Revenue Code and effective tax administration. For enrolled retirement plan agents, continuing education credit will be awarded for publications on qualified retirement plan matters, provided the content of such publications is current and designed for the enhancement of the professional knowledge of an individual enrolled to practice as an enrolled retirement plan agent before the Internal Revenue Service. The publication must be consistent with the Internal Revenue Code and effective tax administration.

* * * * *

(g) * * *

(5) Sponsor renewal. (i) In general. A sponsor maintains its status as a qualified sponsor during the sponsor enrollment cycle.

(ii) Renewal period. Each sponsor must file an application to renew its status as a qualified sponsor between May 1 and July 31, 2008. Thereafter, applications for renewal will be required between May 1 and July 31 of every subsequent third year.

(iii) Effective date of renewal. The effective date of renewal is the first day of the third month following the close of the renewal period.

(iv) Sponsor enrollment cycle. The sponsor enrollment cycle is the three successive calendar years preceding the effective date of renewal.

* * * * *

(k) * * *

(4) Individuals placed in inactive enrollment status and individuals ineligible to practice before the Internal Revenue Service may not state or imply that they are enrolled to practice before the Internal Revenue Service, or use the terms enrolled

agent or enrolled retirement plan agent, the designations “EA” or “ERPA” or other form of reference to eligibility to practice before the Internal Revenue Service.

* * * * *

(7) Inactive enrollment status is not available to an individual who is the subject of a disciplinary matter in the Office of Professional Responsibility.

(l) Inactive retirement status. An individual who no longer practices before the Internal Revenue Service may request being placed in an inactive retirement status at any time and such individual will be placed in an inactive retirement status. The individual will be ineligible to practice before the Internal Revenue Service. Such individual must file a timely application for renewal of enrollment at each applicable renewal or enrollment period as provided in this section. An individual who is placed in an inactive retirement status may be reinstated to an active enrollment status by filing an application for renewal of enrollment and providing evidence of the completion of the required continuing professional education hours for the enrollment cycle. Inactive retirement status is not available to an individual who is the subject of a disciplinary matter in the Office of Professional Responsibility.

* * * * *

(p) Effective/applicability date. This section is applicable to enrollment effective on or after September 26, 2007.

Par. 9. Section 10.7 is amended by:

1. Revising paragraph (c)(2)(ii).

2. And adding paragraph (g).

The revisions and additions read as follows:

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

* * * * *

(c) * * *

(2) * * *

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

* * * * *

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

Par. 10. Section 10.22 is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

§10.22 Diligence as to accuracy.

* * * * *

(b) Reliance on others. Except as provided in §§10.34, 10.35, and 10.37, a practitioner will be presumed to have exercised due diligence for purposes of this section if the practitioner relies on the work product of another person and the practitioner used reasonable care in engaging, supervising, training, and evaluating the person, taking proper account of the nature of the relationship between the practitioner and the person.

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

2007.

Par. 11. Section 10.25 is revised to read as follows:

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

(a) Definitions. For purposes of this section--

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

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

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

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

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

(b) General rules--(1) No former Government employee may, subsequent to Government employment, represent anyone in any matter administered by the Internal

Revenue Service if the representation would violate 18 U.S.C. 207 or any other laws of the United States.

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

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

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

any confidential information acquired by the former employee in the development of the rule.

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

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

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

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

Par. 12. Section 10.27 is revised to read as follows:

§10.27 Fees.

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

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

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

(i) An original tax return; or

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

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

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

(c) Definitions. For purposes of this section--

(1) Contingent fee is any fee that is based, in whole or in part, on whether or not a position taken on a tax return or other filing avoids challenge by the Internal Revenue Service or is sustained either by the Internal Revenue Service or in litigation. A contingent fee includes a fee that is based on a percentage of the refund reported on a return, that is based on a percentage of the taxes saved, or that otherwise depends on

the specific result attained. A contingent fee also includes any fee arrangement in which the practitioner will reimburse the client for all or a portion of the client's fee in the event that a position taken on a tax return or other filing is challenged by the Internal Revenue Service or is not sustained, whether pursuant to an indemnity agreement, a guarantee, rescission rights, or any other arrangement with a similar effect.

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

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

Par. 13. Section 10.29 is revised to read as follows:

§10.29 Conflicting interests.

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

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

(2) There is a significant risk that the representation of one or more clients will be

materially limited by the practitioner's responsibilities to another client, a former client or a third person, or by a personal interest of the practitioner.

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

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

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

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

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

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

Par. 14. Section 10.30(a)(1) is revised to read as follows:

§10.30 Solicitation.

(a) Advertising and solicitation restrictions.

(1) A practitioner may not, with respect to any Internal Revenue Service matter, in any way use or participate in the use of any form or public communication or private solicitation containing a false, fraudulent, or coercive statement or claim; or a misleading

or deceptive statement or claim. Enrolled agents or enrolled retirement plan agents, in describing their professional designation, may not utilize the term of art "certified" or imply an employer/employee relationship with the Internal Revenue Service. Examples of acceptable descriptions for enrolled agents are "enrolled to represent taxpayers before the Internal Revenue Service," "enrolled to practice before the Internal Revenue Service," and "admitted to practice before the Internal Revenue Service." Similarly, examples of acceptable descriptions for enrolled retirement plan agents are "enrolled to represent taxpayers before the Internal Revenue Service as a retirement plan agent" and "enrolled to practice before the Internal Revenue Service as a retirement plan agent."

* * * * *

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

Par. 15. Section 10.34 is revised to read as follows:

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

(a) [Reserved].

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

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

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

tax laws;

(ii) That is frivolous; or

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

(c) Advising clients on potential penalties--(1) A practitioner must inform a client of any penalties that are reasonably likely to apply to the client with respect to--

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

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

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

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

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

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

(d) Relying on information furnished by clients. A practitioner advising a client to take a position on a tax return, document, affidavit or other paper submitted to the Internal Revenue Service, or preparing or signing a tax return as a preparer, generally may rely in good faith without verification upon information furnished by the client. The practitioner may not, however, ignore the implications of information furnished to, or

actually known by, the practitioner, and must make reasonable inquiries if the information as furnished appears to be incorrect, inconsistent with an important fact or another factual assumption, or incomplete.

(e) [Reserved].

(f) Effective/applicability date. Section 10.34 is applicable to tax returns, documents, affidavits and other papers filed on or after September 26, 2007.

Par. 16. In §10.35(b)(1) remove the language "§10.2(e)" and add the language "§10.2(a)(5)" in its place.

Par. 17. Section 10.50 is revised to read as follows:

§10.50 Sanctions.

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

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

(1) If any appraiser is disqualified pursuant to this subpart C, the appraiser is barred from presenting evidence or testimony in any administrative proceeding before the Department of Treasury or the Internal Revenue Service, unless and until

authorized to do so by the Director of the Office of Professional Responsibility pursuant to §10.81, regardless of whether the evidence or testimony would pertain to an appraisal made prior to or after the effective date of disqualification.

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

(c) Authority to impose monetary penalty--(1) In general. (i) The Secretary of the Treasury, or delegate, after notice and an opportunity for a proceeding, may impose a monetary penalty on any practitioner who engages in conduct subject to sanction under paragraph (a) of this section.

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

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

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

(i) Any monetary penalty imposed on a practitioner under this paragraph (c) may

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

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

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

(e) Effective/applicability date. This section is applicable to conduct occurring on or after September 26, 2007, except paragraph (c) which applies to prohibited conduct that occurs after October 22, 2004.

Par. 18. Section 10.51 is revised to read as follows:

§10.51 Incompetence and disreputable conduct.

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

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

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

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

(4) Giving false or misleading information, or participating in any way in the giving of false or misleading information to the Department of the Treasury or any officer or employee thereof, or to any tribunal authorized to pass upon Federal tax matters, in connection with any matter pending or likely to be pending before them, knowing the

information to be false or misleading. Facts or other matters contained in testimony, Federal tax returns, financial statements, applications for enrollment, affidavits, declarations, and any other document or statement, written or oral, are included in the term “information.”

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

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

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

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

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

thing of value.

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

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

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

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

that a practitioner should observe under the circumstances. A pattern of conduct is a factor that will be taken into account in determining whether a practitioner acted knowingly, recklessly, or through gross incompetence. Gross incompetence includes conduct that reflects gross indifference, preparation which is grossly inadequate under the circumstances, and a consistent failure to perform obligations to the client.

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

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

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

Par. 19. Section 10.52 is revised to read as follows:

§10.52 Violations subject to sanction.

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

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

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

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

Par. 20. Section 10.53 is revised to read as follows:

§10.53 Receipt of information concerning practitioner.

(a) Officer or employee of the Internal Revenue Service. If an officer or employee of the Internal Revenue Service has reason to believe that a practitioner has violated any provision of this part, the officer or employee will promptly make a written report to the Director of the Office of Professional Responsibility of the suspected violation. The report will explain the facts and reasons upon which the officer's or employee's belief rests.

(b) Other persons. Any person other than an officer or employee of the Internal Revenue Service having information of a violation of any provision of this part may make an oral or written report of the alleged violation to the Director of the Office of Professional Responsibility or any officer or employee of the Internal Revenue Service. If the report is made to an officer or employee of the Internal Revenue Service, the officer or employee will make a written report of the suspected violation to the Director of the Office of Professional Responsibility.

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

(d) Effect on proceedings under subpart D. The destruction of any report will not

bar any proceeding under subpart D of this part, but will preclude the Director of the Office of Professional Responsibility's use of a copy of the report in a proceeding under subpart D of this part.

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

Par. 21. Section 10.60 is amended by revising paragraph (a) and adding paragraph (d) to read as follows:

§10.60 Institution of proceeding.

(a) Whenever the Director of the Office of Professional Responsibility determines that a practitioner (or employer, firm or other entity, if applicable) violated any provision of the laws governing practice before the Internal Revenue Service or the regulations in this part, the Director of the Office of Professional Responsibility may reprimand the practitioner or, in accordance with §10.62, institute a proceeding for a sanction described in §10.50. A proceeding is instituted by the filing of a complaint, the contents of which are more fully described in §10.62.

* * * * *

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

Par. 22. Section 10.61 is revised to read as follows:

§10.61 Conferences.

(a) In general. The Director of the Office of Professional Responsibility may confer with a practitioner, employer, firm or other entity, or an appraiser concerning allegations of misconduct irrespective of whether a proceeding has been instituted. If

the conference results in a stipulation in connection with an ongoing proceeding in which the practitioner, employer, firm or other entity, or appraiser is the respondent, the stipulation may be entered in the record by either party to the proceeding.

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

(2) Discretion; acceptance or declination. The Director of the Office of Professional Responsibility may, in his or her discretion, accept or decline the offer described in paragraph (b)(1) of this section. In any declination, the Director of the Office of Professional Responsibility may state that he or she would accept the offer described in paragraph (b)(1) of this section if it contained different terms. The Director of the Office of Professional Responsibility may, in his or her discretion, accept or reject a revised offer submitted in response to the declination or may counteroffer and act upon any accepted counteroffer.

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

Par. 23. Section 10.62 is revised to read as follows:

§10.62 Contents of complaint.

(a) Charges. A complaint must name the respondent, provide a clear and concise description of the facts and law that constitute the basis for the proceeding, and be signed by the Director of the Office of Professional Responsibility or a person representing the Director of the Office of Professional Responsibility under §10.69(a)(1). A complaint is sufficient if it fairly informs the respondent of the charges brought so that

the respondent is able to prepare a defense.

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

(c) Demand for answer. The Director of the Office of Professional Responsibility must, in the complaint or in a separate paper attached to the complaint, notify the respondent of the time for answering the complaint, which may not be less than 30 days from the date of service of the complaint, the name and address of the Administrative Law Judge with whom the answer must be filed, the name and address of the person representing the Director of the Office of Professional Responsibility to whom a copy of the answer must be served, and that a decision by default may be rendered against the respondent in the event an answer is not filed as required.

(d) Effective/applicability date. This section is applicable to complaints brought on or after September 26, 2007.

Par. 24. Section 10.63 is amended by:

1. Revising the section heading and paragraph (a)(4).

2. Redesignating paragraph (d) as paragraph (e).

3. Adding new paragraphs (d) and (f).

The revision and additions read as follows:

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

(a) * * *

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

* * * * *

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

* * * * *

(f) Effective/applicability date. This section is applicable to complaints brought on or after September 26, 2007.

Par. 25. Section 10.65 is revised to read as follows:

§10.65 Supplemental charges.

(a) In general. The Director of the Office of Professional Responsibility may file supplemental charges, by amending the complaint with the permission of the Administrative Law Judge, against the respondent, if, for example--

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

(2) It appears that the respondent has knowingly introduced false testimony during the proceedings against the respondent.

(b) Hearing. The supplemental charges may be heard with other charges in the

case, provided the respondent is given due notice of the charges and is afforded a reasonable opportunity to prepare a defense to the supplemental charges.

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

Par. 26. Section 10.68 is revised to read as follows:

§10.68 Motions and requests.

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

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

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

(b) Response. Unless otherwise ordered by the Administrative Law Judge, the nonmoving party is not required to file a response to a motion. If the Administrative Law

Judge does not order the nonmoving party to file a response, and the nonmoving party files no response, the nonmoving party is deemed to oppose the motion. If a nonmoving party does not respond within 30 days of the filing of a motion for decision by default for failure to file a timely answer or for failure to prosecute, the nonmoving party is deemed not to oppose the motion.

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

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

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

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

Par. 27. Section 10.70 is amended by revising paragraphs (a) and (b)(6) and adding paragraph (c) to read as follows:

§10.70 Administrative Law Judge.

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

(b) * * *

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

* * * * *

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

Par. 28(a). Section 10.73 is removed.

Par. 28(b). Sections 10.71 and 10.72 are redesignated as §§10.72 and 10.73, respectively.

Par. 29. New §10.71 is added to read as follows:

§10.71 Discovery.

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

(1) Depositions upon oral examination; or

(2) Answers to requests for admission.

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

(2) In ordering a deposition, the Administrative Law Judge will require

reasonable notice to the opposing party as to the time and place of the deposition. The opposing party, if attending, will be provided the opportunity for full examination and cross-examination of any witness.

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

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

(d) Limitations. Discovery shall not be authorized if--

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

(2) It will unduly delay the proceeding;

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

(4) It is frivolous or abusive;

(5) It is cumulative or duplicative;

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

(7) The material sought relates to mental impressions, conclusions, or legal

theories of any party, attorney, or other representative, of a party prepared in anticipation of a proceeding; or

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

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

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

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

Par. 30. Newly designated §10.72 is amended by:

1. Redesignating paragraphs (b), (c) and (d) as paragraphs (d), (e) and (f), respectively.

2. Revising paragraph (a) and newly designated paragraph (d).

3. Adding new paragraphs (b), (c) and (g).

The additions and revisions read as follows:

§10.72 Hearings.

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

(2) Time for hearing. Absent a determination by the Administrative Law Judge

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

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

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

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

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

(A) The Director of the Office of Professional Responsibility withdraws the complaint;

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

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

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

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

(b) Cross-examination. A party is entitled to present his or her case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct cross-examination, in the presence of the Administrative Law Judge, as may be required for a full and true disclosure of the facts. This paragraph (b) does not limit a party from presenting evidence contained within a deposition when the Administrative Law Judge

determines that the deposition has been obtained in compliance with the rules of this subpart D.

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

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

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

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

(4) A list of undisputed facts.

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

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

(3) Returns and return information--(i) Disclosure to practitioner or appraiser.

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

(ii) Disclosure to officers and employees of the Department of the Treasury.

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

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

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

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

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

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

(4) Protective measures--(i) Mandatory protective order. If redaction of names, addresses, and other identifying information of third party taxpayers may still permit indirect identification of any third party taxpayer, the Administrative Law Judge will issue a protective order to ensure that the identifying information is available to the parties and the Administrative Law Judge for purposes of the proceeding, but is not disclosed to, or open to inspection by, the public.

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

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

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

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

with, the procedure involved.

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

* * * * *

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

Par. 31. Newly designated §10.73 is amended by:

1. Redesignating paragraphs (c), (d), and (e) as paragraphs (d), (e), and (f), respectively.

2. Revising paragraph (b) and newly designated paragraph (d).

3. Adding new paragraphs (c) and (g).

The revisions and additions read as follows:

§10.73 Evidence.

* * * * *

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

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

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

* * * * *

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

Par. 32. Section 10.76 is revised to read as follows:

§10.76 Decision of Administrative Law Judge.

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

(2) Summary adjudication. In the event that a motion for summary adjudication is filed, the Administrative Law Judge should rule on the motion for summary adjudication within 60 days after the party in opposition files a written response, or if no written response is filed, within 90 days after the motion for summary adjudication is filed. A decision shall thereafter be rendered if the pleadings, depositions, admissions, and any other admissible evidence show that there is no genuine issue of material fact and that a decision may be rendered as a matter of law. The decision must include a

statement of conclusions, as well as the reasons or basis for making such conclusions, and an order of censure, suspension, disbarment, monetary penalty, disqualification, or dismissal of the complaint.

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

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

(c) Copy of decision. The Administrative Law Judge will provide the decision to the Director of the Office of Professional Responsibility, with a copy to the Director's authorized representative, and a copy of the decision to the respondent or the respondent's authorized representative.

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

(e) Effective/applicability date. This section is applicable to proceedings initiated

on or after September 26, 2007.

Par. 33. Section 10.77 is revised to read as follows:

§10.77 Appeal of decision of Administrative Law Judge.

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

(b) Time and place for filing of appeal. The appeal and brief must be filed, in duplicate, with the Director of the Office of Professional Responsibility within 30 days of the date that the decision of the Administrative Law Judge is served on the parties. The Director of the Office of Professional Responsibility will immediately furnish a copy of the appeal to the Secretary of the Treasury or delegate who decides appeals. A copy of the appeal for review must be sent to any non-appealing party. If the Director of the Office of Professional Responsibility files an appeal, he or she will provide a copy of the appeal and certify to the respondent that the appeal has been filed.

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

Par. 34. Section 10.78 is revised to read as follows:

§10.78 Decision on review.

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

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

(c) Copy of decision on review. The Secretary of the Treasury, or delegate, will provide copies of the agency decision to the Director of the Office of Professional Responsibility and the respondent or the respondent's authorized representative.

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

Par. 35. Section 10.82 is amended by:

1. Revising the section heading and paragraph (b).

2. Adding paragraph (h).

The revisions and addition read as follows:

§10.82 Expedited suspension.

* * * * *

(b) To whom applicable. This section applies to any practitioner who, within five years of the date a complaint instituting a proceeding under this section is served:

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

§10.51(a)(10).

(2) Has, irrespective of whether an appeal has been taken, been convicted of any crime under title 26 of the United States Code, any crime involving dishonesty or breach of trust, or any felony for which the conduct involved renders the practitioner unfit to practice before the Internal Revenue Service.

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

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

(i) Instituting or maintaining proceedings primarily for delay;

(ii) Advancing frivolous or groundless arguments; or

(iii) Failing to pursue available administrative remedies.

* * * * *

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

Par. 36. Section 10.90 is revised to read as follows:

§10.90 Records.

(a) Roster. The Director of the Office of Professional Responsibility will maintain, and may make available for public inspection in the time and manner prescribed by the Secretary of the Treasury, or delegate, rosters of--

(1) Enrolled agents, including individuals--

(i) Granted active enrollment to practice;

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

requirements for renewal of enrollment;

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

(iv) Whose offer of consent to resign from enrollment has been accepted by the Director of the Office of Professional Responsibility under §10.61;

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

(3) Disqualified appraisers; and

(4) Enrolled retirement plan agents, including individuals--

(i) Granted active enrollment to practice;

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

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

(iv) Whose offer of consent to resign from enrollment has been accepted by the Director of the Office of Professional Responsibility under §10.61.

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

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

Par. 36. Section 10.91 is revised to read as follows:

§10.91 Saving provision.

Any proceeding instituted under this part prior to July 26, 2002, for which a final decision has not been reached or for which judicial review is still available will not be affected by these revisions. Any proceeding under this part based on conduct engaged in prior to September 26, 2007, which is instituted after that date, will apply subpart D and E or this part as revised, but the conduct engaged in prior to the effective date of these revisions will be judged by the regulations in effect at the time the conduct occurred.

Acting Deputy Commissioner for Services and Enforcement.

Linda E. Stiff

Approved: September 19, 2007

General Counsel, Office of the Secretary.

Robert Hoyt