

Ethics

A Review of Circular 230 with Notes on 2025 proposed Changes

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Presentation Plan:

- 1. Review of Circular 230 including Last Major Update from June 2014**
- 2. Discuss what the proposed Regs from 2025 could change.**

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Circular 230

- **Definition:**
 - A document containing the statute and regulations detailing a tax professional's duties and obligations while practicing before the IRS
 - **LAST OFFICIAL MAJOR UPDATE June 2014**
- **Enabling Statute:**
 - Title 31, US Code 330 – This is the source of OPR's authority.
 - **OPR = Office of Professional Responsibility** – Enforcement Arm (DETAILS to Come Later)
- **Review Responsibilities**
 - **Ultimate Goal of the practitioner, taxpayer and IRS:** Arriving at the Correct Tax
 - **Unenrolled Preparers:** Unenrolled preparers must comply with Circular 230

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Circular 230 – Proposed Changes

- **In December 2024**, the IRS and Treasury Department released proposed regulations to update Circular 230 for the first time since 2014.
- **The proposed regulations have not been finalized and do not currently apply to tax practitioners**, but the original IRS goal was to apply these changes in 2025 but based on the today's date and the government shutdown, that **goal of completing any changes to Circular 230 in 2025 is unlikely.**
- Notes have been added to this presentation where the new regulations would change items discussed in this presentation.
- **NOTE: This presentation is not intended to be a comprehensive list of the proposed changes.**

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Circular 230 – Proposed Changes

- **Proposed Changes TIMELINE to Date:**
- **December 20, 2024:** The Treasury Department and IRS issued proposed regulations to amend Circular 230
- **February 24, 2025:** The public comment period for the proposed changes closed.
- **March 6, 2025:** A public hearing was held to discuss the proposed amendments.
- **Currently:** The Treasury and IRS are still reviewing the comments received. The timeline for the final regulations to be published is uncertain with no ETA shared at this time.

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Circular 230 – PROPOSED CHANGES

KEY Proposed Changes:

Contingent fees: A ban on certain contingent fee arrangements was proposed, which has drawn criticism regarding its potential impact on taxpayer access to services. (We are going to talk more about this today).

Disreputable conduct: More actions would be categorized as disreputable conduct, such as certain fee arrangements and failures to properly advise clients of noncompliance.

Client errors: The regulations would expand practitioners' obligations regarding client errors and omissions.

Technological competency: The regulations aimed to add a requirement for practitioners to maintain a certain level of technological competency

Former IRS employees: The waiver allowing some former IRS employees to become Enrolled Agents **WITHOUT an exam** would be eliminated.

Removal of outdated provisions: The changes eliminated rules governing registered tax return preparers (RTRP), a class of professionals that the IRS was barred from regulating by a 2013 court decision.

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Circular 230

Definition of Circular 230:

- A document containing the statute and regulations detailing a tax professional's duties and obligations while practicing before the IRS

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Circular 230

Definition: (CONTINUED)

- **Loving vs. IRS (Jan. 18, 2013):**
 - The authority to represent taxpayers on the returns prepared by an unenrolled tax return preparer WILL END for tax returns prepared and signed after December 31, 2015
 - The court held that **preparing tax returns is not representation**
 - Also, court held that **Filing Returns in not practice before the IRS**
 - **Let that sink in:** Preparing tax returns in not representation and filing returns in not practice.....
 - **What does that translate to:** Tax Return Preparers are not covered by Circular 230

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Circular 230

2 Sources to read:

- **1. “IRS Power to Regulate Tax Practitioners Slipping Away”** (by Christopher Rizek on Forbes.com)
 - **Loving:** “A person who does not actively represent taxpayers in proceedings with the IRS but merely prepares returns is not engaged in “practice before the IRS” per USC 330(a).
 - **Sexton v Hawkins:**
 - Former attorney made the argument that since OPR suspended him in 2004, he is no longer a practitioner (representation) covered by Circular 230 and that his status as a tax return preparer gives OPR no jurisdiction over him.

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Circular 230

2 Sources to read: (CONTINUED)

- **1. “IRS Power to Regulate Tax Practitioners Slipping Away”** (by Christopher Rizek on November 10, 2014 on Forbes.com)
- **2. “Legislation Needed to Strengthen Circular 230, Karen Hawkins Says”** (by William Davis on October 30, 2014 through TAX NOTES TODAY.)
 - With practitioner’s recent success using litigation to chip away at Circular 230, Karen Hawkins, Director of OPR in 2014, said legislation is necessary to halt the decreasing importance of Circular 230 in the return preparer industry and to clarify roles of offices within IRS.

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Circular 230

Enabling Statute:

- **Title 31, US Code 330** – This is the source of OPR’s authority.
- **OPR = Office of Professional Responsibility**
 - Enforcement Arm of Circular 230
 - We will do a deep dive into how OPR works later in the program

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Circular 230

Practice before the IRS:

- All matters connected with the presentation to the IRS relating to a taxpayer’s rights, privileges or liabilities
- **Presentation to the IRS Includes:**
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Circular 230

REMINDER

Loving vs. IRS (Jan. 18, 2013): page 262 – right column 2nd paragraph:

- The court held that preparing tax returns is not representation
- Also court held that Filing Returns in not practice before the IRS

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Circular 230

Practice before the IRS:

- All matters connected with the presentation to the IRS relating to a taxpayer's rights, privileges or liabilities
- **Presentation to the IRS Includes:**
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Circular 230

Practice before the IRS:

- All matters connected with the presentation to the IRS relating to a taxpayer's rights, privileges or liabilities
- **Presentation to the IRS Includes:**
 - Preparing Documents
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Circular 230

Practice before the IRS:

- All matters connected with the presentation to the IRS relating to a taxpayer's rights, privileges or liabilities
- **Presentation to the IRS Includes:**
 - Preparing Documents
 - Filing Documents
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Circular 230

Practice before the IRS:

- All matters connected with the presentation to the IRS relating to a taxpayer's rights, privileges or liabilities
- **Presentation to the IRS Includes:**
 - Preparing Documents
 - Filing Documents
 - Corresponding and Communicating with IRS
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Circular 230

Practice before the IRS:

- All matters connected with the presentation to the IRS relating to a taxpayer's rights, privileges or liabilities
- **Presentation to the IRS Includes:**
 - Preparing Documents
 - Filing Documents
 - Corresponding and Communicating with IRS
 - Rendering Oral & Written Advice relating to Tax Avoidance or Evasion
 -

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Circular 230

Practice before the IRS:

- All matters connected with the presentation to the IRS relating to a taxpayer's rights, privileges or liabilities
- **Presentation to the IRS Includes:**
 - Preparing Documents
 - Filing Documents
 - Corresponding and Communicating with IRS
 - Rendering Oral & Written Advice relating to Tax Avoidance or Evasion
 - Representation of a Client

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Circular 230

Practice before the IRS:

- **Who Applies To:**
 - **1. Licensed by a State Authority:**
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 - **2. Persons Enrolled to practice:**
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Circular 230

Practice before the IRS:

- **Who Applies To:**
 - **1. Licensed by a State Authority:**
 - Attorneys
 - Certified Public Accountants (CPA)
 - **2. Persons Enrolled to practice:**
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Circular 230

Practice before the IRS:

- **Who Applies To:**
 - **1. Licensed by a State Authority:**
 - Attorneys
 - Certified Public Accountants (CPA)
 - **2. Persons Enrolled to practice:**
 - Enrolled Agents (EA)
 - Enrolled Retirement Plan Agents (ERPA)
 - Enrolled Actuaries (EACT)

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Circular 230

Practice before the IRS

○ Who Applies To: **(CONTINUED)**

- **3. Unenrolled Preparers: Unlicensed individuals** who prepared returns in regard to return they prepared and signed
 - NOTE: “**unlicensed individuals**” and not “**unlicensed preparers**”
 - Distinction between **Compensated vs. Not Compensated**
 - Very clear throughout page 17 of Circular 230 that **this application limited to only compensated preparation**
 - If doing **free preparation**, then not addressed at all that I could find.
- **4. Anyone who gives written advice** that has a potential for tax avoidance
- **5. Any person submitting a power of attorney**

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Circular 230

Practice before the IRS

○ Who Applies To: **(CONTINUED)**

- **6. Appraisers**
 - Persons providing appraisals used in connection with tax matters
 - They can be disqualified from future appraisals relating to tax matters
 - Appraisers are not new to Circular 230 but OPR reached a settlement with an appraiser group that barred that firm for 5 years
 - Appraisers had to admit to violating relevant sections of Circular 230
 - The appraisers prepared reports valuing façade easements donated over several years and certified that the appraiser did not fraudulently or falsely overstate the value of such façade easements.

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Circular 230

Practice before the IRS - Who Applies To: (CONTINUED)

7. Registered Tax Return Preparers (RTRP)

- Yes, they are still in the conversation and still in Circular 230 (**but are coming out in the proposed 2025 Regs**)
- FYI on the RTRP timeline through the court system.
- Started with: **Jan. 18, 2013**, the **United States District Court** for the District of Columbia **enjoined the Internal Revenue Service from enforcing the regulatory requirements for registered tax return preparers.**
- Then, **on Feb. 1, 2013**, the court **modified its order** to clarify that the order **does not affect the requirement for all paid tax return preparers to obtain a preparer tax identification number (PTIN).**

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Circular 230

Practice before the IRS: Who Applies To: (CONTINUED)

7. Registered Tax Return Preparers (RTRP) (CONTINUED)

- On **March 29, 2013**, the **IRS appealed** the district court opinion.
- In July 2013, the IRS refunded testing fees to return preparers who tested or were scheduled to test on or after Jan. 18, 2013.
- On **Feb. 11, 2014**, the **U.S. Court of Appeals** for the District of Columbia Circuit **upheld the decision of the lower court** in the case of Loving vs. IRS,
- And....RTRPs are still listed throughout Circular 230 from the 2014 version (but are expected to be removed in the new 2026 version.

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Circular 230

June 2014 – Update to Circular 230 with some major changes/updates

- **New final regulations:** issued June 2014
 - **June 2014:** Final Issue
 - **September 2012:** Initial Proposal, accepted written comments
 - **December 7, 2012:** Public Hearing after accepting written comments
- **How many public comments were received regarding the changes to Circular 230 in 2014?**
 - **Only _____ comments** were received in 7 week window between proposed and public hearing (pg. 3)

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Circular 230

June 2014 – Update to Circular 230 with some major changes/updates

- **New final regulations:** issued June 2014
 - **June 2014:** Final Issue
 - **September 2012:** Initial Proposal, accepted written comments
 - **December 7, 2012:** Public Hearing after accepting written comments
- **How many public comments were received regarding the changes to Circular 230?**
 - **Only 19 comments** were received in 7 week window between proposed and public hearing (pg. 3)
 - **2025 Proposed Changes:** over 150 comments were made
 - **Public Hearing for 2025:** Held March 6, 2025 – so projects to Oct 2026 (19 months)

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Circular 230 – June 2014 UPDATE

- Review of Circular 230

- Today, I am not going to read it to you or review it section by section – that would not be much fun or any of you or for me.
 - Save reading it for that vacation beach trip this summer.....
- Today, I thought it would be helpful to understand what sections are in Circular 230 and how it is organized

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Circular 230 – June 2014 UPDATE

3 often repeated focus points to take away on current Circular 230 (2014)

- 1. Written Tax Advice:
 - “The rule that drops the long disclosure signature from your emails”
- 2. Expedited suspension for non-filing practitioners:
 - Fail to file an annual return for 4 of out of the 5 preceding years
 - Examples: 1040, 1120
 - Fail to file a return required more frequently than annually for 5 of the 7 preceding periods.
 - Example: 941
- 3. OPR = **Exclusive** Responsibility for discipline of practitioners
 - There had been some confusion over which multiple Federal agencies oversee practitioners
 - The June 2014 update clarified that OPR has the **Exclusive** responsibility

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Circular 230 – June 2014 UPDATE

IRS may suspend or disbar a practitioner who is..... (Circular 230 page 2)

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Circular 230 – June 2014 UPDATE

IRS may suspend or disbar a practitioner who is..... (Circular 230 page 2)

- Incompetent
-
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-

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Circular 230 – June 2014 UPDATE

IRS may suspend or disbar a practitioner who is..... (Circular 230 page 2)

- Incompetent
- Disreputable
-
-

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Circular 230 – June 2014 UPDATE

IRS may suspend or disbar a practitioner who is..... (Circular 230 page 2)

- Incompetent
- Disreputable
- Violates regulations
-

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Circular 230 – June 2014 UPDATE

IRS may suspend or disbar a practitioner who is..... (Circular 230 page 2)

- Incompetent
- Disreputable
- Violates regulations
- **Or with intent to defraud**, willfully and knowingly misleads or threatens a person being represented or a prospective person to be represented

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Circular 230 – June 2014 UPDATE

4 Main “Subparts” in Circular 230

- **Subpart A – Rules Governing Authority to Practice (pages 5 - 18)**
- **Subpart B –Duties and Restrictions Relating to Practice (pages 19 – 27)**
- **Subpart C – Sanctions for Violations of the Regulations (pages 28 - 30)**
- **Subpart D – Rules Applicable to Disciplinary Proceedings (pages 31 – 44)**

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Circular 230 – June 2014 UPDATE

Subpart A – Rules Governing Authority to Practice (pages 5 – 18)

- **NOTE: Very little of Subpart A was changed in 2014**
 - Most of what is in Subpart A was in Circular 230 before the update
- **OPR has exclusive authority to discipline (page 5) (2014 UPDATE)**
- **Chapter covers:**
 - **Offices of OPR (5) (UPDATE)**
 - Definitions (6),
 - Who May Practice (6-8),
 - Eligibility (Civilian - 8 and IRS Employee 8-9),
 - Application (9-10),
 - Renewal (10 – 16)
 - Representing Oneself and Special Appearances (16)
 - Return Preparation and Application of Rules to other Individuals (17)
 - CE Providers (17 – 18)

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Circular 230 – June 2014 UPDATE – SUBPART A

Definition of Practicing before the IRS:

- **All matters** relating to a taxpayer's rights, privileges or liabilities
- **Preparing** documents, filing documents, corresponding and communicating with IRS
- **Rendering** written advice
- **Representing** a client at conferences, hearings and meetings

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Circular 230 – June 2014 UPDATE – SUBPART A

CIVILIAN Eligibility to become an Enrolled Agent:

- **Only 5 things listed in Circular 230:**
 - 4 items grouped on Page 8
 - Then one more item buried at the end of the section on page 9
- **1. AGE**
 - **QUESTION TO AUDIENCE:** How old do you have to be to be able to become an EA?

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Circular 230 – June 2014 UPDATE – SUBPART A

CIVILIAN Eligibility to become an Enrolled Agent:

- **Only 5 things listed in Circular 230:**
 - 4 items grouped on Page 8
 - Then one more item buried at the end of the section on page 9
- **1. AGE**
 - **QUESTION TO AUDIENCE:** How old do you have to be to be able to become an EA?
 - **18 years old**
 - **Takeaway:** Not only can you vote, but you can be an EA without being able to have a drink.....

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Circular 230 – June 2014 UPDATE – SUBPART A

CIVILIAN Eligibility to become an Enrolled Agent (5 Things):

- **1. AGE:** 18 years old
- **2. Written Exams**
 - “Demonstrates special competence in tax matters by written examination administered by IRS”
- **3. PTIN**
 - You must possess a valid PTIN before you apply – not after
- **4. No conduct that would justify the suspension or disbarment** of any practitioner covered by Circular 230

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Circular 230 – June 2014 UPDATE – SUBPART A

CIVILIAN Eligibility to become an Enrolled Agent (5 Things):

- **5. Natural persons**
 - “Enrollment to practice may only be granted to natural persons.”
 - **Natural Person not the same as a Naturalized Person**
 - **Definition of Naturalized Person:**
 - “The process by which a foreign citizen becomes a citizen of a new country.”
 - **Definition of Natural Persons:**
 - “A real human being, as opposed to a legal person, which may be a private (i.e., business entity) or public (i.e., government) organization. “

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Circular 230 – June 2014 UPDATE – SUBPART A

IRS Employee Eligibility to become an Enrolled Agent:

- **Minimum employment Time at the IRS**
 - **QUESTION TO AUDIENCE:** What is that minimum time?
 - _____ Continuous Employment

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Circular 230 – June 2014 UPDATE – SUBPART A

IRS Employee Eligibility to become an Enrolled Agent:

- **Minimum employment Time at the IRS**
 - **QUESTION TO AUDIENCE:** What is that minimum time?
 - **5 Years** Continuous Employment
 - Regularly engaged in applying and interpreting the provisions of the Internal Revenue Code

NOTE for 2025 Version: This ability to get EA license as a former IRS employee without taking an exam to prove competency **MAY BE REMOVED!**

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Circular 230 – June 2014 UPDATE – SUBPART A

POP QUIZ

QUESTION TO AUDIENCE: Can you owe taxes and apply to be an EA?

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Circular 230 – June 2014 UPDATE – SUBPART A

POP QUIZ

QUESTION TO AUDIENCE: Can you owe taxes and apply to be an EA?

- **Yes**
 - You can owe taxes **and have an Installment Agreement** and still apply to be an EA (page 10)
 - However, I did not say anything about filing your tax returns
 - **You must be current on filing both your Business & Personal tax returns**
 - You can reapply to be an EA once current on tax filings

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Circular 230 – June 2014 UPDATE – SUBPART A

POP QUIZ

QUESTION TO AUDIENCE: How long do you have to wait to reapply once returns are current?

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Circular 230 – June 2014 UPDATE – SUBPART A

POP QUIZ

QUESTION TO AUDIENCE: How long do you have to wait to reapply once returns are current?

- No time at all – you can immediately reapply once you are considered current.

HOWEVER

FOLLOW UP QUESTION: What is the definition of current?

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Circular 230 – June 2014 UPDATE – SUBPART A

POP QUIZ

QUESTION TO AUDIENCE: How long do you have to wait to reapply once returns are current?

- No time at all – you can immediately reapply once you are considered current.

HOWEVER

FOLLOW UP QUESTION: What is the definition of current?

- Is Filing the Return enough? **NO.....** What else has to happen next?

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Circular 230 – June 2014 UPDATE – SUBPART A

POP QUIZ

QUESTION TO AUDIENCE: How long do you have to wait to reapply once returns are current?

- No time at all – you can immediately reapply once you are considered current.

HOWEVER

FOLLOW UP QUESTION: What is the definition of current?

- Is Filing the Return enough? **NO.....** What else has to happen next?
- Returns must process and post to your IRS Account

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Circular 230 – June 2014 UPDATE – SUBPART A

POP QUIZ – Last Question.....For now.....

QUESTION TO AUDIENCE: Can you appeal the denial of your EA Status?

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Circular 230 – June 2014 UPDATE – SUBPART A

POP QUIZ – Last Question.....For now.....

QUESTION TO AUDIENCE: Can you appeal the denial of your EA Status?

- YES
- Appeal by written protest must be filed within 30 days of receipt

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Circular 230 – June 2014 UPDATE – SUBPART A

- **Renewal of your EA License**
 - **Renewal Period** – every 3 years based on: (page 11)
 - **SSN Number Ending 4,5,6: (RIGHT NOW!)**
 - October 1, 2025 to January 31, 2026
 - **SSN Number Ending 7,8,9 (or no SSN):**
 - October 1, 2026 to January 31, 2027.
 - **SSN Number Ending 0,1,2,3:**
 - October 1, 2027 to January 31, 2028.

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Circular 230 – June 2014 UPDATE – SUBPART A

Enrolled Agent (EA) Continuing Education (CE)

- **Over 3 years:**
 - 72 hours including 6 hours of ethics (Average of 24 hours per year)
- **Each Year:**
 - Minimum of 16 hours including 2 hours of ethics
- **University Classes: (Classes applicable to taxes)**
 - Each semester hour = 15 contact hours
 - Each Quarter hour = 10 contact hours
- **CPAs:** 120 hours of CPE every 3 years (min 20 hours per year) + 2 hours ethics each year
- **AFSP:** 18 hours include 2 ethics each year – and they still have to pass an exam each year regardless of how you take the CPE live or on demand.

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EXTRA

PTIN Renewal

- **EACH Year:**
 - Between October 16, 2025 to December 31, 2025
- **Fee:** \$18.75

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EXTRA

AFSP (Annual Filing Season Program)

- Non-credentialed tax preparers
- **AFSP preparers must annually:**
 - Renew PTIN
 - 18 hours CE
 - 10 hours federal tax
 - 6 hours federal tax update (AFTR specific class) and MUST take an exam and pass it regardless of in person or on demand CE
 - 2 hours ethics

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Circular 230 – June 2014 UPDATE – SUBPART A**POP QUIZ****Continuing Education (CE)**

QUESTION TO AUDIENCE: Do you have to do your CE if under suspension?

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Circular 230 – June 2014 UPDATE – SUBPART A**POP QUIZ****Continuing Education (CE)**

QUESTION TO AUDIENCE: Do you have to do your CE if under suspension?

- **YES:** Must confirm to requirements for renewal before eligibility is restored

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Circular 230 – June 2014 UPDATE – SUBPART A

POP QUIZ

Continuing Education (CE)

QUESTION TO AUDIENCE: How many years must a practitioner keep your CE records

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Circular 230 – June 2014 UPDATE – SUBPART A

POP QUIZ

Continuing Education (CE)

QUESTION TO AUDIENCE: How many years must a practitioner keep your CE records

- 4 years following date of renewal

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Circular 230 – June 2014 UPDATE – SUBPART A

Continuing Education – Instructor CE Hour Benefit:

- For those of you thinking that an instructor basks in the glow of not needing to attend CE because they teach it, I have some bad news for you:
 - **1 hour of CE for each hour taught**
 - **Max of 2 hours for prep time for each hour taught**

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Circular 230 – June 2014 UPDATE

4 Main “Subparts” in Circular 230

- **Subpart A** – Rules Governing Authority to Practice (pages 5 - 18)
- **Subpart B –Duties and Restrictions Relating to Practice (pages 19 – 27)**
- **Subpart C** – Sanctions for Violations of the Regulations (pages 28 - 30)
- **Subpart D** – Rules Applicable to Disciplinary Proceedings (pages 31 – 44)

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Circular 230 – June 2014 UPDATE – SUBPART B

- **Subpart B –Duties and Restrictions (pages 19 - 27)**
 - **Chapter Covers:**
 - **Due Diligence as to Accuracy & Reliance on Others (19) - UPDATED**
 - Practice by former Government Employees (20)
 - Fees (21)
 - Return of Records to clients (22)
 - Conflict of Interest (22)
 - Solicitation (23)
 - **Negotiating of Taxpayer Checks (24) – UPDATED**
 - Standards for Tax Returns and Documents (24)
 - **Competence (25) – UPDATED**
 - **Compliance (26) – UPDATED**
 - **Requirements for Written Advice (26) – UPDATED**

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Circular 230 – June 2014 UPDATE – SUBPART B

Due Diligence & Reliance on Others – 2014 UPDATE

- “Presumed to have used due diligence if the practitioner used reasonable care in engaging, supervising, training and evaluating the person providing advice

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Circular 230 – June 2014 UPDATE – SUBPART B

- **Practice by Former Government Employees**
 - **QUESTION TO AUDIENCE:** Can a former Revenue Officer (RO) ever represent a taxpayer they collected on while at the IRS?

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Circular 230 – June 2014 UPDATE – SUBPART B

- **Practice by Former Government Employees**
 - **QUESTION TO AUDIENCE:** Can a former Revenue Officer (RO) ever represent a taxpayer they collected on while at the IRS?
 - **YES**, but not right away.....
 - **OK, then.....How long must the RO wait to represent that taxpayer?**

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Circular 230 – June 2014 UPDATE – SUBPART B

- **Practice by Former Government Employees**
 - **QUESTION TO AUDIENCE:** Can a former Revenue Officer (RO) ever represent a taxpayer they collected on while at the IRS?
 - **YES**, but not right away.....
 - **OK, then.....How long must the RO wait to represent that taxpayer?**
 - **2 years** after government employment ended if **had** case within 1 year of leaving Government service.
 - **1 year** after government employment ended if **did not have** case within 1 year of leaving Government service.

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Circular 230 – June 2014 UPDATE – SUBPART B

QUESTION TO AUDIENCE: Can a new firm of a former RO represent a client who falls within the time frame mentioned above?

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Circular 230 – June 2014 UPDATE – SUBPART B

QUESTION TO AUDIENCE: **Can a new firm of a former RO represent a client** who falls within the time frame mentioned above?

- **YES**
- (p21)– But only by isolating the former government employee to ensure they cannot assist in the representation
- A statement must be prepared under oath by both the former government employee as well as another member of the firm acting on behalf of the firm attesting to this.

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Circular 230 – June 2014 UPDATE – SUBPART B

- **Fees and Contingent Fees (As of 2014 version)**
 - “A Practitioner may not charge an unconscionable fee”
 - Unconscionable = unreasonably excessive
 - Rules on Contingent Fees: (p21)
 - **Contingent Fee:** fee based on a % of the refund reported on a return, fee based on a % of the taxes saved or otherwise depends on specific result attained

QUESTION TO AUDIENCE: Are practitioners allowed to charge contingency fees?

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Circular 230 – June 2014 UPDATE – SUBPART B

- Fees

QUESTION TO AUDIENCE: Are practitioners allowed to charge contingency fees?

- **Only if related to IRS exam or challenge to:**

- **Original Tax Return**
- **Amended Return** or claim for refund when return or claim filed within 120 days of taxpayer receiving written notice of exam of original return
- **Connection to a claim for credit or refund** filed solely in connection with determination of statutory interest or penalties assessed by IRS.
- **Any judicial proceeding** arising under IRC

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Circular 230 – 2025 changes

- **Contingent Fees – 2025 Proposed Changes**
- Under the proposed IRS changes to Circular 230, charging contingent fees for services related to preparing an **original tax return, an amended return, or a claim for a refund** or credit **would be considered disreputable conduct**.
- This differs from the current rules, which allow contingent fees for certain services, like claims for a refund filed after an IRS examination has begun.
- The proposed changes would **move the prohibition on contingent fees to a new section on disreputable conduct, which expands the scope of the rule**
- **The IRS contends that charging contingent fees** for initial returns or refund claims **incentivizes practitioners to take overly aggressive tax positions** to increase their potential personal gain.
- This would represent a significant shift for practitioners who must ensure their fee structures comply with the updated regulations

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Circular 230 – 2025 changes

- **What else can be “Disreputable Conduct” – 2025 Proposed Changes**

Willfully failing to follow any federal tax law: This is being added to the disreputable conduct list because such actions reflect a lack of due regard for the tax laws.

Knowingly failing to inform a client of noncompliance, errors, or omissions: This is **specifically tied to returns the practitioner prepared, approved, or submitted while representing the client**. This is considered disreputable because it perpetuates false or misleading information to the IRS.

Assessment of certain penalties: A penalty assessment for willful or reckless conduct will be considered a violation. These include penalties related to **willful understatement of tax liabilities** (§ 6694(b)), aiding and abetting understatement of tax liabilities (§ 6701), or promoting abusive tax shelters (§ 6700).

Charging an unconscionable fee: Charging an excessive or unreasonable fee is explicitly identified as disreputable conduct.

Expansion of check negotiation rules: The prohibition on negotiating client checks would be **expanded to include other forms of electronic payment, such as debit cards and mobile payments**

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Circular 230 – 2025 changes

- **How much is an Unconscionable Fee?**
- The current focus on “Unconscionable Fee” comes from the recent ERC mess and how firms charged for ERC preparation.
- **Per “Taxnotes.com”:**
- Potential conflict of interest is “exacerbated in the ERC context, because the firm is not just purely preparing the ERC claim forms, **but in many of these cases they're making determinations as to eligibility.**”
- The concern then comes down to **whether the opportunity for a substantial contingency fee is clouding the judgment of firms that are providing the advice**, Ferguson said.
- Section 10.27 of Circular 230 states that practitioners can’t charge an unconscionable fee in connection with any matter before the IRS.
- **Determining whether a fee is unconscionable depends on whether it’s appropriate under the taxpayer's circumstances,**

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Circular 230 – 2025 changes

- **How much is an Unconscionable Fee?**
- **If the taxpayer is aware of the rules and the risks they're taking, there may be a way to negotiate a contingency fee.**
- But in situations when a less savvy small business gets assistance, "taking advantage of them with any kind of a fee, I think, would be subject to question if it turns out to be the wrong kind of advice,"
- The IRS clearly views contingency fees as being "a harbinger of firms who may be providing advice to taxpayers to claim the credit where it's not sustainable, because the fees present a potential conflict of interest, adding that he **expects the IRS's focus will be on the advice, not the contingency fee itself.**

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Circular 230 – 2025 changes

- **How much is an Unconscionable Fee?**
- "What this is going to come down to isn't the fees per se, **but the advice that's being given and whether the IRS is going to be able to show that there were false statements or that the people at the ERC firms are encouraging taxpayers to take positions that are not supportable,**"
- Kerr said that while he's also not a big fan of contingency fees, if return preparers charge them and give bad advice, there should be a way to claw back the proceeds.
- Ferguson pointed out that while contingency fees led to problems with the ERC, the fees have helped raise awareness about the ERC program, which initially had a limited uptake.
- Once firms determined they could make a profit from the claims, they began to promote it. **But the IRS got more than it bargained for.**

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Circular 230 – June 2014 UPDATE – SUBPART B

- **Solicitation**
 - “Any lawful solicitation must:
 - **Clearly identify the solicitation** as being on behalf of a practitioner eligible to practice as well as
 - **Identify the source** of the information used in choosing the recipient.”

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Circular 230 – June 2014 UPDATE – SUBPART B

- **Negotiation of Taxpayer Checks - 2014 UPDATE**
 - “Practitioner may NOT endorse or otherwise negotiate any check..... issued to a client by the government in respect of a Federal Tax Liability.”
 - No cashing, no endorsing, no depositing to a controlled account, no split transfers – client agreement is irrelevant

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Circular 230 – June 2014 UPDATE – SUBPART B

- **Competence and Procedures to Ensure Compliance** - 2014 UPDATE
 - “Practitioner **must possess the necessary competence** to engage in practice before IRS. Includes skill, thoroughness and preparation necessary for which the practitioner is engaged.
 - “Practitioner must take **reasonable steps to ensure firm** has adequate procedures, follow those procedures and take prompt action to correct any noncompliance for all members, associates and employees.”

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Circular 230 – June 2014 UPDATE – SUBPART B

- **Requirements for Written Advice** - 2014 UPDATE
 - **Written Advice** – “The drop the signature off your email section”
 - **Covered Opinion Rules**
 - Increased burden on practitioners and clients without increasing quality of the tax advice received
 - Contributed to overuse as well as misleading use of disclaimers on most practice communications

80

Circular 230 – June 2014 UPDATE – SUBPART B

- **QUESTION TO AUDIENCE:** Which of the following are **actual regulations** quoted in the review?
- **#1: Executive Order 13563** to remove or modify regulations that are outmoded, ineffective, insufficient or too burdensome
- **#2: NAEA directive 90210** that set out a goal of reducing by a factor of 1.3 the amount of snide comments by both clients and other non-licensed accounting professional of how big a waste of time our disclaimers are since no one read them in the first place.
- **#3: The Federal Green Initiative Act (FGIA)** towards the reduction of printed paper. The use of disclaimer took up on average 20% of a printed page and thus its removal is projected to exceed projections by 3 years the initial requirement of a 20% reduction of the use of paper as required by the FGIA by 2018.
- **#4 Practitioners will save taxpayers at a minimum: \$5,333,200** through the elimination of the Covered Opinion Rules.

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Circular 230 – June 2014 UPDATE – SUBPART B

- **QUESTION TO AUDIENCE:** Which of the following are **actual regulations** quoted in the review?
- **#1: Executive Order 13563** to remove or modify regulations that are outmoded, ineffective, insufficient or too burdensome **(NO)**
- **#2: NAEA directive 90210** that set out a goal of reducing by a factor of 1.3 the amount of snide comments by both clients and other non-licensed accounting professional of how big a waste of time our disclaimers are since no one read them in the first place.
- **#3: The Federal Green Initiative Act (FGIA)** towards the reduction of printed paper. The use of disclaimer took up on average 20% of a printed page and thus its removal is projected to exceed projections by 3 years the initial requirement of a 20% reduction of the use of paper as required by the FGIA by 2018.
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Circular 230 – June 2014 UPDATE – SUBPART B

- **QUESTION TO AUDIENCE:** Which of the following are **actual regulations** quoted in the review?
- **#1: Executive Order 13563** to remove or modify regulations that are outmoded, ineffective, insufficient or too burdensome **(NO)**
- **#2: NAEA directive 90210** that set out a goal of reducing by a factor of 1.3 the amount of snide comments by both clients and other non-licensed accounting professional of how big a waste of time our disclaimers are since no one read them in the first place. **(NO)**
- **#3: The Federal Green Initiative Act (FGIA)** towards the reduction of printed paper. The use of disclaimer took up on average 20% of a printed page and thus its removal is projected to exceed projections by 3 years the initial requirement of a 20% reduction of the use of paper as required by the FGIA by 2018.
- **#4 Practitioners will save taxpayers at a minimum: \$5,333,200** through the elimination of the Covered Opinion Rules.

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Circular 230 – June 2014 UPDATE – SUBPART B

- **QUESTION TO AUDIENCE:** Which of the following are **actual regulations** quoted in the review?
- **#1: Executive Order 13563** to remove or modify regulations that are outmoded, ineffective, insufficient or too burdensome **(NO)**
- **#2: NAEA directive 90210** that set out a goal of reducing by a factor of 1.3 the amount of snide comments by both clients and other non-licensed accounting professional of how big a waste of time our disclaimers are since no one read them in the first place. **(NO)**
- **#3: The Federal Green Initiative Act (FGIA)** towards the reduction of printed paper. The use of disclaimer took up on average 20% of a printed page and thus its removal is projected to exceed projections by 3 years the initial requirement of a 20% reduction of the use of paper as required by the FGIA by 2018. **(NO)**
- **#4 Practitioners will save taxpayers at a minimum: \$5,333,200** through the elimination of the Covered Opinion Rules.

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Circular 230 – June 2014 UPDATE – SUBPART B

- **QUESTION TO AUDIENCE:** Which of the following are **actual regulations** quoted in the review?
- **#1: Executive Order 13563** to remove or modify regulations that are outmoded, ineffective, insufficient or too burdensome **(NO)**
- **#2: NAEA directive 90210** that set out a goal of reducing by a factor of 1.3 the amount of snide comments by both clients and other non-licensed accounting professional of how big a waste of time our disclaimers are since no one read them in the first place. **(NO)**
- **#3: The Federal Green Initiative Act (FGIA)** towards the reduction of printed paper. The use of disclaimer took up on average 20% of a printed page and thus its removal is projected to exceed projections by 3 years the initial requirement of a 20% reduction of the use of paper as required by the FGIA by 2018. **(NO)**
- **#4 Practitioners will save taxpayers at a minimum: \$5,333,200** through the elimination of the Covered Opinion Rules. **(CORRECT)**

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Circular 230 – June 2014 UPDATE – SUBPART B

- **What is the definition of Written Advice/Covered Opinions?**
 - Could not find a definition within Circular 230
 - Circular 230 (page 26): “A practitioner may give written advice concerning one or more Federal Tax Matters”
- **I read a number of write-ups** from different Accounting Associations to determine a good definition of the Covered Opinion:

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Circular 230 – June 2014 UPDATE – SUBPART B

- What is the definition of Written Advice/Covered Opinions?
 - Journal of Accountancy – Sally Schreiber JD
 - **Practitioners must base all written advice on:**
 - Reasonable factual and legal assumptions
 - Exercise reasonable reliance
 - Consider all relevant facts that you know or should know
 - Use reasonable efforts to identify the facts relevant to written federal tax advice
 - Consider all relevant legal authorities and relate the law to the relevant facts

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Circular 230 – June 2014 UPDATE – SUBPART B

- What is the definition of Written Advice/Covered Opinions?
 - California CPA Foundation – Kip Dellinger, CPA
 - “Heighted scrutiny is required when tax advisers are aware that their advice will be referred to by a person outside of their firm in the **promotion, marketing or recommending** of a partnership or other entity, investment plan or arrangement that has a significant purpose in the avoidance or evasion of any tax imposed by the IRC.”

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Circular 230 – June 2014 UPDATE – SUBPART B

- **What is not Written Advice:**
 - Government submissions on a client's behalf (ex: comments on proposed regulations)
 - CE Presentations (such as this one) are not written advice

- **Statement from the IRS Overview:** “The significant extra costs associated with these activities may, in some cases, have discouraged obtaining written advice. Because the final regulations remove the unnecessary burden related to the process of preparing a covered opinion, **both practitioners and taxpayers will likely experience an overall decrease in the costs** associated with obtaining written tax advice.

- **TAKEAWAY:** You get to take that statement off the bottom of your email signature.

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Circular 230 – June 2014 UPDATE

4 Main “Subparts” in Circular 230

- **Subpart A** – Rules Governing Authority to Practice (pages 5 - 18)
- **Subpart B** –Duties and Restrictions Relating to Practice (pages 19 – 27)
- **Subpart C – Sanctions for Violations of the Regulations (pages 28 - 30)**
- **Subpart D – Rules Applicable to Disciplinary Proceedings (pages 31 – 44)**

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Circular 230 – June 2014 UPDATE – OPR (SUBPARTS C&D)

- **Subpart C – Sanctions for Violations of the Regulations: (pages 28 - 30)**
 - Sanctions (28)
 - Disreputable Conduct (28)
 - Violations (30)
 - Receipt of Information (30)
- **Subpart D – Rules Applicable to Disciplinary Proceedings: (pages 31 - 44)**
 - There are 33 different sections - sadly for all of you, I did not list them all
 - **Let me boil it down for you: If you get into trouble, read this section**
 - Details:
 - From Institution of Complaint to how to answer complaints to when you get thrown into the IRS disbarment

NEW GOAL: Let's just talk about OPR as a whole which will cover the highlights of Subpart C and D

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Circular 230 – June 2014 UPDATE – OPR (SUBPARTS C&D)

Office of Professional Responsibility - OPR

- OPR supports the IRS's strategy to enhance enforcement of the tax law by ensuring that tax professionals adhere to tax practice standards and follow the law
- OPR has **exclusive** responsibility for practitioner conduct and discipline and functions independently of the enforcement of the IRS
- **Versus: Return Preparer Office (RPO)**
 - Some thought that they would share jurisdiction with OPR regarding discipline
 - However, per IRS.gov, this is what RPO is in charge of
 - Register and promote a qualified tax professional community
 - Improve the compliance and accuracy of tax returns prepared by tax preparers
 - Engage stakeholders to create an environment that fosters compliance and program improvement

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Circular 230 – June 2014 UPDATE – OPR (SUBPARTS C&D)

- **Organization of OPR:**
 - **Office of the “Acting” Director – Kimberly Rogers (as of June 2025)**
 - Final decision maker on all disciplinary recommendations

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Circular 230 – June 2014 UPDATE – OPR (SUBPARTS C&D)

- **Organization of OPR:**
 - **Office of the Director – Kimberly Rogers**
 - Final decision maker on all disciplinary recommendations
 - **Legal Analysis Branch (LAB)**
 - Interprets and applies the standards of practice for tax professionals as well as analyzes, investigates the details regarding allegations of practitioner misconduct
 - **Operations and Management Branch (O&M)**
 - Manages the roles of administration, communication, budget and personnel.

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Circular 230 – June 2014 UPDATE – OPR (SUBPARTS C&D)

- **Representation Requirements in front of OPR:**
 - **Tax Compliance (tax returns)**
 - IRS Form 2848
 - **Conduct**
 - A letter of representation
 - **Both Tax Compliance & Conduct**
 - Both an IRS Form 2848 as well as a letter of representation are required

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Circular 230 – June 2014 UPDATE – OPR (SUBPARTS C&D)

- **Burden of proof: - You tell me which of the following applies to OPR?**
 - **Reasonable Doubt (Same as Beyond a Reasonable Doubt as heard on Law and Order)**
– 95% certainty _____
 - **Clear and Convincing Evidence – 75%** _____
 -
 -
 -
 - **Preponderance of Certainty – 51%** _____

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Circular 230 – June 2014 UPDATE – OPR (SUBPARTS C&D)

- **Burden of proof: - You tell me which of the following applies to OPR?**
 - **Reasonable Doubt (Same as Beyond a Reasonable Doubt as heard on Law and Order)**
– 95% certainty **(CRIMINAL ONLY)**
 - **Clear and Convincing Evidence – 75% (OPR)**
 - Only a handful of situations use this in addition to OPR – examples:
 - Patent infringement
 - Parental rights termination
 - **Preponderance of Certainty – 51% (CIVIL)**

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Circular 230 – June 2014 UPDATE – OPR (SUBPARTS C&D)

- **What Sanctions are authorized on a practitioner by OPR?**
 - **Reprimand/Soft Letter**
 - Not listed in Circular 230
 - However, **most common result**
 - **76% of results**
 - **Censure (a public reprimand)**
 - **1% of results**

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Circular 230 – June 2014 UPDATE – OPR (SUBPARTS C&D)

- **What Sanctions are authorized on a practitioner by OPR?**
 - Reprimand/Soft Letter **(76%)**
 - Censure (a public reprimand) **(1%)**
 - Suspension
 - **QUESTION:** What is the minimum or maximum time for a suspension?

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Circular 230 – June 2014 UPDATE – OPR (SUBPARTS C&D)

- **What Sanctions are authorized on a practitioner by OPR?**
 - Reprimand/Soft Letter **(76%)**
 - Censure (a public reprimand) **(1%)**
 - Suspension
 - **QUESTION:** What is the minimum or maximum time for a suspension?
 - **1 to 59 months**

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Circular 230 – June 2014 UPDATE – OPR (SUBPARTS C&D)

- **What Sanctions are authorized on a practitioner by OPR?**
 - Reprimand/Soft Letter **(76%)**
 - Censure (a public reprimand) **(1%)**
 - Suspension **(1%)**
 - Expedited Suspension
 - **18% of results**
 - Disbarment (5 years)
 - **4% of results**
 - In addition to any of the above:
 - **Monetary Penalty** on an individual or firm (or both)
 - Limited to: Gross income derived or to be derived from conduct

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Circular 230 – June 2014 UPDATE – OPR (SUBPARTS C&D)

- **Disciplinary Process: OPR is the starting point**
 - **Step 1:**
 - **OPR renders an independent determination** is a circular 230 violation occurred
 - **NO** – Close Case
 - **YES** - Then OPR communicates with the practitioner – **“Pre-Allegation Notice”**
 - Details the conduct alleged and statement that investigation initiated
 - Gives an opportunity for practitioner to provide evidence and documentation that is relevant
 - **Step 2:**
 - **OPR** reviews facts, evidence and documents and **renders** “the lowest level of discipline warranted for the violation”
 - **Step 3:**
 - **IF OPR fails to reach an agreement** with the practitioner on an appropriate sanction, a complaint is drafted and referred to Office Of Chief Counsel, General Legal Services (GLS)

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Circular 230 – June 2014 UPDATE – OPR (SUBPARTS C&D)

- **Disciplinary Process: (CONTINUED)**
 - **Step 4:**
 - **General Legal Services (GLS)** then offers a final opportunity to resolve matter.
 - If no, then GLS files a complaint to commence a proceeding in front of an Administrative Law Judge (ALJ)
 - **Step 5:**
 - **Administrative Law Judge (ALJ)**
 - A civil hearing with opportunities for government and practitioner to present evidence to ALJ
 - Hearing is conducted but case can be settled at any time
 - ALJ issues an initial decision regarding OPR's proposed sanction:
 - **Accept the OPR recommendation,**
 - **Change (Increase or decrease) the recommended sanction**
 - **Reject OPR recommendation and then dismiss the case.**

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Circular 230 – June 2014 UPDATE – OPR (SUBPARTS C&D)

- **Disciplinary Process: (CONTINUED)**
 - **Step 6:**
 - **Either party can Appeal to the Treasury Appellate Authority (TAA)**
 - TAA renders the Final Agency Decision
 - For OPR, this is the final determination of the case and these decisions are made public unless practitioner appeals
 - **Definition of the Treasury Appellate Authority (TAA) – per IRS Pub 2010-017**
 - The TAA hears and independently decides appeals to the Secretary of the Treasury from the decisions of Administrative Law Judges in OPR cases.
 - The TAA does not report to anyone within the Office of Chief Counsel or the Service with respect to those matters delegated to him as the TAA.
 - The TAA's delegated authority is separate and apart from their other assigned duties within the Office of Chief Counsel.

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Circular 230 – June 2014 UPDATE – OPR (SUBPARTS C&D)

- **Disciplinary Process: (CONTINUED)**
 - **Step 7:**
 - **Practitioner can appeal** by filing a complaint with **US District Court**
 - Federal District Judge will review findings of facts based on administrative record and will set aside TAA action only if it is proved that decision is arbitrary, capricious (sudden and unpredictable change), contrary to law or an abuse of discretion.

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Circular 230 – June 2014 UPDATE – OPR (SUBPARTS C&D)

FINAL POP QUIZ

- **Question #1:**
 - **Can a disciplined practitioner represent clients?**

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Circular 230 – June 2014 UPDATE – OPR (SUBPARTS C&D)**FINAL POP QUIZ**

- Question #1:
 - Can a disciplined practitioner represent clients?
 - **NO**

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Circular 230 – June 2014 UPDATE – OPR (SUBPARTS C&D)**FINAL POP QUIZ**

- Question #2:
 - Can a disciplined practitioner get client information?

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Circular 230 – June 2014 UPDATE – OPR (SUBPARTS C&D)**FINAL POP QUIZ**

- **Question #2:**
 - **Can a disciplined practitioner get client information?**
 - **YES** – by filing IRS Form 8821 (tax returns and transcripts)

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Circular 230 – June 2014 UPDATE – OPR (SUBPARTS C&D)**FINAL POP QUIZ**

- **Question #3:**
 - **Can a disciplined practitioner go to a meeting with a client?**

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Circular 230 – June 2014 UPDATE – OPR (SUBPARTS C&D)

FINAL POP QUIZ

- Question #3:
 - Can a disciplined practitioner go to a meeting with a client?
 - **YES** – However, may only respond to questions and provide facts and documents – cannot advocate for the taxpayer nor argue merits of an issue

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Circular 230 – June 2014 UPDATE – OPR (SUBPARTS C&D)

FINAL POP QUIZ

- Question #4:
 - What Preparer Penalties **REQUIRE referral** by IRS to OPR?
 -
 -
 -

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Circular 230 – June 2014 UPDATE – OPR (SUBPARTS C&D)

FINAL POP QUIZ

- **Question #4:**
 - **What Preparer Penalties REQUIRE referral by IRS to OPR?**
 - 6700 – Promoting Abusive Tax Shelters
 - 6701 (a) – Aiding and Abetting understatement of a tax liability
 - 7407 – Injunction of a tax return preparer (can not prepare returns)
 - 7408 – Injunction of a specified conduct relating to tax shelters and reportable transactions

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Circular 230 – June 2014 UPDATE – OPR (SUBPARTS C&D)

FINAL POP QUIZ

- **Question #5:**
 - **What Preparer Penalties ARE DISCRETIONARY referrals to OPR by IRS?**
 -
 -
 -
 -

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Circular 230 – June 2014 UPDATE – OPR (SUBPARTS C&D)

FINAL POP QUIZ

- **Question #5:**
 - **What Preparer Penalties ARE DISCRETIONARY referrals to OPR by IRS?**
 - 6692 – Accuracy Related Penalty
 - 6694 (a) – Understatement of liability due to an unreasonable position
 - 6695 – Failure to furnish a copy of return, failure to sign return or failure to keep a copy of a tax return
 - 6702 – Frivolous tax return submissions

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Circular 230 – June 2014 UPDATE – OPR (SUBPARTS C&D)

- **Additional typical referrals to OPR?**
 - 1. Inaccuracies or unreasonable entries on tax returns, financial statements or documents
 - 2. Lack of due diligence exercised by a practitioner
 - 3. A willful attempt by the practitioner to evade payment/assessment of Federal Tax
 - 4. Taking a taxpayer's refund by any means

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Circular 230 – June 2014 UPDATE – OPR (SUBPARTS C&D)

- **Additional typical referrals to OPR? (CONTINUED)**
 - 5. Patterns of misconduct – multiple years, multiple clients or inappropriate conduct towards multiple IRS employees
 - 6. Potential conflict of interest situations
 - 7. Any willful violation of Circular 230

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THANK YOU

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