

# A close look at proposed changes to Circular 230.

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On Dec. 20, the IRS and Treasury Department issued [proposed regulations](#) that would update the rules governing tax practice before the IRS for the first time in more than a decade. The rules are included in [Treasury Department Circular No. 230](#) and apply to interactions specified practitioners have with the IRS concerning the tax matters of their clients.

The following is a list of the most notable changes the proposed regulations would make to Circular 230.

1. Eliminate references to registered tax return preparers. In June of 2011, the Treasury Department and IRS established the qualifications for registered tax return preparers who were subject to Circular 230. However, the IRS stopped using the designation in 2014 after a federal court found that preparing tax returns did not constitute practice before the IRS and barred the agency from using the designation. The proposed

regulations would remove the references to registered tax return preparers that remain in Circular 230.

2. More actions would qualify as disreputable conduct. A practitioner who engages in disreputable conduct, as defined in Circular 230, can be disbarred or suspended from practice before the IRS.

- Failing to inform client of noncompliance. Under the proposed regulations, knowingly failing to inform a client of noncompliance, error or omission would constitute disreputable conduct because it causes the practitioner to perpetuate false or misleading information to the IRS and potentially exposes the client to adverse consequences. The obligation to notify clients would only apply to returns prepared, approved or submitted during the representation of a client. The proposed regulations also instruct practitioners that they must consider whether they can continue meeting their obligation to exercise diligence as to the accuracy of a return if the client refuses to take corrective action.
- Contingent fees for refund or credit claims. The proposed regulations would move the prohibition on preparers charging contingency fees for refund

or credit claims from the section of Circular 230 governing refund claims to the section on disreputable conduct. Following the change, the charging of contingency fees for the filing or preparation of an original tax return or a claim for a refund or credit would be defined as disreputable conduct. The change was made in response to a federal court ruling that found the IRC can't prohibit the charging of contingent fees for ordinary refund claims under its authority to regulate practice before the agency.

- Failure to follow tax laws. The proposed regulations would classify a practitioner's willful failure to follow any federal tax law as disreputable conduct because it reflects a lack of due regard for those laws.

### 3. Broaden the prohibition on negotiating client checks.

Under the current version of Circular 230, practitioners are barred from endorsing or negotiating checks issued to their clients with respect to their federal tax liability.

The proposed regulations would broaden the prohibition to apply to all electronic payments to clients with respect to tax liability, including prepaid debit cards, phone or mobile payments, or forms of

electronic payments. This prohibition would apply to payment methods not currently used by the Treasury Department.

4. Add to Circular 230's list of best practices. The proposed regulations would revise Circular 230's best practices section to add the following practices:
  - Create a data security policy to maintain safeguards with respect to client information and establish a plan and procedures for responding to data breaches. This best practice would likely be satisfied through a written information security plan (WISP), which is required for tax practices.
  - Identify, evaluate and address any mental impairment that could adversely impact a practitioner's ability to effectively represent a client before the IRS. This would include mental impairments arising out of, or related to, age, substance abuse, physical or mental health condition, or some other circumstance.
  - Establish a business continuity and succession plan that includes procedures and safeguards related to the cessation of a practice or the occurrence of an outside event, such as a natural disaster or cyberattack.

5. Duty to maintain technological competence.

Practitioners would be required to have the appropriate level of knowledge, skill, thoroughness and preparation necessary for the tax matter in which they are engaged.

6. Sanctions for actions outside of tax practice. The proposed regulations would allow the IRS to sanction practitioners for conduct related to their overall fitness to practice. Sanctions would not be limited to the actions practitioners take while representing clients before the agency.

7. IRS can still investigate suspended practitioners. A federal court ruled in 2017 that the Treasury Department and IRS lacked jurisdiction to investigate whether suspended practitioners violated the terms of their suspension because they were no longer practitioners under the terms of Circular 230. The proposed regulations would specify that the IRS has the jurisdiction to investigate suspended practitioners under 31 U.S.C. §330(c), which provides the agency with the authority to suspend, disbar or censure practitioners under Circular 230. They would also specify that suspended practitioners remain under Circular 230 for the purpose of investigating and acting

on any violation of a suspension or violation of the law or regulations while they are suspended.

Treasury Circular 230

IRS updates