



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

4.1.10

OCTOBER 3, 2023

EFFECTIVE DATE

(10-03-2023)

PURPOSE

- (1) This transmits revised IRM 4.1.10, Planning and Special Programs, Return Preparer Program Coordinator.

MATERIAL CHANGES

- (1) Material changes to the IRM are listed in the table below:

IRM Reference	Description of Change
4.1.10.1.6	Updated acronym table.
4.1.10.1.8	Updated links.
4.1.10.2.1	Content wording modified to expand guidance.
4.1.10.2.2	Content wording modified to reflect program responsibilities and priorities.
4.1.10.4.1.1	Content expanded to reflect preparer penalty referrals to dedicated group.
4.1.10.4.5.1	Content wording updated to reflect current procedures..
4.1.10.4.6	Updated procedures for initial sample selection.
4.1.10.4.8	Content wording updated to reflect current procedures.
4.1.10.4.9	Content wording modified to expand guidance.
4.1.10.4.10	Updated procedures for expansion sample selection.
4.1.10.4.11	Moved penalty procedures to 4.1.10.7.1.
4.1.10.5	Content wording modified to expand guidance.
4.1.10.6	Formerly 4.1.10.7, Referrals to the Lead Development Center at PAC Termination. Content updated to reflect current procedures. Former 4.1.10.6, Third Party Notification in PACs obsolete. Removed section.
4.1.10.7	Formerly 4.1.10.8, Return Preparer Program Penalty Cases. Content wording modified to expand guidance.
4.1.10.7.1	Formerly 4.1.10.8.1, Creating Return Preparer Penalty Cases. Content updated to reflect current procedures.

IRM Reference	Description of Change
4.1.10.7.3	Formerly 4.1.10.8.3, Reviewing Penalty Cases. Content updated to reflect current procedures
4.1.10.7.3.1	Formerly 4.1.10.8.3.1 No-Change Preparer Penalty Cases. Content updated to reflect current procedures.
4.1.10.7.3.2	Formerly 4.1.10.8.3.2 Agreed Preparer Penalty Case Procedures for SB/SE Only. Content updated to reflect current procedures.
4.1.10.7.3.3	Formerly 4.1.10.8.3.3 Unagreed Preparer Penalty Case Procedures for SB/SE Only. Content updated to reflect current procedures.
4.1.10.7.4	Formerly 4.1.10.8.4 Closing Return Preparer Cases - Procedures for SB/SE Only. Content updated to reflect current procedures.
4.1.10.7.6	Formerly 4.1.10.8.6, Suspense Return Preparer Penalty Case Procedures for SB/SE Only. Content updated to reflect current procedures.
4.1.10.8	Formerly, 4.1.10.9, Referrals to the Office of Professional Responsibility at Preparer Penalty Closure. Content updated to reflect current procedures.
4.1.10.9	Formerly 4.1.10.10, Referrals from the Office of Professional Responsibility. Moved to 4.1.10.9.
4.1.10.10	Formerly 4.1.10.11, Bypass of the Taxpayer's Representative. Moved to 4.1.10.10
4.1.10.11	Formerly 4.1.10.12, Misrepresentation on Form 2848, Power of Attorney and Declaration of Representative. Moved to 4.1.10.11

- (2) Minor editorial changes have been made throughout this IRM. Website addresses, legal references, and IRM references were reviewed and updated as necessary.

EFFECT ON OTHER DOCUMENTS

IRM 4.1.10, dated 09-27-2021, is superseded.

AUDIENCE

Return Preparer Coordinators (RPCs) assigned to Small Business Self Employed (SB/SE) Area Planning and Special Programs (PSP), and Large Business and International (LB&I).

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Small Business/Self-Employed

4.1.10

Return Preparer Program Coordinator

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4.1.10.1
(09-27-2021)
Program Scope and Objectives

- (1) Purpose: This IRM section serves as a reference guide on Return Preparer Program procedures for Return Preparer Coordinators.
- (2) Audience: These procedures apply to SB/SE and LB&I Return Preparer Coordinators.
- (3) Policy Owner: The Director, Examination – Exam Case Selection, under the Director, Headquarters Examination.
- (4) IRM Owner: Field Case Selection, under the Director, Examination – Exam Case Selection.
- (5) Primary Stakeholders: SB/SE and LB&I Return Preparer Coordinators.
- (6) Contact Information: To recommend changes or make any other suggestions related to this IRM section, see IRM 1.11.6.6, Providing Feedback About an IRM Section - Outside of Clearance.

4.1.10.1.1
(09-27-2021)
Background

- (1) The Return Preparer Program (RPP) is an IRS-wide effort to enforce compliance of tax return preparers. Tax return preparers are a critical component of tax administration and provide a unique opportunity to impact taxpayer behavior and compliance with tax laws. The IRS encourages compliance among tax return preparers through a variety of means by conducting enforcement activities to identify and address the most egregious return preparers.

4.1.10.1.2
(10-03-2023)
Authority

- (1) Authority to administer the Return Preparer Program includes, but is not limited to, the following:

Authority	Title
Treas. Reg. 1.6695-1	Other assessable penalties with respect to the preparation of tax returns for other persons. 26 CFR 1.6695-1
Treas. Reg. 301.7602-2	Third Party Contacts. 26 CFR 301.7602-2
Treas. Reg. 301.7701-15	Tax Return preparer. 26 CFR 301.7701-15
IRM 1.2.65.3.5	SBSE 1-23-17, Authority to Request and Inspect Preparer Records
IRC 6107	Tax return preparer must furnish copy of return to taxpayer and must retain a copy or list
IRC 6103(k)(6)	Disclosure by certain officers and employees for investigative purposes
IRC 6109	Identifying numbers
IRC 6694	Understatement of taxpayer's liability by tax return preparer

Authority	Title
IRC 6695	Other assessable penalties with respect to the preparation of tax returns for other persons
IRC 6671	Rules for application of assessable penalties
IRC 6700	Promoting abusive tax shelters, etc.
IRC 6701	Penalties for aiding and abetting understatement of tax liability
IRC 6708	Failure to maintain lists of advisees with respect to reportable transactions
IRC 6713	Disclosure or use of information by preparers of returns

4.1.10.1.3
(09-27-2021)
Responsibilities

- (1) The Director, Headquarters Examination, is the executive responsible for providing policy and guidance for field employees, and ensuring consistent application of policy, procedures, and tax law to effect tax administration while protecting taxpayers' rights. See IRM 1.1.16.3.5, Headquarters Examination, for additional information.
- (2) The Director, Examination – Exam Case Selection, reports to the Director, Headquarters Examination, and is responsible for providing guidance on selection of cases and delivery of inventory, input on the work plan, and setting direct assignment criteria for routing of examination work. See IRM 1.1.16.3.5.3, Exam Case Selection, for additional information.
- (3) Field Case Selection (FCS), under the Director, Examination – Exam Case Selection, is the group responsible for providing policy guidance on the selection of cases and delivery of inventory for field examination. See IRM 1.1.16.3.5.3.1, for additional information.

4.1.10.1.4
(09-27-2021)
Program Management and Review

- (1) Periodic program reviews are conducted by Field Case Selection to:
 - a. Assess the effectiveness of specific programs within Examination or across the organization,
 - b. Determine if procedures are followed,
 - c. Validate policies and procedures, and
 - d. Identify and share best/proven practices.

4.1.10.1.5
(09-27-2021)
Program Controls

- (1) See IRM 4.1.1.1.4 Planning and Special Programs, Planning, Monitoring and Coordination Program Reports and IRM 4.1.5.1.4 Case Building, Classification, Storage and Delivery Program Reports for Program Control information applicable to this section.

4.1.10.1.6
(09-27-2021)
Acronyms

- (1) The following table lists acronyms commonly used throughout this IRM and their definitions:

Acronym	Definition
A-CIS	AIMS-Centralized Information System
AFSP	Annual Filing Season Program
AIMS	Audit Information Management System
BMF	Business Master File
CAF	Centralized Authorization File
CCP	Centralized Case Processing
CDE	Compliance Data Environment
CFR	Code of Federal Regulations
CI	Criminal Investigation
CPA	Certified Public Accountant
DFO	Director of Field Operations (LB&I)
DDV	Due Diligence Visits
EFIN	Electronic Filing Identification Number
EIN	Employer Identification Number
EITC	Earned Income Tax Credit
ERCS	Examination Returns Control System
ERO	Electronic Return Originator
EUP	Employee User Portal
FCS	Field Case Selection
FEA	Fraud Enforcement Advisor
IDRS	Integrated Data Retrieval System
IMF	Individual Master File
IRC	Internal Revenue Code
LB&I	Large Business and International
LE	Lead Examiner
LDC	Lead Development Center
MeF	Modernized e-File
MFT	Master File Tax
OFE	Office of Fraud Enforcement
OPR	Office of Professional Responsibility
OSP	Office of Servicewide Penalties

Acronym	Definition
OTSA	Office of Tax Shelter Analysis
PAC	Program Action Case
POA	Power of Attorney
PSC	Preparer Steering Committee
PSP	Planning and Special Programs
PTIN	Preparer Tax Identification Number
RFIS	CI Refund Fraud and Investigative Support
RPC	Return Preparer Coordinator
RPO	Return Preparer Office
RPP	Return Preparer Program
RPPWG	Return Preparer Penalty Working Group
RRP	Return Review Program
SAC	Special Agent in Charge
SB/SE	Small Business/Self-Employed
SDC	CI Scheme Development Centers
TE/GE	Tax Exempt and Government Entities
TIGTA	Treasury Inspector General for Tax Administration
TIN	Taxpayer Identification Number
TPC	Third Party Contact

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4.1.10.1.7
(09-27-2021)

Terms

- (1) The following table lists commonly used terms and associated definitions referenced throughout this IRM:

Term	Definition
Tax Return	A return (including an amended or adjusted return) filed by or on behalf of a taxpayer reporting the liability of the taxpayer for tax under the Code, or related to its collection, required to be filed according to the forms and regulations prescribed by the Treasury Department or the IRS.
Paid Return Preparer	Any person who prepares for compensation, or who employs one or more persons to prepare for compensation, all or a substantial portion of any tax return or any claim for refund of tax under the Internal Revenue Code.

Term	Definition
Ghost Preparer	Ghost preparers are compensated return preparers who fail to identify themselves, or fail to properly identify themselves, on returns they prepare or prepare and file with the IRS in order to hide their identity.
Return Preparer Database	The Return Preparer Database is a repository of return preparers who prepare and sign 10 or more returns. It contains more than 1,000 data elements and can be used as an investigative tool when researching return preparers for compliance and misconduct issues. See IRM 4.1.5.2.5, Return Preparer Database, for more information.
SB/SE Referral	The SB/SE Referral database is the centralized location used by SB/SE Examination to track and monitor return preparer referrals received in SB/SE Examination Area Offices.
Non-PAC Penalty	The Non-PAC Penalty database is the centralized location used by SB/SE Examination to track and monitor return preparer penalties not related to a PAC.

4.1.10.1.8
(10-03-2023)

Related Resources

- (1) The following table lists related resources which contain additional guidance examiners may reference regarding the Return Preparer Program:

Resource	Title
IRM 1.2.1.16.1	Policy Statement 25-2, Return Preparer Misconduct
IRM 4.8.10	Notice of Employment Tax Determination Under IRC 7436
IRM 4.10.3	Examination Techniques
IRM 4.11.51	Return Preparer Program
IRM 4.11.55	Power of Attorney Rights and Responsibilities
IRM 4.32.2	The Abusive Transactions (AT) Process
IRM 11.3.21	Investigative Disclosure
IRM 20.1.6	Preparer, Promoter, Material Advisor Penalties
IRM 25.1.2	Recognizing and Developing Fraud
IRM 25.1.3.6	Return Preparers
IRM 25.24.5	Return Preparer Misconduct Field Examination
IRM 25.27.1	Third-Party Contact Program

Resource	Title
Rev. Proc. 81-38 and Rev. Proc. 2014-42	Limited Practice Without Enrollment (modified and superseded by Rev. Proc. 2014-42 for returns filed after December 31, 2015.)
Rev. Proc. 2014-42	Annual Filing Season Program

- (2) Useful internal websites not listed elsewhere in this document include:

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- b. AIMS/ERCS Knowledge Management *Exam Systems Knowledge Base - Site Pages - GrpbyChap (sharepoint.com)*
- c. Return Preparer Knowledge Management *Return Preparer Information (sharepoint.com)*
- d. LB&I Return Preparer Program *Penalty Consideration (sharepoint.com)*

4.1.10.2
(10-03-2023)

Overview of the Return Preparer Program

- (1) Each Area Planning and Special Programs (PSP) Territory Manager will designate staff members to coordinate on an area basis all SB/SE compliance aspects of the Return Preparer Program.
- (2) The Area Return Preparer Coordinator (RPC) will be responsible for planning and coordinating the IRS's Return Preparer Strategy.

4.1.10.2.1
(09-27-2021)

Area Return Preparer Coordinator (RPC) Responsibilities

- (1) The RPC will be responsible for:
 - a. Planning and coordinating compliance activities related to return preparers.
 - b. Ensuring uniformity in the application of return preparer requirements by advising compliance personnel on appropriate compliance actions.
 - c. Monitoring activities of the Return Preparer Program, identifying problems within the program and notifying the appropriate National Headquarters Office analyst with appropriate recommended solutions.
 - d. Conducting presentations at meetings and training sessions for examiners on program topics utilizing national outreach and educational presentations.
 - e. Maintaining referrals in SB/SE Referral on potentially egregious return preparers received from various sources.
 - f. Evaluating referrals received for potential Program Action Case (PAC) development.
 - g. Preparing documentation for PAC approval.
 - h. Coordinating all compliance activity of income tax returns prepared by return preparers approved for a PAC.
 - i. Maintaining preparer penalty cases in the SB/SE Referral and Non-PAC Penalty databases.
 - j. Monitoring and reporting on preparer penalty cases worked by examination groups.
 - k. Reviewing preparer penalty cases closed by examination groups.

Exception: Preparer penalty cases resulting from 6701 investigations authorized by the LDC and penalty cases worked in the Return Preparer Penalty Working Group (RPPWG) will not be tracked or reviewed by the Area RPC.

- l. Communicating with the examiner and the Fraud Enforcement Advisor (FEA) when a return preparer is in fraud development status (Audit Information Management System (AIMS) Status Code 17).
 - m. Initiating compliance activity for certified public accountants (CPA), attorneys, or enrolled agents (EA) who misrepresent their status before the IRS and the Annual Filing Season Program (AFSP) under Rev. Proc. 2014-42. See IRM 4.1.10.11, Misrepresentation on Form 2448, Power of Attorney and Declaration of Representative.
- (2) The RPC will serve as the Area contact for:
- a. Office of Professional Responsibility (OPR)
 - b. Return Preparer Office (RPO)
 - c. Lead Development Center (LDC)
 - d. Criminal Investigation (CI)
 - e. CI Refund Fraud and Investigative Support (RFIS)
 - f. Treasury Inspector General for Tax Administration (TIGTA)
 - g. Central Authorization File (CAF) unit
 - h. Campus Function
 - i. Stakeholder Liaison functions
- (3) To facilitate the development of the Return Preparer Program, the RPC should develop a good working relationship with the following:
- a. SB/SE Exam Headquarter Return Preparer Program and Policy Analysts
 - b. CI Field Office Questionable Refund Program, Return Preparer Program Coordinators, and CI Refund Fraud and Investigative Support (RFIS), located in campus.
 - c. Return Preparer Office (RPO).
 - d. Lead Development Center (LDC).
 - e. Area PSP E-File Coordinator - A referral source for PACs.
 - f. Office of Professional Responsibility (OPR).
 - g. Area TIGTA personnel who handle misrepresentations by powers of attorney.
 - h. Area Fed/State Coordinator - Some states have Fed/State agreements that include sharing information about questionable/problem return preparers.
 - i. TE/GE Exempt Organization Examination Technical Coordinator and the EO Financial Investigations Unit.
 - j. SB/SE Examination Technical Services Fraud Coordinators and Office of Fraud Enforcement (OFE) Fraud Enforcement Advisors (FEA).
 - k. Office of Servicewide Penalties (OSP).

4.1.10.2.2
(10-03-2023)
**Return Preparer
Program Priorities**

- (1) The overall priority of the Return Preparer Program, as part of the Exam Plan, will vary from year to year. General priorities within the program are as follows:

- a. Return Preparer Referrals — RPCs will input, track and monitor all referrals received in Area Offices in SB/SE Referral, which is housed in the Return Preparer Database. RPCs should ensure referrals received are entered within 14 days of receipt and considered for compliance action within 120 days of receipt.
- b. PAC - Development, approval, and delivery of local and national program work based on available resources, monitoring and terminating.
- c. Ghost Preparer case delivery and assistance.
- d. Return Preparer Penalties - Provide education, assistance, monitoring, and review related to civil preparer penalties.
- e. Other Return Preparer Compliance activities including, but not limited to, preparer misrepresentation, referrals to other functions and assisting compliance personnel with preparer research requests.

4.1.10.3
(09-27-2021)

**Preparer Steering
Committee (PSC)- LB&I
Only**

- (1) LB&I will establish a multi-functional preparer steering committee (PSC).
- (2) The PSC will be responsible for reviewing information, sample results, and making recommendations for a PAC consideration.
- (3) The PSC members are the LB&I RPC, the LB&I RPC's manager, the LB&I Office of Professional Responsibility (OPR) Analyst, an Office of Tax Shelter Analysis (OTSA) representative, a representative of Financial Crimes (CI), and the impacted Practice Area Planning and Special Programs (PSP) Analyst.

4.1.10.4
(09-27-2021)

**Program Action Case
Overview (PAC)**

- (1) PACs are preparer projects where clients of questionable preparers are examined to determine whether preparers are accurately preparing returns. If a preparer's misconduct appears to be pervasive and not isolated to a single taxpayer, consideration should be given to initiating a PAC.
- (2) PACs should be limited to situations where information indicates a return preparer has engaged in a widespread practice of making material errors that demonstrates intentional misconduct or clear incompetence in preparing tax returns.
- (3) The primary purpose of a PAC is to determine if the return preparers preparation behavior results in an understatement of tax on the client's return. If an understatement of tax is present, the examiner should consider penalties on the individual taxpayer and return preparer, just like any other audit. If compliance actions on the preparer appear to be warranted the examiner should provide documentation to the RPC and Lead Examiner (LE) to determine if additional action may be warranted on the preparer upon PAC termination.

4.1.10.4.1
(09-27-2021)

PAC Inventory Sources

- (1) PACs originate from referrals from the following sources:
 - a. Form 14719, SB/SE Return Preparer Referral
 - b. Return Preparer Office (RPO)
 - c. Criminal Investigation (CI)
 - d. SB/SE Lead Development Center (LDC)
 - f. Office of Professional Responsibility (OPR)
 - g. Treasury Inspector General for Tax Administration (TIGTA)
 - h. Large Business & International (LB&I)
 - i. Tax Exempt and Government Entities (TE/GE)
 - j. E-file monitoring visits

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- k. Due Diligence Program Visits
- l. Campus Processing
- m. Preparers identified during workload classification
- n. Other sources

4.1.10.4.1.1
(10-03-2023)

**Return Preparer Referral
Review Process**

- (1) Within 14 days of receiving a Form 14719, SBSE Return Preparer Referral, the RPC will upload and add the referral information in SB/SE Referral.
- (2) The RPC will evaluate each referral within 120 days of receipt and determine if a PAC is warranted.
 - a. If the RPC determines a PAC is warranted, the RPC will update SB/SE Referral with the disposition "referred for PAC development" and select the date the disposition was made.
 - b. If the RPC does not have sufficient information to make a determination on the referral the RPC will update SB/SE Referral with the disposition "more information needed to make a determination" and select the date the disposition was made. The RPC should reach out to the referring individual requesting more information. If the RPC does not receive the additional information requested within 30 days, the initial disposition should be changed in SB/SE Referral to "closed – insufficient information" and the date the disposition was made should be updated.
 - c. If after evaluating the referral, the RPC determines the referral should be forwarded to CI, the LDC, or the RPPWG, the RPC should update SB/SE Referral with the disposition "referred", then select the organization to which referred and select the date the disposition was made. For details on making a referral to the LDC see IRM 4.1.10.4.1.1 (4). For details on making a referral to CI see IRM 4.1.10.4.1.1 (5). For details on making a referral to the RPPWG see IRM 4.1.10.4.1.1 (6) .
 - d. If after evaluating the referral the RPC determines the referral should be forwarded to another Area, the RPC should update SB/SE Referral with the disposition "transferred to another Area" and select the date the disposition was made. The RPC will e-mail the control number and any research conducted to the Field Case Selection (FCS) Return Preparer Analyst and request to have the referral reassigned to the appropriate Area in SB/SE Referral.
 - e. If the RPC determines a PAC is not warranted, the RPC will update SB/SE Referral with the disposition "closed" and select the appropriate disposition reason and the date the disposition was made.
 - f. If after evaluating the referral, the RPC finds the preparer is being addressed by another function they should forward the referral to the function for consideration.
- (3) If a referral is received and it is determined that it is more appropriate for the referral to be worked by the LDC, the RPC will complete Form 14242, Reporting Abusive Tax Promotions and/or Preparers, update SB/SE Referral with the disposition "referred" and the disposition reason "Lead Development Center" and forward the referral to the LDC.
 - a. The Lead Development Center was established to centralize the receipt and development of leads on abusive tax schemes and promoters. The LDC has the authority to approve SB/SE and TE/GE promoter/preparer investigations under IRC 6700, IRC 6701, IRC 7407, and IRC 7408.
 - b. For more information about the LDC, see IRM 4.32.2.4.2, SB/SE Lead Development Center (SB/SE LDC).

- (4) A referral to the LDC may be warranted under the following circumstances:

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- b. The preparer's activities are responsible for significant dollar losses to the government and/or a large number of returns are impacted.
 - c. The preparer's activities impact more than one Area.
 - d. Any other factors the RPC determines impacts compliance.
- (5) If a referral is received, and it is determined that it is more appropriate for the referral to be worked by CI, the RPC will update SB/SE Referral with the disposition "referred" and the disposition reason "Criminal Investigation" and forward the referral to CI.
- a. CI investigates potential criminal violations of the Internal Revenue Code and related financial crimes. They work return preparer fraud which generally involves the orchestrated preparation and filing of false income tax returns (in either paper or electronic form) by unscrupulous preparers who may claim, for example: inflated personal and business expenses, false deductions, unallowable credits or excessive exemptions.
- (6) If a referral is received, and it is determined that the referral does not meet PAC criteria and is more appropriate for the referral to be worked by the RPPWG, the RPC will verify the referral meets the criteria to be referred to the RPPWG and update SB/SE Referral with the disposition "referred" and the disposition reason "Return Preparer Penalty Working Group" and forward the referral to the RPPWG.
- (7) As part of the referral review process the RPC should ensure the preparer is personally compliant on their tax return(s). If personal non-compliance is identified, a referral should be made to the Area Information Referrals Coordinator using Form 5346, Examination Information Report, regardless of whether or not a PAC is pursued. At the time of referral disposition the RPC will update SB/SE Referral indicating the preparer's filing status and if a referral was made. If a referral was made, Form 5346, Examination Information Report, needs to be uploaded. For purposes of the paragraph, personal non-compliance is defined as:
- a. Preparer is a nonfiler
 - b. Preparer is not reporting income consistent with their volume of returns and/or
 - c. Preparer appears to have false or inflated deductions or credits.

4.1.10.4.1.2
(10-03-2023)

Referrals from Criminal Investigation

- (1) CI refers discontinued return preparer investigations, as well as successfully prosecuted cases.
- a. Not all criminal investigations result in prosecution recommendations. SB/SE can accept discontinued subject investigations and closed primary investigations for PAC or civil penalty consideration. In addition, discontinued grand jury investigations can be referred as long as the referral does not contain grand jury information.
 - b. To avoid delays in classification and assignment, these cases should not be referred as prime leads. Instead, upon closure of these investigations, the Special Agent in Charge (SAC) will forward the Closed CI Investigation Forwarding Memorandum with the scheme package and/or

appropriate files through the designated Area RPC e-mail box and e-mail a copy to the CI Refund Crimes and Cyber Crimes Investigative Management Analyst. Visit Knowledge Management for SB/SE RPC Contact Information at: *Exam Procedures Knowledge Base - PSP - Return Preparer Coordinators (RPC's) - Area - PSP - Return Preparer Coordinators (RPC's) - Area (sharepoint.com)* .

- c. Pertinent non-grand jury information included with the Form 9131, Request for Grand Jury Investigation, will be used to refer discontinued grand jury investigations. Copies of returns should be included in the referral package. Originals should be returned to the proper campus.

4.1.10.4.1.3
(10-03-2023)
**CI Request for a
"Parallel" PAC**

- (1) A Parallel PAC is an investigation to assist in determining harm to the government from a return preparer who is the subject of an ongoing criminal investigation.
- (2) CI will provide the returns to be examined.
- (3) The CI Request for Audit Support Memorandum will include the following:
 - a. Request initiation of PAC in support of a criminal investigation involving a return preparer.
 - b. Determine the number of returns to be examined.
 - c. Provide the name of the cooperating revenue agent on the criminal investigation (if assigned).
- (4) The initial PAC examinations should be limited to no more than 30 client cases. If extenuating circumstances exist, that require the initial sample to exceed 30 returns, the reason should be indicated on the CI Request for Audit Support Memorandum.
- (5) The memorandum should be routed to the local SB/SE RPC who will initiate the PAC process. The RPC will coordinate with CI to provide updates as needed. At the completion of the initial sample, the SB/SE RPC will notify CI of the audit results and may provide input on whether additional audits are warranted.
- (6) CI requests for additional audits must be approved by SB/SE's PSP. CI will send the CI Request for Audit Support Memorandum, which is used to request additional audits when it is necessary for the success of the criminal investigation. The memorandum should not be used for Schedule A deduction schemes. In those investigations, case agents will coordinate with their assigned CI Refund Fraud and Investigative Support (RFIS) analyst who will provide the referral information to the Fraud Detection Analyst, Refund and Cyber Crimes.
- (7) The Fraud Detection Analyst, Refund and Cyber Crimes, is responsible for referring Schedule A client audits to W&I or SB/SE Campuses for correspondence audits. A duplicate request should not be sent to SB/SE PSP. Audit resources are limited and CI must work with the examination function to optimize IRS resources.

4.1.10.4.2
(09-27-2021)

**PAC Development
Factors**

- (1) The RPC should review available information about the return preparer by researching their Social Security Number (SSN), Preparer Tax Identification Number (PTIN), Electronic Filing Identification Number (EFIN), and Employer Identification Number (EIN) to determine if a PAC is warranted.
- (2) Factors to consider for initiating a PAC should include, but are not limited to:
 - The egregious nature of the questionable conduct; e. g. does the preparer engage in a widespread practice of making material errors and/or demonstrate intentional misconduct.
 - Volume of client taxpayers affected by the preparer's conduct.
 - Available resources of the examination groups receiving PAC examinations.
 - Type(s) of returns involved (e.g. 1040) and the tax years available.
 - Materiality of potential adjustments.
 - Prior compliance activities; e.g. preparer penalties previously asserted, DDV/ERO visitations, and/or RPO compliance letters.
- (3) Additional factors to consider with PSP management include:
 - Exam Plan workload and planning needs.
 - Refund and EITC rate.

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4.1.10.4.3
(10-03-2023)

**Pre-PAC Contact with
Criminal Investigation
(Deconfliction)**

- (1) In **SB/SE**, when a preparer has been identified for a potential PAC, the RPC must deconflict with CI by sending an e-mail to the CI RPC and/or the CI ensure that any civil action will not conflict with an open criminal investigation.
- (2) In **LB&I**, when the return preparer's activity warrants the initiation of a PAC, the RPC will contact the Office of Tax Shelter Analysis (OTSA) for coordination to ensure there is no conflict with an open criminal investigation or tax promoter investigation. The RPC will also coordinate with SB/SE to ensure there is no conflict.

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4.1.10.4.4
(09-27-2021)

**Lead Development
Center (LDC) Clearance
for PAC (Deconfliction)**

- (1) Before initiating a PAC the RPC will deconflict with the LDC because a return preparer can violate both IRC 6694 and IRC 6701.
Note: Under IRC 6701(f)(2), no penalty shall be assessed under IRC 6694(a) or (b) on any person with respect to any document for which a penalty is assessed under IRC 6701(a).
- (2) If there **is not** an LDC lead in the Return Preparer Database:
 - a. The RPC may initiate the PAC and update SB/SE Referral accordingly.
- (3) If there **is** an LDC lead in the Return Preparer Database:
 - a. If there is a lead with no disposition, the RPC should contact the LDC at status. The LDC will respond to the RPC with clearance or non-clearance.

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Note: If the LDC provides clearance, the RPC can move forward with initiating the PAC and the RPC will update SB/SE accordingly.

Note: If the LDC does not provide clearance, the RPC will close the referral and update SB/SE Referral accordingly.

- b. If there is a lead with a disposition and the disposition is not “LDC Approved 6700 Investigation” RPC may initiate the PAC and will update SB/SE Referral accordingly.
- c. If there is a lead with a disposition “LDC Approved 6700 Investigation” a PAC cannot be pursued. The RPC should forward the information to the LDC so they can consider as part of their investigation.

4.1.10.4.5
(09-27-2021)
PAC Approval Process

- (1) The RPC must secure approval from the appropriate management officials in order to initiate a PAC.

4.1.10.4.5.1
(10-03-2023)
PAC Approval Process for SB/SE

- (1) After deconflicting the preparer with CI and the LDC, the RPC will generate the Area Director Memorandum in SB/SE Referral and include a narrative of the questionable issues, schemes and/or misconduct observed.
- (2) The RPC will:
 - a. Forward the memo to their Section Chief for review and approval.
 - b. Upon approval from the Section Chief, the memorandum will be forwarded to the PSP Territory Manager for review and approval.
 - c. Upon approval from the PSP Territory Manager, the memorandum will be forwarded to the Area Director’s office for review and approval.
- (3) Following the approval of the PAC by the Area Director, the RPC will:
 - a. Assign the appropriate National Return Preparer Project Code to the PAC.
 - b. Request a unique and separate local Examination Returns Control System (ERCS) tracking code for each new PAC. The Area AIMS/ERCS Unit usually assigns and controls local tracking codes.
 - c. Upload a copy of the signed Area Director Memorandum and update SB/SE Referral accordingly.

4.1.10.4.5.2
(09-27-2021)
PAC Approval Process for LB&I

- (1) The RPC, with the assistance of the field agent(s) who identified the preparer’s misconduct, will prepare a briefing package documenting the abusive behavior of the preparer. The RPC and Territory Manager of the agents who identified the misconduct will brief the Director of Field Operations (DFO) about the preparer’s abusive behavior. If the DFO concurs with the initiation of a PAC, the DFO and the RPC, if necessary, will brief the Practice Area Director to obtain their approval. Once obtained, the DFO, RPC and RPC’s manager will request that the Penalty Steering Committee approve the initiation of a PAC. Refer to IRM 4.1.10.3, for the members of the LB&I PSC.

4.1.10.4.6
(10-03-2023)
PAC Return Identification and Selection

- (1) The RPC will identify, classify, and select an initial sample of 20 client returns from the preparer’s client list.
- (2) These cases will generally be worked by tax compliance officers (TCO) unless the complexity of the issues require assignment to a revenue agent (RA).
- (3) Every PAC should have a Lead Examiner (LE) assigned to it. The LE should be assigned some of the client cases to work. In addition, the LE is responsible for working with the RPC and the examiners to ensure that all closed

audit packages are received. Once all client cases have closed the LE is responsible for reviewing closed audit packages to determine if there is a pattern of significant and repetitive deficiencies and further compliance action is warranted on the preparer. When a determination is made the LE will discuss their findings with the RPC for concurrence.

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4.1.10.4.6.1
(10-03-2023)

Sources to Identify Returns

- (1) RPVUE - Integrated Data Retrieval System (IDRS) command code RPVUE provides Individual Master File (IMF) and Business Master File (BMF) preparer client volume information and client information for the current processing year and the three prior processing years. RPVUE lists nine data fields for each IMF client (Form 1040 only). RPVUE does not list any BMF data and cannot be used to evaluate business returns. To evaluate business returns one of the methods listed below may be used.
- (2) CDE -The Compliance Data Environment (CDE) searches the entire filed tax return population against user-specified filter criteria to identify a preparer's client returns. Results can be summarized, stratified or sampled. The CDE representation of returns are electronic transcripts of selected return information in a single year and 3 years return like format. Tax return data provided by CDE includes RTF data plus other CDE calculated fields. CDE is acceptable for classification, but it may not always be as useful as MEF or an original return.
 - a. A CDE research request is required before CDE can be used to identify client cases for a PAC. CDE prints can be used in lieu of original tax returns to establish exam controls, build case files and conduct examinations. Any non-selected CDE prints should be destroyed.
- (3) TRPRT - Available on IDRS for electronically filed returns. TRPRT prints include most line items on the return. If utilized, TRPRT prints— should be considered original returns and any non-selected TPRPT prints should be destroyed.
- (4) The Modernized e-File (MeF) is a web- based system that allows electronic filing of corporate, individual, partnership and other returns to be viewed online. If a return was filed using MeF, an examiner can access the Employee User Portal (EUP) to view the return.
- (5) Original Returns - Using original returns to identify and classify clients for examination should be done on a limited basis since extra costs are incurred to secure an original return. Exam controls must be closed on any original returns not selected for examination and the returns then re-filed.
 - a. To order original returns to be considered for a PAC, use Form 5347, Examination Multiple Request Master File.
- (6) Return Review Program (RRP) - An automated system designed to maximize fraud detection when tax returns are filed. This helps eliminate questionable refunds being issued.

4.1.10.4.6.2
(10-03-2023)

**Client Return Selection
and Classification
Considerations**

- (1) When reviewing a preparer's client population to determine what 20 returns to select for examination the RPC should look for:
 - a. Issues described in the referral.
 - b. Large, unusual, or questionable (LUQ) items of income, expense, and/or credit.
 - c. Patterns, trends, and inconsistencies.

4.1.10.4.7
(09-27-2021)

**Establishing Exam
Controls on Selected
PAC Client Returns**

- (1) The RPC will establish ERCS exam controls for each client return selected for examination in the initial sample:
 - a. Source Code 49 will be used for the primary returns that are selected as part of the PAC. If multi-year cases are developed in PSP for delivery to group, only the primary return should reflect Source Code 49. All related and multi-year examinations should reflect the appropriate source codes when establishing and auditing related returns and multi-year examinations.
 - b. Status Code 08.
 - c. Appropriate tax year.
 - d. Valid AIMS Assignee Code (AAC) for PSP (PBC, SBC, EGC).
 - e. Valid activity code.
 - f. Appropriate national PAC project code (no local project codes should be used).
 - g. Local PAC tracking code.
 - h. Aging Reason Code 49 should be reflected on all return preparer program returns including primary and multiple-year returns.
 - i. Appropriate local ERCS freeze code.
- (2) The RPC will update the status of returns selected for examination in the initial sample to Status Code 08.
- (3) A unique local ERCS freeze code (designated specifically for use with PACs) should be input on ERCS for all client returns in the initial sample. The RPC is required to release this freeze code upon receipt and review of the closed audit package from the examiner.
- (4) There may be situations in which PAC client cases have been established but due to limited resources are unable to be delivered. These cases should be surveyed using disposal code 35 and the RPC should review the subsequent year for PAC consideration. If pursuing the subsequent year is warranted the RPC should complete a PAC Expansion Memo and follow procedures in IRM 4.1.10.4.10, Expanding PACs in SB/SE.

4.1.10.4.8
(10-03-2023)

**Case Building and
Delivery of Selected PAC
Returns**

- (1) Generally, each client return case file will include the supporting documentation listed in the following paragraphs.
- (2) IDRS supporting documents that may be provided:
 - a. TRPRT Print
 - b. RTVUE
 - c. AMDISA
 - d. INOLES
 - e. IMFOLI
 - f. IMFOLT
 - g. IMFOLR

- h. IRPTRL
- (3) Other supporting documents provided to support the examination may include:
 - a. Original Tax Return
 - b. Classification Check Sheet
 - c. CDE Print
 - d. MeF print
 - e. ERCS print
- (4) White Paper -A memo for the examiner that includes PAC specific information:
 - a. Identified issues.
 - b. Project code, tracking code and aging reason code.
 - c. Coding instructions to the examiner to expand the examination, if warranted.
 - d. Refer examiners to guidance pertaining to preparing, conducting and documenting taxpayer interviews. See IRM 4.10.2.7.4(1) , Preliminary Research, IRM 4.10.3.4.1.1, Initial Interviews, IRM 4.10.9.7.5, Workpapers: Documenting Initial Interview and IRM 4.10.3.4.6, Interviews. RPC should not develop or suggest interview questions for PAC client cases.
 - e. PAC Check Sheet – This is a feedback sheet to collect information regarding the results of the client examinations. The examiner should complete and forward Form 15296, SB/SE Program Action Case (PAC) Check Sheet, directly to the RPC's centralized email address as part of the closed audit package at the conclusion of the case.
 - f. Preparer penalties should be considered and documented per IRM 4.10.9.7.10, Return Preparer Penalty Consideration.
 - g. Examiner responsibilities.
- (5) Case Delivery - Cases will be electronically delivered via CDE to examination groups and include the documentation in: IRM 4.1.10.4.8 (2) through IRM 4.1.10.4.8 (4).
 - a. To support the PAC the RPC will conduct a presentation at the beginning of the PAC using approved national education and outreach materials. These presentations will include information on PAC procedures, details of the preparer's egregious and/or questionable issues and information/ documents that should be noted/completed as part of the closed audit package. The RPC should also discuss how to properly document lead sheets to assist the RPC and LE in determining if further compliance action is warranted on the preparer.

4.1.10.4.9
(10-03-2023)

Monitoring Program Action Cases

- (1) The RPC can use the following methods to monitor the progress of a PAC. PAC monitoring should be completed, at a minimum, on a quarterly basis.
 - a. ERCS reports of open client returns (Status 10/12) by tracking code and project code will alert the RPC if the returns are being worked in a timely manner.
 - b. Contact group managers at least quarterly to discuss the progress of each PAC.
 - c. Closely monitor aging PACs to assist in bringing them to termination. Aging PACs are PACs initiated more than three years ago that have not been expanded, or expanded PACs with an expansion approval date more than one year ago.

- d. Monitor closed client return examination results by reviewing Form 15296, SB/SE Program Action Case (PAC) Project Check Sheet.
 - e. If a pattern of no show closings occur, discuss the issue with the group manager. At a minimum, discuss having the examiner secure a current client address and/or summon the client, as necessary.
 - f. If a pattern of no change or closures with issues of only minimal significance becomes apparent, talk to the group manager and examiners. If the client returns have been found to be substantially correct and/or the issue(s) of concern are not found, not adjusted, or not the fault of the preparer, the examiner should discuss with the RPC so the RPC can determine if the PAC should be terminated. Open client examinations should be completed as part of the PAC and remaining client returns in the initial sample should be reviewed with the RPC to determine if the returns should be surveyed.
 - g. Ensure each examiner has considered the return preparer penalty provisions of IRC 6694 and IRC 6695 and documented facts supporting any applicable preparer penalty recommendations for the RPC and LE consideration.
 - h. Prior to releasing PAC freeze codes, the RPC should review the closed audit package to determine whether the relevant PAC issues have been addressed and/or whether appropriate PAC procedures and examination techniques have been applied and discuss the findings with the group manager and examiner, as necessary. Once the case is determined to be correct, the RPC will authorize release of the freeze code.
 - i. Review imported PAC A-CIS data and closed case data results in SB/SE Referral using the Open PAC Monitoring Report.
 - j. Maintain activity record Form 9984, Examining Officer's Activity Record, for each PAC in SB/SE Referral on the Activity Record tab. The RPC should maintain a contemporaneous record of actions on the PAC.
- (2) After completing the initial sample of client returns, the RPC and LE must determine whether PAC examination results are sufficient to warrant preparer penalties and/or a referral to the LDC or CI.
- (3) If PAC results are insufficient to determine if preparer penalties are warranted, such as a high volume of no shows, the RPC should consider expanding the PAC and selecting an additional sample of client returns for examination. See IRM 4.1.10.4.10, Expanding PACs in SB/SE.

4.1.10.4.9.1
(09-27-2021)
Program Reporting

- (1) Area Program Reporting – Areas may prepare informal briefings as requested by their management. Management should provide guidance on the format and content of the reporting.
- (2) Monthly PAC Reporting – By day 20 of each month, the RPC should run and send the following reports from the Area's centralized email box to the Field Case Selection Return Preparer Program Analyst for the prior month:
- a. PAC Report
 - b. Open PAC Monitoring Report
 - c. Closed PAC Monitoring Report
- (3) Quarterly SB/SE Referral and Non-PAC Penalty Certification – Every quarter the Field Case Selection Return Preparer Program Analyst will send a certification document to the Area. The RPC will review the information for accuracy, make any necessary corrections and certify accuracy to the analyst.

4.1.10.4.10
(10-03-2023)

**Expanding PACs in
SB/SE**

- (1) A PAC expansion is when additional client returns will be examined outside the initial sample of 20.
- (2) PAC expansion should be considered in situations where a large pattern of no show closings occur, no change or closures of issues with minimal significance is apparent or when PAC client cases have been established but due to limited resources are unable to be delivered.
- (3) If additional client returns will be examined outside of the initial sample of 20, consideration must be given as to how many additional client returns will be examined.
- (4) In order to expand a PAC, the RPC will need to:
 - a. Prepare a PAC Expansion Memo and request approval from the PSP Territory Manager.
 - b. If approved, upload the PAC Expansion Memo into SB/SE Referral.
 - c. Closely monitor the results of the expanded PAC.
 - d. If results indicate the preparer is not responsible for the errors on the returns, remaining unopened cases may be surveyed and the PAC can be terminated.

4.1.10.4.10.1
(09-27-2021)

Expanding PACs in LB&I

- (1) If additional client returns are to be examined outside the initial PAC, concurrence must be initially received from the Director of Field Operations of the involved Practice Area.
- (2) A memorandum will be prepared by the RPC with assistance of the PAC lead Revenue Agent and issued to the Director of Field Operations explaining the following:
 - a. Results of the PAC examinations completed to date.
 - b. Explanation as to why a conclusion to the PAC cannot be reached without expanding the PAC.
 - c. A description of the types of client returns that will be included in the expanded PAC,
- (3) If concurrence is received from the Director of Field Operations, the results of the expanded PAC should be monitored in accordance with IRM 4.1.10.3.9
- (4) If concurrence is not received from the Director of Field Operations, proceed with a final determination of the PAC in accordance with IRM 4.1.10.3.11.

4.1.10.4.11
(10-03-2023)

PAC Termination

- (1) A PAC should be terminated when all client returns have been closed and the preparer penalty case, if warranted, has been established. This includes client returns that may have been selected as part of an expansion.
- (2) The RPC will generate the PAC Termination Memorandum in SB/SE Referral and include a narrative summarizing what egregious and/or questionable issues were observed.
- (3) The RPC will submit the PAC Termination Memorandum and any other relevant documents to the PSP Territory Manager for signature.
- (4) Following approval of the PAC termination, the RPC will upload a copy of the signed PAC Termination Memorandum and update SB/SE Referral accordingly.

The RPC should also update SB/SE Referral as to whether or not a preparer penalty is being pursued at PAC termination.

- (5) When all cases associated with the PAC have closed to status code 90 the RPC should request the tracking code be marked inactive.
- (6) If the RPC and LE determine that a preparer penalty is warranted see IRM 4.1.10.7 for the preparer penalty establishment procedures.

4.1.10.5
(10-03-2023)
**PAC Conducted in
Conjunction with an
Ongoing Criminal
Investigation**

- (1) Some special issues arise when project code 0588 PACs are conducted as part of an ongoing criminal investigation:
 - a. The case memorandum included in each client file must indicate that the case is part of an open criminal investigation.
 - b. The name and contact number of the special agent working the case should be included in the memorandum along with any special instructions for reporting exam results to CI.
 - c. Civil penalties against the return preparer under IRC 6694 and IRC 6695 should be considered and developed just like any other PAC.
 - d. The RPC **should not** establish or initiate a preparer penalty until the criminal investigation is complete. CI will forward Form 13308, Criminal Investigation Closing Report (Tax and Tax Related Only), upon completion of their investigation. Once received, the RPC can pursue civil penalties
 - e. The RPC will select Pending CI Approval in SB/SE Referral under Preparer Penalty Being Pursued and PAC Preparer Penalty Case Status.
 - f. The RPC will follow up with CI at least once a year for status of the criminal investigation. All follow ups should be documented on the activity record Form 9984, Examining Officer's Activity Record, in SB/SE Referral on the Activity Record tab.
 - g. Once CI has concluded their criminal investigation a civil penalty can be pursued. See IRM 4.1.10.7 for preparer penalty establishment procedures.

4.1.10.6
(10-03-2023)
**Referrals to the Lead
Development Center at
PAC Termination**

- (1) Referrals to the LDC should be made on Form 14242, Reporting Abusive Tax Promotions and/or Preparers, at PAC termination if the preparer's preparation behavior appears to warrant consideration of promoter penalties under IRC 6700, IRC 6701, or injunctions under IRC 7407 and IRC 7408.
- (2) For LDC contact and referral information visit Knowledge Management: *VL135 - Abusive Transactions Knowledge Base - Home (sharepoint.com)*.
- (3) A referral to the LDC at PAC termination does not preclude the RPC from pursuing a preparer penalty. If the LDC determines a 6700/6701 investigation is warranted, they will coordinate with the RPC on the next steps.

4.1.10.6.1
(10-03-2023)
**Referral to Criminal
Investigation at PAC
Termination**

- (1) At the conclusion of a PAC if criminal activity is identified the RPC should make a referral to CI.
- (2) If CI accepts the preparer case, there may be civil penalties that can be assessed against the preparer at a later date.
 - a. Once CI has accepted the preparer referral exam should not contact the preparer without CI approval.

- b. The RPC will update SB/SE Referral and put the PAC in “Pending CI Approval” until CI allows civil activity.
- c. The RPC will monitor the suspense inventory and periodically contact CI to determine case status.
- d. When the criminal prosecution is completed or dropped, the RPC should establish the IRC 6694(b) penalty case and the IRC 6694(a) and IRC 6695 (as applicable and based on statute) and assign to the LE.
- e. Civil penalties under IRC 6694(b) have no statute of limitations on assessment. Civil penalties under IRC 6694(a) and IRC 6695 have a 3 year statute of limitations on assessment. See IRC 6696(d) and IRM 20.1.6.18, Statute of Limitations.

- (3) If a referral is made to CI at PAC termination and CI does not accept it, the RPC should pursue civil preparer penalties. See IRM 4.1.10.7 for preparer penalty establishment procedures.

4.1.10.7
(10-03-2023)

**Return Preparer Penalty
Program Penalty Cases**

- (1) IRM 20.1.6, Preparer, Promoter, Material Advisor Penalties, conveys policy on these penalties as set by OSP.
- (2) The RPC should be familiar with IRM 20.1.6, Preparer, Promoter, Material Advisor Penalties, and IRM 4.11.51, Examining Officers Guide, Return Preparer Program, dealing with preparer penalties.
- (3) The RPC will advise and assist exam employees concerning preparer penalties under IRC 6694 and IRC 6695. Penalty cases under IRC 6700 and IRC 6701 should only be worked by the LDC.
- (4) All preparer penalty cases must be electronic case files per IRM 4.10.15.9, Generic Workcenter.
- (5) LB&I penalty investigations under IRC 6701 against a return preparer must be approved by the RPC before initiated unless it involves a reportable transaction. IRM 20.1.6.14.2(6), SB/SE and LB&I Functional Guidance, also requires the examiner to request assistance from their local counsel in determining the applicability of the penalty. The RPC will forward the referrals involving reportable transactions to OTSA.

4.1.10.7.1
(10-03-2023)

**Creating Return
Preparer Penalty Cases**

- (1) PAC Penalty Creation: Per IRM 4.1.10.4.11(7), PAC Termination, if the RPC and LE determine that a preparer penalty is warranted the RPC will:
 - a. Update PAC Update tab in SB/SE Referral indicating that a preparer penalty will be pursued.
 - b. Complete Form 5809, Preparer Penalty Case Control Card.
 - c. Establish the record(s) on ERCS.
 - d. Upload a copy of Form 5809, Preparer Penalty Case Control Card, in SB/SE Referral.
 - e. Create RGS file for preparer penalty case.
 - f. Send Letter 3164-N, Third Party Contact to Preparers, only if the LE intends to contact clients of the preparer as part of their penalty case.
 - g. If Letter 3164-N, Third Party Contact to Preparers, is **not** sent, transfer the ERCS record(s) and the RGS penalty case file to the LE to work and update the PAC preparer penalty case status on the Preparer Penalties tab in SB/SE Referral to “pending”.
 - h. If Letter 3164-N, Third Party Contact to Preparers, is sent, the RPC will update the PAC preparer penalty case status on the Preparer Penalties

tab in SB/SE Referral to “pending” upon sending the third party letter to the preparer and must wait 45 days prior to transferring the ERCS record(s) and the RGS penalty case file to the LE to work.

- (2) Non-PAC Penalty Creation: Examiners can refer Non-PAC penalties to RPPWG or they can initiate and work a preparer penalty case. If they initiate and work a preparer penalty case they will complete Form 5809, Preparer Penalty Case Control Card, and forward to the RPC for deconfliction. When deconfliction is obtained the examiner will create the RGS penalty case file and establish the preparer penalty case on ERCS. The form has three parts.

Note: When a preparer penalty is being initiated, the RPC will obtain clearance from CI and the LDC. See IRM 4.1.10.4.3 Pre-PAC Contact with Criminal Investigation, and IRM 4.1.10.4.4, Lead Development Center (LDC) Clearance for PAC.

- (3) Penalty cases are established on ERCS only. There are two methods of establishing these penalty cases:
 - a. If a penalty is being pursued relating to one taxpayer (client) use the client’s Taxpayer Identification Number (TIN) to create the ERCS record. The name control line in ERCS will be the name control of the preparer, preparer’s TIN, and the name control of the client.

Example: PREP/123-45-6789/CLIE

- b. If a penalty is being pursued relating to more than one taxpayer (client) use the return preparer’s TIN to create the ERCS record. The name control line in ERCS will be the return preparer’s name. Multiple preparer penalties can be consolidated under a single ERCS record and Form 5809. This method should be used when a preparer has more than one preparer penalty being pursued.

Example: PREPLASTNAME,PREPFIRSTNAME

- (4) A separate Form 5809 and ERCS record is created for each return preparer penalty. The Master File Tax (MFT) will be P1, P2, P3, P4, PC, PJ, PK, PL, PM and/or PN, depending on the type of penalty. See Document 6036, Examination Division Reporting System Codes Booklet, for a list of penalties by activity code.
- (5) Civil penalties under IRC 6694(a) and IRC 6695, have fixed statutes of limitations on assessment under IRC 6696(d). Ensure when the ERCS record is created that the correct statute of limitations is entered. Civil penalties under IRC 6694(b) have no statute of limitations on assessment under IRC 6696(d). When the ERCS record is created alpha statute “XX” will be used. See IRM 20.1.6.21, Statute of Limitations.

4.1.10.7.2 (10-03-2023) Tracking Return Preparer Penalty Cases

- (1) The RPC is responsible for monitoring open PAC and Non-PAC preparer penalty cases initiated in their area. The RPC should utilize the report and query functions in the SB/SE Referral and Non-PAC Penalty databases to track and monitor preparer penalty case status.
- (2) The RPC can use ERCS/Tableau to monitor penalty cases by utilizing reports and filtering by tracking code or activity code.

4.1.10.7.3
(10-03-2023)
Reviewing Penalty Cases

- (1) In **SB/SE**, the RPC will review all return preparer penalty cases and confirm the proper electronic case file assembly by following the outlined steps for closing civil penalty cases in RGS on Knowledge Management *Exam Procedures Knowledge Base - Electronic Case Procedures - GrpbyChpt (sharepoint.com)*. Technical Services does not conduct reviews of return preparer penalty cases. All preparer penalty cases will be closed directly to the RPC from the group in Status Code 41 via Form 3210, Document Transmittal. Upon receipt of the preparer penalty file the RPC will update the Status Code to 44.

Exception: Return preparer penalty cases resulting from 6701 investigations authorized by the LDC and penalty cases worked in the RPPWG will not be reviewed by the Area RPC.

- (2) In **LB&I**, the team manager will review all penalty cases. Cases in which a penalty is asserted will be closed to Centralized Case Processing (CCP), if agreed, or to Appeals, if not agreed. Send a completed copy of Form 8278, Assessment and Abatement of Miscellaneous Civil Penalties, Form 5816, Report of Tax Return Preparer Penalty Case, and Form 886-A, Explanation of Items, to the LB&I RPC.

4.1.10.7.3.1
(10-03-2023)
No-Change Preparer Penalty Cases

- (1) In **SB/SE**, the RPC should review the electronic case file and ensure the preparer penalty has been properly developed.
- If the RPC disagrees with the examiner's findings, the RPC should contact the examiner and discuss the case.
 - The RPC may return the case file to the examiner through the examiner's group manager for further development, if necessary.
 - The RPC should confirm that Letter 1120, No Change Letter - Preparer's Penalty, was issued by the examiner if contact was made with the preparer.
 - If the RPC and LE determine preparer penalties are not warranted, the RPC will issue Letter 4307, PAC Closing Letter, to the preparer if Letter 3164-N, Third Party Contact to Preparers, has been issued.
- (2) In **LB&I** the group will update ERCS to Status Code 90 "Closed - No Change" and forward the closed case to the CCP unit via Form 3210. A copy of Form 8278 and Letter 1120 should be sent to the RPC.

4.1.10.7.3.2
(10-03-2023)
Agreed Preparer Penalty Case Procedures for SB/SE Only

- (1) The RPC should review the electronic case file to ensure the all issues were properly developed and the correct penalty has been applied.
- (2) The RPC should ensure that the electronic case file is correct and complete. The RPC may return the case file to the examiner through the examiner's group manager if any documents or forms need updating.

4.1.10.7.3.3
(10-03-2023)
Unagreed Preparer Penalty Case Procedures for SB/SE Only

- (1) The RPC should review the electronic case file to ensure the issues were properly developed and the correct penalty has been applied.
- The RPC should ensure the examiner has included sufficient evidence to support the preparer penalty.
 - If the primary position of the examiner is to assert the penalty for IRC 6694(b), the RPC should advise the examiner to consider proposing IRC 6694(a) penalty as an alternative position.

- c. The RPC should verify that the preparer was offered a managerial conference.
- d. The RPC should verify that Letter 1125, Transmittal of Examination Report, (the 30-day letter) was issued if sufficient time remained on the statute of limitations to allow its issuance.

Note: For preparer appeal requests, ensure that Form 4665, Report Transmittal, is completed with the appropriate language, and included with the protested preparer penalty case.

Note: If a preparer does not request an appeal, then the protested penalty case requires no additional forms.

- (2) If the RPC disagrees with the examiner's findings, the RPC should contact the examiner and discuss the case.
- (3) The RPC may return the case file to the examiner through the examiner's group manager for further development if necessary.

4.1.10.7.4 (10-03-2023)

Closing Return Preparer Cases - Procedures for SB/SE Only

- (1) When reviewing closed preparer penalty cases the RPC will conduct the steps listed in the following paragraphs.
- (2) Ensure the electronic case file has the appropriate return preparer penalty information.
- (3) Ensure Form 5809, Original Copy, closing status is correct.
- (4) Review Form 8278 to confirm it is correct and includes all the items listed below:
 - a. The group manager signed Form 8278 **prior to the examiner issuing** Form 5816. See IRM 20.1.6.9.1.
 - b. The correct number of forms are completed. A form must be completed for each penalty type and tax year for each penalty assertion.
 - c. The correct SSN or EIN is listed on the form.
 - d. The correct MFT has been selected.
 - e. The statute date is correct.
 - f. The correct penalty code/penalty reference number has been selected.
 - g. The related tax return information has been completed on page 4.
 - h. If both IRC 6694(a) and IRC 6694(b) apply, ensure the combined assessment does not exceed the IRC 6694(b) penalty amount. See IRM 20.1.6.4.13.2(4).
 - i. The IRC 6695 penalty was considered and applied, if warranted.
 - j. Verify if any advanced payment has been posted.
- (5) The RPC will determine where the closed case should be forwarded based on the closure type listed in the following paragraphs.
- (6) No change preparer penalty cases, agreed preparer penalty cases, and unagreed preparer penalty cases (not protested/appealed) will be updated on ERCS to status code 51 (CCP).

Note: All preparer penalty cases must be electronic case files. CCP will not accept preparer penalty cases unless they are in RGS.

- (7) Unagreed preparer penalty cases (protested/appealed) will be updated on ERCS to Status 90 (Closed).
- If the proposed preparer penalty is for IRC 6694(a) or IRC 6694(b) and the preparer has responded to the 30 day letter, Letter 1125, Transmittal of Examination Report, with an adequate protest, close the electronic case file to Appeals in RGS and follow the outlined steps for closing civil penalty cases on RGS to Appeals on Knowledge Management *Agreed, No-change, Protested Case Closing (sharepoint.com)*.
 - Verify if any advanced payment has been made on a protested/appealed case.
 - If the case involves a penalty that is entitled to post-assessment appeal, and there is a payment posting voucher in the case with an appeal request, fax Form 8278, Assessment and Abatement of Miscellaneous Civil Penalties, and Form 3244, Payment Posting Voucher, to the appropriate Field Office Resource Team (FORT) manager in CCP for assessment. See the CCP fax numbers on Knowledge Management: *CCP Exam EFax Numbers (sharepoint.com)*
- Note:** See IRM 20.1.6.19.2, Post-Assessment Appeal Procedures, for information regarding penalties subject to post assessment appeals procedures.
- Upon receipt of the completed faxed document by CCP, update the case on ERCS to Status Code 90 and close the electronic case file to Appeals in RGS and follow the outlined steps for closing civil penalty cases on RGS to Appeals on Knowledge Management ..
- (8) When closing the case out of PSP, the RPC will make sure the penalty type and penalty amount are entered into ERCS.
- (9) If a preparer penalty is asserted, the RPC will update SB/SE Referral or Non-PAC Penalty with the tax year, penalty type and penalty amounts and will upload, Form 8278, Assessment and Abatement of Miscellaneous Civil Penalties.

4.1.10.7.5
(09-27-2021)
**Surveying Return
Preparer Penalty Case
Procedures for SB/SE
Only**

- (1) If a preparer penalty case has been established on ERCS, the preparer has not been contacted and it is determined that a preparer penalty is not warranted the preparer penalty case should be surveyed using Disposal Code 31 and Form 5351, Examination Non-Examined Closings, and Form 3210, Document Transmittal, should be completed. See IRM 4.4.21.5.2.2, Paperless Case File – Group Procedures, items 1 through 3. Upon completion, retain documentation following retention requirements.

4.1.10.7.6
(10-03-2023)
**Suspense Return
Preparer Penalty Case
Procedures for SB/SE
Only**

- (1) If a preparer penalty case has been established, is being worked in an exam group and CI subsequently informs SB/SE they are pursuing a criminal investigation, civil activity must be halted until the criminal investigation is complete.
- The examiner will update the preparer penalty to status 41 and forward to the RPC for review.
 - The RPC will review the electronic preparer penalty case, including the statute, and update the status to 21 and forward the case to Technical Services pending the completion of the criminal case.

Note: Refer to IRM 25.1.4.4.11, Fraud Suspense, and IRM 25.1.5.3, Grand Jury Suspense, for additional guidance.

Note: Contact the Technical Services Fraud Coordinator for additional guidance. The current list of Technical Services Fraud Coordinators may be found at: *Exam Procedures Knowledge Base - Technical Services - GrpbyChpt (sharepoint.com)*

- c. The RPC should update the SB/SE Referral penalty status as “Pending CI Approval” or the Non-PAC Penalty status as “CI Suspense”.
- d. When the criminal prosecution is completed or the criminal case is terminated, the civil preparer penalty case will be released back to exam for completion. The RPC should update the SB/SE Referral penalty status to “pending” or remove the “CI Suspense” as the Non-PAC Penalty status.

4.1.10.8
(09-27-2021)

Referrals to the Office of Professional Responsibility at Preparer Penalty Closure

- (1) The Office of Professional Responsibility (OPR) supports the Internal Revenue Service’s (IRS’s) strategy to enhance enforcement of the tax laws by ensuring that tax professionals adhere to practice standards and follow the Internal Revenue Code, Treasury Regulations, and other laws as they apply to an individual’s qualifications, competency, and ethical and professional fitness to practice before the IRS. The OPR is the office primarily responsible for interpreting and applying the Regulations Governing Practice before the Internal Revenue Service (Treasury Department Circular No. 230) (“Regulations” or “Circular 230”). The OPR has exclusive responsibility for practitioner conduct and discipline, including instituting disciplinary proceedings and pursuing sanctions. It functions independently of the Title 26 enforcement components of the IRS.
- (2) OPR administers the law and regulations governing the practice of tax professionals and other individuals who interact with the tax administration system on behalf of taxpayers, including, but not limited to, attorneys, certified public accountants, enrolled agents, enrolled actuaries, enrolled retirement plan agents, tax return preparers who engage in limited practice before the IRS, and appraisers who provide valuations contained in documents submitted to the IRS.
- (3) Circular 230 provides for a range of sanctions including suspension or disbarment from representation of taxpayers before the IRS.
- (4) The RPC should be familiar with Circular 230 and be prepared to advise field personnel concerning misconduct by Circular 230 practitioners or preparers engaged in limited practice and the preparation of referrals to OPR.
- (5) Examples of Circular 230, misconduct which could warrant a referral to OPR include the following:
 - a. Failure to exercise due diligence (10.22(a)).
 - b. Failure to comply with the standards for tax returns and other submissions (10.34) e.g., in the assertion of penalties under IRC 6694 , IRC 6695, IRC 6700, IRC 6701, IRC 7407, and IRC 7408.
 - c. Conviction of any criminal offense under the revenue laws of the United States (10.51(a)(1)).
 - d. Conviction of any criminal offense involving dishonesty or breach of trust (10.51(a)(2)).
 - e. Conviction of any felony under Federal or State law for which the conduct involved renders the practitioner unfit to practice before the IRS (10.51(a)(3)).

- f. Giving false or misleading information or participating in any way in the giving of false or misleading information in connection with any matter pending or likely to be pending before the IRS, knowing the information to be false or misleading (10.51(a)(4)).
 - g. 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 (10.51(a)(6)).
 - h. Disbarment or suspension by another federal agency, federal court, or state authority from practice as an attorney, certified public accountant, public accountant, or actuary (10.51(a)(10)).
 - i. 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 (10.51 (a)(13)).
 - j. Contemptuous conduct, in connection with practice before the IRS, including the use of abusive language, making false accusations or statements, knowing them to be false, or circulating malicious or libelous matter (10.51(a)(12)).
- (6) Under Circular 230 section 10.53, Receipt of information concerning practitioner, if an officer or employee of the IRS has reason to believe a practitioner has violated Circular 230, the officer or employee must promptly make a written report of the suspected violation to the Director of OPR. See IRM 20.1.6.12.2.3, Referral to the Office of Professional Responsibility.
- (7) Referrals to OPR are mandatory following the assertion of any IRC 6694(b) penalty, Understatement due to willful or reckless conduct. The referral should be made regardless of any appeal actions taken by the practitioner.
- (8) Referrals to OPR are discretionary following the assertion of civil penalties prescribed by the following IRC sections:
 - a. IRC 6662, Accuracy related penalty.
 - b. IRC 6694(a), Understatement due to unreasonable positions.
 - c. IRC 6695(a), Failure to furnish copy to taxpayer.
 - d. IRC 6695(b), Failure to sign return.
 - e. IRC 6695(d), Failure to retain copy of list.
 - f. IRC 6702, Frivolous tax submissions.
- Note:** If any of the above penalties appear to become a pattern across taxpayers, tax issues, or tax years, a referral to OPR should be made.
- (9) Form 8484, Suspected Practitioner Misconduct Report for the Office of Professional Responsibility, should be used to make a referral to the designated #
- (10) It is recommended that a referral submitted to OPR by an examiner be #
#
- (11) OPR has a Disciplined Tax Professionals look-up that contains searchable information regarding censures of practitioners for Circular 230 misconduct and suspensions and disbarments of individuals from practice before the IRS.

4.1.10.8.1

(09-27-2021)

Additional Referrals to the Office of Professional Responsibility

- (1) Other circumstances in which a referral to OPR would be warranted include:
- Inaccurate or unreasonable entries/omissions on tax returns, financial statements and other documents.
 - A lack of due diligence exercised by the practitioner as described under Circular 230 10.22.
 - A willful attempt by the practitioner to evade the payment or assessment of any Federal tax.
 - Cashing, diverting or splitting a taxpayer's refund by any means, electronic or otherwise.
 - "Patterns" of misconduct under Circular 230 involving multiple years, multiple clients or unprofessional conduct demonstrated to multiple IRS employees.
 - Potential conflict-of-interest situations, such as representation of both spouses who have a joint income tax liability or when representation is affected by competing interests of the practitioner.
 - Any willful violation of Circular 230 provisions.

4.1.10.9

(09-27-2021)

Referrals from the Office of Professional Responsibility

- (1) When OPR deems a referral to SB/SE Examination is appropriate, a referral will be made to the business unit.
- In cases of return preparation misconduct or basic preparer tax noncompliance a referral will be made using a referral memorandum.
 - In more complex cases, such as suspected use of multiple business entities, or sophisticated transactions to evade assessment or payment of tax, a referral will be made on Form 14624, Office of Professional Responsibility (OPR) Referral.
- (2) When a referral is made on Form 14624 the Area RPC will complete the below actions within 30 business days of receipt:
- Date stamp the front of Form 14624.
 - Screen the referral by following Substantial Noncompliance Factors (SNIF) criteria in IRM 4.1.1.6.21, Special Enforcement Program (SEP) Leads.
 - Complete Part II of Form 14624, to document if the referral is accepted, surveyed, or rejected.
 - Secure the signature of the PSP Section Chief or designee.
 - Return Form 14624 to OPR with a Form 3210, Document Transmittal.
- (3) If the referral is accepted for audit, the RPC will follow IRM 4.1.1.6.11, Information Referrals and internal procedures to control and build the case file for assignment.
- (4) The case will be assigned to an examination group within 60 days of receipt. The RPC will assign Project Code 0365 and Tracking Code 6581, Office of Professional Responsibility Referrals.

4.1.10.10

(09-27-2021)

Bypass of the Taxpayer's Representative

- (1) IRC 7521(c), Representatives Holding Power of Attorney, states that an examiner, with the manager's approval, may notify a taxpayer directly that such officer or employee believes such representative is responsible for unreasonable delay or hindrance of an Internal Revenue Service examination or investigation of the taxpayer. See IRM 4.11.55.4 for by-pass procedures.

4.1.10.11
(09-27-2021)

**Misrepresentation on
Form 2848, Power of
Attorney and Declaration
of Representative**

- (1) Form 2848, Power of Attorney and Declaration of Representative, may be submitted to Area employees by a representative claiming to be an attorney, CPA, or enrolled agent when, in fact, they are not. In addition, a representative may indicate that they are an unenrolled return preparer who prepared the return indicated on the Form 2848 and are a participant of the Annual Filing Season Program (AFSP) with a Record of Completion, when, in fact, they are not. For guidance on this issue, see IRM 4.11.55.2.1.2, POA Not Authorized to Practice Before the IRS, and IRM 4.11.55.2.1.1.1, Authorized Representation by Persons Other than a Practitioner.
- (2) When a power of attorney is presented to an IRS employee by a representative claiming to be a practitioner as defined by Circular 230 10.2(a) (5) (i.e. an attorney, CPA, enrolled agent, enrolled actuary, and enrolled retirement plan agent), the employee should verify their professional standing.
 - a. The Area RPC should be familiar with the websites in their Area available to verify professional standing of CPAs and attorneys. A starting point for identifying the various state agencies can be located at: *Overview POAs/Representatives (sharepoint.com)*.
 - b. An enrolled agent's status can be verified by checking the status on the Return Preparer Office's website at: <https://irssource.web.irs.gov/RPO/SitePages/AboutRPO.aspx>.
 - c. An Annual Filing Season Program Record of Completion can be verified by checking the status on the Return Preparer Office website at: <https://irssource.web.irs.gov/RPO/SitePages/AboutRPO.aspx>.
- (3) If the employee's search indicates that the representative does not have the professional status they claim, Form 2848 is referred to the RPC for further analysis.
- (4) The RPC is responsible for pursuing an invalid Form 2848. The following steps should be taken:
 - a. Receive a copy of the Form 2848.
 - b. Advise the employee not to send the Form 2848 to the CAF unit if they have not already done so.
 - c. Confirm the employee's search results.
 - d. If the RPC's search confirms the Form 2848 is not a misrepresentation, then the RPC will advise the employee that there is no misrepresentation and to send the Form 2848 to the CAF unit.
 - e. If the RPC's search confirms the Form 2848 is a misrepresentation, then the RPC will send Letter 6382, Request for Verification of Professional Standing, to the representative asking for verification of their professional standing, or Letter 6383, Ineligible Unrolled Preparer Notification, with a 10 day window for a response.
 - f. If there is no response to the letter within 10 days or the representative responds that they do not have the professional standing claimed on the Form 2848, the RPC will send Letter 6384, Taxpayer Notification of Ineligible Representative, to the taxpayer stating that the IRS does not accept their Form 2848.
 - g. The RPC may prepare a memorandum describing what has transpired and submit it along with a copy of Form 2848 and other supporting documentation to the Area TIGTA Office. The Area TIGTA Office may conduct an investigation and make a referral for possible criminal prosecution for false representation dealing with tax administration.

- h. When the misrepresentation is confirmed, action pursuant to Rev. Proc. 2014-42 or Circular 230 Section 10.53, should be considered, as applicable.
- (5) For unenrolled return preparers, the RPC should maintain a record of ineligible presentations received to properly monitor and track any subsequent improper Form 2848. If the unenrolled return preparer continues to file improper Forms 2848, the RPC should consider additional procedures under Rev. Proc. 2014-42 .

Note: The record should be retained for three years.

- (6) If the Form 2848 is not valid, and the employee has already sent it to the CAF Unit, the RPC must notify OPR via e-mail to change the information in CAF.
- (7) A CFINK should be secured to verify the invalid Form 2848 is on record with the CAF.

