Internal Revenue
bulletin

Bulletin No. 2011-27
July 5, 2011

HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

INCOME TAX

Rev. Rul. 2011–14, page 31.

Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate. For purposes of sections 382, 642, 1274, 1288, and other sections of the Code, tables set forth the rates for July 2011.

Notice 2011–47, page 34.

This notice provides for the suspension of certain requirements under section 42 of the Code for low-income housing credit projects in Missouri in order to provide emergency housing relief needed as a result of the devastation caused by severe storms, tornadoes, and flooding in that state beginning on April 19, 2011.

Notice 2011–50, page 35.

Credit for carbon dioxide sequestration; 2011 section 45Q inflation adjustment factor. This notice publishes the inflation adjustment factor for the credit for carbon dioxide (CO_2) sequestration under section 45Q of the Code for calendar year 2011. The amount of credit must be adjusted for inflation for taxable years beginning in a calendar year after 2009.

Notice 2011–51, page 36.

This notice extends interim guidance provided in Notice 2010–79, 2010– 49 I.R.B. 809, on the modification of section 833 treatment of certain health organizations.

EXEMPT ORGANIZATIONS

Announcement 2011–37, page 37.

This announcement advises tax-exempt organizations that operate one or more hospital facilities that Part V, Section B of Schedule H, *Hospitals*, of the 2010 Form 990, *Return of Organization Exempt From Income Tax*, is optional for the 2010 tax year.

ADMINISTRATIVE

T.D. 9527, page 1.

Final regulations in 31 CFR Part 10 provide that registered tax return preparers are practitioners under Circular 230, and that an individual is required to pass a minimum competency examination to become a registered tax return preparer. The final regulations also address registered tax return preparers' continuing education requirements and incorporate the amendments to regulations section 10.34(a) relating to standards with respect to tax returns.

Finding Lists begin on page ii.

Department of the Treasury
Internal Revenue Service

The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents are compiled semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.
This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.
This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.
To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.
This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

Section 42.—Low-Income Housing Credit

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2011. See Rev. Rul. 2011-14, page 31.

Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of July 2011. See Rev. Rul. 2011-14, page 31.

Section 330.—31 USC—Practice Before the Department

31 CFR 10.0: Scope of part.

T.D. 9527

DEPARTMENT OF THE TREASURY
Internal Revenue Service
31 CFR Part 10

Regulations Governing Practice Before the Internal Revenue Service

AGENCY: Office of the Secretary, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations governing practice before the Internal Revenue Service (IRS). The regulations affect individuals who practice before the IRS and providers of continuing education programs. The regulations modify the general standards of practice before the IRS and the standards with respect to tax returns.

DATES: *Effective Date:* These regulations are effective on August 2, 2011.

Applicability Date: For dates of applicability, see §§10.0(b), 10.1(c), 10.2(b), 10.3(j), 10.4(f), 10.5(g), 10.6(n), 10.7(f), 10.8(d), 10.9(c), 10.20(c), 10.25(e), 10.30(e), 10.34(e), 10.36(c), 10.38(b), 10.50(e), 10.51(b), 10.53(e), 10.60(d), 10.61(c), 10.62(d), 10.63(f), 10.64(f), 10.65(c), 10.66(b), 10.69(c), 10.72(g), 10.76(e), 10.77(f), 10.78(d), 10.79(e), 10.80(b), 10.81(b), 10.82(h), and 10.90(c).

FOR FURTHER INFORMATION CONTACT: Matthew D. Lucey at (202) 622–4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these regulations was previously reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1726. The collection of information in these regulations is in §§10.6 and 10.9. The total annual burden of this collection of information is an increase from the burden in the current regulations. This information is required in order for the IRS to ensure that individuals permitted to prepare tax returns are informed of the latest developments in Federal tax practice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number.

Books or records relating to a collection of information must be retained as long as their contents might become material in the administration of any internal revenue law.

Background

Section 330 of title 31 of the United States Code authorizes the Secretary of the Treasury (the Secretary) to regulate the practice of representatives before the Treasury Department. The Secretary is authorized, after notice and an opportunity for a proceeding, to censure, suspend, or disbar from practice before the Treasury Department those representatives who are incompetent, disreputable, or who violate regulations prescribed under section 330 of title 31. The Secretary also is authorized to impose a monetary penalty against these individuals and the individuals' firms or other entities that employ them. Additionally, the Secretary may seek an injunction against these individuals under section 7408 of the Internal Revenue Code (Code).

The Secretary has published regulations governing the practice of representatives before the IRS in 31 CFR part 10 and reprinted the regulations as Treasury Department Circular No. 230 (Circular 230). These regulations authorize the IRS to act upon applications for enrollment to practice before the IRS; to make inquiries with respect to matters under Circular 230; to institute proceedings to impose a monetary penalty or to censure, suspend, or disbar a practitioner from practice before the IRS; to institute proceedings to disqualify appraisers; and to perform other duties necessary to carry out these functions.

Circular 230 has been amended periodically. The regulations were amended most recently on September 26, 2007 (T.D. 9359, 2007–2 C.B. 931 [72 FR 54540]), to modify various provisions relating to the general standards of practice. For example, the 2007 regulations established an enrolled retirement plan agent designation, modified the conflict of interest rules, limited the use of contingent fees by practitioners, and required public disclosure of OPR disciplinary decisions after the decisions become final.

Those final regulations, however, did not finalize the standards with respect to tax returns under §10.34(a) and the definitions under §10.34(e) because of the amendments to section 6694(a) of the Code made by the Small Business and Work Opportunity Tax Act of 2007, Public Law 110–28, 121 Stat. 190. Rather, the IRS and the Treasury Department reserved §10.34(a) and (e) in those final regulations and also simultaneously issued a notice of proposed rulemaking (REG–138637–07, 2007–2 C.B. 977) in the **Federal Register** (72 FR 54621) proposing to conform the professional standards under §10.34 of Circular 230 with the civil penalty standards under section 6694(a) as amended by the 2007 Act.

On October 3, 2008, the Tax Extenders and Alternative Minimum Tax Relief Act of 2008, Div. C. of Public

Law 110–343, 122 Stat. 3765, again amended the standard of conduct that must be met to avoid imposition of the tax return preparer penalty under section 6694(a). The IRS and the Treasury Department published final regulations (T.D. 9436, 2009–3 I.R.B. 268) in the **Federal Register** (73 FR 78430) implementing amendments to the tax return preparer penalties on December 22, 2008. To generally be consistent with the return preparer penalty regulations, these final regulations provide updated rules with respect to the standards for tax returns under §10.34(a).

These final regulations also provide new rules governing the oversight of tax return preparers. Previously, an individual tax return preparer generally was not subject to the provisions in Circular 230 unless the tax return preparer was an attorney, certified public accountant, enrolled agent, or other type of practitioner identified in Circular 230. Prior to the issuance of these final regulations, any individual could prepare tax returns and claims for refund without meeting any qualifications or competency standards. A tax return preparer also used to be able to exercise the privilege of limited practice before the IRS pursuant to the rules in former §10.7(c)(1)(viii) of Circular 230 and Revenue Procedure 81–38, 1981–2 C.B. 592. See §601.601(d)(2)(ii)(*b*).

In June 2009, the IRS launched a review of tax return preparers with the intent to propose a comprehensive set of recommendations to ensure uniform and high ethical standards of conduct for all tax return preparers and to increase taxpayer compliance. As part of this effort, the IRS received input from a large and diverse community through numerous channels, including public forums, solicitation of written comments, and meetings with advisory groups.

The IRS made findings and recommendations in Publication 4832, "*Return Preparer Review*" (the Report), which was published on January 4, 2010. The Report recommends increased oversight of the tax return preparer industry through the issuance of regulations.

To implement recommendations made in the Report, the IRS issued final regulations under section 6109 of the Code (T.D. 9501, 2010–46 I.R.B. 651) published in the **Federal Register** (75 FR 60309) on September 30, 2010. The final regulations under section 6109 provide that, for returns or claims for refund filed after December 31, 2010, the identifying number of a tax return preparer is the individual's preparer tax identification number (PTIN) or such other number prescribed by the IRS in forms, instructions, or other appropriate guidance. The regulations also provide that the IRS is authorized to require through other guidance (as well as in forms and instructions) that tax return preparers apply for a PTIN or other prescribed identifying number, the regular renewal of PTINs or other prescribed identifying number, and the payment of user fees. The IRS also issued final regulations (T.D. 9503, 2010–47 I.R.B. 706) establishing a user fee to apply for or renew a PTIN published in the **Federal Register** (75 FR 60316) on September 30, 2010.

On August 23, 2010, the Treasury Department and the IRS published in the **Federal Register** (75 FR 51713) a notice of proposed rulemaking (REG–138637–07, 2010–44 I.R.B. 581) proposing amendments to Circular 230 based upon certain recommendations made in the Report. The proposed regulations provided that registered tax return preparers are practitioners under Circular 230 and described the process for becoming a registered tax return preparer, as well as the scope of a registered tax return preparer's practice before the IRS. Amendments were also proposed to §10.30 regarding solicitation, §10.36 regarding procedures to ensure compliance, and §10.51 regarding incompetence and disreputable conduct. A public hearing was held on the proposed regulations on October 8, 2010. Written public comments responding to the proposed regulations were received. After consideration of the public comments, the proposed regulations are adopted as revised by this Treasury decision.

Plain Language Summary of the Requirements for Becoming a Registered Tax Return Preparer or Continuing Education Provider

Am I affected by this regulation?

If you are an attorney or certified public accountant, then the amendments to §§10.3, 10.4, 10.5, 10.7 and 10.9 of Circular 230 (rules regarding registered tax return preparers) do not affect you. If you are not an attorney or certified public accountant and you prepare, or assist in preparing, all or substantially all of a tax return or claim for refund for compensation, then you may be affected by this regulation.

Section 10.2(a)(8) of the final regulations clarifies that the definition of "tax return preparer" in Circular 230 is the same as the meaning in section 7701(a)(36) of the Code and 26 CFR 301.7701–15. If you only furnish typing, reproduction, or other mechanical assistance with respect to a tax return or a claim for refund, you are not a tax return preparer under Circular 230.

How am I affected by this regulation and how does this regulation work with other recently issued IRS guidance?

The final regulations, in part, provide details about: (1) the application process to become a registered tax preparer, (2) the renewal process to remain a registered tax return preparer, and (3) other rules that govern practice before the IRS that affect all practitioners.

Application Process

Generally, you must do the following to apply to become a registered tax return preparer: (1) pass a one-time competency exam, (2) pass a suitability check, and (3) obtain a PTIN (and pay the amount provided in the PTIN User Fee regulations).

To allow tax return preparers a transition period to pass the competency examination and, because the competency examination will not be available until after these final regulations are published, Notice 2011–6, 2011–3 I.R.B. 315, which was published on December 30, 2010, provides the following guidance to tax return preparers who obtain a PTIN (in accordance with the PTIN regulations) and pay the applicable user fee (set forth in the PTIN User Fee regulations) before the competency examination is offered:

Individuals who obtain a provisional PTIN before the competency examination is offered may prepare for compensation any tax return or claim for refund until December 31, 2013, as long as the individual renews their PTIN, passes a suitability check (when available), and pays the applicable user fee. After the examination is offered, only attorneys, certified public accountants, enrolled agents, and registered

tax return preparers, or individuals defined in section 1.02(a) or (b) of Notice 2011–6 may obtain a PTIN.

The tax returns and claims for refund covered by the competency examination initially offered will be limited to individual tax returns (Form 1040 series tax returns and accompanying schedules). As provided in Notice 2011–6, individuals may certify that they do not prepare individual tax returns and, as a result, will not be required to pass this initial competency examination or become a registered tax return preparer at this time.

The process for becoming a registered tax return preparer is comparable to the existing process for enrolled agents. Enrolled agents must pass the Special Enrollment Examination and complete continuing education requirements. These regulations, however, do not change enrolled agents' status as practitioners under Circular 230.

Renewal Process

You must complete continuing education to maintain your status as a registered tax return preparer. A registered tax return preparer must annually renew their PTIN and pay a user fee every year. Generally, registered tax return preparers must complete a minimum of 15 credits of continuing education annually. This regulation specifies what constitutes continuing education. Registered tax return preparers must retain records of continuing education courses for four years.

If you prepare or assist in preparing all or substantially all of a tax return for compensation but do not sign the tax return, you are exempt from the competency examination and continuing education requirements if the requirements of section 1.02(a) of Notice 2011–6 are met. You must, however, renew your PTIN, pay the applicable PTIN user fee, and certify that the requirements of Notice 2011–6 are met.

Continuing Education Providers

You are subject to requirements in the final regulations. The final regulations provide requirements applicable to continuing education providers who provide continuing education programs to registered tax return preparers and enrolled agents. Continuing education providers must obtain and renew continuing education provider numbers and continuing education provider program numbers and pay any applicable fees.

Summary of Comments and Explanation of Revisions

The IRS received more than 50 written comments in response to the notice of proposed rulemaking. All of the comments were considered and are available for public inspection. Most of the comments that addressed the proposed regulations are summarized in this preamble. Some comments addressed other regulations or notices of proposed rulemaking and are not discussed in this preamble.

The scope of these rules is limited to practice before the IRS. These regulations do not change the existing authority of attorneys, certified public accountants, and enrolled agents to practice before the IRS under Circular 230 and do not alter or supplant ethical standards that might otherwise be applicable to these practitioners.

IRS Offices Administering and Enforcing Circular 230

To fully implement the return preparer initiative, the IRS announced that a new return preparer office was created to administer PTIN applications, competency testing, and continuing education. The IRS decided that an office dedicated solely to these matters will allow the IRS to best serve tax return preparers and taxpayers by providing efficiency and expertise in this area.

Concurrently, the Office of Professional Responsibility will continue to enforce the Circular 230 provisions relating to practitioner conduct and discipline. The Office of Professional Responsibility will continue to carry out its mission to interpret and apply the standards of practice for tax professionals in a fair and equitable manner. As discussed in the Report, a strong enforcement regime is a key component to increased oversight of the tax return preparer industry. Commentators on the proposed regulations also suggested that the return preparer initiative must be met with appropriate enforcement measures. The IRS recognizes that the Office of Professional Responsibility is central to the IRS' goal of maintaining high standards of ethical conduct for all practitioners and that the Office must operate independently from IRS functions enforcing Title 26 requirements.

The final regulations accommodate the internal structure by generally removing references to the Office of Professional Responsibility. The final regulations allow the flexibility to adjust responsibility appropriately between the offices as the return preparer initiative is implemented. The Commissioner may delegate necessary authorities to appropriate offices.

Definitions — Practice Before the Internal Revenue Service, Tax Return Preparer

The final regulations adopt the proposed amendments to §10.2(a)(4), which clarify that either preparing a document or filing a document may constitute practice before the IRS. The final regulations also adopt the proposed amendments to §10.2(a)(8), which clarify that the definition of "tax return preparer" in Circular 230 is the same as the meaning in section 7701(a)(36) of the Code and 26 CFR 301.7701–15.

Who May Practice

The final regulations adopt the proposed amendments to §10.3(f), which establish a new "registered tax return preparer" designation. A registered tax return preparer is any individual so designated under §10.4(c) who is not currently under suspension or disbarment from practice before the IRS. An individual who is a registered tax return preparer pursuant to this part is a practitioner authorized to practice before the IRS, subject to the limitations identified in these regulations. Some commentators stated that the term registered tax return preparer would confuse the public because it implies a high level of professional capability. As stated in the Report, the goal of the return preparer initiative is increased oversight of the tax return preparer industry and to institute standards for minimum competence. For those individuals who have passed a competency examination and have met continuing education requirements, the Treasury Department and the IRS conclude that the term "registered" is appropriate.

Some commentators requested that the IRS not include registered tax return preparers as individuals who may practice under proposed §10.3. Representation is defined as "[a]cts performed on behalf of a taxpayer by a representative before the Internal Revenue Service." See 26 CFR 601.501(b)(13) (Conference and Practice Requirements). As discussed earlier in this preamble, practice before the IRS includes preparing or filing tax returns and other documents with the IRS. Thus, preparation of a tax return is practice before the IRS. Because registered tax return preparers are individuals who prepare all or substantially all of a tax return or claim for refund on behalf of a taxpayer for compensation, they practice before the IRS and must be included in §10.3 of the final regulations.

The Treasury Department and the IRS received comments requesting clarification with respect to which forms registered tax return preparers are permitted to prepare. The IRS will prescribe by forms, instructions, or other appropriate guidance the tax returns and claims for refund registered tax return preparers are permitted to prepare after successfully completing the competency examination. Forms, instructions, or other appropriate guidance may also provide rules with respect to forms that may be prepared without completion of the competency examination. Notice 2011–6 permits individuals who prepare tax returns not covered by the competency examination to obtain a PTIN if certain requirements are met.

Registered tax return preparers also may represent taxpayers before revenue agents, customer service representatives, or similar officers and employees of the IRS (including the Taxpayer Advocate Service) during an examination if the registered tax return preparer signed the tax return or claim for refund for the taxable year or period under examination. Consistent with the limited practice rights previously available to unenrolled return preparers under former §10.7(c)(1)(viii), registered tax return preparers are not permitted to represent taxpayers, regardless of the circumstances requiring representation, before appeals officers, revenue officers, Counsel, or similar officers or employees of the IRS or the Treasury Department. A registered tax return preparer's authorization to practice under this part also does not include the authority to provide tax advice to a client or another person except as necessary to prepare a tax return, claim for refund, or other document intended to be submitted to the IRS.

Some commentators inquired as to whether the federally authorized tax practitioner privilege under section 7525 applies to communications between a taxpayer and a registered tax return preparer. The Treasury Department and the IRS have concluded that the federally authorized tax practitioner privilege generally does not apply to communications between a taxpayer and a registered tax return preparer because the advice a registered tax return preparer provides ordinarily is intended to be reflected on a tax return and is not intended to be confidential or privileged.

The conduct of a registered tax return preparer in connection with the preparation of the return, claim for refund, or other document, as well as any representation of the client during an examination, will be subject to the standards of conduct in Circular 230. Inquiries into possible misconduct and disciplinary proceedings relating to registered tax return preparer misconduct will be conducted under the provisions in Circular 230.

Numerous members of the tax return preparation industry submitted comments requesting that certain individuals be exempted from the requirements in the proposed regulations. Commentators suggested that tax return preparers who are supervised by certain practitioners currently authorized to practice under Circular 230 should not be required to become registered tax return preparers if the supervising practitioner signs the tax return prepared in part by the supervised tax return preparer. Commentators reasoned that certain practitioners who sign tax returns are subject to, in addition to Circular 230, professional standards and oversight by state licensing authorities and other professional organizations that place responsibility for the tax return on the signing practitioner.

In Notice 2011–6, the Treasury Department and the IRS provided, pursuant to §1.6019–2(h), that individuals who are not attorneys, certified public accountants, enrolled agents, enrolled retirement plan agents, enrolled actuaries, or registered tax return preparers will be eligible to obtain a PTIN and, thus, prepare, or assist in preparing, all or substantially all of a tax return or claim for refund for compensation in certain discrete circumstances. Section 1.02(a) of the notice permits certain individuals supervised by an attorney, certified public accountant, enrolled agent, enrolled retirement plan agent, or enrolled actuary who signs the return or claim for refund prepared by the individual to obtain a PTIN. These individuals also are required to certify in their application to receive a PTIN that they are supervised by an attorney, certified public accountant, enrolled agent, enrolled retirement plan agent, or enrolled actuary who signs the tax return or claim for refund and provide a supervising individual's PTIN or other number if prescribed by the IRS. These individuals may not sign any tax return they prepare or assist in preparing for compensation. If at any point, the individual is no longer supervised by the signing attorney, certified public accountant, enrolled agent, enrolled retirement plan agent, or enrolled actuary, the individual must notify the IRS if prescribed in forms, instructions, or other appropriate guidance and will no longer be permitted to prepare or assist in preparing all or substantially all of a tax return or claim for refund for compensation under this exception. Because individuals meeting these requirements, as fully set forth in §1.02(a) of Notice 2011–6, are permitted to obtain a PTIN, they are not required to become registered tax return preparers to obtain a PTIN.

Eligibility to Become an Enrolled Agent or Enrolled Retirement Plan Agent

The final regulations provide that an enrolled agent or enrolled retirement plan agent must be eighteen years old and obtain a PTIN to be eligible to practice before the IRS as an enrolled agent or enrolled retirement plan agent.

Section 10.4(d) of the final regulations also provides that a former employee who, by virtue of past service and technical experience in the IRS, may be granted enrollment as an enrolled agent or enrolled retirement plan agent if certain criteria are satisfied. Some commentators on the proposed regulations suggested that former IRS employees should not be granted enrollment because the IRS is not exempting, or "grandfathering," experienced un-

enrolled practitioners from the testing and continuing education requirements. This recommendation is not adopted because the IRS may easily check a former employee's IRS employment record to ensure the individual has the past service and technical experience for the scope of enrollment sought by the former employee.

Eligibility to Become a Registered Tax Return Preparer

The final regulations require that an individual must be eighteen years old, possess a current or otherwise valid PTIN or other prescribed identifying number, and pass a minimum competency examination to become a registered tax return preparer. Many commentators supported the IRS' effort to increase the overall competency of tax return preparers by implementing reasonable standards. The minimum age requirement included in the final regulations will assist the Treasury Department and the IRS in efficient tax administration by ensuring that registered tax return preparers have a minimum level of experience, knowledge, judgment, and maturity. Other categories of Circular 230 practitioners are generally subject to state requirements that result in the individual possessing a minimum level of experience, knowledge, judgment, and maturity.

The competency examination will be administered by, or administered under the oversight of, the IRS, similar to the special enrollment examinations for enrolled agents and enrolled retirement plan agents. Tax return preparers will be subject to suitability checks to determine whether the tax return preparer has engaged in disreputable conduct, which, at the time the application is filed with the IRS, could result in suspension or disbarment under Circular 230. An individual who has engaged in disreputable conduct is not eligible to become a registered tax return preparer.

Commentators requested that the IRS delay implementation of the testing requirement. The Treasury Department and the IRS did not adopt any delay in implementation of the testing requirement because it is currently anticipated that the examination to become a registered tax return preparer will not be available until after the effective date of these regulations. Notice 2011–6 provides guidance establishing transition rules explaining the steps individuals must take to prepare all or substantially all of a tax return or claim for refund while awaiting full implementation of the examination process. The IRS will provide administrative information about the competency examination to tax return preparers via appropriate channels, including the Tax Professionals page of the IRS website, *http://www.irs.gov/taxpros*.

Some commentators also requested that the Treasury Department and the IRS delay implementation of the continuing education requirements. In response to these concerns and to ensure the IRS has sufficient time to implement these requirements appropriately, the Treasury Department and the IRS announced that the implementation of the continuing education requirement will be postponed and that there will be no continuing education requirement at least during the first year of registration, which commenced on September 30, 2010. The IRS will provide administrative information about continuing education to tax return preparers via appropriate channels, including the Tax Professionals page of the IRS website, *http://www.irs.gov/taxpros*.

Procedures for Becoming or Renewing an Individual's Designation as a Registered Tax Return Preparer

Section 10.5 of the final regulations sets forth the applicable procedures related to becoming a registered tax return preparer, which generally are consistent with the procedures currently utilized for enrolled agents and enrolled retirement plan agents. The regulations provide that individuals who want to become a registered tax return preparer or renew their designation as a registered tax return preparer must utilize forms and comply with the procedures established and published by the IRS. The final regulations permit the IRS to change the procedures to apply to become a registered tax return preparer.

As a condition for consideration of an application, the IRS may conduct a Federal tax compliance check and suitability check. The tax compliance check will be limited to an inquiry regarding whether the individual has filed all required individual or business tax returns (such as employment tax returns that might have been required to be filed by the applicant) and whether the individual has failed to pay, or make proper arrangements with the IRS for payment of, any Federal tax debts. The suitability check will be limited to an inquiry regarding whether the individual has engaged in any conduct that would justify suspension or disbarment of any practitioner under the provisions of this part, including whether the applicant has engaged in disreputable conduct.

The IRS may not designate an individual as a registered tax return preparer only if the results of the tax compliance or suitability check are sufficient to establish that the individual engaged in conduct subject to sanctions under Circular 230 at the time the individual seeks to become a registered tax return preparer or the individual does not pass the required competency examination or meet other established standards. If the individual does not pass the competency examination or the tax compliance or suitability check, the individual will not be designated as a registered tax return preparer. Pursuant to §10.5(f) of these regulations, an applicant denied status as a registered tax return preparer will be informed in writing as to the reason(s) for any denial of the application. The applicant may file a written protest within 30 days after receipt of the denial. The written protest must be filed as prescribed by the Internal Revenue Service in forms, guidance, or other appropriate guidance. An individual who is initially denied status as a registered tax return preparer for failure pass a tax compliance check may reapply after the initial denial if the individual becomes current with respect to the individual's tax liabilities.

Once an individual is approved as a registered tax return preparer, the IRS will issue a registration card or certificate to each individual. The card or certificate will be in addition to any notification provided to an individual who obtains a PTIN. Registered tax return preparers must have both a valid registration card or certificate and a current and valid PTIN number to practice before the IRS.

Section 10.6 of the final regulations sets forth the procedures for renewing an individual's designation as a registered tax return preparer. Registered tax return preparers must renew their designation as prescribed in forms, instructions, or other appropriate guidance. A condition of renewal is the completion of the requisite number of continuing education hours by registered tax return preparers. Registered

tax return preparers must complete 15 hours of continuing education during each registration year, with a minimum of three hours of Federal tax law updates, two hours of tax-related ethics and 10 hours of Federal tax law topics. The registration year is defined as each 12-month period that the registered tax return preparer is authorized to practice before the IRS.

Registered tax return preparers must maintain records with respect to the completion of the continuing education credit hours and to self-certify the completion of the continuing education credit at the time of renewal. These regulations require that a qualifying continuing education course enhance professional knowledge in Federal taxation or Federal tax related matters and be consistent with the Code and effective tax administration.

Section 10.6(f)(2)(iii) of the proposed regulations provided that the maximum continuing education credit allowed for instruction and preparation is four hours annually. The proposed regulations also removed the ability to receive hours for authoring articles, books, or other publications that was formerly allowed with respect to enrolled agents and enrolled retirement plan agents. The Treasury Department and the IRS did receive comments objecting to the reduction of maximum credit and the removal of the ability to receive credit for authoring publications. The comments stated that the rules would result in a lower quality of education and lower diversity.

In §10.6(f)(2)(iii) of the final regulations, the Treasury Department and the IRS modified the proposed rules regarding the maximum credit allowed for instruction and preparation to allow enrolled agents and enrolled retirement plan agents to earn six hours annually. The final regulations allow registered tax return preparers to earn four hour annually. The Treasury Department and the IRS do not agree with the comments concerning receiving credit for authoring publications because the learning involved with authoring a publication does necessarily not equate to the knowledge derived from a continuing education program that is current and developed by an individual qualified in the relevant subject matter. Therefore, the final regulations remove the ability to receive hours for authoring articles, books, or other publications that was formerly allowed with respect to enrolled agents and enrolled retirement plan agents.

Sections 10.5(b) and 10.6(d)(7) of the final regulations provide that the IRS may charge a reasonable nonrefundable fee for each initial application and renewal of status as a registered tax return preparer submitted to the IRS. At the outset, the initial application fee refers to the initial PTIN user fee and the user fee applicable to any required competency examination. Similarly, a registered tax return preparer must renew a PTIN and pay the applicable user fee as prescribed by the IRS in forms, instructions, or other appropriate guidance. The IRS may in future regulations add or remove fees applicable to becoming a registered tax return preparer.

The Treasury Department and the IRS received numerous comments requesting that certain non-signing tax return preparers be exempt from the testing and continuing education requirements. Commentators reasoned that the testing and continuing education requirements are not necessary for non-signing tax return preparers who are supervised because a supervising practitioner is responsible for the accuracy of the underlying return and must generally comply with continuing professional education requirements and ethical standards. Comments also suggested that fees for the competency examination and continuing education for paraprofessionals and those assisting in return preparation would not be justified when the signing tax return preparer ultimately reviews, and is responsible for, the accuracy of the tax return. Overall, these comments suggested that the costs of requiring testing and continuing education for tax return preparers who are supervised by attorneys, certified public accountants, enrolled agents, enrolled retirement plan agents, and enrolled actuaries outweighed the attendant benefits.

The Treasury Department and the IRS addressed these concerns in Notice 2011–6, which, as previously stated in this preamble, allows individuals who are not attorneys, certified public accountants, enrolled agents, or registered tax return preparers to obtain a PTIN provided the individual is supervised by an attorney, certified public accountant, enrolled agent, enrolled retirement plan agent, or enrolled actuary who signs the tax return or claim for refund when the individual prepares all or substantially all of a tax return or claim for refund. Because individuals meeting these requirements, as fully set forth in §1.02(a) of Notice 2011–6, are permitted to obtain a PTIN, they are not required to become registered tax return preparers and, therefore, are not required to pass the competency examination or meet the continuing education requirements.

Some commentators requested that the Treasury Department and the IRS exempt student interns from the requirement to obtain a PTIN. These commentators suggested that the PTIN requirement would deter interest in tax accounting internships and make internship programs a money-losing proposition. The PTIN requirement applies to anyone who prepares all or substantially all of a tax return for compensation. If an intern does not receive compensation, the intern is not required to obtain a PTIN under the §1.6109–2 regulations. If, however, an intern engages in tax return preparation activities that make the intern a tax return preparer for purposes of the §1.6109–2 regulations and the intern is compensated for these activities, the intern must obtain a PTIN.

Continuing Education Providers

In §10.9 of the proposed regulations, the Treasury Department and the IRS proposed a new requirement that continuing education providers obtain approval of each program to be qualified as a continuing education program. The proposed regulations also required providers of continuing education courses to maintain records and educational material concerning continuing education programs and the individuals who attended them. Section 10.9(a)(6) of the proposed regulations indicated that the IRS may charge a reasonable nonrefundable fee for each application for qualification as a qualified continuing education program.

The Treasury Department and the IRS received numerous comments requesting that the IRS reconsider the change in the continuing education approval process. Comments questioned why the IRS would require pre-approval of continuing education requirements when the number of individuals required to complete continuing education requirement is being significantly increased. Commentators

suggested that the pre-approval process would be a substantial burden to continuing education providers and the IRS. In response to these comments, the Treasury Department and the IRS chose not to finalize the rules in proposed §10.9 regarding pre-approval of individual continuing education programs.

Because the Treasury Department and the IRS are not finalizing the rules in proposed §10.9 with respect to pre-approval of individual continuing education programs, §10.9 of these final regulations adopts rules similar to the rules in former §10.6(g) applicable to qualified sponsors. Under §10.9 of the final regulations, continuing education providers must be qualified and must obtain a qualified continuing education provider number to be eligible to offer qualified continuing education. While continuing education providers initially will not be required to obtain the IRS' approval of each continuing education program offered, the regulations authorize the IRS to require such approval, at its discretion, in appropriate forms, instructions or other appropriate guidance. Under the final regulations, continuing education providers are required to obtain a continuing education program number for each qualified continuing education program offered. Although the IRS is not currently proposing charging providers a fee for obtaining a continuing education provider number or a continuing education program number, these regulations provide that providers must pay any user fee applicable to obtaining either number established in future regulations.

Section 10.9 of these final regulations allows those listed in former §10.6(g) to be qualified continuing education providers. Commentators on the proposed regulations suggested that the Treasury Department and the IRS consider that some professional organizations have nationally recognized standards for approving continuing education programs that are comparable to the IRS standards in Circular 230. Specifically, the comments requested that continuing education providers approved by these organization's standards be exempted from the requirement to seek additional approval from the IRS with respect to each continuing education program.

The Treasury Department and the IRS agree with the commentators that there is merit in recognizing continuing education providers that have been approved previously by professional organizations with standards comparable to Circular 230. Accordingly, §10.9 of these regulations includes as qualified continuing education providers those providers that are recognized and approved as providers of continuing education on subject matters within §10.6(f) of these regulations by a qualifying organization that has minimum education standards comparable to those set forth in Circular 230. The IRS intends to identify in forms, instructions, or other appropriate guidance the professional organizations whose approval will allow a continuing education provider to be qualified within §10.9.

Limited Practice Before the IRS, Return Preparation, and Application to Other Individuals

Section 10.3(f) of these regulations permits registered tax return preparers to represent a taxpayer during an examination if the registered tax return preparer prepared the return for the taxable period under examination. Therefore, the final regulations remove the limited practice authorization in former §10.7(c)(1)(viii), which allowed an unenrolled tax return preparer to represent a taxpayer during an examination if that individual prepared the return for the taxable period under examination. Additionally, the final regulations remove former §10.8 regarding customhouse brokers from Circular 230 and move the language in former §10.7(e) to new §10.8.

Section 10.8(a) of the final regulations provides that any individual who for compensation prepares or assists with the preparation of all or substantially all of a tax return or claim for refund must have a PTIN. Except as otherwise prescribed in forms, instructions, or other appropriate guidance, an individual must be an attorney, certified public accountant, enrolled agent, or registered tax return preparer to obtain a preparer tax identification number. These rules are consistent with the final PTIN regulations under section 6109. An individual who is not an attorney, certified public accountant, enrolled agent, or registered tax return preparer who nevertheless prepares for compensation all or a substantial portion of a document (including tax returns and claims for refund) for submission to the IRS is engaged in practice before the IRS and is subject to the rules and standards of Circular 230.

Section 10.8(b) of the final regulations provides that any individual, whether or not the individual is a practitioner, may assist with the preparation of a tax return or claim for refund (provided the individual prepares less than substantially all of the tax return or claim for refund). This revision is consistent with the inclusion of registered tax return preparers as practitioners authorized to practice before the IRS and the practice rights available to these practitioners.

These regulations also establish a new §10.8(c) regarding other individuals. Any individual who prepares for compensation all or a substantial portion of a document pertaining to a taxpayer's tax liability for submission to the IRS is subject to the duties and restrictions relating to practice before the IRS and may be sanctioned, after notice and opportunity for a conference, for any conduct that would justify a sanction under §10.50. An individual described in 26 CFR 301.7701–15(f) is not treated as having prepared all or a substantial portion of the document by reason of such assistance. For example, an individual who only furnishes typing, reproducing, or other mechanical assistance with respect to a document is not subject to the duties and restrictions relating to practice before the IRS.

Solicitation

Section 10.30(a)(1) of these regulations provides that a practitioner may not, with respect to any IRS matter, in any way use or participate in the use of any form of public communication or private solicitation containing a false, fraudulent, coercive, misleading, or deceptive statement or claim. In describing their designation, registered tax return preparers may not utilize the term "certified" or imply an employer/employee relationship with the IRS.

The proposed regulations provided that registered tax return preparers were permitted to use the term "designated as a registered tax return preparer with the Internal Revenue Service" when describing their designation. Some commentators expressed concern that the word "with" may imply a closer relationship with the IRS

than exists, such as an employer-employee relationship. These commentators suggested using the term "by" instead. Accordingly, the IRS revised the language in final §10.30(a)(1) to take into account this suggestion.

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

After careful consideration, the IRS and the Treasury Department continue to conclude that the professional standards in §10.34(a) generally should be consistent with the civil penalty standards in section 6694 for tax return preparers. As discussed in this preamble, the limited differences between the standards in §10.34 and section 6694 arise from the different purposes served by those provisions and the different manner in which the two standards will be administered.

The standards with respect to tax returns in §10.34(a) in the final regulations provide broader guidelines that are more appropriate for professional ethics standards. Under §10.34(a)(1)(i) of the regulations, a practitioner may not willfully, recklessly, or through gross incompetence, sign a tax return or claim for refund that the practitioner knows or reasonably should know contains a position that: (A) lacks a reasonable basis; (B) is an unreasonable position as described in section 6694(a)(2) (including the related regulations and other published guidance); or (C) is a willful attempt by the practitioner to understate the liability for tax or a reckless or intentional disregard of rules or regulations by the practitioner as described in section 6694(b)(2) (including the related regulations and other published guidance).

Under §10.34(a)(1)(ii) of these regulations, a practitioner may not willfully, recklessly, or through gross incompetence, advise a client to take a position on a tax return or claim for refund, or prepare a portion of a tax return or claim for refund containing a position, that: (A) lacks a reasonable basis; (B) is an unreasonable position as described in section 6694(a)(2) (including the related regulations and other published guidance); or (C) is a willful attempt by the practitioner to understate the liability for tax or a reckless or intentional disregard of rules or regulations by the practitioner as described in section 6694(b)(2) (including the related regulations and other published guidance).

Commentators on proposed §10.34 requested that the IRS clarify whether Notice 2009–5, 2009–3 I.R.B. 309, applies for purposes of determining whether the tax return preparer prepared a return or claim for refund with an unreasonable position under §10.34. An unreasonable position for purposes of §10.34 is an unreasonable position as described in section 6694(a)(2) and related published guidance. Thus, Notice 2009–5 applies to determine whether the tax return preparer took an unreasonable position to the extent that it applies to the tax return preparer for purposes of section 6694.

Some commentators were concerned that a violation of section 6694 would translate to a *per se* violation of §10.34. If the IRS, however, assesses a penalty against a practitioner under section 6694 and also refers the practitioner for possible discipline under Circular 230, an independent determination as to whether the practitioner engaged in willful, reckless, or grossly incompetent conduct subject to discipline under §10.34(a) will be made before any disciplinary proceedings are instituted or any sanctions are imposed. Thus, a practitioner liable for a penalty under section 6694 is not automatically subject to discipline under §10.34(a) of these regulations.

Several commentators recommended that the final regulations adopt the reasonable basis standard as the appropriate return position standard under §10.34(a) rather than the civil penalty standards in section 6694(a) (the substantial authority and reasonable basis with adequate disclosure standards). These commentators similarly requested clarification providing that a practitioner is not subject to discipline under §10.34(a) if the practitioner fails to adequately disclose a position on a return or claim for refund for which there is a reasonable basis. These comments are not adopted in final §10.34(a). Proposed §10.34(a)(1)(i)(A) and (a)(1)(ii)(A) established reasonable basis as the minimum threshold standard for practitioners because a practitioner acts unethically when the practitioner advises a taxpayer to take a position on a return or claim for refund that lacks a reasonable basis. The Treasury Department and the IRS continue to believe that a practitioner also acts unethically in violating the civil penalty standards under section 6694(a) (including when there is a reasonable basis for a position on a return or claim for refund but the practitioner does not adequately disclose the position within the meaning of §1.6694–2(d)(3)) through willful, reckless, or grossly incompetent conduct. Accordingly, final §10.34(a)(1)(i) and (a)(1)(ii) provide three independent standards of practitioner conduct and a practitioner who fails to satisfy any one of these three standards is subject to discipline under §10.34(a).

Procedures to Ensure Compliance

Section 10.36(b) of these regulations provides that firm management with principal authority and responsibility for overseeing a firm's practice of preparing tax returns, claims for refunds and other documents filed with the IRS must take reasonable steps to ensure that the firm has adequate procedures in effect for purposes of complying with Circular 230. The Treasury Department and the IRS continue to believe that expansion of §10.36 to require firm procedures for tax return preparation practice, in addition to the pre-existing application to covered opinions, will help ensure compliance and encourage firms to self-regulate. Firm responsibility is a critical factor in ensuring high quality advice and representation for taxpayers.

Authority to Accept a Practitioner's Consent to Sanction

Section 10.50 of the final regulations provides that the IRS has the authority to accept a practitioner's offer of consent to be sanctioned under §10.50 in lieu of instituting or continuing a proceeding under §10.60(a). Section 10.61(b)(2) currently provides that the IRS may accept or decline such an offer from a practitioner. A provision similar to the provision added to these regulations was removed during a previous revision of Circular 230. Due to the removal, some stakeholders have expressed concern over whether the IRS has the authority to accept an offer of consent to sanction. The provision added in the final regulations is merely intended to clarify any ambiguity with respect to the authority of the IRS to accept an offer of consent to sanction in lieu of instituting or continuing a proceeding.

Incompetence and Disreputable Conduct

Section 10.51 of Circular 230 defines disreputable conduct for which a practitioner may be sanctioned. Section 6011(e)(3) of the Code, enacted by section 17 of the Worker, Homeownership, and Business Assistance Act of 2009, Public Law 111–92 (123 Stat. 2984, 2996) (Nov. 6, 2009), requires certain specified tax return preparers to file individual income tax returns electronically. Because the Treasury Department and the IRS believe that the failure to comply with this requirement is disreputable conduct, these regulations are amended to add a new paragraph in §10.51 to address practitioners who fail to comply with this requirement. Under §10.51(a)(16), disreputable conduct includes willfully failing to file on magnetic or other electronic media a tax return prepared by the practitioner when the practitioner is required to do so by Federal tax laws (unless the failure is due to reasonable cause and not due to willful neglect). Some commentators stated that a failure to electronically file is only a procedural failure and suggested that it could only constitute disreputable conduct when coupled with an attempt to defraud the government. Commentators also suggested that a failure to electronically file should not constitute disreputable conduct because there are many valid reasons why a practitioner would not choose to file electronically file tax returns.

The Treasury Department and the IRS, however, conclude that it is appropriate to include as disreputable conduct a tax return preparer's willful failure to electronically file tax returns subject to the mandatory electronic filing requirement. The IRS cannot permit tax return preparers to intentionally disregard the internal revenue laws and continue to practice before the IRS. Section 6011(e)(3) only applies to certain tax return preparers who file a specified number of returns per year and these tax return preparers need to be aware of the new electronic filing requirement. The Treasury Department and the IRS have issued final regulations (T.D. 9518, 2011–17 I.R.B. 710, published in the **Federal Register** (76 FR 17521) on March 30, 2011, that provide exclusions from the electronic filing requirement. The exclusions in the final regulations include undue hardship waivers and administrative exemptions. *See* Rev. Proc. 2011–25 for additional information on hardship waivers and Notice 2011–16 for additional information on administrative exemptions. Moreover, tax return preparers are only subject to sanction under §10.51(a)(16) of the final regulations for not electronically filing if such a failure is willful. Accordingly, §10.51(a)(16) is sufficiently narrowly tailored to only apply to these tax return preparers who willfully fail to comply with the electronic filing requirement.

Under §10.51(a)(17) of the final regulations, disreputable conduct also includes willfully preparing all or substantially all of, or signing as a compensated tax return preparer, a tax return or claim for refund when the practitioner does not possess a current or otherwise valid PTIN or other prescribed identifying number. Section 10.51(a)(18) of these regulations states that it is disreputable conduct for a practitioner to willfully represent a taxpayer before an officer or employee of the IRS unless the practitioner is authorized to do so pursuant to Circular 230. These changes are consistent with the other revisions in these regulations and under section 6109.

Proceedings Against Appraisers

The regulations also contain amendments to §10.60(b) relating to institution of proceedings against appraisers to better reflect the modifications made by section 1219 of the Pension Protection Act of 2006, Public Law 109–280 (120 Stat. 780), and the enactment of the section 6695A penalty. The IRS may reprimand or institute a proceeding for disqualification against an appraiser assessed a penalty under sections 6694, 6695A, or 6701, among any other relevant penalty provisions, as long as it is determined that the appraiser acted willfully, recklessly, or through gross incompetence with respect to the proscribed conduct.

Appeal of Decision of Administrative Law Judge

These regulations amend §10.77 to provide additional, clarifying information regarding the procedure for filing an appeal of an Administrative Law Judge's decision with respect to a proceeding under subpart D of Circular 230.

Records

Section 10.90 of these final regulations clarify that the roster requirements also pertain to registered tax return preparers and qualified continuing education programs.

Effective Date

These final regulations generally apply 60 days after the date the regulations are published in the **Federal Register**.

Special Analyses

Executive Order 12866, as supplemented by Executive Order 13563, provides that regulations must promote predictability and reduce uncertainty, and in developing regulations, agencies must take into account benefits and costs, both quantitative and qualitative. Specifically, agencies are directed, to the extent permitted by law, to propose or adopt regulations only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives; and in choosing among alternative regulatory approaches, select those approaches that maximize net benefits. This rule has been designated a "significant regulatory action" under section 3(f) of Executive Order 12866, inasmuch as it may adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs. Accordingly, the rule has been reviewed by the Office of Management and Budget. The Regulatory Assessment prepared for this regulation is provided in this preamble under the heading "Regulatory Assessment Under E.O. 12866, as Supplemented by E.O. 13563."

It has been determined that a final regulatory flexibility analysis is required for this final regulation under 5 U.S.C. 604. This analysis is set forth later in this preamble under the heading "Final Regulatory Flexibility Analysis."

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), Public Law 104–4 (March 22, 1995), requires that an agency

prepare a budgetary impact statement before promulgating a rule that may result in expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. Please see the Regulatory Assessment for a discussion of the budgetary impact of this final rule.

Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking was submitted to Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business and no comments were received.

A. *Regulatory Assessment under E.O. 12866, as Supplemented by E.O 13563*

1. *Statement of the need for the regulatory action*

Although the IRS has exercised its authority to regulate for attorneys, certified public accountants, and other specified tax professionals, regulations under Circular 230 currently do not apply to a critical group of tax professionals: tax return preparers. As discussed in the Report, taxpayers' reliance on tax return preparers has grown steadily in recent decades. The number of taxpayers who prepared their own tax returns without assistance fell by more than two-thirds between 1993 and 2005. In fact, today, tax return preparers assist a majority of U.S. taxpayers in meeting their Federal tax filing obligations. In 2008 and 2009, for example, paid tax return preparers, including attorneys, certified public accountants, enrolled agents, and unenrolled tax return preparers, prepared almost 60 percent of all federal tax returns filed, including approximately 87 million federal individual income tax returns. The IRS expects these numbers to increase in 2010 and the coming years.

Tax return preparers are not only responsible for assisting taxpayers in filing complete, timely, and accurate returns, but also help educate taxpayers about the tax laws, and facilitate electronic filing. Tax return preparers provide advice to taxpayers, identify items or issues for which the law or guidance is unclear, and inform taxpayers of the benefits and risks of positions taken on a tax return, and the tax treatment or reporting of items and transactions. The IRS and the Treasury Department recognize that the majority of tax return preparers serve the interests of their clients and the tax system by preparing complete and accurate returns.

The tax system is best served by tax return preparers who are ethical, provide good service, and are qualified. Recent government studies, including studies from the Government Accountability Office and the Treasury Inspector General for Tax Administration, see, for example, Government Accountability Office, *Paid Tax Return Preparers: In a Limited Study, Chain Preparers Made Serious Errors*, GAO–06–563T (Apr. 4, 2006); Treasury Inspector General for Tax Administration, *Most Tax Returns Prepared by a Limited Sample of Unenrolled Preparers Contained Significant Errors*, Rept. # 2008–40–171 (Sept. 3, 2008), illustrate the losses incurred by both taxpayers and the system of Federal tax administration when tax return preparers fail to properly prepare tax returns. Additionally, many of the more than 500 public comments received by the IRS during the agency's review of the return preparer industry expressed concern for taxpayers, tax administration and the return preparer industry, all of whom are hurt when tax returns are not accurately prepared.

An overwhelming number of commentators (98 percent of the persons who offered comments on oversight and enforcement) supported increased government oversight of tax return preparers, particularly for individuals who are not attorneys, certified public accountants or others currently authorized to practice before the IRS. These commentators argued that taxpayers, the IRS and tax administration generally would benefit from the registration of tax return preparers. Eighty-eight percent of the persons who expressed an opinion on registering paid tax return preparers favor registration. Ninety percent of the persons who commented on testing and education favor minimum education or testing requirements for paid tax return preparers. And 98 percent of the persons who commented on quality and ethics favor establishment of quality and ethics standards for paid tax return preparers.

Because the IRS has not adopted a uniform set of regulations for tax return preparers, the amount of oversight of tax return professionals varies greatly depending on professional affiliations and the geographic area in which they practice. Most tax return preparers do not have to pass any government or professionally mandated competency requirement. Most tax return preparers are not required to participate in a specified program of continuing professional education. And the ethical rules found in Circular 230 currently are not applicable to all tax return preparers.

As such, the IRS recognizes the need to apply a uniform set of rules to offer taxpayers some assurance that their tax returns are prepared completely and accurately. Increasing the completeness and accuracy of returns would necessarily lead to increased compliance with tax obligations by taxpayers.

2. *Potentially affected tax returns*

These regulations generally extend pre-existing regulations that apply to attorneys, certified public accountants and other specified tax professionals to tax return preparers, including currently unenrolled tax return preparers, who prepare all or substantially all of a tax return or claim for refund for compensation. The rules potentially apply to all returns prepared by tax return preparers regardless of the taxpayer. For example, the rules apply to self-employed tax return preparers who prepare individual tax returns for persons who have only wage and interest income. The IRS is authorized to extend the application of the rule to corporate and large partnership returns, which are prepared predominately by tax return preparers employed by large accounting firms. These examples are nonexclusive and the application or potential application of these rules is not limited to only those tax return preparers covered by the examples.

The current expansion of these regulations to currently unenrolled tax return preparers will impact individual taxpayers more than large corporate taxpayers.

3. *An assessment of benefits anticipated from the regulatory action*

The primary benefit anticipated from these regulations is that they will improve the accuracy, completeness, and timeliness of tax returns prepared by tax return preparers. As illustrated in the recent government studies, including the IRS' recent review of the tax return preparer industry, inaccurate tax returns are costly both to taxpayers and the government. Inaccurate returns may affect the finances of taxpayers, who might overpay their respective share of taxes or fail to take advantage of available tax benefits. Inaccurate tax returns may also affect the U.S. government because of overpayments, underpayments and increased costs of enforcement and collection.

The regulations are expected to improve the accuracy, completeness, and timeliness of tax returns in a number of ways. First, requiring registered tax return preparers to demonstrate the necessary qualifications to provide a valuable service by successfully completing a government or professionally mandated competency examination and continued competence by completing the specified continuing education credits annually will result in more competent and ethical tax return preparers who are well educated in the rules and subject matter. A more competent and ethical tax return preparer community will prevent costly errors, potentially saving taxpayers from unwanted problems and relieving the IRS from expending valuable examination and collection resources. Thus, regulations are critical to assisting the IRS curtail the activities of noncompliant and unethical tax return preparers.

Second, these regulations, in association with new and separate regulations under section 6109 requiring all individuals who prepare all or substantially all of a tax return for compensation to obtain a PTIN, are expected to improve the accuracy, completeness and timeliness of tax returns because they will help the IRS identify tax return preparers and the tax returns and claims for refund that they prepare, which will aid the IRS' oversight of tax return preparers, and to administer requirements intended to ensure that tax return preparers are competent, trained, and conform to rules of practice. Individuals who prepare all or substantially all of a tax return or claim for refund will be required to obtain a PTIN prescribed by the IRS and furnish the PTIN when the tax return preparer signs (as the tax return preparer) a tax return or claim for refund. Given the important role that tax return preparers play in Federal tax administration, the IRS has a significant interest in being able to accurately identify tax return preparers and monitor the tax return preparation activities of these individuals. These regulations, in conjunction with the final PTIN regulations, will enable the IRS to more accurately identify tax return preparers and improve the IRS' ability to associate filed tax returns and refund claims with the responsible tax return preparer.

Third, the regulations are expected to improve the accuracy of tax returns by providing that all registered tax return preparers are practicing before the IRS and, therefore, are practitioners subject to the ethical standards of conduct in Circular 230. This change will authorize the IRS to inquire into possible misconduct and institute disciplinary proceedings relating to registered tax return preparer misconduct under the provisions of Circular 230. A registered tax return preparer who is shown to be incompetent or disreputable, fails to comply with the provisions in Circular 230, or with intent to defraud, willfully and knowingly misleads or threatens a client or prospective client, is subject to censure, suspension, or disbarment from practice before the IRS, as well as a monetary penalty.

The availability of these sanctions will act as a deterrent to registered tax return preparers engaging in misconduct because disreputable or incompetent registered tax return preparers who are suspended or disbarred from practice will no longer be able to prepare tax returns, claims for refund, and other documents submitted to the IRS. Competent and ethical tax return preparers who are well educated in the rules and subject matter of their field can prevent costly errors, potentially saving a taxpayer from unwanted problems later on and relieving the IRS from expending valuable examination and collection resources.

The IRS and the Treasury Department expect that the largest marginal improvements in accuracy will be with regard to tax returns prepared by tax return preparers who previously were unregulated through the Circular 230 requirements. Unlike certified public accountants, attorneys, and enrolled agents, unenrolled tax return preparers generally are not subject to any form of testing, continuing professional education, or uniform ethical standards. The tax returns prepared by unenrolled tax return preparers may involve tax issues that are less complicated and smaller in amount than issues in tax returns prepared by other types of tax professionals. In addition, individual taxpayers may face a variety of complex tax issues, for which the advice of a qualified tax advisor will improve the accuracy on the return.

4. *An assessment of costs anticipated from the regulatory action*

There are various costs anticipated from this regulatory action.

Cost Category	Preliminary Cost Estimate
COMPETENCY EXAMINATION	
• Costs to registered tax preparers: costs associated with taking a minimum competency examination (including costs of examination, amount of time required to study for the exam, and any associated travel)	*Costs to Registered Tax Return Preparers* The costs associated with competency examinations for registered tax preparers are currently unknown. The competency examination has not been developed and an examination vendor has not been selected. The cost of the examination and amount of time required to study for it, therefore, are unknown. The costs for any associated travel will depend on what locations the test is offered in and how close the applicant lives to those locations. While there is currently no vendor for the examination, it is expected that the vendor will offer the test in many locations across the United States and multiple locations outside the United States.
• Costs to vendors: user fee costs IRS will charge to recover the costs to third-party vendors who administer the registered tax return preparer competency examination	*Costs to Vendors* The vendor for the examination has not been selected so these fees cannot yet be determined.
• Costs to government: costs associated with creating, administrating, and reviewing competency exams	*Costs to Government* These costs are currently unknown. The costs to the government will depend, in part, on which functions will be performed by a vendor. Also, the vendor may recover the vendor's associated costs through a separate fee charged by the vendor.
PTIN	
• Costs to registered tax preparers: user fees for applying for a PTIN and renewing a PTIN	*Costs to Registered Tax Return Preparers and Certain Other Individuals Eligible to Receive a PTIN under Notice 2011–6* The fees registered tax preparers and certain other individuals under Notice 2011–6 will face for applying for a PTIN and renewing a PTIN is $64.25 annually. Given that there are an estimated 800,000 to 1,200,000 individuals who will apply for or renew a PTIN annually, we estimate that the aggregate annual PTIN registration costs will be from $51 million to $77 million.
• Costs to vendors: user fee assessed by third-party vendor to administer the PTIN application and renewal process	*Costs to Vendors* The fee charged by the vendor is $14.25. The $14.25 fee reflects costs incurred by the vendor in processing a PTIN application or renewal. Given that there are an estimated 800,000 to 1,200,000 individuals who will apply for or renew a PTIN annually, we estimate that the aggregate annual PTIN registration costs will be from $11 million to $17 million.

	Costs to Government
• Costs to government: administration of PTIN registration program	The $50 annual fee is expected to recover the $59,427,633 annual costs the government will face in its administration of the PTIN registration program. This fee includes: (1) the costs the government faces in administering registration cards or certificates for each registered tax preparer, (2) costs associated with prescribing by forms, instructions, or other guidance which forms and schedules registered tax preparers can sign for, and (3) tax compliance and suitability checks conducted by the government.
RECORDKEEPING	
	Costs to Continuing Education Providers
• Costs to continuing education providers: recordkeeping requirements on continuing education providers to maintain records and educational material concerning these programs and the individuals who attend them.	$38,632,500 annual costs
	Costs to Registered Tax Return Preparers
• Costs to registered tax preparers: recordkeeping requirements on registered tax preparers to maintain records and educational materials regarding the completion of the required qualifying continuing education credits.	$9,880,000 annual costs
CONTINUING EDUCATION	
	Costs to Registered Tax Return Preparers
• Costs to registered tax preparers: completing continuing education coursework requirement	We do not have a cost estimate available for continuing education costs borne by the tax preparers. The cost of continuing education courses generally range from $20 to $300 per course.
	Costs to Continuing Education Providers
• Costs to continuing education providers: obtaining required numbers from the IRS	Continuing education providers are not currently charged a fee for obtaining a provider number or program number.
FINGERPRINTING	
	Costs to Registered Tax Return Preparers and Certain Other Individuals Eligible to Receive a PTIN under Notice 2011–6
• Costs to registered tax return preparers: fingerprinting	The fees that will be imposed on registered tax return preparers and certain other individuals eligible to receive a PTIN under Notice 2011–6 for fingerprinting are not available because the vendor processing the fingerprinting check has not been selected.

Tax return preparers will incur costs associated with taking a minimum competency examination, including the cost of the examination, the amount of time required to study for the examination, and any associated travel depending on the proximity of tax return preparer to the test site location. Although it is anticipated that the vendor will offer the test at multiple locations in the United States and outside the United States, the vendor and the test locations have not been selected at this time. Future regulations will be proposed that address the costs to the government for creating, administering, and reviewing the examination and the user fee the IRS will charge to recover these costs. The third-party vendor who helps administer the registered tax return preparer competency examination also will charge a reasonable fee to take the registered tax return preparer examination and a reasonable fee to be fingerprinted.

Additionally, preparers are subject to user fees for applying for a PTIN and renewing the PTIN. Final regulations establish a $50 fee to apply for a PTIN. A third party vendor administers the PTIN application and renewal process and charges a $14.25 fee that is independent of the user fee charged by the government.

The PTIN user fee recovers the full cost to the government to administer the PTIN application and renewal program. The administration of the PTIN application and renewal program requires the use of IRS services, goods, and resources. For the PTIN application and renewal program to be self-sustaining, the IRS must charge a user fee to recover the costs of providing the special benefits associated with PTIN. A PTIN confers a special benefit because without a PTIN, a tax return preparer could not receive compensation for preparing all or substantially all of a federal tax return or claim for refund. This analysis is consistent with the current practice of charging a user fee on individuals seeking to become enrolled agents. Being an enrolled agent confers special benefits; and, therefore, the IRS currently charges a user fee on applicants seeking those special benefits.

Tax return preparers will incur recordkeeping and other costs associated with taking continuing education classes and any associated travel. Section 10.6 of these final regulations requires a registered tax return preparer to maintain records and educational materials regarding the completion of the required qualifying continuing education credits. The IRS and the Treasury Department estimate that there are 650,000 practitioners who will be affected by these recordkeeping requirements and the estimated annual burden per practitioner will vary from 30 minutes to one hour, depending on individual circumstances, with an estimated average of 54 minutes. The total annual costs resulting from these recordkeeping requirements will be $9,880,000 for all affected practitioners.

Continuing education providers will be subject to recordkeeping costs. Section 10.9 of these final regulations requires providers of qualifying continuing education programs to maintain records and educational material concerning these programs and the individuals who attend them. Approximately 500 continuing education providers are currently approved to provide continuing education programs for the approximately 50,000 enrolled agents, enrolled actuaries and enrolled retirement plan agents who must complete continuing education currently, but the IRS and the Treasury Department estimate that there are 2,250 continuing education providers who will be affected by these recordkeeping requirements and the estimated annual burden per continuing education provider will vary from 5 hours to 5,000 hours, depending on individual circumstances, with an estimated average of 500 hours. The estimated total annual costs resulting from these requirements will be $38,632,500 for all affected continuing education providers.

Currently, the cost to the tax return preparer of any particular continuing education course can vary greatly from free to hundreds of dollars. Many tax return preparation firms either provide continuing education courses at the firm to their employees for no charge or sponsor the cost of external courses for their employees. Other tax return preparers, however, will have to personally pay the cost of each continuing education course, which generally ranges anywhere from $20 to $300 per course depending on whether the continuing education provider offers the course in person, online, or over the phone. Tax return preparers also may incur additional costs if they travel to attend continuing education programs. These costs may include the time to travel to the program, transportation, lodging and incidentals.

Entities may be directly affected by the competency examination, PTIN and continuing education costs if they choose to pay any or all of the user fees or expenses for their employees. Some individuals and entities also may lose sales and profits while preparers are studying and sitting for the examination or taking the continuing education courses. Finally, individual tax return preparers and entities that employ individuals who prepare tax returns may need to close or change their business model if all, or a majority, of their employees cannot satisfy the necessary qualifications and competency requirements. The IRS and the Treasury Department believe that only a small percentage of tax return preparers will need to close or change their business model based upon these rules.

5. *An assessment of costs and benefits of potential alternatives*

The IRS and the Treasury Department considered various alternatives in determining the best ways to implement proposed changes to the regulation of tax return preparers. In order to place the costs and benefits of the final rule in context, E.O. 12866 requires a comparison between the final rule, a baseline of what the world would look like without the final rule, and reasonable alternatives to the proposed rule.

i. *Baseline scenario*

Under a baseline scenario, the current ethical standards in Circular 230 would continue to apply only to attorneys, certified public accountants, enrolled agents, and other practitioners who prepare tax returns and claims for refund, but not to unenrolled tax return preparers. Also, any unenrolled tax return preparer under this baseline scenario would be able to prepare and sign tax returns and claims for refund without passing an examination to establish competence or satisfying continuing education requirements.

Remaining under the current rules regarding tax return preparers would eliminate the benefits of the rule described in section A3 of this preamble. For example, under the baseline, OPR would not be authorized to institute disciplinary proceedings seeking sanctions against unenrolled tax return preparers.

Continuing to authorize any individual to prepare tax returns and claims for refund for compensation without passing an examination or taking continuing education courses also would eliminate any costs associated with the rule described in section A4 of this preamble. Tax return preparers, however, would still potentially be subject to user fees for obtaining a PTIN and renewing the PTIN if other Treasury Department and IRS regulations specifically prescribed those fees.

ii. *Alternative one*

The first alternative that was considered is to require all tax return preparers to comply with the ethical standards in Circular 230, but not to require any tax return preparer to pass an examination and complete continuing education courses. Under this

alternative, the provisions of the rule clarifying that tax return preparers are subject to the ethical rules in Circular 230 would remain intact, but all of the other changes would not be adopted.

The benefits resulting from this alternative would likely be less than the benefits resulting from these regulations because tax return preparers would not need to meet a minimum competency level and keep educated and up-to-date on Federal tax issues. The most significant drawback to this alternative is the potential loss of these benefits and the benefits that result from monitoring the return preparation activities of tax return preparers generally. Under this alternative, however, tax return preparers would not incur the majority of costs that exist under the regulations.

iii. *Alternative two*

A second alternative is to require tax return preparers who are not currently authorized to practice before the IRS to apply for such authorization with the IRS, satisfy annual continuing education requirements, and meet certain ethical standards, but not to pass a minimum competency examination. This alternative is identical to the regulations other than requiring certain preparers to successfully pass an examination administered by, or under the oversight of, the IRS.

The benefits resulting from this alternative are more comparable to the benefits in the regulations than under alternative one. Nevertheless, the lack of an examination would not be as effective in ensuring that tax return preparers are qualified to obtain professional credentials and practice before the IRS. Tax return preparers under this alternative would incur all of the same costs that are in the regulations other than the costs associated with taking the examination.

iv. *Alternative three*

A third alternative is to "grandfather in" unenrolled tax return preparers who have accurately and competently prepared tax returns for a certain amount of years. This alternative is the same as the rules in the regulations other than authorizing some unenrolled return preparers who have a specified amount of prior experience preparing tax returns and claims for refund to continue to prepare and sign returns without passing a minimum competency examination.

The benefits resulting from this alternative would likely be less than the benefits resulting from these regulations because the IRS and the Treasury Department believe a minimum level of competency needs to be assured through examination. Additionally, this alternative is not as likely to promote the same taxpayer confidence in the tax return preparation community as the regulations, which may, in turn, influence taxpayers when choosing a tax return preparer. Tax return preparers under this alternative would incur all of the same costs that are in the regulations except certain unenrolled preparers would avoid the costs associated with taking the examination.

v. *Alternative four*

A fourth alternative is to require all tax return preparers, regardless of whether the tax return preparer is supervised, to complete the competency examination and continuing education requirements. This alternative is identical to the proposed regulations, which proposed requiring all unenrolled tax return preparers to meet the examination and education requirements.

Numerous commentators suggested that the costs of requiring testing and continuing education for tax return preparers who are supervised by attorneys, certified public accountants and enrolled agents outweighed the attendant benefits. After fully considering these comments, the IRS decided that the best alternative was not requiring testing and continuing education for tax return preparers who are employed by law firms, certified public accounting firms and certain other recognized firms and are supervised by attorneys, certified public accountants, enrolled agents, enrolled retirement plan agents and enrolled actuaries who sign the returns that these individuals prepare.

B. *Final Regulatory Flexibility Analysis*

When an agency promulgates a final regulation that follows a required notice of proposed rulemaking, the Regulatory Flexibility Act (5 U.S.C. chapter 6) (RFA) requires the agency "to prepare a final regulatory flexibility analysis." A final regulatory flexibility analysis must, pursuant to 5 U.S.C. 604(a), contain the five elements listed in this final regulatory flexibility analysis. Section 605 of the RFA provides an exception to this requirement if the agency certifies that the rulemaking will not have a significant economic impact on a substantial number of small entities. A small entity is defined as a small business, small nonprofit organization, or small governmental jurisdiction. See 5 U.S.C. 601(3) through (6). The IRS and the Treasury Department conclude that the final regulations will impact a substantial number of small entities and the economic impact will be significant. As a result, a regulatory flexibility analysis is required.

1. *Statement of the need for and objectives of the proposed rule*

Tax return preparers are critical to ensuring compliance with the Federal tax laws and are an important component in the IRS' administration of those laws. More than eighty percent of U.S. taxpayers use a tax return preparer or consumer tax return preparation software to help prepare and file tax returns. Most tax return preparers are currently not subject to the ethical rules governing practice before the IRS and do not have to pass any competency requirement established by the government or a professional organization. After completing a comprehensive six-month review of tax return preparers, which included receiving input through public forums, solicitation of written comments, and meetings with advisory groups, the IRS concluded that there is a need for increased oversight of the tax return preparer industry.

The principal objective of the regulations is to increase oversight of tax return preparers and to provide guidance to tax return preparers about the new requirements imposed on them under Circular 230. These regulations implement higher standards for the tax return preparer community with the goal of significantly enhancing protections and service for taxpayers, increasing confidence in the tax system, and resulting in greater long-term compliance with the tax laws.

Specifically, the regulations clarify that a registered tax return preparer is a practitioner practicing before the IRS and thereby is subject to the ethical rules in Circular 230. The regulations require a

registered tax return preparer to demonstrate the necessary qualifications and competency to advise and assist other persons in the preparation of all or substantially all of a tax return or claim for refund.

2. *Summaries of the significant issues raised in the public comments responding to the initial regulatory flexibility analysis and of the agency's assessment of the issues, and a statement of any changes to the rule as a result of the comments*

The IRS did not receive specific comments from the public responding to the initial regulatory flexibility analysis in these final regulations. The IRS did receive comments from the public on the proposed amendments to 31 CFR part 10. A summary of the comments is set forth elsewhere in this preamble, along with the Treasury Department's and the IRS' assessment of the issues raised in the comments and descriptions of any revisions resulting from the comments.

3. *Description and estimate of the number of small entities subject to the rule*

The regulations affect individuals currently working as paid tax return preparers, individuals who want to become designated as a registered tax return preparer under the new oversight rules in Circular 230, and those small entities that are owned by or employ paid preparers. Only individuals, not businesses, can practice before the IRS or become a registered tax return preparer. Thus, the economic impact of these regulations on any small entity generally will be a result of an unenrolled individual owning a small business or on a small business that otherwise employs unenrolled paid return preparers.

The appropriate North American Industry Classification System (NAICS) codes for tax return preparers relate to tax preparation services (NAICS code 541213) and other accounting services (NAICS code 541219). Entities identified under these codes are considered small under the Small Business Administration size standards (13 CFR 121.201) if their annual revenue is less than $7 million or $8.5 million, respectively. The IRS estimates that approximately seventy to eighty percent of the individuals subject to these regulations are paid preparers operating as or employed by small entities.

4. *Description of the projected reporting, recordkeeping and related requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirements and the type of professional skills necessary for preparation of the report or record*

The IRS estimates that there are approximately 600,000 to 700,000 unenrolled tax return preparers who are currently not attorneys, certified public accountants, or enrolled agents and who will seek status as a registered tax return preparer. Under the regulations, tax return preparers who become registered tax return preparers are subject to a recordkeeping requirement within the meaning of the Paperwork Reduction Act because they are required to maintain records and educational materials regarding their satisfaction of the qualifying continuing education requirements. These recordkeeping requirements do not require any specific professional skills other than general recordkeeping skills already needed to own and operate a small business or to competently act as a tax return preparer. It is estimated that practitioners will annually spend approximately 30 minutes to one hour in maintaining the required records, depending on individual circumstances.

The estimated 2,250 providers of qualifying continuing education programs will be required to maintain records and educational material concerning these programs and the persons who attended them. These continuing education providers will annually spend approximately five minutes per attendee per program maintaining the required records.

As previously discussed in section A4 of this preamble, the rule contains a number of other compliance requirements not subject to the Paperwork Reduction Act. These include the costs tax return preparers incur to take a competency examination, costs for continuing education classes, and other incidental costs and user fees. Small entities may be directly affected by these costs if they choose to pay any or all of these fees for their employees. In some cases, small entities may lose sales and profits while their employees prepare for and take the examination or participate in continuing education courses. Finally, some small entities that employ individuals who prepare tax returns may need to alter their business model if a significant number of their employees cannot satisfy the necessary qualifications and competency requirements. The IRS and the Treasury Department believe that only a small percentage of small entities, if any, may need to cease doing business or radically change their business model due to these rules.

5. *A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting any alternative adopted in the final rule and why other significant alternatives affecting the impact on small entities that the agency considered were rejected*

The Treasury Department and the IRS have considered alternatives to the final regulations at multiple points. These final regulations are, in large measure, an outgrowth of, and in part carry out, the Report, which extensively reviewed different approaches to improving how the IRS oversees and interacts with tax return preparers. As part of the Report, the IRS received a large volume of comments on the oversight and enforcement of tax return preparers from all interested parties, including tax professional groups representing large and small entities, Federal and state organizations, IRS advisory groups, software vendors, individual return preparers, and the public. The input received from this large and diverse community overwhelmingly expressed support for the requirements proposed in the Report.

In concert with this tremendous public support for increased IRS oversight of tax return preparers, the IRS and the Treasury Department considered various alternatives in determining the best ways to implement proposed changes to the regulation of paid preparers. These alternatives included:

(1) Requiring all tax return preparers to comply with the ethical standards in Circular 230 or a code of ethics similar to Circular 230, but not requiring any tax re-

turn preparers to demonstrate their qualifications and competency;

(2) Requiring tax return preparers who are not currently authorized to practice before the IRS to apply for authorization with the IRS, satisfy annual continuing education requirements, and meet certain ethical standards, but not to pass a minimum competency examination;

(3) Requiring all tax return preparers who are not currently authorized to practice before the IRS to pass a minimum competency examination and meet other requirements, but "grandfather in" tax return preparers who have accurately and competently prepared tax returns for a certain number of years; and

(4) Requiring all unenrolled tax return preparers to complete testing and continuing education requirements.

The proposed regulations proposed that all unenrolled tax return preparers must complete testing and continuing education requirements. Many commentators on the proposed regulations expressed support for efforts to increase the oversight of tax return preparers, particularly for those who are not attorneys, certified public accountants, or other individuals previously authorized to practice before the IRS. As discussed in this preamble, many commentators requested, however, that the IRS exempt individuals who prepare tax returns under the supervision of Circular 230 practitioners from the requirements of these regulations. These commentators were concerned that unnecessary time and cost would be incurred with respect to the testing and continuing education requirements for individuals who do not sign tax returns but prepare them under the supervision of a practitioner ultimately responsible for the tax return. In response to these comments, the IRS published Notice 2011–6, generally allowing individuals to obtain PTINs if the individuals are employed by law firms, certified public accounting firms and certain other recognized firms and who are supervised by attorneys, certified public accountants, enrolled agents, enrolled retirement plan agents and enrolled actuaries who sign the returns that these individuals prepare. This step taken by the IRS will minimize the economic impact of these regulations on many small entities in which attorneys, certified public accountants, enrolled agents, enrolled retirement plan agents, or enrolled actuaries supervise and sign tax returns prepared individuals who are not attorneys, certified public accountants, or enrolled agents.

The IRS also received comments objecting to the rule in the proposed regulations requiring continuing education providers to obtain continuing education program approval from the IRS for each continuing education program offered. In response to these comments the IRS, the IRS eliminated such a requirement. This step taken by the IRS will minimize the economic impact of these regulations on some small entities that offer continuing education programs. These regulations do require continuing education providers to obtain a continuing education provider number and a continuing education provider program number. Although the IRS is not currently proposing charging providers a fee to obtain a continuing education provider number or a continuing education provider program number, these regulations provide that the payment of any applicable user fee established in future regulations is required to obtain either number.

The Treasury Department and the IRS are not aware of any additional steps that the IRS could take to minimize the economic impact on small entities that would be consistent with the objectives of these final regulations. These regulations do not impose any more requirements on small entities than are necessary to effectively administer the internal revenue laws. Further, the regulations do not subject small entities to requirements that are not also applicable to larger entities covered by the regulations.

After considering the alternatives and the input provided through the public comment process, the IRS and the Treasury Department concluded that the provisions of the final regulations are necessary for sound tax administration and are the best way to increase oversight of all paid preparers. The testing requirements in the rules will ensure that tax return preparers pass a minimum competency examination to obtain their professional credentials, while the continuing education requirements will help ensure that tax return preparers remain current on Federal tax law and continue to expand their tax knowledge. The extension of the rules in Circular 230 to registered tax return preparers will require all practitioners to meet certain ethical standards and allow the IRS to suspend or otherwise discipline tax return preparers who engage in unethical or disreputable conduct. Accordingly, the implementation of the qualification and competency standards in these rules is expected to increase taxpayer compliance, ensure uniformity, and allow taxpayers to be confident that the tax return preparers to whom they turn for assistance are knowledgeable, skilled and ethical.

Drafting Information

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

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Adoption of Amendments to the Regulations

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

PART 10—PRACTICE BEFORE THE INTERNAL REVENUE SERVICE

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

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

Par. 2. Section 10.0 is revised to read as follows:

§10.0 Scope of part.

(a) This part contains rules governing the recognition of attorneys, certified public accountants, enrolled agents, enrolled retirement plan agents, registered tax return preparers, and other persons representing taxpayers before the Internal Revenue Service. Subpart A of this part sets forth rules relating to the authority to practice before the Internal Revenue Service; subpart B of this part prescribes the duties and restrictions relating to such practice; subpart C of this part prescribes the sanctions for violating the regulations; subpart D of this part contains the rules applicable to disciplinary proceedings; and subpart E

of this part contains general provisions relating to the availability of official records.

(b) *Effective/applicability date*. This section is applicable beginning August 2, 2011.

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

§10.1 Offices.

(a) *Establishment of office(s)*. The Commissioner shall establish the Office of Professional Responsibility and any other office(s) within the Internal Revenue Service necessary to administer and enforce this part. The Commissioner shall appoint the Director of the Office of Professional Responsibility and any other Internal Revenue official(s) to manage and direct any office(s) established to administer or enforce this part. Offices established under this part include, but are not limited to:

(1) The Office of Professional Responsibility, which shall generally have responsibility for matters related to practitioner conduct and discipline, including disciplinary proceedings and sanctions; and

(2) An office with responsibility for matters related to authority to practice before the Internal Revenue Service, including acting on applications for enrollment to practice before the Internal Revenue Service and administering competency testing and continuing education.

(b) Officers and employees within any office established under this part may perform acts necessary or appropriate to carry out the responsibilities of their office(s) under this part or as otherwise prescribed by the Commissioner.

(c) *Acting*. The Commissioner will designate an officer or employee of the Internal Revenue Service to perform the duties of an individual appointed under paragraph (a) of this section in the absence of that officer or employee or during a vacancy in that office.

(d) *Effective/applicability date*. This section is applicable beginning August 2, 2011.

Par. 4. Section 10.2 is amended by revising paragraphs (a)(4) and (a)(5), adding paragraph (a)(8), and revising paragraph (b) to read as follows:

§10.2 Definitions.

(a) * * *

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

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

* * * * *

(8) *Tax return preparer* means any individual within the meaning of section 7701(a)(36) and 26 CFR 301.7701–15.

(b) *Effective/applicability date*. This section is applicable beginning August 2, 2011.

Par. 5. Section 10.3 is amended by:

1. Revising paragraphs (d)(3) and (e)(3);

2. Redesignating paragraphs (f), (g), (h), and (i) as paragraphs (g), (h), (i), and (j) respectively;

3. Adding new paragraph (f); and

4. Revising newly designated paragraph (j).

The revisions and additions read as follows:

§10.3 Who may practice.

* * * * *

(d) * * *

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

(e) * * *

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

(f) *Registered tax return preparers*. (1) Any individual who is designated as a registered tax return preparer pursuant to §10.4(c) of this part who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Internal Revenue Service.

(2) Practice as a registered tax return preparer is limited to preparing and signing tax returns and claims for refund, and other documents for submission to the Internal Revenue Service. A registered tax return preparer may prepare all or substantially all of a tax return or claim for refund of tax. The Internal Revenue Service will prescribe by forms, instructions, or other appropriate guidance the tax returns and claims for refund that a registered tax return preparer may prepare and sign.

(3) A registered tax return preparer may represent taxpayers before revenue agents, customer service representatives, or similar officers and employees of the Internal Revenue Service (including the Taxpayer Advocate Service) during an examination if the registered tax return preparer signed the tax return or claim for refund for the taxable year or period under examination. Unless otherwise prescribed by regulation or notice, this right does not permit such individual to represent the taxpayer, regardless of the circumstances requiring representation, before appeals officers, revenue officers, Counsel or similar officers or employees of the Internal Revenue Service or the Treasury Department. A registered tax return preparer's authorization to practice under this part also does not include the authority to provide tax advice to a client or another person except as necessary to prepare a tax return, claim for refund, or other document intended to be submitted to the Internal Revenue Service.

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

* * * * *

(j) *Effective/applicability date*. This section is generally applicable beginning August 2, 2011.

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

§10.4 Eligibility to become an enrolled agent, enrolled retirement plan agent, or registered tax return preparer.

(a) *Enrollment as an enrolled agent upon examination*. The Commissioner, or delegate, will grant enrollment as an enrolled agent to an applicant eighteen years of age or older who demonstrates special competence in tax matters by written examination administered by, or administered under the oversight of, the Internal Revenue Service, who possesses a current or otherwise valid preparer tax identification number or other prescribed identifying number, and who has not engaged in any conduct that would justify the suspension or disbarment of any practitioner under the provisions of this part.

(b) *Enrollment as a retirement plan agent upon examination*. The Commissioner, or delegate, will grant enrollment as an enrolled retirement plan agent to an applicant eighteen years of age or older who demonstrates special competence in qualified retirement plan matters by written examination administered by, or administered under the oversight of, the Internal Revenue Service, who possesses a current or otherwise valid preparer tax identification number or other prescribed identifying number, and who has not engaged in any conduct that would justify the suspension or disbarment of any practitioner under the provisions of this part.

(c) *Designation as a registered tax return preparer*. The Commissioner, or delegate, may designate an individual eighteen years of age or older as a registered tax return preparer provided an applicant demonstrates competence in Federal tax return preparation matters by written examination administered by, or administered under the oversight of, the Internal Revenue Service, or otherwise meets the requisite standards prescribed by the Internal Revenue Service, possesses a current or otherwise valid preparer tax identification number or other prescribed identifying number, and has not engaged in any conduct that would justify the suspension or disbarment of any practitioner under the provisions of this part.

(d) *Enrollment of former Internal Revenue Service employees*. The Commissioner, or delegate, may grant enrollment as an enrolled agent or enrolled retirement plan agent to an applicant who, by virtue of past service and technical experience in the Internal Revenue Service, has qualified for such enrollment and who has not engaged in any conduct that would justify the suspension or disbarment of any practitioner under the provisions of this part, under the following circumstances:

(1) The former employee applies for enrollment on an Internal Revenue Service form and supplies the information requested on the form and such other information regarding the experience and training of the applicant as may be relevant.

(2) The appropriate office of the Internal Revenue Service provides a detailed report of the nature and rating of the applicant's work while employed by the Internal Revenue Service and a recommendation whether such employment qualifies the applicant technically or otherwise for the desired authorization.

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

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

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

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

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

(e) *Natural persons*. Enrollment or authorization to practice may be granted only to natural persons.

(f) *Effective/applicability date*. This section is applicable beginning August 2, 2011.

Par. 7. Section 10.5 is revised to read as follows:

§10.5 Application to become an enrolled agent, enrolled retirement plan agent, or registered tax return preparer.

(a) *Form; address*. An applicant to become an enrolled agent, enrolled retirement plan agent, or registered tax return preparer must apply as required by forms or procedures established and published by the Internal Revenue Service, including proper execution of required forms under oath or affirmation. The address on the application will be the address under which a successful applicant is enrolled or registered and is the address to which all correspondence concerning enrollment or registration will be sent.

(b) *Fee*. A reasonable nonrefundable fee may be charged for each application to become an enrolled agent, enrolled retirement plan agent, or registered tax return preparer. See 26 CFR part 300.

(c) *Additional information; examination*. The Internal Revenue Service may require the applicant, as a condition to consideration of an application, to file addi-

tional information and to submit to any written or oral examination under oath or otherwise. Upon the applicant's written request, the Internal Revenue Service will afford the applicant the opportunity to be heard with respect to the application.

(d) *Compliance and suitability checks*. (1) As a condition to consideration of an application, the Internal Revenue Service may conduct a Federal tax compliance check and suitability check. The tax compliance check will be limited to an inquiry regarding whether an applicant has filed all required individual or business tax returns and whether the applicant has failed to pay, or make proper arrangements with the Internal Revenue Service for payment of, any Federal tax debts. The suitability check will be limited to an inquiry regarding whether an applicant has engaged in any conduct that would justify suspension or disbarment of any practitioner under the provisions of this part on the date the application is submitted, including whether the applicant has engaged in disreputable conduct as defined in §10.51. The application will be denied only if the results of the compliance or suitability check are sufficient to establish that the practitioner engaged in conduct subject to sanctions under §§10.51 and 10.52.

(2) If the applicant does not pass the tax compliance or suitability check, the applicant will not be issued an enrollment or registration card or certificate pursuant to §10.6(b) of this part. An applicant who is initially denied enrollment or registration for failure to pass a tax compliance check may reapply after the initial denial if the applicant becomes current with respect to the applicant's tax liabilities.

(e) *Temporary recognition*. On receipt of a properly executed application, the Commissioner, or delegate, may grant the applicant temporary recognition to practice pending a determination as to whether status as an enrolled agent, enrolled retirement plan agent, or registered tax return preparer should be granted. Temporary recognition will be granted only in unusual circumstances and it will not be granted, in any circumstance, if the application is not regular on its face, if the information stated in the application, if true, is not sufficient to warrant granting the application to practice, or the Commissioner, or delegate, has information indicating that the statements in the application are untrue or that the applicant would not otherwise qualify to become an enrolled agent, enrolled retirement plan agent, or registered tax return preparer. Issuance of temporary recognition does not constitute either a designation or a finding of eligibility as an enrolled agent, enrolled retirement plan agent, or registered tax return preparer, and the temporary recognition may be withdrawn at any time.

(f) *Protest of application denial*. The applicant will be informed in writing as to the reason(s) for any denial of an application. The applicant may, within 30 days after receipt of the notice of denial of the application, file a written protest of the denial as prescribed by the Internal Revenue Service in forms, guidance, or other appropriate guidance. A protest under this section is not governed by subpart D of this part.

(g) *Effective/applicability date*. This section is applicable to applications received August 2, 2011.

Par. 8. Section 10.6 is revised to read as follows:

§10.6 Term and renewal of status as an enrolled agent, enrolled retirement plan agent, or registered tax return preparer.

(a) *Term*. Each individual authorized to practice before the Internal Revenue Service as an enrolled agent, enrolled retirement plan agent, or registered tax return preparer will be accorded active enrollment or registration status subject to renewal of enrollment or registration as provided in this part.

(b) *Enrollment or registration card or certificate*. The Internal Revenue Service will issue an enrollment or registration card or certificate to each individual whose application to practice before the Internal Revenue Service is approved. Each card or certificate will be valid for the period stated on the card or certificate. An enrolled agent, enrolled retirement plan agent, or registered tax return preparer may not practice before the Internal Revenue Service if the card or certificate is not current or otherwise valid. The card or certificate is in addition to any notification that may be provided to each individual who obtains a preparer tax identification number.

(c) *Change of address*. An enrolled agent, enrolled retirement plan agent, or registered tax return preparer must send notification of any change of address to the address specified by the Internal Revenue Service within 60 days of the change of address. This notification must include the enrolled agent's, enrolled retirement plan agent's, or registered tax return preparer's name, prior address, new address, tax identification number(s) (including preparer tax identification number), and the date the change of address is effective. Unless this notification is sent, the address for purposes of any correspondence from the appropriate Internal Revenue Service office responsible for administering this part shall be the address reflected on the practitioner's most recent application for enrollment or registration, or application for renewal of enrollment or registration. A practitioner's change of address notification under this part will not constitute a change of the practitioner's last known address for purposes of section 6212 of the Internal Revenue Code and regulations thereunder.

(d) *Renewal*—(1) *In general*. Enrolled agents, enrolled retirement plan agents, and registered tax return preparers must renew their status with the Internal Revenue Service to maintain eligibility to practice before the Internal Revenue Service. Failure to receive notification from the Internal Revenue Service of the renewal requirement will not be justification for the individual's failure to satisfy this requirement.

(2) *Renewal period for enrolled agents*. (i) All enrolled agents must renew their preparer tax identification number as prescribed by forms, instructions, or other appropriate guidance.

(ii) Enrolled agents who have a social security number or tax identification number that ends with the numbers 0, 1, 2, or 3, except for those individuals who received their initial enrollment after November 1, 2003, must apply for renewal between November 1, 2003, and January 31, 2004. The renewal will be effective April 1, 2004.

(iii) Enrolled agents who have a social security number or tax identification number that ends with the numbers 4, 5, or 6, except for those individuals who received their initial enrollment after November 1, 2004, must apply for renewal between November 1, 2004, and

January 31, 2005. The renewal will be effective April 1, 2005.

(iv) Enrolled agents who have a social security number or tax identification number that ends with the numbers 7, 8, or 9, except for those individuals who received their initial enrollment after November 1, 2005, must apply for renewal between November 1, 2005, and January 31, 2006. The renewal will be effective April 1, 2006.

(v) Thereafter, applications for renewal as an enrolled agent will be required between November 1 and January 31 of every subsequent third year as specified in paragraph (d)(2)(i), (d)(2)(ii), or (d)(2)(iii) of this section according to the last number of the individual's social security number or tax identification number. Those individuals who receive initial enrollment as an enrolled agent after November 1 and before April 2 of the applicable renewal period will not be required to renew their enrollment before the first full renewal period following the receipt of their initial enrollment.

(3) *Renewal period for enrolled retirement plan agents*. (i) All enrolled retirement plan agents must renew their preparer tax identification number as prescribed by the Internal Revenue Service in forms, instructions, or other appropriate guidance.

(ii) Enrolled retirement plan agents will be required to renew their status as enrolled retirement plan agents between April 1 and June 30 of every third year subsequent to their initial enrollment.

(4) *Renewal period for registered tax return preparers*. Registered tax return preparers must renew their preparer tax identification number and their status as a registered tax return preparer as prescribed by the Internal Revenue Service in forms, instructions, or other appropriate guidance.

(5) *Notification of renewal*. After review and approval, the Internal Revenue Service will notify the individual of the renewal and will issue the individual a card or certificate evidencing current status as an enrolled agent, enrolled retirement plan agent, or registered tax return preparer.

(6) *Fee*. A reasonable nonrefundable fee may be charged for each application for renewal filed. See 26 CFR part 300.

(7) *Forms*. Forms required for renewal may be obtained by sending a written request to the address specified by the Internal Revenue Service or from such other source as the Internal Revenue Service will publish in the Internal Revenue Bulletin (see 26 CFR 601.601(d)(2)(ii)(*b*)) and on the Internal Revenue Service webpage (*www.irs.gov*).

(e) *Condition for renewal: continuing education*. In order to qualify for renewal as an enrolled agent, enrolled retirement plan agent, or registered tax return preparer, an individual must certify, in the manner prescribed by the Internal Revenue Service, that the individual has satisfied the requisite number of continuing education hours.

(1) *Definitions*. For purposes of this section—

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

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

(iii) *Registration year* means each 12-month period the registered tax return preparer is authorized to practice before the Internal Revenue Service.

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

(2) *For renewed enrollment as an enrolled agent or enrolled retirement plan agent*—(i) *Requirements for enrollment cycle*. A minimum of 72 hours of continuing education credit, including six hours of ethics or professional conduct, must be completed during each enrollment cycle.

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

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

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

(3) *Requirements for renewal as a registered tax return preparer*. A minimum of 15 hours of continuing education credit, including two hours of ethics or professional conduct, three hours of Federal tax law updates, and 10 hours of Federal tax law topics, must be completed during each registration year.

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

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

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

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

(A) Be a qualifying continuing education program designed to enhance professional knowledge in qualified retirement plan matters; and

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

(iii) *Registered tax return preparers*. To qualify for continuing education credit for a registered tax return preparer, a course of learning must—

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

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

(2) *Qualifying programs*—(i) *Formal programs*. A formal program qualifies as a continuing education program if it—

(A) Requires attendance and provides each attendee with a certificate of attendance;

(B) Is conducted by a qualified instructor, discussion leader, or speaker (in other words, a person whose background, training, education, and experience is appropriate for instructing or leading a discussion on the subject matter of the particular program);

(C) Provides or requires a written outline, textbook, or suitable electronic educational materials; and

(D) Satisfies the requirements established for a qualified continuing education program pursuant to §10.9.

(ii) *Correspondence or individual study programs (including taped programs)*. Qualifying continuing education programs include correspondence or individual study programs that are conducted by continuing education providers and completed on an individual basis by the enrolled individual. The allowable credit hours for such programs will be measured on a basis comparable to the measurement of a seminar or course for credit in an accredited educational institution. Such programs qualify as continuing education programs only if they—

(A) Require registration of the participants by the continuing education provider;

(B) Provide a means for measuring successful completion by the participants (for example, a written examination), including the issuance of a certificate of completion by the continuing education provider;

(C) Provide a written outline, textbook, or suitable electronic educational materials; and

(D) Satisfy the requirements established for a qualified continuing education program pursuant to §10.9.

(iii) *Serving as an instructor, discussion leader or speaker*. (A) One hour of continuing education credit will be awarded for each contact hour completed as an instructor, discussion leader, or speaker at an educational program that meets the continuing education requirements of paragraph (f) of this section.

(B) A maximum of two hours of continuing education credit will be awarded for actual subject preparation time for each contact hour completed as an instructor, discussion leader, or speaker at such programs. It is the responsibility of the individual claiming such credit to maintain records to verify preparation time.

(C) The maximum continuing education credit for instruction and preparation may not exceed four hours annually for registered tax return preparers and six hours annually for enrolled agents and enrolled retirement plan agents.

(D) An instructor, discussion leader, or speaker who makes more than one presentation on the same subject matter during an enrollment cycle or registration year will receive continuing education credit for only one such presentation for the enrollment cycle or registration year.

(3) *Periodic examination*. Enrolled Agents and Enrolled Retirement Plan Agents may establish eligibility for renewal of enrollment for any enrollment cycle by—

(i) Achieving a passing score on each part of the Special Enrollment Examination administered under this part during the three year period prior to renewal; and

(ii) Completing a minimum of 16 hours of qualifying continuing education during the last year of an enrollment cycle.

(g) *Measurement of continuing education coursework*. (1) All continuing education programs will be measured in terms of contact hours. The shortest recognized program will be one contact hour.

(2) A contact hour is 50 minutes of continuous participation in a program. Credit is granted only for a full contact hour, which is 50 minutes or multiples thereof. For example, a program lasting more than 50 minutes but less than 100 minutes will count as only one contact hour.

(3) Individual segments at continuous conferences, conventions and the like will be considered one total program. For example, two 90-minute segments (180 minutes) at a continuous conference will count as three contact hours.

(4) For university or college courses, each semester hour credit will equal 15 contact hours and a quarter hour credit will equal 10 contact hours.

(h) *Recordkeeping requirements*. (1) Each individual applying for renewal must retain for a period of four years following the date of renewal the information required with regard to qualifying continuing education credit hours. Such information includes—

(i) The name of the sponsoring organization;

(ii) The location of the program;

(iii) The title of the program, qualified program number, and description of its content;

(iv) Written outlines, course syllibi, textbook, and/or electronic materials provided or required for the course;

(v) The dates attended;

(vi) The credit hours claimed;

(vii) The name(s) of the instructor(s), discussion leader(s), or speaker(s), if appropriate; and

(viii) The certificate of completion and/or signed statement of the hours of attendance obtained from the continuing education provider.

(2) To receive continuing education credit for service completed as an instructor, discussion leader, or speaker, the following information must be maintained for a period of four years following the date of renewal—

(i) The name of the sponsoring organization;

(ii) The location of the program;

(iii) The title of the program and copy of its content;

(iv) The dates of the program; and

(v) The credit hours claimed.

(i) *Waivers*. (1) Waiver from the continuing education requirements for a given period may be granted for the following reasons—

(i) Health, which prevented compliance with the continuing education requirements;

(ii) Extended active military duty;

(iii) Absence from the United States for an extended period of time due to employment or other reasons, provided the individual does not practice before the Internal Revenue Service during such absence; and

(iv) Other compelling reasons, which will be considered on a case-by-case basis.

(2) A request for waiver must be accompanied by appropriate documentation. The individual is required to furnish any additional documentation or explanation deemed necessary. Examples of appropriate documentation could be a medical certificate or military orders.

(3) A request for waiver must be filed no later than the last day of the renewal application period.

(4) If a request for waiver is not approved, the individual will be placed in inactive status. The individual will be notified that the waiver was not approved and that the individual has been placed on a roster of inactive enrolled agents, enrolled retirement plan agents, or registered tax return preparers.

(5) If the request for waiver is not approved, the individual may file a protest as prescribed by the Internal Revenue Service in forms, instructions, or other appropriate guidance. A protest filed under this section is not governed by subpart D of this part.

(6) If a request for waiver is approved, the individual will be notified and issued a card or certificate evidencing renewal.

(7) Those who are granted waivers are required to file timely applications for renewal of enrollment or registration.

(j) *Failure to comply*. (1) Compliance by an individual with the requirements of this part is determined by the Internal Revenue Service. The Internal Revenue Service will provide notice to any individual who fails to meet the continuing education and fee requirements of eligibility for renewal. The notice will state the basis for the determination of noncompliance and will provide the individual an opportunity to furnish the requested information in writing relating to the matter within 60 days of the date of the notice. Such information will be considered in making a final determination as to eligibility for renewal. The individual must be informed of the reason(s) for any denial of a renewal. The individual may, within 30 days after receipt of the notice of denial of renewal, file a written protest of the denial as prescribed by the Internal Revenue Service in forms, instructions, or other appropriate guidance. A protest under this section is not governed by subpart D of this part.

(2) The continuing education records of an enrolled agent, enrolled retirement plan agent, or registered tax return preparer may be reviewed to determine compliance with the requirements and standards for renewal as provided in paragraph (f) of this section. As part of this review, the enrolled agent, enrolled retirement plan agent or registered tax return preparer may be required to provide the Internal Revenue Service with copies of any continuing education records required to be maintained under this part. If the enrolled agent, enrolled retirement plan agent or registered tax return preparer fails to comply with this requirement, any continuing education hours claimed may be disallowed.

(3) An individual who has not filed a timely application for renewal, who has not made a timely response to the notice of noncompliance with the renewal requirements, or who has not satisfied the requirements of eligibility for renewal will be placed on a roster of inactive enrolled individuals or inactive registered individuals. During this time, the individual will be ineligible to practice before the Internal Revenue Service.

(4) Individuals placed in inactive status and individuals ineligible to practice before the Internal Revenue Service may not state or imply that they are eligible to practice before the Internal Revenue Service, or use the terms enrolled agent, enrolled retirement plan agent, or registered tax return preparer, the designations "EA" or "ERPA" or other form of reference to eligibility to practice before the Internal Revenue Service.

(5) An individual placed in inactive status may be reinstated to an active status by filing an application for renewal and providing evidence of the completion of all required continuing education hours for the enrollment cycle or registration year. Continuing education credit under this paragraph (j)(5) may not be used to satisfy the requirements of the enrollment cycle or registration year in which the individual has been placed back on the active roster.

(6) An individual placed in inactive status must file an application for renewal and satisfy the requirements for renewal as set forth in this section within three years of being placed in inactive status. Otherwise, the name of such individual will be removed from the inactive status roster and the individual's status as an enrolled agent, enrolled retirement plan agent, or registered tax return preparer will terminate. Future eligibility for active status must then be reestablished by the individual as provided in this section.

(7) Inactive status is not available to an individual who is the subject of a pending disciplinary matter before the Internal Revenue Service.

(k) *Inactive retirement status*. An individual who no longer practices before the Internal Revenue Service may request to be placed in an inactive retirement status at any time and such individual will be placed in an inactive retirement status. The individual will be ineligible to practice before the Internal Revenue Service. An individual who is placed in an inactive retirement status may be reinstated to an active status by filing an application for renewal and providing evidence of the completion of the required continuing education hours for the enrollment cycle or registration year. Inactive retirement status is not available to an individual who is ineligible to practice before the Internal Revenue Service or an individual who is the subject of a pending disciplinary matter under this part.

(l) *Renewal while under suspension or disbarment*. An individual who is ineligible to practice before the Internal Revenue Service by virtue of disciplinary action under this part is required to conform to the requirements for renewal of enrollment or registration before the individual's eligibility is restored.

(m) *Enrolled actuaries*. The enrollment and renewal of enrollment of actuaries authorized to practice under paragraph (d) of §10.3 are governed by the regulations of the Joint Board for the Enrollment of Actuaries at 20 CFR 901.1 through 901.72.

(n) *Effective/applicability date*. This section is applicable to enrollment or registration effective beginning August 2, 2011.

Par. 9. Section 10.7 is amended by:

1. Revising the section heading.
2. Removing paragraph (c)(1)(viii).
3. Revising paragraph (c)(2), and (d).
4. Removing paragraph (e)
5. Redesignating paragraphs (f) and (g) as paragraphs (e) and (f) and revising them.

The revisions read as follows:

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

* * * * *

(c) * * *

(2) *Limitations.* (i) An individual who is under suspension or disbarment from practice before the Internal Revenue Service may not engage in limited practice before the Internal Revenue Service under paragraph (c)(1) of this section.

(ii) The Commissioner, or delegate, may, after notice and opportunity for a conference, deny eligibility to engage in limited practice before the Internal Revenue Service under paragraph (c)(1) of this

section to any individual who has engaged in conduct that would justify a sanction under §10.50.

(iii) An individual who represents a taxpayer under the authority of paragraph (c)(1) of this section is subject, to the extent of his or her authority, to such rules of general applicability regarding standards of conduct and other matters as prescribed by the Internal Revenue Service.

(d) *Special appearances*. The Commissioner, or delegate, may, subject to conditions deemed appropriate, authorize an individual who is not otherwise eligible to practice before the Internal Revenue Service to represent another person in a particular matter.

(e) *Fiduciaries*. For purposes of this part, a fiduciary (for example, a trustee, receiver, guardian, personal representative, administrator, or executor) is considered to be the taxpayer and not a representative of the taxpayer.

(f) *Effective/applicability date*. This section is applicable beginning August 2, 2011.

Par. 10. Section 10.8 is revised to read as follows:

§10.8 Return preparation and application of rules to other individuals.

(a) *Preparing all or substantially all of a tax return*. Any individual who for compensation prepares or assists with the preparation of all or substantially all of a tax return or claim for refund must have a preparer tax identification number. Except as otherwise prescribed in forms, instructions, or other appropriate guidance, an individual must be an attorney, certified public accountant, enrolled agent, or registered tax return preparer to obtain a preparer tax identification number. Any individual who for compensation prepares or assists with the preparation of all or substantially all of a tax return or claim for refund is subject to the duties and restrictions relating to practice in subpart B, as well as subject to the sanctions for violation of the regulations in subpart C.

(b) *Preparing a tax return and furnishing information*. Any individual may for compensation prepare or assist with the preparation of a tax return or claim for refund (provided the individual prepares less than substantially all of the tax return or claim for refund), appear as a witness for the taxpayer before the Internal Revenue Service, or furnish information at the request of the Internal Revenue Service or any of its officers or employees.

(c) *Application of rules to other individuals*. Any individual who for compensation prepares, or assists in the preparation of, all or a substantial portion of a document pertaining to any taxpayer's tax liability for submission to the Internal Revenue Service is subject to the duties and restrictions relating to practice in subpart B, as well as subject to the sanctions for violation of the regulations in subpart C. Unless otherwise a practitioner, however, an individual may not for compensation prepare, or assist in the preparation of, all or substantially all of a tax return or claim for refund, or sign tax returns and claims for refund. For purposes of this paragraph, an individual described in 26 CFR 301.7701–15(f) is not treated as having prepared all or a substantial portion of the document by reason of such assistance.

(d) *Effective/applicability date*. This section is applicable beginning August 2, 2011.

Par. 11. Section 10.9 is added to subpart A to read as follows:

§10.9 Continuing education providers and continuing education programs.

(a) *Continuing education providers*—(1) *In general*. Continuing education providers are those responsible for presenting continuing education programs. A continuing education provider must—

(i) Be an accredited educational institution;

(ii) Be recognized for continuing education purposes by the licensing body of any State, territory, or possession of the United States, including a Commonwealth, or the District of Columbia;

(iii) Be recognized and approved by a qualifying organization as a provider of continuing education on subject matters within §10.6(f) of this part. The Internal Revenue Service may, at its discretion, identify a professional organization, society or business entity that maintains minimum education standards comparable to those set forth in this part as a qualifying organization for purposes of this part in appropriate forms, instructions, and other appropriate guidance; or

(iv) Be recognized by the Internal Revenue Service as a professional organization, society, or business whose programs include offering continuing professional education opportunities in subject matters within §10.6(f) of this part. The Internal Revenue Service, at its discretion, may require such professional organizations, societies, or businesses to file an agreement and/or obtain Internal Revenue Service approval of each program as a qualified continuing education program in appropriate forms, instructions or other appropriate guidance.

(2) *Continuing education provider numbers*—(i) *In general*. A continuing education provider is required to obtain a continuing education provider number and pay any applicable user fee.

(ii) *Renewal*. A continuing education provider maintains its status as a continuing education provider during the continuing education provider cycle by renewing its continuing education provider number as prescribed by forms, instructions or other appropriate guidance and paying any applicable user fee.

(3) *Requirements for qualified continuing education programs*. A continuing education provider must ensure the qualified continuing education program complies with all the following requirements—

(i) Programs must be developed by individual(s) qualified in the subject matter;

(ii) Program subject matter must be current;

(iii) Instructors, discussion leaders, and speakers must be qualified with respect to program content;

(iv) Programs must include some means for evaluation of the technical content and presentation to be evaluated;

(v) Certificates of completion bearing a current qualified continuing education program number issued by the Internal Revenue Service must be provided to the participants who successfully complete the program; and

(vi) Records must be maintained by the continuing education provider to verify the participants who attended and completed the program for a period of four years following completion of the program. In the case of continuous conferences, conventions, and the like, records must be maintained to verify completion of the program

and attendance by each participant at each segment of the program.

(4) *Program numbers*— (i) *In general*. Every continuing education provider is required to obtain a continuing education provider program number and pay any applicable user fee for each program offered. Program numbers shall be obtained as prescribed by forms, instructions or other appropriate guidance. Although, at the discretion of the Internal Revenue Service, a continuing education provider may be required to demonstrate that the program is designed to enhance professional knowledge in Federal taxation or Federal tax related matters (programs comprised of current subject matter in Federal taxation or Federal tax related matters, including accounting, tax return preparation software, taxation, or ethics) and complies with the requirements in paragraph (a)(2)of this section before a program number is issued.

(ii) *Update programs*. Update programs may use the same number as the program subject to update. An update program is a program that instructs on a change of existing law occurring within one year of the update program offering. The qualifying education program subject to update must have been offered within the two year time period prior to the change in existing law.

(iii) *Change in existing law*. A change in existing law means the effective date of the statute or regulation, or date of entry of judicial decision, that is the subject of the update.

(b) *Failure to comply*. Compliance by a continuing education provider with the requirements of this part is determined by the Internal Revenue Service. A continuing education provider who fails to meet the requirements of this part will be notified by the Internal Revenue Service. The notice will state the basis for the determination of noncompliance and will provide the continuing education provider an opportunity to furnish the requested information in writing relating to the matter within 60 days of the date of the notice. The continuing education provider may, within 30 days after receipt of the notice of denial, file a written protest as prescribed by the Internal Revenue Service in forms, instructions, or other appropriate guidance. A protest under this section is not governed by subpart D of this part.

(c) *Effective/applicability date*. This section is applicable beginning August 2, 2011.

Par. 12. Section 10.20 is amended by

1. Redesignating paragraphs (b) and (c) as (a)(3) and (b).

2. Revising newly designated paragraphs (a)(3) and (b).

3. Adding paragraph (c).

The revisions and additions read as follows:

§10.20 Information to be furnished.

(a) * * *

(3) When a proper and lawful request is made by a duly authorized officer or employee of the Internal Revenue Service, concerning an inquiry into an alleged violation of the regulations in this part, a practitioner must provide any information the practitioner has concerning the alleged violation and testify regarding this information in any proceeding instituted under this part, unless the practitioner believes in good faith and on reasonable grounds that the information is privileged.

(b) *Interference with a proper and lawful request for records or information*. A practitioner may not interfere, or attempt to interfere, with any proper and lawful effort by the Internal Revenue Service, its officers or employees, to obtain any record or information unless the practitioner believes in good faith and on reasonable grounds that the record or information is privileged.

(c) *Effective/applicability date*. This section is applicable beginning August 2, 2011.

Par. 13. Section 10.25 is amended by revising paragraphs (c)(2) and (e) to read as follows:

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

* * * * *

(c) * * *

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

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(e) *Effective/applicability date*. This section is applicable beginning August 2, 2011.

Par. 14. Section 10.30 is amended by revising paragraphs (a)(1) and (e) to read as follows:

§10.30 Solicitation.

(a) *Advertising and solicitation restrictions*. (1) A practitioner may not, with respect to any Internal Revenue Service matter, in any way use or participate in the use of any form of public communication or private solicitation containing a false, fraudulent, or coercive statement or claim; or a misleading or deceptive statement or claim. Enrolled agents, enrolled retirement plan agents, or registered tax return preparers, in describing their professional designation, may not utilize the term "certified" or imply an employer/employee relationship with the Internal Revenue Service. Examples of acceptable descriptions for enrolled agents are "enrolled to represent taxpayers before the Internal Revenue Service," "enrolled to practice before the Internal Revenue Service," and "admitted to practice before the Internal Revenue Service." Similarly, examples of acceptable descriptions for enrolled retirement plan agents are "enrolled to represent taxpayers before the Internal Revenue Service as a retirement plan agent" and "enrolled to practice before the Internal Revenue Service as a retirement plan agent." An example of an acceptable description for registered tax return preparers is "designated as a registered tax return preparer by the Internal Revenue Service."

* * * * *

(e) *Effective/applicability date*. This section is applicable beginning August 2, 2011.

* * * * *

Par. 15. Section 10.34 is amended by:

1. Adding paragraph (a).

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

3. Revising newly designated paragraph (e).

The revision and addition read as follows:

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

(a) *Tax returns*. (1) A practitioner may not willfully, recklessly, or through gross incompetence—

(i) Sign a tax return or claim for refund that the practitioner knows or reasonably should know contains a position that—

(A) Lacks a reasonable basis;

(B) Is an unreasonable position as described in section 6694(a)(2) of the Internal Revenue Code (Code) (including the related regulations and other published guidance); or

(C) Is a willful attempt by the practitioner to understate the liability for tax or a reckless or intentional disregard of rules or regulations by the practitioner as described in section 6694(b)(2) of the Code (including the related regulations and other published guidance).

(ii) Advise a client to take a position on a tax return or claim for refund, or prepare a portion of a tax return or claim for refund containing a position, that—

(A) Lacks a reasonable basis;

(B) Is an unreasonable position as described in section 6694(a)(2) of the Code (including the related regulations and other published guidance); or

(C) Is a willful attempt by the practitioner to understate the liability for tax or a reckless or intentional disregard of rules or regulations by the practitioner as described in section 6694(b)(2) of the Code (including the related regulations and other published guidance).

(2) A pattern of conduct is a factor that will be taken into account in determining whether a practitioner acted willfully, recklessly, or through gross incompetence.

* * * * *

(e) *Effective/applicability date*. Paragraph (a) of this section is applicable for returns or claims for refund filed, or advice provided, beginning August 2, 2011. Paragraphs (b) through (d) of this section are applicable to tax returns, documents, affidavits, and other papers filed on or after September 26, 2007.

Par. 16. Section 10.36 is amended by:

1. Redesignating paragraph (b) as paragraph (c).

2. Adding new paragraph (b).

3. Revising newly designated paragraph (c).

The addition and revisions read as follows:

§10.36 Procedures to ensure compliance.

* * * * *

(b) *Requirements for tax returns and other documents*. Any practitioner who has (or practitioners who have or share) principal authority and responsibility for overseeing a firm's practice of preparing tax returns, claims for refunds, or other documents for submission to the Internal Revenue Service must take reasonable steps to ensure that the firm has adequate procedures in effect for all members, associates, and employees for purposes of complying with Circular 230. Any practitioner who has (or practitioners who have or share) this principal authority will be subject to discipline for failing to comply with the requirements of this paragraph if—

(1) The practitioner through willfulness, recklessness, or gross incompetence does not take reasonable steps to ensure that the firm has adequate procedures to comply with Circular 230, and one or more individuals who are members of, associated with, or employed by, the firm are, or have, engaged in a pattern or practice, in connection with their practice with the firm, of failing to comply with Circular 230; or

(2) The practitioner knows or should know that one or more individuals who are members of, associated with, or employed by, the firm are, or have, engaged in a pattern or practice, in connection with their practice with the firm, that does not comply with Circular 230, and the practitioner, through willfulness, recklessness, or gross incompetence fails to take prompt action to correct the noncompliance.

(c) *Effective/applicability date*. This section is applicable beginning August 2, 2011.

Par. 17. Section 10.38 is revised to read as follows:

§10.38 Establishment of advisory committees.

(a) *Advisory committees.* To promote and maintain the public's confidence in tax advisors, the Internal Revenue Service is authorized to establish one or more advisory committees composed of at least six individuals authorized to practice before the Internal Revenue Service. Membership of an advisory committee must be balanced among those who practice as attorneys, accountants, enrolled agents, enrolled actuaries, enrolled retirement plan agents, and registered tax return preparers. Under procedures prescribed by the Internal Revenue Service, an advisory committee may review and make general recommendations regarding the practices, procedures, and policies of the offices described in §10.1.

(b) *Effective/applicability date*. This section is applicable beginning August 2, 2011.

Par. 18. Section 10.50 is amended by

1. Revising paragraph (b)(1).

2. Redesignating paragraphs (d) and (e) as paragraphs (e) and (f).

3. Adding new paragraph (d).

4. Revising newly redesignated paragraph (f).

The revisions and addition read as follows:

§10.50 Sanctions.

* * * * *

(b) * * *

(1) If any appraiser is disqualified pursuant to this subpart C, the appraiser is barred from presenting evidence or testimony in any administrative proceeding before the Department of Treasury or the Internal Revenue Service, unless and until authorized to do so by the Internal Revenue Service pursuant to §10.81, regardless of whether the evidence or testimony would pertain to an appraisal made prior to or after the effective date of disqualification.

* * * * *

(d) *Authority to accept a practitioner's consent to sanction*. The Internal Revenue Service may accept a practitioner's offer of consent to be sanctioned under §10.50 in lieu of instituting or continuing a proceeding under §10.60(a).

* * * * *

(f) *Effective/applicability date*. This section is applicable to conduct occurring on or after August 2, 2011, except that paragraphs (a), (b)(2), and (e) apply to conduct occurring on or after September 26, 2007, and paragraph (c) applies to prohib-

ited conduct that occurs after October 22, 2004.

Par. 19. Section 10.51 is amended by adding paragraphs (a)(16), (17), and (18) and revising paragraph (b) to read as follows:

§10.51 Incompetence and disreputable conduct.

(a) * * *

(16) Willfully failing to file on magnetic or other electronic media a tax return prepared by the practitioner when the practitioner is required to do so by the Federal tax laws unless the failure is due to reasonable cause and not due to willful neglect.

(17) Willfully preparing all or substantially all of, or signing, a tax return or claim for refund when the practitioner does not possess a current or otherwise valid preparer tax identification number or other prescribed identifying number.

(18) Willfully representing a taxpayer before an officer or employee of the Internal Revenue Service unless the practitioner is authorized to do so pursuant to this part.

(b) *Effective/applicability date*. This section is applicable beginning August 2, 2011.

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

§10.53 Receipt of information concerning practitioner.

(a) *Officer or employee of the Internal Revenue Service*. If an officer or employee of the Internal Revenue Service has reason to believe a practitioner has violated any provision of this part, the officer or employee will promptly make a written report of the suspected violation. The report will explain the facts and reasons upon which the officer's or employee's belief rests and must be submitted to the office(s) of the Internal Revenue Service responsible for administering or enforcing this part.

(b) *Other persons*. Any person other than an officer or employee of the Internal Revenue Service having information of a violation of any provision of this part may make an oral or written report of the alleged violation to the office(s) of the Internal Revenue Service responsible for administering or enforcing this part or any officer or employee of the Internal Revenue Service. If the report is made to an officer or employee of the Internal Revenue Service, the officer or employee will make a written report of the suspected violation and submit the report to the office(s) of the Internal Revenue Service responsible for administering or enforcing this part.

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

(d) *Effect on proceedings under subpart D*. The destruction of any report will not bar any proceeding under subpart D of this part, but will preclude the use of a copy of the report in a proceeding under subpart D of this part.

(e) *Effective/applicability date*. This section is applicable beginning August 2, 2011.

Par. 21. Section 10.60 is amended by revising paragraphs (a), (b), and (d) to read as follows:

§10.60 Institution of proceeding.

(a) Whenever it is determined that a practitioner (or employer, firm or other entity, if applicable) violated any provision of the laws governing practice before the Internal Revenue Service or the regulations in this part, the practitioner may be reprimanded in accordance with §10.62, or subject to a proceeding for sanctions described in §10.50.

(b) Whenever a penalty has been assessed against an appraiser under the Internal Revenue Code and an appropriate officer or employee in an office established to enforce this part determines that the appraiser acted willfully, recklessly, or through gross incompetence with respect to the proscribed conduct, the appraiser may be reprimanded in accordance with §10.62 or subject to a proceeding for disqualification. A proceeding for disqualification of an appraiser is instituted by the filing of a complaint, the contents of which are more fully described in §10.62.

* * * * *

(d) *Effective/applicability date*. This section is applicable beginning August 2, 2011.

Par. 22. Section 10.61 is amended by revising paragraphs (a), (b)(2), and (c) to read as follows:

§10.61 Conferences.

(a) *In general*. The Commissioner, or delegate, may confer with a practitioner, employer, firm or other entity, or an appraiser concerning allegations of misconduct irrespective of whether a proceeding has been instituted. If the conference results in a stipulation in connection with an ongoing proceeding in which the practitioner, employer, firm or other entity, or appraiser is the respondent, the stipulation may be entered in the record by either party to the proceeding.

(b) * * *

(2) *Discretion; acceptance or declination*. The Commissioner, or delegate, may accept or decline the offer described in paragraph (b)(1) of this section. When the decision is to decline the offer, the written notice of declination may state that the offer described in paragraph (b)(1) of this section would be accepted if it contained different terms. The Commissioner, or delegate, has the discretion to accept or reject a revised offer submitted in response to the declination or may counteroffer and act upon any accepted counteroffer.

(c) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

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

§10.62 Contents of complaint.

(a) *Charges*. A complaint must name the respondent, provide a clear and concise description of the facts and law that constitute the basis for the proceeding, and be signed by an authorized representative of the Internal Revenue Service under §10.69(a)(1). A complaint is sufficient if it fairly informs the respondent of the charges brought so that the respondent is able to prepare a defense.

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

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

(d) *Effective/applicability date*. This section is applicable beginning August 2, 2011.

Par. 24. Section 10.63 is amended by revising paragraphs (c) and (f) to read as follows:

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

* * * * *

(c) *Service of papers on the Internal Revenue Service*. Whenever a paper is required or permitted to be served on the Internal Revenue Service in connection with a proceeding under this part, the paper will be served on the Internal Revenue Service's authorized representative under §10.69(a)(1) at the address designated in the complaint, or at an address provided in a notice of appearance. If no address is designated in the complaint or provided in a notice of appearance, service will be made on the office(s) established to enforce this part under the authority of §10.1, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224.

* * * * *

(f) *Effective/applicability date*. This section is applicable beginning August 2, 2011.

Par. 25. Section 10.64 is amended by revising paragraph (a) and adding paragraph (f) to read as follows:

§10.64 Answer; default.

(a) *Filing*. The respondent's answer must be filed with the Administrative Law Judge, and served on the Internal Revenue Service, within the time specified in the complaint unless, on request or application of the respondent, the time is extended by the Administrative Law Judge.

* * * * *

(f) *Effective/applicability date*. This section is applicable beginning August 2, 2011.

Par. 26. Section 10.65 is amended by revising paragraphs (a) and (c) to read:

§10.65 Supplemental charges.

(a) *In general*. Supplemental charges may be filed against the respondent by amending the complaint with the permission of the Administrative Law Judge if, for example—

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

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

* * * * *

(c) *Effective/applicability date*. This section is applicable beginning August 2, 2011.

Par. 27. Section 10.66 is revised to read as follows:

§10.66 Reply to answer.

(a) The Internal Revenue Service may file a reply to the respondent's answer, but unless otherwise ordered by the Administrative Law Judge, no reply to the respondent's answer is required. If a reply is not filed, new matter in the answer is deemed denied.

(b) *Effective/applicability date*. This section is applicable beginning August 2, 2011.

Par. 28. Section 10.69 is revised to read as follows:

§10.69 Representation; ex parte communication.

(a) *Representation*. The Internal Revenue Service may be represented in proceedings under this part by an attorney or other employee of the Internal Revenue Service. An attorney or an employee of the Internal Revenue Service representing the Internal Revenue Service in a proceeding under this part may sign the complaint or any document required to be filed in the proceeding on behalf of the Internal Revenue Service.

(b) *Ex parte communication*. The Internal Revenue Service, the respondent, and any representatives of either party, may not attempt to initiate or participate in *ex parte* discussions concerning a proceeding or potential proceeding with the Administrative Law Judge (or any person who is likely to advise the Administrative Law Judge on a ruling or decision) in the proceeding before or during the pendency of the proceeding. Any memorandum, letter or other communication concerning the merits of the proceeding, addressed to the Administrative Law Judge, by or on behalf of any party shall be regarded as an argument in the proceeding and shall be served on the other party.

(c) *Effective/applicability date*. This section is applicable beginning August 2, 2011.

Par. 29. Section 10.72 is amended by revising paragraphs (a)(3)(iv)(A), (d)(1), and (g) to read as follows:

§10.72 Hearings.

(a) * * *

(3) * * *

(iv) * * *

(A) The Internal Revenue Service withdraws the complaint;

* * * * *

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

* * * * *

(g) *Effective/applicability date*. This section is applicable beginning August 2, 2011.

Par. 30. Section 10.76 is amended by revising paragraphs (c), and (e) to read as follows:

§10.76 Decision of Administrative Law Judge.

* * * * *

(c) *Copy of decision*. The Administrative Law Judge will provide the decision to the Internal Revenue Service's authorized representative, and a copy of the decision to the respondent or the respondent's authorized representative.

* * * * *

(e) *Effective/applicability date*. This section is applicable beginning August 2, 2011.

Par. 31. Section 10.77 is revised to read as follows:

§10.77 Appeal of decision of Administrative Law Judge.

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

(b) *Time and place for filing of appeal*. The notice of appeal and brief must be filed, in duplicate, with the Secretary of the Treasury, or delegate deciding appeals, at an address for appeals that is identified to the parties with the decision of the Administrative Law Judge. The notice of appeal and brief must be filed within 30 days of the date that the decision of the Administrative Law Judge is served on the parties. The appealing party must serve a copy of the notice of appeal and the brief to any non-appealing party or, if the party is represented, the non-appealing party's representative.

(c) *Response*. Within 30 days of receiving the copy of the appellant's brief, the other party may file a response brief with the Secretary of the Treasury, or delegate deciding appeals, using the address identified for appeals. A copy of the response brief must be served at the same time on the opposing party or, if the party is represented, the opposing party's representative.

(d) *No other briefs, responses or motions as of right*. Other than the appeal brief and response brief, the parties are not permitted to file any other briefs, responses or motions, except on a grant of leave to do so after a motion demonstrating sufficient cause, or unless otherwise ordered by the Secretary of the Treasury, or delegate deciding appeals.

(e) *Additional time for briefs and responses*. Notwithstanding the time for filing briefs and responses provided in paragraphs (b) and (c) of this section, the Secretary of the Treasury, or delegate deciding appeals, may, for good cause, authorize additional time for filing briefs and responses upon a motion of a party or upon the initiative of the Secretary of the Treasury, or delegate deciding appeals.

(f) *Effective/applicability date*. This section is applicable beginning August 2, 2011.

Par. 32. Section 10.78 is amended by revising paragraphs (c) and (d) to read as follows:

§10.78 Decision on review.

* * * * *

(c) *Copy of decision on review*. The Secretary of the Treasury, or delegate, will provide copies of the agency decision to the authorized representative of the Internal Revenue Service and the respondent or the respondent's authorized representative.

(d) *Effective/applicability date*. This section is applicable beginning August 2, 2011.

Par. 33. Section 10.79 is revised to read as follows:

§10.79 Effect of disbarment, suspension, or censure.

(a) *Disbarment*. When the final decision in a case is against the respondent (or the respondent has offered his or her consent and such consent has been accepted by the Internal Revenue Service) and such decision is for disbarment, the respondent will not be permitted to practice before the Internal Revenue Service unless and until authorized to do so by the Internal Revenue Service pursuant to §10.81.

(b) *Suspension*. When the final decision in a case is against the respondent (or the respondent has offered his or her consent and such consent has been accepted by the Internal Revenue Service) and such decision is for suspension, the respondent will not be permitted to practice before the Internal Revenue Service during the period of suspension. For periods after the suspension, the practitioner's future representations may be subject to conditions as authorized by paragraph (d) of this section.

(c) *Censure*. When the final decision in the case is against the respondent (or the Internal Revenue Service has accepted the respondent's offer to consent, if such offer was made) and such decision is for censure, the respondent will be permitted to practice before the Internal Revenue Service, but the respondent's future representations may be subject to conditions as authorized by paragraph (d) of this section.

(d) *Conditions*. After being subject to the sanction of either suspension or censure, the future representations of a practitioner so sanctioned shall be subject to specified conditions designed to promote high standards of conduct. These conditions can be imposed for a reasonable period in light of the gravity of the practitioner's violations. For example, where a practitioner is censured because the practitioner failed to advise the practitioner's clients about a potential conflict of interest or failed to obtain the clients' written consents, the practitioner may be required to provide the Internal Revenue Service with a copy of all consents obtained by the practitioner for an appropriate period following censure, whether or not such consents are specifically requested.

(e) *Effective/applicability date*. This section is applicable beginning August 2, 2011.

Par. 34. Section 10.80 is revised to read as follows:

§10.80 Notice of disbarment, suspension, censure, or disqualification.

(a) *In general*. On the issuance of a final order censuring, suspending, or disbarring a practitioner or a final order disqualifying an appraiser, notification of the censure, suspension, disbarment or disqualification will be given to appropriate officers and employees of the Internal Revenue Service and interested departments and agencies of the Federal government. The Internal Revenue Service may determine the manner of giving notice to the proper authorities of the State by which the censured, suspended, or disbarred person was licensed to practice.

(b) *Effective/applicability date*. This section is applicable beginning August 2, 2011.

Par. 35. Section 10.81 is revised to read as follows:

§10.81 Petition for reinstatement.

(a) *In general.* A disbarred practitioner or a disqualified appraiser may petition for reinstatement before the Internal Revenue Service after the expiration of 5 years following such disbarment or disqualification. Reinstatement will not be granted unless the Internal Revenue Service is satisfied that the petitioner is not likely to conduct himself, thereafter, contrary to the regulations in this part, and that granting such reinstatement would not be contrary to the public interest.

(b) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

Par. 36. Section 10.82 is amended by revising paragraphs (a), (c) introductory text, (c)(3), (d), (e), (f), (g), and (h) to read as follows:

§10.82 Expedited suspension.

(a) *When applicable.* Whenever the Commissioner, or delegate, determines that a practitioner is described in paragraph (b) of this section, proceedings may be instituted under this section to suspend the practitioner from practice before the Internal Revenue Service.

* * * * *

(c) *Instituting a proceeding.* A proceeding under this section will be instituted by a complaint that names the respondent, is signed by an authorized representative of the Internal Revenue Service under §10.69(a)(1), and is filed and served according to the rules set forth in paragraph (a) of §10.63. The complaint must give a plain and concise description of the allegations that constitute the basis for the proceeding. The complaint must notify the respondent —

* * * * *

(3) That the respondent may request a conference to address the merits of the complaint and that any such request must be made in the answer; and

* * * * *

(d) *Answer.* The answer to a complaint described in this section must be filed no later than 30 calendar days following the date the complaint is served, unless the time for filing is extended. The answer must be filed in accordance with the rules set forth in §10.64, except as otherwise provided in this section. A respondent is entitled to a conference only if the conference is requested in a timely filed answer. If a request for a conference is not made in the answer or the answer is not timely filed, the respondent will be deemed to have waived the right to a conference and may be suspended at any time following the date on which the answer was due.

(e) *Conference.* An authorized representative of the Internal Revenue Service will preside at a conference described in this section. The conference will be held at a place and time selected by the Internal Revenue Service, but no sooner than 14 calendar days after the date by which the answer must be filed with the Internal Revenue Service, unless the respondent agrees to an earlier date. An authorized representative may represent the respondent at the conference. Following the conference, upon a finding that the respondent is described in paragraph (b) of this section, or upon the respondent's failure to appear at the conference either personally or through an authorized representative, the respondent may be immediately suspended from practice before the Internal Revenue Service.

(f) *Duration of suspension.* A suspension under this section will commence on the date that written notice of the suspension is issued. The suspension will remain effective until the earlier of the following:

(1) The Internal Revenue Service lifts the suspension after determining that the practitioner is no longer described in paragraph (b) of this section or for any other reason; or

(2) The suspension is lifted by an Administrative Law Judge or the Secretary of the Treasury in a proceeding referred to in paragraph (g) of this section and instituted under §10.60.

(g) *Proceeding instituted under §10.60.* If the Internal Revenue Service suspended a practitioner under this section, the practitioner may ask the Internal Revenue Service to issue a complaint under §10.60. The request must be made in writing within 2 years from the date on which the practitioner's suspension commences. The Internal Revenue Service must issue a complaint requested under this paragraph within 30 calendar days of receiving the request.

(h) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

Par. 37. Section 10.90 is amended by:

1. Revising paragraph (a).

2. Redesignating the second paragraph (b) as paragraph (c).

3. Revising newly designated paragraph (c).

The revisions read as follows:

§10.90 Records

(a) *Roster.* The Internal Revenue Service will maintain and make available for public inspection in the time and manner prescribed by the Secretary, or delegate, the following rosters —

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

(2) Enrolled agents, including individuals—

(i) Granted active enrollment to practice;

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

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

(iv) Whose offer of consent to resign from enrollment has been accepted by the Internal Revenue Service under §10.61.

(3) Enrolled retirement plan agents, including individuals—

(i) Granted active enrollment to practice;

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

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

(iv) Whose offer of consent to resign from enrollment has been accepted under §10.61.

(4) Registered tax return preparers, including individuals—

(i) Authorized to prepare all or substantially all of a tax return or claim for refund;

(ii) Who have been placed in inactive status for failure to meet the requirements for renewal;

(iii) Who have been placed in inactive retirement status; and

(iv) Whose offer of consent to resign from their status as a registered tax return

preparer has been accepted by the Internal Revenue Service under §10.61.

(5) Disqualified appraisers.

(6) Qualified continuing education providers, including providers—

(i) Who have obtain a qualifying continuing education provider number

(ii) Whose qualifying continuing education number has been revoked for failure to comply with the requirements of this part.

* * * * *

(c) *Effective/applicability date*. This section is applicable beginning August 2, 2011.

Steven T. Miller,
Deputy Commissioner for Services and Enforcement.

Approved May 20, 2011.

George Madison,
General Counsel,
Office of the Secretary.

(Filed by the Office of the Federal Register on May 31, 2011, 8:45 a.m., and published in the issue of the Federal Register for June 3, 2011, 76 F.R. 32286)

Section 382.—Limitation on Net Operating Loss Carrryforwards and Certain Built-In Losses Following Ownership Change

The adjusted applicable federal long-term rate is set forth for the month of July 2011. See Rev. Rul. 2011-14, page 31.

Section 412.—Minimum Funding Standards

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2011. See Rev. Rul. 2011-14, page 31.

Section 467.—Certain Payments for the Use of Property or Services

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2011. See Rev. Rul. 2011-14, page 31.

Section 468.—Special Rules for Mining and Solid Waste Reclamation and Closing Costs

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2011. See Rev. Rul. 2011-14, page 31.

Section 482.—Allocation of Income and Deductions Among Taxpayers

Federal short-term, mid-term, and long-term rates are set forth for the month of July 2011. See Rev. Rul. 2011-14, page 31.

Section 483.—Interest on Certain Deferred Payments

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2011. See Rev. Rul. 2011-14, page 31.

Section 642.—Special Rules for Credits and Deductions

Federal short-term, mid-term, and long-term rates are set forth for the month of July 2011. See Rev. Rul. 2011-14, page 31.

Section 807.—Rules for Certain Reserves

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2011. See Rev. Rul. 2011-14, page 31.

Section 846.—Discounted Unpaid Losses Defined

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2011. See Rev. Rul. 2011-14, page 31.

Section 1274.—Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property

(Also Sections 42, 280G, 382, 412, 467, 468, 482, 483, 642, 807, 846, 1288, 7520, 7872.)

Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate. For purposes of sections 382, 642, 1274, 1288, and other sections of the Code, tables set forth the rates for July 2011.

Rev. Rul. 2011–14

This revenue ruling provides various prescribed rates for federal income tax purposes for July 2011 (the current month). Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the appropriate percentages for determining the low-income housing credit described in section 42(b)(1) for buildings placed in service during the current month. However, under section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, and before December 31, 2013, shall not be less than 9%. Table 5 contains the federal rate for determining the present value of an annuity, an interest for life or for a term of years, or a remainder or a reversionary interest for purposes of section 7520. Finally, Table 6 contains the blended annual rate for 2011 for purposes of section 7872.

REV. RUL. 2011–14 TABLE 1

Applicable Federal Rates (AFR) for July 2011

	Period for Compounding			
	Annual	*Semiannual*	*Quarterly*	*Monthly*
Short-term				
AFR	.37%	.37%	.37%	.37%
110% AFR	.41%	.41%	.41%	.41%
120% AFR	.44%	.44%	.44%	.44%
130% AFR	.48%	.48%	.48%	.48%
Mid-term				
AFR	2.00%	1.99%	1.99%	1.98%
110% AFR	2.20%	2.19%	2.18%	2.18%
120% AFR	2.40%	2.39%	2.38%	2.38%
130% AFR	2.61%	2.59%	2.58%	2.58%
150% AFR	3.01%	2.99%	2.98%	2.97%
175% AFR	3.51%	3.48%	3.46%	3.46%
Long-term				
AFR	3.86%	3.82%	3.80%	3.79%
110% AFR	4.24%	4.20%	4.18%	4.16%
120% AFR	4.63%	4.58%	4.55%	4.54%
130% AFR	5.03%	4.97%	4.94%	4.92%

REV. RUL. 2011–14 TABLE 2

Adjusted AFR for July 2011

	Period for Compounding			
	Annual	*Semiannual*	*Quarterly*	*Monthly*
Short-term adjusted AFR	.53%	.53%	.53%	.53%
Mid-term adjusted AFR	1.57%	1.56%	1.56%	1.55%
Long-term adjusted AFR	3.86%	3.82%	3.80%	3.79%

REV. RUL. 2011–14 TABLE 3

Rates Under Section 382 for July 2011

Adjusted federal long-term rate for the current month	3.86%
Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.)	4.30%

REV. RUL. 2011–14 TABLE 4

Appropriate Percentages Under Section 42(b)(1) for July 2011

Note: Under Section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, and before December 31, 2013, shall not be less than 9%.

Appropriate percentage for the 70% present value low-income housing credit	7.68%
Appropriate percentage for the 30% present value low-income housing credit	3.29%

REV. RUL. 2011–14 TABLE 5	
Rate Under Section 7520 for July 2011	
Applicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest	2.4%

REV. RUL. 2011–14 TABLE 6	
Blended Annual Rate for 2011	
Section 7872(e)(2) blended annual rate for 2011	.40%

Section 1288.—Treatment of Original Issue Discount on Tax-Exempt Obligations

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2011. See Rev. Rul. 2011-14, page 31.

Section 7520.—Valuation Tables

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2011. See Rev. Rul. 2011-14, page 31.

Section 7872.—Treatment of Loans With Below-Market Interest Rates

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2011. See Rev. Rul. 2011-14, page 31.

Part III. Administrative, Procedural, and Miscellaneous

Relief from Certain Low-Income Housing Credit Requirements Due to Severe Storms, Tornadoes, and Flooding in Missouri

Notice 2011–47

The Internal Revenue Service is suspending certain requirements under § 42 of the Internal Revenue Code for low-income housing credit projects in the United States to provide emergency housing relief needed as a result of the devastation caused by severe storms, tornadoes, and flooding in Missouri beginning on April 19, 2011. This relief is being granted pursuant to the Service's authority under § 42(n) and § 1.42–13(a) of the Income Tax Regulations.

BACKGROUND

On May 9, 2011, the President declared a major disaster for the State of Missouri. This declaration was made under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq*. Subsequently, the Federal Emergency Management Agency (FEMA) designated jurisdictions for Individual Assistance. The State of Missouri has requested that the Service allow owners of low-income housing credit projects to provide temporary housing in vacant units to individuals who resided in jurisdictions designated for Individual Assistance in Missouri and who have been displaced because their residences were destroyed or damaged as a result of the devastation caused by the severe storms, tornadoes, and flooding. Based upon this request and because of the widespread damage to housing caused by the severe storms, tornadoes, and flooding, the Service has determined that the Missouri Housing Development Commission (Commission) may provide approval to project owners to provide temporary emergency housing for displaced individuals in accordance with this notice.

I. SUSPENSION OF INCOME LIMITATIONS

The Service has determined that it is appropriate to temporarily suspend certain income limitation requirements under § 42 for certain qualified low-income projects. The suspension will apply to low-income housing projects approved by the Commission, in which vacant units are rented to displaced individuals. The Commission will determine the appropriate period of temporary housing for each project, not to extend beyond June 30, 2012 (temporary housing period).

II. STATUS OF UNITS

A. Units in the first year of the credit period

A displaced individual temporarily occupying a unit during the first year of the credit period under § 42(f)(1) will be deemed a qualified low-income tenant for purposes of determining the project's qualified basis under § 42(c)(1), and for meeting the project's 20-50 test or 40-60 test as elected by the project owner under § 42(g)(1). After the end of the temporary housing period established by the Commission (not to extend beyond June 30, 2012), a displaced individual will no longer be deemed a qualified low-income tenant.

B. Vacant units after the first year of the credit period

During the temporary housing period established by the Commission, the status of a vacant unit (that is, market-rate or low-income for purposes of § 42 or never previously occupied) after the first year of the credit period that becomes temporarily occupied by a displaced individual remains the same as the unit's status before the displaced individual moves in. Displaced individuals temporarily occupying vacant units will not be treated as low-income tenants under § 42(i)(3)(A)(ii). However, even if it houses a displaced individual, a low-income or market rate unit that was vacant before the effective date of this notice will continue to be treated as a vacant low-income or market rate unit. Similarly, a unit that was never previously occupied before the effective date of this notice will continue to be treated as a unit that has never been previously occupied even if it houses a displaced individual. Thus, the fact that a vacant unit becomes occupied by a displaced individual will not affect the building's applicable fraction under § 42(c)(1)(B) for purposes of determining the building's qualified basis, nor will it affect the 20–50 test or 40–60 test of § 42(g)(1). If the income of occupants in low-income units exceeds 140 percent of the applicable income limitation, the temporary occupancy of a unit by a displaced individual will not cause application of the available unit rule under § 42(g)(2)(D)(ii). In addition, the project owner is not required during the temporary housing period to make attempts to rent to low-income individuals the low-income units that house displaced individuals.

III. SUSPENSION OF NON-TRANSIENT REQUIREMENTS

The non-transient use requirement of § 42(i)(3)(B)(i) shall not apply to any unit providing temporary housing to a displaced individual during the temporary housing period determined by the Commission in accordance with section I of this notice.

IV. OTHER REQUIREMENTS

All other rules and requirements of § 42 will continue to apply during the temporary housing period established by the Commission. After the end of the temporary housing period, the applicable income limitations contained in § 42(g)(1), the available unit rule under § 42(g)(2)(D)(ii), the nontransient requirement of § 42(i)(3)(B)(i), and the requirement to make reasonable attempts to rent vacant units to low-income individuals shall resume. If a project owner offers to rent a unit to a displaced individual after the end of the temporary housing period, the displaced individual must be certified under the requirements of § 42(i)(3)(A)(ii) and § 1.42–5(b) and (c) to be a qualified low-income tenant. To qualify for the relief in this notice, the project owner must additionally meet all of the following requirements:

(1) Major Disaster Area

The displaced individual must have resided in a Missouri jurisdiction designated for Individual Assistance by FEMA as a result of the severe storms, tornadoes, and flooding in Missouri beginning on April 19, 2011.

(2) Approval of the Missouri Housing Development Commission

The project owner must obtain approval from the Commission for the relief described in this notice. The Commission will determine the appropriate period of temporary housing for each project, not to extend beyond June 30, 2012.

(3) Certifications and Recordkeeping

To comply with the requirements of § 1.42–5, project owners are required to maintain and certify certain information concerning each displaced individual temporarily housed in the project, specifically: name, address of damaged residence, social security number, and a statement signed under penalties of perjury by the displaced individual that, because of damage to the individual's residence in a Missouri jurisdiction designated for Individual Assistance by FEMA as a result of the severe storms, tornadoes, and flooding beginning on April 19, 2011, the individual requires temporary housing. The owner must notify the Commission that vacant units are available for rent to displaced individuals.

The owner must also certify the date the displaced individual began temporary occupancy and the date the project will discontinue providing temporary housing as established by the Commission. The certifications and recordkeeping for displaced individuals must be maintained as part of the annual compliance monitoring process with the Commission.

(4) Rent Restrictions

Rents for the low-income units that house displaced individuals must not exceed the existing rent-restricted rates for the low-income units established under § 42(g)(2).

(5) Protection of Existing Tenants

Existing tenants in occupied low-income units cannot be evicted or have their tenancy terminated as a result of efforts to provide temporary housing for displaced individuals.

EFFECTIVE DATE

This notice is effective May 9, 2011 (the date of the President's major disaster declarations as a result of the severe storms, tornadoes, and flooding in Missouri beginning on April 19, 2011).

PAPERWORK REDUCTION ACT

The collection of information contained in this notice has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–2210.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collection of information in this notice is in the section titled "OTHER REQUIREMENTS" under "(3) Certifications and Recordkeeping." This information is required to enable the Service to verify whether individuals are displaced as a result of the devastation caused by severe storms, tornadoes, and flooding in Missouri beginning on April 19, 2011, and thus warrant temporary housing in vacant low-income housing units. The collection of information is required to obtain a benefit. The likely respondents are individuals and businesses.

The estimated total annual recordkeeping burden is 125 hours.

The estimated annual burden per recordkeeper is approximately 15 minutes. The estimated number of recordkeepers is 500.

Books or records relating to a collection of information must be retained as long as their contents may become material to the administration of the internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

DRAFTING INFORMATION

The principal author of this notice is David Selig of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact Mr. Selig at (202) 622–3040 (not a toll-free call).

Credit for Carbon Dioxide Sequestration 2011 Section 45Q Inflation Adjustment Factor

Notice 2011–50

SECTION 1. PURPOSE

This notice publishes the inflation adjustment factor for the credit for carbon dioxide (CO_2) sequestration under § 45Q of the Internal Revenue Code (§ 45Q credit) for calendar year 2011. The inflation adjustment factor is used to determine the amount of the credit allowable under § 45Q. The calendar year 2011 inflation-adjusted credit applies to the amount of qualified CO_2 captured by a taxpayer at a qualified facility and disposed of in secure geological storage.

SECTION 2. BACKGROUND

Section 45Q(a)(1) allows a credit of $20 per metric ton of qualified CO_2 that is captured by the taxpayer at a qualified facility, disposed of by the taxpayer in secure geological storage, and not used by the taxpayer as a tertiary injectant. Section 45Q(a)(2) allows a credit of $10 per metric ton of qualified CO_2 that is captured by the taxpayer at a qualified facility, used by the taxpayer as a tertiary injectant in a qualified enhanced oil or natural gas recovery project (EOR project), and disposed of by the taxpayer in secure geological storage.

Section 45Q(b)(1) defines the term "qualified carbon dioxide" as CO_2 captured from an industrial source that would otherwise be released into the atmosphere as industrial emission of greenhouse gas (GHG), and that is measured at the source of capture and verified at the point of disposal or injection. Qualified CO_2 includes

the initial deposit of captured CO_2 used as a tertiary injectant but does not include CO_2 that is re-captured, recycled, or otherwise re-injected as part of the enhanced oil and natural gas recovery process.

Section 45Q(c) defines the term "qualified facility" as an industrial facility that is owned by the taxpayer, where carbon capture equipment is placed in service, and where at least 500,000 metric tons of CO_2 is captured during the taxable year.

Section 45Q(d)(2) provides that the Secretary, in consultation with the Administrator of the Environmental Protection Agency (EPA), the Secretary of Energy, and the Secretary of the Interior, shall establish regulations for determining adequate security measures for the geological storage of CO_2 under paragraph (1)(B) or (2)(C) of subsection (a) such that the CO_2 does not escape into the atmosphere. See section 5 of Notice 2009–83, 2009–44 I.R.B. 588, for procedures regarding secure geological storage.

Section 45Q(d)(5) allows the § 45Q credit to the person that captures and physically or contractually ensures the disposal of or the use as a tertiary injectant of the qualified CO_2, except to the extent provided in regulations prescribed by the Secretary.

Under § 45Q(d)(7), for taxable years beginning in a calendar year after 2009, the dollar amount contained in § 45Q(a) must be adjusted for inflation by multiplying such dollar amount by the inflation adjustment factor for such calendar year determined under § 43(b)(3)(B), determined by substituting "2008" for "1990."

Section 43(b)(3)(B) defines "inflation adjustment factor" as, with respect to any calendar year, a fraction the numerator of which is the GNP implicit price deflator for the preceding calendar year and the denominator of which is the GNP implicit price deflator for 1990. For purposes of § 45Q(d)(7), with respect to 2011 calendar year, the inflation adjustment factor is a fraction the numerator of which is the GNP implicit price deflator for 2010 (110.654) and the denominator of which is the GNP implicit price deflator for 2008 (108.626).

Section 45Q(e) provides that the § 45Q credit will apply with respect to qualified CO_2 before the end of the calendar year in which the Secretary, in consultation with the EPA, certifies that 75,000,000 metric tons of qualified CO_2 have been taken into account in accordance with § 45Q(a).

SECTION 3. INFLATION ADJUSTMENT FACTOR

The inflation adjustment factor for calendar year 2011 is 1.0187. The 45Q credit for calendar year 2011 is $20.37 per metric ton of qualified CO_2 under § 45Q(a)(1) and $10.19 per metric ton of qualified CO_2 under § 45Q(a)(2).

SECTION 4. DRAFTING INFORMATION

The principal author of this notice is Jennifer C. Bernardini of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice, contact Jennifer C. Bernardini at (202) 622–3110 (not a toll-free call).

Extension of Interim Guidance on Modification of Section 833 Treatment of Certain Health Organizations

Notice 2011–51

PURPOSE

This notice extends the interim guidance provided in Notice 2010–79, 2010–49 I.R.B. 809, as clarified and modified by Notice 2011–4, 2011–2 I.R.B. 282, and Rev. Proc. 2011–14, 2011–4 I.R.B. 330, on the interpretation and application of § 833(c)(5) of the Internal Revenue Code (Code).

BACKGROUND

Section 9016 of the Patient Protections and Affordable Care Act, Pub. L. No. 111–148, 124 Stat. 119 (2010), (Affordable Care Act) added § 833(c)(5) to the Code, effective for taxable years beginning after December 31, 2009. Section 833(c)(5) provides that § 833 does not apply to an otherwise-eligible organization unless the organization's medical loss ratio (MLR) during the taxable year is not less than 85 percent. For this purpose, an organization's MLR is equal to the fraction of the organization's total premium revenue that is expended on reimbursement for clinical services provided to enrollees under its policies during the taxable year (as reported under § 2718 of the Public Health Service Act).

In 2010, the Department of Health and Human Services issued interim final regulations implementing § 2718 of the Public Health Service Act, 75 Fed. Reg. 74864 (December 1, 2010) (to be codified at 45 C.F.R. pt. 158).

Also in 2010, Treasury and the IRS issued Notice 2010–79, 2010–49 I.R.B. 809, providing transitional relief and interim guidance on the computation of a taxpayer's MLR for purposes of § 833(c)(5), the consequences of nonapplication of § 833 by reason of § 833(c)(5), and changes in accounting method. The relief applied to the first taxable year beginning after December 31, 2009.

EXTENSION OF INTERIM GUIDANCE

To provide affected taxpayers with sufficient time to adapt to the reporting requirements under § 2718 of the Public Health Service Act that bear on data used to compute the MLR under § 833(c)(5) and to make any administrative or other adjustments that may be necessary in light of the possible nonapplication of § 833 to such taxpayers, the interim guidance provided in Notice 2010–79 is extended to any taxable year beginning in 2010 and the first taxable year beginning after December 31, 2010.

CONTACT INFORMATION

The principal author of this notice is Rebecca L. Baxter of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this notice, contact Rebecca L. Baxter at (202) 622–7117 (not a toll-free call).

Part IV. Items of General Interest

Portion of Form 990 Schedule H Optional for Tax-Exempt Hospitals for Tax Year 2010

Announcement 2011–37

This announcement advises tax-exempt organizations that operate one or more hospital facilities ("hospital organizations") that Part V, Section B ("Part V.B") of Schedule H, *Hospitals*, of the 2010 Form 990, *Return of Organization Exempt From Income Tax*, is optional for the 2010 tax year. Hospital organizations that are required to file the 2010 Form 990 are not required to complete Part V.B, but they are required to complete all other sections of the 2010 Schedule H, including Sections A and C of Part V. In addition, a hospital organization must attach its most recent audited financial statements to its 2010 Form 990 if its tax year began after March 23, 2010, regardless of whether it completes Part V.B. *See* I.R.C. § 6033(b)(15)(B); Instructions for Form 990, Part IV, line 20b.

The Internal Revenue Service (IRS) has decided to make the entire Part V.B optional for the 2010 tax year to give the hospital community more time to familiarize itself with the types of information the IRS will be collecting related to compliance with section 9007 of the Patient Protection and Affordable Care Act ("Affordable Care Act"), Pub. L. No. 111–148, 124 Stat. 119 (March 23, 2010) and to address any ambiguities arising from the extensive revisions of the form and instructions. Part V.B includes questions related to the additional requirements enacted by Section 9007 of the Affordable Care Act, such as questions regarding a hospital facility's community health needs assessment (Lines 1 through 7, optional for tax years beginning on or before March 23, 2012), financial assistance policy (Lines 8 through 13), billing and collections (Lines 14 through 18) and charges for medical care (lines 19 through 21). The IRS continues to invite comments on how to improve the clarity and reduce the burden of reporting the information related to these additional requirements on the Form 990 and Schedule H. (For details on how to submit comments regarding the Form 990, see Instructions for 2010 Form 990, p. 46.)

No penalties under section 6652(c)(1)(A)(ii) of the Internal Revenue Code (Code) will be assessed for failure to include information required to be shown on a Form 990 because any line or lines of Part V.B is left incomplete. If an affected hospital organization receives a section 6652(c)(1)(A)(ii) penalty notice from the IRS solely for not completing any line or lines of Part V.B for the tax year 2010, the hospital organization should call the telephone number on the penalty notice to request that the IRS abate the penalty. Section 6652(c)(1)(A)(ii) penalties still apply to the failure to complete the other sections of the Schedule H or the Form 990.

This announcement does not affect the effective dates of section 501(r) or any other provision added to the Code by section 9007 of the Affordable Care Act.

Announcement 2011–20, which directs hospital organizations not to file the 2010 Form 990 before July 1, 2011, and grants hospital organizations with return due dates prior to August 15, 2011, an automatic three-month extension of time to file a Form 990 for 2010, is still in effect.

For further information regarding this announcement, please contact Steve Clarke at (202) 283–9474 (not a toll-free number).

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.
ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D. —Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z —Corporation.

Numerical Finding List[1]

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[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2011–1 through 2011–26 is in Internal Revenue Bulletin 2011–26, dated June 27, 2011.

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[1] A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2011–1 through 2011–26 is in Internal Revenue Bulletin 2011–26, dated June 27, 2011.

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