

Proposed Circular 230 Regulations Changes to § 10.0-10.9

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Agenda and Objectives

- Become aware of the proposed changes that may impact you, the tax professional
- Note: References to the “registered tax return preparer” have been removed but limited practice remains
- The proposed regulations clarifies “Practice before IRS”
- Explore specific changes and address questions
- Become aware that the regulations do not become final until 30 days after they are approved and deemed final



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Overall Change Review



- **Elimination of Regulation of Registered Tax Return Preparers as Practitioners**
- As a result of the decision and injunction order in *Loving*, the 2011 amendments that relate to registered tax return preparers are no longer enforceable
- Therefore, the proposed regulations would eliminate rules regarding registered tax return preparers under current §§ 10.3 through 10.6
- The proposed regulations would also remove references to registered tax return preparers under current §§ 10.0, 10.2, 10.30, 10.38, and 10.90 and redesignate current § 10.90 as § 10.110
- The Annual Filing Season Program (AFSP) remains active

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Overall Change Review



- **Revision of Standards Relating to Tax Return Preparation**
- Circular 230 contains provisions that are unrelated to the registered tax return preparer program but impose specific standards on tax return preparation
- Consistent with the holding in *Loving*, the proposed regulations would eliminate or revise these provisions to impose standards related to tax returns prepared, approved, or submitted in connection with representing a client in a matter before the IRS
- This distinction would be also incorporated under the amended definition of “Practice before the IRS” under proposed § 10.2(a)(4), which would clarify that practice before the IRS includes the preparation and submission of tax returns in connection with representing a client in a matter before the IRS

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Overall Change Review



- Current § 10.8 provides rules related to tax return preparation, describes actions that individuals who did not prepare all, or substantially all, of a tax return can take before the IRS, and prohibits non-practitioners from preparing all, or substantially all, of a tax return
- The proposed regulations would eliminate the current language under § 10.8 in its entirety
- However, guidance regarding what actions non-practitioners may take in response to IRS inquiries is still necessary and authorized under [31 U.S.C. 330](#)
- Therefore, the proposed regulations would retitle current § 10.8 as “Participation in IRS proceedings by non-practitioners” and would provide that, except for appraisers who have been disqualified pursuant to proposed § 10.61(a), any individual may appear as a witness before the IRS or furnish information at the request of the IRS

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Overall Change Review



- **Enrolled Retirement Plan Agent and Enrolled Agent Procedures**
- Current § 10.3(e)(1) provides that enrolled retirement plan agents (ERPAs) may practice before the IRS
- Current § 10.4(b) authorizes the IRS to grant status as ERPAs to individuals who demonstrate special competence in qualified retirement plan matters by passing a written examination and who have not engaged in any conduct that would justify suspension or disbarment under Circular 230
- The IRS stopped offering the Enrolled Retirement Plan Agent Special Enrollment Examination (ERPA-SEE) on February 12, 2016, and no longer accepts applications for new enrollment as an ERPA

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Overall Change Review



- **Enrolled Retirement Plan Agent and Enrolled Agent Procedures**
- Because of a steady decline in ERPA-SEE test-takers, the cost to administer the ERPA-SEE no longer warranted offering the test
- Individuals who had passed the ERPA-SEE before February 12, 2016, and are currently enrolled as ERPAs can maintain their status
- Therefore, the proposed regulations would clarify that ERPAs who passed the ERPA-SEE prior to February 12, 2016, remain authorized to practice before the IRS if they continue to pay the annual user fee described under [26 CFR 300.10\(b\)](#) and complete the continuing education described in § 10.6(e)
- The proposed regulations would also remove current § 10.4(b), which describes the process to become an ERPA by special examination

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Overall Change Review



- Current § 10.4(d) provides that a former IRS employee, based on past service and technical experience in the IRS, may be granted enrollment as an EA or ERPA without testing if certain criteria are met
- There is no statutory requirement that the IRS provide this exemption to former employees and administering requests for this waiver has consumed substantial IRS resources
- Accordingly, the proposed regulations would eliminate the opportunity for former IRS employees to apply for a waiver of enrollment requirements as of 30 days after the date these regulations are published in the **Federal Register** as final regulations
- Applications from former IRS employees submitted on or before that date would be processed according to the procedures under current § 10.4(d)

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Overall Change Review



- Current § 10.5 includes ERPAs in the description of application procedures to become a practitioner under Circular 230
- Because the IRS no longer offers the special enrollment examination to become an ERPA and no longer accepts applications for new enrollment as an ERPA, these procedures are no longer relevant and references to ERPAs would be removed under proposed § 10.5
- The renewal period and procedures for existing ERPAs remains unchanged under current § 10.6

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- Current § 10.6(b) states that the IRS will provide confirmation of enrollment to EAs and ERPAs by issuing a registration card or certificate
- Instead of specifying the form of confirmation, proposed § 10.6(b) would provide that the IRS will issue a document, which may be an enrollment card or other document
- This revision would give the IRS flexibility as to the form of enrollment confirmation provided to practitioners in the future without requiring an amendment to the regulations

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- Current § 10.6(d)(2) provides an explanation of the renewal period for EA's
- Proposed § 10.6(d)(2) would make minor revisions to this description but makes no substantive changes to the renewal period or renewal process for EA's

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Overall Change Review



- **Limited Practice and Annual Filing Season Program (AFSP) Participants**
- Proposed § 10.7(c)(1)(viii) would provide that individuals who possess a current Annual Filing Season Program (AFSP) Record of Completion may engage in limited practice, by representing taxpayers before the IRS with respect to tax returns or claims for refund or credit the individuals prepared and signed during a calendar year for which a Record of Completion was issued
- The individual must have a valid Record of Completion for the calendar year in which the tax return or claim for refund or credit was prepared and signed and a valid Record of Completion for the year or years in which the representation occurs

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Limited Practice and Annual Filing Season Program (AFSP) Participants

- AFSP participants generally are otherwise unenrolled preparers who, pursuant to Rev. Proc. 2014-42, 2014-29, voluntarily consent to be subject to Circular 230 duties and restrictions to participate in the AFSP, including prohibitions on incompetence or disreputable conduct, and must comply with the duties and restrictions to the extent they represent taxpayers before the IRS under the AFSP
- The authority for the Treasury Department and the IRS to implement the AFSP was upheld by the D.C. Circuit, in *AICPA v. IRS*, 746 Fed. Appx. 1 (D.C. Cir. 2018)

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Overall Change Review



Continuing Education Provider Fees

- Under current § 10.9(a)(2), continuing education providers that provide education to practitioners on subject matters described under current § 10.6(f) must be approved by the IRS, obtain a continuing education number, and pay any applicable user fee
- Continuing education providers must follow the procedures outlined under Rev. Proc. 2012-12, 2012-2 I.R.B. 275 (January 9, 2012) to become an accredited provider and obtain a continuing education provider number
- Continuing education providers must renew their status annually by renewing their provider number and paying a user fee
- Under current § 10.9(a)(4), continuing education providers must seek approval for individual continuing education programs and obtain a program number

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Overall Change Review



- **Continuing Education Provider Fees**
- The continuing education program is administered by a third-party vendor through a five-year contract with the IRS
- The vendor will charge continuing education providers a \$650 application and renewal fee through 2025
- Continuing education providers must renew for the upcoming calendar year before midnight on December 31 or incur late fees ranging between \$100 and \$200
- Under the vendor's contract with the IRS, the vendor's fee is reviewed and approved by the IRS

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- Because the IRS does not incur any direct costs to administer the continuing education program, it does not currently charge a separate user fee to recover costs
- In the future, however, the IRS may charge a user fee if circumstances change
- Any future user fee will be calculated pursuant to the Independent Offices Appropriation Act of 1952 ([31 U.S.C. 9701](#)) and OMB Circular A-25, *User Charges*
- New proposed § 10.9(c) explains that a potential user fee may be charged in addition to the current vendor fee for approval of continuing education providers and their programs

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Polling Question #1



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§10.2 Definitions – Practice Before IRS



- §(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 client'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
- **Any action that supports a presentation to the Internal Revenue Service, including the preparation and submission of tax returns in connection with representing a client in a matter before the Internal Revenue Service, may constitute practice before the Internal Revenue Service**

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§10.2 Definitions – What is a Practitioner?



- Practitioner means any individual described in § 10.3(a), (b), (c), (d), or (e).
- **(6) A tax return includes an amended tax return and a claim for refund or credit within the meaning of § 6696(e)(2) of the Internal Revenue Code, such as a claim for refund or credit made on IRS Form 843, Claim for Refund and Request for Abatement**
- **Previous wording:** A tax return includes an amended tax return and a claim for refund

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§10.3 Who May Practice



- **(c) Enrolled agents**
- Any individual enrolled as an agent pursuant to this part who is not currently under suspension or disbarment from practice before the Internal Revenue Service, **and whose valid enrollment is active and has not been terminated under § 10.6, may practice before the Internal Revenue Service**
- **Previous wording:** Any individual enrolled as an agent pursuant to this part who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Internal Revenue Service

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§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, and enrolled retirement plan agents (registered tax return preparers has been removed)

Previous wording: 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

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§10.3 Who May Practice



- (e)(1) Any individual enrolled **prior to February 12, 2016**, as a retirement plan agent pursuant to this part who is not currently under suspension or disbarment from practice before the Internal Revenue Service, and whose enrollment is not in inactive status or has not been terminated under § 10.6, may practice before the Internal Revenue Service
- Previous wording: Any individual enrolled as a retirement plan agent pursuant to this part who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Internal Revenue Service

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§10.3 Who May Practice



- (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, and enrolled actuaries (registered tax return preparers has been removed)
- Previous wording: 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

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§ 10.3(f)



- This section was entirely concerning “registered tax return preparers” and has been removed

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§10.4 Eligibility to Become an Enrolled Agent



- Former IRS employees must apply for special enrollment in accordance with [31 CFR 10.4\(d\)](#), revised as of July 1, [year to be determined], on or before [date 30 days after date of publication of final regulations in the **Federal Register**]
- Previous wording: 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
- §§10.4(d) – (e) – several areas

§10.5 Application to Become an Enrolled Agent



- Form; address. An applicant to become an enrolled agent 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 and is the address to which all correspondence concerning enrollment will be sent
- Previous wording: 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

§10.5 Application to Become an Enrolled Agent



- (b) Fee. A reasonable nonrefundable fee may be charged for each application to become an enrolled agent
- Previous wording: A reasonable nonrefundable fee may be charged for each application to become an enrolled agent, **enrolled retirement plan agent, or registered tax return preparer**

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§10.5 Application to Become an Enrolled Agent



- (d)(2) If the applicant does not pass the tax compliance or suitability check, the applicant will not be issued a confirmation of enrollment pursuant to § 10.6(b)
- An applicant who is initially denied enrollment 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
- Previous wording: 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

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§10.5 Application to Become an Enrolled Agent



(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 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 if 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

Issuance of temporary recognition does not constitute either a designation or a finding of eligibility as an enrolled agent, and the temporary recognition may be withdrawn at any time (**removed the ERPA and registered tax return preparer**)

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§10.6 Term and Renewal of Status as an Enrolled Agent or Enrolled Retirement Plan Agent – (removed the registered tax return preparer in title)



(a) Term

Each individual authorized to practice before the Internal Revenue Service as an enrolled agent or enrolled retirement plan agent will be accorded active enrollment status subject to renewal of enrollment as provided in this part

Previous wording: 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

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§10.6 Term and Renewal of Status as an Enrolled Agent or Enrolled Retirement Plan Agent – (removed the registered tax return preparer in title)



- (b) Confirmation of enrollment (title change) formerly (Enrollment or registration card or certificate) – in addition removed the registered tax return preparer reference
- The Internal Revenue Service will issue an enrollment document (such as an enrollment card or other document) to an individual who meets the enrollment requirements in this paragraph (b) and whose application to practice before the Internal Revenue Service is approved
- This approval will be valid for the period stated on the enrollment document
- An enrolled agent or enrolled retirement plan agent may not practice before the Internal Revenue Service without a valid approval
- The enrollment document is in addition to any notification that may be provided to each individual who obtains a preparer tax identification number

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§10.6 Term and Renewal of Status as an Enrolled Agent or Enrolled Retirement Plan Agent – (removed the registered tax return preparer in title)



- (c) Change of address
- An enrolled agent or enrolled retirement plan agent must send notification of any change of address to the address specified by the Internal Revenue Service within 60 days of the change of address
- This notification must include the enrolled agent's or enrolled retirement plan agent'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 will be the address reflected on the practitioner's most recent application for enrollment, or application for renewal of enrollment

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§10.6 Term and Renewal of Status as an Enrolled Agent or Enrolled Retirement Plan Agent – (removed the registered tax return preparer in title)

- (c) Change of address
- 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 § 6212 of the Internal Revenue Code
- Previous wording included the reference to the registered tax return preparer

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Polling Question #2

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10.6 Term and Renewal of Status as an Enrolled Agent or Enrolled Retirement Plan Agent



(d) (1) Enrolled agents or enrolled retirement plan agents 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 the requirement of this paragraph

Previous wording: 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

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10.6 Term and Renewal of Status as an Enrolled Agent or Enrolled Retirement Plan Agent



- (d)(2) Renewal period for enrolled agents
- (i) Applications for renewal of status as an enrolled agent will be required between November 1 and January 31 every three years according to the last digit 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
- (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, 2024, must apply for renewal between November 1, 2024, and January 31, 2025
- The renewal will be effective April 1, 2025

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10.6 Term and Renewal of Status as an Enrolled Agent or Enrolled Retirement Plan Agent



(d)(2)(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, 2025, must apply for renewal between November 1, 2025, and January 31, 2026

The renewal will be effective April 1, 2026.

- (iv) Enrolled agents who have a Social Security number or tax identification number that ends with the numbers 7, 8, or 9, or who do not have a Social Security number, except for those individuals who received their initial enrollment after November 1, 2026, must apply for renewal between November 1, 2026, and January 31, 2027
- The renewal will be effective April 1, 2027

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§ 10.6(4) Notification of Renewal



- (4) Notification of renewal
- After review and approval, the Internal Revenue Service will notify the individual of the renewal and will issue the individual a document evidencing current status as an enrolled agent or enrolled retirement plan agent
- Previous wording: 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**

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§ 10.6(6) Forms



(6) 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 website

Previous wording: 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)

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§ 10.6(e) Condition for Renewal – Continuing Education



- (e) To qualify for renewal as an enrolled agent or enrolled retirement plan agent 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
- Previous wording: **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

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§ 10.6(f)(2)(ii)(C) Condition for Renewal – Continuing Education

- (ii) Correspondence or individual study programs (including recorded programs)
- (iii)(C) The maximum continuing education credit for instruction and preparation may not exceed six hours annually for enrolled agents and enrolled retirement plan agents**

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§ 10.6(i)(4)&(5) Condition for Renewal – Continuing Education – New Section

- **(i)(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 or enrolled retirement plan agents
- **(i)(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 F of this part

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10.6(j)(2) Recordkeeping Requirements – Formerly 10.6(h)



(j)(2) The continuing education records of an enrolled agent or enrolled retirement plan agent 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 or enrolled retirement plan agent 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 or enrolled retirement plan agent fails to comply with the requirement in this paragraph (j)(2), any continuing education hours claimed may be disallowed

Previous wording included registered tax return preparers

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10.6(j)(4) Recordkeeping Requirements – Formerly 10.6(h)



- (4) Individuals in inactive status and individuals who are 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 or enrolled retirement plan agent, the designations *EA* or *ERPA*, or other form of reference to eligibility to practice before the Internal Revenue Service
- The term “registered tax return preparer was removed

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10.6(j)(5) Inactive Status– Formerly 10.6(h)



- (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
- Continuing education credit under this paragraph (j)(5) may not be used to satisfy the requirements of the enrollment cycle in which the individual has been placed back on the active roster
- **Previous wording:** 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

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§10.6(j)(6) Inactive Status



- (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 or enrolled retirement plan agent will terminate
- Future eligibility for active status must then be reestablished by the individual as provided in this section
- The term “register tax return preparer was eliminated

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§10.6(k) Inactive Retirement Status

- (k) 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
- 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
- Previous wording : removed the “registered tax return preparer” status

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§10.7(c)(1) Representing Oneself; Participating in Rulemaking; Limited Practice; and Special Appearances – New Section

- (viii) An individual who possesses a current Annual Filing Season Program (AFSP) Record of Completion may represent a client before revenue agents, customer service representatives, or similar officers and employees of the Internal Revenue Service, including the Taxpayer Advocate Service, during an examination of a tax return or claim for refund or credit that the individual prepared and signed
- The individual must have: a valid Record of Completion for the calendar year in which the tax return or claim for refund or credit was prepared and signed and a valid Record of Completion for the year or years in which the representation occurs

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§10.8 Participation in IRS Proceedings by Non-Practitioners



- (a) Furnishing Information
- Any individual, except appraisers who have been disqualified pursuant to § 10.61(a), including non-practitioners, may appear as a witness before the Internal Revenue Service, or furnish information at the request of the Internal Revenue Service or any of its officers or employees

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Polling Question #3



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Questions?



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Upcoming Webinars:

- There is a Form for That (8/12) – 2-3pm ET – Maitre
- Tax-Exempt Organizations (8/13) – 2-3pm ET – Adams
- IRS issued “B” and “C” Notices (8/14) – 2-3pm ET - Maitre



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