

## Tax Notes Today

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### Hawkins Explains RPO Investigation Authority

*By Jeremiah Coder*

The IRS Return Preparer Office's (RPO) new authority to make initial investigations of some complaints for alleged unethical preparer conduct is limited and reasonable, IRS Office of Professional Responsibility Director Karen Hawkins said September 19.

The delegation of authority to the RPO from IRS Commissioner Douglas Shulman includes authority for receiving and processing complaints regarding alleged preparer or practitioner misconduct, and initiating preliminary investigations, including data gathering.

Practitioners have expressed concern about the scope of investigations by the RPO and whether such activity would send the wrong message to the preparer community about the RPO's role in enforcement of Circular 230. Hawkins largely dismissed those anxieties in comments during a teleconference with the American Bar Association Section of Taxation Administrative Practice Committee. There is a distinction between external complaints the IRS receives about practitioner conduct and internal referrals of alleged unethical conduct made by the IRS operating divisions to OPR, she said.

Most external complaints arise from taxpayers misunderstanding the preparer-client relationship and involve conduct that does not rise to the level of a Circular 230 violation, Hawkins said. Noting that OPR has only 30 employees, compared with nearly 200 at the RPO, she said that to protect the resources of OPR, she suggested that these screening activities be done by RPO. There is a good reason for the RPO to "take the first cut" at the complaints, as experience has shown that most of those cases are closed without sanction or closed for lack of jurisdiction, and "didn't advance the ball on doing any real Circular 230 disciplinary activity," she said.

OPR is offering the RPO "as much training and oversight and guidance as they are interested in receiving," Hawkins said. "At the moment, there is a clear understanding that [OPR is there] to lend a hand and give them some of the background and training they need," she said. A 90-minute webinar that OPR developed for internal training is being used across the agency, she said, including for field personnel. "There are lots of safety nets around [RPO] and there are lots of efforts being made to make sure that as we move forward into 2014, when we have a full cadre of [registered tax return preparers], that [RPO] is more than capable in handling all of this," she said.

Concern over the scope of RPO investigations is unwarranted because Circular 230 clearly says that pre-allegation letters and activity beyond that can only occur under OPR's exclusive disciplinary authority, Hawkins said. She has encouraged the RPO to use the soft letters OPR has developed to try to get practitioners into compliance before referrals are made to OPR, she said.

Hawkins said that there was significant discussion with Shulman on the delegation orders and that he indicated that down the road, if experience shows the delegations are

not working, they should be revisited and revised. "I certainly am committed to doing that," Hawkins said.

The recent change in leadership at RPO is unlikely to make any waves within the office, Hawkins said. "I don't think we'll see a beat skip.