



**THE OFFICE OF PROFESSIONAL  
RESPONSIBILITY'S  
FY 2017  
ACCOMPLISHMENT  
REPORT**

# The History of the **Office of Professional Responsibility**



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In January 2003, the Internal Revenue Service (IRS) announced the creation of the new Office of Professional Responsibility (OPR). The office was created as part of the IRS's modernization effort and continuing commitment to ensuring the integrity of the American tax system and its recognition of tax professionals as an integral part of effective tax administration. The office was also created in response to the proliferation of tax avoidance schemes being promoted by large accounting/law firms and the marketing of tax opinions used to support them. The OPR replaced the former Director of Practice to enhance the oversight of these and other tax professionals.

Like the Director of Practice, the OPR derives its authority from Treasury Department Circular 230. Circular 230 is the common name given to the regulations promulgated from the statute found in Title 31, United States Code Section 330. Circular 230 is a hybrid document containing the rules, regulations, ethical/conduct provisions, and disciplinary procedures that apply to those who practice before the IRS. The statute and the body of regulations are the source of the OPR's authority. Title 31 seeks to ensure tax professionals possess the requisite character, reputation, qualifications, and competency to provide valuable service to clients in presenting their case to the IRS. Circular 230 contains the "rules of the road" for tax practice. The underlying issue in all OPR allegations/cases is the tax professional's "fitness to practice" before the IRS.

Prior to its reorganization in 2012, the OPR continued to administer the enrolled agent, enrolled retirement plan agent, and enrolled actuary programs it inherited from the Director of Practice. These duties included the processing of applications for enrollment, administering the Special Enrollment Examination (SEE), processing renewals of enrollment, providing oversight of continuing education requirements, and approving applications from those seeking approval to become IRS recognized continuing education providers. The OPR investigated allegations of misconduct on the part of attorneys, accountants, enrolled agents, and other tax professionals that represent taxpayers before the IRS pursuant to its authority under Title 31. However, a majority of the OPR resources were devoted to the processing and oversight functions associated with its Office of Practitioner Enrollment responsibilities. Much of the OPR's disciplinary work involved personal tax compliance issues identified during the enrollment/renewal process or practitioner personal tax non-compliance issues referred to the OPR by IRS field personnel.

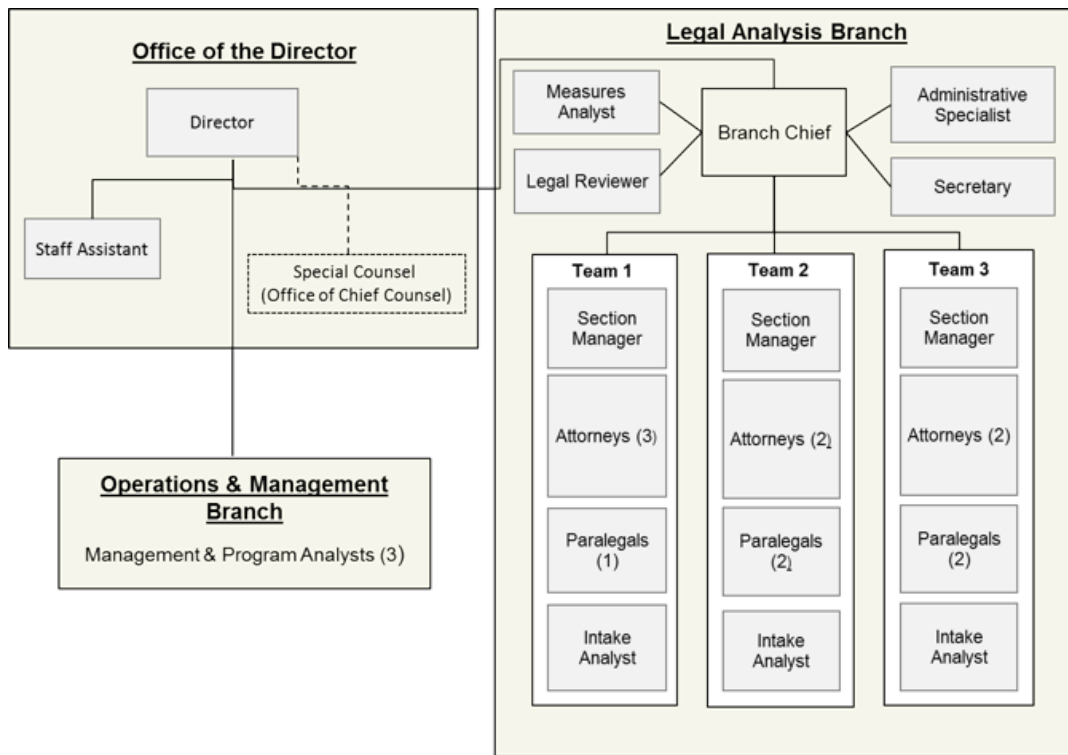
The OPR underwent a major reorganization in February 2012. All processing functions were transferred to the new Return Preparer Office (RPO). The OPR is no longer responsible for enrollment, testing, and administrative processing functions associated with the enrolled agent, enrolled retirement agent, and enrolled actuary programs. This shift allows the OPR to focus on its core mission and direct all resources to the analysis and interpretation of alleged practitioner

misconduct and any resulting disciplinary proceedings under Circular 230. The OPR maintained its sole authority to interpret and apply the *Regulations Governing Practice Before the Internal Revenue Service* (Treasury Department Circular 230) and the sole authority for practitioner discipline under the regulations<sup>1</sup>. The OPR continues to support the IRS's strategy to enhance enforcement of the tax law by ensuring that tax practitioners adhere to professional standards and follow the law. The OPR remains independent from the Title 26 based enforcement components of the IRS.

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<sup>1</sup> Several procedural provisions of Circular 230 were delegated to RPO in a Memorandum of Understanding dated January 14, 2013.

# The OPR Organizational Chart



## FY 2017 ACCOMPLISHMENTS

In this report, you will find accomplishments and goals regarding:

- The OPR's Administration of Practitioner Discipline;
- Policy and Procedure;
- Outreach Activities; and
- FY 2018 and Beyond.

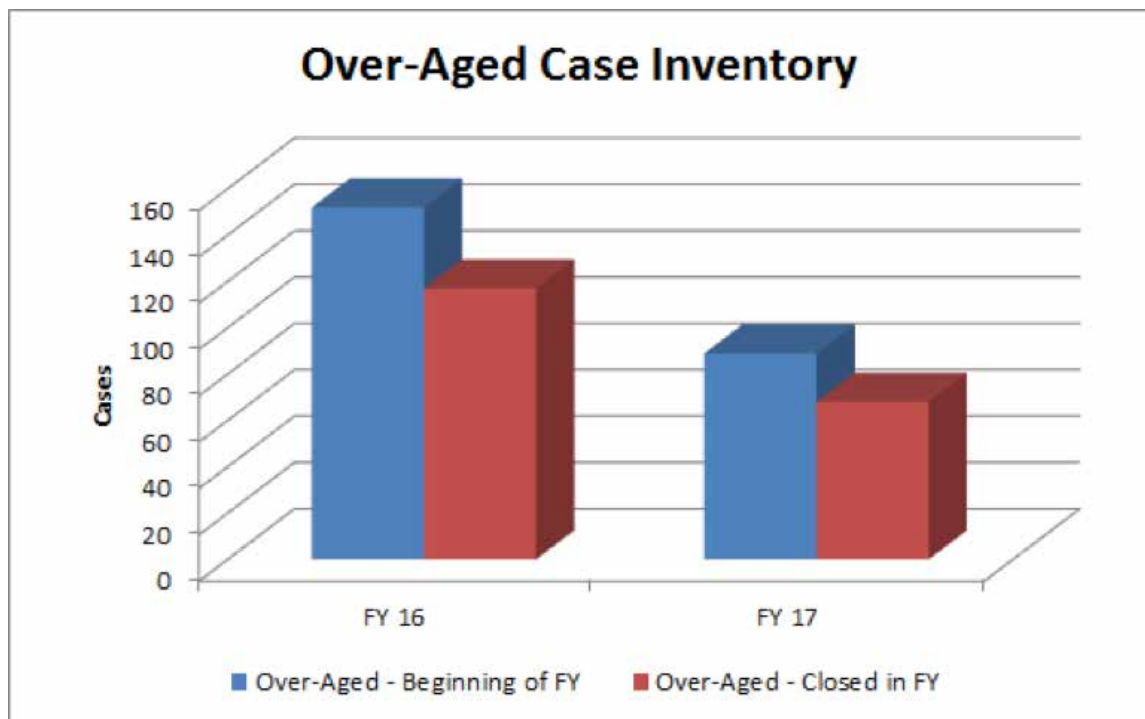
## Administration of Practitioner Discipline

The mission of the OPR's Legal Analysis Branch (LAB) is threefold: (1) to perform the legal work required to investigate, substantiate, analyze, and interpret allegations of misconduct committed by tax professionals and determine whether practitioners have violated Circular 230 and, depending on the severity of violations and other factors, are overall fit or unfit to practice before the IRS; (2) to negotiate whenever possible appropriate levels of discipline; and (3) to initiate disciplinary proceedings before Administrative Law Judges (ALJs), when necessary.

### Case Inventory.

	Beginning Inventory	Receipts	Closures	Ending Inventory
FY 2016	471	846	889	428
FY 2017	429	1,641	1,781	289

In FY 2017, the OPR both received and closed more cases than it did in FY 2016, while maintaining an increased attention on resolving over-aged inventory. Over-aged inventory was reduced by 76.4-percent in FY 2017, building on a similar 76.9-percent reduction in FY 2016.



On average –

- The number of new cases assigned to each attorney/paralegal was 25.61 a year, or 2.13 a month.
- The number of intakes per month was 136.75.
- The number of closures per month was 148.

In addition, the OPR worked with General Legal Services (GLS) in the Office of Chief Counsel to resolve one existing proceeding that was pending with an ALJ and to continue to zealously litigate another pre-FY 2017 proceeding. The OPR and GLS also constructively collaborated on the preparation and filing of four new formal complaints against tax practitioners in proceedings before ALJs, and moving two other cases toward administrative litigation. Formal complaints are initiated only after extensive but unsuccessful efforts to reach a negotiated resolution with the tax practitioner, and formal proceedings generally require substantial investment of staff time by both the OPR and GLS.

**Practitioner Compliance Issues.** In the Fiscal Year 2016 Accomplishment Report, the OPR included a discussion of diligence issues, including factors that drove decisions on the actions taken by the OPR to resolve those cases. In the discussion of the OPR's inventory that follows, this report highlights another common case type--those involving practitioner compliance issues. Practitioners who demonstrate a high level of disregard for the Federal tax system are unfit to represent others who are making a good-faith attempt to comply with their own Federal tax obligations.

Circular 230, section 10.51 prescribes a non-exclusive list of incompetence and disreputable conduct for which a practitioner may be sanctioned. Section 10.51(a)(6) provides that incompetence and disreputable conduct includes willfully failing to make a Federal tax return in violation of the Federal tax laws, or willfully evading, attempting to evade, or participating in any way in evading or attempting to evade any assessment or payment of any Federal tax.

### The OPR Case Inventory

Historically, a substantial majority of the OPR's cases fall into the following three case types:

- Compliance – cases involving one or more alleged violations of Circular 230 that are directly related to the practitioner's disregard of personal and/or business tax compliance;
- Conduct – cases involving one or more alleged violations of Circular 230 that are unrelated to the practitioner's level of tax compliance; and
- Hybrid – cases involving multiple alleged violations of Circular 230, some of which are compliance-related and others that are conduct-related.

In FY 2017, the OPR closed more than 180 Compliance and Hybrid cases. Two of these closures occurred after an ALJ rendered a decision in a formal disciplinary proceeding – one decision ordering the disbarment of a practitioner and the other decision ordering the suspension of a practitioner – for proven violations of Circular 230 related to the practitioners' tax noncompliance. The remaining cases were resolved in one of the following ways:

- Negotiated Agreement;
- Reprimand;
- Soft Closing Letter / Compliance Closing Letter, cautioning recipients against continued delinquencies in tax compliance;

- CAF Notification (to update the Centralized Authorization File (CAF) to record an individual's partial or complete ineligibility to practice before the IRS);
- Cease-and-Desist Letter;
- Closed Without Sanction; or
- Closed Without Action.

For every case the OPR conducts in administering and enforcing the regulations in Circular 230, the outcome is largely dependent on the particular facts and circumstances of the case. However, what all compliance and hybrid cases generally have in common is an accountable practitioner who neglected or ignored their Federal tax obligations.

The discussion below summarizes similarities between cases based on how they were resolved; however, it is important to note that if a disciplinary sanction was imposed or pursued, it was appropriate to the facts of the underlying case.

### *Negotiated Agreement*

As mentioned above, the OPR obtained two ALJ decisions in FY 2017 that included findings and conclusions that the respective practitioner's tax noncompliance violated Circular 230. If an OPR investigation identifies serious and ongoing tax noncompliance by a practitioner, the OPR will almost always institute a proceeding to seek that individual's suspension or disbarment from practice. In lieu of the OPR instituting or continuing a disciplinary proceeding under section 10.60(a) of Circular 230, a practitioner can voluntarily consent to be sanctioned under section 10.50, and the OPR can either accept or decline the offer or propose an offer that would be acceptable to the office under different terms. In FY 2017 and in prior fiscal years, the OPR entered into several negotiated agreements in which a practitioner consented to a voluntary sanction. Generally, if egregious willful failures to file required tax returns are present in a case or there is evidence of evasion of tax, the OPR will not accept anything less than a lengthy suspension, along with terms requiring the practitioner to become tax compliant (if the practitioner has not already done so) and to remain tax compliant.

### *Reprimand*

The OPR issued a significant number of private reprimands in FY 2017 as a case closing action. The OPR typically issues reprimands if the OPR has decisive evidence the practitioner being reprimanded willfully failed to file or timely file multiple tax returns, had balances due for multiple taxable periods at the beginning of the OPR's investigation, or committed a combined pattern of such behavior, but the individual has since become tax compliant (often after being contacted by the OPR). Many of the Hybrid cases resolved with a reprimand also had additional substantiated violations of other requirements or prohibitions in Circular 230.

As their respective titles indicate, a reprimand is a stronger action than a soft closing letter or compliance closing letter. A reprimand declares that the practitioner violated Circular 230 through conduct that was well below the baseline standards of ethical and professional responsibility to which all practitioners are held, and the language firmly admonishes the practitioner accordingly. Because of a reprimand's nature, the cases in which the OPR issued a letter of reprimand were generally more

serious and of greater concern than those that were concluded with a soft closing letter or compliance closing letter to a practitioner.

#### *Soft Closing Letter / Compliance Closing Letter*

The OPR also issued numerous soft closing letters and compliance closing letters in FY 2017 prior to case closure. In general, soft closing letters and compliance closing letters are issued if the OPR has evidence the individual failed in the past to file or failed to timely file a tax return for one or two periods or pay balances due and the individual has since become tax compliant.

#### *CAF Notification or Cease and Desist Letter*

The OPR closed several cases in FY 2017 with a CAF Notification or a cease-and-desist letter. A CAF Notification or cease-and-desist letter is a common resolution when the individual is not currently eligible to practice before the IRS and is unlikely to attempt to engage in unauthorized practice in the future.

#### *Closed Without Action and Closed Without Sanction*

There were also some cases on individuals who were referred to the OPR to investigate alleged tax-compliance violations that the OPR closed without action or closed without sanction in FY 2017. These closures generally were due to one or more of the following reasons:

- Lack of practitioner information (e.g., the OPR was unable to identify or locate the practitioner who was referred based on the information provided);
- Lack of jurisdiction; or
- Lack of a Circular 230 violation present (in other words, an OPR investigation did not reveal a violation).

#### *Expedited Suspension Procedures*

Another OPR case type is “XP” – which are cases where the expedited suspension procedures described in Circular 230 section 10.82 are utilized.

Section 10.82 authorizes the OPR to immediately suspend a practitioner who is subject to one of five bases for suspension after the practitioner is provided notice and an opportunity to respond (and participate in a conference with the OPR if requested). Expedited action in these cases is needed to prevent harm to taxpayers and the Federal tax system. The OPR commences an XP proceeding by sending a practitioner an Order to Show Cause why the practitioner should not be suspended from practice before the IRS. An Order to Show Cause explains the basis (or bases) for the proposed suspension and how and by when the practitioner served with the order can respond and have a conference with the OPR.

Repeated instances of non-filing of Federal tax returns demonstrates willfulness and a high level of disregard for the Federal tax system, regardless of the type of tax return at issue. Practitioners who exhibit contempt for the internal revenue laws will erode integrity in the process of taxpayer representation if allowed to continue to practice and pose a danger to taxpayers who trust that their



tax matters with the IRS are being properly handled. As a result, section 10.82 was revised in June of 2014 to extend the expedited disciplinary procedures to apply to practitioners who have demonstrated a pattern of willful disreputable conduct by either:

- (1) failing to make an annual Federal tax return, in violation of the Federal tax laws, during 4 of the 5 tax years immediately before the institution of an expedited suspension proceeding; or
- (2) failing to make a tax return required more frequently than annually (such as quarterly), in violation of the Federal tax laws, during 5 of 7 tax periods immediately before the institution of an expedited suspension proceeding.

In FY 2017, the OPR issued an Order to Show Cause to 11 practitioners for compliance failures described in section 10.82. In seven of the 11 cases, failures to file were the sole basis for the Order to Show Cause. After each practitioner was provided with notice through the Order to Show Cause and an opportunity to be heard, nine practitioners were immediately and indefinitely suspended, and the OPR entered into negotiated agreements with the remaining two practitioners.

**ALJ Cases.** As indicated above, during FY 2017, the OPR had six cases in litigation before ALJs. The OPR's position was conclusively sustained by the presiding ALJ in three cases, and three other cases were at various stages of the ALJ or appellate process as of the end of the fiscal year. In one case, an ALJ decision was reversed on procedural grounds by the Treasury Appellate Authority, and remanded for further consideration by the ALJ. The parties are awaiting the ALJ's decision on remand, with the right to appeal back to the Appellate Authority. The Appellate Authority's decision demonstrates that he is exercising the independent judgment conferred on him as the Secretary's delegate for deciding appeals.

The two cases that the OPR and GLS instituted in FY 2016 that continued into FY 2017 (one is now final, while the other is ongoing) involved allegations of willful tax noncompliance as a taxpayer or tax noncompliance coupled with misconduct in practice before the IRS. The four new complaints filed this fiscal year included:

- a. Three complaints involving issues of practitioner tax noncompliance or a combination of such tax-compliance failures and other issues of improper conduct as a Circular 230 practitioner; and
- b. One complaint involving disreputable conduct committed in practice not before the IRS but still rendering a practitioner unfit to continue as a Circular 230 practitioner in good standing.

Further, two of the four complaints were filed after a practitioner subject to an expedited-suspension proceeding under section 10.82 of Circular 230 exercised their right to appeal a suspension by demanding the case be brought before an ALJ.

**Case Closures.** The OPR is responsible for the oversight of tax practitioner conduct in federal tax matters and has exclusive authority for practitioner discipline, including the initiation of disciplinary proceedings to impose sanctions under Circular 230. During the fiscal year, we continued our focus on the day-to-day investigation, analysis, and disposition of reports and other information of suspected practitioner misconduct and on our commitment to ensure consistent application of due process throughout the lifecycle of a case.

With regard to enforcement, we imposed or obtained a total of 216 disciplinary or corrective actions during FY 2017, including one **Disbarment** from practice before the IRS, 45 **Suspensions** from practice, and one **Censure**. We entered into three Deferred Discipline Agreements—these are consensual arrangements between the OPR and a practitioner, whereby the practitioner admits to specified Circular 230 violations and the OPR defers discipline for a probationary period during which conditions apply to the practitioner. The OPR also issued 33 reprimands and 44 “soft” notices. A “soft” notice informs the recipients of apparent (more likely than not) violations of Circular 230 and advises the individuals, after an opportunity to respond, that the OPR does not intend to take any further action under the circumstances. A notification is a reminder that good standing as a practitioner requires adherence to Circular 230 and warns against future misconduct.

In addition to the “soft notices,” the OPR issued 16 cease-and-desist letters to individuals who, despite being ineligible to practice on behalf of taxpayers (often because of a Circular 230 suspension or disbarment), have attempted to represent taxpayers before the IRS. Similarly, the OPR considered 25 petitions from disbarred or suspended practitioners seeking to be reinstated to practice. The OPR denied six of those petitions, due to a continuing risk to taxpayers and tax administration.

## **POLICY AND PROCEDURE**

**Reporting Agent Program.** The OPR is assisting SB/SE Collection Policy (Employment Tax Policy) in developing proposed procedures to suspend reporting agents from the IRS’s Reporting Agent program (RAP) for significant noncompliance with the requirements of the program. Reporting agents are businesses that are appointed by an employer (on Form 8655, Reporting Agent Authorization) to sign and file the employer’s federal employment-tax returns and deposit or pay employment taxes for the employer. SB/SE is considering whether to establish formal procedures for reporting-agent suspension, in accordance with Rev. Proc. 2012-32.

The revenue procedure specifies the requirements for an employer to appoint a reporting agent, the scope of the reporting agent’s authorization, and the IRS’s “right to suspend a Reporting Agent from the Reporting Agent program” (section 8). The revenue procedure also lists five general grounds that can result in a proposed suspension, which is subject to administrative review at the reporting agent’s request. Further, if a suspension is imposed, the revenue procedure allows the suspended reporting agent to appeal. The provisions concerning suspension were carried over from the preceding guidance, Rev. Proc. 2007-38. To date, the IRS has not used its authority to propose suspension, or to suspend, any reporting agent, regardless of any instances in which suspension may have been warranted. Collection Policy estimates the current number of reporting agents is approximately 30,000, the overwhelming majority of which fulfill their filing and payment obligations on behalf of customers.

Based on the OPR’s role as a disciplinary authority with general jurisdiction over tax professionals who are paid to represent taxpayers’ interests before the IRS, SB/SE reached out to the OPR about the possibility of the OPR rendering suspensions of reporting agents, including deciding any appeal of a suspension.

Under SB/SE’s proposal, Collection personnel in the field would refer cases involving serious infractions of the RAP to the OPR, recommending suspension of the reporting agent from the

program. Specific referral criteria that supplement the grounds for suspension listed in Rev. Proc. 2012-32 are currently in development and are intended to identify those reporting agents whose conduct of non-filing and nonpayment quantitatively merits recommending suspension. Upon referral, if the OPR agrees with the suspension recommendation, the OPR would issue a notice to the reporting agent proposing suspension from the RAP. After this notice and an opportunity for the reporting agent to be heard, the OPR would then decide if the company should be suspended or not. If suspended, the former reporting agent would have the right (under section 11 of Rev. Proc. 2012-32) to appeal the suspension to the OPR. Staff members who were uninvolved in the initial decision (and not supervised by those who were involved) presumably would conduct an independent review of the case, and the OPR's Director (or delegate) would uphold or set aside the suspension.

This proposed process would be similar to what the OPR already does in connection with certain other programs, ancillary to its core mission of implementing Circular 230's rules of practice, namely:

- **Tax Return Preparers' Privilege of Limited Practice.** In 2014, the Commissioner delegated to the OPR both the first-line and appellate authority prescribed in Rev. Proc. 81-38 to determine a return preparer ineligible to represent taxpayers (specifically, current or former clients whose returns the individual prepared and signed) because of the preparer's abuse of the practice privilege or for committing criminal or other disreputable conduct.
- **Enrolled Agent Program.** An applicant whose application for enrollment or to renew enrollment as an enrolled agent is denied, due to failing the requirements to become enrolled or reenrolled, may appeal the denial (per section 10.5(f) of Cir. 230). The OPR decides these appeals.
- **Program for Certification of Professional Employer Organizations (CPEOs).** As mandated by statute, the IRS promulgated in 2016 and 2017 a series of published guidance creating a program for professional employer organizations to be certified (effectively a seal of approval that allows a customer to rely upon the services of a CPEO to handle the customer's federal employment-tax filing and payment obligations for wages paid to the customer's employees (covered by a contract between the CPEO and the employer), without the customer incurring liability for unfiled returns or unpaid taxes). PEOs must apply to be certified, must comply with program requirements, and may be denied entry into the program or have their certification as a CPEO revoked. If the CPEO Program Office in SB/SE denies an application or suspends an organization's certification and proposes revocation, Rev. Proc. 2016-33 and Rev. Proc. 2017-14 authorize the OPR to review and decide any appeal of the denial or of the suspension and proposed revocation.

**The Return Preparer Database.** The OPR module in the Return Preparer Database is now being used to identify individuals who have been disciplined by the OPR. By running an individual's preparer tax identification number (PTIN) through this database, the RPO can identify PTIN holders participating or applying to participate in the RPO's Annual Filing Season Program who were disciplined under Circular 230. The Annual Filing Season Program participants must consent to adhere to specific practice obligations outlined in Subpart B of Circular 230 ("Duties and Restrictions Relating to Practice") and to not violate section 10.51 of the Circular ("Incompetence and disreputable conduct"). Additionally, the rules applicable to the Annual Filing Season Program in Rev. Proc. 2014-42 provide that tax return preparers who have been suspended, disbarred, or disqualified from practice before the IRS are "ineligible" to participate in the Annual Filing Season Program (sec. 4.06(1)(a)). Therefore, return preparers should not be participating in the Annual Filing Season Program once they are suspended or disbarred by the OPR. Using this new function of the Return Preparer Database

has resulted in the referral of eight return preparers to the RPO's Suitability Office for review and consideration for removal from the Annual Filing Season Program.

**Case Selection and Triage Process.** During an OPR organizational assessment conducted in the second half of calendar year 2016, it was recommended that the OPR's LAB attorneys and paralegals play a larger role in the case intake and selection process through the adoption of a "triage" process for incoming referrals. In late March 2017, the OPR began pilot testing a weekly case-selection triage process, and the first triage team meeting was held on April 4.

For purposes of the pilot test, all LAB paralegals and attorneys will serve on the triage team for three weeks at a time. Each triage team consists of one LAB paralegal and two LAB attorneys. To increase consistency and promote collaboration between the LAB teams, one paralegal or attorney rotates off the triage team each week and another paralegal or attorney, who is not from the same LAB team, takes their place. In addition, the triage team will always consist of one attorney from each LAB team.

In the event a Circular 230 violation is alleged in a referral and preliminary research suggests the OPR has jurisdiction, an Intake Analyst completes a summary check sheet and uploads research results (e.g., credentials research and CAF research) into the OPR's Case and Correspondence Management System (CCMS) before indicating that the referral is ready for triage. Triage team recommendations (i.e., case acceptance, declination, or additional research needed) are made by majority rule, documented using a "Referral Acceptance/Declination Form," and guided by a "Case Selection Document." If the triage team's recommendation is not unanimous, the dissenter's reasoning is documented. All triage team recommendations are reviewed by the LAB Chief prior to case assignment or closure.

During FY 2017, the triage team met a total of 20 times and triaged 123 referrals. Of the 123 referrals triaged, the various teams recommended that 81 referrals be opened as a case and assigned to an attorney or paralegal for investigation, one referral be returned to an Intake Analyst for additional research, and 41 referrals be closed with no further action. The LAB Chief agreed with all but five closure recommendations and four case-acceptance recommendations. Generally, and as requested, each Referral Acceptance/Declination Form completed by the triage team with an "acceptance" recommendation provided helpful suggestions and next steps for the LAB employee who is assigned the case.

Going forward, it is anticipated that each triage team will consider eight referrals per meeting. This will allow the OPR to triage 400 referrals a year (assuming 50 meetings), which should enable consideration of all referrals submitted to the office, while still allowing the OPR to pursue and triage other potential violations of Circular 230 (e.g., after searching available information sources, such as IRS penalty databases).

The recommendation to involve LAB attorneys and paralegals in case triage was intended to increase employee engagement in the work selection. Additional benefits are improved collaboration and knowledge transfer among the OPR staff, and improved consistency in documentation of case selection decisions. The triage approach also adds an additional assurance of integrity in the OPR case selection process, formalizing long-standing separation of duty practices and providing multiple perspectives when determining which cases will be worked.

**RPO Referral Criteria.** The OPR receives more referrals from the RPO than from any other IRS organization. Indeed, the RPO and the OPR have a Memorandum of Understanding (MOU) in place between the offices that in part provides for the RPO to refer certain matters to the OPR for our review and possible treatment as cases under Circular 230. Many of the referrals that the OPR receives from the RPO are not actionable, however, generally because the individual referred is an unenrolled tax return preparer whose alleged misconduct relates to return preparation. In an ongoing effort to reduce the number of RPO referrals that the OPR cannot act on, and to conserve each office's resources, the OPR re-assessed its needs and priorities in connection with the referrals. We focused on the categories within the referrals currently prescribed by the MOU (and among the pool of other, potential referrals) we are most interested in receiving as ones the office can jurisdictionally act on and do so in a meaningful way. Based on the results of that reassessment, the OPR and the RPO held productive meetings together to discuss how to best align referral practices with the capabilities of both offices. The two offices also began a process of drafting, reviewing, and refining a set of revised referral criteria. Once the criteria are finalized, they will be incorporated into an updated OPR/RPO MOU.

**Scanning Procedures.** The OPR has formalized its process for scanning documents. The OPR maintains approximately 20 to 25 Standing Operating Procedures (SOPs)—a set of management- and Director-approved documents that detail the various procedural steps for staff to follow to implement the OPR's principal functions. An additional SOP was created to provide specific instructions on how to use the technology options available to the office for document and image scanning in order to construct a complete electronic case file, including instructions on use of consistent file-name conventions. The SOP also includes a very specific example to illustrate the application of the National Archives and Records Administration's definition of a "record" when notes are made on "working copies" of documents. This consolidation restates in one place the basic expectation that the electronic case file should contain a complete record of actions taken, evidence relied on, and documents received or produced for each case. A complete electronic case record is a fundamental building block for our eventual move to wholly electronic case processing.

**Continuing Education Appeals.** Enrollment to practice before the IRS is a cyclical process, such that enrolled agents must renew their enrollment by application to the IRS every three years, and must complete 72 credit hours of qualifying continuing education during an enrolled agent's three-year cycle. Circular 230 specifies that an applicant for renewal of enrollment must retain, for four years after the date of renewal, information and documents evidencing completion of the mandated hours of continuing education. To help ensure compliance with the requirements, section 10.6(j)(2) of Circular 230 provides that the "continuing education records" of an enrolled practitioner "may be reviewed to determine compliance with the requirements and standards for renewal" and "[a]s part of this review, the enrolled agent . . . may be required to provide the Internal Revenue Service with copies of any continuing education records required to be maintained under this part."

When an enrolled agent appears to have failed to comply with renewal requirements, the IRS (through the RPO) must notify the enrolled agent of the evident failure and state the basis for the determination of noncompliance and afford the enrolled agent a period of 60 days to provide the information needed to confirm compliance with renewal requirements. If an enrolled agent does not take corrective action within the 60 days and thereby fails a compliance review, the RPO issues a notice letter to the practitioner stating that he or she is no longer eligible to practice before the IRS as an enrolled agent

(effectively revoking the individual's status as an enrolled agent). Upon receipt of the RPO's notice letter, the enrolled agent has 30 days to file a written protest (an appeal) of the denial. If the enrolled agent files a written protest within 30 days, and absent an eleventh-hour demonstration of compliance with the renewal requirements, the RPO will forward the protest to the OPR for a final decision. The OPR is developing an SOP that will apply to these appeals and producing standardized template documents that the OPR will use to render our decision on the protest/appeal.

**Authentication of Third Party.** The IRS's Identity Assurance Office (IAO) is working to define enterprise-wide strategies for authenticating third-party users and has proposed a plan to develop an official authorization strategy focused on defining the function, applicability and capability for these authorized users and a roadmap for how it is to be implemented. The IAO and Online Services are leading this effort and leveraging the benefits of using a "Core Team" of stakeholders and subject-matter experts from across the IRS to help shape the strategy. The OPR volunteered to be part of this core team and has taken part in a series of working sessions designed to develop the authorization strategy.

**Forms 2848 & 8821.** The OPR collaborated with the Wage & Investment division and the Office of Chief Counsel to modify the Forms 2848 and 8821 and the forms' instructions to take into account a taxpayer representative's use or potential use of an Intermediate Service Provider in connection with access to e-Services. The IRS e-Services is a suite of web-based tools that allow tax professionals, reporting agents, the mortgage industry, and third-party payers to complete transactions online with the IRS. The tools include Registration Services, e-File Application, Taxpayer Identification Number (TIN) Matching, and, notably, the Transcript Delivery System (which provides transcripts upon request if a valid Form 2848 or 8821 is on file with the IRS). These tools and other features of e-Services are only available to approved IRS business partners, not to the general public. E-Services users accept a user agreement upon completion of registration.

Earlier this year, the IRS identified an emerging service available to tax return preparers and tax practitioners from entities that the IRS has termed, Intermediate Service Providers (ISPs). ISPs are privately owned companies that offer subscriptions to their software or services that taxpayer-appointed representatives can use to retrieve taxpayers' tax return data (personal or business) from e-Services, as well as use to store and display the data for the representative. Taxpayer representatives who are authorized e-Services users often avail themselves of these products and services offered by ISPs. The use of an ISP is in lieu of the representatives obtaining their clients' tax information directly from the IRS through the e-Services' Transcript Delivery System.

To protect taxpayers' privacy, the IRS is updating the e-Services User Agreement to address the use of an ISP and the need to notify a taxpayer when the tax professional is using an ISP.

In addition, the IRS decided to implement changes to the Forms 2848 and 8821 and instructions, with the changes to be published in early 2018 (early-release drafts of the revised forms are now publicly available). These changes, which the OPR was instrumental in drafting and finalizing, add a new checkbox for a taxpayer to authorize his or her representative's use of an ISP, as well as a brief explanation of what ISPs are and the purpose of the checkbox.

**Case and Correspondence Management System.** The OPR extensively modified the CCMS workflow configuration to facilitate implementation of new business processes that are designed to accelerate and overall improve the OPR’s intake phase and the selection of cases for opening and investigation. The new processes have enabled the OPR to efficiently make decisions on the disposition of over 700 disciplinary notices from State Boards of Accountancy and State Bars during FY 2017. As described in the discussion of the “Case Selection and Triage Process” earlier in this report, other types of referrals and complaints about practitioners are now assessed during intake by a team of OPR attorneys and a paralegal to determine jurisdiction and recommend opening or declining to open a case.

In addition, CCMS was modified to provide, as a new feature of the system, a follow-up reminder for use with a closed case that may require future investigation or action, dependent on external events (e.g., the conclusion of court proceedings).

**Strategic Plan.** In FY 2016, the OPR contracted a team of professional business consultants to lead the OPR through a comprehensive organizational assessment with a preliminary focus on what the OPR’s mission performance and its workforce engagement would look like in their ideal state—i.e., a future-state vision of the OPR. Subsequently, the OPR developed a new Strategic Plan this fiscal year as a framework for (1) generating strategies to improve how the OPR performs its activities and set its priorities, (2) determining the appropriate courses of action to take, and (3) providing the roadmap that ultimately will lead to achieving the vision as a reality, while accomplishing the mission on a day-to-day basis. The key outcomes of the organizational assessment have been incorporated throughout the OPR Strategic Plan.

## OUTREACH ACTIVITIES

The OPR continues to focus on educating tax professionals and enhancing their knowledge of relevant Circular 230 provisions, as well as educating IRS employees about the attributes of a quality, actionable referral to the OPR.

### FY 2017 COMMUNICATIONS AND OUTREACH RESULTS

Event Type	Number of Events	Number of Attendees
Internal Speaking Engagements	8	250
External Speaking Engagements	19	2,140
2017 Nationwide Tax Forums	20	10,528
OPR Webinars	3	10,559
Tax Talk Today Webinar	1	1,200
Stakeholder Liaison Presentations	16	992
<b>Total FY 2017 Outreach</b>	<b>67</b>	<b>25,669</b>

**Outreach to Professional Organizations.** The OPR spoke at over 50 events or programs on a variety of topics and practice areas affected by Circular 230 during FY 2017. The Director delivered a presentation to the American Society of Appraisers on “How Due Diligence and Other Provisions of IRS Circular 230 Apply to Appraisers.” This online program provided an overview of the history and content of substantive provisions

applicable to appraisers found in the governing statute, 31 U.S.C. section 330, and in the implementing regulations (Circular 230). The program also explained how appraisers are impacted by the IRS standards for professional conduct prescribed in Circular 230. Several key questions were raised and answered, including:

- What due-diligence obligations and other prominent provisions of Circular 230 apply to appraisers?
- Why might the OPR sanction an appraiser for certain misconduct?
- What sanctions can be imposed on appraisers, and how are instances of sanctions publicized?
- What is the difference between sanctions and Title 26 penalties?

The OPR also spoke to the CPA Academy in a presentation titled, “Circular 230 – Diligence and Competence,” which reached almost 3,000 tax professionals. The presentation reviewed provisions of Circular 230 related to diligence and competence in tax practice, and included a discussion of core principles and their application in disciplinary matters considered by the OPR.

The OPR personnel also developed and delivered presentations to practitioner and other groups ranging from educational institutions to professional organizations of CPAs, enrolled agents, and lawyers.

**IRS Nationwide Tax Forums.** The IRS Nationwide Tax Forums continue to provide a valuable opportunity for the OPR to broadly disseminate its messages to the tax-professional community. The forums are always a large part of the OPR’s external outreach and education during the year, reaching over 10,500 tax professionals who attended the two separate Circular 230 presentations, offered twice at each forum. The two programs were, “OPR Discipline- What You Need To Know” and “Keeping Up With Your Due Diligence.” The presentations collectively addressed:

- Practitioner behavior that commonly results in discipline, from reprimand to disbarment;
- A discussion of factors that drive the decision on whether to pursue discipline;
- How the OPR decides the level of appropriate discipline;
- Due diligence topics for tax professionals; and
- Applying Circular 230 to specific issues of significance in tax practice.

**OPR Webinar.** The OPR recorded a new webinar during FY 2017 titled: “The Office of Professional Responsibility: What You Need to Know About Practicing before the IRS.”

The external webinar was broadcast in July, reaching over 7,300 tax professionals, and discussed:

- The regulations governing tax practice before the IRS (Circular 230, Rev. 6/2014) in general
- Due diligence obligations of tax professionals
- Overview of other key Circular 230 provisions



- Practitioner responsibilities to their clients and to the tax administration system
- Best practices for all tax professionals
- Office of Professional Responsibility policies and procedures

The webinar is archived and available for viewing on the IRS video portal. The OPR will continue to rebroadcast the webinar every quarter that will include a live Q&A session with the Director.

**Tax Talk Today.** Director Whitlock participated as a panelist in a live webcast to 1,200 viewers during a Tax Talk Today broadcast titled, “Ethics & Standards for Practitioners – Circular 230 Review.” The program in part invited the professional community to think about and propose changes that affect the rules governing practice before the IRS and explored the prospects for additional changes to Circular 230 beyond those finalized in June 2014. A focus of the program was on the role of the OPR in assuring that practitioners maintain the highest ethical standards. Panelists also focused on ethical issues most often faced by tax practitioners, the Internal Revenue Code penalties that may be imposed on practitioners, and the impact of preparer penalties on the conduct of a professional’s practice on behalf of clients.

**Stakeholder Liaison Presentations.** SB/SE Stakeholder Liaison (SL) began delivering external presentations at tax-professional gatherings on behalf of the OPR. The OPR provided training to SL field personnel to ensure they had a clear understanding of the OPR and Circular 230, and would be capable of responding to questions that are not addressed in the materials provided by the OPR to SL. SL conducted these educational sessions using several PowerPoint presentations that the OPR tailored and provided for that purpose, along with a question-and-answer document to assist the SL presenters in preparing for and responding to anticipated or commonly asked questions. This fiscal year, SL delivered presentations to 16 groups and reached over 900 tax professionals.

## FY 2018 AND BEYOND



My goals for the office during FY 2017 were to develop a more strategic approach to case selection, document the case-selection criteria, create professional-development opportunities for the OPR personnel, and conduct meaningful communication and outreach to those whose actions the OPR can positively influence. As is described throughout this report, I believe the OPR exceeded those goals. For the coming fiscal year, the OPR will focus on:

- Developing additional approaches to identify possible Circular 230 violations of significance that are going unidentified.
- Increasing the value of the OPR outreach and education, including by better anticipating the current issues and concerns most likely to be on the minds of tax practitioners as a whole and more actively soliciting input from organizers and co-presenters to meet the needs of specific events and audiences.
- Improving the day-to-day and cumulative efficiency and impact of the OPR operations.
- Supporting the OPR staff development, such as through assignments of special projects, representing the office in settings other than routine Circular 230 investigatory and disciplinary matters, and encouraging employees to pursue developmental opportunities available Servicewide.