**5.8.10.9 (07-20-2020)**

**Indicators of Potential Practitioner Misconduct**

1. During the verification of OIC financial statements , employees should always be aware of any indications that a practitioner violated the duties and restrictions relating to practice before the IRS as described in Treasury Department Circular No. 230 (Circular 230) "Regulations Governing Practice before the Internal Revenue Service" (Revised 6/2014). Section 10.50 of Circular 230 generally defines “incompetence and disreputable conduct” that is subject to sanction under section 10.50. In addition, section 10.52(a)(1) states that a practitioner may be sanctioned under section 10.50 for violating any of the regulations in Circular 230 (other than section 10.33). For example, a practitioner may be sanctioned for violating the following regulations:
   1. Failure to exercise due diligence. There may be evidence to show that the practitioner ignored certain known facts or failed to make reasonable inquiries to verify the correctness of oral or written representations made by a client. Practitioners have a duty to make reasonable inquiries to clients, to determine the correctness of documentation they submit to the IRS.
   2. Deceptive advertising with respect to offers (such as unqualified promises of settlement, or "pennies on the dollar" ).
2. The Office of Professional Responsibility (OPR) may impose sanctions, including monetary penalties, on practitioners. Also, if the practitioner is acting on behalf of an employer or other entity, the OPR may impose a monetary penalty on the employer, firm or other entity if it knew, or reasonably should have known, of the conduct.
3. A referral should also be made if the employee becomes aware that a suspended or disbarred practitioner is practicing or attempting to practice before the IRS, or that an unenrolled preparer is attempting to represent the taxpayer before the IRS during the offer investigation.

**Note:**

The referral process is required by Section § 10.53(a) and 10.53(b) of Circular No. 230.

1. Employees should also report suspected violations of 18, U.S.C. § 207, Post Employment Conflicts of Interest (Circular No. 230, Section 10.25), to TIGTA or OPR. Questions regarding post employment conflicts should be directed to the Associate Chief Counsel (GLS).

**5.8.10.9.1 (02-14-2017)**

**The Role of the Office of Professional Responsibility**

1. Under the authority provided by 31 U.S.C. § 330 and 31 CFR § 10, which is published as Treasury Department Circular No. 230 , Regulations Governing Practice before the Internal Revenue Service (Revised 6/2014), OPR renders final decisions on applications for enrollment to practice, as needed. OPR also makes inquiries into matters under its jurisdiction, and institutes disciplinary proceedings against tax practitioners who are found to have violated any part of Circular No. 230.

**5.8.10.9.2 (07-20-2020)**

**Examples of Tax Practitioner Misconduct in the Offer in Compromise Program**

1. A pattern of inappropriate conduct is a factor that the OPR will consider in determining whether sufficient evidence exists to suggest a willful violation of Circular 230.
2. Below are some indicators of misconduct by practitioners.
   1. Example 1 — Establishing a pattern on several Offer in Compromise cases to attempt to influence the case dispositions to obtain the desired results by:
      * Using abusive language
      * Threatening claims of misconduct (e.g., Section 1203 of the RRA)
      * Making false claims of misconduct
      * Threatening employee with personal legal action/litigation
      * Verbal/Physical threats or assaults
      * Offering a bribe (e.g., offering gifts or other things of value)

**Note:**

Verbal and/or physical threats/assaults should be referred directly to the local TIGTA office or by calling the TIGTA National Hotline at 1–800–366–4484 or 1–800–589–3718 after hours.

* 1. Example 2 — Establishing a pattern on several OIC cases to delay investigations by performing one or several of the following actions:
     + Missing appointments
     + Canceling appointments at the last moment with no good cause provided
     + Agreeing to provide requested documentation and/or information and then refusing to follow through, hindering the ability of the employee to complete the investigation of the offer
     + Providing partial information requiring repeated call backs/correspondence and delays

**Note:**

IRM 1.25.1.3, Referral to the Office of Professional Responsibility, states that a referral must clearly document all case actions leading to the request, and the practitioner's failure to comply. In instances of unreasonable delay on the part of a practitioner, POA bypass procedures should first be initiated prior to a referral to OPR. This set of facts may also support a referral under Section 10.22 (Diligence as to accuracy) and Section 10.23 (Prompt disposition of pending matters) of Circular 230. If a practitioner refused to provide documentation on grounds of privilege, the Office of Chief Counsel should be consulted.

* 1. Example 3 — Establishing a pattern on several offer submissions of significant omissions, improper, or unsubstantiated discounts on a number of assets. The information provided must be shown to be materially misrepresented, not merely a simple error. The omissions or material misrepresentations could include, but are not limited to, the following:
     + Omitting or undervaluing assets on CIS
     + Understating the taxpayer's income and / or overstating the taxpayer’s expenses
     + Listing a large number of claimed dependents on CIS
     + Listing similar dollar amounts in both checking and savings accounts
     + Claiming no available credit on CIS, including credit cards
     + Listing similar amounts for monthly income and expenses in different cases (e.g. same low wages, same child care expenses)

1. The badges of practitioner misconduct may also be indicators of potential fraud. (Refer to *IRM 5.8.10.10*.) The inappropriate misconduct should be discussed with your fraud technical advisor (FTA) if appropriate. If a decision is made to refer the practitioner to TIGTA and/or the Fraud program for potential criminal sanctions, these actions must be clearly documented in the OPR referral.

**5.8.10.9.3 (07-20-2020)**

**Referring Tax Practitioner Misconduct to the Office of Professional Responsibility**

1. Employees should be alert to the patterns and/or trends of inappropriate conduct as discussed in *IRM 5.8.10.9*, Indicators of Potential Practitioner Misconduct. When patterns and/or trends are identified through OICs submitted by a tax practitioner, or when reported to an IRS employee by any person other than an officer or employee of the IRS, the employee should complete and submit Form 8484, Suspected Practitioner Misconduct Report for the Office of Professional Responsibility, to the OPR, and refer the suspected practitioner misconduct for any appropriate disciplinary action.
2. Circular No. 230, Section 10.53 states a referral should include all of the basic information, including details of why the referral meets the criteria outlined above. The referral should contain the following specific information: the tax practitioner's name, address, telephone number, designation (i.e. attorney, certified public accountant, enrolled agent, enrolled actuary, etc.), a detailed description of the allegations, and any documents that support the allegations. The Form 8484 must be signed by the referring employee’s manager.
3. Mail, fax, or E-mail the Form 8484, the accompanying narrative, and any other supporting documents to:

IRS Office of Professional Responsibility  
SE:OPR Room 7238  
1111 Constitution Ave, NW  
Washington, DC 20224  
E-mail address: \*OPR referrals

A copy of the referral should also be provided to the National Offer in Compromise Program Manager.

1. Additional information about reporting suspected practitioner misconduct may be found on the OPR Intranet Website.

**5.8.10.9.4 (07-20-2020)**

**Preparation of Form 8484, *Suspected Practitioner Misconduct Report for the Office of Professional Responsibility* (OPR)**

1. *Part A – Practitioner Information:* Practitioner information must include the practitioner's name, mailing address, telephone number, fax number, social security number, and CAF number. Indicate whether the practitioner is an attorney, certified public accountant, enrolled agent, enrolled actuary, or appraiser.
2. *Part B – Explanation of Suspected Misconduct:* Complete and attach a narrative to the Form 8484. The narrative should be detailed enough to allow the OPR to give the practitioner fair notice of the suspected misconduct. It should list all significant events that illustrate the inappropriate conduct in chronological order, explain how the conduct impacts on the administration of the tax laws, and establish a pattern of misconduct. It should include appropriate quotations from the case history that would support the alleged misconduct. If applicable, hand-written material should be typed. The narrative should be specific and should include: who, what, when, where, and why.
3. *Part C- Your Information:*Complete the form with your name, mailing address, and other applicable contact information. Also include the names of other persons who have knowledge of the suspected misconduct.
4. *Part D – Manager Approval:* While OPR does not require any particular level of management approval, field group managers or offer examiner unit managers (COIC) should review and approve referrals made by OIC employees before the documents are sent to OPR.
5. Upon receipt of Form 8484, OPR will provide you with written acknowledgement of the submission.

**5.8.10.10 (07-20-2020)**

**Indicators of Taxpayer Fraud**

1. The following are potential fraud warning signs most identifiable during an interview:
   1. Failing to keep proper books and records in a business or profession.
   2. Having no records, poorly kept records, or false or altered records.
   3. Destroying books and records without plausible explanation or refusing to make certain records available.
   4. Appearing unwilling to delegate record keeping to employees.
   5. Engaging in illegal activities.
   6. Having a personal living standard that is inconsistent with reported income.
   7. Purchasing assets and placing them in the names of others.
   8. Making self-serving statements with no documented proof.
   9. Repeatedly procrastinating in making and keeping IRS appointments.
   10. Showing undue concern about immediate closing of the case.
2. The following are potential fraud warning signs most identifiable during verification of the financial statement:
   1. Uncooperative attitude, displayed by:  
      •Not providing requested information  
      •Refusing to make certain records available  
      •Not furnishing adequate explanations for discrepancies or questionable items
   2. Trying to conceal a pertinent fact or record
   3. Failing to deposit all receipts to the business account
   4. Using nominees or false names
   5. Depleting assets shortly before filing an offer
   6. Inflating salaries, payment of bonuses or cash withdrawals by officers, directors, shareholders, or other insiders
   7. Transferring property to insiders, shareholders, or relatives shortly before filing the offer
   8. Paying off loans to directors, officers, shareholders, relatives, or other insiders shortly before filing of the offer
   9. Having complicated corporate structures and relationships
   10. Undervaluing assets
   11. Overstating liabilities
3. The fraud indicators below can fall into any of the categories in paragraphs (1) and (2) above:
   1. Making false, misleading, and inconsistent statements
   2. Using currency instead of bank accounts or making large expenditures in currency
   3. Concealing bank accounts and other property
4. If indications of fraud are identified, follow the procedures outlined in IRM 5.8.4.18, Potential Fraud Referrals.
5. Refer to IRM 5.8.4.19.1, Open Criminal Investigations, for information concerning the appropriate actions if the taxpayer is involved in an open criminal investigation.

**5.8.10.11 (02-14-2017)**

**Potentially Dangerous or Caution Upon Contact Taxpayer**

1. A review of IDRS Command Code **ENMOD** may show that a POA or taxpayer has been designated as either a PDT or a CAU.
2. A taxpayer or POA who meet these criteria should be approached with caution. See IRM 25.4.1, Potentially Dangerous Taxpayer, or IRM 25.4.2, Caution Upon Contact Taxpayer.