

Navigating Circular 230 in an AI World

Course Material Export – Generated for IRS Continuing Education Review

1.1 - Learning objectives & CE overview

Lesson at a Glance

This course provides **2 hours of IRS-approved CE credit in the Ethics category**, satisfying the annual 2-hour ethics CE requirement for Enrolled Agents, CPAs, and non-credentialed tax return preparers participating in the IRS Annual Filing Season Program (AFSP). Fully updated for 2026, it covers all Circular 230 subparts and integrates AI ethics guidance reflecting current OPR enforcement priorities.

Learning Objectives

After completing this lesson, you will be able to:

- Identify all practitioner categories authorized to practice before the IRS under Circular 230 Subpart A.
- Apply Subpart B competence, diligence, and written advice standards to real situations including AI-assisted work.
- Recognize fee arrangements, conflicts, and client duties that most frequently trigger OPR discipline.
- Describe how AI tools, data privacy, and WISP obligations intersect with Circular 230.
- Explain the OPR disciplinary process from complaint through final determination.
- Pass the 20-question final exam with 70% or higher to earn CE credit.

Course Architecture

Module	Title	Circular 230	Time
1	Ethical Foundations	Preamble	15 min
2	Authority to Practice	Subpart A · §10.3–10.10	15 min
3	Modern Due Diligence	Subpart B · §10.22–10.37	25 min
4	AI, Data & Digital Ethics	§10.20, §10.22, §10.37	20 min
5	Fees, Conflicts & Clients	§10.21, §10.27–10.29	20 min
6	Enforcement & OPR	Subparts C, D & OPR	25 min

CE Credit Requirements

After completing this lesson, you will be able to:

- **Passing score:** 70% or higher on the 20-question final exam.
- **Knowledge checks:** Formative and ungraded — prepare you for the final exam.
- **Record-keeping:** Retain your certificate for at least 3 years.
- **Category:** Ethics (IRS Category 3) — satisfies the annual 2-hour EA ethics requirement.

1.2 - What ethics means for tax professionals today

Ethics & Professional Responsibility

The Foundation of Practice Before the IRS

[Image: Ethics and Professional Responsibility]

Why Ethics Matters

Tax professionals occupy a unique position of **dual trust**. Every practitioner has a duty to serve clients zealously while also protecting the integrity of the federal tax system. These responsibilities are not competing obligations—they exist simultaneously. Clients rely on practitioners for accurate advice, while the IRS relies on practitioners to uphold professional standards that support voluntary tax compliance.

What Is Circular 230?

Circular 230 (**31 C.F.R. Part 10**) establishes the rules governing practice before the Internal Revenue Service. It defines who may represent taxpayers before the IRS and sets the professional, ethical, and competency standards those practitioners must follow.

Legal Authority

Circular 230 derives its authority from **31 U.S.C. §330**, which authorizes the Secretary of the Treasury to regulate representatives who practice before the Department of the Treasury and the Internal Revenue Service.

Who Must Follow Circular 230?

Enrolled Agents

CPAs

Attorneys

Return Preparers

Consequences of Violations

Violations of Circular 230 can result in disciplinary action by the IRS Office of Professional Responsibility (OPR). Depending on the severity of the violation, sanctions may include:

- Censure
- Suspension from practice before the IRS
- Disbarment from practice before the IRS

Practitioner Insight

Ethics is not a separate part of tax practice—it is the framework that governs every client conversation, tax position, disclosure, engagement, and representation before the IRS. Technical tax knowledge may help a practitioner prepare a return, but ethical judgment determines whether that practitioner will maintain the privilege of practicing before the IRS throughout their career.

The Dual Trust Obligation

- Unlike most business relationships — where duty runs exclusively to the paying client — tax practitioners owe obligations in two directions simultaneously:
- **To the client:** competent, diligent, candid advice that advances the client's lawful interests.
- **To the tax system:** accurate filings, truthful representations to the IRS, and conduct that supports federal tax administration.
- These obligations sometimes conflict. When they do, Circular 230 provides the framework — and the answer is never simply "do whatever the client wants."

OPR Sanctions at a Glance

Sanction	Description	Public?
Private Reprimand	Informal written warning; no formal proceeding	No
Censure	Formal public reprimand; may continue to practice	Yes
Suspension	Temporary bar from IRS practice	Yes
Disbarment	Permanent bar; reinstatement petition after 5 years	Yes

Practitioner Tips

- **Know your regulator.** OPR's published decisions are on the IRS website. Reading real cases is more instructive than any summary.
- **Dual trust in practice:** Before signing any IRS document, ask: Am I comfortable if this is examined? If no, don't sign.
- **Client pressure is never a defense** in OPR proceedings. Document your professional judgments, especially when declining a client's request.

Common Errors / Red Flags

- Rationalizing a questionable position with "the client really needs this" — client need is not a Circular 230 defense.
- Treating ethics CE as a once-a-year obligation rather than a daily practice standard.
- Assuming "everyone does it" — OPR's case files suggest that is exactly what gets practitioners in trouble.

1.3 How the landscape has changed: 2020–2026

Ethics in Modern Practice

How the Landscape Has Changed

[Image: How the Landscape Has Changed]

Ethics Rules Have Not Changed — The Environment Has

The core duties imposed by Circular 230 remain the same: competence, confidentiality, diligence, honesty, and professional responsibility. What has changed is the environment in which practitioners operate. Remote work, artificial intelligence, cybersecurity threats, expanded enforcement, and new regulatory requirements have created ethical risks that did not exist a decade ago.

1

Permanent Remote Practice

Post-pandemic remote and hybrid practice is now the norm. This creates new **\$10.20 confidentiality risks**, including video calls in public locations, cloud storage of taxpayer information, remote staff using personal devices, and electronic delivery of sensitive documents.

Practitioners who have not updated security procedures to reflect remote operations face significantly increased confidentiality exposure.

2

Increased IRS Enforcement

The Inflation Reduction Act provided approximately **\$80 billion** in additional IRS funding over ten years, with substantial investments in enforcement and technology. OPR also received additional resources.

Result: more investigations, more discipline actions, and faster case resolution. Assuming enforcement is unlikely is no longer a viable risk-management strategy.

3

FTC Safeguards Rule

The FTC revised the Safeguards Rule to explicitly cover tax preparation firms. A **Written Information Security Plan (WISP)** is now mandatory.

Failure to maintain a WISP may result in FTC civil penalties and may also support a Circular 230 **§10.20 confidentiality violation**.

4

AI Enters Mainstream Practice

AI research and drafting tools became mainstream in 2023–2024. Many practitioners fail to recognize that AI-generated client communications may constitute **written advice under §10.37**.

Uploading client data may violate **§10.20 confidentiality**, while relying on unverified AI output may violate **§10.22 competence**.

5

OPR Enforcement at Record Levels

Fiscal Year 2024 produced the highest Office of Professional Responsibility enforcement activity on record:

900+

Investigations

350+

Discipline Actions

Most common enforcement categories:

Incompetence

Contingent Fees

Conflicts of Interest

Failure to Advise Clients of Noncompliance

Key Lesson

Ethical compliance in 2026 requires more than technical tax knowledge. Practitioners must understand cybersecurity, remote work risks, AI governance, data protection requirements, and evolving regulatory expectations. The ethical standards themselves have remained largely unchanged—the risks associated with violating them have expanded dramatically.

Scenario

Circular 230 Compliance Scenario

AI Drafted Tax Opinion

An Enrolled Agent working from home uses a consumer AI chatbot to draft a tax opinion. She uploads the client's Schedule K-1s, performs only a cursory review of the AI-generated analysis, and then sends the opinion on her firm letterhead.

§10.20

Client Data Uploaded

Uploading client tax data to an unvetted AI platform may violate firm data-protection policies and WISP requirements, especially when confidential taxpayer information is exposed outside approved systems.

§10.37

Written Advice Without Review

Practitioners must exercise professional judgment when giving written advice. Sending AI-generated conclusions on firm letterhead without adequate independent review may fail this standard.

§10.22

Diligence and Competence

If the practitioner lacks the knowledge, skill, or diligence to evaluate the AI output and verify its accuracy, she may not have exercised the due diligence required under Circular 230.

Key Takeaway

AI can assist with research and drafting, but the practitioner—not the software—remains responsible for protecting client information, verifying facts, applying tax law correctly, and ensuring the accuracy of advice provided to a client.

Module 4 Connection

Module 4 examines each of these obligations and provides practical procedures for compliant AI use in a tax practice.

Practitioner Tips

- Practitioner Action Items
- **Audit your remote practice setup.** Are client files stored securely? Are team members accessing taxpayer data from personal devices? Is a VPN required and

consistently used when working remotely? Review your remote-work procedures before the next filing season.

- **Get your WISP in order.** IRS Publication 4557 provides a practical framework specifically designed for tax professionals. A current Written Information Security Plan is no longer optional—it is a core compliance requirement under the FTC Safeguards Rule and an essential part of protecting client information.
- **Treat AI output as a first draft, never a final answer.** AI can improve efficiency, but it cannot replace professional judgment. Every AI-generated client communication, research summary, tax analysis, or recommendation must be independently reviewed and verified before it leaves your office.

1.4 — AI Tools & Ethical Obligations: First Look

AI Ethics & Professional Responsibility

AI Is Not the Tax Preparer

[Image: AI Is Not The Tax Preparer]

AI Creates Circular 230 Exposure

AI tools have become mainstream in tax practice, yet many practitioners do not realize they are creating potential Circular 230 exposure every time they use AI for research, drafting, client communications, or tax analysis. AI can improve efficiency, but it does not assume responsibility for the work product. The practitioner remains fully responsible for every conclusion, recommendation, and communication delivered to a client.

Three Key Circular 230 Sections

§10.22 — Competence

Practitioners must possess the knowledge, skill, thoroughness, and preparation necessary for the matter.

If you cannot evaluate whether AI-generated analysis is correct, you are not competent to use that AI output for that purpose.

§10.37 — Written Advice

Written advice must be based on reasonable factual and legal assumptions.

An email forwarding AI-generated tax analysis is written advice under Circular 230. If you send it, you own it.

§10.20 — Confidentiality

Uploading client information to an AI platform constitutes a disclosure to the vendor's systems.

Without appropriate contractual protections, the disclosure may violate Circular 230 and IRC §7216.

AI & Ethics Warning

The most important rule for practitioners using AI is simple:

AI Is Your Assistant.

You Are The Tax Professional.

AI may help draft a memo, summarize authority, or organize information. It cannot assume responsibility for professional judgment. Circular 230 responsibility remains with the practitioner whose name appears on the work product.

Appropriate AI Use

An EA uses AI to create a draft memorandum regarding S corporation basis.

The practitioner independently verifies the analysis against IRC §1367 and applicable basis-ordering rules, revises the memo to reflect the client's facts, documents the review, and then delivers the final version.

This satisfies the competence and written-advice requirements of Circular 230.

Inappropriate AI Use

An EA copies a ChatGPT response regarding S corporation basis, pastes it into a client email, adds a signature line, and sends it without reviewing the analysis.

Any factual or legal error becomes the practitioner's responsibility under Circular 230.

Document Your Review

The strongest protection in an OPR inquiry is evidence that you exercised independent professional judgment.

"AI draft reviewed against IRC §XXX and Rev. Rul. 20XX-XX; analysis confirmed accurate; basis adjusted for client's specific facts."

A note like this demonstrates that the AI output was reviewed, verified, and modified through independent professional analysis.

Why Vendor Disclaimers Do Not Protect You

Most AI platforms state that their output is "not legal advice" or "not professional advice." These disclaimers protect the vendor—not the practitioner. When you place your name on AI-generated work and provide it to a client, you become the practitioner of record. Circular 230 responsibilities cannot be delegated to software, algorithms, or disclaimers.

2.1 - Who may practice before the IRS

Circular 230 Fundamentals

Who May Practice Before the IRS?

Background

Circular 230 **§10.3** defines who is authorized to practice before the IRS. Understanding these categories—and the limits of each authorization—is fundamental to ethical tax practice. Practicing beyond the scope of your authorization is itself a Circular 230 violation.

Under **§10.2(a)(4)**, "practice before the IRS" is defined broadly and includes preparing and filing documents, corresponding with the IRS on behalf of taxpayers, rendering written advice regarding IRS matters, and representing taxpayers during conferences, hearings, meetings, examinations, appeals, and collection proceedings.

Authorized Practitioner Categories

Category	Authorization Basis	Scope
Attorney	State Bar License	Unlimited — All Matters
CPA	State Board License	Unlimited — All Matters
Enrolled Agent	SEE Exam or IRS Service	Unlimited — All Matters
Enrolled Actuary	Joint Board Enrollment	Actuarial Matters Only
Enrolled Retirement Plan Agent	IRS Enrollment	Retirement Plan Matters Only
Unenrolled Preparer	Prepared Return Under Examination	Exam Only — No Appeals or Collections

Enrolled Agents — The IRS Credential

Enrolled Agents hold the only professional credential issued directly by the IRS.

To become an EA, an individual must either:

- Pass all three parts of the Special Enrollment Examination (SEE) within the permitted testing period.
- Complete at least five years of qualifying IRS service in a technical tax position and satisfy suitability requirements.

EAs have **unlimited practice rights** and may represent any taxpayer, in any matter, before any IRS office.

Scope Limitation Example

A Registered Tax Return Preparer represents a client during an IRS examination of a return she prepared. During the examination, the IRS discovers prior-year unpaid taxes and opens a collection matter.

The preparer's authority ends with the examination. She may not represent the taxpayer in the collection proceeding because collection representation exceeds the scope of her authorization.

The correct action is to refer the client to an EA, CPA, attorney, or other practitioner authorized to handle collection matters.

- Practitioner Tips
- Know your authorization limits. Representing a taxpayer beyond your permitted scope is itself a Circular 230 violation.
- Enrolled Agent authority is federal—not state-based. An EA may represent taxpayers before the IRS nationwide.
- A valid PTIN is required regardless of credential. Every compensated federal return preparer must maintain a current PTIN.

[Image: IRS Audit Notice]

Key Takeaways

Who Can Practice — And What That Actually Means

The IRS Credential

Only Enrolled Agents hold an IRS-issued credential. CPAs are licensed by state boards of accountancy. Attorneys are licensed by state bars. EAs are licensed directly by the IRS through the Special Enrollment Examination or qualifying IRS service and have unlimited practice rights before the IRS.

"Practice Before the IRS" Is Broad

It's not just audit representation. Circular 230 §10.2(a)(4) includes preparing and filing documents, corresponding with the IRS on behalf of taxpayers, rendering written advice, and representing taxpayers during IRS proceedings.

Unenrolled Preparers Have Limited Authority

You prepared the return? You may represent the taxpayer at examination only. Under §10.7(c), representation is limited to the specific return prepared and only before revenue agents and customer service representatives—not Appeals, Collections, or Tax Court.

Real-World Example

A preparer successfully represents a client during an IRS examination of a return she prepared. At the conclusion of the audit, the IRS identifies unpaid prior-year liabilities and

opens a collection case.

The preparer's authority ends with the examination. She cannot represent the taxpayer in the collection matter and must refer the client to an EA, CPA, or attorney authorized to handle IRS collections.

Practitioner Warning

Practicing outside the scope of your authorization is itself a Circular 230 violation. This is not merely an ethics concern—it is a compliance issue that can lead to disciplinary action. Know your authority, recognize your limits, and refer matters that fall outside your permitted scope of representation.

2.2 — Enrollment, AFSP & Continuing Education Requirements

Enrolled Agent Compliance

Maintaining Enrollment & PTIN Status

Enrollment must be maintained through ongoing continuing education compliance, annual PTIN renewal, and adherence to Circular 230 standards. Lapses are more common than practitioners expect — and a lapsed practitioner may not represent clients before the IRS in any capacity until enrollment is reinstated.

EA Continuing Education Requirements

72

Hours Per 3-Year Cycle

Must be completed through IRS-approved providers.

16

Minimum Hours Per Year

Annual minimum includes the ethics requirement.

2

Ethics Hours Per Year

This course satisfies the annual 2-hour ethics requirement.

Annual

PTIN Renewal

Typically renewed October 16 through December 31 for the following year.

PTIN Renewal

All practitioners who prepare or assist in preparing federal tax returns must have a valid, current PTIN — regardless of credential.

- PTIN renewal is required every year.
- Preparing returns without a valid PTIN may trigger IRC §6695(c) penalties and Circular 230 discipline.

Lapsed Enrollment

If an Enrolled Agent fails to renew enrollment because CE requirements were missed or the renewal application was not completed, the enrollment lapses.

- A lapsed EA may not represent clients before the IRS.
- There is no limited practice authority during the lapse.

Common Mistake

Many Enrolled Agents assume that a valid PTIN authorizes continued IRS practice after enrollment lapses. This is incorrect.

**PTIN authorizes return preparation only.
Enrollment authorizes representation before the IRS.**

Both must be current. A valid PTIN with lapsed enrollment does not permit IRS representation beyond return preparation.

PTIN vs. Enrollment

PTIN

Allows a compensated preparer to prepare or assist in preparing federal tax returns.

It does not create unlimited IRS representation authority.

EA Enrollment

Authorizes an Enrolled Agent to represent taxpayers before the IRS.

If enrollment lapses, IRS representation authority stops until reinstatement.

- Practitioner Tips
- Track CE throughout the year rather than waiting until the final months of the three-year enrollment cycle.
- Keep CE certificates for at least 4 years from the date the CE is claimed.
- Renew your PTIN every year, even if you hold a professional license or credential with separate renewal requirements.

AFSP Participants

Practitioners participating in the **Annual Filing Season Program (AFSP)** are not subject to the Enrolled Agent 72-hour continuing education requirement. Instead, AFSP participants must complete **18 hours of IRS-approved continuing education each year**, including the Annual Federal Tax Refresher (AFTR) course, ethics, and federal tax law topics. Successful completion allows eligible preparers to receive the IRS Annual Filing Season Program Record of Completion and maintain limited representation rights for returns they prepare.

CE Requirements — AFSP vs. Enrolled Agent

Requirement	AFSP Participant	Enrolled Agent (EA)
Total CE per cycle	18 hours per year	72 hours per 3-year cycle (minimum 16 hrs/year)
Ethics CE required	2 hours per year This course satisfies your full annual ethics requirement ✓	2 hours per year This course satisfies the full annual ethics requirement
AFTR (Annual Federal Tax Refresher)	6 hours per year AFTR content course — separate from the 3-hour AFTR timed exam	Included in 72-hour total (no separate minimum)
Federal tax law topics AFTR exam required?	10 hours per year Yes — IRS Annual Federal Tax Refresher exam (3-hour timed, 100 questions)	Included in 72-hour total No — CE only; EA credential obtained through SEE
Credential issued	Record of Completion (annual)	Enrolled Agent credential (3-year renewal)
Representation rights	Limited — examinations of returns you prepared only	Unlimited — all matters before the IRS
IRS CE provider requirement	Must use IRS-approved CE providers	Must use IRS-approved CE providers
PTIN required?	Yes — annual renewal required	Yes — annual renewal required

What Happens if You Miss Your CE Requirements

Situation	AFSP Participant	Enrolled Agent
Miss CE deadline	No Record of Completion issued for that year — limited representation rights lost until next year's requirements are completed	Enrollment lapses — may not represent clients before the IRS until reinstated
Preparation during lapse	May still prepare returns (AFSP is voluntary) but loses Record of	May not represent clients — can still prepare returns with

Situation	AFSP Participant	Enrolled Agent
	Completion benefits and representation rights	valid PTIN
Reinstatement	Complete current year requirements and AFTR exam to receive new Record of Completion	File for reinstatement with IRS after completing CE — no automatic reinstatement

Thinking About Becoming an Enrolled Agent?

Many AFSP participants use the program as a stepping stone toward the Enrolled Agent (EA) credential. The AFSP builds a strong foundation in federal tax law and ethics while helping practitioners gain experience before pursuing unlimited IRS representation rights.

Step 1 — Pass the SEE

Complete all three parts of the Special Enrollment Examination (SEE):

- Individuals
- Businesses
- Representation, Practices & Procedures

All three parts must be passed within a rolling three-year period.

Step 2 — IRS Suitability Review

The IRS conducts a background and suitability review that includes verification of your federal tax compliance history and filing obligations.

Step 3 — Continue Your CE

AFSP ethics and federal tax CE courses remain valuable preparation. However, the AFTR examination does not replace the Special Enrollment Examination requirement for EA status.

The Big Difference

AFSP participants have **limited representation rights** for returns they personally prepared. Once you become an **Enrolled Agent**, your authority expands to **unlimited representation rights** — any taxpayer, any tax matter, any IRS office, including examinations, appeals, collections, and taxpayer advocacy matters.

AI & Ethics Note

Keep your CE certificates organized — IRS may request documentation of CE completion. A simple folder (physical or cloud-based) with certificates sorted by year and course satisfies this requirement. If you use AI tools to draft any CE-related documentation or correspondence, remember that the CE certificate itself must come directly from the IRS-approved provider — AI cannot generate a valid IRS CE certificate. Retain certificates for at least four years from the date you claim the CE.

- Practitioner Success Tips
- **Track CE throughout the year.** Waiting until renewal season to complete all required education often results in missed deadlines, incomplete records, and unnecessary stress.
- **Keep your CE certificates organized.** Maintain copies of all completion certificates for at least four years from the date the education was claimed.
- **Renew your PTIN every year.** A professional credential does not replace the annual PTIN renewal requirement for return preparers.
- **Consider your long-term professional path.** Many AFSP participants eventually pursue the Enrolled Agent credential to obtain unlimited representation rights before the IRS. Consistent CE completion and strong ethics habits make that transition much easier.

2.3 — Restrictions on Practice

Lesson at a Glance

Not every tax professional may represent clients in every IRS proceeding. Circular 230 §10.7–10.10 define exactly what AFSP participants and other practitioners may and may not do — and the consequences of going beyond those limits. Knowing your scope is not a limitation; it protects you, your clients, and your standing with the IRS.

Who Is Ineligible to Practice

- **Suspended practitioners:** May not practice before the IRS in any capacity during the suspension period.
- **Disbarred practitioners:** May not practice until reinstated under §10.81.
- **State-disciplined attorneys and CPAs:** State bar disbarment or CPA license revocation can trigger parallel Circular 230 proceedings.
- **Individuals under final orders of non-recognition:** The IRS can disqualify a specific individual from representing a taxpayer in a specific matter.

Limited Practice: Unenrolled Return Preparers (§10.7(c))

An individual who prepared and signed a return as preparer may represent the taxpayer — but **only in the examination of that specific return** and only before revenue agents, customer service representatives, and similar IRS officers. Unenrolled preparers may **NOT**:

- Represent a client in IRS Appeals;
- Represent a client in any collection matter (CDP hearings, installment agreements, OIC);
- Represent a client before IRS Office of Chief Counsel;
- Sign any document on behalf of a taxpayer (other than as return preparer).

AFSP Participants — Your Specific Scope

[Image: afsp.webp]

If you hold a current IRS **Record of Completion** through the Annual Filing Season Program, your representation rights are defined by §10.7(c) above — with one important benefit: your Record of Completion is publicly listed in the IRS Return Preparer Directory, which signals to clients that you have met voluntary CE and testing standards above the baseline preparer requirement.

Your representation rights as an AFSP participant:

Proceeding type	AFSP participant — authorized?
Examination (audit) of a return you prepared	✓ Yes
IRS Appeals	X No
Collection matters (CDP, installment agreement, OIC)	X No
Tax Court	X No
Signing documents on behalf of a taxpayer	X No
Representing a client on a return someone else prepared	X No

When a client's matter escalates beyond an examination — to Appeals, collections, or Tax Court — your obligation under Circular 230 is to advise the client that they need a fully enrolled practitioner (EA, CPA, or attorney) to represent them at that level. Referring the client is not a failure; it is exactly what the rules require and what a professional does.

Student and LITC Supervised Practice (§10.7(d))

Students at qualifying Low Income Taxpayer Clinics (LITCs) and Student Tax Clinic Programs may represent clients before the IRS — but only under the **direct supervision** of a licensed supervising practitioner. The supervisor remains fully responsible under Circular 230 for the student's work.

Scope Violation Scenario

An unenrolled return preparer's client receives a Notice of Deficiency. The preparer, having successfully handled the audit, decides to also handle the Tax Court petition. She has no authority to do this — unenrolled practice rights are limited to the examination level. Representing a client in Tax Court requires Tax Court bar admission or a bar license.

Practitioner Tips

- **When your scope ends, say so — and have a referral ready.** When a client's matter escalates to Appeals or collections, tell them clearly: "This has moved beyond what I am authorized to handle as an AFSP participant. You need an Enrolled Agent or attorney for this next stage." Having a trusted EA or CPA you can refer clients to is a professional asset, not a competitive threat.
- **Document the referral in writing.** If you advise a client their matter requires a fully enrolled practitioner and they decline to seek one, note that in your file. If the matter goes badly, your documented advice protects you from Circular 230 exposure.
- **Supervisors in LITC/STCP programs:** You are fully responsible for student work. Review everything before it is submitted.

2.4 - AI & licensing gray areas

[Image: learning.gif]

As AI tools become embedded in tax practice, new questions arise about what constitutes 'practice before the IRS' and whether AI-assisted services require a licensed practitioner. This lesson examines current regulatory thinking and the practical steps practitioners should take before formal IRS guidance is issued.

Current Framework Applied to AI

The IRS has not yet issued comprehensive guidance on whether AI tools constitute 'practice before the IRS.' However, OPR advisory opinions suggest the existing framework applies: if a licensed practitioner reviews and transmits AI-generated advice to a named taxpayer, that practitioner is practicing — regardless of how the advice was generated.

- **Who is the practitioner?** If an EA reviews and transmits AI-generated advice, the EA is the practitioner of record. The AI is a tool — like tax software.
- **What if no licensed person reviews the output?** This is the unsettled gray zone. A consumer AI product providing specific tax advice without licensed review may constitute unauthorized practice — but IRS has not issued a formal determination.
- **White-labeling AI:** If a firm deploys an AI advisory tool under its own name to serve clients, the firm and its licensed practitioners are likely practicing for every client interaction, creating CE, disclosure, and Circular 230 obligations for every output.

Scenario — Who Is Practicing?

A tax software company (unlicensed) launches an AI chatbot that provides specific answers to individual taxpayers' questions. A licensed EA reviews only 'escalated' questions — not routine AI outputs. Is the EA practicing? Is the software company?

Analysis: The EA likely is not the practitioner of record for routine outputs she did not review. The software company may be engaged in unlicensed practice. The safest approach: every client-specific output requires licensed review.

AI & Ethics Note

Until the IRS issues formal guidance, practitioners should apply the existing §10.2 definition **conservatively: treat all AI-generated client-specific tax advice as requiring licensed review**. This means a licensed EA, CPA, or attorney must review the output before it reaches the client — not a paralegal, support staff, or the AI itself.

Practitioner Tips

- **Don't white-label AI without a compliance review.** If your firm's name is on it and clients rely on it, you are likely practicing with respect to it.
- **Watch for IRS guidance.** Until formal guidance issues, conservative application of §10.2 is the appropriate default.
- **Your engagement agreement should address AI.** Module 5 provides model language for engagement letters disclosing AI use and protecting practitioners.

3.1 — Competence & Diligence

[Image: learning.gif]

§10.22 and §10.23 establish the foundational due diligence standards for all Circular 230 practitioners. Competence means having the knowledge, skill, and preparation necessary for the matter. Diligence means acting on that competence promptly and thoroughly. Both apply with full force to AI-assisted work.

§10.22 — Competence

§10.22 requires practitioners to possess the **knowledge, skill, thoroughness, and preparation** necessary for the matter at hand. All four elements must be present:

- **Knowledge:** Understanding the relevant law, regulations, and IRS guidance applicable to the matter.
- **Skill:** The ability to apply that knowledge to the client's specific facts.
- **Thoroughness:** Adequate inquiry into the relevant facts and law — not just surface-level review.
- **Preparation:** Allocating sufficient time and resources before providing advice or signing a document.

If a practitioner lacks any of these elements, §10.22 requires them to either **decline the matter** or **associate with a competent co-practitioner**.

AI & Ethics Note

The §10.22 competence standard applies fully to AI-assisted work — and may raise the bar. If you use AI to research or draft advice, you must be competent enough to evaluate whether the AI output is correct. A practitioner who cannot assess the accuracy of AI-generated analysis is not competent to send that analysis to a client, regardless of how the AI generated it.

Practitioner Tips

- **Manage workload as a competence issue.** Taking on more clients than you can serve competently is a §10.22 violation.
- **CE is your competence maintenance tool.** Your annual CE requirements — whether the 18-hour AFSP program or the 72-hour EA enrollment cycle — maintain

the 'knowledge' element of §10.22 as the law changes. Keeping current is not just a compliance formality; it is how you stay competent.

- **Document your preparation time.** Showing you researched relevant law thoroughly is evidence of competence in an OPR proceeding.

3.2 — Written Advice & Covered Opinions

[Image: learning.gif]

§10.37 establishes standards for all written tax advice — not just formal opinion letters. Every email containing a tax analysis, every memo addressing a client's position, and every AI-generated draft forwarded to a client is written advice subject to §10.37. This lesson covers the standard, its four elements, and how to satisfy it in 2026.

The §10.37 Written Advice Standard

Written advice must:

- **Be based on reasonable factual and legal assumptions** (including about future events);
- **Reasonably consider all relevant facts and circumstances** the practitioner knows or should know;
- **Use reasonable efforts** to identify and ascertain relevant facts; and
- **Not rely on representations the practitioner knows or has reason to know are incorrect**, incomplete, or inconsistent.

What Is 'Written Advice'?

Written advice under §10.37 is any written communication providing tax analysis or recommendations. This includes:

- Formal opinion letters and memoranda;
- Emails containing tax analysis or recommendations;
- Letters responding to client tax questions;
- Reports and analyses submitted to the IRS;

- **AI-generated drafts forwarded to clients** — the method of generation does not change the classification.

Written advice does **NOT** include: oral advice, tax return preparation itself (governed by §10.34), or advertising materials.

Covered Opinions: The Heightened Standard

A 'covered opinion' is written advice about a **listed transaction** (a tax shelter on the IRS §6011 list) or a transaction with the **principal purpose of tax avoidance**. Covered opinions require additional disclosure language and more rigorous factual investigation under §10.35. If you are advising on a listed transaction, consult the full §10.35 requirements before issuing any written advice.

AI & Ethics Note

AI & Ethics Note

AI-generated drafts forwarded to clients - the method of generation does not change the classification. Written advice does **NOT** include: oral advice, tax return preparation itself (governed by §10.34, or advertising materials).

Practitioner Tips

- **Every substantive email is written advice.** Before sending any email with tax analysis, ask: Is this based on reasonable assumptions? Have I considered all relevant facts?
- **'I'm just thinking out loud' is not a §10.37 defense.** Written is written.
- **For covered opinions:** stop, read §10.35 in full, and consider involving a specialist.

3.3 - Positions, omissions & misleading conduct

[Image: Unsupported Tax Position]

Circular 230 §10.34

Client Pressure Is Not a Defense

Scenario

A client insists that his home office qualifies for a deduction and provides information clearly showing the space is not used exclusively and regularly for business. The CPA understands that the deduction fails the requirements of IRC §280A but signs the return anyway because she does not want to lose the client.

Why This Violates §10.34

The practitioner knowingly signed a return containing a position that lacked a reasonable basis. The client's insistence does not excuse the violation. Under Circular 230, the practitioner—not the client—is responsible for determining whether a tax position is supportable.

"The client told me to claim it" is not a recognized defense before the IRS or the Office of Professional Responsibility (OPR).

What Usually Happens

The practitioner knows the deduction is unsupported. The client insists. The return is signed anyway. The IRS later audits the return, disallows the deduction, assesses penalties, and refers the practitioner to OPR for review.

§10.34 violations are among the most common grounds for practitioner discipline because they frequently involve situations where the preparer knew the position was improper before signing the return.

Practitioner Tip

One of the most important skills in tax practice is being willing to tell a client "**No.**" Losing a client because you refused an unsupported deduction is far less costly than facing preparer penalties, an OPR investigation, suspension, or censure because you signed a return you knew was wrong.

§10.34 — Standards for Returns and Documents

A practitioner may not sign a return, or advise a client to take a position, if the practitioner knows the return:

- Contains a **frivolous position** (patently improper);
- Contains an **unreasonable position** that could trigger a penalty; or
- Represents a **willful attempt to understate** tax liability.

'Reasonable basis' means the position has at least a one-in-three chance of being sustained on the merits. This is a **higher standard** than the 'non-frivolous' standard that applies to pro se taxpayers.

§10.36 — Supervisory Compliance Obligations

§10.36 applies to firm partners, principals, and anyone who supervises other practitioners. These practitioners must implement procedures reasonably designed to ensure that all firm members comply with Circular 230. If a subordinate violates Circular 230 and the supervisor knew about it and ratified it, the supervisor faces discipline as well.

Circular 230 §10.34

Client Pressure Is Not a Defense

A client insists that his home office qualifies for a deduction and provides details that clearly show the space is **not used exclusively and regularly for business**.

The CPA understands that the deduction does not meet the requirements of IRC §280A, but signs the return anyway because she does not want to lose the client.

Result

This is a violation of **§10.34**.

The practitioner knowingly signed a return containing a position that lacked a reasonable basis.

Why the Practitioner Is Responsible

Professional Judgment

The practitioner—not the client—is responsible for determining whether a position has a reasonable basis.

Signature Matters

By signing the return, the practitioner adopts responsibility for the tax positions reported.

No Client Exception

"The client insisted" is not recognized as a defense by OPR or the IRS.

The Typical OPR Pattern

Many §10.34 disciplinary cases follow the same pattern:

Step 1: The practitioner knows the deduction, credit, filing status, or business expense is unsupported.

Step 2: The client insists the item be claimed.

Step 3: The practitioner signs the return to preserve the client relationship.

Step 4: The IRS audits the return, disallows the position, assesses penalties, and reviews the preparer's conduct.

Step 5: The matter is referred to the Office of Professional Responsibility (OPR).

Possible Consequences

Accuracy Penalties

OPR Investigation

Suspension

Censure

Practitioner Tip

One of the hardest professional skills is telling a client **"No."**

Under Circular 230, your obligation is to the law and to your professional standards—not to the client's desired outcome. The clients you lose by refusing unsupported positions are far less costly than the clients who lead to an IRS examination, preparer penalties, or an OPR disciplinary action.

3.4 - Advertising & solicitation rules

[Image: Advertising-Solicitation-Rules_.svg]

§10.30 governs how practitioners may market their services. False, fraudulent, misleading, and coercive solicitation is prohibited — including on websites, social media, and in AI-generated marketing copy. This lesson applies §10.30 to modern digital marketing.

What §10.30 Prohibits

1

False or misleading statements about services, credentials, fees, or results.

2

Uninvited in-person or telephone solicitation of prospective clients known to be in need of specific services due to a particular occurrence (e.g., contacting taxpayers listed in delinquent tax rolls).

3

Coercive solicitation — using pressure or undue influence to attract clients.

4

Fee guarantees — "Guaranteed maximum refund" is false or misleading because outcomes depend on facts and law.

5

Misleading credential claims — claiming to be an EA or CPA when you are not.

What Is Permitted

- Truthful advertising of services, credentials, fees, and practice areas.
- Testimonials that reflect genuine client experience with appropriate disclosures about past results.
- Direct mail and email marketing, provided content is truthful and non-coercive.
- Professional directory listings.

AI & Ethics Note

Circular 230 §10.30

Marketing Claims Can Become Ethics Violations

Scenario

A CPA's LinkedIn profile states:

"Former IRS Agent — I know exactly what they look for and I'll make sure you never get audited."

The statement may sound impressive from a marketing perspective, but it creates significant Circular 230 concerns.

Why It Violates §10.30

False Guarantee

No practitioner can guarantee that a taxpayer will never be audited. Audit selection is controlled by the IRS, not by the preparer.

Misleading Expertise Claim

Claiming to know "exactly what they look for" implies access to confidential or non-public IRS audit selection criteria that practitioners do not possess.

AI Marketing Risk

AI tools frequently generate persuasive marketing language designed to attract attention and increase conversions. Unfortunately, that same language may create Circular 230 violations.

AI often produces phrases such as:

- "Maximum refund guaranteed"
- "Audit-proof tax returns"
- "We know exactly how the IRS thinks"
- "Guaranteed tax savings"

These statements may be misleading, unverifiable, or prohibited under §10.30.

Before Publishing Any Marketing Content

- Verify that every factual statement is accurate and supportable.
- Remove guarantees regarding refunds, audit outcomes, or tax savings.
- Avoid implying access to confidential IRS information.
- Review all AI-generated website copy, emails, advertisements, and social media posts before publication.

Practitioner Tip

AI may write the advertisement, website copy, LinkedIn profile, or social media post—but **you remain responsible for every claim that appears under your name.**

Circular 230 does not recognize an "AI wrote it" defense. If the content is false, misleading, or deceptive, the practitioner—not the software—is accountable for the violation.

3.5 AI Advice as Written Advice: Deep Dive

[Image: AI-Advice-as-Written-Advice-Deep-Dive_.svg]

Building on the §10.37 framework, this lesson applies it specifically to AI-generated content. A three-part test, five scenarios, and a concrete documentation protocol help practitioners use AI productively while remaining fully compliant.

The Three-Part Test

1

In writing: The communication is written (email, memo, letter, report, PDF).

2

Tax analysis or recommendation: It contains analysis of a federal tax question or a recommendation regarding a tax position.

3

Communicated to a client by the practitioner: The practitioner sends, forwards, or otherwise delivers it to a named client or taxpayer.

The Verification Protocol

✓

Client File Note

AI-Assisted Written Advice Review Documentation

Date: March 18, 2026

Matter: Draft client response regarding rental property conversion to short-term rental activity and related tax implications.

Review Note: AI-generated draft reviewed on March 18, 2026. Internal consistency, factual assumptions, and logical structure were reviewed for accuracy and completeness. All legal citations were independently verified against the applicable primary authorities, including IRC §469 and Treasury Regulation §1.469-1T.

The analysis was reviewed to confirm application of the correct tax year law and current guidance. Client-specific facts were incorporated into the final analysis, including expected average rental period, anticipated services provided to guests, participation level, and potential self-employment tax considerations.

Revisions were made where necessary to reflect the client's actual circumstances and to ensure compliance with Circular 230 §10.37. The AI draft was used solely as a preliminary drafting tool and was not relied upon without independent professional review.

Review Procedures Completed

- Reviewed AI draft for internal consistency and logical structure.
- Verified all legal authorities against primary sources.
- Confirmed use of current-year tax law and guidance.
- Incorporated all relevant client-specific facts.

- Revised analysis based on independent review.
- Documented review and retained in client file.

File Documentation Statement: AI draft reviewed March 18, 2026. Citations verified against applicable primary authorities. Analysis revised to reflect client-specific facts. Final version reflects my independent professional judgment and professional responsibility under Circular 230 §§10.22 and 10.37.

Reviewer Signature

[Image: Reviewer signature]

Prepared by: Anita Taylor, EA

Role: Tax Practitioner / Reviewer

To satisfy §10.37 when using AI, the practitioner must:

1

Review the AI draft for internal consistency and logical structure.

2

Verify every legal citation against the primary source (code section, regulation, revenue ruling, case).

3

Confirm the AI applied the correct year's law (AI training data may be outdated).

4

Ensure the analysis incorporates all relevant client-specific facts.

5

Revise as needed based on independent review.

6

Note the review in your file: 'AI draft reviewed [date]. Citations verified against [primary sources]. Analysis revised to reflect [client facts]. Final version reflects my independent professional judgment.'

AI & Ethics Note

Suggested file note language: 'AI-assisted draft prepared [date] using [tool name]. Reviewed and verified by [practitioner name] on [date]. Verification: (1) IRC citations confirmed at IRC.gov; (2) Analysis checked against [Reg./Rev. Rul./Notice]; (3) Client facts from [source] incorporated. Final document reflects independent professional judgment.'

Circular 230 §§10.22 & 10.37

AI-Assisted Tax Advice: Three Scenarios

These examples show the dividing line between acceptable and unacceptable AI use in professional tax practice. AI may assist with drafting, but the practitioner remains responsible for verifying the law, correcting errors, applying the client's facts, and exercising independent professional judgment.

Scenario A — Non-Compliant

An EA drafts a memo citing "**Rev. Rul. 2024-08**" for a key Qualified Opportunity Zone proposition. The revenue ruling does not exist — the AI hallucinated it. The client relies on the memo and takes the position.

The IRS disallows the deduction, assesses accuracy penalties, and refers the EA to OPR.

Why This Fails

- The practitioner did not verify the cited authority.
- The written advice relied on a non-existent revenue ruling.
- The practitioner failed the competence and written-advice standards.

Scenario B — Compliant

A CPA uses AI to draft an initial memo on Qualified Opportunity Zone investment. She reviews the draft, verifies IRC §1400Z-2 citations against the current Code, checks the AI's analysis against current QOZ regulations, revises three inaccurate statements, adds the client's specific investment horizon, notes her review in the file, and sends the revised memo.

This satisfies **§10.22** and **§10.37**.

Why This Works

- The CPA verified the legal authorities against primary sources.
- The AI draft was corrected and revised.
- Client-specific facts were added to the final analysis.
- The review was documented in the client file.

Scenario C — Non-Compliant Despite Disclaimer

An attorney generates an AI tax opinion letter, adds "**AI-generated — not professional tax advice**" in the header, and sends it to the client without independent review.

The disclaimer does not change the analysis. The attorney placed their name on tax analysis sent to a client. It is written advice under **§10.37** regardless of the disclaimer.

Why the Disclaimer Fails

- A disclaimer does not erase professional responsibility.
- The client received written tax analysis from the practitioner.
- The practitioner failed to independently review and verify the AI output.

Practitioner Tip

AI can draft, organize, and summarize — but it cannot satisfy Circular 230 for you. The practitioner must verify citations, apply the correct law, revise errors, incorporate client-specific facts, and document independent review before sending any AI-assisted advice to a client.

3.6 — Scenario Workshop: Due Diligence in Practice

[Image: Workshop Case Studies]

Ethics Workshop

Circular 230 Case Study Analysis

This workshop applies **§10.22, §10.30, §10.34, §10.36, and §10.37** to realistic practitioner situations. For each scenario, identify the Circular 230 violation, explain why the conduct is problematic, and determine the corrective action. These patterns appear frequently in OPR disciplinary proceedings.

Case Study #1 — AI Hallucinated Authority

An EA sends a client memorandum citing "Rev. Rul. 2024-08" as authority for a Qualified Opportunity Zone position. The revenue ruling does not exist. The citation was generated by AI and never verified.

Violation: §10.22 (Competence) and §10.37 (Written Advice)

Why: The practitioner failed to verify the legal authority before providing written advice.

Corrective Action: Verify every AI-generated citation against primary authority before relying on or sending it to a client.

Case Study #2 — Proper AI Review Process

A CPA uses AI to draft a Qualified Opportunity Zone memo, independently verifies IRC §1400Z-2, reviews current regulations, corrects inaccurate statements, incorporates client facts, documents her review, and then sends the final version.

Result: Compliant

Why: The practitioner exercised independent professional judgment and verified the legal authorities.

Circular 230 Sections: Satisfies §10.22 and §10.37.

Case Study #3 — "AI Generated" Disclaimer

An attorney generates an AI tax opinion letter, places "AI-Generated — Not Professional Tax Advice" at the top, performs no review, and sends it directly to the client.

Violation: §10.22 and §10.37

Why: The disclaimer does not eliminate professional responsibility.

Corrective Action: Review, verify, revise, and document the analysis before sending it to a client.

Case Study #4 — Misleading Marketing

A CPA's website states: "Former IRS Agent — I know exactly what triggers audits and I guarantee you'll never be audited."

Violation: §10.30 (Solicitation)

Why: The advertisement contains misleading guarantees and implies access to confidential IRS information.

Corrective Action: Remove unsupported claims, guarantees, and misleading representations from marketing materials.

Case Study #5 — Unsupported Return Position

A client insists on claiming a home office deduction even though the workspace is used for both business and personal activities. The practitioner knows the deduction is not supportable but signs the return anyway.

Violation: §10.34 (Standards for Tax Returns)

Why: The return contains a position lacking a reasonable basis.

Corrective Action: Refuse to sign the return unless the unsupported position is removed.

Case Study #6 — Firm-Wide Compliance Failure

A managing partner knows staff members routinely copy AI-generated client emails into final communications without review. No written procedures exist and no training is provided.

Violation: §10.36 (Supervisory Responsibility)

Why: The firm lacks reasonable procedures designed to ensure Circular 230 compliance.

Corrective Action: Implement written policies, staff training, supervision procedures, and AI review requirements.

Workshop Takeaway

Most OPR cases do not involve complex tax law. They involve practitioners failing to verify facts, failing to verify authorities, signing unsupported returns, making misleading claims, or failing to supervise staff properly. The recurring question in every Circular 230 case is simple:

"Did the practitioner exercise independent professional judgment?"

If the

[Image: Circular 230 Workshop]

Ethics Workshop

Four Common OPR Case Patterns

These scenarios apply Circular 230 §§10.22, 10.30, 10.36, and 10.37 to realistic practitioner situations. Similar fact patterns appear regularly in OPR investigations and disciplinary proceedings.

Scenario 1 — International Competence

Anita, an EA who primarily prepares individual returns, is asked to advise on the U.S. tax treatment of a UK pension plan and treaty-based filing positions on Form 8833. She is unfamiliar with the U.S.–UK treaty provisions and related FBAR requirements.

Issue

§10.22 — Competence. Anita lacks the knowledge and preparation necessary to advise on this matter.

Correct Action

Refer the client to an international tax specialist or invest sufficient time to become genuinely competent before providing advice. Proceeding while hoping she is "probably right" violates §10.22.

Scenario 2 — Website Red Flags

A CPA's website advertises:

"Guaranteed Maximum Refund on Every Return."

"IRS Audit Guarantee."

"Award-Winning Tax Expertise."

The referenced "award" was a local readers' poll from 2019.

Issue

§10.30 — Solicitation.

- "Guaranteed maximum refund" is misleading.
- An audit outcome cannot be guaranteed.
- Presenting a five-year-old popularity poll as evidence of expertise is misleading.

Correct Action

Remove all guarantee language and accurately describe any awards with the date and source.

Scenario 3 — Conservation Easement Written Advice

A tax attorney drafts a written opinion supporting a \$1.2 million conservation easement deduction. She relies entirely on the client's appraisal without evaluating the appraisal methodology, comparables, or assumptions. The property is located in a county specifically identified by the IRS as an easement examination priority area.

Issue

§10.37 — Written Advice.

Practitioners must make reasonable efforts to identify and evaluate relevant facts. Blind reliance on a client-provided appraisal in a high-risk area fails the reasonable-efforts standard.

Correct Action

Obtain an independent qualified appraisal review. If the valuation cannot be supported, decline to issue the opinion.

Scenario 4 — Supervisor Liability

A CPA firm partner learns that a subordinate CPA has been charging contingent fees based on refund amounts for amended returns. The partner decides not to investigate and takes no action.

Issue

§10.36 — Supervisory Responsibility.

A supervising practitioner who becomes aware of likely misconduct has an obligation to investigate and address it. Willful ignorance may be treated as ratification of the violation.

Correct Action

Investigate immediately, correct prohibited fee arrangements, refund any impermissible fees, and implement procedures to prevent recurrence.

Workshop Takeaway

Most Circular 230 violations do not arise from difficult tax calculations. They arise when practitioners operate outside their competence, make misleading public claims, issue written advice without adequate factual support, or ignore known compliance problems within their firms.

In nearly every OPR case, the critical question is:

"Did the practitioner exercise reasonable professional judgment and fulfill their responsibilities under Circular 230?"

4.1 — AI in Tax Practice: Opportunity & Obligation

[Image: AI.svg]

AI tools offer real efficiency gains for tax practitioners — but they create Circular 230 exposure most users do not recognize. This lesson maps the AI landscape in tax practice, identifies where AI commonly fails, and establishes the practitioner obligations that govern AI use.

§10.20

What It Prohibits

- §10.20 prohibits practitioners from using information obtained in professional practice to their own advantage or the client's disadvantage, and from making **unauthorized disclosures**. Uploading client data to an AI platform that:
 - (1) uses user inputs to train the model;
 - (2) retains user inputs beyond the session; or
 - (3) shares data with third-party subprocessors without adequate protections constitutes an unauthorized disclosure under §10.20.

IRC §7216 — Criminal Penalties

- IRC §7216 independently prohibits any person engaged in the business of preparing tax returns from knowingly or recklessly disclosing information furnished for that purpose. Violations carry **up to 1 year imprisonment and \$1,000 fine per violation**. Uploading client data to a known data-harvesting AI platform without consent could meet the 'knowingly or recklessly' threshold.

Types of AI Tools in Tax Practice

Category	Examples	Primary C230 Risk
Research tools	ChatGPT, Westlaw AI, Bloomberg Tax AI	§10.22 — must verify output
Drafting tools	Copilot, Claude, Gemini	§10.37 — written advice standards
Tax compliance AI	Intuit Assist, Drake AI features	§10.34 — position standards
Client communication AI	AI email drafting, chatbots	§10.20, §10.37, §10.30

AI Hallucination: The Core Risk

[Image: AI.svg]

AI hallucination is the phenomenon in which an AI generates confident, plausible-sounding content that is factually incorrect — including **fabricated legal citations, invented revenue rulings, and incorrect code section references**. In tax practice, an AI citing 'Rev. Rul. 2023-07' for a proposition that ruling does not support — or does not exist — creates immediate §10.22 and §10.37 exposure for any practitioner who forwards that citation to a client without verification.

OPR Risk Alert

[Image: Seal_of_the_United_States_Department_of_Justice.svg]

OPR's 2024 advisory specifically noted that practitioners who adopt AI tools without establishing adequate verification and oversight protocols are at heightened risk of §10.22 (competence) violations. The advisory does not prohibit AI use — it requires that AI use be integrated into a professionally competent workflow.

Practitioner What AI Cannot Do

- **Exercise professional judgment:** AI cannot assess whether a client's characterization of facts is credible or evaluate audit risk in the context of a specific filing history.
- **Know what the client told you:** AI has no access to information outside what you provide in the prompt.
- **Apply the correct year's law reliably:** AI training data has a cutoff. Late-year legislative changes and 2025–2026 regulatory updates may not be reflected.
- **Take responsibility:** You are the practitioner. The CE credential and the Circular 230 obligation are yours.

AI & Ethics Note

Practical AI verification checklist:

- (1) Verify every legal citation against the primary source.
- (2) Check that the analysis applies the correct tax year's law.
- (3) Confirm the AI used the right legal standard.
- (4) Assess whether the AI missed any relevant facts the client gave you.
- (5) Document your review in your file.

4.2 — Client Data Privacy & Confidentiality

[Image: Client-Data-Privacy-Confidentiality-1.svg]

§10.20 prohibits unauthorized disclosure of information obtained in professional practice. When a practitioner uploads client data to an AI platform, they make a disclosure — to the vendor's systems. This lesson applies §10.20 and IRC §7216 to AI tool use, cloud storage, and digital data handling in 2026.

§10.20

What It Prohibits

- §10.20 prohibits practitioners from using information obtained in professional practice to their own advantage or the client's disadvantage, and from making **unauthorized disclosures**. Uploading client data to an AI platform that:
 - (1) uses user inputs to train the model;
 - (2) retains user inputs beyond the session; or
 - (3) shares data with third-party subprocessors without adequate protectionsconstitutes an unauthorized disclosure under §10.20.

IRC §7216 — Criminal Penalties

- IRC §7216 independently prohibits any person engaged in the business of preparing tax returns from knowingly or recklessly disclosing information furnished for that purpose. Violations carry **up to 1 year imprisonment and \$1,000 fine per violation**. Uploading client data to a known data-harvesting AI platform without consent could meet the 'knowingly or recklessly' threshold.

AI Tool Data Protection Comparison

Tool Type	Training Use?	Data Retained?	DPA Available?	Safe for Client Data?
Consumer ChatGPT (free/Plus)	Yes (opt-out)	Yes	No	No
ChatGPT Enterprise	No	No (30-day default)	Yes	With DPA review
Microsoft 365 Copilot	No	Tenant-controlled	Yes	With DPA review

AI & Ethics Note

Before uploading any client data to an AI tool:

- (1) Confirm the tool's data use policy — specifically whether inputs are used for model training and whether they are retained.
- (2) Obtain a Data Processing Agreement (DPA) if available.
- (3) Consider whether client consent is needed under your engagement agreement.
- (4) De-identify data where possible — replace the client's name with '[CLIENT],' SSN with '[REDACTED],' etc.

Practitioner Tips

- **Never upload a full tax return to a consumer AI tool.** A client's 1040 with name, SSN, and financial data is the most sensitive document in your files.
- **Add AI data handling to your engagement letter.** Module 5 covers model language.
- **Check your state's rules.** Many state CPA boards and bar associations have issued additional guidance on client data and AI that may be stricter than Circular 230.

4.3 — WISP, Cybersecurity & the FTC Safeguards Rule

[Image: wispv2.svg]

A Written Information Security Plan (WISP) is no longer optional for tax professionals. The FTC Safeguards Rule (revised 2023) explicitly requires it. IRS Publication 4557 provides a practitioner-specific template. This lesson covers what a compliant WISP must contain, how it satisfies Circular 230 §10.20, and how AI tool use must be addressed within it.

Six Core WISP Elements

- **Designated Information Security Coordinator:** A specific named individual responsible for overseeing the security program.
- **Risk Assessment:** Documented identification of foreseeable risks to client data security and evaluation of current safeguards' effectiveness.
- **Safeguard Implementation:** Reasonable safeguards addressing identified risks — access controls, encryption, multi-factor authentication, and secure disposal of client data.
- **Oversight of Service Providers:** Contracts with vendors who handle client data requiring them to implement appropriate safeguards. **This includes AI vendors.**
- **Testing and Monitoring:** Regular testing of safeguard effectiveness — at minimum annually.
- **Update and Revision:** The plan must be reviewed and updated in response to significant changes — including adopting new AI tools.

[Image: WISP and AI Governance]

Worked Example

WISP and AI Adoption

A sole-practitioner EA adopts a new AI research platform in 2026. Her Written Information Security Plan (WISP) was created in 2022 and contains no references to artificial intelligence tools, AI vendors, data processing agreements, or AI-related security controls.

Required Compliance Actions

- Add the AI platform to the WISP as a new service provider that receives or processes firm information.
- Obtain and retain a Data Processing Agreement (DPA) from the vendor and document approval within the WISP.
- Update the firm's risk assessment to identify AI-related data transmission, storage, retention, and disclosure risks.
- Add an AI Use Policy defining approved tools, prohibited data, review procedures, and incident-response requirements.

Common Compliance Failure

Many practitioners adopt new technology without updating their WISP. The software is implemented, client data begins flowing through the platform, and months later the WISP still reflects the firm's 2022 technology environment.

Under the FTC Safeguards Rule and IRS Publication 4557 guidance, a WISP must be updated whenever material changes occur in the firm's technology, vendors, or data-handling practices.

Risk Assessment Update Example

New Risk Identified: Client information may be transmitted to a third-party AI vendor for research, drafting, or document-generation purposes.

Mitigation: Restrict client-specific data to approved enterprise AI platforms with executed DPAs, require practitioner review of all AI-generated work product, prohibit consumer AI tools for client information, and monitor vendor security changes annually.

Key Lesson

A WISP is not a document that is written once and forgotten. It is a living compliance document. Every significant technology change — including AI tools, cloud platforms, client portals, remote access systems, and new vendors — requires review and, when appropriate, revision of the WISP.

Failure to update the WISP after adopting new technology is itself a compliance failure.

IRS Publication 4557 — Your WISP Template

- IRS Publication 4557 (Safeguarding Taxpayer Data) provides a plain-language WISP template specifically for tax professionals. It is free, available at [IRS.gov](https://www.irs.gov), covers all FTC Safeguards Rule elements, and includes checklists for data security practices common in tax offices. If you do not have a WISP, start here.

AI & Ethics Note

IRS Publication 4557 (Safeguarding Taxpayer Data) provides a plain-language WISP template specifically for tax professionals. It is free, available at IRS.gov, covers all FTC Safeguards Rule elements, and includes checklists for data security practices common in tax offices. If you do not have a WISP, start here.

Practitioner Tips

- **If you don't have a WISP, create one this week.** Start with IRS Publication 4557. A basic, good-faith WISP is far better than none.
- **Review and update your WISP annually** and every time you adopt a new tool or hire new staff who handle client data.
- **Your WISP is also your OPR defense document.** In a §10.20 data security investigation, a current, well-maintained WISP demonstrates you took your security obligations seriously.

4.4 — AI Vendor Evaluation & Data Agreements

Lesson at a Glance

Before adopting any AI tool in your practice, a structured evaluation is required to satisfy §10.20 and §10.33. This lesson provides a three-part checklist covering data protection, accuracy, and Circular 230 compliance — with red flags that should disqualify a vendor regardless of product features.

Data Protection Checklist

Accuracy and Reliability Checklist

Circular 230 Compliance Checklist

1

Part 1 — Data Protection Checklist

- Does the vendor provide a **Data Processing Agreement (DPA)** or Business Associate Agreement?
- Are user inputs used to **train or improve the model**? (If yes, client data cannot be entered without explicit client consent.)
- Is user data **retained after the session**? For how long? Can retention be disabled?
- Is data **encrypted in transit and at rest**?

- Is a **subprocessor list** available? What third parties does the vendor share data with?

2

Part 2 — Accuracy and Reliability Checklist

- Does the tool **cite primary sources** for legal propositions?
- Can cited sources be **independently verified** at IRS.gov or Cornell LII?
- Has the tool been **tested in your practice area**?
- Does the tool disclose its **knowledge cutoff date**?

3

Part 3 — Circular 230 Compliance Checklist

- Does the vendor's agreement address **professional responsibility compliance**?
- Does the vendor provide any **indemnification** if the tool generates incorrect advice causing client harm?
- Has the vendor issued guidance specifically for **licensed tax professionals**?

4.5 — When AI Goes Wrong: Liability & Case Studies

1

Incorrect Tax Advice Formulation

3

Misrepresentation (AI-Generated Citations)

THE SINGLE
COMMON THREAD

LACK OF HUMAN
OVERSIGHT & BLIND
RELIANCE ON AI OUTPUT

2

Unauthorized Practice (Over-Reliance)

4

Privacy Breach (AI Input Leak)

Lesson at a Glance

OPR investigations involving AI-related practice failures are a new and growing category. This lesson examines five real-pattern case studies, identifies the specific Circular 230 violations in each, and extracts the mitigation steps that would have prevented each outcome. Every case study shares a single common thread.

Hallucinations

Outdated AI Data

Fake Citations

AI Input Data Leak

Lack of Supervision

Case Studies

[Image: AI Ethics Case Studies]

AI Ethics Workshop

Five Real-World AI Compliance Failures

These examples demonstrate how AI-related mistakes can quickly become Circular 230 violations. In every case, the problem is not the AI itself — it is the practitioner's failure to exercise independent professional judgment.

Case Study 1 — Hallucinated Citation

An EA drafts a memo citing "**Rev. Rul. 2024-08**" for a key Qualified Opportunity Zone proposition. The revenue ruling does not exist — the AI hallucinated it. The client relies on the memo, takes the position, and the IRS later disallows the deduction.

Violations

- §10.22 — Failed to verify the AI-generated citation.
- §10.37 — Written advice not based on reasonable legal assumptions.

Mitigation: Verify every citation against primary authority before sending client communications. Most hallucinated citations can be identified in less than a minute.

Case Study 2 — Misapplied Legal Standard

A CPA uses AI to analyze a conservation easement transaction. The AI incorrectly applies a securities-law "reasonable investor" standard instead of the qualified appraisal requirements under Treasury Regulation §1.170A-17. The CPA fails to notice and signs the return.

Violations

- §10.22 — Insufficient competence to recognize the incorrect legal standard.
- §10.34 — Signed a return containing an unsupported position.

Mitigation: AI does not replace subject-matter expertise. Practitioners must know the governing law well enough to recognize when AI applies the wrong authority.

Case Study 3 — Client Data Uploaded to Consumer AI

A solo EA uploads complete client tax returns, K-1s, and supporting schedules to a free AI chatbot to "double-check" her work. Months later, the platform experiences a security incident exposing client information.

Violations

- §10.20 — Unauthorized disclosure of client information.
- Potential IRC §7216 violation.

Mitigation: Never upload client tax documents to consumer AI systems. Use only approved enterprise tools with executed DPAs and documented safeguards.

Case Study 4 — Unreviewed Technical Analysis

A tax attorney uses AI to generate a 10-page written opinion supporting a cost segregation study. She reads only the executive summary. The technical section contains two incorrect depreciation classifications that overstate deductions by \$400,000.

Violations

- §10.22 — Failed to adequately review the analysis.
- §10.37 — Written advice not based on reasonable assumptions.

Mitigation: Review every section of every document bearing your name. There is no exception under Circular 230 for portions you did not read.

Case Study 5 — AI Marketing Violations

An EA uses AI to generate website copy. The AI produces statements such as:

"Guaranteed Lowest Taxes for Every Client."

"Former IRS Insider — We Know Exactly What Auditors Look For."

The content is published without review.

Violation

- §10.30 — False, deceptive, and misleading advertising.

Mitigation: Review all AI-generated marketing materials before publication. AI is designed to persuade; Circular 230 requires accuracy.

Key Lesson

Every AI compliance failure in this workshop stems from the same mistake: the practitioner treated AI output as if it were already reviewed and verified.

AI can assist with research, drafting, summarization, and organization. It cannot assume your professional responsibility.

Under Circular 230, the practitioner — not the software — remains responsible for competence, confidentiality, written advice, return positions, and marketing claims.

5.1 — Fee Types & What Circular 230 Permits

§10.27 governs practitioner fees and is one of the most frequently violated Circular 230 provisions. Contingent fees are generally prohibited in federal tax matters. Unconscionable fees are prohibited regardless of client consent. §10.28 requires prompt return of client records even when fees are disputed.

Fee

Errors

Disclosures

Agreements

Conduct

Fee Types Under §10.27

Fee Type	Permitted?	Notes
Hourly fees	Yes	Must be reasonable

Fee Type	Permitted?	Notes
Flat/fixed fees	Yes	Must be reasonable
Contingent fees — return preparation	No	Prohibited — no exceptions for return prep
Contingent fees — amended returns (prior IRS assessment for math/clerical error)	Limited	Only where IRS previously assessed based on math or clerical error
Contingent fees — judicial proceedings	Limited	Permitted in Tax Court and other judicial proceedings
Unconscionable fees	Never	Prohibited even with client consent
Referral fees (disclosed)	Yes	Must be disclosed; cannot compromise independence
Referral fees (undisclosed)	No	Prohibited

Worked Example

Contingent Fee Violation

A CPA charges a client a fee equal to **25% of any additional deductions** identified on an amended return. The larger the refund generated by the amended return, the larger the CPA's fee.

The Problem

The CPA's compensation is directly tied to the size of the refund generated by the amended return.

This creates a financial incentive to maximize deductions and refund claims, which is precisely the type of arrangement Circular 230 seeks to restrict.

Limited Exception

A contingent fee may be permitted for certain amended return claims involving a prior IRS assessment based on a **mathematical or clerical error**.

If the amended return merely adds missed deductions or credits, the exception generally does not apply.

Circular 230 Analysis

Issue: §10.27 — Fees.

If the amended return simply increases deductions, generates a larger refund, and the practitioner's fee is calculated as a percentage of that refund, the arrangement is generally

an impermissible contingent fee under Circular 230.

The fact that the client agrees to the arrangement or is pleased with the outcome does not make the fee permissible.

OPR Risk Alert

OPR has specifically scrutinized contingent fee arrangements involving amended returns.

Practitioners sometimes assume these arrangements are acceptable because they are common in the marketplace or because clients prefer "pay only if we save you money" pricing models.

Neither argument is a defense.

OPR has repeatedly rejected the position that a fee arrangement is permissible merely because it is common practice in a local market.

Best Practice

Charge amended return work using a fixed fee, hourly fee, or other non-contingent arrangement documented in the engagement letter.

When evaluating a fee structure, ask one simple question:

"Would my fee increase solely because the refund increased?"

If the answer is yes, Circular 230 §10.27 should be reviewed carefully before proceeding.

§10.28 — Return of Client Records

Circular 230 §10.28

Return of Client Records

When a representation ends, a practitioner must **promptly return all original client records upon request**. The client's records belong to the client — not the practitioner. While the practitioner may retain copies for their own files, withholding original records because of an unpaid bill creates significant Circular 230 exposure.

What Must Be Returned

- Original W-2s, 1099s, K-1s, and other source documents.
- Client-provided financial statements and supporting schedules.
- Receipts, invoices, mileage logs, and other substantiation records.
- Any original records furnished by the client during the engagement.

Common Violation

A practitioner refuses to return a client's original tax records until an outstanding invoice is paid.

The practitioner believes withholding the documents will force payment.

Under §10.28, this is generally prohibited. A fee dispute does not allow the practitioner to keep the client's original records.

Worked Example

A client terminates her relationship with a CPA and requests the return of all tax records. The client also disputes a \$2,500 unpaid invoice.

The CPA may pursue collection of the unpaid fee through normal business or legal channels.

The CPA may not withhold the client's original records as leverage for payment.

The records must be returned promptly, and the fee dispute handled separately.

OPR Risk Alert

§10.28 complaints are among the easiest cases for a client to prove.

The client simply demonstrates:

- The records belonged to the client.
- A request for return was made.
- The practitioner refused or delayed return because of unpaid fees.

There is usually very little factual dispute, making these cases difficult for practitioners to defend before OPR.

Practitioner Tip

Return original records immediately and keep copies for your files. If fees remain unpaid, pursue collection through invoices, engagement letter remedies, mediation, small claims court, or other lawful collection methods.

Never use client records as collateral for an unpaid bill.

5.2 — Fee Agreements & Written Disclosures

A well-drafted engagement letter is the single most effective risk-management tool available to a tax practitioner. It establishes scope, fees, the basis of the relationship, and — in 2026 — the firm's AI use policy. This lesson covers the elements of a compliant, protective engagement letter.

Fee

Errors

Disclosures

Agreements

Conduct

What you Learning Objectives

Core competencies covered in this lesson

- Identify the essential elements of a Circular 230-compliant engagement letter.
- Explain how advance fees and retainers must be structured and documented.
- Draft key engagement letter provisions addressing AI use and data security.
- Recognize how a well-drafted engagement letter protects against both fee disputes and OPR complaints.

Essential Elements of a Compliant Engagement Letter

- **Identity of the client:** Who exactly is the client? For business entities, name the entity — not just the owner.
- **Scope of services:** What specifically will you do? What is expressly excluded?
- **Fee structure:** Hourly, flat, or retainer? Billing cycle? What triggers an additional fee?
- **Advance fees/retainers:** Is the retainer refundable? How is it drawn down? What happens to unused amounts?
- **Client responsibilities:** The client's obligation to provide accurate, complete, timely information.
- **No audit guarantee:** Explicitly state that you cannot guarantee the outcome of any IRS proceeding.
- **Record-keeping:** How long you will retain work product and in what format records will be returned.

Model AI Use Engagement Letter Provision (2026 — adapt to your practice)

- Our firm uses AI-assisted tools to enhance research and document drafting efficiency. All AI-generated content is reviewed by a licensed practitioner before delivery to you. Client data provided to our firm may be processed through secure, enterprise-grade software platforms subject to Data Processing Agreements that prohibit use of your data for AI model training. Your data is handled in accordance with our Written Information Security Plan, available upon request.

Practitioner Tips

- **Review your engagement letter template annually.** Tax law changes, new services, and new tools (AI) should all be reflected in updated language.
- **Get the engagement letter signed before you begin work** — not after.
- **For contingent fee exceptions:** Put the contingency structure in writing, confirm it meets a §10.27 exception, and retain a copy of the signed agreement.

5.3 — Conflicts of Interest: Types & Identification

§10.29 prohibits practitioners from representing clients when their interests conflict — unless the conflict is waivable and each client provides informed written consent. This lesson examines all five types of conflicts and the factual patterns that trigger a conflict check obligation.

Identification

Errors

Consent

Documentation

Conduct

What you Learning Objectives

Core competencies covered in this lesson

- Define a conflict of interest under §10.29's two-prong test.
- Identify all five types of conflicts: concurrent, successive, business, personal/family, and third-party payor.
- Recognize factual patterns that trigger a conflict check obligation.
- Explain when a conflict is non-waivable.

The §10.29 Two-Prong Test

A conflict exists under §10.29 if the representation of one client is:

- **Directly adverse** to another client; OR
- **Materially limited** by the practitioner's responsibilities to another client, a former client, a third party, or the practitioner's own interests.

Both prongs are independently sufficient. A conflict does not require open hostility between clients — a risk of material limitation is enough.

Five Types of Conflicts

Type	Description	Example
Concurrent	Currently representing two clients with adverse interests on the same or related matter	Representing both business partners in a partnership dissolution dispute
Successive	Previously represented a client; now asked to represent a new client adverse to the former client on the same matter	Previously advised Firm A on a transaction; now asked to advise Firm B on the same transaction
Business interest	Practitioner has a financial interest in the outcome	Practitioner owns stock in a company she is advising on a merger's tax treatment
Personal/family	Personal or family relationships create a risk of material limitation	Representing a client in a dispute with the practitioner's spouse's employer
Third-party payor	Someone other than the named client is paying the practitioner's fees	Parent company pays for subsidiary's tax representation; duty runs to subsidiary, not parent

Scenario — Third-Party Payor Conflict

[Image: scene.webp]

An EA is representing an employee in a trust fund recovery penalty (TFRP) case. The employee's former employer is paying the EA's fees because it wants to monitor the case. The employer is also a TFRP target and may want to minimize its own liability by shifting blame to the employee.

Issue: Classic third-party payor conflict. The EA's client is the employee. The EA cannot let the payor direct or influence the representation. The EA must: (1) advise the employee of the arrangement and its risks; (2) confirm duties run exclusively to the employee; and (3) evaluate whether a conflict waiver is feasible or whether to decline.

Trust Fund Recovery Penalty (TFRP)

[Image: DidUKnow.svg]

The **Trust Fund Recovery Penalty (TFRP)** is one of the sharpest, most aggressive collection tools used by the IRS. It allows the government to **pierce the corporate veil** and hold individuals *personally liable* for a business's unpaid payroll taxes

Example: If a company withholds \$10,000 from its employees' paychecks but uses that money to pay an urgent vendor bill instead, the IRS can penalize the responsible individuals a full \$10,000 *personally*, plus accrued interest.

Non-Waivable: When Withdrawal Is Non-Waivable Conflicts

- Some conflicts cannot be waived. A conflict is non-waivable when the interests are so directly and fundamentally adverse that no reasonable practitioner could provide competent, independent representation to both simultaneously — for example, when one client's gain is necessarily and exclusively the other client's loss

5.4 — Conflict Waivers: Disclosure, Consent & Documentation

A §10.29 conflict may be waived — but only when the practitioner reasonably believes competent representation is possible AND each affected client provides informed written consent. This lesson covers what 'informed consent' requires, what valid waiver documentation looks like, and when no waiver is sufficient.

Conflict

Errors

Consent

Documentation

Conduct

What you Learning Objectives

Core competencies covered in this lesson

- State the two conditions required for a valid §10.29 conflict waiver.
- Describe what 'informed consent' requires in a conflict disclosure.
- Draft key elements of a compliant conflict waiver letter.
- Identify fact patterns in which no waiver is sufficient.

The Two-Condition Waiver Test

A §10.29 conflict waiver is valid only when both conditions are satisfied:

- **Reasonable belief in competent representation:** The practitioner reasonably believes they can provide competent and diligent representation to each affected client notwithstanding the conflict.
- **Informed written consent from each affected client:** Each client gives informed consent after full disclosure of the nature and implications of the conflict.

Three What 'Informed Consent' Requires:

- The **nature of the conflict** — who the other client is (unless confidentiality prevents disclosure) and how their interests may be adverse;
- How the conflict **might affect the representation** — specific ways the practitioner's ability to advise fully could be limited;
- **The alternative — that the client has the right to seek independent counsel; and**
- The **practitioner's assessment** of whether competent representation is achievable.

Model Conflict Waiver Letter Elements

[Image: conflict-letter-767x1024.webp]

Non-Waivable: When Withdrawal Is Required

- No waiver is sufficient when: (1) Representing both spouses in a tax dispute that turns on which spouse is responsible for an understatement; (2) Representing both sides of a transaction for purposes of negotiating its tax terms; (3) Any situation where one client's best outcome is necessarily and exclusively the other client's worst outcome. In these cases, the practitioner must decline one (or both) representations.

Practitioner Tips

- **Document conflict checks in every new matter file.** A two-line entry noting you ran a conflicts check and found no issue provides evidence of compliance.
- **Conflict waiver letters should be prepared by the practitioner, not the client.** Asking a client to 'just sign this form' without proper explanation does not satisfy informed consent.
- **Keep waiver documentation for the duration of the representation plus 3 years.**

5.5 — Client Fraud, Errors & Withdrawal Obligations

§10.21 is one of the most consequential — and most violated — provisions in Circular 230. When a practitioner discovers that a client has failed to comply with federal tax law or made an error on a previously filed return, §10.21 imposes a mandatory disclosure obligation to the *client*. When the client refuses to correct the error, withdrawal may be required.

Client Fraud

Errors

Trust Accounts

Withdrawal Obligations

Conduct

What you Learning Objectives

Core competencies covered in this lesson

- State the practitioner's obligation under §10.21 when client noncompliance is discovered.
- Explain to whom the §10.21 duty runs — and to whom it does not.
- Identify the circumstances in which withdrawal from a representation is required.
- Describe how to withdraw without prejudicing the client.

The §10.21 Obligation

Under §10.21, a practitioner who knows that a client has not complied with a revenue law, or has made an error or omission in any IRS document, must **promptly advise the client** of:

- The noncompliance, error, or omission; and
- The **consequences** under the Code and regulations.

Three critical points:

- **The duty runs to the client — not the IRS.** §10.21 does not require independent reporting to the IRS.
- **The duty is to advise — not to correct.** Whether to correct is ultimately the client's decision.
- **If the client refuses to correct, the practitioner must consider withdrawal.**

Scenario — §10.21 in Action

[Image: scene.webp]

While preparing a client's 2026 return, an EA discovers the client has been claiming an ineligible dependent on returns for the past 4 years. The client acknowledges this and asks the EA to 'just prepare this year's return and let it go.'

EA's obligations:

- Promptly advise the client of the prior 4 years of noncompliance and its consequences (accuracy penalties, interest, possible fraud penalty if willful).
- The EA cannot prepare the current-year return claiming the same ineligible dependent — that would be a §10.34 violation.
- If the client refuses to file amended returns or correct the current-year return, the EA must consider withdrawing.
- The EA cannot report the prior noncompliance to the IRS without the client's consent — but also cannot continue representing a client insisting on continued noncompliance.

OPR Risk Alert

- The pattern OPR sees most often in §10.21 cases: a practitioner knows or strongly suspects a client is not complying — cash business income implausibly low, undisclosed foreign accounts mentioned — and continues the representation without addressing it. OPR treats willful blindness (deliberately avoiding investigation of obvious red flags) as equivalent to actual knowledge. Continued representation of a client you suspect is committing tax fraud, without addressing it, is itself an OPR violation.

How to Withdraw Ethically

- Provide reasonable notice — do not abandon the engagement abruptly if doing so would prejudice the client (e.g., do not withdraw the day before a Tax Court filing).

- Return all client files and records promptly under §10.28.
- Do not reveal the reason for withdrawal to the IRS or third parties without the client's consent.
- Document the withdrawal in writing, retaining a copy.

5.6 — AI & Client Relationship Ethics

Lesson at a Glance

[Image: brain-circuit.svg]

Using AI in client work raises specific obligations around disclosure, consent, and relationship management that §10.20, §10.29, and §10.33 address. This lesson covers what practitioners should tell clients about AI use, how to structure client consent, and model engagement letter language for 2026 practice.

Learning Objectives

After completing this lesson you will be able to:

- Identify the disclosure obligations that arise from AI tool use under §10.20 and §10.33.
- Explain when client consent is required before using AI with their data.
- Apply the §10.29 personal interest conflict framework to AI vendor relationships.
- Draft model engagement letter provisions addressing AI use and data protection.

What Clients Should Be Told About AI

[Image: comment-dots.svg]

What AI tools you use

at least the category (research AI, drafting AI, compliance AI).

[Image: shield-halved.svg]

How client data is protected

whether you have DPAs with AI vendors and what your WISP addresses regarding AI.

[Image: user-shield.svg]

That AI output is reviewed by a licensed professional

before delivery to the client.

[Image: triangle-exclamation.svg]

Any limitations of AI in your process

for example, that your AI research tool has a knowledge cutoff.

When IRC §7216 Consent Is Required

- IRC §7216 requires a client's explicit written consent before their tax return information is disclosed to third parties for any purpose other than tax return preparation. If an AI tool's terms of service constitute a disclosure to a third party, and if the tool uses data for any purpose beyond the session, you need written client consent before uploading their data. The consent form must meet the requirements of Treas. Reg. §301.7216-3.

Model Engagement Letter AI Provision (2026)

- Our firm uses AI-assisted tools to support research, drafting, and analysis. Every AI-assisted work product is reviewed and verified by a licensed tax professional before delivery to you.
- Client tax information processed in connection with this engagement may be handled through our secure software platforms. We maintain Data Processing Agreements with all technology vendors that prohibit use of your data for AI model training. Your data is handled in accordance with our Written Information Security Plan
- By signing this engagement letter, you authorize our use of these tools under the protections described above. If you have concerns about specific tools or processes, please contact us before signing.

Scenario — Personal Interest Conflict via AI Vendor

[Image: scene.webp]

An EA receives a referral fee from an AI tax research company whose product she uses in her practice. She recommends the same product to her clients. The referral arrangement creates a personal interest conflict under §10.29 — her financial interest in the vendor's product sales may compromise the independence of her recommendation.

Required actions: Disclose the financial relationship to any client to whom she recommends the product. Evaluate whether the conflict is waivable or whether she should stop accepting the referral fee.

Practitioner Tips

- **Proactive disclosure builds trust.** Clients who learn from their practitioner that AI is being used — with documented safeguards — generally respond positively.
- **State rules may be stricter.** Several state bar associations and CPA boards have issued AI disclosure guidance that goes further than Circular 230.
- **Your AI disclosure is also your risk management.** If a client claims harm from AI-generated advice, your documented disclosure that AI was used and reviewed by a licensed professional is a key defense.

6.1 — OPR Structure & Authority

Lesson at a Glance

[Image: Seal_of_the_United_States_Department_of_Justice.svg]

The Office of Professional Responsibility is the sole enforcement body for Circular 230. Understanding how OPR is organized, what powers it holds, and what its enforcement data shows is the foundation for this module — and for building a practice that never attracts OPR's attention.

What you Learning Objectives

Core competencies covered in this lesson

- Describe OPR's organizational structure and placement within the IRS.
- Identify the full range of sanctions OPR may impose under Circular 230.
- Explain the sources of OPR referrals.
- Interpret OPR enforcement data to identify the highest-risk violation categories.

OPR's Disciplinary Sanctions

Sanction	Description	Public Record?
Private reprimand [Image: file-shield.svg]	Informal written warning; no formal proceeding required	[Image: circle-xmark.svg]
Censure [Image: bullhorn.svg]	Formal public reprimand; practitioner may continue to practice	[Image: circle-check.svg]
Suspension [Image: user-slash.svg]	Temporary bar from IRS practice (specified period)	[Image: circle-check.svg]
Disbarment [Image: ban.svg]	Permanent bar; reinstatement petition available after 5 years	[Image: circle-check.svg]

Sources of OPR Referrals

[Image: file-shield.svg]

IRS examination and appeals:

Revenue agents and appeals officers observing practitioner misconduct.

IRS Criminal Investigation (CI): Referrals involving fraud facilitation and willful misconduct.

[Image: fingerprint.svg]

IRS Criminal Investigation (CI):

Referrals involving fraud facilitation and willful misconduct.

[Image: US-TreasuryInspectorGeneralForTaxAdmin-Seal.svg]

TIGTA

Treasury Inspector General oversight investigations.

[Image: bullhorn.svg]

Client complaints:

Clients who believe their practitioner violated Circular 230.

[Image: id-card-clip.svg]

Other practitioners:

Practitioners who observe misconduct during proceedings.

[Image: magnifying-glass-arrow-right.svg]

OPR self-initiated investigations

OPR monitors media reports, public filings, and state bar disciplinary actions.

FY2024 Enforcement Highlights

- ~1,200 referrals received.
- 900+ investigations opened.
- 350+ formal discipline actions — highest on record.
- Top violation categories: §10.22 incompetence, §10.27 contingent fees, §10.29 conflicts, §10.21 failure to advise, §10.51 disreputable conduct.

6.2 — Anatomy of an OPR Investigation

Lesson at a Glance

[Image: Seal_of_the_United_States_Department_of_Justice.svg]

Most practitioners who receive OPR communications have no idea what happens next. This lesson maps every stage of the OPR process — from complaint intake through final determination — and explains the practitioner's rights and options at each stage.

What you Learning Objectives

Core competencies covered in this course

- Describe each stage of an OPR investigation from intake through final determination.
- Identify the practitioner's rights at each stage of the OPR process.
- Explain when OPR may use an expedited proceeding.
- Apply Recognize the significance of the Notice of Proposed Discipline (NPD). lessons to your own practice risk assessment.

Learning Objectives

[Image: file-signature.svg]

Stage 1 — Intake and Investigation

OPR receives a referral or complaint and evaluates it. If the facts appear sufficient, OPR opens a case file. The practitioner is typically not notified at this stage. OPR investigates — gathering information from the referring party, reviewing IRS records, and potentially requesting documents. This stage can last months.

[Image: handshake.svg]

Stage 2 — Informal Conference (Optional)

OPR receives a referral or complaint and evaluates it. If the facts appear sufficient, OPR opens a case file. The practitioner is typically not notified at this stage. OPR investigates — gathering information from the referring party, reviewing IRS records, and potentially requesting documents. This stage can last months.

[Image: gavel.svg]

Stage 3 — Notice of Proposed Discipline (NPD)

OPR receives a referral or complaint and evaluates it. If the facts appear sufficient, OPR opens a case file. The practitioner is typically not notified at this stage. OPR investigates — gathering information from the referring party, reviewing IRS records, and potentially requesting documents. This stage can last months.

[Image: scale-balanced.svg]

Stage 4 — Consent or Hearing

OPR receives a referral or complaint and evaluates it. If the facts appear sufficient, OPR opens a case file. The practitioner is typically not notified at this stage. OPR investigates — gathering information from the referring party, reviewing IRS records, and potentially requesting documents. This stage can last months.

[Image: stamp.svg]

Stage 5 — Final Decision and Publication

The ALJ issues a written decision, which may be appealed to the Secretary of the Treasury. Final decisions against practitioners — name, credential, violation, sanction — are **published on the OPR website**. This publication is publicly searchable and often picked up by state licensing boards.

[Image: hourglass-clock.svg]

Expedited Proceedings (§10.82)

§10.82 authorizes OPR to expedite proceedings when a practitioner has been convicted of certain crimes (felonies involving dishonesty, breach of trust, or tax violations) or disbarred by a state bar. Expedited proceedings can result in immediate suspension while the case is pending.

6.3 — Real OPR Cases: Lessons Learned

[Image: learning.gif]

OPR publishes its discipline decisions — by name — on the IRS website. This lesson analyzes five anonymized real-pattern cases drawn from OPR's published record, identifies the specific violations in each, and extracts the compliance lesson that would have prevented each outcome.

What you Learning Objectives

Core competencies covered in this course

- Identify the specific Circular 230 violations in each case study.
- Extract the compliance lesson from each case pattern.
- Recognize how multiple violations in a single matter compound disciplinary risk.
- Apply case lessons to your own practice risk assessment.

Case 1 — Incompetence and Workload (§10.22)

[Image: scene.webp]

An EA accepted substantially more clients than she could competently serve. Over two years, she missed multiple IRS notice deadlines, failed to file extensions, and did not respond to client communications. Clients suffered assessments and penalties. OPR imposed a 12-month suspension.

Lesson: Taking on more clients than you can serve is not just a business management problem — it is a §10.22 competence violation. When your workload prevents thorough, timely work, you must refer clients rather than serve them poorly.

Case 2 — Contingent Fees on Amended Returns (§10.27)

[Image: scene.webp]

A CPA charged fees of 30% of any refund obtained on amended returns. OPR investigated after a client complaint. The CPA argued the arrangement was common practice in her market. OPR imposed censure and required reimbursement of prohibited fees. The 'common practice' defense was explicitly rejected.

Lesson: Contingent fee arrangements on amended return refund claims that do not meet the §10.27 exception are prohibited — regardless of market norms. Industry norms are not a Circular 230 defense.

Case 3 — Conflicts Without Waivers (§10.29)

[Image: scene.webp]

An EA represented both a business and its sole owner in an employment tax dispute. The interests of the business (minimizing entity liability) and the owner (minimizing personal TFRP liability) were adverse. No conflict waiver was obtained. OPR imposed a 24-month suspension.

Lesson: Representing both an entity and its owner in the same tax dispute almost always creates a §10.29 conflict. Obtain written conflict waivers — with full disclosure — before proceeding with any dual representation.

Case 4 — Unrealistic Positions in a Tax Shelter (§10.34)

[Image: scene.webp]

An attorney prepared returns for multiple clients claiming inflated charitable deductions in a conservation easement syndication scheme. When challenged, the attorney stated that clients 'wanted the deductions.' OPR imposed disbarment.

Lesson: Signing returns with positions lacking a reasonable basis — particularly in listed transaction areas — results in the most severe OPR sanctions. Client demand is never a defense.

Case 5 — Willful Blindness to Client Fraud (§10.21)

[Image: scene.webp]

A CPA prepared annual returns for a small business client for 6 years. The client's reported cash receipts were consistently and implausibly low compared to the business's size and industry norms. The CPA never asked questions. When the client was criminally charged with tax evasion, the CPA claimed ignorance. OPR imposed an 18-month suspension, finding willful blindness.

Lesson: When the facts in front of you are implausible, §10.21 requires asking questions. Deliberately not asking is willful blindness. Willful blindness is not a defense — it is itself a violation.

The Common Thread

- All five cases share a single common thread: **the practitioner prioritized the client relationship or fee revenue over independent professional judgment.** Independent professional judgment — maintained even when uncomfortable — is the only effective protection against OPR discipline.

6.4 — What To Do If OPR Contacts You

Receiving a contact from OPR is one of the most stressful events in a practitioner's career. Most practitioners who receive initial OPR contacts do not end up with formal discipline — if they respond appropriately. This lesson provides a step-by-step response protocol and identifies the specific mistakes that convert manageable situations into serious discipline.

Learning Objectives

Core competencies covered in this course

- Apply a step-by-step response protocol when contacted by OPR at any stage.
- Identify the specific mistakes that worsen OPR investigations.
- Explain when and why to engage defense counsel.
- Recognize the difference between an initial inquiry and a formal Notice of Proposed Discipline.

The Response Protocol

- **Do not panic.** A large percentage of initial OPR inquiries are closed without formal discipline once the practitioner provides a clear, documented response.
- **Do not respond immediately.** OPR letters are not typically time-sensitive at the initial inquiry stage (absent an NPD 30-day deadline). Review the letter carefully and understand exactly what is being asked.
- **Engage defense counsel.** Any contact from OPR about a potential violation warrants consultation with an attorney experienced in Circular 230 defense — even if you believe you have done nothing wrong.
- **Preserve all documents.** Do not destroy, alter, or delete any records that might be relevant. Document destruction — even of materials you routinely discard — can independently constitute a violation.

- **Do not contact the complaining party.** Contacting a client who filed a complaint can be characterized as witness intimidation or obstruction.
- **Respond timely to formal notices.** The NPD has a hard 30-day response deadline. Missing this deadline can result in the proposed discipline being imposed by default.
- **Do not volunteer information beyond what is requested.** An initial inquiry asking for specific documents does not invite a comprehensive narrative of your practice history.

Scenario — Initial Inquiry vs. NPD

[Image: Scene1-Take.webp]

An EA receives a letter stating: 'We are reviewing information relating to your practice before the IRS. Please provide a response within 30 days if you believe there is information we should consider.' This is an initial inquiry — not an NPD. The EA should consult counsel, review files on any matters that might be the subject of a complaint, and prepare a focused, documented response with counsel's guidance.

Mistakes That Make It Worse

- Responding immediately and at length without counsel.
- Contacting the client who complained.
- Destroying records that might be relevant.
- Misrepresenting facts — even minor inaccuracies in OPR responses can independently constitute violations.
- Missing the 30-day NPD response deadline.

6.5 — Reinstatement After Discipline Lesson at a Glance

Lesson at a Glance

Suspension or disbarment does not necessarily end a practitioner's career permanently. §10.81 provides a reinstatement pathway. This lesson covers eligibility, the petition process, and what OPR looks for when evaluating reinstatement — including the role of ethics CE completion.

Communication

Fees

Trust Accounts

Management

Conduct

Learning Objectives

After completing this lesson you will be able to:

- State the waiting periods for reinstatement petitions under §10.81 after suspension and disbarment.
- Describe the reinstatement petition process and required documentation.
- Identify the factors OPR considers in evaluating a reinstatement petition.
- Explain why ethics CE completion is explicitly favorable evidence in reinstatement proceedings.

Waiting Periods

Discipline Type	Waiting Period Before Petition	Reinstatement Automatic?
Suspension	After the suspension period expires	No — petition required
Disbarment	5 years from date of disbarment	No — petition required

What OPR Considers in Reinstatement Petitions

What OPR Considers in Reinstatement Petitions

- **Absence of recurrence risk:** Evidence the violation will not recur — changes in practice structure or oversight that address the original risk factors.
- **CE completion:** Has the practitioner remained current on CE? **Ethics CE is explicitly favorable evidence** — completing this course demonstrates awareness of Circular 230 obligations and commitment to compliance.
- **Professional development:** Additional training, supervision, or mentoring relevant to the original violation.
- **Restitution:** If the original violation caused client financial harm, has the practitioner made restitution?

Practitioner Tips

- **If under suspension: do not practice before the IRS in any capacity.** Even minor IRS practice while suspended is an expedited disbarment risk.
- **Begin building your reinstatement record the day your discipline begins.** CE completion, practice reform documentation, and professional references take time to develop.

- **Engage experienced Circular 230 counsel for your reinstatement petition.** A well-prepared petition significantly improves prospects.

6.6 — Proactive Compliance: Staying Off OPR's Radar

Communication

Fees

Trust Accounts

Management

Conduct

Learning Objectives

After completing this lesson you will be able to:

- Design a proactive compliance system addressing the five most common OPR violation categories.
- Provide specific protective action recommendations to affected clients, including IP PIN enrollment.
- Build a complete incident file with all required documentation components.
- Conduct a structured post-incident review and use its findings to update your WISP.

The Five-Category Compliance System

1

Competence (§10.22)

- Maintain a current CE tracker — never scramble to complete CE in the final weeks of an enrollment cycle.
- Before accepting complex or unfamiliar matters, document your analysis of whether you are competent to handle them.
- Review AI verification protocols annually as tools evolve.

2

Fee Compliance (§10.27)

- Review all fee arrangements annually for any contingent fee structure.
- Ensure your engagement letter template does not contain language that could be read as a guarantee of outcome.

3

Conflicts (§10.29)

- Implement a conflicts check at the start of every new matter — not just new clients. Log the check in the file.
- Review existing client relationships annually for conflicts that may have developed.
- Update and retain all conflict waiver documentation for 3 years after the matter closes.

4

Client Noncompliance (§10.21)

- Establish a clear internal protocol for when a client discloses or you discover noncompliance: document the discovery, advise the client in writing, note the response, document your analysis of whether withdrawal is required.
- Train staff that §10.21 issues must be escalated to a licensed practitioner immediately.

5

Data Security / AI (§10.20)

- Maintain and annually update your WISP.
- Review all AI tools in use annually — confirm DPAs are in place and data terms have not changed.
- Conduct an annual team training on client data handling and AI tool use.

Annual Compliance Checklist

- CE tracker reviewed — all requirements on pace
- PTIN renewed
- Engagement letter template reviewed and updated (including AI provision)
- Fee arrangements reviewed — no prohibited contingent fees
- Conflicts check system documented and functioning
- WISP reviewed and updated — AI tools and new staff addressed
- DPAs confirmed for all AI and tech vendors
- §10.21 protocol documented and staff trained
- §10.36 supervisory compliance procedures reviewed (multi-practitioner firms)

If You Make a Mistake

[Image: oops_.svg]

When a practitioner discovers a Circular 230 violation, OPR treats **self-reporting, prompt correction, and documented remediation** as significant mitigating factors — factors that can reduce a potential suspension to a censure, or a censure to a private reprimand. Consult experienced Circular 230 counsel before self-reporting.

Final Lesson – Course Feedback & Survey

Course Feedback

Share Your Experience

Your insights help us continuously improve. Please take a brief moment to share your feedback about the cybersecurity training module below.