



# Perspectives April 2025



## PROPOSED REGULATION CHANGES TO CIRCULAR 230

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The Treasury Department and the Internal Revenue Service (“IRS”) issued proposed regulations that amend parts of Circular 230. Certain proposed regulations apply to appraisers of real property, personal property, and businesses. The proposed regulations describe the appraisal standards that should be followed by appraisers when preparing appraisals that are submitted in an administrative proceeding before the IRS. The proposed regulations also discuss how appraisers who act willfully, recklessly, or through gross incompetence may be disqualified from presenting evidence or testimony in an administrative proceeding before the Treasury Department or the IRS. Appraisers who practice before the IRS should familiarize themselves with the proposed regulations.

### Introduction

On December 20, 2024, the Treasury Department and the Internal Revenue Service (“IRS”) issued REG-116610-20, which included proposed regulations that would amend the rules for certain tax professionals who practice before the IRS.<sup>1</sup> The rules are contained in Treasury Department Circular 230.

The IRS Office of Professional Responsibility (“OPR”) addresses matters related to practitioner conduct. The OPR also has responsibility for practitioner discipline, including disciplinary proceedings and sanctions. The proposed regulations, if finalized, would amend Circular 230 to account for changes in the law and changes that have occurred in tax practice over the years.

The proposed regulations include several proposed changes to certain parts of Circular 230. These changes relate to tax return preparers and the payment of contingent fees. The proposed regulations also would revise or eliminate other provisions that the Treasury and the IRS determined are out of date.

The proposed regulations incorporate new provisions that are meant to better align Circular 230 with the current practice environment, such as requiring that tax practitioners maintain technological competency as part of their practice before the IRS.

Lastly, the proposed regulations provide rules related to appraisers, including the standards for disqualification for appraisers who practice before the IRS.



## Overview of the Proposed Regulations

The proposed regulations would amend the regulations under 31 U.S. Code 330 relating to practice before the IRS, which are codified at 31 Code of Federal Regulations (“CFR”) part 10 and reprinted as Treasury Department Circular No. 230.

The proposed regulations eliminate provisions related to registered tax return preparers, classify the use of certain contingent fee arrangements by practitioners as disreputable conduct, establish new standards for appraisals and the disqualification of appraisers, and update certain provisions.

The proposed regulations would affect registered tax return preparers, enrolled agents, enrolled retirement plan agents, enrolled actuaries, attorneys, accountants, and other professionals who practice before the IRS. The proposed regulations would also affect appraisers who submit appraisals in an administrative proceeding before the Treasury Department or the IRS. Circular 230 affects individual practitioners and firms.

The Treasury and the IRS state that the objective of the proposed regulations is to align Circular 230 with current law and to clarify or update its standards. However, according to the Treasury and the IRS, none of the revisions are intended to impose new standards or burdens on practitioners or appraisers. The proposed regulations would either update long-standing Circular 230 standards or incorporate standards that practitioners or appraisers typically comply with outside practice before the IRS.

## Appraiser-Related Changes

The proposed regulations add a new section 10.60 and section 10.61, which are relevant to appraisers.

The proposed regulations include a section that provides definitions related to appraisers and standards for the disqualification of appraisers. The current rules reference the authority of the Treasury and the IRS to disqualify appraisers from presenting evidence or testimony in any administrative proceeding before the Treasury or the IRS. However, currently, Circular 230 does not provide a separate definition of appraisers or what constitutes an administrative proceeding for purposes of disqualification.



In contrast, the proposed regulations provide separate definitions for both appraisers and administrative proceedings and explain how they would relate to the new appraiser standards. Current regulation under section 10.60(b) provides that proceedings to disqualify appraisers can be instituted whenever a penalty has been assessed against an appraiser under the Internal Revenue Code (the “Code”) and the IRS determines that the appraiser acted willfully, recklessly, or through gross incompetence with respect to the conduct at issue.

## NONE OF THE REVISIONS ARE INTENDED TO IMPOSE NEW STANDARDS OR BURDENS ON PRACTITIONERS OR APPRAISERS.

Proposed section 10.61, under new subpart D, would require appraisals submitted in an administrative proceeding before the IRS to conform to the substance and principles of (1) the *Uniform Standards of Professional Appraisal Practice* (“USPAP”) promulgated by the Appraisal Standards Board of the Appraisal Foundation or (2) the International Valuation Standards (“IVS”) promulgated by the International Valuation Standards Council.

As a result, proposed section 10.61 would ensure that appraisals submitted in an administrative proceeding generally conform to applicable standards without requiring strict compliance with such standards. Appraisers who willfully fail to meet these standards



may be subject to disqualification under Circular 230. However, according to the proposed regulations, a failure to conform to the substance and principles of the USPAP or IVS standards that is not the result of willful, reckless, or grossly incompetent conduct is not sanctionable.

The OPR would determine whether an appraisal conforms to the substance and principles of these general appraisal guidelines during the Circular 230 investigatory and disciplinary process, prior to instituting any formal disciplinary proceeding. An opinion by a court, such as the U.S. Tax Court, finding that an appraiser failed to comply with the substance and principles of the USPAP (or otherwise violated the standards for appraisers) may be considered when making that determination.

## THE PROPOSED REGULATIONS COULD HAVE CREATED A NEW STANDARD FOR APPRAISALS SUBMITTED IN AN ADMINISTRATIVE PROCEEDING BEFORE THE IRS, BUT A NEW STANDARD WOULD HAVE BEEN MORE BURDENSOME TO APPRAISERS.

According to the proposed regulations, using the substance and principles of the USPAP or IVS appraisal standards as a basis for disqualification would enable the IRS to proactively address inadequate appraisals submitted in administrative proceedings. The USPAP and IVS provide broad standards for general appraisal practice. The USPAP and IVS appraisal standards also provide a generally accepted standard of care that is widely followed in U.S. and international valuation matters for real property, personal property, and business appraisal. As such, the proposed regulations suggest that the USPAP and IVS standards form a “floor” for appraiser competency.

The Treasury and the IRS also point out in the proposed regulations that (1) the USPAP is required for state-licensed and state-certified real property appraisers

and has been widely adopted by professional appraisal societies, (2) the IRS already recognizes the USPAP as generally accepted appraisal standards relating to charitable contribution deductions under the Code, and (3) the Tax Court also has looked to adherence to the USPAP as a measure of appraisal credibility. As a result, the Treasury and the IRS believe the proposed regulations would provide additional clarity to appraisers with respect to the standard for appraisals submitted in an IRS administrative proceeding.

Proposed section 10.61(b)(2) would also provide that appraisers who know or reasonably should know that an appraisal will be used in an administrative proceeding by taxpayers to support (1) a substantial valuation misstatement under section 6662(e), (2) a substantial estate or gift tax valuation understatement within the meaning of section 6662(g), or (3) a gross valuation misstatement pursuant to section 6662(h), would be subject to disqualification if the appraiser acts willfully, recklessly, or through gross incompetence.

Also, consistent with the current version of section 10.60(b), proposed section 10.61(c) would provide that an appraiser who has been assessed a penalty under section 6694, 6695A, 6700, or 6701 of the Code, for which it is determined that the appraiser acted willfully, recklessly, or through gross incompetence, may be disqualified for engaging in disreputable conduct. Furthermore, appraisers who have been assessed penalties because of their willful, reckless, or grossly incompetent conduct have engaged in disreputable conduct that should disqualify them from presenting evidence or testimony in an administrative proceeding before the Treasury Department or the IRS.

The proposed regulations provide that an appraiser may show adherence to the USPAP standards when issuing an appraisal, and such adherence will be considered as a defense in determining whether an appraiser acted willfully, recklessly, or through gross incompetence with respect to potential disqualification.

The Treasury and the IRS point out that the proposed regulations could have created a new standard for appraisals submitted in an administrative proceeding before the IRS, but a new standard would have been more burdensome to appraisers. Instead, the Treasury and the IRS concluded that requiring appraisals to conform in substance and principles to the USPAP or IVS standards is less costly and burdensome because



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Under the proposed regulations, the Internal Revenue Service can disqualify an appraiser if the appraiser is found to have violated standards or for disreputable conduct, including gross incompetence.

appraisers already are typically required to abide by these standards.

### **Definition of an Appraiser**

According to proposed section 10.60, the term “appraiser” means any individual who estimates the market value of any asset to support a position taken on a tax return or in an administrative proceeding. Appraisers include, but are not limited to, individuals who meet the definition of a “qualified appraiser” under section 170(f)(11)(E) of the Code. Furthermore, an administrative proceeding for purposes of the proposed subpart of the regulations includes any matter or other action before the Treasury or the IRS that involves the presentation of documents, testimony, or other evidence. Administrative proceedings include, but are not limited to, investigations, examinations, appeals, and collection actions.

### **Disqualification of an Appraiser**

According to proposed section 10.61, the Commissioner, after due notice and an opportunity for a hearing, may disqualify an appraiser for violations of any of

the standards identified in section 10.61 or for the disreputable conduct described in section 10.61. Disqualification may include (1) a finding that appraisals by the appraiser will have no probative effect in an administrative proceeding or (2) barring an appraiser from presenting evidence or testimony in any administrative proceeding before the Treasury or the IRS.

According to the proposed regulations, an appraiser’s disqualification will remain in effect until the appraiser is authorized to present evidence or testimony pursuant to the regulations. The prohibition applies to appraisals, evidence, and testimony submitted or presented by the appraiser and is not limited to a specific appraisal or client. The prohibition also applies to appraisals made before the effective date of disqualification.

Also, any appraisal made by a disqualified appraiser after the effective date of disqualification will not have probative effect in any administrative proceeding before the Treasury or the IRS. An appraisal otherwise barred from admission into evidence pursuant to section 10.61 may be admitted solely for the purpose of determining the client’s reliance in good faith on the appraisal.



## Appraisal Standards

According to proposed section 10.61, all appraisals submitted in an administrative proceeding should conform to the substance and principles of generally accepted appraisal standards evidenced by the USPAP or IVS. Furthermore, an appraiser may not prepare an appraisal where the appraiser knew or reasonably should have known that it would be submitted during an administrative proceeding and used to support (1) a substantial valuation misstatement as defined in section 6662(e) of the Code, (2) a substantial estate or gift tax valuation understatement as defined in section 6662(g), or (3) a gross valuation misstatement as defined in section 6662(h).

## Disreputable Appraiser Conduct

According to proposed section 10.61, an appraiser who has been assessed a penalty under section 6694, 6695A, 6700, or 6701 of the Code, for which it is determined that the appraiser acted willfully, recklessly, or through gross incompetence with respect to the proscribed conduct may be disqualified for engaging in disreputable conduct.

An appraiser may be disqualified under section 10.61(a) if the appraiser:

1. Willfully violates any of the appraisal standards described in section 10.61

2. Recklessly or through gross incompetence engages in a pattern of submitting appraisals that violate the appraisal standards described in section 10.61
3. Recklessly or through gross incompetence violates the appraisal standard described in section 10.61
4. Engages in disreputable conduct

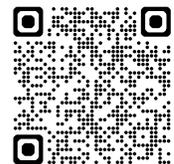
The proposed regulations also amend section 10.80. The amended section now states that whenever the Treasury determines that the appraiser acted willfully, recklessly, or through gross incompetence; or engaged in disreputable conduct, the appraiser may be subject to a proceeding for disqualification that is instituted by the filing of a complaint.

All professionals who practice before the IRS should understand the proposed regulation changes to Circular 230. Business appraisers, specifically, should acquaint themselves with the proposed changes related to the adherence to appraisal standards and the disqualification of an appraiser pursuant to disreputable conduct. Furthermore, the proposed regulations reiterate the importance of working with an appraisal professional who follows recognized valuation standards such as the USPAP or the IVS when preparing analyses that will be presented in an administrative proceeding before the Treasury or the IRS.

## About the Author



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**Reference:**

- 1 Regulations Governing Practice Before the Internal Revenue Service, 89 Fed. Reg. 116610-20 (Dec. 26, 2024).