



*The Office of Professional Responsibility Can  
Do More to Effectively Identify and Act  
Against Incompetent and Disreputable  
Tax Practitioners*

**March 2006**

**Reference Number: 2006-10-066**

This report has cleared the Treasury Inspector General for Tax Administration disclosure review process and information determined to be restricted from public release has been redacted from this document.

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TREASURY INSPECTOR GENERAL  
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

March 31, 2006

**MEMORANDUM FOR** DIRECTOR, OFFICE OF PROFESSIONAL RESPONSIBILITY

**FROM:**

*Michael R. Phillips*  
Michael R. Phillips  
Deputy Inspector General for Audit

**SUBJECT:**

Final Audit Report – The Office of Professional Responsibility Can Do More to Effectively Identify and Act Against Incompetent and Disreputable Tax Practitioners (Audit # 200410031)

This report presents the results of our review of tax practitioner disciplinary actions as administered by the Internal Revenue Service (IRS) Office of Professional Responsibility (OPR). The overall objective of this review was to determine whether the IRS has an effective process to identify and discipline tax practitioners when appropriate and whether its records are adequate to protect against improper representation.

*Synopsis*

Recently, the IRS has placed a greater emphasis on the oversight of tax practitioners. To help ensure adequate resources are devoted to provide this oversight, the IRS substantially increased the budget and staffing of the OPR. In Fiscal Year (FY) 2002, the OPR had a budget of \$1.8 million and a staff of 15. By FY 2005, it had a budget of \$5 million and a staff of 56. During this time, the number of disciplinary actions by the OPR also increased, primarily because of expedited suspensions, which are generally used by the OPR in response to action already taken by Federal or State Government agencies to convict or disbar a tax practitioner or to revoke a practitioner's license.

Notwithstanding the increases in enforcement activity, there are still a significant number of tax practitioners whose conduct appears to warrant disciplinary action by the IRS but who have not been identified by the OPR. We believe the OPR needs to improve its ability to identify such practitioners so it can take appropriate disciplinary actions. Some tax practitioners who have been convicted of tax-related crimes or whose licenses have been suspended or revoked by State authorities have not been suspended from practice before the IRS.



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In addition, the IRS does not have an adequate method to notify the OPR of tax practitioners who are not compliant with their own tax obligations. In a statistical sample of 750 of the approximately 407,000 licensed tax practitioners, there were 34 (4.5 percent) who were not compliant with their individual tax obligations. These 34 practitioners had a total of 81 tax periods with balances due of \$826,709 and 34 tax periods for which required tax returns had not been filed.<sup>1</sup> Based on our sample, we estimate there are approximately 22,500 licensed tax practitioners who are not compliant with their tax obligations but who have not been identified for referral to the OPR.

We previously reviewed the OPR in 2001 (the OPR was then known as the Office of the Director of Practice) and reported problems with the lack of information needed to assess or manage the resources used for the disciplinary proceedings program.<sup>2</sup> We reported that the OPR case management system (the Director of Practice Case Tracking System) was not used effectively to monitor program activities and resources and that case information was not always updated or accurate. During this review, we found the OPR had not implemented some of our recommendations. Consequently, the problems we reported in 2001 still exist. The OPR still does not have the information needed to effectively monitor program activities and resources, and the case management system still contains unreliable information.

OPR management advised us they do not account for the time the OPR staff spends on specific cases or types of cases. While other IRS operations capture this type of information to evaluate and manage the use of staff time, OPR management believes capturing information related to the use of OPR staff time is not productive. However, we believe that, given the scope and importance of the OPR's responsibilities, the inattention to the use of its resources is ill-advised. Furthermore, the lack of information needed for program monitoring reduces accountability. Problems obtaining information related to the OPR's use of resources limited the scope of our review.

The OPR does not have written procedures for controlling and reviewing case referrals. Although the IRS operating divisions had procedures to send referrals to the OPR, they generally do not maintain a record or list of referrals sent to the OPR. The process of evaluating whether referrals were appropriately received, recorded, and processed was complicated by the fact that the OPR destroyed some referrals in October 2004. OPR officials did not notify the Office of Audit about the destruction of its records. The Office of Audit was made aware of this matter through the Treasury Inspector General for Tax Administration (TIGTA) Office of Investigations, which was acting on an allegation from an OPR employee. The employee alleged that the OPR had acted improperly when it destroyed the records. OPR executives expressed the belief that reporting the allegation in this manner constituted sufficient notice to the Office of Audit. When asked why they did not communicate directly with the Office of Audit that the

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<sup>1</sup> A tax period is a measure of time for which a tax return is required to be filed.

<sup>2</sup> *Improved Case Monitoring and Taxpayer Awareness Activities Can Enhance the Effectiveness of the Tax Practitioner Disciplinary Proceedings Program* (Reference Number 2001-10-027, dated January 2001).



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OPR had destroyed records pertinent to this audit, OPR executives expressed the view “it was not on our radar screen.”

OPR officials advised us the OPR was at that time moving its offices and storage to a new location. Rather than move these records, an OPR official verbally approved their destruction. Although the IRS has written procedures for retention and destruction of records, these procedures were not followed by the OPR. There was no log of what records were destroyed, no log of when and how the records were destroyed, and no official written authorization. OPR officials advised us that only referrals received before 2004 were destroyed, and these were only referrals that they would not develop into cases because the individuals either were not within the jurisdiction of the OPR or the information in the referrals was insufficient to warrant action by the OPR. OPR officials acknowledged that they were required to retain these files for 10 years. However, they believe this is too long a retention period for these types of records; therefore, they intend to seek approval to reduce the retention requirement for these types of records from 10 years to 1 year. The destruction of these records also limited the scope of our review.

Written procedures to ensure consistent processing and adherence to requirements need to be developed and followed. The inconsistent manner in which the OPR handles referrals and the lack of written procedures increase the risk that the OPR is not operating effectively and is not identifying tax practitioners who are not in compliance with Department of the Treasury regulations.

### *Recommendations*

We recommended the Director, OPR, work with other law enforcement agencies, including the Department of Justice, to improve the referral process and develop a process to obtain relevant information on State disciplinary actions by coordinating with State licensing authorities such as State bar associations and boards of accountancy. The Director, OPR, should coordinate with the Director, Customer Account Services Consolidation, in the Wage and Investment Division and the Associate Chief Information Officer for the Modernization and Information Technology Services organization in developing a method of uniquely identifying representatives on the Centralized Authorization File<sup>3</sup> and use the information to notify the OPR when representatives are not compliant with their individual tax obligations. The Director, OPR, should implement the recommendations from our prior report. This should include employing the OPR case management system to provide data on the use of program resources and performing an annual workload and staffing analysis to help prioritize and allocate resources. The Director, OPR, should also evaluate the OPR record retention requirement and obtain approval for any needed changes to those requirements; develop procedures to better define what cases will be recorded

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<sup>3</sup> Taxpayers can authorize individuals to represent them on tax returns or other tax-related issues by submitting a Power of Attorney and Declaration of Representative (Form 2848) to the IRS that is recorded on the CAF.



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on the case management system and how the source, nature, and outcome of referrals will be monitored to help target outreach efforts; and establish controls and analytical procedures that will increase the reliability of the OPR case management system by periodically verifying the inventory.

### *Response*

OPR management agreed with five of our seven recommendations, agreed in principle only with one recommendation, and disagreed with one recommendation. OPR management agreed in principle that it would be desirable to collect comprehensive conviction information from law enforcement agencies for all crimes involving dishonesty and breach of trust for practitioners. However, they believe they are doing all that can reasonably be done at this time and must rely on law enforcement agencies to identify these cases. The OPR will contact each State licensing authority to establish a process for communicating relevant disciplinary information and will coordinate with other IRS and Department of the Treasury operations to develop a method to uniquely identify representatives on the IRS Centralized Authorization File to determine and notify the OPR of licensed tax practitioners that are not compliant with their individual tax obligations. Additionally, the OPR will evaluate its record retention requirements and obtain approval for any needed changes to those requirements. Furthermore, the OPR has implemented a new case management information system that includes documented procedures for recording correspondence and quality control procedures for data reliability. OPR management stated they will not implement the recommendations from the prior TIGTA report because they do not agree annual workload and staffing analysis is productive given the size and maturity of their organization. Their new case management information system does not include this capability, and they believe changes would not yield benefits commensurate with the costs for both software modifications and ongoing collection and analysis of data. Resource allocation issues will be addressed through the normal budget development process and through regular business performance reviews. Management's complete response to the draft report is included as Appendix V.

### *Office of Audit Comment*

We do not agree that OPR management is doing all it reasonably can to collect comprehensive conviction information. Working with law enforcement agencies, including the Department of Justice, to improve the referral process for practitioner convictions would not only improve the OPR's ability to identify disreputable tax practitioners, it would also help improve the efficiency of the process and reduce the number of certain types of unproductive referrals.

We are also concerned with management's decision not to implement recommendations from the prior TIGTA report to employ the OPR case management system to provide data on the use of program resources and to perform an annual workload and staffing analysis to help prioritize and allocate resources. These recommendations were previously agreed to but were not implemented



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by the Director of Practice or the OPR. OPR management did not include in their response any information to provide support for their statement that the size and maturity of the organization make it unproductive to perform annual workload and staffing analysis. We believe the problems we identified during this audit are a strong indication that such analysis is needed to effectively manage the program. For example, OPR management should be in a position to explain what resources are devoted to a major emphasis area such as tax shelter cases.

We are elevating our disagreement related to these two recommendations to the Department of the Treasury for resolution. The IRS Commissioner is responsible for submitting a written reply to the Assistant Secretary for Management and Chief Financial Officer of the Department of the Treasury within 30 calendar days of the final report issuance date. This reply should explain the IRS' reasons for the lack of agreement with Recommendations 1 and 4 in this audit report. The IRS Commissioner will provide a copy of the reply to the TIGTA. Resolution shall be made by the Department of the Treasury within a maximum of 6 months after issuance of a final TIGTA audit report, in accordance with Office of Management and Budget Circular A-50.

We have also included Office of Audit comments to specific issues in management's general discussion of the report as Appendix VI. Copies of this report are being sent to the IRS managers affected by the report recommendations. Please contact me at (202) 622-6510 if you have questions or Daniel R. Devlin, Assistant Inspector General for Audit (Headquarters Operations and Exempt Organizations Programs), at 202-622-8500.



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## *Background*

Tax practitioners play a critical role in the Federal tax system. Many taxpayers depend on tax practitioners to prepare returns, advise them on tax-related matters, and represent them before the Internal Revenue Service (IRS) to resolve tax issues. The IRS Office of Professional Responsibility (OPR) has an oversight role to ensure licensed tax practitioners (attorneys, certified public accountants (CPA), enrolled agents, enrolled actuaries, and appraisers)<sup>1</sup> who practice before the IRS adhere to standards of conduct and professionalism.<sup>2</sup> This includes the responsibility for investigating allegations of misconduct by licensed tax practitioners who represent taxpayers in matters before the IRS.

Treasury Department Circular No. 230, *Regulations Governing the Practice of Attorneys, Certified Public Accountants, Enrolled Agents, Enrolled Actuaries, and Appraisers before the Internal Revenue Service*, contains the standards of conduct and professionalism for licensed tax practitioners and authorizes the Department of the Treasury to institute disciplinary proceedings against tax practitioners whose conduct violates these regulations.<sup>3</sup> The general categories of misconduct subject to disciplinary action include:

- Misconduct while representing a taxpayer, such as giving false or misleading information to the Department of the Treasury.
- Failing to file a required Federal tax return, or evading assessment or payment of Federal tax.
- Providing either recklessly or through gross incompetence an opinion contrary to law.
- Other types of misconduct involving disreputable behavior, such as conviction of a criminal offense or revocation of a professional license by a State authority.<sup>4</sup>

In performing its oversight role, the OPR relies heavily on referrals involving tax practitioner misconduct from several sources including IRS employees, taxpayers, tax practitioners, law enforcement agencies, and State licensing authorities.<sup>5</sup> Depending on information provided and the results of the OPR investigation, the OPR can apply disciplinary actions including a private

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<sup>1</sup> This report does not address enrolled actuaries or appraisers because the total numbers account for less than 1 percent of representatives practicing before the IRS.

<sup>2</sup> The OPR was established in January 2003 to replace what was formerly the Office of the Director of Practice.

<sup>3</sup> Title 31 Code of Federal Regulations, Subtitle A, Part 10 (June 20, 2005, revision).

<sup>4</sup> This includes any United States territory, possession, commonwealth, and the District of Columbia.

<sup>5</sup> A referral can be sent to the OPR using a Report of Suspected Practitioner Misconduct (Form 8484) or a written statement. In addition, the IRS public web site (IRS.gov) has a link for tax professionals and taxpayers to submit referrals.





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reprimand, censure (public reprimand), suspension, or disbarment. A tax practitioner may consent to the proposed disciplinary action, or the case can be sent for an administrative hearing.

When the OPR takes a disciplinary action against a tax practitioner, it maintains the action on its case management system (the Director of Practice Case Tracking System). The OPR also records the information on its Intranet web site and informs the public through Internal Revenue Bulletins. If the disciplinary action involves an enrolled agent, the OPR will also update its enrolled agent database.<sup>6</sup> Furthermore, if the disciplinary action suspends or revokes the practitioner's eligibility to practice before the IRS, the OPR will notify the appropriate IRS unit to update the Centralized Authorization File (CAF).<sup>7</sup> The CAF is the computer system used by IRS employees to determine the scope of authority granted by the taxpayers, direct copies of tax notices and correspondence to taxpayer representatives, and obtain contact information to communicate with taxpayer representatives. There are approximately 1.4 million representatives on the CAF with an estimated 407,000 of these listed as licensed tax practitioners.

Recently, the IRS has placed a greater emphasis on the oversight of tax practitioners. In its Fiscal Year (FY) 2005-2009 Strategic Plan, the IRS included a number of strategies to ensure attorneys, accountants, and other tax practitioners adhere to professional standards and follow the law. These strategies include outreach and education to tax practitioners and IRS operating divisions related to the standards of conduct, the IRS role in enforcing the standards, and the use of disciplinary actions when appropriate. One area in which the IRS has focused its enforcement is on tax practitioners who promote abusive tax avoidance transactions such as abusive tax shelters. This emphasis is in response to a growing problem with the promotion and use of abusive tax shelters. A number of IRS divisions and functions have taken a coordinated approach in addressing this problem. Furthermore, Treasury Department Circular No. 230 was recently revised to impose stricter standards on individuals and firms that provide advice related to transactions intended to shelter income from taxation. The new rules strengthen the standards to help ensure practitioners analyze and address carefully whether a particular transaction has a legitimate business reason and is not solely for tax benefits. In addition, monetary penalties can be imposed on promoters of abusive tax shelters in addition to any suspension, disbarment, or censure of a practitioner.<sup>8</sup>

This review of the OPR's tax practitioner disciplinary actions was performed at the IRS National Headquarters in Washington, D.C., in the OPR during the period October 2004 through December 2005. There were certain impairments to the scope of our audit work. The OPR destroyed some case referral records received before October 2004. OPR management did not

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<sup>6</sup> The Enrolled Practitioner Program System is used to record and monitor individuals granted enrolled agent status by the IRS.

<sup>7</sup> Taxpayers can authorize individuals to represent them on tax returns or other tax-related issues by submitting a Power of Attorney and Declaration of Representative (Form 2848) to the IRS that is recorded on the CAF.

<sup>8</sup> American Jobs Creation Act of 2004, Pub. L. No. 108-357, 118 Stat. 1418 (2004) and Treasury Department Circular No. 230 (new regulations in effect June 20, 2005).



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disclose the destruction of these records to us during the audit. In addition, certain information needed to evaluate the OPR's processes and use of resources was not available. These matters are discussed in further detail in the Results of Review section. With the exception of these impairments, this audit was conducted in accordance with *Government Auditing Standards*. Detailed information on our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.



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*Results of Review*

**Many Tax Practitioners Whose Conduct Appears to Warrant Disciplinary Action Are Still Able to Practice Before the Internal Revenue Service**

To enforce the rules and regulations governing practice before the IRS, the OPR must be able to identify practitioners who are not in compliance with those rules and regulations so appropriate disciplinary action can be taken. To help ensure the OPR has the resources needed for this effort, the IRS substantially increased the budget and staffing of the OPR. In FY 2002, the OPR had a budget of \$1.8 million and a staff of 15. By FY 2005, it had a budget of \$5 million and a staff of 56. During this time, the number of disciplinary actions taken by the OPR also increased, primarily because of expedited suspensions, which are generally used by the OPR in response to action already taken by Federal or State Government agencies to convict or disbar a practitioner or to revoke a practitioner's license. Table 1 shows enforcement activity by type of disciplinary action for FYs 2002-2005.

**Table 1: Enforcement Activity by Type of Disciplinary Action<sup>9</sup>**

Type of Disciplinary Action	Number of Cases			
	FY 2002	FY 2003	FY 2004	FY 2005
Disbarment	11	6	2	0
Disbarment by Consent	0	0	1	1
Expedited Suspension	7	47	48	223
Suspension After Hearing	2	2	6	11
Suspension by Consent	26	48	60	37
Censure	0	9	16	11
Reprimand	24	21	31	37
Resignation of Enrolled Agents	3	2	4	0
<b>TOTALS</b>	<b>73</b>	<b>135</b>	<b>168</b>	<b>320</b>

Source: *The OPR's Business Performance Review dated October 25, 2005.*

Notwithstanding the increases in enforcement activity, there are still a significant number of tax practitioners whose conduct appears to warrant disciplinary action by the IRS but who have not been identified by the OPR. Based on our review, we believe the OPR needs to improve its ability to identify such practitioners so it can take appropriate disciplinary actions.

<sup>9</sup> The OPR disciplinary actions are limited to the regulation of the practitioner's eligibility to represent taxpayers before the IRS.



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**Some practitioners who have been convicted of tax-related crimes have not been restricted from practicing before the IRS**

Treasury Department Circular No. 230 states that the OPR may expedite suspension of any practitioner who, within 5 years, has been convicted of any tax-related crime, any crime involving dishonesty or breach of trust, or any felony for which the conduct involved renders the practitioner unfit to practice before the IRS. A practitioner must be notified by the OPR and provided 30 days to request a conference with the OPR to address the merits of the complaint. The practitioner may be suspended either immediately following the expiration of the 30-day period or, if a conference is requested, immediately following the conference, depending on the resolution of the conference.<sup>10</sup>

Several sources assist the OPR in identifying practitioner convictions. The primary sources of tax-related convictions are the functions that investigate or prosecute the cases, such as the IRS Criminal Investigation Division (CID), the Treasury Inspector General for Tax Administration (TIGTA), and the Department of Justice Tax Division. However, there have been only a limited number of referrals from these sources. During FYs 2002-2004, the OPR recorded on its case management system only 52 referrals identifying the conviction of tax practitioners under the OPR's jurisdiction from these primary sources.

To evaluate the scope of the number of tax practitioner convictions that could be identified from these sources, we reviewed approximately 1,200 Department of Justice Tax Division, IRS CID, and TIGTA Office of Investigations press releases and/or case summaries for tax-related crimes during Calendar Years 2002-2004. From this review, we identified 223 representatives who were convicted, or were served with an injunction, and were also listed on the CAF. For 24 representatives, the IRS had taken the necessary actions to record on the CAF that these representatives may not represent taxpayers before the IRS. However, the remaining 199 (89 percent) representatives were still listed on the CAF as eligible to practice before the IRS. Of these 199 representatives/designees, 55 are within the jurisdiction of the OPR because they were attorneys, CPAs, or enrolled agents. The Small Business/Self-Employed (SB/SE) Division and the Wage and Investment Division have jurisdiction for the remaining 144 representatives.

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<sup>10</sup> Treasury Department Circular No. 230 § 10.82 (Rev. 6-2005) specifies the process for expedited suspensions.



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Table 2 shows the results of our review of the 55 licensed practitioners within the jurisdiction of the OPR. We also compared these 55 individuals to the OPR case management system to determine if the OPR had taken any disciplinary action related to these individuals. The OPR had not identified 39 individuals. For the remaining 16 individuals, the OPR had taken disciplinary actions, but these actions had not been updated to the CAF.

**Table 2: Convicted Individuals Still Listed on the CAF**

Type of Tax Practitioner	Convicted Individuals	Taxpayers Represented on the CAF
Attorney	22	374
CPA	27	611
Enrolled Agent	6	451
<b>Totals</b>	<b>55</b>	<b>1,436</b>

*Source: The TIGTA's review of CAF information and reported convictions for Calendar Years 2002-2004.*

Based on a recommendation in a prior TIGTA audit report,<sup>11</sup> the IRS is improving its processes to ensure actions taken by the OPR are updated to the CAF. However, further actions are needed to ensure the OPR's processes identify practitioners convicted of the types of crimes that warrant IRS action, to prevent these practitioners from representing taxpayers before the IRS. It is important that this information is received and acted on timely. The tax practitioners we identified had been convicted of serious offenses such as income tax evasion, conspiracy to obstruct or defraud the IRS, or preparation of fraudulent tax returns. Delays in identifying these tax practitioners could have serious adverse consequences to both taxpayers and the IRS.

Furthermore, the information we reviewed constitutes only a portion of the total number of individuals with criminal convictions who may be representing taxpayers. Our scope included tax crimes reported by 3 law enforcement agencies during a 3-year period. We did not review State convictions or other types of Federal Government convictions, such as those involving dishonesty, breach of trust, or a felony, that could warrant sanction by the OPR.

During our review, the OPR initiated action to obtain from the IRS CID a complete list of licensed tax practitioners who had been investigated and sentenced for tax-related crimes.<sup>12</sup> The OPR informed us it is reviewing the last 3 years' worth of prosecution data and is working with the CID to gather documentation necessary to support expedited proceedings against these practitioners. This should be a significant benefit to identify tax-related convictions. In addition, to increase awareness of the types of cases that should be referred, OPR officials have given presentations at continuing professional education sessions and performed other outreach activities with IRS and TIGTA offices and officials.

<sup>11</sup> *Information on the Centralized Authorization File Is Often Not Accurate or Complete* (Reference Number 2004-10-148, dated August 2004).

<sup>12</sup> The complete CID list was taken from the IRS Criminal Investigation Management Information System and included prosecution data for accountants and attorneys that were sentenced between 1978 and 2005.



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Although the OPR has solicited the help of Federal Government authorities such as the Department of Justice Tax Division and the United States District Courts to provide information related to criminal convictions, there are impediments to obtaining this information. The Federal Judiciary System includes 94 separate United States District Courts and 12 Courts of Appeals. Additionally, the Department of Justice press releases do not always identify whether an individual convicted of a tax crime is a licensed tax practitioner. Matching names and locations to determine whether these convictions relate to a licensed tax practitioner is not always feasible because matching can be accomplished only through a manual research process. While information related to convictions is available on some law enforcement databases, there are restrictions on the use of these databases. To obtain such information, further coordination would be needed with other law enforcement sources, including the Department of Justice, to obtain conviction information in a format that allows the OPR to identify whether the information relates to tax practitioners within its jurisdiction.

**Attorneys and CPAs with revoked or suspended licenses are still listed on the CAF as eligible to practice before the IRS**

State authorities such as State bar associations or boards of accountancy may suspend or revoke the license of an attorney or CPA who is not in compliance with State laws or regulations. In these instances, the Director, OPR, may also suspend the practitioner from practice before the IRS in accordance with Treasury Department Circular No. 230.

To evaluate whether State disciplinary actions are acted on by the OPR, we judgmentally selected five States to review the disciplinary actions by the bar associations and boards of accountancy.<sup>13</sup> Using the States' web site listings, we identified approximately 2,100 State actions that occurred during Calendar Years 2002-2004. These State actions included revocations, disbarments, resignations, and surrendered licenses.<sup>14</sup> Of these approximately 2,100 attorneys and CPAs, 516 were still listed on the CAF as eligible to practice before the IRS. Table 3 shows the practitioners by State and the number of taxpayers represented on the CAF.

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<sup>13</sup> We selected five of the most populated States: California, Florida, New York, Pennsylvania, and Texas.

<sup>14</sup> Suspensions were not included in our review because the OPR will take disciplinary actions only for State suspensions longer than 6 months; some States did not provide time durations for suspensions.



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We compared the 516 attorneys and CPAs with the OPR case management system to determine whether the OPR had taken any disciplinary action. In 24 cases, disciplinary actions had been taken; however, the CAF had not been updated to reflect the disciplinary actions. As noted previously, the IRS is working to improve its processes to ensure actions taken by the OPR are updated to the CAF. Because our scope included only 5 States, the 492 of 516 attorneys and CPAs not listed on the OPR case management system are only a portion of tax practitioners who have been the subject of disciplinary actions by a State authority but for whom the OPR has taken no related action to evaluate whether these tax practitioners are eligible to practice before the IRS.<sup>15</sup>

**Table 3: Attorneys and CPAs With Revoked or Suspended Licenses but No Related Action Shown on the CAF**

State Bar Association or State Board of Accountancy	Attorneys or CPAs	Taxpayers Represented on the CAF
California	86	1,144
Florida	59	643
New York	82	487
Pennsylvania	35	77
Texas	254	2,867
<b>Totals</b>	<b>516</b>	<b>5,218</b>

*Source: The OPR case management system, CAF information, and State bar and accountancy boards for Calendar Years 2002-2004.*

Although OPR employees review information received from State authorities and have increased their efforts to research web sites for State disciplinary actions, there is no consistent or systematic process for the State authorities to notify the IRS when practitioners' licenses are suspended or revoked. OPR officials stated they have solicited information about licensed tax practitioners from some State authorities and national associations representing attorneys and CPAs. These efforts resulted in an increased number of expedited suspensions in FY 2005. However, the OPR has not been consistent in its efforts to communicate with the numerous State bar associations and State boards of accountancy. In 2004, the OPR did send some letters soliciting the help of the State bar associations, but none were sent to the State boards of accountancy. OPR officials were able to provide copies of some of these letters but did not retain copies of all letters or keep a list to verify which States had been contacted. In addition, the OPR did not send any solicitation letters to any State bar associations or boards of accountancy in 2005. During our review, we contacted two of the five judgmentally selected State boards of accountancy to inquire as to their willingness to provide information to the OPR. Representatives from both organizations were willing to share the State disciplinary actions by adding the OPR to their distribution lists. However, they stated that the OPR has not made such a request.

<sup>15</sup> Disciplinary actions by State authorities included disbarment, revocation, resignation, or surrender of license in lieu of disciplinary action.



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The OPR should reevaluate its limited strategy of communicating with State licensing authorities. Mass mailing of letters may not be the most effective or timely means of coordinating the referral process. Furthermore, it is inefficient to obtain this information by monitoring State web sites. Because of the number of different State authorities, many actions listed on these sites are not related to suspensions or revocations, and the availability or accessibility of the information on web sites varies by State. The OPR should develop a process with State authorities for requesting and providing information and determine the frequency and content of referral information for practitioners within the OPR's jurisdiction. Feedback from State authorities could be used to improve the process so the OPR receives timely and effective referrals.

**Some tax practitioners are not compliant with their own tax obligations**

If a tax practitioner willfully fails to file a Federal tax return or attempts to evade assessment or payment of any Federal tax, the practitioner may be censured, suspended, or disbarred from practice before the IRS. The OPR relies on IRS employees and external sources to refer cases of tax practitioner misconduct related to failure to file or other tax delinquencies. The IRS does not have a systematic process to identify tax practitioners on the CAF who are not complying with their Federal tax obligations so they can be referred to the OPR for further evaluation and possible disciplinary action.

To evaluate the level of tax compliance of licensed tax practitioners and the frequency of related disciplinary actions, we obtained a computer extract of the taxpayer representatives recorded on the CAF<sup>16</sup> and selected a stratified statistical sample of 750 of the approximately 407,000 licensed tax practitioners. Overall, we identified 34 (4.5 percent) who were not compliant with their individual tax obligations. These 34 practitioners had a total of 81 tax periods with balances due of \$826,709 and 34 tax periods for which required tax returns had not been filed.<sup>17</sup> Table 4 shows the populations, sample sizes, and results for licensed tax practitioners on the CAF who were not compliant with their individual tax obligations.

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<sup>16</sup> This extract was a combination of two extracts. The extract of authorized or designated tax practitioners was as of December 13, 2004; the extract of all other representatives was as of February 22, 2005.

<sup>17</sup> A tax period is a measure of time for which a tax return is required to be filed.





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**Table 4: Tax Practitioners on the CAF Who Were Not Compliant With Their Own Tax Obligations<sup>18</sup>**

Type of Tax Practitioner	Population	Sample Size	Number and Percentage Not Compliant	Number of Unfiled Tax Returns	Number of Balance-Due Tax Periods	Total Balance-Due Amounts
Attorney	137,928	200	8 (4.0%)	3	29	\$436,873
CPA	181,237	200	15 (7.5%)	18	24	255,964
Enrolled Agent	25,610	200	4 (2.0%)	6	7	50,754
Multiple Designations <sup>19</sup>	62,397	150	7 (4.7%)	7	21	83,118
<b>Totals</b>	<b>407,172</b>	<b>750</b>	<b>34 (4.5%)</b>	<b>34</b>	<b>81</b>	<b>\$826,709</b>

Source: The TIGTA's sample of representatives on the CAF using March 2005 tax account information.

According to information on the CAF, the 34 tax practitioners represent a total of 470 taxpayers. The OPR had not identified these 34 tax practitioners. We provided this information to the OPR during our review. Subsequently, the OPR developed cases, contacted these practitioners, and when applicable, imposed sanctions ranging from reprimands to indefinite suspensions. Based on our sample, we estimate there are approximately 22,500 licensed tax practitioners who are not compliant with their tax obligations and who have not been identified for referral to the OPR.<sup>20</sup> Licensed tax practitioners that are not compliant with their own tax obligations may not be well equipped to provide tax advice and services to taxpayers. Allowing these tax practitioners to practice before the IRS could undermine the public confidence in these professionals.

Compliance operations within the IRS had initiated tax enforcement action on 24 of the 34 individuals in our sample. However, because there is no cross-reference from the CAF to a tax practitioner's Taxpayer Identification Number,<sup>21</sup> the IRS cannot systematically identify whether a delinquent taxpayer is also a licensed tax practitioner. Consequently, these types of cases are not referred to the OPR so it can evaluate whether the problem is serious enough to warrant disciplinary action. A manual process to evaluate tax practitioners' tax compliance is not feasible because there are approximately 407,000 licensed tax practitioners on the CAF. A manual research process would have to use names and addresses from the CAF to identify representatives' tax accounts before tax compliance could be checked. This would be difficult

<sup>18</sup> For this review, we considered a representative to be not in compliance with his or her tax obligations if the IRS had initiated enforcement action by issuing a Taxpayer Delinquency Account for a tax period with a balance due or a Taxpayer Delinquency Investigation for a tax period with a missing tax return or at least two tax periods missing tax returns that have expired extensions to file.

<sup>19</sup> A representative with multiple designations on the CAF but at least one designation is an attorney, a CPA, or an enrolled agent.

<sup>20</sup> Statistical information for our estimate is in Appendix IV.

<sup>21</sup> This could be the tax practitioner's Social Security Number or Employer Identification Number.



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because some names are very common; there can be minor differences with how a name is recorded on an account; and the same person can have different addresses, such as a home address on a personal tax account and a business address on a CAF account.

The IRS considered requiring licensed tax practitioners and other types of representatives to include their Social Security Numbers when submitting a Power of Attorney and Declaration of Representative (Form 2848) to represent taxpayers before the IRS. The Social Security Numbers on these authorization forms were to be added to the CAF to help confirm the identity of representatives. However, because of the privacy concerns of tax practitioners, the IRS did not establish this requirement.

We discussed with OPR officials the possibility of using an alternative method that does not use Social Security Numbers on the Form 2848 but can still uniquely identify representatives on the CAF, including the possibility of expanding the use of the Preparer Tax Identification Number, which is used to uniquely identify tax return preparers. Some representatives who also prepare tax returns may already have Preparer Tax Identification Numbers. Use of a unique identifier on the CAF would help the OPR identify tax practitioners who are not compliant with their tax obligations and help eliminate duplicate practitioner records on the CAF. OPR officials stated they would discuss the feasibility of implementing alternative methods with the Wage and Investment Division, which maintains the CAF database, and with the Modernization and Information Technology Services organization, which is responsible for programming changes.

In addition, the OPR has been working with the IRS Office of Performance Evaluation and Risk Analysis on a study involving the tax compliance of licensed tax practitioners who represent clients before the IRS. The results of this study were similar to our results. The OPR is using the information to develop educational messages and other outreach initiatives designed to improve practitioner tax compliance and is reviewing the tax noncompliance of practitioners identified during that study.

## ***Recommendations***

The Director, OPR, should:

**Recommendation 1:** Work with other law enforcement agencies, including the Department of Justice, to improve the referral process by obtaining timely, relevant conviction information for tax crimes and State or Federal convictions involving dishonesty and breach of trust in a format that is useful to the OPR.

**Management's Response:** Management agreed with this recommendation in principle only, stating that it would be desirable to collect comprehensive conviction information from law enforcement agencies for all crimes involving dishonesty and breach of trust for practitioners. However, they believe they are doing all that can



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reasonably be done at this time and must rely on law enforcement agencies to identify these cases.

**Office of Audit Comment:** We do not agree that OPR management is doing all it reasonably can to collect comprehensive conviction information. Working with law enforcement agencies, including the Department of Justice, to improve the referral process for practitioner convictions would not only improve the OPR's ability to identify disreputable tax practitioners, it would also help improve the efficiency of the process and reduce the number of certain types of unproductive referrals.

**Recommendation 2:** Develop a process to obtain relevant information on State disciplinary actions by coordinating with State licensing authorities such as State bar associations and boards of accountancy. This would include establishing communication contacts and methods, discussing best practices for requesting and providing information, and determining the frequency and content of referral information for tax practitioners within the OPR's jurisdiction.

**Management's Response:** Management agreed with the recommendation and will contact each State licensing authority to establish a process for communicating relevant disciplinary information.

**Recommendation 3:** Coordinate with the Wage and Investment Division and the Modernization and Information Technology Services organization in developing a method of uniquely identifying representatives on the CAF that does not require representatives to use Social Security Numbers on Form 2848. If such a method can be developed, use the information to notify the OPR when representatives are not compliant with their individual tax obligations.

**Management's Response:** Management agreed with the recommendation. The OPR will coordinate with other IRS and Department of the Treasury operations to develop a method to uniquely identify representatives on the IRS CAF to help determine and notify the OPR of licensed tax practitioners that are not compliant with their individual tax obligations.

### ***The Office of Professional Responsibility Needs to Improve Its Management of Staff and Cases***

We previously reviewed the OPR in 2001 (the OPR was then known as the Office of the Director of Practice) and reported problems with the lack of information needed to assess or manage the resources used for the disciplinary proceedings program.<sup>22</sup> We reported that the OPR case management system was not used effectively to monitor program activities and resources and

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<sup>22</sup> *Improved Case Monitoring and Taxpayer Awareness Activities Can Enhance the Effectiveness of the Tax Practitioner Disciplinary Proceedings Program* (Reference Number 2001-10-027, dated January 2001).



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that case information was not always updated or accurate.<sup>23</sup> The report contained the following recommendations to OPR management:

- Upgrade the automated case management system to provide more timely and accurate data on case activities and the use of program resources.
- Conduct an annual workload and staffing analysis to identify the staffing necessary to take prompt action on allegations of tax practitioner violations.

However, during this review, we found the OPR had not implemented some corrective actions needed to address these recommendations. Consequently, the problems we reported in 2001 still exist. The OPR still does not have the information needed to effectively monitor program activities and resources, and the case management system still contains unreliable information. In addition, it is not possible to reconcile the information on the system with source documents because most IRS operating divisions do not know what referrals were sent to the OPR, the OPR does not account for all referrals received, the OPR did not maintain source documentation for some case referrals, and the OPR does not have written procedures to ensure consistent processing of referrals. To further complicate matters, some referrals were inappropriately destroyed. As such, the OPR's ability to perform analyses to identify potential areas for emphasis or improvement is very limited.

**The OPR does not have the information needed to evaluate its use of resources**

OPR management advised us they do not account for the time the OPR staff spends on specific cases or types of cases. While other IRS operations capture this type of information to evaluate and manage the use of staff time, OPR management believes capturing information related to the use of OPR staff time is not productive. However, we believe that, given the scope and importance of the OPR's responsibilities, the inattention to the use of its resources is ill-advised. Furthermore, the lack of information needed for program monitoring reduces accountability.

Problems obtaining information related to the OPR's use of resources limited the scope of our review. For example, at the beginning of our audit, OPR management asked that we consider the fact that they are giving higher priority and devoting more resources to tax practitioners who promote tax shelters. However, during our audit, when we asked for information about the resources devoted to these types of cases, OPR management officials advised us they could not provide us this information. OPR management stated they do not track the use of staff time and did not know what time was needed to work the tax shelter-related cases. As such, we were able to obtain only general information about the OPR inventory and method of prioritizing the cases. According to the IRS functions responsible for tax shelter cases, approximately 80 cases

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<sup>23</sup> The OPR case management system is called the Director of Practice Case Tracking System and is used to record and monitor enforcement activity.



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involving licensed tax practitioners were referred to the OPR in 2005.<sup>24</sup> The OPR informed us it has approximately 36 tax shelter cases in development. OPR management advised us that their decisions on which cases to assign to OPR staff depend on whether the OPR can take action based on Treasury Department Circular No. 230 guidelines and whether the case will serve as a significant deterrent to the licensed tax practitioner community.

**Guidance is not sufficient to ensure referrals are consistently processed and requirements are followed**

When an IRS operating division, taxpayer, or practitioner sends a referral to the OPR, the OPR sends an acknowledgement that the referral has been received. However, the OPR does not have written procedures for how it controls and reviews referrals. OPR staff advised us that, because the program was small with minimal staff turnover, the process was verbally communicated among staff members. A draft desk guide for screening, controlling, and reviewing referrals was developed but never formalized or implemented.

We contacted several IRS operating divisions to evaluate their procedures and processes to ensure appropriate cases are referred to the OPR. Although the IRS operating divisions had procedures to send referrals to the OPR, they generally do not maintain a record or list of referrals sent to the OPR. The only record of referral is kept in each individual case file maintained by the IRS operating division. The TIGTA Office of Investigations also sends referrals to the OPR and does maintain a list of those referrals. Based on the information recorded by the TIGTA Office of Investigations, it does not appear the OPR has an adequate process for controlling referrals. We checked the case management system and the OPR's other (manual) tracking system to determine if the OPR had received and recorded the referrals.<sup>25</sup> Of the 123 TIGTA referrals sent to the OPR since FY 2002, 31 referrals (25 percent) were not recorded on either the case management or manual tracking systems.

We contacted several State authorities that send lists of State actions, and they advised us that they do not receive acknowledgement letters from the OPR. According to the OPR, when referrals from State authorities are received, an OPR employee will review each State action to ensure the person can be uniquely identified and is active on the CAF. If so, the OPR will record the case on the case management system and typically take action to expedite a suspension of the tax practitioner. All other referrals are not recorded and are stored in a paper file.

The process of evaluating whether referrals were appropriately received, recorded, and processed was complicated by the fact that the OPR destroyed some referrals in October 2004. OPR officials did not notify the Office of Audit about the destruction of its records. The Office of

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<sup>24</sup> The IRS Large and Mid-Size Business Division Office of Tax Shelter Analysis and the SB/SE Division Lead Development Center.

<sup>25</sup> In the past (prior to FY 2005), the OPR used a manual Mail Tracking System to record the referrals received. Those referrals that were not within the OPR's jurisdiction were forwarded to the SB/SE Division for consideration.



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Audit was made aware of this matter through the TIGTA Office of Investigations, which was acting on an allegation from an OPR employee. The employee alleged that the OPR had acted improperly when it destroyed the records. OPR executives expressed the belief that reporting the allegation in this manner constituted sufficient notice to the Office of Audit. When asked why they did not communicate directly with the Office of Audit that the OPR had destroyed records pertinent to this audit, OPR executives expressed the view “it was not on our radar screen.”

OPR officials advised us the OPR was at that time moving its offices and storage to a new location. Rather than move these records, an OPR official verbally approved their destruction. Although the IRS has written procedures for records retention and destruction of records, these procedures were not followed by the OPR. There was no log of what records were destroyed, no log of when and how the records were destroyed, and no official written authorization. OPR officials advised us that only referrals received before 2004 were destroyed, and these were only referrals that they would not develop into cases because the individuals either were not within the jurisdiction of the OPR or the information in the referrals was insufficient to warrant action by the OPR. OPR officials acknowledged that they were required to retain these files for 10 years. However, they believe this is too long a retention period for these types of records; therefore, they intend to seek approval to reduce the retention requirement for these types of records from 10 years to 1 year.

Written procedures to ensure consistent processing and adherence to requirements need to be developed and followed. The inconsistent manner in which the OPR handles referrals and the lack of written procedures increase the risk that the OPR is not operating effectively and is not identifying tax practitioners who are not in compliance with Department of the Treasury regulations.

**Information is not properly recorded on the case management system**

According to OPR officials, prior to January 10, 2005, certain types of case referrals were not tracked on the case management system. Referrals that were not tracked included those involving nonlicensed practitioners, individuals not listed on the CAF as practicing before the IRS, referrals that did not have sufficient information, and those for matters that were not within the scope of the OPR’s authority.

OPR officials stated that, since January 10, 2005, they are recording all referrals, including those that are not within their jurisdiction or that lack sufficient information. Nonetheless, we found that many of these types of referrals are not being recorded. We reviewed a random sample of 73 of these types of referrals received as of January 10, 2005, which was the date OPR officials indicated they began recording all such referrals; however, only 1 of 73 referrals was recorded on the OPR case management system.

There were also problems with the accuracy of information recorded on the OPR case management system. For example, as of June 15, 2005, the system indicated there were 64 open cases that had not yet been assigned to an OPR employee. However, of these 64 cases, 19 were



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input errors (according to the OPR, these were not open cases awaiting assignment); 6 cases were duplicate records on the system; 2 cases had been closed but not updated on the system; 1 case had the wrong name; and 7 cases did not have case files or sufficient information on the system with which to determine the current assignment, status, or conclusion. We also reviewed the entire case inventories of three OPR employees to determine if their cases were accounted for and accurately reflected on the OPR case management system. One of these employees had 10 cases that had been closed or reassigned but had not been updated on the system. In addition, we found 47 cases, which had previously been assigned to employees who had since left the OPR, had not been reassigned as of June 15, 2005.<sup>26</sup>

Furthermore, source documents were not retained for some cases recorded on the OPR case management system, and some cases with source documents were not recorded on the system. In a random sample of 105 records on the system, there were 15 (14 percent) without supporting documents on file. In addition, in a random sample of 69 closed case files in the OPR office, there were 4 cases (5.8 percent) without records on the system.<sup>27</sup>

The accuracy and consistency of the information on the OPR case management system is important, not only to ensure cases are properly controlled and processed but also because it is the system that can be used as a tool to identify trends in the volume of cases received and worked as well as the average number of days needed to complete casework.

The OPR is replacing the current case management system with a new computer system. It expects the new system to interact with other IRS computer systems and provide improved case management information. However, this may not correct some of the problems we identified because these problems were not entirely caused by the system used but rather by record keeping policies and practices. Because of the varied sources and forms of referrals, it may not be feasible to record all these referrals as potential cases on the OPR case management system. For example, other government entities, such as State licensing authorities, may send lists of potential cases, but many of these cases may not be appropriate for action by the OPR. It would not be practical or advisable to record all as separate cases on the system until the OPR has performed preliminary screening to determine whether the names provided were individuals who practice before the IRS and whether the nature of the information appeared to warrant disciplinary action by the OPR.

Nonetheless, it would be advisable for the OPR to monitor the source, quantity, quality, frequency, and outcome of referrals to identify potential areas for emphasis or improvement with its outreach efforts and enable OPR officials to work with the sources of information to improve the reliability and relevance of the information provided. Improvements in these areas would

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<sup>26</sup> One employee left the OPR in April 2005 and the other in May 2005.

<sup>27</sup> These cases could have been closed any time in the past 10 years. We selected a random case and then selected every 50<sup>th</sup> case until all cabinets had been sampled. Using this method, we estimate there are approximately 3,450 closed cases ( $69 * 50 = 3,450$ ) in the OPR office.



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allow the OPR to more efficiently and effectively use its resources by reducing the time needed to screen referrals. As such, the OPR's procedures need to better define what cases will be recorded on the case management system and how the source, nature, and outcome of all referrals will be monitored.

## ***Recommendations***

The Director, OPR, should:

**Recommendation 4:** Implement the recommendations from our prior report. This should include employing the OPR case management system to provide data on the use of program resources and performing an annual workload and staffing analysis to help prioritize and allocate resources.

**Management's Response:** Management disagreed with this recommendation because they do not agree annual workload and staffing analysis is productive given the size and maturity of their organization. In addition, their new case management information system does not include this capability, and the OPR believes changes would not yield benefits commensurate with the substantial software modifications and ongoing collection and analysis of data. Resource allocation issues will be addressed through the normal budget development process and through regular business performance reviews.

**Office of Audit Comment:** We are concerned with management's decision not to implement recommendations from the prior TIGTA report to employ the OPR case management system to provide data on the use of program resources and to perform an annual workload and staffing analysis to help prioritize and allocate resources. These recommendations were previously agreed to but were not implemented by the Director of Practice or the OPR. OPR management did not include in their response any information to provide support for their statement that the size and maturity of the organization make it unproductive to perform annual workload and staffing analysis. We believe the problems we identified during this audit are a strong indication that such analysis is needed to effectively manage the program. For example, OPR management should be in a position to explain what resources are devoted to a major emphasis area such as tax shelter cases.

**Recommendation 5:** Evaluate the OPR record retention requirements and obtain approval for any needed changes to those requirements.

**Management's Response:** Management agreed with the recommendation and will evaluate their record retention requirements and obtain approval for any needed changes to those requirements.





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**Recommendation 6:** Develop procedures to better define which cases will be recorded on the OPR case management system and how the source, nature, and outcome of referrals will be monitored to help target outreach efforts.

**Management's Response:** Management agreed with the recommendation. The implementation of their new case management system includes the documentation of procedures for recording correspondence.

**Recommendation 7:** Establish controls and analytical procedures that will increase the reliability of the OPR case management system by periodically verifying the inventory.

**Management's Response:** Management agreed with the recommendation. The implementation of their new case management system includes quality control procedures to ensure data reliability.



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## Appendix I

### *Detailed Objective, Scope, and Methodology*

The overall objective of this review was to determine whether the Internal Revenue Service (IRS) has an effective process to identify and discipline tax practitioners when appropriate and whether its records are adequate to protect against improper representation. To accomplish this objective, we:

- I. Interviewed Office of Professional Responsibility (OPR) management and employees and reviewed Department of the Treasury regulations (Treasury Department Circular No. 230<sup>1</sup>) to evaluate the procedures and guidance for the OPR regarding the identification, referral, discipline, and monitoring of tax practitioners/preparers.
- II. Determined the OPR process to control and work referrals, apply disciplinary actions, and monitor abusive tax practitioners.
  - A. Discussed with OPR management their workload, strategic priorities, and methodology for directing resources and interviewed employees within the OPR and other IRS operating divisions to determine how tax practitioner complaints are referred and processed.
  - B. Evaluated whether the OPR retained appropriate case referral documentation and discussed any missing documentation with OPR officials.
  - C. Obtained a computer backup of the OPR case management system as of June 15, 2005, and conducted direct testing of the data to validate their accuracy and completeness.
    1. Using a 90 percent confidence interval, an 8 percent expected error rate, and a +/-5 percent precision rate, selected a random sample of 73 of 1,900 referrals that were received and stored in the OPR filing cabinets and either were not within the OPR's jurisdiction or did not contain sufficient information to warrant OPR action. We compared these 73 source document referrals to the OPR case management system to determine whether these cases were adequately controlled.<sup>2</sup>

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<sup>1</sup> *Regulations Governing the Practice of Attorneys, Certified Public Accountants, Enrolled Agents, Enrolled Actuaries, and Appraisers before the Internal Revenue Service.* Title 31 Code of Federal Regulations, Subtitle A, Part 10 (June 20, 2005, revision).

<sup>2</sup> The OPR case management system is called the Director of Practice Case Tracking System and is used to record and monitor enforcement activity.



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2. Using a 90 percent confidence interval, a 10 percent expected error rate, and a +/-5 percent precision rate, selected a random sample of 105 of 2,101 practitioner referral cases recorded as closed on the OPR case management system between Fiscal Years (FY) 2001-2005 to determine whether case files were retained and whether the case information was properly recorded.
  3. Using a 90 percent confidence interval, a 6 percent expected error rate, and a +/-5 percent precision rate, selected a random sample of 69 of 3,450 closed practitioner referrals received and stored in the OPR filing cabinets and compared them to the OPR case management system to determine whether the case information was properly recorded.
  4. Selected the complete open case inventories of three OPR employees from the OPR case management system and verified whether the cases were accurately accounted for on the system.
- III. Determined whether attorneys, certified public accountants (CPA), and enrolled agents with criminal tax convictions were identified and effectively processed by the OPR.
- A. Identified licensed practitioners with criminal tax convictions between Calendar Years 2002-2004 from approximately 1,200 press releases and case summaries from the Department of Justice Tax Division, the United States Attorney's Office, and the IRS Criminal Investigation Division and the Treasury Inspector General for Tax Administration Office of Investigations.
  - B. Identified and discussed with OPR management those tax practitioners who were convicted of tax crimes but who were not identified by the OPR and were listed on the Centralized Authorization File (CAF)<sup>3</sup> without restrictions.
- IV. Determined whether attorneys and CPAs with State sanctions and enrolled agents with IRS sanctions were identified and effectively processed by the OPR.
- A. Identified licensed practitioners with sanctions imposed between Calendar Years 2002-2004. Due to the limited availability and accessibility of State licensing web sites, we judgmentally selected 5 of the 50 United States (California, Florida, New York, Pennsylvania, and Texas) and reviewed 5 web sites for State boards of accountancy and 5 web sites for State bar associations.
  - B. Identified and discussed with OPR management those tax practitioners with State sanctions but who were not identified by the OPR and were listed on the CAF without restrictions.

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<sup>3</sup> Taxpayers can authorize individuals to represent them on tax returns or other tax-related issues by submitting a Power of Attorney and Declaration of Representative (Form 2848) to the IRS that is recorded on the CAF.



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- V. Determined whether licensed tax practitioners listed on the IRS CAF were delinquent with their personal tax accounts.
- A. Obtained from the IRS Detroit, Michigan, CAF Programming Group an extract of the CAF and conducted direct testing of the data to validate for accuracy and completeness. We analyzed the data and identified approximately 1.4 million representatives who were recorded on the CAF as of February 2005 with an estimated 407,000 of these listed as licensed tax practitioners.
  - B. Based on the advice of our statistician, used an attribute sampling methodology with a 95 percent confidence interval, an expected error rate of 10 percent, and a precision rate of +/-5 percent to select a stratified, random sample of 750 licensed tax practitioners. The first stratum was composed of attorneys, and the second and third strata were composed of CPAs and enrolled agents, respectively. The final stratum was composed of representatives with multiple designations, with at least one license designator.
  - C. Identified the number of noncompliant licensed practitioners and discussed with OPR management those licensed practitioners with a delinquent tax account and estimated the number who are currently noncompliant and still eligible to represent taxpayers before the IRS.



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## **Appendix II**

### *Major Contributors to This Report*

Daniel R. Devlin, Assistant Inspector General for Audit (Headquarters Operations and Exempt Organizations Programs)  
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Carl L. Aley, Acting Director  
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## **Appendix III**

### *Report Distribution List*

Commissioner C  
Office of the Commissioner – Attn: Chief of Staff C  
Deputy Commissioner for Operations Support OS  
Deputy Commissioner for Services and Enforcement SE  
Commissioner, Wage and Investment Division SE:W  
Chief Information Officer OS:CIO  
Director, Customer Account Services Consolidation SE:W  
Director, Customer Account Services SE:W:CAS  
Associate Chief Information Officer, Business Systems Development OS:CIO:I:B  
Director, Compliance Services OS:CIO:I:B:CS  
Chief Counsel CC  
National Taxpayer Advocate TA  
Director, Office of Legislative Affairs CL:LA  
Director, Office of Program Evaluation and Risk Analysis RAS:O  
Office of Management Controls OS:CFO:AR:M  
Audit Liaisons:  
    Deputy Commissioner for Operations Support OS  
    Deputy Commissioner for Services and Enforcement SE  
    Director, Office of Professional Responsibility SE:OPR



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## Appendix IV

### *Outcome Measures*

This appendix presents detailed information on the measurable impact that our recommended corrective actions will have on tax administration. These benefits will be incorporated into our Semiannual Report to Congress.

#### **Type and Value of Outcome Measure:**

- Taxpayer Burden – Actual; 1,436 taxpayers are being represented by 55 licensed tax practitioners who have been convicted or enjoined for a tax-related crime (see page 5).

#### **Methodology Used to Measure the Reported Benefit:**

To evaluate whether the process followed by the Office of Professional Responsibility (OPR) identifies most of the practitioner convictions, we reviewed approximately 1,200 Department of Justice Tax Division, Internal Revenue Service (IRS) Criminal Investigation Division, and Treasury Inspector General for Tax Administration Office of Investigations press releases and/or case summaries for tax-related crimes during Calendar Years 2002-2004. From this review, we identified 223 representatives who were convicted, or served with an injunction, who were also listed on the Centralized Authorization File (CAF).<sup>1</sup> For 24 representatives, the IRS had taken the necessary actions to record on the CAF that these representatives may not represent taxpayers before the IRS. However, the remaining 199 (89 percent) representatives were still listed on the CAF as eligible to practice before the IRS. Of these 199 representatives, 55 are within the jurisdiction of the OPR because they were attorneys, certified public accountants (CPA), or enrolled agents and represent 1,436 taxpayers.

#### **Type and Value of Outcome Measure:**

- Taxpayer Burden – Actual; 5,218 taxpayers are being represented by 516 tax practitioners who have had their licenses revoked or have been disbarred by a State bar or board of accountancy (see page 7).

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<sup>1</sup> Taxpayers can authorize individuals to represent them on tax returns or other tax-related issues by submitting a Power of Attorney and Declaration of Representative (Form 2848) to the IRS that is recorded on the CAF.



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**Methodology Used to Measure the Reported Benefit:**

To evaluate whether State disciplinary actions are acted on by the OPR, we judgmentally selected five States to review the disciplinary actions by the bar associations and State boards of accountancy.<sup>2</sup> Using the States' web site listings of actions, we identified approximately 2,100 actions that occurred during Calendar Years 2002-2004. These actions included revocations, disbarments, resignations, and surrendered licenses.<sup>3</sup> Of these approximately 2,100 attorneys and CPAs, 516 were still listed on the CAF as eligible to practice before the IRS.

**Type and Value of Outcome Measure:**

- Taxpayer Burden – Potential; 22,500 licensed practitioners whose tax accounts are in a Taxpayer Delinquency Investigation or a Taxpayer Delinquent Account status with balances due<sup>4</sup> (see page 9).
- Taxpayer Burden – Actual; 470 taxpayers are being represented by 34 licensed practitioners whose tax accounts are in a Taxpayer Delinquency Investigation or a Taxpayer Delinquent Account status with balances due (see page 9).

**Methodology Used to Measure the Reported Benefit:**

We obtained a computer extract of approximately 1.4 million taxpayer representatives from the CAF database.<sup>5</sup> We selected a statistical sample of 750 licensed practitioners based on stratification among the designation levels for the licensed representatives. The strata included attorneys, CPAs, enrolled agents, and representatives with more than one designation (with at least one of the designations indicating they are an attorney, a CPA, or an enrolled agent). In this sample, we identified 34 licensed tax practitioners whose tax accounts indicate a Taxpayer Delinquency Investigation or Taxpayer Delinquent Account status. Using a 95 percent confidence interval, a 5.53 percent error rate, and a +/-1.94 percent precision rate and applying the error rates for each stratum in our sample, we estimated that 22,500 licensed practitioners are not compliant with their own tax obligations but are still eligible to practice before the IRS.

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<sup>2</sup> We selected five of the most populated States: California, Florida, New York, Pennsylvania, and Texas.

<sup>3</sup> Suspensions were not included in our review because the OPR will take disciplinary actions only for State suspensions longer than 6 months; some State information did not provide time durations for suspensions.

<sup>4</sup> For this review, we considered a representative to be not in compliance with his or her tax obligations if the IRS had initiated enforcement action by issuing a Taxpayer Delinquency Account for a tax period with a balance due or a Taxpayer Delinquency Investigation for a tax period with a missing tax return or at least two tax periods missing tax returns that have expired extensions to file.

<sup>5</sup> Approximately 407,000 of the 1.4 million taxpayer representatives were listed as licensed tax practitioners.





*The Office of Professional Responsibility Can Do More to Effectively Identify and Act Against Incompetent and Disreputable Tax Practitioners*

**Appendix V**

*Management's Response to the Draft Report*



Office of Professional Responsibility

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
Washington, D.C. 20224  
March 15, 2006

RECEIVED  
MAR 20 2006

**MEMORANDUM FOR DEPUTY INSPECTOR GENERAL FOR AUDIT**

**FROM:**

Cono Namorato   
Director, Office of Professional Responsibility

**SUBJECT:**

Draft Audit Report – The Office of Professional Responsibility Can Do More to Effectively Identify and Act Against Incompetent and Disreputable Tax Practitioners (Audit #200410031)

Thank you for the opportunity to respond to your draft audit report dated February 13, 2006. The Office of Professional Responsibility (OPR) recognizes the need to effectively identify and act against incompetent and disreputable tax practitioners. Additionally, we concur that the Internal Revenue Service has placed a greater emphasis on the oversight of tax practitioners evidenced by the numerous strategies included in the FY 2005-2009 IRS Strategic Plan.

OPR is fully supportive of the Strategic Plan as evidenced by our office:

- Co-coordinating the Service-wide tax professional strategy which began in late 2003;
- Engaging the Office of Performance Evaluation and Risk Analysis to evaluate the personal tax compliance of Circular 230 practitioners;
- The overwhelming number of outreach activities by many members of our staff in 2004 and 2005;
- Designating senior attorneys to participate in the LMSB and TEGE 6700 committee meetings;
- Instituting numerous changes to Circular 230 to improve our ability to address practitioner behaviors that significantly affect tax administration;
- Increasing our enforcement staff; and,
- Enhancing the visibility of the office internally and externally.

Your draft report emphasizes two aspects of OPR enforcement—expedited proceedings based on criminal convictions and state licensing authority actions, and practitioner tax non-compliance. While we agree that we can make improvements in both areas, we disagree with the emphasis placed on them in your draft report. A key part of the IRS Strategic Plan emphasis on oversight of tax practitioners is identifying improper tax



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practitioner behaviors that have the greatest impact on public confidence in tax administration. These cases tend to be complex and time consuming, and results cannot be measured by simply counting the number of actions taken. Further, the impact of these cases cannot be considered in isolation from other actions by the Service and OPR. Changes in Circular 230, increasing emphasis of practitioner penalty issues by the Operating Divisions, and statutory and regulatory changes on issues such as reporting listed transactions all contribute to "raising the bar" for tax professionals. Our commitment to improve administration of the expedited proceedings and tax compliance activities of OPR cannot be made at the expense of our emphasis on practitioner behaviors with a greater impact on public confidence in tax administration.

We are concerned that the report does not appear to focus on the OPR as it exists today. The period covered by the audit includes FY 2002 through FY 2004, and some reported data includes FY 2005 activity. However, the organization that existed in 2002 bears little resemblance to the OPR of today. We began implementing a complete reorganization and revitalization of Circular 230 programs in the second quarter of FY 2003, and significant changes were still being made throughout FY 2005. Despite our requests, the audit findings do not indicate when the events that form the basis for the findings occurred. Thus, it is not possible for us to determine whether the conditions cited in the report reflect the former Director of Practice organization and operating procedures, the early stages of the transformation to the OPR, or the more recent actions by this office. Whether the cited deficiency relates to identification of potentially actionable misconduct, file maintenance or database accuracy, we cannot determine from the findings whether the audit has identified a problem that we have already addressed, or one that still needs our attention.

Finally, we are concerned that the authors of the report have taken information out of context, or applied inappropriate definitions, resulting in incorrect or over-stated conclusions. For example:

The draft report characterizes our decision not to require detailed accounting of hours spent on each case as "inattention to resource issues." It also refers to a recommendation from an audit of the Director of Practice that annual workload and staffing reviews should be conducted. The Service went beyond this with a consultant supported study of the entire program. The OPR was created to supersede the Director of Practice and make fundamental changes while improving ongoing programs. We commissioned further studies related to OPR programs to help us understand the scope and impact of practitioner misconduct, and have worked closely with the Operating Divisions to ensure consistency in the Service-wide effort to improve oversight of tax practitioners. It is simply too soon to tell how these changes may affect resource requirements, and it would be inappropriate to conduct further workload and staffing analysis until the effect of program changes can be determined. We have used a combination of permanent hiring, temporary positions and details from other IRS organizations to maintain our flexibility to adjust at the appropriate time. We have also decided not to attempt to track staff hours committed to each case, as we believe the cost



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of collecting the information outweighs the limited utility of the data. We think our record belies the assertion that OPR is inattentive to resource issues.

The draft report combines information about dissimilar activities, painting an inaccurate picture of our operations.

In a discussion of OPR recording of “referrals” in our information system, the draft report cites a sample of 73 “referrals,” of which only 1 was recorded in the information system. From the description of the sample, it appears that these 73 “referrals” are reports we receive from State licensing authorities about disciplinary actions taken against attorneys or certified public accountants. OPR made a policy decision **not** to record information from these State reports unless we can determine that we have jurisdiction to act against the individuals cited in the reports. As the audit findings note elsewhere, “it would not be practical or advisable to record all [of the State licensing authority actions] as separate cases on the system until the OPR has performed preliminary screening to determine whether the names provided were individuals who practice before the IRS and whether the nature of the information appeared to warrant disciplinary action by the OPR.” The finding that “only 1 of 73 referrals was recorded on the OPR’s case management system” is described as a deficiency, when in fact it was an almost perfect application of our policy **not** to record this information unless further research justified doing so. If the one case that was recorded involved a person within our jurisdiction, there was no error in our performance on these 73 items.

In a discussion of action taken based on conviction of tax related crimes, the report refers to individuals who “were convicted, or were served with an injunction, and were also listed on the (Centralized Authorization File).” The report also refers to this group as persons who were convicted. An injunction may provide the basis for initiating a traditional (full due process) action under Circular 230, while a conviction can be the basis for an expedited (limited due process) action. There is no explanation for the inclusion of injunctions with convictions, nor is there any recognition that an injunction case is considered using different procedures from those applicable to a conviction. Similarly, the draft report refers to State licensing authority actions without distinguishing between those taken “for cause” and those taken for failure to pay a fee (such as a renewal fee). The former may be processed using expedited procedures, while the latter may not.

The report refers to TIGTA Office of Investigations referrals, and states that 25% of the referrals since FY 2002 could not be located. The report does not say whether the 31 referrals that could not be found were reports of investigation, referrals of uninvestigated allegations for which a reply was expected, or referrals “for information” with no reply expected. It also does not indicate when the referrals were made. Our processes changed



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from FY 2002 through FY 2004, as did the staff committed to keeping our information system accurate.

The draft report cites as impairment to the scope of the audit an OPR decision to destroy certain case referral records. These were records of referrals that OPR or the Director of Practice had reviewed and determined were not actionable—either for a lack of jurisdiction, or because the conduct described was insufficient to justify further inquiry. The Director of Practice policy was to hold these files for ten years, on the theory that they may become relevant if additional information was received or developed concerning the practitioner. The OPR changed this policy because the theory behind it had not proven valid (no cases could be cited where the old records had been combined with new information to form the basis of a disciplinary action). We had also been questioned by practitioners about the practice of retaining allegations to which the practitioner had not been given an opportunity to respond. Our decision to destroy records more than one year old was implemented before amending the published records retention rule, which was based on the former policy of the Director of Practice. This was an administrative oversight—the published record retention rule should reflect the program policy decision. Had we taken the administrative step prior to executing the decision to destroy the records, the result would have been the same—the obsolete records would not have been retained, and would not have been available for the audit team to review. The policy change on retention of these obsolete records was unrelated to the audit, and we question the prominence the “impairment” has been given.

The OPR cannot evaluate the statements regarding outcome measures that appear in Appendix IV of the draft report. As is noted above, the information on convictions also includes injunctions, and the information on State licensing authority actions does not distinguish between actions for cause and actions for failure to pay a licensing fee. The procedures followed vary based on the nature of the action taken by the courts or the State licensing authorities, so it is not clear that all of the cases included in the sample would result in a suspension of practice privileges. We also caution against projecting the number of taxpayers represented based on the data presented. The Centralized Authorization File data presented does not indicate how many representations occurred after the event which the audit team assumes would trigger a suspension of practice privileges. Even if all of the representatives cited in the samples are assumed to be subject to suspension, representations that occurred prior to the triggering event should not be included in the statement of benefits.



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**Recommendation 1:** Work with other law enforcement agencies, including the Department of Justice, to improve the referral process by obtaining timely, relevant conviction information for tax crimes and State or Federal convictions involving dishonesty and breach of trust in a format that is useful to the OPR.

**Response:** While we agree in principle that it would be desirable to collect comprehensive conviction information on all crimes involving dishonesty and breach of trust, OPR believes we are doing all that can reasonably be done at this time. We have established links with both IRS CI and TIGTA Office of Investigations to obtain information on their criminal investigations involving Circular 230 practitioners. We review Department of Justice tax related press releases as they are issued to identify potential Circular 230 practitioners. It is not reasonable to expect Federal and State prosecutors to recognize Circular 230 practitioners among their non-tax crime prosecutions. State licensing authorities often cite non-tax crime convictions in their disciplinary actions. As a practical matter, we must rely on them to identify these cases.

**Recommendation 2:** Develop a process to obtain relevant information on State disciplinary actions by coordinating with State licensing authorities such as State bar associations and boards of accountancy. This would include establishing communication contacts and methods, discussing best practices for requesting and providing information, and determining the frequency and content of referral information for tax practitioners within the OPR's jurisdiction.

**Response: Concur.** OPR will contact each State licensing authority to establish processes for communicating relevant disciplinary information.

**Expected Completion Date:** April 2007.

**Recommendation 3:** Coordinate with the Wage and Investment Division and the Modernization and Information Technology Services organization in developing a method of uniquely identifying representatives on the CAF that does not require representatives to use Social Security Numbers on a Power of Attorney and Declaration of Representative (Form 2848). If such a method can be developed, use the information to notify the OPR when representatives are not compliant with their individual tax obligations.

**Response: Concur.** A proposal to provide express statutory authority to require identification numbers on documents other than tax returns is included in the FY 2007 President's Budget proposals. If the legislation is passed, it will enable us to require an identification number on the *Power of Attorney Form (Form 2848)*.

If the legislation is not passed, we are also consulting with the Office of Chief Counsel and Department of Treasury, Office of Tax Policy, to explore using a unique identifier other than a Social Security Number on Forms 2848, *Power of Attorney and Declaration of Representative*, which is consistent with the Secretary's statutory and regulatory authority. If an agreement on the use of a unique identifier is reached, we will coordinate with the Wage and Investment Division and the Modernization and



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Information Technology Services organization in developing a unique identifier that can be used to notify OPR when representatives are not compliant with their individual tax obligations.

**Expected Completion Date:** September 2007

**Recommendation 4:** Implement the recommendations from our prior report. This should include employing the OPR's case management system to provide data on the use of program resources and performing an annual workload and staffing analysis to help prioritize and allocate resources.

**Response: Disagree.** The OPR is implementing a case management information system using a Service-wide hardware and software platform. The system does not include the capability to track staff hours committed to each case, and adding this capability would require substantial software modifications. OPR does not believe collection of this data would yield benefits commensurate with the costs for both system modification and ongoing collection and analysis of the data. We do not agree that annual workload and staffing analysis is productive, given the size and maturity of the organization. Resource allocation issues will be addressed through the normal budget development process and through regular business performance reviews.

**Recommendation 5:** Evaluate the OPR record retention requirements and obtain approval for any needed changes to those requirements.

**Response: Concur**

**Estimated Completion Date:** June, 2006

**Recommendation 6:** Develop procedures to better define which cases will be recorded on the OPR's case management system and how the source, nature, and outcome of referrals will be monitored to help target outreach efforts.

**Response: Concur.** Implementation of the new case information system includes documentation of procedures for recording correspondence.

**Action completed.**

**Recommendation 7:** Establish controls and analytical procedures that will increase the reliability of the OPR's case management system by periodically verifying the inventory.

**Response: Concur.** Implementation of the new case information system includes quality control procedures to ensure data reliability.

**Action completed.**

If you have questions, please call me or have a member of your staff contact Stephen Whitlock, Deputy Director, and (202) 622-5267.



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## Appendix VI

### *Office of Audit Comments on Management's Response*

In response to our draft report, the Director, Office of Professional Responsibility (OPR), included some general comments and assertions we believe warrant additional comment. We have included portions of management's response and our related comments below.

***Management's Response:*** *Your draft report emphasizes two aspects of OPR enforcement—expedited proceedings based on criminal convictions and State licensing authority actions, and practitioner tax non-compliance. While we agree that we can make improvements in both areas, we disagree with the emphasis placed on them in your draft report. A key part of the IRS Strategic Plan emphasis on oversight of tax practitioners is identifying improper tax practitioner behaviors that have the greatest impact on public confidence in tax administration. These cases tend to be complex and time consuming, and results cannot be measured by simply counting the number of actions taken.*

***Office of Audit Comment:*** One of the most significant areas of concern in this report is OPR management's inability to provide the data needed to evaluate the overall scope of its operations. When asked, OPR management was unable to provide information to demonstrate (1) what resources were committed to priority areas or (2) the effect any shift in its use of resources had had on the overall enforcement program.

***Management's Response:*** *We are concerned that the report does not appear to focus on the OPR as it exists today. The period covered by the audit includes FY [Fiscal Year] 2002 through FY 2004, and some reported data includes FY 2005 activity. However, the organization that existed in 2002 bears little resemblance to the OPR of today. We began implementing a complete reorganization and revitalization of Circular 230<sup>1</sup> programs in the second quarter of FY 2003, and significant changes were still being made throughout FY 2005. Despite our requests, the audit findings do not indicate when the events that form the basis for the findings occurred. Thus, it is not possible for us to determine whether the conditions cited in the report reflect the former Director of Practice organization and operating procedures, the early stages of transformation to the OPR, or the more recent actions by this office. Whether the cited*

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<sup>1</sup> Treasury Department Circular No. 230, *Regulations Governing the Practice of Attorneys, Certified Public Accountants, Enrolled Agents, Enrolled Actuaries, and Appraisers before the Internal Revenue Service*, contains the standards of conduct and professionalism for licensed tax practitioners and authorizes the Department of the Treasury to institute disciplinary proceedings against tax practitioners whose conduct violates these regulations. Title 31 Code of Federal Regulations, Subtitle A, Part 10 (June 20, 2005, revision).



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*deficiency relates to identification of potentially actionable misconduct, file maintenance or database accuracy, we cannot determine from the findings whether the audit has identified a problem that we have already addressed, or one that still needs our attention.*

**Office of Audit Comment:** The OPR was established in January of 2003 and has the same responsibility for oversight related to Circular 230 as the former Director of Practice. Much of our scope period was after the OPR was established. Although staffing increased and personnel changes were made, we found the same conditions before and after the OPR was established. Preliminary results of our findings for this scope period were presented and discussed with the OPR in February 2005. After discovering files had been destroyed by the OPR, we expanded our audit testing to include a computer system and physical inventory validation as of June 15, 2005. This identified additional conditions previously reported to the Director of Practice that continue to exist in the OPR. The problems have not been adequately addressed and still need the OPR's attention.

**Management's Response:** *The finding that "only 1 of 73 referrals was recorded on the OPR's case management system" is described as a deficiency, when in fact it was an almost perfect application of our policy **not** to record this information unless further research justified doing so. If the one case that was recorded involved a person within our jurisdiction, there was no error in our performance on these 73 items.*

**Office of Audit Comment:** We are not certain what policy OPR management is referring to when they state that not recording this information is a perfect application of their policy. OPR management was unable to provide us with any such policy or procedures. They had draft procedures, which were never implemented, that indicated this information should have been recorded. This further supports our conclusion and recommendation that the OPR needs to develop procedures to better define which cases will be recorded on the OPR case management system and how the source, nature, and outcome of referrals will be monitored to help target outreach efforts.

**Management's Response:** *There is no explanation for the inclusion of injunctions with convictions, nor is there any recognition that an injunction case is considered using different procedures from those applicable to a conviction. Similarly, the draft report refers to State licensing authority actions without distinguishing between those taken "for cause" and those taken for failure to pay a fee (such as a renewal fee). The former may be processed using expedited procedures, while the latter may not.*

**Office of Audit Comment:** We provided information on cases that the OPR should have identified for possible action but had not. Whether the cases were processed using expedited procedures was not relevant because these cases had not been identified by the OPR for processing at all.





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**Management's Response:** *The report refers to TIGTA [Treasury Inspector General for Tax Administration] Office of Investigations referrals, and states that 25% of the referrals since FY 2002 could not be located. The report does not say whether the 31 referrals that could not be found were reports of investigation, referrals of uninvestigated allegations for which a reply was expected, or referrals "for information" with no reply expected. It also does not indicate when the referrals were made. Our processes changed from FY 2002 through FY 2004, as did the staff committed to keeping our information system accurate.*

**Office of Audit Comment:** *The TIGTA Office of Investigations expected IRS replies for all referrals we reported. These were not referrals "for information." Furthermore, the time period of these missing referrals indicate that the OPR's changes in processes and staff did not improve the problem. Most of these missing referrals were from FYs 2004 and 2005.*

<b>Fiscal Year</b>	<b>Missing Referrals</b>
2003	5
2004	14
2005	12
<b>TOTAL</b>	<b>31</b>

This is only one of several indications that the OPR case management system was not reliable. Our concern is that, when it was possible to reconcile cases that were referred to the OPR, the reconciliation indicated a significant portion of the cases referred were missing and had not been recorded. As such, the scope of this problem may be much larger because most IRS functions and many other law enforcement agencies send referrals. Because most of these sources could not provide a list of referrals sent to the OPR, we were unable to identify the full extent of missing referrals.

**Management's Response:** *The draft report cites as impairment to the scope of the audit [of] an OPR decision to destroy certain case referral records. These were records of referrals that [the] OPR or the Director of Practice had reviewed and determined were not actionable—either for a lack of jurisdiction, or because the conduct described was insufficient to justify further inquiry. The Director of Practice policy was to hold these files for ten years, on the theory that they may become relevant if additional information was received or developed concerning the practitioner. The OPR changed this policy because the theory behind it had not proven valid (no cases could be cited where the old records had been combined with new information to form the basis of a disciplinary action). We had also been questioned by practitioners about the practice of retaining allegations to which the practitioner had not been given an opportunity to respond. Our decision to destroy records more than one year old was implemented before amending the published records retention rule, which was based on the former policy of the Director of Practice. This was an administrative oversight—the published record retention rule should reflect the program policy decision. Had we taken the*



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*administrative step prior to executing the decision to destroy the records, the result would have been the same—the obsolete records would not have been retained, and would not have been available for the audit team to review. The policy change on retention of these obsolete records was unrelated to the audit, and we question the prominence the “impairment” has been given.*

**Office of Audit Comment:** OPR management was unable to provide any evidence of a policy change related to the records retention requirement. Moreover, the OPR has still not obtained approval to change the requirement—the established retention requirement to store these files is still 10 years—despite the fact that more than 1 year has elapsed since these records were destroyed. Moreover, many of the records destroyed were from the period 2002 to 2004, which was the scope period of our audit, and we should have had access to these records to evaluate whether the OPR properly considered and acted on the information in the referrals. When the OPR destroyed the files, it did not log what records were destroyed, did not log when and how the records were destroyed, and did not obtain official written authorization. The OPR did not inform us that some of these records had been destroyed the same month, October 2004, we started our fieldwork. Since the OPR decision to destroy records was in violation of established written policy; was not properly authorized, documented, or voluntarily disclosed to the TIGTA; and may have been important to our audit results, we believe the audit scope impairment is applicable and the prominence is justified.

**Management’s Response:** *The OPR cannot evaluate the statements regarding outcome measures that appear in Appendix IV of the draft report. As is noted above, the information on convictions also includes injunctions, and the information on State licensing authority actions does not distinguish between actions for cause and actions for failure to pay a licensing fee. The procedures followed vary based on the nature of the action taken by the courts or the State licensing authorities, so it is not clear that all of the cases included in the sample would result in a suspension of practice privileges. We also caution against projecting the number of taxpayers represented based on the data presented. The Centralized Authorization File data presented does not indicate how many representations occurred after the event which the audit team assumes would trigger a suspension of practice privileges. Even if all of the representatives cited in the samples are assumed to be subject to suspension, representations that occurred prior to the triggering event should not be included in the statement of benefits.*

**Office of Audit Comment:** Notwithstanding the fact that OPR management cautioned us against projecting the number of taxpayers represented based on the data presented, the number of taxpayers represented was not a projection. We obtained the actual number of taxpayers who had a convicted, an enjoined, or a State-sanctioned tax practitioner listed as their representative on the Centralized Authorization File. At the time of our review, and possibly still today, these tax practitioners were able to act as a power of attorney for these taxpayers at IRS hearings, prepare and file documents, receive refunds and other correspondences, and communicate with the IRS regarding the



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taxpayer's rights and liabilities. The only projection we made related to tax practitioners who were not compliant with their own tax obligations; we did not project the number of taxpayers being represented. This was based on a statistically valid sampling methodology, and the OPR did not cite any disagreement with the estimate of 22,500 noncompliant tax practitioners.