

the Director of the Office of Professional Responsibility or any officer or employee of the Internal Revenue Service. If the report is made to an officer or employee of the Internal Revenue Service, the officer or employee will make a written report of the suspected violation to the Director of the Office of Professional Responsibility.

(c) *Destruction of report.* No report made under paragraph (a) or (b) of this section shall be maintained by the Director of the Office of Professional Responsibility unless retention of the report is permissible under the applicable records control schedule as approved by the National Archives and Records Administration and designated in the Internal Revenue Manual. The Director of the Office of Professional Responsibility must destroy the reports as soon as permissible under the applicable records control schedule.

(d) *Effect on proceedings under subpart D.* The destruction of any report will not bar any proceeding under subpart D of this part, but will preclude the Director of the Office of Professional Responsibility's use of a copy of the report in a proceeding under subpart D of this part.

(e) *Effective/applicability date.* This section is applicable on September 26, 2007.

[T.D. 9359, 72 FR 54551, Sept. 26, 2007]

Subpart D—Rules Applicable to Disciplinary Proceedings

SOURCE: T.D. 9011, 67 FR 48774, July 26, 2002, unless otherwise noted.

§ 10.60 Institution of proceeding.

(a) Whenever the Director of the Office of Professional Responsibility determines that a practitioner (or employer, firm or other entity, if applicable) violated any provision of the laws governing practice before the Internal Revenue Service or the regulations in this part, the Director of the Office of Professional Responsibility may reprimand the practitioner or, in accordance with § 10.62, institute a proceeding for a sanction described in § 10.50. A proceeding is instituted by the filing of a complaint, the contents of which are more fully described in § 10.62.

(b) Whenever the Director of the Office of Professional Responsibility is advised or becomes aware that a penalty has been assessed against an appraiser under section 6701(a) of the Internal Revenue Code, the Director of the Office of Professional Responsibility may reprimand the appraiser or, in accordance with § 10.62, institute a proceeding for disqualification of the appraiser. A proceeding for disqualification of an appraiser is instituted by the filing of a complaint, the contents of which are more fully described in § 10.62.

(c) Except as provided in § 10.82, a proceeding will not be instituted under this section unless the proposed respondent previously has been advised in writing of the law, facts and conduct warranting such action and has been accorded an opportunity to dispute facts, assert additional facts, and make arguments (including an explanation or description of mitigating circumstances).

(d) *Effective/applicability date.* This section is applicable on September 26, 2007.

[T.D. 9011, 67 FR 48765, July 26, 2002, as amended by T.D. 9359, 72 FR 54544, 54551, Sept. 26, 2007]

§ 10.61 Conferences.

(a) *In general.* The Director of the Office of Professional Responsibility may confer with a practitioner, employer, firm or other entity, or an appraiser concerning allegations of misconduct irrespective of whether a proceeding has been instituted. If the conference results in a stipulation in connection with an ongoing proceeding in which the practitioner, employer, firm or other entity, or appraiser is the respondent, the stipulation may be entered in the record by either party to the proceeding.

(b) *Voluntary sanction—(1) In general.* In lieu of a proceeding being instituted or continued under § 10.60(a), a practitioner or appraiser (or employer, firm or other entity, if applicable) may offer a consent to be sanctioned under § 10.50.

(2) *Discretion; acceptance or declination.* The Director of the Office of Professional Responsibility may, in his or her discretion, accept or decline the offer described in paragraph (b)(1) of

§ 10.62

this section. In any declination, the Director of the Office of Professional Responsibility may state that he or she would accept the offer described in paragraph (b)(1) of this section if it contained different terms. The Director of the Office of Professional Responsibility may, in his or her discretion, accept or reject a revised offer submitted in response to the declination or may counteroffer and act upon any accepted counteroffer.

(c) *Effective/applicability date.* This section is applicable on September 26, 2007.

[T.D. 9359, 72 FR 54551, Sept. 26, 2007]

§ 10.62 Contents of complaint.

(a) *Charges.* A complaint must name the respondent, provide a clear and concise description of the facts and law that constitute the basis for the proceeding, and be signed by the Director of the Office of Professional Responsibility or a person representing the Director of the Office of Professional Responsibility under § 10.69(a)(1). A complaint is sufficient if it fairly informs the respondent of the charges brought so that the respondent is able to prepare a defense.

(b) *Specification of sanction.* The complaint must specify the sanction sought by the Director of the Office of Professional Responsibility against the practitioner or appraiser. If the sanction sought is a suspension, the duration of the suspension sought must be specified.

(c) *Demand for answer.* The Director of the Office of Professional Responsibility must, in the complaint or in a separate paper attached to the complaint, notify the respondent of the time for answering the complaint, which may not be less than 30 days from the date of service of the complaint, the name and address of the Administrative Law Judge with whom the answer must be filed, the name and address of the person representing the Director of the Office of Professional Responsibility to whom a copy of the answer must be served, and that a decision by default may be rendered against the respondent in the event an answer is not filed as required.

31 CFR Subtitle A (7-1-08 Edition)

(d) *Effective/applicability date.* This section is applicable to complaints brought on or after September 26, 2007.

[T.D. 9359, 72 FR 54551, Sept. 26, 2007]

§ 10.63 Service of complaint; service of other papers; service of evidence in support of complaint; filing of papers.

(a) *Service of complaint—(1) In general.* The complaint or a copy of the complaint must be served on the respondent by any manner described in paragraphs (a)(2) or (3) of this section.

(2) *Service by certified or first class mail.* (i) Service of the complaint may be made on the respondent by mailing the complaint by certified mail to the last known address (as determined under section 6212 of the Internal Revenue Code and the regulations thereunder) of the respondent. Where service is by certified mail, the returned post office receipt duly signed by the respondent will be proof of service.

(ii) If the certified mail is not claimed or accepted by the respondent, or is returned undelivered, service may be made on the respondent, by mailing the complaint to the respondent by first class mail. Service by this method will be considered complete upon mailing, provided the complaint is addressed to the respondent at the respondent's last known address as determined under section 6212 of the Internal Revenue Code and the regulations thereunder.

(3) *Service by other than certified or first class mail.* (i) Service of the complaint may be made on the respondent by delivery by a private delivery service designated pursuant to section 7502(f) of the Internal Revenue Code to the last known address (as determined under section 6212 of the Internal Revenue Code and the regulations thereunder) of the respondent. Service by this method will be considered complete, provided the complaint is addressed to the respondent at the respondent's last known address as determined under section 6212 of the Internal Revenue Code and the regulations thereunder.

(ii) Service of the complaint may be made in person on, or by leaving the complaint at the office or place of business of, the respondent. Service by this