



Part 5. Collecting Process

Chapter 8. Offer in Compromise

Section 1. Overview

5.8.1 Overview

- 5.8.1.1 [Introduction](#)
- 5.8.1.2 [Timeliness of Offer Investigations](#)
- 5.8.1.3 [Functional Responsibilities](#)
- 5.8.1.4 [Liabilities to be Compromised](#)
- 5.8.1.5 [Exceptions to Liabilities to be Compromised](#)
- 5.8.1.6 [Application Fee](#)
- 5.8.1.7 [The Tax Increase Prevention and Reconciliation Act of 2005](#)
- 5.8.1.8 [Initial Receipt of Offers](#)
- 5.8.1.9 [Form 656, Offer in Compromise](#)
- 5.8.1.10 [Withholding Collection](#)
- 5.8.1.11 [Interest on Compromise Amount](#)
- 5.8.1.12 [Effect on Previous Offers on Collection Statute](#)
- Exhibit 5.8.1-1 [Common Abbreviations Used in the IRM](#)

Manual Transmittal

April 24, 2015

Purpose

(1) This transmits revised IRM 5.8.1, Offer in Compromise, Overview.

Material Changes

- (1) This IRM has only been updated to incorporate interim guidance memorandum SBSE-05-0414-0029 titled Offer Investigations - Payment Options dated April 18, 2014.
- (2) The following subsections were revised to incorporate interim guidance memorandum SBSE-05-0414-0029 titled Offer Investigations - Payment Options, dated April 18, 2014.
- 5.8.1.7.(2) Updated to incorporate the revised definition of lump sum "cash" payment terms to state offer amount must be within five months of offer acceptance.
- 5.8.1.9.4(3)a Updated to incorporate the revised definition of lump sum "cash" payment terms to state offer amount must be within five months of offer acceptance.
- 5.8.1.9.4(3)a Examples were added to show when an exception may be granted relative to the five month requirement.

Effect on Other Documents

This IRM supersedes IRM 5.8.1 dated 11/4/2014 and incorporates interim guidance memorandum SBSE-05-0414-0029 titled Offer Investigations - Payment Options dated April 18, 2014.

Audience

SB/SE Collection and Campus Compliance employees.

Effective Date

(04-24-2015)

Kristen E. Bailey
Acting Director Collection Policy

5.8.1.1 (02-26-2013)

Introduction

1. The government, like other creditors, encounters situations where an account receivable cannot be collected in full or there is a legitimate dispute as to what is owed. It is an accepted business practice to resolve these issues through negotiation and compromise.
2. This IRM provides procedures for collection employees to follow when considering a taxpayer's proposal to compromise.
3. See Exhibit 5.8.1-1 for a list of common abbreviations used throughout all sections 5.8.

5.8.1.1.1 (09-23-2008)

Definition

1. An offer in compromise (OIC) is an agreement between a taxpayer and the government that settles a tax liability for payment of less than the full amount owed.

5.8.1.1.2 (02-26-2013)

Authority

1. The Secretary of the Treasury is granted broad authority to compromise tax liabilities in IRC Section § 7122.
2. The Commissioner of Internal Revenue, under Treasury Regulation § 301.7122-1, is authorized to compromise a liability on any one of three grounds: Doubt as to Collectibility (DATC), Doubt as to Liability (DATL), or to promote Effective Tax Administration (ETA).

3. Delegation Order No. 5-1 (Rev. 3) in IRM 1.2.44, *Delegation of Authorities for the Collection Process*, delegates the Commissioner's authority to accept, reject, terminate, or acknowledge withdrawals of offers in compromise.

5.8.1.1.3 (02-26-2013)

Policy

1. Policy Statement P-5-100 in IRM 1.2.14.1.17, states:

The Service will accept an offer in compromise when it is unlikely that the tax liability can be collected in full and the amount offered reasonably reflects collection potential. An OIC is a legitimate alternative to declaring a case currently not collectible or a protracted installment agreement.

The goal is to achieve collection of what is potentially collectible at the earliest possible time and at the least cost to the Government.

Note:

A protracted installment agreement is one that extends beyond the Collection Statute Expiration Date.

2. *Offers to be accepted.* In cases where an OIC appears to be a viable solution to a tax delinquency, the Service employee assigned the case will discuss the compromise alternative with the taxpayer and, when necessary, assist in preparing the required forms. The taxpayer will be responsible for initiating the first specific proposal for compromise.
3. The success of the OIC program will be assured only if taxpayers make adequate compromise proposals consistent with their ability to pay and the Service makes prompt and reasonable decisions. Taxpayers are expected to provide reasonable documentation to verify their ability to pay. The ultimate goal is a compromise that is in the best interest of both the taxpayer and the government. Acceptance of an adequate offer will also result in creating for the taxpayer an expectation of a fresh start toward compliance with all future filing and payment requirements.
4. Unless special circumstances exist, offers will not be accepted if it is believed that the liability can be paid in full as a lump sum, or by installment payments extending through the remaining statutory period for collection, or other means of collection.
5. Generally, a DATC offer amount must equal or exceed a taxpayer's reasonable collection potential (RCP) in order to be acceptable. In most cases, when the offered amount exceeds the RCP, the acceptance should be for the amount offered. The exceptions include special circumstances defined in IRM 5.8.4 and acceptance on the basis of hardship or effective tax administration (ETA) as defined in IRM 5.8.11.

5.8.1.1.4 (09-23-2008)

Objectives

1. The objectives of the OIC program are:

- Effect collection of what can reasonably be collected at the earliest possible time and at the least cost to the government.
- Achieve a resolution that is in the best interests of both the individual taxpayer and the government.
- Provide the taxpayer a fresh start toward future voluntary compliance with all filing and payment requirements.
- Secure collection of revenue that may not be collected through any other means.

5.8.1.1.5 (02-26-2013)

Process

1. Revenue Procedure 2003-71, 2003-2 CB 517, defines the procedures applicable to the submission and processing of OIC tax liabilities. Notice 2006-68, 2006-2 CB 105, provides additional guidance regarding offers submitted on or after July 16, 2006. This handbook further describes, in detail, those procedures.

5.8.1.2 (02-26-2013)

Timeliness of Offer Investigations

1. The timeliness of case actions in an offer investigation is important not only to ensure the efficiency of the process but also is a key component of taxpayer satisfaction.
2. The guidelines for timely case actions defined in this IRM are intended to provide structure for the overall offer process and to ensure investigations are completed in a responsive and efficient manner.
3. Managers and employees must make sure communications from taxpayers are addressed in a timely manner. Timeliness of case actions ensures the length of the offer investigation process is appropriate given the taxpayer's specific set of facts and circumstances.
4. These guidelines are not intended as absolute measures of performance for individual employees. Performance evaluations of individual employees must be based on reviews of actual work produced by the employees and must take into account any special circumstances that may have impacted the ability of the employees to meet the specified guidelines. In general, unwarranted inactivity gaps in an OIC investigation should be avoided, and offer managers should establish controls to ensure that cases with unwarranted inactivity gaps are identified and addressed appropriately.

5.8.1.3 (03-16-2010)

Functional Responsibilities

1. The following list, while not all inclusive, provides a brief summary of various functions activities related to OIC processing.

5.8.1.3.1 (02-26-2013)

Tax Cases Controlled by Department of Justice

1. The IRS may not have the authority to accept an OIC when:
- A. Questions concerning the amount of the taxpayer's liability or the collection of a liability for all or part of the periods the taxpayer owes are in litigation being handled by the Department of Justice (DOJ).
 - B. The federal tax liability for all or part of the periods the taxpayer owes has been reduced to a judgment. See IRM 5.8.10, *Special Case Processing*, for additional information on DOJ and docketed cases.
 - C. An offer is received that covers tax periods for which restitution was ordered. Refer to IRM 5.1.5.24.5, *Balancing Civil and Criminal Cases - Offers in Compromise and Restitution*. The Service cannot accept an OIC that in any way modifies the terms of a restitution order. The IRS may consider an OIC for periods for which restitution was ordered *only* if the defendant has paid or will pay the full amount of the restitution as part of the offer. If there is a closed Criminal Investigation (CI)

indicator on the account, contact should be made with Advisory to verify if restitution was ordered. If restitution was ordered, the tax period may be under the control of the DOJ. In those cases, request the guidance of Area Counsel before proceeding. These cases may be identified by a TC 971 AC 180 - 189.

D. The IRS has referred to the DOJ the taxpayer's civil or criminal case for prosecution or defense.

E. Acceptance by the IRS is dependent upon the DOJ accepting a related offer or settlement.

2. If the offer is returned based on paragraph (1) (a) through (d) above, all payments should be applied in accordance with guidelines established by the Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA).
3. In some instances, DOJ may request the case be forwarded to them for inclusion in pending litigation. However, in DATC offers, DOJ generally request that the field offer specialist conduct the investigation and make a recommendation to accept or reject the offer. In those cases, coordinate with Area Counsel to determine if the request should be worked as a courtesy investigation or if Collection has jurisdiction to process the offer.

5.8.1.3.2 (02-26-2013) Docketed Tax Court Cases

1. Area Counsel handles Tax Court cases. The IRS has the authority to accept offers where the liability is the subject of a pending Tax Court case. See IRM 5.8.1.5.1 below for information on the consideration of offers relating to unassessed liabilities. Generally, DATC cases will be under the jurisdiction of Collection, unless the case is under Appeals jurisdiction. See IRM 5.8.10 for additional information on docketed court cases.
2. All cases identified as docketed court cases will be immediately forwarded to a field offer group for investigation.
3. Centralized Offer in Compromise (COIC) will be responsible for determining processability on these cases.

5.8.1.3.3 (03-16-2010) Collection Function

1. The Collection function is responsible for processing and investigating the following offers:
 - All offers based on DATC, including proposed liabilities still subject to settlement in Examination or Appeals.
 - All offers based on ETA.
 - All offers submitted under DATL for either a TFRP or PLET assessment.

5.8.1.3.4 (02-26-2013) Examination Function

1. Examination function is responsible for processing and investigating offers submitted based on DATL (excluding offers submitted to compromise a TFRP or PLET). See IRM 4.18.2.3, *Jurisdiction—Doubt as to Liability*.
2. Examination function employees must also provide the Collection function with a recommendation on offers based on ETA with public policy/equity issues, when requested by Collection. See IRM 5.8.11, *Effective Tax Administration*, for public policy or equity grounds and IRM 4.18.2, Exam Offer-In-Compromise - Doubt as to Liability Offers. See IRM 5.19.7.2, *Centralized Doubt as to Liability (DATL) Offers in Compromise*, for more information.

5.8.1.3.5 (02-26-2013) Appeals

1. Offers secured in Appeals offices in conjunction with related casework such as Collection Due Process (CDP) or Equivalent Hearing (EH), will be forwarded to the COIC sites for processability determination(s), processing of the application fee(s), deposit(s), required TIPRA payment(s), and mailing of processability letters provided by Appeals.
2. COIC is responsible for the input of necessary transaction codes to IDRS. See IRM 5.8.2 for guidelines on determining processability for Appeals CDP offers.
3. Appeals will normally develop their own offers, but if complex issues are identified, they may require the assistance of Field Collection or Examination sources through the issuance of an Appeal Referral Investigation (ARI).

Exception:

Exceptions to development of OICs with an open CDP are those cases that fall under COIC casework criteria found in IRM 5.8.4.

5.8.1.3.6 (02-26-2013) Counsel

1. Counsel attorneys provide opinions on OIC's recommended for acceptance when the total liability, including additions and accrued penalty and interest, is \$50,000 or greater at the time of submission.
2. Counsel attorneys, when requested, may also provide legal opinions for matters related to investigation and processing of offers.

5.8.1.3.7 (02-26-2013) Taxpayer Advocate Service

1. The Taxpayer Advocate Service (TAS) is an independent organization within the IRS whose employees assist taxpayers who are experiencing economic harm, who are seeking help in resolving tax problems that have not been resolved through normal channels, or who believe that an IRS system or procedure is not working as it should.
2. The National Taxpayer Advocate and the Commissioner, SB/SE Division have reached an agreement (effective May 31, 2011) outlining the procedures and responsibilities for processing TAS casework when either the statutory or delegated authority to complete a case transaction rests with the SB/SE Division. The agreement is known as a Service Level Agreement (SLA).
3. In preparation for a case being referred to a SB/SE Division function, the TAS employee is responsible for:
 - A. Preparing Form 12412, *Operations Assistance Request* (OAR). The form should include a requested completion date.
 - B. Securing all necessary supporting documentation.
 - C. Identifying cases that require expedite processing. No case will automatically receive expedite processing; requests for expedite processing will be made on a case-by-case basis.
 - D. Forwarding Form 12412 and documentation to the SB/SE Business Unit Liaison.
4. SB/SE Division is responsible for:
 - A. Assisting a liaison in each office or Campus where a Taxpayer Advocate is located.

- B. Acknowledging receipt of the case within one workday for cases requiring expedite processing or within three workdays for all other cases.
 - C. Responding to TAS within three (3) workdays in writing, via facsimile, secure messaging E-mail, or hand delivery of resolution.
 - D. Providing TAS with the name and telephone number of the SB/SE group manager or employee assigned the case.
 - E. If the requested completion date cannot be met, refer to the SLA for how to proceed.
 - F. Upon closing of the Operations Assistance Request (OAR), the SB/SE employee assigned the OAR will complete Section VI of Form 12412, *Operations Assistance Request*, and return it to the TAS employee assigned the case. The Form 12412 must be returned within three workdays from the date that all actions have been completed and transactions input.
5. To see the full SLA, click on the link SLA - Service Level Agreements found at <http://tas.web.irs.gov> in the TAS Favorites section of the page.

5.8.1.4 (01-01-2015)

Liabilities to be Compromised

1. Offers accepted based on DATC or ETA should include all unpaid tax liabilities and periods, including MFT 35 — IRC § 5000A *individual shared responsibility payment* (SRP) liabilities. See IRM 5.8.11 for a definition of ETA.
2. Offers accepted based on DATL should only include the tax years or periods in question. Liabilities for other tax periods should not be included in the offer.

5.8.1.4.1 (02-26-2013)

Definition of a Compromised Liability

1. An OIC is effective for the entire assessed liability for tax, penalties, and interest for the years or periods covered by the offer. All questions of tax liability for the years or periods covered by the agreement are conclusively settled. Neither the taxpayer nor the government can reopen a compromised tax year or period unless there was falsification of information or documents, concealment of ability to pay and/or assets, or a mutual mistake of a material fact that would be sufficient to cause the agreement to be set aside or reformed.

5.8.1.5 (06-24-2013)

Exceptions to Liabilities to be Compromised

1. An OIC may not be appropriate in the following situations. As always, each case must be evaluated on its own merit before returning an offer under the identified basis. If appropriate, the offer may be returned without further consideration or investigation. See IRM 5.8.4.23, *Other Cases*, for additional information on liabilities that may be considered during an offer investigation.

5.8.1.5.1 (02-26-2013)

Unassessed Liability

1. The Service will not consider an offer that is solely for a tax period or tax year that has not been assessed due to non-filing situations, unless IDRS indicates a return has been received or an assessment is pending.

Note:

The Service may consider an offer with an open, unassessed liability(ies) under Examination or Automated Underreporter (AUR). See IRM 5.8.4.15, *Coordination of Offer Investigations*, for additional instruction.

2. Taxpayers may submit, and the Service will consider, an offer to compromise taxes due on tax returns that have been filed but have not yet been assessed when unpaid liabilities already exist on IDRS. However, before the offer can be accepted, unassessed taxes should be assessed.
3. OE/OS should continue to investigate, and may accept, an offer when the taxpayer has submitted a tax return for which there may be a refund or an assessment. If the offer is accepted, document the AOIC Remarks to alert MOIC of the possible assessment or refund.

Note:

This only applies to tax years not listed on the Form 656.

4. If IDRS does not indicate a return has been received, an assessment or refund is pending, or unpaid liabilities already exist, the offer should be returned to the taxpayer.

5.8.1.5.2 (02-26-2013)

Expired Liability

1. An OIC will not be accepted on any tax liability that has become unenforceable due to the expiration of the statutory period for collecting the debt.
2. If a taxpayer makes a voluntary payment to a liability barred by statute, inform the taxpayer that the payment is not required and ask if they want the payment applied to the account or returned. The taxpayer must be advised that the payment is purely voluntary. If the taxpayer's intentions cannot be determined, return the payment to the taxpayer.
3. Document the case history.

5.8.1.5.3 (02-26-2013)

Non-Tax Liability

1. IRC Section § 6305 requires the Secretary of the Treasury to assess and collect certain child support obligations certified by the Secretary of Health and Human Services. These liabilities are identified on the non-master file with a master file tax code (MFT) of 59. The Secretary of the Treasury is not authorized to compromise these liabilities.

Note:

Consideration of the OIC may continue after removing the non-tax liability (from AOIC) under IRC Section § 6305 MFT 59.

2. The individual may seek to pursue any available, equitable, or administrative action in a state court or before a state agency to determine the correct liability or to recover an amount collected under this section.

5.8.1.5.4 (02-26-2013)

Erroneous Refund (Category D)

1. IRM 21.4.5.1 defines an erroneous refund as "the receipt of any money from the Service to which the recipient is not entitled". Definitions of the categories of an erroneous refund may be found in IRM 21.4.5.4. These cases may be identified by the following transaction codes:

- Transaction code 844 (generates the –U freeze)
- Transaction code 700 with a document code 58 and blocking series 950 – 999

- Transaction code 470 closing code 93
2. If an erroneous refund is discovered and there are less than two years remaining on the collection statute, COIC should prepare a Form 4844 to forward to Accounts Management. Field offer groups should contact Collection Case Processing (CCP), to ensure the appropriate codes are input and the modules are referred to Accounting.
 3. If an OIC is submitted, the offer will be returned to the taxpayer and closed as a processable return. See IRM 5.8.7 for additional information on closing a case as a processable return.
 4. These refunds are defined as erroneous refunds that do not fall under any other category where the ASERD has expired but the ERSED remains open.

Example:

- (1) Misapplied Payments: A payment is misapplied to the wrong TIN, overpays the account and generates an erroneous refund; (2) A taxpayer receives both a manual refund (TC 840) and generated refund (TC 846); (3) A taxpayer files a non-receipt claim on a refund check and receives a replacement check. The taxpayer cashes both checks; (4) A direct deposit is applied to the wrong taxpayer's bank account (unintended recipient) due to IRS error; (5) A refund of court ordered restitution.
5. These refunds can only be recovered by an erroneous refund lawsuit, refund offset or voluntary repayment. Administrative collection actions such as the issuance of a lien or a levy cannot be taken to recover Category D erroneous refunds. If an OIC is submitted, the offer will be returned to the taxpayer and closed as a processable return.
 6. All fees and payments received should be applied to the liability(s) in accordance to current TIPRA procedures. See IRM 5.8.4 for additional information.
 7. If the erroneous refund was due to identity theft or practitioner fraud or misconduct, refer to IRM 5.8.4.23.8, *Identity Theft*, and IRM 5.8.4.23.9, *Return Preparer Fraud or Misconduct*, for additional information.

**5.8.1.5.5 (02-26-2013)
Child Support Obligations**

1. While the Service is charged with collecting certain child support obligations, we do not have the authority to compromise them. These accounts are identified on the Non-Master-File with an MFT code of 59.
2. If a taxpayer proposes a compromise that includes a child support liability, Service employees should request that the offer be amended to remove the child support obligation. If the offer is to be accepted, the liabilities can be compromised without including the child support debt. If the taxpayer refuses to remove the child support liability the offer should be rejected using the public policy reason and the open paragraph stating that, "We do not have authority to compromise child support obligations" and close the case as a processable return following procedures defined in IRM 5.8.7.

**5.8.1.5.6 (02-26-2013)
Offers from a Minor Child**

1. Section § 7122 and the regulations govern the formation and legal effect of OICs. The courts also apply generally applicable principles of contract law. Under these principles, a minor child does not possess the legal capacity to form a binding contract and in turn has the power to repudiate or disaffirm most contractual obligations. A minor child would also have the ability to repudiate or disaffirm a compromise signed on behalf of the minor child by a parent or power of attorney. Notice 89-7 states, "a parent or guardian named in Form 2848-D may not legally bind the child with respect to a tax liability unless authorized to do so by the law of the state in which the child resides" .
2. Because a compromise under Section § 7122 may not legally bind a minor, it is recommended that the Service not enter into compromises with minors or with a parent on behalf of a minor. In these cases, the offer will be returned as a processable return as defined in IRM 5.8.7.

**5.8.1.6 (03-16-2010)
Application Fee**

1. Effective November 1, 2003, the Service began charging an application fee for offers submitted after that date.
2. The application fee applies only to certain offers processed under Section § 7122. It does not apply to offers in settlement under the jurisdiction of the DOJ.

**5.8.1.7 (04-24-2015)
The Tax Increase Prevention and Reconciliation Act of 2005**

1. The Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA) was enacted on May 17, 2006. TIPRA made major changes to the OIC program effective for all OICs received by the IRS on or after July 16, 2006.
2. Taxpayers submitting requests for lump sum cash offers must include with the offer a payment equal to 20% of the offer amount. The payment is treated as a payment of tax and is nonrefundable. That is, it will not be returned even if the offer is deemed to be not processable, later returned, withdrawn, terminated, or rejected. A lump sum cash offer means any offer of payments made in five or fewer installments within five months of offer acceptance, unless an exception as noted in IRM 5.8.1.9.4(3) exists.
3. Taxpayers submitting requests for periodic payment offers must include the first proposed installment payment with their offer. A periodic payment offer is any offer of payments made in six or more installments. The taxpayer is required to pay additional installments while the offer is being evaluated by the IRS. All installment payments are nonrefundable, even if the offer is deemed not processable, later returned or rejected.
4. Under TIPRA, taxpayers who qualify as low-income, based on current criteria, and check the box in Section 4 on Form 656, are not required to submit the application fee or any TIPRA payment(s) while the OIC is being investigated.
5. If the IRS does not make a determination on an OIC within 24 months, the OIC will be deemed accepted. If a liability included in the offer amount is disputed in any court proceeding, that time period is omitted from the calculation of the two-year period. Once a determination letter is issued by the offer examiner or offer specialist, the 24-month time frame will be considered stopped.

**5.8.1.8 (06-24-2013)
Initial Receipt of Offers**

1. All initial offer receipts that are submitted based on DATC, ETA, or DATL for either TFRP or PLET must be processed by the appropriate COIC site, based on the taxpayer's state of residence.
 - If the taxpayer resides in Alaska, Alabama, Arkansas, Arizona, Colorado, Florida, Georgia, Hawaii, Idaho, Kentucky, Louisiana, Mississippi, Montana, North Carolina, New Mexico, Nevada, Oklahoma, Oregon, South Carolina, Tennessee, Texas, Utah, Washington, Wisconsin, or Wyoming, the offer will be processed by the Memphis COIC Unit.
 - If the taxpayer resides in California, Connecticut, Delaware, Iowa, Illinois, Indiana, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, North Dakota, Nebraska, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, South Dakota, Vermont, Virginia, West Virginia, District of Columbia, Puerto Rico, or a foreign address the offer will be processed by the Brookhaven COIC Unit.

**5.8.1.8.1 (02-26-2013)
Initial Receipts of Offers Received Elsewhere in the Service**

- Offers that are received elsewhere by a Service employee must be immediately date stamped and forwarded to their respective COIC site for processing within 24 hours of receipt of the Form 656, *Offer in Compromise*.
- When an offer is received on an assigned case by a field revenue officer (RO), Form 657, *Offer in Compromise Revenue Officer Report*, must be completed and attached to the offer package. This form is to be signed by the RO and approved by the manager. The RO should retain all information related to the collection case and forward only the following information to COIC:
 - Form 656, *Offer in Compromise*
 - Form 657, *Offer in Compromise/Revenue Officer Report*
 - Collection Information Statement (CIS) with attached substantiation
 - Current Form 2848, *Power of Attorney and Declaration of Representative* or Form 8821, *Tax Information Authorization*, if applicable
 - Any information gathered during the field investigation that verifies or refutes amounts claimed on the CIS submitted with the offer
 - Application fee and any applicable TIPRA payments (20% of offer amount for lump sum cash offers or first proposed payment for periodic payment offers)
- The above information should be transmitted to the appropriate COIC site using Form 3210, *Document Transmittal*, and must be sent by traceable methods if an application fee and/or payment is attached.

5.8.1.8.2 (02-26-2013)

Receipt of Doubt as to Liability Offers (Other than PLET or TFRP)

- DATL offers, other than for PLET or TFRP, must be submitted on a Form 656-L, *Offer in Compromise (Doubt as to Liability)*, and forwarded to the centralized DATL processing unit located at the Brookhaven campus for screening and processing. The offer should be immediately forwarded using the Form 3210, *Document Transmittal*, to:

Internal Revenue Service
Centralized DATL Unit
P.O. Box 480 Stop 662
Holtsville, NY 11742-0480

- Follow procedures in IRM 10.2.13.4.4.1, *Shipping Personally Identifiable Information (PII)* when shipping through a private delivery carrier, such as UPS or FedEx. Below is the physical address to use for shipment.

Internal Revenue Service
1040 Waverly Ave
Stop 662A
Holtsville, NY 11742

5.8.1.9 (02-26-2013)

Form 656, *Offer in Compromise*

- OIC requests are submitted on Form 656, *Offer in Compromise*, using the most current version. Computer generated or photocopied versions of Form 656, *Offer in Compromise*, are also acceptable provided they contain the following statement: "I/we affirm that this form is a verbatim duplicate of the official Form 656, and I/we agree to be bound by all terms and conditions set forth in the official Form 656."
- The Form 656-B (Booklet), *Offer in Compromise*, provides detailed instructions for completing an offer and includes all of the necessary financial forms. When submitting Form 656, taxpayers must include an application fee and the required TIPRA payment, depending on the type of offer, unless they qualify for the low-income certification or are filing a DATL offer.

Note:

Low income certification applies to individuals and sole proprietorships. Corporations, partnerships, or other non-individual entities are excluded.

- Offers submitted on the basis of DATC or ETA should include a current version of the collection information statement. For offers based solely on DATL, no collection information statement is required. However, the taxpayer must include a written statement explaining why the liability is incorrect and must include a statement addressing the validity of the actual assessment(s) or a portion of the assessment(s).

5.8.1.9.1 (03-16-2010)

Name and Address of Taxpayer

- The full name, address, Social Security Number, Employer Identification Number, and/or Individual Taxpayer Identification Number (ITIN) of the taxpayer must be entered on Form 656. If the taxpayer(s) uses a mailing address that is different from the street address, the physical address must be included as well.

5.8.1.9.2 (02-26-2013)

Basis for Compromise

- When submitting an offer, taxpayers must indicate the basis(es) upon which they propose to compromise: DATC and/or to promote ETA.
- If the taxpayer submits a Form 656-L, the basis for compromise will be DATL only.
- If a taxpayer submits a DATC/ETA and DATL offer concurrently, contact must be made to ask the taxpayer which offer they would like considered. Only one basis can be considered at a time. The OE/OS will consider the DATL or the DATC/ETA offer but not both concurrently. See IRM 5.8.10.13 if a taxpayer submits a DATC/ETA and DATL offer concurrently.

5.8.1.9.3 (03-16-2010)

Amount Offered

- The total amount of money offered must be indicated and must be more than zero. The amount offered may not include money already paid, expected future refunds, funds attached by levy, or anticipated benefits from capital/net operating losses.

5.8.1.9.4 (04-24-2015)

Payments

- Taxpayers are expected to pay the entire amount offered in as short a time as reasonably possible. Acceptable offer payment terms should be determined by the OE or the OS and should not be limited to the proposal of the taxpayer.

2. The amounts and due dates of payments must be specified.
3. There are two types of payment terms offered on the Form 656 that the Service and the taxpayer may agree to:
 - A. **Lump Sum Offer** — A lump sum cash offer (one payable in five or fewer installments within five months of offer acceptance) must be accompanied by the payment of 20% of the amount of the offer.

Note:

An exception may be allowed to the five month payment requirement when instances such as the ones shown in the examples below exist (not all inclusive). In these cases, more flexible payment terms may be warranted, yet the payment terms may not exceed 24 months. Also, in these cases, while they may be submitted and considered as cash offers, the RCP should be calculated as a periodic payment offer (24 months)

Example:

A non-profit organization submits a Doubt as to Collectibility with Special Circumstances offer. This organization's services are critical to the community and it receives funding through grants from federal and state sources. Based on when the grant funds are received, monies to pay out the OIC will be available in months six, nine and twelve. The financial statement appears to support the offer and the taxpayer's overall compliance history does not weigh against acceptance. Therefore, the offer is accepted as a lump sum cash payment offer payable in months six, nine and twelve.

Example:

The taxpayer submits an offer under Effective Tax Administration based on non-economic hardship. The taxpayer was using a payroll service provider (PSP) who deducted all tax payments from the taxpayer's bank account, yet did not remit them to the Service. The taxpayer is a food service company who has been in business since 1987. Their main customer is Department of Defense. Their overall compliance history has been positive. The majority of funding from DOD is received in October and January. The financial statement appears to support the offer. The offer is accepted as a lump sum cash payment offer payable in months eight and eleven.

- B. **Periodic Payment Offer** A periodic payment offer (one payable in six or more installments) must be accompanied by the payment of the amount of the first proposed installment and additional installments must be paid while the offer is being evaluated by the Internal Revenue Service. The total installments may not exceed 24 months.
4. A taxpayer may designate TIPRA payments (pre-acceptance) to a specific liability including trust fund. Once the offer has been accepted, the funds are applied in the government's best interest and the taxpayer no longer has the right to designate payments.

Note:

Pre-acceptance payments designated to the trust fund portion of a liability must be posted using Designated Payment Code (DPC) 02.

5. The application fee may not be designated.

5.8.1.9.5 (03-16-2010)

Standard Conditions

1. Taxpayers must agree to all the standard conditions of the agreement as they are printed on the Form 656.
2. Offers accepted under DATL or ETA based on Public Policy/Equity are not subject to the waiver of refund condition. See IRM 5.8.11, *Effective Tax Administration*, discussing public policy/equity offers.
3. If the taxpayer submitted the Form 656 altering any of the provisions of Form 656, Section 8, the offer should be immediately deemed a processable return based on an altered Form 656.

5.8.1.9.6 (03-16-2010)

Total Liability

1. Each separate tax period and type of tax must be indicated on the Form 656. TFRP assessments made prior to August 2000, will be assessed on the last quarter only, while those made after August 2000, will include an assessment for each quarter. Verification on IDRS will be required to determine how the assessment was completed.
2. Taxpayer may submit an offer that does not include all outstanding liabilities. Prior to accepting the offer, the OE/OS must include all outstanding liabilities on the Form 656 and make sure they are included on AOIC. No amended Form 656 is required.
3. An offer submitted on Form 656-L, under DATL criteria, will be accepted for only the tax periods that are in question.

5.8.1.9.7 (03-16-2010)

Explanation of Circumstances

1. Taxpayers may use the designated space on the Form 656, *Offer in Compromise*, or attach a separate statement to explain why they are submitting the offer.
2. If a special circumstance exists, the taxpayer should explain the situation and include all supporting documents to assist in verification of the special circumstance that is being claimed.

5.8.1.9.8 (02-26-2013)

Signatures

1. Each taxpayer that is party to an OIC should personally sign the Form 656. When unusual circumstances prevent this (e.g., the taxpayer is incapacitated), an authorized representative may sign for the taxpayer.
2. In the case of joint OICs, all parties, or their designated representative as explained above, must sign the Form 656 to ensure the provisions of the agreement bind all parties.
3. The case file should include a copy of the properly executed Form 2848, *Power of Attorney and Declaration of Representative*, Form 8821, *Tax Information Authorization*; or verified CFINQ print as verification of the representative's authority.

Note:

Geographic distance between the representative and the taxpayer is not an acceptable reason for a representative to sign on the taxpayer's behalf.

4. The Form 656 may be accepted by fax if there is an open offer and if contact has been made with the taxpayer by phone or in-person and the taxpayer history file is documented with the date of contact and notation is made that the taxpayer wishes to send the document/form/letter by fax. Confirmation of the fax sender's identity may be verified after receipt of the Form 656.
5. A Form 656 signed with an "X" must also include signature of a witness.
6. A Form 656 digitally signed may be worked through evaluation; however, an original signature must be secured prior to acceptance.

7. Since the CIS requires certification under penalty of perjury, the taxpayer(s) must personally sign the Form 433-A (OIC), *Collection Information Statement for Wage Earners and Self-Employed Individuals*, and/or 433-B (OIC), *Collection Information Statement for Businesses*.
8. Offers submitted for corporations should reflect the corporate name on the first signature line of the Form 656. The signature name and title of the authorized officer should be reflected on the second line of the Form 656.
9. An offer submitted by the fiduciary of an estate of a deceased taxpayer will be binding on the taxpayer's estate to the extent that it would be binding on a taxpayer who submits an offer on their own behalf. Include in the case file a copy of the fiduciary's appointment document.
10. If an offer is submitted on behalf of a deceased taxpayer, when there is no estate, the individual who signs the offer must have authority. This authority can be designated by a will appointing that individual as the executor or by written authorization from the probate court.

5.8.1.10 (01-01-2015) Withholding Collection

1. For offers pending on or after December 31, 1999, collection by levy on property owned by the offer taxpayer is prohibited while the offer is pending unless collection is in jeopardy and for 30 days thereafter if the offer is rejected. If the taxpayer appeals the rejection of the offer, levy is also prohibited while the appeal is pending.
2. The term jeopardy is defined in Policy Statement P-4-88. Collection is not considered to be in jeopardy because an undisclosed asset was discovered during the investigation. See IRM 1.2.13.1.27, *Policy Statement 4-88*.
3. Upon receiving information that a jeopardy levy has been approved, contact the employee issuing the levy. If it is agreed that the offer was filed to hinder or delay collection, follow procedures in IRM 5.8.4 (Solely to Delay) to return the offer.
4. The prohibition on levy does not require release of a levy that was served prior to the offer submission. The taxpayer's circumstances should be considered when making a determination to release a levy or keep it in place while the offer is pending.

Note:

Collection by levy is not prohibited (and the collection statute is not suspended) if the taxpayer has filed a written notice waiving the restrictions on levy. However, if the taxpayer submitted the Form 656 altering any of the provisions of Form 656, Section 8, the offer should be immediately deemed a processable return based on an altered Form 656.

5. While an offer is pending there is no prohibition on filing Notices of Federal Tax Lien. See IRM 5.8.4.13, *Notice of Federal Tax Lien Filing*, for a discussion of filing a Notice of Federal Tax Lien (NFTL) while an offer is pending. Unless a jeopardy situation exists, a request for Notice of Federal Tax Lien will usually not be made until a final determination has been made on the offer.

Note:

If MFT 35 liabilities were included in the OIC, the related periods will not be included in the NFTL.

6. All collection action must be suspended when a taxpayer is identified as being located in a Combat Zone (CZ) area. This action includes filing of a Notice of Federal Tax Lien. See IRM 5.8.3 for Combat Zone processing and IRM 5.19.10.6.3 *Combat Zone Freeze Codes*, for additional information.

5.8.1.11 (03-16-2010) Interest on Compromise Amount

1. For all offers accepted after December 31, 1999, interest on the compromise amount is also compromised.
2. For all offers accepted before January 1, 2000, on Form 656 revisions prior to 1-2000, interest continues to accrue until the compromise amount is paid in full.

5.8.1.12 (03-16-2010) Effect on Previous Offers on Collection Statute

1. Over the years various changes in the tax law have had an effect on the statutory collection period. See IRM 5.8.10, *Special Case Processing*, for additional guidance.

Exhibit 5.8.1-1 Common Abbreviations Used in the IRM

Below is a list of common abbreviations used throughout this IRM.

AET – Asset Equity Table – A table listing all the taxpayers assets, encumbrances, and exemptions. It then calculates the equity which is included in the reasonable collection potential (RCP) calculation.

AOIC – Automated Offer in Compromise – Computer application where offers in compromise are recorded and monitored from receipt to closure. History of the offer investigations conducted by COIC employees and of actions taken by Monitoring OIC (MOIC) units are also maintained on this system.

ARI – Appeals Referral Investigation – A request from Appeals for assistance from the appropriate Collection function on verifying the accuracy of information reported on a CIS or assistance in completing the offers investigation.

ASED – Assessment Statute Expiration Date – The date the statutory period for assessing tax expires.

ATAT – Abusive Tax Avoidance Transactions – Abusive transactions taken by taxpayers to avoid paying, such as creating trusts, using off shore credit cards, etc.

CDP – Collection Due Process - Allows taxpayers a right to a hearing before Appeals regarding proposed collection enforcement actions or filed Notice of Federal Tax Lien.

CIS – Collection Information Statement – A financial statement listing assets, income, liabilities, and expenses submitted by the taxpayer. This financial statement can be submitted on Form 433-A (OIC), *Collection Information Statement for Wage Earners and Self-Employed Individuals*, or Form 433-B (OIC), *Collection Information Statement for Businesses*.

COIC – Centralized Offer in Compromise – Units located in Brookhaven and Memphis campus that complete initial processing and work less complicated offers to completion. Do not confuse this with MOIC – COIC units do not monitor or default accepted offers.

CSED – Collection Statute Expiration Date – The date the statutory period for collecting the tax expires.

DATC – Doubt as to Collectibility – Basis for acceptance of an offer where there is doubt that the tax can be paid in full.

DATL – Doubt as to Liability – Basis for acceptance of an offer where there is doubt that the liability is correct.

DCSC – Doubt as to Collectibility with Special Circumstance – Basis for acceptance of an offer where there is doubt that the tax can be paid in full and special circumstances exist that warrants accepting the offer for less than the reasonable collection potential (RCP).

ETA – Effective Tax Administration – Basis for acceptance of an offer where there is no doubt that the liability is correct or can be paid in full. However, requiring the taxpayer to fully pay the tax would either create an economic hardship or be a public policy/equity issue.

FICA – Future Income Collateral Agreement – An agreement secured in connection with an accepted offer that requires a taxpayer to pay a percentage of future income for a set number of years as additional consideration for acceptance of the offer.

FMV – Fair Market Value – The value a taxpayer would receive if an asset was sold to a willing buyer given time to obtain the best and highest possible price.

IA – Installment Agreement – An agreement under IRC § 6159 to pay the liability over an established period of time.

IAR – Independent Administrative Reviewer – An independent third party who reviews a decision to reject an offer prior to that decision being conveyed to a taxpayer. This person is not in the chain of command of the employees responsible for the rejection of the offer.

IBTF – In Business Trust Fund – A taxpayer who is in business and owes trust fund (e.g. – Form 941) taxes.

ICS – Integrated Collection System – Computer application used by Compliance employees to monitor inventory. Histories of OIC investigations conducted by area office employees are maintained on this system.

IET – Income/Expense Table – A table that lists the income and expenses both claimed and allowed for purposes of calculating reasonable collection potential (RCP).

MOIC – Monitoring OIC Unit – Unit in Compliance Services located in a campus that completes end processing and monitoring of accepted offers.

NFTL – Notice of Federal Tax Lien - The notice of the filed Federal Tax Lien

NRE – Net Realizable Equity – Quick sale value less the amount owed on an asset.

OE – Offer Examiner – A tax examiner appointed as an offer investigator and located in COIC.

OI – Other Investigation – Form 2209, Courtesy Investigation, is used for District investigations in locating taxpayers or to gather information in collecting on assigned cases.

OS – Offer Specialist – A revenue officer appointed as an offer investigator, generally located in an area office.

PE – Process Examiner – A tax examiner who completes initial processability determinations on offers and is located in COIC.

PLET – Personal Liability for Excise Tax – Assessments made on individual taxpayers for withheld excise taxes.

POD – Post of Duty – Internal Revenue Service local office(s).

QSV – Quick Sale Value – The amount that could be obtained if an asset is sold quickly, usually less than FMV.

RCP – Reasonable Collection Potential – The amount that could reasonably be collected from the taxpayer.

TFRP – Trust Fund Recovery Penalty – Assessments made on individual taxpayers for the withheld or trust fund portion of delinquent employment taxes.

TIPRA – Tax Increase Prevention and Reconciliation Act of 2005 – Section 509 – Legislation enacted in May, 2006, which made major changes to the OIC program.

[More Internal Revenue Manual](#)



Part 5. Collecting Process

Chapter 8. Offer in Compromise

Section 2. Centralized Offer in Compromise Initial Processing and Processability

5.8.2 Centralized Offer in Compromise Initial Processing and Processability

- 5.8.2.1 [Overview](#)
- 5.8.2.2 [Initial Processing of Offers in Centralized Offers in Compromise Sites](#)
- 5.8.2.3 [Processability](#)
- 5.8.2.4 [Not Processable](#)
- 5.8.2.5 [Not Processable Offers Received with Payments](#)
- 5.8.2.6 [Erroneous Processability Determinations](#)
- 5.8.2.7 [Processable Offers](#)
- 5.8.2.8 [Sorts and Payment Processing](#)
- 5.8.2.9 [Offer Submitted Solely for Unassessed Liability\(ies\)](#)
- 5.8.2.10 [Processing Forms 3210 after Processability Determinations](#)
- 5.8.2.11 [Identifying CDP Cases under the Jurisdiction of Appeals](#)
- 5.8.2.12 [Changing Status Codes](#)
- Exhibit 5.8.2-1 [IAT Tools That Work For You in COIC](#)
- Exhibit 5.8.2-2 [COIC Procedures for Status 60 / Status 71 Changes](#)

Manual Transmittal

April 24, 2015

Purpose

(1) This transmits revised IRM 5.8.2, Offer in Compromise, Centralized Offer in Compromise Initial Processing and Processability.

Material Changes

(1) This IRM was updated to incorporate interim guidance memorandum SBSE-05-0414-0029 titled Offer Investigations - Payment Options dated April 18, 2014

(2) The following section was updated to incorporate changes discussed in interim guidance memorandum SBSE-05-0414-0029 titled Offer Investigations - Payment Options dated April 18, 2014.

5.8.2.2.(3)a Updated to incorporate the revised definition of lump sum "cash" offer to require the offer amount to be paid within five months of acceptance.

Effect on Other Documents

This IRM supersedes IRM 5.8.2, dated 11/04/2014. Also, Interim guidance memorandum SBSE-05-0414-0029 titled Offer Investigations - Payment Options dated April 18, 2014 was incorporated into this IRM.

Audience

SB/SE Collection and Campus Compliance employees.

Effective Date

(04-24-2015)

Kristen E. Bailey
Acting Director, Collection Policy

5.8.2.1 (05-14-2013)

Overview

1. Jurisdictional responsibility must be determined upon receipt of a taxpayer's proposal to compromise. This section provides instructions for initial case processing on new offers.

5.8.2.1.1 (05-14-2013)

Integrated Automation Technologies (IAT)

1. Integrated Automation Technologies (IAT) tools must be used whenever possible. Some IAT tools are mandatory while others are suggested for use.
2. A current list of mandated and suggested use tools can be found in *Exhibit 5.8.2-1, IAT Tools That Work For You in COIC*. Each tool on the list is linked to the IAT website at <http://iat.web.irs.gov/>. The website contains descriptions and job aids for each tool and should be checked periodically for new tools that may assist in case processing.
3. When a mandated IAT tool is not used because it was not available, or determined not to be appropriate due to a specific situation, document AOIC Remarks with the corresponding reason. In these situations, complete case processing through IDRS following established procedures.

5.8.2.2 (05-14-2013)

Initial Processing of Offers in Centralized Offers in Compromise Sites

1. When an offer is received in the Centralized Offer in Compromise (COIC) site, date stamp the Form 656, *Offer in Compromise*, in the IRS Received Date Stamp block.

Note:

If an offer was received in a location other than the site that is loading the offer onto the Automated Offer in Compromise (AOIC) system, document AOIC Remarks with the initial IRS Date Stamp location.

2. The Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA) was signed into law on May 17, 2006.
3. The law stipulates that, in addition to the application fee, an Offer in Compromise (OIC) received on or after July 16, 2006, must include one of the following based on the offer terms:
 - A. **Lump Sum Cash** – The submission of any lump sum OIC should be accompanied by 20% of the amount of the offer or the low income certification box checked on Form 656. The term "lump sum" means any offer of payments made in 5 or fewer installments within five months of offer acceptance, unless an exception as noted in IRM 5.1.9.4(3) exists. Enter a "C" (Cash) on the Automated Offer in Compromise (AOIC) "Terms" screen.
 - B. **Periodic Payment** – The submission of any periodic payment OIC should be accompanied by the amount of the first proposed installment or the low income certification box checked on Form 656. The term "periodic payment" means any offer of payments in 6 to 24 months. Enter a "D" (Deferred) on the AOIC *Terms* screen.
4. The required initial payment and subsequent payments will be applied to the taxpayer's account, whether the offer is deemed processable or not processable. These funds are non-refundable, except for some situations, and should be immediately posted to the taxpayer's account (either as designated by the taxpayer or to the Government's best interest if not designated). This does not include deposits or application fees. Deposits are refundable. Application fees may not be designated but may be refundable, in certain situations.
5. Because a taxpayer may not specify how the application fee for processing an offer in compromise will be applied, the Service will apply the application fee in the best interests of the government.
6. Sort in the following categories:
 - Offers submitted with remittance
 - Offers submitted without remittance
 - Out of jurisdiction transfers

7. Verify the jurisdiction of the offer.

If the office of jurisdiction is...

Then...

Collection

- Add the offer to AOIC.
- Process in accordance with current guidelines.
- Process the payment(s) through PCC to the 4710 account.

Doubt as to Liability (DATL)

- Do not load the offer onto AOIC.
- Forward to the Brookhaven Centralized DATL Site.

DATL (Trust Fund Recovery Penalty (TFRP)/ Personal Liability Excise Tax (PLET))

- Add the offer to AOIC.
- Process payments in accordance with current guidelines.
- Immediately forward the case to the appropriate OIC field office drop point.
- List payments on the AOIC Appeals *Fee* screen.

Appeals - Non Collection Due Process (CDP)

- Do not load the offer onto AOIC.
- Forward the case to Appeals using the Form 3210, *Document Transmittal*.

Appeals - CDP offers meeting COIC criteria

- Load offer onto AOIC.
- Select Offer Category Code (OCC) 10
- Update offer type *Collection Due Process* which will generate an offer type "P".
- Assign offers to next appropriate inventory; 51xx, 60xx.

Appeals - CDP offers that do not meet COIC criteria

- Load offer onto AOIC.
- Select OCC 10.
- Update offer type *Collection Due Process* which will generate an offer type "P".
- Transfer offer to Area Office (AO) 21.
- Forward complete offer file to Appeals.

8. COIC interoffice transfers based upon State mapping are no longer necessary.
9. Research Integrated Data Retrieval System (IDRS) for entity verification, bankruptcy, cross reference Taxpayer Identification Numbers (TINs) and freeze codes.
10. Print the first page of Individual Master File Online Tax definer 'T' (IMFOLT) and Business Master File Online Tax definer T (BMFOLT) (as applicable) and include in every case file.
11. Complete the following actions on AOIC:
 - Query AOIC to ensure the receipt is a new offer

Note:

If there is an existing offer for the same taxpayer TIN, additional research will be required.

- Add only new offers to AOIC
- Load entity information with the social security number (SSN) and name control only
- Initiate Data Download
- If valid power of attorney (POA) information is found on Centralized Authorization File Inquiry (CFINK) or provided with the offer, load the information on the AOIC POA screen. If multiple POAs are provided, load up to two on the AOIC POA screen. Update AOIC Remarks with the representative information for any valid Powers of Attorney not loaded on the AOIC POA screen.
- Complete the "Update Processability" function of AOIC.

Note:

Multiple offers submitted with one remittance intended as the application fee(s) and/or payment(s) for all will be processed. Load the offers to the AOIC system.

12. If research indicates the taxpayer has an accepted offer in monitoring and the Service Center status code is other than 'C*' do not load the offer. Return the offer and any money received with the submission to the taxpayer. If the prior accepted offer is in status C* load the offer and process following established guidelines.
13. Follow procedures in *IRM 5.8.2.3.1, Determining Processability*, below to make a processability determination and *IRM 5.8.2.7.1, Processable Offers - Payment Processing* and *IRM 5.8.2.8, Sorts and Payment Processing*, for processing application fees, payments, and deposits.

5.8.2.3 (05-14-2013)

Processability

1. COIC Process Examiners (PEs) are responsible for determining processability on offers received and worked by the Service; including TFRP/PLET DATL offers . All other DATL offers are processed by the Centralized DATL Unit (see *IRM 5.8.2.2 (7)* above).
2. If the offer is received with payment, processability must be made within 24 hours of IRS received date. Case building must then be completed within 16 calendar days of AO received date.
3. If no payment is submitted, processability and case building must be completed within 16 calendar days of AO received date.
4. Each new receipt will fall into one of the following categories:
 - Not processable – The taxpayer does not meet one or more of the criteria for offer consideration.
 - Processable – The taxpayer meets the minimum criteria for offer consideration.

5.8.2.3.1 (05-14-2013)

Determining Processability

1. The COIC sites are responsible for determining offer processability. An OIC will be returned as not processable if one or more of the criteria below are present:
 - **Taxpayer in Bankruptcy** – An offer will not be considered while a taxpayer is in bankruptcy. See *IRM 5.8.2.3.2, Additional Research on Bankruptcy Cases*, below for procedures on conducting additional research on bankruptcy OICs prior to returning the offer as not processable.
 - **Taxpayer did not submit the application fee with the offer** – The application fee must be submitted with each Form 656, *Offer in Compromise*, or the low income certification box checked in the applicable section of Form 656.
 - **Taxpayer did not submit the required initial payment with the offer.** – (1) Lump Sum Cash offers must include 20% of the offered amount or the low income certification box checked in the applicable section of Form 656; (2) Periodic Payment offers must include initial proposed installment payment or the low income certification box checked in the applicable section of Form 656.

Exception:

If the taxpayer submits the application fee and a portion (but not all) of the required TIPRA payment (either cash or periodic payment) the offer will be considered a processable offer.

- **Department of Justice** - The IRS may not process any offer to compromise a liability previously referred to the Department of Justice (DOJ) for prosecution or defense. If all liabilities have been referred to DOJ then the offer is not processable. If IRS retains jurisdiction on any tax liabilities then the offer is processable and should be referred to the appropriate field offer group.
 - **Unassessed Liabilities** -Offers submitted solely to compromise a tax period or tax year that has not been assessed, and IDRS does not indicate a return has been received, will be deemed not processable. Any TIPRA payment and application fee paid with the offer should be returned to the taxpayer. If IDRS indicates a return has been received, process based on *IRM 5.8.2.9, Offer Submitted Solely for Unassessed Liability(ies)*
 - **Offer submitted solely for tax period(s) with expired CSED(s)** - An offer will not be considered when the CSED(s) has expired for all liabilities sought to be compromised; as evidenced by a TC 608 on the taxpayer's account. Any TIPRA payment and application fee paid with the offer should be returned to the taxpayer.
2. An OIC is considered pending when a delegated IRS official signs and dates the Form 656. This date is the official offer pending date. If the offer is determined to be processable, the PE must immediately sign and date the waiver on the Form 656.

Note:

The pending date entered on AOIC must match the date the delegated official signed the Form 656. This date must also match the Transaction Code (TC) 480 date when it posts to IDRS.

3. No application fee, TIPRA payment or financial statement is required for offers based solely on DATL.
4. The low income certification applies only to individual taxpayers, including sole proprietorship with Schedule C filing requirements.

5.8.2.3.2 (05-14-2013)

Additional Research on Bankruptcy Cases

1. If the taxpayer failed to indicate the date of dismissal or discharge on the Form 433-A(OIC), *Collection Information Statement for Wage Earners and Self-Employed Individuals*, or Form 433-B(OIC), *Collection Information Statement for Businesses*, it may be necessary to conduct additional research to determine whether a taxpayer is still in bankruptcy or has been discharged or dismissed. Bankruptcy should be verified using IDRS, Automated Insolvency System (AIS), and Public Access to Court Electronic Records (PACER) before returning as not processable. The following table directs the next action to take when an open TC 520 is discovered.

Circumstance...

Upon receipt of an initial offer with a application fee and TIPRA payment

And...

IDRS research shows an open TC 520 with a bankruptcy closing code present on any liability

Then...

Follow current procedures to refund or return the application fee and TIPRA payment, as appropriate.

Upon receipt of a subsequent periodic payment, and there was previously no open TC 520 with a bankruptcy closing code present on any liability at the time the offer was deemed processable

IDRS research now shows an open TC 520 with a bankruptcy closing code present on any liability (posted date is prior to waiver date)

Follow current procedures for not processable return to refund or return the application fee and TIPRA payment, as appropriate.

Note:

Field OS must contact the appropriate COIC site.

2. The following TC 520 closing codes can be used to identify when a taxpayer has filed bankruptcy: 60-67, 81, 83-89. See Document 6209, *IRS Processing Codes and Information*, for additional information.

Note:

Because closing codes 81 and 84 are litigation codes not exclusive to bankruptcy, it will be necessary to research PACER to determine if the taxpayer filed bankruptcy.

3. Document AOIC Remarks with any findings.

**5.8.2.4 (05-14-2013)
Not Processable**

1. When returning the offer as not processable do not sign the offer.

Note:

If correspondence is received with no Form 656, *Offer in Compromise*, respond to the taxpayer using correspondex Letter 278C. If the correspondence is received with money, do not send Letter 278C; return both the correspondence and money to the taxpayer along with a letter advising the taxpayer why the correspondence and money are being returned.

2. Take the following actions:

- A. Complete the AOIC *Payment* screen as applicable.
- B. Stamp Form 656, *Offer in Compromise*, with "RETURN" and write the date that the offer was determined to be not processable.
- C. Cross out all IRS received dates with an "X."
- D. Document the AOIC Remarks with the payment information, specifying the reason(s) for the not processable determination.
- E. If the payment(s) was processed through Remittance Strategy for Paper Check Conversion (RS-PCC), prepare the Form 5792, *Request for IDRS Generated Refund (IGR)*, for a manual refund. In most cases only the application fee will be refunded.

Note:

The Form 5792, *Request for IDRS Generated Refund (IGR)*, on not processable offers will be processed according to normal manual refund procedures outlined in IRM 21.4.4, *Manual Refunds*.

3. Prepare the Return Letter.

- A. In addition to identifying the reason(s) for the determination, also address any issues concerning combined joint and separate liabilities, if appropriate; for example, individual and corporate or partnership liabilities on one Form 656, *Offer in Compromise*. In those cases, include option "AF" in the return letter.
- B. Ensure signature on the return letter as defined in Delegation Order 5-1.
- C. Close AOIC with a final disposition code of 10.
- D. Send Form 656, *Offer in Compromise*, the return letter, Pub 1, *Your Rights as a Taxpayer*, and Pub 594, *The IRS Collection Process*, to the taxpayer with all original documents submitted with the offer. If a POA is present, send the representative a copy of the letter. If disclosure issues exist, use the appropriate paragraph to indicate this in the return letter, and do not send a copy to the representative.

4. If the Form 656, *Offer in Compromise*, was forwarded by a Revenue Officer (RO) with a Form 657, *Revenue Officer Report*, and it is determined to be not processable, the COIC site should forward Form 657 and a copy of the not processable letter to the approving official of Form 657. If Form 656 was forwarded by an RO without Form 657, forward a copy of the return letter to the RO assigned the collection case for information.

5. Caution should be exercised to ensure that no IDRS prints or other internally generated research documents are sent to either the taxpayer or the POA. All internal documents should be destroyed.

Note:

There is no requirement to retain any information or copies of documents on not processable cases.

**5.8.2.5 (05-14-2013)
Not Processable Offers Received with Payments**

1. The following procedures apply if the application fee and payment(s) were made with certified funds (money order, bank check, cashiers check, government check), and the processability determination and return package can be completed on an expedited basis, and the offer package with the certified funds payment instrument can be returned to the taxpayer within 24 hours of receipt.

- Hand-carry the certified funds payment instrument and return offer package to the Campus Support Mail Team within 24 hours of receipt. The Campus Support Mail Team is responsible for preparation and mailing of the certified package.
- The Form 3210, *Document Transmittal*, must be completed by annotating "\$xxx amount Certified" to indicate the payment was returned via certified funds to the taxpayer.

2. The following procedures will only apply if processability cannot be completed within 24 hours of receipt of the application fee and the payment(s) was made with certified funds (money order, bank check, cashiers check, government check).

- Certified funds will be deposited upon receipt and processed through the normal work stream for both the clerical and PE procedures.
- Request a manual refund by preparing the Form 3753, *Manual Refund Posting Voucher*.

Note:

Form 3753 manual refunds on not processable offers will be processed according to normal manual refund procedures outlined in IRM 21.4.4, *Manual Refunds*.

- Prepare the offer package to be returned to the taxpayer.
3. The following procedures will only apply if processability cannot be completed within 24 hours of receipt of the application fee and the payment(s) was made with a personal check.
- A. Complete a separate Form 3210, *Document Transmittal*, for those offers to be returned based on the receipt of only the application fee.
 - B. Enter no more than 5 offers on the Form 3210, *Document Transmittal*.
 - C. Load onto AOIC.
 - D. Hand-carry the Form 3210, *Document Transmittal*, to the Campus Support Mail Team to get personal checks stamped as non-negotiable.

Note:

COIC will use a non-negotiable stamp on personal checks when the taxpayer's offer is deemed not processable. The Form 3210 will be issued for control purposes only and should be maintained as a record of the payment(s) received. The Form 3210 must also indicate the check(s) was stamped as non-negotiable and the date it was stamped. The check must be stamped non-negotiable within 24 hours of receipt.

- E. Personal checks stamped non-negotiable will be returned to the designated COIC function employee housed in the Campus Support mail area and maintained in a locked file until the completion of the return package.
- F. Personal checks stamped non-negotiable and the offer package should be returned to the taxpayer through normal mail-out procedures.
- G. The AOIC history must be documented indicating the check was stamped non-negotiable and include the date it was stamped.

Note:

Once the checks have been stamped non-negotiable and handled according to the procedures above, the offer package should be assigned to a PE for completion of the return letter and offer package.

- 4. Management must establish controls to ensure returned offer packages are associated with the non-negotiable payment instruments and processed in accordance with established procedures.
- 5. If the taxpayer also submitted a deposit and the offer is not processable, the deposit should be refunded to the taxpayer. Prepare the Form 3753, *Manual Refund Posting Voucher*, to refund the deposit from the 4710 Account, and forward it to Monitoring Offer in Compromise (MOIC) for processing. Annotate the AOIC *Remarks* screen.

5.8.2.6 (05-14-2013)

Erroneous Processability Determinations

- 1. The Service retains the application fee for processable offers; therefore, application fees associated with offers that are initially deemed processable but subsequently determined to be not processable must be returned to the taxpayer.
- 2. If the offer was originally determined processable and the application fee was deposited, but it was later concluded that this determination was made in error, processing should stop. The case should be closed using not processable procedures defined above. In these cases, it is important to ensure AOIC is updated to "not processable" to reverse the TC 480(s). This will result in the generation of a TC 483 posting to the appropriate modules. The application fee must be manually refunded to the taxpayer. When an erroneous processability determination is corrected, prepare the return letter and correct the AOIC *Payment* screen record. Follow *IRM 5.8.2.5, Not Processable Offers Received with Payments*, above, for refund procedures.

Note:

If it is later determined that the taxpayer was in bankruptcy at the time the offer was filed, TIPRA payments must also be manually refunded.

5.8.2.7 (01-01-2015)

Processable Offers

- 1. Complete the AOIC *Payment* screen and generate Form 3244, *Payment Posting Voucher*, or Form 2515, *Record of Offer in Compromise*, as appropriate.
- 2. Complete the *Terms* screen on AOIC.
- 3. *Verify Master File Tax (MFT)* screens are populated through Data Download or manually input all required information.

Note:

When manually adding tax periods to the AOIC MFT screen include MFT 35, Shared Responsibility Payment liabilities assessed under IRC § 5000A, *Individual Shared Responsibility Payment*.

- 4. On all Individual Master File (IMF) cases enter "P" if the offer is for the primary taxpayer of the controlling TIN on the entity, enter "S" if the offer is for the secondary taxpayer, or "B" if both husband and wife are making a joint offer. If only one party of a joint liability is submitting the offer, remove the "Y" from the *MFT* screen. This will take the case out of Status 71.

Note:

See *IRM 5.8.2.12, Changing Status Codes*, below for guidance on when it is appropriate to change the status code.

- 5. Include a Master File print or a current IDRS print showing the liabilities and CSED(s) at the time the offer was submitted with each case file.
- 6. Check for any freeze codes such as: -Y (offer in compromise), -W (litigation), -Z (Criminal Investigation), -A (duplicate return), -V (bankruptcy), -L (Administrative Information Management Strategy, (AIMS)), -F (frivolous return), -E (tax shelter/rollback) and TC 520 that may require special action. Freeze codes indicating Criminal Investigation Division (CID), bankruptcy, Exam issues (i.e. AIMS), duplicate return filed, or other litigations should be worked in accordance with guidelines in this IRM.
- 7. Check for cross-reference SSN, Employee Identification Number (EIN), and Individual Taxpayer Identification Numbers (ITINs) known or found for the taxpayer for input to MFT Data Download.
- 8. Verify the taxpayer has submitted the appropriate Form 656, *Offer in Compromise*, Form 433-A(OIC), *Collection Information Statement for Wage Earners and Self-Employed Individuals*, and/or Form 433-B(OIC), *Collection Information Statement for Businesses*.
- 9. Verify the taxpayer has submitted the application fee, required TIPRA payment, or checked the box on Form 656 for the low income certification for each offer submitted.
- 10. Document the AOIC Remarks.

5.8.2.7.1 (05-14-2013)

Processable Offers - Payment Processing

1. If the taxpayer submits both the application fee and the required initial TIPRA payment (20 % or first installment) in one check, the application fee will be entered first and the remainder will be applied as the required TIPRA payment.
2. Insufficient remittance of the initial TIPRA payment will be considered a perfection issue. See IRM 5.8.3, *Centralized Offer in Compromise Transfers, Perfection, and Case Building*, for more information regarding the perfection of incomplete offers.
3. The required initial TIPRA payment (20% or first installment) will be applied to the taxpayer's liability in all instances. With the exception of specific offer submissions noted in *IRM 5.8.2.3.1 (1)* above, these monies are not refundable to the taxpayer.
4. Taxpayers may designate how the required TIPRA payments are to be applied and payments will be applied in accordance with the taxpayer's designation. The designation applies only to the payment being processed.

Note:

If the taxpayer wishes to have future payments applied to particular liabilities, each payment will need to be designated. Payments without designation will be applied to the taxpayer's tax liability in the best interest of the Government.

5. If no written payment designation was submitted with the offer, apply the payment(s) to the taxpayer's tax liability in the best interest of the Government.
6. For offers submitted from entities other than corporations, apply the payment(s) to the tax liability(ies) with the earliest unexpired CSED(s).

Note:

There may be instances when the earliest unexpired CSED is not the earliest tax period.

7. For offers submitted from corporations or other entities subject to the trust fund recovery penalty, involving trust fund taxes, apply payment(s) in the following descending order:
 - A. To all Forms 1120, 940, and any other non-trust fund liabilities (in earliest unexpired CSED order), if any; and
 - B. To the following unpaid portions of all Form 941 periods (in earliest unexpired CSED order):
 - Non-trust fund portion of tax (employer's share of FICA)
 - Assessed lien fees and collection costs
 - Assessed penalty
 - Assessed interest
 - Accrued penalty to the date of payment
 - Accrued interest to date of payment
 - Trust fund portion of the Form 941 (employee's and withholding share of FICA)
8. It is possible the taxpayer may submit the application fee, the required initial TIPRA payment, and a deposit with the Form 656, *Offer in Compromise*.
 - The application fee, required initial TIPRA payment, and deposit will be entered on separate lines on the Form 3210, *Document Transmittal, Document Transmittal*, and processed through RS-PCC.
9. All checks must be deposited within 24 hours of receipt.
10. If the amount submitted with the Form 656, *Offer in Compromise*, exceeds the amount required, the entire amount will be treated as a non-refundable payment of tax, unless the taxpayer indicates the excess amount is to be treated as a deposit in the applicable section on Form 656.
11. If the taxpayer sends one check, the amount submitted exceeds the required amounts, and the taxpayer indicated how the payment should be applied (for example, as a deposit or an estimated tax payment), process the amount according to the taxpayer's designation. The application fee portion of the payment may not be designated, and will be applied in the best interest of the Government. Any payments other than the application fee, required TIPRA payment, or deposit must be processed on Form 3244, *Payment Posting Voucher*, with the appropriate transaction code and Designated Payment Code (DPC). For example, an estimated payment will be a TC 430 (for IMF) or TC 660 (for BMF), instead of TC 670. This determination will be made by the PE when making a processability determination and applying payments on the Form 3244, *Payment Posting Voucher*, using the IRS received date as the payment date.
12. Subsequent payments must also be deposited within the 24 hour requirement as defined above.

Note:

Subsequent installment payments of a periodic payment offer are non-refundable and should be applied to the earliest tax liability with the earliest CSED or as designated by the taxpayer. If the offer is submitted by an entity subject to the trust fund recovery penalty refer to (7) of this section for application of payments.

13. If the payment is submitted on Form 656-PPV, *Offer In Compromise Partial Payment Voucher*:
 - Process the payment as described above through RS-PCC or Paper Check Conversion (PCC) when applicable.
 - Document the payment on AOIC *Payment* screen.

5.8.2.8 (05-14-2013)

Sorts and Payment Processing

1. The "If and Then" table below provides the criteria for processing payments:

Note:

Request input of a secondary TC 570 with "\$.00" on BMF liabilities only when the payment exceeds the liability(ies) to avoid systemic issues that may not allow offset as defined in IRM 5.1.12, *Cases Requiring Special Handling*.

If you receive a...

Then...

Form 656, *Offer in Compromise*, the application fee, and required initial TIPRA payment

- A. Load the offer on AOIC.
- B. List payments on the AOIC *Payment* screen.

C. Process payments through RS-PCC or PCC as applicable.

Offers received with a check for the application fee only are deemed not processable upon receipt and will be sorted by the clerical function during the fine sort.

Form 656, *Offer in Compromise*, with the application fee and no required initial TIPRA payment (20% or first installment payment)

- A. Load the offer in AOIC.
- B. Update the AOIC Remarks documenting that the offer is not processable.
- C. Complete the Form 3210, *Document Transmittal*, for a not processable return.
- D. If the taxpayer submitted a personal check, COIC will stamp the check non-negotiable, generate the return letter, and send to the taxpayer.
- E. If the taxpayer submitted certified funds (money order, certified check, etc.), COIC will generate the return letter, and the funds will be returned by certified mail via Campus Support.

Form 656, *Offer in Compromise*, from an individual taxpayer with both an application fee, the low income certification box checked, and the required initial TIPRA payment

- A. Load the offer on AOIC.
- B. Prepare the Form 2515, *Record of Offer in Compromise*, designating the payment(s) as a deposit and process through PCC.
- C. Complete the AOIC *Payment* screen indicating "valid waiver" .

Form 656, *Offer in Compromise*, from an individual taxpayer with both an application fee, low income certification, and no required initial TIPRA payment

- A. Load offer on AOIC.
- B. Complete the AOIC *Payment* screen indicating "valid waiver" .
- C. Prepare the Form 2515, *Record of Offer in Compromise*, designating the application fee as a deposit and process through PCC.

Form 656, *Offer in Compromise*, from an individual taxpayer with a low income waiver (in lieu of the application fee and required initial payment)

Complete the AOIC *Payment* screen indicating "valid waiver" .

Non CDP Form 656, *Offer in Compromise* - Appeals Jurisdiction

- Load payments to the Appeals *Fee* screen.
- Complete the Form 3210, *Document Transmittal*, by entering the following: (1) Revenue Accounting Control System (RACS) number (2) SSN/EIN (3) Name Control (4) Check Amount (5) Check Number (6) Check Type (7) The application fee (8) Amount of the required initial TIPRA payment and deposit, if any.
- Prepare the Form 2515, *Record of Offer in Compromise*.

CDP Form 656, *Offer in Compromise* – Appeals Jurisdiction

- A. Load payments to AOIC *Payment* screen.
- B. Complete the Form 3210, *Document Transmittal*, by entering the following: (1) Offer Number (2) SSN/EIN (3) Name Control (4) Check Amount (5) Check Number (6) Check Type (7) The application fee (8) Amount of the required initial TIPRA payment and deposit, if any.
- C. Prepare the Form 3244, *Payment Posting Voucher*.
- D. Update Case Category Code to 10
- E. Transfer case to AO 21.

CDP Form 656 Form 656, *Offer in Compromise* - COIC criteria

- Load payments to AOIC *Payment* screen.
- Complete the Form 3210, *Document Transmittal*, by entering the following: (1) Offer Number (2) SSN/EIN (3) Name Control (4) Check Amount (5) Check Number (6) Check Type (7) The application fee (8) Amount of the required initial TIPRA payment and deposit, if any.
- Prepare the Form 3244, *Payment Posting Voucher*.

DATL offer (Form 656-L, *Offer in Compromise (Doubt as to Liability)*)

DATL offers, Form 656-L, are exempted from application fees and all TIPRA payments. Any fee or payment will be treated as a deposit and processed on the Form 3210, *Document Transmittal*, and Form 2515, *Record of Offer in Compromise*, through PCC.

2. DATL offers (and any other manually monitored offer such as DOJ) require the same RACS numbering scheme in place of the offer number on the Form 3210, *Document Transmittal*, COIC Remittance Tracking Report and Form 2515, *Record of Offer in Compromise*, as outlined above. Utilize the RACS deposit numbering system provided by MOIC to generate and enter a 10 digit control number on both the Form 3210 and Form 2515.

5.8.2.9 (05-14-2013) Offer Submitted Solely for Unassessed Liability(ies)

1. An unassessed liability is a liability where no assessment has been made.
2. If an offer is received that is solely for an unassessed liability(ies), COIC will determine processability using the following procedures.

If...

Then...

Research of IDRS indicates the return has been received, but has not posted

- A. Continue working the offer.
- B. Post the payments to the taxpayer account. Request input of a secondary TC 570 with "\$.00", to allow the payment to post to the taxpayers account, before the assessment.

Research of IDRS shows no indication a return has been received and no return was submitted with the offer.

Return the offer per *IRM 5.8.2.3.1 (1)* above

Research indicates the unassessed liability is being worked in

- A. Continue with offer processing

5.8.2.9.1 (01-01-2015)**Payments Processed Using Remittance Strategy – Paper Check Conversion (RS-PCC)**

1. Most payments received for the OIC application fee and TIPRA payments will be processed by Campus Support utilizing Remittance Strategy Paper Check Conversion (RS-PCC).
2. All payments regardless of whether scanned through PCC or RS-PCC must be delivered to Campus Support for processing within 24 hours of receipt. The 24 hour deposit standard must be met.
3. COIC is responsible for completing the Form 3244, *Payment Posting Voucher*, with the following information:
 - SSN/EIN
 - MFT
 - Tax Period
 - Transaction received date
 - Taxpayer name, address, and zip code
 - Transaction code
 - Transaction amount
 - Remarks
 - Prepared by (name and unit symbol)
 - DPC code

DPC Definition

- 33 Offer in Compromise application fee
 34 Offer in Compromise 20% lump sum / initial periodic payment
 35 Offer in Compromise subsequent payments made during the offer investigation
 Trust Fund Liability Payments (i.e. 941, 943, 945 liabilities, NOT MFT 55). Payment is to be applied first to the trust fund portion of the tax.

02 Caution:

Only use DPC 02 when posting offer payments designated to the trust fund portion when the offer was submitted by a corporate taxpayer or LLC.

- 09 Offer in Compromise (Accepted Offer Payments)
 99 Miscellaneous Payment

Note:

Any payment received after the offer has been closed should be applied to the taxpayer's liability using DPC 99.

4. Write "RS-PCC" on the Form 3210, *Document Transmittal*.
5. List Trust Fund liability designated payments (DPC 02) at the beginning of the Form 3210, *Document Transmittal*, and highlight for special handling.
6. Write the offer number on the Form 3210, *Document Transmittal*, for each payment processed through RS-PCC.
7. Payments should be listed on the AOIC *Payment* screen.

5.8.2.9.2 (05-14-2013)**Payment Processing through Paper Check Conversion (PCC)**

1. The following payments cannot be processed through RS-PCC and must be processed through Paper Check Conversion (PCC):
 - A. Government checks not endorsed.
 - B. Third party checks not endorsed.
 - C. Foreign checks.
 - D. Any check that cannot be read by RS-PCC scanner.
 - E. Any funds that are received with the original offer that cannot be identified as the application fee or the initial TIPRA payment. These funds are considered a deposit and must be deposited in the 4710 Account.
 - F. Payments posting to MFT 51 (Form 709, *United States Gift (and Generation - Skipping Transfer) Tax Return*, Form 709-A, *United States Short Form Gift Tax Return*) and MFT 52 (Form 706, *U.S. Estate Tax Return*).
2. PCC payment processing:
 - A. Complete the *Payment* screen on AOIC.
 - B. Generate Form 2515, *Record of Offer in Compromise*, from AOIC.
 - C. Prepare Form 3210, *Document Transmittal*, annotating "PCC" in the upper right hand corner.
 - D. Complete Form 2515 and make one copy. Attach the payment(s) to the original.
 - E. Form 2515, Annotations - COIC will use the following abbreviations to annotate the Form 2515, beside the appropriate entry in the *Amount* column. The blank space at the bottom of the form may be used for any additional remarks.

Definition

Application Fee

Abbreviation

AppFee

Payment
Deposit
Estimated Payment
Refund to Taxpayer

Pymt
Dep
ES

Note:

To be used when COIC prepared the Form 3753, *Manual Refund Posting Voucher*, to refund the application fee and forwarded to Cincinnati for processing

RefTP

Designated Payment

Note:

DesgP

Indicate MFT and Period

- F. Forward the Form 3210, Form 2515, and remittance(s) to PCC for processing.
- G. Forward the copy of Form 2515 to MOIC. Attach the transmittal Form 3210.
- H. Attach Form 3210, and include (1) offer number; (2) taxpayer identification number; (3) taxpayer name; and (4) amount of the payment.
- I. Transmit the payment by traceable methods to the appropriate MOIC unit for processing.
- J. Annotate the *Remarks* section of Form 2515 with the payment application (e.g., 20% lump sum, first periodic installment, application fee, and any deposit, if applicable).

Note:

Because a taxpayer cannot designate how the application fee for processing an offer in compromise will be applied, the Service will apply the application fee in the best interests of the government.

Note:

If the taxpayer designated application of the TIPRA payment(s) on Form 656, *Offer in Compromise*, enter the appropriate information in the *Remarks* section of the Form 2515. If the taxpayer also submitted a deposit separate from the required TIPRA payment, split the payment as requested. Enter the information according to the offer terms and annotate the difference as the deposit. The deposit will remain in the 4710 Account until a determination is made; that is, the offer is accepted, rejected, or returned.

- K. Retain a copy of the Form 2515 in the case file.

Note:

The entries on the Form 2515 must equal the check(s) amount(s) recorded on the Form 3210. The Form 3210 and associated documents should be returned to COIC clerical for processing.

- L. Document the AOIC Remarks with the payment type, application of the funds, and if the payment was applied per taxpayer's designation.

Example:

One check received in the amount of \$650. Payments applied: \$xxx application fee; \$xxx payment; \$xxx deposit.

3. Deposits are not treated as payments of tax upon receipt. They are held in a special deposit fund commonly referred to as the 4710 Account. The deposit is not reflected on IDRS nor applied to any specific tax period until the offer is accepted. For those offers previously loaded on AOIC, the amount will be annotated on the *Deposits* screen of the taxpayers AOIC record by the MOIC employee processing the remittance.
4. COIC sites will treat any remittance (including those for an application fee) received with DATL offers (non-TFRP/PLET) as a deposit. Since such offers do not require an application fee or initial payment, and will be manually monitored by MOIC, employees should list any such remittances on the Form 3210, *Document Transmittal*, and prepare the Form 2515, *Record of Offer in Compromise*, for processing. Utilize the RACS deposit numbering system provided by MOIC to generate and enter a 10 digit control number on both the Form 3210 and Form 2515.

Note:

A PDF fillable version of the Form 2515 is accessible on the IRS Intranet.

5. All payments regardless of whether scanned through PCC or RS-PCC must be delivered to Campus Support for processing within 24 hours of receipt. The 24 hour deposit standard must be met.

5.8.2.10 (01-01-2015)

Processing Forms 3210 after Processability Determinations

1. Form 2515, *Record of Offer in Compromise*, and Form 3753, *Manual Refund Posting Voucher*, will be forwarded to COIC after processability determinations have been made.
2. Form 3210, *Document Transmittal*, will be returned to COIC for processing of all attached Form 3244, *Payment Posting Voucher*. All completed Form 3210 will be filed and retained in COIC.
3. If the offer was determined to be not processable and payments were processed through PCC, forward the related Form 2515 and Form 3753 to MOIC for processing with a copy of the Form 3210. The Form 3210 serves as the transfer transmittal.

Note:

All forms should be forwarded to MOIC on an expedited basis.

4. Not processable offers (with the exception of offers returned because only the application fee was submitted with a personal check, not processable offers submitted solely for unassessed liabilities and offers submitted solely for a liability(ies) with an expired CSED(s)) will be returned to the clerical function with the associated Form 3210, Form 2515 and Form 3753. The PE will prepare the return letter and envelope for mail out. The following actions must be taken:
 - Date and sign the return letter
 - Include with the letter any other associated documents
 - Seal the envelope for mail out

- Close with final disposition 10 on AOIC
- Include the Form 656, *Offer in Compromise*
- Return to the clerical function to be mailed

Note:

If the offer is being returned because the taxpayer submitted only the application fee, or is a not processable offer submitted solely for an unassessed liability(ies) or an offer submitted solely for a liability(ies) with expired CSED(s) do not seal the envelope. The clerical function must associate the check(s) with the offer package before it is returned.

5. If the offer was determined to be processable and the payments processed through PCC, forward the related Form 2515 to MOIC for processing with a copy of the Form 3210. The Form 3210 serves as the transfer transmittal.
6. The COIC sites will retain processable offers for further OIC processing and assignment.

5.8.2.11 (05-14-2013)

Identifying CDP Cases under the Jurisdiction of Appeals

1. The procedures below apply to cases falling under the jurisdiction of Appeals. They do not apply to CDP procedures established for cases investigated by COIC. See IRM 5.8.3.3, *Routing Cases Based on Jurisdictional Responsibility*, for guidance.
2. OICs submitted directly to the Compliance employee, are occasionally identified as having an open CDP control. When this occurs, the COIC site CDP coordinator will research Appeals Centralized Database System (ACDS) to determine if the CDP is still open, and if a determination letter has been issued.
3. If the CDP determination letter has not been issued or a withdrawal has not been signed and dated, the offer is considered to be open and under the jurisdiction of Appeals.
4. If the offer is under the jurisdiction of Appeals:
 - Change the case category code to 10, select Offer Type *Collection Due Process*, which will change the Offer Type Code to "P" and transfer the case to AO 21.
 - Forward the case file to Appeals

5.8.2.11.1 (05-14-2013)

Determining Processability for Appeals Collection Due Process

1. If Collection files a lien while an offer is being investigated, the investigation will continue. If the taxpayer files a Collection Due Process (CDP) request because of that lien and the CDP remains open, the offer falls under the jurisdiction of Appeals.
2. If the case falls under the jurisdiction of Appeals but is being worked in COIC, change the case category code to 10 and select Offer Type *Collection Due Process* which will change the Offer Type Code to "P" .
3. Appeals may require Collection's assistance to complete the investigation on complex cases. In those cases, an Appeal Referral Investigation (ARI) may be issued to a field RO Collection group.
4. The same processability criteria will be applied to these cases.
5. Payment processing should be through RS-PCC or PCC as appropriate.
6. Appeals will provide COIC with both processable and not processable determination letters containing all necessary information, including the Appeals contact information on Appeals Transmittal Form 3210, *Document Transmittal*. Appeals will provide two copies of the Appeals Transmittal Form 3210. One copy is for COIC clerical filing and the other copy will remain with Form 656, *Offer in Compromise*, and related documents. It is the responsibility of COIC to sign, date, and mail the applicable letter based on the processability determination.

If...	Then...
The offer is not processable and a remittance was attached	<ol style="list-style-type: none"> A. Prepare the not processable letter and the Form 656, <i>Offer in Compromise</i>, to mail to the taxpayer in accordance to current IRM procedures. B. Access the AOIC <i>Payment</i> screen and input the payment data. C. Send an email to the SO/AO with the information as to why the offer was deemed not processable. The Appeals employee name and fax number should be noted on the Appeals Transmittal Form 3210, <i>Document Transmittal</i>. D. Fax a copy of the not processable letter to the Appeals employee.

Note:

The Appeals Transmittal Form 3210 should remain with the case until a processability determination has been made. A copy should be retained by the Clerical staff in Appeals.

The offer is not processable and no remittance was attached	<ol style="list-style-type: none"> A. Prepare the not processable letter and the Form 656 to mail to the taxpayer in accordance with current procedures. B. Send an email to the SO/AO with the information as to why the offer was deemed not processable. The Appeals employee name and fax number should be noted on the Appeals Transmittal Form 3210. C. Fax a copy of the not processable letter to the Appeals employee.
If the offer is processable and a remittance is attached	<ol style="list-style-type: none"> A. Access the AOIC <i>Payment</i> screen and input the fee and payment data and process the payment through RS-PCC or PCC, as appropriate. B. Mail the processability letter to the taxpayer. C. Send a copy of the letter and the original offer package to the Appeals employee designated on the Appeals Transmittal Form 3210. The Appeals employee name and fax number should be noted on the Appeals Transmittal Form 3210.

Note:

The Appeals Transmittal Form 3210 should remain with the case until the processability determination has been made. A copy should be retained by the Clerical staff in Appeals.

If the offer is processable and the taxpayer submitted and qualified for the low income certification

- A. Mail the processability letter to the taxpayer.
- B. Send a copy of the letter and the offer package to the designated Appeals employee on Appeals Transmittal Form 3210. The Appeals employee name and fax number should be noted on the Appeals Transmittal Form 3210.

7. If the offer was deemed not processable send an email notification to the AO/SO advising the reason.
8. COIC will advise the AO/SO when it is necessary for the Appeals employee to secure additional Form 656, application fee(s), and/or required initial payments prior to the investigation by generating the letter identifying Option "Y" criteria. The COIC site will prepare Appeals Transmittal Form 3210 for transmittal of the processable offer back to Appeals. The Appeals Transmittal Form 3210 will include the following information:
 - List the specific periods with the TC 480
 - Identify an Option "Y" condition
 - Copy of Form 3244, *Payment Posting Voucher*, (showing the designation of money; i.e., fee, periodic payment received, or partial payment of 20%)
 - Non-compliance issues
 - Additional forms, fees, and/or payments
9. It will be the responsibility of Appeals to resolve each TC 480 (e.g. input of TC 481, 482, 483) after Appeals concludes the offer investigation. The Form 3244, *Payment Posting Voucher*, should show the IRS received date for the date of the payment.

If...

It is determined that the case is under Appeals jurisdiction and the CDP condition is identified while the offer is being processed through COIC

It is determined the case is under Appeals jurisdiction but the CDP condition is identified after the offer has been deemed processable and moved to a workable inventory

Then...

- The COIC site CDP coordinator will advise the AO/SO of the processability determination.
- The AO/SO will generate and transmit via encrypted email to the COIC site CDP coordinator the appropriate appeals processable and not processable letters.
- The COIC site will follow the current procedures to process the letter and application fee.

COIC will:

- Input CCC 10, Offer Type Code "P" and transfer to AO 21, and ship the offer to Appeals.

5.8.2.12 (05-14-2013) Changing Status Codes

1. If the offer is determined to be processable, it may be necessary to change the status code to 71.
2. If tax periods are in status 53, 61, 63, 72 or if the Form 657, *Offer In Compromise/Revenue Officer Report*, indicates that Tax Delinquent Accounts (TDAs) are to remain in the field, remove the "Y" on each tax period on the *MFT* screen. Do not change the status of those accounts unless the module is a Status 53 with Closing Code 03 (unable to locate) or Closing Code 12 (unable to contact).
3. Offers in status 60 (installment agreement) – for offers with a status of 60 the indicator should be changed to Status 71. If the offer cannot be accepted, the installment agreement should be reinstated. In those cases, the reinstatement fee for the IA will be waived. See *Exhibit 5.8.2-2, COIC Procedures for Status 60 / 71 Changes*, below for instructions.

Exhibit 5.8.2-1 IAT Tools That Work For You in COIC

This image is too large to be displayed in the current screen. [Please click the link to view the image.](#)

Exhibit 5.8.2-2 COIC Procedures for Status 60 / Status 71 Changes

The below procedures have been established to assist the COIC sites taking a taxpayer account from Status (STAT) 60 to STAT 71 and placing the account back into STAT 60 if the offer is rejected, returned, or withdrawn.

This image is too large to be displayed in the current screen. [Please click the link to view the image.](#)

This image is too large to be displayed in the current screen. [Please click the link to view the image.](#)

This image is too large to be displayed in the current screen. [Please click the link to view the image.](#)

This image is too large to be displayed in the current screen. [Please click the link to view the image.](#)

This image is too large to be displayed in the current screen. [Please click the link to view the image.](#)

[More Internal Revenue Manual](#)



Part 5. Collecting Process

Chapter 8. Offer in Compromise

Section 3. Centralized Offer in Compromise Transfers, Perfection, and Case Building

5.8.3 Centralized Offer in Compromise Transfers, Perfection, and Case Building

- 5.8.3.1 [Overview](#)
- 5.8.3.2 [Perfection and Case Building Timeframes](#)
- 5.8.3.3 [Routing Cases Based on Jurisdictional Responsibility](#)
- 5.8.3.4 [Field Cases – Identification and Transfer](#)
- 5.8.3.5 [Processing Forms 656 and Initial Offer Payments](#)
- 5.8.3.6 [Perfecting Field Cases](#)
- 5.8.3.7 [Perfecting COIC Cases](#)
- 5.8.3.8 [PE Requests for Estimated Tax Payments](#)
- 5.8.3.9 [AOIC Combo Letter](#)
- 5.8.3.10 [Processing Taxpayer Responses to Combo Letters](#)
- 5.8.3.11 [Processing Telephone Responses to Combo Letters](#)
- 5.8.3.12 [No Reply Procedures](#)
- 5.8.3.13 [Processing Form 657, Offer in Compromise/Revenue Officer Report](#)
- 5.8.3.14 [Input and Verification of TC 480](#)
- 5.8.3.15 [Dishonored Payments](#)
- 5.8.3.16 ["Application Fee Refund/Apply Listing" Validation](#)
- 5.8.3.17 [Expedite Handling](#)
- 5.8.3.18 [Third Party Authorizations](#)
- 5.8.3.19 [Processing Forms 4844 from Automated Collection Services, Toll Free, or Other Service Divisions](#)
- Exhibit 5.8.3-1 [Form 3210 – To Appeals with Open TIPRA Statute](#)

Manual Transmittal

October 29, 2014

Purpose

(1) This transmits a topic based revision to IRM 5.8.3, *Centralized Offer in Compromise Transfers, Perfection, and Case Building, Perfecting COIC Cases*, to incorporate procedural changes based on Affordable Care Act (ACA) provision 1501.

Material Changes

(1) This IRM has only been updated for the Affordable Care Act (ACA) Provision 1501: Requirement to Maintain Minimal Essential Coverage (Individual Shared Responsibility Payment) (IRC § 5000A). Content unrelated to the ACA provisions was not reviewed for currency or accuracy.

- 5.8.3.7(3) updated to include adding MFT 35 to the AOIC MFT screen when applicable.

(2) Editorial changes were made throughout the IRM.

Effect on Other Documents

This material supersedes IRM 5.8.3, dated 05-14-2013.

Audience

SB/SE Collection and Campus Compliance employees.

Effective Date

(01-01-2015)

Rocco A. Steco
Acting Director Collection Policy

5.8.3.1 (03-26-2010)

Overview

1. Process Examiners (PE) are responsible for making a processability determination on all offer receipts, other than those based solely upon Doubt as to Liability (DATL). Processable offers are then perfected and built (i.e., internal and external information is secured to verify financial information) before being assigned for investigation. This chapter explains the procedures to be followed for determining jurisdictional responsibility, transferring cases, perfecting offers, and case building for offers in compromise.

5.8.3.2 (05-14-2013)

Perfection and Case Building Timeframes

1. If an offer is received with payment(s), processability must be determined within 24 hours of IRS received date and case building completed within 16 days of Area Office, AO, received date.
2. If no payment(s) is submitted, processability and case building must be completed within 16 days of the AO received date.

5.8.3.3 (05-14-2013)

Routing Cases Based on Jurisdictional Responsibility

1. Except for CDP offers meeting COIC criteria, for all cases cited in the table below, generate and send the transfer letter to the taxpayer and/or POA, if applicable. Ensure all TC 480 or STAUPs have been input, as appropriate.
2. The following table provides guidance when it has been determined that Collection does not have jurisdictional responsibility:

If responsibility lies with...	Then...
DATL, other than Trust Fund Recovery Penalty (TFRP) - DATL and Personal Liability Excise Tax (PLET) - DATL	Send the offer directly to the centralized DATL processing unit located at the Brookhaven campus. No fee is required for these offers. If the offer was loaded to the Automated Offer in Compromise system (AOIC) delete the offer. The offer will be loaded to AOIC, AO 19, by the DATL team.
Appeals - Non-Collection Due Process (CDP)	Move the payments from the AOIC Payment Screen to the AOIC Appeals Fee Screen. Delete the offer from AOIC and forward the case to Appeals using the Appeals Transmittal Form 3210. See Exhibit 5.8.3-1. <ul style="list-style-type: none"> • Load offer on AOIC
Appeals - CDP offers meeting COIC criteria	<ul style="list-style-type: none"> • Select OCC 10 • Update Offer Type, <i>Collection Due Process</i>, which will generate an offer type "P" • Assign offer to next appropriate inventory; 51XX, 60XX.
Appeals - CDP offers that do not meet COIC criteria	<ul style="list-style-type: none"> • Load offer on AOIC • Select OCC 10 • Update Offer Type <i>Collection Due Process</i> which will generate an offer type "P" • Transfer offer to AO 21 • Forward complete offer file to Appeals

5.8.3.4 (05-14-2013)

Field Cases – Identification and Transfer

1. Once the COIC sites have loaded the offer to AOIC and completed initial processing and perfection, pending offers in the following categories will be immediately transferred to the appropriate Area Office to be worked in a field group:
 - Corporations
 - Employment Tax from Partnerships
 - Estates and trusts
 - Currently incarcerated taxpayers
 - Trust Fund Recovery Penalty (TFRP) – Doubt as to Liability (DATL)
 - Personal Liability Excise Tax (PLET) - Doubt as to Liability (DATL)
 - Any business with employees
 - IMF taxpayers involved in a closely held corporation
 - Limited Liability Partnership (LLP) and Limited Liability Company (LLC)
 - IMF taxpayers whose primary source of income is from a partnership
 - Sole proprietors with gross receipts over \$500,000
 - International taxpayers
 - Offers worked by a field OS within the past 24 months
 - Docketed court cases
 - Offers involving court-ordered restitution
 - Department of Justice, see IRM 5.8.2
2. Prior to transfer to the field, COIC will generate the AOIC transfer letter or Combo A letter and send to the taxpayer. When preparing the letter, the PE must use 120 days as the time frame for taxpayer contact.
3. All offers forwarded to Area offices for investigation will be sent to a central point designated by the Area office.

5.8.3.5 (05-14-2013)

Processing Forms 656 and Initial Offer Payments

1. Taxpayers are required to include one application fee and TIPRA payment or check the Low Income Certification box in Section 4 of the Form 656 for each Form 656, *Offer in Compromise*, submitted, other than those based solely on DATL.
2. There should only be as many Forms 656 as there are entities. In conjunction with an acceptance letter, the Form 656 constitutes a binding agreement between the government and the taxpayer.

Example:

(1) Two taxpayers who jointly owe the same liability (including spouses living separately or divorced) may submit a joint OIC on one Form 656 showing each name, address, and taxpayer identification number. However, separate OICs (one for each person) may be submitted if the individuals deem it to be appropriate for their particular situation.

Example:

(2) Taxpayers who owe both joint liabilities and TFRP liabilities for the same quarters and the same amount, must submit two offers.

3. There may be instances when a taxpayer sends in three offers when only two are required. In those cases you should:

- Add the applicable MFTs from the third offer to each of the remaining two offers.
 - Treat any additional application fee and/or TIPRA payment as a deposit (apply it to the 4710 account).
 - Inform the taxpayer, preferably by telephone, of the actions taken.
 - Put an "X" through the first page of the third offer and keep it in the case file.
4. The table below is intended to assist in identifying a processable offer for application fee purposes and provide guidance on advising the taxpayer when more than one Form 656, application fee, and/or TIPRA payment is required.

If...	Then the requirement is...
(1) two TPs owe joint liabilities only (without checking the Low Income Certification box in Section 4 of the Form 656)	to send in one Form 656 with one application fee and TIPRA payment. to send in one Form 656, application fee, and TIPRA payment. PEs will:
(2) two TPs owe joint liabilities only but they send in two Forms 656 with one check for the application fee and TIPRA payment (without checking the Low Income Certification box in Section 4 of the Form 656)	<ul style="list-style-type: none"> • Load all liabilities to the AOIC MFT screen • Put an "X" through the first page of the second offer and keep it in the case file <p>to send in two separate Forms 656 with two separate application fees and TIPRA payments. However, if only one application fee and TIPRA payment was sent with the two separate offers PEs will:</p>
(3) two TPs have separate liabilities only and they send in two Forms 656 but one application fee and TIPRA payment (without checking the Low Income Certification box in Section 4 of the Form 656).	<ul style="list-style-type: none"> • Load all liabilities to the AOIC MFT screen using the appropriate "P" , Primary, or "S" , Secondary, designation. • Put an "X" through the first page of the second offer and keep it in the case file • The related offer will be secured by the Offer Examiner/Offer Specialist (OE/OS) prior to accepting the offer. <p>to send in two separate Forms 656 with two separate application fees and TIPRA payments. The offer will be deemed processable and the PE will:</p>
(4) two TPs have joint liabilities and one or both of the TPs also have separate liabilities and the TPs submit one Form 656 with both the joint and separate liabilities and only one application fee and TIPRA payment (without checking the Low Income Certification box in Section 4 of the Form 656).	<ul style="list-style-type: none"> • Load all liabilities to the AOIC MFT screen using the appropriate "B" , Both, "P" , Primary, or "S" , Secondary, designation. • The offer will be perfected by the OE or OS prior to accepting the offer. The PE will not secure the second offer. <p>to send in two separate Form's 656, one for the corporation or partnership and the other for the individual.</p>
(5) a corporation or partnership is submitting an OIC and one Form 656 is submitted that includes both the corporation or partnership and individual liabilities with one application fee and TIPRA payment (The Low Income Certification for individuals only. In this scenario, no Low Income Certification was indicated on the Form 656)	<ul style="list-style-type: none"> • Prepare an amended/revise Form 656 by completing items 1 through 5 with the entity and tax liability information for the business (corporation or partnership). • Prepare a second Form 656 by completing items 1 through 5 with the entity and tax liability of the individual. • Annotate the top of the Form 656, "Related to Offer Number" , inserting the number of the original offer. This will help identify that the offer was submitted in response to a perfection request. <p>Note:</p> <p>Clerical units should be aware that new offers received in the PO Box designated for response correspondence must keep all correspondence and attachments associated with the offer to assist in the identification of the related offer.</p>
	<ul style="list-style-type: none"> • Include Option Y in the combo letter. • Include the amended/revise Form 656, and the copy of the original Form 656 with the combo letter . • If the TPs refuse to perfect the offer, return the original offer without any further consideration. <p>to send in two separate offers with two separate application fees and TIPRA payments. However, if the taxpayers submitted two offers and one application fee and TIPRA payment, the PE will:</p>
(6) two taxpayers have joint liabilities and either or both of the taxpayers also have separate liabilities and they submit two Forms 656 listing the joint liabilities on one and the separate liabilities on the other, but only one application fee and TIPRA payment (without checking the Low Income Certification box in Section 4 of the Form 656).	<ul style="list-style-type: none"> • Load the joint Form 656 • Load all liabilities to the AOIC MFT screen using the appropriate "B" , Both, "P" , Primary, or "S" , Secondary, designation • Put an "X" through the first page of the second offer and keep it in the case file • The offer will be perfected by the OE or OS prior to accepting the offer. The PE will not secure the second offer
(7) an LLC is submitting an OIC and one Form 656 is submitted that includes both the LLC and individual liabilities with one application fee and TIPRA payment for the individual (without checking the Low Income Certification box in Section 4 of the Form 656).	to send in two separate Forms 656, follow procedures in (5) above, unless the LLC is classified as a disregarded entity and the liabilities are for wages paid prior to 1/1/2009 or excise tax liabilities for periods ending prior to 1/1/2008, which may be included on the same Form 656 as the taxpayers individual or sole proprietorship liabilities.

Note:

To assist in the identification of an LLC see IRM 5.1.21.10.2 ,Offers In Compromise

Note:

In instances where the liability is owed by an LLC for employment taxes on wages paid prior to and subsequent to 1/1/2009 or excise tax liabilities prior to and subsequent to 1/1/2008, the taxpayer may be required to submit two Forms 656, application fees, and TIPRA payments, even though the liabilities may have been reported under the same EIN, if the liabilities incurred prior to the dates specified above relate to an LLC classified as a disregarded entity.

5. Individuals or self-employed taxpayers filing a DATC or ETA offer should complete and attach Form 433-A(OIC), *Collection Information Statement for Wage Earners and Self-Employed Individuals*.
6. All other forms of business entities (partnerships, corporations, limited liability companies, etc.) should submit Form 433-B(OIC), *Collection Information Statement for Businesses*.

Note:

Page 4 of Form 433-B(OIC) may not be required if information provided by the taxpayer includes a current Profit and Loss statement and/or sufficient information to make a determination.

7. Taxpayers who submit an offer to compromise individually owed tax and also have a substantial interest in an ongoing business may be required to submit a Form 433-B(OIC) for that business.

**5.8.3.6 (05-14-2013)
Perfecting Field Cases**

1. Certain critical errors in an offer must be corrected in order to perfect the offer and enable the Service to begin the offer investigation. For field cases, the only issues that will be perfected are the following:
 - Additional Forms 656; related application fee and TIPRA payment(s)
 - Balance of any TIPRA shortfall due at the time of submission
 - The offer was submitted on an obsolete Form 656
 - The Form 433A(OIC) and/or 433B(OIC) is missing
2. Document the AOIC history to summarize any perfection issues.
3. These cases must be flagged while in the hold file waiting for the taxpayer's response.
4. Upon receipt of the response, the case must be immediately pulled and shipped to the receiving field office.
5. If the taxpayer fails to perfect the offer, return the offer without further contact.

Note:

PEs must ensure all payments received have the correct Designated Payment Codes (DPC).

**5.8.3.6.1 (05-14-2013)
Field Cases - Case Building**

1. Case building for field cases should be minimal.
2. Prior to the transfer of cases to an Area office, COIC will include in the case file prints of IMFOLT or BMFOLT or a print of the Masterfile screen from AOIC.
3. COIC will generate the TC 480 and Status 71 through the AOIC system. However, there may be situations when the Status 71 cannot be systemically generated (e.g., MFT 31 modules created prior to January 2005, imminent statute, etc.). In those cases where AOIC does not systemically generate the appropriate TC 480 and/or Status 71, COIC must manually input the appropriate codes.

Note:

If the TC 480 was manually input, it must be manually reversed. The AOIC history should be notated to alert the OE/OS that the TC 480 must be manually reversed at closing.

**5.8.3.7 (01-01-2015)
Perfecting COIC Cases**

1. Prior to beginning an OIC investigation, certain critical errors must be corrected to perfect the offer. The combo letter on the AOIC system is designed to communicate with the taxpayer and/or their representative to request the necessary corrective action. If there is no response to the request letter, the OIC may be returned with no further contact. A return for failure to perfect an offer does not require a Form 1271, *Rejection or Withdrawal Memorandum*. The taxpayer has no appeal rights when the offer is closed as a return. The following errors must be corrected before beginning the investigation:
 - The offer was submitted on an obsolete Form 656, *Offer in Compromise*.
 - Balance of any TIPRA shortfall due at the time of submission.
 - There are unfiled tax returns (generally, this will not exceed a 6-year look-back period without managerial approval).
 - Form 433-A(OIC) and/or 433-B(OIC) is blank, partially completed, or missing.

Note:

An original return will not be requested if there is already a Substitute for Return (SFR) assessment on Master File.

2. When sending a combo letter to perfect the errors listed above, also request the information shown below, if necessary.
 - The taxpayer's name, physical address or taxpayer identification number (TIN) is missing or incorrect and cannot be determined from IDRS or other documents submitted with the offer.

Note:

If the information can be located on IDRS or other documents submitted with the offer, input the correct information on AOIC and continue processing the offer.

- An amount of money is offered, but the payment terms are not specified.
- The taxpayer(s) signature is missing on Form 656.
- The offered amount is blank or zero, unless terms are present.

3. If a tax period with an amount due is missing from the Form 656, but all tax periods due can be determined from IDRS or other documents submitted with the offer, add the missing periods to the AOIC MFT screen and include them on the Form 656. This includes any liability under MFT 35, assessed under the Affordable Care Act (ACA) Provision 1501, Individual Shared Responsibility Payment (SRP) I RC § 5000A,
4. When a taxpayer has included a tax period(s) for which there is no apparent amount due, do not add the tax period(s) to AOIC. Contact the taxpayer to determine if any issues are pending that may result in additional tax.
5. If the basis for compromise is not indicated but it can be determined by reviewing the package, begin the investigation.
6. An offer can be investigated but cannot be accepted until all errors are corrected and/or an amended Form 656 is signed. Therefore, offers will not be returned by the PE if the taxpayer fails to respond to any perfection issue listed in paragraph 2 above.

Note:

PEs must ensure all payments received have the correct Designated Payment Codes (DPC).

5.8.3.7.1 (05-14-2013)

Case Building for COIC Offers

1. Case building for COIC cases should be minimal and will be limited to include prints of the following in-house research:
 - Copy of the NFTL, if notice of filing is on the Automated Lien System (ALS)
 - Applicable IDRS prints
2. COIC will generate the TC 480 and Status 71 through the AOIC system. However, there may be situations when the TC 480/Status 71 cannot be systemically generated (e.g., MFT 31 modules created prior to January 2005, imminent statute, etc.). In those cases where AOIC does not systemically generate the appropriate TC 480 and/or Status 71, COIC must manually input the appropriate codes.

Note:

If the TC 480 was manually input it must be manually reversed. The AOIC history should be notated to alert the OE/OS that the TC 480 must be manually reversed at closing.

5.8.3.8 (05-14-2013)

PE Requests for Estimated Tax Payments

1. PEs will request delinquent estimated tax (ES) payments as part of their case building actions for all self-employed taxpayers.
2. Determine if the taxpayer is currently self-employed. If research indicates the taxpayer is no longer self-employed, and has not been self-employed for the entire calendar year, no ES payments are required.
3. In order to be considered for an OIC, the self-employed taxpayer must be current with filing and payment requirements in the year in which the offer was submitted. ES payments are generally due quarterly; April 15th, June 15th, September 15th and January 15th of the following year.
4. Self employed taxpayers are required to pay an amount equal to their current year self employment tax liability or the self employment tax owed in the prior year, whichever is less.
5. To determine whether ES payments are required:
 - Check IMFOLI for the current year. ES payments may be identified by TC 640.
 - If quarterly ES payments are posted to the account, no further action is necessary.
6. If there are no payments, or missing payments, take the following actions
 - Check the prior year TXMOD to determine the taxpayer's total tax liability (TC 150),
 - Subtract any withholding tax (TC 806),
 - If the result is \$1,000 or more, this would be the amount due for ES payments in the current year. If the result is under \$1,000, the taxpayer is not liable for ES payments.
 - Divide the total amount by 4 to get the quarterly amount due.
 - Determine the amount due up to the current date and request the shortfall using the Combo letter, paragraph AZ.
 - Annotate the remarks section of AOIC with your request and schedule appropriate follow-up.
7. If an ES payment is the only corrective action requested in the Combo letter, the offer should be assigned to 60XX. PEs **will not** return the offer if the taxpayer fails to respond.

5.8.3.9 (05-14-2013)

AOIC Combo Letter

1. The combo letter on the AOIC system is designed to communicate with the taxpayer and/or their representative to advise the taxpayer that their offer has been received or to request the necessary corrective action(s).
2. If no perfection is required, issue the AOIC Combo Letter, Paragraph A. The date of possible taxpayer contact must reflect 120 days from the date of the Combo letter. Document the AOIC remarks with this information.
3. If perfection is required, prepare the combo letter using the paragraphs that address all deficiencies. Include Pub 1, *Your Rights as a Taxpayer*, and Pub 594, *The IRS Collection Process*.
4. Before mailing the AOIC Combo Letter to the taxpayer and representative, if appropriate, you must ensure the representative is authorized to receive correspondence. If a disclosure issue exists, use the applicable paragraph to indicate this in the AOIC Combo Letter, and do not send a copy of the letter to the representative. Instead, send the representative a letter notifying him or her that correspondence has been sent to his or her client and he or she must contact his or her client for the information.
5. Post-date all AOIC Combo Letters five (5) calendar days. Schedule follow-up for the 45th day from the date of the letter. This means that at least 50 calendar days (5 postdate plus 45 calendar days from the date of the letter) will have elapsed before an established follow-up date.
6. Envelopes containing the AOIC Combo Letter, which require a response (Options B, C, or D), must be stamped or otherwise marked "URGENT-TIME SENSITIVE" .
7. Document the AOIC remarks to summarize all applicable perfection issues and the mailing date of the letter.

8. Input the appropriate follow-up date.
9. Retain a copy of the signed and dated AOIC Combo Letter in the file.
10. Assign the offer to the applicable AOIC assignment number.
11. If there is no response to the Combo letter, the OIC may be returned with no further contact. A return for failure to perfect an offer does not require a Form 1271, *Rejection or Withdrawal Memorandum*. The taxpayer has no appeal rights when the offer is closed as a return. For additional information on return reconsideration procedures see IRM 5.8.7.3, *Return Reconsideration*.

5.8.3.10 (05-14-2013)

Processing Taxpayer Responses to Combo Letters

1. If the combo letter requested critical perfection information, but the taxpayer fails to respond, the offer may be returned with no further contact.
2. If the offer is assigned to 51XX and the taxpayer responds, incorporate the response into the file and assign to 5500 or 5558, as appropriate.
3. Responses received on cases assigned to 5150 (field) must be reviewed immediately, assigned to a PE for expedite processing, and transferred to the appropriate field drop point.
4. All other responses must be reviewed within 10 calendar days of assignment to the PE.
5. Upon reviewing the response, take the next appropriate action; assign to 60XX or return.
6. If the taxpayer or their representative requests an extension of time to comply with the request for information, a reasonable amount of time should be granted. Document the AOIC history indicating the new deadline for the response. If the taxpayer and/or the representative fails to meet the additional deadline, return the offer with no further contact.

Note:

If the only corrective action requested was for estimated tax payments, the offer **will not** be returned by the PE if the taxpayer fails to respond. See 5.8.3.8, *Estimated Tax Payments*, above.

7. If the request included unfiled or delinquent returns and the taxpayer failed to file the requested returns, provide copies, or provide a valid reason for not filing and internal sources do not reflect that the return(s) have been filed, the offer may be returned with no further contact.

Note:

If the taxpayer gives an explanation supporting special circumstances, the offer should be forwarded to 60XX for further consideration.

8. If the request included:

- Missing TIPRA payments,
- Perfection of Form 656, *Offer in Compromise* (current revision or related Form 656 and applicable payments),
- Missing Form 433-A(OIC), *Collection Information Statement for Wage Earners and Self-Employed Individuals*, and/or Form 433-B(OIC), *Collection Information Statement for Businesses*,

and the taxpayer failed to provide or address the missing payments or forms, internal research does not reflect the payment(s) have been received, and no special circumstances were identified, the offer may be returned with no further contact. For additional information on return reconsideration procedures see IRM 5.8.7.3, *Return Reconsideration*.

9. Update the AOIC remarks summarizing the documents or payments received.
10. Sign any amended or revised Forms 656 with the current date. Retain the original and any amended Forms 656 in the file.
11. PEs are required to initiate the next appropriate action on cases where taxpayers have responded to the combo letter within 10 calendar days from the date the offer is assigned to the PE.
12. An interim letter, advising 90 days for the next taxpayer contact, must be sent after the PE reviews the response, prior to assignment to an OE holding inventory. Document the AOIC Remarks that the interim letter was issued.

5.8.3.11 (05-14-2013)

Processing Telephone Responses to Combo Letters

1. PEs are responsible for answering incoming calls from taxpayers, tax representatives and internal customers on the COIC toll-free telephone line.
2. Generally these calls involve taxpayer inquiries regarding the status of pending offers or questions about a letter they received.
3. For the majority of the calls, the PE should access the offer on AOIC and, by reviewing the remarks screen, satisfactorily answer the taxpayer's questions.
4. There will be times when it will be necessary for the PE to take additional follow-up actions to address the taxpayer's concerns.
5. The table below illustrates when follow-up actions must be taken.

If the taxpayer...

states they received a letter indicating the need to file a delinquent tax return but indicate they are not liable for filing a return

wishes to withdraw their offer

Then the PE will...

- Accept oral testimony.
- Document the conversation in AOIC Remarks.
- If this is the only corrective action that was requested, pull the case from 51XX and assign to 60XX.
- Accept oral testimony (withdrawal requests are not required to be made in writing). Inform taxpayer that there are no Appeal rights if the offer is withdrawn.
- Document the conversation in AOIC remarks.
- Pull the case from 51XX
- Assign case for withdrawal processing.

states they have special circumstances which may require expedite handling, such as:

- Imminent foreclosure on home
- Medical conditions
- Funds for offer only available for a limited time

- Document AOIC remarks.
- Pull case from assigned inventory.
- Give case to manager to expedite.

Note:

See "Expedite Handling" 5.8.3.17

6. Any additional discussions with the taxpayer or tax representative that may require follow-up actions should be discussed with the manager.
7. All phone calls must be well documented in the AOIC Remarks Screen.

5.8.3.12 (05-14-2013)

No Reply Procedures

1. After the offer is determined processable and a combo letter has been sent, the offer should be held until the follow up date expires to allow the taxpayer to provide the requested information.
2. If the taxpayer or their representative requests an extension of time to comply with the request for information, a reasonable amount of time should be granted. Document the AOIC history indicating the new deadline for the response. If the taxpayer and/or the representative fail to meet the additional deadline, return the offer with no additional contact.
3. After the designated time period has passed and no response has been received, the "No Reply" return process will be initiated by the COIC site designated manager. The AOIC system will generate all the necessary letters and documents to allow for the closing of the case off of AOIC.
4. Before closing the offer, check AOIC to verify that no response was received. Check IDRS to ensure there is no Combat Zone, -C Freeze, on the account. For additional information see IRM 5.19.10.6 , *Combat Zone Freeze Codes*.
5. When returning the offer:
 - Retain the original Form 656, *Offer in Compromise*, any amended Forms 656, and a copy of the return letter in the file.
 - Cross out all IRS received dates with an "X" .
 - Stamp the Form 656 with RETURN and add the current date.
 - Update the case remarks on AOIC, including the reason for the return.
 - Include a copy of the history in the file and give the file to the manager for approval.

Note:

For information on return reconsideration procedures see IRM 5.8.7.3, *Return Reconsideration*.

5.8.3.13 (05-14-2013)

Processing Form 657, Offer in Compromise/Revenue Officer Report

1. All OICs forwarded with a Form 657, *Offer in Compromise/Revenue Officer Report*, will be processed following expedite handling. See IRM 5.8.3.18, *Expedite Handling*, below for additional instructions on expedite handling.
2. If an offer was sent in by an Revenue Officer (RO) with a Form 657 attached and the RO has determined that the OIC was submitted solely to delay collection, the COIC site will contact the originating RO to advise when the return letter has been issued. Unless a jeopardy situation exists, the RO must wait for COIC notification that the return letter has been issued before taking any collection enforcement action. See IRM 5.8.4.20, *Offer Submitted Solely to Delay Collection*, for solely to delay procedures.
3. If the offer account is in Status 26 and the Form 657 was not received, the COIC site will contact the RO to request Form 657 and continue processing the offer.
4. If a taxpayer or POA contacts the COIC site concerning an offer returned as solely to delay based on an RO recommendation, the call should be referred to the field Collection RO group manager.

5.8.3.13.1 (05-14-2013)

Offers Submitted Solely to Delay Collection per Forms 657

1. When an RO determines that an offer is submitted solely to delay collection, the offer can be returned to the taxpayer without further consideration.

Note:

The term solely to delay collection is defined as an offer that was submitted for the sole purpose of avoiding or delaying collection activity. See IRM 5.8.4.20, *Offer Submitted Solely to Delay Collection*, for examples of solely to delay.

2. The field OIC group manager and the COIC Unit Manager have delegated authority to approve returns based on solely to delay collection.
3. An OIC is not considered submitted solely to delay collection just because there is an imminent CSED issue or if an offer has been rejected after investigation and the taxpayer exercises appeal rights.

5.8.3.13.2 (05-14-2013)

PE Procedures for Processing Forms 657 Submitted Solely to Delay

1. The COIC site will:
 - Screen out all Forms 657, *Offer in Compromise/Revenue Officer Report*,
 - Make all Forms 657 a priority,
 - Promptly process, and
 - Immediately return the offer as solely to delay collection.
2. Form 657 serves to establish coordination between the field Collection RO group, the offer group, and the COIC site to provide case documentation regarding these determinations, and to ensure collection action is not pursued until the offer is closed.
3. If the COIC unit manager agrees with the determination, the COIC manager or employee will contact the originating field Collection RO to advise that the return letter has been issued.

4. If the COIC unit manager disagrees with the determination, discussions should be initiated with the field Collection RO manager to reach an agreeable solution.
5. Once the return letter is sent and the case reassigned to the field Collection RO, then the field Collection RO assigned the case must initiate appropriate collection action in accordance with IRM 5.1.10.8, *Timely Follow Ups*.

5.8.3.14 (05-14-2013) Input and Verification of TC 480

1. The PE must verify that the TC 480 has posted to each tax period shown on the Form 656.
2. If the TC 480 has not posted, it must be manually input. If a manual input is required, document the AOIC history indicating that the TC 480 must be manually reversed at closing.
3. The table below provides instruction for inputting the TC 480.

If ...	Then ...
TC 480 is not present	Input the TC 480 using CC REQ77. Use the date the Form 656 was signed by the IRS official as the transaction date, not the date the taxpayer signed. Note: If the TC 480 is manually input, it must be manually released. <ul style="list-style-type: none"> • Input TC 483 using CC REQ77. • Input TC 470 using CC REQ77 to prevent balance due notices from issuing. • Input TC 480 using CC REQ77 with the correct date; include a posting delay code of 1.
All TC 480s present do not have the same date the Form 656 was signed by the IRS official	

5.8.3.15 (05-14-2013) Dishonored Payments

1. For payments processed through Paper Check Conversion (PCC) Cincinnati Accounting receives the initial notification of a dishonored OIC payment from the Federal Reserve Bank through the Electronic Verification and Image Services (ELVIS) automated system.
2. The Cincinnati Dishonored Check Unit will notify the taxpayer by mailing them a copy of the dishonored check and Form 12993-A, *Check for Offer in Compromise Payment Not Accepted by Bank*.
3. Cincinnati Accounting will fax copies of the dishonored payments to the COIC site that originated Form 3210, *Document Transmittal*.
4. Notification of dishonored payments that are processed through Remittance Strategy-Paper Check Conversion (RS-PCC) will originate from Ogden Accounting.
5. Upon notification of a dishonored application fee and/or TIPRA payment, the site will determine the current AOIC offer assignment.
6. If the payment has been moved from the 4710 Account to the Master File, the Dishonored Check Unit will reverse the payment with a TC 671. If no notification of the dishonored payment is received, the dishonored check can also be identified by the TC 671 posted on IDRS.
7. Upon notification of a dishonored application fee and/or TIPRA payment, the offer will be immediately returned to the taxpayer with the appropriate AOIC letter for a dishonored check. Document the AOIC history with the following information:
 - Which check(s) (application fee, TIPRA payment, or both) was returned,
 - The check number; and
 - Date the check was dishonored
8. There may be no notification of dishonored checks processed through RS-PCC. Check IDRS for the posting of a TC 671 that may also include a secondary TC 280 or TC 286, *dishonored check penalty*.
9. If the payment was dishonored while still in the 4710 account, Accounting will annotate their copy of the Form 3210 as appropriate.

If...	Then...
The dishonored check was a deposit	Notify Monitoring Offer in Compromise (MOIC) and continue investigation of the case.
The dishonored check was for either the application fee or TIPRA payments	Notify MOIC and stop investigation of the case.

10. If the taxpayer or an authorized representative offers to replace the dishonored check and requests reconsideration of their offer, contact by the taxpayer or their representative must be made within 30 days of the date of the initial AOIC return letter. The replacement payment must be in the form of certified funds (money order, cashier check, etc.) and received within a reasonable amount of time. See IRM 5.8.7, *Return, Terminate, Withdraw, and Reject Processing*, for reconsideration procedures.
11. When contacted:
 - Inform the taxpayer or the authorized representative that the offer will not be reconsidered if the payment is not made with certified funds.
 - A due date for receipt of the payment must be provided to the taxpayer or the authorized representative.
 - Advise the taxpayer or their representative to submit the payment by overnight mail.
 - Document the case history.
12. Inform the taxpayer or the authorized representative that the certified funds must be mailed to either of the following addresses:

Brookhaven: Mail Stop 681, PO Box 9011, Holtsville, NY 11742, or for Private Delivery Service (PDS)

1040 Waverly Ave., Stop 681, Holtsville, NY 11742

Memphis: AMC-Stop 880, PO Box 30834, Memphis, TN 38130-0834, or for Private Delivery Service (PDS)

13. To ensure proper handling, advise the taxpayer to include a letter requesting reconsideration of the offer.
 14. If the payment was dishonored while still residing in the 4710 Account, the payment should be processed through established deposit procedures. A copy of Form 3210 must be forwarded to the appropriate MOIC function. Clearly indicate on the copy of Form 3210 that the payment is a replacement for a dishonored check. MOIC will load the payment on the AOIC deposit screen once the AOIC record is reloaded. MOIC is responsible for ensuring the payment is applied to the Master File as originally intended.
- Note:**
- The offer will be reloaded, and a new offer number will generate. The new Form 3210 will reflect the new offer number. Cross reference the original offer number in the AOIC history, and in the remarks section of Form 3210 to ensure Accounting is aware there may be two Forms 3210 with different offer numbers for the same taxpayer.
15. If the payment was dishonored with a TC 671 on the Master File, prepare a Form 3244, *Payment Posting Voucher*, to post the payment as a replacement for the dishonored payment.
 16. Upon receipt of the replacement payment, the employee that processes the payment must also:
 - Reload the offer on AOIC, if appropriate.
 - Verify if the payment was received within the established deadline as annotated in the AOIC remarks.
 17. If the payment is not received by the specified due date, the payment will be processed in accordance with TIPRA payment requirements, and the case will not be opened as a reconsideration. See IRM 5.8.7.3, *Return Reconsideration*, for reconsideration procedures.

5.8.3.15.1 (05-14-2013)

Additional Procedures for Dishonored Payments

1. If the offer is still assigned to a COIC site, COIC will immediately cease processing the associated offer, update AOIC and return it to the taxpayer, utilizing letter option RET-AA.
2. If the offer is assigned to an Area office, COIC will telephone the employee assigned the offer (or the manager of the assigned function, if no individual is specified on AOIC) to advise of the dishonored payment. Once contact is made with the assigned area employee or manager, COIC will fax a copy of the dishonored check to include in the case file and document AOIC to indicate to whom the information was communicated.
3. If the case was processed as an Appeals CDP offer, COIC should query the Appeals Centralized Database System (ACDS) to determine which Appeals employee is assigned the case. COIC will telephone the Appeals employee to advise of the dishonored check and fax a copy to include in the Appeals case file. COIC will update the AOIC.
4. If notification of the dishonored check occurs after the offer was closed on AOIC, the designated AOIC liaison within the COIC site will contact the Headquarters AOIC analyst to correct the application fee record of the closed offer.

5.8.3.16 (05-14-2013)

"Application Fee Refund/Apply Listing" Validation

1. When an erroneous processability determination is corrected after forwarding the related application fee remittance for deposit, the COIC sites will need to determine whether the remittance has been deposited and credited to the taxpayer's liability. An application Fee Refund/Apply Listing should be generated from AOIC to identify application fees that were initially determined to be processable, but later determined to be not processable. Generation of this listing is required in order for the COIC site to verify and authorize a manual refund.
2. The COIC sites should request MOIC to generate the Application Fee Refund/Apply Listing on a monthly basis.
3. Generally, when an offer is deemed not processable, the Service includes the taxpayer's application fee, and in some cases the initial TIPRA payment, see IRM 5.8.2.3, *Processability*, with the return disposition letter. However, depending on the elapsed time between inputting a processability change on AOIC from "Y" to an "N", the Service may have already deposited the related application fee and applied the payment to the taxpayer's liability on Master File.

If...	Then...
the payment has been deposited and still resides in the 4710 Account at the time the offer is deemed not processable	prepare a Form 3753, <i>Manual Refund Posting Voucher</i> , to manually refund.
the payment has been applied	prepare the Form 5792, <i>Request for IDRS Generated Refund</i> , to manually refund.

Note:

The comments recorded on the Form 5792 must specifically state that the offer was deemed not processable and the taxpayer is entitled to the refund of the application fee. Include a contact name and number on the Form 5792 to provide Accounting a contact if questions should arise.

4. To determine whether or not a manual refund of the application fee should be issued, research the completed Form 3210, *Document Transmittal*, to determine whether the application fee was deposited by the Service or returned to the taxpayer via manual refund procedures.
5. Thorough research and care is required when determining which offers on the application Fee Refund/Apply Listing should receive manual refunds.

If...	Then...
Research indicated that the application fee was returned to the taxpayer(s)	The designated COIC site AOIC liaison should contact the Headquarters AOIC analyst to make the necessary adjustment to the application fee information to remove it from the Refund/Apply Listing. This action will eliminate the potential for the taxpayer to receive an erroneous refund.
Research indicated that the application fee was deposited and still resides in the 4710 Account	Contact the Monitoring Offer in Compromise (MOIC) function co-located with the COIC site and request a manual refund be generated to the taxpayer(s) using Form 3753.

- | | |
|---|---|
| Research indicated that the application fee was deposited and has been applied to the Master File | <ul style="list-style-type: none"> • Prepare Form 5792 to manually refund the application fee payment. • The designated COIC site AOIC liaison should contact the Headquarter AOIC analyst to make the necessary adjustment to the application fee information to remove the payment from the Refund/Apply Listing. |
|---|---|

6. To request the MOIC function to issue manual refunds, prepare a memorandum that includes:
 - The offer number,

- The taxpayer(s) name and
 - The taxpayer(s) identification number (TIN).
7. Records that support the COIC sites decision to either remove the offer record from the Refund/Apply Listing or to issue a manual refund must be retained for one year. At a minimum, the file should consist of:
 - Copies of the Refund/Apply Listing or a memorandum detailing the requested information,
 - Copies of the Form 3210 and
 - Any other supporting documentation necessary to support the decision, including, but not limited to, the Remittance Processing System daily remittance registers.
 8. TIPRA does not allow refunds of periodic payments. However, it does allow refunds of the application fee, the initial TIPRA payment in limited circumstances, see IRM 5.8.2.3 , *Processability*, and any deposits the taxpayer may have made.
 9. All IDRS manual refunds must be monitored to ensure they are issued to the taxpayer and to avoid duplicate refunds.
 10. When a manual refund is generated:
 - Open an IDRS control base and place in "M" status.
 - The status of the refund must be updated weekly on the Manual Refund listing.
 - Monitor open controls until posting of the TC 840.
 - Close IDRS control when the manual refund has posted.

Note:

For additional information see IRM 21.4.4.5.1, *Monitoring Manual Refunds*.

**5.8.3.17 (05-14-2013)
Expedite Handling**

1. There may be occasions where a taxpayer or Power of Attorney requests expedited processing of their OIC due to an emergency or perceived emergency situation. Situations that may warrant expedited case processing include (but are not limited to):
 - A contract or business agreement requiring the taxpayer, as a condition of the contract or agreement, to resolve the tax liability by a specific date,
 - Availability of the money to fund the offer is limited to a certain time; and
 - A terminal illness may affect the ability to complete the payment terms.

Note:

Contact by phone, fax, or mail may identify an emergency situation not initiated by the taxpayer. Once identified, expedite processing may become necessary. Follow the procedures in paragraphs (3) and (4) below and discuss with your manager.

2. Processing Forms 656, *Offer in Compromise*, must be given priority consideration and handled expeditiously due to pending collection action.
3. Offers received with a request for expedited processing should be referred to management for a decision on whether or not expedited treatment is warranted.
4. If a decision is made to expedite offer processing, the manager should document the AOIC history indicating the basis for the decision. Form 656 should be clearly labeled at the top "Emergency Processing Requested." Immediate processability and assignment for investigation should be made.
5. Every effort should be made to close the offer within 90 calendar days of receipt. In an attempt to bring the case to a prompt and timely resolution and to meet the special needs of the taxpayer, immediate contact should be made with the taxpayer to request any additional information needed.
6. If a decision is made not to expedite the case, the manager should document the basis for the decision on the AOIC history. Contact the taxpayer by telephone or correspondence explaining the basis for the decision. The case should be worked under routine processing.

**5.8.3.17.1 (05-14-2013)
Expedite Handling for Short Collection Statute Expiration Dates on Related Offers**

1. The Collection Statute Expiration Date (CSED) is ten years from the date of a tax assessment.
2. PEs are responsible for ensuring there are no tax liabilities with less than one year remaining on the CSED for any offer received that will require a request for a related offer prior to acceptance. CSED dates can be found on the AOIC MFT screen and on the IDRS prints in the case files.
3. If any CSED is identified that is less than one year from the date the offer was received and there are no perfection issues:
 - Document AOIC Remarks screen,
 - Send Combo A to the taxpayer and representative, if applicable and
 - Give case file to manager to be expedited to an OE.

Note:

If case is to be transferred to the field, write: "Expedite - Short CSED" , on the front of the case folder.

4. If a CSED is identified that is less than one year from the date the offer was received and perfection of the offer is required:
 - Send a Combo letter to request the needed perfection,
 - Document the AOIC Remarks screen and
 - Flag case for expedited handling,
 - When the response is received, give case file to the manager to be expedited to an OE.
 - If no response is received, return offer following *IRM 5.8.3.12, No Reply Procedures*.

Note:

If case is to be transferred to the field, write: "Expedite - Short CSED", on the front of the case folder.

5.8.3.18 (05-14-2013)

Third Party Authorizations

1. Taxpayers who wish to be represented must submit a properly executed Form 2848, *Power of Attorney and Declaration of Representative*. Input the representative's information on AOIC and retain a copy of the form in the paper case file. Forward the original for recording on the Centralized Authorization File (CAF).
2. Send all original correspondence to the taxpayer and provide a copy to the representative if the taxpayer has checked the box in Part 2 of Form 2848.
3. Individuals who are not authorized to practice before the IRS with respect to a collection matter (such as unenrolled return preparers and registered tax return preparers) may accompany taxpayers to meetings with a completed Form 8821, *Taxpayer Information Authorization*, or other proper authorization, and receive and provide information that relates to the offer investigation. They are not authorized to represent the taxpayers or sign documents relating to offers in compromise. See IRM 5.1.10.6.2, *Right to Representation*.
4. If the offer contains liabilities for tax years or periods that are not also included on Form 2848, a letter cannot be sent to the representative covering these periods. Instead, send a redacted letter to the representative. The letter sent to the taxpayer can request completion of a Form 8821 or a Form 2848 to cover the missing periods.
5. If, during the investigation, it is discovered that the POA no longer represents the taxpayer, secure a letter revoking the POA and document the case history. Remove the POA information from AOIC.
6. Where a recognized representative has unreasonably delayed or hindered an examination, collection, or investigation by failing to furnish, after repeated requests, non-privileged information necessary to the examination, collection or investigation, the IRS employee conducting the examination, collection, or investigation may be given permission to bypass the representative and contact the taxpayer directly for such information [26 C.F.R. § 601.506 (b) (Statement of Procedural Rules)]. Prior to contacting the taxpayer directly, the IRS employee must first initiate bypass procedures. See IRM 5.1.23.5, *By-Passing a Taxpayer's Representative*, for procedures to bypass a POA.

5.8.3.18.1 (05-14-2013)

Third Party Authorization Requests

1. During the course of the investigation, a taxpayer may submit a Form 2848 designating a third-party as their representative or power of attorney, or the taxpayer may submit a Form 8821 designating an appointee or may complete Section 11 of Form 656, *Offer in Compromise*, for a Third Party Designee. When properly completed and filed by the taxpayer, each of these documents should be recognized during an investigation, and interaction with the third party should be governed by the parameters allowed within each of these authorization forms.
 - Form 2848 - authorizes an eligible individual (e.g., attorney, CPA, enrolled agent, or enrolled actuary) to represent a taxpayer before the IRS and allows the individual to receive confidential information.
 - Form 8821 authorizes any individual, corporation, or partnership to inspect and/or receive a taxpayer's confidential information for the type of tax and the years listed on Form 8821, Item 3.
 - Section 11 of Form 656 allows a third party designee to discuss the offer with the IRS and allows the IRS to discuss with the designee any additional information needed to process the offer.
2. The table below provides guidance to assist in distinguishing the differences between the Form 2848, Form 8821, and item 14 on the Form 656.

Type of Form	Designee may be individual or entity	Designee can inspect limited tax info	Designee may receive limited written info	Designee can represent TP on collection matters	Designee can execute waivers, consents, etc	TP can designate more than one individual/entity on the form	Designee may redelegate to another individual or entity	Unenrolled return preparer or registered tax preparer can be designated
Form 8821	Either	Yes	Yes	No	No	Yes	No	Yes
Form 656 Section 11	Individual Only	Yes	No	No	No	No	No	Yes
Form 2848	Individual Only	Yes	Yes	Yes	Yes	Yes	Yes (Individuals Only)	Yes (but only for examination matters with respect to a return he/she prepared)

5.8.3.18.2 (05-14-2013)

Form 8821, Tax Information Authorization (Rev. 10/2011)

1. If Form 8821 is missing critical information that can only be provided by the taxpayer (e.g., tax years, type of tax, missing taxpayer signature, date), return to the taxpayer.
2. Information that may be disclosed to the designee is limited to the type of tax, tax form number, tax years or periods, or specific tax matter that is listed on the Form 8821, item 3.
3. If Form 8821, item 5a is checked, the designee is also entitled to receive copies of tax information, notices, and other written communication on an ongoing basis for the type of tax, tax form number, tax years, or specific tax matter listed under item 3.
4. The designee is not authorized to respond to any type of correspondence on behalf of the taxpayer if the response advocates a position that would indicate that the designee is taking on a representational role.
5. Mail the original Form 8821 to the appropriate Centralized Authorization File (CAF) campus in Memphis, Ogden, or Philadelphia (International), depending on the taxpayer's state of residence. Page 2 of Form 8821 provides mailing addresses to be used.
6. Form 8821 may also be faxed. Refer to page 2 of Form 8821 for detailed fax information. If the form is faxed, retain the original in the case file. Document the history to indicate the date and campus to which the form was sent.

5.8.3.18.3 (05-14-2013)

Form 656, Offer in Compromise, Section 11: Third Party Designee (Rev. 5/2012)

1. The information and/or documentation that may be disclosed to the designee is limited only to information and/or documentation necessary to process an offer.
2. Information may include tax liabilities omitted on the Form 656 or unfiled tax returns affecting the acceptance of the offer.

5.8.3.18.4 (05-14-2013)

Form 2848, Power of Attorney and Declaration of Representative (Rev. 3/2012)

1. As of March 2004, the IRS will not honor a Form 2848, *Power of Attorney and Declaration of Representative*, if it designates a representative who is not authorized to practice before the IRS. Further, the form will not be treated as a Taxpayer Information Authorization. Form 8821, *Taxpayer Information Authorization*, is required to allow those individuals, who cannot practice before Collection personnel to access tax information beyond what would be allowed if they completed Section 11 of Form 656, *Offer in Compromise*.

2. Taxpayers may authorize a student who works in a Low Income Taxpayer Clinic (LITC) or Student Tax Clinic Program (STCP) to represent them under a special order issued by the Office of Professional Responsibility (OPR). A copy of the letter from OPR authorizing practice before the IRS must be attached to Form 2848. Students who have been authorized to practice by a special order may, subject to any limitations set forth in the letter from OPR, represent taxpayers before any IRS office and should be treated the same as any other taxpayer representative designated on Form 2848.
3. The power to sign the taxpayer's tax returns can be granted only in limited situations. Refer to Form 2848 and Treasury Regulations 1.6012-1(a)(5) and 1.6061-1(a) for additional information.
4. If a joint return has been filed, one or both spouses may choose to be represented by a POA. However, beginning in October, 2011, if both spouses choose to be represented by the same individual(s) or different individuals, both the husband and wife are required to file and sign separate Forms 2848. If only one spouse is to be represented, only the one that will be represented is required to sign the Form 2848. Regardless, any authorized representative of either spouse is allowed access to tax information related to the joint tax return.
5. Mail or fax Form 2848 to the appropriate Centralized Authorization File (CAF) campus in Memphis, Ogden, or Philadelphia (International) depending on the taxpayer's state of residence. Refer to the Instructions on the Form 2848 for mailing addresses and fax numbers. If the Form 2848 is faxed, retain the original in the case file. Document the case to indicate the date and campus to which the form was sent.

5.8.3.19 (05-14-2013)

Processing Forms 4844 from Automated Collection Services, Toll Free, or Other Service Divisions

1. Form 4844, *Request for Terminal Action*, will be prepared by Automated Collection System (ACS), Toll Free, and Walk-in operations to provide information submitted by the taxpayer on a previously filed offer in compromise. Normally, these forms will be prepared if the taxpayer has yet to be contacted or notified of the status of the offer within 45 calendar days of the offer being submitted for processing.
2. Form 4844 will be faxed to the appropriate COIC sites. The forms should be reviewed within 48 hours of receipt and any necessary action taken on the account based on the information provided.

Exhibit 5.8.3-1

Form 3210 – To Appeals with Open TIPRA Statute

Appeals Transmittal used for transmitting OICs worked in conjunction with a CDP.

This image is too large to be displayed in the current screen. [Please click the link to view the image.](#)

[More Internal Revenue Manual](#)



Part 5. Collecting Process

Chapter 8. Offer in Compromise

Section 4. Investigation

5.8.4 Investigation

- 5.8.4.1 [Overview](#)
- 5.8.4.2 [Effective Tax Administration \(ETA\) and Doubt as to Collectibility with Special Circumstances \(DATCSC\)](#)
- 5.8.4.3 [Doubt as to Collectibility](#)
- 5.8.4.4 [Field Assignments](#)
- 5.8.4.5 [COIC Assignments](#)
- 5.8.4.6 [Initial Compliance Screening](#)
- 5.8.4.7 [Initial Offer Actions](#)
- 5.8.4.8 [Taxpayer Contact](#)
- 5.8.4.9 [Actions Based on Reasonable Collection Potential](#)
- 5.8.4.10 [Follow-Up Actions](#)
- 5.8.4.11 [Case Recommendations and Closing Actions](#)
- 5.8.4.12 [Documentation](#)
- 5.8.4.13 [Notice of Federal Tax Lien Filing](#)
- 5.8.4.14 [Related Cases in Appeals](#)
- 5.8.4.15 [COIC Investigation of Offers under Appeals Jurisdiction \(COIC ONLY\)](#)
- 5.8.4.16 [Coordination with Appeals](#)
- 5.8.4.17 [Pending Assessments](#)
- 5.8.4.18 [Potential Fraud Referrals](#)
- 5.8.4.19 [Criminal Investigations](#)
- 5.8.4.20 [Offer Submitted Solely to Delay Collection](#)
- 5.8.4.21 [Responsibility of Offer Examiners, Offer Specialists, and Field Revenue Officers](#)
- 5.8.4.22 [Procedures for Certain Types of Taxpayers and Liabilities](#)
- 5.8.4.23 [Other Cases](#)
- 5.8.4.24 [Offers from Operating Businesses](#)
- 5.8.4.25 [Periodic Payments Required with Offer in Compromise Submissions](#)
- 5.8.4.26 [Third party Authorizations](#)
- 5.8.4.27 [Expedite Handling](#)
- Exhibit 5.8.4-1 [Expedite Processing - Notification of Preliminary Case Decision](#)
- Exhibit 5.8.4-2 [Offer in Compromise Recommendation Report](#)
- Exhibit 5.8.4-3 [Asset/Equity Table \(AET\) and Income/Expense Table \(IET\)](#)
- Exhibit 5.8.4-4 [COIC Procedures for Status 60/ Status 71 Changes](#)
- Exhibit 5.8.4-5 [Field Procedures for OIC in Lieu of Installment Agreement](#)

Manual Transmittal

April 30, 2015

Purpose

(1) This transmits revised IRM 5.8.4, *Offer in Compromise, Investigation*.

Material Changes

(1) The changes to IRM 5.8.4, *Offer in Compromise, Investigation* are to incorporate interim guidance memorandum SBSE-05-0414-0029 titled Offer Investigations - Payment Options dated April 18, 2014.

(2) The following subsections were revised to incorporate interim guidance memorandum SBSE-05-0414-0029 titled Offer Investigations - Payment Options dated April 18, 2014.

5.8.4.3.1(1) Updated to incorporate the revised definition of lump sum "cash" payment terms to state offer amount must be within five months of offer acceptance.

5.8.4.13 (6) Revised to include a note that if the offer is paid within 5 months of acceptance, the NFTL may be deferred.

5.8.4.25(2)(a) Updated to incorporate the revised definition of lump sum "cash" payment terms to state offer amount must be within five months of offer acceptance.

Effect on Other Documents

This IRM supersedes IRM 5.8.4 dated 12/04/2014 and incorporates interim guidance memorandum SBSE-05-0414-0029 titled Offer Investigations - Payment Options dated April 18, 2014.

Audience

SB/SE Collection, SBSE Campus Compliance employees

Effective Date

(04-30-2015)

Kristen E. Bailey
Acting Director Collection Policy

5.8.4.1 (06-01-2010)

Overview

1. This chapter provides:

- Instructions for conducting the different types of offer investigations.
- Definitions for considering each possible basis under which an offer may be filed.
- Directions for coordinating activities with other Service functions.

5.8.4.2 (05-10-2013)

Effective Tax Administration (ETA) and Doubt as to Collectibility with Special Circumstances (DATCSC)

1. When investigating any offer in compromise (OIC), consideration should be given to the following issues when present, whether identified by the taxpayer or not:

- Economic Hardship – when a taxpayer is unable to pay necessary basic living expenses. Further defined in IRM 5.8.11, *Economic Hardship*.
- Public Policy or Equity – where, due to exceptional circumstances, collection in full would undermine public confidence that the tax laws are being administered in a fair and equitable manner. Further defined in IRM 5.8.11, *Public Policy or Equity Grounds*.

Note:

The Offer Examiner/Offer Specialist OE/OS should review comments included on the Form 656 Section 3 and/or any attachments to the Form 656 to determine if specific special circumstances or Effective Tax Administration (ETA) issues are discussed, which should be considered. Statements such as "I cannot pay" will be addressed with the determination of the taxpayer's reasonable collection potential (RCP).

2. Offers can be considered under ETA criteria when:

- There is no doubt the tax is owed and no doubt that the full amount owed can be collected from the taxpayer,
- The taxpayer has a proven economic hardship or has presented facts that would support acceptance under the public policy/equity basis, and
- Compromise would not undermine compliance with tax laws.

3. Offers can be considered under DATCSC criteria when:

- The taxpayer cannot fully pay the tax due, and
- The taxpayer has proven special circumstances that warrant acceptance for less than the amount of the calculated RCP.

4. Factors establishing special circumstances under DATC are the same as those considered under ETA.

5. IRM 5.8.11, *Effective Tax Administration*, provides a list of factors to consider when determining if special circumstances exist and also includes a full discussion on how to investigate and determine acceptability of an offer under ETA or DATCSC grounds.

5.8.4.3 (05-10-2013)

Doubt as to Collectibility

1. Doubt as to Collectibility (DATC) offers may be worked either in the COIC site by an offer examiner (OE) or in Area offices by an offer specialists (OS). Cases assigned to an OE in COIC may be forwarded to Area offices for assignment to an OS if complex issues meeting field transfer criteria in IRM 5.8.4.5.1 are identified.

2. For DATC offers, the decision to accept or reject usually rests on whether the amount offered reflects the reasonable collection potential (RCP). The exception to this rule would be for offers not accepted based on public policy reasons as defined in IRM 5.8.7.7.2, *Public Policy Rejection*. RCP is defined as the amount that can be collected from all available means, including administrative and judicial collection remedies. Generally, the components of collectibility outlined in IRM 5.8.4.3.1 below, will be included in calculating the total RCP. See IRM 5.8.5, *Financial Analysis*, for more detail on how to analyze the taxpayers financial condition to arrive at the value of each component. In determining the taxpayer's future ability to pay, full consideration must be given to the taxpayer's overall general situation including such factors as age, health, marital status, number and age of dependents, education or occupational training, work experience and present and future employment status.

3. Offers should not be accepted where the tax can be paid in full as a lump sum or can be paid under current installment agreement (IA) guidelines, unless special circumstances are identified that warrant consideration of a lesser amount. The offer should be recommended for rejection based on the taxpayer's ability to full pay under current IA guidelines.

Note:

An offer in compromise is a legitimate alternative to a protracted installment agreement. A protracted installment agreement is defined as an agreement that extends beyond the Collection Statute Expiration Date (CSED).

4. Additionally, if the taxpayer has the ability to make installment payments, the investigating employee should determine the amount which may be collectible from a partial payment installment agreement (PPIA). After consideration of all factors, the offer may be recommended for rejection as not in the government's interest, when the calculated amount potentially received through a PPIA, does not fully pay the liability, yet approximates the outstanding balance.

Note:

Although a PPIA may generate more funds than the amount offered, acceptance may be appropriate based on the taxpayer's reasonable collection potential and/or specific circumstances. Substantial consideration should be given to the benefit to the government of receiving payment at an earlier time, the compliance aspect of the OIC, monitoring and default issues associated with a PPIA, the difference between the potential amount received from a PPIA and the tax liability, the difference between the potential amount received from a PPIA and the offer amount, the taxpayers gross income and family size, and anticipated changes in the taxpayer's income or expenses.

Example:

The outstanding tax liability is \$ 50,000 and the taxpayer submitted an offer in the amount of \$ 15,000. The taxpayer is unable to full pay via an IA within the CSED, yet a PPIA would collect \$25,000. Although the amount potentially collectible via the PPIA would exceed the offer amount, the taxpayer's offer should be accepted unless other circumstances, i.e. public policy, weigh against acceptance.

Example:

The outstanding tax liability is \$ 200,000 and the taxpayer submitted an offer in the amount of \$ 18,000. The taxpayer is unable to fully pay the tax liability via an IA within the CSED. The taxpayer's RCP is based solely on their future income of \$1,500 per month. Based on the calculation of RCP the taxpayer's offer may be acceptable, yet there remains over 9 years on the CSED, so the government would potentially receive over \$ 160,000 from a PPIA. In this instance, the difference between the potentially acceptable offer amount and the amount received via a PPIA is such that acceptance of the taxpayer's offer is not in the government's interest. The offer should be rejected on that basis.

5. To determine if the taxpayer can full pay, the calculation must be based on the balance due of all outstanding liabilities at the time the offer is received.

5.8.4.3.1 (04-30-2015)

Components of Collectibility

1. The following four components of collectibility will ordinarily be included in calculating the RCP for offer purposes:

Components	Definition
Assets	The amount collectible from the taxpayer's net realizable equity in assets. The amount collectible from the taxpayer's expected future income after allowing for payment of necessary living expenses. <ul style="list-style-type: none"> • For Lump Sum Cash offers, project for the next 12 months or the remaining statutory period, whichever is less;
Future Income	<p>Note:</p> <p>Any lump sum cash offer which meets the exception criteria discussed in IRM 5.8.1.9.4(3) in which payment terms exceed five months should have expected future income calculated over 24 months or the remaining statutory period, whichever is less.</p> <ul style="list-style-type: none"> • For Periodic Payment offers, project for the next 24 months or the remaining statutory period, whichever is less.
Amount Collectible from third parties	The amount we could expect to collect from third parties through administrative or judicial action. For example, amounts collectible through a transferee assessment, nominee lien, or suit to set aside a fraudulent conveyance.
Assets and/or income that are available to the taxpayer but are beyond the reach of the government	Assets that the lien will not attach such as equity in assets located outside the country.

5.8.4.4 (05-10-2013) Field Assignments

1. Prior to the issuance of offer cases to the field, COIC will have made all processability determinations and completed initial actions in accordance with current procedures. In some cases, no additional information will be needed from the taxpayer to complete the investigation. In these situations, the next appropriate action(s) should be scheduled in a manner that ensures the timely resolution of the case.
2. Generally, the AOIC assignment date will be the assignment date of record.
3. If assignment to an OS does not or will not take place within 120 days of the date the case was transferred to the Area on AOIC:
 - Contact the taxpayer by telephone or in writing and advise of the status of the case and expected assignment date. If the taxpayer is verbally notified, the contact must be documented in the AOIC history. If the taxpayer is notified in writing, a copy of the letter must be kept with the offer file and document the case history. Option "D" of the AOIC transfer letter may be used to meet the notification requirements.
 - The location of the case at the end of the 120-day period will determine who will contact the taxpayer: the drop point group or the assigned group.
 - The date COIC transferred the case on AOIC will be used as the start date for the 120-day calculation.
4. Within five business days of receipt of the offer case file from the COIC site, the Area office will:
 - Acknowledge receipt of the offer file(s) by signing and returning the acknowledgement copy of Form 3210, *Document Transmittal*.
 - Accept transfer of the offer record on AOIC.
 - Reassign the offer to the appropriate Area hold file.

5.8.4.5 (05-10-2013) COIC Assignments

1. If assignment to an OE does not or will not take place within 120 days of assignment to the 60XX hold file, the COIC site will:
 - Contact the taxpayer (verbally or in writing) and advise of the status of the case and expected assignment date. If the taxpayer is verbally notified, the contact must be documented in the AOIC history. If the taxpayer is notified in writing, a copy of the letter must be kept with the offer file.

Note:

The date the case is assigned to 60XX on AOIC will be used as the start date for the 120 day calculation.

5.8.4.5.1 (05-10-2013) Complex Issues Identified During an Investigation (COIC Only)

1. Below is a list of potential issues that, when identified during an investigation by COIC, indicate a case should be immediately transferred to the field.
 - Entity consists of a municipality and/or educational institution, which requires a more specialized knowledge of tax laws.
 - Complexity of issues include, but are not limited to, valuation of on-going businesses; income determination when excessive accumulation of retained earnings is identified; specialized assets.
 - The taxpayer's case has been classified as an Abusive Tax Avoidance Transaction (ATAT) case on ICS.
 - OICs filed by individuals and business taxpayers (e.g., partnerships, corporations) involved in complex activities or transactions designed or structured to hide or conceal income, such as offshore activities, disguised withdrawals in the form of shareholder loans, or multiple related entities, requiring a thorough knowledge of the different fraud indicators, as well as working knowledge on a wide range of financial and investigative skills.
 - Need for comprehensive reviews to determine that other required returns such as excise, or specialty returns, need to be filed.
 - Presence of tools used to conceal and/or cloud taxpayer's true financial condition. Examples, not all inclusive include nominee, alter ego, and transferee situations.
 - Comprehensive and complex financial statements requiring knowledge of accounting and business principles in order to determine the taxpayer's actual income and expense and thereby determine true reasonable collection potential.
 - Need to gather, research, inspect, and validate data from a variety of sources through personal contacts. The data may, in some instances, be unique to a particular trade or industry.
 - Cases involving high profile taxpayers with potential for media scrutiny.
2. If internal research shows income from a Form K-1, contact should be made with the taxpayer or POA to determine if the income is from an investment or if the taxpayer is involved in the operation of the entity. If the income is from an investment, the OE should not transfer the case but continue the investigation and include the income in the calculation of the future income value. If the income is from an entity in which the taxpayer materially participates in the operation of the business, immediately transfer the case to the field.

3. When such issues are identified, consult the site RO to determine if the transfer is appropriate.

5.8.4.6 (05-10-2013)

Initial Compliance Screening

1. Upon receipt of the offer case file, the OS/OE should determine if any compliance issues are present, i.e. unfiled returns, missing estimated tax (ES) payments, and/or failure to be current on federal tax deposits (FTDs). See IRM 5.8.7 for additional information on the calculation and determination of appropriate ES payments. Refer to IRM 5.8.7.2.2.3 relative to a return for failure to make timely federal tax deposits.

Note:

If the taxpayer does not provide current acknowledgement numbers, FTDs can be verified on IDRS using CC EFTPS.

Note:

Area offices may establish procedures to conduct this compliance screening on offers awaiting assignment to an OS. This initial screening prior to assignment may be completed by a Tax Examiner.

2. During this initial screening it is appropriate to determine if any "delay of collection" criteria (as described in IRM 5.8.4.20) apply. Also, a cursory review of the taxpayer's financial statement to determine if the taxpayer can obviously full pay the outstanding balance before completing the detailed financial evaluation outlined in IRM 5.8.4.8 should be made.

Example:

A taxpayer submitting an offer has a tax liability of \$20,000 with 76 months remaining on the collection statute expiration date. The Form 433-A(OIC) submitted by the taxpayer shows the taxpayer has equity in real property of \$ 75,000 and has the ability to pay \$500 per month. The information provided by the taxpayer does not indicate any special circumstances are present. The calculation of the taxpayer's ability to pay is based on income and expenses provided by the taxpayer. Since the taxpayer appears to be able to fully pay the liability by either borrowing against the equity in their real property without economic hardship (defined as when a taxpayer is unable to pay reasonable basic living expenses) and/or by entering into an installment agreement, an offer may not be a viable resolution to the taxpayer's account. The taxpayer should be contacted to discuss the equity in their property and ability to make payments prior to the OE/OS conducting a complete financial evaluation.

3. If the taxpayer has unfiled returns, missing ES and/or FTD payments, there are delay of collection issues, and/or the taxpayer has an obvious ability to full pay the outstanding balance, then the taxpayer/representative should be contacted by telephone to discuss the issues. When applicable, the taxpayer should be provided a reasonable period of time, normally 15 days, to comply with filing any returns or making any required ES or FTD. If the taxpayer or his/her representative requests an extension of time to comply, a reasonable amount of time should be granted.

5.8.4.7 (01-01-2015)

Initial Offer Actions

1. Initial offer actions must be completed within 30 calendar days of the date an offer is assigned to an Offer Examiner (OE)/Offer Specialist (OS). In situations where the Field OS is not in the same location as the group manager, an additional 5 days will be allowed from the assignment date to complete the initial case actions.

Note:

If initial analysis and compliance are completed in one action, it must be completed within the required 30 days. If an initial compliance review was completed in accordance with IRM 5.8.4.6, *Initial Compliance Screening*, the timeframe for the initial offer actions in this section are extended to 45 days, an additional 5 days are allowed as discussed above.

2. The assigned employee must complete the following actions:

- A. If not previously completed, verify the taxpayer's compliance with the current year's ES tax payments and/or current quarter FTD payments. See IRM 5.8.7 for additional information on the calculation and determination of appropriate ES payments.
- B. If the taxpayer checked the low income certification, determine whether the household income (at the time of offer submission or current income, whichever is lower) and family size support the decision not to pay the application fee and/or the required Tax Increase Prevention and Reconciliation Act (TIPRA) payment. If the OE/OS concludes that the income for the family size exceeds the levels for which a waiver is allowed (i.e. the taxpayer should have paid the application fee and/or the required TIPRA payment), contact the taxpayer by telephone and request the required initial payment and application fee. If the taxpayer does not respond in a reasonable amount of time, the offer will be returned. If the taxpayer cannot be reached by telephone, after two attempts, issue an additional information letter requesting the required payments.

Note:

If taxpayer paid the application fee and his income subsequently drops so he now qualifies for the waiver, the application fee will not be refunded.

- C. If the taxpayer failed to make the appropriate amount of the required lump sum cash payment (20% of the offered amount) or payments due under a periodic payment plan, you must also request the remainder of the lump sum cash or required periodic payment(s) when requesting additional information. Refer to IRM 5.8.4.25 on the appropriate action if the taxpayer fails to make the required TIPRA payments.
- D. Review the financial information submitted by the taxpayer
- E. Prepare a preliminary AET/IET with available information, even if the information has not been verified, to make a projected resolution to the case or to determine exactly what additional information is needed.
- F. Research available internal sources to verify and supplement taxpayer information. Information should not be requested from the taxpayer that is available through internal sources or online research.
- G. If the initial analysis reflects the need for additional information, and the information is not available through internal sources or online research, contact the taxpayer/representative by telephone to discuss any additional information necessary to continue the offer investigation or required so a recommendation can be made on the acceptability of the taxpayer's offer. Generally, no correspondence should be sent until the OS/OE makes two attempts to contact the taxpayer via telephone. The telephone contact or attempted contact must be documented in the AOIC or ICS history.

Note:

There may be certain situations that require a request for additional information. However, if the information was current at the time of submission, it may not be necessary to require the taxpayer to update the information. For example, the information became outdated due to processing delays caused by the Service and through no fault of the taxpayer. In those cases, it is appropriate to rely on the outdated information if there is no indication the taxpayer's overall situation has significantly changed. Judgment should be exercised to determine if any, or to what extent, updated information may be necessary.

- H. In certain situations, it may be appropriate to follow-up on telephone contact with a written request to the taxpayer/representative.
- I. If no additional information is needed, proceed with the appropriate disposition of the offer.

- J. The initial NFTL determination should be made and documented. While an initial NFTL determination is required it may not be necessary to file the NFTL at this time, unless a jeopardy situation exists. For example, the taxpayer is threatening imminent bankruptcy.

Note:

If a taxpayer has been identified as being located in a Combat Zone area, no NFTLs should be filed unless extenuating circumstances exist. Document the case history.

Note:

Since any individual shared responsibility payment (SRP) assessed under §5000A is not subject to penalties or to lien and levy enforcement actions, if the filing of a NFTL is being requested, it should NOT include any individual SRP (MFT 35) tax period. Additionally, when the taxpayer is advised of the NFTL filing, if the taxpayer has any individual SRP liabilities outstanding, they must also be notified the NFTL will not include any SRP assessment.

3. If the taxpayer submits tax returns with a balance due, the OE/OS will treat the liabilities as missing periods and process the return(s), add the missing periods on the AOIC MFT screen, include the periods on the original Form 656, and continue working the offer.

Note:

The Form 656 allows the Service to include any assessed liabilities that were not listed on the Form 656. Therefore, an amended Form 656 is not required to add the missing periods only.

4. If the taxpayer indicates that they are no longer required to file a tax return, it will be the responsibility of the OE/OS to close the filing requirements or indicate no liability to file; that is, input Transaction Code 590 or 591, as appropriate. Refer to Document 6209, Sections 8 and 11 for the appropriate transaction and closing codes and request input of the TC 590/591.

Example:

The taxpayer is out of business and is no longer required to file. In the case of a business, if the taxpayer provides information that they are no longer required to file a return (e.g., Forms 941 or 940), close the filing requirements and work the offer.

5. If a request for delinquent returns was made prior to assignment to the offer specialist/examiner and the taxpayer failed to file the requested returns or provide reason for not filing, the offer may be returned without any additional contact.
6. The AOIC Decision Point tool is primarily used by the OE and may be accessed by an OS through the AOIC system. This tool may be used to assist with the RCP calculations and in making a final case decision. It is the responsibility of the user to ensure a final case decision is based on the facts and circumstances of the case. Decision Point should be used in conjunction with IRM 5.8 and 5.15 to ensure the correct case decision has been reached. There will be some cases that cannot be loaded on Decision Point; therefore, it may be necessary for the OE/OS to manually calculate the RCP.
7. COIC will generate the TC 480 and Status 71 through the AOIC system. However, there may be situations when the Status 71 will not generate (e.g., MFT 31 modules created prior to January 2005, imminent statute, etc.). It is the responsibility of the OS/OE to ensure the 480 is input and reflects the correct date. Any corrective action must be taken immediately.

Note:

If a TC 480 is manually input, it must be manually reversed. Document the AOIC history that the 480 must be manually reversed.

5.8.4.8 (01-01-2015)

Taxpayer Contact

1. If initial analysis reveals additional information is required, contact the taxpayer or the representative by telephone. Generally, two attempts to contact the taxpayer/representative via telephone must be made before correspondence is sent requesting a return phone call or additional information. The contacts or attempted contacts must be documented in the history.

Note:

Refer to IRM 25.4, Employee Protection for a discussion on Potentially Dangerous Taxpayers (PDT) and Caution Upon Contact (CAU) indicators when either is shown on the Integrated Data Retrieval System (IDRS) and/or Integrated Collection System (ICS).

2. If the request for information is in person (e.g., by telephone, office, or field visit) the initial contact must include the following information:
- A. Verify receipt of Publication 1 and Publication 594. If the first conversation is with the Power of Attorney (POA), verify that the taxpayer has received these publications. If the taxpayer or the POA verifies receipt, ask if there are any questions and answer any questions they may have to ensure there is a clear understanding of their rights. If the taxpayer has not received the publications, offer to either explain their rights before proceeding or re-mail the publications to the taxpayer and postpone conversation until they have been received and read.
 - B. Address and document any potential special circumstances (e.g. ETA or DATCSC) identified during initial contact or initial review of documents submitted with the offer.
 - C. If the initial financial analysis determines the taxpayer has the ability to full pay the liability or pay via an installment agreement, then alternative resolutions should be discussed.
 - D. If the determination has been made that a NFTL will be filed, the taxpayer must be advised of the NFTL filing. See 5.8.4.13 for NFTL filing criteria. Explain the possible effects of the NFTL filing on normal business operations and his credit rating. If the taxpayer disagrees with the proposed NFTL filing, advise the taxpayer of his right to discuss the NFTL filing with the employee's manager and their right to appeal under the Collection Appeals Program (CAP). Also explain to the taxpayer their right to request a Collection Due Process (CDP) hearing under IRC 6320 once the NFTL has been filed. See IRM 5.12 and IRM 5.1.9.3.

Note:

Since any individual shared responsibility payment (SRP) assessed under §5000A is not subject to penalties or to lien and levy enforcement actions, if the filing of a NFTL is being requested, it should NOT include any individual SRP (MFT 35) tax period. Additionally, when the taxpayer is advised of the NFTL filing, if the taxpayer has any individual SRP liabilities outstanding, they must also be notified the NFTL will not include any SRP assessment.

3. If the OS/OE requested a call back using paragraph D in the AOIC additional information letter and the taxpayer or representative fails to respond within the allotted time frame, the offer will be returned without further consideration.
4. If the written request is for other than (3) above, the correspondence must include:
- A. A list of the specific items/information needed,
 - B. A specific deadline for providing the information,
 - C. A statement indicating that the offer will be returned without further consideration if all the information is not provided,

- D. The name, phone number, and employee number of the investigating employee,
 - E. A statement regarding enclosure of Publication 1 and 594, if necessary, and
 - F. A statement addressing any potential special circumstances (e.g., ETA or DATCSC), if appropriate.
5. For offers where it is determined the taxpayer has substantially replied or adequately addressed the requested information or documents (even if they did not specifically include them in the response), or where they failed to substantiate certain claimed monthly expenses or loan balances, continue working the case. Do not send a request for additional information if the information is not critical to making a case decision. For example, missing expense documentation, when the expenses such as health care, child support, court ordered payments, etc, appear reasonable or can be verified via other documents provided or oral testimony; or if the submission includes sufficient partial information (such as wage statements, bank statements, or retirement information).

Note:

The verification required should be consistent with the facts and circumstances of the specific offer investigation.

6. Certain information will be required to correct the following situations prior to continuing the offer investigation including:
- Missing or zero offer amount, unless terms are present.
 - Taxpayer's name, physical address or TIN (if information cannot be located through internal sources or on submitted documents).
 - Additional Form(s) 656 which may be required involving related offer(s). Refer to IRM 5.8.3.5 which discusses when securing relating offers is appropriate.
 - Missing TIPRA payment or shortfall.
 - Unfiled tax returns (generally, this will not exceed a 6-year look-back period, without managerial approval).
 - Obsolete Form 656.
 - Missing or blank Form 433-A (OIC) and/or 433-B (OIC).
7. If the taxpayer or their representative requests an extension of time to comply with the request for additional information, a reasonable amount of time should be granted. Generally, a minimum of 15 and a maximum of 30 calendar days should be allowed. If the taxpayer or representative requests more than 30 calendar days, the additional time should be allowed if the reason for the request is reasonable. However, if it appears that the representative or taxpayer is delaying the progress of the offer investigation or if the taxpayer or representative fails to meet the deadline, the offer may be returned. Document the ICS or AOIC history indicating the new deadline for the response.

Note:

If the additional time requested will not be granted, the taxpayer or the representative should be advised of the opportunity to discuss the extension with the OE/OS manager.

8. For offers, which include employment tax or corporate income tax liabilities, submitted by an on-going business, a field call will be made prior to acceptance to validate the existence and value of business assets and inventory. This may require an Other Investigation to a Collection Field revenue officer (RO). If a field call has been previously made and assets have been valued and documented, a field call would not be required, unless the OS deems it necessary.

Exception:

If after discussion with RO group manager, it is determined a field call cannot be made in a reasonable period of time, due to the taxpayer's geographic location, the ICS history will be documented and the offer acceptance recommendation may be submitted for approval.

9. If any of the errors were not corrected to perfect the offer, the offer will be returned.
10. If the taxpayer fails to submit the balance of the required initial TIPRA payment (20% for a cash lump sum offer) within a reasonable amount of time, the offer will be returned without further contact. The OE/OS should issue the appropriate AOIC return letter and mail it to the taxpayer. For further information on returning an offer for failure to make any periodic payments, refer to IRM 5.8.4.25, *Periodic Payments Required with Offer in Compromise Submissions*.

Note:

If the taxpayer gives an explanation supporting special circumstances as a reason the funds were not available, the OE/OS will continue to work the offer as if the taxpayer had submitted the entire payment.

**5.8.4.9 (05-10-2013)
Actions Based on Reasonable Collection Potential**

1. Once the RCP has been calculated, process the case as follows:

<p>If...</p> <p>The offer must be increased before recommending for acceptance</p>	<p>Then...</p> <p>Contact the taxpayer by telephone to discuss amending the offer to the acceptable amount. If contact by telephone cannot be made after two attempts, send a quick note requesting a call back within 10 calendar days of the date of your letter. If the taxpayer's response does not change the case determination, issue the rejection letter using the option to increase paragraph. If the taxpayer agrees, issue the appropriate letter with the addendum for signature.</p>
	<p>Note:</p> <p>If after discussion with the taxpayer/POA, a copy of the AET and/or IET is requested, and it is unable to be faxed, the OS/OE may use Letter 3498 as a cover letter.</p>
<p>The analysis shows the taxpayer can fully pay the liability through liquidating assets (without incurring economic hardship which is defined as when a taxpayer is unable to pay reasonable basic living expenses) and/or installment payments</p>	<p>Contact the taxpayer by telephone to discuss withdrawing the offer and entering into an alternative resolution. If contact by telephone cannot be made after two attempts, send a quick note requesting a call back within 10 calendar days of the date of your letter. If the taxpayer's response does not change the case determination, issue the rejection letter using the full pay paragraph. If additional information is provided, make the appropriate adjustment to the RCP and contact the taxpayer by telephone to discuss the case decision.</p>
	<p>Note:</p> <p>If after discussion with the taxpayer/POA, a copy of the AET and/or IET is requested, and it is unable to be faxed, the OS/OE may use Letter 3499 as a cover letter.</p>
<p>The offer amount equals or exceeds the RCP and the offer is otherwise acceptable</p>	<p>The acceptance letter should be issued. (See IRM 5.8.8, Acceptance Processing)</p>
<p>Special circumstances are identified that warrant</p>	<p>Consider an ETA offer or DATCSC. (See IRM 5.8.11, Effective Tax Administration)</p>

acceptance for less than the RCP

5.8.4.10 (06-01-2010)

Follow-Up Actions

1. In order to ensure timely case processing, all in-process offers must have follow-up dates scheduled for the next appropriate action.
2. Throughout the investigation, the scheduling of timely follow-up actions should be reasonable and appropriate, based on the facts of the case. In order to be considered timely, follow-up actions should be significant actions that can reasonably be expected to move the offer investigation toward resolution. Generally, follow-up actions should occur within 15 calendar days of an established deadline for taxpayer action.

Note:

When the taxpayer provides requested information prior to the deadline established, the OS/OE should attempt to adjust the follow-up date and review the information as soon as possible to provide the taxpayer with quality customer service.

3. Follow-up actions should occur within 30 calendar days in situations where no contact has been established with the taxpayer or no deadline has been given.
4. Follow-up actions may include:
 - Recommending acceptance or rejection if the information received is sufficient to make a decision regarding the offer.
 - Recommending the case for closure when the taxpayer has clearly failed to provide the requested documents or information.
 - Personal contact when the taxpayer has made an attempt to comply with the requested documentation but the provided information is incomplete, or needs clarification.

5.8.4.11 (06-01-2010)

Case Recommendations and Closing Actions

1. Once the RCP has been calculated, timely actions should be taken to bring the case to closure.
2. Case Recommendations
 - A. The OE in COIC must submit all appropriate recommendation reports (i.e., Forms 1271/7249) within 10 calendar days from the date of the documented case decision.
 - B. The OS must submit all appropriate recommendation reports within 15 calendar days from the date of the documented case decision.
3. Closing Actions – Case must be submitted for closing actions (i.e., dating/ mailing of letters, closing on AOIC, ICS, etc.) within the defined 10 to 15 calendar days as described above.

5.8.4.12 (05-10-2013)

Documentation

1. Documentation must include, but is not limited to:
 - The basis of the processability determination;
 - Case actions;
 - Requests for information/documentation;
 - Conversations with taxpayers or representatives;
 - Results of internal information analysis;
 - Special issues or circumstances;
 - Financial analysis, if applicable; and
 - Case decisions
2. Documentation should support and define differences and verification of the assets and expenses, including reasons for disallowance of income and expenses. It should also include a brief statement of evaluation of the income, allowable expenses, asset values, encumbrances, and, if relevant to the case decision, the source of offer funds.
3. COIC employees will use AOIC to document case actions.
4. Field compliance employees will use ICS to document case actions. When ICS is used to record documentation, a closing summary history must be placed on AOIC prior to closing the case, indicating the basis for the closure and a statement that the complete history is available on ICS.
5. As is the case with all compromise determinations, referrals, and acceptance/rejection decisions, employees must exercise good judgment. This good judgment needs to be clearly evident and articulated in the case file documentation and should be supported by the known case facts, circumstances, and supporting documents. There is no clearly defined formula to follow in ultimately making these decisions, and each case needs to be evaluated on its own set of facts and circumstances. Particularly in regard to acceptance/rejection decisions, the recommendation report must clearly explain the reasoning behind our actions.
6. Prior to final processing, AOIC must be updated to indicate the correct basis for closing the offer and the dollar amount of the offer considered or accepted. This will ensure that all final closing reports generated from AOIC reflect the correct basis and dollar amount. The approval levels indicated on closing reports and letters must be consistent with the basis for closure.
7. Documentation must be recorded the day the action occurs or as soon as practical thereafter.

5.8.4.13 (04-30-2015)

Notice of Federal Tax Lien Filing

1. It is the responsibility of the employee to safeguard the government's interest and taxpayer rights. Employees must exercise judgment in deciding whether or not a Notice of Federal Tax Lien (NFTL) should be filed. See IRM 5.12, Federal Tax Liens, for further discussion on the NFTL.

Note:

Since any individual shared responsibility payment (SRP) assessed under §5000A is not subject to penalties or to lien and levy enforcement actions, if the filing of a NFTL is being requested, it should NOT include any individual SRP (MFT 35) tax period. Additionally, when the taxpayer is advised of the NFTL filing, if the taxpayer has any individual SRP liabilities outstanding, they must also be notified the NFTL will not include any SRP assessment,

2. Unless a jeopardy situation exists, the request for NFTL should be processed simultaneously with the closing of the offer case (including appeal period). However, a notice of federal tax lien should be filed immediately if a jeopardy situation exists, the taxpayer is attempting to sell or encumber his real property and not provide the proceeds to the IRS, or the taxpayer has indicated he will be filing bankruptcy.
3. A NFTL filing determination must be made and documented on all assigned cases as part of the initial offer actions.

If...	Then...
	Document the case file with the date the NFTL determination was made and include the basis for the decision to withhold filing. An additional determination will be required at the conclusion of the investigation. Generally, a NFTL will be filed when the offer is closed, if the offer is:
	<ul style="list-style-type: none"> • Rejected (at the conclusion of the appeal period) • Returned • Withdrawn

Your initial analysis shows no NFTL has been filed and a decision is made to not file a NFTL until the conclusion of the investigation and the unpaid balance of assessments exceeds \$10,000.

Caution:

An attempt must be made to contact the TP by phone or in person to advise of the filing before requesting the NFTL. If attempted contact is unsuccessful, the OE/OS may use correspondence, including the additional information letter and/or AOIC rejection letter.

Note:

The unpaid balance of assessment should not include the amount of any shared responsibility payment assessment (MFT 35) in determining whether the \$10,000 threshold is met.

Ensure that an attempt to notify the TP of the proposed filing (by phone, letter, or in person) has been made and documented before requesting the NFTL be filed. Provide the required appeal rights per IRM 5.12.1, *Lien Appeals*, if the taxpayer objects to the filing. If the NFTL is filed and a CDP request is received, process it immediately following guidelines in IRM 5.1.9, *Collection Appeal Rights*

A determination is made to file a NFTL immediately

Note:

Since any individual shared responsibility payment (SRP) assessed under §5000A is not subject to penalties or to lien and levy enforcement actions, if the filing of a NFTL is being requested, it should NOT include any individual SRP (MFT 35) tax period. Additionally, when the taxpayer is advised of the NFTL filing, if the taxpayer has any SRP liabilities outstanding, they must also be notified the NFTL will not include any individual SRP assessment,

NFTLs were previously filed but in an incorrect jurisdiction

Determine whether to file a NFTL in the correct jurisdiction or withhold filing until the conclusion of the investigation. Follow instructions above based on your decision. If the decision is made to withhold the filing until the conclusion of the investigation, an additional determination must be made at that time.

NFTLs were filed but have expired
NFTLs were filed and are currently in the refile period

Follow instructions in IRM 5.12, *Federal Tax Liens*.

Ensure that NFTLs are correctly refiled in all required jurisdictions.

4. The initial review of any case must include an analysis of whether a NFTL has been correctly filed on all tax modules with a balance due, is filed in the correct jurisdiction, and whether any filed NFTLs should be re-filed. If analysis indicates a NFTL was erroneously allowed to self-release, appropriate action must be taken to correct the problem.

Note:

If it is determined a NFTL inappropriately included an individual SRP assessment (MFT 35), immediate action must be taken to withdraw the NFTL with respect to the individual SRP tax period. Refer to IRM 5.12.9.3.1 - Withdrawal for Premature or Inadvertent Filings.

5. A NFTL will generally be filed whenever the unpaid aggregate balance of assessments exceeds \$10,000 and an offer is rejected (at the conclusion of the appeal period), returned, or withdrawn.

Note:

The unpaid aggregate balance of assessment should not include the amount of any SRP assessment (MFT 35) in determining whether the \$10,000 threshold is met.

Note:

An attempt must be made to contact the taxpayer prior to the filing of the NFTL (see Table in (3) above). During discussion with the taxpayer of the NFTL filing, and/or alternative resolutions, if appropriate, the taxpayer should be advised he may qualify for an installment agreement that does not require the filing of a notice of federal tax lien. Refer to IRM 5.14.5, *Installment Agreements, Streamlined, Guaranteed and In-Business Trust Fund Express Installment Agreements*.

Note:

Since any individual shared responsibility payment (SRP) assessed under §5000A is not subject to penalties or to lien and levy enforcement actions, if the filing of a NFTL is being requested, it should NOT include any individual SRP (MFT 35) tax period. Additionally, when the taxpayer is advised of the NFTL filing, if the taxpayer has any SRP liabilities outstanding, they must also be notified the NFTL will not include any SRP assessment,

6. If the offer is accepted and the terms provide for payment in more than five months and the liability is over \$50,000, then a NFTL determination must be made. A NFTL should be filed if deemed necessary to protect the government's interest in specific assets.

Note:

Inform taxpayers that the IRS may be able to defer filing or not file a NFTL if they can make all payments within 5 months of acceptance.

7. Circumstances warranting non-filing of a NFTL in the above situations should be clearly documented on AOIC or ICS.
8. In those cases where an offer is being investigated and the taxpayer files a request for a CDP or EH during the investigation, the case then comes under the jurisdiction of Appeals. If a determination to accept the offer has been made, the OE/OS will:
 - Issue the AOIC Acceptance Letter to the taxpayer (including the AET/IET if appropriate),
 - Close the case as an acceptance on AOIC,
 - Forward the case file to the appropriate MOIC function for acceptance monitoring with all required documentation, and

- Forward copies of the acceptance letter, 7249, and amended Form 656, if applicable, to Appeals.

Note:

On accepted offers Appeals will adopt the case decision to accept the offer in its entirety and close the CDP/EH.

If a determination to reject the offer has been made, the offer file should be forwarded to the Appeals Officer handling the CDP or EH hearing. Transfer the offer to Area 21 on AOIC.

Note:

No rejection letters should be sent since the offer is already under Appeal's jurisdiction.

Exception:

See IRM 5.8.4.15, *Investigation of Offers under Appeals Jurisdiction (COIC ONLY)*, for CDP cases meeting COIC criteria and retained in COIC for processing and preliminary decision.

5.8.4.14 (05-10-2013)

Related Cases in Appeals

1. Taxpayers may have liabilities for related entities, one of which is being evaluated in Appeals while the other is in COIC or field collection. For various reasons, offers on related entities may be submitted to Appeals after an initial offer is being investigated in COIC or the field for a different entity.
2. During the course of the consideration of an offer in COIC or field collection, if Collection becomes aware that there is an open, related offer under consideration in Appeals, then the employee should coordinate with whomever the related case is assigned to in Appeals to accept transfer of the related case. Once Appeals has indicated they will accept the offer for investigation, AOIC remarks should be documented with the Appeals employee who has the related case, and the offer transferred to Area 21 on AOIC.
3. Related cases will be those related to any joint or individual offer involving the separate liabilities of one or both spouses (e.g., sole-proprietorship liabilities, trust fund recovery penalties, liabilities from a prior marriage).

Note:

In a situation involving married taxpayers where two separate offers involving jointly owed liabilities are under consideration, the offers will be considered related only if the taxpayers are domiciled together.

4. An offer involving one or more closely-held corporations or LLCs owned by one or both spouses in the joint or individual offer will not be forwarded to Appeals. The offer will be investigated and an appropriate disposition will be determined.

5.8.4.15 (05-10-2013)

COIC Investigation of Offers under Appeals Jurisdiction (COIC ONLY)

1. All offers submitted during a CDP hearing or EH meeting COIC criteria will be investigated in a COIC site.
2. COIC is responsible for making a processability determination. Once a determination is made, COIC will notify Appeals using the form provided in Exhibit 5.8.4-1.
3. Procedures defined in this section apply only to those cases meeting COIC criteria, which consists of wage earners and self-employed taxpayers with gross receipts up to \$500,000 and no employees. See IRM 5.8.3.4, *Field Cases - Identification and Transfer*, for the categories of cases to be worked by the field.
4. All CDP cases investigated by COIC will be loaded on AOIC using Offer Case Category code (OCC) 10.
5. COIC must return a CDP OIC to Appeals with no less than one-year (12 months) remaining on the 24-month time frame in order for Appeals to make its final determination. If there is less than 12 months remaining on the 24-month period, COIC must contact the Appeals employee assigned the case and provide a status report on the anticipated completion of the investigation.

Note:

COIC must not discuss the merits of the offer since this is prohibited under ex-parte communication.

6. Both Appeals and Collection will be responsible for monitoring the 24-month time frame for mandatory acceptance. COIC should follow-up with Appeals on a regular basis for status updates.

5.8.4.15.1 (06-01-2010)

COIC Investigation of Offers Received by Appeals with a CDP (COIC ONLY)

1. Appeals should suspend the CDP case while COIC completes their investigation and forward the case to the appropriate COIC site for processability determination. No letters will be generated by Appeals.
2. If the offer is not processable, COIC will follow procedures in IRM 5.8.2.6, *Not Processable*, and mail the not processable letter, refund all applicable fees, and return the case to Appeals with no further action. Include a copy of the letter in the case file.
3. If the offer is processable, COIC will:
 - Load the case on AOIC with jurisdiction code 1 (the jurisdiction code will not change, even though Appeals will be making the final determination),
 - Assign the case for investigation following current procedures in IRM 5.8, and
 - Make a preliminary determination.

Note:

Procedures defined in 8.23 require Appeals APS Units to close cases on AOIC. If closure cannot be completed by the APS unit, COIC may need to assist in closing the case in a timely manner following procedures in 5.8.4.15.4 below.

5.8.4.15.2 (06-01-2010)

COIC Investigation of CDPs Received by COIC while an Offer is Pending (COIC ONLY)

1. If the offer meets COIC criteria, COIC will:
 - Follow current procedures to forward the CDP to Appeals within 5 workdays
 - Complete the Form 12153A or 12153B and e-mail Compliance Case Processing (CCP) for input of Stage 1 and 3 into the CDP Tracking System (CDPTS), following procedures in IRM 5.1.9.3.3(4).

Note:

Stage 1 location code for Brookhaven is 0100 and Memphis is 0300.

2. If the CDP is withdrawn, request input of Stage 12 to reflect withdrawal of the CDP hearing request.
3. If the hearing request is timely, Appeals will input the TC 520 CC 76/77, when needed, on COIC originated CDP cases.

5.8.4.15.3 (06-01-2010)

COIC Investigation of CDP Offers when Complex Issues are Discovered (COIC ONLY)

1. If during the investigation COIC discovers complex issues that would normally be worked by the field, COIC will:
 - Document the case file regarding the complex issue;
 - Return the entire case file with all documentation to Appeals;
 - Transfer the offer to Area 21 on AOIC; and
 - Follow procedures in IRM 5.8.2.10.1, *Determining Processability for Appeals Collection Due Process*.
2. All cases will be worked in the appropriate COIC site. If the case has complex issues that cannot be worked by COIC, Appeals will retain jurisdiction of the case, and may issue an ARI for a field investigation, when appropriate.

5.8.4.15.4 (05-10-2013)

COIC Case Decisions on CDP Offers (COIC ONLY)

1. All cases worked under this criteria should be transferred to Area 21 on AOIC prior to forwarding the case to Appeals.
2. If COIC determines the offer should be rejected, returned or withdrawn (mandatory), COIC will:
 - Issue the pre-determination letter to the taxpayer (include the AET/IET, if completed), and
 - Immediately forward the entire case file with all supporting documentation (including a complete up-to-date history, a copy of the withdrawal letter, using the transmittal document in Exhibit 5.8.4-1) to Appeals using overnight mail.
3. If the offer is withdrawn voluntarily, COIC will:
 - Issue the AOIC Withdrawal Letter to the taxpayer;
 - Close the case as a withdrawal on AOIC; and
 - Immediately forward the entire case file with all supporting documentation (including a complete up-to-date history, a copy of the withdrawal letter, using the transmittal document in Exhibit 5.8.4-1) to Appeals using overnight mail.
4. If the offer is to be accepted, COIC will:
 - Re-assign the case from 9020 to an employee number;
 - Issue the AOIC Acceptance Letter to the taxpayer (including the AET/IET if appropriate);
 - Close the case as an acceptance on AOIC;
 - Forward the case file to the appropriate MOIC function for acceptance monitoring with all required documentation; and
 - Forward copies of the acceptance letter, 7249, and amended Form 656, if applicable, to Appeals.

Note:

On accepted offers Appeals will adopt the case decision to accept the offer in its entirety and close the CDP/EH.

5.8.4.16 (05-10-2013)

Coordination with Appeals

1. Coordination with Appeals is sometimes required during offer investigations.

5.8.4.16.1 (05-10-2013)

Cases Pending or Decided in Appeals

1. During a Collection Due Process (CDP) or equivalent hearing (EH) assigned to Appeals, an offer may be submitted by the taxpayer. Taxpayers also occasionally submit a DATC offer during an appeal of a proposed audit deficiency. Appeals retains jurisdiction of both these types of offers, but may send an Appeals Referral Investigation (ARI) to Collection.

Note:

Situations when an offer submitted during a CDP may be investigated by COIC are discussed in IRM 5.8.4.15 above.

2. An ARI requesting CIS verification of a complex nature, which may include valuation of assets, lien searches, or asset ownership research should be assigned to a field RO. The results of the investigation will be reported via memorandum to Appeals and Appeals will conclude the investigation. Requests for any expeditious treatment of an ARI will be decided on a case by case basis through a discussion between the two functional managers.

Note:

Ex parte communication rules apply in these situations. The ex parte procedures relating to sharing information with the taxpayer and discussions with Appeals must be adhered to when completing the review at Appeals request. Refer to IRM 5.1.9, *Collection Appeal Rights*.

3. Offers based on DATL on TFRP or PLET assessments must be reviewed upon receipt to ensure that the case is not pending or was not already heard in Appeals. If a DATL offer involving a TFRP or PLET assessment had previously been determined in Appeals or is found to be currently assigned to an Appeals office, the offer should be deleted on AOIC and the case file transferred to Appeals. Refer to IRM 5.8.4.16.1 - *Cases Pending or Decided in Appeals*.
4. If an offer based on DATC or Effective Tax Administration hardship criteria is received and there is an open case pending in Appeals, then Appeals will have jurisdiction, yet the offer may be investigated by COIC in accordance with IRM 5.8.4.15.1. The Appeals employee assigned the CDP must be notified of the offer investigation. If the offer is related to a CDP hearing and does not meet COIC criteria, then the offer should be transferred to Area 21 on AOIC and the offer case file shipped to the appropriate Appeals office.

Note:

Ex parte communication rules apply in these situations. The ex parte procedures relating to sharing information with the taxpayer and discussions with Appeals must be adhered to by the COIC or Field employee. Refer to IRM 5.1.9, *Collection Appeal Rights*.

5.8.4.16.1.1 (05-10-2013)

Field Procedures for Deleting Cases Pending or Decided in Appeals

1. Offers that are under the jurisdiction of Appeals involving TFRP or PLET assessments, must be immediately forwarded to Appeals and deleted from AOIC. The field OS does not have the authority to delete offers from the AOIC system. Therefore, it is necessary for the field OS to request COIC to delete the offer from AOIC.
2. Document the AOIC history with the following information, then assign back to the appropriate COIC site.
 - Request deletion of the offer from AOIC.
 - Request reversal of the fee screen.
 - Reason for the request to delete the case from AOIC.
 - The Appeals office where the case is being assigned.
 - The name and phone number of the assigned Appeals officer, if available.
3. Email the appropriate centralized site with the offer number of the offer that needs to be deleted off the AOIC system. Identify the action being requested in the subject line of the email. Send the email to the appropriate site at the following email address:
 - *SBSE COIC Memphis
 - *SBSE COIC Brookhaven

Note:

For offers under Appeals jurisdiction which are other than CDP, COIC should move the payments from the AOIC Payment Screen to the AOIC Appeals Fee Screen and delete the offer from AOIC.

4. Immediately ship the case to the appropriate Appeals office following current procedures.

5.8.4.17 (05-10-2013)

Pending Assessments

1. During initial analysis of an offer, IDRS should be checked to verify there are no actions for any periods either included or not included on the offer; such as, open audits, underreporter cases, TEFRA proceedings, pending TFRP assessments, or amended returns pending but not yet assessed. Pending examination cases and AUR may be identified by:
 - TC 922 without a CP 2000 process code or TC 290/291
 - TC 976 or 977 without a subsequent tax increase or decrease
 - -L Freeze and/or an AMDIS record
 - Partnership Investor Control File (PICF) code on AMDIS of 5 indicating an investor with at least one open TEFRA key case linkage
2. If any potential adjustments are identified, the assigned employee should be contacted to determine the status of the potential assessment and informed that an offer based on DATC has been received. The decision on how to proceed with the offer should be based on the status and/or issues of the potential adjustment/assessment. The table below provides some examples.

If...	Then...
<p>The TP was involved in abusive tax avoidance transactions (ATAT), appears to have substantial unreported income (UIDIF), or there is another reasonable explanation given by the assigned Examination employee explaining why the audit should continue</p>	<ul style="list-style-type: none"> • The TP should be advised that the offer investigation cannot proceed until the Exam issues have been resolved. • Solicit a withdrawal explaining that it is in the taxpayer's best interest due to CSED suspension. • If the TP refuses to withdraw, return the offer using the AOIC reason that other investigations are pending, which may affect the liability sought to be compromised or the grounds upon which it was submitted.
<p>The audit is routine and the assigned Exam employee has agreed to close the tax year(s) with no change</p>	<p>Proceed with the offer investigation.</p> <ul style="list-style-type: none"> • Proceed with the offer investigation.
<p>The audit is routine, nearly concluded, and Examination wishes to conclude and assess the tax.</p>	<ul style="list-style-type: none"> • Talk to the TP and the Revenue Agent (RA) to coordinate securing an agreement to the deficiency to expedite assessment. • Include the tax year, if acceptance is appropriate, but do not issue the acceptance letter until the tax is assessed. • Prior to beginning the offer investigation, contact the controlling Examination or AUR group to determine if continuing the offer investigation is appropriate based on the status of the potential examination or AUR assessment and the issues involved. • If it is determined the investigation should not continue, return the offer using the AOIC reason that other investigations are pending, which may affect the liability sought to be compromised or the grounds upon which it was submitted.

Note:

Prior to returning the offer, the TP or POA must be contacted to discuss the reason the offer is being returned.

The return, for a tax period not included on the offer, has been selected for examination or Automated Under Reporter (AUR) consideration, yet is not assigned to a specific employee.

The return, for a tax period included on the offer, has been selected for examination or Automated Under Reporter (AUR) review, yet is not assigned to a specific employee and is the only tax year which will potentially be examined.

The Partnership Investor Control File (PICF) code on AMDIS is a 5, indicating at least one open TEFRA key case linkage exists

The Partnership Investor Control File (PICF) code on AMDIS is a 7, the TEFRA case is closed

Exam issues are delaying offer processing of an acceptance

- If it is determined the offer can be recommended for acceptance, contact the controlling Examination or AUR group to advise them a determination was made the taxpayer's offer was acceptable. If the tax year will not be closed, the taxpayer should be advised, any additional liability that is not fully paid will default the offer.
- If the determination is other than acceptance, the offer should be closed appropriately.
- Complete the offer investigation to determine appropriate resolution.
- If the offer will be recommended for acceptance, contact the controlling Examination or AUR group to advise them an offer has been submitted that includes the tax years awaiting assignment or review and is acceptable under DATC criteria, so they may close their investigation.
- If the determination is other than acceptance, the offer should be closed appropriately.
- Advise the TP that we cannot consider an offer until all TEFRA partnership issues have been resolved.
- Attempt to secure a withdrawal.
- If the taxpayer refuses to withdraw, consider returning the offer using the AOIC Return Letter paragraph that other investigations are pending that may affect the liability sought to be compromised or the grounds upon which it was submitted.
- Verify with the assigned Examination employee that the assessment was made.
- Include the additional liability(ies) in the offer.

The OE/OS manager should contact the Examination liaison to coordinate an expedited assessment. If the Examination will not be closed and/or the assessment not made within 90 days (or if there remains less than 120 days on the 24 month TIPRA statute), the offer may be returned as "Other Investigations Pending".

3. Within 7 to 14 calendar days prior to accepting an offer, IDRS should be rechecked to ensure that there are no new audit issues pending.

5.8.4.18 (05-10-2013) Potential Fraud Referrals

1. *Responsibility of OS and Field revenue officers (RO)* – When indicators of potential fraud arise during an offer investigation, the OS will:

- Work the case to the point where a decision regarding final disposition can be made. All requests for additional documentation should have been sent to the taxpayer and sufficient time allowed for the taxpayer to respond. Final action with respect to the determination will be taken if the case does not meet Fraud Technical Advisor (FTA) fraud referral criteria.
- Discuss the indicators of fraud with the group manager before proceeding.

If...	Then...
<p>The group manager concurs with the fraud potential the FTA agrees that there is potential fraud</p>	<p>the OS will contact the local FTA and discuss the case.</p> <p>the FTA will evaluate the case and determine if sufficient information is present to refer the case directly to Criminal Investigation (CI) or if further development is needed.</p> <ul style="list-style-type: none"> • The OS will issue an Other Investigation (OI) on ICS to the Collection group that covers the geographic area where the taxpayer resides and mail a copy of all supporting documentation to the Collection group. After the OI has been issued, the OS will request assignment of the case on AOIC to 9998 (Fraud) and input a follow-up date on the AOIC "Follow-up" screen • The OS should indicate the 24-month mandatory acceptance date and that the investigation should be expedited. • The revenue officer (RO) assigned the OI will work with their local FTA to gather the information required and determine if the case has potential to be developed as a fraud referral. <p>Note:</p> <p>Territory Manager intervention may be necessary if the OI is not being worked.</p> <ul style="list-style-type: none"> • The Area office assigned the offer investigation will retain the offer pending the concurrence or non-concurrence of the local ROs FTA.
<p>additional development is needed</p>	<p>the RO will notify the OS and the OS will continue to work the offer investigation to resolution and request reassignment of the case on AOIC.</p> <ul style="list-style-type: none"> • The RO will prepare Form 11661-A, <i>Fraud Development Recommendation - Field Collection</i>. The FTA will denote their concurrence by signing the Form 11661-A. • The RO will contact the OS as soon as the local FTA has signed Form 11661-A. • The OS will then return the offer under the criterion "other investigations are pending that may affect the liability sought to be compromised or the grounds upon which it was submitted."
<p>the ROs local FTA does not concur with the potential for fraud development</p>	<p>the OS should contact the FTA to discuss the current status of the referral and advise them of the 24 month TIPRA statute. Advise the FTA if a fraud determination is not reached within 60 days, a recommendation to accept or reject the taxpayer's offer will be made. After 60 days, a determination should be made on the offer; the OS should discuss with the manager, the FTA, and RO, if appropriate, the next action based on available information. The appropriate action may be acceptance, rejection based solely upon the merits of the offer, or rejection under the basis "not in the government's best interest."</p>
<p>the ROs local FTA concurs with the potential for fraud development</p>	<p>Note:</p> <p>A return may also be appropriate, based on the taxpayer's failure to provide requested documents or remain in compliance.</p>
<p>after 16 months from the IRS offer received date, the ROs local FTA has not made a decision whether the potential fraud development exists</p>	<p>Note:</p> <p>A return may also be appropriate, based on the taxpayer's failure to provide requested documents or remain in compliance.</p>

the OS should contact the FTA to discuss the current status of the referral and advise them of the 24 month TIPRA statute. Advise the FTA if a fraud determination is not reached within 60 days, a recommendation to accept or reject the taxpayer's offer will be made. After 60 days, a determination should be made on the offer; the OE should discuss with their manager, the FTA, and RO, if appropriate, the next action based on available information. The appropriate action may be acceptance or rejection under the basis "not in the government's best interest."

the taxpayer submits a subsequent offer and the ROs fraud investigation is still open

Note:

A return may also be appropriate, based on the taxpayer's failure to provide requested documents or remain in compliance.

2. *Responsibility of the OE in COIC* – When indicators of potential fraud arise during an offer investigation, the OE will:

A. Work the case to the point where a decision regarding final disposition can be made. All requests for documentation should have been sent to the taxpayer and sufficient time allowed for the taxpayer to respond. Final action with respect to the determination will be taken if the case does not meet Fraud Technical Advisor (FTA) fraud referral criteria.

B. Discuss the case with the group manager.

If...
the group manager concurs with the fraud potential

Then...
contact the site's Collection Functional Fraud Coordinator (CFFC) and discuss the case.

the CFFC agrees that the potential for fraud development exists

- The CFFC will secure concurrence from the FTA assigned to the campus.
- The FTA will evaluate the case and determine if sufficient information is present to refer the case directly to Criminal Investigation (CI) or if further development is needed.
- The CFFC will prepare Form 11661-C, *Fraud Development Recommendation - Campus Collection*, and obtain FTA concurrence. The CFFC will initiate an outgoing Other Investigation (OI) on ICS (sub coded 106) to the field Collection group that covers the geographic area where the taxpayer is located and mail a copy of all supporting documentation and a copy of the signed Form 11661-C to the Collection group. After the OI has been issued, assign the case on AOIC to 9998 (Fraud) and input a follow-up date on the AOIC "Follow-up" screen.

the CFFC and FTAs determine that further development is needed.

- The OI should indicate the 24-month mandatory acceptance date and that the investigation should be expedited.
- The OI will be assigned to an RO who will work with the local FTA to develop the fraud referral and make a determination if the potential for fraud development exists

Note:

Territory Manager intervention may be necessary if the OI is not being worked.

the case does not need any further development.
the ROs local FTA concurs with the potential for fraud development
the ROs local FTA does not concur with the potential for fraud development

the CFFC will prepare Form 11661-C and secure campus FTA concurrence. The campus FTA will advise the OE how to refer directly to CI.
the ROs local FTA will denote concurrence by signing Form 11661-C. The RO will notify the CFFC and the CFFC will request the offer be returned as "other investigations are pending that may affect the liability sought to be compromised or the grounds upon which it was submitted."
the RO will notify the CFFC and the CFFC will reassign the offer on AOIC to the group manager of the originating OE, who will then assign the case for completion of the offer investigation.

after 16 months from the IRS offer received date, the ROs local FTA has not made a decision whether the potential for fraud development exists

the OE should contact the FTA to discuss the current status of the referral and advise them of the 24 month TIPRA statute. Advise the FTA if a fraud determination is not reached within 60 days, a recommendation to accept or reject the taxpayer's offer will be made. After 60 days, a determination should be made on the offer; the OE should discuss with the manager, the FTA, and RO, if appropriate, the next action based on available information. The appropriate action may be acceptance or rejection based solely on the merits of the offer or rejection under the basis "not in the government's best interest."

Note:

A return may also be appropriate, based on the taxpayer's failure to provide requested documents or remain in compliance.

the taxpayer submits a subsequent offer and the ROs fraud investigation is still open

the OE should contact the FTA to discuss the current status of the referral and advise them of the 24 month TIPRA statute. Advise the FTA if a fraud determination is not reached within 60 days, a recommendation to accept or reject the taxpayer's offer will be made. After 60 days, a determination should be made on the offer; the OE should discuss with the manager, the FTA, and RO, if appropriate, the next action based on available information. The appropriate action may be acceptance or rejection under the basis "not in the government's best interest."

Note:

A return may also be appropriate, based on the taxpayer's failure to provide requested documents or remain in compliance.

Note:

The CFFC will monitor the OIs monthly and report to the Operations Manager the current status of all open OIs. Close monitoring is needed to ensure that the OIC is resolved prior to the 24-month mandatory acceptance period.

**5.8.4.19 (05-10-2013)
Criminal Investigations**

1. A taxpayer who submits an offer may be or might have been involved in a criminal investigation. The OE/OS should proceed appropriately based on whether the criminal investigation is open or closed. Criminal Investigation (CI) involvement with a specific tax year may impact the ability to continue the investigation.
2. Criminal investigation involvement in a tax year can be identified on IDRS by Transaction Code (TC) 910, 914 or 916.

**5.8.4.19.1 (05-10-2013)
Open Criminal Investigations**

1. When a TC 910, 914, 916, or 918 identifying an open CI is on IDRS, contact must be made with the assigned Special Agent and procedures in IRM 5.1.5, *Field Collecting Procedures, Balancing Civil and Criminal Cases*, should be followed. It may be necessary for the group or unit managers to discuss with the CI manager to determine the next appropriate action. A decision will need to be made on the appropriate actions to take (including disposition of any application fee or deposit) and what may or may

not be discussed with the taxpayer.

Note:

Advise CI of the TIPRA provisions for automatic offer acceptance, if a decision is not reached within 24 months of receipt. We can no longer hold offers open indefinitely pending a decision regarding the potential criminal investigation.

2. Once a taxpayer has been advised of the open criminal investigation, if the assigned Special Agent has no objection, the taxpayer may be asked to withdraw the offer until the criminal matter is resolved. If the taxpayer declines to withdraw the offer, return the offer to the taxpayer under the criterion "other investigations are pending that may affect the liability sought to be compromised or the grounds upon which it was submitted." If the Special Agent objects to asking the taxpayer to withdraw the offer or contacting the taxpayer, remind the Special Agent of the 24-month mandatory acceptance requirement. If the Special Agent continues to request that the taxpayer not be contacted, reassign the case on AOIC to 9999. Monitor the case and contact the Special Agent monthly to determine if and when taxpayer contact can be made. If, after 16 months from the IRS received date CI has not made a decision about what may or may not be discussed with the taxpayer, advise CI the offer is being returned under the criterion "other investigations are pending that may affect the liability sought to be compromised or the grounds upon which it was submitted. "

**5.8.4.19.2 (05-10-2013)
Closed Criminal Investigations**

1. When a TC 912, identifying a closed criminal investigation is found on the tax module, the OE/OS should contact the assigned Special Agent of the closed case. The OE/OS should determine if information is available that may impact the acceptability of the offer, the calculation of reasonable collection potential, or whether the offer investigation should continue. Issues may also include whether the taxpayer was guilty of a tax crime and is currently paying restitution. *IRM 5.8.4.23.2, Offers in Compromise Submitted that Include Restitution.*
2. The OE/OS should also review IDRS to determine if any tax periods involve Abusive Tax Avoidance Transaction (ATAT) issues. If ATAT issues are present, the OE/OS should also contact the revenue agent or revenue officer to discuss any impact the ATAT investigation may have on the offer investigations.

**5.8.4.20 (05-10-2013)
Offer Submitted Solely to Delay Collection**

1. When it is determined that an offer is submitted solely to delay collection, the offer should be returned to the taxpayer without further consideration. The term solely to delay collection means an offer was submitted for the sole purpose of avoiding or delaying collection activity. A determination that an offer is submitted solely for the purpose of delaying collection should be apparent to an impartial observer.
2. The Field OIC group manager and the COIC Unit Manager have delegated authority to approve returns based on solely to delay collection.
3. An offer is not considered submitted solely to delay collection just because there is an imminent CSED issue or if an offer has been investigated and rejected and the taxpayer exercises appeal rights.
4. When a taxpayer submits an offer that is not materially different from a previous offer that was considered and rejected with appeal rights, the offer may be returned as solely to delay collection.
5. When a taxpayer submits an offer that is not materially different from a previous offer that was considered and returned and the cause of the prior return has not been addressed, the offer may be returned as solely to delay collection.

Example:

The taxpayer fails to address the issues or defects of the previously submitted offer.

Note:

This does not include those offers previously returned for failure to pay estimated tax payments and/or federal tax deposits. See IRM 5.8.7 for returns for failure to make ES or FTDs.

6. The offer may be considered as materially different when the amount reflected on the re-submission is substantially similar to, less than, or the same as the prior offer and the following exist:

A. The taxpayer's financial situation has changed. A change in the taxpayer's financial situation may include:

- (1) A change in employment and/or income,
- (2) A change in marital status affecting future ability to pay,
- (3) A change in ownership of assets or significant decline in the value of any assets,
- (4) The loss of an asset that was included in the original offer investigation, or
- (5) A change in circumstances that would affect allowable expenses and future ability to pay.

B. The taxpayer has raised special circumstances that were not considered during the prior investigation.

7. Although no provisions are provided for any formal appeal of a decision to return an offer submitted solely to delay collection, all employees must honor any taxpayer's request for a review of this decision with their immediate manager.
8. In some situations, it may be determined that an offer is submitted as solely to delay collection when no prior offer has been submitted. When a collection employee has contacted the taxpayer and determined that the next action necessary is to enforce collection through levy or seizure, but the taxpayer files a clearly frivolous offer, that is considerably less than equity in assets and/or his ability to make future payments, no special circumstances exist, and the RO determines the submission is to delay this enforcement action, the offer may be returned as solely to delay collection, unless there is a change of circumstances not considered by the collection employee.

Note:

This may include situations involving OICs from entities (subject to the assertion of the trust fund recovery penalty (TFRP) under IRC 6672) attempting to compromise trust fund taxes where any trust fund portion has not been paid, the applicable TFRP has not been previously assessed against all responsible persons, the TFRP package forwarded for assessment, or a determination made by an RO to not assert due to collectibility or dollar criteria and the Service has previously explained to the principals that an offer will not be investigated unless the TFRP investigation is completed or the trust fund paid. See IRM 5.8.4.22.1.

Exception:

For offers involving special circumstances as discussed in IRM 5.8.11.2.2.1, *Public Policy or Equity Compelling Factors*, the offer may be investigated or if appropriate, held in suspense until the TFRP investigation is completed. Also refer to IRM 5.1.24.5.8(5) and IRM 5.7.3.3.3(5) which provide guidance on additional factors the RO will be considering when determining the willfulness of the clients of third party payers.

Example:

The taxpayer was harmed by a third party provider and submits an offer under Non-Economic Hardship criteria. The OS may conduct the offer investigation, yet should not make an acceptance recommendation, if deemed appropriate, until the TFRP investigation is completed and either a determination was made that there were no responsible/willful persons or a TFRP assessment was recommended against any responsible/willful persons.

5.8.4.20.1 (05-10-2013)

Solely to Delay Examples and Discussion

1. The following are examples of offers considered submitted solely to delay collection based on re-submission after a prior rejection, return, or default:

Example:

(1) During initial analysis by an OE/OS, it is discovered on AOIC that the taxpayer had a previous offer returned six months ago as part of the "No Reply" process. A review of the AOIC case history indicated the taxpayer did not provide any bank statements with the first offer and did not respond to the combo letter requesting the necessary documentation to determine an accurate RCP. The initial analysis indicated bank statements are required to determine an accurate RCP; however, none were provided with the new offer and there was no indication from the taxpayer the accounts were closed. No special circumstances were indicated.

Example:

(2) The taxpayer submitted an offer for \$10,000. The OE/OS computed the RCP to be \$20,000. The taxpayer refused to increase the offer to the computed RCP. A rejection letter was issued, and the taxpayer did not appeal. One month later, the taxpayer resubmitted an offer for \$10,100. A thorough analysis indicated there is no change in taxpayer's financial condition and no special circumstances were indicated.

Example:

(3) A taxpayer submits an offer for \$3,000 to be paid within 90 days of acceptance. A prior offer was submitted for \$10,000 to be paid within 90 days. The investigation of the initial offer submission resulted in the offer being rejected with appeal rights. During that offer investigation it was determined that a piece of property was transferred to a non-liable spouse for no consideration and that a clear transferee issue exists. The value placed on the transferred property was \$30,000, and was included in the reasonable collection potential (RCP). The taxpayer failed to request a timely appeal on the rejected offer. There were no special circumstances indicated.

Example:

(4) During initial processing of an OIC, AOIC indicates there have been three offers submitted by the taxpayer over the past 18 months. All three were returned for failure to provide requested CIS information. The closed return file indicates the taxpayer was asked to provide a financial statement for a closely held corporation, which the taxpayer holds 75% interest in and is the corporate president. A Form 433-B for this corporation was requested during the offer investigation. The offer specialist clearly documented in the file the taxpayer's interest and position in this corporation. The request was clear and specific and the taxpayer refused to provide this information, claiming the IRS has no right to place a value on the corporation when determining his ability to pay on personal tax liabilities. The newly submitted offer package does not include a Form 433-B for the corporation and the Form 433-A indicates the same corporation is the taxpayer's current employer.

Example:

(5) An offer is submitted for \$30,000 payable within 90 days of acceptance. Research on AOIC indicates a second offer submitted by the taxpayer. A prior offer was submitted for \$20,000 payable within 90 days of acceptance. The original offer was rejected with appeal rights, the taxpayer filed a timely appeal, and Appeals sustained the rejection. A review of the prior offer file indicates the taxpayer has the ability to full pay the outstanding liability through an installment agreement. The total liability is for \$40,000. A review of the financial information indicates the taxpayer still has the ability to full pay the liability. The original offer was received 18 months ago and no payments have been made during this period. There is no change indicated on the financial statement, except the taxpayer has a new employer. The taxpayer's income remained the same. There are no special circumstances indicated.

Example:

(6) Taxpayer submits a new offer within one year after defaulting on a prior offer and their financial situation has not changed since the offer was accepted.

2. The following are examples of offers considered solely to delay collection based on a prior collection analysis and determination of ability to pay:

Example:

(1) Taxpayer owes \$500,000. An offer is submitted for \$15,000. The CIS, as submitted by the taxpayer, indicates the taxpayer has recently been fired from his job where he had been earning \$200,000 a year. The CIS also reflects a personal residence with a fair market value of \$1.5 million and outstanding mortgage of \$750,000 leaving equity of \$750,000; a piece of property owned free and clear valued at \$60,000, a large boat with a value of \$140,000 which is unencumbered. Final demand has been made and a collection employee has indicated to the taxpayer that a Notice of Federal Tax Lien will be filed and possible enforcement action if the taxpayer does not full pay the liability. The investigation has shown that there are no special circumstances to be considered.

Example:

(2) Taxpayers owe a joint 1040 liability for 2007 of \$139,854 and submitted an offer for \$250. Both taxpayers are self-employed. The husband is a painter and the wife is a real estate sales person. They have no future income potential. They own an unimproved lot valued at \$14,700, a personal residence valued at \$177,500, six automobiles and two horse trailers valued at \$20,775. Their total reasonable collection potential (RCP) is \$127,191 based on the equity in the assets. The balance due period was in active collection inventory prior to the offer submission. The collection employee advised the taxpayer to secure a loan on their equity or levy action would be initiated. The taxpayer refused to pay more than the proposed \$250 and submitted the offer instead of making any payment to their tax liability. The collection employee completed the Form 657 indicating the case should be returned as solely to delay based on the prior collection history and recent lack of cooperation by the taxpayer to resolve the balance due. It was agreed and approved by the collection manager. The investigation has shown that there are no special circumstances to be considered.

Example:

(3) A corporation owes Form 941 employment taxes which include the unpaid trust fund portion. The revenue officer previously advised the corporate principals that the Service would not consider an offer in compromise for this tax liability unless they personally full paid the trust fund portion or the trust fund recovery penalty (TFRP) was assessed against all responsible persons. The principals did not pay the trust fund portion and the corporation submitted an offer in compromise before the revenue officer assessed the TFRP against all responsible parties.

5.8.4.20.2 (05-10-2013)

Procedures for Return of Offers Submitted Solely to Delay Collection

1. The determination that an offer was submitted solely to delay collection may be made immediately after the offer is deemed processable or at any time during the offer investigation when the facts support the decision.

- The determination that an offer was submitted after a prior reject or default can be supported by reviewing records on AOIC and IDRS transactions:

If...	Then...
AOIC indicates that prior offer records exist	Determine the type of disposition used to close the prior submissions.
AOIC indicates the prior offer submission was rejected with appeal rights	The re-submission will be determined to be solely to delay collection unless the taxpayer can show his financial situation has changed since the previous offer investigation.
The prior offer was defaulted within the past year	The re-submission requires review to determine if it was submitted solely to delay collection.

- To determine if the re-submission is materially different from the prior rejected or defaulted offer:
 - Review any AOIC and/or ICS history to establish that an offer is a re-submission solely to delay collection.
 - Compare the information contained in the prior history with the resubmitted offer package to determine if the offer was submitted solely to delay collection.
 - If necessary, the taxpayer/representative should be contacted to discuss if there are any changes to the taxpayer's situation which would justify a new offer submission.

Note:

This does not include those offers previously returned for failure to pay estimated tax payments and/or federal tax deposits. The taxpayer must be contacted, preferably by telephone, and given a reasonable time to submit the required payments prior to returning the offer for compliance. Do not return the offer as solely to delay.

- Cases assigned to a field RO* – When the field RO receives an offer, or is notified that the taxpayer submitted an offer to COIC, the RO will complete Form 657, *Revenue Officer Report*, and submit it to the RO group manager for approval. Form 657 must provide detailed reasons supporting any solely to delay collection decision. The RO will fax the Form 657 to either the field OS group manager or COIC Unit Manager, depending on where the offer is assigned at that time. The RO will also provide copies of current ICS history sheet (prior 12 months of activity) to the appropriate COIC site. However, if the RO feels that the ICS history sheets (older than 12 months) would also benefit the COIC sites, the RO should then determine what information would be pertinent to the decision.

**5.8.4.21 (05-10-2013)
Responsibility of Offer Examiners, Offer Specialists, and Field Revenue Officers**

- The OE/OS is responsible for working only offer aspects of an investigation. During the offer process employees may discover collection issues that require a Field RO investigation.
- If the issues are initially identified by an OE in COIC, the OE must first discuss the issue with his manager and site RO, to confirm that the issues require a Field RO investigation.
- In the situations below, except in the case of TFRP or PLET investigations, an Other Investigation (OI) will be initiated only after the COIC or field manager and RO manager have discussed the issue and agree that the situation warrants the issuance of the OI.

Issue	Procedure
Transferee, Nominee or Alter Ego	When these issues arise during an offer investigation, the OE/OS should establish a valuation for the involved asset or income stream. The OE/OS should include the value in computing the RCP but not actually complete the administrative actions required to establish the liability or secure a lien against the third party. If the value of the involved asset or income stream will be obtained through an accepted offer, that fact should be clearly documented and any transferee, nominee or alter ego remedy not pursued through administrative or judicial action. If the offer is rejected or moving toward rejection and time is of the essence due to the dissipation/transfer of assets or statute expiration, a Form 2209, <i>Courtesy Investigation</i> , or OI should be initiated to request the assignment of a RO to complete the required action to establish the transferee, nominee or alter ego liability or lien. If during the course of an offer investigation an OE/OS determines that immediate levy or seizure action may be needed, the case will be referred to the Field Collection function. The OE/OS will initiate an Other Investigation request to an RO group outlining the actions needed and provide any additional information that would assist the RO. Upon notification that the field will proceed with enforcement action, the OE/OS will follow the procedures to close the offer outlined in IRM 5.8.4.20, <i>Offers Submitted Solely to Delay Collection</i> , and advise the field RO or his manager when the return letter has been mailed to the taxpayer.
Levy or seizure related actions	The OE/OS should consider the value of any recovery that may be made through a suit when determining the RCP. If the anticipated recovery amount is obtained through an accepted offer this fact should be clearly documented and the suit recommendation not pursued. If the offer is rejected or moving toward rejection and time is of the essence due to the statute expiration for filing suit, an OI should be initiated to request the assignment of a RO to complete the suit recommendation.
Suit recommendations	Due to the potential for the pyramiding of liabilities and dissipation of assets in IBTF cases, the OS will initiate an OI on rejected or returned offers involving ongoing businesses with employment tax liabilities. Because rejected, returned, and withdrawn offers do not systemically revert to Status 26 (field assignment), the OI serves as an open assignment until the case is systemically assigned to Status 24 (queue), at which time the collection group manager can assign the case to an RO and close the OI. This process will generally take about 30 days.
Continuing action on In Business Trust Fund (IBTF) cases	It is the responsibility of the traditional RO to complete the TFRP or PLET investigation and make a determination regarding personal responsibility and willfulness in these cases. The RO will follow the provisions in IRM 5.7.4, <i>Investigation and Recommendation of TFRP</i> . For all offers received after February 4, 2008, the TFRP must be assessed against all responsible/willful persons, the outstanding trust fund amounts paid, the TFRP package forwarded for assessment or a determination made by an RO to not assert due to collectability or dollar criteria prior to consideration of the offer. See IRM 5.8.4.22.1 below for instructions on processing these investigations in conjunction with open offers, including when the aggregate outstanding trust fund liability is under the criteria established in IRM 5.7.4.1.1 and offers submitted under special circumstances discussed in IRM 5.8.11.2.2.1
Trust Fund Recovery Penalty (TFRP) and Personal Liability for Excise Tax (PLET) cases	Note: OIs referred per these instructions should be considered high risk cases (i.e., risk code 100) and processed accordingly.

**5.8.4.22 (06-01-2010)
Procedures for Certain Types of Taxpayers and Liabilities**

- Certain types of taxpayers and/or liabilities require unique considerations. The instructions described below should be followed when considering cases of this nature.

**5.8.4.22.1 (05-10-2013)
Trust Fund Liabilities**

- Before an offer to compromise trust fund tax will be investigated, for entities in which the trust fund recovery penalty is applicable (in business or out of business) all the issues outlined in IRM 5.8.4.21 above should be considered. In addition, as a prerequisite, the trust fund portion of the taxes must be paid, the TFRP must be assessed against all responsible/willful persons, a determination made by an RO to not assert due to collectability or dollar criteria, or the trust fund package forwarded for assessment.

Note:

If the taxpayer's aggregate outstanding trust fund liability is under criteria established in IRM 5.7.4.1.1, is out of business with no potential to incur additional liabilities, and the RO determines no other prior TFRP assertions (from unrelated entities) were made against the responsible parties, a determination made by an RO to not assert the TFRP is sufficient to allow for the offer investigation to proceed.

Exception:

For offers involving special circumstances as discussed in IRM 5.8.11.2.2.1, *Public Policy or Equity Compelling Factors*, the offer may be investigated or if appropriate, held in suspense until the TFRP investigation is completed. Also refer to IRM 5.1.24.5.8(5) and IRM 5.7.3.3.3(5) which provide guidance on additional factors the RO will be considering when determining the willfulness of the clients of third party payers.

- 2. It is the Service's policy that the amount offered to compromise a liability subject to assertion of the TFRP will represent what can be collected from the employer. If the Service enters into a compromise with an employer for a portion of the trust fund tax liability, the remainder of the trust fund taxes may still be collected from a responsible person pursuant to Section 6672 of the Internal Revenue Code.
- 3. Revenue officers have two options when they negotiate with the entity principals. This applies to trust fund liabilities in Status 26 or other assessments in notice status related to the Status 26 entity, which have any unpaid trust fund amount still within the TFRP Assessment Statute Expiration Date (ASED). They are:
 - If the entity wishes to file an offer, generally, all responsible persons must first agree to the assessment of the TFRP. Both responsibility and willfulness must be present to assert the TFRP and/or request signature of Form 2751, *Proposed Assessment of Trust Fund Recovery Penalty*. This requires the field RO to secure basic documentary evidence to support assertion and that all responsible persons sign Form 2751. The signing of the Form 2751 does not preclude the responsible person from challenging this assessment by paying a divisible portion of the tax, filing a refund claim and if unsuccessful, a refund suit. The responsible person should be advised of the right to file a refund claim when the Form 2751 is provided to the responsible person.
 - Alternatively, the responsible parties can personally full pay the trust fund amount on behalf of the entity. IRM 5.7.4.4, *Payments by Responsible Party on Behalf of the Employer*, contains instructions when a responsible person chooses to pay on behalf of the entity. Absent a non-assertion determination due to an ability to pay or dollar criteria, failure to pay the trust fund or sign the Form 2751 by a party determined to be both responsible and willful, will result in a solely to delay determination if the entity files an offer. See IRM 5.8.4.20 above. In addition, a formal appeal of the proposed TFRP will result in the offer being returned as solely to delay.

Note:

If extenuating circumstances are present that prevent the assessment of the TFRP against all responsible persons, the RO, after consulting with a manager, may consider processing the OIC without the assessment of all potential responsible persons. For example, a potential responsible person cannot be located. The RO may allow the OIC to be investigated if the government's interests are sufficiently protected and if the other responsible persons have agreed to assessment of the TFRP.

- 4. Only the amount that can be collected from the entity (including dissipated assets) will be considered in the RCP calculation of an acceptable offer. The Service will pursue collection of the TFRP assessed against the responsible person(s), unless the trust fund portion has been full paid.

Note:

A taxpayer may designate TIPRA payments (pre-acceptance) to a specific liability including trust fund liabilities. Once the offer has been accepted, subsequent payments of the offer amount will be applied in the government's best interest

- 5. During initial analysis of an offer received from an entity subject to the assertion of the TFRP and involving unpaid trust fund tax, the offer specialist must determine the ASED of each period and take immediate steps to protect it if expiration is imminent.
- 6. The following actions should be taken based on the facts of the case:

If...	Then the RO will...	Then the OS will...
The TFRP has been completed and the assessment processed prior to the time the corporate offer is filed	Document this fact in the ICS history and on the Form 657 and forward to COIC.	Proceed with the offer investigation. Return the case as solely to delay.
The account is in Status 26, the TFRP has not been assessed, the taxpayer was advised that an offer will not be investigated until the TFRP is assessed or full paid yet submitted an OIC	Document this fact in the ICS history. Complete Form 657 requesting the case be returned as solely to delay. Advise the taxpayer that an OIC will not be considered until the trust fund is paid or the TFRP assessed. If the trust fund is not paid, complete the TFRP investigation.	Exception: For offers involving special circumstances as discussed in IRM 5.8.11.2.2.1, <i>Public Policy or Equity Compelling Factors</i> , the offer may be investigated or if appropriate, held in suspense until the TFRP investigation is completed. Also refer to IRM 5.1.24.5.8(5) and IRM 5.7.3.3.3(5) which provides guidance on additional factors the RO will be considering when determining the willfulness of the clients of third party payers.
The account is not in Status 26 and/or the responsible person(s) was not previously advised that an offer will not be investigated until the trust fund is paid or the TFRP assessed The ASED has expired without any TFRP assessment	Complete the TFRP investigation. Trust fund OIC investigations are considered mandatory OIs and must be assigned by the group manager. See IRM 5.1.8.5, <i>Mandatory Assignments</i> . The OI should be completed within 90 days and must be assessed prior to acceptance of the OIC.	Retain the offer and generate an outgoing OI (coded 100) to the field to complete the TFRP investigation. If the account was assigned to an RO at the time the OIC was received but the taxpayer had not been advised of the trust fund policy, generate an outgoing OI to the manager of the RO who was assigned the account when the offer was received. If the account was not assigned to an RO when the offer was received, send the OI to the group that works the taxpayer's zip code. Coordinate with the assigned RO to ensure the TFRP is assessed, a determination made to not assert, or the trust fund fully paid. Annotate the expiration in the case history and continue processing the OIC determining only the corporation's RCP. Prepare an expired statute notification and submit to the OIC group manager for processing. Coordinate with the assigned RO to ensure that a determination is made to assert or not assert the TFRP, or that the trust fund is fully paid.
There is a pending TFRP investigation.	Advise the taxpayer that the offer investigation cannot proceed until the TFRP issues have been resolved and secure a signed Form 2751.	Note: If the taxpayer is uncooperative and/or the TFRP assessment will not be within 90 days, the OE/OS should contact the taxpayer and attempt to secure a withdrawal. If the taxpayer is unwilling to withdraw the offer, the offer may be returned as solely to delay.

- 7. In the situation where the amount offered by a corporation combined with the payments already made on related TFRP assessments exceeds the total employment tax liability of the corporation for the same tax periods, take the following actions:

- A. Request the responsible person(s) sign irrevocable requests to transfer the payments on the TFRP accounts to the related corporation liability.
- B. Complete and process Form 3870 to transfer the credit(s).
- C. Secure full payment of the balance due from the corporation.
- D. Secure a withdrawal of the offer.

- When corporate offers are being considered, corporate officers, shareholders, or others determined to be responsible for a TFRP may be required to submit a Form 433-A (OIC). When partnership or LLC offers are being considered, the general partners and the LLC's owners may be required to submit a Form 433-A (OIC) as well. In certain instances, since the RCP for a corporate offer is based on the amount collectible and equity in assets of the corporation, it may be unnecessary to secure a 433-A (OIC) from individual shareholders, corporate officers, or other parties, who hold only a minimal interest in the corporation and/or have no control over the corporation's activities.

5.8.4.22.2 (05-10-2013)

Partnership Liabilities

- Partnership employment tax liabilities are not joint and several as in the case of joint income tax assessments. The Service's ability to collect from the partners is based on state law.
- When a partnership liability is compromised for any individual general partner our ability to collect from all other general partners may be affected. Therefore, the amount offered to compromise a partnership tax liability must include what we can collect from the partnership plus what can be collected from each of the general partners. No offer should be accepted to compromise only one partner's individual liability for the partnership debt.
- When investigating partnership offers a CIS should be secured from the partnership and from all general partners. The RCP for the partnership must equal what could be collected from the partnership plus what could be collected from all general partners. Generally, an offer based on DATC from a partnership will not be accepted when the RCP of one or more of the general partners cannot be determined. When it is not possible to secure a CIS from one or more of the general partners, because they cannot be located or they refuse to cooperate or join in the offer, the offer may still be accepted if the investigation is able to establish that there is no collection potential from the non-participating partner(s).

Note:

If the offer is being rejected based on the failure of a general partner to submit financial information, the offer specialist should determine an appropriate resolution to the partnership account. Refer to IRM 5.8.7.10, *Alternative Resolutions*.

5.8.4.22.3 (05-10-2013)

Doubt as to Liability (DATL)

- After initial processing, offers based on DATL of a TFRP or PLET are transferred to Area offices for assignment to an OS. All other DATL offers should be forwarded with no initial processing, to the centralized DATL processing unit located at the Brookhaven campus.

Note:

The taxpayer is not required to submit an application fee and/or any TIPRA payments with a DATL offer. Current compliance and submission of financial statements are NOT required. If the taxpayer's offer is accepted, refund recoupment and the five year compliance aspects are not applicable.

- For offers based on DATL of a TFRP or PLET, the decision to accept or reject rests primarily on a reconsideration of whether or not the person assessed was responsible for and willfully failed to pay over the subject tax. Offers on assessments of this nature that were determined by Appeals or that received an Appeal hearing should be transferred to Appeals for consideration.
- The taxpayer must offer a dollar amount. An offer for zero dollars on this basis is not acceptable and is subject to perfection requirements. The amount may be a cash or periodic offer, payable within 90 days of acceptance, unless an alternative payment term is approved at the time the offer is accepted.
- The administrative file should be secured and reviewed to examine the evidence that supported the assessment. New information, testimony or documents presented by the taxpayer should be considered. Refer to IRM 5.7, *Trust Fund Compliance Handbook*, for a discussion of the factors and evidence that support an assessment of a TFRP or PLET.
- A DATL offer of a TFRP or PLET liability should be resolved in one of the following ways:

If...	Then...
No new information is available and the TFRP or PLET file supports the original assessment	Reject the offer.
Another amount of liability is determined and the taxpayer agrees to the finding	Prepare and submit Form 3870, <i>Request for Adjustment</i> , to correct the assessment and secure a withdrawal of the offer or recommend acceptance of the offer for the correct amount.
Another amount of liability is determined and the taxpayer still does not agree	Submit Form 3870 to correct the assessment and recommend rejection of the offer.
The Administrative file does not support the assessment	Abate the assessment in full and secure a withdrawal of the offer.
The TFRP files cannot be located and/or reconstructed	Consult with Counsel to make a determination if the offer should be accepted.

- If new information is presented that raises doubt or the existing information supports the fact that the assessment is weak, consider accepting an offer to avoid the hazards of litigation.
- Before considering a DATL offer, first screen the Form 656-L to determine if it can be considered and if all required documentation is attached. DATL offers cannot be considered if any of the following conditions exist:
 - It is clearly not the taxpayer's intention to compromise the tax liability based on the belief that it is incorrect. For example, taxpayers may erroneously submit the Form 656-L when the intent is to request an installment agreement to pay the existing liability or to compromise the liability on the basis that they can not pay.
 - The taxpayer seeks to compromise a tax period for an unassessed liability, pending in Automated Underreporter (AUR), Substitute for Return (SFR/ASFR), Combined Annual Wage Reporting (CAWR), or Federal Unemployment Tax Adjustment (FUTA).
 - Still under examination (-L freeze, CC AMDISA area office status codes 10 – 56).
 - The 30-day letter reporting the examination changes or statutory notice of deficiency has been issued.
 - If a determination is pending before the Tax Court.
 - If the IRS referred the taxpayer's case involving such a liability to the Department of Justice.
- Examples of DATL offers that may be returned as solely to delay collection are:
 - Resubmission of offers that are based on offer explanations that have previously been rejected or previously returned offers for which the taxpayer has not provided any new information.
 - Claims that the liability stems from the operation of a law that is unfair (e.g., liability based on withdrawing funds from a 401(k) plan).
 - Claims based on a divorce decree which stipulates the spouses each owe certain portions of a joint liability (the government is not party to such agreements).
 - Those that do not raise a valid liability issue or that give no reason for DATL basis.
 - Frivolous or patently groundless offers such as those that assert the types of tax arguments listed in IRS Notice 2008-14 http://www.irs.gov/irb/2008-04_IRB.12.html and <http://www.irs.gov/pub/irs-drop/n-06-31.pdf>. In egregious situations, assertion of the penalty for a frivolous submission may be appropriate.

9. If an RO determines the offer should be returned in accordance with IRM 5.8.4.20(4) a Form 657, *Offer in Compromise – Revenue Officer Report*, with the "Yes" block checked to indicate the offer was submitted "solely to delay collection", should be submitted with the offer with appropriate supporting documentation.

Note:

If the liabilities covered by Form 656-L are in IDRS Status 26 and a Form 657 was not received, contact the RO assigned the balance due account to advise of the receipt of the DATL offer. Request a Form 657 to determine whether to consider the OIC.

5.8.4.23 (05-10-2013)

Other Cases

1. An OIC may not be appropriate in the following situations: restitution, child support obligations, innocent spouse, and others. As always, each case must be evaluated on its own merit before returning an offer under the identified basis. If appropriate, the offer may be returned without further consideration or investigation.

5.8.4.23.1 (05-10-2013)

Claims for Relief from Joint and Several Liability under Section 6015 (Commonly Referred to as Innocent Spouse Claim)

1. When one spouse files a claim for relief from joint and several liability and the other spouse submits an OIC, the Service employee considering the section 6015 claim should be contacted prior to proceeding to ensure there are no reasons to delay the investigation of the OIC until the section 6015 claim is resolved.
2. If a taxpayer files a DATC offer but raises relief from joint and several liability issues during the investigation, the issue should be discussed with the taxpayer. If appropriate, the offer should be withdrawn and the claim should be forwarded to the Cincinnati Centralized Innocent Spouse Operations Unit (CCISO).
3. If IDRS indicates the taxpayer has an open claim for relief from a joint and several liability, or if a DATC offer and a claim for joint and several liability is filed simultaneously the taxpayer should be requested to withdraw the offer unless CCISO advises that the claim will be closed immediately with no change. If CCISO indicates the claim appears valid and the taxpayer will not withdraw the offer, it should be suspended pending disposition of the section 6015 claim.

5.8.4.23.2 (05-10-2013)

Offers in Compromise Submitted that Include Restitution

1. An offer may be submitted by a taxpayer who also has been ordered to pay restitution. In these instances, the IRS may not accept an OIC that in any way modifies the terms of a restitution order.
2. There may be situations where the IRS has assessed civil tax liabilities, interests and penalties in excess of the amount that was awarded as restitution. In this situation, the IRS may consider an OIC to pay the additional taxes, penalties, and interest for the same tax periods for which restitution was ordered only if the defendant has paid or will pay as part of the offer the full amount of the restitution.

Example:

The court orders payment of restitution to the IRS for the 2000 tax year in the amount of \$50,000. The IRS makes a restitution assessment in the amount of \$50,000 for the 2000 tax year. Pursuant to further examination, the IRS assesses additional tax, interest, and penalties in the amount of \$30,000 for the same tax year. The IRS may compromise the additional amount assessed as civil tax liabilities (\$30,000), only if the defendant has paid or will pay the full amount of the restitution (\$50,000).

3. The IRS also will not consider an offer based on Doubt as to Collectibility or Effective Tax Administration for "non-restitution" taxes or years because those offers must include a compromise of all unpaid taxes.

Example:

The court awards restitution payable to the IRS in the amount of \$50,000 for the tax years 2000 and 2001. The IRS assesses civil tax liabilities in the amount of \$25,000 for tax year 2002. The IRS may not compromise the civil tax liability for the 2002 tax year based on doubt as to collectibility or effective tax administration because the offer would have to include tax years for which restitution was ordered payable to the IRS.

Example:

The court awards restitution payable to the IRS in the amount of \$50,000 for the tax years 2000 and 2001. The IRS makes restitution assessments in the amounts of \$25,000 each for the tax years 2000 and 2001. Pursuant to an audit, the IRS also makes an assessment in the amount of \$25,000 for tax year 2002. The IRS may not compromise the civil tax liability for the 2002 tax year based on doubt as to collectibility or effective tax administration because the offer would have to include tax years (2000 and 2001) for which restitution assessments were made, and provide for the full payment of these assessments by the end of the offer period.

4. If an OIC is submitted by a taxpayer that includes tax periods for which criminal restitution was ordered payable to the IRS, the offer should not be considered unless it provides for full payment of the amount of restitution. In addition, the terms of the offer cannot alter any provision of an existing court-ordered restitution payment plan by allowing for payment of a lesser amount or less frequently than the plan requires. Taxpayers submitting such offers should be informed that only the district court that entered the restitution order can modify the order. The appropriate resolution would be a processable return of the taxpayer's offer.

Example:

Taxpayer submits an OIC for tax years 2003 thru 2008. The assessments for the 2003 and 2004 tax years are based on a court order requiring the taxpayer to pay \$20,000 in restitution for these years. An offer in compromise may be considered which includes the restitution assessments for the 2003 and 2004 tax years. However, the terms of the OIC must provide for full payment of the amount of restitution (\$20,000) and cannot provide for a longer payout period or less frequent payments than provided by the court in the restitution order. Additionally, the OIC must provide a descriptive breakdown of the specific restitution and non-restitution amounts to be paid under the terms of the OIC, and must not contradict the minimum requirements and ultimate restitution amount set forth in the restitution order. If the offer is accepted, MOIC will monitor the non-restitution payments. Any issues regarding restitution payments should be directed to the Advisory probation liaison.

5. Questions relating to the terms of a restitution order (e.g., amount awarded, tax periods covered) should be directed to the special agent assigned to the case or the Advisory probation liaison. Defendants seeking to modify a restitution order should be directed to contact their probation officer. See IRM 5.1.5.24, *Restitution Overview*, for more information.

5.8.4.23.2.1 (05-10-2013)

Restitution Payment Schedule

1. If a taxpayer has been ordered to pay restitution, then any changes to the terms of a restitution payment schedule in a Judgment and Commitment Order can only be made pursuant to the order of the same court that issued a restitution order.
2. The defendant must notify the court and the Department of Justice of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay. The U.S. may also notify the court of a change in the defendant's economic circumstances. Upon receiving notice of such change, the court may, on motion of a party or on its own motion, adjust a restitution payment schedule or require immediate payment in full, as the interests of justice require. See 18 USC 3644(k). A defendant seeking to adjust a restitution order or payment schedule should consult with his or her probation officer.

5.8.4.23.2.2 (05-10-2013)

Identification of Restitution Assessments

1. Prior to the enactment of Public Law 111-237, the amount of restitution ordered payable to the IRS in a criminal case could not be assessed as a tax. The Firearms Excise Tax Improvement Act of 2010 ("the FETI Act"), Public Law No. 111-237, amended IRC § 6201 to provide that the IRS shall assess and collect the amount of restitution ordered in a criminal case for failure to pay any tax imposed by the Internal Revenue Code in the same manner as if such amount were such tax. The law applies to restitution orders entered after August 16, 2010. See IRM 5.1.5, *Field Collecting Procedures, Balancing Civil and Criminal Cases*.

Note:

Although FETI allows for the assessment of restitution, the IRS still may not compromise or change the terms of any restitution order.

2. Since the enactment of the "FETI Act" a restitution assessment may be established on IDRS. This assessment is created on MFT 31 for the taxpayer(s) ordered to pay restitution to the IRS. Other identifying factors are:
 - Transaction code (TC) 971 with Action Code (AC) 102 will be used to identify these modules as restitution assessments.
 - TC 290 with reason codes 141 through 149 will be used to assess the restitution amount.
 - TC 971 with AC 180 through 189 will reflect the type of tax and tax periods for which restitution was ordered.

**5.8.4.23.3 (05-10-2013)
Reversed Credits**

1. There may be situations when the taxpayer intentionally claimed a credit in order to receive a larger refund than legally entitled to, e.g. first time homebuyer, EITC, Advance Child Tax Credit (ACTC), etc. During the investigation of an offer involving these types of adjustments, it may be necessary to secure a copy of the audit workpapers to determine the cause of the liability, the amount, the frequency, and whether the claimed credit was intentionally fraudulent. Offers where the taxpayer intentionally and knowingly claimed a credit for which they were not entitled may be rejected as not in the government's best interest.

**5.8.4.23.4 (05-10-2013)
Refund Schemes**

1. Situations involving refund schemes, i.e. unsubstantiated withholding on forms W-2 and 1099 OID, and erroneous refundable credits, in which the taxpayer received fraudulent refunds, may be rejected as not in the government's best interest.

Note:

The taxpayer's compliance history over a number of years subsequent to being involved in the scheme may be taken into consideration in determining whether to investigate the taxpayer's offer.

**5.8.4.23.5 (05-10-2013)
Identity Theft**

1. IRM 10.5.3.2.6, *Initial Allegation or Suspicion of Tax-Related Identity Theft – Identity Theft Indicators*, is a Servicewide guidance on the use of TC 971 AC 522 to identify and track identity theft inventory.
2. Identity theft (IDT) should not prohibit investigation of the offer. Each case will need to be considered on its own merit since there may be unique issues impacting the case decision.

Note:

If the offer is to be accepted, information on the IDT period(s) must be provided to MOIC with the acceptance file and documented in the AOIC remarks to avoid default of the offer. In addition, it will not be necessary to input or request input of the TC 470 CC 90, since the case will be in Status 71.

3. Prior to input of the TC 971 AC 522, review IRP, Accurint, check signature, etc. to make IDT determination. If it is determined that IDT was not present, then TC 972 AC 522 NOIDT should be input.
4. When IDT is discovered during the offer investigation or disclosed by the taxpayer, follow the procedures in the table below. Prior to inputting an IDT TC 971/522, review IDRS Command Code ENMOD (or IMFOLE if account not on IDRS) to prevent inputting a duplicate TC 971/522 on the same tax period.

Step Action	If...	Then...	Notes
1	Request the taxpayer provide authentication and evidence of IDT to substantiate identity theft	Authentication and evidence is not received	<ul style="list-style-type: none"> • Centralized Offer in Compromise (COIC) Offer Examiner (OE) will Input the following TC 972 AC 522 with the Source Code SBSE CSCO NORPLY. • The Field Offer Specialist (OS) will: Use Form 4844, <i>Request for Terminal Action</i>, to request input of the TC 972 AC 522 SBSE CFBALDUE OR SBSE CFDELRET NORPLY and forward to the DITA team. <p>See IRM 10.5.3.2.7, <i>Overview – Identify Theft Supporting Documentation</i>, for required documentation.</p>
		A. There is a posted or unreversed TC 971 AC 501/506 or TC 971 AC 522 with a Source Code defined below.	
		B. The posted transaction falls within the 3 year period as described in IRM 10.5.3.2.7, <i>Overview - Identity Theft Supporting Documentation</i> , and	
		C. The allegation relates to a previously reported incident as described in 10.5.3.2.7, <i>Overview - Identity Theft Supporting Documentation</i> , Source Codes	
			If the initial identification is made by the OE or OS, the input of TC 971 AC 522 will be required. However, if this is not the first identification,

2 Review CC ENMOD and determine

- **INCOME:** Reported under TPs SSN without their consent or knowledge
- **MULTFL:** Two or more returns filed for the same tax period under the same SSN
- **INCMUL:** Both income reporting and multiple Filings apply
- **NOFR:** Victim is not required to file a tax return, or
- **OTHER:** Situation does not related to any existing Tax Administration Source

- **COIC OE will:** Input TC 971 AC 522 with Source Code **PNDCLM** prior to input of TC 971 AC 522 with Source Code **NODCRQ**
- **The Field OS will:** Use Form 4844 to request input of the TC 971 AC 522 with Source Code **NODCRQ** and forward to the Designated Identity Theft Adjustment (DITA) team.

research IDRS to ensure a duplicate request of the TC 971 Action Code for the same tax period(s) is not input.

Note:
In these instances, substantiation documentation is not required.

Note:

The Secondary Date field will reflect the tax year of the identify theft incident.

:

Input TC 971 AC 522 on ENMOD (not TXMOD) of the affected TIN.

The taxpayer claims the income was not earned by them or the tax return was not filed by them and there is no valid TC 971 AC 522 for the applicable tax periods on ENMOD

- **COIC OE will:** Input the following Source Code in the MISC field —**SBSE CSCO PNDCLM** if the taxpayer disclosed the identity theft issue or **SBSE CSCO IRSID** if the IRS discovered the identity theft.
- **The Field OS will:** Use Form 4844 to request input of TC 971 AC 522 with the following Source Code in the MISC field and forward to the DITA team. — **SBSE CFBALDUE OR SBSE CFDELRET PNDCLM** if the taxpayer disclosed the identity theft issue or **SBSE CFBALDUE OR SBSE CFDELRET IRSID** if the IRS discovered the identity theft.

The Secondary Date field on ENMOD will reflect the tax year of the identity theft incident.

Complete and legible authentication and evidence is received

Follow the procedures in Step 3 and Step 4.

3 TC 470 CC 90

The offer is not accepted

- **COIC OE will:** Input TC 470 CC 90
- **Field OS will:** Use Form 4844 to request input of the TC 470 CC 90 and forward to DITA
- **Campus Compliance RO will:** Complete and Forward a Form 4442, *Inquiry Referral*, and route based on SERP ID Theft Liaison Listing on the Who/Where tab.
- **Field OS will:** Complete the Form 3870 and route based on Exhibits in IRM 4.13.7, as appropriate.

A TC 470 will go unpostable if input before the TC 480 is reversed.
A TC 470 CC 90 is not necessary for accepted offers.

4

Determine the source of the identity theft liability (ASFR, AUR, EXAM, etc.) and forward as appropriate with required documentation

The liability was assessed in ASFR, AUR or EXAM

Audit reconsideration – Prepare Form 3870 and route based on IRM Exhibits 4.13.7-3 and 4.13.7-4. This includes returns filed under the taxpayer’s social security number by an identity thief and a subsequent audit assessment made by Examination.

AUR reconsideration – Prepare Form 3870 and route based no IRM Exhibit 4.13.7-6. This includes a return filed under the taxpayer’s social security number by an identity thief and a subsequent AUR assessment.

If the initial identification is made by the OE or OS, the input of TC 971 AC 522 will be required. However, if this is not the first identification, research IDRS to ensure a duplicate request of the TC 971 Action Code for the same tax period(s) is not input. No TC 470 can be input until the offer is closed.

•SFR/ASFR – (Brookhaven/Fresno) – Prepare Form 3870 and route based on IRM 5.1.15.4.3(4).

Field OS/Campus Compliance RO will: Prepare Form 3870 (Other template in ICS) and forward to DITA if there is not a subsequent Audit or AUR assessment. The Form 3870 must be mailed, rather than faxed or sent electronically to DITA, if an original return is attached.

The liability was not assessed in ASFR, AUR or EXAM

Note:

This applies to an Identity Theft Return – This is a return that was filed under the taxpayer’s social security number by an identity thief.

5. Preparing and Routing of Form 3870 (Field OS and Campus Compliance RO)

A. If it is determined that the taxpayer is a victim of identity theft, Form 3870 is prepared to correct the victim’s account. The following guidelines should be followed when preparing Form 3870:

(1) Write “**Identity Theft**” in bold letters in item 11, *Reason for Adjustment*.

(2) Include specific instructions on actions needed to correct the account. For example, state that “TC 150 in amount of \$XX is return filed by identity thief.” Indicate if there are any estimated tax payments that were made by the victim (taxpayer) that should remain on the account or if a refund generated by the identity theft return was offset to another tax liability.

(3) Attach the following to the Form 3870: a copy of the substantiation documentation (evidence of identity theft and authentication of identity) [maintain a copy in the case file]; **NUMIDENT** – Obtained by requesting MFTRA type U ; and the original return, if secured from victim (taxpayer).

(4) Request input of TC 971 AC 501 or AC 506 on Form 3870. TC 971 AC will be input when the account is corrected.

(5) Forward Form 3870 to the appropriate function for adjustment based on the type of assessment.

Note:

Incomplete referrals will be rejected.

B. The completed Form 3870 is routed based on the type of assessment that needs to be adjusted.

(1) **Audit reconsideration** – Prepare Form 3870 and route based on IRM Exhibits 4.13.7-3, *Routing of Area Office Reconsideration Requests* (as of 01/01/2006) and 4.13.4, *Central Reconsideration Unit (CRU) Addresses*. This includes a return filed under the taxpayer’s social security number by an identity thief and a subsequent audit assessment made by Examination.

(2) **AUR reconsideration** – Prepare Form 3870 and route based on IRM Exhibit 4.13.7-6, *Addresses for AUR Reconsideration Requests*. This includes a return filed under the taxpayer’s social security number by an identity thief and a subsequent AUR assessment. *SFR/ASFR* (Brookhaven/Fresno) — Prepare Form 3870 and route based on IRM 5.1.15.4.3(4), *Substitute For Return (SFR) and Automated Substitute for Return (ASFR) Reconsiderations*.

(3) **Identity Theft Return** – This is a return that was filed under the taxpayer’s social security number by an identity thief. Prepare manual Form 3870 (Other template in ICS) and forward to DITA if there is not a subsequent Audit or AUR assessment.

Note:

The Form 3870 must be mailed, rather than faxed or sent electronically to DITA, if an original return is attached.

C. If the liability was not assessed in ASFR, AUR or Exam forward the completed Form 3870 to DITA. The contact information for the new SB/SE Designated Identity Theft Adjustment (DITA) team is as follows:

Internal Revenue Service

DITA Mail Stop 4-G20.500

2970 Market St

Philadelphia, PA 19104

Note:

Outlook mailbox for electronic submission is *SBSE CCS DITA

6. COIC OE will update the AOIC Case Category Code to 15, *Identity Theft*, and report time under 810–66012. Document the AOIC case history.

Note:

Time reported is for completion of the 4442 referral only.

7. Field OS will:

- A. Update the AOIC Case Category Code to 15, *Identity Theft*, and report time on ICS.

Note:

The time spent working the ID theft issue, such as preparing 4844 to input TC 971 action codes, reviewing ID theft documentation, and preparing F 3870 are the actions to be captured.

- B. In the "program name" field within the Miscellaneous Field input **CFBALDUE** or **CFDELRET**, until an IDT code is developed.
- C. Document ICS/AOIC case history.

5.8.4.23.6 (05-10-2013)

Return Preparer Fraud or Misconduct

1. A taxpayer becomes a victim of return preparer fraud when the tax preparer (paid or otherwise) completes a tax return for a taxpayer and without the taxpayer's knowledge makes changes to that return resulting in a benefit to the preparer or third party. Taxpayers may be unaware there is an issue until contact by the IRS, well after all refunds have been issued.
2. There are many variations on the scenarios involving a preparer who has committed fraud on the taxpayer's return.

Example:

The preparer filing the return on paper, where the alterations to the return occur after the taxpayer has approved the return.

Example:

The taxpayer indicates approval of the return by signing Form 8879, *IRS e-file Signature Authorization*, and then the preparer alters the return before electronically filing it.

Example:

The preparer may split the refund by using Form 8888, *Allocation of Refund (Including Savings Bond Purchases)*, so that the taxpayer gets the amount of refund that he or she is expecting, and the preparer asks the IRS to direct deposit the portion of the refund resulting from the inflated items into his own bank account or bank account under his control.

Example:

The preparer may have the entire refund direct-deposited into his or her account, and then wire transfers the amount the taxpayer was expecting into the taxpayer's bank account.

3. Be careful to distinguish between return preparer fraud, and identity theft that was committed by a return preparer.

Example:

If the taxpayer authorized a preparer to prepare and file the taxpayer's return, but the preparer altered items of income/deductions/credits/withholding to obtain a larger refund without the taxpayer's knowledge and consent, this is return preparer fraud and you must follow the procedures in this section. In contrast, suppose the taxpayer went to a preparer with the intention of having her return prepared. But after meeting with the preparer, the taxpayer changed her mind and left without hiring the preparer (e.g., taxpayer decided the preparer's fees were too high and wanted to go elsewhere). The preparer nonetheless filed a return for the taxpayer, using the taxpayer's information but diverting the refund into the preparer's bank account (or a bank account under the preparer's control). This is identity theft, and you must follow the procedures in IRM 5.8.4.23.7, *Identity Theft*.

4. When a taxpayer appears to have been a victim of preparer fraud, request that the taxpayer provide the following documentation:

- Signed copy of the tax return the taxpayer intended to file.
- A copy of the return that the preparer provided for the taxpayer's approval or the return information from IDRS if the taxpayer does not have the preparer's return copy.
- A bank statement reflecting the amount of the refund the taxpayer received. If the taxpayer received a cash refund directly from the preparer; request a signed written statement that includes the amount of the cash refund received.
- Completed Form 14157, *Return Preparer Complaint*, or a written statement from the taxpayer, signed under penalties of perjury, which states:

1) The bank account to which the refund (or a portion of the refund) was deposited did not belong to the taxpayer;

2) The taxpayer had no knowledge that the preparer was depositing the refund (or portion thereof) into that bank account; and

3) The taxpayer had no knowledge that the preparer had filed a different return with the IRS.

- Completed Form 14157-A, *Tax Return Preparer Fraud or Misconduct Affidavit*, signed under penalties of perjury.
- Completed Form 3911, *Taxpayer Statement Regarding Refund*, even if the taxpayer received a portion of the refund to which he or she was entitled. Refer to IRM 21.4.2.4, *Refund Trace Actions*.

Note:

If a taxpayer does not have a representative, they may be eligible for assistance from a Low Income Taxpayer Clinic (LITC). For LITC eligibility guidelines see IRS Publication 4134, *Low Income Taxpayer Clinic List*.

If...	Then...	Notes
The taxpayer cannot produce a copy of the tax return but has other documents to support his or her assertion that what the preparer filed is not what the taxpayer approved	Secure copies of the other documents (e.g., copies of work papers the return preparer used in preparing the return or the taxpayer's copies of the Forms W-2, <i>Wage and Tax Statement</i> , showing the correct, unaltered wages and withholding).	Include a statement that the attached information was provided by the taxpayer, and the refund the taxpayer received is approximately what should be expected if the return had been prepared based on correct information. Document the case history.
no documentation is received from the taxpayer by the deadline established or the documentation does not support the taxpayer's claim of return preparer fraud	Continue investigation of the offer without further delay and make a final case decision.	Document the case history.

5. Review all documentation provided to determine if return preparer fraud occurred. If Return Preparer Fraud occurred, the COIC OE will complete and forward a Form 4442 referral attaching related documentation to the Campus Compliance RO.

Note:

If the taxpayer received more than the refund shown on the corrected return, the IRS should collect any excess amount from the taxpayer.

6. The Field OS will:

- A. Complete Form 3870 with specific instructions on actions needed to correct account.
- B. Attach copy of Form 14157 and documentation to Form 3870.
- C. Do not attach IDRS prints.
- D. Fax or mail Form 3870 to the SB/SE Designated Identity Theft Adjustment Group (DITA) at the Philadelphia Campus to the address below. DITA has the authority to make adjustments involving overstated withholding or credits.

Internal Revenue Service

DITA Mail Stop 4 G 20.500

2970 Market Street

Philadelphia, PA 19104

FAX: (267) 941-1425

E. If the balance due is the result of an audit or Automated Underreporter (AUR) assessment, take the following actions:

(1) **AUR reconsideration** – Prepare Form 3870 and route based on IRM Exhibit 4.13.7-6 This includes a return filed under the taxpayer's social security number by an identity thief and a subsequent AUR assessment.

(2) **Audit reconsideration** – Prepare Form 3870 and route based on IRM Exhibits 4.13.7-3 and 4.13.7-4 This includes return filed under the taxpayer's social security number by an identity thief and a subsequent audit assessment made by Examination.

If...

The taxpayer visited a preparer but did not authorize the preparer to file a return on his behalf. The preparer, without authorization, filed a return using the taxpayer's name and TIN.

The taxpayer authorized the preparer to file a return, but the preparer altered the return and received the falsified portion of the refund.

Then...

This should be treated as identity theft.

- **COIC OE will:** Complete and forward a Form 4442 referral attaching related documentation to the Campus Compliance RO.
- **Field OS will:** Prepare Form 3870 to adjust the taxpayer's account to reflect the correct return. The appropriate refund will be issued to the taxpayer.
- **COIC OE will:** Complete and forward a Form 4442 referral attaching related documentation to the Campus Compliance RO.
- **Field OS will:** Prepare Form 3870 to adjust the taxpayer's account to reflect the correct return.

7. Modules identified with preparer fraud or misconduct should not prohibit investigation of the offer. Each case will need to be considered on its own merit since there may be unique issues impacting the case decision. Be sensitive to the adverse impact that being a victim of Return Preparer Fraud may have upon a taxpayer and his/her ability to pay.

Note:

If the offer is to be accepted, information on the IDT period(s) must be provided to MOIC with the acceptance file and documented in the AOIC remarks to avoid default of the offer.

8. If misconduct is detected, in addition to the actions required under (5) of this section, refer to IRM 5.8.10.9.3, *Referring Tax Practitioner Misconduct to the Office of Professional Responsibility*, and 5.8.10.9.4, *Preparation of Form 8484, Report of Suspected Practitioner Misconduct and Report of Appraiser Penalty to the Office of Professional Responsibility (OPR)*.

9. COIC OE Reporting Procedures:

- Update the AOIC Case Category Code to 16, *Return Preparer Fraud or Misconduct*.
- Report time under 810-66013.

Note:

Time reported is for completion of the 4442 referral only

- Document the AOIC case history.

10. Field OS Reporting Procedures:

- Update the AOIC Case Category Code to 16, *Return Preparer Fraud or Misconduct*.
- Document ICS/AOIC case history .

Note:

Unlike Identity Theft (IDT) procedures, at this time Field OS have no time reporting requirements for cases identified as Return Preparer Fraud or Misconduct.

5.8.4.24 (05-10-2013)

Offers from Operating Businesses

1. Trust fund taxes are taxes withheld or collected from an individual and paid over to the government on that person's behalf. See IRM 5.7.3, *Establishing Responsibility and Willfulness for the Trust Fund Recovery Penalty (TFRP)*, for a list of tax returns used to report trust fund taxes and where assessment of the TFRP based on the liabilities reported on the returns is possible.

2. When an offer is accepted to compromise trust fund tax owed by an operating business, the taxpayer is relieved of a significant operating expense. The effect is to grant the delinquent taxpayer an economic advantage over competitors who are in tax compliance. The following procedures apply to all In Business Trust Fund (IBTF) taxpayers, including sole proprietorships, partnerships, limited liability companies, as well as corporations.

A. These taxpayers must remain in compliance while the offer is being considered. See IRM 5.8.7 for required actions prior to returning the offer.

B. For offers received after February 4, 2008, involving corporate entities, or any entity in which assertion of the TFRP is applicable: the trust fund portion of the tax liabilities must be paid, the TFRP must be assessed against all responsible persons, a determination made by an RO to not assert due to collectibility or dollar criteria, or the trust fund package forwarded for assessment. See IRM 5.8.4.22.1 above for instructions on processing these investigations in conjunction with open offers, including when the aggregate outstanding trust fund liability is under the criteria established in IRM 5.7.4.1.1 and offers submitted under special circumstances discussed in IRM 5.8.11.2.2.1.

C. If financial analysis reveals that the taxpayer cannot pay operating expenses and remain current with taxes (i.e. the business is operating at a loss), all business assets should be valued rather than valuing the income stream. The value of the business as a going concern should also be evaluated. Close review should be conducted as well to see whether the offer meets the criteria for rejection as not in the best interest of the government. See IRM 5.8.7.

D. If the offer is from an ongoing business that appears to be insolvent and it appears that the government's position would be better protected through a formal insolvency proceeding, consideration should be given to the rejection as not in the best interest of the government. See IRM 5.8.7.

E. Business tax returns (Schedule C, Form 1120, and Form 1065), the taxpayer's balance sheet, income statements, and the Form 433-B (OIC) need to be carefully analyzed to arrive at the correct RCP.

3. The following issues should be carefully reviewed and/or considered:

A. *Depreciation* – Do not allow depreciation. Instead allow necessary actual monthly obligations paid to secured creditors on depreciable assets (i.e. autos, equipment, or real estate loans).

B. *Accounts Receivable* – Accounts receivable that are current (i.e. normally less than 90 days past due) generally should not be discounted at Quick Sale Value (QSV). Value all accounts receivable at 100% of the balance due, unless the taxpayer can substantiate the account has been delinquent over 90 days. If the account is determined to be delinquent, it may be discounted up to a maximum of 50%. However, supporting documentation is required to substantiate accounts the taxpayer claims are delinquent over 90 days; such as a request for the taxpayer to provide an aging report. If the account is over 90 days and the taxpayer fails to provide substantiation, it will be valued at 100%.

Note:

A delinquent account is defined as an uncollectible account that has been delinquent for more than 90 days. A collectible account is defined as one that may be considered to be past due, but is still an active client.

C. *Personal Expenses Paid by the Business* – Financial statements must be reviewed to ensure expenses such as car payments, insurance, utilities, etc. are not claimed on both the Form 433-A (OIC) and the Form 433-B (OIC).

D. *Potential Recovery of Priority Taxes* – Refer to **IRM 5.8.10.2 - Bankruptcy**, for a discussion on factors to consider in potential bankruptcy situations.

E. *Field Visits to Evaluate Business Assets* – A field call must be made to validate the existence and value of business assets and inventory for all offers involving an operating business that will be recommended for acceptance. The offer specialist should make the call, if practical, or initiate an OI to request that a call be made by another RO if the taxpayer operates outside the offer specialist's commuting area. If a field call has been previously made and assets have been valued and documented, a field call would not be required.

Note:

OIs referred per these instructions should be considered high risk cases, code 100, and processed accordingly.

Exception:

If after discussion with field RO group manager, it is determined a field call cannot be made in a reasonable period of time, due to the taxpayers geographic location, the ICS history will be documented and the offer acceptance recommendation may be submitted for approval.

4. See IRM 5.8.5 for information on handling LLC entities.

5. In some cases, it may be necessary to verify income and expenses through copies of cancelled checks. The OS should use good judgment and common sense when requesting a taxpayer to provide such documentation since this type of request may put a significant cost and burden on the taxpayer. Generally, requests for cancelled checks should be limited to the most recent months.

5.8.4.25 (04-30-2015)

Periodic Payments Required with Offer in Compromise Submissions

1. IRC Section 7122(c), as amended by the TIPRA, requires OIC's submitted on or after July 17, 2006 (and not subject to waiver with respect to low income taxpayers or offers submitted based solely on DATL) must be accompanied by partial payment of the proposed offer amount. These payments are applied to the tax liabilities included on the offer and are in addition to any application fee imposed.
2. The form of these partial payments depends on the taxpayer's proposed offer and its terms.
 - A. A lump sum cash offer (defined as payable in five or fewer payments within five months (unless an exception as discussed in IRM 5.8.1.9.4(3) exists) of offer acceptance), must be accompanied by a payment of 20% of the offered amount.
 - B. A periodic payment (defined as payable in six to 24 months or through the statutory period) must be accompanied by payment of the first proposed installment, and additional payments must be paid in accordance with the taxpayer's proposed offer terms while the Service evaluates the offer. The total installments may not exceed 24 months.
3. If the taxpayer qualifies for the Low Income Waiver, the taxpayer is not required to pay the application fee, or TIPRA payment(s), including any future payments, until accepted.
4. If a periodic payment offer is accepted, and the taxpayer qualified for a Low Income Waiver, the 24-month timeframe for paying the accepted offer amount will start on the date of written notice of acceptance. At that time, the taxpayer will begin making the payments in accordance to the terms of the accepted offer.
5. While a periodic payment offer is being evaluated by the Service, the taxpayer must make subsequent proposed payments as they become due. There is no requirement that the payments be made monthly or in equal amounts.
6. The Service is not bound by either the offer amount or the terms. The offer examiner/specialist may determine that the proposed offer amount is too low or the payment terms too protracted to recommend acceptance. In this situation, the offer investigator may advise the taxpayer that a larger amount or different terms would likely be recommended for acceptance.
7. Taxpayers who qualify for waiver of the application fee based on their income level at the time they submit an offer are also exempt from making the required TIPRA payment(s). If during the investigation it is discovered that the taxpayer does not qualify for the waiver, contact the taxpayer and make one request by telephone for the required payment(s) and the application fee. Allow 15 calendar days for the taxpayer to submit the payment(s) and fee. If the taxpayer cannot be reached by telephone, issue an additional information letter to notify of the need to make the payment(s) and allow 15 calendar days from the date of the letter to submit the payment(s). If the taxpayer or POA fails to submit the payment or request an extension of time within 30 days from the date of the letter, close the offer as a mandatory withdrawal, using the appropriate withdrawal letter. Document the ICS or AOIC history. See IRM 5.8.7, *Mandatory Withdrawal*.
8. If the taxpayer submitted the application fee, and TIPRA payment in addition to checking the Low Income Certification box, and it is discovered that the taxpayer does not qualify for the waiver, the offer investigator will:
 - Request the money be moved to the appropriate account and/or liability(s), and
 - Continue working the offer.
9. If the taxpayer submitted a periodic payment offer, the offer specialist/examiner will make one request by telephone for the taxpayer to make up the past due TIPRA payment(s) from the date of submission to the date of discovery. Allow 15 calendar days for the taxpayer to submit the payment(s). The taxpayer will then be required to make payments in accordance to the terms of the offer when submitted during the remainder of the investigation. If the taxpayer cannot be reached by telephone, issue an additional information letter to notify of the need to make the payment(s) and allow 15 calendar days from the date of the letter to submit the payment(s). If the taxpayer or POA fails to submit the payment or request an extension of time within 30 calendar days from the date of the letter, close the offer as a mandatory withdrawal, using the appropriate withdrawal letter. Document the ICS or AOIC history. See IRM 5.8.7, *Mandatory Withdrawal*.
10. Situations may exist where the offer investigation has been completed and it has been determined the offer will not be accepted prior to determining the taxpayer has missed an installment of their periodic payment offer. In these instances, when contact is made with the taxpayer to secure the missed installment(s), whether by telephone or correspondence, in addition to advising the taxpayer the offer will be processed as a mandatory withdrawal if the installment is not paid, the OE/OS should also advise the taxpayer that even if the taxpayer makes the required installments, the offer will be recommended for rejection. Providing a copy of the IET and AET may also be appropriate. The appropriate next action should be taken based on the taxpayer/POA response.
11. Taxpayers may designate how the required TIPRA payments are to be applied to the taxpayer's liabilities. The request for designation must be made in writing when the offer is submitted (in the case of the initial partial payments) or when the payment is made (in the case of subsequent installment payments made for a periodic payment offer). Once a designation of payment is made, it cannot be changed at a later time. The written payment designation must clearly explain how these payments are to be applied to specific tax periods or liabilities (e.g., income taxes, employment taxes, trust fund portions of employment or excise taxes, etc.). This written payment designation must become part of, and remain with, the offer case file.
12. In the absence of any written payment designation by the taxpayer when the payment is made, the Service will apply the payments in the best interest of the Government.

Note:

Form 656 may include a designation of the application fee and initial TIPRA payment, it does not serve as a designation for any subsequent payments.

13. COIC will process the required initial TIPRA payment accompanying periodic payment offers prior to transferring an offer to an OS. For offers submitted by corporations to compromise trust fund taxes, COIC will apply the initial payment(s) to the tax liability with the earliest unexpired CSED. OS's assigned to investigate these offers are responsible for transferring the partial payment(s), if necessary, in the best interest of the government as defined in 5.8.4.25.1 below.

5.8.4.25.1 (06-01-2010)

Periodic Payments made During the Offer Investigation

1. It is the responsibility of the OE/OS assigned the case to ensure that taxpayers make the proposed installments during the offer investigation. In addition, the OE/OS must also ensure that required additional amounts are paid if the taxpayer submits a revised OIC reflecting a larger proposed offer amount and/or changes the offer from a periodic payment to a lump sum cash offer.
2. If a subsequent payment is received by an OE/OS with a Form 656-PPV, forward the payment with the Form 656-PPV to the appropriate COIC address shown on the form. An OS may process payments on Form 795 using ICS, yet if processed through ICS, the AOIC payment screen should also be annotated.
3. Upon receipt of a subsequent payment received by the COIC site while the offer is assigned to an OE/OS, COIC must annotate the AOIC payment screen or if unable to access the payment screen, annotate AOIC history with the following information:
 - Date(s) of receipt
 - Amount of the payment(s)
 - Location (MFT and period) applied

4. It is the responsibility of the OE/OS to check the AOIC payment screen, AOIC history and/or IDRS for verification of posted or pending payments that may have been received in the COIC site.
5. If a subsequent payment is received by the OE/OS, the OE/OS will use Form 3244 to apply the payment(s) directly to the tax liability in accordance with the taxpayer's written payment designation, if any, submitted with the payment.
6. If no written payment designation was submitted, apply the payment(s) directly to a tax liability to the best interest of the Government.
7. For offers submitted from entities other than corporations, apply the payment(s) to the tax liability(ies) with the earliest unexpired CSED(s).
8. For offers submitted from corporations or other entities subject to the trust fund recovery penalty, apply payment(s) in the following descending order:
 - A. To all Forms 1120, 940, and any other non-trust fund liabilities (in earliest unexpired CSED order), if any; and
 - B. To the following unpaid portions of all Form 941 periods (in earliest unexpired CSED order):

- | |
|---|
| (1) Non-trust fund portion of tax (employer's share of FICA) |
| (2) Assessed lien fees and collection costs |
| (3) Assessed penalty |
| (4) Assessed interest |
| (5) Accrued penalty to the date of payment |
| (6) Accrued interest to date of payment |
| (7) Trust fund portion of the Form 941 (employee's and withholding share of FICA) |

9. Annotate the AOIC payment screen or if unable to access the AOIC payment screen, then annotate the AOIC history with the amount(s) and date(s) of receipt.

Note:

Use DPC 02 when posting subsequent periodic offer payments specified to the trust fund portion when the offer was submitted by a corporate taxpayer. In all other situations, use DPC 35.

10. If the taxpayer fails to make a proposed installment for a periodic payment offer, the OE/OS will allow one opportunity to pay the missing amount(s). Attempt to contact the taxpayer by telephone, and allow 15 calendar days for the taxpayer to submit the payment(s). If the taxpayer or the representative cannot be reached by telephone, issue an additional information letter to notify of the need to make the payment(s) and allow 15 calendar days from the date of the letter to submit the payment(s).
 - A. If the taxpayer submits the payment(s) within 30 calendar days from the date of the letter (allowing 15 calendar days for mail), continue the offer investigation. In some cases, it may be necessary to allow additional time for the taxpayer to submit the payments. Document the ICS or AOIC history with the reason for the delay.
 - B. If the taxpayer fails to submit the payment or request an extension of time within 30 calendar days from the date of the letter, close the offer as a mandatory withdrawal, using the appropriate withdrawal letter. Document the ICS or AOIC history.

Note:

Taxpayers will be afforded one opportunity to make up the missed payment(s) for a periodic payment offer, including any amended offers, unless special circumstances exist.

11. The proposed offer amounts and terms submitted by a taxpayer dictate the required partial offer payments. The Service is not bound by those same terms in determining an acceptable offer. Therefore, OE/OS's may negotiate different offer terms, when appropriate.
12. During evaluation of an offer, the OE/OS may determine that the proposed offer is too low or the payment terms too protracted to recommend acceptance. In this situation, the OE/OS will advise the taxpayer that a larger amount or different terms would likely be recommended for acceptance. If the taxpayer submits a revised offer reflecting a larger proposed offer amount or changing the terms, one or more additional payments may be required, unless the taxpayer qualified for the waiver. The taxpayer will be given credit for partial payments already made with respect to the original offer.

If...	And...	Then...
Original offer was a lump sum cash offer	Revised offer is a lump sum with a greater proposed offer amount	Taxpayer must pay 20% of the revised amount, less the partial payment made with the original offer, with the revised OIC.
Original offer was a periodic payment	Revised offer is a lump sum cash	Taxpayer must pay 20% of revised offer amount, less any installment payments already paid toward the original offer, with the revised OIC.
Original offer was periodic payment	Revised offer is periodic payment with greater proposed offer amount and/or different proposed installment amounts or schedule	Taxpayer must make the initial proposed installment in accordance with the terms of the revised offer, and continue to make the proposed installments during evaluation of the OIC.
Original offer was lump sum cash offer	Revised offer is periodic payment with greater proposed offer amount	Taxpayer must make the initial proposed installment in accordance with the terms of the revised offer, and continue to make the proposed installments during evaluation of the revised OIC.

13. If the taxpayer submitting a revised or amended offer does not make the additional required payment(s), the OE/OS will return the offer as a processable return using the appropriate AOIC generated letter.

Note:

The exceptions to this rule are if the taxpayer was not subject to the waiver with respect to low income taxpayers for offers submitted based solely on DATL. These taxpayers are not required to submit payments with an amended OIC.

14. If the taxpayer fails to submit the revised offer, prepare the rejection letter.
15. The OE/OS is responsible for ensuring TIPRA payments are made during the investigation. Once the final determination letter has been issued, the OE/OS is no longer required to monitor for payments.

5.8.4.25.2 (05-10-2013)

Offers in Status 60

1. Once an OIC is determined processable, the taxpayer will only be required to make the TIPRA payments. The case status will be changed to Status 71.
2. See Exhibit 5.8.4-4 (COIC) and Exhibit 5.8.4-5 (Field) below for step-by-step instructions to take a taxpayer's account from Status 60 to Status 71.
3. If the offer is rejected, returned, withdrawn, or terminated, return the account back to Status 60 by following the procedures in Exhibit 5.8.4-4 (COIC) and Exhibit 5.8.4-5 (Field) below.

5.8.4.26 (05-10-2013)

Third party Authorizations

1. Taxpayers who wish to be represented must submit a properly executed Form 2848, *Power of Attorney and Declaration of Representative*. If POA information is located on CFINQ, load the information on the AOIC POA Screen and follow procedures as defined below. Input the representative's information on AOIC and retain a copy of the form in the paper case file. Forward the original for recording on the Centralized Authorization File (CAF).
2. Send all original correspondence to the taxpayer and provide a copy to the representative unless the taxpayer has indicated otherwise by checking item b on line 7 of Form 2848.
3. Individuals who are not entitled to practice before the IRS with respect to a collection matter (such as unenrolled return preparers) may accompany taxpayers to meetings with a completed Form 8821, *Taxpayer Information Authorization*, or other proper authorization, and receive and provide information that relates to the offer investigation. They are not authorized to represent the taxpayers or sign documents relating to offers in compromise.
4. If the Form 2848 does not include liabilities that are included on the offer, send a redacted letter to the representative. The letter sent to the taxpayer can request completion of a Form 2848 to cover the missing periods.
5. If during the investigation it is discovered that the POA no longer represents the taxpayer, secure a letter revoking the POA and document the case history. Remove the POA information from AOIC.
6. Attorneys, Certified Public Accountants (CPAs), enrolled agents, or enrolled actuaries are generally the only practitioners authorized to represent taxpayers before the IRS on collection matters.

Note:

An unenrolled return preparer is an individual, other than an attorney, CPA, enrolled agent, or enrolled actuary, who prepares and signs a taxpayer's return as a preparer, or who prepared a return but is not required to sign the return. An unenrolled return preparer cannot represent a taxpayer before the IRS on any collection matter. An unenrolled return preparer, however, may represent a taxpayer before the IRS in certain other limited situations. See IRM 5.1.10.5.2, *Right to Representation*.

Note:

If a taxpayer does not have a representative, they may be eligible for assistance from a Low Income Taxpayer Clinic (LITC). For LITC eligibility guidelines see IRS Publication 4134, *Low Income Taxpayer Clinic List*.

7. During the course of the investigation, a taxpayer may submit a Form 2848 designating a third-party as their representative or power of attorney, or the taxpayer may submit a Form 8821 designating an appointee or may complete the third party designee section on the Form 656, *Offer in Compromise*. When properly completed and filed by the taxpayer, each of these documents should be recognized during an investigation, and interaction with the third party should be governed by the parameters allowed within each of these authorization forms.
 - Form 2848 authorizes an eligible individual (e.g. attorney, CPA, enrolled agent, or enrolled actuary) to represent as well as receive confidential information.
 - Form 8821 and third party designee on the Form 656.
8. If Form 8821 is missing critical information that can only be provided by the taxpayer (e.g., tax years, type of tax, missing taxpayer signature, date) it will be returned to the taxpayer.
9. Information that may be disclosed to the designee is limited to the type of tax, tax form number, tax years or periods, or specific tax matter that is listed on the Form 8821, item 3.
10. If Form 8821, item 5a is checked, the designee is also entitled to receive copies of tax information, notices, and other written communication on an ongoing basis for the type of tax, tax form number, tax years, or specific tax matter listed under item 3.
11. The designee is not authorized to respond to any type of correspondence on behalf of the taxpayer if the response advocates a position that would indicate that the designee is taking on a representational role.
12. Where a recognized representative has unreasonably delayed or hindered an examination, collection, or investigation by failing to furnish, after repeated request, non-privileged information necessary to the examination, collection or investigation, the Internal Revenue Service employee conducting the examination, collection, or investigation may be given permission to bypass the representative and contact the taxpayer directly for such information. 26 C.F.R. § 601.506(b) (Statement of Procedural Rules). Prior to contacting the taxpayer directly, the IRS employee must first initiate bypass procedures. See IRM 5.1.23.5 for procedures to bypass a POA.

5.8.4.27 (06-01-2010)

Expedite Handling

1. There may be occasions where a taxpayer or representative may request expedited processing of their OIC due to an emergency or perceived emergency situation. Situations that may warrant expedited case processing include:
 - A. A contract or business agreement requiring the taxpayer, as a condition of the contract or agreement, to resolve the tax liability by a specific date.
 - B. Availability of the money to fund the offer is limited to a certain time.
 - C. A terminal illness may affect the ability to complete the payment terms.

Note:

Situations may arise that were not initiated by the taxpayer either via phone contact, fax or mail. Once identified that expedite processing may become necessary, follow (3) and (4) below and discuss with your manager.

2. Processing of Forms 656 must be given priority consideration and handled expeditiously due to pending collection action.

3. Offers received with a request for expedited processing should be referred to management for a decision on whether or not expedited treatment is warranted.
4. If a decision is made to expedite offer processing, the manager should document the AOIC history, indicating the basis for the decision. The Form 656 should be clearly labeled at the top Emergency Processing Requested, and an immediate processability determination and assignment for investigation should be made. Every effort should be made to close the offer within 90 calendar days of receipt. In an attempt to bring the case to a prompt and timely resolution and to meet the special needs of the taxpayer, immediate contact should be made with the taxpayer to request any additional information needed.
5. If a decision is made not to expedite the case, the manager should document the basis for the decision on the AOIC and ICS history. Contact the taxpayer by telephone or correspondence explaining the basis for the decision. The case should be worked under routine processing.

**Exhibit 5.8.4-1
Expedite Processing - Notification of Preliminary Case Decision**

These documents are cover sheets used by COIC to ship the cases to Appeals upon preliminary case decision.

This image is too large to be displayed in the current screen. [Please click the link to view the image.](#)

This image is too large to be displayed in the current screen. [Please click the link to view the image.](#)

**Exhibit 5.8.4-2
Offer in Compromise Recommendation Report**

Form 657 is a report used to refer an OIC for consideration from a field Collection RO.

This image is too large to be displayed in the current screen. [Please click the link to view the image.](#)

**Exhibit 5.8.4-3
Asset/Equity Table (AET) and Income/ Expense Table (IET)**

Asset Equity Table – A table listing all the taxpayers assets, encumbrances, and exemptions. It then calculates the equity which is included in the reasonable collection potential (RCP) calculation. Income/Expense Table calculates the taxpayers future ability to pay.

This image is too large to be displayed in the current screen. [Please click the link to view the image.](#)

This image is too large to be displayed in the current screen. [Please click the link to view the image.](#)

**Exhibit 5.8.4-4
COIC Procedures for Status 60/ Status 71 Changes**

The below procedures have been established to assist the COIC sites when taking a taxpayer account from Status 60 to Status 71 and placing the account back into Status 60 if the offer is rejected, returned, or withdrawn.

This image is too large to be displayed in the current screen. [Please click the link to view the image.](#)

This image is too large to be displayed in the current screen. [Please click the link to view the image.](#)

This image is too large to be displayed in the current screen. [Please click the link to view the image.](#)

This image is too large to be displayed in the current screen. [Please click the link to view the image.](#)

**Exhibit 5.8.4-5
Field Procedures for OIC in Lieu of Installment Agreement**

The below procedures have been established to assist the field when taking a taxpayer account from Status 60 to Status 71 and placing the account back into Status 60 if the offer is rejected, returned, or withdrawn.

This image is too large to be displayed in the current screen. [Please click the link to view the image.](#)

[More Internal Revenue Manual](#)



Part 5. Collecting Process

Chapter 8. Offer in Compromise

Section 5. Financial Analysis

5.8.5 Financial Analysis

- 5.8.5.1 [Overview](#)
- 5.8.5.2 [Ability to Pay](#)
- 5.8.5.3 [Taxpayer Submitted Documents](#)
- 5.8.5.4 [Equity in Assets](#)
- 5.8.5.5 [Jointly Held Assets](#)
- 5.8.5.6 [Assets Held By Others as Transferees, Nominees, or Alter Egos](#)
- 5.8.5.7 [Cash](#)
- 5.8.5.8 [Securities and Stocks of Closely Held Entities](#)
- 5.8.5.9 [Life Insurance](#)
- 5.8.5.10 [Retirement or Profit Sharing Plans](#)
- 5.8.5.11 [Furniture, Fixtures, and Personal Effects](#)
- 5.8.5.12 [Motor Vehicles, Airplanes, and Boats](#)
- 5.8.5.13 [Real Estate](#)
- 5.8.5.14 [Accounts and Notes Receivable](#)
- 5.8.5.15 [Income-Producing Assets](#)
- 5.8.5.16 [Inventory, Machinery, Equipment, and Tools of the Trade](#)
- 5.8.5.17 [Business as a Going Concern](#)
- 5.8.5.18 [Dissipation of Assets](#)
- 5.8.5.19 [Retired Debt](#)
- 5.8.5.20 [Future Income](#)
- 5.8.5.21 [Future Income Collateral Agreements](#)
- 5.8.5.22 [Allowable Expenses](#)
- 5.8.5.23 [Conditional Expenses](#)
- 5.8.5.24 [Shared Expenses](#)
- 5.8.5.25 [Calculation of Future Income](#)
- 5.8.5.26 [Limited Liability Companies \(LLC\) Issues](#)
- 5.8.5.27 [Offer in Compromise Submitted on Cases Involving Collection Statute Expiration Date Extensions](#)
- 5.8.5.28 [Payment Terms](#)
- Exhibit 5.8.5-1 [Periodic Payments Limited by Small Amount Due](#)
- Exhibit 5.8.5-2 [Periodic Payments Limited by Application of Payment From Equity in Assets](#)

Manual Transmittal

September 30, 2013

Purpose

(1) This transmits a revision for IRM 5.8, Offer in Compromise, Section 5 – Financial Analysis.

Material Changes

(1) The procedures in this section of the IRM apply to Offer Examiners, Offer Specialists, and other IRS employees who conduct investigations of a taxpayer's offer in compromise.

- 5.8.5.2 Includes additional discussion on the calculation of taxpayer's ability to pay via an installment agreement.
- 5.8.5.3 Includes reference to use of current information.
- 5.8.5.3.1 Includes guidance on when is necessary to determine the source of offer funds.
- 5.8.5.3.1.1 Includes additional guidance on use of RTVUE information.
- 5.8.5.3.1.2 Restricted information on when a credit report is required.
- 5.8.5.3.1.3 Provides additional discussion on use of internal sources and requests for information.
- 5.8.5.4 Provides additional guidance on when field calls required and actions to take when equity in assets exist.
- 5.8.5.5.1 Renumbered to 5.8.5.15 and revised to incorporate Interim Guidance memorandum (IGM) number SBSE-05-0512-041
- 5.8.5.5.2 Renumbered to 5.8.5.6
- 5.8.5.6 Renumbered to 5.8.5.7 and revised to incorporate Interim Guidance memorandum (IGM) number SBSE-05-0512-041
- 5.8.5.6.1 Renumbered to 5.8.5.7.1
- 5.8.5.7 Renumbered to 5.8.5.8 and edited to include additional considerations involving offers from closely held corporations.
- 5.8.5.8 Renumbered to 5.8.5.9
- 5.8.5.9 Renumbered to 5.8.5.10 and revised to included guidance on when to allow early withdrawal penalty and tax consequences against retirement account equity.
- 5.8.5.10 Renumbered to 5.8.5.11
- 5.8.5.11 Renumbered to 5.8.5.12 and revised to incorporate Interim Guidance memorandum (IGM) number SBSE-05-0512-041
- 5.8.5.12 Renumbered to 5.8.5.13 and revised to included additional guidance on sources to use and documents to request for verification of real property values.
- 5.8.5.13 Renumbered to 5.8.5.14
- 5.8.5.14 Renumbered to 5.8.5.16
- 5.8.5.15 Renumbered to 5.8.5.17 and revised to incorporate Interim Guidance memorandum (IGM) number SBSE-05-0512-041
- 5.8.5.16 Renumbered to 5.8.5.18 and revised to incorporate Interim Guidance memorandum (IGM) number SBSE-05-0512-041
- 5.8.5.17 Renumbered to 5.8.5.19 and revised to discuss when the value of the business as a going concern should be included in reasonable collection potential.
- 5.8.5.18 Renumbered to 5.8.5.20
- 5.8.5.19 Renumbered to 5.8.5.21
- 5.8.5.20 Renumbered to 5.8.5.22

- 5.8.5.20.3 Renumbered to 5.8.5.22.3 and revised to incorporate Interim Guidance memorandum (IGM) number SBSE-05-0512-041
- 5.8.5.20.4 Renumbered to 5.8.5.22.4 and revised to incorporate Interim Guidance memorandum (IGM) number SBSE-05-0512-041
- 5.8.5.21 Renumbered to 5.8.5.23
- 5.8.5.22 Renumbered to 5.8.5.24 and revised to provide guidance on the calculation of reasonable collection potential in situations involving separate offers from parties sharing expenses.
- 5.8.5.23 Renumbered to 5.8.5.25 and revised to incorporate Interim Guidance memorandum (IGM) number SBSE-05-0512-041
- 5.8.5.23.1 Renumbered to 5.8.5.25.1
- 5.8.5.24 Renumbered to 5.8.5.26
- 5.8.5.24.1 Renumbered to 5.8.5.26.1
- 5.8.5.25 Renumbered to 5.8.5.27 and renamed - Periodic Payment Offer in Compromise Received After Collection Statute Expiration Date Extension
- 5.8.5.26 Renumbered to 5.8.5.28 and revised to incorporate changes based on terms of the offer being limited to 24 months.
- 5.8.5.27 Renamed and revised to discuss the determination of the taxpayer's ability to full pay via current installment agreement guidelines when a waiver was secured prior to March 24, 1998.
- Exhibit 5.8.5 - 1 Removed
- Exhibit 5.8.5 - 2 Renumbered to Exhibit 5.8.5 - 1 and retitled to Periodic Payments Limited by Small Amount Due
- Exhibit 5.8.5 - 3 Renumbered to Exhibit 5.8.5 - 2 Periodic Payments Limited by Application of Payment From Equity in Assets

Effect on Other Documents

This material supersedes IRM 5.8.5, dated 10/22/2010 and incorporates Interim Guidance Memorandum Number SBSE-05-0512-041 dated May 21, 2013 titled, Interim Guidance Memorandum for Offer in Compromise Defined in IRM 5.8.5, Financial Analysis.

Audience

SB/SE Collection and Campus Compliance employees.

Effective Date

(09-30-2013)

Scott D. Reisher
Director Collection Policy

5.8.5.1 (09-23-2008)

Overview

1. This chapter provides instructions for analyzing the taxpayer's financial condition to determine reasonable collection potential (RCP). IRM 5.15, *Financial Analysis Handbook*, provides information on analyzing and verifying of financial information and should be used in conjunction with this section.

5.8.5.2 (09-30-2013)

Ability to Pay

1. The ability to pay determination should be made on the liability(s) due at the time the offer was submitted.
2. The initial calculation should be completed to determine if the taxpayer can full pay through installment agreement guidelines based on submitted substantiation including application of the standards and allowances. It is appropriate to use Decision Point (AOC) or Decision IA (IRWeb or SERP) to ensure accruals are taken into consideration. This computation should be completed prior to initial financial analysis.

Exception:

If the taxpayer indicates special circumstances or effective tax administration criteria, then the offer investigation should continue without completing the initial calculation to determine if the taxpayer can full pay via an installment agreement.

3. If the initial calculation indicates the taxpayer cannot full pay through an installment agreement, continue the investigation to determine the RCP. Refer to IRM 5.8.4.3, *Doubt as to Collectibility* involving situations when the calculated amount potentially received through a PPIA, which does not fully pay the liability, approximates the outstanding balance.
4. Document the history supporting your determination.

5.8.5.3 (09-30-2013)

Taxpayer Submitted Documents

1. Collection Information Statements (CIS) and related documentation submitted with an OIC should reflect current information as of the date of the OIC submission.
2. If during the investigation, the financial information becomes older than 12 months and it appears significant changes have occurred, a request for updated information may be appropriate. Prior to contacting the taxpayer, attempt to secure the necessary verification through internal sources. If taxpayer contact is required, contact via telephone is preferred to expedite case processing.
3. In certain situations, information may become outdated due to significant processing delays caused by the Service and through no fault of the taxpayer. In those cases, it may be appropriate to rely on the outdated information if there is no indication the taxpayer's overall situation has significantly changed. Judgment should be exercised to determine whether, and to what extent, updated information is necessary. If there is any reason to believe the taxpayer's situation may have significantly changed (i.e. change of employment, loss of job, etc.), and substantiation cannot be secured via internal research, secure a new CIS.

5.8.5.3.1 (09-30-2013)

Verification

1. A thorough verification of the taxpayer's CIS, Form 433-A(OIC) and/or Form 433-B(OIC), involves reviewing taxpayer submitted documentation and information available from internal sources. As a general rule, additional documentation should not be requested when the information is readily available from internal sources or it would not change the recommendation.
2. Collection issues that have been previously addressed during a prior investigation will not be re-examined unless there is convincing evidence that such reinvestigation is absolutely necessary. Investigative actions that are less than 12 months old may be used to evaluate the OIC, unless the taxpayer indicates there has been a material change or there is evidence indicating his financial situation has changed in the intervening months.

Example:

If a Revenue Officer has completed a full CIS analysis, including verification of assets, income, and expenses, and has made a determination of the fair market value (FMV) of assets, equity in assets and monthly ability to pay, this information should not be re-investigated. The OE or OS should use the RO's determinations to calculate the RCP. However, any differences between the taxpayers and the RO's CIS should be resolved by contacting and inquiring with the taxpayer, by phone, if possible.

3. Prior to accepting an offer, it may be appropriate to contact the taxpayer to determine the source of the offer funds.

5.8.5.3.1.1 (09-30-2013)

Verification through Internal Research

1. Verify as much of the CIS as possible through internal sources.
2. The following internal and external information sources should be considered. Discuss any major discrepancies with the taxpayer/POA and document the history. This list is not all inclusive.

Internal Sources	Review to
ENMOD and INOLES	Identify/research cross reference TINs for related business activity not declared on the CIS.
SUMRY, IMFOL and BMFOL	Verify full compliance and determine if there are any open control bases or freeze codes.
RTVUE (IMF)/ BRTVUE (BMF), TRDBV, or TDS	Compare the amount of reported income and expenses declared on the CIS to verify the amounts are within reason.
IRPTRO	<ul style="list-style-type: none"> • Compare real estate tax and mortgage interest deductions to the amounts declared on the CIS. Discuss any difference with the taxpayer to determine the reason for the increase or decrease. • Identify accounts not reported on the CIS, such as certificates of deposit or investment accounts. • Verify sources of income, such as employers, bank accounts, and retirement accounts. • Identify recent transferred or disposed of assets, such as stocks and bonds.
State Motor Vehicle Records	Identify motor vehicles currently registered to the taxpayer but not declared on the CIS. Also check for ownership in business names.
Real Estate Records	<ul style="list-style-type: none"> • Identify real property titled to the taxpayer but not declared on the CIS. • Identify property held by transferee, nominee, or alter ego. Also check for ownership in business names.
Accurint	Identify other aliases, related business entities, UCC filings, properties, judgments, and vehicle registrations. In most instances, the OE/OS should only be using current information to verify the taxpayer's ownership or interest in assets.
Credit Bureau Report	<ul style="list-style-type: none"> • Identify past residences and employers. • Verify competing lien holders, balances due and payment history. • Identify property not listed on CIS.

5.8.5.3.1.2 (09-30-2013)

Securing Credit Reports to Verify Taxpayer Information

1. Based on your discretion and judgment, consider securing a full credit report to assist in locating taxpayer assets, verifying financial information, and/or determining an alternative resolution to an OIC. The case history must be documented with the reason(s) for the request.

2. =====

Note:

=====

3. All credit report requests require managerial approval.
4. When computing equity in real estate or allowable motor vehicles, and the taxpayer has not submitted substantiation of loan balances claimed on the Form 433-A(OIC), OE/OS should request a credit report and use the loan balance information to determine the current balances of any relevant loans from commercial lenders. If the loan is from a private source, it may be necessary to contact the taxpayer/representative for the information.
5. Procedures for destruction of credit reports for OICs should be as follows:
 - A. For rejected cases, all credit reports should be destroyed upon closure of the case after the 45-day period for appeal has passed. If the taxpayer files for appeal, the credit report should remain with the file and be forwarded to Appeals. Appeals will then be responsible for pulling and destroying the report. This is in accordance with IRM 5.1.18.17.2.8, *Disposal of Credit Information*.
 - B. For accepted cases, the credit report should be destroyed after all approving signatures have been obtained.
 - C. For all other closures (returned, withdrawn, terminated), all credit reports should be pulled after the managerial review and approval.
6. In all cases, where a credit report was secured, the case history must be documented that a credit report was secured and reviewed. The documentation must include a summary of any information relevant to the offer recommendation.

5.8.5.3.1.3 (09-30-2013)

Verification through Taxpayer Contact

1. If not present in the file when assigned for investigation and internal sources are not available or indicate a discrepancy, appropriate documentation should be requested from the taxpayer either verbally or in writing, to verify the information on the CIS. A request for additional information and verification should be based on the taxpayer's circumstances and the information must be necessary to make an informed decision on the acceptability of the taxpayer's OIC. Do not make a blanket request for information that would have no impact on the case resolution. Do not request any information that is available internally.

Note:

Any request for information from the taxpayer that is available via internal sources must include documentation in the AOIC/ICS history with the reason for the request.

2. The chart below provides guidance to the types of information that may be needed to verify the CIS if not included or addressed with the original Form 656, 433-A(OIC), or 433-B(OIC). This list is not all inclusive.

Note:

Generally, current is defined as 3 months as of the date the Form 656 was signed, not the date the Form 656 was received.

Taxpayer Documentation

Wage Earner — three months of wage statements or a current wage statement with year-to-date figures

Review to

- Compare earnings to the income declared on the CIS.
- Verify adequate tax withholding.
- Identify payroll deductions.
- Identify deductions to savings accounts, credit union accounts, or retirement accounts.

Self-employed – proof of gross income, profit and loss (P&L) statement from the most recent 6 - 12 month period,

Compare earnings to the income declared on the CIS

Note:

In certain instances, more specific information may be required from the taxpayer including accounts receivable listings, commission statements, etc).

Bank statements – three current months showing the monthly transactions, withdrawals, and deposits for IMF accounts and six months for operating businesses

Compare deposit amounts to income reported on the tax return and CIS. Question deposits that exceed reported income and unusual expenses paid.

Note:

Only consider requesting specific cancelled checks and deposit items if questionable items cannot be adequately explained. *IRM 5.8.5.7, Cash.*

Retirement account statements and brochures, brokerage account statements, securities, or other investments
Life insurance policies
Motor vehicle statements from the lender

Identify the type (mandatory/voluntary), conditions for borrowing, conditions for withdrawal, and current market value. *IRM 5.8.5.10, Retirement or Profit Sharing Plans.* Identify the cash value of the policy. *IRM 5.8.5.9, Life Insurance.* Verify monthly payment and payoff amount. *IRM 5.8.5.12, Motor Vehicles, Airplanes and Boats.*

Real estate lender statements

Identify the payoff amount and monthly payment expense and verify the property address on the real estate or lender statement. *IRM 5.8.5.13, Real Estate.*

Court orders and court ordered payments for child support/alimony

Verify responsibility for child support/alimony, that the payments are actually being made, and the length of time payments are required to be made.

Note:

If a copy of the court order is not provided or the payment cannot be verified, the payment will be disallowed as an expense.

5.8.5.4 (09-30-2013) Equity in Assets

1. Proper asset valuation is essential to determine RCP. In some cases, it may be necessary to review the following documents to determine undisclosed assets or income and assist in valuing the property:
 - A. Divorce decrees or separation agreements to determine the disposition of assets in the property settlements;
 - B. Homeowners or renters insurance policies and riders to identify high value personal items such as jewelry, antiques, or artwork;
 - C. Financial statements recently provided to lending institutions or others to identify assets or income that may not have been revealed on the CIS.
2. For an on-going business, field calls should be made to validate the existence and value of business assets and inventory. This may require an Other Investigation (OI) to a Collection Field revenue officer. If a field call has been previously made and assets have been valued and documented, a field call would not be required. The offer specialist should make the field call, if practical, or initiate an OI to request that a field call be made by another RO if the taxpayer operates outside the offer specialist's commuting area.

Note:

If after discussion with field RO group manager, it is determined a field call cannot be made in a reasonable period of time, due to the taxpayer's geographic location, the ICS history will be documented and the offer acceptance recommendation, if appropriate, may be submitted for approval.

3. Field calls may be made on non-operating businesses or individuals' after all internal research has been exhausted. In those cases, a Form 2209 or ICS Other Investigation may be issued. Issuance of other investigations in these instances should be rare.
4. Assets should not be eliminated or valued at zero dollars simply because the taxpayer is unable to borrow against the equity in the asset or the Service chooses not to take enforcement action against the asset. However, in some situations based on the facts of the case, special circumstances may be present that will allow an offer to be accepted for less than RCP, in accordance with *IRM 5.8.11, Effective Tax Administration.*

Note:

If the offer is being rejected or withdrawn based on the equity in an asset which the taxpayer is not able to liquidate or borrow against, the OE/OS should determine an appropriate resolution to the taxpayer's account. Refer to *IRM 5.8.7.10- Alternative Resolutions.*

5.8.5.4.1 (09-30-2013) Net Realizable Equity

1. For offer purposes, assets are valued at net realizable equity (NRE). Net realizable equity is defined as quick sale value (QSV) less amounts owed to secured lien holders with priority over the federal tax lien, if applicable, and applicable exemption amounts. See *IRM 5.17.2, Federal Tax Liens* for more information on lien priorities.
2. QSV is defined as an estimate of the price a seller could get for the asset in a situation where financial pressures motivate the owner to sell in a short period of time, usually 90 calendar days or less. Generally, QSV is an amount less than fair market value (FMV). For purposes of determining the taxpayer's reasonable collection potential (RCP), information provided by the taxpayer and third party sources available to the OE/OS should be reviewed to arrive at an appropriate FMV of the property.

If the OE/OS determines the FMV of an asset to be greater than the amount listed by the taxpayer, a discussion with the taxpayer/representative is required to determine if the taxpayer has any additional information to assist in correctly determining the FMV of the asset. If the OE/OS cannot reach agreement with the taxpayer on the appropriate value of an asset, a discussion with the manager should be held to determine if any additional resources are available to verify the correct valuation is being used in the calculation of RCP.

3. Normally, QSV is calculated at 80% of FMV. A higher or lower percentage may be applied in determining QSV when appropriate, depending on the type of asset and current market conditions. If, based on the current market and area economic conditions, it is believed that the property would quickly sell at full FMV, then it may be appropriate to consider QSV to be the same as FMV. This is occasionally found to be true in real estate markets where real estate is selling quickly at or above the listing price. As long as the value chosen represents a fair estimate of the price a seller could get for the asset in a situation where the asset must be sold quickly (usually 90 calendar days or less) then it would be appropriate to use a percentage other than 80%. Generally, it is the policy of the Service to apply QSV in valuing property for offer purposes.
4. When a particular asset has been sold (or a sale is pending) in order to fund the offer, no reduction for QSV should be made. Instead, verify the actual sale price, ensuring that the sale is an arms length transaction, and use that amount as the QSV. A reduction may be made for the costs of the sale and the expected current year tax consequence to arrive at the NRE of the asset. Consider reviewing a lender statement that estimates proposed closing costs.
5. When the value of an asset is other than the QSV, document the case history defining the decision and the basis for the value used.

5.8.5.5 (10-22-2010) Jointly Held Assets

1. When taxpayers submit separate offers but have jointly owned assets, allocate equity in the assets equally between the owners. However:

If...	Then...
The joint owners demonstrate their interest in the property is not equally divided	Allocate the equity based on each owner's contribution to the value of the asset.
The joint owners have joint and individual tax liabilities included in the offer investigation	Apply the equity first to the joint liability and then to the individual liability.
2. For property held as tenancies by the entirety when the tax is owed by only one spouse, the taxpayer's portion is usually 50% of the property's NRE.
3. It may be necessary to review applicable state law, including the effect community property and registered domestic partnership laws have on property ownership rights in order to determine the taxpayers interest in assets that should be included in RCP.

5.8.5.6 (09-30-2013) Assets Held By Others as Transferees, Nominees, or Alter Egos

1. A critical part of the financial analysis is to determine what degree of control the taxpayer has over assets and income in the possession of others. This is especially true when the offer will be funded by a third party.
2. When these issues arise, apply the principles in IRM 5.17.14, *Fraudulent Transfer and Transferees and Other Third Party Liability*, or request a Counsel opinion. Document the valuation and reason for including any assets held by a transferee, nominee or alter ego, including the identification of any documents which substantiate the determination. The taxpayer/representative should be contacted to discuss the findings, preferably by telephone to expedite the process, and if necessary, request any additional documents or verification.
3. If the taxpayer has a beneficial interest in the asset or income stream, then the value should be reflected in the RCP. Document the valuation and reason for including any assets held by a transferee, nominee or alter ego, including the identification of any documents which substantiate the determination. This may require the taxpayer to submit completed financial statements for the entity identified.
4. If the taxpayer is unwilling or unable to provide the financial information requested; consider assigning a value based on available information. If information necessary to determine whether the taxpayer's offer should be accepted is not provided, consider a return as discussed in IRM 5.8.7.2.2.4, *Return for Failure to Provide Information*. The return recommendation should include a thorough discussion on the reasons for returning the taxpayer's offer including the documents requested and why they are necessary to make the offer recommendation.
5. Prior to returning an offer because documents relating to the transferee/nominee/alter ego issue(s) are not submitted, review documents already provided by the taxpayer and consider if the existing information is sufficient to calculate the RCP. Document the valuation and reason for including any assets held by a nominee or alter ego, including the identification of any documents which substantiate the determination. If the value of the taxpayer's assets, other than transferred property, is greater than the offer amount, the offer should be recommended for rejection. If a rejection recommendation is made, the taxpayer's failure to provide requested information and discussion of the transferee/nominee issues should be included in the closing narrative in the ICS history or AOIC remarks.
6. If the request for information is a request for verification of possible additional income and the offer has already been determined to be a full pay, proceed with rejection of the offer. If a rejection recommendation is made, the taxpayer's failure to provide requested information and discussion of the transferee/nominee/alter ego issues should be included in the recommendation narrative.
7. It is not necessary to actually seek or obtain any specific legal remedy in order to address these issues in an offer. However, the offer file must be clearly documented with the basis for including the value of a transferred asset in the RCP. Care should be taken so that the determination to include assets held by others is reasonable. The case decision should be documented.

5.8.5.7 (09-30-2013) Cash

1. Use the amount listed on the Form 433-A (OIC) for the amount of cash in the taxpayer's bank accounts. Reduce the total amount listed by \$1,000.

Note:

The \$1,000 reduction only applies to individual bank accounts.

Exception:

If the total amount listed on the Form 433-A (OIC) is over \$1,000 and you have reason to believe the money will be used to pay for the taxpayer's monthly allowable living expenses, do not include it on the AET.

2. Review checking account statements over a reasonable period of time, generally three months for wage earners and six months for taxpayers who are non wage earners.. Look for any unusual activity, such as deposits in excess of reported income, withdrawals, transfers, or checks for expenses not reflected on the CIS. The OE/OS should discuss any inconsistencies with the taxpayer.

Example:

(1) The taxpayer lists \$10,000 on Form 433-A (OIC) The taxpayer's allowable living expenses are \$3,000. Include \$6,000 (\$10,000 less \$1,000 less \$3,000) as an asset value on the AET.

Example:

(2) The taxpayer lists \$3,000 on the Form 433-A (OIC) and his allowable living expenses are \$2,700. Do not include any amount on the AET since the \$300 difference is less than \$1000.

3. Review savings account statements over a reasonable period of time, generally three months.
 - If the account has little withdrawal activity, use the ending balance on the latest statement, less \$1,000 if not previously applied to another account, as the asset value for the AET.
 - If it is apparent that the account is used for paying monthly living expenses, treat it as a checking account and follow the instructions in paragraphs (1) and (2) above to determine its value.
4. If analysis of the bank statement reveals large amounts of recently expended funds, *IRM 5.8.5.18, Dissipation of Assets*, for a full discussion of the treatment of dissipated assets.
5. If the taxpayer offers the balances of accounts (for example, certificate of deposit, savings bonds, etc.) to fund the offer, allow for any penalty for early withdrawal and the expected current year tax consequence.
6. Include any deposits made with the offer as an asset on the AET. Deposits are refundable, and must be considered an asset.
7. For funds on deposit with the OIC, allow as an encumbrance any amount borrowed if the monies must be repaid. Appropriate documentation must be provided.
8. Document AOIC or ICS with how the value of cash listed on the Asset/Equity Table was determined..

5.8.5.7.1 (09-30-2013)

Treatment of Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA) Payments on the Asset/Equity Table (AET)

1. Do not include any TIPRA payments (lump sum or periodic) as a separate asset on the AET.
2. Payments in excess of any required TIPRA payment(s) are treated as a tax payment and will not be included on the AET, unless designated as a deposit by the taxpayer.

Note:

The Form 656, Offer in Compromise, allows a taxpayer to treat the excess payment as a deposit in Section 6 of the form. Thus, check this section of the form when conducting the analysis.

5.8.5.8 (09-30-2013)

Securities and Stocks of Closely Held Entities

1. Financial securities are considered an asset and their value should be determined and included in the RCP when investigating an offer.
2. When the taxpayer will liquidate the investment to fund the offer, allow associated fees in addition to any penalty for early withdrawal and the current year tax consequence.
3. To determine the value of publicly traded stock, research a daily paper, other internal sources, or inquire with a broker for the current market price. Then, allow for the estimated costs of the sale to arrive at the QSV.
4. To determine the value of closely held stock that is either not traded publicly or for which there is no established market, consider the following methods of valuing the company and assign the applicable portion of the company's value to the taxpayer's stock or other interest:
 - Secure and verify a CIS.
 - Review recent year's annual report to stockholders.
 - Review recent year's corporate income tax returns.
 - Request an appraisal of the business as a going concern by a qualified and impartial appraiser.

Note:

Use business appraisals only when the cost of the appraisal is justified by the complexity of the business activity.

5. When a taxpayer holds only a negligible or token interest, has made no investment and exercises no control over the corporate affairs, it is permissible to assign no value to the stock.

Note:

When a taxpayer claims they have no interest in a closely held corporation or family owned business, yet the facts reveal their interest may have been transferred or assigned, refer to *IRM 5.8.4.21, Responsibility of Offer Examiners, Offer Specialists, and Field Revenue Officers*.

6. Additional considerations involving offers from closely held entities:
 - Compensation to Corporate Officers – Wages and/or other compensation, (i.e., draws) paid to corporate officers in excess of applicable expenses allowable per National and Local standards should generally not be allowed as business expenses. The OS should use judgment in determining whether the officer compensation is deemed excessive. The officer's ownership interest in the business and any control over the compensation received should also be a consideration.
 - Stock Holder Distributions and Repayment of Loans to Officers – These expenses are discretionary in nature. Distributions of this nature made after the incurrence of the tax delinquency should be evaluated under the dissipated asset provisions. Loans to officers should be considered an account receivable and valued according to their collectibility.
 - Stock Held by Beneficial Owner - The value of stock ownership in a closely held corporation/LLC should be included in the RCP of a taxpayer submitting an offer to compromise their individual liabilities. The value of the stock should not be excluded from RCP solely on the basis that an offer was also submitted by the closely held entity.

5.8.5.9 (09-30-2013)

Life Insurance

1. Identify the type, conditions for borrowing or cancellation, and the current loan and cash values.
2. Life insurance as an investment (e.g., whole life) is not considered necessary.
3. When determining the value in a taxpayer's insurance policy, consider:

If...	Then...
The taxpayer will retain or sell the policy	Equity is the cash surrender value.

to help fund the offer

The taxpayer will borrow on the policy to Equity is the cash loan value less any prior policy loans or automatic premium loans required to keep the contract in force. See help fund the offer *IRM 5.8.5.23, Conditional Expenses*, for allowance of the payment.

4. Reasonable premiums for term life policies may be allowed as a necessary expense. Verify the amount of the premiums and ensure payments are being made.

5.8.5.10 (09-30-2013)

Retirement or Profit Sharing Plans

1. Funds held in a retirement or profit sharing plan are considered an asset and must be valued for offer purposes.
2. Contributions to voluntary retirement plans are not a necessary expense. Review of the retirement plan document may be necessary to determine the taxpayer's benefits and options under the plan.
3. It may be necessary to secure a copy of the plan to determine the taxpayer's vested interest and ability to borrow.
4. When determining the value of a taxpayer's pension and profit sharing plans consider:

If...	And...	Then...
The account is an Individual Retirement Account (IRA), 401(k), or Keogh Account	The taxpayer is not retired or close to retirement	Equity is the cash value less any tax consequences for liquidating the account and early withdrawal penalty, if applicable.
The account is an Individual Retirement Account (IRA), 401(k), or Keogh Account	The taxpayer is retired or close to retirement	<ul style="list-style-type: none">• Equity is the cash value less any tax consequences for liquidating the account and early withdrawal penalty, if applicable.• The plan may be considered as income, if the income from the plan is required to provide for necessary living expenses.
The contribution to a retirement plan is required as a condition of employment	The taxpayer is able to withdraw funds from the account	Equity is the amount the taxpayer can withdraw less any tax consequences and early withdrawal penalty, if applicable.
The contribution to an employer's plan is required as a condition of employment	The taxpayer is unable to withdraw funds from the account but is permitted to borrow on the plan	Equity is the available loan value.
Any retirement plan that may not be borrowed on or liquidated until separation from employment	The taxpayer is retired, eligible to retire, or close to retirement	Equity is the cash value less any tax consequences for liquidating the account and early withdrawal penalty, if applicable, or consider the plan as income if the income from the plan is necessary to provide for necessary living expenses.
The plan may not be borrowed on or liquidated until separation from employment and the taxpayer has no ability to access the funds within the terms of the offer	The taxpayer is not eligible to retire until after the period for which we are calculating future income	The plan has no equity.
The plan includes a stock option	The taxpayer is eligible to take the option	Equity is the value of the stock at current market price less any expense to exercise the option.

5.8.5.11 (10-22-2010)

Furniture, Fixtures, and Personal Effects

1. The taxpayer's declared value of household goods is usually acceptable unless there are articles of extraordinary value, such as antiques, artwork, jewelry, or collector's items. Exercise discretion in determining whether the assets warrant personal inspection.
2. There is a statutory exemption from levy that applies to the taxpayer's furniture and personal effects. This exemption amount is updated on an annual basis.

Note:

This exemption applies only to individual taxpayers.

3. When determining the value consider the following:

If...	Then...
The taxpayer qualifies as head of household, single, or married	Grant a reduction in the value of personal effects for the levy exemption amount.
The property is owned jointly with any person who is not liable for the tax	Determine the value of the taxpayer's proportionate share of property before allowing the levy exemption.
Some of the furniture or fixtures are used in a business	They are not personal effects, but they may qualify for the levy exemption as tools of a trade.
If the property has an encumbrance with priority over the NFTL	Allow the encumbrance in addition to the statutory exemption.

5.8.5.12 (09-30-2013)

Motor Vehicles, Airplanes, and Boats

1. Equity in motor vehicles, airplanes, and boats must be determined and included in the RCP. The general rule for determining NRE, as discussed in *IRM 5.8.5.4.1, Net Realizable Equity*, applies when determining equity in these assets. Unusual assets such as airplanes and boats may require an appraisal to determine FMV, unless the items can be located in a trade association guide. The case file should document how the values were determined.
2. It is not necessary to personally inspect automobiles used for personal transportation. When it appears reasonable, accept the taxpayers stated value. If the taxpayer failed to provide the value or the value appears to be unreasonable, consult a trade association guide. Generally, the Private Party or equivalent value should be used. In most cases, the vehicle will be discounted for the FMV to 80% to arrive at the QSV.
3. Exclude \$3,450 per car from the QSV of vehicles owned by the taxpayer(s) and used for work, the production of income, and/or the welfare of the taxpayer's family (two cars for joint taxpayers and one vehicle for a single taxpayer).
4. When these assets are used for business purposes, they may be considered income producing assets. See also, *IRM 5.8.5.15, Income Producing Assets*, for a full discussion on the treatment of income producing assets.

5.8.5.13 (09-30-2013)

Real Estate

1. Verify types of ownership through warranty and mortgage deeds.
2. The FMV of the property must be established. FMV is defined as the price at which a willing seller will sell and a willing buyer will pay for the property, given time to obtain the best and highest possible price. When a question of value arises, a discussion with the taxpayer and/or representative may be necessary to establish an accurate value. In most instances, the following information, available through internal research, should be used to verify the FMV listed on the Form 433-A(OIC)/433-B(OIC) or provided by the taxpayer:

- Accurint.
- Real estate tax assessment.
- Market comparable.
- Recent purchase price.

If internal research does not provide an accurate valuation, the OE/OS may request additional documentation including:

- An existing contract to sell.
- Recent appraisals.
- Homeowner's insurance policy(s).

Note:

Additional documentation from the taxpayer should only be requested based on the facts and circumstances of the case.

3. Once the FMV of real estate is established, a determination regarding a reduction of value for offer purposes must be made. Procedures outlining reduction to QSV are discussed in *IRM 5.8.5.4.1, Net Realizable Equity*.
4. Equity in real estate is included when calculating the taxpayer's RCP in an acceptable offer amount. See *IRM 5.8.5.15, Income Producing Assets*, relating to taxpayers whose sole business is real estate rental/leasing and/or development.
5. The OE/OS should document what methods were used in determining the value of the property and the reason for applying any value other than the QSV.
6. For real estate and other related property held as tenancies by the entirety when the tax is owed by only one spouse, the taxpayer's portion is usually 50% of the property's NRE.

5.8.5.14 (10-22-2010)

Accounts and Notes Receivable

1. Accounts and notes receivable are considered assets unless a determination is made to treat them as part of the income stream when they are required for the production of income. When it is determined that liquidation of a receivable would be detrimental to the continued operation of an otherwise profitable business, it may be treated as future income.
2. Accounts Receivable – Value all accounts receivable at 100% of the balance due, unless the taxpayer can substantiate the account has been delinquent over 90 days. Accounts receivable that are current (i.e. less than 90 days past due) generally should not be discounted at Quick Sale Value (QSV). If the account is determined to be delinquent it may be discounted appropriately based on the age of the receivable and the potential for collection. However, supporting documentation is required to substantiate accounts the taxpayer claims are delinquent over 90 days; such as a request for the taxpayer to provide an aging report. If the account is over 90 days and the taxpayer fails to provide substantiation, it will be valued at 100%.
3. To determine the value of accounts receivable:
 - A. When the receivables have been sold at a discount or pledged as collateral on a loan, apply the provisions of IRC 6323(c) to determine the lien priority of commercial transactions and financing agreements.
 - B. Closely examine accounts of significant value that the taxpayer is not attempting to collect, or that are receivable from officers, stockholders, or relatives.
4. To determine the value of a note receivable, consider the following:
 - Whether it is secured and if so by what asset(s),
 - What is collectible from the borrower, and
 - If it could be successfully levied upon.

5.8.5.15 (09-30-2013)

Income-Producing Assets

1. When investigating the RCP for an offer that includes business assets, an analysis is necessary to determine if certain assets are essential for the production of income. When it has been identified that an asset or a portion of an asset is necessary for the production of income, it is appropriate to adjust the income or expense calculation for that taxpayer to account for the loss of income stream if the asset was either liquidated or used as collateral to secure a loan to fund the offer.
2. When valuing income-producing assets:

<p>If...</p> <p>There is no equity in the assets</p> <p>There is equity and no available income stream (i.e. profit) produced by those assets</p> <p>There are both equity in assets that are determined to be necessary for the production of income and an available income stream produced by those assets</p> <p>An asset used in the production of income will be liquidated to help fund an offer</p> <p>A taxpayer borrows against an asset that is necessary for the production of income, and devotes the proceeds to the payment of the offer</p>	<p>Then...</p> <p>There is no adjustment necessary to the income stream.</p> <p>There is no adjustment necessary to the income stream. Consider including the equity in the asset in the RCP.</p> <ul style="list-style-type: none"> • Compare the value of the income stream produced by the income producing asset(s) to the equity that is available. • Determine if an adjustment to income or expenses is appropriate. <p>Adjusting the income to account for the loss of the asset may be appropriate.</p> <p>Allow the loan payment as an expense and consider the effect that loan will have on the future income stream.</p>
--	--
3. As a general rule, equity in income producing assets will not be added to the RCP of a viable, ongoing business; unless it is determined the assets are not critical to business operations.

Exception:

Equity in real property should be included in calculation of RCP.

Note:

Even though rental property may produce income for the taxpayer, the equity should be included in RCP. An adjustment to the taxpayer's future income value may be appropriate, if the taxpayer will be borrowing against or selling the property to fund the offer.

The following examples provide some guidance in evaluating equity and income produced by assets:

Example:

(1) A business depends on a machine to manufacture parts and cannot operate without this machine. The equity is \$100,000. The machine produces net income of \$5,000 monthly. The RCP should include the income produced by the machine, but not the equity. Equity in this machine will generally not be included in the RCP because the machine is needed to produce the income, and is essential to the ability of the business to continue to operate.

Note:

It is in the government's best interests to work with this taxpayer to maintain business operations, particularly in a bad economy.

Example:

(2) The same business in the prior example, but the business can continue to operate without the machine, i.e. the equipment is not used in the process of generating the key product of the business. The machine generates only \$500 net monthly income. Consider including the equity in the RCP and remove \$500 from the business income.

Example:

(3) A trucking company has ten trucks. Eight are fully encumbered and two trucks have no encumbrances and \$30,000 in equity. The two trucks combined generate net income of \$12,000 per year. The net income from the trucks is included in the calculation of Future Income Value. The equity in the trucks should not be included in RCP.

Example:

(4) The same trucks described in the previous example generate only \$1000 per year in net income, but have \$30,000 in equity. If the business can successfully operate without the two trucks, consider removing the income from the RCP and including the equity in the RCP.

Example:

(5) A BMF in-business taxpayer owns real property with net equity of \$50,000. The equity in the real property should be included in RCP, yet the taxpayer's net income should be adjusted for the loss of any rent/lease payments, or required loan payments.

Example:

(6) The property discussed in example (6) is leased and the taxpayer will borrow \$40,000 against the equity to fund the offer. The property generates \$1,500 of net income each month and the loan will require payments of \$1,000 per month. In this instance, the OE/OS will include in the calculation of RCP, the \$50,000 equity in the real property, plus the remaining \$500 (after allowing for the loan repayment) per month for the number of months based on the terms of the offer.

4. Based on the taxpayer's specific circumstances, there may instances where the income producing assets in a Subchapter S corporation may be treated similar to assets owned by a taxpayer's sole proprietorship business.

Factors to consider include:

- Type of business activity
- Taxpayer's occupation
- Current income received from the corporation as salary and the amount of future income that the taxpayer will receive
- Current income received from corporation as dividend
- Ability of the taxpayer to sell their interest in the corporation.

Example:

A taxpayer operates a construction company, as a Sub S corporation, in which his wages from the corporation are \$ 60,000 per year. The taxpayer's future income value of \$12,000 is based on net income of \$1000 per month for 12 months (cash offer). The taxpayer's interest in the corporate assets is equal to \$20,000. It is determined all assets are required for the production of income by the corporation. Since the taxpayer shows a net income from the business, the exclusion of income producing assets may be appropriate in this instance.

Example:

The same scenario as the previous example, yet the taxpayer does not draw a salary and the corporation shows a loss from the Sub S. Since the corporation is not generating any income for the taxpayer, the taxpayer's interest in the corporation should be included in RCP.

5. When considering equity in income producing assets and the effect on income streams and expenses, you must exercise sound judgment consistent with the unique facts of each case.

6. Each case must be thoroughly documented regarding equity decisions in income producing property

5.8.5.16 (10-22-2010)

Inventory, Machinery, Equipment, and Tools of the Trade

1. Inventory, machinery, and equipment may be considered income producing assets. *IRM 5.8.5.15, Income Producing Assets*, when it is determined that liquidation of these assets would be detrimental to the continued operation of an otherwise profitable business.

2. To determine the value of business assets, use the following:

- For assets commonly used in many businesses, such as automobiles and trucks, the value may be easily determined by consulting trade association guides.
- For specialized machinery and equipment suitable for only certain applications, consult a trade association guide, secure an appraisal from a knowledgeable and impartial dealer, or contact the manufacturer.
- When the property is unique or difficult to value and no other resource will meet the need, follow local procedure to request the services of an IRS valuation engineer.
- Consider asking the taxpayer to secure an appraisal from a qualified business appraiser.

Note:

Business appraisals should only be requested when the cost of the appraisal is justified by the complexity of the business activity and where there is a market for similar businesses in the taxpayer's location.

3. There is a statutory exemption from levy that applies to an individual taxpayer's tools used in a trade or business, which will be allowed in addition to any encumbrance that has priority over the NFTL. This exemption for tools of the trade generally does not apply to automobiles. The levy exemption amount is updated on an annual basis.

5.8.5.17 (09-30-2013)**Business as a Going Concern**

1. Evaluation of a business as a going concern is sometimes necessary when determining RCP of an operating business owned individually or by a corporation, partnership, or LLC. This analysis recognizes that a business may be worth more than the sum of its parts, when sold as a going concern.
2. To determine the value of a business as a going concern consider the value of assets, future income, and intangible assets such as:
 - Ability or reputation of a professional.
 - Established customer base.
 - Prominent location.
 - Well known trade name, trademark, or telephone number.
 - Possession of government licenses, copyrights, or patents.

Generally, the difference between what an ongoing business would realize if sold on the open market as a going concern and the traditional RCP analysis is attributable to the value of these intangibles.

3. Request the assistance of an IRS valuation engineer when a difficult or complex valuation is necessary.
4. When determining the equity to include in RCP for an individual taxpayer who has an interest in a business entity, consideration should be given to the taxpayer's control over the business.
5. Generally, the value of a business as a going concern would not be included in RCP of a viable, ongoing business, unless the value is substantially greater than the income produced by the business.

Example:

The taxpayer operates a business which holds a liquor license which is transferable and valued at \$100,000. The net income from the business is \$1,000 per month. The value of the liquor license should be included in RCP, yet the taxpayer's net income should be adjusted and/or anticipated additional expenses allowed.

6. The justification for the value used should be clearly documented in the case history.

5.8.5.18 (09-30-2013)**Dissipation of Assets**

1. Inclusion of dissipated assets in the calculation of the reasonable collection potential (RCP) is no longer applicable, except in situations where it can be shown the taxpayer has sold, transferred, encumbered or otherwise disposed of assets in an attempt to avoid the payment of the tax liability or used the assets or proceeds (other than wages, salary, or other income) for other than the payment of items necessary for the production of income or the health and welfare of the taxpayer or their family, after the tax has been assessed or within six months prior to the tax assessment.
2. Generally, a three year time frame will be used to determine if it is appropriate to include a dissipated asset in RCP. Include the year of submission as a complete year in the calculation.

Example:

If the offer is submitted in 2012, any asset dissipated prior to 2010 should not be included.

- If the tax liability did not exist prior to the transfer or the transfer occurred prior to the taxable event giving rise to the tax liability, generally, a taxpayer cannot be said to have dissipated the assets in disregard of the outstanding tax liability.
- If a taxpayer withdraws funds from an IRA to invest in a business opportunity but does not have any tax liability prior to the withdrawal, the funds were not dissipated.

Note:

The scope of an offer investigation should not be expanded beyond the requirements defined in *IRM 5.8.5.4, Equity in Assets*, for the sole purpose of attempting to locate dissipated assets.

3. If it is determined inclusion of a dissipated asset is appropriate and the taxpayer is unwilling or unable to include the value of the dissipated asset in the offer amount, the offer should be rejected as not in the government's best interest. Although the offer is being rejected under not in the government's best interest criteria, a calculation of an acceptable offer amount based on the equity in assets, the value of future income, and the amount attributable to the dissipated asset(s) should be provided with the rejection recommendation.

Note:

Even if the transfer and/or sale took place more than three years prior to the offer submission, it may be appropriate to include the asset in the calculation of RCP if the asset transfer and/or sale occurred either within six months prior to or within six months after the assessment of the tax liability. If the transfer took place upon notice of or during an examination, these time frames may not apply based on the circumstances of the case. In any instance where the inclusion of a dissipated asset is being considered, a determination on whether the funds were used for health/welfare of the family or production of income would be appropriate

4. See below for examples of the types of situations where it may be appropriate to include, or not include, the value of an asset in the calculation of RCP. The examples provided are not meant to be all inclusive as each case must be evaluated on its own merit.
5. Examples of situations in which the value of an asset should be included in RCP include, but are not limited to:

Note:

Each of the examples in paragraph (5) occurred within three years prior to the offer submission or during the offer investigation, and the taxpayer dissipated the assets after incurring the tax liability, within six months prior to the tax assessment, during an examination, or after receiving notice of an examination.

Example:

(1) The taxpayer dissolved an IRA or other investment account to pay for specific non-priority items, i.e. child's wedding, child's university tuition, extravagant vacation, etc. .

Example:

(2) The taxpayer refinanced their house and used the funds to pay off credit card and non-secured debt. The credit cards were NOT used for payment of necessary living expenses and/or the production of income.

Example:

(3) The taxpayer inherited funds and used the funds for non-priority items (other than health/welfare of the family or production of income).

Example:

(4) The taxpayer closed bank/investment accounts and will not disclose how the funds were spent or if any funds remain.

Example:

(5) A taxpayer filed a CAP to avoid the filing of a NFTL and insisted the lien would impair his credit and his ability to successfully operate his business. After the non-filing was granted, the taxpayer fully encumbered his assets, used the funds for non-priority items (items not necessary for the production of income or the health and welfare of the taxpayer and/or their family) and then submitted an OIC.

Example:

(6) The taxpayer sold real estate and gifted the funds from the sale to family members.

6. Situations may occur in which the transfer happened over 3 years prior to the offer submission, yet because of the timing of the transfer (within six months prior to or six months after the tax assessment or after notification of an examination), the inclusion of the asset in RCP may be appropriate

Example:

The taxpayer filed tax returns for five years (2001 - 2005) in February of 2007, which were assessed in March 2007. In January of 2007, the taxpayer transferred real property to a family member for no consideration. An offer was submitted in January 2012. In this instance, since the transfer was within six months of the tax assessments, it may be appropriate to include the value of the real property in RCP.

Example:

The taxpayer received notification the IRS was beginning an audit of their 2008 tax return in January of 2010. The taxpayer transferred an investment account to a family member in February 2010. Additional tax liabilities based on the audit were assessed in March 2012. An offer was submitted in March 2013. In this instance, since the transfer took place after notification of the audit, it may be appropriate to include the value of the account in RCP.

7. Examples of situations in which the value of an asset should NOT be included in RCP, include but are not limited to: .

Example:

(1) When it can be shown through internal research or substantiation provided by the taxpayer that the funds were needed to provide for necessary living expenses, these amounts should not be included in the RCP calculation.

Example:

(2) Dissolving an IRA during unemployment or underemployment. Review of available internal sources verified the taxpayer's income was insufficient to meet necessary living expenses. In this case, do not include the funds up to the amount needed to meet allowable expenses in the RCP calculation.

Example:

(3) Substantial amount withdrawn from bank accounts. Taxpayer provided supporting documentation that funds were used to pay for medical or other necessary living expenses. This amount will not be included in the RCP calculation

Example:

(4) Disposing of an asset and using the funds to purchase another asset that is included in the offer evaluation. Do not include the value of the asset disposed of as a dissipated asset.

8. Prior to including the dissipated asset in the RCP, the taxpayer should be contacted (preferably by telephone) and afforded the opportunity to explain or verify the dissipation of the asset.

9. The case history must be clearly documented with the basis for your decision regarding the dissipated asset.

5.8.5.19 (09-30-2013)

Retired Debt

1. Retired debt is an expected change in necessary or allowable expenses. The necessary/allowable expenses may decrease, which would change the taxpayer's ability to pay.

Example:

Required child support payments may stop before the future income period ends. It is expected that these retired payments would increase the taxpayer's ability to pay.

2. Inclusion of retired debt should not be automatically included in the calculation of the RCP. The OE/OS should use judgment in determining whether inclusion of the retired debt is appropriate based on the facts of the case; such as special circumstances or ETA situations.

3. Do not retire the first \$400 of a loan payment on a vehicle (Limited to one vehicle for a single taxpayer and two vehicles for a joint offer).

Example:

If the taxpayer has a car payment of \$750 per month and the maximum standard is \$450, \$50 would be retired beginning the date the loan is paid.

4. The case histories must be documented to support the inclusion or exclusion of the retired debt.

5.8.5.20 (09-30-2013)

Future Income

1. Future income is defined as an estimate of the taxpayer's ability to pay based on an analysis of gross income, less necessary living expenses, for a specific number of months into the future. *IRM 5.8.5.25, Calculation of Future Income*, table for calculation.

2. As a general rule, the taxpayer's current income should be used in the analysis of future ability to pay.

Note:

This may include situations where the taxpayer's income is recently reduced based on a change in occupation or employment status.

3. Consideration should be given to the taxpayer's overall general situation including such facts as age, health, marital status, number and age of dependents, level of education or occupational training, and work experience.
4. Situations that may warrant placing a different value on future income than current or past income indicates are discussed in the table below. Additionally, securing a future income collateral agreement based on the taxpayer's earnings potential may be appropriate and are discussed in more detail in *IRM 5.8.5.21, Future Income Collateral Agreements*, and *IRM 5.8.6, Collateral Agreements*.

If...	Then...
Income will increase or decrease or current necessary expenses will increase or decrease	Adjust the amount or number of payments to what is expected during the appropriate number of months.

A taxpayer is temporarily or recently unemployed or underemployed	Use the level of income expected if the taxpayer were fully employed and if the potential for employment is apparent. Each case should be judged on its own merit, including consideration of special circumstances or ETA issues.
---	--

Example:

Unemployed – The taxpayer is a construction worker who currently is not employed due to lack of work during the winter months. Since this loss of employment during the winter is normal for the taxpayer, use the taxpayer's previous annual income or you may use income averaging to accurately determine the taxpayer's income.

Example:

Underemployed – The taxpayer is a teacher and is currently employed at a lesser paying job, yet will begin or return to work as a teacher when the school year begins in the fall, the taxpayer is considered to be currently underemployed. Use the anticipated income once the taxpayer is fully employed.

A taxpayer is unemployed and is not expected to return to their previous occupation or previous level of earnings	Contact the taxpayer to discuss the expected future level of income. When considering future income, also allow anticipated increases in necessary living expenses and/or applicable taxes.
---	---

Note:

Each case should be judged on its own merit, including consideration of special circumstances or ETA issues.

A taxpayer is long-term unemployed	Do not income average. The taxpayer's current income should be used in the future income calculation. If there is a verified expectation the taxpayer will be securing employment then the use of anticipated future income may be appropriate. Anticipated future income should not be used in situations where the future employment is uncertain.
------------------------------------	--

Example:

Taxpayer has been unemployed for over one year. There are currently no employment opportunities for the taxpayer and the household is living on one income. Using the taxpayer's current income with a future income collateral agreement may be appropriate.

A taxpayer is long-term underemployed	Do not income average. Use the taxpayer's current income.
---------------------------------------	---

Example:

The taxpayer was previously employed in a manufacturer plant making \$75,000 per year. There are currently no opportunities for the taxpayer to secure employment making the same rate of pay as their prior job. Their income is now \$25,000 per year with no anticipated increase. Use the current income only.

A taxpayer has an irregular employment history or fluctuating income	Average earnings over the three prior years. The use of a time period other than three years should be the exception and only when specific circumstances are present.
--	--

Example:

The taxpayer is a stock broker whose income in 2011 was \$150,000 and income in 2012 was \$25,000. In this case, you should consider income averaging the prior three years or secure a future income collateral agreement if the offer is accepted.

Note:

This practice does not apply to wage earners. Wage earners should be based on current income unless the taxpayer has unique circumstances.

A taxpayer is in poor health and their ability to continue working is questionable	Reduce the number of payments to the appropriate number of months it is anticipated the taxpayer will continue working. Consider special circumstance situations when making any adjustments.
--	---

Example:

Taxpayer has a serious health issue and it is anticipated they will be unable to work after six months. Use the taxpayer's current income for six months then reduce their income to the anticipated amount they will be receiving after they are unable to work.

A taxpayer is close to retirement and has indicated they will be retiring	If the taxpayer can substantiate retirement is imminent, adjust the taxpayer's future earnings and expenses accordingly. If it cannot be substantiated, base the calculation on current earnings. At this point, it may be appropriate to discuss other options available to the taxpayer, for example an installment agreement.
---	--

Example:

(1) The taxpayer is 65 years of age and has indicated they will retire at the age of 66. They provide copies of documents that have been submitted to their employer discussing their retirement date. Use the taxpayer's current income until the taxpayer's anticipated retirement date, then adjust the taxpayer's income to reflect the amount expected in retirement.

Example:

(2) The taxpayer is 62 years of age, the taxpayer is in good health, and their income has remained stable for the past three years. The taxpayer states they would like to retire at age 65. Use the taxpayer's current income and if the RCP exceeds the offer amount, discuss the option of securing an installment agreement until the taxpayer actually retires, at which time an offer may be appropriate.

A taxpayer will file a petition for liquidating bankruptcy

Consider reducing the value of future income. The total value of future income should not be reduced to an amount less than what could be paid toward non-dischargeable periods, or what could be recovered through bankruptcy, whichever is greater. When considering a reduction in future income, also consider the intangible value to the taxpayer of avoiding bankruptcy. Refer to IRM 5.8.10.2, *Bankruptcy*.

5. Judgment should be used in determining the appropriate time to apply income averaging on a case by case basis. All circumstances of the taxpayer should be considered when determining the appropriate application of income averaging, including special circumstances and ETA considerations. Below are some examples of when income averaging may not be appropriate.

Example:

(1) Taxpayer's spouse has not worked for over two and one-half years and has no expectations of returning to work. Do not average income for the spouse's past employment.

Example:

(2) Taxpayer has been unemployed for over one year and provided proof that Social Security Disability is the sole source of income. Do not apply income averaging in this case but use current income to determine the taxpayer's future ability to pay.

Example:

(3) The taxpayer was incarcerated and may have been involved in the transfer of assets. If the OE/OS is unable to complete a thorough asset investigation, consideration should be given whether it would be in the best interest of the government to reject the offer and reassign the case to the field for a determination on any hidden assets.

Example:

(4) The taxpayer recently began working after several months of unemployment. Use the most recent three months pay statements to determine future income. Since the taxpayer is a wage earner, the use of income averaging over the prior three years of income is not appropriate.

6. In situations where the taxpayer's income does not appear to meet their stated living expenses the difference should not be included as additional income to the taxpayer, unless there are clear indications additional income not included on the collection information statement is being received and will continue to be received by the taxpayer. Discussion with the taxpayer/POA and a review of documents submitted by the taxpayer must take place to determine how the taxpayer is paying current expenses and the appropriateness of including an additional amount in the calculation of future income. Verification of the source of unexplained bank deposits or statements from the source of gifts may be required to correctly determine the taxpayer's current income. Telephone contact is recommended to expedite the case processing.

Example:

(1) The taxpayer has been receiving gifts from their parents to meet current living expenses for the past six months. The taxpayer has no guaranteed right to the funds in the future and the amount does not appear to be based on the transfer of assets to the parents. The gift amount should not be included as income.

Example:

(2) The taxpayer has been receiving an amount each month that only began recently, which they state is a gift from a friend. Further research has determined the taxpayer is in business with the friend and the amount is from their business. This amount should be included as income to the taxpayer. Additionally, consideration should be given to referring the taxpayer and the business income tax return to Examination.

Example:

(3) The taxpayer had gambling winnings over a period of time, but is not consistent. Do not include those winnings as additional income on the IET. This does not apply to professional gamblers.

Example:

(4) The collection information statement (CIS) submitted by the taxpayer included \$3,000.00 of monthly income, which is verified by paystubs. The CIS submitted by the taxpayer includes \$4,000.00 of expenses. An additional \$1,000.00 should not be added to the taxpayer's income based solely on the fact it appears the taxpayer has been meeting the living expenses included on the CIS. Discussion with the taxpayer or representative is necessary to clarify the discrepancy prior to including the amount as additional income.

7. Employees need to exercise good judgment when determining future income. The history must be clearly documented and support the known facts and circumstances of the case and include analysis of the supporting documents. Each case needs to be evaluated on its own particular set of facts and circumstances. The history must clearly explain the reasoning behind our actions.

5.8.5.21 (09-30-2013)

Future Income Collateral Agreements

1. In some instances, it may be difficult to calculate the taxpayer's anticipated income. While the use of income averaging is one method available to calculate future earnings it may also be appropriate to use the taxpayer's current income and secure a future income collateral agreement. The use of a future income collateral agreement will protect the government's interest in any substantial increase in the taxpayer's earnings.
2. A future income collateral agreement is most appropriate in situations where the taxpayer's future income is uncertain, but it is reasonably expected that the taxpayer will be receiving a substantial increase in income.
3. A future income collateral agreement should not be used to accept an offer for a lesser amount than the calculated RCP. See IRM 5.8.6.2.1.1, *Form 2261/2261-A Completion*, for instructions on completing future income collateral agreements.

Example:

(1) A taxpayer is currently in medical school; upon graduation income should increase dramatically. Consider securing a future income collateral agreement.

Example:

(2) A taxpayer recently secured a job as an attorney with a starting salary of \$80,000 per year, with potential for significant increases in salary. Consider securing a future income collateral agreement.

Example:

(3) A taxpayer is a real estate agent who has had two years of high income and the current income is significantly diminished. Based on the current real estate market, it may be appropriate to use the taxpayer's current income and secure a future income collateral agreement in lieu of income averaging.

Example:

(4) A taxpayer's RCP is \$12,000 but has offered \$10,000 plus a future income collateral agreement. A future income collateral agreement is not appropriate in lieu of the taxpayer increasing their offer to the RCP amount. If the taxpayer is not willing to increase their offer to the RCP amount, the offer should be rejected.

**5.8.5.22 (10-22-2010)
Allowable Expenses**

1. Allowable expenses consist of necessary and conditional expenses, as defined in IRM 5.15.1, *Financial Analysis Handbook*, and further discussed below. Use the amount shown in the expense standard schedules unless that amount would result in the taxpayer not having adequate means to provide for basic living expenses. Once allowable expenses are determined, they are used to calculate the amount that can be collected from the taxpayer's future income. See IRM 5.8.5.20, *Future Income*, for additional information on future income.

**5.8.5.22.1 (10-22-2010)
Necessary Expenses**

1. A necessary expense is one that is necessary for the production of income or for the health and welfare of the taxpayer's family. IRM 5.15.1, *Financial Analysis Handbook*, discusses the national and local expense standards, which serve as guidelines to provide accuracy and consistency in determining a taxpayer's basic living expenses. The standards are available on the IRS web site and are periodically updated.
2. Taxpayers are allowed the National Standard Expense amount for their family size, without questioning the amount actually spent. If the total amount claimed is more than the total allowed by the National Standards, the taxpayer must provide documentation to substantiate and justify that the allowed expenses are inadequate to provide basic living expenses. All deviations from the national standards must be verified, reasonable and documented in the case history.
3. National and local expense standards are guidelines. If it is determined a standard amount is inadequate to provide for a specific taxpayer's basic living expenses, allow a deviation. Require the taxpayer to provide reasonable substantiation and document the case file.

Example:

National Standard Expense amount is \$1,100. The taxpayer's actual expenditures are: housekeeping supplies - \$100, clothing - \$100, food - \$700, personal care products - \$100, and miscellaneous - \$200 (Total Expenses - \$1,200). The taxpayer is allowed the national standard amount of \$1,100, unless the higher amount is justified as necessary. In this example the taxpayer has claimed a higher food expense than allowed. Justification would be based on prescribed or required dietary needs. The taxpayer must substantiate and verify only the food expense. The taxpayer is not required to verify expenses for all five categories if a higher expense is claimed for one category. The standard amounts will be allowed for the remaining categories.

Example:

The taxpayer is living in a home with a \$2,250 monthly housing expense, including utilities. The present fair market value of the house is approximately equal to the mortgage balance. The local standard allowance is \$1,800 per month. If the taxpayer remains in his home, income and expenses are approximately equal, leaving no disposable income in the calculation of future income value. If the taxpayer is unable to restructure their mortgage payment and the equity in the property is insufficient to pay the costs of selling their current home, related moving expenses, and purchasing or renting a new home that would allow for monthly payments within the national standard, the taxpayer may be allowed a housing amount that exceeds the standard.

See IRM 5.15.1.7, *Allowable Expense Overview*.

4. Generally, the total number of persons allowed for national standard expenses should be the same as those allowed as dependents on the taxpayer's current year income tax return. There may be reasonable exceptions. Fully document the reasons for any exceptions.

Example:

Foster children or children for whom adoption is pending.

Example:

Custodial parent released the dependency exemption to ex-spouse.

5. A deviation from the standards should not be considered merely because it is inconvenient for the taxpayer to dispose of high value assets. In some situations, taxpayer's may be expected to make life-style choices that will facilitate collection of the delinquent tax.

**5.8.5.22.2 (10-22-2010)
Housing and Utilities**

1. When determining a taxpayer's housing and utility expense, use an amount sufficient to provide for basic living expenses. Use the amount shown in the expense standard schedules as a guideline unless such use results in the taxpayer not having adequate means to provide for basic living expenses. If it is determined that a standard amount is inadequate to provide for a basic living expenses, allow a deviation. If the amount of the payment cannot be verified through other sources (such as, bank statements), require the taxpayer to provide reasonable substantiation. Deviations from the expense standards must be verified, reasonable, and documented in the case history. Below are two examples, which are not all inclusive. Each decision should be based on the merits of the particular case.

Example:

A taxpayer with a physical disability or an unusually large family requires a housing cost that is not covered by the local standard. Require the taxpayer to provide copies of mortgage or rent payments, utility bills and maintenance costs to verify the necessary amount.

Example:

A taxpayer has owned their home for several years and the payment is above the established standard. Your investigation indicates the taxpayer would not be able to rent an apartment for less than their current loan payment. In that case, you should consider allowing the full amount of the loan payment. Document the case history.

2. Absent special circumstances, when determining a taxpayer's housing and utility expense, use the amount that is claimed or the standard, whichever is less.

**5.8.5.22.3 (09-30-2013)
Transportation Expenses**

1. Transportation expenses are considered necessary when they are used by taxpayers and their families to provide for their health and welfare and/or the production of income. Employees investigating OICs are expected to exercise appropriate judgment in determining whether claimed transportation expenses meet these standards. Expenses that appear excessive should be questioned and, in appropriate situations, disallowed.
2. The transportation standards consist of nationwide figures for loan or lease payments referred to as ownership costs and additional amounts for operating costs broken down by Census Region and Metropolitan Statistical Area. Operating costs include maintenance, repairs, insurance, fuel, registrations, licenses, inspections, parking and tolls.

3. Ownership Expenses – Expenses are allowed for purchase or lease of a vehicle. Taxpayers will be allowed the local standard or the amount actually paid, whichever is less, unless the taxpayer provides documentation to verify and substantiate that the higher expenses are necessary. *IRM 5.8.5.19, Retired Debt*, for a discussion on situations when the vehicle loan or lease will be paid off during the period of time future income is calculated.
4. Operating Expenses – Allow the full operating costs portion of the local transportation standard, or the amount actually claimed by the taxpayer, whichever is less. Substantiation for this allowance is not required unless the amount claimed is more than the total allowed by any of the transportation standards.
5. If a taxpayer claims higher amounts of operating costs because he commutes long distances to reach his place of employment, he may be allowed greater than the standard. The additional operating expense would generally meet the production of income test and therefore be allowed if the taxpayer provides substantiation.
6. In situations where the taxpayer has a vehicle that is currently over six years old or has reported mileage of 75,000 miles or more, an additional monthly operating expense of \$200 will generally be allowed per vehicle (up to two vehicles when a joint offer is submitted).

Example:

(1) The taxpayer who has a 2007 vehicle with 50,000 miles, will be allowed the standard of \$231 per month plus \$200 per month operating expense (because of the age of the vehicle), for a total operating expense allowance of \$431 per month.

7. All deviations from the transportation standards must be verified, reasonable and documented in the case history.

5.8.5.22.4 (09-30-2013)

Other Expenses

1. Other expenses may be allowed in determining the value of future income for offer purposes. The expense must meet the necessary expense test by providing for the health and welfare of the taxpayer and/or his or her family or must be for the production of income. This is determined based on the facts and circumstances of each case.
2. Repayment of loans incurred to fund the offer and secured by the taxpayer's assets will be allowed, if the asset is necessary for the health and welfare of the taxpayer and/or their family, i.e. taxpayer's residence, and the repayment amount is reasonable. The same rule applies whether the equity is paid to IRS before the offer is submitted or will be paid upon acceptance of the offer. *IRM 5.8.5.15, Income-Producing Assets*, to determine when to allow repayment of loans on those type of assets if they are used to fund the offer.

Example:

(1) The taxpayer has secured a 2nd mortgage against their residence which will be paid toward the offer amount upon acceptance. The payment is reasonable based on the amount borrowed and terms of repayment. The payment should be allowed as an expense on the Income/Expense Table.

Example:

(2) A taxpayer may have a liability for a court ordered judgment that is senior to the NFTL. Unless the taxpayer is actually making payments on that liability, it is not considered as an allowable monthly expense.

3. Minimum payments on student loans guaranteed by the federal government will be allowed for the taxpayer's post-high school education. Proof of payment must be provided. If student loans are owed, but no payments are being made, do not allow them, unless the non-payment is due to circumstances of financial hardship, e.g. unemployment, medical expenses, etc.
4. Education expenses will be allowed only for the taxpayer and only if it they are required as a condition of present employment. Expenses for dependents to attend colleges, universities, or private schools will not be allowed unless the dependents have special needs that cannot be met by public schools.
5. Child support payments for natural children or legally adopted dependents may be allowed based on the taxpayer's situation. A copy of the court order and proof of payments should be provided. If no payments are being made, do not allow the expense, unless the nonpayment was due to temporary job loss or illness.

In situations where a court order is pending, additional verification may be required. For example, a draft or copy of the court order may be requested.

Example:

The taxpayers are separated and a court date has not been established but child support payments are being made and the taxpayer provided verification of payments.

Note:

Do not allow payments for expenses, such as college tuition or life insurance for children, made pursuant to a court order. The fact that the taxpayer may be under court order to make payments with respect to such expenses does not change the character of the expense. Therefore, that the taxpayer is under court order to provide a payment should not in the ordinary course elevate that expense to allowable status as an offer expense, when the Service would not otherwise allow it.

6. Substantiation of claimed health care expenses of less than the allowable standard is not required.
7. When a taxpayer owes both delinquent federal and state or local taxes, and does not have the ability to full pay the liabilities, monthly payments to state taxing authorities will be allowed in certain circumstances.

Note:

State or local liens may enjoy a priority in fixed payment streams such as annuity payments. If necessary, consult with Area Counsel to determine lien priorities.

- A. Determine the disposable income on a Collection Information Statement (CIS), Forms 433-A (OIC) or 433-B (OIC). Do not include any amount that is being paid for outstanding state or local tax liabilities in the calculation of the future income value component (FIV) of the reasonable collection potential (RCP). FIV is the difference between gross income and allowable living expenses.

Calculate the dollar amounts for IRS and state or local payments based on the total liability owed to each agency (including penalties and interest to date).

Example:

The taxpayer owes the state \$20,000 and owes the IRS \$100,000, a total of \$120,000 (\$20,000/\$120,000 = 17%; \$100,000/\$120,000 = 83%). The taxpayer has disposable income of \$300 per month. A monthly payment to the State Taxing Authority of \$51 may be allowed until the debt is retired. See the If/Then table below for examples.

- Seventeen percent (17%) of \$300 = \$51
- Eighty-three percent (83%) of \$300 = \$249

B. To determine allowable payments for delinquent state or local tax debts follow the procedures below:

If...	And...	Then...
(1) The taxpayer does not have an existing agreement for payment of the delinquent state or local tax debts,	Provides a complete CIS and verification of state or local tax debts,	Follow procedures in paragraph (a) above to establish the calculated percentage amount that will be determined as the allowable monthly payment for delinquent state or local taxes.
(2) The taxpayer has an existing agreement for delinquent state or local tax debts, which was established after the earliest IRS date of assessment,	The payment amount on the state or local agreement is less than the calculated percentage amount,	The monthly amount due on the existing state or local agreement will be listed as the allowable delinquent state or local tax payment. Example: The calculation based on the example in paragraph (a) above shows the taxpayer should pay \$51 but the State agreement is for \$50. Allow the State agreed payment of \$50. The payment to IRS will be increased by the amount allowed for the monthly state or local payment when the state or local liability is scheduled to be full paid.
(3) The taxpayer has an existing agreement for delinquent state or local tax debts, which was established after the earliest IRS date of assessment,	The payment amount on the agreement is more than the calculated percentage amount,	The amount allowed as the delinquent state or local tax payment will be the calculated percentage amount. Advise the taxpayer that he/she can use the amount IRS allows for Miscellaneous expenses under National Standards to pay the additional amount due for the delinquent state or local tax payment. Example: The calculation based on the example in paragraph (a) above shows the taxpayer should pay \$51 but the State agreement is for \$52. Allow the calculated payment of \$51. The payment to IRS will be increased by the amount allowed for the monthly state or local payment when the state or local liability is scheduled to be full paid
(4) The taxpayer has an existing agreement for delinquent state or local tax debts, which was established prior to the IRS earliest date of assessment	The payment is not greater than the taxpayer's net disposable income	Allow the state or local tax agreement.

8. Generally, charitable contributions are not allowed in the RCP calculation. However, charitable contributions may be an allowable expense if they are a condition of employment or meet the necessary expense test.

Note:

A minister is required to tithe according to his employment contract. IRM 5.15.1, *Financial Analysis Handbook*.

9. Payments being made to fund or repay loans from voluntary retirement plans will not be allowed. Taxpayers who cannot repay these loans will have a tax consequence in the year that the loan is declared in default and that consequence should be estimated and allowed as an additional tax expense on the IET for the required number of months necessary to cover the additional tax consequence. The OE/OS should request the taxpayer or their representative to estimate the tax ramification of the failure to re-pay the loan, or may request assistance from the Examination function or Customer Service to determine the tax consequences.
10. Current taxes are allowed regardless of whether the taxpayer made them in the past or not. If an adjustment to the taxpayer's income is made, an adjustment of the tax liability must also be made. Current taxes include federal, state, and local taxes. In a wage earner situation, allow the amount shown on the pay stub. If the current withholding amount is insufficient, the tax expenses should be based on the actual tax expense.
11. Offers may be received where the taxpayers have not provided either proof of payment for certain monthly expenses claimed on the Form 433-A(OIC) or statements. Often the taxpayers are not actually paying claimed expenses, or they are not allowable under offer program guidelines. If a taxpayer does not substantiate claimed expenses for Form 433-A(OIC) categories of court ordered payments, child/dependent care, life insurance, other secured debt, or other expenses the OE/OS will complete the IET assuming that the taxpayer is not making any payments for the particular unsubstantiated expense.

Example:

(1) Taxpayers frequently list their unsecured credit card bills under secured debt or other expenses. Since the miscellaneous allowance in the National Standard expense includes credit card payments, these will not be considered as an additional allowable monthly expense.

Example:

(2) A taxpayer may have a liability for a court ordered judgment that is senior to the NFTL, unless the taxpayer is actually making payments on that liability; it is not considered as an allowable monthly expense.

**5.8.5.23 (09-30-2013)
Conditional Expenses**

1. Conditional expenses are defined in IRM 5.15.1, *Financial Analysis Handbook*, as those that may be allowed when the tax will be paid in full by an installment agreement within 6 years. For offer purposes, the full amount of the tax will not be collected, therefore, the rules for conditional expenses do not apply. However, an offer may be accepted for less than the RCP when special circumstances are present in accordance with IRM 5.8.11, *Effective Tax Administration*.
2. The one year rule which allows time for a taxpayer to adjust current expenses to meet the terms of an installment agreement is not allowed for Offers in Compromise.
3. The purchase of discretionary investments is not allowed in the calculation of the RCP.

Example:

Payroll savings plans, purchase of whole life policies, mutual funds, or voluntary retirement plan contributions.

**5.8.5.24 (09-30-2013)
Shared Expenses**

1. Generally, a taxpayer will be allowed only the expenses the taxpayer is required to pay. Consideration must be given to situations where the taxpayer shares expenses with another. Shared expenses may exist in one of two situations:
 - An offer is submitted by a taxpayer who shares living expenses with another individual who is not liable for the tax.
 - Separate offers are submitted by two or more persons who owe joint liabilities and/or separate liabilities and who share the same household.
2. Generally, the assets and income of a not liable person are excluded from the computation of the taxpayer's ability to pay. Treasury Reg. 301.7122-1 (c) (2) (ii) (A) only applies in not liable and does not apply in partially liable situations.

Exception:

Related offers including both joint and separate liabilities. The amount of both offers should equal the total amount collectable from the shared household. *IRM 5.8.5.5, Jointly Held Assets*, provides that the equity in jointly owned assets should be applied first to the joint liabilities and then to the separate liabilities.

3. Below are some examples of joint and separate liabilities.

Exception:

Community property states. Follow community property laws in these states to determine what assets and income of the non-liable person are subject to the collection of tax. See *IRM 25.18, Community Property*.

Exception:

Domestic partnership states. Follow domestic partnership laws in these states to determine what assets and income of the non-liable person are subject to the collection of tax.

If...

A joint offer was submitted on joint tax liabilities and a separate offer was also submitted by one spouse with a separate tax liability or separate offers are submitted by joint taxpayers

A separate offer is submitted by only one taxpayer who owes joint liabilities

Then...

Compute the RCP including the joint income and assets. Allocate the total collection potential to both offers. If the offer is to be accepted, it may be necessary to secure amended Form(s) 656 from the taxpayers reflecting the proportionate amount of the RCP on the joint liability(s) and the remaining amount RCP on the separate liability(s). The total offer amount must exceed the total RCP.

Compute the RCP based on the taxpayer's separate income and assets using the allocations described in *IRM 5.8.5.5, Jointly Held Assets*, taking into consideration community property laws, if applicable.

Compute two separate RCPs based on their separate income(s) and expenses. If the combined RCP is less than the offer amount, proceed with acceptance.

If the combined RCP is greater than the offer amount or additional information/documentation is needed, contact the taxpayers individually to discuss the RCP based on his or her individual financial analysis, preferably by telephone. Advise him or her that the RCP is based on their individual income and assets and they should discuss the outcome with the related party to determine if an increase in their joint offer amount will be submitted. If they agree to submit a joint offer that is greater than their total individual RCPs secure an addendum to revise the offer amount.

A joint offer was submitted from taxpayers residing in separate households

Caution:

Do not disclose the financial information of the individual to the other taxpayer. It will be at the taxpayer's discretion to discuss their financial information and determine whether an amended offer should be submitted to include both RCPs.

4. The OE/OS should secure sufficient information concerning the non-liable person's assets and income to determine the taxpayer's proportionate share of the total household income and expenses. Review the entire household's information and:

- A. Determine the total actual household income.
- B. Determine what percentage of the total household income the taxpayer contributes.
- C. Determine allowable expense amounts using the rules in this chapter and *IRM 5.15.1, Financial Analysis Handbook*.
- D. Determine which expenses the taxpayer and others have agreed to share, e.g., taxpayer and non-liable spouse pay their expenses from joint checking account. If there is no agreement, then the expense isn't shared, as is typical for child support, allowable educational loan, or union dues.
- E. Apply the taxpayer's percentage of income to the shared expenses.
- F. Verify that the taxpayer actually contributes at least this amount to the total household expense. National Standard expenses do not require verification unless the taxpayer claims more than the standard amount.
- G. Do not allow the taxpayer any amount paid toward the non-liable person's discretionary expenses.

5. Shared expense calculations between spouses are used when the parties live in a separate property state or state law permits the parties to separate their incomes and the non-liable spouse does not agree to have their income considered in the repayment of the liable spouse's tax debt (*IRM 5.15.1.4(2)*). If the non-liable spouse does not agree to have their income considered in the repayment amount, determine the income percentages as stated in paragraph (4).

After determining the percentage of income of the liable taxpayer, that percentage is multiplied against the ALE standard amounts for the household (*IRM 5.15.1.4(4)*). If the taxpayer's calculated percentage amount for National Standards for Food, Clothing and Other Items and for Out-of-Pocket Health Care Costs, is less than the standard amount for one person, the liable taxpayer will be allowed the standard amount. For the other ALE expenses (Transportation and Housing/Utilities), the liable taxpayer will be allowed the calculated percentage amount or the standard amount, whichever is less. Consideration should also be given to any separate expenses the liable taxpayer may be solely responsible for paying, such as alimony, child care, etc.

6. If the non-liable person's income is not provided or cannot be verified internally, the liable taxpayer should be allowed only the national and local standards for 1 person plus any allowable and verifiable dependents. In those cases where the non-liable person refuses to provide the supporting documentation (if the expenses are reasonable) you may consider allowing up to 50% of the additional necessary household expenses.
7. If an in-house verification is conducted on the not liable person, this information cannot be relayed to the taxpayer. This is not an Unauthorized Access (UNAX) violation but would be considered an unauthorized disclosure if any information is shared with the taxpayer.
8. When the taxpayer can provide documentation that income is not mingled (as in the case of roommates who share housing) and responsibility for household expenses are divided equitably between co-habitants (as documented by rental agreements, bank statement analysis, etc.), the total allowable expenses should not exceed the total allowable housing standard for the taxpayer.

In this situation, it would not be necessary to obtain the income information of the other person(s). However, sufficient financial information must be secured to verify the total household expenses and prove that the taxpayer is paying his/her proportionate share. The investigating employees should exercise sound judgment in these situations to determine which approach is most appropriate, based on the facts of each case.

Example:

When the taxpayer is renting an apartment or room and the owner of the property is not the taxpayer, the rental agreement or signed statement from the owner of the property should support the decision not to require the owner to divulge any personal information regarding income or household expenses. In this case, the investigating employee should accept the information provided by the taxpayer and make a determination based on that information.

1. The use of Decision Point or Decision IA is recommended to assist in this calculation. If Decision Point or Decision IA is not available, the below procedures should be followed.
2. Future income is defined as an estimate of the taxpayer's ability to pay based on an analysis of gross income, less necessary living expenses, for a specific number of months into the future. The number of months used depends on the payment terms of the offer.

If...	Then...
The offer will be paid in 5 months or less and 5 or fewer payments	Use the realizable value of assets plus the amount that could be collected in 12 months.
The offer is payable in six to 24 months	Use the realizable value of assets plus the amount that could be collected in 24 months.

A. **Note:**

The deferred payment option which allows payment over the life of the statute is no longer available. With implementation of the 12 and 24 month multipliers, the maximum number of months for a periodic payment offer cannot exceed 24 months.

3. Generally, the amount to be collected from future income is calculated by taking the projected gross monthly income, less allowable expenses, and multiplying the difference by the number of months applicable to the terms of offer.
4. For lump sum cash and periodic payment offers, when there are less than 12 or 24 months remaining on the statutory period for collection, use the number of months remaining on the statutory period for collection.

5.8.5.25.1 (09-30-2013)

Calculation of Future Income – IRC 6503(c) (Taxpayer Out of the Country)

1. The 16 year limitation from the date of assessment discussed in IRM 5.1.19.3, *Case Actions That Can Suspend And/Or Extend A CSED*, should also be taken into consideration in the calculation of the taxpayer's Future Income Value (FIV) as discussed in IRM 5.8.5.25, *Calculation of Future Income*. These provisions only apply to taxpayers who are cooperative. In situations where the taxpayer is uncooperative, an offer in compromise is not an appropriate case resolution.

Note:

If the number of months remaining until the 16 year limitation period is less than the 12 or 24 month factor in certain cash or periodic payment offers, then the number of months remaining until the 16 year limitation period should be used in the FIV calculation. The 16 year limitation period should also be used as the factor in Periodic Payment offer situations where the taxpayer has returned from outside the country and the CSED calculation in accordance with IRC 6503(c) is longer than 16 years.

5.8.5.26 (10-22-2010)

Limited Liability Companies (LLC) Issues

1. Collection from a LLC involves unique issues especially when the liabilities include employment or excise taxes. Refer to IRM 5.1.21, *Collecting from Limited Liability Companies* (LLC) for a complete discussion on the characteristics of a LLC and issues involving collection of liabilities owed by the LLC.

Note:

Treasury Regulations issued on August 16, 2007, affect the tax treatment of certain LLCs for excise taxes that accrue on or after January 1, 2008, and for employment taxes on wages paid on or after January 1, 2009.

2. While investigating an offer in compromise that involves an LLC, knowing the classification for federal tax purposes is necessary. Yet, classification of the LLC for federal tax purposes does not negate state law provisions concerning the legal status of the LLC. For example:
 - Classification of an LLC as a partnership does not mean the member/owners have liability for LLC debts as would be the case in a state law partnership.
 - Under certain circumstances, an LLC may be disregarded as an entity separate from its owner. This classification does not mean that an LLC owned by an individual is the equivalent of a sole proprietorship.

5.8.5.26.1 (10-22-2010)

Financial Analysis of an LLC

1. As with any entity, sufficient information must be secured so an informed decision can be made on the acceptability of the taxpayer's compromise proposal.
2. In all instances, a financial statement will be required from the LLC. This includes employment tax liabilities for wages paid prior to January 1, 2009, where the classification of the LLC is a disregarded entity even though the LLC is not the liable taxpayer.
3. Financial information of all member owners should also be secured. When a member owner holds only a negligible or token interest, has made no or minimal investment and exercises no control over the corporate affairs, financial information may not be required unless other factors are present to indicate the information is necessary to determine the acceptability of the taxpayer's offer. Judgment relative to the information required from the member owners should be exercised in situations where a transfer of assets/interest may have taken place.
4. If the taxpayer is unwilling or unable to provide the financial information requested and the information is necessary to determine whether the taxpayer's offer should be accepted, consider a return as discussed in IRM 5.8.7, *Return, Terminate, Withdraw, and Reject Processing*.

5.8.5.27 (09-30-2013)

Offer in Compromise Submitted on Cases Involving Collection Statute Expiration Date Extensions

1. Taxpayers that previously extended the CSED in connection with an installment agreement may request approval of an OIC. In accordance with IRM 5.8.4.3 *Doubt as to Collectibility*, an offer should not be accepted if the liability can be fully paid under current installment agreement guidelines.
2. On March 24, 1998, the Service issued procedures that limited the length of CSED extensions. See IRM 5.14.2, *Partial Payment Installment Agreements and the Collection Statute Expiration Date (CSED)*, for further instruction on the policy of the Service.
3. In situations where the extension was granted prior to October 18, 1999, a determination as to whether the taxpayer can fully pay based on the current collection statute is not required.

5.8.5.28 (09-30-2013)

Payment Terms

1. Payment terms are negotiable, but should provide for payment of the offered amount in the least time possible. If a taxpayer is planning to sell asset(s) to fund all or a portion of the offer, the payment terms for the offer should provide for immediate payment of the amounts received from the sale. If the taxpayer is planning to borrow a portion of the money, the OE/OS should determine when the loan will be received and the payment terms of the offer should provide for payment of the borrowed portion at the time the funds are received.

2. For those taxpayers who agree to shorter payment terms, fewer months of future income are required:

Payment Type	Payment Terms	Number of Months Future Income Required
Lump Sum Cash	5 or less installments within 5 months	12 months or the remaining statutory period, whichever is less
Periodic Payment	Within 6 to 24 months	24 months or the remaining statutory period, whichever is less

3. While a periodic payment offer is being evaluated by the Service, the taxpayer must make subsequent proposed installment payments as they become due. There is no requirement that the payments be made monthly or in equal amounts. However, the Service is not bound by either the offer amount or the terms. While the calculation of RCP and consideration of any special circumstances will assist in determining an acceptable offer amount, in situations where the OE/OS determines that the proposed offer payment terms are too protracted to recommend acceptance, the OE/OS should discuss with the taxpayer what may be appropriate payment terms based on the taxpayer's circumstances.

Example:

(1) Acceptable Payment Terms for a Periodic Payment Offer – A taxpayer submits an offer for \$10,000. The IRS received date is January 1, 2011. The taxpayer's offer of \$10,000 was accepted in November 2011, and the taxpayer remained current on all required payments during the investigation. During the investigation, the taxpayer paid \$500. The taxpayer has 24 months from the date of submission to complete the terms of the offer. The terms of the offer were \$100 every other month for a total of 23 months and the balance would be due on the 24th month. On the 24th month, January 2013, the taxpayer would then be required to pay the balance of \$8,300 (\$10,000 less \$1,700 [\$1,200 in installments plus \$500 in installments paid during the investigation]). No adjustments to the terms would be required.

4. A third party source of funds may be required to make the portion of the monthly payment that is greater than we determined the taxpayer can afford from future income. Document the case history with source of the funds, if relevant to the case decision.

**Exhibit 5.8.5-1
Periodic Payments Limited by Small Amount Due**

For example the taxpayer accrued the following liability:

MFT-Period	CSED	Liability
30-200312	07/20/2014	\$100,000
30-200412	09/27/2016	\$ 1,200
30-200512	09/20/2017	\$ 600

The offer was determined processable on May 31, 2013. The taxpayer has no equity in assets and can pay \$300 per month.

MFT-Period Months on the statute Installments Due Installments Applied

30-200312	14	333	14
30-200412	40	4	4
30-200512	52	2	2
Total			20

The amount collectible from future income is \$300 times 20 months = \$6,000.

**Exhibit 5.8.5-2
Periodic Payments Limited by Application of Payment From Equity in Assets**

For example the taxpayer accrued the following liability:

MFT-Period	CSED	Liability
30-200412	07/20/2015	\$30,000
30-200512	09/27/2016	\$ 1,200
30-200612	09/20/2017	\$ 9,000

The offer was determined processable on May 31, 2012. The taxpayer has \$30,000 equity in assets which he will pay within 90 calendar days and can pay \$300 per month which he will begin paying within 30 calendar days.

MFT-Period Months on the statute Installments Due Installments Applied

30-200412	26	0	0
30-200512	52	4	4
30-200612	64	20	20
Total			24

After applying the \$30,000 payment for the equity in assets, the amount collectible from future income is \$300 times 24 months = \$7,200 Reasonable collection potential is \$37,200



Part 5. Collecting Process

Chapter 8. Offer in Compromise

Section 6. Collateral Agreements

5.8.6 Collateral Agreements

- 5.8.6.1 [Overview](#)
- 5.8.6.2 [Collateral Agreements](#)
- 5.8.6.3 [Multiple Agreements](#)
- 5.8.6.4 [Waiver of Refunds](#)
- Exhibit 5.8.6-1 [Collateral Agreement – Modification of Waiver Provisions of Compromise Agreement](#)

Manual Transmittal

July 31, 2014

Purpose

(1) This transmits revised IRM 5.8, Offer in Compromise, Section 6 - Collateral Agreements.

Material Changes

(1) This IRM was updated to incorporate the following changes.

- 5.8.6.2.1 (2) (b) Note The note was revised to clarify when the use of income averaging is appropriate.
- 5.8.6.2.1.1 (3) Example revised to coincide with changes to the number of months offer terms are allowed.
- 5.8.6.2.3 (6) Added to discuss a requirement to complete the collateral agreement section of the terms screen.
- 5.8.6.2.3.3 (2) Revised to include form title.
- 5.8.6.3 (4) Added to discuss a requirement to complete the collateral agreement section of the terms screen.

(2) Editorial changes were made throughout the document.

Effect on Other Documents

This material supersedes IRM 5.8.6, dated 10/29/10.

Audience

SB/SE Compliance employees.

Effective Date

(07-31-2014)

Rocco A. Steco
Acting Director Collection Policy

5.8.6.1 (10-29-2010)

Overview

1. A collateral agreement enables the government to collect funds in addition to the amount actually secured by the offer or to add additional terms not included in the standard Form 656 agreement, thereby recouping part or all of the difference between the amount of the offer or additional terms of the offer and the liability compromised.
2. After consideration of all the facts and circumstances, the refusal to enter into an appropriate collateral agreement may be a reason to reject the taxpayer's offer. The offer file must be clearly documented with the basis for the rejection.

5.8.6.2 (10-29-2010)

Collateral Agreements

1. Collateral agreements may be appropriate in situations where a significant recovery is anticipated or securing a collateral agreement will facilitate resolution. The monitoring aspects of the agreement should also be considered when making the decision as to whether a collateral agreement is appropriate. The basis for securing the collateral and reasoning why additional recovery is being sought must be fully documented in the AOIC and/or ICS history.
2. Do not use a collateral agreement to accept an offer amount less than the taxpayer's financial condition indicates.
3. In lieu of a collateral agreement, the taxpayer may increase the amount of the offer equivalent to what the government could reasonably expect to recover from the collateral agreement.
4. A collateral agreement may be appropriate in the following situations:

If the taxpayer...

Anticipates a substantial increase in future income
Is compromising the income tax liability of a defunct professional corporation
Has real or personal property that is being depreciated
Has net operating losses or capital losses arising from prior years available

Then consider securing a...

Future income collateral agreement.
Future income collateral agreement from the majority or sole owner of the professional corporation to collect from their future individual income.
Collateral agreement to reduce the basis of the asset.
A collateral agreement to waive the loss.

for deduction in future years

Note:

Monitoring for this type of collateral is limited to the Collection Statute Expiration Date (CSED) timeframe for the tax periods on the accepted offer.

Is seeking to compromise a TFRP and qualifies to take a capital loss benefit from the defunct corporation on Form 1040

A collateral agreement from the individual taxpayer to waive the capital loss.

Note:

Monitoring for this type of collateral is limited to the CSED timeframe for the tax periods on the accepted offer.

5.8.6.2.1 (07-31-2014)

Future Income

1. It is appropriate to consider future income collateral agreements for individuals, limited liability companies, and corporations when the investigation reveals that a substantial increase in the taxpayer's future income is expected.
2. The use of a future income collateral agreement may be an option when the calculation of the taxpayer's future income for Reasonable Collection Potential (RCP) purposes does not reasonably reflect the taxpayer's earnings potential. Scenarios where the taxpayer's future income may be substantially higher include the following:
 - A. The taxpayer's past income does not provide an accurate analysis for what may be earned in the future based on their earnings potential due to their training or education.

Example:

The taxpayer is a student and is expected to graduate soon and begin earning a significant annual income.

- B. The taxpayer's current income is minimal or considerably less than what the taxpayer has earned in the past and a reasonable expectation exists that the taxpayer's earnings will be increasing substantially prior to the expiration of the CSED.

Example:

The taxpayer is an engineer, but is currently employed as a salesman earning less than half of his prior salary due to difficulty he has had in obtaining a job in the engineering field at the present time.

Note:

Judgment should be used in determining the appropriate time to apply income averaging on a case by case basis. All circumstances of the taxpayer should be considered when determining the appropriate application of income averaging, including special circumstances and ETA considerations. See IRM 5.8.5.20, Future Income

3. *Do not* secure a future income collateral agreement:
 - To collect future income that should be included in the offer amount.
 - Merely on unfounded speculation about an increase in income.
 - To cover statistically improbable events, such as lottery winnings.
 - To attempt collection from a potential inheritance.
4. Future income collateral agreements must be monitored annually for the life of the agreement. The cost of monitoring and the difficulty in tracing income structured through other entities should be considered when deciding whether such an agreement is warranted. When necessary, include instructions to MOIC regarding when it is appropriate to issue an other investigation to follow up on the receipt of potential funds.

Note:

Consult Area Counsel relative to the wording of unique collateral agreement situations.

5.8.6.2.1.1 (07-31-2014)

Form 2261/2261-A Completion

1. Use Form 2261, Collateral Agreement — Future Income (Individual), for individual taxpayers or Form 2261–A, Collateral Agreement — Future Income (Corporation) for corporate taxpayers.
2. The beginning year is defined as the year following acceptance of the offer. The ending year is defined as the last year for which the collateral agreement will remain in effect.
3. The period of time a future income collateral agreement should cover will be determined by the circumstances identified in the offer investigation based on the taxpayer's financial situation. Generally the period of time the agreement covers should coincide with the future compliance provision.

Example:

(1) A future income collateral agreement should generally run for five years.

The offer file should document the basis for the time frame used for each collateral agreement.

4. The beginning dollar amount should allow for the taxpayer to meet reasonable and necessary living expenses during the term of the offer. The offer specialist (OS) should be flexible allowing for the expected rate of inflation, as well as any additional expenses such as those for an expected additional child or a replacement auto which may occur while the collateral agreement is being monitored. Generally, the initial dollar amount should approximate one and one-half times the taxpayer's current necessary and reasonable living expenses, less federal income tax (including self-employment tax, if applicable).

Note:

A future income collateral agreement should not be used to recover minimal amounts the taxpayer may receive from future cost of living or other longevity raises. The expected recovery should be based on a reasonable assumption of a substantial increase in the taxpayer's income based on changes in their situation.

5. The percentages and amounts determined appropriate in Item 1 of Form 2261 or Form 2261–A are negotiable and should be based on the taxpayer's situation and reflect appropriate anticipated increases in reasonable and necessary expenses. The beginning percentage should be determined based on the facts and circumstances of the case. Increases in the percentage amounts may also be included, when appropriate. The OE/OS should use judgment in determining the amounts used when completing Form 2261.

Example:

The taxpayer has submitted an offer which is greater than reasonable collection potential (RCP) and is deemed acceptable. There is also a reasonable basis that the taxpayer's income will increase substantially over the next two years to over \$100,000 per year. The total current reasonable expenses from the income/expense table (IET) used in the offer evaluation is \$ 4000 per month (\$750 per month is the federal tax liability). Based on this information a collateral agreement Form 2261 is secured. The amount used on Form 2261 is 40% of any amount over \$58,500 per year ($4000 - 750 = 3250 \times 1.5 \times 12 = 58500$).

Example:

Taxpayers have submitted an offer which is greater than RCP and is deemed acceptable. The taxpayer has been involved in multi-million dollar developments and there is a reasonable basis to determine the taxpayer may receive a substantial payment from a future development within the next 24 to 48 months. The current reasonable expenses for the household from the IET used in the offer evaluation is \$ 5000 per month (\$1000 per month is the federal tax liability). Based on this information a collateral agreement Form 2261 is secured. Amounts used on Form 2261 are 40% of any amount between \$72,000 ($5000 - 1000 = 4000 \times 1.5 \times 12 = 72000$) and \$150,000, plus 75% of any amount over \$150,000.

Note:

These examples are not meant to be all inclusive, judgment must be used to determine the appropriate percentages and dollar amounts when completing Form 2261 and Form 2261-A. It is also not necessary to always have graduated payments, a set percentage as in the first example will be appropriate in most instances.

- Offers with future income collateral agreements must be approved by the authorized approving official of the offer in compromise. The approving official will indicate approval by signing Form 7249, Offer Acceptance Report, and the acceptance letter. Form 2261 may be signed by the authorized official in Delegation Order 25-2.

5.8.6.2.2 (10-29-2010)

Adjusted Basis of Specific Assets

- The initial basis of an asset is equal to the cost of acquiring it. Adjustments to the basis are made each year for the cost of improvements and accumulated depreciation. When an asset is sold, the basis is used to determine the amount of capital gain to be taxed.
- A collateral agreement may be used to reduce the basis of a specific asset, after accumulated depreciation (book value), to a lesser amount or zero. The effect of reducing the basis of a specific asset include limiting or eliminating the amount of depreciation deduction allowed in future years, potentially having the taxpayer incur a higher capital gain tax to be paid if the asset is later sold for an amount more than the adjusted basis or reducing the amount of the loss the taxpayer can claim.
- Use Form 2261-B, Collateral Agreement — Adjusted Basis of Specific Assets. The beginning year is defined as the year after the last filed tax return. Insert the year of the last filed tax return in the phrase "for all taxable years beginning after" . Specifically describe each asset. Set the amount of the basis at the reduced or zero value.

Note:

A specific description of the asset must be included in the collateral agreement in order for MOIC to monitor the agreement.

- Adjusted basis collateral agreements must be monitored annually until the asset is ultimately disposed of or the expiration of the collection statute expiration date(s) (CSED) on all tax periods included in the offer, whichever occurs first. Consider the cost to monitor the agreement and the difficulty in tracing the sale or exchange of the property when deciding whether such an agreement is warranted.

5.8.6.2.3 (07-31-2014)

Waiver of Losses

- Use Form 2261-C, Collateral Agreement —Waiver of Net Operating Losses, Capital Losses, and Unused Investment Credits. The beginning year is defined as the next year after the last filed tax return. Insert the year of the last filed tax return in the phrase "for all taxable years beginning after" . Waive net operating losses and capital losses arising from all years prior to and including the last filed tax return.
- Do not prohibit the deduction of losses that arise in years after the offer is accepted.
- The waiver of investment credits is obsolete.
- Waiver of losses collateral agreements must be monitored annually until all the losses are extinguished or the expiration of the CSED(s) on all tax periods included in the offer. Consider the cost to monitor the agreement and potential for recovery of future tax liabilities when deciding whether such an agreement is warranted.
- A waiver of losses collateral agreement may be secured to partially waive a loss, if the facts of the case support this determination.
- When a Form 2261-C, Collateral Agreement – Waiver of Net Operating Losses, Capital Losses, and Unused Investment Credits is being secured, the collateral section of the terms screen must be completed on AOIC in accordance with IRM 5.8.8 - Acceptance Processing.

5.8.6.2.3.1 (10-29-2010)

Net Operating Loss

- Net Operating Loss (NOL) may be incurred when expenses exceed the income of a business.
 - The taxpayer must be able to prove the amount of the loss.
 - Generally, losses may be carried back no more than five years and forward no more than twenty years or until all the loss is offset against taxable income.
 - If the taxpayer only wishes to carry the loss forward, the taxpayer must elect to do so on a timely filed return for the year of the loss, or if the original return is filed timely but no election is made on an amended return by the close of the period 6 months after the due date of the return excluding extensions.
- When the taxpayer has claimed a NOL, determine and verify the exact origin and amount of the loss. If a taxpayer has been associated with more than one business there may be multiple losses.

When...

Calculating the remainder of the NOL

Then...

The loss can be located on the "other income" line or the "business loss" line on Form 1040 and should be labeled as Net Operating Loss.

- Determine the original loss amount claimed on the tax return.
- Subtract any carry backs.
- Subtract the amounts claimed on subsequent tax returns from the year the NOL was established.

5.8.6.2.3.2 (10-29-2010)

Capital Loss

- A capital loss is one in which the taxpayer experiences a loss associated with such investments as land, stock, paid in capital, or loans from shareholders. This loss is:
 - Found on a Schedule D.
 - Must be offset against only capital gain in the year it is incurred with the remainder carried forward for offset of only capital gain in future years. However, individuals are allowed to offset \$3,000 against ordinary income in the year the capital loss is incurred and each succeeding year thereafter;

Example:

A taxpayer has a \$100,000 loss and a \$40,000 gain. The taxpayer may offset \$40,000 against the gain and an additional \$3,000 loss against other income leaving a \$57,000 loss that may be carried forward in future years.

- Individuals must carry capital loss forward and may carry the loss forward until it is exhausted without limit to the number of years of carry forward required. Corporations are generally limited to carry capital losses back 3 preceding years and forward 5 subsequent taxable years.

2. When the taxpayer claims a capital loss, determine and verify the exact origin and amount of the loss.

If...	Then...
The loss is derived from personal investment	The investment can be either loans to the corporation or the individual's capital investment in the corporation. <ul style="list-style-type: none">• Verify loans through copies of checks or general journal entries that establish the loan and track repayment.• Verify capital investment through canceled checks or other documents which support the amount of the original loan.
Determining the remaining amount of the loss once you have determined the origin	Trace the loss forward through the tax return copy or RTVUE.

5.8.6.2.3.3 (07-31-2014)

Passive Loss

1. Passive Activity Loss is one that involves the conduct of any trade or business in which the taxpayer does not materially participate. **This loss should not be confused with net operating loss.**

- Any rental activity is a passive activity even if the taxpayer does materially participate.
- Losses from a passive activity generally cannot be deducted from other types of income (e.g., wages, interest, or dividends).
- The amount of the taxpayer's allowable loss is subject to the "at-risk" rules. Generally losses are limited to the amount of the taxpayer's cash contribution, adjusted basis of other property which contributes to the activity, and amounts borrowed for use in the activity if the taxpayer has personal liability for the borrowed amounts.

Note:

Refer to the current Master Tax Guide for additional information.

2. Because passive losses are not deducted from earned income, waiving them may have little or no effect. One option is to reduce the basis of the property to zero so that the taxpayer cannot carry the loss over to the tax year in which the property is sold and receive benefit of the loss against a capital gain at that time. Form 2261-B Collateral Agreement - Adjusted Basis of Specific Assets should be used in these situations.

5.8.6.3 (07-31-2014)

Multiple Agreements

1. When related taxpayers submit more than one offer to compromise different tax liabilities secure only one collateral agreement. Describe on the collateral agreement all the offers to which it relates.
2. When more than one type of collateral agreement is secured for the same offer, separate collateral agreements may be secured or the terms of all the agreements may be incorporated into one Form 2261, Collateral Agreements – Future Income (Individuals) or Form 2261-A, Collateral Agreements – Future Income Corporation. The appropriate language may be found on Form 2261-B, Collateral Agreement – Adjusted Basis of Specific Assets, or Form 2261-C, Collateral Agreement – Waiver of Net Operating Losses, Capital Losses, and Unused Investment Credits.

Type of Agreement... Statement...

Adjusted Basis of Assets "For the purpose of computing income taxes of the taxpayer for all taxable years beginning after ____, the basis for certain assets, under existing law for computing depreciation and the gain or loss upon sale, exchange or other disposition shall be as follows:

Name of asset _____ Other Identification _____
Dollar amount _____

That in no event shall the basis set forth above be in excess of the basis that would otherwise be allowable for tax purposes, except for this agreement."

Waiver of Net Operating Loss "For the purpose of computing income taxes of the taxpayer for all taxable years beginning after ____, Any net operating losses sustained for the years before __ shall not be claimed as net operating loss deductions under the provisions of Section 172 of the Internal Revenue Code."

Waiver of Capital Losses "For the purpose of computing income taxes of the taxpayer for all taxable years beginning after ____, Any net capital losses sustained for the years before __ shall not be claimed as carryovers or carrybacks under the provisions of Section 1212 of the Internal Revenue Code."

3. If there is insufficient space on the form to insert all the necessary paragraphs simply type the paragraph numbers followed by "See Attached" and fasten a separate sheet containing the added provisions.
4. When a Form 2261-C, Collateral Agreement – Waiver of Net Operating Losses, Capital Losses, and Unused Investment Credits is being secured or the collateral agreement terms are being incorporated into another collateral form, the collateral agreement section of the terms screen must be completed in accordance with IRM 5.8.8 - Acceptance Processing.

5.8.6.4 (10-29-2010)

Waiver of Refunds

1. Form 656 contains a term which waives refunds and overpayments for all tax years through the year the offer in compromise is accepted. This waiver is a standard term, which cannot be altered.
2. When accepting an offer based on DATL or under the basis of ETA involving public policy/equity considerations, the waiver of refunds is not applicable.
3. In order to remove the waiver of refund provision for ETA offers involving public policy/equity considerations, both the taxpayer and the authorized official must sign an agreement and include it with the accepted offer in compromise. See Exhibit 5.8.6-1.

Exhibit 5.8.6-1

Collateral Agreement – Modification of Waiver Provisions of Compromise Agreement

This is an example of a collateral agreement modifying waiver provisions.

(For use when offer is being accepted under Detriment to Voluntary Compliance or on the basis of Effective Tax Administration involving Public Policy/Equity considerations)

To: Commissioner of Internal Revenue

I submitted an offer dated (date) in the amount of \$(amount), to compromise unpaid (kind of tax) tax, plus statutory additions, for the tax periods (dates).

The purpose of this letter is to modify that offer by stating that Section _____ (insert appropriate section) of the agreement, Form 656, governing refunds and overpayments, will not apply to this offer. Acceptance of this offer will in no way alter my rights to refunds of overpayment or my ability to designate an overpayment to estimated tax payments for the following year:

Taxpayer's Signature

Date

I accept this modification on behalf of the Internal Revenue Service:

Signature of delegated official — Date

[More Internal Revenue Manual](#)



Part 5. Collecting Process

Chapter 8. Offer in Compromise

Section 7. Return, Terminate, Withdraw, and Reject Processing

5.8.7 Return, Terminate, Withdraw, and Reject Processing

- 5.8.7.1 [Overview](#)
- 5.8.7.2 [Returns](#)
- 5.8.7.3 [Return Reconsideration](#)
- 5.8.7.4 [Withdrawal](#)
- 5.8.7.5 [Termination of Consideration](#)
- 5.8.7.6 [Fast Track Mediation for Offer in Compromise](#)
- 5.8.7.7 [Rejection](#)
- 5.8.7.8 [Authorization to Apply Deposit](#)
- 5.8.7.9 [Potential Subsequent Actions](#)
- 5.8.7.10 [Alternative Resolutions](#)
- 5.8.7.11 [Destruction of Credit Reports](#)
- 5.8.7.12 [Closed File Retention](#)
- 5.8.7.13 [Requesting a Closed Case from FRC](#)
- Exhibit 5.8.7-1 [Field Cover Sheet for Reloading an OIC under Reconsideration Procedures](#)

Manual Transmittal

December 01, 2014

Purpose

(1) This transmits a topic based revision to IRM 5.8 Offer in Compromise, Section 7, *Return, Terminate, Withdraw, and Reject* to incorporate procedural changes based on IRC §5000A.

Material Changes

(1) This IRM has only been updated for Affordable Care Act (ACA) Provision 1501: Requirement to Maintain Minimum Essential Coverage (Individual Shared Responsibility) (IRC §5000A), as identified below. Content unrelated to the ACA provisions was not reviewed for currency or accuracy.

(2) The following subsections were revised based on ACA provisions.

5.8.7.4(3) New (b) added such that the former alpha items (b) through (e) are now (c) through (f) The new (b) instructs that a NFTL cannot include any shared responsibility payment (SRP) statutory liens on the NFTL and also includes a note, which states enforcement action cannot take place on SRP assessments.

5.8.7.7(1) New (c) added such that the former alpha items (c) and (d) are now (d) through (e) The new (c) instructs that a NFTL cannot include any shared responsibility payment (SRP) statutory liens on the NFTL and also includes a note, which states enforcement action cannot take place on SRP assessments

(3) Editorial changes were made throughout this IRM to update website addresses, legal references, and IRM references.

Effect on Other Documents

This material supersedes IRM 5.8.7, dated 03/07/2014.

Audience

SB/SE Collection and Campus Compliance employees.

Effective Date

(01-01-2015)

Dretha Barham
Director Collection Policy

5.8.7.1 (09-23-2008)

Overview

1. Offers that are not recommended for acceptance will be closed by return, rejection, withdrawal, or termination. This section defines the types of dispositions other than acceptance and describes the procedures for completing each type of closure.

5.8.7.2 (03-07-2014)

Returns

1. An offer can be returned as either a "not processable return" or a "processable return". It is important to note the distinction because the collection statute is not suspended for a "not processable return", and the application fee will be refunded.
2. Review the AOIC record to ensure the information is accurate.

5.8.7.2.1 (03-07-2014)

Not Processable Returns

1. An offer is determined to be not processable if any of the "Not Processable" criteria listed in IRM 5.8.2.3.1, *Determining Processability*, is present. This decision is the sole responsibility of the Centralized OIC (COIC) sites located in the Brookhaven and Memphis Campus.

5.8.7.2.2 (03-07-2014)

Processable Returns

1. Processable returns include all returns made after the offer has been determined to be processable.
2. A processable return will result in suspension of the collection statute for the period of time the offer was considered processable and will result in the Service keeping the application fee and applicable TIPRA payment(s). A taxpayer whose offer is closed as a return does not receive appeal rights; however different levels of approval exist for some return situations. The Service's return of an offer may be reconsidered in limited situations. See IRM 5.8.7.3 below for reconsideration criteria.
3. During the offer investigation, there are a number of situations that may result in a processable offer being returned to a taxpayer. During discussion with the taxpayer or if correspondence is sent, the taxpayer should be made aware of all issues which are preventing the offer investigation from proceeding, i.e. the taxpayer may have compliance issues and verification of an expense is required. The following chart lists the reasons a processable offer may be returned and who can authorize the return. Approval authority is outlined in Delegation Order No. 5-1.

Reason for Return

Taxpayer filed bankruptcy during a pending investigation.

Tax is paid, has been abated, or no tax can be identified as owing.

Taxpayer failed to perfect offer forms necessary to process the offer for consideration.

Taxpayer failed to perfect offer forms necessary to process the offer for acceptance, such as an amended or related Form 656 or an addendum.

Failure to remain in filing or payment compliance (including failure to make ES payments), failure to make FTDs during the investigation, failure to provide financial information, failure to make TIPRA payment(s) when submitting a revised offer, incorrectly claiming a waiver from application fee or TIPRA payments, and solely to delay collection considerations.

All other return reasons

Who has delegated authority to sign the letter?

Investigating Process Examiner (PE), Offer Examiner (OE), Offer Specialist (OS)

Investigating PE, OE, OS

Investigating PE, OE, OS

Investigating PE, OE, OS

Investigating OE, OS

Group Manager in area office and Unit Manager in COIC

Investigating PE, OE, OS

Investigating PE, OE, OS

5.8.7.2.2.1 (03-07-2014)

Return for Filing Compliance

1. A processable offer must be returned when the investigation reveals the taxpayer has not remained in filing compliance. A reasonable attempt should be made to secure the delinquent return(s) (generally, per IRM 1.2.14.1.18, Policy Statement 5-133, this will not exceed a 6-year lookback period without managerial approval). One attempt should be made by telephone to secure the return(s). If the taxpayer or their representative cannot be reached by telephone a letter should be issued. If the taxpayer fails to submit the delinquent returns or provide a reason for not filing and internal research verifies the returns are not posted or pending, return the offer without further contact. Document the case history with attempts to secure the delinquent returns.
2. If the current year return has not posted and there is no extension, TC 460, check FFINQ to verify if the return has been received or waiting to be processed. Do not return the offer for non-compliance if indicators on FFINQ show that the return has been received but not processed. If the return has not posted or is not pending and the offer is going to be accepted, schedule follow-ups during the eight week period after the due date of the return or extension and monitor for the posted return or extension. Submission Processing IRM 3.30.123.6.1.6, *Domestic Form 1040 Series OTFP (AUSPC, FSPC, KCSPC Only) (Program #s 43110, 43130, 44110, and 47130) Processing Specifications*, provides specific dates for the current year processing.
3. If the AOIC remarks indicates that the processing examiner in COIC issued a Combo Letter requesting delinquent tax returns prior to assignment to the OE/OS and the taxpayer failed to file the requested return(s) or provide a reason for not filing and internal research verifies the returns are not posted or pending, the offer may be returned without any additional contact. See IRM 5.8.4.7 for further instruction. Document the case history.

5.8.7.2.2.2 (03-07-2014)

Return for Inadequate Estimated or Insufficient Withholding Tax Payments

1. A processable offer must be returned when the investigation reveals the taxpayer does not have sufficient estimated tax paid or income tax withheld to cover the estimate of the current year's tax.

Example:

While investigating an OIC on July 16, 2013 which was submitted in January 2013, you should verify the taxpayer has made the required estimated tax payments for the first two quarters of the 2013 tax year.

2. The requirement to have adequate estimated tax paid prior to acceptance of an offer applies to corporate as well as individual taxpayers.
3. Who should make estimated tax payments (includes but not limited to)?
 - A. A person that is considered to be self-employed is generally required to make estimated tax payments during the tax year. A self employed individual's required estimated tax payments are based on their anticipated tax liability which includes income tax plus self-employment tax based on the taxpayer's self-employment income.
4. How much is due and when should the payment(s) be made?
 - A. For individuals, if the taxpayer expects to owe at least \$1,000, the amount of the payment will be based on 100% of the prior year's tax or 90% of the current year's tax due at the time of the offer, whichever is less. Current year's tax should be based on current income and all legally allowable expenses. The OE/OS may use the on-line calculator on www.irs.gov to calculate the ES payments due.

Note:

See Pub 505, *Tax Withholding and Estimated Tax*, and Pub 334, *Tax Guide For Small Business (For Individuals Who Use Schedule C or C-EZ)*, which provides a more detailed and complete discussion on the matter.

- B. A person who receives retirement income (IRA, 401k, SSA, etc.), yet does not have sufficient withholding based on their anticipated tax liability.

Note:

If the prior year's tax liability showed no estimated payments were due, then the taxpayer would not legally be required to make any payments for the current year. However, a taxpayer must be made aware the consequences of filing a return with a balance due would be a default in the offer terms if the offer is accepted.

- B. The amount of the estimated tax payment is generally based on the net taxable income, including the gross income earned, less allowable deductions. This includes depreciation, home office expenses, automobile expenses, and depletion from carrying on a trade or business.

- C. Generally, payments should be made quarterly and are due April 15th, June 15th, and September 15th of the current year in addition to January 15th of the following year.

- D. See Pub 505, *Tax Withholding and Estimated Tax*, and Pub 334, *Tax Guide For Small Business (For Individuals Who Use Schedule C or C-EZ)*, which provides a more detailed and complete discussion on the matter.

5. The OE/OS should determine the appropriate amount due during the initial analysis of the case as defined in IRM 5.8.4.6, *Initial Compliance Screening*, and IRM 5.8.4.7, *Initial Offer Actions*.
6. If it is determined that the taxpayer is delinquent in the payment of estimated tax and a previous request for estimated tax payments was not made, the OE/OS should calculate the required amount due and give the taxpayer up to 15 calendar days to make the payments. One attempt should be made by telephone to contact the taxpayer to request the necessary tax payment(s). Document the case history with the results of the phone contact attempt.

Note:

The OE/OS should provide the taxpayer/representative with the calculated ES payment. Allow the taxpayer/representative the ability to provide information which shows a different amount may be appropriate.

7. If no telephone contact can be made, a letter must be prepared and mailed to the taxpayer requesting the payment. Allow 15 calendar days from the date of the letter for the taxpayer to respond (plus 15 calendar days for mailing for a total of 30 calendar days), before taking the next action. Document the case history.

Note:

If the OE/OS is preparing an additional information letter, the request for the ES payment may be included at that time. This is **only** after one phone contact has been attempted and the history appropriately reflects this action.

8. If the taxpayer or their representative provides a legitimate reason for requesting additional time to make the payment(s), a reasonable deadline for responding must be given along with a warning that the offer will be returned if the payment is not received by the established deadline. This may be an additional 15 calendar days from the original established deadline. Barring any special circumstances such as, medical reasons that may extend the request beyond the additional 15 calendar days, the offer may be returned if the taxpayer fails to comply with the request for the payment(s). The case history must be sufficiently documented indicating the attempts made to secure the payment(s).
9. Prior to returning an offer for this reason, the following actions must be taken:
 - A. A determination must be made as to whether the taxpayer has earned sufficient taxable income to require ES payments or income tax withholding for the year(s) in question.
 - B. A calculation should be made to determine the amount of tax that should have been paid in ES tax payments to date (or withheld) on the income earned.
 - C. Document the case history with attempted contacts as defined in paragraphs (6) and (7) above (including any requested and/or granted extensions of time), the determination as to whether the taxpayer has earned sufficient taxable income to require ES payments, and the amount due.

Note:

A "no answer" contact does not meet the criteria as an attempt. If contact by telephone could not be made, a letter must be sent requesting payment and a copy must be retained in the case file.

- D. Additional verification of proof of payment(s). Proof of payment may be verified on IDRS or may include a copy of a cancelled check, a receipt issued by the Taxpayer Assistance Center that accepted the payment; certification of mailing to the appropriate Campus for processing, or a receipt from the bank that processed the payment.

Note:

If the taxpayer or representative provides information the required ES payments for the current year are substantially less than the prior year or the taxpayer may not incur any tax liability for the current year; the OE/OS should not return the offer for failure to make ES payments based on the prior year tax liability. However, a taxpayer must be made aware the consequences of filing a return with a balance due would be a default in the offer terms if the offer is accepted

10. The history must be documented to support the reason for the return and all attempted requests to bring the taxpayer into compliance. Prior to returning the offer, the OE/OS must verify through internal sources (IDRS) if any ES payments have posted to the taxpayer's account, prior to returning the offer.
11. In instances where the failure to remain in compliance with estimated tax payments was subsequent to a preliminary determination letter being issued to the taxpayer, the OE/OS may proceed with rejection of the offer without contacting the taxpayer to discuss the non-compliance.

Document the case history thoroughly, including the date the preliminary determination letter was mailed and the timing of any subsequent non-compliance. In this case, issue a rejection letter, allowing the taxpayer appeal rights.

Note:

The taxpayer should be advised when personally contacted or in correspondence provided during the offer investigation that failure to remain in compliance with estimated tax payments may result in the offer being closed as a return.

12. A return for failing to make required estimated tax payments or insufficient withheld tax requires approval of a Group Manager in the field or a Unit Manager in COIC. See Delegation Order 5-1 for details.

5.8.7.2.2.3 (03-07-2014)

Return for Failure to Make Timely Federal Tax Deposit

1. A processable offer may be returned when the investigation reveals the taxpayer has not made federal tax deposits during the investigation.
2. Who should make FTDs?
 - A. Generally, every employer who pays wages to an employee must withhold income tax and the employee share of FICA (i.e., social security and Medicare) or RRTA taxes from the employee's gross wages and report the tax liability on an employer's federal tax return (941, 943, 944, 945 or CT-1). Non-payroll income tax withholding must be reported on Form 945, *Annual Return of Withheld Federal Income Tax*. If the employer accumulates an employment tax liability for withheld taxes and the employer share of FICA or RRTA taxes of \$2,500 or more during a quarter (for returns due quarterly) or a year (for returns due annually), this liability must be deposited monthly or semi-weekly depending upon the employer's deposit schedule.

Note:

The deposit rules for Form 941, *Employer's Quarterly Federal Tax Return*, also apply to tax liabilities for Form 943, *Employer's Annual Federal Tax Return for Agricultural Employees*; Form 944, *Employer's Annual Federal Tax Return*; Form 945, *Annual Return of Withheld Federal Income Tax*; and Form CT-1, *Employer's Annual Railroad Retirement Tax Return*. However, because Forms 943, 944, 945 and CT-1 are annual returns, the rules for determining the deposit schedule apply to a calendar year rather than a calendar quarter.

3. How much is due and when should federal tax deposits be made?

- A. There are two deposit schedules: monthly and semi-weekly. The deposit schedule a taxpayer must use is based on the total tax liability the taxpayer reported during a look-back period. Generally, for Form 941 filers, the look-back period begins July 1 and ends June 30. However, the look-back period for 2011 Form 941 filers who filed Form 944 in either 2009 or 2010 is calendar year 2009. If the taxpayer reported \$50,000 or less of employment taxes during the look-back period, they would be classified as a monthly depositor. If the taxpayer reported more than \$50,000 of employment taxes in the look-back period, they would be classified as a semi-weekly depositor.

Exception: If an employer's total tax liability for any quarter is less than \$2,500, payment may be made with the Form 941 on the due date of the return in lieu of making deposits.

- B. Use IDRS command code ENMOD to determine if the taxpayer has an open employment tax filing requirement. Use BMFOLK to determine if a taxpayer is a monthly or semi-weekly depositor for a particular quarter.
- C. Monthly depositors must deposit accumulated taxes on payments made during a calendar month by the 15th day of the following month.
- D. Semi-weekly depositors must deposit accumulated taxes on payments using the following schedule:

Payment Days	Deposit By
Wednesday, Thursday, and/or Friday	Following Wednesday
Saturday, Sunday, Monday, and/or Tuesday	Following Friday

- E. Generally, the amount required to be deposited is comprised of the federal income tax withheld plus both the employee and employer Social Security and Medicare taxes.

Note:

For more information on federal tax deposit requirements, see IRM 20.1.4, *Penalty Handbook — Failure to Deposit Penalty*.

4. The OS should determine the type of depositor (monthly or semi-weekly) and verify that deposits are being made, and should monitor compliance with FTDs throughout the offer investigation. The taxpayer will be asked to provide proof of each required deposit while the investigation remains open.
5. Beginning January 1, 2011, all FTDs must be made by means of the Electronic Federal Tax Payment System (EFTPS). Prior to January 1, 2011, many employers were permitted to make their federal tax deposits at an authorized financial institution accompanied by an FTD coupon. EFTPS is a system designed to use electronic funds transfer (EFT) to pay Federal taxes. The EFT number is shown..
6. Most employers will also have an employment tax filing requirement for Form 940, *Employer's Annual Federal Unemployment (FUTA) Tax Return*. If an employer's FUTA tax liability for any calendar quarter is over \$500 (including any FUTA tax carried forward from an earlier quarter), the employer must deposit the tax (i.e., make an FTD) by electronic funds transfer (EFTPS). The employer must include liabilities owed for credit reduction with the 4th quarter FTD. If an employer's FUTA tax liability for a quarter is \$500 or less, the employer does not have to deposit the tax. Instead, it may be carried forward and added to the liability for the next quarter.
7. The OS will review the taxpayer's account for FTD compliance during the quarter that the offer was submitted and any subsequent quarters. If it is determined at any time during the investigation that the taxpayer is missing or is not current with FTD(s), contact the taxpayer by telephone and request the missing deposits. Allow the taxpayer 15 calendar days to make the deposit(s). Advise the taxpayer that any future missed deposits will result in immediate return of the offer without appeal rights and with no additional contact. Document the case history with the results of the discussion or attempted contact.

If telephone contact cannot be made, a letter must be prepared and mailed to the taxpayer requesting the missing FTD(s). Allow 15 calendar days from the date of the letter for the taxpayer to respond or make up the missed deposit(s) (plus 15 calendar days for mailing for a total of 30 calendar days), before taking the next action. Document the case history.

Note:

Beginning January 1, 2011, all deposits must be made using the Electronic Federal Tax Payment System (EFTPS). Missing deposits for quarters in which the due date for the return has passed should be forwarded directly to the OS for processing as a TC 670 (subsequent payment). Proof of deposit for the current quarter may be provided in the form of an EFTPS acknowledgement number.

8. The taxpayer will be allowed only one opportunity to make up missed deposits, regardless of when the deposit was missed. Subsequent missed deposits will result in an immediate return of the offer.
9. The history must be documented to support the reason for the return and all attempted requests to bring the taxpayer into FTD compliance.
10. A taxpayer whose offer is returned for failure to make FTDs will not include appeal rights. The application fee, as well as any TIPRA payments will also be retained.
11. A return of an offer for failure to make required FTDs requires approval of the Group Manager.

5.8.7.2.2.4 (05-10-2011)

Return for Failure to Provide Information

1. An offer may be returned at any time during processing if the taxpayer fails to provide information necessary to determine whether it should be accepted or rejected. The OE/OS should make every reasonable effort to secure sufficient information needed so a recommendation can be made.
2. If the taxpayer has substantively complied or if only limited information is missing, the OE/OS will attempt to contact the taxpayer by telephone to secure the missing information prior to returning the offer. A "no answer" contact does not meet the criteria as an attempt.
3. Prior to returning an offer for this reason the following actions must be taken:
 - A review must be made to determine if the missing information would prohibit the Service's ability to determine the RCP of the taxpayer. In situations where sufficient information has been provided to determine the RCP, do not return the offer.
 - A request for the needed information must be made by telephone, in person, and/or by letter. A reasonable deadline for responding must be given along with a warning that the offer will be returned if the information is not received by the deadline.
 - The above information must be clearly documented in the case history. A reasonable deadline should be determined by the amount of information required from the taxpayer.
4. In those cases where the taxpayer or their representative have attempted to cooperate with any requests, the OE/OS will attempt a second telephone call to the taxpayer or their representative to request the additional information prior to returning the offer.

Note:

A "no answer" contact does not meet the criteria as an attempt.

5. The history must be clearly documented to reflect the missing information requested and results of the telephone call.
6. The return letter must be signed by the Group Manager in the field or a Unit Manager in COIC. See Delegation Order 5-1 for more detail.

5.8.7.2.2.5 (03-07-2014)

Return for Dishonored Payments

1. Upon notification of a dishonored application fee and/or TIPRA payment, determine the current AOIC offer assignment by querying the offer number annotated on the upper left hand corner of the check.
2. The offer will be immediately returned to the taxpayer with the appropriate notification for a dishonored check. Document the case history with which check(s) (application fee, TIPRA payment, or both) was returned and the date the check was dishonored.
3. If the taxpayer or an authorized representative offers to replace the dishonored check and requests reconsideration of their offer, contact by the taxpayer or their representative must be made within 30 calendar days of the date of the initial return letter.
4. The replacement payment must be in the form of certified funds (money order, cashier check, etc.) and received within a reasonable amount of time. See IRM 5.8.7.3, *Return Reconsideration*, below for reconsideration procedures.
 - Inform the taxpayer or the authorized representative that the offer will not be reconsidered if the payment is not made with certified funds.
 - Provide a reasonable due date for receipt of the payment to the taxpayer or the authorized representative.
 - Advise the taxpayer or their representative to submit the payment by overnight mail.
 - Document the case history.
5. Inform the taxpayer or the authorized representative that the certified funds must be mailed to either of the following addresses:

Brookhaven: Internal Revenue Service Center 1040 Waverly Ave Mail Stop 681, , Holtsville, NY 11742

Memphis: Internal Revenue Service Center 5333 Getwell Rd AMC-Stop 880, Memphis, TN 38118

6. To ensure proper handling, advise the taxpayer to include a letter requesting reconsideration of the offer.
7. If the payment was dishonored with a TC 671 on the Master File, include information in the AOIC remarks.
8. Upon receipt of the replacement payment, the case should be worked under reconsideration criteria, if appropriate. The employee should verify if the payment was received within the established deadline as annotated in the case history.

If...	Then...
The payment was received within the established timeframes	Use the reconsideration process defined in IRM 5.8.7.3, <i>Return Reconsideration</i> , and continue working the offer
The payment was not received within the established timeframes	Do not process the payment and do not reconsider the case

5.8.7.2.2.6 (03-07-2014)

Closing an Offer as a Processable Return

1. Processable returns do not require preparation of the Form 1271, *Rejection or Withdrawal Memorandum*.
2. The following actions should be taken to close a case as a processable return:
 - A. Verify that the AOIC record reflects a "Y" in the Processable status field.
 - B. Generate the "Return Letter" for the signature of the appropriate delegated official, listing the reason(s) the offer is no longer processable.
 - C. If a POA indicator exists, verify a POA letter is provided. If a disclosure issue exists, use the appropriate paragraph to indicate this in the return letter, and do not send a copy to the representative.
 - D. Stamp the Form 656 "RETURN" , Cross out the IRS received date(s) with a "X" .
 - E. Document the case history, indicating the reason(s) the offer is no longer processable and with any other pertinent information regarding the case.
 - F. Attach a copy of the offer to the taxpayer's letter and submit the letter(s) for approval and required signature.
 - G. Keep the original offer, any amended offers, the closing letter(s), the CIS, all supporting documentation, and all internal documentation secured in connection with the investigation in the case file. For space saving purposes, delete any unnecessary documentation.

Note:

See IRM 5.8.7.11, *Destruction of Credit Reports*, for information on the purging and destruction of credit reports.

- H. Close the case on AOIC as a "return" once the letter is signed.
 - I. Prepare the Form 3177, *Notice of Action for Entry on Master File*, to request input of a TC 481 to reverse the TC 480 for any NMF tax period that is listed on the MFT screen and not on Form 656.
 - J. If the file or case history reflects a TC 480 was manually input, it must be manually reversed by the field or COIC person inputting closing actions on AOIC. Ensure all TC 480s are reversed.

Note:

At a minimum, the AOIC Transaction Listing (Parts 2 and 3) must be resolved on a weekly basis to ensure all reversing transactions are correctly posted. Additionally, any open IDRS control bases assigned to XX88888884 (first 2 digits represent the area), must be closed, once the systemic posting error has been resolved. There could be a delay from the time the error is on the AOIC transaction listing to when the control base is opened on IDRS.

- K. See IRM 5.8.7.10, *Alternative Resolutions*, for procedures on forwarding the case for the next appropriate collection action.
3. See IRM 5.8.7.7.3.1, *Notification of Dishonored Check After Issuance of the Rejection Letter*, for procedures to close the offer as a return based on notification of a dishonored check after issuance of a rejection letter.

5.8.7.3 (09-23-2008)

Return Reconsideration

1. This section *does not* apply to the return of offers deemed not processable. It also *does not* apply to processable offers returned for any of the following reason codes, unless the return was determined to have been in error.
 - P — filed bankruptcy after offer submission
 - Q — non-compliance after offer submission
 - R, V, W — "solely to delay" submissions
 - S — collection is in jeopardy
 - X — "other investigations are pending that may effect ..."
 - Y — original assessment fully abated
2. Situations may arise when the reconsideration of a returned offer would best serve the interests of both the Service and the taxpayer. Generally, an additional application fee and mandatory payment will not be required. Upon receipt of a return letter, taxpayers may telephone to object to the return of an offer. Below are the criteria for possible reconsideration.

5.8.7.3.1 (03-07-2014)

Criteria for Return Reconsideration

1. Generally, the taxpayer or the representative must contact the Service to raise objections and provide an explanation for failure to provide the requested items. The objection must be raised within 30 calendar days from the date of the return letter (unless the condition that caused the failure to supply the substantiation continued for a prolonged period).
2. Acceptable criteria for potential situations where return reconsideration may be applicable based on IRS error are listed below. These are not all inclusive.
 - A. The offer was closed as a return in error by the field or the COIC site.
 - B. The information was sent timely, but it was not associated with the case.

Note:

Special rules apply in determining the postmark date for documents sent by private delivery services. See IRM 3.10.72.2.4.3, *Private Delivery Services (PDS)*, and IRM 3.10.72.6.2.4, *Determining Postmark Date*.

- C. The taxpayer was affected by a federally declared disaster as defined in IRC § 7508A.
 - D. The taxpayer is in a combat zone as defined in IRC § 7508.
 - E. The taxpayer provided proof that the required TIPRA payments were made, but not posted.
3. Acceptable criteria for potential situations where return reconsideration may be applicable based on specific taxpayer issues are listed below. These are not all inclusive.
 - A. Serious illness or injury prevented the taxpayer from submitting the information timely.

Note:

Serious illness or injury may not apply to the taxpayer's representative, if the taxpayer controlling the information receives a copy of the combo or additional information letter and is aware he or she should respond directly. Inquire with the representative and/or use POA bypass procedures if necessary. See IRM 5.1.23, *Taxpayer Representation*, for bypass procedures.

- B. There was a death in the taxpayer's immediate family that prevented timely mailing of the information.
- C. The failure to perfect by providing a required additional Form 656, required TIPRA payment (i.e., remainder of 20% of the amount of a lump sum cash offer), and application fee when the original Form 656 included both joint and separate liabilities or individual or joint and corporation or partnership liabilities.
- D. The taxpayer requests a low income certification waiver instead of paying the application fee and required TIPRA payment, and then provides proof that an incorrect conclusion was made.
- E. The taxpayer failed to make ES payments but provides proof that ES payments or withheld taxes are not due.
- F. The taxpayer provided proof of ES payments, but it was not received until after the deadline.
- G. The taxpayer submitted certified funds (e.g., money order, cashiers check, etc.) within the required timeframes to replace previously dishonored check(s).

5.8.7.3.2 (05-10-2011)

Conditions for Return Reconsiderations

1. Before reconsidering the closed offer, the taxpayer or authorized representative must have requested return reconsideration within 30 calendar days from the date of the return letter.
2. The following would *not* be acceptable reasons for return reconsideration:
 - A. Lack of availability of either the taxpayer or representative, absent circumstances identified in IRM 5.8.7.3.1, above;
 - B. Representatives' filing season activity, unless the representative made reasonable requests for an extension prior to return of the OIC.

5.8.7.3.3 (09-23-2008)

Approval Authority for Return Reconsideration

1. Approval to reconsider a returned, processable offer(s) will be obtained from COIC Department Managers or field Group Managers before requesting the taxpayer or authorized representative to send any missing documentation, payments or fees. This authority may not be re-delegated.
2. The manager will indicate approval or denial of the request by making a history entry on AOIC or ICS.

5.8.7.3.4 (03-07-2014)

Reconsideration Procedures

1. If the employee receiving a telephone request from a taxpayer or authorized representative for reconsideration determines the request does not have merit, based upon the acceptable criteria outlined in IRM 5.8.7.3.1 above, the employee will advise the taxpayer or their authorized representative of the decision and the taxpayer's right to discuss the issue with the employee's manager. Annotate the closed offer record history on AOIC.
2. If the employee receiving a telephone request for reconsideration determines that the request does have merit based upon the acceptable criteria outlined in IRM 5.8.7.3.1 above, the employee will:
 - Contact the taxpayer or their representative and request additional information to support the reconsideration request, if applicable.
 - The information must be received within 10 calendar days of the contact. Fax is the preferred method of receipt.
 - Annotate the closed AOIC or ICS offer history.
3. If the taxpayer or their representative fails to provide the requested information, annotate the closed AOIC remarks that there will be no reconsideration.
4. If the taxpayer or their representative provides the requested information, the recommending employee will:
 - Annotate the closed AOIC remarks and request the reconsideration by making a history entry on the closed offer record on AOIC (not ICS), describing the taxpayer's claim or supporting verification and why the reconsideration request is justified.
 - Submit the closed offer case file, along with any verification submitted by the taxpayer to support the reconsideration request, through the appropriate management channels to the approving official.
5. Retain the original Form(s) 656 in the case file and take the following actions on the original Form 656 retained in the case file:
 - Sign and insert the employees title in Item 11 of the Form 656 for the authorized Service official. This information is to be inserted alongside the entries on the original offer.
 - Enter on the date line of AOIC "Pending Dt" used for the new offer record.

5.8.7.3.4.1 (05-10-2011)

Denial of the Reconsideration

1. If the approving official denies the reconsideration request, the employee assigned the case should clearly communicate by telephone to the taxpayer or their representative that the request for reconsideration was denied and that the matter is closed. Document the AOIC remarks with the information.

5.8.7.3.4.2 (05-10-2011)

Approval of the Reconsideration

1. If the approving official agrees that a returned offer should be reconsidered, the employee assigned the case will telephone the taxpayer or their representative and advise that the offer is being reconsidered. They should also be advised that they must be able to provide the missing or required information, substantiation, Forms 656, and/or applicable fees within 10 calendar days of the telephonic communication of the reconsideration approval.
2. The offer information will not be reloaded to AOIC or worked until receipt of any required information or substantiation, Forms 656, and/or applicable fees. If the taxpayer fails to submit the promised items within the agreed timeframe, document the AOIC remarks of the closed offer and take no further action.

5.8.7.3.4.2.1 (05-10-2011)

Additional Form(s) 656 and Application Fee(s) Received as Condition for Reconsideration

1. Some reconsideration situations may involve an original offer that included either joint and individual tax liabilities, or joint or individual and corporation or partnership liabilities on one Form 656. The offer may have been returned because the taxpayers failed to perfect the offer by submitting additional Forms 656 and the applicable application fee and required TIPRA payments for each. Since the taxpayers met the fee and payment requirement for the original, returned Form 656 they must submit and meet the fee requirement for each additional Form 656 before the original offer can be reloaded under return reconsideration procedures. Therefore, both the "Amended/Revised" and "Related to" offers that were previously provided with the Combo letter, must be loaded to AOIC, but not until the application fee is received for the "Related to" offer along with any additional substantiation that was required.

5.8.7.3.4.3 (03-07-2014)

Reloading the Reconsideration Offer (COIC ONLY)

1. The field does not have the authority to reopen an offer record on AOIC. If reconsideration has been approved by the field manager, the field must notify the respective COIC site. Field offices should fax a copy of the front page of the original Form 656 along with the cover sheet in Exhibit 1 below. Be sure the offer number and received date of the requested information and/or substantiation is on the cover sheet. This will enable the COIC sites to create the new offer record.
2. For purposes of an approved "return reconsideration," take the following actions:
 - If the offer is being reloaded due to " IRS error " then create a new AOIC offer record by reloading the same AOIC data as the returned offer.

Note:

AOIC will allow an offer to be reopened, if it is within a certain timeframe (This is normally 30 calendar days). If the offer is being reopened based on " IRS error ", then the closed offer record may be reopened on AOIC and would not require the creation of a new offer record.

- If the offer is not being reopened based on " IRS error " then create a new AOIC offer record by reloading the same AOIC data as the returned offer, except for "IRS Rcvd Dt," "AO Rcvd Dt" and "Pend Dt" fields which will contain the date any missing information, substantiation, Forms 656, and/or applicable fees was received.
- Associate the documents from the closed offer with the new, reloaded offer folder.
- Enter an AOIC remarks notation in the closed offer record to indicate the documents were refiled with the reloaded offer.
- Place a hard copy of the AOIC remarks in the closed offer folder.

5.8.7.3.4.3.1 (05-10-2011)

Reloading Offers with a Previously Submitted Application Fee (COIC ONLY)

1. If the taxpayer paid the application fee with the original returned offer, for the new AOIC offer record enter:
 - "N" in the "Fee Due" field
 - "ME" in the "Waiver Criteria" field
 - The number of the original, returned offer in the "Master Offer #" field of AOIC Application Fee screen

5.8.7.3.4.3.2 (03-07-2014)

Reloading Offers with a Previous Low Income Certification (COIC ONLY)

1. If the taxpayer previously checked low income certification on the returned offer, enter the following for the new AOIC offer record:

- "N" in the "Fee Due" field.
- "ME" in the "Waiver Criteria" field of AOIC Application Fee Screen.
- The number of the original, returned offer in the Master Offer number field of AOIC Application Fee Screen.

5.8.7.4 (09-23-2008)

Withdrawal

1. There are two kinds of withdrawn offers; they are (1) Voluntary and (2) Mandatory.
2. Voluntary Withdrawal of Offers – An action that may be taken by the taxpayer at any time during the offer investigation. See IRM 5.8.7.4.1 below for more information.
3. Mandatory Withdrawn Offers – An action that may be taken by an OE/OS during the offer investigation. See IRM 5.8.7.4.2 below for more information.

5.8.7.4.1 (03-07-2014)

Voluntary Withdrawal

1. Taxpayers may voluntarily withdraw their OIC at any time after the offer has been submitted. A withdrawal must never be solicited merely to avoid a complete investigation or deny taxpayers access to Appeals.
2. When an OIC cannot be recommended for acceptance the OE/OS should give the taxpayer an opportunity to voluntarily withdraw the offer and at the same time inform the taxpayer that withdrawing the offer forfeits their appeal rights.

Note:

If a joint offer is withdrawn and only one spouse signs the withdrawal request, an effort should be made to perfect the request. Contact the taxpayers and have the other spouse sign the withdrawal request, secure verbal approval to withdraw the offer, or continue the offer investigation on the remaining spouse. The spouse who initially signed the withdrawal may provide a statement affirming that they are withdrawing on their spouse's behalf. If there is no response to the request for perfection, then the withdrawal will only be considered for the spouse who signed the withdrawal request. Input TC 482 for "B" and reinput TC 480 for "P" or "S", as needed, using the same date as the original TC 480. Change the AOIC entity to the name of the spouse who did not request the withdrawal. An amended Form 656 will be required if the offer is ultimately accepted.

Note:

If only one spouse submits a withdrawal, a request for mirroring the accounts should be processed, in accordance with current procedures, at the conclusion of the offer investigation

3. Document the case history or correspondence that the taxpayer was informed that a withdrawal forfeits their appeal rights.
4. A voluntary withdrawal request may be made orally, by fax, or in writing. The Letter 3504 (SC/CG) is available for taxpayers to request a withdrawal. Receipt of a withdrawal request (either in writing or orally) must be clearly documented in the case file indicating how the request was received.
5. If a request for a voluntary withdrawal is made and a deposit has been received the taxpayer should be asked to:
 - Provide a request in writing clearly indicating a desire to withdraw the offer.
 - Include a statement indicating that it is understood that rights to appeal are forfeited by a withdrawal.
 - Include a statement indicating how any deposit made (if any) should be disposed (i.e. should it be refunded or applied to the tax debt).
 - Sign and date the request.

5.8.7.4.2 (03-07-2014)

Mandatory Withdrawal

1. If during the investigation the taxpayer fails to make the required subsequent periodic payments as required by TIPRA, the offer may be considered withdrawn.
2. One request for the missed payment(s) must be made by telephone. If the taxpayer or their representative cannot be contacted by telephone, issue a letter requesting the missed payment(s). If the contact is by telephone, allow the taxpayer 15 calendar days to submit the payment(s) before taking the next action. If the contact is written, allow 15 calendar days from the date of the letter for the taxpayer to submit the payment(s) (plus 15 calendar days for mailing for a total of 30 calendar days), before taking the next action. Document the case history.

Note:

If documentation is in the offer file that a previous request was made for the missed payment(s) and the payment(s) has not been made, the OE/OS is not required to re-request.

3. If the taxpayer provides a reasonable explanation for missing the payment(s) (i.e. special circumstances exist) the investigation of the offer should continue.
4. Issue the withdrawal letter indicating that the taxpayer failed to comply with the request for the required payment(s), therefore the offer is withdrawn.
5. The letter must include the following information:
 - A statement indicating that the taxpayer failed to respond to the request for the remainder of the required periodic payments.
 - A statement indicating how any deposit made is being disposed of (i.e., refunded or applied to the tax deposit).
6. Close the offer as withdrawn as defined in IRM 5.8.7.4.3 below.
7. Document the case history, thoroughly describing the attempts to secure the funds and the decision to consider the offer withdrawn.

Note:

The taxpayer should be advised, whether personally contacted or in correspondence provided during the offer investigation, that failure to remain in compliance with periodic payments may result in the offer being closed as a return or mandatory withdrawal with no appeal rights.

8. In instances where the failure to remain in compliance with periodic payments was subsequent to a preliminary discussion with or letter being issued to the taxpayer advising that the OIC would be rejected, the OE/OS may proceed with rejection of the offer without contacting the taxpayer to discuss the non-compliance.

Note:

Document the case history thoroughly, including the date the preliminary determination letter was mailed or discussion took place and the timing of any subsequent non-compliance. In this case, issue a rejection letter so the taxpayer will receive appeal rights

5.8.7.4.2.1 (03-07-2014)

Amended Offer after Failure to Make Required Periodic Payments

1. The offer examiner/offer specialists (OE/OS) will follow the provisions of IRM 5.8.7.4.2, Mandatory Withdrawal, and close an offer as a mandatory withdrawal if the taxpayer fails to remain in compliance with periodic payments required based on the terms of the offer under investigation. The submission of an amended offer, unless requested by the OE/OS, will not change the determination to process a mandatory withdrawal, if any required TIPRA payments based on the terms of the original offer are not paid.

Example:

The taxpayer submits an amended offer in which the payment terms under periodic payment provisions are for a lesser amount than required under the original offer amount. The taxpayer is unable or unwilling to make up the payments required under the original terms through the date of the amended original offer (\$12,000) which provided for the TP to submit periodic payments on a monthly basis equal to \$ 500 per month for 24 months. After four months the taxpayer has submitted two payments totaling \$1,000 and submits an amended periodic payment offer in the amount of \$5,000 with the periodic payment terms being \$1,000 already paid and \$200 per month for 20 months. In this instance, the taxpayer would be required to submit the missing required periodic payments of \$1,000 for the offer investigation to continue.

Example:

The amended offer is for a lesser amount than the previous offer and has lump sum payment terms (five or fewer payments in five months or less). The taxpayer requests any previous periodic payments be applied toward the 20% required TIPRA payment for a lump sum offer.

Exception:

If the OE/OS has determined reasonable collection potential (RCP) and requests the taxpayer submit an amended offer equal to or greater than RCP and the taxpayer submits any required TIPRA payment(s) with the amended offer, the OE/OS may proceed with recommending acceptance of the amended offer, even though previously required periodic payments were missed.

2. If the taxpayer has made all payments required under TIPRA at the time an amended offer is received, the OE/OS should begin to monitor required TIPRA payments based on the amended offer and will make a determination on the acceptability of the amended offer based on the revised terms.

5.8.7.4.3 (03-07-2014)

Closing an Offer as a Withdrawal

1. Offers closed as withdrawals do not require preparation of Form 1271, *Rejection or Withdrawal Memorandum*.
2. The effective date of the withdrawal will depend on the method of receipt of the request to withdraw. The following chart shows the correct date to use as the withdrawal date:

If taxpayer withdraws an offer in compromise by...	Then the offer will be considered withdrawn ...
phone	on the date the Service mails, or personally delivers, a written letter to the taxpayer acknowledging the withdrawal.
non-certified mail or fax	on the date the Service mails, or personally delivers, a written letter to the taxpayer acknowledging the withdrawal.
mailing written notification of the withdrawal via U.S. certified mail	on the date the Service receives the certified mail.
personal delivery	when notification of the withdrawal is received by the Service.

3. The following actions should be taken to close an offer as a withdrawal:

A. Review the AOIC record to ensure the information is accurate.

B. Generate the AOIC "Withdrawal Letter" for the signature of the authorized delegated employee. Use the chart above to determine the correct date to use as the effective date of the withdrawal.

- Voluntary withdrawal – Use the chart above to determine the correct date to use as the effective date of the withdrawal.
- Mandatory withdrawal – The date of the withdrawal is the date of the "Withdrawal Letter."

C. Generate the POA letter for any authorized representative, if applicable.

D. Document the AOIC remarks, indicating the date, method of receipt, and type of withdrawal (e.g., voluntary or mandatory).

E. Submit the file for approval and signature of the letter(s).

Note:

The approval signature may be secured via electronic methods, in accordance with the current security and verification standards of the Internal Revenue Service. In all instances, a printed copy of the electronically executed document, form/letter, must be included in the offer case file.

F. Close the case on AOIC as withdrawn after approval has been received. If there is a deposit and the taxpayer has requested that the deposit be applied to the tax, input "A" and mail a copy of the taxpayer's written request for application of the funds to the appropriate MOIC Unit. If there is a deposit and the taxpayer has asked for a refund or provided no instructions for disposition, input "R" to refund the deposit.

G. Keep a copy of the letter(s) with the closed offer file.

H. Prepare a Form 3177, *Notice of Action for Entry on Master File*, to request input of a Transaction Code (TC) 482 to reverse the TC 480 for any NMF tax period that is listed on the MFT screen and not on Form 656.

I. If the file or case history reflects a TC 480 was manually input, it must be manually reversed by the field or COIC person inputting closing actions on AOIC. Ensure all TC 480s are reversed.

Note:

At a minimum, the AOIC Transaction Listing (Parts 2 and 3) must be resolved on a weekly basis to ensure all reversing transactions are correctly posted. Additionally, any open IDRS control bases assigned to XX88888884 (first 2 digits represent the area), must be closed, once the systemic posting error has been resolved. There could be a delay from the time the error is on the AOIC transaction listing to when the control base is opened on IDRS.

J. See IRM 5.8.7.10, *Alternative Resolutions*, for procedures on forwarding the case for the next appropriate collection action.

5.8.7.5 (09-23-2008)

Termination of Consideration

1. Consideration of an offer must be terminated upon the death of a single proponent. The date of termination is the taxpayer's date of death and the date used for the TC 482. Offers that are terminated do not receive appeal rights. See IRM 5.8.10.4, *Death of a Taxpayer*, for instructions on actions to take prior to termination when advised that one party to a joint offer has died.

5.8.7.5.1 (03-07-2014)

Closing an Offer as a Termination

1. Offers closed as terminations do not require preparation of Form 1271, *Rejection or Withdrawal Memorandum*.

2. The following actions should be taken to close an offer as a termination:

- A. Generate the AOIC "Termination Letter" for the signature of the authorized delegated employee. On the salutation line of the letter, enter the "Estate of" and the taxpayer's name.
- B. Generate a copy of the letter for any authorized representative.
- C. Document the history indicating the date of death and how notification was received.
- D. Check INOLE to determine if a TC 540 has been input, if no TC 540 is present, then request input of TC 540 to IDRS if the exact date of death is confirmed.
- E. Submit the package for approval and signature of the letter(s).

Note:

The approval signature may be secured via electronic methods, in accordance with the current security and verification standards of the Internal Revenue Service. In all instances, a printed copy of the electronically executed document, form/letter, must be included in the offer case file.

F. Close the case on AOIC as a "Termination" after approval and document the date of death in the case history.

Note:

If the date of death is prior to the TC480, when closing the offer on AOIC, use the pending date of the TC480.

G. Keep a copy of the letter(s) with the closed offer file.

H. Prepare the Form 3177, *Notice of Action for Entry on Master File*, to request input of a TC 482 to reverse the TC 480 for any NMF tax period that is listed on the MFT screen and not on Form 656.

I. If the file or case history reflects a TC 480 was manually input, it must be manually reversed by the field or COIC person inputting closing actions on AOIC. Ensure all TC 480s are reversed.

Note:

At a minimum, the AOIC Transaction Listing (Parts 2 and 3) must be resolved on a weekly basis to ensure all reversing transactions are correctly posted. Additionally, any open IDRS control bases assigned to XX88888884 (first 2 digits represent the area), must be closed, once the systemic posting error has been resolved. There could be a delay from the time the error is on the AOIC transaction listing to when the control base is opened on IDRS.

5.8.7.6 (09-23-2008)

Fast Track Mediation for Offer in Compromise

1. IRM 8.26.3, *Alternative Dispute Resolution (ADR) Program - Small Business Self-Employed (SB/SE) Fast Track Mediation*, was issued October 24, 2007. The goal of Fast Track Mediation (FTM) is to help taxpayers resolve disputes arising in examination and collection source work without having to send the case to Appeals.

Note:

This program is not available for any work in the COIC sites.

5.8.7.6.1 (03-07-2014)

Criteria for Fast Track Mediation

1. Mediation may only be considered after the OS has fully developed the case facts and made a reasonable attempt to negotiate an acceptable offer.

Note:

Mediation is not a substitute for the taxpayer's or the taxpayer's representative's right to a conference with the manager.

2. Taxpayers or the taxpayer's representative who express an interest in mediating must first request a conference with the manager.
3. The opportunity to mediate should only be granted after the first level manager has reviewed the case and determined that the issues in dispute may be resolved in mediation.
4. When appropriate, mediation should be offered before the case is forwarded to the IAR for approval.
5. Below are some examples of when it would be appropriate or inappropriate to offer mediation. The examples are not all inclusive.

Example:

Appropriate — valuations of ongoing business' goodwill; artwork with collector or sentimental value; valuation of assets including real property.

Example:

Inappropriate — taxpayer has ability to full pay based on financial data; taxpayer declines to increase the amount offered and does not disagree with the values; rejection is based on public policy.

5.8.7.6.2 (03-07-2014)

Processing Granted Requests for Fast Track Mediation

1. When the request for mediation is granted, the OS will complete the following actions:
 - Complete the Form 13369, *Agreement to Mediate*
 - Complete a summary of issues
 - Within three business days of securing the taxpayer's or their representative's signature, follow local established procedures to submit the request to Appeals.
 - Provide a copy of the Form 13369 to the taxpayer or their representative.
 - The OS will represent Collection in the mediation session.

Note:

Collection retains jurisdiction of the offer throughout the mediation process.

5.8.7.6.3 (03-07-2014)

Processing Granted Requests for Fast Track Mediation

1. If the taxpayer or their representative's request is denied, document the case file with the reason for the denial, including how it was relayed to the taxpayer and/or their representative.
2. Secure the approval of the first and second level manager.

5.8.7.7 (03-07-2014)

Rejection

1. When the facts of the case do not support acceptance and the taxpayer will not agree to an acceptable offer or an alternative resolution of the delinquency and withdraw the offer, the taxpayer should be informed that the offer will be recommended for rejection.
2. When the offer is rejected, the taxpayer will be notified in writing and the letter will explain how the taxpayer may exercise their appeal rights. Information received from the taxpayer in response to a conversation or letter must be considered before proceeding with the rejection.
3. Generally, rejections on offers based on DATL are because the liability is believed to be correct as assessed or the taxpayer will not withdraw the offer after the account has been adjusted.
4. The most common reason for rejecting an offer based on Doubt as to Collectibility (DATC) is because it has been determined that more can be collected than was offered. In all cases, the taxpayer should be informed prior to the issuance of the rejection letter that an acceptance cannot be recommended. This communication should be by telephone.

When the taxpayer is contacted, the OE/OS should explain the computation of the RCP, offer to provide the taxpayer with a copy of the financial analysis, and give the taxpayer an opportunity to submit any additional financial information. If no conversation can be held with the taxpayer to convey this information, the OE/OS should send the taxpayer/poa a quicknote to request contact. A PD 3500 may be used when a quicknote is not appropriate, yet correspondence is required.

Note:

Whether the communication is by telephone or letter, the taxpayer should be informed of the necessity to remain in compliance with their estimated tax or periodic payments while the offer is being investigated to avoid their offer being returned or closed as a mandatory withdrawal. Refer to IRM 5.8.7.2.2.2, *Return for Inadequate Estimated or Insufficient Withholding Tax Payments*, or IRM 5.8.7.4.2, *Mandatory Withdrawal*, which discusses the appropriate closing actions to take if the taxpayer's failure to remain in compliance occurs subsequent to a preliminary rejection letter.

The calculation of RCP should be completed in all instances. This includes offers being rejected under, not in the "best interest of the government" (NIBIG) and "Public Policy" .

Note:

When providing information on the taxpayer's ability to pay prior to the offer being rejected under NIBIG or Public Policy, the taxpayer should be advised, "although the financial information may show the offer might be acceptable under DATC, the offer is being rejected based on the fact it is either not in the best interest of the government or contrary to public policy (also insert specific issues identified, if taxpayer has not been made aware of the reasons in prior discussions)."

5. When discussing the potential rejection or preparing the potential rejection letter requesting an increased offer amount, the calculation should reflect any payments made during the offer investigation.

Example:

The taxpayer submitted a \$1,000 short term periodic payment offer. The balance due is \$10,000. The RCP was determined to be \$4,400, so when providing the RCP information to the taxpayer, the OE/OS should include the following information: "To date you have made four (this number will reflect actual number of payments made) payments totaling \$400. Your balance of \$4,000 must be paid in 20 months (remaining maximum term of the periodic payment offer) at \$200 per month.

6. If the taxpayer or their representative presents new information, it must be considered and addressed in the history. If the information does not change the decision to reject, contact the POA/TP by telephone to discuss the new information and inform them that the information submitted did not change the rejection determination. If no telephone contact can be made, issue the appropriate AOIC rejection letter and document the AOIC or ICS history.
7. When an offer is rejected, there is no obligation on the part of the taxpayer to continue to make periodic payments pursuant to the offer schedule, even if the taxpayer has appealed the rejection.
8. If the taxpayer is not in compliance, the offer should be returned, not rejected. See IRM 5.8.7.2.2 for complete instructions.

5.8.7.7.1 (03-07-2014)

Not in the Best Interest of the Government Rejection

1. An offer rejection may also be based on a determination that acceptance of the specific offer at hand is not in the "best interest of the government" as discussed in Revenue Procedure 2003-71, SECTION 6.03 which states: "The decision whether and when to accept an offer to compromise a liability is within the discretion of the Service. In keeping with Policy Statement P-5-100, an offer will only be accepted if it is determined to be in the best interest of both the taxpayer and the Service. In addition to the criteria discussed in Section 4.02, the Service may take into account public policy and tax administration concerns in determining whether an offer to compromise is acceptable" .

Rejections under this provision should not be routine and should be fully supported by the facts outlined in the rejection narrative. Offers rejected under this section require the review and approval of the second level manager; that is, Territory Manager for the field or Department Manager for COIC.

2. Once a determination is made that a rejection under this basis is appropriate, a calculation of the taxpayer's ability to pay should still be computed. The preliminary asset/equity and income/expense tables as discussed in IRM 5.8.4.7, *Initial Offer Actions* should be completed and provided to the taxpayer. The extent of additional verification, if required, should be based on the facts of the case. The preliminary tables and the basis for the rejection should be discussed with the taxpayer/representative to allow for submission of additional information for consideration
3. Below are situations that may warrant rejection as not being in the "best interest of the government" (not all inclusive).
 - The taxpayer's offer meets processability criteria however; the taxpayer has an egregious history of past noncompliance, as evidenced by the taxpayer's failure to voluntarily file correct returns.

Note:

Future collection potential and the ability to secure a collateral agreement should be considerations prior to recommending an offer for rejection under NIBIG.

Example:

An offer in compromise in the amount of \$ 100 is submitted by a taxpayer who has a history of filing frivolous returns. The OIC includes tax assessments which were completed by the IRS under substitute for return procedures. The financial statements submitted with the offer include very little income on which minimal estimate tax payments have been made. Information from internal sources reveals the taxpayer has additional income not being reported on the financial statement. It is not in the Government's interest to investigate an OIC until the taxpayer demonstrates compliance with filing and payment of the appropriate tax. Referral of the taxpayer should also be considered based on available information.

- The taxpayer is the primary responsible party for a related entity, i.e. corporation, partnership, etc., that is not in compliance with it's filing and/or paying requirements, has not entered into an agreement to resolve the compliance or balances due, or does not have an offer pending.
 - An in-business taxpayer compromising employment taxes, where financial analysis indicates the business does not have the ability to fund the offer, remain current with future tax obligations, and meet the business's normal operating expenses.
 - The offer is from an ongoing business that appears to be insolvent, will remain insolvent, even if the offer is accepted, and it appears that the Government's position would be better protected through a formal insolvency proceeding. Refer to IRM 5.8.10.2.2.1, *Consideration of a Potential Bankruptcy Filing on the Calculation of RCP in an OIC Investigation*
 - The taxpayer does not have the ability to fully pay the liability via an installment agreement, yet based on the evaluation of the taxpayer's financial situation and after consideration of all factors, the offer may be recommended for rejection as not in the government's interest, when the calculated amount potentially received through a PPIA, does not fully pay the liability, yet approximates the outstanding balance. The taxpayer should be provided the opportunity to enter into a PPIA. Refer to IRM 5.8.4.3 (4).
4. In each of the situations listed, a review of the taxpayer's financial situation should be completed prior to a final determination that a rejection under NIBIG is the appropriate course of action.

Exception:

In circumstances where the potential for a fraud referral exists, the financial evaluation conducted and verified should be based on the facts and circumstances of the case. Refer to IRM 5.8.4.18, *Potential Fraud Referrals*.

The taxpayer should also be provided the opportunity to withdraw the offer prior to submission of the offer rejection recommendation, advised of the reason(s) the offer is being recommended for rejection under NIBIG criteria, and alternatives available to the taxpayer

If the offer is not withdrawn, the offer examiner/offer specialist should proceed with rejection in accordance with IRM 5.8.7.7.3, *Closing an Offer as a Rejection*. The rejection letter will provide the taxpayer appeal rights in accordance with Treasury Regulation 301.7122-1 (f) (5).

5.8.7.7.2 (03-07-2014) Public Policy Rejection

1. Policy Statement P-5-89 (IRM 1.2.14.1.15) establishes that offers may be rejected on the basis of public policy if acceptance might in any way be detrimental to the interests of fair tax administration, even though it is shown conclusively that the amount offered is greater than could be collected by any other means, provided no ETA issues exist.

Note:

This section should not be confused with IRM 5.8.11.2.2 under ETA offers.

2. Offer acceptance reports are open to public inspection in accordance with Internal Revenue Code § 6103(k)(1), so the general public may be aware of any offer acceptance. A decision to reject an offer for public policy reason(s) should be based on the fact that public reaction to the acceptance of the offer could be so negative as to diminish future voluntary compliance by the general public. *Decisions to reject offers for this reason should be rare.*

Note:

Once a determination is made that a rejection under this basis is appropriate, a calculation of the taxpayer's ability to pay is still computed. The preliminary asset/equity and income/expense tables should be completed as discussed in IRM 5.8.5.7, *Initial Offer Actions*.

The extent of additional verification requested from the taxpayer should be based on the facts of the case. The preliminary tables and the basis for the rejection should be discussed with the taxpayer/representative to allow for submission of additional information for consideration.

After discussion with the taxpayer/representative, if the decision to reject the offer is appropriate, the offer examiner/offer specialist should proceed with rejection in accordance with IRM 5.8.7.7.3, *Closing an Offer as a Rejection*. The rejection letter will provide the taxpayer appeal rights in accordance with Treasury Regulation 301.7122-1 (f) (5).

3. Below are some examples of situations that may warrant rejection based on a public policy decision.
 - The taxpayer has in the past, and continues to openly encourage others to refuse to comply with the tax laws.
 - Indicators exist showing that the financial benefits of a criminal activity are concealed or the criminal activity is continuing.
 - The taxpayer engaged in a pattern of conduct suggesting intentional dissipation of assets.

Example:

The taxpayer, a payroll service provider, has received from its clients payments of employment taxes in the amount of \$10 million. The taxpayer remits to the Service an amount equal to the trust fund portion of the employment taxes and designates the payment for application to the trust fund portion of the tax. The taxpayer pays no more of the employment tax. Meanwhile, the taxpayer dissipates all of its remaining assets, reducing its reasonable collection potential to \$0. The taxpayer then submits an OIC for \$10,000. Because the OIC exceeds reasonable collection potential, the taxpayer would qualify for the OIC on the grounds of doubt as to collectability. Nevertheless, the OIC should be rejected on public policy grounds.

4. An offer will not be rejected on public policy grounds solely because:
 - It would generate considerable public interest, some of it critical.
 - A taxpayer was criminally prosecuted for a tax or non-tax violation.
5. The rejection narrative should discuss the specific public policy issues.
6. Rejections of this type require the approval of the SB/SE Collection, Territory Managers (2nd level) in the field or SB/SE Compliance Services Operations Managers for COIC. Refer to Delegation Order 5-1 for approval authority.

5.8.7.7.3 (03-07-2014) Closing an Offer as a Rejection

1. The following actions should be taken to close an offer as a rejection:

- A. Analyze accounts on AOIC and IDRS systems to resolve issues involving misapplied or un-refunded payments/deposits.
- B. Update the MFT screen with assessment dates, if necessary, and balance due.
- C. Update AOIC to reflect the computed RCP.
- D. Update AOIC screen with current AGI.
- E. Generate the AOIC "Rejection Letter" using the appropriate optional paragraph(s) for the signature of the authorized delegated official. Attach the IET and AET to the letter when the offer is based on DATC.
- F. Generate the POA letter, if applicable.
- G. Generate Form 1271, *Rejection or Withdrawal Memorandum*, for signature by the appropriate delegated officials. The Reviewer on Form 1271 must be the Independent Administrative Reviewer (IAR).
- H. Document the ICS history or AOIC remarks regarding the decision. Include the following:

- Amount of the RCP
- Attempts to negotiate an alternative resolution
- Key issues in the disagreement
- Discussion of any special circumstances noted

- I. Print the AOIC remarks or ICS history and include it in the offer file.
- J. Prepare a supplemental memorandum to report any rare facts of a confidential nature that should not be disclosed through a Freedom of Information Act (FOIA) request and include it in the file clearly identifying it as "Confidential Information– Not to be Disclosed" .
- K. Place Tabs (Document 9600B) in the case file for ease in review or if the decision is appealed. The use of labeled dividers is required.
- L. Ensure that the *Recommendation Report* clearly explains the rationale for the rejection. IMFOLI and SUMRY should be the top pages under the "Account Transcript" tab, followed by the balance of current transcripts. Credit Report, Power of Attorney, and Form 3040 should be the first 3 pages under the "Miscellaneous" Tab, followed by current additional miscellaneous information.
- M. Submit the package for managerial approval and signing of Form 1271.

Note:

The approval signature may be secured via electronic methods, in accordance with the current security and verification standards of the Internal Revenue Service. In all instances, a printed copy of the electronically executed document, form/letter, must be included in the offer case file.

- N. After approval, route the file to the IAR.
- O. After approval of the IAR, route the offer for signature, dating, and mailing of the letter(s).

Note:

The approval signature may be secured via electronic methods, in accordance with the current security and verification standards of the Internal Revenue Service. In all instances, a printed copy of the electronically executed document, form/letter, must be included in the offer case file.

- P. Assign the case on AOIC to the designated "30-day hold (xx99)" assignment number and route the case file to the hold file for monitoring of the appeal period.
- Q. Prepare Form 3177, *Notice of Action for Entry on Master File*, to request input of a TC 483 or 481 (whichever is appropriate) to reverse the TC 480 for any NMF tax period that is listed on the MFT screen and not on Form 656.
- R. If the file or case AOIC remarks reflects a TC 480 was manually input, it must be manually reversed by the field or COIC person inputting closing actions on AOIC. Ensure all TC 480s are reversed.

Note:

At a minimum, the AOIC Transaction Listing (Parts 2 and 3) must be resolved on a weekly basis to ensure all reversing transactions are correctly posted. Additionally, any open IDRS control bases assigned to XX88888884 (first 2 digits represent the area), must be closed, once the systemic posting error has been resolved. There could be a delay from the time the error is on the AOIC transaction listing to when the control base is opened on IDRS.

- S. See IRM 5.8.7.10 below for procedures on forwarding the case for the next appropriate collection action.

- 2. See IRM 5.8.7.7.3.1, Notification of Dishonored Check after Issuance of the Rejection Letter, (below) for procedures to close the offer as a return based on notification of a dishonored check after issuance of a rejection letter.

5.8.7.7.3.1 (05-10-2011)

Notification of Dishonored Check After Issuance of the Rejection Letter

- 1. If notification of the dishonored check occurred after issuance of a rejection letter, the employee should:
 - Date the return letter 31 days from the date of the rejection letter.
 - Include the open paragraph "RET-M" with the following language: "As a result, your request for appeal has been dismissed" .

Note:

This should only be used in those cases where a request for an appeal was received within the 30-day appeal period.

- Close the case on AOIC as a return using the mail date of the return letter and AOIC final disposition code 10.

5.8.7.7.4 (01-01-2015)

Rejection Not Appealed

1. Treasury Regulation 301.7122-1 (f) (5) provides that the 30-day period to request an appeal starts the day after the date on the rejection letter. The rejected offer must be suspended during this 30-day period to allow the taxpayer an opportunity to request an appeal, even if the taxpayer advises the Service that no appeal is desired. These cases should be monitored for receipt of a request for appeal.

Note:

IRC 7508 provides for postponement of certain acts, including submission of an appeal in OIC cases, during the period of time a taxpayer is in a combat zone (CZ) plus 180 days. This postponement would be in addition to the 30 days allowed in the rejection letter. If the taxpayer enters a CZ during the appeal period, the appeal period would be the time the taxpayer is in the CZ, plus any remaining time in the appeal period, plus 180 days.

2. Rejected offers should be held in the suspense file for 15 calendar days past the 30-day deadline to allow time for an appeal request to be received and associated with the offer file.

Note:

If the 30th day falls on a Saturday, Sunday, or holiday the date for timely submission will be the next business day. For example, the 30th day for appeal falls on Saturday, August 7, 2010. The request for the appeal is dated Monday, August 9, 2010. This is considered to be a timely appeal because it was postmarked on the first regular business day following the 30th calendar day.

Note:

Special rules apply in determining the postmark date for documents sent by private delivery service. See IRM 3.10.72.6.2.3, *What is a Designated Private Delivery Service (PDS)?*, or IRM 3.10.72.6.2.4, *Determining Postmark Date*.

3. If no appeal request is received by the 45th day from the day of the rejection letter, the following actions should be taken:

- A. Close the offer record as a rejection with no appeal on AOIC.
- B. A notice of federal tax lien (NFTL) cannot include shared responsibility payment (SRP) statutory liens on the NFTL. If a NFTL request is being forwarded for filing, it cannot include any SRP liabilities. See IRC § 5000A, IRM 5.12.2.3.1.1, and IRM 5.12.2.6.1

Note:

SRP liabilities are not subject to penalties or to lien and levy enforcement actions.

- C. If warranted, take action to return the accounts to the Field Compliance function for immediate resumption of collection activities. See IRM 5.8.7.10, *Alternative Resolutions*, for procedures on forwarding the case for the next appropriate collection action.
- D. Prepare the Form 3177, *Notice of Action for Entry on Master File*, to request input of a TC 483 to reverse the TC 480 for any NMF tax period that is listed on the MFT screen and not on Form 656.
- E. If the file, or case history reflects a TC 480 was manually input, it must be manually reversed by the field or COIC person inputting closing actions on AOIC. Ensure all TC 480s are reversed.

Note:

At a minimum, the AOIC Transaction Listing (Parts 2 and 3) must be resolved on a weekly basis to ensure all reversing transactions are correctly posted. Additionally, any open IDRS control bases assigned to XX88888884 (1st 2 digits represent the area), must be closed, once the systemic posting error has been resolved. There could be a delay from the time the error is on the AOIC transaction listing to when the control base is opened on IDRS.

- F. Route the offer file to the closed files.

5.8.7.7.5 (03-07-2014) Rejection Appealed

1. If a request for an appeal is received that is postmarked no later than 30 calendar days following the date of the rejection letter, the case must be forwarded to Appeals function for consideration.

Note:

If the 30th day falls on a Saturday, Sunday, or holiday the date for timely submission will be the next business day. For example, the 30th day for appeal falls on Saturday, August 7, 2010. The request for the appeal is dated Monday, August 9, 2010. This is considered to be a timely appeal because it was postmarked on the first regular business day following the 30th calendar day.

Note:

Special rules apply in determining the postmark date for documents sent by private delivery service. See IRM 3.10.72.6.2.3, *What is a Designated Private Delivery Service (PDS)?*, or IRM 3.10.72.6.2.4, *Determining Postmark Date*.

- Timely appeals — Upon transfer of the case to Appeals, notify the taxpayer that the case is being transferred and provide the telephone number of Appeals Customer Service. Notification may be verbal or in writing but should be documented. Written notification may be completed using the AOIC transfer letter, paragraph B.
- Untimely appeals — Notify the taxpayer that the appeal was not timely and will not be forwarded to Appeals for consideration. Notification may be verbal or in writing but should be documented. Written notification may be completed using AOIC transfer letter, paragraph C.

2. If the request for appeal is unsigned, the request will not be considered timely and the taxpayer should be notified appropriately.

Note:

If you receive an unsigned request for appeal, you would give the taxpayer or POA 15 calendar days from the date the request was received. This is may be in addition to the 30 calendar days initially provided for by the appeal. The 15 days may begin before the 30 days expires, so it is not always an additional 15 days and 30 days.

3. If a joint offer is rejected and only one spouse signs the request for appeal, an effort should be made to perfect the request. Contact the taxpayers and have the other spouse sign the request for appeal. The spouse who initially signed the appeal may provide a statement affirming that they are appealing on their spouse's behalf. If there is no response to the request for perfection, then the appeal will only be considered for the spouse who signed the request for appeal. Input TC 481 for "B" and reinput TC 480 for "P" or "S", as needed, using the same date as the original TC 480. Change the AOIC entity to the name of the spouse who requested the appeal. Appeals will secure an amended Form 656 if the offer is ultimately accepted.

Note:

If only one spouse requests appeals consideration, at the conclusion of the offer investigation, a request for mirroring the accounts should be submitted based on current

procedures.

4. The taxpayer should provide specific information with the appeal letter, including a list of items of disagreement and evidence to support any of those items. If the letter provides new information not previously considered, the case should be reassigned to an OE/OS for reconsideration.

Note:

Caution must be exercised when reviewing a case where new information is received and the offer reconsidered following issuance of a rejection letter. If the taxpayer's letter requested an appeal, the offer must still be forwarded to Appeals if this reconsideration of the offer results in no change to the initial decision to reject. **A new rejection letter should not be sent.**

5. The taxpayer is entitled to an appeal of the offer rejection, even if items of disagreement are not provided or argued. If it can reasonably be determined that the letter is a request for an appeal, the taxpayer should be afforded that right.

5.8.7.7.6 (08-05-2013)

Ex Parte Issues when Rejected Offer Appealed

1. Upon receipt of the taxpayer's appeal, the OE/OS will review the information provided to determine if any new information is identified or additional documentation has been submitted. If after review, the OE/OS determines rejection of the offer is still appropriate, additional discussion with the taxpayer may be necessary. New information is information that was not previously discussed with or raised by the taxpayer, or not previously investigated and documented by the OE/OS.

Example:

A taxpayer's appeal states that their actual housing expense, which is higher than the local standard, should be allowed. The OE/OS had previously documented the basis for not allowing the actual expense and determined the local standard was appropriate for the taxpayer. This is not new information.

Example:

A taxpayer submits an appeal that includes additional documentation of the taxpayer's current income. Since this documentation was not previously considered, this is new information that requires additional investigation or consideration by the OE/OS.

2. If the taxpayer appeal does not include new information requiring additional investigation or consideration by the OE/OS, the OE/OS will:

- A. Document receipt of the appeal in the AOIC remarks or ICS case history with a statement that the taxpayer appeal was received on (date), did not contain new information and the case is being forwarded to the group manager for review prior to transmission to Appeals.
- B. Submit the OIC case file for managerial review.
- C. The manager must ensure that no prohibited ex parte communications are included in the offer case file or the case history before approving the transmittal of the case to Appeals.

Note:

The OE/OS should not make any commentary in the AOIC remarks or ICS histories regarding the merits of the appeal and should not prepare any memorandum discussing the issues or the basis for the original determination.

3. If the taxpayer appeal includes new information requiring additional investigation by the OE/OS, the OE/OS will:

- A. Document receipt of the appeal in the AOIC remarks or ICS case history. Annotate history with a statement that the taxpayer's appeal was received on (date), and include **only** the facts concerning the new information requiring additional investigation.
- B. Conduct additional investigation of the new information as appropriate, and document the AOIC remarks or ICS history with the investigation actions and results of the investigation.
- C. If the additional investigation results in a decision to change the recommendation to an acceptance, follow the procedures in IRM 5.8.8.3, *Closing a Case as an Acceptance*.
- D. If the additional investigation does not result in a decision to change the recommendation to an acceptance, the OE/OS will take the following actions:

1. Attempt to make telephone contact with the taxpayer to explain the results of the additional investigation.

2. Document the AOIC remarks or ICS history, noting if contact was made with the taxpayer and the details of the discussion.

3. If the OE/OS is unable to make contact with the taxpayer within a reasonable time period, forward the offer case file to the group manager.

4. The group manager will take the following actions:

- A. Review the OIC case file, AOIC remarks or ICS history to determine if the new information has been sufficiently addressed and documented.
- B. If the new information requires additional investigation, the group manager will return the offer file to the OE/OS.
- C. If the new information has been sufficiently addressed and documented, the group manager will issue the AOIC transfer letter to the taxpayer. The manager will use the "open" paragraph to provide the taxpayer with a brief summary of the results of the additional investigation.

Note:

Suggested language for open paragraph:

"After review of the expense documentation provided, a determination was made that the rejection of your offer is still appropriate because (insert explanation). Your offer will be forwarded to the Appeals Division per your request" or

"After review of the additional information provided relative to the value of your real property, a determination was made that the rejection of your offer is still appropriate because (insert explanation). Your offer will be forwarded to the Appeals Division per your request."

- D. Document issuance of the letter to the taxpayer in the ICS history, and place a copy of the letter in the offer case file.

- E. The manager must ensure that no prohibited ex parte communications are included in the offer case file or the case history before approving the transmittal of the case to Appeals. If the case history contains commentary that is determined to violate the ex parte communication rules, the manager will take appropriate action, which could include sharing the information with the taxpayer, or following ICS history removal procedures detailed in IRM 5.1.10.8, *Case Histories*.

Note:

The administrative OIC case file transmitted to Appeals is not an ex parte communication since it sets forth the boundaries of the dispute between the taxpayer and the Internal Revenue Service and forms the basis for Appeals to assume jurisdiction. The OIC case file should include all information that supports the original determination.

Example:

An OE/OS received an appeal from a taxpayer appealing the offer rejection and documents AOIC remarks or ICS history as appropriate. The OE/OS determined the appeal contains new information. The OE/OS reviews the new information provided, contacts the taxpayer by telephone to discuss their investigation of the new information, and advises the taxpayer the determination to reject the OIC will not change. The discussion with the taxpayer is documented in the AOIC remarks or ICS history. Since the additional investigation was discussed with the taxpayer, there is no prohibited ex parte communication. The OE/OS forwarded the offer case file to the group manager, who reviewed it to determine if the new information had been sufficiently addressed and documented that no prohibited ex parte communications were included in the offer case file or the case history before approving the transmittal of the case to Appeals.

Example:

An OE/OS received an appeal from a taxpayer appealing the rejection of their OIC. The OE/OS documented the ICS case history that the appeal contained new information. The OE/OS conducted additional investigation of the new information and concluded that the determination to reject the OIC remained appropriate. The OE/OS attempted to contact the taxpayer by telephone to advise the taxpayer of the results of the investigation, but was unable to reach the taxpayer and documented the AOIC remarks or ICS history. The OE/OS submitted the offer case file to the group manager, who after reviewing the case file to determine if the new information issue had been sufficiently addressed and documented, issued the taxpayer an AOIC transfer letter advising of the transfer of the offer to Appeals and discussing the new information in the "open" paragraph. The final determination was documented in AOIC remarks or ICS history, and a copy of the letter was included in the offer case file. No ex parte communication rules were violated in transmitting the administrative file to Appeals because the additional investigation results were shared with the taxpayer in the AOIC transfer letter.

Example:

An OE/OS received an appeal of the offer rejection from a taxpayer. The OE/OS documented the AOIC remarks or ICS case history that the appeal contained new information. The OE/OS conducted additional investigation of the new information and concluded that the determination to reject the OIC remained appropriate. The OE/OS documented the results of the additional investigation, but did not contact the taxpayer by telephone to advise the taxpayer of the results of the investigation, and his or her manager did not send a letter to the taxpayer containing the results of the additional investigation. The OE/OS violated the ex parte communication rules because he communicated with Appeals through the AOIC remarks or ICS case history, which contained documentation regarding the results of the additional investigation of the new information that was not shared with the taxpayer.

Note:

The communication to the taxpayer should include a brief summary of the additional investigation and must be at least as detailed about the reason for the rejection as the communication to Appeals. Appeals may not receive details about the basis for the determination that are not provided to the taxpayer.

5. After review of taxpayer's appeal:
 - A. Transfer the case to 90XX on AOIC.
 - B. Mail the case to the appropriate Appeals Area office based on the taxpayer's zip code.
6. If an offer previously forwarded to Appeals is returned as a premature referral, the originating function may not communicate ex parte with Appeals while reconsidering the case, other than with respect to ministerial, administrative, or procedural matters, without offering the taxpayer or representative an opportunity to participate in the discussion because Appeals may ultimately review the case. If necessary, the taxpayer should be contacted to discuss the results of any additional investigation or be provided with information by the group manager relative to the results of any additional investigation that was not discussed with the taxpayer via correspondence, prior to the offer being returned to Appeals.
7. Fast Track Mediation (FTM) in accordance with IRM 5.8.7.6, Fast Track Mediation for Offers in Compromise, may be utilized prior to the issuance of the rejection letter. This program is designed to expedite case resolution since the entire process normally takes 30-40 days to complete. Fast Track Mediation involves Appeals employees serving as mediators and facilitating settlement discussions while jurisdiction of the case is still with Collection. The prohibition against ex parte communications between Appeals employees and originating function employees does not apply to FTM because the Appeals employees are not acting in their traditional Appeals settlement role. Ex parte communications, such as a private caucus between the Appeals mediator and Collection employees during the course of the mediation session, is permissible under the ex parte communication rules.

5.8.7.7.7 (01-01-2015)

Closing of Offer After Appeal's Consideration

1. If Appeals sustains the rejection determination or the taxpayer withdraws the offer in Appeals:

A. Close the offer record on AOIC as:

- Closing code "9" if withdrawn in Appeals.
- Closing code "3" if Appeals sustained the rejection.

Note:

The offer may be closed on AOIC by Appeals Processing (APS).

B. If the file or case history reflects a TC 480 was manually input, it must be manually reversed by the field or COIC person inputting closing actions on AOIC. Ensure all TC 480s are reversed.

Note:

At a minimum, the AOIC Transaction Listing (Parts 2 and 3) must be resolved on a weekly basis to ensure all reversing transactions are correctly posted. Additionally, any open IDRS control bases assigned to XX8888884 (first 2 digits represent the area), must be closed, once the systemic posting error has been resolved. There may be a delay from the time the error is reflected on the AOIC transaction listing to when the control base is opened on IDRS.

C. If a NFTL request is being forwarded for filing, it cannot include any SRP liabilities. See IRC § 5000A, IRM 5.12.2.3.1.1, and IRM 5.12.2.6.1.

Note:

SRP amounts owed are not subject to penalties or to lien and levy enforcement actions.

D. See IRM 5.8.7.10, *Alternative Resolutions*, for procedures on forwarding the case for the next appropriate collection action.

E. Route the offer file to the closed files.

5.8.7.8 (09-23-2008)

Authorization to Apply Deposit

1. When a deposit is made with an offer, Service employees should ask taxpayers if they wish to have the funds applied to the delinquent tax debt whenever a withdrawal is solicited or when advising taxpayers that acceptance cannot be recommended.
2. If a taxpayer agrees to the application of the deposit to a tax liability, a written authorization or Form 3040, *Authorization to Apply Offer in Compromise Deposit to Liability*, should be completed, signed, and submitted to the MOIC unit when the case is closed. A copy of the withdrawal or rejection letter must be included with the Form 3040 and forwarded to the appropriate Monitoring OIC (MOIC) unit for processing.

Note:

When closing the AOIC record, input "A" in the pop up screen to alert MOIC that the funds are to be applied and immediately mail the written authorization to that unit. The Accounting Branch requires written authorization from the taxpayer before the funds can be applied to any tax period.

3. If a taxpayer does not authorize application of the deposit to a tax liability it will be returned to the taxpayer.
4. Occasionally requests for a discharge or subordination are received while an offer is pending. See IRM 5.8.10 for instructions on processing the Form 3040 received in conjunction with issuance of the lien certificates.

5.8.7.9 (05-10-2011)

Potential Subsequent Actions

1. If the following issues are present, refer to the IRM references listed below for appropriate actions:
 - A. Solely to Delay Collection – IRM 5.8.4.20, *Offers Submitted Solely to Delay Collection*.
 - B. In-business Trust Fund – IRM 5.8.4.21, *Responsibility of Offer Examiners, Offer Specialist, and Field Revenue Officers [Continuing Action on In Business Trust Fund (IBTF) cases]*.
 - C. Levy/Seizure related action – IRM 5.8.4.21, *Responsibility of Offer Examiners, Offer Specialist, and Field Revenue Officers (Levy or seizure related actions)*.
 - D. Protection of the Government's interest required (Notice of Federal Tax Lien (NFTL), nominee NFTL/levy, suit recommendation, etc.) – IRM 5.8.4.21, *Responsibility of Offer Examiners, Offer Specialist, and Field Revenue Officers*.

Exception:

If a taxpayer has been identified as being located in a Combat Zone area, no NFTL should be filed unless extenuating circumstances exist.

- E. Development of Potential Fraud – IRM 5.8.4.19, *Responsibility of Offer Specialist and Field Revenue Officers*. The fraud referral specialist should be consulted and agreement is reached that a more thorough field investigation is required. See IRM 5.8.10.10, *Indicators of Taxpayer Fraud*, for more information.

5.8.7.10 (03-07-2014)

Alternative Resolutions

1. When an offer in compromise investigation is being closed as other than an acceptance, the Offer Examiner(OE)/Offer Specialist(OS) should have discussed alternative resolutions with the taxpayer. Additionally, if an agreement is not reached with the taxpayer on an alternative resolution to the balance due accounts, the OE/OS should take the appropriate actions to assign the balance due account to the appropriate function.
2. The OE should document the AOIC remarks and the OS should document the ICS history with the proposed actions to be taken on the taxpayer's account, if there remains a liability.
3. No action will be required on the following cases:
 - Cases in Status 12. These cases can go to closed files.
 - Cases in Status 60, 43, 26, and 72 will not be updated. After the financial screens are updated or a history entry discussing reasonable collection potential is input to AMS, the OIC case file should be forwarded to the closed files.

Note:

Refer to IRM Exhibit 5.8.4-4, COIC Procedures for Status 60/Status 71 Changes and IRM Exhibit 5.8.4-5, Field Procedures for OIC in Lieu of Installment Agreement for updating modules which were in status 60 when the offer was submitted.

4. If the offer file was received from Appeals and the rejection was sustained, review the AOIC remarks to determine if a recommendation was made to assign the case to a field RO. If the offer should be assigned to a field RO, follow the procedures in 5.8.7.10.4.

5.8.7.10.1 (03-07-2014)

Alternative Resolution Procedures - Installment Agreement

1. If an agreement is reached to have the taxpayer resolve the liability via an installment agreement, the processing of the Form 433-D, Installment Agreement, to full pay the tax due or Form 9465, Installment Agreement Request, should be completed and processed, as appropriate.
2. Refer to IRM 5.15, Financial Analysis, when determining the appropriate payment amount.
3. The OS should refer to IRM 5.14.2, Partial Payment Installment Agreements and the Collection Statute Expiration Date (CSED), for PPIA procedures
4. Streamlined installment agreement (SIA) processing may be used in offer cases if the taxpayer proposes an amount equal to or greater than the amount required under SIA provisions. Refer to IRM 5.14.5, Streamlined, Guaranteed and In-Business Trust Fund Express Installment, to determine if the taxpayer qualifies for certain types of agreements..
5. If the OIC group is able to input actions to IDRS, the actions should be suspended in the group until the offer closing transactions post (manual reversals should only be input if the TC 480 was manually input). If the actions are to be processed by another Service function, the request should not be mailed until the TC 48X transactions have posted and all compliance and freeze code conditions have been addressed.

5.8.7.10.2 (05-10-2011)

Alternative Resolution Procedures - Currently Not Collectible

1. The Form 53, Report of Currently Not Collectible Taxes, should be completed to report the account uncollectible when requesting current payment would create an undue hardship, the taxpayer is deceased and there is no probate, or the taxpayer is now unable to be located.
2. If a TC 530 is within one year of offer submission, return the account to Status 53. If the TC 530 is over one year old, and the taxpayer has the ability to full pay through an installment agreement or has substantial equity in assets, which were not considered when the account was reported CNC, reverse the TC 530 with the input of a TC 531 using REQ77/FRM77. Accelerate the modules to Status 22 00 using Command Code STAUP after financial screens are updated or a history entry discussing reasonable collection potential is input to AMS. The above actions cannot be processed on IDRS until the TC 48X posts.
3. If the OIC group is able to input actions to IDRS, the actions should be suspended in the group until the offer closing transactions post (manual reversals should only be input if the TC 480 was manually input). If the actions are to be processed by another Service function, the request should not be mailed until the TC 48X transactions have posted and all compliance and freeze code conditions have been addressed.

5.8.7.10.3 (03-07-2014)

Alternative Resolution Procedures - Assignment to ACS

1. Subsequent to AOIC closing action by COIC and the field offer groups, with the exception of cases noted in IRM 5.8.7.10(3), cases in which an installment agreement will be processed, cases in which a CNC is processed, or cases assigned to the field, all other closures meeting the below criteria will be accelerated to ACS and the financial information will be documented on Account Management Services (AMS) Financial Screens or AMS history.
2. If the prior status was 24 or 26 and a Form 657 is not in the offer file or the Form 657 states the RO does not wish to have the case returned to their inventory, the case should be accelerated to Status 22, unless the case is Status 12, 60, 43, or 72. This may be accomplished by inputting a STAUP 22 00 with an assignment code of 0605.
3. All other Status cases will be accelerated to Status 22 on IDRS by inputting Command Code STAUP 22 00.
4. If the OIC group is able to input actions to IDRS, the actions should be suspended in the group until the offer closing transactions post (manual reversals should only be input if the TC 480 was manually input). If the actions are to be processed by another Service function, the request should not be mailed until the TC 48X transactions have posted and all compliance and freeze code conditions have been addressed.
5. The financial information will be input into Financial Statement under the Bal Due icon in AMS. The account does not have to be accelerated to ACS status prior to the AMS financial screen input.
6. If the financial information cannot be input, include a history statement in AMS. Examples of good history statements are: (1) OIC returned because the taxpayer failed to provide bank statements, (2) OIC rejected, the RCP totaled \$_____, and the taxpayer failed to increase their offer and Appeal Rights were not exercised, (3) OIC rejected because the taxpayer RCP totaled \$_____, which exceeds their liability. The taxpayer appealed and Appeals concurred with the rejection recommendation.

5.8.7.10.4 (03-07-2014)

Alternative Resolution Procedures - Assignment to Field

1. If immediate field assignment is being recommended, the history should be documented even if the offer is going to Appeals, so expeditious assignment can be made if Appeals sustains the rejection.

Types of cases where accelerated assignment to a Collection field revenue officer may be necessary include:

- A specific asset(s) with equity of \$50,000 or greater was identified during the offer investigation and/or,
 - A taxpayer's ability to full pay is apparent and the taxpayer refused to fully pay the liability or enter into an installment agreement to resolve the outstanding balance
2. The closing narrative in the AOIC remarks should be documented by the OE relative to whether immediate field action should take place. When reviewing the closing narrative, if the COIC manager agrees that immediate field action is warranted, the manager should state their concurrence in the AOIC remarks. If the offer is not appealed, COIC will process the closing actions on AOIC and forward the offer file to the site RO.
 3. The closing narrative by the OS in the ICS history should include a statement relative to whether immediate field action should take place. When reviewing the closing narrative, if the field offer manager agrees that immediate field action is warranted, the manager should state their concurrence in the AOIC remarks. If the offer is not appealed, the field offer group will process the closing actions on AOIC, as appropriate.
 4. Either the field offer manager or site RO will contact the Field RO Manager to discuss the potential other investigation (OI) issuance.

If after discussion with the field Manager a decision is reached not to issue an OI to the field, the OIC Field Manager or site RO will notate the ICS history or AOIC remarks and forward the case file for any remaining closing actions. NOTE: If possible, bal due modules may be created on ICS by the site RO or field offer group and transferred to the receiving field RO group.

If the field RO Manager states they agree with the assignment of the case, an OI will be issued to the field RO group or bal due modules will be created and transferred to the field RO group. The following information should be included in the ICS history:

- Basis for the immediate assignment determination and
- Equity determination on specific asset/levy source(s) located.

The OI or bal due modules will be created on ICS by the COIC site RO or the field offer group. The ICS parameter tables and SERP zip code assignment list are available to determine the appropriate field group. The ICS modules should be updated or the history should include a statement that the case should be treated as sub-code 604 (Large \$ Asset Case); copies of the Form 433-A(OIC) and 433-B(OIC) along with any relevant research documents will be provided to the Field RO Manager. Additional documents from the offer case file may be secured by the RO, if necessary, once the case is assigned.

Either the site RO or field offer group contact (as determined by the site or group procedures) name and phone number should be listed for the field RO to secure pertinent documents from the offer file, if necessary.

5. If a Form 657, Revenue Officer Report, is present in the case file and the RO requested on Form 657, contact with the RO should be made to advise of the offer rejection and that the RO may initiate action to accelerate the case to Status 26, if they wish to have the case returned to their inventory expeditiously.
6. The above actions cannot be processed on IDRS until the TC 48X posts. If the OIC group is able to input actions to IDRS, the actions should be suspended in the group until the offer closing transactions post (manual reversals should only be input if the TC 480 was manually input). If the actions are to be processed by another Service function, the request should not be mailed until the TC 48X transactions have posted and all compliance and freeze code conditions have been addressed.
7. Once received by the Field RO Manager, the case will be transferred to the RO pending reversal of the TC 480 (usually one full cycle).

Note:

No enforcement action(s) should be taken by the RO until the TC 480 has been reversed or the RO has verified the offer closing letter has been issued

The OI serves as an open assignment until the case is systemically assigned to Status 24 (QUEUE), at which time the RO Manager will assign the case to the RO using ENTITY GM Case Assignment. This process usually takes about 30 days. The RO Manager may use expedited STAUP/TSIGN procedures to assign the case to the RO on IDRS, if necessary.

5.8.7.11 (05-10-2011)

Destruction of Credit Reports

1. Procedures for destruction of credit reports for OICs should be as follows:
 - A. For rejected cases, all credit reports should be destroyed upon closure of the case after the 45-day period for appeal has passed. If the taxpayer files for appeal, the credit report should remain with the file and forwarded to Appeals. Appeals will then be responsible for pulling and destroying the report. This is in accordance with IRM 5.1.18.17.2.8 *Disposal of Credit Information*.
 - B. For returned, withdrawn, and terminated offers all credit reports should be pulled and destroyed after the managerial review and approval.
 - C. For accepted offers, see IRM 5.8.8, *Acceptance Processing*.

5.8.7.12 (03-07-2014)

Closed File Retention

1. Closed cases (other than acceptances) are to be retained in closed files in the Area or COIC offices. Document 12990 *Records and Information Management Record Control Schedules*, directs that the Area and COIC offices may retire the closed files to the Federal Records Center (FRC) when it is determined they are no longer needed for current business. See IRM 5.8.7.12.1 below for instructions on shipping closed cases to the FRC.
2. As space dictates in the offices, the files should be prepared to be retired to the FRC. Instructions for shipping files should be secured from the appropriate AWSS area Records Manager. A record of the cases shipped, including taxpayers name, TIN, and year closed, with a cross reference to the FRC box number and locations should be maintained in the Area or COIC office so the closed case file can be retrieved, if necessary, for litigation or other necessary action. This information should also be input into AOIC under FRC Tracking located on the AO-AOIC Main Menu page under maintenance.
3. Prior to shipping these cases they should be purged so that only the following documents are shipped:

If...	Then ship ...
	Return, Termination or Withdrawal letter to the taxpayer (and POA letter if applicable)
	<ul style="list-style-type: none">• All Forms 656 received• Form 2848, if applicable
Returned, Terminated or Withdrawn	<ul style="list-style-type: none">• CIS• Case history sheets• Other significant correspondence/ documents
	Rejection letter to taxpayer (and POA letter if applicable)
	<ul style="list-style-type: none">• All Forms 656 received• Form 2848, if applicable• Form 1271
Rejected	<ul style="list-style-type: none">• Narrative report• CIS with supporting verification/documentation• Case history sheets

- Other significant correspondence/documents

5.8.7.12.1 (05-10-2011)

Shipment of Closed Cases to Federal Records Center (FRC)

1. Document 12990 *Records and Information Management Record Control Schedules, R*, allows local offices to retain closed files until “there is no longer a business need” to retain them at the local level.
2. Follow procedures in IRM 1.15.4, *Retiring and Requesting Records*, when mailing closed cases to the FRC.

5.8.7.12.2 (05-10-2011)

Loading FRC Information on AOIC

1. COIC and field Area offices are required to load the FRC information on the AOIC FRC Tracking screen, for each case, prior to mailing the closed file(s) to the FRC. This screen includes the offer number, accession number, box number, FRC date and location. Refer to the AOIC Course User’s Guide for instructions on loading information on the AOIC FRC Tracking screen.
2. Cases shipped to FRC prior to the inclusion on AOIC, will not be grandfathered into AOIC; therefore, paper documents must be retained.

5.8.7.13 (05-10-2011)

Requesting a Closed Case from FRC

1. The AOIC FRC Tracking screen provides information to locate a closed offer file previously shipped to the FRC by entering either the TIN, accession number and/or the FRC date. Refer to the AOIC Course User’s Guide for instructions on how to locate a closed offer using the AOIC FRC Tracking Option.

Note:

If information is not available on the AOIC FRC Tracking screen or the AOIC remarks, refer to the Area designee responsible for maintaining the SF 135, *Records Transmittal and Receipt*, to locate the information.

2. If retrieval of a case is needed from FRC, a Form 2275, Records Request, Charge and Recharge, or optional Form OF 11, *Reference Request – Federal Records Center*, sheet must be completed. Follow procedures in IRM 1.15.4, *Retiring and Requesting Records*, when requesting closed cases from FRC.

Exhibit 5.8.7-1

Field Cover Sheet for Reloading an OIC under Reconsideration Procedures

This image is too large to be displayed in the current screen. [Please click the link to view the image.](#)

[More Internal Revenue Manual](#)



Part 5. Collecting Process

Chapter 8. Offer in Compromise

Section 8. Acceptance Processing

5.8.8 Acceptance Processing

- 5.8.8.1 [Overview](#)
- 5.8.8.2 [Amendment or Addendum to Form 656](#)
- 5.8.8.3 [Pen and Ink Changes to Form 656](#)
- 5.8.8.4 [Use of Electronic Signature on OIC Forms and Letters](#)
- 5.8.8.5 [Faxed Amended Forms 656](#)
- 5.8.8.6 [Required Actions Prior to Closing an OIC as an Acceptance](#)
- 5.8.8.7 [Closing Actions on Accepted Offers](#)
- 5.8.8.8 [Public Inspection File](#)
- 5.8.8.9 [Processing the Closed Offer File](#)
- 5.8.8.10 [Acceptance Processing for Related, TFRP, Federal Employee, and Federal Contractor Offers](#)
- 5.8.8.11 [24-Month Mandatory Acceptance under IRC § 7122\(f\)](#)
- 5.8.8.12 [Legal Opinion of Counsel](#)
- 5.8.8.13 [Continuous Wage Levy](#)
- 5.8.8.14 [Destruction of Credit Reports](#)
- 5.8.8.15 [Forwarding Case Files to the Federal Record Center \(FRC\)](#)
- 5.8.8.16 [Notification of Dishonored Application Fee and/or TIPRA Payment after Notification of Acceptance](#)
- Exhibit 5.8.8-1 [Offer in Compromise Recommendation Report](#)
- Exhibit 5.8.8-2 [Addendum to Form 656](#)
- Exhibit 5.8.8-3 [Letter for Addendum to Form 656](#)
- Exhibit 5.8.8-4 [24-Month Acceptance Letter](#)

Manual Transmittal

November 04, 2014

Purpose

(1) This transmits a topic based revision for IRM 5.8.8, Offer in Compromise, Acceptance Processing to incorporate procedural changes based on *Affordable Care Act (ACA) Provision 1501: Requirement to Maintain Minimum Essential Coverage (Individual Shared Responsibility) (IRC § 5000A)*.

Material Changes

(1) This IRM has only been updated for the Affordable Care Act (ACA) Provision 1501. Any content unrelated to the ACA provision was not reviewed for currency or accuracy.

IRM reference

Changes

- | | |
|------------|---|
| 5.8.8.6(4) | Included language concerning MFT 35 under IRC § 5000A individual shared responsibility payment. |
| 5.8.8.6(7) | Included language that if the OIC contains MFT 35 periods, the related liabilities will not be included in the Notice of Federal Tax Lien (NFTL). |
| 5.8.8.8(2) | Corrected IRM reference in Note. |
| 5.8.8.15 | Added a reference to IRM 5.8.7.12.2, which provides instruction to load FRC information on AOIC. |

Effect on Other Documents

IRM 5.8.8 published 08-08-2014 is superseded.

Audience

SB/SE Collection and Campus Compliance employees

Effective Date

(01-01-2015)

Rocco A. Steco
Acting Director Collection Policy

5.8.8.1 (09-23-2008)

Overview

1. The determination to accept an OIC is based on sound decisions relating to an analysis of the taxpayer's facts, circumstances, and financial situation. Documentation supporting this decision and approval at the proper levels are required to complete the acceptance. This section describes the process for accepting an OIC.

5.8.8.2 (08-08-2014)

Amendment or Addendum to Form 656

1. When an OIC is being recommended for acceptance, there may be a need to make changes to the OIC. Depending on the type of change, the taxpayer may be required to submit either an amended Form 656 or an addendum.
 - A. Secure an **amended** Form 656 when there are changes to:

(1) The entity,

(2) The TIN, and/or

(3) The signature

Exception:

No amended Form 656 is required if the changes meet the criteria defined in IRM 5.8.8.3, *Pen and Ink Changes to the Form 656*, below.

B. Secure an **addendum** when the *only* changes are to:

(1) The payment amount, and/or

(2) The payment terms

2. The submission of an amended Form 656 or addendum may also require an additional payment of either 20% of the revised offer amount (less the amount previously submitted) or the revised periodic payment. The taxpayer will be given credit for payments made with the original OIC.

**5.8.8.2.1 (08-08-2014)
Amending Form 656**

1. An amended Form 656 will be required if the changes are for other than those defined in:

- IRM 5.8.8.2.2, *Addendum to Form 656* or
- IRM 5.8.8.3, *Pen and Ink Changes to Form 656*.

2. An amended Form 656 will also be required when an original Form 656 was made processable without a signature or with an electronic signature and the OIC is now ready to be accepted. In these cases, an original signature must be secured.

3. When accepting the OIC requires an amended Form 656, the following actions will need to be taken on AOIC:

- A. Update the Summary screen by inputting "A" (Amended) to reflect receipt of an amended Form 656.
- B. Update the Offer Amount, if applicable.

Note:

Include the total offer amount, not the amount remaining after any applied TIPRA payments.

- C. Update the OIC type (cash or deferred), if applicable.
- D. Do not change the OIC pending date.

4. Write "AMENDED" on the top margin of Page 1 of the Form 656.

5. Document the case history.

**5.8.8.2.2 (08-08-2014)
Addendum to Form 656**

1. The addendum is secured in lieu of an amended Form 656 and should be obtained when the payment terms and/or the offer amount are the **only** changes required.

Note:

See IRM 5.8.8.2.2.1 below for instructions on the completion of the addendum.

2. Prior to sending the addendum to the taxpayer, contact by telephone should be attempted to inform him or her of the purpose and importance of promptly reviewing, signing, dating, and returning the addendum. Also, inform the taxpayer that the OIC may be returned without appeal if they should fail to sign and return it within the agreed time.

3. Prepare the letter to the addendum. See Exhibit 5.8.8–3 below.

Note:

The letter may also be found on AOIC. Open AOIC, then **(Select)** "OIC Transmittal" then **(Select)** "Click here for Addendum to Form 656" **(Select)** "Addendum Letter Format"

4. Complete the addendum before sending it to the taxpayer.

Note:

The addendum may also be found on AOIC. Open AOIC, then **(Select)** "OIC Transmittal" then **(Select)** "Click here for Addendum to Form 656" **(Select)** "ADDENDUM TO FORM 656"

5. When the signed, dated addendum is received, do not cross out or update the original Form 656.

Note:

The signed and dated addendum may be mailed or faxed by the taxpayer. In addition, the "IRS Only" box in Section 5 (Payment Terms) of the Form 656 must be completed.

6. The addendum must be date stamped. There is no requirement for the receiving IRS employee to sign the addendum upon receipt.

7. The acceptance letter should reflect the date of the original Form 656.

8. The addendum must be attached to the original Form 656.
9. The addendum does not reset the 24-month mandatory acceptance period.
10. Only one addendum is required for joint OICs.

5.8.8.2.2.1 (08-08-2014)

Instructions for Completion of the Addendum

1. It is the responsibility of the OE or OS to complete the addendum *before* sending to the taxpayer or POA following the below instructions.
 - A. **Part 1** — Enter the taxpayer name; original offer number; taxpayer(s) Social Security Number (SSN) or Employee Identification Number (EIN); original IRS received date; original offer amount; and original tax periods to be compromised.
 - B. **Part 2, Revised Offer in Compromise Amount** — Enter the revised, agreed offer amount. *Line A* – Enter the amount paid with the original OIC; *Line B* – Enter the amount and date of TIPRA payment(s) submitted with an amended/revised Form 656; *Line C* – Enter the amount of any additional payment to be included with the addendum; *Line D* – Enter the total of all periodic payments received since the original OIC was submitted.
 - C. **Part 3, Revised Offer in Compromise Payment Terms — Cash Offer payable in 5 or fewer payments in 5 or fewer months** — Enter the revised terms for a lump sum cash OIC. Lines E through I — define the amount and number of payments.

Note:

Generally, a cash OIC cannot exceed 5 payments made within 5 months from the acceptance date. In rare situations, an exception may be allowed to the five month payment requirement when instances such as the ones shown in the examples below exist (not all inclusive). In these cases, more flexible payment terms may be warranted, but may not exceed 24 months. Also, in these cases, while they may be submitted and considered as cash offers, the RCP should be calculated as a periodic offer (24 months).

Example:

A non-profit organization submits a Doubt as to Collectibility with Special Circumstances offer. This organization's services are critical to the community and it receives funding through grants from federal and state sources. Based on when the grant funds are received, monies to pay out the OIC will be available in months six, nine and twelve. The financial statement appears to support the offer and the taxpayer's overall compliance history does not weigh against acceptance. Therefore, the offer is accepted as a lump sum cash payment offer payable in months six, nine and twelve.

Example:

The taxpayer submits an offer under Effective Tax Administration based on non-economic hardship. The taxpayer was using a payroll service provider (PSP) who deducted all tax payments from the taxpayer's bank account, yet did not remit them to the Service. The taxpayer is a food service company who has been in business since 1987. Their main customer is the Department of Defense. Their overall compliance history has been positive. The majority of funding from DOD is received in October and January. The financial statement appears to support the offer. The offer is accepted as a lump sum cash payment offer payable in months eight and eleven.

Note:

The balloon payment must be in the government's best interest. See IRM 5.8.5.28.

- D. **Part 4, Revised Offer in Compromise Payment Terms — Periodic Payment Offer payable in 6 — 24 months** — Enter the revised terms for a periodic payment OIC.

Note:

A periodic payment OIC cannot exceed 24 months. Part 4 must equal the amended offer amount minus any payments entered in Part 2, lines A through D. The terms for periodic payments allow the taxpayer to make a final balloon payment or unequal monthly payments. The below example provides language that may be used when the taxpayer is proposing a balloon payment at the end of the OIC agreement.

Example:

\$250 will be sent beginning on the 15th of January 2014, and then \$250 will be sent in on the 15th of each month for a total of 23 months with a final payment of \$7,500 due on the 15th (day) of the 24th month of the agreement.

- E. **Signature(s)** — The taxpayer(s) or authorized Corporate officer must sign and date the addendum.

Note:

A joint OIC must be signed by both taxpayer's.

5.8.8.3 (08-08-2014)

Pen and Ink Changes to Form 656

1. Pen and ink changes may be made to correct the below issues. No amended Form 656 or addendum will be required in these instances. However, if the situation is other than those defined in the below examples, an amended Form 656 or addendum must be secured.
 - Middle initial is incorrect or missing. It may be added or removed to match IDRS.
 - SSN or EIN does not match IDRS and it is apparent that the reason for the mismatch is a transposition of numbers.
 - A business name and EIN was included on the Form 656 but conversation with the taxpayer confirmed they do not want to compromise the liabilities of the company (LLC, LLP, etc.). Remove the name by lining through the entity information. Reverse the related TC 480(s) and remove the related periods on AOIC, if applicable.
 - When the terms are completed but the total amount offered is blank, has a simple addition error, or not completed. Total the payments as stated in the terms and fill in or correct the total amount of the offer.
 - Changing the day of the month of the payment(s) when requested by the taxpayer or POA.
 - Filling in the physical address, after verification with the taxpayer or POA.
 - Check the low income certification box when the taxpayer or POA includes a Form 656-A, *Income Certification for Offer in Compromise Application Fee (For Individual Taxpayer Only)*, with the new Form 656 but fails to check the Low Income Certification box.
 - Round payments up or down to the nearest dollar, as appropriate. Below is an example of rounding the payments to eliminate odd cents.

Note:

There is no requirement to make the payments in equal monthly installments.

Example:

The taxpayer offers to pay \$7,810 over 24 months for an average of \$325.42 per month. Rounding the offer payments to \$326 would equal an offer amount of \$7,824. You may consider taking one of two options. *Option 1* - Discuss increasing the offer to \$7,824 paid at \$326 a month for 24 months. *Option 2* - The first payment could be set at \$335 with the rest of the payments at \$325 for the remaining 23 months to equal a total offer amount of \$7,810. Any adjustments require telephone contact to discuss the options.

- Add or delete periods. If an additional period is assessed after the original Form 656 pending date on AOIC, the Transaction Code (TC) 480 date will reflect the TC 150, TC 290, or TC 300 date, if there is a dollar amount associated. Do not use any TC date with zero amounts. If a period has been full paid through other than TIPRA payments, remove the period.

Note:

Update the AOIC MFT screen by adding any new tax periods not included on the original Form 656 and/or deleting any tax periods that are no longer owed, unless the liabilities were paid as a result of TIPRA. In addition, the Form 656 allows the IRS to add or delete any liabilities that were not listed on the Form 656 or not found on IDRS. Therefore, an amended Form 656 is not required for the sole purpose of adding or deleting periods.

2. In all instances when a pen and ink change is appropriate, the OE, OS, or PE must contact the taxpayer and/or POA by telephone to secure verbal approval **before** making the change(s). Conversations and approvals must be well documented in the case history.

Note:

If no telephone contact for approval can be secured, an amended Form 656 or addendum must be secured correcting all deficiencies **before** acceptance, as defined in 5.8.8.2 above.

3. When pen and ink changes are made to the Form 656 the OE, OS, or PE must initial and date each change.

5.8.8.4 (08-08-2014)

Use of Electronic Signature on OIC Forms and Letters

1. When employees are not co-located with approving officials, to expedite case closing actions certain documents have been approved to be signed with electronic signature. In order to secure the approval signature electronically it must meet the current security and verification standards of the IRS.

Note:

The ability to use electronic methods of signature does not forego the delegation of authority defined in IRM 1.2.44.2, *Delegation Order 5-1 (Rev. 3)*.

2. The below documents have been approved for electronic signature on accepted OICs.

- Form 7249, *Offer Acceptance Report*
- OIC Acceptance Letter
- All Collateral Agreements — **Form 2261**, *Collateral Agreement - Future Income (Individual)*; **Form 2261-A**, *Collateral Agreement - Future Income Corporation*; **Form 2261-B**, *Collateral Agreement - Adjusted Basis for Specific Assets*; and **Form 2261-C**, *Collateral Agreement - Waiver of Net Operating Losses, Capital Losses, and Unused Investment Credits*.

3. Necessary documents for the approving official to determine the appropriateness of the closing action must be provided with the request.

Note:

Approving officials may use their discretion to determine required documentation based on the specific case and type of closing action. They may also determine when an original signature on any OIC form or letter is the appropriate method of approval.

4. A printed copy of the electronically executed document, form and/or letter, must be included in the case file.
5. Follow the below procedures to prepare documents for electronic signature:
 - E-mail, E-Fax, or scan and save the documents in PDF format.
 - Internal use forms, including Form 7249, *Offer Acceptance Report*, may be signed (certified with visible signature) using the approved signature method.
6. The letter being provided to the taxpayer should include a graphic signature in the Signature block.

Note:

Specific instructions on how to include an image of your handwritten signature in the digital signature selections are available through **(Select) "Adobe Acrobat Help" (Select) "How to Sign" (Select) "Create a Signature Appearance"** .

7. The ICS and/or AOIC history must clearly indicate the documents that are being submitted to the approving official.

5.8.8.5 (08-08-2014)

Faxed Amended Forms 656

1. The amended Form 656 may be accepted by fax if:
 - there is an open OIC;
 - contact has been made with the taxpayer by phone or in-person;
 - the taxpayer history file is documented with the date of contact and notation is made that the taxpayer requests to send the form by fax; and
 - the original Form 656 has an original signature(s).

5.8.8.6 (01-01-2015)

Required Actions Prior to Closing an OIC as an Acceptance

1. **Re-check IDRS Command Codes AMDIS and TXMODA** — Tax must not be compromised unless it is assessed and legally due. On those cases where an audit, AUR, SFR, or ASFR was discovered during the investigation IDRS must be re-checked to ensure that all taxes included on the accepted OIC have been properly assessed and are still due and owing. If an open audit or AUR is found on a period included as part of the OIC, contact should be made to resolve the issue per IRM 5.8.4.17, *Pending Assessments*. If an amended return has been processed, the adjustment must post before acceptance. Document the case history.

2. **Check IDRS for Department of Justice or Docketed Court Controls** — Status code 71 or 72 identifies more than a DOJ case. The OE or OS should check IDRS before acceptance for any Transaction Code (TC) identifying an open DOJ, tax court case, or judgment. If a Status Code 71 or 72, TC 520 or TC 550 with an indicator of 04 is present, the offer cannot be accepted without the approval of Counsel or DOJ. A list of status indicators may be found in Document 6209, Section 11 – Collection or on SERP under Document 6209. Area Counsel must be contacted to share your recommendation for acceptance with DOJ. See IRM 5.8.1.3.1, Tax Cases Controlled by Department of Justice and 5.8.1.3.2, Docketed Tax Court Cases, for additional information.

Note:

A copy of the IDRS transcript must be included in the file if the offer is to be reviewed and approved by Counsel.

3. **Credit Report request**— Verify that a full credit report has been requested when the current balance meets the amount defined in IRM 5.1.18.18.2.4, *Required Credit Reports*, and IRM 5.8.5.3.1.2, *Securing Credit Reports to Verify Taxpayer Information*. All requests for credit reports require managerial approval.

Note:

A full credit report may be secured on any case to assist in locating taxpayer assets and verifying financial information, when appropriate. After reviewing the credit report, the case history must be documented with an analysis of the findings as well as the reason(s) for the request .

4. **Update AOIC** — Update the AOIC record as follows:

- A. *Main Screen* — Update to reflect the correct basis for compromise, if changed, and document the existence of special circumstances, if applicable. Update the disposition code to 1 (proposed acceptance).
- B. *MFT Screen* — Verify the correct assessment date for each module, including MFT 35 — individual shared responsibility payment (SPR) assessed pursuant to IRC § 5000A. Update module(s) that may have changed. Go to the MFT screen; Select the "Update Accrued Date" tab; Input the date the interest is to be computed to; Go to the "Request Interest" tab and re-input the date for the accrual of interest; Review the data to make sure it is correct; Press "Submit" to populate the information into AOIC

If...

Any modules have restricted penalty or interest

Any modules are Non-Masterfile, and not on IDRS

The module was full paid as a result of a payment action other than TIPRA (such as, refund offset, prior levy payment, etc.)

The payment(s) that satisfied the tax period included both a TIPRA payment, and other payment (such as, refund offset, prior levy payment)

Then...

Use IDRS command code COMPAD or COMPAF to determine the accrued amounts. Include the accrued amounts in the total liability listed on the MFT screen. The manually accrued amounts must also be added to the paper transcript.

Secure an Automated Non-Masterfile (ANMF) transcript. Update as necessary using IDRS command code COMPAD and/or COMPAF.

Remove the period from the MFT screen on AOIC, and update the Form 656 to reflect the periods to be compromised.

Note:

No amended Form 656 is required. See IRM 5.8.8.3, *Pen and Ink Changes to the Form 656*, above for instructions to add or remove periods on the Form 656.

The MFT screen will reflect a zero balance due. Do not remove the period from the MFT screen on AOIC. Do not update the Form 656 to remove the periods that were full paid.

Note:

No amended Form 656 is required. See IRM 5.8.8.3 above for additional information.

- C. *Terms Screen* — Update the Accepted Terms screen to those reflected on the accepted OIC. Do not update the Proposed Terms.

Note:

If a collateral agreement is secured, you must also update the Collateral section of the Terms screen with the information of the agreement. In addition, if a Form 2261-C, *Collateral Agreement – Waiver of Net Operating Losses, Capital Losses, and Unused Investment Credits*, is secured document the terms and include the following language — "...and all other conditions as set forth in the Form 2261-C attached to the form 656 which was signed by the taxpayer on (MM/DD/YYYY)." This action will ensure the language is also included on the Form 7249, *Offer Acceptance Report*.

5. **Refresh Masterfile Data** — Go to the MFT screen and select "Refresh Masterfile Data". This action should be completed prior to generating the Form 7249. This action ensures the Form 7249, the AOIC Masterfile Screen, TDS (Transcript Deliver System), or MFTRA-X are in close agreement since the Form 7249 requires various levels of approval, and both become public documents.

Note:

If you have access to TDS you should use that system. MFTRAX will continue to be available; however; TDS should be the first option for ordering transcripts. Both AOIC and TDS provide redacted transcripts.

6. **Redacting the Transcript** — Request a transcript using AOIC Masterfile Screen, TDS, or order a MFTRA-X as close to the acceptance date as possible without delaying acceptance. A complete copy should be retained with the case file. If the data has not been systemically redacted (as in most AOIC transcripts) for the public inspection file, the OE/OS must redact critical information by blacking out the taxpayer's social security number (both primary and secondary, if a joint OIC) and/or Employee Identification Number (EIN) and all tax information that is not to be disclosed to the public; such as:

- A. Name and SSN of a co-obligor spouse if the spouse is not a party to the compromise
- B. Address (house number and street name only)
- C. Number of exemptions
- D. Filing status
- E. Adjusted gross income
- F. Taxable income
- G. Principal Industry Activity Code
- H. Transaction Codes with no dollar amounts. Redact the entire line including the date should be redacted.
 - I. Transaction Codes and explanations dealing with fraud, negligence, or criminal investigations, but not the date and amount of the transaction.
- J. Power of Attorney/Tax Information Authorization (POA/TIA) on file.

7. **Document the Case History** — Before closing a case as an acceptance, document the case history on AOIC regarding the decision. For field employees using ICS, include a summary paragraph on AOIC which includes a sentence that the complete history is on ICS. Include any special instructions for the MOIC Unit regarding application of funds, the total offer payments received during the pendency of the OIC, whether a Form 3040, *Authorization to Apply Offer in Compromise Deposit to Liability*, was secured, and/or requesting a NFTL re-filing if one will be required during the terms of any periodic payment OIC. See IRM 5.12, *Federal Tax Liens*, for more information about when to re-file a NFTL.

Note:

If MFT 35 liabilities were included in the OIC, the related periods will not be included in the NFTL.

8. **Generate and print letters and reports** — Generate and print letters and report as follows:
- The Acceptance Recommendation Report should only be prepared on those cases meeting Counsel criteria (see IRM 5.8.1.3.6, *Counsel*). Make sure the Acceptance Recommendation Report and case history clearly and accurately reflect the reason for the acceptance. This is particularly important in Effective Tax Administration (ETA) and Doubt as to Collectibility with Special Circumstances (DATC-SC) cases (see Exhibit 5.8.8-1 below). The report should include the following information: (1) The cause of the delinquency and status of current compliance; (2) The amount of the RCP and an explanation of how the RCP was calculated; (3) Whether or not special circumstances exist and how they affected the agreed offer amount; such as age or existing health issues, etc.; (4) Negotiations resulting in the acceptable OIC amount; (5) A conclusion that summarizes the basis for acceptance.
 - The Confidential Information Report may be required in those rare situations where relevant facts of a confidential nature exist that should not be included in the acceptance recommendation report complete a supplemental memorandum and include it in the case file. Do not include information already discussed in the OIC acceptance recommendation report.
 - Generate and print the appropriate acceptance letter and POA letter, if applicable, for the signature of the delegated official(s). Attach copies of the accepted Form 656 and addendum, if appropriate, and any applicable collateral agreement(s).
 - Generate Form 7249 verify that it reflects the current liability(s).
 - Print Form 7249 for the required signatures. The accepting official has delegated authority for acceptance based on the type and dollar amount of the case. IRM 1.2.44.2, *Delegation Order 5-1 (Rev. 3)*, provides the level of authority for approving all OIC dispositions.

Note:

The approving official as defined in IRM 1.2.44.2 **must** be the final signature.

9. **Assemble file using Document 9600 B** — The file must be assembled using Document 9600 B, *Tab Dividers for Offer-in-Compromise Case Files Document*. The current revision of the labeled dividers is required.

Note:

The Document 9600 B must remain in the packaged order. IMFOLI and SUMRY should be the top pages under the "Account Transcript" tab, followed by the balance of current transcripts. Credit Report, Power of Attorney, and Form 3040 should be the first 3 pages under the "Miscellaneous" tab, followed by current additional miscellaneous information.

10. **Submit the file for approval** — Submit the file for all required signatures including routing to Counsel for review, if required. See IRM 5.8.8.11, *Legal Opinion of Counsel*, below.

5.8.8.7 (08-08-2014)

Closing Actions on Accepted Offers

- Upon securing all required approval(s) and signature(s), date and mail the acceptance letter(s). Acceptance letters generated at the end of the year should be dated and mailed the same calendar year that the letters are signed. Signed and dated copies must retained in the OIC file.
- Make a copy of the Form 7249 for the public inspection file. The copy must be redacted in accordance to IRM 5.8.8.6(7), above, and include all required signatures. Mail it together with the required sanitized transcripts to the appropriate office for filing in the public inspection file.
- Close the case on AOIC and process in accordance with procedures defined in IRM 5.8.8.9, *Processing the Closed Offer File*, below.

5.8.8.8 (08-08-2014)

Public Inspection File

- Public inspection of certain information regarding all OIC's accepted under IRC § 7122 is authorized by IRC § 6103(k)(1).
 - For each accepted OIC, the file will **only** contain the following items:
 - A copy of the redacted Form 7249
- Note:**
- See IRM 5.8.8.6(6) above for a list of redacted information.
- The sanitized AOIC Masterfile Screen, TDS, MFTRA-X or ANMF transcript.
 - The office that has accepted the OIC will be responsible for providing all required documents as soon as possible after acceptance, for inclusion in the public inspection file.
 - Treas. Reg. § 601.702 (d) (8) provides that, for one year after the date of execution, a copy of Form 7249, *Offer Acceptance Report*, for each accepted OIC with respect to any liability for a tax imposed by Title 26 shall be made available for inspection and copying. A separate file of accepted OIC records will be maintained for this purpose and made available to the public for a period of one year.
 - The public inspection file will be maintained in a location designated by the Area office. The file will be maintained in the Area where the taxpayer resides.
 - The Area office may destroy the Public Inspection file after the one year period has expired.
 - If a visitor has requested to view the Public Inspection File and attempts to take a picture either with a camera or camera phone, they should be informed that photos are prohibited in IRS facilities. If they continue to attempt to take unauthorized photos, local Physical Security and Emergency Preparedness (PSEP) security staff should be immediately contacted, as well as TIGTA, and/or Federal Protection Service (FPS) and the local police, as appropriate, to file a complaint in violation of CFR, Title 41, Subpart 101-20.310, (Conformity with Signs and Directions).

5.8.8.9 (08-08-2014)

Processing the Closed Offer File

1. Once an OIC has been closed on AOIC, it should be held in-house until Embedded Quality (EQ) has had sufficient time to pull for review. Field Area Office EQ randomly selected cases are identified on the AOIC Quality Review Listing the following Monday after closure. If the case is not selected for review, the OIC should be released on AOIC on the following Monday after closure or as soon as practical thereafter, and the entire file mailed to the applicable MOIC unit. Care must be used to ensure that the OIC is mailed to the same unit it is released to on AOIC.
2. If the case is chosen for EQ review, copies of the following documents should be made and placed in the file in lieu of the originals before the OIC is forwarded for review. The OIC should be validated and released on AOIC on the following Monday after closure or as soon as practical before sending the original documents to the MOIC unit in a file folder clearly indicating that the remaining information was mailed to EQ.
 - A. Original and amended Form 656, *Offer in Compromise*, or addendum
 - B. Form 7249, *Offer Acceptance Report*
 - C. Copy of the Acceptance letter(s)
 - D. Any collateral agreements
3. Before forwarding the case to the MOIC unit take the following steps:
 - A. Verify that the original, any amended Form(s) 656, and addendum, if required, are in the case file.
 - B. Check to be sure the Form(s) 656, Form 7249, IDRS, and AOIC all reflect the same tax liability(ies).
 - C. Verify that the waiver dates on the Form(s) 656, IDRS, and AOIC are correct and consistent.
 - D. Update Data Download before releasing jurisdiction to MOIC. This action will ensure the Primary Location Code and Collection Location Code are updated.
4. Accepted OIC files should be mailed with a Form 3210. Shipping offices must ensure that a receipted copy of the Form 3210 is received. If a receipted copy of the Form 3210 is not received within 30 calendar days of mailing, contact must be made with the receiving office and tracing actions taken. Appropriate actions must be taken to recover or replace missing or lost files.

5.8.8.10 (08-08-2014)

Acceptance Processing for Related, TFRP, Federal Employee, and Federal Contractor Offers

1. When two or more related OICs are being recommended for acceptance, but acceptance is based on one financial analysis, one acceptance narrative may be used. A separate file should be created for each entity containing the separate items that pertain to each OIC. It is not necessary to duplicate information that pertains to both or all files. The files must remain together and clearly marked indicating that there are related OICs (for example "1 of 2" and "2 of 2").
2. When the accepted OIC includes Trust Fund Recovery Penalty (TFRP) assessments, a careful review must be made to ensure all TFRP assessments are included. Generally, TFRP assessments made before August 2000, combine all unpaid corporate tax quarters and were assessed under the tax period of the latest quarterly period owed by the corporation. TFRP assessments after August 2000, are made for each quarterly period that is owed by the corporation. The Forms 656 and 7249 must match and must reflect each individually assessed TFRP tax period.
3. OICs from Federal employees require a determination of whether public policy implications exist based on the sensitivity of the employee's position or area of responsibility. The result of this consideration should be documented in the case file. OIC acceptances for employees of the IRS also require the approval of the SBSE Collection Area Directors or SB/SE Compliance Services Operations Manager (COIC).

Note:

OICs from Federal civil service retirees are to be considered under normal procedures.

4. OICs from a Federal Contractor require a determination of whether public policy implications exist. The result of this consideration should be documented in the case file. OIC acceptances for Federal Contractors also require the approval of the SBSE Collection Area Directors or SB/SE Compliance Services Operations Manager (COIC). See IRM 5.7.9.2, Identifying Federal Contractors, for additional information.

5.8.8.11 (08-08-2014)

24-Month Mandatory Acceptance under IRC § 7122(f)

1. An OIC will be deemed accepted if the IRS does not make a decision on the OIC and notify the taxpayer of its determination within two years of the IRS received date, which is stamped on the Form 656 upon receipt. The postmark date is not relevant in determining when an OIC is received.

Note:

Any period during which any tax liability that is included on the OIC is in dispute in any judicial proceeding will not be taken into account in determining the expiration of the 24-month period.

2. An OIC will not be deemed to be accepted pursuant to I.R.C § 7122(f), if within the 24-month period, the OIC is:
 - A. Rejected by the IRS,
 - B. Returned by the IRS to the taxpayer as not-processable or no longer processable,
 - C. Voluntarily withdrawn by the taxpayer,
 - D. Withdrawn under IRC § 7122(c)(1)(B)(ii) because the taxpayer failed to make the second or later installment(s) due on a periodic payment OIC, or
 - E. Terminated by the IRS.
3. Expedited processing should take place if 18 months or more have expired from the IRS received date. There may be cases where a field Revenue Officer secured the OIC several months (or years), before forwarding to COIC for processing. When identified, these cases must be brought to the immediate attention of Headquarters Policy Analyst and worked expeditiously.
4. To determine if 24 months have expired since the IRS received date, the OE/OS should conduct a thorough review of the OIC file to determine if the provisions of IRC § 7122(f) apply. This should include (at a minimum):
 - A review of the Form 656 to determine the IRS received date. If the IRS received date is prior to July 16, 2006, the OIC is pre-TIPRA and the 24-month mandatory acceptance period does not apply.
 - A review to determine if the OIC was received after July 16, 2006 and 24 months have elapsed since the IRS received date. If 24 months have not elapsed, then the OIC is not a mandatory acceptance.
 - A review to determine if a decision letter has been issued to the taxpayer within 24 months of the IRS received date. Decision letters include issuance of rejection, return, withdrawal (voluntary and mandatory), termination, and/or acceptance letters. If a decision letter was issued within 24 months of the IRS received date, then the OIC is not a mandatory acceptance.

- Determine if any tax liability listed in the OIC was disputed in a judicial proceeding during the 24-month period following the IRS received date. The length of time that any tax liability included on the OIC was disputed in a judicial proceeding should be excluded in the calculation of the 24-month TIPRA determination. If, after the revised calculation, 24 months have not elapsed, then the OIC is not a mandatory acceptance. If a total of 24 months have expired (after subtracting the length of time any tax liability was disputed in a judicial proceeding), the OIC will be deemed a mandatory acceptance.

Note:

If there is any question about whether the 24-month period has expired, refer the case through your local IRS Counsel for review. Do not assume that the tax liability was in dispute merely because the Department of Justice litigated issues in a bankruptcy case. A bankruptcy litigation may not raise a dispute as to the taxpayer-debtor's tax liability, e.g., the trustee sues the United States to recover a preference payment.

5.8.8.11.1 (08-08-2014)

Employee Responsibilities for 24-Month Mandatory Acceptance under IRC § 7122(f)

1. If the 24-month period has expired, the following actions are required:
 - A. As soon as the 24-month period expiration is identified, the OE/OS currently assigned the OIC or the group manager if the case is not assigned, will document the AOIC history and ICS history, if applicable, addressing the reason(s) the 24-month period expired. The assigned employee must also immediately inform their group manager or department manager of the 24-month period expiration.

Note:

If the OIC is not on AOIC, a history statement will be entered in the system of record, i.e., ICS, AMS, etc. The statement should include any unusual or mitigating circumstances.

- B. The group or department manager will review the AOIC history, summary statement, and the ICS history as well as any other relevant information to determine if further administrative action is warranted and if disciplinary action is appropriate.
- C. The group or department manager will prepare a memorandum within 30 calendar days of notification of the expired TIPRA statute to the Territory or Operations Manager detailing the reason(s) the 24-month period expired without the IRS making a decision on the OIC, why further administrative action is or is not warranted, and include any proposed disciplinary actions, if appropriate. The memorandum will also include the following information: (1) IRS received date; (2) COIC site of original receipt; (3) Date assigned to and received by the field area (if applicable); (4) Date received by the OE/OS who is currently assigned the case; (5) Date and type of any proposed recommendations made by an OE/OS; (6) Dates of discussion between manager and employee beginning 18 months after the IRS received date concerning the impending expiration of the 24-month TIPRA statute; (7) Any mitigating circumstances.
- D. The Territory or Operations Manager will review the memorandum and within two calendar days of receipt will forward a copy by overnight mail to the Area or Campus Director, if not co-located, along with a cover memorandum outlining recommended disciplinary action, if any.

5.8.8.11.2 (08-08-2014)

Acceptance Letter Issued under IRC § 7122(f)

1. After confirming that the IRS did not make a determination with regard to the OIC within 24 months of the IRS received date, the taxpayer must be issued an acceptance letter (see IRM Exhibit 5.8.8-4 below).
2. See IRM 1.2.44.2, *Delegation Order 5-1 (Rev. 3)* for the level of authority delegated permission to sign the OIC and acceptance letter.
3. Mail the signed letter to the taxpayer.
4. Mail a copy of the memorandum described in IRM 5.8.8.9.1, above, and a copy of the acceptance letter to the National OIC Program Manager within 45 calendar days of discovery.

Note:

The National OIC Program Manager is not the delegated official required to sign the acceptance letter or memorandum.

5. Update AOIC to reclassify the basis of compromise as "A" (Alternative Basis for compromise). Use the date the 24-month period expired as the AOIC acceptance date. Use the same date on the acceptance letter.

Note:

Updating the basis to "A" on AOIC is for tracking purposes only and has no impact on the levels of approval defined in IRM 1.2.44.2.

6. The OIC file will be processed in accordance with procedures defined in this IRM.

5.8.8.12 (08-08-2014)

Legal Opinion of Counsel

1. Counsel is required to review OICs when the total liability(ies) for all related OICs on the same taxpayer is \$50,000 or more. The purpose of Counsel's review is to determine whether the OIC legally meets the standards of DATL, DATC or the promotion of Effective Tax Administration (ETA). Counsel also reviews the OIC to ensure it conforms to the Service's policies and procedures.
2. The requirement for Counsel review is based on the liability(ies) at the time of submission, not at the time of acceptance. For example, if the application of TIPRA payments reduced the liability(ies) below the required \$50,000, the OIC will still require Counsel review before acceptance.
3. A follow-up should be scheduled for 45 days from date of submission for Counsel review. If Counsel has not responded within 45 days, contact Counsel to determine the status of the review.

5.8.8.12.1 (08-08-2014)

Counsel Review and Concurrence (Legal Issues)

1. Counsel's signature on Form 7249 constitutes the legal opinion required by IRC § 7122(b). By signing the form and checking the "agree" box for legal sufficiency, Counsel is certifying that all of the legal requirements for compromise have been met. If Counsel does not sign or check the "disagree" box for legal sufficiency on the Form 7249, then the IRS has the legal right to accept the offer. However, rejecting Counsel advice is not a preferred course of action. In these instances, the OE/OS should try to resolve the matter with Counsel before accepting the offer.
2. It is recommended that if no agreement can be reached, the next appropriate action must be taken (for example, rejection) to resolve the OIC.
3. If it is determined that acceptance without Counsel concurrence is appropriate it must be approved by the Area Director. The Area Director must sign the acceptance letter, Form 7249, and any collateral agreements.
4. Thoroughly document the case history with the issues and supporting reasons for moving forward with acceptance. Include Counsel's memorandum or other communication with the case file.

5.8.8.12.2 (08-08-2014)

Counsel Review and Concurrence (Non-Legal Issues)

1. In some cases, Counsel may determine that the compromise is legally permissible, but may raise policy concerns or other issues of a non-legal nature. In these cases, Counsel must sign the Form 7249 and communicate the remaining issues by separate memorandum.

Note:

Counsel's signature does not necessarily indicate concurrence with the acceptance decision, but only that there are no legal barriers to compromise. It may be necessary to contact Counsel to discuss the outstanding issues.

2. There is no requirement for Counsel to concur with the decision to accept the OIC in order to go forward for approval. In those cases where Counsel does not concur and the issue is not of a legal nature, the accepting official must review and consider any opinion from Counsel prior to making the acceptance final. Where major policy concerns have been raised but not agreed, thoroughly document the case history with the issues and the supporting reasons for moving forward with the acceptance.
3. If, after discussion, agreement with Counsel cannot be reached, and only Policy issues exist, and Counsel has not signed the Form 7249 or otherwise agreed with the acceptance recommendation, the OIC may be accepted without Counsel signature.

Note:

Rejecting Counsel opinion is not a preferred course of action. An attempt to resolve issues with Counsel should take place prior to accepting the offer.

4. Cases that do not have concurrence of Counsel must be approved by the Area Director. The Area Director must sign the acceptance letter, Form 7249, and any collateral agreements.
5. Thoroughly document the case history with the issues and supporting reasons for moving forward with acceptance. Include Counsel's memorandum or other communication with the case file.

5.8.8.13 (08-08-2014)

Continuous Wage Levy

1. When the taxpayer has a continuous wage levy it must be addressed or released prior to forwarding the case to MOIC.
2. See IRM 5.8.1.10, *Withholding Collection*, for additional information on levy.
3. Take the following actions:
 - A. Research for the levy source.
 - B. Prepare a levy release, Form 668-D, *Release of Levy / Release of Property from Levy*.
 - C. Obtain authorizing signature.

Note:

COIC should use the Campus Revenue Officer.

- D. Mail the release to the employer.
 - E. Notify the taxpayer informing him or her of the levy release. If a letter is used as the method of communication, the following text is recommended: "Our records show that there is a levy on your account. This levy will be released. A copy of the Form 668-D, *Release of Levy / Release of Property from Levy*, is enclosed for your records. We are processing your levy release and it should be effective within 30 days."
 - F. If a levy is issued in error (during investigation or after processability), the levy proceeds must be returned to the taxpayer unless the taxpayer provides a request in writing for the IRS to keep the payments and be considered part of the OIC funds. If the taxpayer requested the levy funds be applied as a payment toward the OIC, the DPC must be changed to the appropriate DPC for OIC.
4. If a Transaction Code (TC) 971 Action Code (AC) 060 is present and it is identified as an open Federal Payment Levy Program (FPLP) levy, coordinate with Advisory to facilitate the release. See IRM 5.11.7.2.6 for additional information concerning the identification of an FPLP levy.

5.8.8.14 (08-08-2014)

Destruction of Credit Reports

1. All credit reports must be destroyed on accepted OICs after all approving signatures have been obtained.
2. If a credit report was requested, verify that the case history includes a summary of all relevant information.

5.8.8.15 (08-08-2014)

Forwarding Case Files to the Federal Record Center (FRC)

1. After the case has been closed on AOIC, the case should be retired to FRC when it is no longer needed for current business. It should be destroyed 11 years after acceptance of the OIC.

Note:

Because the closed case will be retained longer than two years, field offer specialists should include a hard copy of the ICS history.

2. See IRM 5.8.7.12.2, *Loading FRC Information on AOIC*, for instructions on loading the information on AOIC.

5.8.8.16 (08-08-2014)

Notification of Dishonored Application Fee and/or TIPRA Payment after Notification of Acceptance

1. If the case has been closed on AOIC but not yet forwarded to MOIC, upon notification of the dishonored check immediately notify the taxpayer or their power of attorney and request a replacement check.
2. The replacement payment should be in the form of certified funds (money order, cashier check, etc.) and received within a reasonable amount of time.
 - Inform the taxpayer or the authorized representative that the accepted OIC will be rescinded if the payment is not received within a reasonable time .
 - Provide a due date for receipt of the replacement payment to the taxpayer or the authorized representative.
 - Advise the taxpayer or their representative to submit the payment by overnight mail.
 - Document the case history.

3. If the case has been closed on AOIC and forwarded to MOIC, the case will be returned to the OE/OS for taxpayer contact.
4. Upon receipt of the case from MOIC, the OE/OS should immediately contact the taxpayer and request replacement payment in certified funds, if possible. Follow the procedures paragraphs (1) and (2) above.
5. If the taxpayer fails to replace the dishonored check, the accepted OIC will be rescinded based on a mutual mistake of fact in accordance with IRM 5.8.9.2, *Rescission of Accepted Offers*.
6. Document the AOIC case history.

Exhibit 5.8.8-1
Offer in Compromise Recommendation Report

The below document is an example of the Acceptance Recommendation Report.

This image is too large to be displayed in the current screen. [Please click the link to view the image.](#)
This image is too large to be displayed in the current screen. [Please click the link to view the image.](#)

Exhibit 5.8.8-2
Addendum to Form 656

The below document is the addendum to the Form 656 to be used in lieu of an amended Form 656. A fillable form may be accessed by signing on to AOIC then click on "AOIC Transmittals" and then click on "Click here for Addendum to Form 656" .

This image is too large to be displayed in the current screen. [Please click the link to view the image.](#)

Exhibit 5.8.8-3
Letter for Addendum to Form 656

This image is too large to be displayed in the current screen. [Please click the link to view the image.](#)

Exhibit 5.8.8-4
24-Month Acceptance Letter

The letter is to be used if the OIC is accepted under IRC § 7122(f). The letter may be accessed by signing on to AOIC then click on "AOIC Transmittals" click on "Click here for Sample TIPRA Letter" .

This image is too large to be displayed in the current screen. [Please click the link to view the image.](#)
This image is too large to be displayed in the current screen. [Please click the link to view the image.](#)

[More Internal Revenue Manual](#)



Part 5. Collecting Process

Chapter 8. Offer in Compromise

Section 9. Actions on Post-Accepted Offers

5.8.9 Actions on Post-Accepted Offers

- 5.8.9.1 [Overview](#)
- 5.8.9.2 [Rescission of Accepted Offers](#)
- 5.8.9.3 [Department of Justice Controlled Cases](#)
- 5.8.9.4 [Potential Default Cases](#)
- 5.8.9.5 [Compromise of a Compromise](#)
- Exhibit 5.8.9-1 [Pattern Letter 1603\(P\)](#)
- Exhibit 5.8.9-2 [Pattern Letter 1604\(P\)](#)
- Exhibit 5.8.9-3 [Pattern Letter 1607\(P\)](#)

Manual Transmittal

April 23, 2015

Purpose

(1) This transmits a revision for IRM 5.8.9, Offer in Compromise — Actions on Post-Accepted Offers.

Material Changes

(1) Changes included in this revision

IRM Reference	Change
5.8.9	Revised language, grammatical errors, spelled acronyms, and rearranged within established sections for better flow.
5.8.9.1	Revised language to better define the purpose of this IRM.
5.8.9.2.1	New Sub-section for Mutual Mistake of Fact and False Information/Representations. Language was previously incorporated in 5.8.9.2.
5.8.9.2.2	Added a new paragraph (1) with a requirement to send a preliminary letter to the taxpayer informing them of the proposed rescission.
5.8.9.3	New section discussing OICs that may be under the jurisdiction of DOJ. Cases that fall under this criteria will be deemed not processable although previously accepted.
5.8.9.4	Added a requirement to include a copy of the approved acceptance letter in the public information file.
5.8.9.5.1(4)	Added a requirement to share the language in Exhibit 1 with the taxpayer and/or representative to provide language needed to request consideration of an offer on an offer.
5.8.9.5.2(2)	Added a note that generally, a request for a current tax return should be verified through internal sources. A request for a copy from the taxpayer should be rare. A tax return should never be requested if it is not legally due.
5.8.9.5.3(3)	Added language that the function that accepted the offer will also be required to review the request for consideration of an offer on an offer, including Counsel.
5.8.9.5.3(4)	Added a requirement to include the redacted copy of the acceptance letter as well as a copy of the signed, approved Form 7249 in the Public Inspection File.
Exhibits 5.8.9-1 through 5.8.9-3	All exhibits were revised and approved by the Office of Taxpayer Correspondence. These formatted letters must be used in communicating acceptance or denial of an offer on an offer.
Exhibit 5.8.9-4, Default Letter	Removed this exhibit. The default letter may be found on the AOIC system under Transmittals.
Prior Section 5.8.5, Overlooked Periods	Removed this section because this procedures do not apply to situations described within this IRM. See IRM 5.8.8 for procedures on overlooked periods and allowed pen & ink changes.

Effect on Other Documents

IRM 5.8.9 published 10-31-2014 is superseded.

Audience

SB/SE Collection and Campus Compliance employees.

Effective Date

(04-23-2015)

Kristen E. Bailey
Acting Director Collection Policy

5.8.9.1 (04-23-2015)

Overview

1. Once an Offer in Compromise (OIC) is accepted, it may be necessary to consider a request to rescind or terminate an OIC or revise an existing OIC. This section provides guidance for these situations.

5.8.9.2 (04-23-2015)

Rescission of Accepted Offers

1. An OIC is an agreement that is binding on both the government and the taxpayer, and precludes further inquiry into the matters to which it relates unless false information,

fraud, a mutual mistake of fact is identified, or the taxpayer was ordered to pay restitution.

2. The function that accepted the OIC is also responsible for making the determination to rescind the OIC and will also be responsible for completion of all required actions identified in IRM 5.8.9.2.1 through 5.8.9.2.3 below.

5.8.9.2.1 (04-23-2015)

Mutual Mistake of Fact and False Information/Representations

1. An OIC may be rescinded or set aside when there was a mutual mistake as it relates to a material fact or false information/representation that was made by one party.
2. A "mutual mistake of fact" is defined as an erroneous belief held by both parties about the facts as they existed at the time the contract was entered into.
3. The mere fact that both parties are "mistaken" with respect to the same basic assumption about an existing fact does not, of itself, provide reason for the affected party to void the contract. Rescission is only appropriate where a mistake of both parties has such a material affect on the agreed exchange of performance that it upsets the very basis of the OIC.
4. To constitute false representation, the following must be present:
 - A. The representation and/or information related to material facts were false.
 - B. The maker knew or should have known the facts to be false.
 - C. The facts were made for the purpose of inducing, and did induce the other party to make the contract, and that the latter had the right to rely on them, and did rely on them, thereby sustaining injury.

5.8.9.2.2 (04-23-2015)

Rescission Procedures

1. Prior to rescinding an OIC based on mutual mistake or false information/representation, send a preliminary letter to the taxpayer advising of the proposed rescission of their offer.

The letter will contain the grounds for the proposed rescindment and will give the taxpayer 15 days to respond and provide any additional information related to the proposed rescindment.

Note:

AOIC Remarks must be noted with the date the initial proposal letter was mailed, the taxpayer's response and the analysis of any additional information provided.

2. Rescind an OIC in the following manner:
 - Prepare a letter to the taxpayer identifying the OIC by the day it was accepted, and advising that the acceptance of the OIC is rescinded and the acceptance letter is revoked.
 - Include in the letter the grounds for rescission in general terms with a demand for payment of the unpaid tax liability.
 - All rescission determinations must be reviewed and approved by Counsel before being sent to the taxpayer.

Note:

The letter must be signed by the same level of approval that accepted the OIC.

- Document the AOIC Remarks with the basis for the decision to rescind and any taxpayer contact.
- After all approvals have been received, notify the appropriate MOIC liaison of the rescission and request input of a TC 781 to ensure the case is reassigned to the field for appropriate collection action.

5.8.9.3 (04-23-2015)

Department of Justice Controlled Cases

1. Occasionally an OIC is purportedly accepted while a period is under the settlement jurisdiction of the DOJ. In these cases, although the OIC was processed as an acceptance, the IRS never actually accepted the OIC because it lacked the legal authority to do so. See IRM 5.8.1.3.1, *Tax Cases Controlled by Department of Justice*, for additional information.
2. The OIC cannot be rescinded but must be returned as not processable because the IRS had no authority to accept an OIC on any period controlled by DOJ.
3. All payments will be applied in accordance to TIPRA regulations for not processable offers.
4. These offers will be returned to the COIC site to change the processability criteria, issue the not processable letter, and refund the application fee. See IRM 5.8.2.6, *Erroneous Processability Determinations*.
5. If the not processable determination is within one year of acceptance, a copy of the not processable letter should be sent to the Public Inspection File to be associated with the acceptance letter.

5.8.9.4 (04-23-2015)

Potential Default Cases

1. An OIC can reach a potential default status in one of three ways:
 - A. The taxpayer failed to fulfill the payment terms of the OIC;
 - B. The taxpayer failed to fulfill the terms of a related collateral agreement;
 - C. The taxpayer failed to adhere to the compliance provisions; or
 - D. Taxpayer failed to return an erroneously issued refund.

Note:

MFT 35 — The taxpayer's failure to report or pay an individual shared responsibility payment (SRP) liability made under IRC § 5000A and/or any individual SRP liability assessment made after acceptance will not default the OIC.

2. Campus MOIC units have responsibility and authority to make determinations on potential defaulted OICs.

3. The MOIC unit will make an attempt to secure compliance. If the taxpayer fails to comply with any requests for delinquent returns or payments, the MOIC unit will default the OIC. After all appropriate letters have been sent, MOIC will input reversal codes to bring the liability back to the collection stream, as appropriate, and close the case as a default.

5.8.9.5 (04-23-2015)

Compromise of a Compromise

1. The compromise of a compromise should be rare in light of the investigation completed in connection with the original offer. In some cases where the taxpayer is unable to pay the balance of an accepted offer, the balance of a non-rebate erroneously issued refund, or the balance of the contingent liability under the terms of a collateral agreement and the investigation reveals that extreme hardship or special circumstances exist, the Service may determine that the Government would better benefit to not accept a compromise on a compromise but it may be in the best interest of the government to:
 - A. Adjust the payment terms of the OIC,
 - B. Formally compromise the existing compromise, or
 - C. Obtain managerial approval to settle the OIC for the amount already paid and not default the OIC.
2. A Form 2209, *Courtesy Investigation*, request will be issued by MOIC to the office that accepted the OIC when a request to compromise a previously accepted OIC is received. A request for a courtesy investigation should be rare, but when issued the courtesy investigation should be worked in an expeditious manner and if ICS is used, coded with a priority code 100.

Note:

A Courtesy Investigation should only be issued by the MOIC function if a compromise on a compromise is received or the terms of an agreed collateral agreement cannot be properly monitored.

3. A proposal to compromise the balance of an accepted offer must rest on Doubt as to Collectibility (DATC), DATC with special circumstances (DATCSC), or effective tax administration (ETA).

5.8.9.5.1 (04-23-2015)

Receipt and Processing

1. The office that initially accepted the OIC will consider the taxpayer's proposal. The proposal must be in writing and in the form of a letter.

Note:

Do not secure a new Form 656. No Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA) payments are required if the terms (lump sum cash or periodic payment) of the new proposal are the same as the original, accepted offer.

2. Upon receipt of the proposal:
 - COIC will add a history entry to AOIC indicating that an offer on an offer has been received.
 - The field should create an Other Investigation (OI) or Collection Initiative Program (CIP) on Integrated Collection System (ICS) to open a control until the taxpayer's proposal has been considered.
 - Both the field and COIC should notify the appropriate MOIC unit that the OIC should not be defaulted until the investigation has been completed.
3. When closing, AOIC must be noted with the results of the investigation.
4. The proposal letter submitted by the taxpayer should be addressed to the Commissioner of Internal Revenue Service and include language shown in Pattern Letter 1603(P). See Exhibit 5.8.9-1 below.

Note:

The OE or OS should share a copy of the required language, an example, or copy of Exhibit 5.8.9-1 with the taxpayer.

5. The taxpayer must submit a current financial statement(s) and all required supporting documentation.

5.8.9.5.2 (04-23-2015)

Consideration of Proposal

1. The consideration of such a proposal will be made by the office of jurisdiction that originally accepted the OIC. Acceptance will depend on:
 - A. If it is in the best interest of the Government; and
 - B. If the same considerations and merits were applied as if it were submitted on a Form 656.
2. The information required to support the proposal should fit the case. Such as:
 - Copy of the taxpayer's most recent income tax return or Command Code (CC) RTVUE/BRTVU print.

Note:

Generally, this information may be secured through internal sources such as AMS and EUP. A request for a copy from the taxpayer should be rare. A tax return should never be requested if it is not legally due, including any extension of time to file.

- Estimate of the remaining liability under the terms of the future income collateral agreement, if applicable.
- Reasons why the request is being made to compromise the existing agreement.
- Full compliance check.
- Statement of current financial condition.
- Description of future prospects and any other information which might have a bearing upon the acceptability of the OIC.
- Estimated and projected amount of future income over the period covered by the remaining terms of the original agreement.

5.8.9.5.3 (04-23-2015)

Processing Completed Investigations

1. When the investigation is complete, the taxpayer's proposal, investigative report, and memorandum containing a complete statement of the facts in the case, including the recommendation, should be forwarded to the next level of authority for approval.
2. An acceptance or denial letter should be prepared for the delegated official. See Exhibits 5.8.9–2 and 5.8.9–3 below.
3. If the taxpayer's proposal is acceptable, the procedures for acceptance of the original OIC will be followed which include an opinion of Counsel as set forth in IRM 5.8.8.5, *Legal Opinion of Counsel*.
4. Follow the below "If/Then" chart for preparation of the file.

If...	Then...
The proposal is acceptable	<p>Forward the case file to the delegated official for approval and signature. Include:</p> <ul style="list-style-type: none"> • Copy of the Acceptance Letter • Taxpayer's proposal • Memorandum supporting the compromise of a compromise • Work papers and financial information • Original acceptance recommendation, if available • Generate a new Form 7249

Note:

Include a copy of the Form 7249 and acceptance letter in the Public Inspection File. See IRM 5.8.8.8, Public Inspection File, for additional information.

Forward the case file to the delegated official for approval and signature. Include:

If...	Then...
The proposal is not acceptable	<ul style="list-style-type: none"> • Copy of the Denial Letter • Taxpayer's proposal • Memorandum supporting the recommendation

Note:

No appeal rights are granted to the taxpayer.

5. Update the AOIC history and the ICS history, if it is a field OIC, with the results of the investigation. If the proposal is accepted, include the amount of the accepted proposal and the terms for payment in the AOIC history and ICS, if appropriate .
6. Once the decision letter has been signed and mailed, the OI or CIP should be closed.

Note:

There will be no open AOIC record. The new Form 7249 and acceptance letter must be redacted and included in the Public Inspection File.

7. Document the case history indicating that the OI is closed and the final resolution.
8. The closed file should be mailed to the appropriate MOIC unit with instruction to either monitor if it is to be accepted, or default if it is not accepted.

**Exhibit 5.8.9-1
Pattern Letter 1603(P)**

This is an example of a proposal letter to compromise a balance due on an OIC or to compromise future income collateral agreements. This letter should be provided to the taxpayer as an example.

Note:

This letter format must be shared with the taxpayer and/or POA.

The information that is printed in bold letters should be included if there was a collateral agreement with the original offer or if the original offer had an attached collateral agreement.

Date _____ Name _____
 Address _____
 City, State Zip _____

Commissioner of Internal Revenue
 Washington, DC 20224

On [enter date of acceptance letter] you accepted [my/our] offer in compromise **and the related Form 2261, Collateral Agreement, Future Income – Individual; or 2261 – A, Collateral Agreement, Future Income – Corporation.** [I/we] agreed to pay \$[enter the agreed offer amount from the signed, dated Form 656, *Offer in Compromise*] to compromise the tax liability(s) listed below:

[List type(s) of tax and period(s)]

Instead of future payments specified in Form 2261, Collateral Agreement, Future Income – Individual; or 2261 – A, Collateral Agreement, Future Income – Corporation
 [I/we] propose to pay \$[enter amount you are offering to pay] in full settlement of the original offer **and the collateral agreement.**

[Also select one of the following sentences to describe how you will pay the amount you entered in the previous sentence:]

[I/we] have enclosed full payment of the proposed amount.

[I/we] will make full payment of the proposed amount when you notify [me/us] that you have accepted [my/our] proposal.

[I/we] have enclosed a payment of \$[Enter Amount] as the initial payment with the balance of \$[Enter Amount] paid over [Enter number 1-23 months] when you notify [me/us] that you have accepted [my/our] proposal.

[I/we] have enclosed \$[Enter amount you are sending with this letter] and will pay the balance when you notify [me/us] that you have accepted [my/our] proposal.

[The below paragraphs must be included in all proposal letters.]

[I/we] agree to file and pay all taxes as required by the Internal Revenue Code for five years from the date of acceptance of the proposed, revised offer. [I/we] further agree to promptly pay any liabilities assessed after acceptance of this revised offer for tax years ending prior to acceptance that are not otherwise included in the revised offer.

[I/we] agree to waive any and all claims to overpayments of tax or other liabilities, including interest on those payments, that [I/we] may be entitled to receive under the Internal Revenue Code. This waiver is limited to overpayments which haven't already been refunded to me for any years or tax periods which end before or during the year you accept this

proposal.
[We] have enclosed a letter with this proposal which contains the detailed reasons for submitting this offer and a completed financial statement showing [my/our] current financial condition.

[Sign and Date]

[Each person who is submitting this proposal must sign and date the letter.]

Exhibit 5.8.9-2
Pattern Letter 1604(P)

This is an example of an acceptance letter for a compromise of a compromise.

Acceptance letter for proposal to compromise balance due on offer in compromise and/or collateral agreement. The information that is printed in **bold** should be added for a collateral agreement.

Date: Person to Contact:
Address
Telephone Number:

Salutation

We accept your proposal to pay \$[Enter Amount] to settle the remaining liability under the offer in compromise accepted on [Enter Date] **and/or the related collateral agreement.**
[Pick one]

Since you have paid the amount proposed, you do not need to take further action.

Since you enclosed \$[Enter Amount] with your proposal, please send the balance of \$[Enter Amount] by [Enter Date].

Since your payment was to be made on notice of acceptance of your proposal, please send \$[Enter Amount] by [Enter Date].

Since you chose to pay your proposed amount over [Enter number of months] months, you must make the payments on the [Enter the day of the month each payment is due] of each month until the accepted offer amount is paid in full.

Make your check or money order payable to the "United States Treasury" and mail to [enter the service center address "Attn.: Collection Offer Unit"].

If you receive a refund that you specifically waived under the terms of your proposal, please return it promptly to the address above.

If you have any questions, please contact the person whose name and telephone number are shown above.

Sincerely yours,
(Signature and title)

Exhibit 5.8.9-3
Pattern Letter 1607(P)

This is an example of a denial of a proposal of an offer on an offer.

Denial of proposal to compromise balance due on offer in compromise and/ or collateral agreement. The information that is printed in **bold** letters should be added for a collateral agreement.

Date: Person to Contact
Address
Telephone Number

Salutation

We are sorry, but we cannot accept your proposal dated [Enter Date] to compromise the remaining liability under the offer in compromise accepted on [Enter Date] **and/or related collateral agreement.**

[Explain reasons]

We must, therefore, ask you to comply with the terms of the offer in compromise **including any collateral agreement.** If you have any questions, please contact the person whose name and telephone number are shown above.

Sincerely yours,
(Signature and title)

[More Internal Revenue Manual](#)



Part 5. Collecting Process

Chapter 8. Offer in Compromise

Section 10. Special Case Processing

5.8.10 Special Case Processing

- 5.8.10.1 [Overview](#)
- 5.8.10.2 [Bankruptcy](#)
- 5.8.10.3 [Other Insolvency Cases](#)
- 5.8.10.4 [Death of Taxpayer](#)
- 5.8.10.5 [Transferee](#)
- 5.8.10.6 [Discharge and Subordination Requests](#)
- 5.8.10.7 [Effect of Previous Offers on Collection Statute](#)
- 5.8.10.8 [Effect of Previous Offers on Assessment Statute Expiration Date](#)
- 5.8.10.9 [Indicators of Potential Practitioner Misconduct](#)
- 5.8.10.10 [Indicators of Taxpayer Fraud](#)
- 5.8.10.11 [Docketed Tax Court Cases](#)
- 5.8.10.12 [Offer in Compromise Submission with Frivolous, Delaying, or Impeding Issues](#)
- 5.8.10.13 [Taxpayer Files both Doubt as to Liability and Doubt as to Collectibility Offers](#)
- Exhibit 5.8.10-1 [Docketed Tax Court Case Expedited Processing Transmittal](#)
- Exhibit 5.8.10-2 [Letter requesting taxpayer withdraw offer submitted which includes a frivolous position](#)

Manual Transmittal

September 27, 2011

Purpose

(1) This transmits a revision for IRM 5.8, Offer in Compromise, Section 10 — Special Case Processing.

Material Changes

- (1) 5.8.10.2.2 — Revised to include additional guidance in situations where potential bankruptcy issues are present and an adjustment to RCP may be appropriate.
- (2) 5.8.2.2.2.1 — Added to discuss issues which should be considered when potential for filing bankruptcy exists.
- (3) 5.8.2.2.2.2 — Added to provide assistance in determining RCP and an acceptable offer amount where the potential for filing bankruptcy exists.
- (4) 5.8.10.2.3 — Revised to include references to changes in IRM 5.9.4
- (5) 5.8.10.2.4 - Revised to include correct IRM 5.9.4 references.
- (6) 5.8.10.5 - Includes additional discussion on documentation in potential transferee situations.
- (7) 5.8.10.6 - Revised to include the current procedures for processing discharge and subordination requests.
- (8) 5.8.10.8 - Renumbered to 5.8.10.9.
- (9) 5.8.10.8 - Added section to include information on the extension of the assessment statute when an offer is submitted.
- (10) 5.8.10.8.3 Renumbered to 5.8.10.9.3 and revised to update the procedures to refer practitioner misconduct to OPR based on OPR current guidance.
- (11) 5.8.10.9 - Renumbered to 5.8.10.10 and revised to reference the guidance provided in IRM 5.8.4.16 and IRM 5.8.4.17 relative to fraud referrals and open fraud investigations.
- (12) 5.8.10.11 - Added to include guidance on offers involving docketed tax court cases and docketed CDP cases.
- (13) 5.8.10.12 - Added to include guidance on offers that include frivolous submission issues.
- (14) 5.8.10.12.1 - Provides guidance on how to request assertion of a frivolous submission penalty in accordance with IRC 6702(b).
- (15) 5.8.10.13 -Added to include guidance on the appropriate action to take when a taxpayer files a Doubt as to Liability and a Doubt as to Collectibility Offer concurrently.
- (16) Exhibit 5.8.10-1 - Added a transmittal sheet involving docketed tax court and docketed CDP cases.
- (17) Exhibit 5.8.10-2 - Added a letter for use to request withdrawal of the taxpayer's offer when frivolous issues are present.
- (18) Editorial Changes were made throughout the document.

Effect on Other Documents

This material supersedes IRM 5.8, dated 09/23/2008. Interim guidance memo SBSE-05-0809-019, Offer in Compromise Mandatory Acceptance, was incorporated into IRM 5.8.8, Acceptance Processing.

Audience

SB/SE Collection and Campus Compliance and employees.

Effective Date

(09-27-2011)

5.8.10.1 (09-27-2011)

Overview

1. During the investigation of an offer in compromise (OIC), certain situations may be encountered that require consideration before a final determination can be made. This section discusses how to treat these situations when evaluating an offer.

5.8.10.2 (09-27-2011)

Bankruptcy

1. Bankruptcy may affect the Service's consideration of an OIC. The taxpayer may file bankruptcy and an OIC simultaneously, or file an OIC in an attempt to avoid bankruptcy, or file an OIC after a bankruptcy has been concluded.

5.8.10.2.1 (09-27-2011)

Offer in Compromise During Bankruptcy

1. The Service will not consider an OIC under its administrative OIC procedures while a taxpayer is in bankruptcy. When a taxpayer files bankruptcy, the Bankruptcy Code provides procedures to resolve the Service's claim.
2. An OIC will not be considered under administrative OIC procedures until the bankruptcy is concluded. In Chapter 7 cases, an administrative compromise with the taxpayer can be considered after the taxpayer has received a discharge. See IRM 5.8.10.2.3, Acceptance of Offer in Compromise After Chapter 7 Bankruptcy. In Chapter 11, 12, and 13 cases, an administrative compromise will not be considered until the taxpayer completes payments under the plan or the bankruptcy is dismissed by the court.
3. If a taxpayer is in bankruptcy when an administrative OIC is submitted or during a pending offer investigation, the offer is returned as non-processable. The return of the offer does not constitute a rejection of the offer and does not entitle the taxpayer to appeal the matter to Appeals. See Treas. Regs. § 301.7122-1(f)(5)(ii)

5.8.10.2.2 (09-27-2011)

Offers in Compromise Before Bankruptcy

1. When a taxpayer or representative states during an offer investigation that a bankruptcy petition will be filed if the taxpayer's offer is not accepted, the offer examiner/offer specialist must determine whether the potential for a bankruptcy filing actually exists and the impact the possible bankruptcy filing may have on the collection of the outstanding tax liabilities.
In order to make an informed decision as to the reasonableness of the taxpayer's Offer in Compromise, consider whether the taxpayer has been involved in previous bankruptcy proceeding(s) and/or if any tax liabilities may potentially be dischargeable .
The following procedures will assist in determining the impact a potential bankruptcy filing may have on the offer investigation. Additionally, if the taxpayer or their representative indicates the taxpayer is considering filing bankruptcy, immediately make a lien filing determination as to whether the filing of a notice of federal tax lien (NFTL) is necessary to protect the government's interest in assets during the offer investigation.
2. Benefits to the Service if an offer in compromise is accepted and the taxpayer does not file bankruptcy:
 - The Service can negotiate for amounts collectible from future income and from assets beyond the reach of the government, that may not be collectible if the taxpayer files bankruptcy.
 - Negotiations may result in an offer amount that exceeds the amount recoverable in an insolvency proceeding.
 - Terms for payment of an offer may result in funds being collected in a shorter time than through bankruptcy.
 - The terms of the offer in compromise includes a requirement the taxpayer files and pays all tax liabilities for the succeeding five years.
3. Benefits to the Taxpayer:
 - Bankruptcy carries certain negative repercussions, i.e. a negative effect on the taxpayer's credit rating.
 - Bankruptcy does not discharge all tax liabilities.
 - If a NFTL has been filed, the federal tax lien may survive bankruptcy against certain assets.
4. While evaluating the acceptability of an OIC when the threat of bankruptcy is a consideration, determine the reasonable collection potential (RCP) as defined in IRM 5.8.5, Offer in Compromise - Financial Analysis. If the amount offered by the taxpayer exceeds the RCP, proceed with the offer investigation and appropriate disposition. Any special circumstances or hardship issues should also be considered prior to investigating the effect a potential bankruptcy may have on an acceptable offer amount.
5. Analysis of the potential amount collectible, if bankruptcy proceedings were filed, should include analysis of the taxpayer's collection information statement(s), other financial statements, draft bankruptcy schedules (if available), and a determination of which liabilities may be dischargeable. This will result in the ability to make an informed decision regarding the OIC and should open negotiation with the taxpayer.
6. When completing the analysis consider the following questions:
 - Is the taxpayer an individual? Although other entities could receive a discharge in an insolvency proceeding, as a matter of policy, the potential bankruptcy filing of an entity other than an individual or from a taxpayer whose only liabilities include employment taxes will not be a consideration when calculating reasonable collection potential for purposes of determining the acceptability of an OIC.
 - Is the Service the sole or major creditor?
 - Would taxes be dischargeable in bankruptcy?
 - Does the offer amount equal or exceed what the Service can reasonably expect to recover from bankruptcy?
 - Are there other considerations, such as what could be collected on liabilities that would not be discharged, or what could be collected from property outside of the bankruptcy, including third parties?

Note:

Under no circumstances will the Service accept less than would be recoverable from a Chapter 7 bankruptcy, unless special circumstances exist. Absent special circumstances, the basis for acceptance of an offer where the RCP is adjusted based on consideration of the amount recoverable in bankruptcy will be Doubt as to Collectibility. Refer to IRM 5.8.11 - Effective Tax Administration for a discussion of special circumstances.

5.8.10.2.2.1 (09-27-2011)

Consideration of a Potential Bankruptcy Filing on the Calculation of RCP in an OIC Investigation

1. The following information is provided to guide you in determining if consideration should be given to a potential bankruptcy filing and in what situations involvement of an insolvency advisor or specialist is appropriate.

Note:

An offer should never be accepted solely on the basis of the taxpayer offering the amount collectible through a bankruptcy proceeding without further investigation. However acceptance of an offer for less than reasonable collection potential (calculated in accordance with IRM 5.8.5, Offer in Compromise - Financial Analysis) may be appropriate based on the facts of the case.

If ...	Then ...	Comments
The taxpayer/representative submits an offer and indicates it should be accepted for less than RCP because a bankruptcy proceeding will be filed if the offer is not accepted.	Review the assessments to determine if any taxes may be dischargeable and conduct a review of financial statements and draft bankruptcy schedules, if available, to determine the amount potentially collectible through the bankruptcy proceeding. Refer to the additional guidance provided in this section to determine the potential reduction to future income value (FIV)	Depending on the date of the tax assessment and the type of taxes owing, certain taxes may be dischargeable. In limited instances, an adjustment to FIV may be appropriate.

- The assistance of the Insolvency Unit should be pursued if the guidance in IRM 5.8.10.2.2.2 is insufficient to make a reasonable decision on a case and the UBA is \$25,000 or more. If Insolvency is contacted for assistance; document any discussions and/or calculations in the recommendation report and appropriate ICS/AOIC history. OIC employees should contact the Centralized Insolvency Operation (CIO) to secure information on the insolvency employee who may be contacted for assistance based on the taxpayer's geographic location. The CIO phone number is listed in the SERP "Who/Where" tables.

**5.8.10.2.2.2 (09-27-2011)
Potential Adjustments to Reasonable Collection Potential**

- This section provides very general guidance in the determination of the amounts potentially recoverable in a bankruptcy proceeding. The estimations used in this section are only meant to arrive at the amount reasonably expected to be collected from the taxpayer as discussed in Policy Statement P-5-100.

Note:

This guidance is not meant to replace the specific information provided in IRM 5.9 - BANKRUPTCY AND OTHER INSOLVENCIES and should *Not* be referred to in order to calculate amounts the Service would actually recover thru any insolvency proceeding.

- Although the classification of a tax liability and the potential dischargeability is a complicated matter, the following general rules may be used in determining RCP during an offer investigation where the potential for a bankruptcy filing exists. Although not all inclusive, the determination of tax liabilities which may survive bankruptcy depends on whether the liabilities are secured, the type of tax liability, and the age of the liability.

- Secured - For purposes of this section, secured tax claims are those for which a notice of federal tax lien (NFTL) has been filed or will be filed during the offer investigation to the extent of the equity to which the lien attaches. Any portion of the liability that is not secured by equity in assets will be classified as a priority or general unsecured claim.

Note:

Certain "excluded" property, such as an ERISA qualified retirement plan, may be secured via the statutory lien.

- Priority - Generally, priority tax claims are those with return due dates of less than three years prior to the petition date, income tax assessments made within 240 days before petition date, and income tax deficiencies that are unassessed but are assessable prior to the petition date. Also, priority claims include all trust fund liabilities, both the trust fund portion of employment taxes and the trust fund recovery penalty. Only the tax and related interest (not penalties) is entitled to priority.
- Nondischargeable- Priority tax claims are not dischargeable in bankruptcy. Other nondischargeable taxes include taxes for which no return was filed; taxes filed late but within two years of the bankruptcy petition date, penalties related to a transaction or event within two years of the petition date, fraud, and situations when the taxpayer has willfully evaded payment of tax..

- Calculation of an acceptable offer amount –

The following guidance will assist in determining the taxpayer's RCP in situations where the filing of a bankruptcy is a viable option for the taxpayer.

A. The equity in any assets secured by a NFTL, including real or personal property, should be included in the RCP. This includes situations where all taxes may be dischargeable in bankruptcy. The NFTL will secure the government's ability to collect from these assets, even if they are exempt.

Note:

Special circumstances and hardship issues should also be considered in determining whether an offer for less than RCP is acceptable.

B. The taxpayer's FIV may be reduced below the normal calculation of FIV in accordance with IRM 5.8.5.23, Calculation of Future Income, yet should not be reduced to less than the balance of nondischargeable tax liabilities, since they will remain owing subsequent to the bankruptcy.

Example:

A taxpayer who owes \$65,000.00 states they will be filing a Chapter 7 liquidating bankruptcy if their offer in compromise is not accepted. The taxpayer has net equity (after consideration of any prior encumbrances, allowances, or appropriate percentage reductions) in real property, vehicles, and retirement accounts equal to \$ 25,000.00 and there are no special circumstances or hardship issues to consider. A NFTL is filed on all outstanding tax liabilities. The taxpayer has the ability to pay \$500.00 per month. The tax liabilities include \$50,000.00 of dischargeable taxes and \$15,000.00 of priority taxes which will survive the bankruptcy. After all factors are considered, FIV may be reduced to approximate the \$15,000.00 which will be collectible from an installment agreement on the liabilities which will survive the bankruptcy. The net equity in all assets (\$25,000.00) should also be included in the RCP calculation for a minimum offer amount of \$40,000.00.

Example:

The taxpayer has equity in assets equal to \$25,000.00 which includes real property and retirement accounts. The taxpayer has no future income ability and no ability to borrow against the \$15,000.00 equity in their residence. Additionally, it is determined the liquidation of the equity in the taxpayer's residence to pay the outstanding liability(ies) would render the taxpayer unable to meet basic living expenses and the taxpayer will need their \$10,000.00 retirement account to meet basic living expenses. The tax liabilities include \$50,000.00 of dischargeable taxes and \$15,000.00 of priority taxes which will survive the bankruptcy. Since the taxpayer has no future income ability and liquidation of the equity in the residence and retirement account would render the taxpayer unable to meet basic living expenses, the taxpayer's offer in the amount of \$2,500.00, which will be funded by a loan from a relative would be appropriate based on the taxpayer's special circumstances.

Example:

All the tax liabilities are trust fund taxes and the taxpayer has stated they are going to file a Chapter 7 proceeding. Since the taxes are not dischargeable, the taxpayer's possible bankruptcy should not affect the determination of an acceptable offer.

Example:

The tax liabilities are from timely filed individual tax returns which are all over three years old and have been assessed for more than 240 days with an UBA of \$50,000.00. Since the taxpayer owns no real property, it is possible the government will receive a minimal amount in a Chapter 7 proceeding. Since the UBA is over \$25,000.00, discussion with Insolvency may be appropriate, if the taxpayer's offer appears reasonable, yet less than the RCP.

5.8.10.2.3 (09-27-2011)

Acceptance of Offer in Compromise After Chapter 7 Bankruptcy

1. Only after a discharge has been granted or a dismissal has taken place, can an administrative OIC be considered by the Service in a Chapter 7 proceeding. Once the discharge is entered, the Service will be able to determine which taxes are discharged and will be able to make a determination of "Doubt as to Collectibility" under its administrative OIC procedures
2. For debtors discharged in Chapter 7, where the bankruptcy case is still pending, it is uncertain whether the Service would still have a valid claim in bankruptcy if an OIC is accepted. Therefore, the amount acceptable should include the amount that the Service can reasonably expect to recover from the bankruptcy in addition to what can be collected from the taxpayer on non-discharged liabilities or from property outside the bankruptcy.
3. Refer to IRM 5.9.4.10, Offer in Compromise and Bankruptcy for discussion on the Service's policy relative to specific bankruptcy chapters.
4. IRM 5.9.4.10 (6) provides guidance on the handling of OIC payments prior to filing of a bankruptcy petition and IRM 5.9.4.10 (7) discusses payments subsequent to the petition date.

5.8.10.2.4 (09-27-2011)

Bankruptcy After Offer In Compromise Acceptance

1. When a taxpayer files bankruptcy after an OIC is accepted, the Service may need to take specific actions to secure unpaid offer funds or to secure payment of tax through the bankruptcy proceeding. (See IRM 5.9, Bankruptcy and Other Insolvencies, for additional information.)
2. In accordance with the Bankruptcy Code, the offer should not be defaulted or payments solicited while the taxpayer is in bankruptcy.
3. When the Service becomes aware that a bankruptcy has been filed after the acceptance of an OIC:

If...	Then...
The offer funds have been paid in full	The bankruptcy filing has no effect on the accepted offer.
The offer funds have not been paid in full	Refer to IRM 5.9.4.10.1 Accepted but Not Completed Administrative OICs. If additional guidance is required, contact the Insolvency Unit to determine necessary action to protect the Service's interest in the bankruptcy proceeding.

5.8.10.3 (09-23-2008)

Other Insolvency Cases

1. A copy of the court order or other evidence should accompany Form 656, Offer in Compromise.
2. The following should be secured in "Receiverships" and other non-bankruptcy insolvencies:
 - A general statement of the circumstances which resulted in the receivership and the purpose of the receivership; that is, whether the objective is liquidation of assets, conservation of assets, foreclosure of a mortgage or reorganization.
 - A copy of the petition for the appointment of a receiver and a copy of the court order appointing the receiver or trustee can be used in lieu of a general statement, if the petition provides the information above.
 - Copies of all pertinent schedules filed with the court.
3. Consideration of an OIC frequently presents questions concerning the rights of the government to priority in the collection of the tax claims over the claims of other creditors of the taxpayer.
4. The rights of other creditors are based on liens which may be recognized by state law, but because of the taxpayer's assignment of assets for the benefit of other creditors, the provisions of 31 U.S.C. § 3713 apply.
5. When considering the offer:
 - Evaluate the rights of all creditors,
 - Evaluate all facts and circumstances relating to the various claims,
 - Verify all pertinent dates, such as the origin and filing of all claims and liens, and
 - Verify the steps which have been taken towards the enforcement of the claimant's alleged rights.

6. The following table provides information on potential options available to collect the liabilities.

If...	Then...
The priority rights of the United States are disregarded when the funds of the estate are disbursed	An assignee for the benefit of creditors, as well as an executor or administrator of a decedent's estate, may become personally liable.
A corporation is the assignor and the tax liability sought to be compromised consists of withholding of Federal Insurance Contribution Act (FICA) taxes, or taxes which the assignor might be required to withhold or collect from others and pay over to the government	Consider the possibility of enforcing the TFRP provisions of the code.

7. When questions arise regarding the priority rights of the United States contact Area Counsel.

5.8.10.4 (09-23-2008)

Death of Taxpayer

1. When the Service is notified of the death of the taxpayer who submitted an OIC that is currently under consideration, the Service can no longer consider the OIC. A termination letter will be generated from AOIC and the offer should be closed with the termination closure option.
2. Many times the OIC under consideration was submitted jointly by a husband and wife. In that situation, contact with the surviving spouse should be made to determine whether there is a probate proceeding pending. See IRM 5.5, Decedent Estates and Estate Taxes, and IRM 5.17.13.10, Decedents' Estates, for more information about decedent taxpayers and probate proceedings.

If...	Then...
There is a probate	Explain that consideration of the offer will be terminated and that another offer can be submitted once the probate has been concluded. Contact Technical Support and advise of the probate proceeding and the tax liability due. Terminate consideration of the offer.
There will be no probate proceeding and the surviving spouse does not want us to continue considering the OIC	Terminate consideration of the joint offer due to the death of the spouse. Even if the surviving spouse is named as the executor in a will, the spouse

There will be no probate proceeding, the surviving spouse does want us to continue considering the OIC, and the surviving spouse is named as executor by a will, or if there is no will, the spouse is named as the personal representative by the probate court

may need approval from the probate court, which determines the validity of wills, prior to acting on behalf of the decedent spouse. Consult Area Counsel. Once the surviving spouse is authorized to act on behalf of the decedent by the probate court, obtain a copy of the will and/or court order, and an amended OIC reflecting the spouse as deceased and continue consideration of the joint offer.

There is no probate proceeding and the surviving spouse wants the Service to continue consideration of the OIC; however, the spouse was not appointed executor by a will (with approval by the probate court), or if there is no will, the surviving spouse is not named as the personal representative by the probate court

Since the surviving spouse does not have the authority to compromise the liability of the deceased taxpayer, secure an amended offer removing the deceased spouse's name and continue consideration of an offer for the surviving spouse's obligation only.

5.8.10.5 (09-27-2011)

Transferee

1. When an OIC investigation reveals the potential for a transferee situation, the burden of proof of transferee liability rests with the government.

Note:

If it is determined that a transferee investigation should be initiated, it will not be conducted by the Offer Investigator. Instead, it will be conducted by a field RO by generating an Other Investigation. *Other Investigations referred per these instructions should be considered high risk cases, code 100, and processed accordingly.*

If...

A potential transferee is discovered during an OIC investigation
A transferee liability exists

Then...

Conduct an investigation to determine if a transferee exists.

1. Determine the amount the Service may reasonably expect to collect from the transferee.
2. Attempt to negotiate an acceptable OIC amount with the transferee value included in the RCP calculation.

There is a question whether a transferee liability may be established and sustained

1. Determine the value of the transferee based on the degree of doubt regarding the transferee being sustained.
2. Attempt to negotiate an acceptable offer amount including this value in the RCP.

Note:

Flexibility should be exercised during negotiations if the transferee assessment will not be pursued.

During the investigation of an OIC the OE/OS determines that a transferee assessment should be pursued and negotiations have not resulted in an acceptable offer amount

1. Attempt to secure a withdrawal letter from the taxpayer.
2. If the taxpayer does not withdraw the OIC, prepare the rejection closing documents and follow procedures for recommending rejection with appeal rights. Include the value of the transferee in the RCP.

Note:

Thorough documentation of the basis for including the value of a transferred asset in the RCP is required. A discussion on the documents reviewed in making the determination that transferee issues exist should be included in the rejection narrative as well as the case history.

3. Prepare an Other Investigation to be issued to a field RO to investigate the transferee issue.

5.8.10.6 (09-27-2011)

Discharge and Subordination Requests

1. An application for discharge or subordination may be received in conjunction with an offer in compromise (OIC) in a number of different scenarios including:

- When a taxpayer simultaneously submits an application for discharge/subordination and a Form 656 - Offer in Compromise to Advisory.

Note:

If the taxpayer wants the proceeds from their discharge/subordination to be applied to their initial Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA) payment refer to the guidance in (2) of this section

, or

- When a taxpayer requests a discharge/subordination while an offer is pending and the request is approved, or
- When a taxpayer submits a discharge or subordination after an OIC has been accepted, but before all the payment terms have been met

Note:

Proceeds from the discharge/subordination may not be applied as the application fee

Note:

In these cases, the discharge or subordination investigation will not be conducted by the OE/OS. Instead, it must be conducted by the appropriate Technical Support by generating an Other Investigation. *Other Investigations referred per these instructions should be considered high risk cases, code 100, and processed accordingly.*

2. Requests for discharge or subordination received with the Form 656 or while an OIC is pending are to be handled as follows:

If...

Then...

The advisor will:

- Date stamp the offer in compromise as being received
- Prepare Form 657, Offer in Compromise/Revenue Officer Report. The Advisor will write in red ink at the top of the Form – "Discharge/Subordination Request". This will alert COIC that this is not a solely to delay issue.

- Follow IRM 5.8.2.2(3) and forward a copy of the application for discharge/subordination, Form 657, and all offer documents (Form 656, Form 433A/B, support documents, and payments, if applicable) to the appropriate COIC site via overnight mail.

Note:

Payments made to the Service in order to obtain a certificate of discharge may be applied as the initial TIPRA payment only if the payment is received at the time of the offer submission.

The taxpayer simultaneously submits an application for discharge/subordination and an OIC to Advisory.

Note:

If the offer is submitted without the required TIPRA payment and the taxpayer now wants to begin the paperwork for a discharge, the offer should be treated as a not processable return.

- Because TIPRA requires that we have 2 years from the IRS received date to make a determination or the offer will automatically be accepted, the advisor will work the application for discharge or subordination expeditiously.
- The COIC site process examiner will make a processability determination and process the offer as described in IRM 5.8.3, Offer in Compromise - Processability. However, do not treat these offers as solely to delay collection as described in IRM 5.8.3.8, Processing Form 657, Offer in Compromise/Revenue Officer Report. The advisor is only using the Form 657 as a way to identify and bring to the attention of COIC that there is an application of discharge/subordination currently being investigated.
- Once the offer has been deemed processable, COIC will immediately transfer the offer to the Area and send all of the appropriate documents. Prior to transfer, the COIC site will document the AOIC history with the advisor's name and phone number.
- If the offer is not processable, then the process examiner will promptly notify the advisor.

Throughout this process, it is vital there be communication between the site, Advisory, and the field offer specialist. The advisor will:

- Advise the taxpayer that proceeds from the discharge or subordination will be applied to the OIC, if accepted.
- Advise the taxpayer if the OIC is not accepted, the proceeds will be applied to the tax liability.
- Before delivering the certificate of discharge or subordination, the advisor will require the taxpayer to execute a Form 3040, Authorization to Apply Offer in Compromise Deposit to Liability. The word "irrevocable" must be written in the signature block of the Form 3040 or the taxpayer should check the box on Form 3040 and place their initials next to that box.
- The advisor will submit a copy of the Form 3040 to the OE/OS investigating the offer and will retain the signed Form 3040 in the case file for use in the event the OIC is returned, withdrawn, or rejected.

The taxpayer requests a discharge/subordination while an offer is pending and the request is approved.

Note:

A TIPRA payment may not be used to offset the amount required from the taxpayer to obtain the certificate of discharge/subordination. Refer to the prior discussion if the OIC and the payment to receive a discharge/subordination are submitted simultaneously.

3. Requests for discharge or subordination received after an OIC has been accepted, but before all the payment terms have been met, should be handled as follows:

<p>If... The taxpayer does not intend to apply the proceeds received from the discharge or subordination to the OIC amount</p>	<p>Then... Deny the discharge or subordination request. Request an investigation of the discharge or subordination from Technical Support and then coordinate with Technical Support to apply the proceeds to the OIC amount.</p>
<p>The taxpayer does intend to apply the proceeds toward the OIC amount</p>	<p>Note: The government is bound by the payment terms of an accepted OIC and cannot require payment of the offer amount in different terms, other than stated in the OIC agreement.</p>

**5.8.10.7 (09-23-2008)
Effect of Previous Offers on Collection Statute**

1. Over the years there have been numerous changes in the law and IRS procedures relating to the extension of the statutory period for collection while OIC's are being considered. The information provided in this section will assist in determining the correct CSED, which can impact the number of required payments in periodic payment situations and in the determination of future income value.
2. For OIC's pending prior to 1/1/2000, the taxpayer executed a waiver of the statutory period for collection, extending the collection statute for the period the OIC was under consideration and for an additional one year. For OIC's accepted prior to 1/1/2000 this waiver of the statutory period for collection also included the period of time the terms of an accepted OIC were still in effect.

Note:

RRA 98 imposed a limitation for OIC's subject to a waiver of collection statute. The waiver cannot extend the CSED beyond either 12/31/2002, or the original CSED, whichever is later.

3. For OIC's submitted or pending after 12/31/1999, the statutory period for collection was suspended, by operation of law, while the OIC was pending, for 30 calendar days following rejection of an OIC, and for the period the rejection was being considered in Appeals. This suspension of the collection statute is effective through 12/20/2000.
4. For OIC's that were pending prior to 1/1/2000 and were still pending on or after 1/1/2000, the collection statute is extended by both waiver periods and by the suspension period (See paragraphs 2 and 3 above).

Note:

The limitation on the waiver of collection statute applies to these OIC periods.

5. The Community Renewal Tax Relief Act of 2000 was signed into law on 12/21/2000. This act eliminated the suspension of the statutory period for collection, effective on the day of enactment (12/21/2000).
6. The Job Creation and Workers Assistance Act was signed into law March 9, 2002. This law reinstated the suspension of the statutory period for collection, by operation of law, while the OIC is pending, for 30 calendar days following rejection of an OIC, and for the period the rejection is being considered in Appeals.
7. Cases may be encountered where prior rules were in effect. The following chart shows the changes that have occurred in this area.

If the offer has a... and was... then...

Pending date of 1/1/2000 or later	Accepted prior to 12/21/2000	The CSED is extended from the pending date (TC 480) until the acceptance date (TC 781/788).
Pending date of 1/1/2000 or later	Accepted between 12/21/2000 and 3/8/2002	The CSED is only extended from the pending date (TC 480) through 12/20/2000.
Pending date of 1/1/2000 or later	Accepted after 3/8/2002	The CSED is extended from the pending date (TC 480) through 12/20/2000 and if the offer was still pending, it was also extended from 3/9/02 until the date of acceptance (TC 780). The CSED is extended from the pending date (TC 480) until 30 calendar days after the rejection letter is issued (TC 481), excluding any portion of that period which falls between 12/21/2000 and 3/8/2002.
Pending date of 1/1/2000 or later	Rejected and taxpayer does not appeal	Note: As of 2/2/2004, the AOIC system automatically adds 30 days to the date of the TC 481 on rejected not Appealed offer closures prior to transmission to master file. Appealed rejections carry the Appeals rejection date.
Pending date of 1/1/2000 or later	Rejected and sustained in Appeals	The CSED is extended from the pending date (TC 480) until the date that Appeals issues a decision letter (TC 481), excluding any portion of that period which falls between 12/21/2000 and 3/8/2002.
Pending date prior to 1/1/2000	Accepted prior to 1/1/2000	The CSED is extended from the pending date (TC 480) until all payment installments are made (TC 780) plus 1 year. The CSED cannot be extended beyond 12/31/2002 or the original CSED date, whichever is later.
Pending date prior to 1/1/2000	Accepted after 12/31/1999 but prior to 12/21/2000	The CSED is extended from the pending date (TC 480) through 12/31/99 plus 1 year. The CSED cannot be extended beyond 12/31/2002 or the original CSED date, whichever is later. If the offer was still pending on 1/1/2000, the CSED would also be extended from that date until the date of acceptance (TC 780).
Pending date prior to 1/1/2000	Accepted after 12/20/2000	The CSED is extended from the pending date (TC 480) through 12/31/99 plus 1 year. The CSED cannot be extended beyond 12/31/2002 or the original CSED date, whichever is later. In addition, the CSED is extended from 1/1/2000 through 12/20/2000. However, the CSED would not be extended from 12/21/2000 until 3/8/2002. If the offer was still pending on 3/9/2002 the CSED would also be extended from that date until it was accepted (TC 780).
Pending date prior to 1/1/2000	Rejected prior to 1/1/2000	The CSED is extended from the pending date (TC 480) until the rejection date (TC 481) plus 1 year. The CSED cannot be extended beyond 12/31/2002 or the original CSED date, whichever is later.
Pending date prior to 1/1/2000	Rejected 1/1/2000 or later	The CSED is extended from the pending date (TC 480) until 12/31/1999 plus one year. If the CSED was originally going to expire after 12/31/2002, then the waiver language contained on the submitted Form 656 has no effect. Rather, in this instance, the CSED is extended from 1/1/2000 until 12/20/2000 or the rejection date (TC 481) plus 30 calendar days, whichever is earlier. If the offer is still pending, the CSED is again extended from 3/9/2002 until the rejection date (TC 481) plus 30 calendar days.

8. If only one party to a joint assessment files an OIC, then the statute is suspended just for that person. The appropriate CSED suspension code must be input on IDRS to identify the specific taxpayer for which the offer applies. They are described below.

- P = Primary
- S = Secondary
- B = Both

**5.8.10.8 (09-27-2011)
Effect of Previous Offers on Assessment Statute Expiration Date**

1. A taxpayer submitting an offer in compromise agrees to the extension of the statute of limitations for assessment. The extension allows the Service the opportunity to evaluate the terms of an offer without the assessment statute expiring in the meantime.
2. An offer is considered pending or "being reviewed" when an authorized Service official signs the Form 656 up until the date a determination is made. The TC 480 date is the date the offer was signed by an authorized Service official and is therefore the date the pending period begins.
3. For an offer that has been accepted, the assessment statute is extended for the time the offer is pending up until the date the Service acknowledges acceptance of the offer in writing.
4. For an offer that has been rejected, returned (processable), terminated or withdrawn, the amount of any federal tax due for a tax period included on the offer may be assessed on the date by which any debt must currently be assessed plus the period of time the offer is pending plus one year.

Note:
The appropriate calculation of the assessment statute is dependent on which revision of Form 656 the offer was submitted, refer to the table in paragraph (6) of this section which discusses the impact the submission of an offer has on the assessment statute expiration date based on the form submitted and the manner in which the offer was closed.

5. The filing of an offer in compromise does not extend the assessment statute for the purpose of assessing the trust fund recovery penalty against anyone other than the taxpayer filing the offer.
6. The following charts illustrate the period of time the assessment statute is extended as determined by the revision date of the Offer in Compromise Form 656:

ASED extension when offer submitted on Form 656 (Rev. March 2011) or later

If ...	Then ...
TC 480 posted after expiration of the assessment statute expiration date (ASED).	OIC does not have any impact on calculation of the period of time for assessment which has otherwise expired.
TC 480 posted before expiration of the ASED and the TC 480 is reversed with a TC 481 rejection or return of the taxpayer's offer.	ASED is extended from date of TC 480 to date of TC 481, plus one additional year.

TC 480 posted before expiration of the ASED and the TC 480 is reversed with a TC 482 withdrawal of the taxpayer's offer.
TC 480 posted before expiration of the ASED and the TC 480 is reversed with a TC 483.
TC 480 posted before expiration of the ASED and the TC 480 is reversed with a TC 780 (acceptance).

ASED is extended from date of TC 480 to date of TC 482, plus one additional year.

ASED is not extended since the TC 483 is a reversing transaction to indicate the TC 480 was posted erroneously or returned to the taxpayer as non-processable.

ASED is extended from date of TC 480 to date of TC 780.

EXAMPLE: An offer accepted for processing (TC 480 date) on April 1, 2011 is rejected (TC 481 date) on July 1, 2011. Prior to submission of the offer the earliest ASED was May 10, 2011. The ASED is extended for 91 days while the offer was pending, plus an additional year (365 days) for a total of 456 days which is added to the ASED of each tax period listed on the offer. The new ASED on the earliest period is August 8, 2012.

ASED extension when offer submitted on Form 656 Revision Dates May 2001 - March 2009

If ...	Then ...
TC 480 posted after expiration of the assessment statute expiration date (ASED).	OIC does not have any impact on calculation of the period of time for assessment which has otherwise expired.
TC 480 posted before expiration of the ASED and the TC 480 is reversed with a TC 481 rejection of the taxpayer's offer.	ASED is extended from date of TC 480 to date of TC 481. The ASED will expire no sooner than one year after rejection of the taxpayer's offer.
TC 480 posted before expiration of the ASED and the TC 480 is reversed with a TC 482 or a TC 481 based on a processable return of the taxpayer's offer.	ASED is extended from date of TC 480 to date of TC 481/482.
TC 480 posted before expiration of the ASED and the TC 480 is reversed with a TC 483.	ASED is not extended since the TC 483 is a reversing transaction to indicate the TC 480 was posted erroneously or returned to the taxpayer as non-processable.
TC 480 posted before expiration of the ASED and the TC 480 is reversed with a TC 780 (acceptance).	ASED is extended from date of TC 480 to date of TC 780.

EXAMPLE (1): An offer accepted for processing (TC 480 date) on March 1, 2009 is rejected (TC 481 date) on September 1, 2009. Prior to submission of the offer the earliest ASED was March 10, 2010. Since the ASED is suspended for 184 days while the offer was pending, an additional 184 days is added to the ASED of each tax period listed on the offer. The new ASED on the earliest period is September 10, 2010.

EXAMPLE (2): The same TC 480 and 481 dates as the previous example, yet the earliest ASED prior to the offer submission was February 1, 2010. Since the additional 184 days would only extend the ASED to August 4, 2010, additional time is added to extend the ASED the one year period provided for on the Form 656, the new ASED is September 1, 2010.

EXAMPLE (3): The taxpayer in example 2, then submits a new offer which has a TC 480 date of August 1, 2010, which is rejected with a TC 481 date of November 10, 2010. The ASED would be suspended for 101 days, yet since the 101 days would only extend the ASED to December 11, 2010 additional time is added to extend the ASED the one year period provided for on the Form 656, the new ASED would be November 10, 2011.

Note:

In Example 3, the extension of the ASED does not include one additional year for each offer submitted, yet if the offer was submitted on Form 656 with a revision date May 2001 through March 2009, inclusive, the Service is provided at least one year from the date the offer is closed to assess additional tax on any tax period included in the offer.

5.8.10.9 (09-27-2011)

Indicators of Potential Practitioner Misconduct

1. During the verification of financial statements relating to the OIC, employees should always be aware of any indications that a practitioner violated the duties and restrictions relating to practice before the IRS as described in Treasury Department Circular No. 230 (Circular 230) "Regulations Governing the Practice of Attorneys, Certified Public Accountants, Enrolled Agents, Enrolled Actuaries, Enrolled Retirement Plan Agents, and Appraisers Before the Internal Revenue Service" (Revised 4/2008). Pertinent Sections of Circular 230 may include, but are not limited to, Sections 10.20, 10.21, 10.22, 10.23, 10.24 and 10.30. Incompetence and disreputable conduct is described in Section 10.51. Some examples of those indicators are:
 - A. Failure to exercise due diligence. This may be conduct where the practitioner ignored certain known facts or failed to make reasonable inquiries to ascertain the reasonableness or correctness of certain oral or written representations made by his/her client. A practitioner has a duty to make reasonable inquiries to determine the correctness of documentation they prepare or assist in the preparation thereof relating to a submission to the IRS.
 - B. Deceptive advertising with respect to offers (such as unqualified promises of settlement, or "pennies on the dollar").
2. Section 822 of the American Jobs Creation Act of 2004 expanded the sanctions OPR may impose on practitioners to include the imposition of a monetary penalty. If the practitioner is acting on behalf of an employer or other entity, OPR may impose a monetary penalty on the employer, firm or other entity, in addition to the practitioner, if it knew, or reasonably should have known, of the conduct.
3. A referral should also be made if the employee becomes aware that a suspended or disbarred practitioner is practicing or attempting to practice before the IRS, or when it is noted that an unenrolled return preparer has been added to an otherwise valid Form 2848, Power of Attorney and Declaration of Representative, to attempt to have this person represent the taxpayer before the IRS during the course of the offer investigation.

Note:

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

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

5.8.10.9.1 (09-27-2011)

The Role of the Office of Professional Responsibility

1. Under the authority provided by 31 U.S.C. § 330 and 31 CFR § 10, which is published as Treasury Department Circular No. 230 "Regulations Governing the Practice of Attorneys, Certified Public Accountants, Enrolled Agents, Enrolled Actuaries, and Appraisers before the Internal Revenue Service" (Revised 4/2008), OPR renders decisions on applications for enrollment to practice, makes inquiries into matters under its jurisdiction, and institutes disciplinary proceedings against tax practitioners who are found to have violated any part of Circular No. 230.

5.8.10.9.2 (09-27-2011)

Examples of Tax Practitioner Misconduct in the Offer in Compromise Program

1. A pattern of inappropriate conduct is a factor that the OPR will consider in determining whether sufficient evidence exists to suggest a willful violation of Circular 230.
2. Below are some indicators of misconduct by practitioners.

A. **Example #1** — Establishing a pattern on several Offer in Compromise investigations to influence the case disposition or Service employee to obtain the desired results by:

- Using abusive language
- Threatening claims of misconduct (e.g., Section 1203 of the RRA)
- Making false claims of misconduct
- Threatening employee with personal legal action/litigation
- Verbal/Physical threats or assaults
- Offering a bribe (e.g., offering gifts or other things of value)

Note:

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

B. **Example #2** — Establishing a pattern on several OIC cases in which investigations are delayed by the practitioner performing one or several of the following actions:

- Missing appointments
- Canceling appointments at the last moment with no good cause provided
- Agreeing to provide requested documentation and/or information and then refusing to follow through, hindering the ability of the employee to complete the investigation of the offer
- Providing partial information requiring repeated call backs/correspondence and delays.

Note:

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

C. **Example #3** — Establishing a pattern on several offer submissions, which could include significant omissions, or improper or unsubstantiated discounts on a number of assets. The information provided must be shown to be materially misrepresented, not merely a simple error. The omissions or material misrepresentations could include, but are not limited to, the following:

- Assets are omitted
- Listed assets are undervalued
- Understating the taxpayer's income
- Over stating the taxpayer's expenses
- CIS reflects a large number of claimed dependents
- CIS reflects similar dollar amounts in both checking and savings accounts
- CIS reflects no available credit, including credit cards
- CIS reflects omissions of assets
- CIS shows similar listings for monthly income and expenses (e.g. same low wages, same child care expenses)

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

5.8.10.9.3 (09-27-2011)

Referring Tax Practitioner Misconduct to the Office of Professional Responsibility

1. Employees should be alert to the patterns and/or trends of inappropriate conduct as discussed in IRM 5.8.10.9.2, Examples of Tax Practitioner Misconduct in the Offer in Compromise Program. When patterns and/or trends are identified through OIC's submitted by a tax practitioner, or when reported to an employee by any other person other than an officer or employee of the Service, the employee should complete and submit Form 8484, Report of Suspected Practitioner Misconduct and Report of Appraiser Penalty, to the OPR, and refer the suspected practitioner misconduct for appropriate disciplinary action.
2. Circular No. 230, Section 10.53 states a referral should include all of the basic information, as well as the reasons supporting the Service employee's belief that the information submitted by the practitioner was below the expected standard. The referral should contain the following specific information: the tax practitioner's name, address, telephone number, designation (i.e., attorney, certified public accountant, enrolled agent, enrolled actuary, etc.), a detailed description of the allegations, and any documents that support those allegations.
3. Mail, fax, or E-mail the Form 8484, the accompanying narrative, and any other supporting documents to:

Office of Professional Responsibility
SE:OPR
Room 7238 Attn: Misconduct Reports Desk
1111 Constitution Ave, NW
Washington, DC 20224
FAX: (202) 622-2207
E-mail address: OPR@irs.gov

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

4. Additional information about reporting suspected practitioner misconduct may be found on the OPR Intranet Website at <http://nhq.no.irs.gov/OPR/>. OPR has established an E-mail address to answer questions about Circular No. 230 issues at OPR@irs.gov.

5.8.10.9.4 (09-27-2011)

Preparation of Form 8484, Report of Suspected Practitioner Misconduct and Report of Appraiser Penalty to the Office of Professional Responsibility (OPR)

1. Part A – Practitioner Information

Practitioner information must include the practitioner's name, mailing address, telephone number, fax number, social security number, and CAF number. Indicate whether the practitioner is an attorney, certified public accountant, enrolled agent, enrolled actuary, or appraiser.

2. Part B – Evidence of Practice before the IRS

If available, attach a copy of the Form 2848, Power of Attorney and Declaration of Representative, or an IDRS CAF printout to the Form 8484. If neither a copy of the Form 2848 nor a CAF printout is available, but the employee has personal knowledge of the practice, provide the following statement, "I dealt with this practitioner during (year) regarding a collection matter. The Form 2848 was not put on the CAF and I do not have access to the closed case file." OPR must be able to accurately identify and locate the tax practitioner in order to process the referral and establish proof of practice before the Internal Revenue Service.

3. Part C – Explanation of Suspected Misconduct

Complete and attach a narrative to the Form 8484. The narrative should be detailed enough to allow the OPR to give the practitioner fair notice of the suspected misconduct. It should list all significant events that illustrate the inappropriate conduct in chronological order, explain how the conduct impacts on the administration of the tax laws, as well as any other supporting information that will establish a pattern of misconduct. It should include appropriate quotations from the case history that would support the alleged misconduct. If applicable, hand-written material should be transcribed. The narrative should be specific and should include: who, what, when, where, and why.

4. Part D – Contact Person and Address

The contact person is not necessarily the person with first-hand knowledge of the suspected misconduct. Rather, the contact person may be an Area employee responsible for collecting misconduct reports and submitting them to the OPR. OPR will direct questions concerning the referral to the contact person.

5. Part E – Management Approval

While OPR does not require any particular level of management approval, field Group Managers or Offer Examiner Unit Managers (COIC) should review and approve referrals made by OIC employees before documents are sent to OPR.

6. Part F – Office of Professional Responsibility (OPR) Acknowledgement of Report

Upon receiving the Form 8484 and the corresponding narrative, OPR will complete *Part F* and return a copy to the contact person.

5.8.10.10 (09-27-2011)

Indicators of Taxpayer Fraud

1. The following are potential fraud warning signs most identifiable during an interview:

- A. Failing to keep proper books and records in a business or profession.
- B. No records, poorly kept records, or attempts to falsify or alter records.
- C. Destroying books and records without plausible explanation or refusal to make certain records available.
- D. Extent of taxpayer's control of sales and receipts and the apparent unwillingness to delegate this function to employees.
- E. Engaging in illegal activities.
- F. Personal living standard and asset acquisition is inconsistent with reported income.
- G. Indications that valuable assets belonging to the taxpayer are being acquired and held in the name of others.
- H. Self-serving statements with no documented proof.
 - I. Repeated procrastination on the part of the taxpayer in making and keeping appointments.
 - J. Hasty agreement to adjust and undue concern about immediate closing of the case may indicate a more thorough examination may be necessary.

2. The following are potential fraud warning signs most identifiable during verification of the financial statement:

A. Uncooperative attitude displayed by:

- Not providing requested information
- Refusal to make certain records available
- Not furnishing adequate explanations for discrepancies or questionable items

B. Trying to conceal a pertinent fact or record.

C. Failing to deposit all receipts to the business account.

D. Use of nominees or false names.

E. Unusual depletion of assets shortly before filing an offer.

F. Inflated salaries, payment of bonuses or cash withdrawals by officers, directors, shareholders, or other insiders.

G. Transfers of property to insiders, shareholders, or relatives shortly before filing the offer.

H. Payoff of loans to directors, officers, shareholders, relatives, or other insiders shortly before filing of the offer.

I. Complicated corporate structures and relationships.

J. Undervaluing of assets.

K. Overstatement of liabilities.

3. The fraud indicators below can fall into any of the categories in paragraphs (1) and (2) above:

A. Making false, misleading, and inconsistent statements.

B. Using currency instead of bank accounts or making large expenditures in currency.

C. Concealment of bank accounts and other property.

4. If indications of fraud are identified, follow the procedures outlined in IRM 5.8.4.16 - Potential Fraud Referrals.

5. Refer to IRM 5.8.4.17 - Open Criminal Investigations relative to the appropriate actions if the taxpayer is involved in an open criminal investigation.

5.8.10.11 (09-27-2011)

Docketed Tax Court Cases

1. Tax Court cases generally are handled by Area Counsel. The IRS has the authority to accept offers where the liability is the subject of a pending Tax Court Case. Unless the case is under Appeals jurisdiction, Doubt as to Collectibility (DATC) offers submitted while a Tax Court case is pending are under Collection jurisdiction.
2. Any request for a financial review from Collection by Area Counsel in which settlement authority is being utilized outside the offer process should be provided to a Revenue Officer in Collection Field function and worked as an Other Investigation (OI).

5.8.10.11.1 (09-27-2011)

Docketed Cases Involving Pending Liabilities

1. These procedures provide guidance in situations where the taxpayer's liability has not been determined.

2. Responsibility of Counsel:

- A. Regardless of whether the written OIC is complete, immediately send it and any attachments or payments to the appropriate COIC site with the "Expedited Processing Required" transmittal (Exhibit 5.8.10-1) for a processability determination. The correct COIC site is based on the location (state) of the taxpayer and can be found on the OIC portion of the "My SB/SE-Collection website." Counsel will overnight it to the appropriate COIC site to ensure the 24-hour period for deposit is met.
- B. A stipulation of the full amount of the deficiencies and penalties (those determined in the statutory notice or those redetermined on the merits by agreement of the parties) should be obtained and may be held in escrow by Counsel, see CCDM 35.8.6.2.1. Additionally, a signed Form 3040, Authorization to Apply Offer in Compromise Deposit to Liability, should be secured, and the taxpayer should be advised, if the offer is not accepted the TIPRA payment is non-refundable and will be applied to any current outstanding liability or liability determined in the court proceedings.
- C. Counsel will advise the Offer Specialist of any new developments on the case that may impact the investigation and/or the overall decision.

3. Responsibilities of COIC:

- A. Review for processability criteria.
- B. If the offer is not processable, contact the Counsel Attorney and explain why the offer cannot be processed.

Note:

If the offer is a pending liability case, the modules should be added to AOIC showing 0.00 liability.

- C. If the offer is processable, follow current IRM procedures, including loading the offer on AOIC. Treat the offer as being received on the date that Counsel received it.
- D. If the offer is a pending liability case, the TIPRA payment and application fee (if applicable) should be posted as a deposit.
- E. Immediately forward the case (including the "Expedite" transmittal) to the appropriate drop point.
- F. Document the AOIC history.
- G. The type of pending Tax Court Case determines whether the OIC is subject to the 24 month, "deemed accepted" rule of IRC §7122(f). If the proceeding is a deficiency case, the 24 month rule does not apply because the liability is in dispute.

4. Responsibility of the Field Group:

- A. Upon receipt of the offer in the appropriate Drop Point, assign the case within 5 days of receipt.

- B. Upon assignment, the Offer Specialist (OS) should contact the Attorney indicated on the transmittal and provide their name and contact phone number.
- C. The OS should complete the investigation within Counsel's (the Court's) required timeframe or contact the attorney to discuss any anticipated delays.
- D. If the investigation results in a decision to recommend acceptance of the offer, discuss the findings with the Counsel Attorney before communicating the decision to the taxpayer or their representative.
- E. If the investigation indicates that the case could be an acceptance, but would require an increase in the offer amount, the OS should issue the preliminary acceptance letter requesting the increased amount. If the TP agrees to the increased amount, contact the Counsel Attorney prior to issuing the acceptance letter. If the TP does not agree to the increased offer amount, contact the Counsel Attorney to discuss the next appropriate action.
- F. If the decision is other than acceptance, discuss with the Counsel Attorney the issuance of an appropriate final determination letter.
- G. If it is determined, with Counsel concurrence, a rejection letter as discussed in 26 CFR 301.7122-1 (f), should be provided, IRM procedures requiring review by the IAR in accordance with IRC §7122 (e) will be followed.

5.8.10.11.2 (09-27-2011)

Docketed Collection Due Process (CDP) Cases

1. These procedures provide guidance in situations where Area Counsel requests consideration of an offer by employees of an OIC function.
2. Responsibility of Counsel
 - A. Regardless of whether the written OIC is complete, immediately send it and any attachments or payments to the appropriate COIC site with the "Expedited Processing Required" transmittal (Exhibit 5.8.10-1) for a processability determination. The correct COIC site is based on the location (state) of the taxpayer and can be found on the OIC portion of the "My SB/SE-Collection website." Counsel will overnight it to the appropriate COIC site to ensure the 24-hour period for deposit is met.
 - B. Counsel will advise the Offer Specialist of any new developments on the case that may impact the investigation and/or the overall decision.
3. Responsibilities of COIC:
 - A. Review for processability criteria.
 - B. If the offer is not processable, contact the Counsel Attorney and explain why the offer cannot be processed.
 - C. If the offer is processable, follow current IRM procedures, including loading the offer on AOIC. Treat the offer as being received on the date that Counsel received it.
 - D. The TIPRA payment and application fee (if applicable) should be posted to the taxpayers' account.
 - E. Immediately forward the case (including the "Expedite" transmittal) to the appropriate drop point.
 - F. Document the AOIC history.
 - G. If the taxpayer raises any tax liability in a CDP case in Tax Court, the 24 month rule applies, but the 24 month period is suspended for the period in which the tax liability is disputed in court.
4. Responsibility of the Field Group:
 - A. Upon receipt of the offer in the appropriate Drop Point, assign the case within 5 days of receipt.
 - B. Upon assignment, the Offer Specialist (OS) should contact the Attorney indicated on the transmittal and provide their name and contact phone number.
 - C. The OS should complete the investigation within Counsel's (the Court's) required timeframe or contact the attorney to discuss any anticipated delays.
 - D. If the investigation results in a decision to recommend acceptance of the offer, discuss the findings with the Counsel Attorney before communicating the decision to the taxpayer or their representative.
 - E. If the investigation indicates that the case could be an acceptance, but would require an increase in the offer amount, the OS should contact the Counsel Attorney to discuss the potentially acceptable amount and next appropriate action.
 - F. If the TP agrees to the amount deemed acceptable, discuss with the Counsel Attorney the timing of the offer acceptance letter in relation to the court proceedings.
 - G. If the TP does not agree to the increased offer amount, the offer should be closed as a processable return based on the current litigation

5.8.10.12 (09-27-2011)

Offer in Compromise Submission with Frivolous, Delaying, or Impeding Issues

1. A taxpayer may submit an offer in compromise (OIC) which provides a frivolous or groundless position as the reason the OIC should be accepted. In these instances, the OIC should be returned under delay of collection criteria in accordance with IRM 5.8.4.18, Offer Submitted Solely to Delay Collection, or may be treated as though the offer was never submitted in accordance with IRC 7122(f)(g).

Note:

If the submission involves a practitioner refer to IRM 5.8.10.9 relative to potential practitioner misconduct.

2. A determination to treat the OIC as though it was never submitted should be based on the specific facts of the case.

Note:

The collection statute expiration date will not be suspended and any application fee and offer payment will be required to be returned if the offer is treated as though it was never submitted.

3. The taxpayer's basis for submitting the offer is deemed frivolous if it includes a tax argument discussed in Internal Revenue Service Notice 2010-33 which lists specific tax arguments determined to be frivolous, including but not limited to, federal income taxes are unconstitutional, enforcement of the tax laws invades a taxpayer's privacy under the Fourth Amendment, or the Fifth Amendment privilege against self-incrimination grants taxpayers the right not to file returns or the right to withhold all financial information from the Service.
4. If the taxpayer includes any of the positions listed in Notice 2010-33 as the reason an offer in compromise should be accepted, then the assertion of a penalty for a frivolous submission under IRC 6702(b) may be appropriate. IRC 6702(b) provides for a penalty in situations when there is a frivolous offer submission or an offer submission in which the taxpayer has demonstrated a desire to delay or impede the administration of federal tax laws.
5. The recommendation to assert the penalty under IRC 6702(b) must be based on the facts and circumstances of the particular case. In egregious situations where the assertion of the penalty is deemed appropriate, prior to returning the offer under solely to delay criteria in accordance with IRM 5.8.4.18.1, Procedures for Return of Offers Submitted Solely to Delay Collection, or determining the offer will be treated as never being submitted, refer to IRM 5.8.10.12.1, Request for Penalty Assertion under IRC

6702(b) relative to the actions necessary to assert a penalty under IRC 6702(b).

Note:

Although these types of submissions will most generally be under Doubt as to Liability (DATL) and processed by the DATL unit, in rare instances an offer submitted under Doubt as to Collectibility or Effective Tax Administration or which include a trust fund recovery penalty assessment may include a frivolous argument.

5.8.10.12.1 (09-27-2011)

Request for Penalty Assertion under IRC 6702(b)

1. If the taxpayer files an offer in compromise (OIC) that states the OIC should be accepted based on a frivolous position or reflects a desire to delay or impede the administration of federal tax laws and it is determined assertion of the penalty under IRC section 6702(b) is applicable; the taxpayer should be given 30 days to withdraw or amend their OIC prior to the assertion of the penalty.
2. The opportunity to withdraw or amend the offer should be in writing and included in correspondence that advises the taxpayer that actions to avoid the \$5,000 IRC 6702(b) penalty are either to withdraw the offer or amend the offer so it only includes a valid reason for acceptance based on existing law.
3. If the taxpayer fails to withdraw the offer, then review the documentation to verify that the offer includes either a frivolous position or a desire to delay position.
4. Once the criteria for penalty assessment have been verified, the collection employee will take the necessary steps to have the penalty assessed by preparing a Form 3210, Document Transmittal addressed to Ogden Compliance Services, Attn: FRP, M/S 4450, Sr. Technical Advisor, 1973 N. Rulon White Blvd, Ogden, Utah, 84404. The following information should be listed on the Form 3210:
 - TIN and Name Control
 - MFT 55 for IMF or MFT 13 for BMF and Period (if multiple periods, use the latest period on the hearing request)
 - Penalty Reference Code 543 which is used for IRC section 6702(b) penalties

The following documents should be attached to the Form 3210:

- The original Form 656 and related attachments discussing the basis for the offer submission.
 - A copy of the letter or letters issued soliciting a withdrawal of the taxpayer's "specified frivolous position" or desire-to-delay position.
 - A copy of any written communication received from the taxpayer in response to the withdrawal solicitation.
5. The group manager will document approval of the penalty assessment by writing *Determination to assess penalty pursuant to IRC 6702(b) approved* on the Form 3210 and sign the Form 3210. The request for penalty assessment can be mailed or faxed to Ogden at 801-620-2422. The Frivolous Return Program at the Ogden Compliance Services Campus will review the documents and process the request for penalty assessment. Follow-up with Ogden if they do not acknowledge receipt of the Form 3210 within 15 days.

5.8.10.13 (09-27-2011)

Taxpayer Files both Doubt as to Liability and Doubt as to Collectibility Offers

1. When a taxpayer files a Doubt as to Liability (DATL) (Form 656-L) and Doubt as to Collectibility (DATC) (Form 656) at the same time, consideration of both offers will not occur simultaneously.
2. In most instances the appropriate action will be the return of the DATC offer, so the DATL offer investigation can be completed prior to consideration of any DATC issues. When a DATL and DATC offer are submitted simultaneously, the taxpayer should be contacted (preferably by telephone) and advised both offers cannot be considered at the same time and provide the taxpayer the opportunity to decide which offer they wish to be investigated. The offer not being considered will be returned. In simultaneous submission situations, if an application fee and TIPRA payment was submitted with the DATC offer, they will be refunded, if the DATC offer is returned.
3. If a DATL or DATC offer is submitted while another offer under a different basis is being investigated; the OE/OS must initiate contact with the taxpayer and discuss which option the taxpayer would like to pursue. If the taxpayer cannot be contacted or is unwilling to submit a withdrawal, the offer not currently under consideration will be returned. For example, if a DATC offer is under investigation, then a DATL offer is submitted, if the taxpayer determines they wish to continue the DATC offer, return the DATL offer. The taxpayer should also be advised, if the DATC offer was the initial offer being investigated and is being withdrawn or returned, any application fee or TIPRA payment will not be refunded.

Note:

A taxpayer may submit an additional Form 656 requesting consideration under effective tax administration (ETA) while a Form 656 DATC offer is under consideration. The additional Form 656 should be considered an amended offer and any ETA issues presented should be considered.

Note:

If a taxpayer submits a Form 656 requesting consideration under ETA while a DATL offer is under consideration, the offer should be returned as discussed in paragraph (3) above.

4. If a DATC offer is being returned based on a simultaneous submission, the offer should be closed as a non-processable return and any application fee or TIPRA payment should be refunded. A DATC offer returned due to being submitted subsequent to a DATL offer, should also be closed as a non-processable return with any application fee or TIPRA payment refunded. An offer returned under the provisions of paragraph (3) when the DATC was the original offer being investigated should be closed as a processable return, which does not allow for the refund of the application fee or TIPRA payment. AOIC histories should be documented appropriately.

Exhibit 5.8.10-1

Docketed Tax Court Case Expedited Processing Transmittal

EXPEDITE PROCESSING REQUIRED
DOCKETED TAX COURT CASE

FOR COUNSEL USE ONLY

Counsel Contact Information:

Name:
Contact Number:
E-mail:

Enclosures:

Application fee (Amount: _____)
TIPRA payment (Amount: _____)
Deposit (Amount: _____)
656-A in lieu of application fee, and payment(s)

Form 656
Form 433-A, Collection Information Sheet
Other information provided by taxpayer to support offer
Stipulated Settlement
Form 3040

TAXPAYER NAME: _____ DATE OFFER RECEIVED BY COUNSEL: _____
DATE STATUS REPORT DUE TO COURT: _____

Mail 656 package, payments or 656-A, and cover sheet to the appropriate centralized site
NOTE TO ALL OFFER SPECIALIST: Upon receipt of documents, notify the contact shown above.

MCOIC
Stop 880
5333 Getwell Rd.
Memphis, TN 38118

BCOIC
1040 Waverly Ave
Stop 680
Holtsville, NY 11742

Exhibit 5.8.10-2
Letter requesting taxpayer withdraw offer submitted which includes a frivolous position

Taxpayer Name
Address
City ST. ZIP

Dear

Your offer in compromise was received in this office and reviewed.

It has been determined that your basis for compromise is either:

- a "specified frivolous position", identified by the IRS in Notice 2010-33 (for Notice 2010-33, refer to the IRS Internet website at: http://www.irs.gov/irb/2010-17_IRB/ar13.html)
or
- a disagreement listing moral, religious, political, constitutional, conscientious, or similar grounds that reflects a desire to delay or impede the administration of federal tax laws.

An offer in compromise cannot be considered if it is based solely on a specified frivolous position, or the disagreement reflects a desire to delay or impede the administration of federal tax laws.

You can amend your offer in compromise if you have any non-frivolous basis for compromise you wish to have considered. A non-frivolous basis can include:

- Doubt as to Collectibility - Doubt as to Collectibility exists in any case where the taxpayer's assets and income cannot satisfy the full amount of the liability.
- Doubt as to liability - Doubt as to liability exists where there is a genuine dispute as to the existence or amount of the correct tax liability under the law.
- Effective Tax Administration – Effective Tax Administration is a situation where it is determined that, although collection in full could be achieved, collection of the full liability would cause the taxpayer economic hardship. Economic hardship is defined as the inability to pay reasonable basic living expenses.

If you do not have any non-frivolous basis for your offer in compromise and, therefore, do not intend to amend your compromise proposal you can, instead, withdraw your offer in compromise and avoid the \$5,000 penalty imposed under Internal Revenue Code section 6702(b) for submitting an Offer in Compromise based on a "specified frivolous position" or reflecting a desire to delay or impede the administration of federal tax laws. *Attached is a withdrawal form which may be used for this purpose.*

Please either amend (on the enclosed Form 656) or withdraw your offer in compromise within 30 days from the date of this letter by providing a non-frivolous basis for compromise. If we do not hear from you or if you submit another issue that is frivolous, or reflects a desire to delay or impede the administration of federal tax laws, you will be assessed a penalty in accordance with Internal Revenue Code Sections 6702(b) and your offer will not be considered. If you submit an amended offer that provides a non-frivolous basis for consideration, your offer will be forwarded for investigation.

Please contact (insert contact name phone number) with any questions or concerns you have regarding this letter.

Sincerely,

[More Internal Revenue Manual](#)



Part 5. Collecting Process

Chapter 8. Offer in Compromise

Section 11. Effective Tax Administration

5.8.11 Effective Tax Administration

- 5.8.11.1 [Overview](#)
- 5.8.11.2 [Legal Basis for Effective Tax Administration Offer](#)
- 5.8.11.3 [Initial Processing of Effective Tax Administration Offers](#)
- 5.8.11.4 [Evaluation of Offers](#)
- 5.8.11.5 [Documentation and Verification](#)
- 5.8.11.6 [Final Processing](#)
- Exhibit 5.8.11-1 [Effective Tax Administration Non-Hardship OIC Check Sheet](#)

Manual Transmittal

November 26, 2013

Purpose

(1) This transmits revised IRM 5.8.11, Offer in Compromise, Effective Tax Administration.

Material Changes

(1) Exhibit 5.8.11-1 — Updated the NEH-ETA check sheet to reflect the correct phone number and mailing address.

Effect on Other Documents

This material supersedes IRM 5.8.11, dated 09/23/2008.

Audience

SB/SE Compliance employees

Effective Date

(11-26-2013)

Dretha Barham
Director, Collection Policy

5.8.11.1 (09-23-2008) Overview

1. As part of the IRS Restructuring and Reform Act of 1998 (RRA 98), Congress added section 7122(c) to the Internal Revenue Code. That section provides that the Service shall set forth guidelines for determining when an OIC should be accepted. Congress explained that these guidelines should allow the Service to consider:

- Hardship,
- Public policy, and
- Equity

Treasury Regulation § 301.7122-1 authorizes the Service to consider OIC's raising these issues. These offers are called Effective Tax Administration (ETA) offers.

2. The availability of an ETA offer encourages taxpayers to comply with the tax laws because taxpayers will believe the tax laws are fair and equitable. The ETA offer allows for situations where tax liabilities should not be collected even though:

- The tax is legally owed, and
- The taxpayer has the ability to pay it in full

3. No compromise to promote ETA may be entered into if compromise of the liability would undermine compliance by taxpayers with the tax laws.

4. If a taxpayer submits an ETA offer, first investigate the offer for:

- DATL, and/or
- DATC

5. An ETA offer can only be considered when the Service has determined that the taxpayer does not qualify for consideration under DATL and/or DATC.

6. The taxpayer must include the CIS (Form 433-A and/or Form 433-B) when submitting an offer requesting consideration under ETA.

7. Economic hardship standard of § 301.6343-1 specifically applies only to individuals.

5.8.11.2 (09-23-2008)

Legal Basis for Effective Tax Administration Offer

1. Compared to Doubt as to Collectibility (DATC)

A. In a DATC offer, the tax liability equals or exceeds the taxpayers RCP which is:

- Net equity, plus
- Future income, and
- Other components of collectibility

B. In an ETA offer the tax liability is less than the taxpayers RCP. The RCP shows the taxes owed can be collected in full either:

- In a lump sum, or
- Through an installment agreement (IA)

C. A DATC offer does not convert to an ETA offer if the OI and the taxpayer cannot agree on an acceptable offer amount.

2. Compared to Doubt as to Collectibility with Special Circumstances (DCSC)

- A. Taxpayers may qualify for an ETA offer when their RCP is greater than the liability but there are economic or public policy/equity circumstances that would justify accepting the offer for an amount less than full payment.
- B. Taxpayers may qualify for a DCSC offer when they cannot fully pay the tax due but have proven special circumstances that warrant acceptance for less than RCP. Factors establishing special circumstances under DATC are the same as those considered under ETA. Refer to IRM 5.8.4.3.

Example:

The taxpayer owes \$ 20,000. The RCP is \$ 25,000. The taxpayer could have an offer accepted for less than the total liability of \$ 20,000 under the ETA provisions if economic hardship, or public policy/equity issues exist which would support an acceptance recommendation.

Example:

The taxpayer owes \$20,000. However his RCP is \$15,000. The offer does not meet the legal basis for an ETA because the RCP is lower than the liability. However, applying the same factors of economic hardship, or public policy/equity, an offer could be accepted for less than the RCP (\$15,000) under DCSC provisions.

3. Compared to Doubt as to Liability

An offer can be considered under ETA provisions only when there are no DATL issues.

4. In reaching these determinations:

If...

The Service determines that there is doubt as to the amount of the liability the taxpayer owes

The Service determines that the taxpayers equity in assets plus future income (RCP) does not exceed the amount of the tax liability

The Service determines the taxpayer is not eligible for compromise based on DATL or DATC and the taxpayer can demonstrate that collection of the tax liability in full would create economic hardship, or demonstrate that there is compelling public policy or equity issues in the case that would provide sufficient basis for compromise

Then...

Taxpayer is not eligible for ETA consideration. The OIC is considered based on the DATL issue.

Taxpayer is not eligible for an ETA offer. The OIC is considered based on DATC. However, hardship or public policy/equity may be present in the case to allow consideration under DCSC.

The taxpayer would be eligible for ETA consideration.

5. Before we can consider an OIC based on economic hardship or public policy/equity considerations, three factors must exist:

- A. A liability has been or will be assessed against taxpayer(s) before acceptance of the OIC
- B. The sum of net equity in assets, future income, and the other components of collectibility making up RCP must be greater than the amount owed.
- C. Exceptional circumstances exist, such as the collection of the tax would create an economic hardship, or there is compelling public policy or equity considerations that provide sufficient basis for compromise.

5.8.11.2.1 (09-23-2008)

Economic Hardship

1. When a taxpayers liability can be collected in full but collection would create an economic hardship, an ETA offer based on economic hardship can be considered.
2. The definition of economic hardship as it applies to ETA offers is derived from Treasury Regulations § 301.6343-1. Economic hardship occurs when a taxpayer is unable to pay reasonable basic living expenses. The determination of a reasonable amount for basic living expenses will be made by the Commissioner and will vary according to the unique circumstances of the individual taxpayer. Unique circumstances, however, do not include the maintenance of an affluent or luxurious standard of living.

Note:

Because economic hardship is defined as the inability to meet reasonable basic living expenses, it applies only to individuals (including sole proprietorship entities). Compromise on economic hardship grounds is not available to corporations, partnerships, or other non-individual entities.

3. The taxpayers financial information and special circumstances must be examined to determine if they qualify for an ETA offer based on economic hardship. Financial analysis includes reviewing basic living expenses as well as other considerations.
4. The taxpayer's income and basic living expenses must be considered to determine if the claim for economic hardship should be accepted. Basic living expenses are those expenses that provide for health, welfare, and production of income of the taxpayer and the taxpayer's family. National and local standard expense amounts are designed to provide accuracy and consistency in determining taxpayer's basic living expenses. These standards are guidelines and if it is determined that a standard amount is inadequate to provide for a specific taxpayer's basic living expenses, allow a deviation. Require the taxpayer to provide reasonable substantiation and document the case file.

5. In addition to the basic living expenses, other factors to consider that impact upon the taxpayers financial condition include:

- The taxpayers age and employment status,
- Number, age, and health of the taxpayers dependents,
- Cost of living in the area the taxpayer resides, and
- Any extraordinary circumstances such as special education expenses, a medical catastrophe, or natural disaster.

Note:

This list is not all-inclusive. Other factors may be considered in making an economic hardship determination.

6. Factors that support an economic hardship determination may include:

1. The taxpayer is incapable of earning a living because of a long term illness, medical condition or disability, and it is reasonably foreseeable that the financial resources will be exhausted providing for care and support during the course of the condition.
2. The taxpayer may have a set monthly income and no other means of support and the income is exhausted each month in providing for the care of dependents.
3. The taxpayer has assets, but is unable to borrow against the equity in those assets, and liquidation to pay the outstanding tax liability(s) would render the taxpayer unable to meet basic living expenses.

Note:

These factors are representative of situations the Service regularly encounters when working with taxpayers to resolve delinquent accounts. They are not intended to provide an exhaustive list of the types of cases that can be compromised based on economic hardship.

7. The following examples illustrate the types of cases that may be compromised under the economic hardship standard.

Example:

The taxpayer has assets sufficient to satisfy the tax liability and provides full time care and assistance to a dependent child, who has a serious long-term illness. It is expected that the taxpayer will need to use the equity in assets to provide for adequate basic living expenses and medical care for the child. The taxpayers overall compliance history does not weigh against compromise.

Example:

The taxpayer is retired and the only income is from a pension. The only asset is a retirement account and the funds in the account are sufficient to satisfy the liability. Liquidation of the retirement account would leave the taxpayer without adequate means to provide for basic living expenses. The taxpayers overall compliance history does not weigh against compromise.

Example:

The taxpayer is disabled and lives on a fixed income that will not, after allowance of adequate basic living expenses, permit full payment of the liability under an installment agreement. The taxpayer also owns a modest house that has been specially equipped to accommodate for a disability. The equity in the house is sufficient to permit payment of the liability owed. However, because of the disability and limited earning potential, the taxpayer is unable to obtain a mortgage or otherwise borrow against this equity. In addition, because the taxpayers home has been specially equipped to accommodate the disability, forced sale of the taxpayers residence would create severe adverse consequences for the taxpayer, making such a sale unlikely. The taxpayers overall compliance history does not weigh against compromise.

8. The economic hardship standard authorizes compromise regardless of the cause of the liability, provided compromise does not undermine compliance by other taxpayers.

Example:

The taxpayer submitted an ETA offer based on economic hardship. The financial statement appears to support the offer. When a research of the county property records is conducted, it is noted that the home was transferred to a child for \$100 plus love and affection. The transfer of the home was made after the tax was assessed. It is confirmed that deliberate actions were taken to avoid the payment of tax; therefore, the offer should not be accepted.

9. In economic hardship cases, an acceptable offer amount is determined by analyzing the financial information, supporting documentation, and the hardship that would be created if certain assets, or a portion of certain assets, were used to pay the liability.

Example:

The taxpayer was diagnosed with an illness that eventually will hinder any ability to work. Although currently employed, the taxpayer will soon be forced to quit their job and will use personal funds for basic living expenses. The taxpayer owes \$ 100,000 and has a reasonable collection potential of \$ 150,000. An offer was submitted for \$ 35,000. Through the investigation, it is determined that collecting more than \$ 50,000 would cause an economic hardship for the taxpayer. A determination on economic hardship was made due to the fact the taxpayer's reasonable living expenses, including ongoing medical costs will exceed their income once the taxpayer is unemployed. The taxpayer is advised to raise the offer to \$ 50,000 since it is the amount the Service can collect without creating an economic hardship.

10. The existence of economic hardship criteria does not dictate that an OIC must be accepted. An acceptable offer amount must still be determined based on a full financial analysis and negotiation with the taxpayer. When hardship criteria are identified but the taxpayer does not offer an acceptable amount, the OIC should not be recommended for acceptance.

5.8.11.2.2 (09-23-2008)

Public Policy or Equity Grounds

1. Acceptance of an OIC based on considerations of equity and public policy will generally be based on a combination of facts and circumstances. It is important that appropriate cases are identified and forwarded to the NEH-ETA group in Austin, TX for consideration. Generally, the circumstances should be such that acceptance of the offer is fair and equitable and promotes ETA.
2. Where there is no DATL, no DATC, and the liability could be collected in full without causing economic hardship, the Service may compromise to promote ETA where compelling public policy or equity considerations identified by the taxpayer provide a sufficient basis for accepting less than full payment. Compromise is authorized on this basis only where, due to exceptional circumstances, collection in full would undermine public confidence that the tax laws are being administered in a fair and equitable manner. Because the Service assumes that Congress imposes tax liabilities only where it determines it is fair to do so, compromise on these grounds will be rare.
3. The Service recognizes that compromise on these grounds will often raise the issue of disparate treatment of taxpayers who can pay in full and whose liabilities arose under substantially similar circumstances. Taxpayers seeking compromise on this basis bear the burden of demonstrating circumstances that are compelling enough to justify compromise notwithstanding this inherent inequity.
4. All non-hardship ETA offers should meet the following requirements:
 - The taxpayer has remained in compliance since incurring the liability and overall their compliance history does not weigh against compromise;

- The taxpayer must have acted reasonably and responsibly in the situation giving rise to the liabilities; and
- The circumstances of the case must be such that other taxpayers would view the compromise as a fair and equitable result. For example, it should not appear to other taxpayers that the result of the compromise places the taxpayer in a better position than they would occupy had they timely and fully met their obligations.

Note:

Generally, tax liabilities associated with the taxpayer's participation in abusive tax avoidance transactions will not be compromised under these procedures.

5.8.11.2.2.1 (09-23-2008)

Public Policy or Equity Compelling Factors

1. Compromise may promote ETA where a taxpayer's liability was directly caused by a processing error on the part of the Service and would otherwise have been avoided. Compromise to remedy the mistake may be appropriate to the extent correction of the mistake (such as through abatements, reversal of credits, etc) does not put the taxpayer back in the same position that he or she would have occupied if the error had not been made.

Example:

The taxpayer is a closely-held corporation. The IRS audited the taxpayer's tax returns for 2000, 2001, and 2002 and determined that the taxpayer was a personal holding company liable for personal holding company tax. The taxpayer agreed to immediate assessment of the tax, but attempted to take advantage of the deduction for deficiency dividends under section 547. Although the taxpayer made the distributions necessary to qualify for the deduction, the IRS made several errors in executing the required agreements and other paperwork. As a result, the taxpayer could not avail itself of the section 547 deduction. Under the statute, applicable regulations, and pertinent case law, there is no means by which the mistakes can be corrected to allow the taxpayer to take advantage of the deduction. There is documentary evidence that all of the required Service officials intended to complete the processing of the agreements and that, but for their failure to do so, the taxpayer would have qualified for the deduction. The taxpayer has no prior history of noncompliance.

Note:

The fact that the tax liability was caused solely by an error on the part of the Service supports the determination that collection in full would cause other taxpayers to question the fairness of the tax system. Furthermore, the policies underlying the imposition of the personal holding company tax and the rules regarding deficiency deductions are not undermined by compromise under these circumstances. The Service may consider accepting a compromise that would reflect the amount the taxpayer would now owe had the Service not made an error.

2. Compromise may promote ETA where the taxpayer incurred the liability because of having followed erroneous advice or instructions from the Service. The advice or instructions caused the taxpayer to incur a tax liability that would not otherwise have been incurred.

Example:

The taxpayer is a salaried sales manager at a department store who has been able to place \$ 2,000 in a tax-deductible IRA account for each of the last two years. The taxpayer learns that a higher rate of interest can be earned on his IRA savings by moving the savings from a Money Management account to a Certificate of Deposit at a different financial institution. Prior to transferring the savings, the taxpayer submits an E-mail inquiry to the IRS at its Web Page, requesting information about the steps needed to preserve the tax benefits currently enjoyed and to avoid any penalty. The IRS responds in an answering E-mail that the taxpayer may withdraw the IRA savings from the neighborhood bank, but it must be redeposited in a new IRA account within 90 days. The taxpayer withdraws the funds and redeposits them in a new IRA account 63 days later. Upon audit, the taxpayer learns that he has been misinformed about the required rollover period and is now liable for additional taxes, penalties and interest for not redepositing the amount within 60 days. Had the advice provided been accurate, the taxpayer would have redeposited the funds in a timely manner. The taxpayer is able to provide documentation that demonstrates the taxpayer was provided incorrect information. . The taxpayers overall compliance history does not weigh against compromise.

Note:

Because the tax liability in this example was caused by relying on the Service's erroneous statement, and the taxpayer clearly could have avoided the liability had the Service given correct information, it is reasonable to conclude that collection in full would cause other taxpayers to question the fairness of the tax system. The Service may consider accepting a compromise that would reflect the amount the taxpayer would now owe had the Service not made an error.

3. If actions or inaction of the Service unreasonably delayed resolution of the taxpayer's case and interest or penalty abatement is not available, compromise may still be warranted if the circumstances are sufficiently compelling. An OIC should not be accepted under ETA provisions, in lieu of abatement under IRC Section 6404(e), when appropriate.
4. These provisions may allow for relief if the taxpayer alleges that the criminal or fraudulent act of a third party is directly responsible for the tax liability. The taxpayer should be able to provide supporting documentation that the act occurred and was the direct cause of the delinquency. The taxpayer should also be able to show that the nature of the crime was such that even a prudent, responsible business owner would have been misled to believe the tax obligations were properly addressed. There should be evidence that the funds required for the payment of the taxes were segregated or otherwise identified and were available to pay the taxes in a timely manner. Compromise would promote ETA in such situations only where the failure to comply is directly attributable to intervention by a third party and where the taxpayer has made every effort to comply and taken reasonable precautions to prevent the criminal or fraudulent acts at issue. The taxpayer's efforts to mitigate the damages by pursuing collection from the third party should also be considered. Compromise for this reason would only promote ETA where there is a very close nexus between the actions at issue and the failure to comply.

Example:

The taxpayer was using a payroll service provider (PSP) who deducted all tax payments from the taxpayer's bank account, yet did not remit them to the Service. The taxpayer took all reasonable precautions to prevent this from occurring. The PSP also falsified documents to conceal the embezzlement. Since the abatement of interest is not available under 6404(e) on employment taxes, an offer in the amount of the tax balance may be accepted. The taxpayer's overall compliance history does not weigh against acceptance of the offer.

Note:

The Service will not compromise on public policy or equity grounds solely on the argument that the acts of a third party caused the unpaid tax liability. Third parties include: Representatives, Partners, Agent, or Employee.

The actions of the third party may be part of a fact pattern that, viewed as a whole, present compelling public policy or equity concerns justifying compromise. As with all compromises based on public policy or equity, the taxpayer's situations must be compelling enough to justify compromise even though similarly situated taxpayers may have paid in full.

This section does not apply to TEFRA liabilities. Refer to Example 2 under paragraph (7) in this subsection for discussion of TEFRA cases.

5. Compromise may be appropriate where there is clear and convincing evidence that rejecting the OIC, and pursuing other collection alternatives, would have a significantly negative impact on the community in which the taxpayer lives or does business, i.e. does the taxpayer provide essential services to the community that would be lost if the tax liability was collected in full? The taxpayer should be asked to provide documentation that full payment of the tax liabilities would likely result in the inability of the business to provide these essential services. The businesses that would typically qualify under this provision are not for profit, charitable, or exempt organizations.

Example:

A non-profit organization provides quality health and human services to indigent, low-income and under-served residents in two counties. Rejecting the offer and pursuing collection action for full payment would result in forcing the center to choose between paying the delinquent taxes or providing competent medical care.

After conducting a thorough review of the facts; it was determined that services would not be provided to the community if the taxpayer was no longer able to operate.

Since the taxpayer took all reasonable actions to prevent the delinquency from occurring and the taxpayer's overall compliance history does not weigh against acceptance of the offer, an offer amount for less than the remaining tax balance may be considered.

6. Compromise may promote ETA where the taxpayer was incapacitated and thus unable to comply with the tax laws.

Example:

In October 2003, the taxpayer developed a serious illness that resulted in almost continuous hospitalization for a number of years. The medical condition was such that during this period, the taxpayer was unable to manage any of his financial affairs. The taxpayer has not filed tax returns since that time. The taxpayer's health has now improved and has promptly begun to attend to tax matters. The taxpayer discovered that the IRS prepared a substitute for return for the 2003 tax year based on information documents it had received and assessed a tax deficiency. When the taxpayer discovered the liability, with penalties and interest, the tax bill was more than three times the original tax liability. The taxpayer's overall compliance history does not weigh against compromise.

Note:

In this situation, the Service should first work with the taxpayer and attempt to prepare an accurate return for the 2003 tax year and adjust the taxpayers account accordingly. The Service should also work with the taxpayer to secure the filing of any missing returns. Following that, the Service should consider accepting a compromise that would approximate the amount the taxpayer would have been assessed had he been able to comply with his filing and payment responsibilities in a timely manner. Such a compromise would be fair and equitable to the taxpayer and, under these circumstances, would advance the public policy of voluntary compliance with the tax laws.

Note:

It would not promote ETA to compromise with the taxpayer, if the investigation revealed that the taxpayer was able to attend to financial matters during the time of the illness. For example, assume the taxpayer, paid all other bills and continued to successfully operate a business during the illness. Under such circumstances, compromise would not promote ETA, and could serve to undermine compliance by other taxpayers.

7. Compromise on public policy or equity grounds is not authorized based solely on a taxpayer's belief that a provision of the tax law is itself unfair. Where a taxpayer is clearly liable for taxes, penalties, or interest due to operation of law, a finding that the law is unfair would undermine the will of Congress in imposing liability under those circumstances.

Example:

The taxpayer argues that collection would be inequitable because the liability resulted from a discharge of indebtedness rather than from wages. Because Congress has clearly stated that a discharge of indebtedness results in taxable income to the taxpayer it would not promote ETA to compromise on these grounds. See Internal Revenue Code (IRC) 61(a)(12).

Example:

In 2000, the taxpayer invested in a nationally marketed partnership which promised the taxpayer tax benefits far exceeding the amount of the investment. Immediately upon investing, the taxpayer claimed investment tax credits that significantly reduced or eliminated the tax liabilities for the years 1997 through 2000. In 2001, the IRS opened an audit of the partnership under the provisions of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). After issuance of the Final Partnership Administrative Adjustment (FPAA), but prior to any proceedings in Tax Court, the IRS made a global settlement offer in which it offered to concede a substantial portion of the interest and penalties that could be expected to be assessed if the IRS's determinations were upheld by the court. The taxpayer rejected the settlement offer. After several years of litigation, the partnership level proceeding eventually ended in Tax Court decisions upholding the vast majority of the deficiencies asserted in the FPAA on the grounds that the partnership's activities lacked economic substance. The taxpayer has now offered to compromise all the penalties and interest on terms more favorable than those contained in the prior settlement offer, arguing that TEFRA is unfair and that the liabilities accrued in large part due to the actions of the Tax Matters Partner (TMP) during the audit and litigation. Neither the operation of the TEFRA rules nor the TMP's actions on behalf of the taxpayer provide grounds to compromise under the equity provision of 5.8.11.2.2. Compromise on those grounds would undermine the purpose of both the penalty and interest provisions at issue and the consistent settlement principles of TEFRA. Furthermore, reducing the risks of participating in tax shelters would encourage more taxpayers to run those risks, which would undermine compliance. Depending on the taxpayers particular facts and circumstances, however, compromise may be authorized on the grounds of Doubt as to Collectibility (DATC), or because collection of the full liability would cause an economic hardship within the meaning of section 5.8.11.2.1.

Note:

In both of these examples, the taxpayers are essentially claiming that Congress enacted unfair statutes and are arguing that the Service should use its compromise authority to rewrite those statutes based on a perception of unfairness. Compromise for that reason would not promote ETA. The compromise authority under Section 7122 is not so broad as to allow the Service to disregard or override the judgments of Congress.

8. There may be other circumstances involved in a case that would lead a reasonable third party to conclude that acceptance of the OIC would be fair, equitable, and promote effective tax administration. Other factors not discussed above or in the IRM, may be present to support the conclusion that the case presents compelling public policy or equity considerations sufficient to justify compromise. Documentation of the presence of those factors which weigh in favor of compromise to promote effective tax administration must be thoroughly documented in the case file. **Because these cases have the potential to establish new policy for the IRS in this area, offers recommended for acceptance under this paragraph should be routed through the National OIC Program Manager in order to obtain concurrence of the Director, Collection.** The Office of Appeals should establish within their IRM a level of concurrence commensurate with the Director of Collection so the issue of establishing new policy is addressed.
9. Once it has been determined that a case raises compelling public policy or equity considerations, Refer to IRM 5.8.11.4.3, Determining Acceptable Offer Amount.

5.8.11.2.3 (09-23-2008)

Compromise Would Not Undermine Compliance With Tax Laws

1. Compromise under the ETA economic hardship or non-economic hardship provisions are permissible if acceptance does not undermine compliance. The public should not perceive that the taxpayer whose offer is accepted benefited by not complying with the tax laws.
2. Factors supporting (but not conclusive of), a determination that compromise would undermine compliance includes; but is not limited to:
 - The taxpayer has an overall history of noncompliance with the filing and payment requirements of the Internal Revenue Code
 - The taxpayer has taken deliberate actions to avoid the payment of taxes.
 - The taxpayer has encouraged others to refuse to comply with the tax laws.

Note:

There may be other situations where compromise would be undermined.

5.8.11.3 (09-23-2008)

Initial Processing of Effective Tax Administration Offers

1. Offers submitted on the grounds of ETA will be worked either by the COIC units or field specialists.
2. Taxpayers seeking a compromise under ETA will submit the Form 656 selecting ETA along with the CIS (Form 433-A and/or Form 433-B). Taxpayers must complete Section 9 (or attach a separate statement) and document their special circumstances. The documentation should explain why collection of the liability in full would cause economic hardship, or the public policy/equity issues present that would justify compromising the liability. An attachment can be provided if additional space is needed. If the taxpayer does not submit a financial statement with the offer, normal correspondence activity should be undertaken to secure the financial statement, and any other data determined necessary for evaluation of the offer. If the taxpayer fails to provide the requested information, normal "return" procedures should be followed since ETA criteria can not be considered until all other bases have been addressed.
3. Like all other offers, the Service will only consider an ETA offer when taxpayers have met the processability criteria (e.g. paid the application fee or filed Form 656-A, submitted the required initial TIPRA payment with the offer or filed Form 656-A, and are not a debtor in bankruptcy).

Note:

Follow IRM 5.8.3 for initial processing of offers.

4. Elements necessary to perfect an OIC also apply to ETA offers. The requirement to submit complete financial statements for ETA offers is the same as for DATC offers.

Note:

Follow IRM 5.8.3.11 for procedures on perfecting offers.

5. ETA offers are initially added to AOIC as DATC offers. Once the offer investigation reveals that the taxpayers assets and future income exceed the tax liability thereby indicating no basis for a DATC, the offer should be considered under the ETA provisions. AOIC must be updated to reflect the correct basis for the compromise (e.g. ETA). Refer to IRM 5.8.11.6 below for a full discussion of requirements to update AOIC prior to final processing of ETA and DCSC offers.

5.8.11.4 (09-23-2008)

Evaluation of Offers

1. ETA offers cannot be considered if the taxpayer qualifies for DATC or DATL.

Note:

Follow IRM 5.8.4, Evaluation of Offers, for DATC issues and determining RCP.

2. If the assets and future income do not exceed the tax liability and special circumstances exist, the taxpayers offer must be considered under DCSC. The taxpayers may have checked the ETA box and given an explanation of circumstance on the Form 656, however unless they have the ability to full pay the liability, the offer would not meet the legal standard for ETA consideration. The offer must be considered under DCSC.
3. If the taxpayer submits an offer based on DATC but collection potential exceeds the liability and there are special circumstances, the offer should be considered on the basis of ETA. The employee that investigates the OIC is required to address any potential special circumstances during first contact with the taxpayer or POA. This will be accomplished in conjunction with the current requirement to verify receipt of Publication 1 and Publication 594 and must be documented in the OIC case history. This requirement does not apply where the only taxpayer contact is through correspondence.
4. If the offer is rejected, the narrative should describe the considerations of both bases. If the offer is accepted the offer report must reflect the basis upon which the offer is accepted.

5.8.11.4.1 (09-23-2008)

Public Policy/Equity Processing

1. OIC's submitted under the Public Policy/Equity provisions are authorized under these guidelines only when there are exceptional circumstances. While compromise under these guidelines is expected to be rare, appropriate recommendations for acceptance will be made.
2. In order to develop consistency in the interpretation and application of Treasury Regulations (TD 9007) published on July 22, 2002, a Specialty Group has been established in Austin, TX to work these offers.
3. Only after consideration has been given to all other potential bases for acceptance (e.g. DATL, DATC, DCSC, and/or ETA based on economic hardship) will ETA-Public Policy/Equity be considered. Therefore, all cases must have been completely developed under all other bases before transfer will be accepted by the Austin Group.
4. After all other potential bases have been considered; complete Exhibit 5.8.11-1 "Non-Economic Hardship Effective Tax Administration (NEH-ETA) OIC Check Sheet." The check sheet must be completed and sent to the Austin group before any cases are transferred. The purpose of the check sheet is to document that all issues other than Public Policy/Equity ETA have been evaluated and to provide information on the non-economic ETA factors present.
5. The completed check sheet and a copy of the entire Form 656 should be faxed to offer Group Manager in Austin. The sender should include a copy of any letter or document presented by the taxpayer to support the special circumstances. The group will evaluate the information and respond to the sender within 10 workdays. This response will either be an explanation of why the taxpayers offer cannot be investigated under Public Policy/Equity ETA provisions, or a request to transfer the offer to the Austin group.
6. If the Austin group determines that the offer cannot be investigated under the Public Policy/Equity ETA provisions, the information will be faxed back to the sender who will be responsible for issuing the proposed rejection letter to the taxpayer, covering all factors considered.
7. If the Austin group determines that the information presented requires further analysis, the sender will be notified to transfer the case to the Austin group. Referrals of cases to the ETA group should include the OI's recommendation as to what would constitute an acceptable compromise amount.
 - The sender should contact the taxpayer by telephone and advise the taxpayer of the results of the collectibility and liability portions of the offer investigation prior to transfer. If the taxpayer cannot be reached by phone then a standard transfer letter should be sent.
 - The file should be sent by overnight mail on a Form 3210 to the Austin group.
 - At the time of mailing, the case should be transferred on AOIC to Area 05 (Gulf States).
 - A history item should be added to AOIC to show the case is being sent to the Austin group, Area 05 (Gulf States).
 - The Austin group will maintain the faxed copies of all check sheets received and appropriate documentation on all offers accepted for transfer. This documentation will provide a historical record to support a decision to accept or reject the offer.

Note:

The OI may also seek guidance from the Austin group on a DCSC offers that involve Public Policy/Equity issues. The guidance should be solicited by preparing the check sheet and documenting the issues involved in the case. However, these cases will not be transferred to the Austin group.

5.8.11.4.2 (09-23-2008)

Financial Statement Analysis

1. Offers submitted under ETA require the same full financial analysis as DATC offers in order to determine RCP and to determine an acceptable offer amount. Procedures for financial analysis are contained in IRM 5.8.5, Financial Analysis.
2. Once the RCP is completed, a determination can be made as to whether the OIC qualifies for consideration under ETA or DATC.
3. If the taxpayers assets and future income exceed the tax liability, the taxpayers OIC can be considered under the ETA basis.

5.8.11.4.3 (09-23-2008)

Determining an Acceptable Offer Amount

1. An acceptable offer amount, based on economic hardship, is determined by analyzing the financial information and the hardship that would be created if certain assets, or a portion of certain assets, were used to pay the liability.

Example:

The taxpayer has a \$100,000 liability and a RCP of \$125,000. To avoid economic hardship, it is determined that the taxpayer will need \$75,000. The remaining \$50,000 should be considered the acceptable offer amount.

2. In OIC's based on Public Policy/Equity, the Service would expect the taxpayer to offer an amount that is fair and equitable under the circumstances. The Service does not anticipate accepting compromises offering only nominal or token funds. Rather, the amount accepted should be determined by reference to the factors giving rise to the decision that compromise is appropriate. For example:
 - A. In cases compromised under IRM 5.8.11.2.2.1 above, paragraphs 1, 2, and 3, an acceptable offer would be expected to result in the taxpayer being placed in the same position as if the error or delay on the part of the Service had not occurred.
 - B. In cases compromised under IRM 5.8.11.2.2.1 above, paragraphs 4 and 5, the taxpayer's financial condition may be a relevant consideration, after considering all other facts and circumstances. The justification for a particular amount to be accepted should be clearly documented.
 - C. When compromising based on IRM 5.8.11.2.2.1 paragraphs 4, 5, and 8, in business cases in particular, the Service must be cautious to avoid providing financial advantages through the forgiveness of tax debt. This may create the appearance that the delinquent business has been able to profit from its failure to pay, giving it a competitive advantage over other, fully compliant businesses. For this reason, the Service will generally insist that a compromise with an operating business provide for payment of the full amount of tax, exclusive of interest and penalties.
3. Generally, it is the responsibility of the taxpayer to make decisions and take the appropriate actions needed to fund the acceptable offer amount. However, due consideration of these funding options is often needed for the Service to arrive at an acceptable offer amount. For example, based on the taxpayer's situation and geographic location, funding options may allow the taxpayer to tap into available equity without creating economic hardship. When appropriate, these options should be taken into consideration in determining an acceptable offer amount for an ETA offer based on economic hardship.

5.8.11.5 (09-23-2008)

Documentation and Verification

1. To verify the taxpayers special circumstances and support a basis of ETA:
 - A. Request supporting documentation of the taxpayers situation. Exercise sound judgement in determining the degree of verification necessary. For example, verification of a health problem could be a doctor's letter or copies of medical expenses.
 - B. When special circumstances are found to exist, the amount offered will be less than RCP. For ETA, the RCP is always greater than the full liability. In the report narrative, explain clearly the rationale for acceptance of the amount offered. The documentation must include reasons why some or all of the equity in certain assets is not being offered, how the offer amount is being funded, and any other pertinent information that indicates how the amount offered was determined to be acceptable.
2. As is the case with all compromise determinations, referrals, and acceptance/rejection decisions, employees need to exercise good judgment. This good judgment needs to be clearly evident and articulated in the case file documentation and should be supported by the known case facts, circumstances, and supporting documents. There is no clearly defined formula to follow in ultimately making these decisions, and each case needs to be evaluated on its own particular set of facts and circumstances. Particularly in regard to acceptance/rejection decisions, the recommendation report must clearly explain the reasoning behind our actions.

5.8.11.6 (09-23-2008)

Final Processing

1. Prior to final processing, AOIC must be updated to indicate the correct basis for closing the offer. This will ensure that all final closing reports generated from AOIC reflect the correct basis. The approval levels indicated on closing reports and letters must be consistent with the basis for closure.
2. The following is a guide to these determinations:

If...	And...	Then...
The offer was submitted under ETA	An economic hardship has been determined to exist, but the RCP is less than the liability balance due	<ol style="list-style-type: none"> 1. Update the AOIC offer screen to indicate a "C" under the offer type. 2. Generate all closing reports with the proper approving official for DCSC.
The offer was submitted under DCSC	An economic hardship has been determined to exist, and the RCP is greater than the liability balance due	<ol style="list-style-type: none"> 1. Update AOIC offer screen to indicate "A" under offer type. 2. Generate closing reports with the proper approving official for ETA offers.
The offer was submitted under ETA	The offer is being recommended for acceptance under DATC <i>with</i> the offer exceeding the RCP	<ol style="list-style-type: none"> 1. AOIC offer screen does not require updating for special circumstances. The type of offer on AOIC should reflect "C" for DATC.

The offer was submitted under Doubt as to Collectibility with item 9 of Form 656 completed with circumstances that do not meet any of the elements that define economic hardship, or Public Policy/Equity criteria	The offer cannot be recommended for acceptance under DATC.	2. Generate closing reports with the proper approving official for DATC <i>without</i> special circumstances.
The offer was submitted under ETA with item 9 of Form 656 completed with circumstances that do not meet ETA criteria	The taxpayer does not qualify for ETA because the RCP is less than the liability and the offer cannot be recommended for acceptance under DCSC.	1. Generate closing reports with the proper approving official for DATC <i>without</i> special circumstances. 2. Address in the history, why the circumstances described in item 9 do not meet defined economic hardship, or Public Policy/Equity criteria.
The offer was submitted under ETA with item 9 of the Form 656 completed with circumstances that the investigation reveals do not meet ETA criteria	The offer cannot be recommended for acceptance and the RCP exceeds the liability	1. Update AOIC offer screen to indicate "C" under special circumstances. 2. Generate closing reports with the proper approving official for DCSC.
The offer was submitted under ETA	The special circumstances meet economic hardship, or Public Policy/Equity criteria and the RCP exceeds the tax liability. However, the offer cannot be recommended for acceptance.	1. Update AOIC offer screen to indicate "A" under offer type. 2. Generate closing reports with the proper approving official for DCSC.
The offer was submitted under DCSC	The special circumstances meet economic hardship, or Public Policy/Equity criteria and the RCP is less than the tax liability, however, the offer cannot be recommended for acceptance.	1. Update AOIC offer screen to indicate "A" under offer type. 2. Generate closing reports with the proper approving official for ETA offers.
The offer was submitted under DCSC	The special circumstances meet economic hardship, or Public Policy/Equity criteria and the RCP is less than the tax liability, however, the offer cannot be recommended for acceptance.	Generate closing reports with the proper approving official for DCSC.

**5.8.11.6.1 (09-23-2008)
Rejection/Return/Withdrawal Processing**

1. The procedures in IRM 5.8.7 should be followed when processing ETA rejected, withdrawn or returned offers.
2. IRM 5.8.12 provides instructions for IAR review of rejected offers.
3. See IRM 1.2.44.2 – Delegation Order No. 5-1 for the official with delegated authority based on ETA. The delegated official's signature is required on the Form 1271 and the closing letter

**5.8.11.6.2 (09-23-2008)
Acceptance Processing**

1. The procedures in IRM 5.8.8, Acceptance Processing, should be followed when processing accepted ETA offers.
2. Area Counsel's opinion is required on ETA offers where the unpaid amount of tax assessed (including any interest, addition to the tax, or assessable penalty) is \$50,000 or more.
3. See IRM 1.2.44.2 – Delegation Order No. 5-1 for the official with delegated authority based on ETA. The delegated official's signature is required on the Form 1271 and the closing letter

**Exhibit 5.8.11-1
Effective Tax Administration Non-Hardship OIC Check Sheet**

This is a two-page check sheet used for ETA Non-hardship OIC's.

This image is too large to be displayed in the current screen. [Please click the link to view the image.](#)

This image is too large to be displayed in the current screen. [Please click the link to view the image.](#)

[More Internal Revenue Manual](#)