



APPEALS

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

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8.23.2, 8.23.3, 8.23.4, 8.25.2

**MEMORANDUM FOR APPEALS EMPLOYEES**

FROM: John V. Cardone /s/ *John V. Cardone*  
Director, Policy, Quality and Case Support

SUBJECT: Implementation of the Appeals Judicial Approach and  
Culture (AJAC) Project  
Collection - Phase 2

The purpose of this memorandum is to modify and clarify the effective date pertaining to the second phase of implementation of the AJAC Project recommendations with respect to Collection cases worked in Appeals, as described in Interim Guidance Memorandum AP-08-0614-0003, dated June 16, 2014. The attachments remain unchanged.

The AJAC Project is reinforcing Appeals' quasi-judicial approach to the way it handles cases, with the goal of enhancing internal and external customer perceptions of a fair, impartial and independent Office of Appeals.

The attachments to this memorandum provide guidance pertaining to all Appeals employees who open or close cases, and who hold hearings, conferences or otherwise resolve open case issues in the affected Collection work streams in Appeals.

**IRM subsections** affected by these changes are listed in the *Table of Contents* included with each attachment.

**This guidance will be effective for all Collection cases, Collection Information Statements and significant information received by Appeals on or after August 11, 2014.** The guidance will be incorporated into the Internal Revenue Manual (IRM) within two years from the **effective** date of the memorandum.

Appeals employees should elevate any questions through their appropriate management chain.

**Attachments:**

- (1) Collection Due Process
- (2) Offers in Compromise
- (3) Trust Fund Recovery Penalty

**Distribution:**

[www.irs.gov](http://www.irs.gov)

**Table of Contents – IRM 8.22.7  
Collection Due Process**

The below listed IRM sections provide clarification as to the Appeals Judicial Approach and Culture (AJAC) process, which returns Appeals to its core mission of dispute resolution.

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**8.22.7.1.1**  
**Collection Information Statement (CIS)**

Removed the following sentence from paragraph (2) *If a new CIS is received in Appeals from the taxpayer, the CIS may be referred to Collection for review if the CDP is a field sourced case. See IRM 8.22.7.4.1.*

**8.22.7.2**  
**Credit Reports**

(1) Appeals does not request credit reports in CDP cases.

**8.22.7.3**  
**Third-Party Contacts**

(1) Appeals does not contact third parties to verify a CIS. If verification is necessary, see IRM 8.22.7.4, *Appeals Referral Investigation (ARI)*, below.

**8.22.7.4**  
**Appeals Referral Investigation (ARI)**

(1) An ARI may be necessary if:

- The appropriateness of a collection alternative or CNC hardship can't be determined without additional information that Appeals can't secure from internal sources or the taxpayer
- The taxpayer proposes a corporate or LLC Trust Fund offer requiring a TFRP calculation or investigation
- The taxpayer provides a new CIS to Appeals that requires verification and proposes an IA or CNC

(2) If you determine an investigation is needed or verification is required, use an ARI to forward the information to Collection.

(3) If a taxpayer proposes a collection alternative but does not qualify for the alternative based on other facts (e.g. non-compliance), an ARI is not necessary.

(4) Field Collection is responsible for ARIs on field sourced CDPs. See IRM 8.22.7.4.1, *ARI to Collection to Verify CIS*, below.

(5) ACS is responsible for ARIs on ACS sourced CDPs. See IRM 8.22.7.4.4, *ARI to ACS to Verify CIS*, below.

(6) While the ARI is being worked, suspend the CDP in ACDS. Input SU/PI and E/OTH to suspend the case and SU/TO to take it out once the ARI is complete.

(7) If, in response to an ARI you receive:

- **An incomplete response:** Proceed with the information you have.
- **No response:** Follow up with Collection once. If there is no response to the follow up, proceed with the information you have.

#### **8.22.7.4.1**

##### **ARI to Field Collection to Verify CIS**

(5) If you have not heard back on an ARI, follow up within 30 days after the deadline for completion with Collection via secure email. Limit your inquiry to the status of the ARI to avoid prohibited ex parte communication. Print Collection's response and associate it with your case file.

(6) Share the results of the ARI with the taxpayer and ask for his or her review. Give the taxpayer at least 15 business days to review the results before scheduling a follow-up conference or using the information in your determination.

**Example:** "Enclosed are the results of Collection's review of [specify issue]. If you disagree with the results, tell me what you disagree with and why you disagree by MM/DD/YY. I'll consider Collection's review and your response before making a decision in your Collection Due Process hearing."

#### **8.22.7.4.2**

##### **ARI to Field Collection for Corporate and LLC Trust Fund Offers**

The only change here is to the title incorporating "Field" Collection.

#### **8.22.7.4.3**

##### **ARI to Field Collection or COIC to Review New Information in a CDP OIC**

(1) If Collection returns a CDP OIC to Appeals with a recommendation to reject and the taxpayer subsequently submits new information to Appeals, see IRM 8.23.3.3.1.2, *Review of Supplemental Information – Collection Issue Offers*, to determine if an ARI is necessary.

(2) If an ARI is necessary, issue it to the Collection office that recommended rejection of the OIC. Instructions for preparing the ARI are at IRM 8.23.3.3.2.6, *Requesting Assistance from Field or Campus Collection*.

(3) Prepare a letter to the taxpayer advising that a referral is being made to Collection for verification.

**Example:** "You requested Appeals consider [specify issue]. Appeals asked Collection to review the information provided while we retain jurisdiction of your case. It may be necessary for Collection to contact you and/or third parties for

information to complete the review. You'll have an opportunity to respond once the results of the review are shared with you.”

**8.22.7.4.4**  
**ARI to ACS to Verify CIS**

(1) If the table in ACS [IRM 5.19.1.1.6 \(8\), \*Financial Analysis, Verification and Substantiation\*](#), shows ACS would verify a CIS based on the taxpayer's balance due and type of case resolution, you may request an ACS ARI. If the table indicates no verification is needed, then Appeals will not request verification through the ACS ARI process.

**Note:** ACS CIS verification is limited to checking internal sources.

(2) Prepare Form 2209, *Courtesy Investigation*, or Form 10467, *Appeals Division Feedback Report and Transmittal Memorandum*, and state the reason(s) for your ACS ARI request in the remarks section:

**Example:** “Appeals is conducting a CDP/EH hearing and the taxpayer raised [collection alternative] which requires [specify what is ACS should do]. Please see the attached and verify necessary items.”

(3) Prepare a letter to the taxpayer advising that a referral is being made to ACS for verification:

**Example:** “You requested Appeals consider [specify issue]. Appeals asked Collection to review the information provided while we retain jurisdiction of your case. It may be necessary for Collection to contact you for information to complete the review. You'll have an opportunity to respond once the results of the review are shared with you.”

(4) Prepare a fax cover sheet and fax Form 2209 or Form 10467 and the CIS to the ACS Campus Eefax number of the originating ACS site:

- Cincinnati: 866-722-5542
- Fresno: 855-230-8299
- Kansas City: 816-282-6375
- Philadelphia: 855-647-8434

(5) If you have not heard back on an ARI, follow up within 30 days after the deadline for completion with the ACS CDP Coordinator via secure email. The Coordinator can be located on the SERP Who/Where webpage which is accessible [here](#). Limit your inquiry to the status of the ARI to avoid a prohibited ex parte communication. Print ACS response and associate it with your case file.

(6) ACS returns the ARI to the hearing officer by secure email.

(7) Share the results of the ARI with the taxpayer and ask for his or her review. Give the taxpayer at least 15 business days to review the results before scheduling a follow-up conference or using the information in your determination.

**Example:** “Enclosed are the results of Collection's review of [specify issue]. If you disagree with the results, tell me what you disagree with and why you disagree by MM/DD/YY. I'll consider Collection's review and your response before making a decision in your Collection Due Process hearing.”

#### **8.22.7.5** **Installment Agreements (IA)**

Appeals does not make a recommendation to file an NFTL in any circumstance. Removed paragraph (7) *Make an NFTL determination...* and added new paragraphs (7) and (8):

(7) If you determine an NFTL will not be filed as a condition of an IA, check the box on form 433-D that says “May be filed if this agreement defaults.”

**Note:** Advise Collection on Form 5402 when you determine no NFTL will be filed. Form 433-D is not always returned to Collection.

(8) For all other IAs, add the statement “an NFTL may be filed by Collection” to Form 433-D, *Additional Conditions/Terms* box.

#### **8.22.7.7** **Currently Not Collectible (CNC)**

Appeals does not make a recommendation to file an NFTL in any circumstance. Removed paragraph (6) *Make an NFTL determination...* and added a new paragraph (6)

(6) When resolving a case as CNC, advise the taxpayer verbally or in writing that a lien may be filed by Collection.

#### **8.22.7.10** **Offers in Compromise (OIC)**

(5) Advise the taxpayer of any conditions that might result in the return of a processable offer:

- Failure to remain in filing compliance
- Insufficient estimated tax paid or income tax withheld to cover the estimate of the current year's tax
- Federal tax deposits not timely made during the course of the investigation

- Failure to provide requested information needed to determine the acceptability of the offer
- Dishonored check for application fee or TIPRA payment
- Failure to make periodic payments

**8.22.7.10.1**  
**Responsibilities in CDP OICs**

(1) The subsections below discuss responsibilities in CDP OICs.

**8.22.7.10.1.1**  
**Functional Responsibilities**

(1) COIC makes the offer processability determination. When a taxpayer disagrees with COIC's not-processable determination, Appeals makes a final OIC processability determination and includes it in the NOD. See IRM 8.22.7.10.4.1, *OIC is Not Processable*, below.

(2) Collection investigates the offer and either:

- a) Accepts it, or
- b) Provides Appeals a recommendation of rejection, or
- c) Determines if the criteria for returning a processable offer or a mandatory withdrawal is met, or
- d) Secures a voluntary withdrawal

(3) For offers recommended for rejection, Appeals considers disputed items and makes a final determination following IRM 8.23.3.3, *Appeals OIC Evaluation Procedures*.

(4) For offers returned by Collection, Appeals makes a final determination by noting in the NOD that the basis for the return was correct.

(5) If all CDP periods are satisfied while an OIC is pending with Collection, there is no issue with respect to the NFTL or the proposed levy for Appeals to consider. Notify Collection that:

- Appeals releases jurisdiction, and
- Collection makes the final determination on the OIC

(6) If a taxpayer withdraws a CDP request, the OIC is returned to Collection for the determination.

**8.22.7.10.1.2**  
**Associating Separated CDP and OIC cases**

Renumbered from 8.22.7.10.2. No change in content.

**8.22.7.10.1.3  
TIPRA Statute Responsibilities**

Renumbered from 8.22.7.10.1. No change in content.

**8.22.7.10.2  
Requesting an OIC WUNO**

Renumbered from 8.22.7.10.3.

(2) Feature Codes:

- a. All CDP OICS: Input Feature Code “DP” and “CO” to the OIC WUNO. Input a “DP” to the CDP WUNO
- b. DATL-OICS: Input Feature Code “LI” to the OIC WUNO

**8.22.7.10.3  
Receipt of Form 656**

Renumbered from 8.22.7.10.4 with change below.

Removed paragraph (3) instructions to determine whether an OIC meets COIC investigation criteria. Collection now makes an initial recommendation in all OICs.

**8.22.7.10.4  
Processing Offers**

Renumbered from 8.22.7.10.5 with changes below.

(1) When a hearing officer receives an OIC in CDP, prepare Form 13933, *Collection Due Process/Equivalent Hearing Offer in Compromise Cover Sheet* and Form 3210, *Application Fee* in the OIC section of APGolf. Send them with the items below to the appropriate COIC site for a processability determination and Collection investigation:

- Form 656
- the OIC application fee and TIPRA payment, if applicable
- Any written designation of the TIPRA payment from the taxpayer
- Form 433-A/B
- A signed Letter 3820, *Appeals Received Your Offer in Compromise and We Can Consider It*
- A self-addressed return envelope

**NOTE:** The requirement to sign Letter 3820 before sending it to COIC is a new requirement. COIC mails Letter 3820 for processable OICs notifying the taxpayer that their offer has been forwarded to Collection for investigation.

(2) The requirement to send COIC Letter 3821 has been removed. COIC uses its own letter if the offer is not processable.

**8.22.7.10.4.1**  
**OIC is Not Processable**

Renumbered from 8.22.7.10.5.1. No change in content.

(1) If COIC determines an offer is not processable, COIC:

- a) Mails Form 656 and a Return Letter to the taxpayer, explaining why the OIC isn't processable
- b) Faxes Appeals a copy of the taxpayer's Return Letter
- c) Refunds the application fee, if applicable

(2) The AOIC Return Letter advises the taxpayer to contact Collection if she or he disagrees with the decision to return the OIC. If the taxpayer raises this issue in CDP, ask the taxpayer how the processability criterion at IRM 5.8.2.3 was incorrectly applied. Independently evaluate their claim and if you agree the return was in error, resubmit Form 656 to COIC for processability with the new information.

(3) If the return was not in error, close the OIC WUNO when closing the CDP case:

- a) Prepare Form 5402 using cc 20 premature referral and the appropriate resolution reason
- b) Document the not-processable determination in the attachment to the determination/decision Letter

**Example:** "The offer in compromise submitted during your Collection Due Process hearing was returned on 01/31/2013. It was not processable because [insert reason]."

**8.22.7.10.4.2**  
**OIC is Processable**

Renumbered from 8.22.7.10.5.2. No change in content.

(1) If COIC determines an offer is processable, COIC:

- a) Signs Form 656

- b) Mails Letter 3820 to the taxpayer and POA, if applicable, and
- c) Inputs TC 480 for OIC periods
- d) Inputs STAUP to EH and non-CDP periods to move those periods to status 71 (if not in status 53)
- e) Mails copies of Form 13933, Letter 3820 Form 656 to the originating Appeals employee within 14 days

**8.22.7.10.4.3**  
**OIC Investigation**

Renumbered from 8.22.7.10.6.3 with changes.

(1) Collection investigates the offer and either:

- a) Accepts it, or
- b) Provides Appeals a recommendation of rejection, or
- c) Determines if the criteria for returning a processable offer or a mandatory withdrawal is met, or
- d) Secures a voluntary withdrawal

(2) COIC may transfer an OIC to Field Collection for investigation based on complex issues.

(3) Collection must return an OIC to Appeals with no less than 9 months on the 24 month TIPRA statute in order for Appeals to make a final determination. If there is less than 9 months remaining, Collection must contact the Appeals employee assigned the case and provide a report on the anticipated completion of the investigation.

NOTE: If Collection does not return an OIC with 9 months remaining on the TIPRA statute, elevate this to your ATM to elevate to Collection.

**8.22.7.10.4.4**  
**Collection Recommends Acceptance**

Renumbered from 8.22.7.10.6.4. References to "COIC" changed to "Collection."

(1) If Collection accepts the OIC, Collection will:

- a) Issue the acceptance letter, which is a final determination under IRC 7122(f), *Deemed acceptance of offer not rejected within certain period*
- b) Forward original documents to MOIC and the required documents to the Public Inspection File
- c) Return to Appeals copies of the acceptance letter, Form 7249, and Form 656
- d) STAUP CDP periods to status 71 to prevent them from reverting to collection status when TC 520 cc 76/77 is reversed

(2) Once you are notified of the accepted offer, ask the taxpayer to sign Form 12257 to resolve the CDP. If the taxpayer declines to sign, adopt the decision to accept the offer in the attachment to the Determination/Decision and close the CDP/EH if the taxpayer has no other relevant issues.

(3) To close the OIC WUNO:

- a) Generate the OIC 5402 and select closing code 15
- b) Select "CDP OIC acceptable" as the Resolution Reason
- c) In "Remarks" section, type "Collection accepted OIC and issued the acceptance letter."

#### **8.22.7.10.4.5**

#### **Collection Recommends Rejection, Return or Mandatory Withdrawal**

Renumbered from 8.22.7.10.6.5. References to "COIC" changed to "Collection" with additional changes below.

(1) Collection shares the results of the OIC investigation with the taxpayer. If Collection recommends rejection, Appeals will make a final determination under IRC 7122(f) within 24 months of the date the offer was received.

(2) If Collection erroneously issued a final rejection letter, Collection will not rescind it. Instead, the hearing officer will inform the taxpayer that the OIC is under Appeals' jurisdiction and Appeals will make the final determination regarding the OIC in the CDP determination/decision letter. Locate the COIC CDP coordinator [http://appeals.web.irs.gov/tech\\_services/collection/cdp.htm](http://appeals.web.irs.gov/tech_services/collection/cdp.htm) and request that the offer be reopened on AOIC under reconsideration procedures in IRM 5.8.7.3.

**Note:** In this circumstance, the TIPRA statute continues to run until Appeals makes the final determination.

(3) The CDP and OIC files are generally closed and retained together in case the OIC is raised as an issue in a CDP Tax Court petition.

#### **8.22.7.10.5**

#### **Mandatory Withdrawal for Missed Periodic Payment**

Renumbered from 8.22.7.10.7. Revised to reflect Appeals no longer monitors periodic payments.

(1) If a taxpayer fails to make a payment other than the first installment, Collection asks the taxpayer to make up the missed payment. If the taxpayer fails to do so, Collection notifies Appeals the OIC was closed as a mandatory

withdrawal. Confirm that the taxpayer was given an opportunity to make up the missed payment and failed to do so.

(2) Appeals closes the OIC WUNO as a mandatory withdrawal with the following actions:

Step	Action
1	Remove the DP feature code from both the OIC and CDP WUNOs in ACDS.
2	Prepare Form 5402 using cc 16 withdrawal
3	Note the OIC in your CDP NOD with the following language: "You submitted an offer which required periodic payments according to a schedule you proposed. You failed to pay after being reminded of the payment requirement. Under the law, your offer was withdrawn."

(3) If the OIC must be closed before the CDP WUNO, retain the OIC file with the CDP file and send APS the following to close the OIC WUNO:

- Form 5402 for the OIC WUNO
- OIC CAR

**8.22.7.10.6  
Return Procedures for Dishonored Payments**

Renumbered from 8.22.7.10.8. Edited for clarity.

(1) If Collection discovers a dishonored application fee and/or TIPRA payment after the offer is deemed processable, Collection returns the offer to the taxpayer with a letter giving 30 days to make the payment good and request reconsideration. If the taxpayer fails to provide replacement payment, Collection notifies the Appeals hearing officer of the dishonored payment. Confirm that the taxpayer was given an opportunity to provide a replacement payment and failed to do so.

(2) Appeals closes the OIC WUNO as a return with the following actions:

Step	Action
1	Remove the DP feature code from both the OIC and CDP WUNOs in ACDS.
2	Prepare Form 5402 using cc 20 premature referral and the appropriate resolution reason code.
3	Note the OIC in your CDP NOD with the following language: "You submitted an offer but did not provide the required 20% down payment and/or the first initial payment of a proposed Periodic Payment Offer. Your offer was returned."

(3) If the OIC WUNO must be closed before the CDP WUNO, retain the OIC file with the CDP file and send APS the following to close the OIC WUNO:

- Form 5402 for the OIC WUNO
- OIC CAR

**8.22.7.10.7**

**Return Procedures for Bankruptcy**

Renumbered from 8.22.7.10.9. Edited for clarity.

(1) If a taxpayer files bankruptcy while an OIC is open, the OIC is returned. Close the OIC WUNO immediately upon notification with the following actions:

Step	Action
1	Remove the DP feature code from both the OIC and CDP WUNOs in ACDS.
2	Prepare Form 5402 using cc 20 premature referral and the appropriate resolution reason code.
3	If the OIC is to be returned by Appeals and not Collection, generate Return Letter 3821
4	Note the OIC in your CDP NOD with the following language: "You filed bankruptcy while your offer was under consideration. We can't consider an offer while you are in bankruptcy. Your offer was returned."

(2) Retain the OIC file with the bankruptcy-suspended CDP file and send APS the following to close the OIC WUNO:

- Form 5402 for the OIC WUNO
- OIC CAR
- Return Letter 3821 and Form 656, if the OIC is being returned by Appeals instead of Collection

**8.22.7.10.8**

**Termination of OIC due to Death of Taxpayer**

Renumbered from 8.22.7.10.10. Edited for clarity and also to reflect the Termination letter is generated only if Appeals is returning the OIC.

(1) An OIC is terminated upon the death of a taxpayer. If the OIC was jointly submitted and one spouse dies, see IRM 5.8.10.4, *Death of Taxpayer*, to determine whether to continue.

(2) If an OIC is terminated due to the death of the taxpayer, close the OIC WUNO with the following actions:

Step	Action
1	Remove the DP feature code from both the OIC and CDP WUNOs in ACDS.
2	Prepare Form 5402 using cc 20 premature referral and the appropriate resolution reason code.
3	If the OIC is to be terminated by Appeals and not Collection, generate the Termination Letter using the template found on the <a href="#">Appeals OIC Web Page</a>
4	Note the OIC in your CDP NOD with the following language: "The offer was terminated due to the death of the taxpayer while the offer was under consideration."

(3) When a taxpayer dies, the OIC WUNO is closed at once while the CDP case may remain open. Retain the OIC file with the CDP file and send APS the following to close the OIC WUNO:

- Form 5402 for the OIC WUNO
- OIC CAR
- Termination Letter, **if** the OIC is being returned by Appeals instead of Collection

#### **8.22.7.10.9** **Withdrawals**

Renumbered from 8.22.7.11. No change in content.

(1) The subsections below discuss withdrawals in combination CDP OIC cases.

#### **8.22.7.10.9.1** **Withdrawal of the CDP**

Renumbered from 8.22.7.10.11.1. Changes are found in paragraphs (2) and (3) below.

(1) A taxpayer may ask to withdraw a CDP hearing while an offer is being considered by Collection. Explain that the consequences of withdrawal include:

- No Appeals verification that all applicable laws and procedures were followed
- Collection issues a decision on the OIC
- No right to petition Tax Court for an abuse of discretion review

(2) If the taxpayer withdraws a CDP/EH hearing while an OIC is:

- **Pending in Collection:** inform Collection immediately by encrypted email. Collection issues the OIC decision letter and does not return any paperwork to Appeals.
- **Pending in Appeals:** the OIC is returned to Collection on Form 3210 for a final determination. Form 3210 will say that Appeals released jurisdiction. Ensure Form 3210 is acknowledged and follow up with Collection to resolve any issues concerning receipt of the OIC **before** closing the OIC WUNO to insure the TIPRA statute is protected.

(3) Close the OIC WUNO using closing code 20 and the premature referral reason “CDP withdrawn while related OIC pending in Collection”.

#### **8.22.7.10.9.2** **Withdrawal of the OIC**

Renumbered from 8.22.7.10.11.2. No changes.

(1) A taxpayer may request to withdraw an OIC any time after the OIC is submitted. The request may be made verbally, by fax or letter.

(2) Document receipt of a withdrawal in your case history and indicate how the request was made.

(3) If a withdrawal is not hand-delivered or received by certified mail, it is considered withdrawn when it is acknowledged in writing by the IRS. For a CDP OIC, Form 12257 or the closing letter must acknowledge the taxpayer's withdrawal of the offer to close the TIPRA statute.

#### **8.22.7.10.10** **Corporate and LLC Trust Fund Offers**

Renumbered from 8.22.7.10.12. No changes.

#### **8.22.7.10.10.1** **Trust Fund Computation**

Renumbered from 8.22.7.10.12.1. No changes.

#### **8.22.7.10.10.2** **TFRP Investigation**

Renumbered from 8.22.7.10.12.2. No changes.

#### **8.22.7.10.11** **Doubt as to Liability (DATL) Offers**

Renumbered from 8.22.7.10.13. No changes.

**8.22.7.10.12  
Terminated OICs**

Renumbered from 8.22.7.10.14. No changes.

**8.22.8.5.1  
Referring a Liability Issue**

Added a new *Note* to (7) describe the AO in the AO liability referral process.

(7) The AO considers the issue with the goal of finishing within 120 days of receipt. The SO may contact the AO for a status report after 90 days. After 120 days, the SO may ask their ATM to contact the AO ATM.

**Note:** The Appeals Officer is acting as a consultant when making a determination on the liability.

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Offers in Compromise**

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8.23.1.3  
Conference and Settlement Practices

(2) The primary obligations Appeals has in a non-CDP OIC appeal are to:

- Provide the taxpayer with an opportunity for the Appeals conference he/she asked for under IRC 7122(e)(2).
- Determine whether Collection was correct in rejecting the taxpayer's offer by addressing the disputed issues that caused the offer to be rejected.
- Provide a reasonable opportunity for the taxpayer to submit clarifying information or other documentation that the taxpayer believes is necessary to properly evaluate the offer and/or may make the offer acceptable.

**Note:** It is not intended that Appeals will ask for additional information thought by Appeals to be necessary for issue development. You will ask the taxpayer for clarifying information if the taxpayer (particularly a pro se taxpayer) is unsure of what to provide to clarify a position that is being advanced by the taxpayer. You will primarily rely on the case development that is in the case file at the time of Appeal.

- Accept offers improperly rejected by Collection
- If an offer cannot be accepted, communicate the reason(s) why and discuss alternatives (such as installment agreements and Currently Not Collectible status, as applicable) that the taxpayer may pursue with Collection. Do not refer the taxpayer back to COIC or field offices. Close the offer and refer the taxpayer to Form 9465 *Installment Agreement Request*, and/or 1-800-829-1040.

**Note:** IRM 8.6.1 discusses conference and settlement practices applicable to all Appeals cases and makes no exceptions to offering the taxpayer an opportunity for a conference. This applies even in cases in which the taxpayer is not in compliance with filing and/or payment requirements. You should not close a non-CDP offer case as sustaining rejection of the offer without first offering the taxpayer an opportunity for a conference. See also IRM 8.23.2.4 and related subsections, and IRM 8.23.2.5.

(3) You should not investigate or continue development of an offer that was rejected by Collection. You should consider those items in dispute at the time of rejection, or which are raised later by the taxpayer. However, as may be necessary following IRM 8.23.1.3(2), requests for the taxpayer to provide supplemental information to Appeals should clearly indicate:

- Precisely what is needed, and when
- Why the information, documentation, unfiled return, payment, etc., is necessary. See IRM 8.23.2.4, its related subsections, and 8.23.2.5 for tax compliance matters.

- That you will make your decision based upon available information if all of the requested items are not received by the due date provided. See also IRM 8.23.3.3.1.2.

(4) Any reason for granting the taxpayer an extension of time to provide information or other documentation should be documented in the case activity record.

**Note:** Ensure that the taxpayer had a full opportunity to present information and/or documentation to Collection to address relevant Reasonable Collection Potential (RCP) issues before the offer was rejected. Refer to IRM 8.23.3.3 for Appeals OIC evaluation procedures.

**8.23.2.1**  
**Receipt**

Deleted (4)

End of section.

**8.23.2.2.1**  
**Transfer of OIC Cases**

(5) Prior to transferring a case, you should conduct a preliminary review to avoid unnecessary delays. If the review shows that the entire liability is clearly collectible and the taxpayer presents no special circumstances, the offer's rejection may, generally, be sustained without transfer.

(10) One of the following two Sub-Action Codes must be used when a request for a face-to-face conference is denied.

Sub-Action Code	Definition
DF	Transfer or reassignment was denied because taxpayer raised only frivolous issues.
DO	Transfer or reassignment was denied for other reasons.

**8.23.2.3**

**Initial Case Review and Statute Controls**

(10) There are two instances where Appeals may receive an OIC without a final decision first being made by Collection, and thus, have an open TIPRA statute (see also table (11) below):

- OIC submitted as an alternative to collection in a CDP or EH case
- OIC processed as a single, processible OIC filing for two (or more) entities, and which is in need of perfection to create a second or third related offer. See IRM 5.8.3.5. In this case, when the second or third OIC is received, a new TC 480 date and TIPRA statute date will be present. If the related offer(s) is secured by Appeals, then since the new offer(s) was never rejected by Collection, it will have an open TIPRA statute. New offers must be sent to COIC for a processibility determination.

TIPRA Step table at (11) amended as follows:

Step	Question	If "Yes"	If "No"
Four	Was the offer submitted as part of a CDP or EH case?	Proceed to Step five	The case must be a new offer resulting from the perfection of a previously rejected offer. Make sure Steps two and three above are done and double check the WUNO to make sure the TIPRA Statute Code with the proper statute date is present on each tax period. Step Five does not apply.

8.23.2.3.1  
Assignment of Related Offers

(1) It is sometimes the case that taxpayers have liabilities for multiple entities. For various reasons, it is also sometimes the case that these related offers are submitted by taxpayers **after** an initial offer is submitted for a different entity. During the course of the consideration of an offer by Appeals, if you become aware that there is an open, related offer under consideration elsewhere in Appeals, then coordinate with whomever the related case is assigned to accept transfer of the related case, so that the cases may share a consolidated assignment, review and disposition.

(2) For purposes of this subsection, related cases will be those related to any joint or individual offer as follows:

**a.** Any additional 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.

**b.** Any additional offer involving one or more closely-held corporations or LLCs owned by one or both spouses in the joint or individual offer.

Note: Appeals will **not** accept immediate assignment **from Collection** of any related offer that appears in example (2)(b). Such cases are considered related **only** for purposes of consolidating assignment **once in Appeals**. There is no authority for Appeals to accept assignment of these cases from Collection unless the taxpayer has first undergone the administrative review and rejection process under IRC 7122(e).

(3) If an initial offer is already assigned in Appeals, you should coordinate with Collection to immediately accept assignment of any related offer that fits example (2)(a) above. Any undeveloped information that is included with a related offer that is transferred to Appeals will be considered “new information” submitted to Appeals. If necessary, undeveloped information will be sent to Collection following the ARI procedures in IRM 8.23.3.3.2.6.

(4) Per IRM 5.8.1.4 and 5.8.1.4.1, all assessed taxpayer liabilities should be included in any offer acceptance. If related liabilities exist (as in example 2(a) above), an offer cannot be accepted that does not also include offer(s) for related liabilities. Therefore, if you are **accepting** an offer, secure the necessary forms and payments needed for the related offer, and forward the package to COIC for the necessary processing. COIC will generally determine processibility within 24 hours.

**8.23.2.4**

**Premature Referral Issues – In General**

(5) Deleted. All DATL guidance is now contained in 8.23.3.10.

Remaining section renumbered. (6) is now (5), etc.

**8.23.2.4.1**

**Premature Referral Issues – Delinquent or Insufficient Estimated Tax Payments and Withholdings**

(1) When a collectibility issue OIC is considered and rejected by Collection, the disposition of the case as a rejection indicates that the taxpayer was in current compliance at the time of rejection. If not, Collection should have closed the case to the taxpayer as a “return” with no appeal right. Therefore, you will consider the taxpayer as being in verified tax compliance whenever a rejected case is received, and will not request estimated tax payments or withholdings, even if those appear to have been delinquent or miscalculated prior to the rejection of the case.

(2) You will not return a case as a premature referral to Collection to address issues indicated in (1) above.

(3) You will not monitor a taxpayer's ongoing tax compliance while a rejected offer is under consideration, except as specified in IRM 8.23.2.4 and its related subsections, IRM 8.23.2.4.3, and the “Note” below.

**Note:** If the amount of estimated tax payments or withholdings is disputed in a taxpayer's appeal, then you may verify them as expense items on the Income/Expense Table, but will not otherwise address these issues. The Form 656-B contains tax compliance provisions which the taxpayer must follow while an offer is under consideration.

**End of Section**

**8.23.2.4.2**

**Premature Referral Issues – In-Business Trust Fund (IBTF) Compliance Issues**

(1) Because of the risk of rapid and substantial losses to the government due to failure to make Federal Tax Deposit (FTD) payments, you should generally follow IRM 5.8.7 with respect to verification of FTD compliance, and IBTF return filing compliance, but with some noted exceptions.

(2) As explained in IRM 8.23.2.4.1 above, when a collectibility issue OIC is considered and rejected by Collection, the disposition of the case as a rejection indicates that the

taxpayer was in current FTD and filing compliance at the time of the rejection. If not, Collection should have closed the case to the taxpayer as a “return” with no appeal right. Therefore, you will consider the taxpayer as being in verified FTD compliance whenever a rejected case is received, and will not demand federal tax deposits to be made even if those appear to have been delinquent or miscalculated prior to the rejection (See also (4) below).

(3) You will not return a case as a premature referral to Collection to address issues indicated in (1) or (2) above.

(4) You will not monitor the taxpayer’s regular FTD schedule. However, if you recognize a new IBTF assessment while you are considering the offer, you should give the taxpayer 14 days to pay the entire liability (including penalties and interest) so that the consideration of the offer may continue. If the taxpayer does not pay the new liability in full, you should either sustain rejection of the offer or, in unique circumstances (left to Appeals’ discretion), determine to include the liability in the offer and proceed with consideration of the case. See also IRM 8.23.2.5, *When a Taxpayer Does Not Remain in Compliance*.

(5) If an IBTF tax return becomes delinquent while an OIC case is under your consideration, you should:

- Request that the taxpayer provide proof of the filing of the return (within 14 days)
- Sustain the rejection of the case if the return is not filed

**End of section**

**8.23.2.4.3**

**Premature Referral Issues – Delinquent Returns (non-IBTF)**

(1) The taxpayer must timely file returns that become due while an offer is under consideration. You will treat these situations as follows:

<b>If...</b>	<b>Then...</b>
A return is due but unfiled	Provide the taxpayer with a 14 day deadline to file the return or provide adequate proof of filing. Allow additional time if the taxpayer is contacted by mail.
If after providing time to file the return, it either remains unfiled or adequate proof of filing was not provided	You will sustain rejection of the offer.
The return is filed and there is no tax due	You will proceed with the appeal.

<b>If...</b>	<b>Then...</b>
The return is filed and there is tax due	It will be at your discretion to determine if the liability should be included in the offer, or if payment is required. Weigh the unique circumstances of each case.
If full payment of the new liability is required	You will allow the taxpayer 14 days to make the payment, or the offer rejection will be sustained.

(2) You will **not** return a case as a premature referral to Collection to address issues indicated in (1) above.

**8.23.2.4.4**

**Premature Referral Issues - Periodic Payment Offers**

Deleted the last comment in this section; "See the reminder after the table in IRM 8.23.2.4.1(2)".

**8.23.2.4.5**

**Premature Referral Issues – Other Issues**

(1) Your initial case review may show that Collection did not adequately identify reasons why a case was referred to Appeals. Any feedback transmittal should clearly identify why the referral was inadequate, including any IRM (or other) requirements that Collection failed to follow in documenting the reason for referral to Appeals. See also (2) below.

**8.23.2.5 (Former)**

**Liability Previously Determined by Appeals**

This section was removed from this IRM and incorporated with Doubt as to Liability guidance located in IRM 8.23.3.10.

**8.23.2.5 (Section renumbered from 8.23.2.6)**  
**When a Taxpayer Does Not Remain in Compliance**

(1) IRM 5.8 generally does not require a processible offer to be returned or rejected because a previously unfiled or delinquent return produces a new liability, or because another assessment is made for any other reason during the time an offer is being considered. The same standard is applied in Appeals. You may include new liabilities on the Form 656 using pen-and-ink additions, and continue consideration of the offer (see also 8.23.2.4.2 for an exception for IBTF cases).

(2) Carefully review the premature referral criteria to determine when a specific issue of non-compliance occurred in relation to when the preliminary determination letter was issued by the Collection offer examiner. As explained earlier in IRM 8.23.2.4 and related subsections, current tax compliance issues will generally not be reviewed by you unless a tax return is due. Compliance problems that may affect the acceptability of an offer will generally only include instances in which the taxpayer failed to:

- Timely file all required returns
- Timely pay all tax, penalties and interest due on returns assessed after the offer was received by Appeals (see (5) below), or
- Make payments required for a Periodic Payment OIC proposal.

(3) In the instances above, it is important for you to provide the taxpayer with clear and specific instructions as to exactly what is required of them, specific deadlines, and the consequence if the compliance issue is not promptly resolved.

(4) As stated in (1) above, Appeals generally does not require a processible offer to be returned or rejected because a previously unfiled or delinquent IMF return produces a new liability, or because any other new assessment is made while the offer is being considered. New liabilities may be included on the Form 656, and consideration of the appeal will continue. See IRM 8.23.2.4 and related subsections for exceptions.

(5) Per IRM 8.23.1.3, one of the four primary obligations you have in a non-CDP OIC appeal is to offer the taxpayer an opportunity for the Appeals conference that he/she asked for under IRC 7122(e)(2). Non-compliance with a filing and/or payment requirement does not preclude you from giving the taxpayer an opportunity for a conference. Even if the taxpayer does not remedy a compliance issue prior to or at the scheduled conference, the opportunity for a conference must be given. If the taxpayer does not take part in the conference when scheduled, you do not need to offer the non-CDP taxpayer a second opportunity.

See also IRM 8.23.1.3 for more information about granting extensions of time in a non-CDP OIC case.

**8.23.3.1**  
**Consideration of Doubt as to Collectibility Offers**

At (9), a second note was added as follows:

**Note:** Additional resources listed here are not intended to assist you in the further development of issues that either were not identified or may not have been adequately developed by Collection.

**8.23.3.1.1.1**  
**Processibility Criteria and General Changes Resulting from TIPRA**

(3) Collection has procedures for handling cases where the determination that a taxpayer qualified for the Form 656 waiver was later found to be erroneous. However, you will not become involved in addressing erroneous Form 656 qualification issues on a non-CDP offer. If Collection has granted the waiver for the Taxpayer, do not revisit the issue.

**8.23.3.2**  
**Rejected Offers**

(1) a. Collection is responsible for reviewing and verifying any information provided by the taxpayer before the offer is rejected and any new information provided by the taxpayer as part of the appeal of the rejection. See IRM 5.8.7. Collection should address each disputed item in its narrative or case history. If the taxpayer provided substantial information with the appeal that was not adequately considered by Collection, you will not return the case as a premature referral. Weigh Collection's development of the issue versus information and testimony provided by the taxpayer, and make your decision based upon those factors.

**8.23.3.3**  
**Appeals OIC Evaluation Procedures**

(3) Agreed RCP issues that were previously addressed during the investigation by Collection will not be re-examined by you. This does not include correcting errors that are strictly computational. A strictly computational error is one that does not involve judgment, but simple math. Correcting strictly computational errors should be uncommon, but may occur in the following general circumstances:

- For the correction of simple mathematical errors anywhere on the Income/Expense Table (IET) or Asset Equity Table (AET) (such as addition or subtraction)

- Where Collection fully developed an income, expense, asset or liability item, but did not record the value in the correct amount on the IET or AET.
- Where an asset value is present on the Form 433-A/B (OIC) that was prepared by the taxpayer, and the value was uncontested by Collection in its development of the case. The taxpayer's value of the asset should be transferred to the IET/AET if it was not included.
- In Appeals, the taxpayer's income is a disputed item, and is increased or decreased by you. Expenses for taxes should also be increased or decreased accordingly.
- If you made *any* correction to a strictly computational error, and the change resulted in a calculated full-pay of the liability then you will sustain rejection of the offer, absent effective tax administration conditions.

Note at (3) deleted.

(9) You are responsible to address taxpayer compliance obligations **only** as stated in IRM 8.23.2.4 *Premature Referral Issues* and IRM 8.23.2.5, *When the Taxpayer Does not Remain in Compliance*.

#### **8.23.3.3.1** **Preliminary Evaluation Procedures**

(3) You must review the written appeal for the specific issues that are in dispute. If no specific issues are listed in the appeal, then the specific items of disagreement present on the IET/AET completed by Collection will be used to identify the issues. You should contact the taxpayer to confirm the items in dispute, if necessary. Only the disputed issues will be initially reviewed and considered by you, however, the taxpayer may present new issues during the appeal.

(4) If the case requires verification of more complex items submitted after appeal, then you should send an Appeals Referral Investigation (ARI) to a Campus or Field OIC group. Use either the rejection letter or Form 1271 when determining to whom to send the ARI. See IRM 8.23.3.3.2.6 for procedures when requesting assistance from Collection.

(5) Within 30 days of case receipt, you should send out an initial substantive contact letter that:

- Identifies the dispute
- Asks the taxpayer to provide any other information to substantiate his or her claims
- Identifies any compliance issues that must be remedied. See IRM 8.23.2.4, its related subsections and IRM 8.23.2.5 for compliance issues to be addressed.
- Sets clear expectations and a specific date for providing any additional information. Due dates for the additional information should be within the next 30

days of the date of the initial contact letter and before any scheduled conference date, unless circumstances warrant a longer period.

- Schedules the conference or requests the taxpayer to contact you by a specific date.
- Advises the taxpayer of the consequences of either not providing additional information by the established due date or failing to participate in the conference.
- Advises the taxpayer that any new information that is provided may be referred to Collection for an initial review and comment.

Note at (5) deleted.

(6) You will then:

a. Review the information in the case file and, if possible, prior to the scheduled conference, request from the taxpayer any additional information that may be needed to clarify issues that are in dispute. See IRM 8.23.3.3.1.2 for procedures for requesting additional information. Additional information should not be requested by you to develop new issues or to bolster development of issues that may have been under-developed by Collection.

b. Conduct the conference, including explaining the offer process, how an acceptable amount is computed and how the available financial data supports either acceptance or a sustained rejection of the offer. Be aware that the taxpayer may raise new issues and present new information during the appeal.

#### **8.23.3.3.1.1** **Coordination with Other Functions**

Deleted former (3).

#### **8.23.3.3.1.2** **Review of Supplemental Information – Collection Issue Offers**

(1) You will review the written appeal for the specific issues that are in dispute. If no specific issues are listed in the appeal, then the specific items of disagreement present on the IET/AET completed by Collection will be used to identify the issues. You should contact the taxpayer to confirm the items in dispute, if necessary. Only the disputed issues will be initially reviewed and considered by you, however the taxpayer may present new issues during the appeal.

(2) Because information submitted to you by the taxpayer may sometimes require further analysis or more complex development, it may be necessary for you to request completion of an ARI from a Centralized Offer in Compromise (COIC) or Field OIC group. See (4), below, and IRM 8.23.3.3.2.6.

(4) Do not forward information to a COIC or Field OIC Group using an ARI if the information can be easily reviewed by you. However, if investigation or further development of the issue is needed, you must use an ARI.

Example: Many items such as new household bills, pay stubs, bank statements, retirement account statements, etc., can generally be reviewed by you without investigation. However, information involving more than a cursory analysis such as a newly furnished business appraisal, business profit and loss or financial statements, recently dissipated assets of high value, stock valuations, etc., should be initially reviewed by a COIC or Field OIC group in response to an ARI. In some circumstances, another option may be a referral for analysis by an Appeals Valuation Engineer.

#### **8.23.3.3.2**

#### **Financial Analysis and Reasonable Collection Potential (RCP) Determination**

(1) You will review the written appeal for the specific issues that are in dispute. If no specific issues are listed in the appeal, then the specific items of disagreement present on the IET/AET completed by Collection will be used to identify the issues. You should contact the taxpayer to confirm the items in dispute, if necessary. Only the disputed issues will be initially reviewed and considered by you, however the taxpayer may present new issues during the appeal.

(3) Occasionally, more complex, new information may be submitted by the taxpayer that requires the assistance of a COIC or Field OIC group. See IRM 8.23.3.3.1.2 and 8.23.3.3.2.6, in such circumstances.

(6) You will not secure a consumer credit report when recommending an offer for acceptance. However, any credit reports that are in the case file must be disposed of upon closure of the OIC, regardless of disposition (acceptance, rejection or withdrawal). Refer to IRM 8.23.4.2.1 for procedures.

(7) Deleted rows 4 and 5 from the “If, Then” chart. You no longer will grant alternative resolutions to a rejected or withdrawn offer.

Deleted the former guidance in (8), (9), (10), pertaining to NFTL determinations made by Appeals. You will no longer make NFTL filing determinations.

(8) If an offer cannot be accepted, you must communicate the reason(s) why and discuss alternatives (such as installment agreements and Currently Not Collectible status, as applicable) that the taxpayer may pursue with Collection. Do not refer the taxpayer to COIC or Field OIC groups. Close the offer and refer the taxpayer to Form 9465 *Installment Agreement Request*, and/or 1-800-829-1040.

(9) NFTL filing determinations are not to be made by Appeals employees.

**End of Section**

**8.23.3.3.2.3**  
**Bankruptcy Considerations**

(2) If the taxpayer states an intent to file bankruptcy if the offer is not accepted, you should consider whether any of the tax liability can be discharged, and refer to the guidance in IRM 5.8.5 and IRM 5.8.10. Considering if the taxpayer were to file bankruptcy, you should make a general analysis of collectibility and the liabilities that would be discharged. You should attempt to negotiate an agreeable settlement, as appropriate. Based upon your findings, a hazards approach should be used based upon the degree of risk determined to exist that the taxpayer would file bankruptcy. An ARI may be needed to have the bankruptcy analysis considered by Collection first. See IRM 8.23.3.3.2.6 for ARI procedures.

For bankruptcy considerations, some general determinations you should make are as follows:

- a. which liabilities are dischargeable
- b. if the taxpayer has dischargeable non-tax debts
- c. if the taxpayer has any prior history of bankruptcy filing
- d. the overall age of the liabilities
- e. the success of the Service's prior collection efforts against the taxpayer
- f. any assets that would be excluded from a bankruptcy estate and encumbered by the statutory lien
- g. does the taxpayer qualify for a Chapter 7 discharge based upon the "means test"
- h. any NFTLs already filed on assets that would be exempted from a bankruptcy estate

Note: Procedures involving ex parte communications must be followed when discussing case information with Insolvency Unit personnel. You should clearly document the case activity record concerning exactly what information was requested from Insolvency, why such information was requested, and the results of the contact. See IRM 8.1.10, Ex Parte Communications, for additional guidance.

**8.23.3.3.2.4**  
**Dissipation of Assets**

Note added at (2) to state:

**Note:** Where more complex asset dissipation issues are encountered, it may be necessary for you to use an ARI to refer the taxpayer's documentation to a COIC or Field OIC group for initial analysis. Refer to IRM 8.23.3.3.2.6.

**8.23.3.3.2.6**  
**Requesting Assistance from Field or Campus Collection**

(1) Situations may arise during the consideration of an appealed rejection where you will request the review of new information to be made by a COIC or Field OIC group. In these situations, you should use Form 2209 *Courtesy Investigation*, to request an Appeals Referral Investigation (ARI). The ARI should be sent as follows:

- If the OIC case was rejected to Appeals by a Field OIC group, you should send the ARI to the originating office. The name of the Collection manager will be on the rejection letter or Form 1271 that should be located in the case file.
- If the OIC case was rejected to Appeals by COIC, then you should send the ARI to the originating office via secure email to \*SBSE COIC Memphis or \*SBSE COIC Brookhaven. If you are unable to scan and secure email the ARI, it may be sent to the originating office via e-fax to Memphis COIC at 1-855-800-5520 or Brookhaven COIC at 1-855-383-8818. Subject lines should include "ARI".

E-fax, secure email or regular mail may be used to transmit referrals. If regular mail is used, you should include a Form 3210 transmittal. If E-fax is used, a copy of the "received" transmittal should be retained in the case file by you.

(3) Suspend the case in ACDS using CARATS code SU/PI until the ARI is completed. Update the status to E/OTH.

(4) Once the ARI is returned, take the case out of suspense using CARATS code SU/TO.

(5) Renumbered from (3) in current IRM. The case will be decided by you based upon the available information in either of the following circumstances:

- The taxpayer does not cooperate with Collection or otherwise fully respond to any request(s) for additional information.
- The COIC or Field OIC Group in receipt of the ARI does not respond timely. This does not include a request for additional time to complete the ARI, to which Appeals agrees.

Note: If there is no response to you from Collection, or the taxpayer has not responded to Collection after 45 days and no requests for extension have been agreed, you will make a determination based upon the available information, including the uninvestigated items provided by the taxpayer.

(6) Renumbered from (4) in current IRM.

(7) Renumbered from (5) in current IRM. After sending the ARI, you should send a letter to the taxpayer advising them of the referral – consider using Letter 5208 for this purpose. Generally state what you have asked Collection to do and inform the taxpayer

that you will share the results with the taxpayer and give him/her an opportunity to provide feedback.

(8) Renumbered from (6) in current IRM.

(9) Per IRM 5.1.8.5, Collection considers the ARI to be a “Mandatory Assignment.” For a non-CDP OIC, this means the manager is responsible to assign the ARI to the next available COIC or Field OIC employee. In most instances, the manager should assign the ARI to the employee who originally worked the offer. Where a previous investigation of the offer has not taken place, the manager should assign in accordance with normal procedures. The completion period for the ARI is:

- 45 days after issuance if the action address is within the United States, Puerto Rico or the Virgin Islands
- Six months after issuance if the action address is any other US possession or territory or located within a foreign country

Bullet one revised after (10)

- Why the COIC or Field OIC employee was contacted

#### **8.23.3.4** **Amended Offers**

Deleted the example in (7).

(16) Section 8 of Form 656 (01/2014) allows the Service to add any assessed liabilities the taxpayer omitted or failed to list in Section 2 of the Form. A liability that was included on the Form 656 but for which there is no longer an outstanding balance, can also be removed from the Form 656 (01/2014), unless the period was satisfied due to a TIPRA payment. If the only revision needed before acceptance is to add or delete a missing period, neither an addendum nor an amended Form 656 is necessary. Contact the taxpayer to advise him/her that you are adding or deleting the missing period(s).

**Caution:** Earlier revisions of the Form 656, Section 8, do *not* contain any provision to allow Service personnel to delete any listed period. So, if an earlier Form 656 lists a tax period that is paid in full and no TIPRA payment was applied to such tax period (see paragraph (2) above), an amended Form 656 must be secured.

**8.23.3.5**  
**Collateral Agreements**

Deleted the caution statement from (5).

**8.23.3.6.1**  
**Corporate Trust Fund Offers**

(4) Consult IRM 8.23.2.4 and its related subsections, and IRM 8.23.2.5 for premature referral or compliance issues that may be applicable.

Deleted the "Reminder."

Deleted (5).

**8.23.3.8**  
**Effective Tax Administration**

Deleted (9). NFTL filing criteria is no longer applicable.

**8.23.3.9**  
**Centralized Offer in Compromise "Obvious Full Pay" Offers**

Deleted former section in full.

**8.23.3.9 (Renumbered from 8.23.3.9.1)**  
**Consideration of "Obvious Full Pay" Offers**

(1) On occasion, taxpayers will submit an OIC accompanied by a financial statement that indicates they can full-pay the liability. IRM 5.8.4.6 directs Collection to contact the taxpayer or representative to verify the information. If the taxpayer does not respond or responds with no additional information, the offer rejection may be sustained.

(2) You will work these cases the same way as a fully developed OIC rejection. As with any other Appeals case, standard Appeals conference and settlement practices will apply. If the taxpayer provides new information to you that requires more than a cursory review, then you will follow the guidance in IRM 8.23.3.3.2.6, and use an ARI to refer the information back to Collection for review and development.

**End of section**

**8.23.3.10**

**Consideration of Doubt as to Liability (DATL) Offers**

- (1) You will make an independent determination regarding any offers. A DATL offer will generally be evaluated by you in the same manner as an audit reconsideration case. You should consider the facts and law as well as the hazards of litigation in determining the degree of doubt as to the liability.
- (2) IRC 7122(d)(3) provides that a DATL offer may not be rejected solely because the Service cannot locate the taxpayer's return or return information. The Service is also prohibited from requesting a financial statement if an offer is based solely on doubt as to liability.
- (3) Appeals will consider offers based on DATL where the offer was rejected by Exam, TEGE, a specialty group, or Collection.
- (4) **Any** DATL OIC (CDP or non-CDP) work unit (WUNO) should have ACDS feature code "**LI**".
- (5) Under IRC 7122(f), and the Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA), an offer shall be deemed accepted if the IRS does not make a determination regarding whether to accept the offer and notify the taxpayer of its determination. The above action must have taken place before the date which is 24 months after the date of receipt of such offer by the IRS. See also IRM 8.21.5, *Collection Statutes*.
- (6) This 24-month TIPRA period ends when the offer is rejected, so most non-CDP offers received in Appeals will **not** have open TIPRA statute issues. However, you should review IRM 8.23.2.3 *Initial Case Review and Statute Controls*, to make sure an OIC WUNO contains the proper statute controls.
- (7) A DATL offer acceptance must be payable within 90 days unless an alternative payment term is approved at the time the offer is accepted. See Form 656-L.
- (8) If the DATL offer came to you after being rejected by Exam, the case file should be fully developed and documented. If the case file is not fully developed and documented, you will not return the case as a premature referral. You should weigh the development of the case by the originating function versus information and testimony provided to you by the taxpayer, and make the decision based upon those factors.
- (9) If the DATL offer case came to you because the liability at issue was previously determined by Appeals, then Appeals has jurisdiction over the case and the originating office is not responsible for the initial development of the case or securing the closed administrative file before forwarding the case to Appeals. See IRM 8.23.3.10.2 for guidance pertaining to such cases.

**Caution:** Even if Appeals recently closed a tax case (income tax, employment tax, etc.) involving the very same liability that is now the subject of the DATL offer, you are still responsible for deciding the disposition of the offer. Such a case is not a premature referral, return, withdrawal or rejection, just because the previous tax case was closed recently before the submission of the DATL offer.

(10) The total amount of money offered must be indicated and must be more than zero. If a DATL offer is received by Appeals that is not for more than \$0.00, the offer will be returned. You will close a return by sustaining rejection; no separate independent administrative review is necessary.

#### **8.23.3.10.1**

##### **Examination DATL Offers – Liability Previously Determined by a Court**

(1) If the taxpayer submits Form 656-L and the liability was finally determined by the Tax Court, other courts, or by a Final Closing Agreement authorized under IRC 7121 (e.g. Forms 866 or 906), then there is no doubt concerning the existence or amount of the liability. The offer will be returned. You will close a return by sustaining rejection; no separate independent administrative review is necessary.

**Note:** First, you should search ACDS and IDRS for litigation codes and confirm that the case was decided on the merits, as opposed to dismissed and not considered by the Court.

**Exception:** If the offer is based upon a computational error by the Service **after** the decision was entered (e.g., penalties assessed contrary to the decision), you should consider the offer. You should review the decision document to ensure that the assessment is based upon the agreement. If an adjustment is required, you will prepare Form 3870 and return the offer. You will close a return by sustaining rejection; no separate independent administrative review is necessary

**Caution:** See IRM 8.23.2.4(5), for an exception for a case closed on ACDS with Closing Code 21.

#### **8.23.3.10.2**

##### **Examination DATL Offers – Liability Previously Determined by Form 870-AD**

(1) If the taxpayer submits Form 656-L and the liability was previously determined by other agreement reached in Appeals, (e.g. hazards or 870-AD), the originating function will forward the timely appealed case for consideration by Appeals without initial development. You will secure the administrative file and make a determination on the DATL following the guidance in Policy Statements P-8-2 and P-8-3.

**Caution:** See IRM 8.23.2.4(5), for an exception for a case closed on ACDS with Closing Code 21.

(2) If the taxpayer submits new information that, in your judgment, requires additional analysis or investigative action, you will retain jurisdiction of the case and return the new information to the originating function, via Form 10467 or Form 2209. Situations requiring the use of a Form 10467 or Form 2209 and referral back to the originating function will be rare.

**Note:** If the new information only affects the consideration of hazards, then you will evaluate the probative value of the new information and make a determination on the DATL. A referral to the originating function should not be made in these cases.

(3) The originating function has 45 days to take action on the new information and respond to you. This timeframe may be extended by mutual agreement. You will notify the taxpayer of the referral to the originating function and convey the findings to the taxpayer, giving them an opportunity to respond prior to making any case determination. You will also retain responsibility for any TIPRA statute, should there be one.

(4) If there is no response from the originating function or the taxpayer after 45 days, and no requests for extension have been agreed, you will make a determination based upon the available information, including the uninvestigated items provided by the taxpayer.

### **8.23.3.10.3**

#### **Examination Issue DATL Offers – Liability Previously Determined by Form 870 or Defaulted Statutory Notice of Deficiency (SNOD)**

(1) If the taxpayer submits new information during your consideration of a rejected DATL offer which was previously closed with a Form 870 or a defaulted SNOD, then you will retain jurisdiction and transmit the new information to the originating function via Form 10467 or Form 2209. Referrals of this kind should generally be rare.

**Note:** Documents previously inaccessible to the taxpayer or which require a more in-depth analysis or investigation would be appropriate for a referral to the originating function using Form 10467 or Form 2209. This includes new issues raised by the taxpayer while in Appeals.

(2) If the new information only affects the consideration of hazards, then you will evaluate the probative value of the new information and make a determination on the DATL. A referral to the originating function should not be made.

(3) If new information does not require additional analysis or investigative action, you will make the determination on the DATL.

(4) The originating function will have 45 days to take action on the new information and respond to you. This timeframe may be extended by mutual agreement. You will notify the taxpayer of the referral to the originating function, and will convey the findings to the taxpayer and give the taxpayer an opportunity to respond prior to making any case determination.

(5) If there is no response from the originating function or the taxpayer after 45 days, and no requests for extension have been agreed, you will make a determination based upon the available information, including the uninvestigated items provided by the taxpayer.

**8.23.3.10.4 (Renumbered from 8.23.3.10.1)**  
**Tax Equity and Fiscal**  
**Responsibility Act (TEFRA) Liability Offers**

Section renumbered only.

**8.23.3.10.5 (Renumbered from 8.23.3.10.2)**  
**Doubt as to Liability (DATL) Offers Involving**  
**Trust Fund Recovery (TFRP) and Personal Liability for Excise Tax (PLET) Liability**

(1) Under IRC 7122(f), and the Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA), an offer shall be deemed to be accepted if it is not rejected, returned, or withdrawn or treated as withdrawn under section 7122(c)(1)(B)(ii). The rejection, return or withdrawal of the offer must have taken place before the date which is 24 months after the date of receipt of such offer by the IRS. See also IRM 8.21.5, *Collection Statutes*.

(2) This 24-month TIPRA period ends when the offer is rejected by Collection, so most non-CDP offers you consider will not have open TIPRA statute issues. However, review IRM 8.23.2.3 Initial Case Review and Statute Controls, to make sure the OIC WUNO contains the proper statute controls.

(3) If an offer involving a TFRP or PLET assessment is based upon DATL and came to you after being rejected by Collection, the case file should be fully developed and documented. If the case file is not fully developed and documented, the case will not be returned by you as a premature referral. Weigh Collection's development of the issue versus information and testimony provided by the taxpayer, and make your decision based upon those factors. See subsections related to IRM 8.23.3.10.5 for guidance if new information is presented to you.

(4) If the DATL offer case came to you because the liability at issue was previously determined by Appeals, then Appeals has jurisdiction over the case and Collection is

not responsible for any initial development of the case or for securing the closed administrative file before forwarding a timely appealed case to Appeals.

**Note:** Even if Appeals recently closed a TFRP or PLET case involving the very same liability that is now the subject of the DATL offer, you are still responsible to either accept or sustain rejection of the offer. Such a case is not a premature referral, return, withdrawal or rejection just because the previous TFRP case was closed recently before the DATL offer was submitted.

(5) The OIC work unit (WUNO) **must** have feature code '**LI**' indicating it is a DATL offer.

(6) A DATL offer acceptance must be payable within 90 days unless an alternative payment term is approved at the time the offer is accepted. See Form 656-L.

(7) IRM 8.25 has instructions for working TFRP cases in Appeals. IRM 5.8.4 also contains guidance for working doubt as to liability offers involving TFRP and PLET assessments. You should consult the chart in IRM 8.23.3.10.9 for how to resolve a DATL offer case (acceptance, rejection or withdrawal, and the use of Form 3870).

(8) Once the offer amount is paid, acceptance of a doubt as to liability offer concludes the TFRP or PLET matter for the taxpayer. Once accepted, there is no five-year compliance or refund offset provisions on a doubt as to liability offer.

(9) If an adjustment is being made to the TFRP or PLET, even if the offer is to be withdrawn or rejected, the Form 3870 must be prepared by you to provide instructions to APS regarding any adjustments that need to be made. The Appeals Case Memorandum should also explain the basis of the adjustments. APS will forward the 3870 to the correct [Advisory Unit](#), along with any TFRP assessment file.

(10) Non-compliance in filing of required federal tax returns does not preclude you from considering and accepting an appealed DATL offer, or from making appropriate adjustments via Form 3870.

(11) A DATL offer is no longer considered during a bankruptcy proceeding. If an open bankruptcy is identified during consideration of the DATL offer, you will sustain rejection.

(12) The taxpayer must offer a dollar amount. If a DATL offer is received by you that is not for more than \$0.00, return the offer. You will close a return by sustaining rejection; no separate independent administrative review is necessary.

**Note:** Once the offer is closed, at your discretion, you may choose to work the issue as an informal claim. See IRM 8.25.1.7.4.1.

**8.23.3.10.6**

**TFRP or PLET Issue DATL Offers – Liability Previously Determined by a Court**

(1) If the taxpayer submits Form 656-L and the liability was finally determined by the Tax Court, other courts, or by a Final Closing Agreement authorized under IRC 7121 (e.g. Forms 866 or 906), then there is no doubt concerning the existence or amount of the liability. The offer will be returned. You will close a return by sustaining rejection; no separate independent administrative review is necessary.

**Note:** You should first research ACDS and IDRS for litigation codes and confirm that the case was decided on the merits, as opposed to dismissed and not considered by the Court.

**Exception:** See also IRM 8.23.2.4(5), for an exception for a case closed on ACDS with Closing Code 21.

**Exception:** If the offer is based upon a computational error made by the Service after the decision was entered, the offer should be considered. You should review the decision document to ensure that the assessment is based upon the agreement.

**8.23.3.10.7**

**TFRP or PLET Issue DATL Offers – Liability Previously Determined by Form 2751-AD**

(1) If the taxpayer submits Form 656-L and the liability was previously determined by other agreement reached in Appeals, (e.g. hazards, Form 2751-AD), Collection will forward the timely appealed DATL for consideration by Appeals without any initial development. You will secure the administrative file and make a determination on the DATL following the guidance in Policy Statements P-8-2 and P-8-3.

**Caution:** See IRM 8.23.2.4(5), for an exception for a case closed on ACDS with Closing Code 21.

(2) If the taxpayer submits new information that, in your judgment, requires additional analysis or investigative action, then you will retain jurisdiction of the case and, using Form 2209, return the new information to the originating function. Situations requiring the use of a Form 2209 and referral back to the originating function should be highly uncommon.

**Note:** If the new information only affects the consideration of hazards, then you will evaluate the probative value of the new information and make a determination on the DATL. A referral to the local Collection team will not be made.

(3) The local Collection team has 45 days to review and comment on the new information and to respond to you. This timeframe may be extended by mutual agreement.

(4) You will retain jurisdiction of the case while the originating function considers the new information. You will be responsible to monitor the TIPRA statute, should there be one.

(5) You will notify the taxpayer of any referral to the originating function (e.g. Field OIC group), share the referral's findings with the taxpayer, and give the taxpayer an opportunity to respond prior to making any case determination.

(6) Consult IRM 8.25.2.4.2 for more information regarding case analysis and new evidence.

#### **8.23.3.10.8**

#### **TFRP and PLET Issue DATL Offers – Liability Previously Determined by Form 2751 or Defaulted Letter 1153**

(1) If the taxpayer submits new information during your consideration of a rejected DATL offer which was previously closed with a Form 2751 or a defaulted Letter 1153, then you will retain jurisdiction and return the new information to the originating function via Form 2209. Situations where you request the development of new information will be highly uncommon.

New information includes documents previously inaccessible to the taxpayer or those which require a more in-depth analysis or investigation. This includes new issues raised by the taxpayer while in Appeals.

**Note:** If the new information only affects the consideration of hazards, then you will evaluate the probative value of the new information and make a determination on the DATL. A referral to the originating function will not be made.

(2) If new information does not require additional analysis or investigative action, then you will make the determination on the DATL.

(3) The originating function will have 45 days to review and comment on the new information and respond to you. This timeframe may be extended by mutual agreement.

(4) You will notify the taxpayer of any referral to the originating function (e.g. Field OIC group), and will share the referral's findings with the taxpayer, giving an opportunity to respond prior to making any case determination. Consider using Appeals' Letter 5208 to notify taxpayers of the referral.

(5) You will retain jurisdiction of the case while the originating function considers the new information.

(6) Consult IRM 8.25.2.4.2 for more information regarding case analysis and new evidence.

**8.23.3.10.9**  
**Doubt as to Liability (DATL) – Resolution Options**

(1) The table below contains actions necessary to make the adjustments to an account, or to accept a DATL offer.

<b>If...</b>	<b>Then...</b>
<p>The case is resolved by a redetermination of liability that is not based upon hazards</p>	<p>The balance of the assessment in excess of the re-determined liability amount should be abated using a Form 3870.</p> <p>a) Ask the taxpayer to withdraw the offer.            b) If the taxpayer does not withdraw the offer, you should sustain rejection using the DATL optional paragraph on the rejection letter (Letter 5197) on APGolf.            c) The 3870 adjustment will be made by APS if the offer is a DATL <b>other than</b> TFRP or PLET.            d) If the offer is on TFRP or PLET liabilities, APS will forward the 3870 to the correct <a href="#">Advisory Unit</a> located on SERP, along with any TFRP assessment file.</p>
<p>It is determined that there is doubt as to liability based upon hazards of litigation</p>	<p>Then you should close the case by accepting the offer. The acceptable amount depends on the degree of doubt established, based upon the hazards relative to the amount assessed. <b>No 3870 adjustments to the account should be made.</b></p>
<p>It is determined that there is no doubt as to the liability</p>	<p>You will close the case by using the DATL optional paragraph on the OIC rejection letter (Letter 5197) on APGolf.</p>

(2) As stated in the table above, if the case is resolved by a redetermination of tax that does not include hazards a Form 3870 must be used to make the proper adjustment, rather than to proceed with accepting the offer. This is because if the redetermination is made with a Form 3870, the adjustment is not dependent on any further action by the taxpayer. However, if the offer is accepted using Form 656-L, the taxpayer would still have to pay the offered amount and may lose tax refunds offset during the consideration of the offer. If payment terms are not met, the accepted offer will be terminated and IRS must reinstate the original assessment without any adjustments.

(3) If a DATL offer is accepted, you must remove the 5-year compliance and refund/overpayment offset provisions from the OIC Acceptance Letter.

(4) If the offer is withdrawn or rejection is sustained and no Form 3870 adjustment is necessary, you may close the case using normal procedures. See IRM 8.23.4.3 if the rejection is sustained and IRM 8.23.4.4 if the offer is withdrawn.

(5) Non-compliance in filing of required federal tax returns does not preclude you from considering and accepting an appealed DATL offer or from making appropriate adjustments via Form 3870.

(6) A DATL offer is no longer considered during a bankruptcy proceeding. If an open bankruptcy is identified during consideration of the DATL offer, you must return the offer. You will close a return by sustaining rejection; no separate independent administrative review is necessary.

### **8.23.3.12**

#### **Alternative Resolutions for Offers**

(1) Your role in a rejected offer is to resolve the disputed issues. Although taxpayers will occasionally express an interest in alternative resolutions when it is apparent that an offer is not a viable option, you will not deviate from Appeals' role when considering the rejection of a non-CDP offer.

(2) If an offer cannot be accepted, you must communicate the reason(s) why and discuss alternatives (such as installment agreements and Currently Not Collectible status, as applicable) that the taxpayer may pursue with Collection. Do not refer the taxpayer back to COIC or Field offices. You should close the offer and refer the taxpayer to Form 9465 *Installment Agreement Request*, and/or 1-800-829-1040.

(3) NFTL filing determinations are not to be made by you. When completing Form 5402 to close the case, select "N/A" from the drop-down option for NFTL. Notify the taxpayer verbally or in writing that Collection may file an NFTL after the case is closed. If the taxpayer indicates intent to file a Collection Appeal Request, you should refer them to

the Collection employee who worked the initial case, and close the OIC following normal procedures.

**End of Section**

**8.23.3.13**  
**Potential Default Offers**

(4) If Appeals initially accepted the offer, Appeals will consider the taxpayer's potential default.

- See IRM 8.23.3.14 for Compromise of a Compromise cases.

(7) Generally, all potential default offer cases will be worked by the Brookhaven Appeals office. Exceptions to this *may* be as follows:

- a. Proposals received on offers originally accepted by a field Appeals office may be assigned to the same Appeals team that originally accepted the offer.
- b. Proposals received on field and campus CDP offers that are subject to retained jurisdiction may be assigned to the field or campus team that accepted the CDP offer.

(8) When you are advised of the death of a taxpayer, it must be determined whether there is an estate. If this determination was not made prior to the referral coming to you, an Appeals Referral Investigation (ARI) may be needed. The ARI should be sent to [Advisory](#) to make the determination. If there is an estate, the Service should file a proof of claim for the balance owed on the offer. If there is no estate, the offer should simply be closed out by you as satisfied following procedures in this section.

(9) If the taxpayer is deceased, you should verify TC 540 was input or request APS manually input the TC 540.

**8.23.3.14**  
**Compromise of a Compromise**

(3) If Appeals initially accepted the offer, Appeals will consider the taxpayer's "compromise of a compromise" proposal.

(4) Further substantive information that is provided to you by the taxpayer should be referred by you via an ARI to the appropriate [Collection Drop Point](#) manager. It is recommended to fax or email the ARI to the Drop Point Manager.

Remaining section renumbered. Former (4) is now (5), etc.

(7) When you are advised of the death of a taxpayer, it must be determined whether there is an estate. If this determination was not made prior to the referral coming to Appeals, an Appeals Referral Investigation (ARI) may be needed. The ARI should be sent by you to Advisory to make the determination. If there is an estate, the Service should file a proof of claim for the balance owed on the offer. If there is no estate, the offer should simply be closed out by you as satisfied following procedures in this section.

(8) If the taxpayer is deceased, you should verify the TC 540 was input, or request APS manually input the TC 540.

#### **8.23.4.1**

### **Procedures for Closing Non-Collection Due Process Offers**

(1) and (9) Changed 8.23.6 reference to 8.20.7.39. IRM 8.23.6 is obsolete.

#### **8.23.4.2.1**

### **Accepted Offer Closing Documents and Appeals Hearing Officer Procedures**

(1) d. The cause of the tax problem and status of current compliance, as needed. See all of 8.23.2.4 and its related subsections, and 8.23.2.5 for the appropriate monitoring of compliance issues.

Deleted former (3) pertaining to NFTL determinations. You are not to make NFTL filing determinations.

Remaining section renumbered. Former (4) is now (3), etc.

#### **8.23.4.2.2**

### **Counsel Review of Acceptance Recommendations**

(5) If Counsel did not sign the Form 7249 or determined that the offer is not legally sufficient the offer may still be accepted by Appeals. You should document the case history and include in the case file a copy of Counsel's memorandum or other communication expressing its conclusion.

**Note:** Other than as allowed by certain exceptions elsewhere in IRM 8.23, you will not identify new assets or increase a determination of equity in assets made by Collection. Even where Counsel, after identifying new issues or requesting further development of existing issues, determines that the offer is not legally sufficient, you will not deviate from Appeals' guidance and dispute resolution role. If the offer is otherwise acceptable, you should accept the offer.

**Note:** If Counsel identifies errors made solely by Appeals, it would not be appropriate for you to accept the offer without first addressing those errors.

(6) When an OIC is accepted in the situations described in (5) above, the Appeals management level that is required for approval of these cases will not change.

### **8.23.4.3** **Sustaining Offer Rejection**

(2) Generally, you will sustain a rejection only under the same basis for which the offer was rejected. Note that the following exceptions may apply:

- Does not apply to an offer that was rejected by Collection under Public Policy or Not in the Government's Best Interest, per Policy Statement, P-5-89. If you do not sustain rejection on these grounds rejection may still be sustained based upon the collectibility determination documented by Collection.
- You may sustain rejection for a tax compliance issue as detailed in IRM 8.23.2.4, its related subsections, and IRM 8.23.2.5.
- You must sustain rejection when a taxpayer files bankruptcy. This rejection may be approved at the ATM level.

(7) If you sustain rejection of an offer, communicate the reason(s) why and discuss alternatives (such as installment agreements and Currently Not Collectible status, as applicable) that the taxpayer may pursue with Collection. Do not refer the taxpayer to COIC or field offices. You should close the offer and refer the taxpayer to Form 9465 *Installment Agreement Request*, and/or 1-800-829-1040.

(8) You will not make any NFTL filing determinations. You should notify the taxpayer verbally or in writing that Collection may file an NFTL after the case is closed. If the taxpayer indicates intent to file a Collection Appeal Request, refer them to the Collection employee who worked the initial case, and close the OIC following normal procedures.

(9) If a deposit was received with the offer, the deposit will be returned unless the taxpayer provides written authorization to apply it to the tax debt. Form 3040, *Authorization to Apply Offer in Compromise Deposit to Liability*, or other written authorization may be used for this purpose. The deposit is credited as of the date it was received by the Service.

**Note:** If the offer at issue is a TIPRA offer, the 20% initial payment for a Lump Sum Cash offer and the proposed payments for a Periodic Payment Offer are not deposits and will not be refunded. Also, if the taxpayer pays more than 20% with the submission of a Lump Sum Cash offer, the excess amount is considered a payment of tax and will be applied in the Government's best interest, unless otherwise designated or the taxpayer indicates on the Form 656 to treat the excess amount as a deposit. The same

applies to periodic installments in excess of the proposed amounts. See Form 656, section 8.

(10) If the case is a DATL offer involving a TFRP or personal liability for excise tax (PLET) liability, and you are making an adjustment to the liability, prepare Form 3870. APS will forward the 3870 to the correct [Advisory Unit](#) , along with any TFRP assessment file.

(11) See IRM 8.23.4.2.1(7) for instructions on destroying credit reports.

## **End of Section**

### **8.23.4.3.1**

#### **Closing Documents and Appeals Hearing Officer Procedures for Sustaining Offer Rejection**

(4) f. Form 1271, *Rejection and Withdrawal Memorandum*. Include this form if it was prepared by Collection. Do **not** prepare a Form 1271 if there is none in the file.

### **8.23.4.4**

#### **Withdrawn Offers**

(6) If an offer is to be withdrawn, you must communicate the reason(s) why and discuss alternatives (such as installment agreements and Currently Not Collectible status, as applicable) that the taxpayer may pursue with Collection. Do not refer the taxpayer to COIC or field offices. Close the offer and refer the taxpayer to Form 9465 *Installment Agreement Request*, and/or 1-800-829-1040.

(7) You will not make any NFTL filing determinations. You should notify the taxpayer verbally or in writing that Collection may file an NFTL after the case is closed. If the taxpayer indicates intent to file a Collection Appeal Request, refer them to the Collection employee who worked the initial case, and close the OIC following normal procedures.

Remaining section renumbered. Former (9) is now (8).

### **8.23.4.4.1**

#### **Withdrawn Offer Closing Documents and Appeals Hearing Officer Procedures**

(5) If the case is a DATL offer involving a TFRP or personal liability for excise tax (PLET) liability, and you are making an adjustment to the liability, prepare Form 3870. APS will forward the 3870 to the correct [Advisory Unit](#) , along with any TFRP assessment file.

**8.23.4.5**  
**Potential Default Offers**

(1) A potential default offer is loaded onto ACDS as an OIC case, using feature code "DO". This includes potential default offers that are being considered as a "compromise of a compromise", and the formal rescission of accepted offers. See also IRM 8.23.3.13 for general procedures for potential default cases.

(4) If the potential default case involves the death of a taxpayer, and following procedures in IRM 8.23.3.13, it was determined that no estate exists, then you should simply close the offer as satisfied following compromise of a compromise procedures. See IRM 8.23.3.14 for "compromise of a compromise" procedures. You should document the case activity record, input DM and AC/FR, and use Closing Code 15. Send the Form 2209 back to MOIC advising that the offer should not be terminated.

(8) When you have made the case decision, you will return the Form 2209 and any closing documents to the appropriate MOIC site.

**Table of Contents – IRM 8.25.2  
Trust Fund Recovery Penalty**

The below listed IRM sections provide clarification as to the Appeals Judicial Approach and Culture (AJAC) process, which returns Appeals to its core mission of dispute resolution.

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**8.25.2.3.3.4**

**Valid Request - Formal Claim**

(1) A formal Claim must be filed on a Form 843, *Claim for Refund and Abatement of Tax*. A taxpayer must pay one employee's employment tax liability and submit a separate Form 843 for each quarter. A taxpayer can challenge the government's decision on a formal claim in court.

(2) Advisory and field collection can't reverse an Appeals' determination. So, If Appeals made an earlier determination on the TFRP, (whether in the form of Letter 1153 protest, claim, doubt as to liability offer in compromise, etc.), the claim is forwarded to us without consideration from Collection Advisory.

(3) If you determine during your initial review that the issue is different/new, close the claim as a premature referral. Collection Advisory will work the claim. If Advisory partially/fully denies the claim, they issue the Claim Disallowance Letter. This letter notifies the taxpayer that they have 30 days to request reconsideration by Appeals, and two years to request consideration by the courts.

(4) If you determine during your initial review that Appeals has already made a determination on the issue raised, Appeals will work the claim. Follow the guidance in IRM 8.25.2.4.2 (6) & (7) for any new information received. (Remainder of current IRM 8.25.2.3.3.4 is renumbered. Former (3) is now (5), etc.).

(5) When Appeals makes a determination, it must issue the appropriate claim closing letter. If a certified Claim Disallowance Letter has never been issued, and the Claim is partially/fully denied, Appeals is responsible for issuing the Claim Disallowance Letter that starts the 2-year time frame for the taxpayer to have the claim considered by the court.

**Note:** If a certified Claim Disallowance Letter has previously been issued by Collection or Appeals, the case is a Claim Reconsideration (see IRM 8.25.2.3.3.5, Valid Request-Claim Reconsideration).

(6) If the taxpayer has made the required payment, submitted the Form(s) 843, and posted a bond under IRC 6672(c) within 30 days of notice and demand, collection action is stayed and the CSED is suspended until Appeals makes its final determination. If the taxpayer then files a suit for refund within 30 days of denial of the refund claim, the CSED remains suspended until the court reaches its final resolution.

**Note:** If a refund suit is filed on a TFRP claim being worked by Appeals, see **8.7.1.8.2, Refund Suits with Disposition of Pending Claims.**

**8.25.2.3.3.5**

**Valid Request - Claim Reconsideration**

(1) If Appeals has not made a previous determination on the issues raised (through a timely Letter 1153 protest, claim, doubt as to liability offer in compromise, etc.) for the period(s) covered, a formal claim is first worked by Collection Advisory.

(2) If Collection Advisory denies all or part of the taxpayer's formal claim, it issues a Claim Disallowance Letter, and if the taxpayer indicates that they want an appeal within 30 days, the case is forwarded to Appeals for reconsideration. Appeals can also reconsider claims previously disallowed by Appeals.

(3) Having Appeals reconsider a claim does not extend the time frame for the taxpayer to file suit.

**Note:** If the taxpayer provides additional information substantiating the claim after issuance of a final notice of claim disallowance do not reconsider the claim unless time remains in the taxpayer's two year period of limitations for filing a refund suit under IRC 6532(a).

**Note:** If a refund suit is filed on a claim reconsideration being worked by Appeals, see **8.7.1.8.2, Refund Suits with Disposition of Pending Claims.**

**8.25.2.4.2**

**Case Analysis-Evidence**

No change to (1) through (5).

(6) If relevant new information is submitted on the potentially responsible party's behalf, that in the judgment of the Appeals hearing officer requires investigative analysis, then Appeals will retain jurisdiction of the case and forward the new information via Form 10467 Appeals Division Feedback Report and Transmittal Memorandum, (ARI) to the originating Collection Advisory Group for action. SB/SE will have 45 days to investigate and inform Appeals of their findings. This time may be extended by mutual agreement. These situations should be highly uncommon and Appeals has responsibility for informing the potentially responsible person (PRP) that the information was sent to SB/SE, sharing SB/SE's response with the PRP, and allowing them time to comment.

(7) If the new information is not relevant, or does not require investigative analysis, Appeals will make a determination without ARI issuance. For instance, if the new information solely affects the consideration of hazards, then Appeals will evaluate the probative value of the new information and make a determination.

Example: The following scenarios are for further clarity:

**a)** The PRP submits a Form 4180 or affidavit claiming they did not have check signing authority (maybe they even submit a signature card showing they are not listed, or were removed) BUT the TFRP file contains copies of cancelled checks or other evidence indicating that the PRP controlled the payment of bills. Since the new information is refuted by information in the file, the government's position is already established and the weight the courts will give the new information is a hazard determination that must be made by Appeals.

**b)** The PRP submits proof that a third party was in control of the disbursement of all funds (bankruptcy trustee or lockbox situation) BUT the file contains evidence indicating that the PRP had the authority to close the corporation and stop the accrual of additional trust fund liability. If the new issue/info doesn't negate willfulness for this PRP, it is not relevant to Collection's liability determination. In addition, if case law supports a willfulness determination under these specific circumstances and the new issue/info would not affect Appeals' determination (including its broader determination regarding the hazards of litigation), then Appeals does not need the information verified.

**c)** Authenticity of Evidence – PRP submits copies of canceled checks with notations in the memo section that designate the payments to TF. ICS history and IDRS records indicate that the payments were all applied to Non-TF; thus, there is no documentation of the designated payment. Referral to Compliance is appropriate to authenticate the canceled checks (secure copies of the remittances from the financial institution) to verify that the designation was made at the time of payment.

**NOTE:** New Information is any item or document related to a disputed issue that the taxpayer didn't previously share with the RO and in the judgment of the Appeals hearing officer requires investigative analysis.

**NOTE:** Investigative Analysis requires verification with third parties (beyond mere review) and is necessary for Compliance to establish the Government's position on the new information

**8.25.2.5**  
**Conference Guidelines**

(7) Prepare a conference letter. Letter 965, Claim Conference Letter, can be used. Besides providing written documentation concerning the date, time and place for the scheduled Appeals conference, this letter may be used to:

- request clarification of issues;
- explain the law concerning the trust fund recovery penalty; and
- request documentation such as payroll records, proof of designation of payments, etc., that may be necessary.