

IRM PROCEDURAL UPDATE

DATE: 03/03/2021

NUMBER: sbse-05-0321-0336

SUBJECT: ACS/ACSS Case Processing Authority Level

AFFECTED IRM(s)/SUBSECTION(s): 5.19.17

IRM 5.19.17.2.1.2, Hardship Authority Levels, Revised table under paragraph (3) with ACS/ACSS increased hardship authority levels.

3. The following table provides the authority levels and IRM references for closing IMF and/or BMF out of business accounts as CNC - Hardship. Treasury Regulation § 301.7701-2 states that on or after January 1, 2009, single member owners of LLCs are treated as corporations. Therefore, after that date, these closing codes should not be used for single member owner LLCs. A trust fund recovery penalty investigation must be conducted and assessed if applicable.

Closing Codes	Dollar Criteria & IRM References
24	All employees: less than # [REDACTED] # AAB (CC SUMRY). See IRM 5.19.17.2.4.1, CNC Exception Processing.
24 - 32	Field Assistance (FA): <ul style="list-style-type: none">○ Up to # [REDACTED] # AAB (CC SUMRY) (IMF), and CSCO employees: <ul style="list-style-type: none">○ Up to # [REDACTED] # AAB (CC SUMRY) (IMF), and○ Up to # [REDACTED] # AAB (CC SUMRY) (BMF) OOB BMF ACS and ACSS employees: <ul style="list-style-type: none">○ Up to # [REDACTED] # AAB (CC SUMRY) (IMF), and○ Up to # [REDACTED] # AAB (CC SUMRY) (BMF) OOB

	BMF
	REMINDER: Hardship codes can only be used for individual or joint IMF assessments, and OOB BMF sole proprietorships, general partnerships, and LLCs, where an individual owner is identified as the liable taxpayer.

IRM 5.19.17.2.4, CNC Unable to Pay - Hardship, Added reminder, revised example and deleted third column of table under paragraph (11) for clarity.

11. Values for unable-to-pay codes are:

Value	Closing Code
\$20,000	24
\$28,000	25
\$36,000	26
\$44,000	27
\$52,000	28
\$60,000	29
\$68,000	30
\$76,000	31
\$84,000	32

- a. Multiply the total allowable monthly expenses by 12.

REMINDER: The taxpayer's monthly tax withholding (Federal, State, Local, etc.) should be included within the calculation process.

- b. Use the hardship cc most closely corresponding to the Taxpayer's allowable expenses.

EXAMPLE: The taxpayer's monthly allowable expenses are \$3,400. Multiply \$3,400 x 12 = \$40,800. Closing Code 27 is the next highest cc to the taxpayer's allowable expense of \$40,800.

Do not select a closing code below the taxpayer's allowable expenses.

CAUTION: All outstanding levies on salary or wages must be released when a case is closed under hardship provisions.

REMINDER: If Individual SRPs are included with other MFT 30 or MFT 31 modules on an account that meets CNC criteria, close them consistently with the other modules.

IRM 5.19.17.2.11, CNC Mandatory Follow-Up, Reorganized bullet list under paragraph (4) for readability.

4. ACS rarely closes accounts CNC that would require a mandatory follow – up. If the taxpayers meet the criteria for a CNC mandatory follow-up;
 - **DO NOT input the CNC,**
 - Prepare Form 2209, Courtesy Investigation, and
 - Send completed Form 2209, Courtesy Investigation, to:

IRS—CCP—GCP
BLN 5—E104-114
2970 Market St.
Philadelphia, PA 19104—5002

**IRM 5.19.17.3, Offer in Compromise (OIC) Procedures, Revised paragraph (7)
Full pay from 120 days to 180 days.**

1. An OIC is a hybrid of federal law and contract law. In part, IRC section 7122 and its accompanying regulation dictate the substance and form for an OIC. If OIC terms are not provided for in section 7122 and its regulation, then the IRS may draft additional OIC terms under contract law. As a policy matter, one should remember that the Service, like any business, encounters situations when an account receivable cannot be collected in full or there is a dispute regarding what is owed. It is an accepted business practice to resolve collection and liability issues through compromise.
2. An Offer In Compromise (OIC) is an agreement between a taxpayer and the government that settles a tax liability for payment of less than the full amount owed:
 - Doubt as to Collectability – Doubt exists that the taxpayer could ever pay the full amount of the tax liability owed within the remainder of the statutory period for collection. This type of OIC is requested using Form 656-B, Offer in Compromise.
 - Doubt as to Liability – There is legitimate doubt that the assessed liability is correct. This type of OIC is requested using Form 656-L, Offer in Compromise (Doubt as to Liability).
 - Effective Tax Administration – There is no doubt that the tax is correct and there is potential to collect the full amount of the tax owed, but exceptional circumstances exist that would allow the IRS to consider an OIC. This type of OIC is requested using Form 656-B, Offer in Compromise.

NOTE: As a matter of policy, taxpayers **cannot** submit offers in compromise at the same time claiming *both* that they do not believe the liability is correct (Doubt as to Liability) *and* that they are unable to pay it (Doubt as to Collectability) refer to IRM 5.8.10.14, Taxpayers Files both Doubt as to Liability and Doubt as to Collectability Offers.

3. On May 17, 2006, Congress passed into law the Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA), making major changes to the OIC program, including narrowing the scope of rules for lump-sum and periodic-payment offers; these changes were effective for all offers received by the IRS starting July 16, 2006.

- a. Under the current law, taxpayers submitting requests for lump-sum OICs must include a payment equal to 20% of the amount offered with Form 656; a lump-sum OIC means any offer of payments made in five or fewer installments within five or fewer months from offer acceptance.

NOTE: A lump sum offer received with a payment that is less than the 20 percent payment will be deemed processable, but the taxpayer will be asked to pay the remaining balance within a specified time frame in order to avoid the immediate return of the offer. Failure to submit the remaining balance within that extended period will cause the IRS to return the offer, generally retain any payments, and the application fee that was submitted with the offer.

- b. Taxpayers submitting requests for periodic-payment OICs must include the first proposed installment payment with Form 656, Offer in Compromise; a periodic payment OIC is any offer of payments in six or more installments paid within six to 24 months. The total payments cannot exceed 24 months.

NOTE: The taxpayer is required to make the proposed monthly periodic payments until a determination is made on their offer. Generally, the IRS will apply all installment payments to the tax liability, even if the offer is deemed non-processable, later returned, withdrawn, terminated or rejected.

- c. Taxpayers qualifying for low income waiver, based on current criteria, do not have to submit the application fee or meet the partial payment requirements of TIPRA.

NOTE: Taxpayers filing doubt-as-to-liability (DATL) offers are also exempt from the application fee and payment requirements.

- d. Form 656-B, Offer in Compromise (Booklet), provides detailed instructions for completing and submitting the offer and includes all necessary financial forms. There are two types of payment terms to which the Service and the taxpayer may agree. **Payment Option 1:** Requires 20% of the total offer amount to be paid with the offer and the remaining balance paid in 5 or fewer payments within 5 or fewer months of the date your offer is accepted. **Payment Option 2:** Must be paid in monthly installments within 6 to 24 months from offer acceptance. Failure to make regular monthly payments may cause the offer to be closed.

4. If taxpayer needs further clarification of the tax law or which forms to use, have them contact the nearest IRS Taxpayer Assistance Center at 844-545-5640.

REMINDER: Taxpayer Assistance Centers personnel do not prepare Form 656. If a taxpayer is not represented, they may be eligible for assistance from a Low Income Taxpayer Clinic (LITC). See IRM 5.19.17.1.7(4), Related Resources, for more information.

5. The IRS will **NOT** accept an OIC for processing when the following criteria are present:
 - The taxpayer is in bankruptcy.
 - The taxpayer has no tax liabilities.
 - The total amount of the payment is listed as the deposit and the taxpayer does not qualify for low income waiver
 - The taxpayer did not include the application fee when the offer is submitted.
 - The taxpayer did not submit any of the required payment with the offer.
 - The liability was previously referred to the Department of Justice (DOJ).
 - If the offer is for an unassessed liability only
 - Offer submitted solely for tax period(s) with expired CSED(s)
 - Unfiled tax return - the taxpayer submitted an offer where IDRS does not indicate a required return has been received.
 - Offer to compromise liability included in an open offer in compromise.

EXCEPTION: The requirements for the taxpayer to pay both the application fee and the down payment with the offer are waived if the taxpayer meets the requirements for Low-Income certification.

6. Prior to an offer submission, there are two systems in-place (external and internal) to help determine if the taxpayer is a good candidate for an offer and they are:
 - a. Offer in Compromise (OIC) Pre-Qualifier Tool is the external system that could be utilized by taxpayers (IMF and sole-proprietorship) to help determine whether they are a good candidate for an offer and what a reasonable offer amount may be. The OIC Pre-Qualifier Tool is available at https://irs.treasury.gov/oic_pre_qualifier/.
 - b. Offer in Compromise (OIC) Decision Tool is the internal system that would guide the Service employee into making a better decision on whether or not the taxpayer could qualify for an Offer in Compromise by answering a few yes or no questions. The OIC Decision Tool is available at <http://ts00309.tcc.irs.gov:8080/OICDecisionTool/screen/OICDecisionTool/en-US/summary?user=guest&CookieSet=true>. Then click on the red word Oracle for the site to appear.

7. Conduct a tiered interview to determine the taxpayer's ability to:

- Full pay today.
- Partial pay (VLSP).
- Full Pay up to 180 days.
- Pay by IA.

NOTE: See IRM 5.19.1.6, Methods of Payment.

8. If the taxpayer asks for an OIC, and the account is assigned to one of the following IDRS statuses follow the table below:

If...	And...	Then...
Status 26	Intentionally left blank	advise the taxpayer to contact the assigned revenue officer.
Status 53, 60, 61, 63, or 72	OIC not submitted	follow all applicable procedures in paragraph (10) below
Status 53, 60, 61, 63, or 72	OIC previously submitted	follow IRM 5.19.17.3.1, Taxpayer Claims OIC Previously Submitted (No TC 480 or ST 71 Present)

9. If you are speaking to the taxpayer, **they request** an OIC and the account is in Notice Status (21, 54, 56, 58), ACS Status (22), or Status 24 take the following actions:

NOTE: If you are working correspondence, follow procedures in paragraph (10) below.

- a. Secure financial information, if necessary to, analyze the taxpayer's ability to full pay. If the liability can be paid in full or the taxpayer qualifies for an IA, the taxpayer does not qualify for an OIC unless it is an OIC concerning doubt as to liability or to promote effective tax administration (ETA). Encourage a taxpayer qualifying for a PPIA to enter into one; explain that the ability to make a PPIA will be a factor in the offer decision if the taxpayer chooses to submit an offer. Follow procedures in paragraph (10) below if the taxpayer chooses to submit an offer.

EXCEPTION: AM employees do **not** conduct Financial Analysis. See IRM 5.19.1.3.3, Referral and Redirects for AM Employees.

- b. If financial analysis shows the taxpayer has the ability to pay, advise them that while they may submit an offer, the financial information they provided shows they have the ability to pay their liability. As a result, it is unlikely the offer will be accepted unless they have circumstances which would qualify them for an ETA offer. Provide the alternative method to resolve the liability, such as full pay or an IA.

NOTE: If the financial information indicates the taxpayer is unable to pay, (negative net income), consider a CNC: IRM 5.19.17.2, Currently not Collectible (CNC) Procedures.

- c. Follow procedures in paragraph (10) below, if the taxpayer does not agree with the proposed method of resolution and wants to proceed with the offer; or you are working correspondence.

CAUTION: While speaking to the taxpayer, you must advise them of the requirements for the OIC to be accepted for processing, and to consider payment alternatives to submitting an offer. Only an OIC Specialist or COIC Offer Examiner can accept or reject an offer.

10. During any taxpayer correspondence, either in writing, in person or by phone, if the taxpayer requests an offer, or the Service has determined through financial analysis that the taxpayer has a potential for an offer, take the following actions:

- a. Send Letter 278C, Offer in Compromise; Forms Requested. Provide the required tax forms or advise the taxpayer how to obtain them. If the taxpayer has internet access, you can provide them with the IRS web-site address at https://irs.treasury.gov/oic_pre_qualifier/. You can also provide the Toll-Free number 800-TAX-FORM (800-829-3676) to order forms. You can also enclose the forms in the letter or use **ELITE** (on AMS) to directly mail forms to the taxpayer's address. Form 656-B, Offer in Compromise (Booklet). This booklet includes instructions and removable forms: Form 433-A(OIC), Collection Information Statement for Wage Earners, Form 433-B (OIC), Collection Information Statement for Business, Form 656, Offer in Compromise and Form 656-L, Offer in Compromise (Doubt as to Liability)

CAUTION: As a matter of policy, taxpayers cannot have both types of offers open at the same time. If you are speaking with the taxpayer, ask them whether they disagree with the liability. If they disagree with the liability, then they should file their OIC using Form 656-L, Offer in Compromise (Doubt as to Liability). If the taxpayer agrees with the liability, then they should file their OIC using Form 656-B, Offer in Compromise (Booklet).

- b. Instruct the taxpayer they must submit all applicable forms within 30 days.
- c. For Notice Status accounts, input CC STAUP 2209.
- d. Update AMS history.
- e. If enforcement action was previously taken, do not release the levy solely based on the taxpayer's request for an OIC; follow related guidelines. See IRM 5.19.4.4.10, Levy Release: General Information.
- f. Cover normal case processing, including full compliance and cause and cure.

REMINDER: If in Status 22, Warn of Enforcement Action (WOEA).

g. Forward the correspondence to the assigned RO if the account is in ST 26.

11. ACS uses one of the following history codes based on the account information on ACS:

If ...	And ...	Then ...
A levy source is available	The "FNL NOT" date is shown on at least one balance due module	Enter "TOE3, 60,OIC"
A levy source is available	No "FNL NOT" date is shown on any balance due module	Enter "TOE2, 60,OIC"
No levy source is available	Intentionally left blank	Enter "TOI4, 60,OIC"

12. For additional information regarding OICs, see IRM 5.8.1, Offers In Compromise.