



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

July 18, 2013

Control No. AP-08-0713-03  
Expiration Date: 07/18/2014  
Affected IRMs: Listed Below

**MEMORANDUM FOR APPEALS EMPLOYEES**

FROM: Susan L. Latham /s/ *Susan L. Latham*  
Director, Policy, Quality and Case Support

SUBJECT: Implementation of the Appeals Judicial Approach and  
Culture (AJAC) Project

The purpose of this memorandum is to provide guidance to Appeals employees pertaining to the first phase of implementation of the AJAC Project recommendations.

The AJAC Project is returning Appeals to a quasi-judicial approach in 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 Appeals hearing officers in impacted work streams in Appeals. For purposes of this guidance, an Appeals hearing officer is any Settlement Officer, Appeals Officer or Appeals Account Resolution Specialist or other employee holding hearings, conferences or who otherwise resolves open case issues in Appeals.

IRM sections impacted by these immediate changes are as follows:

- 1.2.17, *Servicewide Policies and Authorities - Policy Statements for the Appeals Process*
- 8.4.1, *Appeals Docketed Cases - Procedures for Processing and Settling Docketed Cases*
- 8.6.1, *Conference and Settlement Practices - Conference and Issue Resolution*
- 8.6.4, *Conference and Settlement Practices - Reaching Settlement and Securing an Appeals Agreement Form*
- 8.22.4, *Collection Due Process - Collection Due Process Appeals Program*
- 8.22.7, *Collection Due Process - Alternatives to Collection Action*

- 8.23.1, *Offer in Compromise - Offer in Compromise Overview*
- 8.23.2, *Offer in Compromise - Receipt and Control of Non-Collection Due Process Offers*
- 8.23.3, *Offer in Compromise - Evaluation of Offers in Compromise*
- 8.23.4, *Offer in Compromise - Acceptance, Rejection Sustention, and Withdrawal Procedures for Non- Collection Due Process (CDP) Offers*
- 8.24.1, *Collection Appeals Program and Jeopardy Levy Appeals - Collection Appeals Program (CAP)*

The guidance is effective from the date of this memorandum, and will be incorporated into the Internal Revenue Manual (IRM) within one year from the date of the memorandum. It is effective for all actions taken by Appeals after issuance, for open cases that have not been submitted to a management official or Counsel for final review and approval. Appeals personnel should elevate any questions through the appropriate management chain.

Attachments:

- (1) [In General](#)
- (2) [Collection Due Process](#)
- (3) [Offers in Compromise](#)
- (4) [Collection Appeals Program](#)
- (5) [Examination Cases](#)

Distribution:

Chief, Appeals

Chief Counsel

Commissioner, Large Business and International

Commissioner, Small Business/Self-Employed

Commissioner, Tax Exempt and Government Entities

Commissioner, Wage and Investment

National Taxpayer Advocate

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

## Attachment 1

### In General

#### 1.2.17.1.2

#### Policy Statement 8-2 (Formerly P-8-49)

(1) **New issues not to be raised by Appeals.**

(2) Appeals will not raise new issues. Appeals also will not reopen an issue on which the taxpayer and the Service are in agreement.

**Exception:** See Internal Revenue Code Section 7121.

=====

**Note:** IRM provisions affected by this change in policy will be updated as reflected in the remainder of this interim guidance.

## **Attachment 2**

### **Collection Due Process and Equivalent Hearing Cases**

## **Collection Due Process and Equivalent Hearing Cases**

### **8.22.4.2.1 Appeals Policy**

(1) Appeals' mission is to resolve tax controversies on a basis which is fair and impartial to the Government and the taxpayer. To accomplish this mission in CDP cases, the Appeals hearing officer is responsible for making a determination based on the facts and the law known to Appeals during the time of the hearing.

(2) The Tax Court's standard of review in non-liability CDP determinations is to consider:

- Whether Appeals' factual and legal conclusions reached at a CDP hearing are reasonable, not whether they are correct
- The appropriateness of Appeals' ultimate decision

In *Dalton v. Commissioner*, 682 F.3d 149, the First Circuit reversed the Tax Court and held that a deferential standard of review is appropriate, noting the record usually available to the Tax Court in CDP cases.

(3) CDP files sent to Appeals should contain sufficient documentation for Appeals to make a determination. If a CDP file lacks documentation, it cannot be returned to Collection as a premature referral due to statutory requirements. Instead, the Appeals hearing officer must decide whether to:

- Request relevant information from the taxpayer, or
- Issue an ARI for Collection to secure or verify information, or
- Make a determination based on the information available

(4) Part 5 Collection Process IRM contains administrative policies and procedures for considering alternatives to collection and other resolutions such as:

- Offer in Compromise- IRM 5.8
- Federal Tax Liens - IRM 5.12
- Installment Agreements- IRM 5.14
- Financial Analysis - IRM 5.15
- Currently not Collectible - IRM 5.16

(5) Appeals researches Part 5 to:

- Verify whether administrative procedures were followed in issuing a Notice of Intent to Levy and/or filing a Notice of Federal Tax Lien

## **Attachment 2**

### **Collection Due Process and Equivalent Hearing Cases**

- Review Collection case actions and decisions, taking into account any special circumstances
- Evaluate alternatives to collection action

(6) References in IRM Part 5 to take or propose any enforcement or investigative activity do not apply to Appeals hearing officers.

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

(1) If a taxpayer requests an alternative to collection action and does not qualify for a Guaranteed or Streamlined Installment Agreement, a current Collection Information Statement (CIS) is generally required. A CIS is current if it is dated 12 months or less from the date received in Appeals.

NOTE: Ensure the current Allowable Living Expenses are used prior to making a determination or decision that requires a CIS.

(2) Treat a current CIS that comes with a CDP referral as verified since Collection reviewed it or had an opportunity to review it.

(3) The taxpayer's financial information may be reported on:

- Form 433-A, Collection Information Statement for Wage Earners and Self-Employed Individuals.
- Form 433-B, Collection Information Statement for Businesses
- Form 433-F, Collection Information Statement
- Form 433-A and Form 433-B (OIC)

(4) Form 433-F is routinely used by ACS and campuses. If Collection requested a Form 433-F and the taxpayer provided it, Appeals will rely on it.

NOTE: If the taxpayer proposes an OIC as a collection alternative, the taxpayer must complete the CIS that is included in Form 656-B, the offer in compromise booklet.

#### **8.22.7.10.6.5 COIC Recommends Rejection, Return, Mandatory Withdrawal**

(1) COIC shares the results of their investigation with the taxpayer in a pre-determination letter. If COIC makes any recommendation other than acceptance of the offer, Appeals will make the final determination. COIC's recommendation to reject, return, or withdraw is not a final determination under IRC 7122(f). A final determination must be made by Appeals within 24 months from the date the offer was received.

(2) Offers with a preliminary recommendation by COIC will be treated as priority. Work these with a goal of making a final determination within 120 days of the

## **Attachment 2**

### **Collection Due Process and Equivalent Hearing Cases**

date the preliminary recommendation is received. You need not contact COIC when the offer cannot be closed within that time frame.

(3) In making a final determination on an OIC:

- Consider only the assets documented by Collection, unless the taxpayer voluntarily provides new information to Appeals. Do not investigate to identify and value additional assets.
- Use the values agreed to by the taxpayer and Collection. Do not revise the value of an asset to an amount higher than determined by Collection, unless the taxpayer voluntarily provides new information to Appeals
- Correct any RCP errors that are strictly computational.

(4) If COIC erroneously issues a final rejection letter, COIC will not rescind the rejection letter. Appeals will instead inform the taxpayer that the OIC is under Appeals' jurisdiction and that Appeals will address the OIC in the determination/decision letter. Locate the [COIC CDP coordinator](#) and request that the offer be reopened on AOIC under reconsideration procedures in IRM 5.8.7.3.

## **Attachment 3**

### **Offers in Compromise**

## **Offers in Compromise**

### **8.23.1.1**

#### **General**

(2) Appeals researches IRM 5.8 and related interim guidance to evaluate Collection actions, decisions and valuation methods for Offers in Compromise. In addition to IRM 8.23, other IRM sections impacting Appeals' consideration of an offer in compromise (OIC) include:

- IRM 8.1.1, Appeals Operating Directives and Guidelines
- IRM 8.2, Pre-90-Day and 90-Day Cases (contains general information for all Appeals cases)
- IRM 8.6.1, Conference and Issue Resolution
- IRM 8.6.4, Reaching Settlement and Securing an Appeals Agreement Form
- IRM 8.7.6, Appeals Bankruptcy Cases
- IRM 8.21, Appeals Statute Responsibility

### **8.23.1.3**

#### **Conference and Settlement Practices**

(1) The Appeals process in an OIC case is not an extension of the Collection OIC process. The role and mission of Appeals are different than that of Collection. Appeals' personnel must employ Appeals' standard conference and settlement practices for all work streams, including OICs.

(2) Appeals' primary obligations 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.
- Advise the taxpayer of what is needed in order for the offer to be properly evaluated and/or accepted and provide reasonable opportunity to submit
- supplemental information or documentation that the taxpayer or the Appeals hearing officer believes is necessary to properly evaluate the offer and/or may make the offer acceptable.
- 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) that can be pursued with Collection, including

### Attachment 3 Offers in Compromise

explaining any forms or documentation required for consideration of these alternatives.

**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. Do 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 8.23.2.6.

(3) In a non-CDP OIC case, Appeals will not “re-work” the offer rejected by Collection. Appeals will consider those items in dispute at the time of the rejection. Requests for the taxpayer to provide supplemental information to Appeals should clearly indicate:

- precisely what is needed, and when
- that the information, documentation, unfiled return, payment, etc., is necessary
- that Appeals will make its decision based upon available information if all of the requested items are not received by the due date provided. See IRM 8.23.3.3.1.2.

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

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

(5) IRM 8.1.1, Appeals Operating Directives and Guidelines, IRM 8.6.1, Conference and Issue Resolution, and IRM 8.6.4, Reaching Settlement and Securing an Appeals Agreement Form, contain general guidance on Appeals conference and settlement practices and other general Appeals responsibilities. Appeals’ decision to sustain a rejection of a non-CDP offer is not subject to judicial review, therefore, not all of IRMs 8.1.1, 8.6.1 and 8.6.4 relate to OICs. Some sections that are relevant include:

- a) Conduct conferences in an open atmosphere that fosters cooperation in the resolution of disputes. Above all, it is of utmost importance to be a good listener. (See IRM 8.6.1.3 and 8.6.4.1.4).
- b) Consider whether the taxpayer demonstrates a lack of technical knowledge. The Appeals hearing officer will assist the pro se taxpayer to an appropriate extent. Assistance should be consistent with the Appeals

## **Attachment 3**

### **Offers in Compromise**

role of impartiality. In the absence of an agreement, ensure the taxpayer fully understands their appeal rights.

(6) Consideration of certain issues, as well as an overall judgment as to the appropriateness of compromise, often requires subjective judgments to be made by the Appeals hearing officer. With this in mind, some general factors to consider when evaluating an OIC are:

- the success, or lack thereof, of prior collection efforts against the taxpayer
- the advantage of the taxpayer's future compliance, secured through acceptance of an OIC

**Note:** Such factors are not stand-alone bases of acceptance of compromise, but should be considered in developing a frame of mind that is open to compromise.

#### **8.23.2.4**

##### **Premature Referral Issues**

(8) A case will not be returned as a premature referral where Collection did not fully develop certain issues. Weigh Collection's development of the issue versus information and testimony provided by the taxpayer, and make the decision based upon those factors.

#### **8.23.2.4.5**

##### **Premature Referral Issues - Other Issues**

(1) 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.

(2) A case will not be returned as a premature referral where Collection did not fully develop certain issues. Weigh Collection's development of the issue versus information and testimony provided by the taxpayer, and make the decision based upon those factors.

(Remainder of current IRM 8.23.2.4.5 section renumbered. Former (2) is now (3), etc.).

#### **8.23.3.1**

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

(5) Appeals researches IRM 5.8 and related interim guidance to evaluate Collection actions, decisions and valuation methods for Offers in Compromise. When evaluating an appealed rejection, IRM 5.8 and related interim guidance are

## **Attachment 3**

### **Offers in Compromise**

consulted as a reference to ensure that Collection followed their proper procedures. Appeals' evaluation of an OIC must be independent of the decision rendered by Collection. Standard Appeals conference practices are found in IRM 8.6.1, Conference and Settlement Practices, Conference and Issue Resolution.

(6) The Appeals hearing officer will not request information or evidence (from any party) solely for the purpose of strengthening the government's case.

(Remainder of current IRM 8.23.3.1 renumbered. Former (6) is now (7), etc.).

#### **8.23.3.3**

##### **Appeals OIC Evaluation Procedures**

(1) As stated in IRM 8.23.3.1, Appeals researches IRM 5.8 and related interim guidance to evaluate Collection actions, decisions and valuation methods for Offers in Compromise. Appeals' evaluation of an OIC must be independent of the decision rendered by Collection. Standard Appeals conference practices are found in IRM 8.6.1, Conference and Settlement Practices, Conference and Issue Resolution.

(2) No change to current IRM 8.23.3.3(2).

(3) Agreed RCP issues that were previously addressed during the investigation by Collection will not be re-examined by Appeals. This does not include correcting errors that are strictly computational.

Note: Refer to IRM 8.23.4.2.2 where additional facts and law are addressed by Counsel.

(4) Appeals employees will not attempt to identify and value any additional assets. In addition, Appeals employees should not revise the value of an asset to an amount that is higher than previously determined by Collection.

**Note:** The most current Allowable Living Expense (ALE) standards will be used by the Appeals employee when working an offer. Cases already submitted to the Appeals Team Manager (ATM) and/or Counsel for final review or approval will not be reworked for the purpose of updating ALE.

(5) In collection issue cases, the taxpayer may submit new information while the case is in Appeals. Any new information should be considered, particularly if it pertains to an issue disputed at the time of rejection. New information pertaining to an issue that was not in dispute at the time of rejection may also be considered. See IRM 8.23.3.3.2.6 as revised in this memorandum, for guidance on information that should generally be referred to Collection for an initial review.

### **Attachment 3**

#### **Offers in Compromise**

(6) A case will not be returned as a premature referral where Collection did not fully develop certain issues. Weigh Collection's development of the issue versus information and testimony provided by the taxpayer, and make the decision based upon those factors. See also IRM 8.23.2 for premature referral issues on appealed OIC cases.

(7) A financial statement that is less than 12 months old from the date it was received in Appeals will not be updated and will be considered verified since it was provided to Collection and they reviewed or had the opportunity to review it. Use the RECDATE of the OIC work unit to determine when the case was received in Appeals.

(8) Appeals will not contact the taxpayer to secure an updated financial statement if the information is less than 12 months old, or if the information has become outdated as a result of IRS delay. If Appeals needs updated financial information from the taxpayer, an updated Form 433-A and/or Form 433-B is not necessary. "Pen-and-ink" changes to the existing Form 433-A/B are sufficient. See IRM 8.23.3.3.1.2, pertaining to the review of supplemental information.

(Remainder of current IRM 8.23.3.3 renumbered. Former (6) is now (9), etc.).

#### **8.23.3.3.1**

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

(3) 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. Only the disputed issues will be reviewed and considered by Appeals.

(4) If the case requires verification of more complex items submitted after appeal, then send an Appeals Referral Investigation (ARI) to a Field Revenue Officer group. See IRM 8.23.3.3.2.6 for procedures when requesting assistance from Collection.

(5) No change to current IRM 8.23.3.3.1(5).

(6) Within 30 days of case assignment, (see IRM 8.23.2.1), Appeals should send out an initial substantive contact letter that:

- Explains the appeal process. Be sure to further explain that if the taxpayer prefers a face-to-face Conference, he or she should, generally, contact the Appeals hearing officer within 14 days from the date of the letter. See also IRM 8.23.2.2.1 regarding transferring a non-CDP OIC case.
- Identifies the disputed issues

## **Attachment 3**

### **Offers in Compromise**

- Asks the taxpayer to provide any other information to substantiate his or her claims
- Identifies any compliance issues that must be remedied
- Sets clear expectations and a specific date for providing any requested additional information. Due dates for additional information should be within 30 days of the date of the initial contact letter and before any scheduled conference date, unless special circumstances warrant a longer period.
- Schedules the conference or requests the taxpayer contact Appeals by a specific date.
- Advises the taxpayer of the consequences of either not providing requested information by the established due date or failing to participate in the conference.
- Advises the taxpayer that new information that is provided may be referred to Collection for an initial review and comment.

**Note:** See IRM 8.23.2.2.1, for guidance pertaining to face-to-face conferences and circuit riding in Appeals.

**Note:** Request only specific items needed to resolve the issues in dispute between Collection and the taxpayer. See IRM 8.23.3.3.1.2 for guidance on additional information.

(Remainder of IRM 8.23.3.3.1 renumbered. Former (6) is now (7), etc.).

#### **8.23.3.3.1.2**

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

(1) As stated earlier in 8.23.3, review the written appeal for the issues that are in dispute. If no specific issues are listed in the appeal, then the specific issues present on the IET/AET completed by Collection will be used to identify the issues under appeal.

(2) Because information submitted to Appeals by the taxpayer may sometimes require further analysis or more complex development, it may be necessary for Appeals to request an ARI. See (4) below, in addition to IRM 8.23.3.3.2.6 found in this guidance.

(3) Appeals will not request information to document or raise new issues.

(4) Do not forward information to Collection using an ARI if the information can be easily reviewed by the Appeals hearing officer. However, if investigation or further development of the issue is needed, use an ARI.

**Example:** Many items such as new household bills, pay stubs, bank statements, retirement account statements, etc., can generally be reviewed by Appeals, and

## **Attachment 3**

### **Offers in Compromise**

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 Collection in response to an ARI. In some circumstances, another option may be a referral for analysis by an Appeals Valuation Engineer.

(Remainder of IRM 8.23.3.3.1.2 renumbered. Former (4) is now (5), etc.).

#### **8.23.3.3.2**

### **Financial Analysis and RCP Determination**

(1) As stated earlier in 8.23.3, review the written appeal for the specific issues that are in dispute. The specific issues present on the IET/AET completed by Collection and/or the taxpayer's written request for appeal will be used to identify the issues.

**Exception:** Appeals will use the most current or updated national and local standards unless the case has already been submitted by the Appeals hearing officer to the Appeals Team Manager (ATM) for final review or approval, or to Counsel for final review.

(2) Appeals can consult with IRM 5.8.5 which contains details as to the information needing verification, and required level of such verification. If an issue is inadequately developed, Appeals will not develop the issue further. Weigh the evidence provided by the taxpayer versus the reasons for Collection's non-acceptance of the issue, and make a determination based upon those factors.

(3) Occasionally, more complex, new information may be submitted by the taxpayer which requires the assistance of a field investigator. See IRM 8.23.3.3.1.2 and 8.23.3.3.2.6, in such circumstances.

(No change to remainder of IRM 8.23.3.3.2, beginning with (4)).

#### **8.23.3.3.2.1**

### **Net Realizable Equity**

(1) For offer purposes, assets are valued at the net realizable equity (NRE). NRE is generally defined as quick sale value (QSV) less amounts owed to secured lien holders with priority over the federal tax lien, if applicable, and levy exemption amounts. See IRM 5.17.2.

(2) QSV is defined as an estimate of the price a seller could get for the asset in a situation where financial pressures motivate the owner to sell in a short period of time, usually 90 calendar days or less. Generally, QSV is an amount less than

### **Attachment 3**

#### **Offers in Compromise**

fair market value (FMV). For purposes of determining the taxpayer's reasonable collection potential (RCP), information provided by the government and the taxpayer should be used to arrive at appropriate FMV determinations.

(3) As stated earlier in this IRM, Appeals researches IRM 5.8 and related interim guidance to evaluate Collection actions, decisions and valuation methods for Offers in Compromise. IRM 5.8 and related interim guidance should be used as a reference for valuation methods pertaining to Offers in Compromise.

(4) For the consideration of an Offer in Compromise by Collection, Collection should verify the information contained on the financial statement, and identify any assets belonging to the taxpayer that may not have been disclosed. Collection should also properly value assets that were either disclosed by the taxpayer or discovered during the offer investigation.

(5) Appeals employees will only consider assets documented previously by Collection in the offer case file. Appeals will not identify and value any additional assets. Appeals will only consider Items in dispute where the Taxpayer and Collection did not reach an agreement.

(6) Appeals employees will not revise the value of an asset to an amount that is higher than the value previously determined by Collection, unless the taxpayer voluntarily provided such information to Appeals.

#### **8.23.3.3.2.6 (Renumbered from 8.23.3.3.2.5)**

##### **Requesting Assistance from Collection**

(1) Situations may arise during the consideration of an appealed offer in which Appeals requests the assistance of a field Revenue Officer. In these situations, Appeals should send an Appeals Referral Investigation (ARI) to the field collection office nearest the taxpayer, using Form 2209 Courtesy Investigation.

(2) These requests should be limited to situations where Appeals needs the assistance of a Revenue Officer to perform more complex financial verification actions.

**Example:** Many items such as new household bills, pay stubs, bank statements, retirement account statements, etc., can generally be reviewed by the Appeals hearing officer, and without further investigation. However, information requiring 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 Collection in response to an ARI. In some circumstances, the Appeals hearing officer may refer the issue to an Appeals Valuation Engineer.

### Attachment 3 Offers in Compromise

**Note:** See IRM 8.23.3.4 for situations where an ARI may be necessary for amended offers.

(3) If the taxpayer does not cooperate with Collection or otherwise fully respond to the request(s) for additional information, decide the issue based upon the available information.

#### 8.23.3.4 Amended Offers

(1) In a non-CDP OIC, Appeals will review the taxpayer's written appeal for the specific items that are in dispute. The specific, disputed items present on the IET/AET completed by Collection or the taxpayer's written request for appeal will be used to identify the disputed items.

(2) If new information requiring further development is provided during consideration of an offer, an Appeals Referral Investigation (ARI) will be sent to Collection via Form 2209 Courtesy Investigation, to consider the new information. Collection's response to the ARI will be shared with the taxpayer.

(3) If the Collection response to an ARI includes comment that the offer should be accepted, the Appeals hearing officer will adopt the recommendation. If the Collection response is not to accept or no recommendation is made, the Appeals hearing officer will review the information that was provided by both the government and the taxpayer and determine whether or not to accept the offer. See IRM 8.23.3.3.2.6 and (5) below, for examples where an ARI may be needed.

(4) In the interests of good tax administration, when rejection of an offer is sustained but the taxpayer is a possible candidate for consideration of acceptance under another basis, the Appeals hearing officer will assist the taxpayer with an understanding of further options as outlined in (5) below.

(5) The table and examples below provide an illustration for the consideration of amended offers in Appeals.

<b>If the Original Offer was Considered Under</b>	<b>Then it also may Generally be Considered Under</b>
DATC, DATSC or ETA Hardship	DATC, DATCSC, ETA Hardship, ETA Public Policy
Doubt as to Liability (DATL)	DATL
ETA Public Policy	DATC, DATCSC, ETA Hardship, ETA Public Policy

**Example 1:** The taxpayer submitted an offer under DATC and the offer was rejected by Collection. During the appeal, it is determined that the acceptable amount of the offer is higher and the taxpayer agrees to pay the new offer

### **Attachment 3**

#### **Offers in Compromise**

amount and/or new payment terms. The Appeals hearing officer will secure an addendum or amended offer form to reflect the new offer amount and process the acceptance. An ARI is not necessary.

**Example 2:** In example 1 (above), if new information is submitted by the taxpayer that requires investigation, the Appeals hearing officer will use an ARI to send the new information to Collection for verification. Appeals will share and discuss Collection's response with the taxpayer, and make a determination based upon the information that was provided.

**Example 3:** A DATC offer is considered and rejected by Collection. In Appeals, the taxpayer introduces information requiring further development to consider the same offer under DATCSC or ETA. Upon securing the new information from the taxpayer, the Appeals hearing officer will use an ARI to send the new information to Collection for development of the issue. Appeals will share Collection's response with the taxpayer and make a determination based upon the information that was provided.

**Example 4:** A DATCSC offer is considered and rejected by Collection. During the appeal process the taxpayer is unable to prevail using the special circumstances. The taxpayer raises a counter argument they can pay the RCP amount – which was fully documented and verified in the case file from Collection. The Appeals hearing officer can accept the offer based upon DATC without an ARI. However, if new information requiring further development is presented for consideration, an ARI is necessary for Collection to comment on the new information. Appeals will share Collection's response with the taxpayer and make a determination based upon the information that was provided.

**Example 5:** An ETA Hardship offer is considered and rejected by Collection. During the appeal process the taxpayer is unable to prevail under ETA, however, a change in RCP or amount owed causes the taxpayer no longer to be projected as being able to full-pay the liability.

If the taxpayer raises a counter argument they can instead pay the RCP amount, and the issues involved in the argument have already been fully documented and verified by Collection, the Appeals hearing officer can accept the offer based upon DATC or DATCSC, without an ARI. However, if new information requiring further development is presented for consideration, an ARI will be necessary for Collection to comment on it. Appeals will share Collection's response with the taxpayer and make a determination based upon the information that was provided.

**Example 6:** A DATL offer is considered and rejected by Compliance. In Appeals, the taxpayer attempts to introduce new issues for consideration of the same offer under any other acceptance basis. The original offer must be resolved, and the taxpayer may submit a new offer to Compliance under the new basis of compromise. Consult IRM 5.8.1.9.2.

## **Attachment 3**

### **Offers in Compromise**

**Note:** The same rule in Example 6 applies if a DATC or ETA offer is considered and rejected by Collection, but the taxpayer wishes to introduce a DATL offer in Appeals. The original offer must be resolved, and the taxpayer may submit a new offer to Compliance under the new basis of compromise.

**Example 7:** An ETA Public Policy offer is considered and rejected by Collection. Under ETA Public Policy, all other bases of compromise must have been considered and, where applicable, fully developed prior to rejection. Therefore, any developed bases of rejection are subject to consideration by Appeals.

**Example 8:** An offer is considered and rejected by Collection under any basis other than DATL and, in Appeals, either:

- The taxpayer raises issues involving ETA Public Policy, or
- Appeals identifies for the first time issues involving ETA Public Policy

An ARI should be sent to Collection's ETA team in Austin, TX, for initial analysis of the ETA offer. See IRM 5.8.11.

(Remainder of IRM 8.23.3.4 renumbered. Former section (1) is now (6), etc).

#### **8.23.4.2.2**

#### **Counsel Review of Offer Acceptance Recommendation**

(1) IRC 7122(b) requires an opinion from Counsel to be placed in the file if the liability, including tax, penalties and interest, is \$50,000 or more. Counsel's review has two separate and distinct components:

- a. Certification that the legal requirements for compromise were met.
- b. If the legal requirements for compromise were met, then Counsel reviews the proposed acceptance for consistent application of the Service's policies regarding acceptance.

**Note:** The 24-month TIPRA statute period under IRC 7122(f) includes whatever time a case may be pending in Counsel awaiting its statutory opinion on an acceptance recommendation. See IRM 8.23.2.3 for additional information on statute responsibilities.

(2) The requirement for Counsel review is generally based on the liability(s) at the time of submission, not at the time of acceptance. For example, if the application of TIPRA payments reduced the liability(s) below the required \$50,000, the offer(s) will still require Counsel review before acceptance. However, if a liability of less than \$50,000 is owed at the time of offer submission, and that liability is subsequently increased to more than \$50,000 by the time the offer is recommended for acceptance, then the opinion of Counsel is required.

### **Attachment 3**

#### **Offers in Compromise**

(3) Per CCDM 33.3.2, Chief Counsel Directives Manual - Legal Advice, Other Legal Advice, Offers in Compromise, a finding by Counsel that a proposed acceptance is not in keeping with Service policy is not a justification for withholding an opinion if all of the legal requirements for compromise have been met. If Counsel signs the Form 7249 but disagrees with the amount of the offer, they will communicate their disagreement in a separate memorandum.

(4) Although Counsel's opinion is required for compromise, its concurrence with the decision to accept the offer is not. However, the approving official for Appeals must review and carefully consider any opinion from Counsel prior to accepting the offer. If Counsel raised substantive concerns, it is appropriate to document the case activity record indicating the approving official carefully considered the issues before accepting the offer.

(5) If Counsel did not sign the Form 7249 or otherwise agree with the offer recommendation, the offer may still be accepted by Appeals. Document the case history and include a copy of Counsel's memorandum or other communication expressing its disagreement (See (6) below).

(6) When Appeals accepts an OIC where Counsel either did not agree with acceptance or otherwise did not sign the Form 7249, the Appeals management level that is required for approval of these cases will not change, but a rebuttal memorandum must be written to address any issues presented by Counsel. The rebuttal may be brief or detailed, but should be clear in addressing all the issues Counsel presented. Upon closure of the case, Appeals must notify Counsel that the offer was accepted notwithstanding their recommendation, and detail the reasons for acceptance.

(7) If acceptance of the offer is subject to Counsel's review, proceed as follows:

**Note:** Due to the number of variables involved in managing different sized offices and employees in remote offices, the following guidance is general in nature. Each office must establish its own processes within the following framework to most effectively manage and control the flow of the case and input of the required data at the appropriate time.

1. The Appeals hearing officer will input CARATS Action Code 'AC' with SubAction Code 'DC' and submit the case to the ATM for approval. Appeals should not input the 'AC/FR' at this time because the case will be forwarded to Counsel for review.

2. The ATM will review the case and sign the Form 7249 indicating concurrence with the acceptance recommendation. The ATM will not sign either the Form 5402 or OIC Acceptance Letter until the case comes back from Counsel. The ATM will return the case to the ATE if the acceptance recommendation is not approved at the ATM level.

### **Attachment 3**

#### **Offers in Compromise**

3. If approved, the ATM will forward the case to APS who will update ACDS to reflect 'DCOTHER' indicating the case was sent to Counsel for approval. APS will send the case to Counsel.

4. The case will be returned to APS after Counsel has completed its review. If Counsel does not sign the Form 7249, APS will return the case file to the Appeals hearing officer. If Counsel signed the Form 7249, APS will return the case file to either the ATM or the Appeals hearing officer, depending on locally established procedures.

**Note:** Upon closure of a case in which IRS Counsel's opinion did not recommend acceptance and Appeals agrees with the decision, either the ATM or the Appeals hearing officer must input an entry into CARATS to explain the outcome of the Counsel review, and the general reasons why the offer was rejected.

5. If the Appeals hearing officer receives the case file from APS after Counsel's review, he/she will input CARATS Action Code 'AC' with SubAction Code 'FR' to reflect the case's "final resolution" and submit the case to the ATM for final approval. If the ATM receives the case file from APS after Counsel's review, the Appeals hearing officer must be notified so the status of the case may be updated to 'AC/FR'. The ATM must remove and destroy any credit reports in the file before submitting the case to APS for closing. See IRM 8.23.4.2.1 for information on the removal and destruction of credit reports.

6. After the 'AC/FR' action and SubAction codes are input, the ATM will sign the OIC Acceptance Letter and input the ACAPDATE on ACDS. See (7) immediately below if the approval requires the signature of the AD, DFO or DCO.

7. If the approving official is the AD, DFO or DCO, upon receiving the case back from Counsel, the acceptance letter will not be signed by the ATM. The Appeals hearing officer will forward the case to the AD, DFO or DCO for the necessary review and approval. Once the signed Form 7249 and OIC Acceptance Letter are received from the AD, DFO or DCO, the Appeals hearing officer will input the 'AC/FR' action and SubAction codes, and the ATM will input the ACAPDATE, and close the case through APS after removing and destroying all credit reports in the file and forward the case file to APS for closing.

#### **8.23.4.3**

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

(1) No change to current IRM (1).

(2) Generally, Appeals will sustain a rejection only under the same basis for which the offer was rejected.

### **Attachment 3**

#### **Offers in Compromise**

**Note:** 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 Appeals does not sustain rejection on these grounds, the offer may still be determined inadequate based upon the collectibility determination documented by Collection.

(3) If an OIC was rejected because it was determined that the taxpayer could pay more than the amount offered, and information provided by the taxpayer or Appeals' analysis determines otherwise, Appeals will not independently sustain the rejection or otherwise dispose of the case under any other basis such as Public Policy, Not in the Government's Best Interest, or a finding that the submission of the offer was solely to delay collection.

**Exception:** See IRM 8.23.3.4(6) as renumbered by this guidance.

(Remainder of IRM 8.23.4.3 renumbered. Former section (3) is now (4), etc.).

## Attachment 4 Collection Appeals Program

### Collection Appeals Program

#### 8.24.1.1.1 Administrative and Legislative History

(9) Under CAP:

- a) Appeals' administrative decision is final.
- b) The goal is to provide a response with a 5-day turnaround.
- c) Appeals' review is for appropriateness of the action proposed or taken based on law, regulations, policy and procedures after considering all of the relevant facts and circumstances.
- d) Appeals does NOT consider alternatives to the issue under appeal, but solely
- e) determines the appropriateness of the issue under appeal.

#### Example 1: Proposed Lien Filing

The taxpayer submits a CAP appeal request upon completion of the required managerial conference, which did not produce a resolution to the disagreement concerning the proposed Notice of Federal Tax Lien filing. During the Appeals conference, the Appeals hearing officer determines the taxpayer's liability is under audit reconsideration and confirms with Examination that the balance is going to be reduced to an amount that would qualify the taxpayer for a streamlined installment agreement.

In this case, Appeals does not sustain Collection's position concerning the proposed Notice of Federal Tax Lien filing. Appeals directs that the lien determination will be deferred, pending Collection's consideration of a streamlined installment agreement for the taxpayer. Having considered the appropriateness of the issue under appeal, the Appeals hearing officer **will not** negotiate the collection alternative(s) (e.g. installment agreement).

#### Example 2: Levy

The taxpayer submits a CAP appeal, requesting a levy release. The taxpayer acknowledges he has a delinquent return but claims the levy is creating an economic hardship. Aside from the delinquent return, the taxpayer is cooperative, having provided the requested Collection Information Statement (CIS) and supporting financial documentation to Collection.

Appeals reviews the financial documentation forwarded by Collection and determines the levy is creating an economic hardship against the taxpayer. Considering IRC § 6343(e), Appeals does not sustain Collection, directing that the levy be released. Having considered the appropriateness of the issue under

## **Attachment 4**

### **Collection Appeals Program**

appeal, the Appeals hearing officer **will not** consider any collection alternatives (e.g. placing the account in CNC status).

#### **8.24.1.2.7**

##### **Case Procedures under CAP**

(8) Appeals should review the case for appropriateness of the action, proposed or taken, based on law, regulations, policy, and procedures (national and local), considering all of the relevant facts and circumstances.

(9) Local procedures will only be considered appropriate if they are written and consistent with the IRM.

(10) Judgment is likely to be an issue on these types of cases, although they can also involve legal or procedural issues. Appeals may reverse the Collection function's action if evaluation of the taxpayer's history and current facts and circumstances indicate that the proposed or taken action is inappropriate.

(11) Due to the extensive investigation and multiple levels of approval required in seizing property, the appropriate approval authority in Appeals must concur before a decision to direct release of a seizure is shared with Collection. If a Collection Area Director approved the seizure, the Appeals Director of Field Operations must approve the release; if the Collection Territory Manager approved the seizure, the Appeals Area Director must approve the determination to release.

(12) Appeals should inform both the Collection function and the taxpayer of the decision as soon as possible after receiving the necessary approvals to direct release of a seizure.

- a. Approval may initially be oral to speed up the notification process.
- b. Follow any oral communication of approval with managerial documentation in the case activity record.
- c. The written closing letter should be sent to the taxpayer at the taxpayer's last known address, no later than 3 business days after the final approval of Appeals' decision. This may require either the mailing of the closing letter by the ATM or the faxing of the closing letter by APS. If APS will not receive the CAP file within one day of the ATM's final approval the ATM will ensure the timely mailing of the closing letter. If APS will receive the CAP file within one day of the ATM's final approval APS will ensure timely mailing of the closing letter.
- d. The Appeals decision will be implemented, as applicable, after both Collection and the taxpayer have been informed of the decision. Collection may be informed either verbally, via fax or secured E-mail.

## **Attachment 4**

### **Collection Appeals Program**

(13) Appeals' CAP hearing decision is limited to sustaining Collection or otherwise directing Collection to take the appropriate corrective action (e.g. release levy). It is appropriate to inform the taxpayer of sources of information regarding the collection process and collection alternatives. Taxpayers should be encouraged to review this information in relevant publications and at [www.IRS.gov](http://www.IRS.gov).

#### **Example 1: Rejected Installment Agreement**

A BMF taxpayer requests an installment agreement (IA) with payment terms of \$2,000 per month to resolve their outstanding corporate income tax liabilities of approximately \$100,000. The taxpayer provides the requested financial documentation and they are in compliance with no issues precluding them from qualifying for an IA.

The Revenue Officer informs the taxpayer the proposal is rejected because it is believed the entity can pay more. Collection, however, does not inform the taxpayer what monthly amount would be acceptable for an IA. The Independent Reviewer concurs with the rejection determination and the taxpayer files a CAP appeal to protest the denial.

Copies of the Collection Information Statement (Form 433-B) and attachments are provided to Appeals for the CAP hearing. The assigned Appeals hearing officer reviews the financial documentation and calculates the taxpayer has the ability to pay \$2,500 per month.

Considering the issue under appeal involves a rejected IA, Appeals' decision is to sustain Collection's rejection of the IA or direct Collection to take the appropriate action. In this case, if the taxpayer is agreeable to a monthly IA of \$2,500, Appeals will direct Collection to arrange an IA for this amount. If the taxpayer is not agreeable to the monthly IA amount of \$2,500, Appeals will sustain Collection.

#### **Example 2: Proposed Seizure**

During a field visit to the taxpayer's address of record, the Revenue Officer (RO) is informed the property is being rented and the taxpayer resides at another location. The taxpayer is uncooperative with information concerning the real property but the RO conducts research and learns the taxpayer owns the property and it is unencumbered.

The RO proceeds with the required pre-seizure paperwork and advises the taxpayer that seizure is the next planned action, pursuant to IRM 5.10.1.7.2(2). In response, the taxpayer's POA submits a CAP appeal against the proposed seizure after the required managerial conference does not generate a resolution.

**Attachment 4**  
**Collection Appeals Program**

During the CAP hearing, the POA acknowledges the subject property is free and clear but informs the Appeals hearing officer that the home is occupied by the taxpayer's former spouse and dependent minor children.

Upon the Appeals hearing officer's determination that the RO did not secure the required judicial approval pursuant to IRC 6334(e)(1) and IRM 5.10.2.19(1), Appeals does not sustain Collection. Appeals also directs Collection to cease pursuing seizure of the property until judicial approval is secured.

## Attachment 5 Examination

### Examination

#### 8.4.1.15.3

#### New Issues in Docketed Cases

(1) A new issue in a docketed case is any adjustment to or change to an item that affects the petitioner's tax liability that was not included in the notice of deficiency and is raised or discussed during consideration of the case.

(2) Appeals will not raise a new issue in a docketed case. However, Appeals will consider new issue(s) the Government raises in its pleadings and may consider any new evidence developed by Compliance or Counsel to support the Government's position.

**Note:** The Government has the burden of proof on new issues the Government raises in its pleadings.

(3) Whenever a petitioner raises an issue not previously examined or raised in the petition, the assigned Appeals hearing officer must prepare a brief memorandum to the assigned Area Counsel attorney. The memorandum must:

- a) Describe the new issue
- b) Assess whether Appeals believes the issue is amenable to settlement
- c) State whether additional factual development is necessary and
- d) Add any other observations and recommendations Appeals may have concerning the new issue
- e) Submit the completed memorandum to the ATM to be forwarded to Counsel

(4) Advise the petitioner that no settlement discussion will take place with respect to the new issue until the assigned Area Counsel attorney determines whether a formal amendment of the pleadings is needed to raise the new issue pursuant to Tax Court Rule 41(a).

**Note:** Chief Counsel favors formal amendments to the pleadings unless a substantial reason exists for permitting Appeals to consider a new issue raised by the petitioner without a formal amendment to the pleadings. When the new issue involves a Coordinated Industry Case (CIC), a Compliance Coordinated Issue (CCI), an Appeals Coordinated Issue (ACI), large dollar amounts, or is otherwise significant, Area Counsel generally will ask the petitioner to formally amend the pleadings before Appeals considers the new issue.

## **Attachment 5 Examination**

(5) Within ten (10) business days of receipt of the memorandum from Appeals, the assigned Area Counsel attorney will notify Appeals in writing as to whether Appeals may consider the new issue raised by the petitioner in the absence of a formal amendment to the pleadings.

**Note:** When Area Counsel determines that Appeals may consider a new issue without a formal amendment to the pleadings or the petitioner raises a new issue in a formal amendment to the proceedings, the Appeals hearing officer will retain jurisdiction and refer the issue to Compliance for review and to make a determination.

(6) Where the taxpayer (or representative) offers to make payment of additional tax liability for slush fund or improper payment deductions, or reveals their existence to Appeals for the first time, discontinue Appeals consideration of the case and immediately contact the assigned Area Counsel attorney.

### **8.6.1.6**

#### **New Issues and Reopening Closed Issues**

(1) Policy Statement 8–2 (formerly P-8-49) states that Appeals will not raise new issues and will not reopen an issue on which the taxpayer and the Service are in agreement. See IRM 1.2.17.1.2.

**Note:** Although Appeals will not raise new issues, Appeals hearing officers will notify their ATMs if they identify a new systemic issue. ATMs will report the identification of new systemic issues to their Area Directors, who, in consultation with the Director, Field Operations, Campus Operations or Specialty Operations will decide if the new systemic issue requires Compliance’s attention. If a systemic issue may be present, Appeals will notify the appropriate Compliance executives and personnel. The Appeals hearing officer will not raise a new issue in the disposition of the pending case. See Internal Revenue Code Section 7121 for any exceptions.

**Note:** A systemic issue is an issue that requires a change or modification to an established procedure, process or operation (e.g., training issues, computer program, campus procedure for processing claims). These are issues that potentially impact more than one taxpayer.

(2) Policy Statement 8–3 (formerly P-8-50) states the policy of the IRS concerning the reopening of cases previously closed by Appeals. Mutual concession cases will not be reopened based on action initiated by the Service except when the disposition involved fraud, malfeasance, concealment or misrepresentation of a material fact, an important mistake in mathematical calculation or discovery that a return contains unreported income, unadjusted deductions, credits, gains, losses, etc., resulting from the taxpayer's participation

## Attachment 5 Examination

in a listed transaction. Reopening the case requires the approval of the Appeals Director with oversight of the case, either Field Operations, Campus Operations or Specialty Operations. See IRM 1.2.17.1.3. The following explains references contained within the Policy Statement:

- a) Reference to a case closed on a basis of concessions made by both Appeals and the taxpayer, means a non-docketed case closed by a Form 870-AD or closing agreement.
- b) Reference to a case closed on a basis **not involving** concessions made by both Appeals and the taxpayer, means a non-docketed case closed by other than a Form 870-AD type of agreement. For example: A case closed by Form 870 or similar form, or closed by reason of failure of the taxpayer to file a timely petition with the United States Tax Court following issuance of a statutory notice of deficiency by Appeals, or an excise or employment tax case closed without agreement as to the assessment.
- c) Reference to a serious administrative omission regarding non-mutual concession cases includes criticism of an issue by the Joint Committee.

**Note:** Appeals will not reopen a case (whether initiated by the taxpayer or the Service), if the case was closed with finality. See IRM 8.7.7.13.1, Audit Reconsideration Cases.

(3) Under Policy Statement 8-3, no approval is required to reopen previously closed cases in the following situations:

- To allow carrybacks provided by law which were not taken into account in a prior closing.
- To assess an excessive portion of a tentative allowance.
- To adjust matters previously reserved by the government or by the taxpayer in an agreement. See IRM 8.6.4, Reaching Settlement and Securing an Appeals Agreement Form.

(4) See IRM 8.7.7, Claim and Overassessment Cases, for procedures in cases where the taxpayer files a claim for refund in a case previously closed by Appeals.

### 8.6.1.6.1 Defining a New Issue

(1) The restrictions on raising a new issue (Policy Statement 8-2) or reopening a closed case (Policy Statement 8-3) do not apply to new issues raised by taxpayers. For purposes of this IRM section, the term “new issue” means issues identified by Appeals in non-docketed cases.

## **Attachment 5 Examination**

**Note:** Reopening a previously agreed issue or raising a new issue has the same implications, and is, for all practical purposes, one and the same. Therefore, for purposes of this section, treat reopening an agreed issue the same as raising a new issue.

(2) A new issue is a matter not raised during Compliance's consideration.

(3) A new theory or alternative argument is not a new issue. See IRM 8.6.1.6.2(3), General Guidelines.

**Note:** A change in computation is not a new issue.

### **8.6.1.6.2 General Guidelines**

(1) Appeals will not raise new issues and will focus dispute resolution efforts on resolving the points of disagreement identified by the parties. The Appeals process is not a continuation or an extension of the examination process.

(2) Appeals will attempt to settle a case on factual hazards when the case submitted by Compliance is not fully developed and the taxpayer has presented no new information or evidence.

(3) In resolving disputes, Appeals may consider new theories and/or alternative legal arguments that support the parties' positions when evaluating the hazards of litigation in a case. However, the Appeals hearing officer will not develop evidence that is not in the case file to support the new theory or argument. See IRM 8.4.1.15.3.

(4) The discussion of new or additional cases (or other authorities, e.g., revenue rulings or revenue procedures) that supports a theory or argument previously presented does not constitute consideration of a new issue.

(5) In docketed cases, the Appeals hearing officer will consider a new issue affirmatively raised by the government in pleadings and may consider any new evidence developed by Compliance or Counsel to support the government's position on the new issue. The Appeals hearing officer's consideration of a new issue in a docketed case will take into account that the government has the burden of proof. See IRM 8.4.1.15.3, New Issues in Docketed Cases.

### **8.6.1.6.3 Burden of Proof when Government Raises New Issues**

(1) The burden of proof is on the government when it raises a new (affirmative) issue in a docketed case.

## **Attachment 5 Examination**

### **8.6.4.1.9 Disagreements with Appeals Determinations**

(1) This section provides formal procedures for Compliance to voice their concerns about an Appeals settled case. These procedures are not intended to replace any informal procedures currently in use at the local level. Local management in Compliance and Appeals continue to address and resolve disagreements over case resolutions at the lowest possible level. These formal procedures are used when the informal process results in Compliance still having unresolved significant concerns about the Appeals disposition of an issue.

(2) Formal disagreement is expressed by written dissent. The written dissent must clearly state the reason(s) for dissent, the rationale supporting the reason(s) for the dissent, and whether Compliance requests a conference with the appropriate Appeals executive (Director, Field Operations, Director, Campus Operations or Director, Specialty Operations). The rationale for the dissent should include:

- a) Citation of the specific facts that was not considered, or given enough weight, if Compliance believes Appeals did not properly consider the facts.
- b) Citation of the applicable law (i.e. Code Sec., Regs., Rev. Ruls., Ct. Cases, etc.) that was not considered and/or been accorded different weight if Compliance believes there was unsound application of the law by Appeals.

**Note:** Formal dissents by Compliance are not appropriate in an Appeals case where "hazards of litigation" were considered in the settlement of the case. Appeals clearly identifies within the Appeals Case Memo (ACM) those cases resolved by considering the "hazards of litigation." However, they are most appropriate in cases of fraud, malfeasance, or misrepresentation of a material fact (See IRC Section 7121) and those involving systemic issues.

**Note:** The decision to hold a conference is at the discretion of the appropriate Appeals executive. If a conference is held, the parties must follow the ex parte communication guidelines set forth in Rev. Proc. 2012-18 at Section 2.03(11).

(3) Dissents should be forwarded to the appropriate Appeals Field Operations, Campus Operations, or Specialty Operations Director via the "\*AP Formal Dissents" centralized mailbox within 90 days (extensions may be mutually agreed upon) of receipt of an ACM by Compliance. The appropriate Director will retrieve the formal dissent from the centralized mailbox and send Compliance an acknowledgment of receipt.

(4) Upon receipt of the dissent, the Appeals Director will determine whether a reply to the dissent is appropriate, and guided by Policy Statement P-8-3

## **Attachment 5 Examination**

(formerly P-8-50), and existing regulations and statutes, whether the case should be reopened.

**Exception:** Appeals cannot reopen final CDP determinations.

(5) If a TAS case is reopened and the determination changed as a result of this process, Appeals must notify TAS of the change.

(6) The above procedures do not preclude the exchange of non-case specific information that occurs through Advisory Boards or between analysts in Compliance and Appeals.