



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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MEMORANDUM FOR APPEALS EMPLOYEES

FROM: John V. Cardone /s/ *John V. Cardone*
DIRECTOR, POLICY, QUALITY AND CASE SUPPORT

SUBJECT: Interim Guidance on Appeals' Conference Practices

This memorandum issues guidance to Appeals employees regarding conference practices in work streams as described in the attachments until all applicable Internal Revenue Manual (IRM) sections are updated. Please distribute this information to all affected employees within your organization.

Purpose: The purpose of this memorandum is to make the Appeals conference policy in the affected IRMs consistent with the revised guidance in IRM 8.6.1, *Conference and Issue Resolution*, which is effective October 1, 2016 and applies to all cases received in Appeals on or after October 1, 2016.

Procedural Change: The guidance in revised IRM 8.6.1 communicates the policy on Appeals conference practices. Appeals is able to resolve most cases with telephone conferences. Appeals also conducts conferences by other means, including in-person, correspondence, and Virtual Service Delivery (VSD), where available. Revised IRM 8.6.1 contains factors to consider when deciding whether to hold an in-person conference and when to use the new case assistance procedures.

Affected IRMs: IRMs 1.1.7, 8.4.1, 8.4.2, 8.7.8, 8.11.1, 8.11.4, 8.22.5, 8.23.2, 8.24.1, 8.25.2, and 25.15.12.

Effective Date/Effect on Other Documents: This guidance is effective on October 1, 2016, and will be incorporated into the IRMs within two years from the date issued.

Contact: If you have any questions, please follow established procedures on [How to Contact an Analyst](#).

cc: www.irs.gov

Attachments: (1) Examination and (2) Collection

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The IRM sections below provide clarification on Appeals' conference practices in Examination work streams.

**1.1.7.1
Chief, Appeals**

(3) To accomplish the mission, Appeals:

- f. Provides taxpayers a variety of dispute resolution methods to resolve disputes without litigation, including but not limited to conferences, correspondence, and alternative dispute resolution services including fast-track settlement, mediation, early referral of issues to Appeals and simultaneous consideration of issues by Appeals and Competent Authority.

**8.4.1.7
Docketed Case Received in Appeals**

(4) Deleted this sentence in the **Note: Existing Case Routing Guidelines:**

Transfers for face-to-face conferences, etc., should continue using normal procedures as explained in [IRM 8.1.1.1](#) (3), [IRM 8.4.2](#), [IRM 8.20.6](#), and the Appeals Case Routing page at: <http://appeals.web.irs.gov/APS/caserouting.htm>.

**8.4.1.17.2
Stipulation/Decision Preparation**

(5) During an in-person conference, the ATE will prepare settlement documents and seek the necessary signatures, if possible. If not, or when the conference is conducted by any other method, the ATE will mail settlement documents to the petitioner or counsel of record as soon as possible after the conference.

**8.4.2.3
Request for In-Person Conference**

(1) If the petitioner or counsel of record requests an in-person conference, follow the procedures in:

- a) IRM 8.6.1.4.1, *Conference Practice*
- b) IRM 8.6.1.4.5, *Virtual Service Delivery (VSD)*

**8.4.2.5
Transfers of Docketed Cases between Appeals Offices**

(1) When appropriate, Appeals transfers docketed cases between offices for considerations such as for workload balancing.

- (2) See IRM 8.4.2.3, *Request for In-Person Conference*. This covers procedures to follow if the petitioner or counsel of record requests an in-person conference.

**8.7.8.3.7
AO Procedures for EP Conferences**

Deleted (2) reflected below in full:

Schedule the conference as quickly as possible after considering workload and travel commitments. Hold conferences at a mutually convenient IRS office. Conferences by telephone are permitted when agreeable to both parties and feasible in terms of the complexity of the case. If both parties agree no useful purpose is served by holding a conference, settle the disputed issues in the case based upon the protest and the rest of the administrative record.

**8.11.1.1.7
Consideration of Penalty Cases**

- (5) Appeals holds conferences to resolve issues in dispute: PENAP conferences are usually held by telephone or correspondence. If the taxpayer or representative requests an in-person conference, follow the procedures in:

- a) IRM 8.6.1.4.1, *Conference Practice*
- b) IRM 8.6.1.4.5, *Virtual Service Delivery (VSD)*

**8.11.4.1
Penalty Appeals (PENAP) Program**

- (3) PENAP conferences are usually held by telephone or correspondence. If the taxpayer or representative requests an in-person conference, follow the procedures in:

- a) IRM 8.6.1.4.1, *Conference Practice*
- b) IRM 8.6.1.4.5, *Virtual Service Delivery (VSD)*

**25.15.12.9
Initial Contact**

- (4) Innocent Spouse conferences are generally conducted by telephone or correspondence. If the appellant spouse or representative requests an in-person conference, follow the procedures in:

- a) IRM 8.6.1.4.1, *Conference Practice*
- b) IRM 8.6.1.4.5, *Virtual Service Delivery (VSD)*

25.15.12.15.8

Appeals Technical Employee Assignment and Consideration

(1) Innocent Spouse appeals are usually conducted by telephone or correspondence, and assigned to an ATE in the Cincinnati Campus Appeals office or transferred to another ATE for workload balancing. If the appellant spouse or representative requests an in-person conference, follow the procedures in:

- a) IRM 8.6.1.4.1, *Conference Practice*
- b) IRM 8.6.1.4.5, *Virtual Service Delivery (VSD)*

The IRM sections below provide clarification on Appeals' conference practices in Collection work streams.

**8.22.5.6.1
Types of Appeals Conference**

(1) Appeals conference practices are found in IRM 8.6.1.4, *Conference Techniques Used by Appeals Technical Employees*, and the following subsections:

- IRM 8.6.1.4.1, Conference Practice
- IRM 8.6.1.4.1.1, In-Person Conferences: Case Assistance
- IRM 8.6.1.4.1.2, In-Person Conferences: Circuit Riding
- IRM 8.6.1.4.5, Virtual Service Delivery (VSD) where it is available

Note: VSD employs teleconferencing technology permitting virtual face-to-face meetings from remote locations.

(2) The Substantive Contact (SCL) Letter offers taxpayers the opportunity for an in-person conference. Taxpayers who request **and** qualify for an in-person conference will be accommodated following procedures in IRM 8.6.1.4.1.1, *In-Person Conferences: Case Related Assistance*, IRM 8.6.1.4.1.2, *In-Person Conferences: Circuit Riding* or IRM 8.6.1.4.5, *Virtual Service Delivery*. Employees will utilize these procedures to afford taxpayers an in-person conference at an Appeals office closest to their residence or principal place of business.

(3) If the taxpayer is entitled to a CDP hearing but neglects to participate, a review of the documents in the case file constitutes the CDP hearing.

(4) Regardless of the provisions in IRM 8.6.1.4.1, *Conference Practice*, an in-person conference will not be offered in the following circumstances:

- a) Taxpayers identified as potentially dangerous, without Criminal Investigation or Treasury Inspector General Tax Administration protection at the meeting. See IRM 25.4 for additional information about Potentially Dangerous Taxpayer and Caution upon Contact Programs.
- b) Taxpayers who include a frivolous, delaying or impeding argument in their hearing request.
- c) Taxpayers who are not eligible for the collection alternative they seek based on IRS policy.

(5) Deleted.

8.22.5.6.1.1 In-Person Conference in the Absence of Eligibility for Collection Alternatives

- (1) A taxpayer seeking an in-person conference must meet the criteria in IRM 8.6.1.4.1.
- (2) If a taxpayer meets the criteria for an in-person conference and the sole purpose of the conference is to discuss a collection alternative, Appeals may require financial information and/or compliance with filing requirements or deposits of tax as an additional condition to granting the in-person conference **if** the collection alternative requires such.
- (3) Treas. Reg. 301.6330-1(e) states, "Taxpayers will be expected to provide all relevant information requested by Appeals, including financial statements, for its consideration of the facts and issues involved in the hearing." Treas. Reg. 301.6330-1 Q&A-D8 further states, "A face-to-face CDP conference concerning a collection alternative, such as an installment agreement or an offer to compromise liability, will not be granted unless other taxpayers would be eligible for the alternative in similar circumstances." Eligibility requirements are those threshold conditions that must be met in order for Appeals to consider the taxpayer's proposed alternative to collection. The regulations give the filing of required returns and making certain required deposits of tax as examples of eligibility requirements.
- (4) If the taxpayer otherwise meets the criteria for an in-person conference and the sole purpose of the CDP hearing is to discuss a collection alternative which the taxpayer does not appear eligible for, Appeals must give taxpayers an opportunity to present:
 - a) Required financial information
 - b) Unfiled returns
 - c) Evidence of deposit of tax necessary to enable consideration of collection alternative – see table below
- (5) The following table contains the requirements for consideration of collection alternatives and thus, when "other taxpayers would be eligible for the alternative in similar circumstances":

| Collection Alternative | IRM Reference | Financial Info | | Unfiled Returns | | ES/FTDs | |
|---|---|----------------|----|-----------------|----|---------|----|
| | | Yes | No | Yes | No | Yes | No |
| Installment payment agreement (including partial payment installment agreements) involving non-trust fund tax | <ul style="list-style-type: none"> • IRM 5.14.1.3, <i>Identifying Pending, Approved and Rejected Installment Agreement Proposals on IDRS</i>, regarding financial information • IRM 5.14.1.4.2, <i>Compliance and Installment Agreements</i>, regarding unfiled returns and deposits of tax | X | | X | | | X |
| Guaranteed or streamlined installment payment agreement | <ul style="list-style-type: none"> • IRM 5.14.5, <i>Streamlined, Guaranteed and In-Business Trust Fund Express Installment Agreements</i>, regarding financial info • IRM 5.14.1.4.2 regarding unfiled returns and deposits of tax (ES and FTDs) | | X | X | | | X |
| In-business trust fund installment agreement | IRM 5.14.7.4 , <i>In-Business Trust Fund Installment Agreements Requiring Financial Analysis and Determining Ability to Pay</i> | X | | X | | X | |

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| Collection Alternative | IRM Reference | Financial Info | | Unfiled Returns | | ES/FTDs | |
|--|--|----------------|----|-----------------|----|---------|----|
| | | Yes | No | Yes | No | Yes | No |
| Express in-business trust fund installment payment agreement | IRM 5.14.5.4 , <i>In-Business Trust Fund Express Installment Agreements</i> | | X | X | | | X |
| Offer in compromise for individual (based upon doubt as to collectibility) | <ul style="list-style-type: none"> • IRM 5.8.3.5, <i>Processing Forms 656 and Initial Offer Payments</i>, regarding financial information • IRM 5.8.7.2.2.2, <i>Return for Inadequate Estimated or Insufficient Withholding Tax Payments</i>, regarding ES and adequate withholding (and that such is a basis for returning an offering but not a basis for not considering the offer) | X | | X | | | X |

| Collection Alternative | IRM Reference | Financial Info | | Unfiled Returns | | ES/FTDs | |
|---|--|----------------|----|-----------------|----|---------|----|
| | | Yes | No | Yes | No | Yes | No |
| Offer in compromise involving unpaid trust fund tax | <ul style="list-style-type: none"> • IRM 5.8.3.5, regarding financial information • IRM 5.8.7.2.2.3, <i>Return for Failure to Make Timely Federal Tax Deposit</i>, regarding FTDs (and that such is a basis for returning an offering but not a basis for not considering the offer) | X | | X | | | X |

Caution: The determination of a taxpayer's eligibility for a collection alternative must be made without regard to the taxpayer's ability to pay the unpaid tax. Submission of financial information is not an opportunity for Appeals to prejudge the viability of a collection alternative prior to the conference. An in-person conference can't be denied because the initial review of the financial information shows that the taxpayer appears to be able to pay the tax in full or isn't able to make the payments proposed.

- (6) If the taxpayer meets the criteria for an in-person conference as noted in IRM 8.6.1.4.1 and the sole basis of the CDP request is to discuss a collection alternative, give the taxpayer a reasonable opportunity (14 calendar days) to:
- Demonstrate** they are eligible for the collection alternative they seek (e.g., the taxpayer has already filed the required return or there was no filing requirement for a particular tax period), or
 - Become** eligible by filing required returns and/or making required deposit of tax
- (7) Advise the taxpayer that Appeals will schedule a telephone conference if he/she fails to provide the necessary financial information by the deadline.
- (8) There may be instances in which a taxpayer needs more than 14 days to make a deposit of tax, prepare financial information or file a delinquent return. An extension to a deadline may be granted if the facts support it.

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- (9) If the taxpayer submits some but not all requested financial information, determine whether the information is sufficient to practically discuss the proposed collection alternative at an in-person conference. For example: the missing information is insignificant in determining ability to pay or may be easily obtained from a different, routinely used source.
- (10) Do not condition an in-person conference on the production of supporting documents to the collection information statement for a taxpayer who otherwise meets the criteria for an in-person conference.
- (11) Grant an in-person conference if the financial information is less than 12 months old as this meets the general eligibility requirement. An in-person conference may be conditioned on the submission of updated financial information if the taxpayer's financial condition is known to have significantly changed since the date the prior financial information was prepared.
- (12) The following table contains scenarios to assist in determining whether a taxpayer who meets the criteria in IRM 8.6.1.4.1 and whose sole issue is the discussion of a collection alternative should be granted an in-person conference:

| Scenario | In-Person? |
|---|------------|
| Taxpayer requests an in-person conference to discuss an IA. You inform the taxpayer that she must submit her unfiled returns for 2009 and 2010 to qualify for an IA and to obtain the in-person conference. Taxpayer states these will be refund returns and neglects to submit them by the deadline given. | No |
| Taxpayer requests an in-person conference to discuss a doubt as to collectibility OIC. She submitted a Form 433-A that was missing information. You determine there is sufficient information to discuss the merits of her OIC and that the missing information can be secured from another source. | Yes |
| Taxpayer requests an in-person conference to discuss evidence he has that shows payments made towards the liability are not reflected on his transcript. | Yes |
| Taxpayer requests an in-person conference for a collection alternative. Taxpayer states he does not understand how to calculate the offer amount on an OIC. You schedule an in-person conference to explain how to fill out Form 656. | Yes |

8.22.5.6.1.2

Face-to-Face Conference and Currently Not Collectible (CNC) Hardship

- (1) A taxpayer seeking an in-person conference must meet the criteria in IRM 8.6.1.4.1.
- (2) If a taxpayer meets the criteria for an in-person conference and the sole purpose of the CDP conference is to discuss CNC hardship, Appeals may require the taxpayer to provide the financial or other documentation necessary to consider the claim of CNC hardship as an additional condition to granting an in-person conference, unless Appeals determines that the in-person conference is necessary to explain the requirements for obtaining CNC-hardship status.

Example: The taxpayer meets the criteria in IRM 8.6.1.4.1 because the taxpayer has special needs and the ATE determined those special needs would require an in-person conference to explain CNC hardship requirements without the submission of financial or other documentation.

- (3) Give the taxpayer a reasonable opportunity (14 calendar days) to provide the financial or other documentation necessary to consider the claim of CNC hardship. Advise the taxpayer that Appeals will schedule a telephone conference if he/she fails to provide the necessary information by the deadline.
- (4) If a taxpayer submits some but not all of the requested financial or other documentation, determine whether the information is complete enough to practically discuss the CNC request at an in-person conference. If it is not, give the taxpayer a reasonable opportunity (14 calendar days) to supplement its submission to qualify for the in-person conference requested.
- (5) If the taxpayer otherwise qualifies for an in-person conference and the UBA is less than \$10,000, the taxpayer may not need to submit financial information to qualify for CNC-hardship. See [IRM 5.16.1.2.9](#), *Hardship*.

8.22.5.6.1.3

Case Transfer Procedures

- (1) Procedures regarding the transfer of cases can be found in IRM 8.6.1.4.2, *Change of Appeals Technical Employee (ATE) After Initial Contact*.
- (2) Generally, a taxpayer does not have the right to a conference with an ATE other than the one assigned to his or her case. However, in CDP cases, where the ATE has had prior involvement, the case must be reassigned. See IRM 8.22.5.4.1, *No Prior Involvement*.
- (3) Employees will utilize procedures in IRM 8.6.1.4.1.1, *In-Person Conferences: Case Related Assistance*, IRM 8.6.1.4.1.2, *In-Person Conferences: Circuit Riding* or IRM

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8.6.1.4.5, Virtual Service Delivery to accommodate an in-person conference request when an in-person conference is appropriate.

8.23.2.1
Receipt

(2) Field Collection, Field Examination and the Centralized Offer in Compromise (COIC) sites forward taxpayers' appeals of rejected offers. The campus Appeals offices in Brookhaven and Memphis work the bulk of the cases coming out of the COIC sites. The most complex COIC offers and Compliance field source cases are generally assigned to the Appeals office that covers the taxpayer's geographical location.

(3) Within 30 days of assignment of a rejected offer case in Appeals, Letter 5576, *Appeals Offer in Compromise Acknowledgement and Conference Letter* is sent to the taxpayer. Enclose Publication 4227, *Overview of Appeals Process*, and Publication 4167, *Appeals - Introduction to Alternative Dispute Resolution*. The purpose of this letter is to:

- Advise the taxpayer of receipt of the case in Appeals
- Provide the Appeals contact person's name and telephone number
- Explain what the taxpayer can expect from Appeals during the appeal process,
- Explain what Appeals generally expects from the taxpayer during the Appeals process
- Schedule the telephone conference

Note: Appeals campus sites in Brookhaven and Memphis should not enclose Publication 4167 with Letter 5576 because OICs considered at an Appeals campus site are not presently eligible for alternative dispute resolution processes.

8.23.2.2
Assignment of OIC Case

(1) As previously indicated, Appeals receives rejected OIC cases from a variety of sources. Assignments should be based upon case complexity and the experience level of the Appeals Technical Employee (ATE). If the complexity of a certain case extends beyond the technical skills available in a particular location, the case should be reassigned.

(2) Appeals management will occasionally assign or reassign cases to other areas to effectively manage inventory levels.

- (3) OICs rejected by a COIC site may be resolved through written or telephone contact. In working these cases, you must be knowledgeable with this IRM text as well as with [IRM 5.8](#), *Offer in Compromise*, [IRM 5.14](#), *Installment Agreements*, [IRM 5.15](#), *Financial Analysis*, and [IRM 5.16](#), *Currently Not Collectible*.

8.23.2.2.1

Transfer of OIC Cases

- (1) If the taxpayer requests an in-person conference in response to Letter 5576, *Appeals Offer in Compromise Acknowledgement and Conference Letter*, you may grant the request if the provisions in IRM 8.6.1.4.1, *Conference Practice*, are met.
- (2) There is no separate Appeals policy for OIC cases and in-person hearings. OIC conferences are usually held by telephone or correspondence. If the taxpayer or representative requests an in-person conference, follow the procedures in:
- a) IRM 8.6.1.4.1.1, *In-Person Conferences and Circuit Riding*
 - b) IRM 8.6.1.4.5, *Virtual Service Delivery (VSD)*
- (3) Deleted.
- (4) A taxpayer or representative might request to have a case transferred to the Appeals office closest to the taxpayer for an in-person conference. Case transfer procedures are found in IRM 8.6.1.2. You may accommodate a taxpayer's or representative's request for an in-person conference by following procedures in IRM 8.6.1.4.1.1, *In-Person Conferences and Circuit Riding* and IRM 8.6.1.4.5, *Virtual Service Delivery (VSD)*.
- Note:** [Revenue Procedure 2014-63](#) was released December 29, 2014, creating a nationwide post-Appeals mediation (PAM) program for **field** Offer in Compromise (OIC) cases. [IRM 8.26.9](#), *Post Appeals Mediation Procedures for Collection Cases*, supplements [Revenue Procedure 2014-63](#) and was updated March 16, 2015. The alternative dispute resolution (ADR) programs are designed to supplement and not replace the standard appeals process. Appeals' primary emphasis is on the standard appeals process and not on ADR. OIC cases will not be transferred from a campus location for the purpose of participating in PAM
- (5) Deleted.
- (6) IRM 8.6.1.4.1, *Conference Practice*, and the related subsections contain Appeals' in-person conference procedures. Where the taxpayer has requested an in-person conference and where an in-person conference is appropriate per IRM 8.6.1.4.1, the ATE will accommodate the request by following IRM 8.6.1.4.1.1, *In-Person*

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Conferences: Case Assistance, or IRM 8.6.1.4.1.2, In-Person Conferences: Circuit Riding, as appropriate.

(7) Deleted

(8) Deleted.

(9) Deleted.

8.24.1.2
Collection Appeals Program (CAP)

(5) Given the CAP program is an administrative appeal process, taxpayers are not entitled to an in-person hearing by statute. However, there may be rare situations in which an in-person hearing request should be granted to reach account resolution. Appeals conference techniques are described in IRM 8.6.1, *Conference and Settlement Practices – Conference and Issue Resolution*.

Note: If an in-person hearing is not necessary to resolve the account or fully explain Appeals' determination to the taxpayer or representative, the conference should be held by telephone.

8.25.2.5
Conference Guidelines

(1) Under [IRM 8.1.1.1.\(3\)](#), *Accomplishing the Appeals Mission*, Appeals generally conducts conferences by telephone or correspondence.

(2) Refer to [IRM 8.6.1.4.1](#), *Conference Practice*, and subsections, for Appeals conference guidelines and procedures. These conference techniques apply to TFRP TBOR2 and Claim cases.

(3) Deleted.

(4) An Appeals Office may transfer a case when the transfer does not conflict with the provisions of IRM 8.6.1.2, *Transfer Procedures*, and 8.6.1.4.2, *Change of Appeals Technical Employee (ATE) After Initial Contact*. To reduce the length of time a case is in Appeals, it is important to initiate the transfer of appropriate cases as quickly as practicable in the overall Appeals process.

(5) In general, Appeals will not transfer a case after the taxpayer or representative has participated in substantive discussion/negotiations with the hearing officer.

(6) through (17): No change to published guidance dated (10-24-2014).

