



INDEPENDENT OFFICE
OF APPEALS

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

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MEMORANDUM FOR ALL IRS INDEPENDENT OFFICE OF APPEALS EMPLOYEES

FROM: Steven M. Martin /s/ *Steven M. Martin*
Director, Operations Support

SUBJECT: Appeals Case Management System (ACMS) procedure updates
for IRM 8.1.10, Ex Parte Communications

This guidance provides procedures for integrating ACMS to IRM 8.1.10, Ex Parte Communications. Please distribute this information to all impacted employees within your organization.

Purpose: This guidance is issued to update IRM procedures reflecting the functionality and process changes for the IRS Independent Office of Appeals (Appeals) new case management system, ACMS.

Background/Source(s) of Authority: Appeals Centralized Database System (ACDS), Appeals' aging legacy system, is being replaced by ACMS, a more modernized system. Appeals contracted Salesforce to create ACMS, which will provide Appeals with a new level of automation and analytics. These updates will allow for more effective collaboration within Appeals and, in the future, with other IRS business units.

Procedural Change: Release 1 of ACMS will focus on Collection-sourced case work, while additional ACMS releases will incorporate the remaining workstreams. Future releases will incorporate concepts introduced in this guidance and will be reinforced via training and applicable user guides. Procedural changes pertaining to this guidance are included in the attachment.

Additional Information: Additional information on ACMS can be found on the Appeals Intranet page – Appeals Case Management System (ACMS). This site will contain links for helpful information with ACMS, training documents, etc.

Effect on Other Documents: This guidance may be incorporated into affected IRMs within two years from the date of this memorandum.

Effective Date: This guidance is effective as of the date of this memorandum.

Contact: Appeals employees should follow existing procedures to elevate questions through their management chain and follow established procedures on How to Contact an Analyst.

Attachment

cc: www.irs.gov

8.1.10.5 (MM-DD-YYYY)

Opportunity to Participate

(1) Communications between Appeals and an originating function employee are not considered ex parte communications **IF** Appeals provides the taxpayer/representative an opportunity to participate in the communications. If the taxpayer/representative chooses not to participate in the communications, the ex parte communication rules do not apply. See section 2.01(1)(a)(v) of Revenue Procedure 2012-18, Communications in Which the Taxpayer/Representative is Given an Opportunity to Participate.

(2) If Appeals has a meeting or conference call with the originating function to discuss the strengths or weaknesses of the facts, issues, or positions of the taxpayer's case, the taxpayer/representative must be given a reasonable opportunity to participate. A preconference meeting is an example of this type of meeting. See section 2.03(5) of Revenue Procedure 2012-18, Preconference Meetings, and IRM 8.7.11.11, Pre-Conference Meeting, for additional details about preconference meetings.

(3) Reasonable accommodations will be made to reach a mutually acceptable date and time for a discussion or meeting. However, the accommodations made shall not unreasonably delay the date and time for which Appeals schedules the discussion or meeting. Facts and circumstances will dictate what constitutes an unreasonable delay. If no agreement can be reached regarding a mutually acceptable date and time for the discussion or meeting, or if the taxpayer/representative seeks to unreasonably delay a discussion or meeting, Appeals will proceed with the discussion or meeting.

(4) The following table contains steps for ensuring Appeals has adequately offered the taxpayer/representative an opportunity to participate (see section 2.01(3) of Revenue Procedure 2012-18, Opportunity to Participate):

If ...	Then ...
A meeting or conference call is scheduled with an originating function and the strengths or weaknesses of the facts, issues, or positions of the case will be discussed	Notify the taxpayer/representative of a scheduled meeting or conference call and invite the taxpayer/representative to participate
The taxpayer/representative is unable to participate in the meeting or conference call at the scheduled time	<ol style="list-style-type: none">1. Find out the reason(s) why2. Ask the taxpayer/representative for an alternative date(s)3. Base your decision to reschedule on the facts and circumstances of the case, including the reason(s) why the taxpayer/representative is not available for the originally scheduled meeting or conference call and whether the alternative date(s) proposed by the taxpayer/representative is reasonable4. Document the case action record

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If ...	Then ...
Based on the facts and circumstances of the case, the meeting or conference call is rescheduled	<ol style="list-style-type: none"> 1. Notify the taxpayer/representative and the originating function of the new date and time 2. Advise the taxpayer/representative that the meeting or conference call will not be further rescheduled 3. Document the case action record
<ol style="list-style-type: none"> a. Based on the facts and circumstances of the case, the meeting or conference call is not rescheduled, or b. No agreement is reached regarding a mutually acceptable date and time for the meeting or conference call 	<ol style="list-style-type: none"> 1. Notify the taxpayer/representative of the date and time of the meeting or conference call 2. Proceed with the meeting or conference call 3. Document the case action record, including that the taxpayer/representative declined to participate 4. Provide the taxpayer/representative with the substance of the discussion and give him/her a reasonable period of time within which to respond
Appeals receives a written communication from an originating function that addresses the strengths or weaknesses of the facts, issues, or positions of the taxpayer's case that was not generated in the ordinary course of developing the case and the reason for including the material was to influence Appeals	<ol style="list-style-type: none"> 1. Notify your manager of the receipt of the ex parte communication 2. Notify the taxpayer/representative of the receipt of the ex parte communication 3. Provide the taxpayer/representative with a copy of the written communication and give him/her a reasonable period of time within which to respond either verbally or in writing, including their input regarding the appropriate remedy to cure the breach of the ex parte communication rules 4. Document the case action record

8.1.10.5.1 (MM-DD-YYYY)

Waiver

(1) A taxpayer/representative has the option of granting a waiver on a communication-by- communication basis or a waiver covering all communications that might occur during the course of Appeals' consideration of a specified case.

(2) When discussing an ex parte communication waiver with a taxpayer or representative, make sure:

- Both parties are clear about whether the waiver is for a specific communication or covers all communications

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- The taxpayer/representative understands that he/she may revoke the waiver at any time, in which case the revocation would be effective with respect to communications occurring subsequent to the revocation
- (3) A written waiver is recommended but not required. A written waiver signed by the taxpayer or representative provides both the taxpayer/representative and Appeals with a record of the date the waiver was granted and the communication(s) covered, which helps avoid possible misunderstandings or misinterpretations.
- (4) Similarly, a written revocation of the ex parte communication waiver is recommended but not required.
- (5) If a waiver is granted verbally by the taxpayer/representative, document the case action record with:
- a. The date (and time, if necessary) the waiver was granted, and
 - b. Whether the waiver is for a specific communication or for all communications
- Note:** If the verbal waiver is intended to cover *all* communications, Appeals should obtain a written waiver from the taxpayer/representative.
- (6) See section 2.01(3)(c) of Revenue Procedure 2012-18, Opportunity to Participate, Waiver, for additional information.

8.1.10.6 (MM-DD-YYYY)

Curing Ex Parte Communication Breaches

- (1) The ex parte communication rules set forth in Revenue Procedure 2012-18 do not create substantive rights affecting the taxpayer's tax liability or the IRS's ability to determine, assess, or collect the tax liability, including statutory interest and any penalties, if applicable.
- (2) All IRS employees, including Appeals employees, are responsible for ensuring compliance with the ex parte communication rules.
- (3) Appeals managers will consider feedback from other functions and will be responsible for monitoring compliance during their day-to-day interaction with employees, as well as during workload reviews and closed case reviews. Ex parte communication breaches will be addressed in accordance with existing administrative and personnel processes on a case-by-case basis.
- (4) An Appeals employee (see table in IRM 8.1.10.1 (6) above) who discovers an ex parte communication breach shall promptly document the case action record and notify his/her immediate manager. The Appeals manager will notify the manager of the employee who violated the ex parte communication rules. The information provided by the Appeals manager shall be limited to the specific details of the ex parte communication violation and may not include any discussion of the merits of the appealed case or recommendation of personnel action. The appeals manager will notify the Area Technical Advisor who will enter the information in the Ex Parte Report System set up to monitor breaches. As set forth in Revenue Procedure 2012-18, the system will generically describe the breach of the ex parte rules and will not retain case or employee specific information.
- (5) Prompt disclosure to the taxpayer/representative of the ex parte communication breach is important to promote transparency and preserve the integrity of the Appeals process. Failing to do so could create additional difficulties and added burden for both the taxpayer and Appeals if the breach were to come to light at some later point in

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time, such as through a Tax Court proceeding.

(6) Most breaches of the ex parte communication rules may be cured by:

- a. Timely notifying the taxpayer/representative,
- b. Promptly sharing the communication or information at issue, and
- c. Affording the taxpayer/representative a reasonable period of time within which to respond with input, including the requested remedy

(7) Some breaches may warrant reassignment of the case to a different Appeals employee in order to protect taxpayer rights and preserve Appeals' independence as set forth in RRA 98 section 1001(a)(4).

(8) The specific administrative remedy that will be made available in the case is within the sole discretion of Appeals and will be based on the facts and circumstances of the particular case. To assist in determining the appropriate remedy, the Appeals employee shall request input from the taxpayer/representative. In determining the appropriate remedy, Appeals will consider:

- a. The extent to which the ex parte communication may have impaired, or appeared to impair, the Appeals employee's independence from the originating function,
- b. Whether the taxpayer/representative's opportunity to learn about, and respond to, the ex parte communication has, or would, fully restore Appeals' appearance of independence, and
- c. The remedy, if any, proposed by the taxpayer/representative.

(9) The Appeals Area Director or equivalent level Appeals manager is the deciding official and his/her decision is not appealable. A description of the remedy will also be recorded in the Ex Parte Report System described above.

Example: Appeals officer Jones received an unexpected telephone call from the revenue agent who had recently referred an income tax case to Appeals that was assigned to Jones. The revenue agent indicated he had a related case involving the same transaction and asked when Jones thought the case might be closed. After providing the revenue agent with an estimated closing date, the revenue agent quickly told Jones he felt the taxpayer was not credible, was likely dissipating assets in anticipation of owing tax and that she should simply disregard the taxpayer's baseless arguments and sustain the proposed assessment. Jones promptly terminated the call, immediately notified her Appeals team manager, and documented the case action record. The Appeals team manager notified the revenue agent's manager of the ex parte communication violation. Jones contacted the representative, notified him of the details of the ex parte communication breach and gave him a reasonable period of time within which to respond with comments including input as to the requested remedy. The representative requested that Jones consider additional information, addressing the revenue agent's ex parte comments, and Jones did so in due course as part of her further consideration of the case. Jones' actions cured the ex parte communication breach.

Example: Appeals officer Salmon was conducting his initial review of an offer in compromise (OIC) case. The Collection OIC specialist entered into their case history a rebuttal of each position outlined by the taxpayer's protest letter. Salmon noticed that it appeared Collection violated the ex parte communication rules by not sharing the rebuttal comments with the taxpayer concurrent with sending the case to Appeals as required by section 2.03(4)(c) of Revenue

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Procedure 2012-18, Rebuttal to Protest. The case history did not reflect any discussion of the rebuttal comments with the taxpayer nor a letter from the Collection group manager to the taxpayer. Salmon contacted the representative and confirmed the rebuttal comments were not shared. Salmon promptly notified his Appeals team manager and documented the case action record. The Appeals team manager notified the OIC specialist's manager of the ex parte communication violation. Salmon shared the rebuttal comments entered in the case history with the representative and gave the representative a reasonable period of time within which to respond with comments, including input as to the requested remedy. The representative requested that Salmon consider additional information, addressing the OIC specialist's rebuttal comments. As Salmon continued to work the case, he considered the information provided by the representative. Salmon's actions cured the ex parte communication breach.

Note: No ex parte communication violation would have occurred in the above example **if** the Collection OIC specialist's case history entry had merely contained a neutral list of unagreed issues, without discussion, with an indication of which issues raised in the taxpayer's protest, if any, were conceded.

(10) The following table reflects the necessary steps for addressing breaches of the ex parte communication rules discovered while the case is in Appeals' jurisdiction:

Step	Action
1	Notify your immediate supervisor
2	Notify the taxpayer and representative: <ul style="list-style-type: none"> a. With the details of the breach, b. That he/she has an opportunity to provide comments, including a recommended remedy, c. The period of time by which the comments or recommended remedy must be received (no extension of time will be granted absent unusual circumstances), and d. That Appeals will make the final decision as to the appropriate remedy
3	Document the case action record with the following: <ul style="list-style-type: none"> a. A description of the breach of the ex parte communication rules, b. How you became aware of the breach, c. When and how you notified your immediate supervisor, and d. When and how you notified the taxpayer/representative and the date by which his/her comments and remedy input are due
4	After the taxpayer/representative's input is received, document the case action record with the following: <ul style="list-style-type: none"> a. The taxpayer/representative's input, b. The remedy requested by the taxpayer/representative, c. The final remedy determined by Appeals, and d. How and when the final remedy determined by Appeals was communicated to the taxpayer/representative

Step	Action
	<p>If no taxpayer/representative input or remedy request is received within five business days after the date by which the input or remedy request was due, document the case action record with the following:</p> <ul style="list-style-type: none"> a. The taxpayer/representative did not provide input or request a remedy within the established timeframe, b. The final remedy determined by Appeals, and c. How and when the final remedy determined by Appeals was communicated to the taxpayer/representative

(11) For a discussion of remands by the Tax Court for breaches of the ex parte communication rules in CDP cases, see section 2.10(2) of Revenue Procedure 2012-18, Remedies Available to Taxpayers, Collection Due Process Cases.

8.1.10.7 (MM-DD-YYYY)

Documenting Ex Parte Communications

(1) RRA 98 section 1001(a)(4) prohibits ex parte communications between Appeals employees and other IRS employees "to the extent that such communications appear to compromise the independence of the appeals officers." Because *appearance* is the determinative standard under RRA 98 section 1001(a)(4), it is important to accurately and adequately document ex parte communications with other IRS employees. This section addresses the documentation requirements:

- For both prohibited and permissible communications
- With both an originating function or another IRS function

(2) The Appeals technical employee will document all ex parte communications with originating function employees, whether written or verbal, in the case action record on a contemporaneous basis, as follows:

- a. The general purpose for either contacting or being contacted by the originating function IRS employee
- b. The answer, information, or document(s) received from the originating function IRS employee

Note: See IRM 8.1.10.6 above for details on when information or documents received from an originating function employee must be shared with the taxpayer or representative.

- c. Whether the taxpayer or representative provided a waiver covering the ex parte communication in accordance with section 2.01(3)(c) of Revenue Procedure 2012-18, Opportunity to Participate, Waiver

Example: An appeals officer reviewed a new income tax case in which the revenue agent's work papers refer to a certain document that was not included in the administrative file sent to Appeals. The appeals officer called the revenue agent and asked whether the document was still available. The revenue agent advised the appeals officer that the entire administrative file was sent to Appeals and she no longer has the document. Even though this communication regarded a ministerial or administrative matter and, thus, was permissible, the appeals officer

contemporaneously documented the case action record that he contacted the revenue agent to inquire about the referenced document and the response he received from the revenue agent. Months later, the taxpayer's representative contacted the appeals officer's manager alleging an ex parte communication violation. The Appeals manager reviewed the case file and case action record and explained to the representative the details of the communication and why it was permissible.

Example: An appeals officer answered an incoming telephone call. It was a Centralized Offer in Compromise (COIC) employee calling to find out when the CDP offer in compromise was expected to be closed. The appeals officer indicated a conference was scheduled for later that week and estimated a date of closing within the next six months. Even though this communication was with respect to a ministerial or administrative matter, and, thus, was permissible, the appeals officer immediately documented the case action record indicating she was contacted by the COIC employee inquiring about the anticipated date the CDP offer would be closed and accurately documented the response given to the COIC employee.

(3) Although not required, it is also a good practice for Appeals employees to document communications with non-originating function IRS employees in the case action record on a contemporaneous basis.

Example: An appeals officer was contacted by CI inquiring about the type of case being considered by Appeals. The appeals officer advised the CI special agent that the case was a reasonable cause penalty abatement request. The special agent told the appeals officer the case before Appeals would not interfere with the ongoing criminal investigation and that Appeals may proceed with considering the taxpayer's penalty appeal. The appeals officer made a general entry of the discussion with the special agent in the case action record.