



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

5.8.4

FEBRUARY 10, 2023

EFFECTIVE DATE

(02-10-2023)

PURPOSE

- (1) This transmits revised Internal Revenue Manual (IRM) 5.8.4, Offer in Compromise, Investigation.

MATERIAL CHANGES

- (1) The following table outlines changes made to IRM 5.8.4:

IRM SECTION REVISED	SUMMARY of CHANGES
effect on other documents	Added IGMs: <ul style="list-style-type: none">• SBSE-05-0221-0014, IG on Completion of Initial Compliance Screening, Verification of Low-Income Waiver, and Filing of Notice of Federal Tax Lien on Offer Acceptances, dated February 22, 2021• SBSE-05-0422-0014, IG on Federal Tax Deposit Compliance for Offers in Compromise, dated April 25, 2022• SBSE-05-0522-0034, IG on Initial Compliance Screening Time frames, dated May 4, 2022.• SBSE-05-0721-0025, IG Involving IRS Received Date on Related Offers, dated July 07, 2021.• SBSE-05-1021-0063, IG on Refund Recoupments, dated October 28, 2021.

IRM SECTION REVISED	SUMMARY of CHANGES
5.8.4.6 (1)	Added content from SBSE-05-0422-0014, IG on Federal Tax Deposit Compliance for OIC-: The taxpayer must be current with FTDs for the two preceding quarters prior to offer submission, through the current quarter of offer submission, and during the investigation of the offer. Added: Note: Taxpayers are considered in compliance if any FTDs are brought current and any resulting penalty paid in full (Status 12).
5.8.4.6 (5)	Added content from SBSE-05-0422-0014, IG on Federal Tax Deposit Compliance for OIC, Added: Note: if the taxpayer has a zero balance on the prior returns but incurred penalties paid in full (St. 12), this is considered in compliance for initial screening purposes.
5.8.4.6(9)	Added content from SBSE-05-0221-0014, IG on Completion of Initial Compliance Screening, Verification of Low-Income Waiver, and Filing of Notice of Federal Tax Lien on Offer Acceptances. (9) Was removed and renumbered since the action of securing related offers is address in IRM 5.8.4.7, Initial Offer Actions
5.8.4.6 (10)	Added content from SBSE-05-0522-0034, IG on Initial Compliance Screening Time Frames. Updated the note to say screening must be done within 15 days from should be done within 15 days. (9) was removed (see above) , therefore this will be renumbered to (9)

IRM SECTION REVISED	SUMMARY of CHANGES
5.8.4.7 (2)(a)	Added content from SBSE-05-0221-0014, IG on Completion of Initial Compliance Screening, Verification of Low-Income Waiver, and Filing of Notice of Federal Tax Lien on Offer Acceptances. Changed the requirement for low income taxpayer verification. The OE /OS should not conduct an additional review unless there was an obvious error made by the process examiner.
5.8.4.7.1 (2)	Added content from SBSE-05-0721-0025, IG Involving IRS Received Date on Related Offers. Added 2(a): Guidance on when the separate liability is less than the total RCP Added: 2(b) decision chart when preparing a related offer, when to use original dates and new IRS receive dates for related offers.
5.8.4.7.1(4)	Added content from SBSE-05-0721-0025, IG Involving IRS Received Date on Related Offers. Added to the (2) table: The waiver date for all liabilities will retain the original waiver date and original IRS received date.
5.8.4.8 (13)	Added content from SBSE-05-1021-0063, Interim Guidance on Refund Recoupments. Added: Guidance on issuance of a refund due to a hardship during the offer investigation.
5.8.4.13 (6)	Added content from SBSE-05-0221-0014, IG on Completion of Initial Compliance Screening, Verification of Low-Income Waiver, and Filing of Notice of Federal Tax Lien on Offer Acceptances. New paragraph (6) on NFTL's current paragraphs 6, 7, 8 will be renumbered.

IRM SECTION REVISED	SUMMARY of CHANGES
5.8.4.26	Added content from SBSE-05-0221-0014, IG on Completion of Initial Compliance Screening, Verification of Low-Income Waiver, and Filing of Notice of Federal Tax Lien on Offer Acceptances Added guidance on authorized representatives and when to send notices.

- (2) Reviewed and updated website addresses, legal references and IRM references, as necessary.

EFFECT ON OTHER DOCUMENTS

This IRM supersedes IRM 5.8.4 dated September 24, 2020. Incorporated IGM #s: SBSE-05-0522-0034, Interim Guidance on Initial Compliance Screening Time frames dated May 04, 2022, SBSE-05-0422-0014, Interim Guidance on Federal Tax Deposit Compliance for Offers in Compromise, dated April 25, 2022, SBSE-05-1021-0063, Interim Guidance on Refund Recoupments, dated October 28, 2021, SBSE-05-0721-0025, Interim Guidance Involving IRS Received Date on Related Offers, dated July 07, 2021, SBSE-05-0221-0014, Interim Guidance of Completion of Initial Compliance Screening, Verification of Low-Income Waiver, and Filing of Notice of Federal Tax Lien of Offer Acceptances, dated February 22, 2021, have been incorporated into this IRM.

AUDIENCE

SB/SE Collection Offer Examiners, Offer Specialists, and other IRS employees who conduct investigations of a taxpayer's offer in compromise.

Kareem Williams
Director Collection Policy

5.8.4
Investigation

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5.8.4.1
(06-01-2010)
Program Scope and Objectives

- (1) **Purpose:** This chapter provides:
 - Instructions for conducting the different types of offer investigations.
 - Definitions for considering each possible basis under which an offer may be filed.
 - Directions for coordinating activities with other Service functions.
- (2) **Audience:** These procedures apply to Internal Revenue Service (IRS) employees who are responsible for investigating and considering offers:
 - Offer Examiners (OE) in Centralized Offer in Compromise (COIC)
 - Offer Specialists (OS) in the Field Offer Territories
 - Additional IRS employees assigned to the offer program and employees who conduct offer in compromise investigations and consider offer in compromise appeals
- (3) **Policy Owner:** Director, Collection Policy, SBSE
- (4) **Program Owner:** Collection Policy, SBSE, Offer in Compromise (OIC) Program
- (5) **Primary Stakeholders:** The primary stakeholders are COIC and Field offer employees.
- (6) **Program Goals:** Policy Statement P-5-100 explains the objective of the OIC as a collection tool. This Internal Revenue Manual (IRM) section provides the fundamental knowledge and procedural guidance for offer examiners and offer specialists engaged in the investigation of offers. The procedures in this IRM include guidance so employees will be able to complete offer investigations and initiate taxpayer contact, when appropriate.

5.8.4.1.1
(01-18-2018)
Background

- (1) An offer in compromise (referred to as an offer or OIC) is a way for the IRS to recoup a portion of the monies owed by taxpayers unable to pay their taxes in full. Revenue Procedure 2003-71 explains the procedures applicable to the submission and processing of offers to compromise a tax liability under **Section 7122** of the Internal Revenue Code. The Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA) also provided additional requirements for submission of an offer.
- (2) Offers are submitted to one of the IRS locations for consideration and evaluated on the basis of its processability, the taxpayer's ability to pay, and the taxpayer's foreseeable future earnings. 26 CFR 300.3, Offer to compromise fee, and Notice 2006-68 also provide information on the submission of payments and fees associated with an offer submission. During the offer investigation, the taxpayer's individual circumstances are evaluated and the IRS will make a determination for disposition to either Return, Reject, Withdraw, Terminate, or Accept the offer. This IRM section provides guidance on how an offer investigation should be completed and the impact other functions or activities may have on the offer investigation.

5.8.4.1.2
(07-18-2017)
Authority

- (1) Authorities relating to this section include:
 - Internal Revenue Code (IRC) 7122 - Compromises
 - Treasury Regulations 301.7122-1 - Compromises
 - IRC 6702(b) - Civil penalty for specified frivolous submissions
 - Policy Statement P-5-100

- Policy Statement P-5-89
- 26 CFR 300.3, Offer to compromise fee
- Revenue Procedure 2003-71
- Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA)
- Notice 2006-68
- IRM 1.2.1, Servicewide Policy Statements
- IRM 1.2.2, Servicewide Delegations of Authority

5.8.4.1.3
(07-18-2017)
Responsibilities

- (1) The Director, Collection Policy is responsible for all policies and procedures within the Offer in Compromise program.
- (2) The National Program Manager, Offer in Compromise is responsible for development and delivery of policies and procedures within the program.
- (3) Managers of employees investigating offers are responsible for ensuring these procedures are followed and employee actions are timely and accurate.
- (4) Offer examiners, offer specialists, and other employees investigating offers are responsible for following the procedures in this IRM.

5.8.4.1.4
(07-18-2017)
Program Management and Review

- (1) Operational and program reviews are conducted on a yearly basis by the Director Specialty Collection Offer in Compromise, (SCOIC) and Collection Policy, with the use of data and reports from the Automated Offer In Compromise (AOIC) system and ENTITY case management system. In addition ad hoc reports, which provide information on the inventory levels, hours per case, and age of offers in inventory or at time of closure, are also provided. See IRM 1.4.52, Resource Guide for Managers, Offer in Compromise Manager's Resource Guide.
- (2) Managerial case reviews are also completed as defined in IRM 1.4.52, Offer in Compromise Manager's Resource Guide. These reviews are a method to determine if the offer amount accurately reflects the reasonable collection potential (RCP) as defined in Policy Statement P-5-100.
- (3) National quality reviews and consistency reviews are routinely conducted to ensure program consistency and effectiveness in case processing. As a result of these reviews, procedural changes may be required to improve the quality and effectiveness of the program.

5.8.4.1.5
(07-18-2017)
Program Controls

- (1) AOIC is used to track offers submitted by taxpayers and record case actions and history. Ability to take action on AOIC is limited to specific offer employees. Additional permissions are provided based on an employee's duties and responsibilities.
- (2) ICS is used by field employees as a method for inventory control and history documentation.
- (3) Managers are required to follow program management procedures and controls addressed in IRM 1.4.52, Resource Guide for Managers.
- (4) Managerial Requirements for case approval are defined in Del. Order 5-1.
- (5) The review conducted by the Office of Chief Counsel on certain offers is in accordance with Treasury Regulations 301.7122-1 - Compromises.

5.8.4.1.6
(01-18-2018)
**Terms/Definitions/
Acronyms**

- (1) The following table is a list of common abbreviations, definitions and acronyms used throughout this IRM.

Acronym	Definition
ACS	Automated Collection System
AET	Asset Equity Table
AOIC	Automated Offer in Compromise
ATAT	Abusive Tax Avoidance Transaction
APS	Account and Processing Support
CAU	Caution Indicator
CDP	Collection Due Process
CFFC	Collection Functional Fraud Coordinator
COIC	Centralized Offer in Compromise
CSED	Collection Statute Expiration Date
DATC	Doubt as to Collectibility
DATCSC	Doubt as to Collectibility with Special Circumstances
DATL	Doubt as to Liability
DP	Decision Point Tool on AOIC
DPC	Designated Payment Code
DVDP	Domestic Voluntary Disclosure Program
EFTPS	Electronic Federal Tax Payment System
EH	Equivalent Hearing
ES	Estimated Tax Payment
ETA	Effective Tax Administration
FTA	Fraud Technical Analyst
FTD	Federal Tax Deposit
ICS	Integrated Collection System
IDT	Identity Theft
IRC	Internal Revenue Code
IRM	Internal Revenue Manual
MFT	Master File Transaction

Acronym	Definition
MOIC	Monitoring Offer in Compromise Unit
NFTL	Notice of Federal Tax Lien
OE	Offer Examiner
OI	Other Investigation
OIC	Offer in Compromise
OS	Offer Specialist
OVDP	Offshore Voluntary Disclosure Program
PDT	Potentially Dangerous Taxpayer
PPIA	Part Pay Installment Agreement
RCP	Reasonable Collection Potential
RO	Revenue Officer
TIPRA	Tax Increase Prevention and Reconciliation Act of 2005
TFRP	Trust Fund Recovery Penalty

5.8.4.1.7
(07-18-2017)
Related Resources

- (1) Additional resources can be found in IRM 5.8, Offer in Compromise.
- (2) Employees can find helpful information on these websites:
 - *SERP*
 - *Internal Management Document site*

5.8.4.2
(05-10-2013)
Effective Tax Administration (ETA) and Doubt as to Collectibility with Special Circumstances (DATCSC)

- (1) When investigating any offer in compromise (OIC), consideration should be given to the following issues when present, whether identified by the taxpayer or not:
 - Economic Hardship – when a taxpayer is unable to pay reasonable basic living expenses. Further defined in IRM 5.8.11.3.1, Economic Hardship.
 - Public Policy or Equity – where, due to exceptional circumstances, collection in full would undermine public confidence that the tax laws are being administered in a fair and equitable manner. Further defined in IRM 5.8.11.3.2, Public Policy or Equity Grounds.

Note: The Offer Examiner/Offer Specialist OE/OS should review comments included on the Form 656 Section 3 and/or any attachments to the Form 656 to determine if specific special circumstances or Effective Tax Administration (ETA) issues are discussed, which should be considered. Statements such as “I cannot pay” will be addressed with the determination of the taxpayer’s reasonable collection potential (RCP).

- (2) Offers can be considered under ETA criteria when:
 - There is no doubt the tax is owed and no doubt that the full amount owed can be collected from the taxpayer,
 - The taxpayer has a proven economic hardship or has presented facts that would support acceptance under the public policy/equity basis, and
 - Compromise would not undermine compliance with tax laws.
- (3) Offers can be considered under DATCSC criteria when:
 - The taxpayer cannot fully pay the tax due, and
 - The taxpayer has proven special circumstances that warrant acceptance for less than the amount of the calculated RCP.
- (4) Factors establishing special circumstances under DATCSC are the same as those considered under ETA.
- (5) IRM 5.8.11, Effective Tax Administration, provides a list of factors to consider when determining if special circumstances exist and also includes a full discussion on how to investigate and determine acceptability of an offer under ETA or DATCSC grounds.

5.8.4.3
(09-24-2020)
Doubt as to Collectibility

- (1) Doubt as to Collectibility (DATC) offers may be worked either in the COIC site by an OE or in Area offices by an OS. Cases assigned to an OE in COIC may be forwarded to a Field Offer in Compromise (FOIC) group, for assignment to an OS if complex issues meeting field transfer criteria in IRM 5.8.4.5.1, Complex Issues Identified During an Investigation (COIC Only) are identified.
- (2) For DATC offers, the decision to accept or reject usually rests on whether the amount offered reflects the RCP. The exception to this rule would be for offers not accepted based on public policy reasons as defined in IRM 5.8.7.7.2, Public Policy Rejection. RCP is defined as the amount that can be collected from all available means, including administrative and judicial collection remedies. Generally, the components of collectibility outlined in IRM 5.8.4.3.1 below, will be included in calculating the total RCP. Additionally, the taxpayer may be required to include the value of assets transferred or disposed of prior to the offer submission in an acceptable offer amount. See IRM 5.8.5, Financial Analysis, for more detail on how to analyze the taxpayers financial condition to arrive at the value of each component. In determining the taxpayer's future ability to pay, full consideration must be given to the taxpayer's overall general situation including such factors as age, health, marital status, number and age of dependents, education or occupational training, work experience and present and future employment status.

Note: The fact the government may choose not to enforce against an asset via levy does not require the value of the asset be removed from the calculation of RCP.

- (3) Offers should not be accepted where the tax can be paid in full as a lump sum or can be paid under current installment agreement (IA) guidelines, unless special circumstances are identified that warrant consideration of a lesser amount. The offer should be recommended for rejection based on the taxpayer's ability to full pay under current IA guidelines. Refer to IRM 5.8.5.2, Ability to Pay.

Note: An offer in compromise is a legitimate alternative to a protracted installment agreement. A protracted installment agreement is defined as an agreement that extends beyond the Collection Statute Expiration Date (CSED).

- (4) Additionally, if the taxpayer has the ability to make installment payments, the investigating employee should determine the amount which may be collectible from a partial payment installment agreement (PPIA). In some instances, although the taxpayer is not able to fully pay via an installment agreement, due to a high monthly payment ability, the amount collectible through the CSED is substantially more than the RCP amount calculated as defined in IRM 5.8.5, Financial Analysis. In these situations, when the disparity between the amount offered and the amount collectible via a PPIA is substantial, acceptance of an offer may not be in the government's best interest. Based on this calculation, if the taxpayer is unwilling or unable to increase their offer to an amount which is closer to the PPIA collectible amount, they should be provided the opportunity to withdraw the offer and enter into a PPIA prior to rejection. Ensure the case determination is consistent with the program objectives to effect collection of what can reasonably be collected. See IRM 5.8.1.2.2, Policy. Although a PPIA may generate more funds than the amount offered, acceptance may be appropriate based on the taxpayer's reasonable collection potential and/or specific circumstances. Substantial consideration should be given to the benefit to the government of receiving payment at an earlier time, the compliance aspect of the OIC, monitoring and default issues associated with a PPIA, the difference between the potential amount received from a PPIA and the tax liability, the difference between the potential amount received from a PPIA and the offer amount, the taxpayer's gross income and family size, and anticipated changes in the taxpayer's income or expenses.

Example: The outstanding tax liability is \$50,000 and the taxpayer submitted an offer in the amount of \$15,000. The taxpayer is unable to full pay via an IA within the CSED, yet a PPIA has the potential to collect \$25,000. Although the amount potentially collectible via the PPIA would exceed the offer amount, the requirement for the taxpayer to remain in compliance for five years, the benefit of the government receiving the funds at an earlier date and consideration of the additional costs incurred to monitor the PPIA provides that the taxpayer's offer should be accepted unless other circumstances, i.e. public policy, weigh against acceptance.

Example: The outstanding tax liability is \$200,000 and the taxpayer submitted an offer in the amount of \$36,000. The taxpayer is unable to fully pay the tax liability via an IA within the CSED. The taxpayer's RCP is \$36,000 which is based solely on their future income of \$1,500 per month. Based on the calculation of RCP the taxpayer's offer may be acceptable, yet there remains over 9 years on the CSED, so the government would potentially receive over \$ 162,000 from a PPIA, if the taxpayer would sustain payments over the remaining months of the CSED. If the taxpayer submits payments over a 48 month period, the amount received would be double the RCP. In this instance, the fact the government has the potential to receive substantially more than RCP and the associated monitoring costs incurred, provides that acceptance of the taxpayer's offer is not in the government's interest. The offer should be rejected on that basis, unless special circumstances are present which allow for acceptance under ETA or DATCSC.

- (5) The calculation of whether the taxpayer can full pay must be based on the balance due of all outstanding liabilities, inclusive of penalties and interest, at the time the offer is received. Since the balance due at the time of the offer submission is used to determine ability to fully pay the liability, the taxpayer's income and equity in assets should normally coincide to the offer submission date.

Note: The liability due at the time of offer submission should not be reduced by periodic payments received during the offer investigation to determine ability to full pay, although reduction of the liability based on a refund offset or other type of payment, i.e. levy proceeds, is appropriate.

Reminder: The initial calculation of a taxpayer's ability to full pay the liability is based on equity in assets and income at the time of offer submission. Yet, if the taxpayer acquires an asset, or there is a substantial increase in income/decrease in expenses during the offer investigation, the calculation of the taxpayer's ability to full pay may be revised and provide an appropriate basis for rejection of the taxpayer's offer.

5.8.4.3.1
(04-30-2015)

**Components of
Collectibility**

- (1) The following four components of collectibility will ordinarily be included in calculating the RCP for offer purposes:

Components	Definition
Assets	The amount collectible from the taxpayer's net realizable equity in assets.
Future Income	<p>The amount collectible from the taxpayer's expected future income after allowing for payment of necessary living expenses.</p> <ul style="list-style-type: none"> • For Lump Sum Cash offers, project for the next 12 months or the remaining statutory period, whichever is less; <p>Note: Any lump sum cash offer which meets the exception criteria discussed in IRM 5.8.1.15.4, Payments, in which payment terms exceed five months should have expected future income calculated over 24 months or the remaining statutory period, whichever is less.</p> <ul style="list-style-type: none"> • For Periodic Payment offers, project for the next 24 months or the remaining statutory period, whichever is less.
Amount Collectible from third parties	The amount we could expect to collect from third parties through administrative or judicial action. For example, amounts collectible through imposing a transferee assessment, enforcing a filed nominee or alter ego notice of federal tax lien, or pursuing suit to set aside a fraudulent conveyance.

Components	Definition
Assets and/or income that are available to the taxpayer but are beyond the reach of the government	Assets that the lien will not attach such as equity in assets located outside the country.

5.8.4.4
(09-24-2020)

Field Assignments

- (1) Prior to the issuance of offer cases to FOIC, COIC will have made all processability determinations and completed initial actions in accordance with current procedures. In some cases, no additional information will be needed from the taxpayer to complete the investigation. In these situations, the next appropriate action(s) should be scheduled in a manner that ensures the timely resolution of the case.
- (2) Generally, the AOIC assignment date will be the assignment date of record.
- (3) If contact with the taxpayer/representative does not or will not take place prior to the date the taxpayer is expecting contact based on prior correspondence or discussion, the OS should:
 - Contact the taxpayer by telephone or in writing and advise of the status of the case and expected contact date. If the taxpayer is verbally notified, document the contact in AOIC. If the taxpayer is notified in writing, a copy of the letter must be kept with the offer file, unless the letter was sent via correspondex and is documented on IDRS, and document the case history. Option “D” of the AOIC transfer letter may be used to meet the notification requirements.

Note: FOIC may utilize the interim letter process by updating the follow up screen in AOIC with the date an interim letter will be required when the offer is received. This will allow for an interim letter to be mailed prior to the expiration of the expected contact period. The follow-up screen must also be updated after the mailing of any interim letter, so an additional 90 day letter will be mailed if contact does not take place within the timeframe in any previous letter sent.

 - The location of the case 90 days after the mailing of the initial 120 day AOIC transfer letter or 75 days after the 90 day interim letter will determine who will contact the taxpayer.
 - The date COIC transferred the case on AOIC will be used as the start date for the 90 day calculation.
 - Prior to assignment to the OE/OS, the manager should determine from the follow-up screen whether an interim letter is due within 30 days and if necessary have another interim letter mailed to the taxpayer.
- (4) Within five business days of receipt of the offer case file from the COIC site, FOIC will:
 - Acknowledge receipt of the offer file(s) by signing and returning the acknowledgement copy of Form 3210, Document Transmittal.
 - Accept transfer of the offer record on AOIC.
 - Assign the offer to the appropriate OS. FOIC hold files should only be used for unique and limited circumstances.

5.8.4.5
(05-10-2013)
COIC Assignments

- (1) If assignment to an OE does not or will not take place within 90 days of assignment to the 60XX hold file, the COIC site will:
- Contact the taxpayer (verbally or in writing) and advise of the status of the case and expected assignment date. If the taxpayer is verbally notified, the contact must be documented in the AOIC history. If the taxpayer is notified in writing, a copy of the letter must be kept with the offer file, unless the letter was sent via correspondex and is documented on IDRS.

Note: The date the case is assigned to 60XX on AOIC will be used as the start date for the 90 day calculation.

Reminder: When the case is assigned to an OE, the manager should determine if the taxpayer is expecting contact within 30 days of the assignment. If expected contact is within 30 days of assignment, advise the taxpayer of the case transfer and expected contact date.

5.8.4.5.1
(09-24-2020)
**Complex Issues
Identified During an
Investigation (COIC
Only)**

- (1) Below is a list of potential issues that, when identified during an investigation by COIC, indicate a case might be transferred to the field.
- Entity consists of a municipality and/or educational institution, which requires a more specialized knowledge of tax laws.
 - Complexity of issues include, but are not limited to, valuation of on-going businesses; income determination when excessive accumulation of retained earnings is identified; specialized assets.
 - The taxpayer's case has been classified as an Abusive Tax Avoidance Transaction (ATAT) case on ICS or ATAT issues have been identified and a determination is made that field investigation of the offer is appropriate.
 - OICs filed by individuals and business taxpayers (e.g., partnerships, corporations) involved in complex activities or transactions designed or structured to hide or conceal income, such as offshore activities, or multiple related entities, requiring a thorough knowledge of the different fraud indicators, as well as working knowledge on a wide range of financial and investigative skills.
 - Need for comprehensive reviews to determine that other required returns such as excise, or specialty returns, need to be filed.
 - Presence of tools used to conceal and/or cloud taxpayer's true financial condition. Examples, not all inclusive include nominee, alter ego, and transferee situations.
 - Comprehensive and complex financial statements requiring knowledge of accounting and business principles in order to determine the taxpayer's actual income and expense and thereby determine true reasonable collection potential.
 - Need to gather, research, inspect, and validate data from a variety of sources through personal contacts. The data may, in some instances, be unique to a particular trade or industry.
 - Cases involving high profile taxpayers with potential for media scrutiny.
 - Docketed Tax Court Cases IRM 5.8.10.12, Docketed Tax Court Cases.
 - International Taxpayers.
 - Offers in which there is Department of Justice involvement IRM 5.8.2, Centralized Offer in Compromise Initial Processing and Processability.

- Offers in which any assessments were involved in the Offshore Voluntary Disclosure Program (OVDP) or Domestic Voluntary Disclosure Program (DVDP).

- (2) When such issues are identified, consult the site RO to determine if the transfer is appropriate.
- (3) Managers should refer to IRM 1.4.52.6.4, COIC Responsibility for Cases Transferred to Field OIC, relative to appropriate actions prior to transfer.

Note: If a case has not been identified as a field OIC transfer within 12 months of the IRS Received Date, the site must retain and work the case. If the site believes there are complex issues that cannot be resolved at the site, the case must be elevated to the National OIC program manager for a transfer determination.

5.8.4.6
(02-10-2023)
**Initial Compliance
Screening**

- (1) Prior to beginning a RCP or full pay calculation, the OE/OS must determine if any compliance issues are present, i.e. unfiled returns, missing Tax Increase Prevention and Reconciliation Act (TIPRA) payments, missing estimated tax (ES) payments, and/or failure to be current on federal tax deposits (FTDs). See IRM 5.8.7.2.2.2, Return for Inadequate Estimated or Insufficient Withholding Tax Payments, for additional information on the calculation and determination of appropriate ES payments. The taxpayer must be current with FTDs for the two preceding quarters prior to the offer submission, through the current quarter of offer submission, and during the investigation of the offer.

Note: Taxpayers are considered in compliance if any FTDs are brought current and any resulting penalty paid in full (status 12).

Refer to IRM 5.8.7.2.2.3, Return for Failure to Make Timely Federal Tax Deposit, relative to a return for failure to make timely federal tax deposits. If the taxpayer does not provide current acknowledgement numbers, verify FTDs on IDRS using CC EFTPS.

Note: Compliance requirements for FTDs do not apply to Doubt as to Liability Offers.

Note: Area offices may establish procedures to conduct this compliance screening on offers awaiting assignment to an OS. This initial screening prior to assignment may be completed by a Tax Examiner.

- (2) The OE/OS should also determine if any “delay of collection” criteria as discussed in IRM 5.8.4.20, Offer Submitted Solely to Delay Collection, are present.
- (3) If the taxpayer has unfiled returns (due after the offer submission), missing TIPRA payments, missing ES and/or FTD payments, and/or there are “delay of collection” issues, the taxpayer/representative should be contacted by telephone to discuss. When applicable, the taxpayer should be provided a reasonable period of time, normally 15 days, to comply with filing any returns or making any required TIPRA payment, ES or FTD. If the taxpayer or his/her representative requests an extension of time to comply, a reasonable amount of time should be granted for the filing of returns or ES payments. A request for an extension to make the required TIPRA payment or FTD should only be

granted if the taxpayer has a special circumstance. If the taxpayer/representative states the ES payment requirement is less than determined by the OE/OS, the OE/OS will accept the taxpayer's statement unless there is an indication to the contrary, i.e. financial statements submitted for the current year indicate net income and potential tax liability is substantially more than the current and anticipated amounts of ES and/or withholding.

Reminder: If contact is made with the taxpayer or their representative, the OE/OS must document discussion of Publication 1 and Publication 594 and the filing or potential filing of NFTL, including the ability to file a CAP request prior to the filing of the NFTL.

- (4) If the delinquent returns were due prior to submission of the offer and a request for the return(s) was previously made, the offer may be returned without any additional contact.
- (5) If the taxpayer/representative was previously provided the opportunity to pay a shortfall in required ES payments or federal tax deposits and advised that failure to make these required payments would cause the offer to be returned, the OE/OS is not required to provide the taxpayer additional time to submit the payment. If the taxpayer was advised to submit an ES or FTD shortfall, before returning the offer, the OE/OS must ensure the taxpayer/representative has not communicated a change in circumstance that reduces or eliminates the payment due. If it is unclear whether the taxpayer's circumstances may have changed, then the taxpayer/representative should be contacted to verify if the taxpayer's situation has changed and/or the payment(s) are not due.

Note: If the taxpayer has a zero balance on the prior returns but incurred penalties paid in full (Status 12), this is considered in compliance for initial screening purposes.

Example: Taxpayer was advised based on 2019 tax return information ES payments were required for tax year 2020. Information was included in an additional request letter sent during perfection which included a request for ES payments. The Form 433-A(OIC) shows wage income. Although the taxpayer was advised to become current on estimated tax payments, it is unclear whether the taxpayer is still self-employed. Contact should be attempted to determine whether ES payments are required. Since this is a compliance issue one attempt to contact the taxpayer/representative is required.

- (6) If the taxpayer submits a tax return with a balance due, the OE/OS will treat the liability(ies) as a missing period(s) and process the return(s). If appropriate, add the missing period(s) on the AOIC MFT screen, include the period(s) on the original Form 656, and continue working the offer. Refer to IRM 5.8.3.12, Processing Tax Returns, which include procedures to expedite return processing, when appropriate. If the tax return is for a tax period in which estimated tax payments were requested during the offer investigation, determine if a return of the offer is the appropriate resolution. Refer to IRM 5.8.7.2.2.2 Return for Inadequate Estimated or Insufficient Withholding Tax Payments.

Note: The Form 656 allows the Service to include any assessed liabilities that were not listed on the Form 656. Therefore, an amended Form 656 is not required to add the missing periods only.

- (7) If the taxpayer indicates that they are no longer required to file a tax return, it will be the responsibility of the OE/OS to close the filing requirements or indicate no liability to file; that is, input or request input of Transaction Code 590 or 591, as appropriate.

If	And	Action
TDI status (00,01,02) on IDRS	Regardless of IRP information	Secure the return.
If the taxpayer has no filing requirement (i.e. disability, retirement or IRP income is below the threshold)	Internal verification indicates the taxpayer may have other income not reported on IRP. Example: Mortgage Interest paid by taxpayer greater than disability amount received.	Secure the return if taxpayer is unable to provide reasonable explanation on how expenses paid.
If the taxpayer has no filing requirement (i.e. disability, or retirement or IRP income is below the threshold)	Via internal verification and discussion with the taxpayer you've confirmed there is no other earned or passive income	Close the filing requirement via TC 590 cc 51.

Refer to **Document 6209**, Sections 8 and 11 for the appropriate transaction and closing codes and request input of the TC 590/591. Additional information may be found in IRM 5.1.11.8.3 , No Return Secured Taxpayer Not Required To File For This Period Only. While it is the Service's policy, not to enforce delinquency procedures beyond six years, open TDIs must be closed if you are accepting the offer. To close a TDI for modules older than this timeframe, request TC 590 CC 52 and reference Policy Statement, P-5-133. Managerial approval is required for this closing code. See IRM 5.1.11.7.1 , Enforcement Determination, and IRM 5.1.11.8.3 , No Return Secured Taxpayer Not Required To File For This Period Only.

Example: The taxpayer is out of business and is no longer required to file. In the case of a business, if the taxpayer provides information that they are no longer required to file a return (e.g., Forms 941 or 940), close the filing requirements and work the offer.

Example: An individual taxpayer has no income and no filing requirement for tax year ended 12/31/2017, the input of TC 590 cc 50 for the 2017 tax year is appropriate.

- (8) IRM 5.8.3.6, Perfecting COIC Cases, does not require a request for an original return if a substitute for return (SFR) is on file, yet the OE/OS should verify with the taxpayer/representative that the SFR assessment approximates the correct tax liability and/or provide the taxpayer the opportunity to submit an original return. If an original return is not secured for any tax period(s) included

on the offer, the taxpayer/representative must be advised that if the offer is accepted, the tax liability can never be adjusted, even if the offer defaults.

Note: The OE/OS is not required to contact the taxpayer/representative if the only issue identified during the initial compliance screening is the SFR assessment.

- (9) Initial compliance screening should include a determination of what date the taxpayer is expecting contact regarding the offer investigation. If the most recent interim contact letter will expire before anticipated contact, the OE/OS must advise the taxpayer via phone or letter when contact to discuss the taxpayer's offer will take place. Correspondence (AOIC transfer letter paragraph "D"), may be used if the OE/OS is sending the letter solely to advise of the anticipated contact date.

Note: Completion of initial compliance screening **must** be conducted within 15 calendar days of the offer assignment date. In situations where the Field OS is not in the same location as the group manager, an additional 5 calendar days from the assignment date is an appropriate timeframe to complete the initial compliance screening.

- (10) The following table provides guidance on the appropriate actions to take based on the information required:

If	And	Then
Requesting delinquent periodic payments IRM 5.8.4.25, Periodic Payments Required with Offer in Compromise Submissions	You have made one phone call attempt	Use paragraph "C" on the Additional Information letter. Give the taxpayer 15 days for a response. If no response, close the offer as a mandatory withdrawal. Note: Mail time in offices may vary, so the OE/OS may allow up to an additional fifteen days where appropriate.

If	And	Then
<p>Requesting delinquent tax returns IRM 5.8.7.2.2.1 Return for Filing Compliance</p>	<p>You have made one phone call attempt</p>	<p>Use the open paragraph on the Additional Information letter. Give the taxpayer 15 days for a response. If no response, return the offer.</p> <p>Note: Mail time in offices may vary, so the OE/OS may allow up to an additional fifteen days where appropriate.</p>
<p>Requesting ES payments IRM 5.8.7.2.2.2, Return for Inadequate Estimated or Insufficient Withholding Tax Payments</p>	<p>You have made one phone call attempt</p>	<p>Use the open paragraph on the Additional Information letter. Give the taxpayer 15 days for a response. If no response, return the offer.</p> <p>Note: Mail time in offices may vary, so the OE/OS may allow up to an additional fifteen days where appropriate.</p>

If	And	Then
Requesting FTD payments IRM 5.8.7.2.2.3, Return for Failure to Make Timely Federal Tax Deposit	You have made one phone call attempt	Use the open paragraph on the Additional Information letter. Give the taxpayer 15 days for a response. If no response, return the offer. Note: Mail time in offices may vary, so the OE/OS may allow up to an additional fifteen days where appropriate.

5.8.4.7
(02-10-2023)
Initial Offer Actions

- (1) These initial offer actions should be completed within 30 calendar days of the compliance screening, yet no later than 45 calendar days from the date an offer is assigned to an OE/OS. In situations where the Field OS is not in the same location as the group manager, an additional 5 calendar days will be allowed from the assignment date to complete the initial case actions.

Reminder: Conducting initial compliance screening within 15 days of receipt of the offer allows for the ability to address any non-compliance of the taxpayer prior to completing any further initial analysis actions. Failure to timely address compliance may require completion of unnecessary financial analysis if offer is returned for compliance issues.

- (2) The assigned employee must complete the following additional actions:
- a. Since the determination the taxpayer qualified for the low-income waiver was already made during initial processability, the OE/OS should not conduct an additional review as to whether the low-income waiver requirements are met.

Note: If an obvious error was made in the determination as to whether the taxpayer qualifies for the Low-Income Waiver (LIW), either contact the taxpayer for missing application fee and/or TIPRA payments or follow the procedure in para (b) or para (c), if payment were received with the Form 656, Offer in Compromise.

Example: The taxpayer's monthly income is \$10,000 with a family size of one based on review of Form 433-A (OIC). A review of IDRS does not show a Low-Income indicator and AOIC remarks state the PE used \$1,000 per month as their basis for the taxpayer LIW qualification. Since this was clearly an erroneous determi-

nation, the taxpayer/representative should be contacted to secure the application fee and/or TIPRA payment, unless payments already received.

If the OE/OS concludes the taxpayer does not qualify based on AGI and the income for the family size exceeds the levels for which a waiver is allowed (i.e. the taxpayer should have paid the application fee and the required TIPRA payment), contact the taxpayer by telephone and request the required initial TIPRA payment and application fee. If the taxpayer cannot be reached by telephone, after two attempts, issue an additional information letter requesting the required TIPRA payment and application fee. If the taxpayer does not become current with required TIPRA payment and application fee by the deadline provided, the offer should be returned.

Note: The application fee will not be refunded if the taxpayer paid the application fee and his income subsequently drops so he now qualifies for the waiver. Refer to IRM 5.19.7.2.1.1, OIC Application Fee, for situations in which a refund of the application fee may be appropriate.

- b. If the taxpayer submitted the application fee and TIPRA payment, in addition to checking the Low-Income Certification box requesting the payment be applied to the liability and it is discovered the taxpayer does not qualify for the waiver, the offer investigator will request the Designated Payment Code (DPC) on the application fee amount be updated to DPC 33 and the DPC on the TIPRA payment amount be updated to DPC 34. Update the AOIC payment screen or request the payment screen be updated, in accordance with group procedures, and continue investigating the offer.
- c. If the taxpayer submitted the application fee and TIPRA payment, in addition to checking the Low-Income Certification box in which they requested the payment be applied as a deposit and it is discovered that the taxpayer does not qualify for the waiver, the offer investigator will contact the taxpayer as discussed in a) above, to provide the taxpayer the opportunity to submit the application fee and TIPRA payment. If the taxpayer requests the deposit amount be applied as an application fee and TIPRA payment, unless authorized by the taxpayer on Form 656, the OE/OS should secure a Form 3040, Authorization to Apply Offer in Compromise Deposit to Liability. Document the receipt of the Form 3040 in AOIC remarks, and notify MOIC via e-mail to apply the deposit to the taxpayer's account as the application fee and TIPRA payment.

Note: The Form 3040 should be retained in the offer file.

- d. If the taxpayer failed to make the appropriate amount of the required lump sum cash payment (20% of the offered amount) or payments due under a periodic payment plan, you must also request the remainder of the lump sum cash or required periodic payment(s) when requesting additional information. Refer to IRM 5.8.4.25 on the appropriate action if the taxpayer fails to make the required periodic TIPRA payments.
- e. Secure any related offer, along with applicable application fee and TIPRA payment **prior to** beginning the offer investigation. If the taxpayer fails to provide the requested related offer, the offer will be returned with no further consideration. Refer to IRM 5.8.3.5, Processing Forms 656 and Initial Offer Payments, for information on the required number of **Form(s) 656**.

Note: The original waiver date should be maintained for tax periods on the related offer if the tax period(s) were included on the original **Form 656** or added prior to the related offer submission. If a tax period is included on the related offer, which was not included or added to the original **Form 656**, the waiver date will be the date the new **Form 656** is deemed processable. If the waiver date for any tax periods on the related offer is based on the original offer waiver date, then the received date must also reflect the received date of the original offer.

- f. Review the **Form 433-A(OIC)**, **Form 433-B(OIC)** and financial information submitted by the taxpayer. If you determine the **Form 433-A/B(OIC)** has missing pages/sections which are material to the investigation, you may request the taxpayer complete and initial the missing sections of the form. In some instances, it may be sufficient to confirm verbally that they had no entries, yet if the missing sections/pages of the CIS are critical or the taxpayer failed to include specific account numbers or other identifying information, requesting the taxpayer submit a revised CIS which includes only the missing sections/pages may be appropriate.
- g. Prepare a preliminary Asset/Equity Table and Income Expense Table (AET/IET) with available information, even if the information has not been verified, to make a projected resolution to the case or to determine exactly what additional information is needed.
- h. Research available internal sources to verify and supplement taxpayer information. Information should not be requested from the taxpayer that is available through internal sources or online research.
- i. If the taxpayer has related entities, complete a compliance review of any related entities. If the taxpayer is the primary responsible party, i.e. corporation, partnership, etc. or the owner, general partner, or significant shareholder, refer to IRM 5.8.7.7.1, Not in the Best Interest of the Government Rejection, if the related entity is not in compliance. If the taxpayer submits a **Form 656** to compromise the related entity liability, when forwarding to COIC for processing, enter the offer number of the open offer you are currently investigating with the wording “related entity”.
- j. If the initial analysis reflects the need for additional information, and the information is not available through internal sources or online research, contact the taxpayer/representative by telephone to discuss any additional information necessary to continue the offer investigation. Generally, no correspondence should be sent until the OE/OS makes two attempts to contact the taxpayer via telephone, unless for compliance issues discussed in IRM 5.8.4.6, Initial Compliance Screening. The telephone contact or attempted contact must be documented in the AOIC or ICS history.

Note: If the information was current at the time of submission, it may not be necessary to require the taxpayer to update the information. For example, the information became outdated due to processing delays caused by the Service and through no fault of the taxpayer. In those cases, it is appropriate to rely on the outdated information if there is no indication the taxpayer’s overall situation has significantly changed. Judgment should be exercised to determine if any, or to what extent, updated information may be necessary.

- k. In certain situations, it may be appropriate to follow-up on telephone contact with a written request to the taxpayer/representative.

- l. If no additional information is needed, proceed with the appropriate disposition of the offer.
- m. The initial Notice of Federal Tax Lien (NFTL) determination should be made and documented. While an initial NFTL determination is required, it may not be necessary to immediately file the NFTL unless the government's interest is in jeopardy, such as the taxpayer is liquidating assets or is threatening imminent bankruptcy. The OE/OS must follow standard procedures in providing the taxpayer appeal rights including documenting any NFTL discussions and discussion of the taxpayer's appeal rights. Refer to IRM 5.1.9.2, Informing Taxpayers of Their Appeal Rights and IRM 5.12.6, Appeals Processes Involving Liens, relative to taxpayer appeal rights in the NFTL lien filing process.

Note: If a taxpayer is in a Combat Zone area, no NFTLs should be filed unless extenuating circumstances exist. Document the case history.

Note: Since any individual shared responsibility payment (SRP) assessed under 5000A is not subject to penalties or to NFTL and levy enforcement actions, if the filing of a NFTL is being requested, it should NOT include any individual SRP/MFT 35 modules or SRP/MFT 65 modules. Additionally, when the taxpayer is advised of the NFTL filing, if the taxpayer has any individual SRP liabilities outstanding, they must also be notified the NFTL will not include any SRP assessment.

- (3) The AOIC Decision Point (DP) tool is accessed through the AOIC system. This tool is used to complete the RCP calculations and assist in making a final case decision. It is the responsibility of the user to ensure a final case decision is based on the facts and circumstances of the case. DP should be used in conjunction with IRM 5.8, Offer in Compromise and IRM 5.15, Financial Analysis to ensure the correct case decision has been reached. There will be some cases that cannot be loaded on DP; therefore, it may be necessary for the OE/OS to manually calculate the RCP.

Note: If the **Form 433-A(OIC)** clearly shows the taxpayer has no assets and no disposable income, the financial information showing all zeros is not required to be input to DP. The OE/OS should still verify the financial information through internal sources,

- (4) COIC will generate the TC 480 and Status 71 through the AOIC system. However, there may be situations when the Status 71 will not generate (e.g., MFT 31 modules created prior to January 2005, imminent statute, etc.). It is the responsibility of the OE/OS to ensure the 480 is input and reflects the correct date. Any corrective action must be taken immediately.

Note: If a TC 480 is manually input, it must be manually reversed. Document the AOIC history that the 480 must be manually reversed.

5.8.4.7.1
(02-10-2023)
Securing Related Offer

- (1) Taxpayers who owe joint and separate liabilities are required to file two **Forms 656**. If one **Form 656** was submitted including joint and separate liabilities or separate liabilities are identified during initial offer screening, the OE/OS must perfect the offer before continuing with case processing. In these cases, an amended **Form 656** and a related **Form 656** will be required. An additional

application fee and initial TIPRA payment must be secured for the related offer, unless the taxpayer qualifies for the low-income certification.

- (2) There should be one amended **Form 656** for one taxpayer, which includes his or her joint and separate liabilities and one related **Form 656** for the remaining taxpayer, which includes his or her joint and separate liabilities. See IRM 5.8.3.7, Case Building Offers, for additional information.

Reminder: In circumstances where the balance of the separate liability is less than the total RCP, the OE/OS should discuss with the taxpayer/representative the option of securing full payment of the separate liability and reducing the offer amount to potentially compromise the remaining joint liabilities. If the separate liability will be full paid, an additional **Form 656**, related application fee and TIPRA payment will not be required. The scenario may also be present if the joint liability is less than the total RCP and only one taxpayer owes separate liabilities.

- a. In circumstances where the balance of the separate liability is less than the total RCP, the OE/OS should discuss with the taxpayer/representative the option of securing full payment of the separate liability and reducing the offer amount to potentially compromise the remaining joint liabilities. If the separate liability will be full paid, an additional **Form 656**, related application fee and TIPRA payment will not be required. The scenario may also be present if the joint liability is less than the total RCP and only one taxpayer owes separate liabilities. The original waiver and original IRS received date applies to periods that were on the original offer.
- b. When preparing a related offer, refer to the chart below:

If	Then
The modules are the same as the original Form 656 For example: Original submission is for joint periods and Mr. Taxpayer has CDP and Mrs. Taxpayer does not have a CDP and all balance due modules are the same	The OE/OS will annotate the top of the related offer (Form 656) "Related to OIC # 1001XXXXXX original received date MM/DD/YYYY" . (The Related form 656 on <i>OIC SharePoint</i> has a date field for this purpose).
None of the modules on the related offer were on the original offer	The related offer will use the IRS received date stamped on the related Form 656. There should be no handwritten IRS received date on the top of the related form 656.
There are modules on the Related offer that were contained on the original offer and additional modules that were not.	The related offer will maintain the original IRS received date. The OE/OS will annotate the top of the related offer (Form 656) "Related to OIC # 1001XXXXXX original received date MM/DD/YYYY" with the original IRS received date. (The Related Form 656 on <i>OIC SharePoint</i> has a date field for this purpose).

- (3) In order to avoid disclosure issues when the taxpayers are not represented by a POA, requests for amended and revised **Forms 656** must be made by phone.

Note: Refer to the revision date of the original Form 656 submitted to determine if the taxpayers have authorized the discussion of the existence of separate tax liabilities with their spouse.

- Make two phone attempts to contact the taxpayers. If phone contact is made, discussion should be held with both taxpayers. When discussing the requirement for two separate offers, a discussion should be held regarding how the taxpayers want to treat the initial TIPRA payment; for example, splitting the original payment between the two offers or submitting a new payment.

Note: Advise the taxpayers that a separate **Form 656** is required and two separate **Forms 656** will be mailed; one to the primary spouse and one to the secondary spouse. If phone attempts are not successful, use letter 2844 with paragraph “D” to request a call back.

Note: If contact is made with only one taxpayer advise them of the requirement for two Forms 656 and that you will be mailing separate offer forms addressed to each taxpayer.

- If contact is made with the taxpayer and completed Forms 656 are being sent to the taxpayer, the OE/OS should provide additional information in the open paragraph letter 2844 which includes:

If:	Then include this statement in open paragraph:
Taxpayer is prorating the original offer amount and no additional TIPRA payment is required.	Please review the Forms 656 and if you concur, sign the applicable Form 656. Send the signed Forms 656 and the application fee (currently \$205) for the related offer.
If the original terms apply to the first offer and the taxpayer is offering new terms for the related offer.	Please review the Forms 656 and if you concur, sign the applicable Form 656. Send the signed Forms 656 along with the application fee (currently \$205) and an initial payment of \$ _____ for the related offer.

- If neither taxpayer returns the new offer(s) or fails to respond to the request for a call back, the original offer will be returned with no further consideration. In most instances the use of Return Letter paragraph “AF” is appropriate. If additional documents were requested (i.e. financial information), the return letter may include additional paragraphs to provide the taxpayer with all the reasons for the return.

Note: If only one taxpayer responds, continue working the single offer and return the original offer to the non-responsive taxpayer without further consideration.

- When amended and related Forms 656 are mailed to the taxpayers after discussing the requirement, two separate mailings will be needed if you are unable to secure permission from each spouse to mail the forms in one envelope.
 - When the amended and related offers are received, follow established procedures for loading the cases on AOIC.
- (4) Once the offer is loaded on AOIC, verify the waiver dates (TC 480). The waiver dates will be dependent on whether the original offer included all the periods or if related periods were discovered during the offer investigation and not included on the original offer. The table below provides guidance on when AOIC should reflect the original waiver date versus a new waiver date.

Note: The TIPRA Statute is established when the original Form 656 was received and is not impacted when the related/amended Forms 656 are secured.

If...	Then...	And...
1) Two separate offers are received, each with their own joint and separate liabilities, but an overlooked period must be added to one or both offers.	1) Make pen and ink changes to add the overlooked period(s). See IRM 5.8.8.3, Pen and Ink Changes to Form 656.	1) The waiver date of the overlooked period(s) will be the same as the date of the original offer.
2) One Form 656 is received with both joint and separate liabilities and there are no overlooked periods.	2) Secure an "Amended" offer for one taxpayer to include their joint and separate liabilities and a "Related" offer for the remaining taxpayer to include their joint and separate liabilities, if applicable.	2) The waiver date for all liabilities will retain the original waiver date and original IRS received date.

If...	Then...	And...
<p>3) One joint offer is received with joint liabilities only and separate liabilities are identified for one taxpayer during processing and must be added.</p>	<p>3a) Secure an “Amended” offer with the joint and separate liabilities, removing one taxpayer from the offer.3b) Secure a “Related” offer for the other taxpayer with the joint liabilities only.</p>	<p>3a) The original periods that were included on the original offer will retain the original waiver dates.Load the new, separate liabilities on the same AOIC MFT screen as the original liabilities with a new waiver date.3b) The “Related” Form 656 will retain the original waiver date for the periods included on the original offer.Load the new, separate liabilities which were added to the “Amended” offer on the same AOIC MFT Screen as the original liabilities with a new waiver date.</p>
<p>4) One joint offer is received with joint liabilities only and separate liabilities are identified during processing for both taxpayers and must be added.</p>	<p>4a) Secure an “Amended” offer to include the joint and separate liabilities, removing one taxpayer from the offer.4b) Secure a “Related ”offer for the remaining taxpayer to include the joint and separate liabilities.</p>	<p>4a) The “Amended” offer will retain the original waiver dates on the periods that were included on the original offer.Load the new, separate liabilities on the same AOIC MFT Screen as the original liabilities with a new waiver date.4b) The “Related” Form 656 will retain the original waiver date for the periods included on the original offer.Load the new, separate liabilities on the same AOIC MFT Screen as the original liabilities with a new waiver date.</p>

- (5) For offers including liabilities of a single member owner of an LLC or a single member LLC that reports solely on a Schedule C, since any employment tax liabilities accrued after January 1, 2009 are incurred by the single member LLC

business entity and not by the individual, if an offer is submitted by the individual and includes employment tax liabilities of the LLC incurred after January 1, 2009, a related offer will be required from the LLC regardless of how the taxpayer reports his income. You must also request any related TIPRA payment and application fee.

Note: If the original offer was submitted with the low income waiver box checked and the taxpayer qualifies, the waiver would apply only to the original offer since the waiver cannot apply to a corporation.

Example: The taxpayer is a single member LLC that reports solely on a Schedule C. One Form 656 was submitted and included liabilities for Form 941 for 2007-03, 2007-06, 2008-03, 2009-06, and 2011-03. A related offer from the regarded LLC will be required to compromise the 2009 and 2011 employment tax liabilities because they were accrued on or after January 1, 2009, and therefore were incurred by the single member LLC business entity instead of the individual. Any application fee and related TIPRA payments would also need to be collected, even if the original offer was submitted under (and the taxpayer qualified for) the low income waiver. After January 1, 2009, the LLC is liable for the employment taxes and is treated as a corporation for tax purposes, so they do not qualify for the waiver. The original offer would not require any payments if the taxpayer qualified for the waiver at the time of submission.

5.8.4.7.1.1
(08-28-2018)
**Electronic Processing of
Related Offers Secured
by the Field Offer
Specialist (OS)**

- (1) Related offers secured by the field OS must be sent to the dedicated e-fax mail box in Memphis COIC or Brookhaven COIC, as shown on the Related Offer Cover sheet. This will result in the offer being loaded faster and properly associated on AOIC with the original offer. To load a related offer, COIC will need all the information that would have been submitted with the paper originals (including the remittance information).
- (2) For Field Processing Only:
 - a. Use the most current version of the Related Offer Cover sheet, which can be found in the OIC SharePoint Library.
 - b. Complete all fields of the Related Offer Cover Sheet.
 - c. Process any payments received with the related, amended Form 656. Provide copies of the checks and the **Form 3244**, Payment Posting Voucher. Ensure the payments are processed to the teller timely. Refer to IRM 5.1.2.1, Remittance Processing Overview.
 - d. If TIPRA payment(s) applied to the original offer need to be applied towards TIPRA of the new offer, clearly notate the information in the AOIC Remarks, as well as in the related offer fax package.
 - e. If funds currently in the 4710 account need to be applied to TIPRA, send an e-mail request to Monitoring OIC (*SBSE EEF BSC MOIC DEPOSIT or *SBSE EEF MSC MOIC DEPOSIT) (subject line: "Deposit Disposition Request for MOIC") and document AOIC Remarks regarding the request. Include in the e-mail, the offer number, identification of payment to be moved, instructions regarding payment application which includes tax period(s) and DPC, and type of authorization (Form 3040 or other written authorization). Refer to IRM 5.8.4.7, Additional Initial Offer Actions, para. (c) relative to securing Form 3040.

- f. E-fax the documents (cover sheet, Form 656, copies of check(s) and posting vouchers) to the COIC location that processed the original offer.

Note: Do not mail the paper documents and do not include copies of the original OIC in the fax request.

- g. Although COIC will send an e-mail notification when the offer is loaded, it is recommended to calendar a follow-up for 10 calendar days.
- h. Once loaded, accept transfer of the case promptly, and ensure assignment. If the offer is not promptly accepted and assigned, it will appear on the Transfer Not Accepted reports, which must be reconciled.

5.8.4.7.1.2
(08-28-2018)
**Centralized OIC
Responsibilities When
Related Offers Are
Received Electronically**

- (1) Load the new offer and post applicable payments within two business days of receipt. Required actions when loading the new offer include inputting the appropriate codes on IDRS and AOIC to ensure the correct waiver dates (TC 480) and statute expiration code (B, P, or S) are reflected on the Master File tax module for each tax period included on both the related and the original offer.

Note: If the PE is unable to correct any waiver dates on AOIC, information should be input in the remarks that the OS needs to update AOIC with the correct information.

- (2) Once the offer is loaded on AOIC, the PE manager will:
 - a. Verify all OIC periods are on the correct MFT screen and appropriate codes (TC 480 and statute expiration) are input for both offers. If any tax periods cannot be input on the AOIC MFT screen or the appropriate codes are not input on IDRS for both offers, then the remarks screen must be documented with information on any additional actions required by the OS.
 - b. Transfer the offer to the appropriate Area Office.
 - c. Via e-mail, provide the OS and the group manager the offer number. The FOIC group will then accept transfer and complete the investigation.

Reminder: The original waiver date applies to periods that were on the original offer.

5.8.4.8
(02-10-2023)
Taxpayer Contact

- (1) If initial analysis reveals additional information is required, contact the taxpayer or the representative by telephone. Generally, two attempts to contact the taxpayer/representative via telephone must be made before correspondence is sent requesting a return phone call. The contacts or attempted contacts must be documented in the history.

Note: In certain situations, it may be beneficial to schedule a telephone appointment with the taxpayer or representative.

Note: Refer to IRM 25.4, Employee Protection, for a discussion on Potentially Dangerous Taxpayers (PDT) and Caution Upon Contact (CAU) indicators when either is shown on the Integrated Data Retrieval System (IDRS) and/or Integrated Collection System (ICS).

- (2) If the request for information is in person (e.g., by telephone, office, or field visit) the initial contact must include the following information:

- a. Verify receipt and document discussion of Pub 1, Your Rights as a Taxpayer, and Pub 594, The IRS Collection Process. If the first conversation is with the Power of Attorney (POA), verify that the taxpayer has received these publications. If the taxpayer or the POA verifies receipt, ask if there are any questions and answer any questions they may have to ensure there is a clear understanding of their rights. If the taxpayer has not received the publications, offer to either explain their rights before proceeding or re-mail the publications to the taxpayer and postpone conversation until they have been received and read.
- b. Address and document any potential special circumstances (e.g. ETA or DATCSC) identified during initial contact or initial review of documents submitted with the offer.
- c. If the initial financial analysis determines the taxpayer has the ability to full pay the liability or pay via an installment agreement, then alternative resolutions should be discussed.
- d. If the determination has been made that a NFTL will be filed, the taxpayer must be advised of the NFTL filing. See IRM 5.8.4.13, Notice of Federal Tax Lien Filing for filing criteria. Explain the possible effects of the NFTL filing on normal business operations.. The OE/OS should follow standard procedures in providing the taxpayer appeal rights. Refer to IRM 5.1.9.2, Informing Taxpayers of Their Appeal Rights and IRM 5.12.6, Appeals Processes Involving Liens, relative to taxpayer appeal rights in the lien filing process. Also explain to the taxpayer their right to request a Collection Due Process (CDP) hearing under IRC 6320 once the NFTL has been filed in accordance with IRM 5.12, Notice of Federal Tax Lien and IRM 5.1.9.3, Collection Due Process.

Note: Since any individual shared responsibility payment (SRP) assessed under 5000A is not subject to penalties or to NFTL and levy enforcement actions, if the filing of a NFTL is being requested, it should NOT include any individual SRP/MFT 35 modules or SRP/MFT 65 modules. Additionally, when the taxpayer is advised of the NFTL filing, if the taxpayer has any individual SRP liabilities outstanding, they must also be notified the NFTL will not include any SRP assessment.

- (3) If the OE/OS requested a call back using AOIC letter 2844 (paragraph D) and the taxpayer or representative fails to respond within the allotted time frame, the offer will be returned without further consideration.
- (4) If the written request is for other than (3) above, the correspondence must include:
 - a. A list of the specific items/information needed,
 - b. A specific deadline for providing the information,
 - c. A statement indicating that the offer will be returned without further consideration if all the information is not provided,
 - d. The name, phone number, and employee number of the investigating employee,
 - e. A statement regarding enclosure of Publication 1 and 594, if necessary, and
 - f. A statement addressing any potential special circumstances (e.g., ETA or DATCSC), if appropriate.

Note: To maintain consistency, all correspondence requesting additional information or supporting documentation must be generated on the AOIC system.

Exception: It may be appropriate in unique instances, i.e. offers involving public policy or Non-Economic Hardship situations, for a document request to be composed outside the AOIC system. These requests should be limited to circumstances in which the requested information would be too involved to be included in the AOIC letter “open paragraph”.

- (5) If the information is not critical to making a case decision, do not send a request for additional information. For example, missing expense documentation, when the expenses such as health care, child support, court ordered payments, etc, appear reasonable or can be verified via other documents provided or oral testimony; or if the financial information submitted included sufficient information (such as wage statements, bank statements, or retirement information) even though the information may not be the number of documents normally required.

Note: The verification required should be consistent with the facts and circumstances of the specific offer investigation.

- (6) Sometimes the response to a request for information does not include all the information requested. If the taxpayer has substantially replied or adequately addressed the requested information or documents (even if they did not provide the specific documents or information requested in the response), or where they failed to include substantiation of certain claimed monthly expenses or loan balances which are reasonable or can be verified via other sources, the appropriate action may be to continue working the case. The OE/OS should determine whether the documents not provided are required to make an informed decision on the acceptability of the taxpayer’s offer.

- (7) Certain information will be required to correct the following situations prior to continuing the offer investigation including:

- Missing or zero offer amount, unless terms are present.
- The full name, address, Social Security Number (SSN), Employer Identification Number (EIN), and/or Individual Taxpayer Identification Number (ITIN) of the taxpayer must be entered on **Form 656**. If the taxpayer(s) uses a mailing address that is different from the street address, the physical home address should be included as well. If the home address line is blank or the taxpayer does not include an address, then verify with the taxpayer their specific circumstance which may be the use of an address of their representative, a Low-Income Tax Clinic (LITC), or a PO Box.
- Additional Form(s) 656 which may be required involving related offer(s). Refer to IRM 5.8.3.5, Processing Forms 656 and Initial Offer Payments, which discusses when securing related offers is appropriate.

Note: If an amended offer is secured the OE/OS should not sign any amended or revised Forms 656. Retain the original and any amended Forms 656 in the file.

- Missing TIPRA payment or shortfall.
- Unfiled tax returns (generally, this will not exceed a 6-year look-back period, without managerial approval).

- Obsolete Form 656.
- Missing or blank Form 433-A (OIC) and/or 433-B (OIC).

(8) The following table provides guidance on the appropriate actions to take based on the information required:

If	And	Then
Additional information is required to determine an RCP. IRM 5.8.4.7, Initial Offer Actions	You have made two phone call attempts. Note: In order to allow for a call back, the second phone call attempt should be the next business day.	Send letter 2844 using paragraph “D” requesting a call back. If the taxpayer/ POA fails to respond, the offer will be returned. NOTE: Do not include any additional requests with this paragraph selection.
Initial analysis results in an increase or full pay rejection IRM 5.8.4.9, Actions Based on Reasonable Collection Potential	You have made two phone call attempts. Note: In order to allow for a call back, the second phone call attempt should be the next business day.	Send letter 2844 using paragraph “E” requesting a call back. If the taxpayer/ POA fails to respond, the offer will be rejected based on the initial analysis. NOTE: No request for additional information should be included when using paragraph “E”, yet the OE/OS may enclose a copy of the AET/IET, if prepared.
Requesting compliance issues together with additional financial information	You have made two phone call attempts. Note: In order to allow for a call back, the second phone call attempt should be the next business day.	Send letter 2844 using paragraph “D” requesting a call back. If the taxpayer/ POA fails to respond, return the offer. The return letter will not address any compliance issue(s). Use paragraph AT. Note: Do Not include a list of the financial information needed.

(9) If the taxpayer or their representative requests an extension of time to comply with the request for additional information, a reasonable amount of time should be granted. Generally, a minimum of 15 and a maximum of 30 calendar days

should be allowed. If the taxpayer or representative requests more than 30 calendar days, the additional time should be allowed if the reason for the request is reasonable. However, if it appears that the representative or taxpayer is delaying the progress of the offer investigation or if the taxpayer or representative fails to meet the deadline, the offer may be returned. Document the ICS or AOIC history indicating the new deadline for the response.

Note: If the additional time requested will not be granted, the taxpayer or the representative should be advised of the opportunity to discuss the extension with the OE/OS manager.

- (10) For offers, which include employment tax or corporate income tax liabilities, submitted by an on-going business, a field call may be made prior to acceptance to validate the existence and value of business assets and inventory. A field call is a requirement on acceptances which the Territory Manager, Operations Manager, or Director is the delegated approving official. This may require an Other Investigation (OI) to a Collection Field revenue officer (RO). If a field call has been previously made and assets have been valued and documented, a field call would not be required, unless the OE/OS deems it necessary. An OI may be issued to request a field call on other acceptances which include tax liabilities of an on-going business, if the OE/OS determines the taxpayer's assets should be viewed to assist in determining current market value.

Note: Prior to an OS conducting any field call to view assets, the OS must discuss with their group manager whether the OS or a field RO should complete the field call.

Exception: If after discussion with the RO group manager, it is determined a field call cannot be made, due to the taxpayer's geographic location, document the ICS history and submit the offer acceptance recommendation for approval.

Exception: If the offer is being recommended for acceptance based on Effective Tax Administration Public policy/Equity (NEH-ETA) factors, a field call may be requested, yet is not a requirement, even though the Territory Manager may be the approving official.

- (11) If any of the errors were not corrected to perfect the offer, return the offer.
- (12) If the taxpayer fails to submit the balance of the required initial TIPRA payment (20% for a cash lump sum offer) within a reasonable amount of time, return the offer without further contact. The OE/OS should issue the appropriate AOIC return letter and mail it to the taxpayer. For further information on returning an offer for failure to make any periodic payments, refer to IRM 5.8.4.25, Periodic Payments Required with Offer in Compromise Submissions.

Note: If the taxpayer gives an explanation supporting special circumstances as a reason the funds were not available, continue to work the offer as if the taxpayer had submitted the entire payment. This should be a rare situation after discussion with your manager.

- (13) If the taxpayer/representative requests the issuance of a refund due to a hardship for a tax return being processed during the offer investigation, inform

the taxpayer they may seek an Offset Bypass Refund under the procedures in IRM 21.4.6.5.11.1 by calling 800-829-1040, if appropriate

5.8.4.9
(09-24-2020)

**Actions Based on
Reasonable Collection
Potential**

- (1) Once the RCP has been calculated, process the case as follows:

If...	Then...
The offer must be increased before recommending acceptance	<p>Contact the taxpayer by telephone to discuss amending the offer to the acceptable amount. If contact by telephone cannot be made after two attempts, send letter 2844 using paragraph "D" (a copy of the IET/AET may be provided with the 2844, if will assist in expediting case resolution), requesting a call back within 10 calendar days of the date of your letter. If the taxpayer's response does not change the case determination, issue the rejection letter using the option to increase paragraph. If the taxpayer agrees, issue the appropriate letter with the addendum for signature.</p> <p>Note: If after discussion with the taxpayer/POA, a copy of the AET and/or IET is requested, and it is unable to be faxed, the OE/OS may use PD 3500 as a cover letter.</p>

If...	Then...
The analysis shows the taxpayer can fully pay the liability through liquidating assets (without incurring economic hardship which is defined as when a taxpayer is unable to pay reasonable basic living expenses) and/or installment payments	Contact the taxpayer by telephone to discuss withdrawing the offer and entering into an alternative resolution. If contact by telephone cannot be made after two attempts, send letter 2844 paragraph "E" requesting a call back within 10 calendar days of the date of your letter. If the taxpayer's response does not change the case determination, issue the rejection letter using the full pay paragraph. If additional information is provided, make the appropriate adjustment to the RCP and contact the taxpayer by telephone to discuss the case decision. Note: If after discussion with the taxpayer/POA, a copy of the AET and/or IET is requested, and it is unable to be faxed, the OE/OS may use PD 3500 as a cover letter.
The offer amount equals or exceeds the RCP and the offer is otherwise acceptable	The acceptance letter should be issued. See IRM 5.8.8, Acceptance Processing.
Special circumstances are identified that warrant acceptance for less than the RCP	Consider an ETA offer or DATCSC. See IRM 5.8.11, Effective Tax Administration.

5.8.4.10
(06-01-2010)

Follow-Up Actions

- (1) In order to ensure timely case processing, all in-process offers must have follow-up dates scheduled for the next appropriate action.
- (2) Throughout the investigation, the scheduling of timely follow-up actions should be reasonable and appropriate, based on the facts of the case. In order to be considered timely, follow-up actions should be significant actions that can reasonably be expected to move the offer investigation toward resolution. Generally, follow-up actions should occur within 15 calendar days of an established deadline for taxpayer action.

Note: When the taxpayer provides requested information prior to the deadline established, the OE/OS should attempt to adjust the follow-up date and review the information as soon as possible to provide the taxpayer with quality customer service.

- (3) Follow-up actions should occur within 30 calendar days in situations where no contact has been established with the taxpayer or no deadline has been given.
- (4) Follow-up actions may include:
 - Recommending acceptance or rejection if the information received is sufficient to make a decision regarding the offer.
 - Recommending the case for closure when the taxpayer has clearly failed to provide the requested documents or information.
 - Personal contact when the taxpayer has made an attempt to comply with the requested documentation but the provided information is incomplete, or needs clarification.

5.8.4.11
(09-24-2020)
**Case Recommendations
and Closing Actions**

- (1) Once the RCP has been calculated, timely actions should be taken to bring the case to closure.
- (2) Case Recommendations
 - a. The OE in COIC must submit all appropriate recommendation reports (i.e., Forms 1271/7249) as soon as possible, yet no later than 10 calendar days from the date of the documented case decision.
 - b. The OS must submit all appropriate recommendation reports as soon as possible, yet no later than 15 calendar days from the date of the documented case decision.
- (3) Closing Actions – Case must be submitted for closing actions (i.e., dating/ mailing of letters, closing on AOIC, ICS, etc.) within the above-defined 10 calendar day or 15 calendar day period.

Note: While the allowable timeframe for closing actions is 10/15 days, the OE/OS should always strive to complete recommendation reports and submit closing documents as soon as the case decision is made to provide taxpayers quality customer service.

5.8.4.12
(09-24-2020)
Documentation

- (1) Documentation must include, but is not limited to:
 - The basis of the processability determination;
 - Case actions;
 - Requests for information/documentation;
 - Conversations with taxpayers or representatives;
 - Results of internal information analysis;
 - Special issues or circumstances;
 - Financial analysis, if applicable;
 - Case decisions; and
 - Managerial approval.

Note: Do not copy and paste entire documents which are available in the offer case file, into the AOIC remarks or ICS history. Documentation may include a brief summary of the type of information requested or the financial analysis completed.
- (2) Documentation should support and define differences and verification of the assets and expenses, including reasons for disallowance of income and

expenses. It should also include a brief statement of evaluation of the income, allowable expenses, asset values, encumbrances, and, if relevant to the case decision, the source of offer funds.

- (3) COIC employees will use AOIC to document case actions.
- (4) FOIC employees will use ICS to document case actions. When ICS is used to record documentation, a closing summary history must be placed on AOIC prior to closing the case, indicating the basis for the closure, special instructions to MOIC, if necessary, and a statement that the complete history is available on ICS.
- (5) As is the case with all compromise determinations, referrals, and acceptance/rejection decisions, employees must exercise good judgment. This good judgment needs to be clearly evident and articulated in the case file documentation and should be supported by the known case facts, circumstances, and supporting documents. There is no clearly defined formula to follow in ultimately making these decisions, and each case needs to be evaluated on its own set of facts and circumstances. Particularly in regard to acceptance/rejection decisions, the recommendation report must clearly explain the reasoning behind our actions.
- (6) The OE/OS must input information in the AOIC remarks to indicate whether any tax periods included on the offer should be mirrored at the conclusion of the offer investigation. Additionally, AOIC remarks must indicate whether the offer requires manual input of any closing codes.
- (7) Prior to final processing, AOIC must be updated to indicate the correct basis of the offer as identified on Form 656 and the dollar amount of the offer considered or accepted. This will ensure that all final closing reports generated from AOIC reflect the correct basis and dollar amount. The approval levels indicated on closing reports and letters must be consistent with the basis for closure.
- (8) Documentation must be recorded the day the action occurs or as soon as practical thereafter.

5.8.4.13
(02-10-2023)
**Notice of Federal Tax
Lien Filing**

- (1) It is the responsibility of the employee to safeguard the government's interest and taxpayer rights. Employees must exercise judgment in deciding whether or not a Notice of Federal Tax Lien (NFTL) should be filed. See IRM 5.12, Federal Tax Liens, for further discussion on the NFTL. If a NFTL is being requested, the OE/OS must follow standard procedures in providing the taxpayer appeal rights, refer to IRM 5.1.9.2, Informing Taxpayers of Their Appeal Rights, and IRM 5.12.6, Appeals Processes Involving Liens, relative to taxpayer appeal rights in the lien filing process.

Note: Since any individual shared responsibility payment (SRP) assessed under 5000A is not subject to penalties or to NFTL and levy enforcement actions, if the filing of a NFTL is being requested, it should NOT include any individual SRP/MFT 35 modules or the mirrored SRP/MFT 65 modules. Additionally, when the taxpayer is advised of the NFTL filing, if the taxpayer has any individual SRP liabilities outstanding, they must also be notified the NFTL will not include any SRP assessment.

- (2) Generally, the request for NFTL should be processed in accordance with table in paragraph 3 of this subsection. However, a notice of federal tax lien should

be filed immediately if the government's interest is in jeopardy, such as the taxpayer is attempting to sell or encumber his real property and not providing the proceeds to the IRS, or the taxpayer has indicated he will be filing bankruptcy.

- (3) A NFTL filing determination must be made and documented on all assigned cases as part of the initial offer actions. The following table provides guidance on when the filing of a NFTL may be appropriate.

If...	Then...
Your initial analysis shows no NFTL has been filed, the liability meets NFTL filing criteria, and a determination is made to not file a NFTL until the conclusion of the investigation	Document the case file with the date the NFTL determination was made and include the basis for the determination to defer filing a NFTL. Upon initial contact, the taxpayer must be advised a NFTL will be filed at the conclusion of the investigation. Refer to IRM 5.1.9.2 , Informing Taxpayers of Their Appeal Rights and IRM 5.12.6, Appeals Process Involving Liens relative to discussion of appeal rights in the lien filing process. Refer to paragraph (5) of this section regarding when the filing of a NFTL is appropriate.
A determination is made to file a NFTL immediately	Ensure that an attempt to notify the TP of the proposed filing (by phone, letter, or in person) has been made and documented, before requesting the NFTL be filed. Refer to IRM 5.1.9.2 , Informing Taxpayers of Their Appeal Rights and IRM 5.12.6 , Appeals Process Involving Liens relative to discussion of appeal rights in the lien filing process. If the NFTL is filed and a CDP request is received, process it immediately following guidelines in IRM 5.1.9, Collection Appeal Rights.
NFTLs were previously filed but in an incorrect jurisdiction	Determine whether to file a NFTL in the correct jurisdiction or defer filing until the conclusion of the investigation. If the determination is made to defer the NFTL filing until the conclusion of the investigation, an additional determination must be made at that time.
NFTLs were filed but have expired	Follow instructions in IRM 5.12.3.14, Revocation of Lien Release.
NFTLs were filed and are currently in the refile period	Ensure that NFTLs are correctly refiled in all required jurisdictions.

- (4) The initial review of any case must include an analysis of whether a NFTL has been correctly filed on all tax modules with a balance due, is filed in the correct jurisdiction, and whether any filed NFTLs should be re-filed. If analysis indicates a NFTL was erroneously allowed to self-release, appropriate action must be taken to correct the problem.

Note: If it is determined a NFTL inappropriately included any individual SRP/MFT 35 modules or the mirrored SRP/MFT 65 modules, immediate action must be

taken to withdraw the NFTL with respect to the individual SRP tax period. Refer to IRM 5.12.9.3.1, Withdrawal for Premature or Inadvertent Filings.

- (5) A NFTL will generally be filed whenever the aggregate unpaid balance of assessments (UBA) exceeds \$10,000 and an offer is returned or withdrawn (request for NFTL filing should be forwarded 15 calendar days after the mailing of the return/withdrawal letter). If the offer is being rejected and the unpaid balance of assessments is over \$50,000, the NFTL request should be forwarded 15 days after the issuance of the rejection letter. If the UBA exceeds \$10,000 and is less than \$50,000, a NFTL request should be forwarded at the conclusion of the appeal period, if the rejection is not appealed, or if the rejection is appealed, at the conclusion of the appeals investigation. Additional information relative to NFTL filing:

- In rejection, return, and withdrawal situations the NFTL request should be forwarded for processing based on procedures established in the group, yet no sooner than 15 calendar days after mailing of the decision letter, unless the taxpayer has been advised by the OE/OS the NFTL will be filed upon issuance of the decision letter. If a significant time has passed since the taxpayer/representative (tp/rep) was advised of the NFTL filing, the OE/OS should attempt to contact the tp/rep to remind them of their Appeal rights.

Reminder: If the NFTL filing is being delayed until the conclusion of the appeals investigation, the NFTL request must be updated before submitting the request for input to address any changes to the UBA, the taxpayer's address or representative.

- An attempt must be made to contact the taxpayer prior to the filing of the NFTL. During discussion with the taxpayer of the NFTL filing, and/or alternative resolutions, if appropriate, the taxpayer should be advised he may qualify for an installment agreement that does not require the filing of a notice of federal tax lien. Refer to IRM 5.14.5, Installment Agreements, Streamlined, Guaranteed and In-Business Trust Fund Express Installment Agreement.

Caution: Since any individual shared responsibility payment (SRP) assessed under §5000A is not subject to penalties or to lien and levy enforcement actions, if the filing of a NFTL is being requested, it must NOT include any individual SRP/MFT 35 modules or the mirrored SRP/MFT 65 modules. Additionally, when the taxpayer is advised of the NFTL filing, if the taxpayer has any SRP liabilities outstanding, they must also be notified the NFTL will not include any SRP assessment. Refer to IRM 5.12.2.3.1.1, Affordable Care Act's (ACA) Shared Responsibility Payment (SRP) Exception and IRM 5.12.2.6.1, ACA Shared Responsibility Considerations When filing NFTL.

- (6) If an offer is being accepted, while there is no requirement to file a NFTL, if the tax liability is greater than or equal to \$50,000 or the offer terms extend past five months, the OE/OS may file a NFTL to protect the government's interest in a taxpayer's real property or other assets. Managerial approval is required if a NFTL is being filed where the tax liability is less than \$50,000 or the offer terms are equal to or less than five months.

- (7) Circumstances warranting non-filing of a NFTL in the above situations should be clearly documented on AOIC or ICS.
- (8) In those cases where an offer is being investigated and the taxpayer files a request for a CDP hearing or Equivalent Hearing (EH) during the investigation, the case then comes under the jurisdiction of Appeals. See IRM 5.8.4.15.3, Actions Required when CDPs are Received while an Offer is Pending for additional guidance.

Note: Refer to IRM 5.1.9.3.3, Processing CDP and EH Requests, relative to filing of a NFTL during a CDP or EH hearing, if the filing of a NFTL is being requested during the offer investigation. If the OE/OS determines that a NFTL needs to be filed during the offer investigation on the same type of tax and tax periods that are the subject of the CDP levy hearing, the offer group manager or designee will contact the Appeals Team Manager (ATM) of the assigned hearing officer, preferably via e-mail, to advise them that filing of the NFTL is planned to determine whether Appeals has new information that may affect the decision, e.g. the taxpayer may have provided Appeals with information raising doubt as to the validity of the liability.

At the conclusion of the offer investigation conducted in accordance with IRM 5.8.4.15 Investigation of Offers under Appeals Jurisdiction, a NFTL filing determination must be made in accordance with IRM 5.8.4.13(5). As in any instance when a NFTL is being filed, an attempt to notify the TP of the proposed NFTL filing and their appeal rights (by phone, letter, or in person) must have been made and documented before requesting the NFTL be filed. Tax periods the subject of a CDP levy hearing should not have a NFTL filed while the CDP is open, unless a discussion with the ATM of the assigned hearing officer has taken place.

- (9) If a L3172 is returned undeliverable, refer to IRM 5.12.6.3.17, Processing Lien Collection Due Process Notices Returned by the USPS, and IRM 5.12.6.3.18, Inputting Transaction Code 971 and Action Code to Indicate the Notice Status.

5.8.4.14
(07-18-2017)
Related Cases in Appeals

- (1) Taxpayers may have liabilities for related entities, one of which is being evaluated in Appeals while the other is in COIC or FOIC. For various reasons, offers on related entities may be submitted to Appeals after an initial offer is being investigated in COIC or FOIC for a different entity.
- (2) During the course of the consideration of an offer in COIC or FOIC, if the OE/OS becomes aware that there is an open, related offer under consideration in Appeals, then the OE/OS should coordinate with whomever the related case is assigned to in Appeals to accept transfer of the related case. Once Appeals has indicated they will accept the offer for investigation, AOIC remarks should be documented with the Appeals employee who has the related case, and the offer transferred to Area 21 on AOIC if the related offer is under the jurisdiction of Appeals based on a CDP. If the offer is related to a previously rejected offer, the assignment number should be changed to coincide with the related offer in Appeals. AOIC remarks and the offer file must be clearly documented as to whether the TIPRA 24-month period is still open.

- (3) Related cases will be those related to any joint or individual offer involving the separate liabilities of one or both spouses (e.g., sole-proprietorship liabilities, trust fund recovery penalties, liabilities from a prior marriage).

Note: In a situation involving married taxpayers where two separate offers involving jointly owed liabilities are under consideration, the offers will be considered related only if the taxpayers are domiciled together.

- (4) An offer involving one or more closely-held corporations or LLCs owned by one or both spouses in the joint or individual offer will not be forwarded to Appeals. The offer will be investigated and an appropriate disposition will be determined.

5.8.4.15
(09-24-2020)
**Investigation of Offers
under Appeals
Jurisdiction**

- (1) All offers submitted during a CDP hearing or EH will be investigated by an OE or an OS.
- (2) COIC is responsible for making a processability determination. Once a determination is made, COIC will notify Appeals using the form provided in Exhibit 5.8.4-1.
- (3) All CDP cases will be loaded on AOIC using Offer Case Category code (OCC) 10. When appropriate, the OCC may be updated by the OE/OS working the offer based on other identifying factors, i.e. - 3110 - PSP/CDP, etc.
- (4) A CDP OIC must be returned to Appeals with no less than 270 days (9 months) remaining on the 24-month time frame in order for Appeals to make its final determination. If there is less than 9 months remaining on the 24-month period, the investigating employee must contact the Appeals employee assigned the case and provide a status report on the anticipated completion of the investigation.

Note: The investigating employee must not discuss the merits of the offer since this is prohibited under ex-parte communication.

- (5) Collection will be responsible for monitoring the 24-month time frame for mandatory acceptance until the offer is transferred to Area 21 on AOIC. Subsequent to the transfer, the responsibility for monitoring will be with Appeals.

5.8.4.15.1
(09-24-2020)
**COIC Investigation of
Offers Received by
Appeals with a CDP**

- (1) Appeals should suspend the CDP case while the investigation is completed and forward the offer and related documents to the appropriate COIC site for a processability determination. Appeals will generate L3820 and include it with the offer submitted for a processability determination.
- (2) If the offer is not processable, COIC will follow procedures in IRM 5.8.2.12, Determining Processability for Appeals Collection Due Process Offers.
- (3) If the offer is processable, COIC will:
- Load the case on AOIC with jurisdiction code 1 (the jurisdiction code will not change, even though Appeals will be making the final determination),
 - Mail AOIC Combo Letter and L3820 to the taxpayer advising the offer is processable.

Note: If L3820 is not provided by Appeals, COIC will only mail the AOIC Combo Letter.

- Assign the case for investigation following current procedures in IRM 5.8.3, Offer in Compromise, Centralized Offer in Compromise Transfers, Perfection and Case Building, and
 - Investigate the offer on cases meeting COIC criteria in accordance with IRM 5.8.4.15.2, Case Decisions on CDP Offers.
- (4) For cases meeting field transfer criteria, upon receipt from COIC, field offer groups will assign cases in accordance with current procedures and investigate the offer in accordance with IRM 5.8.4.15.2, Case Decisions on CDP Offers.

Note: Procedures defined in IRM 8.20.7, Closing Procedures, require Account and Processing Support (APS) to close offers on AOIC when the Appeals case controls are closed. The offer terms screen and offer amount accepted must also be updated on AOIC, if necessary. If closure cannot be completed by the APS unit, APS will reach out to COIC or a field area office to assist in closing the case in a timely manner.

5.8.4.15.2
(09-24-2020)
**Case Decisions on CDP
Offers**

- (1) Complete a financial evaluation in accordance with IRM 5.8.5, Financial Analysis and take action in accordance with IRM 5.8.4.9, Actions Based on Reasonable Collection Potential.
- (2) If the offer is to be accepted, COIC/FOIC will:
- Follow local assignment procedures, including review by Counsel when appropriate;
 - Follow the procedures in IRM 5.8.8, Acceptance Processing
 - Close the case as an acceptance on AOIC;
 - Forward the case file to the appropriate MOIC function for acceptance monitoring with all required documentation; and
 - Forward copies of the acceptance letter and Form 7249 to Appeals. The Form 7249 will include the acceptance terms, applicable tax periods, and approvals, so copies of the Form 656 and/or any addendum are not required.

Note: On accepted offers Appeals will adopt the case decision to accept the offer in its entirety and close the CDP/EH.

- (3) If the offer is returned, terminated, withdrawn voluntarily, or a mandatory withdrawal is appropriate, COIC/FOIC will:
- Issue the appropriate AOIC return/termination/withdrawal letter to the taxpayer based on the basis for closure;

Note: Generally, an offer submitted during a CDP hearing should not be returned under “solely to delay” criteria, as discussed in IRM 5.8.4.20, Offer Submitted Solely to Delay Collection, unless the OE/OS manager agrees IRM requirements are met and the RO manager verifies enforcement action is anticipated subsequent to the offer return.

- Close the case on AOIC in accordance with closing procedures outlined in IRM 5.8.7, Return, Terminate, Withdraw, and Reject Processing; and

- Immediately forward the entire case file with all supporting documentation (including a complete up-to-date history, information on any deposit, and a copy of the return/withdrawal letter) using the transmittal document in Exhibit 5.8.4-2, Notification of Offer Case Decision in CDP Offer Investigations to Appeals using traceable mail, unless the Appeals office is in the same location.

Note: Since ex parte rules apply, the OE/OS must share or discuss any documents with the taxpayer that will be provided to the Appeals' employee.

(4) If a determination is made the offer should be rejected, COIC/FOIC will:

- Select OCC 10;
- Update the offer type to P; Collection Due Process
- Issue the CDP preliminary decision letter, signed by the group manager, to the taxpayer (include the Asset/Equity Table and Income/Expense Table, if completed);

Note: If the offer was submitted as a DATL involving a TFRP assessment, AOIC is unable to generate a CDP preliminary decision letter on these cases. Refer to the OIC Sharepoint site for methods to edit the AOIC CDP preliminary decision letter and appropriate paragraphs.

Reminder: Offers being recommended for rejection under either Public Policy or Not in the Best Interest of the Government require the approval of the SB/SE Collection, Territory Managers (2nd level) in the field or SB/SE Compliance Services Operations Managers for COIC. If making a recommendation to reject a CDP offer under the jurisdiction of Appeals on this basis, the approval of the second level manager must be clearly evident. Their approval may be shown by their signature on the CDP preliminary decision letter, a notation of approval in the case history or remarks, or a printable e-mail signifying approval of the case decision. If the letter is being signed by the 2nd level manager, refer to the sharepoint site on methods to edit the pre-determination letter.

- Transfer the offer on AOIC to Area 21;
- Immediately forward the entire case file with all supporting documentation (including a complete up-to-date history and a copy of the CDP preliminary decision letter using the transmittal document in Exhibit 5.8.4-2, Notification of Offer Case Decision in CDP Offer Investigations, to Appeals using traceable mail, unless the Appeals office is in the same location. The OE/OS should also update the accruals on the AOIC MFT screen and include a print of the MFT screen with the offer case file.

Note: Since ex parte rules apply, the OE/OS must share or discuss any documents with the taxpayer that will be provided to the Appeals' employee.

- 5.8.4.15.3
(07-18-2017)
Actions Required when CDPs are Received while an Offer is Pending
- (1) A CDP hearing request may be received during the investigation of an offer. In these instances, the appropriate CDP codes must be input on IDRS.
- 5.8.4.15.3.1
(07-18-2017)
Actions when CDPs are Received by COIC while an Offer is Pending
- (1) Procedures defined in this section apply only to those cases in COIC inventory.
- (2) COIC will:
- Continue the offer investigation in accordance with IRM 5.8.4.15.2, Case Decisions on CDP Offers;
 - If the NFTL was filed by ACS or the Field, forward the 12153 to appropriate function;
 - If the NFTL was filed by COIC, complete the Form 14461 and follow current procedures to forward the CDP to Appeals within 5 workdays;
 - Transmit the file (Forms 12153, 14461, NFTL (Form 668Y), L 3172 and envelope) to Appeals using Form 3210, Document Transmittal. Include sufficient information on the Form 3210 to identify the hearing request being transmitted. For example, the Name control, last 4 digits of TIN, MFT and tax periods, hearing type and hearing received date. Suspend the control copy of the Form 3210 until the Appeals acknowledgement copy is received. Follow-up with Appeals if acknowledgement of receipt is not received within 30 days.
 - Request input of the appropriate TC 971 action codes (AC) to the respective modules in the CDP request: TC 971 AC 275 when the hearing type is CDP-Levy, CDP-Lien or CDP-Both TC 971 AC 630 in addition to TC 971 AC 275 when the hearing type is CDP-Levy or CDP-Both TC 971 AC 278 if hearing type is EH-Levy, EH-Lien or EH-Both
 - Update AOIC "Remarks";
- (3) If the hearing request is timely, Appeals will input the TC 520 CC 76/77, when needed, on COIC originated CDP cases.
- (4) If the CDP hearing is withdrawn after the case is sent to Appeals, forward the withdrawal to Appeals so that Appeals can close the request and input the appropriate reversing TC 971 action code (AC) to respective modules in the CDP hearing request (TC 971 AC 276 for CDP or TC 971 AC 279 for EH). If applicable, input of TC 521 cc 76/77 should also be requested.
- 5.8.4.15.3.2
(09-24-2020)
Actions when CDPs are Received by FOIC while an Offer is Pending
- (1) Procedures defined in this section apply only to those cases in Field OIC inventory.
- (2) FOIC will:
- Continue the offer investigation in accordance with IRM 5.8.4.15.2;
 - Follow procedures in IRM 5.1.9.3.3, Processing CDP and EH Requests;
 - Since modules in Status 71 are not on ICS, it may be necessary to establish BAL DUE (ICS ONLY) modules on ICS for any tax period(s) listed on the CDP request. If the Status 71 modules were recently in Status 26, the user should be able to select them and add them to the ICS CDP application.
- Note:** Information on the creation of these modules on ICS is available on the OIC sharepoint site.

- If the offer is closed, monitor the CDP OI in accordance with group procedures.

Note: At the conclusion of the CDP investigation in Appeals, the (ICS ONLY) bal due modules, which were involved in the CDP, should systemically drop off ICS. The offer group is not expected to take any action(s) subsequent to the CDP hearing unless the action involves the closed offer.

- (3) When transferring these requests to Appeals refer to IRM 5.1.9.3.3.2, Sending Hearing Request to Appeals, the OS should:

- Prepare a Form 14461, Transmittal of CDP/EH Hearing Request.
- Create a CDP OI, if one is not already present.
- Submit the transfer request with the Form 3210, Document Transmittal to the group manager for approval. The group manager will use the Form 3210 to monitor receipt of the request.

Note: If the case is sent for approval via the ICS CDP application, the Form 14461, Form 3210, and CDP OI will generate when the transfer to Appeals is approved by the manager.

5.8.4.15.4
(09-24-2020)
**Appeals Referral
Investigations (ARI)**

- (1) In certain instances, Appeals may request a review of additional documents submitted by the taxpayer after a recommendation to reject the offer is made by the COIC OE or FOIC OS.
- (2) If additional documents or review is required, Appeals will issue an ARI to the COIC site RO or FOIC group manager based on current procedures. These offers will be transferred to the Area office on AOIC, so appropriate assignment on ICS and AOIC may take place by the group manager. The AOIC OCC code should also be updated to OCC 41 prior to assignment to the OS.

Note: If the ARI is issued on a CDP offer which is assigned on AOIC to Area 21, an e-mail should be provided to Collection Policy to have the offer reassigned on AOIC to the appropriate Area office number. The OIC group will need to accept transfer and then assign the case to the assigned OE/OS. Once the ARI is completed, the offer will need to be reassigned back to Area 21 (Appeals - CDP).

- (3) If an ARI is issued, in most circumstances, the ARI should be completed by the employee who conducted the initial investigation, yet the manager may assign based on current workload. Since the request is based on a previous offer evaluation, these investigations should be assigned expeditiously, and if possible, closed within 45 days of receipt. If the ARI is not completed within 45 days of receipt, Appeals should be contacted to request an extension. Upon return to Appeals, the ARI must be noted if there remains less than 180 days on the TIPRA statute.

Note: Since the offer remains under Appeals' jurisdiction, ex parte rules apply to any discussions with or documents provided to the Appeals employee.

- (4) OS time should be reported under **ICS time code 120**, CDP RELATED OICs or **ICS time code 360 APPEALS**, depending on whether the ARI is related to an offer submitted during a CDP hearing request.

5.8.4.15.5
(09-24-2020)
**CDP Offer Closed in
Error by Collection**

- (1) Appeals may determine a return or mandatory withdrawal of an offer submitted during the CDP process was not in accordance with IRM requirements. The determination that an offer was closed contrary to guidance provided in the IRM must be made by the Appeals employee within 30 days of receipt of the offer case file.
- (2) Upon a determination that the return or withdrawal was processed in error, if additional investigative actions are required by Collection, the Appeals employee will forward the offer case file through their Appeals Manager to the attention of the manager who signed the closing letter for field OIC groups, or the site RO for COIC, who will route the case file appropriately.
- (3) Upon receipt of the offer case file the COIC/FOIC manager will reopen the offer on AOIC, (or if the offer cannot be reopened, have a new offer established using the same receipt, waiver, and open dates as the previously closed offer). The offer will then be assigned immediately to an OE/OS for continuation of the offer investigation. The offer will be investigated in accordance with the guidance provided in IRM 5.8.4.15.2, Case Decisions on CDP Offers. If additional investigation is conducted and there are additional documents or information provided to Appeals, it must also be shared with the taxpayer/representative.

Note: Since a decision letter was mailed, a mandatory acceptance under IRC 7122(f) would no longer be applicable.

- (4) If the COIC/FOIC manager disagrees that the closing action by the offer group was in error, contact should be made with the Appeal's manager to discuss the basis for the reopening. After discussion with the offer manager, if Appeals is unwilling to change the decision to have the offer reopened, Collection will reopen the offer and work in accordance with paragraph 3 of this section. Also advise Collection Policy of the issues involved.

5.8.4.16
(05-10-2013)
**Coordination with
Appeals**

- (1) Coordination with Appeals is sometimes required during offer investigations.

5.8.4.16.1
(09-24-2020)
**Cases Pending or
Decided in Appeals**

- (1) During a Collection Due Process (CDP) or equivalent hearing (EH) assigned to Appeals, an offer may be submitted by the taxpayer. IRM 5.8.4.15, Investigation of Offers under Appeals Jurisdiction. Taxpayers also occasionally submit a DATC offer during an appeal of a proposed audit deficiency. Appeals has jurisdiction of both these types of offers and in certain circumstances may send an Appeals Referral Investigation (ARI) to Collection.
- (2) An ARI requesting CIS verification of a complex nature, which may include valuation of assets, lien searches, or asset ownership research should be assigned to a field RO. The results of the investigation will be reported via memorandum to Appeals and Appeals will conclude the investigation. Requests for any expeditious treatment of an ARI will be decided on a case by case basis through a discussion between the two functional managers.

Note: Ex parte communication rules apply in these situations. The ex parte procedures relating to sharing information with the taxpayer and discussions with Appeals must be adhered to when completing the review at Appeals request. Refer to IRM 5.1.9, Collection Appeal Rights.

- (3) Offers based on Doubt as to Liability (DATL) on Trust Fund Recovery Penalty (TFRP) or Personal Liability for Excise Tax (PLET) assessments must be reviewed upon receipt to ensure that the case is not pending or was not already heard in Appeals. If a DATL offer involving a TFRP or PLET assessment had previously been determined in Appeals or is found to be currently assigned to an Appeals office, refer to IRM 5.8.4.22.4, Doubt as to Liability (DATL) regarding the issuance of a rejection letter and the transferring of the case file to Appeals.
- (4) If an offer based on DATC or ETA hardship criteria is received and there is an open case pending in Appeals, then Appeals will have jurisdiction. The Appeals employee assigned the case in Appeals must be notified of the offer investigation. If the offer is related to a CDP hearing, it should be investigated in accordance with IRM 5.8.4.15, Investigation of Offers under Appeals Jurisdiction.

Note: Ex parte communication rules apply in these situations. The ex parte procedures relating to sharing information with the taxpayer and discussions with Appeals must be adhered to by the COIC or Field employee. Refer to IRM 5.1.9, Collection Appeal Rights.

5.8.4.16.1.1
(09-24-2020)

Procedures for Deleting Cases From AOIC

- (1) Deletion of an offer from AOIC should be rare and only in unusual situations.
Reminder: Prior to completing the deletion actions, COIC/FOIC manager should advise Collection Policy of the basis for the proposed deletion.
- (2) Document the AOIC history with the following information, then assign back to the appropriate COIC site, if not already assigned to COIC.
 - Request deletion of the offer from AOIC
 - Request reversal of the fee screen
 - Reason for the request to delete the case from AOIC.
 - The name and phone number of the involved Appeals employee, if available.
- (3) E-mail the appropriate centralized site with the offer number of the offer that needs to be deleted off the AOIC system. Identify the action being requested in the subject line of the e-mail. Send the e-mail to the appropriate site at the following e-mail address:
 - *SBSE COIC Memphis
 - *SBSE COIC Brookhaven

Note: For offers under Appeals jurisdiction which are other than CDP, COIC should move the payments from the AOIC Payment Screen to the AOIC Appeals Fee Screen and delete the offer from AOIC.

5.8.4.17
(09-24-2020)

Pending Assessments

- (1) During initial analysis of the offer, IDRS must be checked to verify there are no actions pending on any tax modules associated with the taxpayer, including recently filed returns, amended returns, pending TFRP assessments, or pending examinations.
- (2) Within 7 to 14 calendar days prior to accepting an offer, IDRS should be rechecked to ensure that there are no new audit issues pending.

5.8.4.17.1
(09-24-2020)

**Pending Assessments -
Filed Returns**

- (1) If a return has been filed with a balance due, the OE/OS should review Master File (MF) to determine when the liability will be assessed.
- (2) If a recommendation is being made other than acceptance, the OE/OS should not delay closing actions until the return posts or tax is assessed. If the tax period has no assessed liability when the offer is being recommended for closure, it should be removed from the Form 656 and MFT screen.
- (3) Since tax must be assessed to be included on an accepted offer, delays in returns or amended returns posting must be identified as soon as possible to allow for resolution prior to offer closing actions. If it is determined to be in the government's interest to include the tax year in the offer being recommended for acceptance and the return is not pending on MF, the OE/OS should secure managerial approval to hold the offer until the assessment posts. Based on group procedures the offer should be placed in the appropriate assignment number for monitoring. If the offer is still being monitored with less than 90 days remaining on the TIPRA statute the taxpayer should be requested to withdraw the offer. If the taxpayer refuses to withdraw the offer and the taxpayer does not agree to have the tax period removed from the Form 656, the offer should be closed as a processable return based on the inclusion of a tax year with no liability.
- (4) If issues are preventing the return from being processed and the taxpayer wishes to have the tax period included on the offer, it may be necessary to secure a withdrawal and have the taxpayer resubmit the offer after processing issues are resolved.

Note: Refer to the following manual sections to assist in determining potential issues related to a filed return which has not been assessed. IRM 3.12.37-21, ERS Status Codes and IRM 21.4.1.4.1, Locating a Taxpayer's Return.

5.8.4.17.2
(09-24-2020)

**Pending Assessments -
Examination**

- (1) IDRS should be checked to determine if any open audits, underreporter issues, TEFRA proceedings, or other pending examination issues are present. Pending examination cases and AUR may be identified by:
 - TC 922 without a CP 2000 process code or TC 290/291
 - TC 976 or 977 without a subsequent tax increase or decrease
 - -L Freeze and/or an AMDIS record
 - Partnership Investor Control File (PICF) code on AMDIS of 5 indicating an investor with at least one open TEFRA key case linkage
- (2) If any potential adjustments are identified, the assigned employee should be contacted to determine the status of the potential assessment and informed that an offer based on DATC or ETA has been received. The decision on how to proceed with the offer should be based on the status and/or issues of the potential adjustment/assessment. The table below provides some examples.

If...	Then...
<p>TP was involved in abusive tax avoidance transactions (ATAT), appears to have substantial unreported income (UIDIF), or there is another reasonable explanation given by the assigned Examination employee explaining why the audit should continue</p>	<ul style="list-style-type: none"> • The TP should be advised that the offer investigation cannot proceed until the Exam issues have been resolved. • Solicit a withdrawal explaining that it is in the taxpayer's best interest due to CSED suspension. • If the TP refuses to withdraw, return the offer using the AOIC reason that other investigations are pending, which may affect the liability sought to be compromised or the grounds upon which it was submitted.
<p>The audit is routine and the assigned Exam employee has agreed to close the tax year(s) with no change</p>	<p>Proceed with the offer investigation.</p>
<p>The audit is routine, nearly concluded, and Examination wishes to conclude and assess the tax.</p>	<ul style="list-style-type: none"> • Proceed with the offer investigation. • Talk to the TP and the Revenue Agent (RA) to coordinate securing an agreement to the deficiency to expedite assessment. • Include the tax year, if acceptance is appropriate, but do not issue the acceptance letter until the tax is assessed.
<p>The return, for a tax period not included on the offer, has been selected for examination or Automated Under Reporter (AUR) consideration, yet is not assigned to a specific Field Examination employee or has not been started in Campus Examination.</p>	<ul style="list-style-type: none"> • Prior to beginning the offer investigation, contact the controlling Examination or AUR group to determine if continuing the offer investigation is appropriate based on the status of the potential examination or AUR assessment and the issues involved. • If it is determined the offer investigation should not continue, return the offer using the AOIC reason that other investigations are pending, which may affect the liability sought to be compromised or the grounds upon which it was submitted. Note: Prior to returning the offer, the TP or POA must be contacted to discuss the reason the offer is being returned. • If it is determined the offer can be recommended for acceptance, contact the controlling Examination or AUR group to advise them a determination was made the taxpayer's offer was acceptable. If the tax year will not be closed, the taxpayer should be advised that any additional liability that is not fully paid will default the offer. • If the determination is rejection or return, the offer should be closed appropriately, unless the taxpayer wishes to withdraw the offer.

If...	Then...
The return, for a tax period included on the offer, has been selected for examination or Automated Under Reporter (AUR) review, yet is not assigned to a specific employee in Field Examination or has not been started in Campus Examination and is the only tax year which will potentially be examined.	<ul style="list-style-type: none"> • Complete the offer investigation to determine appropriate resolution. • If the offer will be recommended for acceptance, contact the controlling Examination or AUR group to advise them an offer has been submitted that includes the tax years awaiting assignment or review and is acceptable under DATC or ETA criteria, so they may close their investigation. • If the determination is other than acceptance, the offer should be closed appropriately.
The Partnership Investor Control File (PICF) code on AMDIS is a 5, indicating at least one open TEFRA key case linkage exists	<ul style="list-style-type: none"> • Advise the TP that we cannot consider an offer until all TEFRA partnership issues have been resolved. • Attempt to secure a withdrawal. • If the taxpayer refuses to withdraw, consider returning the offer using the AOIC Return Letter paragraph that other investigations are pending that may affect the liability sought to be compromised or the grounds upon which it was submitted.
The Partnership Investor Control File (PICF) code on AMDIS is a 7, the TEFRA case is closed	<ul style="list-style-type: none"> • Verify with the assigned Examination employee that the assessment was made. • Include the additional liability(ies) in the offer.
Exam issues are delaying offer processing of an acceptance	The OE/OS manager should contact the Examination liaison to coordinate an expedited assessment. If the Examination will not be closed and/or the assessment not made within 90 days (or if there remains less than 120 days on the 24 month TIPRA statute), the offer may be returned as "Other Investigations Pending".

5.8.4.18
(09-24-2020)

Potential Fraud Referrals

- (1) When indicators of potential fraud arise during an offer investigation, the OS will:
- a. Work the case to the point where a decision regarding final disposition can be made. All requests for additional documentation should have been sent to the taxpayer and sufficient time allowed for the taxpayer to respond. Final action with respect to the determination will be taken if the case does not meet Fraud Technical Advisor (FTA) fraud referral criteria.
 - b. Discuss the indicators of fraud with the group manager before proceeding.

If...	Then...
The group manager concurs with the fraud potential	the OS will contact the local FTA and discuss the case.
the FTA agrees that there is potential fraud	the FTA will evaluate the case and determine if sufficient information is present to refer the case directly to Criminal Investigation (CI) or if further development is needed.

If...	Then...
additional development is needed	<ul style="list-style-type: none"> • The OS will issue an Other Investigation (OI) on ICS to the Collection group that covers the geographic area where the taxpayer resides and mail a copy of all supporting documentation to the Collection group. After the OI has been issued, the OS will request assignment of the case on AOIC to 9998 (Fraud) and input a follow-up date on the AOIC "Follow-up" screen • The OS should indicate the 24-month mandatory acceptance date on the OI and that the investigation should be expedited. • The revenue officer (RO) assigned the OI will work with their local FTA to gather the information required and determine if the case has potential to be developed as a fraud referral. Note: Territory Manager intervention may be necessary if the OI is not being worked in a timely manner. • The office assigned the offer investigation will retain the offer pending the concurrence or non-concurrence of the local ROs FTA.
the ROs local FTA does not concur with the potential for fraud development	the RO will notify the OS and the OS will continue to work the offer investigation to resolution and request reassignment of the case on AOIC.
the ROs local FTA concurs with the potential for fraud development	<ul style="list-style-type: none"> • The RO will prepare Form 11661-A, Fraud Development Recommendation - Collection. The FTA will denote their concurrence by signing the Form 11661-A. • The RO will contact the OS as soon as the local FTA has signed Form 11661-A. • The OS will monitor the fraud referral and when the referral has been accepted by Criminal Investigation (CI), then return the offer under the criterion "other investigations are pending that may affect the liability sought to be compromised or the grounds upon which it was submitted." Note: CI should be advised prior to the mailing of the return letter.

If...	Then...
<p>after 16 months from the IRS offer received date, the ROs local FTA has not made a decision whether the potential fraud development exists or the fraud referral has not been accepted by CI</p>	<p>the OS should contact the FTA to discuss the current status of the referral and advise them of the 24 month TIPRA statute. Advise the FTA if a fraud determination is not reached or the referral is not accepted by CI within 60 days, a recommendation to return, accept or reject the taxpayer's offer will be made. After 60 days, a determination should be made on the offer; the OS should discuss with the manager, the FTA, and RO, if appropriate, the next action based on available information. The appropriate action may be return under "other investigations pending" criteria, acceptance, rejection based solely upon the merits of the offer, or rejection under the basis "not in the government's best interest."</p> <p>Note: A return may also be appropriate, based on the taxpayer's failure to provide requested documents or remain in compliance.</p>
<p>the taxpayer submits an offer and there is a RO's fraud investigation open</p>	<p>the OS should contact the FTA to discuss the current status of the referral and advise them of the 24 month TIPRA statute. Advise the FTA if a fraud determination is not reached within 60 days, a recommendation to accept or reject the taxpayer's offer will be made. After 60 days, a determination should be made on the offer; the OE should discuss with their manager, the FTA, and RO, if appropriate, the next action based on available information. The appropriate action may be acceptance or rejection under the basis "not in the government's best interest."</p> <p>Note: A return may also be appropriate, based on the taxpayer's failure to provide requested documents or remain in compliance.</p> <p>Note: If the referral is in the process of being accepted by CI, it may be appropriate to hold the offer until the referral is accepted and the offer should then be returned based on "Other Investigations Pending" criteria. In these instances, monitoring of the 24 month TIPRA statute is critical.</p>

- (2) Responsibility of the OE in COIC – When indicators of potential fraud arise during an offer investigation, the OE will:
- a. Work the case to the point where a decision regarding final disposition can be made. All requests for documentation should have been sent to the taxpayer and sufficient time allowed for the taxpayer to respond. Final action with respect to the determination will be taken if the case does not meet Fraud Technical Advisor (FTA) fraud referral criteria.
 - b. Discuss the case with the group manager.

If...	Then...
the group manager concurs with the fraud potential	contact the site's Collection Functional Fraud Coordinator (CFFC) and discuss the case.
the CFFC agrees that the potential for fraud development exists	<ul style="list-style-type: none"> • The CFFC will secure concurrence from the FTA assigned to the campus. • The FTA will evaluate the case and determine if sufficient information is present to refer the case directly to Criminal Investigation (CI) or if further development is needed.
the CFFC and FTAs determine that further development is needed.	<ul style="list-style-type: none"> • The CFFC will prepare Form 11661- A, Fraud Development Recommendation - Collection., and obtain FTA concurrence. The CFFC will initiate an outgoing Other Investigation (OI) on ICS (sub coded 106) to the field Collection group that covers the geographic area where the taxpayer is located and mail a copy of all supporting documentation and a copy of the signed Form 11661- A to the Collection group. After the OI has been issued, assign the case on AOIC to 9998 (Fraud) and input a follow-up date on the AOIC "Follow-up" screen. • The OI should indicate the 24-month mandatory acceptance date on the OI and that the investigation should be expedited. • The OI will be assigned to an RO who will work with the local FTA to develop the fraud referral and make a determination if the potential for fraud development exists Note: Operations Manager intervention may be necessary if the OI is not being worked in a timely manner.
the case does not need any further development.	the CFFC will prepare Form 11661- A and secure campus FTA concurrence. The campus FTA will advise the OE how to refer directly to CI.
the ROs local FTA concurs with the potential for fraud development	the ROs local FTA will denote concurrence by signing Form 11661-A. The RO will notify the CFFC and when the referral is accepted by CI, the CFFC will request the offer be returned as "other investigations are pending that may affect the liability sought to be compromised or the grounds upon which it was submitted."
the ROs local FTA does not concur with the potential for fraud development	the RO will notify the CFFC and the CFFC will reassign the offer on AOIC to the group manager of the originating OE, who will then assign the case for completion of the offer investigation.

If...	Then...
after 16 months from the IRS offer received date, the ROs local FTA has not made a decision whether the potential for fraud development exists	<p>the OE should contact the FTA to discuss the current status of the referral and advise them of the 24 month TIPRA statute. Advise the FTA if a fraud determination is not reached or a referral accepted by CI within 60 days, a recommendation to return, accept or reject the taxpayer's offer will be made. After 60 days, a determination should be made on the offer; the OE should discuss with the manager, the FTA, and RO, if appropriate, the next action based on available information. The appropriate action may be return under "other investigations pending" criteria, acceptance or rejection based solely on the merits of the offer or rejection under the basis "not in the government's best interest."</p> <p>Note: A return may also be appropriate, based on the taxpayer's failure to provide requested documents or remain in compliance.</p>
the taxpayer submits an offer and there is a ROs fraud investigation open	<p>the OE should contact the FTA to discuss the current status of the referral and advise them of the 24 month TIPRA statute. Advise the FTA if a fraud determination is not reached within 60 days, a recommendation to return, accept or reject the taxpayer's offer will be made. After 60 days, a determination should be made on the offer; the OE should discuss with the manager, the FTA, and RO, if appropriate, the next action based on available information. The appropriate action may be return under "other investigations pending" criteria, acceptance or rejection under the basis "not in the government's best interest."</p> <p>Note: A return may also be appropriate, based on the taxpayer's failure to provide requested documents or remain in compliance.</p>

Note: The CFFC will monitor the OIs monthly and report to the Operations Manager the current status of all open OIs. Close monitoring is needed to ensure that the OIC is resolved prior to the 24-month mandatory acceptance period.

5.8.4.19
(05-10-2013)
Criminal Investigations

- (1) A taxpayer who submits an offer may be or might have been involved in a criminal investigation. The OE/OS should proceed appropriately based on whether the criminal investigation is open or closed. Criminal Investigation (CI) involvement with a specific tax year may impact the ability to continue the investigation.
- (2) Criminal investigation involvement in a tax year can be identified on IDRS by Transaction Code (TC) 910, 914 or 916.

5.8.4.19.1
(05-10-2013)
**Open Criminal
Investigations**

- (1) When a TC 910, 914, 916, or 918 identifying an open CI is on IDRS, contact must be made with the assigned Special Agent and procedures in IRM 5.1.5, Field Collecting Procedures, Balancing Civil and Criminal Cases, should be followed. It may be necessary for the group or unit managers to hold a discussion with the CI manager to determine the next appropriate action. A decision will need to be made on the appropriate actions to take and what may or may not be discussed with the taxpayer. The involvement of CI does not change the procedures involving the application of any application fee/TIPRA payment or the refund of any deposit which should be in accordance with current procedures.

Note: Advise CI of the TIPRA provisions for automatic offer acceptance, if a decision is not reached within 24 months of receipt. We can no longer hold offers open indefinitely pending a decision regarding the potential criminal investigation.

- (2) Once a taxpayer has been advised of the open criminal investigation, if the assigned Special Agent has no objection, the taxpayer may be asked to withdraw the offer until the criminal matter is resolved. If the taxpayer declines to withdraw the offer, return the offer to the taxpayer under the criterion "other investigations are pending that may affect the liability sought to be compromised or the grounds upon which it was submitted." If the Special Agent objects to asking the taxpayer to withdraw the offer or contacting the taxpayer, remind the Special Agent of the 24-month mandatory acceptance requirement. If the Special Agent continues to request that the taxpayer not be contacted, reassign the case on AOIC to 9999. Monitor the case and contact the Special Agent monthly to determine if and when taxpayer contact can be made. If, after 16 months from the IRS received date CI has not made a decision about what may or may not be discussed with the taxpayer, advise CI the offer is being returned under the criterion "other investigations are pending that may affect the liability sought to be compromised or the grounds upon which it was submitted."

5.8.4.19.2
(05-10-2013)
**Closed Criminal
Investigations**

- (1) When a TC 912, identifying a closed criminal investigation is found on the tax module, the OE/OS should contact the assigned Special Agent of the closed case. The OE/OS should determine if information is available that may impact the acceptability of the offer, the calculation of reasonable collection potential, or whether the offer investigation should continue. Issues may also include whether the taxpayer was guilty of a tax crime and is currently paying restitution. Refer to IRM 5.8.4.24.1, Offers in Compromise Submitted that Include Restitution.
- (2) The OE/OS should also review IDRS to determine if any tax periods involve Abusive Tax Avoidance Transaction (ATAT) issues. If ATAT issues are present, the OE/OS should also contact the revenue agent or revenue officer to discuss any impact the ATAT investigation may have on the offer investigation.

5.8.4.20
(05-10-2013)
**Offer Submitted Solely
to Delay Collection**

- (1) When it is determined that an offer is submitted solely to delay collection, the offer should be returned to the taxpayer without further consideration. The term solely to delay collection means an offer was submitted for the sole purpose of avoiding or delaying collection activity. A determination that an offer is submitted solely for the purpose of delaying collection should be apparent to an impartial observer.

Note: If the offer is being returned under “solely to delay” criteria, the field offer group manager or COIC team manager must independently determine the return meets IRM requirements and not rely solely on the Form 657.

- (2) An offer is not considered submitted solely to delay collection just because there is an imminent CSED issue or if an offer has been investigated and rejected and the taxpayer exercises appeal rights.
- (3) When a taxpayer submits an offer that is not materially different from a previous offer that was considered and rejected with appeal rights, the offer may be returned as solely to delay collection.
- (4) When a taxpayer submits an offer that is not materially different from a previous offer that was considered and returned and the cause of the prior return has not been addressed, the offer may be returned as solely to delay collection.

Example: The taxpayer fails to address the issues or defects of the previously submitted offer.

Note: This does not include those offers previously returned for failure to pay estimated tax payments and/or federal tax deposits. See IRM 5.8.7.2.2, Processable Returns, for returns for failure to make ES or FTDs.

- (5) The offer may be considered as materially different when the amount reflected on the re-submission is substantially similar to, less than, or the same as the prior offer and the following exist:
 - The taxpayer’s financial situation has changed. A change in the taxpayer’s financial situation may include:
 - (a) A change in employment and/or income,
 - (b) A change in marital status affecting future ability to pay,
 - (c) A change in ownership of assets or significant decline in the value of any assets,
 - (d) The loss of an asset that was included in the original offer investigation, or
 - (e) A change in circumstances that would affect allowable expenses and future ability to pay.
 - The taxpayer has raised special circumstances that were not considered during the prior investigation.
- (6) Although no provisions are provided for any formal appeal of a decision to return an offer submitted solely to delay collection, if contacted after the return letter is issued, employees must honor a taxpayer’s request for a review of the decision to return the offer with their immediate manager.
- (7) In some situations, it may be determined that an offer is submitted as solely to delay collection when no prior offer has been submitted. When a collection employee has contacted the taxpayer and determined that the next action necessary is to enforce collection through levy or seizure, but the taxpayer files a clearly frivolous offer, that is considerably less than equity in assets and/or his ability to make future payments, no special circumstances exist, and the RO determines the submission is to delay this enforcement action, the offer may be returned as solely to delay collection, unless there is a change of circumstances not considered by the collection employee.

Note: This may include situations involving OICs from entities (subject to the assertion of the trust fund recovery penalty (TFRP) under IRC 6672) attempting to compromise trust fund taxes where any trust fund portion has not been paid, the applicable TFRP has not been previously assessed against all responsible persons, the TFRP package forwarded for assessment, or a determination made by an RO to not assert due to collectibility or dollar criteria and the Service has previously explained to the principals that an offer will not be investigated unless the TFRP investigation is completed or the trust fund paid. See IRM 5.8.4.22.1, Trust Fund Liabilities.

Exception: For offers involving special circumstances as discussed in IRM 5.8.11.3.2.1, Public Policy or Equity Compelling Factors, the offer may be investigated or if appropriate, held in suspense until the TFRP investigation is completed. Also refer to IRM 5.1.24.5.8, Trust Fund Recovery Penalty (TFRP) Investigations, and IRM 5.7.3.3.3, Third-Party Payers and Common Law Employers/Clients, which provide guidance on additional factors the RO will be considering when determining the willfulness of the clients of third party payers.

Example: The taxpayer was harmed by a third party provider and submits an offer under Non-Economic Hardship criteria. The OE/OS may conduct the offer investigation, yet should not make an acceptance recommendation, if deemed appropriate, until the TFRP investigation is completed and either a determination was made that there were no responsible/willful persons or a TFRP assessment was recommended against any responsible/willful persons.

5.8.4.20.1
(05-10-2013)
**Solely to Delay
Examples and
Discussion**

(1) The following are examples of offers considered submitted solely to delay collection based on re-submission after a prior rejection, return, or default:

Example: (1) During initial analysis by an OE/OS, it is discovered on AOIC that the taxpayer had a previous offer returned six months ago as part of the “No Reply” process. A review of the AOIC case history indicated the taxpayer did not provide any bank statements with the first offer and did not respond to the combo letter requesting the necessary documentation to determine an accurate RCP. The initial analysis indicated bank statements are required to determine an accurate RCP; however, none were provided with the new offer and there was no indication from the taxpayer the accounts were closed. No special circumstances were indicated.

Example: (2) The taxpayer submitted an offer for \$10,000. The OE/OS computed the RCP to be \$20,000. The taxpayer refused to increase the offer to the computed RCP. A rejection letter was issued, and the taxpayer did not appeal. One month later, the taxpayer resubmitted an offer for \$10,100. A thorough analysis indicated there is no change in taxpayer’s financial condition and no special circumstances were indicated.

Example: (3) A taxpayer submits an offer for \$3,000 to be paid within 90 days of acceptance. A prior offer was submitted for \$10,000 to be paid within 90 days. The investigation of the initial offer submission resulted in the offer being rejected with appeal rights. During that offer investigation it was determined that a piece of property was transferred to a non-liable

spouse for no consideration and that a clear transferee issue exists. The value placed on the transferred property was \$30,000, and was included in the reasonable collection potential (RCP). The taxpayer failed to request a timely appeal on the rejected offer. There were no special circumstances indicated.

Example: (4) During initial processing of an OIC, AOIC indicates there have been three offers submitted by the taxpayer over the past 18 months. All three were returned for failure to provide requested CIS information. The closed return file indicates the taxpayer was asked to provide a financial statement for a closely held corporation, which the taxpayer holds 75% interest in and is the corporate president. A Form 433-B for this corporation was requested during the offer investigation. The offer specialist clearly documented in the file the taxpayer's interest and position in this corporation. The request was clear and specific and the taxpayer refused to provide this information, claiming the IRS has no right to place a value on the corporation when determining his ability to pay on personal tax liabilities. The newly submitted offer package does not include a Form 433-B for the corporation and the Form 433-A indicates the same corporation is the taxpayer's current employer.

Example: (5) An offer is submitted for \$30,000 payable within 90 days of acceptance. Research on AOIC indicates a second offer submitted by the taxpayer. A prior offer was submitted for \$20,000 payable within 90 days of acceptance. The original offer was rejected with appeal rights, the taxpayer filed a timely appeal, and Appeals sustained the rejection. A review of the prior offer file indicates the taxpayer has the ability to full pay the outstanding liability through an installment agreement. The total liability is for \$40,000. A review of the financial information indicates the taxpayer still has the ability to full pay the liability. The original offer was received 18 months ago and no payments have been made during this period. There is no change indicated on the financial statement, except the taxpayer has a new employer. The taxpayer's income remained the same. There are no special circumstances indicated.

Example: (6) Taxpayer submits a new offer within one year after defaulting on a prior offer and their financial situation has not changed since the offer was accepted.

(2) The following are examples of offers considered solely to delay collection based on a prior collection analysis and determination of ability to pay:

Example: (1) Taxpayer owes \$500,000. An offer is submitted for \$15,000. The CIS, as submitted by the taxpayer, indicates the taxpayer has recently been fired from his job where he had been earning \$200,000 a year. The CIS also reflects a personal residence with a fair market value of \$1.5 million and outstanding mortgage of \$750,000 leaving equity of \$750,000; a piece of property owned free and clear valued at \$60,000, a large boat with a value of \$140,000 which is unencumbered. Final demand has been made and a collection employee has indicated to the taxpayer that a Notice of Federal Tax Lien will be filed and possible enforcement action if the taxpayer does not full pay the liability. The investigation has shown that there are no special circumstances to be considered.

Example: (2) Self-employed taxpayers owe a joint 1040 liability for 2017 of \$140,000 and submitted an offer for \$250. They have no future income potential which should be included in RCP. They own an unimproved lot valued at \$14,000, a personal residence valued at \$177,500, six automobiles, and two horse trailers valued at \$20,000. Based on the taxpayers' equity in assets, reasonable collection potential (RCP) is calculated at \$169,200. The balance due period was in active collection inventory prior to the offer submission. The collection employee advised the taxpayer to secure a loan on their equity or levy action would be initiated. The taxpayer refused to pay more than the proposed \$250 and submitted the offer instead of making any payment to their tax liability. The collection employee completed the Form 657 indicating the case should be returned as solely to delay based on the prior collection history and recent lack of cooperation by the taxpayer to resolve the balance due. It was agreed and approved by the collection manager. The investigation has shown that there are no special circumstances to be considered.

Example: (3) A corporation owes Form 941 employment taxes which include the unpaid trust fund portion. The revenue officer previously advised the corporate principals that the Service would not consider an offer in compromise for this tax liability unless they personally full paid the trust fund portion or the trust fund recovery penalty (TFRP) was assessed against all responsible persons. The principals did not pay the trust fund portion and the corporation submitted an offer in compromise before the revenue officer assessed the TFRP against all responsible parties.

5.8.4.20.2
(09-24-2020)
Procedures for Return of Offers Submitted Solely to Delay Collection

- (1) The determination that an offer was submitted solely to delay collection may be made immediately after the offer is deemed processable or at any time during the offer investigation when the facts support the decision.
- (2) The determination that an offer was submitted after a prior reject or default can be supported by reviewing records on AOIC and IDRS transactions:

If...	Then...
AOIC indicates that prior offer records exist	Determine the type of disposition used to close the prior submissions.
AOIC indicates the prior offer submission was rejected with appeal rights	The re-submission will be determined to be solely to delay collection unless the taxpayer can show his financial situation has changed since the previous offer investigation.
The prior offer was defaulted within the past year	The re-submission requires review to determine if it was submitted solely to delay collection.

- (3) To determine if the re-submission is materially different from the prior rejected or defaulted offer:

- a. Review any AOIC and/or ICS history to establish that an offer is a re-submission solely to delay collection.
- b. Compare the information contained in the prior history with the resubmitted offer package to determine if the offer was submitted solely to delay collection.
- c. If necessary, the taxpayer/representative should be contacted to discuss if there are any changes to the taxpayer's situation which would justify a new offer submission.

Note: This does not include those offers previously returned for failure to pay estimated tax payments and/or federal tax deposits. The taxpayer must be contacted, preferably by telephone, and given a reasonable time to submit the required payments prior to returning the offer for compliance. Do not return the offer as solely to delay.

- (4) Cases assigned to a field RO – When the field RO receives an offer, or is notified that the taxpayer submitted an offer to COIC, the RO will complete Form 657, Revenue Officer Report, and submit it to the RO group manager for approval. Form 657 must provide detailed reasons supporting any solely to delay collection decision. The RO will fax the Form 657 to either the FOIC group manager or COIC Group Manager, depending on where the offer is assigned at that time.

Note: If the taxpayer/representative contacts the OE/OS to discuss the offer return, the taxpayer/representative should be directed to discuss the “solely to delay” determination with the RO who submitted the Form 657 and if appropriate, their manager.

- (5) If there is a determination to issue a notice of levy prior to the offer being returned, the RO must secure approval from the SB/SE Collection Territory Manager in accordance with IRM 1.2.65.3.1.

5.8.4.21
(09-24-2020)
**Responsibility of Offer
Examiners, Offer
Specialists, and Field
Revenue Officers**

- (1) The OE/OS is responsible for working only offer aspects of an investigation. During the offer process employees may discover collection issues that require a Field RO investigation.
- (2) If the issues are initially identified by an OE in COIC, the OE must first discuss the issue with his manager and site RO, to confirm that the issues require a Field RO investigation.
- (3) In the situations below, except in the case of TFRP or PLET investigations, an Other Investigation (OI) will be initiated only after the COIC or field manager and RO manager have discussed the issue and agree that the situation warrants the issuance of the OI.

Issue	Procedure
Transferee, Nominee or Alter Ego	<p>When these issues arise during an offer investigation, the OE/OS should establish a valuation for the involved asset or income stream. The OE/OS should include the value in computing the RCP but not actually complete the administrative actions required to establish the liability against the third party which might include any of the following: initiating an IRC 6901 administrative assessment; requesting the filing of a special condition NFTL; initiating a suit to set aside a fraudulent conveyance; or initiating a suit to establish a transferee liability. If the value of the involved asset or income stream will be obtained through an accepted offer, that fact should be clearly documented and any transferee, nominee or alter ego remedy not pursued through administrative or judicial action. If the offer is rejected or moving toward rejection and time is of the essence due to the dissipation/transfer of assets or statute expiration, a Form 2209, Courtesy Investigation, or OI should be initiated to request the assignment of a RO to complete the appropriate action to: initiate an IRC 6901 administrative assessment; secure approval for and file appropriate special condition NFTL(s); initiate a suit to set aside a fraudulent conveyance; or initiate a suit to establish a transferee liability.</p>

Issue	Procedure
Levy or seizure related actions	<p>If during the course of an offer investigation an OE/OS determines that immediate levy or seizure action may be needed, the case will be referred to the Field Collection function. The OE/OS will initiate an Other Investigation request to an RO group outlining the actions needed and provide any additional information that would assist the RO. Upon notification that the field will proceed with enforcement action, the OE/OS will follow the procedures to close the offer outlined in IRM 5.8.4.20, Offers Submitted Solely to Delay Collection, and advise the field RO or his manager when the return letter has been mailed to the taxpayer.</p>
Suit recommendations	<p>The OE/OS should consider the value of any recovery that may be made through a suit when determining the RCP. If the anticipated recovery amount is obtained through an accepted offer this fact should be clearly documented and the suit recommendation not pursued. If the offer is rejected or moving toward rejection and time is of the essence due to the statute expiration for filing suit, an OI should be initiated to request the assignment of a RO to complete the suit recommendation.</p> <p>Note: A referral to the Department of Justice cannot be made while an offer is pending, so coordination may be necessary with the RO completing the suit recommendation to advise them when the offer is closed.</p>

Issue	Procedure
Continuing action on In Business Trust Fund (IBTF) cases	Due to the potential for the pyramiding of liabilities and dissipation of assets in IBTF cases, the OE/OS will initiate an OI (COIC site RO will initiate the OI via ICS) on rejected or returned offers involving ongoing businesses with employment tax liabilities. Because rejected, returned, and withdrawn offers do not systemically revert to Status 26 (field assignment), the OI serves as an open assignment until the case is systemically assigned to Status 24 (queue), at which time the collection group manager can assign the case to an RO and close the OI. This process will generally take about 30 days.

Issue	Procedure
Trust Fund Recovery Penalty (TFRP) and Personal Liability for Excise Tax (PLET) cases	<p>It is the responsibility of the field RO to complete the TFRP or PLET investigation and make a determination regarding personal responsibility and willfulness in these cases. The RO will follow the provisions in IRM 5.7.4, Investigation and Recommendation of TFRP. For all offers, the TFRP must be assessed against all responsible/willful persons, the outstanding trust fund amounts paid, the TFRP package forwarded for assessment or a determination made by an RO to not assert due to collectability or dollar criteria prior to consideration of the offer. See IRM 5.8.4.22.1 Trust Fund Liabilities below for instructions on processing these investigations in conjunction with open offers, including when the aggregate outstanding trust fund liability is under the criteria established in IRM 5.7.4.9., TFRP and Offers in Compromise and offers submitted under special circumstances discussed in IRM 5.8.11.3.2.1, Public Policy or Equity Compelling Factors.</p> <p>Note: OIs referred per these instructions should be considered high risk cases (i.e., risk code 100) and processed accordingly.</p>

5.8.4.22
(06-01-2010)
**Procedures for Certain
Types of Taxpayers and
Liabilities**

- (1) Certain types of taxpayers and/or liabilities require unique considerations. The instructions described below should be followed when considering cases of this nature.

5.8.4.22.1
(09-24-2020)
Trust Fund Liabilities

- (1) Before an offer to compromise trust fund tax will be investigated, for entities in which the trust fund recovery penalty is applicable (in business or out of business) all the issues outlined in IRM 5.8.4.21, Responsibility of Offer Examiners, Offer Specialists, and Field Revenue Officers above should be considered. In addition, as a prerequisite, the trust fund portion of the taxes must

be paid, the TFRP must be assessed against all responsible/willful persons, a determination made by an RO to not assert due to collectibility or dollar criteria, or the trust fund package forwarded for assessment.

Note: If the taxpayer's aggregate outstanding trust fund liability is under criteria established in IRM 5.7.4.9, TFRP and Offers in Compromise, is out of business with no potential to incur additional liabilities, and the RO determines no other prior TFRP assertions (from unrelated entities) were made against the responsible parties, a determination made by an RO to not assert the TFRP is sufficient to allow for the offer investigation to proceed.

Exception: For offers involving special circumstances as discussed in IRM 5.8.11.3.2.1, Public Policy or Equity Compelling Factors, the offer may be investigated or if appropriate, held in suspense until the TFRP investigation is completed. Also refer to IRM 5.1.24.5.8, Trust Fund Recovery Penalty (TFRP) Investigations, and IRM 5.7.3.3.3., Third-Party Payers and Common Law Employers/Clients, which provide guidance on additional factors the RO will be considering when determining the willfulness of the clients of third party payers.

- (2) It is the Service's policy that the amount offered to compromise a liability subject to assertion of the TFRP will represent what can be collected from the employer. If the Service enters into a compromise with an employer for a portion of the trust fund tax liability, the remainder of the trust fund taxes may still be collected from a responsible person.
- (3) Revenue officers have two options when they negotiate with the entity principals. This applies to trust fund liabilities in Status 26 or other assessments in notice status related to the Status 26 entity, which have any unpaid trust fund amount still within the TFRP Assessment Statute Expiration Date (ASED). They are:
 - If the entity wishes to file an offer, generally, all responsible persons must first agree to the assessment of the TFRP. Both responsibility and willfulness must be present to assert the TFRP and/or request signature of Form 2751, Proposed Assessment of Trust Fund Recovery Penalty. Although a Form 2751 is secured, the field RO must also secure basic documentary evidence to support assertion against any responsible person(s) even if they sign the Form 2751. The signing of the Form 2751 does not preclude the responsible person from challenging this assessment by paying a divisible portion of the tax, filing a refund claim and if unsuccessful, a refund suit. The responsible person should be advised of the right to file a refund claim when the Form 2751 is provided to the responsible person.
 - Alternatively, the responsible parties can personally full pay the trust fund amount on behalf of the entity. IRM 5.7.4.4, Payments by Responsible Party on Behalf of the Employer, contains instructions when a responsible person chooses to pay on behalf of the entity. Absent a non-assertion determination due to an inability to pay or dollar criteria, failure to pay the trust fund or sign the Form 2751 by a party determined to be both responsible and willful, will result in a solely to delay determination if the entity files an offer. See IRM 5.8.4.20, Offer Submitted Solely to Delay Collection, above. In addition, a formal appeal of the proposed TFRP will result in the offer being returned as solely to delay.

Note: If extenuating circumstances are present that prevent the assessment of the TFRP against all responsible persons, the RO, after consulting with their manager, may request continued processing of the offer without the assessment of all potential responsible persons. For example, a potential responsible person cannot be located. The RO may request the OIC continue to be investigated if the government's interests are sufficiently protected and if the other responsible persons have agreed to assessment of the TFRP.

- (4) Only the amount that can be collected from the entity (including dissipated assets and any assets fraudulently transferred) will be considered in the RCP calculation of an acceptable offer. The Service will pursue collection of the TFRP assessed against the responsible person(s), unless the trust fund portion has been full paid.

Note: A taxpayer may designate TIPRA payments (pre-acceptance) to a specific liability including trust fund liabilities. For a TIPRA payment designation to be valid, it must accompany the specific payment. Once the offer has been accepted, subsequent payments of the offer amount will be applied in the government's best interest.

- (5) During initial analysis of an offer received from an entity subject to the assertion of the TFRP and involving unpaid trust fund tax, the offer specialist must determine the ASED of each period and take immediate steps to protect it if expiration is imminent.
- (6) The following actions should be taken based on the facts of the case:

If...	Then the RO will...	Then the OE/OS will...
The TFRP has been completed and the assessment processed prior to the time the corporate offer is filed	Document this fact in the ICS history and on the Form 657 and forward to COIC.	Proceed with the offer investigation.

If...	Then the RO will...	Then the OE/OS will...
<p>The account is in Status 26, the TFRP has not been assessed, the taxpayer was advised that an offer will not be investigated until the TFRP is assessed or full paid yet submitted an OIC</p>	<p>Document this fact in the ICS history. Complete Form 657 requesting the case be returned as solely to delay. Advise the taxpayer that an OIC will not be considered until the trust fund is paid or the TFRP assessed. If the trust fund is not paid, complete the TFRP investigation.</p>	<p>Return the case as solely to delay. Exception: For offers involving special circumstances as discussed in IRM 5.8.11.3.2.1, Public Policy or Equity Compelling Factors, the offer may be investigated or if appropriate, held in suspense until the TFRP investigation is completed. Also refer to IRM 5.1.24.5.8, Trust Fund Recovery Penalty (TFRP) Investigations, and IRM 5.7.3.3.3, Third-Party Payers and Common Law Employers/Clients, which provides guidance on additional factors the RO will be considering when determining the willfulness of the clients of third party payers.</p>

If...	Then the RO will...	Then the OE/OS will...
<p>The account is not in Status 26 and/or the responsible person(s) was not previously advised that an offer will not be investigated until the TFRP is assessed or full paid.</p>	<p>Complete the TFRP investigation. Trust fund OIC investigations are considered mandatory OIs and must be assigned by the group manager. See IRM 5.1.8.5, Mandatory Assignments. The OI should be completed within 90 days and must be assessed prior to acceptance of the OIC.</p> <p>Exception: If a determination is made by the OE/OS the trust fund amount is below criteria in IRM 5.8.4.7.2, TFRP Determinations, an OI is not required. The OE/OS manager should document the OIC remarks or ICS history they concur with the non-issuance of the OI. IAT TFRP Calc. may be used to determine remaining trust fund amount.</p>	<p>Retain the offer and generate an outgoing OI (coded 100) to the field to complete the TFRP investigation. If the account was assigned to an RO at the time the OIC was received but the taxpayer had not been advised that an offer will not be investigated until the TFRP is assessed or full paid, generate an outgoing OI to the manager of the RO who was assigned the account when the offer was received. If the account was not assigned to an RO when the offer was received, send the OI to the group that works the taxpayer's zip code. Coordinate with the assigned RO to ensure the TFRP is assessed, a determination made to not assert, or the trust fund amount fully paid.</p> <p>Note: If the TFRP actions are not completed prior to the offer being 18 months from IRS received date, the offer should be returned as "other investigations pending".</p> <p>Note: If the offer is 18 months from IRS received date and the delay in the TFRP investigation is caused by the taxpayer, the offer should be returned as "delay of collection".</p>
<p>The ASED has expired without any TFRP assessment</p>	<p>Document ICS accordingly.</p>	<p>Annotate the expiration in the case history and continue processing the OIC determining only the corporation's RCP. If the ASED expired while in the OE/OS inventory, prepare an expired statute notification and submit to the OIC group manager for processing. Refer to IRM 5.7.3.8, Reporting Expiration of the TFRP Statute.</p>

If...	Then the RO will...	Then the OE/OS will...
There is a pending TFRP investigation.	Advise the taxpayer that the offer investigation cannot proceed until the TFRP issues have been resolved and secure a signed Form 2751.	Coordinate with the assigned RO to ensure that a determination is made to assert or not assert the TFRP, or that the trust fund is fully paid. Note: If the taxpayer is uncooperative and/or the TFRP assessment will not be within 90 days, the OE/OS should contact the taxpayer and attempt to secure a withdrawal. If the taxpayer is unwilling to withdraw the offer, the offer may be returned as “solely to delay”.

- (7) In the situation where the amount offered by a corporation combined with the payments already made on related TFRP assessments exceeds the total employment tax liability of the corporation for the same tax periods, take the following actions:
- a. Request the responsible person(s) sign irrevocable requests to transfer the payments on the TFRP accounts to the related corporation liability.
 - b. Complete and process Form 3870 to transfer the credit(s).
 - c. Secure full payment of the balance due from the corporation.
 - d. Secure a withdrawal of the offer.
- (8) When corporate offers are being considered, corporate officers, shareholders, or others determined to be responsible for a TFRP may be required to submit a Form 433-A (OIC). When partnership or LLC offers are being considered, the general partners and the LLC's owners may be required to submit a Form 433-A (OIC) as well. In certain instances, since the RCP for a corporate offer is based on the amount collectible and equity in assets of the corporation, it may be unnecessary to secure a 433-A (OIC) from individual shareholders, corporate officers, or other parties, who hold only a minimal interest in the corporation and/or have no control over the corporation's activities.

5.8.4.22.2
(05-10-2013)
Partnership Liabilities

- (1) Partnership employment tax liabilities are not joint and several as in the case of joint income tax assessments. The Service's ability to collect from the partners is based on state law.
- (2) When a partnership liability is compromised for any individual general partner our ability to collect from all other general partners may be affected. Therefore, the amount offered to compromise a partnership tax liability must include what we can collect from the partnership plus what can be collected from each of the general partners. No offer should be accepted to compromise only one partner's individual liability for the partnership debt.
- (3) When investigating partnership offers, a CIS should be secured from the partnership and from all general partners. The RCP for the partnership must equal

what could be collected from the partnership plus what could be collected from all general partners. Generally, an offer based on DATC from a partnership will not be accepted when the RCP of one or more of the general partners cannot be determined. When it is not possible to secure a CIS from one or more of the general partners, because they cannot be located or they refuse to cooperate or join in the offer, the offer may still be accepted if the investigation is able to establish that there is no collection potential from the non-participating partner(s).

Note: If the offer is being rejected based on the failure of a general partner to submit financial information, the offer specialist should determine an appropriate resolution to the partnership account. Refer to IRM 5.8.7.10, Alternative Resolutions.

5.8.4.22.3
(09-24-2020)
**Offers from Operating
Businesses**

- (1) Trust fund taxes are taxes withheld or collected from an individual and paid over to the government on that person's behalf. See IRM 5.7.3, Establishing Responsibility and Willfulness for the Trust Fund Recovery Penalty (TFRP), for a list of tax returns used to report trust fund taxes and where assessment of the TFRP based on the liabilities reported on the returns is possible.
- (2) When an offer is accepted to compromise trust fund tax owed by an operating business, the taxpayer is relieved of a significant operating expense. The effect is to grant the delinquent taxpayer an economic advantage over competitors who are in tax compliance. The following procedures apply to all In Business Trust Fund (IBTF) taxpayers, including sole proprietorships, partnerships, limited liability companies, as well as corporations.
 - a. These taxpayers must remain in compliance while the offer is being considered. See IRM 5.8.7, Return, Terminate, Withdraw, and Reject Processing; for required actions prior to returning the offer.
 - b. For offers involving corporate entities, or any entity in which assertion of the TFRP is applicable: the trust fund portion of the tax liabilities must be paid, the TFRP must be assessed against all responsible persons, a determination made by an RO to not assert due to collectibility or dollar criteria, or the trust fund package forwarded for assessment. See IRM 5.8.4.22.1, Trust Fund Liabilities, above for instructions on processing these investigations in conjunction with open offers, including when the aggregate outstanding trust fund liability is under the criteria established in IRM 5.7.4.2, TFRP Determination, Interviews and Investigations and offers submitted under special circumstances discussed in IRM 5.8.11.3.2.1, Public Policy or Equity Compelling Factors.
- (3) The following issues should be carefully reviewed and/or considered:
 - a. Depreciation – Do not allow depreciation. Instead allow necessary actual monthly obligations paid to secured creditors on depreciable assets (i.e. autos, equipment, or real estate loans).
 - b. Personal Expenses Paid by the Business – Financial statements must be reviewed to ensure expenses such as car payments, insurance, utilities, etc. are not claimed on both the Form 433-A (OIC) and the Form 433-B (OIC).
 - c. Refer to IRM 5.8.10.2, Bankruptcy, for a discussion on factors to consider in potential bankruptcy situations.
 - d. Field Visits to Evaluate Business Assets – When appropriate, a field call should be made to validate the existence and value of business assets

and inventory for offers involving an operating business that will be recommended for acceptance. The offer specialist should make the field call, if practical after discussing with their group manager, or initiate an OI to request that a call be made by another RO, if the taxpayer operates outside the offer specialist's commuting area. If a field call has been previously made and assets have been valued and documented, a field call would not be required. The determination of whether a field call should be made will be based on the type of business entity, assets involved, and if appropriate, discussion with the field RO group manager to determine if a field call would be an appropriate use of resources. A field call is a requirement on acceptances which the Territory Manager, Operations Manager, or Director is the delegated approving official.

Exception: If after discussion with the RO group manager, it is determined a field call cannot be made, due to the taxpayer's geographic location, the AOIC history or ICS history will be documented and the offer acceptance recommendation may be submitted for approval.

Note: OIs referred per these instructions should be considered high risk cases, code 100, and processed accordingly.

Exception: If the offer is being recommended for acceptance based on Effective Tax Administration Public policy/Equity (NEH-ETA) factors, a field call may be requested, yet is not a requirement.

- (4) See IRM 5.8.5.26, Limited Liability Companies (LLC) Issues, for information on handling LLC entities.

5.8.4.22.4
(09-24-2020)
**Doubt as to Liability
(DATL)**

- (1) After initial processing, offers based on DATL of a TFRP or PLET are transferred to Area offices for assignment to an OS. All other DATL offers should be forwarded with no initial processing, to the centralized DATL processing unit located at the Brookhaven campus.

Note: The taxpayer is not required to submit an application fee or any TIPRA payments with a DATL offer. Current compliance and submission of financial statements are NOT required. If the taxpayer's offer is accepted, refund recoupment and the five year compliance aspects are not applicable.

- (2) For offers based on DATL of a TFRP or PLET, the decision to accept or reject rests primarily on a reconsideration of whether or not the person assessed was responsible for and willfully failed to pay over the subject tax. Offers on assessments of this nature that were determined by Appeals or that received an Appeal hearing should have an OIC rejection letter mailed to provide the taxpayer appeal rights. Collection is not responsible for any initial development of the case or securing the closed administrative file. The rejection letter should state the offer is being rejected since the initial determination was made by Appeals. The offer file should be transferred to Appeals for consideration if a timely appeal is submitted.
- (3) The taxpayer must offer a dollar amount. An offer for zero dollars on this basis is not acceptable and is subject to perfection requirements. The amount may

be a cash or periodic offer, payable within 90 days of acceptance, unless an alternative payment term is approved at the time the offer is accepted.

- (4) The administrative file should be secured and reviewed to examine the evidence that supported the assessment. New information, testimony or documents presented by the taxpayer should be considered. Refer to IRM 5.7, Trust Fund Compliance Handbook, for a discussion of the factors and evidence that support an assessment of a TFRP or PLET.
- (5) A DATL offer of a TFRP or PLET liability should be resolved in one of the following ways:

If...	Then...
No new information is available and the TFRP or PLET file supports the original assessment	Reject the offer. Note: Rejection of a DATL offer requires IAR review.
Another amount of liability is determined and the taxpayer agrees to the finding	Prepare and submit Form 3870, Request for Adjustment, to correct the assessment and secure a withdrawal of the offer, advising the taxpayer if the offer is withdrawn appeal rights will be forfeited, or recommend acceptance of the offer for the correct amount. Note: The terms of Form 656-L, Offer in Compromise (Doubt as to Liability), includes a provision for the Service to retain all prior year refunds in addition to the offer amount. Consideration should be given to whether offer acceptance is the appropriate resolution when the taxpayer has substantial refunds from previous years which may be applied to the liability in excess of the offer amount.
Another amount of liability is determined and the taxpayer still does not agree	Submit Form 3870 to correct the assessment and recommend rejection of the offer.
The Administrative file does not support the assessment	Abate the assessment in full and secure a withdrawal of the offer.

If...	Then...
The TFRP files cannot be located and/or reconstructed	Consult with Counsel to make a determination if the offer should be accepted.

- (6) Before considering a DATL offer, first screen the Form 656-L to determine if it can be considered and if all required documentation is attached. DATL offers cannot be considered if any of the following conditions exist:
- It is clearly not the taxpayer’s intention to compromise the tax liability based on the belief that it is incorrect. For example, taxpayers may erroneously submit the Form 656-L when the intent is to request an installment agreement to pay the existing liability or to compromise the liability on the basis that they cannot pay.
 - The taxpayer seeks to compromise a tax period for an unassessed liability, pending in Automated Underreporter (AUR), Substitute for Return (SFR/ASFR), Combined Annual Wage Reporting (CAWR), or Federal Unemployment Tax Adjustment (FUTA).
 - Still under examination (-L freeze, CC AMDISA area office status codes 10 – 56).
 - The 30-day letter reporting the examination changes or statutory notice of deficiency has been issued.
 - If a determination is pending before the Tax Court.
 - If the IRS referred the taxpayer’s case involving such a liability to the Department of Justice (DOJ).
- Note:** IRS may assist DOJ with a financial analysis of an offer submitted to DOJ, yet IRS has no authority to accept an offer on any tax liabilities which are under DOJ jurisdiction.
- (7) Examples of DATL offers that may be returned as solely to delay collection are:
- Resubmission of offers that are based on offer explanations that have previously been rejected or previously returned offers for which the taxpayer has not provided any new information.
 - Claims that the liability stems from the operation of a law that is unfair (e.g., liability based on withdrawing funds from a 401(k) plan).
 - Claims based on a divorce decree which stipulates the spouses each owe certain portions of a joint liability (the government is not party to such agreements).
 - Those that do not raise a valid liability issue or that give no reason for DATL basis.
 - Frivolous or patently groundless offers such as those that assert the types of tax arguments listed in Notice 2010-33, https://www.irs.gov/irb/2010-17_IRB/ar13.html and Notice 2006-31 <http://www.irs.gov/pub.irs-drop/n-06-31.pdf>. In egregious situations, assertion of the penalty for a frivolous submission may be appropriate. Refer to IRM 5.8.10.13 , Offer in Compromise Submission with Frivolous, Delaying or Impeding Issues.
- (8) If an RO determines the offer should be returned in accordance with IRM 5.8.4.20, Offers Submitted Solely to Delay Collection, a Form 657, Offer in Compromise – Revenue Officer Report, with the “Yes” block checked to indicate the offer was submitted “solely to delay collection”, should be

submitted with the offer with appropriate supporting documentation.

Note: If the liabilities covered by Form 656-L are in IDRS Status 26 and a Form 657 was not received, contact the RO assigned the balance due account to advise of the receipt of the DATL offer. Request a Form 657 to determine whether to consider the OIC.

5.8.4.22.4.1
(09-24-2020)
**Doubt as to Liability
Issues during DATC
Offer Investigation**

- (1) In some instances, a taxpayer may submit a DATC offer although their intent is to dispute the tax liability under DATL provisions. In these instances, the OE/OS should discuss with the taxpayer whether withdrawal of the DATC offer and submission of a DATL offer is appropriate. Since consideration of a DATL and DATC offer cannot be considered at the same time, refer to IRM 5.8.10.14, Taxpayer Files both Doubt as to Liability and Doubt as to Collectibility Offers, as to the appropriate actions to address the taxpayer's issues.

5.8.4.23
(07-18-2017)
Other Cases

- (1) An OIC may not be appropriate in the following situations: innocent spouse, reversed credits, refund schemes, offers involving deferred IRC 965 payments or assessments, and others. As always, each case must be evaluated on its own merit before returning or rejecting an offer under the identified basis. If appropriate, the offer may be returned without further consideration or investigation.

5.8.4.23.1
(01-18-2018)
**Claims for Relief from
Joint and Several
Liability under Section
6015 (Commonly
Referred to as Innocent
Spouse Claim)**

- (1) When one spouse files a claim for relief from joint and several liability and the other spouse submits an OIC, the Service employee considering the section 6015 claim should be contacted prior to proceeding to ensure there are no reasons to delay the investigation of the OIC until the section 6015 claim is resolved.
- (2) If a taxpayer files a DATC offer but raises relief from joint and several liability issues during the investigation, the issue should be discussed with the taxpayer. Inform the taxpayer that a requesting spouse is not entitled to relief from joint and several liability under section 6015 for any year for which the requesting spouse has entered into an offer in compromise. See Treas. Reg. 1.6015-1(c)(1). If after discussion with the taxpayer it is determined a claim should be filed with the Cincinnati Centralized Innocent Spouse Operations Unit (CCISO), the taxpayer should be requested to withdraw the offer after being advised withdrawing the offer will not allow the taxpayer any appeal rights, will not result in any payments the taxpayer made with the offer being refunded to him or her, and the claim should be forwarded to the CCISO.
- (3) If IDRS indicates the taxpayer has an open claim for relief from a joint and several liability, or if a DATC offer and a claim for joint and several liability are filed simultaneously, ask the taxpayer to withdraw the offer unless CCISO advises that the claim will be closed immediately with no change.
- (4) If the taxpayer refuses to withdraw the offer and a claim is submitted or CCISO indicates a claim already pending appears valid and the taxpayer will not withdraw the offer, the offer investigation should be suspended pending disposition of the section 6015 claim.

Exception: If the IRS received date becomes 18 months or older, the offer should be returned as “Other Investigations Pending” and the taxpayer advised an offer may be submitted once the Innocent Spouse claim is resolved.

5.8.4.23.2
(05-10-2013)
Reversed Credits

- (1) There may be situations when the taxpayer intentionally claimed a credit in order to receive a larger refund than legally entitled to, e.g. first time homebuyer, EITC, Advance Child Tax Credit (ACTC), etc. During the investigation of an offer involving these types of adjustments, it may be necessary to secure a copy of the audit work papers to determine the cause of the liability, the amount, the frequency, and whether the claimed credit was intentionally fraudulent. Offers where the taxpayer intentionally and knowingly claimed a credit for which they were not entitled may be rejected as not in the best interest of the government.

5.8.4.23.3
(05-10-2013)
Refund Schemes

- (1) Situations involving refund schemes, i.e. unsubstantiated withholding on forms W-2 and 1099 OID, and erroneous refundable credits, in which the taxpayer received fraudulent refunds, may be rejected as “not in the best interest of the government”.

Note: The taxpayer’s compliance history over a number of years subsequent to being involved in the scheme may be taken into consideration in determining whether to investigate the taxpayer’s offer.

5.8.4.23.4
(07-18-2017)
Preparer, Promoter, Appraiser, Material Advisor, and Aiding & Abetting Penalties

- (1) The Examination function puts considerable time and effort into assessing these civil penalties, which are intended to increase voluntary compliance. The penalties are quite serious in nature. Collection of the assessed penalties is essential to preserving their compliance impact.
- (2) These civil penalty modules are identified by Master File Tax (MFT) 13 for Business Master File (BMF) or MFT 55 for Individual Master File (IMF), with specific penalty reference numbers depending on the code section of the penalty. Refer to IRM 25.24.4, Return Preparer Misconduct Field Collection.
- (3) Absent unique special circumstances any offer submitted which includes these type of penalties should be rejected as “not in the best interest of the government”. See also IRM 5.8.7.7.1, Not in the Best Interest of the Government Rejection.

5.8.4.23.5
(09-24-2020)
Identity Theft

- (1) An offer in compromise may be submitted for consideration which includes tax periods having Identity Theft (IDT) issues. Guidance in IRM 25.23.2.4, IDT Indicators - Tax Related, provides information on the identification of tax periods involved in IDT and appropriate actions.
- (2) The identification of an IDT issue does not prohibit investigation of the offer. Each case will need to be considered on its own merit since there may be unique issues impacting the case decision.
- (3) Identification of IDT situations may be determined by internal research or information secured from the taxpayer or their representative. Tax periods involving open IDT cases are identified by TC 971 AC 522 on the tax module. Also

review for a TC 971 AC 501/506 on the tax year involved which indicates all identity theft tax administration issues have been resolved from the taxpayer's perspective.

Example: While researching IRPTR you identify the taxpayer has multiple income sources. The CIS only shows one employer and the taxpayer verifies they have not worked for the other entities listed. Refer to IRM 25.23.2.3, Identity Theft Claims - General Guidelines

for information on the completion of Form 14039, Identity Theft Affidavit. If appropriate, have the taxpayer download the form at <https://www.irs.gov> or if requested, send the form to the taxpayer. Request the completed Form 14039 , Identity Theft Affidavit be returned within 10 days.

- (4) The OE/OS should send the completed Form 14039 with a Form 4442, Inquiry Referral to *W&I IDT:Fresno:SPEC-CSCO and highlight the fact the taxpayer has an open offer in compromise.
- (5) IDTVA Specialities (formally IDTVA Compliance) will take the appropriate actions including input of TC 971/522 and work the case under Priority Code 2. Upon case closure, the Headquarters Compliance Liaison will be contacted so notification can be provided to the offer program.
- (6) The OE/OS should set a follow-up for 30 days to allow time for the initial processing of the IDT form and input of TC 971/522.
- (7) COIC OE will update the AOIC Case Category Code to 15, Identity Theft, and report time under 810–66012. Document the AOIC case history.

Note: Time reported is for discussion with the taxpayer on IDT issues and the completion of the 4442 and forwarding of the referral only.

- (8) Field OS will update the AOIC Case Category Code to 15, Identity Theft, and report time on ICS. Document ICS/AOIC case history.
- (9) The OE/OS should complete the financial analysis to determine an RCP.
- (10) If the tax period(s) involved in the IDT issue are not included in the offer and there is no expectation an additional tax liability will be assessed against the taxpayer, the OE/OS should take the following actions:
 - If the offer amount is equal to or exceeds the taxpayer's RCP, proceed with offer acceptance.

Note: Information on the IDT period(s) must be provided to MOIC with the acceptance file and documented in the AOIC remarks to avoid default of the offer. In addition, it will not be necessary to input or request input of the TC 470 CC 90, since the case will be in Status 71.
 - If offer amount is less than RCP and taxpayer unwilling or unable to increase the offer, proceed with rejection.

- (11) If the tax period(s) involved in the IDT issue are included in the offer or there is an expectation an additional tax liability will be assessed against the taxpayer, the OE/OS should take the following actions:

- If the offer amount is equal to or exceeds the taxpayer's RCP, monitor the IDT actions and proceed with acceptance once all IDT issues are resolved. Once the TC 971/522 is input and a determination is made to recommend acceptance of the offer, the OE/OS should discuss with their manager appropriate assignment for monitoring of the offer. If there remains less than six months on the TIPRA 24 month mandatory acceptance timeframe and there is no resolution to the IDT issue, the taxpayer should be requested to withdraw the offer. If the taxpayer is unwilling or does not respond to requests for contact, the offer may be returned as *other investigations pending*.
- If the offer amount is less than RCP and the taxpayer is unwilling or unable to increase the offer, proceed with rejection.

5.8.4.23.6
(07-18-2017)

**Return Preparer Fraud
or Misconduct**

- (1) A taxpayer becomes a victim of return preparer fraud when the tax return preparer (paid or otherwise) completes a tax return for a taxpayer and without the taxpayer's knowledge makes changes to that return resulting in a benefit to the preparer or third party. Taxpayers may be unaware there is an issue until contact by the IRS, well after all refunds have been issued.

Note: Refer to IRM 25.24, Return Preparer Misconduct Program for guidance on the required actions that must be taken when an individual taxpayer alleges return preparer misconduct (RPM) with respect to the taxpayer's tax return.

- (2) There are many variations on the scenarios involving a preparer who has committed fraud or misconduct on the taxpayer's return. Here are some of the common scenarios:

Example: (Unauthorized Filing) - A taxpayer communicates with a return preparer, but for some reason decides not to use this preparer and never authorizes a return filing. Later, the taxpayer attempts to electronically file a return but the IRS rejects the e-filed return. The taxpayer then learns the IRS has already processed a return submitted by the preparer, who directed the refund to an account not belonging to or under the control of the taxpayer.

Example: (Authorized filing, Altered return information and No Additional Refund Due to the Taxpayer) - The taxpayer was in contact with a preparer and did authorize a return filing, but states tax data (exemptions, income, expenses, deductions, credits, etc.) on his/her return was altered before it was filed to include items which he/she did not authorize. The preparer splits the refund by using Form 8888, Allocation of Refund (Including Savings Bond Purchases), so that the taxpayer receives the refund expected, while the preparer direct deposits the excess (fraudulent) refund to a different bank account under the preparer's control

Example: (Authorized filing, Altered return information and Taxpayer Requesting Additional Refund) - The taxpayer was in contact with a preparer and did authorize a return filing, but states tax data (exemptions, income, expenses, deductions, credits, etc.) on his/her return was altered before it was filed to include items which he/she did not authorize. The taxpayer only receives a portion (or none) of the correct refund he or she expected.

Example: Misdirected Refund - The taxpayer was in contact with a preparer and did authorize a return filing, but states although no tax data was altered, the direct deposit information or mailing address for the refund check was altered, diverting all or a portion of the refund to the preparer.

- (3) Be careful to distinguish between return preparer fraud and identity theft that was committed by a return preparer.

Example: If the taxpayer authorized a preparer to prepare and file the taxpayer's return, but the preparer altered items of income/deductions/credits/withholding to obtain a larger refund without the taxpayer's knowledge and consent, this is return preparer fraud and you must follow the procedures in this section. In contrast, for tax year 2018, the taxpayer filed his own return and did not use a preparer. However, unbeknownst to the taxpayer, the preparer he used in 2017 filed a 2018 return using the taxpayer's SSN without permission. This is identity theft, and you must follow the procedures in IRM 5.8.4.23.5, Identity Theft.

- (4) Modules identified with preparer fraud or misconduct should not prohibit investigation of the offer. Each case will need to be considered on its own merit since there may be unique issues impacting the case decision. Be sensitive to the adverse impact that being a victim of Return Preparer Fraud may have upon a taxpayer and his/her ability to pay.

Note: If the offer is to be accepted, information on the IDT period(s) must be provided to MOIC with the acceptance file and documented in the AOIC remarks to avoid default of the offer.

- (5) If misconduct is detected, in addition to the actions required under (6) of this section, refer to IRM 5.8.10.9.3, Referring Tax Practitioner Misconduct to the Office of Professional Responsibility, and IRM 5.8.10.9.4, Preparation of Form 8484, Report of Suspected Practitioner Misconduct and Report of Appraiser Penalty to the Office of Professional Responsibility (OPR).

- (6) COIC OE Reporting Procedures:

- Update the AOIC Case Category Code to 16, Return Preparer Fraud or Misconduct.
- Report time under 810-66013.

Note: Time reported is for completion of the 4442 referral only

- Document the AOIC case history.

- (7) Field OS Reporting Procedures:

- Update the AOIC Case Category Code to 16, Return Preparer Fraud or Misconduct.
- Document ICS/AOIC case history .

Note: Unlike Identity Theft (IDT) procedures, at this time Field OS have no time reporting requirements for cases identified as Return Preparer Fraud or Misconduct.

- (8) If a Notice of Federal Tax Lien (NFTL) has been filed and the entire balance due covered by the NFTL is due to return preparer misconduct or fraud,

request a certificate of release under IRC 6326 erroneous NFTL provisions pursuant to IRM 5.12.3.9, Erroneously Filed Notice of Federal Tax Lien. These releases contain a statement that the filing was erroneous and are requested through Specialty Collection - Advisory. Advisory also issues the Letter 544, Letter of Apology Erroneous Filing of Notice of Federal Tax Lien. At the taxpayer's written request, a copy of the release and letter of apology may be furnished to creditors or credit bureaus. Instruct the taxpayer to provide names, mailing addresses, and permission to disclose the information, see IRM 5.12.3.10.1, Return Preparer Misconduct Situation, for further direction.

5.8.4.23.7
(09-24-2020)
**IRC 965 (Transition Tax)
Liabilities**

- (1) IRC 965 provides that certain taxpayers must pay transition tax on untaxed foreign earnings of certain specified foreign corporations as if those earnings had been repatriated to the United States. Provisions of IRC 965 allow a taxpayer to elect to pay its IRC 965(h) net tax liability in installments over eight years (IRC 965(h)) or, if the taxpayer is a shareholder in an S corporation which is a United States shareholder of a deferred foreign income corporation, to elect to defer the assessment of its IRC 965(i) net tax liability until a triggering event occurs (IRC 965(i)).
- (2) IRC 965 assessments and potential assessments may be identified by the following transaction codes:
 - TC 971 AC 114 - the total IRC 965 tax that is included in the TC 150 amount. If the TC 971, AC 114 is \$0.00, the deferral may be under IRC 965(i), meaning the assessment of the tax liability is deferred until a triggering event.
 - TC 971 AC 115 - the IRC 965(h) deferred tax amount as reported by the taxpayer. There should only be a TC 971 AC 115 if an IRC 965(h) election was made, otherwise there will only be a TC 971, AC 114 on the module.
 - TC 766 CRN 263 - The amount of the IRC 965(h) net tax liability under IRC 965 payment of which the taxpayer is deferring. Taxpayers who make an IRC 965 (h) election may make installment payments for up to 8 years. For the first year, this credit amount could be up to 92% of the net IRC 965(h) tax liability under IRC 965 that is included in the TC 150.
- (3) If an offer which includes IRC 965 net tax liability is deemed processable, compliance screening and other initial offer actions should be completed in accordance with IRM 5.8.4.6, Initial Compliance Screening and IRM 5.8.4.7, Initial Offer Actions. If a tax year is included on the offer which only has tax deferred under IRC 965(i) or payment deferred under IRC 965(h), which has not been accelerated, the taxpayer should be requested to remove the tax year from the offer. If the taxpayer refuses to remove such tax year, the offer should be closed as a processable return.
- (4) If an IRC 965 liability has been assessed and no election was made under IRC 965(h), the tax may be included in the offer. The verification of the taxpayer's financial information in these situations may include assistance from an ATAT RO to determine if the taxpayer is retaining any foreign assets and the valuing of those foreign assets. Foreign Account Tax Compliance Act research should also be completed if the offer is being recommended for acceptance.
- (5) If the taxpayer made an IRC 965(h) election and the offer is going to be recommended for acceptance, the tax liability may be included in the offer, if acceleration has taken place under IRC 965(h)(3) such that the entire amount

of the IRC 965(h) net tax liability is currently due and if the taxpayer had not previously entered into a transfer agreement and assumed another taxpayer's IRC 965(h) net tax liability which is now included in the offer.

- (6) Income tax assessments, other than IRC 965 liabilities, on tax years which also include deferred assessment per IRC 965(i) may be compromised, yet the taxpayer must be specifically advised of the language on Form 656 which states IRC 965(i) net tax liabilities are not included in the compromise proposal. The offer case file must be clearly documented relative to this discussion with the taxpayer or their representative.
- (7) The unique nature of these assessments requires a thorough review of any tax periods in which the taxpayer has reported or may be required to report Transition taxes under IRC 965. The reviewer must determine if the potential exists for a tax liability based on a qualifying event or deferral of payments due. Any compromise determination must document this review and include information on the elections the taxpayer has made to ensure proper resolution to the taxpayer's account. In certain circumstances, based on the dollar amount of the IRC 965 assessment or other factors, assistance may be requested from Examination in evaluating whether the IRC 965 tax has been reported in accordance with the regulations.

Note: Due to the unique nature of offers involving IRC 965 liabilities, the OS must complete a thorough review of the taxpayer's financial situation in order to evaluate whether acceptance of an offer involving this tax is in the government's interest. Any acceptance to compromise a tax period which includes an IRC 965 liability or potential liability must be approved by the Territory Manager or Operations Manager. If it is determined the taxpayer is attempting to avoid the payment of this tax through dissipation or transfer of assets, the offer may be rejected under not in the best interest of the government.

5.8.4.24
(09-24-2020)
**Liabilities Other than
Internal Revenue Code
Title 26**

- (1) The IRS only has the authority based on IRC 7122 to compromise tax liabilities arising under the Internal Revenue Code, Title 26. In some instances, taxpayers will include liabilities on a Form 656 which may not be compromised by IRS as a matter of law. In these instances, any liabilities the IRS has no authority to compromise must be removed from the offer Form 656 before the investigation begins. This section identifies some of the more common liabilities, yet any liability the IRS has no authority to compromise should never be included on the Form 656 or addendum.
- (2) When determined to allow for efficient collection of tax and non-tax liabilities, the offer may include an attachment which provides a condition that a default of the offer may occur if the taxpayer fails to honor payment terms associated with amounts owed to the Department of Justice. In these instances, the wording of the attachment must be approved by Area Counsel.

5.8.4.24.1
(09-24-2020)
**Offers in Compromise
Submitted that Include
Restitution**

- (1) An offer may be submitted by a taxpayer who also has been ordered to pay restitution. Although the IRS is authorized to pursue collection of a restitution-based assessment (RBA), an OIC may only address a taxpayer's civil tax liabilities, not any criminal restitution. Since the IRS does not have the authority to compromise restitution, any restitution or associated RBAs should not be included in any OIC.

- (2) If an OIC is submitted by a taxpayer who also owes criminal restitution to the IRS, the offer may be considered for all civil tax liabilities other than restitution based assessments (RBA). The offer must still include all tax periods with a civil tax liability other than RBA. Inform the taxpayer that the offer has no effect on any court-ordered restitution or RBA. The taxpayer is still required to make payments in compliance with any restitution order, and the IRS may separately pursue collection on any RBA. Any issues regarding restitution payments should be directed to the Advisory probation liaison. If the taxpayer is unwilling to remove the RBA from the terms of the offer, the appropriate resolution would be a processable return of the taxpayer's offer.

Example: Taxpayer submits an OIC for tax years 2013 thru 2018. The civil tax assessments for the 2013 and 2014 tax years are based on a court order requiring the taxpayer to pay \$20,000 in restitution for these years. An offer may be considered for the taxpayer's civil tax liabilities for tax years 2013 through 2018. The taxpayer will separately continue to owe the full amount of court-ordered restitution for 2013 and 2014.

Example: Taxpayer owes restitution for tax year 2015, but has no corresponding civil tax assessment in that year. Taxpayer does have civil tax liabilities in 2016 and 2017. An offer may be considered for the taxpayer's 2016 and 2017 years. The taxpayer would separately continue to owe the court-ordered restitution for 2015.

Example: The court orders payment of restitution to the IRS for the 2016 tax year in the amount of \$50,000. The IRS makes a restitution based assessment (RBA) in the amount of \$50,000, which is reflected on Master File (MF) as a RBA for the 2016 tax year. MF also includes the civil tax assessment in the amount of \$30,000 and pursuant to further examination, the IRS assesses additional tax, interest, and penalties in the amount of \$10,000 for the same tax year. The IRS may compromise the civil tax assessment (\$30,000) and the additional amount assessed as civil tax liabilities (\$10,000). The taxpayer will separately continue to owe the \$50,000 in restitution, which is reflected on MF as a \$50,000 RBA.

Reminder: The acceptance of the offer to compromise the civil tax assessment does not impact the RBA and the taxpayer is still responsible for any outstanding balance of the RBA.

- (3) Questions relating to the terms of a restitution order (e.g., amount awarded, tax periods covered) should be directed to the special agent assigned to the case or the Advisory probation liaison. Defendants seeking to modify a restitution order should be directed to contact their probation officer. See IRM 5.1.5.15, Restitution, for more information.
- (4) If an offer is accepted and the taxpayer has RBA and/or restitution outstanding, AOIC remarks must be documented clearly so MOIC is aware coordination will be required with advisory relative to the application of payments. Additionally, due to the potential for payment cross referencing, abatement of the liabilities compromised should be coordinated with the unit that completes the RBA cross references. In some instances, it may be appropriate to wait until the CSED has expired, although a release of the NFTL would be appropriate when the terms are met.

Note: If an offer acceptance is being recommended which includes a tax module with both civil tax assessments and RBA, the OE/OS must provide the facts to Collection Policy for review prior to forwarding to Area Counsel. Additionally, all acceptance recommendations involving tax periods which include civil tax liabilities and a RBA must be reviewed by Area Counsel prior to the acceptance letter being issued.

5.8.4.24.1.1
(09-24-2020)
**Restitution Payment
Schedule**

- (1) If a taxpayer has been ordered to pay restitution, then any changes to the terms of a restitution payment schedule in a Judgment and Commitment Order can only be made pursuant to the order of the same court that issued a restitution order.

Note: The existence of a payment schedule in the Judgment and Commitment Order does not prevent or otherwise limit the IRS from pursuing administrative collection of the full amount of restitution ordered. A payment schedule only instructs the taxpayer to pay no less than that amount for the period specified. When determining whether administrative collection is warranted while a taxpayer is making timely payments pursuant to the restitution order's payment plan, the Service will consider the taxpayer's ability to pay.

- (2) The defendant must notify the court and the Department of Justice of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay. The U.S. may also notify the court of a change in the defendant's economic circumstances. Upon receiving notice of such change, the court may, on motion of a party or on its own motion, adjust a restitution payment schedule or require immediate payment in full, as the interests of justice require. See 18 USC 3644(k). A defendant seeking to adjust a restitution order or payment schedule should consult with his or her probation officer.

5.8.4.24.1.2
(09-24-2020)
**Identification of
Restitution Assessments**

- (1) Prior to the enactment of Public Law 111-237, the amount of restitution ordered payable to the IRS in a criminal case could not be assessed as a tax. The Firearms Excise Tax Improvement Act of 2010 ("the FETI Act"), Public Law No. 111-237, amended IRC 6201 to provide that the IRS shall assess and collect the amount of restitution ordered in a criminal case for failure to pay any tax imposed by the Internal Revenue Code in the same manner as if such amount were such tax. The law applies to restitution orders entered after August 16, 2010. See IRM 5.1.5, Field Collecting Procedures - Balancing Civil and Criminal Cases.

Note: Although the FETI act allows for the assessment of restitution, the IRS still may not compromise or change the terms of any restitution order. However, to the extent there is a payment plan set out in the court's restitution order, the taxpayer is not prohibited from paying the Service more than the minimum payment amount provided in the restitution order and the Service is not prohibited from pursuing administrative collection for the amount of restitution ordered. When determining whether administrative collection is warranted while a taxpayer is making timely payments pursuant to the restitution order's payment plan, the Service will consider the taxpayer's ability to pay.

(2) Since the enactment of the FETI Act a restitution assessment may be established on IDRS. This assessment is created on MFT 31 for the taxpayer(s) ordered to pay restitution to the IRS. Other identifying factors are:

- Transaction code (TC) 971 with Action Code (AC) 102 will be used to identify these modules as restitution assessments.
- TC 290 with reason codes 141 through 149 will be used to assess the restitution amount.
- TC 971 with AC 180 through 189 will reflect the type of tax and tax periods for which restitution was ordered.

Reminder: Since the IRS has no authority to compromise restitution, an accepted offer in compromise **must** never include any MFT 31 restitution based assessments.

5.8.4.24.2
(09-24-2020)

**Foreign Bank and
Financial Reporting
(FBAR) Assessments**

(1) An offer may be submitted which includes FBAR assessments or a taxpayer who submitted an offer to compromise their tax liabilities also has assessments based on FBAR. Since, the IRS does not have authority to compromise assessments based on FBAR, the taxpayer should be requested to submit an amended offer to remove FBAR liabilities which are included on the Form 656.

Note: FBAR penalties are assessed under Title 31 and do not appear in IDRS.

(2) If the taxpayer has a liability for assessments under FBAR, an offer for tax liabilities other than the FBAR may be investigated. During the review of the taxpayer's financial information, the OE/OS should conduct additional investigation actions to determine if the taxpayer continues to have assets outside the United States. Review the ICS history to determine what research may have been conducted by a field revenue officer. The OE/OS may also issue an other investigation (OI) to an ATAT or International RO group to research FinCEN and/or CBRS to assist in identifying current foreign assets in which they retain an interest.

Note: The taxpayer may also have pending assessments related to Offshore Voluntary Disclosure Initiative.

(3) If the taxpayer is unable or unwilling to submit an amended offer removing the FBAR liabilities, the offer should be closed as a processable return.

5.8.4.24.3
(09-24-2020)

**IRC 6901 - Transferee
Liability**

(1) Courts recognize that transferee liability may arise under applicable state law transferee liability theories. IRC 6901(a)(1)(A)(i) authorizes the assessment of transferee liability, at law or in equity, in the same manner as the liability for income taxes. This provision, however, does not create any separate liability; it merely provides a secondary method for enforcing the existing liability of the transferor. Since the substantive question of whether a transferee is liable for the transferor's obligation depends upon state law, transferee liabilities arising under state law that the IRS collects under section 6901 should not be included in any offer.

5.8.4.25
(08-28-2018)
**Periodic Payments
Required with Offer in
Compromise
Submissions**

- (1) IRC Section 7122(c), as amended by the TIPRA, requires OIC's submitted on or after July 17, 2006 (and not subject to waiver with respect to low income taxpayers or offers submitted based solely on DATL) must be accompanied by partial payment of the proposed offer amount. These payments are applied to the tax liabilities included on the offer and are in addition to any application fee imposed.
- (2) The form of these partial payments depends on the taxpayer's proposed offer and its terms.
 - a. A lump sum cash offer (defined as payable in five or fewer payments within five months of offer acceptance) must be accompanied by a payment of 20% of the offered amount, unless an exception as discussed in IRM 5.8.1.15.4, Payments exists.
 - b. A periodic payment (defined as payable in six to 24 months or through the statutory period) must be accompanied by payment of the first proposed installment, and additional payments must be paid in accordance with the taxpayer's proposed offer terms while the Service evaluates the offer. The total installments may not exceed 24 months.
- (3) If the taxpayer qualifies for the Low Income Waiver, the taxpayer is not required to pay the application fee, or TIPRA payment(s), including any future payments, until accepted.
- (4) If a periodic payment offer is accepted, and the taxpayer qualified for a Low Income Waiver, the 24-month timeframe for paying the accepted offer amount will start on the date of written notice of acceptance. At that time, the taxpayer will begin making the payments in accordance to the terms of the accepted offer.
- (5) While a periodic payment offer is being evaluated by the Service, the taxpayer must make subsequent proposed payments as they become due. There is no requirement that the payments be made monthly or in equal amounts.
- (6) The Service is not bound by either the offer amount or the terms proposed by the taxpayer. The OE/OS may determine that the proposed offer amount is too low or the payment terms too protracted to recommend acceptance. In this situation, the offer investigator may advise the taxpayer that a larger amount or different terms would likely be recommended for acceptance.
- (7) Taxpayers who qualify for waiver of the application fee are also exempt from making the required TIPRA payment(s). If during the investigation, it is discovered that the taxpayer does not qualify for the waiver, contact the taxpayer and make one request by telephone for the required payment(s) and the application fee. Allow 15 calendar days for the taxpayer to submit the payment(s) and fee. If the taxpayer cannot be reached by telephone, issue an additional information letter to notify of the need to make the payment(s) and allow 15 calendar days from the date of the letter to submit the payment(s). If the taxpayer or POA fails to submit the payment or request an extension of time within 30 days from the date of the letter, close the offer as a mandatory withdrawal, using the appropriate withdrawal letter. Document the ICS or AOIC history. See IRM 5.8.7.4.2, Mandatory Withdrawal.
- (8) If the taxpayer submitted the application fee, and TIPRA payment in addition to checking the Low Income Certification box, and it is discovered that the taxpayer does not qualify for the waiver, the offer investigator should refer to

IRM 5.8.4.7, Initial Offer Actions para. (2) for guidance relative to the application of any payments submitted with the offer.

- (9) If the taxpayer submitted a periodic payment offer, the offer specialist/examiner will make one request by telephone for the taxpayer to make up the past due TIPRA payment(s) from the date of submission to the date of discovery. Allow 15 calendar days for the taxpayer to submit the payment(s). The taxpayer will then be required to make payments in accordance to the terms of the offer when submitted during the remainder of the investigation. If the taxpayer cannot be reached by telephone, issue an additional information letter to notify of the need to make the payment(s) and allow 15 calendar days from the date of the letter to submit the payment(s). If the taxpayer or POA fails to submit the payment or request an extension of time within 30 calendar days from the date of the letter, close the offer as a mandatory withdrawal, using the appropriate withdrawal letter. Document the ICS or AOIC history. See IRM 5.8.7.4.2, Mandatory Withdrawal.
- (10) Situations may exist where the offer investigation has been completed and it has been determined the offer will not be accepted prior to determining the taxpayer has missed an installment of their periodic payment offer. In these instances, when contact is made with the taxpayer to secure the missed installment(s), whether by telephone or correspondence, in addition to advising the taxpayer the offer will be processed as a mandatory withdrawal if the installment is not paid, the OE/OS should also advise the taxpayer that even if the taxpayer makes the required installments, the offer will be recommended for rejection. Providing a copy of the IET and AET may also be appropriate. The appropriate next action should be taken based on the taxpayer/POA response.
- (11) Taxpayers may designate how the required TIPRA payments are to be applied to the taxpayer's liabilities. The request for designation must be made in writing when the offer is submitted (in the case of the initial partial payments) or when the payment is made (in the case of subsequent installment payments made for a periodic payment offer). Once a designation of payment is made, it cannot be changed at a later time. The written payment designation must clearly explain how these payments are to be applied to specific tax periods or liabilities (e.g., income taxes, employment taxes, trust fund portions of employment or excise taxes, etc.). This written payment designation must become part of, and remain with, the offer case file.
- (12) In the absence of any written payment designation by the taxpayer when the payment is made, the Service will apply the payments in the best interest of the Government.

Note: Form 656 may include a designation of the initial TIPRA payment, it does not serve as a designation for any subsequent payments.

- (13) COIC will process the required initial TIPRA payment accompanying periodic payment offers prior to transferring an offer to an OS or Grade 12 OE. For offers submitted by corporations to compromise trust fund taxes, COIC will apply the initial payment(s) to the tax liability with the earliest unexpired CSED. OE/OS's assigned to investigate these offers are responsible for transferring the partial payment(s), if necessary, in the best interest of the government as defined in 5.8.4.25.1 below.

5.8.4.25.1

(06-01-2010)

Periodic Payments made During the Offer Investigation

- (1) It is the responsibility of the OE/OS assigned the case to ensure that taxpayers make the proposed installments during the offer investigation. In addition, the OE/OS must also ensure that required additional amounts are paid if the taxpayer submits a revised OIC reflecting a larger proposed offer amount and/or changes the offer from a periodic payment to a lump sum cash offer.
- (2) If a subsequent payment is received by an OE/OS with a Form 656-PPV, forward the payment with the Form 656-PPV to the appropriate COIC address shown on the form. An OS may process payments on Form 795 using ICS, yet if processed through ICS, the AOIC payment screen should also be annotated.
- (3) Upon receipt of a subsequent payment received by the COIC site while the offer is assigned to an OE/OS, COIC must annotate the AOIC payment screen or if unable to access the payment screen, annotate AOIC history with the following information:
 - Date(s) of receipt
 - Amount of the payment(s)
 - Location (MFT and period) applied
- (4) It is the responsibility of the OE/OS to check the AOIC payment screen, AOIC history and/or IDRS for verification of posted or pending payments that may have been received in the COIC site.
- (5) If a subsequent payment is received by the OE/OS, the OE/OS will use Form 3244 to apply the payment(s) directly to the tax liability in accordance with the taxpayer's written payment designation, if any, submitted with the payment.
- (6) If no written payment designation was submitted, apply the payment(s) directly to a tax liability to the best interest of the Government.
- (7) For offers submitted from entities other than corporations, apply the payment(s) to the tax liability(ies) with the earliest unexpired CSED(s).
- (8) For offers submitted from corporations or other entities subject to the trust fund recovery penalty, apply payment(s) in the following descending order:
 - To all Forms 1120, 940, and any other non-trust fund liabilities (in earliest unexpired CSED order), if any; and
 - To the following unpaid portions of all Form 941 periods (in earliest unexpired CSED order):
 - (1) Non-trust fund portion of tax (employer's share of FICA)
 - (2) Assessed lien fees and collection costs
 - (3) Assessed penalty
 - (4) Assessed interest
 - (5) Accrued penalty to the date of payment
 - (6) Accrued interest to date of payment
 - (7) Trust fund portion of the Form 941 (employee's and withholding share of FICA)
- (9) Annotate the AOIC payment screen or if unable to access the AOIC payment screen, then annotate the AOIC history with the amount(s) and date(s) of receipt.

Note: Use DPC 02 when posting subsequent periodic offer payments specified to the trust fund portion when the offer was submitted by a corporate taxpayer. In all other situations, use DPC 35.

- (10) If the taxpayer fails to make a proposed installment for a periodic payment offer, the OE/OS will allow one opportunity to pay the missing amount(s). Attempt to contact the taxpayer by telephone, and allow 15 calendar days for the taxpayer to submit the payment(s). If the taxpayer or the representative cannot be reached by telephone, issue an additional information letter to notify of the need to make the payment(s) and allow 15 calendar days from the date of the letter to submit the payment(s).
- If the taxpayer submits the payment(s) within 30 calendar days from the date of the letter (allowing 15 calendar days for mail), continue the offer investigation. In some cases, it may be necessary to allow additional time for the taxpayer to submit the payments. Document the ICS or AOIC history with the reason for the delay.
 - If the taxpayer fails to submit the payment or request an extension of time within 30 calendar days from the date of the letter, close the offer as a mandatory withdrawal, using the appropriate withdrawal letter. Document the ICS or AOIC history.
- Note:** Taxpayers will be afforded one opportunity to make up the missed payment(s) for a periodic payment offer, including any amended offers, unless special circumstances exist.
- (11) The proposed offer amounts and terms submitted by a taxpayer dictate the required partial offer payments. The Service is not bound by those same terms in determining an acceptable offer. Therefore, OE/OS's may negotiate different offer terms, when appropriate.
- (12) During evaluation of an offer, the OE/OS may determine that the proposed offer is too low or the payment terms too protracted to recommend acceptance. In this situation, the OE/OS will advise the taxpayer that a larger amount or different terms would likely be recommended for acceptance. If the taxpayer submits a revised offer reflecting a larger proposed offer amount or changing the terms, one or more additional payments may be required, unless the taxpayer qualified for the waiver. The taxpayer will be given credit for partial payments already made with respect to the original offer.

If...	And...	Then...
Original offer was a lump sum cash offer	Revised offer is a lump sum with a greater proposed offer amount	Taxpayer must pay 20% of the revised amount, less the partial payment made with the original offer, with the revised OIC.
Original offer was a periodic payment	Revised offer is a lump sum cash	Taxpayer must pay 20% of revised offer amount, less any installment payments already paid toward the original offer, with the revised OIC.

If...	And...	Then...
Original offer was periodic payment	Revised offer is periodic payment with greater proposed offer amount and/or different proposed installment amounts or schedule	Taxpayer must make the initial proposed installment in accordance with the terms of the revised offer, and continue to make the proposed installments during evaluation of the OIC.
Original offer was lump sum cash offer	Revised offer is periodic payment with greater proposed offer amount	Taxpayer must make the initial proposed installment in accordance with the terms of the revised offer, and continue to make the proposed installments during evaluation of the revised OIC.

- (13) If the taxpayer submitting a revised or amended offer does not make the additional required payment(s), the OE/OS will return the offer as a processable return using the appropriate AOIC generated letter.

Note: The exceptions to this rule are if the taxpayer was subject to the waiver with respect to low income taxpayers or for offers submitted based solely on DATL. These taxpayers are not required to submit payments with an amended OIC.

- (14) If the taxpayer fails to submit the revised offer, prepare the rejection letter.
- (15) The OE/OS is responsible for ensuring TIPRA payments are made during the investigation. Once the final determination letter has been issued, the OE/OS is no longer required to monitor for payments.

5.8.4.25.2
(09-24-2020)
Offers in Status 60

- (1) Once an OIC is determined processable, the taxpayer will only be required to make the TIPRA payments. The case status will be changed to Status 71.

Note: If the taxpayer is on a DDIA or PDIA and there are delays in stopping the payment deduction, any installment payment received after the offer receipt date may be designated as an offer payment.

- (2) If the offer is rejected, returned, withdrawn, or terminated, return the account back to Status 60. Step-by-step instructions to take a taxpayer's account from Status 60 to Status 71 are provided on the OIC SharePoint site <https://program.ds.irsnet.gov/sites/SbseEcsCp/OIC/SitePages/Home.aspx>.
- (3) If the taxpayer's account is being returned to Status 60 based on a previous installment agreement, a notice of federal tax lien should not be filed unless the criteria in IRM 5.8.4.13, Notice of Federal Tax Lien, involving situations in which the government's interest is in jeopardy as discussed in paragraph (2) is

met. Prior to the NFTL being requested, the taxpayer must be advised of the proposed NFTL filing and CAP rights.

5.8.4.26
(02-10-2023)
**Third party
Authorizations**

- (1) Taxpayers who wish to be represented must submit a properly executed Form 2848, Power of Attorney and Declaration of Representative. If POA information is located on CFINQ, load the information on the AOIC POA Screen and follow the procedures described below. Input the representative's information on AOIC and retain a copy of the form in the paper case file. Forward the original for recording on the Centralized Authorization File (CAF).
- (2) If the authorization/designation covers all periods, and the taxpayer checked the box for their representative to receive correspondence, then the AOIC POA screen should be updated appropriately. Taxpayers can "check the boxes" to have copies of notices and communication sent to up to two authorized representatives. Send all original correspondence to the taxpayer and provide a copy to the representative.
- (3) Individuals who are not permitted to represent taxpayers with respect to collection matters (such as unenrolled preparers) may accompany taxpayers to meetings if the taxpayer provides a properly completed Form 8821, Taxpayer Information Authorization, or other proper authorization, and may receive and provide information that relates to the offer investigation. They are not authorized to represent the taxpayers or sign documents relating to offers in compromise.
- (4) If the authorization/designation does not cover all of the tax types and tax periods that are included in the offer, do not enclose a copy of the taxpayer correspondence with the cover letter to the representative. If a copy of the taxpayer's correspondence is not enclosed, the cover letter to the representative should advise that the issue involves tax information the representative is not entitled to receive based on the Form 2848 or Form 8821 on file, and instructs them to contact the taxpayer. The letter sent to the taxpayer can request completion of a Form 2848 to cover the missing periods.
- (5) If during the investigation it is discovered that the POA no longer represents the taxpayer, secure a letter revoking the POA and document the case history. Remove the POA information from AOIC.
- (6) Attorneys, Certified Public Accountants (CPAs), enrolled agents, or enrolled actuaries are generally the only practitioners authorized to represent taxpayers before the IRS on collection matters.

Note: An unenrolled return preparer is an individual, other than an attorney, CPA, enrolled agent, or enrolled actuary, who prepares and signs a taxpayer's return as a preparer, or who prepared a return but is not required to sign the return. An unenrolled return preparer cannot represent a taxpayer before the IRS on any collection matter. An unenrolled return preparer, however, may represent a taxpayer before the IRS in certain other limited situations. See IRM 5.1.10.7.2, Right to Representation.

Note: If a taxpayer does not have a representative, they may be eligible for assistance from a Low Income Taxpayer Clinic (LITC). For LITC eligibility guidelines see IRS Publication 4134, Low Income Taxpayer Clinic List.

- (7) During the course of the investigation, a taxpayer may submit a Form 2848 designating a third-party as their representative or power of attorney, or a Form 8821 designating an appointee or may complete the third party designee section on the Form 656, Offer in Compromise. When properly completed and filed by the taxpayer, each of these forms defines the scope of permissible interaction with a designated third party.
- Form 2848 authorizes an eligible individual (e.g. attorney, CPA, enrolled agent, or enrolled actuary) to represent as well as receive confidential information.
 - Form 8821 authorizes the designated individual to receive certain confidential information.

Note: Form 8821 designees should be supplied copies of all OIC correspondence, including the determination letter.

- (8) If Form 8821 is missing critical information that can only be provided by the taxpayer (e.g., tax years, type of tax, missing taxpayer signature, date) it will be returned to the taxpayer.
- (9) Information that may be disclosed to the designee is limited to the type of tax, tax form number, tax years or periods, or specific tax matter that is listed on the Form 8821, item 3.
- (10) A designee who does not have a Form 2848 on file is not authorized to respond to any type of correspondence on behalf of the taxpayer if the response advocates a position that would indicate that the designee is taking on a representational role.
- (11) Where a recognized representative has unreasonably delayed or hindered an examination, collection, or investigation by failing to furnish, after repeated request, non-privileged information necessary to the examination, collection or investigation, the Internal Revenue Service employee conducting the examination, collection, or investigation may be given permission to bypass the representative and contact the taxpayer directly for such information. 26 C.F.R. 601.506(b) (Statement of Procedural Rules). Prior to contacting the taxpayer directly, the IRS employee must first initiate bypass procedures. See IRM 5.1.23.6, Bypassing a Taxpayer's Representative, for procedures to bypass a POA.

5.8.4.27
(07-18-2017)
Expedite Handling

- (1) There may be occasions where a taxpayer or representative may request expedited processing of their OIC due to an emergency or perceived emergency situation. Situations that may warrant expedited case processing include:
- a. A contract or business agreement requiring the taxpayer, as a condition of the contract or agreement, to resolve the tax liability by a specific date.
 - b. Availability of the money to fund the offer is limited to a certain time.
 - c. A terminal illness may affect the ability to complete the payment terms.

Note: Situations may arise that were not initiated by the taxpayer either via phone contact, fax or mail. Once identified that expedite processing may become necessary, follow (3) and (4) below and discuss with your manager.

- (2) Processing of Forms 656 must be given priority consideration and handled expeditiously due to pending collection action.

- (3) Offers received with a request for expedited processing should be referred to management for a decision on whether or not expedited treatment is warranted.

Note: In certain instances, it may be appropriate for the manager to request verification of the basis for the request for expedited treatment.

- (4) If a decision is made to expedite offer processing, the manager should document the AOIC history, indicating the basis for the decision. The Form 656 should be clearly labeled at the top Emergency Processing Requested, and an immediate processability determination and assignment for investigation should be made. Every effort should be made to close the offer within 90 calendar days of receipt. In an attempt to bring the case to a prompt and timely resolution and to meet the special needs of the taxpayer, immediate contact should be made with the taxpayer to request any additional information needed.
- (5) If a decision is made not to expedite the case, the manager should document the basis for the decision on the AOIC and ICS history. Contact the taxpayer by telephone or correspondence explaining the basis for the decision. The case should be worked under routine processing.

Exhibit 5.8.4-1 (07-18-2017)

Expedite Processing Cover Sheet - Collection Due Process/Equivalent Hearing Offer in Compromise

This document is for use as a cover sheet when processing a Collection Due Process/Equivalent Hearing (CDP/EH) Offer in Compromise.

Exhibit 5.8.4-1 (Cont. 1) (07-18-2017)

Expedite Processing Cover Sheet - Collection Due Process/Equivalent Hearing Offer in Compromise

Collection Due Process/Equivalent Hearing Offer in Compromise Cover Sheet	
EXPEDITE PROCESSING REQUIRED	
For Appeals Use Only	For COIC Use Only
Appeals return address Appeals Office	<input type="checkbox"/> Processable (Date) _____
Attention	<input type="checkbox"/> Not processable (Date) _____
Contact number	Mark the appropriate box, and fax a copy of this transmittal to the Appeals contact shown. Retain the original transmittal with the case file.
Email	
Fax number	
Name of taxpayer	
Taxpayer Identification Number (TIN)	
Check(s) enclosed: <input type="checkbox"/> Application fee (amount _____) <input type="checkbox"/> TIPRA payment (amount _____) <input type="checkbox"/> Deposit (amount _____) <input type="checkbox"/> TP meets Low Income Certification guidelines in lieu of application fee and payment(s)	
Mail Form 656, application fee, TIPRA payment(s), deposit (if applicable), and cover sheet to the appropriate centralized site:	
MCOIC Stop 880 5333 Getwell Road Memphis, TN 38118	BCOIC Stop 680 1040 Waverly Ave. Holtsville, NY 11742

Exhibit 5.8.4-2 (07-18-2017)

Notification of Offer Case Decision in CDP Offer Investigations

This cover sheet is for use to advise Appeals of the case decision when an offer in compromise investigation has been completed by COIC or Field on an offer received during a CDP/EH.

EXPEDITE PROCESSING REQUIRED

CDP/EH OIC COVER SHEET

<p>FOR COIC/FIELD USE</p> <p>Collection has completed the investigation of the attached OIC.</p> <hr/> <p><i>Collection Disposition (Offer has been closed on AOIC):</i></p> <p><input type="checkbox"/> Offer Accepted- Collection mailed Acceptance letter. File mailed to MOIC. Mail the following to Appeals: (1) a copy of the Acceptance Letter (2) Form 7249 and (3) if applicable amended Form 656.</p> <p><input type="checkbox"/> Offer Withdrawn- Collection mailed withdrawal letter. File mailed to Appeals.</p> <p><input type="checkbox"/> Offer Returned- Collection mailed return letter. File mailed to Appeals.</p> <p>Date closing letter mailed _____.</p> <hr/> <p>Collection Proposed Disposition:</p> <p><input type="checkbox"/> Offer proposed Rejection- Proposed rejection letter mailed. File mailed to Appeals.</p> <p><input type="checkbox"/> Transferred to Area 21 on AOIC Note: must be OCC 10, and update Offer Type to "Collection Due Process" (IAR and proposed disposition not required)</p> <hr/> <p>Return the case to the following Appeals contact:</p> <p>Name: _____</p> <p>Address: _____</p> <p>_____</p> <p>Contact Number: _____</p>
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Exhibit 5.8.4-4 (07-18-2017)**Asset/Equity Table (AET) and Income/ Expense Table (IET)**

Asset Equity Table – A table listing all the taxpayer’s assets, encumbrances, and exemptions. It then calculates the equity which is included in the reasonable collection potential (RCP) calculation. Income/Expense Table calculates the taxpayer’s future ability to pay.

Exhibit 5.8.4-4 (Cont. 1) (07-18-2017)

Asset/Equity Table (AET) and Income/ Expense Table (IET)

Date:

TAXPAYER'S NAME:

EIN/TIN:

ASSET/EQUITY TABLE (AET)					
(Rev. 3-2016)					
ASSETS	Fair Market Value	Quick Sale Reduction Percentage	Quick Sale Value	Encumbrances or Exemptions	Net Realizable Equity
1. Cash/Bank Accounts				\$1,000.00	
2. Offer Deposit					
3. Loan Value Life Insurance					
4. Pensions / IRA/401(k)					
5. Real Estate					
6. Furniture/Personal Effects					
7. Vehicles					
8. Accounts Receivable					
9. Tools and/or Equipment					
Other -					
Future Income Value (see Income and Expense Table (IET) attached)					
TOTAL MINIMUM VALUE					

- Item 1 Cash/Bank accounts has been reduced by \$1,000. Net equity should not be less than -0-.
- Item 6 IRC 6334(a)(2) allows an exemption of \$9,120 for fuel, provisions, furniture and personal effects.
- Item 7 Vehicle equity has been reduced by \$3,450. Net equity should not be less than -0-.
- Item 9 IRC 6334(a)(3) allows an exemption of \$4,560 for tools of the trade.

REMARKS:

Exhibit 5.8.4-4 (Cont. 2) (07-18-2017)

Asset/Equity Table (AET) and Income/ Expense Table (IET)

TAXPAYER:

TIN/EIN:

Date:

INCOME/EXPENSE TABLE (IET) (Rev. 1-2014)				
The Internal Revenue Service uses established National and Local standards for necessary living expenses when considering Offers in Compromise. Only necessary living expenses will be allowed. Other expenses, such as charitable contributions, education, credit cards, and voluntary retirement allotments are generally not considered as necessary living expenses.				
Total Income		Necessary Living Expenses		
Source	Gross		Claimed	Allowed
20. Wages (T/P)		35. Food, Clothing, and Misc		
21. Wages (Spouse)		36. Housing and Utilities		
22. Interest - Dividend		37. Vehicle Ownership Costs		
23. Net Business Income		38. Vehicle Operating Costs		
24. Net Rental Income		39. Public Transportation		
25. Distributions		40. Health Insurance		
26. Pension/Soc. Sec. (TP)		41. Out of Pocket Health Care Costs		
27. Pension/Soc. Sec. (Spouse)		42. Court ordered payments		
28. Social Security (Taxpayer)		43. Child/dependent care		
29. Social Security (Spouse)		44. Life Insurance		
30. Child Support		45. Current Year Taxes (Income/FICA)		
31. Alimony		46. Secure Debts (Attach list)		
Other Income (Specify below)		47. Del. State or Local Taxes		
32.		48 Other Expenses (Attach list)		
33.		49. Total Living Expenses		
34. Total Income		50. Net Difference		
50. Net difference times (a,b or c) = Amount that could be paid from future income:				
Net difference =		Months	Amount that could be paid =	
<p>a) For cash offers, if the offer is payable in 5 or fewer installments within 5 months, project the payment by multiplying the amount that could be paid times 12 months or times the number of months remaining in the collection statute, whichever is shorter.</p> <p>b) For cash offers, payable in 5 or fewer installments within 24 months or a periodic payment offer payable within 24 months project the payments by multiplying the amount that could be paid times 24 months or times the number of months remaining in the collection statute, whichever is shorter.</p> <p>The total offer amount must be equal to, or greater than, the sum of the equity in assets and the amount that could be paid from future income unless special circumstance considerations have been approved.</p> <p>NOTES: Line 35 National Standard expenses: Maximum allowable by IRS National Expense Standard for food, housekeeping supplies, apparel and services, and personal care products, based upon the number of persons in the household. Line 36 Housing & Utilities expenses: Housing and utility expenses are limited to standards established for the county of residence and the number of household members. Line 37 & 38 Transportation expenses: Transportation expenses are limited to the standards established for zero, one or two vehicles, and to a maximum allowable amount for lease or purchase of one or two vehicles. Months: The number of months shown may be greater than 24 months in order to determine the taxpayer's ability to fully pay the liability through an installment agreement.</p>				

