



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

5.8.9

SEPTEMBER 5, 2024

EFFECTIVE DATE

(09-05-2024)

PURPOSE

- (1) This transmits a revision for IRM 5.8.9, Offer in Compromise, Actions on Post-Accepted Offers.

MATERIAL CHANGES

- (1) Changes included in this revision:

Number	IRM Reference	Change
1	Effect on other documents	This IRM incorporates Interim Guidance Memorandum SBSE-05-0424-0003, Obsolescence of Form 14640, Addendum to Form 656, issued April 22, 2024.
2	Throughout	Made various editorial changes throughout the IRM, e.g., correcting spelling or grammatical errors; updating website addresses/links; adding gender neutral language; adding or correcting IRM references; formatting, etc.
3	5.8.9.1	Updated Contact Information.
4	5.8.9.1.6	Added definition for OIC.
5	5.8.9.2.4	Updated rescission procedures regarding PIF.
6	5.8.9.3	Added for employees to utilize OIC IAT.
7	5.8.9.3.1	Renamed: Department of Justice Controlled Cases Acceptance Letter in Error.

Number	IRM Reference	Change
8	5.8.9.3.1	Added: Once a case/liability is referred to DOJ, the IRS loses its authority to compromise said case/liability. Generally, when the DOJ releases or refers the case back to the IRS for assistance with collection, the DOJ retains its authority over the case, preventing any IRS compromises. In the rare situation where you believe that the DOJ has released its entire jurisdiction over the case/liability and no longer exercises jurisdiction, contact OIC Collection Policy for guidance.
9	5.8.9.3.1.1	Added section: Department of Justice Controlled Cases Acceptance Letter in Error- OIC Remaining Intact with instructions for employees to correct the situation.
10	5.8.9.3.1.2	Added section: Returning an OIC When IRS Erred In Accepting OIC Containing Years Referred to DOJ and provided instructions for employees to correct the situation.
11	5.8.9.6	Added: You may not add a newly accrued tax period for a modification.

Number	IRM Reference	Change
12	5.8.9.6.1	Removed reference to Modification of an Offer Proposed Pattern Letter 1603(P) and placed the required items in a list.
13	5.8.9.6.3	Pattern letters changed to Letter 6645, Denial of a Modification of an OIC and Letter 6646, Acceptance of a Modification of an OIC.
14	5.8.9.6.3	Updated PIF instructions for modification of an OIC.

EFFECT ON OTHER DOCUMENTS

This IRM supersedes IRM 5.8.9 dated September 7, 2022 and incorporates Interim Guidance Memorandum SBSE-05-0424-0003, Obsolescence of Form 14640, Addendum to Form 656, issued April 22, 2024.

AUDIENCE

SB/SE Collection Offer in Compromise employees and Appeals employees

Rocco A Steco
Director, Collection Policy
Small Business / Self Employed

5.8.9

Actions on Post-Accepted Offers

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5.8.9.1
(09-05-2024)
Program Scope and Objectives

- (1) **Purpose:** This section provides instructions for guidance on accepted offers in compromise such as when to rescind, terminate, or revise an existing offer in compromise (OIC).
- (2) **Audience:** These procedures apply to Internal Revenue Service (IRS) employees who are responsible for investigating OICs:
 - Offer Examiners (OE) in Centralized Offer in Compromise (COIC)
 - Offer Specialists (OS) in the Field Offer Territories (FOIC)
 - Additional IRS employees assigned to the OIC program and employees who conduct OIC investigations.
- (3) **Policy Owner:** Director, Collection Policy, SBSE
- (4) **Program Owner:** SBSE Collection Policy, SBSE, [Offer in Compromise (OIC) Program] is the program owner of this IRM.
- (5) **Primary Stakeholders:** The primary stakeholders are COIC and FOIC employees.
- (6) **Contact Information:** SCOIC employees should follow established procedures to contact OIC Collection Policy. Other employees should contact the Product Content Owner shown on the Product Catalog Information page for this IRM.

5.8.9.1.1
(09-05-2024)
Background

- (1) Section 509 of the Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA) significantly impacted the OIC program. This section provides direction on completing OIC investigations which are fair and impartial to both the Government and the taxpayer in a manner that will enhance voluntary compliance and public confidence in the integrity and efficiency of the IRS. Additionally, procedures for coordinating with other functions are provided. This section provides direction on accepted OICs such as when to rescind, terminate, or revise an existing OIC.

5.8.9.1.2
(09-05-2024)
Authority

- (1) Authorities relating to this section include:

Authorities
IRC 7122, Compromises
26 CFR 301.7122-1, Compromises
26 CFR 300.3, Offer to Compromise Fee
IRC 6702(b), Civil Penalty for Specified Frivolous Submissions
Policy Statement P-5-89
Policy Statement P-5-100
Policy Statement P-1-236
Revenue Procedure 2003-71
Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA)
IRM 1.2.1, Servicewide Policy Statements

Authorities

IRM 1.2.2.6.1, Delegation Order 5-1 (Rev. 5), To Accept, Reject, Return, Terminate or Acknowledge Withdrawals of Offers in Compromise

Internal Revenue Service Restructuring and Reform Act of 1998, Section 1203

5.8.9.1.3
(09-05-2024)
Responsibilities

- (1) The Director, Collection Policy, is responsible for all policies and procedures within the OIC program.
- (2) The National Program manager, OIC is responsible for development and delivery of policies and procedures within the program.
- (3) The Director, Specialty Collection Offer in Compromise (SCOIC) is responsible for the performance of the OIC program and ensuring IRM policies and procedures are followed.
- (4) Operations managers (OM)s, department managers (DM)s, territory managers (TM)s, team and group OIC managers are responsible for ensuring the procedures are followed and employee actions are timely and accurate.
- (5) OEs, OSs, and other employees investigating OICs are responsible for following the procedures in this IRM.

5.8.9.1.4
(09-05-2024)
Program Management and Review

- (1) Data and reports from the Automated Offer in Compromise (AOIC) system, Business Objects, ENTITY Case Management System, and Integrated Collection System (ICS) assist in inventory tracking, case age, and timeliness of case actions. Additional ad hoc reports which provide information on the inventory levels, hours per case, and age of OICs in open or closed inventory are also provided when requested by SCOIC.
- (2) Operational and program reviews are conducted on a yearly basis by the Director SCOIC and Collection Policy respectively. Managerial case reviews are also completed as defined in this IRM and IRM 1.4.52, Offer in Compromise Manager's Resource Guide. These reviews are a method to determine if the OIC 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.

5.8.9.1.5
(09-05-2024)
Program Controls

- (1) AOIC is used to track OICs submitted by taxpayers, for inventory control, and to record case actions and history. Ability to take action on AOIC is limited to specific OIC employees. Additional permissions are provided based on an employee's duties and responsibilities.
- (2) ICS is used by FOIC 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, Offer in Compromise Manager's Resource Guide.
- (4) Managerial requirements for case approval are defined in Del. Order 5-1.
- (5) ENTITY is utilized by FOIC managers as a method for inventory control and appropriate time utilization.
- (6) Case reviews are conducted by the Office of Chief Counsel on OICs when the total liability(ies) for all related OICs on the same taxpayer is \$50,000 or more in accordance with IRC 7122(b) and 26 CFR 301.7122-1, Compromises.

5.8.9.1.6
(09-05-2024)
**Terms/Definitions/
Acronyms**

- (1) A list of common abbreviations, definitions and acronyms used throughout this IRM may be found in the table below.

Acronym or Abbreviation	Definition	Description
AOIC	Automated Offer in Compromise	Computer application where OICs are recorded and monitored from receipt to closure. History of the OIC investigations conducted by COIC employees and of actions taken by Monitoring Offer in Compromise (MOIC) units are also maintained on this system.
COIC	Centralized Offer in Compromise	Units located in Brookhaven and Memphis campuses that complete initial processing and work OICs to completion. Do not confuse this with MOIC. COIC units do not monitor or default accepted OICs.
DATC	Doubt as to Collectibility	Basis for acceptance of an OIC where there is doubt that the tax can be paid in full.
DATL	Doubt as to Liability	Basis for acceptance of an OIC where there is doubt that the liability is correct.

Acronym or Abbreviation	Definition	Description
ETA	Effective Tax Administration	Basis for acceptance of an OIC where there is no doubt that the liability is correct or can be paid in full. However, requiring the taxpayer to fully pay the tax would either create an economic hardship or there are compelling public policy or equity considerations.
FOIC	Field Offer in Compromise	Area offices where offer specialists investigate OICs.
MOIC	Monitoring Offer in Compromise	Teams located in Brookhaven and Memphis that monitor accepted OICs for compliance with all terms, complete the default of accepted OICs when applicable and are responsible for the 4710 account. Accepted OICs are sent to one of the two sites (Brookhaven and Memphis) based on whether they were accepted in COIC or FOIC.
OE	Offer Examiner	Offer investigator located in COIC.
OIC	Offer in Compromise	An OIC allows taxpayers to settle their tax debt for less than the full amount they owe.
OS	Offer Specialist	A revenue officer appointed as an OIC investigator, generally located in an area office.

Acronym or Abbreviation	Definition	Description
PIF	Public Inspection File	Public Inspection Files contain limited information regarding accepted OICs such as the taxpayer's name, city/state, liability amount, and OIC terms.
RBA	Restitution-Based Assessment	All related accounts that are associated with specific MFT(s) and tax period(s) that have been ordered by the court to pay unpaid taxes and/or restitution resulting from criminal conduct.
TC	Transaction Code	A code used on Integrated Data Retrieval System (IDRS) to signify actions performed.

5.8.9.1.7
(09-05-2024)

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*
 - *IMD site for Interim Guidance Memorandum (IGM)*
 - *Delegation Orders* IRM 1.2.2.6.1, Delegation Order 5-1 (Rev. 5), To Accept, Reject, Return, Terminate or Acknowledge Withdrawals of Offers in Compromise
- (3) The Taxpayer Bill of Rights (TBOR) lists rights that already existed in the tax code, putting them in simple language and grouping them into 10 fundamental rights. Employees are responsible for being familiar with and acting in accord with taxpayer rights. See IRC 7803(a)(3), Execution of Duties in Accord with Taxpayer Rights. For additional information about the TBOR, see *Taxpayer Bill of Rights*.
- (4) The AOIC User Guide (Training 28206-002) may be found on the AOIC system.

5.8.9.2
(09-05-2024)
Rescission of Accepted Offers

- (1) In some instances, it may be necessary to rescind an accepted OIC. An OIC is an agreement binding on both the government and the taxpayer, and precludes further inquiry into the matters to which it relates unless false information or documents were supplied in conjunction with the OIC, the ability to pay or the assets of the taxpayer were concealed, or a mutual mistake of material fact is discovered.
- (2) The function that accepted the OIC is responsible for making the determination to rescind the OIC and will also be responsible for completion of all required actions identified in IRM 5.8.9.2.1 through 5.8.9.2.4.
- (3) After acceptance of the OIC, 26 CFR 301.7122-1(e)(5) provides that neither the taxpayer nor the IRS is permitted to reopen the case, except in limited situations:
 - False information or documents are supplied in conjunction with the OIC;
 - The assets of the taxpayer or the ability to pay are concealed; or
 - A mutual mistake of material fact sufficient to cause the OIC agreement to be reformed or set aside is discovered.

Note: Under section 164, comment (a) of the Restatement 2d of Contracts, false information or concealment may allow the IRS to rescind an accepted OIC. To do so, the IRS must be able to show that (1) the misrepresentation was material; (2) the misrepresentation induced the IRS to accept the OIC; and (3) the IRS was justified in relying on the misrepresentation.

- (4) If the taxpayer has failed to remain in compliance with the 5-year period under the requirements of Form 656 the OIC should be defaulted in lieu of rescission under 26 CFR 301.7122-1(e)(5). See default provisions in IRM 5.19.7.14.4, Failure to Adhere to Compliance Terms.

5.8.9.2.1
(09-05-2024)
False Information

- (1) Under section 159 of the Restatement 2d of Contracts, false information is a misrepresentation, which is defined as an assertion that is not in accord with the facts. False information does not have to be fraudulent. Misrepresentation should not be automatically defined as fraudulent. Misrepresentation may be due to ignorance or carelessness. A half-truth may be a misrepresentation: a statement may be true with respect to the facts stated, but may fail to include qualifying matter necessary to prevent the implication of an assertion that is false with respect to other facts. A half-truth could also be used to conceal relevant information that would have made a material difference in the determination to accept the OIC. A misrepresentation must relate to something that is a fact at the time that it is made; a fact does not include a future event.
- (2) False information or concealment may allow the IRS to rescind an accepted OIC. To do so, the IRS must be able to show the following below.
 1. The misrepresentation was material.
 2. The misrepresentation must have induced the IRS to accept the OIC.
 3. The IRS was justified in relying on the misrepresentation.

Example: During the OIC investigation the taxpayer states they have nothing to do with XYZ Corporation. The OIC is accepted and no value for XYZ Corporation is calculated in the RCP. The taxpayer received \$400,000 from

the sale of the corporation. Later it was determined that the taxpayer was 100% owner and had full control of XYZ Corporation. This meets the criteria for a rescission.

5.8.9.2.2 (09-05-2024) Concealment of Assets or Ability to Pay

- (1) Under section 160 of the Restatement 2d of Contracts, concealment is an affirmative act intended or known to be likely to keep the IRS from learning of a fact that it would otherwise have learned. Concealment is the equivalent of a misrepresentation. Concealment, however, is not the equivalent of non-disclosure. The significance is that 26 CFR 301.7122 -1(e)(5)(ii) provides that an accepted OIC may be reopened where there has been concealment of the ability to pay or the assets of the taxpayer. If you have a case that requires a distinction between concealment and non-disclosure, contact Area Counsel.

Example: The taxpayer whites-out the portion of their bank statement listing a money market account with \$100,000 in it. The taxpayer then copies the altered bank statement and attaches the copy to their Form 433-A (OIC), list of assets. Here, the taxpayer has taken affirmative acts to conceal the money market account.

Note: Since the value of the properties was considerable refer to IRM 5.8.4.18 for a possible fraud referral.

5.8.9.2.3 (09-05-2024) Mutual Mistake of a Material Fact

- (1) Under sections 151 and 152 of the Restatement 2d of Contracts, a mutual mistake of fact is defined as an erroneous belief held by both parties about an existing fact at the time the contract was entered. The law in existence at the time of the making of the contract is part of the total state of facts at the time. The parties' mutual mistake with respect to the law, as found in statute, regulations, judicial decisions, or elsewhere, may render the compromise subject to rescission. Rescission is only appropriate in situations where a mistake of both parties has such a material effect on the agreed exchange of performances that it upsets the very basis of the agreed OIC.

Example: The taxpayer submitted an OIC which the IRS accepted based on the taxpayer having stock valued at \$0. The taxpayer and SCOIC believe the stock to be worthless, but in fact it is worth approximately \$55,000. The OIC may be rescinded.

Note: Counsel makes the determination if the rescission criteria are met.

5.8.9.2.4 (09-05-2024) Rescission Procedures

- (1) Prior to rescinding an OIC, send a preliminary letter to the taxpayer advising of the proposed rescission of their OIC. The letter will contain the grounds for the proposed rescission and will give the taxpayer 15 days to respond and provide any additional information related to the proposal.

Note: AOIC Remarks must be noted with the date the preliminary proposal letter was mailed, the taxpayer's response, and the analysis of any additional information provided.

- (2) Rescind the OIC in the following manner:

- Prepare a letter to the taxpayer to include the OIC acceptance date. Advise the IRS is rescinding the OIC and revoking the prior acceptance letter. Contact OIC Collection Policy for assistance in preparing the rescission letter.
- Include in the letter the grounds for rescission in general terms with a demand for payment of the original unpaid tax liability, less any OIC payments.
- The Office of Chief Counsel must review for legal requirements and concur with all rescission determinations before sending the rescission notification to the taxpayer.

Note: The letter must be signed by the same level of approval that signed the acceptance.

- Document the AOIC case history with the basis for the decision to rescind and any taxpayer contact.
- After receiving approval/concurrence, including Counsel, notify the appropriate MOIC liaison of the rescission.
- Input the appropriate TC 78X or the 48X and reassign to the field for collection action, if appropriate. See IRM 5.8.7.10.4, Alternative Collection Assignment - Field Collection. In cases of false information or concealment of assets or ability to pay, use TC 781, TC 482 to indicate death of a taxpayer, and TC 483 to indicate mutual mistake.

Note: If the IRS erroneously accepted an OIC after the death of a taxpayer, the office responsible for completing the letter will also be responsible for inputting the TC 482. Use the date of death as the date for the TC 482. See IRM 5.8.7.5, Termination of Consideration.

5.8.9.3 (09-05-2024)

Department of Justice Controlled or Restitution Cases

- (1) Occasionally an OIC is purportedly accepted after the IRS referred the case/liability to the Department of Justice (DOJ) or a restitution-based assessment period is on the Form 656 or Form 7249. The IRS lacks the legal authority to accept these OICs and certain actions must be taken so that the OIC may be deemed not processable or corrected in order to proceed with acceptance.

Note: Using the OIC IAT tool in initial actions will assist in identifying these types of cases.

5.8.9.3.1 (09-05-2024)

Department of Justice Controlled Cases Acceptance Letter in Error

- (1) Once a case/liability is referred to the DOJ, the IRS loses its authority to compromise said case/liability. Generally, when the DOJ releases or refers the case back to the IRS for assistance with collection, the DOJ retains its authority over the case, preventing any IRS compromises. In the rare situation where you believe that the DOJ has released its entire jurisdiction over the case/liability and no longer exercises jurisdiction, contact OIC Collection Policy for guidance.
- (2) Occasionally the IRS errs and sends an acceptance letter for a Form 656 that included tax periods under DOJ settlement jurisdiction. In these cases, although the OIC was processed as an acceptance, the IRS never actually accepted the OIC because it lacked the legal authority to do so. See IRM 5.8.1.6.1, Tax Cases Controlled by Department of Justice, for additional information.

5.8.9.3.1.1
(09-05-2024)
**Department of Justice
Controlled Cases
Acceptance Letter in
Error- OIC Remaining
Intact**

- (3) If all the periods listed on the Form 656 have been referred to DOJ (under their jurisdiction), the IRS does not have the authority to accept the OIC. If the Form 656 contains both periods that have been referred to DOJ (under their jurisdiction) and periods that have not been referred to DOJ, the IRS may keep the offer intact without the DOJ periods as long as the taxpayer concurs.

- (1) If the IRS errs and sends an acceptance letter for a Form 656 that included some of the tax periods under DOJ settlement jurisdiction contact OIC Collection Policy. If the IRS and the taxpayer can reach an agreement to keep the OIC intact, the OIC will be reopened so the DOJ periods can be removed. In all cases, notify DOJ of this activity (through your local Counsel).
- (2) If the IRS and the taxpayer are keeping the OIC intact for the non-DOJ periods, update AOIC remarks with the specific changes that were made to the accepted OIC record and keep SCOIC management apprised of all stages in the correction process. Due to the significant administrative repercussions of the error, SCOIC management will monitor to ensure completion. Follow the steps below.

- a. The OE/OS will determine the location of the OIC file. The OE/OS will need a copy of the Form 656. All documents need to be associated with the official OIC file.
- b. The OE/OS manager will send an e-mail to OIC Collection Policy (**with a CC: to the MOIC DM, OM/TM, and Director SCOIC**) to reopen the OIC. Provide the OIC number, date of acceptance, reason for the request, and FRC data.
- c. OIC Collection Policy will check for the FRC tracking data (and note the FRC information) before reopening the OIC.

Caution: Once the OIC is reopened the FRC data is removed.

- d. The OE/OS will prepare Letter 2908 (from the Publishing site) to advise the taxpayer/POA that the DOJ retained jurisdiction, the DOJ period(s) are not compromised, and are thus being disregarded per the language in the Form 656. Use the open paragraph in Letter 2908 with the following suggested language: *Per the language in Section 7, in the attached Form 656, we did not include periods [tax period(s)] under the Department of Justice jurisdiction in your offer in compromise accepted on [date]. If we released a Notice of Federal Tax Lien with respect to these periods, we will revoke the lien release and file a new Notice of Federal Tax Lien with respect to these periods.*

Note: The official who signed the acceptance letter will also sign the Letter 2908.

- e. Email a copy of the signed Letter 2908 to your local Counsel office and request they advise the DOJ of the IRS error and resolution.
- f. The OE/OS will delete the DOJ periods from the AOIC MFT Screen and request a manual TC 782 equal to the original TC 780 date and manual TC 483 (equal to the original TC 480 date) with a posting delay of one cycle.

Note: If MOIC has already abated the assessments then the OE/OS will ask MOIC to reinstate the periods on IDRS and prepare a revocation of lien release and file the NFTL, if necessary. See IRM 5.19.7.15.2, Revocation of the Certificate of Release of Federal Tax Lien.

- g. The OE/OS will review the OIC payments to verify the taxpayer did not designate payments to the DOJ periods. If the taxpayer designated any payments to the DOJ periods, absent written direction, the designated payments will not be applied to the OIC terms. Update any payments that remain applied to the DOJ periods to DPC 99. Apply all OIC payments to administrative period(s) only.
- h. After coordinating with OIC Collection Policy, COIC/FOIC will reclose and revalidate the OIC to MOIC.

5.8.9.3.1.2
(09-05-2024)

**Returning an OIC When
IRS Erred In Accepting
OIC Containing Years
Referred to DOJ**

- (1) If the IRS erred in accepting an OIC listing a year that had been referred to the DOJ, then contact OIC Collection Policy to determine the disposition of the case. If OIC Collection Policy concludes that the OIC cannot be saved, then return the OIC as not processable following the steps below. The OIC cannot be rescinded but must be returned as not processable because the IRS has no authority to accept an OIC on any period controlled by the DOJ.
- (2) In all instances, update AOIC remarks with the specific changes that were made to the accepted OIC record, and keep SCOIC management apprised of all stages of the correction. Due to the significant administrative repercussions of the error, SCOIC management will monitor to ensure completion.
- (3) The office which recommended the OIC for acceptance is responsible for requesting the following actions:
 - a. The OE/OS will determine the location of the OIC file. If the file is at the Federal Records Center (FRC), retrieve it now. All documents need to be associated with the official OIC file.
 - b. The OE/OS manager will send an e-mail to OIC Collection Policy (**with a CC: to the MOIC DM, OM/TM, and Director SCOIC**) to reopen the OIC. Provide the OIC number, date of acceptance, reason for the request, and FRC data.
 - c. OIC Collection Policy will check for the FRC tracking data (and note the FRC information) before reopening the OIC.

Caution: Once the OIC is reopened the FRC data is removed.

 - d. The OE/OS will contact the taxpayer/POA to advise the IRS erred in accepting the OIC, as the IRS lacked the jurisdiction to accept an OIC after the period/liabilities were referred to the DOJ.
 - e. Notify MOIC that the IRS erred in accepting the OIC, as the IRS no longer had authority to accept because of a prior referral to the DOJ. If the periods have been zeroed out, ask MOIC to reinstate the periods on IDRS, following IRM 5.19.7.15.1, Reinstating Previously Written Off Tax Periods, and IRM 5.19.7.15.2, Revocation of the Certificate of Release of Federal Tax Lien.

Note: MOIC will verify that COIC issued the OIC return letter prior to preparing a revocation of lien release and filing the NFTL.

 - f. Transfer the OIC to the COIC site (that originally processed the OIC) on AOIC and provide instructions in the remarks that COIC should return the OIC as not processable per IRM 5.8.9.3.1.
- (4) The COIC site will:
 - a. Change the processability code on AOIC to "N".

- b. Stamp the Form 656 'RETURN' and cross out the IRS received date and the IRS signature that established the waiver date.
- c. Issue the not processable letter. See IRM 5.8.2.7, Erroneous Processability Determinations.
- d. Update payments changing the OIC payment DPCs to 99 using IAT.
- e. Use OIC IAT payment evaluator to provide Counsel an accounting of all payments to send to Counsel so they can update their suit letter to the DOJ. Include a copy of the not processable letter. See IRM 5.8.2.7 (5).
- f. Retain a copy of the not processable letter for the OIC file (and Counsel) and return the file to the FRC.

Note: Associate all documents with the official OIC file.

- g. Reverse the transaction code (TC) 780 on each applicable period by requesting input of a manual TC 782 equal to the original TC 780 date and manual TC 483 (equal to the original TC 480 date) with a posting delay of one cycle.

- (5) You do not need to take any action to address the PIF.

5.8.9.3.2 (09-05-2024) **Restitution Erroneously Included on Accepted Offer**

- (1) An OIC may be accepted from 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 include a taxpayer's civil tax liabilities, not any criminal restitution. Never include restitution and any associated RBAs in an OIC. If an RBA is erroneously included on the Form 656 or approved Form 7249, action needs to be taken to correct the OIC. Follow the same procedures in IRM 5.8.9.3.1.2 to correct AOIC and related transaction codes.
- (2) The acceptance of an OIC with a civil tax assessment does not impact the validity of the RBA and the taxpayer is still responsible for any outstanding balance of the RBA. Payments received based on the terms of the OIC will be applied to the civil tax assessments, yet in some circumstances the RBA may stem from the same type of tax and tax periods, so OIC payments may partly satisfy the RBA when duplicate civil and/or codefendant assessments exist.
- (3) See IRM 5.1.5, Field Collecting Procedures, Balancing Civil and Criminal Cases, and IRM 5.8.4.24.1, Offers in Compromise Submitted that Include Restitution, for more information on restitution.

5.8.9.4 (09-05-2024) **Offers Accepted in Error with Open Bankruptcy**

- (1) The IRS will not consider an OIC under its administrative OIC procedures while a taxpayer is in bankruptcy. See IRM 5.8.10.2.
- (2) If a taxpayer is in bankruptcy when an administrative OIC is submitted, the OIC is returned as non-processable. The return of the OIC does not constitute a rejection of the OIC and it does not entitle the taxpayer to file an appeal. See 26 CFR 301.7122-1(f)(5)(ii). For a joint liability, even if only one spouse is in bankruptcy, the IRS will return the OIC as non-processable (if there are joint assessments that have not been split to MFT 31).
- (3) If an OIC is inappropriately accepted while the taxpayer is in bankruptcy (open TC 520) the office which recommended the OIC for acceptance is responsible for requesting the following actions below.

Note: Even if the bankruptcy has already been discharged, the IRS did not have the authority to accept the OIC if the accepted date was prior to the discharge date.

- a. Send an e-mail to OIC Collection Policy to request the OIC be reopened by an AOIC programmer. Provide the OIC number, date of acceptance, and reason for the request.
- b. OIC Collection Policy will notify the originator when the OIC is reopened.
- c. Contact the taxpayer/POA to advise the IRS did not have the authority to accept the OIC due to the open TC 520. Instruct them not to send any additional OIC payments.
- d. If any payments posted after the TC 520, contact Insolvency to determine if action is needed to manually refund or change the DPC.

Note: Ensure Insolvency is aware if the payments resulted in the NFTL release.

- e. Request input of TC 782 to reverse the transaction code, TC 780, on each applicable period. The TC 480 and TC 481 must be manually input as well, but cycle delays are required so the TCs post correctly.
- f. Contact MOIC and notify the OIC was reopened because it was closed inappropriately as an acceptance. MOIC does not need to take further monitoring actions.

5.8.9.5

(09-05-2024)

Potential Default Cases

- (1) An OIC can reach a potential default status in one of four ways:

- a. The taxpayer failed to fulfill the payment terms.
- b. The taxpayer failed to fulfill the terms of a related collateral agreement.
- c. The taxpayer failed to adhere to the compliance provisions.
- d. The taxpayer failed to return a mistakenly issued refund.

Note: MFT 35 and/or MFT 65 — The taxpayer's failure to report or pay an individual shared responsibility payment (SRP) liability made under IRC 5000A and/or any individual SRP liability assessment made after acceptance will not default the OIC.

- (2) Campus MOIC units have responsibility and authority to make determinations on potentially defaulted OICs where the taxpayer has not proposed an alternative to the default.
- (3) In its discretion, the MOIC unit may make an attempt to secure compliance; some cases do not merit an attempt to secure compliance. For example, MOIC has previously advised the taxpayer failure to remain in compliance will result in the termination of the OIC agreement. If the taxpayer fails to comply with all provisions of the internal revenue laws, including timely filing and payment, MOIC may elect appropriate remedy, including keeping the OIC in force while obtaining a missed payment/unfiled tax return to defaulting the OIC contract. If MOIC defaults the OIC they will input reversal codes to put the liability(ies) back to the collection stream and close the case as a default.

5.8.9.6
(09-05-2024)
**Modification of an
Accepted Compromise**

- (1) The modification of an accepted OIC should be rare in light of the investigation completed in connection with the original OIC. In some cases where the taxpayer is unable to pay the balance of an accepted OIC, the balance of a non-rebate erroneously issued refund, or the balance of the contingent liability under the terms of a collateral agreement and the investigation reveals that extreme hardship or special circumstances exist, it may be in the best interest of the government to:

- a. Adjust the payment terms,
- b. Obtain managerial approval to write off the tax debt for the amount already paid and not default the OIC or
- c. Formally modify the existing compromise.

- (2) Adjusting the payment terms allows the taxpayer additional time to pay the OIC amount and can be made without a formal modification of an accepted compromise. This does not change what is owed on the OIC and if the payments are not made then the option to default still exists.

Caution: You may not add a newly accrued tax period for a modification.

- (3) Obtaining managerial approval to settle for the amount already paid and not default the OIC doesn't require the taxpayer to submit a formal proposal. In some instances, it is determined to close the OIC with the amount already paid. The option to default still exists if appropriate, in the future.

Note: The approving official should be commensurate with the delegated official who signed the acceptance. For example, if the second-level manager approved the acceptance of the original OIC, this same management level must approve the modification.

- (4) When a taxpayer is unable to pay the balance of an accepted OIC and/or the balance due under the terms of a collateral agreement, the IRS has the option to accept a modification of an accepted compromise. The taxpayer must be current with their filing and payment compliance requirements, or a modification of the existing compromise will not be considered. See IRM 5.19.7.9, Modifying the Accepted OIC. The taxpayer must submit a signed letter to request a modification of an accepted compromise.

- (5) A proposal to modify an accepted OIC must rest on Doubt as to Collectibility (DATC), DATC with special circumstances (DATCSC), or Effective Tax Administration (ETA).

- (6) When a request to modify a previously accepted OIC is received by MOIC they will electronically issue Form 2209, Courtesy Investigation, to the office that accepted the OIC. A request for a courtesy investigation should be rare, but when issued, the courtesy investigation should be worked in an expeditious manner and if ICS is used, treated as a priority assignment. The receiving office must document both receipt and assignment of the Form 2209 in AOIC Remarks.

Note: A Form 2209 should only be issued by the MOIC function if a modification of an accepted compromise is received, or the terms of an agreed collateral agreement cannot be properly monitored.

5.8.9.6.1
(09-05-2024)

Receipt and Processing

- (1) The proposal must be in writing and in the form of a letter addressed to the Internal Revenue Service. The taxpayer's proposal letter should contain the following items listed below.
 - a. The taxpayer's original acceptance letter date.
 - b. The taxpayer's original OIC terms and amount paid to date.
 - c. The new proposed modification terms.
 - d. The taxpayer agrees to file and pay all taxes as required by the Internal Revenue Code for five years, including any extensions, from the date of acceptance of the proposed, revised OIC.
 - e. If the original OIC had a collateral agreement then the modification must include the collateral as well.
 - f. The taxpayer's reason for submitting this modification.

Note: Do not secure a new Form 656. No TIPRA payments are required if the terms (lump sum or periodic payment) of the new proposal are the same as the original, accepted OIC.

- (2) MOIC will send the electronic Form 2209 for a modification of an accepted compromise. If you do not acknowledge the Form 2209 within seven days of issuance, MOIC will follow up with the intended recipient.
- (3) Upon receipt of the proposal:
 - COIC will add a history entry to AOIC Remarks indicating receipt and assignment of a modification of an accepted compromise.
 - FOIC will add a history entry in AOIC Remarks as to the assignment and receipt and create an Other Investigation (OI) or Collection Initiative Program (CIP) on ICS to open a control until the taxpayer's proposal has been considered.
- (4) If you are rerouting the electronic Form 2209, document AOIC Remarks and update the originating MOIC employee.
- (5) The taxpayer must submit a current financial statement(s) and all required supporting documentation.
- (6) The courtesy investigation will be given priority by COIC and FOIC. If the investigation is not completed by the original response date (90 calendar days for Appeals and 45 calendar days for COIC/FOIC) on the Form 2209 then send an extension request, Form 2209-A, Status Report, to MOIC. An extension request should be rare or based on extenuating circumstances.
- (7) When closing the Form 2209, notate AOIC with the results of the investigation.

5.8.9.6.2
(09-05-2024)

Consideration of Proposal

- (1) Acceptance will depend on:
 - a. The best interest of the Government; and
 - b. The same considerations and merits being applied as if it were submitted on a Form 656.
- (2) The information required to support the proposal should fit the case, such as:
 - Command Code (CC) RTVUE/BRTVU print, or if no data is available, a copy of the taxpayer's most recently filed income tax return.

Note: A request for a copy of the taxpayer's tax return should be rare. Generally, this information is secured through internal sources such as Account Management Services (AMS) and Employee User Portal (EUP). Do not request a tax return if it is not legally due, including any extension of time to file.

- Review of CSEDs to make sure no CSEDs have expired or are about to expire.
- Estimate of the remaining liability under the terms of the future income collateral agreement, if applicable.
- Reasons why the request is being made to modify the existing agreement.
- Full compliance check.

Note: If the taxpayer is not in five-year filing and paying compliance, a modification of an accepted compromise cannot be considered. This does not include the current year estimated tax payments.

- Statement of current financial condition.
- Description of future prospects and any other information that might have a bearing on the acceptability of the OIC.
- Estimated and projected amount of future income over the period covered by the remaining terms of the original agreement.

5.8.9.6.3
(09-05-2024)
**Processing Completed
Investigations**

- (1) When you complete the investigation, forward the taxpayer's proposal, investigative report, and memorandum containing a complete statement of the facts in the case, including the recommendation, to the next level of authority for approval/concurrence.
- (2) Prepare an acceptance or denial letter for the delegated official. See Letter 6646 , Acceptance of a Modification of an OIC and Letter 6645, Denial of a Modification of an OIC.
- (3) If the taxpayer's proposal is acceptable, the procedures for acceptance of the original OIC will be followed including an opinion of Counsel as set forth in IRM 5.8.8.13, Legal Opinion of Counsel. You do not need to secure an addendum.

Note: The approving official should be commensurate with the delegated official who signed the acceptance. For example, if the second-level manager approved the acceptance of the original OIC, this same management level must approve the modification.

- (4) An attempt must be made by phone to contact the taxpayer prior to the issuance of the proposed acceptance or denial letter of the modification of an accepted compromise. If the OE or OS makes contact with the taxpayer regarding the denial, they should inform the taxpayer of the denial, and that the payment terms of the original OIC must be met or a default letter will be issued.

Example: The original accepted OIC was for \$50,000 and the taxpayer requests the modification for \$20,000. Your RCP calculation on the modification shows the RCP is \$35,000 and there are no special circumstances present. You would reject this modification request.

Note: Advise the taxpayer there are no appeal rights with the denial decision for the modification of an accepted compromise investigation.

- (5) If the proposal is acceptable and the offer is within one year of the original acceptance date, the IRS must evaluate if it is necessary to correct the PIF record (i.e. generate new Form 7249). Because PIF are generated through AOIC, any correction requires the offer be reopened. Send an e-mail to *SBSE Coll Policy OIC that includes all supporting documents for the offer modification. If Collection Policy determine the PIF requires correction, they will contact you with specific instructions regarding how to update the offer record (AO screen and terms). When the AO recloses the offer, they will record the AO disposition date as the original acceptance date; a modification does not extend the 5-year monitoring timeframe.
- (6) Follow the below “If/Then” chart for preparation of the file.

If	Then
The proposal is acceptable	<p>Forward the case file to the delegated official for approval and signature. If the original compromise required Counsel review, and the taxpayer’s proposal is acceptable, Counsel legal requirement review is required. Include with any acceptance:</p> <ul style="list-style-type: none"> • Copy of the Acceptance Letter • A new Form 7249 • Taxpayer’s proposal • Memorandum supporting the modification of the compromise • Work papers and financial information <p>Note: If the offer acceptance (PIF) is over one year old generate the new Form 7249 through the Publishing website.</p>

If	Then
The proposal was acceptable and the terms change from lump sum to periodic payment	<p>A NFTL determination is needed based upon the new terms. Follow 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.</p> <p>Note: If a CDP request is received in response to the NFTL, process it timely in accordance with IRM 5.1.9, Collection Appeal Rights.</p>
The proposal is not acceptable	<p>Forward the case file to the delegated official for approval and signature. Include:</p> <ul style="list-style-type: none"> • Copy of the Denial Letter • Taxpayer's proposal • Memorandum supporting the recommendation <p>Note: No appeal rights are granted to the taxpayer.</p>

- (7) Update the AOIC Remarks and, if it is an FOIC OIC, update the ICS history with the results of the investigation. If the proposal is accepted, include the amount of the accepted proposal and the terms for payment in the AOIC Remarks and ICS history, if appropriate.

- (8) Once the decision letter has been signed and mailed, close the OI or CIP notating the final resolution.

Note: There will be no ability to complete this action on AOIC as there is no open AOIC record. The new Form 7249 and letter must be manually generated.

- (9) Electronically send the closing documents to the appropriate MOIC unit with instruction to either monitor if it is to be accepted, or default if it is not accepted.

- (10) The closing documents are as follows:

- Form 2209
- Taxpayer's proposal
- Acceptance or denial letter with memorandum, as appropriate
- Form 7249, with signatures, if an acceptance

- (11) If the OIC file is no longer in MOIC and has already been forwarded to FRC, the OE/OS group should forward the work papers and financial information for the modification of an accepted compromise file to FRC following procedures in

IRM 5.8.7.12.1, Shipment of Closed Cases to Federal Records Center (FRC). When the case is boxed, AOIC Remarks should be documented "Modification of an Accepted OIC case file information shipped to FRC as the last case in box number xxx shipped to FRC MM/DD/YYYY."

5.8.9.7
(09-05-2024)

**Overlooked Periods on
Accepted Offers**

- (1) Occasionally additional periods are discovered after the acceptance of an OIC. Missing liabilities assessed before the acceptance are considered only a defect of the OIC. When such liabilities are discovered, the OIC agreement should be modified to include the additional period(s).

Note: Such modification of the OIC agreement would not require a determination of "mutual mistake of material fact". If the modification results in the unpaid amount of tax equaling or exceeding \$50,000 and an opinion from Counsel had not previously been obtained, the file must be sent to Counsel for the required opinion.

- (2) To address overlooked periods on accepted OICs see IRM 5.19.7.3.4, Overlooked Periods, for necessary actions.