



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

5.8.11

APRIL 11, 2024

EFFECTIVE DATE

(04-22-2024)

PURPOSE

- (1) This transmits revised IRM 5.8.11, Offer in Compromise, Effective Tax Administration.

MATERIAL CHANGES

- (1) Material changes to IRM 5.8.11 are listed in the table below.

IRM Section	Material Change
5.8.11.1.2	Updated authorities.
5.8.11.1.6	Added acronyms.
5.8.11.1.7	Added table with additional IRM resources.
5.8.11.2	Editorial changes renumbered this section and include: <ul style="list-style-type: none">In (4) and (5), clarified that ETA is only considered when there are no other grounds for compromise - the taxpayer does not qualify for DATC or DATCSC and is not requesting consideration under DATL.(6) Changed “and/or” to “or” to clarify taxpayers submit either a Form 433-A(OIC) or Form 433-B(OIC) with an offer. If supplemental documentation is required regarding finances of a related entity, taxpayers would use regular Form 433-A or Form 433-B.
5.8.11.3	Re-formatted section for more logical flow.
5.8.11.3.1	<ul style="list-style-type: none">(9) Added IRM reference 5.8.11.5.3.(10) Added additional example to determine the appropriate disposition.
5.8.11.3.2	<ul style="list-style-type: none">(1) Re-formatted section for more logical flow.(2) Removed reference to the NEH-ETA group being located in Austin, TX in this paragraph and throughout IRM 5.8.11.

IRM Section	Material Change
5.8.11.3.2.1	<p>Re-formatted section for more logical flow. Changes include:</p> <ul style="list-style-type: none"> • (1) Listed public policy equity factors that may qualify for NEH-ETA consideration. • (10) To consider administrative remedies if the taxpayer was unable to comply with the tax laws. • (11) Reworded example regarding taxation of cancellation of debt income and updated terminology in the large partnership example. • (12) Clarified actions required if the acceptance recommendation is based on other factors not specifically addressed in this section. • (14) Updated reference to point to two new sections regarding determining the acceptable OIC amount.
5.8.11.4	<p>Changes include:</p> <ul style="list-style-type: none"> • (1) Clarified offers submitted on ETA-economic hardship will be reviewed to determine if the taxpayer qualifies under another basis. • (2) Offers submitted solely on NEH-ETA will be assigned directly to or transferred to the NEH-ETA group. Added note that the Form 656 cannot contain more than one reason for compromise. • (3) Replaced “and/or” with “or” to clarify the applicable 433 (OIC) form is required. Added reference to the exception for victims of payroll service providers. • (5) Removed former (5) as repetitive. • (5) Former (6) now includes reminder that the basis/reason checked on Form 656 must match the legal reason for compromise. Examples provided to illustrate.
5.8.11.5	<p>Added Effective Tax Administration to the title and:</p> <ul style="list-style-type: none"> • (1) Clarified that by checking ETA, the taxpayer acknowledges they can pay in full the liability. • (4) Updated table to remove addendum. Provided additional guidance regarding closing actions based on type of closure.

IRM Section	Material Change
5.8.11.5.1	<p>Changes include:</p> <ul style="list-style-type: none"> • (1) Re-wording for clarification of public policy-equity. • (3) Clarified offers initially submitted on the basis of NEH-ETA are assigned by COIC to the NEH-ETA group. Stipulated when an OIC can be directly transferred; all others require a full investigation by the OE/OS before a checksheet is referred. • (4) Clarification of actions required regarding RCP disagreements prior to referring a case to the NEH-ETA group. • (5) Guidance if the equity/public policy considerations are identified in the OIC package or after contact is made. Added table with examples to provide guidance on transfer criteria. • (7) Added note that if the special circumstances raised are purely economic in nature, the NEH-ETA group may return the checksheet without a memorandum. • (8) Clarified the memorandum will contain an analysis of the non-economic issues. • (9) Removed reference to discussing RCP with the taxpayer because that must be resolved before the referral. • (10) Added note regarding the delegated official when NEH-ETA offers are referred from Appeals.
5.8.11.5.2	Reworded for clarification.
5.8.11.5.3	<p>Added Economic Hardship to the title and moved instruction for NEH-ETA OICs to a new section.</p> <ul style="list-style-type: none"> • (1) Reworded section and added examples to assist with determining an acceptance OIC amount. • (2) Added paragraph advising not to reduce FMV on AET/IET and provided example of documentation to support acceptance. • (4) Added examples regarding funding the OIC.
5.8.11.5.3.1	<p>Created new section for the moved paragraphs regarding determining NEH-ETA OIC amounts. Revised references to the OIC types referenced in IRM 5.8.11.3.2.1 and how to determine the OIC amount.</p>

IRM Section	Material Change
5.8.11.5.3.2	Clarified: <ul style="list-style-type: none"> (1) That in most cases the OIC amount provides for full payment of the underlying tax. (3) A collateral agreement may be considered vs. required.
5.8.11.6	<ul style="list-style-type: none"> Moved procedures specific to NEH-ETA offers to new subsection IRM 5.8.11.6.1 and: Moved paragraphs for better flow - (3) to (1) and (4) to (3). (3) Reworded to contrast ETA v. DATCSC.
5.8.11.6.1	Created a new section for documentation and considerations specific to NEH-ETA offers. <ul style="list-style-type: none"> Clarified the RCP investigation required if the OIC amount is not based on ability to pay. Revised the instructions for TFRP when the BMF NEH-ETA OIC amount is based on the underlying tax. OIC payments are to be designated to tax. Clarified instructions when a TFRP investigation is required. Included an example when penalty abatement should be addressed prior to OIC acceptance.
5.8.11.7	Updated the table in (2) to <ul style="list-style-type: none"> Remove reference to addendum and clarify the basis must be consistent in AOIC, Form 656 and in the closing letters. Add guidance regarding closing steps.
5.8.11.7.1 and 5.8.11.7.2	Added caution the approving official for NEH-ETA OICs is the territory or operations manager.

- (2) Sections were renumbered throughout the document.
- (3) Editorial changes were made throughout this IRM to update terminology, website addresses, legal references, IRM references, and revised forms and to adopt active voice.
- (4) Removed all references to the specific location of the NEH-ETA group.
- (5) Throughout IRM 5.8.11, changed offer to OIC.
- (6) Throughout IRM 5.8.11, removed references to addendum to reflect pending policy change to utilize amended Form 656 for all contract revisions.

EFFECT ON OTHER DOCUMENTS

This material supersedes IRM 5.8.11 dated October 4, 2019.

AUDIENCE

SB/SE Compliance employees

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5.8.11

Effective Tax Administration

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5.8.11.1
(10-04-2019)
Program Scope and Objectives

- (1) **Purpose:** This chapter provides:
 - Instructions for conducting offer in compromise (OIC) investigations involving Effective Tax Administration (ETA) criteria.
 - Definitions for considering basis involving ETA.
- (2) **Audience:** These procedures apply to Internal Revenue Service (IRS) employees who are responsible for investigating and considering offers submitted under the basis of ETA:
 - 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 and consider OIC appeals.
- (3) **Policy Owner:** Director, Collection Policy
- (4) **Program Owner:** SBSE Collection Policy, Offer in Compromise (OIC) Program
- (5) **Primary Stakeholders:** The primary stakeholders are COIC and FOIC employees assigned to Specialty Collection Offer in Compromise.
- (6) **Program Goals:** Policy Statement 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 OIC investigations and initiate taxpayer contact, when appropriate.

5.8.11.1.1
(10-04-2019)
Background

- (1) An offer in compromise (referred to as an offer or OIC) is an agreement between a taxpayer and the Internal Revenue Service that settles a taxpayer's tax liabilities for less than the full amount owed. Revenue Procedure 2003-71 explains the procedures applicable to the submission and processing of offers to compromise a tax liability under IRC 7122. The Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA) also provided additional requirements for submission of an OIC.
- (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 OIC submission. During the OIC investigation, the IRS will evaluate the taxpayer's individual circumstances and make a determination to either return, reject, terminate, accept, or close the OIC as a withdrawal. This IRM section provides guidance on how an OIC investigation should be completed and the impact other functions or activities may have on the OIC investigation.
- (3) Treasury Regulations 301.7122-1, Compromises, provides additional guidance under paragraph (b) (3) *Promote effective tax administration* allowing for a compromise to be entered into to promote effective tax administration.

5.8.11.1.2
(04-11-2024)

Authority

- (1) Authorities relating to this section include:
- IRC 7122 - Compromises
 - Treasury Regulations 301.7122-1 - Compromises
 - IRC 6702(b) - Civil penalty for specified frivolous submissions
 - Policy Statement 5-100
 - Policy Statement 5-89
 - Policy Statement 5-97
 - 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 1.2.2.6, Delegations of Authority for the Collecting Process

5.8.11.1.3
(10-04-2019)

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.

5.8.11.1.4
(10-04-2019)

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 providing information on inventory levels, hours per case, and age of offers in inventory or at time of closure, may also be completed from AOIC and the Integrated Collection System (ICS). See IRM 1.4.52, 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 OIC amount accurately reflects the reasonable collection potential (RCP) as defined in Policy Statement 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.

5.8.11.1.5
(10-04-2019)

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 OIC 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, Offer in Compromise Manager's Resource Guide.
- (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.

5.8.11.1.6
(04-11-2024)
**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
AGI	Adjusted Gross Income
AOIC	Automated Offer in Compromise
APS	Account and Processing Support
ATAT	Abusive Tax Avoidance Transaction
ATFR	Automated Trust Fund Recovery System
CAP	A type of appeal under the Collection Appeal Program
CAU	Caution Indicator
CCC	Case Category Code in AOIC (also referred to as OCC)
CDP	A type of appeal under the Collection Due Process hearing provisions
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
DPC	Designated Payment Code
DVDP	Domestic Voluntary Disclosure Program

Acronym	Definition
e-fax	Enterprise Electronic Facsimile or an electronically transmitted scanned document sent to or from an IRS e-fax number
EFTPS	Electronic Funds Tax Payment System
EH	Equivalency Hearing (Appeals)
ES	Estimated Tax Payment
ETA	Effective Tax Administration
FMV	Fair Market Value
FOIC	Field Offer in Compromise
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 Tax
NEH-ETA	Non-Economic Hardship - Effective Tax Administration
NFTL	Notice of Federal Tax Lien
NIBIG	Not in the Best Interest of the Government
NRE	Net Realizable Equity
OE	Offer Examiner
OI	Other Investigation
OIC	Offer in Compromise
OS	Offer Specialist
OVDP	Offshore Voluntary Disclosure Program
PDT	Potentially Dangerous Taxpayer
PEO	Professional Employer Organization
PII	Personally Identifiable Information
POA	Power of Attorney
PPIA	Partial Pay Installment Agreement

Acronym	Definition
PSP	Payroll Service Provider
PUB	Publication
RA	Reporting Agent
RCP	Reasonable Collection Potential
RO	Revenue Officer
SCOIC	Specialty Collection Offer in Compromise
TIPA	Tax Increase Prevention Act of 2014
TIPRA	Tax Increase Prevention and Reconciliation Act of 2005
TFRP	Trust Fund Recovery Penalty
TM	Territory Manager
TP	Taxpayer

5.8.11.1.7
(04-11-2024)

Related Resources

(1) Additional resources can be found in:

IRM	Title	Guidance On
1.2.2.6	Delegations of Authority for the Collecting Process	Delegation for approval of various types of disposition of offers in compromise
1.2.2.6.4	Delegation Order 5-4 Federal Tax Lien Certificates	Authority to sign Notices of Federal Tax Lien
5.8.4	Investigation	Actions required to determine the appropriate method of closure.
5.8.5	Financial Analysis	Appropriate evaluation of the taxpayer's ability to pay and computation of reasonable collection potential.
5.8.6	Collateral Agreements	When a collateral agreement may be appropriate or a factor in the acceptance or rejection of an OIC.
5.8.7	Return, Terminate, Withdraw and Reject Processing	Actions required when not recommending acceptance of an OIC.

IRM	Title	Guidance On
5.8.10	Special Case Processing	Additional considerations required in special cases such as death of the taxpayer, MFT 74 or 76 modules, etc.
5.8.1.5	Protecting Taxpayer Rights	Rights afforded by Internal Revenue Code and Taxpayer Bill of Rights (TBOR).
5.19.7	Monitoring Offer in Compromise	Actions taken on accepted offers.

(2) Employees can find helpful information on these websites:

- *SERP*
- *Internal Management Documents*

5.8.11.2
(04-11-2024)
Overview

(1) Section 7122(d)(1) directs the Secretary of the Treasury to prescribe guidelines for the IRS to determine whether an OIC is adequate and should be accepted. Congress explained that these guidelines should allow the IRS to consider:

- Hardship,
- Public policy, and
- Equity.

(2) 26 CFR 301.7122-1(b)(3) authorizes the IRS to consider these issues via Effective Tax Administration (ETA) offers.

(3) The availability of an ETA OIC encourages taxpayers to comply with the tax laws because taxpayers will believe the tax laws are fair and equitable. The ETA OIC allows for situations where tax liabilities should not be fully collected even though:

- The tax is legally owed, and
- The taxpayer has the ability to pay it in full.

(4) No compromise to promote ETA may be entered into if compromise of the liability would undermine compliance by taxpayers with the tax laws.

(5) The IRS may compromise to promote effective tax administration where compelling public policy or equity considerations identified by the taxpayer provide a sufficient basis for compromising the liability, and there are no other grounds for compromise.

(6) An ETA OIC can only be considered when the IRS has determined that the taxpayer is not requesting Doubt as to Liability (DATL) consideration and does not qualify for consideration under Doubt as to Collectibility (DATC) or Doubt as to Collectibility with Special Circumstances (DATCSC).

(7) The taxpayer must include the Collection Information Statement (CIS) (Form 433-A (OIC) or Form 433-B (OIC)) when submitting an OIC requesting consideration under ETA.

Exception: See IRM 5.8.11.5.2, Financial Statement Analysis, when complete financial information may not be required on certain offers involving the fraudulent acts of a Payroll Service Provider (PSP).

- (8) Economic hardship standard of 26 CFR 301.6343-1 specifically applies only to **individuals**. Refer to IRM 5.8.11.3.1, Economic Hardship.

5.8.11.3
(04-11-2024)
**Legal Basis for Effective
Tax Administration OIC**

- (1) By definition, ETA OICs apply only when the taxpayer can pay in full. In an ETA OIC, the tax liability is less than the taxpayer's reasonable collection potential (RCP). The RCP shows the taxes owed can be collected in full either:
- In a lump sum,
 - Through an installment agreement (IA),
 - Or a combination of both.

- (2) In comparison, DATC applies when the tax liability exceeds the taxpayer's RCP. In DATC offers, the amount offered must equal or exceed RCP.

Note: A DATC OIC does not convert to an ETA OIC if the Offer Examiner/Offer Specialist (OE/OS) and the taxpayer cannot agree on an acceptable OIC amount.

- (3) A taxpayer who cannot pay in full but has identified special circumstances may qualify for an OIC for less than RCP. Because the taxpayer cannot pay in full, the basis is not ETA but would be DATCSC. **Factors establishing special circumstances under DATCSC are the same as those considered under ETA.** Refer to IRM 5.8.4.2, Effective Tax Administration (ETA) and Doubt as to Collectibility with Special Circumstances (DATCSC) which discusses issues to consider when evaluating an OIC under ETA or DATCSC.

Example: The taxpayer owes \$20,000. The RCP is \$ 25,000. If economic hardship or public policy provisions exist, the taxpayer may qualify for an ETA OIC.

Example: The taxpayer owes \$20,000 and has RCP of \$15,000. The OIC does not meet the legal basis for an ETA because the RCP is lower than the liability. However, applying the same factors of economic hardship, or public policy/equity, an OIC could be accepted for less than the RCP (\$15,000) under DATCSC provisions.

- (4) The IRS may compromise to promote effective tax administration where compelling public policy or equity considerations identified by the taxpayer provide a sufficient basis for compromising the liability, only if there are no other grounds for compromise (DATC, DATCSC or DATL).

- (5) When reaching these determinations:

If...	Then...
During the OIC investigation, the IRS determines that there is doubt as to the amount of the liability the taxpayer owes	Taxpayer is not eligible for ETA consideration. Solicit a withdrawal of the OIC submitted under ETA and recommend the taxpayer submit the appropriate documents, i.e. amended return, etc, so the correct tax may be determined. The taxpayer may review the Form 656-L to determine if they may qualify for a DATL OIC. If after any adjustments or consideration of a DATL OIC are completed, a balance due remains, the taxpayer may submit a DATC or ETA OIC.
The IRS determines that the taxpayer's equity in assets plus future income (RCP) does not exceed the amount of the tax liability	Taxpayer is not eligible for an ETA OIC. The OIC may be considered based on DATC or DATCSC.
The IRS determines the taxpayer is not eligible for compromise based on DATL or DATC and the taxpayer can demonstrate that collection of the tax liability in full would create economic hardship, or demonstrate that there is compelling public policy or equity issues in the case that would provide sufficient basis for compromise	The taxpayer is eligible for ETA consideration.

- (6) Before the IRS can consider any ETA OIC based on economic hardship or public policy/equity considerations, three factors must exist:
- A liability has been or will be assessed against taxpayer(s) before acceptance of the OIC.
 - The sum of net equity in assets, future income, and the other components of collectibility making up the RCP must be greater than the amount owed.
 - The taxpayer presents exceptional circumstances, such as the collection of the tax would create an economic hardship, or compelling public policy or equity considerations that provide sufficient basis for compromise.

5.8.11.3.1 (04-11-2024)

Economic Hardship

- (1) When a taxpayer's liability can be collected in full but collection would create an economic hardship, they may qualify for an ETA OIC based on economic hardship.
- (2) The definition of economic hardship as it applies to ETA offers is derived from 26 CFR 301.6343-1(b)(4). Economic hardship occurs when a taxpayer is unable to pay reasonable basic living expenses. The determination of a rea-

sonable amount for basic living expenses will be made by the director and will vary according to the unique circumstances of the individual taxpayer. Unique circumstances, however, do not include the maintenance of an affluent or luxurious standard of living.

Note: Because economic hardship is defined as the inability to meet reasonable basic living expenses, it applies only to *individuals* (including sole proprietorship entities). Compromise on economic hardship grounds is not available to corporations, partnerships, estates, or other non-individual entities.

- (3) Review the taxpayer's financial information *and* special circumstances to determine if they may qualify for an ETA OIC based on economic hardship. Financial analysis includes reviewing basic living expenses as well as other considerations. When evaluating hardship circumstances, keep in mind the taxpayer must provide verification of medical conditions or other hardships.
- (4) Determine if the taxpayer's income provides for payment of basic living expenses. Basic living expenses are those expenses that provide for health, welfare, and production of income of the taxpayer and the taxpayer's family. National and local standard expense amounts are designed to provide accuracy and consistency in determining taxpayer's basic living expenses for domestic taxpayers. These standards are guidelines and if it is determined that a standard amount is inadequate to provide for a specific taxpayer's basic living expenses, allow a deviation. Request the taxpayer provide reasonable substantiation to support the deviation and document the case file.
- (5) In addition to the basic living expenses, consider other factors that impact the taxpayer's financial condition which may include:
 - The taxpayer's age and employment status,
 - Number, age, and health of the taxpayer's dependents,
 - Cost of living in the area the taxpayer resides, and
 - Any extraordinary circumstances such as special education expenses, a medical catastrophe, or natural disaster.

Note: This list is not all-inclusive. Other factors may be considered in making an economic hardship determination.

- (6) Factors that support an economic hardship determination may include:
 - The taxpayer is incapable of earning a living because of a long term illness, medical condition or disability, and it is reasonably foreseeable that the financial resources will be exhausted providing for care and support during the course of the condition.
 - The taxpayer may have a set monthly income and no other means of support and the income is exhausted each month in providing for the care of dependents.
 - The taxpayer has assets, but is unable to borrow against the equity in those assets, and liquidation to pay the outstanding tax liabilities would render the taxpayer unable to meet basic living expenses.

Note: These factors are representative of situations the IRS regularly encounters when working with taxpayers to resolve delinquent accounts. They are not intended to provide an exhaustive list of the types of cases that can be compromised based on economic hardship.

- (7) The following examples illustrate the types of cases that may be compromised under the economic hardship standard.

Example: The taxpayer has assets sufficient to satisfy the tax liability and provides full time care and assistance to a dependent child, who has a serious long-term illness. It is expected that the taxpayer will need to use the equity in assets to provide for adequate basic living expenses and medical care for the child. The taxpayer's overall compliance history does not weigh against compromise.

Example: The taxpayer is retired and the only income is from a pension which does not meet their necessary living expenses. The only asset is a retirement account and the funds in the account are sufficient to satisfy the liability. Liquidation of the retirement account would leave the taxpayer without adequate means to provide for basic living expenses. The taxpayer's overall compliance history does not weigh against compromise.

Example: The taxpayer is disabled and lives on a fixed income that will not, after allowance of adequate basic living expenses, permit full payment of the liability under an installment agreement. The taxpayer also owns a modest house that has been specially equipped to accommodate for a disability. The equity in the house is sufficient to permit payment of the liability owed. However, because of the disability and limited earning potential, the taxpayer is unable to obtain a mortgage or otherwise borrow against this equity. In addition, because the taxpayer's home has been specially equipped to accommodate the disability, forced sale of the taxpayer's residence would create severe adverse consequences for the taxpayer, making such a sale unlikely. The taxpayer's overall compliance history does not weigh against compromise.

- (8) The economic hardship standard authorizes compromise regardless of the cause of the liability, provided compromise does not undermine compliance by other taxpayers.

Example: The taxpayer submitted an ETA OIC based on economic hardship. The financial statement appears to support the OIC. When a research of the county property records is conducted, it is noted that the home was transferred to a child for \$100 plus love and affection. The transfer of the home was made after the tax was assessed. The taxpayer does not provide any information or documentation to demonstrate the transfer of property was an arms length transaction, so it appears the transfer was to avoid the payment of the tax liability; therefore, the OIC should not be accepted.

- (9) In economic hardship cases, an acceptable OIC amount is determined by analyzing the financial information, supporting documentation, and the hardship that would be created if certain assets, or a portion of certain assets, were used to pay the liability.

Example: The taxpayer was diagnosed with an illness that eventually will hinder any ability to work. Although currently employed, the taxpayer will soon be forced to quit their job and will use personal funds for basic living expenses. The taxpayer owes \$100,000 and has an RCP of \$150,000. An OIC was submitted for \$35,000. Through the investigation, it is deter-

mined that collecting more than \$50,000 would cause an economic hardship for the taxpayer. A determination on economic hardship was made due to the fact the taxpayer's reasonable living expenses, including ongoing medical costs will exceed their income once the taxpayer is unemployed. The taxpayer is advised to raise the OIC to \$50,000, the amount the investigation indicates can be paid without creating an economic hardship. See IRM 5.8.11.5.3 for determining an acceptable amount.

- (10) The existence of economic hardship criteria does not dictate that an OIC must be accepted. An acceptable OIC amount must still be determined based on a full financial analysis and negotiation with the taxpayer. When hardship criteria are identified but the taxpayer does not offer an acceptable amount, the OIC should not be recommended for acceptance.

Example: The taxpayer in the prior example does not increase their OIC to the amount you have determined can be paid without hardship, \$50,000. Recommend the \$35,000 OIC be rejected with appeal rights.

5.8.11.3.2
(04-11-2024)
**Public Policy or Equity
Grounds**

- (1) Per 26 CFR 301.7122-1(b)(3), the IRS may compromise to promote effective tax administration where compelling public policy or equity considerations identified by the taxpayer provide a sufficient basis for compromising the liability. Compromise will be justified only where, due to exceptional circumstances, collection of the full liability would undermine public confidence that the tax laws are being administered in a fair and equitable manner. A taxpayer proposing compromise under this paragraph (b)(3)(ii) will be expected to demonstrate circumstances that justify compromise even though a similarly situated taxpayer may have paid their liability in full.
- (2) If you determine that a taxpayer is requesting consideration of the amount offered based on equity reasons vs. reasonable collection potential or economic hardship, see IRM 5.8.11.5.1 , Public Policy/Equity Processing. Acceptance of an OIC based on considerations of equity and public policy will generally be based on a combination of facts and circumstances. It is important that appropriate cases are identified and forwarded to the non-economic hardship - effective tax administration (NEH-ETA) group for consideration. Generally, the circumstances should be such that acceptance of the OIC is fair and equitable and promotes ETA.
- (3) Where there is no DATL, no DATC, and the liability could be collected in full without causing economic hardship, the IRS may compromise to promote ETA where compelling public policy or equity considerations identified by the taxpayer provide a sufficient basis for accepting less than full payment. Compromise is authorized on this basis only 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. See IRM 5.8.11.3.2.1, Public Policy or Equity Compelling Factors, for the types of situations which may apply.
- (4) The IRS recognizes that compromise on these grounds may raise the issue of disparate treatment of taxpayers who can pay in full and whose liabilities arose under substantially similar circumstances. Taxpayers seeking compromise on this basis bear the burden of demonstrating circumstances that are compelling enough to justify compromise notwithstanding this inherent inequity.

(5) All non-hardship ETA offers should meet the following requirements:

- The taxpayer has remained in compliance since incurring the liability and overall their compliance history does not weigh against compromise;
- **Note:** A taxpayer is deemed to meet the compliance requirement, if they incurred a related liability caused by the fraudulent acts of a PSP.
- The taxpayer must have acted reasonably and responsibly in the situation giving rise to the liabilities; and
- An OIC acceptance should not place the taxpayer in a better position than they would occupy if they had timely and fully met their obligations, unless special circumstances exist to justify the compromise.

Note: Generally, tax liabilities associated with the taxpayer's participation in abusive tax avoidance transactions will not be compromised under these procedures.

5.8.11.3.2.1
(04-11-2024)

**Public Policy or Equity
Compelling Factors**

(1) While by definition the characteristics that may qualify for consideration of compromise on the basis of public policy or equity are unique, issues that may be raised in support of a non-economic Effective Tax Administration (NEH-ETA) OIC may include:

- IRS error, erroneous advice or undue delay
- Wrongful acts of third parties
- Negative community impact
- Incapacitation

(2) Compromise may promote ETA if a taxpayer's liability was directly caused by a processing error on the part of the IRS and would otherwise have been avoided. Compromise to remedy the mistake may be appropriate if administrative remedies will not return the taxpayer to the same position they would have occupied if the error had not been made.

Example: The taxpayer is a closely-held corporation. The IRS audited the taxpayer's tax returns for 2018, 2019, and 2020 and determined that the taxpayer was a personal holding company liable for personal holding company tax. The taxpayer agreed to immediate assessment of the tax, but attempted to take advantage of the deduction for deficiency dividends under section 547. Although the taxpayer made the distributions necessary to qualify for the deduction, the IRS made several errors in executing the required agreements and other paperwork. As a result, the taxpayer could not avail itself of the section 547 deduction. Under the statute, applicable regulations, and pertinent case law, there is no means by which the mistakes can be corrected to allow the taxpayer to take advantage of the deduction. There is documentary evidence that all of the required IRS officials intended to complete the processing of the agreements and that, but for their failure to do so, the taxpayer would have qualified for the deduction. The taxpayer has no prior history of noncompliance.

Note: The fact that the tax liability was caused solely by an error on the part of the IRS supports the determination that collection in full would cause other

taxpayers to question the fairness of the tax system. Furthermore, the policies underlying the imposition of the personal holding company tax and the rules regarding deficiency deductions are not undermined by compromise under these circumstances. the IRS may consider accepting a compromise that would reflect the amount the taxpayer would now owe had the IRS not made an error.

- (3) Compromise may promote ETA if the taxpayer incurred the liability because of having followed erroneous advice or instructions from the IRS. The advice or instructions caused the taxpayer to incur a tax liability that would not otherwise have been incurred. In these instances, the taxpayer must be able to show through some form of documentation when the advice was provided and the IRS employee involved. Refer to IRM 20.1.1.3.3.4.1, Written Advice from the IRS, and IRM 20.1.1.3.3.4.2, Oral Advice from the IRS. Prior to acceptance of an OIC under these provisions, there must be no other method for the taxpayer to have the liability corrected via penalty and/or interest abatement and the taxpayer's overall compliance history does not weigh against compromise.

Note: Because the tax liability in these instances is caused by relying on the IRS's erroneous statement, and the taxpayer clearly could have avoided the liability had the IRS given correct information, it is reasonable to conclude that collection in full would cause other taxpayers to question the fairness of the tax system. If there is no other method to adjust the taxpayer's account so it reflects the amount which would have been owed had the IRS not made an error, accepting a compromise under ETA provisions is appropriate.

- (4) If actions or inaction of the IRS unreasonably delayed resolution of the taxpayer's case and interest or penalty abatement is not available, compromise may still be warranted if the circumstances are sufficiently compelling. An OIC should not be accepted under ETA provisions, in lieu of abatement under IRC 6404(e), when appropriate.
- (5) Compromise may promote ETA and allow for relief if the taxpayer demonstrates that the criminal or fraudulent act of a third party is directly responsible for the tax liability. In any case involving a fraudulent act of a third party, the taxpayer should be able to provide supporting documentation that the act occurred and was the direct cause of the delinquency. The taxpayer should also be able to show that the nature of the crime was such that despite prudent and responsible business actions the taxpayer was misled to believe the tax obligations were properly addressed. There should be evidence that the funds required for the payment of the taxes were segregated or otherwise identified and were available to pay the taxes in a timely manner. Compromise would promote ETA in such situations only where the failure to comply is directly attributable to intervention by a third party and where the taxpayer has made reasonable efforts to comply and taken reasonable precautions to prevent the criminal or fraudulent acts at issue. If appropriate, the taxpayer's efforts to mitigate the damages by pursuing collection from the third party should also be considered. Compromise for this reason would only promote ETA where there is a very close nexus between the actions at issue and the failure to comply. **The IRS will not compromise on public policy or equity grounds solely on the argument that the acts of a third party caused the unpaid tax liability.** Third parties include: Representatives, Partners, Agents,

or Employees. The actions of the third party may be part of a fact pattern that, viewed as a whole, present compelling public policy or equity concerns justifying compromise.

Note: This section does not apply to liabilities established under the Bipartisan Budget Act of 2015 (BBA). Refer to Example 2 under paragraph (11) in this subsection for discussion of BBA cases.

- (6) If the third party was a payroll service provider (PSP), professional employer organization (PEO), or reporting agent (RA), additional considerations apply. Factors which demonstrate the taxpayer was acting reasonably may include, but are not limited to:
- the manner and frequency of monitoring federal tax deposits via Electronic Federal Tax Payment System (EFTPS) or other means,
 - verifying references prior to entering into the arrangement with the PSP, determining if the PSP was licensed as required by state laws and regulations and if any corporate filings and licenses required by the state were up to date,
 - the fact immediate steps to remedy the problem after learning of the PSP's misconduct were taken, and
 - whether mitigating factors were involved that may have hampered the ability to identify and correct the problem, e.g. serious illness, natural disaster, etc., as well as a determination as to whether consideration of the taxpayer's OIC under ETA Hardship is a more appropriate resolution.

Example: A taxpayer contracted with a PSP to handle all the payroll tax matters of the business. The taxpayer utilized a PSP that had been in business for several years and contacted references of other businesses using the PSP who stated the PSP had acted appropriately. The taxpayer monitored the federal tax deposits via their bank account withdrawals and EFTPS. When it was determined the PSP may have missed deposits, the business immediately started verifying federal tax deposits on their due date. No other factors weigh against acceptance of an OIC. Since the taxpayer acted in a reasonable manner, an acceptance of an OIC under ETA Public Policy is appropriate.

Example: A taxpayer contracted with a PSP from outside the community and took no action to verify whether the PSP had clients who were satisfied with their manner of business. The taxpayer never monitored their deposits and when they received a notice from the IRS it was provided to the PSP. The PSP stated they would resolve the issue and the taxpayer never took any follow-up actions to determine if the delinquency issues had been resolved. In this situation the taxpayer is not deemed to have acted in a reasonable manner, so an OIC should not be accepted.

Note: In situations where the actions of a third party service provider (PSP, PEO or RA) contributed to the delinquency, once the OS has determined sufficient supporting information or documents are available to verify the provider was the direct cause of the delinquency, the taxpayer acted in a reasonable manner, and the taxpayer is not contesting their RCP will allow for payment in full, the OS may proceed with minimal review of RCP or financial verification. Refer to IRM 5.8.11.6, Documentation and Verification.

- (7) Taxpayers may have third party payer arrangements with Professional Employer Organizations (PEO) and Reporting Agents (RA). Offers submitted on behalf of clients impacted by the fraudulent acts of these entities require review of the arrangement, including the terms of the contractual arrangement, when it was entered into, whether the terms of the contractual arrangement were ever implemented, and enforced, and how and when the arrangement was revoked or terminated by the taxpayer.
- a. Prior to completing the OIC investigation, the OS must verify who had the responsibility for filing of information and employment tax returns and making federal employment tax deposits. The OS must also verify the steps taken by the client to act in a prudent and responsible business manner with respect to the employment tax liabilities for which the client has submitted an OIC.
 - b. Additional information relative to these arrangements is provided in IRM 5.1.24-1, Third-Party Arrangement Chart. The OS may also refer to IRM 5.1.24.6.1, Certified Professional Employer Organization and IRM 5.1.24.4.3, Reporting Agent.
 - c. Under the Tax Increase Prevention Act of 2014 (TIPA), the IRS established a voluntary certification program for a professional employer organization to become recognized as a Certified Professional Employer Organization (CPEO). Once recognized as a CPEO, the CPEO is generally treated as the employer of any individual performing services for a client of the CPEO. Since a PEO is not required to be a CPEO or the liabilities may have been incurred prior to the passage of this act on December 19, 2014, there will be instances in which a client of a PEO submits an OIC to compromise liabilities which involve the fraudulent acts of a PEO. In addition to requesting relief based on the fraudulent acts of the PEO, the client may also claim that the contract between the parties relieved them of liability for federal employment tax obligations. However, IRC 3401(d) and IRC 3403 determines which party is liable for employment taxes, and the IRS is not bound by any agreement between an employer and a third party. Refer to IRM 5.1.24.6.3, Impact of a PEO Arrangement on Client, which provides information regarding these types of arrangements. The taxpayer cannot contractually assign its tax liability to the PEO in this situation.
- (8) A taxpayer may have entered into an agreement with a RA to perform certain acts which relate to the filing of employment tax returns and/or making federal tax deposits on the employer's behalf. The authority of the RA is granted by the submission of a Form 8655, Reporting Agent Authorization, to the Reporting Agents File unit in Ogden. Refer to IRM 21.3.9, Processing Reporting Agents File Authorizations, for more information on Form 8655 and RFINK. Since use of a reporting agent does not relieve the employer of its employment tax obligations or liability for employment tax, an OIC may also be submitted from a client of a RA, if the RA's actions directly caused the tax liability.

Note: In some instances, it may be necessary to secure information from the RAF unit to determine when/if the authorization was revoked once the taxpayer determined the RA was acting in an improper manner. Failure to revoke the RA agreement after determining the RA had acted in a fraudulent manner does not preclude the acceptance of an OIC, yet the taxpayer must have been acting responsibly and taken the appropriate actions to make sure certain taxes were paid appropriately.

- (9) Compromise under ETA may be appropriate where there is clear and convincing evidence that rejecting the OIC, and pursuing other collection alternatives, would have a significantly negative impact on the community in which the taxpayer lives or does business, i.e., the taxpayer provides essential services to the community that would be lost if the tax liability was collected in full. The taxpayer should be asked to provide documentation that full payment of the tax liabilities would likely result in the inability of the business to provide these essential services. The businesses that would typically qualify under this provision are not for profit, charitable, or exempt organizations.

Example: A non-profit organization provides quality health and human services to indigent, low-income and under-served residents in two counties. Rejecting the OIC and pursuing collection action for full payment would result in forcing the center to choose between paying the delinquent taxes or providing competent medical care.

- (10) Compromise may promote ETA where the taxpayer was incapacitated and thus unable to comply with the tax laws. Before considering an OIC, determine if an administrative remedy is available. Complete any allowable reasonable cause penalty abatement(s). If administrative remedies will not obtain a result which approximates the amount the taxpayer would have been assessed had they been able to comply with filing and paying requirements, consider a compromise that would approximate the amount the taxpayer would have been assessed had they been able to comply in a timely manner. Such a compromise would be fair and equitable to the taxpayer and, under these circumstances, would advance the public policy of voluntary compliance with the tax laws.

Note: It would not promote ETA to compromise with the taxpayer, if the investigation revealed that the taxpayer was able to attend to financial matters during the time of the illness. For example, assume the taxpayer, paid all other bills and continued to successfully operate a business during the illness. Under such circumstances, accepting an OIC would not promote ETA, and could serve to undermine compliance by other taxpayers.

- (11) Compromise on public policy or equity grounds **is not** authorized based solely on a taxpayer's belief that a provision of the tax law is itself unfair. Where a taxpayer is clearly liable for taxes, penalties, or interest due to operation of law, a finding that the law is unfair would undermine the will of Congress in imposing liability under those circumstances.

Example: The taxpayer argues that collection would be inequitable because the liability resulted from a discharge of indebtedness rather than from actual income. If the tax law in place at the time the debt was cancelled requires the cancellation of debt income to be reported as taxable income, it would not promote ETA to compromise on these grounds. See IRC 61(a)(12) .

Example: In 2018, the taxpayer invested in a nationally marketed partnership which promised the taxpayer tax benefits far exceeding the amount of the investment. Immediately upon investing, the taxpayer claimed investment tax credits that significantly reduced or eliminated the tax liabilities for the years 2018 through 2021. In 2022, the IRS opened an audit of the partnership under the provisions of the Bipartisan Budget Act of 2015

(BBA). After issuance of the Final Partnership Adjustment (FPA), but prior to any proceedings in Tax Court, the IRS made a global settlement offer in which it offered to concede a substantial portion of the interest and penalties that could be expected to be assessed if the IRS's determinations were upheld by the court. The taxpayer rejected the settlement offer. After several years of litigation, the partnership level proceeding eventually ended in Tax Court decisions upholding the vast majority of the deficiencies asserted in the FPA on the grounds that the partnership's activities lacked economic substance. The taxpayer has now offered to compromise all the penalties and interest on terms more favorable than those contained in the prior settlement offer, arguing that the BBA is unfair and that the liabilities accrued in large part due to the actions of the Partnership Representative (PR) during the audit and litigation. Neither the operation of the BBA rules nor the PR's actions on behalf of the taxpayer provide grounds to compromise under the equity provision of IRM 5.8.11.3.2. Compromise on those grounds would undermine the purpose of both the penalty and interest provisions at issue and the consistent settlement principles of BBA. Furthermore, reducing the risks of participating in tax shelters would encourage more taxpayers to run those risks, which would undermine compliance. Depending on the taxpayer's particular facts and circumstances, however, compromise may be authorized on the grounds of DATC, or because collection of the full liability would cause an economic hardship within the meaning of IRM 5.8.11.3.1, Economic Hardship.

Note: In both of these examples, the taxpayers are essentially claiming that Congress enacted unfair statutes and are arguing that the IRS should use its compromise authority to rewrite those statutes based on a perception of unfairness. Compromise for that reason would not promote ETA. The compromise authority under Section 7122 is not so broad as to allow the IRS to disregard or override the judgments of Congress.

- (12) There may be other circumstances involved in a case that would lead a reasonable third party to conclude that acceptance of the OIC would be fair, equitable, and promote effective tax administration. Other factors not discussed above or in the IRM, may be present to support the conclusion that the case presents compelling public policy or equity considerations sufficient to justify compromise. If the acceptance recommendation is based on factors **not specifically addressed** in IRM 5.8.11.3.2.1, Public Policy or Equity Compelling Factors, additional action is required. The OS will clearly document the factors which weigh in favor of compromise, the verification that was conducted to support the decision, and the potential outcome of acceptance of the OIC on tax administration. **Because these cases have the potential to establish new policy for the IRS in this area, offers recommended for acceptance under this paragraph must be referred for additional review before the acceptance letter is issued.** If the Territory Manager (TM) concurs with the acceptance recommendation, they will forward the acceptance memorandum or closing narrative with Form 7249, Offer Acceptance Report, to the National OIC Program Manager. The National OIC Program Manager will consult with the Director of Collection. The review by the National OIC Program Manager and Director of Collection will be processed in an expedited manner, typically within 15 days, to ensure timely processing of the acceptance documents. If the OIC acceptance is processed by Collection, the concurrence of Director of Collection should be included in the OIC file. The delegated approving official

will document the concurrence in the AOIC Remarks, and sign the acceptance letter in accordance with Delegation Order No. 5-1.

- (13) As is the case with all compromise determinations, referrals, and acceptance/rejection decisions, employees need to 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 unique set of facts and circumstances. Particularly in regard to acceptance/rejection decisions, the recommendation report must clearly explain the reasoning behind our actions.
- (14) Once it has been determined that a case raises compelling public policy or equity considerations, refer to IRM 5.8.11.5.3.1, Determining an Acceptable OIC Amount - Equity/Public Policy, or IRM 5.8.11.5.3.2, Determining an Acceptable OIC Amount (Fraudulent Acts of a PSP).

5.8.11.3.3
(09-23-2008)

Compromise Would Not Undermine Compliance With Tax Laws

- (1) Compromise under the ETA economic hardship or non-economic hardship provisions are permissible if acceptance does not undermine compliance. The public should not perceive that the taxpayer whose OIC is accepted benefited by not complying with the tax laws.
- (2) Factors supporting (but not conclusive of), a determination that compromise would undermine compliance includes; but is not limited to:
 - The taxpayer has an overall history of noncompliance with the filing and payment requirements of the Internal Revenue Code.
 - The taxpayer has taken deliberate actions to avoid the payment of taxes.
 - The taxpayer has encouraged others to refuse to comply with the tax laws.

Note: There may be other situations where compromise would undermine compliance.

5.8.11.4
(04-11-2024)

Initial Processing of Effective Tax Administration Offers

- (1) Offers submitted on the grounds of ETA - economic hardship will first be reviewed to determine if the taxpayer may qualify under another basis, such as DATC/DATCSC. Both COIC and FOIC are authorized to recommend acceptance of an offer for less than RCP based on economic hardship considerations.
- (2) Offers submitted on the grounds of ETA - exceptional circumstances (non-economic hardship or NEH), will be assigned directly to the NEH group. If you receive an OIC submitted **solely** on the basis of NEH-ETA, or the taxpayer subsequently amends their OIC to solely this basis, transfer the OIC in AOIC to AO 05 and mail the case to the address indicated on the NEH-ETA transfer sheet which is stored on *OIC SharePoint*. For any other type of OIC that requires review, utilize the checklist referral process in IRM 5.8.11.5.1, Public Policy/Equity Processing.

Note: Form 656 is a contract that requires the taxpayer to select the reason (basis) for compromise. Form 656 instructs taxpayers to select one reason. If taxpayers have checked multiple boxes, contact them to clarify what type of OIC they are requesting. If a taxpayer contends payment in full will nega-

tively impact their household or future financial well-being, they are asking for economic hardship consideration, not NEH-ETA. If more than one box is checked, secure an amended Form 656 to reflect the reason the offer is requested.

Reminder: Do not refer Forms 656 to the NEH-ETA group that erroneously request more than one reason for compromise.

- (3) Taxpayers seeking a compromise under ETA will submit the Form 656 selecting ETA along with the CIS (Form 433-A (OIC) or Form 433-B (OIC)). Taxpayers must complete Section 3 (or attach a separate statement) and document their special circumstances. The documentation should explain why collection of the liability in full would cause economic hardship, or the public policy/equity issues present that would justify compromising the liability. An attachment can be provided if additional space is needed. If the taxpayer does not submit a financial statement with the OIC and does not meet the exception provided for victims of payroll service providers referenced in IRM 5.8.11.5.2, Financial Statement Analysis, request the financial statement, and any other data determined necessary for evaluation of the OIC. If the taxpayer fails to provide the requested information, normal "return" procedures should be followed since ETA criteria cannot be considered until all other bases have been addressed.
- (4) Like all other offers, the IRS will only consider an ETA OIC when taxpayers have met the processability criteria (e.g. paid the application fee or checked the low-income waiver box on the Form 656), submitted the required initial TIPRA payments with their OICs or qualified for low-income waivers, have filed all required tax returns, and are not debtors in bankruptcy. Refer to IRM 5.8.2, Centralized Offer in Compromise Initial Processing and Processability, for initial processing of offers.
- (5) The reason on the Form 656 must align with the legal basis the OIC is being accepted, or being rejected. If the reason on Form 656 is not correct, secure an amended OIC. Before proceeding with an acceptance or a rejection, ensure the basis shown in AOIC matches that on the Form 656. Refer to IRM 5.8.11.7, Final Processing, for a full discussion of requirements to update AOIC prior to final processing of ETA and DATCSC offers.

Example: A taxpayer checks the ETA economic hardship box on Form 656. Your investigation reveals the taxpayer cannot full pay the liability and the RCP allows for acceptance based on DATC. The taxpayer does not respond to your attempts to secure an amended Form 656. Ensure the basis in AOIC matches the basis on Form 656 before proceeding with a rejection recommendation. The Form 656 cannot be recommended for acceptance because it does not meet the legal requirements of an ETA OIC.

Example: A taxpayer checks the DATC box, but RCP exceeds the liability. You determine the OIC amount can be accepted based on ETA economic hardship, but the taxpayer does not respond to contact. The basis of the OIC in AOIC should reflect DATC when you proceed with rejection.

Note: In both examples, the taxpayer will have the opportunity to provide a corrected amended Form 656 during the rejection appeal period.

5.8.11.5
(04-11-2024)

**Evaluation of Effective
Tax Administration
Offers**

- (1) When taxpayers submit a Form 656, they are required to indicate the reason (basis) for the OIC. By selecting the ETA basis on the Form 656, the taxpayer acknowledges they have the assets and income to allow for payment of the liability in full. Regardless of the reason / box selected on the form, SCOIC will evaluate the taxpayer's finances to determine the correct basis for which the taxpayer may qualify. ETA offers cannot be considered if the taxpayer qualifies for DATC/DATCSC) or DATL. Refer to IRM 5.8.4, Investigation, for DATC issues and determining reasonable collection potential (RCP).
- (2) If the OE/OS determines the assets and future income do not exceed the tax liability, yet special circumstances exist, the taxpayer's OIC may be considered under DATCSC. The taxpayers may have checked the ETA box and given an explanation of circumstance on the Form 656, however unless they have the ability to full pay the liability, the OIC would not meet the legal standard for ETA consideration. The OIC may be considered under DATCSC.
- (3) If the taxpayer submits an OIC based on DATC but collection potential exceeds the liability and there are special circumstances, the OE/OS will review to determine if the OIC may qualify for consideration on the basis of ETA. The employee will address any potential special circumstances during first contact with the taxpayer or POA, in conjunction with verification of receipt of Publication 1 and Publication 594. The OE/OS will document the discussion in the OIC case history. The requirement to inquire about special circumstances and discuss receipt and content of the IRS publications does not apply if the only taxpayer contact is through correspondence, including secure messaging.
- (4) After the RCP has been established and discussed with the taxpayer, determine your next actions, including whether an amended OIC is required.

Determination	Actions	Comments
Acceptance based on ETA.	<ul style="list-style-type: none"> Form 656 must reflect ETA as the basis for compromise. AOIC must reflect OIC type as "A", ETA OIC, or "N", NEH-ETA OIC as applicable. Form 7249 reason for acceptance must reflect ETA (either economic hardship or NEH, as applicable). The acceptance letter must include Paragraph B regarding the OIC fee. 	If original Form 656 was not submitted with ETA as the basis, secure an amended OIC to update the basis to the correct ETA basis.
Acceptance based on Doubt as to Collectibility with Special Circumstances.	<ul style="list-style-type: none"> Form 656 must reflect DATC as the basis for compromise. AOIC must reflect OIC type as "C", Doubt as to collectibility. Form 7249 reason for acceptance must reflect Doubt as to Collectibility with Special Circumstances. The acceptance letter must include Paragraph B regarding the OIC fee. 	If original Form 656 was submitted with ETA as the basis, secure an amended OIC to update the basis to Doubt as to Collectibility.

Determination	Actions	Comments
Rejection when OIC submitted under ETA.	<ul style="list-style-type: none"> Rejection narrative and rejection letter must describe the consideration of both the ETA issues identified and taxpayer's ability to pay. AOIC must reflect offer type as "A", if the requested basis is economic hardship, or "N" if the requested basis was NEH-ETA. 	Refer to delegation of authorities for appropriate approving official.
Rejection when Special Circumstances were identified during the OIC investigation, for an OIC submitted based on DATC.	<ul style="list-style-type: none"> Rejection narrative and rejection letter must include consideration of both DATC and the Special Circumstances identified during the OIC investigation. AOIC must reflect the OIC type "C", Doubt as to collectibility from Form 656. 	If original Form 656 was submitted with DATC as the basis, do not secure an amended OIC.

5.8.11.5.1
(04-11-2024)
**Public Policy/Equity
Processing**

- (1) A taxpayer seeking an OIC on the Public Policy/Equity Effective Tax Administration provisions must establish they have exceptional circumstances that warrant acceptance of an OIC, even though similarly situated taxpayers may have paid in full.
- (2) In order to develop consistency in the interpretation and application of Treasury Regulations (TD 9007) published on July 22, 2002, a Specialty Group was established to work these offers.

- (3) Offers submitted on the basis of NEH-ETA are assigned to the specialty group. For all offers initially submitted on any other basis, the OE/OS must conduct a full investigation and determine if the taxpayer may qualify for acceptance under another basis (e.g. DATL, DATC, DATCSC, and/or ETA based on economic hardship).

Example: A not for profit organization submits a DATC OIC and indicates that payment of the liability would prevent them from providing essential services to the community. The OIC investigation shows the organization's RCP exceeds the tax liability. You review the AET/IET with the taxpayer and explain that there is no legal basis for DATC based on their RCP, and that non-individuals are not eligible for consideration of DATCSC (which is based on the inability to meet *household* expenses). Upon further discussion the taxpayer does not dispute the RCP, but wants an OIC that takes into consideration the impact to the community. They agree to amend the OIC's basis to NEH-ETA. Upon receipt of the amended Form 656, directly transfer the case to the NEH-ETA group. No checklist is required to transfer OICs submitted **solely** on the basis of NEH-ETA.

Exception: Taxpayers who indicate their liability was caused by the misappropriation of federal tax deposits by a PSP, PEO or RA should be referred **directly** to the NEH-ETA group. See IRM 5.8.11.5.2, Financial Statement Analysis.

- (4) Before proposing a referral to the NEH-ETA group, you must review the RCP with the taxpayer or POA to determine if they have information that may change the determination, and document that discussion. Resolve any outstanding issues involving the calculated reasonable collection potential amount prior to referring the OIC to the NEH-ETA group. If the taxpayer disagrees with RCP, allow a reasonable time to provide any additional documents they wish considered in the calculation of RCP. Any issue which remains in dispute should be identified in the memorandum provided to the NEH-ETA group, including the OE/OS position and how the disputed issue alters the taxpayer's ability to fully pay the liability.
- (5) There may be instances where the taxpayer did not check the NEH-ETA box on Form 656 because they cannot pay in full, yet **also** requested consideration of their equitable circumstances in the Explanation of Circumstances or during contact with SCOIC. Although ineligible on the specific basis of NEH-ETA, a checklist is generally required if the taxpayer is basing **the OIC amount** on extraordinary circumstances, vs. their finances, ability to pay and/or economic hardship for their household. Referral to the NEH-ETA group establishes that the IRS properly considered the taxpayer's request for their offer amount, which was based solely on equity/fairness. In each of the examples below, the tax liability is \$50,000 and the taxpayer acknowledges their RCP is \$40,000. The taxpayer cannot be considered for an OIC based on ETA because they cannot pay in full. In each instance, the OE/OS will fully investigate the RCP and try to negotiate amended terms for a justifiable amount before considering a checklist to the NEH-ETA group. If the case involves trust fund taxes, address any TFRP per IRM 5.8.4.22.1 before submitting the checklist.

If	Then
The BMF taxpayer is offering \$100 because their Form 941 tax is directly due to a former employee's embezzlement actions.	Consider any appropriate allowances for income-producing assets per IRM 5.8.4.15. If unable to reach agreement, refer a checksheet to the NEH-ETA group.
The taxpayer is offering \$25,000 because the taxpayer contends the IRS actions and delay contributed to the accruals.	Determine if any reductions may be appropriate under DATCSC. If unable to reach agreement, refer a checksheet to the NEH-ETA group.
The taxpayer, a not for profit corporation, cannot access the \$30,000 NRE in their building and contends payment of more than the \$10,000 offered would cause a hardship on the community .	Refer a checksheet to the NEH-ETA group. Business entities do not qualify for economic hardship consideration and real estate is not considered an "income-producing asset."
The taxpayer offers \$1,000, contending they'll need the \$40,000 NRE to pay for future medical bills.	Do not refer a checksheet. The taxpayer is requesting economic hardship consideration. See IRM 5.8.11.5.3, Determining an Acceptable OIC Amount - Economic Hardship.
The taxpayer offers \$1,000 because they have insufficient cash flow to qualify for a mortgage to obtain the \$40,000 NRE from their home.	Do not refer a checksheet. The taxpayer is requesting economic hardship consideration.
The taxpayer offers \$1,000, contending they'll need the \$40,000 NRE to pay for future medical bills. They also indicate the IRS delays contributed to their accruals.	Do not refer a checksheet. The taxpayer is requesting economic hardship consideration and is not basing their OIC amount on the IRS action(s). If the OIC is not accepted, determine if the taxpayer may qualify for any penalty abatement under reasonable cause.
The taxpayer offers \$1,000 because they are still recovering from a natural disaster that caused a long period of unemployment as well as damage to their home.	Do not refer a checksheet. The taxpayer is requesting economic hardship consideration.

Example: A taxpayer submitted an OIC based on DATC but all documentation provided with the Form 656 in support of acceptance is based not on the taxpayer's ability pay, but on the fact an internal employee embezzled funds from the taxpayer's payroll account. After completing the DATC

investigation, you solicit an amended OIC to increase the terms to the \$9,000 RCP, but the taxpayer refuses because they believe it is unfair they pay more than the \$100 offered, since the monies were stolen. Even though the taxpayer cannot pay in full, refer a checksheet to the NEH-ETA group so they can address the taxpayer's request that the OIC be accepted based on their equitable circumstances.

- (6) If the OIC cannot be accepted under another basis, and the taxpayer is requesting their unique and exceptional circumstances be considered in the determination, prepare the "Non-Economic Hardship Effective Tax Administration (NEH-ETA) OIC Check Sheet" which is located on *OIC SharePoint*. The check sheet must be completed and sent to the NEH-ETA group before any cases are transferred. The purpose of the check sheet is to document that all issues other than Public Policy/Equity ETA have been evaluated and to provide information on the non-economic equity factors present.
- (7) Send the completed check sheet with all requested attachments to the NEH-ETA OIC group manager. Include copies of any letters or documents presented by the taxpayer to support the special circumstances. The group will evaluate the information and respond to the sender within 10 workdays. The group will either provide a memorandum to explain why further investigation by the group is not necessary or they will send instructions to transfer the OIC to the group.

Note: If the special circumstances are purely economic in nature, the NEH-ETA group may return the checksheet without a memorandum. They will document the history to clarify the special circumstances are economic and the NEH-ETA referral was not necessary.

- (8) If the NEH-ETA group determines that the OIC does not require transfer, they will provide information regarding their analysis of the non-economic issues to the sender who will be responsible for issuing the proposed rejection letter to the taxpayer. The rejection letter will include the paragraph that advises the taxpayer special circumstances were considered. The rejection recommendation closing narrative in AOIC remarks/ICS history, per IRM 5.8.7.7.3, Recommending Rejection of an Offer, must address any special circumstances raised. Include a statement the NEH-ETA group reviewed the taxpayer's request for consideration under public policy/equity and determined it did not meet acceptance criteria.

Note: Per IRM 1.2.2.6.1, Delegation Order 5-1, To Accept, Reject, Return, Terminate or Acknowledge Withdrawals of Compromise, an OIC submitted **solely** under the basis of NEH-ETA requesting public policy or equity consideration must be approved by the FOIC Territory Manager, COIC Operations Manager or Appeals Area Director. .

- (9) If the NEH-ETA group determines that the information presented requires further analysis, they will request you transfer the case.
 - Advise the taxpayer by telephone that the NEH-ETA group will contact them after the case is assigned. If you cannot reach the taxpayer by phone, send a standard transfer letter.
 - Send by overnight mail on a Form 3210 to the NEH-ETA group.
 - At the time of mailing, transfer on AOIC to Area 05 (OIC Territory 2).
 - Enter a history item in AOIC Remarks to show the case is being sent to the NEH-ETA group, Area 05.

- The NEH-ETA group will maintain copies of all check sheets received and appropriate documentation on all offers accepted for transfer.

- (10) A taxpayer who has submitted an OIC under NEH-ETA or has requested consideration of any public policy or equity issues during the OIC investigation must have those issues reviewed by the NEH-ETA group prior to rejection of the taxpayer's OIC or before a rejection is sustained. The review is initiated by providing a NEH-ETA checksheet as discussed in paragraph (5) above to the NEH-ETA group. This review should also occur on offers which are under appeals jurisdiction when NEH-ETA issues are identified by Appeals in CDP and non-CDP offers. If the NEH-ETA group determines the OIC should not be accepted under NEH-ETA and the OIC is under Appeal's jurisdiction, a recommendation will be provided to Appeals who will make the final decision on the case.

Note: Per IRM 1.2.2.6.1, Delegation Order 5-1, To Accept, Reject, Return, Terminate or Acknowledge Withdrawals of Compromise, the delegated official for an OIC submitted solely under the basis of NEH-ETA requesting public policy or equity consideration is the Appeals Area Director.

5.8.11.5.2
(04-11-2024)

Financial Statement Analysis

- (1) Offers submitted under ETA require the same full financial analysis as DATC offers in order to determine RCP and to determine an acceptable OIC amount. Procedures for financial analysis are contained in IRM 5.8.5, Financial Analysis.

Exception: Once a determination is made that the liability was caused by a PSP/PEO/RA, if the NEH-ETA OIC amount is equal to the full amount of tax, exclusive of penalty and interest, no financial analysis is required including review of financial statements. In lieu of OIC financial statements, the taxpayer may supply a statement that they have the ability to fully pay the liability.

- (2) The OE/OS will calculate RCP and determine whether the OIC qualifies for consideration under ETA or DATC.

- (3) If the taxpayer's assets and future income exceed the tax liability, the taxpayer's OIC can be considered under the ETA basis.

5.8.11.5.3
(04-11-2024)

Determining an Acceptable OIC Amount - Economic Hardship

- (1) To determine an acceptable OIC amount based on economic hardship, analyze the financial information to determine if a hardship would be created if certain assets, or a portion of certain assets, were used to pay the liability. The acceptable OIC amount must include all RCP that is not reasonably established to be essential for health and welfare. Because factors other than RCP dictate the OIC amount, judgment and documentation are required to support the decision.

Example: Scenario 1 - The taxpayer has a \$100,000 liability and a RCP of \$125,000 from the net realizable equity (NRE) value of retirement savings. After calculating the anticipated out of pocket medical expenses on the Income/Expense Table, you determine that the taxpayer will need \$75,000 of the determined RCP to meet their necessary living expenses, which exceed income. Document the AOIC/ICS history with how the determination was made that \$75,000 will be reasonably be needed and that the acceptable OIC amount is \$50,000.

Example: Scenario 2 - The taxpayers have a \$130,000 liability and RCP of \$110,000, comprised of \$80,000 NRE in a free and clear residence and \$30,000 in other assets. Their retirement income allows them to meet reasonable living expenses, including housing expenses such as taxes, utilities, insurance and maintenance, but they have no remaining monthly payment ability. The taxpayers could not afford replacement housing if they sold the home. The justifiable OIC amount would be \$30,000 and the basis would be DATCSC because RCP will not allow for payment in full.

Example: Scenario 3- The taxpayers have a \$50,000 liability and RCP of \$80,000, comprised of \$60,000 NRE in their free and clear condominium homestead and \$20,000 in other assets. Their allowable monthly expenses exceed their retirement income by \$200, requiring them to frequently draw on their savings. Additionally, they cannot afford replacement housing if they sold their current modest residence. Based on actuarial tables, you establish that the taxpayers will reasonably need to use much of their liquid assets and recommend acceptance of the \$10,000 offered.

Example: Scenario 4- The taxpayer has a \$100,000 liability and RCP of \$125,000 based on current monthly payment ability through the five years remaining on the CSED. However, the taxpayer is 66 years old and indicates they will have lower income when they are forced to retire in approximately one year due their documented health condition, which renders them unable to continue working. Determine the taxpayer's monthly payment ability after they retire, based on their anticipated retirement income and expenses.

Example: Scenario 5- A taxpayer with a similar liability and RCP indicates they plan to retire but does not have a documented health condition and does not provide verification of imminent retirement. If you cannot reasonably substantiate the retirement, base the calculation on current earnings. It may be appropriate to discuss other options available to the taxpayer such as an installment agreement. Document your reasonings in the case history.

Example: Scenario 6- Taxpayer is 40 years old and is currently unemployed with no immediate employment prospects. Expenses exceed unemployment income by \$200/month. The taxpayer has NRE of \$60,000 in their residence and has offered \$500, saying payment of more would cause an economic hardship. Although expenses currently exceed income, this is a temporary economic situation. Determine if the taxpayer will withdraw the OIC so you can place the modules in currently not collectible (CNC) hardship status. If not, document the reasoning for a rejection recommendation.

Example: Scenario 7- A retired taxpayer owes \$200,000 and has offered \$100. They have investments with NRE of \$150,000, but contend they need the funds to supplement their fixed income. The OE/OS confirms the taxpayer's anticipated expenses exceed income by \$200/month. Although the taxpayer's special circumstances qualify for an OIC for less than RCP, additional research is needed to determine the amount the

taxpayer can pay without incurring hardship. Based on online actuarial tables, the OE/OS estimates the taxpayer will need to supplement income for approximately 120 months ($\$200 \times 120 = \$24,000$). The OE/OS reviews the computations with the POA and asks the taxpayer increase the OIC to \$126,000 ($\$150,000 - \$24,000$) or to provide information to support a different justifiable amount. The POA provided no additional information to support an alternate OIC amount. In the rejection recommendation, the OE/OS included the online information sources to support the computation.

- (2) Do **not** reduce the FMV of an asset or show an encumbrance to reduce the RCP to reflect the OIC amount that is being recommended for acceptance. Document the closing remarks to support acceptance of the amount determined.

Example: The RCP is \$170,000 but the OS recommends acceptance of the ETA OIC for \$50,000. The RCP consists mostly of \$120,000 equity in the free and clear home, but the taxpayers' income won't qualify for a mortgage on the property. They are retired and are not expected to earn a higher income. They cannot sell the home because they cannot afford rent. They agreed to increase their OIC to \$50,000 which represents the equity in other assets. The OS recommends acceptance of this ETA OIC because it reflects the most the taxpayers can offer without incurring an economic hardship.

- (3) Generally, it is the taxpayer's responsibility to make decisions and take the appropriate actions needed to fund the acceptable OIC amount. However, due consideration of these funding options is often needed for the IRS to arrive at an acceptable OIC amount. For example, based on the taxpayer's situation and geographic location, funding options may allow the taxpayer to tap into available equity without creating economic hardship. When appropriate, these options should be taken into consideration in determining an acceptable OIC amount for an ETA OIC based on economic hardship.

Example: Retired taxpayers with NRE of \$120,000 appear to qualify for a reverse mortgage of \$30,000 but are not able to obtain the loan because the NFTL prevents them from accessing the home equity. The taxpayers can borrow \$20,000 from family so combined with the \$5,000 in other assets, they can increase their OIC to \$25,000. An OIC for this amount appears to reflect the most the taxpayers can obtain without economic hardship and may be in the best interest of both the taxpayers and the IRS.

Example: Taxpayers who owe \$800,000 submit an ETA OIC for \$1,000 and indicate paying more would cause economic hardship. The taxpayers have \$150,000 NRE in their \$600,000 FMV home. Their current housing expense exceeds the housing allowance for their household size and zip code by \$2,000/month. Disallowance of the excess housing expense as well as adjustments to other expenses creates a \$3,000/month payment ability on the IET. While this payment won't allow for payment of the liability in full, it is considerable. The taxpayers could sell their current home and buy a less expensive home in their area that would be within the allowable expense standards - their income is sufficient to qualify for replacement housing. In this example, it would not create an economic hardship for them to relocate within the vicinity or access the equity in

their home. The equity should be included in the required OIC amount. Additionally, consider if using an income factor other than 12 may be appropriate, based on the high monthly payment ability. See IRM 5.8.7.7.1, Not in the Best Interest of the Government rejection.

Example: The taxpayers have a \$100,000 liability and RCP of \$150,000, comprised of \$120,000 NRE in their home and \$30,000 in other assets. They have requested an OIC for \$10,000, based on the fact their allowable monthly expenses exceed their retirement income by \$200 and they'll need to draw on their \$30,000 savings to meet expenses. When researching online real estate valuation sites, you discover the taxpayers recently listed their home for sale for \$50,000 higher than the FMV on Form 433-A(OIC). Because the taxpayers plan to move, additional discussion is warranted to determine their future expense needs and to determine if the taxpayers qualify for an OIC for less than RCP.

5.8.11.5.3.1
(04-11-2024)

**Determining an
Acceptable OIC Amount
- Equity/Public Policy**

- (1) In NEH-OICs based on Equity/Public Policy, the IRS expects the taxpayer to offer an amount that is fair and equitable under the circumstances, versus nominal or token funds. The amount accepted will be determined by the specific factors that support the decision that compromise is appropriate. For example:
 - a. In cases compromised under IRM 5.8.11.3.2.1, Public Policy or Equity Compelling Factors, paragraphs 2, 3 and 4 (IRS action), an acceptable OIC would be expected to result in the taxpayer being placed in the same position as if the error or delay on the part of the IRS had not occurred.
 - b. When compromising based on IRM 5.8.11.3.2.1, Public Policy or Equity Compelling Factors, paragraph 5 (acts of third parties), in-business cases in particular, the OIC amount should be for an amount deemed reasonable based on the specific facts of the case. Generally the IRS will insist that a compromise with an operating business provide for payment of the full amount of the remaining tax balance, exclusive of interest and penalties. If the taxpayer is an operating business impacted by the acts of a PSP, the full amount of the remaining tax balance, exclusive of interest and penalties, may not be required based on the taxpayer's situation. Refer to IRM 5.8.11.5.3.2, Determining an Acceptable OIC Amount (Fraudulent Acts of a PSP).
 - c. In cases compromised under IRM 5.8.11.3.2.1, Public Policy or Equity Compelling Factors, paragraph 9 (community impact), the taxpayer's financial condition may be a relevant consideration, after considering all other facts and circumstances. The justification for a particular amount to be accepted should be clearly documented.
- (2) Because the determination of an acceptable amount is not based on RCP, the reasoning must be clear and easy to follow. If the amount recommended for acceptance is less than the underlying BMF employment tax liability, additional documentation is required to explain how the amount was determined and to support acceptance of that amount. See IRM 5.8.11.6.1, Documentation and Verification, Non-Economic Hardship Offers.

5.8.11.5.3.2
(04-11-2024)

Determining an Acceptable OIC Amount (Fraudulent Acts of a PSP)

- (1) In most cases where the taxpayer has the ability to pay the liability in full, the NEH-ETA OIC amount will provide for payment of the full amount of the remaining tax balance, exclusive of interest and penalties.
- (2) However, in offers involving the fraudulent acts of a PSP, it is in the best interests of the taxpayer and the United States to determine an acceptable OIC amount that will not jeopardize the financial viability of an otherwise compliant taxpayer business. Facts to consider include, but are not limited to, determining if payment of the calculated RCP or the remaining tax balance, exclusive of penalty and interest will:
 - Negatively impact the ability of the taxpayer to pay current and future expenses in a timely manner?
 - Negatively impact the ability of the taxpayer to meet other tax obligations?
 - Potentially result in the need for the taxpayer to lay-off employees?
 - Result in the reduction of goods and/or services provided to the community?
 - Impair the ability of the taxpayer business to remain operational?
 - Negatively impact the local economy if the taxpayer business fails?
- (3) If the taxpayer has been reimbursed or if it is certain they will be reimbursed through a civil action, bonding company, insurance, or restitution payment from the court, then the taxpayer's liability up to the amount reimbursed or the amount they will be reimbursed should be taken into consideration.

IF	THEN
Taxpayer has received reimbursement from a third party and the amount received has not been paid toward the liability.	The amount received must be included in the acceptable OIC amount.
Taxpayer is expected to receive reimbursement from a third party, i.e. bonding company, within 30 days of acceptance of the OIC.	The amount the taxpayer is certain to receive should be included in the acceptable OIC amount.
Taxpayer may receive reimbursement from a third party, i.e. civil suit, in the future.	Consider if a collateral agreement should be secured for payment from any future recovery. Coordinate with Area Counsel to use an existing collateral agreement form or draft language to be included as an attachment which addresses the reimbursement issue. Refer to IRM 5.8.6 , Collateral Agreements.

5.8.11.6
(04-11-2024)

Documentation and Verification

- (1) Taxpayers requesting consideration under ETA must include: Form 656, a statement discussing the specific issue(s) which would allow for acceptance of the OIC, and financial statements, Forms 433-A (OIC), Collection Information Statement for Individuals or 433-B (OIC), Collection Information Statement for Businesses, along with appropriate documentation and verification. Refer to

IRM 5.8.11.6.1, Documentation and Verification - Non-Economic Hardship Offers for documentation required when the taxpayer was impacted by the fraudulent actions of a PSP.

- (2) The individual facts and circumstances of each case will determine the degree of verification and documentation necessary to support the determination.

Example: Verification of a health problem or hardship issue could be a doctor's letter, copies of medical expenses, or proof the taxpayer has qualified for disability and/or supplemental security income (SSI).

- (3) Taxpayers requesting consideration of special circumstances are asking the IRS to accept an OIC for less than RCP. If the RCP is greater than the full liability, the legal basis is ETA, not DATCSC. Yet, the documentation and justification for the amount accepted is the same. In the report narrative, clearly explain the special circumstances and the rationale for acceptance of the amount offered. The documentation must include reasons why some or all of the equity in certain assets is not being included in the OIC amount, how the OIC amount is being funded, and any other pertinent information that describes how the amount offered was determined to be acceptable.
- (4) When equity in real property or other assets is not being included in the acceptable OIC amount, the asset/equity table must still reflect the asset value and remaining equity after valid prior encumbrances. The acceptance recommendation must then provide information as to the reason for not including some or all of the equity in the OIC amount. While the taxpayer's ability to borrow against their residence may be a factor to consider in determining whether to include the equity in the OIC amount, it should not be the sole reason to remove the equity. Other factors should be documented as to whether the equity is necessary to meet living expenses and/or medical bills. Consideration should also be given to pursuing other options including reporting the account currently not collectible, so the notice of federal tax lien remains on the property.

5.8.11.6.1
(04-11-2024)
**Documentation and
Verification -
Non-Economic Hardship
Offers**

- (1) NEH-ETA OICs are based on exceptional, unique circumstances as discussed in prior sections of IRM 5.8.11. Documentation should be sufficient to explain the basis of the NEH-ETA request, provide verification of the special circumstances and support the IRS's determination to accept or reject the OIC.
- (2) Except for the exception provided in (3) below, the IRS requires the same basic documents to be supplied with all Forms 656, including financial statements. If the financial statements clearly support an ability to pay in full and the taxpayer is not requesting an OIC on the basis of collectibility, it is likely not necessary to conduct the full analysis in IRM 5.8.5 to establish an exact RCP. The NEH-ETA group will exercise judgment and if the case facts warrant, utilize the CIS figures when it is necessary to prepare an AET/IET.

Note: If the basis of the OIC is community impact, an RCP is required.

- (3) An additional exception may be available if the taxpayer is a victim of embezzlement. If **all** of the following criteria are met, the taxpayer does not need to submit Forms 433-B (OIC), Collection Information Statement for Businesses with the Form 656:

- the liability is directly attributable to acts of third parties such as a payroll service provider (PSP), professional employer organization (PEO), or reporting agent (RA),
- the taxpayer's OIC is equal to the remaining tax balance, exclusive of penalty and interest, and
- the taxpayer does not contest the ability to pay the liability in full, and provides a statement to that effect.

Example: A taxpayer, who is the victim of a PSP that embezzled the tax deposits of the business, submits a Form 656 requesting consideration of an OIC in the amount of the remaining tax, exclusive of penalty and interest. In addition to the Form 656, a statement providing details on the embezzlement demonstrating the taxpayer acted in a responsible manner and a statement the taxpayer has the ability to fully pay the outstanding liability, from available equity in the assets and/or income of the business, are included with the OIC submission. If it is determined the taxpayer meets the criteria for an OIC acceptance under public policy, the OIC may be accepted without any additional documentation.

- (4) If the taxpayer does not meet all of the criteria in (3), they must complete financial statements, including Forms 433-B (OIC), Collection Information Statement for Businesses with the appropriate documentation. Additional information may be requested by the investigating employee, if deemed necessary.

Example: A taxpayer, who is the victim of a PSP that embezzled the tax deposits of the business, submits a Form 656 for an amount that is less than the remaining tax, exclusive of penalty and interest. The OIC is first evaluated to determine if acceptance of the taxpayer's OIC under Doubt as Collectibility (DATC) is appropriate. If the OIC cannot be accepted under DATC, the facts and circumstances should be analyzed to determine if acceptance of an OIC for less than the remaining tax balance is appropriate under IRM 5.8.11.5.3.2, Determining an Acceptable OIC Amount (Fraudulent Acts of a PSP).

- (5) Any TFRP considerations must be addressed and documented. If the investigation establishes the employment tax resulted entirely from the fraudulent acts of a payroll service company but the OIC amount does *not* represent the full balance of the taxes [i.e. is being recommended for acceptance based on the factors in (2) of IRM 5.8.11.5.3.2, Determining an Acceptable Amount (Fraudulent Acts of a PSP)], follow IRM 5.8.4.21, Responsibility of Offer Examiners, Offer Specialists, and Field Revenue Officers. If the TFRP investigation for the PSP or individuals within the PSP is not completed, do not delay acceptance processing. Note the closing AOIC remarks so MOIC is aware of the pending TFRP investigation. Include the name and phone number of the RO conducting the investigation so MOIC may contact them prior to input of the TC 788 and TC 604 to discuss the impact completing the adjustment will have on any ATFR calculation.

- (6) If the investigation establishes the employment tax resulted entirely from the acts of third parties **and** the OIC amount is based on the full underlying tax, take the following actions:

- a. **Provide instruction to the taxpayer** to designate the OIC payments specifically to the underlying tax. To designate payments, the taxpayer must specify the amount and the tax period. Provide the taxpayer the

breakdown by quarter - if there is more than one period, it is recommended to include an attachment in the acceptance letter so it is associated with the acceptance file to MOIC.

Example: The remaining underlying tax balance for the two quarters totals \$55,000. Provide the taxpayer instruction to designate the payment as follows: \$25,000 to 941-12/2021 and \$30,000 to 941-3/2022.

- b. **Provide instruction to MOIC.** Document the AOIC closing remarks that the payments are to be applied to specific periods and provide the breakdown. Advise the taxpayer has been instructed to submit the payments as designated. Notate the AOIC closing remarks that if the taxpayer defaults the OIC due to nonpayment, MOIC must issue an OI to notify the originating group of the default. Upon receipt of the OI, the group will open an ICS case assignment and initiate an OI to a revenue officer group to request a TFRP investigation.

Note: Per the terms of the Form 656, OIC payments received after the OIC is accepted will be applied to the best interest of the government. In these cases, the IRS has determined the payments should be designated as mutually agreed, *not* to the oldest CSED.

- (7) When third party PSP involvement is the basis for the OIC, and the taxpayer's OIC is equal to the remaining tax balance, exclusive of penalty and interest, the following statement may be used in lieu of the Acceptance Recommendation Report discussed in IRM 5.8.8.7, Required Actions Prior to Closing an Offer as an Acceptance: *This OIC is being recommended for acceptance under the non-economic hardship provisions of Effective Tax Administration (NEH-ETA). The taxpayer meets NEH-ETA criteria since they have submitted information to demonstrate they have the ability to fully pay the liability, they acted in a reasonable manner, have shown they were a victim of a fraudulent act of a payroll service provider, and the OIC amount is equal to the full amount of remaining tax, exclusive of penalty and interest, for each of the tax periods listed on the OIC.*
- (8) In addition to the verification of the actions of the third party and the receipt of appropriate verification, the offer specialist must verify the tax assessments are correct prior to acceptance of the OIC. This includes utilizing IDRS information to verify the correct wages were reported (the total wages reported on Forms W-2 are consistent with the annual Forms 941 tax periods included on the OIC). If there are discrepancies, advise the taxpayer they must reconcile the discrepancy by submitting amended 941 returns and/or corrected Forms W-2. Any amended returns must be processed and the account adjusted prior to OIC acceptance. Ensure federal tax deposits are posted to the correct tax periods prior to the adjustments or abatements being processed. The tax modules must reflect the correct data before the IRS can proceed with a determination. If the assessments are not expected to post in a timely manner, see IRM 5.8.4.17.1, Pending Assessments - Filed Returns, to determine if it is necessary to secure a withdrawal.

Example: A taxpayer, who is the victim of a PSP that embezzled the tax deposits of the business, submits a Form 656 requesting consideration of an OIC in the amount of the remaining tax, exclusive of penalty and interest. The taxpayer supplied all supporting information to substantiate acceptance. Yet, IDRS research identifies the annual wages and withholding

reported on the Forms 941 are not in agreement with the numbers reported on the Forms W-2. Additional research is required to resolve the discrepancy and to secure any amended returns or abatements before proceeding with the OIC.

- (9) Prior to acceptance, determine if any future abatement of penalties for tax periods not on the OIC might cause an overpayment. If abatement of penalties is appropriate, the OS should process any abatement in accordance with current procedures prior to acceptance of the OIC, if it appears a future abatement may cause a refund to be issued after the OIC acceptance.

Example: A FTD penalty in the amount of \$2,000 was assessed on the 941 tax period ended March 31, 2021. The PSP clearly used the taxpayer's funds intended and designated for the quarter ended June 30, 2021 to pay the penalty. The March 31, 2021 tax period is not included on the OIC, so any penalty abatement after the OIC is accepted would create a refundable credit. If the abatement of the penalty is appropriate, process the Form 3870 immediately so the payment is applied to the appropriate quarter prior to the OIC acceptance. The pending credit would be considered when determining the amount required for compromise.

5.8.11.7
(04-11-2024)
Final Processing

- (1) Prior to final processing, AOIC must be updated to indicate the correct basis for closing the OIC. This will ensure that all final closing reports generated from AOIC reflect the correct basis. The approval levels indicated on closing reports and letters must be consistent with the basis for closure.
- (2) The following is a guide to these determinations:

If...	And...	Then...
The OIC was submitted under ETA	An economic hardship has been determined to exist, but the RCP is less than the liability balance due	<ol style="list-style-type: none"> 1. Secure an amended Form 656 to correct the basis to DATC. 2. Update the AOIC offer screen to indicate a "C" under the offer type. 3. Generate all closing reports with the proper approving official for DATCSC.
The OIC was submitted under DATCSC	An economic hardship has been determined to exist, and the RCP is greater than the liability balance due	<ol style="list-style-type: none"> 1. Secure an amended Form 656 to correct the basis to ETA. 2. Update AOIC offer screen to indicate "A" under offer type. 3. Generate closing reports with the proper approving official for ETA offers.
The OIC was submitted under ETA	The OIC can be recommended for acceptance under DATC <i>with</i> the OIC exceeding the RCP	<ol style="list-style-type: none"> 1. Secure an amended Form 656 to correct the basis to DATC. 2. Update the AOIC offer screen to reflect "C" for DATC. 3. Generate closing reports with the proper approving official for DATC <i>without</i> special circumstances.

If...	And...	Then...
The OIC was submitted under Doubt as to Collectibility with item 3 of Form 656 completed with circumstances that do not meet any of the elements that define economic hardship, or Public Policy/Equity criteria	The OIC cannot be recommended for acceptance under DATC.	<ol style="list-style-type: none"> 1. Generate a rejection recommendation with the proper approving official for DATC. 2. Address in the history, why the circumstances described in item 3 do not meet defined economic hardship, or Public Policy/Equity criteria.
The OIC was submitted under ETA with item 3 of Form 656 completed with circumstances that do not meet ETA criteria	The taxpayer does not qualify for ETA because the RCP is less than the liability and the OIC cannot be recommended for acceptance under DATCSC. The taxpayer has not responded to requests for an amended Form 656 with terms equal to RCP based on DATC.	<ol style="list-style-type: none"> 1. Verify the AOIC offer screen shows the offer type "A" is being rejected. 2. Use Paragraph B4 (solicit amended) and Paragraph V regarding special circumstances in the rejection letter f.
The OIC was submitted under ETA with item 3 of the Form 656 completed with circumstances that the investigation reveals do not meet ETA criteria	The OIC cannot be recommended for acceptance and the RCP exceeds the liability	<ol style="list-style-type: none"> 1. Verify the AOIC offer screen shows the offer type is "A". 2. Use Paragraphs B1 (full pay) and V (special circumstances) in the rejection letter.

If...	And...	Then...
The OIC was submitted under ETA	The special circumstances meet economic hardship, or Public Policy/ Equity criteria and the RCP exceeds the tax liability. However, the OIC cannot be recommended for acceptance, since the amount offered is less than the determined acceptable OIC amount.	<ol style="list-style-type: none"> 1. Verify the AOIC offer screen shows the offer type is "A." 2. Use Paragraph V (special circumstances) in the rejection letter, along with the appropriate "B" paragraph. Use B4 if you have established an acceptable amount; if not, use B1 (full pay) and an open paragraph if you believe it would be helpful to explain the decision and/or the justifiable amount. .
The OIC was submitted under DATCSC	The special circumstances meet economic hardship, or Public Policy/ Equity criteria and the RCP is less than the tax liability, however, the OIC cannot be recommended for acceptance, since the amount offered is less than the determined acceptable OIC amount.	<ol style="list-style-type: none"> 1. Verify the AOIC offer screen shows the offer type is "C." 2. Include Paragraph V (special circumstances) in the rejection letter and the appropriate B paragraph. Include an open paragraph if helpful to explain the decision and/or the justifiable amount. .

5.8.11.7.1
(04-11-2024)
**Rejection/Return/
Withdrawal Processing**

- (1) The procedures in IRM 5.8.7, Return, Terminate, Withdraw, and Reject Processing, should be followed when processing ETA rejected, withdrawn or returned offers.
- (2) The procedures in IRM 5.8.4.15 , Investigation of Offers under Appeals Jurisdiction, should be followed when processing ETA offers secured during a Collection Due Process hearing.

- (3) IRM 5.8.12, Independent Administrative Review, provides instructions for IAR review of rejected offers.
- (4) See IRM 1.2.2.6.1, Delegation Order No. 5-1 (Rev. 5), To Accept, Reject, Return, Terminate or Acknowledge Withdrawals of Offers in Compromise for the official with delegated authority based on ETA. The delegated official's signature is required on the Form 1271 and the closing letter.

Caution: If the basis of the OIC is NEH-ETA, the second-level manager (Territory Manager in FOIC or Operations Manager in COIC) is the approving official.

5.8.11.7.2
(04-11-2024)

Acceptance Processing

- (1) The procedures in IRM 5.8.8, Acceptance Processing, should be followed when processing accepted ETA offers.
- (2) Area Counsel's opinion is required on ETA offers where the unpaid amount of tax assessed (including any interest, addition to the tax, or assessable penalty) is \$50,000 or more.
- (3) See IRM 1.2.2.6.1, Delegation Order No. 5-1 (Rev. 5), To Accept, Reject, Return, Terminate or Acknowledge Withdrawals of Offers in Compromise for the official with delegated authority based on ETA. The delegated official's signature is required on the Form 7249 and the closing letter.

Caution: If the basis of the OIC is NEH-ETA, the second-level manager (Territory Manager in FOIC or Operations Manager in COIC) is the approving official.