



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

5.8.12

APRIL 26, 2018

EFFECTIVE DATE

(04-26-2018)

PURPOSE

- (1) This transmits revised IRM 5.8.12, *Offer in Compromise, Independent Administrative Review*.

MATERIAL CHANGES

- (1) This IRM was updated to reflect various editorial changes, and the following substantive changes:

IRM Reference	Change
5.8.12	This revision contains various editorial changes, updates and grammatical corrections throughout the revision.
5.8.12.1 through 5.8.12.1.6	Added and updated Program Scope and Objectives and its related subsections to comply with the Deputy Commissioners for Services and Enforcement and Operations Support memo, dated September 14, 2016, entitled Heightened Awareness, Sensitivity, and Understanding of Internal Controls.
5.8.12.2	Updated- Notes: Centralized Offer In Compromise (COIC) — The COIC OE must include a complete printout of the latest AOIC Remarks. Field Offer In Compromise — The IAR has the capability to review the current history on ICS; therefore, it is no longer necessary for Field OS to include a copy of the ICS history with the case submission.
5.8.12.3.(1)	Removed: Note and incorporated “read receipt” into bullet sentence
5.8.12.3 (3)	Updated to include: offer number
5.8.12.3 (1)(B)	Removed: Withdrawl

IRM Reference	Change
5.8.12.3 (1) (f)	Updated: Rejection summary documented in ICS/AOIC, including all issues not in agreement between the taxpayer and the Offer Examiner (OE) or Offer Specialist (OS)
5.8.12.3 (1) (g)	Updated Note: Centralized Offer In Compromise (COIC) — The IAR has the capability to review the current history on AOIC, the COIC OE/SE no longer needs to include a complete printout of the latest AOIC Remarks.
5.8.12.3 (1) (g)	Updated Note: Field Offer In Compromise The IAR has the capability to review the current history on ICS; therefore, it is no longer necessary for Field OS to include a copy of the ICS history with the case submission
5.8.12.3 (1) (h)	Removed Case History- Added: Special Circumstance supporting documents and/or correspondence, including any letters explaining or discussing special circumstances
5.8.12.4	Removed Note: Updated bullet: Forward the form back to the originator via secure messaging Read Receipt to ensure delivery.
5.8.12.5	Added Note: If sending cases, use a trackable method such as UPS Ground, FED Ex, etc. include the complete address on the appropriate mailing labels. The complete address and tracking information should appear on both the package, as well as on Document Transmittal Form 3210.

IRM Reference	Change
5.8.12.7.1 (1)	Updated (c) Update AOIC to reflect the results of the completed review. The Field IAR must document the results of the review on ICS and complete the disposition of the assigned Other Investigation. Removed: (d) and (e)
5.8.12.7.1. (2)	Updated and Added: If a physical file is to be returned to the OE/SE or OS, the Form 3210 must be used. If sending cases, use a trackable method such as UPS Ground, FED Ex, etc. include the complete address on the appropriate mailing labels. The complete address and tracking information should appear both on the package as well as on Document Transmittal Form 3210. (3) If the case is closed using EOIC, follow procedures in IRM 5.8.12.3.1, Independent Administrative Review Procedure for EOIC (Field Only) above. (4) Once the signed, approved Form 1271 is received from the IAR, the OE/SE or OS must include a copy in the case file.

EFFECT ON OTHER DOCUMENTS

This material supersedes IRM 5.8.12, dated 10-28-2014.

AUDIENCE

SB/SE Compliance employees

Kristen E. Bailey
Director, Collection Policy

5.8.12

Independent Administrative Review

Table of Contents

5.8.12.1 Program Scope and Objectives-

5.8.12.1.1 Authority

5.8.12.1.2 Responsibilities

5.8.12.1.3 Program Management and Review

5.8.12.1.4 Program Controls

5.8.12.1.5 Terms/Definitions/Acronyms

5.8.12.1.6 Related Resources

5.8.12.2 Transmission of Documents Using the Electronic Offer in Compromise (EOIC) Process (Field Only)

5.8.12.3 Documents Required for Review

5.8.12.4 Independent Administrative Review Procedure for EOIC (Field Only)

5.8.12.5 Submitting the File for Independent Administrative Review

5.8.12.6 Initial Process

5.8.12.6.1 The Review

5.8.12.7 The Decision

5.8.12.7.1 Rejection Sustained

5.8.12.7.2 Rejection Not Sustained

5.8.12.1
(04-26-2018)
**Program Scope and
Objectives-**

- (1) **Purpose:** This chapter explains the procedures to be followed by an Independent Administrative Reviewer on rejected Offer in Compromise:
 - This IRM provides instruction to conduct an independent administrative review of a proposal to reject an Offer In Compromise in accordance to IRC § 7122 (d) (1).
 - The review must be conducted prior to the final determination of the rejection being communicated to the taxpayer. See IRM 5.8.12.6 *The Decision*.
 - The purpose of the review is to evaluate the case and determine if rejection was the correct decision. The Independent Administrative Reviewer (IAR) is responsible for conducting this review.
- (2) **Audience:** Independent Administrative Reviewers (IAR) are the primary users of this IRM.
- (3) **Policy Owner:** Director, Collection Policy, SB/SE is the owner of the policies in this IRM.
- (4) **Program Owner:** Collection Policy – Offer In Compromise, an organization within SB/SE, is responsible for the administration, procedures, and updates related to the program.
- (5) **Primary Stakeholders:** The primary stakeholders are Centralized Offer In Compromise OE/ SE and Field (OS) offer employees for these procedures.
- (6) **Program Goals:** When the determination is made to reject an Offer In Compromise application, the proposed rejection must first be reviewed by the Independent Administrative Reviewer (IAR). By following the procedures in this IRM, IARs will be able to accurately determine whether the proposed rejection is reasonable, and process the proposed rejection appropriately.

5.8.12.1.1
(04-26-2018)
Authority

- (1) The Secretary of the Treasury is granted broad authority to compromise tax liabilities in IRC Section §7122 (e)(1).
- (2) Delegation Order No. 5–1 (Rev. 4) in IRM 1.2.44.2, *Delegation Order 5-1 (Rev. 4)*, delegates the Commissioner’s authority to accept, reject, terminate, or acknowledge withdrawals of offers.

5.8.12.1.2
(04-26-2018)
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) IRM authors are responsible for writing the policies and procedures and clearing documents through all affected offices.
- (4) Offer examiners, offer specialists, and other employees rejecting offers are responsible for processes and procedures in this IRM.

5.8.12.1.3
(04-26-2018)
**Program Management
and Review**

- (1) Operational and program reviews are conducted on a yearly basis by the Director, Specialty Offers in Compromise (SOIC) and Collection Policy with the use of data and reports from the Automated Offer in Compromise system and ENTITY case management system. In addition, ad hoc reports, which provide information on the inventory levels, hours per case, and age of offers in inventory or at time of closure, are also provided. See IRM 1.4.52, *Resource Guide for Managers, Offer in Compromise Manager's Resource Guide - Field Program* and IRM 1.4.54, *Offer in Compromise Manager's - Centralized OIC Program Guide*.
- (2) Managerial case reviews are also completed as defined in IRM 1.4.52, *Resource Guide for Managers, Offer in Compromise Manager's Resource Guide - Field Program* and IRM 1.4.54, *Offer in Compromise Manager's - Centralized OIC Program Guide*.
- (3) National quality reviews and consistency reviews are routinely conducted to ensure case actions are timely and in accordance with the procedures in this IRM.

5.8.12.1.4
(04-26-2018)
Program Controls

- (1) AOIC is used to track offers submitted by taxpayers and record case actions and history. Ability to take action on AOIC is limited to specific offer employees. Additional permissions are provided based on an employee's duties and responsibilities.
- (2) ICS is used by field employees as a method for inventory control and history documentation.
- (3) Managers are required to follow program management procedures and controls addressed in IRM 1.4.52, *Resource Guide for Managers, Offer in Compromise Manager's Resource Guide - Field Program* and IRM 1.4.54, *Offer in Compromise Manager's - Centralized OIC Program Guide*.
- (4) Managerial Requirements for case approval are defined in Del. Order 5-1.

5.8.12.1.5
(04-26-2018)
**Terms/Definitions/
Acronyms**

- (1) Common abbreviations, definitions and acronyms used throughout this IRM.

AET	Asset Equity Table – A table listing all the taxpayers assets, encumbrances, and exemptions. It then calculates the equity which is included in the reasonable collection potential (RCP) calculation.
AOIC	Automated Offer in Compromise – Computer application where offers in compromise are recorded and monitored from receipt to closure. History of the offer investigations conducted by COIC employees and of actions taken by Monitoring OIC (MOIC) units are also maintained on this system.

CIS	Collection Information Statement – A financial statement listing assets, income, liabilities, and expenses submitted by the taxpayer. This financial statement can be submitted on Form 433-A (OIC), <i>Collection Information Statement for Wage Earners and Self-Employed Individuals</i> , or Form 433-B (OIC), <i>Collection Information Statement for Businesses</i> .
COIC	Centralized Offer in Compromise – Units located in Brookhaven and Memphis campus that complete initial processing and work less complicated offers to completion. Do not confuse this with MOIC – COIC units do not monitor or default accepted offers.
DCSC	Doubt as to Collectibility with Special Circumstance – Basis for acceptance of an offer where there is doubt that the tax can be paid in full and special circumstances exist that warrants accepting the offer for less than the reasonable collection potential (RCP).
ETA	Effective Tax Administration – Basis for acceptance of an offer where this is no doubt that the liability is correct or can be paid in full. However, requiring the taxpayer to fully pay the tax would either create an economic hardship or be a public policy/equity issue.
IAR	Independent Administrative Reviewer – An independent third party who reviews a decision to reject an offer prior to that decision being conveyed to a taxpayer. This person is not in the chain of command of the employees responsible for the rejection of the offer.
ICS	Integrated Collection System – Computer application used by Compliance employees to monitor inventory. Histories of OIC investigations conducted by area office employees are maintained on this system.
IET	Income/Expense Table – A table that lists the income and expenses both claimed and allowed for purposes of calculating reasonable collection potential (RCP).
MOIC	Monitoring OIC Unit – Unit in Compliance Services located in a campus that completes end processing and monitoring of accepted offers.
OE	Offer Examiner – A tax examiner appointed as an offer investigator and located in COIC.
OI	Other Investigation – Form 2209 , <i>Courtesy Investigation</i> , is used for field investigations in locating taxpayers or to gather information in collecting on assigned cases.
OS	Offer Specialist – A revenue officer appointed as an offer investigator, generally located in an area office.
RCP	Reasonable Collection Potential – The amount that could reasonably be collected from the taxpayer.

SE	Self – Employed Offer Examiner- A tax examiner appointed as an offer investigator for self-employed taxpayers and located in COIC.
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5.8.12.1.6
(04-26-2018)

Related Resources

- (1) Additional resources can be found in IRM 5.8, Offer in Compromise.
- (2) IRM 5.8.1.4, *Fairness and Integrity in Enforcement Selection*, and IRM 5.8.1.5, *Protecting Taxpayer Rights*.
- (3) Employees can find helpful information on these websites:
 - **SERP** - <http://serp.enterprise.irs.gov>
 - Internal Management Document site for Interim Guidance Memorandums: <http://imdtrack.web.irs.gov/search.asp>

5.8.12.2
(04-26-2018)

Transmission of Documents Using the Electronic Offer in Compromise (EOIC) Process (Field Only)

- (1) As an alternative method of submitting documents to the IAR for review, it is recommended that the OS use secured e-mail attachments instead of physically shipping the case file. This method should result in considerable savings of time and shipping costs while eliminating the possibility of loss of the case file in transit.

Note: All documents transmitted by e-mail must be sent using Secure Messaging.

- (2) Supporting documents should be in one e-mail with the Form 1271, *Rejection Memorandum*, sent under separate e-mail.
- (3) he scanned documents must be reduced to a PDF file for transmittal to the IAR as an e-mail attachment, with **Scanned Documents XXXX (last 4 digits of SSN) and offer number**

Note: The **XXXX** in the subject line will be the last 4 digits of the Taxpayer Identification Number (TIN) or Employee Identification Number (EIN) and the offer number. Use the PDF format that yields the smallest file size.

5.8.12.3
(04-26-2018)

Documents Required for Review

- (1) The below items should be present in the file or documented on ICS / AOIC. In addition, any additional pertinent information that supported or influenced the case decision should also be included, such as correspondence.
 - a. Form 656, *Offer in Compromise*
 - b. Form 1271, *Rejection Memorandum*
 - c. Rejection letter
 - d. Asset/Equity Table (AET)
 - e. Income/Expense Table (IET)
 - f. Rejection summary **documented** in ICS/AOIC, including all issues not in agreement between the taxpayer and the Offer Examiner (OE) or Offer Specialist (OS).
 - g. Collection Information Statements (CIS)

Note: Centralized Offer In Compromise (COIC) — The IAR has the capability to review the current history on AOIC, the COIC OE/SE no longer needs to include a complete printout of the latest AOIC Remarks.

Note: Field Offer In Compromise — The IAR has the capability to review the current history on ICS; therefore, it is no longer necessary for Field OS to include a copy of the ICS history with the case submission.

- h. Special Circumstance supporting documents and/or correspondence, including any letters explaining or discussing special circumstances.
- (2) If the IAR determines that any information is missing or incomplete that may hinder the review process, the case file may be returned or a memorandum may be sent to the OE, OS, or the manager requesting the information.

Note: In cases where the IAR is located off-site, the requested information may be faxed or electronically submitted via e-mail to the IAR for inclusion in the analysis. See IRM 5.8.12.3 *Transmission of Documents Using the Electronic Offer in Compromise (EOIC) Process (Field Only)*, below for additional information.

5.8.12.4
(04-26-2018)
**Independent
Administrative Review
Procedure for EOIC
(Field Only)**

- (1) When the IAR receives an e-mail from the OIC group with the PDF files attached, they may be printed out for reference during the case review. Since the ICS case history is available in real time, it should be referred to online so that the latest entries are not overlooked.
- (2) The IAR should add the case to the reviewers ICS and Automated OIC (AOIC) inventories.
- (3) Once the review is complete, the IAR should delete all attachments except the Form 1271. If the rejection is not appropriate, follow procedures defined in IRM 5.8.12.6.2, *Rejection Not Sustained*, below. If the rejection is appropriate, the IAR should:
 - Electronically sign and save the Form 1271, then
 - Forward the form back to the originator via secure messaging using **Read Receipt** to ensure delivery.

5.8.12.5
(04-26-2018)
**Submitting the File for
Independent
Administrative Review**

- (1) Prior to the proposed rejection being forwarded to the IAR, the authorized official must have reviewed the file and signed the Form 1271, *Rejection or Withdrawal Memorandum*, indicating concurrence with the proposed rejection.

Note: Failure to secure this signature before transmission to the IAR may result in return of the case to the OE/SE or OS without the IAR completing the review.

- (2) Once the approving official has signed the Form 1271, the offer must be assigned to the IAR pool on AOIC.
- (3) If a physical file is needed/appropriate forwarded to the IAR the Form 3210, *Document Transmittal*, must be used.

Note: If sending cases, use a trackable method such as UPS Ground, FED Ex, etc. include the complete address on the appropriate mailing labels. The complete address and tracking information should appear on both the package, as well as on Document Transmittal Form 3210.

- (4) If the Field OS follows procedures in IRM 5.8.12.3, *Transmission of Documents Using the Electronic Offer in Compromise (EOIC) Process (Field Only)* and 5.8.12.3.1, *Independent Administrative Review Procedure for EOIC (Field Only)* above, the "Read Receipt" on Outlook must be used.

5.8.12.6
(04-26-2018)
Initial Process

- (1) The Field IAR will load the case onto ICS no later than seven (7) calendar days after receipt.
- (2) The IAR will be responsible for updating AOIC to reflect the IAR's assignment number.
- (3) The IAR should complete the review and reach a determination no later than thirty (30) calendar days from opening the ICS **OI** or assignment on AOIC.
- (4) Upon completion of the review, the IAR must update AOIC documenting information on the results of the review. In addition, the Field IAR must document the results of the review on ICS and complete the disposition of the assigned Other Investigation(OI).
- (5) The results of the review should be communicated in a clear, concise, professional and easy to understand manner.

5.8.12.6.1
(04-26-2018)
The Review

- (1) The OE or OS analysis of the taxpayer's OIC should be reviewed to determine if the basis for the rejection determination was appropriate.
- (2) The IAR should consider if the taxpayer's rights have been observed during the offer investigation, in communications, and/or discussions with the taxpayer or Power of Attorney (POA). These considerations should be based on issues that would impact the recommended rejection.
- (3) When reviewing a doubt as to collectability offer, the IAR should compare the offered amount with the RCP in order to determine if the decision to reject is reasonable. Review the Asset/Equity Table, the Income/Expense Table (AET/IET), and the taxpayer's financial information to determine if the reasonable collection potential (RCP) determination is fully supported by the documented facts and circumstances in the case file; including making sure the OE/OS has fully developed the RCP and discussed all issues with the taxpayer before recommending the rejection.

Note: It is not the responsibility of the IAR to re-work the case; however, it is the responsibility of the IAR to make sure all aspects of the offer have been taken into consideration.

- (4) If supporting documents indicate any circumstances that could impact either future earning potential or allowable expenses, the documentation in the case file must support the decision to exclude or include assets, expenses and/or income relating to the taxpayer's circumstances.
- (5) If information contained in the case file indicates issues were raised that meet either Effective Tax Administration (ETA) or Doubt as to Collectibility Special Circumstance (DCSC) criteria, as defined in IRM 5.8.11, *Effective Tax Administration*, the case history must address these issues as well as support the rejection decision.

Note: It is not a requirement that the taxpayer specifically ask for consideration of “special circumstances.” If the IAR identifies the existence of special circumstances that meet ETA or DCSC criteria, this fact should be addressed. The IAR should be alert to instances of Payroll Service Provider Fraud for ETA Special Circumstance consideration and review the victim’s individual unique circumstances.

- (6) The IAR should ensure that all of the facts and circumstances of the case were considered during the investigation and that the decision to reject the offer is reasonable, based on the case analysis.
- (7) The case file should indicate an attempt to communicate the results of the OIC investigation with the taxpayer or POA, prior to recommending the rejection. The IAR should determine whether the communications were reasonable based on the facts of the case.

Note: Communications may not necessarily be telephone calls. In some cases, they may be conducted entirely in the form of letters to the taxpayer or their authorized representative. The case file should document these communications and any specific issues that are in dispute.

- (8) When circumstances dictate, the OE/OS should use problem solving and professional judgment, and in so doing, consider the taxpayer’s perspective when working toward case resolution.

5.8.12.7
(04-26-2018)
The Decision

- (1) The below sections provide closing actions for the IAR based on whether the decision to reject the offer was appropriate.

5.8.12.7.1
(04-26-2018)
Rejection Sustained

- (1) If the proposed rejection of the offer is sustained by the IAR, the reviewer will:
 - a. Update the IAR “Main Screen” on AOIC indicating the appropriate disposition.
 - b. Sign the Form 1271 as the reviewer, indicating concurrence with the proposed disposition.
 - c. Update AOIC to reflect the results of the completed review. The Field IAR must document the results of the review on ICS and complete the disposition of the assigned Other Investigation.
- (2) If a physical file is to be returned to the OE/SE or OS, the Form 3210 must be used. If sending cases, use a trackable method such as UPS Ground, FED Ex, etc. include the complete address on the appropriate mailing labels. The complete address and tracking information should appear both on the package as well as on Document Transmittal Form 3210.
- (3) If the case is closed using EOIC, follow procedures in IRM 5.8.12.4, *Independent Administrative Review Procedure for EOIC (Field Only)*, above.
- (4) Once the signed, approved Form 1271 is received from the IAR, the OE/SE or OS must include a copy in the case file.

5.8.12.7.2
(04-26-2018)
Rejection Not Sustained

- (1) If the proposed rejection is not sustained by the IAR, the reviewer will:

- a. Update the IAR "Main Screen" on AOIC indicating the appropriate IAR disposition.
 - b. Prepare the Form 5942, *Reviewer's Report - Technical Services Advisory*, providing an explanation of why the determination was not sustained and providing instruction on additional actions required by the investigating employee. Field IARs will complete an ICS history entry noting that rejection was not sustained and the specifics of the review are noted on Form 5942 and close the Other Investigation assignment on ICS.
 - c. Secure the IAR manager is required to sign the Form 5942.
- (2) After the IAR manager approves the Form 5942, the case will be routed as follows:
- a. The original Form 5942 and the offer file will be returned to the OE/OS manager.
 - b. A copy of the Form 5942 will be sent to the OE/SE/OS second level manager.
 - c. A copy of the 5942 will be retained by the IAR group manager for two years after the year prepared.
- (3) The following procedures describe necessary actions once the offer file is received by the OE or OS:

If...	Then...
Reconsideration of the offer based on recommendations from the IAR results in a determination to accept the offer	Process the acceptance recommendation following procedures defined in IRM 5.8.8, <i>Acceptance Processing</i> .
Reconsideration of the offer based on recommendations from the IAR results in a determination to continue to recommend rejection of the offer	Update the case file with the additional case actions and any new information and re-submit to the IAR for a second review.
The investigating employee determines that the rejection is the correct action without further development, after reviewing the Form 5942	The offer file will be returned to the IAR for reconsideration. If necessary, additional history should be included to further support the offer rejection.

If...	Then...
After a second review by the IAR, the rejection is still not sustained and if the OE/SE/OS and the IAR still disagree	<p>The decision will be elevated to the second level manager for resolution.</p> <ul style="list-style-type: none">• The IAR manager will forward a memorandum to the Offer Manager with an explanation of why the rejection cannot be sustained.• A copy of the memorandum will be forwarded to the second level manager.• The IAR manager and the second level manager will discuss the issues to reach a resolution.• The final decision will be made by the field second level manager for cases assigned to the field and the second level manager for those cases decided by the COIC sites.

- (4) The original Form 5942 and any other documentation regarding second level management involvement and decisions must be retained in the offer file as a record of actions taken during the IAR process.

