



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

8.23.2

SEPTEMBER 8, 2020

## EFFECTIVE DATE

(09-08-2020)

## PURPOSE

- (1) This transmittal revises IRM 8.23.2, Offer in Compromise, Receipt and Control of Non-Collection Due Process (CDP) Offers.

## MATERIAL CHANGES

- (1) Revised to include Interim Guidance AP-08-1118-0013, Appeals Conference Procedures, and other editorial changes as noted in the table below:

IRM Section	Description of Change
8.23.2.1.2	Added link to Taxpayer Bill of Rights (TBOR) and Publication 5170.
8.23.2.2	Incorporated IG AP-08-1118-0013 revisions to include Pubs. 4167 and 4227 when sending Letter 5576 acknowledgement and conference letter.
8.23.2.3	Incorporated IG AP-08-1118-0013 revisions to include basis for case assignment and scope of knowledge to resolve cases.
8.23.2.3.1	Incorporated IG AP-08-1118-0013 revisions to accommodate taxpayer and representative requests for in-person conference. Deleted (7) - (11) to input ACDS CARATS codes for approval of in-person conference transfers.
In General	Revised for grammar, plain language and other editorial changes.
In General	Updated IRM cross-references.

## EFFECT ON OTHER DOCUMENTS

IRM 8.23.2, dated April 12, 2019 is superseded. Incorporates new and revised guidance pertaining to the Offer in Compromise program in Appeals.

## AUDIENCE

Appeals Employees

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8.23.2

Receipt and Control of Non-Collection Due Process (CDP) Offers

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8.23.2.1  
(09-08-2020)  
**Program Scope and Objectives**

- (1) *Purpose.* This IRM section explains the receipt and control procedures for non Collection Due Process (CDP) Offer in Compromise (OIC) cases worked by Appeals. Procedures for OICs that are worked by Appeals during CDP are discussed in IRM 8.22.7, Alternatives to Collection Action.
- (2) *Audience.* Appeals Technical Employees (ATEs) working Offer in Compromise cases.
- (3) *Policy Owner.* Policy, Planning, Quality & Analysis is under the Director of Case and Operations Support.
- (4) *Program Owner.* Appeals Policy is the program office responsible for providing technical and procedural guidance to the Appeals Organization and is under the Director of Policy, Planning, Quality & Analysis.
- (5) *Contact Information.* Appeals employees follow established procedures on *How to Contact an Analyst*. All other employees should contact the Product Content Owner provided on the Product Catalog Information page for this IRM.

8.23.2.1.1  
(09-08-2020)  
**Background**

- (1) An OIC is an agreement between a taxpayer and the government that settles a tax liability in exchange for payment of less than the full amount owed. Under 26 CFR 301.7122-1(f)(5), a taxpayer may administratively appeal a rejection of an offer to compromise to the IRS Independent Office of Appeals (Appeals) if, within the 30-day period commencing the day after the date on the letter of rejection, the taxpayer requests such an administrative review in the manner provided by the Secretary.

8.23.2.1.2  
(09-08-2020)  
**Authority**

- (1) Authorities that are related to the offer program are:
  - IRC 7122 - Compromises
  - IRM 1.2.44.2 - Delegation Order 5-1 (Rev. 4 and successors)
  - IRM 5.8, Offer in Compromise
  - Notice 2006-68
  - Policy Statement P-5-97, Stay of Collection - Offer in Compromise Cases
  - Policy Statement P-5-100, Offers Will be Accepted
  - Revenue Procedure 26 CFR 300.3 - Offer to Compromise Fee
  - Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA)
  - 26 CFR 301.7122-1 - Compromises
- (2) Additionally, all Appeals employees are responsible to be aware of the taxpayer's rights as articulated in the Taxpayer Bill of Rights (TBOR). See IRC 7803(a)(3) , Execution of Duties in Accord with Taxpayer Rights. For additional information, about the TBOR, see Publication 5170 , Taxpayer Bill of Rights and TBOR link, <https://www.irs.gov/taxpayer-bill-of-rights>.

8.23.2.1.3  
(04-12-2019)  
**Responsibilities**

- (1) The Director, Case and Operations Support (COS) is the executive responsible for designing, developing, delivering and monitoring short and long-range tax administration policies programs, strategies and objectives for the Appeals organization.

- (2) The Director, Policy, is responsible for providing technical and procedural guidance to Appeals employees, establishing and maintaining policies and standard procedures for Appeals work streams.
- (3) Policy is comprised of two teams of analysts: 1) Collection Appeals & Processing Policy, and 2) Examination Appeals Policy. The analyst(s) responsible for the Offer in Compromise program report to the manager for Collection Appeals Policy.

8.23.2.2  
(09-08-2020)  
**Receipt**

- (1) This section provides guidance for the receipt and control of non Collection Due Process (CDP) offers in compromise (OICs). Procedures for OICs received as an alternative to collection in a CDP or equivalent hearing (EH) case are found in IRM 8.22.7, Alternatives to Collection Action.
- (2) Field Collection, Field Examination and the Centralized Offer in Compromise (COIC) sites forward taxpayer's protests of rejected offers. The campus Appeals offices in Brookhaven and Memphis work the bulk of the cases from the COIC sites. The most complex COIC offers and Compliance field source cases are generally assigned to the Appeals office that covers the taxpayer's geographical location .
- (3) Within 30 days of the ATE's receipt of a rejected OIC case in Appeals, Letter 5576, Appeals Offer in Compromise Acknowledgement and Conference Letter, will be mailed to the taxpayer. See IRM 8.23.3.3.1(5), Pre-Conference Considerations, for a complete list of information that is communicated through Letter 5576. Enclose Publication 4227 , Overview of Appeals Process, and Publication 4167 , Appeals - Introduction to Alternative Dispute Resolution. The purpose of this letter is to:
  - Advise the taxpayer of receipt of the case in Appeals
  - Provide the Appeals contact person's name and telephone number
  - Explain what the taxpayer can expect from Appeals during the appeal process
  - Explain what Appeals generally expects from the taxpayer during the Appeals process
  - Schedule the conference

**Note:** If initial contact is made by telephone, cover all of the items above, which are contained in the Letter 5576. Document the case activity record accordingly. See also IRM 8.23.3.3.1(7), Pre-Conference Considerations.

**Note:** Appeals campus sites should not enclose Publication 4167 with Letter 5576 because OICs considered at an Appeals campus site are not presently eligible for alternative dispute resolution processes.

- (4) See IRM 8.20.5.30, Offer in Compromise (OIC) Case Carding, for initial case receipt guidance for Account and Processing Support (APS) personnel.

8.23.2.3  
(09-08-2020)  
**Assignment of OIC Case**

- (1) Appeals receives rejected OIC cases from a variety of sources. Assignments should be based upon case complexity and the experience level of the ATE. If the complexity of a certain case extends beyond the technical skills available in a particular location, the case should be reassigned.

- (2) Appeals management will occasionally assign or re-assign cases to other areas to effectively manage inventory levels.
- (3) OICs rejected by a COIC site may be resolved through written or telephone contact. In working these cases, you must be knowledgeable with this IRM text as well as with IRM 5.8 , Offer in Compromise, IRM 5.14 , Installment Agreements, IRM 5.15 , Financial Analysis, and IRM 5.16, Currently Not Collectible.
- (4) Higher graded OICs are generally more complex and require more detailed financial analysis skills, familiarity with asset valuation techniques, and sound negotiation and communication skills. In working these more complex cases, you must have an in-depth understanding of the following:
  - the impact and priority of the federal tax lien,
  - the impact of state and local statutes on asset ownership, valuation and equities,
  - enforced collection actions such as levy and administrative seizure and sale,
  - judicial actions such as a suit to foreclose a federal tax lien or reduce a tax claim to a judgment, and
  - Trust Fund Recovery Penalty (TFRP) liability issues.
- (5) OICs filed on the basis of Effective Tax Administration (ETA) or Doubt as to Collectibility with Special Circumstances (DCSC) require a level of experience sufficient to consider the facts of the case as described above.
- (6) The OIC case grading matrix is found in IRM 1.4.28, Resource Guide for Managers - Appeals Managers Procedures.

### 8.23.2.3.1 (09-08-2020) Transfer of OIC Cases

- (1) If the taxpayer requests an in-person conference in response to Letter 5576 , grant the request, in accordance with IRM 8.6.1.5.1 .
- (2) There is no separate Appeals policy for OIC cases and in-person hearings. OIC conferences are usually held by telephone or correspondence.
- (3) A taxpayer or representative might request to have a case transferred to the Appeals office closest to the taxpayer for an in-person conference. Case transfer procedures are found in IRM 8.6.1.3 , Transfer Procedures. Accommodate a taxpayer's or representative's request for an in-person conference by following procedures in IRM 8.6.1.5.1 , Conference Practice and IRM 8.6.1.5.1.1 , Circuit Riding and IRM 8.6.1.5.5 , Virtual Service Delivery (VSD).

**Note:** *Revenue Procedure 2014-63* was released December 29, 2014, creating a nationwide post-Appeals mediation (PAM) program for field Offer in Compromise (OIC) cases. IRM 8.26.9, Post Appeals Mediation Procedures for Collection Cases, supplements Revenue Procedure 2014-63 and was updated March 16, 2015. The alternative dispute resolution (ADR) programs are designed to supplement and not replace the standard appeals process. Appeals' primary emphasis is on the standard appeals process and not on ADR. OIC cases will not be transferred from a campus location for the purpose of participating in PAM.

- (4) When determining whether to transfer a case, the taxpayer and business addresses must be physical, and not a post office box or similar non-physical address.

**Note:** A homeless individual will not have a physical address. For transfer purposes these taxpayers may use the address of a friend, relative, employer, P.O. Box, authorized representative or Low-Income Tax Clinic (LITC).

- (5) A taxpayer or representative who believes an adverse decision is likely or imminent might request to have a case transferred to the Appeals office closest to the taxpayer after engaging in substantive negotiations with you **or** after the conference has been held with you. It is important to point out to the taxpayer during an initial telephone contact that any request for an in-person conference must be made before meaningful negotiations begin subject to the in-person conference provisions of IRM 8.6.1, Conference and Issue Resolution. Transfer will **not** be accommodated once a conference has been held.
- (6) IRM 8.6.1.5.1.1, Circuit Riding, and related subsections contain Appeals' circuit riding procedures. In certain cases, where the taxpayer has requested and been granted an in-person conference, Appeals will accommodate taxpayers by circuit riding. Such conferences will be held at the nearest Appeals office or other location, following the procedures noted above.
- (7) One of the following three Sub-Action Codes must be used when the transfer request is **denied** for a face-to-face conference.

Sub-Action Code	Definition
DC	Denied - Compliance Issues
DF	Transfer or reassignment was denied because taxpayer raised only frivolous issues.
DO	Transfer or reassignment was denied for other reasons.

- (8) The definitions for these codes are also available on the ACDS Utilities menu, under "CARATS Operational Definitions".

8.23.2.4  
(09-08-2020)

**Initial Case Review and  
Statute Controls**

- (1) This section provides procedures for preliminary case review to make sure the offer is ready for Appeals' consideration. If the offer was sent to Appeals prematurely, it must be returned to the referring office. You should follow the procedures in IRM 8.23.3, Evaluation of Offers in Compromise, after determining the case is ready for Appeals' consideration.

**Note:** Most premature referrals should, generally, be returned to the originating Compliance office within 45 days of Appeals' receipt of the case. See IRM 8.23.2.5, Premature Referral Issues, for details on premature referral issues including those that must be sent back even after 45 days, due to jurisdictional issues.

- (2) You must screen new OIC receipts to make sure:

- the appeal was timely (see below)
- TC 480 date is the same as the date the delegated official signed the Form 656, Offer in Compromise, and has been input on the Integrated Data Retrieval System (IDRS) for all periods
- periods are in Master File (MF) status 71, as required

**Note:** MF status 71 is not automatically input in all instances. See IRM 5.8.3, Centralized Offer in Compromise Transfers, Perfection, and Case Building.

**Note:** If the TC 480 date is not the same as the date shown on Form 656, or periods are not in St. 71, make a request to APS to make the necessary corrections.

**Note:** See also the table at IRM 5.8.4.7.1(4), Securing Related Offer, for instances where the TC 480 might not match the waiver date when related offers are secured.

- there are no statute issues (see below), and
- if there is an open 24 month statute under the Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA), the work unit number (WUNO) contains the proper statute controls, meaning **both** ACDS Statute Code = 'TIPRA' **and** the correct 24-month statute expiration date (see the table in paragraph (12) below)
- The "OfrNum" field in ACDS is completed with the correct offer number. If the "OfrNum" field is blank or shows the wrong offer number, prepare and submit an ACDS Update Request for APS to complete the field with the correct offer number and send the request form via encrypted email to the APS campus that services your office.

(3) Non-CDP OIC receipts must be checked to make sure the appeal was timely. A taxpayer has 30 calendar days from the date of the rejection letter to request an administrative Appeals hearing. See IRM 5.8.7.7.5(1), Rejection Appealed, to determine if the appeal is timely. If the appeal was not timely, it must be returned as a premature referral because Appeals does not have the jurisdiction to consider the appeal. See IRM 8.23.2.5.1, Premature Referral - Jurisdictional Issues, for specific instructions on determining the timeliness of the appeal.

(4) Taxpayers occasionally submit a written appeal before the offer is rejected. IRC 7122(e) states there must be an independent administrative review of any rejection of an OIC before such rejection is communicated to the taxpayer, and 26 CFR §301.7122-1(f)(1) provides that an offer in compromise has not been rejected until IRS issues a written notice to the taxpayer or his representative advising of:

- The rejection,
- The reason(s) for rejection, and
- The right to an appeal.

See IRM 8.23.2.5.1, Premature Referral - Jurisdictional Issues, for information on what to do if the taxpayer's appeal pre-dates the actual rejection of the offer.

(5) If a joint offer filing is rejected and only one taxpayer appealed timely, then the appeal is not valid for the party who did not sign the appeal request. Collection should have contacted the taxpayers to have the request for appeal perfected, and documented the case history with the contact. If the request for appeal was not perfected, then it is valid only for the spouse who appealed, and Collection should have taken the following actions or mirrored the account (for necessary actions by Appeals, see (6), below):

- a. Input a TC 481 for CSED code "B"
- b. Input a new TC 480 using the original offer date, with CSED code "P" or "S", as applicable. Do not create a new offer on AOIC
- c. Amend AOIC to the name of the individual who appealed the offer

**Note:** If the above actions were not taken, Appeals should request the above corrective actions be taken by APS.

**Note:** Collection will not attempt to amend the Form 656 in this situation.

(6) For the situation in (5), if the Appeals work unit reflects a joint offer, change it to an individual filing by the taxpayer who requested the appeal. You will amend the Form 656 for the individual taxpayer **only** if an acceptance recommendation is made. The taxpayer receives credit for the TIPRA payment and application fee that were paid with the initial offer, although an additional TIPRA payment may be required if the amended offer includes an increase in the offer amount, or change in terms. *This is considered an amended offer, and no separate processability determination will need to be made by Collection.*

(7) IRM 5.8.7, Offer in Compromise, Return, Terminate, Withdraw, and Reject Processing, allows for certain OICs to be closed as a processable return. Under certain circumstances, Collection will agree to reconsider its return, and reopen the case. When this happens a new Form 656 is, generally, not secured. If a return letter is issued to the taxpayer, the TIPRA statute under IRC 7122(f) is closed. Thus, any "reopened" case, whether due to IRS error or not, will not have a TIPRA statute. See IRM 5.8.7.3, Return Reconsideration. This may be of importance where Appeals secures an OIC case on which there was not a decision (rejection, return, withdrawal) made by Collection prior to its assignment in Appeals, as may be seen in (10) below.

(8) Document the following in the case activity record:

- Verification of timely appeal
- Statute and statute control verification
- TC 480 verification (see (2) above)
- All ACDS correction requests

(9) Per IRC 7122(f) and *Notice 2006-68*, an OIC shall be deemed accepted if it is not rejected, returned, withdrawn or treated as withdrawn under section 7122(c)(1)(B)(ii) because the taxpayer failed to make the second or later installment due on a periodic payment OIC (see IRM 5.8.8.12, 24-Month Mandatory Acceptance under IRC § 7122(f)), before the date which is 24 months after the date of the submission of the offer. Any period during which any tax liability that is the subject of the OIC is in dispute in any judicial proceeding shall not be taken into account in determining the expiration of the 24-month period. The date of submission of an offer for purposes of section 7122(f) is the date on which the offer is *received* by the Service.

**Note:** Except for suspension of the 24-month period during which any tax liability that is the subject of the OIC is in dispute in any judicial proceeding, there are no means to extend or suspend the 24-month TIPRA period. The 24-month period includes whatever time a case may be pending in Counsel awaiting their opinion on an acceptance recommendation. There is no statutory basis for the taxpayer and the Service to enter into any sort of agreement to extend or suspend the 24-month period.

- (10) There are two instances where Appeals may receive an OIC without a final decision first being made by Collection, and thus, have an open TIPRA statute (see also table (12) below):
- OIC submitted as an alternative to collection in a CDP or EH case.
  - OIC processed as a single, processable OIC filing for two (or more) entities, and which is in need of perfection to create a second or third related offer. See IRM 5.8.3.5, Processing Forms 656 and Initial Offer Payments . In this case, when the second or third OIC is received, a new TC 480 date and TIPRA statute date will be present. If the related offer(s) is secured by Appeals, then since the new offer(s) was never rejected by Compliance, it will have an open TIPRA statute. New offers **must immediately** be sent to COIC for a processability determination.

**Note:** Only secure additional 656 forms after you have determined to recommend the offer for acceptance.

- (11) For optimal tracking of the TIPRA statute, whenever a new Form 656 is received, immediately advise APS with a request to create a new WUNO.
- (12) Use the following table to check for open TIPRA statutes:

STEP	QUESTION	If YES	If NO
One	Was a formal rejection letter issued by either Collection or Examination?	The 24-month TIPRA period under IRC 7122(f) does not apply and no further action is needed. Any ACDS Statute Code 'TIPRA' input onto the WUNO should be removed and replaced by Statute Code 'SUSP'. <b>Steps 2 – 5 do not apply, unless the rejected OIC case is to be associated with a CDP case, in which case, proceed to step 5.</b>	Proceed to Step Two

STEP	QUESTION	If YES	If NO
<b>Two</b>	Was ACDS Statute Code 'TIPRA' input onto <b>each tax period</b> on the WUNO?	Proceed to Step Three	See IRM 8.23.2.4 and submit a request to APS to have Statute Code 'TIPRA' input on <b>each tax period</b> and be sure to use the proper date stamped on the original Form 656 plus two years as the statute date. Proceed to Step Three.
<b>Three</b>	If ACDS Statute Code 'TIPRA' was input onto each tax period on the WUNO, is the corresponding statute date the date stamped on the originally submitted Form 656 for the entity under consideration, <i>plus two years</i> ?	The Statute Code and date are accurate - proceed to Step Four	See IRM 8.23.2.4 and submit a request to APS to have the statute date (STATDATE) changed to the proper date on each tax period and proceed to Step Four
<b>Four</b>	Was the offer submitted as part of a CDP or EH case?	Proceed to Step Five	If the case is a new offer resulting from the perfection of a previously rejected offer which required a new application fee and TIPRA payment, make sure steps two and three above are done and double check the WUNO to make sure the TIPRA Statute Code with the proper statute date is present on each tax period. Step Five does not apply. If the perfection issue did not result in a new offer submission there is no TIPRA date.

STEP	QUESTION	If YES	If NO
Five	If the OIC is part of a CDP/EH case, was ACDS Feature Code 'DP' input onto both the CDP/EH and OIC WUNOs? If the case was originally a non-CDP offer that is being associated with a CDP case <b>after</b> issuance of a rejection letter, also input a DP feature code.	All necessary actions are done and the OIC WUNO will show up on a Statute Expiration Report and/or an Ad Hoc report	See IRM 8.23.2.4 and submit a request to APS to have Feature Code 'DP' added to both the CDP/EH and OIC WUNOs

- (13) Cases identified with an open TIPRA statute must have the proper ACDS statute controls appear on **each tax period** on the OIC WUNO.
- (14) Cases with an open TIPRA statute are subject to the same back-end processing time frames as listed in IRM 8.21.3.2.7 , Appeals Technical Employees Statute Responsibility - Closings, and IRM 8.21.4.3, Appeals Management Statute Responsibility - Appeals Team Manager (ATM), meaning:
  - a. Written concurrence from the ATM is required to keep the OIC case open beyond 120 days remaining on the 24-month TIPRA statute period, and
  - b. You are responsible to ensure the OIC case is presented to APS for closing with at least 90 days remaining before expiration of the 24-month TIPRA statute period.

**Note:** The 24-month TIPRA statute period under IRC 7122(f) includes any amount of time a case may be pending in Counsel while awaiting its opinion on an acceptance recommendation. You are responsible to make sure the case is presented to Counsel for review with a sufficient amount of time remaining to meet the requirement of having the case presented to APS for closing with at least 90 days remaining before expiration of the 24-month TIPRA statute period.
- (15) Various types of offers or offers with specific issues are assigned unique ACDS feature codes. If the following case types or issues are present, check the OIC WUNO to make sure it reflects the appropriate ACDS feature code:
  - **DO** = Potential default case on previously accepted offer
  - **DP** = OIC that is part of a related CDP or EH case (same 'DP' feature code should also be on the CDP/EH WUNO - see IRM 8.22.5.2.2.3, Collection Due Process - Feature Codes)
  - **ETA** = Effective Tax Administration offer
  - **LI** = OIC based upon doubt as to liability
  - **SP** = OIC based upon doubt as to collectibility with "special circumstances"
- (16) If it is determined that the case is ready for Appeals' consideration, send the Letter 5576, if one was not previously sent and document such in the case activity record.

8.23.2.4.1  
(09-08-2020)

#### Assignment of Related Offers

- (1) Sometimes taxpayers have liabilities for multiple entities. For various reasons, it is also sometimes the case that these related offers are submitted by taxpayers **after** an initial offer is submitted for a different entity. During the course of the consideration of an offer by you, if you become aware that there is an open, related offer under consideration elsewhere in Appeals, then coordinate with whomever the related case is assigned to accept transfer of the related case, so that the cases may share a consolidated assignment, review and disposition.
- (2) For purposes of this subsection, related cases will be those related to any joint or individual offer as follows:
  - a. Any additional offer involving the separate liabilities of one or both spouses (e.g. sole-proprietorship liabilities, trust fund recovery penalties, liabilities from a prior marriage).

**Note:** In a situation involving married taxpayers where two separate offers involving jointly owed liabilities are under consideration, the offers will be considered related **only** if the taxpayers are domiciled together.
  - b. Any additional offer involving one or more closely-held corporations or LLCs owned by one or both spouses in the joint or individual offer.

**Note:** Appeals will not accept immediate assignment from Collection of any related offer that appears in example (2)(b). Such cases are considered related only for purposes of consolidating assignment once in Appeals. There is no authority for Appeals to accept assignment of these cases from Collection unless the taxpayer has first undergone the administrative review and rejection process under IRC 7122(e).
- (3) If an initial offer is already assigned to you, coordinate with Collection to immediately accept assignment of any related offer that fits example (2)(a) above. Any undeveloped information that is included with a related offer that is transferred to Appeals will be considered “new information” submitted to Appeals. If necessary, undeveloped information will be sent to Collection following the procedures in IRM 8.23.3.3.1.2, Request and Review of Supplemental Information - Collection Issue Offers.
- (4) Per IRM 5.8.1.9 , Liabilities to be Compromised, and IRM 5.8.1.9.1, Definition of a Compromised Liability, all assessed taxpayer liabilities should be included in any offer acceptance. If related liabilities exist (as in example 2(a) above), an offer cannot be accepted that does not also include offer(s) for related liabilities. Therefore, *if you are accepting an offer*, secure the necessary forms and payments needed for the related offer, and forward the package to COIC for the necessary processing. COIC will generally determine processibility within 24 hours.
- (5) If an initial offer is already assigned in Appeals, Appeals will not accept immediate assignment from Compliance of any related offer that appears in example (2)(b) and its associated Note. Such cases are considered related **only** for purposes of consolidating assignment **once in Appeals**. There is no authority for Appeals to accept assignment of these cases from Compliance unless the taxpayer has first undergone the administrative review and rejection process under IRC 7122(e).

8.23.2.4.2  
(09-08-2020)  
**Requesting Account  
Adjustments**

- (1) When you encounter a situation where a correction needs to be made to AOIC or IDRS, APS can input the correction. Submit your request via e-mail to the campus location that is responsible to process the closure of your case using one of the mailboxes below :
- \*AP-COS-APS-West-FRS ACDS Update Request
  - \*AP-COS-APS-East-MEM ACDS Update Request
  - \*AP-COS-APS-East-HOL ACDS Update Request

8.23.2.5  
(04-12-2019)  
**Premature Referral  
Issues**

- (1) This section discusses the Appeals hearing officer's responsibilities in identifying and processing premature referrals. Non-CDP OIC protests must be reviewed to determine if there are reasons why the case should be closed and returned as a premature referral. A case is closed as a premature referral for the jurisdictional and other reasons outlined below.

**Note:** A case will not be returned as a premature referral on the basis of your conclusion that Collection did not fully develop certain issues. Review Collection's development of the issue versus information and testimony provided by the taxpayer, and make the decision based on those factors.

8.23.2.5.1  
(09-08-2020)  
**Premature Referral -  
Jurisdictional Issues**

- (1) Non-CDP OIC receipts must be reviewed to make sure the appeal is timely. A taxpayer has 30 calendar days from the date of the rejection letter to request an administrative Appeals hearing. If the appeal was not timely, it must be returned as a premature referral because Appeals does not have the jurisdiction to consider the appeal.
- (2) Occasionally, an appeal is received and the postmark, meter or fax transmission date is illegible or the envelope is missing. To determine timeliness if the postmark, meter or fax transmission date is illegible, or the envelope is missing:
- a. Mailing: Ask the taxpayer when he or she mailed the request. If the taxpayer appears credible, use that date. If you can not reach the taxpayer or the taxpayer is not credible, subtract 3 days for regular mail and 7 days for overseas mail from the IRS received date.
  - b. Faxed: Use the date the Service received the request unless the taxpayer can show otherwise as in (a).
  - c. If there is no IRS received date, use the signature date.
  - d. If there is no IRS received date or signature date, consider timely if received in Appeals within 45 days of date required to be timely.

**Note:** IRC 7502 and IRC 7503 apply to OIC appeals. Per IRC 7502, if the appeal is mailed within 30 calendar days after the date of Compliance's rejection letter, it is a timely appeal. It must be postmarked so that the mailing date can be established. If the postmark is made by a non-U.S. Postal Service system such as a private postage meter stamp or a non-USPS carrier such as UPS or Fedex, 26 CFR 301.7502-1(c)(iii)(B) provides that such postmark must be legible and dated on or before the due date **and** the appeal must be received not later than the time when a letter sent by the same class of mail would ordinarily have been received if it were sent from the same point of origin by the U.S. Post Office on the last day for timely mailing the appeal. Per IRC 7503, if the 30th day falls on a Saturday, Sunday, or legal holiday, a request for appeal is considered timely if mailed on the next business day.

**Note:** IRC 7508 postpones certain time-sensitive acts when a person is serving in the armed forces, in support of the armed forces, in an area designated by the President by Executive Order as a combat zone, or when deployed outside the United States while participating in an operation designated by the Secretary of Defense as a contingency operation. IRC 7508A postpones certain time-sensitive acts when a person is affected by a federally declared disaster or a terroristic or military action. *Revenue Procedure 2018-58* includes the 30-day period for appealing a rejection of an OIC as an act that may be postponed.

- (3) Taxpayers occasionally submit a written appeal before the offer is rejected. IRC 7122(e) states there must be an independent administrative review of any rejection of an OIC before such rejection is communicated to the taxpayer and 26 CFR 301.7122-1(f)(1) provides that an offer in compromise has not been rejected until IRS issues a written notice to the taxpayer or his representative advising of:
- a. The rejection,
  - b. The reason(s) for rejection, and
  - c. The right to an appeal.

If the taxpayer's written appeal pre-dates the actual rejection of the offer, it is not a valid appeal under IRC 7122 and its regulations. Before returning such an offer to Collection as a premature referral, check the case file, the AOIC eCase data and ICS histories to see if the taxpayer submitted a separate and timely written appeal within the prescribed time period. If the only written appeal pre-dates the actual rejection of the offer, the appeal is not timely and it must be returned as a premature referral.

- (4) These less common instances identify cases that should be returned as a premature referral because Appeals lacks the jurisdictional authority to consider the protest:
- a. If a timely appeal is signed by an unauthorized representative or other third party, and not signed by the taxpayer.
  - b. If a timely protest is received, but the rejection letter was signed by a lower level authority than what is required by Delegation Order 5-1 (e.g. a Territory Manager's signature is required but the Group Manager signs the rejection Letter).
  - c. If the tax liability is paid in full before direct or written contact with Appeals.
  - d. If under IRC 7122(f) and *Notice 2006-68*, the 24 month period has lapsed before the taxpayer withdrew the offer, or the IRS returned/rejected the offer. A Form 3999, Statute Expiration Report, or other statute reporting method is **not** needed in this instance.
  - e. If the taxpayer filed bankruptcy before the Collection offer examiner advised the taxpayer of the proposed rejection (documented either verbally or in writing), the offer should have been returned without appeal rights per IRM 5.8.10.2, Bankruptcy. See IRM 8.23.3.3.2.3, Bankruptcy Considerations, if the taxpayer filed bankruptcy after the offer was rejected.
  - f. A new offer is received by the Service after a Notice of Determination or Decision Letter was issued in a CDP or EH case. Such an offer would not be associated with the CDP case as the CDP is now considered closed.

- g. A new offer is received by the Service after the issuance of a CDP closing letter with an executed Form 12257. Such an offer would not be associated with the CDP case as the CDP is now considered closed
- h. A new offer is received by the Service after the issuance of a closing letter for a withdrawn CDP or EH case. Such an offer would not be associated with the CDP case as the CDP is now considered closed
- i. A new offer is received after a related OIC was closed in any manner other than acceptance. See IRM 8.23.2.4.1, Assignment of Related Offers, for related offers. Such an offer would not be associated with the related offer as the related offer is now considered closed.

**Note:** If any of these jurisdictional issues are identified more than 45 days after Appeals received the case, the Appeals hearing officer or the ATM should contact the Collection manager and explain why the case will be returned as a premature referral.

8.23.2.5.2  
(09-08-2020)  
**Premature Referral  
Issues - Other Issues**

- (1) Your initial case review may show that Collection did not sufficiently identify reasons why a case was referred to Appeals. Your feedback should specify why the referral was insufficient and include any IRM (or other) requirements that Collection overlooked or failed to follow in documenting the reason for referral to Appeals. A case will not be returned as a premature referral on the basis of your conclusion that Collection did not fully develop certain issues. In those situations you will make a decision after reviewing Collection's development of the issue against the information and testimony provided by the taxpayer.
- (2) In some cases, Collection may erroneously conclude that Appeals previously determined the tax liability and not address it. For example, this can occur if an earlier case was listed on the Appeals Centralized Database System (ACDS) as docketed and closed using closing code 21. This could mean the case was dismissed without addressing the liability. If you conclude the liability was not previously determined by Appeals, send the case back to the Brookhaven DATL unit alerting them that the case has an open TIPRA statute by using the Form 3210 entitled, "Appeals Returning DATL OIC (CC21)", which is available on the Appeals OIC Web Page. If the liability was established by the Tax Court, you should also alert the DATL unit to that fact.
- (3) If the case involves unpaid trust fund taxes, the assessment statute expiration date (ASED) is not suspended by the offer in compromise. For an OIC received by the Service after February 4, 2008, IRM 5.8.4.22.3(2), Offers from Operating Businesses, states:
  - a. either the trust fund portion of the taxes must be paid,
  - b. the TFRP must be assessed against all responsible persons,
  - c. the trust fund package was forwarded for assessment,

**Note:** Do **not** return a case as a premature referral if Collection has clearly documented either a non-assertion determination **or** that the trust fund balance is below assessment requirements, or if the ASED has expired and no TFRP was assessed.

- (4) Other non-jurisdictional premature referral situations include:

- If there is an unreversed TC 914 or TC 916 that posted to the account *before* the offer was rejected, Collection should have followed the procedures in IRM 5.8.4.19.1 , Open Criminal Investigations. Return such a case as a premature referral. If the TC 914 or TC 916 posted to the account *after* the offer was rejected, retain the case in Appeals and follow IRM 8.23.3.3.1.5, Coordination with Other Functions.
- The Collection Fraud Technical Advisor agreed there is potential fraud and Compliance's fraud development investigation remains open. If this occurred before the offer was rejected, the offer may have been returned **or** rejected. The instructions for fraud development are in IRM 5.8.4.18, Potential Fraud Referrals. Consider the procedures that instruct Collection to return or to reject the offer without appeal rights, to see if a premature referral may be appropriate.
- The taxpayer submitted a claim for relief from joint and several liability (innocent spouse claim) as the requesting spouse **and** the claim was filed **before** the offer was rejected **and** the claim is still open. IRM 5.8.4.23.1, Claims for Relief from Joint and Several Liability under Section 6015 (Commonly Referred to as Innocent Spouse Claim) states that if the taxpayer refused to withdraw the OIC, Collection should have suspended the offer pending disposition of the claim, or returned it if still pending 18 months after the received date. If the claim was filed before the offer was rejected and is still open, return the case to Collection as a premature referral.
- The Partnership Investor Control File (PICF) code on AMDIS is '5', indicating at least one open TEFRA key case linkage exists. Collection should have returned the DATC offer without appeal rights per IRM 5.8.4.17, Pending Assessments, because of the unresolved TEFRA partnership issue. Return the offer to Collection as a premature referral.

**Note:** The other premature referral issues listed above do not cause jurisdictional issues for Appeals, so the cases should generally not be sent back as premature referrals if more than 45 days has lapsed since the date Appeals received the case.

- (5) If a new Form 656 is received for a related offer and COIC determines that the offer is not processible, close the work unit as a premature referral. If it is determined that the case is ready for Appeals' consideration, see IRM 8.23.2.4, Initial Case Review and Statute Controls.
  - (6) Collection will occasionally receive an appeal of a joint offer that is signed only by one individual. If Collection did not take appropriate action to perfect the appeal request, do **not** return the case as a premature referral. Initiate a request to APS to take corrective action. See IRM 8.23.2.4.
- (1) During consideration of an appealed offer, taxpayers are required to make adequate withholdings, estimated tax payments, federal tax deposits, and to file tax returns in a timely manner. Appeals will consider ongoing compliance issues only as specified in this guidance and examples that follow in this section.

8.23.2.6  
(04-12-2019)  
**Taxpayer Compliance  
Issues**

8.23.2.6.1  
(09-08-2020)  
**Taxpayer Compliance  
Issues - Delinquent or  
Insufficient Estimated  
Tax Payments and  
Withholdings**

- (1) When a collectibility OIC is considered and rejected by Collection, the disposition of the case as a rejection indicates that the taxpayer was in current compliance at the time of rejection. If not, Collection should have closed the case to the taxpayer as a “return” with no appeal right. Therefore, you will consider the taxpayer as being in verified tax compliance whenever a rejected case is received, and will not request estimated tax payments or withholdings, even if those appear to have been delinquent or miscalculated prior to the rejection of the case.
- (2) You will not return a case as a premature referral to Collection to address issues indicated in (1) above.
- (3) You will not monitor a taxpayer’s ongoing tax compliance while a rejected offer is under consideration, except as specified in IRM 8.23.2.6, Taxpayer Compliance Issues, and its related subsections.

**Note:** If the amount of estimated tax payments or withholdings is disputed in a taxpayer’s appeal, then you may verify them as expense items on the Income/Expense Table, but will not otherwise address these issues. The Form 656-B contains tax compliance provisions which the taxpayer must follow while an offer is under consideration.

8.23.2.6.2  
(09-08-2020)  
**Taxpayer Compliance  
Issues - In-Business  
Trust Fund (IBTF)  
Compliance**

- (1) Because of the risk of rapid and substantial losses to the government due to the failure to make Federal Tax Deposit (FTD) payments, you should generally follow IRM 5.8.7, Offer in Compromise, Return, Terminate, Withdraw, and Reject Processing, with respect to verification of FTD compliance, and In-Business Trust Fund (IBTF) return filing compliance, *but with some noted exceptions*.
- (2) As explained in IRM 8.23.2.5.1, Premature Referral - Jurisdictional Issues, above, when a collectibility issue OIC is considered and rejected by Collection, the disposition of the case as a rejection indicates that the taxpayer was in current FTD and filing compliance at the time of the rejection. If not, Collection should have closed the case to the taxpayer as a “return” with no appeal right. Therefore, you will consider the taxpayer as being in verified FTD compliance whenever a rejected case is received, and will not demand federal tax deposits to be made even if those appear to have been delinquent or miscalculated prior to the rejection (See also (4) below).
- (3) You will not return a case to Collection as a premature referral to address issues indicated in (1) or (2) above.
- (4) You will not monitor the taxpayer’s regular FTD schedule. However, if you recognize a new IBTF assessment while you are considering the offer, you should give the taxpayer 14 days to pay the entire liability (including penalties and interest) so that the consideration of the offer may continue. If the taxpayer does not pay the new liability in full, you should either sustain rejection of the offer or, in unique circumstances (left to Appeals’ sole discretion), determine to include the liability in the offer and proceed with consideration of the case. See also IRM 8.23.2.7, When a Taxpayer Does Not Remain in Compliance.
- (5) If an IBTF tax return becomes delinquent while an OIC case is under your consideration, you should:

- Request that the taxpayer provide proof of the filing of the return (within 14 days)
  - Sustain the rejection of the case if the return is not filed
- (6) Tax returns secured by Appeals should be evaluated only for the taxpayer's filing and payment compliance.

8.23.2.6.3  
(09-08-2020)

**Taxpayer Compliance  
Issues - Delinquent  
Returns (non-IBTF)**

- (1) The taxpayer must timely file returns that become due while an offer is under consideration. You will treat these situations as follows:

If...	Then...
A return is due but unfiled (includes a return that was due when the case was assigned to Appeals).	Provide the taxpayer with a 14 day deadline to file the return or provide adequate proof of filing. Allow additional time if the taxpayer is contacted by mail.
After providing time to file the return, it either remains unfiled or adequate proof of filing was not provided.	You will sustain rejection of the offer.
The return is filed and there is no tax due.	You will proceed with the appeal.
The return is filed and there is tax due.	It will be at your discretion to determine if the liability should be included in the offer, or if payment is required. Weigh the unique circumstances of each case. See IRM 8.23.2.7, When a Taxpayer does not Remain in Compliance.
Full payment of the new liability is required.	You will allow the taxpayer 14 days to make the payment, or the offer rejection will be sustained.

- (2) You will **not** return a case as a premature referral to Collection to address issues indicated in (1) above.
- (3) Tax returns secured by Appeals should be evaluated only for the taxpayer's filing and payment compliance.

8.23.2.6.4  
(09-08-2020)

**Taxpayer Compliance  
Issues - Periodic  
Payment Offers**

- (1) A taxpayer submitting a Periodic Payment Offer is required to make the periodic installment payments proposed in such offer. If the taxpayer fails to make the periodic installment payments they proposed on Form 656 **before** the Collection offer examiner advised the taxpayer of the proposed rejection (either verbally or in writing), the case should be returned as a premature referral for Compliance to secure the necessary TIPRA payments.

**Note:** The TIPRA requirement for a taxpayer to make proposed periodic installment payments while a Periodic Payment offer is being considered ends when Collection issues the rejection letter. Taxpayers are not required to continue making proposed periodic installment payments while a rejected offer is being considered by Appeals unless Appeals secures an amended offer. See IRM 8.23.1.4.1, Application Fees, Offer Terms, Payments and Deposits, and IRM 8.23.3.4.3, Amended Offers - TIPRA Related Issues.

- (2) Review the periodic payment proposal carefully before making a determination whether the taxpayer failed to make required proposed periodic installment payments before the Collection offer investigator advised the taxpayer of the proposed rejection (documented either verbally or in writing).
- (3) The following table provides instructions for determining whether Collection neglected to follow significant IRM requirements resulting in the premature referral of a Periodic Payment OIC case:

If...	And...	Then...
The taxpayer's failure to make a proposed periodic installment payment(s) occurred <b>before</b> the Collection offer investigator advised the taxpayer of the proposed rejection (documented either verbally or in writing).	Collection did not give the taxpayer an opportunity to make up the missed proposed periodic installment payment(s).	Collection overlooked procedures in IRM 5.8.4.24, Periodic Payments Required with Offer in Compromise Submissions, and did not monitor the proposed periodic installment payment requirements and/or address the missed proposed periodic installment payment issue with the taxpayer. Send the offer back to Collection as a premature referral to address the missed proposed periodic installment payment(s). If the taxpayer corrects the proposed periodic installment payment issue, Collection may send the case back to Appeals to consider the OIC appeal.
The taxpayer's failure to make a proposed periodic installment payment(s) occurred <b>before</b> the Collection offer investigator advised the taxpayer of the proposed rejection (documented either verbally or in writing).	Collection previously gave the taxpayer an opportunity to make up the missed proposed periodic installment payment(s) but the taxpayer did not do so <b>and</b> there is no indication in the case file that Collection determined special circumstances exist.	Collection overlooked IRM 5.8.4.24.1 and IRC 7122(c)(1)(B)(ii) and the offer should have been considered withdrawn by Compliance and not rejected. Send the offer back to Collection as a premature referral.
The taxpayer's failure to make a proposed periodic installment payment(s) occurred <b>after</b> the Collection offer investigator advised the taxpayer of the proposed rejection (documented either verbally or in writing).	The taxpayer did not make up the payment.	Collection is not required to have offered the taxpayer the opportunity to make up the payment. Appeals will follow IRM 5.8.4.24.1 and provide the taxpayer with the opportunity to make the delinquent payment. If the payment is not made, Appeals will close the case as a mandatory withdrawal.

If...	And...	Then...
The taxpayer's failure to make a proposed periodic installment payment(s) occurred <b>after</b> the Collection offer investigator advised the taxpayer of the proposed rejection (documented either verbally or in writing).	Collection previously gave the taxpayer an opportunity to make up a missed proposed periodic payment(s), the taxpayer made up the missed payment(s) and then missed a subsequent proposed periodic payment after submitting an amended offer to Appeals.	Appeals will follow IRM 5.8.4.24.1 and not give the taxpayer a second opportunity to make up the subsequently missed proposed periodic payment <b>unless</b> special circumstances exist. Contact must have been made with the taxpayer to properly determine whether special circumstances exist. If special circumstances do not apply, then Appeals will close the case as a mandatory withdrawal.
The taxpayer's failure to make a proposed periodic payment(s) occurred <b>after</b> an amended offer was secured by Appeals.	Collection previously gave the taxpayer an opportunity to make up a missed proposed periodic payment(s), the taxpayer made up the missed payment(s) and then missed a subsequent proposed periodic payment after submitting an amended offer to Appeals.	Appeals will follow IRM 5.8.4.24.1 and not give the taxpayer a second opportunity to make up the subsequently missed proposed periodic payment <b>unless</b> special circumstances exist. Contact must have been made with the taxpayer to properly determine whether special circumstances exist.
The taxpayer's first failure to make a proposed periodic payment(s) occurred <b>after</b> an amended offer was secured by Appeals	The taxpayer is still not in compliance with proposed periodic payment requirements	Review IRM 5.8.4.24.1 and IRM 8.23.3.4.4 for mandatory withdrawal case procedures for amended offers received by Appeals.

**Note:** Special circumstances in these situations should generally involve something out of the taxpayer's control that has caused their inability to make the payment, and not a mere oversight or financial inability to make the payment.

8.23.2.7  
(09-08-2020)

**When a Taxpayer Does Not Remain in Compliance**

- (1) IRM 5.8.7 generally does not require a processible offer to be returned or rejected because a previously unfiled or delinquent return produces a new liability, or because another assessment is made for any other reason during the time an offer is being considered. The same standard is applied in Appeals. You may include new liabilities on the Form 656 using pen-and-ink additions, and continue consideration of the offer (see IRM 8.23.2.6.2, Taxpayer Compliance Issues - In-Business Trust Fund (IBTF) Compliance, for an exception for IBTF cases).
- (2) Carefully review the premature referral criteria to determine when a specific issue of non-compliance occurred in relation to when the Collection offer examiner advised the taxpayer of the proposed rejection (documented either verbally or in writing). As explained earlier in IRM 8.23.2.6, Taxpayer Compliance Issues, and related subsections, current tax compliance issues will generally not be reviewed by you unless a tax return is due. Compliance

problems that may affect the acceptability of an offer will generally only include instances in which the taxpayer failed to:

- Timely file all required returns
- Timely pay all tax, penalties and interest due on returns assessed after the offer was received by Appeals (see (5) below), or
- Make payments required for a Periodic Payment OIC proposal.

- (3) In the instances above, it is important for you to provide the taxpayer with clear instructions as to exactly what is required of them, specific deadlines, and the consequence if the compliance issue is not promptly resolved.
- (4) As stated in (1) above, Appeals generally does not require a processible offer to be returned or rejected because a previously unfiled or delinquent IMF return produces a new liability, or because any other new assessment is made while the offer is being considered. New liabilities may be included on the Form 656, and consideration of the appeal will continue. See IRM 8.23.2.6, Taxpayer Compliance Issues, and related subsections for exceptions. The following examples illustrate where a new liability will *generally* be included in an offer:

**Example:** In Appeals, a return is filed that was delinquent *before* the case came to Appeals, and the return produces a new liability. Since this issue should have been addressed before the case came to Appeals, the new liability will be included in the offer.

**Example:** A trust fund recovery penalty assessment is made against a taxpayer who has an otherwise viable offer proposal under consideration, and a good overall compliance record in recent years. In this case, it is prudent to continue negotiation of the offer and include the new assessment(s).

**Example:** An assessment is made against a taxpayer who has an otherwise viable offer proposal under consideration, and a good compliance record in recent years. The offer has been under consideration for some time and the Service has expended much time and resources considering the case. Past collection efforts against the taxpayer have yielded very little funds over the years. In this case, it is prudent to continue negotiation of the offer and include the new assessment.

**Example:** An assessment is made against taxpayers who have an otherwise viable offer proposal under consideration, and a good compliance record in recent years. The assessment resulted from the liquidation of a small retirement account that was used by the taxpayers for necessary living expenses. The taxpayers have insufficient liquid assets to immediately pay the new assessment. In this case, it is prudent to continue negotiation of the offer and include the new assessment.

**Example:** A taxpayer does not immediately have the funds to pay a new assessment that has been made since the offer was processed. However, the taxpayer offers to increase the offer by an amount equal to or exceeding the new liability. It is prudent to accept the offer and include the new assessment.

- (5) Per IRM 8.23.1.3, Conference and Settlement Practices, one of the four primary obligations you have in a non-CDP OIC appeal is to offer the taxpayer an opportunity for the Appeals conference that he/she asked for under IRC 7122(e)(2). Non-compliance with a filing and/or payment requirement does not preclude you from giving the taxpayer an opportunity for a conference. Even if the taxpayer does not remedy a compliance issue prior to or at the scheduled conference, the opportunity for a conference must be given. If the taxpayer does not take part in the conference when scheduled, you do not need to offer the non-CDP taxpayer a second opportunity.

See also IRM 8.23.1.3 for more information about granting extensions of time in a non-CDP OIC case.