



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

8.23.3

AUGUST 21, 2023

EFFECTIVE DATE

(08-21-2023)

PURPOSE

- (1) This transmittal revises IRM 8.23.3, Offer in Compromise, Evaluation of Offers in Compromise. It incorporates Interim Guidance Memorandum AP-08-0822-0010, Public Inspection File for Accepted Offers in Compromise (OICs), dated August 23, 2022, and includes changes to Appeals guidance as it pertains to the Offer in Compromise (OIC) program.

MATERIAL CHANGES

- (1) Revised to include the following changes:

IRM Section	Description of Change
IRM 8.23.3.1	Added: Program Scope and Objectives and its related subsections to comply with the Deputy Commissioners of Services and Enforcement and Operations Support memo dated September 14, 2016 entitled, Heightened Awareness, Sensitivity and Understanding of Internal Controls are added in new section 8.23.3.1.
IRM 8.23.3.2	Moved: (1) "Purpose" to IRM 8.23.3.1 (1) Purpose.
IRM 8.23.3.2.1.1	Removed: Specific processability criteria and referred audience to IRM 5.8.2.4.1, Offer in Compromise, Processability, Determining Processability for a detailed explanation.
IRM 8.23.3.3	Added: Example of how Appeals sustains rejections only for the reason stated by Collection, with some exceptions.
IRM 8.23.3.4.1	Removed: Description of L5576 and referred audience to IRM 8.23.2.2 for a detailed explanation.
IRM 8.23.3.4.1.4	Added: 1) Procedures to send ARIs to Collection Field Group Managers and Campus managers by secure email. 2) Procedures when Collection erroneously issues an acceptance letter during an ARI.
IRM 8.23.3.4.2.6	Obsoleted: "Additional Review of Real Property Valuation" and replaced with "Valuation Assistance from Other Appeals Organizations" for assistance from Appeals Engineers.

IRM Section	Description of Change
IRM 8.23.3.5.3	Added: 1) Note to use Form 14667 Cover Sheet, not Form 13933 Cover Sheet, when forwarding related offers to Centralized Offer in Compromise (COIC). 2) Use original WUNOs and Offer Numbers with amended offers and addendums.
IRM 8.23.3.6	Added: Examples when to use, or not use, collateral agreements.
IRM 8.23.3.8	Added: Section 965 liabilities for liabilities to be compromised and pertinent IRM section for references.
IRM 8.23.3.9	Added: Examples of sending an offer to NEH-ETA Austin, TX group for review.
IRM 8.23.3.10	Removed IRM 8.23.3.10, Consideration of Doubt as to Liability, to new IRM 8.23.7, Offer in Compromise, Doubt as to Liability. Renumbered subsequent subsections.
IRM 8.23.3.11	Added: Procedure when amending offer to surviving spouse when there is a death of a taxpayer in a joint offer.
IRM 8.23.3.14	Added: Procedures to prepare AOIC Form 7249 for modified terms of an accepted offer. Revised: to redacted or sanitized transcripts to account transcripts (TXMOD, IMFOLT/BMFOLT) to send to Counsel.
In General	Revised for grammar, plain language and other editorial changes.
In General	Updated IRM cross-references.
In General	As a result of the above changes, some renumbering of this IRM has occurred. Appeals employees should become familiar with those sections they use most.

EFFECT ON OTHER DOCUMENTS

IRM 8.23.3 dated August 18, 2017 is superseded. This IRM revision incorporates Interim Guidance Memorandum AP-08-0822-0010, Public Inspection File for Accepted Offers in Compromise (OICs), dated August 23, 2022.

AUDIENCE

Appeals Employees

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8.23.3

Evaluation of Offers in Compromise

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8.23.3.1
(08-21-2023)
Program Scope and Objectives

- (1) *Purpose.* The purpose of this section is to provide the Appeals Technical Employee (ATE) with the procedures necessary to evaluate a taxpayer's appeal of a rejected offer in compromise (OIC). Appeals does not have its own set of rules and procedures for determining reasonable collection potential (RCP) in an OIC case. For this reason, this IRM section does not reiterate what is already in IRM 5.8, Offer in Compromise. Rather, it discusses some of the basic elements of the OIC evaluation process and provides guidance unique to Appeals' role in that process.
- (2) *Audience.* ATEs working OIC cases.
- (3) *Policy Owner.* Policy, Planning, Quality & Analysis (PPQ&A) is under the Director of Case and Operations Support (C&OS).
- (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 PPQ&A.
- (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.

8.23.3.1.1
(08-21-2023)
Background

- (1) When the government rejects a taxpayer's offer to settle a tax liability, the taxpayer may administratively appeal the rejection of an offer to the IRS Independent Office of 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. Treasury Regulation §301.7122-1(f)(5).

8.23.3.1.2
(08-21-2023)
Authority

- (1) Authorities that are related to the offer program are:
 - IRC 7122 – Compromises, granting broad authority to compromise tax liabilities to the Secretary of the Treasury
 - 26 CFR §301.7122-1, authorizing the Commissioner of Internal Revenue to compromise a liability on any one of three grounds: Doubt as to Collectibility (DATC), Doubt as to Liability (DATL), or to promote Effective Tax Administration (ETA)
 - Policy Statement P-5-89, Offer may be rejected for public policy reasons
 - Policy Statement P-5-97, Stay of collection - offer in compromise cases
 - Policy Statement P-5-100, Offers will be accepted
 - 26 CFR §300.3 – Offer to compromise fee
 - Rev. Proc. 2003-71, 2003-2 CB 517, defines the procedures applicable to the submission and processing of offers to compromise tax liabilities
 - Notice 2006-68, 2006-2 CB 105, provides additional guidance regarding offers submitted on or after July 16, 2006
 - Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA)
 - IRM 1.2.2.6.1, Delegation Order 5-1 (Rev. 5), delegates the Commissioner's authority to accept, reject, return, terminate, or acknowledge withdrawals of offers
- (2) Additionally, all Appeals employees are responsible for being 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 Pub 5170, Taxpayer Bill of Rights and TBOR link, <https://www.irs.gov/taxpayer-bill-of-rights>.

8.23.3.1.3
(08-21-2023)
Responsibilities

- (1) The Director, C&OS, 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 OIC program reports to the manager for Collection Appeals Policy.

8.23.3.2
(08-21-2023)
**Consideration of Doubt
as to Collectibility Offers
(DATC)**

- (1) Collection, under the Commissioner, Small Business/Self Employed (SB/SE), is responsible for processing and analyzing a taxpayer's offer, negotiating with the taxpayer, making an RCP determination and communicating the final determination to the taxpayer. IRM 5.8.4, Offer in Compromise, Investigation, and IRM 5.8.5, Offer in Compromise, Financial Analysis, contain OIC guidance concerning:
 - Components of collectibility
 - Procedures for evaluating specific types of taxpayers and tax debts, including trust fund, excise, partnership, and child support liabilities
 - Financial analysis, including determining equity in assets and a taxpayer's future ability to make payments
 - Issues involving the dissipation of assets
 - Financial information documentation and verification requirements
 - Payment terms
- (2) If a taxpayer cannot pay their unpaid liabilities in full or there are circumstances that otherwise place collectibility of their liabilities in doubt, there is a legal basis for compromise under IRC 7122, based on DATC. If the taxpayer has the ability to pay in full, there may still be a legal basis for compromise if it is further determined that such compromise would promote effective tax administration. See IRM 8.23.3.9, Effective Tax Administration Offers (ETA), and IRM 5.8.11, Offer in Compromise, Effective Tax Administration, for guidance on Effective Tax Administration (ETA) offers.

Note: A DATC offer with "special circumstances" (DCSC) will be evaluated using the same criteria as an ETA offer.

- (3) *Policy Statement P-5-100* states, in part:

The Service will accept an offer in compromise when it is unlikely that the tax liability can be collected in full and the amount offered reasonably reflects collection potential. An offer in compromise is a legitimate alternative to declaring a case currently not collectible or to a protracted installment agreement. The goal is to achieve collection of what is potentially collectible at the earliest possible time and at the least cost to the government.

- (4) If a taxpayer disagrees with Collection's rejection of their offer, they can appeal the rejection to the IRS Independent Office of Appeals by requesting such an appeal within the 30-day period commencing the day after the date on the letter of rejection. While Form 13711, Request for Appeal of Offer in Compromise, is generally used, it is not required.

- (5) The ATE should research IRM 5.8, Offer in Compromise, and related interim guidance to evaluate Compliance actions, decisions and valuation methods for OICs and to ensure that Collection properly followed its procedures. The ATE's evaluation of an OIC must be independent of the decision rendered by Collection.
- (6) Standard Appeals conference practices are found in IRM 8.6.1, Conference and Settlement Practices, Conference and Issue Resolution.
- (7) The ATE will not request information or evidence (from any party) solely for the purpose of strengthening the government's case.
- (8) IRC 7122(d)(2) requires IRS to publish schedules of national and local allowances designed to ensure that taxpayers seeking to compromise their tax debts have an adequate means to provide for basic living expenses. This section further requires that IRS (including Appeals) "shall determine, on the basis of the facts and circumstances of each taxpayer, whether the use of the schedules published under IRC 7122(d)(2)(A) is appropriate and shall not use the schedules to the extent such use would result in the taxpayer not having adequate means to provide for basic living expenses."
 - a. If national or local standards for determining allowable living expenses are updated after Collection rejects an offer, the ATE will use the most current or updated Allowable Living Expense (ALE) standards unless the case has already been submitted for final review and approval by the Appeals Team Manager (ATM) and/or Counsel.
 - b. A taxpayer must be able to substantiate that limiting the allowance to the national or local standard would not provide for their basic living expenses.
 - c. Allowances in excess of national or local standards must be documented in the Appeals Case Memorandum (ACM).
- (9) ATEs who evaluate appeals of rejected OICs must be knowledgeable in the procedures detailed in IRM 5.8, Offer in Compromise, other parts of the IRM, and the law and regulations governing OICs and Appeals, such as:
 - IRM 8.1.1, Appeals Operating Directives and Guidelines
 - IRM 8.2, Pre-90 Day and 90 day Cases (contains general information for all Appeals cases)
 - IRM 8.6.1, Conference and Issue Resolution
 - IRM 8.6.4, Reaching Settlement and Securing an Appeals Agreement Form
 - IRM 8.7.6, Appeals Bankruptcy Cases
 - IRM 8.21, Appeals Statute Responsibility
 - IRM 5.1, Field Collecting Procedures
 - IRM 5.7, Trust Fund Compliance
 - IRM 5.12, Federal Tax Liens
 - IRM 5.14, Installment Agreements
 - IRM 5.15, Financial Analysis
 - IRM 5.16, Currently Not Collectible
 - IRM 5.17, Legal Reference Guide for Revenue Officers
 - IRC 7122
 - Treas. Reg. 301.7122-1, for offers in compromise
 - Notice 2006-68, Down payments for Offers in Compromise
 - Rev. Proc. 2012-18, concerning the prohibition of ex parte communications between Appeals and other IRS employees

- Interim guidance issued by Appeals or other IRS functions
- Other legal and administrative guidance, including local law

Note: The links to several IRM sections, IRC 7122, Treas. Reg. 301.7122-1, Notice 2006-68, and local law guides for all states (including community property states) are available on the *Appeals OIC web page*.

Note: The additional resources listed above are not intended, and should not be used, to assist the ATE in the further development of issues that either were not identified or were not adequately developed by Collection.

8.23.3.2.1 (08-21-2023)

The Tax Increase Prevention and Reconciliation Act of 2005

- (1) The Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA) was enacted May 17, 2006, and became effective July 16, 2006. TIPRA brought about major changes to the OIC program, most of which do not affect non-Collection Due Process (CDP) offers in Appeals. *Notice 2006-68*, Downpayments for Offers in Compromise, provides guidance on TIPRA issues until the regulations are updated.
- (2) One significant change under TIPRA provides that an offer shall be deemed to be accepted if it is not rejected, returned or withdrawn before the date which is 24 months after receipt of the offer by IRS. See IRC 7122(f). This 24-month TIPRA period ends when an offer is rejected by Collection or Examination, so most non-CDP offers considered by Appeals will not have open TIPRA statute issues. There are, however, instances in which a non-CDP OIC case arrives in Appeals with an open TIPRA statute, so the Appeals employee assigned the case must carefully review IRM 8.23.2.4, Initial Case Review and Statute Controls, to make sure the OIC work unit number (WUNO) contains the proper statute controls.
- (3) Treas. Reg. § 300.3 and Notice 2006-68 state that taxpayers submitting offers based on doubt as to liability are not required to make TIPRA payments or user fee payments. Therefore, Form 656 does not include doubt as to liability as a basis for compromise. Instead, taxpayers seeking compromise based on doubt as to liability use Form 656-L, Offer in Compromise, Doubt as to Liability.

Note: Also per Treas. Reg. § 300.3 and Notice 2006-68, low-income taxpayers are not required to make TIPRA payments or user fee payments when submitting offers.

- (4) IRM 8.23.1.5, Requirements for Compromise, contains TIPRA information concerning:
 - OIC payment terms
 - Installment agreement in effect prior to receipt of the OIC
 - Taxpayer's right to designate offer payments
 - Appeals procedures for processing TIPRA payments

8.23.3.2.1.1 (08-21-2023)

Processability Criteria and General Changes Resulting from TIPRA

- (1) The IRS changed the rules for determining the processability of post-TIPRA offers. See IRM 5.8.2.4.1, Processability, Determining Processability, for a detailed explanation of these criteria.
- (2) The Centralized Offer in Compromise (COIC) sites perform all of the Service's processability reviews, including CDP offers for Appeals. If an offer based upon doubt as to collectibility is received without the application fee, initial offer

payment, or the completion of the low-income certification in section 1 of the Form 656, COIC will review Form 433-A, Collection Information Statement for Wage Earners and Self-Employed Individuals, and waiver criteria to see if the taxpayer meets the requirements for waiving the application fee and initial offer payment. If the taxpayer meets the low-income criteria in Form 656, COIC will consider the offer processable.

- (3) Collection has procedures for handling cases where the determination that a taxpayer qualified for the Form 656 waiver was later found to be erroneous. The ATE will not become involved in addressing erroneous Form 656 qualification issues on a non-CDP offer. If Collection has granted the waiver for the taxpayer, do not revisit the issue.
- (4) The TIPRA requirement for a taxpayer to make periodic installment payments while a periodic payment offer is being considered ends when Collection rejects the offer. Taxpayers are not required to continue making periodic installment payments while a rejected offer is being considered by Appeals **unless** Appeals secures an amended offer or Form 14640, Addendum to Form 656. See IRM 8.23.3.5, Amended Offers, for additional guidance on amended offers secured by Appeals.
- (5) IRC §7122(b) requires the review and opinion of Counsel for any OIC acceptance recommendation when the unpaid liability, including accruals, is \$50,000 or more. The requirement for Counsel review is based on the aggregate liability on Form 7249, Offer Acceptance Report, for all related offers on the same taxpayer at the time the offer is submitted for approval. See IRM 8.23.4.3.3, Counsel Review of Acceptance Recommendations.
- (6) The 24-month mandatory acceptance period provided for in IRC 7122(f) ends when Compliance rejects or returns the offer or when the offer is withdrawn or treated as withdrawn under IRC 7122(c)(1)(B)(ii) because the taxpayer failed to make the second or later installment payment due on a periodic payment OIC. See IRM 5.8.8.12, Offer in Compromise, Acceptance Processing, 24-Month Mandatory Acceptance under IRC § 7122(f). Therefore, a non-CDP offer that was rejected by Compliance will not be deemed accepted if Appeals does not render a decision on the appealed offer within 24 months after the date the offer was submitted. (See IRM 8.23.2.4 for a listing of non-CDP offers received in Appeals that were not previously rejected by Compliance and thus have open TIPRA statutes).
- (7) Appeals' responsibilities are considerably different with a CDP offer. See IRM 8.22.7, Collection Due Process, Alternatives to Collection Action, for procedures involving offers received as alternatives to collection in a CDP case.

8.23.3.3
(08-21-2023)
Rejected Offers

- (1) When evaluating offers, Collection contacts the taxpayer via telephone or letter explaining why it is proposing to reject the offer. This contact provides the taxpayer with the rationale and financial analysis for Collection's preliminary conclusion and an opportunity for the taxpayer to supply additional information or, if applicable, to amend the offer to reflect the RCP determined by Collection.
 - a. Collection is responsible for reviewing and verifying any information provided by the taxpayer before the offer is rejected and any new information provided by the taxpayer as part of the appeal of the rejection.

See IRM 5.8.7, Return, Terminate, Withdraw, and Reject Processing. Collection should address each disputed item in its narrative or case history. If the taxpayer provided substantial information with the appeal that was not adequately considered by Collection, the ATE will not return the case as a premature referral. The ATE will weigh Collection's development of the issue versus information and testimony provided by the taxpayer and make a decision based upon those factors. Unless it is at the taxpayer's request, information will not be reviewed by Appeals if it was located in the case file at the time of rejection, was available to Collection at the time of rejection, or provided by the taxpayer with the request for appeal and was not developed by Collection, shared with the taxpayer, or included on the Income/Expense Table (IET) or Asset/Equity Table (AET). See IRM 8.23.3.4 for certain exceptions.

- (2) If Collection rejects the offer, copies of Collection's IET and AET should be attached to its rejection letter.
- (3) As a result of the preliminary determination contact and IET and AET information provided with the rejection letter, a taxpayer should be fully aware of why the offer was rejected. The Form 13711, though not mandatory, directs the taxpayer to provide in the appeal:
 - the disagreed item(s),
 - reason(s) for the disagreement, and
 - supporting documentation, as appropriate

Appeals can then try to narrow the focus of consideration to the specific issues for which the offer was rejected.

- (4) The ATE will sustain rejections only for the reason Collection stated in its rejection letter to the taxpayer that was signed by the appropriate delegated official. For the exceptions to this rule, see IRM 8.23.4.4(2), Sustaining Offer Rejection.

Example: Collection's case file indicates it rejected the offer as not in the best interest of the government. However, the rejection letter to the taxpayer indicates the rejection is based on the RCP as greater than the amount offered, and Collection did not obtain elevated approval to reject the offer as not in the best interest of the government. Appeals will consider the offer as rejected based on the RCP as greater than the amount offered, and not as rejected as not in the best interest of the government.

8.23.3.4
(08-21-2023)
**Appeals OIC Evaluation
Procedures**

- (1) As stated in IRM 8.23.3.2, the ATE will research IRM 5.8, Offer in Compromise, and related interim guidance to evaluate Collection actions, decisions and valuation methods for OICs. The ATE's evaluation of an OIC must be independent of the decision rendered by Collection. Standard Appeals conference practices are found in IRM 8.6.1, Conference and Settlement Practices, Conference and Issue Resolution.
- (2) The ATE must be knowledgeable in the procedures detailed in IRM 5.8, IRM 8.23, and other parts of the IRM and administrative policies and procedures such as those listed in IRM 8.23.3.2 above.
- (3) The ATE will not re-examine agreed RCP issues that were previously addressed during the investigation by Collection. This does not include correct-

ing errors that are strictly computational. A strictly computational error is one that does not involve judgment but involves simple math. Correcting strictly computational errors should be uncommon but may occur in the following general circumstances:

- For the correction of simple mathematical errors anywhere on the Income/Expense Table (IET) or Asset Equity Table (AET) (such as addition or subtraction).
- Where Collection fully developed an income, expense, asset or liability item, but did not record the value in the correct amount on the IET or AET.
- To allow for a statutory tools-of-the-trade exemption that was erroneously excluded by Collection.
- Where an asset value is present on the Form 433-A/B (OIC) that was prepared by the taxpayer, and the value was uncontested by Collection in its development of the case. The taxpayer's value of the asset should be transferred to the IET/AET if it was not included.
- In Appeals, where the taxpayer's income is a disputed item that is increased or decreased by the ATE. Expenses for taxes related to that income should also be increased or decreased accordingly.
- If the ATE made any correction to a strictly computational error, and the change resulted in a calculated full-pay of the liability, the ATE will sustain rejection of the offer absent effective tax administration conditions.

- (4) Appeals employees will not attempt to identify and value any additional assets. In addition, Appeals employees should not revise the value of an asset to an amount that is higher than previously determined by Collection.

Note: The most current Allowable Living Expense (ALE) standards will be used by the Appeals employee when working an offer. Cases already submitted to the Appeals Team Manager (ATM) and/or Counsel for final review or approval will not be revised to update the ALE.

- (5) In collection issue cases, the taxpayer may submit new information while the case is in Appeals. Any new information should be considered, particularly if it pertains to an issue disputed at the time of rejection. New information pertaining to an issue that was not in dispute at the time of rejection may also be considered if voluntarily provided by the taxpayer. See IRM 8.23.3.4.1.3 for guidance on information that should generally be referred to Collection for an initial review.

Note: A taxpayer may voluntarily reveal a new asset, additional income or other matter to Appeals. Appeals will not investigate the matter but, if more than a face value review is needed, the new issue may be forwarded to Collection via an ARI for initial review, investigation and valuation decision. The filing of a tax return that becomes due while the protest is under review by Appeals does not constitute a voluntary admission by the taxpayer of additional assets or income.

- (6) A case will not be returned as a premature referral where Collection did not fully develop certain issues. Weigh Collection's development of the issue versus information and testimony provided by the taxpayer, and make the decision based upon those factors. See also IRM 8.23.2.5, for premature referral issues on appealed OIC cases. Unless it is at the taxpayer's request,

information will not be reviewed by Appeals if it was located in the case file at the time of rejection, was available to Collection at the time of rejection, or provided by the taxpayer with the request for appeal and was not developed by Collection, shared with the taxpayer and included on the IET or AET.

Note: Information that was available to Collection includes not only information in the case file, but information that was available internally such as filed tax returns or income, asset and related entity information available on IDRS. Tax returns that are due during Appeals' consideration of an offer and that are secured by Appeals should be evaluated only for filing and payment compliance.

- (7) A financial statement that is less than 12 months old *from the date it was received in Appeals* will **not** be updated and will be considered verified since it was provided to Collection and they reviewed or had the opportunity to review it. Use the RECDATE of the OIC work unit to determine when the case was received in Appeals.

Example: A financial statement is 11 months old when received in Appeals. The ATE will **not** update the financial statement again *unless* it becomes older by 12 *additional* months and those additional months cannot be attributed to delay by IRS. See (8) below.

- (8) The ATE will not contact the taxpayer to secure an updated financial statement if the information is less than 12 months old or if the information has become outdated as a result of IRS delay. However, in a situation where Appeals **does** need updated financial information from the taxpayer, an updated Form 433-A(OIC) and/or 433-B(OIC) is typically not necessary. Pen and ink changes to the existing Form 433-A/B(OIC) are sufficient. See IRM 8.23.3.4.1.2, which pertains to review of supplemental information.
- (9) The ATE is responsible for addressing taxpayer compliance obligations only as stated in IRM 8.23.2.5, *Premature Referral Issues*, and IRM 8.23.2.7, *When the Taxpayer Does not Remain in Compliance*.
- (10) A taxpayer who had a periodic payment offer rejected by Collection is **not** required to continue making the periodic installment payments while the case is being considered in Appeals. See IRM 8.23.3.2.1.1. The TIPRA requirement to make periodic installment payments ended when Collection rejected the offer. However, if the ATE secures an amended periodic payment offer, then the taxpayer must once again start making the periodic installment payments proposed in the amended offer. See IRM 5.8.4.25, *Periodic Payments Required with Offer in Compromise Submissions*, for guidance on TIPRA payment requirements for amended offers.
- (11) Document all significant case actions in the case activity record in a timely, accurate and complete manner.

8.23.3.4.1
(08-21-2023)
**Pre-Conference
Considerations**

- (1) This section contains preliminary evaluation procedures for cases that were not prematurely referred by Collection. After completing the required initial case review and statute control assessments (both TIPRA and CSED) found in IRM 8.23.2.4, the case is ready for initial evaluation.

- (2) Review and become familiar with IRM 8.23.1, Offer in Compromise, Offer in Compromise Overview, and with the conference and settlement practices found in IRM 8.23.1.4 .
- (3) The ATE must review the written appeal for the specific issues that are in dispute. If no specific issues are listed in the appeal, then the specific items of disagreement present on the IET/AET completed by Collection will be used to identify the issues. If necessary, the ATE may contact the taxpayer to confirm the items in dispute. The ATE will initially review and consider only the disputed issues. Keep in mind that the taxpayer may present new issues during the appeal.
- (4) If the case requires verification of more complex items submitted after appeal, the ATE should issue an Appeals Referral Investigation (ARI) request to a Campus OIC (COIC) or Field OIC (FOIC) group. The ATE can locate the correct Campus or FOIC by reviewing Collection's rejection letter or Form 1271, Rejection Memorandum. See IRM 8.23.3.4.1.4, Requesting an Appeals Referral Investigation (ARI).
- (5) Within 30 days of case receipt, the ATE should issue the initial contact letter, Letter 5576, Appeals Offer in Compromise Acknowledgement and Conference Letter. See IRM 8.23.2.2, Receipt and Control of Non-Collection Due Process (CDP) Offers, Receipt.
- (6) The ATE will then:
 - a. Review the information in the case file and the information provided by the taxpayer identifying any additional information that may be needed to verify the issues in dispute. See IRM 8.23.3.4.1.2, Request and Review of Supplemental Information - Collection Issue Offers, for guidance to request Collection's review of new or supplemental information.

Note: The ATE **will not** request additional information to develop new issues discovered by Appeals or to bolster development of issues that may have been under-developed by Collection.

 - b. Conduct the conference, including providing an explanation of the offer process, how an acceptable amount is computed and how the available financial data supports either acceptance or a sustained rejection of the offer. Be aware that the taxpayer may raise new issues and present new information during the appeal.
 - c. Follow up in a timely manner and review any information submitted as soon as possible. Timeliness of case actions is an important component in making the Appeals determination without needing to ask the taxpayer to update previously supplied financial information.
- (7) If initial contact is made by telephone, cover all of the above items, which are contained in Letter 5576, and document the case activity record accordingly.

8.23.3.4.1.1 (08-21-2023) Consideration of New Issues

- (1) The ATE will review the taxpayer's written appeal for the specific issues that are in dispute. If no specific issues are listed in the appeal, the specific items of disagreement present on the IET/AET completed by Collection will be used to identify the issues. If necessary, the ATE may contact the taxpayer to confirm the items in dispute.
- (2) The following conditions must be present before the ATE considers a new issue:

- a. the new issue was voluntarily identified by the taxpayer while the protest was under consideration by Appeals.
 - b. the information was unavailable to Collection at the time of rejection (e.g., the taxpayer did not share it and it was not readily retrievable from internal sources or it did not exist).
 - c. if the information was available to Collection, the information was shared with the taxpayer (e.g., discussed or included on the IET/AET).
 - d. the information does not require further development.
- (3) Information that was available to Collection includes not only information in the case file, but information that was available internally such as filed tax returns or income, asset and related information available on IDRS.
- (4) Although only the disputed issues will be initially reviewed and considered by the ATE, the taxpayer may present new issues during the appeal. If the taxpayer discloses new issues during the hearing, review this section for instructions on when to consider a new issue.
- (5) The ATE will not request information to verify issues that are not in dispute or to document or raise new issues discovered by Appeals. It is also not appropriate to request such information and refer it to Collection for development via an ARI.

8.23.3.4.1.2
(08-21-2023)

**Request and Review of
Supplemental
Information - Collection
Issue Offers**

- (1) This section provides guidance pertaining to the request and review of supplemental information sought or received by the ATE. The ATE may request supplemental information, if needed, for an issue under appeal.
- (2) The ATE's requests for supplemental information are subject to the following:
- a. The supplemental information being sought pertains to a specific issue that is in dispute between the taxpayer and Collection, or
 - b. The supplemental information pertains to an issue that was raised by the taxpayer after the appeal was made, and
 - c. The ATE's finding cannot raise the value of income or an asset to an amount that is higher than what was determined by Collection, unless the taxpayer provided such information to Appeals. Therefore, the matter should not be pursued by the ATE if the finding would increase the value of income or an asset or reduce an expense item that is not in dispute.

Note: See IRM 8.23.3.4.1.1 for exceptions.

- (3) The ATE may request supplemental information when it is necessary to clarify an item in dispute. Clarifications should be for matters that are generally clear based upon the information already in the case file, but may need additional support in order to resolve or more fully support the taxpayer's claim. Supplemental information is that which should provide sufficient clarification of an issue based upon a simple face value consideration of its contents. Supplemental information will not be requested to better establish the government's position. Two examples of acceptable supplemental information requests are as follows:

Example: (1) The taxpayer is a wage-earner and raises a new issue by claiming that there has been a loss of income due to a recent increase to the taxpayer's employer-provided health insurance plan and an increase to the taxpayer's state income tax withholding. The ATE requests a copy of the taxpayer's pay stub and a completed tax calculation worksheet. The ATE

reviews the information and finds it supports the taxpayer's position enabling the ATE to make a decision in the case.

Example: (2) The taxpayer, a self-employed insurance salesperson, protests his allowable health care expenses stating his monthly premiums have increased. The taxpayer provides copies of his policy and monthly payment with the appeal. Collection disallowed the increase in the premium stating the policy is excessive. The ATE issues the conference letter and requests clarifying information. At the conference the taxpayer provides testimony that he has that particular policy because it covers his spouse's chronic illness. The ATE determines his testimony is credible and that there is sufficient information to make a decision.

- (4) The ATE will not request supplemental information if it does not fall within the parameters of paragraph (2) above and the allowable exception in paragraph (3).

8.23.3.4.1.3
(08-21-2023)
**Determining When to
Send an Appeals
Referral Investigation
(ARI)**

- (1) The procedures for issuing an ARI are found in IRM 8.23.3.4.1.4. This section explains circumstances when an ARI would or would not be sent. Since it is not possible to provide guidance on every scenario encountered, judgment should be used that aligns with Appeals' policy that Appeals is not the first finder of fact.
- (2) If the information under consideration can be easily reviewed and its content determined at face value, do not forward the information to a COIC or FOIC group using an ARI. If the conclusions drawn from the information and testimony are obvious to the ATE, an ARI is not necessary. However, if investigation or further development of the issue is needed, the ATE **must** use an ARI.

Note: Many items such as household bills, pay stubs, bank statements, retirement account statements, etc., can be reviewed by the ATE without investigation. However, Appeals should only evaluate the information presented by the taxpayer and/or Compliance, and not extend that evaluation to investigating the information. Information involving more than a face value evaluation, such as a business appraisal, profit and loss or financial statements, stock valuations, etc., should be reviewed by a COIC or FOIC group in response to an ARI. In unusual circumstances, another option may be a referral for analysis by an Appeals Valuation Engineer. See IRM 8.23.3.4.2.5.

Note: Before referring an ARI to a COIC or FOIC group, verify the information provided by the taxpayer has not already been considered by Collection and that the difference in valuation warrants additional review.

- (3) Some examples of when an ARI would be appropriate are:

Example: (1) A self-employed taxpayer's income is at issue in the appeal and the taxpayer provides new bank statements to show a drop in income. One of the new bank statements shows a transfer from an undisclosed bank account. The taxpayer states the transferred funds are not income. This is new information the taxpayer provided to Appeals for an issue in dispute and must be referred to Collection for investigation using an ARI.

Example: (2) An in-business taxpayer submitted an OIC and a profit and loss statement for the period of January through June of the current year. That statement was used by Collection to determine the taxpayer's ability to pay. With the case in Appeals, the taxpayer's income at issue and the current tax year closed, the taxpayer submits a new profit and loss statement reflecting a significant decrease in income and increases to certain expenses. An ARI must be used for this new information since it requires more than a face value review and will need further verification of income and expense items.

Example: (3) After the rejection of the offer, the taxpayer hires a new representative and provides a revised financial statement and supporting documents to the ATE. An ARI must be used to forward this information to Collection for initial review and verification. The ATE should include a copy of the initial financial statement with the referral of the new information.

Example: (4) After rejection of the offer, the taxpayer provides a new, formal appraisal of his business as an ongoing concern and asks the ATE to significantly reduce the RCP based upon its findings. Due to the complexity of the issue, an ARI must be used.

Note: Any certified professional appraisal provided **by the taxpayer** should be forwarded to Collection for initial analysis.

(4) Examples of when an ARI **would not** be appropriate are:

Example: (1) The taxpayer has two residential real estate properties listed on Form 433-A(OIC). No rental income is present on the financial statement or IET and rental income is not a disputed issue in the appeal. This issue would not be reviewed by the ATE and an ARI would not be appropriate because Collection had the opportunity to develop this aspect of the case but did not do so.

Example: (2) Bank statements found in the case file show transfers to another account that is not listed on the AET and was not otherwise addressed by Collection. An ARI would not be sent to Collection because they had the opportunity to develop the issue but did not do so. The ATE will not raise the issue or send it back to Collection to develop via an ARI.

Example: (3) The ATE reviewing a rejected offer sees comments by Collection that suggest a nominee/transferee or alter-ego situation may be present and there are several documents in the case file from which the comments were derived. These concerns were not raised in the protest, the issue was not developed by Collection and the assets do not appear on the AET. An ARI would not be sent.

Example: (4) After the rejection of his offer, a taxpayer dissipated a bank account holding \$20,000, reportedly using the money to pay medical bills and necessary living expenses. The ATE may ask the taxpayer to provide information to substantiate the claim. The ATE determines the face value of the information provided supports the taxpayer's claim and makes a decision based on that review. An ARI is not required in this instance.

However, if the ATE determines the information provided needs more development or investigation, an ARI could be utilized.

Example: (5) The taxpayer claims a drop in business income, but the new profit and loss statement reflects a net monthly profit similar to the profit shown on the IET. Since Collection's review of the new profit and loss statement and its supporting information would not result in a materially different RCP, an ARI is not appropriate.

- (5) A taxpayer appealing Compliance's rejection of their offer has had an opportunity to present to Collection the issues and financial information or documentation relevant to the acceptance of the offer. Therefore, the ATE should not routinely grant deadline extensions. A deadline extension should only be granted if the ATE believes an extension may ultimately lead to a settlement and is appropriate given the individual facts and circumstances of the case. The reason for granting the extension should be documented in the case activity record.
- (6) If the supplemental information request is made prior to the conference, the ATE should allow a sufficient amount of time between the date by which the taxpayer is to provide the information and the conference date to ensure sufficient time to review the information before the conference. If the supplemental information request is made at or after the conference and the taxpayer does not provide complete information for all of the requested items by the established due date, the case may be closed by sustaining Collection's rejection of the offer. Document the case activity record as to exactly what was received and when it was received. Follow the closing procedures in IRM 8.23.4, *Acceptance, Rejection, Withdrawal and Default Procedures for Non-Collection Due Process (CDP) Offers*.

8.23.3.4.1.4
(08-21-2023)

**Requesting an Appeals
Referral Investigation
(ARI)**

- (1) Situations may arise during the consideration of a rejected offer where the ATE will request review of new information by a COIC or FOIC group. In these situations, the ATE should use Form 2209, *Courtesy Investigation*, to request an ARI. The ARI should be sent as follows:
 - If the OIC case was rejected by FOIC, send the ARI via secure e-mail to the Collection Group Manager of the originating Offer Specialist/ Examiner. If the ATE is unable to scan the ARI and attachments and send them via secure e-mail, then the ATE should fax the ARI to the Group Manager. The name of the Group Manager will be on the rejection letter or Form 1271 that should be located in the case file.
 - If the OIC case was rejected by COIC, send the ARI and attachments to the originating Campus office (Memphis or Brookhaven) via secure e-mail to *SBSE COIC Memphis or *SBSE COIC Brookhaven. If the ATE is unable to scan the ARI and attachments and send them via secure e-mail, the ATE should fax the ARI and attachments to the originating Memphis COIC or Brookhaven COIC at the numbers listed on the *SERP COIC Locations web page*.
 - Include "ARI" in the subject line with **High Importance**. Attachments should include copies of all new information Appeals needs considered and copies of any information and documents from the original file that is **relevant to the specific issue** (i.e. appraisals, P&Ls, etc. that are not available through internal research). The ATE should retain the original documents in the case file.

- (2) These ARI requests should be limited to situations where the ATE needs the assistance of COIC or FOIC to perform certain financial verification actions. See IRM 8.23.3.4.1.3 for examples and guidance in these situations.
 - (3) Apply feature code "RI" Referral Investigation and suspend the case in Appeals Centralized Database System (ACDS) using Case Activity & Automated Time-keeping System (CARATS).
 - (4) code SU/PI until the ARI is completed. Update the status to E/OTH.
 - (5) Once the ARI is returned, take the case out of suspense using CARATS code SU/TO. The RI feature code will remain on the case after it has been taken out of suspense.
 - (6) When issuing the ARI request, the ATE should send a letter to the taxpayer advising them of the referral. Consider using Letter 5208, Notification of Appeals Referral Investigation, for this purpose. State in the letter what Collection was asked to do and inform the taxpayer that the results will be shared with them and that the taxpayer will be given an opportunity to respond to the results.
 - (7) Per IRM 5.1.8.5, Courtesy Investigations, Mandatory Assignments, Collection considers an ARI to be a "Mandatory Assignment." The completion period for an ARI is:
 - 45 days after issuance if the action address is within the United States, Puerto Rico or the Virgin Islands
 - Six months after issuance if the action address is any other U.S. possession or territory or located within a foreign country
- Note:** Additional time to complete an ARI may be granted, if agreed between Appeals and Collection.
- (8) When investigation results are received from Collection, promptly send a copy of the results to the taxpayer attached to a letter stating Collection has concluded its investigation. Give the taxpayer 14 calendar days (more if appropriate under the circumstances) to review the information and provide feedback, if any, that Appeals should consider.
 - (9) The case will be decided by the ATE based upon the available information, including the uninvestigated items provided by the taxpayer, in the following circumstances:
 - The taxpayer does not cooperate with Collection or otherwise fully respond to any request(s) for additional information.
 - The COIC or FOIC group in receipt of the ARI does not respond timely. This does not include a request for additional time to complete the ARI, to which Appeals agrees.
 - The taxpayer does not respond to the ATE's correspondence in (7) above.
 - (10) Appeals retains full jurisdiction of the open OIC while Collection is investigating the ARI, so it is Appeals' responsibility to follow up if the above time frames are not met. Because of ex parte communication issues, limit the extent of the discussion to only the general time frame of the ARIs completion. See IRM 8.1.10, Ex Parte Communications. Carefully document the case activity record:

- why the COIC or FOIC employee was contacted
 - what question(s) was asked and the answer(s) received
- (11) Per *Rev. Proc. 2012-18*, OIC cases are subject to ex parte communication rules. The third-party contact waiver provision found in Section 7 of Form 656 pertains to non-IRS contacts only.
- (12) If Collection's response to an ARI is to accept the offer, the ATE will adopt the recommendation.
- (13) If Collection's response is not to accept the offer or no recommendation is made, the ATE will review the information that was provided by both the government and the taxpayer and determine whether or not to accept the offer. See IRM 8.23.3.4.1.3 for examples when an ARI may be needed.

Note: If Collection's acceptance recommendation is legally or procedurally incorrect, document the Case Activity Record (CAR) with Collection's recommendation and the basis for the error including any applicable IRM citations and make an independent determination on the acceptability of the offer.

Example: A taxpayer's DATC is rejected based on the taxpayer's ability to full pay the liability. In Appeals, the taxpayer amends the offer to submit it under ETA based on public policy. The ATE issues an ARI to the Non-Economic Hardship OIC group for consideration and receives a response recommending acceptance of the offer. The offer specialist's report states that the acceptance recommendation is due to errors in the audit report and corrections to those errors. The ATE reviews this report and determines the recommended acceptance is based on doubt as to liability (DATL) grounds. The ATE sustains the rejection of the existing offer and advises the taxpayer to submit an offer under DATL through normal channels to pursue that remedy.

- (14) Because Appeals retains full jurisdiction of the open OIC while Collection is investigating the ARI, Appeals makes the final decision to accept or reject the OIC and issues the closing letter. There may be instances when Collection issues an acceptance letter during the ARI while Appeals has jurisdiction. In those instances, the OIC acceptance is valid, despite Collection not having jurisdiction. To close an appeal where Collection has accepted the OIC during the ARI:
1. Prepare a case closing letter to the taxpayer that Appeals is closing its case based on Collection's acceptance of the offer and attach Collection's acceptance letter.
 2. Document the case activity record that Collection accepted the OIC during the ARI investigation.
 3. Close the WUNO as closing code 15 "Accepted" on Form 5402.
 4. In "Remarks" section of Form 5402, Appeals Transmittal and Case Memo, type "Collection accepted OIC and issued the acceptance letter. Enclose a copy of acceptance letter when sending Appeals' closing letter to taxpayer."

8.23.3.4.1.5
(08-21-2023)

Coordination with Other Functions

- (1) The ATE must be alert to issues that may prevent making a final determination on an appealed offer rejection and when such issues arose in relation to when the offer was either rejected by Compliance or when the preliminary determination was communicated to the taxpayer by the Compliance offer investigator. Issues arising after Compliance rejected the offer, such as bankruptcy, litigation, or an open criminal investigation, will require coordination with other functions before proceeding with consideration of the appealed offer rejection. See IRM 8.23.2.5 for premature referral criteria and procedures if such events occurred before the preliminary determination letter was issued to the taxpayer by the Compliance offer examiner.

Caution: For ex parte communication purposes, carefully review Appeals' IRM guidance before any contact with another function. Be sure to document the case activity record with the purpose of the contact, what was discussed, and the information that was received. Guidance on ex parte communication issues can be found in *Rev. Proc. 2012-18* and IRM 8.1.10, Ex Parte Communications.

- (2) For procedures concerning an open Examination matter, follow IRM 5.8.4.17.
- (3) For procedures concerning an open criminal investigation, follow IRM 5.8.4.19. The ATE must exercise caution and good judgment before contacting someone from Criminal Investigation (CI). The ATE should discuss the issue with their ATM and, if needed, IRS Counsel, before initiating contact with CI.
- (4) The IRS does not have authority to compromise a case referred to the Department of Justice (DOJ). An IDRS posting of TC 520 with closing codes 70-82 indicates that the taxpayer's case is under the jurisdiction of DOJ for litigation. Contact IRS Counsel and Advisory in Civil Enforcement Advice and Support Operations (CEASO) to determine the nature of the litigation and whether settlement authority belongs solely to DOJ. If any liabilities in the OIC are under DOJ's jurisdiction, acceptance of the offer must be coordinated with DOJ.

Note: Notice of Federal Tax Lien (NFTL) filings for new liabilities during bankruptcy are rare. However, if DOJ also has ongoing civil litigation and obtains a lifting of the stay to allow an NFTL filing, there are restrictions on any potential CDP lien determination by Appeals. Appeals can consider whether the NFTL should be withdrawn, but it will not have authority to compromise the liability or accept collection alternatives because of the referral to the DOJ.

- (5) Some cases under DOJ jurisdiction will not have an open TC 520 posted to IDRS. Restitution ordered by DOJ after August 2010 is identified by TC 971 AC 102 (MFT 31 for IMF). Additional information regarding the background and the collection of restitution assessments is found within IRM 5.1.5.15, Field Collecting Procedures, Balancing Civil and Criminal Cases, Restitution.

8.23.3.4.2
(08-21-2023)

Financial Analysis and RCP Determination

- (1) The ATE will review the written appeal for the specific issues that are in dispute. If no specific issues are listed in the appeal, then the specific items of disagreement present on the IET/AET completed by Collection will be used to identify the issues. If necessary, the ATE may contact the taxpayer to confirm the items in dispute. Only the disputed issues will be initially reviewed and considered by the ATE. However, the taxpayer may present new issues during the appeal.

Exception: The ATE will use the most current or updated national and local standard allowances unless the case has already been submitted by the ATE to the ATM for final review or approval or to Counsel for final review.

- (2) Consult IRM 5.8.5, Offer in Compromise, Financial Analysis, which contains details on the information needing verification. If an issue is inadequately developed, the ATE will not develop the issue but will consider the evidence provided by the taxpayer versus the reasons for Collection's non-acceptance and make a determination based on those factors. Unless it is at the taxpayer's request or an issue in dispute, the ATE will not review information that was located in the case file, was available to Collection at the time of rejection, or provided by the taxpayer with the request for appeal, **and** was not developed by Collection, shared with the taxpayer or included on the IET or AET. See IRM 8.23.3.4.1.1 for certain exceptions.
- (3) Occasionally, new or more complex information may be submitted by the taxpayer that requires the assistance of a COIC or FOIC group. See IRM 8.23.3.4.1.2 and IRM 8.23.3.4.1.3, in such circumstances.
- (4) The numerical factors used to determine the present value of the taxpayer's future ability may occasionally change. Fewer months of future income are generally required from taxpayers who agree to shorter payment terms. The table in IRM 5.8.5.25, Calculation of Future Income, reflects the present value factors to be used when determining the present value of the taxpayer's future ability to pay.
- (5) A frequent issue on appeal is the amount of income to use when determining future ability to pay when a taxpayer has a sporadic employment history or fluctuating income. In these instances, IRM 5.8.5.20, Future Income, says the taxpayer's income may be averaged over the three prior years. It should be rare and clearly explained in the CAR and ACM if Appeals uses a time span which deviates from the typical three years, or a time span used by Compliance.

Note: If the taxpayer is temporarily or recently unemployed or underemployed, use the level of income expected if the taxpayer were fully employed and if the potential for employment is apparent. See IRM 5.8.5.20(4).

- (6) The ATE will not secure a consumer credit report when recommending an offer for acceptance. However, any credit reports that are in the case file must be disposed of upon closure of the OIC, regardless of case disposition (acceptance, rejection or withdrawal). The Fair and Accurate Credit Transactions Act of 2003 requires that persons who dispose of credit information take reasonable measures to protect against unauthorized access to or use of credit information in connection with its disposal. See IRM 8.23.4.3.2, Accepted Offer Closing Documents and ATE Procedures, for procedures to remove and destroy credit report information as part of closing out an OIC case in Appeals.
- (7) If it becomes apparent that Appeals must sustain Collection's rejection of the offer, the ATE will contact the taxpayer and advise them of the decision and the reason(s) why the offer cannot be accepted. Provide a copy of the financial analysis reflecting Appeals' determination of RCP (generally copies of the IET

and AET), allow the taxpayer a reasonable opportunity to provide feedback or amend the offer to the revised RCP amount and then follow the instructions in the following table:

If ...	Then ...
The taxpayer provides feedback causing a <i>substantive</i> change to the previous RCP determination, but the revised RCP is still greater than the taxpayer's offer and less than the amount owed	Contact the taxpayer and allow them 14 calendar days to amend the offer with an addendum to the revised RCP amount. See IRM 8.23.3.5 for details on amended offers and IRM 5.8.4.25, Periodic Payments Required with Offer in Compromise Submissions, for possible TIPRA payment requirements. Note: Appeals has had CDP cases remanded by the Tax Court for abuse of discretion citing IRM 5.8.4.9, Actions Based on Reasonable Collection Potential, for not allowing the taxpayer an opportunity to amend the offer to the final RCP amount.
The taxpayer provides feedback that causes no appreciable change to the RCP determination or is unwilling/unable to amend the offer to the necessary amount, if applicable	Contact the taxpayer, explain any legal or administrative remedies and advise that Appeals must sustain rejection of the offer. Review the procedures in paragraph (8) of this section before proceeding with closing out the case
The taxpayer contacts Appeals and indicates an inability to amend the offer to the necessary amount, or amending the offer doesn't apply because RCP exceeds the liability and there is no basis for ETA consideration	Advise the taxpayer that Appeals must sustain rejection of the offer. Review the procedures in paragraph (8) of this section before proceeding with closing out the case
The taxpayer doesn't respond	Proceed with closing out the case by sustaining rejection of the offer

Note: Providing the taxpayer with a copy of Appeals' financial analysis is not necessary if there are no substantive changes to the analysis that was completed by Collection. The taxpayer has already had an opportunity to provide relevant feedback to Collection's RCP analysis.

8.23.3.4.2.1 (08-21-2023)

Net Realizable Equity

- (1) For offer purposes, assets are valued at the net realizable equity (NRE). NRE is generally defined as quick sale value (QSV) less amounts owed to secured lien holders with priority over the federal tax lien, if applicable, and levy exemption amounts. See IRM 5.17.2, Legal Reference Guide for Revenue Officers, Federal Tax Liens.
- (2) QSV is defined as an estimate of the price a seller could get for the asset in a situation where financial pressures motivate the owner to sell in a short period of time, usually 90 calendar days or less. Generally, QSV is an amount less than fair market value (FMV). For purposes of determining the taxpayer's RCP, information provided by the government and the taxpayer should be used to arrive at appropriate FMV determinations.

- (3) As stated earlier in this IRM, the ATE should research IRM 5.8, Offer in Compromise, and all related interim guidance to evaluate Collection actions, decisions and valuation methods for OICs. IRM 5.8 and all related interim guidance should be used as a reference for valuation methods in OIC cases.
- (4) For the consideration of an OIC by Collection, Collection should verify the information contained on the financial statement, and identify any assets belonging to the taxpayer that may not have been disclosed. Collection should also properly value assets that were either disclosed by the taxpayer or discovered during the offer investigation.
- (5) The ATE will only consider assets documented previously by Collection in the AET. Appeals will not identify and value any additional assets. Appeals will only consider Items in dispute where the taxpayer and Collection did not reach an agreement.
- (6) The ATE will not revise the value of an asset to an amount higher than the value previously determined by Collection, unless the taxpayer provided such information to Appeals.

8.23.3.4.2.2
(08-21-2023)

Future Income Valuation

- (1) Future income is defined as an estimate of the taxpayer's ability to pay based on an analysis of gross income, less necessary living expenses, for a specific number of months into the future. Complete guidance on future income and the calculation of future income are in IRM 5.8.5.20, Offer in Compromise, Financial Analysis, Future Income, and IRM 5.8.5.25, Offer in Compromise, Financial Analysis, Calculation of Future Income.
- (2) When calculating the value of future income, determine if the taxpayer can full pay the liability through installment agreement guidelines. This calculation will initially be based on the taxpayer's documentation and include application of the expense standards and allowances. It is appropriate to ensure accruals are taken into consideration when considering whether or not the liability can be paid in full. Absent special circumstances, an OIC will not be accepted if it is believed that the liability can be paid in full as a lump sum, by installment payments extending through the remaining statutory period for collection, or other means of collection. See IRM 5.8.1.2.2, Offer in Compromise, Overview, Policy. **See also (3) below.**
- (3) Notwithstanding the directives of IRM 5.8.1.2.2, and paragraph (2) above, in an OIC case, future income is an asset and its value can be adjusted for numerous reasons. This means that, under certain circumstances, future income *may* be determined to be *higher or lower* than what is found by initial analysis. Therefore, adjustments to future income calculation can be made even though *initial* analysis determines, with mathematical certainty, that the taxpayer could full-pay the liability through an installment agreement.
- (4) While other reasons for adjustments to future income valuation may apply, the chart below provides IRM references for some of the most common reasons for adjustments to future income that are encountered and for the calculation of future income:

Issue Related to Future Income	IRM Section(s)
Bankruptcy (Proposed Filing)	IRM 5.8.5.20, IRM 5.8.10, IRM 8.23.3.4.2.3
Expenses (Projected Future Increase or Decrease)	IRM 5.8.5.22, IRM 5.8.5.22.1, IRM 5.8.5.22.2, IRM 5.8.5.22.3, IRM 5.8.5.22.4, IRM 5.8.5.23, IRM 5.8.5.24
Future Income (Calculation of)	IRM 5.8.4.3.1, IRM 5.8.5.25
Future Income (Calculation of) - Taxpayer Located Outside of the United States	IRM 5.8.5.25.1
Income Averaging (for situations of taxpayer underemployment, temporary employment, unemployment, fluctuating annual income, etc.)	IRM 5.8.5.20
Payment Terms (Offer Payment Terms)	IRM 5.8.4.3.1, IRM 5.8.5.30
Retirement (Proposed)	IRM 5.8.5.20
Health Concerns	IRM 5.8.5.20

8.23.3.4.2.3 (08-21-2023)

Bankruptcy Considerations

- (1) The IRS will not consider an offer while a taxpayer is in bankruptcy. When a taxpayer files bankruptcy, the Bankruptcy Code provides legal remedies and procedures to resolve the government's claim. If the taxpayer files bankruptcy while the OIC is being considered in Appeals, the ATE must close the case by sustaining Collection's rejection of the offer. In this instance, the offer has already been rejected (by Compliance) and Appeals no longer has a basis to overturn that decision. Follow the procedures in IRM 8.23.4 for closing the offer.
- (2) Should the taxpayer state an intent to file bankruptcy if Appeals does not accept the offer, the ATE should consider whether any of the tax liabilities can be discharged and refer to the guidance in IRM 5.8.5, Offer in Compromise, Financial Analysis and IRM 5.8.10, Offer in Compromise, Special Case Processing. Considering if the taxpayer were to file bankruptcy, the ATE should make a general analysis of collectibility and the liabilities that would be discharged. The ATE should attempt to negotiate an agreeable settlement, as appropriate. Based upon the ATE's findings, a hazards approach should be used based upon the degree of risk determined to exist that the taxpayer would file bankruptcy. An ARI may be needed to have the bankruptcy analysis considered by Collection first. See IRM 8.23.3.4.1.4 for ARI procedures. For bankruptcy considerations, some general determinations the ATE should make are:
 - a. which liabilities are dischargeable
 - b. whether the taxpayer has dischargeable non-tax debts
 - c. whether the taxpayer has any prior history of bankruptcy filing

- d. the overall age of the liabilities
- e. the success of the Service's prior collection efforts against the taxpayer
- f. any assets that would be excluded from a bankruptcy estate and encumbered by the statutory lien
- g. whether the taxpayer qualifies for a Chapter 7 discharge based upon the "means test"
- h. whether there are any NFTLs already filed on assets that would be exempted from a bankruptcy estate

Note: Procedures involving ex parte communications must be followed when discussing case information with Insolvency Unit employees. The ATE should clearly document the case activity record concerning exactly what information was requested from Insolvency, why such information was requested, and the results of the contact. See IRM 8.1.10, *Ex Parte Communications*, for additional guidance.

- (3) The value of future income is an asset that may be lowered based upon the perceived degree of risk of the taxpayer filing a Chapter 7 bankruptcy. See IRM 5.8.5.20, Offer in Compromise, Financial Analysis, Future Income, and IRM 5.8.10, Offer in Compromise, Special Case Processing.
- (4) Appeals will not accept an offer amount that is less than the amount that would be recoverable from a Chapter 7 bankruptcy, unless special circumstances exist. This amount would include the amount recoverable in bankruptcy plus the equity of excluded property subject to a statutory lien or exempted property secured by an NFTL. A successful compromise would generally secure *more* than the adjusted RCP, because if the taxpayer only offers what would be collectible in the event of bankruptcy, there may be little or no benefit to the government by acceptance of the offer.
- (5) The basis for acceptance of an offer will be Doubt as to Collectibility, where the RCP is adjusted based on consideration of the amount recoverable in bankruptcy. If special circumstances are present which suggest that an amount less than the bankruptcy adjusted RCP should be accepted, then the offer should be accepted under either Effective Tax Administration (ETA), or Doubt as to Collectibility with Special Circumstances (DCSC).
- (6) If the taxpayer files bankruptcy after the offer is accepted, follow the procedures in IRM 5.8.10, Offer in Compromise Special Case Processing. In accordance with the Bankruptcy Code, the offer should not be defaulted or payments solicited while the taxpayer is in bankruptcy.
- (7) See IRM 8.7.6.4, Appeals Bankruptcy Cases, Offer in Compromise, for additional information on bankruptcy issues.

8.23.3.4.2.4 (08-21-2023) Dissipated Assets

- (1) Dissipation of assets can be a frequent issue of dispute in an appealed offer rejection. If a determination is made that a taxpayer dissipated an asset(s) and such asset is no longer available to pay the tax liability, a secondary determination must be made as to whether or not to include the value of the dissipated asset as part of the RCP.
- (2) Including the value of the dissipated asset as part of the RCP determination is not automatic. Such inclusion must be clearly justified in the case file and documented in the case activity record. If the taxpayer can show that all or a portion of the asset was used to provide for necessary living expenses, such

portion of the asset should not be included in the RCP calculation. The taxpayer must be able to provide a reasonable accounting of the dissipated asset.

Note: Where more complex asset dissipation issues are encountered, it may be necessary for the ATE to request an ARI and present the taxpayer's documentation to a COIC or FOIC group for initial analysis.

- (3) If the investigation clearly reveals that the asset was dissipated with a disregard of the outstanding tax debt, the value of the asset should *generally* be considered for inclusion in the RCP calculation. As indicated, however, an exception may be appropriate for the amount that the taxpayer can establish was used to fund necessary living expenses.

Caution: Avoid "double counting" of a dissipated asset in the RCP. For example, if a portion or all of a dissipated asset was used to purchase or improve the value of another asset, **do not** include both the full value of the dissipated asset in the RCP and the full value of the other asset that was purchased with, or increased in value by, funds from the dissipated asset.

- (4) If the ATE reduces or eliminates the value of a dissipated asset included by Collection as part of the RCP, the reason for such should be documented in the case activity record and in the ACM.
- (5) IRM 5.8.5.18, Offer in Compromise, Financial Analysis, Dissipation of Assets, contains the primary guidance for dissipated asset issues, including numerous examples.

8.23.3.4.2.5
(08-21-2023)
**Valuation Assistance
from Other Appeals
Organizations**

- (1) There may be situations when a taxpayer disputes Collection's value of an asset on the RCP. If the nature of the asset is rare or complex, the ATE and ATM may decide to use the services of valuation engineers and art appraisers to assist them in determining a value or range of values. The request for such assistance would not be routine.
- (2) These services would only be requested if the taxpayer disputes the asset value given by Collection. A request for these services would **not** be submitted if taxpayer does not dispute Collection value of the asset(s).
- (3) Engineering specialists are available to assist ATEs on a variety of valuation issues (art and cultural items excluded), such as:
 - Financial Products
 - Research and Experimentation – Credits and Expenses
 - Depreciation – Cost Segregation
 - Capital vs. Expense – Repairs
 - Estate & Gift
 - ESOPs – Employee Stock Option Plans
 - Golden Parachutes – IRS Section 280G
 - Natural Resources – Petroleum, Mining and Forestry
 - Chemical/Environmental

For more information on valuation services from engineers, a list of contacts, as well as the procedures to request valuations of items, see IRM 8.7.4, Technical and Procedural Guidelines, Appeals Estate and Gift Tax Cases, as well as the *Appeals Technical Guidance web page*.

- (4) Art Appraisal Services (AAS) provides valuation assistance concerning valuable works of art and cultural property over \$50,000. The AAS Director leads a staff of professional art appraisers who value art and other cultural objects, such as:

- Paintings, drawings, prints, photographs
- Sculptures
- Glass and ceramics
- Textiles and carpets
- Antiques and furniture
- Silver
- Rare manuscripts
- Antiquities
- Ethnographic art
- Collectibles
- Coins and medals
- Historical memorabilia

For more information on AAS services, a list of contacts, as well as the procedures to request valuations of art and cultural items, see IRM 8.18.1, Valuation Assistance, Valuation Assistance Procedures, as well as the *Appeals Art Appraisal Services web page*.

8.23.3.5
(08-21-2023)
Amended Offers

- (1) In a non-CDP OIC, the ATE will review the taxpayer's written appeal for the specific items that are in dispute. The specific disputed items present on the IET/AET completed by Collection or the taxpayer's written request for appeal will be used to identify the disputed items.
- (2) If new information requiring further development is provided during consideration of an offer, the ATE will issue an ARI to Collection via Form 2209, *Courtesy Investigation*, to consider the new information. Collection's response to the ARI will be shared with the taxpayer.
- (3) If Collection's response to an ARI includes a comment that the offer should be accepted, the ATE will adopt the recommendation. If Collection's response is not to accept or no recommendation is made, the ATE will review the information that was provided by both the government and the taxpayer and determine whether or not to accept the offer. See IRM 8.23.3.4.1.3 for examples when an ARI may be needed.

Note: If Collection's acceptance recommendation is legally or procedurally incorrect, document the CAR with Collection's recommendation and the basis for the error including any applicable IRM citations and make an independent determination on the acceptability of the offer.

Example: A taxpayer's DATC offer is rejected based on the taxpayer's ability to full pay the liability. In Appeals, the taxpayer amends the offer to submit it under ETA based on public policy. The ATE issues an ARI to the Non-Economic Hardship OIC group for consideration and receives a response recommending acceptance of the offer. The offer specialist's report states that the acceptance recommendation is due to errors in the audit report and corrections to those errors. The ATE reviews this report and determines the recommended acceptance is based on doubt as to liability (DATL) grounds. The ATE sustains the rejection of the existing

offer and advises the taxpayer to submit an offer under DATL through normal channels to pursue that remedy.

- (4) In the interests of good tax administration, when rejection of an offer is sustained but the taxpayer is a possible candidate for consideration of acceptance under another basis, the ATE will assist the taxpayer by explaining further options as outlined in IRM 8.23.3.5.1.

8.23.3.5.1
(08-21-2023)

**Amended Offers -
Change in Offer Basis or
Other Circumstances**

- (1) Appeals will generally consider an amended basis of acceptance but not in all circumstances. The table and examples below provide illustration:

If the Original Offer was Considered Under	Then it also may Generally be Considered Under
DATC, DCSC or ETA Hardship	DATC, DCSC, ETA Hardship, ETA Public Policy
Doubt as to Liability (DATL)	DATL
ETA Public Policy or Equity criteria	DATC, DCSC, ETA Hardship, ETA Public Policy or Equity criteria

- (2) Examples of amended offers are as follows:

Example: (1) The taxpayer submitted an offer under DATC and the offer was rejected by Collection. During the appeal, it is determined that the acceptable amount of the offer is higher and the taxpayer agrees to pay the new offer amount and/or new payment terms. The ATE will secure a Form 14640 addendum or amended offer form to reflect the new offer amount, the applicable TIPRA payment and process the acceptance. If the taxpayer requested and qualified for low-income certification on Form 656, no payment is required with the addendum. An ARI is not necessary.

Example: (2) In example 1 (above), if new information is submitted by the taxpayer that requires investigation, the ATE will use an ARI to send the new information to Collection for verification. The ATE will share and discuss Collection's response with the taxpayer, and make a determination based upon the information that was provided.

Example: (3) A DATC offer is considered and rejected by Collection. In Appeals, the taxpayer introduces information requiring further development to consider the same offer under DCSC or ETA. Upon securing the new information from the taxpayer, the ATE will use an ARI to send the new information to Collection for development of the issue. The ATE will share Collection's response with the taxpayer and make a determination based upon the information that was provided.

Example: (4) A DCSC offer is considered and rejected by Collection. During the appeal process the taxpayer is unable to prevail using the special circumstances. The taxpayer raises a counter argument they can pay the RCP amount – which was fully documented and verified in the case file

from Collection. The ATE can accept the offer based upon DATC without an ARI. However, if new information requiring further development is presented for consideration, an ARI is necessary for Collection to comment on the new information. The ATE will share Collection's response with the taxpayer and make a determination based upon the information that was provided.

Example: (5) An ETA Hardship offer is considered and rejected by Collection. During the appeal, the taxpayer is unable to prevail under ETA provisions but because of a decrease in the RCP or an increase in the amount of the liability, the taxpayer may request consideration under DATC or DCSC. If the issues are fully documented and developed by Collection, the ATE can accept the offer under those provisions without an ARI. However, if new information requiring further development is presented for consideration, an ARI will be necessary. The ATE will share Collection's response with the taxpayer and make a determination based upon the information provided.

Example: (6) A DATL offer is considered and rejected by Compliance. In Appeals, the taxpayer attempts to introduce new issues for consideration of the same offer under any other acceptance basis. The original offer must be resolved and the taxpayer may submit a new offer to Collection under the new basis of compromise. Consult IRM 5.8.1.15.2, Offer in Compromise, Overview, Basis for Compromise.

Note: The same rule in Example 6 applies if a DATC or ETA offer is considered and rejected by Collection, but the taxpayer wishes to introduce a DATL offer in Appeals. The original offer must be resolved and the taxpayer may submit a new offer to Compliance under the new basis of compromise.

Example: (7) An ETA Public Policy/Equity offer is considered and rejected by Collection. Under ETA public policy or equity, all other bases of compromise must have been considered with the information available and, where applicable, fully developed prior to rejection. Therefore, any developed basis of rejection is subject to consideration by the ATE. If the taxpayer provides additional documents or information for consideration of the ETA rejection or for a basis other than ETA Public Policy/Equity, then an ARI should be issued so Collection has an opportunity to comment.

Example: (8) An offer is considered and rejected by Collection under any basis other than DATL and, in Appeals, the taxpayer raises issues involving ETA public policy, an ARI should be sent to Collection's NEH-ETA team in Austin, TX, for initial analysis of the ETA offer. See IRM 5.8.11, Offer in Compromise, Effective Tax Administration.

(3) Because a taxpayer may propose not just the amount of the offer, but also the terms of the payment, consideration must be given to such terms before deciding to recommend acceptance. The ATE must evaluate and negotiate not just an acceptable offer *amount*, but agreeable *payment terms* as well. The ATE is not required to accept the taxpayer's offer simply because it otherwise meets or exceeds RCP. If the taxpayer's proposed payment terms cause the offer itself to be unacceptable, the terms must be sufficiently renegotiated. If

the taxpayer is not willing to propose acceptable terms, the offer may be denied as not being in the best interest of the government.

- (4) In addition to amending an offer to reflect an acceptable offer amount or acceptable payment terms, an amended offer can be considered to make changes to the entity information on the offer.

Example: A jointly filed offer is considered and rejected by Collection and both parties appeal that rejection. In Appeals, it is determined that the offer is acceptable for one of the joint parties.

8.23.3.5.2
(08-21-2023)
**Amended Offers - Form
656 and Form 14640
Addendum**

- (1) If amending an offer, use only the Form 14640 addendum or Form 656. Do not use any substitute forms. Refer to IRM 5.8.8.2, Offer in Compromise, Acceptance Processing, Amendment or Addendum to Form 656, to determine whether to secure a Form 14640 or an amended Form 656.
- (2) For an amended Form 656, no new IRS signature is required for the waiver date and the TC 480 date for any additional periods that are added to the amended offer will be the same as the original TC 480 date, even if those periods were assessed after the submission of the original offer.
- (3) Review the Form 14640 that the taxpayer submits for accuracy and completeness. ATEs may refer to IRM 5.8.8.2.2.1, Instructions for Completion of Form 14640, Addendum to Form 656, to verify if the payment terms on Form 14640 are accurate and complete.

8.23.3.5.3
(08-21-2023)
**Amended Offers - TIPRA
Related Issues**

- (1) During the course of an offer investigation, if a TIPRA payment(s) (which includes the initial payment submitted with the offer, subsequent periodic installment payments, and/or the payment submitted with an amended offer) contributes to the full payment of a tax period, that period must remain part of the offer and must be listed on any subsequent amended Form 656 or Form 14640 addendum, and the Form 7249. Even though the tax debt is fully paid, the payment or payments used to satisfy the tax debt are still part of the overall offer amount, so all satisfied periods must remain part of the offer. See IRM 5.8.8.6, Offer in Compromise, Acceptance Processing, Faxed Original or Amended Forms 656.
- (2) If a tax period is paid in full exclusively via a non-TIPRA payment, such as a refund offset, advise the taxpayer the period is being removed from the Form 656. Before the AOIC Form 7249 is generated, ensure the period is removed from AOIC. There is no need to secure an amended offer. See IRM 5.8.8.3, Offer in Compromise, Acceptance Processing, Pen and Ink Changes to Form 656.
- (3) A taxpayer who does not meet the low-income certification criteria in Form 656, Section 1, may be required to remit an additional offer payment with the amended offer or Form 14640, depending on the amount and payment terms of such amended offer relative to the amount and payment terms of the original offer. Review IRM 5.8.4.23, Offer in Compromise, Investigation, Other Cases, for various amended offer scenarios and the associated TIPRA payment requirements.
- (4) The taxpayer is given credit toward the amount of the amended offer for all OIC payments made prior to receipt of such amended offer. OIC payments are identified by Designated Payment Codes (DPC) 34 and 35, and typically post

after or near the TC 480 date. See IRM 5.8.4.23 and IRM 5.8.8.2, Offer in Compromise, Acceptance Processing, Amendment or Addendum to Form 656. The OIC Acceptance Letter should indicate the total amount of offer payments received as of the date of issuance as well as the date and amount of the last offer payment received.

Caution: Cases sent to Counsel are sometimes met with delays in the review process. Update the acceptance letter after it is returned from Counsel so that it reflects the current TIPRA payments that have been made.

Example: The taxpayer originally submitted a Lump Sum Cash offer of \$5,000 and submitted \$1,000 with the offer. The offer was rejected and the taxpayer appealed. The taxpayer and Appeals agreed on a final periodic payment offer for \$25,000. The taxpayer received credit for the \$1,000 submitted with the original offer and thus owed a remaining amount of \$24,000 to fully pay the offer. The offer amount listed on the amended Form 656 was \$25,000 and the taxpayer proposed to make \$1,200 periodic installment payments each month until the \$25,000 is paid in full. The amended offer and additional TIPRA payment of \$1,200 were received April 28, 2022. The OIC Acceptance Letter stated a total of \$2,200 had been received and applied to the accepted offer and further advised the taxpayer that the last payment of \$1,200 was received April 28, 2022.

- (5) The ATE may process the OIC payment received with the amended offer. See IRM 8.23.1.5.1.1, Offer in Compromise, Offer in Compromise Overview, Processing OIC Payments, for guidance on how to process OIC payments.
- (6) If an amended offer is received without the required partial payment, follow IRM 5.8.4.25.1, Offer in Compromise, Investigation, Periodic Payments Made During the Offer Investigation, by sustaining rejection of the offer if the taxpayer does not make the required TIPRA payment after being given a reasonable opportunity to do so. If an amended offer is received without the required additional TIPRA payment:
 - a. Carefully review the table in IRM 5.8.4.25.1 to make sure an additional TIPRA payment was required with the amended offer.
 - b. If an additional TIPRA payment is required, contact the taxpayer and explain the TIPRA requirement.
 - c. Give the taxpayer 15 calendar days to submit the required TIPRA payment and clearly explain that Appeals must sustain rejection of the offer if such payment is not received by the established deadline.
 - d. If the taxpayer does not submit the required payment, the case may be closed by sustaining rejection of the offer.

Note: Collection returns an offer as a processable return if the taxpayer does not submit the required additional TIPRA payment with the amended offer. Appeals does not “return” an offer that has already been rejected, but will apply the return criteria located in IRM 5.8.4.25.1, to sustain the previous rejection.

- (7) If the amended offer secured by the ATE is a periodic payment offer from a taxpayer who is not exempt from TIPRA payment requirements (see IRM 8.23.1.5.1 for exemption criteria), the taxpayer must once again start making the proposed periodic installment payments. The ATE is responsible for making sure the taxpayer makes the periodic installment payments proposed in the

amended offer while the OIC case is pending in Appeals. The offer may be considered withdrawn under IRC 7122(c)(1)(B)(ii) if the taxpayer fails to make all proposed periodic installment payments. See IRM 8.23.3.5.4 for Appeals involuntary withdrawal procedures.

- (8) Appeals occasionally receives an appealed rejected offer in which two Forms 656 are required but Collection did not secure the required amended/related offers. Review IRM 5.8.3.5 to determine how many Forms 656 are needed. In such a case, **and only if the ATE intends to recommend an offer for acceptance**, secure the second Form 656 that is required, along with any applicable OIC application fee and TIPRA payment, unless the taxpayer is exempt (per Form 656, Section 1). See IRM 8.23.1.5.1 and IRM 5.8.3.5 for information on required fees and payments. Even though the additional Form 656 is related to the offer that has already been rejected, the Centralized Offer in Compromise (COIC) site must complete the processability review and process the applicable fee and payment. As part of such processing, COIC will add the related offer to their Automated Offer in Compromise (AOIC) system so that offer may be properly monitored if accepted. Because the new Form 656 generally does not represent a new offer to be investigated, COIC will provide expedited processing of the related offer within 1-2 business days of receipt. To initiate this expedited processing, the ATE must:

- a. Date stamp **but not sign** the second Form 656.
- b. Complete Form 14667, Related Offer Cover Sheet, which is available on the *Appeals OIC web page*.

Note: Do **not** use Form 13933, Collection Due Process/Equivalent Hearing Offer in Compromise Cover Sheet, unless the offer is a CDP-OIC, since non-CDP-OICs and CDP-OICs are assigned to different area offices on AOIC.

- c. Prepare a Form 3210 and mail it along with the original, Form 656, the OIC application fee, TIPRA payment, and Form 14667, *Related Offer Cover Sheet*, to the appropriate centralized site.

Caution: To ensure accurate case tracking, be sure that a new WUNO is created as soon as the Form 656 is received.

- (9) Section 7 of the latest revision of Form 656 allows the Service to add any assessed liabilities the taxpayer omitted or failed to list in Sections 1 and 2 of the Form. A liability that was included on the Form 656 but for which there is no longer an outstanding balance can also be removed from the Form 656, unless the period was satisfied due to a TIPRA payment. If the only revision needed before acceptance is to add or delete a missing period, neither a Form 14640 addendum nor an amended Form 656 is necessary. Contact the taxpayer to advise of additions or deletions of any missing period(s). Do not add periods which IRS has no authority to compromise, such as a Restitution Based Assessments (RBA).

Caution: In earlier revisions of the Form 656, the offer terms may not contain a provision allowing Service personnel to delete any listed period. This means that if an earlier Form 656 lists a tax period that is paid in full and no TIPRA payment was applied to such tax period (see paragraph (2) above), an amended Form 656 must be secured.

- (10) An amended Form 656 or Form 14640 does not impact the 24-month period under IRC 7122(f) during which the Service must either reject or return the

offer. If the offer was not rejected (see IRM 8.23.2.4), the date by which Appeals must either reject or return the offer remains 24 months from the date the original offer was received by the Service.

(11) For amended offers or offers with addenda:

- Revise original WUNO to any entity change on amended Form 656.
- On Form 5402 at closing, inform APS in "Remarks" section to make changes to AOIC, such as name changes and CSED code changes between primary and secondary taxpayers.

Note: Amended offers or offers with addenda do not receive new WUNOs or offer numbers. Therefore, do **not** request new WUNOs or offer numbers.

8.23.3.5.4
(08-21-2023)
**Involuntary Withdrawal
Procedures for
Amended Periodic
Payment Offers
Received by Appeals**

- (1) A taxpayer submitting a periodic payment offer is required to make the periodic installment payments proposed in such offer. Most taxpayers submitting a periodic payment offer will propose monthly payments, but are not required to do so under IRC 7122(c)(1)(B)(i). The TIPRA requirement for a taxpayer to make proposed periodic installment payments while a periodic payment offer is being considered ends when Collection rejects the offer. A taxpayer is not required to continue making proposed periodic installment payments while a rejected offer is being considered by Appeals unless an amended offer is secured.
- (2) If the amended offer secured by Appeals is a periodic payment offer from a taxpayer who is not exempt from TIPRA payment requirements (see IRM 8.23.1.5.1 for exemption criteria), the taxpayer must once again start making the proposed periodic installment payments. The ATE is responsible for making sure the taxpayer makes the periodic installment payments proposed in the amended offer while the OIC case is pending in Appeals. The offer may be considered withdrawn under IRC 7122(c)(1)(B)(ii) if the taxpayer fails to make all proposed periodic installment payments.
- (3) Follow IRM 5.8.4.25.1, Offer in Compromise, Investigation, Periodic Payments Made During the Offer Investigation, and IRM 5.8.7.4, Withdrawal, Offer in Compromise, Return, Terminate, Withdraw, and Reject Processing, procedures, including:
 - allowing the taxpayer two weeks to submit the missed payment(s),
 - affording the taxpayer an opportunity to make up only one missed proposed periodic installment payment, unless it is determined special circumstances exist, and
 - continuing with consideration of the taxpayer's appeal if it is determined special circumstances exist
- (4) If the ATE does not receive the required proposed periodic installment payment by the established deadline and determines no special circumstances exist, the offer will be considered withdrawn under IRC 7122(c)(1)(B)(i). Per IRM 5.8.7.4.3(2), the date of the withdrawal (TC 482 date) will be the date of the letter issued by Appeals indicating the offer is considered withdrawn.

Note: To be applicable, special circumstances 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.

8.23.3.6
(08-21-2023)
Collateral Agreements

- (1) While these circumstances are not common, the ATE's recommendation to accept an offer may include a condition that the taxpayer enter into a collateral agreement with respect to future income. This is not considered raising a new issue.

Caution: The ATE will not solicit or require a future income collateral agreement if the issues in dispute did not include income or expense items. The ATE may consider other collateral agreements in certain situations.

Example: Collection included the value of a dissipated asset in their RCP computation based on the taxpayer's use of a retirement account. The taxpayer protests including the dissipated asset and notes that the funds were invested in a resort that was destroyed by a hurricane. The taxpayer is entitled to a capital loss of \$3,000 per year. The ATE determines inclusion of the dissipated asset is erroneous based on IRM requirements but may consider securing a Waiver of Losses collateral agreement.

- (2) Follow IRM 5.8.6, Offer in Compromise, Collateral Agreements, with regard to collateral agreements. In addition to the terms specifically stated in the offer, collateral agreements enable the government to either collect funds or restrict a taxpayer's ability to claim future losses or credits. Do not use them to allow the taxpayer to submit an offer for a lower amount than the RCP if the case dictates. Usage of collateral agreements should not be routine. The ATE should secure a collateral agreement only if significant recovery is expected or the taxpayer has identifiable future losses or credits. It may be appropriate to secure a collateral agreement when a significant increase in income is expected.
- (3) *Do not* secure a future income collateral agreement
- to collect future income that should be included in the offer amount itself
 - merely on unfounded speculation about an increase in future income
 - to guard against statistically improbable events, such as lottery winnings
 - to attempt collection from a potential inheritance
- (4) Do not secure a collateral agreement if taxpayer amends the offer to Collection's RCP, or greater, and Collection did not consider a collateral agreement as part of an acceptance.

Example 1: Collection rejects taxpayer's offer of \$5,000, determining the RCP was \$10,000 and no collateral agreement was discussed. In Appeals, taxpayer amends the offer to \$10,000. If Appeals determines to accept the offer, it would not secure a collateral agreement, because taxpayer would be in a worse position than if Collection had accepted the amended offer.

Example 2: Same as above, except in Appeals, taxpayer amends offer to \$8,000. If Appeals determines to accept the offer, it may secure a collateral agreement, unless precluded by the criteria in paragraph (1).

- (5) If a future income collateral agreement is secured, the agreement can be approved by same level of approval as that of the offer. See IRM 5.8.6.2.1, Offer in Compromise, Collateral Agreements, Future Income, for additional information.

Note: Future income collateral agreements must be manually monitored by MOIC for the life of the agreement. The cost of monitoring the terms and conditions of the agreement and the potential difficulty of tracing the taxpayer's income, especially if such income could be structured through other entities, must be considered before deciding to secure such an agreement.

- (6) Use standard collateral agreements whenever possible to aid in the monitoring of the agreements. The standard agreements are listed below:
 - a. Form 2261, Collateral Agreement-Future Income Individual, and Form 2261-A, Collateral Agreement-Future Income Corporation
 - b. Form 2261-B, Collateral Agreement-Adjusted Basis of Specific Assets
 - c. Form 2261-C, Collateral Agreement-Waiver of Net Operating Losses, Capital Losses, and Unused Investment Credits
- (7) The collateral agreement must be signed by the Appeals official authorized to approve the underlying offer. See IRM 5.8.6.2(4), Collateral Agreements. To determine which Appeals official must sign the underlying offer, refer to current Delegation Order 5-1, found at IRM 1.2.2.6.1.1, Acceptance Authority, and on the *Appeals OIC web page*.
- (8) While IRS does not have the authority to compromise tax periods that were settled by Department of Justice (DOJ), IRS may accept an offer on the non-DOJ periods only, and secure a collateral agreement that the offer will default if the DOJ settlement terms are not fulfilled. Contact Area Counsel for assistance in preparing such a collateral agreement.

Example: Taxpayer owes for tax years 2018, 2019, 2020, and 2021. DOJ settles for tax years 2018 and 2019. IRS may compromise for tax years 2020 and 2021 and secure a collateral agreement that the offer defaults if taxpayer does not comply with the DOJ settlement terms for tax years 2018 and 2019.

8.23.3.7
(08-21-2023)
Offer from an Operating Business

- (1) When an offer is accepted to compromise trust fund tax owed by an operating business, the taxpayer may be relieved of a significant operating expense which could grant the delinquent taxpayer an economic advantage over competitors who are in tax compliance. Recovery of the unpaid trust fund tax amount is a significant issue when considering an offer from a business taxpayer. In the interest of "fairness to all taxpayers" the Service must be cautious to avoid providing financial advantages to those taxpayers through the forgiveness of employment tax debt, as this may be detrimental to competitors who are remaining in compliance with their tax obligations. Procedures in IRM 5.8.4.22.3, Offers from Operating Businesses, must be followed when considering an appealed offer from all In-Business Trust Fund (IBTF) taxpayers, including sole proprietorships, partnerships, LLCs and corporations.
- (2) For offers to compromise trust fund tax, Collection must address all issues discussed in IRM 5.8.4.22.1, Trust Fund Liabilities, before sending the non-CDP offer case to Appeals. This includes:
 - full payment of the trust fund portion of the unpaid tax,
 - assessment of the TFRP(s), **or**
 - the TFRP(s) submitted by Collection for assessment

Note: Special considerations have been granted to taxpayers who have documented fraud by a Payroll Service Provider (PSP). Review provisions of IRM 5.8.11.3.2.1, Public Policy or Equity Compelling Factors, IRM 5.8.11.5.3, Determining an Acceptable Offer Amount, and IRM 5.8.11.6, Documentation and Verification, to determine if these allowances apply.

- (3) Per IRM 8.23.2.5.2, Premature Referral Issues - Other Issues, return the case to Collection as a premature referral if the trust fund tax is not fully paid or the TFRP(s) is not assessed or not in the process of being assessed, unless Collection has clearly documented either a non-assertion determination or the case being under Law Enforcement Manual (LEM) criteria.

8.23.3.7.1
(08-21-2023)
**Corporate Trust Fund
Offer Procedures**

- (1) IRM 5.8.4.22.1, Offer in Compromise, Investigation, Trust Fund Liabilities, provides the guidance for all offers involving trust fund taxes:

- Only the amount representing the RCP of the corporation is needed to compromise a corporate trust fund liability -- the RCP of the person(s) responsible for the Trust Fund Recovery Penalty (TFRP) is no longer needed as part of the corporate trust fund offer, and
- The trust fund portion of the tax liabilities must be paid, the TFRP was either assessed or forwarded (by Collection) for assessment, or a non-assertion determination was made before the corporate offer may be evaluated

Note: Special considerations have been granted to taxpayers who have documented fraud by a Payroll Service Provider (PSP). Review provisions of IRM 5.8.11.3.2.1, Public Policy or Equity Compelling Factors, IRM 5.8.11.5.3, Determining an Acceptable Offer Amount, and IRM 5.8.11.6, Documentation and Verification, to determine if these allowances apply.

- (2) Consult IRM 8.23.2.5.2, Offer in Compromise, Receipt and Control of Non-Collection Due Process (CDP) Offers, Premature Referral Issues - Other Issues, and its related subsections for premature referral or compliance issues that may be applicable.

8.23.3.8
(08-21-2023)
**Offers for Other
Liabilities**

- (1) The chart below contains IRM references for offers involving various other issues:

Issue	IRM Reference(s)
Child - Child Support Obligations	IRM 5.8.1.11.4
Child - Offers from a Minor Child	IRM 5.8.1.11.5
Erroneous Refunds (Non-Rebate)	IRM 5.8.1.11.3
IRC §965 (Transition Tax)	IRM 5.8.1.11.7, IRM 5.8.4.23.7
Limited Liability Companies (LLC)	IRM 5.8.5.27, IRM 5.8.5.27.1, IRM 5.1.21.7.2
Partnership Liabilities	IRM 5.8.4.22.2
Restitution	IRM 5.8.4.24.1

Issue	IRM Reference(s)
Trust Fund Liabilities (including Excise Taxes)	IRM 5.8.4.22.1, IRM 8.23.3.7

8.23.3.9
(08-21-2023)
**Effective Tax
Administration Offers
(ETA)**

- (1) If it is determined that there is no basis to accept a DATC, the offer may still be accepted if it is determined that doing so:
 - a. would promote effective tax administration, and
 - b. would not undermine other taxpayers' compliance with the tax laws.
- (2) It is not a requirement that the taxpayer specifically ask for consideration of "special circumstances." IRM 5.8.11, Offer in Compromise, Effective Tax Administration, contains information about ETA offers and DATC offers where the taxpayer presents "special circumstances" (DCSC) as a basis to accept the offer and the procedures for evaluating such offers. If the ATE identifies special circumstances or if taxpayer raises issues, and these circumstances or issues meet either ETA or DCSC criteria, as defined in IRM 5.8.11, Effective Tax Administration, the case history must address these issues as well as support the final Appeals decision.
- (3) Under ETA, the taxpayer does not dispute being financially capable of paying the liability in full. To accept an ETA offer, the taxpayer must establish that:
 - Paying the full *tax liability* would cause an economic hardship (see below), or
 - Compelling public policy or equity/fairness considerations exist that would undermine public confidence that the tax laws are being administered in a fair and equitable manner if required to pay *in full*. These "public policy" or "equity" offers are sometimes referred to as "non-hardship" ETA offers.
- (4) Under DCSC, the taxpayer does not have the ability to pay in full and does not dispute being financially capable of paying more than the amount being offered. To accept a DCSC offer, the taxpayer must establish that:
 - Paying the full *RCP amount* would cause an economic hardship (see below), or
 - Compelling public policy or equity/fairness considerations exist that would undermine public confidence that the tax laws are being administered in a fair and equitable manner if required to pay the full *RCP amount*.
- (5) ETA and DCSC offers require a more subjective evaluation. Although IRM 5.8.11 is comprehensive, it is not possible to contemplate every situation to which ETA may apply.
- (6) ETA and DCSC offers based upon economic hardship are not uncommon. For purposes of ETA and DCSC offers, the definition of economic hardship is found in Treas. Reg. 301.6343-1(b)(4)(i). Often a taxpayer presents circumstances reflecting one or more of the factors outlined in IRM 5.8.11 or closely resembling many aspects of an example cited in the IRM or Treas. Reg. 301.7122-1, but the case for ETA or DATC-SC acceptance for the amount proposed by the

taxpayer falls apart when actual dollars are factored in. A decision in an ETA or DCSC hardship offer requires a three-tiered approach:

1. Does the taxpayer present exceptional circumstances meriting ETA or DCSC consideration?
2. Would payment of more than the offered amount cause the taxpayer to be unable to meet future necessary living expenses?
3. Would acceptance of the offer undermine other taxpayers' compliance with the tax laws?

An acceptable offer requires affirmative answers to questions 1 and 2, and a negative answer to question 3.

Note: IRM 1.2.2.6.1, Delegation Order 5-1 (Rev. 5), authorizes an ATM to approve the acceptance of an offer based upon ETA-Hardship or DCSC hardship if the assessed liability is less than \$250,000. The approval of the Appeals Area Director is still required in an ETA offer with economic hardship if the assessed liability is \$250,000 or more.

- (7) Offers based upon public policy or equity considerations are more rare.
 - a. **Acceptance** of any ETA or DCSC offer (either CDP or non-CDP) based in whole or in part on public policy or equity considerations requires review and approval by the Director, Collection Appeals.
 - b. **Rejection** of any ETA or DCSC offer (either CDP or non-CDP) based in whole or in part on public policy or equity considerations requires review and approval by either an ATM or ATCL.
- (8) If the taxpayer requests acceptance of an offer for less than RCP on the basis of special circumstances unrelated to economic hardship, the request must be reviewed by the NEH-ETA team in Austin, TX.
- (9) For initial investigation and analysis of an NEH-ETA, ATEs must send the NEH-ETA on an ARI to the group manager of the NEH-ETA group at mailbox: *SBSE NEH-ETA OIC or e-fax 855-839-6211 with an ATM-approved "Effective Tax Administration Non-Hardship OIC Referral Check Sheet". The referral checksheet may be found at *NEH-ETA Referral Checksheet* at the *Appeals Offer in Compromise web page*.

Example: An offer is considered and rejected by Collection under any basis other than DATL and, in Appeals, the taxpayer raises issues involving ETA public policy and equity, or non-economic hardship (NEH). The ATE should send an ARI to Collection's NEH-ETA team in Austin, TX, for initial analysis of the ETA offer. See IRM 5.8.11, Offer in Compromise, Effective Tax Administration.

- (10) See Delegation Order 5-1 at IRM 1.2.2.6.1 and on the *Appeals OIC web page*.

8.23.3.10
(08-21-2023)
**Death of Taxpayer While
OIC Case in Appeals**

- (1) Consideration of an OIC submitted by a single taxpayer must be terminated upon the death of that taxpayer. The date of termination and the date for the TC 482 is the date of the taxpayer's death. A sample OIC Termination Letter is available on the *Appeals OIC web page*.

- (2) If the offer under consideration was submitted jointly by a husband and wife, and during consideration, one spouse dies, the IRS no longer has the authority to accept the joint offer. The surviving spouse has the option of amending the joint offer to only the surviving spouse. Follow the procedures in IRM 5.8.10.4.1, Offer in Compromise, Special Case Processing, Death of Taxpayer, to determine whether to continue with consideration of the jointly-submitted offer.

If...	Then...
the surviving spouse amends the joint offer to surviving spouse only,	<ol style="list-style-type: none"> 1. Secure amended Form 656, not addendum, since there is a change in entity. 2. Do not request new OIC WUNO or offer number. 3. Update case name and Taxpayer Identification Number (TIN) in ACDS to name and TIN of surviving spouse. 4. At closing in Remarks of Form 5402, inform APS to update AOIC as follows: <ol style="list-style-type: none"> a. TP name to surviving spouse name b. MFT screen from B to S or P c. To notate in AOIC Remarks for COIC to mirror accounts with TC 482 with date of death for deceased spouse and the offer outcome for surviving spouse
the surviving spouse does not amend the joint offer,	<ol style="list-style-type: none"> 1. Terminate the offer with cc 14 2. In Remarks on Form 5402, request APS input TC 540 with date of death, if there is no TC 540 on IDRS

8.23.3.11
(08-21-2023)
**Alternative Resolutions
for Offers**

- (1) The ATE's role in a rejected offer is to resolve the disputed issues. Although a taxpayer may express an interest in alternative resolutions when it is apparent that an offer is not a viable option, the ATE will not consider alternative resolutions for a non-CDP offer that cannot be accepted.
- (2) If an offer cannot be accepted, the ATE must communicate the reason(s) why and discuss alternatives (such as installment agreements and Currently Not Collectible status, as applicable) that the taxpayer may pursue with Collection.

Do not refer the taxpayer back to COIC or FOIC offices. Close the offer and refer the taxpayer to www.irs.gov to determine if they qualify for a payment plan. Advise the taxpayer to wait approximately two weeks after they receive the letter regarding the offer closure before submitting any request through On-line Payment Agreement (OPA). They may also contact IRS Telephone Assistance at 1-800-829-1040 (individuals) or 1-800-829-4933 (businesses).

- (3) NFTL filing determinations are not to be made by the ATE. Notify the taxpayer verbally or in writing that Collection may file an NFTL after the case is closed. If the taxpayer indicates intent to file a Collection Appeal Request, refer them to the Collection employee who worked the initial case and close the OIC following normal procedures.

8.23.3.12
(08-21-2023)

Potential Default Offers

- (1) A taxpayer entering into either a DATC or ETA offer agreement must agree to comply with all filing and payment obligations under the Internal Revenue Code for a period of 5 years after the offer is accepted. See Form 656, Section 7.

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

- (2) If a taxpayer fails to meet any of the terms of the offer, the Service has the right to default the offer, reinstate the compromised liability, and pursue collection action against the taxpayer. If the liabilities are jointly owed and the offer was jointly submitted, the default provisions apply only to the party who failed to comply. See Form 656, Section 7.
- (3) IRM 1.2.2.6.1.4, Delegation Order 5-1 (Rev. 5), Termination Authority, grants the Monitoring Offer in Compromise Unit (MOIC) the authority to default any offer where the taxpayer is not proposing an alternative solution to the potential default. If the taxpayer proposes an alternative (such as an modification of an offer) and Appeals initially accepted the offer, Appeals will consider the taxpayer's potential default.
- (4) MOIC refers the potential default to Appeals on Form 2209, Courtesy Investigation, and provides the following additional information:
 - a. A copy of the "Terms" and "MFT" Screens from AOIC
 - b. A copy of the AOIC history, reflecting actions already taken by MOIC on the potential default
 - c. A copy of the AOIC payment screen
 - d. Taxpayer contact information, including the last known telephone number of the taxpayer and/or representative
 - e. Fax number of the Form 2209 originator
 - f. An explanation in the Form 2209 of the cause of the potential default
 - g. Copies of correspondence between the taxpayer and MOIC, including any proposals by the taxpayer to cure the potential default
- (5) Upon receipt of the potential default case in Appeals, the case will be opened as an offer on ACDS in order to place time on the specific case. APS should note it as a pending defaulted offer in compromise by using feature code "DO".
- (6) Generally, all potential default offer cases will be worked by the Brookhaven Appeals office. Exceptions to this *may* be as follows:

- a. Proposals received on offers originally accepted by a field Appeals office may be assigned to the same Appeals team that originally accepted the offer.
 - b. Proposals received on field and campus CDP offers that are subject to retained jurisdiction may be assigned to the field or campus team that accepted the CDP offer.
- (7) When working a potential default case and the ATE becomes aware of the death of a taxpayer, the offer can no longer be considered. The ATE will:
 - a. Check IDRS to verify the TC 540 has posted, and if not, request that APS manually input the TC 540.
 - b. Return the OI to MOIC, indicating that TP is deceased.
- (8) If the offer in default was accepted as part of a CDP hearing, the taxpayer may be entitled to a retained jurisdiction hearing with Appeals. See IRM 8.22, Collection Due Process, concerning retained jurisdiction. Do not establish a retained jurisdiction case on ACDS. It should be noted on ACDS as a defaulted offer and not a new offer.
- (9) If the taxpayer was not able to remedy the potential default issue, the ATE may default the offer **or** settle the offer for the amount already paid per procedures outlined in IRM 8.23.3.13, Modification of a Compromise, and not default the offer.
- (10) If the taxpayer is deceased, the ATE will verify TC 540 was input, and if it was not, request that APS manually input the TC 540. The potential default case will be closed to MOIC advising them that the taxpayer is deceased, that the TC 540 was requested and the results of any ARI that was issued to Collection Advisory.

8.23.3.13
(08-21-2023)
**Modification of a
Compromise**

- (1) In cases where the taxpayer is unable to pay the balance of an accepted offer, the balance of a non-rebate erroneously issued refund, or the balance of the contingent liability under the terms of a collateral agreement, and the investigation reveals that extreme hardship or other circumstances exist which would justify that a default is not in the best interest of the government, then the Service may:
 - a. Adjust the payment terms of the offer,
 - b. Formally modify the existing compromise, or
 - c. Obtain managerial approval to settle the offer for the amount already paid and not default the offer
- (2) A Form 656 is not required to make the proposal, and there is no other standard form for such a proposal. The proposal should be submitted in letter format and addressed to the Commissioner of the Internal Revenue.
- (3) If Appeals initially accepted the offer, Appeals will consider the taxpayer's proposed modification of the compromise.
- (4) Further substantive information that is provided to Appeals by the taxpayer should be referred by the ATE via an ARI request to the Collection Drop Point manager that originally investigated the offer. It is recommended to send the ARI request by fax or e-mail to the Drop Point Manager.

- (5) In Appeals, Modification of a Compromise cases will generally be assigned to Brookhaven Service Center Appeals for considerations but **may** also be assigned as follows:
 - a. Proposals received on offers originally accepted by a field Appeals office *may* be assigned to the same Appeals team that originally accepted the offer.
 - b. Proposals received on field and campus CDP offers that are subject to retained jurisdiction **may** be assigned to the field or campus team that accepted the CDP offer.
- (6) For information on CDP hearings on defaulted OICs, refer to IRM 8.22, Collection Due Process.
- (7) When working a potential default case and the ATE becomes aware of the death of a taxpayer, it must be determined whether there is an estate. If this determination was not made prior to the potential default offer case being assigned to Appeals, an ARI may be needed. The ARI should be issued to Collection Advisory to determine if there is an estate and to request that Collection Advisory file a proof of claim for the balance owed on the offer. The ATE will hold the potential default case open until Collection Advisory responds to the ARI. If there is no estate, the ATE will simply close out the offer case as satisfied following procedures in this section.
- (8) If the taxpayer is deceased, the ATE will verify the TC 540 was input, and if it was not, request that APS manually input the TC 540.
- (9) When making an acceptance recommendation for a modification of a compromise proposal, the case must be forwarded to Counsel for a legal sufficiency review if the original offer was subject to that review. The documents to forward to Counsel include:
 - a. The taxpayer's written proposal for the modification of a compromise
 - b. A fully completed Form 7249 that reflects the new terms of acceptance
 - c. Account transcripts (such as: TXMOD, IMFOLT/BMFOLT)
 - d. Other documentation from the modification of a compromise investigation

Note: Do not include the administrative file from the initial offer acceptance unless it is **readily** available.
- (10) To prepare the Form 7249 for modified terms of an accepted offer:

<p>If the Form 7249 for the modification of the offer terms will be approved by the delegated official...</p>	<p>Then...</p>
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within one year from the original acceptance,	contact Appeals Policy OIC analyst to re- open the offer in AOIC so the Form 7249 may be generated. When notified that the offer has been reopened, proceed with requesting an AOIC Form 7249 in accordance with IRM 8.23.4-1, Step Chart for Securing AOIC Generated Form 7249 for Collection-sourced OICs.
after the one-year Public Inspection File (PIF) retention period,	the PIF does not need to be updated and the offer should not be re-opened on AOIC. Prepare the Form 7249 from the Electronic Publishing Catalog.

- (11) See IRM 8.23.4.8, Modification of a Compromise, for final procedures to close out such cases.

8.23.3.14
(08-21-2023)
**Offer Rescission
Considerations**

- (1) An accepted OIC is an agreement that is binding on both the government and the taxpayer. After acceptance, further inquiry into matters relating to the accepted OIC is precluded, except where one or more of the following is identified:
 - False information or documents are supplied in connection with the offer;
 - The ability to pay or the assets of the taxpayer are concealed; or
 - A mutual mistake of material fact sufficient to cause the offer agreement to be reformed or set aside is discovered.
 - (2) Although such situations will be very uncommon, it may be necessary to consider a request to rescind or default an OIC or modify an accepted OIC. Refer to IRM 5.8.9, Offer in Compromise, Actions on Post-Accepted Offers, for complete guidance in these situations.
 - (3) Where Appeals accepted the OIC, Appeals is responsible for making the determination to rescind the OIC and will also be responsible for completion of all required actions identified in IRM 5.8.9, Offer in Compromise, Actions on Post-Accepted Offers.
- Note:** In instances where an offer was accepted as a collection alternative in a Collection Due Process case, Appeals is not authorized to rescind the offer.
- (4) If Appeals receives a referral from Collection to consider rescission due to a potential fraud issue, the fraud issue should be developed to a point no less than having agreement by the Fraud Technical Advisor that the potential for fraud exists. See IRM 5.8.4.18, Offer in Compromise, Investigation, Potential Fraud Referral. This refers only to a fraud concern and not to any of the other items identified in (1) above.

- (5) For purposes of issue tracking and to review for possible policy implications, rescission recommendations made by Appeals will be forwarded to the Appeals Director of Case and Operations Support with jurisdiction over the OIC program **prior** to taking any final actions.

8.23.3.15
(08-18-2017)
Identity Theft Issues

- (1) The presence of identity theft (IDT) issues does not prohibit consideration of an offer. Each case will need to be considered on its own merits since there may be unique issues impacting the case decision.
- (2) If an offer is accepted that involved IDT issues, information on the IDT period(s) must be provided to MOIC with the acceptance file and documented in ACDS and in the “remarks” section of Form 5402. Make the remarks on Form 5402 to be easily seen by APS so that APS can make the appropriate notation in AOIC.