



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

8.26.9

SEPTEMBER 23, 2020

## EFFECTIVE DATE

(09-23-2020)

## PURPOSE

- (1) This transmits new IRM 8.26.9, Alternative Dispute Resolution (ADR) Program, Post-Appeals Mediation Procedures for Collection Cases.

## MATERIAL CHANGES

- (1) Added new IRM 8.26.9.1, Program Scope and Objectives, and related sections containing information required by IRM 1.11.2.2.5, Address Management and Internal Controls.
- (2) Incorporated information from old IRM 8.26.9.1, Post-Appeals Mediation for Collection Cases - Overview, into new IRM 8.26.9.1, Program Scope and Objectives and its related sections.
- (3) Updated IRM 8.26.9.2.3(2), Post-Appeals Mediation Procedures for ATEs - OIC & TFRP, to note Publication 4167 is enclosed with Letters 5576 and 5157.
- (4) Updated IRM 8.26.9.2.3.3(1), Mediation Request Denied, to reference the following denial letters: Letter 5557, Post Appeals Mediation Denial - OIC, and Letter 5558, Post Appeals Mediation Denial - TFRP.
- (5) Revised IRM 8.26.9.2.3.4.1(5), Agreement to Mediate, to reference Letter 5559, Pre-Mediation Conference Call Follow-Up, and the Mediation Participants List.
- (6) Removed reference to list of trained mediators in IRM 8.26.9.2.3.4.3(2); most Appeals technical employees (ATEs) are trained to participate as mediators.
- (7) Added references to Letters 5557, 5558 and 5559 in IRM Exhibit 8.26.9-1, PAM Process Action Steps - OIC & TFRP.
- (8) Revamped IRM Exhibit 8.26.9-1, PAM Process Action Steps - OIC & TFRP, in accordance with 508 compliance rules.
- (9) Modified IRM Exhibit 8.26.9-2, Model Agreement to Mediate - OIC, in accordance with 508 compliance rules and to change Appeals' name from Office of Appeals to Independent Office of Appeals.
- (10) Modified IRM Exhibit 8.26.9-3, Model Agreement to Mediate - TFRP, in accordance with 508 compliance rules and to change Appeals' name from Office of Appeals to Independent Office of Appeals.
- (11) Restructured IRM Exhibit 8.26.9-5, Model Mediation Participants List, in accordance with 508 compliance rules.
- (12) Restructured IRM Exhibit 8.26.9-7, Model Mediator's Report - OIC, in accordance with 508 compliance rules.
- (13) Restructured IRM Exhibit 8.26.9-8, Model Mediator's Report - TFRP, in accordance with 508 compliance rules.

- (14) Updated references from Appeals Tax Policy and Procedure to Appeals Policy throughout this IRM.
- (15) Made editorial changes throughout this IRM.

#### **EFFECT ON OTHER DOCUMENTS**

IRM 8.26.9 supplements Revenue Procedure 2014-63.

#### **AUDIENCE**

Appeals technical employees considering Offer in Compromise and Trust Fund Recovery Penalty cases.

Steven M. Martin  
Director, Case and Operations Support

8.26.9

Post-Appeals Mediation Procedures for Collection Cases

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8.26.9.1  
(09-23-2020)  
**Program Scope and Objectives**

- (1) Purpose: This IRM contains guidance for Appeals technical employees (ATEs) regarding Post-Appeals Mediation (PAM) for collection cases.
- (2) Audience: ATEs considering Offer in Compromise and Trust Fund Recovery Penalty cases.
- (3) Policy Owner: Policy, Planning, Quality and Analysis (PPQA) is under the Director of Case and Operations Support.
- (4) Program Owner: Appeals Policy is the program office responsible for providing technical and procedural guidance to the Appeals organization and is under the Director of PPQA.
- (5) Contact Information: Appeals employees should follow established procedures on How Contact an Analyst. Other employees should contact the Product Content Owner shown on the *Product Catalog Information page for this IRM*.

8.26.9.1.1  
(09-23-2020)  
**Background**

- (1) The Internal Revenue Service Restructuring and Reform Act of 1998 enacted IRC 7123(b)(1), which required the Secretary to prescribe procedures under which a taxpayer or Appeals may request non-binding mediation on any Appeals procedures or issues unresolved at the conclusion of an unsuccessful attempt to enter into either a closing agreement under IRC 7121 or a compromise under IRC 7122.
- (2) Revenue Procedure 2002-44, 2002-26 I.R.B. 10, was published on July 1, 2002, and formally established the PAM program for non-Collection cases.
- (3) Announcement 2008-111, 2008-48 I.R.B. 1224, established a PAM pilot program for Offer in Compromise (OIC) and Trust Fund Recovery Penalty (TFRP) cases. Announcement 2011-6, 2011-4 I.R.B. 433, extended the pilot without changes.
- (4) On December 1, 2008, Appeals initiated a two-year pilot program in eight cities for post-Appeals mediation for Offer in Compromise and Trust Fund Recovery Penalty cases. The pilot was extended in January of 2011 before post-Appeals mediation became permanent December 29, 2014.

8.26.9.1.2  
(09-23-2020)  
**Authority**

- (1) Revenue Procedure 2014-63, 2014-53 I.R.B. 1014, was published December 29, 2014, superseding previous guidance pertaining to PAM. This revenue procedure created a permanent, nationwide OIC and TFRP PAM program.
- (2) IRM 1.2.1.9.1, Policy Statement 8-1, affirms Appeals' commitment to the development and use of alternative dispute resolution (ADR) techniques.

8.26.9.1.3  
(09-23-2020)  
**Responsibilities**

- (1) The Policy analyst shown on the Product Catalog page as the originator is the assigned author of this IRM.

8.26.9.1.4  
(09-23-2020)  
**Program Reports**

- (1) Policy, Planning, Quality and Analysis (PPQA) provides trend and data analyses and detailed summary reports for Appeals.

8.26.9.1.5  
(09-23-2020)

(1) The table below lists common acronyms used in this section:

#### Terms and Acronyms

| Term                                   | Acronym |
|--|---------|
| Alternative Dispute Resolution         | ADR     |
| Appeals Centralized Database System    | ACDS    |
| Appeals Team Manager                   | ATM     |
| Appeals Technical Employee             | ATE     |
| Collection Due Process                 | CDP     |
| Offer in Compromise                    | OIC     |
| Personally Identifiable Information    | PII     |
| Policy, Planning, Quality and Analysis | PPQA    |
| Post-Appeals Mediation                 | PAM     |
| Power of Attorney                      | POA     |
| Trust Fund Recovery Penalty            | TFRP    |

8.26.9.1.6  
(09-23-2020)

(1) IRM 8.26.3, Fast Track Mediation for Collection Cases, contains guidance regarding Fast Track Mediation cases.

#### Related Resources

8.26.9.2  
(03-16-2015)

#### Introduction to Post-Appeals Mediation Program for Collection Cases

- (1) PAM is a part of the Appeals process and enhances voluntary compliance. Mediation is appropriate only after:
  - a. Appeals settlement negotiations are unsuccessful,
  - b. All issues are resolved but for the issue(s) for which mediation is requested, **and**
  - c. The issue(s) for which mediation is requested is/are fully developed.
- (2) Appeals may mediate only those cases under its active consideration, so the taxpayer's written mediation request must be submitted while the case is under consideration by Appeals. See section 4.01 of Revenue Procedure 2014-63 and IRM 8.26.9.2.3 below.
- (3) Mediation is a non-binding process that uses the services of a mediator as a neutral party to help Appeals and the taxpayer reach a negotiated settlement. To accomplish this goal, the mediator:
  - Acts as a facilitator
  - Assists in defining the issues
  - Assists in identifying possible barriers or roadblocks that may prevent settlement
  - Promotes settlement negotiations between Appeals and the taxpayer
- (4) The mediator does not have settlement authority and will not render a decision regarding any issue in dispute.

8.26.9.2.1  
(09-23-2020)  
**PAM Eligibility - OIC**

- (1) Mediation is optional for both the taxpayer and Appeals. Appeals is committed to mediation as part of its overall ADR program, but mediation does not provide Appeals any additional settlement authority beyond the traditional Appeals process. Appeals also has a responsibility to ensure its ADR programs and the participating cases and issues are consistent with sound tax administration. For these reasons, not every case or issue is eligible for PAM.
- (2) Mediation is available for both legal and factual issues. However, mediation is not the place to consider a new issue or to develop an undeveloped or under-developed issue.
- (3) Provided all facts are known by both parties, OIC cases or issues that would generally be appropriate for mediation include:
  - a. The value of a taxpayer's assets, including those held by a third party
  - b. The value of dissipated assets and what amount should be included in the overall determination of reasonable collection potential
  - c. Whether the taxpayer meets the criteria for deviating from national and/or local expense standards
  - d. A taxpayer's proportionate interest in jointly held assets
  - e. Projections of future income based on calculations other than current income
  - f. The calculation of a taxpayer's future ability to pay when living expenses are shared with a non-liable person
  - g. Certain Doubt as to Liability cases (see also Paragraph (6) below)
  - h. Other factual determinations, such as whether a taxpayer's contributions into a retirement savings account are either discretionary or mandatory as a condition of employment

See section 5.01 of Revenue Procedure 2014-63.

- (4) For cases with liabilities of \$50,000 or more, any settlement or agreement reached through mediation remains subject to the required legal opinion from the Office of Chief Counsel pursuant to IRC 7122(b). If the OIC requires a legal opinion, Appeals will forward the case to Area Counsel after the conclusion of the mediation process. If Counsel concludes the legal requirements for an offer are not met, the offer may still be accepted by Appeals. See Section 11.03 of Rev. Proc.2014-63, IRM 8.23.4.3.2, Counsel Review of Acceptance Recommendations, and IRM 5.8.8.13, Legal Opinion of Counsel.
- (5) Section 4.04 of Revenue Procedure 2014-63 lists types of cases or issues for which mediation will not be available, including:
  - a. An issue designated for litigation or docketed in any court
  - b. An issue for which mediation would not be consistent with sound tax administration

**Example:** A taxpayer owes \$125,000 and is offering \$40,000 to settle the tax debt. During negotiations with Appeals, the Appeals Technical Employee (ATE) determined reasonable collection potential (RCP) was \$195,000. Part of the overall RCP was a determination by the settlement officer that the taxpayer had net realizable equity in her residence of \$30,000 based upon a Fair Market Value of \$200,000 (yielding a Quick Sale Value of \$160,000) with a prior secured mortgage interest of \$130,000.

The only issue for which the taxpayer seeks mediation is that she believes her residence has a Fair Market Value of \$175,000 (yielding a Quick Sale Value of \$140,000 and thus net realizable equity of \$10,000 for RCP purposes). The taxpayer and Appeals agree on all other aspects of the RCP calculation. Even though the value of the taxpayer's residence is an issue over which Appeals would generally agree to mediate, it would not be consistent with sound tax administration to do so in this instance because even if Appeals fully conceded its position on the value of the residence, it would not impact the overall determination that reasonable collection potential exceeds the taxpayer's liability.

- c. Frivolous issues
  - d. Cases where the taxpayer did not act in good faith during settlement negotiations, e.g., failed to respond to document requests, failed to respond timely to offers to settle, or failed to address arguments and precedents raised by Appeals
- (6) Sections 4.04 and 5.02 of Revenue Procedure 2014-63 further provides that mediation is not available for:
- a. Cases in which the taxpayer has the ability to pay in full based on the unadjusted financial information submitted by the taxpayer, except where economic hardship conditions exist
  - b. Cases in which the taxpayer declines to amend or increase the offer despite having no specific disagreement with the valuations, figures, or methodology used by Appeals in determining reasonable collection potential
  - c. Cases in which the disputed issue is explicitly addressed in IRS guidance or established authority
- Example:** A taxpayer submitted a PAM request listing the settlement officer disallowing a \$150 monthly payment towards a \$6,000 unsecured consumer electronics retailer debt. The taxpayer and Appeals agree on all other aspects of the RCP calculation. Payments toward an unsecured debt of this nature is not considered a necessary living expense per IRM 5.15.1, Financial Analysis Handbook, and IRM 5.8.5, Offer in Compromise, Financial Analysis. The instructions in Form 656-B, Form 656 Booklet, Offer in Compromise, also state unsecured debt payments are not generally allowed. Because the issue for which the taxpayer seeks mediation is explicitly addressed in established authority, Appeals would not agree to mediation in this instance.
- d. Cases in which the taxpayer has already attempted to resolve the matter through Fast Track Mediation
  - e. Cases worked solely at an Appeals campus site
  - f. An OIC submitted as an alternative to collection in a Collection Due Process (CDP) or equivalent hearing case
  - g. Cases in which the issue of liability was previously determined by Appeals



- h. Cases in which IRM 1.2.2.6.1, Delegation Order 5-1 (Rev. 5), To Accept, Reject, Return, Terminate or Acknowledge Withdrawals of Offers in Compromise, requires a level of approval higher than that of the Appeals Team Manager
- (7) Taxpayers may request mediation on more than one issue. Depending on the issues for which mediation is requested, Appeals may agree to mediate one and not agree to mediate another.

**Example:** Appeals received a request for mediation listing the value of the taxpayer's motor home and inclusion of his daughter's college expenses as the issues. The daughter has no special needs. If Appeals conceded the value of the motor home to the taxpayer's figure, an acceptable offer could be reached. The value of the motor home is an issue over which Appeals may agree to mediate, but IRM 5.8.5, Offer in Compromise, Financial Analysis, explicitly states that the daughter's college expenses are not allowable as a necessary living expense. Appeals would generally agree to mediate the issue of the value of the motor home, but would not agree to include the daughter's college expenses as part of the mediation.

**Note:** If the taxpayer agrees, Appeals may proceed to mediation over the value of the motor home only. If the taxpayer does not agree to mediate just the motor home value issue, then Appeals must deny the mediation request in full because the daughter's college expenses is not an issue eligible for mediation.

## 8.26.9.2.2 (03-16-2015) PAM Eligibility - TFRP

- (1) Mediation is optional for both the taxpayer and Appeals. Appeals is committed to mediation as part of its overall ADR program, but mediation does not provide Appeals any additional settlement authority beyond the traditional Appeals process. Appeals also has a responsibility to ensure its ADR programs and the participating cases and issues are consistent with sound tax administration. For these reasons, not every case or issue is eligible for PAM.
- (2) TFRP PAM is available for both legal and factual issues. However, mediation is not the place to consider a new issue or to develop an undeveloped or underdeveloped issue.
- (3) Both pre-assessment (Letter 1153) and post-assessment (claim) TFRP cases are eligible for mediation.
- (4) Provided all facts are known by both parties, TFRP cases or issues that would generally be appropriate for mediation include:
  - a. Whether a person was required to collect, truthfully account for, and pay over income, employment or excise taxes
  - b. Whether a responsible person willfully failed to collect or truthfully account for and pay over such tax, or willfully attempted in any manner to evade or defeat payment of such tax
  - c. Whether a taxpayer sufficiently designated a payment to the trust fund portion of the unpaid tax
  - d. Whether the taxpayer provided sufficient corporate payroll records to establish that a corporate tax deposit was in the amount required by

## 8.26 Alternative Dispute Resolution (ADR) Program

Treas. Reg. 31.6302-1(c) and thus was considered a designated payment to be applied to both the trust fund and non-trust fund portions of the employment taxes associated with that specific payroll. See the Note to IRM 5.7.4.3 (9), Calculating the TFRP.

See section 6.01 of Revenue Procedure 2014-63.

- (5) Section 4.04 of Revenue Procedure 2014-63 lists types of cases or issues for which mediation is not available, including:
- a. An issue designated for litigation or docketed in any court
  - b. Issues for which mediation would not be consistent with sound tax administration, e.g., those which Appeals has no ability to settle, such as arguments based upon something other than responsibility, willfulness or the TFRP amount. Examples include:

**Example:** Officer A requested mediation in a proposed TFRP assessment case. During the appeals process, Officer A raised no specific responsibility or willfulness arguments and did not dispute the amount of the proposed TFRP assessment. Officer A's only argument is that Officer B, who did not contest his liability for the TFRP, is more responsible and therefore IRS should go after Officer B instead. Liability for the TFRP under IRC 6672 is based strictly on the merits of each individual's responsibility and willfulness. If Officer A meets the statutory responsibility and willfulness requirements and raises no arguments to dispute such during his appeal, then simply saying someone else is more responsible is not an issue that Appeals has an ability to settle and Appeals will not agree to mediation on this issue.

**Example:** Officer C requested mediation in a TFRP claim case arguing that she was not directly involved in making federal tax deposits. The case file, however, shows she was an officer and a shareholder, signed 75% of all checks and almost all of the payroll checks, exercised her authority to determine which creditors would be paid, hired and fired employees; and was fully aware of the unpaid taxes as they accrued. In this instance, Appeals determined that even if it conceded that she wasn't directly involved in making federal tax deposits, the issues of responsibility and willfulness were still well established and there were no hazards of litigation. Even though Appeals would generally agree to mediate specific aspects of responsibility, it would not be consistent with sound tax administration to do so in this instance because the disputed issue doesn't have a sufficient impact on the overall determination of liability under IRC 6672.

**Example:** Officer D has requested mediation in a proposed TFRP assessment case. During the appeals process, the Power of Attorney (POA) for Officer D raised no specific responsibility or willfulness arguments and did not dispute the amount of the proposed assessment. The POA's only argument is that IRS should not assess the TFRP because it's not collectible. Non-assertion determinations based upon collectibility are

# Post-Appeals Mediation Procedures for Collection Cases 8.26.9

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discretionary to Collection under IRM 5.7.5 and are not appealable or subject to mediation. See Revenue Procedure 2014–63, Section 6.02.

- c. Frivolous issues
- d. Cases where the taxpayer did not act in good faith during settlement negotiations. Examples of this within the context of a TFRP case may include cases in which:

| Example     | Description   | Eligible for Mediation?         |
|-------------|---|---------------------------------|
| 1           | Taxpayer did not participate in the Appeals process by failing to show up for the scheduled conference and/or failing to respond to the Appeals letter in which the conference date and time were scheduled.<br><br><b>Example:</b> After initial review of the TFRP case, ATE Pike sent out a letter scheduling the conference for March 30. The taxpayer was not available when Pike called on March 30 and did not contact Appeals to postpone or reschedule the conference. | No                              |
| 2           | Taxpayer failed to respond to document requests or failed to adequately provide supplemental information or documentary evidence requested by Appeals   | No                              |
| 3           | Taxpayer failed to respond timely to offers made by Appeals to settle   | No                              |
| 4           | Taxpayer failed to address arguments and precedents raised by Appeals   | No                              |
| 5           | Taxpayer clearly <b>refused</b> to submit a Form 4180, Report of Interview with Individual Relative to Trust Fund Recovery Penalty or Personal Liability for Excise Taxes, to Collection  | See below for specific examples |
| 5 Example A | The ICS history clearly indicates revenue officer Salmon attempted to secure a Form 4180 interview with Officer A, but the POA for Officer A stated they would not agree to a Form 4180 interview. In this instance, the taxpayer failed to negotiate in good faith and Appeals would not generally agree to mediate.   | No                              |
| 5 Example B | There is no indication in the ICS history or elsewhere of the revenue officer asking the taxpayer for a Form 4180 interview. In this instance, the taxpayer <b>did not</b> fail to negotiate in good faith and thus is eligible for post-Appeals mediation.   | Yes                             |

| Example        | Description  | Eligible for Mediation? |
|----------------|--|-------------------------|
| 5<br>Example C | The ICS history indicates revenue officer Salmon and Officer B were scheduled to meet for a Form 4180 interview on May 11. On May 10, Officer B contacted revenue officer Salmon to cancel the meeting because of a personal matter and asked the revenue officer to reschedule the meeting. Revenue officer Salmon agreed but closed the corporate case out three weeks later and recommended assessing the TFRP against Officer B based on the Form 4180 interviews of other officers as well as other information in the file. In this instance, the taxpayer <b>did not</b> fail to negotiate in good faith and thus is eligible for post-Appeals mediation. The revenue officer could have rescheduled a time for the Form 4180 as requested by the taxpayer but independently decided such was not needed. | Yes                     |

- (6) Taxpayers may request mediation on more than one issue. Depending on the issues for which mediation is requested, Appeals may agree to mediate one and not agree to mediate another.

**Example:** In addition to arguing that IRS should collect the underlying employment tax from the corporation, Officer C in the above example also contends that her actions as vice president were not willful because she was at all times acting solely at the direction of the president. Appeals would generally agree to mediate the specific factual issue as it relates to willfulness, but would not agree to mediate the issue of IRS collecting the underlying employment tax from the corporation. If the taxpayer agrees, Appeals may proceed to mediation over the specific willfulness argument. If the taxpayer does not agree to mediate only the specific willfulness issue, then Appeals must deny the mediation request in full because the argument that the taxpayer cannot be held liable for the TFRP because IRS should have collected the underlying employment tax from the corporation is not an issue that is eligible for mediation.

8.26.9.2.3  
(09-23-2020)

**Post-Appeals Mediation  
Procedures for ATEs -  
OIC & TFRP**

- (1) Either the taxpayer or Appeals may submit a request for mediation after consulting with the other party.
- (2) Publication 4167, Appeals - Introduction to Alternative Dispute Resolution, explains the mediation process and is enclosed with Letter 5576, Appeals Offer in Compromise Acknowledgement and Conference, and Letter 5157, Non-docketed Acknowledgement and Conference.

**Note:** Be sure the Case Activity Record (CAR) documents Pub 4167 was included as an enclosure with the UAL. See IRM 1.4.28.4.1, Assignment of Work Units and Initial Case Actions.

- (3) Per sections 4.01 and 7.02 of Revenue Procedure 2014-63, cases are eligible for mediation while they are under consideration by Appeals; if a written mediation request is received.

- (4) Section 7 of Revenue Procedure 2014-63 details the manner in which a taxpayer must formally request mediation. There is no form to complete, but the mediation request must be in writing and generally contain the following:
- a. The taxpayer's name, Taxpayer Identification Number (TIN), address, and the name, title, address and telephone number of a person to contact
  - b. The name of the ATM and/or ATE
  - c. The tax period(s) involved
  - d. A description of the issue(s) for which the taxpayer requests mediation with sufficient details for what the taxpayer believes should be used to determine the appropriate settlement amount. For OIC cases, this includes both the specific dollar value for each asset, encumbrance, income or expense item, and the basis by which each specific dollar value was determined. For TFRP cases, this includes sufficient details to support the taxpayer's position as to why he/she is not responsible, actions were not willful, and/or why the TFRP amount should be changed
  - e. The request for a non-IRS co-mediator, if so desired
  - f. A representation that the issue is not excluded in Revenue Procedure 2014-63

**Note:** A written mediation request received while the case is under consideration by Appeals is considered acceptable even if it doesn't contain all or most of the above information. All required information will be obtained through the standard pre-mediation session process, so Appeals will consider the merits of a written document that specifically asks for mediation. See paragraph (7) below for information on receipt of incomplete mediation requests.

**Reminder:** Notify the ATM of a request for mediation if the case is closed (i.e., no longer under consideration by Appeals). Fax or email a copy of both the written mediation request and the denial letter to the Appeals Policy OIC/TFRP PAM program analyst.

- (5) To enable Appeals to determine whether to agree to mediate, the taxpayer needs to:
- a. Identify the specific issue(s) he/she disputes
  - b. Provide the details of his/her position with regard to the disputed issue, including the specific dollar amount or value associated with that position, and
  - c. Provide the basis or reason(s) for such position
- (6) If the taxpayer submits a mediation request before settlement discussions are complete or before Appeals is ready to make a decision on the case, the request is premature but still valid. Revenue Procedure 2014-63 simply requires a written mediation request. Input ACDS feature code 'MD' on the WUNO and fax or email a copy of the mediation request to the Appeals Policy OIC/TFRP PAM program analyst advising in the fax cover or email that the request is premature and settlement discussions are still ongoing. Appeals must hold open the mediation request until settlement discussions are complete.
- a. If a settlement is negotiated, have the taxpayer submit a written statement withdrawing the mediation request.

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- b. If a settlement cannot be negotiated, contact the Appeals Policy OIC/TFRP PAM program analyst to discuss mediation eligibility. See IRM 8.26.9.2.3.2 for full mediation processing procedures.
- (7) If the taxpayer submits a mediation request that does not contain sufficient information to convey what issues the taxpayer wants to mediate, the request is still valid per Revenue Procedure 2014-63. Input ACDS feature code 'MD' on the OIC WUNO and fax or email a copy of the mediation request to the Appeals Policy OIC/TFRP PAM program analyst advising in the fax cover or email that you are working with the taxpayer to "perfect" the mediation request. Contact the taxpayer and advise that Appeals does not have enough information to decide whether to agree to mediation and allow no more than 14 days to provide the necessary details outlined in section 7 of Revenue Procedure 2014-63.
  - a. If the taxpayer provides the necessary details, contact the Appeals Policy OIC/TFRP PAM program analyst to discuss mediation eligibility. See IRM 8.26.9.2.3.2 for full mediation request processing procedures.
  - b. If the taxpayer does not provide the necessary details, the ATM will first discuss the case with the Appeals Policy OIC/TFRP PAM program analyst. If Appeals Policy concurs, the ATM will issue a letter denying the mediation request and fax or email a copy of the letter to the Appeals Policy OIC/TFRP PAM program analyst..

8.26.9.2.3.1  
(09-23-2020)

### Headquarters Involvement (OIC & TFRP PAM)

- (1) All mediation requests under Revenue Procedure 2014-63, or any successor guidance, require Appeals Policy OIC/TFRP PAM program analyst involvement.
- (2) The role of the Appeals Policy OIC/TFRP PAM program analyst includes:
  - Providing program and technical guidance to Appeals field personnel
  - Ensuring Appeals' compliance with Revenue Procedure 2014-63, and IRM 8.26 policies and procedures
  - Assisting in identifying issues and determining whether the issues are eligible for mediation
  - Participating as the Appeals subject matter expert in the pre-mediation administrative conference call during which the mediation process itself will be discussed and Agreement to Mediate negotiated. See IRM 8.26.9.2.3.4 and section 8 of Revenue Procedure 2014-63
  - Assisting Appeals and the taxpayer in the selection of the mediator (see section 9.01 of Revenue Procedure 2014-63) by providing information concerning eligible Appeals mediators and available non-IRS co-mediators
  - Assisting in drafting the Agreement to Mediate and Mediation Participants List
  - Reviewing the Agreement to Mediate and Mediation Participants List, as needed, before the ATM signs
- (3) The ultimate decision as to whether Appeals will agree to mediate a particular case is made by the appropriate Appeals manager after consulting with the Appeals Policy OIC/TFRP PAM program analyst. The ATM is authorized to deny the mediation request. The Appeals Area Director must approve acceptance into PAM.



8.26.9.2.3.2  
(09-23-2020)  
**Processing Receipt of  
PAM Request**

- (4) The Appeals Policy OIC/TFRP PAM program analyst is responsible for gathering data and feedback so Appeals can monitor and assess program effectiveness.
- (1) Upon receipt of a request for mediation, thoroughly review Revenue Procedure 2014-63 and IRM 8.26.9.
- (2) Section 7.02 of Revenue Procedure 2014-63 requires a written mediation request. If the taxpayer verbally asks for mediation, inform him/her that PAM requires a written request and provide general PAM process information. Refer the taxpayer to Revenue Procedure 2014-63. See IRM 8.26.9.2.3 for information and instructions concerning when a taxpayer must submit a formal mediation request.
- (3) If the mediation request is submitted directly to the ATE, promptly inform the ATM.
- (4) Upon receipt of a written mediation request, the ATM or ATE will fax or email a copy to the Appeals Policy OIC/TFRP PAM program analyst. The program analyst will contact the ATM to set up a time to discuss the case's mediation eligibility and provide general mediation policies and procedures. The ATM and ATE should both be at this meeting. The ATM serves as the Appeals decision maker and the ATE serves as the technical expert on the case itself.

**Note:** Fax or email a copy of the written mediation request to the Appeals Policy OIC/TFRP PAM program analyst even if the request involves a CDP OIC or was made when the case was no longer under consideration by Appeals.

- (5) The ATE inputs ACDS Action Code 'MI' (mediation in). This will systemically add feature code 'MD' to the WUNO. If there are multiple WUNOs, be sure to input Action Code 'MI' to each WUNO.

**Note:** Do not input the 'MI' Action Code or 'MD' feature code if the mediation request was received late or if the OIC is part of a CDP case.

- (6) Section 7.03 of Revenue Procedure 2014-63 calls for the ATM to respond to the taxpayer and ATE within two (2) weeks after Appeals received the formal mediation request.

8.26.9.2.3.3  
(09-23-2020)  
**Mediation Request  
Denied**

- (1) If the mediation request is denied, the ATM will promptly take the following actions:
- Inform the taxpayer of the decision in writing via Letter 5557, Post Appeals Mediation Denial - OIC, or Letter 5558, Post Appeals Mediation Denial - TFRP
  - Advise the ATE of the decision
  - Send a copy of the denial letter, via email or fax, to the Appeals Policy OIC/TFRP PAM program analyst
- (2) The ATM's denial of a mediation request is not subject to either further review by Appeals or judicial review. Although no formal appeal procedure exists for the denial of a mediation request, the taxpayer may request a conference with

## 8.26 Alternative Dispute Resolution (ADR) Program

the ATM to discuss the denial. The Appeals Policy OIC/TFRP PAM program analyst is available to take part in this conference. See section 7.03 of Revenue Procedure 2014-63.

- (3) The ATE inputs ACDS Action 'MO' (mediation out) the date the mediation denial letter is issued.

**Note:** ACDS will not allow input of Action Code 'AC-FR' if there is an open 'MI' on the WUNO. A system message appears stating Action Code 'MO' must be input to make the 'AC-FR' available.

- (4) The ATE may proceed with closing out the case per standard procedures..

8.26.9.2.3.4  
(09-23-2020)

### Mediation Request Approved

- (1) The Appeals Area Director must approve the acceptance of all cases into PAM. Upon approval of the mediation request, the ATM will promptly inform the taxpayer, the ATE and the Appeals Policy OIC/TFRP PAM program analyst and schedule the pre-mediation conference call. The purpose of this conference call is to:
  - Go over the mediation process and answer any questions the taxpayer may have about the process so the parties don't have to spend time doing so at the mediation session
  - Discuss the selection of a mediator
  - Discuss or negotiate the mediation participants
  - Negotiate the terms of the Agreement to Mediate

- (2) The mediation session will take place in the Appeals office where either the ATM or the ATE who worked the case is/are located.

**Example:** A settlement officer located in Louisville considered an OIC from taxpayer who resides in Cheyenne, Wyoming and has a POA located in Denver. The Appeals Team Manager is located in Indianapolis. If Appeals agrees to mediate, the mediation session will be at either the Louisville or Indianapolis Appeals office.

- (3) Either party may withdraw from the PAM process at any time prior to reaching a settlement of the issues being mediated by notifying the other party and the mediator in writing. See IRM 8.26.9.2.3.5 for additional details on withdrawing from the PAM process.

8.26.9.2.3.4.1  
(09-23-2020)

### Agreement to Mediate

- (1) The taxpayer and Appeals will enter into a formal and written agreement to mediate. See IRM Exhibit 8.26.9-2 for an OIC Model Agreement to Mediate, and IRM Exhibit 8.26.9-3 for a TFRP Model Agreement to Mediate. The same Model Agreements to Mediate are also available as Word documents on the *Post-Appeals Mediation (Collection Cases) web page*.
- (2) The Agreement to Mediate will be negotiated during the pre-mediation conference call described in the preceding section. The Appeals Policy OIC/TFRP PAM program analyst will work closely with the ATM in preparing the Agreement to Mediate. Any deviations from the Model Agreement to Mediate require the approval of the Director of PPQA.
- (3) The Agreement to Mediate should:



- a. Be as concise as possible
    - b. Precisely specify the issue(s) that the parties have agreed to mediate
    - c. Identify the date on which the parties agree the mediation session will be held and its location
    - d. Set forth any limitation on the number, identity or participation of the mediation session participants
    - e. Prohibit ex parte contacts between the mediator and the parties. Additional information on ex parte contact is found in IRM 8.26.9.2.3.4.7.
  - (4) The Agreement to Mediate should be completed as soon as practical but no more than three (3) weeks after Appeals notified the taxpayer that the mediation request was approved. See section 8.01 of Revenue Procedure 2014-63.
  - (5) The ATM will sign the Agreement to Mediate on behalf of Appeals after submitting a final draft of the Agreement to the Appeals Policy OIC/TFRP PAM program analyst for review and approval. Once approved by Appeals Policy and signed by the ATM, fax the following to the taxpayer/POA:
    - Letter 5559, Pre-Mediation Conference Call Follow-Up
    - Agreement to Mediate
    - Consent to Disclose Tax Information
    - Mediation Participants List
  - (6) Give the taxpayer no more than seven (7) calendar days to sign and return the Agreement to Mediate and Consent to Disclose Tax Information. Also advise that Appeals may withdraw from mediation if taxpayer doesn't respond by the deadline.
  - (7) The taxpayer must sign a Consent to Disclose Tax Information to ensure all IRS personnel at the mediation session may discuss and disclose the taxpayer's return or return information (as defined by IRC 6103(b)(2)) to all persons in attendance at the mediation session. See Exhibit 8.26.9-4 for the Consent to Disclose Tax Information. The same Consent to Disclose Tax Information is available as a Word document on the *Post-Appeals Mediation (Collection Cases) web page*.
- Note:** The consent to disclose tax information provision was originally part of the Agreement to Mediate. When Revenue Procedure 2009-44 was published in October of 2009, it was extracted from the Agreement to Mediate and listed as a separate Exhibit 4.
- (8) Fax or email copies of the signed Agreement to Mediate and Consent to Disclose Taxpayer Information to the Appeals Policy OIC/TFRP PAM program analyst.
  - (9) The mediation session will occur as soon as practical but no more than 60 days after the Agreement to Mediate is signed by both parties. See section 8.01 of Revenue Procedure 2014-63.
  - (10) Per section 8.01 and 10.04 of Revenue Procedure 2014-63, Appeals may withdraw from the mediation process if the taxpayer is unable to adhere to the above time frames without reasonable cause. See IRM 8.26.9.2.3.5 for additional details on withdrawing from the mediation process.

## 8.26 Alternative Dispute Resolution (ADR) Program

### 8.26.9.2.3.4.2 (03-16-2015) PAM Participants

- (1) The taxpayer and Appeals are the parties to the mediation process. Absent an agreement to the contrary, the taxpayer and Appeals must each have at least one participant with decision-making authority attending the mediation session. The decision-maker for Appeals is the ATM.

**Note:** Section 11.03 of Revenue Procedure 2014-63 and the Agreement to Mediate contain a standard provision by which any settlement or agreement reached through mediation on a case with a liability of \$50,000 or more remains subject to Counsel's opinion required by IRC 7122(b).

- (2) In addition to the required decision-makers, the taxpayer and Appeals are generally encouraged to include those persons with information and expertise that would be useful to the decision-makers and the mediator. The Agreement to Mediate will set mutually agreed upon limits on the number, identity or participation of participants. Appeals is not required to accept all participants proposed by the taxpayer.
- (3) In order to minimize the possibility of a last-minute disqualification of the mediator, the taxpayer and Appeals must notify the mediator and the other party of the participants on their mediation team no later than two (2) weeks before the mediation session.
- (4) See Exhibit 8.26.9-5 for a Model Mediation Participants List. The same Model Participants List is available as a Word document on the *Post-Appeals Mediation (Collection Cases) web page*.

### 8.26.9.2.3.4.3 (09-23-2020) Selection of Appeals Mediator

- (1) PAM requires a mediation-trained Appeals employee in each case. The parties will discuss selection of the Appeals mediator during the pre-mediation conference call described above. See IRM 8.26.9.2.3.4.
- (2) The taxpayer and the ATM will select the Appeals mediator. The Appeals mediator may be from the same Appeals office or geographical area where the case is assigned, but not from the same team or group (see section 9.01 of Revenue Procedure 2014-63). The purpose of this is to avoid a situation where the decision-maker for Appeals is also the supervisor of the Appeals mediator.
- (3) The mediator may be an appeals officer or a settlement officer who is trained in mediation techniques.
- (4) Appeals is responsible for all costs associated with the Appeals mediator.
- (5) Due to the fact that the Appeals mediator is an IRS employee, he or she will provide the taxpayer with a written statement confirming:
  - a. His or her proposed service as a mediator,
  - b. That he or she is a current IRS employee,
  - c. That he or she has received training emphasizing his or her role as a fair and impartial participant in the mediation process,
  - d. That an inherent conflict or perception of an inherent conflict results from his or her continued status as an IRS employee, and
  - e. That this will not interfere in his or her ability to impartially facilitate mediation of the case

**Note:** See Exhibit 8.26.9-6 for a Model Impartiality Affirmation Statement for Appeals Mediators. The Impartiality Affirmation Statement is also available as

a Word document on the *Post-Appeals Mediation (Collection Cases)* web page.

8.26.9.2.3.4.4  
(03-16-2015)  
**Selecting a Non-IRS  
Co-Mediator**

- (1) As indicated in the previous section, PAM requires the use of an Appeals employee as the mediator in every case. However, the taxpayer may elect to also use the services of a non-IRS co-mediator. The taxpayer and the ATM should make the selection of a non-IRS co-mediator from any local or national organization that provides a roster of neutrals. Criteria for selecting the non-IRS co-mediator may include:
  - Completion of mediation training,
  - Previous mediation experience, or
  - A substantive knowledge of tax law or industry practices
- (2) Section 12.04 of Revenue Procedure 2014-63 contains details concerning the disqualification of the non-IRS co-mediator from representing the taxpayer before IRS in any pending or future action that involves the issues that are the subject of the mediation and the extent to which the non-IRS co-mediator's firm (if any) will be disqualified.
- (3) The taxpayer is solely responsible for all costs and expenses associated with the non-IRS co-mediator.
- (4) Review sections 9.01 and 12.04 of Revenue Procedure 2014-63 for further provisions on non-IRS co-mediators.

8.26.9.2.3.4.5  
(03-16-2015)  
**Discussion Summary**

- (1) The taxpayer and Appeals will each prepare a summary of the issues for consideration by the mediator. The discussion summary should include:
  - Details, including the proposed dollar amount, net realizable equity in assets, level of income, or amount of allowable expense associated with each issue that is the subject of the mediation
  - Arguments in support of the party's position
- (2) The discussion summary provided by the ATE in a Doubt as to Collectibility offer case should also include the full Income/Expense (IET) and Asset/Equity (AET) Tables used to determine the final reasonable collection potential amount.
- (3) Per section 10.01 of Revenue Procedure 2014-63, the taxpayer and Appeals must submit the discussion summaries to the mediator and each other no later than two (2) weeks prior to the scheduled mediation session.

8.26.9.2.3.4.6  
(03-16-2015)  
**Confidentiality**

- (1) The mediation process is confidential, so information concerning any dispute resolution communication is confidential and may not be disclosed by any party, participant, observer or mediator except as provided by statute, such as in IRC 6103 and 5 U.S.C. section 574. Returns and return information may only be disclosed pursuant to IRC 6103.

**Note:** A dispute resolution communication includes all oral and written communications prepared for the purposes of a dispute resolution proceeding, which includes post-Appeals mediation. See 5 U.S.C. section 571(5).

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- (2) In executing (signing) the Consent to Disclose Tax Information, the taxpayer consents under IRC 6103(c) to the disclosure by the IRS of his/her return and "return information" (as defined by IRC 6103(b)(2)) incident to the mediation to the mediator and any participants or observers identified in writing in the initial list of participants and to any subsequent participants or observers identified in writing by the parties.
- (3) If the Consent to Disclose Tax Information is signed by a person pursuant to a power of attorney, that power of attorney must specifically state that the taxpayer has authorized the power of attorney to, in turn, authorize IRS to disclose the taxpayer's return and return information to third parties.

**Caution:** The Form 2848, *Power of Attorney and Declaration of Representative*, **does not** authorize a representative to execute consents that will allow the IRS to disclose tax return or return information to a third party **unless** this authority is specifically delegated to the representative in section 5 of the Form. If this authority is not specifically delegated to the representative in section 5 of Form 2848, the Agreement to Mediate must be signed by the taxpayer(s).

- (4) A copy of Form 2848, *Power of Attorney and Declaration of Representative*, must be attached to the Agreement to Mediate.
- (5) Confidentiality and disclosure provisions of the Internal Revenue Code, including IRC 6103, IRC 7213, and IRC 7431 apply to:
  - IRS and Treasury employees who participate in or observe the mediation process in any way, and
  - Any person invited by IRS to participate or observe who is under contract to the IRS pursuant to IRC 6103(n)
- (6) The required consent provisions are in the Consent to Disclose Tax Information and the required confidentiality provisions are stated in the Agreement to Mediate.

8.26.9.2.3.4.7  
(03-16-2015)

### Ex Parte Communication (PAM)

- (1) Unsolicited ex parte contact with the mediator by either party outside of the mediation session is prohibited. This ensures the mediator does not receive information of which the other party may be unaware and thus unable to respond to or rebut.
- (2) The prohibition against ex parte communication does not preclude the mediator from contacting a party, or preclude the contacted party from responding to a question or request posed by the mediator. Supplemental information submitted to the mediator must be concurrently shared with the other party.

**Example:** The taxpayer and Appeals submitted their respective discussion summaries to the mediator and the other party on May 9. The mediation session is scheduled for May 28. Upon receiving and reviewing the taxpayer's discussion summary, the settlement officer believes the taxpayer misrepresented an important fact and wants to talk with the mediator about the matter before the mediation session. The settlement officer is precluded from initiating ex parte contact with the mediator in this instance.

**Example:** Same facts as above except that upon reviewing both discussion summaries, the mediator wants some additional documentation that was mentioned in the settlement officer's summary. The mediator may contact either party to ask questions or request additional information without violating the ex parte contact provisions. The supplemental information provided by the settlement officer to the mediator in this instance must be concurrently sent to the taxpayer.

8.26.9.2.3.5  
(03-16-2015)  
**PAM Withdrawal**

- (1) Either party may withdraw from the mediation process at any time by notifying the other party and the mediator in writing. See section 10.04 of Revenue Procedure 2014-63.
- (2) As indicated in IRM 8.26.9.2.3.4.1, Appeals may withdraw from the mediation process if the taxpayer is unable to adhere to time frames without reasonable cause.

**Example:** Appeals received a request for mediation on July 9 and agreed to mediate on July 16. The Agreement to Mediate was signed on July 25. The parties agreed to August 19 for the date of the mediation session, meaning each party must submit their respective Mediation Participants Lists and Discussion Summaries to the mediator and the other party no later than August 5. Appeals submitted its required documents on July 31. On August 4, the settlement officer contacted the POA regarding the taxpayer's Participants List and Discussion Summary. She indicated she forgot and assured Appeals she would have them in the mail that day. On August 11, the ATM contacted the POA again about the required documents. She said she got tied up with other matters but was almost done and would just bring them to the August 19 mediation session. The ATM discussed the matter first with the Appeals Policy OIC/TFRP PAM program analyst and then with the Area Director. The ATM then advised the POA that Appeals was withdrawing from the mediation process because she did not adhere to the required time frames. The ATM notified the mediator, the Area Director and the Appeals Policy OIC/TFRP PAM program analyst. The settlement officer closed out the case by sustaining rejection of the offer.

- (3) The ATE inputs ACDS Action Code 'MO' on the date either Appeals or the taxpayer withdraws from the mediation process.

8.26.9.2.3.6  
(09-23-2020)  
**Mediator's Report**

- (1) At the conclusion of the mediation process, the mediator will prepare a brief written report summarizing the disputed issues and the agreements reached, if any. See IRM Exhibit 8.26.9-7 for a Model Mediator's Report - OIC, and IRM Exhibit 8.26.9-8, for a Model Mediator's Report - TFRP. The same Model Mediator's Reports are available as Word documents on the *Post-Appeals Mediation (Collection Cases) web page*.
- (2) The report must be prepared regardless of the outcome of the mediation. If an agreement on a disputed issue is reached through mediation, it's important for the Mediator's Report to accurately reflect the details of the agreement. The report must be signed by each party and the mediator.

## 8.26 Alternative Dispute Resolution (ADR) Program

8.26.9.2.3.7  
(03-16-2015)

### Appeals Procedures Apply (PAM)

- (3) A copy of the report must be sent to the Appeals Policy OIC/TFRP PAM program analyst by the Appeals mediator, the ATM, or the ATE whose case was mediated.
- (1) At the conclusion of the mediation session, the ATE inputs ACDS Action Code 'MO' (mediation out) to the WUNO.
- (2) If Appeals and the taxpayer reach an agreement on some or all of the disputed issues through the mediation process resulting in an agreement on an acceptable offer amount, the ATE will prepare an Amended Form 656, Offer in Compromise. If possible or practical, prepare the Amended Form 656 and ask the taxpayer to sign the amended offer while the parties are still gathered at the mediation session.
- (3) If the offer is a TIPRA offer (submitted on or after July 16, 2006), review IRM 8.23.3.4, Evaluation of Offers in Compromise, Amended Offers, to determine whether the taxpayer needs to submit a partial payment with the amended offer. If so, the taxpayer may not be able to submit an amended offer at the mediation session and may need time to get funds in order before submitting the amended offer. The ATE should still prepare the Amended Form 656 and make sure everyone is in agreement with its content before ending the mediation session. Give the unsigned Amended Form 656 to the taxpayer and agree on a reasonable time frame for the taxpayer to return the amended offer with the required partial payment, generally no more than 15 calendar days. Be sure to warn the taxpayer that Appeals must sustain rejection of the offer if the required amended offer and/or TIPRA payment is not received (see IRM 8.23.3.4). If the taxpayer does not provide the necessary amended offer and/or TIPRA payment, proceed with closing out the case using standard Appeals procedures.
- (4) Appeals will use established procedures to close out the case. See IRM 8.23.4 for general procedures for closing out a non-CDP OIC case as an acceptance.

**Note:** If the liability exceeds \$50,000, remind the taxpayer that the offer's acceptance based on the agreements reached through mediation is still subject to Counsel's statutory review under IRC 7122(b).

- (5) If Appeals and the taxpayer do not reach an agreement on an issue being mediated, Appeals will not reconsider the mediated issue and will proceed with closing out the case by using established closing procedures provided in IRM 8.23.4.

8.26.9.2.3.8  
(09-23-2020)

### Tracking Time

- (1) The ATE will input the following to the WUNO:

| Action Code | When Input                                     |
|-------------|--|
| MI          | The date the request for mediation is received |



| Action Code | When Input   |
|-------------|--|
| MO          | <p>Whenever one of the following occurs:</p> <ul style="list-style-type: none"> <li>• The date the mediation denial letter is issued</li> <li>• The date the taxpayer or Appeals withdraws from the mediation process</li> <li>• At the conclusion of the mediation session</li> </ul> |

- (2) For purposes of accurately tracking the amount of direct time on Appeals cases, Appeals mediators will be assigned as a Team Member on the mediation case.
- (3) Once the name of the Appeals mediator is known, the ATM of the ATE whose case is being mediated will request input of the following through the APS:
  - a. Feature Code 'TL' to create the Team Leader record for the ATE of the source case, and
  - b. Feature Code 'TM' to create the Team Member record for the Appeals mediator
- (4) The ATE whose case is being mediated is responsible for verifying that APS follows the input procedures in IRM 8.20.6.31, Team Leader/Team Member (TL/TM) Cases.

8.26.9.3  
(03-16-2015)  
**Procedures for Shipping Personally Identifiable Information (PII)**

- (1) The Shipping Policy for PII Documents is located at: <http://publish.no.irs.gov/mailtran/piihardcopy.html>
- (2) For additional information on shipping PII, go to *Employee Toolkit, Shipping Procedures for Personally Identifiable Information (PII)*.
- (3) All Appeals employees must adhere to the procedures for shipping PII.

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# Post-Appeals Mediation Procedures for Collection Cases 8.26.9

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## Exhibit 8.26.9-1 (09-23-2020)

### PAM Process Action Steps - OIC & TFRP

The following step charts summarize the action steps needed to navigate through the PAM process for OIC and TFRP cases. They reflect the required actions upon receipt of an acceptable written mediation request.

**Note:** The charts are not a substitute for IRM 8.26.9. PAM is part of the overall Appeals process, so ATEs and ATMs must be familiar with the procedures outlined in Revenue Procedure 2014-63 and the IRM.

- **Processing Mediation Request**

| Step | Who            | Action  |
|------|----------------|---|
| 1    | ATE            | Immediately notify the ATM upon receipt of the mediation request.<br><b>Note:</b> See IRM 8.26.9.2.3(6) and (7) for guidance on what to do when the request for mediation is either premature or incomplete.            |
| 2    | ATE            | Email or fax a copy of the full written mediation request to the Appeals Policy OIC/TFRP PAM program analyst.   |
| 3    | ATE            | Input ACDS/CARATS Action Code 'MI' (mediation in) to the WUNO. If there are multiple WUNOs, input Action Code 'MI' to all WUNOs. The 'MI' Action Code automatically inputs the 'MD' feature code. See IRM 8.26.9.2.3.2. |
| 4    | Appeals Policy | Initiate contact with the ATM and ATE to schedule a time to discuss the case's mediation eligibility.   |

- **Mediation Request Denied**

| Step | Who       | Action  |
|------|-----------|---|
| 1    | ATE & ATM | The ATE will prepare and the ATM will sign Letter 5557(for OIC PAM request) or Letter 5558 (for TFRP PAM request), denying the mediation request.<br><b>Note:</b> The ATM has the authority to deny a request for mediation. See IRM 8.26.9.2.3.1(3).<br><b>Note:</b> The taxpayer may request a conference with the ATM to discuss the denial, but the decision is not subject to further review. See section 7.03 (2) of Revenue Procedure 2014-63. |
| 2    | ATE       | Email or fax a copy of the denial letter to the Appeals Policy OIC/ TFRP program analyst.   |
| 3    | ATE       | Input ACDS/CARATS Action Code 'MO' (mediation out).<br><b>Note:</b> Action Code 'MO' must be input to enable 'AC-FR.'   |
| 4    | ATE       | Close out the case using standard Appeals procedures.   |

**Exhibit 8.26.9-1 (Cont. 1) (09-23-2020)****PAM Process Action Steps - OIC & TFRP**

**Note:** Section 7.03 of Revenue Procedure 2014-63 states the ATM will respond to the taxpayer within two (2) weeks of receiving the mediation request.

- Mediation Request Approved - Prior to the Pre-Mediation Conference Call**

| Step | Who    | Action  |
|------|--------|---|
| 1    | ATM    | After the mediation is approved by the Area Director, the ATM will promptly notify the taxpayer, the ATE and the Appeals Policy OIC/TFRP PAM program analyst.   |
| 2    | ATE    | The ATE and ATM will contact the Appeals Policy OIC/TFRP PAM program analyst to find out when he/she is available to conduct the pre-mediation conference call. See IRM 8.26.9.2.3.4 (1) for details about the purpose of the pre-mediation conference call.  |
| 3    | ATE    | After finding out some available dates from the ATM and the Appeals Policy OIC/TFRP PAM program analyst, the ATE will contact the taxpayer/POA to schedule the pre-mediation conference call and notify the Appeals Policy OIC/TFRP PAM program analyst of the final date and time selected.  |
| 4    | Policy | The Appeals Policy OIC/TFRP PAM program analyst will initiate and conduct the pre-mediation conference call. At the call, the ATM and the taxpayer will agree to the issue(s) to be mediated and some dates for the mediation session.<br><br><b>Note:</b> Section 8.01 of Revenue Procedure 2014-63 states the Agreement to Mediate generally will be completed and signed by both parties within three (3) weeks after the ATM notifies the taxpayer of the mediation's approval. |

- Mediation Request Approved - After the Pre-Mediation Conference Call**

| Step | Who            | Action   |
|------|----------------|--|
| 1    | Appeals Policy | Immediately after the pre-mediation conference call, the Appeals Policy OIC/TFRP PAM program analyst will prepare drafts of the Agreement to Mediate, Consent to Disclose Tax Information and Mediation Participants List and email them to the ATM & ATE. |
| 2    | ATM            | The ATM and ATE will review the draft of the Agreement to Mediate to make sure it accurately captures the issue(s) to be mediated and follow up with the Appeals Policy OIC/TFRP PAM program analyst on any necessary changes.                             |

# Post-Appeals Mediation Procedures for Collection Cases 8.26.9

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## Exhibit 8.26.9-1 (Cont. 2) (09-23-2020) PAM Process Action Steps - OIC & TFRP

| Step | Who       | Action   |
|------|-----------|--|
| 3    | ATE & ATM | <p>Once the ATM and ATE are satisfied with the draft of the Agreement to Mediate, the ATM will sign the Agreement on behalf of Appeals. Fax the following to the taxpayer/POA:</p> <ul style="list-style-type: none"> <li>• Letter 5559</li> <li>• Agreement to Mediate</li> <li>• Consent to Disclose Tax Information</li> <li>• Mediation Participants List</li> </ul> <p>Letter 5559 gives the taxpayer no more than seven (7) days to return the signed Agreement to Mediate and Consent to Disclose Tax Information and advises that Appeals may withdraw from mediation if taxpayer doesn't respond by the deadline. See IRM 8.26.9.2.3.4.1 (6).</p> |
| 4    | ALL       | Mediation should take place no more than 60 days after the Agreement to Mediate is signed. See Section 8.01 of Revenue Procedure 2014-63.  |
| 5    | ATM       | The ATM will promptly work with other ATMs in the office to secure a mediator based on the dates for the mediation session agreed to at the pre-mediation conference call.   |
| 6    | ATM       | Once the mediator is named, the ATM will work with APS to establish a Team Leader record for the ATE's WUNO and a Team Member WUNO for the mediator. See IRM 8.26.9.2.3.8.   |

### • Mediation Request Approved - Preparing for the Mediation Session

| Step | Who | Action   |
|------|-----|--|
| 1    | ATE | <p>The ATE will prepare a Discussion Summary detailing Appeals' position on the issue(s) to be mediated and provide it and a copy of the Mediation Participants List for Appeals concurrently to the mediator and the taxpayer no less than two (2) weeks prior to the date of the mediation session. See IRM 8.26.9.2.3.4.5.</p> <p><b>Note:</b> The taxpayer must provide the same. It is the ATE's responsibility to follow up with the taxpayer if such documents are not received within the prescribed time frame.</p> |
| 2    | ATE | In advance of the mediation session, the ATE should prepare an amended Form 656 (and collateral agreement, if applicable) with the dollar amount left blank. If an agreement is reached at mediation, the taxpayer can sign the amended offer while the parties are at the table. See IRM 8.26.9.2.3.7   |
| 3    | ATM | The ATM must be prepared to offer a brief opening statement at the mediation session.  |

**Exhibit 8.26.9-1 (Cont. 3) (09-23-2020)****PAM Process Action Steps - OIC & TFRP**

- Post Mediation Session Actions**

| Step | Who       | Action   |
|------|-----------|--|
| 1    | ATE       | ATE inputs ACDS/CARATS Action Code 'MO' (mediation out). See IRM 8.26.9.2.3.7 and IRM 8.26.9.2.3.8.  |
| 2    | ATE & ATM | <p>The ATE and ATM must each send an email to the Appeals Policy OIC/TFRP PAM program analyst with an estimate of the hours they spent on the mediation process from the time the written request for mediation was received through the conclusion of the mediation session.</p> <p><b>Note:</b> The ATE's estimate of hours spent on mediation should <b>not</b> include time spent preparing closing documents because that must be done regardless of mediation.</p> |
| 3    | ATE       | Close the case using standard Appeals procedures based on the outcome of the mediation. See IRM 8.26.9.2.3.7   |
| 4    | ATE       | <p><b>Resolution Reason Descriptions (RRDs) to use on Form 5402:</b></p> <ul style="list-style-type: none"> <li>IF an agreement is reached through mediation, THEN use RRD "Case resolved through post-Appeals mediation"</li> <li>IF no agreement is reached through mediation, THEN use RRD "Case went through post-Appeals mediation without resolution"</li> </ul>   |

- Contact Information:** ATMs and ATEs may contact the Appeals Policy OIC/TFRP PAM program analyst any time with questions or concerns about Post-Appeals mediation or suggestions for improving the program.

Exhibit 8.26.9-2 (09-23-2020)

Model Agreement to Mediate - OIC

## Agreement to Mediate - OIC

### 1. *The Mediation Process.*

The mediation will be an extension of the Appeals process to help [NAME OF TAXPAYER] and the Internal Revenue Service (IRS) - Appeals (the PARTIES) reach a negotiated settlement of the issues to be mediated. See (2) below for the participants in the mediation process. To accomplish this goal, the mediator will act as a facilitator, assist in defining the issues, and promote settlement negotiations between the PARTIES. The mediator will inform and discuss with the PARTIES the rules and procedures pertaining to the mediation process. The mediator will not have settlement authority and will not render a decision regarding any issue in dispute. The PARTIES will continue to have settlement authority for all issues considered under the mediation process.

### 2. *Nature of Process, Participants, Withdrawal.*

#### (a) **The mediation process is optional.**

- (b) Each PARTY must have at least one participant attending the mediation session with decision-making authority. No later than two (2) weeks before the mediation, each PARTY will submit to the other PARTY and the mediator a list of the participants who will attend the mediation session on behalf of or at the request of the PARTY, including a designation of the person(s) with decision-making authority who will represent the PARTY at the mediation session. Each PARTY's list of participants will contain the participant's name, the participant's position with the PARTY or other affiliation (e.g., a member of the Salmon law firm, counsel to the taxpayer), and the participant's address (optional telephone number and fax number). All participants attending the mediation on behalf of or at the request of a PARTY will be listed on the PARTY's list of participants, including witnesses, consultants and attorneys.

[insert limitations on the number or types of participants, if any.]

- (c) Either PARTY may withdraw from the process at any time prior to reaching a settlement of the issues to be mediated by notifying the other PARTY and the mediator in writing.

### 3. *Selection of Mediator and Costs.*

#### (a) **Appeals will pay the costs associated with the Appeals mediator. The taxpayer will pay the cost of a non-IRS co-mediator.**

- (b) The taxpayer, by signing this agreement, acknowledges that (i) the Appeals mediator is a current employee of the IRS, (ii) a conflict results from his or her continued status as an IRS employee, and (iii) this conflict will not interfere in the mediator's ability to facilitate the case impartially.

**Exhibit 8.26.9-2 (Cont. 1) (09-23-2020)**  
**Model Agreement to Mediate - OIC**

**4. *Issues to be mediated.***

The mediation session will encompass the following issues in the Offer in Compromise matter of [NAME OF TAXPAYER] for tax periods ended [ENTER TAX PERIODS]:

(a) [ Issue #1 ]

(b) [ Issue #2 ]

**5. *Submission of Materials.***

Each PARTY will present to the mediator a separate written summation not to exceed 20 pages (exclusive of exhibits consisting of pre-existing documents and reports) regarding each issue. The mediator will have the right to ask either PARTY for additional information before the mediation session if deemed necessary for a full understanding of the issues to be mediated. Each PARTY will simultaneously submit to the other PARTY a copy of any submission to the mediator.

**6. *Place of Mediation.***

The mediation session will take place at either the Appeals office where the case was considered or the Appeals office where the Appeals Team Manager is located.

**7. *Proposed Schedule.***

Subject to the approval of the mediator, the mediation session will be conducted according to the following schedule:

**Submission of Materials to Mediator: A date no later than two weeks prior to the date of the mediation session.**

Mediation Session:

By (Date)

**8. *Confidentiality.***

IRS employees who participate in or observe the mediation process in any way, and any person under contract to the IRS pursuant to section 6103(n) of the Internal Revenue Code, including the mediator, that the IRS invites to participate or observe, will be subject to the confidentiality and disclosure provisions of the Internal Revenue Code, including sections 6103, 7213 and 7431. See also 5 U.S.C. 574.

**9. *Ex Parte Contacts Prohibited.***

There will be no ex parte contacts from a PARTY to the mediator outside the mediation session. This provision is not intended to prevent the mediator from contacting a PARTY, or a PARTY from responding to the mediator's request for information.

**10. *Section 7214(a)(8) Disclosure.***

The PARTIES to this agreement acknowledge that IRS employees involved in this mediation are bound by the section 7214(a)(8) disclosure requirements concerning violations of any revenue law.

**Exhibit 8.26.9-2 (Cont. 2) (09-23-2020)****Model Agreement to Mediate - OIC****8. Confidentiality.****11. No record.**

There will be no stenographic record, audio or video tape recording, or other transcript of the mediation session(s).

**12. Report by Mediator.**

At the conclusion of the mediation session, the mediator will issue a brief report to the PARTIES identifying each issue described in section 4, above, and whether the PARTIES either agreed to resolve or did not resolve the issue.

**13. Appeals Procedures Apply.**

If the mediation process enables the PARTIES to reach agreement on the issues, Appeals will use established procedures to close the case. Any agreement reached through the mediation process remains subject to opinion from the Office of Chief Counsel required under IRC section 7122(b). Delegation Order 5-1 may also apply to settlements resulting from the mediation process.

**14. Precedential Use.**

A settlement reached by the PARTIES through mediation will not be binding on the parties (or be otherwise controlling) for taxable years not covered by the agreement. Except as provided in the agreement, any PARTY may not use such settlement as precedent.

**INTERNAL REVENUE SERVICE - INDEPENDENT OFFICE OF APPEALS**

By: \_\_\_\_\_

Name

Title: Appeals Team Manager

Date: \_\_\_\_\_

**NAME OF TAXPAYER**

By: \_\_\_\_\_

Name

Title:

Date: \_\_\_\_\_

**Exhibit 8.26.9-3 (09-23-2020)****Model Agreement to Mediate - TFRP****Agreement to Mediate - TFRP****1. *The Mediation Process.***

The mediation will be an extension of the Appeals process to help **[NAME OF TAXPAYER]** and the Internal Revenue Service (IRS) - Appeals (the PARTIES) reach a negotiated settlement of the issues to be mediated. See (2) below for the participants in the mediation process. To accomplish this goal, the mediator will act as a facilitator, assist in defining the issues, and promote settlement negotiations between the PARTIES. The mediator will inform and discuss with the PARTIES the rules and procedures pertaining to the mediation process. The mediator will not have settlement authority and will not render a decision regarding any issue in dispute. The PARTIES will continue to have settlement authority for all issues considered under the mediation process.

**2. *Nature of Process, Participants, Withdrawal.*****(a) The mediation process is optional.**

- (b) Each PARTY must have at least one participant attending the mediation session with decision-making authority. No later than two (2) weeks before the mediation, each PARTY will submit to the other PARTY and the mediator a list of the participants who will attend the mediation session on behalf of or at the request of the PARTY, including a designation of the person(s) with decision-making authority who will represent the PARTY at the mediation session. Each PARTY's list of participants will contain the participant's name, the participant's position with the PARTY or other affiliation (e.g., a member of the Salmon law firm, counsel to the taxpayer), and the participant's address (optional telephone number and fax number). All participants attending the mediation on behalf of or at the request of a PARTY will be listed on the PARTY's list of participants, including witnesses, consultants and attorneys.

[insert limitations on the number or types of participants, if any.]

- (c) Either PARTY may withdraw from the process at any time prior to reaching a settlement of the issues to be mediated by notifying the other PARTY and the mediator in writing.

**3. *Selection of Mediator and Costs.*****(a) Appeals will pay the costs associated with the Appeals mediator. The taxpayer will pay the cost of a non-IRS co-mediator.**

- (b) The taxpayer, by signing this agreement, acknowledges that (i) the Appeals mediator is a current employee of the IRS, (ii) a conflict results from his or her continued status as an IRS employee, and (iii) this conflict will not interfere in the mediator's ability to facilitate the case impartially.



**Exhibit 8.26.9-3 (Cont. 1) (09-23-2020)****Model Agreement to Mediate - TFRP****4. *Issues to be mediated.***

The mediation session will encompass the following issues in the Trust Fund Recovery Penalty of [NAME OF TAXPAYER] for tax periods ended [ENTER TAX PERIODS]:

(a) [ Issue #1 ]

(b) [ Issue #2 ]

**5. *Submission of Materials.***

Each PARTY will present to the mediator a separate written summation not to exceed 20 pages (exclusive of exhibits consisting of pre-existing documents and reports) regarding each issue. The mediator will have the right to ask either PARTY for additional information before the mediation session if deemed necessary for a full understanding of the issues to be mediated. Each PARTY will simultaneously submit to the other PARTY a copy of any submission to the mediator.

**6. *Place of Mediation.***

The mediation session will take place at either the Appeals office where the case was considered or the Appeals office where the Appeals Team Manager is located.

**7. *Proposed Schedule.***

Subject to the approval of the mediator, the mediation session will be conducted according to the following schedule:

**Submission of Materials to Mediator: A date no later than two weeks prior to the date of the mediation session.**

Mediation Session:

By (Date)

**8. *Confidentiality.***

IRS employees who participate in or observe the mediation process in any way, and any person under contract to the IRS pursuant to section 6103(n) of the Internal Revenue Code, including the mediator, that the IRS invites to participate or observe, will be subject to the confidentiality and disclosure provisions of the Internal Revenue Code, including sections 6103, 7213 and 7431. See also 5 U.S.C. 574.

**9. *Ex Parte Contacts Prohibited.***

There will be no ex parte contacts from a PARTY to the mediator outside the mediation session. This provision is not intended to prevent the mediator from contacting a PARTY, or a PARTY from responding to the mediator's request for information.

**10. *Section 7214(a)(8) Disclosure.***

**Exhibit 8.26.9-3 (Cont. 2) (09-23-2020)****Model Agreement to Mediate - TFRP****8. Confidentiality.**

The PARTIES to this agreement acknowledge that IRS employees involved in this mediation are bound by the section 7214(a)(8) disclosure requirements concerning violations of any revenue law.

**11. No record.**

There will be no stenographic record, audio or video tape recording, or other transcript of the mediation session(s).

**12. Report by Mediator.**

At the conclusion of the mediation session, the mediator will issue a brief report to the PARTIES identifying each issue described in section 4, above, and whether the PARTIES either agreed to resolve or did not resolve the issue.

**13. Appeals Procedures Apply.**

If the mediation process enables the PARTIES to reach agreement on the issues, Appeals will use established procedures to close the case. Any agreement reached through the mediation process remains subject to opinion from the Office of Chief Counsel required under IRC section 7122(b). Delegation Order 5-1 may also apply to settlements resulting from the mediation process.

**14. Precedential Use.**

A settlement reached by the PARTIES through mediation will not be binding on the parties (or be otherwise controlling) for taxable years not covered by the agreement. Except as provided in the agreement, any PARTY may not use such settlement as precedent.

**INTERNAL REVENUE SERVICE - INDEPENDENT OFFICE OF APPEALS**

By: \_\_\_\_\_

Name

Title: Appeals Team Manager

Date: \_\_\_\_\_

**NAME OF TAXPAYER**

By: \_\_\_\_\_

Name

Title:

Date: \_\_\_\_\_

**Exhibit 8.26.9-4 (10-01-2012)****Consent to Disclose Tax Information****Consent to Disclose Tax Information**

Pursuant to section 6103(c) of the Internal Revenue Code of 1986 (as amended), I hereby consent to the disclosure of return information (as defined by section 6103(b)(2)) relating to the mediation session between \_\_\_\_\_ (Taxpayer) and the Commissioner of Internal Revenue to be held on \_\_\_\_\_ (date), as follows:

The Internal Revenue Service may disclose the taxpayer's return information incident to the mediation to the mediator and any participants or observers identified in the initial list of participants and to any subsequent participants and observers identified in writing by the parties.

This consent relates to the mediation session that is the subject of an agreement to mediate dated \_\_\_\_\_. I am aware that in the absence of this authorization, the return information of \_\_\_\_\_ (Taxpayer) is confidential and may not be disclosed except as authorized by the Internal Revenue Code.

I certify that I have the authority to execute this consent on behalf of the taxpayer.

Taxpayer Name: \_\_\_\_\_

Taxpayer Identification Number: \_\_\_\_\_

Taxpayer Address: \_\_\_\_\_

By: [ **Name of Individual Executing Consent** ]

Title: [ **Title of Individual Executing Consent** ]

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**Exhibit 8.26.9-5 (09-23-2020)****Model Mediation Participants List****Mediation Participants List**

Case Name:

Submitted By:

Date:

Please list below all participants attending the mediation session, including witnesses, consultants, and attorneys. This form must be sent to the other PARTY and to the mediator(s) no later than two (2) weeks before the mediation session. Insert an **asterisk (\*)** before the name of the person who has decision-making authority at the mediation session:

| <b>Name</b> | <b>Position</b> | <b>Address</b> | <b>Telephone<br/>Numbers</b> | <b>&amp;</b> | <b>Fax</b> |
|-------------|-----------------|----------------|------------------------------|--------------|------------|
|-------------|-----------------|----------------|------------------------------|--------------|------------|

**Exhibit 8.26.9-6 (10-01-2012)**

**Model Impartiality Affirmation Statement for Appeals Mediators**

**Impartiality Affirmation Statement**

I, [ **ENTER APPEALS MEDIATOR'S NAME** ], confirm my proposed service as a mediator in the case of [ **ENTER TAXPAYER'S NAME** ]. I am required to inform you that although I have received training emphasizing my role as a fair and impartial participant in this mediation process, I am still an IRS employee. Although my continued status as an IRS employee creates an inherent or the perception of an inherent conflict, it will not interfere with my ability to be impartial in this case.

Dated this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_

/s/ Mediator

**Exhibit 8.26.9-7 (09-23-2020)****Model Mediator's Report - OIC****Model Mediator's Report - OIC**

The parties below agreed to mediate their dispute and attended a mediation session on **MONTH, DAY, YEAR** in an attempt to settle the following issue(s):

**Issue 1:**

Settlement: ☐ Yes  
☐ No  
☐ Partial

**Issue 2:**

Settlement: ☐ Yes  
☐ No  
☐ Partial

|   | <b>Per Appeals</b>               | <b>Per Taxpayer</b>              | <b>Agreement</b>                |
|---|----------------------------------|----------------------------------|---------------------------------|
| <b><u>Mediated Issue</u></b>  | <b><u>Prior to Mediation</u></b> | <b><u>Prior to Mediation</u></b> | <b><u>through Mediation</u></b> |
| 1. [Example: Value of Real Property - Residence]                          | \$                               | \$                               | \$                              |
| 2. (Example: Monthly Income Amount for Determining Future Ability to Pay] | \$                               | \$                               | \$                              |

**Settlement documents will be prepared using established Appeals procedures.**

Dated this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
 /s/ Mediator

\_\_\_\_\_  
 /s/ Party

\_\_\_\_\_  
 /s/ Party

# Post-Appeals Mediation Procedures for Collection Cases 8.26.9

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## Exhibit 8.26.9-8 (09-23-2020) Model Mediator's Report - TFRP

### Model Mediator's Report - TFRP

The parties below agreed to mediate their dispute and attended a mediation session on **MONTH, DAY, YEAR** in an attempt to settle the following issue(s):

#### Issue 1:

Settlement: ☐ Yes  
☐ No  
☐ Partial

#### Issue 2:

Settlement: ☐ Yes  
☐ No  
☐ Partial

| <u>Mediated Issue</u>  | <u>Per Appeals Prior to Mediation</u> | <u>Per Taxpayer Prior to Mediation</u> | <u>Agreement through Mediation</u> |
|--|---------------------------------------|--|------------------------------------|
| 1. (e.g., Willfulness during the quarterly periods ended 12/31/2006 through 3/31/2008)                 | \$                                    | \$                                     | \$                                 |
| 2. (e.g., Designation under IRM 5.7.4.3 of the Federal Tax Deposits listed in the attached Schedule A) | \$                                    | \$                                     | \$                                 |

**Settlement documents will be prepared under established Appeals procedures.**

Dated this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
/s/ Mediator

\_\_\_\_\_  
/s/ Party

\_\_\_\_\_  
/s/ Party

