



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

8.22.7

AUGUST 26, 2020

## EFFECTIVE DATE

(08-26-2020)

## PURPOSE

- (1) This transmits revised IRM 8.22.7, Collection Due Process, Alternatives to Collection Action.

## MATERIAL CHANGES

- (1) The following is a description of the material changes in this revision:

IRM	Description of Changes
8.22.7.1, Program Scope and Objectives	Revised this section, creating a new section for Program Scope and Objectives.
8.22.7.1.1, Background	New subsection added for Background.
8.22.7.1.2, Authority	New subsection added for general authorities.
8.22.7.1.3, Responsibilities	New subsection added to state program responsibilities.
8.22.7.1.4, Reports	New subsection added for program reports.
8.22.7.1.5, Terms and Acronyms	Refers users to an IRM exhibit at 8.22.4-3 for the most common program related terms and acronyms.
8.22.7.2, Collection Information Statement (CIS)	At (2), added emphasis that a CIS is current for 12 months from when received in Appeals.
8.22.7.3, Agreed Resolutions	At (1), added to include all open tax periods when resolving cases through an IA, OIC or CNC.
8.22.7.4, Appeals Referral Investigation (ARI)	At (2), noted that ARI should be made via Form 2209, and not informally over the phone or e-mail directly to an assigned RO or other Collection or ACSS employee.

IRM	Description of Changes
8.22.7.4.1, ARI to Field Collection to Verify CIS	<ul style="list-style-type: none"> <li>At (1), added to use the ARI link in ACDS. Also added a note to state that when removing a case from suspense, check IDRS for any transactions that may have occurred during suspense.</li> <li>At (2), noted that if there is no response to your ARI within 45 days, a follow-up with Collection is discretionary by Appeals.</li> </ul>
8.22.7.4.2, ARI to Field Collection or COIC to Review New OIC Information.	<ul style="list-style-type: none"> <li>Retitled subsection</li> <li>At (2), added a note that an offer considered under ETA (non-economic hardship) must be forwarded to the Austin ETA team for initial consideration.</li> </ul>
8.22.7.4.3, ARI to ACSS to Verify CIS	At (2), added to use the ARI link in ACDS. Also added a note to state that when removing a case from suspense, check IDRS for any transactions that may have occurred during suspense.
8.22.7.5, Installment Agreements (IA)	<ul style="list-style-type: none"> <li>At (1), added a note of caution that a taxpayer with an accepted OIC being monitored by MOIC does not qualify for an IA. Added Part 5 cross-reference.</li> <li>At (6), added a note that a BMF taxpayer that is not in filing compliance with Form W-2 or 1099 should not be considered in filing compliance. Added Part 5 cross-reference.</li> </ul>
8.22.7.5.1, Direct Debit Installment Agreements (DDIA)	<ul style="list-style-type: none"> <li>At (2), added a note regarding the process to reinstate a previously defaulted DDIA.</li> <li>At (4), added instruction to discuss with the taxpayer DDIA payment and for the start date to allow sufficient time for the agreement to be input.</li> </ul>
8.22.7.5.2, Manually-Monitored Installment Agreements (MMIA)	At (2), Added instruction to be sure the TC 971 AC 043 has been input to prevent any FPLP levies.
8.22.7.5.3, Low-Income Installment Agreement Documentation and User Fee reimbursement	Incorporated Interim Guidance AP-08-0419-0006.

IRM	Description of Changes
8.22.7.6, Short Term Payment Plan within 120 Days	<ul style="list-style-type: none"> <li>• Retitled subsection.</li> <li>• Throughout, changed 60 days to 120 days.</li> <li>• At (2), added that IMF, BMF out of business or BMF in-business (non-trust fund) generally qualify.</li> <li>• At (3), added IBTF taxpayers do not qualify.</li> </ul>
8.22.7.8, Adjustments - Form 3870	At (1), added a note that interim adjustments for TFRP assessments in CDP may be sent directly to the appropriate CPM unit for processing. Added cross-reference to IRM 8.25.
8.22.7.9.1, NFTL Withdrawals	At (5), added generally that any lien issue may be raised in a 6330 hearing provided the identical issue was not considered in a prior hearing.
8.22.7.9.1.3, NFTL Withdrawal Procedures	Revised to update Advisory contacts and to change certain APGolf references to APGolf 2.0.
8.22.7.9.3, Discharges and Subordinations	At (3), added a note to state that when removing a case from suspense, check IDRS for any transactions that may have occurred during suspense.
8.22.7.10, Offer in Compromise (OIC)	<ul style="list-style-type: none"> <li>• At (5), additional condition added for when a CDP OIC may not be resolved by Appeals.</li> <li>• At (6), added a reference to <a href="http://www.irs.gov">www.irs.gov</a>.</li> <li>• At (8), added referent to Appeals Policy Statement 8-2.</li> </ul>
8.22.7.10.1.1, Functional Responsibilities	<ul style="list-style-type: none"> <li>• At (1), added emphasis that COIC makes the initial processability determination in all OIC cases.</li> <li>• At (4), added when COIC returns a CDP OIC, confirm the return was appropriate.</li> <li>• At (5), added a note that when the CDP periods become satisfied prior to a final decision by Appeals, return the OIC file to the originator in Compliance, using Form 3210.</li> </ul>
8.22.7.10.1.2, Associating Separated CDP and OIC Submissions	At (7)e, added a note to state that when removing a case from suspense, check IDRS for any transactions that may have occurred during suspense.
8.22.7.10.2, Requesting an OIC WUNO	At (1)d, revised a note to ask APS to add the OIC WUNO in the NOTES field of the related CDP case.

IRM	Description of Changes
8.22.7.10.3, Receipt of Form 656	Added (4), to address with the taxpayer any obvious offer deficiencies prior to sending the offer to COIC for processability. Reminded to forward to COIC regardless, however.
8.22.7.10.4, Processing OICs	Added (1), to reiterate that COIC makes all initial processability determinations. At (3), removed reference to the Letter 3821. COIC uses its own letter and no longer uses Letter 3821.
8.22.7.10.4.1, OIC is Not Processable	Added (1)a), that COIC will secure e-mail the AO to advise of the reason for an offer return.
8.22.7.10.4.4, Collection Rec- ommends Acceptance	At (1)c), removed the requirement for a copy of the Form 656 to be returned to Appeals.
8.22.7.10.5, Mandatory Withdrawals, Returns, and Terminated Offers	<ul style="list-style-type: none"> <li>Added (3), to clarify that if a taxpayer submits an offer immediately following an offer that was returned but before CDP closing letter is issued, the new offer is under CDP and Appeals' jurisdiction.</li> <li>Added (4), to remind the AO to communicate the disposition of closed offers to the taxpayer in the NOD or decision letter, to close the 7122 (f) statute.</li> </ul>
8.22.7.10.5.8, Return for Bankruptcy	<ul style="list-style-type: none"> <li>Added to the table at (1), to return an OIC that is in the possession of Appeals when a taxpayer files bankruptcy. Letter 5010 is used.</li> <li>Added (3), to confirm with Counsel issues involving a Receivership, Assignment for the Benefit of Creditors, or other insolvency. Added cross-references to IRM Part 5.</li> </ul>
8.22.7.10.7, Doubt as to Liability (DATL) OIC	<ul style="list-style-type: none"> <li>In section one of the chart at (5)c), added a note to state that when removing a case from suspense, check IDRS for any transactions that may have occurred during suspense.</li> <li>In section 3 of the chart at (5)b), clarified the note to state a DATL OIC case will be sent to Appeals when timely appealed.</li> </ul>
8.22.7.10.8, Defaulted OICs	Added (3), added to review the case file to confirm that all administrative policies and procedures were followed pertaining to notification to the taxpayer of both potential default and termination.
8.22.7.10.9, Rescission of a Previously Accepted Offer	New subsection added discussing OIC rescission.

IRM	Description of Changes
8.22.7.11, Substitution of Assets	New subsection added discussing the substitution of assets.
Throughout	Revised to: <ul style="list-style-type: none"><li data-bbox="537 468 997 499">• Update citations and references.</li><li data-bbox="537 499 1097 562">• Incorporate plain language writing, active voice and organization.</li></ul>

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

IRM 8.22.7 dated August 09, 2017, is superseded. This revision also incorporates Interim Guidance Memoranda AP-08-0419-0006, *Low-Income Installment Agreement Documentation and User Fee Reimbursement*, dated April 30, 2019.

#### **AUDIENCE**

Appeals Officers, Appeals Account Resolution Specialists and Appeals Team Managers

Steven M. Martin  
Director, Case and Operations Support



8.22.7

Alternatives to Collection Action

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8.22.7.1  
(08-26-2020)  
**Program Scope and Objectives**

- (1) Purpose: This section provides guidance to Appeals Technical Employees (ATEs) in the consideration of collection alternatives proposed in Collection Due Process (CDP), Equivalent Hearing (EH) and retained jurisdiction cases.
- (2) Audience: The primary users of this IRM section are ATEs and Appeals Team Managers (ATMs) handling Collection Due Process (CDP), Equivalent Hearing (EH) and CDP Timeliness Determination (CDPTD) cases.
- (3) Policy Owner: Director, Case and Operations Support.
- (4) Program Owner: Director, Policy, Planning, Quality and Analysis (PPQ&A).
- (5) Contact Information: Appeals Employees should follow established procedures on **How to Contact an Analyst**. Other employees should contact the Product Content Owner shown on the Product Catalog Information page for this IRM section.
- (6) If a CDP liability is full paid, Appeals does not have jurisdiction to consider a collection alternative or CNC for non-CDP period(s) alone.

8.22.7.1.1  
(08-26-2020)  
**Background**

- (1) The IRS Restructuring and Reform Act of 1998 (RRA 98) created Collection Due Process (CDP) appeal rights and with them, the ability for taxpayers to contest their liability under certain circumstances.

8.22.7.1.2  
(08-26-2020)  
**Authority**

- (1) Internal Revenue Code (IRC) sections 6320 and 6330 are the primary sources of authority, in addition to applicable Internal Revenue Manual (IRM) sections. Further, the Taxpayer Bill of Rights, IRC 7803(a)(3), applies to Appeals employees' interactions with taxpayers.

8.22.7.1.3  
(08-26-2020)  
**Responsibilities**

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

8.22.7.1.4  
(08-26-2020)  
**Program Reports**

- (1) PPQ&A provides trend and data analyses and detailed summary reports for Appeals.

8.22.7.1.5  
(08-26-2020)  
**Terms and Acronyms**

- (1) See IRM Exhibit 8.22.4-3, Common Terms and Acronyms Used in Collection Due Process, for such common terms and their definitions.

8.22.7.2  
(08-26-2020)  
**Collection Information Statement (CIS)**

- (1) A current CIS is required if a taxpayer requests an alternative to collection action and does not qualify for a:
  - Guaranteed, Streamlined, In-Business Trust Fund Express IAs
  - Currently not Collectible (CNC) hardship status in limited situations. See IRM 5.16.1.2.9, Hardship.

**Note:** The exception in IRM 5.8.11.5.2 provides that a current CIS is not needed if the taxpayer has established fraudulent activity of a payroll service provider (PSP) and only seeks penalty and interest abatement.

- (2) A CIS is current if it is dated 12 months or less from the date **received in Appeals**. Do not request a new CIS from the taxpayer if it is less than 12 months old or if the information became outdated due to IRS delay. If you need to update financial information in this situation, “pen-and-ink” changes to the existing CIS are sufficient.
- (3) Treat as verified a current CIS that is received along with a CDP since Collection had an opportunity to review it.
- (4) A taxpayer’s financial information may be reported on:
  - Form 433-A, Collection Information Statement for Wage Earners and Self-Employed Individuals
  - Form 433-B, Collection Information Statement for Businesses
  - Form 433-F, Collection Information Statement
  - Form 433-A (OIC) and Form 433-B (OIC)
- (5) Form 433-F is routinely used by ACS and campus. If Collection requested a Form 433-F and the taxpayer provided it, Appeals will rely on it.

**Exception:** If the taxpayer proposes an OIC, the taxpayer must complete the CIS included in Form 656-B, the offer in compromise booklet.

- (6) Ensure current Allowable Living Expenses are used prior to making a determination or decision that requires a CIS.

8.22.7.3  
(08-26-2020)  
**Agreed Resolutions**

- (1) Whether or not they are formally a part of the CDP or EH case, all open tax periods must be included when resolving a case through:
  - Installment Agreement (IA)
  - Offer in Compromise (OIC)
  - Currently not Collectible (CNC)
- (2) The subsection below contains guidance on agreed resolutions in CDP.

8.22.7.3.1  
(08-09-2017)  
**Form 12257 Summary  
Notice of Determination**

- (1) Form 12257 serves as a summary Notice of Determination that waives the taxpayer’s right to go to court and the suspension of levy action.
- (2) When you reach an agreed resolution in a timely CDP, ask the taxpayer to sign Form 12257, Summary Notice of Determination, after advising that:
  - a. The taxpayer is not obligated to sign and the agreed resolution will be input with or without the Form
  - b. The right to petition Tax Court is waived
  - c. The right to a 30 day suspension of levy action is waived
  - d. Without it, Appeals delays the input of the agreed resolution by 60 or more days to see if the taxpayer petitions Tax Court

8.22.7.3.2  
(08-09-2017)  
**Agreed Resolution and  
Open TDI**

- (1) Resolve open Taxpayer Delinquent Investigation (TDI) filing requirements when resolving a case through:
  - IA
  - OIC acceptance
  - CNC, **except cases closed with a hardship closing code** described in IRM 8.22.7.7, Currently Not Collectible.

- (2) Policy Statement 5-133 (P-5-133) allows closing of a TDI because the non-filing is not willful and:

- There would be no tax due on the delinquent return
- There would be minimal tax due on the return
- The cost to the Service to secure a return would exceed anticipated revenue

**Note:** Refer to IRM 5.1.11.7.1, Enforcement Determination,, for further discussion on P-5-133.

- (3) Document 6209, Section 11 lists TDI closing codes. See IRM 5.1.11.8, Delinquent Return Investigation Closures, for more information on closing TDIs. Note how the TDI module was resolved in the “Remarks” section of Form 5402.

## 8.22.7.4 (08-26-2020) Appeals Referral Investigation (ARI)

- (1) An ARI may be necessary if:
- The appropriateness of a collection alternative or CNC hardship can't be determined without additional information that Appeals can't secure from internal sources or the taxpayer
  - The taxpayer provides a new CIS to Appeals that requires verification and proposes an IA or CNC
  - The taxpayer provides complex, new information requiring the assistance of Collection to verify
- (2) If you determine investigation is needed or verification is required, send an ARI using Form 2209 to forward the information to Collection. Informal processes should **not** be used such as direct e-mail or telephone calls to the Revenue Officer or ACSS employees.
- (3) If the taxpayer proposes a collection alternative but does not qualify for the alternative based on other facts (e.g. non-compliance), an ARI is not necessary.
- (4) Field Collection is responsible for ARIs on field sourced CDPs. See IRM 8.22.7.4.1, ARI to Field Collection to Verify CIS,, below.
- (5) ACSS is responsible for ARIs on ACSS sourced CDPs. See IRM 8.22.7.4.3, ARI to ACSS to Verify CIS, below.

## 8.22.7.4.1 (08-26-2020) ARI to Field Collection to Verify CIS

- (1) When issuing an ARI to Field Collection, follow the step table below:

Step	Action
1	<p>In ACDS:</p> <ul style="list-style-type: none"> <li>Select the ARI link at the bottom of the menu bar on the Case Activity Record View. This will systemically input SU/RI to suspend the case.</li> <li>Add Feature Code (RI) <b>Referral Investigation</b>. The RI feature code remains on the case after it is taken out of suspense.</li> <li>Input SU/RT to take the case out of suspense once the ARI is returned</li> </ul> <p><b>Note:</b> When removing a case from suspense, check IDRS for any transactions that may have occurred during the suspense as these may impact the CDP matter.</p>
2	<p>Prepare Form 2209, Courtesy Investigation, and state in the remarks section: "We are conducting a CDP/EH hearing and the taxpayer raised [collection alternative] which require [specify what is Collection to do]."</p> <p>The deadline for completing the ARI is:</p> <ul style="list-style-type: none"> <li>45 days after issuance if the action address is within the United States, Puerto Rico or the Virgin Islands</li> <li>Six months after issuance if the action address is any other US possession or territory or located within a foreign country</li> </ul> <p><b>Note:</b> Collection may request an extension of time to complete the ARI based on complexity, workload or other circumstances. An extension of time may be granted based on the facts of the case.</p>
3	<p>Prepare a letter to the taxpayer notifying them a referral was made. You may use Letter 5208, , Notification of Appeals Referral Investigation, to notify the taxpayer that information they provided to Appeals is being referred to Collection for evaluation.</p> <p><b>Example:</b> "You requested Appeals consider [specify issue]. Appeals has asked Collection to review the information you provided while we retain jurisdiction of your case. It may be necessary for Collection to contact you and/or third parties for information to complete the review. You'll have an opportunity to respond once the results of the review are shared with you."</p>
4	<p>Route the ARI to the Manager of the Revenue Officer who referred the CDP request to Appeals. Look at Form 14461, Transmittal of CDP/Equivalent Hearing Request, block 14 for the Manager and block 12 for his or her address. Send the ARI and a copy of:</p> <ul style="list-style-type: none"> <li>The CIS</li> <li>The taxpayer referral letter to assure Collection the taxpayer is aware contact may be necessary</li> </ul>

(2) In response to your ARI, you may receive:

- No response:** At your discretion, follow up within 30 days of the deadline for completing the ARI via secure e-mail. To avoid prohibited ex parte communications, limit your inquiry to the status of the ARI and route it to the Group Manager of the assigned employee.. Include any response to your ARI in the case file, in digital or paper form.. If there is no response to your ARI follow-up, treat the CIS as verified and proceed with the information you have.

- **An incomplete response:** Treat the CIS as verified and proceed with the information you have. Include any response to your ARI in the case file, in digital or paper form

(3) See the table below for sharing the results of the ARI with the taxpayer:

ARI results ...	Actions required...	Suggested language...
Collection responds to ARI	<p>a. Share the ARI results with the taxpayer and ask for his or her review</p> <p>b. Allow the taxpayer 30 calendar days to respond before scheduling a follow-up conference or using the information in your determination</p>	“Enclosed are the results of Collection’s review of [specify issue]. If you disagree, tell me what you disagree with and why you disagree by MM/DD/YY. I’ll consider Collection’s review and your response before making a decision in your Collection Due Process hearing.”
Collection does not respond to ARI	Tell the taxpayer that Collection did not respond to the request for review	“Collection did not respond to Appeals’ request for review of [specify issue]. I’ll proceed with the information in your file in making a decision in your Collection Due Process hearing. ”

8.22.7.4.2  
(08-26-2020)  
**ARI to Field Collection  
or COIC to Review New  
OIC Related Information**

- (1) If Collection returns a CDP OIC to Appeals with a recommendation to reject and the taxpayer subsequently submits new information to Appeals, see IRM 8.23.3.3.1.2, Request and Review of Supplemental Information - Collection Issue Offers, , and IRM 8.23.3.3.1.3, Determining When to Send an Appeals Referral Investigation (ARI), to determine if an ARI is necessary.
- (2) If an ARI is necessary, issue it to the Collection office that recommended rejection of the OIC. Instructions for preparing the ARI are found in IRM 8.23.3.3.1.3, Determining When to Sent an Appeals Referral Investigation (ARI), and IRM 8.23.3.3.1.4, Requesting an Appeals Referral Investigation (ARI).

**Note:** An offer considered under Effective Tax Administration (ETA), non-economic hardship (NEH), **must** be forwarded to the Compliance ETA team in Austin, Texas, for an initial consideration. This includes a new receipt filed under ETA-NEH, or when ETA-NEH is later raised as a new issue in an existing offer. See also IRM 8.23.3.4.1.

- (3) Prepare a letter to the taxpayer advising that a referral is being made to the OIC unit for verification. You may use Letter 5208, Notification of Appeals Referral Investigation, to notify the taxpayer that information they provided to Appeals is being referred to Collection for evaluation.

**Example:** “You requested Appeals consider [specify issue]. Appeals asked Collection to review the information provided while we retain jurisdiction of your case. It may be necessary for Collection to contact you and/or third parties for information to complete the review. You’ll have an opportunity to respond once the results of the review are shared with you.”

8.22.7.4.3  
(08-26-2020)  
**ARI to ACSS to Verify  
CIS**

- (1) If the table in the Balance Due IRM 5.19.1.2.6.4, Financial Analysis, Verification and Substantiation, shows ACSS would verify a CIS based on the taxpayer’s balance due and type of case resolution, you may request an ACSS ARI. If the table indicates no verification is needed, Appeals will not request verification through an ACSS ARI.

**Note:** ACSS CIS verification is limited to checking internal sources.

- (2) When issuing an ARI, follow the step table below:

Step	Action
1	<p>ACDS actions:</p> <ul style="list-style-type: none"> <li>Select the ARI link at the bottom of the menu bar on the Case Activity Record View. This will systemically input SU/RI to suspend the case..</li> <li>Add Feature Code (RI) <i>Referral Investigation</i>. The RI feature code remains on the case after it is taken out of suspense.</li> <li>Input SU/RT to take the case out of suspense once the ARI is returned</li> </ul> <p><b>Note:</b> When removing a case from suspense, check IDRS for any transactions that may have occurred during the suspense as these may impact the CDP matter.</p>
2	<p>Prepare Form 2209, Courtesy Investigation, and state in the remarks section: “We are conducting a CDP/EH hearing and the taxpayer has raised [collection alternative] which require [specify what ACSS is to do].”</p> <p>The deadline for completing the ARI is:</p> <ul style="list-style-type: none"> <li>45 days after issuance if the action address is within the United States, Puerto Rico or the Virgin Islands</li> <li>Six months after issuance if the action address is any other US possession or territory or located within a foreign country</li> </ul> <p><b>Note:</b> ACSS may request an extension of time to complete the ARI based on the complexity of the ARI, workload or other circumstances. An extension of time may be granted.</p>
3	<p>Prepare a letter to the taxpayer notifying them a referral was made. You may use Letter 5208 Notification of Appeals Referral Investigation, to notify the taxpayer that information they provided to Appeals is being referred to Collection for evaluation.</p> <p><b>Example:</b> “You requested Appeals consider [specify issue]. Appeals has asked Collection to review the information you provided while we retain jurisdiction of your case. It may be necessary for Collection to contact you and/or third parties for information to complete the review. You’ll have an opportunity to respond once the results of the review are shared with you.”</p>

Step	Action
4	Prepare a fax cover sheet and fax Form 2209 and the CIS to the ACSS Campus Eefax number of the originating ACSS site. These are found on the Appeals CDP webpage under the Resources tab labeled <i>ACSS Campus EEFax numbers</i> .
5	ACSS returns the ARI to the hearing officer by secure e-mail.

(3) In response to your ARI, you may receive:

- **No response:** At your discretion, via secure e-mail, follow up within 30 days of the deadline for completing the ARI. To avoid prohibited ex parte communications, limit your inquiry to the status of the ARI and route it to the correct Campus Eefax number for Campus cases. Include any response to your ARI in the case file, in digital or paper form. If there is no response to your ARI follow up, treat the CIS as verified and proceed with the information you have.
- **An incomplete response:** Treat the CIS as verified and proceed with the information you have. Include any response to your ARI in the case file, in digital or paper form.

(4) See the table below for sharing the results of the ACSS ARI with the taxpayer:

ARI results ...	Actions required...	Suggested language...
ACSS responds to ARI	<p>a. Share the ARI results with the taxpayer and ask for his or her review</p> <p>b. Allow the taxpayer 15 business days to respond before scheduling a follow-up conference or using the information in your determination</p>	“Enclosed are the results of Collection’s review of [specify issue]. If you disagree, tell me what you disagree with and why you disagree by MM/DD/YY. I’ll consider Collection’s review and your response before making a decision in your Collection Due Process hearing.”
ACSS does not respond to ARI	Tell the taxpayer that Collection did not respond to the request for review	“Collection did not respond to Appeals’ request for review of [specify issue]. I’ll proceed with the information in your file in making a decision in your Collection Due Process hearing.”

8.22.7.5  
(08-26-2020)  
**Installment Agreements (IA)**

(1) Appeals may secure IAs as a collection alternative in CDP. CDP IAs are not limited by the multifunctional restrictions that apply to other IAs secured by Appeals.



**Caution:** An IA may not be granted if any of the taxpayer's liabilities have been referred to the Department of Justice (DOJ) until DOJ agrees the IA is appropriate. See IRM 8.22.6.9, Tax Cases Controlled by the Department of Justice (DOJ).

**Caution:** A taxpayer who has an accepted OIC that is *still being monitored* by MOIC **does not** qualify for an IA for any *additional liabilities* not included in the accepted OIC. However, the taxpayer may be granted up to 120 days to pay the *additional liabilities*. See the second "Note" at IRM 5.19.7.14.4.2(1), Failure to Adhere to Compliance Terms - Balance Due. Also, if the IRS terminates the OIC contract before a final determination or decision is made for the CDP periods, an IA may be granted that includes the defaulted OIC periods.

- (2) IAs must be a document signed by taxpayer and IRS, or a written confirmation of an agreement mailed or delivered to the taxpayer. Form 433-D Installment Agreement or Form 2159 Payroll Deduction Agreement is used to establish an IA. The taxpayer's signature on the form is not required unless it is a payroll deduction or direct debit IA. If using a written confirmation in lieu of securing a Form 433-D from the taxpayer, you must:
- Include all pertinent information that is found on the Form 433-D, such as payment terms, balance due, any conditions of the payment, NFTL information, and how to make payment.
  - Provide the Agreement Locator Number on the Form 5402 for APS processing
- (3) An ARI to Collection to address TFRP is not necessary when the IA includes trust fund taxes owed by a corporation or an LLC (when the single member owner is not the liable taxpayer). When considering an In-Business Trust Fund (IBTF) IA, Appeals is **not** involved in any aspect of:
- Soliciting or securing Form 2750, Waiver Extending Statutory Period for Assessment of Trust Fund Recovery Penalty, , or Form 2751 Proposed Assessment of Trust Fund Recovery Penalty
  - Determining who is responsible for the TFRP
  - Determining non-assertion based upon collectibility

Collection is solely responsible for TFRP determinations and assessment statutes. Securing Forms 2750 or 2751 or making responsibility and collectibility determinations compromises Appeals' independence.

- (4) Within 24 hours of a processable request for an IA, request input of TC 971 AC 043 (pending IA) by secure mail to Account and Processing Support (APS) for all CDP/EH and non-CDP periods. The transaction code:
- Prevents levy action on non-CDP periods
  - Suspends the running of the collection statute (CSED) during consideration of the agreement
- (5) When determining the acceptability of an IA, consider all relevant facts including the taxpayer's compliance history, ability to pay and equity in assets.
- (6) If it appears a taxpayer will have a balance due at the end of the current year, the accrued liability may be included in an IA per IRM 5.14.1.4.2, Compliance



and Installment Agreements. From the date of the IA, the taxpayer must be in compliance with filing, paying estimated tax payments and federal tax deposits.

**Note:** A BMF taxpayer that is **not** in compliance with the filing of Forms W-2 or 1099 should **not** be considered to be in filing compliance. See IRM 5.1.11.3.3.1

, Documentation of Compliance.

(7) Add the statement “an NFTL may be filed by Collection” to Form 433-D, *Additional Conditions/Terms* box unless you determine an NFTL will not be filed as a condition of an IA.

(8) If you determine an NFTL will not be filed as a condition of an IA, check the box on Form 433-D that says “May be filed if this agreement defaults.”

**Note:** Advise Collection on Form 5402 when you determine no NFTL will be filed as Form 433-D is not always returned to Collection.

(9) Include all balance due periods in an IA, both CDP and non-CDP. List non-CDP periods in the “remarks” section of Form 5402 so APS can input ALL tax periods to IA status.

**Note:** This includes MFT 35 Affordable Care Act (ACA) individual Shared Responsibility Payment (SRP) liabilities.

(10) When one spouse in a joint liability requests separate treatment on an IA or CNC, the account must be mirrored. Refer to IRM 5.19.1.6.7, *Mirroring Accounts*, and its related subsections for situations in which an account cannot be mirrored. Advise the taxpayer that once an account is mirrored, the change cannot be reversed. At closing, include instructions to APS to effect the mirroring and note on Form 5402 the following:

- Identify where APS will forward the case to ACSS Support for the mirroring process (APS does not mirror accounts but will forward the mirroring request (Form 5402) as directed by the AO).
- In Remarks state: “The taxpayer was advised that once the account is mirrored, the change cannot be reversed.”

(11) Do not request input of TC 971 AC 063 (approved IA) as it is systemically generated on input to status 60.

(12) If you reject a pending IA, instruct APS in the “Remarks” section of Form 5402 to input TC 972 AC 043 to reverse the TC 971 AC 043. APS does not input the TC 972 AC 043 until the conclusion of the 30 day suspense period for filing for a judicial review.

## 8.22.7.5.1 (08-26-2020) Direct Debit Installment Agreements (DDIA)

- (1) A DDIA automatically transfers funds from the taxpayer’s bank account to the IRS. If the taxpayer has a bank account, encourage the use of the DDIA.
- (2) The following is required to establish a DDIA:
  - a. Form 433-D
  - b. A CIS, unless the agreement meets streamlined or guaranteed IA criteria
  - c. a voided check or the taxpayer’s legibly written routing and account number

- d. The taxpayer's signature, which is a legal requirement

**Note:** To **reinstate** a previously defaulted DDIA, a new Form 433-D is not required as long as the monthly payment amount does not increase and the taxpayer's bank, routing and account information have **not** changed. Research IDRS command code EFTAD for the taxpayer's banking information, and confirm with the taxpayer it is still accurate. If accurate, at closing, alert APS via Form 5402 to input the appropriate transactions to reinstate the agreement. If the taxpayer's banking information is no longer on EFTAD or is no longer accurate, secure a new Form 433-D.

**Caution:** Avoid delays in DDIA processing by verifying the legibility of any hand written routing and account numbers.

- (3) A faxed signature on Form 433-D can be accepted after speaking with the taxpayer. The faxed copy must be documented with the date of the contact.

**Example:** "04/07/2011 TP REQ FAX"

- (4) Discuss payment with and give the taxpayer a start date that is not too soon. Be sure to allow a sufficient grace period prior to the date the initial payment is scheduled.
- (5) Monthly reminder notices are not issued on DDIA's.
- (6) The taxpayer may request a notice of federal tax lien withdrawal from Collection once certain conditions of the DDIA are met. See IRM 8.22.7.9.1, NFTL Withdrawals for additional information.
- (7) For additional information on the DDIA, see IRM 5.14.10.4 Direct Debit Installment Agreements, and IRM 5.19.1.6.4.13, DDIA, and any related subsections.
- (8) At closing, select "DDIA" from the Form 5402 Installment Agreement drop down box. This alerts APS to return the "DDIA" to the originator for processing.

8.22.7.5.2  
(08-26-2020)  
**Manually-Monitored  
Installment Agreements  
(MMIA)**

- (1) Some IAs are not compatible with IDRS monitoring. The following agreements must be manually monitored in Centralized Case Processing (CCP) to ensure compliance with the terms of agreements:
- NMF assessments
  - Agreements with variable or percentage amounts
  - Agreements with irregular payment intervals
  - Agreements secured from two or more parties at different addresses on the same liability (e.g. divorced taxpayers, partnerships, etc.)
  - L Freeze modules during pending Joint and Several Liability Relief Under IRC 6015 claims
  - IBTF IAs (except Express Agreements)
  - Restitution Based Assessments and related civil assessments
  - Any other agreement not compatible with IDRS monitoring
- (2) Prior to closing, be sure that the TC 971 AC 043 has been input as this will prevent any FPLP levies. See also IRM 8.22.7.5.

- (3) At closing, select “MMIA” from the Form 5402 Installment Agreement drop down box. This alerts APS to return the “MMIA” to the originator for processing.

8.22.7.5.3  
(08-26-2020)  
**Low-Income Installment  
Agreement  
Documentation and User  
Fee Reimbursement**

- (1) The Bipartisan Budget Act of 2018 amended IRC 6159, limiting the installment agreement (IA) user fee by providing a waiver or reimbursement of user fees to low-income taxpayers under certain circumstances. The IRS has interpreted new section 6159(f) to require that taxpayers self-identify that they are unable to make electronic payments through a debit instrument to qualify for a reimbursement of the reduced user fee(s) upon completion of the IA. Newly revised IA forms, including Form 9465, Installment Agreement Request, and Form 433-D, Installment Agreement, include a taxpayer self-identifier check box. The taxpayer should be considered self-identified if they either use the self-identifier check box, or otherwise state that they are unable to make electronic payments through a debit instrument by entering into a direct debit installment agreement (DDIA).
- (2) A DDIA is the only mechanism the Service has in place by which the taxpayer may agree to make electronic payments through a debit instrument.
- (3) Refer to IRM 5.19.1.6.4.6.4, Reimbursement of User Fee for Qualifying Low-Income Taxpayers, for the criteria used to qualify for reimbursement of IA user fees and examples of how a taxpayer self-identifies as unable to make electronic payments through a debit instrument by entering into a DDIA.
- (4) When granting a regular IA or PPIA to a low-income taxpayer:

If...	Then...
taxpayer self-identifies as unable to make electronic payments through a debit instrument by entering into a DDIA,	notate “unable to enter a DDIA” in the “Remarks” section of Form 5402.
taxpayer does not self-identify as unable to make electronic payments through a debit instrument by entering into a DDIA,	notate “Able to enter a DDIA” in the “Remarks” section of Form 5402.

- (5) IA command codes in IDRS will record a taxpayer’s ability to make electronic payments and identify qualifying low-income taxpayers who may be reimbursed the user fee upon completion of their IA. See also IRM 8.20.7.41.1(7).
- (6) When applicable, inform taxpayers that IRS is noting in its records the taxpayer’s ability to make electronic payments through a debit instrument by entering into a DDIA.
- (7) Do not question or dispute a taxpayer’s response to their ability to make electronic payments through a debit instrument by entering into a DDIA, even if the account history shows a past DDIA.

8.22.7.6  
(08-26-2020)  
**Short Term Payment  
Plan Within 120 Days**

- (1) If a taxpayer proposes an agreement to full pay an **ACSS-sourced** account within 120 days, an agreement is authorized per IRM 5.19.1.6.3, Short Term Payment Plan Within 120 Days. A request may be granted based on:
  - Personal funds available to full pay the balance due
  - Third party assets available to full pay the balance due
  - Refund return or amended return that full pays the balance due
- (2) IMF, BMF out of business or BMF in business non trust fund taxpayers generally qualify if there has been no prior short term payment arrangement previously granted.
- (3) IBTF taxpayers do not qualify.
- (4) Request in the remarks section of Form 5402 that APS input STAUP to any non-CDP tax periods if the agreement is that the liability will be satisfied within 120 days as well. Advise APS as to the next status and the number of cycles of delay until the next status. See IRM 2.4.28.2, CC STAUP Notice Requests, for the sequence of master file status codes.

8.22.7.7  
(09-23-2014)  
**Currently Not Collectible  
(CNC)**

- (1) A taxpayer may challenge the appropriateness of collection activity by claiming they are in a hardship situation or by requesting CNC status.
- (2) CNC is not a collection alternative. It is a determination that a case should not be in collection at this time.
- (3) If the taxpayer's CIS confirms hardship per IRM 5.16.1.2.9, Hardship:
  - It is not appropriate to sustain the proposed levy action. IRC 6343(a)(1) requires release of a levy if the IRS determines the levy is causing economic hardship to the taxpayer due to the taxpayer's financial condition.
  - CNC may be granted even if the taxpayer hasn't filed all required returns.
- (4) Form 53, Report of Currently Not Collectible Taxes, is not needed to report a CDP account CNC. APS inputs CNC using Form 5402 and the closing code selected in the drop down menu. List all non-CDP periods in the "remarks" section of Form 5402 so APS can input ALL tax periods to CNC.

**Note:** Prepare Form 53 if the closing code is CC 13, *In-business corporation*. APS is required to send the paper Form 53 to Collection for input and mandatory follow-up determination.

- (5) When resolving trust fund liabilities as CNC, no ARI is necessary. Note on Form 5402 that Compliance is responsible for any TFRP determination and close the case.
- (6) When resolving a case as CNC, advise the taxpayer verbally or in writing that a lien may be filed by Collection.
- (7) Avoid making a CDP determination that a CDP liability is uncollectible on the basis of TC 530 CC 39 in the module. A TC 530 CC 39 only indicates the module has been assigned in Collection to a hold file.

8.22.7.8

(08-26-2020)

## Adjustments-Form 3870

(1) Adjustments on accounts may involve:

- Credit transfers
- Tracing payments
- Penalty abatements
- TFRP adjustment

**Note:** Interim adjustments for TFRP assessments in CDP cases may be sent directly to the appropriate CPM unit for processing. See IRM 8.25.2.7(2).

Locate the CPM contacts at *SERP > Who/Where > Control Point Monitoring Technicians*.

- Tax abatement (FUTA, 6020(b), CAWR, SFR/ASFR, AUR Reconsiderations, Audit Reconsiderations)
- Tax assessed under wrong entity or tax period
- 941-X increase or decrease
- Statute consideration

(2) See the table below for a description of the forms used for making adjustments and transferring credits:

Form	Used for...
2424, Account Adjustment Voucher	transferring credits
8765, IDRS Control File Credit Application	transferring credits from excess collection.
3870, Request for Adjustment	for all other adjustments.

**Note:** To request the Statute Unit clear a payment located in the Excess Collection File for credit or refund to the taxpayer's account, see IRM 25.6.1.10.2.5.1.1, Appeals Determinations.

(3) When adjusting Form 941, 940, and 1040 tax assessments, you must include item or credit adjustment codes. See Document 6209, Section 8. Below are some of the commonly used codes for adjusting Forms 941, 940, and 1040:

Form 941	
Item Reference Number	Explanation
003	Adjusted total of income tax withheld
004	Taxable social security wages
005	Taxable social security tips
007	Adjusted total of social security/medicare taxes

Form 940	
WCA – Wage increase/decrease	

Form 940
TCA – Tax increase/decrease

Form 1040
806-W-2 Withholding tax and/or excess FICA contribution Credit
807-W-2 Withholding tax and/or excess FICA contribution Debit
886-Taxable income (valid 7712 and subsequent)
888-Adjusted gross income adjustment
889-Self-Employment Tax Adjustment

8.22.7.8.1  
(08-09-2017)

#### Interim Adjustments

- (1) A tax adjustment may be required before a case can be closed. Adjustments requested prior to closing a case are called interim adjustments. Interim adjustment requests should be made judiciously.
- (2) To request an interim adjustment:

Step	Action
1	Generate an on-line Form 3870 from APGolf 2.0.
2	Complete the form and e-mail it to your ATM for a digital signature.
3	Generate the “ACDS Update Request Form” or “APS Request Form for Collection Cases” found on APGolf under ACDS Updates and open in WORD
4	Change the caption of the form to <i>CDP Interim Adjustment Request form</i> .
5	After establishing which APS campus services your office, send an e-mail to the respective site with the retitled update form and Form 3870
6	In the subject line of your secure mail, type: CDP Interim Adjustment

- (3) APS alerts the originator via mail when the interim adjustment is complete.

8.22.7.9  
(03-29-2012)

#### Notice of Federal Tax Lien (NFTL)

- (1) This subsection describes actions with respect to an NFTL including NFTL withdrawals, and lien releases, discharges and subordinations.

8.22.7.9.1  
(08-26-2020)

#### NFTL Withdrawals

- (1) IRC 6323(j) gives the Service the authority to withdraw an NFTL under certain circumstances. Taxpayers requesting NFTL withdrawal must meet one of the following conditions:

- **IRC 6323(j)(1)(A):** The filing was premature or not in accordance with the Service's administrative procedures
  - **IRC 6323(j)(1)(B):** The taxpayer entered into an agreement under IRC 6159 to satisfy the tax liability for which the lien was imposed by means of installment payments unless such agreement provides otherwise
  - **IRC 6323(j)(1)(C):** Withdrawal facilitates the collection of the tax liability
  - **IRC 6323(j)(1)(D):** With the consent of the taxpayer or the National Taxpayer Advocate, withdrawal would be in the best interest of the taxpayer and the United States
- (2) See IRM 5.12.9, Withdrawal of Notice of Federal Tax Lien, for examples of when a withdrawal is or is not appropriate.
- (3) Form 12277, Application for Withdrawal of Filed Form 668(Y), Notice of Federal Tax Lien, is used by a taxpayer to indicate the basis for a withdrawal request under IRC 6323(j). This form is not needed in a CDP hearing if the taxpayer's request for withdrawal falls under one of the IRC 6323(j) criteria.
- (4) Use the table below after considering a taxpayer's request for an NFTL withdrawal:

Did you determine withdrawal is appropriate under IRC 6323(j)?	Then...	Does Appeals retain jurisdiction on the NFTL withdrawal?
Yes	<ul style="list-style-type: none"> <li>• Issue a determination or decision that the NFTL will be withdrawn</li> <li>• See table IRM 8.22.7.9.1.3, NFTL Withdrawal Procedures</li> </ul>	Yes
No	Issue a determination or decision explaining the NFTL is not withdrawn and explain the basis of your decision.	No

- (5) Specific NFTL issues such as the discharge, withdrawal, release, subordination or premature filing of a NFTL may be considered during a hearing under IRC 6330, provided the identical issue was **not** already considered in a prior hearing under IRC 6320.

8.22.7.9.1.1  
(11-05-2013)

**DDIA NFTL Withdrawals**

- (1) A taxpayer may request withdrawal of an NFTL under IRC 6323(j)(1)(B) when in an established DDIA. See IRM 5.12.9.3.2.1 Special Provisions for Direct Debit Installment Agreements, for conditions which must be met prior to a determination to withdraw under this provision. Appeals ATMs have the delegated authority to approve or deny such requests. For Appeals NFTL withdrawal procedures, see IRM 8.22.7.9.1.3 below.
- (2) If a taxpayer enters into an IA other than a DDIA, the taxpayer may still qualify for an NFTL withdrawal under IRC 6323(j)(1)(B) if the IA did not provide for the NFTL.



8.22.7.9.1.2  
(11-05-2013)

**Withdrawal of NFTL after Release**

- (1) A taxpayer may request withdrawal of an NFTL under paragraphs (A) and (D) of IRC 6323(j)(1) after the notice has been released. See IRM 5.12.9.9.1, Processing Withdrawals After Release, for conditions which must be met prior to a determination to withdraw under this provision. Appeals ATMs have the delegated authority to approve or deny such requests. For Appeals NFTL withdrawal procedures, see IRM 8.22.7.9.1.3 below.

8.22.7.9.1.3  
(08-26-2020)

**NFTL Withdrawal Procedures**

- (1) Use the table below to request an NFTL withdrawal:

Step	Who	Action
1	hearing officer	Prepare Form 13794-W, Request for Withdrawal or Partial Withdrawal of Notice of Federal Tax Lien, explaining which of the 4 IRC provisions is the basis for the withdrawal. Use the PDF Form 13794-W found in APGOLF 2.0.
2	hearing officer	Insert your name in the "requested by" field on the form and forward the Form 13794-W PDF file by encrypted mail to the ATM.
3	ATM	The ATM signs Form 13794-W and transmits it by encrypted e-mail or e-fax to the Collection Advisory manager for the office that covers the taxpayer's residence. Locate the correct Advisory office via Publication 4235, Collection Advisory Group Numbers and Addresses, or online via the intranet at SERP > Who/Where > Advisory.
4	Advisory	Advisory processes the withdrawal request in accordance with 5.12.9.8.1 Withdrawal Based on Appeals Decision: <ul style="list-style-type: none"> <li>• Confirms the accuracy of Form 13794-W, and</li> <li>• Forwards it to Centralized Lien Processing Operation (CLO) within 5 days of receipt</li> </ul>

- (2) A copy of the withdrawal is available through ALS. If requested by the hearing office, a copy of the withdrawal form is returned by CLO.
- (3) When an NFTL is withdrawn in response to a CDP determination, the taxpayer may not request another CDP lien hearing if the NFTL is later filed.

**Exception:** If Collection timely rescinded the original CDP notice, the taxpayer would be entitled to another CDP lien hearing request.

8.22.7.9.2  
(11-05-2013)

**Partial Release and Manual Release**

- (1) Circumstances may dictate a partial release of an NFTL is necessary. A partial release is necessary when:
- An OIC is accepted from only one party on a joint liability
  - Innocent spouse relief is granted
  - The taxpayer requests a release for a specific tax period that has been satisfied on an NFTL with multiple tax periods



- (2) Use the following procedures for requesting a partial release after receiving concurrence from your ATM:
  - a. Prepare Form 13794
  - b. Forward the request to Centralized Lien Processing Operation (See SERP)
  - c. Request acknowledgment of the request for a partial release
  - d. Once acknowledgment is received, you may close your CDP without waiting for the partial release to be recorded
- (3) Use the procedures above for requesting a manual release for satisfied or unenforceable accounts as per IRM 5.12.3.3.2, Liability is Unenforceable - IRC 6325(a)(1).

8.22.7.9.3  
(08-26-2020)  
**Discharges and Subordinations**

- (1) If a taxpayer requests a subordination or discharge of a tax lien, see the table below:

Alternative	Definition
Discharge- IRC 6325(b)	Permits the Service to discharge property from a tax lien. Taxpayers typically seek a discharge in connection with the sale of real property when there is insufficient equity to full pay the NFTL. See: <ul style="list-style-type: none"> <li>• Pub 783, Instructions on How to Apply for Certificate of Discharge from Federal Tax Lien</li> <li>• IRM 5.12.10.3, Discharge of Property, for additional information</li> </ul>
Subordination- IRC 6325(d)	Permits the Service to subordinate a tax lien to another lien or interest. Taxpayers typically seek subordination in connection with refinancing a loan where there is insufficient equity to full pay the NFTL. See: <ul style="list-style-type: none"> <li>• Pub 784, Instructions on How to Apply for a Certificate of Subordination of Federal Tax Lien</li> <li>• IRM 5.12.10.6, Subordination of Lien, for additional information</li> </ul>

- (2) If the taxpayer completes Form 14135, Application for Certificate of Discharge of Federal Tax Lien, or Form 14134, Application for Certificate of Subordination of Federal Tax Lien, submit the application on an ARI to the Advisory Unit for the state where the property is located. See Pub 4235 for Advisory Unit addresses. In your ARI, remind Advisory to share the results with the taxpayer and Appeals. You may use Letter 5208, Notification of Appeals Referral Investigation, to notify the taxpayer that information they provided to Appeals is being referred to Collection for evaluation.
- (3) Input SU/RI to suspend the case. This automatically puts the case in E/ARI status showing the case is suspended. Add Feature Code (RI) **Referral Investigation**. The RI feature code remains on the case after it is taken out of suspense. Input SU/RT to take the case out of suspense once the ARI is returned.

**Note:** When removing a case from suspense, check IDRS for any transactions that may have occurred during the suspense as these may impact the CDP matter.

- (4) Advisory considers the request, processes any payments and issues the certificate. Advisory shares the results of the request with the taxpayer.
- (5) If Advisory rejects the discharge/subordination request and the taxpayer disputes it, review the decision and make a final determination prior to closing the CDP.
- (6) The results of the discharge/subordination request are communicated to the taxpayer in the determination/decision letter attachment or Form 12257 waiver.

8.22.7.10  
(08-26-2020)  
**Offers in Compromise  
(OIC)**

- (1) This subsection discusses the unique procedures in CDP OICs. General guidance for working OICs in Appeals is found at Appeals IRM 8.23, Offer in Compromise. See IRM 5.8.3.5, Processing Forms 656 and Initial Offer Payments, for instruction on the number of Forms 656 to secure.
- (2) An OIC may be a viable collection alternative in a CDP hearing. Key components of an OIC discussion include:
  - Different types of offers and payment options
  - How reasonable collection potential (RCP) is determined
  - Compliance and acceptance requirements
  - The application fee is refundable if the offer is not processable. The application fee is not refundable once an offer is determined processable
  - TIPRA payments are generally not refundable and are applied to the liability along with the application fee
  - The taxpayer's right to designate application of TIPRA payments, but that the designation must be in writing at the time the payment is made, and that the right to designate offer payments ends once the offer is accepted
  - The application fee and TIPRA payment requirements don't apply if the offer is in doubt as to liability or the taxpayer meets the low-income qualifications
- (3) Advise the taxpayer that a search of the phrase "offer in compromise" at [www.irs.gov](http://www.irs.gov) provides additional resources.
- (4) The taxpayer is responsible for initiating the offer and determining the amount of the offer as per IRM 1.2.1.6.17, Policy Statement 5-100. Do not negotiate the offer amount prior to formal submission of an offer by the taxpayer as this may lead to the government negotiating against itself and the possibility of the taxpayer offering as little as possible.
- (5) Advise the taxpayer of any conditions that might prevent an offer from being considered including:
  - Failure to remain in filing compliance
  - Insufficient estimated tax paid or income tax withheld to cover the estimate of the current year's tax
  - Federal tax deposits not timely made during the course of the investigation

- Failure to provide requested information needed to determine the acceptability of the offer
  - Dishonored check for application fee or TIPRA payment
  - Failure to make periodic payments
  - Filing for bankruptcy
  - A CDP OIC is under consideration in Appeals when the CDP liabilities become satisfied **prior** to a final decision by Appeals.
- (6) If the taxpayer wants an offer considered, provide Form 656-B, Offer in Compromise, if available, and a deadline for the offer to be returned. If not available, refer the taxpayer to the IRS web site according to (3) above.
- (7) You may assist the taxpayer in preparing the offer forms if necessary. For example, the taxpayer may need assistance if they have limited proficiency in English, reading or writing.
- (8) When an OIC is considered, restrict your consideration of issues to those specific items in dispute between the taxpayer and Collection. Following Appeals Policy Statement 8-2, Appeals will not raise new issues. See IRM 1.2.1.9.2, Policy Statement 8-2 (Rev. 1) (Formerly P-8-49), New Issues Not to be Raised by Appeals.

**Note:** The taxpayer may raise new issues. See also IRM 8.23.3.3.1.1, Consideration of New Issues.

8.22.7.10.1  
(09-23-2014)  
**Responsibilities in CDP  
OICs**

- (1) The subsections below discuss responsibilities in CDP OICs.

8.22.7.10.1.1  
(08-26-2020)  
**Functional  
Responsibilities**

- (1) COIC makes the initial offer processability determination in all OIC cases. When a taxpayer disagrees with COIC's not-processable determination, Appeals makes a final OIC processability determination and includes it in the NOD. See IRM 8.22.7.10.4.1, OIC is Not Processable, below.
- (2) Collection investigates the offer and either:
- a. Accepts it, or
  - b. Provides Appeals a recommendation of rejection, or
  - c. Determines if the criteria for returning a processable offer or a mandatory withdrawal is met and returns the offer or follows procedures for acknowledging the withdrawal of an offer, or
  - d. Secures a voluntary withdrawal
- (3) For offers recommended for rejection, Appeals considers disputed items and makes a final determination following IRM 8.23.3.3, Appeals OIC Evaluation Procedures.
- (4) For offers returned by Collection, Appeals notes the return in the NOD that the basis for the return was correct. Appeals should first confirm that the return was appropriate following guidance in IRM 8.22.7.10.5, Mandatory Withdrawals, Returns and Terminated Offers, and related subsections.

- (5) If all CDP periods are satisfied while an OIC is pending with Collection, there is no issue with respect to the NFTL or the proposed levy for Appeals to consider. Notify Collection that:

- Appeals releases jurisdiction, and
- Collection will make the final determination on the OIC

**Note:** When a CDP case is under consideration in Appeals and the CDP periods become satisfied prior to a final decision by Appeals, prepare Form 3210 and immediately return the OIC file to the manager of the Compliance employee who made the preliminary decision. Via secure e-mail, notify the Compliance manager of the reason for the loss of CDP jurisdiction.

- (6) If a taxpayer withdraws a CDP request, the OIC is returned to Collection for the determination.

#### 8.22.7.10.1.2

(08-26-2020)

#### Associating Separated CDP and OIC cases

- (1) If the taxpayer submits an OIC while a CDP is open, associate the OIC with your CDP/ EH case and incorporate the OIC decision into the CDP determination. Failure to do so may result in a remand by the Tax Court to address the OIC. Examples of OICs that must be associated and addressed in a CDP include:

- A taxpayer requests a CDP hearing while an OIC is pending with Collection
- A taxpayer timely requests an appeal of a rejected OIC, and the OIC hearing is pending in Appeals when the taxpayer requested a CDP hearing
- A taxpayer submits an OIC directly to Collection while a CDP hearing is pending i.e. before the date the CDP closing letter is mailed

- (2) An ecase notification in the CAR, ***ecase found new AOIC information for this case***, indicates COIC received an offer which must be carded in and considered by Appeals as a collection alternative in CDP unless, prior to the date of the TC 480:

- The determination/decision letter was mailed in a CDP case, or
- The ATM signed Form 12257 in an agreed CDP case

**Note:** See also IRM 8.22.7.10.6.1, Withdrawal of the CDP.

- (3) When you see the CAR entry, ***ecase found new AOIC information for this case***, and don't have an OIC, check IDRS for a TC 480 and confirm receipt with the COIC CDP coordinator. Do not make a final determination without confirming whether an OIC is pending. If an OIC is pending, the CDP determination/decision must comment on it as a collection alternative.

- (4) If you discover an OIC is pending in Collection, notate it in the CAR and:

- a. Alert the COIC CDP Coordinator found on the *Appeals CDP web page* by secure mail that a CDP/ EH is pending in Appeals
- b. Obtain a copy of Form 656 and request APS card in a OIC WUNO per instructions below.
- c. Suspend action on the CDP unless other issues need to be addressed besides the OIC

- d. Issue the Substantive Contact Letter within 30 days of receiving COIC's recommendation, if the letter has not already been sent
- (5) If you discover an OIC **appeal** pending before another Appeals employee, request the OIC WUNO to be transferred to you to associate with your CDP. A DP feature code is applied to both WUNOs.
- (6) If Collection is considering an OIC and discovers a CDP pending in Appeals, Collection sends Appeals a secure e-mail to notify of the OIC and faxes a copy of Form 656.
- (7) Upon receipt of Form 656:
  - a. Update the CAR to note Collection's investigation of the OIC
  - b. Add "DP" feature code to the CDP/EH WUNO
  - c. Request APS create an OIC WUNO with "DP" feature codes; REQAPPL = the date the taxpayer requested an Appeal. APS will determine the RECDATE and ASGNDATE in generating the OIC WUNO.
  - d. Request APS input on OIC WUNO new STAT code "TIPRA" with the OIC received date + 2 years
  - e. Suspend both WUNOs by selecting carats history Action Code SU, sub action=PI, and suspense action=E/OIC

**Note:** When removing a case from suspense, check IDRS for any transactions that may have occurred during the suspense as these may impact the CDP matter.

  - f. Suspend further actions on the CDP/EH case unless other issues besides the OIC need to be addressed

8.22.7.10.1.3  
(08-26-2020)  
**TIPRA Statute  
Responsibilities**

- (1) When an OIC is submitted in CDP, Appeals generally has 24 months to make a determination. If the offer is not rejected, returned or withdrawn within 24 months of submission, it is deemed accepted. See (5) below for some important clarifications for dispositions made by Collection.
- (2) An OIC is "submitted" as of the day IRS receives the offer. The postmark is irrelevant in determining when an offer was submitted.
- (3) An amended Form 656 is not a new offer and it does not impact the 24 month TIPRA statute that started on the date the original offer was received.
- (4) TIPRA statute cases are subject to the same back-end processing requirements listed in IRM 8.21.3.2.7, Closings, and IRM 8.21.4.3, Appeals Team Manager, which means:
  - Written ATM concurrence is required to keep the OIC open beyond 120 days remaining on the TIPRA statute
  - You are responsible for ensuring the OIC is shipped to APS for closing with at least 90 days remaining on the TIPRA statute
  - If less than 90 days remain when the case is being closed, notify the PTM by encrypted mail when the case is being closed to APS
  - Responsibility for the TIPRA statute is shared jointly by the PTM and the ATM
- (5) Certain dispositions made by Collection during consideration of a CDP OIC will result in the closing of the TIPRA 24-month period. These dispositions are as follows:

- Return
- Mandatory Withdrawal
- Erroneously issued rejection letter

The above dispositions will close the TIPRA 24-month period even if determined by Appeals to have been erroneously made by Collection.

8.22.7.10.2  
(08-26-2020)

#### Requesting an OIC WUNO

- (1) Upon receipt of Form 656, request an OIC WUNO by providing APS with:
  - a. "ACDS Update Request Form" or "APS Request Form for Collection Cases" found on APGolf under ACDS Updates.
  - b. A copy of page one and/or page two of the Form 656 listing all periods on the OIC
  - c. Include the offer number in the "OfrNum" field. ask APS to add the number when it has been established.
  - d. Include the amount of the OIC. To do so, include a copy of page three of the Form 656 **or** clearly indicate the amount of the OIC on whichever form is used to transmit the request (see "a)" above.
  - e. The related CDP Case Summary Card (CSC) noted "Please create OIC WUNO." Include feature code DP.

**Note:** Remember to ask APS to add the OIC WUNO in the NOTES field of the CSC once it has been created. .

- f. TIPRA statute date = oldest date stamp on form 656 of OIC plus two years
- (2) Feature Codes:
  - a. **All CDP OICs:** Input Feature Code "DP" to the OIC WUNO. Input a "DP" to the CDP WUNO
  - b. **DATL-OICs:** Input Feature Code "LI" to the OIC WUNO
- (3) Entries in SOURCE, DO, and PBC for the OIC are the same as the entries in the related CDP.
- (4) A CDP/EH case can result in more than one OIC. For example, related entities such as a joint return and a sole proprietorship are each carded in as a separate OIC work unit. Related case files are associated and worked together unless there is a DATL OIC where the liability is precluded from CDP.

8.22.7.10.3  
(08-26-2020)

#### Receipt of Form 656

- (1) Upon receipt of a new OIC, date stamp the upper right corner of Form 656 with the date the offer was received.

**Example:** The IRS mail room receives and date stamps an envelope containing Form 656 on 11/14/18. You get the Form 656 in your office mail on 11/18/18. The IRS receipt date of the form 656 is 11/14/18.

- (2) **DO NOT SIGN FORM 656** as COIC is responsible for signing it as part of the processability determination. Forward the offer to COIC for processing, even if it was received without a user fee or TIPRA payment.
- (3) If the address on Form 656 doesn't match IDRS, confirm the current address with the taxpayer. Update ACDS with the current address as well.



- (4) Make an effort to address with the taxpayer obvious offer processability deficiencies. Where possible, correct the deficiency prior to forwarding the offer to COIC. However, if you are unable to correct the deficiency, the offer **must** still be forwarded to COIC for the formal processability decision. For possible deficiencies see IRM 5.8.2.4.1, Determining Processability.
- (5) Appeals may take jurisdiction over non-CDP periods for the purpose of resolving a case through an OIC. Examples of tax periods included in a CDP OIC but not the subject of the CDP/EH may include:
  - Tax debts owed by the CDP/EH taxpayer but not listed on the CDP notice
  - Joint tax debts of a co-residing spouse who did not request a CDP/EH hearing, or
  - sole proprietorship or an LLC where the single member owner is solely responsible

8.22.7.10.4  
(08-26-2020)  
**Processing OICs**

- (1) COIC makes the initial processability determination for all OIC cases.
- (2) When receiving an OIC in CDP, prepare Form 13933, Collection Due Process/Equivalent Hearing Offer in Compromise Cover Sheet, and Form 3210, Document Transmittal, in the OIC section of APGolf. Send them with the items below to the appropriate COIC site for a processability determination and Collection investigation:
  - Form 656
  - The OIC application fee and TIPRA payment, if applicable
  - Any written designation of the TIPRA payment from the taxpayer
  - Form 433-A/B
  - A signed Letter 3820, Appeals Received Your Offer in Compromise and We Can Consider It
  - A self-addressed return envelope

**Note:** The requirement to sign Letter 3820 before sending it to COIC is a new requirement. COIC mails Letter 3820 for processable OICs notifying the taxpayer that their offer has been forwarded to Collection for investigation.
- (3) COIC issues its own letter to the taxpayer if the offer is not processable.

8.22.7.10.4.1  
(08-26-2020)  
**OIC is Not Processable**

- (1) If COIC determines an offer is not processable, COIC:
  - a. Secure e-mails the AO to advise of the reason for the return.
  - b. Mails the taxpayer Form 656 and a Return letter, explaining why the OIC isn't processable
  - c. Faxes Appeals a copy of the return letter.
  - d. Refunds the application fee, if applicable
- (2) COIC's return letter advises the taxpayer to contact Collection if she or he disagrees with the decision to return the OIC. If the taxpayer raises the return in CDP, ask the taxpayer how the processability criterion at IRM 5.8.2.4, Processability, was incorrectly applied. Independently evaluate the claim and if you agree the return was in error, resubmit Form 656 to COIC for a processability determination with the new information.

- (3) If the return was not in error, close the OIC WUNO when closing the CDP case:
  - a. Prepare Form 5402 using cc 20 premature referral and the appropriate resolution reason
  - b. Document the not-processable determination in the attachment to the determination/decision letter

**Example:** "The offer in compromise submitted during your Collection Due Process hearing was returned on 01/31/2015 because it was not processable."

8.22.7.10.4.2  
(09-23-2014)  
**OIC is Processable**

- (1) If COIC determines the offer is processable, COIC:
  - a. Signs Form 656
  - b. Mails Letter 3820 to the taxpayer and POA, if applicable, and
  - c. Inputs TC 480 for OIC periods
  - d. Inputs STAUP to EH and non-CDP periods to move those periods to status 71 (if not in status 53)
  - e. Mails a copy of Form 13933 ,Letter 3820 and Form 656 to the originating Appeals employee within 14 days

8.22.7.10.4.3  
(08-26-2020)  
**OIC Investigation**

- (1) Collection investigates the offer and either:
  - a. Accepts it, or
  - b. Provides Appeals a recommendation of rejection, or
  - c. Returns the offer and mails the return letter or issues a mandatory withdrawal letter
  - d. Secures a voluntary withdrawal
- (2) COIC may transfer an OIC to Field Collection for investigation based on complex issues.
- (3) Collection must return an OIC to Appeals with no less than 9 months on the 24 month TIPRA statute for Appeals to make a final determination. If there is less than 9 months remaining, Collection must contact the Appeals employee assigned the case and provide a report on the anticipated completion of the investigation.

**Note:** If Collection does not return an OIC with 9 months remaining on the TIPRA statute, request that your ATM elevate the matter to Collection.

8.22.7.10.4.4  
(08-26-2020)  
**Collection Recommends Acceptance**

- (1) If Collection accepts the OIC, Collection will:
  - a. Issue the acceptance letter
  - b. Forward original documents to MOIC and the required documents to the Public Inspection File
  - c. Return to Appeals via secure E-mail copies of the acceptance letter and Form 7249. The Form 7249 will include the acceptance terms, applicable tax periods and approvals so no copy of the Form 656 or addendum is needed.
  - d. STAUP CDP periods to status 71 to prevent them from reverting to collection status when TC 520 cc 76/77 is reversed



- (2) Once you are notified of the accepted offer, ask the taxpayer to sign Form 12257 to resolve the CDP. If the taxpayer declines to sign, adopt the decision to accept the offer in the attachment to the Determination/Decision and close the CDP/EH if the taxpayer has no other relevant issues.
- (3) To close the OIC WUNO:
  - a. Generate the OIC 5402 and select closing code 15
  - b. Select "CDP OIC acceptable" as the Resolution Reason
  - c. In "Remarks" section, type "Collection accepted OIC and issued the acceptance letter."

8.22.7.10.4.5  
(08-26-2020)  
**Collection Recommends  
Rejection**

- (1) Collection shares the results of the OIC investigation with the taxpayer. If Collection recommends rejection, Appeals makes a final determination under IRC 7122(f) within 24 months of the date the offer was received.

**Note:** With its recommendation, Collection does not provide to Appeals a Form 1271, Rejection or Withdrawal Memorandum. Form 1271 is not used in CDP OICs. See IRM 8.22.9.4.3.1, Rejection.

- (2) If Collection erroneously issued a final rejection letter, Collection will not rescind it. Instead, inform the taxpayer that the OIC is under Appeals' jurisdiction and Appeals will make the final determination regarding the OIC in the CDP determination/decision letter. Locate the COIC CDP coordinator [http://appeals.web.irs.gov/tech\\_services/collection/cdp.htm](http://appeals.web.irs.gov/tech_services/collection/cdp.htm) and request that the offer be reopened on AOIC under reconsideration procedures in IRM 5.8.7.3, Return Reconsideration.

**Note:** In this circumstance, the TIPRA statute **no longer** continues to run. Since a decision letter was mailed, a mandatory acceptance under IRC 7122(f) is no longer applicable..

- (3) In most instances, the CDP and OIC files are closed and retained together in case the OIC is raised as an issue in a CDP Tax Court petition.

8.22.7.10.5  
(08-26-2020)  
**Mandatory Withdrawals,  
Returns and Terminated  
Offers**

- (1) During Collection's offer investigation, there are situations that may result in a processable offer being returned, terminated or withdrawn. Collection advises the taxpayer of issue(s) preventing the offer from proceeding and provides an opportunity for the problem to be cured. If the taxpayer fails to do so, the OIC is returned with a letter advising them to contact Collection if she or he disagrees with the decision to withdraw, return or terminate the OIC.
- (2) When an OIC is returned, terminated or deemed a mandatory withdrawal, review the OIC file and confirm Collection followed their policy:

If you confirm...	Then...
The withdrawal, return or termination was proper	<ul style="list-style-type: none"> <li>The OIC is closed</li> <li>See the tables below for the language used to close the OIC out in your CDP determination or decision.</li> </ul>

The withdrawal, return or termination was in error	<ul style="list-style-type: none"> <li>Resubmit Form 656 to the attention of the Group Manager of the OIC group that returned it, requesting it be reopened.</li> <li>Explain how the withdrawal, return or termination process was incorrectly followed or applied.</li> </ul>
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- (3) The taxpayer may submit a new offer soon after a previous offer is returned by COIC, but prior to the issuance of a CDP or EH closing letter by Appeals. Unless precluded under IRC 6330(c)(2)(B), this new offer is under the jurisdiction of Appeals and CDP. If the offer appears to be another return for a similar reason as the prior offer, attempt to have the taxpayer perfect the offer prior to submitting it to COIC for processability. In any event, the offer must be sent to COIC for processability.
- (4) To be certain the TIPRA statute under 7122(f) is closed prior to the end of the 24-month period that begins with the receipt of Form 656, be sure to communicate to the taxpayer the final disposition of the OIC in your Determination or Decision Letter. See also IRM 8.22.7.10.1.3, TIPRA Statute Responsibilities.

8.22.7.10.5.1  
(08-09-2017)

**Mandatory Withdrawal  
for Missed Periodic  
Payment**

- (1) If a taxpayer fails to make a payment other than the first installment, Collection asks the taxpayer to make up the missed payment. If the taxpayer fails to do so, Collection notifies Appeals the OIC was closed as a mandatory withdrawal.
- (2) Confirm that the taxpayer had the opportunity to make up the missed payment and failed to do so. Once confirmed, close the OIC WUNO as a mandatory withdrawal:

Step	Action
1	Remove the DP feature code from the OIC and CDP WUNOs in ACDS.
2	Prepare Form 5402 using cc 16 withdrawal
3	Note the OIC in your CDP NOD or applicable closing letter with the following language: "You submitted an offer which required periodic payments according to a schedule you proposed. You failed to pay after being reminded of the payment requirement. Under the law, your offer was withdrawn."

- (3) If the OIC must be closed before the CDP WUNO, retain the OIC file with the CDP file and send APS the following to close the OIC WUNO:

- Form 5402 for the OIC WUNO
- OIC CAR

8.22.7.10.5.2  
(08-09-2017)  
**Return for Dishonored  
Payments**

- (1) If Collection discovers a dishonored application fee and/or TIPRA payment after the offer is deemed processable, Collection returns the offer to the taxpayer with a letter giving 30 days to make the payment good and request reconsideration. If the taxpayer fails to provide replacement payment, Collection notifies Appeals of the return for dishonored payment.
- (2) Confirm that the taxpayer had the opportunity to provide a replacement payment and failed to do so. Once confirmed, close the OIC WUNO as a return:

Step	Action
1	Remove the DP feature code from the OIC and CDP WUNOs in ACDS.
2	Prepare Form 5402 using cc 20 premature referral and the appropriate resolution reason code.
3	Note the OIC in your CDP NOD or applicable closing letter with the following language: "The offer you submitted was returned because you did not provide the required down payment and/or the first initial payment of a proposed Periodic Payment Offer."

- (3) If the OIC WUNO must be closed before the CDP WUNO, retain the OIC file with the CDP file and send APS the following:
  - Form 5402 for the OIC WUNO
  - OIC CAR

8.22.7.10.5.3  
(08-26-2020)  
**Return for Filing  
Noncompliance**

- (1) If Collection discovers a taxpayer has not remained in filing compliance, Collection attempts to secure the delinquent return(s). If the taxpayer fails to file, the OIC is returned.
- (2) Confirm the taxpayer's requirements and that the taxpayer was delinquent on the date of the return. Once confirmed, close the OIC WUNO as a return:

Step	Action
1	Remove the DP feature code from both the OIC and CDP WUNOs in ACDS.
2	Prepare Form 5402 using cc 20 premature referral and the appropriate resolution reason code.
3	Note the OIC in your CDP NOD or applicable closing letter with the following language: "The offer you submitted was returned because you did not remain in filing compliance."

- (3) If the OIC WUNO must be closed before the CDP WUNO, retain the OIC file with the CDP file and send APS the following:

- Form 5402 for the OIC WUNO
- OIC CAR

8.22.7.10.5.4  
(08-26-2020)

**Return for Inadequate  
Estimated or  
Withholding Tax  
Payments**

- (1) If Collection discovers a taxpayer is delinquent in estimated tax payments or does not have sufficient withholding, Collection attempts to get the taxpayer current. If the taxpayer fails to do so, the OIC is returned.
- (2) Confirm the taxpayer's payment requirements, that the taxpayer was delinquent on the date of the return and that the taxpayer had an opportunity to cure the delinquency and failed to do so. Once confirmed, close the OIC WUNO as a return:

Step	Action
1	Remove the DP feature code from both the OIC and CDP WUNOs in ACDS.
2	Prepare Form 5402 using cc 20 premature referral and the appropriate resolution reason code.
3	Note the OIC in your CDP NOD or applicable closing letter with the following language: "The offer you submitted was returned because you didn't remain in compliance with your estimated tax payments or withholding."

- (3) If the OIC WUNO must be closed before the CDP WUNO, retain the OIC file with the CDP file and send APS the following:

- Form 5402 for the OIC WUNO
- OIC CAR

8.22.7.10.5.5  
(08-09-2017)

**Return for Failure to  
Make Timely Federal Tax  
Deposit (FTD)**

- (1) If Collection discovers a taxpayer is delinquent on FTDs, Collection asks the taxpayer to get current. If the taxpayer fails to do so, the OIC is returned.
- (2) Confirm the taxpayer's payment requirements, that the taxpayer was delinquent on the date of the return and that the taxpayer had an opportunity to make up the missed deposit(s) and failed to do so. Once confirmed, close the OIC WUNO as a return:

Step	Action
1	Remove the DP feature code from both the OIC and CDP WUNOs in ACDS.
2	Prepare Form 5402 using cc 20 premature referral and the appropriate resolution reason code.

Step	Action
3	Note the OIC in your CDP NOD or applicable closing letter with the following language: "The offer you submitted was returned because you didn't remain in compliance with your Federal Tax Deposits."

- (3) If the OIC WUNO must be closed before the CDP WUNO, retain the OIC file with the CDP file and send APS the following:

- Form 5402 for the OIC WUNO
- OIC CAR

8.22.7.10.5.6  
(08-26-2020)  
**Return for Failure to  
Provide Information**

- (1) Collection identifies information needed to determine RCP and requests it from the taxpayer or their representative. If the taxpayer fails to provide requested information, the offer is returned.
- (2) Confirm that the taxpayer had an opportunity to provide the information and that the taxpayer failed to provide the information as of the date of the return. Once confirmed, close the OIC WUNO as a return:

Step	Action
1	Remove the DP feature code from both the OIC and CDP WUNOs in ACDS.
2	Prepare Form 5402 using cc 20 premature referral and the appropriate resolution reason code.
3	Note the OIC in your CDP NOD or applicable closing letter with the following language: "The offer you submitted was returned because you did not provide necessary information."

- (3) If the OIC WUNO must be closed before the CDP WUNO, retain the OIC file with the CDP file and send APS the following:

- Form 5402 for the OIC WUNO
- OIC CAR

8.22.7.10.5.7  
(08-09-2017)  
**Return for an Open  
Criminal Investigation**

- (1) Once a taxpayer has been advised of an open criminal investigation, the taxpayer is asked to withdraw the offer until the criminal matter is resolved. If the taxpayer declines, Collection returns the offer.
- (2) Confirm that the return was correct. Once confirmed, close the OIC WUNO as a return:

Step	Action
1	Remove the DP feature code from both the OIC and CDP WUNOs in ACDS.
2	Prepare Form 5402 using cc 20 premature referral and the appropriate resolution reason code.
3	Note the OIC in your CDP NOD or applicable closing letter with the following language: "The offer you submitted was returned due to an open criminal investigation."

- (3) If the OIC WUNO must be closed before the CDP WUNO, retain the OIC file with the CDP file and send APS the following:

- Form 5402 for the OIC WUNO
- OIC CAR

8.22.7.10.5.8  
(08-26-2020)

#### Return for Bankruptcy

- (1) If a taxpayer files bankruptcy while an OIC is open, the OIC is returned. Close the OIC WUNO immediately upon notification with the following actions:

Step	Action
1	Remove the DP feature code from both the OIC and CDP WUNOs in ACDS.
2	Prepare Form 5402 using cc 20 premature referral and the appropriate resolution reason code.
3	If the OIC is returned by Appeals and not Collection, generate Letter 5010, Collection Due Process Offer in Compromise Bankruptcy Return, from Publishing. If the OIC is in the possession of Appeals after a recommendation has been made by Collection to return, reject or apply mandatory withdrawal procedures, then the OIC is closed by Appeals. <b>Note:</b> Notate on Form 5402 "Remarks" to APS that the letter was sent to the taxpayer returning the OIC and to reassign the OIC back to "Collection AO" in AOIC.
4	Regardless of who closes the OIC - Collection or Appeals - include in your CDP NOD or applicable closing letter the following language: "The offer you submitted was returned because you filed bankruptcy while your offer was under consideration."

- (2) Retain the OIC file with the bankruptcy-suspended CDP file and send APS the following to close the OIC WUNO:

- Form 5402 for the OIC WUNO
- OIC CAR

- Form 656
- Return Letter 5010 if the OIC is being returned by Appeals instead of Collection

- (3) Consult with local Counsel for issues involving a Receivership, Assignment for the Benefit of Creditors, or other insolvency. Similar to bankruptcy, in these cases, a determination should be made whether or not to suspend the CDP under these circumstances. See also IRM 5.9.20, Non-Bankruptcy Insolvencies, and IRM 5.8.10.3, Other Insolvency Cases.

8.22.7.10.5.9

(08-09-2017)

## Return for Solely to Delay

- (1) Collection may determine an OIC was submitted solely to delay collection.
- (2) Confirm the return was correct following IRM 5.8.4.20, Offer Submitted Solely to Delay Collection. Once confirmed, close the OIC WUNO as a return:

Step	Action
1	Remove the DP feature code from both the OIC and CDP WUNOs in ACDS.
2	Prepare Form 5402 using cc 20 premature referral and the appropriate resolution reason code.
3	Note the OIC in your CDP NOD or applicable closing letter with the following language: "The offer you submitted was returned because it was submitted solely to delay collection."

- (3) If the OIC WUNO must be closed before the CDP WUNO, retain the OIC file with the CDP file and send APS the following:

- Form 5402 for the OIC WUNO
- OIC CAR

8.22.7.10.5.10

(08-09-2017)

## Termination due to Death of Taxpayer

- (1) When the IRS is notified of the death of the taxpayer who submitted an OIC that is currently under consideration, the IRS may no longer consider the OIC. If the OIC was jointly submitted and one spouse dies, see IRM 5.8.10.4.1, Death of the Taxpayer, to determine whether to continue.
- (2) If an OIC is terminated due to the death of the taxpayer, close the OIC WUNO with the following actions:

Step	Action
1	Remove the DP feature code from both the OIC and CDP WUNOs in ACDS.
2	Prepare Form 5402 using cc 20 premature referral and the appropriate resolution reason code.

Step	Action
3	If the OIC is to be terminated by Appeals and not Collection, generate the termination letter using the template found on the <i>Appeals OIC Web Page</i>
4	Note the OIC in your CDP NOD or applicable closing letter with the following language: "The offer was terminated due to the death of the taxpayer while the offer was under consideration."

- (3) When a taxpayer dies, the OIC WUNO is closed at once while the CDP case may remain open. Retain the OIC file with the CDP file and send APS the following to close the OIC WUNO:

- Form 5402 for the OIC WUNO
- OIC CAR
- Termination letter, **if** the OIC is being returned by Appeals instead of Collection

8.22.7.10.6  
(08-09-2017)

#### Taxpayer Withdrawals

- (1) The subsections below discuss withdrawals in combination CDP OIC cases.

8.22.7.10.6.1  
(09-23-2014)

#### Withdrawal of the CDP

- (1) A taxpayer may ask to withdraw a CDP hearing while an offer is being considered by Collection. Explain that the consequences of withdrawal include:

- No Appeals verification that all applicable laws and procedures were followed
- Collection issues a decision on the OIC
- No right to petition Tax Court for an abuse of discretion review

- (2) If the taxpayer withdraws a CDP/EH hearing while an OIC is:

- **Pending in Collection:** inform Collection immediately by encrypted e-mail. Collection will issue the OIC decision letter and does not return any paperwork to Appeals.
- **Pending in Appeals:** return the OIC to Collection on Form 3210 for a final determination. Form 3210 must say that Appeals released jurisdiction. Ensure Form 3210 is acknowledged and follow up with Collection to resolve any issues concerning receipt of the OIC **before** closing the OIC WUNO to insure the TIPRA statute is protected.

- (3) Close the OIC WUNO using closing code 20 and the premature referral reason "CDP withdrawn while related OIC pending in Collection".

8.22.7.10.6.2  
(09-23-2014)

#### Withdrawal of the OIC

- (1) A taxpayer may ask to withdraw an OIC any time after the OIC is submitted. The request may be made verbally, by fax or letter.
- (2) Document receipt of a withdrawal in your case history and how the request was made.



8.22.7.10.7  
(08-26-2020)  
**Doubt as to Liability  
(DATL) OIC**

- (3) If a withdrawal is not hand-delivered or received by certified mail, it is considered withdrawn when it is acknowledged in writing by the IRS. For a CDP OIC, Form 12257 or the closing letter must acknowledge the taxpayer's withdrawal of the offer to close the TIPRA statute.
- (1) A DATL OIC submitted in a CDP hearing is a challenge to the underlying liability. Examine the liability at issue to determine if the taxpayer had a prior opportunity per IRM 8.22.8, Liability Issues and Relief from Liability.
- (2) The taxpayer must offer at least \$1.00 in a DATL OIC. The amount offered should be the amount of the expected liability, penalties and interest.
- (3) The taxpayer is not required to pay an OIC application fee or make a TIPRA payment in a DATL OIC.
- (4) In the case of trust fund recovery penalty (TFRP) or personal liability excise tax (PLET) liabilities, consider hazards of litigation when appropriate. See IRM 8.6.4.2.7, Case Evaluation for Settlement Purposes. The ACM should adequately explain the basis of the settlement. See IRM 8.6.2.6.4.2, Resolved Based on Hazards of Litigation.
- (5) On receipt of a DATL OIC, examine the underlying liability issue and consult with the table below:

When...	Actions
the liability is not precluded	<ol style="list-style-type: none"><li>a. Open an OIC WUNO and forward the DATL to COIC for a processability determination</li><li>b. Follow IRM 8.22.8.5.1, Referring a Liability Issue, for reassigning the DATL OIC to an Exam AO (other than TFRP which a Collection AO may work).</li><li>c. Suspend the CDP using CARATS codes SU-PI, pending an AO decision. Take the CDP out of suspense using CARATS codes SU-TO upon receipt of the AO's decision. <b>Note:</b> When removing a case from suspense, check IDRS for any transactions that may have occurred during the suspense as these may impact the CDP matter.</li><li>d. Adopt the AO's decision and consider any other relevant issues</li><li>e. To close the TIPRA statute, clearly state in your determination or decision letter attachment that the offer was accepted, rejected, withdrawn or returned</li></ol>
the liability is precluded	<ol style="list-style-type: none"><li>a. Forward the DATL to COIC for a processability determination</li><li>b. Note on Form 3210 that "Appeals is precluded from considering this DATL in CDP"</li><li>c. In the determination/decision letter attachment, note that the taxpayer submitted a DATL OIC which could not be considered in CDP. Explain how you determined the taxpayer was precluded from raising the liability challenge in CDP. <b>Note:</b> If Appeals becomes aware of a precluded DATL offer via eCase, contact the DATL unit (via <i>SERP &gt; Who/Where &gt; Offer in Compromise (OIC) Compliance Campus Locations for DATL</i>) to advise them the offer is precluded from CDP. Explain the preclusion in your ACM.</li></ol>

When...	Actions
the liability is precluded but was determined in Appeals	<p>a. Forward the DATL to COIC for a processability determination</p> <p>b. Note on Form 3210 "Appeals is precluded from considering this DATL in CDP. Process following IRM 5.8.4.22.4, Doubt as to Liability."</p> <p><b>Note:</b> Collection will reject the DATL OIC and send it to Appeals for consideration if timely appealed by the taxpayer. This appeal is not required to be worked or associated with the CDP when the liability is precluded.</p> <p>c. In the determination/decision letter attachment, note that the taxpayer submitted a DATL OIC which could not be considered in CDP. Explain how you determined the taxpayer was precluded from raising the liability challenge in CDP.</p>

- (6) If Appeals becomes aware of a precluded DATL offer via eCase, contact the DATL unit via secure e-mail to advise them the offer is precluded from CDP. Explain the precluded issue in the ACM.

8.22.7.10.8  
(08-26-2020)  
**Defaulted OICs**

- (1) When the IRS determines an OIC is in default, it sends the taxpayer a default letter to cure the noncompliance items. If the taxpayer does not cure the default, the OIC is terminated. A taxpayer does not have a right to appeal the termination of an OIC.
- (2) Appeals retains jurisdiction of the offers it accepts. When an offer Appeals accepted is in potential default, MOIC unit sends a Form 2209 to Appeals to consider issuing a default letter per IRM 8.23.3.12, Potential Default Offers.
- (3) Review the OIC file and confirm all administrative policies and procedures were followed pertaining to notification to the taxpayer of **both** potential default and termination. Document your specific findings.
- (4) The taxpayer may contend that the termination was improper because the default was insignificant or not a "material breach." The only relevant question is whether there was a default of an express condition. Whether the taxpayer "materially breached" the OIC or "substantially complied" with the OIC is irrelevant.
- (5) If you determine the termination was improper because there was no default, the purported termination by the Service was improper. You may determine that the OIC is still in effect.
- (6) In CDP, you may also consider a new OIC proposed by the taxpayer as a collection alternative.
- (7) In rare situations, a defaulted OIC may be reopened based upon a taxpayer's exceptional circumstance. See IRM 5.19.7.15.3., Reopening Defaulted Offers.

8.22.7.10.9  
(08-26-2020)  
**Rescission of a Previously Accepted Offer**

- (1) In CDP, the issue of rescission of an OIC may arise in Appeals:
  - When an OIC was accepted by Appeals in a prior CDP hearing, or
  - When an OIC was previously accepted outside of the CDP process, but one or more of the years included in the OIC is now in Appeals under CDP jurisdiction

8.22.7.10.10  
(08-26-2020)

**OICs with Department of Justice (DOJ) Controlled Tax Periods**

- (2) In the *highly* unusual circumstance where the issue of the rescission of a previously accepted offer is raised by a taxpayer in CDP, prepare a summary of all pertinent case details along with the recommendation of the Director, Collection Appeals, and forward it to the lead CDP Policy Analyst in Appeals. The matter will be reviewed by Policy and discussed with Chief Counsel, Procedure & Administration, to determine if it can be considered in CDP.
- (3) See IRM 5.8.9.2, Rescission of Accepted Offers, for rescission criteria.

- (1) OICs with DOJ controlled tax periods require special handling. DOJ controlled tax periods are identified via the IDRS codes listed at IRM 8.22.6.9, Cases Controlled by the Department of Justice (DOJ)..
- (2) When you receive an OIC with DOJ controlled periods, note that on Form 13933, Collection Due Process/Equivalent Hearing Offer in Compromise Cover Sheet, to alert COIC. COIC will make a processability determination based on IRM 5.8.2.4.1.
- (3) If Collection notifies you that DOJ settled its case involving one or more tax years listed on the OIC, resolve the CDP by asking the taxpayer to sign Form 12257, Summary Notice of Determination, Waiver of Right to Judicial Review or a Collection Due Process Determination. If the taxpayer declines to sign the waiver, proceed with your decision and discuss it in your Notice of Determination or Decision letter.
- (4) If Collection returns a recommendation to reject, consider the OIC in the CDP hearing. If your decision is to:
  - **Reject:** Convey the rejection in your Notice of Determination or Decision Letter
  - **Recommend Acceptance:** Advise the taxpayer that a DOJ settlement cannot be compromised by IRS but an offer may be accepted for the non-DOJ periods only. Acceptance of the offer may include a collateral agreement signed by the taxpayer acknowledging the offer will default due to failure of the taxpayer to comply with DOJ's settlement terms for the periods not included in the offer. Contact Area Counsel for assistance in preparing such a collateral agreement.

**Note:** Inclusion of a collateral agreement is not required. However, if the taxpayer declines to agree to the collateral terms with the offer, then an offer including only the non-DOJ periods may still be accepted if Appeals determines rejection of the offer would **not** be in the government's interest.

8.22.7.11  
(08-26-2020)

**Substitution of Assets**

- (1) Treasury Regulation section 301.6330-1 (Q&A-E6) states, in part, the taxpayer may request collection alternatives including,
  - an installment agreement,
  - an offer-in-compromise, or
  - the posting of a bond or the substitution of other assets
- (2) Where a taxpayer raises an issue with respect to the substitution of assets, this is a relevant issue that must be considered by the AO.
- (3) The following example illustrates a possible scenario in which a substitution of assets may be considered:

**Example:** A taxpayer requests that an individual retirement account be levied in order to eliminate an early withdrawal penalty, thus realizing more funds toward payment of the liability.

- (4) A suggestion for substitution of assets **must** be initiated by the taxpayer and not the AO. The decision whether or not to allow a substitution of particular assets is at the judgment and discretion of the AO, after weighing all the facts and circumstances of the issue.
- (5) Contact Appeals Policy or your local Area Counsel where this situation arises.