



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

8.23.4

DECEMBER 5, 2024

## EFFECTIVE DATE

(12-05-2024)

## PURPOSE

- (1) This IRM section explains the closing procedures for non-Collection Due Process (CDP) Offer in Compromise (OIC) cases worked by Appeals.

## MATERIAL CHANGES

- (1) Revised to include the following changes:

IRM Section	Description of Change
Effect on Other Documents	Added: To incorporate Interim Guidance (IG) AP-08-0822-0010, Public Inspection File for Accepted Offers in Compromise (OICs).
8.23.4.3(2)	Removed: "lien fees" from the liability that may be compromised.
8.23.4.3(3)	Added: IRS cannot compromise liabilities arising outside of Title 26.
8.23.4.3.2(6)(b)	Added: APS to update Automated Offer in Compromise (AOIC) with change of offer basis.
8.23.4.3.2(7), (8)	Added: Appeals Technical Employees (ATEs) to upload closing documents as attachments in ACDS and to document case activity record with specific terms of accepted offer.
8.23.4.3.3(1)(a)	Added: Note that Appeals may accept an offer from a taxpayer with diminished mental capacity, notwithstanding guidance from Area Counsel.
8.23.4.3.3(10)	Added: The circumstances when ATEs will secure second-level managerial level approval to accept an OIC.

IRM Section	Description of Change
8.23.4.3.4	Removed: Gatekeeper Review of Public Inspection File (PIF) pursuant to incorporation of Interim Guidance AP-08-0822-0010, Public Inspection File for Accepted Offers in Compromise (OICs).
8.23.4.4(3)	Added: Examples showing that Appeals does not independently sustain offer rejections as Not in Best Interest of Government (NIBIG).
8.23.4.4.1(6)	Added: ATEs will upload all closing documents as attachments to ACDS when sustaining offer rejections.
8.23.4.4.2(4)	Added: Specifies documents for ATEs to upload as attachments to ACDS when re-opening previously sustained offer rejections.
8.23.4.4.2(9)	Added: Process for ATE and Appeals Team Manager (ATM) to re-open offers where Appeals previously sustained rejections.
8.23.4.5.1(6)	Added: ATEs will upload all closing documents as attachments to ACDS when offer is withdrawn.
8.23.4.6(4)	Added: ATEs should issue Letter 5180 to taxpayer explaining Appeals is returning offer to Collection and reason for premature referral.
8.23.4.6(5)	Added: ATMs will contact Field Offer in Compromise (FOIC) Group or Centralized Offer in Compromise (COIC) Team Manager via secure email when Appeals is returning offer to Collection and the reason for premature referral.
8.23.4.7(6)	Added: In Form 5402 "Remarks", ATEs will inform APS to note in AOIC to which Monitoring Offer in Compromise (MOIC) it closed Form 2209.

IRM Section	Description of Change
8.23.4.8(4)	Incorporated: Interim Guidance AP-08-0822-0010, Public Inspection File for Accepted Offers in Compromise (OICs), to prepare AOIC Form 7249 for modified terms of accepted offers.
8.23.4.8(5)	Incorporated: Interim Guidance AP-08-0822-0010, Public Inspection File for Accepted Offers in Compromise (OICs), to prepare AOIC Form 7249 for modified terms of accepted offers.
8.23.4-1 Steps 6, 8	Revised: Where to submit to APS the request for AOIC Form 7249.
Throughout	Revised for grammar, plain language and other editorial changes.
Throughout	Updated IRM cross-references

**EFFECT ON OTHER DOCUMENTS**

This transmittal revises IRM 8.23.4, Offer in Compromise, Acceptance, Rejection, Withdrawal and Default Procedures for Non-Collection Due Process (CDP) Offers, to include Interim Guidance (IG) AP-08-0822-0010, Public Inspection File for Accepted Offers in Compromise (OICs) and supersedes IRM 8.23.4 dated April 7, 2022.

**AUDIENCE**

Appeals Employees

Patrick E. McGuire,  
Acting Director, Case and Operations Support



8.23.4

Acceptance, Rejection, Withdrawal and Default Procedures for Non-Collection Due Process (CDP) Offers

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8.23.4.1  
(04-24-2020)  
**Program Scope and Objectives**

- (1) *Purpose.* This IRM section explains the closing procedures for acceptance, rejection, withdrawal, and default of non-Collection Due Process (CDP) Offer in Compromise (OIC) cases worked by the IRS Independent Office of Appeals (Appeals). Closing procedures for OICs that are worked by Appeals in CDP are discussed in IRM 8.22.9, Closing and Post Closing Actions.
- (2) *Audience.* The primary users of this IRM section are Appeals Technical Employees (ATEs) who work OIC cases.
- (3) *Policy Owner.* Policy, Planning, Quality & Analysis is under the Director of Case and Operations Support.
- (4) *Program Owner.* Appeals Policy is the program office responsible for providing technical and procedural guidance to the Appeals Organization and is under the Director of Policy, Planning, Quality and Analysis.
- (5) *Contact Information.* Appeals employees will follow established procedures on *How to Contact an Analyst*. All other employees should contact the Product Content Owner provided on the Product Catalog Information page for this IRM.

8.23.4.1.1  
(04-24-2020)  
**Background**

- (1) The procedures to close an OIC appeal vary according to the final Appeals decision of the case. This IRM section discusses the actions to take and documents to prepare to close the different OICs.

8.23.4.1.2  
(04-07-2022)  
**Authority**

- (1) Authorities that are related to the offer program are:
  - IRC 7122 – Compromises, granting broad authority to compromise tax liabilities to the Secretary of the Treasury.
  - Treasury Regulation 301.7122-1, authorizing the Commissioner of Internal Revenue to compromise a liability on any one of three grounds: Doubt as to Collectibility (DATC), Doubt as to Liability (DATL), or to promote Effective Tax Administration (ETA).
  - Policy Statement P-5-89, Offer may be rejected for public policy reasons.
  - Policy Statement P-5-97, Stay of collection - offer in compromise cases.
  - Policy Statement P-5-100, Offers will be accepted.
  - Treasury Regulation 300.3 – Offer to compromise fee.
  - Revenue Procedure 2003-71, 2003-2 CB 517, defines the procedures applicable to the submission and processing of offers to compromise tax liabilities.
  - Notice 2006-68, 2006-2 CB 105, provides additional guidance regarding offers submitted on or after July 16, 2006. This handbook further describes, in detail, those procedures.
  - Tax Increase Prevention and Reconciliation Act of 2005 – Section 509 (TIPRA) – Legislation enacted in May 2006, which made major changes to the OIC program.
  - IRM 1.2.2.6.1, Delegation Order 5-1 (Rev. 5), delegates the Commissioner's authority to accept, reject, return, terminate, or acknowledge withdrawals of offers.
- (2) Additionally, all Appeals employees are responsible for being familiar with and acting in accord with taxpayer's rights as articulated in the Taxpayer Bill of Rights (TBOR). TBOR lists rights that already existed in the tax code, putting

them in simple language and grouping them into 10 fundamental rights. See IRC 7803(a)(3), Execution of Duties in Accord with Taxpayer Rights. For additional information about the TBOR, see Publication 5170, Taxpayer Bill of Rights and TBOR link, <https://irssource.web.irs.gov/Lists/General%20News/DispltemForm.aspx?ID=126>.

8.23.4.1.3  
(04-24-2020)

#### Responsibilities

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

8.23.4.1.4  
(04-24-2020)

#### Program Controls

- (1) The Appeals Centralized Database System (ACDS) is used by ATEs and Tax Examiners (TEs) as a method for case file intake and closing, inventory control, statute validation, and history documentation.
- (2) Small Business/Self-Employed (SB/SE's) AOIC program is used to track offers submitted by taxpayers and record case actions.

8.23.4.1.5  
(04-24-2020)

#### Program Reports

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

8.23.4.1.6  
(04-24-2020)

#### Terms and Acronyms

- (1) See IRM Exhibit 8.1.1-1, Common Terms Used in Appeals, for common terms and definitions used in IRM Part 8.

8.23.4.2  
(04-07-2022)

#### Procedures for Closing Non-Collection Due Process (CDP) Offers

- (1) When an ATE makes a decision on an OIC case, the basis of that decision must be adequately documented. The ATE must also prepare the appropriate closing documents in order to obtain the necessary approvals, meet statutory requirements, and produce an accurate and professional closing package. For non-CDP OIC cases, this section provides procedures for the ATE to close cases in acceptance, rejection, withdrawal and default situations. Back-end closing procedures for the Account and Processing Support (APS) are found in IRM 8.20.7.49, Offer in Compromise (OIC) Non-CDP Cases.
- (2) The Appeals Case Memorandum (ACM) contains the detailed basis of the ATE's recommendation. The approving official relies significantly on the information in the ACM. In addition, just as the ATE must provide to the taxpayer an explanation of why the offer was not acceptable if recommending to sustain the rejection, the ATE must also provide an explanation to Compliance of why the decision to reject the offer was overturned or sustained. The ACM's narrative may be brief or long, depending on the complexity of the case. The ACM will include all of the information that the ATE considered in making the case decision. If the offer was originally rejected as not in the best interest of the Government and the ATE's determination is to overturn that decision, the ACM will include the specific reason for that determination.

**Note:** Use of Form 14559, Appeals Compromise Memorandum, is recommended.

- (3) The customized Form 5402, Appeals Case Transmittal and Case Memorandum, contains essential taxpayer identification information, resolution reason codes, case closing codes and case routing information.

**Note:** It is necessary to generate Form 5402 directly from APGolf instead of using a saved Word version. Generating Form 5402 from APGolf in the Appeals



Centralized Database System (ACDS) captures the case's Resolution Reason and Closing Codes. Appeals provides this information to Collection and works with it on efforts to improve the overall OIC process based upon the data collected.

- (4) APGolf generally contains the appropriate letters that notify the taxpayer of the ATE's decision in the case. The *Appeals Offer in Compromise Web Page* contains other letters.

## 8.23.4.3 (12-05-2024) Accepted Offers

- (1) The Secretary has delegated to Appeals the independent authority to accept an OIC. See Delegation Order 5-1, which is found in IRM 1.2.2.6.1.1, Acceptance Authority.
- (2) A compromise is effective for the entire liability for tax, penalties, and interest for the years or periods covered by the offer. An accepted OIC will conclusively settle all tax liabilities listed on the Form 656, Offer in Compromise. Neither the taxpayer nor the government can re-open a compromised tax year or period unless there was a:
- Falsification of information or documents supplied in conjunction with the offer;
  - Discovery of mutual mistake of a material fact that would be sufficient to set aside or reform a contract; or
  - Concealment of assets and/or ability to pay

See IRM 5.8.9, Compromise - Actions on Post-Accepted Offers, for more information.

- (3) The IRS cannot compromise a liability arising outside of Title 26.
- (4) The IRS cannot compromise a tax liability listed in Form 656 after that tax liability has been referred to the Department of Justice (DOJ). Similarly, the IRS cannot compromise a DOJ settlement. The IRS, however, may compromise non-referral years. 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.
  - If the taxpayer declines to agree to the collateral terms or it is the decision of Appeals not to include such collateral terms with the offer, then an offer including only the non-DOJ periods only may still be accepted.
- (5) An OIC accepted under Doubt as to Collectibility (DATC) or Effective Tax Administration (ETA) provisions must include all unpaid assessed tax liabilities for which the taxpayer is liable. The ATE may *consider* an offer that includes an unassessed liability, but the liability must be assessed before the offer can be accepted.

**Note:** During the course of an offer investigation, if a TIPRA payment (including the initial payment submitted with the offer, subsequent periodic installment

payments, and/or the payment submitted with an amended offer) contributes to the full payment of a tax period, that period must remain part of the offer and must be listed on any subsequent amended Form 656, Form 14640, Addendum to Form 656, and Form 7249, Offer Acceptance Report. Even though the tax liability is fully paid, the payment or payments used to satisfy the tax liability are still part of the overall offer amount, so all satisfied periods must remain part of the offer. See IRM 5.8.8.3, Pen and Ink Changes to Form 656. If a tax period is paid in full exclusively via a non-TIPRA payment, such as a refund offset, there is no need to list such period on the amended Form 656, Form 14640, or Form 7249. Before securing an amended Form 656 or Form 14640 with the tax period removed, make sure no TIPRA payment was applied to the satisfied tax period.

8.23.4.3.1  
(12-05-2024)  
**Actions Prior to  
Accepting an OIC**

- (1) Before preparing the closing documents, check the Integrated Data Retrieval System (IDRS) to make sure there are no pending liabilities that are not included on the Form 656. Matters that will later require the time and attention of the ATE and other IRS personnel can be avoided by checking for and resolving possible pending liability issues before closing out the case. The following are some ways to look for possible pending liabilities:

- Check IDRS Command Code (CC) AMDIS
- Check IDRS CC UNLCER to see if there are any Trust Fund Recovery Penalties (TFRP) not listed on the Form 656
- Look for Transaction Codes (TCs) 420, 922, 976 or 977 to see if there is an amended return or any examination or under-reporter activity

If an open audit is found, follow the instructions in IRM 8.23.3.4.1.5, Coordination with Other Functions.

**Caution:** Carefully review published ex parte communications guidance before contacting another function. The ATE must document the case activity record with the purpose of the contact, what was discussed and any information that was exchanged. See IRM 8.1.10, Ex Parte Communications.

**Note:** Also check to confirm that no unreversed TC 520 has posted or is pending for any period being compromised. TC 520 with closing codes 60-89 indicates that the taxpayer is involved in a bankruptcy or other litigation. Contact Advisory, Insolvency, and Quality (AIQ) to determine the nature of the litigation and whether the IRS has authority to accept the offer. If a case has been referred to the Department of Justice (DOJ), settlement authority belongs solely to DOJ.

- (2) Check on IDRS (TXMOD/IMFOL/BMFOL) for transaction codes TC 766 CRN 263 and TC 971 AC 114 or TC 971 AC 115 to identify IRC 965(h) and 965(i) election accounts. If these transaction codes are on accounts to be recommended for offer acceptance, see IRM 5.8.4.23.7, IRC 965 (Transition Tax) Liabilities.
- (3) Verify that no restitution-based assessment periods are included on the accepted offer. Restitution periods may be identified with TC 550 with an indicator of 04. The offer cannot be accepted by IRS unless the restitution tax period(s) are removed from the Form 656. See IRM 5.8.4.24.1, Offers in Compromise Submitted that Include Restitution.

- (4) If the offer includes TFRP assessments, confirm that all assessments are listed on the Form 656. The Form 7249, Form 656 and/or Form 14640, Addendum to Form 656, must match by reflecting each assessed TFRP period.
- (5) An amended Form 656 or addendum secured by Appeals does not require a signature of an IRS representative as the “Authorized Internal Revenue Service Official” on Form 656. Since each offer only has one TC 480 date, a second signature may confuse APS or COIC and cause an erroneous input of another TC 480 date. Additional periods may be added to the existing Form 656 without an amended Form 656 or an addendum if the provisions in IRM 5.8.8.3, Pen and Ink Changes to Form 656, are met.

**Note:** For any **new** offers submitted by related taxpayer entities that are secured subsequent to an initial offer filing by the taxpayer, a signature of an IRS official is still necessary. See IRM 8.23.2.4(10), Initial Case Review and Statute Controls, for a discussion of related entities.

- (6) Prior to requesting an AOIC Form 7249 for Collection-sourced OICs and all CDP-OICs (including CDP-DATLs), the ATE will secure any related offers, with application fees and initial payments, if applicable, and process them in accordance with IRM 8.23.3.5.3, Amended Offers – TIPRA Related Issues. When the ATE has been notified that the related offer has been processed and is assigned an offer number and WUNO, the ATE may proceed to request an AOIC Form 7249.

**Example:** ATE determines to accept a joint offer that also lists the separate liabilities of a spouse. The ATE must secure both, an amended offer from the primary taxpayer, and a new, separate offer from the secondary taxpayer, as well as any required application fee and TIPRA payment. When the new, separate offer is received, send it, and the appropriate fee and TIPRA payment, to the appropriate COIC site for a processability determination. When the ATE is notified that the spouse’s offer is processable and is assigned an offer number and a WUNO, the ATE may submit requests for AOIC Forms 7249 for each offer.

- (7) For **Collection-sourced OICs and all CDP-OICs, including DATLs**, the ATE will complete and submit a request for an AOIC generated Form 7249 following the guidance in Exhibit 8.23.4-1
- (8) For **Examination-sourced OIC-DATLs**, the ATE will complete and submit a request for an AOIC generated Form 7249 following the guidance in **Step Chart for AOIC Generated Form 7249 for Examination-sourced OIC-DATLs**, Exhibit 8.23.4-2.

## 8.23.4.3.2 (12-05-2024) **Accepted Offer Closing Documents and Appeals Technical Employee Procedures**

- (1) The ACM for an accepted offer will contain the following:
  - a. The amount of the original offer and a description of the payment terms.
  - b. The amended offer amount, if applicable, and a description of its payment terms.

**Note:** Provide a complete explanation and discussion of the computation of the amount of the offer that is being recommended for acceptance.

- c. The type of tax and periods (if the report covers individual and joint liabilities, state them in separate paragraphs).

**Note:** If a tax period that was part of the original offer is subsequently paid in full via TIPRA payments, the period must still be listed on any amended offer. Even though the tax period is fully paid, the funds used to satisfy it are part of the overall offer amount, so the tax period must remain on the Form 656. If a tax period is paid in full via a non-TIPRA payment, such as a refund offset, there is no need to list such period on the amended Form 656.

- d. The cause of the tax problem and status of current compliance, as needed. See IRM 8.23.2.6, Taxpayer Compliance Issues, and its related subsections and IRM 8.23.2.7, When a Taxpayer Does Not Remain in Compliance, for the appropriate treatment of compliance issues.
- e. Compliance's reasons for rejecting the offer.
- f. The issues raised by the taxpayer.
- g. An analysis of the taxpayer's financial condition including any documentation on which the ATE's position is based (e.g., type, location and condition of assets and the taxpayer's age, health, education, and future income prospects).
- h. A comparison of the financial figures provided by the taxpayer, the amounts allowed by Collection, and the amounts allowed by Appeals. If the taxpayer amends the offer to the reasonable collection potential (RCP) amount determined by Collection and the ATE agrees that this is the proper amount, there is no need for the financial figure comparison. Instead, attach a copy of Collection's financial analysis tables to the ACM.

**Reminder:** It is important for the ATE to document a clear and complete explanation of the factors considered in accepting the offer. This may include information that was not previously provided to Compliance or a different interpretation of the facts of the case or of IRM policies and procedures.

- i. The source of the offer funds.
- j. The total amount of TIPRA payments already applied to the offer.
- k. An affirmative statement that the offer being recommended for acceptance reflects the RCP or that special circumstances exist that otherwise justify compromise.
- l. An explanation of the special circumstances justifying acceptance under Doubt as to Collectibility with special circumstances (DATC-SC) or Effective Tax Administration (ETA) and why payment of more than the offered amount would either cause the taxpayer to be unable to meet necessary living expenses or would undermine public confidence that the tax laws are being administered in a fair and equitable manner.

**Reminder:** DATC-SC and ETA acceptance recommendations also require an affirmative statement indicating acceptance of the offer would not undermine other taxpayers' compliance with the tax laws.

- m. If the offer being accepted involves a federal employee, a discussion of whether public policy implications exist based on the sensitivity of the employee's position or area of responsibility will be documented.

**Note:** To facilitate a rapid and organized completion of the Income/Expense Table (IET), Asset/Equity Table (AET) and acceptance memorandum, consider

using the Form 14559, Appeals Offer in Compromise Acceptance Memorandum, which is available on the Electronic Publishing website.

- (2) The ATE is responsible for inputting the following data on the customized Form 5402:
  - Amount of the outstanding liability
  - Amount of the taxpayer's original offer
  - Amount of RCP determined by Appeals
  - Amount of the accepted offer
- (3) If the offer is accepted for less than the RCP on the basis of economic hardship, either as Doubt as to Collectibility with Special Circumstances (DATC-SC) or Effective Tax Administration (ETA), 26 CFR 300.3(b)(2) provides that the IRS apply the fee to the offer terms, or refund the fee to the taxpayer if the taxpayer requests it. For DATC-SC or ETA offers that are accepted, document Form 5402 under Remarks with the instructions to Monitoring OIC (MOIC) whether to refund the application fee to taxpayer or apply it to the offer terms.
- (4) When recommending acceptance of two or more related offers based upon a single financial analysis, only one ACM is necessary. To ensure proper processing of the related offers, create separate files/folders marked "1 of 2," and "2 of 2," etc. It is unnecessary to duplicate information pertaining to both taxpayers, but the separate files/folders should contain the documents listed below in paragraph (5), except for only one consolidated ACM.
- (5) Review the Delegation Order at IRM 1.2.2.6.1.1, Acceptance Authority, to determine the appropriate approving official.
- (6) When accepting a non-CDP offer, prepare and assemble the following:
  - a. Form 7249, Offer Acceptance Report, with a IDRS transcript (TXMOD, IMFOLT) for each tax liability listed, if Counsel's opinion is required.

**Note:** The approved Form 7249 will be uploaded to the OIC WUNO in ACDS as an attachment.
  - b. Customized Form 5402 generated from APGolf.

**Note:** If the offer was amended due to a change in basis per IRM 8.23.3.5.1, Amended Offers - Change in Offer Basis or Other Circumstances, note in Form 5402 Remarks for APS to update AOIC with the change in basis.
  - c. ACM
  - d. Letter 5490, OIC Acceptance Letter, or Letter 5521, DATL OIC Acceptance Letter.
  - e. Form 656, Amended Form 656, and/or Form 14640, Addendum to Form 656, if applicable.
  - f. Collateral agreement, if applicable.

**Reminder:** Be sure to enter the Appeals RCP and accepted offer amounts on the Customized Form 5402. APS uses this information to update the applicable screens for the AOIC system.

- (7) The ATE will upload all closing documents as attachments in ACDS.
- (8) The ATE will document the case activity record (CAR) with the specific terms of the accepted OIC (as indicated on Form 656 or amended Form 656 or Form 14640 addendum) and any collateral agreement.
- (9) Enclose a copy of the Form 656 and any collateral agreements with the taxpayer's (and POA's) copy of the OIC Acceptance Letter.
- (10) The Fair and Accurate Credit Transactions Act of 2003 requires that persons who dispose of credit information take reasonable measures to protect against unauthorized access to or use of credit information in connection with its disposal. IRM 5.1.18.19, Consumer Credit Reports, and IRM 5.8.8.15, Destruction of Credit Reports, contain information on credit report usage and disposal requirements. The credit report should remain in the case file until all reviews are complete. The credit report must be removed and properly disposed prior to sending the file to APS for closing. Follow these procedures for proper disposal of credit reports:

If...	Then...
The ATE determines that the Appeals approving official (Appeals Team Manager (ATM), Area Director (AD), Director Collection Appeals or Director Examination Appeals) and/or Counsel <b>do not</b> need to review the credit report(s) as part of the case disposition approval,	The ATE will remove and destroy all credit reports.
The ATE determines that the Appeals approving official and/or Counsel may need to review the credit report(s) as part of the case disposition approval,	The ATE will prominently 'flag' all credit reports and submit the case file for the necessary review and approvals.
The case does not require the review or approval of anyone beyond the ATM,	The ATM will remove and destroy all credit reports immediately prior to submitting the case to APS for closing actions.
The case requires the review or approval of the Area Director, Director Collection Appeals, Director Examination Appeals and/or Counsel and the file is returned to the ATM prior to submitting the case to APS for closing,	The ATE will leave the credit reports in the case file until completion of all reviews. The ATM will remove and destroy all credit reports immediately prior to submitting the case to APS for closing actions.

- (11) See IRM 8.20.7.49, Offer in Compromise (OIC) Non-CDP Cases, for APS OIC case closing procedures.



8.23.4.3.3  
(12-05-2024)  
**Counsel Review of  
Acceptance  
Recommendations**

- (1) IRC 7122(b) requires an opinion from Counsel to be placed in the file if the liability, including tax, penalties and interest, is \$50,000 or more. Counsel's review has two separate and distinct components:

a. Certification that the legal requirements for compromise were met.

**Note:** A taxpayer with diminished mental capacity may submit an offer and the IRS can accept it based on current statutes, policy, and procedures. In this situation, the offer is a voidable contract that may be voided at the election of the taxpayer with diminished capacity. If this reason is the sole reason that Area Counsel does not sign the Form 7249, Appeals may continue with OIC acceptance under IRM 8.23.4.3.3.

b. If the legal requirements for compromise were met, then Counsel reviews the proposed acceptance for consistent application of the Service's policies regarding acceptance.

**Note:** The 24-month TIPRA statute period under IRC 7122(f) includes whatever time a case is pending in Counsel for its statutory opinion on an acceptance recommendation. See IRM 8.23.2.4, Initial Case Review and Statute Controls, for additional information on statute responsibilities.

- (2) The requirement for Counsel review is based on the aggregate liability, including additions and accrued penalty and interest, on Form 7249 for all related offers on the same taxpayer at the time the offer is submitted for approval, if \$50,000 or greater.

**Example:** If a taxpayer owes \$40,000 IMF liability and \$20,000 BMF liability for a BMF entity, the offers will be submitted for Counsel review.

- (3) Under Chief Counsel Directives Manual (CCDM) 33.3.2, Legal Advice, Other Legal Advice, Offers in Compromise, Counsel's finding that a proposed acceptance is not in keeping with IRS policy is not a justification for withholding an opinion if all of the legal requirements for compromise have been met. If Counsel signs the Form 7249 but disagrees with the amount of the offer, they will communicate their disagreement in a separate memorandum.
- (4) Although Counsel's opinion is required for compromise, its concurrence with Appeals' decision to accept the offer is not required. However, the Appeals approving official must review and carefully consider Counsel's opinion prior to accepting the offer. If Counsel raised substantive issues, it is appropriate to document the CAR to reflect that the approving official carefully considered those issues before accepting the offer.
- (5) If the offer meets the legal requirements for compromise but Counsel did not sign the Form 7249 because it disagreed with Appeals' application of IRS policies, Appeals may still accept the offer. The ATE will document the case history, include in the case file a copy of Counsel's memorandum or other communication expressing its opinion and note this IRM reference in Counsel's signature line on Form 7249.

**Note:** The ATE will not identify new assets or increase a determination of equity in assets made by Collection, other than as allowed by certain exceptions in IRM 8.23.3.4, Appeals OIC Evaluation Procedures. If the offer meets the legal requirements for compromise, but Counsel does not sign Form 7249

based on identifying new issues or requesting further development of existing issues, the ATE will not deviate from Appeals' guidance and dispute resolution role. The ATE should accept the offer and document the history as to why Appeals is proceeding with offer acceptance, notwithstanding Counsel's opinion.

**Note:** If Counsel identifies errors made solely by Appeals, it is not appropriate for the ATE to accept the offer without first addressing those errors.

- (6) If an offer is returned by Counsel to address specific errors and those errors have been addressed, the ATE will not resend the case to Counsel for review unless the terms of the offer changed.
- (7) When an OIC is accepted in the situations described in (5) above, the Appeals management level that is required for approval of these cases does not change.
- (8) If acceptance of the offer is subject to Counsel's legal requirements review, proceed as follows:

a. The ATE will create an electronic file by scanning and emailing or faxing to their e-fax number the following documents (where applicable), (the documents appear in their preferred order with the F7249 on top):

- Form 7249, Offer Acceptance Report
- IDRS Transcripts (TXMODs or IMFOLT/BMFOLT; SUMRY or IMFOLI/BMFOLI). See IRM 5.8.8.7, Required Actions Prior to Closing an Offer as an Acceptance.

**Note:** IDRS transcripts are sufficient to prepare AOIC Form 7249 and to provide to Counsel. It is no longer necessary to request account transcripts from Shared Team of Administrative & Redaction Support (STARS).

- Form 1271, Rejection or Withdrawal Memorandum – if included in the administrative file
- Form 656, Offer in Compromise, or Form 656-L, Offer in Compromise (Doubt as to Liability), including any addendums
- IMFOLI/BMFOLI print
- OIC Acceptance Letter (Letters 5490 or 5521)
- Appeals Case Memorandum (Form 14559 may be substituted)
- Appeals Reasonable Collection Potential Tables (unless embedded in Form 14559)
- Appeals Case Activity Record
- Compliance's case history (AOIC history, if included. Do not submit ICS history.)
- Form 433A/B, Collection Information Statements, (not including attachments)
- Any previous Counsel Memorandum in the case file (including those not solicited by Appeals)
- Form 5402, Appeals Transmittal and Case Memo

b. The ATE will save the electronic file on their computer and will upload the documents to Counsel's SharePoint site and assign the request to the ATM for review.



c. The ATE will update ACDS by inputting CARATS Action Code "AC" with Sub-Action Code "DC" to the OIC Work Unit Number (WUNO).

d. The ATM will review the approval documents through the SharePoint site and, if approved, will assign the case to Counsel by updating the SharePoint case status. If the acceptance recommendation is not approved at the ATM level, the ATM will close the request and notify the ATE.

e. Counsel will complete the review of the documents through SharePoint and electronically sign Form 7249. The signed documents will be returned by Counsel to the Appeals ATM through SharePoint by updating the case status.

**Note:** Upon closure of a case in which Counsel's opinion did not recommend acceptance and Appeals agrees with the opinion, either the ATM or the ATE must input an entry into CARATS to explain Counsel's decision and the general reason(s) why the offer was rejected. If Appeals does not agree with Counsel's opinion, Appeals will proceed with the acceptance following guidance in IRM 8.23.4.3.2(5), Accepted Offer Closing Documents and Appeals Technical Employee Procedures. The case will not be resubmitted to Counsel unless the terms of the OIC have changed.

f. Upon receipt from Counsel the ATM will send the signed and dated Form 7249, the signed acceptance letter and signed Form 5402 to the ATE who will update ACDS by inputting:

- CARATS Action Code "AC"
- Sub-Action Code "FR"

g. The ATE will ensure all final OIC documents are electronically attached to the OIC WUNO and uploaded to ACDS, including the Form 656, Form 7249 and IDRS transcripts and any memorandum from Counsel.

h. The ATE will then send a secure email request to the ATM to input the ATM Approval Date (ACAPDATE) when closing actions have been completed on the OIC.

i. The ATE or ATM will forward the case to APS for closing actions after ensuring any credit reports have been removed from the case file and destroyed per IRM 8.23.4.3.2, Accepted Offer Closing Documents and Appeals Technical Employee Procedures.

(9) If the ATM is not the approving official, the ATM will not sign the acceptance letter or Form 5402 after receiving the case back from Counsel. In accordance with IRM 1.2.2.6.1.1, Acceptance Authority, the ATM will forward the acceptance documents for review and approval to the appropriate delegated official based on local and Appeals Area Office procedures. Once the ATE receives the signed Form 7249, OIC Acceptance Letter and Form 5402 from the approving official, the ATE will input the AC/FR Action and Sub-Action codes and the ATM will input the ACAPDATE.

- (10) ATEs will secure second-level managerial approval to accept an OIC as stated in Delegation Order 5-1 when:
- the liability at the time of submission was less than \$250,000 but additional assessments made during the offer process increased the liability to more than \$250,000 or
  - the liability at the time of submission was more than \$250,000 but application of TIPRA payments or refund offsets reduced the liability below the \$250,000 threshold.
- (11) See Steps for Preparing and Submitting OIC for Counsel Review, Acceptance Approval, and Closure, Exhibit 8.23.4-3.

8.23.4.4  
(12-05-2024)  
**Sustaining Offer  
Rejection**

- (1) When the facts of the case do not support acceptance, the ATE should attempt to inform the taxpayer, prior to issuance of the rejection letter, of the decision to sustain the rejection of the offer. See IRM 8.23.3.3, Rejected Offers, for additional information.
- (2) Generally, the ATE will sustain a rejection only under the same basis for which the offer was rejected. Note the following exceptions:

- a. If Collection rejected an offer for public policy reasons under Policy Statement 5-89 or as Not in the Best Interest of the Government, and the ATE does not sustain the rejection on those grounds, the ATE may sustain the rejection based on the collectibility determination documented by Collection.
- b. In the rare situation where the ATE determines that a collateral agreement should be included in the acceptance recommendation and the taxpayer does not agree to its terms, the ATE may reject the offer. This is true even if the ATE raised the collateral agreement as a new issue. See IRM 8.23.3.6, Collateral Agreements.

**Note:** *Instances of including a collateral agreement should be rare.*

- c. The ATE may sustain rejection for a tax compliance issue as discussed in IRM 8.23.2.6, Tax Compliance Issues, its related subsections, and IRM 8.23.2.7, When a Taxpayer Does Not Remain in Compliance.
- d. When a taxpayer does not propose agreeable payment terms, the ATE may sustain a rejection as Not in the Best Interest of the Government. These instances should be rare. See IRM 8.23.3.5.1, Amended Offers - Change in Offer Basis or Other Circumstances.
- e. The ATE must sustain a rejection when a taxpayer files bankruptcy. This is true even if the taxpayer filed and received a discharge while the offer was open. This type of rejection may be approved at the ATM level.
- f. The ATE must sustain rejection of an offer when it is determined the offer should have been returned by Collection in the following circumstances:
  - For cases under DOJ jurisdiction. See IRM 5.8.1.6.1, Tax Cases Controlled by Department of Justice.
  - Cases involving restitution liability. See IRM 5.8.4.24.1, Offers in Compromise Submitted that Include Restitution.

- (3) If Collection rejected a DATC offer on the basis that the taxpayer could pay more than the amount offered, and information provided by the taxpayer or the ATE's analysis concludes otherwise, the ATE will not independently sustain the

rejection or otherwise dispose of the case under any other basis such as Public Policy, Not in the Best Interest of the Government (NIBIG), or a finding that the submission of the offer was solely to delay collection.

**Example:** If Collection rejected a DATC offer on the basis that the taxpayer could pay more than the amount offered, and information provided by the taxpayer or the ATE's analysis concludes otherwise, the ATE will not independently sustain the rejection under NIBIG.

**Example:** Collection's rejection letter lists taxpayer could pay more than the amount offered as the only reason for rejection. The case history lists NIBIG as an alternative basis for rejection, but the rejection letter did not say that the offer was also being rejected based on NIBIG, nor did Collection obtain elevated approval needed for an NIBIG rejection. If Appeals decides that the taxpayer's offer meets or exceeds RCP, the ATE will not independently sustain rejection as NIBIG.

**Exception:** See IRM 8.23.3.5.1, Amended Offers - Change in Offer Basis or Other Circumstances.

- (4) If Collection rejected an offer submitted under Doubt as to Collectibility provisions on the basis that acceptance was not in the Best Interest of the Government, the ATE will sustain Collection's rejection when Appeals concurs that acceptance is not in the Best Interest of the Government or determines that the taxpayer can pay more than the offered amount. See IRM 5.8.7.7.1, Not in the Best Interest of the Government Rejection.
- (5) The ATE will sustain rejection of a DATL offer when Appeals determines that the tax is correct as assessed **or** when Appeals agrees to make an adjustment to the tax but the taxpayer will not withdraw the offer. See IRM 8.23.7.3, Consideration of Rejected Doubt as to Liability (DATL) Offers, and its related subsections.
- (6) The Secretary has delegated to Appeals the independent authority to reject an OIC. See Delegation Order 5-1, which is found in IRM 1.2.2.6.1.2, Rejection Authority.
- (7) If sustaining the rejection of an offer, the ATE will communicate the reason(s) for the decision and discuss alternatives (such as installment agreements and Currently Not Collectible status, as applicable) that the taxpayer may pursue with Collection. Do not refer the taxpayer to COIC or field offices. The ATE will close the offer and refer the taxpayer to Form 9465, Installment Agreement Request, IRS Telephone Assistance at 1-800-829-1040 (individuals) or 1-800-829-4933 (businesses), and [www.irs.gov](http://www.irs.gov) for Online Payment Agreement or other payment option.
- (8) The ATE will not make any Notice of Federal Tax Lien (NFTL) filing determinations. The ATE should inform the taxpayer verbally or in writing that Collection may file an NFTL after the case is closed. If the taxpayer indicates intent to file a Collection Appeal Request, refer them to the Collection employee who worked the initial case, and close the OIC case following normal procedures.
- (9) If the taxpayer submitted a deposit with a Form 656 prior to the revision date of 4/25/2022, the deposit must be returned unless the taxpayer gave written

authorization to apply it to the tax liability. Form 3040, Authorization to Apply Offer in Compromise Deposit to Liability, or other written authorization may be used for this purpose. If applied to a tax liability, the deposit is credited as of the date it was received by the IRS.

**Note:** If the offer at issue includes a TIPRA payment, the 20% initial payment for a lump sum offer and the proposed payments for a periodic payment offer are not deposits and will not be refunded, except in limited circumstances identified in IRM 5.8.2.4.1, Determining Processability. In addition, if the taxpayer pays more than 20% with the submission of a lump sum offer, the excess amount is considered a payment of tax and will be applied in the best interest of the Government, unless otherwise designated or the taxpayer indicates on the Form 656 to treat the excess amount as a deposit. The same applies to periodic installments in excess of the proposed amounts. See Form 656, Section 5.

- (10) If the case is a DATL offer involving a TFRP or personal liability for excise tax (PLET) liability and the ATE recommends making an adjustment to the liability, the ATE will prepare a Form 3870. APS will forward the Form 3870, along with any TFRP or PLET administrative files, to the appropriate Collection Advisory Unit. See IRM 8.23.7.18, Doubt as to Liability (DATL) - Resolution Options.
- (11) See IRM 8.23.4.3.2, Accepted Offer Closing Documents and Appeals Technical Employee Procedures, for instructions on destroying credit reports.

8.23.4.4.1  
(12-05-2024)

**Closing Documents and Appeals Technical Employee Procedures for Sustaining Offer Rejection**

- (1) The ACM for a case in which Appeals sustains the rejection of the offer will contain the following:

- a. Sufficient information and explanation to support the final decision, including a complete financial analysis.

**Note:** The ACM should reflect the conclusion reached by the ATE with ultimate responsibility for the case, including "review and concurrence" requirement and management approval. Also see IRM 8.6.2.2, Introduction to Appeals Case Memos (ACMs).

**Note:** If the decision is simply to sustain Collection's RCP determination, the Offer Examiner's financial analysis tables (IET/AETs) or Full Pay Worksheet) are sufficient.

- b. Any counter proposals either offered to or received from the taxpayer.
- c. Information on the disposition, either a refund or application to a tax liability, of any offer deposits.

**Note:** The Customized OIC Form 5402 may be used in place of an ACM if there is sufficient room to reflect the above items. Also, consider using the Form 14559, Appeals Offer in Compromise Memorandum, which is available on the Electronic Publishing website.

- (2) The ATE is responsible for inputting the following data on the Customized OIC Form 5402:
  - Amount of the outstanding liability
  - Amount of the taxpayer's original offer
  - Amount of RCP determined by Appeals

- (3) Review the Delegation Orders at IRM 1.2.2.6.1.2, Rejection Authority, to determine the appropriate approving official to sustain rejection of the offer.
- (4) When recommending Appeals sustain rejection of the non-CDP offer, prepare and assemble the following:
  - a. Customized OIC Form 5402 generated from APGolf.
  - b. ACM, if necessary.
  - c. An undated Letter 5197 to notify the taxpayer that Appeals sustained rejection of the offer.
  - d. Form 3040, Authorization to Apply Offer in Compromise Deposit to Liability, or other written authorization (if applicable).
  - e. Form 1271, Rejection and Withdrawal Memorandum. Include this form if it was prepared by Collection. Do **not** prepare a Form 1271 if there is none in the file.

**Note:** Consider the use of Form 14561, Income and Expense/Asset Equity Calculation Table, as a means to complete the IET/AET or Form 14559, Appeals Offer in Compromise Memorandum, to include an abbreviated ACM.

- (5) If the liability at issue is a TFRP or PLET and the ATE agrees to adjust or abate the amount of the TFRP or PLET, the ATE is responsible for preparing the Form 3870. Ensure that the Form 5402 properly instructs APS to forward the Form 3870 and the TFRP/PLET administrative file to the appropriate *Collection Advisory Unit*. The ATE is responsible for providing APS with the address of the appropriate Advisory Unit. The Form 5402 contains instructions for determining the appropriate Advisory Unit.
- (6) The ATE will upload rejection closing documents to ACDS as attachments.
- (7) Once all of the above documents are complete and assembled, update the ACDS case status to 'AC/FR' and submit the case file to the ATM for approval.

## 8.23.4.4.2 (12-05-2024) Reconsidering a Previously Rejected Offer

- (1) When a ATE sustains the rejection of a non-CDP offer, Appeals' jurisdiction of the case is relinquished.
- (2) An offer will **not** be reopened:
  - To reconsider the earlier decision based upon the same facts and circumstances.
  - To consider new facts and circumstances that arose **after** the rejection.
  - Because a taxpayer can now fund an offer they were previously unable to fund.
- (3) The ATE *cannot* reconsider a rejected offer case **except** under the following circumstances which should be documented in the case history record:
  - The ATE sustained a rejection because the taxpayer failed to timely provide requested information and it is later learned that the information was provided timely but was misrouted or misidentified by Appeals or IRS.
  - The ATE sustained a rejection because the taxpayer was unable to meet an unreasonably short response deadline.

**Note:** An unreasonably short deadline is defined as less than 14 calendar days from the date of the request.

- The ATE made a significant computational error in determining RCP.
  - The taxpayer failed to respond to the ATE and it is later learned that this was due to an emergency situation (e.g., medical emergency, natural disaster, etc.).
- (4) For all taxpayer requests to reopen a rejected offer, the ATE will upload to ACDS:
- Form 656, and any amended offers or addendums
  - Form 433-A(OIC)
  - taxpayer's written statement for re-opening consideration of OIC, if applicable,
- before forwarding request to the ATM for review.
- (5) The ATM will consider all factors, including the taxpayer's new information and/or statements, in determining to reopen a rejected offer. Refer to IRM 5.8.7.3, Return Reconsideration.
- (6) In all circumstances appearing in (3) above, the taxpayer's request to have the case reconsidered must have been **received** by Appeals **no more than 30 calendar days after** the date Appeals' rejection letter was issued.
- (7) For circumstances not described in (3) above or for reconsideration requests received later than 30 calendar days after the date of the rejection letter, a previously rejected offer may be considered **only** under the following circumstances:
- At the request of the taxpayer or authorized representative, **and**
  - With the agreement of Collection Appeals Director or Exam Appeals Director, **and**
  - With the agreement of the SBSE Director, Specialty Collection OIC.
- (8) For circumstances in (6) above, a request to reconsider a previously rejected offer will be first reviewed by the ATM, and then forwarded to the Appeals Area Technical Advisor where the case was previously assigned. The Appeals Area Technical Advisor will coordinate the agreement of the Collection Appeals Director or Exam Appeals Director and the SBSE Director, Specialty Collection OIC.
- (9) In all cases of approved re-openings of offers where Appeals sustained rejections:

The ATM will	<ol style="list-style-type: none"> <li>1. request that the ACAPDATE be reversed by posting a request using IRS Service Central portal: IRWorks, formerly OSGetServices, and</li> <li>2. use the original Appeals WUNO to monitor the case.</li> </ol>
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The ATE will	<ol style="list-style-type: none"> <li>1. Upload the request form and attachments to APS- Case Update Request via <i>Appeals Shared Programs Hub - Home (sharepoint.com)</i>,</li> <li>2. indicate in the request to post a manual TC 480 to IDRS using the original TC 480 date of the offer and that it is pursuant to a closed offer re-opening, and</li> <li>3. if reconsideration is opened on AOIC under a new offer number, revise "OfNum" in ACDS to the new offer number.</li> </ol> <p><b>Note:</b> The "Remarks" of closing Form 5402 should indicate that the closing TC ( TC 481, 482 or 483) to close the manual TC 480 should be a manual TC.</p>
The Area TA will	request the Appeals Policy OIC analyst to re-open the offer on AOIC.

## 8.23.4.5 (12-05-2024) Withdrawn Offers

- (1) IRM 5.8.7.4, Withdrawal, contains information on withdrawn offers. There are two kinds of withdrawals:
  - a. Voluntary withdrawal, and
  - b. Involuntary withdrawal.
- (2) A taxpayer may voluntarily withdraw an offer at any time after it is submitted, including while the case is in Appeals. A voluntary withdrawal may be made verbally or in writing, including by fax. Written withdrawals are encouraged. Form 14773, or Form 14773-A (for joint offers), Offer in Compromise Withdrawal, may be used to withdraw an offer. The letters must be modified with respect to the taxpayer waiving appeal rights. However, if a taxpayer or authorized representative provides a clear oral statement requesting withdrawal of the offer, the offer may be closed as withdrawn. Be sure to adequately document the case activity record of the taxpayer's or representative's withdrawal request.
- (3) If the taxpayer sends a written withdrawal by certified mail or hand-delivers the withdrawal, the offer is considered withdrawn as of the date Appeals received the withdrawal. Date stamp the withdrawal document with the received date, as that is the date on which the statutory period to collect the tax begins to run.

- (4) If the taxpayer verbally withdraws the offer or sends a written withdrawal by regular mail, fax or any method *other* than certified mail or hand-delivery, the offer will be considered withdrawn as of the date Appeals mails the Letter 241, Offer in Compromise Withdrawal, to the taxpayer.
- (5) When a joint offer is withdrawn, verify both spouses concur with the withdrawal. Refer to IRM 5.8.7.4.1.1, Voluntary Withdrawal of a Joint Offer.
- (6) Document the case activity record as to how the taxpayer made the withdrawal.
- (7) If an offer is withdrawn, either voluntarily or as an involuntary withdrawal, the ATE documents the reason(s) why and discuss alternatives (such as an installment agreement and Currently Not Collectible status, as applicable) that the taxpayer may pursue with Collection. Do not refer the taxpayer to COIC or field offices. Close the offer and refer the taxpayer to Form 9465, Installment Agreement Request, IRS Telephone Assistance at 1-800-829-1040 (individuals) or 1-800-829-4933 (businesses), and [www.irs.gov](http://www.irs.gov) for Online Payment Agreement or other payment option.
- (8) If the taxpayer submitted a deposit with a Form 656 prior to the revision date of 4/25/2022, secure a Form 3040, Authorization to Apply Offer in Compromise Deposit to Liability, or other written authorization, to apply the deposit to a tax liability. If the taxpayer does not provide such written authorization, the deposit must be refunded.
- (9) The ATE will not make any NFTL filing determinations. The ATE should inform the taxpayer verbally or in writing that Collection may file an NFTL after the case is closed. If the taxpayer indicates intent to file a Collection Appeal Request, refer them to the Collection employee who worked the initial case, and close the OIC following normal procedures.
- (10) The offer may also be considered withdrawn under IRC 7122(c)(1)(B)(ii) if the taxpayer fails to make a proposed periodic installment payment. However, the taxpayer is not required to continue making proposed periodic installment payments on a periodic payment offer after such offer is rejected by Collection. For this reason, instances of involuntary withdrawal of a non-CDP offer should be uncommon.

**Note:** Periodic installment payment requirements start again upon receipt of an amended periodic payment offer. The ATE is responsible for securing the TIPRA payment required with the amended offer and monitoring receipt of the proposed periodic installment payments until the case is closed in Appeals. If the ATE secures an amended offer well in advance of closing out the non-CDP offer and the taxpayer fails to make a proposed periodic installment payment, follow the procedures in IRM 8.23.3.5.4, Involuntary Withdrawal Procedures for Amended Periodic Payment Offers Received by Appeals, regarding involuntary withdrawal.

8.23.4.5.1  
(12-05-2024)

**Withdrawn Offer Closing Documents and Appeals Technical Employee Procedures**

- (1) The ACM for a withdrawn offer case will contain the following:
  - a. Sufficient information indicating the type of withdrawal (voluntary or involuntary) and the date (if known) and manner in which the offer was withdrawn, e.g. verbal, written, certified mail, hand-delivery, etc.
  - b. The taxpayer's reason for withdrawing the offer, if known.



- c. Information on the disposition of any deposits submitted with the offer. The deposit will be refunded unless the taxpayer provided written authorization to apply it to a tax liability.

**Note:** The Customized OIC Form 5402 may be used in place of an ACM if there is sufficient room to reflect the above items.

- (2) The ATE is responsible for inputting the following data on the Customized OIC Form 5402:
  - Amount of the outstanding liability
  - Amount of the taxpayer's original offer
  - Amount of RCP determined by Appeals

**Note:** If the OIC is an Examination-sourced DATL offer, the ATE will document Form 5402 under Remarks with instructions to APS to close the case to Centralized Case Processing (CCP). The file will contain the applicable documents listed in IRM 4.8.8.8.6, Case Closing Procedures.

- (3) Prepare Letter 241, Offer in Compromise Withdrawal Letter, to the taxpayer. Letter 241 can be signed by the ATE. In a withdrawal, there is no need to secure an ATM signature on Form 5402.
- (4) When closing a non-CDP offer as withdrawn, prepare and assemble the following:
  - a. Customized Form 5402 generated from APGolf.
  - b. ACM, if all necessary information cannot fit on the Form 5402.
  - c. An undated Letter 241(CG) to notify the taxpayer that the offer is withdrawn, the effective date of the withdrawal, and the disposition of any offer deposit.
  - d. Form 3040 or other written authorization to apply an offer deposit to a tax liability, if applicable.

**Note:** A Form 1271 is not needed for a withdrawn offer. See IRM 5.8.7.4.3, Closing an Offer as a Withdrawal.

- (5) If the case is a DATL offer involving a TFRP or PLET liability, and the ATE recommends an adjustment to the liability, the ATE will prepare a Form 3870. APS will forward the Form 3870, along with any TFRP or PLET administrative file, to the appropriate Collection Advisory Unit.
- (6) The ATE will upload all closing documents as attachments in ACDS.
- (7) Once all of the above documents are complete and assembled, the ATE will update the ACDS case status to AC/FR and provide a copy of Form 5402 to the ATM for ACAP entry on ACDS.
- (8) See IRM 8.23.4.3.2, Accepted Offer Closing Documents and Appeals Technical Employee Procedures, for instructions on destroying credit reports.

## 8.23.4.6 (12-05-2024) Premature Referral Closings

- (1) Form 5402 for premature referral cases will be completed as follows:
  - Closing Code = 20

- Under “Remarks”
  - a. The reason why the case is a premature referral.
  - b. Instruct APS to re-assign the offer back to the originator on AOIC and to annotate in AOIC Remarks that the case is being returned as a premature referral and the reason for the premature referral.
- (2) Form 5402 will be uploaded to ACDS.
- (3) An attachment to 5402 or ACM is not necessary.
- (4) Letter 5180, Appeals Premature Referral - Collection Issues - Jurisdiction Released, should be mailed to the taxpayer to advise them that their offer is being returned to Collection and to explain the reason for the return as a premature referral.
- (5) ATMs will contact the originating Field Offer in Compromise (FOIC) Group or Centralized Offer in Compromise (COIC) Team Manager via secure email and explain why the case is being returned to Collection as a premature referral.

#### 8.23.4.7 (12-05-2024)

##### Potential Default Offers

- (1) A potential default offer is loaded onto ACDS as an OIC case, using feature code “DO”. This includes potential default offers that are being considered as a modification of a compromise (previously referred to as “compromise of a compromise”), and the formal rescission of accepted offers. See IRM 8.23.3.12, Potential Default Offers, for general procedures on potential default cases.
- (2) Delegation Order 5-1 (Rev 4) found in IRM 1.2.2.6.1.4, Termination Authority, grants MOIC the authority to terminate an offer where the taxpayer defaults on the terms of the offer and fails to offer an alternative to the default.

**Note:** An offer defaulted due to the taxpayer’s failure to remain in filing and payment compliance cannot be considered for an alternative such as a modification of a compromise or a change in offer payment terms.

- (3) If the taxpayer remains in filing and payment compliance but was unable to remedy the potential default issue (e.g., missed offer payments, non-compliance with a collateral agreement), the ATE may default the offer and recover the full liability, less any payments made, or accept the offer for amounts already paid under “modification of a compromise” procedures as discussed in IRM 8.23.3.13, Modification of a Compromise. If the ATE decides to default the offer, the ATE will use Letter 5412, Appeals Offer in Compromise Default Letter. The letter must be signed by the Appeals official who accepted the offer or their successor. See the Delegation Orders at IRM 1.2.2.6.1.4, Termination Authority. Document the case activity record, input “DM” and “AC/FR”, and close the case using Closing Code 14. Close the Form 2209, Courtesy Investigation, back to MOIC advising that the offer was defaulted and attach a copy of the signed default letter. MOIC will then reinstate the compromised liability. Follow procedures in IRM 8.23.3.13, Modification of a Compromise, if recommending acceptance of a modification of a compromise.
- (4) If the potential default case involves the death of a taxpayer and it is determined that no estate exists, the ATE will close the offer as satisfied, following procedures in IRM 8.23.3.12, Potential Default Offers, IRM 8.23.3.13, Modification of a Compromise, and IRM 8.23.4.8, Modification of a Compromise, below. The ATE will document the case activity record, input DM and AC/FR, and use

Closing Code 15. Send the Form 2209 back to MOIC advising that the offer should not be terminated.

- (5) When generating the Customized OIC Form 5402 for a potential default case, use the closing codes below. Also, use the most appropriate resolution reason code when generating the Form 5402.
  - a. Closing Code 14 - Offer defaulted or rescinded
  - b. Closing Code 15 - Offer not defaulted
  - c. Closing Code 16 - Request withdrawn by the taxpayer
  - d. Closing Code 20 - MOIC recalled request for default consideration
- (6) In 5402 Remarks, inform APS to note in AOIC Remarks that 2209 was closed to Brookhaven or Memphis MOIC.
- (7) Procedures for rescission of a previously accepted offer are found in IRM 5.8.9, Actions on Post-Accepted Offers, and IRM 8.23.3.14, Offer Rescission Considerations.
- (8) After making a decision on the potential default offer case, the ATE will return the Form 2209 and any closing documents to the appropriate MOIC site.

8.23.4.8  
(12-05-2024)  
**Modification of a Compromise (previously referred to as “Compromise of a Compromise”)**

- (1) After following procedures in IRM 8.23.3.13, Modification of a Compromise, the ATE will close the case and send it back to MOIC using the process in this IRM and IRM 5.8.9.6.3, Processing Completed Investigations.
- (2) If the taxpayer is deceased, the ATE will verify the TC 540 was input to IDRS or request APS to manually input the TC 540 to IDRS.
- (3) If the ATE requests APS to manually input the TC 540, the request will specify:
  - a. TP date of death (if known), or
  - b. state that the “TP date of death is unknown”.
- (4) Return Form 2209 and all closing documents to the appropriate MOIC site, including:
  - a. The taxpayer’s written proposal for the modification of a compromise.
  - b. A copy of the acceptance letter.
  - c. Appeals Case Memorandum (ACM) and documentation supporting the case decision.
  - d. A revised Form 7249.

**Note:** If modification of the offer meets the criteria for legal requirements review per IRC 7122(b), the AOIC Form 7249 of the modified offer is sent to Counsel for review.

- (5) To prepare the Form 7249 for modified terms of an accepted offer:

If the Form 7249 for the modification of the offer terms will be approved by the delegated official...	Then...
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within one year from the original acceptance,	contact Appeals Policy OIC analyst to reopen the offer in AOIC so the Form 7249 may be generated. When notified that the offer has been reopened, proceed with requesting an AOIC Form 7249 in accordance with Exhibit 8.23.4-1 for Collection-sourced OICs and all Collection Due Process OICs.
after the one-year PIF retention period,	the PIF does not need to be updated. Prepare the Form 7249 from the Electronic Publishing Catalog.

# Acceptance, Rejection, Withdrawal and Default Procedures for Non-Collection Due Process (CDP) Offers 8.23.4

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Exhibit 8.23.4-1 (04-07-2022)

Step Chart for Securing AOIC Generated Form 7249 for Collection-sourced OICs and all CDP-OICs—

Step	Action
1.	Generate “APS Action Request Form” found on APGolf under ACDS Updates.
2.	To <b>add</b> periods: a. List MFT and periods. b. Attach IDRS transcript highlighting assessments dates and total liabilities with accruals. c. List the TC 480 date for the offer. d. Indicate if taxpayer is Primary, Secondary, or Both.
3.	To <b>delete</b> periods: a. List periods to be deleted from the offer.
4.	Under “Name and Address changes”, list any name and address <b>change</b> , if different from the original Form 656 or 656-L.
5.	Under “Other /Comments”, list or attach: a. Offer Number. b. Offer Amount. c. Original offer or amended offer. d. Offer Type (select one): <b>DATC, DATL, DATC-SC, ETA, CDP-DATC, CDP-DATL, CDP-DATC-SC, CDP-ETA.</b> e. Offer Terms: 1. <b>List Cash or Deferred.</b> 2. <b>Attach page of F 656, 656-L, or F 14640 that shows terms to be accepted.</b> f. Collateral Agreement form number and title, if applicable. g. Complete signature lines: 1. ATE name. 2. Approving official name. 3. 2nd level Approving Official name, if applicable. h. Reason for acceptance (select one): <b>Collectibility, Liability, Special Circumstances, ETA.</b>
6.	The ATE will: a. Change the caption of the request form to Request for AOIC 7249. b. Upload the request form and attachments to APS- Case Update Request via <i>Appeals Shared Programs Hub - Home (sharepoint.com)</i> .
7.	Upon receipt of the AOIC generated Form 7249 from APS, the ATE will: a. Review the AOIC Form 7249 for completeness, accuracy, and redaction of “ <b>in care of</b> ” names, and other Personally Identifiable Information (PII), and b. Continue following closing procedures found in IRM 8.23.4.

**Exhibit 8.23.4-1 (Cont. 1) (04-07-2022)****Step Chart for Securing AOIC Generated Form 7249 for Collection-sourced OICs and all CDP-OICs—**

8.	<p>To revise or update an AOIC Form 7249, the ATE will:</p> <ol style="list-style-type: none"> <li>Generate “APS Action Request Form.”</li> <li>Indicate the necessary revisions or changes according to Steps 2, 3, and 4.</li> <li>List Offer Type (select one): <b>DATC, DATL, DATC-SC, ETA, CDP-DATC, CDP-DATL, CDP-DATC-SC, CDP-ETA.</b></li> <li>Complete signature lines: <ul style="list-style-type: none"> <li>ATE name.</li> <li>Approving Official name.</li> <li>2nd level Approving Official name, if applicable.</li> </ul> </li> <li>List reason for acceptance.</li> <li>Change the caption of the request form to “Revise AOIC 7249.”</li> <li>Attach the request form and attachments to a secure e-mail with subject line reading: “Revise AOIC 7249”, and the Offer Number redacted to the last four digits as follows: XXXXXX1234. <b>Do not include name control in the title of the email.</b></li> <li>Upload the request form and attachments to APS- Case Update Request via <i>Appeals Shared Programs Hub - Home (sharepoint.com)</i>.</li> </ol>
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# Acceptance, Rejection, Withdrawal and Default Procedures for Non-Collection Due Process (CDP) Offers 8.23.4

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Exhibit 8.23.4-2 (04-07-2022)

## Step Chart for AOIC Generated Form 7249 for Examination-sourced OIC-DATLs

Step	Action
1.	The ATE generates Form 2209 found on APGolf under Collection Due Process and completes the following information in the "Remarks" section: a. "Requesting AOIC Form 7249 for OIC-DATL. After generating DATL AOIC Form 7249 with following information, please send by secure email to the requesting Appeals Officer." b. Offer Number. c. Offer TIN. d. Offer amount to be accepted. e. Terms to be accepted (Form 656-L, Section 3). f. Updates to TP name and/or address, if applicable. g. Updates to MFT and tax periods, if applicable. h. ATE's email address.
2.	The ATE will attach a copy of the Form 656-L to the ARI.
3.	The ATE will fax the ARI and copy of Form 656-L to the fax number listed on <i>Offer-in-Compromise (OIC) Compliance Campus Locations for DATL SERP Webpage</i> for the DATL Unit within the Brookhaven Centralized OIC Operation (COIC).
4.	Upon receipt of the AOIC generated Form 7249 from DATL Unit, the ATE will: a. Review the DATL AOIC Form 7249 for completeness, accuracy, and redaction of <b>"in care of" names, and other</b> Personally Identifiable Information (PII), and b. Continue following closing procedures found in IRM 8.23.4.

**Exhibit 8.23.4-3 (04-07-2022)****Steps for Preparing and Submitting OIC for Counsel Review, Acceptance Approval, and Closure**

Step	Description	Notes/Information
1	ATE prepares electronic copies of the required documents by scanning and emailing or faxing to their e-fax number. The final assembly of the documents is in this preferred order with the Form 7249 on top.	<ul style="list-style-type: none"> <li>Form 7249.</li> <li>IDRS Transcripts.</li> <li>Form 1271 – if included in the administrative file.</li> <li>Form 656 or Form 656-L, including any addendums.</li> <li>IMFOLI/BMFOLI print.</li> <li>OIC Acceptance Letter (Letters 5490 or 5521).</li> <li>ACM or Form 14559.</li> <li>Appeals RCP Tables, if not embedded in ACM or Form 14559.</li> <li>Appeals Case Activity Record.</li> <li>Compliance's case history (AOIC history, if included, not ICS history.)</li> <li>Form 433A/B.</li> <li>Any previous Counsel Memorandum in the case file (including those not solicited by Appeals).</li> <li>Form 5402.</li> </ul>
2	ATE navigates to the Counsel SharePoint Site and opens a request by clicking "new task" under the "Appeals Manager's Approval" view.	<a href="https://adminnondisclosure2.prod.irsounsel.treas.gov/OIC/OIC-Appeals/default.aspx">https://adminnondisclosure2.prod.irsounsel.treas.gov/OIC/OIC-Appeals/default.aspx</a>
3	ATE completes the Share-Point form.	Complete the following fields: <ol style="list-style-type: none"> <li>Taxpayer's Name (Last name first, first name last).</li> <li>Taxpayer's TIN.</li> <li>WUNO.</li> <li>Offer Amount.</li> <li>Total Liability.</li> <li>Appeals' POD.</li> </ol>
4	ATE assigns the priority level and assigns the request to their ATM.	<ul style="list-style-type: none"> <li>The default level is <i>normal</i>.</li> <li><b>Use of the "high" priority level is limited to an impending TIPRA statute or other expedite situations subject to managerial approval.</b></li> <li>Ensure the Case Status is set to "Case Uploaded."</li> <li>Assign the request to the ATM in the "Assigned To" box. Typing in the ATM's last name will generally bring up a selection of options from Outlook. The ATE will notify the ATM that a request is pending review either by setting an alert in SharePoint or by sending a secure email.</li> </ul>
5	ATE attaches the electronically created documents and saves the request.	Click "attach file", which will bring up a screen enabling the ATE to locate the file with the "Browse" button. After locating the correct file, click "OK" and then "Save" the request.



# Acceptance, Rejection, Withdrawal and Default Procedures for Non-Collection Due Process (CDP) Offers 8.23.4

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## Exhibit 8.23.4-3 (Cont. 1) (04-07-2022)

### Steps for Preparing and Submitting OIC for Counsel Review, Acceptance Approval, and Closure

6	ATM is notified by ATE to access Counsel SharePoint site to review the request.	The ATM will navigate to the SharePoint: <a href="https://adminnondisclosure2.prod.irs.counsel.treas.gov/OIC/OIC-Appeals/default.aspx">https://adminnondisclosure2.prod.irs.counsel.treas.gov/OIC/OIC-Appeals/default.aspx</a>
7	ATM updates the case status based on their review.	<ul style="list-style-type: none"> <li>The ATM reviews the uploaded closing documents.</li> <li>If not approved, the case status will be changed to "case closed" and the ATE will be notified by secure email generated by the ATM. Once/if the employee corrects the documents or addresses the concern(s), submit a new request.</li> <li>If approved, the ATM changes the case status to "Counsel Assigned."</li> <li>The ATM changes the status by clicking the "edit item" button and at the "case status" field selecting the correct drop down.</li> </ul>
8	Counsel Review.	<ul style="list-style-type: none"> <li>Once the case status is updated to "Counsel Assigned," a General Litigation (GL) Operator will receive a notification that a request is pending. The GL operator will access the request and assign it to an attorney or paralegal.</li> <li>The attorney or paralegal receives an alert and accesses the request to conduct the legal requirements review.</li> </ul>
9	Counsel Determination.	<ul style="list-style-type: none"> <li>If Counsel determines the offer meets the legal requirements for compromise, they will digitally sign Form 7249 and attach the signed Form 7249 to the request. The request will be updated to "Counsel Completed" status and assigned back to the ATM.</li> <li>If Counsel determines the offer does not meet the legal requirements for compromise or if there are errors, Counsel will update the request to "Counsel Returned" status and assign back to the ATM.</li> </ul>
10	The ATM notes that Counsel has completed the review.	<ul style="list-style-type: none"> <li>If Counsel determined the offer meets the legal requirements for compromise, the ATM accesses the signed Form 7249 from SharePoint, electronically signs the Form 7249, acceptance letter and Form 5402 and forwards it to the ATE via secure email. <b>Note:</b> If the ATM is not the approving official, they will forward Form 7249, the unsigned acceptance letter and closing package to the proper delegated approving official per local procedures.</li> <li>If Counsel determined the offer does not meet the legal requirements for compromise or identified errors, the ATM will notify the ATE to address the issues raised by Counsel and if appropriate, resubmit the file to the ATM. The request will not be returned to Counsel unless the terms of the offer are changed.</li> </ul>

**Exhibit 8.23.4-3 (Cont. 2) (04-07-2022)****Steps for Preparing and Submitting OIC for Counsel Review, Acceptance Approval, and Closure**

11	The ATM updates the case status to Case Closed.	After all steps are completed the ATM edits the request, selects "Case Closed" status and the save button.
12	ATE/ATM closes the case.	<ul style="list-style-type: none"><li>• The ATE ensures all final OIC documents are electronically attached to the OIC WUNO and uploaded to ACDS, including the Form 656, Form 7249 and IDRS transcripts and any memorandum from Counsel.</li><li>• The ATE sends a secure email to the ATM to input the ACAPDATE.</li><li>• ATE or ATM forwards the case to APS for closing actions after ensuring credit reports have been removed and destroyed.</li></ul>