



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

5.8.10

MARCH 10, 2022

## EFFECTIVE DATE

(03-10-2022)

## PURPOSE

- (1) This transmits a revision to IRM 5.8.10, Offer in Compromise, Special Case Processing.

## MATERIAL CHANGES

- (1) IRM 5.8.10.1.7(3): Added new TBOR rights language.
- (2) IRM 5.8.10.2.1(6): Added a paragraph stating to contact Insolvency for instructions if a payment is received after taxpayer files bankruptcy and an OIC.
- (3) IRM 5.8.10.3(6): Added a statement to table clarifying that TFRP liabilities are not dischargeable in insolvency.
- (4) IRM 5.8.10.4.1(3): Added a section addressing Form 56, Notice Concerning Fiduciary Relationship.
- (5) IRM 5.8.10.4.1(4)(b): Added additional instructions for an amended offer when a joint offer is received after one taxpayer's death.
- (6) IRM 5.8.10.4.1(4)(d): Added a statement regarding returns of offers in cases where taxpayer estates are in probate.
- (7) IRM 5.8.10.4.1(6): Updated language to state an offer filed on behalf of a decedent, rather than offer filed by an estate.
- (8) IRM 5.8.10.4.1(8): Added a statement to specify that personal exemptions do not apply for deceased taxpayers' offers.
- (9) IRM 5.8.10.4.1(9): Added a statement regarding offers from business entities when the owner or sole officer passes away during offer investigation.
- (10) IRM 5.8.10.6(2): Added a note saying if a taxpayer is working with CEASO on a lien discharge or subordination and the advisor has not contacted the OE/OS, the OE/OS may contact the advisory office based on SERP information.
- (11) IRM 5.8.10.8(4): Updated to clarify ASER for TFRP is not extended when business files an OIC.
- (12) IRM 5.8.10.9.2(2)(a): Updated TIGTA phone number information, per TIGTA input.
- (13) IRM 5.8.10.12.2(3): Updated to clarify this section is for brand new offers only.
- (14) IRM 5.8.10.12.2(4): Updated to clarify this section is for brand new offers only.
- (15) IRM 5.8.10.12.2(5): Updated to clarify this section is for previously rejected and remanded CDP offers.
- (16) IRM 5.8.10.13(1) and (2): Updated to remove statements that OICs deemed to have been filed "solely to delay collection" may be treated as though they had never been submitted.
- (17) IRM 5.8.10.14(2): Eliminated reference to IRM 5.8.2.4.1(2), which is no longer applicable.
- (18) IRM 5.8.10.16.5(2): Updated "mandatory withdrawal" to new term "involuntary withdrawal".

- (19) IRM 5.8.10.17: Added a new section to address IRC 965 liabilities.
- (20) Added editorial changes throughout the IRM to clarify and simplify language, update citations and update some links.

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

IRM 5.8.10, dated 7-20-2020, is superseded. This IRM incorporates IG memo SBSE 05-0320-0026.

#### **AUDIENCE**

SB/SE Collection and Campus Compliance employees

Kareem Williams  
Director, Collection Policy

5.8.10

Special Case Processing

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5.8.10.1  
(07-20-2020)  
**Program Scope and Objectives**

- (1) **Purpose:** This chapter provides:
  - Instructions for conducting different types of Offer in Compromise (OIC) investigations
  - Definitions for considering different circumstances under which offers are filed
  - Directions for coordinating activities with other IRS functions
- (2) **Audience:** These procedures apply to Internal Revenue Service (IRS) employees who are responsible for investigating offers or otherwise reviewing offers:
  - Offer examiners (OE) in Centralized Offer in Compromise (COIC) units
  - Offer specialists (OS) in Field Offer Territories (FOIC)
  - Independent administrative reviewers
  - IRS Independent Office of Appeals employees
  - Any additional IRS employees assigned to the OIC program who conduct offer investigations
- (3) **Policy Owner:** Director, Collection Policy, SBSE
- (4) **Program Owner:** SBSE Collection Policy, SBSE, (OIC) Program is the owner of this IRM.
- (5) **Primary Stakeholders:** The primary stakeholders are COIC and FOIC employees.
- (6) **Secondary Stakeholders:** The secondary stakeholders are the Office of Professional Responsibility, Centralized Insolvency Operation, and Civil Enforcement Advice and Support Operations.
- (7) **Program Goals:** Policy Statement P-5-100 explains the objective of the OIC as a collection tool. This Internal Revenue Manual (IRM) section provides knowledge and procedural guidance for employees engaged in the investigation of offers. This IRM includes guidance for employees to complete offer investigations in cases where situations exist that require additional consideration before final offer determinations can be made.

5.8.10.1.1  
(03-10-2022)  
**Background**

- (1) An Offer in Compromise (referred to as an offer or OIC) is an agreement between a taxpayer and the Internal Revenue Service that settles a taxpayer's tax liabilities for less than the full amount owed. Offers are submitted to the IRS for consideration and evaluation. Revenue Procedure 2003-71 explains the procedures applicable to the submission and processing of offers to compromise a tax liability under IRC 7122. The Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA) also provided additional requirements for submission of an offer. During the offer investigation, the IRS evaluates the taxpayer's individual circumstances and makes a determination to either return, reject, terminate, accept, or acknowledge withdrawal of the offer. This section provides direction to all IRS employees in the Specialty Collection Offer in Compromise Division and the Appeals Division who analyze taxpayers' OICs.

5.8.10.1.2  
(07-20-2020)  
**Authority**

- (1) Authorities related to this section include:
  - IRC (Internal Revenue Code) 7122, Compromises
  - Treasury Regulations 301.7122-1, Compromises

- IRC 6702(b) - Civil penalty for specified frivolous submissions
- Policy Statement P-5-100
- Policy Statement P-5-89
- 26 CFR 300.3, Offer to compromise fee
- Revenue Procedure 2003-71
- Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA)
- Notice 2006-68
- IRM 1.2.2.6, Delegations of Authority for the Collecting Process

5.8.10.1.3  
(07-20-2020)  
**Responsibilities**

- (1) The director, Collection Policy is responsible for all policies and procedures within the OIC program.
- (2) The national program manager, OIC, is responsible for development and delivery of policies and procedures within the program.
- (3) The director, Specialty Collection Offer in Compromise (SCOIC) is responsible for the performance of the OIC program and ensuring IRM policies and procedures are followed.
- (4) Operation managers, department managers, territory managers, and group OIC managers are responsible for ensuring the procedures are followed and employee actions are timely and accurate.

5.8.10.1.4  
(07-20-2020)  
**Program Management and Review**

- (1) Operational and program reviews are conducted on a yearly basis by the director, Specialty Collection Offers in Compromise, (SCOIC) and Collection Policy, with the use of data and reports from the Automated Offer In Compromise (AOIC) system and ENTITY case management system. Additional ad hoc reports that provide information on the inventory levels, hours per case, and age of each offer in inventory or at time of closure are also available in the AOIC and ENTITY systems. See IRM 1.4.52, Offer in Compromise Manager's Resource Guide.
- (2) Managerial case reviews are performed to determine if OIC and other applicable procedures were followed, and if the offer amount accurately reflects the reasonable collection potential (RCP) as defined in Policy Statement P-5-100.
- (3) National quality reviews and consistency reviews are routinely conducted to ensure program consistency and effectiveness in case processing. IRS may implement procedural changes as a result of these reviews, to improve the quality and effectiveness of the program.

5.8.10.1.5  
(07-20-2020)  
**Program Controls**

- (1) AOIC is used to track offers submitted by taxpayers and record case actions and history. Ability to take action on AOIC is limited to specific offer employees. Additional permissions are provided based on an employee's duties and responsibilities.
- (2) ICS is used by field employees as a method for inventory control and history documentation.
- (3) Managers are required to follow program management procedures and controls addressed in IRM 1.4.52 , Offer in Compromise Manager's Resource Guide.
- (4) Managerial requirements for case approval are defined in Del. Order 5-1.

- (5) Office of Chief Counsel conducts case reviews on certain offers in accordance with IRC 7122(b) and Treasury Regulations 301.7122-1, Compromises.

5.8.10.1.6  
(07-20-2020)

**Terms/Definitions/  
Acronyms**

- (1) The following table is a list of common abbreviations, definitions and acronyms that may be used throughout this IRM.

<b>Acronym</b>	<b>Definition</b>
ACS	Automated Collection System
AET	Asset Equity Table
AOIC	Automated Offer in Compromise
ATAT	Abusive Tax Avoidance Transaction
APS	Account and Processing Support
CAU	Caution Indicator
CDP	Collection Due Process
CEASO	Civil Enforcement Advice and Support Operations (Advisory)
COIC	Centralized Offer in Compromise
CSED	Collection Statute Expiration Date
DATC	Doubt as to Collectibility
DATCSC	Doubt as to Collectibility with Special Circumstances
DATL	Doubt as to Liability
DPC	Designated Payment Code
DVDP	Domestic Voluntary Disclosure Program
EFTPS	Electronic Federal Tax Payment System
EH	Equivalent Hearing
ES	Estimated Tax Payment
ETA	Effective Tax Administration
FOIC	Field Offer in Compromise
FTA	Fraud Technical Analyst
FTD	Federal Tax Deposit
ICS	Integrated Collection System
IDT	Identity Theft
IRC	Internal Revenue Code

Acronym	Definition
IRM	Internal Revenue Manual
MFT	Master File Tax
NEH-ETA	Non-Economic Hardship - Effective Tax Administration
NFTL	Notice of Federal Tax Lien
OE	Offer Examiner
OIC	Offer in Compromise or offer
OS	Offer Specialist
OVDP	Offshore Voluntary Disclosure Program
OI	Other Investigation
PDT	Potentially Dangerous Taxpayer
PPIA	Partial Pay Installment Agreement
RCP	Reasonable Collection Potential
RO	Revenue Officer
SCOIC	Specialty Collection Offer in Compromise
TIPRA	Tax Increase Prevention and Reconciliation Act of 2005
TFRP	Trust Fund Recovery Penalty

5.8.10.1.7  
(03-10-2022)

#### Related Resources

- (1) Additional resources can be found in IRM 5.8, Offer in Compromise.
- (2) Employees can find helpful information on these websites:
  - SERP <http://serp.enterprise.irs.gov/>
  - Internal Management Documents <http://win.web.irs.gov/imd.htm>
- (3) The Taxpayer Bill of Rights (TBOR) lists rights that already existed in the tax code, putting them in simple language and grouping them into 10 fundamental rights. Employees are responsible for being familiar with and acting in accord with taxpayer 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.

5.8.10.2  
(07-20-2020)

#### Bankruptcy

- (1) Bankruptcy may affect the IRS's consideration of an OIC. The taxpayer may file bankruptcy and an OIC simultaneously, file an OIC in an attempt to avoid bankruptcy, or file an OIC after a bankruptcy has been concluded.



5.8.10.2.1  
(03-10-2022)  
**Offer in Compromise  
During Bankruptcy**

- (1) The IRS will not consider an OIC under its administrative OIC procedures while a taxpayer is in bankruptcy. When a taxpayer files bankruptcy, the Bankruptcy Code provides procedures to resolve the IRS's claim.
- (2) An OIC will not be considered under administrative OIC procedures until the bankruptcy is concluded. In Chapter 7 cases, an administrative compromise with the taxpayer can be considered after the taxpayer has received a discharge. See IRM 5.8.10.2.3, Acceptance of Offer In Compromise After Chapter 7 Bankruptcy. In Chapter 11, 12 and 13 cases, an administrative compromise will not be considered until the taxpayer completes the payments under the plan or the bankruptcy is dismissed by the court.
- (3) If a taxpayer is in bankruptcy when an administrative OIC is submitted, the offer is returned as non-processable. The return of the offer does not constitute a rejection of the offer and it does not entitle the taxpayer to file an appeal. See Treasury Regs. 301.7122-1(f)(5)(ii). Even if only one spouse is in bankruptcy, the offer will be returned as non-processable.
- (4) If a taxpayer files bankruptcy **during** a pending offer investigation, the offer will be returned as a processable offer.

**Note:** If only one spouse files bankruptcy during a pending joint offer, an amended Form 656 may be submitted by the non-petitioning spouse. A reasonable period of time should be provided for submission of an amended Form 656. If an amended Form 656 is received, update AOIC and manually send a return letter to the spouse who filed bankruptcy. If an amended Form 656 is not received, the offer will be a processable return based on the bankruptcy.

- (5) If the taxpayer files a bankruptcy while a CDP OIC case is open in Appeals, the offer examiner or offer specialist (OE/OS) will issue the return letter and provide a copy to Appeals. If the taxpayer files bankruptcy after an OE/OS has forwarded a rejection recommendation to Appeals, Appeals will be responsible for issuing the OIC closing letter.
- (6) If the OE or OS receives a payment from a taxpayer after the taxpayer files bankruptcy and before the OIC is closed as a return, the OE or OS should contact Insolvency regarding what to do with the payment.

5.8.10.2.2  
(07-20-2020)  
**Offers in Compromise  
Before Bankruptcy**

- (1) When a taxpayer or representative states during an offer investigation that a bankruptcy petition will be filed if the taxpayer's offer is not accepted, the OE/OS must determine the impact the possible bankruptcy filing may have on the collection of the outstanding tax liabilities. In order to make an informed decision regarding the taxpayer's OIC, consider whether the taxpayer has filed bankruptcy previously and/or if any tax liabilities may potentially be dischargeable.  
The following procedures will assist in determining the impact a potential bankruptcy filing may have on the offer investigation. Additionally, if the taxpayer or representative says the taxpayer is considering filing bankruptcy, immediately make a determination regarding whether an NFTL is necessary to protect the government's interest in assets during the offer investigation.
- (2) Benefits to the IRS if an OIC is accepted and the taxpayer does not file bankruptcy:

- The IRS can negotiate for amounts collectible from future income and from assets beyond the reach of the government that may not be collectible if the taxpayer files bankruptcy.
  - Negotiations may result in an offer amount that exceeds the amount recoverable in an insolvency proceeding.
  - Terms for payment of an offer may result in funds being collected in a shorter time than through bankruptcy.
  - The terms of the OIC include a requirement for the taxpayer to file and pay all tax liabilities for the next five years after acceptance.
- (3) Benefits to the taxpayer if an OIC is accepted and the taxpayer does not file bankruptcy:
- Bankruptcy carries certain negative repercussions, such as a negative effect on the taxpayer's credit rating.
  - Bankruptcy does not discharge all tax liabilities.
  - If a NFTL has been filed, the lien may survive bankruptcy against certain assets.
- (4) While evaluating the acceptability of an OIC when the threat of bankruptcy is a consideration, determine the reasonable collection potential (RCP) as defined in IRM 5.8.5, Offer in Compromise, Financial Analysis. If the amount offered by the taxpayer exceeds the RCP, proceed with the offer investigation. Any special circumstances or hardship issues should also be considered prior to investigating the effect a potential bankruptcy may have on an acceptable offer amount.
- (5) If the OIC is not acceptable based on the calculated RCP amount, analyze the potential amount collectible, if bankruptcy proceedings were filed. This should include analysis of the taxpayer's collection information statement(s), other financial statements, draft bankruptcy schedules (if available), and a determination of which liabilities may be dischargeable. This information will help to determine if the OIC is acceptable based on a potential bankruptcy filing.
- (6) When completing the analysis consider the following questions:
- Is the taxpayer an individual? The potential bankruptcy filing of an entity other than an individual (or from a taxpayer whose only liabilities include employment taxes) will not be a consideration when calculating the RCP for purposes of determining acceptability of an OIC.
  - Is the IRS the sole or major creditor?
  - Would taxes be dischargeable in bankruptcy?
  - Does the offer amount equal or exceed what the IRS can reasonably expect to recover from bankruptcy?
  - Are there other considerations, such as what could be collected on liabilities that would not be discharged, or what could be collected from property outside of the bankruptcy, including third parties?

**Note:** The IRS will not accept less than the amount that would be recoverable from a Chapter 7 bankruptcy, unless special circumstances exist. Absent special circumstances, the basis for acceptance of an offer where the RCP is adjusted based on consideration of the amount recoverable in bankruptcy will be Doubt as to Collectibility. Refer to IRM 5.8.11, Effective Tax Administration, for a discussion of special circumstances.

5.8.10.2.2.1  
(07-20-2020)

**Consideration of a  
Potential Bankruptcy  
Filing on the Calculation  
of RCP in an OIC  
Investigation**

- (1) The following information is provided to help you determine if consideration should be given to a potential bankruptcy filing and in what situations you should contact an insolvency advisor or specialist.

**Note:** An offer should never be accepted solely on the basis of the taxpayer offering the amount collectible through a bankruptcy proceeding without further investigation. However acceptance of an offer for less than reasonable collection potential (calculated in accordance with IRM 5.8.5, Offer in Compromise, Financial Analysis) may be appropriate based on the facts of the case.

If	Then	Comments
The taxpayer/representative submits an OIC and requests an acceptance for less than the RCP amount because a bankruptcy proceeding will be filed if the offer is not accepted.	Review the assessments to determine if any taxes may be dischargeable. Conduct a review of financial statements and draft bankruptcy schedules, if available, to determine the amount potentially collectible through the bankruptcy proceeding. Refer to the additional guidance provided in this section to determine the potential reduction to future income value (FIV).	Depending on the date of the tax assessment and the type of taxes owed, certain taxes may be dischargeable. An adjustment to FIV may be appropriate in certain cases.

- (2) Ask for assistance from the Insolvency Unit if the guidance in IRM 5.8.10.2.2.2 is insufficient to make a reasonable decision on an OIC case and the unpaid balance of assessment (UBA) is \$25,000 or more. Document any discussions with Insolvency and/or document calculations in the recommendation report in the appropriate ICS or AOIC history. OIC employees should contact Centralized Insolvency Operation (CIO) to determine who to contact in Insolvency, based on the taxpayer's geographic location. The CIO phone number is listed in the SERP "Who/Where" tables under Insolvency (Bankruptcy Tools). <http://serp.enterprise.irs.gov/content/who-where/insolvency/insolvency.html>

5.8.10.2.2.2  
(07-20-2020)

**Potential Adjustments to  
Reasonable Collection  
Potential**

- (1) This section provides very general guidance to determine the amount potentially recoverable in a bankruptcy proceeding. The estimations used in this section are only meant to arrive at the amount reasonably expected to be collected from the taxpayer as discussed in Policy Statement P-5-100.

**Note:** This guidance is not meant to replace the specific information provided in IRM 5.9, Bankruptcy and other Insolvencies, and should **not** be referred to in order to calculate amounts the IRS would actually recover through any insolvency proceeding.

(2) The following general rules may be used in determining RCP during an offer investigation where the potential for a bankruptcy filing exists. These rules are not all inclusive.

- Secured - Secured tax claims are those for which a NFTL has been filed or will be filed during the offer investigation to the extent of the equity to which the lien attaches. Any portion of the liability that is not included on the NFTL will be classified as a priority or general unsecured claim.

**Note:** Certain “excluded” property, such as an Employee Retirement Income Security Act (ERISA) qualified retirement plan, may be secured via the statutory lien.

- Priority - Generally, priority tax claims are those with return due dates of less than three years prior to the petition date, income tax assessments made within 240 days before petition date (exclusive of any time during which the OIC is pending or in effect during that 240 day period plus 30 days and any time during which a stay of proceedings against collections was in effect in a prior bankruptcy case during the 240 day period plus 90 days), and income tax deficiencies that are unassessed but are assessable prior to the petition date. Also, priority claims include all trust fund liabilities, both the trust fund portion of employment taxes and the trust fund recovery penalty. Only the tax and related interest (not penalties) are entitled to priority.
- Nondischargeable- Priority tax claims are generally not dischargeable in bankruptcy. Other nondischargeable taxes include taxes for which no return was filed; taxes filed late but within two years of the bankruptcy petition date; penalties related to a transaction or event within three years of the petition date; fraud, and situations when the taxpayer has willfully evaded payment of tax.

(3) Calculation of an acceptable offer amount –

The following guidance will assist in determining the taxpayer’s RCP in situations where the filing of a bankruptcy is a viable option for the taxpayer.

- a. The equity in any assets secured by a NFTL, including real or personal property, should be included in the RCP. This includes situations where all taxes may be dischargeable in bankruptcy. The NFTL will secure the government’s ability to collect from these assets, even if they are exempt.

**Note:** Special circumstances and hardship issues should also be considered in determining whether an offer for less than the RCP amount is acceptable. These issues should be documented clearly on AOIC or ICS.

- b. The taxpayer’s FIV may be reduced below the normal calculation of FIV in accordance with IRM 5.8.5, Financial Analysis, yet the FIV should not be reduced to less than the balance of nondischargeable tax liabilities.

**Example:** Taxpayers who owe a total liability of \$65,000 state they will be filing a Chapter 7 liquidating bankruptcy if their OIC is not accepted. The taxpayers have net equity (after consideration of any prior encumbrances, allowances, or appropriate percentage reductions) in real property, vehicles, and retirement accounts equal to \$25,000 and there are no special circumstances or hardship issues to consider. A NFTL is

filed on all outstanding tax liabilities. The taxpayers have the ability to pay \$500 per month. The tax liabilities include \$50,000 of dischargeable taxes and \$15,000 of priority taxes that will survive the bankruptcy. After all factors are considered, the FIV may be set at \$15,000, which will be collectible from an installment agreement on the liabilities that will survive the bankruptcy. The net equity in all assets (\$25,000) should also be included in the RCP calculation, for a minimum offer amount of \$40,000.

**Example:** The taxpayer has equity in assets equal to \$25,000, which includes real property and retirement accounts that will not be liquidated through the Chapter 7. The taxpayer has no future payment ability and no ability to borrow against the \$15,000 equity in his personal residence. Additionally, it is determined the liquidation of the equity in the taxpayer's residence to pay the outstanding liability would render the taxpayer unable to meet basic living expenses and the taxpayer will need \$10,000 from the retirement account to meet basic living expenses. The tax liabilities include \$50,000 of dischargeable taxes and \$15,000 of priority taxes that will survive the bankruptcy. Since the taxpayer has no future payment ability and liquidation of the equity in the residence and retirement account would render the taxpayer unable to meet basic living expenses, the taxpayer's offer in the amount of \$2,500, which will be funded by a loan from a relative, would be appropriate based on special circumstances.

**Example:** All the tax liabilities are trust fund taxes and the taxpayer has stated she is going to file a Chapter 7 proceeding. Since the taxes are not dischargeable, the possible bankruptcy should not affect the RCP determination of an acceptable offer.

**Example:** The tax liabilities are from timely filed individual tax returns, which are all over three years old and have been assessed for more than 240 days with a UBA of \$50,000. Because the taxpayer owns no real property, it is possible the government will receive a minimal amount in a Chapter 7 proceeding. Since the UBA is over \$25,000, discussion with Insolvency may be appropriate if the taxpayer's offer amount appears reasonable, yet less than the RCP.

5.8.10.2.3  
(07-20-2020)  
**Acceptance of Offer in  
Compromise After  
Chapter 7 Bankruptcy**

- (1) In a Chapter 7 proceeding, an OIC may be considered by IRS only after a discharge has been granted or a dismissal has taken place. Once the discharge is entered, the IRS will be able to determine which taxes are discharged and will be able to make a determination of "Doubt as to Collectibility" under its administrative OIC procedures.
- (2) For debtors discharged in Chapter 7, where the bankruptcy case is still pending, it is uncertain whether the IRS would still have a valid claim in bankruptcy if an OIC is accepted. Therefore, the RCP should include the amount that the IRS can reasonably expect to recover from the bankruptcy in addition to the amount that can be collected from the taxpayer on non-discharged liabilities or from property outside the bankruptcy.
- (3) Refer to IRM 5.9.4.11, Offers in Compromise and Bankruptcy, for discussion on the IRS's policy relative to specific bankruptcy chapters.

5.8.10.2.4  
(07-20-2020)

**Bankruptcy After Offer  
In Compromise  
Acceptance**

- (4) IRM 5.9.4.11(6) provides guidance on the handling of OIC payments prior to filing of a bankruptcy petition and IRM 5.9.4.11(7) discusses payments subsequent to the petition date.

- (1) When a taxpayer files bankruptcy after an OIC is accepted, the IRS may need to take specific actions to secure unpaid offer funds or to secure payment of tax through the bankruptcy proceeding. (See IRM 5.9, Bankruptcy and Other Insolvencies, for additional information.)
- (2) In accordance with the Bankruptcy Code, the offer should not be defaulted or payments solicited while the taxpayer is in bankruptcy.
- (3) When the IRS becomes aware that a bankruptcy has been filed after the acceptance of an OIC, follow the procedures in the table below:

If	Then
The offer funds have been paid in full.	The bankruptcy filing has no effect on the accepted offer.
The offer funds have not been paid in full.	Refer to IRM 5.9.4.11.1, Accepted but Not Completed Administrative OICs. If additional guidance is required, contact the Insolvency Unit to determine necessary action to protect the IRS's interest in the bankruptcy proceeding.

5.8.10.3  
(03-10-2022)

**Other Insolvency Cases**

- (1) A copy of the court order or other evidence should accompany Form 656, Offer in Compromise.
- (2) The following should be secured in "Receiverships" and other non-bankruptcy insolvencies:
- A general statement of the circumstances that resulted in the receivership and the purpose of the receivership; for example, the objective could be liquidation of assets, conservation of assets, foreclosure of a mortgage or reorganization.
  - A copy of the petition for the appointment of a receiver and a copy of the court order appointing the receiver or trustee can be used in lieu of a general statement, if the petition provides the information above.
  - Copies of all pertinent schedules filed with the court.
- (3) Consideration of an OIC frequently presents questions concerning the rights of the government to priority in the collection of the tax claims over the claims of other creditors of the taxpayer.
- (4) The rights of other creditors are based on liens that may be recognized by state law, but because of the taxpayer's assignment of assets for the benefit of other creditors, the provisions of 31 U.S.C. 3713 apply.
- (5) When considering the offer:
- Evaluate the rights of all creditors,
  - Evaluate all facts and circumstances relating to the various claims,



- Verify all pertinent dates, such as the origin and filing of all claims and liens, and
- Verify the steps that have been taken toward the enforcement of the claimant's alleged rights.

(6) The following table provides information on potential options available to collect the liabilities.

If	Then
The priority rights of the United States are disregarded when the funds of the estate are disbursed.	An assignee for the benefit of creditors, as well as an executor or administrator of a decedent's estate, may become personally liable.
A corporation is the assignor and the tax liability sought to be compromised consists of withholding of Federal Insurance Contribution Act (FICA) taxes, or taxes which the assignor might be required to withhold or collect from others and pay over to the government.	Consider the possibility of enforcing the TFRP provisions of the code. TFRP liabilities are not dischargeable in insolvency.

(7) When questions arise regarding the priority rights of the IRS, contact Area Counsel.

#### 5.8.10.4 (07-20-2020)

##### **Deceased Taxpayers and Estates**

- (1) Offers may be submitted for debts involving a deceased taxpayer. Due to the complex nature of probate and state law, offers involving deceased taxpayers or their estates require additional research.
- (2) The liability sought to be compromised may have been assessed against a taxpayer before or after death or the tax may be based on the value of the decedent's assets per Form 706. This section discusses how to treat these situations when evaluating an offer.

#### 5.8.10.4.1 (03-10-2022)

##### **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 can no longer consider the OIC. A termination letter will be generated from AOIC and the offer should be closed with the termination closure option. If verbal contact is made with the surviving spouse or POA, explain that consideration of the offer will be terminated and that another offer can be submitted once the probate has been concluded.
- (2) If the offer is submitted on behalf of the taxpayer and the taxpayer's death is prior to the TC 480 date, the offer must be submitted by a party authorized to act on behalf of the estate. If the offer is submitted by someone who is not authorized to act on behalf of the estate, the offer should be returned under processable return criteria. If there is no requirement for probate, the personal representative or any successor in interest (e.g., spouse, trustee, surviving joint tenant, etc.) MAY be authorized to sign on behalf of the taxpayer's estate. Confirm there is no requirement for probate and that either the successor in interest is appointed personal representative in the taxpayer's will or that the

successor in interest otherwise qualifies. If the offer is returned because an authorized person did not sign it, the open paragraph should be used to discuss the fact the offer must be submitted by someone authorized to act on behalf of the estate. The OE/OS should verify the TC 540 is input on IDRS.

- (3) A fiduciary (trustee, executor, administrator, receiver, or guardian) stands in the position of a taxpayer and acts as the taxpayer. A fiduciary with a valid Form 56, Notice Concerning Fiduciary Relationship, does not need to submit a Form 2848 to interact with the IRS. A fiduciary is treated by the IRS as if he or she is actually the taxpayer and not merely a representative of the taxpayer. A fiduciary assumes the powers, rights, duties, and privileges of the taxpayer, until notice is given that the fiduciary capacity is terminated. The fiduciary may also authorize an individual to represent or perform certain acts on behalf of the person or entity by filing a Form 2848. The fiduciary should sign the power of attorney in the fiduciary's own name and indicate his/her title, as per Form 56, in the appropriate place on Form 2848. The fiduciary should sign Form 56 before signing Form 2848. For additional information on fiduciary authority, please reference IRM 5.5.1.7.
- (4) Many times, the OIC under consideration was submitted jointly by a husband and wife. In that situation, contact with the surviving spouse should be made to determine whether there is a probate proceeding or non-probate/intestate proceeding. See IRM 5.5, Decedent Estates and Estate Taxes, IRM 5.17.13.9, Decedents' Estates, and IRM 5.16.1.2.4 for more information about decedent taxpayers and probate proceedings. A third party authorization (Form 2848, Power of Attorney and Declaration of Representative, Form 8821, Tax Information Authorization) expires with the death of the taxpayer. Do not assume the surviving spouse is the executor for the deceased spouse.
  - a. When spouses have submitted a joint offer and one spouse dies before the offer is accepted, the IRS no longer has the authority to accept the joint offer. The surviving spouse has the option of amending the joint offer to make it the offer of only himself or herself. If the surviving spouse does not amend the joint offer, the IRS must return the joint offer.
  - b. If a joint OIC is filed after one spouse's death and the surviving spouse is not the executor of the deceased taxpayer's will or the personal representative for the estate, and the surviving spouse has not submitted a valid Form 56, an amended offer must be secured for the surviving spouse only.
  - c. In many situations, after a spouse dies, a probate estate may be opened to pay the decedent's debts and distribute property. The executor does not step into the shoes of the decedent for the previously submitted joint offer; the joint offer terminated when the decedent died. Similarly, the administrator for an intestate estate does not step into the shoes of the decedent.
  - d. The IRS generally files a claim in the probate estate, which is preferred for consolidating assets and paying liabilities. Normally in this situation, the offer will be returned as "other investigation pending" with a description of the probate issue in the open paragraph. In rare cases, the executor may submit an offer on behalf of the decedent's estate and the IRS would consider the offer. For example, when the IRS is the priority creditor and the executor offers to pay the IRS the full amount of the estate's reasonable collection potential, the IRS may choose to consider the offer rather than returning it. (If the IRS chooses to consider the offer, it should request the assistance of area counsel and coordinate with Civil



Enforcement Advice and Support Operations (CEASO), if there is an open estate. In many situations, however, the IRS will choose to return the executor's offer. Similarly, the IRS may choose to consider an offer from the administrator of an intestate estate.

- (5) At death, a deceased taxpayer's assets become part of his or her estate. The estate and the estate administrator become liable to pay the debts of the decedent if they have knowledge of debt owed. If the estate administrator has knowledge of unpaid taxes (through notices or liens) and does not pay the taxes, or distributes assets to other creditors or heirs, they become personally liable to pay the outstanding liability under Title 31 U.S.C. Section 3713. See IRM 5.5.3.9, Fiduciary or Transferee Liability. Additional collection avenues that can be used to secure payment from estate administrators, heirs or transferees need to be taken in consideration when investigating an offer.
- (6) Absent special circumstances, an offer should not be accepted if it is determined that the government would receive a greater amount through the probate proceedings. If the government would receive a greater amount through the probate court, an offer filed on behalf of a decedent should not be considered due to the federal government's right to full payment or right to a priority position with regard to limited assets. See IRM 5.5.1, Decedent and Estate Tax Accounts, and IRM 5.5.2, Probate Proceedings, for additional information.

**Note:** The estate and gift tax liens have an absolute life of 10 years from the date of death or date of the gift. They are not extended due to an offer being filed. For additional guidance on these liens and their attachment to assets, see IRM 5.5.9.2, Lien Attachment to Estate Assets.

- (7) If the decedent's assets are being distributed in accordance with state law due to the taxpayer dying intestate, an offer may be considered if submitted by an individual authorized to act on behalf of the taxpayer's estate.
- (8) When an executor or administrator submits an OIC for a deceased taxpayer, the low income waivers under IRC section 7122(c)(3), or the alternative IRS procedure contained in Form 656, section 1, do not apply. Additionally, personal exemptions for bank accounts, vehicles and tools of the trade referenced on Form 433-A (OIC) do not apply for offers submitted on the behalf of deceased taxpayers.
- (9) In cases where the taxpayer entity is a business and the owner or sole officer passes away during the offer investigation, it will be necessary to determine the impact upon the existence of the entity as determined by the entity type and state or probate law (see IRM 5.15.1.14, Business Entity Types), as well as what happens to any individual ownership interests in the business. In situations other than sole proprietorships, consulting with Counsel is recommended. If the offer is going to be accepted, secure an amended Form 656 with the signature of the new owner or sole officer, so that there is no doubt the taxpayer entity intended to proceed with the compromise.

5.8.10.4.2  
(07-20-2020)  
**Offers Submitted for  
Estate Tax Liabilities**

- (1) An offer may be submitted to compromise Form 706 for estate tax liabilities. See IRM 5.5.7.18, Decedent Estates and Estate Taxes, Offers in Compromise, and IRM 5.17.13, Legal Reference Guide for Revenue Officers, Insolvencies and Decedents' Estates, for additional information.

- (2) These offers should be rare since the estate tax lien arises and attaches to all assets in the gross estate at the date of death. This gives the IRS a priority lien position and unique collection avenues to secure payment of the tax liability.
- (3) Consult both federal law, Title 31 U.S.C. 3713, and state law to determine the priority of claims against the estate when determining the RCP. See IRM 5.5.7, Decedent Estates and Estate Taxes, Collecting Estate and Gift Tax Accounts, for additional information.
  - a. Administrative expenses must be examined to determine if the expenses are reasonable and necessary to the administration of the estate. See IRM 5.5.2.6, Administrative Expenses, for factors to consider when determining what expenses should be allowed as necessary administrative expenses. For example, reasonable and necessary expenses should not be permitted ahead of a tax lien if such expenses are already covered by an insurance policy, trust or other similar benefit that covers such costs.
  - b. Distributions of assets are not an administrative expense. Be aware of transferee situations when determining the amount required for compromise. See IRM 5.5.7.14 , Options to Collect Tax Due.

5.8.10.5  
(03-10-2022)  
**Transferee**

- (1) When an OIC investigation reveals the potential for a transferee situation, the burden of proof of transferee liability rests with the government. Refer to IRM 5.8.4.24.3, IRC 6901 – Transferee Liability

**Note:** If it is determined that a transferee investigation should be initiated, it will not be conducted by the OE or OS. Instead, it will be conducted by a field RO by generating an Other Investigation (OI). OIs initiated for a transferee investigation to be conducted on an estate or gift tax case should be sent to the ATAT field collection groups, who have responsibility for working estate and gift tax cases. *Other Investigations referred per these instructions should be considered high risk cases, code 100, and processed accordingly.*

If	Then
A potential transferee is discovered during an OIC investigation	Conduct an investigation to determine if a transferee exists.
A transferee liability exists	<ol style="list-style-type: none"> <li>1. Determine the amount the IRS may reasonably expect to collect from the transferee.</li> <li>2. Attempt to negotiate an acceptable OIC amount with the transferee value included in the RCP calculation.</li> </ol>
There is a question whether a transferee liability may be established and sustained	<ol style="list-style-type: none"> <li>1. Determine the value of the transferee based on the degree of doubt regarding the transferee being sustained.</li> <li>2. Attempt to negotiate an acceptable offer amount including this value in the RCP.</li> </ol> <p><b>Note:</b> Flexibility should be exercised during negotiations if the transferee assessment will not be pursued.</p>
During the investigation of an OIC the OE/OS determines that a transferee assessment should be pursued and negotiations have not resulted in an acceptable offer amount	<ol style="list-style-type: none"> <li>1. Attempt to secure a withdrawal letter from the taxpayer.</li> <li>2. If the taxpayer does not withdraw the OIC, prepare the rejection closing documents and follow procedures for recommending rejection with appeal rights. Include the value of the transferee in the RCP.</li> </ol> <p><b>Note:</b> Thoroughly document the reason for including the value of a transferred asset in the RCP. A discussion on the documents reviewed in making the determination that transferee issues exist should be included in the rejection narrative as well as the case history.</p> <ol style="list-style-type: none"> <li>3. Prepare an OI to be issued to a field RO to investigate the transferee issue.</li> </ol>

5.8.10.6  
(03-10-2022)  
**Discharge and  
Subordination Requests**

- (1) An application for discharge of property from a federal tax lien or subordination of a federal tax lien may be received in conjunction with an OIC in a number of different scenarios including:

- When a taxpayer simultaneously submits an application for discharge/subordination and a Form 656 - Offer in Compromise to CEASO. See IRM 5.12.10.11, OIC Payments and Discharges (or Subordinations), for additional information.

**Note:** Proceeds from the discharge/subordination may not be applied as the application fee. If the taxpayer wants the proceeds from a discharge/subordination to be applied to an initial Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA) payment, refer to the guidance in (2) of this section, or

- When a taxpayer requests a discharge/subordination while an OIC is pending and the request is approved, or
- When a taxpayer submits a discharge or subordination after an OIC has been accepted, but before all the payment terms have been met. .

**Note:** In these cases, the discharge or subordination investigation will not be conducted by the OE/OS. Instead, it must be conducted by the appropriate CEASO by generating an Other Investigation. *Other Investigations referred per these instructions should be considered high risk cases, code 100, and processed accordingly.*

- (2) Requests for discharge or subordination received with the Form 656, or while an OIC is pending, are to be handled as follows:

If	Then
The discharge/subordination is submitted before the OIC and the payment was received prior to the offer submission.	Do not use the proceeds from the discharge (or subordination) as any part of the offer payment. The equity received from the property was applied to reduce the tax liability and it is not in the government's interest to apply the previously posted proceeds to an OIC.
The discharge/subordination is submitted before the OIC and the payment was not received prior to the offer submission.	The discharge/subordination proceeds may be applied to an accepted offer amount, if the equity in the asset was included in the taxpayer's reasonable collection potential.

If	Then
<p>The taxpayer simultaneously submits an application for discharge/subordination and an OIC to CEASO.</p>	<p>The advisor will:</p> <ul style="list-style-type: none"> <li>• Date stamp the OIC as being received.</li> <li>• Prepare Form 657, Offer in Compromise/Revenue Officer Report. The Advisor will write in red ink at the top of the Form, "Discharge/Subordination Request". This will alert COIC that this is not a solely to delay issue.</li> <li>• Follow IRM 5.8.2.3, Initial Processing of OICs, and forward a copy of the application for discharge/subordination, Form 657, and all offer documents (Form 656, Form 433A-OIC/ Form 433B-OIC, supporting documents, and payments, if applicable) to the appropriate COIC site via overnight mail.</li> </ul> <p><b>Note:</b> A payment made in order to obtain a certificate of discharge may be applied as the initial TIPRA payment only if the payment is received at the time of the offer submission.</p> <p><b>Note:</b> If the offer is submitted without the required TIPRA payment and the taxpayer now wants to begin the paperwork for a discharge, the offer should be treated as a not processable return.</p> <ul style="list-style-type: none"> <li>• Because TIPRA requires that we have 2 years from the IRS received date to make a determination or the offer will automatically be accepted, the advisor will work the application for discharge or subordination expeditiously.</li> <li>• The COIC site process examiner will make a processability determination and process the offer as described in IRM 5.8.3, Offer in Compromise - Centralized Offer In Compromise Transfers. Perfection and Case Building. However, do not treat these offers as solely to delay collection as described in IRM 5.8.3.14.1, Offers Submitted Solely to Delay Collection per Form 657. The advisor is only using the Form 657 as a way to identify and bring to the attention of COIC that there is an application of discharge/subordination currently being investigated.</li> <li>• Once the offer has been deemed processable, COIC will immediately transfer the offer to the proper FOIC office and send all of the appropriate documents to the FOIC office. Prior to transfer, the COIC site will document the AOIC history with the advisor's name and phone number.</li> <li>• If the offer is not processable, the process examiner will promptly notify the advisor.</li> </ul> <p>Throughout this process, communication between COIC, CEASO, and the field OS is vital.</p>

If	Then
The taxpayer requests a discharge/subordination while an offer is pending and the request is approved.	<p>The advisor will:</p> <ul style="list-style-type: none"> <li>Advise the taxpayer that proceeds from the discharge or subordination will be applied to the OIC, if accepted.</li> <li>Advise the taxpayer if the OIC is not accepted, the proceeds will be applied to the tax liability.</li> <li>Before delivering the certificate of discharge or subordination, the advisor will require the taxpayer to execute a Form 3040, Authorization to Apply Offer in Compromise Deposit to Liability. The word "irrevocable" must be written in the signature block of the Form 3040 or the taxpayer should check the box on Form 3040 and place their initials next to that box.</li> <li>The advisor will submit the funds as a deposit to COIC or FOIC. If the offer is not accepted, the payment will be posted with a DPC of 53 for discharges and 55 for subordinations.</li> <li>The advisor will submit a copy of the Form 3040 to the OE/OS investigating the offer and will retain the signed Form 3040 in the case file for use in the event the OIC is returned, withdrawn, or rejected.</li> </ul> <p><b>Note:</b> A TIPRA payment may not be used to offset the amount required from the taxpayer to obtain the certificate of discharge/subordination. Refer to the prior discussion if the OIC and the payment to receive a discharge/subordination are submitted simultaneously.</p>

**Note:** If an OE or OS is working an OIC case and the taxpayer states that they requested a lien discharge or subordination from CEASO but the OE/OS has not yet received any information from CEASO, ask the taxpayer if they are currently working with an advisor and if so, which one. If the taxpayer is working with an advisor, the OE/OS should contact the advisor regarding the status of the request and follow the procedures above. If the taxpayer is not yet working with an advisor, the OE/OS may check SERP who/where, Advisory, or the Publication 4235 link and contact the Advisory office where the taxpayer sent the request.

- (3) Requests for discharge or subordination received after an OIC has been accepted, but before all the payment terms have been met, should be handled as follows:

If	Then
The taxpayer does not intend to apply the proceeds received from the discharge or subordination to the OIC amount	Deny the discharge or subordination request.

If	Then
The taxpayer does intend to apply the proceeds toward the OIC amount	<p>Request an investigation of the discharge or subordination from CEASO and then coordinate with CEASO to apply the proceeds to the OIC amount.</p> <p><b>Note:</b> The government is bound by the payment terms of an accepted OIC and cannot require payment of the offer amount in different terms, other than stated in the OIC agreement. However, excess proceeds received based on the federal tax lien can be applied to the liability, as explained in the example below.</p>

**Note:** If a discharge request is submitted (Form 4422, Application for Certificate Discharging Property Subject to Estate Tax Lien) for property subject to the estate tax lien, the application should be sent to the CEASO Estate Tax Lien Group. See instructions on the form for address information.

- (4) If a taxpayer has not finished paying the OIC amount for an accepted offer, the lien has not yet been released, and the taxpayer sells property subject to the lien, the IRS may be entitled to all net sale proceeds that would normally be paid for the taxpayer to obtain a discharge of property from the lien. This will apply even if the total amount of the sale proceeds is greater than the total accepted OIC amount. This provision does not apply to accepted offers based on doubt as to liability. For offers accepted on the basis of NEH-ETA, this issue will be considered on a case by case basis.

**Example:** The taxpayer has a total unpaid balance of assessments of \$200,000 for tax periods 30-201512, 30-201612, and 30-201712. The IRS accepted a doubt as to collectibility OIC in the amount of \$75,000 and the taxpayer has made TIPRA payments of \$50,000 so far, leaving a remaining offer balance of \$25,000. He owns an unimproved piece of real property with a fair market value of \$50,000 and no encumbrances. A lien is on file for all periods in the county where the property is located. The taxpayer notifies the OE/OS that he wants to sell the real property to pay his remaining offer balance and he filed a request for a discharge to do so. The title company will be required to pay the entire \$50,000 (minus closing costs) to IRS, so that a certificate of discharge can be completed for the real property. Of this amount, \$25,000 will be applied to the remaining offer balance and \$25,000 will be applied to the tax liability.

5.8.10.7  
(07-20-2020)  
**Effect of Previous Offers  
on Collection Statute**

- (1) Over the years there have been numerous changes in the law and IRS procedures regarding the extension of the statutory period for collection while OICs are being considered. The information provided in this section will assist in determining the correct CSED, which can impact the number of required payments in periodic payment situations and in the determination of future income value.
- (2) For OICs pending prior to 1/1/2000, the taxpayer executed a waiver of the statutory period for collection, extending the collection statute for the period the



OIC was under consideration and for an additional one year. For OICs accepted prior to 1/1/2000, this waiver of the statutory period for collection also included the period of time the terms of an accepted OIC were still in effect.

**Note:** RRA 98 imposed a limitation for OICs regarding the collection statute. The waiver could not extend the CSED beyond either 12/31/2002, or the original CSED, whichever was later.

- (3) For OICs submitted or pending after 12/31/1999, the statutory period for collection was suspended, by operation of law, while the OIC was pending, for 30 calendar days following rejection of an OIC, and for the period the rejection was being considered in Appeals. This suspension of the collection statute was effective through 12/20/2000.
- (4) For OICs that were pending prior to 1/1/2000 and were still pending on or after 1/1/2000, the collection statute was extended by both waiver periods and by the suspension period (See paragraphs 2 and 3 above).

**Note:** The limitation on the waiver of collection statute applied to these OIC periods.

- (5) The Community Renewal Tax Relief Act of 2000 was signed into law on 12/21/2000. This act eliminated the suspension of the statutory period for collection, effective on the day of enactment (12/21/2000).
- (6) The Job Creation and Workers Assistance Act was signed into law March 9, 2002. This law reinstated the suspension of the statutory period for collection, by operation of law, while the OIC is pending, for 30 calendar days following rejection of an OIC, and for the period the rejection is being considered in Appeals.
- (7) Cases may be encountered where prior rules were in effect. The following chart shows the changes that have occurred in this area.

If the offer has a	And was	Then
Pending date of 1/1/2000 or later	Accepted prior to 12/21/2000	The CSED should be extended from the pending date (TC 480) until the acceptance date (TC 781/788).
Pending date of 1/1/2000 or later	Accepted between 12/21/2000 and 3/8/2002	The CSED should be only extended from the pending date (TC 480) through 12/20/2000.



If the offer has a	And was	Then
Pending date of 1/1/2000 or later	Accepted after 3/8/2002	The CSED should be extended from the pending date (TC 480) through 12/20/2000 and if the offer was still pending, it was also extended from 3/9/02 until the date of acceptance (TC 780).
Pending date of 1/1/2000 or later	Rejected and taxpayer does not appeal	The CSED should be extended from the pending date (TC 480) until 30 calendar days after the rejection letter was issued (TC 481), excluding any portion of that period which fell between 12/21/2000 and 3/8/2002. <b>Note:</b> As of 2/2/2004, the AOIC system automatically adds 30 days to the date of the TC 481 on rejected not Appealed offer closures prior to transmission to master file. Appealed rejections carry the Appeals rejection date.
Pending date of 1/1/2000 or later	Rejected and sustained in Appeals	The CSED should be extended from the pending date (TC 480) until the date that Appeals issued a decision letter (TC 481), excluding any portion of that period which fell between 12/21/2000 and 3/8/2002.

<b>If the offer has a</b>	<b>And was</b>	<b>Then</b>
Pending date prior to 1/1/2000	Accepted prior to 1/1/2000	The CSED should be extended from the pending date (TC 480) until all payment installments were made (TC 780) plus 1 year. The CSED should not be extended beyond 12/31/2002 or the original CSED date, whichever was later.
Pending date prior to 1/1/2000	Accepted after 12/31/1999 but prior to 12/21/2000	The CSED should be extended from the pending date (TC 480) through 12/31/99 plus 1 year. The CSED should not be extended beyond 12/31/2002 or the original CSED date, whichever was later. If the offer was still pending on 1/1/2000, the CSED should also be extended from that date until the date of acceptance (TC 780).
Pending date prior to 1/1/2000	Accepted after 12/20/2000	The CSED should be extended from the pending date (TC 480) through 12/31/99 plus 1 year. The CSED should not be extended beyond 12/31/2002 or the original CSED date, whichever was later. In addition, the CSED should be extended from 1/1/2000 through 12/20/2000. However, the CSED should not be extended from 12/21/2000 until 3/8/2002. If the offer was still pending on 3/9/2002 the CSED should also be extended from that date until it was accepted (TC 780).

If the offer has a	And was	Then
Pending date prior to 1/1/2000	Rejected prior to 1/1/2000	The CSED should be extended from the pending date (TC 480) until the rejection date (TC 481) plus 1 year. The CSED should not be extended beyond 12/31/2002 or the original CSED date, whichever was later.
Pending date prior to 1/1/2000	Rejected 1/1/2000 or later	The CSED should be extended from the pending date (TC 480) until 12/31/1999 plus one year. If the CSED was originally going to expire after 12/31/2002, then the waiver language contained on the submitted Form 656 had no effect. Rather, in this instance, the CSED should be extended from 1/1/2000 until 12/20/2000 or the rejection date (TC 481) plus 30 calendar days, whichever was earlier. If the offer was still pending, the CSED should again be extended from 3/9/2002 until the rejection date (TC 481) plus 30 calendar days.

- (8) If only one party to a joint assessment files an OIC, then the statute is suspended just for that person. The appropriate CSED suspension code must be input on IDRS to identify the specific taxpayer for which the offer applies. They are described below.

- P = Primary
- S = Secondary
- B = Both

5.8.10.8  
(03-10-2022)  
**Effect of Previous Offers  
on Assessment Statute  
Expiration Date**

- (1) A taxpayer agrees to the extension of the statute of limitations for assessment when submitting an OIC. The extension allows the IRS the opportunity to evaluate the terms of an offer without the assessment statute expiring in the meantime.
- (2) An offer is considered pending or "being reviewed" when an authorized IRS official signs the Form 656 up until the date a determination is made. The TC

480 date is the date the offer was signed by an authorized IRS official and is therefore the date the pending period begins.

- (3) For an offer that has been accepted, the assessment statute is extended for the time the offer is pending up until the date the IRS acknowledges acceptance of the offer in writing.
- (4) The filing of an OIC by a business does not extend the assessment statute for the purpose of assessing the trust fund recovery penalty.
- (5) For an offer that has been rejected, returned (processable), terminated or withdrawn, the amount of any federal tax due for a tax period included on the offer may be assessed on the latest allowable assessment date plus the period of time the offer is pending, plus one year.

**Note:** The appropriate calculation of the assessment statute is dependent on which revision of Form 656 was submitted. Refer to the table in paragraph (6) of this section, which discusses the impact the submission of an offer has on the assessment statute expiration date .

- (6) The following charts illustrate the period of time the assessment statute is extended as determined by the revision date of the Offer in Compromise, Form 656:

***ASED extension when offer submitted on Form 656  
(Rev. March 2011) or later***

<b>If</b>	<b>Then</b>
TC 480 posted after expiration of the assessment statute expiration date (ASED).	OIC does not have any impact on calculation of the period of time for assessment which has otherwise expired.
TC 480 posted before expiration of the ASED and the TC 480 is reversed with a TC 481 rejection or return of the taxpayer's offer.	ASED is extended from date of TC 480 to date of TC 481, plus one additional year.
TC 480 posted before expiration of the ASED and the TC 480 is reversed with a TC 482 withdrawal of the taxpayer's offer.	ASED is extended from date of TC 480 to date of TC 482, plus one additional year.
TC 480 posted before expiration of the ASED and the TC 480 is reversed with a TC 483.	ASED is not extended since the TC 483 is a reversing transaction to indicate the TC 480 was posted erroneously or returned to the taxpayer as non-processable.
TC 480 posted before expiration of the ASED and the TC 480 is reversed with a TC 780 (acceptance).	ASED is extended from date of TC 480 to date of TC 780.

**Example:** An offer accepted for processing (TC 480 date) on April 1, 2011 was rejected (TC 481 date) on July 1, 2011. Prior to submission of the offer,

the earliest ASED was May 10, 2011. The ASED should be extended for 91 days while the offer was pending, plus an additional year (365 days) for a total of 456 days, which should be added to the ASED of each tax period listed on the offer. The new ASED on the earliest period should be August 8, 2012.

***ASED extension when offer submitted on Form 656  
Revision Dates May 2001 - March 2009***

<b>If</b>	<b>Then</b>
TC 480 posted after expiration of the assessment statute expiration date (ASED).	OIC has no impact on calculation of the period of time for assessment which has otherwise expired.
TC 480 posted before expiration of the ASED and the TC 480 is reversed with a TC 481 rejection of the taxpayer's offer.	ASED is extended from date of TC 480 to date of TC 481. The ASED will expire no sooner than one year after rejection of the taxpayer's offer.
TC 480 posted before expiration of the ASED and the TC 480 is reversed with a TC 482 or a TC 481 based on a processable return of the taxpayer's offer.	ASED is extended from date of TC 480 to date of TC 481/482.
TC 480 posted before expiration of the ASED and the TC 480 is reversed with a TC 483.	ASED is not extended, since the TC 483 indicates the TC 480 was posted erroneously or the OIC was returned to the taxpayer as non-processable.
TC 480 posted before expiration of the ASED and the TC 480 is reversed with a TC 780 (acceptance).	ASED is extended from date of TC 480 to date of TC 780.

**Example:** An offer accepted for processing (TC 480 date) on March 1, 2009 was rejected (TC 481 date) on September 1, 2009. Prior to submission of the offer, the earliest ASED was March 10, 2010. Since the ASED was suspended for 184 days while the offer was pending, an additional 184 days should be added to the ASED of each tax period listed on the offer. The new ASED on the earliest period should be September 10, 2010.

**Example:** The same TC 480 and 481 dates as the previous example, yet the earliest ASED prior to the offer submission was February 1, 2010. Since the additional 184 days would only extend the ASED to August 4, 2010, additional time should be added to extend the ASED the one year period provided for on the Form 656. The new ASED should be September 1, 2010.

**Example:** The taxpayer in example 2 then submitted a new offer with a TC 480 date of August 1, 2010, which was rejected with a TC 481 date of November 10, 2010. The ASED was suspended for 101 days. Because

the 101 days would only extend the ASED to December 11, 2010 additional time should be added to extend the ASED the one year period provided for on the Form 656. The new ASED should be November 10, 2011.

**Note:** In Example 3, the extension of the ASED did not include one additional year for each offer submitted. If the offer had been submitted on Form 656 with a revision date of May 2001 through March 2009, inclusive, the IRS was provided at least one year from the date the offer was closed to assess additional tax on any tax period included in the offer.

5.8.10.9  
(07-20-2020)

**Indicators of Potential  
Practitioner Misconduct**

- (1) During the verification of OIC financial statements, employees should always be aware of any indications that a practitioner violated the duties and restrictions relating to practice before the IRS as described in Treasury Department Circular No. 230 (Circular 230) "Regulations Governing Practice before the Internal Revenue Service" (Revised 6/2014). Section 10.50 of Circular 230 generally defines "incompetence and disreputable conduct" that is subject to sanction under section 10.50. In addition, section 10.52(a)(1) states that a practitioner may be sanctioned under section 10.50 for violating any of the regulations in Circular 230 (other than section 10.33). For example, a practitioner may be sanctioned for violating the following regulations:
  - a. Failure to exercise due diligence. There may be evidence to show that the practitioner ignored certain known facts or failed to make reasonable inquiries to verify the correctness of oral or written representations made by a client. Practitioners have a duty to make reasonable inquiries to clients, to determine the correctness of documentation they submit to the IRS.
  - b. Deceptive advertising with respect to offers (such as unqualified promises of settlement, or "pennies on the dollar").
- (2) The Office of Professional Responsibility (OPR) may impose sanctions, including monetary penalties, on practitioners. Also, if the practitioner is acting on behalf of an employer or other entity, the OPR may impose a monetary penalty on the employer, firm or other entity if it knew, or reasonably should have known, of the conduct.
- (3) A referral should also be made if the employee becomes aware that a suspended or disbarred practitioner is practicing or attempting to practice before the IRS, or that an unenrolled preparer is attempting to represent the taxpayer before the IRS during the offer investigation.

**Note:** The referral process is required by Section 10.53(a) and 10.53(b) of Circular No. 230.

- (4) Employees should also report suspected violations of 18, U.S.C. 207, Post Employment Conflicts of Interest (Circular No. 230, Section 10.25), to TIGTA or OPR. Questions regarding post employment conflicts should be directed to the Associate Chief Counsel (GLS).

5.8.10.9.1  
(02-14-2017)  
**The Role of the Office of Professional Responsibility**

- (1) Under the authority provided by 31 U.S.C. 330 and 31 CFR 10, which is published as Treasury Department Circular No. 230, Regulations Governing Practice before the Internal Revenue Service (Revised 6/2014), OPR renders final decisions on applications for enrollment to practice, as needed. OPR also makes inquiries into matters under its jurisdiction and institutes disciplinary proceedings against tax practitioners who are found to have violated any part of Circular No. 230.

5.8.10.9.2  
(03-10-2022)  
**Examples of Tax Practitioner Misconduct in the Offer in Compromise Program**

- (1) A pattern of inappropriate conduct is a factor that the OPR will consider in determining whether sufficient evidence exists to suggest a willful violation of Circular 230. Below are some indicators of misconduct by practitioners.
- (2) Example 1 — Establishing a pattern on several Offer in Compromise cases to attempt to influence the case dispositions to obtain the desired results by:
  - Using abusive language
  - Threatening claims of misconduct (e.g., Section 1203 of the RRA)
  - Making false claims of misconduct
  - Threatening employee with personal legal action/litigation
  - Verbal/Physical threats or assaults
  - Offering a bribe (e.g., offering gifts or other things of value)

**Note:** Verbal and/or physical threats/assaults should be referred directly to the local TIGTA office or by calling the TIGTA National Hotline at 1-800-366-4484 during business hours. After regular business hours, call 800-589-3718. This number reaches an answering service which answers all calls from all locations in the United States 24 hours a day 7 days a week. The answering service will contact the on-call TIGTA agent.

- (3) Example 2 — Establishing a pattern on several OIC cases to delay investigations by performing one or several of the following actions:
  - Missing appointments
  - Canceling appointments at the last moment with no good cause provided
  - Agreeing to provide requested documentation and/or information and then refusing to follow through, hindering the ability of the employee to complete the investigation of the offer
  - Providing partial information requiring repeated call backs/ correspondence and delays

**Note:** IRM 1.25.1.3, Referral to the Office of Professional Responsibility, states that a referral must clearly document all case actions leading to the request, and the practitioner's failure to comply. In instances of unreasonable delay on the part of a practitioner, POA bypass procedures should first be initiated prior to a referral to OPR. This set of facts may also support a referral under Section 10.22 (Diligence as to accuracy) and Section 10.23 (Prompt disposition of pending matters) of Circular 230. If a practitioner refused to provide documentation on grounds of privilege, the Office of Chief Counsel should be consulted.

- (4) Example 3 — Establishing a pattern on several offer submissions of significant omissions, improper, or unsubstantiated discounts on a number of assets. The information provided must be shown to be materially misrepresented, not



merely a simple error. The omissions or material misrepresentations could include, but are not limited to, the following:

- Omitting or undervaluing assets on the CIS
- Understating the taxpayer's income and / or overstating the taxpayer's expenses
- Listing a large number of claimed dependents on the CIS
- Listing similar dollar amounts in both checking and savings accounts
- Claiming no available credit on the CIS
- Listing similar amounts for monthly income and expenses in different cases (e.g. same low wages, same child care expenses)

- (5) The badges of practitioner misconduct may also be indicators of potential fraud. (Refer to IRM 5.8.10.10.) The inappropriate misconduct should be discussed with your fraud technical advisor (FTA) if appropriate. If a decision is made to refer the practitioner to TIGTA and/or the Fraud program for potential criminal sanctions, these actions must be clearly documented in the OPR referral.

5.8.10.9.3  
(07-20-2020)  
**Referring Tax  
Practitioner Misconduct  
to the Office of  
Professional  
Responsibility**

- (1) Employees should be alert to the patterns and/or trends of inappropriate conduct as discussed in IRM 5.8.10.9, Indicators of Potential Practitioner Misconduct. When patterns and/or trends are identified through OICs submitted by a tax practitioner, or when reported to an IRS employee by any person other than an officer or employee of the IRS, the employee should complete and submit Form 8484, Suspected Practitioner Misconduct Report for the Office of Professional Responsibility, to the OPR, and refer the suspected practitioner misconduct for any appropriate disciplinary action.
- (2) Circular No. 230, Section 10.53 states a referral should include all of the basic information, including details of why the referral meets the criteria outlined above. The referral should contain the following specific information: the tax practitioner's name, address, telephone number, designation (i.e. attorney, certified public accountant, enrolled agent, enrolled actuary, etc.), a detailed description of the allegations, and any documents that support the allegations. The Form 8484 must be signed by the referring employee's manager.
- (3) Mail, fax, or E-mail the Form 8484, the accompanying narrative, and any other supporting documents to:

IRS Office of Professional Responsibility  
SE:OPR Room 7238  
1111 Constitution Ave, NW  
Washington, DC 20224  
E-mail address: \*OPR referrals

A copy of the referral should also be provided to the National Offer in Compromise Program Manager.

- (4) Additional information about reporting suspected practitioner misconduct may be found on the *OPR Intranet Website*.



## 5.8.10.9.4

(07-20-2020)

**Preparation of Form 8484, Suspected Practitioner Misconduct Report for the Office of Professional Responsibility (OPR)**

- (1) Part A – Practitioner Information: Practitioner information must include the practitioner's name, mailing address, telephone number, fax number, social security number, and CAF number. Indicate whether the practitioner is an attorney, certified public accountant, enrolled agent, enrolled actuary, or appraiser.
- (2) Part B – Explanation of Suspected Misconduct: Complete and attach a narrative to the Form 8484. The narrative should be detailed enough to allow the OPR to give the practitioner fair notice of the suspected misconduct. It should list all significant events that illustrate the inappropriate conduct in chronological order, explain how the conduct impacts on the administration of the tax laws, and establish a pattern of misconduct. It should include appropriate quotations from the case history that would support the alleged misconduct. If applicable, hand-written material should be typed. The narrative should be specific and should include: who, what, when, where, and why.
- (3) Part C- Your Information: Complete the form with your name, mailing address, and other applicable contact information. Also include the names of other persons who have knowledge of the suspected misconduct.
- (4) Part D – Manager Approval: While OPR does not require any particular level of management approval, field group managers or offer examiner unit managers (COIC) should review and approve referrals made by OIC employees before the documents are sent to OPR.
- (5) Upon receipt of Form 8484, OPR will provide you with written acknowledgment of the submission.

## 5.8.10.10

(07-20-2020)

**Indicators of Taxpayer Fraud**

- (1) The following are potential fraud warning signs most identifiable during an interview:
  - a. Failing to keep proper books and records in a business or profession
  - b. Having no records, poorly kept records, or false or altered records
  - c. Destroying books and records without plausible explanation or refusing to make certain records available
  - d. Appearing unwilling to delegate record keeping to employees
  - e. Engaging in illegal activities
  - f. Having a personal living standard that is inconsistent with reported income
  - g. Purchasing assets and placing them in the names of others
  - h. Making self-serving statements with no documented proof
  - i. Repeatedly procrastinating in making and keeping IRS appointments
  - j. Showing undue concern about immediate closing of the case
- (2) The following are potential fraud warning signs most identifiable during verification of the financial statement:
  - a. Not providing requested information
  - b. Refusing to make certain records available
  - c. Not furnishing adequate explanations for discrepancies or questionable items
  - d. Trying to conceal a pertinent fact or record
  - e. Failing to deposit all receipts to the business account
  - f. Using nominees or false names
  - g. Depleting assets shortly before filing an offer

- h. Inflating salaries, payment of bonuses or cash withdrawals by officers, directors, shareholders, or other insiders
  - i. Transferring property to insiders, shareholders, or relatives shortly before filing the offer
  - j. Paying off loans to directors, officers, shareholders, relatives, or other insiders shortly before filing of the offer
  - k. Having complicated corporate structures and relationships
  - l. Undervaluing assets
  - m. Overstating liabilities
- (3) The fraud indicators below can fall into any of the categories in paragraphs (1) and (2) above:
- a. Making false, misleading, and inconsistent statements
  - b. Using currency instead of bank accounts or making large expenditures in currency
  - c. Concealing bank accounts and other property
- (4) If indications of fraud are identified, follow the procedures outlined in IRM 5.8.4.18, Potential Fraud Referrals.
- (5) Refer to IRM 5.8.4.19.1, Open Criminal Investigations, for information concerning the appropriate actions if the taxpayer is involved in an open criminal investigation.

5.8.10.11  
(02-14-2017)

**Potentially Dangerous or  
Caution Upon Contact  
Taxpayer**

- (1) A review of IDRS Command Code **ENMOD** may show that a POA or taxpayer has been designated as either a PDT or a CAU.
- (2) A taxpayer or POA who meet these criteria should be approached with caution. See IRM 25.4.1, Potentially Dangerous Taxpayer, or IRM 25.4.2, Caution Upon Contact Taxpayer.

5.8.10.12  
(07-20-2020)

**Docketed Tax Court  
Cases**

- (1) Tax Court cases generally are handled by Area Counsel. The IRS has the authority to accept offers where the liability is the subject of a pending Tax Court case. Unless the case is under Appeals jurisdiction, Doubt as to Collectibility (DATC) offers submitted while a Tax Court case is pending are under Collection jurisdiction. See IRM 5.8.1.6, Functional Responsibilities.
- (2) Any request from Area Counsel for a financial review from Collection in which settlement authority is being utilized outside the offer process should be provided to a Revenue Officer (RO) in Collection Field function and worked as an Other Investigation (OI). If a request is received by the offer group in error, forward it to the appropriate RO group based on zip code and advise Counsel the request was forwarded to the Field RO group.
- (3) If some of the tax liabilities are under DOJ jurisdiction, only those tax periods under IRS jurisdiction should be included on the Form 656 and the Form 7249.
- (4) If DOJ retains jurisdiction on any tax periods, a collateral agreement should be secured. The agreement should discuss the fact that a default on the DOJ settlement will default the periods accepted on the IRS offer.
- (5) Coordination with DOJ is critical if an offer is being recommended for acceptance. The OS must make a determination on the dollar amounts that will be applied to the DOJ settlement and the IRS offer so the taxpayer is aware of

the application of payments. If any tax periods are under DOJ jurisdiction, the offer cannot be accepted without DOJ coordination.

- (6) If all periods are under IRS jurisdiction, all periods should be included on Form 656 and Form 7249. The Form 7249, Form 656 and the offer file should be provided to the Counsel attorney handling the litigation to ensure that all of the legal requirements for compromise have been met.
- (7) Occasionally an OIC is accepted while a period is under the settlement jurisdiction of the DOJ. In these cases, although the OIC was processed as an acceptance, the IRS never actually accepted the OIC because it lacked the legal authority to do so. See IRM 5.8.1.6.1, Tax Cases Controlled by Department of Justice, for additional information. If an offer is accepted in error, refer to IRM 5.8.9.3 regarding the appropriate actions to take.

**Note:** A rescission of the offer is not appropriate, as the IRS never had the authority to accept the taxpayer's offer.

5.8.10.12.1  
(07-20-2020)  
**Docketed Cases  
Involving Pending  
Liabilities**

- (1) These procedures provide guidance in situations where the taxpayer's liability has not been determined.
- (2) Responsibility of Counsel:
  - a. Regardless of whether the written OIC is complete, immediately send it and any attachments or payments to the appropriate COIC site with the "Expedited Processing Required" transmittal (Exhibit 5.8.10-1) for a processability determination. The correct COIC site is based on the location (state) of the taxpayer and can be found at *Serp Who/Where Offer in Compromise Centralized Service Locations*. Counsel will overnight it to the appropriate COIC site to ensure the 24 hour period for deposit is met.
  - b. A stipulation of the full amount of the deficiencies and penalties (those determined in the statutory notice or those redetermined on the merits by agreement of the parties) should be obtained and may be held in escrow by Counsel, see CCDM 35.8.6.2.1. Additionally, a signed Form 3040, Authorization to Apply Offer in Compromise Deposit to Liability, should be secured. The taxpayer should be advised that if the offer is not accepted, the TIPRA payment is non-refundable and it will be applied to any current outstanding liability or liability determined in the court proceedings.
  - c. Counsel will advise the offer specialist of any new developments on the case that may impact the investigation and/or the overall decision.
- (3) Responsibilities of COIC:
  - a. Review for processability criteria.
  - b. If the offer is not processable, contact the Counsel attorney and explain why the offer cannot be processed.

**Note:** If the offer is a pending liability case, the modules should be added to AOIC showing 0.00 liability.

- c. If the offer is processable, follow current IRM procedures, including loading the offer on AOIC. Treat the offer as being received on the date that Counsel received it.
- d. If the offer is a pending liability case, the TIPRA payment and application fee (if applicable) should be posted as a deposit.

- e. Immediately forward the case (including the “Expedite” transmittal) to the appropriate FOIC location.
- f. Document the AOIC history.
- g. The type of pending Tax Court Case determines whether the OIC is subject to the 24 month, “deemed accepted” rule of IRC 7122(f). If the proceeding is a deficiency case, the 24 month rule does not apply because the liability is in dispute.

(4) Responsibility of FOIC:

- a. Upon receipt of the offer in the appropriate FOIC group, assign the case within 5 days of receipt.
- b. Upon assignment, the OS should contact the attorney indicated on the transmittal and provide their name and contact information.
- c. The OS should complete the investigation within Counsel’s (the Court’s) required time frame or contact the attorney to discuss any anticipated delays.
- d. If the investigation results in a decision to recommend acceptance of the offer, discuss the findings with the Counsel attorney before communicating the decision to the taxpayer or their representative.
- e. If the investigation indicates that the offer could be an acceptance, but would require an increase in the offer amount, the OS should issue a preliminary acceptance letter requesting the increased amount. The letter should include the offer amount that would be considered for acceptance. It should request that the taxpayer notify the OS if the offer amount can be increased to the amount proposed. If the taxpayer agrees to the increased amount, contact the Counsel attorney prior to issuing the acceptance letter. If the taxpayer does not agree to the increased offer amount, contact the Counsel attorney to discuss the next appropriate action. If the offer is accepted, the final acceptance letter will not be issued until after the tax is assessed. The counsel attorney will allow for a stipulation in the proceedings that the taxpayer’s agreement to the assessment depends upon the acceptance of the offer.
- f. If the decision is other than acceptance, discuss with the Counsel attorney the issuance of an appropriate final determination letter.
- g. If it is determined, with Counsel concurrence, that a rejection letter as discussed in 26 CFR 301.7122-1 (f), should be provided, follow IRM procedures requiring review by the IAR in accordance with IRC 7122 (e).

**Note:** In regard to pending liabilities in docketed cases, all taxes must be assessed at the time of the acceptance.

5.8.10.12.2  
(03-10-2022)  
**Docketed Collection Due  
Process (CDP) Cases**

- (1) These procedures provide guidance in situations where Area Counsel requests consideration of an offer by employees of an OIC function on an offer which was submitted during a docketed CDP case.
- (2) Responsibilities of Counsel:
  - a. Regardless of whether the written OIC is complete, immediately send it and any attachments or payments to the appropriate COIC site with the “Expedited Processing Required” transmittal (Exhibit 5.8.10-1) for a processability determination. The correct COIC site is based on the location (state) of the taxpayer and can be found at *.Serp Who/Where Offer in Compromise Centralized Service Locations*. Counsel will overnight it to the appropriate COIC site to ensure the 24-hour period for deposit is met.

- b. Counsel will advise the OE/OS of any new developments on the case that may impact the investigation and/or the overall decision.
- (3) Responsibilities of COIC for a new OIC received by Counsel as part of a docketed CDP case (after Appeals' CDP determination letter was sent):
- a. Review for processability criteria.
  - b. If the offer is not processable, contact the Counsel attorney and explain why the offer cannot be processed.
  - c. If the offer is processable, follow current IRM procedures, including loading the offer on AOIC. Treat the offer as being received on the date that Counsel received it.
  - d. The TIPRA payment and application fee (if applicable) should be posted to the taxpayers' account.
  - e. Immediately forward the case (including the "Expedite" transmittal) to the appropriate office.
  - f. Document the AOIC history.
  - g. If the taxpayer raises any tax liability in a CDP case in Tax Court, the 24 month rule applies, but the 24 month period is suspended for the period in which the tax liability is disputed in court.

**Note:** If the liability is not in dispute, the 24 month TIPRA statute is not suspended, unless a determination letter has been issued by Appeals or an offer decision letter has been issued by Collection.

- (4) Responsibilities of FOIC for a new OIC received by Counsel as part of a docketed CDP case (after Appeals' CDP determination letter was sent):
- a. Upon receipt of the offer in the appropriate FOIC group, assign the case within 5 days of receipt.
  - b. Upon assignment, the OS should contact the attorney indicated on the transmittal and provide their name and contact information.
  - c. The OS should complete the investigation within Counsel's (the Court's) required time frame or contact the attorney to discuss any anticipated delays.
  - d. If the investigation results in a decision to recommend acceptance of the offer, discuss the findings with the Counsel attorney before communicating the decision to the taxpayer or their representative.
  - e. If the investigation indicates that the offer could be an acceptance, but would require an increase in the offer amount, the OS should contact the Counsel attorney to discuss the potentially acceptable amount and next appropriate action.
  - f. If the TP agrees to the amount deemed acceptable, discuss with the Counsel attorney the timing of the offer acceptance letter in relation to the court proceedings.
  - g. If the TP does not agree to the increased offer amount, the offer should be closed as a processable return based on the current litigation.
  - h. Although the 24 month TIPRA rule applies if the taxpayer disputes any tax liability in a docketed CDP case, the 24 month period is suspended for the period in which the tax liability is disputed in court.

**Note:** If the liability is not in dispute, the 24 month TIPRA statute is not suspended, unless a determination letter has been issued by Appeals or an offer decision letter has been issued by Collection.

- (5) If a previously rejected CDP OIC is remanded by Counsel or the Tax Court for consideration by Appeals, and Appeals transfers the OIC to COIC or FOIC for consideration of new information,
  - a. COIC or FOIC should send a secure e-mail to Collection Policy to have the offer reassigned on AOIC from Area 21 to the appropriate Area office for assignment.
  - b. The OE/OS should review the OIC and the information provided in accordance with IRM 5.8.5 and make a determination on the acceptability of the offer proposal.
  - c. The OE/OS should consult with the Counsel attorney regarding any possible OIC acceptance, as discussed in (4)(d), (4)(e) and (4)(f) above.
  - d. If the offer is not acceptable, the OE/OS should notify the Appeals Officer of this determination and Appeals will address the OIC rejection in the supplemental determination letter.
  - e. Upon completion of the review of a docketed CDP OIC case, return the case file to Appeals, update AOIC to "P" and transfer back to Area 21 on AOIC.

5.8.10.13  
(07-20-2020)

**Offer in Compromise  
Submission with  
Frivolous, Delaying, or  
Impeding Issues**

- (1) A taxpayer may submit an Offer in Compromise that provides a frivolous or groundless position as the reason the offer should be accepted. In these instances, the OIC should be returned under delay of collection criteria in accordance with IRM 5.8.4.20, Offer Submitted Solely to Delay Collection.

**Note:** If the submission involves a practitioner, refer to IRM 5.8.10.9 for information concerning potential practitioner misconduct.

- (2) The taxpayer's basis for submitting the offer is deemed frivolous if it includes a tax argument discussed in Internal Revenue Service Notice 2010-33, which lists specific tax arguments determined to be frivolous. These arguments include but are not limited to: federal income taxes are unconstitutional, enforcement of the tax laws invades a taxpayer's privacy under the Fourth Amendment, or the Fifth Amendment privilege against self-incrimination grants taxpayers the right not to file returns or the right to withhold all financial information from the Service.
- (3) If the taxpayer includes any of the positions listed in Notice 2010-33 as the reason an OIC should be accepted, the assertion of a penalty for a frivolous submission under IRC 6702(b) may be appropriate. IRC 6702(b) provides for a penalty in situations when there is a frivolous offer submission or an offer submission in which the taxpayer demonstrates a desire to delay or impede the administration of federal tax laws.
- (4) The recommendation to assert the penalty under IRC 6702(b) must be based on the facts and circumstances of the particular case. In egregious situations where the assertion of the penalty is deemed appropriate, prior to returning the offer under solely to delay criteria in accordance with IRM 5.8.4.20, Offers Submitted Solely to Delay Collection, or determining the offer will be treated as never being submitted, refer to IRM 5.8.10.13.1, Request for Penalty Assertion under IRC 6702(b), regarding the actions needed to assert a penalty under IRC 6702(b).

**Note:** These types of submissions will generally be under Doubt as to Liability (DATL) and processed by the DATL unit. In rare instances an offer submitted



under Doubt as to Collectibility, Effective Tax Administration, or Doubt as to Liability for a trust fund recovery penalty assessment may include a frivolous argument.

5.8.10.13.1  
(03-10-2022)  
**Request for Penalty  
Assertion under IRC  
6702(b)**

- (1) If a taxpayer files an OIC and states that it should be accepted based on a frivolous position or to delay or impede the administration of federal tax laws, assertion of the penalty under IRC section 6702(b) may be applicable. In this instance, the taxpayer should be given notice that the OIC is based on a frivolous position or reflects a desire to delay or impede the administration of federal tax laws, and allowed 30 days from the date of such notice to withdraw or amend the OIC prior to the assertion of the penalty.
- (2) Send a letter to advise the taxpayer that in order to avoid the \$5,000 IRC 6702(b) penalty, the taxpayer must withdraw the offer or amend it to remove any references to frivolous or "desire to delay" positions.
- (3) If the taxpayer fails to withdraw the offer, review the documentation to verify that the offer includes either a frivolous position or a desire to delay position.
- (4) Once the criteria for penalty assessment have been verified, the collection employee will take the necessary steps to have the penalty assessed by preparing a Form 3210, Document Transmittal, addressed to **Ogden Compliance Services, Attn: FRP, M/S 4450, Sr. Technical Advisor, 1973 N. Rulon White Blvd, Ogden, Utah, 84404**. The following information should be listed on the Form 3210:
  - TIN and Name Control
  - MFT 55 for IMF or MFT 13 for BMF and Period (if multiple periods, use the latest period on the hearing request)
  - Penalty Reference Code 543 which is used for IRC section 6702(b) penalties

The following documents should be attached to the Form 3210:

- The original Form 656 and related attachments discussing the basis for the offer submission.
  - A copy of the letter or letters issued soliciting a withdrawal of the taxpayer's specified frivolous position or desire-to-delay position.
  - A copy of any written communication received from the taxpayer in response to the withdrawal solicitation.
- (5) The group manager will document approval of the penalty assessment by writing "Determination to assess penalty pursuant to IRC 6702(b) approved" on the Form 3210 and sign the Form 3210. The request for penalty assessment can be mailed or E-Faxed to Ogden. Please follow the procedures to request a frivolous penalty assessment, which are outlined in IRM 25.25.10.3. The Frivolous Return Program at the Ogden Compliance Services Campus will review the documents and process the request for penalty assessment. Follow-up with Ogden if they do not acknowledge receipt of the Form 3210 within 15 days.

5.8.10.14  
(03-10-2022)

**Taxpayer Files both  
Doubt as to Liability and  
Doubt as to Collectibility  
Offers**

- (1) When a taxpayer files Form 656-L, Doubt as to Liability (DATL), and Form 656, Doubt as to Collectibility (DATC), at the same time, consideration of both offers will not occur simultaneously. In instances in which both offers are received and neither offer has been deemed processable, processability of the DATL offer will be determined first.
- (2) If a DATL or DATC offer is submitted while another offer under a different basis is being investigated, the new offer will generally be returned as not processable. Any payments should be posted to the taxpayer's account in accordance with the guidance provided on the Form 656 and/or Form 656-L.
- (3) A taxpayer may submit an additional Form 656 requesting consideration under effective tax administration (ETA) while a Form 656 DATC offer is under consideration. The additional Form 656 should be considered an amended offer and any ETA issues presented should be considered. If an amended Form 656 is received by anyone other than the employee who is investigating the offer, it must be forwarded immediately to the assigned offer examiner in COIC or faxed to the assigned offer specialist. Additionally, the AOIC remarks screen should be updated that an amended offer was received.
- (4) If a taxpayer wishes consideration of a DATL offer while a DATC offer is being considered, the taxpayer must submit a withdrawal of the DATC offer prior to processing of the DATL offer. The withdrawal of the DATC offer must be submitted within 10 workdays of the DATL offer submission, or the DATL offer will be considered not processable.

5.8.10.15  
(07-20-2020)

**Offers Submitted on  
Offshore Voluntary  
Disclosure Program**

- (1) An offer may be submitted by a taxpayer who was assessed a tax liability under the Offshore Voluntary Disclosure Program/ Practice (OVDP)/ Offshore Voluntary Disclosure Penalty. These tax liabilities may be identified from the Penalty Reference Number (PRN) for the Miscellaneous Offshore Penalty ("MOP") associated with the MFT 55 TC 240. The OVDP PRNs are: 594, 595, 596, 597, 598 and 709.
- (2) OVDP OICs will be worked by a designated group on a priority basis. Unless otherwise specified in this section, all routine IRM OIC procedures apply.
- (3) Due to the importance of the voluntary disclosure practice and the OVDP, if OIC processing reveals that the taxpayer has not fully disclosed pertinent financial information and/or fails to provide requested verification of income sources or assets, the OIC will be closed as a return to the taxpayer and the case file will be returned to the originating ATAT group.
- (4) Typically, taxpayers who have OVDP assessments have waived appeal rights in all collection matters, including OICs, by executing Form 906, Closing Agreement on Final Determination Covering Specific Matters.

**Note:** The Form 906 language must be reviewed to determine if appeal rights were waived. If you have any questions about the language in an OVDP closing agreement, contact SB/SE Counsel HQ for advice (specifically the office of the SB/SE Assistant Division Counsel International). Additionally, the taxpayer may have appeal rights for tax periods not included in the OVDP.

- (5) Offshore Voluntary Disclosure Program OICs recommended for rejection will not be afforded routine appeal rights, as specified in the IRM.



- a. Contact the ATAT RO to see if the appeal rights were waived based on Form 906. If the taxpayer did waive appeal rights, the rejection letter must be edited to delete all references to appeal rights. Use the open paragraph to add: *There is no appeal available to this decision. On <insert date> you signed Form 906, Closing Agreement on Final Determination Covering Specific Matters, thereby waiving appeal rights on this matter. A copy of the signed Form 906 is enclosed for your reference.* Then delete all subsequent paragraphs except the final paragraph that states *Any payments received with your offer or after your offer is closed, will be applied to your liability unless specified elsewhere in this letter.* If the rejection letter is prepared outside of AOIC and sent to the taxpayer, a second rejection letter must be prepared in AOIC (but not sent) to permit closing of the case.
- b. Close the offer on AOIC as “rejected, did not exercise appeal rights.”

**Note:** Until AOIC programming changes are completed, input the proposed disposition on AOIC and contact the IAR for concurrence of the closing actions.

- c. Contact OIC Collection Policy on the date the case is closed on AOIC and request that the TC 481 be deleted and manually input with a TC 481 date of the rejection letter.
- (6) OICs that are determined to be acceptable must be reviewed by designated Counsel in the office of the SBSE Assistant Division Counsel International and routed through appropriate management officials to the National OIC Program manager who will provide to the director, Collection Policy for submission to the director of Collection for approval. Routing of the offer information may be via electronic means if practical.
  - (7) Occasionally, a request will be received to determine the appropriateness of an OIC prior to the taxpayer agreeing to the OVDP assessment. In these instances, most of the financial analysis should already be completed by the ATAT revenue officer and the review is to determine the sufficiency of the offer in accordance with guidance in IRM 5.8. In these instances, a recommendation regarding whether the offer amount is acceptable should be provided to the ATAT RO after concurrence of the manager and the appropriate approving official. For any OIC submitted while an OVDP case is pending with Examination, immediately inform designated Counsel in the office of the SBSE Assistant Division Counsel International.

5.8.10.16  
(07-20-2020)  
**Assessments Related to  
Employee Benefit Plans  
- MFT 74 and 76**

- (1) This section relates to OICs in which the taxpayer included an MFT 74 and/or MFT 76 module on the offer.
- (2) MFT 74 is penalty for late filing of Form 5500, Annual Return/Report of Employee Benefit Plan. MFT 76 is excise tax based on noncompliance with various statutes relating to employee benefit plans. The largest assessments usually relate to inadequate funding of employee pension plans. A tax of up to 10% [§IRC 4971(a)] of the underfunded amount may apply each year. A tax of 100% [IRC 4971(b)] can be imposed in certain cases. The tax may be self-reported on Form 5330, or identified by IRS in an Examination proceeding.

5.8.10.16.1  
(03-10-2022)  
**Identification of MFT 74  
and MFT 76 Modules**

- (1) Currently, due to programming limitations, the systemic input of certain transaction codes to a MFT 74/76 module is not possible due to the 3 digit plan identifier associated with these assessments. Automated systems do not recognize the identifier number.

- (2) Notices are sent when the tax is assessed and every time interest is updated, but the cases do not move beyond status 21, and are therefore not delivered for a collection determination. In some cases, the assessment is reflected on IDRS with no status.
- (3) Research of these modules requires a specific format which include:

Command Code	Format	Notes
INOLEP	INOLEPxx-xxxxxxx	Lists the employee benefit plans and their 3 digit identifiers
BMFOLT	BMFOLTxx-xxxxxxx 74201212001	BMF
TXMODA	TXMODAxx-xxxxxxx_ 74 001 201212	BMF and IMF
MFREQ	MFREQCxx-xxxxxxx 76 201010 NAME 001	If TXMOD is needed for CFOL only period

5.8.10.16.2  
(02-14-2017)

#### Processing of MFT 74 and MFT 76 Modules

- (1) The MFT 74/76 modules should be input onto the AOIC MFT screen. The uploaded transactions will appear on the error listing. Manually request TC 480. Include the 3-digit plan identifier. In AOIC Remarks, indicate the closing TC 48X will also require manual input.

**Note:** The status code of the modules will not update to 71. Additional instructions are in IRM 5.8.2.7.

- (2) Transfer the case on AOIC to the dedicated OIC group. Additional instructions are in IRM 5.8.3.4.

5.8.10.16.3  
(07-20-2020)

#### Field Actions Relating to MFT 74 and MFT 76 Modules

- (1) Once assigned to the dedicated group in Territory 1, the offer specialist should take the following actions:
- Refer to IRM 5.8.10.16 for background regarding how to research these assessments.
  - Determine the current status of the taxpayer's employee benefit plan(s). Has the plan been terminated? If the taxpayer still owns the plan, required funding levels must be maintained, and excise tax must be paid each year.

**Note:** Ensure the taxpayer is aware that under the Form 656 provisions they agree to timely file tax returns and pay taxes for a five year compliance period. Accrual of any additional liability will result in the default of the OIC and reinstatement of the compromised liability.

- Inquire if the taxpayer has applied for or obtained a distress termination with the Pension Benefit Guaranty Corporation (PBGC). PBGC may have

conducted a financial investigation similar to OIC. You may be able to obtain the results of their investigation to assist with your analysis.

5.8.10.16.4  
(07-20-2020)

**Procedures Relating to  
MFT 74 and MFT 76  
Modules - Notice of  
Federal Tax Lien (NFTL)**

- (1) When a NFTL is filed on a MFT 74/76 assessment, the NFTL indicator (TC 582) does not always post to IDRS. In every case, ALS and IDRS must be re-searched to verify if a NFTL was filed and is properly identified.

**Caution:** TC 582s are required to ensure systemic release of NFTLs.

- (2) If a NFTL has been filed and is not reflected on IDRS, prepare Form 4844 to request input of the TC 582 to each module present on the NFTL with the date the NFTL was recorded.
- (3) Forward the request to CCP.
- (4) Follow up to verify input before closing the CIP.
- (5) If you determine a NFTL is required, follow the instructions below when preparing Form 12636.

**Form 12636 Instructions for MFT 74 and MFT 76**

Form 5500/ MFT 74 Assessments	Form 5330/ MFT 76 Assessments
<p>a. In the Item 8, Tax Form section, enter "5500."</p> <p><b>Note:</b> At this time, ALS cannot process the plan numbers for MFT 74 assessments.</p> <p>b. In Items 8-12, enter only MFT 74 periods. Do not include any other types of assessments (e.g., 941, 1120, etc.).</p>	<p>a. In the Item 8, Tax Form section, do NOT enter "5330." Instead, enter the plan number associated with the assessment, preceded by an "E" (e.g., E001).</p> <p><b>Note:</b> Using the plan number is necessary for proper systemic generation and posting transaction codes to IDRS. when printed through ALS, the NFTL will convert the plan number to show Form 5330.</p> <p>b. In Items 8-12, enter only MFT 76 periods. Do not include any other types of assessments (e.g., 941, 1120, etc.).</p>

- (6) Forward the Form 12636 via secure e-mail to the Centralized Lien Operation (CLO). In your e-mail, state that the NFTL is for an employee benefit plan.
- (7) TC 582 for MFT 76 modules should systemically post, but must be verified. TC 582 for MFT 74 will not systemically post and therefore Form 4844 must be prepared to request input of the TC 582 to each module present on the NFTL.

5.8.10.16.5  
(03-10-2022)

**Procedures Relating to  
MFT 74 and MFT 76  
Modules - Case  
Closures**

- (1) The following actions are required when closing an MFT 74 or 76 case:
  - a. In all cases ,update the AOIC Remarks: “\*\*\*Special Processing Required - MFT 74-76 case\*\*\*”
  - b. Document AOIC regarding any NFTLs that are outstanding.
  - c. If the taxpayer is a multi-employer pension plan, ensure the OCC code in AOIC is 32 (or 3210 if the offer was submitted by a multi-employer pension plan during a CDP hearing). If the taxpayer requests review of the offer on the basis of equitable special circumstances, the NEH-ETA OIC group will direct the use of the appropriate code.
  - d. Document AMS regarding case recommendation.
- (2) Closing actions are not uploaded by AOIC. Additional action may be required as indicated in the chart below.

Closure Type	Required Actions
<b>Return</b>	Submit Form 4844 to CCP to request TC 481 = date of return letter
<b>Involuntary Withdrawal</b>	Submit Form 4844 to CCP to request TC 482 = date of involuntary withdrawal letter
<b>Voluntary Withdrawal</b>	Submit Form 4844 to CCP to request TC 482 = date stipulated in IRM 5.8.7.4.3
<b>Rejection no Appeal</b>	Submit Form 4844 to CCP to request TC 481 = date of rejection letter + 30 days
<b>Rejection with Appeal</b>	See IRM 5.8.10.16.5.1
<b>Acceptance</b>	No other action required

5.8.10.16.5.1  
(02-14-2017)

**Procedures Relating to  
MFT 74 and MFT 76  
Modules - Closing  
Rejection with Appeal**

- (1) Before forwarding the case to Appeals, take the following actions:
  - a. Clearly mark the case file that a manual request for TC 481/2 must be input by Appeals if OIC is closed as other than acceptance.
  - b. In closing, the ICS history entry must contain the following language: ““Required closing actions are in IRM 5.8.10.16.5.”” Print the updated ICS history for the file.
  - c. Annotate Form 3210: “MFT 74/76 case.”

5.8.10.17  
(03-10-2022)

**IRC 965 Liabilities**

- (1) In general, beginning with the tax year ended 12/31/2017 or 12/31/2018, taxpayers may be liable for taxes under IRC 965 . This IRC section provides that certain taxpayers must pay a transition tax on the untaxed foreign earnings of certain specified foreign corporations as if those earnings had been repatriated to the United States.
- (2) There are unique issues involving IRC 965 liabilities, including the ability of the taxpayer to pay in installments or defer the assessment under certain circumstances which may affect the processing and investigation of offers.

Additionally, consideration of a taxpayer's ability to repatriate the foreign earnings that are the basis for the IRC 965 liabilities may require the assistance of an Abusive Tax Avoidance Transaction (ATAT) revenue officer to evaluate financial information and assist in conducting research relative to income/assets.

- (3) Provisions of IRC 965 allow a taxpayer to elect to pay the net tax liability in installments over eight years (IRC 965(h)) or if the taxpayer is a shareholder in an S corporation to elect to defer the assessment until a triggering event occurs under (IRC 965(i)), at which point the taxpayer can elect to pay the net tax liability in installments over eight years.
- (4) If Form 656 includes any modules in the liability section that involve IRC 965, follow guidance regarding the processability of the offer and the impact IRC 965 may have on the resolution of the offer investigation. See IRM 5.8.4.23.7, IRC 965 (Transition Tax) Liabilities.
- (5) In regard to IRC 965 liabilities, Form 656 states: The IRS will not compromise any liability for which an election under IRC 965(i) is made; such liabilities are excluded from this offer. Any offer containing a liability for which payment is being deferred under IRC 965(h)(1) can only be processed for investigation if an acceleration of payment under section IRC 965(h)(3) and the regulations thereunder has occurred and no portion of the liability to be compromised resulted from entering into a transfer agreement under section IRC 965(h)(3).

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**Exhibit 5.8.10-1 (02-14-2017)****Docketed Tax Court Case Expedited Processing Transmittal**

EXPEDITE PROCESSING REQUIRED DOCKETED TAX COURT CASE
<b>FOR COUNSEL USE ONLY</b>
Counsel Contact Information: Name: Contact Number: E-mail:
Enclosures:
Application fee (Amount: _____)
TIPRA payment (Amount: _____)
Deposit (Amount: _____)
Form 656 Form 433-A, Collection Information Sheet Other information provided by taxpayer to support offer Stipulated Settlement Form 3040
TAXPAYER NAME: _____ DATE OFFER RECEIVED BY COUNSEL: _____ DATE STATUS REPORT DUE TO COURT: _____
Mail 656 package, payments and cover sheet to the appropriate centralized site <b>NOTE TO OFFER SPECIALIST:</b> Upon receipt of documents, notify the contact shown above.
MCOIC Stop 880 5333 Getwell Rd. Memphis, TN 38118  BCOIC 1040 Waverly Ave Stop 680 Holtsville, NY 11742



**Exhibit 5.8.10-2 (03-10-2022)****Letter requesting taxpayer withdraw offer submitted which includes a frivolous position**

Taxpayer Name Address City ST. ZIP
Dear
<p>Your Offer in Compromise was received in this office and reviewed.</p> <p>It has been determined that your basis for compromise is either:</p> <ul style="list-style-type: none"> <li>• a "specified frivolous position", identified by the IRS in Notice 2010-33 (for Notice 2010-33, refer to the IRS Internet website at: <a href="http://www.irs.gov/irb/2010-17_IRB/ar13.html">http://www.irs.gov/irb/2010-17_IRB/ar13.html</a> or</li> <li>• a disagreement listing moral, religious, political, constitutional, conscientious, or similar grounds that reflects a desire to delay or impede the administration of federal tax laws.</li> </ul> <p>An Offer in Compromise cannot be considered if it is based solely on a specified frivolous position, or the disagreement reflects a desire to delay or impede the administration of federal tax laws.</p> <p>You can amend your Offer in Compromise if you have any non-frivolous basis for compromise you wish to have considered. A non-frivolous basis can include:</p> <ul style="list-style-type: none"> <li>• Doubt as to Collectibility - Doubt as to Collectibility exists in any case where the taxpayer's assets and income cannot satisfy the full amount of the liability.</li> <li>• Doubt as to liability - Doubt as to liability exists where there is a genuine dispute as to the existence or amount of the correct tax liability under the law.</li> <li>• Effective Tax Administration – Effective Tax Administration is a situation where it is determined that, although collection in full could be achieved, collection of the full liability would cause the taxpayer economic hardship. Economic hardship is defined as the inability to pay reasonable basic living expenses.</li> </ul> <p>If you only have a frivolous basis for your Offer in Compromise and do not intend to amend your compromise proposal, you can, instead, withdraw your Offer in Compromise and avoid the \$5,000 penalty imposed under Internal Revenue Code section 6702(b) for submitting an Offer in Compromise based on a "specified frivolous position" or reflecting a desire to delay or impede the administration of federal tax laws. <b>Attached is a withdrawal form which may be used for this purpose.</b></p> <p>Please either amend the enclosed Form 656 by providing a non-frivolous basis for compromise, or withdraw your Offer in Compromise within 30 days from the date of this letter. If we do not hear from you or if you submit another issue that is frivolous, or reflects a desire to delay or impede the administration of federal tax laws, you will be assessed a penalty in accordance with Internal Revenue Code Sections 6702(b) and your offer will not be considered. If you submit an amended offer that provides a non-frivolous basis for consideration, your offer will be forwarded for investigation.</p> <p>Please contact (insert contact name phone number) with any questions or concerns you have regarding this letter.</p>
Sincerely,