

Volume 2

TAS RESEARCH AND RELATED STUDIES

# A Study of the IRS Offer in Compromise Program for Business Taxpayers

## EXECUTIVE SUMMARY<sup>1</sup>

An offer in compromise (OIC) is an agreement between a taxpayer and the government that settles a tax liability for payment of less than the full amount owed. The IRS has authority to accept offers pursuant to Internal Revenue Code (IRC) § 7122. TAS Research conducted this analysis to study how business taxpayers (Business Master File (BMF)) use the OIC program and the impact of the OIC program on future compliance of business taxpayers. For the purposes of this study, “BMF taxpayer” is defined as a taxpayer who filed a Form 941, *Employer’s Quarterly Federal Tax Return*, and then either a Form 1065, *U.S. Return of Partnership Income*, Form 1120, *U.S. Corporation Income Tax Return*, Form 1120S, *U.S. Income Tax Return for S Corporation*, or a Schedule C, *Profit or Loss From Business (Sole Proprietorship)*.

To study the impact of the OIC program, TAS Research examined taxpayers’ filing and payment compliance subsequent to an accepted OIC. BMF taxpayers with accepted OICs are about half as likely to become noncompliant in filing or paying their future BMF tax obligations for five years after the IRS accepts the OIC than BMF taxpayers whose OICs were not accepted. When considering only those BMF taxpayers who continued to operate, the difference in subsequent filing and payment compliance rates were more pronounced. For instance, filing noncompliance beyond five years after the consideration of an OIC is nearly three times higher for BMF taxpayers whose OIC was not accepted than for a BMF taxpayers with an accepted OIC. In other words, approximately 91 percent of BMF taxpayers with an accepted OIC were in filing compliance beyond five years after the OIC consideration compared to 82 percent of BMF taxpayers without an accepted OIC.

TAS Research also analyzed the number of taxpayers who submit multiple OICs within 180 days, referred to as “churning.” Between 2007 and 2016, between approximately four percent and nine percent of taxpayers submitting an OIC had an incident of “churning” with an accepted OIC in approximately 30 percent to 45 percent of the cases. This indicates that business taxpayers are trying to submit successful OICs even if it sometimes takes multiple attempts.

TAS Research looked at how the amount offered on returned or rejected OICs compares to what the IRS has actually been able to collect. TAS Research found that nearly 40 percent of rejected or returned OICs had an amount offered that was greater than the amount collected. In fact, the average amount offered for this population of OICs was more than two times the average amount ultimately collected, and the median amount offered was more than five times the median amount collected.

For rejected OICs in particular, TAS Research looked at what the IRS determined to be the Reasonable Collection Potential (RCP), which is the calculation of all of the taxpayer’s assets, income, and liabilities. Depending on the business entity type, TAS Research found that the RCP is about seven to ten times greater than the amount offered and 20 to 30 times what has been collected subsequently. By rejecting these OICs, the IRS not only loses an opportunity to collect revenue, but it misses out on the improved compliance effect that comes with accepted OICs.

<sup>1</sup> The principal authors of this study are Kate Leifeld, Stacie Swanson, and Jeff Wilson.

## INTRODUCTION

Taxpayers who cannot pay their tax debt in full have options. For instance, a taxpayer may qualify for a monthly payment plan, referred to as an installment agreement.<sup>2</sup> Some taxpayers can also qualify for a status called currently not collectible (CNC) if payment of the debt would create an economic hardship.<sup>3</sup> As will be discussed below, CNC based on hardship is not an option for all business types.

An OIC allows the taxpayer to offer an amount less than the total amount owed in full satisfaction of the debt. This study focuses on OICs from BMF taxpayers with tax debts. OICs are particularly important to BMF taxpayers because they are unable to obtain relief from IRS levies on the basis of economic hardship. Generally, under IRC § 6343(a)(1)(D), the IRS must release a levy if it determines that the levy is creating an economic hardship; however, under regulations, the IRS only extends this relief to individual taxpayers.<sup>4</sup>

Treasury Regulations provide three grounds for an OIC:

- Doubt as to liability;<sup>5</sup>
- Doubt as to collectability;<sup>6</sup> and
- Effective tax administration (ETA).<sup>7</sup>

As part of the compromise, the taxpayer agrees to remain fully compliant with all filing and paying requirements for five years after acceptance of the OIC.<sup>8</sup> If a taxpayer fails to stay in compliance, the entire liability, minus the amount paid with the OIC, plus penalties and interest may be reinstated.<sup>9</sup> Thus, OICs represent an opportunity for the IRS to transform a taxpayer's noncompliant behavior into compliant behavior, without assuming any additional risk.

Notwithstanding the merits of the OIC program, historically the IRS has a lower OIC acceptance rate for BMF taxpayers than individual taxpayers (Individual Master File (IMF)). This study attempts to determine whether by returning or rejecting OICs from businesses, the IRS is missing opportunities to collect revenue and to enable businesses to obtain a fresh start.

The study confirmed that on average BMF OICs have a lower acceptance rate compared to IMF OICs. In fact, the average acceptance rate for IMF OICs is approximately 44 percent while BMF OICs have

2 Internal Revenue Code (IRC) § 6159.

3 Internal Revenue Manual (IRM) 5.16.1.2, *Currently Not Collectible Procedures* (Sept. 18, 2018).

4 Treas. Reg. 301.6343-1(b)(4). See also IRM 5.11.2.3.1.4, *Economic Hardship* (Apr. 15, 2014). For further discussion of this issue, see National Taxpayer Advocate 2011 Annual Report to Congress 537-543.

5 Treas. Reg. 301.7122-1(b)(1). 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. Doubt as to liability does not exist where the liability has been established by a final court decision or judgment concerning the existence or amount of the liability.

6 Treas. Reg. 301.7122-1(b)(2). Doubt as to collectability exists in any case where the taxpayer's assets and income are less than the full amount of the liability.

7 Treas. Reg. 301.7122-1(b)(3). There are two grounds for Effective Tax Administration (ETA) offers: 1) If the Secretary determines that, although collection in full could be achieved, collection of the full liability would cause the taxpayer economic hardship within the meaning of Treas. Reg. § 301.6343-1 and; 2) If there are no grounds for an offer under the other offer in compromise (OIC) criteria, the IRS may compromise to promote effective tax administration where compelling public policy or equity considerations identified by the taxpayer provide a sufficient basis for compromising the liability. Compromise will be justified only where, due to exceptional circumstances, collection of the full liability would undermine public confidence that the tax laws are being administered in a fair and equitable manner.

8 IRS, Form 656-B, *Offer in Compromise* (Rev. June 2018).

9 IRM 5.8.9.4, *Actions on Post-Accepted Offers, Potential Default Cases* (Jan. 12, 2017).

an acceptance rate of about 24 percent. However, the study also found that the noncompliance rate of BMF taxpayers with an accepted OIC is generally less than the noncompliance rate for businesses unable to obtain an accepted OIC. For instance, when we consider payment compliance for the five years following the OIC consideration, BMF taxpayers with an accepted OIC have a payment compliance rate of 83 percent compared to 75 percent for BMF taxpayers without an accepted OIC. And in approximately 40 percent of rejected OIC cases, TAS Research determined that the offered amount was nearly three times more than the amount actually collected.

## BACKGROUND

### OIC is one of several collection alternatives

When a taxpayer is unable to fully pay their debt, the IRS may use collection alternatives. One such option is through a series of monthly payments (referred to as installment agreements).<sup>10</sup> With respect to individual taxpayers, if paying the tax debt creates an economic hardship for the taxpayer, the IRS may stop collection activity and consider the taxpayer to be CNC.<sup>11</sup> However, the option of CNC-economic hardship is not available to corporations and only to limited liability corporations (LLCs) and partnerships in certain situations.<sup>12</sup> Even though a tax delinquency may be paid over time or reported CNC, penalties and interest continue to accrue during the ten year (or more) period in which the IRS must collect the liability.<sup>13</sup>

The third option is an OIC. An OIC is an agreement between a taxpayer and the government that settles a tax liability for payment of less than the full amount owed.<sup>14</sup> The objectives of the OIC program are to:

- Affect collection of what can reasonably be collected at the earliest possible time and at the least cost to the government;
- Achieve a resolution that is in the best interest of both the business and the government;
- Provide the business a fresh start toward future voluntary compliance with all filing and payment requirements; and
- Secure collection of revenue that may not be collected through any other means.<sup>15</sup>

10 IRC § 6159; IRM 5.14.1.1.1, *Background* (July 16, 2018)

11 IRM 5.16.1.2, *Currently Not Collectible Procedures* (Sept. 18, 2018).

12 *Id.*

13 The IRS generally has ten years to collect a tax debt once it is assessed, which is referred to as the collection statute expiration date (CSED). IRC § 6502. Some events may extend or suspend the CSED. In particular, the CSED is suspended during the period an OIC is pending, for 30 days immediately following the rejection of the OIC, and for any period when a timely filed appeal from the rejection is being considered by Appeals. Treas. Reg. § 301.7122-1(i). In some cases, the IRS may choose to reduce to judgment the liability on which a notice of federal tax lien has been filed. This means the IRS would bring suit in federal district court. Once the judgment is in place, the IRS is not limited to the 10-year CSED period. 28 U.S.C. § 3201.

14 IRC § 7122.

15 IRM 1.2.14.1.17, *Policy Statement 5-100* (Jan. 30, 1992); IRM 5.8.1.2.4, *Overview, Objectives* (Sept. 23, 2008).

### Legal Requirements for Acceptable OICs

According to the Internal Revenue Code, for the OIC to be processable, the taxpayer must:

- Include a partial payment (referred to as a “TIPRA payment”) with the OIC; and<sup>16</sup>
- Pay any applicable user fee.<sup>17</sup>

In April 2016, the IRS announced that OICs submitted by a taxpayer who had not filed all necessary tax returns (based on internal research) would be returned to the taxpayer as not processable.<sup>18</sup> In February 2017, the IRS further announced the IRS will keep the payments sent with OICs that are not processed and returned for lack of filing compliance.<sup>19</sup>

Otherwise, the IRS *may* return the user fee and initial payment to the taxpayer when an OIC is returned as not processable.<sup>20</sup> The IRS will keep payments made on rejected OICs.<sup>21</sup>

### The Reasonable Collection Potential Calculation Plays a Vital Role in the OIC Acceptance Process

The IRS will accept an OIC when it is unlikely that a tax liability can be collected in full and the amount offered reflects reasonable collection potential.<sup>22</sup> Additionally, unless special circumstances exist, OICs will not be accepted if the IRS believes the liability can be paid in full as a lump sum, by installment payments extending through the remaining statutory period for collection, or through other means of collection.<sup>23</sup> The IRS first conducts an analysis to see if the taxpayer can afford to pay the liability through the liquidation of existing assets or an installment agreement. Once the IRS confirms that the taxpayer will not be able to pay the debt through these methods, the IRS then determines the taxpayer’s RCP, which will consider all of the taxpayer’s income, assets, expenses, and liabilities.<sup>24</sup> Unless special circumstances exist, the RCP will serve as the basis for an acceptable OIC amount.<sup>25</sup>

16 IRC §§ 7122(c)(1), 7122(d)(3)(C). For lump sum offers, the partial payment must be 20 percent of the OIC amount. For a periodic payment OIC, the partial payment must consist of the first installment payment. IRC §§ 7122(c)(1)(A)–(B).

17 IRC § 7122(c)(2). If an individual taxpayer qualifies for the low-income waiver, he or she will not be required to send any payment with the OIC. IRS, Form 656-B, *Offer in Compromise* (June 2018). Additionally, Treasury regulations require taxpayers to make the OIC in writing, sign the OIC under penalty of perjury, and include all of the information “prescribed or requested by the Secretary.” Treas. Reg. § 301.7122-1(d)(1). If an OIC meets the minimum criteria for consideration, the IRS deems it processable. IRM 5.8.2.3 (May 14, 2013).

18 IRS, *Memorandum for Director, Specialty Collection Offers, Liens & Advisory, Offer in Compromise Filing Compliance and Case Perfection*, SBSE-05-0416-0015 (Apr. 13, 2016).

19 IRS, *Memorandum for Director, Specialty, Offers, Liens & Advisory, Offer in Compromise Filing Compliance and Case Perfection*, SBSE-05-0217-0020 (Feb. 23, 2017). See also *Policy Changes Made by the IRS to the Offer in Compromise Program Makes It More Difficult for Taxpayers to Submit Acceptable Offers*, *supra*.

20 IRM 5.8.2.5, *Not Processable* (May 25, 2018); IRM 5.8.7.2, *Returns* (Oct. 07, 2016).

21 IRS, Form 656, *Offer in Compromise* (June 2018). A rejected OIC differs from a returned OIC in that the IRS has reviewed the facts of the case prior to rejection, and the taxpayer receives appeal rights when the OIC is rejected. IRM 5.8.7.7, *Rejection* (Oct. 7, 2016).

22 IRM 1.2.14.1.17, *Policy statement 5-100* (Jan. 30, 1992).

23 IRM 5.8.1.2.3, *Policy* (May 5, 2017).

24 IRM 5.8.5.2, *Ability to Pay* (Mar. 23, 2018).

25 IRM 5.8.1.2.3, *Policy* (May 5, 2017).

### BMF OIC Acceptance Rates Show a Slight Increase

The following figure shows the OIC receipts, dispositions, and acceptances for IMF and BMF taxpayers since FY 2010. The IRS began accepting a larger percentage of OICs in FY 2011 and reached its highest acceptance rate in 2013 with 43.7 percent. The current rate of OIC acceptances remains about 38 percent.<sup>26</sup>

**FIGURE 5.1, Individual and Business OIC Receipts, Dispositions and Acceptances since 2010<sup>27</sup>**

FY	Receipts	Acceptances	Dispositions	Acceptance Rate
2010	56,539	13,886	52,104	26.7%
2011	59,411	19,562	57,836	33.8%
2012	63,801	23,628	62,597	37.7%
2013	74,217	30,840	70,622	43.7%
2014	67,935	26,924	64,322	41.9%
2015	66,600	27,417	64,479	42.5%
2016	62,937	26,663	65,858	40.5%
2017	62,243	25,326	66,549	38.1%

TAS analysis of IRS OIC data show that from 2007 to 2017, approximately 450,000 IMF taxpayers submitted OICs and about 44 percent of them were ultimately accepted.<sup>28</sup>

**FIGURE 5.2, OIC Receipts, Dispositions and Acceptances for Individual Taxpayers<sup>29</sup>**

FY	Receipts	Acceptances	Dispositions	Acceptance Rate
2010	48,378	15,606	45,537	34.3%
2011	51,022	20,523	50,034	41.0%
2012	57,805	25,752	54,909	46.9%
2013	63,069	29,022	59,079	49.1%
2014	59,017	29,522	58,936	50.1%
2015	57,619	25,619	53,931	47.5%
2016	52,188	26,150	56,280	46.5%
2017	50,042	24,906	54,817	45.4%

26 National Taxpayer Advocate 2017 Annual Report to Congress vol. 2 49. The acceptance rate is the numbers of accepted OICs in a fiscal year divided by the total number of OIC investigations closed by the IRS during that same fiscal year. These figures include both Individual Master File (IMF) and Business Master File (BMF) taxpayers. Fiscal year (FY) 2018 numbers were not included in this study because not enough time had elapsed to provide analysis.

27 National Taxpayer Advocate 2017 Annual Report to Congress vol. 2 49.

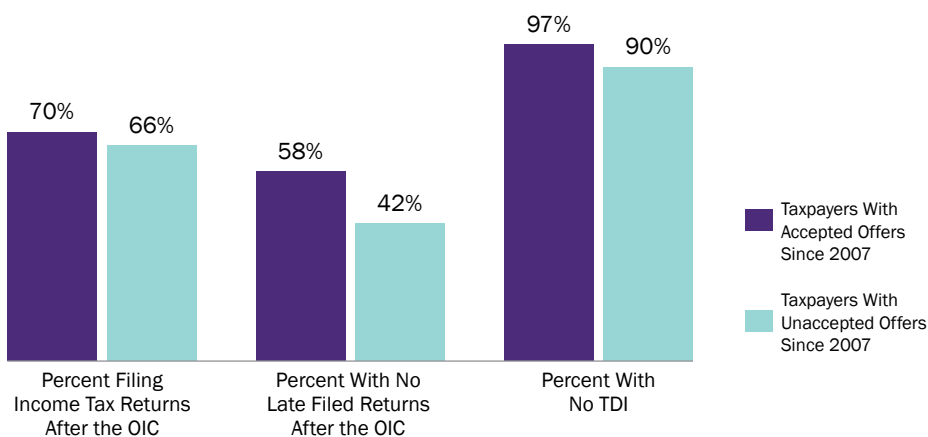
28 IRS, CDW. Individual Master File (IMF) Oct. 2017.

29 *Id.* The table only shows data from FY 2010 through FY 2017.

Furthermore, the National Taxpayer Advocate's study on IMF OICs last year established that accepting an OIC may improve an IMF taxpayer's future compliance. Figure 5.3 compares filing compliance and the incidence of taxpayer delinquent investigations (TDIs) between IMF taxpayers with accepted OICs and all taxpayers with unaccepted OICs.<sup>30</sup>

**FIGURE 5.3**<sup>31</sup>

**Filing Compliance for Taxpayers for the First Five Years  
After the Offer in Compromise Disposition**

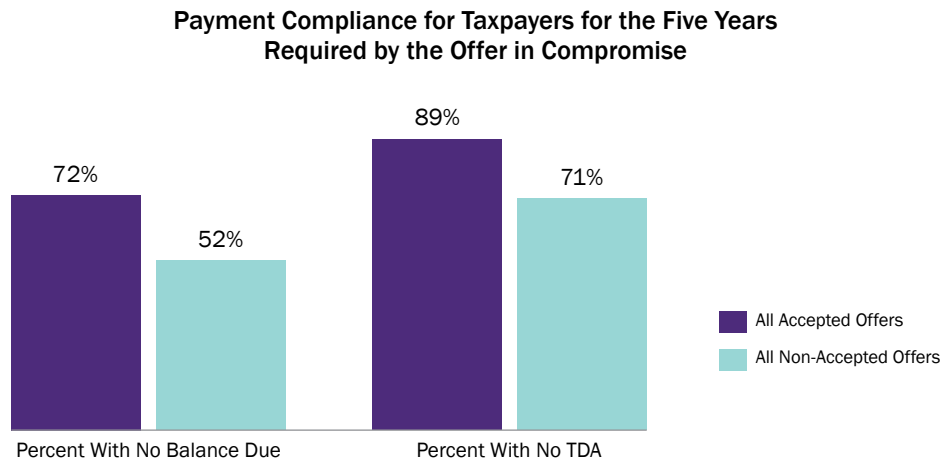


30 A taxpayer delinquent investigation (TDI) is part of the Return Delinquency (RD) Program, which works responses to notices that are issued to taxpayers that have been identified as liable to file and have not filed a tax return by the Return Due Date (RDD). IRM 5.19.22.2, *What Is The BMF Return Delinquency Program?* (Jan. 2, 2015).

31 IRS, CDW. Business Master File (BMF) Oct. 2017.

Figure 5.4 shows the payment compliance for IMF taxpayers by looking at the incidence of balances due and taxpayer delinquent accounts (TDAs).<sup>32</sup>

**FIGURE 5.4**<sup>33</sup>



However, while the IRS has accepted more OICs in recent years, its acceptance rate for OICs submitted by BMF taxpayers is still over 20 percentage points less than its acceptance rate for OICs submitted by IMF taxpayers. From FYs 2010 to 2017, the acceptance rate for IMF OICs was approximately 44 percent, but the acceptance rate for BMF OICs was about 24 percent.<sup>34</sup>

**FIGURE 5.5, OIC Receipts, Dispositions and Acceptances for Business Entities**

FY	Receipts	Acceptances	Dispositions	Acceptance Rate
2010	5,972	864	5,979	14.5%
2011	6,262	1,158	6,928	16.7%
2012	6,576	1,543	7,547	20.4%
2013	6,811	1,471	6,887	21.4%
2014	6,573	1,477	7,048	21.0%
2015	6,237	1,630	6,813	23.9%
2016	5,348	1,594	6,697	23.8%
2017	4,721	1,512	5,710	26.5%

32 A taxpayer delinquent account (TDA) occurs when a taxpayer has a balance due. IRM 5.19.22.2.1, *BMF Return Delinquency Overview* (July 7, 2016). In particular, it occurs after the final collection notice is issued. IRS, Document 6209, Section 8A, *Master File Codes* (2018).

33 We derived the presence of unfiled returns and balances due by examining the collection status of the module from the IMF.

34 IRS, CDW IMF Oct. 2017; IRS, CDW BMF and BMF Dec. 2017.



Although the IRS has begun accepting more BMF OICs in the last three years, increasing from 21 percent in 2014 to 26.5 percent in FY 2017, the BMF acceptance rate is still less than the IMF acceptance rate, which was 45.4 percent in FY 2017.

The recent increase in acceptance of BMF OICs may be partly explained by a change in IRM guidance. For example, IRM 5.8.11.4.3, which relates to determining the appropriate OIC amount for ETA OICs, offered this guidance for BMF OICs in 2013:

When compromising based on IRM 5.8.11.2.2.1 paragraphs 4, 5, and 8, in business cases in particular, the Service must be cautious to avoid providing financial advantages through the forgiveness of tax debt. This may create the appearance that the delinquent business has been able to profit from its failure to pay, giving it a competitive advantage over other, fully compliant businesses. For this reason, the Service will generally insist that a compromise with an operating business provide for payment of the full amount of tax, exclusive of interest and penalties.<sup>35</sup>

The current IRM section does not include this language. Instead, it says:

the offer amount should be for an amount deemed reasonable based on the specific facts of the case, generally the Service will insist that a compromise with an operating business provide for payment of the full amount of the remaining tax balance, exclusive of interest and penalties. If the taxpayer is an operating business impacted by the fraudulent act of a PSP [payroll service provider], the full amount of the remaining tax balance, exclusive of interest and penalties, may not be required based on the taxpayer's situation.<sup>36</sup>

Considering the recent, slight improvements in the BMF OIC acceptance rate, TAS Research studied the impact of the OIC program on subsequent compliance of BMF taxpayers. When the IRS rejects an OIC, the IRS must continue to devote additional resources to collect these liabilities, while missing a significant opportunity to change taxpayer behavior toward ongoing voluntary filing and payment compliance. This study will look at how the IRS uses the OIC program and ways in which it can be improved for the benefit of taxpayers and the IRS alike.

## OBJECTIVES

- Quantify the number of BMF taxpayers who have submitted multiple OICs within 180 days (churning);
- Determine the collection and filing status of the BMF returns with an OIC;
- Determine how much revenue collection potential is lost by not accepting OICs (*i.e.*, what revenue is collected versus what is offered for those returned or rejected OICs while also considering the RCP as determined by the IRS).
- Compare the OIC acceptance rates at the two centralized OIC processing sites, Memphis and Brookhaven, to identify any variations.

<sup>35</sup> IRM 5.8.11.4.3(2)(c) (Sept. 23, 2008).

<sup>36</sup> IRM 5.8.11.4.3(2)(c) (Aug. 5, 2015).

## METHODOLOGY

This study includes all three types of OICs submitted by different types of BMF taxpayers. To begin the OIC process, a taxpayer submits Form 656, *Offer in Compromise*, with the required financial documentation and user fee. TAS Research analyzed the accounts of BMF taxpayers who submitted an OIC from 2007 to 2017 to the IRS.<sup>37</sup>

To determine the entity type in the population of OIC BMF returns, TAS research obtained the Master File Transcript (MFT) Code of the return and treated them as follows:

- MFT Code = 6: Partnership;
- MFT Code = 2: Corporation;
- Sole Proprietorship if the taxpayer identification number (TIN) of the business matched the employer identification number (EIN) of the Schedule C; and
- Other: any remaining after the above identifications were treated as missing and analyses of the Form 941s were done separately.

To complete these objectives, TAS Research had to obtain the MFT Code of the return and assign the appropriate entity types as they matched. To begin, TAS Research selected those with MFT Code 6 to select the partnerships, and those with MFT Code 2 to select the corporations. Those that were remaining were matched to the EIN of Schedule C, *Profit or Loss From Business (Sole Proprietorship)*, from Form 1040 returns to determine which ones were sole proprietors. The results are as follows:

**FIGURE 5.6, Type and Number of Each Business Entity Studied**

Type of Business Entity	Number of Taxpayers
Partnerships <sup>a</sup>	4,283
Corporations	20,963
Schedule C Sole Proprietors	12,009
Unknown <sup>b</sup>	7,965
<b>Total</b>	<b>45,220</b>

a Some entities filed both partnership and corporate income tax returns at various times but were considered as corporations for our analysis. An additional 1,789 taxpayers had an identified entity type such as a not-for-profit organization, or trust, or estate.

b Many of these unidentified taxpayers were identified as sole proprietorships based on the employer identification number (EIN) reported on schedule C; however, in many instances more than one taxpayer reported the same EIN on his or her Schedule C. If this situation occurred, these taxpayers were considered as unidentified.

37 "BMF taxpayer" is defined as a taxpayer who filed a Form 941, *Employer's Quarterly Federal Tax Return*, and then either a Form 1065, *U.S. Return of Partnership Income*, Form 1120, *U.S. Corporation Income Tax Return*, Form 1120S, *U.S. Income Tax Return for S Corporation*, or a Schedule C, *Profit or Loss From Business (Sole Proprietorship)*.

To determine if the taxpayer submitted churning OICs, TAS Research selected all OICs closed as either rejected,<sup>38</sup> withdrawn/terminated,<sup>39</sup> or returned as not processable.<sup>40</sup> The IRS defines “churning” as a new OIC submitted within 180 days after one of the previously indicated OIC disposition types.<sup>41</sup> TAS Research also identified taxpayers that had an OIC accepted by the IRS to distinguish them from taxpayers whose OIC was returned or rejected.<sup>42</sup>

To determine the payment and filing status of the subsequent BMF returns with an OIC, TAS Research obtained the status codes of the modules for returns due for both five years and up to ten years after the year in which the offer was submitted.<sup>43</sup> TAS Research detected if any payment delinquency was present and if a payment delinquency reached TDA status.<sup>44</sup> TAS Research also completed an analysis of filing and payment compliance for only those entities who remained in business after the IRS either accepted or did not accept the OIC.

TAS Research requested and obtained from the IRS a list of BMF taxpayers whose OICs were returned or rejected by the IRS from 2009 through 2013, the amount of these OICs, and, in the case of rejected OICs, the amount of RCP determined by the IRS.<sup>45</sup> The IRS defines RCP as the amount that can be collected from all available means, including administrative and judicial collection remedies. RCP is generally the sum of taxpayers’ assets, future income for the life of the statutory period for collection, amounts collectible from third parties (*e.g.*, assets involved in a fraudulent conveyance from the taxpayer), and taxpayer assets which are beyond the reach of the government (*e.g.*, taxpayer assets in foreign countries).<sup>46</sup> TAS Research compared the amount subsequently collected from these taxpayers to the amount that was submitted on the rejected OIC, while also considering the RCP calculated by the IRS.<sup>47</sup>

Research used the Transaction Code (TC) 780 to determine if there was an accepted OIC for the taxpayer. An accepted OIC can be identified by a TC 780 posting to the delinquent taxpayer accounts.

To determine which campus processed the offer, Research determined the state where the taxpayer submitted the OIC and then used the following data to determine the campus from the following Collection website:

<http://mysbse.web.irs.gov/collection/toolsprocesses/CaseRes/oic/recordsrequest/16188.aspx>

38 Transaction Code 481.

39 Transaction Code 482.

40 Transaction Code 483.

41 IRS, *IRS Offers in Compromise, An Analysis of Various Aspects of the OIC Program 2* (Sept. 2004).

42 Transaction code 780.

43 Data is from the BMF on the IRS CDW. TAS analyzed the BMF tax returns due for the entity in the years following the year in which the IRS accepted the OIC.

44 Any tax return with a status greater than 12 indicates that the return has been in balance due status. In addition, a status of 22, 24, or 26 indicates a TDA. A TDA occurs when a taxpayer has a balance due. 5.19.22.2.1, *BMF Return Delinquency Overview* (July 7, 2016). In particular, it occurs after the final collection notice is issued. IRS, Document 6209, Section 8A, *Master File Codes* (2018).

45 This study includes an examination of all rejected or returned OICs, and whether the OIC was submitted based on doubt as to collectability, doubt as to liability, or effective tax administration. However, the IRS generally only computes reasonable collection potential (RCP) for rejected OICs.

46 IRM 5.8.4.3.1, *Components of Collectability* (Apr. 30, 2015).

47 The amount offered was obtained from an extract provided by the IRS from its Automated OIC System. Subsequent payments are captured by the IRS as Transaction Code 670. For rejected OICs, the TC 670 date was used only if it was after the date of the first TC 480 (when a processable OIC is submitted). We also examined the presence of any taxpayer refunds offset against the liability after rejection.

**Memphis** – Business is in the following states:

Alabama, Arkansas, Florida, Georgia, Hawaii, Idaho, Kentucky, Louisiana, Mississippi, North Carolina, New Mexico, Nevada, Oklahoma, Oregon, Tennessee, Texas, Washington, Wisconsin

**Brookhaven** – Business is in the following states:

Alaska, Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Pennsylvania, Rhode Island, South Carolina, South Dakota, Utah, Vermont, Virginia, West Virginia, Wyoming, Puerto Rico or has a foreign address

**FINDINGS****Since 2007, quantify the number of business taxpayers who have submitted multiple OICs within 180 days (also known as churning)**

TAS Research used the Compliance Data Warehouse to select the population of BMF taxpayers that submitted an OIC between 2007 and 2017.<sup>48</sup> This analysis resulted in the detection 47,004 unique BMF taxpayers who submitted an OIC for approximately 390,000 modules.<sup>49</sup>

Churned OICs are ones in which the taxpayer makes multiple OIC submissions within a 180-day period. There are many reasons why an OIC may need to be perfected. For instance, the IRS may return a taxpayer's OIC as not processable when the taxpayer does not submit the required user fee or Tax Increase and Prevention Reconciliation Act (TIPRA) payment, or when the taxpayer is not in filing compliance.<sup>50</sup> The change in processability for OICs submitted by taxpayers who are not in filing compliance is a relatively new change in procedure.<sup>51</sup> Prior to this change, if the IRS determined that a taxpayer was not in filing compliance, the IRS would process the OIC and contact the taxpayer to discuss any late tax returns and allow the taxpayer time to file them within a specified period of time.<sup>52</sup> Also, generally the IRS will reject the OIC if it determines that the amount offered is not sufficient based on its calculation of the RCP.<sup>53</sup>

To determine if the taxpayers submitted churned OICs, TAS Research calculated the date from when an OIC was rejected/returned/terminated to when a second OIC was submitted. If the amount of time was less than six months, the subsequent OIC was counted as a churned OIC. Overall, approximately

48 IRS, CDW, BMF Dec. 2017. Transaction Code 480 dated after 2007.

49 Modules refer to a tax form (indicated by a MFT Code) and a period associated with that tax form. For example, a taxpayer may submit an offer for each quarter of their 2010 Form 941, *Employer's Quarterly Federal Tax Return Liabilities*. As discussed in this section, many taxpayers will submit multiple OICs for the same liabilities.

50 IRM 5.8.2.4.1, *Determining Processability* (May 25, 2018), contains a complete list of reasons causing the IRS to deem an OIC as not processable.

51 Memorandum from Director, Collection Policy to Director, Specialty Collection, Liens & Advisory (Apr. 13, 2016) (on file with TAS). For more information on this topic, see National Taxpayer Advocate 2017 Annual Report to Congress, vol. 2 42-60; National Taxpayer Advocate 2014 Annual Report to Congress 218-224; National Taxpayer Advocate 2009 Annual Report to Congress 196-212; *The National Taxpayer Advocate's 2014 Annual Report To Congress: Hearing Before the H. Subcomm. On Govt. Operations of the H. Comm. On Oversight And Government Reform*, 114th Cong. 23 (Apr. 15, 2015) (statement of Nina E. Olson, National Taxpayer Advocate).

52 IRM 5.8.3.6(1), *Perfecting Field Cases* (July 28, 2015); IRM 5.8.3.7(1), *Perfecting COIC Cases* (Dec. 7, 2015).

53 IRM Exhibit 5.8.1-1, *Common Abbreviations Used in the IRM* (May 5, 2017). See also *Policy Changes Made by the IRS to the Offer in Compromise Program Makes It More Difficult for Taxpayers to Submit Acceptable Offers*, *supra*.

6.6 percent of taxpayers submitted churned OICs on BMF tax liabilities. The churning rate for BMF taxpayers is slightly lower than the churning rate of about ten percent of IMF taxpayers.<sup>54</sup> This analysis suggests that most BMF taxpayers do not submit OICs merely to delay collection.

**FIGURE 5.7, Churning Counts and Acceptance Rates for All Churned BMF OICs**

Year of first TC 480	Count	Number of Taxpayers Who Churned	Percent of Taxpayers Who Churned	Count of Taxpayers Who Churned With Accepted OIC	Percent of Taxpayers Who Churned With Accepted OIC
2007	5,313	381	7.2%	130	34.1%
2008	4,474	305	6.8%	92	30.2%
2009	3,698	221	6.0%	70	31.7%
2010	4,741	304	6.4%	123	40.5%
2011	4,665	392	8.4%	171	43.6%
2012	4,693	312	6.6%	124	39.7%
2013	4,828	331	6.9%	145	43.8%
2014	4,513	351	7.8%	121	34.5%
2015	4,032	217	5.4%	79	36.4%
2016	3,221	114	3.5%	28	24.6%
<b>Total <sup>a</sup></b>	<b>44,178</b>	<b>2,928</b>	<b>6.6%</b>	<b>1,083</b>	<b>37.0%</b>

a Businesses submitted 2,826 OIC in 2017; however, when TAS Research extracted the data for this study in early 2018, sufficient time had not elapsed to determine the churning rate. We have been unable to determine why both the number of OICs submitted and the acceptance rate of churned OICs decreased beginning in 2016; however, this decrease could be occurring because of the IRS's decision to no longer consider OICs from taxpayers with return delinquencies as processable.

Furthermore, about 37 percent of taxpayers who had a churned OIC ultimately had an accepted OIC. While the IRS certainly has reason to reject or return some OICs, the data indicate that many taxpayers with rejected or returned OICs are trying to resolve their tax delinquencies with a perfected OIC. In addition, this data indicates it may take some taxpayers multiple attempts to perfect their OICs.

When the IRS returns or rejects an OIC and the taxpayer subsequently submits a new OIC, the IRS expends additional resources by reworking the OIC. Moreover, taxpayers may become deterred or prevented from submitting another OIC, which could negatively impact future voluntary filing and payment compliance, as discussed below. For instance, a taxpayer may borrow money from a friend or family member to finance the filing fee and initial payment, a source of income the IRS normally would not have access to, only to have the OIC returned and the initial payment kept by the IRS. A taxpayer in this situation may be unable to submit a second, perfected OIC.

Figures 5.8 through 5.11 explore the number of taxpayers who had churned OICs and if these taxpayers ultimately received an accepted OIC, according to their business entity type (partnership, corporation, or sole proprietorship).

54 National Taxpayer Advocate 2017 Annual Report to Congress vol. 2 52.

**FIGURE 5.8, Churn and Acceptance Rates by Entity Type Between 2007 and 2016**<sup>55</sup>

	% Partnership Churn	% Partnership Churn with Acceptance Rate	% Corp Churn	% Corp Churn with Acceptance Rate	% Sole Prop. Churn	% Sole Prop Churn with Acceptance Rate
2007	13.07%	26.53%	10.40%	22.93%	12.38%	36.32%
2008	10.96%	24.39%	11.06%	16.75%	13.13%	31.21%
2009	10.90%	14.29%	9.89%	19.14%	12.03%	43.48%
2010	12.64%	30.36%	10.44%	27.78%	14.00%	46.24%
2011	12.16%	33.96%	12.17%	30.65%	14.35%	47.37%
2012	11.53%	23.08%	13.07%	23.34%	11.44%	57.60%
2013	11.85%	38.60%	12.27%	27.15%	11.46%	62.40%
2014	13.03%	29.31%	15.26%	24.15%	11.43%	46.67%
2015	9.21%	28.57%	9.74%	20.00%	10.07%	38.38%
2016	7.36%	18.18%	6.71%	9.52%	6.61%	14.29%
<b>Total</b>	<b>11.44%</b>	<b>27.95%</b>	<b>11.30%</b>	<b>23.36%</b>	<b>11.98%</b>	<b>43.54%</b>

**FIGURE 5.9, Churning Counts and Acceptance Rates for All Churned Partnership OICs**<sup>56</sup>

Year of first TC 480	Count	Number of Taxpayers Who Churned	Percent of Taxpayers Who Churned	Count of Taxpayers Who Churned with Accepted OIC	Percent of Taxpayers Who Churned with Accepted OIC
2007	375	49	13.07%	13	26.53%
2008	374	41	10.96%	10	24.39%
2009	321	35	10.90%	5	14.29%
2010	443	56	12.64%	17	30.36%
2011	436	53	12.16%	18	33.96%
2012	451	52	11.53%	12	23.08%
2013	481	57	11.85%	22	38.60%
2014	445	58	13.03%	17	29.31%
2015	380	35	9.21%	10	28.57%
2016	299	22	7.36%	4	18.18%
<b>Total</b>	<b>4,005</b>	<b>458</b>	<b>11.44%</b>	<b>128</b>	<b>27.95%</b>

The IRS accepted about 28 percent of OICs from partnerships with churned OICs during the years 2007 through 2016. The percent of partnerships with churning OICs is approximately 11 percent, which is similar to the overall rate for all the BMF OICs. Figure 5.10 depicts the prevalence of churning and subsequent acceptance in OICs submitted by corporations.

<sup>55</sup> IRS, CDW BMF Dec. 2017.

<sup>56</sup> *Id.*

**FIGURE 5.10, Churning Counts and Acceptance Rates for All Churned Corporation OICs<sup>57</sup>**

Year of first TC 480	Count	Number of Taxpayers Who Churned	Percent of Taxpayers Who Churned	Count of Taxpayers Who Churned with Accepted OIC	Percent of Taxpayers Who Churned with Accepted OIC
2007	1,972	205	10.40%	47	22.93%
2008	1,727	191	11.06%	32	16.75%
2009	1,638	162	9.89%	31	19.14%
2010	2,068	216	10.44%	60	27.78%
2011	2,038	248	12.17%	76	30.65%
2012	2,196	287	13.07%	67	23.34%
2013	2,372	291	12.27%	79	27.15%
2014	2,116	323	15.26%	78	24.15%
2015	1,899	185	9.74%	37	20.00%
2016	1,564	105	6.71%	10	9.52%
<b>Total</b>	<b>19,590</b>	<b>2,213</b>	<b>11.30%</b>	<b>517</b>	<b>23.36%</b>

The percent of corporations with churning OICs is approximately 11 percent, which is similar to the overall percent for all the business entities. However, only 23 percent of these churned OICs were ultimately accepted, which is the lowest rate for the most common three business entities. Figure 5.11 examines the churning of OICs submitted by sole proprietorships.

**FIGURE 5.11, Churning Counts and Acceptance Rates for All Churned Sole Proprietorship OICs<sup>58</sup>**

Year of first TC 480	Count	Number of Taxpayers Who Churned	Percent of Taxpayers Who Churned	Count of Taxpayers Who Churned with Accepted OIC	Percent of Taxpayers Who Churned with Accepted OIC
2007	1,713	212	12.38%	77	36.32%
2008	1,318	173	13.13%	54	31.21%
2009	956	115	12.03%	50	43.48%
2010	1,236	173	14.00%	80	46.24%
2011	1,192	171	14.35%	81	47.37%
2012	1,093	125	11.44%	72	57.60%
2013	1,091	125	11.46%	78	62.40%
2014	1,050	120	11.43%	56	46.67%
2015	983	99	10.07%	38	38.38%
2016	741	49	6.61%	7	14.29%
<b>Total</b>	<b>11,373</b>	<b>1,362</b>	<b>11.98%</b>	<b>593</b>	<b>43.54%</b>

<sup>57</sup> IRS, CDW BMF Dec. 2017.

<sup>58</sup> *Id.*

Again, the percent churning is approximately 12 percent which is about what the overall percent is for all the BMF entities. However, the acceptance rate of sole proprietors with churned OICs is almost 44 percent, which is much higher than the acceptance rate for other business entity types with churned OICs.

### Determine the collection and filing status of the BMF returns with an accepted OIC

Figure 5.12 provides a comparison of the subsequent compliance for those taxpayers whose OICs the IRS did or did not accept. These include all returns filed by the business, not just delinquent income tax returns. TAS Research explored four different measures of subsequent compliance:

- The presence of a TDA;<sup>59</sup>
- The presence of a TDI;<sup>60</sup>
- The presence of a balance due (not arising to the level of a TDA); and
- The presence of an unfiled return (not arising to the level of a TDI).

**FIGURE 5.12, Filing and Payment Compliance Five and Ten Years or More After OIC Was Submitted<sup>61</sup>**

Measure/Result	OIC Not Accepted			OIC Accepted		
	Count	Non-compliant	Percent Non-Compliant	Count	Non-compliant	Percent Non-Compliant
TDA During Five Years After OIC Acceptance	33,961	5,184	15.3%	13,043	893	6.8%
TDI During Five Years After OIC Acceptance	33,961	2,883	8.5%	13,043	417	3.2%
TDA During All Years After OIC Acceptance	33,961	2,645	7.8%	13,043	359	2.8%
TDI During All Years After OIC Acceptance	33,961	2,212	6.5%	13,043	274	2.1%
Balance Due During Five Years After OIC Acceptance	33,961	8,480	25.0%	13,043	2,203	16.9%
Balance Due During All Years After OIC Acceptance	33,961	4,034	11.9%	13,043	769	5.9%
Unfiled Return During Five Years After OIC Acceptance	33,961	6,073	17.9%	13,043	1,146	8.8%
Unfiled Return During All Years After OIC Acceptance	33,961	3,751	11.0%	13,043	579	4.4%

59 A TDA occurs when a taxpayer has a balance due. IRM 5.19.22.2.1, *BMF Return Delinquency Overview* (July 7, 2016). In particular, it occurs after the final collection notice is issued. IRS, Document 6209, Section 8A, *Master File Codes* (2018).

60 A TDI is part of the Return Delinquency (RD) Program, which works responses to notices that are issued to taxpayers that have been identified as liable to file and have not filed a tax return by the RD. IRM 5.19.22.2, *What Is The BMF Return Delinquency Program?* (Jan. 2, 2015).

61 IRS, CDW, BMF Sept. 2018.



TAS Research examined the four measures for two different time periods: the first five years after the year in which the IRS accepted the OIC, and for all years after the year in which the IRS accepted the OIC.<sup>62</sup> The results indicate that BMF taxpayers with accepted OICs are significantly more compliant when considering the measures above. *The noncompliance rate of taxpayers with an accepted OIC is generally less than half of the noncompliance rate for businesses unable to obtain an accepted OIC. For example, only 6.8 percent of businesses with an accepted OIC have a TDA within the five years after the OIC acceptance, compared to 15.3 percent of businesses whose OIC the IRS did not accept. Similarly, only 3.2 percent of businesses where the IRS accepted an OIC had a TDI within five years after the acceptance of their OIC, compared to 8.5 percent of taxpayers whose OIC the IRS did not accept. The differences in TDA and TDI compliance rates beyond five years after the OIC acceptance or rejection show an even wider disparity, with those businesses with accepted OICs having a significantly better level of both filing and payment compliance.*

### When Businesses That Stay in Operation Are Considered, Results Are Even Stronger

Businesses often submit OICs after they have decided to end their operation. Therefore, TAS Research examined which businesses continued their operations by determining which businesses continued to file subsequent returns (or have a requirement to file) after the IRS accepted or rejected their OIC. Figure 5.13 duplicates Figure 5.12, but only for those taxpayers continuing to have tax due returns (even if the tax due was timely filed and paid). The data shows that in all but one category (having a TDI more than five years out), BMF taxpayers with an accepted OIC were much more likely to be compliant than BMF taxpayers without an accepted OIC. Even so, the group having a TDI more than five years out still had better compliance when an OIC was accepted (an approximately 94 percent compliance rate for BMF taxpayers with an accepted OIC compared to 86 percent compliance rate for BMF taxpayers without an accepted OIC).

When it comes to payment compliance, BMF taxpayers with an accepted OIC had an approximately 44 percent compliance rate during the five years after OIC acceptance. This compares to a nearly 32 percent compliance rate for BMF taxpayers without an accepted OIC. Perhaps one way to improve the compliance rate for BMF taxpayers with an accepted OIC even more is to send reminders in the beginning of the year to adjust withholdings and make estimated payments.

62 The terms of an OIC allow the IRS to default an accepted OIC when the taxpayer accrues additional liabilities or fails to file within five years after the IRS accepts the OIC.

**FIGURE 5.13, Filing and Payment Compliance Five and Ten Years or More After OIC Was Submitted for Only In-Business Taxpayers<sup>63</sup>**

Measure/Result	OIC Not Accepted <sup>a</sup>			OIC Accepted		
	Count	Non-compliant	Percent Non-Compliant	Count	Non-compliant	Percent Non-Compliant
TDA During Five Years After OIC Acceptance	12,475	5,184	41.56%	3,950	893	22.61%
TDI During Five Years After OIC Acceptance	12,475	2,352	18.85%	3,950	379	9.59%
TDA During All Years After OIC Acceptance	12,475	2,645	21.20%	3,950	359	9.09%
TDI During All Years After OIC Acceptance	12,475	1,761	14.12%	3,950	245	6.20%
Balance Due During Five Years After OIC Acceptance	12,475	8,480	67.98%	3,950	2,203	55.77%
Balance Due During All Years After OIC Acceptance	12,475	4,034	32.34%	3,950	769	19.47%
Unfiled Return During Five Years After OIC Acceptance	12,475	5,177	41.50%	3,950	1,044	26.43%
Unfiled Return During All Years After OIC Acceptance	12,475	3,088	24.75%	3,950	518	13.11%

a To determine the year of business, research used either the last year of an accepted OIC or the last year of a rejected OIC. Research excluded any offer that is still open or that was accepted or rejected in 2017.

### Determine How Much Revenue Collection Potential Is Lost By Not Accepting OICs

Figures 5.14 through 5.17 show that in a majority of the cases, the IRS's analysis works as it should with rejected and returned OICs because the amount offered is often less than what was ultimately collected by about twice as much. However, when further analysis is done, *TAS Research also determined that almost 40 percent of rejected OICs were for more than was ultimately collected.* Specifically, in these instances, the amount offered was nearly three times the amount actually collected, as shown in Figure 5.14. Figures 5.15 through 5.17 compare the amount offered and the amount collected for partnerships, corporations, and sole-proprietorships, respectively. By rejecting these OICs, the IRS not only loses an opportunity to collect revenue, but it misses out on the improved compliance effect that comes with accepted OICs.

63 IRS, CDW, BMF 2007–2017 Sept. 2018.

**FIGURE 5.14, Amounts Offered and Collected for All Returned or Rejected BMF OICs Compared to Returned or Rejected OICs Where the OIC Amount Was Greater Than Payment<sup>64</sup>**

	ALL Returned/Rejected OICs			
	Count	Mean	Median	Total
Offered	7,295	\$29,447	\$6,000	\$214,817,800
Collected	6,317	\$44,849	\$9,020	\$283,311,550
	All Returned/Rejected OICs with Offer > Payment			
	Count	Mean	Median	Total
Offered	2,828	\$45,044	\$10,000	\$127,384,853
Collected	2,828	\$12,846	\$1,554	\$36,328,386

**FIGURE 5.15, Amounts Offered and Collected for All Returned or Rejected Partnership OICs Compared to Returned or Rejected Partnership OICs Where the OIC Amount Was Greater Than Payment<sup>65</sup>**

	ALL Returned/Rejected Partnership OICs			
	Count	Mean	Median	Total
Offered	878	\$35,625	\$5,000	\$31,279,406
Collected	709	\$34,655	\$7,120	\$24,570,594
	All Returned/Rejected OICs with Offer > Payment			
	Count	Mean	Median	Total
Offered	326	\$71,639	\$10,000	\$23,354,468
Collected	326	\$7,398	\$1,278	\$2,411,678

64 IRS Automated OIC System Aug. 2017; IRS CDW BMF Sept. 2018. Some additional amounts may have been collected from Trust Fund Recovery Penalty assessments against individuals of corporations determined responsible for collecting trust fund taxes.

65 IRS Automated OIC System Aug. 2017; IRS CDW BMF Sept. 2018.

**FIGURE 5.16, Amounts Offered and Collected for All Returned or Rejected Corporation OICs Compared to Returned or Rejected Corporation OICs Where the OIC Amount Was Greater Than Payment<sup>66</sup>**

	ALL Returned/Rejected Corporation OICs			
	Count	Mean	Median	Total
Offered	4,347	\$34,695	\$48,000	\$150,818,185
Collected	3,816	\$53,990	\$11,084	\$206,024,907
	Returned/Rejected Corporation OICs with Offer > Payment			
	Count	Mean	Median	Total
Offered	1,766	\$49,920	\$12,000	\$88,159,029
Collected	1,766	\$16,189	\$1,766	\$28,589,014

**FIGURE 5.17, Amounts Offered and Collected for All Returned or Rejected Sole Proprietor OICs Compared to Returned or Rejected Sole Proprietor OICs Where the OIC Amount Was Greater Than Payment<sup>67</sup>**

	ALL Returned/Rejected Sole Proprietor OICs			
	Count	Mean	Median	Total
Offered	1,061	\$13,043	\$4,000	\$13,838,242
Collected	921	\$21,010	\$6,000	\$19,350,635
	Returned/Rejected Sole Proprietor OICs with OIC > Payment			
	Count	Mean	Median	Total
Offered	394	\$19,154	\$7,284	\$7,546,841
Collected	394	\$5,834	\$1,103	\$2,298,464

Regardless of entity type, Figures 5.14 through 5.17 show that, overall, the IRS collected more than was offered. However, for nearly 39 percent of the cases, the OIC amount was much more than what the IRS ultimately collected. On average, among these cases, the amount offered was more than three times what was collected in the subsequent years. For partnerships, the amount offered was nearly *ten* times the amount actually collected. When considering the nearly four in ten OICs where the amount offered was greater than the amount collected, the median amount offered was more than six times the median amount collected.

66 IRS Automated OIC System Aug. 2017; IRS CDW BMF Sept. 2018.

67 *Id.*

When the IRS rejects an OIC, as opposed to returning it as not processable, the IRS computes a specific dollar amount it believes is the RCP. TAS Research also looked at the RCP for the BMF OICs that were rejected. Figures 5.18 through 5.25 show the amount offered compared to the amounts subsequently collected and the RCP for rejected OICs. The data is then broken down by business entity type.

**FIGURE 5.18, All Offered, Collected, and RCP Amounts with Rejected OICs**<sup>68</sup>

	All Rejected OICs with RCP			
	Count	Mean	Median	Total
Offered	2,775	\$28,754	\$7,152	\$79,793,191
Collected	2,487	\$49,030	\$11,436	\$121,936,743
RCP	2,775	\$403,127	\$113,066	\$1,118,678,499

The above table shows that the percent that was offered was approximately seven percent of the RCP, in addition, what was ultimately collected was about 10 percent of the RCP. Again, the table below shows the percentage of the offered amount and collected amount to the RCP is insignificant (12 percent and five percent respectively). Of the 2,775 rejected partnership OICs, 1,038 (or approximately 37 percent) had an OIC greater than the subsequent payments.

**FIGURE 5.19, All Offered, Collected, and RCP Amounts With Rejected OICs – When the OIC Amount Is Greater Than Subsequent Payments Collected**<sup>69</sup>

	All Rejected OICs			
	Count	Mean	Median	Total
Offered	1,038	\$40,576	\$10,563	\$42,117,880
Collected	1,038	\$15,495	\$1,959	\$16,083,995
RCP	1,038	\$331,507	\$128,796	\$344,104,001

Overall, Figures 5.18 through 5.25 show that the RCP for the entities in this population is significantly overestimated. *In fact, depending on business entity type, the RCP is about seven to ten times greater than the amount offered and 20 to 30 times what has been collected subsequently.* In addition to the impact on revenue collection, inflating the RCP may discourage OIC submissions, with the concurrent impact on subsequent compliance.

68 IRS Automated OIC System Aug. 2017; IRS CDW BMF Sept. 2018.

69 *Id.*

**FIGURE 5.20, Offered, Collected, and RCP Amounts for Partnerships With Rejected OICs**<sup>70</sup>

	Rejected Partnership OICs			
	Count	Mean	Median	Total
Offered	292	\$20,459	\$5,921	\$5,974,098
Collected	248	\$34,573	\$9,231	\$8,574,124
RCP	292	\$215,159	\$97,551	\$62,826,537

**FIGURE 5.21, Offered, Collected, and RCP Amounts for Partnerships With Rejected OICs When the OIC Is Greater Than Subsequent Payments Collected**<sup>71</sup>

	Rejected Partnership OICs			
	Count	Mean	Median	Total
Offered	107	\$28,882	\$10,000	\$3,090,341
Collected	107	\$7,787	\$1,550	\$833,183
RCP	107	\$210,744	\$109,774	\$22,549,598

**FIGURE 5.22, Offered, Collected, and RCP Amounts for Corporations With Rejected OICs**<sup>72</sup>

	Rejected Corporation OICs			
	Count	Mean	Median	Total
Offered	1,588	\$37,305	\$10,000	\$59,239,821
Collected	1,437	\$62,258	\$15,192	\$89,465,223
RCP	1,588	\$496,646	\$141,478	\$788,673,719

<sup>70</sup> IRS Automated OIC System Aug. 2017; IRS CDW BMF Sept. 2018.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

**FIGURE 5.23, Offered, Collected, and RCP Amounts for Corporations With Rejected OICs When the OIC Is Greater Than Subsequent Payments Collected<sup>73</sup>**

	Rejected Corporation OICs			
	Count	Mean	Median	Total
Offered	617	\$53,911	\$14,091	\$33,263,376
Collected	617	\$21,066	\$2,571	\$12,997,627
RCP	617	\$414,590	\$154,839	\$255,802,007

**FIGURE 5.24, Offered, Collected, and RCP Amounts for Sole Proprietorships With Rejected OICs<sup>74</sup>**

	Rejected Sole Proprietor OICs			
	Count	Mean	Median	Total
Offered	483	\$12,901	\$4,050	\$6,230,942
Collected	441	\$22,401	\$7,362	\$9,878,670
RCP	483	\$185,772	\$83,450	\$89,727,724

**FIGURE 5.25, Offered, Collected, and RCP Amounts for Sole Proprietorships With Rejected OICs When the OIC Is Greater Than Subsequent Payments Collected<sup>75</sup>**

	Rejected Sole Proprietor OICs			
	Count	Mean	Median	Total
Offered	178	\$16,345	\$6,450	\$2,909,466
Collected	178	\$5,794	\$1,000	\$1,031,330
RCP	178	\$171,005	\$87,789	\$30,438,947

### Determine the campus that processed the OICs and accepted the OICs

Several Low Income Taxpayer Clinics and other stakeholders have expressed concerns to the National Taxpayer Advocate that OICs are not worked consistently between the two campuses, Memphis and Brookhaven, which process the initial offer.<sup>76</sup>

<sup>73</sup> IRS Automated OIC System Aug. 2017; IRS CDW BMF Sept. 2018.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> Low Income Taxpayer Clinics (LITCs) assist low income individuals who have a tax dispute with the IRS, and provide education and outreach to individuals who speak English as a second language (ESL). TAS, *Low Income Taxpayer Clinics*, <https://taxpayeradvocate.irs.gov/about/litc>. See IRC § 7526.

**FIGURE 5.26, OIC Acceptance Rates by Campus Processing OIC<sup>77</sup>**

Year	Business OICs Processed by Memphis	Percentage of OICs Accepted	Business OICs Processed by Brookhaven	Percentage of OICs Accepted
2007	2,007	23.9%	3,301	25.2%
2008	1,659	18.7%	2,812	20.0%
2009	1,446	23.4%	2,249	25.3%
2010	1,812	26.3%	2,928	25.8%
2011	1,774	29.2%	2,889	32.4%
2012	1,885	30.9%	2,803	34.4%
2013	1,853	30.2%	2,972	33.1%
2014	1,716	32.2%	2,796	35.5%
2015	1,409	32.4%	2,619	35.5%
2016	1,184	27.5%	2,035	31.9%
2017	989	8.4%	1,835	9.5%

Although, overall, for the past 11 years, the difference in the acceptance rates of business offers is only about two percent. The difference between the business OIC acceptance rates widened from 2011 to 2016, with Brookhaven's business OIC acceptance rate being 4.4 percentage points higher than OICs processed at the Memphis site in 2016. The difference between the OIC acceptance rates has come down to a much smaller difference in 2017. Currently, we do not see a significant difference in OIC processing between the two sites.

## CONCLUSIONS

OICs benefit both the IRS and the taxpayer. The IRS collects as much as it can, based on the taxpayer's reasonable collection potential, conditioned on the taxpayer remaining in compliance. The taxpayer is able to move on with a "fresh start." This is particularly important to BMF taxpayers who do not have access to the full array of collection alternatives available to IMF taxpayers. TAS research shows that accepting an OIC positively impacts future filing and payment compliance for BMF taxpayers. However, in over a third of rejected OICs, our research shows that the IRS overinflated the RCP, leading to a rejected OIC.

When read in conjunction with the National Taxpayer Advocate's IMF OIC study from last year, TAS Research has shown that the OIC program is an important tool for revenue collection, taxpayer health and welfare, and continued compliance.

- Overall, since 2007, the percentage of BMF taxpayers who have submitted an OIC, and subsequently churn, is approximately seven percent. The IRS accepted the OICs of over a third of those taxpayers with churned OICs, suggesting that taxpayers are often trying to submit successful OICs and the IRS could save resources by working with these taxpayers to perfect OICs rather than returning them.

<sup>77</sup> IRS, CDW BMF Dec. 2017. Decisions may not have been made on 2017 OICs when the data for this report was pulled in 2018.



- BMF taxpayers with accepted OICs have a higher rate of remaining in filing and payment compliance for the five years after the IRS accepts the OIC than compared to BMF taxpayers whose OICs were not accepted. Taxpayers with accepted OICs have even better compliance beyond five years when compared to businesses who had their OICs returned or rejected. When considering only those taxpayers who continued to operate, the difference in subsequent filing and payment compliance rates were more pronounced in favor of those businesses having an accepted OIC. For instance, filing compliance for all years after OIC acceptance is about 12 percentage points higher for a BMF taxpayer continuing to operate with an accepted OIC than for a BMF taxpayer with a rejected OIC.
- The IRS often overestimates the business taxpayer's RCP. In fact, the RCP is overestimated by about eight times what was offered and about 20 times what was ultimately collected.

## RECOMMENDATIONS

Congress intended for the IRS to take a flexible approach in using the OIC as a collection tool. For businesses, it may be the only viable collection alternative. While the IRS accepts many OICs, the percentage of accepted BMF OICs is less than that of IMF OICs. The IRS also returns or rejects many OICs that could be perfected by working with the taxpayer. And in a substantial number of cases, the IRS rejected an OIC and then failed to collect as much as the taxpayer offered to satisfy the liability. Yet, taxpayers with accepted OICs have better subsequent filing and payment compliance. With these facts in mind, the National Taxpayer Advocate makes the following recommendations:

- The IRS should devote more resources to working with taxpayers to perfect OICs it would otherwise reject or return. Securing acceptable OICs could save the IRS money by preventing resources from being spent collecting the uncompromised delinquency and by obtaining the increased filing and payment compliance that generally accompanies accepted OICs. It also reduces the effort to reopen a case in the case of churned OICs.
- The IRS should study a sample of returned and rejected OICs to determine factors which indicate that the IRS is likely to collect an amount less than what has been offered to compromise the liability. Given the large differential between RCP and the amount offered for some rejected OICs, taxpayers may become discouraged, unable, or unwilling to amend their OICs. As part of this study, the IRS should also determine what factors lead to an inflated RCP so that, in future situations with similar circumstances, the IRS could determine a more realistic amount of RCP, which may result in more accepted OICs.
- The IRS should consider further improving its IRM guidance. For instance, to encourage consideration of specific facts and circumstances for each business, the IRS should eliminate the general assumption that an operating business should provide payment for the full amount of remaining tax and focus on the actual facts and circumstances in which the business operates.

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