Good morning. My name is Ursula K. Wastian. I'm an Appeals team manager from Wisconsin. With me today is my fellow Appeals team manager Philip Oyofo. We're going to take you through a presentation of Appeals: Navigating Collection Cases through the Appeals Process. Collection cases include Collection Due Process and Equivalent Hearings, rejected Offers in Compromise, Trust Fund Recovery Penalty and related claims, and also issues related during a Collection Appeal Program conference involving liens, levies, installment agreements, and third party claims to property.

Appeals is the right place for your client if you received IRS correspondence explaining that you have the right to come to Appeals to dispute an IRS decision and you do not agree with the decision made by the Compliance function. In some limited situations, a verbal statement from an IRS collection employee may extend appeal rights to your client.

Appeals is not the place for you if the correspondence you receive from the IRS was a bill or other information-only statement or document and there was no mention of Appeals, or if the time provided for requesting an appeal has expired. If you don't identify the requirements to appeal or if you don't meet the conditions for coming to Appeals, then I urge you to contact the person you're working with or call the 1-800-829-1040 number or check out IRS.gov website for more information. The Appeals website will provide detailed information on appeal rights and notices that extend an invitation to come to Appeals.

Our mission is to resolve tax controversies without litigation on a basis which is fair and impartial to both the government and the taxpayer in a manner that will enhance voluntary compliance and public confidence in the integrity and efficiency of the Service. A dispute could be about the amount the taxpayer owes, or it could be about how they will pay an outstanding tax liability. Our goal is to be impartial. We try to honor both the government's need for an efficient tax system and the people's right to be treated fairly within the law. Getting to the right answer takes time and resources, and these are limited for you, your clients, and the government. We are, therefore, constantly looking for ways to reduce the length of the appeals process and work more efficiently, thereby reducing your and your taxpayer's burden. We've been doing this for over 88 years.

Appeals’ independence is the cornerstone of the ex parte communication rules. We know it is vital that the taxpayers have full confidence in the independence of the appeals process and the organization. The ex parte communication rules are designed to allow Appeals to independently evaluate the facts and law of each case and to quantify the hazards of litigation based
on that evaluation without undue influence from other parts of the IRS. Shortly after we receive your request to appeal a dispute, we will issue a “Substantive Contact Letter” to both you and your client, letting you know we have your appeal and we have scheduled your conference. This letter will provide the name of the hearing officer assigned to your case, how to contact them, and general information about the appeal process. It will also list any additional information you may need to provide prior to the conference or to qualify for whatever relief or alternative collection consideration you are requesting.

In your protest requesting an appeal, please list all issues with which you disagree and why you disagree, and tell us how you understand the facts and the law. When you come to the conference, please listen to our explanation of your appeal rights and the Appeals process, including the timeframe to resolve your case. Give us any additional information or documentation that will be helpful to your case within the timeframe specified. However, if you present new information that you did not provide to Compliance, then we may return your case or refer that information back to Compliance for further development and consideration.

Appeals does not investigate information nor do we develop a case or an issue. Once Compliance has fully developed the issue, you will receive their comments, and we will provide you with an opportunity to respond further to Appeals.

The Collection Appeals Program (or CAP as it’s commonly referred to) is generally very quick and available for a broad range of collection actions. These actions include proposed or filed liens and levies or seizures, installment agreements that are terminated, rejected, or modified installment agreements, and various third party claims to property. Under CAP, we will also look at denials of lien certificates such as lien discharges, subordinations, or withdrawals. In addition, alter egos and nominees have the right to appeal liens and levies.

Appeals’ review is for the appropriateness of the action proposed or taken based on law, the regulations, policy and procedures after considering all the relevant facts and circumstances. Appeals does not consider alternatives to the issue under appeal, but solely determines the appropriateness of the issue under appeal. Decisions will be limited to sustaining Collection or otherwise directing Collection to take appropriate corrective action. Ideally, a CAP appeal is concluded within five to seven days.

If you are working with a campus location including ACS, then you may make a request for a CAP appeal verbally or you can send in the Form 9423 to request the CAP appeal. If you are working with a field revenue officer, then you must submit a Form 9423 to request a CAP appeal. For all CAP appeal
requests submitted to field officers or offices, except for those involving an installment agreement, you must have a conference with the Compliance manager before they will forward the appeal to our office.

A CDP appeal is available if you've received either a Notice of Federal Tax Lien filing or a Notice of Intent to Levy and Your Right to a Hearing. This also includes a Notice of Jeopardy Levy and Right of Appeal or a Notice of Levy on Your State Income Tax Refund.

Under CDP, Appeals will always verify that legal and procedural requirements have been met, and we will balance the proposed collection action with the legitimate concern of both you and your client of intrusiveness in making our determination. In addition, we will explore collection alternatives or challenges to liability if they are not precluded. During CDP or EH hearings, you may raise almost any issue. However, if there was a prior opportunity to dispute that issue before Appeals, then it may be precluded during the CDP proceeding.

Appeals will not perform investigative actions such as contacting third parties or credit bureaus to verify a financial statement. In addition, Appeals will not make a lien filing determination. Finally, Compliance will make an initial determination on all Offers in Compromise submitted as a collection alternative during a CDP proceeding.

During a timely CDP hearing, the collection statute is suspended and you have the right to petition the United States Tax Court if you disagree with our determination. In addition, Appeals retains jurisdiction over our determination. Although the format and procedures of a CDP and EH (Equivalency Hearing) are identical, the conditions of statute suspension, tax court rights, and retained jurisdiction do not apply to Equivalent Hearings.

If your client’s Offer in Compromise is rejected by Compliance, then you will receive a rejection letter stating why the offer was rejected. The letter offers you an opportunity to come to Appeals. There are no appeal rights if the offer was returned because it was determined to be unprocessable or it was considered to be withdrawn due to the lack of payment compliance.

In your appeal request, specifically identify which items in the reasonable collection potential where you disagree with Compliance's calculation. This can include such things as home equity, bank account values, and the amount of income or a specific expense. In addition, if you believe there are any special circumstances or economic hardship concerns that you want us to consider, then you'll need to discuss these issues in your appeal request.

Appeals will not investigate or continue development of the offer that was rejected by Compliance. Appeals will refer to new financial information
received from the taxpayer and refer it to the Compliance function if investigation of the developed information is necessary. Appeals will not consider any other collection alternative if the offer cannot be accepted. Appeals jurisdiction is limited to the issues raised in the rejection of the Offer in Compromise. Therefore, we will not enter into an installment agreement or report an account currently uncollectible during a rejected Offer in Compromise hearing or appeals proceeding.

Field Collection has sole responsibility to investigate and propose the Trust Fund Recovery Penalty against a potentially responsible individual or entity. They will issue an 1153 letter proposing the assessment and giving your client the right to come to Appeals. You may raise three issues during a Trust Fund Recovery Penalty appeal: responsibility, willfulness, or how the penalty was calculated. Disputes concerning responsibility, willfulness, or other individuals who should have been recommended in your opinion are not open for discussion.

If relevant new information is submitted on your client or potentially responsible party's behalf, that in the judgment of the Appeals hearing officer requires investigative analysis, then Appeals will retain jurisdiction of the case and forward the new information to the Compliance function for further verification.

For proposed Trust Fund Recovery Penalty appeals, the format of the appeal will depend upon the amount of the proposed liability. Similar to income tax protests for small-dollar cases under $25,000, send a letter requesting Appeals consideration and indicate the reason you don't agree with the proposed liability. A formal protest is needed for all other appeal requests. With a formal protest you will need to: list all the changes you do not agree with; state the facts supporting your decision and your position on any issue that you don't agree with; cite the law or authority, if any, on which you are relying; and sign the written protest under penalties of perjury.

Let's move on to the conference. Now that we've discussed the basics of the appeal process for the different collection work streams, we'd like to do a series of very short role-plays for you to illustrate some of the do's and don'ts of submitting appeal requests and for holding conferences. We'll begin with the CAP case and then illustrate a CDP case; and finally, we'll hold a conference on a rejected Offer in Compromise.

So, the story begins with a taxpayer who's a chiropractor, Dr. Johnny “Bones” McCracken. Dr. McCracken operates his practice as a single member LLC. He files a Tax Form 1120S to report his business income and expenses. Initially, Dr. McCracken operated out of a modest storefront and employed a part-time receptionist. Well, as his reputation grew and his practice began to thrive, Dr. McCracken purchased additional equipment and hired additional
staff to open new offices. The doctor soon realized he was better at adjusting spines than he was at adjusting his books, so he hired a business manager to take care of those aspects of his business.

Unfortunately, the doctor had expanded too fast and did not have the cash flow to support all of the expenses that he was incurring. As a result, he got behind on his payroll taxes and stopped filing his personal and business income taxes. I know this sounds familiar to all of you. Ever the optimist, the doctor increased his advertising budget with the hope of bringing in more patients, and he also increased the hours in his offices. He was assuming these measures would cure the problem; unfortunately, they did the opposite.

One day, the doctor received a call from ACS about the delinquent payroll taxes. He was told that a federal tax lien was going to be filed if he did not pay in full within 14 days. A few days later, the doctor was looking on the Internet for a tax advisor to help him out because he had heard he could get good tax help cheap on the Internet. The doctor considered on possibility, OweTax.com, that guaranteed a settlement with the IRS for a significant tax liability reduction. He also considered a representative he had heard about from a friend, an enrolled agent named Max Credit. Although Max had years of experience in the tax field, he was not overly familiar with collection procedures because he worked hard to keep most of his clients out of tax trouble.

The doctor decided to give OweTax.com a try first because it sounded like a great deal. A week later, Maura Money of OweTax.com contacted ACS, and they refused to withhold filing of the federal tax liens because Dr. McCracken was not current with his federal taxes, his deposits, and filing tax returns. Ms. Money requested to speak with the manager who also refused to withhold the filing of the lien. Ms. Money then requested a Collection Appeals Program appeal. The case was created by the ACS employee and was sent along to Appeals.

Two days later, Settlement Officer Strait from a campus Appeals office calls Ms. Money in response to the CAP request.

Mr. Strait: Ms. Money, this is Mr. Strait from the IRS Office of Appeals. I'm calling in response to the Collection Appeal Program request that you submitted about the proposed tax lien filing.

Ms. Money: Thanks for calling. I hope you can help us. Having a tax lien filed against my client would be a disaster.

Mr. Strait: Well, the role of Appeals in the CAP process is to review the appropriateness of the action proposed or taken based on law, regulations, policy, and procedures after considering all of the relevant facts and circumstances. I see
from the file that I reviewed the IRS wants to file the tax lien because the LLC has delinquent employment taxes that it cannot immediately pay, is not making current federal tax deposit, and has unfiled tax returns.

*Ms. Money:* Oh, yeah, I told the doctor to find someone to get those returns done. He told me that he would make the tax deposit as soon as he can. I'm leaving that up to him to take care of. Let's just assume that this all gets done in the next few weeks. Can we put the doctor on an installment agreement? I believe my client has the right to a direct debit installment agreement.

*Mr. Strait:* The purpose of this appeal is to determine whether or not the proposed tax lien filing is appropriate, not to discuss collection alternatives.

*Ms. Money:* All right, how about an Offer in Compromise, then? I can have an offer on your desk in 48 hours.

*Mr. Strait:* Well, an offer is also a collection alternative. Do you have any evidence to present to show that the proposed tax lien file is inappropriate or in violation of law and procedure?

*Ms. Money:* No. But we are willing to accept currently not collectible status to allow the taxpayer time to become current, with no tax lien filed, of course.

*Mr. Strait:* Well, I'm sorry, but the issues you've raised are outside the scope of the CAP appeal.

*Ms. Money:* I believe that the liabilities may be overstated and that my client may have made payments that have not been properly credited. He may need to file an amended return and get copies of records from his bank. Can you delay the lien filing while I investigate these issues?

*Mr. Strait:* Well, the issues you've just raised are appropriate to raise with the Compliance function. At this time, there are valid assessments on the books. Your client is pyramiding additional liabilities, and the government wants to secure its position and its interests, which I find reasonable. I'm going to have to sustain the proposed lien filing.

*Ms. Money:* I understand. Do you think you could abate the penalties and interest to help the taxpayer out before you close the case? It will be much easier for my client to pay if there were no penalties or interest involved. They are really expensive.

*Mr. Strait:* Well, I'm sorry, but I can't address a penalty appeal during a CAP procedure either. I'm sorry. Thank you for your time. I'll be issuing a decision letter shortly.
Ms. Money: Thank you.

Ursula Wastian: So, you probably figured out from this scenario how you should not approach an Appeals case, particularly a CAP case. The representative was disorganized, vague, unprepared, and unknowledgeable. She presented no well-thought-out arguments, no documents to support any position, and presented no meaningful alternative to the tax lien for consideration. Although the outcome of the conference probably would have been the same with any rep because of the facts and circumstances of the case, this rep did little to move the case toward resolution for their client.

The tax liens were filed. Dr. McCracken went about business as usual, hoping that the IRS would just go away or forget about him. Instead, he received a final notice in the mail, which he ignored.

A few months later, his employees started calling him to say that their paychecks were bouncing. The doctor called the bank and was told that a revenue officer had levied the bank account to collect the delinquent employment taxes. The doctor immediately deposited personal funds into the account to honor the paychecks.

In a panic, Dr. McCracken called Max Credit, the enrolled agent. Max had a detailed conversation with the taxpayer, and he recommended that they immediately file a Form 12153 to request a CDP Equivalent Hearing to protect taxpayer's rights going forward. Max then gave the taxpayer a list of things for him to do, including make federal tax deposits. He also gave him a list of information and documents that Max would need, including things needed to get the delinquent returns filed and a financial statement prepared.

Max followed up with the taxpayer to make sure everything was getting done promptly. By the time the day for the doctor’s CDP Equivalent Hearing had arrived, Max was ready. The doctor had been making current tax deposits, the missing tax returns had been prepared, and a completed financial statement with supporting documentation had been e-faxed to the field settlement officer, Mr. Smith. Max had discussed the situation with his client, and they had decided on a strategy.

Mr. Smith: Good morning, Mr. Credit.

Mr. Credit: Good morning.

Mr. Smith: Thank you for sending in the financial statement and the supporting information. I would like to discuss it, but first, has the taxpayer filed those delinquent returns? We can't consider a collection alternative until all the returns are filed.
Mr. Credit: Yes, they were mailed in a few days ago. Here are copies I made for you. Obviously, the 1120S return had no tax due, but as you can see, there were profits to go to the doctor. Now, the doctor owes on each of the related 1040s, which he also filed. We would like to include those balances due as part of the global resolution of the doctor's tax problems.

Mr. Smith: At this point, Appeals only has jurisdiction over the LLC's tax liabilities because only the LLC is eligible for a CDP hearing. You will have to work directly with Compliance regarding the doctor's individual tax liabilities.

Mr. Credit: Well, the doctor has decided that he would like to propose an installment agreement to pay his employment tax liabilities. He is confident that he has straightened out his business problems and will be able to pay $500 a month.

Mr. Smith: Well, before I can respond to this proposal, due to the complexity of your client's financial picture, I'll have to send the financial information to Collection for investigation and comment. As I'm sure you are aware, Appeals does not perform investigative work on cases. After the investigation is done, I will share the results with you and we will start up the CDP hearing again.

Mr. Credit: Thank you for your help.

Ursula Wastian: Well, two months go by, and Mr. Smith receives the results of the Collection investigation, which are forwarded to Max. He and Max negotiate an installment agreement in the amount of $1,000 a month, and the CDP case is closed. Obviously, Max handled the Appeals case much better than Maura Money. He anticipated what was needed, was prepared, and he had a meaningful collection alternative ready to propose.

Unfortunately, a year after going into the installment agreement, Dr. McCracken injured his back shoveling snow, causing him to miss several months of work. During that time the chiropractors that worked for him decided to leave and start their own practices, taking with them patients and revenue. Dr. McCracken had to default on the installment agreement and accrued some new tax liabilities.

Now pessimistic about his business future, the doctor contacts enrolled agent Max again. The doctor files an Offer in Compromise on the unpaid employment taxes. Compliance rejects the offer, and Max prepares the 13711 to request an appeal. On the form, Max lists four specific items of disagreement with Compliance's findings and attaches documents to support his positions. The case arrives in Appeals and is assigned to Settlement Officer Smith.

Mr. Smith: Good afternoon, Mr. Credit. This is Mr. Smith from Appeals calling about Dr. McCracken's Offer in Compromise.
Mr. Credit: Hello, Mr. Smith. I assume that you received all of the documents I sent with the protest.

Mr. Smith: Well, I did and I have reviewed everything. I agree with your position on the two issues concerning advertising expenses and depreciation, as well as 40 percent of the issue on state tax obligations. I'm ready to concede them, but I disagree with part of the state tax issue and completely with the issue of loans to shareholders. It is clear that Dr. McCracken borrowed $50,000 from his business and has not paid it back. That $50,000 is an asset that should be included in the reasonable collection potential.

Mr. Credit: I disagree. That $50,000 is basically worthless because the doctor has serious personal financial problems, including unpaid taxes. He does not have the ability to repay the loan from the business, so it is in reality worthless.

Mr. Smith: There's not much documentation in this file to support your position regarding that money because the file only relates to the LLC's offer. Did the doctor file an offer on his individual liabilities?

Mr. Credit: He did, but the offer was rejected because the revenue officer has proposed Trust Fund Recovery Penalty assessment against the doctor, and we plan to contest those proposals.

Mr. Smith: I have to rely on the evidence in the file, which leads me to sustain rejection of the offer, largely on the basis that Dr. McCracken owes the LLC a substantial sum of money. Perhaps in the future, when all his liabilities have been established and assessed, the doctor can file a new offer on his personal tax obligations in conjunction with the new offer on the LLC and try to convince Compliance that the loan is valueless.

Ursula Wastian: Again, Max handled this case properly. When he submitted the taxpayer's protest, he directly addressed the issues with which he disagreed and included documents upon which he relied. He had his arguments prepared and he stayed on point. Although he was not successful this time, Max did the best he could with the case he had to work with.

Six months later, Dr. McCracken receives the appointment letter scheduling his hearing on the Trust Fund Recovery Penalty. Appeals Officer Farr will conduct the hearing remotely via telephone.

Ms. Farr: Good morning. This is Ms. Farr from Appeals calling about the McCracken case.

Mr. Credit: Good morning.
Ms. Farr: I've reviewed the case file and your client's protest in detail. Do you have anything more you would like to add before we get started?

Mr. Credit: Yes, I do. I notice in the Internal Revenue Manual that the IRS can decide that the trust funds are uncollectible from a responsible individual and decide not to assess the penalties. I believe that my client has no ability to pay the penalty, so why don't we just look at the issue and see if we can decide not to assess him at all.

Ms. Farr: Unfortunately, that part of the Internal Revenue Manual applies only to revenue officers. Appeals has no authority to make that decision in a Trust Fund Recovery Penalty case. We have to stick with issues related to responsibility and willfulness.

Mr. Credit: Okay. There is no question of responsibility with regard to my client. He is the single member of the LLC and makes all of the major financial decisions, so we concede that point. However, when the doctor was out with his back problems, he left his office manager in charge. Shouldn't she be held responsible for the period when she was in charge?

Ms. Farr: Other potentially responsible persons are also excluded from Trust Fund Recovery Penalty appeals. Only Collection can make the decision to recommend someone for assessments of the TFRP. We can only address the issue of Dr. McCracken's potential assessment.

Mr. Credit: I see. In that case, I feel that for two of the quarters in question, when the doctor had his back problems, he did not act willfully. He did not intentionally fail to pay the taxes. He was out of the office much of the time and thought that the office manager would take care of them. If he had known that the office manager was not paying the taxes, then he would have intervened.

Ms. Farr: There's a signed interview in the Compliance file detailing an interview that the revenue officer conducted with the office manager. She told the revenue officer that the doctor told her to pay the current taxes if there was money available after paying regular operating expenses. She made a few deposits when she had the money, but missed most of them. I can't see how the doctor would have thought that the taxes were paid if that's what the doctor told her to do. In any event, a responsible person cannot evade assessment of the penalty by delegating the responsibility to a subordinate.

Mr. Credit: I think the office manager is trying to cover up her failure to follow instructions. The doctor has relied on her for years to make the federal tax deposits. In fact, he hired her after he got into trouble with the employment tax the first time so it would not happen again. Dr. McCracken is not trying to evade the penalty. He innocently was led to believe that the office manager was going to make the tax deposits. If he had known the taxes were going
unpaid, he would have stepped in. He does not want any more tax problems on his hands. If this case were to go to court, I believe that a jury would find the doctor a far more credible witness than the office manager.

Ms. Farr: Well, I disagree. The office manager was not an officer or owner of the LLC and operated under the direction of Dr. McCracken. The interview made it very obvious. You have provided no evidence to show that the office manager had independent authority to make financial decisions without the direction of your client. I plan to sustain the assessment of the penalty.

Mr. Credit: I'm sorry to hear that. I'm going to advise my client to pursue Post Appeals Mediation.

Ursula Wastian: You will receive a closing letter explaining our decision shortly after a decision has been reached. The type of letter, its format and your next steps will depend upon the type of appeal and the decision that was reached. For CAP cases, we direct Compliance to take specific actions, such as preparing the required paperwork for a lien withdrawal or an installment agreement if that was the decision reached in Appeals. In CAP cases, the decision is final and binding on both the IRS and the taxpayer.

For timely CDP hearings, you'll have the option of signing a Form 12257, Waiver, or we can issue a Notice of Determination. All decision-related documents necessary to implement our decision, such as an installment agreement or adjustment document will be prepared and processed by Appeals. If you agree to sign a waiver, then the resolution will be implemented within 30 days. However, you give up the right to petition the tax court by signing the waiver. When a Notice of Determination is issued, you have the right to petition tax court. However, our decision will not be implemented until after the tax court has entered their decision or until after the time to petition the tax court has lapsed. As many of you know, a U.S. Tax Court proceeding can be as quick as 120 days and sometimes can take years to be finalized.

A decision letter is always issued at the conclusion of an Equivalent Hearing. There is no need for a waiver. Equivalency Hearings also do not entitle you to a petition to the U.S. Tax Court. In Trust Fund Recovery Penalty cases, we have several options. These include obtaining a closing agreement, signing a Form 2751 agreeing to the assessment in full or part, or we can just issue a decision letter.

When you disagree with a decision of Appeals, there may be additional options to dispute our decision. However, these options are not available for all types of cases. In a CAP appeal, Appeals’ decision is final and binding on both the taxpayer and the IRS. Appeals will release its jurisdiction, and you'll need to return to Compliance to work out some type of resolution.
If you disagree with our decision during a timely CDP proceeding, then we will issue a Notice of Determination which will give you the right to petition the U.S. Tax Court. With Equivalency Hearings, there's no right to petition the court, and we'll just issue a decision letter releasing jurisdiction back to the Compliance function.

If we cannot come to any type of agreement for a rejected Offer in Compromise case or a Trust Fund Recovery Penalty case, a closing letter will be issued sustaining Compliance's decision. In both of these types of cases, you may have the option of requesting Post Appeals Mediation prior to the issuance of the closing letter. In addition, with proposed Trust Fund Recovery Penalty cases, you have the option of later filing a claim in order to take the dispute to court.

Mediation is an informal, confidential, and flexible dispute resolution process in which an appeals officer trained in mediation techniques serves in an impartial third party facilitating negotiations between the disputing parties. With Post Appeals Mediation, commonly referred to as PAM, a trained mediator from the IRS Office of Appeals is assigned to help you and your appeals officer or settlement officer reach an agreement on the disputed issues. PAM does not create any special authority for settlement with Appeals or by Appeals. You retain full control over every decision you make during the PAM process. No one can impose a decision on either you or Appeals.

PAM is available for both legal and factual disputes. However, campus cases are not eligible for Post Appeals Mediation at this time. To apply for PAM, a written statement containing a specific request for Post Appeals Mediation detailing your position on the disputed issues should be submitted. Send your request to the Appeals team manager and send a copy to the area director. Additional guidelines are available in Revenue Procedure 2014-63 and IRM 8.26.9.

The Appeals website is available from www.irs.gov/appeals. It includes information on how to appeal and what to expect during the appeal. It also includes simple decision trees for you to use to help determine if you might qualify for penalty appeal, innocent spouse relief or an Offer in Compromise, or Post Appeals Mediation. In addition, the website includes background information on Appeals, the appeals process, and links to all forms, letters, and publications dealing with appeal rights. It's a great resource for understanding how to successfully navigate the Appeals process.

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