

IRM PROCEDURAL UPDATE

DATE: 09/14/2020

NUMBER: sbse-05-0920-1006

SUBJECT: CARES Act Flag and ESRP Internal Contact Information

AFFECTED IRM(s)/SUBSECTION(s): 5.9.14

IRM 5.9.14.1(4) Changed program owner to Collection Policy, SB/SE, Insolvency.

4. **Program Owner.** Collection Policy, SB/SE, Insolvency is the program owner of this IRM.

IRM 5.9.14.2.8(4)(o) Removed flag. Move "Letter 226-J Issued for ESRP Flag" from a case flag to a period flag.

4. **Case Flag Conditions and Resolutions.** A brief description of each case flag condition and resolution is listed below:
 - a. **Debtor TIN with an Asterisk Flag.** This flag is issued when the debtor TIN ends with an asterisk. APOC processes the TIN as if the asterisk is not present. Review APOC determinations on this TIN, make any additions or deletions to the records and then update the flag.
 - b. **Amended IRPTRL Flag.** This flag is issued when the IRPTRL information on IDRS has been amended. APOC alerts the caseworker of additional IRPTRL pages which APOC cannot read. Review IRPTRO and other sources to determine if an estimated liability is necessary. If an estimated tax liability is necessary, then create the period, compute the estimate, input the estimate and update the flag. If an estimate is not necessary, close the filing requirements on IDRS and update the flag.
 - c. **Available Credit Flag.** This flag is issued when APOC identifies an available credit greater than \$25. Follow local procedures to resolve the credit and update the flag.
 - d. **BMF Compliance Flag.** This flag is issued when APOC identifies an EIN (cross referenced on INOLES), but does not locate a record on BMFOLI. Users must determine if the Entity should have a BMF estimate. If the BMF estimate is not necessary, then update the flag. If the BMF estimate is necessary and IMF Period Detail records do not exist, then compute the estimate, create a period detail record, input the estimate and update the flag. If the BMF estimate is necessary and

IMF Period Detail records exist, then compute the estimate(s), insert a Period Detail Record, input the estimate, and update the flag.

- e. **CID Freeze Flag.** This flag is issued when a -Z freeze exists on a period on the TIN. Contact Criminal Investigation (CI) before proceeding with the filing of a proof of claim. APOC will include all liabilities on the claim but gives the caseworker an opportunity to change the claim as needed. If CI states a claim can be filed, update the flag. If CI states a claim should not be filed, terminate the case and follow the procedures outlined in IRM 5.9.13.16, *Criminal Investigation Involvement*. If a specific period should not be on a claim, remove the period and update the flag.
- f. **Discharged, Dismissed, or Closed Date on AIS Flag.** This flag is issued when there is a date in the "dismissed", "discharged", or "closed" fields on the AIS Taxpayer screen. Review IDRS for abated liabilities. If there is no liability, update the flag. If the case was originally filed as a Chapter 7 No Asset and converted to a Chapter 7 Asset, then identify the discharged liabilities and include them on the claim. If a case was originally filed as a Chapter 7 No Asset and converted to a Chapter 7 Asset and liabilities were not abated, update the flag. If it appears a discharged Chapter 7 No Asset was converted to a Chapter 13 proceeding, then check the court's electronic records to verify the discharge was vacated. Remove the discharge date on AIS, if necessary. Identify all periods to be included on the claim. Calculate, classify and insert each period and update the flag.

NOTE: For cases filed on or after October 17, 2005, a debtor will not be granted a discharge in a Chapter 13 case if such debtor previously received a discharge in a Chapter 7 case filed less than four years before the filing of the Chapter 13 case. Courts have held that eligibility for discharge depends on the petition date of the prior bankruptcy case and the petition date of the current bankruptcy case, as well as the type of prior bankruptcy case filed by the debtor. (See IRM 5.9.5.7.1(5), *Discharge Limitations*, IRM Exhibit 5.9.5-3, *Allowable Elapsed Time Between Bankruptcy Filings and Discharges*, IRM 5.9.10.3.2(7), *Discharge Limitations*, and Bankruptcy Code § 1328(f).)

- g. **Estimate with -L Freeze Flag.** This flag is issued when APOC identifies an open TC 420 on the TXMODA indicating a Substitute for Return (SFR) has been initiated on a period that has not been filed and an assessment has not posted. Follow local procedures to determine the tax, interest and penalty amounts as needed and update the flag.
- h. **Late Filed Claim Flag.** A late filed claim flag is issued on a case that has an APOC processing date which is more than 180 days after the petition date. Determine if a claim should be filed. See IRM 5.9.13.7.1, *Late Filed Claims*. If a claim should be filed, then calculate and classify each period, create or insert periods as needed, ensure all periods

needed on the claim have been added to APOC and update the flag. If the claim should not be filed, then terminate the case.

NOTE: APOC recognizes all liabilities and adds them to the claim, not distinguishing between pre-petition and post-petition liabilities. Consequently, post-petition periods may appear on the claim. Local procedures and appropriate IRM sections should be followed in dealing with those post-petition liabilities. See IRM 5.9.10.9, *Post-petition Tax Liabilities*; IRM 5.9.8.14.1, *Post-petition Debts - Chapter 11 Individuals*; IRM 5.9.9.10.3, *Post-petition Liabilities in Chapter 12 - Individual Cases*; and IRM 5.9.6.13, *Post-petition Liabilities- Individual*.

- i. **LLC Flag.** This flag is issued when an entity has “LLC” in any name line field on the AIS Taxpayer record. Manual intervention is required to determine the basis of the liability and accuracy of the claim. IRM 5.9.13.14, *Limited Liability Companies*, provides guidance on proper preparation of LLC claims. Counsel input may also be required. If a claim is not necessary, then terminate the case. If the claim is necessary, then ensure all appropriate periods are included on the claim, create, insert or remove periods as needed and update the flag.
- j. **MFT = 14 or 60 Flag.** This flag is issued when APOC identifies an open filing requirement on INOLES for MFT 60, Form 2290, *Heavy Highway Vehicle Use Tax Return*, or for MFT 14, Form 944, *Employer's ANNUAL Federal Tax Return*. APOC cannot do a compliance check on these MFTs. Review bankruptcy schedules and other sources to determine if an estimated liability is necessary. If an estimate is not necessary, then update the flag. If an estimate is necessary, then calculate and classify each period, create a period detail for each estimate and then update the flag.

NOTE: APOC will process balance due periods but cannot conduct a compliance check for MFT 60 or MFT 14.

- k. **Pending Additional Assessment on a TXMOD Flag.** This flag is issued when APOC identifies the existence of a pending tax assessment on TXMODA that has not posted to IMFOL or BMFOL. Create a period, calculate and classify the liability and update the flag.
- l. **Potential Missed BAL Due Flag.** This flag is issued when a balance due period, greater than \$25 is on IDRS but the period is not present in the AIS freeze tables. Decide if the period should be included on the proof of claim. If the period should not be included on the claim, then update the flag. If the period should be included on the claim, then calculate and classify each period, create a period detail for each estimate and update the flag. If this is a pre-petition module and a decision is made to not include this liability on the proof of claim, then manually input the TC 520 on this module and add the TC 520 to the Freeze screen on AIS.

- m. **TFRP for Multiple SSNs in the Same Period Flag.** This flag is issued to alert the caseworker that the AIS freeze table contains an MFT 55 assessment on the same period for both debtors in a joint bankruptcy. APOC will list the liability under both debtors but will allow the caseworker to delete one of the assessments, if appropriate. Review the liabilities to determine if they are for the same business entity. See IRM 5.9.13.13(4), *Duplicate Spousal Trust Fund Assessments*, for guidance. If the caseworker determines the assessments are for the same underlying business entity's liability, the claim should be filed according to local procedures. See IRM 5.9.13.18.4(2), *Duplicate Spousal MFT 31, MFT 65, and Trust Fund Recovery Penalty (TFRP) Assessments*. The appropriate proof of claim statement(s) should be added to the claim. If the MFT 55 assessments are for different business entities, then update the flag.
- n. **Multiple ACA for Different TINs with Same Period Flag.** This flag is issued to alert the caseworker that the AIS freeze table contains the Shared Responsibility Payment (SRP) assessed under MFT 65 on the same period for both debtors in a joint bankruptcy. APOC will list the liability under both debtors but will allow the caseworker to remove one of the APOC records, if appropriate. Review the SRP liabilities to determine if they are from the same jointly filed Form 1040. If the SRP assessments are for separately filed Forms 1040, then update the flag. If the SRP assessments are for the jointly filed Form 1040, then either:
- Remove one of the MFT 65 periods, insert the proper clarifying proof of claim statement and update the flag, or
 - Leave both periods on the claim, insert the proper clarifying proof of claim statement and update the flag.
- If the SRP assessments are for separately filed Forms 1040, then update the flag. See IRM 5.9.13.18.4, *Duplicate and Mirror Assessments and NMF Periods*, for guidance.
- o. **Section 965 Flag.** This flag is issued to alert the caseworker of a possible Section 965 liability. The caseworker would then need to manually review the account to determine if there is a Section 965 liability that needs to be added to the claim. See IRM 5.9.13.18.7, *Section 965 Transition Tax*. If a claim is necessary, the caseworker will update the record with the amount and update the flag. If the claim is not necessary, the period can be removed and the flag updated.

IRM 5.9.14.2.9(5)(v) Added flag. Move "Letter 226-J Issued for ESRP Flag" from a case flag to a period flag.

IRM 5.9.14.2.9(5)(v) Removed ESRP contact information and added internal e-mail box for ESRP questions.

IRM 5.9.14.2.9(5)(w) Added new period flag "CARES Act TC 766 CRN 280 Flag" to identify cases with a potential deferred tax per CARES Act section 2302.

5. **Period Flag Conditions and Resolutions.** A brief description of each period flag condition and resolution is listed below:
- a. **Credits Posted After Petition Date Flag.** This flag is issued when APOC identifies a credit that may have been received after the petition date in violation of the stay. This flag should be worked within **five** calendar days of APOC identifying the flagged condition. APOC has created a claim record for this MFT and Period with amounts for Tax, Penalty, or Interest. Determine if the credit is in violation of the automatic stay. If the credit is NOT in violation of the automatic stay, then update the flag. If the credit is in violation of the automatic stay and cannot be kept, then manually calculate the period without including the credit, update the APOC record with the new figures, update the flag and prepare a manual refund or credit transfer. If the tax period should not be included on the claim, then remove the period.
 - b. **Exam Freeze Flag.** This flag is issued when APOC identifies the existence of a "-L Freeze" on IDRS for an MFT and Period which has a balance due or which was for one of the periods within the time frame checked for compliance (TC 420 on a TXMODA). APOC creates a claim record for this MFT and Period with no amounts for the tax, penalty or interest. Refer to AMDISA on IDRS and contact the appropriate Examination unit to determine if an additional assessment will be proposed. If Exam indicates an additional assessment will be proposed, then ask for the amount of the proposed assessment and compute interest on that amount from the due date of the return to the petition date. If Exam proposes a failure to file penalty, then compute interest on that penalty from the due date of the return to the petition date and add that amount to the penalty. Update the APOC record with the proposed tax, interest on tax, and any penalty amount(s) Exam may give and update the flag. If Exam is not going to make an additional assessment and the period is otherwise full paid, then remove the period and update the flag. If Exam is not going to make an additional assessment but the period still has a liability, the flag should be updated.
 - c. **IRPTR Not Filed Flag.** This flag is issued when APOC attempts to calculate an estimate using IRPTRL information, however that information results in a balance due of equal to or less than zero. APOC will input a \$100 estimate and issue the flag. Change the amount, if information warrants, and update the flag. If no change to the estimate is warranted, then update the flag. If the tax period should not be included on the claim, then remove the period.

EXCEPTION: APOC does not issue \$100 dollar estimate flags on Chapter 7 cases, or on all general unsecured periods on Chapter 11, 12, or 13 cases.

- d. **IRPTRL Greater than One Million Flag.** This flag is issued when APOC identifies an IRPTRL entry that is equal to \$999,999*. This flag

alerts the user that an entry is actually greater than one million. (The maximum value of the field is six characters). Review IRPTRO, update the period with the estimated tax calculated using the actual amounts and update the flag. If the tax period should not be included on the claim, then remove the period.

- e. **Last Return Not Filed Flag.** This flag is issued when APOC attempts to calculate an estimate using Last Filed Return (LFR) information; however, that information results in a balance due of equal to or less than zero. APOC will input a \$100 estimate and issue the flag. Change the amount, if information warrants, and update the flag. If no change to the estimate is warranted, then update the flag. If the tax period should not be included on the claim, then remove the period.

EXCEPTION: APOC does not issue \$100 dollar estimate flags on Chapter 7 cases, or on all general unsecured periods on Chapter 11, 12, or 13 cases.

- f. **Lien Recorded Date Blank or Greater Than The Petition Date Flag.** This flag is issued when the recording date of the NFTL is not on AIS, or the date recorded is greater than the petition date. This flag should be worked within **five** calendar days of APOC identifying the flagged condition. If the petition date is within 30 days of the TC 582 date, then call the recorder where the NFTL was filed and ask for the recorded date to determine if the NFTL was filed prior to the petition date. If the NFTL was recorded prior to the petition date, then verify the period has the correct assessment date, update the APOC record with the NFTL date and update the flag. If the NFTL was recorded after the petition date (in violation of the automatic stay), then reclassify the period as appropriate, update the flag, and request a withdrawal of the NFTL. Managerial approval is required for a NFTL withdrawal. If the NFTL has been received but not recorded, then schedule a follow-up to re-contact the recorder prior to the earliest of: 341 Hearing, Confirmation Date, or Bar Date. If the recorder has not received the NFTL request, then reclassify the period as appropriate and update the flag. If the petition date is more than 30 days from the TC 582 date, then update the APOC record with the TC 582 date and update the flag. If the tax period should not be included on the claim, then remove the period.
- g. **Mortgage Interest Greater Than 50% of Income Flag.** This flag is issued when APOC identifies that the mortgage interest field on IRPTRL is greater than 50% of the total amount of the taxable income.

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The caseworker should make any needed adjustments to the claim based on their initial case review. If the case meets the streamlined criteria, the caseworker is required to review IDRS and other sources to determine if an estimate is necessary for this period. If an estimate is NOT necessary, then

update the flag, remove the period, and close the filing requirements on IDRS. If an estimate is necessary, then update the period and update the flag.

- h. **Negative Tax, Interest, or Penalty Flag.** This flag is issued when APOC identifies a credit balance on the tax, penalty, or interest. The total balance due on the Period Detail Screen will be correct. Pull TXMODA and INTSTB to correct the tax, penalty, and interest figures, update the APOC record to reflect the correct figures and update the flag. If the period should be removed from the claim, then remove the period.
- i. **Restricted Interest or FTP Flag.** This flag is issued when APOC identifies a TC 270 or a TC 340 with a TC amount greater than zero. APOC creates a record for this MFT and Period with amounts for tax, penalty, or interest. Review INTSTB to determine if the message "Computation Hold on Interest/FTP" appears at the bottom of the screen. If that statement does not appear, then update the flag. If the statement does appear, then calculate the period manually, update the APOC record and update the flag. If the tax period should not be included on the claim, then remove the period.

CAUTION: Often interest or penalty appears to be restricted, but is not.

NOTE: If penalties were abated in a prior bankruptcy, there may not be any penalties to be computed or claimed on the proof of claim for the current bankruptcy.

- j. **Secured Period Flag.** APOC issues this flag when it identifies that a Notice of Federal Tax Lien was recorded on a specific period. This flag should be worked within **10** calendar days of APOC identifying the flagged condition for all Chapter 11 and 12 cases. The Secured Period flag indicates the Service may be entitled to an adequate protection or cash collateral agreement. APOC calculates the period as fully secured by default. Determine, by reviewing the NFTL, schedules, or other sources if the period should remain fully secured. If the entire amount of the period should remain secured, then update the flag. If the period should be partially secured, then determine the correct secured amount, update the APOC record, insert a period for the remaining amount, reclassify the period, and update the flag. If the period should not be secured, then reclassify the period, and update the flag. If the tax period should not be included on the claim, then remove the period.

REMINDER: Determining the secured value of a period in a Chapter 13 case is required during the caseworker's initial analysis.

NOTE: If the NFTL was filed with respect to the restitution assessment, the NFTL will carry an "R" and the form number of the

underlying tax source, such as "R1040". The flag should be updated in accordance with the instructions above.

- k. **TC 922 Flag.** This flag is issued when APOC identifies a TC 922 on IDRS for an MFT and period which has a balance due or which was for one of the periods within the time frame for compliance. APOC creates a claim record for this MFT and Period with NO amounts for tax, penalty, or interest. Check AMS for the CP2000. If one is available, then update the record with the amounts shown on the CP2000 and update the flag. If there is no CP2000 on AMS, then contact the appropriate Campus Automated Underreporter Unit to determine if a proposed additional assessment is planned. If an additional tax assessment is planned, then compute the liability, update the APOC record with the proposed tax, interest, and any penalty and update the flag. If AUR proposes a failure to file penalty, then compute interest on that penalty from the due date of the return to the petition date and add that amount to the penalty. If no additional assessment is planned, then remove the period.
- l. **TF/NTF with Multiple Assessments Flag.** This flag is issued when APOC identifies multiple assessments on a single tax period where the due date of the return is more than three years prior to the petition date. The tax assessment will need to have a split classification (unsecured priority and general). Follow procedures outlined in IRM 5.9.13.20, *Claim Calculations*. Update the period for the unsecured general amount, insert period if necessary, with priority classification and amount and update the flag. If the tax period should not be included on the claim, then remove the period.
- m. **TXMODA ST 10/12 Credit Flag.** This flag is issued when APOC identifies a credit balance on a period that is identified as Status 10 or 12 on TXMODA Master File History Section. APOC will process the proof of claim calculations as if the credit does not exist. Review INTSTB to determine if the claim calculations are correct. If the calculations are correct, then update the flag. If the calculations are not correct, then recompute the liability, update the APOC record and update the flag. If this assessment should not remain on the claim, then remove the period.
- n. **Wrong Tax Assessment Date on Lien Flag.** This flag is issued when the assessment date on the NFTL record on AIS does not exactly match the assessment date on IDRS. APOC creates a claim record and classifies it as secured. Determine if the NFTL applies to the assessment in question, and if the assessment should remain as secured. If the assessment date on the AIS NFTL record does not match the assessment date for this assessment, then update the "AIS Assessed" field and follow the instructions in item (j), Secured Period Flag, above.

CAUTION: An amended NFTL should NOT be requested during the time the taxpayer is in bankruptcy.

If the NFTL in question does not apply to this assessment, and is not secured by any other NFTL, then change the classification to priority or general, add a history record to document the activity, and update the flag. If the tax period should not be included on the claim, then remove the period.

- o. **Unable to Determine PBE Flag.** APOC issues this flag when the system cannot calculate the prior bankruptcy extension (PBE) for a specific tax period. If the period should remain on the claim, then pull TXMOD, calculate the extension and determine the correct claim classification, update the APOC record and update the flag. If the period should not be on the claim, then remove the period.
- p. **Not Filed Flag.** This flag is issued when APOC is unable to compute an estimate after trying to utilize both IRP and LFR information. APOC will input a \$100 estimate and issue the flag. Change the amount, if information warrants and update the flag. If no change to the estimate is warranted, then update the flag. If the tax period should not be included on the claim, then remove the period.

EXCEPTION: APOC does not issue \$100 dollar estimate flags on Chapter 7 cases, or on all general unsecured periods on Chapter 11, 12, or 13 cases.

- q. **Split Period Flag.** This flag is issued when APOC identifies an assessed balance due on MFT of 01, 03, 04, 09, 11, 16 and a period where the Return Due Date > Petition Date. A claim record will have been created for this MFT and Period by APOC with no amounts for tax, penalty, and interest. Decide if there are any pre-petition amounts that should be included on the proof of claim. Calculate the pre-petition and post-petition liability for tax, penalty, and interest. If there is pre-petition liability, then update the period record with the pre-petition tax, penalty and interest amounts and update the flag. If there is no pre-petition liability and the tax period should not be included on the claim, then remove the period.
- r. **Unagreed Assessment Flag.** This flag is issued when an unagreed assessment posted with a date that is after the petition date. Determine if this assessment should remain or needs to be abated, and whether or not the assessment can be included on the proof of claim.

EXAMPLE: Post-petition assessments of unagreed deficiencies on pre-petition periods for which the statutory response time to file a Tax Court petition has not expired (or been waived) are violations of IRC § 6213 and must be reversed. See IRM 5.9.4.4(8), *Unagreed Deficiency Assessments*.

Contact Exam or AUR, provide them with the petition date and request they determine if the assessment was made in violation of IRC § 6213.

If the assessment was not made in violation of IRC § 6213 and the period should remain on the claim, then update the flag. If the assessment was made in violation of IRC § 6213, but the amounts should remain on the claim, then tell Exam/AUR they need to abate the liability, monitor the case and reassess after dismissal or discharge. Update the APOC record to reflect the correct estimated paragraph, remove the assessment date and update the flag. If the period should not be included on the claim, then remove the period.

- s. **Potential Missed BAL Due Flag.** This flag is issued when a balance due period, greater than \$25 is on IDRS but the period is not present in the AIS freeze tables. Decide if the period should be included on the proof of claim. APOC calculates the amount owed. If the period should be included on the claim, then update the flag. If the period should not be included on the claim, then remove the period.
- t. **Possible Error in Interest Calculation Flag.** This flag is issued when APOC attempts calculation of a balance due, but encounters an error. APOC may or may not provide dollar amounts in the Tax, Penalty, or Interest field. The APOC calculation provided cannot be relied upon. If the period should remain on the claim, then calculate the assessment manually, update the APOC record as necessary and update the flag. If the period should not remain on the claim, then remove the period.
- u. **Error Condition - APOC Program Problem Flag.** One of the three flag conditions below is issued when APOC encounters a processing problem on a specific tax period, but is still able to continue processing the case. The conditions are displayed as individual Period Flags within APOC; however, they are all lumped together under the title of Error Condition - APOC Program Problem for purposes of the individual Period Detail Flag reports.
 - 1. **TXMODA Fault Flag.** This flag is issued when APOC encounters a dummy module, for example cases in status 23, 53, etc. If the period should remain on the claim, then use cc MFREQ or RECON to bring the period to IDRS and request INTSTB. If a TXMOD has a dummy module or no module, then enter MFREQC. If an item of information is posted to IMFOLT but not to TXMOD, then request RECON. With this information in hand, calculate and classify the period manually, update the APOC record, and update the flag. If the period should not remain on the claim, then remove the period.
 - 2. **Potential Reversed Credit with MF-STS 10 or 12 Flag.** This flag is issued when APOC attempts calculation of a balance due, but encounters an error. APOC may or may not provide dollar amounts in the Tax, Penalty or Interest field. The APOC calculation provided cannot be relied upon. If the period should remain on the claim, then calculate the assessment manually, update the APOC record, as necessary and update the flag. If the period should not remain on the claim, then remove the period.
 - 3. **Calculation Error: Credits Paid Off All Assessmtns Flag.** This flag is issued when APOC attempts calculation of a balance due, but

encounters an error with the application of credits. APOC may or may not provide dollar amounts in the Tax, Penalty, or Interest field. The APOC calculation provided cannot be relied upon. If the period should remain on the claim, then calculate the assessment manually, update the APOC record, as necessary and update the flag. If the period should not remain on the claim, then remove the period.

- v. **Letter 226-J Issued for ESRP Flag.** This flag is issued to alert the caseworker that the government issued Letter 226-J, *ESRP Preliminary Contact*, to the debtor. This letter explains the proposed amount the IRS will assess unless further information is provided by the debtor, to change or nullify the amount. The flag indicates an assessment is not yet made due to the debtor's response time not expiring prior to the bankruptcy filing. The caseworker will need to contact the ESRP unit, to determine the amount on the Letter 226-J, *ESRP Preliminary Contact*, and determine whether a protective claim is necessary. If a protective claim is necessary, the caseworker will update the record with the amount and update the flag. If the protective claim is not necessary, the period can be removed and the flag updated.

[REDACTED]

- w. **CARES Act TC 766 CRN 280 Flag.** This flag is issued when APOC identifies a TC 766 Credit Reference Number (CRN) 280 on IDRS. APOC creates a claim record for MFT 01, MFT 11, MFT 14, MFT 09, and MFT 30 with a TC 766 CRN 280 in tax periods 202006, 202009, and 202012. If the period should remain on the claim, then calculate the liability manually by following the procedures outlined in IRM 5.9.13.18.8(4), Proof of Claim, update the APOC record as necessary, and update the flag. If the period should not remain on the claim, then remove the period.