

IRM PROCEDURAL UPDATE

DATE: 12/07/2023

NUMBER: sbse-05-1223-1153

SUBJECT: Added Guidance on Chap 11 Case Files; Updated TFRP Tolerance, Documentation, Payments Made by a Responsible Person, and When to Check The "Changeable Terms" Box in the CPM

AFFECTED IRM(s)/SUBSECTION(s): 5.9.8

IRM 5.9.8.1.6(4) Added "cc", "CC", "FTD", "IDRS" and "J&C" to list of acronyms.

(4) Acronyms used specifically in this IRM section are listed below:

Acronyms	Definitions
AIS	Automated Insolvency System
APOC	Automated Proofs of Claim
BAPCPA	Bankruptcy Abuse Prevention and Consumer Protection Act
cc	Closing Code
CC	Command Code
CIO	Centralized Insolvency Operation
CPM	Confirmed Plan Monitoring
DIP	Debtor-In-Possession
EPOC	Electronic Proofs of Claim
FI	Field Insolvency
FTD	Federal Tax Deposit
IDRS	Integrated Data Retrieval System
IIP	Insolvency Interface Program
J&C	Judgment and Commitment
NFTL	Notice of Federal Tax Lien
PACER	Public Access to Court Electronic Records
POC	Proof of Claim
SBRA	Small Business Reorganization Act
SOFA	Schedule of Financial Affairs
USBC	United States Bankruptcy Court

IRM 5.9.8.1.7(5) Changed "service" to "IRS".

(5) IRS employees may also refer to IRM 5.17.10, Legal Reference Guide for Revenue Officers, Chapter 11 Bankruptcy (Reorganization), for additional information on Chapter 11 bankruptcies.

Any line marked with a # is for Official use Only

IRM 5.9.8.3 Updated the timeframe that a 341 meeting can be held.

(1) **Notice.** The bankruptcy courts provide the IRS with notice of all Chapter 11 cases whether or not the IRS is listed as a creditor. This notice provides the date, time, and location of the first meeting of creditors, as required by 11 USC 341. The court may also provide copies of the debtor's schedules of assets and liabilities and the statement of financial affairs to the creditor.

(2) **First Meeting of Creditors and Pre-packaged Chapter 11 Cases.** The first meeting of creditors (also known as the 341 hearing) generally occurs 20-50 days after the filing of the petition. However, under 11 USC 341(e), upon request of a party in interest and after notice and hearing, the court can order the US Trustee not to convene a meeting of creditors if the debtor files a pre-packaged Chapter 11. A pre-packaged Chapter 11 is where the debtor prepares a plan and solicits acceptance of the plan prior to the commencement of the case. FI, with Counsel's concurrence, may consider opposing the 11 USC 341(e) request if the lack of a 341 hearing will compromise the IRS's position.

(3) **Preventing Violations of Automatic Stay.** If FI research reveals no liabilities or pending assessments in a case, a TC 520 control must remain on the account until the potential for a violation of the USBC expires. The freeze also allows for monitoring of post-petition tax compliance.

(4) **Proof of Claim.** If the Automated Proof of Claim (APOC) system is unavailable and the debtor owes taxes above the tolerance specified in Exhibit 5.9.13-1, Manual Proofs of Claim and Common Bankruptcy Issues, Threshold for Claims, a manual claim must be prepared and timely filed in accordance with IRM 5.9.13, Manual Proofs of Claim and Common Claim Issues. Motions and hearings involving the IRS can begin early in Chapter 11 cases, so the IRS claim must be on record as soon as possible. The bar date for filing proofs of claim in Chapter 11 cases is set by the court, but the IRS has at least 180 days from the petition date pursuant to 11 USC 502(b)(9).

- a. 11 USC 1111(a) provides a claim is deemed to be filed for any debt listed on the debtor's schedules, *except* a debt listed as disputed, contingent, or unliquidated.
- b. There may be unfiled pre-petition returns when the claim is prepared. Show potential liabilities for any unfiled returns as "unassessed" (formerly listed as estimated).
- c. APOC generates estimated claims systemically. When no basis is found for an estimated claim, APOC annotates the period as "Not Filed" and the dollar amount as "\$100.00".

(5) **Proof of Claim Filing Criteria.** The IRS must not rely on being listed in the bankruptcy schedules. A proof of claim must be filed in every case meeting the tolerances specified in Exhibit 5.9.13-1. However, the tolerance criterion does not prohibit FI from filing claims where liabilities fall below the stated dollar amounts. Local practice may specify filing claims on all balance due accounts.

Note: APOC processing is not governed by Exhibit 5.9.13-1 criteria.

IRM 5.9.8.4.2(19)(c) Removed the caution and replaced it with IRM reference IRM 5.7.3.8, which provides guidance when a RO receives an OI for a TFRP with less than six months left on ASED.

(19) **TFRP Issues.** The TFRP can be proposed against:

- Officers or other responsible persons of a corporation
- Members of a multi-member LLC taxed as a partnership
- Members, managers, or other responsible persons of the LLC taxed as a corporation
- The single-member of a LLC with liabilities for withholding periods that began on or after January 1, 2009
- Another corporation
- Payroll Service Provider (PSP)
- Responsible persons within a PSP
- Professional Employer Organization (PEO)
- Responsible persons within a PEO
- Responsible persons within the common law employer (client of the PSP or PEO)

Note: See IRM 5.9.13.14, Limited Liability Companies (LLCs) for guidance on LLCs. See IRM 5.7.3.4.1, Establishing Responsibility, for additional information regarding persons that may be assessed the TFRP.

- a. For corporations and some Limited Liability Companies (LLCs), caseworkers must conduct an Automated Trust Fund Recovery (ATFR) review to determine what periods, if any, are currently proposed. Determine which responsible persons have been proposed assertions of the TFRP. This information must be paired with the data on IDRS using command code UNLCER. The current RO assignment must be annotated in the AIS history.
- b. Based on local procedures, the investigation can be conducted by a RO in FC or by a FI caseworker. If local practice is to refer the investigation to FC, and the case is not currently assigned to a RO, an OI must be issued to FC through ICS. Insolvency caseworkers will request the TFRP investigation during the initial case review. If it is unclear if the TFRP should be pursued at the time of the initial analysis, the caseworker needs to document the AIS history with the earliest ASED, the reason the TFRP investigation is not being conducted at that time, and when the case will be re-evaluated to determine if the TFRP is required. # [REDACTED]

[REDACTED]

[REDACTED] # IRM 5.7.4.2.1(4), Factors When Considering Trust Fund Balance Owed Amounts, IRM 5.9.3.10, Trust

Fund Recovery Penalty, IRM 5.9.8.11, Trust Fund Considerations in Chapter 11, and IRM 5.9.13.13, TFRP Assessments - Priority Status, provide additional TFRP investigation information.

- c. When requesting a TFRP investigation through an OI, provide the RO with information to assist them in completing the investigation. The information may be provided by updating the ICS case history. See Exhibit 1.4.51-31, Guide for Other Investigation (OI) F/U Report (Field Insolvency), and IRM 5.9.3.10, Trust Fund Recovery Penalty. See IRM 5.7.3.8, Cases Received With Less Than Six Months Remaining on the Assessment Statute.
- d. TFRP issues must be thoroughly documented in the AIS history. See IRM 5.9.5.4, Automated Insolvency System (AIS) Documentation. If the TFRP is not applicable, notate the AIS history accordingly. The TFRP may not be applicable because there are no outstanding trust fund liabilities or the outstanding trust fund liability is minimal.

IRM 5.9.8.4.2(21) Added paragraph to address how Chapter 11 case files need to be maintained and what needs to be contained in the file.

(21) **Chapter 11 Case Files.** FI caseworkers are required to build and maintain case files for all Chapter 11 cases in their inventory. The case file must include letters, referrals, and pertinent documents. Files may be in electronic or hard copy format. All physical files must be stored in a centralized location in the FI office. These case files must be retained in the FI office assigned the case for two years after the case is closed on AIS. Case files will be purged after the retention period. See IRM 5.9.17.21, Maintenance of Information.

IRM 5.9.8.6(7) Clarified adequate protection agreements must have default language included.

(7) **Default Provisions.** Adequate protection agreements must include language outlining actions to be taken in the event of default. Those provisions can include:

- a. Notice of default to the debtor and debtor's attorney with a short "cure" time frame;
- b. A "drop dead" clause providing for unopposed conversion to Chapter 7 if the default is not cured;
- c. An automatic lifting of the stay against collection if the default is not cured; or
- d. Any other appropriate remedy.

IRM 5.9.8.11(1) Added IRM policy statement reference.

(1) **Policy Statement 5-14, Trust Fund Recovery Penalty Assessments.** Absent statute of limitations considerations, the general policy of the IRS is *to refrain from asserting the TFRP against non-debtor responsible persons in cases where the corporate debtor's Chapter 11 plan provides for full payment of trust fund taxes, as long as the plan is not in default* IRM 1.2.1.6.3, Policy Statement 5-14 (Formerly P-5-60), Trust Fund Recovery Penalty Assessments.

IRM 5.9.8.11(4) Updated to address TFRP tolerances.

(4) **Tolerance Criteria for a TFRP Investigation.** Generally, FI initiates a TFRP investigation based on # [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] #

IRM 5.9.8.11(6) Clarified when a TFRP investigation needs to be initiated.

(6) **In Chapter 11 – Withholding Assessment Against Responsible Persons.** For any case that exceeds tolerance criterion, the trust fund investigation must be conducted. If the corporate debtor has a confirmed reorganization plan *providing for full payment of the trust fund taxes*, assertion of the TFRP may be deferred. Each of the following conditions must be met to withhold assessment of the TFRP:

- The corporate debtor must have a confirmed plan,
- All payments under the confirmed plan are current, and
- Responsible persons have signed Form 2750, Waiver Extending Statutory Period for Assessment of Trust Fund Recovery Penalty. The waiver will extend the ASER of the responsible persons to one year beyond anticipated plan completion.

For any case with an aggregate trust fund liability of # [REDACTED] #, the trust fund investigation must be initiated during the initial case review. If the trust fund liability reaches # [REDACTED] # after the initial case review, immediately request the TFRP investigation. At minimum, waivers must be secured to extend the ASER and Form 4183, Recommendation re: Trust Fund Recovery Penalty Assessment, completed during the TFRP investigation. The TFRP will not be assessed unless factors indicate ultimate collection is doubtful from the corporate debtor. Indicators of doubtful ultimate collections are:

- Potentially responsible persons will not sign Form 2750
- Additional unpaid liabilities pyramid after the petition date
- The corporation continues to operate at a loss
- Assets are liquidated
- Excessive compensation is paid to officers during the bankruptcy proceeding
- The debtor defaults on plan payments or is only paying on the plan sporadically

Any line marked with a # is for Official use Only

The caseworker must forward the TFRP file for assessment at anytime any of the above indicators occur.

Caution: The caseworker must monitor the ASED of the responsible persons closely to ensure that it does not expire while assessment of the TFRP is being held in forbearance.

IRM 5.9.8.11(9) Added paragraph (5) to address payments made by a responsible person.

(9) **Payments from Responsible Person.** The proof of claim must not be reduced or amended to reduce the liability based on a TFRP payment assessed against a debtor unless one of the following conditions are met:

- a. the statute of limitations on a refund claim for such payment has expired with no refund claim filed, or
- b. the taxpayer who made the payment waives such a refund claim in writing. All waivers should be reviewed by Counsel prior to amending the claim.

IRM 5.9.8.12(4) Clarified amended plan or disclosure statement received after case closure need to be reviewed for any additional liabilities.

(4) **Amended Plan or Disclosure Statement Received After Case Closure.** If the IRS receives an amended disclosure statement or plan after closing a no liability Chapter 11 case, FI will conduct another liability review taking any necessary actions, which may include reopening the case on AIS.

IRM 5.9.8.13(5) Clarified the LAMS report needs to be worked timely.

(5) **LAMS.** The Litigation Account Management System (LAMS) is a sub-system within AIS used to monitor compliance for all debtors in Chapters 11, 12, and 13. LAMS generates a report to match closed cases on AIS with unreversed TC 520s on IDRS. This report must be worked timely to identify violations of the automatic stay. Through LAMS, timely reviews can be conducted when working on large dollar and chronic repeater cases.

Note: IRM 5.9.16.4, Litigation Account Management System (LAMS), provides instructions for working LAMS reports.

IRM 5.9.8.17.2 Added the Advisory Centralized Restitution Unit mailbox.

(1) **General Information.** Following the conviction of a defendant for a criminal tax violation or tax-related offense, the court may order the defendant to pay restitution. The requirement that the defendant pay restitution will be contained in a document signed by the judge called a Judgment and Commitment (J&C) Order. The Advisory Centralized Restitution Unit can provide information regarding the terms for payment of the restitution and is responsible for monitoring whether the taxpayer is in compliance with the J&C Order. They can be contacted at *SBSE EEF Dallas Restitution. For general information regarding restitution assessments and dischargeability, see IRM 5.9.17.8.8, Discharge and Restitution Assessments. For information regarding proofs of claim and restitution assessments, see IRM 5.9.13.18.5, Restitution Assessments.

(2) **Classifying the Case as Restitution.** When a RO or an Advisor learns that a taxpayer against whom a restitution assessment has been made has filed bankruptcy, the RO or Advisor will contact CIO to inform them that the bankruptcy involves a restitution assessment. It does not matter if the IRS has otherwise received notice of the bankruptcy case and if the case has been opened on AIS. CIO caseworker will input a "CRIMREST - Module(s) w/ Criminal Restitution Assessment" case classification on the AIS case classification screen and document the information provided by the RO or Advisor in the case history.

Note: If the FI caseworker becomes aware of the restitution assessment, and the case classification is not present on AIS, the FI caseworker will add the "CRIMREST" classification to AIS.

(3) **Payment Schedule and J&C Orders.** The J&C Order usually contains a payment schedule specifying the manner in which the restitution order must be paid. The order normally specifies that restitution payments are made to the office of the clerk of the district court in which the J&C Order was entered. The clerk of the court office disburses the payments to the appropriate victims of the criminal action. In the case of the IRS as a victim, the payments are mailed to the Kansas City Submission Processing Center (KCSPC), which applies the payments to the restitution assessment. If the person ordered to make the restitution payments fails to make the required payments, the court may revoke or modify a term of supervised release, or may resentence the individual. In the case of the IRS, the assigned Advisor monitors the payments and reports if the taxpayer fails to make the required payments. FI caseworkers can obtain the restitution payment schedule contained in the J&C Order from the appropriate Advisor.

(4) **Discharge Language in the Plan and Restitution Assessments.** In all cases, plans must be reviewed for language providing for a discharge of the restitution assessment. If the plan contains such language, the case must be referred to Counsel for an objection to confirmation. See IRM 5.9.17.8.8, Discharge and Restitution Assessments, for a discussion of dischargeability and restitution assessments.

IRM 5.9.8.17.2.2 Clarified what caseworker will do if restitution payments are included in the plan.

(1) **Plan Provisions Mirror the J&C Order.** If the taxpayer provides in the plan for the restitution payment to be paid according to the payment scheduled in the J&C Order, FI caseworkers will verify that the plan complies with the terms of the J&C Order in terms of the amount of the payments and the schedule on which the payments are to be made. If the plan mirrors the provisions of the J&C Order, no objection will be raised to the plan unless some other reason for objection exists. If the plan provides for the restitution assessment to be paid according to the J&C Order, upon confirmation the FI caseworker will:

- notify the Advisor that the restitution payments are being made to the IRS pursuant to a Chapter 11 plan.
- monitor that the payments are being made.
- detail in the AIS history the amounts paid under the plan for restitution that are being applied to the restitution assessment.

(2) **Plan Provisions Do Not Mirror the J&C Order.** If the plan provides for the restitution assessment to be paid through the plan, but in amounts less than the payments ordered in the J&C Order, or on a less frequent schedule than the J&C Order requires, the case will be referred to Counsel to object to confirmation of the plan. The basis of the objection to confirmation is that the plan contradicts a court order. In the event that the bankruptcy court confirms a plan in which the restitution payments do not mirror the J&C Order but are in accordance with the USBC, the caseworker will apply the payments in accordance with the provision of the plan and the order confirming the plan. The AIS history must contain the details regarding the appropriate payment application. The FI caseworker will notify the Advisor of the details of the confirmed plan and that the plan does not comply with the provisions of the J&C Order.

(3) **Application of Payments.** Payments made pursuant to a plan for restitution must be applied to the restitution assessment. In the event it is necessary to determine how any payment(s) received in bankruptcy and designated for restitution will be applied, the FI caseworker will contact the Advisor for guidance.

(4) **Actions Upon Default of a Chapter 11 Plan with Restitution Assessments.** The Insolvency caseworker must immediately contact the Advisor in the event that the debtor defaults on a confirmed plan and:

- The restitution is being paid through the plan and
- The restitution assessment(s) have not been fully paid.

The FI caseworker can also contact Counsel for guidance on whether a motion should be filed to dismiss the case. The caseworker will inform Counsel that there is

an unpaid restitution assessment and provide the contact information for the assigned Advisor.

(5) **Dismissal or Discharge of the Case with a Restitution Assessment.** The FI caseworker will notify the appropriate Advisor when a bankruptcy case is dismissed or discharged and there is a restitution assessment. Procedures for the dismissed case with a restitution assessment are the same as those for any dismissed case. See IRM 5.9.17.6, Dismissal, for information. For information on a discharged case with a restitution assessment, see IRM 5.9.17.8.8, Discharge and Restitution Assessments.

IRM 5.9.8.19.3(1)(b) and (c) Replaced "pending default notice" with "Letter 6566"

(1) **Default Notice.** If required plan payments have not been received, the caseworker must promptly address the default. Prompt action will reduce the amount of accrued interest owed by the taxpayer on the delinquent payment(s). The likelihood of the debtor becoming current is greater when there are fewer delinquent payments. When the taxpayer is non-compliant with terms of the confirmed plan, the caseworker must review the plan for default provisions. When the plan contains default provisions, the caseworker must comply with those provisions. When the plan does not contain default provisions, the following steps must be taken, as appropriate:

- a. The assigned caseworker must attempt phone contact with the DIP or trustee (if one was appointed) to negotiate a cure for the default. When an agreement cannot be reached during phone contact, additional action is required. Advise the DIP/trustee that they have five business days to become current on plan payments. Advise them that a default letter will be issued if the plan is not brought current by the deadline. When the caseworker cannot make phone contact within a reasonable period, a default letter must be issued to the DIP/trustee. Generally, five business days constitutes a reasonable period.

Note: Managerial approval is not required when sending a default notice without prior phone contact.

- b. If the arrearage is not cured by the sixth business day, or if a cure cannot be agreed upon during phone contact, send Letter 6566, Chapter 11 Pending Default . The letter must be sent in accordance with the plan's default provisions. It must also be sent when the plan does not contain default provisions. Generally, the notice is sent to the DIP/trustee.
- c. A date must be *specified* in the letter for the DIP/trustee to come into compliance with the plan provisions. For example, request payment within 30 days from the date of the Letter 6566. The letter must request full remittance of delinquent plan payments, to date. Advise the DIP/trustee that they must stay current on plan obligations.

- d. The letter must explain possible consequences of failing to cure the plan default.
- e. When the DIP/trustee *does not* come into full compliance by the deadline established in Letter 6566, Chapter 11 Pending Default, issue Letter 6567, Chapter 11 Default. The letter must be sent to the DIP/trustee and attorney for the DIP or trustee.

IRM 5.9.8.19.3(1)(e) Replaced "last chance letter" with "Letter 6566". Replaced "default notification letter" with "Letter 6567".

(1) **Default Notice.** If required plan payments have not been received, the caseworker must promptly address the default. Prompt action will reduce the amount of accrued interest owed by the taxpayer on the delinquent payment(s). The likelihood of the debtor becoming current is greater when there are fewer delinquent payments. When the taxpayer is non-compliant with terms of the confirmed plan, the caseworker must review the plan for default provisions. When the plan contains default provisions, the caseworker must comply with those provisions. When the plan does not contain default provisions, the following steps must be taken, as appropriate:

- a. The assigned caseworker must attempt phone contact with the DIP or trustee (if one was appointed) to negotiate a cure for the default. When an agreement cannot be reached during phone contact, additional action is required. Advise the DIP/trustee that they have five business days to become current on plan payments. Advise them that a default letter will be issued if the plan is not brought current by the deadline. When the caseworker cannot make phone contact within a reasonable period, a default letter must be issued to the DIP/trustee. Generally, five business days constitutes a reasonable period.

Note: Managerial approval is not required when sending a default notice without prior phone contact.

- b. If the arrearage is not cured by the sixth business day, or if a cure cannot be agreed upon during phone contact, send Letter 6566, Chapter 11 Pending Default . The letter must be sent in accordance with the plan's default provisions. It must also be sent when the plan does not contain default provisions. Generally, the notice is sent to the DIP/trustee.
- c. A date must be *specified* in the letter for the DIP/trustee to come into compliance with the plan provisions. For example, request payment within 30 days from the date of the Letter 6566. The letter must request full remittance of delinquent plan payments, to date. Advise the DIP/trustee that they must stay current on plan obligations.
- d. The letter must explain possible consequences of failing to cure the plan default.
- e. When the DIP/trustee *does not* come into full compliance by the deadline established in Letter 6566, Chapter 11 Pending Default, issue Letter 6567,

Chapter 11 Default. The letter must be sent to the DIP/trustee and attorney for the DIP or trustee.

Exhibit 5.9.8-1 Add requirement to check "changeable terms" box, when the terms of the plan will vary during the life of the plan.

Step	Action
1.	Select the "Case Files" button on the AIS home page and the taxpayer screen will appear.
2.	Type the numeric case number in the "AIS Case Number" field in XX-XXXXX format and select "Submit Search". Select the correct index number to pull up the case.
3.	Add the confirmation date to the confirmation date in the "Confirmed" field under "Other Key Dates" and select "Save".
4.	Select the "CPM" tab at the top of the taxpayer screen. The CPM screen will appear.
5.	Select the "Insert" tab to add information from the confirmed plan to AIS.
6.	Select the "Plan Type" of Administrative, Confirmed or Adq. Protect, from the drop down menu.
7.	The confirmed plan will specify the frequency of plan payments. Select the "Payment Frequency" and click on the "▼" to bring up the drop down list. Select the frequency of payments as Monthly, Quarterly, Semi-Annual, Annually, or Misc., based on the frequency of payments specified in the confirmed plan.
8.	When the CPM is inserted, AIS defaults the "Effective Date" of the plan to the confirmation date entered on the taxpayer screen. If the effective date is a date other than the confirmation date, overlay the confirmation date with the effective date specified in the confirmed plan.
9.	Input the "Payment Due" date. Type in the due date using MM/DD/YYYY format or use the calendar button. This is the due date of the first payment under the plan.
10.	Move the cursor to the "Amount" block and type the plan payment amount in using XXX.XX format.
11.	Move to the drop down menu in the "Interest Type" field on the CPM screen to select the interest type provided for in the plan. Generally, "Daily Compounded" is the interest type unless "Simple" is specified as the interest type in the confirmed plan.
12.	Select the "Optional" block to add the interest rate provided for in the plan. If no specific rate is noted in the plan, the interest rate is generally the IRC rate on the confirmation date (unless the plan specifies no interest will be paid). There is no need to add a decimal point (.) or % symbol in the "Optional" field for AIS to calculate the accrued interest on the plan. Only use the decimal point (.) when the plan provides for an interest rate that is not a whole number. For example, add 3.4% as 3.4. If the plan is confirmed at 3%, enter 3.
13.	The confirmed plan information must be saved to AIS. Select "Save" to save the confirmed plan.

Any line marked with a # is for Official use Only

Step	Action
14.	Go to "Import Period" button on the bottom CPM screen. This will import all of the periods from the proof of claim.
15.	If a BMF tax period has trust fund tax, the tax must be divided into trust fund and non-trust fund. Select the plan index. Select "Show Periods". Select the index number of the module you need to update. Select the "Trust Fund Tax" field under the "Liability" section. Input the trust fund tax amount. The non trust fund tax amount will update automatically. Select "Save". Repeat this step until all tax periods are updated appropriately.
16.	Ensure all periods have the "Plan Verified" box checked.
17.	If the terms of the plan will change during the course of the plan, check the Changeable terms box. Leave the box unchecked if the terms will not change.

Any line marked with a # is for Official use Only