

IRM PROCEDURAL UPDATE

DATE: 07/21/2025

NUMBER: sbse-01-0725-3510

SUBJECT: Resource Guide for Manager; Insolvency

AFFECTED IRM(s)/SUBSECTION(s): 1.4.51

CHANGE(s):

IRM 1.4.51.1.4(2)(b) Established that NQRS reviews are conducted routinely throughout the year.

(2) Program Effectiveness.

1. Operational reviews are conducted on a yearly basis. See IRM 1.4.51.17, Operational Review and Employee Engagement, and IRM 1.4.51.18, Director Performance Review and Employee Engagement, for more information. Operational Reviews are conducted within Specialty Collection - Insolvency (SCI) and also are conducted in Collaboration with Headquarters Collection.
2. National quality reviews are conducted routinely throughout the year. Consistency reviews are conducted at least annually. See IRM 1.4.51.16.1, NQRS and IRM 1.4.51.16.2, EQ Consistency Reviews, for more information.

IRM 1.4.51.3.7.1 Updated the procedures for processing damage claims.

(1) **Overview.** The Commissioner of the IRS has authority to pay damages and attorney's fees from general appropriations in the settlement of the IRS's liabilities on claims for violations of the automatic stay and discharge injunction. Awards are categorized as either:

1. Litigative: an award in the form of a settlement or judgment resulting from a lawsuit; or
2. Administrative: an award premised on an agency's claim authority.

Note: Payment requests are processed through the Bureau of the Fiscal Service (BFS), and the treatment of the two categories of awards differs slightly. (See paragraphs (17) and (18) below.

(2) **Processing Office.** The processing office (FI or CIO) assigned to the case when the violation occurred will be responsible for processing claims for payment of damages up until a referral to Counsel (L&A) is required. At that point the case

becomes a complex issue and will be handled to conclusion by the assigned Field Insolvency office.

(3) **Who Must File a Claim.** The debtor, debtor's representative, or trustee must file a claim with the IRS. The IRS will directly pay the damages and/or attorney's fees if certain criteria are met.

(4) **Willfulness.** The IRS can only be held liable for damages and attorney's fees if it commits a "willful violation" of the stay or discharge injunction. For a violation to be willful, the IRS must know about the stay or discharge and initiate or continue collection activities. If the IRS lacked notice of the stay or discharge injunction, the violation would not be willful. Even when the IRS knows about a stay or discharge injunction, a good faith belief that it is inapplicable might be relevant. If the IRS had a good faith (but erroneous) belief that the stay or discharge did not apply (e.g., the IRS reasonably determined that the liability is excepted from discharge), consult Counsel (L&A) regarding whether damages should apply. *Taggart v. Lorenzen*, 587 U.S. 554, 557 (2019), holding that a bankruptcy court cannot impose contempt sanctions if there was an objectively reasonable basis for concluding that the creditor's conduct might be lawful. (Taggart did not deal with willful violations of the stay or discharge injunction, but a similar standard may apply in these situations.)

(5) **Identifying Willfulness.** To determine if a willful violation has occurred, Insolvency must verify if the IRS received notice of the bankruptcy or discharge order and:

- Subsequently engaged in collection activities, or
- Failed to halt its collection activities.

(6) **Time frames.** Generally for a claim to be considered, the IRS must have failed to take appropriate action within the time frames of the Bankruptcy Code Compliance Program (BCCP). Those time frames are reflected in the chart below:

Time Limits	Required Actions
Two work days	Initiate corrective action on violations of the automatic stay or discharge injunction.
Five work days	Process initial bankruptcy petition information and ensure input of TC 520.
10 work days	Review damage claim applications for damages and attorney's fees for completeness and willfulness determination.
30 calendar days	Process discharge/dismissal notices and initiate closing procedures.
60 calendar days	Provide the debtor with a written response concerning the acceptance or denial of the claim application.

(7) **Exceptions to Time frames.** Regardless of general time frames, if an IRS employee initiates a collection action with knowledge of the stay or discharge, the action is a willful violation.

Example: If a debtor tells an employee that they are in bankruptcy, and the employee proceeds with a seizure, the collection action is a willful violation.

(8) Claim Applications. Because no standard IRS form for requesting payment of a claim has been published, a claim request must be submitted by letter. Field Insolvency offices must provide a claimant the nature of the information to be included in the application letter and where to send the claim. Share the following website, which provides additional information: Claims for relief and damages for violations of bankruptcy automatic stay or discharge injunction. To be considered complete, a claim must be in writing and include the following:

- a. The name, taxpayer identification number, current address, and current home and work telephone numbers (with an identification of any convenient times to be contacted) of the taxpayer making the claim;
- b. The location of the bankruptcy court in which the underlying bankruptcy case was filed and the case number of the case in which the violation occurred;
- c. A description, in reasonable detail, of the violation (include copies of any available substantiating documentation or correspondence with the IRS);
- d. A description of the injuries incurred by the taxpayer filing the claim (include copies of any available substantiating documentation or evidence);
- e. The dollar amount of the claim, including any damages that have not yet been incurred but which are reasonably foreseeable (include copies of any available documentation or evidence); and
- f. The signature of the taxpayer or duly authorized representative.

Note: Administrative costs, as defined in Treas. Reg. 301.7433-1(b)(2)(ii), Administrative costs, including attorneys' fees, are not recoverable as actual, direct economic damages, but these costs may be recoverable under IRC 7430, Awarding of Costs and Certain Fees. See criteria in Treas. Reg. 301.7430-8, *Administrative costs incurred in damage action for violations of section 362 and 524 of the Bankruptcy Code*.

Note: Pro se debtors may not claim attorney's fees.

(9) Evaluating Claims. The IRS evaluates all claim applications for damages and attorneys' fees arising from willful violations of the automatic stay (11 USC 362, Automatic stay) or the discharge injunction (11 USC 524, Effect of discharge). Claims must be evaluated within ten work days from the date of the claim's receipt by the IRS. Insolvency must review the claim to determine:

- a. The completeness of information provided;
- b. Evidence the IRS actions were willful; and
- c. Damages and attorneys' fees are reasonable and adequately substantiated. (Guidance from Counsel (L&A) may be required.)

Note: In determining whether a claim is administratively allowable the reviewer must follow the steps in IRM 25.3.3.9.2(5), Evaluation of a Claim for Damages Under IRC 7433 (a-d) and IRC 7426(h)-Review Determination.

(10) **Incomplete Claims.** Incomplete claims must be returned to the claimant with a letter of explanation identifying the incomplete items. See Exhibit 1.4.51-2, Pattern Letter for Incomplete Claim for Damages and/or Attorney's Fees.

(11) **Non-Willful Violations.** When Insolvency determines a willful violation of the automatic stay or discharge injunction did not occur, processing of the claim must halt. Insolvency must promptly forward its recommendation for rejection to Counsel (L&A).

Note: Claims for violations are generally rejected when the claimant has not established actual damages or attorney's fees.

(12) **Delegated Authorities.** Delegation Order 25-10 found in IRM 1.2.2.15.10 Delegation Order 25-10 (formerly DO-254), Payment of Claims for Damages and Attorneys' Fees Resulting from Violations of the Automatic Stay and Discharge Injunctions of the Bankruptcy Code, outlines approval authorities based on dollar amounts.

(13) **Referral to Counsel.** Any claim for more than \$1,000 must be referred to Counsel (L&A) for a legal opinion prior to its final disposition. A claim for any dollar amount that has been denied in part or in whole must be referred to Counsel (L&A) for a legal opinion.

(14) **Denied Claims.** If payment of a claim is denied wholly or partially by Insolvency, the rejecting office must prepare a rejection recommendation stating the reasons for the rejection and refer the claim application to Counsel (L&A). If Counsel (L&A) renders an opinion contrary to the rejection recommendation, only a Territory / Operation Manager has the authority to disregard the Counsel opinion. For additional information regarding claim rejection steps see IRM 25.3.3.9.2 (6), Claim Rejection. Insolvency must use Pattern Letter for Denial of a claim for Damages available in Exhibit 1.4.51-4.

(15) **Written Notification.** Upon receipt and evaluation of a complete application, Insolvency must send the claimant a written response within 60 calendar days of the receipt date stating the claim has been either rejected or accepted. See Exhibit 1.4.51-3, Pattern Letter for Approval of a Claim for Damages and/or Attorney's Fees, and Exhibit 1.4.51-4, Pattern Letter for Denial of a Claim for Damages and/or Attorney's Fees, for the applicable pattern letters.

(16) **Counsel Review.** If the claim can be fully or partially substantiated and is timely, the claim will be submitted to Counsel for partial or full acceptance concurrence. Follow the steps in IRM 25.3.3.2.2(7), Claims Acceptance Steps. Insolvency must use Pattern Letter for Approval of a Claim for Damages and/or Attorney's Fees available in Exhibit 1.4.51-3.

(17) **Civil Damages.** If a taxpayer's administrative damage claim is disallowed by Insolvency, or six months pass without a decision by the IRS or Insolvency, the

taxpayer may file a civil action for the damages as provided for in IRC 7433, Civil Damages for Certain Unauthorized Collection Actions. If the debtor is an individual, the debtor may also request damages for violations of the bankruptcy automatic stay, whether or not an administrative claim has been filed.

- a. The maximum damage award for reckless and intentional disregard of the code is \$1 million.
- b. Negligent disregard carries a maximum award of \$100,000.

(18) **Payment of Claims for Damages and/or Cost.** Reimbursement for both damages and costs is obtained only through Treasury's Judgment Fund Internet Claims System (JFICS). The approving official for Insolvency JFICS requests is the SCI Director and access to JFICS for Insolvency is through SCI Director's Staff. Procedures in IRM 25.3.3.9.4 , Reimbursement of Damages and Cost, will be followed with the exception of the forms to be used. Pattern letters applying specifically to Insolvency must be substituted. (See paragraph 15 above.)

(19) **Separate Payment Requests for Damages and Attorney's Fees.** When both payment of damages and attorney's fees have been authorized, Insolvency must request funding separately. For example if BFS FS Form 197 is used for the damages award, then BFS FS Form 197 must be used for payment of attorney's fees.

(20) **Documentation.** The AIS history must include detailed information on all aspects of claims for damages and/or attorney's fees including the items listed in the table below:

History items that must be addressed in the AIS case history:
The date the claim was received by the IRS;
A summary of the issues cited in the claim;
The dollar amount being sought broken down by damages and attorney's fees;
A listing of documentation received by from the claimant;
Results of the review for claim application completeness;
Dates of correspondence sent to the claimant along with a summary of the correspondence's content
Names of management officials involved in approving/denying the claims along with the dates of their involvement;
Date referral sent to Counsel;
A summary of Counsel's opinion(s);
Delegated authority's final determination to approve or deny the claim;
The dollar amount(s) to be paid broken down by damages and attorney's fees if claim approved;
Date appropriate forms are prepared and forwarded to BFS for funding if claim approved;
Date denial letter sent to claimant if claim denied;
Date check mailed to claimant if direct deposit not requested;
Claimant's response if received; and

History items that must be addressed in the AIS case history:
Any other information relevant to the claim application and review process.

Note: In addition, paper or electronic files of all forms and correspondence pertaining to the claim must be retained until the possibility of litigation expires. For partially or wholly denied claims, this is two years from the date of the violation.

IRM 1.4.51.12(4) Changed timeframe to work Credits Posted After Petition and NFTL Recorded Date Blank or Greater Than the Petition Date flags from calendar days to business days.

(4) **APOC Reports.** The following is a list of APOC reports that may be reviewed by managers, for a list of mandatory reports see the Field Insolvency Report Job Aid posted at Knowledge Management under Field Insolvency BOE Report Schedule for Group Managers.

- a. Flagged Cases report. The Flagged Cases report lists all cases that have unresolved flags. Most flags must be worked at least **five** calendar days before the 341 meeting.
- b. Period Detail Flag - Credits Posted After Petition Date report. The Period Detail Flag - Credits Posted After Petition Date report lists all modules with a TC designated as Pay in the Payment Designation Tables and the TC date is greater than the Petition Date. Since these credits could be in "**Violation of the Automatic Stay**" caseworkers must work the cases on this report within "**five**" business days of APOC identifying the flagged condition.
- c. Period Detail Flag - Lien Recorded Date Blank or After the Petition Date report. The Period Detail Flag - Lien Recorded Date Blank or After the Petition Date report lists all modules with a notice of lien date that is either not recorded on AIS, or the date recorded is greater than the Petition Date. Since these NFTLs could be in "**Violation of the Automatic Stay**", the caseworker must work the cases on this report within "**five**" business days of APOC identifying the flagged condition.
- d. Period Detail Flag - Secured Period report. The Period Detail Flag - Secured Period report lists all modules classified by APOC as "Secured" based on AIS Lien records. The caseworker must work the cases on this report within "**10**" calendar days of APOC identifying the flagged condition for all chapters other than Chapter 7 and Chapter 13.
- e. APOC Summary report. This report provides the manager with statistical data relating to the processing of cases through APOC.

Throughout this IRM, when applicable references to Counsel or Associate Area Counsel have been replaced with Counsel Litigation and Advisory (L&A).

Editorial changes made throughout the document.