



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

5.9.20

DECEMBER 1, 2022

EFFECTIVE DATE

(12-01-2022)

PURPOSE

- (1) This transmits a new IRM 5.9.20, Bankruptcy and Other Insolvencies, Non-Bankruptcy Insolvencies.

MATERIAL CHANGES

- (1) Editorial changes have been made throughout the IRM and citations have been updated.
- (2) IRM 5.9.20.1(2): Audience section has been updated to align with names/acronyms of current business units. Clarification on employee use was also added.
- (3) IRM 5.9.20.1(3)(4): Policy Owner and Program Owner were updated to align with current business unit names.
- (4) IRM 5.9.20.1(5): Primary Stakeholders was updated to align with current business unit names/acronyms.
- (5) IRM 5.9.20.1.3(2): Responsibilities was updated to correct IRM link reference and IRM title.
- (6) IRM 5.9.20.1.4(1): Program Reports was updated to notate the Business Objects function for the required AIS reports.
- (7) IRM 5.9.20.1.4(2)(a)(b): Program Effectiveness was updated to reflect new IRM link references and to change the name from Advisory to CEASO.
- (8) IRM 5.9.20.1.5(1): Program Controls was updated to reflect new IRM link references.
- (9) IRM 5.9.20.1.5(2): Program Controls was updated to reflect CEASO instead of Advisory. The PALS name was added to the group manager operational guide title.
- (10) IRM 5.9.20.1.6(3): Terms and Acronyms updated ReferenceNet Acronym Database web link.
- (11) IRM 5.9.20.1.6(4): Acronym table has been added for quick reference.
- (12) IRM 5.9.20.1.7(2): Related Resources was updated to add the United States Bankruptcy Code and Rules Booklet.
- (13) IRM 5.9.20.2.1(3): Assigned Offices updated to the New York Field Insolvency office for SIPA case routing.
- (14) IRM 5.9.20.2.1(10): Payment Posting was updated to reflect the New York Insolvency Field office for payment routing.
- (15) IRM 5.9.20.3.1(3): Notification clarified mailing instructions per the Form 56-F's most recent instructions.

EFFECT ON OTHER DOCUMENTS

This supersedes IRM 5.9.20 dated April 3, 2017.

AUDIENCE

Specialty Collection Insolvency and Civil Enforcement Advice & Support Operations

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5.9.20

Non-Bankruptcy Insolvencies

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5.9.20.1
(12-01-2022)
Program Scope and Objectives

- (1) **Purpose.** This Internal Revenue Manual (IRM) section describes the process and procedures for working non-bankruptcy insolvencies and the types of procedures followed to protect the Government's interest in these proceedings.
- (2) **Audience.** This IRM is designed for use by Specialty Collection Insolvency and Civil Enforcement Advice & Support Operations (CEASO) personnel. Advisors, revenue officers, and other SB/SE employees may also refer to this section. Employees in functions other than SB/SE may refer to this section when working with a taxpayer that has filed an insolvency proceeding.
- (3) **Policy Owner.** The Director of Collection Policy is responsible for issuing policy for the Specialty Collection Insolvency program.
- (4) **Program Owner.** The program owner is Collection Policy, Specialty Collection Insolvency, an organization with the Small Business Self Employed (SB/SE) division.
- (5) **Primary Stakeholders.** The primary stakeholders of this section are SB/SE Collection, Specialty Collection Insolvency and SB/SE Specialty Collection Offers, Liens and CEASO.
- (6) **Program Goals.** The goal of this IRM is to protect the government's interest and ensure taxpayer rights are protected while processing stockbroker insolvencies, receiverships, assignment for the benefit of creditors, corporate dissolutions and bulk sales.

5.9.20.1.1
(04-03-2017)
Background

- (1) Internal Revenue Manual (IRM) 5.9, Bankruptcy and Other Insolvencies, contains the Service's position, procedures, information, instructions, guidance, and references concerning bankruptcy cases, stockbroker insolvencies, receiverships, assignments for the benefit of creditors, corporate dissolutions, and bulk sales.
- (2) This IRM specifically addresses the Service's position, procedures, information, instructions, guidance, and references on the following non-bankruptcy insolvencies: stockbroker insolvencies, receiverships, assignments for the benefit of creditors, corporate dissolutions, and bulk sales.

5.9.20.1.2
(04-03-2017)
Authority

- (1) 11 USC 109(b) with 109(d) & (e)
- (2) Securities Investor Protection Act (SIPA) of 1970
- (3) 15 USC 78aaa et seq
- (4) 11 USC 742
- (5) IRC 7403(d)
- (6) IRC 6036

5.9.20.1.3
(12-01-2022)
Responsibilities

- (1) The Director, Specialty Collection Insolvency and Director, Specialty Collection Offers, Liens and CEASO are responsible for program oversight.

- (2) Territory and Frontline managers are responsible for ensuring reviews are completed as required per IRM 1.4.51.17.2, Operational Review, IRM 1.4.51.16.2, EQ Consistency Reviews, IRM 1.4.51.5.2, Reviews (Overview), and IRM 1.4.53, Advisory and Property Appraisal and Liquidation Specialist Group Manager Operational Aid.
- (3) Employees are responsible for following the provided guidance to process cases.

5.9.20.1.4
(12-01-2022)

Program Management and Review

- (1) **Program Reports.** Reports housed on the Business Objects Enterprise system are used to support the insolvency program. The required AIS reports are described in IRM 5.9.12 , Insolvency Automated Processes, IRM 5.9.16 , Insolvency Case Monitoring, and in IRM 1.4.51.8.3 , Case Management Tools.
- (2) **Program Effectiveness.**
 - a. Operational and Program reviews are conducted on a yearly basis. See IRM 1.4.51.17.2, Operational Review, and IRM 1.4.51.17.5, Program Reviews, for more information. Operational Reviews are conducted within the operation and can be obtained by contacting the Director, Specialty Collection Insolvency or Director Specialty Collection Offers, Liens and CEASO. Program Reviews are conducted within Headquarters Collection and can be obtained by contacting the Director, Collection Policy or Director, Specialty Collection Offers, Liens and CEASO.
 - b. National quality reviews conducted on a monthly basis. 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.

5.9.20.1.5
(12-01-2022)

Program Controls

- (1) Insolvency Managers are required to follow program management procedures and controls addressed in IRM 1.4.51.5.2, Reviews (Overview), IRM 1.4.51.15, Controls, and IRM 1.4.51.16, Quality.
- (2) CEASO Managers are required to follow program management procedures and controls addressed in IRM 1.4.53, Advisory and Property Appraisal and Liquidation Specialist Group Manager Operational Aid.

5.9.20.1.6
(12-01-2022)

Terms and Acronyms

- (1) A glossary of terms used in this IRM can be found in Exhibit 5.9.1-1, Glossary of Common Insolvency Terms.
- (2) Common acronyms acceptable for use in the AIS history are listed in Exhibit 5.9.1-2, Acronyms and Abbreviations.
- (3) Additional acceptable acronyms and abbreviations are found in the ReferenceNet Acronym Database, which may be viewed at: <http://rnet.web.irs.gov/Resources/Acronymdb.aspx>.
- (4) Acronyms used specifically in this IRM section are listed below:

Acronyms	Definitions
ABC	Assignment for the Benefit of Creditors
AIS	Automated Insolvency System

Acronyms	Definitions
CEASO	Civil Enforcement Advice & Support Operations
CIO	Centralized Insolvency Operation
CSED	Collection Statute Expiration Date
FDIC	Federal Deposit Insurance Corporation
NFTL	Notice of Federal Tax Lien
SIPA	Security Investor Protection Act
SIPC	Security Investor Protection Corporation
TFRP	Trust Fund Recovery Penalty

5.9.20.1.7
(12-01-2022)
Related Resources

- (1) Procedural guidance on insolvencies can be found throughout IRM 5.9, Bankruptcy and Other Insolvencies.
- (2) The United States Bankruptcy Code and Rules Booklet
- (3) Automated Insolvency System - User Guide, Document 13219.
- (4) <http://www.fdic.gov>

5.9.20.2
(03-05-2015)
Stockbroker Insolvencies

- (1) **Overview.** Because stockbrokers are entrusted with the financial investments of their customers, special laws have been enacted to protect the assets of their investors. In conjunction with these special protections, Congress has limited the extent to which stockbrokers may seek bankruptcy protection. Specifically, stockbrokers are prohibited from being a debtor in Chapters 11 and 13 bankruptcies (11 USC 109(d) & (e)). By default the only chapter of bankruptcy for which a stockbroker may be eligible is Chapter 7. (Compare 11 USC 109(b) with 109(d) & (e).) The Field Insolvency operation is fully responsible for working stockbroker insolvencies.
- (2) **Interstate Commerce.** The majority of stockbrokers deal in interstate commerce and, in so doing, are required to be members of the Security Investor Protection Corporation (SIPC) by the Securities Investor Protection Act (SIPA) of 1970, 15 USC 78aaa et seq. Generally, these stockbrokers should not be filing bankruptcy. However, if a determination has been made a broker or brokerage firm's customers' investments do not need protection under SIPA, it may file a Chapter 7 bankruptcy. The discussion of SIPA cases in the subsection below explains procedures to be taken by Field Insolvency caseworkers.
- (3) **Intrastate Commerce.** A broker or dealer whose business is exclusively *intra*-state and who does not use any facility of a national securities exchange may appropriately file a Chapter 7 bankruptcy. Insolvency specialists should handle these cases as they would any other Chapter 7 bankruptcy.

5.9.20.2.1
(12-01-2022)
SIPA Cases

- (1) **SIPA Actions.** SIPC is a private, non-profit, non-governmental corporation to which most registered brokers are required to belong. Assessments against members are deposited into a fund designed to protect customers (i.e., investors doing business with the broker or brokerage) in the event of the financial failure of a SIPA member. If SIPC determines that a member has failed or is in danger of failing and other conditions are met, SIPC may seek liquidation of the firm.
 - a. SIPC files an application for a protective decree with the district court as a civil suit where SIPC is listed as one of the plaintiffs in the matter. If a Chapter 7 bankruptcy has been filed, the bankruptcy proceeding is stayed pending the outcome of the SIPC liquidation. See 11 USC 742.
 - b. A trustee is appointed to satisfy investors' and other creditors' claims.
 - c. Once the SIPC liquidation proceeding is completed, if the broker or brokerage had filed a Chapter 7 previously, the Chapter 7 case is dismissed. 11 USC 742.
- (2) **SIPC Trustee.** After the district court grants the protective decree, it appoints a trustee and the case is removed to the bankruptcy court. SIPA contains special provisions protecting investment customers, but the general provisions of the bankruptcy code also apply to SIPA liquidations. Since the case is opened in the district court and assigned a case number there, the case is not assigned a bankruptcy case number; however, the Bankruptcy Court gives it an adversary number. Insolvency will use the adversary number to load the case onto the Automated Insolvency System (AIS). The duties of the SIPC trustee are similar to those of a Chapter 7 trustee with the additional duties to:
 - a. Be responsible for all noticing issues on the case;
 - b. Hire any necessary personnel, such as an accountant, to assist in the liquidation process;
 - c. Use any member of SIPC to assist in the liquidation proceeding;
 - d. Maintain and control customer accounts;
 - e. Investigate the debtor and condition of the estate; and
 - f. Report any and all findings to the court.

Note: These additional duties do not require approval of the bankruptcy court. (15 USC 78fff-1.)

Note: The SIPC trustee may submit a request to the Service seeking exemption from filing the returns of a brokerage company in a SIPA proceeding, in appropriate circumstances, under the procedures discussed in IRM 5.9.6.14.1(2) , Relief from Filing Requirement.
- (3) **Assigned Offices.** All SIPA cases are handled by the New York Field Insolvency office. When notices pertaining to SIPA proceedings are received by any other Field Insolvency office or by the CIO, those notices must be forwarded to the New York Field Insolvency office as time sensitive mail according to procedures established in IRM 5.9.11.3(4), Specialty Mail Received by the Field.
- (4) **Initial Insolvency Questions.** Usually the Service will not receive any notification of a stockbroker insolvency until SIPC files an application for a protective decree and the case is transferred to the bankruptcy court as an adversarial proceeding. The caseworker must contact the trustee to obtain information such as:
 - The taxpayer identification number (EIN/SSN)

- Other entities involved and their corresponding TINs
- Date of the 341 meeting of creditors
- If the IRS is named as a creditor
- The last date to file a claim
- How to be added to creditor matrices, if necessary
- Other relevant information or special procedures required by the trustee

(5) **Adding the Case to AIS.** Field Insolvency will be responsible for loading SIPA cases on to AIS. Because AIS has no database for SIPA cases, they will be added as “RC” (receivership) in the “Chapter” field of the AIS entity screen. The caseworker will use the adversary number with the letters “-AD” following the last digit of the number or following the judge’s initials. The “-AD” will identify the case as a SIPA proceeding. The trustee information can be loaded to the AIS Attorney screen.

(6) **Manual Processing.** The Insolvency Interface Program (IIP) will not process SIPA cases. Field Insolvency caseworkers will be responsible for verifying TINs, reviewing status codes, addressing pending Exam actions (TC 420), taking necessary actions to avoid or correct stay violations, and inputting TC 520 cc 84 manually on all periods. If any periods are estimated, a dummy may be required.

Note: Closing code 84 will not establish a dummy module. It may be necessary to establish a dummy mod using cc 81, and change the closing code to 84 after the dummy mod is established.

(7) **TFRP Investigation.** TFRP investigations will be conducted and assertions will be made as if the case were a Chapter 7 bankruptcy.

(8) **Claims.** Claims are filed with the trustee rather than with the court. The typical deadline to file a claim is six months from the date of notice. The Automated Proof of Claim (APOC) system will not process SIPA cases. The caseworker will prepare the Service’s claim as if it were for a Chapter 7 bankruptcy. When a claim is printed from the AIS claim screen, it will be annotated as a “receivership.” The caseworker must white out the “receivership” designation and replace it with “SIPA.”

(9) **Payment Preference.** Customer creditors (see Exhibit 5.9.1-1, Glossary of Common Insolvency Terms) always receive full preference in these liquidation proceedings. The IRS will never be a customer creditor. After distribution is made to customer creditors, distribution toward non-customer claims is treated as if the broker or brokerage had filed a Chapter 7 Asset case (11 USC 726; see 15 USC 78fff(e)).

(10) **Payment Posting.** The SIPA trustee should be instructed to mail payments to the New York Field Insolvency office to be posted through AIS and sent to the serving Campuses. Payments received by the CIO in error will be posted to the period with the most imminent CSED by the CIO. The CIO will advise the New York Field Insolvency office of payment receipt by phone or secure e-mail. Designated payment code “03” should be used on the payment vouchers.

(11) **Stay.** Upon SIPC’s filing of an application for a protective decree under SIPA, all tax proceedings concerning the broker or brokerage are stayed until the application is dismissed or until the liquidation proceedings are finished. 11 USC 362(a). However, in the case of an individual broker, the stay applies to the commencement or continuation of a proceeding in United States Tax Court for

a taxable period ending before the filing of an application for a protective decree under SIPA. Thus, all normal bankruptcy stay procedures must be followed. For instance, receipt of levy payments must be refunded to the SIPC trustee; Notices of Federal Tax Liens filed in violation of the stay must be withdrawn.

- (12) **Case Closure.** After completion of a liquidation proceeding, corporations, limited liability companies, and limited partnerships should be closed as TC 530 cc 10 upon reversal of the TC 520. Individual brokers' cases should be closed as if they were Chapter 7 discharges.
- (13) **Counsel Guidance.** Issues arising from SIPA proceedings that have not been covered in this IRM should be discussed with Counsel.

5.9.20.3
(12-01-2022)
**Receivership
Proceedings**

- (1) **Overview.** A receivership proceeding is when a state or federal court appoints a fiduciary (receiver) to take control of the assets of a business or individual debtor. A receivership may be established to:
 - a. Conserve, preserve, protect, or administer property involved in a legal action;
 - b. Prevent fraud or loss of property from fraud;
 - c. Prevent mismanagement of property; or
 - d. Replace an irresponsible or insolvent assignee where claims are jeopardized in an assignment for benefit of creditors.

The Field Insolvency operation is fully responsible for working receivership cases.

- (2) **Court Jurisdiction.** The majority of receivership actions are brought in the state courts because the basis for jurisdiction by federal district courts is limited. The court appointing the receiver has jurisdiction over the assets of the receivership. The court handles all questions pertaining to the preservation, collection, liquidation, and distribution of the assets.

Note: No absolute right to the appointment of a receiver exists. The decision is at the discretion of the court.

- (3) **US District Courts.** The US government can request a federal district court to appoint a receiver as part of a federal tax lien foreclosure action under IRC 7403(d). Such a receivership is usually sought where necessary for the collection, preservation, or orderly liquidation of property being foreclosed.
- (4) **CSED.** The statute for collection of taxes is suspended during the time the taxpayer's assets are in the control or custody of the court plus six months (IRC 6503(b)).
- (5) **Types of Receiverships.** Receiverships are generally classified as either "general" where all of the non-exempt assets of a business or individual debtor are under the court's control, or "limited" where a specific asset or group of assets are under the court's control. The following chart illustrates the difference between a general and a limited receivership.

Action	General Receivership	Limited Receivership
Receiver controls	All non-exempt property	A specific asset or class of assets only
Debtor controls	All exempt property	All exempt property
IRS method of collection	Proof of claim	Proof of claim
IRS collection action during the proceeding can include	<ul style="list-style-type: none"> • Seizure of any exempt assets • Levy on income from exempt property 	<ul style="list-style-type: none"> • Seizure of assets not part of the receivership • Levy on income produced by assets not under the receivership

- (6) **Receiver.** The receiver is considered an officer of the court with fiduciary responsibilities to the court and creditors. The receiver is usually an independent party without an interest in the case. However, a party in interest with special knowledge of the business may be appointed receiver upon agreement of the parties to the suit. The receiver is not personally liable for receivership obligations.

Note: The receiver of a corporation in receivership may submit a request to the Service seeking exemption from filing the returns of the corporation, in appropriate circumstances, under the procedures discussed in IRM 5.9.6.14.1(2), Relief from Filing Requirement.

- (7) **Bankruptcy versus Receivership.** The Service generally will not initiate or join in a proceeding to request an involuntary bankruptcy for a taxpayer. However, IRC 7403(d) authorizes the Service to request the appointment of a receiver. Such a receivership is usually sought where necessary for the collection, preservation, or orderly liquidation of property being foreclosed.
- (8) **Adding the Case to AIS.** Caseworkers must add receivership cases to AIS, inputting "RC" in the chapter field on the AIS entity screen. The court-appointed receiver's name, address, and phone number must be added to the AIS attorney table.
- (9) **Manual Processing.** IIP does not process receivership cases, so the caseworker must manually input TC 520 cc 84 on balance due modules. Field Insolvency caseworkers will be responsible for verifying TINs, reviewing status codes, addressing pending Exam actions (TC 420), taking necessary actions to avoid or correct stay violations, and inputting TC 520 cc 84 manually on all periods. If any periods on the proof of claim are estimated, a dummy module may be required.

Note: Closing code 84 will not establish a dummy module. It may be necessary to establish a dummy module using cc 81 and change the closing code to 84 after the dummy module is established.

- (10) **TFRP Investigation.** TFRP investigations will be conducted and assertions made as if the case were a Chapter 7 bankruptcy.
- (11) **Unfiled Returns.** Unfiled returns should be requested from the receiver. The Service should make IRC 6020(b) returns for returns not received by the deadline given to the receiver. This may require issuing a summons for the 6020(b) information.
- Note:** The IRS can make immediate assessments of unassessed income, estate and gift tax deficiencies pursuant to IRC 6871; Treas. Reg. 301.6871(b)-1(c).
- (12) **Bar Date.** Claims must be filed by the bar date established by the court or the claim may be disallowed.
- (13) **Proof of Claim.** The Automated Proof of Claim (APOC) system does not process Receivership cases. The proof of claim should be filed manually on Form 4490, unless the receiver requests the claim be filed on another form or presented in letter format. Penalties and interest should be computed to the date of the court order establishing the receivership. Schedules of assets and liabilities are not provided to the court and creditors, so secured claims should be filed at full value. The claim should be filed according to the requirements of the court.
- (14) **Case Files.** In addition to AIS documentation, paper files should be kept for receivership cases, including notices, copies of claims, and correspondence sent to or received from the receiver.
- (15) **Follow-Up Review.** After filing a claim, the caseworker must input a one year follow-up on the AIS case to check for distribution. If no distribution has been received by the follow-up date, the caseworker must contact the receiver by phone or ad hoc letter asking about the progress of the distribution and the likelihood of the Service's receiving payment on its claim.
- (16) **Payment Application.** The court determines the formula for the distribution of assets and to which creditors the assets will be distributed. Generally, the assets are paid:
- First, to the receiver's administrative creditors, including the receiver.
 - Then, to pre-appointment creditors and other creditors.
- Although creditors fall into classes as is the case with a bankruptcy, payment order of those classes may not be mandated by statute and courts may have some discretionary power.
- (17) The receiver should be instructed to mail payments to the Field Insolvency office where the case is assigned. The CIO will post payments received in error to the period with the most imminent CSED. The CIO will advise the caseworker of payment receipt by phone or secure email. Designated payment code "03" should be used on the payment vouchers.
- (18) **Case Closure.** Once the receivership proceeding is complete and the creditors have been paid to the extent allowed by the court distribution, the receiver is discharged and the case is closed. Unlike bankruptcy cases, receivership proceedings do not provide a discharge. The IRS may collect any tax claim that remains unpaid once the proceeding ends. IRC 6873. When a business entity has been dissolved under state receivership proceedings or other dissolution actions, and all IRS activity, including addressing any TFRP issues, has

concluded the litigation freeze code must be reversed and the modules closed with a TC 530 cc10. When an individual receivership is closed in the court and all IRS activity has concluded, the litigation freeze code should be reversed.

- (19) **Counsel Guidance.** Issues arising from receivership proceedings that have not been covered in this IRM should be discussed with Counsel. In some instances formal intervention by Counsel may be required.

5.9.20.3.1
(12-01-2022)
**Federal Deposit
Insurance Corporation
(FDIC) Receivership
Proceedings of Insolvent
Financial Institutions**

- (1) **Overview.** When a financial institution encounters economic distress, the financial institution can be placed into a receivership proceeding pursuant to 12 USC 1821. The receivership proceeding is much like a bankruptcy case. Prior to January 1, 1996, the Resolution Trust Corporation (RTC) was the fiduciary of the insolvent financial institutions. On January 1, 1996, the FDIC took over the responsibility of serving as the fiduciary of failing financial institutions. The FDIC also assumed the responsibility of closing the cases of financial institutions previously administered by the RTC that remained open as of close of business on December 31, 1995. The FDIC has the authority to wind up the financial institution's operations, liquidate the assets, and to pay the claims of creditors from the funds secured from the liquidation of the assets.
- (2) **Court Jurisdiction.** The FDIC receivership is an administrative proceeding. The financial institution's assets are not under the direct control of a court. Therefore, the CSED for the financial institution is not extended during the period that the FDIC is the receiver for the insolvent financial institution.
- (3) **Notification.** Form 56-F, Notice Concerning Fiduciary Relationship of Financial Institution, is the only form the IRS should accept as notice of the FDIC Receivership. In reference to IRC 6402(k) and IRC 6903, send Form 56-F to the Internal Revenue Service Center where the financial institution for whom the fiduciary is acting files its income tax return. For purposes of IRC 6036, send Form 56-F to the Advisory Group Manager of the area office of the IRS having jurisdiction over the person for whom you are acting. Until the Form 56-F is revised, the Advisory Group Manager should forward the form to:

Internal Revenue Service

Insolvency,

Attn: FDIC

MS 5024 DAL

Dallas, TX 75242

Note: The IRS should not honor an informal notice from the FDIC, such as an email to SBSE Collection employees, as the equivalent of a Form 56-F.

- (4) **Adding the case to AIS.** Caseworkers must add the FDIC receivership cases to AIS, inputting "RC" in the chapter field on the Taxpayer Screen on AIS. For easy identification of the FDIC cases, the caseworker must select "FDIC" from the drop down menu in the "Classification" field on the Taxpayer Screen when adding the case to AIS. The name of the failed financial institution should be

added in the "Last Name" field on the Taxpayer Screen. The "First Name" field should show c/o FDIC. The address should be the address of the FDIC location administering the case. The FDIC information may be found using cc *ENMOD* on IDRS or from lines 9 through 13 of the Form 56-F.

- (5) **Creating a Case Number.** The FDIC administers these cases by the EIN of the insolvent financial institution and does not assign a case number to the proceeding. To add a case to AIS, a case number is required and must be created. Create a case number using the year of failure, the first 5 digits of the EIN of the insolvent financial institution, and FDIC. Enter the number in the **court case** number field on AIS in "YY-EINEI-FDIC" format. Do not include FDIC in the AIS case number field.
- (6) **Manual Processing.** IIP does not process receivership FDIC cases. The caseworker will be responsible for verifying TINs, reviewing status codes, addressing pending Exam actions (TC 420), and inputting the TC 520 cc 84 manually on all balance due modules or on any module with a potential balance due. If there is no liability (actual or potential), the case should be closed as NL. No TC 520 cc 84 input will be required on the cases closed as NL.

Note: Closing code 84 will not establish a dummy module. It may be necessary to establish a dummy module using cc 81 and change the closing code to 84 after the dummy module is established.

- (7) **TFRP Investigation.** TFRP investigations will be conducted and assertions made as if the case were a Chapter 7 bankruptcy.
- (8) **Unfiled Returns.** Unfiled returns should be requested from the FDIC. The Service should make IRC 6020(b) returns for returns not received by the deadline given to the FDIC. This may require issuing a summons for the 6020(b) information.
- (9) **Bar Date.** The deadline for filing a proof of claim is set by the FDIC and can be found on the FDIC website, <http://www.fdic.gov>. Use the hyperlink of the failed financial institution to obtain the deadline information as well as a copy of the FDIC proof of claim. The claim must be filed by the established deadline or the claim may be disallowed.
- (10) **Proof of Claim.** The proof of claim should be filed on Form RLS7214 found on the FDIC website. APOC will not compute the proof of claim in these cases. The caseworker must manually compute the claim. Penalties and interest should be computed to the date of the failure of the financial institution. Secured claims should be filed at full value. Instructions for completing and filing the proof of claim can be found on <http://www.fdic.gov>.
- (11) **Case Files.** In addition to AIS documentation, paper files must be kept for the FDIC cases. The files should contain notices, copies of claims, correspondence sent to or received from the receiver, and any other information pertinent to the case that cannot be maintained on AIS.
- (12) **Refund Determination.** When a Form 56-F is filed by the FDIC, the BMF Entity Campus is responsible for the input of the TC 971 AC 076 to IDRS. This creates a Savings and Loan Modular Refund Freeze on the MFT 02. LB&I and the campus administer the refunds on these cases. If an application for tentative carryback allowance (TCA) is filed with respect to the insolvent

financial institution, Accounts Management follows the procedures in IRM 21.5.9.4.2.1, Carryback Applications/Claims from Financial Institutions in Receivership - Form 56-F Filed.

- (13) **Payment Application.** The distribution of payments to creditors in the FDIC cases is not mandated by statute. Information about the order of distribution of the specific case can be found on the FDIC website. Claims are paid in the order of priority:
1. Administrative expenses of the receiver
 2. Deposit liability claims
 3. Other general or senior liabilities of the institution
 4. Subordinated obligations
 5. Shareholder claims
- (14) **Payment Posting.** The FDIC should be instructed to mail payments to the Field Insolvency office where the case is assigned. The CIO will post payments received in error to the period with the most imminent CSED. The CIO will advise the field caseworker of payment receipt by phone or secure email. Designated payment code "03" should be used on the payment vouchers. The payment must be posted using the "Non Plan Payment" option from the "Payment Monitoring Menu" on AIS.
- (15) **Case Closure.** Once any TFRP issues or other IRS activity has been completed and the proof of claim has been acknowledged by the FDIC, the caseworker should initiate closing actions on the case. Balance due modules should be closed as uncollectible using the TC 530.
- If the date the financial institution failed is prior to January 1, 1996, the case was previously administered by the RTC. The modules should be closed with a TC 530 cc 15.
 - If the date the financial institution failed is January 1, 1996 or later, the modules should be closed with TC 530 cc 10.
- Once the TC 530 has posted to IDRS, the TC 520 cc 84 should be reversed on IDRS.
- (16) **Counsel Guidance.** Issues arising from the FDIC receivership proceedings that are not covered in this IRM should be discussed with Counsel. This is especially important when the FDIC is administering the assets of the failed financial institutions and the parent entity or related entity has filed a Chapter 11 or Chapter 7 bankruptcy case.

5.9.20.4
(01-28-2016)
**Assignment for the
Benefit of Creditors
(ABC)**

- (1) **Overview.** An assignment for the benefit of creditors (ABC) is a state law proceeding that is speedier and less costly than a bankruptcy. It involves a voluntary transfer by a debtor of some or all of the debtor's property to an assignee. The assignee applies the assigned property or proceeds from the sale of that property toward payment of the outstanding debts. Generally, the assignment must be in writing, usually in a document conveying title from the debtor to the assignee. Most states apply the requirements of contract law for the assignment to be valid. The Field Insolvency operation is fully responsible for working ABCs.
- (2) **Assignee.** The assignee can be a person, persons, or an entity in trust. In general, the assignee's duties, powers and liabilities are those of a fiduciary.

- (3) **Types of Assignments.** The two types of ABCs are:
- A general assignment of all or substantially all of the debtor's property
 - A partial assignment of only some of the debtor's property
- (4) **State Laws.** Generally, assignments are under the jurisdiction of a state court. If the court supervises the assignment, the proceeding may be handled as a receivership. (See IRM 5.9.20.3, Receivership Proceedings.) If the case is not handled as a receivership, the following applies:
- “-AS” must follow the case number or judge's initials in the case number field on the AIS entity screen to identify the case as an assignment rather than a receivership
 - The proof of claim must state the kind of proceeding as “Assignment for the Benefit of Creditors”
- Note:** The assignee may request a letter in lieu of a claim form.
- (5) **Non-Judicial Assignment.** The ABC may not be under court jurisdiction. If so, no stay against collection exists. When this is the case, Insolvency must immediately contact Counsel to determine if the Service will be a party to the ABC proceeding or will pursue collection administratively. Variations in state laws will affect what actions are in the best interest of the government.
- (6) **Counsel Guidance.** Issues arising from assignments for the benefit of creditors that have not been covered in this IRM should be discussed with Counsel.

5.9.20.5
(03-05-2015)
Corporate Dissolutions

- (1) **Overview.** A corporation's existence is artificial and created by state law. State statutes provide for the creation of a corporation, the period of its existence, and the termination of its life. When a corporation's existence ends, the affairs of the corporation must be wound up, meaning debts must be paid and assets distributed. This process is referred to as a corporate dissolution.
- (2) **Methods of Dissolution.** Dissolution may be accomplished by non-judicial means, usually approved by the stockholders, or by judicial means, usually through a state court procedure. Among the ways a corporation may be dissolved are:
- Expiration of the corporate charter
 - Merger
 - Voluntary surrender of the corporate charter by the stockholders
 - Involuntary dissolution of the corporate charter by the state, usually done to enforce a violation of state law

5.9.20.5.1
(04-03-2017)
Corporate Dissolutions - Judicial

- (1) **Judicial Dissolution.** If difficulties arise during the liquidation of assets, payment of claims, or distribution of assets, or if state law requires, dissolution may be conducted in a court proceeding.
- Usually the court appoints a receiver, liquidator, or other fiduciary who is charged with attending to the dissolution under orders of the state court.
 - The state court hears and determines all controversies arising during the course of the dissolution.

- (2) **Stay from Collection.** The Service cannot take collection actions against any property in the custody of the court. The CSED is suspended during the period the corporation's assets are in the control or custody of the court and for six months thereafter. IRC 6503(b).
- (3) **Manual Processing.** Advisors will be responsible for verifying TINs, reviewing status codes, addressing pending Exam actions (TC 420) taking necessary actions to avoid or correct stay violations, and inputting TC 520 cc 84 manually on all periods
- (4) **TFRP Investigation.** TFRP investigations will be conducted and assertions made as if the case were a Chapter 7 bankruptcy. (See IRM 5.9.6.15, Trust Fund Recovery Penalty.)
- (5) **Unfiled Returns.** Unfiled returns should be requested from the receiver or other fiduciary. The Service should make IRC 6020(b) returns for returns not received by the deadline given to the receiver. This may require issuing a summons for the 6020(b) information.
- (6) **Proof of Claim.** The proof of claim should be filed manually on Form 4490, unless the court or fiduciary of the court requests the claim be filed on another form or presented in letter format. APOC will not compute the proof of claim in these cases. The caseworker must manually compute the claim. Penalties and interest should be computed to the date of the court order establishing the dissolution proceeding. Schedules of assets and liabilities are not provided to the court and creditors, so secured claims should be filed at full value. The claim should be filed according to the requirements of the court or the agent of the court.
- (7) **Counsel Guidance.** Issues arising from corporate dissolutions that have not been covered in this IRM should be discussed with Counsel.

5.9.20.5.2
(03-05-2015)
**Corporate Dissolution -
Non-Judicial**

- (1) **Non-Judicial Dissolution.** If parties in interest can liquidate a corporation without court intervention, and if all parties and creditors feel they are being treated equitably, no need arises to conduct the dissolution under the guidance of a state court. A non-judicial liquidation is most often found where:
 - a. Sufficient money exists or can be generated to pay all corporate creditors; and
 - b. The value and disposition of the assets and the priority among claimants is not disputed.
- (2) **Dissolution Conducted.** The dissolution is usually conducted by the officers of the corporation who act in a fiduciary capacity.
- (3) **No Stay.** In a non-judicial corporate dissolution, a stay against enforced collection is not in force. However, revenue officers should consult Counsel before taking collection actions if they have questions about the Service's legal standing in doing so.

5.9.20.6
(04-03-2017)
Bulk Sales

- (1) **State Oversight.** Most states with bulk sales laws have adopted Article 6 of the Uniform Commercial Code and require that:
 - a. The seller gives the buyer a list of creditors and the amounts owed to each of them;
 - b. The potential buyer to notify each creditor of the proposed sale; and

- c. The notice include an inventory of sales items and the terms of the sale.

Note: Failure to comply with the notice requirement renders the transfer ineffective as against creditors to whom no notice (or improper notice) was given.

- (2) **Required Research.** Revenue officers working in the Advisory function, will work all bulk sales. When the Service is advised of a bulk sale, the advisor assigned the case must research internal systems to determine if the seller owes taxes and take action as needed to ensure payment. If all pre-levy requirements have been met, the Service will issue a levy on the seller prior to sale or, if the sale is complete, the Service will levy on the proceeds.
- (3) **Lien Rights.** The table below explains the IRS' lien rights with respect to bulk sales:

If	And	Then
If the NFTL was filed prior to the transfer	N/A	The lien follows the property and the IRS can seize the property notwithstanding the transfer.
IRS has a statutory lien, but no Notice of Federal Tax Lien has been filed	the IRS did not receive the notice required by the bulk sales law	the transfer is ineffective against the IRS. The statutory lien would be valid against the transferee.
IRS has a statutory lien, but no Notice of Federal Tax Lien has been filed	the IRS received proper notice required by the bulk sales law	the transfer is effective and the purchaser takes the property free and clear of the federal tax lien. Under IRC 6323(a), a federal tax lien is not valid against a purchaser until a notice has been filed.

Note: The bulk sales law only require notice to "creditors". If the IRS is not a creditor at the time of the transfer, the bulk sale law will not apply and the tax lien would not attach. Generally, the IRS would not be a creditor before an assessment is made.