



CSSD Policy			
Subject:	BANKRUPTCY	Number:	2009-2
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Approved by:	Benidia A. Rice, Director	Revision	FINAL

I. **PURPOSE:** 1) To ensure that the appropriate establishment and enforcement activities of a child and/ or medical support order proceed in cases where non-custodial parent filed for bankruptcy; and 2) To ensure that CSSD files Proof of Claims and other pleadings in a timely manner pursuant to the Federal Rules of Bankruptcy Procedure.

II. **REFERENCES:** U.S.C. Title 11, Chapters 7, 11, and 13; Title, Subtitle B “Priority Child Support” (sections 212-220) of Public Law 109-8 “The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005”; 42 U.S.C. § 651 Authorization of Appropriation; 42 U.S.C. § 656(b) Support Obligation as Obligation to State ;discharge in bankruptcy; 45 C.F.R.§303.4, Establishment of support obligation; 45 C.F.R. § 303.5, Establishment of paternity; 45 C.F.R.§ 303.6, Enforcement of support obligations; 45 C.F.R. §303.31 Securing and enforcing medical support obligations; C.F.R. §303.32, National Medical Support Notice; 45 C.F.R. §303.100, Procedures for income withholding; Federal Rules of Bankruptcy Procedure; PIQ-07-04, Additional Information Regarding Enforcing Child Support When Obligor is in Bankruptcy, July 23, 2007.

III. OVERVIEW OF BANKRUPTCY LAW AND PROCEDURE

Bankruptcy is the legal action taken by individuals and entities that are experiencing difficulty with financial management and paying debts. By filing a voluntary petition for bankruptcy, the debtor is enlisting the assistance of the federal court to assistance in resolving their financial obligations. The court takes control over all of the debtor’s property and uses the property to pay debts that existed before the bankruptcy case was filed. Once the bankruptcy petition is filed, an automatic stay is triggered. The automatic stay temporarily stops the commencement, enforcement and perfection of liens and all proceedings to recover pre-petition claims and judgments against the debtor’s property. Actions taken in violation of the automatic stay may result in penalties and the assessment of damages. Therefore, it is important for child support services agencies to under what enforcement and establishment actions are allowable in the various types of bankruptcy cases.

Creditors, who wish to have their financial obligations satisfied, must file a Proof of Claim in the bankruptcy case. The court will pay the claims according to the order of priority specified in the bankruptcy code. The court will appoint a trustee to allocate the debtor’s property amongst the creditors. After the trustee, distributes the debtor’s property, the debtor receives a discharge of his or her

debts; *only dischargeable debts will be discharged in the process*. However, a domestic support obligation, which includes child support, is *never* dischargeable. Once a debt is discharged, the creditor no longer has any rights to collect on that debt. Likewise, the debtor is legally free and clear from the obligation to pay on that debt.

Under Title 11 of the United States Code, there are five (5) different types of bankruptcy for which a debtor can file a petition: Chapter 7-Individual Liquidation; Chapter 9-Municipality; Chapter 11-Business Reorganization; Chapter 12-Family Farmer and Chapter 13-Individual Reorganization. Chapter 7 and Chapter 13 are the two most common types of bankruptcy cases that affect CSSD cases.

Chapter 7

Most Americans file Chapter 7 bankruptcy because it is the simplest and fastest way to obtain bankruptcy relief. Upon the filing of a Chapter 7 petition, the court will appoint a trustee. The trustee is responsible for collecting the debtor's that exist at the time the petition was filed. These assets become the property of the bankruptcy estate. The court will send notices to the creditor, which include the date the petition was filed, the meeting of creditors and the deadline to file a claim. Creditors may file a proof of claim, with supporting documentation attached.

The filing of the petition will trigger the automatic stay for certain types of actions, while the trustee liquidates the property of the bankruptcy estate to repay creditors according to priorities delineated in the bankruptcy code. When it has been determined that the debtor does not have assets, the creditor is not required to file a proof of claim.

The debtor will receive a discharge after the property has been distributed. If the debtor does not have assets, the debtor will receive a discharge without any property being distributed. A debtor usually receives a discharge within three (3) to four (4) months of filing the petition.

Chapter 13

Chapter 13 bankruptcies are known as individual reorganization for individual or married debtors with regular income. The debtor's unsecured debts must be less than \$250,000.00 and secured debts must be less than \$871,550.00. The debtor must submit a Plan of Reorganization ("The Plan"), which details how the claims will be paid off within a certain period of time. Like in Chapter 7 cases, the creditors may file a Proof of Claim and attach supporting documentation. Where a creditor disagrees with the Plan payment schedule or where it appears that the Plan will not leave sufficient assets to pay the claim, the creditor may file an Objection to the Plan.

Property of the Bankruptcy estate is all of the debtor's property at the time the petition was filed and the all property the debtor acquires while the bankruptcy is pending. This property is used to make payments to the creditors under the Plan. The court must confirm the Plan before the trustee can monitor and distribute the property in accordance with the Plan. The debtor will receive a discharge after the plan is completed. A Chapter 13 bankruptcy proceeding can take three (3) to five (5) years for a debtor to successfully complete the Plan.

When a chapter 7 or 13 bankruptcy case is dismissed or discharged, any existing support arrears that was not satisfied during the bankruptcy proceeding will remain due and owing.

The Bankruptcy Reform Act of 1994 and Child Support

The Bankruptcy Reform Act of 1994 ("the 1994 Reform Act") governs all bankruptcy cases filed on or after October 22, 1994 and before or on October 17, 2005. The 1994 Reform Act contained exceptions to the general automatic stay prohibition during a pending bankruptcy case in that it excluded the following child support activities from the automatic stay:

- (a) For all Chapter 7 bankruptcy cases filed on or after October 22, 1994, CSSD may:
 - (1) Establish paternity;
 - (2) Establish support obligations;
 - (3) Modify support obligations;
 - (4) Keep wage withholding orders in effect;

- (b) For all Chapter 13 bankruptcy cases filed on or after October 22, 1994, CSSD may:
 - (1) Establish paternity;
 - (2) Establish support obligations;
 - (3) Modify support obligations.

CSSD will suspend the following enforcement activities until a motion seeking relief from the automatic stay is filed and granted by the bankruptcy court:

- (a) For Chapter 7 bankruptcy cases:
 - (1) Tax Intercept- CSSD will not submit a Debtor/NCP for either federal or local tax interception while the bankruptcy case is in progress or until relief from the automatic stay is obtained. In cases where the Debtor/NCP was previously certified for interception, the interception should be suspended or terminated and any collected funds should be returned.
 - (2) Administrative Offsets – CSSD will suspend the process administrative offsets in the same manner of tax interception cases.

- (3) Passport Denial – CSSD will suspend selection and submission of support cases while the bankruptcy case is still pending or in progress, unless relief from the automatic stay has been obtained.
- (4) License/Registration Revocation - CSSD will suspend selection and submission of support cases while the bankruptcy case is still pending or in progress, unless relief from the automatic stay has been obtained.
- (5) Lottery Intercept- CSSD will suspend selection and submission of support cases while the bankruptcy case is still pending or in progress, unless relief from the automatic stay has been obtained.
- (6) Financial Institution Data Match (“FIDM”) - CSSD will suspend selection and submission of support cases while the bankruptcy case is still pending or in progress, unless relief from the automatic stay has been obtained.
- (7) Credit Bureau Reporting - CSSD will not submit a Debtor/NCP’s name and arrearage amount to credit reporting agencies.
- (8) Issue a New Notice to Withhold Income – CSSD will not automatically issue a new notice to withhold income prior to communicating with the debtor attorney and trustee to discuss what portion of the NCP/debtor’s income is available to attach the notice to.

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005

On April 20, 2005, President George W. Bush signed the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”), which applies to bankruptcy petitions filed on or after October 17, 2005. Title II, Subtitle B “Priority Child Support” contains revisions that will affect the child support agencies seeking to establish paternity, support orders, collect on orders and arrears and enforce child support obligations.

BAPCPA defines domestic support obligations (which include child support obligations) as a debt that accrues before, on or after the date of the order for bankruptcy relief and is owed to, or recoverable by, a spouse, former spouse, or child of the debtor or the child’s parent, guardian or responsible parent or governmental unit. This domestic support debt includes interest accrued. All arrears, including assigned arrears, remain due and owing.

There are 2 major noted changes under BAPCPA that impacts child support agencies’ ability to process and collect on support orders. The first change is in priority order for the payment of child support obligations. Prior to October 17, 2005, child support claims were assigned a priority of seven. Priority distribution in bankruptcy refers to the order in which unsecured claims are paid from the bankruptcy estate. With a priority of seven meant that the trustee would pay higher priority claims in full before the lower priority child support claim.

BAPCPA mandates that child support claims are given first priority and must be paid first, after the secured claims and other administrative cost.

The revisions to the bankruptcy law also allows certain enforcement actions to be taken because such actions have been deemed exceptions to the automatic stay during the bankruptcy proceeding, For bankruptcy petitions (all chapters) filed on or after October 17, 2005, the child support agencies *may initiate and continue* the following enforcement actions:

- (1) Issue, serve or leave in place, all wage withholding orders for domestic support obligations, 11 U.S.C. § 362(b)(2)(C);
- (2) Suspend driver's license 11 U.S.C. § 362(b)(2)(D) ;
- (3) Suspend professional license, 11 U.S.C. § 362(b)(2)(D);
- (4) Report overdue support owed to consumer credit reporting agencies, 11 U.S.C. § 362(b)(2)(E) ;
- (5) Intercept tax refunds, 11 U.S.C. § 362(b)(F) ; and
- (6) Continue to enforce medical support obligations during the bankruptcy, 11 U.S.C. § 362(b)(2)(G).
- (7) All post-petition domestic obligations must be paid in full under the repayment plan before a Chapter 11, 12 and 13 bankruptcy can be discharged.

For bankruptcy cases filed on or after October 17, 2005, the child support agencies *may initiate and continue* the following establishment actions:

- (1) Establish paternity;
- (2) Establish of a support order; and
- (3) Modification of the support order, 11 U.S.C. § 362(b)(2)(A)(ii).

Lastly, the bankruptcy trustee must provide written notice and certain information, which includes a notice to the custodial parent, of their right to use the services of the local child support agency. At the time the debtor is granted a discharge, the bankruptcy trustee must provide the debtor's last known address to the custodial parent and the child support agency.

VI. POLICY

CSSD staff will receive and review all bankruptcy documents. CSSD staff will conduct a search on DCCSES to determine if the non-custodial parent/debtor is known to CSSD. CSSD staff will update the NON-CUSTODIAL PARENT BANKRUPCTY DATA SCREEN in every instance where a non-custodial parent has filed bankruptcy. CSSD staff will determine if and when it is appropriate to file a proof of claim and any other pleading in the bankruptcy case. CSSD staff will communicate with the debtor attorney and/or the trustee to determine the appropriate amount of support arrears to certify in the proof of claim. CSSD staff may also communicate with the debtor attorney and/or trustee if and when the non-

custodial parent/debtor fails to remain current on his or her current support obligation; CSSD staff may determine that it is appropriate to file a Motion to Dismiss in this instance. CSSD staff will continue to monitor the status of the bankruptcy case until the case has been dismissed or discharged.

CSSD staff will process all local and interstate-responding cases in accordance with the procedure below. CSSD staff will contact the out-of-state agency when notice is received that a non-custodial parent/debtor filed for bankruptcy in the jurisdiction of the out-of-state agency. CSSD staff will determine whether the out-of-state agency or CSSD will file the proof of claim in the bankruptcy proceeding. CSSD staff may determine that it is in the best interest of CSSD to file a proof of claim in the out-of-state jurisdiction if the out-of-state agency does not.