

# Attachment 1

## The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005

### **Identification of Child Support Obligation:**

**Question 1:** How will bankruptcy trustees determine the existence of family support obligations and the addresses of obligees?

**Answer 1:** A person filing for bankruptcy must declare to the court, under penalty of perjury, information on the existence of family support and all other financial obligations in the bankruptcy petition. Current bankruptcy forms [<http://www.usdoj.gov/ust/eo/bapcpa/defs/index.htm>] are structured to identify the existence of support obligations. Form B6E (10/05) "Schedule E – Creditors Holding Unsecured Priority Claims" includes a category for "Domestic Support Obligations" for which a debtor must provide a creditor's/obligee's name and mailing address. DOJ guidance for the Chapter 7 and Chapter 13 Section 341 meeting of creditors requires that bankruptcy trustees ensure that debtors answer specific questions for the record at the meeting, including "Do you have a domestic support obligation? To whom? Please provide to me the claimant's address and telephone number, but do not state it on the record." Guidance for Chapter 13 also specifies soliciting information on "Are you current on your post-petition domestic support obligations." On this basis, bankruptcy trustees would be able to identify to which state child support agency to provide notices and to provide notices to the child support obligees.

### **State Agency Addresses for Notices:**

**Question 2:** Must a county-operated state child support program provide a single state level address to which bankruptcy trustees will send notices?

**Answer 2:** Yes, each state child support agency must identify a single bankruptcy reporting contact to which bankruptcy trustees will send notices. Bankruptcy law requires notices to be sent to the "child support enforcement agency established under sections 464 and 466 of the Social Security Act for the State in which such holder [obligee] resides."

**Question 3:** What automated method of providing updates (or more specific contact information) might be developed, such as adding a "Bankruptcy Contact" to the state level contact lists in the Office of Child Support Enforcement's (OCSE) online Intergovernmental Referral Guide?

**Answer 3:** OCSE will explore this idea. At present, state child support agencies should email OCSE with changes in bankruptcy reporting contacts. OCSE will provide the information to the Department of Justice (DOJ) to update its website that provides addresses for bankruptcy trustees [<http://www.usdoj.gov/ust/eo/bapcpa/ds/index.htm>].

**Question 4:** Does DOJ's Executive Office for United States Trustees have an automatic reporting system that might be used to transmit electronic notices over a secure CSE network to the appropriate IV-D agency?

**Answer 4:** DoJ has no such system at this time.

**Question 5:** Could trustees send notices to the Federal level OCSE for matching with the Federal Case Registry? If not, would legislation be required?

**Answer 5:** Reporting to the Federal level is not appropriate at this time. Legislative changes might be required to both Federal bankruptcy and child support statutes to enable reporting to the OCSE rather than direct reporting to state child support agencies.

#### **Content of Notices to State Child Support Agencies:**

**Question 6:** In what form will notice from bankruptcy trustees to state child support agencies be and how will that notice be transmitted?

**Answer 6:** New bankruptcy law provisions [11 U.S.C. sections 704, 1106, 1202, and 1302] require trustees to provide “written notice” to state child support agencies in custodial parents’ states of residence regarding a debtor’s child support obligations. DOJ’s U.S. Trustee Program appoints and supervises the network of bankruptcy trustees (except in Alabama and North Carolina where bankruptcy courts appoint and supervise) and has issued to trustees the guidelines and sample notices attached to this action transmittal.

**Question 7:** What information will notices include? Will SSN and date of birth be required on notices sent to state child support agencies?

**Answer 7:** Bankruptcy law for initial notices specifies inclusion only of the name, address, and telephone number of debtor. However, DOJ’s sample notices to state child support agencies include the name, address, and telephone number of the child support obligee; the name and Social Security Number (SSN) of the obligor, and the bankruptcy case number. DOJ requested that bankruptcy trustees include SSNs on notices specifically to assist in identification of IV-D cases.

#### **State Child Support Agency Actions in Response to Notices:**

**Question 8:** What should a state child support agency do if it receives a report for which there is no IV-D case?

**Answer 8:** A state child support agency need take no action on a report for which it has no associated IV-D case, but must treat any information received as confidential according to state agency security procedures.

**Question 9:** Must a state child support agency send its own notice to each obligee in case a trustee fails to attempt or succeed in directly notifying an obligee?

**Answer 9:** There is no requirement for a state child support agency to notify each obligee regarding bankruptcy notices received.

## **Enforcement Actions during Bankruptcy:**

**Question 10:** Are there special rules to be followed if a state child support agency undertakes to establish or enforce a child support obligation during a bankruptcy proceeding?

**Answer 10:** State child support agencies should follow the same procedures as had been working previously with their local bankruptcy courts. Procedures for various types of bankruptcy in place prior to the recent amendments remain. The U.S. courts' website provides general guidance on various types of bankruptcy [<http://www.uscourts.gov/bankruptcycourts/bankruptcybasics.html>].

**Question 11:** Will state child support agencies be prohibited from sending out billing statements and requests for payment during the bankruptcy period and what procedures should be followed?

**Answer 11:** State child support agencies should continue to send out billing statements and requests for payment as was done prior to the new legislation. If a debtor in bankruptcy has a child support obligation, a proof of claim should be filed to make sure that the bankruptcy trustee is aware of the claim regarding any available asset. A failure to file a proof of claim does not discharge debt, but makes it less likely that assets will be secured to satisfy a support obligation.

**Question 12:** How should proofs of claim be filed if the state child support agency has two types of "priority" claims, i.e., domestic support claims where money is owed to the spouse or custodial parent and money owed directly to the state as reimbursement for public assistance received?

**Answer 12:** The state child support agency should file proofs of claim consistent with guidance from the relevant local bankruptcy court. "Proof of Claim" forms used by some local bankruptcy courts require that claims for domestic support obligations be broken down into the unassigned and assigned support categories specified in 11 U.S.C. 507(a)(1)(A) & (B).

**Question 13:** What happens if the state child support agency receives collections in excess of the obligor's debt in a bankruptcy in which it has filed a proof of claim? Will the state child support agency be penalized?

**Answer 13:** Excess funds from a bankruptcy estate should be treated as would overpayments from any other payment source. There is no provision to penalize a state child support agency for receiving an overpayment.

**Question 14:** Should proofs of claim be filed if the state child support agency has a lien against the debtor's property, since the new law only grants priority for "unsecured" domestic support obligations?

**Answer 14:** Yes, it is appropriate for the IV-D agency to file a proof of claim with the relevant local bankruptcy court regarding any claim, including existing liens against the debtor's property, in attempting to satisfy a domestic support obligation. If the child support agency has already secured a lien against an obligor's property when the obligor enters into bankruptcy proceedings, that lien remains in effect. A 'proof of claim' is a written statement and verifying documentation filed by a creditor that describes the reason that the bankruptcy debtor owes the creditor money. IV-D agencies may include information regarding all legal or equitable interests of the debtor, including debtor's property upon which the IV-D agency has secured a lien, which might be available to satisfy the child support obligation.

**Question 15:** Will state child support agencies be prohibited by the automatic stay from filing executions/liens, contempt actions, motions for judgment, and other actions not enumerated in section 214 during a bankruptcy proceeding?

**Answer 15:** State child support agencies should continue to file enforcement actions that were allowed prior to the new legislation.

**Question 16:** Is there any information available on the impact on current tax intercept procedures?

**Answer 16:** Cases certified on the Federal offset system are no longer required to be excluded from Federal Income Tax Refund Offset during the bankruptcy period. See Federal Offset EFlash #05-55 (12-29-05) or contact Margaret Carter (202-260-7861, [mcarter@acf.hhs.gov](mailto:mcarter@acf.hhs.gov)) for further information.

**Question 17:** Can a state child support agency submit a passport denial request to the Department of State after a bankruptcy has been filed?

**Answer 17:** Yes; passport denial requests may continue to be electronically submitted to OCSE for forwarding to the Department of State even after a bankruptcy filing.

### **Chapter 13 Discharge:**

**Question 18:** Are there any special procedures in relation to Chapter 13 plans of which state child support agencies should be aware?

**Answer 18:** A child support obligor will not be eligible for Chapter 13 discharge until "in the case of a debtor who is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, after such debtor certifies that all amounts payable under such order or such statute that are due on or before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for by the plan) have been paid." [11 U.S.C. 1328(a)]

**Question 19:** If the state child support agency is a primary creditor, does that mean child support will be paid off before the Chapter 13 bankruptcy period expires or will the payments for back child support be stretched out for the established period of the bankruptcy?

**Answer 19:** All disposable income from property of the estate will be applied as a first priority to child support debt during bankruptcy supervision. However, the Chapter 13 repayment plan may have specified that discharge may occur as long as the debtor is current on ongoing support and payments on arrears, as specified under the bankruptcy plan. All arrears will not necessarily have been completely paid before bankruptcy discharge.

**Question 20:** Will state child support agencies be given an opportunity to object to a bankruptcy discharge if child support obligations are not met?

**Answer 20:** Standards of good practice require bankruptcy trustees to ask the debtor about his or her child support situation; however, most courts do not require a separate certification regarding satisfaction of child support obligations. The bankruptcy court's focus is upon giving holders of claims notice that contest is available regarding the dischargeability of a specific claim and a child support debt is not dischargeable. Still, on motion of any party in interest after the hearing on notice, the bankruptcy court may for cause extend the time fixed before bankruptcy discharge.