

	<b>INDIANA DEPARTMENT OF CHILD SERVICES TITLE IV-D POLICY MANUAL</b>	
	<b>Chapter 20: Other Child Support Related Topics</b>	<b>Effective Date: 7/9/2019</b>
	<b>Section 2: Bankruptcy</b>	<b>Version: 1 Revision Date: 8/8/18</b>

<b>BACKGROUND</b>
-------------------

A domestic support obligation is a debt that accrues before, on, or after the date of the order for relief in a bankruptcy case.<sup>1</sup> A domestic support obligation may be alimony or child support from a divorce or paternity order. These debts are not dischargeable under any bankruptcy Chapter.

The Title IV-D Prosecutor may encounter, or the Indiana State Central Collection Unit (INSCCU) may receive payments from, the following types of bankruptcies:

1. Chapter 7: Liquidation<sup>2</sup>
  - a. No-Asset Chapter 7
    - i. Debts are discharged by the bankruptcy court because the debtor does not have sufficient assets to pay off the debts.
    - ii. Once filed, the process takes about 120 days.
  - b. Asset Chapter 7
    - i. Debtor has assets that can be liquidated with the proceeds going towards creditors in order of priority.
    - ii. A proof of claim must be filed at the request of the trustee to ensure payments from the assets.
2. Chapter 11: Business Reorganization<sup>3</sup>
  - a. Chapter 11 is a reorganization by a commercial business which can include a sole proprietor who is a child support obligor.
  - b. A Plan is filed and voted on by the creditor's committee and payments are made through a trustee.
  - c. Chapter 11 allows for the debtor to remain in business.
  - d. A Chapter 11 may convert to a Chapter 7 or 13.
3. Chapter 12: Family Farm<sup>4</sup>
  - a. Chapter 12 is similar to a Chapter 13 bankruptcy, but the farmer is able to keep the family farm.
  - b. A Plan is filed and payments are made through a trustee.
4. Chapter 13: Individual Reorganization<sup>5</sup>
  - a. The debtor's income is used to satisfy the creditors' claims.
  - b. A Plan of reorganization providing for the payment priority of creditors is submitted to a trustee.
  - c. Payments are made to the trustee who then distributes the payments according to the Plan.

---

<sup>1</sup> 11 U.S.C. § 101(14A)

<sup>2</sup> 11 U.S.C. § 701 et seq.

<sup>3</sup> 11 U.S.C. § 1101 et seq.

<sup>4</sup> 11 U.S.C. § 1201 et seq.

<sup>5</sup> 11 U.S.C. § 1301 et seq.

- d. A Chapter 13 payment Plan may be three (3) to five (5) years. Most Plans are five (5) years.
- e. With some exceptions, any debts not paid in full at the end of the successfully completed Plan are discharged. Child support debts cannot be discharged at the completion of the Plan.
- f. For the payment of a child support arrearage to be included in the Plan, a proof of claim must be filed.

<b>POLICY</b>
---------------

1. For All Bankruptcy Chapters

The Title IV-D Prosecutor is not required to release the following suspensions upon the filing of any type of bankruptcy:

- a. Passport;
- b. Driver's license;
- c. Professional license;
- d. DNR license; or
- e. Real or personal property liens.

The Title IV-D Prosecutor shall not file civil contempt under 11 U.S.C. § 362(a). The Title IV-D Prosecutor shall not use the filing of criminal charges merely as a method to negotiate payment from the obligor, although a criminal action is not stayed under 11 U.S.C. § 362(b)(1).

2. Chapter 7

When the obligor files for Chapter 7 bankruptcy, the Title IV-D Prosecutor is permitted to:

- a. Establish paternity;
- b. Establish or modify a child support order;
- c. Establish and enforce a medical support order by sending the National Medical Support Notice (NMSN) to the employer;
- d. Send an income withholding order (IWO) to an employer for current support and any arrears;
- e. Offset federal or state tax refunds;
- f. Continue with credit reporting;
- g. Suspend driver's, Department of Natural Resources (DNR), and professional licenses;
- h. Proceed with any criminal non-support actions; and
- i. Submit the non-custodial parent for passport denial.<sup>6</sup>

When the obligor files for Chapter 7 bankruptcy, the Title IV-D Prosecutor shall not:

- a. Contact the debtor directly to collect on current child support or arrears;
- b. Pursue any Financial Institution Data Match (FIDM) actions;
- c. Create, perfect, or enforce any lien against property of the bankruptcy estate, including but not limited to, vehicle or estate liens; and
- d. Pursue civil contempt action.<sup>7</sup>

<sup>6</sup> 11 U.S.C. § 362(b)(2); 42 U.S.C. § 652(k); 22 C.F.R. § 51.70

<sup>7</sup> 11 U.S.C. § 362(a)

Once the bankruptcy case has been discharged in a Chapter 7 bankruptcy, the Title IV-D Prosecutor may resume all enforcement action on the case.

### 3. Chapter 11

When the obligor files for Chapter 11 bankruptcy, before the Plan is confirmed, the Title IV-D Prosecutor is permitted to:

- a. Establish paternity;
- b. Establish or modify a child support order;
- c. Establish and enforce a medical support order by sending the NMSN to the employer;
- d. Send an IWO to an employer for current support, and arrears, as long as current support, and arrears, are not to be paid through the unconfirmed Plan;
- e. Offset federal or state tax refunds;
- f. Continue with credit reporting;
- g. Suspend driver's, DNR, and professional licenses;
- h. Proceed with any criminal non-support actions; and
- i. Submit the non-custodial parent for passport denial.<sup>8</sup>

When the obligor files for Chapter 11 bankruptcy, the Title IV-D Prosecutor shall not:

- a. Contact the debtor directly to collect on current child support or arrears;
- b. Pursue any FIDM actions;
- c. Create, perfect, or enforce any lien against property of the bankruptcy estate, including but not limited to, vehicle or estate liens; and
- d. Pursue civil contempt action.<sup>9</sup>

Once the Plan has been confirmed for a Chapter 11 bankruptcy, the Title IV-D Prosecutor:

- a. May need to amend the IWO to include current support only, if the arrearage will be paid through the trustee;
- b. May need to terminate the IWO if current support will be paid through the bankruptcy trustee;
- c. May intercept the federal and/or state tax refund if either or both of these are not included in the Plan to pay the debts listed in the Plan; and
- d. Is strongly encouraged to monitor the debtor's payment of current support as the Title IV-D Prosecutor may move for dismissal on the bankruptcy action if the debtor is not paying current child support as ordered.

Once the bankruptcy case has been discharged in a Chapter 11 bankruptcy, the Title IV-D Prosecutor may resume all enforcement action on the case.

### 4. Chapter 12

When the obligor files for Chapter 12 bankruptcy, before the Plan is confirmed, the Title IV-D Prosecutor is permitted to:

- a. Establish paternity;
- b. Establish or modify a child support order;

---

<sup>8</sup> 11 U.S.C. § 362(b)(2); 42 U.S.C. § 652(k); 22 C.F.R. § 51.70

<sup>9</sup> 11 U.S.C. § 362(a)

- c. Establish and enforce a medical support order by sending the NMSN to the employer;
- d. Send an IWO to an employer for current support, and arrears, as long as current support, and arrears, are not to be paid through the unconfirmed Plan;
- e. Offset federal or state tax refunds;
- f. Continue with credit reporting;
- g. Suspend driver's, DNR, and professional licenses;
- h. Proceed with any criminal non-support actions; and
- i. Submit the non-custodial parent for passport denial.<sup>10</sup>

When the obligor files for Chapter 12 bankruptcy, the Title IV-D Prosecutor shall not:

- a. Contact the debtor directly to collect on current child support or arrears;
- b. Pursue any FIDM actions;
- c. Create, perfect, or enforce any lien against property of the bankruptcy estate, including but not limited to, vehicle or estate liens; and
- d. Pursue civil contempt action.<sup>11</sup>

Once the Plan is confirmed for a Chapter 12 bankruptcy; the Title IV-D Prosecutor:

- a. May need to amend the IWO to include current support only, if the arrearage will be paid through the trustee;
- b. May need to terminate the IWO if current support will be paid through the bankruptcy trustee;
- c. May intercept the federal and/or state tax refund if either or both of these are not included in the Plan to pay the debts listed in the Plan; and
- d. Is strongly encouraged to monitor the debtor's payment of current support as the Title IV-D Prosecutor may move for dismissal on the bankruptcy action if the debtor is not paying current child support as ordered.

Once the bankruptcy case has been discharged in a Chapter 12 bankruptcy, the Title IV-D Prosecutor may resume all enforcement action on the case.

## 5. Chapter 13

When the obligor files for Chapter 13 bankruptcy, before the Plan has been confirmed, the Title IV-D Prosecutor is permitted to:

- a. Establish paternity;
- b. Establish or modify a child support order;
- c. Establish and enforce a medical support order by sending the NMSN to the employer;
- d. Send an IWO to an employer for current support, and arrears, as long as current support, and arrears, are not to be paid through the unconfirmed Plan;
- e. Offset federal or state tax refunds;
- f. Continue with credit reporting;
- g. Suspend driver's, DNR, and professional licenses;
- h. Proceed with any criminal non-support actions; and

<sup>10</sup> 11 U.S.C. § 362(b)(2); 42 U.S.C. § 652(k); 22 C.F.R. § 51.70

<sup>11</sup> 11 U.S.C. § 362(a); Russell v. Caffey, 384 Fed. Appx. 882 (U.S. App. 2010); The court found the use of civil contempt to be a violation of the automatic stay because the order contained a purge amount as a way to extract money from the obligor.

- i. Submit the non-custodial parent for passport denial.<sup>12</sup>

When the obligor files for Chapter 13 bankruptcy, the Title IV-D Prosecutor shall not:

- a. Contact the debtor directly to collect on current child support or arrears;
- b. Pursue any FIDM actions;
- c. Create, perfect, or enforce any lien against property of the bankruptcy estate, including but not limited to, vehicle or estate liens; and
- d. Pursue civil contempt action.<sup>13</sup>

Once the Plan has been confirmed for a Chapter 13 bankruptcy, the Title IV-D Prosecutor:

- a. May need to amend the IWO to include current support only, if the arrearage will be paid through the bankruptcy trustee;
- b. May need to terminate the IWO if current support will be paid through the bankruptcy trustee;
- c. May intercept the federal and/or state tax refund if either or both of these are not included in the Plan to pay the debts listed in the Plan;
- d. Is strongly encouraged to monitor the debtor's payment of current support as the Title IV-D Prosecutor may move for dismissal on the bankruptcy action if the debtor is not paying current child support as ordered;<sup>14</sup> and
- e. Is strongly encouraged to object to the discharge of the bankruptcy action if the debtor has not paid the entire arrearage balance during the life of the bankruptcy.<sup>15</sup>

Once the bankruptcy case has been discharged in a Chapter 13 bankruptcy, the Title IV-D Prosecutor may resume all enforcement action on the case.

## REFERENCES

- [11 U.S.C. § 101\(14A\)](#): Definitions
- [11 U.S.C. § 362 et seq.](#): Automatic stay
- [11 U.S.C. § 507 et seq.](#): Priorities
- [11 U.S.C. § 701 et seq.](#): Liquidation
- [11 U.S.C. § 1101 et seq.](#): Reorganization
- [11 U.S.C. § 1201 et seq.](#): Adjustment of debts of a family farmer or fisherman with regular income
- [11 U.S.C. § 1301 et seq.](#): Adjustment of debts of an individual with regular income
- [11 U.S.C. app. § 9037 et seq.](#): Privacy protection for filings made with the court
- [42 U.S.C. § 652](#): Duties of Secretary
- [22 C.F.R. § 51.70](#): Request for hearing to review certain denials and revocations
- [In re Penaran](#), 424 B.R. 868 (Bankr. D. Kan. 2010)
- [Russell v. Caffey](#), 384 Fed. Appx. 882 (U.S. App. 2010)

## PROCEDURE

<sup>12</sup> 11 U.S.C. § 362(b)(2); 42 U.S.C. § 652(k); 22 C.F.R. § 51.70

<sup>13</sup> 11 U.S.C. § 362(a)

<sup>14</sup> 11 U.S.C. § 1307(c)(11)

<sup>15</sup> 11 U.S.C. § 1322(a)(2); 11 U.S.C. § 507(a)(1)(A)

When an obligor files for bankruptcy, the Centralized Enforcement Unit (CEU):

1. Receives the notice and researches the statewide child support system to verify there is an obligor in the system;
2. Creates a case note; and
3. Scans the bankruptcy notice and sends the notice to the appropriate county.

The Title IV-D Prosecutor's office may receive bankruptcy documents either from the parties to the case or a party's attorney, the bankruptcy court or trustee, or CEU.

Most Chapter 7 filings are no asset bankruptcies. In situations where the obligor has filed for Chapter 7 bankruptcy relief and the trustee determines that it is a Chapter 7 bankruptcy with assets, the bankruptcy court will send notice to the creditors regarding how to file a proof of claim and the deadlines for doing so. Claims in a Chapter 7 are paid from asset proceeds recovered by the trustee and not through a payment Plan.

The Title IV-D Prosecutor is strongly encouraged to fill out and file a proof of claim with the bankruptcy trustee for Chapter 11, 12, or 13 bankruptcies. The proof of claim will ensure that if there are any arrears on the case, they are being paid during the life of the bankruptcy repayment Plan. The details of the Plan, including the treatment of child support and arrears, can be found on PACER, the bankruptcy court case management system.

A proof of claim (Form B410) includes:

1. A calculation of arrears as of the date the bankruptcy petition was filed;
2. Any supporting documents such as child support orders;
3. A breakdown of any arrears owed to the state and arrears owed to the custodial party on the Appearance of Child Support Creditor or Representative (Form B2810);
4. The names, Social Security numbers, and dates of birth of minors must be redacted from all supporting documentation (e.g., court orders, payment history, arrears calculation).<sup>16</sup>

When the obligor is required to submit a repayment Plan, the Title IV-D Prosecutor is strongly encouraged to review the unconfirmed Plan to determine if current and/or past due support is to be paid either through the bankruptcy trustee or directly by the obligor. The Title IV-D Prosecutor is strongly encouraged to review the Plan to determine how the tax refunds are treated in the bankruptcy. If the refunds are going to the trustee, the Title IV-D Prosecutor may file an objection to allow the Title IV-D Prosecutor to submit the obligor for tax offset and collect directly.

The Title IV-D Prosecutor is strongly encouraged to use the bankruptcy trustee as a resource and follow the confirmed Plan to ensure the office is complying with federal and state regulations to avoid any legal action from the obligor.

When current support and arrears are to be paid through the trustee, the Title IV-D Prosecutor shall submit a request to the Employer Maintenance Unit (EMU) to put a stop on the IWO on the enforcement screen to ensure that the statewide child support system does not automatically generate an IWO during the life of the bankruptcy so there is not a violation of the automatic stay.

---

<sup>16</sup> 11 U.S.C. app. § 9037

If, pursuant to the Plan, current child support payments are being paid by the obligor directly to the Clerk or INSCCU, the Title IV-D Prosecutor is strongly encouraged to monitor the obligor's payments. If the obligor falls behind on current support payments, the Title IV-D Prosecutor may file, or may contact the bankruptcy trustee, for a dismissal of the bankruptcy action.<sup>17</sup>

## FORMS AND TOOLS

[Questions and Responses regarding New Federal Bankruptcy Law](#)

[Processing an Income Withholding Order or Notice](#)

[Proof of Claim \(Form B410\)](#)

[Appearance of Child Support Creditor or Representative \(Form B2810\)](#)

County Complete Guide to EMU

## FREQUENTLY ASKED QUESTIONS

1. Q: What is the difference between a dismissal and a discharge in bankruptcy cases?  
  
A: A dismissal is when a bankruptcy proceeding is terminated due to lack of payment, or other factors and the outstanding debts are not forgiven. A discharge is the successful completion of a bankruptcy proceeding where all allowable debts are forgiven.
2. Q: If the obligor does not pay current child support or the arrears according to the Plan, may the Title IV-D Prosecutor move to dismiss the bankruptcy?  
  
A: If current child support or the arrears are being paid through the trustee under the confirmed Plan the obligor should remain current on the payments because the trustee is making the payments pursuant to the Plan. If the Plan states the current support or the arrears are to be paid outside the Plan, and the obligor is not current on the payments, the Title IV-D Prosecutor may move for dismissal.
3. Q: Why can the Title IV-D Prosecutor not issue an IWO to a financial institution for a FIDM action when the obligor files for bankruptcy?  
  
A: The property of the bankruptcy estate cannot be attached. In a Chapter 7, the bankruptcy estate is the property that exists as of the filing of the date of the bankruptcy. In a Chapter 11, 12, or 13, the bankruptcy estate encompasses the obligor's property during the length of the Plan. Without going through detailed bank records to determine exactly which funds on deposit are part of the bankruptcy estate, the Title IV-D Prosecutor risks attaching funds of the bankruptcy estate by sending an IWO to a financial institution for a FIDM action.
4. Q: Should the Title IV-D Prosecutor request current child support and/or the arrears be paid inside or outside of the Plan?  
  
A: The child support obligor pays the trustee and then the trustee pays the debts in the Plan in order of priority.

---

<sup>17</sup> 11 U.S.C. § 1307(c)(11)

Because current child support is ongoing and the Title IV-D Prosecutor cannot control when the trustee makes a payment, the current child support should be requested to be paid outside the Plan. The Title IV-D Prosecutor may issue an IWO for current child support only, if the bankruptcy court confirms a Plan with this provision.

The Title IV-D Prosecutor may wish to consider the amount of the arrears and whether the arrears are owed to the state or custodial party in deciding whether to request the arrears be paid inside or outside of the Plan. If the arrears are to be paid inside the Plan, arrears must be paid in full to the custodial party prior to bankruptcy discharge, but arrears owed to the state are not required to be paid in full prior to bankruptcy discharge.<sup>18</sup> Because the trustee pays the debts in order of priority, the arrears may not begin to be paid off immediately. If arrears are to be paid outside of the Plan, then the arrears are not considered part of the Plan which means none of the Title IV-D enforcement measures are curtailed. However, the obligor may not have sufficient funds to pay the trustee to pay the debts in the Plan and to make separate payments on the arrears.

#### **RELATED INFORMATION**

The Title IV-D Prosecutor may consider setting up an account with [PACER](#). This will give the office access to bankruptcy court information and electronic filing.

[OCSE-PIQ-07-04](#): Enforcing Child Support when the Obligor is in Bankruptcy

---

<sup>18</sup> In re Penaran (Bankr. D. Kan.) 424 B.R. 868