

VOLUME 7B, CHAPTER 17: “BANKRUPTCIES”**SUMMARY OF MAJOR CHANGES**

Changes are identified in this table and also denoted by **blue** font.

Substantive revisions are denoted by an asterisk (*) symbol preceding the section, paragraph, table, or figure that includes the revision.

Unless otherwise noted, chapters referenced are contained in this volume.

Hyperlinks are denoted by ***bold, italic, blue, and underlined font***.

The previous version dated **August 2020** is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated hyperlinks and formatting to comply with current administrative instructions.	Revision
All	Renumbered the chapter sections and paragraphs to comply with administrative instructions.	Revision

Table of Contents

VOLUME 7B, CHAPTER 17: “BANKRUPTCIES” 1

1.0 GENERAL..... 3

1.1 Purpose..... 3

1.2 Authoritative Guidance 3

2.0 ADJUSTMENT OF DEBTS OF AN INDIVIDUAL WITH REGULAR INCOME,
BANKRUPTCY, TITLE 11, UNITED STATES CODE (U.S.C.), CHAPTER 13 (THE PLAN)
..... 4

2.1 Repayment Plan..... 4

2.2 Provisions..... 4

2.3 Authority 4

2.4 Retired Pay 4

2.5 Judicial Determination 5

2.6 Delinquent Taxes..... 5

3.0 PROCEDURES 5

3.1 Bankruptcy Notices and Withholding Orders 5

3.2 Case Review and Execution of Bankruptcy Withholding Order 6

REFERENCES 7

CHAPTER 17

BANKRUPTCIES

1.0 GENERAL

1.1 Purpose

This chapter applies to military retirees who have filed a bankruptcy petition under [Title 11, United States Code \(U.S.C.\), Chapter 7](#) or [11 U.S.C., Chapter 13](#) of the Bankruptcy Code. (Note: When hyperlinks to 11 U.S.C., Chapters 7 or 13 are opened, scroll down to access more information on bankruptcy). The law waives the U.S. Government's sovereign immunity for purposes of compliance with payroll deduction orders issued by the bankruptcy courts. Accordingly, the Defense Finance and Accounting Service (DFAS) will honor the bankruptcy withholding orders.

1.1.1. Voluntary Bankruptcy. Military retirees may seek protection of voluntary bankruptcy as "debtors."

1.1.2. Automatic Stay Provisions. Continued deduction from the retiree's pay of most types of debts, including debts owed to the United States, after the filing of a petition in a bankruptcy is improper and violates the automatic stay provisions of the bankruptcy statute. Such amounts withheld after the date the bankruptcy petition is filed must be refunded to the retiree's pay account. The automatic stay provisions of the bankruptcy statute do not preclude continued deductions based on court-ordered support obligations or divisions of retired pay unless the bankruptcy court orders otherwise. Coordinate with the DFAS Office of General Counsel, Garnishment Law Directorate if there are any questions about collecting a debt when a debtor has filed bankruptcy, as there may be exceptions that affect the collection of a debt or refund due a debtor.

1.1.3. Proof of Claim. Upon notice or actual knowledge of the filing of a bankruptcy petition, when the retiree has listed the U.S. Government as a creditor, DFAS-Cleveland, Retired and Annuitant Pay Operations will file [Official Form 410](#), Proof of Claim, with the bankruptcy court concerned.

1.1.4. Post-Petition Debt. A new item of indebtedness incurred after the filing of the bankruptcy petition is known as a post-petition debt. Post-petition debt collection should be coordinated with the DFAS Office of the General Counsel, Garnishment Law Directorate prior to taking any action.

1.2 Authoritative Guidance

The pay policies and requirements established by the DoD in this chapter are derived primarily from, and prepared in accordance with the U.S.C., including Titles 11 and 31. Due to

the subject matter in the chapter, the list of authoritative sources is extensive. The specific statutes, regulations, and other applicable guidance that govern each individual section are listed in a reference section at the end of the chapter.

2.0 ADJUSTMENT OF DEBTS OF AN INDIVIDUAL WITH REGULAR INCOME, BANKRUPTCY, TITLE 11, UNITED STATES CODE (U.S.C.), CHAPTER 13 (THE PLAN)

2.1 Repayment Plan

A retiree may file a petition with the court to enter into a “Chapter 13 plan” under the Bankruptcy Code (11 U.S.C., Chapter 13). Under 11 U.S.C., Chapter 13, a retiree must submit a proposed repayment plan to the bankruptcy court that provides, among other things, that all or a specified amount of future income, as is necessary to pay claims according to the plan, **is** under the control of the bankruptcy trustee. The plan will provide for the submission of such earnings or wages to the supervision and control of the court for the purpose of enforcing the plan.

2.2 Provisions

Generally, when the plan is confirmed by the court, its provisions are binding upon the debtor and all creditors of the debtor, whether they are affected by the plan, **whether** they have accepted it and have filed their claims, or **whether** their claims have been scheduled or allowed, or are allowable. **Coordinate with the DFAS Office of General Counsel, Garnishment Law Directorate as there may be exceptions that do not bind creditors against the plan and/or discharge depending on the characterization of the indebtedness, the date the indebtedness was incurred, and/or the effectiveness of service of the bankruptcy notice to the creditor.**

2.3 Authority

The court has authority to issue orders needed to implement the provisions of the plan including orders directed to an employer of the debtor.

2.4 Retired Pay

The retired pay of a retiree may be used to pay the Chapter 13 plan and is payable to the trustee appointed by the court. The payment by DFAS of part of the retiree’s pay in response to a court order issued in a Chapter 13 plan does not conflict with **31 U.S.C. § 3713** (Priority of Government Claims). Compliance with such a court order gives the government a valid acquittance against the retiree since the court order is binding on the retiree.

Note: See **11 U.S.C. § 101(10A)(B)(ii)(IV)**, for the definition of current monthly income which excludes any monthly compensation, pension, pay, annuity, or allowance paid under Titles 10, 37, or 38 in connection with a disability, combat-related injury or disability, or death of a member of the uniformed services. However, any retired pay excluded shall include retired pay paid under chapter 61 of Title 10 only to the extent that such retired pay exceeds the amount of retired pay to which the debtor would otherwise be entitled if retired under any provisions of Title 10 other than chapter 61 of that title. Additionally, the current monthly income in the definition section affects

the income that is used for determining the amount of payment for the plan. Once DFAS receives the court order issued in a Chapter 13 plan, DFAS will withhold from all available sources to satisfy the court order obligation as the retiree voluntarily entered into the plan.

2.5 Judicial Determination

If the U.S. Government is a creditor when the retiree files a Chapter 13 plan, the Government's priority under 31 U.S.C. § 3713 may be asserted in the absence of a judicial determination to the contrary.

2.6 Delinquent Taxes

A retiree who is participating in a Chapter 13 plan must pay the delinquent taxes which he or she owes that had not been assessed before the date of confirmation of the plan. The retiree also is responsible for all taxes that may become due. The United States may accept the provisions of any plan that includes the assumption, settlement, or payment of any such delinquent taxes.

2.6.1. When DFAS-Cleveland, Retired and Annuitant Pay Operations sends the entire amount of the retiree's pay to the court-appointed trustee, the Internal Revenue Service (IRS) Notice of Levy should be forwarded to the court-appointed trustee for disposition.

2.6.2. When DFAS-Cleveland, Retired and Annuitant Pay Operations sends part of the pay due the retiree to the court-appointed trustee, the IRS Notice of Levy should be processed in the normal manner against the amount due the retiree. The court-appointed trustee is provided a copy of the IRS Notice of Levy and notified of the action taken in establishing the liquidation procedures on a continuing Notice of Levy.

3.0 PROCEDURES

3.1 Bankruptcy Notices and Withholding Orders

3.1.1. All bankruptcy notices and withholding orders should be submitted or faxed to:

DFAS Office of General Counsel
Attn: Garnishment Law Directorate
P.O. Box 998002
Cleveland, OH 44199-8002

Toll Free Fax: (877) 622-5930
Commercial Fax: (216) 367-3675

3.1.2. DFAS Office of General Counsel, Garnishment Law Directorate is the designated agent for service of process for all military retiree bankruptcy notices and withholding orders.

3.1.3. The following information should be included with the withholding order:

3.1.3.1. Full name and

3.1.3.2. Full social security number.

3.1.4. The notice is effective when it is received in the office of the designated official.

3.1.5. When the notice does not sufficiently identify the retiree, it will be returned directly to the person who submitted the order with an explanation of the deficiency.

3.2 Case Review and Execution of Bankruptcy Withholding Order

Upon receipt of notice of a bankruptcy, together with all the required information, the office of the designated official will review the case to determine if there are any garnishments or debt collections that must be terminated as a result of the automatic stay (child support, alimony, child support arrears, alimony arrears, and division of property awards are not terminated unless the bankruptcy order requires it). If a bankruptcy withholding order is submitted, the office of the designated official will establish the withholding against the retiree's pay to comply with the bankruptcy order within 30 days. Withholdings will continue until the amount specified in the order is collected, or the order is modified or terminated, or the bankruptcy case is dismissed or discharged.

3.2.1. Within 30 calendar days after the date of receipt of the order, the designated official will send notice to the retiree.

3.2.2. The letter will inform the retiree the date that the bankruptcy withholding is scheduled to begin and the amount or percentage that will be deducted.

3.2.3. When the retiree identified in the order is found not to be entitled to money due from or payable by DFAS, the designated official will return the order to the person who submitted it and advise him or her that no money is due from or payable by DFAS to the named individual. When it appears that amounts are exhausted temporarily or otherwise unavailable, the authorized person must be told why and for how long any money is unavailable, if known.

REFERENCES

CHAPTER 17 – BANKRUPTCIES

1.0 – GENERAL

- 1.1.1 11 U.S.C. § 109
- 1.1.2 11 U.S.C. § 362
- 1.1.3 11 U.S.C. § 501
- 1.1.4 11 U.S.C. § 1305

2.0 – ADJUSTMENT OF DEBTS OF AN INDIVIDUAL WITH REGULAR INCOME, BANKRUPTCY, CHAPTER 13 (THE PLAN)

- 2.1 11 U.S.C. §§ 1301-1330
- 2.2 11 U.S.C. § 1327
- 2.3 11 U.S.C. § 105
- 2.4 11 U.S.C. § 101(10A)(B)(ii)(IV)
11 U.S.C. § 1326
31 U.S.C. § 3713
- 2.5 31 U.S.C. § 3713
47 Comptroller General (Comp Gen) 522,
United States vs. Shannon, 342 US 288,
1951
- 2.6 31 U.S.C. § 3713
47 Comp Gen 522