

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

All changes are denoted by **blue font**.

Substantive revisions are denoted by an \* 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 February 2009 is archived.

<b>PARAGRAPH</b>	<b>EXPLANATION OF CHANGE/REVISION</b>	<b>PURPOSE</b>
All	Updated hyperlinks and ensured format complied with current administrative standards.	Update
All	Replaced “member” with the term “retiree” throughout the chapter.	Update
All	References to DFAS-Cleveland expanded to DFAS-Cleveland, Retired and Annuitant Pay Operations.	Update
170104	Updated paragraph to include text of deleted subparagraph 170104.B.	Update
170104.A, previous version	Deleted subparagraph. The U.S. Attorney’s office does not file proof of claims for DFAS-Cleveland, Retired and Annuitant Pay Operations.	Delete
170104.B, previous version	Deleted subparagraph. Placed text in paragraph 170104.	Delete
170105	Redefined the term “new item of indebtedness discovered after the filing of a petition” as “post-petition debts.” Provided procedure on processing post-petition debts.	Update
170204	Corrected referenced United States Code from 31 U.S.C. 3727 to 31 U.S.C. 3713 (Priority of Government Claims).	Update

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## CHAPTER 17

**BANKRUPTCIES**

## 1701 GENERAL INFORMATION

## 170101. Purpose

Military retirees may seek protections of voluntary bankruptcy as “debtors,” a class of persons specified in [Title 11 United States Code \(U.S.C.\) section 101](#), as entitled to the benefits of voluntary bankruptcy.

## 170102. Voluntary Bankruptcy

This section applies to military retirees who have filed a bankruptcy petition under [11 U.S.C., Chapter 7](#), or [11 U.S.C., Chapter 13](#) of the Bankruptcy Code. The law waives the United States 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 orders.

## 170103. Automatic Stay Provision

Continued deduction from the retiree’s pay of most types of debts 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.

## \*170104. Proof of Claim

Upon notice or actual knowledge of the filing of a bankruptcy petition, when the retiree has listed the United States Government as a creditor, DFAS-Cleveland, [Retired and Annuitant Pay Operations](#), will file a proof of claim with the Bankruptcy court concerned.

## \*170105. 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 debts should be coordinated with the DFAS Office of General Counsel, Garnishment Operations, prior to taking any action.

## 1702 WAGE EARNER’S PLAN UNDER THE BANKRUPTCY ACT, CHAPTER 13

## 170201. 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.). 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 priority claims under the plan, are under the control of the bankruptcy trustee. A wage earner’s plan under [Chapter 13 of the Bankruptcy Act](#) is one relating to future earnings of the debtor, and relief is predicated upon the primary concept that, while the debtor is unable to pay existing debts, a plan to effect a composition or extension out of future earnings has been presented to the bankruptcy court for approval. 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.

170202. Provisions

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, have accepted it and have filed their claims, or whether their claims have been scheduled or allowed, or are allowable.

170203. 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.

\*170204. Retired Pay

The retired pay of a retiree is subject to payment to the trustee appointed by the court pursuant to [Chapter 13](#). The payment by DFAS of part of the retiree’s pay in response to a court order issued in a [Chapter 13](#) Wage Earner’s Plan case does not violate [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.

170205. Judicial Determination

If the United States Government is a creditor when the retiree files a [Chapter 13](#) Wage Earner’s Plan, then the Government’s priority under [31 U.S.C. 3713](#) may be asserted in the absence of a judicial determination to the contrary.

170206. Delinquent Taxes

A retiree who is participating in a [Chapter 13](#) Wage Earner’s 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 which includes the assumption, settlement, or payment of any such delinquent taxes.

A. 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.

B. 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.

## 1703 PROCEDURES

### 170301. Bankruptcy Withholding Order

Bankruptcy withholding orders should be submitted or faxed to:

DFAS Cleveland  
Garnishment Operations  
P.O. Box 998002  
Cleveland, OH 44199-8002  
Commercial Fax: (877) 622-5390  
(216) 522-6960  
DSN Fax: 580-6960

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

1. Full name.
2. Full social security number.

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

C. 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.

### 170302. Case Review and Execution of Bankruptcy Order

Upon receipt of an effective bankruptcy order, together with all the required information, the office of the designated official will review the case to determine if there are any involuntary allotments, garnishments, or [debt collections](#) that [must](#) be terminated as a result of the automatic stay (child support, alimony and child support arrears, are not terminated unless the bankruptcy order [requires it](#)). The office of the designated official will then 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 cancelled or suspended.



A. Within 30 calendar days after the date of receipt of the order, the designated official will send notice to the retiree stating this fact.

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

C. 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 shall be told why and for how long any money is unavailable, if known.

## BIBLIOGRAPHY

## CHAPTER 17 – BANKRUPTCIES

## 1701 – GENERAL INFORMATION

170102	11 U.S.C. 106
170103	11 U.S.C. 362
170104	11 U.S.C. 501
170105	11 U.S.C. 1328

## 1702 – WAGE EARNER’S PLAN UNDER THE BANKRUPTCY ACT, CHAPTER 13

1702	11 U.S.C. 1301-1330
170202	11 U.S.C. 1322
170203	11 U.S.C. 1327
170204	11 U.S.C. 101
170205	31 U.S.C. 3713
	47 Comp Gen 522 (1968)
	<u>US vs. Shannon</u> , 342 US
	288 (1951)
170206	31 U.S.C. 3713
	47 Comp Gen 522