

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

All changes are 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 **June 2017** is archived.

<b>PARAGRAPH</b>	<b>EXPLANATION OF CHANGE/REVISION</b>	<b>PURPOSE</b>
All	Updated chapter and format to comply with administrative instructions.	Revision
Bibliography	Renamed “Bibliography” to “References.”	Revision

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## CHAPTER 17

**BANKRUPTCIES**

## 1701 GENERAL

## 170101. 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: Scroll down on links to Chapter 7 and Chapter 13.) 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.

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

B. 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.

C. 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.

D. 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.

## 170102. Authoritative Guidance

[The authoritative references are listed at the end of this chapter.](#)

1702 ADJUSTMENT OF DEBTS OF AN INDIVIDUAL WITH REGULAR INCOME, BANKRUPTCY, CHAPTER 13 (THE PLAN)

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 [claims according to the plan](#), are 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.

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, they have accepted it and have filed their claims, or 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 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., section 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 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.

170206. 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.

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 Notices and Withholding Orders

A. 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

B. 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.

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

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

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

E. 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 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](#).

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

B. 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.

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

\*REFERENCES

**CHAPTER 17 – BANKRUPTCIES**

## 1701 – GENERAL

170101.A	11 U.S.C. § 109
170101.B	11 U.S.C. § 362
170101.C	11 U.S.C. § 501
170101.D	11 U.S.C. § 1305

1702 – ADJUSTMENT OF DEBTS OF AN INDIVIDUAL WITH REGULAR INCOME,  
BANKRUPTCY, CHAPTER 13 (THE PLAN)

170201	11 U.S.C. §§ 1301-1330
170202	11 U.S.C. § 1327
170203	11 U.S.C. § 105
170204	11 U.S.C. § 1326 <a href="#">31 U.S.C. § 3713</a>
170205	31 U.S.C. § 3713 47 Comptroller General (Comp Gen) 522, United States vs. Shannon, 342 US 288, 1951
170206	31 U.S.C. § 3713 47 Comp Gen 522