

VOLUME 7A, CHAPTER 50: “BANKRUPTCY”**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 **February 2018** is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated hyperlinks and formatting to comply with current administrative instructions.	Revision
500102	Updated “Authoritative Guidance” paragraph to comply with current administrative instructions.	Revision
500201.B	Updated the “Automatic Stay Provisions” subparagraph to align with Volume 7B, Chapter 17.	Revision
References	Renamed “Bibliography” to “References.”	Revision

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CHAPTER 50

BANKRUPTCY

5001 GENERAL

500101. Purpose

This chapter prescribes the policies to be followed when a Service member files a petition of bankruptcy under Title 11, United States Code (U.S.C.), Chapter 7 or 13.

*500102. Authoritative Guidance

The pay policies and requirements established by the DoD in this chapter are derived primarily from, and prepared in accordance with U.S.C., Titles 11 and 31. The specific statutes, regulations, and other applicable guidance that govern each individual section are listed in the reference section at the end of the chapter.

5002 BANKRUPTCIES

500201. General Information

A. Filing. A member may file a petition of bankruptcy under 11 U.S.C., Chapter 7 or 13 of the Bankruptcy Code. 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.

* B. Automatic Stay Provisions. An amount of indebtedness owed to the United States that was incurred prior to the filing date of the petition, is described as a pre-petition debt. Collecting debts by offset from the member's pay account is authorized only through the day prior to the date the bankruptcy petition is filed. Continuing deductions from the member's pay after the filing of a petition in a bankruptcy is improper and violates the automatic stay provisions of the bankruptcy statute. Amounts withheld after the date the bankruptcy petition is filed must be refunded to the member. 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. If there are any questions about collecting a debt when a debtor has filed bankruptcy, coordinate with the DFAS Office of General Counsel, Garnishment Law Directorate, 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 member has listed the U.S. Government as a creditor, the military pay office will file a proof of claim with the bankruptcy court concerned for all Chapter 13 filings and if requested by the bankruptcy trustee in a Chapter 7 case. The proof of claim is filed with the bankruptcy court on Official Form B 410.

D. Post-Petition Debt. If the bankruptcy is completed and the debtor receives a discharge, then, generally, the listed indebtedness to the United States is discharged with few exceptions. Any new debt that was incurred after the filing of the bankruptcy petition is known as a post-petition debt. The bankruptcy proceedings do not affect post-petition debts. However, prior to taking any collection action on post-petition debts, the matter should be coordinated with the DFAS Office of General Counsel, Garnishment Law Directorate.

E. Dismissal. If the court subsequently dismisses a bankruptcy case, then collection is permitted by offset if otherwise authorized.

500202. Procedures

A. All Bankruptcy Notices and Chapter 13 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

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

B. The following information should be included with the bankruptcy order: full name, and full Social Security number.

C. The bankruptcy notice is effective when it is filed with the court and the provisions of the automatic stay are effective on that date.

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

E. Upon receipt of an effective bankruptcy order, together with all the required information, the Garnishment Law Directorate (office of the designated official) will review the case to determine if there are any involuntary allotments or garnishments that need to be terminated as a result of the automatic stay (child support, alimony, child support arrears, and alimony arrears are not terminated unless the bankruptcy order specifically states so). The Garnishment Law Directorate will then establish the withholding against the member'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.

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

2. The letter will inform the member of the date that the withholding is scheduled to begin and the amount or percentage that will be deducted.

3. When the member 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 are otherwise unavailable, the authorized person will be told why and for how long any money is unavailable, if known.

500203. Chapter 13, Adjustment of Debts of an Individual With Regular Income - The Plan

A. A member may file a petition with the court to enter into a “Chapter 13 Plan” under the Bankruptcy Code. Under Chapter 13, a member 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 under the plan will be sent to the control of the bankruptcy trustee.

B. When the plan is confirmed by the court, its provisions are binding upon the member and all creditors of the member, regardless of whether they are affected by the plan or have been included in the plan.

C. Once the bankruptcy court confirms a plan, it usually orders the employer to pay a specific amount of a member’s income to the trustee named in the order.

D. The pay of a member is subject to payment to the trustee appointed by the court, pursuant to Chapter 13 of the Bankruptcy Act. The payment by DFAS of part of the member’s pay in response to a court order issued under a Chapter 13 Wage Earner’s Plan case 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 member since the court order is binding on the member.

E. If the United States is both the employer and creditor when the member files a Chapter 13 Plan, then the Government’s priority under 31 U.S.C. § 3713 (Priority of Government Claims) may be asserted in the absence of a judicial determination to the contrary. This is done through a filing of the proof of claim by the appropriate pay office.

*REFERENCES

CHAPTER 50 - BANKRUPTCY

5001 – GENERAL

11 U.S.C. §§ 101 – 1330 (Bankruptcy Reform Act of 2005)

5002 – BANKRUPTCIES

500203.D

31 U.S.C. § 3713

500203.E

31 U.S.C. § 3713