

**Domestic Support
Obligation**

- 11 USC § 101 (14 A)
- A debt owed to or recoverable by
 - a spouse, former spouse, or child of the debtor *or such child's parent, legal guardian, or responsible relative*; or
 - a governmental unit

**Domestic Support
Obligation**

- A debt *in the nature of* alimony, maintenance, or support (including assistance provided by a governmental unit)
- A debt established or subject to establishment before, on, or after the date of the order for relief in the bankruptcy proceeding

**Domestic Support
Obligation**

- A debt formed in
 - (i) a separation agreement, divorce decree, or property settlement agreement;
 - (ii) an order; or
 - (iii) a determination made in accordance with applicable non-bankruptcy law by a governmental unit

**Domestic Support
Obligation**

- Includes interest
- Does **not** apply to a debt assigned to a **non-governmental entity**, unless the assignment has been made voluntarily for the purpose of collecting the debt

**Sent a Copy of
the Notice to:**

- SCU Attorney
- Department of Taxation (if referred)
- Interstate-Other Involved Jurisdictions
- County Clearinghouse or the County Attorney

EXAMPLE

The owner of the restaurant
“Debtor’s Diner” owes:

- Past due child support
- Real property taxes
- Fines for Health Code violations
- Unpaid sales taxes

AUTOMATIC STAY RULES

Pre-BAPCPA Filing	Post-BAPCPA Filing
Chapter 7 Pre-BAPCPA Filing	Chapter 7 Post-BAPCPA Filing
Chapter 12/13	Chapter 12/13

SCU ATTORNEY

- **File a Notice of Appearance**
- **File a Claim**
- **Answer Child Support Workers Questions**
- **Evaluate Chapter 12 & 13**
- **File Appropriate Motions Complaints**

BANKRUPTCY PETITIONS

Pre-BAPCPA Petitions:

- **CSS Debts Have Seventh Priority**
- **DSS Debts Do Not Have Priority.
They Are General Unsecured Debts**

BANKRUPTCY PETITIONS

Post-BAPCPA Petitions:

- CSS Debts Have First Priority
- DSS Debts Have First Priority, if They Follow the Distribution Rules
- Child Support Arrears Must be Paid in Full (with a Limited Exceptions for DSS Arrears)

Questions?

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NYPWA Conference

Bankruptcy CLE
Thursday, January 26, 2006
10:45 AM -12:15 PM

Handouts and Evaluation

From the Internet:

<http://www.ocfs.state.ny.us/ohrd/>

From the Intranet:

**[http://ocfs.state.nyenet/ohrd/
distancelearning/satellite/](http://ocfs.state.nyenet/ohrd/distancelearning/satellite/)**

MODEL BANKRUPTCY PROTOCOL

November 28, 2005

This Model Bankruptcy Protocol is a tool to provide you general guidance for implementing office procedures and protocols for handling child support cases when the child support obligor has filed for bankruptcy protection. The Protocol is a general guide for establishing paternity and establishing, modifying, and enforcing child support after a bankruptcy petition has been filed. The 2001 Protocol has been revised to include changes to the Bankruptcy Code under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”), which was effective 10/17/05.

The BAPCPA applies to all petitions filed on or after 10/17/05. Petitions filed before that date follow the laws and procedures which existed before the amendment. This protocol highlights the different treatment of these cases.

This model bankruptcy protocol serves as a general guide only. Development of your district’s specific procedures and treatment of individual cases should be undertaken only after consultation with your child support attorney.

The procedures identified below apply equally to child and spousal support obligations. Prior to the BAPCPA, the Bankruptcy Code did not distinguish between spousal and child support, and both are treated the same. The BAPCPA created a class of debts called “Domestic Support Obligations” (DSO), which include past, present and future debts in the nature of alimony, maintenance and support (spousal and child), including interest on these obligations. The definition includes debts owed to governmental units for assistance provided. 11 USC 101(14A).

I. NOTICE OF BANKRUPTCY, IDENTIFICATION OF LOCAL DISTRICT’S CLAIM

A. County-wide procedures.

Each county should have a procedure for handling bankruptcy notices. For example, every notice of bankruptcy received by the county, whether written or oral, should be routed to one office, usually the County Attorney’s office. Employees receiving oral notice should request the name and address of the court, date of filing, name and address of the debtor and of his or her attorney, and the nature of the debt. The transmittal form attached, “Notice of Bankruptcy Claim,” may be used to record oral notice and to convey either oral, written or e-mail information to the appropriate local legal office. In addition, if the bankruptcy notice clearly identifies a debt owed to a specific county agency, the notice must be forwarded to that agency as well, so it may take steps to comply with the automatic stay immediately (see Sections II - IV, below, for the steps the support collection unit should follow).

1. The office receiving all bankruptcy notices must identify the nature of the debt or debts owed to the county. The notice may not state the exact nature of the debt or debts owed to the county. Possible debts include child

support, real property taxes, TA recoupment, and claims arising from welfare fraud, county agency fines, or public assistance liens. In order to ensure that the appropriate county agency knows of the filing (and automatic stay), the exact nature of the county's interest must be ascertained.

2. The nature of the claim might be apparent from the notice or other communications. If not, the office handling the bankruptcy notices should review the court file (possibly using PACER, the federal court's electronic service for public access to court records and docket information: <http://pacer.psc.uscourts.gov>). In the alternative, the county should have a procedure whereby each agency or department reviews the notice immediately and promptly advises the office handling the bankruptcy notices of any debts or claims the county may hold.
3. Copies of the petition or other information may be obtained from PACER or by contacting the debtor's attorney.

B. Procedures for all agencies.

Any agency receiving notice of a bankruptcy filing must consult with its counsel's office regarding the bankruptcy and the nature of the agency's claims.

1. Counsel must notify any agency which may have a claim against the debtor of the appropriate steps to comply with the stay.
2. Counsel may file an appearance with the bankruptcy court, ensuring that all future information, inquiries or notices will go through counsel's office. In general, no collection activities should be undertaken without consulting counsel.

C. Support Collection Unit Procedures.

1. Notice of bankruptcy. Once a child support claim is identified, the SCU should be immediately notified that a bankruptcy petition has been filed. The "Notice of Chapter XX Bankruptcy Case, Meeting of Creditors, & Deadlines" will identify the name, social security number, and address of the debtor; the debtor's attorney and attorney address, the case number, the name and address of the Bankruptcy Trustee, the bankruptcy chapter the petition is being filed under. The notice also identifies the date location and time for the meeting of creditors; provides deadlines for filing a complaint objecting to discharge; and direction as to whether or not a "proof of claim" must be filed. Importantly, the bankruptcy notice also advises the creditor of the "automatic stay" of certain collection and other actions against the debtor and the debtor's property so the SCU may take appropriate steps to comply with the automatic stay (see Sections II - IV, below).

2. The SCU should designate who receives all notices and who is responsible for taking the necessary steps to comply with the Bankruptcy Code requirements. The child support attorney's office should be sent a copy of bankruptcy notices, unless the SCU designates counsel's office as the initial point for processing bankruptcy notices.
3. The SCU or designee should review the notice and ensure that the debtor named in the notice is a child support obligor and has child support order payable through the SCU. If not, the notice should be returned to the Bankruptcy Court with a copy to the debtor's attorney with a cover letter indicating no connection to the SCU.

II. STEPS TO COMPLY WITH THE AUTOMATIC STAY IN CHILD SUPPORT CASES

A. Automatic Stay (General Information).

1. The automatic stay goes into effect at the time the bankruptcy petition is filed, although there are some limited exceptions under the BAPCPA. The stay means that a debtor, such as the county or SCU, may not take or continue certain actions to enforce or establish debts. Actions which violate the stay may result in a court order sanctioning the creditor and awarding damages, attorney's fees and costs payable to the debtor.

There are "exceptions" to the automatic stay. If an action is exempt from the stay, the SCU may commence or continue that action without violating the stay or being subject to penalties. The BAPCPA greatly expanded the exemptions for domestic support obligations (DSOs). The Protocol is divided into guidelines for bankruptcy petitions filed before 10/17/05 (Section III) and for those filed on or after 10/17/05 (Section IV), the effective date of the new law to provide for change in the exemptions from the automatic stay.

2. The date the bankruptcy petition was filed is a key fact for determining what may and may not be done. The term "pre-petition," as used below, refers to actions or conditions before the date the bankruptcy petition was filed. The term "post-petition," as used below, refers to actions or conditions on or after the date the bankruptcy petition was filed

III. STAY PROCEDURES FOR PETITIONS FILED BEFORE 10/17/05

A. Chapter 7 (Liquidation) and 11 (Reorganization) Cases.

1. Income execution. Post-petition income is not property of the estate in Chapter 7 bankruptcies. The stay does not prohibit collection of child support from property which is not property of the estate. Therefore, an

income execution may be used to collect both current and past-due child support (pre- and post-petition arrears) from post-petition wages.

2. Court Proceedings.
 - a. Proceedings for the establishment of paternity and/or support, or modification of a support order may continue.
 - b. Family court violation petitions based on pre-petition arrears are stayed and the SCU may need to withdraw any pending family court petitions.
 - c. Family court violation petitions based on post-petition arrears may be filed ONLY if they seek to collect support from non-estate assets. The family court petition must be very specific that it only seeks to enforce post-petition arrears against non-estate assets.
 - d. Criminal proceedings generally are not stayed.
3. Administrative Enforcement of Pre-petition Arrears
 - a. Income tax intercept – Must be discontinued.
 - b. Lottery intercept and passport suspension – May continue.
 - c. Suspension of driving privileges– Must be discontinued.
 - d. Referral to DTF – if the referral is not complete, discontinue the process. If the case has already been referred, send DTF a copy of the notice. DTF may not undertake any new enforcement activity that violates the automatic stay.
 - e. Credit bureau reporting – if the referral is not complete, discontinue the process.
 - f. Property executions and restraining notices – no new executions or notices. Outstanding restraining notices should be withdrawn.
 - g. Personal Injury Claims – Existing liens do not need to be withdrawn. No new liens should be issued unless the Trustee abandons any interest in the personal injury claim or case.
4. The steps to stop administrative enforcement are listed in **Appendix A**.
5. Immediately give notice and turn over funds to the Bankruptcy Trustee if improperly collected post-petition. Funds collected before the bankruptcy filing is not subject to the turnover or recovery of preferences sections of the bankruptcy code.

6. The SCU (by its counsel) may always seek to lift the automatic stay for particular enforcement actions. The SCU MUST move to lift the automatic stay if the action the SCU wishes to take will violate the automatic stay. To do so, the SCU attorney would file a motion for relief from the automatic stay.

B. Chapter 12 (Family Farmer) and 13 (Payment Plan) Cases.

1. Income execution
 - a. Current support (support charges accruing post-petition)
 - i. Unlike a Chapter 7 bankruptcy case, under Chapters 12 and 13 post-petition income is property of the estate. Collection of current support by income execution may violate the automatic stay. However, the debtor's attorney may prefer to continue the execution. If the SCU's counsel can immediately contact the debtor's attorney and the attorney will stipulate to continuance of the income execution, then the execution may continue. The bankruptcy court must approve any stipulation. If a court-approved stipulation is obtained, counsel should notify the SCU to modify the income execution to collect current support only. Otherwise, counsel should advise the SCU immediately to terminate the income execution. Counsel should also give the debtor's attorney instructions as to how to make payments and where the debtor should send ongoing payments.
 - ii. If the debtor does not make timely payments of child support as it comes due post-petition, the SCU should consider asking its counsel to move to lift the stay, which would allow enforcement of both the post and pre-petition arrears. The SCU may also notify the Chapter 13 trustee, who could move to dismiss the bankruptcy.
 - b. Pre-petition arrears which accrued before the date the bankruptcy petition was filed will probably be paid under the plan. Un-assigned arrears (i.e., SSL 111-g cases) are entitled to be paid in full under the debtor's Plan as a priority debt. Arrears owed to the SCU are general, unsecured non-dischargeable debts. The plan may only pay a portion of these arrears, although they will not be discharged at the end of the bankruptcy. Note that if a money judgment has been filed in the county where the debtor owns real property, the debt may be secured up to the amount of the money judgment, and entitled to priority treatment as a secured creditor. The SCU attorney, when filling out a claim, should make clear the class, status and priority of the debt.
2. Court Proceedings - Same as Chapter 7, above. Note, however, that post-petition income is property of the estate in Chapters 12 and 13.

3. Administrative Enforcement

- a. Income tax intercept and passport suspensions- Must be discontinued.
- b. Lottery intercept – Must be discontinued.
- c. Suspension of driving privileges – Must be discontinued.
- d. Referral to DTF – If the referral is not complete, discontinue the process. If the case has already been referred, send DTF a copy of the notice. DTF may not undertake any new enforcement activity that violates the automatic stay.
- e. Credit bureau reporting – If the referral is not complete, discontinue the process.
- f. Property executions and restraining notices – no new executions or notices. Outstanding restraining notices should be withdrawn.
- g. Personal Injury Claims – Existing liens do not need to be withdrawn. No new liens should be issued unless the Trustee abandons any interest in the personal injury claim or case.

4. Referral to DTF – if the referral is not complete, discontinue the process. If the case has already been referred, send DTF a copy of the notice. DTF may not undertake any new enforcement activity that violates the automatic stay.

5. Return funds to the debtor if improperly collected post-petition, with notice to the Chapter 13 Trustee.

6. The SCU by its counsel may always seek to lift the automatic stay for particular enforcement actions. The SCU MUST move to lift the automatic stay if there is any question that the action the SCU wishes to take will violate the automatic stay.

IV. STAY PROCEDURES FOR PETITIONS FILED ON OR AFTER 10/17/05

A. Generally. The BAPCPA greatly expands the enforcement actions exempt from the automatic stay. There is no difference between Chapter 7, 11, 12 and 13 cases, except that if arrears are to be paid under a Chapter 12 or 13 Plan, the SCU may be precluded from collecting arrears outside the scheduled plan payments. The following actions are exempt from the stay:

1. Collection of a domestic support obligation from property that is not property of the estate.

2. Income Executions for payment of a domestic support obligation (both current support and arrears).
3. Withholding, suspension, or restriction of a driver's license, a professional or occupational license, or a recreational license.
4. Reporting of overdue support owed by a parent to any consumer reporting agency.
5. Interception of a state or federal tax refund.
6. Enforcement of a medical obligation.

B. Court Proceedings.

1. Commencement or continuation of the following types of civil actions or proceedings is exempt from the stay:
 - a. Establishment of paternity.
 - b. Establishment or modification of an order for domestic support obligations.
 - c. Child custody or visitation proceedings.
 - d. Dissolution of a marriage, except to the extent that such proceeding seeks to determine the division of property that is property of the estate.
 - e. Domestic violence proceedings.
 - f. Actions to withhold, suspend, or restrict a driver's license, a professional or occupational license, or a recreational license to enforce a DSO.
2. Family court violation petitions based on pre-petition arrears are stayed and the SCU may need to withdraw any family court petition unless it can proceed to collect or enforce the obligation against non-estate property, or seeks a remedy that is exempt from the stay (i.e., court based license suspension).
3. Family court violation petitions based on post-petition arrears may be filed ONLY if they seek to collect support from non-estate assets or seek a remedy that is not barred by the stay. However, since the debtor is required to make all post-petition DSO payments, a motion to dismiss the bankruptcy proceeding for failure to pay current child support may be more effective.
4. Criminal proceedings generally are not stayed.

C. Administrative Enforcement.

1. Commencement or continuation of the following types of administrative enforcement actions is/is not exempt from the stay as noted:
 - a. Income tax intercept and passport suspension – Allowed.
 - b. Lottery intercept – Allowed.
 - c. Suspension of driving privileges or professional, occupational or recreational licenses – Allowed.
 - d. Referral to DTF – If the referral is not complete, discontinue the process. If the case has already been referred, send DTF a copy of the notice. DTF may not undertake any new enforcement activity that violates the automatic stay.
 - e. Credit bureau reporting – Allowed.
 - f. Property executions and restraining notices – no new executions or notices. Outstanding restraining notices should be withdrawn.
 - g. Personal Injury Claims – Existing liens do not need to be withdrawn. No new liens should be issued unless the Trustee abandons any interest in the personal injury claim or case.

V. INTERIM STEPS UNDER ALL CHAPTERS

- A. Appearance by SCU Counsel.** Counsel for the SCU may file a notice of appearance at no cost (see attached form). This will entitle the SCU to notice of all future appearances, court actions, etc.
- B. Claims.** The SCU should file a proof of claim, unless directed not to do so in the “Notice of Bankruptcy Chapter 7 Case” (i.e. don’t file in a Chapter 7 “no asset” case). The claim should be prepared by or reviewed and approved by the SCU’s legal office. If a claim is filed, it is presumed to be correct unless challenged by the Debtor.

The proof of claim should specify the arrears due to the custodial parent and to the SCU separately. If a money judgment has been entered, the claim should include interest on the judgment.

- C. Priority.** If the bankruptcy petition was filed before 10/17/05, arrears owed to the custodial parent are priority debts and must be paid in full under any plan proposed in a chapter 12 or 13 proceeding. Arrears owed to the SCU are general, unsecured debts. However, if the arrears have been reduced to money judgment, and the judgment was filed in a county where the debtor owned real property, the debt is secured. Secured debts are entitled to priority, and must be

paid in full under any plan proposed in a chapter 12 or 13 proceeding. Interest on the judgment may be paid under the plan in certain circumstances.

If the bankruptcy petition was filed on or after 10/17/05, under the BAPCPA, child support debts have priority over all other creditors, except certain administrative expenses.

D. Discovery.

1. The debtor is required to provide detailed financial information that may be used in filing motions in the bankruptcy or in future enforcement or modification proceedings.
2. Obtain a copy of the petition and the following schedules:
 - a. income, expense and property schedules; and
 - b. exempt property schedule. Under BAPCPA, the SCU may collect child support from exempt property.
3. The SCU attorney may attend creditor meetings (section 341 meetings).
4. Under BAPCPA, the debtor is required to file tax returns for the 3 years prior to the filing of the petition.

E. Evaluating Chapter 12 and 13 plans.

1. Evaluating the plan in Pre-BAPCPA cases (bankruptcy petition filed before 10/17/05).
 - a. Non-public assistance arrears are entitled to Priority status, and must be paid in full under the Plan. They are entitled to a non-bankruptcy priority over IRS debts pursuant to the provisions of the Internal Revenue Code (26 USCA 6334[a] [8]).
 - b. Public assistance arrears are non-priority, general unsecured debts. They are entitled to a non-bankruptcy priority over IRS debts pursuant to the provisions of the Internal Revenue Code (26 USCA 6334[a] [8]).
 - c. Current support is generally paid outside the plan.
2. Evaluating the plan in BAPCPA cases (bankruptcy petition filed on or after 10/17/05).
 - a. First determine whether the child support arrears are being paid under the Plan. If not, then continue to collect the arrears by any means that does not violate the stay. If the debtor includes the arrears under the Plan, determine whether to object to their inclusion. *If the debtor*

includes the arrears under the Plan, the SCU may not collect the arrears by other means, and the CSMS account must be adjusted to prevent automated enforcement.

- b. Review the plan to ensure that child support arrears are treated properly. Non-public assistance arrears are entitled to first Priority status, and must be paid in full under the Plan. Public assistance arrears are also entitled to Priority status, right after non-public assistance arrears. They must be paid in full under the plan UNLESS the debtor is paying all of his or her “disposable income” (as defined in the Bankruptcy Code) into the plan for a 5 year period. Current support is generally paid outside the plan and may be collected by income execution.
3. The SCU should file objections to the plan where appropriate. A plan cannot be confirmed if the debtor has not paid his or her post-petition child support when due. Counsel should review the other debts and overall plan. A case filed to frustrate child support collection may be dismissed as being in bad faith.

F. Dismissal. Debtor’s failure to comply with the plan may lead to dismissal of the case. The debtor must also continue to make all current child support payments, both after filing a petition and after confirmation of the plan. The debtor is required to begin making payments to the Chapter 13 Trustee within 30 days of filing the plan. Once the plan is confirmed, plan payments should be distributed to the SCU. If the debtor fails to make the required plan payments, the Trustee should move to dismiss the case. The SCU attorney may also move to lift the stay or dismiss the case.

G. Discharge.

1. In general, the SCU does not need to initiate proceedings to determine dischargeability of a child support debt. Any debt “in the nature of ... support” is non-dischargeable. This includes medical expenses, confinement, child care orders, educational expenses and certain legal fees.
2. Under the BAPCPA, the debtor must certify that he or she has made all current support payments in order to obtain a discharge in Chapter 12 or 13.

H. Transfer of SCU case. If the case is transferred to another county’s SCU during the pendency of the bankruptcy case, the initiating SCU must advise the receiving SCU of the pending bankruptcy and cooperate with the new SCU to ensure ongoing compliance with the automatic stay. The SCU receiving the case must advise the bankruptcy court to add its name and address on the creditor’s matrix (for notice purposes), and the SCU attorney in the receiving district should file an appearance (see form attached).

- I. Interstate Cases. If New York is the initiating state, a copy of the initial Notice must be sent to the receiving state. If New York is the receiving state, a copy of the initial Notice must be sent to the initiating state.

VI. CLOSE OF THE BANKRUPTCY CASE

A. Termination of the stay.

1. If the Chapter 12 or 13 Plan requires the SCU to accept payments under the Plan, pre-petition arrears cannot be otherwise enforced. If payments are not received as required by the plan, the SCU's counsel may contact the Chapter 13 Trustee.
2. All actions subject to the stay are barred until:
 - a. The case is closed.
 - b. The case is dismissed.
 - c. A discharge is granted or denied.
 - d. A motion to lift the stay is granted.
3. The court will give notice of the closure or dismissal of the case, or of the discharge to all creditors. In addition, under the BAPCPA, the trustee is required to notify the child support agency of the termination of the case, and provide information including:
 - a. the debtor's last known address;
 - b. the debtor's most recent employer and the employer's address; and
 - c. the names and addresses of creditors holding claims that were not discharged or were reaffirmed. The SCU may write these creditors and ask for the debtor's most recent address.

B. Re-institution of collection activities.

1. On receipt of a notice of dismissal, closure or discharge, the SCU should re-set all fields on CSMS to re-institute enforcement activities. However, non-payment of a pre-petition debt during a chapter 7 proceeding or partial payment under a chapter 12 or 13 plan cannot, standing alone, be the basis for filing a violation petition or instituting a DMV suspension proceeding, DTF referral or other default-based enforcement process. If a default occurred before the bankruptcy petition was filed, and the case still meets the threshold or statutory requirements for an administrative enforcement process after the case closes or a discharge is granted, then the

administrative enforcement may be initiated anew. A violation petition may be filed if the debtor has failed to make current support payments during the pendency of the bankruptcy proceeding (as set forth above) or defaults post-discharge.

2. The SCU should have a “tickler” system to periodically review cases in bankruptcy, in the event the stay has been lifted or terminated without proper notice reaching the SCU. Normally, a discharge issues in a Chapter 7 case within 90 – 180 days of the petition’s filing. In Chapter 13 cases, the case continues according to the terms of the plan, usually between 3 and 5 years from the date the plan is confirmed.

APPENDIX A

Steps To STOP Administrative Enforcement Processes on CSMS

1. Income Executions – Change the delinquency switch on IVDQRY to 86 and then, the next day, to 19.
2. Unemployment Insurance Intercept- Enter an “8” in the UIB-IND to request a termination to the Department of Labor. When CSMS changes the UIB-IND to “4”, set the UIB-IND to “9” to prevent the case from reentering the process.
3. Tax Refund Offset Process (TROP) – by entering a “B” in the DCO field for the tax refund offset process via the 33 DCOR transaction on page 00 of IVDQRY screen, and, if the account is already certified, by processing a negative 64 batch transaction for each ledger certified on the account to delete the account from TROP. After the August end-of-month, the district must still enter the ”B” value for bankruptcy so it will appear on the listing of accounts generated during May’s end-of-month run each year, which lists each case in a district with the ”B” value for bankruptcy. . Once this annual list is received, the district should review each case to determine if the automatic stay is no longer in effect. If the automatic stay is no longer in effect, the “B” value should be removed via the 33 DCOR transaction, else leave the “B” on the account.
4. Driver License Suspension – The entry of delinquency switch 19 in #1 above will generate a termination notice to DMV on those accounts in which a referral to DMV has been sent and will prevent the submission of any new eligible accounts to DMV. The entry of a “B” in #2 above will not remove accounts already in the DMV process and will prevent the submission of any new eligible accounts to DMV.
5. Lottery Intercept and Credit Reporting – Enter a “C” in the CR-IND. For credit bureau reporting, contact Larry Dole at (518) 473-0192 to prevent these accounts from resubmittal to the CRA’s and Lottery.
6. Referral to Taxation and Finance – The entry of delinquency switch 19 in #1 above will stop enforcement at DTF and will prevent the submission of any new eligible accounts to DTF. The entry of the “B” in #2 above will not remove those accounts already sent to DTF and will prevent the submission of any new eligible accounts to DTF.
7. Property Execution – Enter DELQ-SW 19 to prevent asset records from entering the PEX process. If a restraining notice has been issued, produce from the document generation module of CSMS a DOC GEN Notice to Vacate Restraining Notice or Execution. CSMS will then set the PROP EXE

CODE to a 01. The following day, the district should enter a 96 in the PROP EXE CODE to prevent another restraining notice from going out within one year of the date of the property execution code of 96. After one year, the property execution code will be changed from 96 to 01. The next day, if the account is still PEX eligible, the property execution code will be changed by CSMS from 01 to 60. The district then has 45 days to determine whether PEX is appropriate. If it is appropriate, no action is required. A restraining notice will be issued. If PEX is still not appropriate, change the property execution code from 60 to 96. If an execution has been issued, generate on DOC GEN a Notice to Vacate Restraining Notice or Execution. CSMS will change the PROP EXE CODE from a 04 to a 01. The following day, the district should enter a 96 in the PROP EXE CODE to prevent another execution from going out.

8. Personal Injury Insurance Claim Settlement Intercept Process – If the PIC Code on any IVDPIC record is 01, contact DCSE for coding to prevent the record from entering the process. If the PIC Code on any IVDPIC record is 02, change the PIC Code to 76. If the PIC Code on any IVDPIC record is 04, change the PIC Code to 86. If the PIC Code on any IVDPIC record is 15, change the PIC Code to 86.

IMMEDIATE ATTENTION

Notice of Bankruptcy Claim _____ County

1. **Notice received on:**

_____ *Date*

_____ *Time*

_____ *Office*

2. **Type of Notice:**

written (*copy attached*)
phone/oral (please fill out section 5, below)
e-mail (*printout attached*)

3. This notice was forwarded to the County Attorney's office on _____
Date

4. If the notice indicates that a child support debt is involved, a copy of this notice was also sent to the CSEU.

Sent to CSEU on _____
Date

Not sent to CSEU

5. **If oral notice was received, I obtained the following information:**

Name of Court: _____

Address of Court: _____

Name of Debtor(s): _____

Debtor(s) Address: _____

Name of debtor's Attorney: _____

Nature of type of debt: _____

Amount of debt: _____

Date bankruptcy petition was filed: _____

6. **Name of person receiving notice:** _____

Agency/Bureau: _____

Phone Number: _____

UNITED STATES BANKRUPTCY COURT
_____ DISTRICT OF NEW YORK

In Re: _____
Debtor

Bankruptcy Case No.: _____
Chapter: _____

Address:
Social Security No(s):
Employer's Tax Identification No(s). (If any):

APPEARANCE OF CHILD SUPPORT CREDITOR OR REPRESENTATIVE

I certify under penalty of perjury that I am a child support creditor ¹ of the above-named debtor, or the authorized representative of such child support creditor, with respect to the child support obligation which is set out below.

Name:
Organization:
Address:

Telephone Number:

_____ X _____
Date Child Support Creditor or Authorized Representative

Summary of Child Support Obligations

Amount in arrears:
assigned:
\$ _____
assignments:

Amount currently due per week or per month
on a continuing basis:

\$ _____

(per week) (per month)

If Child Support has been

Amount of Support which is owed under

\$ _____

Amount owed primary child support creditor

(balance not assigned):

\$ _____

Attach an itemized statement of account

¹ Child support creditor includes both creditor to whom the debtor has a primary obligation to pay child support as well as any entity to whom such support has been assigned, if pursuant to Section 402(a) (26) of the Social Security Act or if such debt has been assigned to the Federal Government or to any State or political subdivision of a State.

AN OVERVIEW OF BASIC BANKRUPTCY LAW

New York State Office of Temporary and Disability Assistance
Office of Legal Affairs
November 2005

- I. Debtors most often file for bankruptcy under one of three chapters of the Bankruptcy Law - Chapter 7, Chapter 11, and Chapter 13. Family farms may seek relief under Chapter 12, which is similar to Chapter 13.

- A. Chapter 7 Bankruptcy – Liquidation

Purpose: Under Chapter 7, the Trustee liquidates (or sells) the debtor's equity in non-exempt assets. The proceeds (if any) are used to pay as much of the priority and unsecured debts as possible. With some exceptions (such as child support), the debtor is discharged from personal liability for any amount remaining due.

Players: The court appoints a Trustee to represent the interests of the unsecured creditors. Usually the Trustee is appointed from a panel of local bankruptcy attorneys. The debtor and his/her creditors are also parties to this proceeding.

Rough Time Frame: Discharge is usually granted within 90 to 180 days from the date the petition was filed.

General Provisions: The Trustee represents the interests of the unsecured creditors. The Trustee's job is to gather all the non-exempt assets which have any value or equity and sell them. Exempt assets are not sold and assets of no value to the estate are abandoned by the Trustee. Because secured interests (such as perfected judgements or mortgages) may not be voided, the value of an asset must be reduced by the amount of the secured interest.

Debts are separated into certain classes, with some debts having priority over others. Priority debts are paid first. For petitions filed after 10/17/05, child and spousal support debts have first priority (except for certain administrative expenses). After paying the priority debts, anything left over is used to pay the unsecured creditors. Any unsecured debts which remain unpaid are "discharged" with some exceptions, as discussed in Section IV, below.

- B. Chapter 11 Bankruptcy – Business Reorganization

Purpose: To allow a business to reorganize and pay its debts under a "Bankruptcy Plan."

Players: If the business entity is allowed to continue running its business post-petition, it is called the “Debtor in Possession” (“D.I.P.”). Sometimes a Trustee or receiver is appointed to run the business. The debtor and creditors are also parties. The creditors may form Creditors’ Committees which may act as a unit and hire an attorney to represent them. In addition, the United States Trustee is a party.

Rough Time Frame: The debtor has up to one year to propose a Bankruptcy Plan and obtain court confirmation. The plan can then run between 5 and 7 years.

General: The debtor proposes a plan of reorganization. It can terminate unfinished (executory) contracts and leases and otherwise cut costs. The debtor uses its excess income to pay old debts. Past due payments for taxes, mortgages, or secured liens, priority claims, and administrative costs must be paid in full within the life of the plan. The debtor must stay current on mortgage payments, secured lien payments, taxes, and other secured debts. Unsecured debts might be paid partially and are discharged upon confirmation of the plan.

C. Chapter 13 Bankruptcy – Personal Reorganization

Purpose: To allow an individual with regular income more time to pay his/her debts under a “Bankruptcy Plan.”

Players: Each court has a standing Chapter 13 Trustee who has a variety of duties, including receiving and disbursing plan payments. The debtor and creditors are also parties to the proceedings.

Rough Time Frame: The debtor must propose a plan to repay the creditors, and then obtain court confirmation of the proposed plan. Plan payments must begin within 30 days of filing the plan (even before the plan is confirmed). The plan may run from 3 to 5 years.

General: The debtor submits income and expenses schedules as part of the Bankruptcy petition and proposes a plan to use the excess income to pay his/her debts. The plan must pay priority claims (including priority child support) in full over the life of the plan. The debtor must stay current on post-petition child support, mortgage, tax, and secured lien payments. Unsecured, non-priority debts are paid in full or partially over the life of the plan. The unpaid portion of dischargeable debts is discharged once the plan is completed.

D. Chapter 12 Bankruptcy – Family Farm Reorganization

This chapter is for family farmers whose debts exceed the Chapter 13 debt limitations. It closely parallels Chapter 13 procedure.

II. The Automatic Stay – 11 USC § 362

A. The “automatic stay” acts to stop most collection activities or efforts to establish or perfect a lien or security interest against the property of the debtor’s estate. However, there are exemptions from the stay. It does not affect the establishment of paternity, child support, alimony, or their collection from non-estate property. For petitions filed on or after 10/17/05, it does not bar many other child support collection activities. It also does not stop any action by a governmental unit to enforce its police or regulatory powers. It does not bar criminal prosecutions.

B. The stay is in effect until:

1. The case is closed.
2. The case is dismissed.
3. In a Chapter 7 case, a discharge is granted.
4. In a Chapter 11,12 or 13 case, a plan is confirmed (but any debts paid under the plan cannot be enforced unless the Debtor fails to make plan payments.)
5. The property against which enforcement is sought is no longer property of the estate (i.e., if abandoned by the Trustee, if returned to the debtor on confirmation of a Chapter 13 plan).
6. The Bankruptcy Court lifts the stay by written Court order (i.e., granting a creditor’s motion to lift the stay).

III. Priority Debts

Certain debts are entitled to priority in repayment. Unassigned child support arrears are a priority debt if the petition was filed before 10/17/05. For petitions filed on or after 10/17/05, “Domestic Support Obligations” (which include child support arrears, whether assigned or unassigned) are the first priority debt (other than certain administrative expenses). Other priority debts include wages owed to employees, taxes, administrative costs and secured debts, such as past-due mortgage payments.

IV. Discharge of the Debtor

A. General

1. Debts listed in the petition are “discharged” (become unenforceable) upon completion of the bankruptcy process.

2. Non-dischargeable Debts – 11 USC § 523

a. Certain debts cannot be discharged. In general they include taxes, money obtained by fraud, embezzlement or larceny, debts for luxury goods (consumer goods with a value over \$1,000.00) obtained within 60 days of filing, child or spousal support, government fines or penalties, student loans, some divorce judgments debts other than support, and court fees. Judgments arising from willful and malicious injury cause by the debtor are not dischargeable. As discussed below, successful completion of a Chapter 13 plan discharges some debts that would not have been discharged under chapters 7 or 11.

b. Debts “in the nature of child support” are not discharged under any chapter. These may include confinement or pregnancy related costs, child care, education expenses, medical expenses, foster care costs, shelter expenses (such as mortgage payments on the children’s residence), or attorney’s fees incurred in obtaining support. They may include other debts, such as marital credit card debts, if the debtor was ordered to pay them to offset the cost of supporting the child or reduce the amount of support he would otherwise pay.

c. In some cases, the creditor owed a non-dischargeable debt need not seek a court determination that the debt survives the bankruptcy. There are some exceptions to this rule (certain fraud debts, equitable distribution debts and debts due to willful or malicious actions by the debtor) which require the creditor to seek a court determination that the debt is not discharged. A child support creditor does not have to, but may, seek a determination regarding dischargeability

B. Secured versus Unsecured debts

1. A “lien” is a charge or interest in the property of another person to secure payment of a debt or performance of an obligation. A lien may arise from a court order (i.e., a money judgment), by administrative action

(i.e., a child support lien under SSL 111-u), or by agreement (i.e., a mortgage, car loan, or credit agreement for purchase of an appliance). If the creditor has a lien on the debtor's property, the debt is "secured." If not, it is "unsecured."

2. If a dischargeable debt is unsecured, it is no longer enforceable after discharge. If a dischargeable debt is secured, then after discharge the creditors' only recourse is to foreclose or execute on the property encumbered by the lien. The debtor is not personally liable for the debt.

- For example, when a debtor buys a home he signs a note (a personal promise to repay the money) and a mortgage (a lien on the property). The bankruptcy discharge terminates the debtor's personal liability and the note cannot be enforced. The mortgage isn't discharged and the creditor can foreclose on the property, but cannot obtain a deficiency judgment against the debtor.

3. A secured lien may be avoided or voided in some circumstances if it impairs the debtor's exempt property. Child support liens may not be avoided.

C. Discharge under particular Chapters

1. Chapter 7 Discharge:

After the discharge is granted, the debtor is no longer personally liable for any dischargeable debt listed in the petition.

2. Chapter 11 Discharge

The Confirmation of a Bankruptcy Plan under Chapter 11 generally discharges the debtor for any listed pre-petition debt except those debts which are non-dischargeable under § 523. The terms of the plan may determine whether the security interests or liens survive. (note: the courts are divided on this issue)

3. Chapter 12 and 13 Discharge

A confirmed plan is binding on the debtor and the creditors, even if they unsuccessfully objected to the plan. Debts are not discharged until completion of the plan. Debts that are not dischargeable under 11 USC 523 are not dischargeable in Chapter 12 proceedings. However, successful completion of a Chapter 13 plan discharges all debts except child and spousal support, federally guaranteed student loans, DWI related personal injury awards and criminal fines or restitution.

V. Miscellaneous Bankruptcy Concepts

A. Voluntary Reaffirmation of Debts

The debtor can choose to reaffirm a debt. For example, if an automobile purchase loan is secured by a lien on the vehicle, the debtor must reaffirm the debt and make payments or surrender the vehicle. If the debtor wants to keep the car, he will reaffirm the debt. Reaffirmed debts are not discharged in bankruptcy.

B. The Debtor's Estate – 11 USC § 541

1. The "Estate in Bankruptcy" is the property of the debtor subject to the court's jurisdiction. It includes all the debtor's right, title or interest in real or personal property, debts owed to the debtor, accounts receivable, inventory, and rights to redeem property.

2. The Trustee or DIP can demand that a creditor or other person holding property of the estate turn over seized property or property in their possession or control. (11 USC § 542). However, the Trustee may not demand the return of bona fide child support payments or collections.

3. The courts are split on the debtor's right to demand turn over where there is a Trustee appointed. The majority view is that the debtor cannot demand turnover of property until the Trustee abandons the property. If the property is exempt from the bankruptcy estate, the debtor may also have a right to demand its turn over. However, the issue of adequate protection may arise in these cases.

C. Statutory Exemptions From Property of the Estate

1. Some property is exempt from being "property of the estate" (11 USC § 522). New York State Law determines these exemptions and they are set forth in detail in CPLR § 5205 and § 5206, and Debtor and Credit Law § 282.

2. For petitions filed on or after 10/17/05, domestic support obligations, including child support debts, may be enforced against exempt property. Generally, however, exempt property is beyond the reach of the bankruptcy trustee or creditors.

3. Under § 522 (f), the debtor can ask the court to avoid some liens on real or personal property if they impair the debtor's exemption. The practical effect is that an item seized or restrained by the Sheriff or a creditor may lose its status as secured property and be subject to turn over to the debtor or Trustee. Since this would require court proceedings the creditor will receive notice of the proceeding before the court issued an order to that effect.

D. Adequate Protection

1. If there is a lien secured by the property, the lien holder is entitled to "adequate protection" of its interest. Adequate protection means some type of arrangement which protects the secured lien or replaces it with something of equal value. For example, some courts have held that a debtor whose vehicle was seized must provide adequate protection by insuring the car, and keeping current on loan payments in order to get it back.

2. The courts are divided whether the person who seized property pursuant to a judgment lien has the right to withhold the property until adequate protection is offered. Some courts have held that when a Trustee demands turn over, the person holding the property must comply. Other courts have held that the property should not be turned over until the issue of adequate protection is addressed.

INFORMATION MEMORANDUM IM-05-05

DATE: May 4, 2005

TO: ALL STATE AGENCIES ADMINISTERING CHILD SUPPORT ENFORCEMENT PLANS APPROVED UNDER TITLE IV-D OF THE SOCIAL SECURITY ACT AND OTHER INTERESTED PARTIES

SUBJECT: New Federal Bankruptcy Law Contains Child Support Provisions.

BACKGROUND: The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 was signed by President Bush on April 20, 2005, and became Public Law 109-8. Title II, Subtitle B "Priority Child Support" contains a variety of provisions that will be helpful to States and families seeking to establish paternity and support orders and to enforce child support obligations. The revisions, among other changes:

- Define a 'domestic support obligation';
- Allow enforcement of support orders during bankruptcy proceedings;
- Give domestic support obligations first priority in distribution of available funds;
- Instruct bankruptcy trustees to provide appropriate written notice and certain information, including: to an obligee of the right to use the services of a state child support agency where the obligee resides; and to the obligee and child support agency of the bankruptcy proceedings, the claim for a domestic support obligation, and the granting of a discharge.

LEGISLATION:

Library of Congress' Congressional Research Service Summary of P.L. 109-8 Child Support Provisions

(Sec. 212) Revises priority payment guidelines to place within the first priority claim category certain unsecured claims for domestic support obligations, if the funds received by a governmental unit are applied in a prescribed order. Grants priority over such claims, however, to specified administrative expenses of certain trustees.

(Sec. 213) Conditions court confirmation of a debt repayment plan under Chapters 11, 12 (Debts of a Family Farmer), and 13 upon certification that the debtor has paid in full all adjudicated domestic support obligations that become due after the petition filing date.

(Sec. 214) Exempts from an automatic stay specified actions pertaining to domestic support obligations proceedings, including: (1) child custody or visitation; (2) dissolution of marriage; (3) domestic violence; (4) withholding of income that is property of the bankrupt estate for payment of domestic support obligations; (5) suspension of drivers' licenses and professional licenses; (6) reporting of overdue support owed by a parent to certain consumer reporting agencies; (7) interception of specified tax refunds; and (8)

enforcement of medical obligations under title IV, part D (Child Support and Establishment of Paternity) of the Social Security Act.

(Sec. 215) Revamps guidelines governing the nondischargeability of certain debts for alimony, maintenance, and support to repeal the exceptions granted the debtor under specified conditions.

(Sec. 216) Modifies guidelines governing property exempt from the bankruptcy estate to declare such property liable for a debt arising from domestic support obligations.

(Sec. 217) Prohibits the bankruptcy trustee from avoiding a transfer that is a bona fide payment of a debt for a domestic support obligation.

(Sec. 218) Excludes income payments for post-petition domestic support obligations from "disposable income" for purposes of a Chapter 12 confirmation plan.

(Sec. 219) Sets forth the duties of the bankruptcy trustee to notify the claim holder and the appropriate State child support agency of the debtor's last known address.

(Sec. 220) Declares dischargeable any debts for certain qualified educational loans which, if not discharged, would impose an undue hardship upon either the debtor or the debtor's dependent.

ATTACHMENTS:

- House Report 109-031 language regarding Part 1, Title II, Subtitle B "Priority Child Support"
- Title II, Subtitle B "Priority Child Support" (sections 212-220) of Public Law 109-8 "The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005"

INQUIRIES: Please direct inquiries to ACF Regional Administrators.

David H. Siegel
Acting Commissioner
Office of Child Support Enforcement

BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2005

House Report 109-031, Part 1, Subtitle B. Priority Child Support

Sec. 211. Definition of Domestic Support Obligation. Section 211 of the Act amends section 101 of the Bankruptcy Code to define a domestic support obligation as a debt that accrues before, on, or after the date of the order for relief and that it includes interest that accrues pursuant to applicable nonbankruptcy law. As defined in the Act, the term includes a debt owed to or recoverable by: (1) a spouse, former spouse, or child of the debtor, or such child's parent, legal guardian, or responsible relative; or (2) a governmental unit. To qualify as a domestic support obligation, the debt must be in the nature of alimony, maintenance, or support (including assistance provided by a governmental unit), without regard to whether such debt is expressly so designated. It must be established or subject to establishment before, on, or after the date of the order of relief pursuant to: (1) a separation agreement, divorce decree, or property settlement agreement; (2) an order of a court of record; or (3) a determination made in accordance with applicable nonbankruptcy law by a governmental unit. It does not apply to a debt assigned to a nongovernmental entity, unless it was assigned voluntarily by the spouse, former spouse, child, or parent solely for the purpose of collecting the debt.

Sec. 212. Priorities for Claims for Domestic Support Obligations. Section 212 of the Act amends section 507(a) of the Bankruptcy Code to accord first priority in payment to allowed unsecured claims for domestic support obligations that, as of the petition date, are owed to or recoverable by a spouse, former spouse, or child of the debtor, or the parent, legal guardian, or responsible relative of such child, without regard to whether such claim is filed by the claimant or by a governmental unit on behalf of such claimant, on the condition that funds received by such unit under this provision be applied and distributed in accordance with nonbankruptcy law. Subject to these claims, section 212 accords the same payment priority to allowed unsecured claims for domestic support obligations that, as of the petition date, were assigned by a spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative to a governmental unit (unless the claimant assigned the claim voluntarily for the purpose of collecting the debt), or are owed directly to or recoverable by a governmental unit under applicable nonbankruptcy law, on the condition that funds received by such unit under this provision be applied and distributed in accordance with nonbankruptcy law. Where a trustee administers assets that may be available for payment of domestic support obligations under section 507(a)(1) (as amended), administrative expenses of the trustee allowed under section 503(b)(1)(A), (2) and (6) of the Bankruptcy Code must be paid before such claims to the extent the trustee administers assets that are otherwise available for the payment of these claims.

Sec. 213. Requirements To Obtain Confirmation and Discharge in Cases Involving Domestic Support Obligations. With respect to chapter 11 cases, section 213(1) adds a condition for confirmation of a plan. It amends section 1129(a) of the Bankruptcy Code to provide that if a chapter 11 debtor is required by judicial or administrative order or statute to pay a domestic support obligation, then the debtor must pay all amounts

payable under such order or statute that became payable postpetition as a prerequisite for confirmation.

With respect to chapter 12 cases, section 213(2) of the Act amends section 1208(c) of the Bankruptcy Code to provide that the failure of a debtor to pay any domestic support obligation that first becomes payable postpetition is cause for conversion or dismissal of the case. Section 213(3) amends Bankruptcy Code section 1222(a) to permit a chapter 12 debtor to propose a plan paying less than full payment of all amounts owed for a claim entitled to priority under Bankruptcy Code section 507(a)(1)(B) if all of the debtor's projected disposable income for a five-year period is applied to make payments under the plan. Section 213(4) of the Act amends Bankruptcy Code section 1222(b) to permit a chapter 12 debtor to propose a plan that pays postpetition interest on claims that are nondischargeable under Section 1228(a), but only to the extent that the debtor has disposable income available to pay such interest after payment of all allowed claims in full. Section 213(5) amends Bankruptcy Code section 1225(a) to provide that if a chapter 12 debtor is required by judicial or administrative order or statute to pay a domestic support obligation, then the debtor must pay such obligations pursuant to such order or statute that became payable postpetition as a condition of confirmation. Section 213(6) amends Bankruptcy Code section 1228(a) to condition the granting of a chapter 12 discharge upon the debtor's payment of certain postpetition domestic support obligations.

With respect to chapter 13 cases, section 213(7) of the Act amends Bankruptcy Code section 1307(c) to provide that the failure of a debtor to pay any domestic support obligation that first becomes payable postpetition is cause for conversion or dismissal of the debtor's case. Section 213(8) amends Bankruptcy Code section 1322(a) to permit a chapter 13 debtor to propose a plan paying less than the full amount of a claim entitled to priority under Bankruptcy Code section 507(a)(1)(B) if the plan provides that all of the debtor's projected disposable income over a five-year period will be applied to make payments under the plan. Section 213(9) amends Bankruptcy Code section 1322(b) to permit a chapter 13 debtor to propose a plan that pays postpetition interest on nondischargeable debts under section 1328(a), but only to the extent that the debtor has disposable income available to pay such interest after payment in full of all allowed claims. Section 213(10) amends Bankruptcy Code section 1325(a) to provide that if a chapter 13 debtor is required by judicial or administrative order or statute to pay a domestic support obligation, then the debtor must pay all such obligations pursuant to such order or statute that became payable postpetition as a condition of confirmation. Section 213(11) amends Bankruptcy Code section 1328(a) to condition the granting of a chapter 13 discharge on the debtor's payment of certain postpetition domestic support obligations.

Sec. 214. Exceptions To Automatic Stay in Domestic Support Proceedings. Under current law, section 362(b)(2) of the Bankruptcy Code excepts from the automatic stay the commencement or continuation of an action or proceeding: (1) for the establishment of paternity; or (2) the establishment or modification of an order for alimony, maintenance or support. It also permits the collection of such obligations from property that is not property of the estate. Section 214 makes several revisions to Bankruptcy Code section 362(b)(2). First, it replaces the reference to 'alimony, maintenance or support' with 'domestic support obligations.' Second, it adds to section 362(b)(2) actions or proceedings concerning: (1) child custody or visitation; (2) the dissolution of a marriage (except to the extent such proceeding seeks division of property that is property of the

estate); and (3) domestic violence. Third, it permits the withholding of income that is property of the estate or property of the debtor for payment of a domestic support obligation under a judicial or administrative order as well as the withholding, suspension, or restriction of a driver's license, or a professional, occupational or recreational license under state law, pursuant to section 466(a)(16) of the Social Security Act. Fourth, it authorizes the reporting of overdue support owed by a parent to any consumer reporting agency pursuant to section 466(a)(7) of the Social Security Act. Fifth, it permits the interception of tax refunds as authorized by sections 464 and 466(a)(3) of the Social Security Act or analogous state law. Sixth, it allows medical obligations, as specified under title IV of the Social Security Act, to be enforced notwithstanding the automatic stay.

Sec. 215. Nondischargeability of Certain Debts for Alimony, Maintenance, and Support. Section 215 of the Act amends Bankruptcy Code section 523(a)(5) to provide that a 'domestic support obligation' (as defined in section 211 of the Act) is nondischargeable and eliminates Bankruptcy Code section 523(a)(18). Section 215(2) amends Bankruptcy Code section 523(c) to delete the reference to section 523(a)(15) in that provision. Section 215(3) amends section 523(a)(15) to provide that obligations to a spouse, former spouse, or a child of the debtor (not otherwise described in section 523(a)(5)) incurred in connection with a divorce or separation or related action are nondischargeable irrespective of the debtor's inability to pay such debts.

Sec. 216. Continued Liability of Property. Section 216(1) of the Act amends section 522(c) of the Bankruptcy Code to make exempt property liable for nondischargeable domestic support obligations notwithstanding any contrary provision of applicable nonbankruptcy law. Section 216(2) and (3) make conforming amendments to sections 522(f)(1)(A) and 522(g)(2) of the Bankruptcy Code.

Sec. 217. Protection of Domestic Support Claims Against Preferential Transfer Motions. Section 217 of the Act makes a conforming amendment to Bankruptcy Code section 547(c)(7) to provide that a bona fide payment of a debt for a domestic support obligation may not be avoided as a preferential transfer.

Sec. 218. Disposable Income Defined. Section 218 of the Act amends section 1225(b)(2)(A) of the Bankruptcy Code to provide that disposable income in a chapter 12 case does not include payments for postpetition domestic support obligations.

Sec. 219. Collection of Child Support. Section 219 amends sections 704, 1106, 1202, and 1302 of the Bankruptcy Code to require trustees in chapter 7, 11, 12, and 13 cases to provide certain notices to child support claimants and governmental enforcement agencies. In addition, the Act conforms internal statutory cross references to Bankruptcy Code section 523(a)(14A) and deletes the reference to Bankruptcy Code section 523(a)(14) with respect to chapter 13, as this provision is inapplicable to that chapter.

Section 219(a) requires a chapter 7 trustee to provide written notice to a domestic support claimant of the right to use the services of a state child support enforcement agency established under sections 464 and 466 of the Social Security Act in the state where the claimant resides for assistance in collecting child support during and after the bankruptcy case. The notice must include the agency's address and telephone number as well as

explain the claimant's right to payment under the applicable chapter of the Bankruptcy Code. In addition, the trustee must provide written notice to the claimant and the agency of such claim and include the name, address, and telephone number of the child support claimant. At the time the debtor is granted a discharge, the trustee must notify both the child support claimant and the agency that the debtor was granted a discharge as well as supply them with the debtor's last known address, the last known name and address of the debtor's employer, and the name of each creditor holding a debt that is not discharged under section 523(a)(2), (4) or (14A) or holding a debt that was reaffirmed pursuant to Bankruptcy Code section 524. A claimant or agency may request the debtor's last known address from a creditor holding a debt that is not discharged under section 523(a)(2), (4) or (14A) or that is reaffirmed pursuant to section 524 of the Bankruptcy Code. A creditor who discloses such information, however, is not liable to the debtor or any other person by reason of such disclosure. Subsections (b), (c), and (d) of section 219 of the Act impose comparable requirements for chapter 11, 12, and 13 trustees.

Sec. 220. Nondischargeability of Certain Educational Benefits and Loans. Section 220 of the Act amends section 523(a)(8) of the Bankruptcy Code to provide that a debt for a qualified education loan (as defined in section 221(e)(1) of the Internal Revenue Code) is nondischargeable, unless excepting such debt from discharge would impose an undue hardship on the debtor and the debtor's dependents.

Bankruptcy Abuse Prevention and Consumer Protection Act of 2005

Public Law 109-8 -- April 20, 2005

Title II, Subtitle B -- Priority Child Support

SEC. 211. DEFINITION OF DOMESTIC SUPPORT OBLIGATION.

Section 101 of title 11, United States Code, is amended--

(1) by striking paragraph (12A); and

(2) by inserting after paragraph (14) the following:

`(14A) `domestic support obligation' means a debt that accrues before, on, or after the date of the order for relief in a case under this title, including interest that accrues on that debt as provided under applicable nonbankruptcy law notwithstanding any other provision of this title, that is--

`(A) owed to or recoverable by--

`(i) a spouse, former spouse, or child of the debtor or such child's parent, legal guardian, or responsible relative; or

`(ii) a governmental unit;

`(B) in the nature of alimony, maintenance, or support (including assistance provided by a governmental unit) of such spouse, former spouse, or child of the debtor or such child's parent, without regard to whether such debt is expressly so designated;

`(C) established or subject to establishment before, on, or after the date of the order for relief in a case under this title, by reason of applicable provisions of--

`(i) a separation agreement, divorce decree, or property settlement agreement;

`(ii) an order of a court of record; or

`(iii) a determination made in accordance with applicable nonbankruptcy law by a governmental unit; and

`(D) not assigned to a nongovernmental entity, unless that obligation is assigned voluntarily by the spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative for the purpose of collecting the debt;'

SEC. 212. PRIORITIES FOR CLAIMS FOR DOMESTIC SUPPORT OBLIGATIONS.

Section 507(a) of title 11, United States Code, is amended--

(1) by striking paragraph (7);

(2) by redesignating paragraphs (1) through (6) as paragraphs (2) through (7), respectively;

(3) in paragraph (2), as so redesignated, by striking `First' and inserting `Second';

(4) in paragraph (3), as so redesignated, by striking `Second' and inserting `Third';

(5) in paragraph (4), as so redesignated--

(A) by striking `Third' and inserting `Fourth'; and

(B) by striking the semicolon at the end and inserting a period;

(6) in paragraph (5), as so redesignated, by striking `Fourth' and inserting `Fifth';

(7) in paragraph (6), as so redesignated, by striking `Fifth' and inserting `Sixth';

(8) in paragraph (7), as so redesignated, by striking `Sixth' and inserting `Seventh'; and

(9) by inserting before paragraph (2), as so redesignated, the following:

`(1) First:

`(A) Allowed unsecured claims for domestic support obligations that, as of the date of the filing of the petition in a case under this title, are owed to or recoverable by a spouse, former spouse, or child of the debtor, or such child's

parent, legal guardian, or responsible relative, without regard to whether the claim is filed by such person or is filed by a governmental unit on behalf of such person, on the condition that funds received under this paragraph by a governmental unit under this title after the date of the filing of the petition shall be applied and distributed in accordance with applicable nonbankruptcy law.

`(B) Subject to claims under subparagraph (A), allowed unsecured claims for domestic support obligations that, as of the date of the filing of the petition, are assigned by a spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative to a governmental unit (unless such obligation is assigned voluntarily by the spouse, former spouse, child, parent, legal guardian, or responsible relative of the child for the purpose of collecting the debt) or are owed directly to or recoverable by a governmental unit under applicable nonbankruptcy law, on the condition that funds received under this paragraph by a governmental unit under this title after the date of the filing of the petition be applied and distributed in accordance with applicable nonbankruptcy law.

`(C) If a trustee is appointed or elected under section 701, 702, 703, 1104, 1202, or 1302, the administrative expenses of the trustee allowed under paragraphs (1)(A), (2), and (6) of section 503(b) shall be paid before payment of claims under subparagraphs (A) and (B), to the extent that the trustee administers assets that are otherwise available for the payment of such claims.'

SEC. 213. REQUIREMENTS TO OBTAIN CONFIRMATION AND DISCHARGE IN CASES INVOLVING DOMESTIC SUPPORT OBLIGATIONS.

Title 11, United States Code, is amended--

(1) in section 1129(a), by adding at the end the following:

`(14) If the debtor is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, the debtor has paid all amounts payable under such order or such statute for such obligation that first become payable after the date of the filing of the petition.';

(2) in section 1208(c)--

(A) in paragraph (8), by striking `or' at the end;

(B) in paragraph (9), by striking the period at the end and inserting `; and'; and

(C) by adding at the end the following:

`(10) failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition.';

(3) in section 1222(a)--

(A) in paragraph (2), by striking `and' at the end;

(B) in paragraph (3), by striking the period at the end and inserting `; and'; and

(C) by adding at the end the following:

`(4) notwithstanding any other provision of this section, a plan may provide for less than full payment of all amounts owed for a claim entitled to priority under section 507(a)(1)(B) only if the plan provides that all of the debtor's projected disposable income for a 5-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.';

(4) in section 1222(b)--

(A) in paragraph (10), by striking `and' at the end;

(B) by redesignating paragraph (11) as paragraph (12); and

(C) by inserting after paragraph (10) the following:

`(11) provide for the payment of interest accruing after the date of the filing of the petition on unsecured claims that are nondischargeable under section 1228(a), except that such interest may be paid only to the extent that the debtor has disposable income available to pay such interest after making provision for full payment of all allowed claims; and';

(5) in section 1225(a)--

(A) in paragraph (5), by striking `and' at the end;

- (B) in paragraph (6), by striking the period at the end and inserting `; and'; and
- (C) by adding at the end the following:
 - `(7) the debtor has paid all amounts that are required to be paid under a domestic support obligation and that first become payable after the date of the filing of the petition if the debtor is required by a judicial or administrative order, or by statute, to pay such domestic support obligation.';
 - (6) in section 1228(a), in the matter preceding paragraph (1), by inserting `, and in the case of a debtor who is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, after such debtor certifies that all amounts payable under such order or such statute that are due on or before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for by the plan) have been paid' after `completion by the debtor of all payments under the plan';
 - (7) in section 1307(c)--
 - (A) in paragraph (9), by striking `or' at the end;
 - (B) in paragraph (10), by striking the period at the end and inserting `; or'; and
 - (C) by adding at the end the following:
 - `(11) failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition.';
 - (8) in section 1322(a)--
 - (A) in paragraph (2), by striking `and' at the end;
 - (B) in paragraph (3), by striking the period at the end and inserting `; and'; and
 - (C) by adding at the end the following:
 - `(4) notwithstanding any other provision of this section, a plan may provide for less than full payment of all amounts owed for a claim entitled to priority under section 507(a)(1)(B) only if the plan provides that all of the debtor's projected disposable income for a 5-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.';
 - (9) in section 1322(b)--
 - (A) in paragraph (9), by striking `; and' and inserting a semicolon;
 - (B) by redesignating paragraph (10) as paragraph (11); and
 - (C) inserting after paragraph (9) the following:
 - `(10) provide for the payment of interest accruing after the date of the filing of the petition on unsecured claims that are nondischargeable under section 1328(a), except that such interest may be paid only to the extent that the debtor has disposable income available to pay such interest after making provision for full payment of all allowed claims; and';
 - (10) in section 1325(a), as amended by section 102, by inserting after paragraph (7) the following:
 - `(8) the debtor has paid all amounts that are required to be paid under a domestic support obligation and that first become payable after the date of the filing of the petition if the debtor is required by a judicial or administrative order, or by statute, to pay such domestic support obligation; and';
 - (11) in section 1328(a), in the matter preceding paragraph (1), by inserting `, and in the case of a debtor who is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, after such debtor certifies that all amounts payable under such order or such statute that are due on or before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for by the plan) have been paid' after `completion by the debtor of all payments under the plan'.

SEC. 214. EXCEPTIONS TO AUTOMATIC STAY IN DOMESTIC SUPPORT OBLIGATION PROCEEDINGS.

Section 362(b) of title 11, United States Code, is amended by striking paragraph (2) and inserting the following:

- `(2) under subsection (a)--
 - `(A) of the commencement or continuation of a civil action or proceeding--
 - `(i) for the establishment of paternity;

- `(ii) for the establishment or modification of an order for domestic support obligations;
- `(iii) concerning child custody or visitation;
- `(iv) for the dissolution of a marriage, except to the extent that such proceeding seeks to determine the division of property that is property of the estate; or
- `(v) regarding domestic violence;
- `(B) of the collection of a domestic support obligation from property that is not property of the estate;
- `(C) with respect to the withholding of income that is property of the estate or property of the debtor for payment of a domestic support obligation under a judicial or administrative order or a statute;
- `(D) of the withholding, suspension, or restriction of a driver's license, a professional or occupational license, or a recreational license, under State law, as specified in section 466(a)(16) of the Social Security Act;
- `(E) of the reporting of overdue support owed by a parent to any consumer reporting agency as specified in section 466(a)(7) of the Social Security Act;
- `(F) of the interception of a tax refund, as specified in sections 464 and 466(a)(3) of the Social Security Act or under an analogous State law; or
- `(G) of the enforcement of a medical obligation, as specified under title IV of the Social Security Act;'

SEC. 215. NONDISCHARGEABILITY OF CERTAIN DEBTS FOR ALIMONY, MAINTENANCE, AND SUPPORT.

Section 523 of title 11, United States Code, is amended--

(1) in subsection (a)--

(A) by striking paragraph (5) and inserting the following:

`(5) for a domestic support obligation;'; and

(B) by striking paragraph (18);

(2) in subsection (c), by striking `(6), or (15)' each place it appears and inserting `or (6)'; and

(3) in paragraph (15), as added by Public Law 103-394 (108 Stat. 4133)--

(A) by inserting `to a spouse, former spouse, or child of the debtor and' before `not of the kind';

(B) by inserting `or' after `court of record,'; and

(C) by striking `unless--' and all that follows through the end of the paragraph and inserting a semicolon.

SEC. 216. CONTINUED LIABILITY OF PROPERTY.

Section 522 of title 11, United States Code, is amended--

(1) in subsection (c), by striking paragraph (1) and inserting the following:

`(1) a debt of a kind specified in paragraph (1) or (5) of section 523(a) (in which case, notwithstanding any provision of applicable nonbankruptcy law to the contrary, such property shall be liable for a debt of a kind specified in section 523(a)(5));';

(2) in subsection (f)(1)(A), by striking the dash and all that follows through the end of the subparagraph and inserting `of a kind that is specified in section 523(a)(5); or'; and

(3) in subsection (g)(2), by striking `subsection (f)(2)' and inserting `subsection (f)(1)(B)'.

SEC. 217. PROTECTION OF DOMESTIC SUPPORT CLAIMS AGAINST PREFERENTIAL TRANSFER MOTIONS.

Section 547(c)(7) of title 11, United States Code, is amended to read as follows:

`(7) to the extent such transfer was a bona fide payment of a debt for a domestic support obligation;'

SEC. 218. DISPOSABLE INCOME DEFINED.

Section 1225(b)(2)(A) of title 11, United States Code, is amended by inserting `or for a domestic support obligation that first becomes payable after the date of the filing of the petition' after `dependent of the debtor'.

SEC. 219. COLLECTION OF CHILD SUPPORT.

(a) DUTIES OF TRUSTEE UNDER CHAPTER 7- Section 704 of title 11, United States Code, as amended by section 102, is amended--

(1) in subsection (a)--

(A) in paragraph (8), by striking `and' at the end;

(B) in paragraph (9), by striking the period and inserting a semicolon; and

(C) by adding at the end the following:

`(10) if with respect to the debtor there is a claim for a domestic support obligation, provide the applicable notice specified in subsection (c); and'; and

(2) by adding at the end the following:

`(c)(1) In a case described in subsection (a)(10) to which subsection (a)(10) applies, the trustee shall--

`(A)(i) provide written notice to the holder of the claim described in subsection (a)(10) of such claim and of the right of such holder to use the services of the State child support enforcement agency established under sections 464 and 466 of the Social Security Act for the State in which such holder resides, for assistance in collecting child support during and after the case under this title;

`(ii) include in the notice provided under clause (i) the address and telephone number of such State child support enforcement agency; and

`(iii) include in the notice provided under clause (i) an explanation of the rights of such holder to payment of such claim under this chapter;

`(B)(i) provide written notice to such State child support enforcement agency of such claim; and

`(ii) include in the notice provided under clause (i) the name, address, and telephone number of such holder; and

`(C) at such time as the debtor is granted a discharge under section 727, provide written notice to such holder and to such State child support enforcement agency of--

`(i) the granting of the discharge;

`(ii) the last recent known address of the debtor;

`(iii) the last recent known name and address of the debtor's employer; and

`(iv) the name of each creditor that holds a claim that--

`(I) is not discharged under paragraph (2), (4), or (14A) of section 523(a); or

`(II) was reaffirmed by the debtor under section 524(c).

`(2)(A) The holder of a claim described in subsection (a)(10) or the State child support enforcement agency of the State in which such holder resides may request from a creditor described in paragraph (1)(C)(iv) the last known address of the debtor.

`(B) Notwithstanding any other provision of law, a creditor that makes a disclosure of a last known address of a debtor in connection with a request made under subparagraph (A) shall not be liable by reason of making such disclosure.'

(b) DUTIES OF TRUSTEE UNDER CHAPTER 11- Section 1106 of title 11, United States Code, is amended--

(1) in subsection (a)--

(A) in paragraph (6), by striking `and' at the end;

(B) in paragraph (7), by striking the period and inserting `; and'; and

(C) by adding at the end the following:

`(8) if with respect to the debtor there is a claim for a domestic support obligation, provide the applicable notice specified in subsection (c).'; and

(2) by adding at the end the following:

`(c)(1) In a case described in subsection (a)(8) to which subsection (a)(8) applies, the trustee shall--

`(A)(i) provide written notice to the holder of the claim described in subsection (a)(8) of such claim and of the right of such holder to use the services of the State child support enforcement agency established under sections 464 and 466 of the Social Security Act for

the State in which such holder resides, for assistance in collecting child support during and after the case under this title; and

`(ii) include in the notice required by clause (i) the address and telephone number of such State child support enforcement agency;

`(B)(i) provide written notice to such State child support enforcement agency of such claim; and

`(ii) include in the notice required by clause (i) the name, address, and telephone number of such holder; and

`(C) at such time as the debtor is granted a discharge under section 1141, provide written notice to such holder and to such State child support enforcement agency of--

`(i) the granting of the discharge;

`(ii) the last recent known address of the debtor;

`(iii) the last recent known name and address of the debtor's employer; and

`(iv) the name of each creditor that holds a claim that--

`(I) is not discharged under paragraph (2), (4), or (14A) of section 523(a); or

`(II) was reaffirmed by the debtor under section 524(c).

`(2)(A) The holder of a claim described in subsection (a)(8) or the State child support enforcement agency of the State in which such holder resides may request from a creditor described in paragraph (1)(C)(iv) the last known address of the debtor.

`(B) Notwithstanding any other provision of law, a creditor that makes a disclosure of a last known address of a debtor in connection with a request made under subparagraph (A) shall not be liable by reason of making such disclosure.'

(c) DUTIES OF TRUSTEE UNDER CHAPTER 12- Section 1202 of title 11, United States Code, is amended--

(1) in subsection (b)--

(A) in paragraph (4), by striking `and' at the end;

(B) in paragraph (5), by striking the period and inserting `; and'; and

(C) by adding at the end the following:

`(6) if with respect to the debtor there is a claim for a domestic support obligation, provide the applicable notice specified in subsection (c).'; and

(2) by adding at the end the following:

`(c)(1) In a case described in subsection (b)(6) to which subsection (b)(6) applies, the trustee shall--

`(A)(i) provide written notice to the holder of the claim described in subsection (b)(6) of such claim and of the right of such holder to use the services of the State child support enforcement agency established under sections 464 and 466 of the Social Security Act for the State in which such holder resides, for assistance in collecting child support during and after the case under this title; and

`(ii) include in the notice provided under clause (i) the address and telephone number of such State child support enforcement agency;

`(B)(i) provide written notice to such State child support enforcement agency of such claim; and

`(ii) include in the notice provided under clause (i) the name, address, and telephone number of such holder; and

`(C) at such time as the debtor is granted a discharge under section 1228, provide written notice to such holder and to such State child support enforcement agency of--

`(i) the granting of the discharge;

`(ii) the last recent known address of the debtor;

`(iii) the last recent known name and address of the debtor's employer; and

`(iv) the name of each creditor that holds a claim that--

`(I) is not discharged under paragraph (2), (4), or (14A) of section 523(a); or

`(II) was reaffirmed by the debtor under section 524(c).

`(2)(A) The holder of a claim described in subsection (b)(6) or the State child support enforcement agency of the State in which such holder resides may request from a creditor described in paragraph (1)(C)(iv) the last known address of the debtor.

`(B) Notwithstanding any other provision of law, a creditor that makes a disclosure of a last known address of a debtor in connection with a request made under subparagraph (A) shall not be liable by reason of making that disclosure.'

(d) DUTIES OF TRUSTEE UNDER CHAPTER 13- Section 1302 of title 11, United States Code, is amended--

(1) in subsection (b)--

(A) in paragraph (4), by striking `and' at the end;

(B) in paragraph (5), by striking the period and inserting `; and'; and

(C) by adding at the end the following:

`(6) if with respect to the debtor there is a claim for a domestic support obligation, provide the applicable notice specified in subsection (d).'; and

(2) by adding at the end the following:

`(d)(1) In a case described in subsection (b)(6) to which subsection (b)(6) applies, the trustee shall-

`(A)(i) provide written notice to the holder of the claim described in subsection (b)(6) of such claim and of the right of such holder to use the services of the State child support enforcement agency established under sections 464 and 466 of the Social Security Act for the State in which such holder resides, for assistance in collecting child support during and after the case under this title; and

`(ii) include in the notice provided under clause (i) the address and telephone number of such State child support enforcement agency;

`(B)(i) provide written notice to such State child support enforcement agency of such claim; and

`(ii) include in the notice provided under clause (i) the name, address, and telephone number of such holder; and

`(C) at such time as the debtor is granted a discharge under section 1328, provide written notice to such holder and to such State child support enforcement agency of--

`(i) the granting of the discharge;

`(ii) the last recent known address of the debtor;

`(iii) the last recent known name and address of the debtor's employer; and

`(iv) the name of each creditor that holds a claim that--

`(I) is not discharged under paragraph (2) or (4) of section 523(a); or

`(II) was reaffirmed by the debtor under section 524(c).

`(2)(A) The holder of a claim described in subsection (b)(6) or the State child support enforcement agency of the State in which such holder resides may request from a creditor described in paragraph (1)(C)(iv) the last known address of the debtor.

`(B) Notwithstanding any other provision of law, a creditor that makes a disclosure of a last known address of a debtor in connection with a request made under subparagraph (A) shall not be liable by reason of making that disclosure.'

SEC. 220. NONDISCHARGEABILITY OF CERTAIN EDUCATIONAL BENEFITS AND LOANS.

Section 523(a) of title 11, United States Code, is amended by striking paragraph (8) and inserting the following:

`(8) unless excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor's dependents, for--

`(A)(i) an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution; or

`(ii) an obligation to repay funds received as an educational benefit, scholarship, or stipend; or

`(B) any other educational loan that is a qualified education loan, as defined in section 221(d)(1) of the Internal Revenue Code of 1986, incurred by a debtor who is an individual;'

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