



STATE OF MICHIGAN
DEPARTMENT OF HUMAN SERVICES
LANSING



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GOVERNOR

MICHIGAN IV-D ACTION TRANSMITTAL 2008-014

TO: All Office of Child Support (OCS) Staff
All Friend of the Court (FOC) Staff
All Prosecuting Attorney (PA) Staff

FROM: Marilyn F. Stephen, Director
Office of Child Support

DATE: February 20, 2008

SUBJECT: REVISED: The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Bankruptcy Act)

PURPOSE:

This Action Transmittal (AT) describes the child-support-related sections of the federal Bankruptcy Act of 2005¹ and provides instructions for handling child support cases when the non-custodial parent (NCP) has filed for bankruptcy. This AT aids IV-D staff² actions in bankruptcy cases. It does not directly address any IV-D rules or requirements. IV-D offices are encouraged to confirm their chosen course of action on bankruptcy cases with their own bankruptcy law experts.

This AT obsoletes and replaces AT 2006-010, *The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Bankruptcy Act)*. It also obsoletes AT 2001-003, *Application of Offset Exclusion Indicators – Bankruptcy Petition, Dismissal and Discharge Notice*. This AT has been updated to:

- Correct an incorrect link to the Federal Bankruptcy Court's Public Access to Court Electronic Records (PACER) system and Electronic Court Files (ECF) system;
- Describe the OCS internal processes for distributing trustee notices;
- Add passport denial as an enforcement remedy that may be used when an NCP has filed for bankruptcy (and is exempt from the automatic stay);
- Clarify the enforcement actions that may be pursued under the automatic stay provisions; and
- Clarify FOC and OCS staff actions when an NCP files for bankruptcy.

¹ Public Law (P.L.) 109-8 of 2005 amends 11 United States Code (USC) 101 to 1330.

² IV-D staff include OCS, FOC and PA staff. Occasionally, PA staff may handle cases in which the NCP has filed for bankruptcy.

A change bar in the left margin indicates substantive policy changes.

BACKGROUND:

On April 20, 2005, President Bush signed the Bankruptcy Act (effective on October 17, 2005). The Bankruptcy Act expands FOC and OCS staff's ability to enforce child support cases after the NCP has filed for bankruptcy protection.³

PROGRAM ACTIONS AND POLICY INFORMATION:

Overview

Bankruptcy is the legal process to discharge an insolvent individual's debts. Only debts accrued before the NCP files the bankruptcy petition (pre-petition) are included in the bankruptcy. Child support obligations and arrearages cannot be discharged in bankruptcy, and are enforceable after the debts are discharged.

Types of Bankruptcy

- A. Chapter 7 – Liquidation. A trustee collects and sells the debtor's non-exempt property and distributes the proceeds to creditors. Eighty percent of individual bankruptcy petitioners file under Chapter 7.
- B. Chapter 11 – Reorganization. A business or individual creates a reorganization plan to pay off debts. The debt amount must be at least \$250,000 in unsecured debt or \$750,000 in secured debt.
- C. Chapter 12 – Family farmer reorganization. Provides family farmers a chance to reorganize their debts and keep their farms. Total debts must not exceed \$1.5 million.
- D. Chapter 13 – Individual reorganization. The individual agrees to a repayment plan and uses future earnings to pay creditors. The debt amount must be less than \$250,000 in unsecured debt, or \$750,000 in secured debt.

Definitions

Automatic stay – The suspension of collection actions against a debtor who has filed for bankruptcy. The automatic stay occurs automatically with the filing of the bankruptcy petition. The stay protects debtors from creditors seeking to seize their assets. It protects creditors by preventing one creditor from obtaining an excessive share of the debtor's assets to the exclusion of other creditors.

Bankruptcy estate – Generally, the debtor's property that is subject to the jurisdiction of the bankruptcy court.

³ Ref: Office of Child Support Enforcement (OCSE) Information Memorandum (IM) 05-05, *New Federal Bankruptcy Law Contains Child Support Provisions* and OCSE AT 06-05, *Policy Questions and Responses to Miscellaneous Issues regarding Child Support Provisions of the New Federal Bankruptcy Law*, P.L. 109-8.

Confirmation – The bankruptcy court’s approval of the debtor’s reorganization plan, used in Chapters 11, 12 and 13 bankruptcies. Creditors and the court must both approve the plan before confirmation.

Conversion – Changing chapters in bankruptcy; for example, when the court converts a Chapter 13 reorganization filing into a Chapter 7 liquidation filing.

Creditor – The person or organization to whom money is owed.

Debtor – The person or entity seeking protection from creditors under bankruptcy laws.

Dischargeable debts – Debts that may be eliminated in bankruptcy.

Discharge – The court’s declaration of satisfaction or elimination of the debtor’s debts.

Dismissal – The termination of a bankruptcy proceeding.

Exempt property – Property that is part of the bankruptcy estate but is not available to pay the claims of creditors. The debtor selects exempt property from the statutory list of exemptions, available under state law. The debtor uses the exempt property to make a fresh start after bankruptcy.

Insolvent – Financial condition in which a debtor’s debts are greater than the total value of his/her property.

Non-dischargeable – A debt that cannot be eliminated in bankruptcy. Non-dischargeable debts remain legally enforceable despite the bankruptcy discharge. Debts such as current support, arrears, medical support and confinement are non-dischargeable.

Secured debt – A claim given in consideration of a voluntary lien on the debtor’s property or an involuntary lien such as a judgment lien or tax lien. The creditor must secure the claim under applicable state law.

Trustee – The representative of the bankruptcy estate.

Unsecured debt – A debt obligation that is not backed by collateral.

Child-Support-Related Changes to the Bankruptcy Code

The “post-October 17, 2005” bankruptcy law changes how IV-D staff handle child support in cases in which the NCP has filed bankruptcy. The amendments include changes to:

- A. Definitions;

- B. Priorities;
- C. Confirmation and discharge;
- D. Exceptions to the automatic stay;
- E. Non-dischargeability;
- F. Continuation of liens;
- G. Preferential transfers;
- H. Disposable income; and
- I. Duties of trustees.

OCS staff must forward all bankruptcy information, including discharges, received at an OCS office to the appropriate FOC office(s). IV-D staff will handle bankruptcy cases filed before October 17, 2005, according to the pre-October 2005 provisions. Post-October 17, 2005, provisions for bankruptcy cases are effective for each case filed on or after October 17, 2005.

Bankruptcy Act and Child Support

The following graph shows the chapters and sections affected by the bill amendments. Amended sections are shown in parentheses under their corresponding chapter.

Bill Amendment Section	Description of Amendment	Chapter 7	Chapter 11	Chapter 12	Chapter 13
211	Definition of domestic support obligation	Yes (101)	Yes (101)	Yes (101)	Yes (101)
212	Priorities	Yes (507)	Yes (507)	Yes (507)	Yes (507)
213	Plan confirmation	None	Yes (1129)	Yes (1225)	Yes (1325)
213	Conversion or dismissal	None	None	Yes (1208)	Yes (1307)
213	Contents of the plan	None	None	Yes (1222)	Yes (1322)
213	Discharge	None	None	Yes (1228)	Yes (1328)
214	Exceptions to automatic stay	Yes (362)	Yes (362)	Yes (362)	Yes (362)
215	Non-dischargeability	Yes (523)	Yes (523)	Yes (523)	Yes (523)
216	Continued liability of liens	Yes (522)	Yes (522)	Yes (522)	Yes (522)
217	Preferential transfer motions	Yes (547)	Yes (547)	Yes (547)	Yes (547)
218	Disposable income	None	None	Yes (1225)	None
219	Duties of trustees	Yes (704)	Yes (1106)	Yes (1202)	Yes (1302)

A. Definitions – applies to Chapters 7, 11, 12 and 13

1. *Pre-October 17, 2005* – The pre-October 17, 2005, act defines “debt for child support” as “a debt of a kind specified in section 523(a)(5)⁴ of this title, for maintenance and support of a child of the debtor.”

⁴ 11 USC 523(a)(5) provides that a debt to a spouse, former spouse or child of the NCP, owed for alimony, maintenance, divorce decree or other court order, is not dischargeable in bankruptcy.

2. *Post-October 17, 2005* – “Domestic support obligation” clarifies “debt for child support.” A “domestic support obligation” is a debt (including interest) owed to a spouse, former spouse, child, child’s guardian, responsible relative or **governmental unit** for alimony, maintenance, or support that accrues before, on or after the date of the order for relief in the case. This definition expands the types and groups of people who can collect support from a bankrupt NCP and allows “interest” on child support to accrue.⁵ Because “governmental unit” is included in “domestic support obligation,” IV-D staff may enforce cases against bankrupt NCPs for state-owed arrears.⁶

B. Priorities – applies to Chapters 7,11,12 and 13

1. *Pre-October 17, 2005* – Child support has seventh priority in the creditor list, and only debts owed to the spouse, former spouse or dependent children are included. Child support debts owed to the state do not have priority status, but may not be discharged in bankruptcy.
2. *Post-October 17, 2005* – All domestic support obligations, including debts assigned to the state, receive first priority after secured debts. The trustee pays domestic support obligations before any other debt, except the trustee may pay his/her expenses before first priority claims.

C. Confirmation and discharge – applies to Chapters 11, 12, and 13

1. *Pre-October 17, 2005* – NCPs are not required to pay post-petition child support debts before receiving a plan confirmation or discharge.
2. *Post-October 17, 2005* –
 - a. In Chapter 11, 12 or 13 cases, the court cannot confirm a bankruptcy plan or discharge an NCP’s debts until all post-petition domestic support obligations are paid. The court also has the option of dismissing or converting Chapter 11, 12 or 13 bankruptcy into Chapter 7 bankruptcy if the NCP fails to pay post-petition domestic support obligations;
 - b. In Chapter 13 cases, the court may approve a reorganization plan that does not pay the debts in full, **if** the plan provides that **all** of the debtor’s disposable income received for five years after plan confirmation is used to pay the debts. The five-year period begins the date the first payment under the plan is due; and

⁵ Michigan does not charge interest on child support arrearages per Michigan Compiled Law (MCL) 552.603(8).

⁶ MCL 552.602(ff) defines “support”: (i) The payment of money for a child or a spouse ordered by the circuit court, whether the order is embodied in an interim, temporary, permanent, or modified order or judgment. Support may include payment of expenses of medical, dental, and other health care, child care expenses and educational expenses. (ii) The payment of money ordered by the circuit court under the paternity act, MCL 722.711 to 722.730, for necessary expenses incurred by or for the mother in connection with her confinement, for other expenses in connection with the pregnancy of the mother, or for the repayment of genetic testing expenses. (iii) A surcharge under MCL 552.603a. Service fees, processing fees and court fees are not included in the support definition.

- c. In Chapter 13 cases, the IV-D agencies can charge interest on non-dischargeable debts, only to the extent that there is disposable income remaining after the trustee pays the allowed claims in full. Because Michigan does not charge interest and surcharge is non-dischargeable child support, this section does not apply to Michigan cases.⁷

D. Exceptions to the automatic stay – applies to Chapters 7, 11, 12 and 13

1. Continuation of pending legal actions:

- a. *Pre-October 17, 2005* – The Bankruptcy Act only exempts from the automatic stay, the commencement or continuation of action for:
 - i. Establishing paternity;
 - ii. Establishing or modifying alimony, maintenance or support; and
 - iii. Collecting support obligations from property not included in the bankruptcy estate.
- b. *Post-October 17, 2005* – “Domestic support obligation” replaces “alimony, maintenance or support” and allows certain enforcement to be used outside of the automatic stay, including the commencement or continuation of actions for:
 - i. Establishing paternity;
 - ii. Establishing or modifying a domestic support obligation;
 - iii. Collecting support obligations from property not included in the bankruptcy estate;
 - iv. Child custody or visitation;
 - v. Divorce actions (except for division of property);
 - vi. Domestic violence; and
 - vii. Any other enforcement action under the pre-October 17, 2005 Bankruptcy Act.

2. Enforcement of support:

- a. *Pre-October 17, 2005* – IV-D staff may only use one child support enforcement action against a bankrupt NCP: collecting child support from property that is not part of the bankruptcy estate. All other enforcement actions to collect pre-petition arrears are subject to the automatic stay.
- b. *Post-October 17, 2005* – IV-D staff may enforce child support using the following enforcement actions:
 - i. Court or administratively ordered income withholding from estate property;
 - ii. License suspension;

⁷ MCL 552.603(8)

- iii. Credit reporting;
- iv. Tax refund intercept;
- v. Medical support enforcement;
- vi. Passport denial;⁸
- vii. Any other enforcement action used prior to October 17, 2005.

The income withholding provision is especially important in Chapter 11, 12 and 13 cases in which post-petition income and wages become estate property. This provision removes income for child support from the estate property and allows court-ordered income withholding orders for current support and existing arrears collection on Chapters 11, 12 and 13 cases, in addition to Chapter 7 cases.

E. Nondischargeability – applies to Chapters 7, 11, 12 and 13

The dischargeability of child support is a major part of both the pre-petition and “post-October 17, 2005” bankruptcy laws.

1. *Pre-October 17, 2005* –

- a. Child support owed to the family is **not** dischargeable;
- b. Child support assigned to the state is dischargeable; and
- c. Support accrued during a divorce action is only dischargeable if the NCP is unable to pay the debts or the benefit of discharge outweighs the detriment to the spouse, former spouse or child of the NCP.

2. *Post-October 17, 2005* –

- a. Domestic support obligations, including child support, arrears, medical costs and confinement owed to the family **and** to the state are **not** dischargeable;⁹ and
- b. Support accrued during a divorce action is **not** dischargeable regardless of ability to pay or detrimental effects.

F. Continuation of liens – applies to Chapters 7, 11, 12 and 13

- 1. *Pre-October 17, 2005* – Provides that unless a case is dismissed, property exempted under this section may not be used during or after the case to pay the debtor’s debts that arose before the petition, except a debt for taxes or

⁸ OCSE has advised that a U.S. passport is not property of the debtor and, therefore, is not “property of the estate” that would be subject to the bankruptcy automatic stay provisions. Ref: OCSE AT 06-05, Attachment 1, *OCSE’s series of questions and answers regarding child support provisions of P.L. 109-8, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005*, at: <http://www.acf.dhhs.gov/programs/cse/pol/AT/2006/at-06-05a.pdf>. Also reference Policy Interpretation Question (PIQ) PIQ-07-04, *Additional Information Regarding Enforcing Child Support when the Obligor is in Bankruptcy*, at: <http://www.acf.dhhs.gov/programs/cse/pol/PIQ/2007/piq-07-04.htm>.

⁹ Genetic testing is not a domestic support obligation and therefore is dischargeable in bankruptcy.

support.¹⁰ Liens that were filed before the petition do not have to be released, but they may not be levied on until after the bankruptcy case is complete.

2. *Post-October 17, 2005* – Exempt property of the debtor is used during and after the bankruptcy to pay debts for taxes and domestic support obligations, but not for any other kinds of debts unless the court dismisses the case. This means liens may be left in place during the bankruptcy and after the debt has been discharged. However, once the debtor has filed for bankruptcy protection, IV-D staff may not perfect a lien until the court dismisses or discharges the bankruptcy.¹¹

G. Preferential transfers – applies to Chapters 7, 11, 12 and 13

A preferential transfer occurs when a debtor tries to protect his/her property from liquidation by transferring property to another person or by paying a certain creditor to the exclusion of other creditors. The NCP typically makes the payment shortly before the filing of the petition. Trustees can void preferential transfers.

1. *Pre-October 17, 2005* – Under the pre-petition law, preferential treatment does not include child support paid to a family. Trustees do not void child support payments.
2. *Post-October 17, 2005* – The amendment also excludes the “preferential treatment” voiding of “domestic support obligation” payments, including payments assigned to the state. This means if an NCP makes a support payment the day before (s)he files for bankruptcy, the payment can go to the family or to the state, even if it is a preferential transfer.

H. Disposable income – applies to Chapter 12 only

1. *Pre-October 17, 2005* – The previous bankruptcy laws define “disposable income” as:

	Income
–	Amount needed for maintenance and support of NCP or dependent
–	Amount needed for the payment of expenditures necessary for the continuation, preservation and operation of debtor’s business
<hr/>	
	Disposable income

¹⁰ *Nevettie v Doering*, 227 Bankruptcy Reporter (BR) 724 (1998): Debtors may not avoid judicial liens for debts owed for support of a spouse or a child of a debtor (citing 11 USC 522[f][1][A][i],[ii]).

¹¹ Ref: AT 2003-015, *Change in Policy to Provide for Attachment of Financial Assets through FIDM and a One Step Lien and Levy*, and the State Court Administrative Office (SCAO) Administrative Memorandum (ADM) 2000-11, *Administrative Liens for Past Due Support* for information on filing liens.

2. *Post-October 17, 2005* – The disposable income under Chapter 12 is:

	Income
–	Amount needed for maintenance and support of NCP or dependent
–	Amount needed for domestic relations obligation that first becomes payable after filing of petition (post-petition)
–	Amount needed for the payment of expenditures necessary for the continuation, preservation and operation of debtor’s business

	Disposable income

Pre-petition support obligations and the amount necessary for support of the NCP and his/her dependents reduce the NCP’s income before it becomes estate property. This section is rarely used. The majority of bankruptcy filings that IV-D staff will receive will involve Chapter 7 and Chapter 13 filings.¹²

I. Duties of trustees – notice – applies to Chapters 7, 11, 12 and 13

1. *Pre-October 17, 2005* – Trustees are not required to provide notice to IV-D staff of the bankruptcy action or inform the holder of the child support claim (custodial party [CP]) of services provided by the IV-D agency.
2. *Post-October 17, 2005* – Trustees must provide the following notices to the following entities:

a. Notice to the CP of the:¹³

- i. Availability of IV-D services to collect child support;
- ii. Address and telephone number of the IV-D agency;
- iii. Granting of the discharge;
- iv. NCP’s last-known address;
- v. Last-known name and address of the NCP’s employer; and
- vi. Name of each creditor that holds non-discharged or reaffirmed claims.

b. Notice to the IV-D agency of the:

- i. CP’s name, addresses and telephone number;
- ii. Granting of the discharge;
- ii. NCP’s last-known address;
- iii. Last-known name and address of the NCP’s employer; and
- iv. Name of each creditor that holds non-discharged or reaffirmed claims.

Note: IV-D staff or the CP may ask any creditor to provide the NCP’s last-known address. IV-D staff may change the mailing or residential address based on creditor- or trustee-provided information. However, IV-D staff cannot change the NCP’s legal address based on creditor- or

¹² 11 USC 1325 defines disposable income for Chapter 13 as income not reasonably necessary to be expended for maintenance and support of the NCP and the NCP’s dependents. It does not include the “domestic relations obligation” definition.

¹³ Confidentiality rules prevent IV-D staff from providing CP information to the trustee.

trustee-provided information, unless it meets the requirements of SCAO policy for change of legal address.¹⁴ IV-D staff must also follow Department of Human Services (DHS) policy regarding the family violence indicator, address confidentiality, and maintenance and verification of case data.¹⁵

IV-D Staff Actions When an NCP Files for Bankruptcy

When a IV-D staff member learns that an NCP has filed for bankruptcy, (s)he will verify the filing according to office policy.¹⁶ Once the IV-D staff member verifies the NCP filed the petition, (s)he will enter the information into MiCSES as follows:

A. For pre-October 17, 2005, filings:

1. IV-D staff will:

a. On the DEMO screen:

- i. Set the *Bankruptcy IND* (bankruptcy indicator) by double-clicking on the *Bankruptcy* field and selecting “Y” (yes);
- ii. Select the bankruptcy type from the drop-down box:

- a. 7 – Chapter 7;
- b. 11 – Chapter 11; or
- c. 13 – Chapter 13.¹⁷

iii. Enter the petition filing date.

- b. On the *Tax Offset Information and Update* (TAXI) screen, exempt the NCP from tax refund offset, passport denial and financial institution data match (FIDM) enforcement; and
- c. On the *Enforcement Processor* (ENFP) screen, move initiated *Qualified Domestic Relations Order* (QDRO) chains to review status.

¹⁴ Ref: SCAO ADM 2004-15, *Friend of the Court Guidelines for Determining, Changing or Suppressing Addresses of Parties and Nonparties*.

¹⁵ Ref: AT 2007-024, **REVISED**: *Family Violence Indicator (FVI) and the Michigan Child Support Enforcement System (MiCSES) 4.5 Release Federal Case Registry (FCR) Reporting Change*, at: http://mi-support.cses.state.mi.us/policy/stateat/?year=2007#AT2007_024 and AT 2006-022, **REVISED**: *Maintenance and Verification of Case Data*, at: http://mi-support.cses.state.mi.us/policy/stateat/?year=2006#AT2006_022.

¹⁶ Some counties may have access to PACER and can obtain bankruptcy case information online. FOC staff may verify bankruptcy information on PACER and use it to update the *Member Demographics* (DEMO) screen. Counties that do not have access to PACER will follow their county policies to verify bankruptcy information.

¹⁷ MiCSES does not have a bankruptcy type for Chapter 12. IV-D staff will use Chapter 13 and make a note on the *Notes Processor* (NOTE) screen that it is a Chapter 12 bankruptcy. A remedy call has been entered to add Chapter 12 to bankruptcy type.

2. OCS recommends that IV-D staff recall all child-support-related bench warrants. While bench warrants are issued for failure to appear rather than for failure to pay child support, arresting on the failure to appear could result in a danger of violating the automatic stay if the court orders a performance bond to collect pre-petition support, rather than an appearance bond. If the court determines the bench warrant is to remain in place, IV-D staff will, at the time of the hearing on the bench warrant, indicate to the court that the NCP has filed for bankruptcy and the case is subject to the automatic stay.
3. When the *Bankruptcy* field is set to “Y,” MiCSES will automatically:
 - a. Close the *Administrative Lien (ADLV)*, *Show Cause Bench Warrant (SCBW)* and *Credit Reporting (CRAR)* chains; and
 - b. Recalculate employer (*Income Withholding [IIWO]*) and unemployment (*Unemployment [UNEM]*) income withholding amounts to generate an income withholding notice (IWN) for current (post-petition) domestic support only. MiCSES will not recalculate an IWN in arrears-only cases because arrears are not collectible if the NCP filed for bankruptcy before October 17, 2005. IV-D staff must terminate the IWN manually.
4. FOC staff do not need to send copies of the trustee’s notices to the Michigan State Disbursement Unit (MiSDU).

B. For post-October 17, 2005, filings, IV-D staff will:¹⁸

1. On the DEMO screen:
 - a. Set the bankruptcy status by double-clicking on the *Bankruptcy* field and selecting “R” (relief from stay);

Note: If the *Bankruptcy* field is marked “Y,” IV-D staff will change the field to “N” before selecting “R.” “N” will allow enforcement remedies to begin, but indicates there is no bankruptcy. “R” is a status indicator

¹⁸ **Future MiCSES enhancement for bankruptcy** – OCS staff have entered a hotline call for system redesign in compliance with this legislation. Once MiCSES is updated, if the petition date is after October 17, 2005, the system will:

- A. Allow the ADLV chain to continue if the chain was started before the petition filing date;
- B. Prevent the initiation of post-October 17, 2005, ADLV chains after the filing date;
- C. Close the SCBW chain if initiated before the petition filing date;
- D. Allow the manual initiation of the SCBW chain after the filing date;
- E. Allow the CRAR chain to begin;
- F. Allow the tax offset chains to begin;
- G. Allow the license suspension chains to begin;
- H. Allow the initiation and continuance of medical insurance, National Medical Support Notice (NMSN) or show cause medical insurance (SCMI) and show cause medical bill (SCMB) chains;
- I. Restart IIWO and UNEM chains for pre-petition support only, unless the court orders payment of arrears from wages; and
- J. Move QDRO chains to the RQDRO (review for scheduling QDRO motion) minor activity.

that allows enforcement remedies to continue and indicates the NCP is in bankruptcy.

- b. Enter the petition filing date in the *Petition File DT* field;
 - c. Enter a future date in the *Petition End DT* field. The “R” code requires the entry of the *Petition End DT* field. Because the actual end-date is unknown, IV-D staff:
 - i. Will enter a high end-date such as 12/31/9999; and
 - ii. May enter a tickler to review the case periodically.
 - d. Select the bankruptcy type from the drop-down box:
 - i. 7 – Chapter 7;
 - ii. 11 – Chapter 11; or
 - iii. 13 – Chapter 13.¹⁹
2. On the NOTE screen, enter a note indicating that a bankruptcy petition was filed after October 17, 2005;
 3. On the TAXI screen, exclude the NCP from the multistate financial asset lien and levy (FIDM);²⁰ and
 4. On the ENFP screen:
 - a. Close any show cause chains; and
 - b. Move the QDRO chain to the RQDRO minor activity.
- 5. FOC staff do not need to send copies of the trustee’s notices to the MiSDU.**

C. OCS recommends that IV-D staff recall all child-support-related bench warrants. While bench warrants are issued for failure to appear rather than for failure to pay child support, arresting on the failure to appear could result in a danger of violating the automatic stay. The court may also be in violation of the automatic stay by using a performance bond. If the court determines the bench warrant is to remain in place, IV-D staff will, at the time of the hearing on the bench warrant, indicate to the court that the NCP has filed for bankruptcy and the case is subject to the automatic stay.

If the court determines the bench warrant will not remain in place, IV-D staff will close the SCBW chain.

¹⁹ MiCSES does not have a bankruptcy type for Chapter 12. National Child Support Enforcement Association (NCSEA) training materials recommend IV-D staff treat Chapter 12 cases like Chapter 13 cases. IV-D staff will select Chapter 13 from the *Bankruptcy Type* drop-down and make a note on the NOTE screen that it is a Chapter 12 bankruptcy.

²⁰ Bankruptcy **does not** exclude cases from tax refund offset and passport denial. Additionally, existing liens do not have to be removed, but cannot be levied against. OCS and FOC staff should not take any action on existing liens. (Ref: PIQ-07-04.)

D. When the bankruptcy court dismisses the bankruptcy action or discharges the debts, the IV-D staff will:

1. On the DEMO screen:
 - a. Set the bankruptcy status by double-clicking on the *Bankruptcy* field;
 - b. Select “N” (no); and
 - c. Enter the date the judge granted the discharge or dismissed the petition in the *Bankruptcy End DT* field.
2. Remove all enforcement exclusions on the TAXI screen; and
3. Continue the IWN.²¹

E. If, before the discharge of the bankruptcy debts, the debtor falls behind in his/her post-petition domestic support obligation(s), several things may occur:

1. IV-D staff may petition for an order to show cause on the post-petition unpaid support. IV-D staff can determine whether the post-petition domestic support is paid by finding the difference between charges and payments since the bankruptcy filing. The *Support Order Summary* (SLOG) screen provides information that assists IV-D staff in making this determination. The SLOG screen defaults to all cases, but IV-D staff may select one case or all cases. The SLOG screen provides the:
 - a. Month in which the payment information relates (*Month*);
 - b. Type of assistance (*Assistance Type*);
 - c. Total monthly charges (*Total MTH Charges*);
 - d. Child support paid (*C/S Paid*); and
 - e. Month-to-date arrears paid (*M-T-D Arrears Paid*).

The total monthly charges from the time the petition was filed minus the child support paid equals the amount of arrears to be included in the show cause. Pre-petition arrears must not be included. Because MiCSES does not print the partial arrears balance on the *Motion and Order for Show Cause*, IV-D staff must locally print the *Motion and Order for Show Cause* and change the arrears balance on the form;

2. The bankruptcy court will be unable to confirm Chapter 11 and 13 bankruptcy plans; and
3. The bankruptcy court will be unable to discharge the debts.

²¹ The IWN can continue if there is a court order for support. The language of the act is vague as to whether another income withholding order is needed. OCS and FOC staff determined that the original child support order will suffice.

Note: The bankruptcy trustee and attorneys may request evidence that an NCP has paid all post-petition child support in order to confirm a bankruptcy plan or discharge debts. IV-D information is confidential; consequently, the **NCP** must request the payment history and provide it to the bankruptcy trustee, attorneys and the U.S. Bankruptcy Court.

Notices From the Bankruptcy Trustee

The bankruptcy trustee is required to provide certain notices to the IV-D agency. OCSE has indicated that each state child support agency must identify a single bankruptcy reporting contact to which bankruptcy trustees will send notices.²² In May 2007, OCS staff advised all Michigan Bankruptcy Trustees, by letter, to send the required notices, pleadings and correspondence to OCS staff at the following address:

Department of Human Services
Office of Child Support
235 S. Grand Ave.
Suite 1215
P.O. Box 30478
Lansing, MI 48909
Attn: Bankruptcy Claims

A. OCS notice distribution process for NCP bankruptcy notices

When any OCS staff member receives a notice from a bankruptcy trustee, (s)he must forward the notice to the above address. Upon receipt, the general office assistant (GOA) will:

1. Determine all counties that have a case for the NCP²³ by searching the *MiCSES Case Search List (CLST)* screen.
2. Log the receipt of documents from the trustee into the *Bankruptcy Notices Log* (Ref: Attachment 1). The GOA will enter the following information into the log:
 - a. Name of each FOC county where the NCP has a case;
 - b. NCP name;
 - c. Court docket number(s) (for each county where the NCP has a case); and
 - d. The date OCS received the notice from the trustee.
3. Immediately mail a copy of the documents to the affected FOC office(s) to the designated person on the *Bankruptcy Contacts List* (Ref: Attachment 2). GOA staff will not fax a copy of the documents to FOC offices.

²² Ref: OCSE AT 06-05.

²³ The GOA will not send notices for cases in which the bankruptcy debtor is the CP or dependent child. GOAs will process notices received for the CP or dependent in the same manner as notices that are not associated to a MiCSES case.

Note: FOC offices may change their bankruptcy contact information by sending an email with the new contact information to hotline at DIT-MICSES-Helpdesk@michigan.gov. Helpdesk staff will forward the updates to OCS so that GOA staff will send the notices to the correct contact person.

4. Complete the *Bankruptcy Notices Log* by entering:
 - a. The date mailed to FOC; and
 - b. GOA initials, indicating the task is complete.

OCS will not retain a copy of the notices, and GOA staff will not make notes on the NOTE screen. If FOC staff have a question about when GOA staff forwarded the documents, they may call (517) 373-9202, and a GOA will check the *Bankruptcy Notices Log*.

B. Bankruptcy notices not associated with cases on MiCSES

The state child support agency does not need to take any action on a trustee notice if the state does not have an associated case.²⁴ The state child support agency must treat these notices received in error as “confidential” according to state agency security procedures. GOA staff who receive notices not associated with any case will destroy these documents by placing them in a locked shredding bin.

Electronic Filing

Both the Eastern and Western Districts of the U.S. Bankruptcy Courts have mandated electronic filing. Filers and users to the bankruptcy courts use the PACER system to file and view documents with the bankruptcy courts.²⁵

Each U.S. Bankruptcy Court has its own registration requirements. IV-D staff wanting to use PACER must check with the specific court for registration requirements.

- A. Registration – There are two access levels for PACER: Filer and User.
 1. Filer – Filers include attorneys and trustees who will be filing documents on the system. Filers must go through training to receive their password. The bankruptcy court provides the PACER training. The registering IV-D staff member must contact the bankruptcy court for training information.

²⁴ Ref: Attachment 1 of OCSE AT 06-05.

²⁵ Eastern District mandated the use in Administrative Order Adopting Local Rule 5005-2, *Administrative Order Regarding Mandatory Electronic Case Filing*, effective August 1, 2005 – <http://www.mieb.uscourts.gov/notices/admins05-04.pdf>. Western District mandated the use in Administrative Order 2004-06, *Mandatory Electronic Case Filing*, effective January 1, 2005 – <http://www.miw.uscourts.gov/content/cmecf/PDF/AdminProcOrder6.pdf>.

2. User – Entities authorized to appear on behalf of child support creditors are users. Users must register online²⁶ to receive a login and password. Users generally receive one login and password. Entities may obtain additional passwords by making a written request showing sufficient business need. The primary user is responsible for all passwords assigned to the location.

B. Fees/Cooperative Reimbursement Program (CRP)

1. For Internet viewing, the PACER system charges eight cents per page²⁷ retrieved, regardless of whether the user reads, downloads or prints the page. There is a \$2.40 maximum charge per document, even if more than 30 pages are retrieved;²⁸
2. Government agencies must pay PACER fees for use, but PACER does not charge users if less than \$10 in fees accrues for any quarter; and
3. The entire cost of accessing the bankruptcy court electronic reporting system is IV-D reimbursable if the IV-D staff member subscribes to the service for IV-D purposes. The IV-D staff in FOC or PA offices will treat the amount as an "Other Direct" expense for billing purposes.²⁹ If non-IV-D county staff are included in the subscription, then the local office staff must allocate the cost to all users through the indirect cost plan, and the local office share of the total cost is treated as a "Central Services" cost.³⁰ Ref: AT 2006-032 *Fiscal Year (FY) 2007 Legal Support / Cooperative Reimbursement Program (CRP) Contract Application*, Attachment B,³¹ for additional information on other direct expenses and central services costs.

C. Specifications:

1. Pages are submitted, viewable, and printable in PDF format; and
2. Full specifications for the PACER system and demonstrations are available from <http://pacer.psc.uscourts.gov/>.

LEGAL REFERENCES:

Federal

11 USC 101 to 1330

11 USC 522(f)(1)(A)(i), (ii)

11 USC 523(a)(5)

11 USC 1325

Nevettie v Doering, 227 BR 724 (1998)

P.L. 109-8 of 2005

²⁶ Registration is available on the court Web site. Eastern District of Michigan – www.mieb.uscourts.gov, Western District of Michigan – www.miwd.uscourts.gov.

²⁷ PACER considers a page to be 54 lines of data.

²⁸ As of August 5, 2005, dial-up connection is no longer available.

²⁹ Section C, line 3 of the *Title IV-D Cooperative Reimbursement Expenditure Report* (DHS-286).

³⁰ Section D, line 4 of the DHS-286.

³¹ http://mi-support.cses.state.mi.us/policy/stateat/?year=2006#AT2006_032

State

MCL 552.602(ff)

MCL 552.603(8)

MCL 552.603a

MCL 722.711 to MCL 722.730

POLICY REFERENCES:

OCSE AT 06-05, *Policy Questions and Responses to Miscellaneous Issues regarding Child Support Provisions of the New Federal Bankruptcy Law, P.L.*

109-8 and Attachment 1, OCSE's series of questions and answers regarding child support provisions of P.L. 109-8, the Bankruptcy Abuse

Prevention and Consumer Protection Act of 2005

OCSE IM 05-05, *New Federal Bankruptcy Law Contains Child Support Provisions*

U.S. Bankruptcy Court, E.D. Michigan, Administrative Order Adopting Local Rule 5005-2, *Administrative*

Order Regarding Mandatory Electronic Case Filing

U.S. Bankruptcy Court, W.D. Michigan, Administrative Order 2004-06, *Mandatory Electronic Case Filing*

Policy Interpretation Questions (PIQ) PIQ-07-04, Additional Information Regarding Enforcing Child Support when the Obligor is in Bankruptcy

AT 2007-024, **REVISED:** *Family Violence Indicator (FVI) and the Michigan Child Support Enforcement System (MiCSES) 4.5 Release Federal Case*

Registry (FCR) Reporting Change

AT 2006-022, **REVISED:** *Maintenance and Verification of Case Data*

AT 2006-032, *Fiscal Year (FY) 2007 Legal Support / Cooperative Reimbursement Program (CRP) Contract Application*

AT 2003-015, *Change in Policy to Provide for Attachment of Financial Assets through FIDM and a One Step Lien and Levy*

SCAO ADM 2004-15, *Friend of the Court Guidelines for Determining, Changing or Suppressing Addresses of Parties and Nonparties*

SCAO ADM 2000-11, *Administrative Liens for Past Due Support*

AT MAINTENANCE:

Retain AT until further notice.

Obsolete AT 2006-010, *The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Bankruptcy Act).*

Obsolete AT 2001-003, *Application of Offset Exclusion Indicators – Bankruptcy Petition, Dismissal and Discharge Notice.*

EFFECTIVE DATE: Upon receipt.

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ATTACHMENTS: Attachment 1 – *Bankruptcy Notices Log*
Attachment 2 – *Bankruptcy Contacts List*

MFS/DES-P