

DOMESTIC SUPPORT OBLIGATIONS
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First, here are a few basics:

1. “Domestic support obligation” (DSO) is a newly defined term under the Code.
2. There are new exclusions from the automatic stay for DSOs.
3. DSOs are accorded first priority under § 507 in terms of allowance of claims, subject to payment of the trustee’s administrative expenses.
4. DSO notice requirements are imposed on all trustees, chapter 7, 11, 12 and 13.
5. Failure to pay postpetition DSOs is now a ground for conversion or dismissal in chapters 13 and 11.
6. Plan confirmation in chapters 13 and 11 requires payment of postpetition DSOs.
7. DSOs are nondischargeable generally, in chapters 7 and 11, and the chapter 13 debtor does not get a discharge unless he or she is current on postpetition DSOs.

Second, here are a few basic new DSO statutes that I’ve tried to paraphrase carefully:

Section 101(14 A)

“Domestic support obligation” is defined as any debt, pre- or postpetition, including interest, that is - -

- (A) owed to or recoverable by a spouse, former spouse, child of the debtor or such child’s parent, legal guardian, or responsible relative; or a governmental unit
[that is]

- (B) in the nature of alimony, maintenance, or support (including “governmental” assistance without regard to whether the debt is designated as “alimony, maintenance, or support” [and that is]
- (C) established or subject to establishment, pre- or postpetition, by a separation agreement, divorce decree, or property settlement agreement, an order of a court of record or a governmental determination made in accordance with nonbankruptcy law; and [that is]
- (D) not assigned to a government entity, unless assigned voluntarily for collection.

362(b)(2)(A), (B) and (C)

- (A) Civil actions or proceedings for the establishment or modification of a DSO are added to the list of conduct excluded from the automatic stay; [as are]
- (B) DSO collection actions or proceedings aimed at property that is not property of the estate; [and as are]
- (C) actions or proceedings to withhold either property of the estate or property of the debtor for payment of a DSO under a judicial or administrative order or a statute.

[Note: The qualifier “civil” is used only in subparagraph (A).]

Section 507(a)(1)

- (A) Prepetition allowed claims for unsecured DSOs are accorded first priority, whether the claim is filed by the [beneficiary] or a governmental unit on behalf of [the beneficiary], on the condition that any postpetition collections by a governmental unit are applied and distributed in accordance with nonbankruptcy law.

- (B) Subject to claims under subparagraph (A), allowed unsecured [DSO] claims [assigned voluntarily] or owed directly to or recoverable by a governmental unit under applicable law [are also accorded first priority], provided that [all] funds received postpetition are applied and distributed in accordance with applicable nonbankruptcy law. [except]
- (C) [Any trustee under chapters 7, 13, 11, or 12 acting within his or her statutory authority] may recover his or her administrative fees and expenses allowed under section 503(b)(1)(A), (2) and (b) before payment of claims under section 507(a)(1)(A) and (B) to the extent that the trustee administers assets otherwise available for the payment of claims under section 507(a)(1)(A) or (B).

Section 1302(b)(6)

The trustee must give the following written notices with respect to claims for DSOs:

- (A) to the holder of the DSO claim of the holder's child support collection rights, including the address and phone number of the state child support enforcement agency;
- (B) to the state child support enforcement agency of the DSO claim, including the name, address, and phone number of the holder of the DSO claim; and
- (C) when the debtor is granted a discharge, the trustee must give written notice to both the holder of the DSO claim and to the state child support enforcement agency of - -
 - (i) the granting of the discharge;
 - (ii) the last known address of the debtor;
 - (iii) the last known name and address of the debtor's employer; and

- (iv) the name of each creditor who holds a claim that (a) is not dischargeable under section 523(a)(2) or (4), or (b) was reaffirmed by the debtor under section 524(c).

Trustees in chapters 7, 11, and 12 also must give similar written notices regarding DSOs.

See §§ 704(a)(10), 1106(a)(8), 1106(c), 1202(b)(6) and ©).

Chapter 13 statutory changes designed to implement DSO policy:

1307(c) - - Cause for conversion or dismissal of a chapter 13 case now includes failure of the debtor to pay any post petition DSO.

1322(a)(4) - - A debtor's plan may provide for less than full payment of 507(a)(1)(B) priority claims "only if the plan provides for payment of all" disposable income for 5 years.

Under § 1322(b)(10), the plan may provide for interest on DSOs that are nondischargeable under § 1328(a), but only if the debtor has enough disposable income to pay all allowed claims in full.

1325(a)(8) - - Plan confirmation now requires payment of all DSOs that first became payable after the date of the petition "if the Debtor is required to pay by a judicial or administrative order, or by statute."

1325(b)(1) and (2) - - "Disposable income" excludes "child support, foster care, or disability payments for a child . . . to the extent reasonably necessary . . . less amounts reasonably necessary to be expended for DSOs that first become payable" after the petition date.

1325(b)(3) - - "Reasonably necessary" is determined under the means test formulas of

§ 707(b)(2)(A) and (B).

1328(a) - - The debtor in chapter 13 doesn't get a discharge unless he or she is current and so certifies in writing with respect to DSOs, including pre-petition DSOs to the extent provided for in the plan.

Other Chapters

502(b)(5) excepts from allowance DSO claims that are immature as of the petition filing date.

522(f)(1)(A) - - Liens for nondischargability judgments based on DSOs are excepted from liens avoidable under § 522(f).

523(a)(5) - - now simply provides that DSOs are excepted from discharge; all the qualifiers in former § 523(a)(5) have been eliminated.

523(a)(15) - - now simply provides that a debt "to a spouse, former spouse, or child of the debtor and not of the kind described in [523(a)(5)] that is incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court record, or a determination made in accordance with State or territorial law by a governmental unit [is not dischargeable]. The competing tests of former Subparagraphs 523(a)(15)(A) and (B) have been deleted.

547(c)(7) - - Transfers in payment of DSOs are a new defense to preference claims, replacing the

old “spousal and child support” defense. Again, the old qualifiers are gone.

707(c)(3) - - The debtor now has a defense to a motion to dismiss a chapter 7 case brought by a domestic violence or drug trafficking victim, if the debtor can prove that the filing of the chapter 7 case was “necessary to satisfy a claim for a DSO.”

724(b)(2) - - With respect to tax liens for penalties avoided by a chapter 7 Trustee under § 726(a)(4), holders of 507(a)(1) priority DSO claims are relegated to second priority behind senior, unavoidable liens on property of the estate.

Chapters 11 and 12 have changes that are similar to the DSO changes in chapter 13.

For example,

1112(b)(4)(P) - - nonpayment of postpetition DSOs is cause for dismissal or conversion in chapter 11.

1129(a)(14) - - Payment of all postpetition DSOs is a condition to plan confirmation.

Chapter 12 has DSO provisions similar to chapter 11 and chapter 13.

A complete listing of BAPCPA’s DSO provisions (to the extent I could find them) follows.

New Bankruptcy Code provisions relating to Domestic Support Obligations under BAPCPA:

101(14 A)	704(a)(10)	1302(b)(6), (d)
348(b)	707(c)(3)	1307(c)(11)
362(b)(2)	724(b)(2)	1322(a)(4), (b)(10)
502(a)(5)	1106(a)(8)	1325(a)(8), (b)(2), (3)
503(b)(1)(A)(ii)	1112(b)(4)(P)	1328(a)
507(a)(1)	1129(a)(14)	
522(c)(1), (f)(1)	1202(b)(6), (c)	
523(a)(5)	1222(a)(4), (11)	
524(a)(3)	1225(a)(7), (b)(2)	
541(b)(7)(A), (B)	1226(b)(2)	
547(c)(7)	1227(a), (c)	
	1228(a)	