

DSS ADMINISTRATIVE LETTER NO. ECONOMIC AND FAMILY SERVICES 1-2016
FNS Program Integrity
(February 1, 2016)

(Food and Nutrition Services)

County Directors of Social Services

ATTENTION: Food and Nutrition Services Managers and Supervisors and
Program Integrity Supervisors

DATE: February 1, 2016

SUBJECT: FNS Claimants that File Bankruptcy

EFFECTIVE: February 1, 2016

I. General Information

The purpose of this letter is to communicate important policy changes and clarifications that local County Agencies should follow when they learn that an individual subject to an FNS overpayment claim has filed for bankruptcy.

II. Procedures for FNS Claimants that File Bankruptcy

1. General Overview

- a. Generally, bankruptcy is a legal process by which a person or entity that has become unable to repay its debts may obtain relief from some or all of its debts. A person or entity that files for bankruptcy is known as a debtor. Depending on the type of bankruptcy, the debt relief may involve a court-approved repayment plan or a full or partial discharge of the debts.
- b. Bankruptcy law is federal statutory law and bankruptcy proceedings are supervised and litigated in the U.S. Bankruptcy courts.
- c. Bankruptcy proceedings are complex and the counties and State can be subject to severe sanctions from the bankruptcy court for failure to follow bankruptcy laws and rules.
- d. As soon as you learn that **a debtor has filed for bankruptcy, you should immediately stop all collection actions** and contact your County attorney or Local County Agency attorney for advice on how to

handle the FNS overpayment claim. **All collection actions should be stopped regardless of whether the FNS debt was included in the bankruptcy, and regardless of the type of claim involved.** Collection action should not restart unless you receive specific advice from your County attorney or Local County Agency attorney that you may resume collections.

- e. In order to receive payment in a bankruptcy for an FNS overpayment claim, the Local County Agency, or its legal counsel, will need to take action in the debtor's bankruptcy.
- f. Program regulations authorize and require the Local County Agency to act on behalf of Federal and State Agencies in any bankruptcy proceeding involving an individual subject to an FNS overpayment claim.
- g. Local County Agency Staff and County and agency attorneys may contact the State DSS Office for assistance and advice about the treatment of FNS overpayment claims in bankruptcy. The State DSS Office may contact the State Attorney General's Office for advice about complex bankruptcy matters.

2. Notification of Bankruptcy

- a. If a debtor has listed the FNS overpayment claim as a debt in the bankruptcy, the Local County Agency is considered a creditor of the debtor's bankruptcy estate and should receive official notice of the bankruptcy.
- b. However, if the debtor fails to list the FNS overpayment claim in the bankruptcy or provides incorrect address information for the Local County Agency, the Local County Agency may not receive official notice of the bankruptcy.
- c. Regardless of whether the Local County Agency receives official notice of the bankruptcy or learns of the bankruptcy in some other way, upon learning of the bankruptcy the Local County Agency staff should immediately stop all collection actions and should consult with legal counsel before proceeding.

3. Bankruptcy Basics

- a. The Automatic Stay:
The automatic stay is an injunction that prohibits any collection actions taken against a debtor that has filed for bankruptcy. As soon as an individual or entity files for bankruptcy, the automatic stay applies. The automatic stay has the effect of a court order that automatically stops

lawsuits, foreclosure, garnishments, and all collection activity against the debtor the moment a bankruptcy is filed. The automatic stay also prohibits creditors from communicating with the debtor regarding the debt, including telephone calls, letters, and personal contact

b. Proof of Claim:

A proof of claim is a written statement describing the reason a debtor owes a creditor money. There is an official form that is used in bankruptcy courts for filing a proof of claim. Although a creditor is not permitted to pursue collection activity against the debtor, the creditor is permitted to file a proof of claim. Generally, in order for a creditor to receive payment of its claim from a debtor's bankruptcy, the creditor must file a proof of claim.

c. Discharge of Debts:

Most individuals who file for bankruptcy are seeking a "discharge" of their debts. A discharge is a release of a debtor from personal liability for a debt. When a debt is discharged in bankruptcy, the creditor owed the debt is barred from taking any action against the debtor to collect the debt. The discharge also prohibits creditors from communicating with the debtor regarding the debt, including telephone calls, letters, and personal contact.

4. FNS Bankruptcy Procedures:

a. County Responsibility:

Program regulations authorize and require the Local County Agency to act on behalf of Federal and State Agencies in any bankruptcy proceeding involving an individual subject to an FNS overpayment claim. This may include filing objections to discharge, proofs of claim, exceptions to discharge, petitions for revocation of discharge, and other documents, motions, or objections.

b. Effect of the Automatic Stay:

- i. In almost all cases, the automatic stay will apply to an FNS overpayment claim regardless of the type of claim. The Local County Agency should immediately stop all collection actions as soon it learns of the bankruptcy and should consult with legal counsel before proceeding. Local County Agency staff are also prohibited from contacting the debtor for any reason that is related to the FNS overpayment claim.
- ii. The automatic stay applies to the Local County Agency even if the FNS overpayment claim is not listed in the debtor's bankruptcy and even if the County did not receive notice of the bankruptcy and did not have knowledge of the bankruptcy. The County will most likely

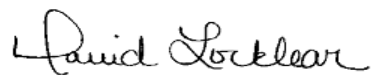
be required to repay any money collected after the date that the debtor filed for bankruptcy.

- iii. Violation of the automatic stay is a serious matter and may subject the County or the State to severe sanctions from the bankruptcy court. The County must immediately stop all collection actions as soon as it learns of a bankruptcy and should immediately contact the County attorney or Local County Agency attorney for advice on how to handle the FNS overpayment.
 - iv. Intentional Program Violations (IPVs) that are referred to and accepted by your County District Attorney's Office for criminal prosecution may not be subject to the automatic stay. Contact the County attorney or Local County Agency attorney for advice on whether your criminal IPV case is subject to the automatic stay.
 - v. In some cases, County legal staff may request that the U.S. Bankruptcy court modify the automatic stay in order to allow Local County Agency to continue collection of the FNS overpayment claim. County DSS should resume collection only after the U.S. Bankruptcy court has issued an order allowing the County to continue collections.
- c. Filing a Proof of Claim:
Local County Agency staff should consult with the County attorney or Local County Agency attorney for advice on whether a proof of claim is needed and instructions on how to file a proof of claim. In some cases, the FNS claim may be subject to setoff or recoupment rights, which will need to be indicated on the proof of claim form or other appropriate court filing.
- d. Discharge of FNS Overpayment Claims:
- i. Some FNS overpayment claims may be non-dischargeable in bankruptcy.
 - ii. IPV claims may be non-dischargeable when the violation was criminally prosecuted or involves false pretenses, false representation, or fraud. Other FNS overpayment claims may be non-dischargeable if they fall into one or more of the specific exceptions provided in federal bankruptcy law.
 - iii. Your County attorney or Local County Agency attorney will need to determine if the FNS overpayment claim is non-dischargeable and take appropriate action in the bankruptcy case.
 - iv. Even when a debt is non-dischargeable in bankruptcy, the creditor generally must take specific actions in the bankruptcy to get an order from the court confirming that the debt is non-dischargeable.

- v. In addition, even when a debt is non-dischargeable, the creditor is still barred by the automatic stay from taking any collection actions during the bankruptcy, unless the creditor has obtained court relief from the automatic stay.

If you have any FNS policy questions, please send them to dss.energy.pi.questions@dhhs.nc.gov

Sincerely,

A handwritten signature in cursive script that reads "David Locklear".

David Locklear, Chief
Economic and Family Services Section

DL/bm