Bankruptcy
SOP# 700

Employment Discrimination Bureau
North Carolina Department of Labor

Procedure approved by: Tiffany Lathan, Bureau Chief

Signature: Tiffany Lathan **Date:** 7/28/14

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Signature: Kathy Woodford **Date:** 7/28/14

STANDARD OPERATING PROCEDURE MANUAL

1. PURPOSE and SCOPE

1.1. Purpose

This SOP establishes the procedure used to address bankrupt Respondents. This procedure has the following goal(s):

- To ensure the appropriate determination of bankruptcy status;
- To ensure the appropriate closing of cases with bankrupt employers.

1.2. Scope

This SOP outlines the necessary steps involved in determining an employer's bankruptcy status, as well as the steps for closing cases with bankrupt employers. The SOP covers the drafting of the memo to file, the closing conferences, and the issuance of a bankruptcy right-to-sue letter. For Occupational Safety & Health (OSH) cases, also refer to the OSH Discrimination Manual for specific OSH procedures.

1.3. Regulations

The following statutes, rules and/or codes must be followed while performing this SOP:

1.3.1. Article 21 of NCGS 95 (NCGS §95-240, et al); and

1.3.2. Department of Labor (DOL) Record Retention Policy

2. PERSONNEL RESPONSIBILITIES

The following is a list of people who participate in the procedure and the overall responsibilities of each role.

Role	Responsibilities
Investigator	• Must determine the bankruptcy status of the employer / Respondent; • If Respondent is in bankruptcy, must close the case and issue a bankruptcy right-to-sue letter; • Must notify the parties when possible and prepare a memo to file regarding closure.

3. HEALTH AND SAFETY ISSUES

Refer to the *Employee Safety and Health Program Policies*, the *Employee Safety and Health Manual*, and the *Employee Safety Rules* on the DOL Intranet for information related to safety matters affecting EDB personnel. For information related to the Americans with Disabilities Act, refer to the ADA Checklist on the Intranet as well. To access these policies and checklists,

click on the links above or visit the DOL Intranet *Safety and Health Program* and the EDB *Standard Operating Procedures* pages.

4. PROCEDURE

4.1. Trigger

This procedure is triggered when the investigator learns that the Respondent may be bankrupt.

4.2. Primary Procedure

4.2.1. The investigator must first determine the following:

a. That the Respondent is indeed the party who has filed for bankruptcy;
b. The bankruptcy court with jurisdiction (the district);
c. The bankruptcy case file number;
d. That the bankruptcy case has *not* been dismissed.

4.2.2. If the investigator has any questions or concerns about how to proceed, the investigator shall consult with the Bureau Chief and/or Legal Affairs prior to proceeding with closure.

4.2.3. If the 4.2.1 criteria have not been met, the investigator must proceed with the REDA investigation.

4.2.4. If the 4.2.1 criteria have been met, then the investigator shall proceed by holding separate closing conferences with the Complainant and Respondent, when possible. In the closing conference, the investigator should:

a. Explain that the case has been closed due to Respondent's bankruptcy filing (that a stay may have been granted by the court on all debt collections for this Respondent);
b. Explain that no further action will be taken by EDB in this matter;
c. Explain the bankruptcy right-to-sue letter (that the Complainant may file a claim against the Respondent in bankruptcy court, if he/she cannot file a claim against Respondent in state court due to a stay);
d. Allow for any questions and confirm mailing addresses.

4.2.5. The investigator shall prepare a memo to file discussing Respondent's bankruptcy, including information on when and where the bankruptcy was filed and the bankruptcy case's current status. The memo shall mention the REDA closure, as well.

4.2.6. The investigator shall issue a bankruptcy right-to-sue letter. Refer to Exhibit 700-1 for a sample letter. The right-to-sue letter must:

a. State the Complainant's name and address, as well as Respondent's name;

b. State that the Respondent has filed for bankruptcy;

c. State the bankruptcy case number and the court where bankruptcy was filed;

d. State that there may be a stay on commencing action again Respondent in state court under REDA as a result of the bankruptcy claim;

e. State that the Complainant may need to file a claim in bankruptcy court, if he/she wishes to pursue the matter;

f. Be dated the day the case is closed. Exception: If the letter cannot be mailed that day, then the letter may be dated with the next business date. For instance, a letter completed after mail pickup on a Friday afternoon may be dated for the following Monday.

4.2.7. No further REDA investigation is required.

4.3. Alternative Procedures – N/A

4.4. Exception Procedures - N/A

5. CUSTOMER SERVICE REQUIREMENTS

The following table lists the customer service requirements that must be satisfied for each Customer of the procedure.

Customer	Requirements
Public (Complainants and Respondents)	Clear communication, both in writing and verbally, is a must so that the parties understand all information being discussed. It is necessary to remain courteous and respectful when dealing with the public, even in the face of frustration. Though the investigator must remain professional at all times, verbal abuse from a party or witness will not be tolerated, and the investigator may end a conversation in such circumstances.

6. DATA AND RECORD MANAGEMENT

6.1. Data Entry in Oracle

6.1.1. The investigator shall enter the following information into Oracle (Refer to Exhibit Oracle):

a. Investigator
b. Assigned Date
c. Received
d. C Contact
e. R Contact
f. Completed (date the case is closed)

g. Inv Finding (Adm Clos) (Note that there is no bankruptcy option, so the most similar option is Adm Clos)
h. Closure Date (dated the case is closed)

6.2. **Record Retention**

6.2.1. All records must be retained in the file and may not be destroyed, per the DOL Retention Policy. Records include, but are not limited to, any information pertaining to Respondent's bankruptcy status, the complaint form, questionnaire, emails, and any any evidence submitted by the Complainant or Respondent.

7. Exhibits

Exhibits are examples of forms, letters, checklists, reports or other documents that are used or created during the execution of this SOP. Exhibits referenced in this SOP are available for view on the SOP website.

7.1.1. Exhibit 700-1 (sample bankruptcy right-to-sue letter)

7.1.2. Exhibit Oracle (screenshot)