

Cramming for the Means Test: How to Pass It Line by Line

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POST-BAPCPA CASE LAW § 707(b)(3)

Dismissal Under 11 U.S.C. § 707(b): In General

In determining whether a debtor's chapter 7 bankruptcy filing constitutes an abuse of the bankruptcy system, the controlling section is 11 U.S.C. § 707(b). Section 707(b)(1) states that 3 elements must be satisfied to show abuse: (1) the debtor must be an individual; (2) the debts must be primarily consumer debts; and (3) the granting of relief to the debtor under Chapter 7 would, in fact, be abuse. 11 U.S.C. § 707(b)(2) and 11 U.S.C. § (b)(3) set forth the grounds for determining whether a filing is an abuse of the bankruptcy system.

On October 17, 2005, the Bankruptcy Abuse Prevention and Consumer Protection Act, (BAPCPA) came into effect. With the enactment of BAPCPA, significant changes were made to § 707(b). Prior to BAPCPA, the element of abuse was qualified by the word "substantial." However, with the enactment of BAPCPA, the adjective "substantial" was dropped, thus making the standard for dismissal less restrictive. Additionally, with the implementation of BAPCPA, there now exist two methods by which abuse is to be determined. First, § 707(b)(2) provides for a presumption of abuse through the operation of a "means test." Second, § 707(b)(3) provides an equitable test where, when determining abuse, the court is directed to consider if the debtors filed the petition in bad faith or if the totality of the circumstances demonstrate abuse. *In re Croskey*, 2007 Slip Copy, 2 (Bankr. N.D. Ohio 2007)[2007 WL 1302571].

In re Glenn, 345 B.R. 831, 835 (Bankr. N.D. Ohio 2006).

I. Preliminary Issues Under § 707(b)(2) and (b)(3)

A. In cases where a debtor passes the means test (§ 707(b)(2)), can the Trustee can still bring a motion to dismiss pursuant to § 707(b)(3), seeking to dismiss for abuse based on the "totality of the circumstances"?

While this issue was raised frequently in the months following the enactment of BAPCPA, post-BAPCPA case law definitively holds that the U.S. Trustee can pursue

dismissal of a case under § 707(b)(3)'s "totality of the circumstances" test even if the debtor successfully passes the means test set forth in § 707(b)(2).

In re Mestemaker, 359 B.R. 849 (Bankr. N.D. Ohio 2007)

Background: Debtors passed the means test with almost \$300 of excess monthly income over expenses. Nevertheless, the trustee asserted that abuse could still be found under § 707(b)(3)'s "totality of the circumstances" test. The debtors argued that "totality of the circumstances" did not come into play because the means test calculation was conclusive evidence regarding their ability to pay their unsecured creditors.

Holding: The court rejected the debtor's argument as "overstat[ing] the statutory significance of 'passing' the means test." *Id.* at 853. After noting that the means test calculation results in an amount *presumed* to be available to pay unsecured creditors based on average income and specifically defined expenses, the court explained that BAPCPA expressly provided courts with a mechanism for "address[ing] the situation where a debtor has greater expenses and/or lower income than what is accounted for under the means test calculation. . . . [T]he plain language of § 707(b)(3), read in conjunction with § 707(b)(1) and (2), is clear and compels a conclusion that a court must consider a debtor's *actual* debt-paying ability in ruling on a motion to dismiss based on abuse where the presumption does not arise or is rebutted." *Id.* at 854-55 (emphasis added).

See also,

In re Haar, 373 B.R. 493, 499 (Bankr. N.D. Ohio 2007)("[T]he means test of § 707(b)(2) is a rigid, mechanical formula which, under certain conditions, gives rise to a presumption of abuse which the debtor may then rebut. By comparison, § 707(b)(3) is an equitable test, with it being incumbent upon the movant to sustain a showing that the necessary conditions exist to warrant dismissal.")

In re Edighoffer, 375 B.R. 789, 792-93 (Bankr. N.D. Ohio 2007)("Courts and commentators alike have recognized that the § 707(b)(3) 'totality of the circumstances' analysis requires a bankruptcy court to undertake an analysis of a debtor's 'actual debt paying ability' independent of the means test analysis under § 707(b)(2). *In re Mestemaker*, 359 B.R. at 853-56; *see also* Hon. Eugene R. Wedoff, *Judicial Discretion to find Abuse under 707(b)(3)*, 71 Mo. L. Rev. 1035, 1037 (2006)('[i]f a section 707(b) motion properly raises the question, a bankruptcy judge has a duty to consider the actual financial situation of a debtor who is not subject to a means test

presumption; that the judge should find abuse where the debtor can repay a sufficient amount of unsecured debt; and that the means test serves to guide, rather than foreclose, such determinations of abuse.’). The totality of the circumstances test also allows the Court to consider both prepetition and post petition circumstances.” (citations omitted)).

In re Barnett, 2007 WL 4510277, *4 (Bankr. N.D. Ohio)(“Under Debtors’ argument, the court would never have an opportunity to examine the ability to pay, a key factor in the ‘totality of the circumstances’ analysis. See *In re Krohn*, 886 F.2d 123 (6th Cir. 1989). Clearly, this goes against the plain language of 11 U.S.C. § 707(b)(3)(B) which instructs ‘the court shall consider . . . the debtor’s financial situation.’ Foreclosing examination of a debtor’s ability to pay would virtually render (b)(3)(B) meaningless. There are innumerable fact patterns where the means test could show an inability to pay but the filing could still constitute an abuse of chapter 7. Several courts in this district have concluded that the ability to pay remains a factor for review in a 707(b)(3) totality of the circumstances analysis.” (citations and footnote omitted)).

**B. BAPCPA lowered the standard for abuse from “substantial abuse” to “abuse”:
are the factors used for determining “abuse” different from those previously
used to determine “substantial abuse”?**

Courts have generally held that while the standard for abuse has been lowered under BAPCPA, the factors used for determining abuse are identical to those used in determining “substantial abuse” prior to BAPCPA.

In re Mestemaker, 359 B.R. 849 (Bankr. N.D. Ohio 2007)

Before BAPCPA, courts considered whether to dismiss a case for ‘substantial abuse’ under § 707(b) based on the ‘totality of the circumstances.’ See *In re Krohn*, 886 F.2d 123, 126 (6th Cir. 1989); *In re Price*, 353 F.3d 1135, 1139 (9th Cir. 2004). The Sixth Circuit explained that ‘substantial abuse’ could be predicated upon either a lack of honesty or want of need, to be determined by the totality of the circumstances. *Krohn*, 886 F.2d at 126. Congress incorporated this judicially created construct in § 707(b)(3) by requiring a court to consider ‘(A) whether the debtor filed the petition in bad faith; or (B) the totality of the circumstances . . . of the debtor’s financial situation demonstrates abuse.’ 11 U.S.C. § 707(b)(3)(A) and (B). Thus, pre-BAPCPA case law applying these concepts is still helpful in determining abuse under § 707(b)(3). See Wedoff

Article [*Judicial Discretion to Find Abuse under § 707(b)(3)*, 25 Am. Bankr. Inst. J. 1, 50] p. 52. The Court emphasizes, however, that Congress has clearly lowered the standard for dismissal in changing the test from ‘substantial abuse’ to ‘abuse.’ Significantly, pre-BAPCPA § 707(b)(1) also contained an express statutory presumption ‘in favor of granting the relief requested by the debtor.’ Congress eliminated that presumption in BAPCPA, replacing it with the means test presumption and the lower standard for dismissal.

Mestemaker, 359 B.R. at 856-57.

See also, *In re Zuccarell*, 373 B.R. 508, 511 (Bankr. N.D. Ohio 2007) (“This Court has observed, as have others, that the ‘totality of the circumstances’ test under § 707(b)(3) is best understood as a codification of pre-BAPCPA case law. Under pre-BAPCPA law, a case could be dismissed for abuse if it were found that there was a ‘want of need’ on the part of the debtor. *In re Krohn*, 886 F.2d 123, 126 (6th Cir. 1989). . . Other courts applying pre-BAPCPA case law to § 707(b)(3) include: *In re McGillis*, 370 B.R. 720 (Bankr. W.D. Mich. 2007); and *In re dePellegrini*, 365 B.R. 830 (Bankr. S.D. Ohio 2007)).

II. Issues Arising under § 707(b)(3)

A. What Constitutes a Reasonable and Necessary Expense?

The controlling law regarding what constitutes abuse was set forth by the Sixth Circuit Court of Appeals in *In re Krohn*, 886 F.2d 123 (6th Cir. 1989).¹ Courts may dismiss a chapter 7 case if the court finds that a debtor has sufficient income to fund a hypothetical chapter 13 plan. In analyzing whether a debtor can fund a hypothetical chapter 13 plan, courts look to whether the debtor has the ability to “tighten” his/her belt without depriving the debtor or his/her dependents of adequate food, clothing, and shelter. The court must look at a debtor’s expenses and determine whether they are reasonable and necessary. The following cases deal with the issue of what constitutes

¹Courts in the Seventh Circuit have also applied the *Krohn* standard. See e.g. *In re Ontiveros*, 198 B.R. 184 (C.D. Ill. 1996).

reasonable and necessary in this context.

1. Housing Expenses

In re Shaw, 311 B.R. 180 (Bankr. M.D. N.C. 2003)

Court held Debtors' housing expense excessive where their gross monthly income was \$7,889 and their monthly housing expense was \$4,449 (for a 3200 square foot house occupied solely by the two debtors whose grown children had moved out). The court stated that "[i]f the Debtors wish to take advantage of the protections afforded by the Bankruptcy Code, they simply must obtain less expensive housing. The Debtors could easily reduce their monthly housing expense by \$1,000 and still have over \$2,000 per month available for housing." *Id.* At 184.

In re Miller, 335 B.R. 335 (Bankr. E.D. Pa. 2005)

Court held Debtor's housing expense excessive where his monthly income was \$10,900, but his monthly housing expense was over \$3,000 because he made the \$3,000 monthly mortgage payment on a house owned solely by his non-debtor wife. The court stated "In considering whether a housing expense is excessive, due regard should be given to the size of the family, their reasonable needs, and the cost of alternative housing." *Id.* at 342. The court noted that debtor's household consisted of two people, and looked to the IRS guidelines in assessing "[h]ow much housing Debtor and his wife need[.]" *Id.* at 343.

In re Nissen, 2007 WL 2915648 (Bankr. D. Neb. 2007)

Court held Debtors' housing expense excessive where the home was valued at \$630,000 with outstanding liens of \$639,000 and monthly interest only mortgage payments of \$5,134.50. The monthly expense constituted approximately 82% of debtor's combined income and was seven times the Internal Revenue Service Local Standard.

In re Osborne, 2008 WL 151294 (Bankr. N.D. Ohio)

Court held debtors' housing expense excessive where debtors' combined gross monthly income was \$5,831.35 and their mortgage payment was \$3,611 (or more than \$1,800 per capita, in light of the fact that debtors were in the process of separating). Debtors had no dependents. Debtors failed to show that the housing expense was "a necessary allocation for the debtor's health and welfare." *Id.* at *3.

In re Wadsworth, 2007 WL 4365374 (Bankr. N.D. Ohio)

Court held debtor's housing expense excessive where debtor's gross

monthly income was approximately \$8,000 and his monthly housing expenses (including utilities and maintenance) was \$2,646. Debtor (who was divorced and had two dependents who did not reside with him) also had a monthly vehicle expense of \$833 and a monthly 401(k) contribution of \$641.33, which the court considered in conjunction with the mortgage debt in concluding that the debtor's expenses were excessive.

In re Felske, 2008 WL 339501 (Bankr. N.D. Ohio)

Court held debtors' housing expense excessive where debtors' combined gross monthly income was between \$6,762 and \$6,997, and their monthly housing expense was \$3,016 (plus another \$500 in utilities and maintenance). Debtors, who had three children, also had a \$788 per month 401(k) loan repayment which the court considered in conjunction with the housing expenses in concluding that debtors' expenses were excessive.

2. 401(k) Loans and Contributions

While 401(k) contributions are not considered disposable income in a chapter 13 case, the court may consider 401(k) contributions and 401(k) loan repayments in the context of dismissal under § 707(b)(3)'s "totality of the circumstances".

[I]t is widely held that, in the context of bankruptcy proceedings, a debtor cannot make voluntary payments toward a retirement savings plan in order to reduce his or her reported disposable income. . . Pre-BAPCPA, the *Behlke* [v. *Eisen*, 358 F.3d 429 (6th Cir. 2004)] set forth the Sixth Circuit precedent that voluntary contributions to a 401(k) or other retirement plan and loan repayments for these types of accounts cannot be deducted from the debtor's disposable income because "it would be unfair to the creditors to allow the Debtors in the present case to commit part of their earnings to the payment of their own retirement fund while at the same time paying their creditors less than a 100% dividend. *Behlke v. Eisen*, 358 F.3d at 435. Since BAPCPA became effective, the court in *In re Woody* agreed with the numerous pre-BAPCPA decisions finding it improper for payments towards a future retirement savings plan to be made from disposable income that should be used to pay pre-existing creditors. *In re Woody*, 494 F.3d 939, 952 (10th Cir. 2007).

In re Burton, 379 B.R. 732, 736 (Bankr. N.D. Ohio 2007)(citations omitted).

In re Zaporski, 366 B.R. 758, 769-74 (Bankr. E.D. Mich. 2007)

In considering a debtor's ability to pay under the "totality of the circumstances" test, the court must consider contributions and repayments to a 401(k) plan and how those amounts would affect a hypothetical chapter 13 plan.

In re Barraza, 346 B.R. 724 (Bankr. N.D. Tx. 2006)

See also *In re Reimer*, 2008 WL 495537, *3 (Bankr. N.D. Ohio)("[U]nless presented with a unique situation, this Court has not permitted debtors, for purposes of § 707(b)(3)(B) to expense against their 'disposable income' voluntary contributions made to retirement accounts"); *In re Beckerman*, 381 B.R. 841, 849 (Bankr. E.D. Mich. 2008)(in light of debtors' ages, minimal savings and lack of property, 401(k) contributions were reasonable and necessary); *In re Wadsworth*, 2007 WL 4365374, *4 (Bankr. N.D. Ohio)("the Debtor, beyond simply a desire to continue with his retirement contributions, gave no reason why his particular circumstance would warrant" deviation from the general rule regarding 401(k) contributions).

3. Charitable Contributions

In determining whether to dismiss a case for abuse under § 707(b), BAPCPA expressly precludes courts from considering charitable contributions a debtor "has made" or "continues to make", however recent or proposed charitable contributions may be subject to attack.

11 U.S.C. § 707(b)(1) states in relevant part,

In making a determination whether to dismiss a case under this section, the court may not take into consideration whether a debtor has made, or continues to make, charitable contributions (that meet the definition of "charitable contribution" under section 548(d)(3)) to any qualified religious or charitable entity or organization (as that term is defined in section 548(d)(4)).

In *In re Bender*, 373 B.R. 25 (Bankr. E.D. Mich. 2007), the Trustee sought to dismiss debtors' case under § 707(b)(3), based in part, on a \$620 monthly contribution to debtors' church. While debtors had been contributing \$260 per month to the church for three years prior to the filing of their petition, schedule J sought to increase the contribution, post-petition, to \$640 per month. In rejecting that expense, the court stated:

[T]he statute is quite specific as to protected contributions—those that a debtor ‘has made, or continues to make’— not amounts which are voluntarily added into a debtor’s budget post-petition. Post-petition increases in contributions are logically characterized as ‘new’ contributions rather than a continuation of prior contributions. To conclude otherwise invites Chapter 7 debtors to propose a dramatic increase in charitable giving post-bankruptcy in an effort to consciously avoid qualifying as a Chapter 13 debtor. Section 707(b)(1) expressly protects a debtor’s charitable contributions from consideration as a ground for dismissal when a debtor has an established pattern of giving to a qualified charity. However, nothing in the statute can be construed to permit a debtor to suddenly become substantially more charitable after filing for bankruptcy, especially when it is the increased charitable contributions that deprive the debtor of the income which could fund a hypothetical chapter 13 plan.

Bender, 373 B.R. at 29-30.

**SPECIAL CIRCUMSTANCES SUFFICIENT TO REUBT
THE PRESUMPTION OF ABUSE**

11 U.S.C. §707(b)(2)(B)

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Once it has been asserted, either by the debtor himself or by the U.S. Trustee, that a chapter 7 case is *presumed* abusive; that is, that the presumption of abuse arises given the formula under §707(b)(2), the debtor may assert *special circumstances* to rebut that presumption. 11 U.S.C. §707(b)(2)(B) provides that a presumption of abuse may only be rebutted by demonstrating the existence of special circumstances, such as a serious medical condition or a call to active duty. The special circumstances must ***justify additional expenses or adjustments of income***, for which there is ***no reasonable alternative***. In order to establish special circumstances, the debtor must provide, and ***attest under oath*** to the accuracy of:

1. An itemization of each additional expense or adjustment to income;
2. Documentation for each additional expense or adjustment to income; and
3. A detailed explanation of the special circumstances that make the additional expenses or adjustment of income necessary and reasonable.

Only if the additional expenses or adjustments to income cause the presumption to *not arise* if used in the means test formula, is the presumption then rebutted.

I. What is a special circumstance?

The term “special circumstances” is not defined by the Code, but 11 U.S.C. 707(b)(2)(B) provides a *non-exhaustive*, two item list of special circumstances that, if established by the debtor using the criteria above, would be sufficient to rebut the presumption of abuse: (1) a serious medical condition, or (2) a call to active duty in the armed forces. Some courts have concluded that the nature of these two items suggests that the circumstances claimed by the debtor to rebut the presumption are those which are beyond his control.

A. *In re Castle* 362 B.R. 846. “To be sure, the two examples given of “special circumstances” in § 707(b)(2)(B)(i) are just that: examples, and thus do not constitute the only types of circumstances which may be used to rebut a presumption of abuse. But they do show a commonality; they both constitute situations which not only put a strain on a debtor's household budget, but they arise from circumstances normally beyond the debtor's control.”

Others disagree. In one such case, the debtors asserted that their expenses associated with an additional residence were necessary, and thus sufficient to rebut the presumption of abuse.

B. *In re Graham* 363 B.R. 844. “Assuming that the UST's position is correct, the Debtors have shown that such special circumstances exist: the Debtor was unable to find employment in the area, despite diligent search. Upon finding suitable and appropriate employment in another state, Mrs. Graham is constrained not to relocate due to the Shared Parenting Plan, which provides that custody of her children is lost if she relocates out of the area. The Court certainly finds special circumstances illustrated in this instance. Furthermore, the term “special circumstances” is not limited in the fashion suggested by the UST. Nothing in the statute suggests or mandates that the “special circumstances” be outside of the control of the debtor.”

II. Is it a “special circumstance” sufficient to rebut the presumption that a conversion to chapter 13 would result in a de minimus or zero percent payment to creditors?

A. *In re Johns*, 342 B.R. 626 (Bankr. E.D. Okla. 2006). The debtors in the Johns case alleged that if they were in a chapter 13 case, the distribution to general unsecured creditors

would be zero because among other things: (1) the monthly child support payment included in their current monthly income in a chapter 7 would not be included as income in a chapter 13; and (2) they would be allowed to deduct their 401(k) loan payments and 401(k) contributions in a chapter 13. The court held that a potential payback of zero percent to unsecured creditors in a chapter 13 is not a special circumstance contemplated under §707(b)(2)(B).

B. *In re Castle* 362 B.R. 846. The Court in the *Castle* case agreed. “The issue as to whether a *de minimis* payout to unsecured creditors constitutes a “**special circumstance**” under § 707(b)(2)(B)(i) has been previously addressed by another court, and answered with an uncompromising no. *In re Johns*, 342 B.R. 626, 629 (Bankr.E.D.Okla.2006). While the court in *In re Johns* did not explain its reasoning in detail, it is hard to find any fallacy with its conclusion: that the “potential payback of zero percent to unsecured creditors is a Chapter 13 is not a special circumstance contemplated under § 707(b)(2)(B).” *Id* at “Nothing in the Bankruptcy Code prohibits a debtor from submitting a Chapter 13 plan of reorganization having little or no value to unsecured creditors so long as it meet the Code's other requirements-e.g., having been proposed in good faith, § 1325(a)(3), meeting the best interest of creditors test of § 1325(a)(4). And while such plans are not favored, there exist a logical disconnect that a “**special circumstance**” under the Bankruptcy Code could arise from a situation which the Code otherwise permits.”

III. How does an adjustment of income create special circumstances?

There are not many reported decisions in the 6th and 7th Circuits defining what circumstances lead to an adjustment of income that are sufficient to rebut the presumption of abuse; speculatively because it is a relatively simple analysis. The most common assertion by

debtors in this regard is a permanent and substantial decrease in income due to loss of employment, reduction in over-time, or other decreases beyond the control of the debtor. Certainly, if a debtor can show a loss of income that will continue, and for which there is no reasonable alternative, then he has likely satisfied the requirements of 707(b)(2)(B). Another example of an adjustment in income that rebuts the presumption is a showing that the debtor received a one time lump sum payment of income during the six month pre petition period, which inordinately inflated the current monthly income. Conversely, it is not appropriate to arbitrarily choose a pre petition period of time in which to determine current monthly income, different from the six month period proscribed in the Code. In other words, the current monthly income must be calculated using income received during the six month prior to the filing of the petition; adding or subtracting pay periods which would result in a lower CMI is not sufficient to defeat the presumption.

IV. What additional expenses justify special circumstances?

A. Retirement (401(k)) deductions

One of the more commonly litigated expenses asserted by debtors as “special”, necessary and sufficient to rebut the presumption is 401k deductions; either in the form of contributions or loan repayments. The U.S. Trustee has successfully argued against this assertion. However, at least one court has suggested that 401k deductions as expenses sufficient to rebut the presumption are a fact specific inquiry.

1. *Eisen v. Thompson*, 370 B.R. 762 (N.D. Ohio 2007). The district court reversed the bankruptcy court’s decision in *In re Thompson*, 350 B.R. 770 (Bankr. N.D. Ohio 2006), concluding that retirement plan loans are neither “debts” nor “secured debts” under the

Bankruptcy Code. The district court also found that assessing special circumstances requires the court to analyze whether the circumstances that led to taking the loan from the retirement account were “special” or whether they were not “special” and instead the result of the debtor’s longstanding inability to keep up with their obligations to creditors. Without more, an occurrence as common as a withdrawal from one’s retirement funds cannot be a “special circumstance.” In the absence of evidence indicating that the circumstances under which the debtor borrowed the retirement funds was “special,” it is an abuse of discretion for a court to hold a 401(k) loan or its repayment to be a “special circumstance.

2. *In re Lenton*, 358 B.R. 651 (Bankr. E.D. Pa. 2006). The court held that 401(k) loan repayments are a special circumstance sufficient to rebut the presumption of abuse.

Following *Thompson* the court held that special circumstances must be evaluated on a case by case basis, but found it compelling that the debtor incurred the loans more than a year before filing his bankruptcy and used the loans to pay down his credit card debt, thereby reducing the unsecured debt that would otherwise be paid in a chapter 13 case. Further, the court found the fact that the debtor cannot stop making the payroll deductions as long as he is employed, and must quit or take leave of absence to stop the payments, to be sufficient to constitute special circumstances “for which there is no reasonable alternative.”

B. Student Loans

Several courts have decided whether student loan payments are necessary expenses which constitute special circumstances sufficient to rebut the presumption.

1. *In re Vaccariello* 375 B.R. 809 (2007) ND Ohio. The Court held that the nature of the student loan as non-dischargeable debts did not render it an expense which should be considered a special circumstance. “If Congress had wanted to make any or all of the

exceptions to discharge a **special circumstance**, it could have chosen to do so. It did not. This Court does not find any basis in the Bankruptcy Code or case law to support a *per se* rule that having no reasonable alternative to paying a nondischargeable debt constitutes **special circumstances.**” Id at 815.

2. In re Delbecq, 368 B.R. 754 (Bkrcty.S.D.Ind.2007). The Court found the non-dischargeable student loan payments did present special circumstances sufficient to rebut the presumption of abuse. The Court’s reasoning focused in part upon the “no reasonable alternative” aspect of the statute. “Given the evidence before the Court, it appears that Debtor's student loan is non-dischargeable. It further appears that if her case is dismissed, Debtor would likely be forced to defer repayment of her student loan-thereby incurring additional indebtedness in the form of interest at nine percent-in order to pay off her other unsecured debts. Nor is conversion to Chapter 13 a reasonable alternative. In this jurisdiction, the Court has historically allowed debtors to classify separately student loan indebtedness pursuant to 11 U.S.C. § 1322(b)(5). If compelled to convert to Chapter 13, Debtor's plan would likely not provide a distribution to her general unsecured creditors, but would instead provide only for the ongoing payment of her student loan.” Id at 759. See also In re Martin, 371 B.R. 347 (Bkrcty.C.D.Ill.2007).

Cramming for the Means Test: How to Pass It Line by Line

Chapter 13 & Form B22C

By Steven A. Leahy

The Bankruptcy Abuse Prevention and Consumer Protection Act (Hereinafter "BAPCPA") became effective on October 17, 2005. Perhaps the greatest change in adopting BAPCPA is the new section 707(b), known as the "means test." In order to implement the BAPCPA means test, debtors are required to file a statement of current monthly income, known as Form B22. (Amended "Means Test" forms became effective January 1, 2008. Web site

<http://www.uscourts.gov/bankform/index.html#means> (visited March 28, 2008)). There are three versions of Form B22: Form 22A (Chapter 7). Form 22B (Chapter 11) and Form 22C (Chapter 13). This article will focus on Official Form 22C and Chapter 13.

The Title of Form B22C is "Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income." The official Form B22C may be found at

http://www.uscourts.gov/rules/BK_Forms_08_Official/B_022C_0108v2.pdf. (visited April 8, 2008))

CHAPTER 13 STATEMENT OF CURRENT MONTHLY INCOME AND CALCULATION OF COMMITMENT PERIOD AND DISPOSABLE INCOME

Form B22C "contain a series of line entries, divided into columns providing for separate entries by the debtor and the debtor's spouse." In re Demonica, 345 B.R. 895, 897 (Bankr. D. Ill. 2006) (quoting Form B22 committee note para. B). The form is divided into seven parts.

- I. Report of Income
- II. Calculation Of § 1325(B)(4) Commitment Period
- III. Application Of § 1325(B)(3) For Determining Disposable Income
- IV. Calculation Of Deductions From Income
 - A. Deductions under Standards of the Internal Revenue Service (IRS)
 - B. Additional Living Expense Deductions
 - C. Deductions for Debt Payment
 - D. Total Deductions from Income
- V. Determination Of Disposable Income Under § 1325(B)(2)
- VI. Additional Expense Claims
- VII. Verification

This article will review each Part sequentially and focus on interesting issues generated by specific lines.

Part I. REPORT OF INCOME

Part I of the CMI is labeled Report of Income and is used to calculate "current monthly income" as that term is defined by BAPCPA. 11 U.S.C. § 101(10A). The calculation requires the addition of virtually all income the debtors earned or received during the six months before the month the case was filed and then the division of that total by six to determine the "current monthly income" of the debtors.

In re Carlton, 362 B.R. 402, 406 (Bankr. D. Ill. 2007)

11 U.S.C. § 101(10A) defines "current monthly income:"

(10A) The term "current monthly income" –

(A) means the average monthly income from all sources that the debtor receives (or in a joint case the debtor and the debtor's spouse receive) without regard to whether such income is taxable income, derived during the 6-month period ending on --

(i) the last day of the calendar month immediately preceding the date of the commencement of the case if the debtor files the schedule of current income required by section 521(a)(1)(B)(ii); or

(ii) the date on which current income is determined by the court for purposes of this title if the debtor does not file the schedule of current income required by section 521(a)(1)(B)(ii); and

(B) includes any amount paid by any entity other than the debtor (or in a joint case the debtor and the debtor's spouse), on a regular basis for the household expenses of the debtor or the debtor's dependents (and in a joint case the debtor's spouse if not otherwise a dependent), but excludes benefits received under the Social Security Act, payments to victims of war crimes or crimes against humanity on account of their status as victims of such crimes, and payments to victims of international terrorism (as defined in section 2331 of title 18) or domestic terrorism (as defined in section 2331 of title 18) on account of their status as victims of such terrorism.

Income, for Form 22C purposes, includes all income, taxable or untaxable. In re Hall, 2007 Bankr. LEXIS 458 (Bankr. D. Ill. 2007).

Question: Whether the purpose of BAPCPA was to make those who can, pay or implement a mechanical system. Both?

Line 7: Any amounts paid by another person or entity, on a regular basis, for the household expenses of the debtor or the debtor’s dependents, including child support paid for that purpose. Do not include alimony or separate maintenance payments or amounts paid by the debtor’s spouse.

7	Any amounts paid by another person or entity, on a regular basis, for the household expenses of the debtor or the debtor’s dependents, including child support paid for that purpose. Do not include alimony or separate maintenance payments or amounts paid by the debtor’s spouse.	\$	\$
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Issue: Weather a Debtor’s bonus (received each and every year), not received in the prior 6 months from the date of filing, should be included when calculating monthly income? (Earned Income Tax Credit?)

Trustee Position

- Includes payments made monthly, quarterly, or annually.
- Includes payments regardless of written agreement with contributor.
- Includes payments from roommate, partner, parent, or relative, regardless of whether living with debtor.
- Includes payments made directly to creditors on behalf of debtor, e.g., rent, car, insurance, or tuition.
- Does not include payments from non-filing spouse (which are already included as income in Column B).

Statement of the U.S. Trustee Program’s Position on Legal Issues Arising Under the Chapter 13 Disposable Income Test
http://www.usdoj.gov/ust/eo/bapcpa/docs/Disposable_Income_Ch13_UST_Policies.pdf
 Site visited (March 29, 2008).

In re Foster - Debtor regularly received annual bonuses. However, the bonus was not received within 6 months of filing. Debtor argued that the bonus should not be included in calculating monthly income. Trustee argued the bonus was paid by an entity other than the debtor, “on a regular basis for the household expenses of the debtor or the debtor's dependents.” The court found that the “bonuses were deposited in the debtors' bank account and may well have been used to pay the debtors' household expenses.” Therefore, the bonuses must be included when calculating monthly income. In re Foster, 2006 Bankr. LEXIS 2259, 2-3 (Bankr. D. Ind. 2006)

Part II. CALCULATION OF § 1325(b)(4) COMMITMENT PERIOD

At Part II of the CMI, the applicable commitment period is calculated. The debtors' current monthly income previously determined at Part I is multiplied by 12 to reach an annualized figure. The annualized figure is then compared to the median family income of the debtors' state of residence for a similar household size. If the debtors' annualized income exceeds the comparable median income, the applicable commitment

period for the debtors' plan is five years. If it does not, then the applicable commitment period is three years.

In re Carlton, 362 B.R. 402, 406 (Bankr. D. Ill. 2007)

Line 13 - Marital Adjustment: If you are married, but are not filing jointly with your spouse, AND if you contend that calculation of the commitment period under § 1325(b)(4) does not require inclusion of the income of your spouse, enter on Line 13 the amount of the income listed in Line 10, Column B that was NOT paid on a regular basis for the household expenses of you or your dependents and specify, in the lines below, the basis for excluding this income (such as payment of the spouse's tax liability or the spouse's support of persons other than the debtor or the debtor's dependents) and the amount of income devoted to each purpose.

13	<p>Marital adjustment. If you are married, but are not filing jointly with your spouse, AND if you contend that calculation of the commitment period under § 1325(b)(4) does not require inclusion of the income of your spouse, enter on Line 13 the amount of the income listed in Line 10, Column B that was NOT paid on a regular basis for the household expenses of you or your dependents and specify, in the lines below, the basis for excluding this income (such as payment of the spouse's tax liability or the spouse's support of persons other than the debtor or the debtor's dependents) and the amount of income devoted to each purpose. If necessary, list additional adjustments on a separate page. If the conditions for entering this adjustment do not apply, enter zero.</p>		
	a.		\$
	b.		\$
	c.		\$
	Total and enter on Line 13.		

Trustee Position - as stated in "Statement of the U.S. Trustee Program's Position on Legal Issues Arising Under the Chapter 13 Disposable Income Test"

➤ "oppose any amount listed on line 13."

The Form itself lists several categories that should be included to adjust the Debtor's income with the income of a non-filing spouse (i.e. Spouse's tax liability, Spouse's support of persons other than the debtor or the debtor's dependants).

In re Hall - The real thrust of the Trustee's argument was that the income of the debtor's non-filing spouse should be considered in determining the debtor's disposable income. However, only the amounts expended by the non-debtor spouse on a regular basis for household expenses were included in a debtor's "current monthly income." Further, any of the non-filing spouse's income which was imputed to a debtor were correspondingly offset by the payment of the household expenses for which the debtor is also responsible. In re Hall, 2007 Bankr. LEXIS 458 (Bankr. D. Ill. 2007)

Part III. APPLICATION OF § 1325(b)(3) FOR DETERMINING DISPOSABLE INCOME

Part III of the CMI is used to determine which statutory methodology will be used to calculate disposable income. Again, the debtors' annualized income is compared to the median family income of their state for similarly-sized households. If the debtors' income exceeds the median

income, then the "disposable income" and the reasonableness of the expenses claimed by the debtors will be calculated in accordance with the provisions of § 1325(b)(3). If it does not, "disposable income" is calculated in accordance with § 1325(b)(2) using the reasonably necessary expenses set forth on Schedule J.

In re Carlton, 362 B.R. 402, 406 (Bankr. D. Ill. 2007)

Line 19 - Marital adjustment: If you are married, but are not filing jointly with your spouse, enter on Line 19 the total of any income listed in Line 10, Column B that was NOT paid on a regular basis for the household expenses of the debtor or the debtor's dependents. Specify in the lines below the basis for excluding the Column B income (such as payment of the spouse's tax liability or the spouse's support of persons other than the debtor or the debtor's dependents) and the amount of income devoted to each purpose.

19	<p>Marital adjustment. If you are married, but are not filing jointly with your spouse, enter on Line 19 the total of any income listed in Line 10, Column B that was NOT paid on a regular basis for the household expenses of the debtor or the debtor's dependents. Specify in the lines below the basis for excluding the Column B income (such as payment of the spouse's tax liability or the spouse's support of persons other than the debtor or the debtor's dependents) and the amount of income devoted to each purpose. If necessary, list additional adjustments on a separate page. If the conditions for entering this adjustment do not apply, enter zero.</p>		
	a.		\$
	b.		\$
	c.		\$
	Total and enter on Line 19.		

Trustee Position - as stated in "Statement of the U.S. Trustee Program's Position on Legal Issues Arising Under the Chapter 13 Disposable Income Test"

- "All income of the non-debtor spouse should be included, except the following expenses of the non-debtor spouse may be excluded:
 - withholding taxes;
 - student loan payments;
 - prior support obligations;
 - debt payments on which only the non-filing spouse is legally liable;
- A car payment on the non-debtor spouse car cannot be excluded if the car is counted as a family car for purposes of lines 28 and 29 (transportation deductions)

Part IV. CALCULATION OF DEDUCTIONS FROM INCOME
Subpart A: Deductions under Standards of the Internal Revenue Service (IRS)

Part IV of the CMI to calculate their available expense deductions. The available deductions are generally comprised of certain national and local standard deductions based on IRS guidelines, certain actual expenses allowed by IRS guidelines, other actual expenses allowed by § 707(b)(2), payments for secured debts amortized over 60 months, payments for priority debts amortized over 60 months, and an estimate of Chapter 13 administrative expenses.

Lines 27 – 28 consider the deductions for ownership and use of motor vehicle.

27A	<p>Local Standards: transportation; vehicle operation/public transportation expense. You are entitled to an expense allowance in this category regardless of whether you pay the expenses of operating a vehicle and regardless of whether you use public transportation.</p> <p>Check the number of vehicles for which you pay the operating expenses or for which the operating expenses are included as a contribution to your household expenses in Line 7. <input type="checkbox"/> 0 <input type="checkbox"/> 1 <input type="checkbox"/> 2 or more.</p> <p>If you checked 0, enter on Line 27A the “Public Transportation” amount from IRS Local Standards: Transportation. If you checked 1 or 2 or more, enter on Line 27A the “Operating Costs” amount from IRS Local Standards: Transportation for the applicable number of vehicles in the applicable Metropolitan Statistical Area or Census Region. (These amounts are available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)</p>	\$									
27B	<p>Local Standards: transportation; additional public transportation expense. If you pay the operating expenses for a vehicle and also use public transportation, and you contend that you are entitled to an additional deduction for your public transportation expenses, enter on Line 27B the “Public Transportation” amount from IRS Local Standards: Transportation. (This amount is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)</p>	\$									
28	<p>Local Standards: transportation ownership/lease expense; Vehicle 1. Check the number of vehicles for which you claim an ownership/lease expense. (You may not claim an ownership/lease expense for more than two vehicles.) <input type="checkbox"/> 1 <input type="checkbox"/> 2 or more.</p> <p>Enter, in Line a below, the “Ownership Costs” for “One Car” from the IRS Local Standards: Transportation (available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 1, as stated in Line 47; subtract Line b from Line a and enter the result in Line 28. Do not enter an amount less than zero.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%; text-align: center;">a.</td> <td style="width: 75%;">IRS Transportation Standards, Ownership Costs</td> <td style="width: 20%; text-align: right;">\$</td> </tr> <tr> <td style="text-align: center;">b.</td> <td>Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 47</td> <td style="text-align: right;">\$</td> </tr> <tr> <td style="text-align: center;">c.</td> <td>Net ownership/lease expense for Vehicle 1</td> <td style="text-align: right;">Subtract Line b from Line a.</td> </tr> </table>	a.	IRS Transportation Standards, Ownership Costs	\$	b.	Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 47	\$	c.	Net ownership/lease expense for Vehicle 1	Subtract Line b from Line a.	\$
a.	IRS Transportation Standards, Ownership Costs	\$									
b.	Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 47	\$									
c.	Net ownership/lease expense for Vehicle 1	Subtract Line b from Line a.									

QUESTION: Many cases address the question “Do Debtors get the deduction even if they don’t have car payments?”

Negative:

- In re Ransom, 2007 WL 4625248 (B.A.P. 9th Cir. Dec. 27, 2007)
- In re Hartwick, 373 B.R. 645 (D.Minn. 2007)
- In re Ross-Tousey, 368 B.R. 762 (E.D. Wis. 2007)
- In re Masur, 2007 WL 3231725 (Bankr. D. S.D. Oct. 30, 2007)
- In re Slusher, 359 B.R. 290 (Bankr. D.Nev. 2007)
- In re Devilliers, 358 B.R. 849 (Bankr. E.D. La. 2007)
- In re Wiggs, 2006 WL 2246432 (Bankr.N.D.Ill. 2006)
- In re Demonica, 345 B.R. 895 (Bankr.N.D.Ill. 2006)

Affirmative:

- In re Barrett, 371 B.R. 855 (Bankr. S.D.Ill. 2007)
- In re Fowler, 349 B.R. 414 (Bankr.D.Del. 2006)
- In re Zak, 361 B.R. 481 (Bankr. N.D. Ohio 2007)

Subpart B: Additional Living Expense Deductions
Note: Do not include any expenses that you have listed in Lines 24-37

Over-the-median Debtors should recognize additional expenses in Subpart B:

Line 41 - Protection against family violence: Enter the total average reasonably necessary monthly expenses that you actually incur to maintain the safety of your family under the Family Violence Prevention and Services Act or other applicable federal law. The nature of these expenses is required to be kept confidential by the court.

41	Protection against family violence. Enter the total average reasonably necessary monthly expenses that you actually incur to maintain the safety of your family under the Family Violence Prevention and Services Act or other applicable federal law. The nature of these expenses is required to be kept confidential by the court.	\$
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Trustee Position - as stated in “Statement of the U.S. Trustee Program’s Position on Legal Issues Arising Under the Chapter 13 Disposable Income Test”

- Include only ongoing expenses related to a real threat.
- Legal costs related to a restraining order may qualify
- Home security system costs will not qualify in all cases
- Nature of expense, but not the amount, must be kept confidential by the court.

Subpart C: Deductions for Debt Payment

Line 47 - Future Payments on secured claims. For each of your debts that is secured by an interest in property that you own, list the name of the creditor, identify the property securing the debt, state the Average Monthly Payment, and check whether the payment includes taxes or insurance. The Average Monthly Payment is the total of all amounts scheduled as contractually due to each Secured Creditor in the 60 months following the filing of the bankruptcy case, divided by 60.

47	Future payments on secured claims. For each of your debts that is secured by an interest in property that you own, list the name of the creditor, identify the property securing the debt, state the Average Monthly Payment, and check whether the payment includes taxes or insurance. The Average Monthly Payment is the total of all amounts scheduled as contractually due to each Secured Creditor in the 60 months following the filing of the bankruptcy case, divided by 60. If necessary, list additional entries on a separate page. Enter the total of the Average Monthly Payments on Line 47.				\$	
		Name of Creditor	Property Securing the Debt	Average Monthly Payment		Does payment include taxes or insurance?
	a.			\$		<input type="checkbox"/> yes <input type="checkbox"/> no
	b.			\$		<input type="checkbox"/> yes <input type="checkbox"/> no
	c.			\$		<input type="checkbox"/> yes <input type="checkbox"/> no
			Total: Add Lines a, b, and c			

QUESTION: Whether Debtors can deduct secured debt if they intend on surrendering the property?

In re Kalata - The trustee contended that the debtor was not pledging all disposable income to the plan as required by 11 U.S.C.S. § 1325(b)(1)(B), since the debtor included

as expenses residence payments which would not be made. The debtor argued that, under 11 U.S.C.S. § 707(b)(2)(A)(iii), the residence payments were properly included as expenses because the debt was scheduled as contractually due to the secured creditor on the date the debtor filed his bankruptcy petition. The bankruptcy court held that, while 11 U.S.C.S. § 1325(b)(3) incorporated 11 U.S.C.S. § 707(b)(2)(A) as a means of calculating the debtor's disposable income, the debtor was required to dedicate his projected disposable income to the plan, and such projected income included the amount of the payments that the debtor was not paying toward his residence. In re Kalata, 2008 Bankr. LEXIS 512 (Bankr. D. Wis. 2008)

In re Turner - The court held that, based on the plain meaning of 11 U.S.C.S. § 707(b)(2)(A)(iii), the debtor, who intended to surrender his residence, was entitled to include his mortgage payment in calculating his disposable income for purposes of 11 U.S.C.S. § 1325(b)(3); therefore, he was not compelled to exclude such payment and increase the amount of disposable income he was to commit to unsecured creditors under the plan. In re Turner, 2008 Bankr. LEXIS 837 (Bankr. D. Ind. 2008)

Line 48 - Other payments on secured claims. If any of debts listed in Line 47 are secured by your primary residence, a motor vehicle, or other property necessary for your support or the support of your dependents, you may include in your deduction 1/60th of any amount (the “cure amount”) that you must pay the creditor in addition to the payments listed in Line 47, in order to maintain possession of the property. The cure amount would include any sums in default that must be paid in order to avoid repossession or foreclosure.

48	Other payments on secured claims. If any of debts listed in Line 47 are secured by your primary residence, a motor vehicle, or other property necessary for your support or the support of your dependents, you may include in your deduction 1/60th of any amount (the “cure amount”) that you must pay the creditor in addition to the payments listed in Line 47, in order to maintain possession of the property. The cure amount would include any sums in default that must be paid in order to avoid repossession or foreclosure. List and total any such amounts in the following chart. If necessary, list additional entries on a separate page.			
		Name of Creditor	Property Securing the Debt	1/60th of the Cure Amount
	a.			\$
	b.			\$
	c.			\$
			Total: Add Lines a, b, and c	\$

Some courts prohibit deductions for arrears on vehicles that will be surrendered.

Subpart D: Total Deductions from Income	
52	Total of all deductions from income. Enter the total of Lines 38, 46, and 51. \$

Line 52 combines the totals from Line 38 (Total Expenses according to IRS Standards), Line 46 (Deductions under 707(b), and Line 51 (Deductions from secured debt).

Part V. DETERMINATION OF DISPOSABLE INCOME UNDER § 1325(b)(2)

Part V of the CMI nets the current monthly income determined at Part I against the deductions available from Part IV. After allowing additional deductions for support income and retirement plan contributions, line 58 of Part V purports to calculate disposable income for over-the-median-income debtors.

In re Carlton, 362 B.R. 402, 406 (Bankr. D. Ill. 2007)

Line 55 - Qualified retirement deductions. Enter the monthly total of (a) all amounts withheld by your employer from wages as contributions for qualified retirement plans. As specified in §541(b)(7) and (b) all required repayments of loans from retirement plans, as specified in § 362(b)(19).

55	Qualified retirement deductions. Enter the monthly total of (a) all amounts withheld by your employer from wages as contributions for qualified retirement plans, as specified in § 541(b)(7) and (b) all required repayments of loans from retirement plans, as specified in § 362(b)(19).	\$
----	--	----

Deduction for special circumstances. If there are special circumstances that justify additional expenses for which there is no reasonable alternative, describe the special circumstances and the resulting expenses in lines a-c below . . . Total the expenses and enter the total in Line 57. **You must provide your case trustee with documentation of these expenses and you must provide a detailed explanation of the special circumstances that make such expenses necessary and reasonable.**

57	Deduction for special circumstances. If there are special circumstances that justify additional expenses for which there is no reasonable alternative, describe the special circumstances and the resulting expenses in lines a-c below. If necessary, list additional entries on a separate page. Total the expenses and enter the total in Line 57. You must provide your case trustee with documentation of these expenses and you must provide a detailed explanation of the special circumstances that make such expenses necessary and reasonable.			
		Nature of special circumstances		Amount of expense
	a.			\$
	b.			\$
	c.			\$
		Total: Add Lines a, b, and c	\$	

In re Martin - A U.S. Trustee asserted that bankruptcy debtors' statutory calculation of their income and expenses was erroneous, and that a proper calculation of disposable income raised a presumption of bankruptcy abuse under 11 U.S.C.S. §707(b). The Trustee moved to dismiss the debtors' case based on the presumption, but the debtors contended that special circumstances existed to rebut the presumption. Court found several “special circumstances:

1. Change of Income
2. birth of child
3. Student Loan Payments

In re Martin, 371 B.R. 347 (Bankr. D. Ill. 2007)

Part VI: ADDITIONAL EXPENSE CLAIMS

Line 60 - Other Expenses. List and describe any monthly expenses, not otherwise stated in this form, that are required for the health and welfare of you and your family and that you contend should be an additional deduction from your current monthly income under § 707(b)(2)(A)(ii)(I). . . All figures should reflect your average monthly expense for each item. Total the expenses.

60	Other Expenses. List and describe any monthly expenses, not otherwise stated in this form, that are required for the health and welfare of you and your family and that you contend should be an additional deduction from your current monthly income under § 707(b)(2)(A)(ii)(I). If necessary, list additional sources on a separate page. All figures should reflect your average monthly expense for each item. Total the expenses.	
		Expense Description
	a.	Monthly Amount
	b.	\$
	c.	\$
	Total: Add Lines a, b, and c	\$

In re Saffrin - debtors' proposed plan arguing that they were not devoting all of their projected disposable income to the plan because their calculation of disposable income deducted payments for their daughter's **college expenses**. The debtors argued that the deduction was permissible because the expenses were necessary for the health and welfare of the family. Court rejected Debtors' arguments. In re Saffrin, 380 B.R. 191 (Bankr. D. Ill. 2007).

Part VII: VERIFICATION

Debtors verify accuracy of calculations:

Final Question: Do “Disposable Income” and “Projected Disposable Income” mean the same thing? Does Form 22C merely provide a “Starting Point for the disposable income inquiry?” or is it the complete inquiry?

CMI calculation is a "rear view mirror" reflection of a debtor's disposable income and Schedules I and J give a "crystal ball" view of current and future disposable income. *See In re Guzman*, 345 B.R. 640, 645 (Bankr. E.D. Wis. 2006) (concluding that the § 1325(b)(3) expense deductions of an above-median debtor are governed by Form B22C, not by Schedule J)

Chapter 7 Means Test - Form 22A Issues

Robert T. Kasdorf

Many issues regarding Form 22A remain unresolved, and, for those that have been litigated, the resolution in one district may conflict with the resolution in another. The purpose of this presentation is to highlight the issues arising from particular lines on the form and to summarize some of the arguments made to support the competing interpretations.

Line 8: Regular contributions to the household expenses of the debtor or the debtor's dependents.

The word “regular” suggests that a pattern of payments must have been established over several months, but the payments may be voluntary and thus subject to termination at the whim of the payor. Monthly gifts by grandparents to the debtors’s children may have to be counted. Payments by a guarantor on a loan probably also count.

Line 10: Income from all other sources.

The breadth of this language suggests that money received that doesn’t qualify as “regular” on Line 8 would have to be listed here. This is where one-time gifts and 401(k) distributions would be listed. 401(k) loans, or any other loans, would presumably not be considered “income”.

14.b. Household size.

Factual issues often arise in determining household size. Can a child be claimed as a member of the household if support is paid but custody is with the ex-spouse? If divorced parties have shared custody, does it matter which spouse gets to claim the child as a dependent on his or her tax return? How much do non-married couples have to combine finances to be considered a household? Can a 25-year old college student still be counted in the household if he or she

comes “home” fairly regularly? Most of these issues call for some questioning by the chapter 7 trustee or U.S. Trustee at the 341 meeting. My experience has been that this is not a part of the form that the U.S. Trustee generally litigates, as long as a reasonable argument is made for the choice of household size.

Lines 23 and 24: Vehicle ownership expense.

The issue here is whether the IRS standard amount can be used for vehicles that don’t have a loan payment. The U.S. Trustee’s Office relies on IRS regulations saying the amount can’t be taken when the taxpayer makes no loan or lease payment. The counter-argument is that the language of the form is unambiguous, so reference to outside materials is inappropriate. That is, the debtor only needs to own the vehicle to claim an ownership expense.

This is an example of how the “bright line” application of the means test can produce an unfair result. Why should a debtor who has a \$500 title loan be able to claim an ownership expense when the debtor with no loan cannot? Where ownership expense is not permitted for a vehicle not subject to a loan or lease, \$200 can be entered on the form if the vehicle is more than 6 years old or has been driven more than 75,000 miles.

Line 25: Taxes

The standard here is clearly the actual tax liability, as shown by the debtors’s returns (plus social security payments). Totaling amounts withheld from paychecks may yield an inflated number, as those withholdings may entitle the debtors to a large refund in the spring.

Line 31: Mandatory payroll deductions

The payments cannot be within the discretion of the debtor. Retirement deductions required by the employer are allowed but, at least according to the U.S. Trustee’s standards, voluntary

contributions to 401(k) plans and payments on 401(k) loans are not. Union dues and uniform costs are allowed. Elective payments for charity and insurance are not allowed on this line, but they may be taken elsewhere on the form.

Line 32: Life insurance

Payments for life insurance are permitted, but the full premium for a whole life policy will likely be challenged. If the debtor has a whole life policy, only the part of the premium which would be needed for a term policy should be listed.

Line 35: Continued contributions to the care of household or family members.

Expenses for care of an elderly, chronically ill or disabled member of the family or household can be listed. Are these all the expenses or just special expenses because of the person's needs? If the person is a member of the household, aren't most of the expenses already included in the IRS standards based on household size?

Line 42: Future payments on secured claims

This is a key area of contention. If a debtor owes a secured debt at the time of filing, does it matter whether he or she is going to continue making the payments? Most districts seem to be adopting the position that, if the debt is outstanding at the filing date, the deduction can be taken. The statement of intention is irrelevant, as is the economic ability of the debtor to make the future payments. This is another example of courts deciding Congress wanted "bright line" standards without exercise of discretion by judges. The resulting certainty of outcome is desirable, but results don't always make sense.

Attorneys sometimes mistakenly enter the amount of a loan payment rather than the 60-month average. If the loan will be completed on its terms in less than 60 months, take the total of the

remaining payments and divide by 60. Another approach is to divide the current payoff by 60 and then add the interest which would be due at the contract rate.

Selected cases: (thanks to Jill Gies)

Deductions for secured debt payments when collateral is not subject to a loan or lease:

In re Hartwick 373 B.R.645 (D. Minn., 2007)

In re Ross - Tousey 368 B.R. 762 (E.D. Wis., 2007)

In re Cole 371 B.R. 454 (Bankr. W.D. Wash., 2007)

In re Wiggs 2006 WL 2246432 (Bankr. N.D. Ill., 2006)(ch. 13)

In re Demonica 345 B.R. 895 (Bankr. N.D. Ill., 2006)(ch.13)

In re Barrett 371 B.R. 855 (Bankr. S.D. Ill., 2007)(ch.13)

In re Zak 361 B.R. 481 (Bankr N.D. Ohio, 2007)

Allowance of \$200 deduction for older vehicles owned outright:

In re McGuire 342 B.R. 608 (Bankr. W.D. Mo., 2006)

In re Ranson 2007 WL 4625248 (B.A.P. 9th Cir., 12/07)

In re Johnson 2006 WL 2883243 (Bankr. M.D.N.C. 2006) (disallowed deduction)

401(k) loan repayments:

In re Mordis 2007 WL 2962903 (Bankr. E.D. Mo., 10/07)

In re Whittaker 2007 WL 2156397 (Bankr N.D. Ohio, 7/07)

In re Barazza 346 B.R. 724 (Bankr. N.D. Tex., 2006)

Eisen v. Thompson 370 B.R. 762 (N.D. Ohio, 2007)

In re Lewis 2007 WL 2742854 (Bankr. N.D. Ohio, 9/07)

Secured debt payments where collateral is to be surrendered:

In re Walker 2006 WL 1314125 (Bankr. N.D. Ga., 2006)

In re Skaggs 349 B.R. 594 (Bankr. E.D. Mo., 2006)

In re Randle 2007 WL 2668727 (N.D. Ill., 7/07)

In re Hartwick 2007 WL 2350560 (D. Minn., 2007)

In re Nockerts 357 B.R. 497 (Bankr. E.D. Wis., 2006)

In re Sorrell 359 B.R. 167 (Bankr. S.D. Ohio, 2007)

In re Mc Gillis 2007 Bankr. LEXIS 1733 (Bankr. W.D. Mich., 5/07)

In re _____
Debtor(s)

Case Number: _____
(If known)

According to the calculations required by this statement:

- The presumption arises.**
- The presumption does not arise.**

(Check the box as directed in Parts I, III, and VI of this statement)

CHAPTER 7 STATEMENT OF CURRENT MONTHLY INCOME AND MEANS-TEST CALCULATION

In addition to Schedules I and J, this statement must be completed by every individual chapter 7 debtor, whether or not filing jointly. Joint debtors may complete one statement only.

Part I. EXCLUSION FOR DISABLED VETERANS AND NON-CONSUMER DEBTORS				
1A		<p>If you are a disabled veteran described in the Veteran’s Declaration in this Part I, (1) check the box at the beginning of the Veteran’s Declaration, (2) check the box for “The presumption does not arise” at the top of this statement, and (3) complete the verification in Part VIII. Do not complete any of the remaining parts of this statement.</p> <p><input type="checkbox"/> Veteran’s Declaration. By checking this box, I declare under penalty of perjury that I am a disabled veteran (as defined in 38 U.S.C. § 3741(1)) whose indebtedness occurred primarily during a period in which I was on active duty (as defined in 10 U.S.C. § 101(d)(1)) or while I was performing a homeland defense activity (as defined in 32 U.S.C. §901(1)).</p>		
1B		<p>If your debts are not primarily consumer debts, check the box below and complete the verification in Part VIII. Do not complete any of the remaining parts of this statement.</p> <p><input type="checkbox"/> Declaration of non-consumer debts. By checking this box, I declare that my debts are not primarily consumer debts.</p>		
Part II. CALCULATION OF MONTHLY INCOME FOR § 707(b)(7) EXCLUSION				
2		<p>Marital/filing status. Check the box that applies and complete the balance of this part of this statement as directed.</p> <p>a. <input type="checkbox"/> Unmarried. Complete only Column A (“Debtor’s Income”) for Lines 3-11.</p> <p>b. <input type="checkbox"/> Married, not filing jointly, with declaration of separate households. By checking this box, debtor declares under penalty of perjury: “My spouse and I are legally separated under applicable non-bankruptcy law or my spouse and I are living apart other than for the purpose of evading the requirements of § 707(b)(2)(A) of the Bankruptcy Code.” Complete only Column A (“Debtor’s Income”) for Lines 3-11.</p> <p>c. <input type="checkbox"/> Married, not filing jointly, without the declaration of separate households set out in Line 2.b above. Complete both Column A (“Debtor’s Income”) and Column B (“Spouse’s Income”) for Lines 3-11.</p> <p>d. <input type="checkbox"/> Married, filing jointly. Complete both Column A (“Debtor’s Income”) and Column B (“Spouse’s Income”) for Lines 3-11.</p>		
		<p>All figures must reflect average monthly income received from all sources, derived during the six calendar months prior to filing the bankruptcy case, ending on the last day of the month before the filing. If the amount of monthly income varied during the six months, you must divide the six-month total by six, and enter the result on the appropriate line.</p>	<p>Column A Debtor’s Income</p>	<p>Column B Spouse’s Income</p>
3		Gross wages, salary, tips, bonuses, overtime, commissions.	\$	\$

4	<p>Income from the operation of a business, profession or farm. Subtract Line b from Line a and enter the difference in the appropriate column(s) of Line 4. If you operate more than one business, profession or farm, enter aggregate numbers and provide details on an attachment. Do not enter a number less than zero. Do not include any part of the business expenses entered on Line b as a deduction in Part V.</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:5%; text-align:center;">a.</td> <td style="width:55%;">Gross receipts</td> <td style="width:40%;">\$</td> </tr> <tr> <td style="text-align:center;">b.</td> <td>Ordinary and necessary business expenses</td> <td>\$</td> </tr> <tr> <td style="text-align:center;">c.</td> <td>Business income</td> <td>Subtract Line b from Line a</td> </tr> </table>	a.	Gross receipts	\$	b.	Ordinary and necessary business expenses	\$	c.	Business income	Subtract Line b from Line a	\$	\$
a.	Gross receipts	\$										
b.	Ordinary and necessary business expenses	\$										
c.	Business income	Subtract Line b from Line a										
5	<p>Rent and other real property income. Subtract Line b from Line a and enter the difference in the appropriate column(s) of Line 5. Do not enter a number less than zero. Do not include any part of the operating expenses entered on Line b as a deduction in Part V.</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:5%; text-align:center;">a.</td> <td style="width:55%;">Gross receipts</td> <td style="width:40%;">\$</td> </tr> <tr> <td style="text-align:center;">b.</td> <td>Ordinary and necessary operating expenses</td> <td>\$</td> </tr> <tr> <td style="text-align:center;">c.</td> <td>Rent and other real property income</td> <td>Subtract Line b from Line a</td> </tr> </table>	a.	Gross receipts	\$	b.	Ordinary and necessary operating expenses	\$	c.	Rent and other real property income	Subtract Line b from Line a	\$	\$
a.	Gross receipts	\$										
b.	Ordinary and necessary operating expenses	\$										
c.	Rent and other real property income	Subtract Line b from Line a										
6	Interest, dividends and royalties.	\$	\$									
7	Pension and retirement income.	\$	\$									
8	Any amounts paid by another person or entity, on a regular basis, for the household expenses of the debtor or the debtor's dependents, including child support paid for that purpose. Do not include alimony or separate maintenance payments or amounts paid by your spouse if Column B is completed.	\$	\$									
9	<p>Unemployment compensation. Enter the amount in the appropriate column(s) of Line 9. However, if you contend that unemployment compensation received by you or your spouse was a benefit under the Social Security Act, do not list the amount of such compensation in Column A or B, but instead state the amount in the space below:</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:40%;">Unemployment compensation claimed to be a benefit under the Social Security Act</td> <td style="width:30%;">Debtor \$ _____</td> <td style="width:30%;">Spouse \$ _____</td> </tr> </table>	Unemployment compensation claimed to be a benefit under the Social Security Act	Debtor \$ _____	Spouse \$ _____	\$	\$						
Unemployment compensation claimed to be a benefit under the Social Security Act	Debtor \$ _____	Spouse \$ _____										
10	<p>Income from all other sources. Specify source and amount. If necessary, list additional sources on a separate page. Do not include alimony or separate maintenance payments paid by your spouse if Column B is completed, but include all other payments of alimony or separate maintenance. Do not include any benefits received under the Social Security Act or payments received as a victim of a war crime, crime against humanity, or as a victim of international or domestic terrorism.</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:5%; text-align:center;">a.</td> <td style="width:55%;"></td> <td style="width:40%;">\$</td> </tr> <tr> <td style="text-align:center;">b.</td> <td></td> <td>\$</td> </tr> </table> <p>Total and enter on Line 10</p>	a.		\$	b.		\$	\$	\$			
a.		\$										
b.		\$										
11	Subtotal of Current Monthly Income for § 707(b)(7). Add Lines 3 thru 10 in Column A, and, if Column B is completed, add Lines 3 through 10 in Column B. Enter the total(s).	\$	\$									
12	Total Current Monthly Income for § 707(b)(7). If Column B has been completed, add Line 11, Column A to Line 11, Column B, and enter the total. If Column B has not been completed, enter the amount from Line 11, Column A.	\$										
Part III. APPLICATION OF § 707(b)(7) EXCLUSION												
13	Annualized Current Monthly Income for § 707(b)(7). Multiply the amount from Line 12 by the number 12 and enter the result.		\$									

14	<p>Applicable median family income. Enter the median family income for the applicable state and household size. (This information is available by family size at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)</p> <p>a. Enter debtor’s state of residence: _____ b. Enter debtor’s household size: _____</p>	\$
15	<p>Application of Section 707(b)(7). Check the applicable box and proceed as directed.</p> <p><input type="checkbox"/> The amount on Line 13 is less than or equal to the amount on Line 14. Check the box for “The presumption does not arise” at the top of page 1 of this statement, and complete Part VIII; do not complete Parts IV, V, VI or VII.</p> <p><input type="checkbox"/> The amount on Line 13 is more than the amount on Line 14. Complete the remaining parts of this statement.</p>	

Complete Parts IV, V, VI, and VII of this statement only if required. (See Line 15.)

Part IV. CALCULATION OF CURRENT MONTHLY INCOME FOR § 707(b)(2)											
16	<p>Enter the amount from Line 12.</p>	\$									
17	<p>Marital adjustment. If you checked the box at Line 2.c, enter on Line 17 the total of any income listed in Line 11, Column B that was NOT paid on a regular basis for the household expenses of the debtor or the debtor’s dependents. Specify in the lines below the basis for excluding the Column B income (such as payment of the spouse’s tax liability or the spouse’s support of persons other than the debtor or the debtor’s dependents) and the amount of income devoted to each purpose. If necessary, list additional adjustments on a separate page. If you did not check box at Line 2.c, enter zero.</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:5%; text-align: center;">a.</td> <td style="width:75%;"></td> <td style="width:20%; text-align: center;">\$</td> </tr> <tr> <td style="text-align: center;">b.</td> <td></td> <td style="text-align: center;">\$</td> </tr> <tr> <td style="text-align: center;">c.</td> <td></td> <td style="text-align: center;">\$</td> </tr> </table> <p>Total and enter on Line 17.</p>		a.		\$	b.		\$	c.		\$
a.		\$									
b.		\$									
c.		\$									
18	<p>Current monthly income for § 707(b)(2). Subtract Line 17 from Line 16 and enter the result.</p>	\$									

Part V. CALCULATION OF DEDUCTIONS FROM INCOME

Subpart A: Deductions under Standards of the Internal Revenue Service (IRS)

19A	<p>National Standards: food, clothing and other items. Enter in Line 19A the “Total” amount from IRS National Standards for Food, Clothing and Other Items for the applicable household size. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)</p>	\$																								
19B	<p>National Standards: health care. Enter in Line a1 below the amount from IRS National Standards for Out-of-Pocket Health Care for persons under 65 years of age, and in Line a2 the IRS National Standards for Out-of-Pocket Health Care for persons 65 years of age or older. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) Enter in Line b1 the number of members of your household who are under 65 years of age, and enter in Line b2 the number of members of your household who are 65 years of age or older. (The total number of household members must be the same as the number stated in Line 14b.) Multiply Line a1 by Line b1 to obtain a total amount for household members under 65, and enter the result in Line c1. Multiply Line a2 by Line b2 to obtain a total amount for household members 65 and older, and enter the result in Line c2. Add Lines c1 and c2 to obtain a total health care amount, and enter the result in Line 19B.</p> <table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th colspan="3" style="text-align: left;">Household members under 65 years of age</th> <th colspan="3" style="text-align: left;">Household members 65 years of age or older</th> </tr> </thead> <tbody> <tr> <td style="width:5%; text-align: center;">a1.</td> <td style="width:30%;">Allowance per member</td> <td style="width:30%;"></td> <td style="width:5%; text-align: center;">a2.</td> <td style="width:30%;">Allowance per member</td> <td style="width:30%;"></td> </tr> <tr> <td style="text-align: center;">b1.</td> <td>Number of members</td> <td></td> <td style="text-align: center;">b2.</td> <td>Number of members</td> <td></td> </tr> <tr> <td style="text-align: center;">c1.</td> <td>Subtotal</td> <td></td> <td style="text-align: center;">c2.</td> <td>Subtotal</td> <td></td> </tr> </tbody> </table>		Household members under 65 years of age			Household members 65 years of age or older			a1.	Allowance per member		a2.	Allowance per member		b1.	Number of members		b2.	Number of members		c1.	Subtotal		c2.	Subtotal	
Household members under 65 years of age			Household members 65 years of age or older																							
a1.	Allowance per member		a2.	Allowance per member																						
b1.	Number of members		b2.	Number of members																						
c1.	Subtotal		c2.	Subtotal																						
		\$																								

20A	<p>Local Standards: housing and utilities; non-mortgage expenses. Enter the amount of the IRS Housing and Utilities Standards; non-mortgage expenses for the applicable county and household size. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court).</p>		\$									
20B	<p>Local Standards: housing and utilities; mortgage/rent expense. Enter, in Line a below, the amount of the IRS Housing and Utilities Standards; mortgage/rent expense for your county and household size (this information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter on Line b the total of the Average Monthly Payments for any debts secured by your home, as stated in Line 42; subtract Line b from Line a and enter the result in Line 20B. Do not enter an amount less than zero.</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:5%; text-align:center;">a.</td> <td style="width:65%;">IRS Housing and Utilities Standards; mortgage/rental expense</td> <td style="width:30%; text-align:right;">\$</td> </tr> <tr> <td style="text-align:center;">b.</td> <td>Average Monthly Payment for any debts secured by your home, if any, as stated in Line 42</td> <td style="text-align:right;">\$</td> </tr> <tr> <td style="text-align:center;">c.</td> <td>Net mortgage/rental expense</td> <td style="text-align:right;">Subtract Line b from Line a.</td> </tr> </table>		a.	IRS Housing and Utilities Standards; mortgage/rental expense	\$	b.	Average Monthly Payment for any debts secured by your home, if any, as stated in Line 42	\$	c.	Net mortgage/rental expense	Subtract Line b from Line a.	\$
a.	IRS Housing and Utilities Standards; mortgage/rental expense	\$										
b.	Average Monthly Payment for any debts secured by your home, if any, as stated in Line 42	\$										
c.	Net mortgage/rental expense	Subtract Line b from Line a.										
21	<p>Local Standards: housing and utilities; adjustment. If you contend that the process set out in Lines 20A and 20B does not accurately compute the allowance to which you are entitled under the IRS Housing and Utilities Standards, enter any additional amount to which you contend you are entitled, and state the basis for your contention in the space below:</p> <p>_____</p> <p>_____</p> <p>_____</p>		\$									
22A	<p>Local Standards: transportation; vehicle operation/public transportation expense. You are entitled to an expense allowance in this category regardless of whether you pay the expenses of operating a vehicle and regardless of whether you use public transportation.</p> <p>Check the number of vehicles for which you pay the operating expenses or for which the operating expenses are included as a contribution to your household expenses in Line 8.</p> <p><input type="checkbox"/> 0 <input type="checkbox"/> 1 <input type="checkbox"/> 2 or more.</p> <p>If you checked 0, enter on Line 22A the “Public Transportation” amount from IRS Local Standards: Transportation. If you checked 1 or 2 or more, enter on Line 22A the “Operating Costs” amount from IRS Local Standards: Transportation for the applicable number of vehicles in the applicable Metropolitan Statistical Area or Census Region. (These amounts are available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)</p>		\$									
22B	<p>Local Standards: transportation; additional public transportation expense. If you pay the operating expenses for a vehicle and also use public transportation, and you contend that you are entitled to an additional deduction for your public transportation expenses, enter on Line 22B the “Public Transportation” amount from IRS Local Standards: Transportation. (This amount is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)</p>		\$									
23	<p>Local Standards: transportation ownership/lease expense; Vehicle 1. Check the number of vehicles for which you claim an ownership/lease expense. (You may not claim an ownership/lease expense for more than two vehicles.)</p> <p><input type="checkbox"/> 1 <input type="checkbox"/> 2 or more.</p> <p>Enter, in Line a below, the “Ownership Costs” for “One Car” from the IRS Local Standards: Transportation (available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 1, as stated in Line 42; subtract Line b from Line a and enter the result in Line 23. Do not enter an amount less than zero.</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:5%; text-align:center;">a.</td> <td style="width:65%;">IRS Transportation Standards, Ownership Costs</td> <td style="width:30%; text-align:right;">\$</td> </tr> <tr> <td style="text-align:center;">b.</td> <td>Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 42</td> <td style="text-align:right;">\$</td> </tr> <tr> <td style="text-align:center;">c.</td> <td>Net ownership/lease expense for Vehicle 1</td> <td style="text-align:right;">Subtract Line b from Line a.</td> </tr> </table>		a.	IRS Transportation Standards, Ownership Costs	\$	b.	Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 42	\$	c.	Net ownership/lease expense for Vehicle 1	Subtract Line b from Line a.	\$
a.	IRS Transportation Standards, Ownership Costs	\$										
b.	Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 42	\$										
c.	Net ownership/lease expense for Vehicle 1	Subtract Line b from Line a.										

24	<p>Local Standards: transportation ownership/lease expense; Vehicle 2. Complete this Line only if you checked the “2 or more” Box in Line 23.</p> <p>Enter, in Line a below, the “Ownership Costs” for “One Car” from the IRS Local Standards: Transportation (available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 2, as stated in Line 42; subtract Line b from Line a and enter the result in Line 24. Do not enter an amount less than zero.</p>		
	a.	IRS Transportation Standards, Ownership Costs	\$
	b.	Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 42	\$
	c.	Net ownership/lease expense for Vehicle 2	Subtract Line b from Line a.
			\$
25	<p>Other Necessary Expenses: taxes. Enter the total average monthly expense that you actually incur for all federal, state and local taxes, other than real estate and sales taxes, such as income taxes, self-employment taxes, social-security taxes, and Medicare taxes. Do not include real estate or sales taxes.</p>		\$
26	<p>Other Necessary Expenses: involuntary deductions for employment. Enter the total average monthly payroll deductions that are required for your employment, such as retirement contributions, union dues, and uniform costs. Do not include discretionary amounts, such as voluntary 401(k) contributions.</p>		\$
27	<p>Other Necessary Expenses: life insurance. Enter total average monthly premiums that you actually pay for term life insurance for yourself. Do not include premiums for insurance on your dependents, for whole life or for any other form of insurance.</p>		\$
28	<p>Other Necessary Expenses: court-ordered payments. Enter the total monthly amount that you are required to pay pursuant to the order of a court or administrative agency, such as spousal or child support payments. Do not include payments on past due obligations included in Line 44.</p>		\$
29	<p>Other Necessary Expenses: education for employment or for a physically or mentally challenged child. Enter the total average monthly amount that you actually expend for education that is a condition of employment and for education that is required for a physically or mentally challenged dependent child for whom no public education providing similar services is available.</p>		\$
30	<p>Other Necessary Expenses: childcare. Enter the total average monthly amount that you actually expend on childcare—such as baby-sitting, day care, nursery and preschool. Do not include other educational payments.</p>		\$
31	<p>Other Necessary Expenses: health care. Enter the total average monthly amount that you actually expend on health care that is required for the health and welfare of yourself or your dependents, that is not reimbursed by insurance or paid by a health savings account, and that is in excess of the amount entered in Line 19B. Do not include payments for health insurance or health savings accounts listed in Line 34.</p>		\$
32	<p>Other Necessary Expenses: telecommunication services. Enter the total average monthly amount that you actually pay for telecommunication services other than your basic home telephone and cell phone service—such as pagers, call waiting, caller id, special long distance, or internet service—to the extent necessary for your health and welfare or that of your dependents. Do not include any amount previously deducted.</p>		\$
33	<p>Total Expenses Allowed under IRS Standards. Enter the total of Lines 19 through 32.</p>		\$
<p>Subpart B: Additional Living Expense Deductions</p> <p>Note: Do not include any expenses that you have listed in Lines 19-32</p>			

34	Health Insurance, Disability Insurance, and Health Savings Account Expenses. List the monthly expenses in the categories set out in lines a-c below that are reasonably necessary for yourself, your spouse, or your dependents.		
	a.	Health Insurance	\$
	b.	Disability Insurance	\$
	c.	Health Savings Account	\$
Total and enter on Line 34			\$
If you do not actually expend this total amount, state your actual total average monthly expenditures in the space below: \$ _____			
35	Continued contributions to the care of household or family members. Enter the total average actual monthly expenses that you will continue to pay for the reasonable and necessary care and support of an elderly, chronically ill, or disabled member of your household or member of your immediate family who is unable to pay for such expenses.		\$
36	Protection against family violence. Enter the total average reasonably necessary monthly expenses that you actually incurred to maintain the safety of your family under the Family Violence Prevention and Services Act or other applicable federal law. The nature of these expenses is required to be kept confidential by the court.		\$
37	Home energy costs. Enter the total average monthly amount, in excess of the allowance specified by IRS Local Standards for Housing and Utilities, that you actually expend for home energy costs. You must provide your case trustee with documentation of your actual expenses, and you must demonstrate that the additional amount claimed is reasonable and necessary.		\$
38	Education expenses for dependent children less than 18. Enter the total average monthly expenses that you actually incur, not to exceed \$137.50 per child, for attendance at a private or public elementary or secondary school by your dependent children less than 18 years of age. You must provide your case trustee with documentation of your actual expenses, and you must explain why the amount claimed is reasonable and necessary and not already accounted for in the IRS Standards.		\$
39	Additional food and clothing expense. Enter the total average monthly amount by which your food and clothing expenses exceed the combined allowances for food and clothing (apparel and services) in the IRS National Standards, not to exceed 5% of those combined allowances. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) You must demonstrate that the additional amount claimed is reasonable and necessary.		\$
40	Continued charitable contributions. Enter the amount that you will continue to contribute in the form of cash or financial instruments to a charitable organization as defined in 26 U.S.C. § 170(c)(1)-(2).		\$
41	Total Additional Expense Deductions under § 707(b). Enter the total of Lines 34 through 40		\$
Subpart C: Deductions for Debt Payment			

42	<p>Future payments on secured claims. For each of your debts that is secured by an interest in property that you own, list the name of the creditor, identify the property securing the debt, state the Average Monthly Payment, and check whether the payment includes taxes or insurance. The Average Monthly Payment is the total of all amounts scheduled as contractually due to each Secured Creditor in the 60 months following the filing of the bankruptcy case, divided by 60. If necessary, list additional entries on a separate page. Enter the total of the Average Monthly Payments on Line 42.</p>			
	Name of Creditor	Property Securing the Debt	Average Monthly Payment	Does payment include taxes or insurance?
	a.		\$	<input type="checkbox"/> yes <input type="checkbox"/> no
	b.		\$	<input type="checkbox"/> yes <input type="checkbox"/> no
	c.		\$	<input type="checkbox"/> yes <input type="checkbox"/> no
			Total: Add Lines a, b and c.	
				\$
43	<p>Other payments on secured claims. If any of debts listed in Line 42 are secured by your primary residence, a motor vehicle, or other property necessary for your support or the support of your dependents, you may include in your deduction 1/60th of any amount (the "cure amount") that you must pay the creditor in addition to the payments listed in Line 42, in order to maintain possession of the property. The cure amount would include any sums in default that must be paid in order to avoid repossession or foreclosure. List and total any such amounts in the following chart. If necessary, list additional entries on a separate page.</p>			
	Name of Creditor	Property Securing the Debt	1/60th of the Cure Amount	
	a.		\$	
	b.		\$	
	c.		\$	
			Total: Add Lines a, b and c	
				\$
44	<p>Payments on prepetition priority claims. Enter the total amount, divided by 60, of all priority claims, such as priority tax, child support and alimony claims, for which you were liable at the time of your bankruptcy filing. Do not include current obligations, such as those set out in Line 28.</p>			\$
45	<p>Chapter 13 administrative expenses. If you are eligible to file a case under chapter 13, complete the following chart, multiply the amount in line a by the amount in line b, and enter the resulting administrative expense.</p>			
	a.	Projected average monthly chapter 13 plan payment.	\$	
	b.	Current multiplier for your district as determined under schedules issued by the Executive Office for United States Trustees. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)	x	
	c.	Average monthly administrative expense of chapter 13 case	Total: Multiply Lines a and b	
				\$
46	<p>Total Deductions for Debt Payment. Enter the total of Lines 42 through 45.</p>			\$
Subpart D: Total Deductions from Income				
47	<p>Total of all deductions allowed under § 707(b)(2). Enter the total of Lines 33, 41, and 46.</p>			\$

Part VI. DETERMINATION OF § 707(b)(2) PRESUMPTION

48	Enter the amount from Line 18 (Current monthly income for § 707(b)(2))	\$
49	Enter the amount from Line 47 (Total of all deductions allowed under § 707(b)(2))	\$
50	Monthly disposable income under § 707(b)(2). Subtract Line 49 from Line 48 and enter the result	\$
51	60-month disposable income under § 707(b)(2). Multiply the amount in Line 50 by the number 60 and enter the result.	\$
52	<p>Initial presumption determination. Check the applicable box and proceed as directed.</p> <p><input type="checkbox"/> The amount on Line 51 is less than \$6,575. Check the box for “The presumption does not arise” at the top of page 1 of this statement, and complete the verification in Part VIII. Do not complete the remainder of Part VI.</p> <p><input type="checkbox"/> The amount set forth on Line 51 is more than \$10,950. Check the box for “The presumption arises” at the top of page 1 of this statement, and complete the verification in Part VIII. You may also complete Part VII. Do not complete the remainder of Part VI.</p> <p><input type="checkbox"/> The amount on Line 51 is at least \$6,575, but not more than \$10,950. Complete the remainder of Part VI (Lines 53 through 55).</p>	
53	Enter the amount of your total non-priority unsecured debt	\$
54	Threshold debt payment amount. Multiply the amount in Line 53 by the number 0.25 and enter the result.	\$
55	<p>Secondary presumption determination. Check the applicable box and proceed as directed.</p> <p><input type="checkbox"/> The amount on Line 51 is less than the amount on Line 54. Check the box for “The presumption does not arise” at the top of page 1 of this statement, and complete the verification in Part VIII.</p> <p><input type="checkbox"/> The amount on Line 51 is equal to or greater than the amount on Line 54. Check the box for “The presumption arises” at the top of page 1 of this statement, and complete the verification in Part VIII. You may also complete Part VII.</p>	

Part VII: ADDITIONAL EXPENSE CLAIMS

56	<p>Other Expenses. List and describe any monthly expenses, not otherwise stated in this form, that are required for the health and welfare of you and your family and that you contend should be an additional deduction from your current monthly income under § 707(b)(2)(A)(ii)(I). If necessary, list additional sources on a separate page. All figures should reflect your average monthly expense for each item. Total the expenses.</p> <table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="width:5%;"></th> <th style="width:70%;">Expense Description</th> <th style="width:25%;">Monthly Amount</th> </tr> </thead> <tbody> <tr> <td style="text-align:center;">a.</td> <td></td> <td style="text-align:center;">\$</td> </tr> <tr> <td style="text-align:center;">b.</td> <td></td> <td style="text-align:center;">\$</td> </tr> <tr> <td style="text-align:center;">c.</td> <td></td> <td style="text-align:center;">\$</td> </tr> <tr> <td></td> <td style="text-align:right;">Total: Add Lines a, b and c</td> <td style="text-align:center;">\$</td> </tr> </tbody> </table>			Expense Description	Monthly Amount	a.		\$	b.		\$	c.		\$		Total: Add Lines a, b and c	\$
	Expense Description	Monthly Amount															
a.		\$															
b.		\$															
c.		\$															
	Total: Add Lines a, b and c	\$															

Part VIII: VERIFICATION

57	<p>I declare under penalty of perjury that the information provided in this statement is true and correct. <i>(If this is a joint case, both debtors must sign.)</i></p> <p style="text-align:center;">Date: _____ Signature: _____ (Debtor)</p> <p style="text-align:center;">Date: _____ Signature: _____ (Joint Debtor, if any)</p>	
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