



AMERICAN
BANKRUPTCY
INSTITUTE

**Consumer Workshop I:
Knocked into a Cocked Hat—
Means Test Unresolved Issues
and Case Law Update**

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Rocky Mountain Bankruptcy Conference 2009

**Consumer Workshop I: Knocked into a Cocked Hat –
Means Test Unresolved Issues and Case Law Update**

FACT SITUATION

Debtor Deanna is unmarried, but lives with her fiancé.

Debtor has two children an 18 year old & 11.

Child support is received sporadically but ordered at \$500 per month. She receives the \$500 every other month. The divorce degree allows each parent to claim one for tax purposes if support is current. Parties share custody.

The 18 year old works part time at Limited Too & grosses \$500-\$40 tax for a net income of \$460.00.

Fiancé has a 13 year old sole custody & he receives \$200.00 a month child support which is regular.

Debtor works at School District 11 & lives in El Paso County, Colorado. Deanna is paid once a month as follows;

Gross income	\$3250
taxes	\$350
PERA	\$260
401K	\$130
401K loan	\$100
health ins	\$250
life ins self	\$15
life ins dep	\$30
net income	\$2115

Fiancé is a salaried employee. His income is as follows

Gross income	\$8333
taxes	\$1166
401K	\$500
health ins	\$350
net income	\$4710

Deanna has a side business cutting trees. In the last 6 months she had gross business income of \$900 & business expenses of \$400.00.

Three months ago Deanna received a one time gift from her brother in the amount of \$12000.00.

Deanna has the following debts:

Unsecured credit card debt in the amount of \$110000. Half of this was used for business purposes.

Two car loans for which she pays \$400.00 each. She wants to surrender one of the vehicles. There is 48 months left to pay on these loans.

She has an old pick up which she uses for her business.

A boat loan with a balance of \$15000 payable at \$250.00 per month. Deanna wants to keep the boat.

A student loan which was reduced to a judgement payable by agreement with the creditor at \$50.00 per month.

A 2006 federal tax liability in the amount of \$5000 for which the IRS has a lien & the Debtor has entered into an installment agreement with the government payable at \$50.00 per month.

Fiancé has the following debts:

1st & 2nd mortgage loans payable at \$1200 & \$300 per month. Deanna lives with him & the home is only in his name.

A car note payable at \$350.00 per month.

Unsecured CC debt (solely in his name) payable at \$600.00 per month.

The parties share other expenses. Out of pocket medical is \$485 per month. Deanna child has asthma. Cell phones \$200, internet \$120(this includes cable). Fiancé travels 120 miles 5 days per week to work. His gas is running \$800.00 per month.

Deanna pays \$200 per month for private school for the 11 year old.

Deanna is a devout Catholic & up until about two years ago she was tithing her 10%-but due to the debt has been unable to tithe. It is important to her that she be allowed to tithe.

In re: Deanna Debtor(s)
 Case Number: _____ (If known)

According to the calculations required by this statement:
 The applicable commitment period is 3 years.
 The applicable commitment period is 5 years.
 Disposable income is determined under § 1325(b)(3).
 Disposable income is not determined under § 1325(b)(3).
 (Check the boxes as directed in Lines 17 and 23 of this statement.)

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

In addition to Schedules I and J, this statement must be completed by every individual Chapter 13 debtor, whether or not filing jointly. Joint debtors may complete one statement only.

Part I. REPORT OF INCOME

<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 2-10. b. <input checked="" type="checkbox"/> Married. Complete both Column A ("Debtor's Income") and Column B ("Spouse's Income") for Lines 2-10.</p>												
1	<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>	Column A Debtor's Income	Column B Spouse's Income									
2	Gross wages, salary, tips, bonuses, overtime, commissions.	\$ 3,250.00	\$ 8,333.00									
3	<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 3. 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 IV.</p> <table border="1"> <tr> <td>a.</td> <td>Gross receipts</td> <td>\$ 150.00</td> </tr> <tr> <td>b.</td> <td>Ordinary and necessary operating expenses</td> <td>\$ 66.67</td> </tr> <tr> <td>c.</td> <td>Business income</td> <td>Subtract Line b from Line a</td> </tr> </table>	a.	Gross receipts	\$ 150.00	b.	Ordinary and necessary operating expenses	\$ 66.67	c.	Business income	Subtract Line b from Line a	\$ 83.33	\$
a.	Gross receipts	\$ 150.00										
b.	Ordinary and necessary operating expenses	\$ 66.67										
c.	Business income	Subtract Line b from Line a										
4	<p>Rent and other real property income. Subtract Line b from Line a and enter the difference in the appropriate column(s) of Line 4. 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 IV.</p> <table border="1"> <tr> <td>a.</td> <td>Gross receipts</td> <td>\$</td> </tr> <tr> <td>b.</td> <td>Ordinary and necessary operating expenses</td> <td>\$</td> </tr> <tr> <td>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										
5	Interest, dividends, and royalties.	\$	\$									
6	Pension and retirement income.	\$	\$									
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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8	<p>Unemployment compensation. Enter the amount in the appropriate column(s) of Line 8. 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:35%;">Unemployment compensation claimed to be a benefit under the Social Security Act</td> <td style="width:20%;">Debtor \$ _____</td> <td style="width:20%;">Spouse \$ _____</td> <td style="width:10%;"></td> <td style="width:15%;"></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 \$ _____									
9	<p>Income from all other sources. Specify source and amount. If necessary, list additional sources on a separate page. Total and enter on Line 9. Do not include alimony or separate maintenance payments paid by your spouse, 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%;">a.</td> <td style="width:60%;">child support</td> <td style="width:10%;">\$</td> <td style="width:25%; text-align:right;">250.00</td> </tr> <tr> <td>b.</td> <td>See Continuation Sheet</td> <td>\$</td> <td style="text-align:right;">700.00</td> </tr> </table>	a.	child support	\$	250.00	b.	See Continuation Sheet	\$	700.00	\$ 950.00	\$
a.	child support	\$	250.00								
b.	See Continuation Sheet	\$	700.00								
10	<p>Subtotal. Add Lines 2 thru 9 in Column A, and, if Column B is completed, add Lines 2 through 9 in Column B. Enter the total(s).</p>	\$ 4,283.33	\$ 8,333.00								
11	<p>Total. If Column B has been completed, add Line 10, Column A to Line 10, Column B, and enter the total. If Column B has not been completed, enter the amount from Line 10, Column A.</p>	\$ 12,616.33									

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

12	<p>Enter the amount from Line 11.</p>		\$ 12,616.33												
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 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. Otherwise, enter zero.</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:5%;">a.</td> <td style="width:65%;"></td> <td style="width:10%;">\$</td> <td style="width:20%;"></td> </tr> <tr> <td>b.</td> <td></td> <td>\$</td> <td></td> </tr> <tr> <td>c.</td> <td></td> <td>\$</td> <td></td> </tr> </table> <p>Total and enter on Line 13.</p>	a.		\$		b.		\$		c.		\$		\$ 0.00	\$
a.		\$													
b.		\$													
c.		\$													
14	<p>Subtract Line 13 from Line 12 and enter the result.</p>	\$ 12,616.33	\$												
15	<p>Annualized current monthly income for § 1325(b)(4). Multiply the amount from Line 14 by the number 12 and enter the result.</p>	\$ 151,395.96	\$												
16	<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: <u>Colorado</u> b. Enter debtor's household size: <u>5</u></p>	\$ 82,887.00	\$												
17	<p>Application of § 1325(b)(4). Check the applicable box and proceed as directed.</p> <p><input type="checkbox"/> The amount on Line 15 is less than the amount on Line 16. Check the box for "The applicable commitment period is 3 years" at the top of page 1 of this statement and continue with this statement.</p> <p><input checked="" type="checkbox"/> The amount on Line 15 is not less than the amount on Line 16. Check the box for "The applicable commitment period is 5 years" at the top of page 1 of this statement and continue with this statement.</p>														

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

18	<p>Enter the amount from Line 11.</p>		\$ 12,616.33
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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> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:5%; text-align:center;">a.</td> <td style="width:70%;">Paycheck deductions, taxes, HOIK</td> <td style="width:10%; text-align:right;">\$</td> <td style="width:15%; text-align:right;">4,466.00</td> </tr> <tr> <td style="text-align:center;">b.</td> <td>Health ins, mort</td> <td style="text-align:right;">\$</td> <td></td> </tr> <tr> <td style="text-align:center;">c.</td> <td>Car loan - cc debt</td> <td style="text-align:right;">\$</td> <td></td> </tr> </table> <p>Total and enter on Line 19.</p>	a.	Paycheck deductions, taxes, HOIK	\$	4,466.00	b.	Health ins, mort	\$		c.	Car loan - cc debt	\$		\$ 4,466.00													
a.	Paycheck deductions, taxes, HOIK	\$	4,466.00																								
b.	Health ins, mort	\$																									
c.	Car loan - cc debt	\$																									
20	Current monthly income for § 1325(b)(3). Subtract Line 19 from Line 18 and enter the result.	\$ 8,150.33																									
21	Annualized current monthly income for § 1325(b)(3). Multiply the amount from Line 20 by the number 12 and enter the result.	\$ 97,803.96																									
22	Applicable median family income. Enter the amount from Line 16.	\$ 82,887.00																									
23	<p>Application of § 1325(b)(3). Check the applicable box and proceed as directed.</p> <p><input checked="" type="checkbox"/> The amount on Line 21 is more than the amount on Line 22. Check the box for "Disposable income is determined under § 1325(b)(3)" at the top of page 1 of this statement and complete the remaining parts of this statement.</p> <p><input type="checkbox"/> The amount on Line 21 is not more than the amount on Line 22. Check the box for "Disposable income is not determined under § 1325(b)(3)" at the top of page 1 of this statement and complete Part VII of this statement. Do not complete Parts IV, V, or VI.</p>																										
Part IV. CALCULATION OF DEDUCTIONS ALLOWED UNDER § 707(b)(2)																											
Subpart A: Deductions under Standards of the Internal Revenue Service (IRS)																											
24A	National Standards: food, apparel and services, housekeeping supplies, personal care, and miscellaneous. Enter in Line 24A the "Total" amount from IRS National Standards for Allowable Living Expenses for the applicable household size. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)	\$ 1,632.00																									
24B	<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 16b.) 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 24B.</p> <table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th colspan="3">Household members under 65 years of age</th> <th colspan="3">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:70%;">Allowance per member</td> <td style="width:10%; text-align:right;">57.00</td> <td style="width:5%; text-align:center;">a2.</td> <td style="width:70%;">Allowance per member</td> <td style="width:10%; text-align:right;">144.00</td> </tr> <tr> <td style="text-align:center;">b1.</td> <td>Number of members</td> <td style="text-align:right;">5</td> <td style="text-align:center;">b2.</td> <td>Number of members</td> <td style="text-align:right;">0</td> </tr> <tr> <td style="text-align:center;">c1.</td> <td>Subtotal</td> <td style="text-align:right;">285.00</td> <td style="text-align:center;">c2.</td> <td>Subtotal</td> <td style="text-align:right;">0.00</td> </tr> </tbody> </table>		Household members under 65 years of age			Household members 65 years of age or older			a1.	Allowance per member	57.00	a2.	Allowance per member	144.00	b1.	Number of members	5	b2.	Number of members	0	c1.	Subtotal	285.00	c2.	Subtotal	0.00	\$ 285.00
Household members under 65 years of age			Household members 65 years of age or older																								
a1.	Allowance per member	57.00	a2.	Allowance per member	144.00																						
b1.	Number of members	5	b2.	Number of members	0																						
c1.	Subtotal	285.00	c2.	Subtotal	0.00																						
25A	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.)	\$ 441.00																									

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25B	<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 47; subtract Line b from Line a and enter the result in Line 25B. 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: 60%;">IRS Housing and Utilities Standards; mortgage/rental expense</td> <td style="width: 10%;">\$</td> <td style="width: 25%; text-align: right;">1,354.00</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 47</td> <td>\$</td> <td></td> </tr> <tr> <td style="text-align: center;">c.</td> <td>Net mortgage/rental expense</td> <td></td> <td>Subtract Line b from Line a</td> </tr> </table>	a.	IRS Housing and Utilities Standards; mortgage/rental expense	\$	1,354.00	b.	Average Monthly Payment for any debts secured by your home, if any, as stated in Line 47	\$		c.	Net mortgage/rental expense		Subtract Line b from Line a	\$ 1,354.00
a.	IRS Housing and Utilities Standards; mortgage/rental expense	\$	1,354.00											
b.	Average Monthly Payment for any debts secured by your home, if any, as stated in Line 47	\$												
c.	Net mortgage/rental expense		Subtract Line b from Line a											
26	<p>Local Standards: housing and utilities; adjustment. If you contend that the process set out in Lines 25A and 25B 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>	\$												
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.</p> <p><input type="checkbox"/> 0 <input type="checkbox"/> 1 <input checked="" 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>	\$ 422.00												
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.)</p> <p><input type="checkbox"/> 1 <input checked="" 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: 60%;">IRS Transportation Standards, Ownership Costs</td> <td style="width: 10%;">\$</td> <td style="width: 25%; text-align: right;">489.00</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>\$</td> <td style="text-align: right;">320.00</td> </tr> <tr> <td style="text-align: center;">c.</td> <td>Net ownership/lease expense for Vehicle 1</td> <td></td> <td>Subtract Line b from Line a</td> </tr> </table>	a.	IRS Transportation Standards, Ownership Costs	\$	489.00	b.	Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 47	\$	320.00	c.	Net ownership/lease expense for Vehicle 1		Subtract Line b from Line a	\$ 169.00
a.	IRS Transportation Standards, Ownership Costs	\$	489.00											
b.	Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 47	\$	320.00											
c.	Net ownership/lease expense for Vehicle 1		Subtract Line b from Line a											

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29	<p>Local Standards: transportation ownership/lease expense; Vehicle 2. Complete this Line only if you checked the "2 or more" Box in Line 28.</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 47; subtract Line b from Line a and enter the result in Line 29. Do not enter an amount less than zero.</p> <table border="1" data-bbox="183 367 1300 546"> <tr> <td data-bbox="183 367 231 409">a.</td> <td data-bbox="231 367 965 409">IRS Transportation Standards, Ownership Costs</td> <td data-bbox="965 367 1300 409">\$ 489.00</td> </tr> <tr> <td data-bbox="183 409 231 493">b.</td> <td data-bbox="231 409 965 493">Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 47</td> <td data-bbox="965 409 1300 493">\$</td> </tr> <tr> <td data-bbox="183 493 231 546">c.</td> <td data-bbox="231 493 965 546">Net ownership/lease expense for Vehicle 2</td> <td data-bbox="965 493 1300 546">Subtract Line b from Line a</td> </tr> </table>	a.	IRS Transportation Standards, Ownership Costs	\$ 489.00	b.	Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 47	\$	c.	Net ownership/lease expense for Vehicle 2	Subtract Line b from Line a	\$ 489.00
a.	IRS Transportation Standards, Ownership Costs	\$ 489.00									
b.	Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 47	\$									
c.	Net ownership/lease expense for Vehicle 2	Subtract Line b from Line a									
30	<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>	\$ 390.00									
31	<p>Other Necessary Expenses: involuntary deductions for employment. Enter the total average monthly deductions that are required for your employment, such as mandatory retirement contributions, union dues, and uniform costs. Do not include discretionary amounts, such as voluntary 401(k) contributions.</p>	\$									
32	<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>	\$ 15.00									
33	<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 49.</p>	\$ 50.00									
34	<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>	\$									
35	<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>	\$									
36	<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 24B. Do not include payments for health insurance or health savings accounts listed in Line 39.</p>	\$ 200.00									
37	<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>	\$ 120.00									
38	<p>Total Expenses Allowed under IRS Standards. Enter the total of Lines 24 through 37.</p>	\$ 5,567.00									

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Subpart B: Additional Expense Deductions under § 707(b)
Note: Do not include any expenses that you have listed in Lines 24-37

39	<p>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.</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:5%; text-align:center;">a.</td> <td style="width:75%;">Health Insurance</td> <td style="width:20%; text-align:right;">\$ 250.00</td> </tr> <tr> <td style="text-align:center;">b.</td> <td>Disability Insurance</td> <td style="text-align:right;">\$</td> </tr> <tr> <td style="text-align:center;">c.</td> <td>Health Savings Account</td> <td style="text-align:right;">\$</td> </tr> </table> <p>Total and enter on Line 39</p> <p>If you do not actually expend this total amount, state your actual total average monthly expenditures in the space below:</p> <p>\$ _____</p>	a.	Health Insurance	\$ 250.00	b.	Disability Insurance	\$	c.	Health Savings Account	\$	\$ 250.00
a.	Health Insurance	\$ 250.00									
b.	Disability Insurance	\$									
c.	Health Savings Account	\$									
40	<p>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. Do not include payments listed in Line 34.</p>	\$									
41	<p>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.</p>	\$									
42	<p>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.</p>	\$									
43	<p>Education expenses for dependent children under 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.</p>	\$ 137.50									
44	<p>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.</p>	\$									
45	<p>Charitable contributions. Enter the amount reasonably necessary for you to expend each month on charitable contributions in the form of cash or financial instruments to a charitable organization as defined in 26 U.S.C. § 170(c)(1)-(2). Do not include any amount in excess of 15% of your gross monthly income.</p>	\$ 325.00									
46	<p>Total Additional Expense Deductions under § 707(b). Enter the total of Lines 39 through 45.</p>	\$ 712.50									

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Subpart C: Deductions for Debt Payment

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.	IRS	IRS	\$ 83.33	<input type="checkbox"/> yes <input checked="" type="checkbox"/> no
b.	Ford	Automobile (1)	\$ 320.00	<input type="checkbox"/> yes <input checked="" type="checkbox"/> no
c.	See Continuation Sheet		\$ 380.00	<input type="checkbox"/> yes <input type="checkbox"/> no
			Total: Add lines a, b and c.	

\$ 783.33

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.

\$

49 **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 33.**

\$

50 **Chapter 13 administrative expenses.** Multiply the amount in Line a by the amount in Line b, and enter the resulting administrative expense.

a.	Projected average monthly Chapter 13 plan payment.	\$ 697.50
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 6.0%
c.	Average monthly administrative expense of Chapter 13 case	Total: Multiply Lines a and b

\$ 41.85

51 **Total Deductions for Debt Payment.** Enter the total of Lines 47 through 50.

\$ 825.18

Subpart D: Total Deductions from Income

52 **Total of all deductions from income.** Enter the total of Lines 38, 46, and 51.

\$ 7,104.68

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

53	Total current monthly income. Enter the amount from Line 20.	\$	8,150.33															
54	Support income. Enter the monthly average of any child support payments, foster care payments, or disability payments for a dependent child, reported in Part I, that you received in accordance with applicable nonbankruptcy law, to the extent reasonably necessary to be expended for such child.	\$																
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).	\$	390.00															
56	Total of all deductions allowed under § 707(b)(2). Enter the amount from Line 52.	\$	7,104.68															
57	<p>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.</p> <table border="1"> <thead> <tr> <th></th> <th>Nature of special circumstances</th> <th>Amount of expense</th> </tr> </thead> <tbody> <tr> <td>a.</td> <td></td> <td>\$</td> </tr> <tr> <td>b.</td> <td></td> <td>\$</td> </tr> <tr> <td>c.</td> <td></td> <td>\$</td> </tr> <tr> <td colspan="2" style="text-align: right;">Total: Add Lines a, b, and c</td> <td>\$</td> </tr> </tbody> </table>				Nature of special circumstances	Amount of expense	a.		\$	b.		\$	c.		\$	Total: Add Lines a, b, and c		\$
	Nature of special circumstances	Amount of expense																
a.		\$																
b.		\$																
c.		\$																
Total: Add Lines a, b, and c		\$																
58	Total adjustments to determine disposable income. Add the amounts on Lines 54, 55, 56, and 57 and enter the result.	\$	7,494.68															
59	Monthly Disposable Income Under § 1325(b)(2). Subtract Line 58 from Line 53 and enter the result.	\$	655.65															

Part VI. ADDITIONAL EXPENSE CLAIMS

60	<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"> <thead> <tr> <th></th> <th>Expense Description</th> <th>Monthly Amount</th> </tr> </thead> <tbody> <tr> <td>a.</td> <td>additional veh expense</td> <td>\$ 300.00</td> </tr> <tr> <td>b.</td> <td></td> <td>\$</td> </tr> <tr> <td>c.</td> <td></td> <td>\$</td> </tr> <tr> <td colspan="2" style="text-align: right;">Total: Add Lines a, b and c</td> <td>\$ 300.00</td> </tr> </tbody> </table>				Expense Description	Monthly Amount	a.	additional veh expense	\$ 300.00	b.		\$	c.		\$	Total: Add Lines a, b and c		\$ 300.00
	Expense Description	Monthly Amount																
a.	additional veh expense	\$ 300.00																
b.		\$																
c.		\$																
Total: Add Lines a, b and c		\$ 300.00																

Part VII. VERIFICATION

61	<p>I declare under penalty of perjury that the information provided in this statement is true and correct. <i>(If this a joint case, both debtors must sign.)</i></p>		
	Date: <u>October 28, 2008</u>	Signature: <u>/s/ Deanna Brady</u>	(Debtor)
	Date: _____	Signature: _____	(Joint Debtor, if any)

CHAPTER 13 STATEMENT OF CURRENT MONTHLY INCOME
Continuation Sheet - Income from all other sources

Source	Amount
child support	200.00
debtors son	500.00

CHAPTER 13 STATEMENT OF CURRENT MONTHLY INCOME
Continuation Sheet - Future payments on secured claims

Name of Creditor	Property Securing the Debt	60-month Average Pmt	Does payment include taxes or insurance?
Bayliner	boat	250.00	No
Fidelity	Fidelity	130.00	No

TOPICS FOR ABI CONFERENCE

KNOCKED INTO A COCKED HAT-MEANS TEST UNRESOLVED ISSUES AND CASE
LAW UPDATE
BY : LORETTA A BURNETT

A. CURRENT MONTHLY INCOME-WHAT IS IT?

B. HOUSEHOLD SIZE FOR PURPOSES OF THE B-22

A.

CURRENT MONTHLY INCOME-WHAT IS IT?

Currently monthly income is defined as average monthly income from all sources that the debtor receives in the six months prior to the filing of the case. 11 U.S.C. 101(10A).

Blacks Law Dictionary defines income as ‘the return from money from one’s business, labor or capital invested- gains, profits , salary, wages etc.’

In *In Re Hedge*, 394 B.R. 463 (S.D. Indiana 2008), the court held that Veteran’s Administration benefits do not come within the exclusion of current monthly income. The *Hedge* Court citing *In Re Waters*, 384 B.R. 432, 437 (N.D.W.Va. 2008), expanded on the statutory exclusions to include seven other exceptions to disposable income: (1) not income to the debtor (2) not paid by a defined entity (3) not received on a regular basis (4) not received for the household expenses of the debtor or the debtors dependents (5) Social security Act payments (6) payments to victims of war crimes, or crimes against humanity & (7) payments to victims of terrorism.

The third provision in the *Waters* case raises interesting issues. Is a one time gift and or sale proceeds of an asset prior to filing regular income & if not should the monies from these items be reflected in the B-22 at all? Are distributions from a retirement fund considered income?

The Court in *In Re Marti*, 393 B.R. 697 (D.Neb. 2008) found that voluntary withdraws from a retirement account were not income. This situation however may be the reverse if the retirement account is cashed out rather than just a loan against the account.

In *In Re Schaefer*, 2008 WL 3346583 (E.D. Wis) the Court did not allow a bonus received during the 6 month period pre-filing, to be prorated over 12 months to better adequately reflect a debtors income. The Court emphasized that income is income for the purposes of the B-22 when it is received versus earned. This analyses may also hold true for a Debtor who receives sporadic overtime pay.

The Illinois Court rejected the argument by the Trustee that as a matter of law all income of a non-filing spouse must be included when calculating a debtors income. *In re Sharp*, 394 B.R. 207 (C.D. Ill 2008). *See also In Re Shahan*, 367 B.R. 732 (D. Kan 2007). In *Sharp*, the Court went on to state that even if a non-filing spouse has excess income after paying all of her bills, that the income is hers & does not become disposable income.

The *Sharp* Court agrees with the 9th Circuit in *In Re Wiegand*, 386 B.R. 238 (9th Cir BAP 2008), that business expense deductions are to be taken after the current monthly income calculation. This decision has rejected the official forms that allow the deduction prior to the calculation.

For a more in depth analyses on earnings see “earnings” at

<http://www.census.gov/population/www/cps/cpsdef.html>.

B.

HOUSEHOLD SIZE FOR THE PURPOSES OF THE B-22

The Bankruptcy Code does not define what is a household. The medium family income is reported by the Bureau of Census. The calculation of income utilizes the Census Bureau's definition of household defined as "all of the people related and unrelated who occupy a housing unit." US Census Bureau, current population survey (2004). Blacks Law Dictionary defines household as "a family living together ... Those who dwell under the same roof and compose a family..."

In recognizing the difference between family size, household size & the number of dependents the Court in *In Re Plumb*, 373 B.R. 429 (N.D. N.Car. 2008), stated that it would be unfair to require the debtors to list financial contributions to the household expenses in determining the current monthly income and not allow them to take the higher standard for these household members. The *Plumb* Court allowed the inclusion of seven grandchildren & great grandchildren in the calculation, but excluded a fiancé.

Similarly, in *In Re Hays* 2008 WL 1924233 (D.KS. 2008), the debtors had claimed a household of seven which included a 28 year old daughter, 22 year old daughter, a 28 year old fiancé & two grandchildren for which they contributed over 50% support. The daughters both had part time jobs and did not contribute their income to the household. The fiancé was in military training. The Court disallowed the fiancé & the 28 year old & stated that if the 22 year old utilized her income for household expenses of the debtors or their dependents than her income must be included in the B-22 calculation. See *In Re law* 2008 WL 1867971, also out of Kansas where the Court disallowed the adult son on the household determination because of the limited allowed expenses under 11 U.S.C. 707 (b)(2)(A)(ii)(I) unless an exception existed under 11 U.S.C. 707(b)2(A)(ii)(I).

The adult son was minimally employed, not claimed as a dependent on the debtors tax return, but lived in the household. The Court emphasized that the Debtors were above the median and above median debtors can only claim expenses which are allowed under 11 U.S.C. 707 (b)(2)(A) for themselves, dependents and a spouse. The Court stated that household is a term that only applies when ascertaining if a debtor is above or below the median income level, it is not related to the expense side of the equation. Absent special circumstances,(elderly, ill, disabled or unable to pay for ones expenses), adult household members are frequently disallowed by the courts. See *In Re O'Connor*, 2008 WL 4516374.

A number of courts take a very conservative approach & follow the reasoning that the number of persons allowed under the national standards should be the same as the number of dependents on a tax return. For further discussion on this approach see *In Re Ellringer* 370 B.R. 905 (D. Minn. 2007). See also *In Re Featherston* 2007 WL 2898705 (D. Mont. 2007) where the Court disallowed the debtors to claim a dependent son when they failed to claim him as a dependent to

qualify for government benefits.

The Court in *In Re Jewell*, 365 B.R. 796 (S.D. Ohio 2007) took a more liberal approach when allowing the Debtors to claim in their household their adult daughter and her three children who lived with them and for whom the debtors provided substantial support. The daughter was unable to contribute to the household any income earned after paying her other expenses. There was no evidence that the living situation was just temporary. The Form 22C included the daughters income and a food stamp allowance. The Court found that the Internal Revenue Manuel was not determinative of the household size for purposes of the B-22A. The Court also determined that the burden of proof was on the US Trustee to refute the inclusion of the daughter and her children. Interestingly, in this case the debtors adult son who worked full time and did not receive regular assistance from the debtors was excluded (by the debtors) from the household count as was his income from the B-22. The court did not rule on the household issue but stated in dicta, even if included, the debtors would not be required to include his income in the calculation of current monthly income.

Whether separate households constitute special circumstances under the means test is yet another issue debtors counsel is asked to frequently address. The Court in *In Re Crego*, 387 B.R. 225 (E.D. Wis. 2008), ruled that a marital separation constituted a special circumstance justifying additional expenses and downward adjustment of disposable income. See also *In Re Graham*, 363 B.R. 844 (Bank. S.D. Ohio 2007) where the court addressed two separate households between spouses due to employment issues.

Consumer Workshop I: Knocked into a Cocked Hat – Means Test Unresolved Issues and Case Law Update

I. Projected Disposable Income

- A. *In re Lanning*, 2008 WL 4879134 (10th Cir. Nov. 13, 2008) – Chapter 13 trustee objected to confirmation of a plan proposed by an above-median-income debtor. Trustee argued that §1325(b)(1)(B) provides a rigid formula for determining projected disposable income that is based on the debtor’s historical income calculated on Form B22C. During the six months prior to the debtor’s filing for chapter 13 relief, she received a buy-out from her employer that resulted in a “bump” to her income, but then she was terminated. Debtor argued that her “projected disposable income” pursuant to 11 U.S.C. §1325(b)(1)(B) should be allowed to deviate from her “current disposable income” on Form B22C. The bankruptcy court rejected the “mechanical approach” and adopted the “forward-looking approach,” which permits the amount of projected disposable income to be rebutted upon a showing of special circumstances at the time of plan confirmation. The Trustee appealed. The Tenth Circuit BAP affirmed, and the Trustee appealed again. The Tenth Circuit Court of Appeals, in affirming the BAP decision, held that “as to the income side of the §1325(b)(1)(B) inquiry, the starting point for calculating a chapter 13 debtor’s ‘projected disposable income’ is presumed to be the debtor’s ‘current monthly income’ as defined in §101(10A)(A)(I), subject to a showing of a substantial change in circumstances.” Like the bankruptcy court and the BAP, the Court of Appeals adopted the “forward looking approach,” which the Court noted was supported by Congressional intent and Form B22C.
- B. *In re Kaganveama*, 541 F.3d 868 (9th Cir. 2008) – Chapter 13 trustee objected to confirmation of a 36-month plan proposed by an above-median-income debtor on the grounds that (1) debtor was not devoting all of her “projected disposable income” to payment of unsecured creditors, and (2) the debtor could not propose a plan whose duration was less than 60 months. The bankruptcy court overruled trustee’s objections and confirmed the debtor’s plan, and certified the case for direct appeal to the Ninth Circuit Court of Appeals. The Court of Appeals, held that term “projected disposable income” is not a free-standing concept that can be divorced from statutory definition of “disposable income” that immediately follows, nor is it a forward-looking concept that simply uses debtor’s “disposable income” as a presumption or a starting point, but is simply the debtor’s “disposable income,” calculated based on an average of what he/she earned over the six months preceding petition date, projected over his/her applicable commitment period. The Court further noted that the term “applicable commitment period” is a temporal concept and not merely a multiplier; but the debtor who had no “projected disposable income” also had no “applicable commitment period,” and anything that she proposed to pay out of her discretionary income could be paid out over a period of less than 60 months without violating the “applicable commitment period” requirement.

- C. *In re Kibbe*, 342 B.R. 411 (Bankr. D.N.H. 2006) – The Court was faced with a debtor who had no disposable income under the BAPCPA, and, therefore, asserted that she had no projected disposable income under §1325(b)(1)(B) to commit to unsecured creditors. The Court disagreed with the debtor’s interpretation of “projected disposable income,” finding that it was based upon the debtor’s current income and expenses pursuant to Schedules I and J. Thus, even though the debtor had zero disposable income under the new calculation method, i.e. Form B22C, the court found that she had projected disposable income to contribute to her unsecured creditors. In reaching this ruling, the court explained that when the debtor’s current monthly income (“CMI”) is less than the applicable median family income, projected disposable income is based on Schedules I and J not on Form B22C. “Although Congress defines the term disposable income in section 1325(b)(2) with reference to current monthly income (an average of a debtor’s income for the six months prior to bankruptcy), Congress uses the term ‘projected disposable income’ in section 1325(b)(1)(B). Congress did not change section 1325(b)(1)(B)’s requirement that all ‘projected disposable income’ must be paid to unsecured creditors Recognizing that the term ‘projected disposable income’ is forward-looking, the Court agrees with the conclusion that ‘projected disposable income’ must be based upon the debtor’s anticipated income during the term of the plan, not merely an average of her prepetition income. . . . To conclude otherwise would invite ‘anomalous results’ when a debtor has had a change of circumstances during the six months immediately prepetition.” *Id.* at 414.
- D. *In re Alexander*, 344 B.R. 742 (Bankr. E.D.N.C. 2006) – In this consolidated case, the court was asked to determine the amount of disposable income that must be contributed to unsecured creditors by above-median and a below-median debtors. The court held that an above-median debtor calculates her disposable income using CMI from Part I of Form B22C and expense deductions allowed by §707(b)(2) in the remainder of Form B22C. To arrive at a disposable income figure for a below-median debtor, one takes the debtor’s CMI from Part I of Form B22C and subtracts the total monthly expenses from Schedule J. “While there is rigidity in arriving at the disposable income figure for the above-median debtor, the court has more flexibility in determining whether the expenses of the below-median income debtor are reasonably necessary [R]esults seem to differ based upon individualized circumstances regarding whether a below-median income debtor has more disposable income under the old or new law. However, for . . . above-median debtors, the debtors uniformly have less disposable income using the new calculation method. . . . Perhaps Congress, in an effort to make higher income-debtors pay more to their unsecured creditors, unwittingly reached the opposite result. . . . [T]his court will not override the definition and process for calculating disposable income under §1325(b)(2)-(3) as being absurd simply because it leads to results that are not aligned with the old law. . . . *In re Hardacre* and its progeny appear to view ‘projected disposable income’ as a term separate and apart from the new definition of ‘disposable income.’ . . . This court disagrees. [P]rojected disposable income has been traditionally calculated in

conjunction with the definition of disposable income. . . . If ‘disposable income’ is not linked to ‘projected disposable income’ then it is just a floating definition with no apparent purpose.” *Id.* at 746-52.

II. Applicable Commitment Period

A. *How and when is the applicable commitment period determined?*

1. *In re Fleishman*, 372 B.R. 64, 70-74 (Bankr. D. Or. 2007) – Applicable commitment period is determined as of the effective date of the plan; unborn child on the effective date of the plan is not counted toward household size. Debtors had CMI of \$61,945. Oregon median family income for household of three was \$55,104. Oregon median family income for household of four was \$63,946. Chapter 13 case was filed in February 2007. Debtors were expecting a child on or about June 27, 2007. Confirmation hearing took place on June 7, 2007. “Applicable commitment period is determined ‘as of the effective date of the plan.’ . . . [A]t the time of the hearing on the Trustee’s objections to the Plan, the Debtors had a household of three . . . not appropriately including the Debtors’ unborn child.”
2. *In re Anderson*, 367 B.R. 727 (Bankr. D. Kan. 2007) – Household size is determined as of the effective date of the plan; court therefore may consider post-petition changes in the household size as it affects CMI and the determination of the applicable commitment period.
3. *In re Moore*, 367 B.R. 721 (Bankr. D. Kan. 2007) – Applicable commitment period calculation is based on CMI and does not change notwithstanding that the debtor lost his job after petition; adjustment to CMI and to disposable income may be necessary consistent with §707(b)(2)(B).

B. *Does the requirement that the debtor commit “projected disposable income” for the “applicable commitment period” impose a temporal or a monetary requirement?*

1. *In re Hylton*, 374 B.R. 587 (Bankr. S.D. Ill. 2007) – The court disagreed with the reasoning of the majority of courts, which have concluded that the applicable commitment period is a temporal requirement. “The plain language of section 1325(b)(4)(A) requires the Debtors to propose a sixty month plan.” *Id.* at 587-88.
2. *In re Kidd*, 374 B.R. 277, 279-81 (Bankr. D. Kan. 2007) – Applicable commitment period in §1325(b)(4) prohibits confirmation of a plan that

would allow the debtor to cash out sooner than three-years or five-years required. “The idea of early payoff of a Chapter 13 plan is not new . . . Congress appears to have put an end to this form of bankruptcy planning under BAPCPA by amending §1325(b)(1)(B) to require that a plan must provide that all of the debtor’s projected disposable income to be received in the applicable commitment period . . . be applied to make payments under the plan. . . . The price that Congress placed on admission into Chapter 13 is to tie the debtor to a plan for a definite period of time, which period is clearly defined in §1325(b)(4) as either 3 or 5 years, depending on the debtor’s income.”

3. *In re Fredrickson*, 368 B.R. 825, 829-31 (Bankr. E.D. Ark. 2007), *aff’d* 375 B.R. 829 (8th Cir. B.A.P. 2007) – Agreeing with *In re Alexander*, 344 B.R. 742 (Bankr. E.D.N.C. 2006), that the applicable commitment period is a temporal requirement for confirmation but the debtor with CMI greater than the applicable median family income who has no projected disposable income can confirm a 48-month plan that pays unsecured creditors more than otherwise required by §1325(b).
4. *In re Fuger*, 347 B.R. 94 (Bankr. D. Utah 2006) – Applicable commitment period is both temporal and monetary – it is temporal because it is the period of time during which projected disposable income is calculated, and it is monetary because applicable commitment period multiplied by disposable income determines the amount that unsecured creditors must be paid.
5. *In re Alexander*, 344 B.R. 742 (Bankr. E.D.N.C. 2006) – Applicable commitment period is a period of time not just a multiplier; when a debtor has no disposable income, there is no use for an applicable commitment period.

MEANS TESTING ISSUES

CALCULATION OF DEDUCTIONS

IRS NATIONAL & LOCAL STANDARDS

Prepared for:
American Bankruptcy Institute 14th Annual
Rocky Mountain Bankruptcy Conference

Prepared by:
Mark R. Stewart,
Attorney at Law
Standing Chapter 13 Trustee
P.O. Box 865
Cheyenne, WY 82003

Part IV: Calculation of Deductions under Standards of the Internal Revenue Service

IRS National and Local Standards

I. What are the IRS Standards ?

Recommended reading:

The Administrative Law of Borrowed Regulations: Legal Questions Regarding the Bankruptcy Law's Incorporation of IRS Standards, Norton Bankruptcy Law Advisor, January 2008, Issue No. 1

Reviews case law which has addressed the level of deference administrative rules and regulations are entitled to receive from courts.

Case law:

Skidmore v. Swift, 323 U.S. 134, 140 (1944).

Headrick v. Rockwell International Corp.
24 F.3d 1272, (10th Cir 1994)

Southern Ute Tribe v. Amoco Production Co.
119 F.3d 816, 830-36 (10th Cir. 1997) rev'd,
526 U.S. 865 (1999)

United States v. Mead Corp., 533 U.S. 218, (2001)

Generally: Where Congress delegates the authority to implement regulations that are to have the force of law, regulations adopted pursuant to that authority are entitled to “strong deference”. Normally pursuant to APA notice and comment rule making process.

Interpretive Rules, an agency’s interpretation of it’s own regulations is “controlling, unless plainly erroneous or inconsistent with the regulation.”

Policy Statements: Lack the force and effect of law. Probably the same level of deference as an interpretive rule.

What are the IRS Standards? The article does not provide a definitive answer.

II. National Standards

A. Food, apparel and services, housekeeping supplies, personal care, and miscellaneous. (line 24A of B22C)¹

Subject to an adjustment of up to 5% of the food and clothing categories if demonstrated to be “reasonable and necessary”. §707(b)(2)(A)(ii)

In re Devilliers, 358 B.R. 849, 863 (Bankr. E.D. La. 2007)

¹All references to lines numbers are to the Statement of Current Monthly Income, (Official Form B22C)(Chapter 13) (01/08)

Standard deductions are presumed reasonable, but may be challenged by a trustee under §1329 modification process if expenses are not reasonable for a sustained period of time.

In re Napier, 2006 WL 418358, at 1-2 (Bankr. D.S.C. 2006) Only debtors and their dependents can be used in calculating the allowances. Borders who are not dependents can not be used in the calculation.

In re Fuller, 346 B.R. 472 (Bankr. S.D. Ill. 2006) Above median income debtor may only deduct the standardized amounts, and not actual expenses.

In re Tuss, 360 B.R. 684 (Bankr. D. Mont. 2007) Claim for additional food, clothing and personal care expenses for working away from home is not allowed. §707 (b) (2)(A)(ii)(I) is a cap on those kind of expenses. Five per cent (5%) adjustment is the only available allowance, unless the debtor can meet “special circumstances” burden.

B. National Standard: Heath Care (line 24B)

Covers out of pocket medical expenses.

Cap is \$57./ month for household members under 65 and \$144./ month for household members over 65 years.

Still allowed to deduct *actual* out of pocket medical expenses on line 36.

III. Local Standards

A. Housing and utilities, non-mortgage expenses (Line 25A)

Home energy costs subject to adjustment for actual expenses if documented and reasonable and necessary. §707(b)(2)(A)(ii)(V).

B. Housing and utilities; mortgage/ rent expenses

In re Briscoe, 374 B.R. 1 (Bankr. D.D.C. 2007)

Debtor gets to deduct the full amount of the standard allowance, even if actual rent payment is less.

In re Edmondson, 371 B.R. 482 (Bankr. D. N.M. 2007)

Debtor entitled to standard mortgage expense plus the deduction allowed for secured debt payments (line 47).

In re Morgan, 374 B.R. 353, 356-59 (Bankr. S.D. Fla. 2007)

Debtor entitled to rent/mortgage expense even if not paying. Adopts reasoning of cases which hold that “applicable monthly expenses” means amounts stated in the IRS standards without reference to actual expenses.

In re Rezendes, 368 B.R. 55 (Bankr. D. Haw. 2007)

Debtor gets lesser of the IRS Standard amount or actual cost of housing. Relies on IRS Manual to support holding that Local Standards are caps.

In re Meek, 370 B.R. 294 (Bankr. D. Id.2007) Above median debtor gets the net of Local Standard for housing

and monthly mortgage payment. If mortgage payment exceeds the Local Standard amount, the amount on line 25 B will be zero. The Debtor deducts the secured debt payment amount on line 47

C. Utilities Adjustment (line 26)

§707(b)(2)(A)(ii)(V) allows if documented and reasonable and necessary.

D. Vehicle Operation/ public transportation expense

E. Transportation ownership/ lease expense

In re Pearson, 390 B.R. 706 (10th Cir. BAP 2008)
Debtor entitled to standard ownership expense for

vehicle even if it is not encumbered by loan or lease.

In re Ransom, 380 B.R. 799 (9th Cir. BAP 2007) limited ownership expense to vehicles that were encumbered by loan or lease

In re Wilson, 383 B.R. 729 (8th Cir. BAP 2008) A vehicle ownership expense is only applicable if a debtor is incurring that expense.

**DEMONSTRATING SPECIAL CIRCUMSTANCES
PURSUANT TO 11 U.S.C. §707(b)(2)(B)(i)**

**Prepared for: American Bankruptcy Institute
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ADDITIONAL EXPENSE ALLOWANCES FOR “SPECIAL CIRCUMSTANCES PURSUANT TO 11 U.S.C. § 707(b)(2)(B)(i)

I. Section 707 (b)(2)(B)(i) In any proceeding brought under this subsection, the presumption of abuse may only be rebutted by demonstrating special circumstances, such as a serious medical condition, or a call or order to active duty in the Armed Forces, to the extent such special circumstances that justify additional expenses or adjustments of current monthly income for which there is no reasonable alternative.

(ii) In order to establish special circumstances, the debtor shall be required to itemize each additional expense or adjustment of income and to provide-

- (I) documentation for such expense or adjustment to income; and
- (II) a detailed explanation of the special circumstance that make such expenses or adjustment to income necessary and reasonable.

§1325 (b)(3) incorporates §707(b)(2)(B) into the calculation of “disposable income”

II. Rebutting the Presumption of Abuse Under §707(b)(2)(B)

In re Parulan, 387 B.R. 168 (E.D. Va. 2008)

§707(b)(2)(B) has both procedural and substantive requirements

1.

Procedural burden:

1. itemization of additional expenses or adjustments;
2. documentation;
3. detailed explanation of special circumstances;
4. oral testimony under oath as to accuracy of information.

Substantive burden:

1. “Such as” does not limit the special circumstances to serious medical condition or call the active duty.
2. Bar is extremely high, placing off limits for most debtors. (But see Judge Lundin’s Chapter 13 treatise §487.1 for contrary view);
3. Uncommon, unusual, exceptional, distinct, peculiar additional or extra conditions or facts;
4. Determined on a case-by-case basis

Examples:

Special circumstances found:

Lanning, ____ F.3d _____, 10th Cir. 2008; (slip; op. No. 08-3009, November 13, 2008)

Starting point for calculation of “projected disposable income” is presumed to be debtor’s CMI. Presumption may be rebutted by showing a “substantial change in circumstances”.

Lanning does not address the process for establishing “special circumstances” provided for in §707(b)(2)(B)(i).

Are these different procedures to reach the same objective, to determine a debtors ability to pay during the term of the plan?

In re Crego, 2008 WL 942618, at p. 3: expenses related to maintaining separate house holds due to post petition separation and divorce may be a special circumstance.

In re Jones, 2007 WL 389372, at 2, (Bankr. D. Neb, 2007)
One time reimbursement for moving expenses, either is not part of CMI, or is an allowed special circumstance adjustment.

In re Stubbs, 2007 WL 4287579, 4-5, (Bankr. D. Mont. 2007), rent that exceeds Local Standard by \$129

In re Knight, 370 B.R. 429, 434 -36, 437-40 (Bankr. N.D. Ga. 2007) Maintaining payments on a student loan which is non-dischargeable may be a special circumstance. The court found that the payment was non-discriminatory because it had only a minimal effect on the distribution to other unsecured creditors.

In re Moore, 367 B.R. 721, 726-27 (Bankr. D. Kan. 2007)
Post petition loss of employment and move. (See *In re Reis*, 377 B.R. 777, 784-85 (Bankr. D. N.H. 2007) holding that the special circumstances must exist prior to or on the petition date because that is when the presumption of abuse arises).

In re Martin, 371 B.R. 347 (Bankr. C.D. Ill 2007) Found “special circumstances” for post petition birth of child, non-dischargeable student loan, and reduction of income post petition. Did not allow expenses for post petition 401k loan or increased transportation costs.

In re Haman, 366 B.R. 307 (Bankr. Del. 2007) Debtor’s obligation on a non-dischargeable student loan which she co-signed for her son qualified as a “special circumstance”.
Court held that Debtor had no reasonable alternative to repayment of the loan.

Special circumstances not found:

In re Sadler, 378 B.R. 780, 787 (Bankr. E.D. Tex 2007)
Debtors did not support claim for \$880. in additional transportation expense with documentary evidence.

In re Hanks, 362 B.R. 494, 501-02 (Bankr. D. Utah 2007)
Loss of job, support by “credible testimony”, did not reach the level of “special circumstance”. “Reasonable alternatives” included second job or overtime, reducing expenses or getting help from family members.

In re Tuss, 360 B.R. 684, 699-701 (Bankr. D. Mont 2007)
Additional expenses for food, clothing and personal care related to job requiring debtor to be away from his home is not a “special circumstance”.

In re Pageau, 383 B.R. 221 (Bankr. N.H. 2008) holding that a non-dischargeable student loan debt, business and equipment loans, or debts incurred to enter a different vocation, or to increase income, are not “special circumstances” entitled to deduction.

RECENT CASES IN 10th CIRCUIT BANKRUPTCY COURTS ON SUBPARTS C AND D OF THE MEANS TEST

1. Payments on secured claims

A. Several courts held that in a Chapter 7 the debtor can deduct on the means test payments on secured claims even though the debtor intends to surrender the collateral. *In re Hansen*, 378 B.R. 329 (Bankr. W.D. Okla. 2007) (Judge Richard L. Bohanon); *In re Lindstrom*, 381 B.R. 303 (Bankr. D.Colo. 2007) (Judge Elizabeth E. Brown), *In re Makres*, 380 B.R. 30 (Bankr. N.D. Okla. 2007) (Judge Terrence L. Michael).

B. No reported cases were found addressing the comparable issue in Chapter 13.

2. Effect of cram down and strip off on deductibility on 22C

In two cases bankruptcy judges in Kansas came to opposite conclusions. *In re Allen*, 2008 WL 451053 (Bankr.D.Kan. 2008) (Judge Janice Miller Karlin) held that in Chapter 13 debtors are not limited to a deduction of their “crammed down” monthly payment on collateral, and instead may deduct on line 47 of Form 22C the full amount of the pre-bankruptcy contractual payments. On the other hand, in *In re Hoss*, 392 B.R. 463 (Bankr.D.Kan. 2008) (Judge Robert E. Nugent) The court held Chapter 13 debtors cannot deduct the full amount of payments on crammed down motor vehicle. Judge Nugent also held the debtor could not deduct any amount for a stripped off 2nd mortgage.

3. Payments on luxury goods

In re Hays, 2008 WL 1924233 (Bankr.D.Kan. 2008) (Judge Janice Miller Karlin)-In Chapter 13 an above median debtor does not have to show that a secured debt is reasonable or necessary for the support of the debtor or the debtor’s dependents for the payment to be deductible on the means test. Timeshare payments were deductible.

In re Martin, 373 B.R. 731 (Bankr. D. Utah 2007) (Judge William T. Thurman)-Above median debtor could deduct boat payment on 22C form. However, continuing payment on a luxury item was one factor showing a lack of good faith on the part of the debtor.

4. Retirement plan payments

In re Jones, 2008 WL 4447041 (Bankr. D. Kan. 2008) (Judge Dale L. Somers)-In a Chapter 13, debtors commencement of retirement plan contributions after filing petition did not establish lack of good faith.