Means Test: Update 2010

Hon. Eugene R. Wedoff | U.S. Bankruptcy Court (N.D. Ill.)
Chicago

2010 Educational Materials

Projected Disposable Income in the Bankruptcy Kaleidoscope: What *Lanning* Answers and What It Doesn't

I. The Question

A. The question. A basic issue in consumer bankruptcy is the extent to which future income must be paid toward unsecured debts. In Chapter 13, which requires a plan providing for some contribution of future income, the question is a little more specific:

> How much future income must a Chapter 13 debtor pay toward unsecured claims in order to obtain a discharge of those claims?

B. *Lanning* grant of certiorari. The Supreme Court's grant of certiorari in *Hamilton v. Lanning*, No. 08-998 (Nov. 2, 2009), asked a similar, but not identical question: "Whether, in calculating the debtor's 'projected disposable income' during the plan period, the bankruptcy court may consider evidence suggesting that the debtor's income or expenses during that period are likely to be different from her income or expenses during the pre-filing period." The problem with the cert grant is that answering *whether* postpetition changes in the debtor's income and expenses may be considered does not necessarily define *when* and *how* the changes should affect required Chapter 13 payments.

II. Historical Background

A. Statutes before BAPCPA. The United States had no permanent bankruptcy law allowing discharges to individuals until the Bankruptcy Act of 1898. That law required no payment of future income as a condition for discharge. Chapter XIII was introduced as a completely voluntary alternative to "straight" bankruptcy in 1938, and Chapter 13, as enacted in the 1978 Bankruptcy Code, was still a completely voluntary alternative to an immediate discharge under Chapter 7. In 1984, individual consumer debtors could be denied Chapter 7 relief under new § 707(b) of the Code for "substantial abuse," which left Chapter 13, with a three to five year repayment plan, as the only alternative for many debtors.

B. Pre-BAPCPA judicial interpretations

1. Pre-Code. Perhaps the leading decision involving future income under the Bankruptcy Act was *Local Loan Co. v. Hunt*, 292 U.S. 234, 244-45 (1934), which held a wage assignment ineffective against a bankruptcy discharge, with the following observation:

> One of the primary purposes of the Bankruptcy Act is to 'relieve the honest debtor from the weight of oppressive indebtedness, and permit him to start afresh free from the obligations and responsibilities consequent upon business misfortunes.' *Williams v. U.S. Fidelity & Guaranty Co.*, 236 U.S. 549, 554, 555 . This purpose of the act has been again and again emphasized by the courts as being of public as well as private interest, in that it gives to the

> honest but unfortunate debtor who surrenders for distribution the property which he owns at the time of bankruptcy, a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of pre-existing debt.
>
> . . . The new opportunity in life and the clear field for future effort, which it is the purpose of the Bankruptcy Act to afford the emancipated debtor, would be of little value to the wage-earner if he were obliged to face the necessity of devoting the whole or a considerable portion of his earnings for an indefinite time in the future to the payment of indebtedness incurred prior to his bankruptcy.

2. Pre-1984 Code

a. Chapter 7. Before the enactment of § 707(b), there was little case law on the question of whether a debtor's income rendered the debtor ineligible for Chapter 7 relief. The House and Senate committee reports accompanying the Bankruptcy Code rejected the concept that ability to pay debts from future income should disqualify a debtor from Chapter 7 relief. *See* H.R. Rep. No. 595, 95th Cong., 1st Sess. 380 (1977); S. Rep. No. 989, 95th Cong., 2d Sess. 94 (1978). Each report commented on dismissal under the original § 707 as follows: "The section does not contemplate . . . that the ability of the debtor to repay his debts in whole or in part constitutes adequate cause for dismissal. To permit dismissal on that ground would be to enact a non-uniform mandatory chapter 13, in lieu of the remedy of bankruptcy." *Id*.

b. Chapter 13. Although before the enactment of § 707(b), a debtor could obtain a discharge in Chapter 7 without consideration of future income, in Chapter 13, many courts found that a debtor with substantial income could not propose a plan in good faith, as required by § 1325(a)(3). *See, e.g., In re Burrell*, 6 B.R. 360, 366 (N.D. Cal. 1980) ("The courts retain discretion to prevent . . . abuse, and that discretion can be exercised effectively through . . . the good faith requirement of § 1325(a)(3). In each case, the bankruptcy court must consider the debtor's entire circumstances to determine whether his plan proposes to make meaningful payments to unsecured creditors.") The good faith requirement led to a wide range of standards for necessary contributions of future income. *See* Brian G. Smooke, *Section 1325(b) and Zero Payments in Chapter 13*, 4 BANKR. DEV. J. 449, 450-54 (1987) (summarizing the case law).

3. The 1984 legislation

a. Section 707(b). Under the original version of § 707(b), enacted in 1984, courts generally found that debtors substantially abused Chapter 7 if they had sufficient income to pay a significant amount of their unsecured debt. *See United States Trustee v. Harris,* 960 F.2d 74, 76-77 (8th Cir. 1992); *In re Krohn,* 886 F.2d 123, 126-28 (6th Cir. 1989); *In re Kelly,* 841 F.2d 908, 913-15 (9th Cir. 1988). However, courts did not develop any clear guideline about how much debt-paying ability would be significant. *See In re Behlke,* 358 F.3d 429, 438 (6th Cir. 2004) ("[T]here is no 'cutoff' or bright-line test under which an ability to pay a certain percentage over a three-to-five year period would or would not be substantial abuse . . . .").

b. Sections 1325(b) and 1329. The original version of § 1325(b) provided that, with an objection from the trustee or an unsecured creditor, a Chapter 13 plan could not be confirmed unless it provided either for full payment of unsecured claims or else for all of the debtor's "projected disposable income" to be contributed to the plan for a three-year period. Disposable income was defined as "income which is received by the debtor and which is not reasonably necessary to be expended—(A) for the maintenance or support of the debtor or a dependent of the debtor; or (B) if the debtor is engaged in business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business."

• *Good faith no longer controlling.* Many courts saw § 1325(b) as replacing good faith under § 1325(a)(3) as a measure of the extent of plan contributions. *See In re Smith*, 848 F.2d 813, 820 (7th Cir. 1988) ("Since Congress has now dealt with the issue quite specifically in the ability-to-pay provisions, there is no longer any reason for the amount of a debtor's payments to be considered as even a part of the good faith standard."); *Educ. Assistance Corp. v. Zellner,* 827 F.2d 1222, 1224 & 1227 (8th Cir. 1987); *N.J. Lawyers' Fund for Client Prot. v. Goddard (In re Goddard)*, 212 B.R. 233, 237-38 (D. N.J. 1997).

• *Extent of income and expenses subject to conflicting judicial standards.* Under § 1325(b), courts generally used the income and expense information set out on the debtors' bankruptcy schedules (Schedules I and J) to establish disposable income, but the decisions varied as to what receipts constituted income and what expenses were necessary. *See, e.g.*, *In re Quarterman*, 342 B.R. 647, 650 (Bankr. M.D. Fla. 2006) (noting pre-BAPCPA disagreement as to whether the income of a non-filing spouse was part of the debtor's income); *In re New York City Employees' Ret. Sys. v. Sapir (In re Taylor),* 243 F.3d 124 (2d Cir. 2001) (considering whether contributions to a retirement plan are a necessary expense).

• *Treatment of future changes by plan or modification.* Adjustments could be made for future changes that were known at the time of plan confirmation, but uncertain changes were required to be addressed after confirmation, through a motion to modify the plan. *See Anderson v. Satterlee (In re Anderson),* 21 F.3d 355, 358 (9th Cir. 1994); *In re Arnold,* 869 F.2d 240, 243 (4th Cir. 1989).

• *Prepayment as a bar on modification.* Cases were divided as to whether a plan modification remained available after a pre-payment of all of the debtor's plan contributions, since § 1329(a) allows modification only "before the completion of payments." *See Pancurak v. Winnecour (In re Pancurak)*, 316 B.R. 173, 176 (Bankr. W.D. Penn. 2004) (holding that after a lump sum payment of the full amount due under the confirmed plan a postconfirmation modification would not be permitted); *In re Sunahara,* 326 B.R. 768, 781-82 (BAP 9th Cir. 2005) (holding that early payments do not end the plan term, and modification remains available until the plan term ends, but that shortening the term is one way in which a plan may be modified).

• *Disposable income in modified plans.* Cases were also divided on the question of whether modified plans were required to comply with the disposable income mandate of § 1325(b)—for example, *Sunahara,* 326 B.R. at 780, held that § 1325(b) is not incorporated into § 1329, while *In re Keller*, 329 B.R. 697, 701-02 (Bankr. E.D. Cal. 2005) disagreed. However, courts holding § 1325 inapplicable to modified plans filed by a debtor still require meaningful contributions of income, by reapplying the good faith test of § 1325(a)(3). *See In re Fridley*, 380 B.R. 538, 543 (BAP 9th Cir. 2007).

• *Changed circumstances as a requirement for modified plans.* Finally, the cases disagreed about whether a change in the debtor's circumstances was required for modification. *In re Arnold*, 869 F.2d at 243, required a substantial and unanticipated change in circumstances for modification; *In re Witkowski*, 16 F.3d 739 (7th Cir. 1994), did not.

III. How BAPCPA changed the treatment of future income.

A. Three significant provisions

1. The "means test" in § 707(b)(2). The most noted change effected by BAPCPA was the creation of a means test to implement dismissal or conversion of Chapter 7 cases due to the debt-paying ability of the debtor. For debtors with more than the median income for their state, the average income that the debtors received during a specified six-month period—as defined in § 101(10A)—is reduced by only the deductions specified by the Internal Revenue Manual and certain additional provisions of § 707(b)(2)(A). If the difference between income and expenses is not less than the trigger points set out in § 707(b)(2)(A)(i), the court is required to presume abuse resulting in dismissal or conversion. The debtor is allowed to show special circumstances that would bring the net income level below the trigger points, but the points themselves are not subject to judicial alteration. On the other hand, even if the means test does not result in a presumption of abuse, § 707(b)(3) allows the court to find abuse based on "the totality of the circumstances . . . of the debtor's financial situation."

2. "Disposable income" in § 1325(b). BAPCPA gave a new definition to "disposable income" in Chapter 13. Rather than being largely left to judicial interpretation, the definition set out in § 1325(b)(2) provides detail both for the gross income that is the starting point and the expense deductions that are allowed from that income. Moreover, the duration of payments is changed by new § 1325(b)(4) from three years to an "applicable commitment period" of three years for debtors with less than median income and five years for debtors with median income or greater.

• The starting point of the new § 1325(b) is a modification of the original, calling for a minimum payments by the debtor of "projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan." *This provision focuses on receipt of income during a specific future calendar period after plan confirmation.*

• In contrast, new § 1325(b)(2) sets out a definition of "disposable income" that begins by equating it, with specified exceptions, to "current monthly income received by the debtor." "Current monthly income," in turn, is the term used in the means test and is itself defined in § 101(10A) of the Code as—in most situations—"the average monthly income from all sources that the debtor receives . . . derived during the 6-month period ending on . . . the last day of the calendar month immediately preceding the date of the commencement of the case" (together with regular payments made by another entity for the debtor's household expenses, but not "benefits received under the Social Security Act"). *This part of the definition of disposable income focuses on the debtor's past rather than current or anticipated income.*

• Section 1325(b)(2) continues the definition of disposable income by specifying deductions for maintenance and support, charitable contributions, and business expenses, without further detail. However, § 1325(b)(3) provides that for debtors with above-median income, "[a]mounts reasonably necessary to be expended under paragraph (2) shall be determined in accordance with subparagraphs (A) and (B) of section 707(b)(2)"—that is, the presumptive and "special circumstances" provisions of the means test. *No time period is specified for the deductions from income, but one of the statutory deductions, for care of immediate family members in § 707(b)(2)(A)(ii)(II), applies to "the continuation of actual expenses paid by the debtor." The "totality of circumstances" ground for a finding of abuse is not included for purposes of determining disposable income.*

3. Plan modification in § 1329. BAPCPA added § 1329(a)(4) to provide a new ground for modification, to "reduce amounts to be paid under the plan by the actual amount expended by the debtor to purchase health insurance," but only if the debtor demonstrates, as required by § 1329(a)(4)(C), that "the amount is not otherwise allowed for purposes of determining disposable income under section 1325(b) of this title." This provision does not appear to have any implication about whether § 1325(b) applies to a modified plan. It simply disallows a modification for insurance payments if the amount of the payments was already deducted in determining the disposable income in the original plan. *In re Hill,* 386 B.R. 670, 676 n.13 (Bankr. S.D. Ohio 2008). *BAPCPA makes no changes to § 1329(a) that clarify its effect on payments of debtors' income in Chapter 13.*

IV. Judicial approaches to the language to § 1325(b)

Courts that interpreted § 1325(b) under BAPCPA developed three approaches, with significantly different results.

A. Current monthly income and means test deductions as conclusive. One approach made the six-month pre-bankruptcy period, set out in the definition of current monthly income, the conclusive basis for calculating disposable income under § 1325(b)(2); it simply multiplies the average income from that period by the number of months in the applicable commitment period to generate the income from which necessary expenditures are subtracted to obtain disposable income. The leading decision was *Maney*

v. Kagenveama (In re Kagenveama), 541 F.3d 868, 872 (9th Cir. 2008) ("Reading the statute as requiring 'disposable income,' as defined in subsection (b)(2), to be projected out over the 'applicable commitment period' to derive the 'projected disposable income' amount is the most natural reading of the statute, and it is the one we adopt.").

1. Effect. The effect of the conclusive approach was to give a major advantage to a debtor whose income has increased during or after the six month period preceding the petition date. Such a debtor would be responsible for less income than actually available during the plan, and would likely be able to show greater expenses (measured at the time of filing or thereafter). On the other hand, debtors whose income has declined would be at a disadvantage, being responsible for more income than they are actually receiving.

2. Avoidance of the effect. Courts applying the conclusive approach under § 1325(b) developed at least two different methods for avoiding problematic results.

a. Plan modification. The benefit to a debtor with higher income than recognized under the conclusive approach could be offset by a modified plan proposed by the standing trustee. This approach would succeed if (1) no change in circumstances after the confirmation is required and (2) the debtor is not able—either financially or legally—to complete plan payments before the motion for modification is brought (since modification under § 1329(a) is only possible until the debtor has completed plan payments). Note that overcoming a § 1325(b) objection in the original plan is no use to the higher income debtor in the face of a motion to modify the plan, since § 1325(b) only establishes a minimum contribution level, not a maximum.

b. Delayed determination of current monthly income. The detriment to a debtor whose income has declined during or after the six months prepetition could be ameliorated by allowing the debtor to avoid or delay filing Schedule I, the statement of the debtor's current income. Under the definition of current monthly income in § 101(10A)(A)(ii), if the debtor does not file this schedule, the court is directed to determine the debtor's average income during the six-month period ending on "the date on which current income is determined by the court for purposes of this title." Of course, unless the court orders otherwise, the failure of the debtor to file Schedule I within 45 days of the bankruptcy filing will result in automatic dismissal under § 521(i)(1), but the court could make an order excusing the filing on the debtor's motion. This approach was employed in *In re Dunford*,408 B.R. 489 (Bankr. N.D. Ill. 2009).

B. Current monthly income and means test deductions as presumptive. A second approach, noting the practical difficulties of the conclusive approach, starts with the same calculation of disposable income (the definition of § 101(10A) and the means test deductions for above-median income debtors), but holds that this calculation is only presumptively correct, with the presumption able to be rebutted by a showing that the debtor's income or expenses have changed substantially from that calculation. Several circuit courts have adopted this approach. *See In re Nowlin*, 576 F.3d 258, 263 (5th Cir. 2009); *In re Turner*, 574 F.3d 349, 356 (7th Cir. 2009); *Coop v. Frederickson (In re Frederickson),* 545 F.3d 652, 659-60 (8th Cir. 2008); *Hamilton v. Lanning (In re Lanning),* 545 F.3d

1269, 1282 (10th Cir. 2008), *aff'd* 130 S.Ct. 2464 (2010). The principal difficulty with the presumptive approach is that there is nothing in the statutory language indicating either a presumption with respect to disposable income, any basis for rebutting a presumption, or the rules for determining disposable income if the statutory formulas should not be used.

C. Current monthly income and means test deductions applied to the applicable commitment period. A final approach, adopted by the First Circuit BAP and two bankruptcy court decisions, holds that the income calculation rules of § 101(10A) and the means test are fully applicable according to their terms, but that, in order to comply with the provision of § 1325(b) that disposable income is "projected . . . to be received in the applicable commitment period," the calculation rules should be applied to that period. Thus, if the income or expenses of the debtor have changed or will change during the applicable commitment period, as opposed to pre-filing periods, the disposable income will likewise differ. *See Kibbe v. Sumski (In re Kibbe),* 361 B.R. 302, 314 (BAP 1st Cir. 2007); *In re Johnson*, 400 B.R. 639, 649-50 (Bankr. N.D. Ill. 2009); *In re Hardacre,* 338 B.R. 718, 723 (Bankr. N.D. Tex. 2006). This "harmonizing" approach does differ from the conclusive language of § 101(10A), but the difference is said to be authorized by the need to reconcile the conflicting language of § 1325(b). *See Johnson*, 400 B.R. at 649:

> [T]o the extent that two statutory provisions cannot be reconciled, the more specific governs the more general. *Busic v. United States,* 446 U.S. 398, 406 (1980) (holding that "a more specific statute will be given precedence over a more general one, regardless of their temporal sequence"). The specific provision of § 1325(b)(1) regarding disposable income "to be received in the [post-filing] applicable commitment period" must therefore be given precedence over the general definition of current monthly income in § 101(10A), which looks to income received pre-filing.

V. What Supreme Court decided in *Lanning*

A. Holding. In two places, the Supreme Court announced its holding, rejecting conclusive (or "mechanical") application of a six-month backward calculation of projected disposable income.

1. "We granted certiorari to decide how a bankruptcy court should calculate a debtor's 'projected disposable income.' Some lower courts have taken what the parties term the 'mechanical approach,' while most have adopted what has been called the 'forward-looking approach.' We hold that the 'forward-looking approach' is correct." *Hamilton v. Lanning*, 130 S.Ct. 2464, 2469 (2010).

2. "Consistent with the text of § 1325 and pre-BAPCPA practice, we hold that when a bankruptcy court calculates a debtor's projected disposable income, the court may account for changes in the debtor's income or expenses that are known or virtually certain at the time of confirmation." *Id.* at 2478.

B. Rationale. The decision is bases its affirmative case entirely on the language of § 1325(b).

1. The meaning of "projected." The decision initially focuses on the word "projected" in "projected disposable income," stating that under both the ordinary understanding of the word and its use in other federal statutes, "projected" includes consideration of likely future events and is not limited to "multiplying" data from past events. *Id.* at 2471-72.

2. Pre-BAPCPA applications. Next, the Court cites pre-BAPCPA interpretations of projected disposable income in which future changes were taken into consideration, and states that if Congress does not expressly reject the prior interpretations of statutory language, those interpretations should continue to be valid. *Id.* at 2472-73.

3. Conflicts with other language of § 1325(b). The decision observes that a backward-based projection does not accurately reflect "income to be received" during the applicable commitment period, as required by § 1325(b), and that determining projected disposable income "as of the effective date of the plan," which the subsection also requires, is not meaningful if that date has no effect on the calculation. *Id.* at 2474

4. Unintended "senseless" results. "In cases in which a debtor's disposable income during the 6-month look-back period is either substantially lower or higher than the debtor's disposable income during the plan period, the mechanical approach would produce senseless results that we do not think Congress intended." *Id.* at 2475-76.

C. Rebuttal. In rejecting the conclusive approach to projected disposable income, the *Lanning* decision rebuts the argument based on the § 101(10A) definition of current monthly income, and it rejects the suggested workarounds for avoiding problematic results of the conclusive approach.

1. Section 101(10A). The decision states that the backward-looking definition of current monthly income in § 101(10A) is not rendered without meaning by considering postpetition changes. "[A] court taking the forward-looking approach should begin by calculating disposable income, and in most cases, nothing more is required. It is only in unusual cases that a court may go further and take into account other known or virtually certain information about the debtor's future income or expenses." *Id.* at 2475.

2. Workarounds. The Court concluded that "none of the maneuvers" suggested for avoiding the problematic outcome of the conclusive approach for debtors is "satisfactory" and that there is "no reason to think that Congress meant for any of these strategies to operate as a safety valve for the mechanical approach." *Id.* at 2476, 2477.

a. Delaying filing of the case. The major problem noted by the Court is that a debtor, facing foreclosure sale or wage deduction, may not be able to wait to get the benefits of a bankruptcy case. *Id.* at 2476.

b. Delay filing Schedule I. The court finds two problems: first, if the conclusive approach were intended by Congress, it would make little sense to allow an

easy evasion; second, a delay in filing Schedule I will not assist a debtor with future income reductions that will occur after a hearing on projected disposable income. *Id.* at 2476-77.

c. Dismiss and refile. For debtors with an immediate need for bankruptcy relief, the court considers the possibility of filing a bankruptcy case to address the immediate problem, then dismissing and refiling after the change in income has been in effect for a substantial period of time. The court finds that this stratagem is potentially seen as abusive and would undermine the supposed conclusive effect of § 101(10A). *Id.* at 2477.

d. Convert from Chapter 7. The Court notes that any sojourn of a debtor in Chapter 7 would subject the debtor to the potential of a finding of abuse under § 707(b). *Id.*

D. Effect on the kaleidoscope. The *Lanning* decision plainly rejects the conclusive approach to projected disposable income; present and future changes certainly can be considered now. However, a number of questions still remain.

1. Relevance of statutory standards

a. Controlling for the starting point. *Lanning* makes clear that at least the initial determination of projected disposable income must be made in compliance with the full text of §§ 101(10A) and 707(b)(2). 130 S.Ct. at 2475.

b. Perhaps controlling for later changes. The presumption approach adopted in *Lanning* leaves courts free to determine what interest and expenses ought to be considered whenever there is a substantial change from the initial determination. This, though, will require courts to consider the extent to which judicial standards can supplant the statutory measures of income and expenses set forth in §§ 101(10A) and 707(b)(2)(A) and (B). Some decisions have held that where substantial changes have occurred or are anticipated, the pre-BAPCPA standards, using Schedules I and J, may be employed. *See, e.g., In re Frederickson*, 545 F.3d 652, 659 (8th Cir. 2008) ("[W]e adopt the view shared by many bankruptcy courts that a debtor's 'disposable income' calculation on Form 22C is a starting point for determining the debtor's 'projected disposable income,' but that the final calculation can take into consideration changes that have occurred in the debtor's financial circumstances as well as the debtor's actual income and expenses as reported on Schedules I and J.") In contrast, the "harmonizing" approach would require application of the statutory standards rather than the schedules. *See In re Johnson,* 400 B.R. 639 (Bankr. N.D. Ill. 2009), *aff'd*, No. 09-1212, 2010 WL 2594354 (7th Cir. June 21, 2010).

2. Burden of proof. *Lanning* makes change from the initial determination depend on "changes in the debtor's income or expenses that are known or virtually certain at the time of confirmation." 130 S.Ct. at 2478. Courts will have to determine the extent of the evidentiary duty borne by the debtor in establishing that a change is "virtually certain."

3. Changes in the means test form. The result in *Lanning* may require changes in Official Form 22C, the Chapter 13 means test form, to require disclosure of more recent, or anticipated, income and expense information.

Supreme Court of the United States.
Jason M. RANSOM, Petitioner,
v.
MBNA, AMERICA BANK, N.A., Respondent.
No. 09-907.
January 25, 2010.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

Petition for Writ of Certiorari

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QUESTION PRESENTED FOR REVIEW

Whether, in calculating the debtor's "projected disposable income" during the plan period, the bankruptcy court may allow an ownership cost deduction for vehicles only if the debtor is actually making payments on the vehicles.

***II** PARTIES TO THE PROCEEDINGS

The petitioner in this case is Jason M. Ransom. The respondent is MBNA, America Bank, N.A. The United States of America, United States Trustee, appeared as Amicus Curiae in the appellate proceedings below.

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***1** PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the final judgment of the United States Court of Appeals for the Ninth Circuit.

OPINION AND JUDGMENT BELOW

The Bankruptcy Court's memorandum denying confirmation is reprinted in the Appendix ("App.") at App. 36. The Bankruptcy Court's order denying confirmation is reprinted at App. 48. The opinion of the Bankruptcy Appellate Panel of the Ninth Circuit Court of Appeals is reprinted at App. 15, and officially reported at 380 B.R. 799 (B.A.P. 9th Cir. 2007). The opinion of the Ninth Circuit Court of Appeals is reprinted at App. 1, and officially reported at 577 F.3d 1026 (9th Cir. 2009). The order of the Ninth Circuit denying the petition for rehearing is reprinted at App. 5.

STATEMENT OF JURISDICTION

The Bankruptcy Court had jurisdiction under 28 U.S.C. §§ 1334 and 157(b)(1) and (b)(2)(L). The Bankruptcy Appellate Panel of the Ninth Circuit Court of Appeals had jurisdiction under 28 U.S.C. § 158(b). The Ninth Circuit Court of Appeals had ***2** jurisdiction under 28 U.S.C. § 158(d). This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The provisions of 11 U.S.C. §§ 707 and 1325 are reprinted at App. 50 and App. 64.

STATEMENT OF THE CASE

The facts in this matter are undisputed. The debtor, Jason Ransom, filed for bankruptcy relief under chapter 13 of Title 11 of the United States Code on July 5, 2006. One of the debtor's assets, as listed in the schedules of his bankruptcy petition, was a 2004 Toyota Camry which he owned in full. There were no liens or secured loans of any kind on his vehicle. The debtor listed $82,542.93 in unsecured claims, including the claim of MBNA America Bank in the amount of $32,896.73.

Debtor's Statement of Current Monthly Income ("Form B22C") reported monthly income of $4,248.56, and annual income of $50,982.72. As a result, his income exceeded the median income for Nevada, his state of residence. Ransom reported monthly expense deductions of $4,038.01, and a monthly disposable income of $210.55. Part of his monthly expense deductions consisted of the vehicle "ownership cost" deduction which is contested in this case.

***3** MBNA objected to confirmation of debtor's chapter 13 plan, in which Ransom proposed paying $500.00 per month over sixty months. Specifically, MBNA argued that Ransom was not devoting all of his projected disposable income to fund the plan as required by 11 U.S.C. § 1325(b)(1)(B). MBNA contended that the debtor could not take an ownership cost deduction for his vehicle if he was not making any payments on the vehicle. MBNA argued that Ransom's projected disposable income should be $681.55, which amounted to the $210.55 that he reported in disposable income, plus the contested ownership cost deduction which MBNA claimed should be disallowed.

The crux of MBNA's objection, which was adopted by all the courts in this case below, was that an ownership cost deduction could only be taken for a vehicle if the owner was making payments on the vehicle. The objecting creditor's rationale was that the Internal Revenue Manual (the "Manual") of the Internal Revenue Service ("IRS") disallows any deduction by a taxpayer above the taxpayer's actual lease or loan payment. *See*, Memorandum Denying Confirmation of Bankruptcy Judge Bruce A. Markell, App. 36; *Ransom v. MBNA Am. Bank (In re Ransom)*, 380 B.R. 799, 806 (B.A.P. 9th Cir. 2007); *Ransom v. MBNA, Am. Bank (In re Ransom)*, 577 F.3d 1026, 1029-30 (9th Cir. 2009).

The courts below disallowed Ransom's claim of a vehicle ownership cost based on the IRS collection Manual, which allows with respect to transportation ***4** only a deduction for "the local standard or the amount actually paid, whichever is less." (Cited at *Ransom*, 380 B.R. at 806, fn. 15). Using the collection Manual as the standard, the lower courts disallowed Ransom's claimed vehicle cost deduction, despite the fact that 11 U.S.C. § 707(b)(2)(A)(ii)(I) simply states in pertinent part that, "The debtor's monthly expenses shall be the debtor's applicable

expense amounts specified under the National Standards and Local Standards[.]" The statute utilizes the expense amounts specified by the IRS in its National Standards and Local Standards, but nowhere states that the expense amounts are to be construed or limited by the practices of the IRS collection Manual.

Although the Ninth Circuit rejected Ransom's claim of a vehicle cost deduction, and thus denied confirmation of his plan, the appellate court took the extraordinary step of declaring that in the final analysis, the statute setting forth the means test for expense deductions cannot be properly interpreted as it stands, and only Congress could answer the question posed by the case. The Ninth Circuit concluded:
The "correct" answer to the question before us, which the courts have been struggling with for years - at the unnecessary cost of thousands of hours of valuable judicial time - depends ultimately not upon our interpretation of the statute, but upon what Congress wants the answer to be. We would hope, in this regard, that we the judiciary ***5** would be relieved of this Sisyphean adventure by legislation clearly answering a straightforward policy question: shall an above-median income debtor in chapter 13 be allowed to shelter from unsecured creditors a standardized vehicle ownership cost for a vehicle owned free and clear, or not? Because resolution of this issue rests with Congress, we have taken the unusual step of directing the Clerk of the Court to forward a copy of this opinion to the Senate and House Judiciary Committees.

Ransom, 577 F.3d at 1031-32.

REASONS FOR GRANTING THE PETITION

This Court has recently granted certiorari in the case of *In re Lanning,* 545 F.3d 1269 (10th Cir. 2008), *cert. granted,* 130 S. Ct. 487, 175 L. Ed. 2d 343 (2009). Certiorari was granted in *Lanning* limited to the question:
Whether, in calculating the debtor's "projected disposable income" during the plan period, the bankruptcy court may consider evidence suggesting that the debtor's income or expenses during that period are likely to be different from her income or expenses during the pre-filing period.

Id.

Ransom is, in every respect, the sister case to *Lanning.* In each case, there is a wide split between ***6** the Circuit Courts of Appeals regarding the calculation of "projected disposable income" for the means test under 11 U.S.C. § 1325(b)(1)(B). In *Lanning,* the pivotal question is whether the bankruptcy court may consider if income and expenses during the plan period are likely to be different from those during the pre-filing period. In *Ransom*, petitioner asks this Court to consider a companion issue:
Whether, in calculating the debtor's "projected disposable income" during the plan period, the bankruptcy court may allow an ownership cost deduction for vehicles only if the debtor is actually making payments on the vehicles.

In the event that this Court chooses to resolve the issues raised by both *Ransom* and *Lanning*, the Court will be able to resolve the lack of uniformity in interpretation of 11 U.S.C. § 1325(b)(1)(B) that has resulted in split approaches to the statute across the Federal courts.

The Ninth Circuit Court of Appeals has stated its belief that, with respect to applicable expense deductions under 11 U.S.C. § 707(b)(2)(A)(ii)(I), "The 'correct' answer to the question before us … depends ultimately not upon our interpretation of the statute, but upon what Congress wants the answer to be.… We would hope … that we the judiciary would be relieved of this Sisyphean adventure by legislation[.]" *Ransom,* 577 F.3d at 1031-32.

***7** In fact, Congress has already stated the correct answer to the question the courts have been struggling with, and the answer is contained in the plain language of the legislation. Apparently the task of interpretation appeared "Sisyphean" to the Ninth Circuit only because it refused to acknowledge that the words of the statute mean precisely what they appear to mean.

As discussed below, there is a sharp split between various Courts of Appeals on the issue before us. The Fifth, Seventh and Eighth Circuits have ruled that the plain language of the statute should prevail, and the debtor should be allowed a deduction for the ownership costs of a vehicle regardless of whether the debtor is still making loan or lease payments. By contrast, the Ninth Circuit has found that an extrinsic standard, the procedures of the IRS Manual, should

be introduced to determine the proper treatment of deductions under the Bankruptcy Code. Relying on the IRS Manual, the Ninth Circuit has determined that only actual loan or lease payments can be deducted as vehicle expenses. However, the statute nowhere calls for adopting the approach to deductions of the IRS collection Manual, and this approach should be rejected.

***8** I. SECTION 707(b)(2)(A)(ii)(I) OF THE BANKRUPTCY CODE PROVIDES FOR THE DEDUCTION OF VEHICLE OWNERSHIP COSTS REGARDLESS OF WHETHER THE DEBTOR OWNS A VEHICLE FREE AND CLEAR OF DEBT

In 2005, Congress added 11 U.S.C. § 707(b)(2)(A)(ii)(I) of the Bankruptcy Code as part of an objective and mechanical "means test," which established a threshold beyond which abuse would be presumed. The means test ensures that a debtor's total expenses are reasonable. The threshold for presuming abuse no longer requires an individual inquiry into a debtor's most common expenses such as food, housing and transportation costs. For these types of expenses, the means test looks to the National and Local Standards used by the IRS. Specifically, § 707(b)(2)(A)(ii)(I) provides that the debtor's monthly expenses "shall be the debtor's applicable monthly expense amounts specified under the National Standards and Local Standards … issued by the Internal Revenue Service …". Transportation allowances fall under the Local Standards and are divided into two components: operating costs and ownership costs. The IRS specifies amounts to be used for each component.[FN1] ***9** Unlike the Bankruptcy Code, however, the IRS treats Local Standard expenses as caps on actual expenses rather than as an allowance.

> FN1. The IRS publishes the ownership cost component of the Local Transportation Standard on a national basis, by number of cars. The operating cost component is published by number of cars and by Metropolitan Statistical Area and Census Bureau region. The Local Transportation Expense Standards may be found at http://www.irs.gov/businesses/small/article/0,, id=104623,00.html.

The question presented on appeal is whether a debtor who owns vehicles but does not have loan or lease payments on those vehicles is entitled to the "car ownership" allowance under § 707(b)(2)(A)(ii)(I) of the Bankruptcy Code. In contrast to all other Courts of Appeals to consider the question, the Ninth Circuit held that cart owners with no loan or lease payments could not take an ownership deduction.

II. REVIEW IS WARRANTED TO RESOLVE THE CONFLICT BETWEEN CIRCUITS AS TO THE INTERPRETATION OF 11 U.S.C. § 707(b)(2)(A)(ii)(I)

This Court has consistently employed a strict plain meaning rule for cases involving the Bankruptcy Code. Under the rule the plain language of the Code controls absent an absurd result. *See, Lamie v. U.S. Trustee,* 540 U.S. 526, 534, 124 S. Ct. 1023 (2004); *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.,* 530 U.S. 1, 6, 120 S. Ct. 1942 (2000); *United States v. Ron Pair Enterprises, Inc.,* 489 U.S. 235, 241, 109 S. Ct. 1026 (1989). A plain reading of the statutory language in this case would entitle all car owners, not just those with loan or ***10** lease payments, to take the ownership deduction under § 707(b)(2)(A)(ii)(I).

In *Ross-Tousey v. Neary,* 549 F.3d 1148, 1158 (7th Cir. 2008), the Seventh Circuit Court of Appeals noted that under *Ransom,* 380 B.R. at 807, the IRS collection Manual approach would be applied, and a debtor could not take any ownership deduction if he had no debt or lease payments with respect to his vehicle. However, the Seventh Circuit found that the "plain language of section 707(b)(2)(A)(ii)(I) is more strongly supported by the language and logic of the statute." The Seventh Circuit reversed a decision of the district court, which had disallowed a vehicle ownership deduction where the debtors were not making car payments. *United States v. Ross-Tousey,* 368 B.R. 762 (E.D. Wis. 2007).

Similarly, the Fifth Circuit Court of Appeals in *Tate v. Bolen,* 571 F.3d 423 (5th Cir. 2009), reversed the order of the district court upholding the bankruptcy court's dismissal of the chapter 7 case for abuse because the debtors claimed a vehicle ownership expense for a vehicle that was not encumbered by a debt or a lease. The Fifth Circuit concluded that "the plain language approach as set forth by the Seventh Circuit [in *Ross-Tousey v. Neary*] provides the best reading of § 707(b)(2)(A)(ii)(I)." *Tate v. Bolen,* 571

F.3d at 428. Under the means test, the debtor should be allowed to deduct a transportation ownership deduction regardless of whether the debtor has a loan or lease payment on his cars.

***11** The Sixth Circuit Bankruptcy Appellate Panel also applied the plain language of the statute to conclude that all debtors who own vehicles may take the ownership deduction regardless of whether the debtors make loan or lease payments on those vehicles. *See, Hildrebrand v. Kimbro,* 389 B.R. 518 (B.A.P. 6th Cir. 2008). In *Kimbro*, the Sixth Circuit B.A.P. affirmed that statutory interpretation should rely on the plain language of the legislation:

The plain language of 11 U.S.C. § 707(b)(2)(A)(ii)(I) states that a debtor's means test deductions "shall be" the amounts specified in the local standards and there is nothing explicit in that statutory language that requires a debtor to have a debt or lease payment to deduct a vehicle ownership expense in the bankruptcy means test.

Id. at 523. The Sixth Circuit Panel relied on the straightforward approach to interpretation set forth in *Lamie*:

The starting point in discerning congressional intent is the existing statutory text, and not the predecessor statutes. It is well established that when the statute's language is plain, the sole function of the court - at least where the disposition required by the text is not absurd - is to enforce it according to its terms. *Lamie v. U.S. Trustee, supra,* 540 U.S. at 534 (citations omitted).

Id. at 522-23.

***12** The Eighth Circuit Court of Appeals, in *eCast Settlement Corporation v. Washburn,* 579 F.3d 934 (8th Cir. 2009), abrogated an Eighth Circuit Bankruptcy Appellate Panel decision relied by the Ninth Circuit in its opinion.[FN2] The Eighth Circuit held that "a debtor need not in fact owe a vehicle loan or lease payment to claim a vehicle-ownership expense in accordance with § 707(b)(2)(A)(ii)(I)." *Id.* at 940. The Eighth Circuit adopted the analyses of the Fifth and Seventh Circuit Courts of Appeals on this issue, and held that "the plain language approach adopted by the Fifth and Seventh Circuits results in the proper interpretation of 11 U.S.C. § 707(b)(2)(A)(ii)(I)." *Id.* at 937.

FN2. The Eighth Circuit Bankruptcy Appellate Panel decision abrogated by the Eighth Circuit Court of Appeals was *Babin v. Wilson,* 383 B.R. 729 (B.A.P. 8th Cir. 2008). The Ninth Circuit, in *Ransom,* 577 F.3d at 1029, adopting the approach of the Eighth Circuit B.A.P. set forth in *Wilson*, stated that "roughly half of the courts to address the issue, including our BAP and the Eighth Circuit BAP, have found a debtor is entitled to the ownership cost deduction only if the debtor actually has loan or lease payments on a vehicle."

***13** A. The Ninth Circuit Incorrectly Rejected the Plain Language of the Statute to the Effect that Applicable Monthly Expenses Are Pegged to National and Local Standards, Not Determined by Actual Expenditures.

The language of 11 U.S.C. § 707(b)(2)(A)(ii)(I) is clear. It provides that the debtor's monthly expenses "**shall be** the debtor's applicable monthly expense **amounts specified** under the National Standards and Local Standards … issued by the Internal Revenue Service[.] (emphasis added)." The statutory language of § 707(b)(2)(A)(ii)(I) allows no discretion. *See, In re Phillips,* 382 B.R. 153 (Bankr. D. Mass. 2008). By stating that the debtor "shall" use as his or her expenses the "amounts specified under the National Standards and Local Standards," Congress created a fixed allowance for debtors in the amounts specified, not merely a cap of the debtor's actual expenses. *See*, Eugene R. Wedoff, *Means Testing in the New 707(b),* 79 Am. Bankr. L.J. 231, 257-58 (2005) ("the statute makes no provision for reducing the specified amounts to the debtor's actual expenses - a plain reading of the statute would allow a deduction of the amounts listed in the Local Standards even where the debtor's actual expenses are less"). *See also*, 6 *Collier on Bankruptcy* ¶ 707.05(2)(c)(i) (A. Resnick and H. Sommer, eds., 15th ed. Rev. 2005) ("The better view is that, because the language refers to deducting the 'amount specified' in the standards, and not actual expenses, the ownership allowance ***14** specified in the standards is the minimum amount to be deducted").

Congress drew a distinction in the statute between "applicable" expenses on one hand and "actual" expenses on the other. As the Eighth Circuit Court of Appeals states in *Ross-Tousey,* 549 F.3d at 1157, "In

order to give effect to all the words of the statute, the term 'applicable monthly expense amounts' cannot mean the same thing as 'actual monthly expenses.' "

The bankruptcy court in *In re Farrar-Johnson,* 353 B.R. 224 (Bankr. N.D. Ill. 2006) drew an analogous distinction between "applicable" and "actual" expenses in interpreting 11 U.S.C. § 707(b)(2)(A)(ii)(I). There, the debtors claim a monthly housing expense, even though the debtors were provided housing on a military base. The court reasoned that, "By reference to section 707(b)(2)(A), section 1325(b)(3) also lets an above-median debtor claim a housing expense on Form B22C even if he has no housing expense." *Id.* at 227. The court held that the debtors could properly claim a housing expense as the "reasonably necessary" amount on Form B22C, and denied the trustee's motion to dismiss.

The *Farrar-Johnson* court clarified that an "applicable" expense can be claimed on Form B22C even if no "actual" expense was incurred:
The debtors were entitled to claim that expense whether they had it or not. Section 707(b)(2)(A)(ii)(I) permits a debtor to claim ***15** "the applicable monthly expense amount" under the Local Standards. Read in isolation, "applicable" is ambiguous, meaning simply: "That can be applied; appropriate." *American Heritage Dictionary* 89 (3rd ed. 1996); *see also Webster's Third New Int'l Dictionary* 105 (1981) (defining "applicable" as "capable of being applied: having relevance"). An expense could be "appropriate" for a debtor to claim because he actually incurs that expense. It could also be "appropriate" to claim because he lives in a certain state and county and has a household of a certain size, putting him in the right box on the Local Standards chart.

Id. at 230. The court pointed out that "applicable" expenses refer to a standard published by the government, and do not entail an analysis of "appropriate" expense or "actual" expense:
Statutory terms … are never read in isolation; they are read in the context in which they appear (citation omitted). Section 707(b)(2)(A)(ii)(I) defines monthly expenses not only as a debtor's "*applicable* monthly expense amounts" under the "National and Local Standards" but also as the debtor's "*actual* monthly expenses" for the categories the IRS specifies as "Other Necessary Expenses." 11 U.S.C. § 707(b)(2)(A)(ii)(I) (emphasis added). Congress drew a distinction in the statute between "applicable" expenses on the one hand and "actual" expenses on the other. "Other Necessary Expenses" must be the debtor's "actual" expenses. Expenses under the "Local Standards," in contrast, ***16** need only be those "applicable" to the debtor - because of where he lives and how large his household is. It makes no difference whether he "actually" has them. *See* Wedoff, *supra*, at 256 (noting that "a plain reading of the statute would allow a deduction of the amounts listed in the Local Standards even where the debtor's actual expenses are less").

Id. at 230-31.

In *Ross-Tousey*, the Court of the Appeals for the Seventh Circuit distinguished between cases adopting the Internal Revenue Service Manual as the standard for reading the statute, such as *Ransom,* 380 B.R. at 808, and those holding that a debtor who owns his car outright may take the deduction, such as *Kimbro, supra*, 389 B.R. at 532. The Seventh Circuit found that courts allowing the deduction were adhering strictly to the statutory language, which calls for defining applicable expenses as those set forth in the IRS Local Standards:
[C]ourts in the plain language camp argue that "applicable" refers to the selection of an expense amount corresponding to the appropriate geographic region and number of vehicles owned by the debtor. *See, e.g., In re Grunert,* 353 B.R. 591, 592 (Bankr. E.D. Wis. 2007); *In re McIvor,* No. 06-42566, 2006 Bankr. LEXIS 3861, 2006 WL 3949172, *4 (Bankr. E.D. Mich. Nov. 15, 2006) ("the word 'applicable,' in the context of 707(b)(2)(A)(ii)(I) means the applicable Local Standards as it pertains to the area in which the debtor ***17** resides"); *In re Smith,* No. 06-30261, 2007 Bankr. LEXIS 2173, 2007 WL 1836874, *8 (Bankr. N.D. Ohio June 22, 2007) ("If the debtor has only one car, the 'applicable' expense is the one found in the first column [of the Standard for Ownership Costs], and if a debtor has a second vehicle, the amount in the second column is also 'applicable.' "). In other words, under the plain language approach, the Local Standard vehicle ownership deduction "applies" to the debtor by virtue of his geographic region and number of cars, regardless of whether that deduction is an actual expenses.

Ross-Tousey, 549 F.3d at 1157-58. The Seventh Circuit sided with the courts interpreting "applicable"

expenses in § 707(b)(2)(A)(ii)(I) according to the plain language of the statute:

We are persuaded that the plain language view of section 707(b)(2)(A)(ii)(I) is more strongly supported by the language and logic of the statute. In order to give effect to all the words of the statute, the term "applicable monthly expense amounts" cannot mean the same thing as "actual monthly expenses." Under the statute, a debtor's "actual monthly expenses" are only relevant with regard to the IRS's "Other Necessary Expenses;" they are not relevant to deductions taken under the Local Standards, including the transportation ownership deduction. Since "applicable" cannot be synonymous with "actual," applicable cannot reference what the debtor's actual expense is ***18** for a category, as courts favoring the IRM [Internal Revenue Manual] approach would interpret the word. We conclude that the better interpretation of "applicable" is that it references the selection of the debtor's geographic region and number of cars.

Id. at 1158.

Put another way, the *Ransom* line of decisions is distinguished by the fact that the Ninth Circuit has chosen *not* to make the plain language of the statute the determining factor in its interpretation.

B. The Court of Appeals for the Ninth Circuit Has Erroneously Imported the IRS Methodology Into the Bankruptcy Code.

Congress did not incorporate the language of the Internal Revenue Manual ("Manual" or "IRM") into 11 U.S.C. § 707(b)(2)(A)(ii)(I), although it could easily have done so if it sought to incorporate IRS collection methodology into the interpretation of the means test.

Nonetheless, the *Ransom* court adopts the "IRM approach," which relies on the IRS's interpretation of which transportation expenses are deductible:

The IRS Collection Financial Standards, which are used in calculating repayment of delinquent taxes, provide: "If a taxpayer has a car, but no car payment, only the operating costs portion of the transportation standard ***19** is used to figure the allowable transportation expense." *See* Collection Financial Standards (March 1, 2009) (footnote omitted). The IRM similarly requires a taxpayer to have a loan or lease payment to qualify for the ownership cost deduction. *See* Internal Revenue Service Manual, Financial Analysis Handbook, Pt. 5, ch. 15, § 5.15.1.9 (I.B) (May 29, 2008) (footnote omitted).

Ransom, 577 F.3d at 1030. The Ninth Circuit follows the IRM approach because of a belief that the IRS collection methodology best implements Congress's intent:

This approach also is arguably supported by Congress's intent in implementing the means testing as part of BAPCPA [the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005] - "to ensure that debtors repay creditors the maximum they can afford." H.R. Rep. 109-31(I), at 1, *reprinted in* 2005 U.S.C.C.A.N. 88, 89.

Id.

As the Court of Appeals for the Seventh Circuit pointed out in *Ross-Tousey*, the language of § 707(b)(2)(A)(ii)(I) contains no reference to using an IRS method for determining whether deductions are allowable:

[W]hile the IRM provides a useful methodology to IRS agents for determining a taxpayer's ability to pay the IRS, we agree with other plain language courts that there ***20** is no indication that Congress intended that methodology to be used in conducting the means test. As an initial matter, section 707(b)(2)(A)(ii)(I) makes reference only to the "amounts specified" in the Local Standards; the statute does not incorporate the IRM or the Financial Analysis Handbook, or even refer to them. *See* § 707(b)(2)(A)(ii)(I) (making no reference to the IRM, the Financial Analysis Handbook or their methodologies).

Ross-Tousey, 549 F.3d at 1159.

The *Ross-Tousey* court found no support for the contention, in *Ransom*, that using the IRM approach is called for by Congressional intent. As the Seventh Circuit Court of Appeals put it:

The legislative history of section 707(b)(2)(A)(ii)(I) confirms that the provision's silence with regard to the IRM and IRS methodology was deliberate … A prior version of the BAPCPA which was never passed defined "projected monthly net income" under the means test to require a calculation of expenses as follows:

(A) the expense allowances under the applicable National Standards, Local Standards, and Other Neces-

sary Expenses allowance (excluding pay-ments for debts) for the debtor … in the area in which the debtor resides *as determined under the Internal Revenue financial analysis* for expenses in effect as of the date of the order for relief.
***21** H.R. 3150, 105th Congress (1998) (emphasis added). The phrase "as determined under the Internal Revenue Service financial analysis" was later removed and replaced by the current language, which states that the debtor should deduct the "applicable monthly expense amounts specified under the National and Local Standards (citations omitted). Because the statute incorporates only the "amounts" of the Local Standards and does not incorporate IRM procedures or methodology, and because the legislative history of the statute indicates that Congress intentionally omitted any reference to IRM financial analysis, we believe that using the IRM methodology in conducting the means test is misguided (citations omitted).

Id. at 1159-60.

The Seventh Circuit also found it inconsistent to utilize IRM methods, which allow the revenue officer substantial discretion, with respect to a means test that aims for a "uniform, bright-line test" that eliminates judicial discretion. *Id.* at 1160.

***22** C. The Ninth Circuit Has Wrongly Concluded that There Are No Ownership Costs Associated with a Vehicle aside from Loan and Lease Payments.

In *Ransom*, the Court of the Appeals for the Ninth Circuit has dismissed as "ironic" and "fictitious" the concept of ownership expenses other than debt payments:
An "ownership cost" is not an "expense" - either actual or applicable - if it does not exist, period. Ironic it would be indeed to diminish payments to unsecured creditors in this context on the basis of a fictitious expense not incurred by a debtor.

Ransom, 577 F.3d at 1030. As the Ninth Circuit Bankruptcy Appellate Panel put it, "we believe the statute can only be interpreted to 'apply' expense standards in cases where debtors in fact pay such expenses." *Ransom*, 380 B.R. at 808.

However, the *Ransom* court failed to acknowledge that there are vehicle ownership costs in addition to debt payments. As the Court of Appeals for the Seventh Circuit stated in *Ross-Tousey*, 549 F.3d at 1160, there are costs of vehicle ownership aside from loan payments: "These non-debt costs include depreciation, insurance, licensing fees and taxes." Replacement costs are another ownership expense, and the ownership cost deduction takes into account the expenses incurred by debtors to replace their vehicles. *See* Wedoff, 79 Am. Bankr. L.J. at 258.

***23** The Ninth Circuit chose to interpret the statute to achieve "one of the main objectives of BAPCPA: to ensure that debtors repay as much of their debt as reasonably possible." *Ransom*, 577 F.3d at 1031, citing the opinion of the Ninth Circuit Bankruptcy Appellate Panel, *Ransom*, 380 B.R. at 808. However, the Ninth Circuit's strategy appears to be ineffectual. Debtors can make up for the lack of a car ownership deduction by taking on new secured debt and purchasing additional vehicles. In this way, unsecured creditors would still be denied repayment. In the alternative, debtors can time their bankruptcy filing to take place while they still have a few car payments left, thus retaining an ownership deduction which they would lose if they filed just after making their last payment. *See* Wedoff, 79 Am. Bankr. L.J. at 258.

Rather than stretching 11 U.S.C. § 707(b)(2)(A)(ii)(I) to maximize debt collection, courts should adhere to the statute's plain meaning. The debtor's monthly transportation expenses for vehicles are properly calculated as the expense amounts specified under the National Standards and Local Standards as the transportation ownership deduction.

***24 CONCLUSION**

For the foregoing reasons, the petition for writ of certiorari should be granted to review the judgment below.

Related Westlaw Journal Article(Back to Top)

6 NO. 21 Andrews Bankruptcy Litig. Rep. 3

Ransom v. MBNA, America Bank, N.A.
2010 WL 342159 (U.S.) (Appellate Petition, Motion and Filing)

END OF DOCUMENT

B22A (Official Form 22A) (Chapter 7) (12/10)

In re _____
Debtor(s)

Case Number: _____
(If known)

According to the information required to be entered on this statement (check one box as directed in Part I, III, or VI of this statement):

☐ **The presumption arises.**
☐ **The presumption does not arise.**
☐ **The presumption is temporarily inapplicable.**

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. If none of the exclusions in Part I applies, joint debtors may complete one statement only. If any of the exclusions in Part I applies, joint debtors should complete separate statements if they believe this is required by § 707(b)(2)(C).

Part I. MILITARY AND NON-CONSUMER DEBTORS

1A	**Disabled Veterans.** If you are a disabled veteran described in the Declaration in this Part IA, (1) check the box at the beginning of the 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. .☐ **Declaration of Disabled Veteran.** 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)).
1B	**Non-consumer Debtors.** 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. ☐ **Declaration of non-consumer debts.** By checking this box, I declare that my debts are not primarily consumer debts.
1C	**Reservists and National Guard Members; active duty or homeland defense activity.** Members of a reserve component of the Armed Forces and members of the National Guard who were called to active duty (as defined in 10 U.S.C. § 101(d)(1)) after September 11, 2001, for a period of at least 90 days, or who have performed homeland defense activity (as defined in 32 U.S.C. § 901(1)) for a period of at least 90 days, are excluded from all forms of means testing during the time of active duty or homeland defense activity and for 540 days thereafter (the "exclusion period"). If you qualify for this temporary exclusion, (1) check the appropriate boxes and complete any required information in the Declaration of Reservists and National Guard Members below, (2) check the box for "The presumption is temporarily inapplicable" at the top of this statement, and (3) complete the verification in Part VIII. **During your exclusion period you are not required to complete the balance of this form, but you must complete the form no later than 14 days after the date on which your exclusion period ends, unless the time for filing a motion raising the means test presumption expires in your case before your exclusion period ends.** ☐ **Declaration of Reservists and National Guard Members.** By checking this box and making the appropriate entries below, I declare that I am eligible for a temporary exclusion from means testing because, as a member of a reserve component of the Armed Forces or the National Guard a. ☐ I was called to active duty after September 11, 2001, for a period of at least 90 days and ☐ I remain on active duty /or/ ☐ I was released from active duty on _____, which is less than 540 days before this bankruptcy case was filed; OR b. ☐ I am performing homeland defense activity for a period of at least 90 days /or/ ☐ I performed homeland defense activity for a period of at least 90 days, terminating on _____, which is less than 540 days before this bankruptcy case was filed.

Part II. CALCULATION OF MONTHLY INCOME FOR § 707(b)(7) EXCLUSION

2 **Marital/filing status.** Check the box that applies and complete the balance of this part of this statement as directed.

a. ☐ Unmarried. **Complete only Column A ("Debtor's Income") for Lines 3-11.**

b. ☐ 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.**

c. ☐ 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.**

d. ☐ Married, filing jointly. **Complete both Column A ("Debtor's Income") and Column B ("Spouse's Income") for Lines 3-11.**

	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.	Column A Debtor's Income	Column B Spouse's Income
3	**Gross wages, salary, tips, bonuses, overtime, commissions.**	$	$
4	**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.**	$	$
5	**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.**	$	$
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. Each regular payment should be reported in only one column; if a payment is listed in Column A, do not report that payment in Column B.	$	$
9	**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:	$	$

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 operating expenses	$
c.	Rent and other real property income	Subtract Line b from Line a

Unemployment compensation claimed to be a benefit under the Social Security Act	Debtor $ _____	Spouse $ _____

19A	**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 number of persons. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) The applicable number of persons is the number that would currently be allowed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support.	$
19B	**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 applicable number of persons who are under 65 years of age, and enter in Line b2 the applicable number of persons who are 65 years of age or older. (The applicable number of persons in each age category is the number in that category that would currently be allowed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support.) Multiply Line a1 by Line b1 to obtain a total amount for persons under 65, and enter the result in Line c1. Multiply Line a2 by Line b2 to obtain a total amount for persons 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.	$

Persons under 65 years of age			**Persons 65 years of age or older**		
a1.	Allowance per person		a2.	Allowance per person	
b1.	Number of persons		b2.	Number of persons	
c1.	Subtotal		c2.	Subtotal	

20A	**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 family size. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court). The applicable family size consists of the number that would currently be allowed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support.	$
20B	**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 family size (this information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court) (the applicable family size consists of the number that would currently be allowed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support); 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.**	$

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	**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: _____ _____ _____	$

Official Form 22B (Chapter 11) (12/10)
In re _____
Debtor(s)

Case Number: _____
(If known)

CHAPTER 11 STATEMENT OF CURRENT MONTHLY INCOME

In addition to Schedules I and J, this statement must be completed by every individual Chapter 11 debtor, whether or not filing jointly. Joint debtors may complete one statement only.

Part I. CALCULATION OF CURRENT MONTHLY INCOME

1	**Marital/filing status.** Check the box that applies and complete the balance of this part of this statement as directed. a. ☐ Unmarried. **Complete only Column A ("Debtor's Income") for Lines 2-10.** b. ☐ Married, not filing jointly. **Complete only Column A ("Debtor's Income") for Lines 2-10.** c. ☐ Married, filing jointly. **Complete both Column A ("Debtor's Income") and Column B ("Spouse's Income") for Lines 2-10.**		
	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.	**Column A Debtor's Income**	**Column B Spouse's Income**
2	**Gross wages, salary, tips, bonuses, overtime, commissions.**	$	$
3	**Net 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. Do not enter a number less than zero. a. Gross receipts $ b. Ordinary and necessary business expenses $ c. Business income Subtract Line b from Line a	$	$
4	**Net rental 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. 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 or spousal support.** Do not include contributions from the debtor's spouse if Column B is completed. Each regular payment should be reported in only one column; if a payment is listed in Column A, do not report that payment in Column B.	$	$
8	**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: Unemployment compensation claimed to be a benefit under the Social Security Act | Debtor $ _____ | Spouse $ _____	$	$
9	**Income from all other sources**. If necessary, list additional sources on a separate page. **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. Specify source and amount. a. $ b. $ Total and enter on Line 9	$	$
10	**Subtotal of current monthly income.** 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).	$	$

B 22C (Official Form 22C) (Chapter 13) (12/10)

In re _____
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

		Column A Debtor's Income	Column B Spouse's Income
1	**Marital/filing status.** Check the box that applies and complete the balance of this part of this statement as directed. a. ☐ Unmarried. **Complete only Column A ("Debtor's Income") for Lines 2-10.** b. ☐ Married. **Complete both Column A ("Debtor's Income") and Column B ("Spouse's Income") for Lines 2-10.**		
	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.		
2	**Gross wages, salary, tips, bonuses, overtime, commissions.**	$	$
3	**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.**		
	a. Gross receipts — $		
	b. Ordinary and necessary business expenses — $		
	c. Business income — Subtract Line b from Line a	$	$
4	**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.**		
	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. Each regular payment should be reported in only one column; if a payment is listed in Column A, do not report that payment in Column B.	$	$

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. If necessary, list additional adjustments on a separate page. If the conditions for entering this adjustment do not apply, enter zero. a. [ ] $ [ ] b. [ ] $ [ ] c. [ ] $ [ ] Total and enter on Line 19.	$
20	**Current monthly income for § 1325(b)(3).** Subtract Line 19 from Line 18 and enter the result.	
21	**Annualized current monthly income for § 1325(b)(3).** Multiply the amount from Line 20 by the number 12 and enter the result.	$
22	**Applicable median family income.** Enter the amount from Line 16.	$
23	**Application of § 1325(b)(3).** Check the applicable box and proceed as directed. ☐ **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. ☐ **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.**	

Part IV. CALCULATION OF DEDUCTIONS FROM INCOME

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 number of persons. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) The applicable number of persons is the number that would currently be allowed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support.	$
24B	**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 applicable number of persons who are under 65 years of age, and enter in Line b2 the applicable number of persons who are 65 years of age or older. (The applicable number of persons in each age category is the number in that category that would currently be allowed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support.) Multiply Line a1 by Line b1 to obtain a total amount for persons under 65, and enter the result in Line c1. Multiply Line a2 by Line b2 to obtain a total amount for persons 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.	$

Persons under 65 years of age			Persons 65 years of age or older		
a1.	Allowance per person		a2.	Allowance per person	
b1.	Number of persons		b2.	Number of persons	
c1.	Subtotal		c2.	Subtotal	

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 family size. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court). The applicable family size consists of the number that would currently be allowed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support.	$

25B	**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 family size (this information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court) (the applicable family size consists of the number that would currently be allowed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support); 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.**	
	a. IRS Housing and Utilities Standards; mortgage/rent expense — $	
	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	**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: _____ _____ _____	$
27A	**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. 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. ☐ 0 ☐ 1 ☐ 2 or more. 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.)	$
27B	**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.)	$
28	**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.) ☐ 1 ☐ 2 or more. 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.**	
	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.	$

2010 COMMITTEE NOTE

Form 22A, lines 19A, 19B, 20A, and 20B, and Form 22C, lines 24A, 24B, 25A, and 25B, are amended to delete the terms "household" and "household size" and to replace them with "number of persons" or "family size." Under § 707(b)(2)(A)(ii)(I) means test deductions for food, clothing, and other items and for health care are permitted to be taken in the amounts specified in the IRS National Standards. The IRS National Standards are based on numbers of persons, not household size. Similarly, the IRS Local Standards are based on family, not household, size. The IRS itself generally determines the applicable number of persons or family size for these purposes according to the number of dependents that the debtor claims for federal income tax purposes.

In order for Forms 22A and 22C to reflect more accurately the manner in which the specified National and Local Standards are applied by the IRS, the references to "household" and "household size" are deleted, and the substituted terms – "number of persons" and "family size" – are defined in terms of exemptions on the debtor's federal income tax return and other dependents.

Form 22A, line 8, Form 22B, line 7, and Form 22C, line 7, are amended to add an instruction that only one joint filer should report regular payments by another person for household expenses. Reporting of the figure by both spouses results in an erroneous double-counting of this source of income.

The introductory instruction to Part I of Form 22A is amended to direct debtors in joint cases to file separate forms if only one of the debtors is entitled to an exemption under Part I and the debtors believe that the filing of separate forms is required by § 707(b)(2)(C) of the Code. The language of § 707(b) is ambiguous about how the exclusions from means testing authorized by § 707(b)(1) (for debtors whose debts are not primarily consumer debts) and (b)(2)(D) (for certain disabled veterans, National Guard members, and Armed Forces reservists) are to be applied in joint cases. The form does not impose a particular interpretation of these provisions. It leaves up to joint debtors the initial determination of whether the exclusion of one spouse from means testing relieves the other spouse from the obligation to complete the form, and allows any dispute over this matter to be resolved by the courts.