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SECTION 707(b): WHAT DOES IT MEAN?

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SECTION 707(b): WHAT DOES IT MEAN?

On April 2, 2005, Congress enacted the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA). BAPCPA made significant changes to the bankruptcy law, especially in the area on consumer bankruptcy. The changes that have drawn the most attention are those to U.S.C § 707(b) allowing for the dismissal of a chapter 7 bankruptcy filed by an individual whose debts are primary consumer debts upon the determination by the bankruptcy court that granting of relief would be an abuse of the provision of chapter 7. The primary focus of § 707(b) is the prevention of the abuse of the bankruptcy system by granting individual debtors a chapter 7 discharge when those debtors have the ability to pay a significant portion of their debts. In this manuscript I trace the evolution of such "needs based" bankruptcy and analyze the provision of the new so-called "means test" enacted by BAPCA.

I. EVOLUTION OF DISMISSAL OF CHAPTER7 BANKRUPTCIES ON GROUNDS OF DEBTORS' ABILITY TO PAY OR BAD FAITH

A. BANKRUPTCY ACT OF 1898

In the Bankruptcy Act of 1898, 30 Stat. 544 (1898), the ability of the debtor's inability to pay his debts was not an element of a debtor obtaining a discharge of his debts. Congress explained the basis for such "unconditional discharge" in the legislative history to the Act as follows:

> [W]hen an honest man is hopelessly down financially, nothing is gained for the public by keeping him down, but, on the contrary, the public good will be promoted by having his assets distributed ratably as far as they will go among his creditors and letting him start anew.

H.R. Rep. No. 55-65 at 43 (1897).

B. BANKRUPTCY REFORM ACT OF 1978

The modern era of bankruptcy law was ushered in by the Bankruptcy Reform Act of 1978, which enacted the Bankruptcy Code. Congress rejected proposals to impose an ability-to-pay condition on the granting of a chapter 7 discharge. The legislative history reflects that Congress believed that a mandatory chapter 13 would violate the thirteenth amendment. *H.R. Rep. No. 95-595 at 120 (1977).* The Bankruptcy Code contained no explicit provision allowing for the dismissal of a chapter 7 bankruptcy on the basis of either bad faith or the debtor's ability to pay his debts. Section 707(a) provided for the dismissal of a chapter 7 case "for cause". Congress did not define the meaning of "cause" except for providing two nonexclusive examples of cause: unreasonable delay that is prejudicial to creditors and failure to pay fees.[1] The legislative history of §707(a) provides scant guidance, as well. The one reference to the meaning of the "cause" is that

[1] In 1986 Congress added a third example of "cause", to wit: the failure to file the information required by §521.

the ability of the debtor to repay his debts in whole or in part does not constitute adequate cause for dismissal. *H.R. Rep. 95-593 at 380 (1978).*

C. 1984 and 1986 Amendments; §707(b)

The consumer credit industry quickly became dissatisfied with what it perceived to be their inability to prevent debtors who had the ability to pay their debts from obtaining relief under chapter 7. Their lobbying efforts resulted in the enactment of §707(b) in 1984. As enacted in 1984, §707(b) provided as follows:

> b) After notice and a hearing, the court, on its own motion and not at the request or suggestion of any party in interest, may dismiss a case filed by an individual debtor under this chapter whose debts are primarily consumer debts if it finds that the granting of relief would be a substantial abuse of the provisions of this chapter. There shall be a presumption in favor of granting the relief requested by the debtor.

When enacted in 1984, a §707(b) dismissal arose only upon a motion by the court. It was unclear as to whether a panel trustees or the US Trustee constituted a party in interest prohibited from bringing information to the court on the issue of substantial abuse. See *In re Christian,* 51 B.R. 118 (Bankr. D.N.J. 1985). In the Bankruptcy Judges, United States Trustees and Family Farmer Act of 1986, *Pub. L. No. 99-554, 100 Stat. 3008 (Oct. 27, 1986)*, Congress expanded the United States Trustee System nationwide, except in North Carolina and Alabama, and authorized the United States Trustee to file §707(b) motions.

D. 1998 Amendments

Pursuant to the Religious Liberty and Charitable Contribution Protection Act, *Pub. L. No. 105-183, 112 Stat. 517*, Congress amended §707(b) again to add a provision forbidding the courts from considering the continuation of charitable contributions in determining whether a debtor has the ability to pay his debts.

E. Case Law Under Pre-BAPCA §707(b)

A summary of the case law with respect to the dismissal of chapter 7 cases prior to the enactment of BAPCPA is as follows:

A case of any kind could be dismissed for "cause" upon the motion of any party in interest. "Cause" was not defined in the statute. But according to the legislative history, cause excluded the ability to pay. The courts split on whether a case filed in bad faith could be dismissed for cause. Cases in which courts have ruled that cases can be dismissed pursuant to §707(a) for bad faith include *In re Tamecki,* 229 F.3d 205 (3d Cir. 2000); *In re Zick*, 931 F.2d 1124 (6th Cir. 1991); *McDow v. Smith*, 295 B.R. 69 (E.D. Va. 2003); and *In re Smith*, 229 B.R. 895 (Bankr. S.D.Ga. 1997). Cases holding that §707(a) does not authorize a court to dismiss a case for bad faith include *In re Padilla*, 222 F.3d 1184 (9th Cir. 2000) and *In re Huckfeldt*, 39 F.3d 829 (8th Cir. 1994)(though allowing

the dismissal for "cause"). The disagreement in the courts appears to be more a matter of semantics than substance. See for example, *In re Horan*, 303 B.R. 42 (Bankr. D.Conn. 2004).

In those cases in which the debtor's debts were primarily consumer debts, upon motion by the court, the U.S. Trustees, or Bankruptcy Administrator, the court could dismiss a case for substantial abuse. The statute provided no guidance on the parameters of substantial abuse, but the legislative history reflected that the primary factor in establishing such abuse was the debtor's ability to pay. With so little statutory guidance, the courts came to different conclusions as to what constituted "substantial abuse". Some courts held that the debtor's ability to pay, standing alone, constituted grounds for dismissal of under §707(b). See *In re Kelly*, 841 F.2d 908 (9th Cir. 1988). On the other extreme were courts that held that the ability to pay was only one of the factors in the "totality of circumstances" to be weighed by a court in determining if a case should be dismissed pursuant to §707(b). See *In re Green*, 934 F.2d 568 (4th Cir. 1991).

In summary, the courts were far from unanimous in interpreting and applying the law with respect to the dismissal of chapter 7 cases. From the perspective of the credit industry, the frustration arising out of the lack of unanimity in the interpretation of the law, paled in comparison to the frustration created by the uneven application of the law on a case-by-case basis. Some United States Trustees or Bankruptcy Administrators were more likely than others to file §707(b) motions. From district to district, the facts necessary to establish substantial abuse were not the same. Two judges in the same district might reach opposite conclusions on what appears to be identical facts. This frustration provided impetus to the lobbying efforts by the credit industry to amend §707(b).

II. DISMISSAL OF CHAPTER 7 CASES UNDER BAPCPA: AN OVERVIEW

A. § 707(a) UNDER BAPCPA

BAPCPA makes no amendments to § 707(a). However, as discussed at page 16, *infra*, by including bad faith as one of the factors for the court to consider in determining whether a case can be dismissed under §707(b)(1), Congress may have undermined those courts who have held that the authority granted to the courts to dismiss a case for cause includes the authority to dismiss a case filed in bad faith. Moving the bad-faith dismissal from §707(a) to §707(b) could be significant because motions to dismiss under §707(b) are limited both as to standing and to circumstances. When the safe harbor provision applies[2] only the court and the US Trustee can file a motion to dismiss for bad faith. Section 707(b) applies only when the debtor's debts are primarily consumer debts.[3]

[2] See discussion, *infra,* at pp. 10-13.
[3] See discussion, *infra,* at pp. 5-8.

B. §707(b) UNDER BAPCPA

With the amendments to §707(b) in BAPCPA Congress has made it clear that the ability to pay alone can provide grounds for the dismissal of a chapter 7 case. However, to ensure uniformity and, perhaps, to prevent the courts from circumventing its intent, Congress enacted a precise formula to be utilized by the courts in determining whether debtors have the means to pay their debts. To further ensure the implementation of needs-based bankruptcy, Congress expanded the standing of parties entitled to file §707(b) motions and imposed upon the US Trustees increased duties in enforcing the statute.

Former §707(b) has been re-codified as §707(b)(1) and, as amended, reads as follows:

> (b)(1) After notice and a hearing, the court, on its own motion or on a motion by the United States trustee, trustee (or bankruptcy administrator, if any), or any party in interest, may dismiss a case filed by an individual debtor under this chapter whose debts are primarily consumer debts, or, with the debtor's consent, convert such a case to a case under chapter 11 or 13 of this title, if it finds that the granting of relief would be an abuse of the provisions of this chapter. In making a determination whether to dismiss a case under this section, the court may not take into consideration whether a debtor has made, or continues to make, charitable contributions (that meet the definition of "charitable contribution" under section 548(d)(3)) to any qualified religious or charitable entity or organization (as that term is defined in section 548(d)(4)).

The primary changes are as follows:

1. Standing is expanded to allow 707(b) motions to be filed by panel trustees and creditors, in addition to US trustees, BA's, and the courts.

2. The explicit presumption in favor of granting relief under chapter 7 is removed.

3. The standard is changed from one of "substantial abuse" to "abuse".

BAPCPA adds 6 more subsections to §707(b). They are as follows:

1. Subsection 2 is the "means test" through the creation of a presumption of abuse based on calculations of the debtor's income and expenses. Subsection 2 is essentially a statutory determination of the debtor's ability to pay his debts.

2. Subsection 3 provides the grounds for the dismissal of cases for abuse when the application of the statutory ability-to-pay provision results in a determination that the debtor does not have the ability to pay his debts.

3. Subsection 4 imposes certain duties upon the debtor's attorney and provides for the imposition of fees, costs, and sanctions upon the attorney for his or her failure to fulfill those duties. The provision is essentially a statutory Rule 9011.

4. Subsection 5 provides for the award of fees and costs to the debtor in successfully defending a §707(b) brought by a creditor if the filing of the motion violated Rule 9011 or certain other duties.

5. Subsection 6 provides a safe harbor that limits the standing to file §707(b) motions to the courts, the US Trustee, and the BA when the debtor's income is below the median income.

6. Subsection 7 provides a second safe harbor that prevents any entity from filing a motion to dismiss under §707(b)(2) if the debtor's income and that of the debtor's non-filing spouse, if any, is below the median income. As discussed below at page 17, when this safe harbor provision applies, the court, the US Trustee, or the BA can still file a motion to dismiss, but the only grounds for dismissal are those set out in §707(b)(3), and do not include the debtor's ability to pay.

III. DISMISSAL OF CHAPTER 7 CASES UNDER BAPCPA: THE SPECIFICS

A. PRIMARILY CONSUMER DEBTS

When §707(b) was enacted in 1984 a condition to its applicability was that the debtor's debts must be primarily consumer debts. Interestingly enough, Congress did not eliminate this condition when it amended §707(b) in BAPCPA. Therefore, all the existing case law related to defining consumer debts and determining when a debtor's debts are primarily consumer debts remain relevant to the application of §707(b). Section 101(8) of the Bankruptcy Code defines "consumer debt" as a debt incurred by an individual primarily for a personal, family, or household purpose. Several provisions of the Bankruptcy Code utilize the term. It appears in §521 with respect to triggering a debtor's obligation to file a Statement of Intention.[4] In §523(a)(2)(C) and §523(d), consumer debt is an element of a presumption related to a discharge exception and of a court's authority to award a debtor attorney's fees in defending an unjustified discharge complaint, respectively. It appears in §722 related to the redemption of property. The term appears in §1301 in connection with the codebtor stay applicable in chapter 13 cases. Finally, it appears in §1322(b)(1) with respect to discriminatory classification of claims in chapter 13 cases.

A common tendency is to classify debts into two categories: 1) consumer debts, and 2) business debts. However, in implementing §707(b) a more precise division of claims is

[4] BAPCPA deleted "consumer" from the Statement of Intention requirement, and the requirement now applies to all secured debts.

two categories: 1) consumer debts, and 2) debts which are not consumer debts, i.e., everything else. The most common non-consumer debts are business debts, but there are other debts that are neither consumer nor business. Examples of such debts are tort claims and tax debts. When ascertaining whether a debtor's debts are primarily consumer debts, these debts go on the non-consumer side of the ledger.

There is no unanimity among the courts with respect to classifying debts as consumer of non-consumer, but in general the following rules have emerged:

1. Debts are primarily consumer debts when the total amount of consumer debts is more than 50% of all debts. See *In re Kelly*, 841 F.2d 908 (9th Cir. 1988); *In re Stewart*, 175 F.3d 796 (10th Cir. 1999). But see *In re Booth*, 858 F.2d 1051 (5th Cir. 1988)(stating " 'primarily' suggests an overall ratio of consumer debts to non-consumer debts of over fifty percent … consumer debts should be evaluated not only by amount, but by their relative number"); *In re Bryant*, 47 B.R. 21 (Bankr. W.D.N.C. 1984)(court held that the courts should make the determination on the basis of the number of creditors as well as amount).

2. Mortgage debts incurred for personal, family or household purposes are consumer debts. *In re Price*, 353 F.3d 1135 (9th Cir. 2004); *In re Praleikas*, 248 B.R. 140 (Bankr. W.D.Mo. 2000).

3. Tax debts are not consumer debts. *In re Westberry,* 215 F.3d 589 (6th Cir. 2000)(income taxes); *In re Stovall*, 209 B.R. 849 (Bankr. E.D.Va. 1997)(personal property taxes); *In re Smith*, 1994 WL 681030 (Bankr. M.D.N.C. 1994)(income taxes); *In re Greene*, 157 B.R. 496 (Bankr. S.D.Ga. 1993). But see *In re Bell*, 65 B.R. 575 (Bankr. E.D.Mich. 1986).

4. Tort claims are not consumer debts. *In re Izzi*, 196 B.R. 727 (Bankr. E.D. Pa. 1996)(assault); *In re Arlington*, 192 B.R. 494 (Bankr. N.D.Ill. 1995)(malicious prosecution); *In re Marshalek*, 158 B.R. 704 (Bankr. N.D.Ohio 1993)(automobile accident).

5. The courts are split on designating student loans as consumer debts. *In re Stewart*, 175 F.3d 796 (10th Cir. 1999)(substantial portion of student loans were consumer debts); *In re Wisher*, 222 B.R. 634 (Bankr. D.Colo. 1998) (student loan is a consumer debt); *In re Vianese*, 192 B.R. 61 (Bankr. N.D.N.Y. 1996)(student loan for children's education is a consumer debt); *In re Dickerson*, 193 B.R. 67 (Bankr. M.D.Fla. 1996)(student loan included in non-consumer debts, but debts were still primarily consumer debts); *In re Hill*, 1994 WL 738663 (Bankr. D.Idaho 1994)(student loan included in non-consumer debts, but debts were still primarily consumer debts).

6. For the most part, the courts have held that marital debts, such as equitable distribution claims, are consumer debts. *In re Traub*, 140 B.R. 286 (Bankr. D.N.M. 1992); *In re Palmer*, 117 B.R. 443 (Bankr. D.Iowa 1990).

Some debts such as tax debts, guaranties of business debts, or loans to purchase a home, are easily identifiable as either consumer or non-consumer debts. Unfortunately, in many instances the determination is not so easily made. A mortgage secured by the debtor's home is not all consumer debt if the debtor refinanced the home to obtain cash to start a business. Cash advances on credit cards, if used to keep a business afloat may also be non-consumer/business debt. Many debtors, who are self-employed or otherwise engaged in business, have so intermingled their personal and business affairs that ascertaining where the consumer debt stops and the non-consumer debt starts is a daunting task. However, if establishing that the debtor's debts are not primarily consumer debts will avoid a dismissal or a forced chapter 13, the benefit to the debtor of taking on the task will justify the time and expense. I have found that the process is facilitated by allowing the debtor to "tell his story" on how he got into financial difficulty. By probing at the details, I unravel the knot of intermingled finances, and come to a conclusion as to whether the debts are primarily consumer debts. If it appears that the debts are not primarily consumer debts, I obtain whatever documentation that is available to support the fact, and carefully designate the non-consumer debts on schedules D, E, and F.

Even cases in which it appears at first that the debtor's debts are consumer debts can merit further investigation and analysis. The following hypothetical illustrates the point.

> Miles Standish and John Smith opened competing dry cleaning businesses on Pocahontas Drive in Jamestown, Virginia, in 2004. Each invested $30,000 of his own money into his business. Standish created a corporation to own and operate his business. The corporation borrowed $50,000 on a SBA "working capital" loan, which Standish personally guaranteed. Smith did not obtain a business loan.
>
> Neither business succeeded. Each business generated revenue sufficient to pay the expenses, excluding a salary to the owner. Standish's corporation, however, paid him a salary of $3,000 per month for 12 months by depleting the working capital loan. This salary allowed him to pay his personal living expenses. Smith paid his personal living expenses by obtaining cash advances on his credit cards. Each closed his business in September 2005.
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> In October Standish obtained a job as a military advisor, earning $5,000 per month. Smith opened a credit counseling service in October, and after finally obtaining approval by the US Trustee, has earned $25,000 through March 2006. In April they each consult with a bankruptcy attorney about filing chapter 7 bankruptcy. Standish's only debt is the $50,000 SBA loan. Smith has $50,000 in credit card debt, all of which was incurred to pay his living expenses while he was operating the dry cleaning business.

The circumstances of Standish and Smith are remarkably similar. Standish's debt is clearly a business debt. Are Smith's credit card debts consumer debts? They were used to pay for his living expenses, which certainly meets the definition of a consumer debt.

Would Smith's situation be different if he had formed a corporation, borrowed the funds on his credit card, loaned them to the corporation, and then paid it back in the form of salary? Will form prevail over substance?

B. APPLICATION OF THE MEANS TEST: CURRENT MONTHLY INCOME

Application of the means test imposed by BAPCPA begins with ascertaining the debtors "current monthly income" (CMI). Current monthly income is defined at §101(10A) as follows:

> (10A) The term "current monthly income'--
>
> (A) means the average monthly income from all sources that the debtor receives (or in a joint case the debtor and the debtor's spouse receive) without regard to whether such income is taxable income, derived during the 6-month period ending on—
>
> (i) the last day of the calendar month immediately preceding the date of the commencement of the case if the debtor files the schedule of current income required by section 521(a)(1)(B)(ii); or
>
> (ii) the date on which current income is determined by the court for purposes of this title if the debtor does not file the schedule of current income required by section 521(a)(1)(B)(ii); and
>
> (B) includes any amount paid by any entity other than the debtor (or in a joint case the debtor and the debtor's spouse), on a regular basis for the household expenses of the debtor or the debtor's dependents (and in a joint case the debtor's spouse if not otherwise a dependent), but excludes benefits received under the Social Security Act, payments to victims of war crimes or crimes against humanity on account of their status as victims of such crimes, and payments to victims of international terrorism (as defined in section 2331 of title 18) or domestic terrorism (as defined in section 2331 of title 18) on account of their status as victims of such terrorism.

The three elements of CMI are: 1) it must be income; 2) it must be received by the debtor; 3) it must be derived during the six-month period ending on the last day of the month prior to filing the petition. As to this last element, if the debtor fails to file Schedule I as required by §521(a)(1)(B)(ii), CMI includes income derived through the date upon which "current income" is determined by the court. This provision is a puzzler, because "current income" as set out in Schedule I is not CMI. Furthermore, it is unclear how a debtor avoids a dismissal pursuant to §707(a)(3) if he fails to file Schedule I.

As to the timing issue in general, the dual requirements that the income must be received by the debtor and must be derived during the applicable six-month period, lend themselves to three interpretations. First, they could mean that the debtor must not only receive the income during the six-month period, but it must arise from some event that occurred during that period. A second interpretation is that the income arises from some

event that occurred during the six-month period, so long as it is included in CMI despite the fact the debtor receives it post-petition. A final interpretation is that "derived" is synonymous with "received", and the two term merge into one, requiring only that the income be received during the six-month period. Because of the simplicity of implementation, I believe that this last interpretation is the one that will be utilized by the parties and adopted by the courts.

With respect to what constitutes income, the Bankruptcy Code does not provide a definition. The statute does provide guidance as to some items to be included or excluded from the calculation of CMI. If whatever the debtor receives is income, it is not excluded because it is not taxable. Income excludes benefits received under the Social Security Act and payments to certain victims of war crimes, crimes against humanity, and terrorism. CMI includes any amount paid by an entity, other than the debtor, "on a regular basis" for the household expenses of the debtor and the debtor's dependents.

When the source of the payments by the other entity is social security benefits, it is unclear as to whether these payments are included in CMI. This situation will arise with some frequency. It is not uncommon for a married couple, in which one spouse is gainfully employed and the other is disabled, to incur their debts solely in the name of the employed spouse. Commonly, in such situations, only the indebted spouse files bankruptcy. In these cases, the non-filing spouse usually contributes his or her entire social security check to household expenses. As stated earlier, it is unclear if such contributions are included in the debtor's CMI. If the couple filed a joint petition, then unquestionably the social security benefits are not included in CMI, and the CMI in the joint case may be lower than in the individual case.

There are other scenarios in which the CMI of a single filer will undoubtedly be higher than a joint filing with a spouse. For example, if one spouse has a nest egg (such as funds from a retirement account cashed in more than six months prior to the filing, an inheritance, or a personal injury fund) upon which the parties have been "living", the depletion of these funds for living expenses are not income if both spouses file. However, if the spouse to whom the nest egg does not belong files alone, the amounts paid from it on a regular basis for his household expenses will be included in CMI.

An important issue is whether tax refunds are included in CMI. In my opinion, tax refunds are not income to be included in CMI. The payment of taxes through withholding or the payment of estimated tax payments is essentially putting money into a savings account. When the IRS "refunds" the overpayment of taxes paid by a debtor, it is returning part of those savings to the debtor. Consider this example: Debtor A and Debtor B are both self-employed carpenters. Their earnings are the same. Debtor A makes $8,000 estimated tax payments to the IRS throughout 2005. Debtor B makes no estimated tax payments, but puts $8,000 into savings so that he will have the funds available with which to pay his taxes. When the tax return is prepared each owes $5,000 in taxes. Debtor A gets a $3,000 refund. Debtor B gets nothing, but writes a check to the IRS for $5,000 and has $3,000 left in the bank. It makes no sense to say that Debtor A's

current monthly income is $500 higher than Debtor B's. The same analysis would apply with two salaried debtors with identical incomes, but with one having more withheld from his wages than the other.

This issue has significance only when applying the safe harbor provisions of the means test, pursuant to which the debtor's CMI is compared to median income. At the next step of the process (what we in my office now call the "long form B22A") in which CMI is compared to the deductible expenses, the bottom line result will usually be the same whether the tax refund is included in CMI and the tax payments that created the refund are deducted back out, or in the alternative, the tax refund is not included in CMI.

When you apply this analysis to the preparation of the long form B22A, the deduction should reflect the debtor's actual tax liability, based on any refunds or taxes owed. If a debtor is having $1,000 deducted per month from his paycheck for taxes, but receives a $3,000 refund, he is over-withholding by $250 per month and the tax deduction on line 25 of Form B22A should be $750, not $1,000. If he owes $3,000, the deduction should be $1,250. The analysis (and the math) is easy when the debtor's income is stable and consistently the same.

Earned Income Credits (EIC) are income. EIC is not the refund of the debtor's funds, but rather is new money paid by the government to the "working poor". It is sometimes referred to as a "negative income tax." EIC should be included in CMI. However, I can't imagine that even with its inclusion that the CMI of someone receiving EIC will exceed the median income.

C. APPLICATION OF THE MEANS TEST: SAFE HARBORS

Upon determining the debtor's CMI, the next step in the process is to determine if one or both of the safe harbor provisions applies. Those safe harbor provisions are set out in §707(b)(6) and (b)(7). Those provisions are as follows:

> (6) Only the judge or United States trustee (or bankruptcy administrator, if any) may file a motion under section 707(b), if the current monthly income of the debtor, or in a joint case, the debtor and the debtor's spouse, as of the date of the order for relief, when multiplied by 12, is equal to or less than--
>
> (A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;
>
> (B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or
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> (C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4.

(7)(A) No judge, United States trustee (or bankruptcy administrator, if any), trustee, or other party in interest may file a motion under paragraph (2) if the current monthly income of the debtor, including a veteran (as that term is defined in section 101 of title 38), and the debtor's spouse combined, as of the date of the order for relief when multiplied by 12, is equal to or less than --

(i) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

(ii) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

(iii) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4.

(B) In a case that is not a joint case, current monthly income of the debtor's spouse shall not be considered for purposes of subparagraph (A) if--

(i)(I) the debtor and the debtor's spouse are separated under applicable nonbankruptcy law; or

(II) the debtor and the debtor's spouse are living separate and apart, other than for the purpose of evading subparagraph (A); and

(ii) the debtor files a statement under penalty of perjury--

(I) specifying that the debtor meets the requirement of subclause (I) or (II) of clause (i); and

(II) disclosing the aggregate, or best estimate of the aggregate, amount of any cash or money payments received from the debtor's spouse attributed to the debtor's current monthly income.

The first safe harbor applies when the CMI of the debtor (or debtors in a joint case) is less than the appropriate median income for the applicable state. The comparison is made on the number of individuals in the debtor's household. When the debtor's CMI is equal to or less than the median income for a household of the same size as the debtor, §707(b)(6) eliminates the standing of creditors and the panel trustee to file a §707(b) motion on any grounds. The court, the US Trustee, and the BA continue to have standing to file motions.

The second safe harbor eliminates the standing of any entity to file a motion under §707(b)(2) if the CMI of the debtor and the debtor's spouse combined is equal to or less than the median income for a household of the same size in the applicable state.

The debtor's CMI is compared to the "median family income for the applicable State". Once the applicable state is determined, ascertaining the amount of the median income is just a matter of reading the chart provided by the US Trustee. In most cases the applicable state will not be in question. However, in those cases in which the debtor has resided or been domiciled in more than one state during the six months prior to filing or in which the debtor resides in one state and is domiciled in another state, the debtor's attorney must ascertain which state's median income figures apply. The statute provides no direct guidance, and there is no case law on the issue yet. The most expedient choice is the state in which the case is filed. Other options are: 1) the state in which the debtor resides, if different from the state in which the case is filed; 2) the state in which the debtor is domiciled, if different from the state in which the case is filed; 3) the state in which the debtor was domiciled or resided for the greater portion of the 180 days prior to filing the bankruptcy.

In those states that have higher median incomes, the living expenses are usually higher as well. Consequently, using the median income for the appropriate state as a measure of a debtor's disposable income and his ability to pay his debts makes sense. Therefore, in those rare cases in which residency and domicile differ, residency should control because a debtor's living expenses are affected by the place in which he lives, not the place he calls home. Since CMI is an amount calculated over the six-month period ending on the last day of the month prior to the petition date, the determination of the "applicable State" should be made upon the same basis. If the debtor resided in more than one state during the six-month period, the applicable state should be the one in which the debtor resided for the greater portion of the six-month period. As a result the comparison of CMI to median income will be on an apples-to-apples basis, to the extent practicable.

This issue is not likely to be litigated on a frequent basis. Whether one state or another is the applicable state for the safe harbor comparison is significant only if the outcome will differ. The chances are great that in a case in which a debtor misses the safe harbor due to the choice of one state's higher median income rather than another state's lower median income, the debtor will be able to prevent the presumption of abuse from arising at the next step of the means test.

Several observations are in order with respect to these safe harbors.

1. The only circumstances in which a debtor may fall under the protection of the first safe harbor and not the second is when the debtor is married and files an individual petition. If the debtor is single or the case is a joint case, the comparisons mandated by the two provisions are the same.

2. A literal reading of the provisions dictates that the results of the two provisions will be the same in all cases, including those cases in which a married debtor files alone. The basis for this assertion is that in the first safe harbor only the CMI of the filing spouse is considered, and in the second Congress attempts to include the income of the non-filing spouse, by specifying that the comparison to the median income shall include the CMI of

the debtor and the debtor's spouse combined. The problem is that CMI, as defined in §101(10A) includes only income received by the debtor. By definition the debtor's spouse, who is not a debtor, has no CMI. Whether the courts will construe the statute literally and exclude any consideration of the spouse's income or interpret it to include what the spouse's CMI would be if the spouse were a debtor, remains to be seen.

3. The reference to motions to dismiss "under paragraph (2)" is a bit confusing. Motions to dismiss are made pursuant to §707(b)(1). Paragraph (2) creates the presumption of abuse based on the debtor's ability to pay a determined by his income and expenses. Presumably, the reference to paragraph (2) is intended to provide the debtor a safe harbor from a motion to dismiss based on his ability to pay. The legislative history supports this view.

4. When a debtor falls under the protection of both safe harbors, only the court, the US Trustee, or the BA can file a motion to dismiss his case under §707(b), and those motions are restricted to the general grounds for dismissal of bad faith and totality of the circumstances of the debtor's financial situation pursuant to §707(b)(3).

D. APPLICATION OF THE MEANS TEST: DEDUCTION OF EXPENSES

If the debtor's CMI exceeds the median income, then he must proceed to the next level of the means test – the deduction of allowable expenses. The expenses fall into the following groupings: 1) expenses deducted under the "National Standards" promulgated by the IRS; 2) expenses promulgated under the "Local Standards" promulgated by the IRS; 3) "Other Necessary Expenses" allowed under the IRS guidelines; 4) payment of secured debts and priority claims; and 5) several other expenses set out in the statute. Attached as Appendix A are selected provisions of the Internal Revenue Manual (IRM) with the pertinent IRS guidelines.

These expenses are set out on Form B22A filed with the bankruptcy petition. I have created a form which I use in my office in marshalling the information necessary to complete Form B22A. It is attached as Appendix B to this manuscript. Debtors' attorneys should be aware of the following:

1. IRM specifically provides that the national and local standard expenses are guidelines and that upon a determination that a standard amount is inadequate a deviation should be allowed.

2. Other Necessary Expenses are allowed so long as they are necessary to provide for the debtor's and his family's health and welfare and/or necessary for the production of income. The amount allowed must be reasonable.

3. Specifically included within the category of Other Necessary Expenses are student loans if they are "secured" by the federal government.

4. Form B22A contains a paragraph 56 which allows for the listing of miscellaneous Other Necessary Expenses, but its location on the form does allow such expenses to be deducted from CMI in determining whether the presumption of abuse arises.

5. The Rules of Bankruptcy Procedure and the Official Forms are promulgated pursuant to 28 U.S.C. §2075 which provides:

> The Supreme Court shall have the power to prescribe by general rules, the forms of process, writs, pleadings, and motions, and the practice and procedure in cases under title 11.
>
> Such rules shall not abridge, enlarge, or modify any substantive right.
>
> The Supreme Court shall transmit to Congress not later than May 1 of the year in which a rule prescribed under this section is to become effective a copy of the proposed rule. The rule shall take effect no earlier than December 1 of the year in which it is transmitted to Congress unless otherwise provided by law.
>
> The bankruptcy rules promulgated under this section shall prescribe a form for the statement required under section 707(b)(2)(C) of title 11 and may provide general rules on the content of such statement.

6. The last sentence, of 28 U.S.C. §2075, added by BAPCPA, explicitly authorized the promulgation of the form we now know as Official Form B22A. The second sentence of 28 U.S.C.§2075 provides that the rules may not abridge, enlarge, or modify any substantive right. To the extent that Form B22A deprives a debtor of the deduction of an expense allowed under the substantive provisions of §707(b)(2)(A) of the Bankruptcy Code, the provision of the Bankruptcy Code control, and the debtor is allowed to claim the deduction. See *In re Waindell*, 65 F.3d 1307 (5th Cir. 1995) and *In re Coleman,* 1996 WL 33401896 (Bankr. S.D.Ga. 1996). If the expenses exceed CMI or if CMI exceeds the expenses by less than $100.00, the debtor "passes" the means test and no presumption of abuses arises. If CMI exceeds the expenses by $167.00 the debtor fails the means test, and the presumption of abuse arises. If the excess income is between $100.00 and $167.00 the presumption of abuse arises if the product of that amount and 60 is equal to or greater than 25% of the debtor's non-priority unsecured debts.

E. APPLICATION OF THE MEANS TEST: REBUTTING THE PRESUMPTION WITH SPECIAL CIRCUMSANCES

When application of §707(b)(2)(A) results in the presumption of abuse, §707(b)(2)(B) gives the debtor the opportunity to rebut the presumption by demonstrating special

circumstances. These special circumstances must relate to the debtor's income and expenses. The means test calculations performed pursuant to §707(b)(2)(A) are based on historical date, i.e. the debtor's income during the six-month period ending on the last day prior to filing the petition. The need to resort to the special circumstances rebuttal of the presumption of abuse will arise most often when the debtor's financial circumstances at the time the petition is filed differ from the circumstances that existed during the six-month period.

The most prevalent change will be a decrease in income, i.e., the debtor's "current monthly income" as defined in the Code overstates his real current monthly income. One way to deal with such decreases in income is to simply wait. After enough months elapse the Code's CMI will accurately reflect the real current monthly income, and the presumption of abuse will no longer arise. However, there will be instances in which the debtor is unwilling or unable to wait to file. He may be subject to a garnishment or other collection actions that require an immediate filing.

There must be no "reasonable alternative" to the reduction in income. The circumstances in which debtors will incur reductions in income are nearly unlimited, and the responses of the courts in deciding whether the debtor has a reasonable alternative to the reduction will depend on the facts of the cases. With respect to involuntary reductions in income the debtor should demonstrate that he has taken reasonable action to remedy the situation.

There will be cases in which the debtor voluntarily reduces his income by changing careers, quitting a part-time job, or working less overtime. As a first impression, one might conclude that there is always a reasonable alternative to the reduction. The debtor just has to keep on doing what he has been doing. However, many debtors are working two jobs or working substantial hours of overtime in a failed attempt to pay their debts. If such a debtor chooses to reduce his work hours, he must be prepared to demonstrate that it is not reasonable for him to keep working such long hours. In such cases evidence that the reduction in hours is necessary to preserve the debtor's health or marriage will be useful. Good lawyering will be a premium in these cases.

Even if the court finds that the debtor did have a reasonable alternative to the reduction in income and dismisses a case, the debtor may be able to successfully file a second chapter 7 case. It is likely that 60 to 90 days will elapse from the time that the case is filed and it is dismissed. Assuming that the debtor files a second case 30 to 60 days after the dismissal, his CMI upon the filing of the second case may be below the median or at least low enough to allow the rebuttal of the presumption of abuse. In the second case, the debtor will have an automatic stay for only 30 days, but if the debtor is not being garnished the automatic stay may not be crucial, since the discharge injunction will be entered approximately 60 days after the stay expires. As discussed at pages 16 -17, *infra*, the debtor may still be subjected to motions to dismiss for bad faith or the totality of the circumstances pursuant to §707(b)(3).

With respect to extraordinary expenses, the debtor's attorney should first ascertain whether the expenses can properly be included as an adjustment to expenses or as "Other

Necessary Expenses" pursuant to §707(b)(2)(A)(ii)(I) under the IRS guidelines. The inclusion of the expenses in this fashion may allow the debtor to rebut the presumption of abuse and avoid the need to establish special circumstances under §707(b)(2)(B). As discussed at pages 14, Official Form B22A complicates this approach by not allowing the entry of some of these expenses in determining whether the presumption of abuse arises. When the expenses are included as special circumstances, they must be justified and there must be no reasonable alternative to them. The Code provides no further guidance as to what is allowable other than the two examples of a serious medical condition and a call to active duty in the Armed Services. My advice to debtors' attorneys is as follows:

1. You have an ethical duty to zealously represent the interest of your client.

2. Temper that duty with the provisions of §707(b)(4) that allows the imposition of costs, attorney's fees, and civil penalties if you fail to perform a reasonable investigation into the circumstances, determine that the assertion of special circumstances is well grounded in fact, and determine that the assertion of special circumstances is warranted by existing law, or a good faith argument for the extension modification or reversal of existing law.

3. Until the case law develops, aggressiveness in what expenses justify a determination of special circumstances is less likely to result in an award of fees or the imposition of sanctions than failure to document and prove the expenses do in fact exist.

III. DISMISSAL WHEN PRESUMPTION OF ABUSE DOES NOT ARISE OR IS REBUTTED

A. DISMISSAL FOR CAUSE UNDER 707(a)

Section 707(b)(3) provides:

> (3) In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter in a case in which the presumption in subparagraph (A)(i) of such paragraph does not arise or is rebutted, the court shall consider--
>
> (A) whether the debtor filed the petition in bad faith; or
> (B) the totality of the circumstances (including whether the debtor seeks to reject a personal services contract and the financial need for such rejection as sought by the debtor) of the debtor's financial situation demonstrates abuse.

Standing to file motion applying the §707(b)(3) grounds for dismissal is limited. If the debtor's CMI is below the median income, then only the judge, the US Trustee, or the BA have standing to file the motion. In such cases, panel trustees and creditors still can file motions to dismiss pursuant to §707(a) for cause. Those court that have held that dismissal for cause includes grounds for dismissal for bad faith, will have to reconsider

their position. With "bad faith" set out as an explicit basis for dismissal under §707(b)(3), it would be contrary to basic principles of statutory construction to include the same basis for dismissal under §707(a). However, no one should be surprised when a court dismisses a case under §707(a) upon fact and circumstances deemed appropriate by the court. All the court has to do is to recite the facts and circumstances upon which the determination to dismiss is based and call them "cause".

B. DISMISSAL UNDER §707(b)(3)

The controversy that has and will develop with respect to §707(b)(3) is whether the inclusion in that provision as one of the grounds for dismissal the consideration of the totality of the circumstances of the totality of the debtor's financial situation allows the courts to consider the debtor's ability to pay despite the fact that the debtor has "passed" the means test. In my opinion, it does not. As stated earlier, the impetus behind the amendments to §707(b) in BAPCPA was the dissatisfaction with the inconsistency of the courts in determining whether to dismiss cases based on a debtor's ability to pay. With great specificity Congress has created a statutory formula upon which that determination is made. To engraft some other judicially created ability-to-pay standard upon debtors thwarts the Congressional intent.

Then under what circumstances should creditors and other parties file a motion to dismiss under §707(b)(3)? What factors do the courts consider in ruling on such motions? In general, the focus should be on the debtor's conduct, not only in connection with the prosecution of the case, but with respect to his activity in preparation to file. The vast majority of debtors avail themselves of bankruptcy relief for proper reasons, and they do so in a straight-forward and honest manor. Dismissals under §707(b)(3) should be reserved for those exceptional cases in which the debtor is attempting to "use" the system for some improper purpose.

There is a body of case law applying standards of "bad faith" in dismissing cases pursuant to 707(a).[5] The cases will serve as the starting point for determining bad faith under §707(b)(3). In applying the substantial abuse standard for dismissal under the former §707(b), some courts, such as *In re Green*, 934 F.2d 568 (1991), looked at the totality of the circumstances, including the debtor's ability to pay his debts. The factors considered in those cases will form the basis for interpreting dismissals based on the totality of the circumstances under §707(b)(3). However, in those cases, the debtor's ability to pay was the most important factor considered. Now that Congress has provided us with a formula on determining the ability to pay, it should not be a factor in the application of §707(b)(3).

[5] See cases cited at page 3.

APPENDIX A

Selected Provisions from Internal Revenue Manual

Internal Revenue Manual - 5.15.1 Financial Analysis Handbook 5.15.1.7

1. Allowable expenses include those expenses that meet the necessary expense test. The *necessary* expense *test is defined as* expenses *that are necessary to* provide *for a taxpayer's and his or* her *family's health and welfare and/or production of income.* The expenses must be reasonable. The total necessary expenses establish the minimum a taxpayer and family needs to live.

2. There are three types of necessary expenses:

- National Standards

- Local Standards

- Other Expenses

3. National Standards: These establish standards for reasonable amounts for five necessary expenses. Four of them come from the Bureau of Labor Statistics (BLS) Consumer Expenditure Survey: food, housekeeping supplies, apparel and services, and personal care products and services. The fifth category, miscellaneous, is a discretionary amount established by the Service. It is $100 for one person and $25 for each additional person in the taxpayer's household.

All five standards are included in one total national standard expense.

4. Local Standards: These establish standards for two necessary expenses: housing and transportation. Taxpayers will be allowed the local standard or the amount actually paid, whichever is less.

A. Housing - Standards are established for each county within a state. When deciding if a deviation is appropriate, consider the cost of moving to a new residence; the increased cost of transportation to work and school that will result from moving to lower-cost housing and the tax consequences. The tax consequence is the difference between the benefit the taxpayer currently derives from the interest and property tax deductions on Schedule A to the benefit the taxpayer would derive without the same or adjusted expense.

B. Transportation - The transportation standards consist of nationwide figures for loan or lease payments referred to as ownership cost, and additional amounts for operating costs broken down by Census Region and Metropolitan Statistical Area. Operating costs were derived from BLS data. If a taxpayer has a car payment, the allowable ownership cost added to the allowable operating cost equals the allowable transportation expense. If a taxpayer has no car payment only the

operating cost portion of the transportation standard is used to figure the allowable transportation expense. Under ownership costs, separate caps are provided for the first car and second car. If the taxpayer does not own a car a standard public transportation amount is allowed.

5. Other - Other expenses may be allowed if they meet the necessary expense test. The amount allowed must be reasonable considering the taxpayer's individual facts and circumstances.

6. Conditional expenses. These expenses do not meet the necessary expenses test. However, they are allowable if the tax liability, including projected accruals, can be fully paid within five years.

7. National local expense standards are guidelines. If it is determined a standard amount is inadequate to provide for a specific taxpayer's basic living expenses, allow a deviation. Require the taxpayer to provide reasonable substantiation and document the case file.

8. Generally, the total number of persons allowed for national standard expenses should be the same as those allowed as dependents on the taxpayer's current year income tax return. Verify exemptions claimed on taxpayer's income tax return meet the dependency requirements of the IRC. There may be reasonable exceptions. Fully document the reasons for any exceptions. For example, foster children or children for whom adoption is pending.

9. A deviation from the local standard is not allowed merely because it is inconvenient for the taxpayer to dispose of valued assets.

10. Revenue officers should consider the length of the payments. Although it may be appropriate to allow for payments made on the secured debts that meet the necessary expense test, if the debt will be fully repaid in one year only allow those payments for one year.

5.15.1.8 (05-01-2004) National Standards

1. National standards include the following expenses:

A. Apparel and services. Includes shoes and clothing, laundry and dry cleaning, and shoe repair.

B. Food. Includes all meals, home and away.

C. Housekeeping supplies. Includes laundry and cleaning supplies; other household products such as cleaning and toilet tissue, paper towels and napkins; lawn and garden supplies; postage and stationary; and other miscellaneous household supplies.

D. Personal care products and services. Includes hair care products, haircuts and beautician services, oral hygiene products and articles, shaving needs, cosmetics, perfume, bath preparations, deodorants, feminine hygiene products, electric personal care appliances, personal care services, and repair of personal care appliances.

E. Miscellaneous. A discretionary allowance of $100 for one person and $25 for each additional person in a taxpayer's family.

2. Allow taxpayers the total national standard amount for their income level.

Example: *The taxpayer's expenses are: housekeeping supplies - $150, clothing - $150, food - $600, miscellaneous - $400 (Total Expenses - $1,300). The taxpayer is allowed the national standard* of *$1,100.*

3. A taxpayer that claims more than the total allowed by the national standards must substantiate and justify each separate expense of the total national standard amounts.

Example: *A taxpayer may claim* a *higher food expense than allowed. Justification would be based on prescribed or required dietary needs.*

5.15.1.9 (05-01-2004) Local Standards

1.Local standards include the following expenses:

A. Housing and Utilities. The utilities include gas, electricity, water, fuel, oil, bottled gas, trash and garbage collection, wood and other fuels, septic cleaning, and telephone. Housing expenses include: mortgage or rent, property taxes, interest, parking, necessary maintenance and repair, homeowner's or renter's insurance, homeowner dues and condominium fees. Usually, this is considered necessary only for the place of residence. Any other housing expenses should be allowed only if, based on a taxpayer's individual facts and circumstances, disallowance will cause the taxpayer economic hardship.

B. Transportation. Vehicle insurance, vehicle payment (lease or purchase), maintenance, fuel, state and local registration, required inspection, parking fees, tolls, driver's license, public transportation. Transportation costs not required to produce income or ensure the health and welfare of the family are not considered necessary. Consider availability of public transportation if car payments (purchase or lease) will prevent the tax liability from being paid in part or full. Public transportation costs could be an option if it does not significantly increase commuting time and inconvenience the taxpayer.

Note: If the taxpayer has no car payment, or no car, question how the taxpayer travels to and from work, grocer, medical care, etc. The taxpayer is only allowed the operating cost or the cost of transportation.

5.15.1.10 (05-01-2004) Other Expenses

1. Other expenses may be considered if they meet the necessary expense test - they must provide for the health and welfare of the taxpayer and/or his or her family or they must be for the production of income. This is determined based on the facts and circumstances of each case.

2. If other expenses are determined to be necessary and, therefore allowable, document the reasons for the decision in your history.

3. The amount allowed for necessary or conditional expenses depends on the taxpayer's ability to full pay the liability within five years and on the taxpayer's individual facts and circumstances. If the liability can be paid within 5 years, it may be appropriate to allow the taxpayer the excessive necessary and conditional expenses. If the taxpayer cannot pay within 5 years, it may be appropriate to allow the taxpayer the excessive necessary and conditional expenses for up to one year in order to modify or eliminate the expense. *(See IRM* 5.14, *Installment Agreements)*

Expense Item:	Expense is Necessary if:
Accounting and legal fees.	Representation before the service is needed or meets the necessary expense test.
Students Loans	If it is secured by the federal government Only for taxpayer’s education

APPENDIX B
MEANS TEST: EXPENSE CALCULATION FORM

Line #	Item	Amt.	Form 22A Amount	Form 22B Line #
	INCOME & HOUSEHOLD SIZE:			
1	**Current Monthly Income**		_____	12
2	**Household Size**		_____	14(b)
	EXPENSES **National Standards: food, wearing apparel, and other items**			
3	**Food, Apparel & Services (from chart)**	_____		
4	**Other National Standard Exp. (from chart)**	_____		
5	**Total National Standard Exp. (from chart)** **(Add lines 3 and 4)**		(_____)	19
6	**Additional Food & Clothing (from chart)** **(Not to exceed 5% of line 3)**		(_____)	39
	Local Standards: housing and utilities			
7	**Non-mortgage expenses (from chart)** **(gas, electricity, water, fuel oil, bottled gas, trash and garbage collection, wood and other fuels, septic cleaning, and basic telephone)**		(_____)	20A
8	**Actual expenditure for home energy cost**	_____		
9	**Actual expenditures for other utility Expenses included at line 7**	_____		
10	**Add lines 8 and 9**	_____		
	Mortgage Payments/Rent **(mortgage or rent, property taxes, interest, parking, , necessary maintenance & repair, homeowner's or renter's insurance, home-owner's dues, and condominium fees)**			
11	**Chart amount**		_____	20B(a)

Line #	Item	Amt.	Form 22A Amount	Form 22B Line #
12	Actual expenses for parking and necessary maintenance & repair	_____		
13	If rental, enter actual monthly rent and renter's insurance (if owner go to line 16)	_____		
14	Add lines 10, 12 and 13	_____		
15	If line 14 exceeds the total of lines 7 and 11, enter the excess amount (must establish that the disallowance of the excess will cause economic hardship)		(_____)	21
16	Enter amount from line 18 of Secured Pmt. Form		_____	20B(b)
17	Subtract line 16 from line 11 (Do not enter a negative amount)		(_____)	20B(c)
18	Add lines 10, 12 and 16	_____		
19	Add lines 7 and 11	_____		
20	Subtract line 19 from line 18	_____		
21	If line 19 is greater than line 18, go to Transportation Expenses			
22	If line 18 is greater than line 19, enter the lesser of line 20 or the sum lines 10 and 12		(_____)	21

Transportation Expenses

List all vehicles. Designate any paid-for vehicle(s), first as veh. 1 and then as veh. 2

Vehicle 1 _____

Vehicle 2 _____

Vehicle 3 _____

Vehicle 4 _____

Line #	Item	Amt.	Form 22A Amount	Form 22B Line #
	Ownership Costs			
23	Vehicle 1 (enter amount from chart)		_____	23(a)
24	Vehicle 1 (enter amount from line of Secured Pmt. Form)		_____	23(b)
25	Subtract line 24 from line 23 and enter the amount (if negative, enter 0)		(_____)	23(c)
26	Vehicle 2 (enter amount from chart)		_____	24(a)
27	Vehicle 2 (enter amount from line of Secured Pmt. Form)		_____	24(b)
28	Subtract line 27 from line 26 and enter the amount (if negative, enter 0)		(_____)	24(c)
29	Operating expenses (enter the amount from local standards chart for # of vehicles)		(_____)	22
30	If debtor has no vehicle enter amount from chart for appropriate region or MSA		(_____)	22
	Payments on Secured Debts			
31	Monthly Payments: Enter amount from line 33 of Secured Pmt. Form		(_____)	42
31A	Arrrearages: Enter amount from line 38 of Secured Pmt. Form		(_____)	43
	Other Necessary Expenses			
	Taxes:			
32	Monthly Income Taxes: (Calculate average monthly amount of income, soc. sec., and self-employment taxes using the debtor's CMI as the basis for the calculation. Adjust for any over or under withholding)	_____		
33	Property Taxes (Annual amount divided by 12. Do not include real estate taxes included in housing expense)	_____		

Line #	Item	Amt.	Form 22A Amount	Form 22B Line #
34	Other Taxes: (Specify) _____	_____		
35	Add lines 32, 33 and 34		(_____)	25
36	Mandatory Payroll Deductions Specify: Deduction Amount _____ _____ _____ _____ Total Mandatory Deductions		(_____)	26
37	Health Insurance		_____	34(a)
38	Disability Insurance		_____	34(b)
39	Health Savings Account		_____	34(c)
40	Add lines 37, 38 and 39		(_____)	34
41	Actual, un-reimbursed health exp.		(_____)	31
42	Term Life Insurance		(_____)	27
43	Child Care Expenses		(_____)	30
44	Telecommunication Services (Average, actual monthly expenses for cell phones, pagers, call waiting, caller id, long distance)		(_____)	32
45	Continued Charitable Contributions		(_____)	41
	Alimony, Child Support, Court Ordered Payments, and Continued Contributions for Care and Support of Needy Household or Family Members			
46	Court Ordered Payments			
	Child Support and Alimony:	_____		

Line #	Item	Amt.	Form 22A Amount	Form 22B Line #
	Other Court Ordered Payments (Specify):			
	_____	_____		
	Add all court ordered payments and enter total		**(_____)**	**28**
47	**Non-Court Ordered CS and Alimony**	_____		
	Support of Other Family Members or Members of Household			
	Relationship:			
	_____	_____		
	_____	_____		
	Add all payments and enter total		**(_____)**	**35**
48	**Payment of Priority Debts (Divide total priority debt by 60. Do not include any child support or alimony already included at line 46 or 47)**		**(_____)**	**44**
49	**Federally Guaranteed Student Loan Pmts. (Loan must have been for the debtor's education and debtor must be making payments.)**		**(_____)**	**56**
50	**Other (Less Common) Allowable Expenses**			
	Expenses are briefly described below with line number of Form B22A in parentheses			
	Education for your employment (29):	_____		
	Education for a disabled child (29):	_____		

Line #	Item	Amt.	Form 22A Amount	Form 22B Line #
	Education for child less than 18 (38):	_____		
	(limited to $125 per month)			
	Protection against family violence (36):	_____		
	Total of such expenses		**(_____)**	
	Other Expenses:			
	(The expenses must provide for the health and welfare of the debtor or the debtor's family, or they must be for the production of income)			
	Note: There is no line on Form B22A upon which include such expenses.			
	Expense	**Amount**		
	_____	_____		
	_____	_____		
	_____	_____		
	Total of Other Non-Specified Expenses		**(_____)**	**56**

SECURED PAYMENT FORM

I. MORTGAGE DEBTS SECURED BY PRIMARY RESIDENCE

Property Address: _____

_____

Number of Mortgages: _____

Special issues (such as balloon payment due in less than 60 months, adjustable rate loan with likelihood of future increase in rates).

_____

_____

_____

FIRST MORTGAGE:

NAME OF FIRST MORTGAGE HOLDER:

_____

CALCULATION OF FUTURE PAYMENTS DUE ON MORTGAGE:

_____

1. **Amount of monthly payment:** _____
   (***If number of payments remaining due is less than 60, complete remainder of this section.; otherwise insert amount at Line 1 at Line 5.)***

2. **If number of payments due is less than 60, state the number of payments**

   remaining due _____.

3. **Multiply Line 1 by Line 2:** _____

4. **Divide Line 3 by 60:** _____

5. **Enter lesser of Line 1 or Line 4:** _____.

If mortgage does not include an escrow account for taxes and/or insurance, calculate the monthly amount of the excluded item below:

6. State annual amount of taxes (if not escrowed): _____.

7. Divide Line 6 by 12: _____.

8. State annual insurance premium (if not escrowed): _____.

9. Divide Line 8 by 12: _____.

10. Add Lines 5, 7 and 9: _____.

<u>SECOND MORTGAGE</u>:

NAME OF SECOND MORTGAGE HOLDER:

_____

CALCULATION OF FUTURE PAYMENTS DUE ON MORTGAGE:

_____

11. Amount of monthly payment: _____
(*If number of payments remaining due is less than 60, complete remainder of this section.; otherwise insert amount at Line 11 at Line 15.)*

12. If number of payments due is less than 60, state the number of payments remaining due _____.

13. Multiply Line 11 by Line 12: _____

14. Divide Line 13 by 60: _____

15. Enter lesser of Line 11 or Line 14: _____.

If there are more than 2 mortgages, repeat the steps for each additional mortgage and add the amount derived to Line 18.

HOMEOWNERS DUES/SPECIAL ASSESSMENTS

16. List monthly HO dues: _____

17. If debtor pays HO dues in intervals other than monthly, or if the debtor is responsible for paying special assessments on the property during the next 60 months, complete the total of all such payments that are due within the next 60 months, and divide by 60: _____

18. Total payments on residence (add Lines 10, 15, and 17): _____.

II. PAYMENTS ON VEHICLES 1 and 2

Note: Vehicles upon which there is no secured debt, if any, should be designated first as vehicle 1 and then as vehicle 2. The secured payments on vehicles not designated as vehicle 1 or 2 should be listed at lines 29 –32 below.

19. Monthly payment (if any) on vehicle 1: _____

20. Number of payments remaining due on vehicle 1: _____.

21. Multiply Line 19 by Line 20: _____.

22. Divide Line 21 by 60: _____.

23. Enter lesser of Line 19 or Line 22: _____.

24. Monthly payment (if any) on vehicle 2: _____

25. Number of payments remaining due on vehicle 2: _____.

26. Multiply Line 24 by Line 25: _____.

27. Divide Line 26 by 60: _____.

28. Enter lesser of Line 24 or Line 27: _____.

III. PAYMENTS ON OTHER SECURED DEBTS

Calculate the Average Monthly Payment (AMP) on each secured debt by multiplying the number of payments due over the next 60 months and divide by 60. Include taxes and insurance paid in connection with mortgage debts.

	CREDITOR	COLLATERAL	AMP
29.			
30.			
31.			
32.			

33. Total payments on all secured debts: _____
(Add lines 18, 23, 28, and 29-32)

IV. ADDITIONAL PAYMENTS TO SECURED CREDITOR NECESSARY TO KEEP PRIMARY RESIDENCE, MOTOR VEHICLES, AND OTHER ESSENTIAL PROPERTY.

A. ARREARAGES

34. CREDITOR	**AMOUNT OF ARREARAGE**

35. Divide total arrearage above by 60: _____.

B. Other Payments on Secured Debts for each Federal Tax Lien, Judicial Lien or other secured debt securing essential property. Calculate the amount of the creditors' secured claim in a chapter 13, and determine the amount of the monthly payment on the claim in a chapter 13 case over 60 months.

36. CREDITOR	**AMOUNT OF ALLOWABLE CLAIM**	**INTEREST RATE**	**MONTHLY PAYMENT**

37. Total monthly payments from Line 36: _____.

38. Add Lines 35 and 37: _____.