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No. 09-907

In The
Supreme Court of the United States

JASON M. RANSOM,

Petitioner,

v.

MBNA, AMERICA BANK, N.A.,

Respondent.

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

BRIEF FOR PETITIONER

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QUESTION PRESENTED

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.

PARTIES TO THE PROCEEDINGS

The caption of the case in this Court contains the names of all the parties.

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OPINIONS BELOW

The Bankruptcy Court's memorandum denying confirmation of petitioner's Chapter 13 plan (Pet.App. 36-47) and the Bankruptcy Court's order denying confirmation (Pet.App. 48) are unreported. The opinion of the Bankruptcy Appellate Panel of the Ninth Circuit Court of Appeals (Pet.App. 15-35) affirming the Bankruptcy Court is reported at 380 B.R. 799 (B.A.P. 9th Cir. 2007). The opinion of the Ninth Circuit Court of Appeals (Pet.App. 1-14) affirming the Bankruptcy Appellate Panel is reported at 577 F.3d 1026 (9th Cir. 2009). The order of the Ninth Circuit denying the petition for rehearing (Pet.App. 49) is unreported.

JURISDICTION

The memorandum and order of the Bankruptcy Court were entered on June 6, 2007. Pet.App. 36, 48. 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 affirmed the order of the Bankruptcy Court on December 27, 2007. Pet.App. 15. The Bankruptcy Appellate Panel had jurisdiction under 28 U.S.C. § 158(b). The order of the Ninth Circuit Court of Appeals was entered on August 14, 2009. Pet.App. 1. The Ninth Circuit Court of Appeals had jurisdiction under 28 U.S.C. § 158(d). The Ninth Circuit denied petitioner's timely motion for rehearing on October

28, 2009. Pet.App. 49. Petitioner timely filed his petition for *certiorari* on January 25, 2010. This Court granted the petition on April 19, 2010. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The text of 11 U.S.C. §§ 707 and 1325 are reproduced in full in the appendix to the petition. Pet.App. 50-70.

INTRODUCTION

Petitioner Jason Ransom filed a Chapter 13 petition. Because he had an above-median income, he had to commit to paying his unsecured creditors over a period of five years. Based on his current and expense schedules, he filed a Chapter 13 plan calling for monthly payments of $500.00 for 60 months. On Form 22C, he calculated $210.55 in disposable income based, in part, on a monthly allowance for $471.00 in vehicle ownership costs specified on Local Standards furnished by the Internal Revenue Service. The trustee objected to confirmation of Ransom's plan on the grounds that Ransom owned his car free and clear, and hence the $471.00 transportation ownership cost should be disallowed. Ransom's disposable income to pay creditors would be $681.55 a month without the ownership cost deduction for his car. The trustee's objection, and that of the unsecured creditor

MBNA America Bank, has been sustained by the Bankruptcy Court, the Bankruptcy Appellate Panel of the Ninth Circuit, and the Ninth Circuit Court of Appeals.

The long contest over a $471.00 vehicle allowance is rooted in a much larger issue of statutory interpretation. Should the vehicle allowance be granted as specified by the Local Standards published by the Internal Revenue Service, as petitioner contends? Or should the vehicle ownership deduction, in the absence of secured debt on the vehicle, be rejected, as the financial analysis and audit methodology of the IRS would conclude for tax purposes, and as appellee argues?

Although the Ninth Circuit Court of Appeals held against petitioner, the Ninth Circuit concluded its opinion by asking, in a dramatic fashion, to be relieved of the burden of deciding the transportation deduction issue. The Court of Appeals wrote:

> 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 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 v. MBNA Am. Bank, 577 F. 3d 1026, 1031-32 (9th Cir. 2009).

The unique feature of statutory interpretation on this issue consists of assessing the interaction of two sets of rules and regulations, on the one hand, the Bankruptcy Code, and on the other hand, the Local Standards published periodically by the Internal Revenue Service. Petitioner maintains that when the means test of 11 U.S.C. § 707(b)(2) references specified Standards of the IRS as applicable deductions, then only the specified amounts are utilized, and IRS procedures in any other respect are immaterial. Appellee argues that when the Local Standards of the IRS are referenced by the Bankruptcy Code, then of necessity the IRS procedures, manuals, and financial analysis must be incorporated.

Ultimately, interpretation of an act of Congress involves not only what is said, but what is not said. If a statute were to rely on the procedures and methodology of the IRS, the statute must so state. With respect to vehicle ownership costs, the means test only tells the debtor to use the standardized

expense amounts specified by the IRS. The statute does not tell us to rely on any other IRS practice regarding the ownership deduction, and therefore we may not do so.

STATEMENT OF THE CASE

A. The Bankruptcy Filing

1. The debtor, Jason Ransom, filed for bankruptcy relief under chapter 13 of Title 11 of the United States Code on July 5, 2006. The jurisdiction for his filing was the U.S. Bankruptcy Court for the District of Nevada (Las Vegas). One of the debtor's assets, as listed in Schedule B of his bankruptcy petition, was a 2004 Toyota Camry, which he owned in full. J.A. 38. 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.

On Form B22C, Debtor's Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income, Ransom reported monthly income of $4,248.56, and annual income of $50,982.72. J.A. 45-47. As a result, his income exceeded the median income for Nevada, his state of residence. As an above-the-median debtor, he was required to make plan payments for a commitment period of 5 years. Ransom reported monthly expense deductions of $4,038.01, and a monthly disposable income of $210.55. J.A. 53.

On Ransom's Form B22C, he deducted a total of $809.00 for transportation expenses. He deducted $338.00 for operating expenses for one vehicle, and this deduction has not been challenged. He also deducted $471.00 as vehicle ownership expense under the IRS Local Standards. The dispute over the proper deduction of ownership cost is the root of the present controversy.

Ransom's Schedule I, Current Income of Individual Debtor(s), lists gross monthly wages of $4,132.66, and net monthly take home pay of $2,806.84. J.A. 43. His Schedule J, Current Expenditures of Individual Debtor(s), lists monthly expenses of $2,302.69, and monthly net income of $504.15. J.A. 44. Ransom filed a Chapter 13 plan providing for monthly payments of $500.00 for sixty (60) months. J.A. 55.

There has been no change of circumstances in Ransom's income and expenses between the time of filing and plan confirmation. Neither party to this case has claimed that any unusual change in income affects the computation of projected disposable income, and no evidence was introduced in the trial court about events that would substantially change the debtor's financial situation.

B. Procedural History Of The Case

1. The trustee filed an opposition to confirmation of plan based in part on "seeking ownership expense (line 28) for vehicle that is paid in full. J.A.

59-60. MBNA America Bank, NA and Chase Manhattan Bank USA, NA, both unsecured creditors, filed an objection to confirmation of Chapter 13 Plan. J.A. 61-72. These oppositions to the plan argued that there can be no vehicle ownership cost deduction unless the owner is making car payments. Because Ransom was making no loan or lease payments on his car, the bankruptcy court issued a memorandum and order denying confirmation of Ransom's Chapter 13 Plan. Pet.App. 36, 41, 48.

2. Ransom appealed to the bankruptcy appellate panel, which affirmed. Pet.App. 15-35. The appellate panel cited numerous courts which allow the vehicle ownership expense deduction in the absence of secured debt payments, and numerous courts which disallow the vehicle ownership expense deduction in the absence of debt payments. Pet.App. 23-26. The court held that "a debtor has no right to deduct a vehicle ownership expense when he or she makes no lease or loan payments on the vehicle." Pet.App. 35.

3. Ransom appealed again, and the Ninth Circuit affirmed. Pet.App. 1-14. The appeals court rested its holding on three main grounds. First, the appeals court reasoned that deduction of ownership costs under the IRS Local Standards must be consistent with the Internal Revenue Manual approach, which only allows deductions in the event of loan or lease payments. *Id.* at 8-9. Second, the appeals court referred to BAPCPA's goal "to ensure that debtors repay creditors the maximum they can

afford." *Id.* at 10. Third, the court of appeals reasoned that there can be no "applicable" expense amounts unless loan or lease payments are incurred. *Id.* at 11-12.

4. Ransom timely sought certiorari, and this Court granted certiorari.

SUMMARY OF ARGUMENT

I.

A. The debtor's right to an ownership cost deduction under the means test, even where the debtor makes no payments on car loans or leases, has been upheld by the Fifth, Seventh, and Eighth Courts of Appeals in *Tate v. Bolen,* 571 F.3d 423 (5th Cir. 2009); *Ross-Tousey v. Neary,* 549 F.3d 1148 (7th Cir. 2008); and *eCast Settlement Corporation v. Washburn,* 579 F.3d 934 (8th Cir. 2009). *Tate* and *Ross-Tousey* are cases arising under Chapter 7 of the Bankruptcy Code. *Washburn* is a case under Chapter 13 of the Bankruptcy Code. The means test is found in Chapter 7 of the Code, and applies in Chapter 13 by reference to § 1325(b)(3) for debtors with above-median income. The calculation of vehicle ownership expense under the means test will yield the same results in Chapter 7 and Chapter 13 cases.

The *Washburn* decision combines a forward-looking approach to projected disposable income and an allowance of the vehicle ownership deduction in

the absence of car payments. The case involves an above-median debtor who owns his vehicle outright. The *Washburn* court distinguishes between a debtor's "disposable income," which is calculated solely on the basis of historical numbers and regional averages, and a debtor's "projected disposable income," which necessarily contemplates a forward-looking number. Disposable income is presumptively the debtor's projected disposable income. The presumption is only rebutted where there is reasonable certainty about future events, or a substantial change in circumstances, that would change the debtor's financial situation. The analysis of projected disposable income in *Washburn* is very close to the holding of this Court in *Hamilton v. Lanning,* 560 U.S. ___ (2010). The holding in *Washburn* demonstrates that the forward-looking approach to projected disposable income does not limit the debtor's right to a vehicle ownership deduction, even if the debtor makes no loan or lease payments on his vehicle.

B. Determining the proper deduction for vehicle ownership costs depends on a close reading of the means test, which helps calculate the disposable income available to a debtor for the payment of debts. Disposable income is defined as current monthly income less "amounts reasonably necessary to be expended" for the debtor's maintenance by § 1325(b)(2). The amounts which debtor can reasonably expend are found by applying the means test of 11 U.S.C. § 707(b)(2). In particular, transportation expenses, which are set by the Local Standards

issued by the Internal Revenue Service, are deductable as the "debtor's applicable monthly expense amounts specified under the . . . Local Standards." 11 U.S.C. § 707(b)(2)(A)(ii)(I).

From the outset, the Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States, recognized that there was a tension between the methodology of the Internal Revenue Service and the proper reading of the bankruptcy statute. The IRS treats the amounts in the Local Standards as caps on actual expenses, namely loan or lease payments. By contrast, the Judicial Council adopted the position in drafting bankruptcy rules and forms that the amounts specified in the Local Standards serve in the means test as allowed deductions or allowances. The treatment of a transportation expense by the IRS is not the same as its treatment for the bankruptcy code, even though the statute utilizes Standards issued by the IRS.

The position of the Judicial Council should be adopted in construing the vehicle ownership deduction. If the "amounts specified under the . . . Local Standards" were not fixed sums as set forth in the IRS tables for regions and metropolitan areas, then the deduction amounts would not be "specified" – rather, they would be caps on actual cash expenses. The statutory language states that the amounts are "specified," and the statute must prevail.

Moreover, the Judicial Council correctly ascertained that the transportation ownership/lease

component may, or may not, involve debt payment. If no debt payment is involved in the vehicle ownership allowance, then the debtor may deduct the amount specified in the Local Standards. However, if the debtor makes loan or lease payments on a vehicle, then the forms require debtors to reduce the allowance for ownership expense by the average monthly loan payment. The Judicial Council's distinction between the ownership allowance, and payments on secured debt, is the appropriate interpretation of the various sections of the means test. § 707(b)(2)(A)(ii)(I) expressly excludes from expenses consideration of debt payment: "the monthly expenses of the debtor shall not include any payments for debts." If the amounts of the Local Standards were caps on car payments, as the IRS financial analysis indicates, then the exclusion of debt payment stated in § 707(b)(2)(A)(ii)(I) would be meaningless. However, the Judicial Council sensibly concludes that the debtor should not be allowed *two* ownership deductions, one for the Local Standards allowance and one for secured payments under § 707(b)(2)(A)(iii). Therefore, the § 707(b)(2)(A)(ii)(I) transportation ownership allowance (which does not reference debt payments) is reduced on the forms by average monthly loan payment amounts.

The context of how expenses are treated in § 707(b)(2)(A)(ii) makes abundantly clear that there is a distinction between fixed allowances and actual expenses. Subclause (I), which includes transportation expenses, distinguishes between "monthly

expense amounts specified under the National Standards and Local Standards," and "the debtor's actual monthly expenses for the categories specified as Other Necessary Expenses issued by the Internal Revenue Service." On the one hand, the allowances under the Local Standards are "expense amounts specified," since they are fixed by the applicable tables. On the other hand, the actual expenses are computed with regard to "categories specified;" here the categories are fixed, but the amounts are not. Subclauses (II) through (IV) all refer to actual expenses. Subclause (V) distinguishes clearly between specified allowances and actual expenses: "the debtor's monthly expenses may include an allowance for housing and utilities, in excess of the allowance specified by the Local Standards for housing and utilities issued by the Internal Revenue Service, based on the actual expenses for home energy costs." The statutory language renders precisely that an "allowance specified by the Local Standards" is not the same thing as "actual expenses." The context makes clear that ownership "expense amounts specified" under the Local Standards cannot be equated with actual out-of-pocket expenses.

II.

A. The Ninth Circuit, in *Ransom v. MBNA Am. Bank*, 577 F.3d 1026 (9th Cir. 2006), takes the position that the methods of the Internal Revenue Manual can be applied to determine the availability

of the vehicle ownership expense deduction. In the IRS financial analysis, there generally has to be a loan or lease payment for a taxpayer to qualify for the ownership cost deduction. And under IRS collection standards, if a taxpayer has a car but no car payments, only the operating costs portion of the transportation standard is used to calculate the allowable transportation expense.

There are several problems associated with incorporating a large body of procedures, those of the Internal Revenue Service, into the means test of the Bankruptcy Code. One difficulty is that the statute does not incorporate the Internal Revenue Manual or Financial Analysis handbook, or even refer to them. Before importing IRS analysis into bankruptcy proceedings, Congress could reasonably be required to state unequivocally that it is doing so. Moreover, a draft version of the means test under the 1998 bankruptcy reform act stated explicitly that the expense allowances under the National Standards, Local Standards, and Other Necessary Expenses would be determined under the Internal Revenue financial analysis. That language incorporating Internal Revenue Manual analysis is absent from the 2005 version of the means test, and its absence weakens the argument that IRS financial analysis should be used.

B. The *Ransom* court views the adjective "applicable" as the key term in understanding how the debtor's monthly expenses are the "debtor's applicable monthly expense amounts specified under

the . . . Local Standards." § 707(b)(2)(A)(ii)(I). In its analysis, the deduction of monthly expenses becomes appropriate or applicable to the debtor when the debtor actually has such expenses. Hence, the vehicle ownership expense allowance is simply inapplicable to the debtor if he makes no loan or lease payments on the vehicle. The court reasons that the term "applicable" would become meaningless if the debtor could deduct expenses he does not actually have.

An alternative meaning of "applicable" would be more to the point: an applicable expense amount is the one set down for a category, such as vehicle ownership expense, according to geographic region and number of cars. For a specific geographic region, the West, and ownership of one car, the Local Standards in 2006 specified that Ransom would be entitled to a $471 vehicle ownership expense allowance. For a different geographic region or metropolitan area, and ownership of two or more cars, a different vehicle ownership allowance would be listed in the Local Standards depending on the relevant census information.

The Ninth Circuit opinion argues that no expense amount under the Local Standards is "applicable" to the debtor as a vehicle ownership expense unless the debtor is actually making lease or loan payments. Otherwise, the debtor would be asserting a deduction for an expense he doesn't have, and the claimed expense would be applicable to nothing at all. A basic flaw in this argument is that § 707(b)(2)(A)(ii)(I) provides that "the monthly expenses of the debtor

shall not include any payments for debts." Hence, the ownership expense allowance could not possibly be attributable to lease or loan payments, as the *Ransom* court insists: no monthly expenses are allowed to figure in this subclause of the means test. In fact, the "applicable monthly expense amounts specified under the . . . Local Standards" are standardized allowances based on census data, and these allowances apply to a debtor who owns a car regardless of whether the debtor is making car payments. There is nothing illogical about Congress's granting an exemption for the expenses intrinsic in vehicle ownership, such as depreciation, insurance, licensing fees, taxes, and replacement cost.

C. The Ninth Circuit is mistaken in believing that the BAPCPA goal of maximizing debt repayment requires denial of an ownership cost deduction in the absence of car payments. If a Chapter 13 debtor has even one car payment remaining at the time of filing, the debtor would be entitled under the Ninth Circuit analysis to deduct the amount of the car payment as an ownership expense, and repayment of unsecured debt would not be furthered. Allowing the vehicle ownership allowance under the Local Standards levels the playing field between cars which are owned outright and cars which are encumbered by secured debt. Restricting the ownership expense deduction to car payments is simply an incentive to debtors to retain large amounts of secured automobile debt, or else lose the ownership allowance.

In Ransom's case, denial of the vehicle ownership allowance deters repayment of unsecured debt. By refusing Ransom the ownership allowance, the Ninth Circuit inflates his disposable income to $681.55, even though his net monthly income as reflected on schedules I and J is only $504.15. He has been unable to have his bankruptcy plan confirmed. In this outcome, Ransom doesn't make enhanced payments to creditors, but rather is denied the opportunity to make any payments through a Chapter 13 plan.

D. Dicta in this Court's recent decision, *Hamilton v. Lanning,* 560 U.S. ___ (2010), discourage "senseless results" not intended by Congress in the computation of disposable income under § 1325(b)(2). These dicta are applicable to *Ransom* even though the issue here is allowing an owner expense deduction, not the difference between the forward-looking and mechanical approaches.

One such senseless result "would deny creditors payments that the debtor could easily make." *Hamilton v. Lanning, supra.* The other senseless result "would deny the protection of Chapter 13 to debtors who meet the chapter's main eligibility requirements." *Ibid.* The Ninth Circuit's decision has achieved both these undesirable outcomes. Jason Ransom is being denied the protection of Chapter 13 even though he is a debtor who meets the chapter's main eligibility requirements. Ransom is an individual whose income is sufficiently stable and regular to make payments under a plan, and his debts fall below the applicable limits. Under

§ 1325(a)(6), a plan cannot be confirmed unless the debtor will be able to make all the payments under the plan. However, if Ransom is denied a vehicle ownership deduction for his car, creditors will be denied payments which he could easily make. The reason for this dilemma is straightforward. On Form B22C, Ransom calculated disposable income of $210.55, based in part on a $471.00 deduction for the ownership expense. However, if Ransom is denied his vehicle ownership deduction, his disposable income would increase to $681.55 – he would be required to make payments in this amount, or his plan could not be confirmed. But we know that Ransom's net monthly income, as shown on Schedules I and J, is $504.15. As long as Ransom's vehicle ownership deduction is rejected, his disposable income is inflated to a figure which he cannot possibly pay on a monthly basis. The upshot is that Ransom would be unable to get a plan confirmed. Instead of paying more money to creditors, he would end up paying nothing in bankruptcy on his debts.

The Ninth Circuit decision yields the "senseless results" which this Court warned against. Creditors have been denied payments that the debtor could easily make. And Ransom, who meets the main Chapter 13 eligibility requirements, ends up being denied bankruptcy protection. These mistaken outcomes can be avoided by allowing Ransom an

ownership cost deduction for his vehicle even though he makes no payments on the vehicle.

ARGUMENT

I. THE VEHICLE OWNERSHIP DEDUCTION, FOR THE PURPOSE OF CALCULATING PROJECTED DISPOSABLE INCOME, IS ALLOWED EVEN IF THE DEBTOR MAKES NO LOAN OR LEASE PAYMENTS

A. The Courts Of Appeals For The Fifth, Seventh And Eighth Circuits Have Held That A Debtor Should Be Allowed An Ownership Cost Deduction For Vehicles Even If The Debtor Makes No Payments On The Vehicles

The debtor's right to an ownership cost deduction under the means test for vehicles, even where the debtor makes no payments on the vehicles, has been upheld in *Tate v. Bolen,* 571 F.3d 423 (5th Cir. 2009); *Ross-Tousey v. Neary,* 549 F.3d 1148 (7th Cir. 2008); and *eCast Settlement Corporation v. Washburn,* 579 F.3d 934 (8th Cir. 2009). *Tate* and *Ross-Tousey* are cases arising under Chapter 7 of the Bankruptcy Code. *Washburn* is a case under Chapter 13 of the Bankruptcy Code.

The means test, § 707(b)(2), pertains to both Chapter 7 and Chapter 13 proceedings. Indeed, the means test is found in Chapter 7 of the Code, and

applies in Chapter 13 by reference to § 1325(b)(3) for debtors with above-median income.

The Eighth Circuit notes that there is little temptation in Chapter 7 to incorporate the methods of the Internal Revenue Manual into the means test:

> [I]n Chapter Seven, the means test is for determining whether a bankruptcy petition is presumptively abusive. Even where a petition is not presumptively abusive, a court may still find a Chapter Seven petition abusive for reasons of "bad faith or based on the totality of the circumstances." Accordingly, in the context of Chapter Seven, it is unnecessary to incorporate the IRM into the means test to honor the Congressional intent of limiting the courts' ability to allow expenses and making it more difficult to discharge consumer debt. Rather, the catch-all provisions of Chapter Seven provide a backstop that permits the dismissal of abusive Chapter Seven petitions (citation omitted).

Washburn, 579 F.3d at 940. Chapter 7 has several provisions for dismissing abusive cases, and it is unnecessary to incorporate Internal Revenue Manual ("IRM") methods into the means test.

Chapter 13 is more susceptible to being influenced by BAPCPA's legislative mandate to make funds available to creditors, yet the Eighth Circuit concludes that § 707(b)(2)(A)(ii)(I) must be interpreted uniformly in Chapter 7 and Chapter 13 cases:

> Our case, however, arises under Chapter Thirteen rather than Chapter Seven, and the same issues of presumptive abuse or non-presumptive abuse are not directly in play. Still, the question before us today is how to properly interpret a provision of Chapter Seven, and we do not believe it is appropriate to give § 707(b)(2)(A)(ii)(I) one meaning when applied in a Chapter Seven proceeding and another when applied in a Chapter Thirteen proceeding without a legislative basis for doing so. Accordingly, even though the argument based on BAPCPA's intent to make more funds available to creditors is more compelling in the present case than in Chapter Seven cases such as *Ross-Tousey* or *Tate,* we find the Seventh and Fifth Circuits' balancing of competing legislative intentions convincing. Accordingly, we hold 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. The calculation of vehicle ownership expense under the means test will yield the same result in Chapter 7 and Chapter 13 cases.

Following the Fifth and Seventh Circuits, the Eighth Circuit declines to use the IRM method in determining the vehicle ownership deduction. Under the IRM approach, a vehicle ownership deduction is only permitted on condition of a monthly debt payment. However, this requirement cannot be reconciled with the portion of § 707(b)(2)(A)(ii)(I) that

provides, "Notwithstanding any other provision of this clause, the monthly expenses of the debtor shall not include any payments for debts." *Id.* at 938. Since Congress did not condition "monthly expense amounts" on the existence of a corresponding debt, it is appropriate to treat these expense amounts "in a categorical fashion based on a debtor's geographic location and number of vehicles rather than making such expense amounts available only on condition of a vehicle-related debt" (citation omitted)." *Id.*

The Eighth Circuit notes that the IRS itself disavows any intent to have the financial standards from the IRM apply in any context other than tax collection and specifically disclaims any intent to have the IRM apply in the context of bankruptcy expense calculations:

> Disclaimer: IRS Collection Financial Standards are intended for use in calculating repayment of delinquent taxes. These Standards are effective on March 1, 2008 for purposes of federal tax administration only. Expense information for use in bankruptcy calculations can be found on the website of the U.S. Trustee Program.

Id. at 938-39 (citation omitted) (quoting http://www.irs.gov/individuals/article/0,,id=96543.00.html). The intent of the administrative body that formulated the IRM, as well as legislative intent, support a refusal to incorporate the IRM into the means test for determination of disposable income. *Id.* at 939.

1. The *Washburn* Decision Took a Forward-Looking Approach to Projected Disposable Income and Allowed the Ownership Deduction in the Absence of Car Payments

In *Washburn,* the debtor had above-median income. His Chapter 13 plan included payment of his "projected disposable income" under § 1325(b)(1)(B) to his unsecured creditors for an "applicable commitment period" of sixty months. The debtor's "disposable income" was determined by applying the "means test" of Chapter 7. Under § 1325(b)(2)-(3), disposable income was defined as current monthly income less amounts reasonably necessary to be expended under § 707(b)(2)(A) and (B).

The debtor owned his car outright, but excluded from income $471 a month as a vehicle ownership expense. The trustee and an unsecured creditor objected to vehicle ownership allowance, but the debtor's claim to the allowance was upheld by the bankruptcy court, and subsequently by the Eighth Circuit.

The *Washburn* court followed its previous decision in *In re Frederickson,* 545 F.3d 656 (8th Cir. 2008), cert. denied, 129 S.Ct. 1630 (2009). *Frederickson* recognized a distinction between disposable income and projected disposable income; the latter was found to be a forward-looking term rather than a mechanically derived and strictly defined term like disposable income. The court recognized some

discretion in looking beyond disposable income in determining projected disposable income:

> [A] distinction can be drawn between a debtor's "disposable income," which is calculated solely on the basis of historical numbers and regional averages, and a debtor's "projected disposable income," which necessarily contemplates a forward-looking number. Under this interpretation, bankruptcy courts will continue to have some discretion over the calculations of each individual debtor's financial situation, with the result that the debtor's "projected disposable income" will end up more closely aligning with reality.

Frederickson, 545 F.3d at 659. The *Washburn* court declined to engage in speculation about projected disposable income without evidence of reasonably certain future events that would change the debtor's financial situation. Disposable income is presumptively the debtor's projected disposable income, unless the presumption is rebutted by a sufficiently certain basis for departing from the disposable income definition. The *Washburn* court held that no such evidence had been presented. *Washburn,* 579 F.3d at 941-42.

The Eighth Circuit's formulation of the forward-looking approach and the vehicle expense deduction is as follows:

> [D]etermination of a vehicle-ownership expense for the purpose of determining

> disposable income is categorical under § 707(b)(2)(A)(ii)(I), but "some discretion" exists for bankruptcy courts to consider the debtor's actual financial situation in determining projected disposable income for the purpose of § 1325(b)(1)(B).

Id. at 942. Unless a substantial change in circumstances is reasonably certain, projected disposable income will not differ from disposable income and the vehicle ownership deduction, regardless of whether the debtor makes loan or lease payments on the vehicle.

B. The Means Test Specifies Standard Expense Allowances For Vehicle Ownership Costs

1. The language of § 707(b)(2) distinguishes between standard expense allowances and computation of actual monthly expenses. Where a standard expense allowance is indicated, the debtor is allowed to deduct from income a fixed amount specified in the National and Local Standards set forth by the Internal Revenue Service. Where an actual expense is required, the debtor is allowed only a deduction based on a computation of out-of-pocket expenditures.

The language of § 1325(b)(2), which provides for application of the means test, allows for use of standard expense allowances as well as tabulation of actual expenses. In pertinent part, it states:

> For purposes of this subsection, the term "disposable income" means current monthly income received by the debtor . . . less amounts reasonably necessary to be expended –
>
> (A)(i) for the maintenance or support of the debtor . . .

The phrase "amounts reasonably necessary to be expended" cannot be reduced to "amounts actually expended, but not in an amount more than reasonably necessary." The latter phrasing would limit the deduction from income to actual out-of-pocket expenses. By contrast, the term "amounts reasonably necessary to be expended" lends itself to standard amounts which are promulgated as being reasonable, as well as to computation of expenses incurred.

The "amounts reasonably necessary to be expended" are determined in accordance with the means test of § 707(b)(2)(A).

§ 707(b)(2)(A)(ii)(I) covers deduction of a variety of consumer expenses, including transportation costs:

> The debtor's monthly expenses shall be the debtor's applicable monthly **expense amounts specified** under the National Standards and Local Standards, and the debtor's **actual monthly expenses** for the categories specified as Other Necessary Expenses issued by the Internal Revenue Service for the area in which the debtor resides . . . (emphasis added).

The "expense amounts specified" under the IRS National Standards and Local Standards refer most logically to the amounts set forth as the pertinent standards. These "specified" amounts are contrasted with "actual monthly expenses" for the IRS list of Other Necessary Expenses.

If § 707(b)(2)(A)(ii)(I) referred only to actual monthly expenses, there would be no sense in the differentiation between "monthly expense amounts specified" under the National Standards and Local Standards, and "actual monthly expenses" pertaining to Other Necessary Expenses.

Use of the verb "specified" in § 707(b)(2)(A)(ii)(I) indicates reference to a list of delineated amounts. "Specify" is defined as:

> 1. to mention, describe, or define in detail; state definitely. 2. to include as an item in a set of specifications. 3. to state explicitly as a condition.

Webster's New World Dictionary of the American Language: College Edition (1958).

Ransom's argument is supported by the ordinary meaning of the word "specified." "When terms used in a statute are undefined, we give them their ordinary meaning." *Hamilton v. Lanning,* 560 U.S. ___ (2010), citing *Asgrow Seed v. Winterboer*, 513 U.S. 179, 187 (1995). Amounts "specified" are, by definition, amounts listed and settled, and available for reference. They are items in a set of specifications. If the

amounts set forth in the tables of the National Standards and Local Standards were merely jumping-off places for a calculation of the appropriate amounts, the drafters of the means test would have so stated. For example, the monthly expenses could have been defined as "the debtor's applicable monthly expenses, not to exceed the amounts specified under the National Standards and Local Standards."

Ransom's position is also supported by a rule of statutory construction: "[W]e are hesitant to adopt an interpretation of a congressional enactment which renders superfluous another portion of that same law" (internal quotation marks omitted), *Hamilton v. Lanning, supra,* citing *Kawaauhau v. Geiger,* 523 U.S. 57, 62 (1998). Section 707(b)(2)(A)(ii)(I) contains the express prohibition, "Notwithstanding any other provision of this clause, the monthly expenses of the debtor shall not include any payments for debts." In stark contrast, the IRS Financial Analysis Handbook states, at Section 5.15.1.7, that

> 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.

J.A. 84.

According to the IRS financial analysis, the ownership cost deduction is allowable only for car payments. In this view, the transportation expense under the Local Standards will include no deduction for ownership expense if a debtor owns his vehicle free and clear. But if the transportation ownership deduction is measured by lease and loan payments, then the deduction renders meaningless the exclusion of debt payments from the monthly expenses of the debtor. All the clauses of the statutory provision can only retain their meaning if the vehicle ownership deduction is an allowance not governed by car payments.

On May 24, 2006, the Advisory Committee on Bankruptcy Rules of the Judicial Council of the United States issued its Report on the proposed Bankruptcy Rules and the Official Forms to be used by debtors in accord with the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA" or the "Act"). App. 9-15.

The initial step in determining what disposable income, if any, a debtor must devote to the repayment of unsecured creditors is the "means test" which sets forth deductions from current monthly income ("CMI"). As the Advisory Committee explains:

> The means test operates by deducting from CMI defined allowances for living expenses and payment of secured and priority debt, leaving disposable income presumptively available to pay unsecured non-priority debt. These deductions from CMI are set out in the

> Code at § 707(b)(2)(A)(ii)-(iv). The forms for Chapter 7 and Chapter 13 have identical provisions . . . for calculating these deductions.

App. 19.

The Report of the Advisory Committee specifies how deductions are to be ascertained under the means test, and in particular, how these deductions are to entered on the forms which implement the means test:

> Subpart A deals with deductions from CMI, set out in § 707(b)(2)(A)(ii), for the "debtor's applicable monthly expense amounts specified under the National Standards and Local Standards, and the debtor's actual expenses for the categories specified as Other Necessary Expenses issued by the Internal Revenue Service for the area in which the debtor resides." The forms provide entry lines for each of the specified expense deductions under the IRS standards, and instructions on the entry lines identify the website of the U.S. Trustee Program, where the relevant IRS allowances are to be found.

App. 19.

The procedure for finding the correct allowance under the National Standards and Local Standards is straightforward. On the line for the "specified expense deductions," the debtor locates the proper IRS allowance on the website of the U.S. Trustee

Program and enters it on the form as the allowed deduction.

The Report of the Advisory Committee explains that the IRS National Standards set forth single allowances nationwide depending on income and household size:

> The IRS National Standards provide a single allowance for food, clothing, household supplies, personal care, and miscellany, depending on income and household size. The forms contain an entry line for the applicable allowance.

App. 20.

The Advisory Committee on Bankruptcy Rules also takes the position that IRS Local Standards for transportation, which include the automobile deductions presented for review in the instant case, should be treated as allowed deductions rather than merely a cap on expenses as they would be on IRS audit:

> The IRS Local Standards provide one set of deductions for housing and utilities and another set for transportation expenses, with different amounts for different areas of the country, depending on the size of the debtor's family and the number of the debtor's vehicles. Each amount specified in the Local Standards is treated by the IRS as a cap on actual expenses, but **because § 707(b)(2)(A)(ii) provides for deductions in the "amounts specified under the . . . Local Standards," the forms treat these**

> **amounts as allowed deductions.** The forms again direct debtors to the website of the U.S. Trustee Program to obtain the appropriate allowances (emphasis added).

App. 20.

Form 22, as completed for Jason Ransom in this case, and for any above-the-median debtor in any Chapter 7 or Chapter 13 case, contemplates that the amounts listed as the IRS Local Standards for transportation be treated as "allowed deductions." By contrast, the IRS itself, in conducting its audits, would treat the Local Standards as a cap on actual expenses.

The Advisory Committee on Bankruptcy Rules delineates an essential distinction between the use of the IRS Local Standards on transportation for the internal procedures of the IRS, and the use of those same Standards for implementation of BAPCPA. The IRS devised its Standards to limit the deductions claimed by taxpayers; the IRS-implemented Standards are maximum deductions, and where the actual expense is less, the IRS deduction will be reduced accordingly. However, for purposes of the Bankruptcy Code, the IRS Standards are "appropriate allowances." These allowances are not reduced if the actual expenses are less. The bankruptcy-implemented transportation Standards are both cap and floor of vehicle-related expenses.

The Advisory Committee distinguishes between the transportation allowance and the ownership/lease expense:

> The IRS issues Local Standards for transportation in two components for its internal purposes as well as for bankruptcy: one component covers vehicle operation/public transportation expense and the other ownership/lease expense. The amount of the vehicle operation/public transportation allowance depends on the number of vehicles the debtor operates, with debtors who do not operate vehicles being given a public transportation allowance. The instruction for this line item makes it clear that every debtor is thus entitled to some transportation expense allowance. No debt payment is involved in this allowance.

App. 21.

The vehicle operation/public transportation expense is an allowance which has nothing to do with debt payments. The only factors for the transportation expense are the number of vehicles operated by the debtor, and a public transportation allowance. Therefore it would make no sense to say that the transportation allowance cannot be greater than vehicle loan or lease payments, since "no debt payment is involved in this allowance."

There is also an IRS Local Standard for ownership/lease expense, and computation of this expense may include a reduction for debt payments,

so that there is no double counting with respect to the allowed deductions on secured debt. The Report of the Advisory Committee explains:

> The ownership/lease component, on the other hand, may involve debt payment. Accordingly, **the forms require debtors to reduce the allowance for ownership/lease expense by the average monthly loan payment amount** (principal and interest), up to the full amount of the IRS ownership/lease expense amount. This average payment is as reported on the separate line of the forms for deductions of secured debt (emphasis added).

App. 21-22.

The bifurcation of the IRS Local Standards for transportation into two components – vehicle operation as opposed to ownership/lease expense. A debtor may receive a vehicle operation deduction based on the number of vehicles operated, regardless of whether there are any debt payments associated with the vehicles. The ownership/lease expense is an allowance that does not necessarily include a debt portion: a debtor will automatically receive the ownership deduction provided he owns one or more vehicles. However, the ownership/lease expense deduction must be reduced by the amount of any allowed secured payments which are deducted under § 707(b)(2)(A)(iii), otherwise the debtor would receive a double deduction for ownership expenses.

The means test of Form 22 incorporates, from its inception, the position that the transportation expenses of the IRS Local Standards, as applied to the determination of disposable income in bankruptcy, are "appropriate allowances," not caps. Form 22, as drafted, does not allow for the transportation allowance for vehicles to be reduced if actual expenses are less. On Form 22, the transportation allowance is set once it has been determined under the IRS Local Standards for the area of the country, the size of debtor's family and the number of debtor's vehicles. The only adjustment is a reduction of the ownership/lease expense to eliminate double-counting for any secured debt expenses which are deducted.

Ransom, in claiming a vehicle deduction on Form 22, acted as dictated by Federal Rule of Bankruptcy Procedure 1007(b)(6):

> A debtor in a chapter 13 case shall file a statement of current monthly income, prepared as prescribed by the appropriate Official Form, and, if the debtor has current monthly income greater than the median family income for the applicable state and family size, a calculation of disposable income in accordance with § 1325(b)(3), **prepared as prescribed by the appropriate Official Form** (emphasis added).

Federal Rule of Bankruptcy Procedure 1007(b)(6) gives the debtor no discretion. The debtor must prepare the calculation of disposable income "as

prescribed by the appropriate Official Form." As indicated by the Report of the Advisory Committee on Bankruptcy Rules, and by the text of Form 22 approved by the Judicial Conference, the debtor followed the Rules of Bankruptcy Procedure in completing the calculation of disposable income as he did.

Jason Ransom completed Form 22 precisely as the form instructed, and entered a deduction for vehicle operation and vehicle ownership precisely in conformity to the instructions provided with Form 22.

If appellee's objection to confirmation of Ransom's Chapter 13 plan were to be sustained, not only this debtor's Chapter 13 plan would be affected: Form 22 would have to be revised to accord with a new interpretation of how vehicle ownership deductions are computed under the means test. However, no such revision is necessary or appropriate. Petitioner's Chapter 13 plan faithfully implements the terms of Official Form 22, which in turn accurately reflects the provisions of §§ 1325 (b)(2) and (b)(3) and 707(b)(2)(A)(ii)(I).

2. The monthly expenses used for motor vehicle deductions are set forth in § 707(b)(2)(A)(ii)(I), since motor vehicle expenses for purposes of the means test are those specified in the National Standards and Local Standards.

The language relating to vehicle expenses can be clarified by comparison with the other subclauses, (II) through (V), of subparagraph (A)(ii). Considered

together, subclauses (I) through (V) display a consistent differentiation between "monthly expense amounts specified" and "actual monthly expenses."

§ 707(b)(2)(A)(ii)(II) sets forth, in pertinent part, monthly expenses regarding the elderly, ill and disabled:

> In addition, the debtor's monthly expenses may include, if applicable, the continuation of **actual expenses** paid by the debtor that are reasonable and necessary for care and support of an elderly, chronically ill, or disabled household member or member of the debtor's immediate family . . . (emphasis added).

The debtor's expenses for the elderly, ill or disabled must be "actual expenses." This category of expenses that must be "actual," that is, calculated on the basis of enumerated expenditures, is different from the "expense amounts specified" under the National Standards and Local Standards.

Debtor's monthly expenses also include administrative expenses of the chapter 13 plan, as set forth in pertinent part in § 707(b)(2)(A)(ii)(III):

> In addition, for a debtor eligible for chapter 13, the debtor's monthly expenses may include the **actual administrative expenses** of administering a chapter 13 plan for the district in which the debtor resides . . . (emphasis added).

Subclause (III) takes care to specify that "actual" administrative expenses are the predicate for this expense deduction.

The deduction of educational expenses for minor children is limited to actual expenses, up to a fixed allowable amount per child. § 707(b)(2)(A)(ii)(IV) provides in pertinent part:

> In addition, the debtor's monthly expenses may include the **actual expenses** for each dependent child less than 18 years of age, not to exceed $1,650 per year per child, to attend a private or public elementary or secondary school . . . (emphasis added).

Subclause (IV) makes clear that only the actual expenses for education for minor children can be deducted. The dollar amount allowed per child per year is a cap on allowable expenses, not a standard amount which can automatically be applied.

§ 707(b)(2)(A)(ii)(V) provides for the deduction of additional expenses for housing and utilities. The language of subclause (V) is helpful because it differentiates between a deduction of expenses which are calculated specifically ("actual expenses") and expenses which are mandated by an official schedule ("the allowance specified"). Subclause (V) states as follows:

> In addition, the debtor's monthly expenses may include an allowance for housing and utilities, in excess of the **allowance specified by the Local Standards** for

> housing and utilities issued by the Internal Revenue Service, based on the **actual expenses** for home energy costs if the debtor provides documentation of such **actual expenses** and demonstrates that such **actual expenses** are reasonable and necessary (emphasis added).

Subclause (V) provides an additional allowance for home energy costs where the demonstrated, documented "actual expenses" for such costs exceed the "allowance specified by the Local Standards." Subclause (V) would have no meaning if an "allowance specified" under IRS standards were no different than "actual expenses" tabulated by the debtor.

Subclause (V) for home energy costs, like subclause (I) for vehicle expense deductions and other categories, makes clear that an expense amount "specified" under the IRS standards is not to be equated with "actual expenses." The "allowance specified" [subclause (V)] and the "monthly expense amounts specified" [subclause (I)] refer to set amounts specified by the IRS in standardized tables. These "specified" amounts limit the deductions that can be claimed by debtors under the means test, unless a specific exception is provided for a deduction in excess of these specified amounts. By contrast, "actual monthly expenses" in subclauses (I) through (V) represent calculations of amounts expended rather than fixed sums listed in the IRS standards.

C. The Plain Language Interpretation Of The Means Test Has Widely Held That A Vehicle Ownership Allowance Is Permitted Even When The Debtor Makes No Car Payments

The language of § 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 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 Seventh Circuit Court of Appeals states in *Ross-Tousey v. Neary,* 549 F.3d 1148, 1157 (7th Cir. 2008), "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 § 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 "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, 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 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 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 expense.

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 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.

It can also be argued that "applicable monthly expense amounts" cannot refer to car loan and lease payments, because the section of the means test dealing with vehicle ownership costs expressly excludes payments for debts:

> [T]he Financial Analysis Handbook provides that Ownership Costs are "nationwide figures for loan or lease payments." Financial Analysis Handbook, § 5.15.1.7. Section 707(b)(2)(A)(ii)(I), however, directs that "the monthly expenses of the debtor shall not include any payments for debts." Given that Congress did not intend for the debtor's "applicable monthly expense amounts specified under the . . . Local Standards" to include an automobile loan payment, the term "applicable" cannot be interpreted to mean that the debtor must have an automobile loan payment to take the deduction. Instead, the only logical interpretation of the term "applicable" is that it refers to the amount "applicable" to the debtor from among the various expense amounts

> provided in the tables that make up the Standards.

Clippard v. Ragle (In re Ragle), 395 B.R. 387, 401 (D. E.D.Ky. 2008).

Since 11 U.S.C. § 707(b)(2)(A)(ii)(I) expressly excludes payments for debts from that subclause, "applicable monthly expense amounts" cannot refer to loan and lease payments, as the *Ransom* court would contend. Rather, "applicable" must mean the amounts set forth in the tables of the Local Standards.

Put another way, in *Ransom* the Ninth Circuit has chosen *not* to make the plain language of the statute the determining factor in its interpretation.

II. THE NINTH CIRCUIT ERRS IN DENYING A VEHICLE OWNERSHIP DEDUCTION IN THE ABSENCE OF CAR PAYMENTS

A. The Ninth Circuit Is Mistaken In Importing The Financial Analysis Methodology Of The Internal Revenue Manual Into The Bankruptcy Code

Congress did not incorporate the language of the Internal Revenue Manual ("Manual" or "IRM") into § 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 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 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 Necessary Expenses allowance (excluding payments for debts) for the debtor . . . in the area in which the debtor resides *as determined under the Internal Revenue Service financial analysis* for expenses in effect as of the date of the order for relief.
>
> 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. An early version of the means test, in the 1998 bankruptcy reform legislation which was not enacted, specified that the IRS financial analysis would be used in determining deductions under the

National Standards and Local Standards. However, the means test passed into law by the 2005 law omits any reference to using the Internal Revenue Manual criteria to cap the amounts allowed under the Local Standards. The language of the means test incorporates the amounts set forth in the Local Standards, not the IRM financial analysis which the IRS would use in a tax audit.

The Seventh Circuit argues that the legislative history of § 707(b)(2)(A)(ii)(I) confirms that the provision's silence with regard to the IRM and IRS methodology is deliberate. The court uses the prior version of the bill to interpret the bill that was subsequently enacted, citing *In re Lifschultz Fast Freight Corp.*, 63 F.3d 621, 631 (7th Cir. 1995) for the conclusion that when the final enacted version of a bill omits a provision contained in earlier unpassed versions, the omission evidences a "significant and clearly deliberate" choice by Congress. *Ross-Tousey,* 549 F.3d at 1159.

B. The Ninth Circuit Is Mistaken In Asserting That Any Deduction For Vehicle Ownership Costs Is "Fictitious" In The Absence Of Car Payments

The Ninth Circuit attaches particular importance to the term "applicable" in the definition of the debtor's monthly expenses as the debtor's "applicable monthly expense amounts specified under the . . . Local Standards." § 707(b)(2)(A)(ii)(I). In the court's

view, the term "applicable" loses all meaning if applied to an ownership expense deduction in the absence of car payments:

> As set forth in the statute, the adjective "applicable" modifies the meaning of the noun "monthly expense amounts;" it indicates that the deduction of the monthly expense amount specified under the Local Standards for the expense becomes relevant to the debtor (i.e., appropriate or applicable to the debtor) when he or she in fact has such an expense.
>
> The ordinary, common meaning of "applicable" further impels us to this conclusion. "Applicable," in its ordinary sense, means "capable of or suitable for being applied." Merriam-Webster's Collegiate Dictionary 60 (11th ed. 2005). Given the ordinary sense of the term "applicable," how is the vehicle ownership expense allowance *capable of being applied* to the debtor if he does not make any lease or loan payments on the vehicle? In other words, how can the debtor assert a deduction for an expense he does not have? If we granted the debtor such an allowance, we would be reading "applicable" right out of the Bankruptcy Code.

Ransom, 577 F.3d. at 1031. The reasoning here is that an expense amount is only "applicable" if there is actually an expense. In the absence of lease or loan payments, the court argues, there can be no monthly vehicle ownership expense. In other words, no

expense amount is applicable under the Local Standards where the debtor owns the vehicle outright; otherwise the term "applicable" becomes meaningless. The problem with this argument is that it assumes what it attempts to prove. The word "applicable" can easily be read to mean the appropriate geographic region and number of cars for a debtor. Once this pertinent expense amount is located, it can be entered as a deduction in the amount specified in the Local Standards.

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.

Granting the ownership cost deduction to a vehicle that is owned outright accords best with economic reality:

> [A] car for which the debtor no longer makes payments may soon need to be replaced (so that the debtor will actually have ownership expenses), and it avoids arbitrary distinctions between debtors who have only a few car payments left at the time of their bankruptcy filing and those who finished making their car payments just before the filing.

In re Fowler, 349 B.R. 414, 419 (Bankr. D.Del. 2006) (quoting Eugene R. Wedoff*, Means Testing in the New § 707(b)*, 79 Am. Bankr. L. J. 231, 257-58 (2005).

In Ransom's case, the Ninth Circuit approach would grant him a full ownership cost deduction under the Local Standards even if he had only one payment remaining on his vehicle. But in fact Ransom owned his car outright, so he received no ownership deduction and his Chapter 13 Plan was denied confirmation. Such a result is arbitrary at best.

In the analysis in *Kimbro, supra,* the real ownership expenses are not debt payments or loan payments, but factors such as depreciation:

> In *Kimbro,* the Sixth Circuit BAP found that another policy reason for permitting the deduction for a debtor who owns a car free and clear of any debt was the fact that such a debtor still incurs expenses arising from the ownership of the vehicle. *Id.* at 522. In fact, the BAP found that debt payments and lease payments are not really "ownership expenses." *Id.* at 531. Instead, "the expenses related to vehicle ownership are the expenses for depreciation, insurance, licensing fees and taxes." *Id.* The BAP determined that "every vehicle owner incurs ownership expenses, and that is so regardless of debt or lease payments." *Id.* The court concluded that "[b]ecause the ownership of a vehicle always involves an expense, it was neither absurd nor irrational for Congress to allow a uniform deduction in the bankruptcy means test for an ownership expense even when there is no debt or lease payment." *Id.*

Clippard v. Ragle, 395 B.R. at 400.

For the *Ransom* court, the statutory language "does not allow a debtor to deduct an 'ownership cost' (as distinct from an 'operating cost') that the debtor does not have. *Ransom*, 577 F.3d at 1030. By contrast, the *Kimbro* line of analysis finds it "neither absurd nor irrational" for Congress to allow a deduction for ownership expenses such as depreciation, insurance,

licensing fees and taxes. The *Kimbro* position is supported by the fact that 11 U.S.C. § 707(b)(2)(A)(ii)(I) expressly states, "the monthly expenses of the debtor shall not include any payments for debts." In light of this prohibition, it is incongruous to conclude that the vehicle ownership expenses under the Local Standards consist precisely of car payments.

C. The Ninth Circuit Is Wrong To Single Out The Ownership Cost Allowance As Thwarting BAPCPA's Goal Of Debt Repayment

The Ninth Circuit chooses to deny Ransom a vehicle ownership allowance 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, this strategy appears at best to be ineffectual. 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.

The Ninth Circuit penalizes Ransom for owning his vehicle free and clear, and disregards the depreciation and replacement costs inherent in automobile ownership. Further, the Ninth Circuit holding ignores the fact that Ransom could have lowered his

disposable income much further if he had large car payments. Under § 707(b)(2)(iii), a debtor is allowed to deduct from monthly income the average monthly payments on secured debt, including debt on motor vehicles, calculated as the sum of all such payments divided by 60. If Ransom's average monthly payments on secured motor vehicle debt were large enough, his disposable income under the means test could be reduced to zero. Surely Ransom's ownership cost allowance under the Local Standards does appear excessive compared to the virtually unlimited deduction he could have obtained if he were making loan or lease payments on his vehicle.

Means testing seeks to implement improved debt repayment. This goal is not served by disallowing the vehicle ownership cost allowance for vehicles which are owned free and clear. Such an outcome sends entirely the wrong message, namely, that it is advantageous to be deeply in debt on motor vehicle loans, rather than to pay them off. Under § 707(b)(2)(iii), a debtor is allowed to deduct from monthly income the average monthly payments on secured debt, including debt on motor vehicles, calculated as the sum of all such payments divided by 60. If Ransom's average monthly payments on secured motor vehicle debt were large enough, his disposable income under the means test could be reduced to zero. Granting Ransom a vehicle cost deduction levels the playing field between those who owe secured debt on their cars, and those who do not. By contrast, denying his deduction amounts to an

incentive to retain secured debt as a way to lower disposable income in bankruptcy.

In fact, the Ninth Circuit's decision frustrates "one of the main objectives of BAPCPA: to ensure that debtors repay as much of their debt as reasonably possible." *Ransom, supra.* If the Ninth Circuit's holding were upheld on appeal, the end result would not be that Ransom would pay more through his Chapter 13 plan and thus produce a more favorable outcome for unsecured creditors: the result would be that Ransom would be denied the opportunity to make any debt payments in a bankruptcy case.

Ransom's net monthly income, as set forth in Schedules I and J to his petition, is $504.15. That is the amount of money that he has available to pay debts while meeting his living expenses. However, under the approach urged by appellee, and adopted by the lower courts in this matter, the monthly payment which Ransom would be obligated to make in a Chapter 13 plan would be $681.55. This amount is the sum of adding $210.55, the disposable income calculated on Form B22C, and $471, the disallowed vehicle ownership expense.

Where the trustee or the holder of an allowed unsecured claim objects to confirmation of the plan, § 1325(b)(1)(B) obligates the debtor in a Chapter 13 case to commit all his projected disposable income to the payment of unsecured debt over the plan period. If the debtor's disposable income were $681.55, as alleged by MBNA, then the debtor would have to pay

this amount each month or the court could not approve his plan.

Under appellee's scenario, Ransom would not pay more each month on his unsecured debt obligations: Ransom would pay nothing at all, because Ransom would not be able to have a Chapter 13 plan confirmed.

The result sought by appellee is contrary to the objectives of BAPCPA and contrary to common sense. BAPCPA seeks to have debtors pay the full sum they are capable of paying toward their unsecured debt. The outcome of appellee's approach is that the debtor would pay nothing through the bankruptcy court. This result is rejected by the great majority of Courts of Appeals that have considered the issue, and it should be rejected by this Court also.

D. The Ninth Circuit Approach Conflicts With Dicta In This Court's *Hamilton v. Lanning* Decision Which Reject Senseless Results Not Intended By Congress

Dicta in this Court's recent decision, *Hamilton v. Lanning,* 560 U.S. ___ (June 7, 2010), conflict with the approach of the Ninth Circuit in the instant case. One must point out that the outcome in *Lanning* is not determinative of the outcome in *Ransom*. *Lanning* holds that the forward-looking approach is preferable to the mechanical approach in calculating

"projected disposable income" under § 1325(b)(1). The question of the forward-looking approach, versus the backward-looking approach, does not arise in *Ransom,* which on appeal involves only the question of whether the debtor can deduct a vehicle ownership allowance in the absence of lease or loan payments. Moreover, the Court in *Lanning* observes, "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." *Hamilton v. Lanning,* 560 U.S. at ___.

In *Ransom,* the forward-looking approach also calls for a computation of projected disposable income for the applicable commitment period. However, no substantial change in circumstances has occurred in this case, and no major alteration in the debtor's economic situation is foreseen. Therefore, in *Ransom* there is no reason to believe that projected disposable income will differ in any significant way from disposable income calculated with reference to the means test.

The outcome in *Ransom* cannot be subsumed under the *Lanning* decision. Nonetheless, there is an important issue in common between the two cases because both involve a computation of disposable income under § 1325(b)(2). The rationale of the Court in considering disposable income for a confirmable plan in *Lanning* is applicable in *Ransom*, even

though the specific issue shifts from the time period for determining disposable income in *Lanning* to accepting only car payments as a vehicle ownership cost allowance in *Ransom*. The Court's rationale in analyzing disposable income is to avoid "senseless results" not intended by Congress:

> 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. In cases in which the debtor's disposable income is higher during the plan period, the mechanical approach would deny creditors payments that the debtor could easily make. And where, as in the present case, the debtor's disposable income during the plan period is substantially lower, the mechanical approach would deny the protection of Chapter 13 to debtors who meet the chapter's main eligibility requirements. Here, for example, respondent is an "individual whose income is sufficiently stable and regular" to allow her "to make payments under the plan," § 101(30), and her debts fall below the limits set out in § 109(e). But if the mechanical approach were used, she could not file a confirmable plan. Under § 1325(a)(6), a plan cannot be confirmed unless "the debtor will be able to make all payments under the plan and comply with the plan." And as petitioner concedes, respondent could not possibly

> make the payments that the mechanical approach prescribes.

Hamilton v. Lanning, 560 U.S. at ___.

Two sorts of "senseless results" are identified in the Court's analysis. One is the approach which would "deny creditors payments that the debtor could easily make." *Ibid.* This unfortunate result – denying creditors payments that the debtor is capable of making – is hardly the objective of the BAPCPA legislation. The other counterproductive approach would "deny the protection of Chapter 13 to debtors who meet the chapter's main eligibility requirements." *Ibid.* The Court's reasoning is that if the debtor meets Chapter 13's main eligibility requirements, the debtor should be able to structure a plan to obtain bankruptcy protection.

The *Ransom* holding yields precisely the sort of senseless results that this Court rejects in *Lanning*. Jason Ransom is being denied the protection of Chapter 13 even though he is a debtor who meets the chapter's main eligibility requirements. Ransom is an "individual whose income is sufficiently stable and regular" to allow him "to make payments under a plan," § 101(30), and his debts fall below the limits set out in § 109(e). But if the Ninth Circuit approach were used, he could not file a confirmable plan. Under § 1325(a)(6), a plan cannot be confirmed unless "the debtor will be able to make all payments under the plan and comply with the plan." Ransom's Form B22C lists disposable income of $210.55, based in

part on an ownership expense deduction of $471 a month for his car. However, it is uncontested that Ransom's net monthly income, as shown on Schedules I and J, is $504.15. The Ninth Circuit decision, by denying Ransom the vehicle ownership allowance, would raise his disposable income to $681.55 a month. He does not have that amount available to pay unsecured creditors, and thus his plan cannot be approved.

And the Ninth Circuit holding is not beneficial to creditors: it denies them payments that Ransom could easily make. Ransom's proposed Chapter 13 plan commits to making monthly payments of $500.00 for the benefit of unsecured creditors. However, denying him a vehicle ownership deduction would raise his disposable income – and projected disposable income as well – from $210.55 to $681.55, an amount well in excess of any net income he has available to pay unsecured creditors on a monthly basis. His transportation ownership cost allowance, as set forth in the plain language of the statute, should be deducted from current monthly income to arrive at disposable income. Only allowing the vehicle cost deduction, even in the absence of lease or loan payments, can avoid those "senseless results" never intended by Congress.

CONCLUSION

This Court should reverse the judgment of the Ninth Circuit Court of Appeals and remand the case for further proceedings.

Respectfully submitted,

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Means Testing

Census Bureau, IRS Data and Administrative Expenses Multipliers

(Cases Filed Between February 13, 2006, and September 30, 2006, Inclusive)

Section I. Census Bureau Data

In Part III of Bankruptcy Form B22A and Part II of Bankruptcy Form B22C, debtors are instructed to enter the "Applicable median family income." This information is published by the Census Bureau according to State and family size, and the data is updated each year. In addition, pursuant to 11 U.S.C. § 101(39A)(B), the data on this Web site will be further adjusted early each calendar year based upon the Consumer Price Index for All Urban Consumers.

The following link provides the median family income data published for the year 2005, reproduced in a format that is designed for ease of use in completing these bankruptcy forms.

Median Income Figures for Calendar Year 2005 Based on State/Territory and Family Size

Section II. IRS Data

In Part V, Subpart A, of Bankruptcy Form B22A and Part IV, Subpart A, of Bankruptcy Form B22C, debtors are instructed to enter "National Standards" and "Local Standards." This information is updated

annually by the IRS. The following links provide the appropriate data, reproduced in a format designed for ease of use in completing these bankruptcy forms.

> **Note:** The IRS expense figures posted on this Web site are for use in completing bankruptcy forms. They are not for use in computing taxes or for any other tax administration purpose. Expense information for tax purposes can be found on the IRS Web site.

1. *National Standards.* The National Standards are published by the IRS, and the table includes five (5) subcategories of expenses and their combined total. The National Standards are published by the number of persons and gross income level.

Part V, Subpart B, on Form B22A and Part IV, Subpart B, on Form B22C allow for a qualifying debtor to claim an additional food and clothing ("apparel and services") expense if the debtor's average monthly food and clothing expense exceeds the combined allowances for those two subcategories, not to exceed five (5) percent. For purposes of these bankruptcy forms, the "Food" and "Apparel & services" subcategories have been combined and are provided as a separate line item, which is displayed together with the five (5) percent calculation of those two subcategories combined.

National Standards for Allowable Living Expenses (excluding Alaska & Hawaii)

Alaska – National Standards for Allowable Living Expenses

Hawaii – National Standards for Allowable Living Expenses (includes Guam, Puerto Rico, the Northern Mariana Islands, and the Virgin Islands for purposes of these bankruptcy forms)

> **NOTE:** The IRS does not currently publish National Standards for Allowable Living Expenses for Guam, Puerto Rico, the Northern Mariana Islands, and the Virgin Islands. For purposes of these bankruptcy forms, these Commonwealths and Territories use the "Hawaii – National Standards for Allowable Living Expenses."

2. ***Local Standards.*** The Local Standards are published by the IRS and consist of two primary expense categories, "Housing and Utilities" and "Transportation."

> **a.** ***Local Housing and Utilities Expense Standards* – By State, County, and Family Size.** The Housing and Utilities Standards are published by the IRS by State (including Guam, the Northern Mariana Islands, Puerto Rico, the Virgin Islands, and the District of Columbia), county, and family size. For purposes of these bankruptcy forms, the Housing and Utilities Standards are provided in two components – non-mortgage expenses and mortgage/rent expenses.

> **b.** ***Local Transportation Expense Standards* – By Metropolitan Statistical Area and Census Region.** The Transportation Standards are published by the IRS in two components. The *Operating Costs & Public Transportation Costs* component of the Transportation Standards is

published by number of cars and by Metropolitan Statistical Area (MSA) and Census Bureau region. In order to use the data, you must determine in what Census Bureau region your state is located and whether your county is located in a MSA. The *Ownership Costs* component of the Transportation Standards is published on a national basis, by number of cars. This information, reproduced in a format designed for ease of use in completing these bankruptcy forms, is available at the following link.

NOTE: The IRS does not currently publish transportation standards for Guam, Puerto Rico, the Northern Mariana Islands, or the Virgin Islands. For purposes of these bankruptcy forms, the Virgin Islands and Puerto Rico are included with the Northeast Census Bureau Region, and Guam and the Northern Mariana Islands are included with the West Census Bureau Region.

Section III. **<u>Administrative Expenses Multipliers</u>**

11 U.S.C. § 707(b)(2)(A)(ii)(III) allows a debtor who is eligible for chapter 13 to include in his/her calculation of monthly expenses the actual administrative expenses of administering a chapter 13 plan in the judicial district where the debtor resides.

The Executive Office for U.S. Trustees issues the schedules of actual administrative expenses which contain, by judicial district, the chapter 13 multiplier needed to complete Official Bankruptcy Forms B22A and B22C (Statement of Current Monthly Income and calculations). Form B22A is the form most chapter 7

debtors will complete and the multiplier is entered on Line 45.b; Form B22C is the form most chapter 13 debtors will complete and the multiplier is entered on Line 50.b.

Schedules of Actual Administrative Expenses of Administering a Chapter 13 Plan (as Required by 11 U.S.C. § 707(b)(2)(A)(ii)(III))

Note:

The original source for the State Median Family Income is the Census Bureau.

The original source for the National and Local Standards is the IRS.

To report any differences between the data on these pages and their original source, please e-mail: ust.mt.help@usdoj.gov.

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[SEAL] U.S. Trustee Program/Dept. of Justice

IRS Local Transportation Expense Standards – West Census Region

(Cases Filed Between February 13, 2006, and September 30, 2006, Inclusive)

For Use with Allowable Transportation Expenses Table
The Operating Costs and Public Transportation Costs sections of the Transportation Standards are provided by Census Region and Metropolitan Statistical Area (MSA). The following table lists the states that comprise each Census Region. Once the taxpayer's Census Region has been ascertained, to determine if an MSA standard is applicable, use the definitions below to see if the taxpayer lives within an MSA (MSAs are defined by county and city, where applicable). If the taxpayer does not reside in an MSA, use the regional standard.

West Census Region:		
New Mexico, Arizona, Colorado, Wyoming, Montana, Nevada, Utah, Washington, Oregon, Idaho, California, Alaska, Hawaii		
Metropolitan Statistical Areas (MSAs) Within the West Census Region		
MSA	**COUNTIES (unless otherwise specified)**	
Los Angeles	*in CA:*	Los Angeles, Orange, Riverside, San Bernadino, Ventura

San Francisco	*in CA:*	Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Santa Cruz, Solano, Sonoma
San Diego	*in CA:*	San Diego
Portland	*in OR:*	Clackamas, Columbia, Marion, Multnomah, Polk, Washington, Yamhill
	in WA:	Clark
Seattle	*in WA:*	Island, King, Kitsap, Pierce, Snohomish, Thurston
Honolulu	*in HI:*	Honolulu
Anchorage	*in AK:*	Anchorage borough
Phoenix	*in AZ:*	Maricopa, Pinal
Denver	*in CO:*	Adams, Arapahoe, Boulder, Denver, Douglas, Jefferson, Weld

IRS LOCAL TRANSPORTATION*
EXPENSE STANDARDS
West Census Region

Operating Costs & Public Transportation Costs (Line 22, Form B22A) (Line 27, Form B22C)			
Region	**No Car**	**One Car**	**Two Cars**
West Census Region	$252	$338	$420

MSA Locations Within Census Region:			
Anchorage	$319	$341	$423
Denver	$312	$338	$420
Honolulu	$300	$328	$410
Los Angeles	$284	$426	$508
Phoenix	$275	$351	$433
Portland	$194	$297	$379
San Diego	$322	$382	$464
San Francisco	$325	$401	$484
Seattle	$267	$329	$412

Ownership Costs (Lines 23 and 24, Form B22A) (Lines 28 and 29, Form B22C)		
National	**First Car**	**Second Car**
	$471	$332

*Does not include personal property taxes.

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COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
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EVIDENCE RULES

TO: **Honorable David F. Levi, Chair Standing Committee on Rules of Practice and Procedure**

FROM: **Honorable Thomas S. Zilly, Chair Advisory Committee on Bankruptcy Rules**

DATE: **May 24, 2006**

RE: **Report of the Advisory Committee on Bankruptcy Rules**

I. INTRODUCTION

The Advisory Committee on Bankruptcy Rules met on March 8-10, 2006, in Chapel Hill, North Carolina. As a result of that meeting and other actions, the Advisory Committee recommends a series of Action Items to the Standing Committee. First, the Committee recommends that the Standing Committee finally approve and recommend to the Judicial Conference the rules set out in Part II.A.3 of this report. Second, the Committee recommends that the Standing Committee approve for publication in August 2006 the proposed new and amended rules set out in Part II.B.2 of this report. Third, we recommend amending Interim Rule 1007, to be effective on October 1, 2006, as set out in Part II.B.4. Fourth, the Committee recommends that the Standing Committee approve the proposed amendments to the Official Forms in Part II.C.2 of the report and submit them to the Judicial Conference for its approval with an effective date of October 1, 2006. Finally, the Advisory Committee recommends that the new and amended Official Forms as set out in Part II.D.2 of the report be approved for publication in August 2006. Parts II.C.2 and II.D.2 are set out in a separate attachment.

The Advisory Committee considered public comments regarding the proposed amendments to Bankruptcy Rules 1014, 3007, 4001, 6006, and 7007.1, and new Rules 6003, 9005.1, and 9037 that were published in August 2005. The Advisory Committee received a number of comments on the proposed

amendments to the Rules, and the comments are summarized later in this report. Since no person who submitted a written comment requested to appear at the public hearing scheduled for January 9, 2006, the hearing was canceled. The Advisory Committee recommends that the proposed amendments and additions to the Bankruptcy Rules set out in Part II.A.3 be approved for transmittal to the Judicial Conference.

In addition to these new rules and amendments, a proposed amendment to Bankruptcy Rule 3001 was published for comment in August 2005. The Advisory Committee recommends that the proposed amendments to Rule 3001 be withdrawn. The Committee received several comments opposing the recommended amendments to the rule that would have limited the length of documents that could be attached to a proof of a claim. After further consideration of those comments, the Advisory Committee concluded that the proposed amendment should be withdrawn.

The Advisory Committee has spent considerable time on the creation of Interim Rules to implement the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the 2005 Act). President Bush signed the 2005 Act on April 20, 2005, and most of its provisions became effective on October 17, 2005. The Advisory Committee prepared Interim Rules to operate in cases governed by the 2005 Act until final rules could be put in place. The Interim Rules were approved by the Standing Committee and were

adopted by standing order in every district in the United States. These adoptions were nearly uniform throughout the country with only a few minor variations in the rules as locally adopted. The Interim Rules comprise the bulk of the package of new rules and rules amendments being recommended for publication.

The proposed rules recommended for publication also include amendments and additions that were not included in the package of Interim Rules that became effective by standing orders on October 17, 2005. For example, one provision of the 2005 Act does not become effective until a rule has been promulgated under the Rules Enabling Act process. Consequently, there was no need to include that rule in the Interim Rules, but the changes in the bankruptcy Code require the adoption of new rules to implement those provisions. The Committee received and considered various comments to the Interim Rules prior to its meeting in March, and the proposed Rules have incorporated these comments as appropriate.

The report includes a statement at the end of each rule or rule amendment being recommended for publication as to whether the proposal was previously approved as an Interim Rule. That statement also identifies any changes in the recommended version of the rule to the existing Interim Rule. While there were changes to many of the Interim Rules, most of the changes were stylistic. More significant amendments were made to Interim Rules 1007, 1010(b), 1011(f), 2002(g)(5), 2015(a)(6), 3002(c)(5), 4003, 4008,

and 8001(f)(5). The amendments to Rules 1005, 2015.3, 3016(d), 5001, and 9009 are entirely new and were not included in the Interim Rules. The 2005 Act requires the amendments to Rules 1005, 2015.3, 3016(d) and 9009, while the amendments to Rule 5001 are necessary because of the amendment to 28 U.S.C. § 152(c), which authorizes bankruptcy judges to hold court outside of their districts in emergency situations. Attached to the report is a chart that states the number of the rule being proposed for publication, whether a change in the rule was required by the 2005 Act, whether it was an Interim Rule, and the extent of the change in the rule from the Interim Rule. These rules are set out in Part II.B.2 of the report.

Part II.B.4 contains amendments to Bankruptcy Rule 1007 that are being recommended both for inclusion in the rules for publication and for approval as an Interim Rule that can be recommended to the bankruptcy courts for adoption by standing order in the manner that the Interim Rules were adopted prior to October 17, 2005. The 2005 Act amended the Bankruptcy Code to require that consumer debtors receive credit counseling prior to commencing a bankruptcy case. Interim Rule 1007 implements that provision by requiring debtors to file a certificate that they have completed the counseling in the 180 days prior to the commencement of the case. Case law developments have shown that some debtors have completed the counseling but have been unable to obtain a copy of the certificate. The proposed

amendment to Interim Rule 1007(b) and (c) addresses the problem by permitting debtors in this position to make a statement that they have completed the counseling and are awaiting receipt of the appropriate certificate. In that event, the debtor has until 15 days after the filing of the petition to file the certificate with the court.

In tandem with this proposed amendment to the Interim Rule 1007, the Advisory Committee recommends a change to Official Form 1, the voluntary petition, for approval by the Standing Committee and for recommendation for adoption by the Judicial Conference, with an effective date of October 1, 2006. The amendment to the Official Form includes a change that implements the amendment to Interim Rule 1007(b)(3) and also includes a series of cautions intended to inform debtors of the consequences of the filing of a bankruptcy petition. Many pro se debtors are unaware of the significant adverse consequences of filing a petition, and the warnings may deter improvident or premature filings. This will reduce the harm to those debtors as well as ease burdens on clerks who often are called upon to respond to inquiries from debtors on these matters.

In addition to the proposed amendment to the Official Form 1, the Advisory Committee recommends changes to several other Official Forms also with an effective date of October 1, 2006. These amendments, which are described in Section II.C.1, implement the substantial new statistical reporting requirements in

the 2005 Act. They are set out in a separate attachment.

The 2005 Act also required the amendment or creation of many Official Forms. Because the forms must be uniform to be truly useful in cases, the amendments and additions to the forms were recommended to the Judicial Conference for its approval in August and October of 2005. The Judicial Conference approved the forms which became effective on October 17, 2005. Time did not allow for the publication of these forms for comment, so the Advisory Committee recommends that the Official Forms that became effective on October 17, 2005, be published for comment along with the Interim Rules. As with the Interim Rules, the Official Forms being proposed for publication also include some minor amendments from those currently in use. The use of the Official Forms and Interim Rules since October 2005 provides a unique opportunity for the Advisory Committee to evaluate the proposed rules and the Official Forms and should enable the bench and bar to offer especially valuable commentary on their workings. The amendments and additions to the Official Forms which are recommended for publication are described in Part II.C.1. Due to their length, these materials are set out in a separate attachment.

Forms 22A, 22B, ~~23C~~ [22C]

COMMITTEE NOTE

A. Overview

Among the changes introduced by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 are interlocking provisions defining "current monthly income" and establishing a means test to determine whether relief under Chapter 7 should be presumed abusive. Current monthly income ("CMI") is defined in § 101(10A) of the Code, and the means test is set out in § 707(b)(2). These provisions have a variety of applications. In Chapter 7, if the debtor's CMI exceeds a defined level the debtor is subject to the means test, and § 707(b)(2)(C) specifically requires debtors to file a statement of CMI and calculations to determine the applicability of the means-test presumption. In Chapters 11 and 13, CMI provides the starting point for determining the disposable income that must be contributed to payment of unsecured creditors. Moreover, Chapter 13 debtors with CMI above defined levels are required by § 1325(b)(3) to complete the means test in order to determine the amount of their monthly disposable income; and, pursuant to § 1325(b)(4), the level of CMI determines the "applicable commitment period" over which projected disposable income must be paid to unsecured creditors.

To provide for the reporting and calculation of CMI and for the completion of the means test where required, three separate official forms have been

created – one for Chapter 7, one for Chapter 11, and one for Chapter 13. This note first describes the calculation of CMI that is common to all three of the forms, next describes the means test as set out in the Chapter 7 and 13 forms, and finally addresses particular issues that are unique to each of the forms.

B. Calculation of CMI

Although Chapters 7, 11, and 13 use CMI for different purposes, the basic computation is the same in each. As defined in § 101(10A), CMI is the monthly average of certain income that the debtor (and in a joint case, the debtor's spouse) received in the six calendar months before the bankruptcy filing. The definition includes in this average (1) income from all sources, whether or not taxable, and (2) any amount paid by an entity other than the debtor (or the debtor's spouse in a joint case) on a regular basis for the household expenses of the debtor, the debtor's dependents, and (in a joint case) the debtor's spouse if not otherwise a dependent. At the same time, the definition excludes from the averaged income "benefits received under the Social Security Act" and certain payments to victims of terrorism, war crimes, and crimes against humanity.

Each form provides for reporting income items constituting CMI. The items are reported in a set of entry lines – Part II of the Chapter 7 form and Part I of the forms for Chapter 11 and Chapter 13 – that include separate columns for reporting income of the debtor

and of the debtor's spouse. The first of these entry lines includes a set of instructions and check boxes indicating when the "debtor's spouse" column must be completed. The instructions also direct the required averaging of reported income.

The subsequent entry lines specify several common types of income and are followed by a "catch-all" line for other income. The specific entry lines address: (a) gross wages; (b) business income; (c) rental income; (d) interest, dividends, and royalties; (e) pension and retirement income; (f) regular contributions to the debtor's household expenses; and (g) unemployment compensation. Gross wages (before taxes) are required to be entered. Consistent with usage in the Internal Revenue Manual and the American Community Survey of the Census Bureau, business and rental income is defined as gross receipts less ordinary and necessary expenses. Unemployment compensation is given special treatment. Because the federal government provides funding for state unemployment compensation under the Social Security Act, there may be a dispute about whether unemployment compensation is a "benefit received under the Social Security Act." The forms take no position on the merits of this argument, but give debtors the option of reporting unemployment compensation separately from the CMI calculation. This separate reporting allows parties in interest to determine the materiality of an exclusion of unemployment compensation and to challenge it. The forms provide for totaling the income lines.

C. The means test: deductions from current monthly income (CMI)

The means test operates by deducting from CMI defined allowances for living expenses and payment of secured and priority debt, leaving disposable income presumptively available to pay unsecured nonpriority debt. These deductions from CMI under are set out in the Code at § 707(b)(2)(A)(ii)-(iv). The forms for Chapter 7 and Chapter 13 have identical sections (Parts V and III, respectively) for calculating these deductions. The calculations are divided into subparts reflecting three different kinds of allowed deductions.

1. Deductions under IRS standards

Subpart A deals with deductions from CMI, set out in § 707(b)(2)(A)(ii), for "the debtor's applicable monthly expense amounts specified under the National Standards and Local Standards, and the debtor's actual monthly expenses for the categories specified as Other Necessary Expenses issued by the Internal Revenue Service for the area in which the debtor resides." The forms provide entry lines for each of the specified expense deductions under the IRS standards, and instructions on the entry lines identify the website of the U.S. Trustee Program, where the relevant IRS allowances can be found. As with all of the deductions in § 707(b)(2)(A)(ii), deductions under the IRS standards are subject to the proviso that they not include "any payments for debts."

The IRS National Standards provide a single allowance for food, clothing, household supplies, personal care, and miscellany, depending on income and household size. The forms contain an entry line for the applicable allowance.

The IRS Local Standards provide one set of deductions for housing and utilities and another set for transportation expenses, with different amounts for different areas of the country, depending on the size of the debtor's family and the number of the debtor's vehicles. Each amount specified in the Local Standards is treated by the IRS as a cap on actual expenses, but because § 707(b)(2)(A)(ii) provides for deductions in the "amounts specified under the . . . Local Standards," the forms treat these amounts as allowed deductions. The forms again direct debtors to the website of the U.S. Trustee Program to obtain the appropriate allowances.

The Local Standards for housing and utilities, as published by the IRS for its internal purposes, present single amounts covering all housing expenses; however, for bankruptcy purposes, the IRS has separated these amounts into a non-mortgage component and a mortgage/rent component. The non-mortgage component covers a variety of expenses involved in maintaining a residence, such as utilities, repairs and maintenance. The mortgage/rent component covers the cost of acquiring the residence. For homeowners with mortgages, the mortgage/rent component involves debt payment, since the cost of a mortgage is part of the allowance. Accordingly, the

forms require debtors to deduct from the mortgage/rent component their average monthly mortgage payment (including required payments for taxes and insurance), up to the full amount of the IRS mortgage/rent component, and instruct debtors that this average monthly payment is the one reported on the separate line of the forms for deductions of secured debt under § 707(b)(2)(a)(iii). The forms allow debtors to challenge the appropriateness of this method of computing the Local Standards allowance for housing and utilities and to claim any additional housing allowance to which they contend they are entitled, but the forms require specification of the basis for such a contention.

The IRS issues Local Standards for transportation in two components for its internal purposes as well as for bankruptcy: one component covers vehicle operation/public transportation expense and the other ownership/lease expense. The amount of the vehicle operation/public transportation allowance depends on the number of vehicles the debtor operates, with debtors who do not operate vehicles being given a public transportation allowance. The instruction for this line item makes it clear that every debtor is thus entitled to some transportation expense allowance. No debt payment is involved in this allowance. The ownership/lease component, on the other hand, may involve debt payment. Accordingly, the forms require debtors to reduce the allowance for ownership/lease expense by the average monthly loan payment amount (principal and interest), up to the full amount

of the IRS ownership/lease expense amount. This average payment is as reported on the separate line of the forms for deductions of secured debt under § 707(b)(2)(a)(iii).

The IRS does not set out specific dollar allowances for "Other Necessary Expenses." Rather, it specifies a number of categories for such expenses, and describes the nature of the expenses that may be deducted in each of these categories. Section 707(b)(2)(a)(ii) allows a deduction for the debtor's actual expenses in these specified categories, subject to its requirement that payment of debt not be included. Several of the IRS categories deal with debt repayment and so are not included in the forms. Several other categories deal with expense items that are more expansively addressed by specific statutory allowances. Subpart A sets out the remaining categories of "Other Necessary Expenses" in individual entry lines. Instructions in these entry lines reflect limitations imposed by the IRS and the need to avoid inclusion of items deducted elsewhere on the forms.

Subpart A concludes with a subtotal of the deductions allowed under the IRS standards.

2. Additional statutory expense deductions

In addition to the expense deductions allowed under the IRS standards, the means test makes provision – in subclauses (I), (II), (IV), and (V) of § 707(b)(2)(A)(ii) – for six special expense deductions. Each of these additional expense items is set out on a

separate entry line in Subpart B, introduced by an instruction that there should not be double counting of any expense already included in the IRS deductions. Contributions to tax-exempt charities provide another statutory expense deduction. Section 1325(b)(2)(A)(ii) expressly allows a deduction from CMI for such contributions (up to 15% of the debtor's gross income), and § 707(b)(1) provides that in considering whether a Chapter 7 filing is an abuse, the court may not take into consideration "whether a debtor . . . continues to make [tax-exempt] charitable contributions." Accordingly, Subpart B also includes an entry line for charitable contributions. The subpart concludes with a subtotal of the additional statutory expense deductions.

3. Deductions for payment of debt

Subpart C deals with the means test's deductions from CMI for payment of secured and priority debt, as well as a deduction for administrative fees that would be incurred if the debtor paid debts through a Chapter 13 plan. In accord with § 707(b)(2)(A)(iii), the deduction for secured debt is divided into two entry lines – one for payments that are contractually due during the 60 months following the bankruptcy filing, the other for amounts needed to retain necessary collateral securing debts in default. In each situation, the instructions for the entry lines require dividing the total payment amount by 60, as the statute directs. Priority debt, deductible pursuant to § 707(b)(2)(A)(iv), is treated on a single entry line,

also requiring division by 60. The defined deduction for the expenses of administering a Chapter 13 plan is allowed by § 707(b)(2)(A)(ii)(III) only for debtors eligible for Chapter 13. The forms treat this deduction in an entry line requiring the eligible debtor to state the amount of the prospective Chapter 13 plan payment and multiply that payment amount by the percentage fee established for the debtor's district by the Executive Office for United States Trustees. The forms refer debtors to the website of the U.S. Trustee Program to obtain this percentage fee. The subpart concludes with a subtotal of debt payment deductions.

4. Total deductions

Finally, the forms direct that the subtotals from Subparts A, B, and C be added together to arrive at the total of allowed deductions from CMI under the means test.

5. Additional claimed deductions

The forms do not provide for means-test deductions from CMI for expenses in categories that are not specifically identified as "Other Necessary Expenses" in the Internal Revenue Manual. However, debtors may wish to claim expenses that do not fall within the categories listed as "Other Necessary Expenses" in the forms. Part VII of the Chapter 7 form and Part VI of the Chapter 13 form provide for such expenses to be identified and totaled. Although expenses listed

in these sections are not deducted from CMI for purposes of the means-test calculation, the listing provides a basis for debtors to assert that these expenses should be deducted from CMI under § 707(b)(2)(A)(ii)(I), and that the results of the forms' calculation, therefore, should be modified.

D. The chapter-specific forms

1. Chapter 7

The Chapter 7 form has several unique aspects. The form includes, in the upper right corner of the first page, a check box directing the debtor to state whether or not the calculations required by the form result in a presumption of abuse. The debtor is not bound by this statement and may argue, in response to a motion brought under § 707(b)(1), that there should be no presumption despite the calculations required by the form. The check box is intended to give clerks of court a conspicuous indication of the cases for which they are required to provide notice of a presumption of abuse pursuant to § 342(d).

Part I implements the provision of § 707(b)(2)(D) that excludes certain disabled veterans from all means-testing, making it unnecessary to compute the CMI of such veterans. Debtors who declare under penalty of perjury that they are disabled veterans within the statutory definition are directed to verify their declaration in Part VII, to check the "no presumption" box at the beginning of the form, and to disregard the remaining parts of the form.

Part II computes CMI. Section 707(b)(7) prohibits a motion to dismiss based on the means test's presumption of abuse if the debtor's annualized CMI does not exceed a defined median state income. For this purpose, the statute directs that CMI of the debtor's spouse be combined with the debtor's CMI even if the debtor's spouse is not a joint debtor, unless the debtor declares under penalty of perjury that the spouses are legally separated or living separately other than for purposes of evading the means test. Accordingly, the calculation of CMI in Part II directs a computation of the CMI of the debtor's spouse not only in joint cases, but also in cases of married debtors who do not make the specified declaration, and the CMI of both spouses in these cases is combined for purposes of determining standing under § 707(b)(7).

Part III compares the debtor's CMI to the applicable state median income for purposes of § 707(b)(7). It then directs debtors whose income does not exceed the applicable median to verify the form, to check the "no presumption" box at the beginning of the form, and not to complete the remaining parts of the form. Debtors whose CMI does exceed the applicable state median are required to complete the remaining parts of the form.

Part IV adjusts the CMI of a married debtor, not filing jointly, whose spouse's CMI was combined with the debtor's for purposes of determining standing to assert the means-test presumption. The means test itself does not charge a married debtor in a non-joint

case with the income of the non-filing spouse, but rather only with contributions made by that spouse to the household expenses of the debtor or the debtor's dependents, as provided in the definition of CMI in § 101(10A). Accordingly, Part IV calls for the combined CMI of Part II to be reduced by the amount of the non-filing spouse's income that was not contributed to the household expenses of the debtor or the debtor's dependents.

Part V provides for a calculation of the means test's deductions from the debtor's CMI, as described above.

Part VI provides for a determination of whether the debtor's CMI, less the allowed deductions, gives rise to a presumption of abuse under § 707(b)(2)(A). Depending on the outcome of this determination, the debtor is directed to check the appropriate box at the beginning of the form and to sign the verification in Part VIII. Part VII allows the debtor to claim additional deductions, as discussed above.

2. Chapter 11

The Chapter 11 form is the simplest of the three, since the means-test deductions of § 707(b)(2) are not employed in determining the extent of an individual Chapter 11 debtor's disposable income. Section 1129(a)(15) requires payments of disposable income "as defined in section 1325(b)(2)," and that paragraph allows calculation of disposable income under judicially-determined standards, rather than pursuant to the

means-test deductions, specified for higher income Chapter 13 debtors by § 1325(b)(3). However, § 1325(b)(2) does require that CMI be used as the starting point in the judicial determination of disposable income, and so the Chapter 11 form requires this calculation (in Part I of the form), as described above, together with a verification (in Part II).

3. Chapter 13

Like the Chapter 7 form, the form for Chapter 13 debtors contains a number of special provisions. The upper right corner of the first page includes check boxes requiring the debtor to state whether, under the calculations required by the statement, the applicable commitment period under § 1325(b)(4) is three years or five years and whether § 1325(b)(3) requires the means-test deductions to be used in determining the debtor's disposable income. The check box is intended to inform standing trustees and other interested parties about these items, but does not prevent the debtor from arguing that the calculations required by the form do not accurately reflect the debtor's disposable income.

Part I is a report of income to be used for determining CMI. Section 1325(b)(4) imposes a five-year applicable commitment period – rather than a three-year period – if the debtor's annualized CMI is not less than a defined median state income. For this purpose, as under § 707(b)(4), the statute requires that the CMI of the debtor's spouse to be combined

with the debtor's CMI, and no exception exists for spouses who are legally separated or living separately. Accordingly, the report of income in Part I directs a combined reporting of the income of both spouses in all cases of married debtors.

Part II computes the applicable commitment period by annualizing the income calculated in Part I and comparing it to the applicable state median. The form allows debtors to contend that the income of a non-filing spouse should not be treated as CMI and permits debtors to claim a deduction for any income of a non-filing spouse to the extent that this income was not contributed to the household expenses of the debtor or the debtor's dependents. The debtor is directed to check the appropriate box at the beginning of the form, stating the applicable commitment period.

Part III compares the debtor's CMI to the applicable state median, allowing a determination of whether the means-test deductions must be used, pursuant to § 1325(b)(3), in calculating disposable income. For this purpose, since § 1325(b)(3) does not provide for including the income of the debtor's spouse, the form directs a deduction of the income of a non-filing spouse that is not contributed to the household expenses of the debtor or the debtor's dependents. Again, the debtor is directed to check the appropriate box at the beginning of the form, indicating whether the means-test deductions are applicable. If so, the debtor is directed to complete the remainder of the form. If not, the debtor is directed to

complete the verification in Part VII but not complete the other parts of the form.

Part IV provides for calculation of the means-test deductions provided in § 707(b)(2), described above, as incorporated by § 1325(b)(3) for debtors with CMI above the applicable state median.

Part V provides for three adjustments required by special provisions affecting disposable income in Chapter 13. First, § 1325(b)(2) itself excludes from the CMI used in determining disposable income certain "child support payments, foster care payments, [and] disability payments for a dependent child." Because payments of this kind are included in the definition of CMI in § 101(10A), a line entry for deduction of these payments is provided. Second, a line entry is provided for deduction of contributions by the debtor to certain retirement plans, listed in § 541(b)(7)(B), since that provision states that such contributions "shall not constitute disposable income, as defined in section 1325(b)." Third, the same line entry also allows a deduction from disposable income for payments on loans from retirement accounts that are excepted from the automatic stay by § 362(b)(19), since § 1322(f) provides that for a "loan described in section 362(b)(19) . . . any amounts required to repay such loan shall not constitute 'disposable income' under section 1325."

The Chapter 13 form does not provide a deduction from disposable income for the Chapter 13 debtor's anticipated attorney fees. No specific statutory

allowance for such a deduction exists, and none appears necessary. Section 1325(b)(1)(B) requires that disposable income contributed to a Chapter 13 plan be used to pay "unsecured creditors." A debtor's attorney who has not taken a security interest in the debtor's property is an unsecured creditor who may be paid from disposable income.

Part VI allows the debtor to claim additional deductions, as described above, and Part VII is the verification.

October 2006 Supplement to Committee Note

Forms 22A, Line 43, and Form 22C, Line 48, are amended to delete the phrase "in default" with respect to "Other payments on secured claims." A debtor may be required to make other payments to the creditor even when the debt is not in default, such as to retain collateral. Form 22C, Line 17, also is amended to require all chapter 13 debtors, including those whose income falls below the applicable median income, to determine their disposable income under § 1325(b)(3) of the Code by completing Part III of the form. All three forms contain stylistic amendments to conform the wording more closely to that used in the 2005 Act.