

Eric Froisland
Attorney for Kevin R. Anderson
Standing Chapter 13 Trustee for
The District of Utah
405 South Main Street, Suite 600
Salt Lake City, Utah 84111

COMMENTS ON PROPOSED AMENDMENTS TO OFFICIAL FORM B22C

Part I. Report of Income

Line No. 1. Marital/filing status.

The instructions here are incomplete and have led to complications and confusion in cases where married debtors have filed jointly and where a married debtor has filed but the spouse has not.

11 U.S.C. § 101(10A)(A) defines current monthly income (CMI) as “the average monthly income from all sources that the debtor receives (or in a joint case, the debtor and the debtor’s spouse receive) without regard to whether such income is taxable income, derived during the 6-month period ending on – (i) the last day of the calendar month immediately preceding the date of the commencement of the case.” Section 101(10A)(B) includes in CMI “any amount paid by any entity other than the debtor (or in a joint case the debtor and the debtor’s spouse), on a regular basis for the household expenses of the debtor or the debtor’s dependents (and in a joint case the debtor’s spouse if not otherwise a dependent).”

The calculation of CMI differs depending on whether (1) the debtor is single; (2) the debtor is married but the spouse is not filing for bankruptcy; or (3) the debtors are married and filing jointly. However, the only factor taken into account on Line 1 is whether the debtor is single or married, which has led to confusion by debtors’ counsel

regarding the marital adjustments on Lines 13 & 19. Given the definition of CMI, the Instructions on Line 1 should have three different choices with slightly different instructions for each line.

For a debtor who is single, there is no spousal income to include and support income would include amounts paid by any other entity for household expenses of the debtor or the debtor's dependents, excluding amounts paid by the debtor. Therefore, the instruction should require that the debtor complete Column A with support income paid by any other entity, excluding the debtor, listed on Line 7.

For debtors who are married and filing jointly, both of the debtors will need to list their CMI, which should be done in separate columns, and support income would include amounts paid by any other entity for household expenses of the debtors or the debtors' dependents, excluding amounts paid by the debtors. Therefore, the instructions should require that the debtor complete Column A and the debtor's spouse complete Column B, with support income (excluding any amounts paid by either of the debtors) being listed on Line 7.

For a debtor who is married but filing alone, only the debtor needs to list his/her income on Form B22C, and support income would include amounts paid by any other entity for household expenses of the debtor or the debtor's dependents, excluding amounts paid by the debtor but including amounts paid by the debtor's non-filing spouse. Therefore, the instructions should require that the married debtor filing alone complete Column A, with support income (excluding any amounts paid by the debtor but including any amount paid by the non-filing spouse) being listed on Line 7.

Line No. 3: Income from the operation of a business, profession, or farm.

Line No. 3 does not adequately capture all “income” that a debtor receives from the operation of a business, profession, or farm. Section § 101(10A) broadly defines CMI to include “income from all sources” and “without regard to whether such income is taxable income.” The definition of CMI does not exclude business expenses, and § 1325(b)(2)(B) specifically provides that if the debtor is engaged in business, then “payment of expenditures necessary for the continuation, preservation, and operation of such business” are excluded from Disposable Income – not from CMI. Excluding such expenses from CMI allows debtors with significant business income to avoid having Disposable Income calculated by the Means Test, and it ignores the requirement that such expenses must be “necessary for the continuation, preservation, and operation of such business” before they are deductible from Disposable Income.

Line No. 4: Rent and other real property income.

Line 4 does not adequately capture all rental income that a debtor receives. As explained above, there is no exclusion from CMI for expenses related to rental income. While such expenses may be proper deductions from Disposable Income, there is no statutory basis to exclude such expenses from the CMI calculation.

Line No. 7: Any amounts paid by another person or entity, on a regular basis, for the household expenses of the debtor or the debtor’s dependents, including child or spousal support.

The instructions on Line No. 7 are confusing as to the inclusion of income from a non-filing spouse who also regularly pays household expenses. Section 101(10A) only excludes such amounts paid by the debtor, and the debtor’s spouse in a joint case, and

includes all other amounts paid by other entities for household expenses and expenses of a debtor's dependents.

The instructions for Line No. 7 should require the listing of all income from any entity that is paying household expenses of the debtors or the debtors' dependents, excluding amounts paid by the debtor or the debtor's spouse in a joint case.

Line No. 9: Income from all other sources.

The single column of boxes in Line 9 is confusing in joint cases because it does not identify which income belongs to which debtor. Either the a and b boxes should be eliminated and instructions provided that total amounts of such income be listed in Column A for single debtors or married debtors filing alone, and Column B for the debtor's spouse in joint cases. In the alternative, there should be two columns so that the debtor and the debtor's spouse can separately disclose other income, with the totals being listed in Column A and B respectively.

Line No. 11: Total.

Form B22C should contain a line that clearly identifies the resulting sum to be the CMI of the debtor as calculated under § 101(10A), and that this is the CMI for all purposes under Chapter 13. Presently, parties to the Chapter 13 process are often confused as to which line on Form B22C states the CMI.

Part II. Calculation of § 1325(b)(4) Commitment Period

Line Nos. 12-17

Part II of B22C has created substantial confusion among debtors' counsel and the Applicable Commitment Period (ACP) calculation should be done using a separate form. The confusion arises from the statutory difference in calculating CMI for purposes of the

Means Test and calculating CMI for purposes of determining the ACP. Section 1325(b)(4)(A)(ii) states that the ACP shall be three years or not be less than 5 years “if the current monthly income of the debtor and the debtor’s spouse combined, when multiplied by 12, is not less than” the applicable median family income but may be less than 3 or 5 years “if the plan provides for payment in full of all allowed unsecured claims over a shorter period.”

First, Part II does not allow a shorter ACP if the plan provides for the full payment of allowed unsecured claims.

Second, Part II fails to capture all of the income used in calculating the ACP. Under § 1324(b)(2), the CMI used to calculate Disposable Income excludes child support payments, foster care payments, and qualifying disability payments. The CMI used to calculate the ACP under § 1325(b)(4) does not exclude these sources of income.

Third, Part II fails to properly distinguish between the sources of the income used to calculate the ACP and Disposable Income where the debtor is married and filing alone or married and filing jointly. Disposable Income is calculated using the “debtor’s” CMI, which includes amounts paid by any other entity for the debtor’s household expense or a dependent of the debtor. However, ACP is calculated using the CMI of the debtor and the debtor’s spouse combined. Both calculations appear to be relatively straight forward and very similar in the case of a single debtor or married debtors filing jointly. However, in cases of a married debtor filing alone, the calculations are different. In these cases, only the amount paid by the non-filing spouse for household expenses would be included in the Disposable Income calculation; however, it appears that all of the non-filing spouse’s CMI would be included in the ACP calculation. Granted, it is an issue if a non-

filing spouse can even have CMI given the definition of § 101(10A); however the present form does not account for any of these statutory issues and has led to immense confusion in the CMI used to calculate Disposable Income and the CMI used to calculate ACP.

Finally, all of these problems have been compounded by the current use of the marital adjustment on Line 13, which debtors' counsel have found confusing at best. The marital adjustment is not based on any Code section from which a definition or guidelines can be derived or presented for argument. Any marital adjustment can be better addressed by providing more clear instructions on what income to include and exclude on Lines 1-9.

Part III. Application of § 1325(b)(3) for Determining Disposable Income

Line No. 19.

As discussed above, the marital adjustment has led to substantial confusion among all parties. The definition of CMI, along with its various inclusions and exclusions, would be better served with the elimination of Line 19 and by addressing the inclusions and exclusions of CMI in Lines 1-9.

Part IV. Calculation of Deductions Allowed Under § 707(b)(2)

Line No. 24: National Standards: food, clothing, household supplies, personal care, and miscellaneous.

Section 707(b)(2)(A)(ii)(I) states that 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." The National Standards issued by the IRS include: apparel and services; food; housekeeping supplies; personal care products and services; and, miscellaneous. However, the title to Line 24 is

“National Standards: food, clothing, household supplies, personal care, and miscellaneous.” The differences between the IRS National Standard and the title presently used in Line 24 has led to confusion by debtors’ counsel as to what is included in the expenses on Line 24 and what the debtor may claim as a deduction on other parts of Form B22C. The instructions for Line 24 should be changed to reflect the IRS National standards as described by the IRS, which includes apparel and services, food, housekeeping supplies, personal care products and services, and miscellaneous. While this may cause some confusion in applying the additional 5% allowance for “food and clothing” on Line 44, the courts should be left to address the disparity between the statutory language and the IRS National Standards.

There is also the question as to how the “gross income” figure is calculated to determine the amount of the deduction under the National Standard Expenses. The IRS uses a calculation similar to the one performed on Schedule I to determine gross income but most debtors assume that they use the CMI figure from Line 11. This issue will eventually be decided by the courts, but Form B22C should require the debtor to disclose what gross income figure was used in determining the applicable National Standard Expense.

Line Nos. 25a, 25b, and 26: Local Standards, housing and utilities; non-mortgage/mortgage expense.

As stated above, § 707(b)(2) provides that the debtor’s monthly expenses “shall be the debtor’s applicable monthly expense amounts specified under the ... Local Standards ... issued by the Internal Revenue Service.” The Local Standards consist of two categories: (1) housing/utilities; and (2) transportation. However, Form B22C divides the Local Standards into three categories: (1) non-mortgage expenses; (2)

mortgage/rent expenses; and (3) transportation. Again, this has led to confusion as to what exactly is to be included on Lines 25A and 25B; specifically, should the debtor list expenses pursuant to the two categories issued by the IRS or the three categories promulgated by the U.S. Trustee and adopted by Form B22C? Because § 707(b)(2) is clear that the debtor's expenses shall be the expenses issued by the IRS, lines 25A and 25B should be combined into one single housing and utility expense.

The separation of the housing and utilities expenses has also led to confusion in the application of the additional home energy costs allowed on Line 42 pursuant to § 707(b)(2)(A)(ii)(V). Because § 707(b)(2)(A)(ii)(V) allows for expenses that are in addition to the "housing and utilities" expenses and because Form B22C separates these expenses, there have been issues as to whether Line 42 is in addition to Line 25A, Line 25B, or both. For example, in cases where the debtor's mortgage payment is below the U.S. Trustee's housing and utility/mortgage allowance, but the utility expenses are below the U.S. Trustee's allowance, debtors often claim an additional utility expense on Line 42. Because Form B22C splits the Local Standard housing/utilities expense into two amounts, parties to the Chapter 13 process are litigating an issue that arises from an interpretation of the form rather than from the statutory language of § 707(b)(2).

Line 25b allows the debtor to deduct the greater of the IRS Local Standard expenses amount or the debtor's actual mortgage payment. There is an undecided issue as to the following: (1) is the debtor allowed the IRS expense for housing and utilities, even if the debtor does not have any house/utility expenses¹; (2), is the debtor limited to the lesser of actual expenses or the IRS allowance; or (3) is the debtor allowed the greater

¹ It is not uncommon for a debtor to live with a family member or friend without any obligation to pay housing or utility expenses; yet, such debtors are currently receiving the full IRS deduction for housing and utility expenses.

of actual expenses or the IRS expense amounts. Line 25(b) makes the legal conclusion that the debtor is entitled to the greater of the IRS allowance. This has led to a disparate outcome between debtors who rent (because they are limited to the IRS Local Expense) and debtors who have mortgage payments (because they are allowed the higher of the IRS Local Expense or their mortgage payment). The Internal Revenue Manual provides that the housing expense includes the mortgage and rent expenses and does not provide preferential treatment to homeowners. *See*, Internal Revenue Manual, Part 5, Chapter 15, Section 1 at 5.15.1.9. The instructions for Line 25 should more closely mirror § 707(b)(2), which states that the debtor's monthly expenses "shall be" the expense amounts specified under the Local Standards; not the greater of the IRS Standards or the actual mortgage payment. If the debtor feels that this number is not adequate, then additional amounts may be claimed under Line 26 and the courts can address those issues as they arise.

Line No. 27: Local Standards: transportation; vehicle operation/public transportation expense.

The instructions for this line should not include the sentence, "*You are entitled to an expense allowance in this category regardless of whether you pay the expenses of operating a vehicle and regardless of whether you use public transportation.*" There does not appear to be any statutory language that would require this language. The instructions for Line 27 should simply instruct the debtor to mark the numbers of cars they operate and then instruct the debtor to deduct the applicable amount listed on the IRS form for "Operating Costs and Public Transportation Costs."

Line Nos. 28 & 29: Local Standards: transportation ownership/lease expenses.

Lines 28-29 permit a debtor to deduct the greater of the IRS allowance or the actual car payment. As explained above, there is a legal issue as to whether this deduction is limited to the IRS allowance. Form B22C should allow for the legal interpretation that a debtor is limited to the lesser of the actual car payment or the IRS allowance.

The approach on Form B22C also results in a disparate outcome between debtors who lease (because they are limited to the IRS Local Expense) and debtors who have secured car payments (because they are allowed the higher of the IRS Local Expense or the amount of their scheduled debt amount divided by 60). The Internal Revenue Manual provides that the transportation ownership expense includes all related “vehicle payment[s] (lease or purchase)” and does not provide preferential treatment to vehicle owners. *See*, Internal Revenue Manual, Part 5, Chapter 15, Section 1 at 5.15.1.9.

Given the unanswered question as to whether the debtor is limited to the IRS allowance or the actual car payment, a line should be added that is similar to Line 26 that would allow a debtor to assert an additional amount over IRS Local Transportation Expenses or to assert an additional ownership expense amount when the vehicle is owned free and clear (e.g., the “older car deduction²” allowed by Internal Revenue Manual, Part 5, Chapter 8, Section 5 at 5.8.5.5.2.).

Line Nos. 30-37

Section 707(b)(2)(A)(ii)(I) states that the “debtor’s monthly expenses shall be ... the debtor’s actual monthly expenses for the categories specified as Other Necessary Expenses issued by the Internal Revenue Service.” As set forth in the Internal Revenue

² The IRS allows an additional \$200 operating expense if the vehicle is more than 6 years old or has more than 75,000 miles.

Manual, there are sixteen categories of Other Necessary Expenses (*see*, Internal Revenue Manual, Part 5, Chapter 15, Section 1 at 5.15.1.10) but only eight categories are listed on Form B22C. Section 707(b)(2)(A)(ii)(I) does not specifically exclude any of the Other Necessary Expenses allowed by the IRS. The Other Necessary Expense categories missing from Form B22C include: accounting and legal fees, charitable contributions, dependent care, secured or legally perfected debts, unsecured debts, student loans, internet provider/email, and repayment of loans made for payment of federal taxes.

Based on the language of § 707(b)(2)(A)(ii)(I), it appears that four of these unlisted Other Necessary categories should be listed on Form B22C. Therefore, B22C should be amended to include Other Necessary Expense deduction lines for accounting and legal fees, charitable contributions, dependent care, and internet provider/email, with titles and instructions that mirror the IRS application of these expense categories.

It is not clear as to whether the Other Necessary Expense categories for secured or legally perfected debts, unsecured debts, student loans, or repayment of loans made for payment of federal taxes should be included on Form B22C. There remains a significant issue as to the treatment of debt payment deductions on Form B22C and how the six relevant Code sections that affect debt expenses interact.

First, § 1325(b)(2) states that 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 or a dependent of the debtor.” Section 1325(b)(3) states that the “[a]mounts reasonably necessary to be expended under paragraph (2) shall be determined in accordance with subparagraphs (A) and (B) of section 707(b)(2), if the debtor has current monthly income, when multiplied by 12,

greater than [the applicable family median income].” Section 707(b)(2)(A)(ii)(I) provides that the debtor’s monthly expense shall be the debtor’s actual expenses for the categories specified as Other Necessary Expenses, which clearly includes expense deductions for secured debt, unsecured debt, student loans and loans made to repay federal taxes. Section 707(b)(2)(A)(ii)(I) also states that “Notwithstanding any other provision of this clause, the monthly expenses of the debtor shall not include any payments for debts.” Section 707(b)(2)(A)(iii) then provides that the “debtor’s average monthly payments on account of secured debts shall be calculated as the sum of – (the total of all amounts scheduled as contractually due to secured creditors in each month of the 60 months following the date of the petition ... divided by 60.” Finally, § 707(b)(2)(A)(iv) holds that the “debtor’s expenses for payment of all priority claims (including priority child support and alimony claims) shall be calculated as the total amount of debts entitled to priority, divided by 60.”

Given these six Code provisions, there appear to be four possible choices for how debt payments can be treated on Form B22C. First, the debtor is entitled to deduct all secured debt payments and all priority debt payments under § 707(b)(2)(A)(iii) and (iv), regardless of the other five provisions mentioned above. Second, the debtor is not entitled to deduct any debt payment expenses under § 707(b)(2)(A)(ii)(I), regardless of the five other provisions mentioned above. Third, the debtor’s monthly expenses shall be the Other Necessary Expenses, including the debt payments categories, but the amounts for such expenses are limited to the debt payment calculations listed in §§ 707(b)(2)(A)(iii) and (iv). Fourth, pursuant to § 1325(b)(3), the amount of a debtor’s reasonably necessary expenses are determined under § 707(b)(2)(A), which prohibits the

use of the Other Necessary Expense debt expense categories but allows separately for secured and priority debt expense deductions, as calculated under §§ 707(b)(2)(A)(iii) and (iv) (so long as such expense are reasonably necessary under § 1325(b)(2)).

Presently, Form B22C only provides for the first option that the debtor is not entitled to claim the Other Necessary Expenses, which appears to be the option that is least consistent with all of the Code sections that affect how debt payments are to be included and calculated. The present method for calculating secured debt payments on Form B22C has also led to problems in determining the appropriate deduction, if any, for secured tax debt. Lines 47-48 are limited to scheduled secured debt that is contractually due; however, secured tax debts are not contractually due, and there is no other place on Form B22C to account for these debts. It is doubtful that Congress would deny a deduction for secured tax debts while allowing a deduction for priority tax debts (see Line 49).

Line No. 31: Other Necessary Expenses: mandatory payroll deductions.

Form B22C states Line 31 is for Other Necessary Expenses that are “mandatory payroll deductions,” but the IRS categorizes this Other Necessary Expense as “Involuntary Deductions.” The use of “mandatory” rather than “involuntary” on Form B22C pulls in a broader array of expenses than the IRS allowance and has led to confusion as to whether an expense is “mandatory.” The instructions are consistent with the IRS Other Necessary Expense category for involuntary deductions, but the title to Line 31 should be changed to “involuntary deductions.”

Line No. 33: Other Necessary Expenses: court-ordered payments.

Form B22C only allows payments to be deducted if the debtor is required to make support payments pursuant to a court order. However, the instructions for the IRS Other Necessary Expense category allow a deduction for payments required by a state administrative order. The instructions for Line 32 should be amended to include such orders.

Line No. 36: Other Necessary Expenses: health care.

The instructions on Line 36 instruct the debtor to include the average amount that they actually expend on health care. The IRS guidelines limit this deduction to out-of-pocket expense and require that the deductions be required for the health and welfare of the family, which excludes elective procedures. The IRS guidelines also require the debtor to provide proof of excessive out-of-pocket medical and dental expenses. The instructions for Line 36 should mirror the IRS standards more closely by requiring the debtor to take the average of out-of-pocket health care expenses (meaning expenses after insurance claims are paid) that are required for the health and welfare of the family and that the debtor must provide proof for excessive out of pocket medical and dental expenses.

Line No. 37: Other Necessary Expenses: telecommunication services.

The IRS guidelines for this category only include expenses for cell phones, pagers, call waiting, caller identification or long distance if such expenses are necessary for the health and welfare of the debtor/the debtor's family *or* necessary for the production of income. The title and instructions for Line 37 are over-inclusive by allowing internet expenses and are under-inclusive by limiting expenses to those necessary for the health and welfare of the debtor and his family. The title of Line 37

should mirror the IRS title of “Optional Telephones and Telephone Services.” The instructions should direct the debtor to include actual expenses for cell phones, pagers, call waiting, caller identification or long distance to the extent the expenses are necessary for the health and welfare of the debtor and/or debtor’s family or necessary for the production of income. The bolded instructions to not include amounts previously deducted would not be necessary if the instructions clearly limited this expense to cell phones, pagers, call waiting, caller identification, and long distance charges.

Line No. 39: Health Insurance, Disability Insurance, and Health Savings Account Expenses.

Section 707(b)(2)(A)(ii)(I) states that the debtor’s expenses “shall include *reasonably necessary* health insurance, disability insurance, and health savings account expenses for the debtor, the spouse of the debtor, or the dependents of the debtor.” The instructions to Line 39 do not include any instruction that the expenses listed here must be reasonably necessary.

Line No. 41: Protection against family violence.

Section 707(b)(2)(A)(ii)(I) states that: “In addition, the debtor’s monthly expense shall include the debtor’s reasonably necessary expenses incurred to maintain the safety of the debtor and the family of the debtor from family violence as identified under section 309 of the Family Violence Prevention and Services Act, or other applicable law.” The instructions for Line 40 should instruct the debtor to include the “reasonably necessary” expenses.

Line No. 42: Home energy costs.

Section 707(b)(2)(A)(ii)(V) states that in addition to the IRS allowable expenses, the debtor “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 [IRS], based on the actual expense for home energy costs if the debtor provides documentation of such actual expenses and demonstrates that such actual expenses are reasonable and necessary.” The instructions to Line 42 require the debtor to “provide your case trustee with documentation demonstrating that the additional amount claimed is reasonable and necessary.” It may merely be semantics, but the instructions to Line 42 appear to require the debtor to provide documentation that their additional home energy costs are reasonable and necessary, which could be interpreted to limit the kind of evidence the debtor could use to establish that their additional home energy expenses are reasonable and necessary. Instructions for Line 42 should be clear that the debtor must: (1) provide documentation of actual home energy costs; and (2) must demonstrate that such actual expenses are reasonable and necessary.

Line No. 43: Education expenses, for dependent children under 18.

Section 707(b)(2)(A)(ii)(IV) states that the debtor’s monthly expenses may also include “the actual expenses for each dependent child less than 18 years of age, not to exceed \$1,500 per year per child, to attend a private or public elementary or secondary school if the debtor provides documentation of such expenses and a detailed explanation of why such expenses are reasonable and necessary, and why such expenses are not already accounted for in the National Standards, Local Standards, or Other Necessary Expenses referred to in subclause (I).” Line 43 instructs the debtor to enter the average monthly expenses the debtor actually incurs “in providing elementary and secondary education” and requires the debtor to “provide your case trustee with documentation demonstrating that the amount claimed is reasonable and necessary and not already

accounted for in the IRS standards.” First the instructions on Line 43 could be read as being more restrictive than the Code because it limits the debtor’s expenses to those used in “providing” elementary and secondary education rather the expenses associated with “attending” elementary and secondary education. Second, the instructions to Line 43 could be interpreted to require the debtor to provide documentation evidencing that the amount claimed is reasonable and necessary and not already included in the IRS Standards. Such an interpretation might limit the kind of evidence the debtor could use to establish that the education expenses are reasonable and necessary. Instructions for Line 43 should allow for expenses related to “attending” an elementary or secondary school and should clearly explain that the debtor must: (1) provide documentation of their education expenses; (2) provide a detailed explanation of why such expenses are reasonable and necessary; and (3) a detailed explanation as to why such expenses are not already accounted for in the IRS Standards.

Line No. 44: Additional food and clothing expense.

Section 707(b)(2)(A)(iii)(II) states that the debtor’s monthly expenses may also include an additional allowance for “food and clothing” of up to 5% of the food and clothing categories included in the National Standards “if it is demonstrated that it is reasonable and necessary.” The instructions on Line 44 require the debtor to “provide your case trustee with documentation demonstrating that the additional amount is claimed is reasonable and necessary.” This instruction appears to be more restrictive than the Code, which only requires the debtor to demonstrate that the additional expenses are reasonable and necessary. There is no requirement in § 707(b)(2) that the debtor must provide documentation and does not appear to limit such justification strictly to

documents, which is how the instructions on Line 44 could be interpreted. The instructions to Line 44 should only require the debtor to demonstrate that such additional food and clothing expenses are reasonable and necessary.

Line No. 45: Continued charitable contributions.

The suggestion in the title to Line 45 that a Chapter 13 debtor can only deduct “continued” charitable contributions is not found in § 1325(b)(2)(A)(ii).

Line No. 47: Future payments on secured claims.

As stated in the comments to Lines 30-37, there remains an unanswered question as to how to handle debt payments on Form B22C. Line 47 appears to allow all secured debt payments as a separate deduction while disallowing all Other Necessary Expenses categories for debt payments. Line 47 also results in confusion as to whether secured tax debts can be deducted here or elsewhere.

In addition, § 707(b)(2)(A)(iii) states that the “debtor’s average monthly payments on account of secured debts shall be calculated as the sum of – (the total of all amounts *scheduled* as contractually due to secured creditors in each month of the 60 months following the date of the petition) ... divided by 60.” The instructions to Line 47 omit the requirement that such debts be *scheduled* as contractually due.

Line No. 49: Payments on priority claims.

The Code provides that the attorney's fees of a Chapter 13 debtor are entitled to a priority status (see 11 U.S.C. §§ 330(a)(4)(B), 503(b), and 507(a)(1)). Line 49 should provide for the inclusion of estimated attorney's fees in the calculation of the deduction for the payment on priority claims.

Line No. 52: Total of all deductions allowed under § 707(b)(2).

This line is unnecessary and should be eliminated.

Line No. 53: Total current monthly income.

The instructions should require the debtor to list the Current Monthly Income figure from Line No. 11.

Line No. 54: Support Income.

Section 1325(b)(2) states that disposable income means CMI received by the debtor (other than child support payments, foster care payments, or qualifying disability payments. As stated in the comment to Line 7, certain support payments, to the extent reasonably necessary for the support of a child, are excluded from the CMI used to determine if disposable income is calculated under the Means Test of § 707(b). Line 54 should be eliminated and such support payments should be excluded from the Current Monthly Income amounts listed on Line 7.

Line No. 55: Qualified retirement deductions.

Section 541(b)(7) states that “any amount withheld by an employer from the wages of employees for payments as contributions to an [ERISA qualified] employee benefit plan ... shall not constitute disposable income as defined in section 1325(b)(2).” Section 1322(f) states that a plan may not materially alter the terms of a loan described in section 362(b)(19) and any amounts required to repay such loan shall not constitute ‘disposable income’ under section 1325.”

First, the instructions to Line 55 do not limit the payments and contributions to “amounts withheld by an employer.” Second, the instructions to Line 55 require the debtor to take the monthly average of all repayments of retirement plans loans. To more closely mirror the statutory language, the instructions to Line 55 should require the debtor

to list the actual monthly contribution amounts withheld by an employer and the actual monthly payment amounts required to repay any loans described in § 362(b)(19).

Line No. 56. Total of all deductions allowed under § 707(b)(2).

This line is unnecessary and should be eliminated.

Line No. 57. Total adjustment to determine disposable income.

This line should instruct the debtor to list the total amounts from Line Nos. 38, 46, 51, and 55.

Line No. 59. Other Expenses.

This line may be based on the IRS allowance of additional expenses that are necessary for the health and welfare of the debtor (see, Internal Revenue Manual, Part 5, Chapter 15, Section 1 at 5.15.1.10.) However, § 707(b)(2)(B)(i) allows a debtor to rebut the presumption of abuse by demonstrating special needs that allow for additional expense deductions³ or an adjustment to the debtor's CMI. The title and instructions to Line 59 should be replaced to clarify that the debtor is adjusting their Disposable Income calculation by either claiming additional expenses or making adjustments to the CMI calculation. The instructions should also make clear that if the debtor claims such deductions or adjustments, they must be supported with documentation, a detailed explanation, and a statement under oath that such deductions or adjustments are "necessary and reasonable," as required by § 707(b)(2)(B)(ii) and (iii).

³ Such "special circumstances" include a serious medical condition or a call for active military duty, to the extent such special circumstances justify additional expenses and for which there is not a reasonable alternative.