

Fill in this information to identify your case:

Debtor 1 _____
First Name Middle Name Last Name

Debtor 2 _____
(Spouse, if filing) First Name Middle Name Last Name

United States Bankruptcy Court for the: _____ District of _____

Case number _____
(if known)

Check the appropriate box as directed in lines 40 or 42:

According to the calculations required by this Statement:

- 1. There is no presumption of abuse.
- 2. There is a presumption of abuse.
- Check if this is an amended filing

Official Form 122A-2

Chapter 7 Means Test Calculation

04/25

To fill out this form, you will need your completed copy of *Chapter 7 Statement of Your Current Monthly Income* (Official Form 122A-1).

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for being accurate. If more space is needed, attach a separate sheet to this form. Include the line number to which the additional information applies. On the top of any additional pages, write your name and case number (if known).

Part 1: Determine Your Adjusted Income

1. **Copy your total current monthly income.** Copy line 11 from Official Form 122A-1 here → \$ _____

2. **Did you fill out Column B in Part 1 of Form 122A-1?**

- No. Fill in \$0 for the total on line 3.
- Yes. Is your spouse filing with you?
 - No. Go to line 3.
 - Yes. Fill in \$0 for the total on line 3.

3. **Adjust your current monthly income by subtracting any part of your spouse's income not used to pay for the household expenses of you or your dependents.** Follow these steps:

On line 11, Column B of Form 122A-1, was any amount of the income you reported for your spouse NOT regularly used for the household expenses of you or your dependents?

- No. Fill in 0 for the total on line 3.
- Yes. Fill in the information below:

State each purpose for which the income was used <small>For example, the income is used to pay your spouse's tax debt or to support people other than you or your dependents</small>	Fill in the amount you are subtracting from your spouse's income
_____	\$ _____
_____	\$ _____
_____	+ \$ _____
Total	\$ _____

Copy total here → - \$ _____

4. **Adjust your current monthly income.** Subtract the total on line 3 from line 1.

\$ _____

Part 2: Calculate Your Deductions from Your Income

The Internal Revenue Service (IRS) issues National and Local Standards for certain expense amounts. Use these amounts to answer the questions in lines 6-15. To find the IRS standards, go online using the link specified in the separate instructions for this form. This information may also be available at the bankruptcy clerk's office.

Deduct the expense amounts set out in lines 6-15 regardless of your actual expense. In later parts of the form, you will use some of your actual expenses if they are higher than the standards. Do not deduct any amounts that you subtracted from your spouse's income in line 3 and do not deduct any operating expenses that you subtracted from income in lines 5 and 6 of Form 122A-1.

If your expenses differ from month to month, enter the average expense.

Whenever this part of the form refers to you, it means both you and your spouse if Column B of Form 122A-1 is filled in.

5. The number of people used in determining your deductions from income

Fill in the number of people who could be claimed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support. This number may be different from the number of people in your household.

[Empty box for line 5]

National Standards You must use the IRS National Standards to answer the questions in lines 6-7.

6. Food, clothing, and other items: Using the number of people you entered in line 5 and the IRS National Standards, fill in the dollar amount for food, clothing, and other items. \$

7. Out-of-pocket health care allowance: Using the number of people you entered in line 5 and the IRS National Standards, fill in the dollar amount for out-of-pocket health care. The number of people is split into two categories—people who are under 65 and people who are 65 or older—because older people have a higher IRS allowance for health care costs. If your actual expenses are higher than this IRS amount, you may deduct the additional amount on line 22.

People who are under 65 years of age

7a. Out-of-pocket health care allowance per person \$

7b. Number of people who are under 65 X

7c. Subtotal. Multiply line 7a by line 7b. \$ Copy here -> \$

People who are 65 years of age or older

7d. Out-of-pocket health care allowance per person \$

7e. Number of people who are 65 or older X

7f. Subtotal. Multiply line 7d by line 7e. \$ Copy here -> + \$

7g. Total. Add lines 7c and 7f. \$ Copy total here -> \$

Local Standards You must use the IRS Local Standards to answer the questions in lines 8-15.

Based on information from the IRS, the U.S. Trustee Program has divided the IRS Local Standard for housing for bankruptcy purposes into two parts:

- Housing and utilities – Insurance and operating expenses
- Housing and utilities – Mortgage or rent expenses

To answer the questions in lines 8-9, use the U.S. Trustee Program chart.

To find the chart, go online using the link specified in the separate instructions for this form. This chart may also be available at the bankruptcy clerk's office.

8. **Housing and utilities – Insurance and operating expenses:** Using the number of people you entered in line 5, fill in the dollar amount listed for your county for insurance and operating expenses. \$ _____

9. **Housing and utilities – Mortgage or rent expenses:**

9a. Using the number of people you entered in line 5, fill in the dollar amount listed for your county for mortgage or rent expenses. \$ _____

9b. Total average monthly payment for all mortgages and other debts secured by your home.

To calculate the total average monthly payment, add all amounts that are contractually due to each secured creditor in the 60 months after you file for bankruptcy. Then divide by 60.

Name of the creditor	Average monthly payment
_____	\$ _____
_____	\$ _____
_____	+ \$ _____

Total average monthly payment \$ _____ **Copy here** → - \$ _____ Repeat this amount on line 33a.

9c. Net mortgage or rent expense. Subtract line 9b (total average monthly payment) from line 9a (mortgage or rent expense). If this amount is less than \$0, enter \$0. \$ _____ **Copy here** → \$ _____

10. **If you claim that the U.S. Trustee Program's division of the IRS Local Standard for housing is incorrect and affects the calculation of your monthly expenses, fill in any additional amount you claim.** \$ _____

Explain why: _____

11. **Local transportation expenses:** Check the number of vehicles for which you claim an ownership or operating expense.

- 0. Go to line 14.
- 1. Go to line 12.
- 2 or more. Go to line 12.

12. **Vehicle operation expense:** Using the IRS Local Standards and the number of vehicles for which you claim the operating expenses, fill in the *Operating Costs* that apply for your Census region or metropolitan statistical area. \$ _____

13. Vehicle ownership or lease expense: Using the IRS Local Standards, calculate the net ownership or lease expense for each vehicle below. You may not claim the expense if you do not make any loan or lease payments on the vehicle. In addition, you may not claim the expense for more than two vehicles.

Vehicle 1 Describe Vehicle 1: _____

13a. Ownership or leasing costs using IRS Local Standard. \$ _____

13b. Average monthly payment for all debts secured by Vehicle 1. Do not include costs for leased vehicles.

To calculate the average monthly payment here and on line 13e, add all amounts that are contractually due to each secured creditor in the 60 months after you filed for bankruptcy. Then divide by 60.

Table with 2 columns: Name of each creditor for Vehicle 1, Average monthly payment. Includes a total average monthly payment box.

Copy here ->

- \$ _____

Repeat this amount on line 33b.

13c. Net Vehicle 1 ownership or lease expense Subtract line 13b from line 13a. If this amount is less than \$0, enter \$0.

\$ _____

Copy net Vehicle 1 expense here ... ->

\$ _____

Vehicle 2 Describe Vehicle 2: _____

13d. Ownership or leasing costs using IRS Local Standard. \$ _____

13e. Average monthly payment for all debts secured by Vehicle 2. Do not include costs for leased vehicles.

Table with 2 columns: Name of each creditor for Vehicle 2, Average monthly payment. Includes a total average monthly payment box.

Copy here ->

- \$ _____

Repeat this amount on line 33c.

13f. Net Vehicle 2 ownership or lease expense Subtract line 13e from 13d. If this amount is less than \$0, enter \$0.

\$ _____

Copy net Vehicle 2 expense here ... ->

\$ _____

14. Public transportation expense: If you claimed 0 vehicles in line 11, using the IRS Local Standards, fill in the Public Transportation expense allowance regardless of whether you use public transportation. \$ _____

15. Additional public transportation expense: If you claimed 1 or more vehicles in line 11 and if you claim that you may also deduct a public transportation expense, you may fill in what you believe is the appropriate expense, but you may not claim more than the IRS Local Standard for Public Transportation. \$ _____

Other Necessary Expenses In addition to the expense deductions listed above, you are allowed your monthly expenses for the following IRS categories.

16. **Taxes:** The total monthly amount that you will actually owe for federal, state and local taxes, such as income taxes, self-employment taxes, Social Security taxes, and Medicare taxes. You may include the monthly amount withheld from your pay for these taxes. However, if you expect to receive a tax refund, you must divide the expected refund by 12 and subtract that number from the total monthly amount that is withheld to pay for taxes. \$ _____

Do not include real estate, sales, or use taxes.

17. **Involuntary deductions:** The total monthly payroll deductions that your job requires, such as retirement contributions, union dues, and uniform costs. \$ _____

Do not include amounts that are not required by your job, such as voluntary 401(k) contributions or payroll savings.

18. **Life insurance:** The total monthly premiums that you pay for your own term life insurance. If two married people are filing together, include payments that you make for your spouse's term life insurance. Do not include premiums for life insurance on your dependents, for a non-filing spouse's life insurance, or for any form of life insurance other than term. \$ _____

19. **Court-ordered payments:** The total monthly amount that you pay as required by the order of a court or administrative agency, such as spousal or child support payments. \$ _____

Do not include payments on past due obligations for spousal or child support. You will list these obligations in line 35.

20. **Education:** The total monthly amount that you pay for education that is either required:
 as a condition for your job, or
 for your physically or mentally challenged dependent child if no public education is available for similar services. \$ _____

21. **Childcare:** The total monthly amount that you pay for childcare, such as babysitting, daycare, nursery, and preschool. Do not include payments for any elementary or secondary school education. \$ _____

22. **Additional health care expenses, excluding insurance costs:** The monthly amount that you pay for health care that is required for the health and welfare of you or your dependents and that is not reimbursed by insurance or paid by a health savings account. Include only the amount that is more than the total entered in line 7. Payments for health insurance or health savings accounts should be listed only in line 25. \$ _____

23. **Optional telephones and telephone services:** The total monthly amount that you pay for telecommunication services for you and your dependents, such as pagers, call waiting, caller identification, special long distance, or business cell phone service, to the extent necessary for your health and welfare or that of your dependents or for the production of income, if it is not reimbursed by your employer. + \$ _____

Do not include payments for basic home telephone, internet and cell phone service. Do not include self-employment expenses, such as those reported on line 5 of Official Form 122A-1, or any amount you previously deducted.

24. **Add all of the expenses allowed under the IRS expense allowances.** Add lines 6 through 23. \$ _____

Additional Expense Deductions

These are additional deductions allowed by the Means Test.
Note: Do not include any expense allowances listed in lines 6-24.

25. **Health insurance, disability insurance, and health savings account expenses.** The monthly expenses for health insurance, disability insurance, and health savings accounts that are reasonably necessary for yourself, your spouse, or your dependents.

Health insurance \$ _____

Disability insurance \$ _____

Health savings account + \$ _____

Total \$ _____

Copy total here → \$ _____

Do you actually spend this total amount?

No. How much do you actually spend? \$ _____

Yes

26. **Continuing contributions to the care of household or family members.** The actual monthly expenses that you will continue to pay for the reasonable and necessary care and support of an elderly, chronically ill, or disabled member of your household or member of your immediate family who is unable to pay for such expenses. These expenses may include contributions to an account of a qualified ABLÉ program. 26 U.S.C. § 529A(b).

\$ _____

27. **Protection against family violence.** The reasonably necessary monthly expenses that you incur to maintain the safety of you and your family under the Family Violence Prevention and Services Act or other federal laws that apply. By law, the court must keep the nature of these expenses confidential.

\$ _____

28. **Additional home energy costs.** Your home energy costs are included in your insurance and operating expenses on line 8. If you believe that you have home energy costs that are more than the home energy costs included in expenses on line 8, then fill in the excess amount of home energy costs. You must give your case trustee documentation of your actual expenses, and you must show that the additional amount claimed is reasonable and necessary.

\$ _____

29. **Education expenses for dependent children who are younger than 18.** The monthly expenses (not more than \$214.58* per child) that you pay for your dependent children who are younger than 18 years old to attend a private or public elementary or secondary school. You must give your case trustee documentation of your actual expenses, and you must explain why the amount claimed is reasonable and necessary and not already accounted for in lines 6-23.

\$ _____

* Subject to adjustment on 4/01/28, and every 3 years after that for cases begun on or after the date of adjustment.

30. **Additional food and clothing expense.** The monthly amount by which your actual food and clothing expenses are higher than the combined food and clothing allowances in the IRS National Standards. That amount cannot be more than 5% of the food and clothing allowances in the IRS National Standards. To find a chart showing the maximum additional allowance, go online using the link specified in the separate instructions for this form. This chart may also be available at the bankruptcy clerk's office. You must show that the additional amount claimed is reasonable and necessary.

\$ _____

31. **Continuing charitable contributions.** The amount that you will continue to contribute in the form of cash or financial instruments to a religious or charitable organization. 26 U.S.C. § 170(c)(1)-(2).

+ \$ _____

32. **Add all of the additional expense deductions.**
Add lines 25 through 31.

\$ _____

Deductions for Debt Payment

33. For debts that are secured by an interest in property that you own, including home mortgages, vehicle loans, and other secured debt, fill in lines 33a through 33e.

To calculate the total average monthly payment, add all amounts that are contractually due to each secured creditor in the 60 months after you file for bankruptcy. Then divide by 60.

Mortgages on your home:

33a. Copy line 9b here ... Average monthly payment \$

Loans on your first two vehicles:

33b. Copy line 13b here ... Average monthly payment \$

33c. Copy line 13e here ... Average monthly payment \$

33d. List other secured debts:

Table with 3 columns: Name of each creditor for other secured debt, Identify property that secures the debt, Does payment include taxes or insurance? (No/Yes), and Average monthly payment.

33e. Total average monthly payment. Add lines 33a through 33d. Copy total here \$

34. Are any debts that you listed in line 33 secured by your primary residence, a vehicle, or other property necessary for your support or the support of your dependents?

- No. Go to line 35.
Yes. State any amount that you must pay to a creditor, in addition to the payments listed in line 33, to keep possession of your property (called the cure amount). Next, divide by 60 and fill in the information below.

Table with 4 columns: Name of the creditor, Identify property that secures the debt, Total cure amount, Monthly cure amount. Includes a total row and a 'Copy total here' instruction.

35. Do you owe any priority claims such as a priority tax, child support, or alimony — that are past due as of the filing date of your bankruptcy case? 11 U.S.C. § 507.

- No. Go to line 36.
Yes. Fill in the total amount of all of these priority claims. Do not include current or ongoing priority claims, such as those you listed in line 19.

Total amount of all past-due priority claims ... \$ ÷ 60 = \$

36. Are you eligible to file a case under Chapter 13? 11 U.S.C. § 109(e). For more information, go online using the link for Bankruptcy Basics specified in the separate instructions for this form. Bankruptcy Basics may also be available at the bankruptcy clerk's office.

- No. Go to line 37.
Yes. Fill in the following information.

Projected monthly plan payment if you were filing under Chapter 13 \$

Current multiplier for your district as stated on the list issued by the Administrative Office of the United States Courts (for districts in Alabama and North Carolina) or by the Executive Office for United States Trustees (for all other districts).

X

To find a list of district multipliers that includes your district, go online using the link specified in the separate instructions for this form. This list may also be available at the bankruptcy clerk's office.

Average monthly administrative expense if you were filing under Chapter 13

\$ Copy total here \$

37. Add all of the deductions for debt payment.

Add lines 33e through 36.

\$

Total Deductions from Income

38. Add all of the allowed deductions.

Copy line 24, All of the expenses allowed under IRS expense allowances \$

Copy line 32, All of the additional expense deductions \$

Copy line 37, All of the deductions for debt payment + \$

Total deductions \$ Copy total here \$

Part 3: Determine Whether There Is a Presumption of Abuse

39. Calculate monthly disposable income for 60 months

39a. Copy line 4, adjusted current monthly income \$

39b. Copy line 38, Total deductions - \$

39c. Monthly disposable income. 11 U.S.C. § 707(b)(2). Subtract line 39b from line 39a. \$ Copy here \$

For the next 60 months (5 years) x 60

39d. Total. Multiply line 39c by 60. \$ Copy here \$

40. Find out whether there is a presumption of abuse. Check the box that applies:

- The line 39d is less than \$10,275*. On the top of page 1 of this form, check box 1, There is no presumption of abuse. Go to Part 5.
The line 39d is more than \$17,150*. On the top of page 1 of this form, check box 2, There is a presumption of abuse. You may fill out Part 4 if you claim special circumstances. Then go to Part 5.
The line 39d is at least \$10,275*, but not more than \$17,150*. Go to line 41.

* Subject to adjustment on 4/01/28, and every 3 years after that for cases filed on or after the date of adjustment.

41. 41a. Fill in the amount of your total nonpriority unsecured debt. If you filled out A Summary of Your Assets and Liabilities and Certain Statistical Information Schedules (Official Form 106Sum), you may refer to line 3b on that form.....

\$ _____

x .25

41b. 25% of your total nonpriority unsecured debt. 11 U.S.C. § 707(b)(2)(A)(i)(I). Multiply line 41a by 0.25.

\$ _____

Copy here →

\$ _____

42. Determine whether the income you have left over after subtracting all allowed deductions is enough to pay 25% of your unsecured, nonpriority debt.

Check the box that applies:

[] Line 39d is less than line 41b. On the top of page 1 of this form, check box 1, There is no presumption of abuse. Go to Part 5.

[] Line 39d is equal to or more than line 41b. On the top of page 1 of this form, check box 2, There is a presumption of abuse. You may fill out Part 4 if you claim special circumstances. Then go to Part 5.

Part 4: Give Details About Special Circumstances

43. Do you have any special circumstances that justify additional expenses or adjustments of current monthly income for which there is no reasonable alternative? 11 U.S.C. § 707(b)(2)(B).

[] No. Go to Part 5.

[] Yes. Fill in the following information. All figures should reflect your average monthly expense or income adjustment for each item. You may include expenses you listed in line 25.

You must give a detailed explanation of the special circumstances that make the expenses or income adjustments necessary and reasonable. You must also give your case trustee documentation of your actual expenses or income adjustments.

Table with 2 columns: Give a detailed explanation of the special circumstances, Average monthly expense or income adjustment. Includes 4 rows of input lines.

Part 5: Sign Below

By signing here, I declare under penalty of perjury that the information on this statement and in any attachments is true and correct.

X Signature of Debtor 1

X Signature of Debtor 2

Date MM / DD / YYYY

Date MM / DD / YYYY

2025-04 STAFF NOTATION

The dollar amounts listed in lines 29 and 40 of 122A-2, and line 29 of 122C-2 are adjusted effective April 1, 2025, as part of the tri-annual dollar adjustments required by 11 U.S.C. § 104.

2022-04 STAFF NOTATION

The CARES Act changes Official Forms 122A-1, 122B, and 122C-1 described in the 2020-04 Committee Note lapsed on March 27, 2022. The three forms have reverted to their pre-CARES Act versions (December 2019 in the case of 122A-1, October 2019 as amended in December 2021 in the case of 122B, and October 2019 in the case of 122C-1).

In addition, the dollar amounts listed in lines 29 and 40 of 122A-2, and line 29 of 122C-2 are adjusted effective April 1, 2022, as part of the tri-annual dollar adjustments required by 11 U.S.C. § 104.

2021-12 COMMITTEE NOTE

Official Form 122B is amended in response to the enactment of the Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter V of chapter 11. As amended, the initial instruction in the form includes an exception for subchapter V cases. Because Code § 1129(a)(15) is inapplicable to such cases, there is no need for an individual debtor in a subchapter V case to file a statement of current monthly income.

2020-04 COMMITTEE NOTE

Official Forms 122A-1, 122B, and 122C-1 are amended in response to the enactment of the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”), Pub. L. No. 116-136, 134 Stat. 281.¹ That law

¹ As amended by the COVID-19 Bankruptcy Relief Extension Act of 2021, Pub. L. 117-5, 135 Stat. 249 (providing that the CARES Act

modifies the definition of “current monthly income” in §101(10A) and the definition of “disposable income” in §1325(b)(2) to exclude “payments made under the Federal law relating to the national emergency declared by the President under the National Emergencies Act (50 U.S.C. 1601 et seq.) with respect to the coronavirus disease 2019 (COVID-19).” Each form is modified to expressly exclude these amounts from line 10. These amendments will terminate one year after the date of enactment of the CARES Act.

2019-12 COMMITTEE NOTE

The instruction on line 14a of Official Form 122A-1 is amended to remind a debtor for whom there is no presumption of abuse that Official Form 122A-2 (*Chapter 7 Means Test Calculation*) should not be filled out or filed.

2019-10 COMMITTEE NOTE

Official Forms 122A-1, 122B, and 122C-1 are amended in response to the enactment of the Honoring American Veterans in Extreme Need Act of 2019 (the “HAVEN Act”), Pub. L. No. 116-52, 133 Stat. 1076. That law modifies the definition of “current monthly income” in § 101(10A) to exclude certain amounts payable “in connection with a disability, combat-related injury or disability or death of a member of the uniformed services.” The exclusion for servicemember retired pay is limited, however, and the debtor should exclude from current monthly income only that amount of retired pay that exceeds the amount that the recipient would otherwise be entitled to receive had the recipient retired for a reason other than disability. Each form is modified to expressly exclude these amounts from lines 9 and 10.

definition of “debtor” for determining eligibility to proceed under subchapter V of the chapter 11 will terminate two years (on March 27, 2022) after the CARES Act was enacted).

2015 COMMITTEE NOTE

Official Forms 122A-1, 122A-1Supp, 122A-2, 122B, 122C-1, and 122C-2 are updated to comport with the form numbering style developed as part of the Forms Modernization Project. The forms are derived from Official Forms 22A-1, 22A-1Supp, 22A-2, 22B, 122C-1, and 22C-2.

A statement is added to line 26 of Forms 122A-2 and 122C-2 explaining that contributions to qualified ABLE accounts, as defined in 26 U.S.C. § 529A(b), may be included in the deduction for contributions to the care of household or family members. Authorization of the deduction of such contributions was added to Bankruptcy Code § 707(b)(2)(A)(ii)(II) by the Tax Increase Prevention Act of 2014, Pub. Law No. 113-295.

Official Forms 122A-1, 122B, and 122C-1 are revised to add a workspace column for debtor 2 at questions 5 and 6 on the forms.

Official Form 122B is also revised to remove former Part 2. This portion of the form provided for the exclusion of certain income of a debtor's non-filing spouse; since that income is not required to be reported, its exclusion is unnecessary.

Other stylistic changes were made throughout the forms.

HISTORICAL NOTES

2010 COMMITTEE NOTE

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

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

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

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

debtors the initial determination of whether the exclusion of one spouse from means testing relieves the other spouse from the obligation to complete the form, and allows any dispute over this matter to be resolved by the courts.

2008 COMMITTEE NOTE

The chapter 7 form is amended to implement the temporary exclusion from means testing created by the National Guard and Reservists Debt Relief Act of 2008. That law amended §707(b)(2)(D) for a period of three years by adding a new subsection (ii) to provide a temporary exclusion from the application of the means test for certain members of the National Guard and reserve components of the Armed Forces. The new temporary exclusion would last for the period that the qualifying debtor is on active duty or is performing a homeland defense activity, and for 540 days thereafter.

Because the exclusion for Reservists and National Guard members applies only for a defined period of time, it may expire during the course of the chapter 7 case filed by a debtor initially entitled to the exclusion. For that reason, a new check box is added to the top of the form that states that the “presumption is temporarily inapplicable.” A debtor who is entitled to claim the Reservists and National Guard exclusion at the commencement of the chapter 7 case may check that box.

The new exclusion applies only to a debtor who satisfies all of the requirements of §707(b)(2)(D)(ii), and its expiration date depends on facts specific to each debtor. Therefore, in a joint case in which the exclusion in part 1C is claimed by either or both filers, each joint filer must complete a separate statement. If only one joint debtor qualifies for the exclusion in part 1C, the other joint debtor must complete the form.

Part 1C is added to the form to allow qualifying debtors to claim the temporary exclusion under § 707(b)(2)(D)(ii). Debtors who declare under penalty of perjury that they satisfy all of the requirements of that provision are directed to verify their declaration in Part VIII and to check the “temporary presumption” box at the beginning of the form. They are not required to complete the remaining parts of the form for so long as the exclusion

remains applicable.

A debtor who is or has been a Reservist or a National Guard member may qualify for the exclusion described in part 1C by being called to active duty service after September 11, 2001, for a period of at least 90 days, or while performing homeland defense activity for a period of at least 90 days. After the debtor has been released from active duty or has ceased performing homeland defense activity, the exclusion applies for a period of 540 days after the release date or cessation of homeland defense activity. Under those circumstances the debtor must state the date of release from active duty or the date on which the performance of homeland defense activity terminated.

If the Reservist and National Guard exclusion terminates during the course of a chapter 7 case – because of the expiration of the 540 day period following the release from active duty or the cessation of homeland defense activity – then the debtor may be required to complete the remaining parts of the form that are applicable to the debtor. If the exclusion terminates while a timely motion to dismiss under § 707(b)(2) may still be filed, Interim Rule 1007-I(n) requires that the debtor complete the remaining parts of the form no later than 14 days after the termination. If the obligation to complete the form arises in these circumstances and the debtor has not previously completed the form, the clerk is required to give the debtor notice of the obligation.

2005-2008 COMMITTEE NOTE²

A. Overview

Among the changes introduced by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 was a set of 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

²The 2005-2008 Committee Note incorporates Committee Notes previously published in 2005 and 2006 and changes effective through January 2008.

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 debtors may be required to pay to unsecured creditors. Moreover, Chapter 13 debtors with CMI above defined median income levels are required by § 1325(b)(3) to use the deductions from income prescribed by the means test in order to determine what part of their income is "disposable," 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 deductions set out in the Chapter 7 and 13 forms, and finally addresses particular issues that are unique to each of the separate 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 of the three forms provides for reporting income items constituting CMI. The items are reported in a set of entry lines—Part II of the form for Chapter 7 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 for income reporting specify several common types of income and are followed by a “catch-all” line for other income. The entry lines address (a) gross wages; (b) business income; (c) rental income; (d) interest, dividends, and royalties; (e) pension and retirement income; (f) regular payments of the household expenses of the debtor or the debtor’s dependents; (g) unemployment compensation, and (h) all other forms of income (the “catch-all” line).

Gross wages (before taxes) are required to be entered. However, consistent with usage in the Internal Revenue Manual and the American Community Survey of the Census Bureau, business and rental income are 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.

Alimony and child support are also given special treatment. Child support is not generally considered “income” to the recipient. See 26 U.S.C. § 71(c). Thus, child support is only part of CMI if it is paid on a regular basis for the household expenses of the debtor or the debtor’s dependents. On the other hand, alimony and other forms of spousal support are considered income to the

recipient, and thus are within CMI regardless of the regularity and use of the payments. To address this distinction, the instruction in the entry line for regular payments of household expenses directs that the entry include regular child support payments used for household expenses of the debtor or the debtor's dependents, and the instruction for the "catch-all" line directs inclusion of all spousal support payments that are not otherwise reported as spousal income.

The forms provide for totaling the income reporting lines.

C. The means test: deductions from current monthly income

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 similar sections (Parts V and IV, 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."

National Standards. The IRS National Standards

provide a single allowance for food, clothing, household supplies, personal care, and miscellany, depending on household size, which can be entered directly from a table supplied by the IRS. There is also a National Standard for out-of-pocket health care expenses, which provides two different per-person allowances, depending on age group: the allowance for persons 65 or older is greater than the allowance for those under 65. Accordingly, the forms direct debtors to compute the National Standard allowance for health care by first multiplying each of the two age-group allowances by the number of household members within that age group and then adding subtotals for the two age groups to obtain the total allowance.

Local Standards. 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 household and the number of the debtor's vehicles. Each of the amounts specified in the Local Standards are 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 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 provided the Executive Office for United States Trustees with information allowing a division of 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. The forms take no position on the question of whether the debtor must actually be making payments on a home in order to claim a mortgage/rent allowance. For homeowners with mortgages, the mortgage/rent allowance involves debt payment, since the cost of a mortgage is the basis for the allowance. Accordingly, the forms require debtors to deduct from the mortgage/rent allowance their average monthly mortgage payment, up to the full amount of the IRS mortgage/rent allowance, 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; debtors who do not operate vehicles are given a public transportation allowance, regardless of whether they actually use public transportation. It is not clear whether the public transportation allowance may also be claimed by debtors who do make use of public transportation but also operate vehicles. The forms permit debtors to claim both a public transportation and vehicle operating allowance, but take no position as to whether it is appropriate to claim both allowances. No debt payment is involved in the vehicle operation/public transportation component of the Local Standards for transportation.

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 forms take no position on the question of whether the debtor must actually be making payments on a vehicle in order to claim the ownership/lease allowance.

Other Necessary Expenses. 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.

1. 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 tracks the statutory language and provides that there should not be double counting of any expense already included in the IRS deductions.

One of these special expense deductions presents a problem of statutory construction. Section 707(b)(2)(A)(ii)(I), after directing the calculation of the debtor’s monthly expenses under the IRS standards, states, “Such expenses shall include reasonably necessary health insurance, disability insurance, and health saving account expenses” There is no express statutory limitation to expenses actually incurred by the debtor, and so the provision appears to allow a reasonable “monthly expense” deduction for health and disability insurance or a health savings account even if the debtor does not make such payments, similar to the way in which the National Standards give an allowance for food, clothing and personal care expenses without regard to the debtor’s actual expenditures. However, the statutory language might also be read as providing that the debtor’s “Other Necessary Expenses” should include reasonable insurance and health savings account payments. Since “Other Necessary Expenses” are limited to actual expenditures, such a limitation could be implied here. The forms deal with this ambiguity by allowing the debtor to claim a deduction for

reasonable insurance and health savings account expenses even if not made, but also require a statement of the amount actually expended in these categories, thus allowing a challenge by any party who believes that only actual expenditures are properly deductible.

Contributions to tax-exempt charities provide another statutory expense deduction. Section 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.” Section 1325(b)(2)(A)(ii) expressly allows a deduction from CMI for such contributions that are “reasonably necessary” (up to 15% of the debtor’s gross income), and the Religious Liberty and Charitable Donation Clarification Act of 2005 added language to § 1325(b)(3) to provide the same deduction for above-median income debtors whose disposable income is determined using means test deductions. Accordingly, Subpart B of both the Chapter 7 and Chapter 13 forms includes an entry line for charitable contributions, employing the different statutory deductions allowed in each context.

The Subpart B concludes with a subtotal of the additional statutory expense deductions.

2. 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. The forms recognize another ambiguity in this connection: “payments contractually due” might either be understood as limited to payments of principal and interest (payable to secured creditor) or, in the context of a mortgage with an escrow, might be understood as including payments of property taxes and insurance

(ultimately paid to taxing bodies and insurers, but initially payable to the mortgagee). The forms require the debtor to specify whether the amount deducted includes taxes and insurance, allowing a party in interest to inquire into the deduction and raise an objection.

Priority debt, deductible pursuant to § 707(b)(2)(A)(iv), is treated on a single entry line, also requiring division by 60. The instruction for this line makes clear that only past due priority debt—not anticipated debts—should be included. Thus, future support or tax obligations, and future fees that might be payable to a Chapter 13 debtor’s attorney, are not included.

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.

3. 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.

4. 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 should therefore 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 I also provides an exclusion for debtors who do not have primarily consumer debts. These debtors are not subject to any of the provisions of § 707(b)—including the requirement of § 707(b)(2)(C) for filing a CMI statement—since § 707(b) applies, by its terms, only to “an individual debtor . . . whose debts are primarily consumer debts.” However, a debtor may be found to have asserted non-consumer status incorrectly. Unless such a debtor has filed the CMI form within the 45 days after filing the case, the case could be subject to automatic dismissal under § 521(i). To avoid this possibility, debtors asserting principally non-consumer status may complete the appropriate portions of Part I, claim an exclusion from the balance of the form, and promptly file the form. If it is subsequently determined that the debtor does have primarily consumer debts, the

form will have been filed within the deadline established by § 521(i), and can be amended to include the necessary CMI and means test information.

Part II computes CMI for purposes of the safe harbor of § 707(b)(7). 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 in Part II. The means test itself does not charge a married debtor in a non-joint case with the income of the non-filing spouse, but only with payments regularly made by that spouse for 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 regularly paid for the household expenses of the debtor or the debtor's dependents. The form requires that the alternative uses of the spouse's income be specified.

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

described above in § C.

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 in § C.5.

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. In the absence of full payment of allowed unsecured claims, § 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)(7), § 1325(b)(4) requires that the CMI of the debtor’s spouse be combined with the debtor’s CMI, but, unlike § 707(b)(7), no exception is made 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 regularly paid for the household expenses of the debtor or the debtor’s dependents (with the alternative uses specified). The debtor is directed to check the appropriate box at the beginning of the form, stating the applicable commitment period. The check box does not prevent a debtor from proposing an applicable commitment period of less than three or five years in conjunction with a plan that pays all allowed unsecured claims in full.

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 was 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 in § C,

as incorporated by § 1325(b)(3) for debtors with CMI above the applicable state median.

Part V provides for four 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.” Finally, § 1325(b)(3) requires that deductions from income for above-median income debtors be determined not only in accordance with the means test deductions, set out in subparagraph (A) of § 707(b)(2), but also in accordance with subparagraph (B), which sets out the grounds for rebutting a presumption of abuse based on a demonstration of additional expenses justified by special circumstances. Part V includes an entry line for such additional expenses, with a warning that the debtor will be required (as provided by § 707(b)(2)(B)) to document the expenses and provide a detailed explanation of the special circumstances that make them reasonable and necessary.

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 declare expenses not allowed under the form without deducting them from CMI, as described above in § C.5.

2006 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. Both forms contain stylistic amendments to conform the wording more closely to that used in the 2005 Act.

2005-2008 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 separate 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 of the forms 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 non-priority 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 of the amounts specified in the Local Standards are

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 of the forms 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 of the form 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 of the form is the computation of CMI. Section 707(b)(7) eliminates standing to assert 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 of the form provides for the comparison of 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 of the form provides for an adjustment to 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 of the form 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 the means test deductions are required by § 1325(b)(3) 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 of the form 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 CMI of the debtor's spouse is required by the statute to be combined with the debtor's CMI, and there is no exception 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 of the form 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 of the form 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. There is no specific statutory allowance for such a deduction, 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 of the form allows the debtor to claim additional deductions, as described above, and Part VII is the verification.