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02/16/2007 08:42 AM

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Subject Fw: Comments on Financial Services

----- Forwarded by James Ishida/DCA/AO/USCOURTS on 02/16/2007 08:42 AM -----



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02/15/2007 04:57 PM

To <Rules\_Comments@ao.uscourts.gov>  
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Subject Comments on Financial Services

<<Untitled.pdf>> I have attached comments from the Financial Services Roundtable that are being submitted electronically. Please acknowledge receipt of the comments for our file. Thanks!!

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# THE FINANCIAL SERVICES ROUNDTABLE

*Impacting Policy. Impacting People.*



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February 14, 2007

Mr. Peter G. McCabe  
Secretary, Committee on Rules of Practice and Procedure  
Thurgood Marshall Federal Judiciary Building  
Washington, DC 20544

As the Judicial Conference considers final rules to implement the provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act ("BAPCPA"), the Financial Services Roundtable ("Roundtable") submits the following brief comments to highlight issues of importance to our members. The Financial Services Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. Roundtable member companies provide fuel for America's economic engine, accounting directly for \$65.8 trillion in managed assets, \$1 trillion in revenue, and 2.4 million jobs.

The Roundtable has also submitted comprehensive comments with a coalition of other financial services trade associations.

There are several areas of particular concern to the Roundtable:

- the final rules should delete the requirement that creditor motions to dismiss be filed "with particularity," a high burden on creditors with no statutory basis;
- the final rules should require that debtors file a certificate that they completed post-petition education, thus closing a possible loophole for dishonest debtors to evade this important educational requirement;
- the new rules and forms should require debtor attorneys to attest, under oath, to the accuracy of a debtor's schedules and statements; as provided for in BAPCPA; and
- the means-test forms should be amended to prevent debtors from claiming inflated or non-existent expenses.

Rule 1017 implements the amendments to § 707(b) that permit creditors to move to dismiss chapter 7 consumer cases. The rule requires that a motion filed under § 707(b)(3) state with particularity the circumstances that are abusive. This particularity requirement has no statutory basis. To the extent that the purpose of this rule is to protect consumers, it should be noted that Congress has already imposed sanctions on abusive creditor motions. Thus, this requirement is unnecessary and should be deleted.

Rule 4006 implements the new law's requirement that debtors complete a course in personal financial management as a pre-condition of a discharge. However, there is no requirement that the debtor file a certificate or offer proof of completion. The final rule should require such documentation.

Under BAPCPA, the signature of an attorney on a bankruptcy pleading constitutes a representation by the attorney that the debtor has performed a reasonable investigation to determine that the facts provided are true. The Committee should specifically amend the rules and forms to implement the attorney signature provision in BAPCPA.

On December 6, 2006, the Senate Judiciary Committee's Subcommittee on Administrative Oversight and the Courts held an oversight hearing to examine the progress of implementing P.L. 109-8. During the course of this hearing, the Department of Justice was specifically asked to correct deficiencies in the means-test forms that distort income calculations by permitting or directing debtors to claim excessive or phantom expenses. Forms 22A and 22C as currently drafted skew this important income calculation by allowing duplicative or inaccurate deductions as follows:

#### *IRS Standards*

- Line 19/Line 24 asks debtors to list a deduction amount related to food, clothing, household supplies, personal care, and miscellaneous expenses. Instead of requiring a debtor to list the actual amount spent for such expenses on a monthly basis, the forms direct debtors to list the IRS National Standards for Allowable Living Expenses based on family size and income level. This National Standards amount could exceed the actual amount spent by debtors and therefore allow them to take a higher deduction.
- Line 20A/Line 25A asks debtors to list a deduction amount related to housing and utilities expenses, other than mortgage expenses. Instead of requiring a debtor to list the actual amount spent for such expenses on a monthly basis, the forms direct debtors to use the IRS Local Housing and Utilities Standards. This Local Standards amount could exceed the actual amount spent by debtors and therefore allow them to take a higher deduction.

- Line 20B/Line 25B asks debtors to list a deduction amount related to mortgage or rent expenses. Instead of requiring a debtor to list the actual amount spent for such expenses on a monthly basis, the forms direct debtors to use the IRS Local Housing and Utilities Standards for mortgage/rent expenses. Debtors are instructed to deduct the average monthly payment for debts secured by the home, if any, from the allowance amount and insert that average monthly payment in Line 42/47. If this Local Standards amount exceeds the actual amount spent by debtors, debtors are directed to take a higher deduction.
- Line 22/Line 27 asks debtors to list a deduction amount related to transportation, vehicle operation, and public transportation. The forms indicate that debtors are entitled to this deduction *even though they may not actually have any transportation expense*. Debtors are directed to use the IRS Local Transportation Standards, Operating Costs & Public Transportation Costs. This Local Standards amount may exceed the actual amount spent by debtors and therefore allow them to take a higher deduction.
- Line 23/Line 28 asks debtors to list a deduction amount related to ownership and lease expenses for a claimed first vehicle. Instead of requiring a debtor to list the actual amount spent for such expenses on a monthly basis, the forms direct debtors to use the IRS Transportation Standards, Ownership Costs, First Car. Debtors are instructed to deduct the average monthly payment for debts secured by this first vehicle, if any, and insert that average monthly payment in Line 42/47. The IRS Standards amount could exceed the actual amount spent by debtors and therefore allow them to take a higher deduction.
- Line 24/Line 29 asks debtors to list a deduction amount related to ownership and lease expenses for a claimed second vehicle. Instead of requiring a debtor to list the actual amount spent for such expenses on a monthly basis, the forms direct debtors to use the IRS Transportation Standards, Ownership Costs, Second Car. Debtors are instructed to deduct the average monthly payment for debts secured by this second vehicle, if any, and insert that average monthly payment in Line 42/47. The IRS Standards amount could exceed the actual amount spent by debtors and therefore allow them to take a higher deduction.
- Line 42/Line 47 asks debtors to list a deduction amount related to future payments on secured claims. This amount includes a 60-month average payment for debts secured by the debtor's vehicles and home that were deducted from the IRS Standards deduction amount taken earlier on the forms. The debt amount was previously deducted from the Standards amount. However, if the debt is lower than the Standards amount, the debtor is able to use the remainder of the Standards amount deduction in addition to taking a deduction on the debt amount owed for the vehicle

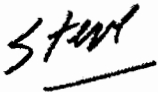
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or residence. Thus, debtors could be permitted to take two deductions for one expense.

We believe that it is critically important for the Judicial Conference to heed the calls from the authors of BAPCPA to modify forms 22A and 22C to conform to Congressional intent. A key goal of bankruptcy reform was to generate accurate information about a particular debtor's situation. Sadly, the current forms fall short of this goal.

Thank you for considering the views of the Roundtable.

Best regards,

A handwritten signature in black ink, appearing to read "Steve", with a horizontal line underneath.

Steve Bartlett  
President and CEO