COMMITTEE NOTE

A. Overview

One of the changes in bankruptcy practice introduced by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 is a definition of "current monthly income," set out in § 101(10A) of the Code. Certain individual debtors in Chapter 7, all individual debtors in Chapter 11, and all Chapter 13 debtors are required to calculate their income under this definition. Certain Chapter 7 and 13 debtors are further required to calculate deductions from current monthly income allowed under the means test of § 707(b)(2)(A). Chapter 7 debtors subject to the means test may, as a result of these calculations, be subject to a presumption of abuse. The means test deductions are used in Chapter 13 to calculate disposable income under § 1325(b)(2) and (3). To comply with the reporting and calculation requirements involving current monthly income and the means test, three separate forms have been provided – one for Chapter 7, one for Chapter 11, and one for Chapter 13. This note first describes the "current monthly income" calculation that is common to all three of the forms, next describes the means test deductions employed in the Chapter 7 and 13 forms, and finally addresses particular issues that are unique to each of the separate forms.

B. Calculation of current monthly income

Current monthly income ("CMI"), as defined in § 101(10A), has different purposes in each of the three chapters in which it is used, but basic computation is the same. CMI is a monthly average of defined "income" received in the six calendar months prior to the bankruptcy filing by the debtor and, in a joint case, the debtor's spouse. The "income" to be included in this average is (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 debtors dependents, and (in a joint case) the debtor's spouse if not otherwise a dependent. However, the income to be averaged is defined as not including "benefits received under the Social Security Act" and certain payments received by victims of terrorism, war crimes, and crimes against humanity.

The forms address the calculation of CMI, in each chapter, by a series of line entries, divided into columns providing for separate entries by the debtor and the debtor's spouse. The calculation line entries are set out in Part II of the Chapter 7 form, and Part I of the forms for Chapter 11 and Chapter 13. These line entries for calculating CMI are introduced by a set of instructions and check boxes indicating when the "debtor's spouse" column is required to be completed. The instructions also direct the required averaging of the income reported on the line entries.

The line entries specify several common types of income and then include a "catch-all" line for other types. The specific entry lines address gross wages; business and rental income; interest, dividends, and royalties; pension and retirement income; and regular contributions to the debtor's household expenses. 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 making the argument by reporting unemployment compensation separately from their current monthly income. The separate reporting allows parties in interest to determine the materiality of an exclusion of unemployment compensation and to challenge it. The forms provide instruction for proper totaling of the income lines.

C. Means test deductions from current monthly income

Deductions from CMI are set out in § 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 web pages 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 separate deductions for housing and utilities and for transportation, with different amounts for different areas of the country, depending on the debtor's family size and number of the number of the debtor's vehicles. Each of the amounts specified by the IRS in the Local Standards are treated by the IRS as a cap on actual expenses, but because § 707(b)(2)(A)(ii)(I) provides for deduction in the "amounts specified under the . . . Local Standards," the forms treat these amounts as allowed deductions.

~~[For use with the alternate versions of the Chapter 7 and 13 forms: The Local Standards for housing and utilities separate this expense category into a utilities/maintenance component and a mortgage/rental expense component. The utilities/maintenance component is a simple allowance, covering a variety of expenses involved in the operation of a residence. The mortgage/rental expense component covers the cost of acquiring the residence; for homeowners with mortgages, the mortgage/rental expense thus involves debt payment, since the cost of a mortgage is part of the allowance. Accordingly, the form requires debtors to deduct from allowance for mortgage/rental expense the average monthly mortgage payment (principal and interest), up to the full amount of the IRS mortgage/rental expense. This average payment is as reported on the separate line of the form for deductions of secured debt pursuant to § 707(b)(2)(a)(iii).]~~ **(Under revision)**

~~[For use with the original versions of the Chapter 7 and 13 forms: The Local Standards for housing and utilities provide a single expense allowance covering both the cost of acquiring housing (rent or mortgage payments) and the cost of utilities, insurance, and maintenance connected with the housing. Because this allowance includes debt payment, the form directs debtors to deduct any portion of the allowance that includes payments on debts secured by their homes. The proper manner of calculating this deduction from the housing and utilities allowance will have to be determined by judicial decisions.]~~ **(Under revision)**

The Local Standards for transportation separate this expense category into a vehicle operation/public transportation component and a component for 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 expense. 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. However, for debtors with debt secured by the vehicles that they operate, the ownership/lease expense does involve debt payment. Accordingly, the form requires 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 form for deductions of secured debt pursuant to § 707(b)(2)(a)(iii).

The IRS does not set out allowances for "Other Necessary Expenses." Rather, it sets out 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. The remaining IRS categories are set out in individual line entries. Instructions on the individual entry lines reflect limitations imposed by the IRS and the need to avoid inclusion of items deducted elsewhere on the forms.

The forms call for a subtotal of the deductions allowed under the IRS standards.

2. Additional statutory expense deductions

In addition to the IRS expense deductions, subclauses (I), (II), (IV), and (V) of § 707(b)(2)(A)(ii) allow six special expense deductions. Each of these additional expense items is set out on a separate line entry 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. Specifically, § 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. Again, the forms call for the additional statutory expense deductions to be subtotaled.

3. Deductions for payment of debt

Subpart C of the forms deals with deductions from CMI for payment of secured and priority debt, as well as a deduction for administrative expenses 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 that requires 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 a website that will set out this percentage fee. An entry line is provided for subtotaling the 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.

5. Additional claimed deductions

The forms do not provide for 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. The forms provide sections (Part VII in the Chapter 7 form and Part V in the Chapter 13 form) for such expenses to be identified and totaled. Although expenses listed in these sections are not deducted from CMI for purposes of the forms' calculations, 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 are therefore inaccurate.

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 requiring the debtor to state whether or not a presumption of abuse exists as a result of the calculations required by the form. This check box is intended to give clerks of court a conspicuous indication of the cases for which they will be 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 any form of 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 current monthly income ("CMI") as defined in § 101(10A). Section 707(b)(2) 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 CMI of the debtor's spouse is added to 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 in all cases of married debtors where the debtor is unable to make the specified declaration or where the debtors are filing jointly, and the CMI of both spouses in these cases is added for purposes of determining standing under § 707(b)(7).

Part III of the form provides for the comparison of the debtor's CMI for purposes of § 707(b)(7) to the applicable state median income. It then directs debtors whose income does not exceed the applicable median to verify the form and check the "no presumption" box at the beginning of the form, but 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 included 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 and the debtor's dependents, as provided in the definition of CMI in § 101(10A). Accordingly, Part IV calls for the combined CMI total 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 allowed 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. Rather, § 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. Because § 1325(b)(3) employs the means test deductions for debtors whose CMI exceeds the applicable state median income, the upper right corner of the first page includes check boxes requiring the debtor to state whether § 1325(b)(3) applies, thus quickly informing standing trustees and other interested parties of the need to consider these deductions.

Part I of the form is the calculation of CMI, as described above.

Part II of the form compares the debtor's CMI to the applicable state median, allowing the determination of the applicability of the means-test deductions required by § 1325(b)(3).

Part III 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 IV provides for three adjustments required by special provisions affecting disposable income. First, § 1325(b)(2) itself excludes from CMI in the determination of 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)(2)[.]" 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 V of the form allows the debtor to claim additional deductions, as described above, and Part VI is the verification.