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Subject comments

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Attached are comments to Form B22C and Schedules I and J to Form 6 in .pdf and WordPerfect formats.
thanks. kml

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COMMENTS
PRELIMINARY DRAFT OF PROPOSED AMENDMENTS TO FEDERAL RULES OF BANKRUPTCY AND FORMS

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These comments are directed at Form B22C and Schedules I and J to Form 6—the key forms used in Chapter 13 practice to determine confirmation of plans. BAPCPA delivered a conflicting instruction set that cannot be comprehensively and uncontroversially arrayed in ordinary bankruptcy forms. Form B22C was drafted in an amazingly short period of time based on many best guesses about a very uncertain new statute. Early reported decisions already indicate the need for some tweaking.

THE BIG PICTURE

Please bear with me: It is difficult to make sense of the changes suggested below without first describing the problem as I see it.

Chapter 13, as amended by BAPCPA, requires seven new or changed calculations or presentations of every debtor. Three of these calculations are new with BAPCPA: (1) current monthly income (§ 101(10A)); (2) monthly net income (§ 521(a)(1)(B)(v)); and, (3) applicable commitment period (§ 1325(b)(4)). Two are unchanged by BAPCPA but because of other changes by BAPCPA, their content needs updating: (4) current income (§ 521(a)(1)(B)(ii)); and (5) current expenditures (§ 521(a)(1)(B)(ii)). The last two—(6) disposable income (§ 1325(b)(2)) and (7)

projected disposable income (§ 1325(b)(1)(B))—have roots in the former law but resemble their former selves in name only.

1. **Current Monthly Income (CMI).** Parts I and III of Form B22C intend to produce a Statement of Current Monthly Income as required by Rule 1007(b)(6), but the form does not accurately determine CMI. Detailed below, the form mismanages the income of a "spouse," deals inaccurately with business expenses and does not produce an accurate statement of CMI for all Chapter 13 debtors.

2. **Monthly Net Income.** Monthly net income is not defined by BAPCPA. It makes sense to attempt a monthly net income calculation somewhere on Schedules I and J to Form 6 but because those schedules reflect pre-BAPCPA law and practice, the resulting Statement of Monthly Net Income is not useful. With some tweaking to Schedules I and J, this Statement could be made useful, especially with respect to debtors with CMI less than applicable median family income.

3. **Applicable Commitment Period.** This new concept is based on an undefined phrase: "current monthly income of the debtor and the debtor's spouse combined." We don't know what "combined" means in this context. The effort to define and calculate applicable commitment period on the same form with the Statement of Current Monthly Income and the disposable income calculation renders Form B22C complicated and confusing. The applicable commitment period calculation in Part II of B22C is distorted by CMI miscalculations and then further distorted by controversial assumptions about the meaning of "combined" in § 1325(b)(4). Form B22C attempts an applicable commitment period calculation but the CMI errors elsewhere in the form make this inaccurate for all debtors and the "adjustment" comes too late to fix the applicable commitment period calculation for debtors with CMI less than applicable median family income.

4. Current Income and 5. Current Expenses. These required statements have been around for a long time and were not modified by BAPCPA. However, Schedules I and J of Form 6 have not been reworked to reflect the enhanced roles these schedules play in the disposable income calculation. The schedules contain inaccurate instructions with respect to debts paid through plans and fail to include expense deductions that are allowed by BAPCPA and necessary to the disposable income calculation—especially with respect to debtors with CMI less than applicable median family income. Schedules I and J could be easily reworked to produce the expense component of the disposable income calculation for under-median income debtors.

6. Disposable Income. Form B22C attempts a disposable income calculation for debtors with CMI greater than applicable median family income but does not do it accurately. Schedules I and J were not adjusted to provide a platform for calculating disposable income for under-median income debtors. By leaving Schedules I and J as they were, courts and debtors are confused. No combination of Form B22C and Schedules I and J to Form 6 gets you a disposable income calculation for a debtor with CMI less than applicable median family income. This is the vast majority of Chapter 13 debtors and is a hole worth filling.

7. Projected Disposable Income. As you know, many early reported decisions have fundamentally misconstrued projected disposable income to mean something different than disposable income over the applicable commitment period. *See, e.g., In re Hardacre,* 338 B.R. 718 (Bankr. N.D. Tex. 2006). I believe that the forms have contributed to this confusion. By tweaking Form B22C and reworking Schedules I and J to Form 6, a comprehensive presentation of disposable income is possible that can then be sensibly "projected" over the applicable commitment period. In

other words, frustration with the failure of the forms to produce useful numbers has inspired courts and practitioners to invent inconsistent methodologies to determine projected disposable income.

SUGGESTED FIXES

1. Minor adjustments to B22C to produce an accurate CMI calculation for all debtors.

2. Minor adjustments to B22C to produce an accurate applicable commitment period calculation for all debtors.

3. Changes to B22C to produce a correct disposable income calculation for debtors with CMI greater than applicable median family income.

4. Changes to Schedules I and J of Official Form 6 to present current income and current expenses for all debtors and enable the use of these schedules in a disposable income calculation for debtors with CMI less than applicable median family income.

LINE-BY-LINE COMMENTS ON FORM B22C

The Check Boxes. The applicable commitment period check boxes at the top of the form are inaccurate because the CMI calculation is wrong in Parts I and III of the form (see below) and the cross-reference to Line 17 comes too soon in the flow of the form to accurately correct for problems in the CMI calculation. The "marital adjustment" in Line 13 is discretionary according to the instructions but it should be different and not discretionary if the purpose of the adjustment is to correct for the over-inclusion in CMI of a spouse's income in Part I of the form and to account for the uncertain meaning of "combined" in § 1325(b)(4) for purposes of Part II. A married debtor filing separately who chooses not to make the marital adjustment at Line 13 will inaccurately calculate CMI for purposes of Line 17 and will then be referred backwards to the check box at the top of the

form. If the changes to Part I and Part II discussed below are made, then the cross-reference with respect to the check box should also be changed to reflect the correct line at which applicable commitment period is calculated for all debtors.

Line 1: the Problem with Spouses. Under pre-BAPCPA law, we didn't much care who was "debtor" and who was "spouse." In a joint case, we accounted for income and expenses as a family unit. In a not-joint case, we captured the income of the nonfiling spouse separately on Schedule I and the family expenses on Schedule J.

BAPCPA is fundamentally different. The definition of CMI in § 101(10A) makes important distinctions between the income of the debtor and the income of the debtor's spouse, especially in a not-joint case. The expense deductions allowed debtors with CMI greater than applicable median family income variously make distinctions between debtors and spouses—including not accounting for the dependents of a nonfiling spouse that are not dependents of the filing spouse. *See In re Lara,* No. 347 B.R. 198 (Bankr. N.D. Tex. 2006) (treating spouses as a "unit" for purposes of transportation expense deductions).

Line 1 should be adjusted to include an instruction that joint debtors indicate who is the "debtor" and who is the "spouse." The instruction in Line 1 should be modified to indicate that a married debtor not filing a joint case should not complete Column B. The instruction that a married debtor not filing jointly should include a spouse's income in Column B fundamentally distorts the CMI calculation. The only portion of a nonfiling spouse's income that should be captured as part of a filing debtor's CMI comes in at Line 7 in Column A (see below), eliminating the need for the "marital adjustment" at Lines 13 and 19.

Line 3; Line 4—Business Expenses. Lines 3 and 4 inappropriately instruct debtors to deduct "ordinary and necessary business expenses" and "ordinary and necessary operating expenses" with respect to operation of a business and income from property. These inappropriate expense deductions distort the calculation of CMI for all business debtors and debtors with rental income.

CMI is a measure of *gross* income without deduction for the expenses of producing that income. Business expenses for a debtor with CMI greater than applicable median family income are addressed as expense deductions in categories of the Other Necessary Expenses issued by the IRS and accounted for in the disposable income calculation by § 1325(b)(3) and § 707(b)(2)(A)(ii)(I). For a debtor with CMI less than applicable median family income, a very different formulation of deductible expenses for the preservation, operation or continuation of a business is allowed at § 1325(b)(2)(B). Neither of the statutory formulations of the expenses of operation of a business or of ownership of property are properly deducted for purposes of determining CMI.

Business expenses are just that—expenses—that come out *after* CMI is determined consistent with the statutory definition. Because the formulations of what business expenses are deductible are different for over-median and under-median income debtors, deducting business and operating expenses on the income side of Part I of Form B22C materially distorts the disposable income calculation that comes later. Reported decisions have already recognized this problem. *See In re Jackson,* No. 05-10662-8-RDD, 2006 WL 2949112 (Bankr. E.D.N.C. Sept. 15, 2006).

The fix is simple—remove the expense deductions at Lines 3 and 4 and correct the instructions to reflect that business expenses and operating expenses for debtors with CMI greater than applicable median family income are accounted for in Part IV. Add a line in Part IV that captures the categories of Other Necessary Expenses issued by the IRS that include business

expenses. For debtors with CMI less than applicable median family income, Line 16 of Schedule J of Form 6 accounts for business and operating expenses.

Line 7. This line is over-inclusive or under-inclusive, and endlessly confusing. The instructions seem intended to capture the component of current monthly income separately described in § 101(10A)(B). But the instruction at Line 7 contains the phrase "including child or spousal support" which nowhere appears in § 101(10A)(B). This choice is not compelled by the statute and renders child or spousal support subject to the special conditions in § 101(10A)(B) when the statute does not impose those special conditions. In other words, nothing in the statute suggests that child or spousal support is included in CMI only if it is paid on a regular basis or only if it is for the household expenses of the debtor or the debtor's dependents. To the contrary, child or spousal support would be included in CMI of the debtor without regard to how often it is received or what it is used for if it is income under § 101(10A)(A) or (B). The instruction thus seems to under include child or spousal support.

On the other hand, what goes in the "Column B Spouse's Income" at Line 7 in a not-joint case that is not already required in Column A at Line 7? If this is not an empty set, then it over-includes some amount that is nowhere described in § 101(10A)(A) or (B).

On the third hand, in a joint case, if the filing spouse is misinterpreted to be "the debtor" for purposes of Line 7—an easy mistake given the two column format—then Line 7 literally would include in the report of income amounts paid by any entity on a regular basis for the household expenses of a spouse's separate dependents. Nothing in § 101(10A)(B) suggests that amounts paid on a regular basis for the household expenses of a spouse's dependents would be included in CMI

when the debtor and the spouse have separate dependents—a common fact pattern in Chapter 13 cases.

Two different fixes are needed at Line 7. Child or spousal support should be a separate line item in the report of income that is not conditioned with respect to regularity or use of the payments. There should be no "Column B Spouse's Income" with respect to a nonfiling spouse and amounts paid on a regular basis for the household expenses of spouse's dependant(s) should be excluded by instruction.

To be completely consistent, for CMI purposes, the instruction "do not include amounts paid by the debtor's spouse" is also wrong with respect to amounts paid on a regular basis for the household expenses of the debtor or the debtor's dependents by a nonfiling spouse. If Column B is eliminated from Part I, then the instruction at Line 7 can be corrected to require inclusion of amounts paid by a nonfiling spouse on a regular basis for the household expenses of the debtor or a dependent of the debtor.

Obviously, the bigger issue at Line 7 is that Part I of the form fails to distinguish between "the debtor" and "the spouse" for all CMI purposes. Arguably, when a joint case is filed, Column A and Column B both deal with a "debtor" and § 101(10A)(B) would include amounts paid on a regular basis for the household expenses of either debtor's dependents. But this outcome is not certain because "debtor" and "debtor's spouse" are not addressed uniformly by § 101(10A). When the spouse is not also a debtor, Line 7 as currently constructed cannot be accurate of the § 101(10A)(B) inclusion in CMI.

Line 11. As explained above, the "total" at Line 11 is under-inclusive of income for all debtors engaged in business or who receive rental income and is over-inclusive of income for married debtors, especially those with a nonfiling spouse.

Perhaps more importantly, Line 11 is the logical place to produce a "Statement of Current Monthly Income." Part I of the form should be extended to produce a Statement of Current Monthly Income that is accurate for all debtors so that this CMI calculation can then form the basis for the applicable commitment period calculation in Part II and the disposable income calculation in the rest of the form. The CMI calculation is by far the most important part of B22C for the vast majority of debtors who are instructed not to complete most of the form because they have CMI less than applicable median family income. It is important to rework Part I so it actually produces a CMI Statement for all debtors—before attempting the controversial and uncertain applicable commitment period and disposable income computations.

If the expense deductions were corrected at Lines 3 and 4 and if Column B was required only of joint debtors, then adjustments to the instruction at Line 7 would produce at Line 11 an accurate Statement of Current Monthly Income that could then be used in the rest of the form. As it stands, the "total" at Line 11 is not an amount that is required by any provision of the Bankruptcy Code and is not useful without adjustments for any purpose in a Chapter 13 case. It includes a great deal of information about a nonfiling spouse that is not required by the Code.

Part II: Commitment Period Calculation. Applicable commitment period in § 1325(b)(4) is ambiguously based on "current monthly income of the debtor and the debtor's spouse combined." There are many possible interpretations of the word "combined" in this context. Part II of B22C inappropriately stakes out a peculiar statutory interpretation of "combined." The discretionary

"marital adjustment" at Line 13 is not adequate to correct for the missing consensus with respect to the meaning of "combined." Part II adopts the inaccurate CMI calculation in Part I and then multiplies the error as a miscalculation of applicable commitment period which then populates the check boxes through Line 17.

Line 13. The optional "marital adjustment" at Line 13 takes out of the "total" calculated at Line 11 income attributable to a nonfiling spouse that was included in Part I because of the (mistaken) instruction that a nonfiling spouse must complete Column B of Part I. This is very confusing. What gets dragged into Part I with respect to a nonfiling spouse is all of the nonfiling spouse's income, including the amounts at Line 7 that may have been paid by another entity on a regular basis for the household expenses of the nonfiling spouse and, perhaps, for the nonfiling spouse's dependents. By no construction of § 101(10A) should these amounts be included in CMI and the marital adjustment at Line 13 will not correct for this over inclusion unless the debtor "contends" brilliantly that the commitment period calculation does not require inclusion of the income of a nonfiling spouse except for amounts paid by the nonfiling spouse on a regular basis for the household expenses of the debtor or a dependent of the debtor.

This is doubly confusing because "combined" CMI is of uncertain meaning given that a nonfiling spouse's income is not included by § 101(10A) except to the extent it is captured by § 101(10A)(B); but all of the nonfiling spouse's income is included in the total that comes over from Line 11 because of the way Part I of the form is constructed. Put another way, the applicable commitment period calculation in § 1325(b)(4) is based on a "combined" CMI calculation that cannot be generated by simply adjusting the Line 11 total unless you assume that Line 11 is an accurate calculation of CMI—which it is not—*and* you assume that "combined" CMI for a debtor

and a debtor's spouse captures only that part of a nonfiling spouse's income that is already part of the filing debtor's CMI at Line 11. These assumptions drain "combined" of any meaning if the debtor makes the contention in Line 13 or inflate CMI for any married debtor with a nonfiling spouse who does not elect the contention in Line 13.

The fix is to correct Part I so that it produces an accurate Statement of Current Monthly Income for the debtor and to then state at Line 13 that the debtor should enter the amount *added* to CMI to determine "combined" CMI for the debtor and a nonfiling spouse.

Line 15. This is the first place in the form where the phrase "current monthly income" appears and no accurate Statement of Current Monthly Income is produced at Line 15. As explained above, Line 14 is not a Statement of Current Monthly Income and annualizing Line 14 at Line 15 simply produces an annualized misstatement of CMI.

For § 1325(b)(4) purposes, the form should annualize CMI for debtors who are not married and annualize "combined" CMI for debtors that are married. This can't be done at Line 15 without first generating a correct Statement of Current Monthly Income for all debtors in Part I and then a correct "combined" CMI at Line 13.

Line 16. The reference to "www.usdofj.gov/ust/" should be removed. This is a Justice Department web site. The Justice Department is a litigant in the bankruptcy courts and it is inappropriate for an official form to embrace evidence provided by the Department of Justice when that evidence cannot be controlled or verified by the Judiciary. The Department of Justice has already corrupted data produced by the Internal Revenue Service for use in bankruptcy cases (*see* Line 25, below) and nothing prevents the Justice Department from doing the same with respect to median

family income statistics supplied by the Census Bureau or the Department of Labor. A "neutral" source should be cited or no source at all at Line 16.

The parenthetical cross-reference to "information . . . available by family size" at the Justice Department web site is particularly inappropriate here because median income typically is reported by the Census Bureau on a "household income" basis. The computational cross-reference in § 1325(b)(3)(A) speaks of a "debtor in a *household* of one person." But that same section then speaks of "median *family* income" for the applicable state. The Census Bureau considers a "household" to be a very different thing than a "family"—no blood or marriage relationship is required of members of a household. The Department of Justice completely ignores this statutory conundrum by reporting on its web site only median "family" income statistics, organized by "family size" with no discussion of the statutory use of the word "household." This is a distinction with a difference that should not be compounded by the cross-reference to the Justice Department's interpretation of the statute.

Line 17. Because there is no correct CMI calculation at Line 17 in Form B22C, the check boxes with respect to three-year and five-year commitment periods can't be accurate. Especially with respect to debtors with a nonfiling spouse, the applicable commitment period calculation at Line 17 will not be accurate without the adjustments discussed above.

Part III. An alternative to reaching CMI at Line 11 would be to reverse Parts II and III of Form B22C. Part III gets closer to producing a Statement of Current Monthly Income. Because CMI is fundamental to both the applicable commitment period and disposable income calculations, the form should produce an accurate Statement of Current Monthly income before it tackles the other calculations.

The "marital adjustment" at Line 19 in Part III is a start toward correcting the over inclusions in Part I to produce a statement of CMI. But Line 19 comes too late to correct CMI for purposes of applicable commitment period in Part II. Flipping these parts and making the indicated internal changes would correct this problem.

Line 19. The "marital adjustment" at Line 19 partially corrects for the mistakes in the calculation of CMI in Part I. If the adjustments discussed above with respect to Lines 3, 4 and 7 are made, then the marital adjustment in Line 19 can be eliminated.

Line 20. Perhaps this line should be called "Statement of Current Monthly Income." Because Line 23 directs debtors with CMI less than applicable median family income to not complete the rest of the form, there should be an explicit Statement of Current Monthly Income somewhere before Line 23. I would do it at Line 11 as explained above.

Part IV; Line 24. The heading for "clothing" should be changed to "apparel & services." There is no "clothing" item within the National Standards issued by the IRS. The heading "household supplies" should be changed to "housekeeping supplies" for the same reason.

The parenthetical cross-reference to the U.S. Department of Justice web site should be eliminated for the reasons discussed above. Here, the Department of Justice presentation of the IRS National Standards contains information that is not contained in the National Standards issued by the IRS. Differences between what the IRS actually issues as National Standards and what the Department of Justice has chosen to present becomes more important below.

Perhaps the instruction at Line 24 should say something about how debtors are to determine "gross monthly income" for purposes of selecting the applicable National Standards amounts. The IRS tables for National Standards are based on gross monthly income, but Part I of Form B22C does

not generate that number and it is not obvious how this amount should be determined for purposes of selecting the correct National Standard. If the Committee intends debtors to use the Line 11 "total" as gross monthly income, there is a disconnect between the calculations in Part I and the methods used by the IRS to determine gross monthly income for purposes of the National Standards. If the Committee intends some other source for gross monthly income (Schedule I, e.g.,?), then perhaps that source should be stated at Line 24 so debtors will know which column to use within the National Standards. This has already become an issue in reported decisions. *See In re Tranmer,* No. 06-60353-13, 2006 WL 3366458 (Bankr. D. Mont. Nov. 16, 2006).

Lines 25(a), 25(b) and 26. The Committee is undoubtedly aware that there is no such thing as "Local Standards: Housing and Utilities" *issued* by the Internal Revenue Service that reveals "Non-Mortgage Expenses" by county and family size as required at Line 25(a). The cross-reference in the parenthetical instruction at Line 25(a) misleads debtors to a Justice Department web site at which fake local standards for housing and utilities have been issued by the Department of Justice.

The statute is not ambiguous: only Local Standards *issued* by the IRS should be used to determine the housing and utilities allowance. Referencing the Department of Justice's fabricated interpolation of Local Standards issued by the IRS instructs debtors to embed the U.S. Trustee's litigation position in the middle of an Official Bankruptcy Form. Line 26 then puts the burden on debtors to explain why the U.S. Trustee's position is not correct. Most debtors—especially pro se debtors—cannot engage in this kind of statutory construction debate in the context of a form.

Lines 25(a), 25(b) and 26 should be replaced with a single, one-line statement of the Local Standard for Housing and Utilities *issued* by the Internal Revenue Service. If a web site reference is necessary, refer to the statutorily prescribed Local Standards issued by the IRS.

Line 25(b) engages the difficult question whether the statute requires "netting" of Local Standards for Housing and Utilities against debts secured by a debtor's residence. Again, B22C wades into the debate, taking an aggressive position that the monthly average of all debts secured by a debtor's residence is subtracted from the applicable allowance for housing and utilities. This is one interpretation of § 707(b)(2)(A)(ii)(I) but hardly the only interpretation and perhaps not even the interpretation most strongly supported by plain language. Form B22C is not the place for this sort of statutory discourse. A neutral form would not require the debtor to make the calculation described at Line 25(b).

Lines 27, 28 and 29. Once again, the cross-references to a Department of Justice web site should be eliminated and/or replaced with references to the "Local Standards: Transportation" issued by the Internal Revenue Service. Lines 28 and 29 require netting of debts in a manner that is not required by § 707(b)(2)(A)(ii)(I). At the least, a line should be added similar to Line 26 at which debtors make adjustments if they disagree with the method of calculation adopted by the Form.

Line 30. Lines 30 through 37 contain eight of the categories of Other Necessary Expenses specified by the IRS. There are actually 16 categories of Other Necessary Expenses issued by the IRS. Section 707(b)(2)(A)(ii)(I) allows debtors the "actual monthly expenses" for *all* of the categories specified as Other Necessary Expenses issued by the Internal Revenue Service. Inexplicably, only eight of the 16 categories are actually listed on Form B22C. (*See* Line 38, below).

The first category listed—"taxes"—is not consistent with the category for taxes in the Other Necessary Expenses issued by the IRS. The IRS describes this category as "current federal, FICA, medicare, state and local taxes." Line 30 describes it as "all federal, state and local taxes, other than

real estate and sales taxes . . . ." Redundantly, Line 30 tells debtors, "do not include real estate or sales taxes." Line 30 should simply mimic the IRS category as issued by the IRS.

Actual expenses of a debtor for real estate or sales taxes are included in the category of Other Necessary Expenses issued by the IRS and are properly deductible at Line 30. Line 47 allows the debtor to include "payments of taxes . . . required by the mortgage" but no other provision of Official Form B22C brings back into the calculation real estate or sales taxes excluded at Line 30.

There is double confusion here with respect to real estate taxes. Arguably, real estate taxes are already included in the Local Standards for Housing and Utilities issued by the IRS. But § 707(b)(2)(A)(ii)(I) clearly allows debtors to deduct the Local Standards for Housing and Utilities and to deduct real estate taxes in the category of Other Necessary Expenses issued by the IRS. Form B22C allows a second deduction for real estate taxes if required by the mortgage at Line 47 but omits those taxes—except to the extent already included by the IRS in its Local Standards for Housing and Utilities—when the debtor pays real estate taxes not included in a mortgage.

The treatment of real estate taxes by Form B22C needs further attention. Most consistently with the statute, Line 30 should not exclude real estate taxes and no additional expense deduction for real estate taxes should be included at Line 47.

Sales taxes are simply omitted altogether from Form B22C, notwithstanding that sale taxes are an allowed expense in a category of Other Necessary Expenses issued by the IRS. The exclusion of sales taxes at Line 30 should be eliminated.

Line 31. The IRS calls this category "involuntary deductions." Line 31 uses "mandatory payroll deductions." There is no obvious good reason for renaming the category. The word "involuntary" could convey different meaning than "mandatory" to some. The additional modifier,

"payroll deductions," is misleading and unnecessary. An employee who pays for uniforms can claim this deduction according to the IRS even if it is not first deducted from payroll.

Line 32. The category here, according to the IRS, is "life insurance." The rest of the text at Line 32 is interpretation of the category, not all of which is found either in the Bankruptcy Code or in the Internal Revenue Manual. Given that the category is life insurance, it is not obvious that courts will adopt the conclusion in the instruction that only term life insurance is allowed.

The bolded instruction not to include premiums for insurance on dependents will be confusing in husband/wife cases when there is insurance on both spouses. Nothing in the Code prohibits a deduction for life insurance on a spouse who is a dependent. Given that there is only one column at Line 32—in contrast to all of Part I—who is the "yourself" and the "your" in the instruction at Line 32 in a joint case? Shouldn't the instruction here be that average monthly premiums actually paid for life insurance for the debtor and, in a joint case, for the debtor's spouse, are allowed?

Line 33. The category "court ordered payments" is more narrow than the deduction that is actually allowed by the IRS. The instruction at Line 33 calls for payments "pursuant to court order" but the IRS includes in this category "orders made by the state" even if not made by a court. Because spousal and child support are the subject of this category, it is important that in some states support is often "ordered" by an administrative agency that is not a court. A minor adjustment to the instruction at Line 33 would be appropriate.

The exclusion of "past due support obligations included in Line 49" is confusing. As discussed below, Line 49 is the actual expense allowed by § 707(b)(2)(A)(iv) for payment of all priority claims. Priority claims, of course, would include all domestic support obligations, including

a significant overlap with "court ordered payments" allowed as a category of Other Necessary Expenses by § 707(b)(2)(A)(ii)(I). This overlap extends beyond "past due" support obligations, yet the instruction at Line 33 excludes from court ordered payments only past due obligations included as priority debts at Line 49. In other words, the form eliminates part of the overlap between Lines 33 and 49 but not all of the overlap. Was this intentional?

Are debtors allowed to include the portion of a domestic support obligation that is *not* "past due" in both places? Arguably, the statute allows debtors both deductions. The Form makes a policy decision to "net" the overlap between court ordered payments and priority debts but the form does not completely do that. Perhaps the form should go one way or the other: either eliminate the entire overlap between the two provisions of the statute or leave the netting issue to the courts and neutralize the form by eliminating the exclusion of past due support at Line 33.

Line 34. IRS category is "Education." The description at Line 34 and the instruction are partial excerpts from the IRS Manual that are not required by the statute and are not fully inclusive of how the category is described in the IRS Manual. For example, the instruction describes "education that is a condition of employment," but the IRS Manual includes education that would increase pay but is not necessarily a condition of employment. The "condition of employment" language should either be eliminated or expanded to more accurately describe the IRS category.

Curiously, the "education" category described by the IRS is "only" available for "the taxpayer"—exactly the words the IRS uses to describe the life insurance deduction discussed above at Line 32. The form at Line 32 clearly limits the deduction for life insurance premiums to "yourself" and excludes insurance for "your dependents;" yet, there is no similar restriction with respect to the deduction for education at Line 34. Is this an intended lack of parallelism? What about education

expenses for a physically or mentally challenged child of the debtor's spouse? Would it matter whether the spouse is also a debtor? Would it matter whether the child is also a dependent of the debtor? Because there is only one column at Line 34 and because Part I is over-inclusive with respect to a spouse's income, it can be argued that Line 34 should include education expenses of a spouse's physically or mentally challenged child without regard to whether the spouse is also a debtor and without regard to whether the child is also a dependent of the debtor. Otherwise, the expense deduction is under-inclusive of actual expenses within the education category.

Line 36. The exclusion here for "not reimbursed by insurance" is accurate only if an instruction is added at Line 7 of Part I to exclude insurance reimbursements from the current monthly income described in § 101(10A)(B).

Perhaps it is stylistic only, but Lines 35 and 36 call for "average monthly amount that you actually expend," Line 34 instructs "*total* monthly amount that you actually expend," Line 33 describes "total monthly amount that you are required to pay," Line 31 uses "total average monthly . . ." and Line 30 uses "total average monthly expense that you actually incur." With respect to each of these categories of Other Necessary Expenses issued by the IRS, the Code allows "actual monthly expenses" and "total" probably applies equally to all expenses within a category. Some attention should be given to standardizing the descriptions in Lines 30 through 37.

Line 37. Line 37 seems to be a combination of at least two separate categories of Other Necessary Expenses issued by the IRS though it specifically mirrors no existing category and contains confusing instructions. There is an IRS category for "optional telephones and telephone service" that allows expenses for cell phone, pager, call waiting, caller identification or long distance. There is an entirely separate IRS category for "internet provider/e-mail." The Bankruptcy

Code conditions neither of these categories that the expenses must be "necessary for your health and welfare or that of your dependents"—a condition added to the instruction at Line 37. This condition comes from the Internal Revenue Manual and may or may not be the appropriate test for allowance under § 707(b)(2)(A)(ii)(I). This limitation should be removed from Line 37 and left for judicial determination.

The bolded instruction "do not include any amount previously deducted" does not come from the statute and is problematic. There is a "telephone" component to the housing and utilities portion of the Local Standards that are separately allowed as expense deductions at Line 25(a). It is impossible for a debtor to determine the portion of the Local Standards for Housing and Utilities that is attributable to telephone expense. What does the form mean by the bolded exclusion at Line 37?

To be true to the statutory instructions, two categories in separate lines should be created here, one for "optional telephones and telephone service" and another for "internet provider/e-mail." The instruction with respect to "basic home telephone service" should be eliminated because it has no origin in the statute or the Internal Revenue Manual. If the bolded exclusion at Line 37 is intended to prevent the overlap between the Local Standards and the Other Necessary Expense category, then the instructions at Line 37 are simply redundant and the bolded exclusion should be deleted.

Line 38. Several Categories of Other Necessary Expenses issued by the IRS are missing from this part of Form B22C and should be added before total expenses are calculated at Line 38. The following categories are missing and should be added: (1) accounting and legal fees; (2) charitable contributions; (3) dependent care; (4) secured or legally perfected debts; (5) unsecured debts; (6) student loans; and (7) repayment of loans made for payment of federal taxes. There will certainly be controversy with respect to the content of these categories, but there is no controversy that these

categories exist, are issued by the IRS and are omitted from the form notwithstanding that they are included by the statute.

By leaving them out of the form, the Committee has materially interpreted the statute in the form. Perhaps these missing categories will need limiting instructions—maybe they could be listed together at a single line with language similar to Line 26—but they should be somewhere in the form because they are required by the statute. Especially pro se debtors will be completely unaware of these categories and unaware of their rights to assert legitimate expenses in a category that is omitted from the form. The fix is simple; put all the categories in and let parties and the courts deal with the questions of statutory interpretation.

Subpart B. The header for Subpart B references "§ 707(b)." Shouldn't this reference be "§ 707(b)(2)"? The header for Part IV more accurately references § 707(b)(2) and it is possibly misleading to more generally reference § 707(b) in the header for Subpart B.

Line 39. The instructions at Line 39 are not accurate of § 707(b)(2)(A)(iii)(I). Line 39 uses the phrase "average monthly amounts that you actually pay." Section 707(b)(2)(A)(ii)(I) describes this expense as "reasonably necessary . . ." without the further modifier "actually pay." This distinction is potentially important because some of the sentences and subclauses in § 707(b)(2)(A) are allowances and others specifically allow only amounts actually paid by the debtor. The instruction at Line 39 should parallel the statute rather than add a condition not in the statute.

Line 40. There's no question that Line 40 may overlap with the expense allowed at Line 34; the problem is that the statute clearly prefaces the deduction described at Line 40 with the words "in addition" and the form boldly instructs that the expenses at Lines 34 and 40 are mutually exclusive. The meaning of "in addition" in § 707(b)(2)(A)(ii) will undoubtedly be litigated because other

subsections—for example, § 707(b)(2)(A)(ii)(IV)—specifically instructs what to do with an overlap; § 707(b)(2)(A)(ii)(II) is not worded that way. The form does not need to take a position in this debate but instead, should simply instruct the filer to enter the continuation of actual expenses paid by the debtor that are reasonable and necessary for care and support of an elderly, chronically ill or disabled household member or member of the debtor's immediate family who is unable to pay for such expenses.

Line 42. Given that the IRS Local Standards for Housing and Utilities do not identify the amount allocable to home energy costs, following the instruction at Line 42 is impossible. A Chapter 13 debtor cannot correctly calculate Line 42 and follow the introductory instruction not to include any expense listed in Lines 24 through 37.

There is an alternative reading of the statute that home energy costs documented as reasonable and necessary are allowed in addition to the amount specified by the IRS Local Standards for Housing and Utilities. That question of statutory construction is inappropriately pretermitted by the instruction at Line 42.

The actual wording of the statute at § 707(b)(2)(A)(ii)(V) would be a more appropriate description at Line 42 than the instruction in the form. The issues of statutory construction would then be left to the courts.

Line 43. Section 707(b)(2)(A)(ii)(IV) allows an additional deduction for actual expenses "to attend a private or public elementary or secondary school" if the debtor provides documentation described in the bolded portion of Line 43. The instruction at Line 43 that the education expenses must relate to "providing elementary and secondary education" is different than the statutory description of actual expenses for each dependent child "to attend" a private or public elementary

or secondary school. The instruction at Line 43 suggests limitations not contained in the statute. Expenses to attend a private or public elementary school would go beyond tuition and the like, but "providing" is more narrow. The instruction at Line 43 should mimic the statute.

Line 44. Line 44 allows "additional food and clothing expense" but the statute references "food and clothing categories as specified by the National Standards issued by the Internal Revenue Service." The "food and clothing categories" specified by the National Standards are actually "apparel and services" and "food." The instructions at Line 44 describe "combined allowances for food and apparel in the IRS National Standards" leaving out "services." The form creates ambiguity with respect to things like laundry, dry cleaning, shoe repair and similar expenses that are included in the "apparel and services" category of the National Standards. The National Standards amount for "apparel and services" is not further broken down by the IRS. I am not advocating that the Committee do so—although the Department of Justice did so with respect to the Local Standards for Housing and Utilities, discussed above—but laundry, cleaning and other "services" with respect to apparel are included in the IRS National Standards but not captured by the form for purposes of the 5% calculation of additional food and clothing allowance. If debtors have actual clothing expense which exceeds the IRS National Standards for apparel and services when combined with the laundry and dry cleaning expenses, the additional 5% should be allowed at Line 44. The instructions do not lead to that conclusion. The fix would be to include "and services" in the description of the allowable additional expenses for apparel (if documented) at Line 44.

The cross-reference to the Department of Justice web site again should be eliminated and a reference if any to the IRS National Standards substituted.

Line 45. As the Committee is undoubtedly aware, bankruptcy courts have already concluded that the statutory charitable exclusion described in § 707(b)(1) is not incorporated into the disposable income test in Chapter 13 cases by § 1325(b)(3) with respect to debtors with CMI greater than applicable median family income. Line 45 is a reworded § 707(b)(1) that is both different from the statute and not consistent with the category of Other Necessary Expenses issued by the IRS that addresses charitable contributions. The IRS category limits charitable contributions to those that are a condition of employment or that meet the necessary expense tests, with the example given by the IRS of a minister required to tithe.

One fix would be to simply eliminate Line 45. Perhaps a better fix would be to reword Line 45 to be consistent with the charitable contribution Category of Other Necessary Expenses issued by the IRS. A third alternative would be a line that allows debtors to "contend" that a charitable deduction expense is appropriate.

Line 47. Section 707(b)(2)(A)(iii) states that calculation of average monthly payments on account of secured debts shall be based on "all amounts *scheduled* as contractually due to secured creditors in each month of the 60 months following the date of the petition." The instruction at Line 47 restates the statute as "total of all amounts contractually due to each secured creditor in the 60 months following the filing of the bankruptcy case, divided by 60." The importance of the word "scheduled" has already been noted in reported decisions. Interpreting that word will determine whether the secured debt expense amount is based on secured debts listed in the schedules or based on secured claims that will be paid through the plan. This difference is material, for example, when collateral is surrendered, sold or paid for by a third party through the Chapter 13 plan. The form should be amended to parrot the statutory phrasing.

As mentioned above, the instructions at Line 47 allow inclusion of payments for taxes and insurance "required by the mortgage." The limitation that taxes and insurance be "required by the mortgage" is not logical given the exclusion of real estate taxes from the Category of Other Necessary Expenses for taxes reported at Line 30. Especially rural Chapter 13 debtors pay their own real estate taxes directly to the taxing authority and those taxes are not included in the amortization schedules that will be consulted by debtors to fill in the boxes at Line 47. The instructions should be corrected to alert debtors that they should add any real estate taxes—whether required by the mortgage or not—at Line 30.

For consistency sake, it has to be noted that there is no instruction at Line 47 to exclude taxes or insurance that are already included in the Local Standards for Housing and Utilities reported at Lines 25(a), 25(b) and 26. In other words, despite the corruption of the IRS Local Standards elsewhere in Form B22C —for example, by breaking out "mortgage" and "non-mortgage" debt in a manner that is *not* issued by the IRS—there is no adjustment for taxes and insurance that the form instructs debtors to separately include at Line 47 notwithstanding that those taxes and insurance are already included by the IRS in the Local Standard amount. Ironically, Line 47 is more neutral with respect to real estate taxes and insurance but this neutrality at Line 47 is inconsistent with the lack of neutrality at Lines 25(a) and 25(b).

Line 48. A "cure amount" that debtors forget to include at Line 48 is creditor's attorney's fees, foreclosure expenses and the like. It would be helpful to include in the instruction at Line 48 a specific reference to those amounts as examples of amounts that must be paid to avoid repossession or foreclosure.

Line 49. Line 49 and § 707(b)(2)(A)(iv), of course, overlap the Category of Other Necessary Expenses issued by the IRS for "court ordered payments" at Line 33. As mentioned above, the exclusion of only "past due support obligations" at Line 33 leaves an overlap between Lines 33 and 49 to the extent a priority claim is also a "court ordered payment." I do not advocate further "netting" of this overlap in the form because that would inevitably inject even more statutory interpretation into the form. However, the form is curiously inconsistent in the exclusion at Line 33 of only past due support that would be included at Line 49.

There is another overlap between Line 49 and Line 30 that is not acknowledged in the form. The Category of Other Necessary Expenses issued by the IRS for "taxes" includes taxes that would be priority claims. The form does not address this overlap.

Missing altogether at Line 49 is an instruction to include the debtor's attorney's fees. There is an unfortunate comment to the form that "the Chapter 13 form does not provide a deduction from disposable income for the Chapter 13 debtor's anticipated attorneys fees. No specific statutory allowance for such a deduction exists, and none appears necessary." This is strange given that a Chapter 13 debtor's attorney's fees are an expense of administration entitled to priority in a Chapter 13 case under 11 U.S.C. §§ 329, 330, 503(b)(2) and 507(a)(2). Perhaps eliminating the comment would be the appropriate fix; or, an additional instruction at Line 49 to include attorney's fees, consistent with the statute.

Line 50. Section 707(b)(2)(A)(ii)(III) permits a deduction for the "actual administrative expenses of administering a Chapter 13 plan" up to 10% of "projected plan payments." Line 50 more narrowly takes the "average monthly Chapter 13 plan payment" and multiplies it by the current percentage fee calculated by the Attorney General for the district under 28 U.S.C. § 586(e)(1).

Line 50 does not account for all of the "administrative expenses" of a Chapter 13 case allowed by the statute. For example, as just mentioned with respect to Line 49, attorneys fees are an administrative expense not accounted for in Line 50. If attorneys fees are excluded at Line 49 (consistent with the Committee comments), then attorneys fees should be a line item added to average monthly administrative expenses at Line 50. There are many districts in which the amount determined by the Attorney General is less than 10% of projected plan payments and thus, there will be plenty of room at Line 50 for administrative expenses in addition to the 28 U.S.C. § 586(e) percentage fee. Perhaps another box should be added to Line 50 for average administrative expenses other than the percentage fee payable to the Chapter 13 trustee.

Subpart D/Line 52. Subpart D and Line 52 purport to total all deductions "allowed under § 707(b)(2)" but this comes prematurely. Section 1325(b)(3) incorporates § 707(b)(2)(B) for Chapter 13 debtors with CMI greater than applicable median family income. Section 707(b)(2)(B) allows "special circumstances" to justify "additional expenses or adjustments of current monthly income for which there is no reasonable alternative." As discussed below, with respect to Line 59, the "additional expense claims" allowed in Part VI of Form B22C, does not mirror the statute, is not sufficiently robust and comes too late to correct for the missing allowance in § 707(b)(2)(B).

The fix is at or about Line 52. A new line should be added that mimics the language of § 707(b)(2)(B) and allows the debtor to claim additional expenses *or* adjustments of current monthly income based on special circumstances with respect to which there is no reasonable alternative. A special circumstances fix at Line 52 won't address the question whether a special circumstances adjustment of CMI—consistent with § 707(b)(2)(B)—should occur in Part I of B22C, before CMI is used to calculate applicable commitment period.

Part V; Line 53. The importance of adding a "special circumstances" adjustment at Line 52 is demonstrated at Line 53. "Total current monthly income" will not be correctly stated here by reference to Line 20 as required by the instructions. Section 707(b)(2)(B) permits special circumstances adjustments to CMI and those adjustments are not accounted for in the form as currently constructed. The adjustments invited at Line 59 deal only with expenses and do not adjust CMI at all. The cross-reference at Line 53 to Line 20 picks up a calculation of CMI that will not be accurate for any debtor who has a special circumstances adjustment. The fix is to rework Line 52 as described immediately above and change the reference at Line 53 to CMI after any special circumstances adjustment.

Line 54. The restriction in the instruction at Line 54 that child support payments, foster care payments or disability payments for a dependent child are deductible only if "included in Line 7" should be eliminated. As discussed above, Line 7 identifies only "amounts paid by another person or entity on a regular basis for the household expenses of the debtor or the debtor's dependents." The instruction at Line 7 links § 101(10A)(A) and (B) in a manner not required by the statute and this cross-reference at Line 54 would not allow the debtor to deduct support income that is excluded by § 1325(b)(2) but does not fall within § 101(10A)(B). Examples would be child support that isn't paid on a regular basis and support received by the debtor that is reasonably necessary to be expended for a child but is not a "household expense." The fix is eliminate the cross-reference to Line 7 at Line 54.

Line 55. The instruction at Line 55 with respect to retirement plan contributions and loan repayments needs tweaking. With respect to qualified retirement plans, § 541(b)(7) excludes any amount "withheld by an employer from the wages of employees for payment as contributions." The

instruction at Line 54 dissimilarly refers to "contributions *or* wage deductions." Section 541(b)(7)(B) additionally excludes from the estate any amount "received by an employer from employees for payment as contributions" but there is uncertainty whether any "contribution" to a qualified retirement plan that was not withheld by an employer and received by an employer falls within the exclusion. In other words, the instruction at Line 55 that all "contributions *or* wage deductions" are excluded adopts an aggressive interpretation of the statute that is unnecessary to the form. The first part of the instruction should be corrected to read "amounts withheld by an employer from wages or received by an employer as contributions . . . [.]"

The second problem at Line 55 is the instruction to "enter the monthly average" with respect to repayment of loans from retirement plans specified in § 362(b)(19). Courts have already recognized that pension loan repayments specified in § 362(b)(19) may not be "materially altered" and do not constitute "disposable income" under § 1322(f) without regard to monthly averaging. *See In re Wiggs,* No. 06 B 70203, 2006 WL 2246432 (Bankr. N.D. Ill. Aug. 4, 2006). Requiring a "monthly average" at Line 55 distorts the disposable income calculation for any Chapter 13 debtor with CMI greater than applicable median family income who has a pension loan that will be repaid according to its terms in less than 60 months. A debtor with a pension loan repayment of $500 per month must be allowed a $500 per month deduction from CMI to calculate disposable income without regard to whether a "monthly average" would produce a lesser amount over the life of the plan. Otherwise, the form will require some debtors to "materially alter" the pension loan repayment terms in order to satisfy other conditions for confirmation. A fix would be to separate the pension loan repayment Subpart B in Line 55 and instruct the debtor to list the amount required to repay pension loans without material alteration of the terms.

Line 56. There is another significant statutory exclusion from CMI on the way to disposable income that is missing altogether in Part V that should be inserted after Line 55 and before the total at Line 56. 11 U.S.C. § 1325(b)(2) includes in disposable income only CMI that is "received" by the debtor. CMI on the other hand, begins in § 101(10A)(A) with income *received* by the debtor then adds, in § 101(10A)(B), amounts paid by others on a regular basis for the household expenses of the debtor and the debtor's dependents—without regard to whether those amounts are received by the debtor (or received by the debtor's spouse in a joint case). At some point, all Chapter 13 debtors must adjust CMI downward by amounts captured by § 101(10A) that are *not received* by the debtor or in a joint case, by the debtor or by the debtor's spouse. The "marital adjustment" at Line 19 will not accomplish this exclusion and there is no other place in Form B22C to make the adjustment. A reasonable fix would be to add a line before Line 56 that adjusts CMI consistent with § 1325(b)(2).

Line 57. Line 57 should include a cross-reference to Line 59—unless the "special circumstances" adjustment discussed above is made at Line 52. The point here is that § 707(b)(2)(B) permits Chapter 13 debtors with CMI greater than applicable median family income to assert special circumstances that either reduce CMI or increase expenses on the way to disposable income. As part of calculating "total adjustments to determine disposable income" at Line 57, the special circumstances adjustments must be made. As currently constructed, the expense side of the special circumstances allowance in § 707(b)(2)(B) is at Line 59—after the total adjustments are made to determine disposable income at Line 57. The additional expenses now addressed at Line 59 must be calculated and deducted before the debtor reaches Line 57.

Part VI/Line 59. The "additional expense claims" or "other expenses" at Line 59 are curiously worded and fundamentally misleading. The "health and welfare" condition stated in the

instruction at Line 59 suggests that this comes from the IRS Manual but, as mentioned above, § 707(b)(2)(B)—not referenced anywhere at Line 59—permits additional expenses based more broadly on "special circumstances." There is no mention of a "health and welfare" standard in § 707(b)(2)(B). Oddly, the additional foundation and documentation requirements in § 707(b)(2)(B) are nowhere mentioned in the instruction at Line 59.

Line 59 should be rewritten to summarize the statutory conditions for claiming a special circumstances expense addition or adjustment under § 707(b)(2)(B). Also, as explained above, Line 59 needs to be moved up in the form—perhaps to Line 52—so that any additional expenses claimed as special circumstances under § 707(b)(2)(B) are subtracted from CMI before the calculation of monthly disposable income at Line 58. In other words, Part VI can be eliminated and an adjustment for § 707(b)(2)(B) added in Part V or perhaps at the end of Part IV.

SCHEDULES I AND J TO OFFICIAL FORM 6

BAPCPA created a need to amend Schedules I and J to Official Form 6 for use in Chapter 13 cases.

For all Chapter 13 debtors, the income side of the disposable income calculation in § 1325(b) begins with current monthly income (CMI). New Form B22C at Parts I–III purports to calculate CMI for all debtors but does so inaccurately (*see* comments to Form B22C). Schedule I to Official Form 6 is a statement of "current income"—not a statement of current monthly income. The construction and content of Schedule I (appropriately) does not reflect § 101(10A)—the statutory definition for current monthly income.

Debtors and some courts are confused by the existence of two Official Forms dealing with the income side of a Chapter 13 debtor's financial life. There is nothing in Schedule I to signal that Schedule I is *not* a calculation of CMI for purposes of § 1325(b). Some courts have concluded to use Schedule I rather than Parts I–III of Form B22C for the income side of the disposable income calculation in § 1325(b)(2). Other courts have more accurately read the statute to require the use of CMI from Form B22C as the income side of the disposable income calculation in § 1325(b)(2). Still other courts are using a hybrid or combination of Schedules I and Parts I–III of Form B22C to determine CMI for § 1325(b)(2) purposes.

At the big picture level, the Committee should address how the forms could minimize the confusion among debtors and the courts with respect to the income side of the disposable income test. One suggestion would be clearer instructions that Schedule I to Official Form 6 is *not* to be used to calculate CMI. Another possible approach would be to combine Schedule I and Parts I–III of Form B22C into a single form that displays income information in columns—one column for monthly

income at the petition and a second parallel column for monthly income determined as an average for the six months before the petition.

Schedule J to Form 6 is problematic because of the instruction at Line 23 of Form B22C. Chapter 13 debtors with CMI *less than* applicable median family income are (appropriately) instructed at Line 23 to skip the expense calculations in Parts IV, V and VI of Form B22C. The only expense information an under-median-income Chapter 13 debtor provides is in Schedule J to Form 6—"current expenditures of individual debtors."

Unfortunately, Schedule J to Form 6 was constructed at a time and reflects a statutory scheme that is different than BAPCPA. Reported decisions already indicate that the courts are going to use Schedule J for the expense side of the disposable income calculation with respect to Chapter 13 debtors with CMI less than applicable median family income. Schedule J can be modified to accomplish this task.

For example, Line 13 of Schedule J instructs debtors not to list payments "included in the plan" with respect to installment debt for a car or other collateral. Now that BAPCPA has redefined disposable income to be the entitlement of *unsecured* creditors in Chapter 13 cases, all secured debt payments must be accounted for as expense deductions from CMI on the way to disposable income for debtors with CMI less than applicable median family income. Line 13 of Schedule J to Form 6 could be redrafted to require debtors to list and account for all secured debt repayment that is reasonable and necessary for the maintenance and support of the debtor or a dependent of the debtor.

Line 16 of Schedule J describes a deduction for expenses from operation of a business, profession or farm. As discussed elsewhere, at Lines 3 and 4 of Form B22C, debtors are instructed to deduct ordinary and necessary business and operating expenses from income to determine CMI.

Although the business expense deduction at Lines 3 and 4 of Form B22C arguably is in error, the result is that Schedule J expenses cannot be subtracted from CMI to accurately determine disposable income for business debtors with CMI less than applicable median family income.

The start of a fix is to correct Lines 3 and 4 of Form B22C, as discussed elsewhere. If the Committee insists on deducting business and operating expenses at Lines 3 and 4 of Form B22C, then it is not obvious how Schedule J can accurately be the Statement of Current Expenditures required by the statute and be used as the expense side of the disposable income calculation for debtors with CMI less than applicable median family income. Perhaps a warning instruction is needed somewhere in Schedule J that business and operating expenses are already accounted for at Lines 3 and 4 of Form B22C.

There is no place on Schedule J for administrative expenses. Adding a line to Schedule J on which the debtor estimates the expenses of administration of the Chapter 13 case—including attorneys fees and trustees fees—would facilitate use of Schedule J for the expense side of the disposable income calculation for debtors with CMI less than applicable median family income.

Schedules I and J (appropriately?) do not purport to account for four other adjustments of CMI necessary to determine disposable income for a debtor with CMI less than applicable median income: 1) CMI not "received" by the debtor; 2) child support, foster care and disability payments; 3) pension loan repayments; and 4) retirement deductions. Every under-median Chapter 13 debtor must perform a disposable income calculation but there is no form to channel these calculations into a uniform presentation. With adjustments, Schedule J gets the 5th component—amounts reasonably necessary to be expended—but it would be worth the effort to add a page to Form 6 that takes the

CMI calculated in Parts I–III of B22C and adjusts it to produce disposable income for under-median-income debtors.

The message here is that Schedule J needs a new look in light of developing case law that judges are going to use Schedule J to determine expenses deducted from CMI to determine disposable income for Chapter 13 debtors with CMI less than applicable median family income. It would be a substantial contribution to rework Schedule J so that it would actually produce an accurate expense deduction for disposable income test purposes in under-median Chapter 13 cases.

Thanks for listening.