BROWN BAG LUNCH AND LEARN – Part II
Means Test and Other Eligibility Requirements

MEANS TEST | **NOTES**

I. Goal
   A. To "steer filers who can repay a portion of their debts away from chapter 7 bankruptcy." *Remarks of Senator Charles Grassley, initiating floor debate on S. 420 (3/5/01).*

II. Mechanism
   A. Fits into a new **§ 707(b)** of the Code
   B. Employs a 3-step abuse presumption
   C. Limits rebuttal of presumption
   D. Creates new duties for debtors' counsel and case trustees

III. New **§ 707(b)** of the Code:
   A. Term "substantial abuse" abandoned for just, "abuse"
   B. Bad faith and "totality of circumstances" stated as grounds of abuse
   C. Option of conversion to Chapter 13
   D. The means test is designed to create a presumption that a Chapter 7 case is an abuse wherever the debtor appears to have sufficient income to pay substantial amounts of general unsecured debt
   E. Breadth of standing to object based on abuse determined by comparison of debtor's "current monthly income" to median income of applicable state **§ 101(10A)** (*See chart below*)
      1. Current monthly income does NOT equal actual income.
      2. Means test uses debtor's 6-month average income,
         a. based on the 6 calendar months preceding filing if the debtor files a "schedule of current income" with petition as required under
            § 521(a)(1)(B)(ii) – § 101(10A)(i)
         b. based on the 6-month period ending on the date on which current income is determined by the court, if bankruptcy filed without schedule of current income **– § 101(10A)(ii)**
      3. Includes regular contributions to expenses (*e.g.*, from non-filing spouse), but does not include Social Security benefits or "victim payments" (war crimes, international or domestic terrorism) – **§ 101(10A)(B)**

4. Averaging of income may penalize debtors recently out of work (imputation of non-existent income) or military personnel on deployment (increased hazard pay skews result)

Standing for § 707(b) Objections

	Debtor's income at or below applicable median	**Debtor's income greater than applicable median**
General grounds: bad faith, totality of circumstances	Judges, U.S. Trustee only (like current law)	All parties in interest
The means-test presumption of abuse	Nobody at all	All parties in interest

IV. Means test overview

1. Calculate "current monthly income"
2. Subtract allowed deductions
3. Compare result to trigger points

V. Step 1: Calculate "current monthly income" – *See above* –

VI. Step 2 – Subtract Allowed Deductions

A. Living expenses determined by reference to IRS standards. – **§707(b)(2)(A)(ii)(I)** (*currently undergoing review - so stay tuned for possible changes*)

1. National Standards (see www.irs.gov/businesses/small/article/0,,id=104627,00.html)
   a. Food, Housekeeping Supplies, Apparel and Services, Personal Care Products and Services, and Miscellaneous
      (1) 5% increase to food and clothing if "reasonable and necessary" – **§ 707(b)(2)(A)(ii)(I)**
      (2) interesting quirk about IRS national standards – families that make more are allowed to spend more
      (3) probably not limited by actual expensess
2. Local Standards (county specific)
   a. Housing and Utilities
      (1) See http://www.irs.gov/businesses/small/article/0,,id=104920,00.html
      (2) May be adjusted upward if debtor provides

documentation that actual, higher home energy costs are reasonable and necessary **– § 707(b)(2)(A)(ii)(V)**

(3) lesser of standards or actual amounts

b. Transportation

(1) See http://www.irs.gov/businesses/small/article/0,,id=104623,00.html

3. "Other Necessary Expenses"

a. Examples: accounting and legal fees, dependent care, child care, life insurance, taxes, internet services. *See reference materials for expanded list.*

b. May allow for judicial discretion.

B. Secured debt (1/60 of 5-yr payments), including arrearages on primary residence, motor vehicle, or other property necessary for the support of the debtor's dependents **– § 707(b)(2)(A)(iii)**

1. Statute is not clear on relationship between allowance for housing AND deduction of mortgage payments - is debtor able to "double-dip"?

C. Priority debt (1/60 of 5-yr payments) **– § 707(b)(2)(A)(iv)**

D. Charitable donations **– § 707(b)(1)**

1. Probably capped at 15%, but statute is not clear; may be higher if debtor already donating at higher rate.

E. Ch. 13 fees (up to 10% of payments) **– § 707(b)(2)(A)(III)**

F. Miscellaneous Deductions

1. Health insurance, disability insurance, and health savings account expenses for debtor and dependents **– § 707(b)(2)(A)(ii)(I)**

2. Expenses for care of elderly, chronically ill, or disabled immediate family member **– § 707(b)(2)(A)(ii)(II)**

3. Expenses for protection from domestic violence **– § 707(b)(2)(A)(ii)(I)**

4. Private school ($1,500/kid under 18) with documentation why expenses are reasonable and necessary **– § 707(b)(2)(A)(ii)(IV)**

VII. Step 3 - Compare result to trigger points: **– § 707(b)(2)(A)(I)**

A. $166.67 or more, presumed abusive

B. $100 to $166.66, may be presumed abusive — if enough to pay 25% of general unsecured claims over 5 years (so, claims of $24 - 40,000)

C. $99.99 or less, not presumed abusive

VIII. To rebut presumption debtor must show income under trigger points by:

A. showing special circumstances that justify additional expenses or adjustments of current monthly income for which there is no reasonable alternative;

B. itemizing each additional expense or adjustment of income;

C. providing documentation for such expense or adjustment to income and a detailed explanation of the special circumstances that make such expenses or adjustment to income necessary and reasonable; and

D. attesting under oath to the accuracy of any information provided to demonstrate that additional expenses or adjustments to income are required. **– – § 707(b)(2)**

IX. Duties of the UST / Panel Trustees

A. The UST must review all materials submitted by the debtor, and, within 10 days after the § 341 meeting, [the case trustee] must file a statement with the court as to whether the debtor's case raises a presumption of abuse **– § 704(b)(1)**

B. If the presumption applies, and if the debtor's income is at or above the applicable median, then, within 30 days after filing a statement under § 704(b)(1), the UST (the case trustee) must file either a § 707(b) motion or a statement explaining why such a motion is not being filed **– § 704(b)(2)**

C. No additional compensation for statements or for unsuccessful § 707(b) motions

X. Likely Effects of the Means Test

A. Few cases of presumed abuse under the means test.

B. New § 707(b) depending more on "totality of circumstances" than on the means test.

C. Consumer bankruptcy more expensive for all participants.

D. Chapter 7 trustees under-compensated.

E. Greater power and responsibility for U.S. Trustee.

OTHER ELIGIBILITY REQUIREMENTS

I. Credit Counseling

A. **Section109(h)(1)** requires that individual debtors receive a "briefing" from an approved nonprofit budget and credit counseling agency in the 180 days prior to filing

1. Counseling may be accomplished by telephone or internet. – **§ 109(h)(1)**
2. Clerk will have list of counseling agencies, once they are approved by UST – **§ 111(a)(1)**
3. If counseling agencies charge a fee, fee must be reasonable and they must provide services "without regard to ability to pay fee" – **§ 111(d)(1)(E)**

B. Exceptions to credit counseling requirement:

1. UST has determined that agencies in district are not reasonably able to provide adequate services to the individuals seeking such counseling; **– § 109(h)(2)**
2. The debtor is mentally incompetent, incapable, disabled, or away on military duty **– § 109(h)(4)**; or
3. The debtor must make a showing of exigent circumstances – **§ 109(h)(3)**
   a. Certificate explaining exigent circumstances must include statement that debtor requested counseling from an approved provider but was unable to obtain the services during the 5 days following the request.

   * This exception expires after 30 days, which period can only be extended by 15 days by the court.*

II. Extension of Period Between Discharges

A. Chapter 7 discharge:

1. 8 years from chapter 7 discharge - **§ 727(a)(8)**
2. 6 years from chapter 13 discharge **- § 727(a)(9)**
   a. no restriction if previous 13 paid 100% of claims or 70% of claims and was debtor's best efforts.

B. Chapter 13 discharge

1. 4 years after chapter 7 discharge **- § 1328(f)(1)**
2. 2 years after previous chapter 13 discharge **- § 1328(f)(2)**

MEDIAN INCOME

State	Family Size	Income
Missouri	2-person families	44,437
Missouri	3-person families	49,134
Missouri	4-person families	60,528
Missouri	5-person families	56,065
Missouri	6-person families	60,077
Missouri	7-or-more-person families	46,763
Kansas	2-person families	44,578
Kansas	3-person families	52,003
Kansas	4-person families	59,484
Kansas	5-person families	61,240
Kansas	6-person families	61,358
Kansas	7-or-more-person families	57,205

From Census Bureau (*see cite in outline*)