

**COMMENTS ON THE PROPOSED
NEW OFFICIAL BANKRUPTCY FORMS**

Submitted by Edward C. Boltz as President and on behalf of the
National Association of Consumer Bankruptcy Attorneys

February 14, 2013

A. General Comments About the Graphics and Formatting of Proposed Amended Official Forms:

1. Too much white space and too many pages.
2. Grayed background is inadvisable:
 - a. wastes toner when printing or copying; and
 - b. copier quality on printer, copier or scanner may make the text difficult to read.
3. Black bars with white text create the same problems.
4. Repeating the full basic case information on the first page of each form is a waste of space and is not necessary to identify the case.
5. Putting an “x” everywhere there is a place for a signature is confusing to the debtor. Let the attorney put the “x” where it is applicable and leave it off where the particular debtor does not need to sign. It is intended to be helpful, but it is not.
6. Make sure the space for signatures is large enough for the purpose (often it is not).
7. Changes are intended to make it easier for *pro se* debtors to complete:
 - a. The layout of the new forms actually makes them more difficult to read; and
 - b. The use of simpler words does not assure that a *pro se* debtor will understand the meaning of the words in the context of the bankruptcy form
8. NACBA suggests that these graphic and formatting issues both be corrected and that the Comments to the Forms clearly indicate that graphic and formatting considerations can be altered and further to indicate that sections of the Forms that are not applicable in a case can be “collapsed” rather than requiring unnecessary and unused portions to be printed and included with the petition filed with the courts.

B. Review of Proposed Amended Official Forms:

Form 3A: Application for Individuals to Pay the Filing Fee in Installments

1. NACBA suggests the deletion of the phrase “or anyone else” in *Part 2: Sign Here*, because a Chapter 13 debtor will often be making plan payments to the Chapter 13 Trustee while filing fee installments are still being paid.
2. NACBA suggests inclusion of an option allowing the filing fee installments to be paid through the conduit of the Chapter 13 Trustee, as is presently done in many districts and avoids the difficulties of separate payments by the debtor and collection responsibilities for the Clerk of Court.

Part 2: Sign Here

By signing here, you state that you are unable to pay the full filing fee at once, that you want to pay the fee in installments, and that you understand that:

- You must pay your entire filing fee before you make any more payments or transfer any more property to an attorney, bankruptcy petition preparer, or anyone else in connection with your bankruptcy case.
- You must pay the entire fee no later than 120 days after you first file for bankruptcy, unless the court extends your deadline to 180 days. Your debts will not be discharged until your entire fee is paid.
- If you do not make any payment when it is due, your bankruptcy case may be dismissed, and your rights in other bankruptcy proceedings may be affected.

Form 3B: Application to Have the Chapter 7 Filing Fee Waived

1. NACBA questions the need to ask debtors about non-cash government housing assistance. If the debtor is receiving non-cash housing assistance, the debtor usually does not know the value of the assistance nor does the difference between that value and the actual amount paid for rent increase the debtor’s ability to pay the court filing fee. For example: If the market rent of the debtor’s unit is \$1,500, but the debtor’s share of the rent is \$300, the fact that the value of the assistance is \$1,200 does not make the debtor more able to pay the court filing fee.

Part 1: Tell the Court About Your Family and Your Family's Income

1. What is the size of your family?
 Your family includes you, your spouse, and any dependents listed on Schedule J: Current Expenditures of Individual Debtor(s) (Official Form 6J).
 Number of people _____

Check all that apply.
 You
 Your spouse
 Your dependents _____
 How many dependents?

2. Fill in your family's average monthly income.
 Include your spouse's income if your spouse is living with you, even if your spouse is not filing.
 Do not include your spouse's income if you are separated and your spouse is not filing with you.
 Do not include non-cash governmental assistance such as food stamps or housing subsidies.

Person in your family	That person's average monthly net income (take-home pay)
You	\$ _____
Your spouse	+ \$ _____
Total	\$ _____

Add your income and your spouse's income or copy line 10 of Schedule I: Your Income, if you have already filled it out.
 Your family's average monthly net income

3. Do you receive any non-cash governmental assistance not included in your answer on line 2?
 No
 Yes. Explain: _____

Type of assistance	Monthly dollar value
_____	\$ _____

- NACBA suggests that the current form seems cleaner, easier to read, and to fill out

Form 6I: Schedule I: Your Income

- NACBA questions the relocation of the list of dependents to Schedule J. The following section is currently in Schedule I:

Debtor's Marital Status:	DEPENDENTS OF DEBTOR AND SPOUSE	
	RELATIONSHIP(S):	AGE(S):
Employment:	DEBTOR	SPOUSE
Occupation		
Name of Employer		
How long employed		
Address of Employer		

- The current forms have no place to include second job information, and that has not been fixed in the proposed forms.

3. NACBA suggests that Line 5d should itemize the types of insurance to more closely match the categories used on the B22 forms.
4. NACBA suggests that, as the B22 forms allow deduction of contributions to Health Savings Accounts, a separate line for such contribution should be specifically included.
5. More lines for “other” income would be helpful.
6. Line 13 does not include enough space to provide the requested information (the current form provides more space).

Form 6J: Schedule J: Your Expenses

1. NACBA Suggests, as above, that the listing of dependents (moved from Schedule I) uses an inordinate amount of white space and the new, more detailed wording seems confusing and unnecessary.
2. It seems unnecessary to create two columns of expenses for Chapter 13 debtors (as of plan confirmation date). If this approach is adopted, each Chapter 13 debtor will have to prepare *three separate budgets* (22-C, plus two columns of J), not just the current two budgets. Such an approach is not required by the Bankruptcy Code, and is extremely burdensome for the debtor. Why is the pre-bankruptcy budget necessary at all? To address the Committee Notes regarding the purpose of the two columns, the form could simply provide a second check-box to indicate that the budget amounts on the form are based upon the debtor’s circumstances as of the date of the amendment, to cover the situation where amended Schedules I or J filed later in the case.

Part 2: Estimate Your Ongoing Monthly Expenses			
		<i>Column A For all individuals</i>	<i>Column B For Chapter 13 ONLY</i>
		Your expenses as of the date you file for bankruptcy	What your expenses will be if your current plan is confirmed
4. The rental or home ownership expenses for your residence. Include first mortgage payments and any rent for the ground or lot.	4.	\$ _____	\$ _____
If not included in line 4:			
4a. Real estate taxes	4a.	\$ _____	\$ _____
4b. Property, homeowner's, or renter's insurance	4b.	\$ _____	\$ _____
4c. Home maintenance, repair, and upkeep expenses	4c.	\$ _____	\$ _____
4d. Homeowner's association or condominium dues	4d.	\$ _____	\$ _____

3. Matching the insurance categories with Schedule I and form 22 would be helpful
4. NACBA believes that student loan payments in Chapter 7 are an appropriate expense to include on Schedule J, as such would be non-dischargeable in most cases and required to be paid.

Similarly, NACBA believes that in appropriate circumstances, Chapter 13 Debtors should be permitted to separately classify student loans and continue to pay those claims, either directly or through the Chapter 13 plan. Because many courts and trustees, however, object to budgeting these payments in Chapter 7 and in Chapter 13, if debtors provide for monthly payments on student loans, inclusion of this expense on Schedule J would seem to be a trap for the unwary. NACBA suggests that it would be preferable if the Comments indicated that debtors could include student loan payments under “Other” if appropriate.

17. Installment or lease payments:				
17a. Car payments for Vehicle 1	17a.	\$ _____		\$ _____
17b. Car payments for Vehicle 2	17b.	\$ _____		\$ _____
17c. Student loan payments	17c.	\$ _____		\$ _____
17d. Other. Specify: _____	17d.	\$ _____		\$ _____
17e. Other. Specify: _____	17e.	\$ _____		\$ _____

5. NACBA suggests that it would be helpful to note on Line 18 that the debtor should not duplicate amounts paid through payroll deduction, and which show up on Schedule I.
6. More lines for Line 21 Other Expenses should be included.
7. NACBA suggest that Schedule J specifically include a line (or lines) for emergencies and miscellaneous, as is provided in the National Standards under food and clothing on the B22 forms.
8. Similarly, the types of educational expenses on Schedule J should mirror the B22 line items more closely.

Form 22A-1: Chapter 7 Statement of Your Current Monthly Income

1. NACBA suggests that a shortened version be used for Below Median Family Income debtors.
2. See discussion under B22C-1 regarding business expenses.
3. NACBA believes that the determination of how much of a nondebtor spouse’s income should be included in current monthly income, what has come to be called the “marital deduction,” belongs on Forms 22A-1 and 22C-1. Those forms calculate the debtor’s current monthly income. Although the current forms 22A and 22C take the position that the “current monthly income of the debtor and the debtor’s spouse combined” includes all of the income of a nondebtor spouse, most courts have held that a nondebtor spouse does not have current monthly income as that term is defined in section 101 and thus not all of the nondebtor spouse’s income should be included in that calculation. See, e.g., *In re Vollen*, 426 B.R. 359 (Bankr. D. Kan. 2010); *In re Stansell*, 395 B.R. 457 (Bankr. D.

Idaho 2008); *In re Grubbs*, 2007 WL 4418146 (Bankr. E.D. Va. Dec. 14, 2007); *Collier on Bankruptcy* ¶ 1325.11[4][d] (16th Ed.). Therefore, the income calculated on Form 22A-1 and 22C-1 for purposes of section 707(b)(7) and 1325(b)(4) should not include income of a nondebtor spouse not paid on a regular basis for the household expenses of the debtor or the debtor's dependents.

Form 22A-2: Chapter 7 Means Test Calculation

1. Added on to B22A-1 to include deduction of allowable expenses for Above Median Family Income debtors.
2. Changed the itemization of monthly mortgage payments from the equivalent of current line 42 of B22A to B20B(b), without any obvious reason for doing so.

Form 22B: Chapter 11 Statement of Your Current Monthly Income

1. No obvious significant changes.

Form 22C-1: Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period

1. NACBA suggests that a shortened version be used for Below Median Family Income debtors.
2. A separate form for claiming Reasonably Necessary Expenses should be provided. Schedule J data is not equivalent to the data that is needed to offset the Current Monthly Income for a Below Median Family Income debtor.

5. Net income from operating a business, profession, or farm			
Gross receipts (before all deductions)	\$ _____		
Ordinary and necessary operating expenses	- \$ _____		
Net monthly income from a business, profession, or farm	\$ _____	Copy here →	\$ _____ \$ _____

Form 22C-2: Chapter 13 Calculation of Your Disposable Income

1. Added on to B22C-1 to include deduction of allowable expenses for Above Median Family Income debtors.
2. Like B22A-2, changed the itemization of monthly mortgage payments from the equivalent of current line 47 of 22C to 25B(b), without any obvious reason for doing so.
3. Differences between Special Circumstances and *Lanning* [*Hamilton v. Lanning*, 130 S.Ct. 2464, 177 L.Ed.2d 23 (2010)] adjustment

Describe the special circumstance	Amount of expense	
39a. _____	\$ _____	
39b. _____	\$ _____	
39c. _____	+ \$ _____	
39d. Total. Add lines 39a through 39c.....39d.	\$ _____	Copy 39d here → + \$ _____
40. Total adjustments. Add lines 36 through 39d.		\$ _____ Copy total here → - \$ _____
41. Calculate your monthly disposable income under § 1325(b)(2). Subtract line 40 from line 35.		\$ _____

- As drafted, the 22C-2 form does not provide a line to take the *Lanning* adjustments, even at the end, where we do not believe they belong.
- See C. below for detailed discussion of Part 3, the *Lanning* adjustment.

Part 3: Change in Income or Expenses

42. Change in income or expenses. If the income in Form 22C-1 or the expenses you reported in this form has changed or is virtually certain to change during the 12 months after the date you filed your bankruptcy petition, fill in the information below. For example, if the wages reported increased after you filed your petition, check 22C-1 in the first column, enter line 2 in the second column, explain why the wages increased, fill in when the increase occurred, and fill in the amount of the increase.

Form	Line	Reason for change	Date of change	Increase or decrease?	Amount of change
<input type="checkbox"/> B22C-1 <input type="checkbox"/> B22C-2	____		____	<input type="checkbox"/> Increase <input type="checkbox"/> Decrease	\$ _____
<input type="checkbox"/> B22C-1 <input type="checkbox"/> B22C-2	____		____	<input type="checkbox"/> Increase <input type="checkbox"/> Decrease	\$ _____
<input type="checkbox"/> B22C-1 <input type="checkbox"/> B22C-2	____		____	<input type="checkbox"/> Increase <input type="checkbox"/> Decrease	\$ _____
<input type="checkbox"/> B22C-1 <input type="checkbox"/> B22C-2	____		____	<input type="checkbox"/> Increase <input type="checkbox"/> Decrease	\$ _____

- C. Review of Proposed 22-C-2 Provision for the Lanning Adjustment (See Above):**
- NACBA believes that the income or expenses “known or virtually certain” on the plan confirmation date are to be used, regardless of proximity, and not such amounts that might be known or virtually certain only within 12 months, as stated on the proposed form.
 - NACBA believes that *Lanning* adjustments apply to each line item and not simply to the bottom line, Disposable Income.

a. A debtor could appear to be Above Median Family Income without the *Lanning* adjustment, but with it would be Below Median Family Income, thus changing the *applicable commitment period*. That seems more consistent with the intent of the Supreme Court in *Lanning*.

b. *Lanning* (130 S.Ct. at 2478) states:
“Consistent with the text of § 1325 and pre-BAPCPA practice, we hold that when a bankruptcy court calculates a debtor’s *projected disposable income*, the court may account for changes in the debtor’s **income** or **expenses** that are **known or virtually certain** at the **time of confirmation**.”

Lanning does not instruct the court to adjust the **disposable income**, as would be the case if the adjustment was taken at the end of the 22C, as is done in the proposed amended form. The instruction regarding adjustments is to “account for changes in the debtor’s income or expenses,” not to adjust the disposable income.

Lanning places the adjustment in the context of calculating **projected disposable income**, which is done, as follows:
(22C income (Lanning-adjusted) minus 22C allowed expenses (Lanning-adjusted) equals Disposable Income) times Applicable Commitment Period equals Projected Disposable Income.

4. NACBA believes that *Lanning* adjustments should apply in **exceptional or unusual cases only** and that the forms should state as such. An interpretation of *Lanning* that leads to adjustments in a significant portion of cases is probably not consistent with *Lanning*.

Lanning (130 S.Ct. at 2475) states:
“As the Tenth Circuit recognized in this case, a court taking the forward-looking approach should begin by calculating disposable income, and in most cases, nothing more is required. **It is only in unusual cases** that a court may go further and take into account other known or virtually certain information about the debtor’s future income or expenses.”

Part I. REPORT OF INCOME				
1	Marital/filing status. Check the box that applies and complete the balance of this part of this statement as directed. a. <input type="checkbox"/> Unmarried. Complete only Column A ("Debtor's Income") for Lines 2-10. b. <input type="checkbox"/> Married. Complete both Column A ("Debtor's Income") and Column B ("Spouse's Income") for Lines 2-10.			
	All figures must reflect average monthly income received from all sources, derived during the six calendar months prior to filing the bankruptcy case, ending on the last day of the month before the filing. If the amount of monthly income varied during the six months, you must divide the six-month total by six, and enter the result on the appropriate line.			Column A Debtor's Income
2	Gross wages, salary, tips, bonuses, overtime, commissions.	\$	\$	Lanning Adjustment
3	Income from the operation of a business, profession, or farm. Subtract Line b from Line a and enter the difference in the appropriate column(s) of Line 3. If you operate more than one business, profession or farm, enter aggregate numbers and provide details on an attachment. Do not enter a number less than zero. Do not include any part of the business expenses entered on Line b as a deduction in Part IV.			
	a.	Gross receipts	\$	
	b.	Ordinary and necessary business expenses	\$	
	c.	Business income	Subtract Line b from Line a	\$

D. Proposed CHANGES to 22-C-2 Provision for the Lanning Adjustment:

Instructions:

1. Adjust income and expense entries in exceptional or unusual circumstances to account for significant "known or virtually certain changes at the time of confirmation," in accordance with *Hamilton v. Lanning* (Lanning), 506 U.S. ___, 130 S.Ct. 2464, 177 L.Ed.2d 23 (2010)
2. In new Part VII. Explanations of Lanning Adjustments Claimed:
 - a. Enter the Line number (and Column letter, if applicable) of the adjusted dollar amount.
 - b. In "Reason for Change," describe the exceptional or unusual circumstances that caused or will cause a significant change in the income or expense item to be known or virtually certain at the time of confirmation.

NACBA believes that the section of Form 22C-2 dealing with the "Lanning adjustments" should allow the debtor to calculate projected disposable income after taking the adjustments into account, in accordance with the Lanning decision. Therefore, a line 43 should be added to state the debtor's adjusted projected disposable income after the Lanning adjustments to income and expenses.

APPENDIX: Suggested Forms

1. NACBA suggests that a Statement of Reasonably Necessary Expenses for below median income debtor in Chapter 13 be included.

Comment [HS1]: I thought we were deleting this.