

# BANKRUPTCY LAW

## PRINCIPLES, POLICIES, AND PRACTICE FOURTH EDITION

2016 Supplement

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## CHAPTER 2

# INVOKING BANKRUPTCY RELIEF

*On page 77, replace the dollar amounts in paragraph at top of page with the following:*

“\$1,250” should be “\$1,300”

“\$18,675” should be “\$19,250”

“\$12,475” should be “\$12,850”

*On page 78, at the end of the second to last paragraph, add “See Official Form 103B.”*

*On pages 78-79, replace the numbers of the Official Forms and the letters on the Schedules with the following. Note that all Bankruptcy Forms now have “B” as a precedent; that is not included below:*

“3” should be “103A”

“6” should be “106”

“A, B” should be “A/B”

“E, and F” should be “E/F”

“7” should be “107”

“4” should be “104”

“22” should be “122A-1”

“8” should be “108”

*On page 102, substitute the following for the first URL and the two sentences subsequent:*

[https://www.justice.gov/ust/eo/bapcpa/20160501/bci\\_data/median\\_income\\_table.htm](https://www.justice.gov/ust/eo/bapcpa/20160501/bci_data/median_income_table.htm)

So, for example, in Illinois, the single earner income median applicable to cases filed on or after May 1, 2016 is \$49,741. The median income for a family of four in Illinois is \$86,921.

*On page 102, in the sentence preceding the second URL, replace “Form B22A2” with “B122A-2.” After that sentence, add the following:*

Note that the Official Bankruptcy Forms were revised and renumbered effective December 1, 2015. For example, old Form B22A2 became Form B122A-2.

*On page 102, substitute the following for the second URL:*

<http://www.uscourts.gov/forms/means-test-forms/chapter-7-means-test-calculation>

*In the middle of page 103, substitute the following for “d.,” and the first full paragraph following the alphabetical list:*

- d. The debtor fails the means test if that total is not less than the *lesser* of:
- (i) \$7,700 *or* 25% of the debtor’s nonpriority unsecured claims, whichever is *greater*, § 707(b)(2)(A)(i)(I)

*or*

  - (ii) \$12,850, § 707(b)(2)(A)(i)(II).

Thus, the range of repayment capacity that may demonstrate presumptive abuse ranges from a low of \$7,700 to a high of \$12,850 (depending on the amount of nonpriority unsecured claims). That means that any individual debtor with primarily consumer debts whose family income is above the state median and who has at least \$128.34 per month in repayment capacity according to the means test could potentially face a presumption of abuse, and a debtor with excess income of \$214.17 per month always would face the presumption.

*On page 104, substitute the following for the facts of Problem 2.5:*

Debtor and his spouse both work. Combined, their “current monthly income” is \$5,400 per month. The Illinois state median income for 2-person families is \$63,896 per year (as of May 1, 2016). Debtor is self-employed as a painting contractor, and his spouse has a steady wage-earning job. Under the means test, their deductible monthly expenses are as follows: \$2,900 (net of secured debt payments) under the IRS standards; secured debts of \$1,800; priority debts of \$300; and various other deductible expenses of \$100, for a total of \$5,100. Their combined nonpriority unsecured debts are \$80,000. They want to file chapter 7, and come to see you for advice.

*On page 105, substitute the following for the clause preceding the URL near the middle of 105, the URL itself, and the paragraph subsequent to the URL :*

See (as of May 1, 2016):

[https://www.justice.gov/ust/eo/bapcpa/20160501/bci\\_data/median\\_income\\_table.htm](https://www.justice.gov/ust/eo/bapcpa/20160501/bci_data/median_income_table.htm)

If the debtor is in a household of more than 4 individuals, the highest median family income of the applicable state for a family of 4 or fewer individuals is used, plus an additional \$700 per month (or \$8,400 per year) for each individual in excess of four. § 707(b)(7)(A).

*On page 105, substitute the following for the last sentence of Problem 2.6:*

For cases filed on or after May 1, 2016, the median income for a family of four in New York was \$88,747 and in New Jersey was \$111,088.

*On pages 108 through 115, substitute “Form B22A2” with “B122A-2.”*

*On page 108, substitute the following URL in the second sentence of the first paragraph:*

<http://www.uscourts.gov/forms/means-test-forms/chapter-7-means-test-calculation>).

*On page 108, in the paragraph that is captioned “Additional Living Expense Deductions,” change “\$1,875” to “\$1,925.”*

*On page 108, for the first URL under “(a) Living Expenses,” substitute the following:*

<https://www.justice.gov/ust/means-testing/20160501>

*On page 109, substitute the following for the URL and the ensuing “applicable to” parenthetical in the first full paragraph:*

<https://www.justice.gov/ust/means-testing/20160501>

(applicable to cases filed on or after 05/01/16, and updated periodically).

*On pages 109 and 110, substitute the following for the text following the heading “National Standards”:*

The National Standards establish allowances for food, clothing, and other items. For cases filed on or after May 1, 2016 (and to be updated periodically), see:

[https://www.justice.gov/ust/eo/bapcpa/20160501/bci\\_data/national\\_expense\\_standards.htm](https://www.justice.gov/ust/eo/bapcpa/20160501/bci_data/national_expense_standards.htm)

The amount of these allowances increases with family size. There is also a separate national allowance for out-of-pocket healthcare expenses. That allowance is larger for a person who is 65 or older (\$130 per month) than for those younger than 65 (\$54 per month). See:

[https://www.justice.gov/ust/eo/bapcpa/20160501/bci\\_data/national\\_oop\\_healthcare.htm](https://www.justice.gov/ust/eo/bapcpa/20160501/bci_data/national_oop_healthcare.htm)

For families larger than 4 people, a total per-person allotment is provided (\$341, plus age-appropriate healthcare allowance of either \$54 or \$130). Under the means test, debtors can add an extra 5% to the National Standards food and clothing allowances, if such an increase is

demonstrated to be “reasonable and necessary” — whatever that means! The following table provides the National Standards for a family of 4, all under age 65 (for cases filed on or after 05/01/16), including health care:

<b>Collection Financial Standards for Food, Clothing and Other Items, Plus Health Care</b>	
<b>Expense</b>	<b>Four Persons</b>
Food	\$815
Housekeeping supplies	\$71
Apparel & services	\$227
Personal care products & services	\$74
Miscellaneous	\$322
Out-of-pocket health care	\$216
<b>Total</b>	<b>\$1,725</b>

On page 110, under “Local Standards,” substitute the following two URLs for the transportation allowance and for housing and utilities, respectively:

[https://www.justice.gov/ust/eo/bapcpa/20160501/bci\\_data/IRS\\_Trans\\_Exp\\_Std\\_MW.htm](https://www.justice.gov/ust/eo/bapcpa/20160501/bci_data/IRS_Trans_Exp_Std_MW.htm)

...

[https://www.justice.gov/ust/eo/bapcpa/20160501/bci\\_data/housing\\_charts/irs\\_housing\\_charts\\_IL.htm](https://www.justice.gov/ust/eo/bapcpa/20160501/bci_data/housing_charts/irs_housing_charts_IL.htm)

On page 111, substitute the following for the third through fifth sentences of the second full paragraph:

The numbers used assume the case was filed on or after May 1, 2016 (and before the next periodic allowance adjustment). A debtor who lives in Cook County, Illinois has a housing allowance for a family of 4 of \$2,437 (\$669 for non-mortgage or rent expenses, and \$1,768 for mortgage or rent costs); for neighboring DuPage County, the allowance is \$2,664 (\$622 and \$2,042, respectively) — \$227 per month higher. So, by moving across the county line, a debtor could insulate an additional \$13,620 of income over the 60-month means test calculation period.

On page 111, in the fourth full paragraph, change the dollar amounts from “\$262” to “\$236” and from “\$524” to “\$472”.

On page 111, in the fifth full paragraph, change the dollar amount from “\$182” to “\$173” change the parenthetical date from “(as of April 1, 2014)” to “(as of May 1, 2016)”.

*On page 111, in the last paragraph, change the dollar amount from “\$517” to “\$471” and substitute the following for the URL in the portion of that paragraph carrying over to the top of page 112:*

<http://www.uscourts.gov/forms/means-test-forms/chapter-7-means-test-calculation>

*On page 112, in the last two paragraphs, carrying over to the top of page 113, change the following dollar amounts each time they appear:*

“\$517” should be “\$471”

“\$367” should be “\$321”

“\$884” should be “\$792”

*On page 115, change the URL under the first paragraph to:*

[https://www.justice.gov/ust/eo/bapcpa/20160501/bci\\_data/ch13\\_exp\\_mult.htm](https://www.justice.gov/ust/eo/bapcpa/20160501/bci_data/ch13_exp_mult.htm)

*On page 115, in the second full paragraph, substitute the following for the second sentence:*

For example, in Illinois, debtors in the Central District may claim 10.0%, but debtors in the Northern District are only allowed 6.6%.

*On page 115, in the second paragraph under “Note on Charitable Contributions,” change “\$12,475” to “\$12,850” each time it appears.*

*On pages 116 and 117, substitute the following for everything from “Step Three” up to problem 2.12:*

*Step Three: Compare that figure with the statutory “trigger” amount, which is the lesser of:*

(a) 25% of the debtor’s nonpriority unsecured claims *or* \$7,700, whichever is greater

*or*

(b) \$12,850.

If the amount computed in Step Two (debtor’s actual projected repayment capacity) is greater than or equal to the figure in Step Three (the trigger amount), then abuse is presumed. § 707(b)(2)(A)(I). It’s that simple (just kidding).

A convenient way to think about the means test is to split debtors into three tiers based on the amount of unsecured debt they have.

- Tier One is for debtors with less than \$30,800 of unsecured debt. For these debtors, abuse

is presumed if their Step Two total of net monthly income over 60 months is at least **\$7,700**.

- Tier Two is for debtors with unsecured debts between \$30,800 and \$51,400. Abuse is presumed if the debtor’s Step Two total (“net monthly income” over 60 months) is more than **25%** of the debtor’s unsecured debts; the repayment range is between \$7,700 and \$12,850.
- Tier Three includes debtors with more than \$51,400 of unsecured debt. For these debtors, abuse is presumed if the debtor’s Step Two total of net monthly income over five years is at least **\$12,850**, without regard to how much unsecured debt such debtor actually has.

Another way to conceptualize the means test is in terms of “trigger points.” Since \$7,700 is the minimum amount that can trigger a presumption of abuse, and because \$7,700 divided by 60 months (the projected presumption period) is just over \$128.33, if a debtor has net monthly income (current monthly income minus deductions) of *\$128.33 or less a month*, the means test presumption of abuse *never* arises. On the other hand, since any repayment capacity over 60 months of \$12,850 or more always triggers the presumption, and given that \$12,850 divided by 60 is just under \$214.17, the presumption of abuse *always* arises if a debtors net monthly income is *more than \$214.17*. These trigger points can be summarized by the following table:

Monthly Disposable Income	Presumption of Abuse
Less than \$128.34	Never Arises
\$128.34–214.17	(1) Arises if nonpriority unsecured debt $\leq$ \$30,800; (2) If nonpriority unsecured debt $>$ \$30,800, arises if repayment capacity $\geq$ 25% of unsecured debt
More than \$214.17	Always Arises

Note how small a margin a debtor has under the means test. A difference of \$86 of income over expenses a month can be the difference between abuse *never* being presumed and abuse *always* being presumed!

*On page 117, replace “\$5,125” with “\$5,150” in Part a. of Problem 2.12.*

*On page 135, replace “Form B22C” with “Forms B122-C1 and 122C-2” each time it appears.*

*On page 150, change “\$315” to “\$307” each time it appears in Question 18.*

*On page 153, under “Claim Requirements,” on the fourth bullet point, change “\$15,325” to “\$15,775,” and change the date in the parenthetical to “April 1, 2019”. Make the same dollar value change to Question 5 at the bottom of the page*

*On page 160, in last line, strike “the deal” the second time it appears.*

## **CHAPTER 3**

### **PROPERTY OF THE ESTATE**

*On page 182, in Question 4, replace “\$1,245,475” with “\$1,283,025” and replace “(\$2,490,950)” with “(\$2,566,050)”.*

*On page 182, replace “\$6,225” with “\$6,425” each time it appears in Question 6, including the portion of the paragraph that carries over to page 183.*

## CHAPTER 5 UNSECURED CLAIMS

*On page 259, replace the dollar amounts in the priorities list with the following:*

“\$12,475” should be “\$12,850”

“\$6,150” should be “\$6,325”

“\$2,775” should be “\$2,850”

*On page 278, replace “\$12,475” with “\$12,850” in the second full paragraph. Change the year in the last sentence of that paragraph from “2016” to “2019”.*

*On page 281, replace “\$6,150” with “\$6,325” in the “Grain producers and fishermen” paragraph.*

*On page 281, replace “\$2,775” with “\$2,850” in the first paragraph under “Consumer layaway deposits.”*

## **CHAPTER 9**

### **AVOIDING POWERS**

*On page 525, in the last bullet point at the top of the page, replace “\$6,225” with “\$6,425”.*

## CHAPTER 10 DISCHARGE

*On page 591, in the third sentence of the last paragraph, replace “\$155,675” with “\$160,375” and “2013” with “2016”.*

*On page 611, in the second sentence of the first full paragraph, replace “\$155,675” with “\$160,375” and “2013” with “2016”.*

*On page 623, in the second full paragraph under “**Fraud and Related Provisions**”, replace “\$650” with “\$675” and “\$925” with “\$950”.*

## CHAPTER 11 EXEMPTIONS

*On page 662, in citation for Robinson v. Hagan, replace “2014 U.S. Dist. LEXIS 155467” with “527 B.R. 314” and at end of citation, add “aff’d, 811 F.3d 267 (7th Cir. 2016)”*

*On page 674, replace “\$3,675” with “\$3,775” in the first line of the page.*

*On page 691, in the fifth sentence of the second full paragraph, replace:*

*“\$6,225” with “\$6,425”*

*“2013” with “2016”*

*“2016” with “2019”*

*On page 693, in the fourth sentence of the third full paragraph, replace “\$155,675” with “\$160,375” and “2013” with “2016”.*