



# MEANS TESTING

Presented by  
**Office of the  
United States Trustee**

## **Marital Filing Status**

Line 2

- 4 Options
  - Unmarried (per federal law)
  - Married (but separated not filing jointly)
    - Requires representation of legal separation or that separation was not to beat MT.
  - Married – Not Filing Jointly
  - Married – Filing Jointly
- If legally separated filing joint petition – UST will treat as one household for expense purposes.
- Does it match Schedule I?
- Income for non-filing spouse?



## **Applicable Median Family Income**

Line 13 & 14 -

- **Are they over the median income but presumption does not arise?**
- **Are the numbers close?**
- **Is it consistent with Schedule I?**
- **Tax return?**

## Calculation of CMI for 707(b)(2)

Lines 16 -18

- **General Rule is all income of non-debtor spouse is included in calculation.**
- **Line 17 Marital adjustment: some expenses of non-debtor spouse may be “adjusted” or “backed out.”**
- **Is the spouse actually making payments?**
- **Payment for debt exclusively for the benefit of spouse? (credit cards v. student loan payment)**
- **Should not “back out” amounts if they are claimed as expenses elsewhere on the form.**

## **Local Standards; Housing and Utilities (mortgage/rent)**

Line 20B -

- Debtors receive benefit of higher of IRS standard or actual mortgage costs.
  - However, beware of §707(b)(3)
- IRS standard is both the “floor and ceiling” for rent expense.
- No “double dipping” – don’t get both IRS standard and actual cost.
- UST position is: don’t list mortgage payment for house being surrendered but do list amount of IRS standard.

## **Local Standards; Housing and Utilities (mortgage/rent)**

Line 20B - continued

- **Only entitled to one mortgage/rent payment per household**
  - even if maintaining two separate households.  
This is not a special circumstance.
  - no vacation homes (but payment allowed on Line 42)
- **UST position is: debtors generally don't get this allowance if no mortgage/rent payment obligation**
  - Living with relative long period of time
  - Military/employer paid housing (but may be entitled to deduct non-mortgage portion on line 20A if paid by debtor).

## **Local Standards; Transportation (Operating)**

Line 22 A

- Same venue rules apply as with housing.
- Get an “operating” expense even without vehicle (but limited to “zero” vehicles).
- Get operating costs corresponding to number of vehicles not to exceed two.
- Claim public transportation amount if debtor has “0” vehicles

## Local Standards; Transportation (Operating)

Line 22A

- Applies if vehicle owned outright, leased, purchasing or if paying operating expenses.
- Includes gas, oil, tires, etc.
- Applies to any licensable “street ready” vehicle.
- Debtors without a vehicle loan or lease payment, but who operate vehicles older than 6 model years and/or with 75,000 or more miles, will be allowed an additional \$200 vehicle operating expense per vehicle for up to two eligible vehicles.

- See In re McGuire, 2006 WL 1527146 (Bankr. W.D.Mo. June 1, 2006)



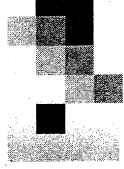
## Local Standards; Transportation (Ownership)

Line 23 and 24

- National standards.
- “Stackable” so currently \$489 for first vehicle, \$489 for second vehicle. No more than two.
- UST position had been: don't claim ownership expense on vehicle with no purchase or lease payment obligation. Paid off vehicle
  - Borrowed vehicle
  - Surrendered vehicle
- See Ransom v. Fia Card Services, N.A. 562 U.S.-, 131 s.ct. 716(2010).
  - UST position that ownership expense is not allowed if debtor owns vehicle free and clear.


## §707(b) Application of Ransom

- “applicable” expenses under the means test
- The U.S. Supreme Court says... a deduction is “appropriate, relevant, suitable or fit” based on its correspondence to an individual debtor’s financial circumstances”
- UST position is actual is actual. No phantom payments (paid off vehicle, borrowed vehicle, surrendered vehicle).



## Line 26 Involuntary deductions for employment

- Key word is involuntary
- No 401(k) loan repayment



# Line 28 Court Ordered Payments

- Is there really a court order?
- DSO form?
- Schedule I?

## **Future Payments on Secured Claims**

Line 42

- **UST position is: no expense allowance if surrendering collateral. Check Statement of Intention. (See Ransom v. Fia Card Services, N.A. 562 U.S.-, 131 s.ct. 716(2010).)**
- **Does not include payments for leased property.**
- **Is the payment averaged? Total all payments coming due in 60 months and divide by 60.**
- **Should track Schedule D.**

## Line 56 Other Expenses

- Catchall category
- Separate household? Not allowed
- Other debts? Not allowed
- Student loans? Not allowed