
Frequently Asked Questions Regarding BAPCPA

Questions are sorted by category

Means Test

If debtor's income is below the median state income, which sections of the Statement of Current Monthly Income need to be completed?

- Chapter 7 cases - complete Part I, II, III and VIII of form B22A
- Chapter 13 cases - complete Part I, II and VI of form B22C
- Chapter 11 cases - complete the entire form B22B(Part I and II)

If debtor's income is above the median state income, which sections of the Statement of Current Monthly income need to be completed?

- If debtors income is above the median state income, all sections of the form applicable to the chapter being filed must be completed.

What if the debtor(s) spend less than the IRS allowable expenses?

- If debtor(s) spend less than the IRS allowable expenses, the amount listed as the allowable expense on the applicable expense standard charts should be used.

What if the debtor(s) spend more than the IRS allowable expenses?

- If the debtor(s) spend more than the IRS allowable expenses, the amount listed as the allowable expense on the applicable expense standard charts must be used. However, there are certain sections of the form (for Chapter 7 see Part V Subpart B and also Part VII, for Chapter 13 see Part III Subpart B and also Part V) which allow for the insertion of expenses in excess of the allowable standards.

Should the means test form be filed as a separate document or filed as part of the voluntary petition?

- This document should be included as part of the voluntary petition.

Are there any provisions for exemptions from credit counseling?

- Yes. There are provisions for exemptions if the debtor(s) is mentally incapable, disabled or active duty military in a military combat zone. If these instances apply, a Motion for Exemption from Credit Counseling will need to be filed. A local form motion/order for exemption from credit counseling will be available soon.

When are the figures for IRS allowable expenses updated?

- These figures are updated by the IRS in January of each year.

When are the median state income figures updated?

- These figures are updated in August of each year.

Where do I find the IRS allowable expenses?

- <http://www.usdoj.gov/ust/bapcpa/meanstesting.htm>

Is there a difference between Current Monthly income on the means test calculation and Schedule I?

- Yes. The means test calculation uses the debtors income for the past 6 months prior to filing (excluding the month the debtor is filing the petition) which may be different than the amount that is listed on Schedule I.

Are child support payments included in the calculations for current monthly income?

- Yes.

Is social security income included in the calculations for current monthly income?

- No.

Is unemployment compensation considered income on the means test?

- Yes.

If only one spouse is filing and not the other, should the currently monthly income reflect only the income and expenses for that one debtor?

- No. If only one spouse is filing, the form requires all household income to be listed. However, there is a section of the form which allows for marital adjustment.

If the debtor(s) means test reflects that the presumption of abuse arises, does that automatically mean that the debtor may not proceed under Chapter 7?

- No. The U.S. Trustee's office will consider the totality of circumstances surrounding the filing in their decision regarding the presumption of abuse

If the debtor(s) means test reflects no presumption of abuse, will that automatically exempt them from any 707(b) actions?

- No. The U.S. Trustee will be closely reviewing all cases to determine if 707(b) applies.

Credit Counseling

Where can I find approved credit counseling services?

- Credit Counseling Agencies are approved by the Office of the U.S. Trustee and a list of those agencies can be found at :
http://www.usdoj.gov/ust/bapcpa/ccde/cc_approved.htm

Is there a fee for credit counseling and if so, how much?

- If a fee is charged for counseling services, the fee must be reasonable and the agency must provide services without regard to ability to pay the fee. Refer to each credit counseling agency for further information regarding fees for these services.

How is credit counseling received when approved agencies do not have local offices?

- Approved credit counseling agencies are able to provide these services either over the telephone or via the internet.

Are toll free numbers available if a debtor wishes to receive credit counseling by telephone?

- Yes. Please refer to each individual credit counseling agency for further information.
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Are the credit counseling agencies approved by the local U.S. Trustee's office or by the National office?

- These agencies are approved by the National office of the U.S. Trustee

What happens if the debtor(s) has not received credit counseling at the time the petition is filed with the Court?

If a certification of credit counseling is not filed as part of the voluntary petition, one of the three items listed below will occur:

- The Clerk's office will create a 15 day deficiency deadline for the filing of the certification of credit counseling
- A motion/order for exigent circumstances (ie. Extension of time) will be filed with the petition
- A motion/order for exemption from credit counseling will be filed with the petition

Automatic Stay - Lease Payments

Is this new provision restricted to residential property only?

- Yes.

Can the 30 days deposit of rent be paid via the internet (ie. Pay.gov)?

- No. At this time deposit of rent must be made via cash, cashiers check or money order.

Reaffirmation Agreements

What will happen if debtor(s) counsel does not sign off on a reaffirmation agreement?

- The reaffirmation agreement will be treated as “pro-se” and the agreement will be set for hearing.

Does the presumption of undue hardship apply to Credit Unions?

- No.

Tax Returns

Where should debtor(s) tax returns that need to be turned over to the Court prior to the 341 meeting be sent?

- A general order should be signed prior to October 17, 2005 which will direct debtor(s) to forward tax returns to the Trustee.

Are tax transcripts acceptable in lieu of the actual tax return?

- Yes.

What should be submitted if the debtor is not required to file tax returns?

- An affidavit should be submitted to the Trustee explaining the debtor(s) circumstances in lieu of the tax returns.

If the debtor has tax returns that need to be filed, where should these returns be sent for filing?

- Please forward unfiled tax returns to the address listed below:
Internal Revenue Service
P.O. Box 1706, Room 651
Insolvency Section
Louisville KY 40201

How should tax returns and other documents required for the 341 meeting of creditors be forwarded to the Trustee?

- You may want to check with the Trustee handling the case and see how they would prefer the documents to be sent. Some Trustee's do not want documents e-mailed to them while others prefer receiving the documents by e-mail. As a general rule, documents should be neatly sorted and mailed to the Trustee along with a copy of the order to the debtor.

Chapter 15

What is Chapter 15?

- Chapter 15, which replaces the former section 304 of the Code, is an entirely new chapter which incorporates the Model Law on Cross-Border Insolvency completed by the United Nations Commission on International Trade Law (UNCITRAL) in 1997. The new chapter encourages cooperation between the United States and foreign countries in connection with international insolvency cases.

In Forma Pauperis

Who qualifies for In Forma Pauperis?

- Debtor(s) with income less than 150% of the official poverty line. The official poverty line information can be found at www.aspe.hhs.gov/poverty/05poverty.html. All applications for In Forma Pauperis will be reviewed by the Judge.

What will happen if the Application to Proceed In Forma Pauperis is denied by the Judge?

- The Court will enter an order to pay the filing fee in installments and set the appropriate deadlines.

Should an Application to Proceed In Forma Pauperis be filed as part of the petition similar to the way an Application to Pay the Filing Fee in installments is filed?

- No. An Application to Proceed In Forma Pauperis **must** be docketed separately under the Motions/Applications category by selecting the event “In Forma Pauperis”.

Can a debtor filing a Chapter 11 or Chapter 13 case file an Application to Proceed In Forma Pauperis?

- No. This provision only applies to individual Chapter 7 debtor(s).

If the debtor(s) is granted a waiver of the initial filing fee, will this waiver apply to any other fees that may arise during the course of the bankruptcy case?

- No. If the debtor(s) wishes to request that subsequent fees be waived in the case, an Application to Proceed In Forma Pauperis will need to be filed concurrently with each pleading that requires a fee.

Financial Management Training

Where can I find approved Financial Management Training agencies?

- Financial Management Training Agencies are approved by the Office of the U.S. Trustee and a list of those agencies can be found at : http://www.usdoj.gov/ust/bapcpa/ccde/cc_approved.htm

Is there a fee for Financial Management Training and if so, how much?

- If a fee is charged for financial management training, the fee must be reasonable and the agency must provide services without regard to ability to pay the fee. Refer to each financial management training agency for further information regarding fees for these services.

How is Financial Management Training received when approved agencies do not have local offices?

- Approved Financial Management Training agencies are able to provide these services either over the telephone or via the internet.

Are toll free numbers available if a debtor wishes to receive Financial Management training by telephone?

- Yes. Please refer to each individual financial management training agency for further information.

Are there any provisions for exemptions from Financial Management training?

- Yes. There are provisions for exemptions if the debtor(s) is mentally incapable, disabled or active duty military in a military combat zone. If these instances apply, a Motion for Exemption from Financial Management Training will need to be filed. A local form motion/order for exemption from credit counseling will be available soon.

If the debtor(s) receives an order of exemption from credit counseling, will that exemption also automatically apply to the Financial Management training requirement?

- No. A separate motion/order for exemption from Financial Management training must be filed.

Are the Financial Management Training agencies approved by the local U.S. Trustee's office or by the National office?

- These agencies are approved by the National office of the U.S. Trustee

What will happen if the debtor(s) has not received the required financial management training and the bankruptcy case is otherwise ready for discharge?

- If the debtor(s) has not completed the required Financial Management Training course and filed the Certification regarding this Financial Management training with the Court and the case is otherwise ready for discharge, the case will be closed without a discharge.

If the debtor(s) complete the financial management training and the bankruptcy case has been closed without a discharge, can the case be reopened so that a discharge may be entered?

- Yes. A motion to reopen will need to be filed along with the certification regarding the financial management training and the appropriate reopening fee. The case could then be reopened and a discharge could be entered.

Is the stay still in effect a bankruptcy case is closed without a discharge?

- No. The stay would terminate upon closing of the case.

When is the certification of Financial Management training due?

- 45 days from the first date scheduled for the 341 meeting.

Fee Changes

Are filing fees going to be affected with the new Bankruptcy Act?

- Yes. The new fees will go into effect on October 17, 2005.
A summary of the fee changes is listed below:

Chapter 7 will increase from \$209 to \$274

Chapter 13 will decrease from \$194 to \$189

Chapter 11 will increase from \$830 to \$1039

Newly created Chapter 15 will be \$1039

Adversary fees increased on 9/20/05 to \$250

New Forms

Where can I find the new forms?

- http://www.uscourts.gov/rules/new_and_revised_official_forms.html