

CALCULATING PROJECTED DISPOSABLE INCOME OF AN ABOVE-MEDIAN CHAPTER 13 DEBTOR

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I. INTRODUCTION

The American consumer is in a historically dire situation. Consumer debt relative to income is at an all-time high¹ while the job market is experiencing record layoffs.² This will undoubtedly lead to a deluge of consumer bankruptcy filings in the coming years.

In 2005, at the urging of unsecured lenders led by the credit card industry, Congress passed the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 [“BAPCPA”].³ Before BAPCPA, consumers could choose whether to file for relief under Chapter 7 or Chapter 13.⁴ Chapter 7 allows the consumer to discharge a majority of his unsecured debt, such as credit card debt.⁵ The Chapter 7 debtor may also have to sell some assets such as his home.⁶ In Chapter 13, the debtor pays off some of his unsecured debt under a payment plan.⁷

Prior to BAPCPA, the vast majority of consumer bankruptcy cases were filed under Chapter 7.⁸ In 2005, Chapter 7 cases constituted more than 1.5 million of approximately 2.0 million total consumer bankruptcy filings.⁹ In 2004, 1.1 out of 1.5 million consumer

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¹ See Am. Bankr. Inst., Bankruptcy Filing Statistics, www.abiworld.org/statistics (scroll down to “Consumer debt is consistent with bankruptcy filings”, click on image) (last visited Feb. 24, 2009).

² Conor Dougherty, *Unemployment Rises in Every State*, WALL ST. J. (Jan. 28, 2009), at A3.

³ H.R. REP. NO. 109-31, pt. 1, at 575.

⁴ Bruce M. Price & Terry Dalton, *From Downhill to Slalom: An Empirical Analysis of the Effectiveness of BAPCPA (And Some Unintended Consequences)*, 26 YALE L. & POL’Y REV. 135, 137 (2007).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 142.

⁹ *Id.* at 143.

bankruptcy filings were under Chapter 7.¹⁰ In 2003, Chapter 7 cases comprised more than 70% of consumer bankruptcy filings.¹¹ In 1996, when consumer bankruptcy filings first topped one million, more than 700,000 of the filings came under Chapter 7.¹² The consumer preference for Chapter 7 indicates that, prior to BAPCPA, consumers chose to discharge their unsecured debt over keeping some of their assets under a Chapter 13 plan.¹³

The consumer preference for Chapter 7 led politicians, scholars, and credit card companies to believe consumers were abusing Chapter 7 to walk away from credit card debts they had accumulated.¹⁴ Scholars and credit card companies speculated that consumers were discharging their unsecured debt even though, in many cases, they could pay a significant portion under a Chapter 13 repayment plan.¹⁵

The central feature of BAPCPA is a “means test.”¹⁶ Under the means test, if a Chapter 7 filer’s income is above a certain amount, the debtor is presumed to be abusing the system.¹⁷ Unless the debtor can rebut this presumption by documenting an actual need for Chapter 7, the debtor must file under Chapter 13.¹⁸ By forcing some debtors into Chapter 13, Congress hoped to force debtors to take responsibility for their debts and pay off as possible.¹⁹

The means test comes into play a second time for many Chapter 13 debtors. In order for the debtor to receive Chapter 13 relief, the court must approve the debtor’s payment plan.²⁰ If the bankruptcy trustee or a creditor objects to the plan, generally the court may only approve the plan if all of the debtor’s projected disposable income is committed to repay creditors.²¹ Prior to BAPCPA bankruptcy courts had wide discretion over what amount of a debtor’s income was disposable.²² Post BAPCPA, a debtor’s projected disposable income is to be determined with reference to the means test.²³ BAPCPA defines disposable income using the means test.²⁴ Disposable income is essentially the debtor’s income from all sources for the six months prior

¹⁰ Price, *supra* note 4.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 137-38.

¹⁴ *Id.* at 143.

¹⁵ *Id.*

¹⁶ H.R. REP. NO. 109-31, pt. 1, at 2 (2005).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Nancy C. Dreher & Joan N. Feeney, BANKRUPTCY LAW MANUAL § 13:43 (5th ed. West 2008).

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ BANKRUPTCY LAW MANUAL, *supra* note 20, at § 13:43.

to the date of filing, less reasonably necessary expenses.²⁵ If the debtor's income is above the median for his home state, the debtor's reasonably necessary expenses are determined with reference to standards set out in the means test.²⁶ The means test's use of historical income and hypothetical standards often creates an inaccurate picture of the debtor's disposable income. Nonetheless, §1325(b) makes clear that bankruptcy courts are to determine debtor's projected disposable income in reference to the means test.²⁷

Currently, there is a split among the circuit courts as to whether "projected disposable income" is calculated by mechanical application of the definition of disposable income, or whether courts may deviate from the means test calculation in order to reflect the debtor's actual ability to pay. The Ninth Circuit, along with several bankruptcy courts, has held that BAPCPA's new definition of disposable income requires a "mechanical approach" to calculation of a debtor's projected disposable income whereby "disposable income" and "projected disposable income" are synonymous,²⁸ regardless of whether that figure accurately represents a debtor's ability to adhere to a payment plan. Conversely, the majority approach is the "forward-looking approach."²⁹ Under the forward-looking approach, the debtor's disposable income, as defined by the means test, is presumed to be the debtor's projected disposable income.³⁰ However, under the forward-looking approach, the court may deviate from that figure if it does not accurately reflect the debtor's ability to make payments. The Eighth and Tenth Circuits have adopted the forward-looking approach.³¹

This paper addresses the ongoing circuit split as to the proper way to determine "projected disposable income" of an above-median Chapter 13 debtor. This paper will demonstrate that the statutory language supports the forward-looking approach to the extent it supports either approach. Additionally, this paper will demonstrate that the nine years of legislative history indicate that Congressional intent supports the forward-looking approach. This paper will also demonstrate that the mechanical approach leads to absurd results and thus common sense supports the forward-looking approach. Finally, this paper will demonstrate that the economic realities of bankruptcy

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ See e.g. *In re Kagenveama*, 541 F.3d 868 (9th Cir. 2008); *In re Alexander*, 344 B.R. 742 (Bankr. E.D.N.C. 2006); *In re Austin*, 372 B.R. 668 (Bankr. D.Vt. 2007); *In re Kolb*, 366 B.R. 802 (Bankr. S.D. Ohio 2007); *In re Hanks*, 362 B.R. 494 (Bankr. D. Utah 2007); *In re Miller*, 361 B.R. 224 (Bankr. N.D. Ala. 2007); *In re Tranmer*, 355 B.R. 234 (Bankr. D. Mont. 2006); and *In re Barr*, 341 B.R. 181, 185 (Bankr. M.D.N.C. 2006).

²⁹ *In re Lanning*, 545 F.3d 1269, 1270 (10th Cir. 2008).

³⁰ *Id.* at 1270.

³¹ *Id.*; *In re Frederickson*, 545 F.3d 652 (8th Cir. 2008).

support the forward-looking approach.

II. BACKGROUND

In April 2005, Congress passed the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”), the culmination of several years of efforts to reform the Bankruptcy Code (“Code”).³² BAPCPA is ostensibly intended to avoid abuse of the bankruptcy laws by debtors.³³ Since its initial proposal in 1996, the bankruptcy reforms that constitute BAPCPA have spawned a great deal of controversy among legal scholars and social commentators. Among those that have taken issue with the law are labor unions, the ACLU, and various consumer advocates.³⁴

“Means testing” is the central feature of the Bill’s consumer bankruptcy reforms.³⁵ The means testing mechanism was adopted to ensure that debtors pay the maximum amount they can afford.³⁶ Prior to BAPCPA, the law did not require the court to examine a debtor’s ability to repay his debts.³⁷ Consequently, some Chapter 7 debtors who could have paid a portion of their unsecured debts were able to walk away from those obligations.³⁸ Moreover, debtors filing for Chapter 7 were presumed to need relief.³⁹ Under the means test, a consumer debtor’s reasonably necessary expenses are weighed against his income to determine monthly disposable income.⁴⁰ Generally, consumer debtors having more than a certain threshold amount⁴¹ of disposable monthly income are barred from Chapter 7 protection and are instead forced into Chapter 13.⁴² The hope is that in a Chapter 11 or Chapter 13 situation, the consumer will be able to pay some of his debts over time.⁴³ In exchange, the consumer is discharged of obligations that would remain under Chapter 7.⁴⁴ Chapter 7 liquidation discharges the

³² H.R. REP. NO. 109-31, pt. 1, at 2 (2005).

³³ Price, *supra* note 4, at 143.

³⁴ H.R. REP. NO. 109-31, pt. 1, at 541 (2005).

³⁵ H.R. REP. NO. 109-31, pt. 1, at 2 (2005).

³⁶ *Id.*

³⁷ S. Hrg. 105-89 at 7. *Increase in Personal Bankruptcy and the Crisis in Consumer Credit*, hearings before the Subcommittee on Administrative Oversight and the Courts of the Senate Judiciary Committee (April 11, 1997). Reprinted in William H. Manz, *Bankruptcy Reform: The Legislative History of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005*, vol. 18, document 233.

³⁸ *Id.*

³⁹ H.R. REP. NO. 109-31, pt. 1, at 49.

⁴⁰ BANKRUPTCY LAW MANUAL, *supra* note 20, at § 13:43.

⁴¹ Roughly \$167.00 in 2007.

⁴² Price, *supra* note 4, at 136-37.

⁴³ *Id.* at 138.

⁴⁴ Robert J. Bein, *Subjectivity, Good Faith, and the Expanded Chapter 13 Discharge*, 70 MO. L. REV. 655, 656 (Summer 2005).

majority of the debtor's unsecured obligations, leaving little or nothing for unsecured creditors such as credit card companies.⁴⁵ However, the debtor also has to sell certain assets in which the debtor has equity.⁴⁶ Conversely, in Chapter 13, the debtor forms a plan to pay some or all of his unsecured debt over time.⁴⁷ The means test also comes into play in determining a Chapter 13 debtor's ability to repay creditors under a payment plan.

A recent Tenth Circuit decision highlights a decisive split in the courts as to the exact role the means test plays in determining a Chapter 13 debtor's ability to pay creditors.⁴⁸ In *In re Lanning*, the Tenth Circuit examined the two opposing methods courts have used to calculate "projected disposable income" of an above-median Chapter 13 debtor under BAPCPA.⁴⁹ A majority has adopted the "forward-looking approach."⁵⁰ Under this approach, the Chapter 13 debtor's six-month "disposable income," as it is defined by the Code, is presumed to be the debtor's projected disposable income unless the debtor can demonstrate that that figure should not constitute projected disposable income.⁵¹ In that case, the court may take into account a debtor's special circumstances in calculating projected disposable income and confirming a plan.⁵²

A minority of courts has adopted the "mechanical approach" to calculating projected disposable income.⁵³ Under this approach, the court interprets "disposable income" and "projected disposable income" as synonymous.⁵⁴ The court uses the statutory definition of disposable income (there is no statutory definition of projected disposable income) and projects that number as the amount the debtor will be able to pay over the term of the plan.⁵⁵

III. CHAPTER 13 PROCESS

A debtor seeking bankruptcy protection initiates the process by filing a petition with the courts.⁵⁶ At or near the time of filing, he must present a payment plan, a completed "Schedule I" (Current Income of

⁴⁵ Price, *supra* note 4, at 136-37.

⁴⁶ *Id.* at 137.

⁴⁷ *Id.*

⁴⁸ *In re Lanning*, 545 F.3d at 1270.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ See *Manny v. Kagenveama*, 541 F.3d 868 (9th Cir. 2008).

⁵⁴ *In re Lanning*, 545 F.3d at 1270.

⁵⁵ *Id.*

⁵⁶ 11 U.S.C. § 301 (2005).

Individual Debtor), “Schedule J’ (Current Expenditures of Individual Debtor) and “Form B22C” (Statement of Current Monthly Income and Disposable Income Calculation).⁵⁷ In the payment plan, the debtor proposes a schedule under which she will use her projected disposable income to repay some or all of her debts over a period of three to five years.⁵⁸ Form B22C requires the debtor to calculate “current monthly income” as an average of all income received in the six calendar months prior to the month the bankruptcy petition is filed.⁵⁹

The payment plan is the central feature of Chapter 13 bankruptcy.⁶⁰ Creditors may oppose the debtor’s proposed plan.⁶¹ §1325 provides the requirements that a plan must meet for confirmation.⁶² Among these requirements are the following: the plan must be proposed in good faith,⁶³ the plan must be feasible (i.e. a plan must be such that the debtor can reasonably be expected to comply);⁶⁴ and the petition must be filed in good faith.⁶⁵

Both pre and post-2005, the debtor’s ability to pay is generally calculated by subtracting expenses from income projected over the life of the plan.⁶⁶ Prior to BAPCPA, disposable income was defined as income less “reasonably necessary” expenses.⁶⁷ In the pre-BAPCPA cases, courts had a great deal of discretion as to what expenses were reasonably necessary, and what income was disposable.⁶⁸ Courts differed drastically on the degree to which it was appropriate for the court to scrutinize the debtor’s lifestyle in determining what expenses were reasonably necessary.⁶⁹

BAPCPA contains a new definition of disposable income that relies on the means test for determining whether abuse exists in a Chapter 7 case. Disposable income is defined as current monthly income, as defined in §101(10A), less reasonably necessary expenses.⁷⁰ If a debtor’s current monthly income is above his state’s median income for a comparable household, his reasonable and necessary expenses are to be determined in accordance with §707’s means test.⁷¹ Under the means test, and corresponding form B22C, the debtor’s expenses are

⁵⁷ 11 U.S.C. § 1322 (West 2005).

⁵⁸ BANKRUPTCY LAW MANUAL, *supra* note 20, at § 13:43.

⁵⁹ *In re Lanning*, 545 F.3d at 1271.

⁶⁰ BANKRUPTCY LAW MANUAL, *supra* note 20, at § 13:18.

⁶¹ 11 U.S.C. § 1325 (West 2005).

⁶² *Id.*

⁶³ *Id.* at (a)(3).

⁶⁴ *Id.* at (a)(6).

⁶⁵ *Id.* at (a)(7).

⁶⁶ BANKRUPTCY LAW MANUAL, *supra* note 20, at § 13:43.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ 11 U.S.C. § 1325(b)(2) (2005).

⁷¹ *Id.* at (b)(3).

determined according to IRS national and local tables of living expenses.⁷² In the case of an above-median income debtor, BAPCPA limits the bankruptcy court's discretion as to what expenses are permissible in the calculation of disposable income.⁷³ Conversely, if a debtor's income is lower than the state median, the debtor's actual expenses and judicial discretion will determine the debtor's disposable income.⁷⁴ Thus, for below-median Chapter 13 debtors, pre and post-2005 calculations of disposable income are largely the same.⁷⁵

If the plan meets all the requirements of §1325(a), the debtor must still overcome §1325(b).⁷⁶ This section provides that if the trustee or the holder of an allowed unsecured claim objects to a plan, the court may not confirm the plan unless either (1) the value to be paid out in satisfaction of such claim is not less than the amount of the claim; or (2) the plan provides that all the debtor's "*projected disposable income*" will be paid out under the plan.⁷⁷ (emphasis added). Thus some holders of unsecured claims, such as credit card companies, will force the debtor to pledge all of his "projected disposable income" in a Chapter 13 plan. Not surprisingly, this happens frequently.⁷⁸ However, courts disagree on how to calculate "projected disposable income."

IV. THE SPLIT

As noted, under §1325(b)(1)(B) of BAPCPA, the court may approve a Chapter 13 plan over objection only if, "as of the effective date of the plan," the plan "provides that all of the debtor's *projected disposable income to be received in the applicable commitment period* . . . will be applied to make payments to creditors under the plan."⁷⁹ (emphasis added). Courts are split as to how to define "projected disposable income." § 1325(b)(2) defines "disposable income" for an above-median debtor⁸⁰ as "current monthly income," (CMI). CMI is defined in §101(10A)(A)(i) as the average of the debtor's monthly income from all sources for the six-month period ending in the month prior to filing.⁸¹ Thus, "disposable income" is the average of the debtor's monthly income for the six months prior to the month of filing his

⁷² BANKRUPTCY LAW MANUAL, *supra* note 20, at § 13:43.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ BANKRUPTCY LAW MANUAL, *supra* note 20, at § 13:43.

⁷⁹ 11 U.S.C. § 1325(b)(1)(B) (2005).

⁸⁰ Henceforth, any debtor referred to in this paper is an above-median debtor unless otherwise specified.

⁸¹ 11 U.S.C. § 101(10A)(A)(i) (2007).

bankruptcy petition.

The split turns on whether projected disposable income is calculated by mechanical application of the definitions of disposable income and current monthly income, or whether courts may adjust the disposable income calculated on Form B22C according to the debtor's actual ability to make plan payments. Several courts have held that BAPCPA's new definitions of disposable income and CMI require a "mechanical approach" to calculation of a debtor's projected disposable income whereby "disposable income" and "projected disposable income" are synonymous.⁸² The court applies the debtor's disposable income as calculated on B22C to the applicable commitment period, regardless of whether that figure accurately represents a debtor's ability to make payments over the commitment period. Conversely, the majority approach is the "forward-looking approach."⁸³ Under the forward-looking approach, the debtor's "disposable income" (as defined by §1325 and §101(10A)) is presumed to be the debtor's projected disposable income.⁸⁴ However, under the forward-looking approach, the debtor can then rebut that calculation of projected disposable income by showing that the calculation does not accurately reflect the debtor's ability to make payments. Hence, in determining the amount a debtor can pay over the life of the plan, the courts will account for any drastic change in income prior to filing.

V. THE "FORWARD-LOOKING APPROACH"

In *In re Lanning*, an issue of first impression, the Tenth Circuit adopted the forward-looking approach. The court affirmed decisions of both the bankruptcy and Tenth Circuit Bankruptcy Appellate Court (hereafter bankruptcy appellate courts will be referred to as "BAP").⁸⁵ The debtor was a single woman who filed Chapter 13 in October, 2006 to address \$36,793.36 in unsecured debt.⁸⁶ She had income of \$43,147 in 2004, and \$56,516 in 2005.⁸⁷ During the six-month period before filing her petition, the debtor accepted a buyout from her employer, Payless Shoes.⁸⁸ The buyout increased her monthly gross income to \$11,990.03 in April 2006, and \$15,356.42 in May, 2006.⁸⁹

The Debtor's Schedule I listed a monthly net income of \$1,922

⁸² See *supra* note 28 for a list of cases employing the mechanical approach.

⁸³ *In re Lanning*, 545 F.3d at 1270.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.* at 1271.

⁸⁹ *In re Lanning*, 545 F.3d at 1271.

(\$23,604 annually), reflecting income from a job she acquired after leaving Payless.⁹⁰ She filed a Schedule J showing actual monthly expenses of \$1,772.97.⁹¹ Thus, she had excess income of \$149.03.⁹² The debtor's form B22C current monthly income was \$5,343.70 and included her buyout from Payless.⁹³ Annualized, her current monthly income was higher than the \$36,631.00 median income for a family of one in Kansas.⁹⁴ Thus, she was required to complete B22C, calculating deductions and exceptions according to IRS standards.⁹⁵ Per her B22C, the debtor's monthly expenses totaled \$4,228.71.⁹⁶ Under §1325(b)(2), this left her a monthly disposable income" of \$1,114.98.⁹⁷

The debtor's Schedule J showed excess monthly income of \$149.00 and the debtor proposed a plan of \$144.00 per month for thirty-six months.⁹⁸ In total, the debtor's proposed plan called for payment of \$5,184 in satisfaction of \$36,793.36 of unsecured debt.⁹⁹

The bankruptcy trustee objected to the plan, arguing that §1325(b)(1)(B) required a rigid formula for determining projected disposable income based on the debtor's historical monthly income as calculated on Form B22C.¹⁰⁰ The trustee proposed she pay \$756 over sixty months.¹⁰¹ The trustee's proposed plan was notable for two reasons. First, it was less than the supposedly inflexible B22C formula would prescribe (if the B22C formula is inflexible she should have to pay her monthly disposable income of \$1,114.98 per month). Second, and puzzling to say the least, the trustee acknowledged that she did not have the income to support the trustee's plan.¹⁰²

The bankruptcy court employed the forward-looking approach, holding that the monthly disposable income reflected on form B22C constituted projected disposable income under §1325(b)(1)(B), contingent on a showing that the Form B22C calculations accurately reflected the debtor's ability to make plan payments.¹⁰³ If the debtor experiences change in financial circumstances, such that the form B22C amounts are not an accurate reflection of the debtor's ability to pay, the court will take other considerations into account.¹⁰⁴

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *In re Lanning*, 545 F.3d at 1271.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *In re Lanning*, 545 F.3d at 1271.

¹⁰¹ *Id.* at 1272.

¹⁰² *Id.*

¹⁰³ *Id.* at 1273.

¹⁰⁴ *Id.*

VI. THE “MECHANICAL APPROACH”

The court in *In re Kagenveama* adopted the “mechanical approach.”¹⁰⁵ In 2005, the debtor filed for Chapter 13 protection.¹⁰⁶ Along with her petition, she filed the required Schedules I and J and Form B22C.¹⁰⁷ Her Schedule I income totaled \$4,096.26, while Schedule J expenses totaled \$2,572.37, leaving \$1,523.89 in disposable income.¹⁰⁸ The debtor’s Form B22C listed average monthly income of \$6,168.21.¹⁰⁹ Because she was an above-median debtor, she had to calculate her expenses according to the §707(b)(2) means test.¹¹⁰ After the appropriate expenses were deducted, her Form B22C listed disposable income as a negative number: -\$4.04. The debtor proposed a plan under which she would pay \$1,000.00 per month over three years.¹¹¹ In what can be accurately described as a nonsensical result, the court held that the mechanical approach was the correct approach and the debtor’s “projected disposable income” was negative, despite the fact that the debtor claimed she had disposable income and was willing to pay her creditors.¹¹²

VII. ANALYSIS

A. “Plain” Text of the Statute

Courts adopting the mechanical approach, as well as those adopting the forward-looking approach, rely heavily on the supposedly plain language of the BAPCPA amendments. The court in *Lanning* noted that the words “projected” and “to be received” would be superfluous if a debtor’s historical disposable income was the only consideration.¹¹³ The court also emphasized Schedule I’s instruction that the debtor provide an “‘estimate of average or *projected* monthly income at the time the case is filed,” along with “any increase or decrease in income reasonably anticipated to occur within the year following the filing of [Schedule I].”¹¹⁴ (emphasis added). This is

¹⁰⁵ *In re Kagenveama*, 541 F.3d at 868.

¹⁰⁶ *Id.* at 871.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *In re Kagenveama*, 541 F.3d at 871.

¹¹² *Id.* at 871-72.

¹¹³ *In re Lanning*, 545 F.3d at 1273.

¹¹⁴ *Id.*

significant because opponents of the forward-looking approach argue that projected has no definition outside of B22C disposable income.¹¹⁵ However, within the body of documents traditionally used to determine the debtor's ability to pay, the term projected is linked to the term "estimate." As will be discussed in more detail later, the Schedule I estimate of projected income was traditionally a product of the bankruptcy court's discretion. Nothing in BAPCPA purports to eliminate that discretion.¹¹⁶ At the very least, the term "estimate" implies an educated guess at what the debtor's disposable income will be over the life of the plan. That educated guess is explicitly conditioned on "any increase or decrease in income reasonably anticipated to occur." The important thing is that "projected" is not a term that only exists in relation to B22C disposable income. It has a long-standing association in Chapter 13 procedure with the notion of estimating what the debtor's ability to pay actually will be over the life of the plan. There is no indication in the statute that that has changed.

In affirming the bankruptcy court's decision, the BAP noted that BAPCPA changed the definition of disposable income, but did not change projected disposable income, which had an accepted meaning prior to BAPCPA.¹¹⁷ Courts understood projected disposable income to mean Schedule I income less Schedule J expenses, subject to adjustment at the court's discretion if that calculation did not fairly reflect the debtor's ability to pay.¹¹⁸

Most significantly, the BAP found that "although the BAPCPA amendments 'specify the formula by which to determine a debtor's median standing, as well as the monthly disposable income as of the date of the petition, they give us no reason to believe that Congress intended to eliminate the bankruptcy court's discretion. . .'"¹¹⁹ The court suggested that that the BAPCPA gave no reason, beyond the mere existence of the Form B22C means test, that Congress intended to entirely strip the court of its traditional discretion.¹²⁰ The court took the stance that B22C created a rebuttable presumption as to the debtor's disposable income over the life of the plan.¹²¹

The Tenth Circuit went on to point out that the relevant language of §1325(b)(1)(B) is substantially the same as it was prior to BAPCPA, i.e. that all projected disposable income received by the debtor in the payment period will be applied to satisfy creditors.¹²² In

¹¹⁵ *In re Kagenveama*, 541 F.3d at 872-73.

¹¹⁶ *Id.* at 1274.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *In re Lanning*, 545 F.3d at 1274.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.* at 1275.

relying on the old definition of “projected disposable income,” Congress must not have wanted to completely alter the practices associated with the concept. More likely, Congress intended B22C disposable income as a starting point or measuring stick to settle discrepancies in the courts as to what sources of income and expenses are appropriate for calculating projected disposable income.¹²³ In leaving the language surrounding *projected* disposable income as it was pre-BAPCPA, Congress left courts a significant portion of their traditional discretion to estimate the debtor’s ability to pay; but anchored that discretion to the means test in B22C.

The *Lanning* court went on to demonstrate that “projected” is a nexus between “disposable income” and “to be received in the applicable period.”¹²⁴ Thus “projected disposable income” is that much disposable income (as it is defined in §1325(b)(2) and §101(10A)) as will be available to the debtor during the plan period. The debtor commits all “disposable income” that is “projected. . .to be received in the applicable commitment period.”¹²⁵ An interpretation that suggests that projected disposable income is synonymous with disposable income ignores the language “projected. . .to be received in the applicable plan period.”¹²⁶ Additionally, it ignores the relevance of Schedules I and J in the Chapter 13 process. Surely, after a decade of negotiating revision to the bankruptcy laws, Congress was familiar with past practice of the courts. By leaving Schedules I and J unchanged, one can assume Congress was comfortable with the traditional role those forms play, i.e., informing the court’s decision as to what type of plan a debtor can actually pay.

In coming to the opposite conclusion, the *Kagenveama* court also relied heavily on the statutory language. Ironically, both parties in the case claimed that a reading of the “plain text” of the statute supported their interpretation.¹²⁷ The Ninth Circuit held that the mechanical approach was “the most natural reading of the statute” and adopted the mechanical approach.¹²⁸ Apparently the readings proffered by the majority of courts are all less natural. The court then simply projected her means test disposable income over the applicable commitment period.

The court reasoned “[t]he substitution of any data not covered

¹²³ See H.R. REP. NO. 109-31, pt. 1, at 5 (for the proposition that Congress intended the means test to settle such differences in the court...).

¹²⁴ *In re Lanning*, 545 F.3d at 1279.

¹²⁵ *Id.*

¹²⁶ *Id.* at 1278.

¹²⁷ *In re Kagenveama*, 541 F.3d at 873. This is highly ironic considering that nearly every court on both sides of the argument states that the “plain” text of the statute supports their decision.

¹²⁸ *Id.*

by the §1325(b)(2) definition in the “projected disposable income” calculation would render as surplusage the definition of “disposable income” found in §1325(b)(2).¹²⁹ This proposition, however, is objectively false. Use of the §1325(b)(2) disposable income, as a starting point, rather than an end point, does not render the definition surplusage.¹³⁰ To the contrary, it requires the definition. The definition of disposable income remains essential to the courts’ determination of projected disposable income.

The court went on to say the word “projected” does not provide a basis for including other data in the calculation “because ‘projected’ is simply a modifier of the defined term ‘disposable income.’”¹³¹ Again, this is false. The court draws an illusory distinction between “modify” and “add data.” By the court’s own explanation, “projected” modifies “disposable income.” If it modifies the term, it necessarily adds data. There is no distinction between modifying a term and adding data to it. Modify means “to limit the meaning of, especially in grammatical construction,” “change,” or “alter.”¹³² Thus, the data imported in “disposable income” is limited or altered by the data imported by the word “projected.” Even the court’s use of projected adds something to disposable income. The *Kagenveama* court’s reading of projected adds data dictating that disposable income should be multiplied by the applicable plan length. Not only is this totally *unnatural*, but it is unsupported by anything in the statute. Presumably, if Congress intended such a specific meaning, they could have, over the eight years and thousands of pages it took to draft the legislation, specified as much. Moreover, no dictionary defines projected as “multiplied over the life of the plan.”

Conversely, the forward-looking approach does employ a reading of projected that is natural to the English language and natural to bankruptcy law. Definitions 1a and 1b in *The Merriam-Webster Dictionary* define the verb project as “1 a: to devise in the mind, design; b: to plan, figure, or estimate for the future.”¹³³ The forward-looking approach requires courts to do just that; to devise in the mind, plan, figure, or estimate what disposable income (as defined in §1325(b)(2)) will be over the life of the plan. Thereby, the court attempts to create a plan that satisfies the feasibility requirement of §1325(a)(6). Additionally, the forward-looking reading of projected is consistent with traditional Chapter 13 practice. This is important because although BAPCPA changed the definition of disposable income, it did

¹²⁹ *Id.*

¹³⁰ *In re Lanning*, 545 F.3d at 1280.

¹³¹ *In re Kagenveama*, 541 F.3d at 873.

¹³² MERRIAM-WEBSTER DICTIONARY 317 (2005).

¹³³ Merriam-Webster Online, <http://www.merriam-webster.com> (last visited Mar. 28, 2009).

not address the term “projected” as it relates to disposable income.¹³⁴ As stated earlier, before BAPCPA courts used discretion to estimate a debtor’s future ability to pay. A natural reading of projected, in light of the fact that BAPCPA took no steps to change, or even address, its meaning, would assume that it had a meaning similar to its pre-BAPCPA meaning.¹³⁵ This is especially true in light of the fact that Congress was specifically addressing debtors’ ability to make Chapter 13 payments. Had Congress wanted to create such a specific and counterintuitive definition of projected over the decade they took to amend the statute, it is safe to assume they would have done so. It is difficult to think that Congress forgot, or just didn’t get to it.

Thus, although BAPCPA severely limited the court’s discretion as to what expenses an above-median debtor could deduct from disposable income, it did not limit the court’s traditional discretion in estimating what portion of that income would be available to satisfy creditors over the plan life.

B. Legislative History

Along with Congress’ repeated, explicit declarations that they designed BAPCPA to ensure that debtors pay creditors as much as they are able, there is additional evidence in the legislative history that supports the forward-looking approach. House Report 109-31 states that, in furtherance of its goal of holding debtors accountable for their debts, BAPCPA is designed to settle disparities among the courts as to what expenses are reasonably necessary.¹³⁶ The forward-looking approach does not leave the definition of “disposable income” in 1225(b)(2) without purpose. Rather, under the forward-looking approach, disposable income is an essential reference point. It gives the bankruptcy courts a set of norms from which to begin their determination of projected disposable income.¹³⁷ Thereby, B22C disposable income settles the differences among courts that Congress referred to in House Report 109-31.¹³⁸ House Report 109-31 states that a factor calling for bankruptcy reform is disagreement within the courts as to how thoroughly the courts should examine a debtor’s lifestyle to determine whether the debtor has the ability to pay creditors.¹³⁹ Courts had nearly total discretion over whether a debtor could or should repay

¹³⁴ *In re Lanning*, 545 F.3d at 1274.

¹³⁵ *Id.*

¹³⁶ H.R. Rep. No. 109-31, pt. 1 at 5 (2005).

¹³⁷ *In re Lanning*, 545 F.3d at 1280.

¹³⁸ H.R. REP. NO. 109-31, pt. 1, at 5.

¹³⁹ *Id.*

some of his debts.¹⁴⁰ The purpose of BAPCPA is to settle these discrepancies in favor of courts thoroughly examining what the debtor can pay and forcing the debtor to pay that amount.¹⁴¹ The court's analysis will begin with B22 disposable income.¹⁴² From that starting point, "projected" allows the court to account for events that will necessarily affect a debtor's ability to pay.¹⁴³

There is additional evidence within the Means Test indicates that Congress intended courts to exercise discretion in calculating income and expenses. Section 1325(b)(3) mandates that a debtor's reasonably necessary expenses be calculated according to Section 707(b)(2)(A) and (B).¹⁴⁴ In §707(b)(2)(B), Congress explicitly allows a debtor to rebut the §707(b) presumption of abuse "by demonstrating special circumstances. . .to the extent such special circumstances justify additional expenses or adjustments of current monthly income for which there is no reasonable alternative."¹⁴⁵ Such a special circumstance might include medical bills.¹⁴⁶ The means test used to create the presumption of abuse in Chapter 7 proceedings is the same test used to determine disposable income. It seems extremely unlikely that Congress recognized that debtors filing Chapter 7 may have special needs requiring the court to deviate from the specific provisions of the means test, but did not recognize such a need in for Chapter 13 debtors. To the contrary, the interdependence of the two chapters and their similar use of the means test, suggest that Congress would expect similar treatment regarding special circumstances. Indeed, in the "Dissenting Views" section of House Report 109-31, thirteen Congressmen and women discuss the operation of the means test in Chapters 7 and 13 interchangeably.¹⁴⁷ The discussion indicates an understanding among the Congressmen and women that the test functions the same in either instance. They concede that Section 1325's application of the IRS expenses in a Chapter 13 case can be rebutted upon a showing by the debtor that those expenses are unreasonable.¹⁴⁸ Thus the BAPCPA does reserve leeway for the judge in a Chapter 13 context if the debtor can demonstrate that the calculations of the means test are unreasonable.

This Section 707(b)(2)(B) special circumstances allowance

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *In re Lanning*, 545 F.3d at 1282.

¹⁴³ *Id.*

¹⁴⁴ H.R. REP. NO. 109-31, pt. 1, at 49.

¹⁴⁵ 11 U.S.C.A. § 707(b)(2)(B)(i) (2008). *See also* H.R. REP. NO. 109-31, pt. 1, at 49; BAPCPA S. 256, 109th Congress § 102 (2005).

¹⁴⁶ *Id.*

¹⁴⁷ H.R. Rep. No. 109-31, pt. 1 at 557-58.

¹⁴⁸ H.R. Rep. No. 109-31, pt. 1 at 558.

supports the notion that the means test is a reference point from which the examination of the debtor's financial condition must start. This method adds consistency to the way in which courts examine a debtors' financial condition while leaving the courts room to make adjustments where no reasonable alternative exists. In the instance of someone who had a job during the six months prior to filing, but no longer has a job, there is no reasonable alternative but for the court to account for the change in income. It is patently unreasonable for a court to ignore the fact that a debtor has lost his job and pretend that a debtor's income is more than it actually is.

The BAPCPA creates a guide for exactly how deeply a court should scrutinize a debtor's lifestyle in judging the debtor's ability to pay. Moreover, as multiple courts have pointed out, the Form B22C calculation of disposable income will, in most instances, be applied as projected disposable income.¹⁴⁹ Thus, newly-defined "disposable income" serves a critical role in Chapter 13, despite the fact that it may not always be an exact measure of projected disposable income that the debtor will "receive[] in the applicable plan period."

The mechanical approach leads to results that are absurd in some instances, as in the *Kagenveama* case, and extremely difficult on the debtor in other cases. Debtors such as the one in *Lanning*, discussed above, would be foreclosed from bankruptcy protection while debtors who are much better off financially would be able to obtain bankruptcy relief.¹⁵⁰ For example, suppose an above-median debtor has disposable income as defined in the means test. That debtor cannot file for Chapter 7. If that debtor were laid off from the local factory just prior to filing, his six-month prepetition income would be significantly higher than his actual ability to pay. Under the mechanical approach, the debtor must commit his prepetition income (which he no longer earns, and is unlikely to earn any time soon). Because of the feasibility requirement of §1325(a)(6), that debtor cannot confirm a plan under the mechanical approach.¹⁵¹ Therefore, he cannot obtain Chapter 13 protection. Thus, under the mechanical approach the responsible but unfortunate debtor will be foreclosed from filing for bankruptcy protection in many instances. Meanwhile, a debtor who was simply irresponsible with his credit cards but has a substantial income and no job trouble may be able to seek bankruptcy protection.¹⁵²

This result is both tragic and anomalous, and seems diametrically opposed to Congress' professed intent in passing

¹⁴⁹ *In re Lanning*, 545 F.3d at 1273, 1276 ("Most courts applying this approach view Form B22C as presumptively correct regarding income").

¹⁵⁰ *See In re Lanning*, 545 F.3d at 1281.

¹⁵¹ *Id.*

¹⁵² *Id.*

BAPCPA. The Judiciary Committee stated that reasons for passing BAPCPA include “restoring personal responsibility” to bankruptcy and ensuring that the system was fair to debtors.¹⁵³ The above scenarios, the results of which are commanded by the mechanical approach, run contrary to both these goals. The irresponsible debtor in the latter scenario is rewarded by the mechanical approach, while the responsible but unfortunate debtor, whom the system is designed to assist, is left with no protection from creditors.

C. Economic Implications of Bankruptcy

Without making any judgments on BAPCPA as a whole, this article takes the position that the forward-looking approach comports with the economic realities of bankruptcy to a greater degree than the mechanical approach and therefore is the better approach for American consumers. The forward-looking approach is the better approach because it provides bankruptcy relief for those who need it, whereas the mechanical approach denies bankruptcy protection to those who need it most while providing relief for irresponsible debtors who abuse the system.¹⁵⁴

The number of consumer bankruptcy filings in America has dramatically risen since 1980.¹⁵⁵ Roughly 287,000 consumers filed for bankruptcy in 1980.¹⁵⁶ In 2004, more than 1.5 million consumers filed for bankruptcy.¹⁵⁷ As a percentage of all households, the number of filings in the 90’s was eight times greater than during the great depression.¹⁵⁸ Research by the Federal Reserve indicates that consumer debt is at an all time high relative to household income.¹⁵⁹ With the job market and asset prices tumbling, that figure is certain to go higher.

The growth in consumer bankruptcies during the 80’s and 90’s puzzled economists because it was generally a time of economic prosperity with low unemployment.¹⁶⁰ In fact, researchers have discovered that consumer filings increase more in times of economic

¹⁵³ H.R. REP. NO. 109-31, pt. 1, at 2.

¹⁵⁴ *In re Lanning*, 545 F.3d at 1281.

¹⁵⁵ Price, *supra* note 4, at 140.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.* at 141.

¹⁵⁸ Remarks of Rep. George Gekas, 144 Cong. Rec. E87 (daily ed. Feb. 4, 1998) reprinted in William H. Manz, *Bankruptcy Reform, The legislative History of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005*, vol. 1, document 11.

¹⁵⁹ See Am. Bankr. Inst., Bankruptcy Filing Statistics, www.abiworld.org/statistics (scroll down to “Consumer debt is consistent with bankruptcy filings,” click on image) (last visited Jan. 7, 2009).

¹⁶⁰ Price, *supra* note 4, at 144.

prosperity than during recessions.¹⁶¹ If unemployment was low and the economy was healthy, why were bankruptcy filings consistently increasing? The seeming contradiction raised the question: Who was filing?¹⁶²

The results of such inquiries were shocking. Professors Theresa Sullivan, Elizabeth Warren, and Jay Westbrook each conducted independent studies of bankruptcy over a twenty-year period.¹⁶³ The average bankruptcy filer fits squarely in the middle class.¹⁶⁴ Bankrupt debtors are more likely to have attended college than the average American.¹⁶⁵ Ironically, the bankrupt debtor is also less likely to have finished college than the average American who begins college.¹⁶⁶ In other words, the bankrupt debtor is more likely than the average American college student to leave college without finishing. Bankrupt debtors largely have jobs commensurate with middle-class status.¹⁶⁷ Additionally, in 2001, more than 50% of bankrupt debtors owned homes.¹⁶⁸

Despite the middle class standing of most consumer debtors, most bankruptcy filers have incomes well below median.¹⁶⁹ While this says nothing about the whether the debtors used credit wisely, it does suggest that many, if not most, consumer debtors experience some financial disruption that drives their income down and motivates them to file for bankruptcy.¹⁷⁰ Indeed, Professors Sullivan, Warren, and Westbrook found evidence that more than two thirds of consumer debtors suffer some type of employment disruption before filing.¹⁷¹ Other reasons for financial disruption include medical bills, divorce, having to care for an elderly relative, or collapse of a small business.¹⁷²

It is important to keep in mind that the huge rise in bankruptcy

¹⁶¹ Sen. Hrg. 105-89 at 39. *Increase in Personal Bankruptcy and the Crisis in Consumer Credit*, hearings before the Subcommittee on Administrative Oversight and the Courts of the Senate Judiciary Committee (April 11, 1997) reprinted in William H. Manz, *Bankruptcy Reform: The Legislative History of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005*, vol. 18, document 233.

¹⁶² Price, *supra* note 4, at 144, citing Elizabeth Warren, *Financial Collapse and Class Status: Who Goes Bankrupt?*, 41 OSGOOD HALL L.J. 115, 116 (2003).

¹⁶³ Teresa A. Sullivan, Elizabeth Warren & Jay Lawrence Westbrook, *Twenty-First Century Bankruptcy: Two Decades About Consumer Debt and the Stigma of Bankruptcy* 6 (October 19, 2005) (unpublished manuscript on file with the author); see also Price, *supra* note 4, at 145 (for a discussion of the Sullivan et al. article).

¹⁶⁴ Price, *supra* note 4 at 146.

¹⁶⁵ *Id.* at 145, citing Warren, *supra* note 162, at 116.

¹⁶⁶ *Id.* at 148.

¹⁶⁷ Warren, *supra* note 162, at 136.

¹⁶⁸ Price, *supra* note 4, at 146.

¹⁶⁹ *Id.* at 144.

¹⁷⁰ *Id.* at 144-45.

¹⁷¹ Warren, *supra* note 162, at 144-46; see also Price, *supra* note 4, at 147 (for a discussion of these findings).

¹⁷² Price, *supra* note 4, at 162-64 ("more than half of all consumer bankruptcy filings in 1999 involved some type of medical-related problem").

filings occurred during a time of relatively stable employment. This belies the notion that employment shocks have been the paramount cause of bankruptcy filings. Without passing judgment on why consumers have accumulated so much debt, it seems more likely that skyrocketing use of consumer credit is driving the rise in bankruptcy. Consumer debt has risen consistently since 1980, to current all time highs.¹⁷³ Opponents of BAPCPA state that “the overwhelming weight of authority establishes that it is the massive increase in consumer debt. . . which has brought about the increase in consumer filings.”¹⁷⁴ For instance, between 1989 and 2001, credit card debt more than tripled along side a similar increase in consumer bankruptcy filings.¹⁷⁵ Once the highly-leveraged consumer experiences an income disruption, he becomes unable to service his debt and seeks refuge in bankruptcy. In testimony on the issue of consumer bankruptcy, the Office of the Comptroller told Congress that it was not surprising that non-business bankruptcies increase during periods of economic expansion.¹⁷⁶ This is because use of consumer credit actually increases during times of economic prosperity, and consumer bankruptcy is inextricably linked to consumer credit.¹⁷⁷

As demonstrated above, the mechanical approach does not comport with these economic realities. A consumer such as the debtor in *Lanning* is unable to obtain bankruptcy protection, despite the facts that she is in financially dire straits and has proffered a plan to pay her unsecured creditors.¹⁷⁸ As indicated by the Sullivan, Warren and Westbrook study,¹⁷⁹ most bankrupt debtors suffer job loss, or some other type of employment disruption, shortly before filing. The typical debtor’s B2C income then does not reflect his true ability to pay. Therefore, he will never be able to propose a feasible plan under Chapter 13 and is barred from Chapter 7.¹⁸⁰ This is regardless of the fact that he may have been responsible with his credit. But a totally irresponsible debtor with a substantial income is able to obtain bankruptcy protection under the mechanical approach.¹⁸¹ This is backwards and contrary to legislative intent. It is not reasonable to

¹⁷³ See Am. Bankr. Inst., *supra* note 1.

¹⁷⁴ H.R. REP. NO. 109-31, pt. 1, at 576.

¹⁷⁵ H.R. REP. NO. 109-31, pt. 1, at 49.

¹⁷⁶ S. Hrg. 105-89 at 39. *Increase in Personal Bankruptcy and the Crisis in Consumer Credit*, hearings before the Subcommittee on Administrative Oversight and the Courts of the Senate Judiciary Committee (April 11, 1997). Reprinted in William H. Manz, *Bankruptcy Reform: The Legislative History of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005*, vol. 18, document 233.

¹⁷⁷ *Id.*

¹⁷⁸ *In re Lanning*, 545 F.3d at 1281.

¹⁷⁹ Sullivan, et al., *supra* note 163.

¹⁸⁰ *In re Lanning*, 545 F.3d at 1281.

¹⁸¹ *Id.*

assume that Congress secretly intended nonsensical results when they have stated their intent behind bankruptcy reform was to force debtors to pay their creditors as much as they are able.

Conversely, under the forward-looking approach, both debtors would be afforded bankruptcy relief and each debtor would pay their unsecured creditors according to their ability. Allowing Chapter 13 debtors to repay unsecured creditors to the extent they are able benefits all consumers.¹⁸²

VIII. CONCLUSION

The text of the statute is obviously not “plain” as is evidenced by the fact that nearly every court on both sides of the argument has quoted the maxim in their argument. In light of that fact, semantic arguments seem unnecessary when Congressional intent is so explicit. Congress stated that BAPCPA “is intended to ensure that debtors repay creditors the maximum they can afford.”¹⁸³ As the court in *In re Kibbe* put it, “Congress intended that debtors pay the greatest amount within their capabilities. Nothing more; nothing less.”¹⁸⁴ The arguments based on the text of the statute, which is somewhat ambiguous as to either argument, should take direction from the completely unambiguous Congressional intent. The forward-looking method goes much further than the mechanical approach in ensuring that debtors pay the maximum they can afford. Thus, Congressional intent supports the forward-looking approach.

To the extent the statutory language supports one reading over another, it supports the forward-looking approach. The mechanical approach requires a totally unnatural reading of the term projected, while ignoring substantial other portions of the statute as well as Schedules I and J. Also, the mechanical approach ignores the fact that Congress chose not to address the term “projected” in projected disposable income and its traditional role of allowing courts to make adjustments to disposable income when necessary. Moreover, the forward-looking approach does not render the §1325(b)(2) definition of “disposable income” surplusage. To the contrary, disposable income under the forward-looking approach is the basis for projected disposable income. Thus, the language of the statute supports the forward-looking approach.

Courts and commentators have suggested that there is

¹⁸² H.R. REP. NO. 109-31, pt. 1, at 2.

¹⁸³ *Id.*

¹⁸⁴ *In re Kibbe*, 361 B.R. 302, 314 (B.A.P. 1st Cir. 2007).

insufficient legislative history to clearly determine a legislative intent as to the rewording of § 1325 of the Code.¹⁸⁵ This is objectively false. It ignores the precursor bills and years of legislative attempts that culminated in BAPCPA. As one opponent of BAPCPA put it, “[t]he reported bill is virtually identical to the conference report on H.R. 333 in the 107th Congress. . . .”¹⁸⁶ Congressional intent was to force debtors to pay creditors to the maximum of their ability. Commenting the 2000 version of the law, Bill Clinton wrote that its “central premise” was that “the debtors who truly have the capacity to repay a portion of their debts do so.”¹⁸⁷ Discussing the 1998 version of the Bill, Representative George Gekas (Pennsylvania) stated “The consumer bankruptcy provisions of the Bankruptcy Reform Act of 1998 are designed to address a flaw in the bankruptcy law that allows individuals to file for bankruptcy and walk away from their debts, regardless of whether they are able to repay a portion of what they owe.”¹⁸⁸ The forward-looking approach supports this intent. The mechanical approach does not.

Additionally, the forward-looking approach is more consistent with the economic realities of bankruptcy. The bankrupt debtor typically suffers some sort of financially disruptive event shortly before filing and uses an ever-increasing amount of credit. By relying on historical income figures, the mechanical approach is inconsistent with the pattern of income disruption prior to filing. Conversely, the forward-looking approach accounts for both expanding use of unsecured credit and the reality of income disruptions by ensuring that debtors pay what they can.

Finally, common sense favors the forward-looking approach.¹⁸⁹ The mechanical approach leads to some debtors paying less than they are able despite clearly articulated Congressional intent to the contrary. Further, it denies Chapter 13 protection to those who need it most. Such results are especially unfortunate as they are not required by the statute. It is not reasonable to interpret the statute in a way that leads to nonsensical, counterproductive results when an interpretation that is at least as viable is available. Such a reading suggests that Congress intended nonsense when enacting the statute. That is not a reasonable

¹⁸⁵ *In re Lanning*, 545 F.3d at 1280. See also Jeffrey R. Drobish, *The Forbidden Crystal Ball: Interpreting “Projected Disposable Income” for Chapter 13 Bankruptcy Plans After BAPCPA*, 85 WASH. U. L. REV. 185, 205 (2007).

¹⁸⁶ H.R. REP. NO. 109-31, pt. 1, at 541. See also William H. Manz’s 18-volume *Bankruptcy Reform: The Legislative History of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005* for an extensive legislative history of BAPCPA.

¹⁸⁷ William J. Clinton, *Memorandum of Disapproval on the “Bankruptcy Reform Act of 2000*, 36 Weekly Compilation of Presidential Documents 3130 (December 19, 2000). Reprinted in William H. Manz, *Bankruptcy Reform, The legislative History of the Bankruptcy Abuse and Consumer Protection Act of 2005*, Vol. 1, Document 7.

¹⁸⁸ See Remarks of Rep. George Gekas, *supra* note 158.

¹⁸⁹ *In re Lanning*, 545 F.3d at 1273.

supposition. Congress intended debtors to pay as much as they are able. The forward-looking approach supports this intent.