

ALL OR NOTHING: PROPERLY DEDUCTING VEHICLE OWNERSHIP EXPENSES UNDER § 707(B)(2)(A)(II)(I)

ABSTRACT

Congress's introduction of means testing under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 placed increased significance on calculating debtors' currently monthly income for purposes of determining whether debtors are abusing bankruptcy. The Bankruptcy Code allows debtors to deduct vehicle ownership expenses from this calculation under § 707(b)(2)(A)(ii)(I). That section's ambiguous language has courts divided over whether to apply this deduction when a debtor has no actual ownership expenses. This division subjects creditors and debtors to significantly different treatment depending upon the forum administering their bankruptcy proceedings. This Comment explains how courts and parties will find greater uniformity and equity by looking to the policy considerations supporting the vehicle ownership expense deduction and how those considerations require that the deduction should apply only when debtors have actual ownership expenses.

INTRODUCTION

Congress passed the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) to reform the consumer bankruptcy system.¹ As BAPCPA's title demonstrates, Congress perceived the bankruptcy system prior to 2005 as permitting excessive abuse by both debtors and creditors.² Congress thus enacted BAPCPA to ensure that debtors repay their creditors to the maximum extent possible in bankruptcy,³ to reduce perceived excessive judicial discretion in bankruptcy proceedings, and to make judicial

¹ H.R. REP. NO. 109-31, pt. 1, at 2 (2005), *reprinted in* 2005 U.S.C.C.A.N. 88, 89. BAPCPA only applies to an individual debtor "whose debts are primarily consumer debts." 11 U.S.C. § 707(b)(1) (2006). *See generally* Eugene R. Wedoff, *Means Testing in the New § 707(b)*, 79 AM. BANKR. L.J. 231, 232-41 (2005) (describing the regulatory framework of the means test and providing an overview of its operation).

² H.R. REP. NO. 109-31, pt. 1, at 2.

³ *See id.* ("The heart of the bill's consumer bankruptcy reforms consists of the implementation of an income/expense screening mechanism ('needs-based bankruptcy relief' or 'means testing'), which is intended to ensure that debtors repay creditors the maximum they can afford.").

decisions concerning bankruptcy more uniform and predictable.⁴ BAPCPA, however, has not successfully implemented these reforms in cases involving the vehicle ownership expense deduction located in § 707(b)(2)(A)(ii)(I) of the Bankruptcy Code.

BAPCPA implements its reforms with, among other provisions, a procedural mechanism in § 707 called the “means test.”⁵ The means test measures debtors’ ability to repay their creditors in both chapter 7 and chapter 13 bankruptcies and ultimately ensures that those debtors capable of repaying their creditors will be funneled into chapter 13 restructuring, as opposed to chapter 7 liquidation.⁶ To determine which type of bankruptcy relief consumer debtors may obtain, the means test measures whether their current monthly income exceeds a specific threshold after subtracting certain permitted expense deductions.⁷ If a debtor’s current monthly income exceeds this threshold, BAPCPA presumes the debtor’s chapter 7 case is abusive, and a court will convert it to a chapter 13 case or dismiss it altogether.⁸ Because the total amount of a debtor’s permitted expense deductions may bring the debtor’s current monthly income above or below the means test threshold, an accurate determination of those deductions often determines the critical question of what type of relief the debtor is entitled to receive in bankruptcy.⁹

As currently written and interpreted by courts, BAPCPA’s means test does not resolve whether debtors may deduct vehicle ownership expenses for vehicles they own free and clear of any actual ownership expenses—i.e., debt or lease payments—on the bankruptcy petition date. Properly calculating the vehicle ownership expense deduction has significant consequences in consumer bankruptcy because the deduction is sizeable—\$489 for one vehicle or \$978 for a maximum of two vehicles¹⁰—and often determines the outcome of the means test and whether debtors obtain chapter 7 relief, whether creditors are paid in full through chapter 13, or whether a debtor’s case should be

⁴ See *id.* at 2–5.

⁵ See 11 U.S.C. § 707(b)(1); Wedoff, *supra* note 1, at 231.

⁶ 11 U.S.C. § 707(b)(2)(A)(i).

⁷ *Id.* Section 707(b) allows expense deductions for housing, utilities, and certain secured debts. See *id.* § 707(b)(2)(A)(ii)(I). Specifically, that section provides that debtors are allowed to deduct the amounts specified in national and local standards published by the Internal Revenue Service (IRS). See *infra* Part I.C.

⁸ 11 U.S.C. § 707(b)(2)(A)(i)

⁹ See Wedoff, *supra* note 1, at 232–41.

¹⁰ The Code draws these figures from Local Transportation Standards published by the IRS. See *infra* Part I.C.

dismissed altogether.¹¹ Most debtors claim this deduction to reduce their current monthly income as calculated under the means test and keep more of that income for themselves.¹² Consequently, creditors often object because these deductions reduce their ultimate payout and may allow debtors to abuse bankruptcy and prejudice creditors' interests.¹³

The issues surrounding the vehicle ownership expense deduction shed light on how Congress's aims in enacting BAPCPA—namely, encouraging uniformity in application of bankruptcy law and maximum repayment to creditors—often conflict.¹⁴ For instance, allowing a blanket deduction based strictly on the number of vehicles owned by a debtor without regard to the debtor's actual ownership expenses promotes the increased uniformity and predictability in judicial decisions that Congress aimed to achieve. This uniformity and predictability, however, may allow debtors to deduct expenses for vehicles they do not use or are inoperable and thus undermines Congress's aim of ensuring that debtors repay their creditors to the maximum extent possible in bankruptcy.¹⁵

Because vehicle ownership expense deduction cases implicate these conflicting aims and apply in so many consumer bankruptcies, case law on vehicle ownership expense deductions has developed inconsistently and rapidly. As of January 2009, at least eighty bankruptcy courts have addressed this issue and are split in their decisions.¹⁶ This split persists among district courts¹⁷ and bankruptcy appellate panels.¹⁸ Recently, the United States Circuit

¹¹ See, e.g., *In re Harris*, 353 B.R. 304, 310 (Bankr. E.D. Okla. 2006) (finding debtor's chapter 7 case presumptively abusive and subject to chapter 13 conversion because debtor owned a vehicle free and clear yet claimed the vehicle ownership expense deduction); *In re Wilson*, 356 B.R. 114, 121 (Bankr. D. Del. 2006) (noting that if the vehicle ownership expense deduction is prohibited, then a presumption of abuse would arise and the debtors' chapter 7 case would be dismissed under § 707(b)(3)). Alternatively, a debtor's claiming of the vehicle ownership expense deduction in the absence of debt or lease payments can provide a basis for objection to confirmation of a bankruptcy plan. See, e.g., *In re Carlin*, 348 B.R. 795, 799 (Bankr. D. Or. 2006) (granting trustee's objection to chapter 13 confirmation).

¹² The deduction reduces current monthly income by \$489 for one vehicle and by \$978 for two vehicles. See *infra* Part I.C.

¹³ See *supra* note 11 and accompanying text.

¹⁴ See *supra* note 4 and accompanying text.

¹⁵ See *Fokkena v. Hartwick*, 373 B.R. 645, 652–53 (D. Minn. 2007) (noting that allowing a blanket deduction based strictly on the number of vehicles owned by a debtor would allow the particular debtor to claim deductions for nonfunctioning vehicles).

¹⁶ See *In re Coffin*, 396 B.R. 804, 807–08 nn.10–11 (Bankr. D. Me. 2008) (listing the courts split over allowing vehicle ownership deductions when debtors have no actual expenses for owning the vehicle).

¹⁷ Reviewing appeals of bankruptcy court decisions on the vehicle ownership deduction, at least nine district courts have ruled on this issue. Seven of these courts prohibited the deduction. *Tate v. Lentz*, No. 1:08cv32HSO-JMR, 2008 WL 4489761, at *3–4 (S.D. Miss. Sept. 29, 2008) (prohibiting the deduction and

Court of Appeals for the Seventh Circuit addressed this issue and concluded that a debtor is entitled to the deduction even when the debtor has no actual expenses for owning the vehicle, like debt or lease payments.¹⁹

This Comment attempts to resolve the split among these courts. Proceeding in four sections, it explains that although § 707(b)(2)(A)(ii)(I)'s language and legislative history are ambiguous, policy considerations dictate that the vehicle ownership expense deduction should be disallowed for vehicles that do not require actual ownership expenses on the bankruptcy petition date.²⁰ Part I describes the purpose of the means test in both chapter 7 and chapter 13 cases and how the vehicle ownership expense deduction functions in those cases. Part II analyzes conflicting interpretations of the

recognizing that the weight of persuasive authority in the Fifth Circuit supports the prohibition, although the Fifth Circuit has yet to rule on the issue); *Grossman v. Sawdy*, 384 B.R. 199, 203–05 (E.D. Wis. 2008); *Wieland v. Thomas*, 382 B.R. 793, 797–99 (D. Kan. 2008); *Meade v. McVay (In re Meade)*, 384 B.R. 132, 135–38 (W.D. Tex. 2008); *Fokkena*, 373 B.R. at 649–52; *Neary v. Ross-Tousey (In re Ross-Tousey)*, 368 B.R. 762, 763–69 (E.D. Wis. 2007), *rev'd*, 549 F.3d 1148 (7th Cir. 2008); U.S. Tr. v. *Deadmond (In re Deadmond)*, No. CV 07-15-H-CCL, 2008 WL 191165, at *2–4 (D. Mont. Jan. 22, 2008). Two district courts, however, permitted the deduction. *Clippard v. Ragle (In re Ragle)*, 395 B.R. 387, 400–01 (E.D. Ky. 2008); *Brunner v. Armstrong (In re Armstrong)*, 395 B.R. 127, 129–33 (E.D. Wash. 2008).

¹⁸ The four bankruptcy appellate panels that have considered the issue have split evenly. The Bankruptcy Appellate Panels of the Eighth and Ninth Circuits prohibit the deduction. *Babin v. Wilson (In re Wilson)*, 383 B.R. 729, 734 (B.A.P. 8th Cir. 2008); *Ransom v. MBNA Am. Bank (In re Ransom)*, 380 B.R. 799, 806–09 (B.A.P. 9th Cir. 2007). In contrast, the Bankruptcy Appellate Panels of the Sixth and Tenth Circuits permit the deduction. *Pearson v. Stewart (In re Pearson)*, 390 B.R. 706, 712–15 (B.A.P. 10th Cir. 2008), *vacated as moot*, No. 08-8060, 2009 WL 205408 (10th Cir. Jan. 22, 2009); *Hildebrand v. Kimbro (In re Kimbro)*, 389 B.R. 518, 521–32 (B.A.P. 6th Cir. 2008).

Though courts and scholars dispute what deference bankruptcy appellate panel decisions deserve, “a bankruptcy court should typically follow such decisions unless good reason exists not to.” *In re Watkins*, No. 07-6317-PHX-SSC, 2008 WL 2475749, at *4 (Bankr. D. Ariz. June 18, 2008) (adopting the reasoning of the Ninth Circuit Bankruptcy Appellate Panel’s decision in *In re Ransom*, 380 B.R. at 799). See generally Jonathan P. Friedland et al., *Whether BAP and District Court Precedent Is Binding*, in 2 BANKRUPTCY LITIGATION § 9:43 (Howard J. Steinberg ed., 2008) (summarizing the conflicting opinions of scholars, courts, and commentators about what authority bankruptcy appellate panel decisions deserve); Bryan T. Camp, *Bound by the BAP: The Stare Decisis Effects of BAP Decisions*, 34 SAN DIEGO L. REV. 1643, 1676–84 (1997) (arguing that federal bankruptcy and district courts should be bound by bankruptcy appellate panel decisions).

¹⁹ *Ross-Tousey v. Neary (In re Ross-Tousey)*, 549 F.3d 1148, 1157–62 (7th Cir. 2008).

²⁰ This Comment challenges what most commentators and academics have written on the subject. See 6 COLLIER ON BANKRUPTCY ¶ 707.05[2][c][i] (15th ed. rev., 2008); Wedoff, *supra* note 1; Charles J. Tabb & Jillian K. McClelland, *Living with the Means Test*, 31 S. ILL. U. L.J. 463, 487 (2007) (concluding that permitting the expense deduction only when a debt or lease payments exists would be “misguided” because of the statute’s plain language “allowance not actual” approach to the Local Standards in § 707(b)(2)(A)(ii)(I) and ancillary policy considerations); David P. Leibowitz & Sharanya Gururajan, *Vehicle Ownership Expense Deduction: Fixed Allowance or Cap on an Actual Expense?*, AM. BANKR. INST. J., Aug. 2008, at 12, 72 (from a practitioner’s perspective, “cases treating the ownership expense as an ‘allowance’ seem to emerge as winners as they are more in keeping with the plain language of the statute”).

vehicle ownership expense deduction based on § 707's ambiguous legislative history and text and explains how a proper construction of that statute prohibits the deduction when debtors have no actual expenses for owning a vehicle. Part III analyzes additional policy arguments that inform the debate surrounding vehicle ownership expense deductions. Part IV summarizes these arguments, concludes that the vehicle ownership expense deduction should not apply to debtors having no actual expenses for owning a vehicle, and describes the important implications of resolving this issue for debtors, creditors, and practitioners.

I. PROCEDURE FOR PERFORMING CALCULATIONS UNDER THE MEANS TEST

This Part first explains how the means test works in consumer bankruptcy. After explaining how the means test determines whether a court allows a debtor to remain in chapter 7, converts the case to a chapter 13 case, or dismisses the case altogether, this Part then explains how the vehicle ownership expense deduction plays an important role in making this determination. Finally, this Part explains how the Code's vehicle ownership expense deduction incorporates information published by the Internal Revenue Service for collecting delinquent taxes and how this information affects the vehicle ownership expense deduction in consumer bankruptcy cases.

A. *The Means Test*

A debtor may seek bankruptcy relief by filing a petition under either chapter 7 or chapter 13.²¹ Under both chapter 7 and 13, the debtor must use the means test formula provided in § 707(b)(2)(A)(i) to calculate his or her "current monthly income." Although identical in both chapters, the current monthly income calculation serves different purposes in chapter 7 and chapter 13.

When a debtor files under chapter 7, a court will decide whether the debtor's filing creates a presumption of abuse.²² This presumption of abuse arises if the debtor's "statutorily defined 'current monthly income,' . . . reduced by defined allowances for living expenses and payment of secured and priority debt . . . is high enough to at least equal defined trigger

²¹ 11 U.S.C. § 301 (2006).

²² *In re Howell*, 366 B.R. 153, 156–57 n.18 (Bankr. D. Kan. 2007).

points”—or thresholds set in the Code.²³ If the presumption of abuse arises, the court either dismisses the debtor’s case or converts it to a chapter 13 proceeding.²⁴ Alternatively, when a debtor files for chapter 13 relief or when a court converts a case to chapter 13, courts consider the debtor’s current monthly income to determine whether the debtor has sufficient projected disposable income to repay creditors during a three- or five-year chapter 13 repayment plan.²⁵

Even when a debtor in chapter 7 passes the means test without conversion or dismissal for presumed abuse, a court may still dismiss the case by considering the “totality of the circumstances” under § 707(b)(3)(B).²⁶ When looking at the totality of the circumstances, the court uses its discretion to decide whether the debtor’s case should be dismissed from chapter 7 proceedings due to fraud or abuse, even when the debtor appears to have insufficient income to pay creditors under a chapter 13 payout plan.²⁷

B. Vehicle Expense Deductions Under the Bankruptcy Code

The Code allows debtors to deduct certain expenses from their current monthly income calculations.²⁸ When totaled, these deductions comprise the debtor’s total applicable defined allowances for living expenses.²⁹

Among these allowances, the Code deducts certain transportation costs as “applicable monthly expense[s]” under § 707(b)(2)(A)(ii)(I), including qualified vehicle ownership expenses.³⁰ Section 707(b)(2)(A)(ii)(I) states that “the debtor’s monthly expenses shall be the debtor’s applicable monthly expense amounts specified under the National Standards and Local Standards.”³¹ These standards are deduction amounts published by the IRS.³² Thus, to determine whether a debtor’s transportation expense is among the

²³ Wedoff, *supra* note 1, at 231–32 (paraphrasing 11 U.S.C. § 707(b)(2)(A)(i)). Current monthly income is an average of the debtor’s earnings in the six month period prior to the commencement of the bankruptcy case. 11 U.S.C. § 101.

²⁴ 11 U.S.C. § 707(b)(1).

²⁵ *Id.* § 1322(a)(4); *In re Howell*, 366 B.R. at 157.

²⁶ 11 U.S.C. § 707(b)(3)(B).

²⁷ *Id.* Alternatively, the court may dismiss the case if the debtor filed in bad faith. *See id.* § 707(b)(3)(A).

²⁸ *Id.* § 707(b)(2)(A)(i).

²⁹ *Id.* § 707(b).

³⁰ *Id.* § 707(b)(2)(A)(ii)(I).

³¹ *Id.*

³² *See infra* Part I.C.

monthly expenses “applicable” under § 707(b)(2)(A)(ii)(I), one must consult the IRS Standards.³³

C. IRS Standards and Treatment of Transportation Expense Deductions

The IRS uses standards to determine a taxpayer’s ability to pay delinquent tax liability.³⁴ It explains these standards in its *Financial Analysis Handbook*, which “provides instructions for analyzing . . . [a] taxpayer’s financial condition”³⁵ and divides “allowable expenses”³⁶ into three categories: “National Standards,” “Local Standards,” and “Other Expenses.”³⁷ The IRS publishes the *Financial Analysis Handbook* in its Internal Revenue Manual (IRM), and it publishes deductible amounts for the National and Local Standards on the Internet.³⁸ National Standards³⁹ are generally uniform throughout the United States and apply to such allowable necessary expenses as food, housekeeping supplies, apparel, personal care products, and services.⁴⁰ The Local Standards⁴¹ apply to transportation, housing, and utilities.⁴²

³³ Courts, however, disagree about how to interpret the word “applicable” in § 707(b)(2)(A)(ii)(I) and whether the IRS’s treatment of its own standards are incorporated into § 707(b)(2)(A)(ii)(I). See *infra* Part II.2.A.

³⁴ Internal Revenue Service, Collection Financial Standards, <http://www.irs.gov/individuals/article/0,,id=96543,00.html> (last visited Feb. 10, 2009) [hereinafter *IRS Standards*].

³⁵ Internal Revenue Service, Internal Revenue Manual, <http://www.irs.gov/irm/index.html> (last visited Mar. 21, 2009) [hereinafter *IRM*]. The *Financial Analysis Handbook* is located in section 5.15.1.9 of the Internal Revenue Manual (IRM). *IRM*, *supra* at 5.15.1. The standards located within the IRM serve as guidelines for IRS revenue officers when collecting delinquent taxes. *In re Law*, No. 07-40863, 2008 WL 1867971, at *10 (Bankr. D. Kan. Apr. 24, 2008).

³⁶ *IRM*, *supra* note 35, at 5.15.1.7.1.

Allowable expenses include those expenses that meet the necessary expense test. *The necessary expense test is defined as expenses that are necessary to provide for a taxpayer’s and his or her family’s health and welfare and/or production of income.* The expenses must be reasonable. The total necessary expenses establish the minimum a taxpayer and family needs to live.

Id.

³⁷ *IRM*, *supra* note 35, at 5.15.1.2–4, 5.15.1.8–10.

³⁸ See *IRM*, *supra* note 35, at 5.15.1 (publishing the *Financial Analysis Handbook*); see also *IRS Standards*, *supra* note 34 (publishing the National and Local Standards).

³⁹ See Internal Revenue Service, National Standards: Food, Clothing and Other Items, <http://www.irs.gov/businesses/small/article/0,,id=104627,00.html> (last visited Mar. 21, 2009) [hereinafter *IRS National Standards*].

⁴⁰ *IRM*, *supra* note 35, at 5.15.1.8; see also *IRS National Standards*, *supra* note 39.

⁴¹ Internal Revenue Service, Local Standards: Transportation, <http://www.irs.gov/businesses/small/article/0,,id=104623,00.html> (last visited Mar. 21, 2009) [hereinafter *IRS Local Transportation Standards*].

⁴² See *IRM*, *supra* note 35, at 5.15.1.9; *IRS Local Transportation Standards*, *supra* note 41.

The Local Standards allow two types of transportation expenses—ownership expenses and operation expenses.⁴³ The ownership expense allowance is a nationwide monthly allowance for ownership costs, which covers loan or lease payments for no more than two vehicles and allows \$489 for one vehicle or \$978 for two vehicles.⁴⁴ The allowance generally caps what ownership costs a taxpayer may deduct by allowing the taxpayer to deduct the lesser of either the monthly allowance or the taxpayer's actual ownership expenses.⁴⁵

The operation expense allowance provides regional allowances for taxpayers operating up to two motor vehicles or using public transportation.⁴⁶ The monthly operation allowance averages from \$186 to \$280 per vehicle, depending on the region.⁴⁷ This operation allowance also allows an additional \$200 per month deduction for taxpayers who own old or high-mileage vehicles free and clear of actual ownership expenses.⁴⁸

In computing the total transportation expense under the IRS standards, taxpayers cannot claim ownership costs for vehicles owned free and clear of payments.⁴⁹ Rather, taxpayers may only claim the operating cost portion of the transportation expense for these vehicles.⁵⁰

⁴³ *Id.*

⁴⁴ *Id.* Deductible vehicle ownership cost amounts are available on the IRS website. See *IRS Local Transportation Standards*, *supra* note 41.

⁴⁵ *IRM*, *supra* note 35, at 5.19.1.6.2.5. The Local Standards identify four regions and twenty-eight metropolitan areas in the United States. *IRS Local Transportation Standards*, *supra* note 41; see also *Hildebrand v. Kimbro (In re Kimbro)*, 389 B.R. 518, 527–31 (B.A.P. 6th Cir. 2008) (discussing the narrow exceptions to the default rule that the IRS treats Local Standards as caps on actual ownership cost deductions).

⁴⁶ Deductible vehicle operating cost amounts are available on the IRS website. See *IRS Local Transportation Standards*, *supra* note 41.

⁴⁷ *IRM*, *supra* note 35, at 5.15.1.7(4)(B).

⁴⁸ *Id.* at 5.8.5.6.3(3). When a taxpayer owns a vehicle currently “over six years old or has reported mileage of 75,000 miles or more,” the IRS allows an additional operating expense of \$200 per vehicle “for the collection period that remains *after* the loan/lease has been retired, *plus* the operating expense.” *Id.*; see also *In re Martinez*, 391 B.R. 424, 429–30 (Bankr. E.D. Wis. 2008) (holding that chapter 7 debtors could not prorate the remaining twenty-five months of the sixty-month period in which the debtors' vehicles would have been paid off under a hypothetical sixty-month chapter 13 repayment period).

⁴⁹ See *IRS Standards*, *supra* note 34, at 5.15.1.7(4)(B). The relevant part provides: “If a taxpayer has a car payment, the allowable ownership cost added to the allowable operating cost equals the allowable transportation expense. If a taxpayer has a car, but no car payment, only the operating costs portion of the transportation standard is used to figure the allowable transportation expense.” *Id.* Additionally, “[u]nlike the national standards, the local standards for housing, utilities, and transportation serve as a cap. The taxpayer is allowed [either the amount of] the local standard or the amount actually paid, whichever is less.” *IRM*, *supra* note 35, at 5.19.1.6.2.5(2).

⁵⁰ See *IRS Standards*, *supra* note 34.

*D. Implications of the Bankruptcy Code's Incorporation of IRS
Transportation Expenses*

Courts applying the vehicle ownership deduction do not dispute that they must look to the dollar amounts in the Local Standards.⁵¹ Courts agree that the Local Standards' deductions are allowed in full.⁵² Their agreement ends here, however, as courts dispute how the Local Standards apply when deducting vehicle ownership expenses for calculating a debtor's current monthly income under the means test.⁵³ Specifically, courts disagree about the extent to which Congress intended to incorporate the IRM into § 707(b)(2)(A)(ii)(I).⁵⁴

Some courts allow debtors to claim the vehicle ownership expense deduction even when debtors have no actual expenses for owning the vehicle.⁵⁵ These "prodeduction courts" allow the deduction based strictly on the number of vehicles claimed, and they find the IRS's internal policies and procedures published in the IRM irrelevant for computing current monthly income in bankruptcy.⁵⁶ Accordingly, prodeduction courts' reliance on the Local

⁵¹ See *infra* Part III.A.

⁵² See, e.g., *In re Moorman*, 376 B.R. 694, 696 (Bankr. C.D. Ill. 2007) (observing that if deductible, the debtor could claim the Local Standards as fixed amounts). The Bankruptcy Code provides debtors an official form to calculate their current monthly income. 11 U.S.C. app. Official Form 22A (2006), available at http://www.usdoj.gov/ust/eo/bapcpa/dfs/docs/samples/BK_Form_B22A_V1.pdf (last accessed Jan. 23, 2009) [hereinafter *Form 22A*]. This form directs debtors to enter vehicle ownership expenses as fixed amounts listed in the IRS Standards. *Id.* Specifically, line 23 of Form 22A instructs debtors to enter the "Ownership Costs" for 'One Car' from the IRS Local Standards: Transportation." *Id.* Furthermore, Official Form 22A permits a debtor to deduct the excess of actual vehicle expense over allowable expense amounts as a "future payment on secured claims," thereby permitting a debtor to deduct amounts in excess of the standard vehicle ownership expense amount. *Id.*

⁵³ See *Hildebrand v. Kimbro (In re Kimbro)*, 389 B.R. 518, 521–22 (B.A.P. 6th Cir. 2008) (noting that this issue arises due to 11 U.S.C. § 707(b)(2)(A)(ii)(I)'s incorporation of the IRS Local and National Standards).

⁵⁴ See *supra* note 30 and accompanying text.

⁵⁵ See, e.g., *Clippard v. Ragle (In re Ragle)*, 395 B.R. 387, 400 (E.D. Ky. 2008) (declining to apply the deductions in the same manner as the IRS under the IRM including the Financial Analysis Handbook); *In re Fowler*, 349 B.R. 414, 418 (Bankr. D. Del. 2006) (declining to adopt the IRM cap based on the plain language of the statute).

⁵⁶ Additionally, prodeduction courts note that even assuming deference should be given to the IRM, IRS officers have discretion to deviate from these fixed amounts "when failure to do so will cause the taxpayer economic hardship." *IRM, supra* note 35, at 5.15.1.1(6); see also *In re Kimbro*, 389 B.R. at 528 (observing that "under the IRM, a revenue officer is afforded significant discretion in determining a taxpayer's ability to pay a tax debt"); *In re White*, 382 B.R. 751, 757–58 (Bankr. C.D. Ill. 2008) (holding that the IRM is not implicitly incorporated into the Bankruptcy Code; that the "Financial Analysis handbook portion of the IRM provides informal, flexible guidelines designed to give guidance to field agents negotiating with taxpayers to resolve tax collection issues"; and that the "IRM is in the nature of an internal agency rule that is not enforceable against the IRS"). The discretionary nature of the IRM provisions thus suggests they should not be incorporated into a rigid application of the BAPCPA reforms under the means test.

Standards and the IRM begins and ends when they incorporate the dollar amount figures posted in the Financial Analysis Handbook.⁵⁷ Prodeduction courts allow vehicle ownership expense deductions under § 707(b)(2)(A)(ii)(I) as “applicable” deductions if the debtor owns the vehicle.⁵⁸

In contrast, other courts prohibit the vehicle ownership expense deduction when the debtor has no actual ownership expenses.⁵⁹ These “antiduction courts” hold that under § 707(b)(2)(A)(ii)(I), the vehicle ownership expense deduction is an “applicable” monthly expense only if the debtor has remaining debt or lease payments on the vehicle.⁶⁰ These courts often find that Congress specifically intended to incorporate the IRS’s prohibition of ownership expense deductions for vehicles owned free and clear of debt or lease payments into the means test.⁶¹ Following this IRS prohibition, courts do not deduct ownership expense payments when debtors have no debt or lease payments on their vehicles upon filing their bankruptcy petition.⁶²

The dispute between these prodeduction and antiduction courts has serious consequences in consumer bankruptcy. The potential deduction in these cases is sizable—\$489 for one vehicle or \$978 for two vehicles.⁶³ Permitting or denying this deduction can dictate whether a particular case

⁵⁷ See, e.g., *In re Moorman*, 376 B.R. at 697 (holding that “although Congress borrowed the National and Local Standards from the IRS for incorporation into BAPCPA, there is no reasonable basis to also borrow the IRS collection guidelines and methods found in the IRM for interpretation of BAPCPA”); *In re Kimbro*, 389 B.R. at 522 (affirming the lower court’s finding that “[s]ection 707(b)(2)(A)(ii)(I) does not incorporate the IRM into the bankruptcy means test”).

⁵⁸ Additionally, prodeduction courts point to the distinction between Local Standards as caps by the IRS and fixed allowances under the Code as evidence that Congress did not intend to adopt IRS procedures wholesale, specifically, the IRS’s prohibition on ownership expenses for vehicles owned free and clear.

⁵⁹ E.g., *In re Canales*, 377 B.R. 658, 665–66 (Bankr. C.D. Cal. 2007); *In re Brown*, 376 B.R. 601, 606 (Bankr. S.D. Tex. 2007).

⁶⁰ See *In re Canales*, 377 B.R. at 665–66 (reading “the term ‘applicable’ in § 707(b)(2)(A)(ii)(I) to require that the debtor make some lease or loan payment on a vehicle in order to be entitled to claim a deduction for transportation ownership expenses”); *In re Brown*, 376 B.R. at 606 (holding that “the ownership expense is only ‘applicable’ if the debtor makes a loan or lease payment on a vehicle”).

⁶¹ The IRS prohibits deductions for vehicles owned free and clear of debt or lease payments. See *supra* notes 49–50 and accompanying text. Antiduction courts follow this policy when applying the IRS standards under the means test. See, e.g., *In re Slusher*, 359 B.R. 290, 309 (Bankr. D. Nev. 2007) (noting that had Congress not intended to incorporate IRS provisions, then § 707(b)(2)(A)(ii)(I) would have read, “‘The debtor’s monthly expenses shall be the monthly expense amounts specified under the National Standards and Local Standards . . .’ rather than ‘The debtor’s monthly expenses shall be the debtor’s applicable monthly expense amounts specified under the National and Local Standards . . .’”); see also *In re Cole*, 371 B.R. 454, 459 (Bankr. W.D. Wash. 2007) (noting that because Congress referred the courts specifically to the IRS standards, the Court should be guided by how the IRS uses and employs those standards).

⁶² See *supra* note 49 and accompanying text.

⁶³ See *supra* note 10 and accompanying text.

remains in chapter 7, is converted to a chapter 13 case, or is dismissed altogether.⁶⁴ Because a denied or allowed deduction may so drastically affect debtors' and creditors' rights in so many consumer bankruptcies, judicial disagreements over this issue allow too much uncertainty and inconsistency in national bankruptcy policy and law. As the next section explains, although the text of § 707(b)(2)(A)(ii)(I) ambiguously incorporates the IRS standards, a proper understanding of the Congressional intent and policy considerations behind the vehicle ownership expense deduction reveals it should be prohibited on vehicles for which debtors have no actual expenses.

II. STATUTORY CONSTRUCTION IN LIGHT OF LEGISLATIVE HISTORY

Despite the importance of the vehicle ownership expense deduction in many cases, courts inconsistently apply the vehicle ownership expense deduction because they have differing interpretations of § 707(b)(2)(A)(ii)(I). In relevant part, that section provides:

The debtor's monthly expenses shall be the debtor's *applicable monthly expense* amounts specified under the National Standards and Local Standards, and the debtor's *actual monthly expenses* for the categories specified as Other Necessary Expenses issued by the Internal Revenue Service for the area in which the debtor resides, as in effect on the date of the order for relief, for the debtor, the dependents of the debtor, and the spouse of the debtor in a joint case, if the spouse is not otherwise a dependent.⁶⁵

Courts disagree about how to interpret the word "applicable" occurring in the first clause of this text.⁶⁶ Specifically, they dispute whether the Local Standards are "applicable" for as long as the debtor owns the claimed vehicles or whether the Local Standards are applicable only when the debtor's claimed vehicles are encumbered by debt or lease payments, as the IRS requires when applying the Local Standards.⁶⁷ As explained below, conflicting judicial interpretations demonstrate that § 707(b)(2)(A)(ii)(I)'s language is neither plain nor ordinary.⁶⁸ Even though the statute's legislative history does not explicitly resolve these ambiguities, a proper construction of

⁶⁴ See *supra* note 11 and accompanying text.

⁶⁵ 11 U.S.C. § 707(b)(2)(A)(ii)(I) (2006) (emphasis added).

⁶⁶ See *infra* Part II.A.

⁶⁷ See *infra* Part II.A.

⁶⁸ See *infra* Part II.A.

§ 707(b)(2)(A)(ii)(I)'s language requires that debtors have actual debt or lease payments on vehicles they claim for ownership expense deductions.⁶⁹

A. *Conflicting Plain Meaning Interpretations*

The text of § 707(b)(2)(A)(ii)(I) has caused considerable confusion among the courts, especially in recent cases.

1. *Early Plain and Ordinary Meaning Interpretations*

Initially, prodeduction courts held that § 707(b)(2)(A)(ii)(I)'s language is clear and unambiguous.⁷⁰ Courts stressed that the inclusion of “applicable monthly expense amounts specified under the . . . [IRS] Local Standards” is clear and unambiguous.⁷¹ The progression of the cases allowing the deduction begins with the decision issued in *In re Demonica*, which laid the theoretical groundwork for the subsequent decisions.⁷²

The bankruptcy court in *In re Demonica*, was the first court to note a distinction between Congress's use of the words “applicable” and “actual.”⁷³ In that case, the court considered whether a debtor was eligible for the vehicle ownership expense deduction when, although not personally liable on the vehicle's note, he made monthly payments on the note for his wife.⁷⁴ The court also considered whether the payments qualified as an “applicable monthly expense” and found the debtor's payments on behalf of his wife were deductible as a vehicle ownership expense under 707(b)(2)(A)(ii)(I).⁷⁵ The court held that the full Local Standard amount was deductible from current monthly income even when the debtor's actual expenses were less.⁷⁶ The court supported its holding by stating that “[i]n order to give effect to every word in the statute, the term ‘actual monthly expenses’ [referencing Other Necessary

⁶⁹ See *infra* Part II.B.

⁷⁰ See *In re Enright*, 397 B.R. 272, 279 (Bankr. M.D.N.C. 2007) (finding that the plain language of § 707(b)(2)(A)(ii)(I) is clear); *In re Fowler*, 349 B.R. 414, 418 (Bankr. D. Del. 2006); see also *In re Farrar-Johnson*, 353 B.R. 224, 231 (Bankr. N.D. Ill. 2006) (noting that “the clear statutory language ends the inquiry” concerning “actual” versus “applicable”).

⁷¹ *In re Fowler*, 349 B.R. at 418.

⁷² *In re Demonica*, 345 B.R. 895, 902 (Bankr. N.D. Ill. 2006) (prohibiting the deduction in the absence of debt or lease payments, but nonetheless noting a distinction between “applicable” and “actual”).

⁷³ *Id.*

⁷⁴ *Id.* at 904.

⁷⁵ *Id.* at 905.

⁷⁶ *Id.* at 901–02.

Expenses] cannot be interpreted to mean the same as ‘applicable monthly expenses [referencing National and Local Standards].’”⁷⁷

Just two months later, the bankruptcy court in *In re Fowler* became the first to permit the vehicle ownership expense deduction when a debtor had owed nothing on the claimed vehicle.⁷⁸ The court focused its inquiry on § 707(b)(2)(A)(ii)(I)’s distinction between “actual” and “applicable” monthly expense amounts and noted that “where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acted intentionally and purposely.”⁷⁹ Thus, the court found that because “applicable” precedes the statute’s reference to the National and Local Standards, the statute’s language clearly provides that these Standards are “applicable” for calculating deductions claimed for the number of vehicles the debtor owns.⁸⁰ Because “applicable” does not precede its reference to the Standards with “actual,” as the statute does for other necessary expenses, the court found the Standards are not to be determined by the debtor’s actual vehicle ownership expenses.⁸¹

Although most prodeduction courts held that § 707(b)(2)(A)(ii)(I)’s language unambiguously allows vehicle ownership expenses on vehicles for which a debtor has no debt or lease payments,⁸² many early antideduction courts also held the statute unambiguously required the contrary.⁸³ For example, one antideduction court recognized that “by employing the word ‘applicable,’ defined by Webster’s Dictionary as ‘being capable of being

⁷⁷ *Id.* at 902. Prodeduction and antideduction courts do not dispute that the Local Standards operate as fixed allowances and not as limits on deduction amounts that would allow the lesser of either actual ownership expenses or the Local Standard deduction amount. Prodeduction courts would later seize upon the opinion in *In re Demonica* as supporting their approach to applying the vehicle ownership expense deduction. *See, e.g., In re Fowler*, 349 B.R. 414, 418 (Bankr. D. Del. 2006). In the wake of *In re Fowler*, several prodeduction courts have appeared. *See, e.g., In re Vesper*, 371 B.R. 426, 432 (Bankr. D. Alaska 2007); *In re Farrar-Johnson*, 353 B.R. 224, 231 (Bankr. N.D. Ill. 2006).

⁷⁸ *In re Fowler*, 349 B.R. at 414, 421.

⁷⁹ *Id.* at 418 (quoting *Duncan v. Walker*, 533 U.S. 167, 172 (2001)). The court also noted that the provision lacks a direct reference to the IRM. *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *See supra* notes 70–73.

⁸³ *See In re Howell*, 366 B.R. 153, 157 (Bankr. D. Kan. 2007); *In re Slusher*, 359 B.R. 290, 308 (Bankr. D. Nev. 2007) (“A natural reading of the statute would indicate that the juxtaposition of ‘actual’ with the term ‘applicable’ means that there may be situations in which these modifiers limit the deductions in different ways.”); *In re Carlin*, 348 B.R. 795, 798 (Bankr. D. Or. 2006). *See generally* Gary Neustadter, 2005: *A Consumer Bankruptcy Odyssey*, 39 CREIGHTON L. REV. 225 (2006) (interpreting § 707(b)(2)(A)(ii)(I) as unambiguously denying deductions for vehicles debtors own free and clear, even when the vehicle needs repair or replacement, and judging courts denying the deduction on this rationale as reasonable).

applied' or 'readily applicable or practical,' the drafters of § 707 suggest that the Standards must be interpreted in the context of the [IRS] Manual's application of them, not in a vacuum."⁸⁴ Because the IRM applies the standards only when actual expenses exist, this court and other anteduction courts concluded the statute's text clearly demonstrates that Congress intended to allow vehicle ownership expense deductions only when actual ownership expenses exist.⁸⁵ Moreover, anteduction courts have reinforced their plain language holdings by noting that under the statute, "applicable" modifies "*monthly expense amounts* specified under the . . . Local Standards" instead of simply "amounts."⁸⁶ Because Congress also modifies "expense" with applicable, courts infer that Congress intended to allow deductions only when expenses actually exist.⁸⁷

2. *Recent Conflicting Interpretations*

More recent decisions by both prodeduction and anteduction courts interpreting § 707(b)(2)(A)(ii)(I) demonstrate that courts have retreated from the plain language statutory construction of earlier opinions.⁸⁸ For instance, one prodeduction court recently recognized that § 707(b)(2)(A)(ii)(I) "is

⁸⁴ *In re Howell*, 366 B.R. at 157; *see also In re Carlin*, 348 B.R. at 798 (holding that because the language of the statute clearly prohibits an expense deduction for a vehicle owned free and clear, there is no need for the court to decipher legislative intent).

⁸⁵ *See In re Howell*, 366 B.R. at 157; *In re Wiggs*, No. 06 B 70203, 2006 WL 2246432, at *2 (Bankr. D. Ill. Aug. 4, 2006) ("This Court finds that the language of the statute is clear and unambiguous. This Court finds that the term 'applicable' modifies the amounts specified to limit the expenses to only those that apply."); *In re Harris*, 353 B.R. 304, 308 (Bankr. E.D. Okla. 2006) ("[I]f a debtor is not incurring ownership expenses for a vehicle, then the ownership expense is not 'applicable' to that debtor."); *In re Carlin*, 348 B.R. at 798 n.10 ("The court need not attempt to divine legislative intent in a case where, as here, the language of the statute is clear.").

⁸⁶ *U.S. Tr. v. Deadmond (In re Deadmond)*, No. CV 07-15-H-CCL, 2008 WL 191165, at *4 (Bankr. D. Mont. Jan. 22, 2008) (emphasis added); *see also In re Garcia*, No. 4-07-bk-00268-JMM, 2007 WL 2692232, at *4 (Bankr. D. Ariz. Sept. 11, 2007) ("[T]he 'last antecedent' rule of statutory construction would dictate that the adjective 'applicable' modify the subject that seems most properly related by context and applicability. In this case, 'applicable' modifies 'expense' or 'expense amounts' rather than just 'amounts.'").

⁸⁷ *In re Deadmond*, 2008 WL 191165, at *4; *see also In re Garcia*, 2007 WL 2692232, at *4.

⁸⁸ *See Ransom v. MBNA Am. Bank (In re Ransom)*, 380 B.R. 799, 807-08 (B.A.P. 9th Cir. 2007) (prohibiting the deduction and relying on the plain meaning of the statute); *In re Clark*, No. 07-23390, 2008 WL 444565, at *3 (Bankr. E.D. Wis. Feb. 14, 2008) (recognizing that the "struggle to interpret 'applicable' and 'actual,' as those words are used in the statute, is the most perplexing exercise"); *In re Davis*, 382 B.R. 764, 769 (Bankr. W.D. Ark. 2008), *rev'd sub nom. Babin v. Powell (In re Powell)*, 392 B.R. 401 (B.A.P. 8th Cir. 2008); *In re Armstrong*, 370 B.R. 323, 328 (Bankr. E.D. Wash 2007). *But see Hildebrand v. Kimbro (In re Kimbro)*, 389 B.R. 518, 522 (B.A.P. 6th Cir. 2008) (permitting the deduction and relying on the plain meaning of the statute); *Stapleton v. Weiderhold (In re Weiderhold)*, 381 B.R. 626, 630 (Bankr. M.D. Pa. 2008) (same).

subject to different interpretations” and has “no plain meaning.”⁸⁹ This court reasoned that “[i]f the words of the statute as written had plain, ordinary and literal meanings, there would not exist two evenly-balanced lines of authority reaching contrary results.”⁹⁰ Similarly, recent decisions conclude Congress’s inclusion of “actual” and “applicable” in the same sentence is ambiguous, and thus the court must look for further evidence of legislative intent.⁹¹ The Bankruptcy Appellate Panel of the Eighth Circuit, for example, recently recognized the sharp divide among bankruptcy courts concerning the alleged plain language of the statute as a reason to continue the inquiry into the statute’s legislative history and policy objectives.⁹²

Some recent anteduction court opinions have also looked beyond the plain language of the statute, noting that individual provisions of an act must be read in relation to the act’s overarching purpose.⁹³ More specifically, when analyzing the meaning of § 707(b)(2)(A)(ii)(I), these courts consider BAPCPA’s overall goal of maximizing debtors’ repayment to creditors.⁹⁴ One court recently recognized this goal and stated, “Denying debtors the ownership allowance when they have no ownership expense . . . is entirely consistent with one of the apparent objectives of BAPCPA: to ensure that debtors actually pay what they are capable of paying to unsecured creditors.”⁹⁵ Similarly, another court reasoned that a blanket deduction would limit the cash flow available to creditors and result in a windfall to the debtor.⁹⁶ Thus, courts in these recent cases consistently point to BAPCPA’s underlying purpose of creditor repayment as part of a more holistic method of statutory construction.

⁸⁹ *In re Armstrong*, 370 B.R. at 328.

⁹⁰ *Id.*

⁹¹ See *Babin v. Wilson (In re Wilson)*, 383 B.R. 729, 732–33 (B.A.P. 8th Cir. 2008) (recognizing the sharp divide between courts regarding the statute’s alleged plain language); *In re Law*, No. 07-40863, 2008 WL 1867971, at *11 (Bankr. D. Kan. Apr. 24, 2008); *In re Howell*, 366 B.R. 153, 157 (Bankr. D. Kan. 2007) (holding that the debtor could not take the deduction due to the legislative history and policy considerations underlying the statute); *In re Garcia*, No. 4-07-bk-00268-JMM, 2007 WL 2692232, at *5 (Bankr. D. Ariz. Sept. 11, 2007); *In re Cole*, 371 B.R. 454, 457 (Bankr. W.D. Wash. 2007).

⁹² *In re Wilson*, 383 B.R. at 732–34. Another court recently prohibited the deduction after looking to the IRS guidelines in the IRM and the IRS Financial Analysis Handbook to justify its holding. *In re Garcia*, 2007 WL 2692232, at *5; see also *In re Cole*, 371 B.R. at 457 (“The only certainty is that courts’ attempts to discern the plain meaning of the text have only revealed its patent ambiguity.”).

⁹³ *In re Wilson*, 383 B.R. at 733; *In re Howell*, 366 B.R. at 157.

⁹⁴ *In re Wilson*, 383 B.R. at 733; *Ransom v. MBNA Am. Bank (In re Ransom)*, 380 B.R. 799, 808 (B.A.P. 8th Cir. 2007); *In re Howell*, 366 B.R. at 157.

⁹⁵ *Neary v. Ross-Tousey (In re Ross-Tousey)*, 368 B.R. 762, 767 (E.D. Wis. 2007) (quoting *In re Howell*, 366 B.R. at 157), *rev’d*, 549 F.3d 1148 (7th Cir. 2008).

⁹⁶ *In re Cole*, 371 B.R. at 458–59.

3. *Why the Language of the Statute is Ambiguous*

Some prodeduction and antideduction courts hold that the word “applicable” in § 707(b)(2)(A)(ii)(I)’s text should be given its plain and ordinary meaning.⁹⁷ These courts correctly acknowledge that the “starting point in discerning congressional intent is the existing statutory text”⁹⁸ and that “when the statute’s language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms.”⁹⁹ Yet the statutory language of § 707(b)(2)(A)(ii)(I) is anything but plain and ordinary. If the language were plain and ordinary, then over eighty bankruptcy courts would not have ruled on the issue with such disparate interpretations¹⁰⁰ and bankruptcy appellate panels and district courts would not also have split over the proper interpretation of the statute.¹⁰¹

Prodeduction courts place too much emphasis on the plain meaning of the apparent distinction between the words “actual” and “applicable” in § 707(b)(2)(A)(ii)(I).¹⁰² Although these courts reasonably conclude that Congress intended these words to have distinct meanings, prodeduction courts interpret them to have such opposite meanings that their interpretation precludes the court from considering any of the debtor’s actual expenses. Courts could follow another approach, however, and interpret “applicable” and “actual” to have different meanings while also interpreting “applicable” in a manner consistent with the antideduction courts’ approach. For instance, courts could interpret “applicable” to mean that the Local Standards amount applies to a claimed vehicle deduction when the debtor incurs actual ownership

⁹⁷ See *In re Armstrong*, 370 B.R. 323, 328 (Bankr. E.D. Wash. 2007). Four prodeduction courts have found a plain meaning in the statute’s text. *In re Barrett*, 371 B.R. 855, 858 (Bankr. S.D. Ill. 2007); *In re Thomas*, No. 06-21108, 2007 WL 2903201, at *2 (Bankr. D. Kan. Oct. 2, 2007), *rev’d sub nom.* *Wieland v. Thomas*, 382 B.R. 793 (D. Kan. 2008); *In re Fowler*, 349 B.R. 414, 418 (Bankr. D. Del. 2006); *In re Farrar-Johnson*, 353 B.R. 224, 231 (Bankr. N.D. Ill. 2006). Two antideduction courts have also found a plain meaning in the statute’s text. *In re Howell*, 366 B.R. at 157; *In re Carlin*, 348 B.R. 795, 798 (Bankr. D. Or. 2006).

⁹⁸ *Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004).

⁹⁹ *Id.* (quoting *Hartford Underwriters Ins. Co. v. Union Planters Bank*, 530 U.S. 1, 6 (2000)).

¹⁰⁰ See *In re Vesper*, 371 B.R. 426, 428–29 nn.6–8 (Bankr. D. Alaska 2007); *Grossman v. Sawdy*, 384 B.R. 199, 202–03 n.2 (E.D. Wis. 2008) (listing the court splits on the issue of vehicle ownership expense deductions).

¹⁰¹ See *supra* notes 11–12 and accompanying text.

¹⁰² Prodeduction courts basing their holdings on plain meaning conclude that the words “actual” and “applicable” in § 707(b)(2)(A)(ii)(I) must have different meanings since they are included in the same sentence and that if Congress intended for actual debt or lease payments to be relevant, then the word “actual” would have modified “National and Local Standards” as is currently only the case with “Other Necessary Expenses.” See *In re Vesper*, 371 B.R. 426, 431 (Bankr. D. Alaska 2007); *In re Fowler*, 349 B.R. 414, 418 (Bankr. D. Del. 2006); see also *supra* notes 79–81 and accompanying text.

expenses on that vehicle, regardless of whether the actual expenses are more or less than the Local Standard amount.¹⁰³ According to this interpretation, courts consider whether the debtor has actual ownership expenses, and if the debtor does, the debtor receives a deduction for the Local Standard amount, rather than the amount of the actual expense.

Furthermore, courts' reliance on BAPCPA's legislative intent, legislative history, and the provision's policy objectives demonstrates that § 707(b)(2)(A)(ii)(I)'s text is neither clear nor unambiguous.¹⁰⁴ By looking beyond the plain language of the text, courts acknowledge that the text is ambiguous. Although reasonable minds might disagree about what § 707(b)(2)(A)(ii)(I)'s text means on its face, looking beyond this text provides convincing evidence that Congress intended to give debtors the vehicle ownership expense deduction only when debtors have actual expenses.¹⁰⁵

¹⁰³ See *Fokkena v. Hartwick*, 373 B.R. 645, 650 (D. Minn. 2007) (discussing this ant deduction interpretation of the actual verses applicable distinction).

¹⁰⁴ Compare *In re Fowler*, 349 B.R. 414, 419 (Bankr. D. Del. 2006) (prodeduction court analyzing both Congress's intent and judicial discretion to dismiss under § 707(b)(3) after assessing whether the statute's language was clear) with *In re Howell*, 366 B.R. 153, 157 (Bankr. D. Kan. 2007) (ant deduction court denying the deduction because of BAPCPA's general policy and the \$200 per month allowance for older and higher mileage vehicles).

¹⁰⁵ BAPCPA's overarching purpose of ensuring that debtors capable of repaying creditors actually do so is highly convincing evidence that Congress intended to give debtors the vehicle ownership expense deduction only when debtors have actual expenses. H.R. REP. NO. 109-31(I), at 2 (2005), *reprinted in* 2005 U.S.C.C.A.N. 88, 89 ("The heart of the bill's consumer bankruptcy reforms consists of the implementation of an income/expense screening mechanism (. . . 'means testing'), which is intended to ensure that debtors repay creditors the maximum they can afford."). In fact, the Supreme Court mandates consideration of overarching policy considerations when interpreting a statute and has stated that "statutory construction is a holistic endeavor." *Koons Buick Pontiac GMC, Inc. v. Nigh*, 543 U.S. 50, 60 (2004) (internal quotations omitted) (quoting *United Sav. Ass'n of Tex. v. Timbers Inwood Forest Assocs., Ltd.*, 484 U.S. 363, 371 (1988)).

As discussed in more detail below, under the prodeduction line of cases there is no deduction qualification requirement that vehicles owned free and clear of debt or lease payments be in working condition or are actually used day-to-day by the debtor. See *infra* Part III.B. Thus, ownership deductions granted for such nonfunctioning and unused vehicles represent pure windfall deductions for the benefit of debtors at the direct expense of creditors, since absolutely no ownership expenses would be incurred on these vehicles. See *Fokkena*, 373 B.R. at 652-53 (noting that under the prodeduction court's reasoning the debtor's two vehicles would qualify for the deduction even though they were completely nonfunctioning).

Additionally, one need look no further than the plain meaning of the statute's title (Bankruptcy Abuse Prevention and Consumer Protection Act) to conclude that if a debtor is not incurring actual ownership expenses, then that debtor should not be permitted to deduct a monthly ownership expense amount from his or her current monthly income. Concluding otherwise would shift BAPCPA from a dual purpose act into a heavily single purpose act for the benefit of debtors. "Just as it would not make sense to allow tax exemptions based solely on the number of children a taxpayer has, it makes little sense to allow an ownership allowance based solely on the number of cars one owns." *Neary v. Ross-Tousey (In re Ross-Tousey)*, 368 B.R. 762, 766 (E.D. Wis. 2007), *rev'd*, 549 F.3d 1148 (7th Cir. 2008).

B. Evidence of Legislative Intent Beyond the Text of the Statute

Both prodeduction and antideduction courts rely upon legislative history to support their interpretations. Prodeduction courts typically cite three sources of legislative history: (1) an early unenacted version of BAPCPA, (2) a report from the House of Representatives Committee on the Judiciary, and (3) the IRM's use of IRS Standards as caps on taxpayers' deductible expenses. In response, antideduction courts point to legislative history for support, and rely on congressional intent evidenced in BAPCPA and means test policies.¹⁰⁶ Ultimately, the prodeduction courts contradict congressional intent.¹⁰⁷

1. Previous Draft Version of BAPCPA as Evidence of Legislative Intent

Prodeduction courts commonly point to an unenacted draft of BAPCPA as evidence that Congress intended for the vehicle ownership expense deduction to be deductible without regard to debtors' actual expenses.¹⁰⁸ The unenacted version calculated the current monthly income under the means test by specifying that debtors were entitled to expense allowances under the "applicable National Standards, Local Standards, and Other Necessary Expense allowance for the debtor . . . in the area in which the debtor resides as determined under *the Internal Revenue Service financial analysis* for expenses in effect as of the date of the order for relief."¹⁰⁹ The enacted language of § 707(b)(2)(A)(ii)(I) omits this reference to the IRS financial analysis and

¹⁰⁶ Randle v. Neary (*In re Randle*), No. 07 C 631, 2007 WL 2668727, at *7-9 (N.D. Ill. 2007) (asserting that the purpose of the means test is to measure the debtor's expenses based on a "snapshot" as of the petition date); *In re Howell*, 366 B.R. 153, 157 (Bankr. D. Kan. 2007) (stating that one of the objectives of BAPCPA is "to ensure that debtors actually pay what they are capable of paying to secured creditors").

¹⁰⁷ Regardless of whether prodeduction or antideduction courts have correctly interpreted the legislative history, the Supreme Court precedents are uncertain about how much, if any, deference should be given to legislative history when analyzing a statute. See *H. J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 251-52 (1989) (Rehnquist, C.J., Scalia, O'Connor, & Kennedy, JJ., concurring); *Blanchard v. Bergeron*, 489 U.S. 87, 97-99 (1989) (Scalia, J., concurring); *Rose v. Rose*, 481 U.S. 619, 642-43 (1987) (Scalia, J., concurring). Legislative history is often "generated for strategic or insincere reasons," it is "highly unreliable," and therefore, "courts must discover a statute's purpose or intent only from analyzing the text and not from the vagaries of a legislative record drafted or understood by at best small subgroups of members." James J. Brudney, *Liberal Justices' Reliance on Legislative History: Principle, Strategy, and the Scalia Effect* 54-55 (Ohio St. Pub. L., Working Paper No. 95, 2007), available at <http://ssrn.com/abstract=1008330> (describing Justice Scalia's view of legislative history).

¹⁰⁸ See *In re Barrett*, 371 B.R. 855, 858-59 (Bankr. S.D. Ill. 2007); *In re Chamberlain*, 369 B.R. 519, 525 n.21 (Bankr. D. Ariz. 2007), *abrogated by Ransom v. MBNA Am. Bank (In re Ransom)*, 380 B.R. 799, 808 (B.A.P. 9th Cir. 2007); *In re Swan*, 368 B.R. 12, 19 (Bankr. N.D. Cal. 2007); *In re Farrar-Johnson*, 353 B.R. 224, 231 (Bankr. N.D. Ill. 2006); *In re Fowler*, 349 B.R. 414, 419 (Bankr. D. Del. 2006).

¹⁰⁹ H.R. 3150, 105th Cong. (1998) (emphasis added); see also *In re Fowler*, 349 B.R. at 419 (citing same).

simply entitles debtors to the “applicable monthly expense amounts specified under the National Standards and Local Standards.”¹¹⁰ From this change in language, prodeduction courts conclude that if Congress intended for debtors to perform calculations according to IRS internal procedures, then the explicit reference to the IRS financial analysis would not have been deleted.¹¹¹

Congress’s change in language, however, does not necessarily imply that Congress meant to ignore IRS internal procedures for calculating deductions. Although the enacted language of § 707(b)(2)(A)(ii)(I) does not explicitly mention IRS methodology, Congress’s use of the word “applicable” can reasonably be interpreted as incorporating the IRS methodology.¹¹² It is therefore possible that Congress deleted “as determined under the Internal Revenue Service” because retaining that language would have been redundant. Had Congress not deleted this language, courts interpreting § 707(b)(2)(A)(ii)(I) could have ended their analysis with the plain language of the statute. Because Congress may have deleted the language only to avoid redundancy and not to exclude IRS procedures explicitly, this change in language does not resolve the statute’s ambiguity; thus, courts must further inquire into Congress’s intent.

2. Committee Reports Entitled to Minimal Deference

Prodeduction courts also rely upon the dissenting views expressed in a report from the House of Representatives Committee on the Judiciary as evidence of congressional intent.¹¹³ The dissenters in the report state that the disposable income calculation “formula remains *inflexible and divorced* from

¹¹⁰ 11 U.S.C. § 707(b)(2)(A)(ii)(I) (2006).

¹¹¹ See *In re Scarafiotti*, 375 B.R. 618, 627–28 (Bankr. D. Colo. 2007) (stating that “if Congress had intended to incorporate the IRM, it would have referred to it expressly” instead of deleting the reference to the IRM in the previous version). This view is similar to that taken in *Collier on Bankruptcy*, which recognizes that “[t]he statute is not crystal clear about how transportation expenses are computed” and substantially rests its prodeduction conclusion on the statute’s legislative history. 6 COLLIER ON BANKRUPTCY ¶ 707.05[2][c][i] (15th ed. rev., 2008). *Collier* also cites the view taken by the Advisory Committee on Bankruptcy Rules in drafting Form 22A and the statute’s remaining legislative history. *Id.*; see also *In re Barrett*, 371 B.R. at 859 (“[T]he language of the Manual provided a model that Congress could easily have adopted. Congress’ [sic] choice not to use that language implies that it did not intend the same result.”); *In re Fowler*, 349 B.R. at 419.

¹¹² See *supra* Part II.A.3.

¹¹³ See *In re Grunert*, 353 B.R. 591, 594 (Bankr. E.D. Wis. 2006) (citing H.R. REP. NO. 109-31, pt. 1, at 553 (2005) (dissenting views)), *abrogated by* *Babin v. Wilson (In re Wilson)*, 383 B.R. 729 (B.A.P. 8th Cir. 2008); *accord Hildebrand v. Kimbro (In re Kimbro)*, 389 B.R. 518, 526 (B.A.P. 6th Cir. 2008) (citing same); *In re Chamberlain*, 369 B.R. 519, 525 n.22 (Bankr. D. Ariz. 2007), *abrogated by* *Ransom v. MBNA Am. Bank (In re Ransom)*, 380 B.R. 799, 808 (B.A.P. 9th Cir. 2007) (citing the *In re Grunert* court’s reference to the report as evidence that Congress did not intend the Local Standards to cap allowable deduction amounts).

the debtor's actual circumstances."¹¹⁴ Prodeduction courts regard this statement as evidence that Congress intended to preclude consideration of the presence or absence of actual debt or lease payments.¹¹⁵

This statement comes from a dissenting opinion in the report and deserves at most minimal weight as an expression of Congress's intent when enacting the statute. Even assuming this statement represents most members' views at the time of BAPCPA's passage, the Supreme Court is wary of affording such committee reports deference.¹¹⁶ Moreover, assuming this statement deserves deference, the dissenters' phrase "inflexible and divorced from the debtor's actual circumstances" possibly supports the interpretation antideduction courts use. According to the interpretations both the prodeduction and the antideduction courts use, the statute allows a deduction for the full amount of the Local Standards, as opposed to the actual debt or lease payment amount if the actual amount is less than the Local Standards amount.¹¹⁷ The antideduction courts' interpretation of the statute might also find the formula "inflexible" because it either deducts the Local Standards amount in full or deducts nothing.¹¹⁸

3. *The IRM's Treatment of the Vehicle Ownership Expense as a Cap on Taxpayers' Expenses*

In computing the total transportation expense under the IRS standards, the IRM does not allow taxpayers to claim ownership costs for vehicles owned free and clear of payments.¹¹⁹ Debtors seeking to deduct vehicle ownership expenses under the Bankruptcy Code use an official form for calculating their current monthly income titled "Form 22A," which directs them to enter vehicle ownership expenses as the fixed amounts listed in the IRS Standards and not amounts of actual expenses.¹²⁰ Prodeduction courts compare the IRM and Form 22A as further evidence that Congress intended to disregard whether a

¹¹⁴ H.R. REP. NO. 109-31, pt. 1, at 553 (2005) (dissenting views) (emphasis added).

¹¹⁵ *In re Kimbro*, 389 B.R. at 526.

¹¹⁶ *Blanchard v. Bergeron*, 489 U.S. 87, 99 (1989) (Scalia, J., concurring) (describing committee reports as "increasingly unreliable evidence of what the voting Members of Congress actually had in mind").

¹¹⁷ *See supra* note 52 and accompanying text. The prodeduction and antideduction courts only differ over requiring actual expenses before allowing a deduction. *See supra* Part I.D.

¹¹⁸ *See supra* note 52 and accompanying text. Similarly, both prodeduction and antideduction courts acknowledge that the formula is "divorced from the debtor's actual circumstances" because they all permit the full deduction when a debtor has actual expenses, regardless of the amount of those actual expenses. *See supra* Part I.D.

¹¹⁹ *See supra* note 49 and accompanying text.

¹²⁰ *See supra* note 52 and accompanying text.

debtor incurs actual expenses under § 707(b)(2)(A)(ii)(I).¹²¹ Specifically, prodeduction courts note that Form 22A establishes both that a debtor is permitted the full vehicle ownership deduction even when payments are less than the deduction amount.¹²² The IRM, however, caps taxpayers' deductions at the lesser of either actual monthly vehicle ownership expenses or the Local Standard amount.¹²³ Thus, as one prodeduction court stated in noting this distinction, "the allowable ownership expense amount under the bankruptcy statute has nothing to do with a debtor's actual vehicle loan or lease expenses" and "is an allowed deduction, considered as a necessary expense" without regard to actual debt or lease payments.¹²⁴

Prodeduction courts incorrectly conclude the Code's vehicle ownership expense deduction has "nothing to do with a debtor's actual vehicle loan or lease payments."¹²⁵ Although this statement is accurate when the debtor's actual expense is less than the Local Standard allowance,¹²⁶ it is misleading when a debtor's actual vehicle ownership expense exceeds the Local Standards amount because any actual expenses exceeding the Local Standards amount are fully deductible as a "future payment on secured claims" on Form 22A.¹²⁷

¹²¹ *E.g.*, *In re Vesper*, 371 B.R. 426, 432 (Bankr. D. Alaska 2007); *In re Swan*, 368 B.R. 12, 18 (Bankr. N.D. Cal. 2007) (recognizing as further evidence of Congress's intention to ignore actual lease payments that under the IRM, "the transportation standards act as caps"). *Id.*

¹²² *Form 22A*, *supra* note 52, at lines 23–24; *see also In re Vesper*, 371 B.R. at 432; *In re Swan*, 368 B.R. at 18.

¹²³ *See IRM*, *supra* note 35, at 5.19.1.6.2.5(2); *see also In re Vesper*, 371 B.R. at 432; *In re Swan*, 368 B.R. at 18.

¹²⁴ *In re Vesper*, 371 B.R. at 432. The *In re Vesper* court noted the U.S. Trustee web page was consistent with its holding. *Id.* Specifically, it noted a disclaimer on the webpage of the U.S. Trustee Program that reads: "The IRS expense figures posted on this Web site are for use in completing bankruptcy forms. *They are not for use in computing taxes or for any other tax administration purpose.*" *Id.* Although the U.S. Trustee Program's website no longer hosts the particular webpage quoted by the *In re Vesper* court, the U.S. Trustee Program still hosts a webpage for means testing information that does not contain the quoted disclaimer. *See* U.S. Trustee Program/Dept. of Justice, Census Bureau, IRS Data and Administrative Expenses Multipliers, <http://www.usdoj.gov/ust/eo/bapcpa/meanstesting.htm> (last visited Mar. 12, 2009). The *In re Vesper* court noted that when a debtor followed the link on the U.S. Trustee Program's website to determine the allowable ownership expense for the debtor's region, single dollar amounts appear on the linked page. *In re Vesper*, 371 B.R. at 432. The court failed to note, however, that the disclaimer on the U.S. Trustee Program's website is a boilerplate disclaimer designed to redirect users accidentally arriving on the U.S. Trustee's website to the IRS's website. Also, the website's use of single dollar amounts is consistent with the anteduction court interpretation because those single dollar amounts could be used simply to remind debtors that as long as a portion of debt or lease payments remain, vehicle ownership expense functions as a fixed allowance.

¹²⁵ *In re Vesper*, 371 B.R. at 432.

¹²⁶ *See infra* note 129.

¹²⁷ *Form 22A*, *supra* note 52, at line 42.

The Code's official form thus takes into account a debtor's actual expenses when they exceed the Local Standards amount.¹²⁸

Additionally, other Form 22A language undermines prodeduction courts' conclusion that Congress meant to allow the vehicle ownership expense deduction when debtors lack actual expenses.¹²⁹ That form instructs debtors claiming a vehicle ownership expense simply to "[c]heck the number of vehicles for which . . . [the debtor] claim[s] an ownership/lease expense."¹³⁰ In contrast, Form 22A instructs debtors claiming vehicle operation and public transportation expenses that they "are entitled to an expense allowance in this category *regardless of whether you pay* the expenses of operating a vehicle and *regardless of whether you use public transportation.*"¹³¹ Because Form 22A does not instruct debtors claiming an ownership expense that they are entitled to an expense allowance in this category "*regardless of whether you pay*" the expenses of owning a vehicle, this suggests the form's drafters knew how to provide a vehicle ownership deduction regardless of actual expenses and chose not to do so. The language of Form 22A thus suggests debtors and courts

¹²⁸ Prodeduction courts have held that that reliance on the IRM's prohibition of the deduction is misplaced when interpreting § 707(b)(2)(A)(ii)(I) because IRS provisions are designed for collecting delinquent taxes and the means test is used to determine whether debtors have the ability to repay a sufficient portion of their debt. See *In re Young*, 392 B.R. 6, 21 (Bankr. D. Mass. 2008) (recognizing this distinction and ultimately permitting the deduction); *In re Briscoe*, 374 B.R. 1 (Bankr. D. Colo. 2007); *In re Vesper*, 371 B.R. at 432. Similarly, as one prodeduction court held, "The IRS is not an administrative agency that administers the Bankruptcy Code, so there is no basis for a Court to defer to its administrative expertise." *In re Chamberlain*, 369 B.R. 519, 525 (Bankr. D. Ariz. 2007), *abrogated by* *Ransom v. MBNA Am. Bank (In re Ransom)*, 380 B.R. 799, 808 (B.A.P. 9th Cir. 2007). Yet Congress undoubtedly intended to incorporate IRS provisions to a certain degree, or else it would not have included a reference to the "National Standards and Local Standards" in the first place. See *In re Slusher*, 359 B.R. 290, 309 (Bankr. D. Nev. 2007). The *In re Slusher* court noted:

Congress' decision to use the IRS standards within the Bankruptcy Code strongly suggests that courts should look to how the IRS determined those standards; that is, as to how the IRS would have applied them in similar circumstances. In making that inquiry, it makes no sense to turn a blind eye to existing administrative interpretations of the very text Congress has specified. And such interpretations exist. . . . [P]ractical reason would suggest that courts should consider the full manner by which the IRS uses these standards.

Id. (citations omitted). Moreover, the distinction prodeduction courts make between using the IRS Standards for delinquent tax collection and using them for the means test is a distinction without a difference. In both uses, the IRS Standards are designed to assess an individual's ability to repay creditors. See *supra* note 34. The only substantive difference between how the standards are used in bankruptcy cases and in tax cases is the identity of the creditors involved—either the federal government in tax cases or the debtor's creditors in bankruptcy cases.

¹²⁹ See *Grossman v. Sawdy*, 384 B.R. 199, 205 (E.D. Wis. 2008) (discussing this distinction in Form 22A language).

¹³⁰ *Form 22A*, *supra* note 52, at line 23.

¹³¹ *Form 22A*, *supra* note 52, at line 22A (emphasis added).

should not disregard the debtor's actual ownership expenses when calculating the vehicle ownership expense deduction.

Although the plain meaning of § 707(b)(2)(A)(ii)(I) is capable of conflicting yet reasonable interpretations, the statute's legislative history favors the antideduction courts' approach of allowing vehicle ownership expense deductions only when debtors have actual ownership expenses. Policy considerations also support this approach, as the next Part explains.

III. POLICY SUPPORT FOR THE ANTIDEDUCTION COURTS' APPROACH

Prodeduction and antideduction courts alike look to the policies of BAPCPA generally, of the means test specifically, and of avoiding unfair and arbitrary results in vehicle ownership expense deduction cases. As this section explains, these policy considerations favor disallowing the vehicle ownership deduction when debtors have no actual ownership expenses.

A. *General BAPCPA Versus Specific Means Test Policies*

Prodeduction and antideduction courts base their holdings upon policies underlying BAPCPA and the means test. Prodeduction courts emphasize that disregarding the IRS's treatment of the Local Standards supports the general BAPCPA policies of encouraging uniform application of bankruptcy law and of limiting judicial discretion.¹³² Alternatively, antideduction courts, emphasize the overarching BAPCPA policy of maximizing repayment to creditors.¹³³ As this Part demonstrates, the antideduction courts' approach also encourages uniform application of bankruptcy law and policy, while still maintaining sound judicial discretion. Furthermore, the antideduction courts' approach furthers the overarching BAPCPA policy of encouraging creditor repayment, while the prodeduction courts' approach does not. When considered together, these policies suggest Congress either intended to require debtors to have actual ownership expenses before receiving ownership expense deductions or would have required this if it had anticipated how the deduction implicates these policies.

Prodeduction courts hold that allowing a blanket vehicle ownership expense deduction based on the number of vehicles owned by the debtor

¹³² *In re Fowler*, 349 B.R. 414, 420–21 (Bankr. D. Del. 2006); *In re Moorman*, 376 B.R. 694, 699 (Bankr. C.D. Ill. 2007).

¹³³ *See supra* Part II.A.2.

further the policy underlying BAPCPA, ensures that the means test will be easily and uniformly applied, will avoid unnecessary litigation, and will encourage judicial predictability.¹³⁴ This position was best articulated by the Bankruptcy Appellate Panel for the Sixth Circuit in *In re Kimbro*, in which the court considered whether a chapter 13 debtor who owned an unencumbered vehicle could deduct the vehicle ownership expense.¹³⁵ After noting the discretion the IRM afforded IRS officers in allowing expenses above the National and Local Standards, the court concluded that “[t]he substantial discretion allowed to a revenue officer under the IRM is inconsistent with the purpose of the means test to adopt a uniform, bright-line test that eliminates judicial discretion[, since] . . . Congress decided to give a higher priority to expediency and uniformity than to accuracy.”¹³⁶ Accordingly, the court held Congress intended for debtors simply to fill in the IRS’s vehicle ownership Local Standard expense amount into their bankruptcy forms rather than give bankruptcy judges the discretion IRM affords IRS officers.¹³⁷

Although the majority opinion of the *In re Kimbro* court appears to present a compelling policy argument, it merely remains “a superb effort to weave a seemingly robust cloth from somewhat thin threads.”¹³⁸ The *In re Kimbro* court’s focus on the discretionary application of the IRS Standards is misleading because the discretions allowed are narrow exceptions to the general rule. Generally, under the IRM, vehicle ownership expenses are prohibited in the absence of debt or lease payments without discretion.¹³⁹

¹³⁴ See *Hildebrand v. Kimbro (In re Kimbro)*, 389 B.R. 518, 531 (B.A.P. 6th Cir. 2008); *In re May*, 390 B.R. 338, 345–46 (Bankr. S.D. Ohio 2008); *In re Chamberlain*, 369 B.R. 519, 525 (Bankr. D. Ariz. 2007), *abrogated by Ransom v. MBNA Am. Bank (In re Ransom)*, 380 B.R. 799, 808 (B.A.P. 9th Cir. 2007); *In re Fowler*, 349 B.R. at 420–21; *In re Moorman*, 376 B.R. at 699 (“In passing BAPCPA, Congress intended to limit judicial discretion and to create objective—perhaps, even rigid and inflexible—standards for expense deductions.”); *In re Scarafioti*, 375 B.R. 618, 630 (Bankr. D. Colo. 2007); *In re Barr*, 341 B.R. 181, 185 (Bankr. M.D.N.C. 2006) (holding that under BAPCPA, a court must not consider the actual expenses listed on debtors’ bankruptcy schedules in determining whether the debtor is committing sufficient funds for creditor repayment under chapter 13).

¹³⁵ *In re Kimbro*, 389 B.R. at 531–32 (holding that the values of expediency and uniformity outweigh the benefits of the more discretionary IRM application of the vehicle ownership expenses).

¹³⁶ *Id.* at 527–32 (listing seven examples of IRS discretion when applying the National and Local Standards and holding that the values of expediency and uniformity outweigh the benefits of the more discretionary IRM application of the vehicle ownership expenses).

¹³⁷ See *id.*

¹³⁸ *Id.* at 532 (Fulton, J., dissenting).

¹³⁹ *Id.* at 527–32. The court cites to unrelated necessary expenses and housing expenses, which do not bear on the issue at hand—the applicability of the vehicle ownership expense Local Standard. *Id.*

Additionally, the process of determining vehicle ownership expense applicability under § 707(b)(2)(A)(ii)(I) does not simply consist of filling in a number, as the *In re Kimbro* court characterizes it;

Thus, Congress may have intended courts to apply the general IRM rule to all § 707(b)(2)(A)(ii)(I) cases, prohibiting vehicle ownership expense deductions in the absence of debt or lease payments without discretion.

Following the IRM's rule of prohibiting vehicle ownership expense deductions in the absence of debt or lease payments does not grant judges excessive discretion. In fact, judges would have no discretion under this rule, since they would apply it in a bright line, all-or-nothing fashion, depending on the existence of debt or lease payments. Thus, the rule would not undermine BAPCPA's policy of encouraging uniform application of bankruptcy law and policy, as the prodeduction courts claim it would.

B. Arbitrary and Unfair Results: Broken Down Vehicles and Windfall Deductions

Prodeduction and antideduction courts also base their holdings on the policy of avoiding arbitrary and unfair results for supporting their respective interpretations of § 707(b)(2)(A)(ii)(I). Prodeduction courts claim that their approach avoids the irrelevant distinction between vehicles with minimal payments left and those owned free and clear on the petition date.¹⁴⁰ Additionally, prodeduction courts attest that their approach discourages eve of bankruptcy purchases.¹⁴¹ In response, antideduction courts claim that allowing ownership deductions in the absence of debt or lease payments creates windfall deductions when debtors obtain the deduction for vehicles that do not run or

rather, it requires consideration of IRS guidelines. *Id.* at 530–32. The following illustration by the dissenting judge in *In re Kimbro* illustrates this point:

Consider the table titled “Operating Costs” in the IRS Local Standards for “transportation.” The table consists of a heading, “Operating Costs,” a column labeled “One Car” with dollar amounts beneath, a column labeled “Two Cars” with dollar amounts beneath, and a column appearing to be divided by region—Northeast, Midwest, South, West—and further divided by what appears to be larger cities or metropolitan areas. The table alone does not describe the geographical boundaries of each “region” or “city.” Also, the table by itself does not tell a reader what the dollar amounts mean or how they are to be used. One must use the IRS guidelines—at least some of which appear on the same page as the table—first to locate the appropriate geographical location heading (*i.e.*, which Region or “city”) and then to determine whether and how either amount is “applicable.”

Id. at 533 (Fulton, J., dissenting) (citation omitted).

¹⁴⁰ See *In re Moorman*, 376 B.R. 694, 699 (Bankr. C.D. Ill. 2007); *In re Vesper*, 371 B.R. 426, 429–30 (Bankr. D. Alaska 2007); *In re Fowler*, 349 B.R. 414, 418 (Bankr. D. Del. 2006).

¹⁴¹ See *In re Moorman*, 376 B.R. at 699; *In re Vesper*, 371 B.R. at 429–30; *In re Fowler*, 349 B.R. at 418.

the debtor does not use.¹⁴² As explained below, the policy of avoiding arbitrary and unfair results strongly favors the anteduction courts' approach.

Prodeduction courts claim their approach avoids arbitrary and unfair results for five reasons.¹⁴³ First, these courts find that requiring the existence of debt or lease payments encourages debtors to acquire financially encumbered vehicles on the eve of filing bankruptcy to qualify for the deduction.¹⁴⁴ Second, prodeduction courts claim that requiring remaining debt or lease payments as a prerequisite to allowing the ownership deduction punishes those debtors who drive inexpensive, paid-off vehicles.¹⁴⁵ Third, prodeduction courts also claim their approach avoids giving an entire \$489 monthly deduction for a vehicle when the debtor only owes \$1 per month on that vehicle.¹⁴⁶ Fourth, they claim their approach avoids the arbitrary result of denying a deduction to the same debtor if the debtor paid off this \$1 debt prior to filing.¹⁴⁷ Fifth, prodeduction courts reason their approach "reflects the reality that a car for which the debtor no longer makes payments may soon need to be replaced."¹⁴⁸

Anteduction courts also base their approach upon the policy of avoiding arbitrary and unfair results.¹⁴⁹ For instance, one anteduction district court

¹⁴² *Fokkena v. Hartwick*, 373 B.R. 645, 652–53 (D. Minn. 2007); *Neary v. Ross-Tousey (In re Ross-Tousey)*, 368 B.R. 762, 768 (E.D. Wis. 2007), *rev'd*, 549 F.3d 1148 (7th Cir. 2008); *In re Garcia*, No. 4-07-bk-00268-JMM, 2007 WL 2692232, at *5 (Bankr. D. Ariz. Sept. 11, 2007).

¹⁴³ *See In re Moorman*, 376 B.R. at 699; *In re Swan*, 368 B.R. 12, 21 (Bankr. N.D. Cal. 2007).

¹⁴⁴ *In re Moorman*, 376 B.R. at 699; *In re Swan*, 368 B.R. at 21.

¹⁴⁵ *See In re Moorman*, 376 B.R. at 699; *In re Swan*, 368 B.R. at 21.

¹⁴⁶ *See In re Moorman*, 376 B.R. at 699; *In re Vesper*, 371 B.R. at 429–30; *In re Fowler*, 349 B.R. 414, 418 (Bankr. D. Del. 2006).

¹⁴⁷ *See In re Moorman*, 376 B.R. at 699; *In re Vesper*, 371 B.R. at 429–30; *In re Fowler*, 349 B.R. at 418.

¹⁴⁸ *In re Fowler*, 349 B.R. at 419 (quoting Eugene R. Wedoff, *Means Testing in the New § 707(b)*, 79 AM. BANKR. L.J. 231, 258 (2005)); *Clippard v. Ragle (In re Ragle)*, 395 B.R. 387, 399 (E.D. Ky. 2008); *In re Pearl*, 394 B.R. 309, 314 (Bankr. N.D.N.Y. 2008); *In re May*, 390 B.R. 338, 348 n.10 (Bankr. S.D. Ohio 2008); Wedoff, *supra* note 1, at 258.

This justification for the prodeduction approach, however, ignores the fact that the Bankruptcy Code generally, and the means test specifically, focus on the debtor's current financial situation and do not predict the debtor's future financial situation. *Fokkena v. Hartwick*, 373 B.R. 645, 655 (D. Minn. 2007) ("[T]he means test is aimed at capturing a 'snapshot' of the debtor's financial state as of the date the petition is filed, rather than at constructing a forward-looking analysis of the debtor's financial situation" (internal quotations omitted)); *see also Randle v. Neary (In re Randle)*, No. 07 C 631, 2007 WL 2668727, at *7–9 (N.D. Ill. July 20, 2007); *In re Littman*, 370 B.R. 820, 829 (Bankr. D. Idaho 2007); *In re Meek*, 370 B.R. 294, 299 (Bankr. D. Idaho 2007); *In re Oliver*, 350 B.R. 294, 299–300 (Bankr. W.D. Tex. 2006).

¹⁴⁹ *See Fokkena*, 373 B.R. at 652–53; *Neary v. Ross-Tousey (In re Ross-Tousey)*, 368 B.R. 762, 768 (E.D. Wis. 2007), *rev'd*, 549 F.3d 1148 (7th Cir. 2008); *In re Garcia*, No. 4-07-bk-00268-JMM, 2007 WL 2692232, at *5 (Bankr. D. Ariz. Sept. 11, 2007).

found it impermissibly arbitrary to follow the prodeduction approach of allowing the vehicle ownership expense deduction based simply on the number of vehicles the debtor owns.¹⁵⁰ The court recognized under the prodeduction approach a debtor could qualify for a two vehicle deduction even when the only vehicles the debtor owns are “unusable cars rusting in their back yard.”¹⁵¹ Another antideduction court also recognized that giving debtors disposable income deductions for “a fictional ownership allowance” gives “debtors with unencumbered vehicles a windfall at the expense of their unsecured creditors.”¹⁵²

Because prodeduction and antideduction courts have correctly identified that both approaches generate arbitrary and unfair results, the better approach in these cases will be the one that minimizes the harm caused by those results. The prodeduction courts’ approach actually exacerbates the harm caused by its arbitrary results. While attempting to avoid punishing those debtors who drive inexpensive, paid-off vehicles,¹⁵³ prodeduction courts allow all debtors to claim the full ownership expense deductions under § 707(b)(2)(A)(ii)(I) without regard to whether their vehicles actually have ownership expenses. Thus, to avoid arbitrary application of the statute in some cases, these courts permit all debtors to take the vehicle ownership deduction.

Although the antideduction approach makes an arbitrary distinction between debtors who have just a few vehicle payments remaining and those that own their vehicles free and clear,¹⁵⁴ the antideduction approach is the better of two imperfect approaches because it is less likely to allow abuse. The prodeduction approach allows abuse any time a debtor receives a deduction for an unencumbered vehicle, while the antideduction approach only allows abuse when a debtor understands bankruptcy law well enough to realize that buying a vehicle on the eve of bankruptcy would allow that debtor to deduct the vehicle ownership expense. Although not foolproof, the antideduction approach limits

¹⁵⁰ *Fokkena*, 373 B.R. at 652–53; see also *In re Garcia*, 2007 WL 2692232, at *5 (stating that to hold otherwise would give debtors a “windfall deduction” in comparison to good-faith debtors with car payments).

¹⁵¹ *Fokkena*, 373 B.R. at 652–53. Although reversed by the Seventh Circuit, the District Court for the Eastern District of Wisconsin argued that it is less arbitrary to condition the deduction on ownership expenses and that “[d]oing so ensures that the car is more likely to be *used* by the debtor in his everyday life.” *In re Ross-Tousey*, 368 B.R. at 768.

¹⁵² *In re Howell*, 366 B.R. 153, 157 (Bankr. D. Kan. 2007).

¹⁵³ See *In re Moorman*, 376 B.R. 694, 699 (Bankr. C.D. Ill. 2007); *In re Swan*, 368 B.R. 12, 21 (Bankr. N.D. Cal. 2007).

¹⁵⁴ See *Clippard v. Ragle (In re Ragle)*, 395 B.R. 387, 399 (E.D. Ky. 2008); *In re Pearl*, 394 B.R. 309, 314 (Bankr. N.D.N.Y. 2008); *In re May*, 390 B.R. 338, 348 n.10 (Bankr. S.D. Ohio 2008); *In re Fowler*, 349 B.R. 414, 419 (Bankr. D. Del. 2006).

abuse to specific cases rather than allowing it in all cases, as the prodeduction courts' approach does. Further, as explained below, the antideduction approach features better safeguards against abuse and arbitrary and unfair results.

C. The Antideduction Approach Features Better Safeguards Against Abuse and Arbitrary and Unfair Results

Prodeduction and antideduction courts rest their holdings on the safeguards against abuse their approaches provide. Prodeduction courts claim their approach avoids abuse by allowing judges to dismiss cases under § 707(b)(3)'s totality of the circumstances test.¹⁵⁵ Antideduction courts claim their approach prevents arbitrary and unfair results by relying upon the \$200 per month operation expense for old or high mileage vehicles,¹⁵⁶ by allowing additional expenses adjustments for special circumstances under § 707(b)(2)(B),¹⁵⁷ and by allowing chapter 13 postpetition adjustments.¹⁵⁸ As explained below, the safeguards of the antideduction approach further BAPCPA's goal of achieving uniformity.

1. The Totality of the Circumstances Test Is an Insufficient Check on Abusive Practices

Prodeduction courts hold that § 707(b)(3)'s totality of the circumstances test constitutes a sufficient check on the potential for abuse in chapter 7 cases.¹⁵⁹ Under § 707(b)(3), even if a chapter 7 debtor survives the presumption of abuse test under § 707(b)(2)(A)(i),¹⁶⁰ a court can determine that bankruptcy relief would nonetheless be abusive.¹⁶¹ In making this determination, the court shall consider “whether the debtor filed the petition in bad faith” or “the totality of the circumstances . . . of the debtor's financial

¹⁵⁵ See *infra* Part III.C.1.

¹⁵⁶ See *infra* Part III.C.2.a.

¹⁵⁷ See *infra* Part III.C.2.b.

¹⁵⁸ See *infra* Part III.C.3.

¹⁵⁹ See, e.g., *Ross-Tousey v. Neary (In re Ross-Tousey)*, 549 F.3d 1148, 1162 (7th Cir. 2008) (allowing the deduction on an unencumbered vehicle but remanding to the district court based on the totality of the circumstances); *Clippard v. Ragle (In re Ragle)*, 395 B.R. 387 (E.D. Ky. 2008) (permitting the deduction on an unencumbered vehicle while noting that the trustee can still raise a bad faith or totality of the circumstances argument in support of their motion to dismiss); *In re Fowler*, 349 B.R. 414, 421 (Bankr. D. Del. 2006) (recognizing that the U.S. Trustee “can argue, and the Court can consider, the fact that the Debtor does not have any secured car debt to pay in determining whether the case should be dismissed under section 707(b)(3)”).

¹⁶⁰ See *supra* Part I.A.

¹⁶¹ 11 U.S.C. § 707(b)(3) (2006).

situation demonstrates abuse.”¹⁶² Prodeduction courts claim this provision reduces potential for abuse, observing that parties in interest can challenge debtors’ cases under § 707(b)(3) in individual cases of unfairness.¹⁶³

The totality of circumstances test in § 707(b)(3) is an insufficient check on abuse for two reasons. First, § 707(b)(3) applies only in chapter 7 cases and thus is ineffective for eliminating abusive deductions claimed for nonfunctioning or unused vehicles in chapter 13 cases. Second and more importantly, the totality of circumstances test in § 707(b)(3) undermines prodeduction courts’ primary rationale for not incorporating the IRM’s general rule of prohibiting deductions in the absence of actual expenses. Prodeduction courts do not incorporate the IRM’s general rule and approach because they fear doing so will threaten the BAPCPA policy of uniform application of bankruptcy law and policy by increasing judicial discretion. The only safeguard their approach offers against abuse is § 707(b)(3)’s totality of the circumstances test, however, and this test depends entirely upon judicial discretion. Thus, the prodeduction courts’ approach is more likely to increase judicial discretion and undermine the BAPCPA policy of uniform application of bankruptcy law.¹⁶⁴ Moreover, § 707(b)(3) does nothing to address the windfall ownership deductions for unencumbered vehicles that never need replacement or significant repairs during the chapter 13 repayment period or the similar period of time following chapter 7 relief.

¹⁶² *Id.*

¹⁶³ *See, e.g., In re Fowler*, 349 B.R. at 421.

¹⁶⁴ *See, e.g., In re Ross-Tousey*, 549 F.3d 1148 (7th Cir. 2008). The foundation of the court’s decision to allow the vehicle ownership expense deduction for financially unencumbered vehicles rested on its holding that Congress did not intend to incorporate the IRM into § 707(b)(2)(A)(ii)(I) due to the Manual’s discretionary nature. *In re Ross-Tousey*, 549 F.3d at 1158–60. Specifically, the court held that:

If courts were to interpret section 707(b)(2)(A)(ii)(I) as incorporating the highly discretionary procedures revenue officers use under the IRM, the means test would be similar to the disposable income determination used before BAPCPA, when bankruptcy judges had a great deal of discretion in determining a debtor’s net disposable income. It was clearly Congress’s intent to eliminate such discretion when it enacted BAPCPA.

Id. at 1160 (internal citation omitted). Notwithstanding the Seventh Circuit’s heavy reliance on the BAPCPA policy of encouraging uniformity by limiting judicial discretion, it nonetheless discounts the potential for abuse under its holding by noting that the trustee “can still request dismissal, as he has done in this case, under section 707(b)(3), either for bad faith or based on the totality of circumstances.” *Id.* at 1162. Thus, prodeduction courts such as the Seventh Circuit in *In re Ross-Tousey*, want to have their cake and eat it too.

2. Potential Expenses in Addition to the Vehicle Ownership Expense

Although § 703(b)(3)'s safeguard against abuse and arbitrary and unfair results depends primarily upon judicial discretion and does not address windfall deductions, two other safeguards allow antideduction courts to minimize these results while still prohibiting the deduction in the absence of debt or lease payments. The first safeguard is an operation allowance for older or higher mileage vehicles.¹⁶⁵ The second safeguard is the court's ability to adjust expense deductions in special circumstances.¹⁶⁶

a. Additional Vehicle Operating Expense for Older or High Mileage Vehicles

Most courts allow an additional vehicle operating expense of \$200 per month for vehicles older than six years or those having a mileage over 75,000, even when the vehicle is unencumbered by debt or lease payments.¹⁶⁷ When permitted, this expense is added to the Local Standard operating expense.¹⁶⁸ Some courts, however, prohibit this additional \$200 per month operation expense deduction because this deduction is not a fixed Local Standard, but a discretionary instruction to IRS officers in the IRM.¹⁶⁹ This minority of courts believes that allowing the additional high mileage or older vehicle deduction incorporates too much discretion from the IRM and therefore contradicts Congress's intention to limit judicial discretion.¹⁷⁰

¹⁶⁵ E.g., *In re Carlin*, 348 B.R. 795, 798 (Bankr. D. Or. 2006) (applying this additional operation expense).

¹⁶⁶ See 11 U.S.C. § 707(b)(2)(B).

¹⁶⁷ See *IRM*, *supra* note 35, at 5.8.5.6.3.3; *Babin v. Wilson (In re Wilson)*, 383 B.R. 729, 734 (B.A.P. 8th Cir. 2008); *In re Zaporski*, 366 B.R. 758 (Bankr. E.D. Mich. 2007) (allowing both the additional operation and the ownership deduction for unencumbered vehicle); *In re Carlin*, 348 B.R. at 798; *In re Lara*, 347 B.R. 198, 202 (Bankr. N.D. Tex. 2006); *In re Barraza*, 346 B.R. 724, 729 (Bankr. N.D. Tex. 2006); *In re McGuire*, 342 B.R. 608, 613–14 (Bankr. W.D. Mo. 2006), *abrogated by* *Coop v. Frederickson (In re Frederickson)*, 375 B.R. 829 (B.A.P. 8th Cir. 2007), *rev'd*, *In re Frederickson*, 545 F.3d 652 (8th Cir. 2008), *abrogation recognized in In re Riding*, 377 B.R. 239, 242 n.9 (Bankr. W.D. Mo. 2007). But some courts prohibited the additional operation deduction. See *In re Johnson*, No. 06-10674C-13, 2006 WL 2883243, at *1 (Bankr. M.D.N.C. Oct. 6, 2006); *In re Ford*, No. 06-11097, 2006 WL 4458358, at *1 (Bankr. N.D. Ohio July 26, 2006).

¹⁶⁸ See *supra* notes 10 and 131 and accompanying text.

¹⁶⁹ See, e.g., *Pearson v. Stewart (In re Pearson)*, 390 B.R. 706, 716 (B.A.P. 10th Cir. 2008) (stating that the \$200 operation expense should not be given because it is derived from the IRM, not the Local Standards), *vacated*, No. 08-8060, 2009 WL 205408 (10th Cir. Jan. 22, 2009). But see *In re Zaporski*, 366 B.R. 758 (Bankr. E.D. Mich. 2007) (allowing both the additional operation and the ownership deduction for unencumbered vehicle).

¹⁷⁰ See *In re Pearson*, 390 B.R. at 716.

Allowing an additional \$200 operation expense provides an important safeguard for debtors' financial wellbeing. Allowing the additional expense addresses the concerns voiced by prodeduction courts that blanket vehicle ownership expense deductions should be permitted because a vehicle might need significant repairs following bankruptcy relief.¹⁷¹ Additionally, because this operation expense applies only to certain vehicles satisfying objective criteria—vehicles older than six years or having a mileage over 75,000 miles¹⁷²—it does not run afoul of BAPCPA's goal of encouraging uniform application of bankruptcy law by limiting judicial discretion.

b. Additional Expenses Under Special Circumstances

Section 707(b)(2)(B) provides another safeguard that allows courts to adjust expense deductions in special cases.¹⁷³ If a court identifies “special circumstances that justify additional expenses or adjustments of current monthly income,” then the court may consider the presumption of abuse rebutted under the means test in chapter 7 cases.¹⁷⁴ Although this provision depends upon judicial discretion, like the totality of circumstances test discussed above,¹⁷⁵ the special circumstances provision sets a higher standard that courts apply only in exceptional circumstances.¹⁷⁶ For instance, one court

¹⁷¹ Prodeduction courts argue that the vehicle ownership expense is insufficient because debtors incur vehicle ownership costs outside of debt or lease payments. *E.g.*, *Ross-Tousey v. Neary (In re Ross-Tousey)*, 549 F.3d 1148, 1160 (7th Cir. 2008) (“[P]olicy considerations support allowing the ownership deduction to debtors who own their cars outright. It is common sense that there are costs associated with vehicle ownership apart from loan or lease payments. . . . These non-debt costs include depreciation, insurance, licensing fees and taxes.”). This broad interpretation of “ownership” costs ignores that vehicle operation expense deductions cover such expenses. *See IRM, supra* note 35, at 5.15.1.9(1)(B) (noting the application of Local Standards for transportation cover “[v]ehicle insurance, vehicle payment (lease or purchase), maintenance, fuel, state and local registration, required inspection, parking fees, tolls, driver’s license, and public transportation”).

¹⁷² *See IRM, supra* note 35, at 5.8.5.6.3(3).

¹⁷³ The text of this section provides:

[T]he presumption of abuse may only be rebutted by demonstrating special circumstances, such as a serious medical condition or a call or order to active duty in the Armed Forces, to the extent such special circumstances that justify additional expenses or adjustments of current monthly income for which there is no reasonable alternative.

11 U.S.C. § 707(b)(2)(B) (2006).

¹⁷⁴ *Id.*

¹⁷⁵ *See supra* Part III.C.1.

¹⁷⁶ *In re Scarafiotti*, 375 B.R. 618, 633 (Bankr. D. Colo. 2007) (approving \$297 in excess of Local Standards for housing due to the existence of “special circumstances” based on a well-documented presentation of evidence that the debtor’s son had special needs which justified living in a more expensive neighborhood). *But see In re Delunas*, No. 06-43133-705, 2007 WL 737763, at *2 (Bankr. E.D. Mo. Mar. 6, 2007) (holding “special circumstances” did not exist to justify \$813 in addition to the permitted housing

allowed a debtor to claim an additional vehicle operation expense in addition to the \$200 per month permitted under the IRM on the grounds that rising gas prices and an unusually long commute were special circumstances justifying additional expenses or adjustments of current monthly income.¹⁷⁷ Under certain situations, anteduction courts may use the safeguard provided in the special circumstances provision to adjust vehicle ownership expense deductions that are insufficient to cover the full range of expenses associated with ownership of a vehicle.

3. *Postpetition Income Adjustment in Chapter 13 Cases*

Chapter 13 debtors may seek postpetition adjustment of their current monthly income to account for their need to purchase a new vehicle during the chapter 13 payment period.¹⁷⁸ In contrast, chapter 7 debtors may not adjust their currently monthly income calculation postpetition because once a presumption of abuse arises from that calculation, the debtor's case is dismissed.¹⁷⁹ Prodeduction courts claim that because this adjustment is not available in chapter 7 cases, it provides an ineffective safeguard to the arbitrary and unfair results of the anteduction courts' approach.¹⁸⁰ These prodeduction courts, however, fail to recognize that dismissal from chapter 7 does not necessarily end the debtor's bankruptcy proceedings. Upon dismissal without prejudice, the debtor may file a new case under chapter 13, to which the

expense deduction in part due to a lack of expert proof). Moreover, the burden is on the debtor to prove that "special circumstances" exist. *Id.*; see also *In re Hunt*, No. 08-6916-AJM-7, 2008 WL 5142183, at *5 (Bankr. S.D. Ind. Dec. 5, 2008) ("[T]he vehicle operating expense deduction does not prohibit the debtor from claiming additional expenses anticipated in the purchase of a replacement vehicle based on 'special circumstances.'"); *In re Martinez*, 391 B.R. 424, 430 (Bankr. E.D. Wis. 2008) (finding potential need to replace vehicle too speculative to justify special circumstances); *In re Batzkiel*, 349 B.R. 581, 586 (Bankr. N.D. Iowa 2006) (holding special circumstances exist due to rising fuel prices and extraordinarily long commute).

¹⁷⁷ *In re Batzkiel*, 349 B.R. at 586.

¹⁷⁸ See *In re Carlin*, 348 B.R. 795, 798 (Bankr. D. Or. 2006) (recognizing that if a postpetition chapter 13 debtor needed to replace a broken vehicle during the repayment period that § 707(b)(2)(B) authorizes a change in disposable income based on "special circumstances"). Chapter 13 postconfirmation income adjustments come to light under 11 U.S.C. § 521(f), wherein at the request of the court, United States Trustee, or any party in interest, a chapter 13 debtor shall file statements of income and expenditures and tax returns annually after the plan is confirmed until the chapter 13 case is closed. 11 U.S.C. § 521; see also *In re McGuire*, 342 B.R. 608, 614 n.22 (Bankr. W.D. Mo. 2006) ("If debtors are not permitted (or in some cases, required) to change their plan payments due to changes in actual income and expenses, § 521(f) would serve no purpose.").

¹⁷⁹ See *supra* Part I.A.

¹⁸⁰ See, e.g., *In re Zak*, 361 B.R. 481, 488 (Bankr. N.D. Ohio 2007); *In re Fowler*, 349 B.R. 414, 420 (Bankr. D. Del. 2006) ("Obviously, this Court, in determining a motion to dismiss a chapter 7 case, cannot [seek an adjustment of the debtor's plan payments in order to account for the need to purchase a replacement vehicle].").

postpetition and postconfirmation income adjustment would apply.¹⁸¹ In such cases, the disposable income adjustment benefits of chapter 13 are fully available to the former chapter 7 debtor,¹⁸² thus creating a potential safety net for debtors initially filing under chapter 7.

Although the prodeduction and antideduction approaches generate somewhat arbitrary and unfair results, the prodeduction approach causes more problems than it solves. The prodeduction approach's only safeguard against generating these results is a totality of circumstances test that increases judicial discretion and undermines that approach's rationale of not incorporating the IRM's prohibition of ownership expense deductions without actual expenses to limit judicial discretion.¹⁸³ Although the antideduction approach makes an arbitrary distinction between debtors who have just a few vehicle payments remaining and those that own their vehicles free and clear, the antideduction approach is the better of two imperfect approaches because it has better safeguards against abuse and arbitrary and unfair results.¹⁸⁴

CONCLUSION

The preceding synthesis addresses the divergence that has emerged among courts since BAPCPA about whether debtors may claim the vehicle ownership expense deduction without having actual ownership expenses. The cases demonstrate that the deduction should not apply to vehicles owned by debtors free and clear.

Although the language providing for the deduction in § 707(b)(2)(A)(ii)(I) is ambiguous, BAPCPA's policies of maximizing repayment to creditors and of encouraging uniform application of bankruptcy law are best served when debtors are denied the vehicle ownership deductions where they own unencumbered vehicles. Short of amending § 707(b)(2)(A)(ii)(I)'s ambiguous language, the way to achieve maximum repayment to creditors, protection of the debtor's financial wellbeing, and to honor the BAPCPA policies of preventing bankruptcy abuse and encouraging uniform application of bankruptcy law is to limit judicial discretion and prohibit vehicle ownership

¹⁸¹ See *supra* Part I.A.

¹⁸² See *In re Fowler*, 349 B.R. at 420 (recognizing if the need arose during a chapter 13 repayment period to purchase a replacement vehicle that a chapter 13 debtor could simply seek a payment plan adjustment).

¹⁸³ See *supra* Part III.C.1.

¹⁸⁴ See *supra* Part III.C.2.

expense deductions for vehicles on which debtors have no actual ownership expenses.

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