Below is an Opinion of the Court.

TRISH M. BROWN
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF OREGON

In re CARLEY M. CUMMINGS, Debtor.	Case No. 06-33029-tmb13 MEMORANDUM OPINION

This matter came before the court on the objection of Bank of America (the "Bank") to confirmation of the Debtor's Chapter 13 Plan. The Bank was represented by Richard Parker. The Debtor, Carley Cummings (the "Debtor") was represented by Ryan Hackett and the Chapter 13 Trustee, Brian Lynch, (the "Trustee") was represented by Wayne Godare.

Following a hearing held on January 4, 2007, I took this matter under advisement. I have reviewed my notes, the exhibits, and the pleadings and other submissions in the file. I also have read applicable legal authorities, both as cited to me and as located through my own research. I have considered carefully the arguments presented and have read counsel's submissions in detail. The following findings of fact and legal conclusions constitute the court's findings under Federal Rule of Civil Procedure 52(a), applicable in this proceeding under Federal Rule of Bankruptcy Procedure 9014.

FACTS

The facts of this case are undisputed. The Debtor filed a voluntary Chapter 13 petition on September

30, 2006. The debtor's case was filed after the effective date of the 2005 Bankruptcy Abuse Prevention and Consumer Protection Act ("BAPCPA"). It is, therefore, subject to the requirements of that act, including the requirement that the Debtor file a Form B22C - Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income ("Form B22C"). This form, promulgated by the Administrative Office of the United States Courts, is used to enable debtors to provide the information necessary to calculate whether the debtor's income is above or below the median, and, if above, to calculate the deductions allowed by § 707(b)(2)(A) and to determine the "applicable commitment" period for the debtor's Chapter 13 Plan.

As shown on her Form B22C, Debtor's gross monthly income is $4,137.35, giving her a gross annual income of $49,648.20. This amount exceeded the median family income of $37,530.00 applicable in Oregon at the time of filing for a one person household. The Debtor's total monthly expense deductions, as shown on her Form B22C, are $3,883.50, leaving her with a net disposable monthly income of $253.85. The Debtor's Form B22C monthly expenses include $471.00 for vehicle ownership expense and $831.00 for mortgage/rent expense. These amounts constitute the IRS National and Local vehicle ownership expense and mortgage/rent expense for a one person household in Multnomah County, Oregon.

Debtor also filed a Schedule I. Current Income of Individual Debtor(s) and a Schedule J. Current Expenditures of Individual Debtor(s). The Debtor's Schedule I shows that she has monthly income, after payment of taxes and insurance, of $2,968.00. According to her Schedule J, the Debtor's monthly expenses total $2,371.25. This includes $500 per month for rent or home mortgage payment and $254.00 per month for her car payment. Deducting the monthly Schedule J expenses from the Debtor's Schedule I income leaves her with a net monthly income of $596.75.

The Debtor proposes to pay the Trustee $285.00 per month for a period of 60 months. The Bank, an unsecured creditor, contends that confirmation of the Plan should be denied because the Debtor is not committing all her disposable income to the Plan. Specifically, it contends that the Debtor's vehicle ownership and housing expenses should be based on her actual expenses, as shown on her Schedule J, and not on the expenses shown on her Form B22C. The Debtor and the Trustee disagree. They contend that the

debtor's vehicle ownership and housing expenses, for purpose of plan confirmation, is properly calculated using the National and Local Standards adopted by the IRS.

ISSUE PRESENTED

The sole issue presented in this case is whether an above-median income debtor whose actual vehicle ownership and housing expenses are less than the amount set forth in the applicable National and Local Standards may claim the full amount provided for under those standards in calculating her disposable income for chapter 13 plan purposes.

LEGAL ANALYSIS

Section 1325(b)(1), of the Code provides:

> "(b)(1) If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan—
>
> (A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or
>
> (B) the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan." (emphasis added)

Section 1325(b)(2) provides in pertinent part:

> "(2) For purposes of this subsection, the term "disposable income" means current monthly income received by the debtor (other than child support payments, foster care payments, or disability payments for a dependent child made in accordance with applicable nonbankruptcy law to the extent reasonably necessary to be expended for such child) less amounts reasonably necessary to be expended—
>
> (A)(I) for the maintenance or support of the debtor or a dependent of the debtor, or for a domestic support obligation, that first becomes payable after the date the petition is filed . . ."

In order to determine whether the Debtor's plan complies with this confirmation requirement the court must determine whether the amount set forth on the Debtor's Form B22C is the amount "reasonably necessary to be expended" for her maintenance and support of the Debtor.

> "Prior to the bankruptcy amendments, Schedules I and J were the primary source of evidence used to satisfy the disposable income test under § 1325(b). Upon objection to confirmation under § 1325(b), courts examined a debtor's current monthly income and expenses reported on Schedules I and J. Determining whether the debtor's reported Schedule J expenses were reasonably necessary for the support of the debtor or a dependant [sic] of the debtor was a fact-bound undertaking that required the court to make judgments about a debtor's lifestyle." In re Miller, No. 06-81889, 2007 WL 128790 at *2 (Bankr. N.D. Ala. 2007).

BAPCPA added § 1325(b)(3) which states:

> "Amounts reasonably necessary to be expended under paragraph (2) shall be determined in accordance with subparagraphs (A) and (B) of Section 707(b)(2) . . ." 11 U.S.C. § 1325(b)(3) (emphasis added.)

For its part, subparagraph (A) of § 707(b)(2) provides:

> "(ii)(I) 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." (emphasis added)

Although this language appears straightforward, it has "proved nettlesome and ambiguous to many courts." In re Slusher, No. 06-10435, 2007 WL 118009, at *11 (Bankr. D. Nev. 2007). This has resulted in a split of authority among the courts as to how "amounts reasonably necessary" for the maintenance and support of an above median income debtor should be determined.

> "One line of cases holds that post-BAPCPA, Schedule J is irrelevant to the determination of disposable income for above median income debtors. These cases find BAPCPA ushered in a new method for calculating disposable income for above median income debtors, 'one **designed** to make the determination for those debtors 'formulaic.'" See In re Farrar-Johnson, 353 B.R. 224 (Bankr.N.D.Ill.2006) (finding Schedule J expenses to be completely irrelevant to the determination of disposable income); In re Alexander, 344 B.R. 742 Bankr.E.D.N.C. 2006)(finding debtors are only required to repay unsecured creditors the amount determined using Form **B22C**); In re Barr, 341 B.R. 181 (Bankr. M.D.N.C. 2006)(finding disposable income is governed solely by the IRS standards); In re Guzman, 345 B.R. 640 (Bankr. E.D.Wis.2006)(finding disposable income for above median income debtors must determined based solely on application of IRS standards); In re Hanks, 2007 WL 60812 (Bankr. D.Utah 2007)(holding that Form **B22C** controls unless 'special circumstances' can be shown under § 707(b)(2)(B))." Miller, 2007 WL 128790, at *4. (bolding in original) (footnote omitted).

Those courts adopting the approach that Schedule J is not relevant to determining the reasonableness

of an above median income debtor's vehicle ownership and housing expenses rely on the plain language of § 707(b)(2) which provides that the debtor's monthly expenses "shall be the debtor's applicable monthly expense amounts specified under the National Standards and Local Standards." These courts contend that "[f]urther evidence of Congress' intent [to eliminate use of Schedule J for above median income debtors] is seen from the fact that in the same sentence of section 707(b)(2)(A)(ii)(I), Congress expressly stated that the debtor would be entitled to 'actual monthly expenses' for Other Necessary Expenses. The use of 'actual' with respect to Other Necessary Expenses and 'applicable' with respect to the National and Local Standards must mean that Congress intended two different applications." In re Fowler, 349 B.R. 414, 418 (Bankr. D. Del. 2006). Finally, these courts note that:

> "[t]here is no reference in [the] language [of § 707(b)(2)(A)(ii)(I)] to the use of the Local Standards as a cap. In contrast, the IRM [Internal Revenue Manual] expressly provides that 'The taxpayer is allowed the local standards or the amount actually paid, *whichever is less*.' IRM at 5.15.17 ¶ 4 (emphasis added). The fact that Congress did not use language similar to the IRM evidences that it did not intend the Local Standards to apply as a cap." Id. at 418.

Based on this analysis, courts holding that Schedule J is not relevant to determination of vehicle ownership and housing expenses of an above median income debtor have allowed the debtor to include the full amount of the National and Local Standard expenses for these items regardless of whether the debtor actually has an expense of the type provided for in those standards. See, Farrar-Johnson, 353 B.R. 224 (Bankr. N.D. Ill. 2006) (debtor who resided in military housing and had no housing expense entitled to deduct standard housing expense for purpose of determining disposable income) and Fowler, 349 B.R. at 414 (debtor entitled to deduct standard vehicle expense in determining whether chapter 7 filing constituted abuse despite the fact that she owned her vehicle free and clear).

This district has rejected the contention that a debtor may deduct a Local Standards vehicle ownership expense for purpose of determining disposable income if the debtor owns that vehicle free and clear. In re Carlin, 348 B.R. 795 (Bankr. D. Or. 2006). In doing so, the court, citing In re McGuire, 342 B.R. 608 (Bankr. W.D. Mo. 2006) stated:

> "[t]he statute provides that a 'debtor's monthly expenses shall be the debtor's applicable monthly expense amounts' under the Standards. If a debtor does not own or lease a vehicle, the ownership expense is not "applicable" to that debtor. Thus, if a debtor is not incurring

> expenses for the purchase or lease of a vehicle, the debtor cannot claim a vehicle ownership expense under the IRS Standards. This conforms with the IRS's application of the Standards." Carlin, 348 B.R. at 798.

This court agrees with the Carlin court that National and Local Standard expenses for vehicle ownership and housing are not "applicable" to debtors who do not have those expenses, i.e. those who own their vehicles free and clear or who do not have a mortgage or rent expense.

However, other courts have concluded that the Schedule J numbers, capped by the National and Local Standards are appropriate. In In re Slusher, 2007 WL 118009 (Bankr. D. Nev. 2007), the court rejected the argument that allowing deductions of actual expenses, versus the full amount of the IRS National and Local Standards for vehicle ownership and housing, would make meaningless the distinction between "actual" and "applicable" expenses. It reasoned that:

> "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. For example, a debtor may deduct only the *actual* amount of Other Necessary Expenses, regardless of the amount of those expenses. In contrast, a debtor can deduct the amount specified by the IRS for expenses falling under the IRS' National and Local Standards, even if such scheduled amounts are higher or lower than the debtor's actual expenses. Under this reading, 'actual' and 'applicable' do mean two different things-one is a limitless deduction within the specified categories of Other Necessary Expenses, and the other is a deduction limited to the amount and type specified by the IRS. Had Congress intended to indiscriminately allow all expense amounts specified in the National and Local Standards, it would have written 707(b)(2)(A)(ii)(I) to 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 . . .'" Id at *13. (Emphasis added in original).

The Slusher court, and other courts using Schedule J in determining disposable income for an above median income debtor rely on the "logic and rationale used [by the IRS] to define the Standards . . . ." In re Slusher , 2007 WL 118009, at *15. These courts note that the IRS' "website indicates that '[u]nlike the National Standards, the taxpayer is allowed the amount actually spent or the standard, whichever is less' for expense items such as cars covered by the Local Standards. This is backed by a statement in the Internal Revenue Manual, a set of administrative guidelines for interpreting, among other things, the Collection Financial Standards." Id. (footnote omitted).

The issue I must decide then is whether this court will allow the Debtor to deduct the full amount allowed by the National and Local Standards for vehicle ownership and housing or limit the Debtor's deduction to the "actual" amount of these expenses as provided in Slusher. Section 707(b)(2)(A)(ii)(I) provides that for purposes of determining amounts reasonably necessary to be expended for the maintenance and support of the debtor, the debtor is entitled to deduct certain "applicable expenses" and other "actual" expenses. The Bank concedes that the plain language of the statute appears to support the Debtor's position that she may deduct certain "applicable" expenses regardless of her actual expense. It argues, however, that:

> "when considering the method of calculation of the plan payment, a bankruptcy court must . . . look to a debtor's actual expenditures as set forth on Schedule J, limiting those expenditures to no higher than the means test allowances as set forth by BAPCPA. This method of calculation provides Debtor's creditors with the highest dividend on their claims in the most fair and equitable manner that is consistent with the purpose and spirit of the Code, as amended by BAPCPA." (Bank's Br. in Supp. of Obj. to Confirmation of Plan at 3, lines 9-16).

In essence, the Bank would like me to follow Slusher. It contends that:

> "the clear purpose of the law as evidenced by its title, the policy concerns underlying its passing, and the President's comments, indicates an intent to require debtors to repay their unsecured creditors as much as possible. Logic dictates that to do so, a comparison of a debtor's actual expenses and the 'means test' expenses or IRS Standards is in order." (Bank's Br. in Supp. of Obj. to Confirmation of Plan at 19, lines 19-23).

This argument focuses on only one purpose of the BAPCPA, to compel debtors to repay unsecured debt where possible. However, BAPCPA was also intended to standardize bankruptcy practices throughout the country. As noted by the Farrar-Johnson court "[o]ne of the aims of the means test was to limit judicial involvement- and so judicial discretion-by making mechanical the determination of abuse under section 707(b). The means test in section 1325(b)(3) is meant to have the same mechanical effect." Farrar-Johnson, 353 B.R. at 229 (citations omitted).

More importantly, in interpreting a statute:

> "[t]he plain language of a statute is the 'most reliable indicator of congressional intent' [and that] [i]t is not the courts' place to rewrite the statute, turning it into something they consider more logical, sensible, or conducive to human progress and enlightenment. The sole function of the courts is 'to enforce the statute according to its terms." Id. at 229. (citations omitted).

Courts " must aspire to give meaning to a statute's every word." Carlin, 348 B.R. at 798-799. I

agree with those courts that find that "[t]he use of 'actual' with respect to Other Necessary Expenses and 'applicable' with respect to the National and Local Standards must mean that Congress intended two different applications." In re Fowler, 349 B.R. 414, 418 (Bankr. D. Del. 2006). With due respect to the Slusher court, I do not believe that the term "applicable" was intended as a limit on a debtor's deductions. I believe that Congress meant to radically change the method for calculating disposable income. It replaced the old method for calculating disposable income, which relied on judicial interpretation of Schedules I and J, with a rigid formula designed to limit judicial discretion. See, Culhane & White, Catching Can-Pay Debtors: Is the Means Test the Only Way?, 13 Am, Bankr. Inst. L. Rev. 665 (Winter, 2005) (quoting the legislative history to demonstrate Congress's dissatisfaction with the inconsistent outcomes under former § 707(b)). To hold that an above-median debtor's vehicle ownership and housing expenses are still subject to discretion, consideration of actual expenses, and consideration of other factors such as IRS administrative determinations would be to contravene Congress's stated intent. The proper way to link Congress's intent to limit judicial discretion with an interpretation of the word "applicable" is to hold that the "applicable" expense amount an above-median debtor may deduct for vehicle ownership and housing is a simple two-step inquiry. First, the debtor establishes that she actually, in fact, incurs such an expense. Second, the debtor looks up the amount specified by the IRS and lists that amount on Form B22C. Such an approach gives effect to the intentions of Congress and keeps courts out of IRS administrative law and squarely in the comfortable confines of the Code. Consequently, I find that where an expense provided for under the National or Local Standards is "applicable" to a debtor, that is, the debtor has an expense of that nature, the debtor is entitled to deduct the full amount of the National and Local Standards for purposes of determining disposable income, regardless of the amount of the debtor's actual expense for that item.

CONCLUSION

Under § 1325(b)(3), expenses for an above median income debtor must be determined in accordance with § 707(b)(2)(A)(ii)(I) and without reference to the debtor's schedule J. Under § 707(b)(2)(A)(ii)(I), a debtor is entitled to deduct the full amount of any "applicable monthly expense amounts specified under the National Standards and Local Standards." The Debtor in this case has both a vehicle ownership expense and

a rent expense. Consequently, the National and Local Standards for both expenses are "applicable" to this Debtor. She is, therefore, entitled to deduct the full "expense amounts specified" under the National and Local Standards for those items, regardless of the amount of her actual expenses. The Bank's objection is, therefore, overruled. An order confirming the chapter 13 plan should be submitted within 10 days of the date of entry of this opinion.

###

cc: Ryan P. Hackett
Wayne Godare
Richard Parker