

**Training Manual for
Pro Bono Bankruptcy Training Program**

**MODULE 3 –
PREPARING THE BANKRUPTCY
DOCUMENTS**

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MODULE 3 - PREPARING THE BANKRUPTCY DOCUMENTS

Once the debtor has decided that bankruptcy is appropriate in a particular case, most of the remaining work for the attorney involves the preparation of the necessary papers for the initial filing. This Module uses a sample case to illustrate how to prepare the forms used in a typical chapter 7 bankruptcy case. A full set of filled-in forms based on the sample case is attached to this Module as Appendix A. Portions of the forms are referenced in this Module to highlight particular issues.

Preparing the bankruptcy filing is mostly a matter of filling in the blanks on a standard set of forms based on information and documents gathered from the debtor and other sources. As with all legal documents, an important goal of this exercise is to convey information as clearly and completely as possible. When necessary, the attorney should not hesitate to supplement the answers given with explanatory notes or additional information provided on the forms or on attachments. While every effort should be made to accurately complete these forms, it is ordinarily possible to correct inadvertent errors by amendment without great difficulty.

1. THE REQUIRED DOCUMENTS

1.1 Required Documents in All Consumer Cases

Most of the required documents in a bankruptcy case are Official Forms promulgated by the Judicial Conference of the United States. Normally a bankruptcy case is started by filing all of the required documents at once, except those that must be filed postpetition. However, to accommodate emergency filings, Bankruptcy Rule 1007 allows a case to be initiated by filing less than the full set of documents. The minimum set of documents required to start a case include the following:

- ☐ Voluntary petition in which the debtor requests relief under the Bankruptcy Code (Official Form 101);
- ☐ Certification that the debtor received credit counseling or is seeking a waiver or deferral of the requirement (Part 5 to Official Form 101);
- ☐ Statement of the debtor's Social Security number (Official Form 121);
- ☐ Initial statement about any prepetition eviction judgment against the debtor, if applicable (Official Form 101A);

- ☐ Mailing list of names and addresses for all creditors and certain other entities (sometimes known as the “mailing matrix”); and
- ☐ Application for waiver of the filing fee (Official Form 103B) or application to pay the filing fee in installments (Official Form 103A), if the filing fee is not paid in full with the petition.

The following documents, if not filed with the petition, must be filed within fourteen days thereafter in all consumer cases:

- ☐ Certificate from an approved credit counseling agency and any debt repayment plan developed by that agency;
- ☐ Schedules of the debtor’s assets, liabilities, executory contracts and unexpired leases, codebtors, income, and expenses (Official Forms 106A – 106J);
- ☐ Summary of the debtor’s assets and liabilities, and certain statistical information (Official Form 106Sum);
- ☐ Declaration about the debtor’s schedules (Official Form 106Dec);
- ☐ Statement of financial affairs (Official Form 107);
- ☐ Disclosure of attorney fees paid or promised (Director’s Procedural Form B2030), and
- ☐ Statement of current monthly income in chapter 7 (Official Form 122A-1) and, if applicable, statement of exemption from presumption of abuse under means test (Official Form 122A-1Supp); or the statement of current monthly income in chapter 13 and calculation of commitment period (Official Form 122C-1).

There are several other documents, if applicable and not filed with the petition, which must also be filed within fourteen days after the filing of the petition:

- ☐ Schedule J-2: Expenses for Separate Household (Official Form 106J-2), if a joint case is filed and the debtor and the debtor’s spouse maintain separate households;
- ☐ A statement (provided as an attachment to Official Form 106I) showing the gross receipts, ordinary and necessary business expenses, and total monthly net income, if the debtor operates a business, profession, rental property, or farm;

- ☐ Means test calculation in chapter 7 cases (Official Form 122A-2) or disposable income calculation in chapter 13 cases Official Form 122C-2), for debtors above their state's median income;
- ☐ Chapter 7 means test exemption attachment (Official Form 122A-1Supp, filed with Official Form 122A-1), for debtors who do not have primarily consumer debts or who otherwise contend that they are exempt from means testing;
- ☐ Payment advices (pay stubs) the debtor received from an employer in the sixty days before filing the petition; and
- ☐ Record of the debtor's interest in an education savings account or an ABLE account.

1.2 Additional Required Documents in Chapter 7 and Chapter 13 Cases

The documents filed to initiate chapter 7 and chapter 13 cases are essentially the same, with the exception of two additional documents (local rules may require one or two other papers):

- ☐ In a chapter 7 case, the debtor must file a statement of intention with respect to secured debts or personal property leases (Official Form 108). This statement is normally filed with the schedules and statement of affairs, but section 521(a)(2)(A) provides that it must be filed within thirty days after the filing of the petition, or on or before the date of the section 341 meeting, whichever is earlier; and
- ☐ In a chapter 13 case, the debtor must also file a proposed plan. While the form of the chapter 13 plan is not set by the Code or the Bankruptcy Rules, chapter 13 trustees and courts by local rule in many jurisdictions have adopted form plans to be used by debtors. Debtors should be permitted to make additions and modifications to any form plan that are consistent with the provisions of the Bankruptcy Code.

1.3 Other Forms After Case Filed

Once the initial documents have been filed, certain other documents and forms, such as a certification of completion of the financial education course and copies of tax transcripts or returns, must be filed with the court or provided to the trustee. These document requirements are discussed in Module 4.

1.4 Extension of Time to File Required Documents

If the required documents cannot be completed and filed within fourteen days after the petition date, the debtor may request an extension of time under Bankruptcy Rule 1007(c). If

the missing documents are not filed within fourteen days after the petition date and no motion for an extension is filed, the court may dismiss the case. In most districts the court will provide the debtor and the debtor's attorney with a deficiency notice or order to show cause stating that the case will be dismissed without further notice or hearing if the missing documents are not filed by a specified date.

1.5 Avoiding "Automatic" Dismissal

Section 521(i)(1) provides that a case is to be "automatically dismissed" if the debtor does not file the information required by section 521(a)(1) within forty-five days after filing the petition. This information, contained on some but not all of the Official Forms, is as follows:

- List of creditors (mailing list);
- Schedule of assets and liabilities (Official Forms 106A/-/106F);
- Schedule of current income and expenses (Official Forms 106I and 106J);
- Statement of debtor's financial affairs (Official Form 107);
- Certificate that section 342(b) notice has been provided (Official Form 101, Part 7);
- Payment advices received within sixty day prepetition period;
- Statement of monthly net income (Official Form 106J, line 23);
- Statement of reasonably anticipated income or expenditures (Official Forms 106I, line 13 and 106J, line 24).

To the extent that section 707(b)(2)(C) may provide that the information in Official Forms 122A-1 and 122A-2 is made part of Schedules I and J, failing to provide the information on Official Forms 122A-1 and 122A-2 in a chapter 7 case in which the debtor has primarily consumer debts arguably may also give rise to automatic dismissal.

To avoid a case being automatically dismissed under this provision, counsel should ensure that these documents are properly filed before the forty-five-day period expires. It is usually obvious if there is a problem because most courts provide a "deficiency notice" if the required documents are not filed within fourteen days after the petition date. This notice includes not only the documents required by section 521(a)(1) but all of the documents described in this Module. Still, it is advisable to make use of a checklist such as the form reprinted as Attachment B. At some point before the forty-five-day period expires, counsel should review the checklist and make certain that the required documents have been completed and filed with the court, or seek an extension of time.

In addition to requesting an extension of time under Bankruptcy Rule 1007(c) as described above, a separate Code provision allows for an extension of time if the debtor is unable to file the information required under section 521(a)(1) within forty-five days after filing the petition. An additional forty-five-day extension of time may be granted on motion for cause shown pursuant to section 521(i)(3). The motion must be filed within forty-five days after the filing of the petition.

2. GETTING THE CASE FILED

2.1 Electronic Case Filing (ECF)

Bankruptcy courts require that bankruptcy forms be filed electronically. Some courts provide an exception for attorneys who file only an occasional case. These courts permit such attorneys or pro se debtors to file in paper form or they provide scanning and other equipment at the clerk's office that can be used to convert the forms to PDF format for electronic filing. However there are many advantages to electronic filing, and attorneys should become an ECF user.

Some bankruptcy courts require attorneys to participate in a training about how to use ECF or give attorneys practice petitions to file before an attorney is certified to file using ECF. Once an attorney is using ECF, all pleadings, such as adversary complaints, motions, and so forth, must be filed exclusively in PDF format via the ECF system.

After the forms have been converted to PDF format, the attorney may log onto the bankruptcy court's ECF website, fill in basic data about the debtor, and locate and attach the file with the PDF petition/schedules. The attorney then clicks on the final button, and the documents are uploaded through the ECF system to the bankruptcy court. The court gives the petitioner an instant case number as proof of filing, and future communication from the court arrives via e-mail, so one receives instant notice of events in the case. The attorney is given a "one-time" free access to all documents filed in the case, permitting them to be viewed and downloaded without paying a PACER fee.

If the debtor does not submit a filing fee waiver petition, the ECF system will prompt the registered user to submit payment through the use of a credit card. Some courts have established special procedures for attorneys working for legal services and pro bono programs which do not have office credit cards, often by permitting a paper check to be submitted promptly after the case filing.

2.2 Software Programs

Attorneys who regularly handle bankruptcy cases typically purchase special software programs to produce the bankruptcy forms. These software programs facilitate the entry and organization of data on the forms, similar to a spreadsheet program, and assist in getting the documents in proper form for electronic filing. Some volunteer lawyer programs make the use of such bankruptcy programs available to volunteer attorneys at a computer workstation in their office. Another option for volunteer attorneys who do not wish to purchase a special bankruptcy program is to use the blank Official Forms that are available for download in PDF format on the website of the Administrative Office of the United States Courts. See www.uscourts.gov/FormsAndFees/Forms/BankruptcyForms.aspx. Some of these forms can be filled in electronically. When using such "fillable forms," some fields on the forms are automatically populated after information has been typed.

3. PREPARING THE DOCUMENTS

3.1 Tips on Preparing Bankruptcy Forms

3.1.1 Basic Principles

There are three basic principles that should guide preparation of the bankruptcy forms and schedules:

COMPLETE

- Full disclosure required of all assets, liabilities, and other financial information.
- When appropriate check the box “no” or “none” rather than leave blank.
- When in doubt, list it!

ACCURATE

- Provide correct and adequate property descriptions.
- Convey information as clearly as possible.
- When appropriate, supplement answers given with notes indicated by asterisks or on an attachment.

CURRENT

- Update all documents before filing.
- Promptly make corrections through amendments.

3.1.2 Individual and Joint Cases

An individual may file a bankruptcy case alone, even if the individual is married. Only an individual and his or her spouse may file a joint bankruptcy case. 11 U.S.C. § 302. A legally married same-sex couple may file a joint bankruptcy petition. Couples in certain other formal relationships may not file jointly, such as a domestic partnership or a civil union, or a marriage in a foreign jurisdiction that is not recognized in the United States (such as a non-consensual marriage).

The forms use the term “you” or “Debtor 1” when referring to the sole debtor in an individual case. In a joint case, the reference to “you” is seeking information from both debtors. When the forms are seeking separate information from each of the spouses, the form uses “Debtor 1” and “Debtor 2” to distinguish between the spouses. In preparing the forms in a joint case, the

attorney should designate one of the spouses as “Debtor 1” and the other as “Debtor 2,” and maintain that designation consistently throughout all of the forms.

3.1.3 Amendments to Forms

Despite using best efforts to obtain complete and accurate information in preparing the forms, it is not uncommon for errors or omissions to be discovered after the documents are filed. If an amendment is needed, Bankruptcy Rule 1009 provides that the debtor may amend the filed documents as a matter of course at any time before the case is closed. The procedure is simple and is described in Module 4. A filing fee of \$31 must be paid (assuming a waiver has not been granted) for amendments to a debtor’s schedules of creditors or mailing list (matrix). No fee is required when the nature of such an amendment is simply to change the address of a creditor or an attorney for a creditor listed on the schedules, or to add the name and address of an attorney for a listed creditor. All other schedules and forms may be amended without paying a filing fee.

Most of the forms in individual cases have a box in the upper right corner that is labeled: “Check if this is an amended filing.” In preparing an amended form, the attorney should check this box and also make the proper event designation when uploading the document in the ECF system. If the amended form changes an amount that is reported in the summary of assets and liabilities, an amended Official Form 106Sum should also be filed. As discussed below in the instructions for preparing Schedules I and J, these forms provide for a distinction between an amended form that corrects information as of the petition date and a supplement that reflects postpetition changes in income and expenses in chapter 13 cases.

3.1.4 Privacy Protection

Bankruptcy Rule 9037(a) requires that only the last four digits of a Social Security number or and Individual Taxpayer Identification number can be included in an electronic or paper filing, unless the court orders otherwise. (As discussed below, Official Form 121 requires the debtor’s full Social Security number, but it is “submitted” to the court and not “filed”). Similarly, only the last four digits of a financial account number and only the year of an individual’s birth may be listed. With respect to minor children, only the initials of the child should be provided. The Instructions to the Official Forms state that instead of the child’s full name, a person preparing the forms should “fill in only the child’s initials and the full name and address of the child’s parent or guardian. For example, write A.B., a minor child (John Doe, parent, 123 Main St., City State).”

3.2 Sample Case Facts

The sample case below is provided to help illustrate how the basic forms are prepared. The debtor has decided to file for chapter 7 bankruptcy primarily to stop a wage garnishment. Her attorney has learned the following information from the initial client interview.

Lisa Reyes had serious health problems in 2013 that forced her to leave her job. Unable to afford an apartment on her own, Ms. Reyes and her two children (ages six and nine) moved into her sister's apartment. Ms. Reyes and her sister share equally the rent and utility expenses. However, Ms. Reyes pays directly from her own income all other household expenses for herself and her children.

Ms. Reyes has recovered from her health problems and is now trying to get a public housing apartment or Section 8 voucher because she cannot afford market rent apartments in the area based on her current income. Although she is on a priority waiting list for the next vacant public housing apartment, the Louisville Metro Housing Authority (LMHA) has told her that she cannot have a public housing unit until she pays a \$2,430 debt for back rent at a prior LMHA residence. The LMHA is also concerned that if Ms. Reyes is provided an apartment, she will not be able to obtain electric service because she has a back electric bill of \$790.

Ms. Reyes has outstanding medical bills, several debts on credit cards she used to help cover expenses when she was unemployed, a small tax debt owed to the IRS (with her former husband), and a deficiency judgment on a loan for a car that was repossessed after she lost her job.

Nine months ago, Ms. Reyes started a job as a cashier at The Home Store. The car loan judgment creditor quickly learned that she was working and began garnishing her wages. With less disposable income because of the garnishment, Ms. Reyes turned to a payday lender for a \$300 loan to help cover her share of the rent and utilities. That loan has been "rolled over" several times and the payday lender intends to deposit her \$385 check next week after she gets paid.

Ms. Reyes' property consists of furniture, household appliances, household goods and furnishings, clothing, and other personal belongings. Some items are being held in a storage unit until she gets her own apartment. She also owns an inexpensive used car she recently purchased. Her attorney believes that the payday lender may have violated a state statute based on the repeat loan transactions.

3.3 Voluntary Petition

Official Form 101 is the petition used by an individual (or two married individuals filing jointly) to commence a voluntary case under chapter 7, 11, 12, or 13 of the Bankruptcy Code. The filing of the petition constitutes an "order for relief." 11 U.S.C. §§ 301, 302. It also invokes the automatic stay, which takes effect immediately upon the filing of the petition, subject to certain exceptions. 11 U.S.C. § 362; discussed in Module 1.

3.3.1 Information About the Debtor

Name and Address. Part 1 of the petition requests the debtor's full name and all other names used by the debtor within eight years before filing the petition, such as married names and maiden names. The name listed on line 1 in Part 1 should be the same name that is listed on the debtor's government-issued picture identification (such as a driver's license or passport) that the debtor will bring to the meeting of creditors. In our sample case, the debtor has listed her full name in line 1. She also lists in line 2 the name she used when she was married, "Lisa Sandra Medrano." This information, together with the other identifying information on the petition, helps creditors to identify the debtor when they receive notice of the bankruptcy filing, comply with the automatic stay, and file accurate proofs of claim. Any business or trade names, including "doing business as" names, should be listed in line 4.

The form requires listing of both a street address (which Ms. Reyes has done in line 5) and any separate mailing address for the debtor. Married debtors who are filing jointly but living apart must provide the separate address used by the joint debtor (referred to as "Debtor 2"). Because Ms. Reyes is the only person filing this case, the "joint debtor" spaces on the petition are left blank.

Section 107(c) permits the court to protect an individual from disclosure of information that would create an undue risk of unlawful injury. For example, a victim of domestic violence who has moved and obtained a court order changing her name may have serious concerns about disclosing her former name and address in a document that is easily searchable in the PACER system and which would reveal her current location. When the debtor has a substantial need to keep a former name or other identifying information confidential, such as for safety reasons relating to domestic violence, a motion may be filed with the petition requesting that the debtor be excused from including certain identifying information.

Although unusual, an infant or incompetent person who does not have a duly appointed representative may file a bankruptcy petition by next friend or guardian *ad litem*. Bankruptcy Rule 1004.1. In this situation, the infant's initials or the incompetent person's name should be listed as the debtor with the notation "by next friend" followed by the name of the next friend or guardian *ad litem*.

Social Security Number. The form requires the reporting in line 3 of only the last four digits of the debtor's Social Security number or other taxpayer identification number. As discussed below, debtors must also submit Official Form 121--Statement of Social Security Number(s) on which they must supply their full Social Security number, or indicate that they do not have a Social Security number.

Venue. In most consumer cases, the debtor will check the box in the venue section in line 6 of the petition stating that he or she lived in the judicial district in which the case is filed for the 180-day period preceding the petition date (or in that district for a longer part of the 180-day period than in any other district). If the debtor has been domiciled during this period

in a judicial district other than where he or she is currently residing, and is filing the petition in the domiciliary state, the debtor should check the box labeled “I have another reason” and should provide an explanation. A map showing the geographical boundaries of the federal judicial districts is available at www.uscourts.gov/courtlinks.

3.3.2 Information About the Case

Filing Fee. The petition must be accompanied by filing fees totaling \$335 in chapter 7 cases and \$310 in chapter 13 cases, unless the debtor files an application for waiver of the chapter 7 filing fee, or an application and order to pay the filing fee in installments. Married debtors need only pay a single filing fee if they file jointly. The debtor should check the appropriate box in line 8 indicating whether the filing fee is being paid in full, in installments, or whether the debtor is seeking waiver of the fee. In the sample case, Ms. Reyes is seeking waiver of the fee, and has prepared Official Form 103B.

Other Bankruptcy Cases. The debtor must provide in line 9 information concerning any bankruptcy cases filed within the previous eight years. In limited situations, a prior bankruptcy may preclude filing a new case. The availability of a discharge may also be limited if a discharge was received in a relevant previous case. In addition, dismissal of a prior case may result in certain limitations on the automatic stay if a new case is filed within one year after the dismissal. Any other bankruptcy cases pending or being filed by a spouse or business partner of the debtor must be listed in line 10.

Residential Tenants. If the debtor is a tenant in a residential structure and no court judgment for possession has been entered against the debtor before the bankruptcy petition is filed, the debtor can simply check the applicable box in line 11 of the petition. If a court judgment for possession has been entered against the debtor before the petition is filed, the debtor should check the box indicating this in line 11 and then fill out and file with the petition the Initial Statement About an Eviction Judgment Against You (Official Form 101A). If it is the debtor’s intention to obtain a stay of the eviction for a thirty-day period after filing bankruptcy, the applicable boxes on Official Form 101A must be checked certifying that the debtor (1) has a right to cure any monetary default under state or federal nonbankruptcy law, and (2) has deposited with the clerk of the bankruptcy court all rent that would become due during the thirty days after the filing of the petition.

3.3.3 Other Information on Petition

Hazardous Property. Part 4 of the petition requires the debtor to disclose whether the debtor owns or has possession of property that poses or is alleged to pose a threat of imminent and identifiable harm to public health and safety. The debtor must also disclose if he or she owns any property that needs immediate attention, such as perishable livestock or a building that needs urgent repairs.

Prepetition Credit Counseling. Part 5 of the petition is the debtor’s statement of compliance with the credit counseling requirement under section 109(h). If a joint petition is filed, each debtor must fill out line 15. The debtor is also required to file a certificate from an approved credit counseling agency stating that the debtor has received the prepetition briefing. If that agency developed a debt management plan for the debtor, the debt management plan must be filed as well. The certificate (and debt management plan, if any) should be attached to the petition by uploading them with the petition during electronic filing. If these documents are not attached and filed with the petition, the debtor should check the applicable statement in line 15 and file the documents within fourteen days after filing the petition. The debtor may also check the statements in line 15 that describe the basis for a temporary or permanent waiver of the requirement, and in such cases a separate sheet explaining the exigent circumstances justifying the temporary waiver or a motion for waiver of the requirement should be filed with the petition. For a discussion of the difficulty in obtaining a waiver of the counseling requirement, see Module 2.

Nature of Debts. Line 16 of Part 6 asks whether the debtor’s debts are primarily consumer debts or primarily business debts. A definition of “consumer debt” is provided in section 101(8). The answer to this question is particularly relevant to the application of section 707(b) and the “means test,” which apply only to debtors whose debts are primarily consumer debts. A chapter 7 debtor whose debts are not primarily consumer debts need only sign Official Form 122A-1 and attach to it the statement of exemption (Official Form 122A-1Supp). In the sample case, the majority of Ms. Reyes’s debts are consumer debts, and as a result she has answered “yes” in line 16a and she will need to complete Official Form 122A-1.

If the debtor indicates that she does not have primarily consumer or business debts, by answering “no” in lines 16a and 16b, then she must state in line 16c the types of debts she has that are not consumer or business debts. For example, the debtor’s primary liability may stem from a judgment in a tort action, which is not a consumer or business debt.

Reporting Information. In line 17 of the petition, the debtor makes a prediction as to whether assets will be available for distribution to unsecured creditors by checking one of the two boxes provided. Because the debtor’s assets in most consumer chapter 7 cases may be claimed as fully exempt, the box indicating that no distribution to unsecured creditors will be made is usually checked and, based on this information, the notice sent to creditors by the bankruptcy court indicates that no proof of claim need be filed unless further notice is provided. Lines 18 through 20 of the petition request estimates used by the court for administrative purposes. Although the best available estimates should be used, there are no penalties for inaccurate estimates.

3.3.4 Signatures on Petition

Signature of Debtor. After the petition has been prepared, reviewed by the debtor, and any final corrections made, the debtor must sign the petition in Part 7. The debtor should be advised that he or she is declaring under penalty of perjury that the information provided in the

petition is “true and correct,” and that if the debtor has chosen to file under chapter 7, the debtor is aware of the right to proceed under other chapters. *Pro se* debtors must also declare that they have obtained and read a copy of the notice required by section 342(b). If the petition and other documents signed by the debtor are filed electronically, local rules in most districts require that the debtor’s attorney maintain a copy of the petition and other documents containing a “wet signature” for a specified period of time.

The debtor’s attorney should be present when the papers are reviewed with the debtor and signed. The debtor should be advised to look for any errors or omissions so that they can be fixed before the documents are filed. Most importantly, because several weeks or months may have passed since the initial or subsequent interviews with the debtor, or since the debtor filled out a questionnaire, the debtor should be asked if anything has changed.

Signature of Attorney and Declarations. An attorney representing a debtor must sign the petition in Part 7 of the petition. This section includes a declaration that the debtor’s attorney has informed the debtor that he or she may proceed under chapter 7, 11, 12, or 13 of the Bankruptcy Code, as applicable, and has explained the relief available under each chapter. By signing the petition, the debtor’s attorney also certifies that a copy of the notice required by section 342(b) has been delivered to the debtor (see discussion below). Finally, in a case in which section 707(b)(4)(D) applies, the debtor’s attorney also certifies by signing that he or she has “no knowledge after an inquiry that the information in the schedules filed with the petition is incorrect.”

3.4 Statement of Social Security Number

Debtors must submit a statement of Social Security number(s) (Official Form 121) on which they must supply their full Social Security number, or indicate that they do not have a Social Security number. Bankruptcy Rule 1007(f). If a joint case is filed, both debtors must fill out the form. The statement is submitted with the petition and schedules but is not made part of the official court file. The form ensures that the debtor’s full Social Security number is not available to the general public or over the Internet. The debtor’s full Social Security number provided on this statement is included in the notice of the section 341(a) meeting mailed to creditors. In some districts the form is not submitted to the court because the Social Security number is given during electronic filing. In these districts the debtor’s attorney retains the form.

All Social Security numbers that the debtor has used must be listed. For example, different numbers may have been obtained from the Social Security Administration if the debtor has been the victim of identity theft or domestic violence. The form also provides space to list all federal Individual Taxpayer Identification Numbers (ITIN) used by the debtor. An ITIN is a tax processing number issued by the Internal Revenue Service. The IRS issues ITINs to individuals who are required to have a U.S. taxpayer identification number but who do not have and are not eligible to obtain a Social Security number. Ms. Reyes has checked the box indicating that she does not have an ITIN.

3.5 Application to Pay Filing Fee in Installments

Official Form 103A is an application and order to pay the filing fee in installments. If the debtor is unable to pay the full filing fee at the outset of the case, Bankruptcy Rule 1006(b) provides that the fee may be paid in installments. No filing fee need be paid at the time the petition is filed if the petition is accompanied by this form, though typically the first installment is paid with the petition. The application may be denied if the debtor owes the court filing fees from an earlier dismissed case (and these unpaid fees should be listed on Schedule F).

No more than four installments may be proposed, to be paid over no more than 120 days after the petition is filed. The court, for cause, can extend the period to 180 days. The proposed terms of payment should normally specify the amounts and dates when payments will be due. The debtor should specify whether the first payment will be made with the filing of the petition or on a specified date. Some courts prefer that the installments be in equal, or near equal, amounts. For example, the debtor could propose to pay the \$335 chapter filing fee in four installments, \$80 with the petition, followed by three additional installments of \$85 each. The order provided in Official Form 103A should accompany the application to pay the filing fee in installments.

3.6 Application for Waiver of Chapter 7 Filing Fee

Official Form 103B is an application to waive the chapter 7 filing fee. The chapter 7 filing fee may be waived for debtors whose income is less than 150% of the federal poverty guidelines based upon family size, and who do not have an ability to pay the filing fee in installments based on the totality of the circumstances. See 28 U.S.C. § 1930(f)(1), discussed in Module 2; Judicial Conference of the United States Bankruptcy Case Policies, § 820, Chapter 7 Fee Waiver Procedures, available at: <http://www.uscourts.gov/rules-policies/judiciary-policies/bankruptcy-case-policies>.

In determining income eligibility, all dependents the debtor has listed or intends to list on Schedule J should be counted in listing the debtor's family size on line 1 of Part 1. A non-filing spouse is counted under family size, and his or her income must be included, unless the spouses are separated.

The debtor's income for comparison with the poverty figures is the average monthly net income that is or will be reported by the debtor in line 10 of Schedule I (Official Form 106I), less any non-cash governmental assistance, such as food stamps or housing subsidies. In the sample case Ms. Reyes has deducted the SNAP benefits and childcare assistance she receives from the income she reported on line 10 of Schedule I. Contributions the debtor receives on a regular basis from others to pay expenses, which are listed in line 11 of Schedule I and in line 8 of Form 103B, may be considered by the court in determining the ability to pay the filing fee in installments. However, they are not included in the debtor's income for comparison with the poverty figures for purposes of income eligibility, because they are not included in the line 10, Schedule I calculation.

If the debtor is filing Form 103B as part of an emergency filing before preparing Schedule I, an estimate should be made of the debtor's average monthly net income based on the calculation on Schedule I and a deduction for non-cash governmental assistance. However, some courts are reluctant to grant a fee waiver application if Schedule I, as well as Schedules A/B and J, are not filed with the petition. To avoid delay in consideration of the application, or the possible scheduling of a hearing on the application, debtor's counsel should attempt to file these documents with petition and fee waiver application.

If Schedules A/B and J are submitted with the petition and attached to Official Form 103B, designated portions of Form 103B requesting duplicative information about expenses and assets need not be completed. If these schedules are not attached, the debtor must provide an estimate of average monthly expenses and answer the questions concerning assets on Form 103B. To be consistent with Schedule J, Ms. Reyes reports on line 9 of Part 2 that her monthly expenses may decrease if she obtains a public housing apartment. Unlike line 24 of Schedule J, however, the debtor reports here only an anticipated change in expenses by more than 10 per cent during the 6 months following the filing of the case.

Line 5 of Part 1 provides space for the debtor to explain any additional circumstances related to the inability to pay the filing fee in installments. The debtor's attorney should list any factors that make the debtor's waiver request more compelling or help to explain why potential income and assets may not be immediately available to the debtor or are needed for essential expenses. An explanation provided here may address anticipated concerns of the court and avoid the scheduling of a hearing on the application. In the sample case, Ms. Reyes attempts to do this by explaining that the Earned Income Tax Credit she expects to receive in the following year is needed to make car repairs and pay for her children's clothing and other necessary expenses.

3.7 Mailing List

Bankruptcy Rule 1007(a)(1) requires that the debtor file with the petition a list of the names and addresses of all creditors included on Schedules D and E/F and any entity included on Schedules G and H. The debtor may also wish to include on the mailing list the names and addresses of related parties or representatives, if not listed on the schedules. The mailing list (sometimes referred to as the "mailing matrix") is not prepared on an official form and is used by the court system to prepare notices for interested parties. The court's local rules or administrative orders should be checked for instructions concerning the prescribed format for the mailing list. Although all documents filed electronically should be in Adobe Acrobat (PDF) format, the court may require the mailing list to be filed in text (.txt) format. In addition, local rules may require that certain entities, such as the Internal Revenue Service or state tax authorities, be included on the mailing list at a designated address even if these entities are not creditors in the bankruptcy case.

3.8 Section 342(b) Notice

Section 342(b) requires the clerk of the bankruptcy court to give each consumer debtor a notice prior to the filing of the petition describing the chapters of the Bankruptcy Code under which the debtor may proceed, the services of credit counseling agencies, and the possible consequences of bankruptcy fraud. However, because section 521(a)(1)(B)(iii) requires the debtor's attorney to file a certification that the attorney delivered the notice to the debtor, a represented debtor will receive the notice from his or her attorney rather than from the court. The attorney certification is made in Part 7 of Official Form 101, as discussed above. Director's Form 2010, prepared by Administrative Office of the U.S. Courts, provides the notice required by 11 U.S.C. § 342(b). The attorney should provide a copy of Director's Form 2010 to the debtor before the petition and other forms are signed.

To the extent not covered by the section 342(b)(1) notice, and within three days of first providing bankruptcy assistance to the debtor, section 527(a)(2) requires a debt relief agency to also provide a notice to the debtor containing various other disclosures about the bankruptcy process. *See* Module 2. Attorneys who are debt relief agencies may want to provide the notices required by these two Code sections to the debtor at the same time.

3.9 Schedule A/B -- Property

All individual debtors who file a bankruptcy case, under any chapter, must submit schedules A/B through J (Official Form 106A/B through 106J). These schedules are intended to comply with section 521(a)(1) of the Bankruptcy Code and Bankruptcy Rule 1007(b). The main purpose of these schedules is to give an exact picture of the debtor's assets, liabilities, budget, and financial affairs as of the petition date, in a uniform manner that facilitates administration of the case.

Schedule A/B (Official Form 106A/B) is a list of the debtor's real and personal property. In this schedule the debtor must list all legal, equitable, and future interests in property.

3.9.1 Real Property

Part 1 of the form requests information about the debtor's real property. If the debtor has no real property, the debtor should check the box "no" and proceed to Part 2. The debtor's interest in an executory contract or unexpired lease involving real property should be listed on Schedule G, rather than here. However, if the debtor is uncertain about the precise nature of an interest in such a contract or lease, such as might be the case with a land purchase contract or a "contract for deed," the debtor should list the interest on both schedules. Whether a mobile or manufactured home is listed as real property in Part 1 or as personal property in Part 2 will depend upon applicable state law and, in some cases, whether the debtor has taken steps under state law to convert the interest to real property.

In the sample case, Ms. Reyes is sharing an apartment with her sister and owns no real property. If Ms. Reyes had real property, the following information would need to be provided.

Where is the Property? The property location, including the street address for the property, is usually sufficient. For property that may not have a street or post office address, such as a vacant lot, some other description should be provided, such as a tax assessor's identification number or plat and lot number. Based on the practice in some districts, these local property identification numbers can also be added for any property in the space provided for "Other information you wish to add about this item."

What is the Property? The form provides a list of different types of property and the debtor is instructed to check all the boxes that describe the real property. For example, the debtor may indicate that the property is a "condominium" and "investment property" by checking both boxes. The debtor may provide a description of the property under "other" if the types of property listed do not apply.

Who Has an Interest in the Property? In this portion of the real property question the debtor indicates who has an interest in the property. Using the form convention that deals with joint filings, the response should indicate that either "Debtor 1 only," "Debtor 2 only," or "Debtor 1 and Debtor 2 only" have an interest in the property. If at least one of the debtors has an interest in the property with someone else, the box noting that should be checked. The debtor does not need to identify the other person on this form, though that person would be identified on Schedule H if the debtor and the co-owner are co-borrowers on a loan secured by the property.

Current Value. The form requests that the debtor state the current value of the entire property and the current value of the portion owned by the debtor (or both Debtor 1 and Debtor 2 in a joint case). For example, if the debtor owns a house having a current value of \$100,000 equally with her brother, the debtor would list the value of her interest as \$50,000 (50% of the value of the house). The value of the property interest should be given without deduction for any exemptions the debtor may claim or secured debts, such as mortgages. The amount of any secured claims on the property and any unsecured portion of a creditor's secured claim are listed on Schedule D: Creditors Who Have Claims Secured by Property. The value listed for the property can be the debtor's best estimate of the property's fair market value as of the petition date. Sources for determining property value may be a recent appraisal, a broker's price opinion, tax assessment value, or an online valuation tool. Often the valuation is selected from a range of good faith choices. If there is a wide range in the value based on these different sources, and the debtor has a limited homestead exemption or the home value could affect the debtor's ability to void a lien in the bankruptcy case, the debtor should get an independent appraisal before filing the case. The property value listed on this schedule should be consistent with the value listed, if applicable, on Schedule C: The Property You Claim as Exempt and Schedule D.

Nature of Debtor's Interest in Property. The debtor should describe the ownership interest in the blank space provided, such as "fee simple," "life estate," "tenants by the entirety" or "equitable interest under land contract." If the debtor's interest in a particular property is other than a full possessory interest in fee simple, a careful description of the debtor's actual interest should be provided. Similarly, if there are limits on the debtor's ability to dispose of or access the property, such as an affordability covenant, the nature of the limitation should be described in detail. It is more important to list the nature of the interest accurately than to fit it into the available space. A supplemental sheet should be used when necessary.

Community Property. The debtor must indicate whether the property is community property, by checking the applicable box.

3.9.2 Vehicles

Part 2 of Schedule A/B is a list of all of the debtor's interests in vehicles, such as cars, vans, trucks, tractors, sport utility vehicles, and motorcycles. Vehicles that are leased are listed here and also reported on Schedule G: Executory Contracts and Unexpired Leases.

The instructions on the form note that the debtor should list any interests in vehicles, whether they are "registered or not" or if "someone else drives" them. Even property that has been repossessed or seized is property of the estate to the extent of the debtor's interest in it. In the case of an automobile repossession, the debtor's attorney should attempt to determine if the vehicle has been sold or transferred in accordance with state law. If the debtor retains any interest in the vehicle it should be listed on Schedule A/B. Because Ms. Reyes no longer has an interest in the vehicle that was previously repossessed and resold by BuyHereNow Auto Sales, it is not listed here. Information about the repossession, however, is provided in response to questions on the Statement of Financial Affairs for Individuals Filing for Bankruptcy (Official Form 107). In the sample case the vehicle Ms. Reyes currently owns is listed in line 3 of Part 2.

Vehicle Information. The debtor must provide the make, model, year and approximate mileage for the vehicle. The 2015 Advisory Committee Note to Form A/B states: "Because mileage is just a general indication of vehicle value, the debtor is not required to list the exact mileage, but instead is prompted to provide the approximate mileage." The form provides a space for the debtor to provide any other information about the vehicle. For example, if a car is inoperable or in need of significant repairs, listing that information would help support the value given for the vehicle.

Who has an Interest in the Property? Similar to real property interests, the debtor must indicate who has an interest in the vehicle, by stating "Debtor 1 only," "Debtor 2 only," "Debtor 1 and Debtor 2 only," or "At least one of the debtors and another." The debtor must also note whether the vehicle is community property.

Current Value. The form requests that the debtor state the current value of the entire property and the current value of the portion owned by the debtor (or both Debtor 1 and Debtor 2 in a joint case). The value of the property interest should be given without deduction for any exemptions or secured debts. The amount of any secured claims on the property and any unsecured portion of a creditor's secured claim are listed on Schedule D: Creditors Who Have Claims Secured by Property. The value listed for the property can be the debtor's best estimate of the property's fair market value as of the petition date. The value listed by Ms. Reyes was obtained from an online motor vehicle industry guide. The property value listed on this schedule should be consistent with the value listed, if applicable, on Schedule C and D.

3.9.3 Personal and Household Items

In Part 3 of Schedule A/B, the debtor must list any legal or equitable interest the debtor has in a variety of personal and household items.

Courts vary in the specificity they require for the description of personal and household goods. In general, a brief description of the types of items is sufficient, rather than an itemized description of each item of property. However, the debtor should list separately each major appliance or other item of significant value. The instructions that accompany the forms state that the debtor should "[s]eparately describe and list individual items worth more than \$500." See "Instructions – Bankruptcy Forms for Individuals," Dec. 2015.

In line 6 of Part 3, the debtor lists household goods and furnishings, such as major appliances, furniture, linens, china, and kitchenware.

Description. Notes describing the age or condition of the property, such as "4 years old," are often useful for explaining a low valuation for items that depreciate quickly, such as a home computer.

Catch-All Description. There is usually no need to list every last plate, cup, and saucer. Some sort of catch-all for miscellaneous items is usually a good idea to cover all other items with values too small to warrant individual listings. The statement "no item worth more than \$575" is added in the sample schedules to be consistent with the form instructions and to support the debtor's claim on Schedule C that the items are exempt based on the federal bankruptcy exemption in section 522(d)(3), for debtors who are permitted to use the federal bankruptcy exemptions. (To be exempt under section 522(d)(3) as of April 1, 2016, the property may not exceed \$600 in value in any particular item or \$12,625 in aggregate value).

Valuation. Generally the market value for used furniture and similar household items is quite low. Clients should be asked for "garage sale" value, which is usually substantially less than the original purchase price.

3.9.4 Other Personal and Household Items

In line 7 of Part 3, the debtor lists electronic items, including audio, video, stereo, and digital equipment. This category includes items such as televisions, radios, computers, printers, scanners, music collections, cell phones, cameras, media players, and electronic games. It may be useful to include notes about the age and condition of certain electronic devices and computers that rapidly depreciate in value. For some items that are potentially worth more than \$500, the final auction sale price for similar items on eBay or other popular online auction websites may be helpful in estimating value.

In lines 8 through 13 of Part 3, the debtor lists other property in the following categories: collectibles of value; equipment for sports and hobbies; firearms; clothes; jewelry; and non-farm animals. Although items may fit in more than one category, the debtor should list the asset only in one category, generally the one that more specifically applies. For example, if the debtor has an item of furniture that is a rare antique, it should be listed in line 8 (collectibles of value) rather than line 6 (household goods and furnishings). As with the other categories in Part 3, the debtor must either provide a general description of a group of items or separately list and describe individual items having a value of more than \$500. The debtor must also list the current value for the reported items.

Line 14 instructs the debtor to list any other personal and household item that has not already been listed in the other categories. The form suggests as an example “health aids” that may not have been listed elsewhere.

3.9.5 Financial Assets

In addition to tangible possessions, all other types of property interests should be set out in Part 4 of Schedule A/B, including causes of action, government grants (such as energy assistance), security deposits with landlords or utilities, support or alimony owed to the debtor, tax refunds and Earned Income Tax Credits, retroactive lump-sum Social Security awards, and so forth. See Module 2, for a discussion of frequently overlooked property. Care should be taken to ensure that all of the debtor’s claims against others, even those that are contingent and unliquidated, are listed here. Because of the potential consequences of failing to list property in the schedules, it is always better to be overinclusive, rather than underinclusive. Note that the debtor should check the box “no” in any category for which the debtor has no property.

Although the categories of property set out in Part 4 are quite detailed, below is commentary on a few specific categories.

Deposits of Money. If the debtor has funds in a checking or savings account, certificate of deposit, or any other financial account at a bank, credit union, or other financial institution, they must be listed as assets in line 17. The form instructs the debtor to provide the name of the institution and the amount in the account. Debtors who are receiving Social Security and

public assistance benefits may be receiving those benefits through an Electronic Benefit Transfer (EBT) account. In the sample, Ms. Reyes has listed her EBT account and balance for benefits under the Supplemental Nutrition Assistance Program (SNAP).

The amount should reflect the account balance as of the petition date. Counsel should ask if the debtor has written checks that have not been cashed, as the debtor may mistakenly believe that there are less funds in the checking account on the petition. This can be a critical issue in districts in which no wildcard or other exemption is available to the debtor to exempt funds in the account. If the funds in the account cannot be exempted, then the debtor should consider delaying the filing or converting the funds to exempt property, if possible, prior to the bankruptcy. See Module 2, for a discussion of exemption planning.

The debtor must bring to the meeting of creditors copies of bank statements for the time period that includes the date of the petition. See Bankruptcy Rule 4002(b)(2); Module 4. Some trustees request that the attorney provide this information before the meeting of creditors. On occasion, a trustee will request additional records of bank accounts if there is some question about a rapid, unexplained dissipation of assets. Finally, if the bank has a right to a set-off (usually based on a debt owed by the debtor to the bank) and might “freeze” the account upon filing, funds should be withdrawn from the account and a new account should be opened in another bank prior to the filing of the case, if possible.

Retirement or Pension Accounts. Funds held in retirement or pension accounts are listed in line 21 of Schedule A/B, rather than in line 17. This includes interests in IRA, ERISA, Keogh, 401(k), 403(b), thrift savings accounts, or other pension or profit-sharing plans. Although ERISA-qualified pension plans are not property of the estate under section 541(c)(2) and *Patterson v. Shumate*, 504 U.S. 753 (1992), they are nevertheless personal property of the debtor that must be listed on Schedule A/B. If the pension plan is ERISA-qualified, the debtor should indicate that it is not part of the bankruptcy estate. The debtor may be asked to provide proof to the trustee that the plan is ERISA-qualified.

Interests in an education IRA, in an account in a qualified ABLE program, or under a qualified state tuition program are not listed here, but rather are listed in line 24. The debtor must also file separately the records of any such interests. See 11 U.S.C. § 521(c).

Security Deposits. Security deposits are listed in line 22. This category generally includes any deposit given to a company to ensure future payment or as condition for obtaining service from the company. The most common types of deposits are those given to landlords, utility companies, and furniture rental companies. The debtor should also list in line 22 any prepayments, such as prepaid last month’s rent given to a landlord. Deposits made with landlords may also include cleaning deposits, key deposits, pet deposits, and so forth. In most states debtors continue to have a property interest in security deposits. In many cases security deposits are overlooked assets of the debtor that should be properly listed here and exempted on Schedule C if possible.

Tax Refunds. Tax refunds due the debtor should be listed in line 28 of Part 4 and exempted, if possible. In many districts anticipated refunds are listed as a prorated amount to reflect the period from the beginning of the applicable tax year to the date the petition is filed. Local practice should be checked. Ms. Reyes has listed the prorated amount of anticipated tax refunds and an Earned Income Tax Credit.

Family Support. Any past due or lump sum amounts of family support owed to the debtor, such as alimony, spousal support, child support, maintenance, divorce settlement, or property settlement, are listed in line 29. Ms. Reyes has added a note that the support she is owed is not likely collectible.

Other Amounts Owed to Debtor. Line 30 is a general category in which the debtor lists any other amounts owed to the debtor. For example, if the debtor has been awarded retroactive lump-sum Social Security benefits that have not been received as of the petition date, they would be listed here. Other examples provided in the form instructions include: unpaid wages, disability insurance payments, disability benefits, sick pay, vacation pay, workers' compensation, and unpaid loans made by the debtor to someone else.

Insurance Policies. The debtor's interests in insurance policies are listed in on line 31, noting for each policy the insurance company, beneficiary, and surrender or refund value. The form provides examples of the types of policies that should be listed, such as health, disability, or life insurance; health savings account (HSA); credit, homeowner's, or renter's insurance. These examples include insurance products that do not have a cash surrender or refund value, so the form apparently seeks information about all of the debtor's insurance policies. Ms. Reyes has listed the disability and health insurance coverage provided by her employer, and listed the surrender value as \$0.00.

Claims Against Third Parties. If the debtor has any potential causes of action against third parties, it is very important to list them both in line 33 of Schedule A/B and in Schedule C (if an exemption can be claimed). Ms. Reyes has listed her potential state consumer protection act claim against Easy Credit Co. A potential claim should be listed here even if a lawsuit has not been filed, a demand for payment has not been made, or success of the claim seems remote. The debtor's failure to list causes of action or claims may preclude the debtor from pursuing them after bankruptcy under the doctrine of judicial estoppel.

The value of a cause of action should be discounted for the contingency of success and ultimate probability of collecting any judgment obtained. If the debtor is represented by other counsel in pursuing the cause of action, information concerning these considerations and an estimate of the claim may be obtained from that attorney. Alternatively, if the value of a claim is truly unknown, it is often best to simply state the value as "unknown," leaving it to the trustee and creditors to assess the claim's value on their own based on the information provided by the debtor.

Other Contingent and Unliquidated Claims. Any other contingent and unliquidated claims of the debtor not listed earlier should be listed in line 34. They should be listed even if the debtor expects only to use the claims defensively (for example, as an objection or by way of recoupment to a creditor's proof of claim), or as the debtor's right to setoff claims. Avoidance claims under the Bankruptcy Code can also be listed here. For example, a claim for recovery of wages garnished prepetition that are being held by an employer should be listed here and exempted on Schedule C if an exemption is available. Wages in excess of \$600 that were garnished in the ninety-day period before the bankruptcy filing, such as in the sample case, may be recovered as a preference pursuant to section 547. If the debtor retains a property interest in the garnished wages and can claim them as exempt, the debtor may be able to recover wages less than \$600 or garnished more than ninety days prepetition by using the lien avoidance provisions under section 522(f). See Module 4. Ms. Reyes has listed her claim to recovery of the \$635 in wages that were garnished prepetition and held by her employer.

Business-Related Property. Part 6 is used to list any legal or equitable interest the debtor has in business-related property. Part 7 requests similar information for any farm or commercial fishing property of the debtor.

Other Property. Line 53 in Part 7 is a general category in which the debtor lists any property that the debtor has an interest in that was not otherwise listed in Parts 1 through 6 of the form. If there is some property interest of the debtor that does not seem to fit in any of the other categories on the form, this is the place to list it. The instructions for the form refer to "season tickets" or "country club membership" as examples of previously unlisted property.

3.10 Schedule C -- Exemptions

Schedule C is the debtor's list of property claimed as exempt. The goal in completing this schedule is to claim as exempt as much as possible--preferably all--of the client's property based on the available exemptions. In the case of most low-income clients, that is generally not difficult. The items listed in Schedule C should be checked against Schedule A/B to be sure that nothing has been inadvertently omitted and that the current market values listed for the items are identical. Exemptions claimed on Schedule C shall be allowed unless a party in interest timely objects and the objection is granted by the court. See Bankruptcy Rule 4003; Module 1.

It is important to exempt any property that has been foreclosed upon prepetition in which the debtor has a right of redemption that may be exercised. Otherwise, unless the property is sure to be abandoned, the right to redeem may be jeopardized. Similarly, if property is subject to liens or transfers avoidable under section 522, the property should be claimed as exempt before the avoiding power is exercised. See Module 4.

State or Federal Exemptions. Schedule C must, first of all, state whether the debtor is utilizing the state exemptions or the federal bankruptcy exemptions. Often there may be no choice because the state has opted out of the federal exemptions. If married debtors file jointly in a state in which a choice may be made, both spouses must take the same set of exemptions.

A debtor may need to apply section 522(b)(3)(A) to determine which state exemptions she can use if she has lived in multiple states in the preceding two years. See Module 1. The debtor should check the box corresponding to the appropriate exemption scheme: federal bankruptcy exemptions (11 U.S.C. § 522(b)(2)) or state and federal nonbankruptcy exemptions (11 U.S.C. § 522(b)(3)). In the sample case, Ms. Reyes is a resident of Kentucky, a non-opt out state. She therefore has elected to claim the bankruptcy exemptions under section 522(d), based on section 522(b)(2).

Current Value. The value listed in this schedule should be the full market value of the debtor's interest in the property without deducting any liens or available exemptions, consistent with the value listed in Schedule A/B. Note however that it is the debtor's equity in the property, not its full value, which is considered when applying an exemption to the debtor's interest in the property. For example, if the dollar amount of a motor vehicle exemption is \$1,500, and the debtor's car has a market value of \$5,000 but is subject to a \$3,800 lien, the debtor's equity is only \$1,200 and the property may be claimed as fully exempt.

Amount of Claimed Exemption. The amount listed in this schedule for the claimed exemption should generally correspond to the debtor's equity in the property, not to its full value. However, it is advisable to claim the full amount of an available dollar-capped exemption (if it is not a "wild-card" or "floating" exemption and cannot be used for another item of property) in the event that liens on the property are avoided during the bankruptcy or if the value of the debtor's equity proves to be higher than estimated. Even if the debtor is able to use a "wild-card" exemption on different assets (such as the unused portion of the homestead exemption under section 522(d)(5)), it is advisable to claim the highest possible equity as exempt up to the statutory exemption limit to avoid there being non-exempt equity if the debtor successfully avoids a lien on the property. If the debtor has no equity in certain property such as a home, an exemption may be claimed based on the debtor's possessory interest.

Some exemptions permit the debtor to claim an entire asset as exempt rather than a certain dollar amount. If the debtor claims a certain dollar amount for an exemption, and the asset is worth more than the amount listed as exempt, a trustee may argue that the debtor has only exempted the asset up to the amount listed rather than the entire asset, and that the excess value over that amount may be liquidated for creditors. The United States Supreme Court, in *Schwab v. Reilly*, 130 S. Ct. 2652, 2668 (2010), accepted this argument, but also provided suggested language that the debtor may use to make clear the debtor's intent to exempt the entire asset. The *Schwab* court suggested that the debtor may list "full fair market value (FMV)" or "100% of FMV" as the amount of the claimed exemption on Schedule C. However, some courts have found the debtor's use of "100% of FMV" to be invalid--particularly in cases in which the debtor did not also list a dollar amount for a claimed exemption that is dollar-capped. Schedule C gives the debtor the option of either listing a dollar amount for the exemption or checking the box: "100% of fair market value, up to any applicable statutory limit."

Ms. Reyes has estimated the value of her potential state consumer protection act claim in the amount of \$2,000. Because of the contingent and unliquidated nature of the claim, however, she checked the box indicating that her entire interest is claimed as exempt, up to the applicable statutory limit. As discussed in the next section, the statutory limit of the remaining “wild-card” exemption under section 522(d)(5), considering Ms. Reyes use of the exemption on other property, is \$6,310.51.

Wild-Card Exemption. The federal “wild-card” or “floating” exemption under section 522(d)(5) can be applied to any of the debtor’s property, and can be used cumulatively with other exemptions. The dollar amount for each debtor is currently \$1,250 plus up to an additional \$11,850 of any unused amount of the homestead exemption under section 522(d)(1), for a total amount of \$13,100. (All dollar amounts in the federal bankruptcy exemptions are adjusted for inflation every three years, with the next change slated to occur on April 1, 2019). For low-income debtors that do not own a home, the wild-card exemption can be substantial. Some state exemption schemes have similar wild-card exemptions.

Using the exemption amounts in effect when the sample case was filed, Ms. Reyes has claimed the section 522(d)(5) exemption on various personal property, in the following dollar amounts: \$284.49 for cash and deposits of money, \$525.00 for security deposits, \$4,970.00 for anticipated tax refunds and credits, \$635.00 for garnished wages, in the total amount of \$6,414.49. This leaves \$6,310.51 remaining as the unused portion of the section 522(d)(5) exemption ($\$12,725 - \$6,414.49 = \$6,310.51$), which would be the statutory limit of her exemption in the potential state consumer protection act claim.

Homestead Exemption. The debtor must state on Schedule C, by checking the applicable box in line 3, if the debtor claims a homestead exemption in excess of \$160,375. A claim of exemption in excess of \$160,375 could, in limited circumstances, give rise to an objection based on the homestead limitations in sections 522(p) and (q). See Module 1. The homestead cap adjusts every three years. The next adjustment is scheduled for April 1, 2019.

3.11 Listing Creditor Claims

Schedules D and E/F divide all of the debtor’s liabilities into three categories: those owed to secured creditors, those owed to unsecured creditors entitled to priority, and those owed to unsecured creditors without priority.

In filling out these schedules, it is important that the correct name and address be listed for each creditor. If the creditor fails to receive notice, the dischargeability of the debt may be affected. The other information requested, regarding last four digits of the account number, the amount of the debt, the date incurred, whether there are codebtors, and the type of claim, is usually less critical but, of course, should be answered as accurately as possible. When accurate information is unavailable, the debtor’s best estimate is usually sufficient so long as it is made in good faith. In most consumer cases the amount of the debt listed in the schedules has little relevance because, if assets are available for distribution, they are paid out according

to the creditors' proofs of claim rather than the debtor's schedules. However, if there is any chance that the amount of the debt will continue to be relevant after bankruptcy (as is the case with secured or nondischargeable debts), the schedules should not admit to a debt larger than the debtor will later contend is due.

Because debts that are not listed are sometimes not discharged, it is obviously important to list every conceivable claim against the debtor so that the discharge may be used to maximum advantage. Doing so may necessitate prompting the client to remember various types and categories of frequently overlooked debts. See Module 2. It may also mean listing debts that appear on a client's credit report (reports from all three major credit bureaus should be checked), even if the client does not recognize them and they appear to be erroneously reported. There is ordinarily no disadvantage to listing these debts and, if appropriate, noting that they are disputed. The client may obtain a free credit report each year from each of the three major credit bureaus.

Contingent, Unliquidated, and Disputed Claims. If a debt is contingent, unliquidated, or disputed, that should be noted by checking the applicable box. It is always wise to list the debt as disputed if there is any doubt about the validity of the debt or the amount the creditor claims is due. Noting the debt as disputed should prevent a later claim by the creditor that the schedules constitute an admission by the debtor of the validity or extent of the creditor's claim. This may be important in chapter 13 cases if the debtor intends to object to the claim filed by the creditor, or if the case is later dismissed.

Contingent Claims. A claim is contingent when the debtor's liability has not been firmly established prior to the filing of the bankruptcy and such liability may depend upon subsequent events or conditions. For example, if the debtor is a guarantor on another's obligation, the debtor's liability may depend upon whether the primary obligor defaults on the loan.

Unliquidated Claims. A claim is unliquidated when liability exists but the amount owed is uncertain. For example, the debtor may be liable for negligently operating an automobile, but the extent of the damages caused by the debtor is uncertain when the bankruptcy is filed.

Disputed Claims. A claim is disputed when the debtor disputes either liability on the debt or the amount the creditor claims is owed. A debt may be listed as disputed with respect to an unrecognized debt collector or debt purchaser if the ownership of the debt is uncertain.

Creditor's Name and Mailing Address. The instructions for Schedules D and E/F request that the creditors be listed in alphabetical order "as much as possible." If there are multiple parties who have owned or collected on a particular claim, the name and address of the current creditor (usually the creditor that has had most recent contact with the debtor) should be listed in Part 1 of Schedule D and Parts 1 and 2 of Schedule E/F. A particular claim should be listed

only once in these parts of the forms. All other previous creditors for the claim and parties who are collecting on the debt, such as collection agencies and attorneys, may be listed for notification purposes in separate entries in Part 2 of Schedule D and Part 3 of Schedule E/F, noting the line in Part 1 of Schedule D and Parts 1 and 2 of Schedule E/F that corresponds to the same claim and the last four digits of the account number for that debt. The amount of the debt is not listed in Part 2 of Schedule D and Part 3 of Schedule E/F so that the total debt amount reported on the schedule and summaries is accurate. If there is any doubt about who is the current holder of the account, especially if it is not clear whether an account has been sold to a debt buyer or assigned to a collection agency, including both the original creditor and any assignees or collection agencies in the appropriate parts of Schedules D and E/F, and the mailing list, ensures that all parties get notice of the bankruptcy and that any claim they may have is discharged.

Local bankruptcy court rules should be checked for designated addresses that shall be used whenever notice is provided to certain creditors or interested parties, such as the IRS and other federal, state and local agencies.

Codebtors. The existence of codebtors should be indicated on Schedules D and E/F by checking the box (under the question “Who owes the debt?”) that is labeled: “At least one of the debtors and another.” The name and address of the codebtor also should be listed in Schedule H. The debtor should check the applicable box if the debt is a community debt.

Account Number. Due to concerns about identity theft, Schedules D and E/F instruct the debtor to list only the last four digits of the account number. Most creditors are able to identify accounts without having the full account number. If the debtor is concerned that a particular creditor is threatening collection action and may not easily identify the account, a separate letter can be sent by the debtor’s attorney to the creditor containing the full account number and advising the creditor of the bankruptcy filing.

3.12 Schedule D -- Secured Claims

Schedule D lists the claims of all secured creditors. This schedule should include all creditors that hold liens, even if they are undersecured, and even if their liens can later be avoided by the debtor or the trustee. These liens may include judgment and statutory liens, garnishments, mortgages, and deeds of trust. Creditors holding security deposits also should be listed here, as well as creditors holding less obvious types of security interests such as those that arise by operation of law, like a tax lien, rather than from a security agreement. Similarly, banks and other savings institutions to which the debtor owes money and which have a right of setoff against the debtor’s accounts should be considered secured to the extent such amounts are present in the debtor’s accounts. Doctors or attorneys who have claims for professional services that are secured by liens on the outcome of the debtor’s personal injury claim should be listed here. If the debtor intends to treat a rent-to-own contract as a credit sale of property subject to a security interest, the rent-to-own debt should be included in this schedule. There is a box on Schedule D for the debtor to check if there are no secured creditors.

Amount of Claim. This amount listed in Column A should be the full amount of the claim even though it may exceed the value of the collateral. In chapter 13 cases some courts may require a separate listing of the arrears when the plan proposes to cure arrears. Check local practice.

Value of the Collateral. This amount listed in Column B should be the full fair market value of the property. It should correspond to the value listed in Schedule A/B.

Unsecured Portion. This amount listed in Column C is the amount by which this creditor's claim exceeds the value of the collateral. For example, if a creditor's total claim is \$4,000, and the value of the collateral - such as a vehicle - is \$2,500, the unsecured portion of the claim is \$1,500. This unsecured portion of the claim should not be listed again on Schedule E/F. A debt should be listed on Schedule D as a secured claim even if there is no value to support the claim, such as a completely underwater junior mortgage. In chapter 13 it may be possible to avoid a lien to the extent that it exceeds the value of the collateral. Such treatment, however, may not be possible for loans secured only by the debtors' principal residence, certain vehicles purchased within 910 days before the filing, or certain personal property purchased within one year before the filing date. *See* Module 1.

3.12 Schedule E/F -- Unsecured Claims

Schedule E/F is a list of the debtor's unsecured claims. Part 1 is used for creditors with priority claims and Part 2 is for creditors with non-priority claims. If there is a potential claim against the debtor based on a prepetition termination of an executory contract or lease, it should be listed here rather than reported on Schedule G: Executory Contracts and Unexpired Leases (Official Form 106G).

3.12.1 Priority Unsecured Claims

In Part 1 of Schedule E/F, the debtor lists claims that have priority under the Bankruptcy Code, such as taxes and domestic support obligations. Boxes on the official form should be checked to designate which types of priority debt the debtor has or to note that the debtor has no priority obligations. If the priority claim is not described by one of the three checkbox options listed on the form (these categories are designated to assist the court in collecting statistical information), a brief description of the type of claim should be listed in the space provided under "Other."

In order to complete this schedule a determination must first be made as to which claims, if any, fall into the priority categories set out in section 507. If the creditor has a lien, list the debt on Schedule D as a secured debt, whether or not the creditor would otherwise be entitled to priority. In some cases only part of the creditor's total claim will be entitled to priority status. If a creditor has more than one priority unsecured claim, list the creditor separately for each priority claim.

The most common type of priority debts in consumer cases will be for taxes owed and domestic support arrearages. Not all tax claims are entitled to priority, however, and only those which are at least partially priority claims should be listed in Part 1 of Schedule E/F. This determination is especially important because priority tax claims are nondischargeable in both chapter 7 and chapter 13 cases, and must be paid in full in chapter 13 cases. If there are assets in the estate to be distributed in a chapter 7 case, or if a tax claim is to be paid under a chapter 13 plan, it is important to make sure that such nondischargeable tax debts are listed as priority claims so that they will be paid first. However, if there is any doubt as to priority status, list the taxes in part 2 of Schedule E/F (unless secured by a lien) so as not to make any admission as to nondischargeability.

Taxes. As noted above, not all tax debts are priority debts. Check section 507(a)(7) in each instance. Remember also that if a tax creditor holds a lien for the debt, the tax debt is not a priority claim because it is not unsecured. Different debts to the Internal Revenue Service (IRS) may be listed on different schedules. That is, a debtor may have a debt to the IRS secured by a tax lien, and another debt to the IRS that remains unsecured. In such a case the secured debt would be listed on Schedule D and the unsecured debt would be listed on either in Part 1 or Part 2 of Schedule E/F, depending on its priority status.

Priority and Nonpriority Amounts. With respect to each priority claim, the total claim, the amount entitled to priority and the amount not entitled to priority should be listed separately in the appropriate column. The nonpriority portion of the debt is listed here in Part 1, not in Part 2.

3.12.2 Nonpriority Unsecured Claims

All of the client's remaining unsecured debts are included in Part 2 of Schedule E/F. All possible claims should be listed. Claims should be listed even if the debtor's credit report shows that the debt has been "charged off," as this merely reflects an accounting treatment by the creditor and does not eliminate the debtor's liability on the debt. Similarly, a debt should be listed even if the creditor may be barred from pursuing a potential collection action on the debt due to a statute of limitations, though it is advisable to list the debt as "disputed."

Date Debt Incurred. The exact date the claim was incurred should be listed if that information is available. Otherwise listing the month and year, or simply the year, should suffice. In the case of credit card debts that involve multiple transactions, a general description such as "credit card purchases" or "miscellaneous purchases" made on "various dates" may be appropriate. Alternatively, the debtor can list the month and year (or simply year) when the account was first opened, or can provide a range of dates reflecting the first and last transactions, such as "Jan. 2012 – April 2015."

Type of Claim. The debtor must check a box if the debt is for a student loan, arises from a divorce or separation agreement, or to a pension or profit-sharing plan (these categories are

designated to assist the court in collecting statistical information). If the claim is not described by one of these options, a brief description of the type of claim should be listed in the space provided under “other,” such as “goods purchased” or “medical services.”

Utility Debts. Utility debts are often omitted, particularly when the account is more or less current. Unless a current bill has just been paid and no balance is owed on the account (including any balance owed on a budget-billing plan), it should be listed. The debtor should list all prior utility accounts having an outstanding balance, whether or not they were obtained in the debtor’s name. In the sample case the discharge of this debt will help Ms. Reyes obtain electric service once she has her own apartment and will remove a potential basis for the housing authority to deny her a housing subsidy. As discussed in Module 2, the debtor’s attorney should attempt to determine if the utility will request a deposit after the petition is filed.

Payday Loans. The debt owed to Easy Credit Co. is for a payday loan (also called “cash advances,” “deferred presentment,” “deferred deposits,” or “check loans”). This type of loan and its treatment in bankruptcy is discussed in Module 1. Some payday lenders take the view that a transaction in which they hold a postdated check of the debtor creates a secured debt. Most courts have rejected this position and therefore payday loans should be listed here on Schedule E/F as an unsecured debt rather than on Schedule D.

Disputed Claim. It is less critical in a chapter 7 case to list a debt as disputed in Schedule E/F because normally all unsecured debts are discharged, except those ineligible for discharge under section 523(a). However the debtor in a chapter 13 case may have an interest in objecting to unsecured claims because the amount of the claim will affect the percentage distribution to unsecured creditors and may reduce the amount the debtor needs to pay under certain types of plans. If there is any doubt about the debtor’s liability or the amount of the claim, list the claim as disputed to preserve the debtor’s right to assert an objection to the claim later and to avoid any preclusive effect given to an undisputed claim in post-bankruptcy litigation.

With respect to creditor Easy Credit Co., Ms. Reyes has a potential set-off and affirmative claim based on a state consumer protection act violation, which is listed in Schedule B as property and exempted in Schedule C. The debt is listed here as disputed based on the consumer protection act claim, and the box is checked indicating that the debt is subject to offset.

Executory Contracts and Leases. Executory contracts and unexpired leases are listed on Schedule G: Executory Contracts and Unexpired Leases (Official Form 106G). It is generally not necessary for the debtor to list potential liability on an ongoing executory contract or unexpired lease as an unsecured debt on Schedule E/F. However, if the contract or lease has terminated and damages are owed by the debtor, that liability should be listed in Part 2 of Schedule E/F. In the sample case, if Ms. Reyes had defaulted on the storage contract, the storage company may have acquired a lien on her property under state law. If the storage company had perfected its lien or if state law automatically granted a lien to the company when the goods were placed in

storage (as is the case in most states), the debt would have been listed as a secured debt on Schedule D rather than Schedule E/F.

3.13 Schedule G -- Executory Contracts and Unexpired Leases

The debtor must list on Schedule G any unexpired leases and executory contracts. This schedule is designed primarily to put the trustee on notice of leases or other executory contracts that might be assumed or rejected because of their potential benefit or cost to the estate. An executory contract is broadly defined as one for which significant aspects of performance remain due by the parties. An unexpired lease is one that has not yet terminated according to its terms. If the debtor has no unexpired leases or executory contracts, the debtor should check the applicable box.

For cases that include unexpired leases or other executory contracts, the listing must include a description of the contract or lease. The debtor's interest in the contract or lease may also be listed on Schedule A/B: Property (Official Form 106A/B). All entities listed on Schedule G must be included in the list of creditors filed at the outset of the case to ensure that they receive notice.

Residential Leases. Consumer debtors who are not homeowners will likely have a residential lease that should be listed on Schedule G. Such leases should be listed even if the lease is only a month-to-month oral agreement. Many debtors will also have cell phone, internet, and cable contracts that should be listed here. Occasionally the debtor may be party to an automobile lease, an ongoing employment contract, or a pending sale agreement for goods or real estate. These should be listed as well. A lease that has terminated prepetition should not be listed on this schedule and any liability for back rent or other damages resulting from the lease termination should be listed in Schedule E/F, as done in Ms. Reyes' case with respect to the back rent claim owed to the local housing authority.

Automobile Leases. An automobile lease should be listed on Schedule G (and the automobile listed on Schedule A/B). The debtor's intention with respect to the lease should also be noted on the Statement of Intention (Official Form 108). Section 365(p) provides that a chapter 7 debtor may assume a personal property lease. The procedure for assuming such a lease is discussed in Module 4. If the debtor does not timely assume a personal property lease, section 365(p)(1) provides that the leased property is no longer property of the estate and the automatic stay is terminated as to that property. If an automobile lease has terminated prepetition and the creditor has a claim for damages against the debtor based on the lease terms, that potential liability should be listed on Schedule E/F.

Rent-to-Own Contracts. While Ms. Reyes is not a party to a rent-to-own contract, many low income consumers obtain furniture, appliances, and other household goods from rent-to-own companies. Some consumers that are hoping to become homeowners enter into similar contracts involving real property. There are significant advantages and court precedent for treating some types of these contracts as security agreements rather than executory contracts.

Particularly in cases in which debtors are party to installment sale contracts for real property and leases with purchase options, such obligations should generally be listed on Schedule D as a secured debt and not on Schedule G.

For rent-to-own contracts covering appliances and household goods, however, many states have passed legislation that exempts such transactions from Uniform Commercial Code Article 9. If the contract clearly satisfies the statutory requirements for exclusion from Article 9, the obligation may be listed on Schedule G as an executory contract, and any liability of the debtor should be listed on Schedule E/F. Regardless of whether the contract is treated as executory or as a security agreement, the rent-to-own company is subject to the automatic stay.

3.14 Schedule H -- Codebtors

The debtor's codebtors, other than a spouse in a joint case, should be listed on Schedule H. Debtors who have no codebtors should check the applicable box. If the debtor has lived in a community property state or territory within the previous eight years, the debtor must list the state and provide the name and address for any spouse, former spouse, or legal equivalent that the debtor lived with during that time. A former spouse who is jointly responsible with the debtor under state law for providing necessities such as food and medical care to dependents should be listed here as a codebtor. A guarantor on a debt owed by the debtor, such as a private mortgage insurance company, should be listed here as a codebtor.

In the sample case Ms. Reyes' sister is listed as a codebtor on her car loan and home rental, and her former husband is listed as a codebtor on her tax debt. For each codebtor obligation, she has also indicated on column 2 the creditor to whom the debt is owed, by checking the box for each applicable schedule and providing the line number on which the debt is listed.

3.15 Schedules I and J -- Income and Expenses

The last two parts of Official Form 106 are Schedules I and J. These schedules require a complete disclosure of the debtor's income and expenses. In chapter 7 cases these schedules are intended to provide information that could help a bankruptcy court determine whether a chapter 7 case might be an "abuse" and therefore subject to dismissal under section 707(b). In chapter 13 cases Schedules I and J allow the trustee and creditors to determine, particularly for below-median debtors, whether the debtor's plan is feasible and whether it is in compliance with plan requirements.

3.15.1 The Debtor's Income

Schedule I must include income information for both spouses in a joint case and also when one spouse files a case individually, unless the spouses are separated. Employment information for the debtor and a non-filing spouse (if the spouses are not separated), or both debtors in a joint case, is listed in Part 1 of Schedule I. Part-time, seasonal, and self-employed work should be included.

Part 2 of Schedule I requests information that is used to estimate the debtor's monthly income. The debtor is instructed on the form to "estimate monthly income as of the date you file this form." For wage income the form asks the debtor to provide both gross and net monthly take home pay, and to list the applicable payroll deductions. If the debtor has more than one employer, the form instructions state that the information for all employers should be combined and reported on the lines in Part 2, rather than provide separate listings for each employer.

When income is from operating a business, profession, rental property, or farm, the total net income is reported in line 8a. The debtor must also attach for each property and business a statement showing the gross receipts, ordinary and necessary business expenses, and the total monthly net income.

Child support, alimony, and any other family support that is regularly received by the debtor, a non-filing spouse, or a dependent is listed on line 8c. Regular contributions to the expenses listed on Schedule J received by the debtor from someone who is not a spouse or former spouse of the debtor, such as an unmarried partner, roommate, or dependent, should be listed separately on line 11, with a description of the contribution. This listing is of particular importance in chapter 13 cases in which the income contributions may be necessary to meet the regular income eligibility requirement or to make the plan feasible.

Contributions for expenses that have already been reported elsewhere on the form should not be listed on line 11. Also, contributions should be listed on line 11 only if the related expenses are reported on Schedule J. For example, if the debtor shares a \$100 monthly utility expense equally with a roommate, the \$50 monthly contribution from the roommate should not be listed as income on Schedule I if the debtor lists only her \$50 share of the expense on Schedule J. In the sample case, Ms. Reyes does not list any amount as contributions from her sister that she lives with because Ms. Reyes lists only her share of the total home rent (\$475 out of \$950) and utility expenses on Schedule J, and Ms. Reyes does not share any other household expenses with her sister.

Public Assistance Benefits. Even though some public assistance benefits such as food stamps (under the Supplemental Nutrition Assistance Program) or rental/utility allowances may not be treated as income for many purposes, government cash assistance and the value of any non-cash assistance, if known, that is regularly received should be listed in response to line 8f on Schedule I. The amount of such assistance is typically offset by a relevant expense listed in the appropriate category on Schedule J. This may be especially important in a chapter 13 case to show how the debtor is able to pay a particular expense. In the sample case the value of the SNAP benefits received by Ms. Reyes is listed on Schedule I and offset by the debtor's food expense on Schedule J (by listing the total food expense, consisting of the amount received in Food Stamps and the amount Ms. Reyes pays out-of-pocket). Her receipt of child care assistance is handled in the same manner.

Expected Changes in Income. Any non-speculative expected change in income should be listed on line 13 of Schedule I, with an explanation. As this statement satisfies the document filing requirement of section 521(a)(1)(B)(vi), the debtor should not leave the question blank if no change in income is anticipated and should instead check the box “No.” A response to the question removes any doubt that the filing requirement has been satisfied.

Supplement to Schedule I. Schedule I has a box in the upper right corner that is labeled: “Check if this is an amended filing.” This box should be checked if an amended Schedule I is filed to correct information reflecting the debtor’s income as of the petition date. Schedule I has an additional box labeled: “A supplement showing post-petition chapter 13 income as of the following date: _____.” This box should be checked if the new Schedule I is intended to report postpetition changes in the debtor’s income in a chapter 13 case, noting the date when the change took effect. The attorney should be sure to check the appropriate box and also make the applicable event designation when uploading the document in the ECF system.

3.15.2 The Debtor’s Expenses

Schedule J requires information about the expenses of the debtor and the debtor’s family. Some debtors have only a vague idea of what they spend for various items, and they often under-estimate their actual expenses. They may spend less than necessary for things like automobile repairs, home maintenance and clothing because of limited income or debt payments (some that they will no longer have to make after filing). The debtor’s expenses usually can be estimated, within the limits of realistic budgeting, in a way that presents the case in a favorable light. Of course a good faith effort to be accurate is always required. However excess income is rarely a problem for low-income debtors, the overwhelming majority of whom have barely enough income to meet the most basic family expenses.

When household expenses are regularly paid by persons other than the debtor or a non-filing spouse, those expenses should be listed on Schedule J if the contributions for those expenses are also reported in line 11 of Schedule I. For example, if the debtor and a roommate share rent and utilities, and the debtor does not list the roommate’s contribution to these expenses in line 11 of Schedule I, then only the debtor’s share of these expenses should be listed on Schedule J. Regular expenses from the operation of a business should be included in a statement attached to Schedule I, not reported here on Schedule J.

Names of Minor Children. Part 1 of Schedule J requests information about the debtor’s dependents. The names of minor children should not be included, as such disclosures in the public records of a bankruptcy case are prohibited under Code section 112 and Bankruptcy Rule 9037. List only the relationship of the dependent to the debtor and the dependent’s age. The form also asks the debtor to indicate if the dependent lives with the debtor.

Joint Debtors, Separate Households, and Non-filing Spouse. The expenses listed on Schedule J should include those of both debtors in a joint case or of the debtor and a non-filing

spouse in an individual case (unless the spouses are separated). If a joint case is filed but the debtors keep separate households, Debtor 2 is instructed to complete and file Schedule J-2: Expenses for Separate Household of Debtor 2 (Official Form 106J-2).

Ongoing Average Monthly Expenses. The estimates to be included here are ongoing average monthly expenses as of the petition date (or the date when an amended Schedule J is filed), and not necessarily what the debtor has paid prepetition or is accustomed to paying. Expenses such as needed dental care or necessary home repairs that a debtor has been unable to pay for in the recent past because of debts that will be discharged or inadequate income may be listed as part of the debtor's projected budget. Although they may not have been paid in the past, they are nevertheless ongoing expenses as of the petition date (or the date when an amended Schedule J is filed).

Mortgage Payments. Any amount the debtor will pay on a mortgage to cover the postpetition mortgage payments should be listed on line 4 of Part 2. Local practice should be checked as to whether postpetition mortgage payments that are to be disbursed by the trustee in a chapter 13 case should be listed on line 4. Amounts to be paid under a chapter 13 plan to cure a mortgage arrearage should not be listed on line 4. Additional payments for junior mortgages on the property, such as home equity loans, are listed separately on line 5. If real estate taxes or property insurance are not included with the debtor's mortgage payment, list such tax or insurance payments on lines 4a and 4b. If the debtor lives in a cooperative or condominium, any homeowner's association fee not included with the debtor's mortgage payment should be listed in line 4d. Any lot rent or ground lease fees that the debtor pays for a manufactured home should be listed on either line 4d or line 17c. Mortgage payments and expenses for a vacation home or other real property owned by the debtor, except business or rental property expenses that are reported on a statement submitted with Schedule I, should be listed on line 20.

Food and Housekeeping Supplies. The food expense item on line 7 of Schedule J is often difficult for the debtor to estimate. It should reflect all food costs including, for example, the costs of school lunches and eating meals out. It should also include housekeeping supplies, such as cleaning products and laundry detergent. As non-food items such as diapers and personal care products are often purchased at the same time as food, the debtor should attempt as best as possible to estimate these expenses separately from the food expense on line 7, and list them on line 10. Personal care services, such as haircuts, are also listed on line 10. As with other expenses that are not typically paid on a monthly basis, the debtor should prorate any payments made biweekly, quarterly, semiannually, or annually to show a monthly amount. In the sample case Ms. Reyes has listed her total food expense on line 7 and indicated on Schedule I that she receives SNAP benefits. Similarly, she has listed her total childcare expense on line 8 and indicated on Schedule I that she receives state childcare assistance.

Automobile Insurance. If the debtor owns an automobile, the absence of automobile insurance expenditures may give rise to an allegation by the creditor that a secured claim on a car loan is not "adequately protected." In a chapter 13 case a debtor who is retaining personal

property subject to a lease or purchase money security interest is required to provide the lessor or creditor reasonable evidence of insurance coverage. The debtor should be advised of these concerns and should be encouraged to maintain insurance coverage.

Automobile Loan and Other Installment Payments. In a chapter 7 case the debtor should list on line 17 any installment payments on debts the debtor intends to pay even after receiving a bankruptcy discharge. Most commonly these will be automobile loans or other secured debts that the debtor intends to reaffirm or otherwise continue to make payments on. In a chapter 13 case such installment payments should not be listed here if the claim is being treated under section 1325(a)(5) and being paid under the plan. Nondischargeable obligations, such as a student loan that will not be subject to a hardship discharge proceeding, can be listed with a notation in the “other” category in line 17c or 17d.

Miscellaneous Expenses. A catchall category under “other” in line 21 can be used to list various items not specifically listed in the previous categories, such as the purchase of cigarettes, children’s birthday gifts and, in the case of Ms. Reyes, her storage rental expense.

Statement of Monthly Net Income. The statement of monthly net income in line 23c, reflecting the income and expenses listed on Schedules I and J, satisfies the document filing requirement for “monthly net income” of section 521(a)(1)(B)(v).

Anticipated Increases or Decreases in Expenditures. Any non-speculative expected changes in expenses should be listed in line 24. As this statement satisfies the document filing requirement of section 521(a)(1)(B)(vi), the debtor should check the box “no” if no changes in expenses are anticipated. Ms. Reyes has noted that if she is approved for subsidized housing and obtains her own apartment, there may be a slight reduction in her monthly rent and the elimination of the storage rental expense. Given her low income and her negative expected net income, this potential increase in disposable income will not affect her ability to obtain a discharge.

Supplement to Schedule J. Schedule J has a box in the upper right corner that is labeled: “Check if this is an amended filing.” This box should be checked if an amended Schedule J is filed to correct information reflecting the debtor’s expenses as of the petition date. Schedule J has an additional box labeled: “A supplement showing post-petition chapter 13 expenses as of the following date: ____.” This box should be checked if the new Schedule J is intended to report postpetition changes in the debtor’s expenses in a chapter 13 case, noting the date when the change took effect. The attorney should be sure to check the appropriate box and also make the applicable event designation when uploading the document in the ECF system.

3.16 Summary of Assets and Liabilities, and Statistical Information

Accompanying the schedules is a form (Official Form 106Sum) that summarizes the debtor’s debts, property, income, and expenses. The form reports the totals of certain information

listed on other forms, and is used for statistical reports that the courts are required by law to prepare and make public. The form is self-explanatory. Bankruptcy software programs will typically insert the applicable figures from the schedules and forms automatically once they are completed. If after the initial filing the debtor files any amendments to the schedules or forms that are used to generate the summary, the debtor must fill out a new Form 106Sum and check the box at the top of the form indicating that is an amended filing.

3.17 Debtor's Declaration

After the schedules have been prepared, reviewed by the debtor, and any final corrections made, the debtor must sign the declaration page (Official Form 106Dec). The debtor should be advised that he or she is declaring under penalty of perjury that he or she has read the summary and schedules and that the information contained in them is "true and correct." As with the petition and any other documents signed by the debtor and filed electronically, local rules in some districts require that the debtor's attorney maintain a copy of the declaration containing a "wet signature" by the debtor for a specified period of time.

3.18 Statement of Financial Affairs

The statement of financial affairs (Official Form 107) is required to be completed by all individual debtors. 11 U.S.C. § 521(a)(1)(B)(iii); Bankruptcy Rule 1007(b)(1). The form contains detailed questions that must be answered, but it is relatively simple to fill out. It is important to pay careful attention to the specific time period requested, as various questions ask for information about several different time periods. Most of the questions include a box labeled "no" which should be checked if that is the appropriate response to the given question.

Spouses filing a joint petition may file a single statement, but each spouse is responsible for providing correct information. In cases brought under chapter 12 or 13, married debtors must provide information for both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. Debtors who have been engaged in business within the four years preceding the bankruptcy filing must provide the information requested in Part 11 for all unincorporated businesses as well as for their personal affairs. The statement of financial affairs, like the schedules, must be signed by the debtor, or both debtors in a joint case, under penalty of perjury.

Marital Status and Prior Residences. In Part 1 of Official Form 107, debtors are asked whether they are currently married. Debtors must also list in response to question 2 the address for all of their residences during the past three years, not including their current residence. The answer to this question may help the trustee or other parties verify the identity of the debtor and determine whether the debtor's claim of exemptions is proper under the domiciliary requirements of section 522(b)(3)(A).

Finally, debtors must state in response to question 3 if they have lived with a spouse or legal equivalent of a spouse in a community property state or territory within the past eight years. If

the answer is yes, the debtor is reminded to fill out Schedule H: Your Codebtors (Official Form 106H). In some cases the property and debts of a spouse or former spouse in a community property state may be affected by the bankruptcy, even if the spouse or former spouse has not joined in the bankruptcy case. See 11 U.S.C. §§ 524(a)(3), 541(a)(2).

Debtor's Past Income. The two questions in Part 2 on the statement of financial affairs address the debtor's income history. The information to be included in response to these questions goes back several years and therefore may be different from the current and expected future income included in Schedule I or the current monthly income reported on Forms 122A-1 and 122C-1. In general, though, the responses on this form should be cross-checked with the schedules to ensure that all of the documents are consistent.

Question 4 requests the debtor's employment income received for the calendar year in which the petition is filed (from January 1 until the petition date), plus the two calendar years immediately preceding the current year. The amounts listed should be the debtor's gross income, not net income. All employment and business income, even from part-time or self-employment activities, must be listed. The debtor must provide income information about a non-filing spouse under "Debtor 2" in a chapter 12 or chapter 13 case, unless the spouses are separated. If debtors filing jointly have income they receive together, it should be listed only once under "Debtor 1."

Question 5 in Part 2 requests the debtor's income other than from employment or operation of a business. The time period is the same as in question 4; the calendar year in which the petition is filed (from January 1 until the petition date), plus the two calendar years immediately preceding the current year. This category can include income from a variety of sources, such as Social Security benefits, public assistance payments, unemployment payments, Earned Income Tax Credits, Child Tax Credits, alimony, child support, interest, dividends, pensions, annuities, rents, and gambling and lottery winnings. Even if the payments received would not be considered income for other purposes, or even if they would not be taxable, they should be listed here. In the sample case Ms. Reyes has listed various forms of public assistance and tax credits. Tax refunds that are a return of funds withheld for the debtor's wages should not be listed as these amounts are already reflected in the reporting of the debtor's gross wage income in response to question 4.

Payments Made Before Filing Bankruptcy. Part 3 contains questions about prepetition payments or transfers of property by the debtor, particularly as they relate to the trustee's avoidance powers under section 547 and 548. The first part of question 6 seeks information about larger payments or transfers (\$6,425 or more) made to creditors within the ninety days prior to the bankruptcy, excluding payments for domestic support obligations or to the debtor's attorney for representation in the bankruptcy case. Information about such payments is provided only by debtors whose debts are not primarily consumer debts.

Debtors whose debts are primarily consumer debts will instead respond to the second part of question 6, which requests information about loans and other debts on which more than \$600

was repaid within the ninety days prior to the bankruptcy. Payments made for a domestic support obligation are not listed here, as such payments may not be recovered by the trustee as preferences. 11 U.S.C. § 547(c)(7). Payments made to the debtor's attorney for representation in the bankruptcy case are also excluded. Because the question is not limited to voluntary payments, Ms. Reyes has listed here her wages that were garnished during the ninety-day period. Ms. Reyes may attempt to recover the wages as an avoidable preference or by using the lien avoidance provisions under section 522(f) if the creditor's judgment lien impairs the exemption she has claimed in the wages. Ms. Reyes did not list the payments made on her current car loan as they amounted to less than \$600 during the ninety-day prepetition period.

Questions 7 and 8 deal with payments of any amount made to or for the benefit of creditors who were "insiders" within the year prior to the bankruptcy. These must be listed regardless of the amount of the payment. The term "insider" is defined in section 101(31) and includes relatives and certain business relations of the debtor. The trustee may be able to recover these payments as preferences.

Legal Actions. Part 4 contains questions about legal proceedings involving the debtor or the debtor's property. Question 9 asks for information about all lawsuits and administrative proceedings to which the debtor is or was a party within the previous year. When such proceedings involve claims brought by the debtor they should also be included on Schedule A/B as property of the debtor and on Schedule C as exempt, if possible. Failure to list causes of actions or claims may preclude the debtor from pursuing them after bankruptcy under the doctrine of judicial estoppel. In the sample case Ms. Reyes has listed the court action filed against her for a deficiency following the automobile repossession.

Question 10 seeks details of any repossession, foreclosure, garnishment, attachment, execution, seizure, or levy of the debtor's property within the previous year. Information about property repossessed, foreclosed, or garnished within the previous year must be provided even if the debtor is no longer in possession of the property. Such property may still be property of the bankruptcy estate if the debtor retains some interest, such as equity or a right of redemption. Note that this question seeks information about voluntary returns or transfers, such as a deed in lieu of foreclosure, as well as about involuntary repossessions, foreclosures, or tax sales. In Ms. Reyes's case the automobile repossession is not listed here because it occurred more than one year before her bankruptcy filing.

Question 11 requests information about setoffs taken by a bank, creditor or any other entity within the ninety days preceding the case. Debtors who have had setoffs made against their bank or other accounts or against tax refunds or benefits owed to them during that period must list the name and address of the creditor, describe the action taken by the creditor, and the date and amount of the setoff.

Question 12 asks the debtor to state whether any property of the debtor was in the possession of an assignee for the benefit of creditors, a court-appointed receiver, a custodian, or some

other official (not a bankruptcy trustee) within the previous year. This question is usually not applicable in consumer cases.

Gifts and Contributions. Part 5 contains questions about gifts and contributions made by the debtor. Questions 13 and 14 seek information about large gifts and charitable contributions made in the two years before the bankruptcy filing. Gifts and charitable contributions with a total value of \$600 or less per recipient do not need to be listed. The amount listed on Schedule J as an ongoing expense for charitable contributions should be consistent with the amounts disclosed here (or the debtor should be prepared to explain any inconsistency).

Losses. Question 15 in Part 6 asks the debtor to disclose all losses from fire, theft, other casualty, or gambling within the previous year. If the debtor has such a loss it should be listed here and any related claim for insurance proceeds should be listed in Schedule A/B and exempted on Schedule C if possible.

Certain Payments and Transfers. Part 7 contains questions about certain payments and transfers made by the debtor. If the debtor was required to pay for her prepetition credit and budget counseling briefing, that payment should be listed in response to question 16. All other payments made to attorneys, bankruptcy petition preparers, or credit counseling agencies within the previous year for bankruptcy-related services, including those for the current bankruptcy filing, should also be listed. Question 17 asks for information about payments or transfers of property by the debtor or someone acting on behalf of the debtor within the previous year to debt consolidation companies or anyone who promised to help the debtor deal with creditors. The general purpose of these questions is to assist the court in supervision of attorney fees paid to debtors' counsel and to occasionally reveal abusive debt counseling, debt consolidation, petition preparer, foreclosure assistance, or other bankruptcy-related scams.

Any transfers made within two years preceding the filing of the petition that were not made in the ordinary course of the business or financial affairs of the debtor (such as payments for normal household expenses) and that are not listed elsewhere in the statement should be listed in response to question 18. The granting of a security interest, such as a mortgage on the debtor's home, is a transfer that should be listed here. Gifts or transfers listed in response to earlier questions should not be listed here. Because this question includes involuntary transfers that are not otherwise listed in response to question 10, Ms. Reyes has listed the automobile repossession that occurred within the two-year prepetition period. It should be noted that although the form generally seeks information only about transfers during the two-year prepetition period, section 548 permits the trustee to use state law fraudulent transfer and avoidance powers that can have a longer look-back period. See Module 2.

Question 19 requires the debtor to list all property transferred within ten years prior to filing the petition to a self-settled trust or similar device of which the debtor is a beneficiary. The debtor must provide a description and value of the property transferred.

Financial Accounts, Safe Deposit Boxes, and Storage Units. Part 8 requests information about certain financial accounts and locations where property could be held. Financial accounts or instruments that were closed, sold or otherwise transferred within the year previous to the bankruptcy filing must be listed in response to question 20, whether they were held in the debtor's name or for the benefit of the debtor. These may include checking, savings, certificate of deposit, money market, and other types of financial accounts. Shares in banks, credit unions shares, pension funds, brokerage houses, and other types of financial institutions are also listed here.

Question 21 requests information about any safe deposit box or other depository for securities, cash, or other valuables that the debtor currently has or had within the year prior to the bankruptcy filing. Question 22 asks the debtor to disclose if any of the debtor's property was stored in a storage unit or a place other than the debtor's home within the year prior to the bankruptcy filing. If the debtor still owns such property, it should also be listed on Schedule A/B.

Property Held for Someone Else. Question 23 in Part 9 deals with property held or controlled by the debtor but belonging to another person. Property held in trust for another or in a Uniform Transfer to Minors account should also be listed here.

Environmental Information. Part 10 requests information about environmental concerns. Questions 24 and 25 ask if the debtor has been notified by a governmental unit of any potential environmental liabilities of the debtor, or of any release of hazardous materials. Although few debtors have such liabilities, any debtor who has received a notice that she may have an environmental violation must provide information about that potential liability. If the debtor has been a party in a judicial or administrative proceeding under an environmental law (which is broadly defined in Part 10), information about the proceeding must be provided in response to question 26.

Business Information. Part 11 is intended to identify debtors who have been in business within the previous four years. If the debtor has not been in business during this period and answers "no" in response to question 27, question 28 need not be answered. Debtors who have owned a business or had connections to a business, such as by being a sole proprietor or self-employed in a trade or profession, a member of a limited liability company or limited partnership, an officer, director, or managing executive of a corporation, or an owner of at least 5% of the voting or equity securities of a corporation, must answer fully both questions in Part 11.

3.19 Statement of Intention

Another required document in chapter 7 cases (but not in chapter 13 cases) is the Statement of Intention (Official Form 108). 11 U.S.C. § 521(a)(2)(A); Bankruptcy Rule 1007(b)(2). This document must state certain intentions of the debtor, as of the date of its filing, with regard to any property, real or personal, that serves as collateral for a debt. In addition this form requires the debtor to state the debtor's intentions with respect to leases of personal property.

The statement must be filed within thirty days after the debtor files a petition under chapter 7 or on or before the date of the section 341 meeting of creditors, whichever is earlier, unless the court, for cause, extends the deadline for filing. As a practical matter it is normally filed with the schedules and statement of financial affairs. Unlike the petition and schedules, copies of the statement of intention must be served on the secured creditors and lessors listed on the form. The debtor is generally required to carry out the stated intention within thirty days after the first date set for the meeting of creditors, though a longer period of forty-five days after the meeting of creditors is provided for certain allowed purchase money claims secured by personal property. Failure to perform the debtor's stated intention may result in termination of the automatic stay as to the personal property subject to the statement. See Module 4.

More Than Three Options? Prior to the 2005 Code amendments, some courts did not limit debtors to the choices of surrender, redeem, or reaffirm for secured debt. These courts held that as long as the debtor is current with payments on a secured loan when the petition is filed and the payments are maintained, there is no need to reaffirm and the creditor would not be permitted to repossess. Section 521 was amended in various ways in 2005, and most courts have since held that this "fourth option" no longer exists as to personal property (section 524(j) preserves this option for mortgages secured by the debtor's principal residence). However, many creditors will not seek to enforce their state law remedies if the debtor is current on payments. Whether creditors pursue their state law rights, and whether debtors are permitted to indicate on the Statement of Intention that they intend to "retain and continue making payments," often depends on local practice and the practice of individual creditors. Additionally, if the debtor states an intention to reaffirm a debt and executes a reaffirmation agreement that is later disapproved by the court, most courts have held that the "fourth option" remains viable as long as the debtor remains current on the loan.

Reaffirmation. There are situations when reaffirmation is not advisable. Other options for retaining essential secured property should always be explored first. If reaffirmation is pursued, the agreement should be executed and filed with the court before the discharge is granted. This is discussed more fully in Module 4.

Exempt Property. The debtor should check the applicable box in Part 1 if the property is claimed as exempt on Schedule C, particularly if the debtor includes a more specific statement under the retention option that the lien is to be avoided by using the lien avoidance provisions of section 522(f).

Unexpired Personal Property Leases. The debtor's intention with respect to an unexpired lease of personal property must be noted in Part 2 of the Statement of Intention. The debtor must list the name of the creditor and provide a description of the leased property. The debtor must also check the applicable box indicating whether or not the lease will be assumed. Section 365(p) provides that a chapter 7 debtor may assume a personal property lease. The procedure for assuming such a lease is discussed in Module 4.

3.20 Means Test Forms

In order to provide information about the presumption of abuse in chapter 7 and the debtor's disposable income in chapter 13, the debtor must file the appropriate versions of Official Form 122. Bankruptcy Rule 1007(b)(4). Official Forms 122A-1 and 122A-2 are used in chapter 7 cases and Official Forms 122C-1 and 122C-2 are used in chapter 13 cases. These forms, though lengthy and complicated, are largely self-explanatory. Fortunately for pro bono and other attorneys representing debtors whose incomes fall below the state median income, only one of the forms must be completed.

Debtors who do not have primarily consumer debts or who otherwise contend that they are exempt from means testing should prepare the separate supplement, Official Form 122A-1Supp, and file it with Official Form 122A-1. The first part of Form 122A-Supp permits debtors to indicate that their debts are not primarily consumer debts. In Part 2 of the form, disabled veterans can state that their indebtedness occurred primarily during a period in which they were on active duty or performing homeland defense activity. The final portion of Part 2 can be used by certain reservists and National Guard members who were called to active duty during specified periods. If debtors indicate on Form 122A-1Supp that they qualify for one of these exemptions, they are not required to fill out any part of Form 122A-1 other than the declaration in Part 3.

For a discussion of the "means test" under section 707(b) and the "disposable income" test under section 1325(b), see Module 2.

3.20.1 Statement of Current Monthly Income

Part 1 of Form 122A-1 is the calculation of monthly income for the purposes of section 707(b)(7), which creates a safe harbor from the means test for lower income debtors. Form 122A-1 takes the position that both spouses' incomes must always be included in this calculation unless the spouses are separated, not filing jointly, and living in separate households for purposes other than evading the means test. Part 1 of Form 122C-1 is similar, except that it requires a non-debtor spouse's income in all cases. Obviously some debtors simply do not have such information if they are separated from their spouses, and will have to state on the form that the information is unknown.

Neither form takes a position on whether unemployment compensation is a benefit under the Social Security Act that is excluded from the income calculation, based on the definition of "current monthly income" in section 101(10A). If the debtor does not include such benefits in the calculation, the compensation must nonetheless be disclosed in line 8 of Form 122A-1 and Form 122C-1.

In preparing these sections of the forms it is important that the correct prepetition period be used for determining the debtor's income. The figures listed on the form should reflect the average monthly income for the six calendar months prior to filing the petition, ending on the

last day of the month before the filing. If the debtor received different amounts of income during these months, all of these amounts for the six-month period should be totaled and then divided by six.

Safe Harbor. Part 2 of Form 122A-1 determines whether, according to the form's methodology, the section 707(b)(7) safe harbor from the means test applies. The income calculated in Part 1 of Form 122A-1 is compared to the applicable median family income for the debtor's state and household size, which can be found at: www.justice.gov/ust/means-testing.

Parts 2 and 3 of Form 122C-1 use a similar calculation to determine if the means test under section 707(b) is used to calculate the debtor's disposable income under section 1325(b)(3), and to determine the applicable commitment period under section 1325(b)(4). The form does this by comparing the income amount computed in Part I of Form 122C-1 to the applicable median family income for the debtor's state and household size. However, unlike Form 122A-1, Form 122C-1 allows a debtor to choose to make the comparison after subtracting the income of a non-filing spouse that was not regularly paid for the household expenses of the debtor and the debtor's dependents.

Form Completion for Debtors Below Median Income. After these parts of either Form 122A-1 or 122C-1 are completed, most debtors may proceed to the last part of the forms and sign the declaration. Only debtors whose incomes are above the applicable state medians must complete the other means test forms, Official Forms 122A-2 or 122C-2. Chapter 7 debtors whose incomes in Part 2 are below the median income must also check the box labeled "There is no presumption of abuse" at the top of the first page of Form 122A-1. Chapter 13 debtors must check the appropriate boxes at the beginning of Form 122C-1 concerning the applicable commitment period and whether, according to the calculations on the form, disposable income is determined under section 1325(b)(3).

3.20.2 Chapter 7 Means Test Calculation and Chapter 13 Calculation of Disposable Income

Debtors whose incomes are above the applicable state medians must fill out Form 122A-2 in a chapter 7 case or Form 122C-2 in a chapter 13 case. Part 1 of Form 122A-2 first permits the debtor to make a marital adjustment to the "current monthly income" that the debtor reported on Form 122A-1. If a non-filing spouse's income was previously included in the income calculations on the Form 122A-1, that income is subtracted, except to the extent it has been paid for household expenses of the debtor or the debtor's dependents. A similar marital adjustment is done on Form 122C-1 in chapter 13 cases.

Debtors complete Part 2 of Form 122A-2 or Part 1 of Form 122C-2 by consulting the Internal Revenue Service living expense standards. These expense standards can be found on the United States Trustee Program's website at www.justice.gov/ust. Other items on these parts of the forms are based on the debtor's actual expenses. The calculations on Form 122A-2 will determine whether the debtor is subject to the presumption of abuse under section 707(b).

The calculations on Form 122C-2 will provide the amount of the debtor's disposable income as determined under section 1325(b)(3) which must be dedicated to unsecured creditors under the debtor's chapter 13 plan.

3.21 Disclosure of Attorney Compensation

In every case a disclosure of fees paid to the debtor's attorney must be filed. 11 U.S.C. § 329; Bankruptcy Rule 2016(b). Director's Form B2030, though not an Official Form, has been promulgated by the Administrative Office of the United States Courts to fulfill this requirement. The purpose of this form is to allow the court and the United States trustee, who also must receive a copy, to monitor fees and to make sure they are reasonable.

The attorney must disclose the amount of any compensation paid within one year before the filing of the petition, or agreed to be paid, for services in contemplation of or in connection with the bankruptcy case. Because no fee is paid to legal services or pro bono attorneys by their clients, completion of this form should pose no difficulty. In this situation the line items describing total amount of compensation, the amount paid before filing the statement, and the balance due should state "\$0.00." Attorneys charging fees must provide some specificity about the services provided, and any services the attorney has excluded based on the retainer with the debtor. The degree of specificity required varies to some extent based on local rules and practice. The attorney must also state on the form if he or she has agreed to share the disclosed compensation with persons other than members or associates of the attorney's law firm.

3.22 Payment Advices

Section 521(a)(1)(B)(iv) requires the debtor to file copies of all payment advices or other evidence of payment received from employers within sixty days before the filing of the petition. Bankruptcy Rule 1007(b)(1)(E) requires that all but the last four digits of the debtor's Social Security number must be redacted from these documents before filing. If a debtor has not received any payment advices or documentation of payment from an employer during the relevant period, the Bankruptcy Code and Rules do not require that anything be filed. However some courts have adopted local rules requiring the debtor to file a declaration or certification that no such documents were received. Even if no local rule exists, it may be advisable to file such a form.

Because section 521(a)(1)(B) applies only if the court does not order otherwise, some courts have used their power to "order otherwise" to adopt local rules or general orders providing that payment advices are to be provided to the trustee, usually at or before the meeting of creditors, rather than filed with the court.

In some cases the debtor may not have retained the payment advices. Although the debtor or the debtor's attorney can often obtain from an employer a statement of compensation paid in the form of a letter, some debtors may be reluctant to notify their employers that they are

filing bankruptcy. In other cases the debtor may no longer be employed by the same employer or may not be on good terms with an employer or former employer. In this situation a motion to excuse the filing of some or all of the payment advices may be filed. In addition to explaining the circumstances it is helpful if the debtor provides some evidence of the wages earned during the sixty-day period, such as a recent pay stub with year-to-date figures or a recent W-2 form.