BANKRUPTCY BY THE NUMBERS

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NOT MANY DEBTORS CAN WEAR THIS MINI:

H.R. 2415 contained a provision referred to as the "mini-means" test. It would allow the United States Trustee or Bankruptcy Administrator to decline to file an abuse motion on Chapter 7 debtors with incomes between 100% and 150% of the applicable State median, if an abbreviated expense analysis indicates that the debtor could not repay a minimum amount. The provision was described in the December 7, 2000, Congressional Record (page S.11702) as follows:

> However, if the debtor's gross income is between 100% and 150% of median income, and the debtor's net income determined in a special short-hand calculation based on core expenses is under the threshold, the trustee is relieved of any obligation to file a motion to dismiss. This "mini screen" does not change the substantive requirements of the means test. Its application is limited and is intended only to permit the United States trustee or bankruptcy administrator to use a short-hand method of calculating the debtor's income available to pay creditors. If the short-hand calculation of net income indicates that the debtor does not meet ability to pay criteria, further administration of the means test is not required. Otherwise, the full means test calculation will be made to determine whether dismissal or conversion is appropriate.

Michael Seay Wilson addressed a similar provision in S. 625 in his **Cracking the Code** article of March 31, 2000.[2/] He noted that the mini-means test "appears to be an attempt to remove the IRS other necessary expenses standards as a valid deduction from gross income when computing under this provision. Unfortunately, this portion of the IRS standards includes expenses such as tithing, child care, alimony, child support, education, health care, taxes and other mandatory payroll deductions".

The mini-means test would seem to be a well-meaning proposal to ease some of the administrative burdens of implementing the means testing process. In this article, we attempt to assess its probable impact. It is not possible to apply the mini-means test with precision absent specific facts about a case. However, it is possible to construct a model that would give a good general indication of its impact.

[1/] All views expressed in this article are those of the authors, and do not necessarily represent the views of the Executive Office for United States Trustees or the Department of Justice.

[2/] His article addressed a similar mini-means test provision that was included in S. 625. See: www.abiworld.org/newslet/00seay0331.html

The details of the model used for this article are rather tedious[3/], but we believe that the result is a decent approximation of reality. Based on application of the income formula we use here (see footnote 3) we estimate that 12.8% of current Chapter 7 debtors have incomes between 100% and 150% of the applicable median.

The mini-means test allows five categories of expenses to be subtracted from gross income:

1. Housing
2. Food
3. Transportation (operating expenses only)
4. Priority debt
5. Secured debt

The maximums for the first three items are included in the IRS Guidelines. The applicable amounts can vary by family size, income, and county of residence. Generally, the IRS maximums for these three items add up to 40-60% of the applicable State median income. Therefore, the remaining difference between gross income and allowable expenses will have to be made up by secured and priority debt payments, if a debtor is to demonstrate eligibility for chapter 7 via the mini-means test. Allowable payments in these categories would include such items as monthly mortgage payments to the extent that they exceed the IRS housing allowance, tax and support arrearages, and car payments.

The major drawback to the mini-means test is that it does not allow for mandatory payroll withholding amounts such as State and federal taxes, Social Security, etc. Because these expenses are not included in the mini-means test, the test will except very few debtors from further means testing. The only debtors who would be affected by the mini-means provision are those with substantial monthly secured and priority debt payments. Since we would need case-specific information to determine monthly secured and priority debt payments, we determined how much these would have to be to establish that

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[3/] The income standard in H.R. 2415 is "the highest median income of the applicable State for a family of the same number or fewer individuals last reported by the Bureau of the Census". No additional allowance is provided for families with more than 4 persons. and for one-person households the standard is the median family income of the applicable State for 1 earner. Since the Bureau of the Census does not currently publish such data, we used other published data to estimate the applicable State medians. The median family income for each state (from Census Income table D.) was divided by the national average to obtain a state multiplier. (These ranged from a low of .7041 in West Virginia to a high of 1.2825 in Maryland.) For each state and family size this figure was multiplied by the national median income for that family size (from Census Table H.11).

To model the mini-means test, we need the following information for each family size:
IRS Housing Allowance: This is based on county and family size. Debtors were given the maximum IRS allowance. Homeowners can exceed this amount by reporting their mortgage as secured debt.
IRS Food Allowance: This allowance is based on gross income and family size.
IRS Transportation Allowance: The IRS provides expense allowances for both operating costs and for ownership (car payments). Our model allows operating costs for one vehicle for households of 1, and two vehicles for families with two or more persons. Ownership costs will be claimed as secured debt payments.

Minimum Plan Payments: The minimum monthly disposable income test applicable to the mini-means test provision can range from $100 to $167, depending on the amount of unsecured debt. For this analysis we assumed it to be $100 in all cases.

a debtor was eligible for Chapter 7 via the mini-means test.

There are 3,141 counties in the United States (excluding the territorial courts). We applied our model to debtors with incomes exactly at the State median and at 150% of the median for family sizes of from one to four persons, giving us over 25,000 possible combinations. The only situation in which the allowances for food, housing, and transportation alone can possibly exceed the applicable median income is for a one-person household in Manhattan with an income at or slightly above the applicable median. All other debtors would need secured and priority debts to make up the difference.

The amount of monthly secured and priority debt payments needed to demonstrate eligibility for Chapter 7 via the mini-means test varies depending on family size and location. It is lowest for one-person households with incomes at or near the median, but would be over $500 in all but 16 counties nationwide. In four-person households with incomes at the applicable median it would be over $1,000 in all but two counties, and over $2,000 in more than 83% of all counties.

The situation is even more unlikely for debtors with incomes at 150% of the applicable median. For debtors in all but 12 counties the secured and priority debt payment would need to be over $1,500. In four-person households it would be over $3,000 in all but four counties, and as much as $7,000 in some places.

It is clear that application of the mini-means test would affect only a small number of debtors who have extremely high levels of secured and priority debts relative to their incomes. Factors that would make debtors more likely to be affected by the mini-means test include:

- One-person households;
- Income at or slightly above the applicable median;
- High monthly mortgages;
- High car payments;
- Large tax or support arrearages.

Conclusion: The mini-means test is intended to make administration of the means testing provisions less burdensome. It appears, however, that because of the mini-means test's extremely narrow definition of allowable expenses, it will remove very few Chapter 7 debtors from further means testing. Consequently, U.S. Trustees and Bankruptcy Administrators may find it more efficient to go directly to the full means testing formula to determine whether a debtor qualifies for Chapter 7.