Presumption of Abuse—Chapter 7

Docketing Event
- Bankruptcy> Motions/Applications/Objections> Motion to Dismiss Case Pursuant to 11 U.S.C. 707(b)(1) and (b)(2)
- Bankruptcy> Miscellaneous> Debtor(s) Rebuttal of Presumption of Abuse

Negative Notice: N/A

Accompanying Orders: N/A

Code and Rule References:
11 U.S.C. § 704(b)(1)(A), (b)(2)
11 U.S.C. § 707(b)(1), (2)(A)
Fed. R. Bankr. P. 1017
Fed. R. Bankr. P. 2002(f)(10)
Fed. R. Bankr. P. 5008

Fee: N/A

Applicable Chapters: 7

Implemented: 10/26/17

Last Revision: 1/23/2018 9:31:36 AM

Description

Among the changes introduced by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) was a set of interlocking provisions defining "current monthly income" and establishing a means test to determine whether relief under Chapter 7 should be presumed abusive.

Individual debtors in a Chapter 7 case must file a statement of income and means test calculation. According to the information required to be entered on that statement, the debtor may declare that a presumption of abuse arises. Additionally, the notice of commencement of case includes a statement on whether the presumption of abuse arises that is based on the information entered upon the filing the statement.

The United States Trustee must review the statement and other materials filed by the Chapter 7 individual debtor and shall, within ten days after the first meeting of creditors, file a statement with the Court as to whether there is a presumption of abuse. 11 U.S.C. § 707(b).

The Clerk shall prepare and provide a notice regarding the United States Trustee's findings to all creditors within seven days after docketing by the United States Trustee.

The United States Trustee, after filing a statement of presumed abuse, shall within thirty days file either a motion to dismiss the debtor's case or a motion to convert the case. In lieu of filing a motion to dismiss and/or a motion to convert, the United States Trustee shall file a statement on why such a motion is not appropriate.