

Means Test
11 U.S.C. §707
BR Act Section 102

The means testing mechanism presumes abuse in individual cases if, after subjecting a petition to financial analysis, it is determined that the debtor could repay a threshold level of general unsecured debt. This computation is based in large part on two elements: 1) the debtor's current monthly income (generally, income from all sources, including contributions by others to household expenses but excluding Social Security benefits); and 2) allowed deductions, utilizing an IRS standard for expenses, as well as several other highly detailed expense standards.

In order to comply with the means test requirements, all individual debtors (individual chapter 7 consumer debtor, each individual debtor in a joint case, individual chapter 11 debtor, and all chapter 13 debtors) will complete the first three pages of the form entitled Statement of Current Monthly Income. If the debtor is filing under chapter 7, chapter 13 or individual chapter 11, and the debtor's income is above the state median, the debtor will need to complete a second three page form entitled Means Test/Disposable Income Calculation Form.¹ The petition will include a checkbox, to be completed by the debtor or debtor's attorney, which will indicate whether or not there is a presumption of abuse. The clerk's office will not be required to review any of the calculations provided by the debtor in either of the means test documents for accuracy, completeness, etc.

We understand that the current thinking of the Rules Committee is that the notice the clerk is required to send within 10 days of the filing of the petition will be included as part of the § 341 notice. The revised § 341 notice will indicate:

- There is a presumption of abuse; or*
- The proper forms have not been filed and there is not enough information to conclude if there is a presumption of abuse.*

If the information filed by the debtor does not raise a presumption of abuse, the § 341 notice will be silent as to the presumption.

I. DEBTOR REPRESENTED BY ATTORNEY

A. Debtor/Debtor's Attorney Responsibilities

- 1. Debtor/ Debtor's attorney should complete income and means test documents, as appropriate.**
- 2. When petition is filed electronically with the means test documents**

¹ The two forms discussed here will be referred as the means test documents in the discussion below.

completed, the CM/ECF filer will be prompted via a new CM/ECF docket processing function (DPF) to indicate whether or not there is a presumption of abuse.

B. Means Test Documents Completed and Filed at Time Petition is Filed

1. Clerk's duties

- a. **Clerk's office will not be required to review any of the calculations provided by the debtor for accuracy, completeness, etc.**
- b. CM/ECF will review debtor's response to checkbox question
 - i. Quality control/local decision: clerk's office may decide to check to see if checkbox and response in CM/ECF regarding presumption of abuse correspond
- c. CM/ECF will generate appropriate § 341 notice indicating if presumption of abuse exists or not.

C. Means Test Documents Not Filed with Petition

1. Clerk's Duties:

- a. Recommended Practice: Clerk's office will issue a deficiency notice (combined with other deficiencies indicated at case opening) with a time certain deadline - likely 15 days as debtor has same amount of time to file means test information as allowed to file the schedules. (If the deficiency is not corrected, the case can be dismissed once the deadline occurs.)
- b. CM/ECF will automatically queue § 341 notice with language noting that there is not enough information to conclude whether there is a presumption of abuse.²
- c. If Debtor files Means Test documents within 15 days of filing of petition:
 - i. If no presumption of abuse, no other notice necessary.
 - ii. If presumption of abuse, clerk's office must send separate notice stating that there is a presumption of abuse regardless of whether the 10-day time limit

² Once the BNC receives the file, the BNC will automatically check notice recipient addresses against its preferred creditor address list.

has expired. (We understand that this is the thinking of the Rules Committee)

II. DEBTOR APPEARS PRO SE

A. Additional Duties for Clerk's Offices

1. **The clerk's office will not be required to review any of the calculations provided by the debtor for accuracy, completeness, etc.**
2. The clerk's office staff will scan petition and forms into CM/ECF.
3. Staff will have to look at checkbox to determine debtor's answer regarding presumption of abuse and respond appropriately in CM/ECF.
4. CM/ECF will generate appropriate § 341 notice indicating if presumption of abuse exists or not.
5. If the means test documents are not filed with the petition
 - a. Recommended Practice: Clerk's staff could physically give pro se debtor means test documents to be completed by debtor without clerk's office assistance,³ or
 - b. Clerk's office will issue deficiency notice with a time certain deadline.

III. TRUSTEE STATEMENT OF WHETHER OR NOT PRESUMPTION OF ABUSE EXISTS

A. Trustee Duty

1. Trustee must review materials filed by debtor.
2. Not later than 10 days after the conclusion of the 341 meeting, the Trustee will file with the court a statement if there is a presumption of abuse.⁴
 - a. This determination will be filed with court.⁵

³ Clerk's office cannot help debtor complete forms because clerk's staff cannot give legal advice to debtor.

⁴ Administrative Office staff is resolving the issue of in what form the statement will be transmitted to the court (i.e., as a virtual document or as an attachment).

⁵ We understand that the Executive Office for United States Trustees is interpreting the statute to mean that if the U.S. Trustee determines that there is no presumption of abuse, no statement will be sent.

B. Clerk's Duty

1. Not later than 5 days after receiving Trustee statement, clerk provides a copy of the statement to all creditors indicating that there is a presumption of abuse.
 - a. Statement/notice to creditors will be created via CM/ECF from data received by Trustee.
 - b. Statement will be sent only if there is a presumption of abuse.
2. The court must ensure that a discharge does not issue until the trustee's statement of abuse has been filed or the time to do so has expired;
 - This situation could arise when the section 341 meeting has been continued and is not concluded until after the time a discharge would normally be issued.
 - The Release Notes to CM/ECF Version 2.7 will assist courts with automating this function.