QUESTIONS FOR THE RECORD FOR JUDGE ROSEMARY GAMBARDELLA SUBMITTED BY SENATOR JEFF SESSIONS

1. In your testimony, you stated there are problems with the way the means test is implemented and how it operates. I believe the means test, conceptually, is good policy. Rather than disregarding the test, as this bill will do in practice, we should first examine what steps can be taken to strengthen the means test and make it more effective. What suggestions do you have for tightening up the means test in order to address the concerns and objections that have been raised?

SUPPLEMENT TO
TESTIMONY OF HONORABLE ROSEMARY GAMBARDELLA
United States Bankruptcy Court for the District of New Jersey
"Abusive Credit Card Practices and Bankruptcy"
Hearing of the Senate Judiciary Committee's Subcommittee on Administrative Oversight and the Courts
Hearing Date: March 24, 2009

Senator Sessions, thank you for the opportunity to supplement the record of this hearing and your question regarding suggestions to "tighten up" or "strengthen" the effectiveness of BAPCPA's means test. Your question raises the following issues:

Despite the high cost of administering the means test by way of collecting, analyzing and reporting this additional information, most debtors have income below the applicable state median income levels and are within the "safe harbor" such that the presumption of abuse will not arise. As well, these median income thresholds greatly vary from state to state. A study of 1995 bankruptcy filings found that more than 75 percent of the debtors had income less than the national median, and that this percentage would likely increase if, as in BAPCPA, state medians were used. A later study using 1998 and 1999 case filings concluded that more than 84 percent of debtors had incomes below the applicable state median. As well, for debtors whose income is above the median, pre-bankruptcy planning can produce significant deductions from income, particularly in the area of secured debt and charitable contributions, to remove otherwise disposable income. See Hon. Eugene R. Wedoff, U.S.B.J. N.D. Ill., Means Testing in the New § 707(b); Am. Bankr. L. J., Vol. 79, Issue 2, 231, 277-279 (2005).