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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

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**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT**

6	In re:)	BAP No. EC-10-1153-MkZJu
)	
7	ROBERT LYNN SCHOLZ; CAROLYN)	Bk. No. 09-14453
	GAIL SCHOLZ,)	
8)	
	Debtors.)	
9	_____)	
)	
10	MICHAEL HUGH MEYER, Chapter 13))	
	Trustee,)	
11)	
	Appellant,)	
12)	
	v.)	OPINION
13)	
	ROBERT LYNN SCHOLZ; CAROLYN)	
14	GAIL SCHOLZ; UNITED STATES)	
	TRUSTEE,)	
15)	
	Appellees.)	
16	_____)	

Argued And Submitted On
November 18, 2010, at Sacramento, California

Filed: March 22, 2011

Appeal From The United States Bankruptcy Court
for the Eastern District of California

Honorable W. Richard Lee, Bankruptcy Judge, Presiding

Appearances: Brent D. Meyer appeared for Appellant Michael H. Meyer, chapter 13 trustee; and Gary L. Huss of the Law Offices of Gary Huss appeared for Appellees Robert L. Scholz and Carolyn G. Scholz.

Before: MARKELL, ZIVE* and JURY, Bankruptcy Judges.

* Hon. Gregg W. Zive, United States Bankruptcy Judge for the District of Nevada, sitting by designation.

1 MARKELL, Bankruptcy Judge:

2
3 **INTRODUCTION**

4 This appeal presents two related questions: (1) does the
5 Bankruptcy Code's definition of "current monthly income", found
6 at 11 U.S.C. § 101(10A) ("CMI"), include Railroad Retirement Act
7 benefits ("RRA Benefits"); and (2) regardless of the answer to
8 the first question, should RRA Benefits be considered when
9 calculating projected disposable income under § 1325(b)?¹

10 Debtors Robert Lynn Scholz and Carolyn Gail Scholz take the
11 position that RRA Benefits do not count towards CMI, and should
12 not be counted as part of projected disposable income. Their
13 chapter 13 trustee, Michael Hugh Meyer (the "Trustee") disagrees
14 on both counts.

15 This disagreement formed the basis of the Trustee's
16 objection to the Debtors' plan. The bankruptcy court, however,
17 confirmed the plan over the Trustee's objection in a published
18 decision, In re Scholz, 427 B.R. 864 (Bankr. E.D. Cal. 2010).

19 On appeal, we agree with the Trustee that RRA Benefits fall
20 within the definition of CMI, but we agree with the bankruptcy
21 court that RRA Benefits cannot be considered when calculating
22 projected disposable income. As our first conclusion affects
23 essential elements of the confirmation order and the order
24 overruling the Trustee's objection, we VACATE and REMAND.

25 _____
26 ¹ Unless specified otherwise, all chapter and section
27 references are to title 11 of the United States Code, commonly
28 referred to as the Bankruptcy Code, 11 U.S.C. §§ 101-1532. All
rule references are to the Federal Rules of Bankruptcy Procedure,
Rules 1001-9037.

1 **FACTS**

2 The facts relevant to this appeal are undisputed. The
3 Debtors filed a voluntary petition and plan on May 15, 2009
4 seeking relief under chapter 13. Mr. Scholz, now retired,
5 formerly worked in the railroad industry. Ms. Scholz is not
6 retired and works for a real estate agency.

7 Pursuant to Rule 1007(b) (6), the Debtors filed Form B22C
8 which indicated that they were below-median-income debtors and
9 that their CMI was \$3,822.98. This sum consisted of wages and
10 commissions received on account of Ms. Scholz's current
11 employment in the average monthly amount of \$3,436.13 and
12 retirement benefits received from her former employer in the
13 average monthly amount of \$386.85. The Debtors reported no
14 monthly income or benefits of any type for Mr. Scholz in the body
15 of their Form B22C. The Debtors did, however, attach an
16 addendum in which they disclosed that they had excluded from
17 their calculation of CMI Mr. Scholz's average monthly RRA
18 Benefits.

19 That exclusion was significant. On their Schedule I the
20 Debtors reported combined average monthly income of \$6,799.61.
21 This higher amount reflected Mr. Scholz's monthly RRA Benefits of
22 \$3,709.25. This income was also necessary. The Debtors'
23 Schedule J indicated combined average monthly expenses of
24 \$6,361.36. The Debtors' plan committed to pay this positive
25 difference of \$438 per month to the Trustee. The plan provided
26 for a 60-month term.

27 The Trustee did not object to the 60-month term, but did
28 object to the manner in which the Debtors' expenses were

1 calculated. To understand the basis of this objection, one must
2 understand the role CMI plays in a debtor's chapter 13 bankruptcy
3 case. If a debtor's CMI is above the median income level in the
4 debtor's state, the debtor's expenses are subject to calculation
5 using the method specified in § 707(b)(2). Section 707(b)(2) is
6 typically more restrictive for above-median-income debtors
7 because it refers to Internal Revenue Service standards instead
8 of actual expenses. In contrast, debtors whose CMI is below-
9 median generally are entitled to deduct all actual expenses that
10 are "reasonably necessary" for their "maintenance and support."
11 See 11 U.S.C. § 1325(b)(2), (3) and (4).²

12 On June 29, 2009, the Trustee filed his objection to the
13 Debtors' plan. The Trustee asserted that the Debtors should have
14 included Mr. Scholz's RRA Benefits in their CMI calculation. If
15 this had been done, the Debtors would not have qualified as
16 below-median-income debtors. While the effect on their projected
17 disposable income is unknown, the Trustee asserts it would have
18 increased their projected disposable income because he contended
19 that the Debtors' actual expenses were more than those which
20 would have been allowed under § 707(b)(2). Accordingly, the
21 Trustee argued that the Debtors had not established, as required
22 by § 1325(b)(1)(B), that their plan provided for payment to their
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26 ² A debtor with above-median CMI is also required to commit
27 to a 60-month plan if the plan does not pay unsecured creditors
28 in full. That aspect is not at issue here as the Debtors
voluntarily chose a 60-month commitment period.

1 unsecured creditors of all of their projected disposable income
2 during the plan's five-year commitment period.³

3 Both sides briefed the issue of whether RRA Benefits must be
4 included in the calculation of CMI. The court then requested
5 supplemental briefing concerning the impact of the RRA's
6 antigarnishment/antialienation statute, 45 U.S.C. § 231m, on the
7 calculation of CMI. The Debtors filed a supplemental brief; the
8 Trustee did not.

9 After the completion of briefing, the bankruptcy court
10 entered an order overruling the Trustee's objection (the
11 "Objection Order"). The court also issued a memorandum decision
12 explaining its reasoning, 427 B.R. 864, in which it held that RRA
13 Benefits should not be included in the calculation of CMI. The
14 bankruptcy court acknowledged that, unlike benefits paid under
15 the Social Security Act ("SSA Benefits"), RRA Benefits are not
16 expressly excluded from the statutory definition of CMI. Id. at
17 870. In addition, the court noted that RRA Benefits are not the
18 same as SSA Benefits, and that Congress could have expressly
19 excluded RRA Benefits from the CMI calculation if it had wanted
20 to do so (as it had done with SSA Benefits). Id. Citing Lamie
21 v. U.S. Trustee, 540 U.S. 526, 542 (2004), the bankruptcy court
22 conceded that, if Congress enacted something other than what it
23 meant to, it was Congress's sole prerogative to amend its statute
24 to conform with its actual intent. 427 B.R. at 870.

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27 ³ The Trustee raised several additional concerns in his
28 objection, but these other concerns have not been pursued on
appeal.

1 amounts reasonably necessary to be expended . . . for . . .
2 maintenance and support.” 11 U.S.C. § 1325(b) (2).

3 For purposes of calculating disposable income, the type of
4 expenses that may be deducted differs depending on whether the
5 debtor’s CMI is above or below the median for similarly-sized
6 households in the debtor’s state. Hamilton v. Lanning, 130 S.
7 Ct. 2464, 2470 (2010). Section 1325(b) (2) allows a debtor whose
8 CMI is less than the median family income⁶ of the state in which
9 he or she resides to deduct their actual expenses so long as
10 those expenses are reasonably necessary for the maintenance or
11 support of the debtor and his or her dependents. If the debtor’s
12 CMI is above the median, however, Section 1325(b) (3) requires
13 that debtor to calculate the expense side of his or her
14 disposable income according to the standards set forth in the
15 chapter 7 “means test” found in 11 U.S.C. § 707(b) (2).

16 When converting the statutorily defined term of “disposable
17 income” into projected disposable income, a court starts with the
18 CMI calculation as a presumptive start, and then “may account for
19 changes in the debtor’s income or expenses that are known or
20 virtually certain at the time of confirmation.” Hamilton, 130 S.
21 Ct. at 2478; American Express Bank, FSB v. Smith (In re Smith),
22 418 B.R. 359, 365 (9th Cir. BAP 2009).

23 In short, for purposes of calculating projected disposable
24 income, CMI determines what receipts to include initially and
25 consequently strongly affects what a chapter 13 debtor ultimately

27 ⁶ “Median family income” is a defined term. See 11 U.S.C.
28 § 101(39A).

1 must pay to confirm a plan over a trustee's objections. See 11
2 U.S.C. § 1325(b).⁷

3 **B. SSA Benefits, RRA Benefits and CMI**

4 As with any other inquiry into statutory construction, our
5 analysis begins with the language of the statute itself. See
6 Ransom v. FIA Card Servs., N.A., 131 S. Ct. 716, 723 (2011).
7 According to the Code, CMI "means the average monthly income from
8 all sources" regardless of whether it is taxable. 11 U.S.C.
9 § 101(10A) (A). CMI typically is measured by calculating the
10 debtor's average monthly income during the full six months
11 immediately preceding the debtor's bankruptcy filing. See
12 § 101(10A) (A) (i). CMI also includes "any amount paid by any
13 entity other than the debtor . . . on a regular basis for the
14 household expenses of the debtor or the debtor's dependents
15" 11 U.S.C. § 101(10A) (B). This last-mentioned form of
16 CMI is sometimes referred to as "income replacement" and while it
17 is expansive, it expressly excludes three specific types of
18 payments. One of the exclusions is for SSA Benefits. 11 U.S.C.
19 § 101(10A) (B).⁸

20 Notably, however, these exclusions from CMI do not include
21 RRA Benefits. The bankruptcy court recounted the history of the
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23
24 ⁷ In chapter 7 cases, CMI plays a different role, helping
25 to determine whether a chapter 7 filing should be presumed
26 abusive. See § 707(b) (2) and (7).

27 ⁸ The other two exclusions are (i) payments to victims of
28 war crimes or crimes against humanity on account of their status
as victims of such crimes; and (ii) payments to victims of
international terrorism or domestic terrorism on account of their
status as victims of such terrorism. 11 U.S.C. § 101(10A) (B).

1 Railroad Retirement Act ("RRA"), compared it to the Social
2 Security Act ("SSA"), and noted that, even though both acts
3 provided retirement and other income-replacement benefits to the
4 public, there were some significant distinctions between the two
5 acts. Unlike the SSA, some benefits under the RRA function like
6 a private pension plan. As the bankruptcy court explained:

7 RRA Benefits are available in two tiers. The upper
8 tier, tier 1, is tied to the employee's earnings and
9 years in railroad service. Tier 1 is the equivalent of
10 a private pension plan. The lower and larger tier of
benefits, tier 2, corresponds to the benefits that a
nonrailroad employee would expect to receive for
equivalent nonrailroad service under the SSA.

11 427 B.R. at 869 (citing Hisquierdo v. Hisquierdo, 439 U.S. 572,
12 574-75 (1979), partially superseded by statute, 45 U.S.C.
13 § 231m(b)).⁹

14 Under the rule of statutory construction known as expressio
15 unius est exclusio alterius, the express exclusion of SSA
16 Benefits from the CMI definition would not extend to RRA
17 Benefits. See generally Blausey v. U.S. Trustee, 552 F.3d 1124,
18 1133-34 (9th Cir. 2009) (applying expressio unius est exclusio
19 alterius and holding that disability benefits paid by private
20 insurer fall within the definition of CMI). In holding that the
21 private insurer disability benefits were income within the
22 meaning of the Bankruptcy Code, Blausey rejected the debtors'

24 ⁹ The terminology used in Hisquierdo has not been uniformly
25 adopted. The IRS refers to SSA Benefit equivalents under the
Railroad Retirement Act as the upper tier or tier 1 benefits.
26 See e.g. I.R.S. Publ'n No. 915, at p. 1 (Jan. 28, 2010),
available at <http://www.irs.gov/pub/irs-pdf/p915.pdf> (last
27 visited March 15, 2011) (referring to RRA Benefits equivalent to
28 SSA Benefits as "tier 1 benefits"). The lack of uniformity does
not affect our analysis or the outcome of this appeal.

1 attempts to rely upon the Internal Revenue Code's definition of
2 gross income and the dictionary definition of income. The
3 Blausey court further noted that its holding was consistent with
4 one of the legislative purposes underlying the 2005 amendments to
5 the Bankruptcy Code: to ensure "that debtors repay creditors the
6 maximum they can afford." Id. at 1133 (quoting H.R. Rep.
7 109-31(I) at 1, reprinted in 2005 U.S.C.C.A.N. 88, 89 (April 8,
8 2005)).

9 Consistent with Blausey, the bankruptcy court conceded that
10 the CMI definition's express exclusion of SSA Benefits did not
11 extend to RRA Benefits. The bankruptcy court nonetheless held
12 that the RRA's antigarnishment/antialienation statute, § 231m,¹⁰
13 excluded RRA Benefits from the operation of the Bankruptcy Code
14 in its entirety, including the definition of CMI. In so holding,
15 the bankruptcy court relied on Carpenter v. Ries (In re
16 Carpenter), 408 B.R. 244, 248-49 (8th Cir. BAP 2009), which held
17 that a similar, but not identical, antigarnishment/antialienation
18 statute in the Social Security Act, 42 U.S.C. § 407,¹¹ prevented

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20 ¹⁰ 45 U.S.C. § 231m(a) provides:

21 (a) Except as provided in subsection (b) of this
22 section and the Internal Revenue Code of 1986 [26 U.S.C. § 1
23 et seq.], notwithstanding any other law of the United
24 States, or of any State, territory, or the District of
25 Columbia, no annuity or supplemental annuity shall be
26 assignable or be subject to any tax or to garnishment,
27 attachment, or other legal process under any circumstances
28 whatsoever, nor shall the payment thereof be anticipated[.]

¹¹ 42 U.S.C. § 407 provides:

(a) The right of any person to any future payment under
this subchapter shall not be transferable or assignable, at
(continued...)

1 SSA Benefits from becoming property of the debtor's chapter 7
2 bankruptcy estate subject to distribution to the creditors of
3 that estate. Scholz, 427 B.R. at 871.

4 The bankruptcy court's reliance on Carpenter is misplaced.
5 Carpenter is distinguishable in a number of respects. Carpenter
6 based its holding in part on language in the SSA's
7 antigarnishment/antialienation statute that expressly protected
8 SSA Benefits from "the operation of any bankruptcy or insolvency
9 law." See 42 U.S.C. § 407(a). Section 231m contains no similar
10 language. Carpenter also based its holding on the express
11 exclusion of SSA Benefits from the Code's definition of CMI.
12 Carpenter, 408 B.R. at 248. As already noted above, this express
13 exclusion does not extend to RRA Benefits. Finally, the issue
14 presented in Carpenter is quite different from the issue
15 presented to us in this appeal. The Carpenter court needed to

17 ¹¹(...continued)

18 law or in equity, and none of the moneys paid or payable or
19 rights existing under this subchapter shall be subject to
20 execution, levy, attachment, garnishment, or other legal
21 process, or to the operation of any bankruptcy or insolvency
22 law.

22 (b) No other provision of law, enacted before, on, or
23 after April 20, 1983, may be construed to limit, supersede,
24 or otherwise modify the provisions of this section except to
25 the extent that it does so by express reference to this
26 section.

26 (c) Nothing in this section shall be construed to
27 prohibit withholding taxes from any benefit under this
28 subchapter, if such withholding is done pursuant to a
request made in accordance with section 3402(p)(1) of the
Internal Revenue Code of 1986 [26 U.S.C.A. § 3402] by the
person entitled to such benefit or such person's
representative payee.

1 decide whether SSA Benefits were an asset that became a part of a
2 debtor's chapter 7 bankruptcy estate pursuant to § 541. In
3 contrast, the issue here is whether RRA Benefits received prior
4 to the debtor's bankruptcy filing should be included in the
5 calculation of CMI.

6 Our prior decision, Hagel v. Drummond (In re Hagel), 184
7 B.R. 793, 797-98 (9th Cir. BAP 1995), partially superseded by
8 statute, 11 U.S.C. § 101(10A)(B), is more on point than
9 Carpenter, even though it was decided before Congress added CMI
10 to the Code's definitions. In Hagel, we held that the SSA's
11 antigarnishment/antialienation statute did not by itself exclude
12 SSA Benefits from the calculation of disposable income for
13 chapter 13 plan purposes. As we explained in Hagel, chapter 13
14 is voluntary in nature, and any debtor who seeks to realize the
15 benefits of confirming a chapter 13 plan must be willing to
16 voluntarily commit to that plan all non-excluded types of income
17 and income replacements (which at the time included SSA
18 Benefits). Id.; see also Hamilton, 130 S. Ct. at 2468-69 (noting
19 that chapter 13 allows debtors to obtain a discharge and at the
20 same time retain their nonexempt assets, but only if they "agree"
21 to pay their creditors future income under a court-approved
22 plan).

23 It is true that, subsequent to Hagel, Congress enacted
24 § 101(10A)(B) expressly excluding SSA Benefits from the
25 definition of CMI, which in turn effectively excludes SSA
26 Benefits from the calculation of disposable income; however,
27 there is nothing in the Bankruptcy Code, nor in the RRA's
28 antigarnishment/antialienation statute, § 231m, that would

1 prevent the reasoning of Hagel from applying to RRA Benefits, at
2 least to the extent of determining whether RRA Benefits should be
3 included in CMI.

4 The bankruptcy court also relied on the unique language in
5 § 231m that prohibits "anticipation" of RRA Benefits: ". . . nor
6 shall payment thereof be anticipated."¹² The bankruptcy court
7 pointed out that the inclusion of RRA Benefits in the calculation
8 of projected disposable income under § 1325(b)(1)(B) necessarily
9 would contravene the antianticipation clause in § 231m.

10 As discussed below, we agree with the bankruptcy court that
11 including RRA Benefits in projected disposable income would
12 contravene the antianticipation clause of § 231m. But that point
13 misses the targeted issue of whether RRA Benefits should be
14 included in CMI. Unlike projected disposable income, CMI is a
15 historical figure that typically takes into account income and
16 income replacements received by debtors during the six-month
17 period immediately before their bankruptcy filing. See 11 U.S.C.
18 § 101(10A)(A)(i) and (ii); Hamilton, 130 S. Ct. at 2470. Simply
19 put, there is no anticipation of future payments in the
20 calculation of CMI, so including RRA Benefits in the CMI
21 calculation does not contravene the RRA's antianticipation
22 clause.

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25 ¹² We have found only one other instance of an
26 antianticipation clause in a federal statute, also in the
27 Railroad Retirement Act. See 45 U.S.C. § 352(e). No other
28 federal antigarnishment/antialienation statute that we know of
has a similar clause. See generally In re Pritchard, 75 B.R.
877, 879 n.4 (Bankr. D. Minn. 1987) (listing such statutes and
quoting their contents).

1 Even though we disagree with the bankruptcy court's
2 conclusion that § 231m effectively excludes RRA Benefits from the
3 definition of CMI, we do acknowledge that there is some intuitive
4 appeal to the bankruptcy court's holding. The similarities in
5 underlying purpose between the RRA and SSA make it seem
6 incongruous, at first blush, for Congress to have expressly
7 excluded SSA Benefits but not RRA Benefits from the definition of
8 CMI, and this incongruity perhaps suggests that Congress might
9 have neglected to expressly exclude RRA Benefits by mere
10 oversight. However, even if it is possible that Congress
11 inadvertently neglected to expressly exclude RRA Benefits, it is
12 not our job to fix the statute; if Congress believes that it made
13 a mistake, Congress itself should fix the definition of CMI. See
14 Lamie, 540 U.S. at 542.

15 We cannot rule out that Congress might have intentionally
16 decided to include RRA Benefits in the definition of CMI. Put
17 another way, in the argot of statutory interpretation, we will
18 not read into a statute additional words or terms, so as to
19 expand or contract the statute's coverage, when the plain
20 language of the statute as written is neither absurd nor leads to
21 absurd results. See Lamie, 540 U.S. at 538. As detailed above,
22 the RRA and the SSA have significant differences, both in terms
23 of benefits and in terms of their antigarnishment/antialienation
24 statutes. These differences might explain Congress's disparate
25 treatment of RRA Benefits and SSA Benefits in the Bankruptcy Code
26 and thus tend to undermine the intuitive appeal of the bankruptcy
27 court's holding. For instance, it could be that Congress viewed
28 the availability under the RRA of private-pension-plan-like

1 benefits as grounds for not excepting such benefits from the
2 definition of CMI. Alternately, given that the RRA's
3 antianticipation clause prevents bankruptcy courts from including
4 RRA Benefits in the calculation of projected disposable income,
5 Congress might have felt it unnecessary to also exclude RRA
6 Benefits from the CMI definition. Conversely, because the SSA
7 does not have an antianticipation clause, Congress might have
8 felt it necessary to expressly exclude SSA Benefits from the CMI
9 definition.

10 In sum, the inclusion of RRA Benefits within the definition
11 of CMI is both plain on the face of the statute and not absurd.
12 Consequently, even if that inclusion were inadvertent, Congress
13 rather than the courts should fix the CMI definition to expressly
14 exclude RRA Benefits if that is what Congress actually meant to
15 do. Thus, we hold that RRA Benefits fall within the statutory
16 definition of CMI.

17 **C. The Antianticipation Clause and Projected Disposable Income**

18 Even though we hold that RRA Benefits fall within the
19 definition of CMI, we agree with the bankruptcy court that RRA
20 Benefits cannot be considered when calculating projected
21 disposable income. To do so would contravene the RRA's
22 antianticipation clause.

23 To repeat, the antianticipation clause reads as follows:

24 (a) Except as provided in subsection (b) of this
25 section and the Internal Revenue Code of 1986 [26 U.S.C. § 1
26 et seq.], notwithstanding any other law of the United
27 States, or of any State, territory, or the District of
28 Columbia, no annuity or supplemental annuity shall be
assignable or be subject to any tax or to garnishment,
attachment, or other legal process under any circumstances
whatsoever, nor shall the payment thereof be anticipated[.]

1 45 U.S.C. § 231m(a) (emphasis added).

2 While the meaning and purpose of this clause is far from
3 apparent, the Supreme Court in Hisquierdo resolved its meaning.
4 See 439 U.S. at 588-89. At issue in Hisquierdo was a California
5 divorce decree that allocated future RRA benefits to a spouse.
6 The spouse whose work had led to the benefits objected,
7 contending that § 231m(a) prohibited such an "anticipation" of
8 such benefits.

9 After examining the sparse legislative history, the
10 Hisquierdo court concluded that the RRA's antianticipation clause
11 must be similar in meaning and effect to similar provisions in
12 express trusts. According to Hisquierdo, the antianticipation
13 clause would bar any attempt to pay, or commit for payment, RRA
14 Benefits before they come due. Id.

15 Whereas CMI focuses exclusively on the debtor's financial
16 past, it is now settled that the term "projected disposable
17 income" is "forward looking" in nature. See Hamilton, 130 S. Ct.
18 at 2471-74. Hamilton held that bankruptcy courts have discretion
19 when calculating projected disposable income to consider
20 significant changes in income that either had occurred or were
21 substantially certain to occur, even though not reflected in the
22 debtor's historical CMI figure. Id. In so holding, Hamilton
23 relied in part on the ordinary meaning of the word "projected" as
24 well as prior cases interpreting that word. Id.; see also
25 Ransom, 131 S. Ct. at 724 (stating that, when the Bankruptcy Code
26 does not define a term used, we look to its ordinary meaning).

27 Hamilton's interpretation of projected disposable income as
28 forward looking necessarily means that the term anticipates

1 future income of the debtor. As such, it falls squarely within
2 § 231m's exclusion. Consequently, in calculating projected
3 disposable income, bankruptcy courts cannot consider RRA
4 Benefits.

5 If Congress wanted bankruptcy courts to anticipate RRA
6 Benefits as part of their calculation of projected disposable
7 income, it would have needed to expressly limit the RRA's
8 antianticipation clause to permit such anticipation. To hold
9 otherwise would undermine the meaning of the phrase
10 "notwithstanding any other law of the United States" in
11 § 231m(a).

12 At oral argument, the Trustee asserted that the Bankruptcy
13 Code, as amended by the Bankruptcy Abuse Prevention and Consumer
14 Protection Act of 2005, Pub. L. 109-8, 119 Stat. 23 (Apr. 20,
15 2005), impliedly repealed in part the RRA's antianticipation
16 clause by including RRA Benefits in the definition of CMI.¹³ But
17 we do not perceive any direct conflict between the Bankruptcy
18 Code and the RRA's antianticipation clause. Section 101(10A)(A)
19 merely defines CMI, and Congress's inclusion of RRA Benefits in
20 that definition does not by itself constitute any sort of
21 conflict (direct or indirect) because, as set forth above, CMI by
22 definition only looks backwards at historical income. Moreover,
23 Congress did not define the term "projected disposable income,"
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26 ¹³ If there were a direct conflict between the two
27 statutes, the rule of construction that "the more recent of two
28 irreconcilably conflicting statutes governs" might help to
support the Trustee's argument. See Watt v. Alaska, 451 U.S.
259, 266 (1981) (citing 2A C. Sands, SUTHERLAND ON STATUTES AND
STATUTORY CONSTRUCTION § 51.02 (4th ed. 1973)).

1 thereby enabling the courts to interpret that term according to
2 its plain meaning, see Hamilton, 130 S. Ct. at 2471, and in a
3 manner consistent with the United States Code as a whole. See
4 generally U.S. v. Hall, 617 F.3d 1161, 1166 (9th Cir. 2010)
5 (stating that courts must interpret the United States Code as a
6 whole and must “assume that Congress is aware of existing law
7 when it passes legislation.”). Simply put, by declining to
8 expressly define the term “projected disposable income” Congress
9 left room for the courts to interpret that term in a manner that
10 harmonizes it with existing federal law, including the RRA.

11 In any event, there is insufficient basis either on the face
12 of the Bankruptcy Code or in the legislative history for us to
13 find an implied partial repeal of the RRA’s antianticipation
14 clause. See Branch v. Smith, 538 U.S. 254, 273 (2003) (stating
15 that repeals by implication are disfavored and only will be found
16 when the two statutes cannot be reconciled or when the latter
17 statute is clearly intended to replace, and wholly covers the
18 subject matter of, the earlier statute); Morton v. Mancari, 417
19 U.S. 535, 551 (1974) (stating that “. . . courts are not at
20 liberty to pick and choose among congressional enactments, and
21 when two statutes are capable of co-existence, it is the duty of
22 the courts, absent a clearly expressed congressional intention to
23 the contrary, to regard each as effective.”).

24 Thus, even though RRA Benefits fall within the definition of
25 CMI, we hold that they cannot be considered when calculating
26 projected disposable income.

CONCLUSION

Accordingly, we VACATE the bankruptcy court's confirmation order and REMAND for further proceedings.

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