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

ORDERED PUBLISHED

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

5	In re:)	BAP No.	EC-15-1091-JuFD
)		
6	NANCY ADINOLFI,)	Bk. No.	14-12645
)		
7	Debtor.)		
	_____)		
8)		
9	NANCY ADINOLFI,)		
)		
10	Appellant,)		
)		
11	v.)	OPINION	
)		
12	MICHAEL MEYER, Chapter 13)		
	Trustee,)		
)		
13	Appellee.)		
	_____)		

Argued and Submitted on November 19, 2015
at Sacramento, California

Filed - January 19, 2016

Appeal from the United States Bankruptcy Court
for the Eastern District of California

Honorable Fredrick E. Clement, Bankruptcy Judge, Presiding

Appearances: _____
 David R. Jenkins argued for Appellant Nancy
 Adinolfi; Deanna K. Hazelton argued for Appellee
 Michael H. Meyer, chapter 13 trustee.

Before: FARIS, DUNN, and JURY, Bankruptcy Judges.

Opinion by Judge Faris.

Dissent by Judge Jury.

1 FARIS, Bankruptcy Judge:
2

3
4 **INTRODUCTION**

5 Debtor Nancy Adinolfi appeals from the bankruptcy court's
6 order denying the confirmation of her chapter 13¹ plan. A
7 chapter 13 debtor whose income exceeds the applicable median must
8 devote all of her "projected disposable income" to the payment of
9 her unsecured creditors. The statute excludes "benefits received
10 under the Social Security Act" from "disposable income." The
11 Debtor argues that Adoption Assistance payments she receives are
12 "benefits received under the Social Security Act," but the
13 bankruptcy court ruled to the contrary. We hold that the
14 bankruptcy court erred, and therefore we REVERSE.

15 **FACTUAL BACKGROUND**

16 The parties stipulated to most of the facts. The Debtor
17 receives \$1,422² per month in Adoption Assistance payments under
18 the Adoption Assistance and Child Welfare Act of 1980. That act
19 established a program of federal payments to participating states
20 to provide funds for financial assistance to families adopting
21 special needs children from foster care. 42 U.S.C. §§ 670-76.
22 Pursuant to this Act, California receives funds from the federal
23 government under Title IV-E of the Social Security Act ("SSA").

24 ¹ Unless otherwise indicated, all chapter and section
25 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
26 "Rule" references are to the Federal Rules of Bankruptcy
27 Procedure.

28 ² The Debtor has entered into two Adoption Assistance
Program Agreements. The Debtor receives \$729 per month under one
agreement and \$693 under the other agreement.

1 Each year, the U.S. Department of Health and Human Services
2 calculates the Federal Medical Assistance Percentage ("FMAP").
3 The FMAP is used to determine the amount of federal matching
4 funds provided to various subsidy programs, including the
5 Adoption Assistance program. The Adoption Assistance payments
6 are then paid from a pool of federal funds allocated to
7 California to pay individuals who qualify under the California
8 Welfare and Institutions Code §§ 16115 through 16125.
9 Specifically, the money allocated to fund the Debtor's Adoption
10 Assistance payments, as well as all other individuals receiving
11 the same benefits, were comprised of 50% federal funding, 37.5%
12 state funding, and 12.5% county funding. The Debtor's payments
13 under the Adoption Assistance program are paid directly by Merced
14 County Human Services Agency, not the federal government.

15 The Debtor filed a chapter 13 petition. She disclosed the
16 Adoption Assistance payments but took the position that those
17 payments were not included in her disposable income.³ She
18 proposed a chapter 13 plan with a monthly payment of \$935, which
19 would have paid 0% to unsecured non-priority creditors.

20 Appellee Michael Meyers, chapter 13 trustee, objected to
21 confirmation of the plan, contending that it was improper to
22 exclude the Adoption Assistance payments from her income when
23

24 ³ The Debtor also excluded from her income \$1,909 per month
25 that she receives as Foster Care payments. Prior to the plan
26 confirmation hearing, and in response to the Trustee's objection,
27 she stipulated that the Foster Care payments should be included
28 in her income because the Foster Care benefits are entirely state
funded. At oral argument, her counsel said that this stipulation
may have been a mistake, but the Foster Care payments are not
before us.

1 calculating her plan payments.

2 The Bankruptcy Court sustained the objection of the Trustee,
3 concluding that the Adoption Assistance payments should have been
4 included in the Debtor's current monthly income. This timely
5 appeal followed.

6 JURISDICTION

7 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
8 §§ 1334 and 157(b)(2)(A). Denial of confirmation of a chapter 13
9 plan is an interlocutory order and therefore not ripe for appeal
10 without leave. Bullard v. Blue Hills Bank, 135 S. Ct. 1686, 1695
11 (2015). On May 20, 2015, a motions panel granted leave to
12 appeal. Therefore, we have jurisdiction under 28 U.S.C.
13 § 158(a)(3).

14 ISSUE

15 Whether the bankruptcy court erred when it held that
16 Adoption Assistance payments are not "benefits received under the
17 Social Security Act" within the meaning of § 101(10A)(B).

18 STANDARD OF REVIEW

19 "We review the bankruptcy court's findings of fact for clear
20 error; we review its conclusions of law **de novo**." Quintana v.
21 Comm'r of Internal Revenue Serv. (In re Quintana), 915 F.2d 513,
22 515 (9th Cir. 1990) (citing Ragsdale v. Haller, 780 F.2d 794, 795
23 (9th Cir. 1986)).

24 We apply the de novo standard when reviewing chapter 13 plan
25 confirmation issues requiring the interpretation of a statute.
26 Moen v. Hull (In re Hull), 251 B.R. 726, 730 (9th Cir. BAP 2000)
27 (citing United Cal. Sav. Bank v. Martin (In re Martin), 156 B.R.
28 47, 49 (9th Cir. BAP 1993)); see In re Quintana, 915 F.2d at 515

1 ("The interpretation of a federal statute is a question of law
2 reviewed de novo." (citation omitted)).

3 **DISCUSSION**

4 **A. Adoption Assistance payments are "benefits received under
5 the Social Security Act" and covered by the SSA exclusion.**

6 A bankruptcy court can confirm a chapter 13 plan only if the
7 plan meets numerous requirements. One of these is § 1325(b)(1),
8 which provides that the court may not confirm a plan over the
9 objection of the trustee (or an unsecured creditor) unless the
10 plan provides for full payment of all unsecured claims or "the
11 plan provides that all of the debtor's projected disposable
12 income . . . will be applied to make payments to unsecured
13 creditors under the plan."

14 This section contains a nested set of defined terms. Under
15 § 1325(b)(2), "the term 'disposable income' means current monthly
16 income received by the debtor," subject to an exclusion which we
17 discuss below, less certain expenses. Section 101(10A)(B)
18 defines "current monthly income." Under that definition, a
19 debtor's "current monthly income" "excludes benefits received
20 under the Social Security Act."

21 This appeal requires us to construe that exclusion from
22 current monthly income, which we will call the "SSA exclusion."

23 In doing so, we follow well-established rules of statutory
24 construction. We focus on the language of the statute. Lamie v.
25 U.S. Tr., 540 U.S. 526, 534 (2004); Friedman v. P+P, LLC (In re
26 Friedman), 466 B.R. 471, 479 (9th Cir. BAP 2012). We give each
27 word its ordinary meaning unless the statute or the context
28 requires otherwise. United States v. Neal, 776 F.3d 645, 652

1 (9th Cir. 2015); Foxgord v. Hirschmoeller, 820 F.2d 1030, 1032
2 (9th Cir. 1987). We may refer to dictionary definitions. United
3 States v. Banks, 556 F.3d 967, 978 (9th Cir. 2009) (In
4 interpreting statutory words, "dictionary definitions are
5 cognizable."). We must interpret not only the individual words,
6 but also the provision as a whole along with related provisions.
7 United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs.,
8 Ltd., 484 U.S. 365, 371 (1988) ("Statutory construction, however,
9 is a holistic endeavor. A provision that may seem ambiguous in
10 isolation is often clarified by the remainder of the statutory
11 scheme -- because the same terminology is used elsewhere in a
12 context that makes its meaning clear, or because only one of the
13 permissible meanings produces a substantive effect that is
14 compatible with the rest of the law" (internal citations
15 omitted)); United States v. 144,774 pounds of Blue King Crab, 410
16 F.3d 1131, 1134 (9th Cir. 2005) ("It is an accepted canon of
17 statutory interpretation that we must interpret the statutory
18 phrase as a whole, giving effect to each word and not
19 interpreting the provision so as to make other provisions
20 meaningless or superfluous.").

21 If the statutory language is ambiguous, we may consult
22 additional guides to interpretation, such as legislative history
23 and the statute's context. Searcy v. Ada Cty. Prosecuting
24 Attorney's Office (In re Searcy), 463 B.R. 888, 892 (9th Cir. BAP
25 2012), aff'd, 561 F. App'x 644 (9th Cir. 2014) ("where statutory
26 language is ambiguous, courts need to look beyond the specific
27 language of the subject statute to the context in which that
28 language is used and to relevant legislative history"). A term

1 is ambiguous if it is fairly susceptible to different reasonable
2 interpretations. Woods v. Carey, 722 F.3d 1177, 1181 (9th Cir.
3 2013) (stating that a statute is ambiguous if it gives rise to
4 more than one reasonable interpretation); A-Z Int'l v. Philips,
5 179 F.3d 1187, 1192 (9th Cir. 1999) (same).

6 Courts have construed the SSA exclusion in different ways.
7 Compare In re Munger, 370 B.R. 21, 23-26 (Bankr. D. Mass. 2007)
8 (holding that unemployment compensation is excluded from current
9 monthly income as defined because unemployment compensation is a
10 benefit received under the Social Security Act), and In re
11 Sorrell, 359 B.R. 167, 180-81 (Bankr. S.D. Ohio 2007) (holding
12 that unemployment compensation is excluded from current monthly
13 income and noting that § 101(10A) "does not speak of 'payments,'
14 direct, indirect, or otherwise, but instead contains the
15 unambiguously broader term 'benefits'"), with DeHart v. Baden (In
16 re Baden), 396 B.R. 617, 621-23 (Bankr. M.D. Pa. 2008) (holding
17 that unemployment compensation is not excluded from current
18 monthly income because unemployment compensation is not a
19 "benefit" - an ambiguous word - received under the Social
20 Security Act, but received under a state-run program), and In re
21 Kucharz, 418 B.R. 635, 640-43 (Bankr. C.D. Ill. 2009) (holding
22 that unemployment compensation is not excluded from current
23 monthly income, and noting that § 101(10A)(B) "is ambiguous on
24 its face, as it is amenable to two conflicting interpretations").
25 We therefore conclude that the SSA exclusion is ambiguous.

26 Judicial decisions, even those that are not binding on this
27 Panel, are an excellent source of interpretive guidance. There
28 are no decisions addressing whether the SSA exclusion covers

1 Adoption Assistance payments. Several courts have considered a
2 related issue: whether unemployment insurance payments are
3 "benefits received under the Social Security Act." Most of those
4 courts have held that unemployment compensation is not excluded.
5 See, e.g., In re Gentry, 463 B.R. 526 (Bankr. D. Colo. 2011). A
6 minority of courts have held that the exclusion applies. See,
7 e.g., In re Munger, 370 B.R. at 23-26.

8 **1. Construction of the individual words**

9 We begin with the individual words in the phrase, and then
10 turn to the phrase as a whole.

11 The word "benefits" does not present a problem in this case.
12 No one denies that the Adoption Assistance payments which the
13 Debtor receives are "benefits."

14 The word "received," at least in isolation, also presents no
15 difficulty. There is no question that the Debtor "receives" the
16 Adoption Assistance payments.

17 The word "under" has many meanings, but we can reject most
18 of them because they do not make sense in this context. The
19 meanings that make sense here are "subject to the authority,
20 control, guidance, or instruction of," Merriam-Webster's
21 Collegiate Dictionary 1283 (10th ed. 2002), or "in accordance
22 with (some regulative power or principle)," Oxford English
23 Dictionary, www.oed.org. Significantly for this case, the
24 dictionary definitions do not support the proposition that
25 "under" means that the subject is under the **exclusive** control of
26 something.

27 The "Social Security Act" is codified at 42 U.S.C.A. §§ 301-
28

1 1397mm.⁴ The SSA was first enacted in 1935 and has been amended
2 hundreds of times since then. See generally Historical
3 Background and Development of Social Security,
4 <https://www.ssa.gov/history/briefhistory3.html> (last accessed
5 Dec. 3, 2015). It has become a sprawling statute, filling twelve
6 volumes of the United States Code Annotated and providing for
7 many benefit programs, some of which are familiar and others
8 obscure. These programs have a bewildering variety of funding
9 formulae and administrative mechanisms. The federal government
10 funds and administers some of the programs itself, but most of
11 the programs contemplate some degree of state involvement, and
12 many are jointly funded and operated by the federal and state
13 governments. The following summary does not include all such
14 programs and dramatically simplifies the program requirements for
15 almost all of them. Our purpose is to emphasize the wide
16 variation in the programs authorized by the SSA and the futility
17 of picking and choosing which programs are "under" the SSA.

18 **a. Federally-administered programs**

19 Some SSA programs are almost entirely operated and funded by
20 the federal government. But even these programs often
21 contemplate some state involvement. These include:

- 22 • The program that most people simply call "**Social Security**,"
23 which provides "old age," survivors, and disability
24 insurance benefits. 42 U.S.C.A. §§ 401-434. (Benefits are
25

26 ⁴ For a list of the provisions of the Social Security Act,
27 see the Table of Contents to the Compilation of the Social
28 Security Laws, [https://www.socialsecurity.gov/OP_Home/ssact/
ssact-toc.htm](https://www.socialsecurity.gov/OP_Home/ssact/ssact-toc.htm) (last accessed Dec. 3, 2015).

1 also available to the survivors of certain railroad
2 retirees. Id. § 402(1). The federal government pays the
3 entire cost of this program. Id. § 401(a). The states have
4 little to do with its administration, with one important
5 exception: a state may elect to have a state agency, rather
6 than the federal government, make determinations of
7 disability. If a state so elects, the federal government
8 retains supervision of the state agency's performance and
9 reimburses the state's administrative costs. Id. § 421. (A
10 special provision applies if a state or political
11 subdivision elects to allow its employees to participate in
12 these benefits. Id. § 418.)

- 13 • **Medicare**, id. §§ 1395-1395kkk-1. Medicare is mostly
14 operated by the federal government, through private
15 companies acting as third-party administrators. Id.
16 § 1395kk-1. The states may elect to be involved in Medicare
17 by certifying the qualifications of certain health care
18 providers. Id. § 1395aa.
- 19 • Supplemental security income ("**SSI**") for the low-income
20 aged, blind, and disabled. Id. §§ 1381-1383f. This program
21 contemplates some coordination with the states; if a state
22 offers similar benefits, the state and the federal
23 government may agree that the federal government will pay
24 the state benefits on behalf of the state, and the state
25 will reimburse the federal government for the state benefits
26 paid plus a per-payment administrative fee. Id. § 1382e.
- 27 • Special benefits for **World War II veterans**, id. §§ 1001-
28 1013. The SSA provides that, if a state provides comparable

1 benefits, the federal government may agree with the state to
2 pay those benefits on behalf of the state, and the state
3 reimburses the federal government for the benefits paid plus
4 an administrative fee. Id. § 1010a.

5 **b. Federal funding of state-paid benefits**

6 For other programs, the SSA provides that, if a state
7 creates a program of a certain kind that meets detailed
8 requirements (and is usually subject to federal approval of the
9 state government's plan), the federal government will pay all or
10 part of the benefits and the administrative costs of the program.
11 These include:

- 12 • **Medicaid**, pursuant to which the federal government makes
13 grants to states operating plans for medical assistance that
14 meet the detailed and voluminous requirements of § 1396a.
15 The federal government pays a percentage of the benefits
16 paid by the states. The percentage depends on a comparison
17 of the state's per capita income with the national per
18 capita income, but is not less than 50% or more than 83%.
19 Id. § 1396d(b). The federal government also pays a portion
20 (usually 75%) of the state's expenses for administering
21 various parts of the program. Id. § 1396b.
- 22 • Programs in **Guam, Puerto Rico, and the Virgin Islands**
23 **providing old age benefits**, id. §§ 301-306, where the
24 federal government pays the territorial government half of
25 the benefits payments, not to exceed a capped amount per
26 beneficiary, and half of the administrative costs, id.
27 § 303.
- 28 • The **Stephanie Tubbs Jones Child Welfare Services Program**,

1 id. §§ 620-628, under which the federal government
2 reimburses states for 75% of the benefits paid and
3 administrative costs for certain child welfare programs,
4 subject to an aggregate cap. The same program authorizes
5 matching grants to states and Indian tribes that provide
6 "family connection programs." Id. § 627.

- 7 • Programs for **family support, family preservation, family**
8 **reunification, and adoption support services**, id. §§ 629-
9 629i. The federal government pays the states up to 75% of
10 the cost of such programs plus certain grants for program
11 administration and other purposes. Id. §§ 629d, 629g.
- 12 • **Foster care and adoption assistance**, id. §§ 670-679c. The
13 federal government pays the "federal medical assistance
14 percentage" of the covered benefit payments, 75% of parent
15 training expenses, and 50% of operating expenses, id. § 674,
16 plus possible incentive payments, id. § 673b. This program
17 includes the Adoption Assistance payments at issue in this
18 appeal.
- 19 • **Aid to the blind** in Puerto Rico, Guam, and the Virgin
20 Islands, id. §§ 1201-1206. The federal government pays up
21 to half of the benefits, subject to a dollar cap per
22 beneficiary, and half of the territorial government's
23 administrative expenses. Id. § 1203.

24 **c. Federal reimbursement for administrative costs**

25 In a third category of programs, the SSA provides that, if a
26 state creates a benefit program of a particular type that meets
27 specified requirements, the federal government will reimburse the
28 state for some or all of the reasonable costs of administering

1 the program, but not any benefit payments. These include:

- 2 • **Unemployment compensation**, id. §§ 501-504, 1101-1110.

3 Although the states fund these benefits, the federal
4 government plays a crucial fiscal role. In order to receive
5 federal reimbursement for the state's administrative costs,
6 the state must pay over to the federal government all taxes
7 and other contributions to the state's programs. The
8 federal government holds the funds in the Unemployment Trust
9 Fund and returns the funds to the states upon requisition.
10 The federal government has the authority to make loans to
11 states if the state needs money to pay benefits. Id.
12 §§ 1321-1324. The federal government also funds part of the
13 benefits in certain circumstances: if the federal government
14 legislates to extend the usual 26-week benefit period, the
15 federal government pays 50% of the extended benefits. See
16 In re Kucharz, 418 B.R. 635 (Bankr. C.D. Ill. 2009).

- 17 • Programs for **child support collection** and the **determination**
18 **of paternity**, 42 U.S.C.A. §§ 651-669b. The federal
19 government reimburses up to 66% of the cost of operating
20 qualified programs, id. § 655, plus certain incentive
21 payments, id. § 658a.

22 **d. Federal block grants and loans**

23 In a fourth category, the SSA provides that the federal
24 government provides "block grants" (and in some cases loans) to
25 states (and Indian tribes) that enact and administer programs
26 meeting specified criteria. The amount of the grant is sometimes
27 entirely independent of the state's outlays but in other cases is
28 based on a formula that is tied (more or less loosely) to such

1 costs. These include (among others):

- 2 • Temporary Assistance to Needy Families ("**TANF**"), id. §§ 601-
3 619. The TANF block grants are based on a lengthy and
4 complicated set of criteria applied by the Secretary of the
5 Treasury that depend only in part on the benefits actually
6 paid by each state. Id. § 603. The states have latitude in
7 spending the block grant money, id. § 604, but the SSA
8 imposes certain strict limitations on the states' payments
9 of benefits, e.g., id. §§ 607, 608.
- 10 • **Maternal and child health services**, id. §§ 701-713. A fixed
11 amount of money is allocated based on a formula that is not
12 directly related to the states' expenses of such programs.
13 Id. §702(c).
- 14 • **Child care services, protective services for children and**
15 **adults, foster care services, adult day care services**, and
16 other programs generally described in 42 U.S.C.A. § 1397a.
17 A fixed aggregate sum is allocated among the states based on
18 population, id. § 1397b, and the presence of "qualified
19 empowerment zones" in the state, id. § 1397f.
- 20 • **Elder justice programs**, id. §§ 1397j-1397m-5. Entities
21 eligible to receive these grants include states and their
22 political subdivisions as well as Indian tribes and other
23 public and private entities. Id. § 1397j(7). The
24 Department of Health and Human Services allocates a fixed
25 sum among grant applicants on a more or less discretionary
26 basis.
- 27 • State Children's Health Program, commonly known as "**SCHIP**,"
28 id. §§ 1397aa-mm. This program provides funds to states

1 that maintain qualified and approved programs to provide
2 health insurance to targeted low-income children under
3 Medicaid or otherwise. A fixed sum is allocated among
4 qualified states based on a complicated formula that, very
5 broadly summarized, covers half of the state's deemed cost
6 of the program. Id. § 1397dd.

- 7 • **The Ticket to Work and Self-Sufficiency Program, id.**
8 § 1320b-19, under which the federal government provides a
9 voucher to qualified disabled beneficiaries which the
10 beneficiary may use to obtain services from "employment
11 networks." States may elect to establish employment
12 networks and receive payments under the program. The
13 employment network receives payments for each month during
14 which the beneficiary is not receiving specified welfare
15 benefits (presumably because the beneficiary is employed) or
16 is making progress toward employment. Id. § 1320b-19(h);
17 see also id. § 1320b-21 (describing another similar
18 program).

19 In short, the "Social Security Act" encompasses a wide
20 spectrum of programs. Most of the programs involve some degree
21 of state participation, and the extent of the states' involvement
22 varies widely from program to program.

23 **2. Construction of the entire phrase**

24 Having considered the individual terms contained in the
25 phrase "benefits received under the Social Security Act," one
26 must return to the entire phrase. The most natural reading of
27 this phrase is "benefits received subject to the authority of,
28 and in accordance with, 42 U.S.C.A. §§ 301-1397mm." The Adoption

1 Assistance payments received by the Debtor are paid out by the
2 county government, but are subject to the federal program
3 requirements and standards of 42 U.S.C.A. §§ 670-679c and federal
4 oversight. Thus, under our reading of the phrase, the Adoption
5 Assistance payments which the Debtor receives are "benefits
6 received under the Social Security Act" and are excluded from her
7 "current monthly income."

8 **B. The Trustee's arguments are unavailing.**

9 The Trustee mounts several arguments for a construction of
10 the SSA exclusion that would not cover the Adoption Assistance
11 payments (i.e., those payments should be included in current
12 monthly income).

13 All of these arguments boil down to the proposition that,
14 when Congress referred to "benefits received under the Social
15 Security Act," it really meant only benefits received under **some**
16 of the SSA programs. However, when Congress referred to the
17 "Social Security Act" as a whole, Congress knew of the many
18 differences between and nuances in the individual SSA programs.
19 Nothing in the language of the SSA exclusion suggests that
20 Congress intended to include only those programs that are funded
21 and administered solely by the federal government. Accepting the
22 Trustee's arguments would create arbitrary distinctions not
23 clearly intended by Congress and would amount to an impermissible
24 rewriting of the statute.

25 Therefore, and for the reasons explained below, we do not
26 find any of the Trustee's arguments persuasive in this instance.

27 **1. BAPCPA's purpose**

28 The Trustee argues that a narrow interpretation of the SSA

1 exclusion is more consistent with the purpose of the statute.
2 The SSA exclusion was part of the Bankruptcy Abuse Prevention and
3 Consumer Protection Act of 2005 ("BAPCPA"). The Trustee quotes
4 legislative history suggesting that the "means test," which
5 begins with a determination of the Debtor's "current monthly
6 income," was enacted to "help[] courts determine who can and who
7 cannot repay their debts and, perhaps most importantly, how much
8 they can afford to repay." 151 Cong. Rec. S1726-01, S1786 (daily
9 ed. Feb. 28, 2005).

10 The quoted legislative history does not help the Trustee.
11 If Congress intended to require **all** debtors to pay more, a narrow
12 interpretation of the SSA exclusion would make sense. But the
13 legislative history shows that the purpose was more precise: to
14 help courts separate "can-pay" debtors from "can't-pay" debtors,
15 and to require "can-pay" debtors to pay as much as they can
16 afford. The text of § 101(10A)(B) demonstrates that Congress
17 decided that "benefits received under the Social Security Act"
18 should not count when identifying "can-pay" debtors and deciding
19 how much more they should pay. This is reasonable because
20 generally the SSA programs are intended to benefit people who are
21 needy in some respect: they are aged, sick, physically or
22 mentally disabled, suffering from family separation or abuse, or
23 the like. Thus, Congress could reasonably have decided that SSA
24 beneficiaries are not generally "can-pay" debtors and that SSA
25 benefits should not count toward the debtor's ability to repay
26 creditors. Neither the statutory text nor the legislative
27 history suggests that Congress wanted the courts to give a
28 narrower meaning to the SSA exclusion than a natural reading of

1 its words would support.

2 The purpose of the SSA also supports the natural reading of
3 the SSA exclusion. Congress created the SSA programs to help
4 people who have specified kinds of needs. For example, Congress
5 created the Adoption Assistance program to help people meet the
6 costs of adopting special-needs children out of foster care.
7 Although Congress did not restrict the use of the Adoption
8 Assistance funds in the hands of the adoptive parents, it is
9 reasonable to suppose that Congress wanted the parents to use the
10 funds to raise their adoptive children, not to repay their
11 unsecured creditors under a chapter 13 plan. Thus, excluding the
12 Adoption Assistance payments from current monthly income is
13 consistent with the purpose of the SSA.

14 Some of the cases holding that unemployment insurance
15 payments are not excluded rely on the purposes of BAPCPA. They
16 note that, under pre-BAPCPA law, most courts included
17 unemployment compensation in a debtor's income when determining
18 the adequacy of chapter 13 plan payments. They assert that "a
19 court should not assume that Congress intended to deviate from
20 established applications of judicial interpretation unless the
21 statute effects such a change with specificity." In re Gentry,
22 463 B.R. at 530. They conclude that the SSA exclusion should not
23 cover unemployment compensation because pre-BAPCPA decisions
24 included it in the debtor's disposable income. The issue of
25 unemployment benefits is not before us, but we see two flaws in
26 the application of this reasoning to the Adoption Assistance
27 payments.

28 First, the canon does not apply by its terms. The "current

1 monthly income" construct, including the SSA exclusion, did not
2 exist prior to BAPCPA. Therefore, there are no pre-BAPCPA
3 judicial interpretations of the relevant language.

4 Second, the best source of information about Congress'
5 purpose is the words of the statutes it enacts. See Church of
6 Scientology of Cal. v. U.S. Dep't of Justice, 612 F.2d 417, 421
7 (9th Cir. 1979) ("in the vast majority of its legislation
8 Congress does mean what it says and thus the statutory language
9 is normally the best evidence of congressional intent"). It is
10 true that BAPCPA generally made bankruptcy more difficult and
11 expensive for many debtors, but it does not follow that courts
12 must interpret every one of BAPCPA's provisions in that manner,
13 especially where the most natural reading of a particular
14 provision is not consistent with that perceived purpose.

15 2. Remedial legislation

16 The Trustee argues that the "means test" is remedial
17 legislation which must be broadly interpreted in order to
18 effectuate its purpose. This argument rests on a familiar
19 interpretive canon which is often stated but is open to
20 criticism.⁵

21 The canon does not help us because we face a clash between

22
23 ⁵ The first problem with the remedial-statute
24 rule is the difficulty of determining what
25 constitutes a remedial statute. Is any
26 statute **not** remedial? Does any statute **not**
27 seek to remedy an unjust or inconvenient
28 situation? . . . The other problem with the
remedial-statute rule is that identifying
what a "liberal construction" consists of is
impossible The canon is therefore
today either incomprehensible or superfluous.

1 two pieces of "remedial" legislation. The first is BAPCPA, which
2 was meant to remedy the perceived problem of "can-pay" debtors
3 paying too little in bankruptcy. The Trustee argues that the
4 remedial legislation canon should be used to create a broad
5 definition of "current monthly income," and therefore a narrow
6 definition of "benefits received under the Social Security Act."
7 Some courts have accepted this argument in the unemployment
8 insurance context. In re Gentry, 463 B.R. at 530-31. But the
9 SSA is also remedial legislation; Congress meant to remedy the
10 problems faced by people who are indigent, elderly, disabled,
11 abused, etc. Cruz v. Sullivan, 912 F.2d 8, 11 (2d Cir. 1990)
12 ("The [Social Security] Act must be liberally applied, for it is
13 a remedial statute intended to include not exclude."). Thus, the
14 remedial legislation canon supports a broad interpretation of the
15 SSA exclusion.

16 In other words, applying the remedial legislation canon
17 requires us to interpret the SSA exclusion both narrowly and
18 broadly. It leads us nowhere.

19 **3. The "follow-the-money" theory**

20 The Trustee argues that the Debtor does not receive any
21 benefits under the SSA because the Debtor does not receive any
22 funds from the Social Security Administration. Instead, she
23 receives checks from the county government. According to the
24 Trustee, the state, not the Debtor, is the party receiving
25 benefits under the SSA, because it is the state, not the Debtor,
26 that receives direct federal funding. The Trustee argues that,
27 "since the **states receive** the benefit, it is not income that the
28 **debtor receives under the Social Security Act**, but income the

1 **debtor receives from a state** that chooses to set up social
2 service programs." (Emphases in original.)

3 We are not persuaded by the Trustee's "follow the money"
4 argument. If Congress meant what the Trustee says, Congress
5 would have said something like "benefits received **from the**
6 **federal government** under the Social Security Act." But that is
7 not what Congress said. Rather, Congress used broad language
8 which excludes all "benefits received under the Social Security
9 Act." Congress knew that, under many SSA programs, state and
10 local governments cut the benefit checks. Congress also knew how
11 to refer to specific portions of the SSA when it wanted to do so.
12 See, e.g., §§ 362(b)(2)(D), (E), (F), (G); 704(c)(1)(A)(i);
13 1302(d)(1)(A)(i). But in this case, Congress referred to the
14 entire SSA. We must assume that, when Congress referred broadly
15 to the SSA, Congress meant exactly what it said. In re Sorrell,
16 359 B.R. at 183.

17 The "follow the money" argument also produces an irrational
18 result. As we note above, the "current monthly income"
19 construct, of which the SSA exclusion is a part, is meant to help
20 courts distinguish "can-pay" and "can't-pay" debtors and decide
21 how much "can-pay" debtors can pay. The fact that a debtor
22 receives a check from a state or local government, rather than
23 the federal government, has no effect on the debtor's ability to
24 pay. There is no reason to think that Congress intended to
25 require beneficiaries of SSA programs who receive checks from
26 state or local governments to pay more than beneficiaries of SSA
27 programs who receive checks from the federal government.

28 The "follow the money" argument also proves too much. The

1 federal government sometimes hires private contractors to
2 administer federal programs. Medicare is a prominent example;
3 most Medicare benefits are paid by private companies acting as
4 third-party administrators for the federal government. See 42
5 U.S.C.A. § 1395kk-1. But no one could plausibly deny that
6 Medicare is "under the Social Security Act," even though private
7 contractors cut the benefit checks.

8 **4. *Expressio unius est exclusio alterius***

9 The Trustee correctly points out that, when a statute
10 provides for enumerated exceptions, a court cannot create
11 additional exclusions. The principle is of course correct, but
12 it does not apply. The question is not whether the Panel should
13 create a nonstatutory exception to "current monthly income," but
14 rather how the Panel should interpret the existing statutory
15 exclusion for SSA benefits. The *expressio unius* doctrine has
16 nothing to do with the question we must answer.

17 In support of this argument, the Trustee cites Blausey v.
18 U.S. Trustee, 552 F.3d 1124 (9th Cir. 2009). But that decision
19 is not applicable. In that case, the debtor argued that private
20 disability insurance benefits were not "income" for purposes of
21 determining "current monthly income" because they are not taxable
22 under the Internal Revenue Code. The Ninth Circuit rejected this
23 argument for multiple reasons. First, the court pointed out
24 that, under the statutory definition, "current monthly income"
25 includes all income "without regard to whether such income is
26 taxable income." This language makes clear that the Internal
27 Revenue Code's definition of "income" does not apply under the
28 Bankruptcy Code. The court went on to say that the Bankruptcy

1 Code's definition "specifically excludes certain payments, such
2 as Social Security payments," but did not specifically exclude
3 private disability insurance payments, so under familiar rules,
4 the latter payments are included. In this case, there is a
5 specific exclusion for SSA benefits; the only question is how to
6 interpret that exclusion. The *expressio unius* canon does not
7 apply.

8 **5. The effect of state law**

9 The Trustee points out that California has enacted its own
10 law that provides for adoption assistance payments and permits
11 California to receive reimbursement under the SSA. The Trustee
12 argues that, therefore, the "benefits [are] received under" the
13 California law, not under the SSA.

14 The unstated assumption that underlies this argument is
15 that, to be excluded, the benefits must be received **only** under
16 the SSA, and not also under state law. If this is what Congress
17 meant, Congress could and would have included the word "only" in
18 the relevant phrase.

19 The argument also does not account for the extensive federal
20 regulation and supervision of the state's program. In order to
21 receive federal payments, the state must (among other things)
22 create a plan meeting extensive and detailed requirements, secure
23 federal approval of that plan, provide periodic reports to the
24 federal government, and submit to periodic audits. See, e.g., 42
25 U.S.C. § 671. The extensive and intrusive role of the federal
26 government in the Adoption Assistance program means that the
27 Adoption Assistance benefits are "received under" the SSA, even
28 if they are also "received under" state law.

1 Nothing in the words of the statute suggests that the SSA
2 must be the exclusive source of authority for the benefits
3 program. The fact that Congress referred to the entire SSA,
4 knowing that most SSA programs have some degree of state
5 involvement, suggests the opposite.

6 **6. The effect of § 1325(b)(2)**

7 The Trustee points out that, in a chapter 13 case,
8 “‘disposable income’ means current monthly income received by the
9 debtor (other than child support payments, foster care payments,
10 or disability payments for a dependent child made in accordance
11 with applicable nonbankruptcy law to the extent reasonably
12 necessary to be expended for such child)” The Trustee
13 argues that we must avoid a construction of § 101(10A)(B) that
14 would render any part of § 1325(b)(2) redundant. Therefore,
15 according to the Trustee, we must interpret “benefits received
16 under the Social Security Act” in a way that excludes all “foster
17 care payments.” We disagree.

18 First, in chapter 13 cases, any overlap between the SSA
19 exclusion and § 1325(b)(2) is only partial, and, in fact, the
20 exclusions appear complementary. “Child support payments, foster
21 care payments, or disability payments for a dependent child”
22 could come from a program operated by a state or local government
23 independent of the SSA, and might include payments from
24 nongovernmental bodies, such as charities or private individuals.
25 Therefore, our interpretation of the SSA exclusion does not
26 render § 1325(b)(2) superfluous. See generally Schwartz v.
27 United States (In re Schwartz), 954 F.2d 569, 574 (9th Cir. 1992)
28 (“Although there are circumstances where section 362 overlaps

1 section 549 and renders it unnecessary, this overlap falls far
2 short of rendering section 549 meaningless."); see also Carson
3 Harbor Vill., Ltd. v. Unocal Corp., 270 F.3d 863, 884 (9th Cir.
4 2001) (The court acknowledged that, "despite their overlap[,]"
5 the term "disposal" did not render the term "placement"
6 superfluous.).

7 Second, the definition of "current monthly income" in
8 § 101(10A)(B) applies to chapter 7 cases as well as chapter 13
9 cases. Section 707(b) provides (in brief summary) that the
10 bankruptcy court can dismiss a chapter 7 case as abusive if the
11 debtor's income exceeds the applicable median income and the
12 debtor's "current monthly income" (reduced by certain expenses)
13 exceeds a threshold. Chapter 7 does not contain the SSA
14 exclusion adopted in § 1325(b)(2). Therefore, even if there were
15 some overlap between §§ 101(10A)(B) and 1325(b)(2), it would be
16 incorrect to narrow § 101(10A)(B).

17 CONCLUSION

18 For the reasons set forth above, we hold that the Adoption
19 Assistance benefits the Debtor receives are covered by the SSA
20 exclusion. We REVERSE the bankruptcy court's order and REMAND
21 for further proceedings consistent with this opinion.
22
23
24

25 Dissent begins on next page.
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27
28

1 Jury, Bankruptcy Judge, Dissenting:

2
3 To answer the narrow question presented to the Panel in this
4 appeal, the majority, applying its version of statutory
5 construction, has swept a broad, inclusive brush across the
6 landscape of exclusions from current monthly income for the
7 purposes of a chapter 13 means test analysis. As highlighted by
8 the majority's recitation of the myriad of benefit programs
9 "provided by" the Social Security Act (SSA) - a "sprawling
10 statute . . . providing for many benefit programs, some of which
11 are familiar and others obscure" - this approach would exclude
12 from the monies which must be committed to pay chapter 13
13 creditors any funds remotely connected to the SSA and the federal
14 government - so remotely connected that it would exclude from
15 disposable income payments to a debtor even though not one dollar
16 came from the federal government and most people would have no
17 idea the SSA had any connection to the payments received.

18 I submit that this outcome was not what Congress intended,
19 based on statutory construction, the purposes of the means test,
20 and common sense.

21 Section 101(10A)(B) defines current monthly income in
22 pertinent part as:

23 . . . any amount paid by any entity other than the debtor (or
24 in a joint case the debtor and the debtor's spouse), on a
25 regular basis for the household expenses of the debtor or
26 the debtor's dependents (and in a joint case the debtor's
spouse if not otherwise a dependent), but **excludes benefits
received under the Social Security Act**

27 11 U.S.C. § 101(10A)(B) (emphasis added). As noted by the
28 majority, the Panel's task is to determine whether Adoption

1 Assistance payments are included in the phrase "benefits received
2 under the Social Security Act." At least two interpretations of
3 § 101(10A)(B) have developed since the provision was added to the
4 Bankruptcy Code as part of the Bankruptcy Abuse Prevention and
5 Consumer Protection Act of 2005 ("BAPCPA"). The majority has
6 joined the trustee (and rejected the Debtor's argument) in
7 concluding that the phrase is ambiguous, with which I agree, so I
8 need not recite the varying interpretations of the words in order
9 to establish that point. However, I am not alone in construing
10 this ambiguity narrowly; other courts have reached similar
11 conclusions.

12 Adoption Assistance payments are only excluded from current
13 monthly income if they are properly characterized as benefits
14 received under the Social Security Act. § 101(10A)(B). To be
15 "benefits received under," the benefits must more than "merely
16 'relate to' or be 'envisioned by' or 'induced by' the Social
17 Security Act[,]" they must be **received under** the SSA. In re
18 Kucharz, 418 B.R. 635, 641 (Bankr. C.D. Ill. 2009).

19 Multiple words in the phrase are ambiguous. Most discussed
20 in the cases and by the parties is the term "under." Webster's
21 Third New International Dictionary defines "under," in the
22 context as used in § 101(10A)(B), as "required by" or "in
23 accordance with." Webster's Third New International Dictionary
24 1143 (1993). Considering only this definition of "under", a
25 benefit "received under" the Social Security Act may refer to a
26 direct benefit made by the federal government or it may refer to
27 an indirect benefit made by a state-run program.

28

1 Focusing the statutory construction analysis just on the
2 term "under", however, presents an incomplete view. The word
3 "under" directly follows the word "received" and in my view the
4 words must be read together. Simply defined, "received" means
5 "to come into possession of." Id. at 608. Therefore, read
6 together, "received under" means "to come into possession of as
7 required by or in accordance with" the SSA. This definition
8 certainly suggests that unless the Social Security Administration
9 is directly involved with the payment of money to the Debtor and
10 the determination of who is entitled to the funds, the benefits
11 are not "received under" the SSA. The majority, in its statutory
12 construction analysis, only considers each word in isolation,
13 tossing off the word "received"¹ without connecting it at all to
14 "under the Social Security Act." As seen in my analysis below, I
15 consider this isolation view as error because it ignores the
16 source of the funds and how the Debtor may qualify for them.

17 Everyone agreeing that the statute is ambiguous, and that
18 the words collectively or in isolation can have differing
19 meanings, I now turn, as I must, to the statute's context within
20 the overall statutory framework. When a statute is ambiguous,
21 the Court may ascertain the legislative intent by analyzing the
22 statute's legislative history while construing the statute in
23 accordance with logic as well as public policy. Leavitt v.
24 Alexander (In re Alexander), 472 B.R. 815, 822 (9th Cir. BAP
25 2012).

27 ¹ "The word 'received,' at least in isolation, also
28 presents no difficulty. There is no question that the Debtor
'receives' the Adoption Assistance payments." Majority Opinion
at 8.

1 The legislative history of BAPCPA does not provide much
2 assistance in determining Congress's intent, as the "information
3 on the final version is sparse" and "inconclusive." In re Baden,
4 396 B.R. 617, 622 (Bankr. M.D. Pa. 2008); In re Kucharz, 418 B.R.
5 at 640; see generally H.R. 250, 105th Cong. (1997).² However, it
6 established that Congress had two primary concerns when enacting
7 BAPCPA. The first is ensuring that the individuals who have the
8 ability to pay their debts in fact do pay. See Tousey v. Neary
9 (In re Ross-Tousey), 549 F.3d 1148, 1151 (7th Cir. 2008);
10 see also In re Baden, 369 B.R. at 622. The second was to
11 "protect[] education and retirement savings from being drained by
12 creditors." In re Baden, 396 B.R. at 622 (citing H.R.Rep No.
13 109-31(I), at 2-3, 115 (2005), U.S. Code Cong. & Admin. News
14 2005, pp. 88-89, 177-78; 151 Cong. Rec. S2470 (Mar. 10, 2005);
15 151 Cong. Rec. S1726 (Feb. 28, 2005)).

16 Excluding Adoption Assistance payments from current monthly
17 income is not consistent with these goals. As stated,
18 § 101(10A)(A) defines current monthly income as "the average
19 monthly income from all sources that the debtor receives without
20 regard to whether such income is taxable income." Then,
21 § 101(10A)(B) specifically excludes three types of payments from
22 current monthly income: benefits received under the Social
23 Security Act, payments to victims of war crimes or crimes against
24 humanity on account of their status, and payments to victims of
25 international terrorism. That Congress specifically excluded
26 only these three specific sources of income signals an intent to
27

28 ² There is no direct reference to the Social Security
exclusion at all in the legislative history.

1 keep the exclusions narrow. Construing the exceptions in the
2 broadest terms is inconsistent with the purpose of ensuring that
3 the individuals who have the ability to pay their debts in fact
4 do pay. The majority's interpretation of § 101(10A) creates an
5 exception that swallows the rule; it opens the door for
6 exclusions where a federal grant given to a state, no matter how
7 small a percentage of what a debtor receives, would cause an
8 entire category of income to be excluded.

9 Excluding Adoption Assistance payments also does not meet
10 the second stated purpose - protecting **retirement** savings from
11 being drained by creditors. Most of us think of Social Security
12 payments as retirement income - i.e., what a retired person will
13 need for basic living expenses. Adoption Assistance payments
14 hardly fit that use and it cannot be argued they meet that stated
15 purpose. The logical conclusion to draw from the legislative
16 history is that Congress wanted to protect Social Security
17 retirement benefits (theoretically, paid in by debtors from their
18 lifetime earning careers) from the means test but otherwise
19 sought to maximize the types of income to be used to pay
20 creditors.

21 Although no reported cases address whether Adoption
22 Assistance payments are a benefit under the SSA, there have been
23 a handful of cases that have addressed whether unemployment
24 compensation is one of the benefits received under the Act. I
25 recognize a split in authority on the issue. On one hand, In re
26 Sorrell, 359 B.R. 167 (Bankr. S.D. Ohio 2007), and In re Munger,
27 370 B.R. 21 (Bankr. D. Mass. 2007), have held that unemployment
28 compensation is one of the benefits received under the SSA.

1 These courts reason that although unemployment compensation is
2 administered through a number of different state-run programs,
3 the common funding source of all unemployment compensation is the
4 SSA. They take the position that § 101(10A)(B) does not make a
5 distinction between direct and indirect benefits. See In re
6 Sorrell, 359 B.R. at 181; In re Munger, 370 B.R. at 23.

7 On the other hand, In re Baden and In re Kucharz have held
8 that unemployment compensation is not one of the benefits
9 received under the SSA. In so holding, both courts take the
10 position that unemployment compensation is governed by state law
11 and administered pursuant to state-run agencies. They thus
12 conclude that unemployment compensation is not paid under the
13 SSA; rather, it is merely an indirect benefit. See In re
14 Kucharz, 418 B.R. at 643; In re Baden, 396 B.R. at 623. As such,
15 courts on either side of the split ultimately base their
16 respective positions on the source of the funds.

17 Although these cases are distinguishable since they address
18 a different governmental benefit, i.e., unemployment compensation
19 vs. Adoption Assistance payments, the reasoning used by the
20 courts is a helpful consideration in my determination that
21 Adoption Assistance payments are not excluded from current
22 monthly income.

23 I find the reasoning in In re Kucharz persuasive. After
24 giving an in depth analysis of the origins of the SSA and
25 unemployment compensation, the Kucharz court concluded that
26 "unemployment insurance claims are submitted to, evaluated and
27 paid or denied by state officials implementing state law," and
28 administered by a state agency that was specially created to

1 handle unemployment compensation, independent of the SSA. Id. at
2 639. The unemployment compensation benefits are therefore not
3 received under the SSA. This reasoning is compelling, and the
4 source of funds for the benefits is strikingly similar to the
5 case at hand. As will be further explained below, the Adoption
6 Assistance payments are paid to the Debtor as required by state
7 law, not by the SSA; thus, like unemployment compensation, the
8 Debtor does not receive Adoption Assistance payments under the
9 Act.

10 As the majority highlights, the Social Security Act, 42
11 U.S.C. §§ 402-34, speaks of various programs. Whereas some
12 payments made as part of the benefit programs come directly to
13 the recipient from the Social Security Administration, for some
14 of the programs, the Social Security Administration contributes
15 funds to state-run programs which combine those funds with monies
16 from other sources to provide benefits to the recipients. The
17 Ninth Circuit in Drummond v Welsh (In re Welsh), 711 F.3d 1120
18 (9th Cir. 2013), held that payments made by the Social Security
19 Administration are excluded from the computation of current
20 monthly income, arguably because they are solely sourced in
21 Social Security funds and paid by that agency directly to the
22 recipient. Adoption Assistance payments are not such payments, as
23 money is paid to the adoptive parents by the state-run programs.
24 The State of California, like all other States that participate,
25 accepts funds from the federal government under Title IV-E of the
26 Social Security Act, but fifty percent of the funding also comes
27 from state and local sources. California has created a separate
28 statutory scheme to comply with the federal requirements. As

1 such, the administrative agency which the State has designated to
2 administer the Adoption Assistance program is the California
3 Department of Social Services. See Cal. Wel. & Inst. Code
4 § 16121. In order to receive funding, each adoptive parent must
5 enter into a written agreement with the State of California. 42
6 U.S.C. §§ 673(a)(1) & 675(3). The federal government is not a
7 party to these contracts.

8 The simple fact is that Adoption Assistance payments are
9 paid to the Debtor as required by state law, not by the SSA, nor
10 are they paid by the Social Security Administration.
11 Furthermore, the qualifications to receive such funds are
12 determined by state statutes and regulations, and the State of
13 California manages and staffs the program. As such, although the
14 SSA may be a source of funds which make up part of the payment,
15 the Adoption Assistance payments are **received** from the State of
16 California and its corresponding state agency. Therefore, I
17 conclude that Debtor does not *receive* the Adoption Assistance
18 payment under the SSA, but under the California Welfare and
19 Institutions Code.

20 Concluding that Congress could not have intended the broad
21 exclusions from chapter 13 disposable income that the majority
22 proclaims, I respectfully dissent.