SUMMARY OF ABSOLUTE PRIORITY RULE DECISIONS IN INDIVIDUAL CHAPTER 11 CASES

Case	View	Approach/Rationale	Statutory Language	Legis. History	Intent of BAPCPA	Consequences
In re Tegeder, 369 B.R. 477 (Bankr. D. Neb. May 23, 2007)	Broad	Finding no reported decisions, Court relies on several treatises, including Judge Drake's Bankruptcy Practice for the General Practitioner § 12:27 n. 28, as of Sep. 2006, and concludes that BAPCPA repealed APR for individuals because §1115 references §541.	Unambiguous	Not Discussed	Not Discussed	Not Discussed
In re Roedemeier, 374 B.R. 264 (Bankr. D. Kan. Aug. 16, 2007)	Broad	Recognizes possibility of two interpretations; seeks, therefore, to determine Congress' intent; mostly relies on "Ch. 11→Ch. 13" argument (i.e. Congress was trying to make Ch. 11 similar to Ch. 13 for individuals and, thus, intended to repeal APR); cites *Tegeder* approvingly.	Ambiguous	Not Discussed	Broad view helps explain the reason for a number of the BAPCPA changes, including APR exception: Allow Ch. 11 to function much like Ch. 13; notes that many of the changes apply to individuals only and are drawn from the Ch. 13 model; lists the changes: §§1115; 1123(a)(8); 1129(b)(2)(B)(ii); 1129(a)(15); 1141(d)(5); and 1127(e).	Narrow reading makes it difficult to see the purpose of the other, related amendments under BAPCPA.
In re Johnson, 402 B.R. 851 (Bankr. N.D. Ind. Mar. 4, 2009)	Broad	In deciding another BAPCPA intent issue, the Court summarizes various BAPCPA changes that made, according to one commentator, Ch. 11 more like "big Chapter 13" cases for individuals; *in dicta*, without analysis or support, Court concludes that BAPCPA repealed APR for individuals as long as debtor satisfies disposable income test of §1325(b)(2); also points out that certain differences between Ch. 11 and Ch. 13 remain.	No Finding	Not Discussed	In *dicta* on the APR issue, Court lists "Ch. 11→Ch. 13" changes: • Property of estate now includes post-petition property (§1115 v. §1306) • Post-petition earnings and income must be used to fund plan to extent necessary (§1123(a)(8) v. §1322(a)(1) • Substantial consummation no longer a bar to modification of confirmed plan (§1127(e) v. §1329(a)) • Individual must wait until plan payments are complete before receiving a discharge	Not Discussed

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					(§1141(d)(5) v. §1328(a))	
In re Shat, 424 B.R. 854 (Bankr. D. Nev. Feb. 22, 2010)	Broad	Focuses on meaning of "property included in the estate under" §1115 in §1129(b)(2)(B)(ii); relies on the "relatively straightforward" language of statute and the "Ch. 11→Ch. 13"-type changes to conclude that the narrow view is the better view; other than perhaps *Friedman*, *Shat* is the broad view case most discussed by the narrow view courts.	Ambiguous	Discussed extensively; concludes there is no discussion of policy/ purpose behind BAPCPA changes to APR.	Concludes that purpose was to adopt for individual Ch. 11 debtors as much of Ch. 13 as possible to prevent debtors from an easy escape from means testing; outlines the changes: • Redefining property of the estate via §1115 (similar to what is provided in §1306) • Changing mandatory requirements of plan via §1123(a)(8) (to resemble §1322(a)(1)) • Addition of §1325(b)'s disposable income test via §1129(a)(15) • Delay of discharge until completion of plan payments (similar to §1328(a)) • Introduction of the hardship discharge via §1141(d)(5) (similar to §1328(b)) • Addition of §1127(e) to permit modification after substantial consummation (similar to §1329(a)) Emphasizes that the statutory language must be viewed in the context of the Code as a whole. Concludes that, given the "relatively straightforward reading of the statute supporting the broader reading and the general rehabilitative aim" of Ch. 11, the "in addition to the property specified in section 541"	Acknowledges that broad view reads APR out of individual Ch. 11 cases in a "convoluted manner—arguably indicative that Congress did not fully appreciate the effect of the language it chose." However, it also points out that APR, even if it has a long history, is not "sacrosanct"—Ch. 13 doesn't have an APR and most of the BAPCPA changes were designed to adapt various Ch. 13 provisions to fit Ch. 11. Concludes that broad view saves APR from an "almost trivial reading" because under narrow view "only the value of aggregate postpetition earnings payable after the fifth anniversary of plan confirmation" is protected.

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Case	View	Approach/Rationale	Statutory Language	Legis. History	Intent of BAPCPA	Consequences
					language in §1115 absorbs and then supersedes §541 for individual Ch. 11 cases. Concludes that its reading is consistent with "Ch. 11→Ch. 13" changes listed above and that such changes are meaningless under the narrow view. In support, the Court summarizes prior broad view cases (*Bullard*, *Tegeder*, and *Roedemeier*).	
In re Gbadebo, 431 B.R. 222 (Bankr. N.D. Cal. Apr. 16, 2010)	Narrow	Cites broad view cases: *Tegeder*, *Roedemeier*, and *Shat*; discusses *Shat* extensively, but disagrees; §541 reference in §1115 is meant to avoid §1115 superseding §541, such that APR exception only applies to property *added* by §1115; rejects "Ch. 11→Ch. 13" argument; claims that its conclusion is based on the language and the Code as a whole.	Unambiguous	Purpose of BAPCPA: ensure debtors who can pay a portion of their debts do so.	"Ch. 11→Ch. 13" changes do not show that Congress meant to repeal APR for individuals, especially given that many of them impose greater burdens on debtors, not less burdens. As a whole, BAPCPA was not meant to enhance the "fresh start."	Disagrees with the argument that the amendment makes confirmation impossible for individual debtors in Ch. 11. They can confirm via consent, especially if they offer a reasonable dividend that exceeds the Ch. 7 payout.
In re Mullins, 435 B.R. 352 (Bankr. W.D. Va. Jun. 22, 2010)	Narrow	Acknowledges competing cases, but concludes that *Gbadebo* is most consistent w/ statutory language and broad view cases have "strained to find ambiguity" to support "Ch.11→Ch. 13" argument. in the statute in	Unambiguous	Not Discussed	If Congress has intended on repealing APR, then it would have done so explicitly. Concluded that the "chief problem" addressed by Congress was that "pre-BAPCPA cases for individual debtors whose	Acknowledges that the decision might make Ch. 11 less attractive or desirable for similarly-situated debtors, but suggests that a policy of providing creditor protection when a debtor proposes to retain significant property,

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Case	View	Approach/Rationale	Statutory Language	Legis. History	Intent of BAPCPA	Consequences
		order to arrive at a conclusion which is more in keeping with the broader intent of certain BAPCPA provisions intended to make" Ch. 11 cases more like Ch. 13 cases.			principal business endeavor was the earned income which their personal efforts generated were problematic for chapter 11 debtors because their post-petition earnings were not deemed to be property of the bankruptcy estate. The new statutory language quite clearly changed that prior rule."	with little guarantees for creditors, is not unreasonable. Although debtor's proposal was not an unreasonable one, the Court suggests that it is more appropriate for the debtor to negotiate consent.
In re Steedley, 2010 WL 3528599 (Bankr. S.D. Ga. Aug. 27, 2010)	Narrow	Relies on, and more or less adopts, *Gbadebo.*	Unambiguous	Not Discussed	Agrees with *Gbadebo*, concluding that nothing in the plain language of statute suggests that §1115 subsumes §541; rather, §541 applies in all Ch. 11 cases; therefore, because §1115 *adds* property to the estate, it is *that* property that an individual debtor may retain under APR.	Not discussed.
In re Gelin, 437 B.R. 435 (Bankr. M.D. Fl. Sep. 29, 2010)	Narrow	Focuses on meaning of "property included in the estate under § 1115"; acknowledges both views but disagrees with broad view cases, including *Shat*; relies on *Gbadebo* instead; concludes that narrow approach is more persuasive and broad approach is convoluted, complicated, and forced.	Ambiguous	Not helpful; silent on whether APR repealed; and ambiguous in its own right.	Adopts *Gbadebo*: (1) far more likely that §1115 *adds* to §541 (it doesn't subsume it) and (2) BAPCPA not intended to make Ch. 11 like Ch. 13 (i.e. easier). Concluded that the approaches in *Shat*, *Roedemeier*, and *Tegeder* to eliminating APR could not be more convoluted. If Congress had intended on repealing the APR, then it would have done so explicitly.	Narrow view doesn't make §1115 meaningless: §1115 brings post-petition property into estate and, thus, subjects it to automatic stay and Ch. 11 confirmation tests. Narrow view doesn't make language added to APR meaningless: individuals can now retain post-petition assets despite APR. If debtors want to retain pre-petition property, they must obtain consent or pay in full.
In re Karlovich, 456 B.R. 677 (Bankr. S.D. Cal. Nov. 16, 2010)	Narrow	Disagrees w/ broad cases; relies on *Gbadebo*; concludes that language is unambiguous, showing	Unambiguous	Not Discussed	Purpose of the §1129 change was to make APR the same for individuals and non-individuals, as it was pre-BAPCPA; it merely	Not Discussed

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Case	View	Approach/Rationale	Statutory Language	Legis. History	Intent of BAPCPA	Consequences
		Congress' intent to keep APR the same as it was pre-BAPCPA.			balances out the §1115 change. If Congress has intended on repealing the APR, then it would have done so explicitly. Rejects "Ch. 11→Ch. 13" argument: If Congress had wanted to make them similar, it would have increased or eliminated the Ch. 13 debt thresholds. .	
In re Stephens, 445 B.R. 816 (Bankr. S.D. Tex. Feb. 22, 2011)	Narrow	Acknowledges the split; collects the cases on both sides; and chooses and agrees w/ the narrow side (i.e. *Gbadebo*, *Mullins*, *Gelin*, and *Karlovich*).	No Finding	No Discussion	Under broad view, the "in addition to the property specified in section 541" language from §1115(a) would "render surplusage" the "all property of the kind specified in section 541" language from in §1115(a)(1). Similarly, the broad view also renders §541 surplusage.	Not Discussed
In re Walsh, 447 B.R. 45 (Bankr. D. Mass. Mar. 9, 2011)	Narrow	References *Shat* but disagrees with it; focus of issue is the "property included in the estate under section 1115" language; adopts *Gbadebo* (and cites approvingly other similar narrow view cases).	Unambiguous	Not Discussed	Relying on *Gbadebo*, Court does not discuss intent of BAPCPA. Rather, it focuses exclusively on statutory language, concluding that §1115 merely adds to §541, such that only the property added by §1115 is exempt from APR.	Not Discussed
In re Draiman, 450 B.R. 777 (Bankr. N.D. Ill. Apr. 19, 2011)	Narrow	Collects the cases; agrees w/ narrow cases starting w/ *Gbadebo* (including *Mullins*, *Gelin*, *Steedley*, and *Karlovich*); §1115 adds to §541; it doesn't subsume/supersede it.	Unambiguous	Concludes there is no relevant legis. history showing intent to repeal APR.	Some BAPCPA changes were intended to make Ch. 11 more like Ch. 13, but that "purpose is not evident with respect to" APR.	Not Discussed

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Case	View	Approach/Rationale	Statutory Language	Legis. History	Intent of BAPCPA	Consequences
In re Kamell, 451 B.R. 505 (Bankr. C.D. Cal. May 4, 2011)	Narrow	Acknowledges both views and cites the cases; uses a "holistic," context-based statutory approach; finds language and legis. history, unhelpful; viewing APR as a mainstay of Ch. 11, it finds no clear intent by Congress to repeal it (essentially, a "no repeal by implication"-style case).	Ambiguous	Legislative history is scarce, equivocal, and unhelpful.	Addresses "Ch. 11→Ch. 13" argument and lists examples of the conforming changes; however, concludes it "is a bridge too far" to conclude that intent was to make Ch. 11 like Ch. 13: (1) if Congress wanted to make Ch. 11 and Ch. 13 similar, then it could have increased Ch. 13 debt thresholds in Ch. 13 and (2) purpose of BAPCPA was "to tighten, not loosen" the ability of debtors to avoid paying creditors. If Congress has intended on repealing APR, then it would have done so explicitly, especially given that APR is a mainstay going back to 1930s (or earlier). Equally plausible that Congress wanted to make the APR similar for individuals and entities by (i) including post-petition income in the estate but (ii) avoiding, via the language added to APR, the "untenable situation that an individual cannot keep *any* of his post-petition earnings for the entire period of his plan nor any pre-petition property if he must resort to cram down." Concludes that Congress was attempting to balance the benefits and hardships in cram down for individual Ch. 11 debtors.	Doesn't agree that the narrow view makes Ch. 11 unworkable for individuals because individuals can still negotiate acceptance, pay dissenters in full, or contribute new value.
In re Maharaj, 449 B.R. 484 (Bankr. E.D. Va. May 9, 2011)	Narrow	Acknowledges both views; cites the cases; adopts *Mullins* and the like as being more consistent w/	No explicit finding (but adopts *Mullins*, which found	Not Discussed	Addresses "Ch. 11→Ch.13" argument: If Congress intended to make them similar, it would have done so explicitly. Also agrees	Recognizes analysis not "free from doubt"; sympathizes w/ debtor, who proposed a payout greater than available

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Case	View	Approach/Rationale	Statutory Language	Legis. History	Intent of BAPCPA	Consequences
		"structure of the changes made by BAPCPA"	the language unambiguous)		w/ *Karlovich*: Congress could have simply increased or eliminated Ch. 13 debt thresholds.	in a Ch. 7, but was not surprised that creditors objected.
In re Lindsey, 453 B.R. 886 (Bankr. E.D. Tenn. Aug. 5, 2011)	Narrow	One of the more extensive decisions; detailed overview of statutory construction rules: (1) start w/ plain language; (2) only consider intent if ambiguous or if it is facially clear, but would lead to absurd/inconsistent results; acknowledges both views; cites broad/narrow view cases, w/ extensive discussions of *Shat* and *Kamell*, in particular; chooses narrow view after weighing the cases; extensive analysis of the interplay between the §1115 and §1129(b) language, concluding that §1115 merely supplements, and does not supplant §541; therefore, it's more logical to conclude that only post-petition income/property are excepted from APR; bolsters its analysis with four factors (see across).	Ambiguous	Legislative history is sparse, at best, and "provides no real assistance."	Proper decision hinges on what Congress meant by "included in the estate under §1115." Concludes, by analyzing the language (similar to prior narrow cases), that §1115 only supplements §541, such that Congress only intended for post-petition earnings and property be excepted from APR. Points to 4 supporting factors: • Narrow view in line with purpose of BAPCPA: restore personal responsibility and integrity to the system and ensure that the system is fair for both sides (quotes 2005 WL 832198 for legis. hist.) • Having creditors bear losses from inability to collect from debtors hurts the economy. • Without BAPCPA, there are loopholes and incentives that allow, and even encourage, bad faith, abusive filings. • Some debtors can repay a significant portion of their debts but, pre-BAPCPA, there was no clear mandate that they do so; there is now. In light of such factors, it's not reasonable to assume that Congress intended to repeal APR,	See discussion of the 4 factors, wherein Court discusses extensively the policy considerations behind BAPCPA.

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					on the one hand, and to decrease liquidations and increase repayment, on the other hand. Agrees with common narrow view argument that Congress would have repealed APR explicitly if it intended to repeal it.	
SPCP Group, LLC v. Biggins, 465 B.R. 316 (M.D. Fla. Sep. 21, 2011)	Broad	Acknowledges the 2 views by comparing *Shat* and *Gelin*; departs from both, concluding that language is unambiguous, such that it's not necessary to guess what Congress meant; concludes that the broad approach is correct because it's clear under §1115 that property of the estate includes pre- and post-petition property; therefore, APR does not apply in individual cases.	Unambiguous	Not Discussed	Not Discussed (as the Court concluded that its inquiry must stop upon determining that the meaning of the statute is clear) **But Note**: Court changed its mind in *In re Martin* (see below) in light of recent Circuit decisions adopting narrow approach.	Not Discussed
In re Borton, 2011 WL 5439285 (Bankr. D. Idaho Nov. 9, 2011)	Narrow	Acknowledges both views; cites competing cases; sides w/ narrow view using a case comparison approach.	Unambiguous	Not Discussed	Not discussed	Not discussed
In re Tucker, 2011 WL 5926757 (Bankr. D. Or. Nov. 28, 2011)	Narrow	Acknowledges both views; cites competing cases; adopts *Karlovich* with little explanation.	Unambiguous	Not discussed	As per *Karlovich*, §1115 puts individuals in the "same position as other chapter 11 debtors" with respect to the APR.	Not discussed
Friedman v. P + P, LLC (In re Friedman), 466 B.R.	Broad	Begins w/ history of APR, emphasizing it was not	Unambiguous	Not very helpful; pretty limited; the	Relies primarily on a "plain-meaning" interpretation of the	See BAPCPA column.

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471 (9th Cir. B.A.P. Mar. 19, 2012)		codified until '78, it's not labeled as such in the Code, it's never been absolute; and courts have always viewed it w/ common sense to facilitate goal of Code; even if words have alternative meanings, that doesn't mean ambiguities arise; recites rules of construction and turns to statutory language; concludes that property "included" in estate under §1115 includes §541 property as well as post-petition property added by §1115; finds support for "plain meaning" view in other plan confirmation requirements (disposable income requirement; best interests of creditors test; and delay of discharge pending plan payments); addresses dissent; addresses other matters in support (legislative history, congressional intent, and other views) (see column across); but see dissent by Judge Jury. *Also note: It is often pointed out that Friedman was only briefed/argued by debtor and a supporting amicus brief, without the narrow view being advocated.*		Code itself is a better guide; L.H., discussions of congressional intent, and other speculations aren't very helpful and amount to "titanic effort to frame [] outcomes on what may be a very weak universe of original sources," when Code itself is best guide.	statutory language in §1115 and §1120(b)(2)(B)(ii), concluding that §1115 includes §541 property as well as the property added for individual debtors in §1115. Tests its plain-meaning interpretation against rest of Ch. 11, concluding that (i) there are no anomalies, inconsistencies, or conflicts created by its view and (ii) the rest of Ch. 11 accords with its view (e.g. new disposable income requirement, best interests of creditors test, and delay of discharge pending completion of plan payments). Illogical to impose disposable income requirement and then "remove the debtor's means of production of debtor's disposable income by maintaining" the APR. With respect to the dissent's argument that broad view makes §541 superfluous, Court argues that §1115 mirrors §1306 but no one ever argued that §1306 renders §541 superfluous. To do otherwise would "create an indefensible discontinuity between § 1115 and § 1306." Ultimately, "included" isn't a word of limitation, as dispute over "included"/"includes" arises from "misinterpretation of the words." Cites *Gelin*, *Tegeder*, and *Shat*. Reiterates "Ch. 11→Ch. 13"-type	

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					changes make confirmation more difficult for individuals; in fact, just as in Ch. 13, disposable income requirement ensures debtor will dedicate all of his disposable income for designated period (at least 5 years). Disagrees w/ procedural "anomaly" cited by *Gbadebo*, disagreeing w/ idea that repealing APR means debtors will solicit votes they can then ignore. Specifically, if the class votes "yes," then §1129(a)(8) is satisfied. If the class votes "no," then vote is not ignored: debtor must either pay in full (§1129(a)(15)(A)) or satisfy the disposable income requirement (over 5 yrs or life of plan under §1129(a)(15)(B)) and be fair and equitable under §1129(b)(1). In short, the Court concludes that Congress intended that the disposable income requirement trump the APR in individual Ch. 11 cases.	
Friedman v. P + P, LLC (In re Friedman), 466 B.R. 471 (9th Cir. B.A.P. Mar. 19, 2012) **Judge Jury's Dissent**		In her extensive dissent, Judge Jury criticized the majority for its "simplistic outcome," "strained reading" of the statute, and "result-driven approach." Concludes that majority bases its "simplistic outcome" on "conviction" that Congress intended to	Ambiguous		Argues that majority lost sight of 2 important policies: (1) striking balance b/w debtor's interest in reorganizing and creditor's interest in maximizing estate and (2) enhancing return to creditors, as intended by BAPCPA. Disagrees w/ majority that Congress intended disposable income requirement in	Argues debtor can still retain *something* under narrow view, and cites to the auto loan payment example from *Lively* (see discussion above). Disagrees that narrow view makes confirmation impossible: they can proceed via consent, pay creditors in full or comply w/ APR—all of

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		make Ch. 11 like Ch. 13. Concluded that the majority's analysis of BAPCPA violated the rules of statutory construction, including the rule that disfavors interpretations that render language superfluous, produce absurd or bizarre results, or are inconsistent with the intent of the statute. After reciting construction rules and an extensive analysis of the language, concludes language isn't plain at all; §1115 merely adds to the estate (such that §1115 does not subsume §541 and APR exception is limited to post-petition income/property); this avoids rendering others parts of Code superfluous; citing *Kamell*, argues broad view makes §1129(b)(2)(B)(i) absurd. At bottom, something as significant as APR should only be repealed if there is a clear expression of Congressional intent.			§1129(a)(15) to trump APR, pointing out that §1129(a)(15) only applies when unsecured creditor objects to confirmation. Argues that majority relies exclusively on literal meaning of statute while ignoring its purpose, rejecting the "Ch. 11→Ch.13" argument: some of the changes might make them similar, but they aren't sufficient to conclude that Congress intended to repeal APR, particularly given Congress wanted debtors to pay more, not less, after BAPCPA. Concludes that broad view throws Ch. 11 out of balance and permits debtor to retain property while disenfranchising the votes of unsecured creditors. Individual Ch. 11 debtors are not just Ch. 13 debtors w/ larger debts: they get to continue to possess their property and have powers of a trustee. In exchange, Ch. 11 gives creditors protection from debtor retaining everything. APR has been embedded in bankruptcy for many years; therefore, courts should be cautious in finding an exception that Congress is not clear on.	the options debtors had before BAPCPA. Just because result is harsh does not mean court can read words into the statute.
In re Lively, 467 B.R. 884 (Bankr. S.D. Tex. Mar. 21, 2012)	Narrow	Issues memorandum certifying its denial of confirmation (see *In re Lively*, 2011 WL 6936363 (Bankr. S.D. Tex. 2011),	Unambiguous	Not discussed	Narrow approach doesn't produce absurd results and fits in the overarching statutory scheme.	Narrow view doesn't make §1129 exception trivial (uses an example of downsizing an expense, post-confirmation, with no increase in disposable

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		attached to certification; collects cases; emphasizes (but disagrees with) *Shat*.				income, such that debtor, not creditors, retain the benefit of the downsizing).
In re Arnold, 471 B.R. 578 (Bankr. C.D. Cal. May 17, 2012)	Narrow	Arguably the most thorough and extensive of the narrow view cases; concludes that *Friedman*, as a BAP decision, is not binding; provides detailed overview of history/purpose of APR, w/ emphasis on connection b/w APR, consent, and cramdown in bankruptcy; starts w/ statutory approach (w/ an overview of construction rules, similar to those summarized above); agrees w/ *Lindsey* that it's "axiomatic" that the language is ambiguous; *extensive*, pages-long grammatical analysis, which concludes that §1115 adds to §541 (and doesn't subsume it) and that broad view renders §541 superfluous (in violation of rules of construction); chooses the narrow view, pointing to legislative history and policy in further support of narrow view.	Ambiguous	Acknowledges that some view it as sparse, equivocal, and altogether unhelpful; concludes that it merely restates the statute. Also concludes that L.H. supports narrow view and the idea of debtors paying more, not less via 4 factors cited in L.H.: (1) consumer filings increasing and becoming too available; (2) increased losses to Americans who do pay their debts; (3) loopholes & improper incentives in Code; and (4) fact that some debtors can and should pay a significant part of their debts.	Clear that Congress intended debtors to pay more, not less; Congress didn't intend to enhance debtor's ability to get a fresh start. Not clear from legislative history that Congress intended to relax confirmation standards for individual Ch. 11 debtors or to repeal APR. In fact, explains the court, §1115 was added as a part of the "Discouraging Abuse" part of BAPCPA. Concludes "Ch. 11→Ch. 13" argument not supported by structure of statute; e.g. Congress could have raised Ch. 13 debt limits. If Congress has intended on repealing APR, then it would have done so explicitly, either with the statutory language or in the legislative history. Quotes Supreme Court prohibition against eroding past practice.	Explains that BAPCPA permits individual Ch. 11 debtor to keep something, at least (something it couldn't do pre-BAPCPA, says the court). The amendment to §1129 and addition of §1115 strikes a proper debtor/creditor balance, whereas broad view destroys and does "violence" to that "delicate" balance. Without APR, debtor has no incentive to negotiate. Cites *Friedman* dissent. Narrow view does not make Ch. 11 impossible for individuals: they can, like before, still negotiate consent or pay dissenters in full.
In re Maharaj, 681 F.3d 558 (4th Cir. Jun. 14, 2012)	Narrow	Acknowledges split; collects cases and discusses	Ambiguous	Sparse, such that there's no clear	Based on *Karlovich*, concludes that amendment preserved APR	It points out that based on its conclusion that Congress did

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		them extensively; starts w/ text, concluding that "includes" and "included" are susceptible to more than 1 reasonable interpretation; holds that Congress didn't intend to repeal APR, based on broader context of BAPCPA, a "familiar canon of statutory construction," and presumption against implied repeal.		statement by Congress of intent to repeal APR; does show that creditors were focus of BAPCPA.	as it operated pre-BAPCPA. Disagrees w/ *Tegeder* that narrow view renders §1115 trivial because, it argues, narrow view brings post-petition property into estate via §1115 and, thus, extends scope of automatic stay. Additionally, amendment permits debtor to retain that property during the Ch. 11 w/out it being at risk in a cram down analysis. Points to Supreme Court's view that, especially in bankruptcy, implied repeal is strongly disfavored. There must be a clear indication of intent before court can read the "Bankruptcy Code to erode past bankruptcy practice." Relying on *Kamell*: if Congress had intended on repealing a long-standing principle like the APR, then it would have done so in a far less convoluted manner and it would have done so explicitly, either in the text or in the legislative history as it has done on prior occasions (e.g. in 1952). Rejects the "Ch. 11→Ch. 13" argument, concluding that Congress could have made Ch. 11 more like Ch. 13 in a far less convoluted manner and, relying on *Gbadebo*: changes that made Ch. 11 more like Ch. 13 do not justify the conclusion that Congress intended to make them similar with respect to the APR.	not intend to repeal the APR, it is not required to consider policy arguments. However, it considers and rejects them anyway: (1) the legislative history rejects the notion that Congress intended to provide greater benefits to debtors as compared to protections for creditors and (2) BAPCPA did not make confirmation impossible, as the APR has always applied to individuals, and debtors can still negotiate consent, pay higher dividends, or comply with the APR by contributing pre-petition property.

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In re Tucker, 479 B.R. 873 (Bankr. D. Or. Oct. 11, 2012)	Broad	Initially, Court concluded that APR applied; however, *Friedman* came down; concluding that *Friedman* is binding, it follows it w/out further discussion.	No Finding	Not Discussed	Not Discussed	Not Discussed
In re Lee Min Ho Chen, 482 B.R. 473 (Bankr. D. P.R. Nov. 9, 2012)	Narrow	More or less follows and adopts *Arnold* (including its grammatical analysis).	Ambiguous	Legislative history is sparse but suggests that Congress wanted debtors to pay more, not less. Therefore, it supports the narrow view.	Agrees with *Arnold* (see above).	Agrees with *Arnold*: policy considerations weigh heavily in favor of narrow view; broad view undercuts creditor protections and would allow highly-leveraged debtors who do not qualify for Ch. 13 to retain their pre-petition property creditors' expense.
In re Stephens, 704 F.3d 1279 (10th Cir. Jan. 15, 2013)	Narrow	Statutory text is ambiguous, as shown by decisions reading the text different ways; agrees w/ *Maharaj* that either view is plausible; recognizes merits of each view's take on Congress' intent and the inherent tension between the "avoid abuse" argument and the "enhance fresh start" argument; Congressional intent is ambiguous; heeds "presumption against implied repeal," esp. in bankruptcy where courts are not to read Code to erode past practice w/out clear intent and particularly when Congress has expressly repealed APR before.	Ambiguous	Sparse; contains no explanation of what changes result from the addition of §1115	Recognizes broad view points as to BAPCPA intent: (1) the "Ch. 11→ Ch. 13" provisions and (2) even without APR, creditors are still protected by the disposable income requirement and the best interests of creditors test. Recognizes narrow view points as to BAPCPA intent: (1) each of the new provisions, even those modeled after Ch. 13, impose greater burdens on debtors to ensure a greater payout; (2) if Congress had intended to repeal the APR, then it would have done so in a far less convoluted way (e.g. via changing the Ch. 13 debt limits); and (3) legis. history lists several debtor protections but doesn't mention repeal of APR. Therefore, under narrow view,	Not Discussed

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Case	View	Approach/Rationale	Statutory Language	Legis. History	Intent of BAPCPA	Consequences
					amendments preserve status quo. Because the text and Congress' intent are ambiguous, Court heeded "presumption against implied repeal." There simply is not a clear indication that Congress intended to repeal such a "pillar of creditor protection," especially it has explicitly repealed the APR in the past.	
In re Texas Star Refreshments, LLC, 494 B.R. 684 (Bankr. N.D. Tex. Mar. 22, 2013)	Narrow	Only briefly addresses APR in a multi-part confirmation decision; acknowledges the split; concludes that, after reviewing the cases, the narrow view cases are the "better reasoned" cases; cites *Maharaj* and *Lively* (but notes that *Lively* was, at that time, on appeal to the 5th Circuit) (see discussion below).	No Finding	Not Discussed	Not Discussed	Not Discussed
In re O'Neal, 490 B.R. 837 (Bankr. W.D. Ark. Apr. 12, 2013)	Broad	Reviews the 2 Circuit decisions at that time: *Stephens* and *Maharaj*; it then reviews *Friedman*; focuses on "Ch. 11→Ch. 13"-type changes, concluding that they make no sense unless Congress was attempting to make Ch. 11 work like Ch. 13; therefore, APR does not apply in individual cases.	Ambiguous	Not Relied On	Make Ch. 11 work more like Ch. 13 for individuals, as shown by the various "Ch. 11→Ch. 13" changes outlined in *Friedman* (including disposable income test and delay of discharge) and the similarity b/w §§1115 and 1306. "If Congress was not attempting to write out of individual Chapter 11 cases the absolute priority rule, what was the purpose of all of the BAPCPA amendments to Chapter 11, including section 1115, which were obviously borrowed from Chapter 13?"	"No analysis of this issue is free from doubt." Narrow view renders ineffective any practical application of §1115, especially given the addition of the disposable income requirement.

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Case	View	Approach/Rationale	Statutory Language	Legis. History	Intent of BAPCPA	Consequences
					Illogical to require individuals to satisfy 5 year disposable income test and then remove their means of providing that income.	
In re Lively, 717 F.3d 406 (5th Cir. May 29, 2013)	Narrow	Acknowledges most courts have found the statutory language ambiguous and have, therefore, gone on to examine "unenlightening legislative history and extrinsic interpretative factors to arrive at" broad or narrow view; agrees w/ lower court that narrow approach is "unambiguous and correct"; even if language is ambiguous, narrow view must prevail; otherwise, there would be repeal by implication.	Unambiguous	Unenlightening	The changes were intended to coordinate Ch. 11 somewhat with Ch. 13: it wanted individual Ch. 11 debtors, like Ch. 13 debtors, to have a disposable income requirement, but, at the same time, did not want individual Ch. 11 debtors saddled, under APR (which does not exist in Ch. 13), w/ committing all of their post-petition property to satisfy claims. Grammatical parsing unnecessary as "§ 1115 expressly states that property is being 'added' to that comprised by § 541." Even if §1115 is ambiguous, broad view would result in a startling and indirect way for Congress to have "effected partial implicit repeal of the very provision that the section amended." Repeals by implication are disfavored, especially in bankruptcy, unless intent is clear and manifest. As APR has been a "cornerstone" in Ch. 11 for over a century," Congress must have been aware of the rule; and, without something more clear, would not have intended to reverse it.	Not Discussed
In re Sample, No. 10-	Broad	Concludes that BAP	No Finding	Not Discussed	Not Discussed	Not Discussed

SUMMARY OF ABSOLUTE PRIORITY RULE DECISIONS IN INDIVIDUAL CHAPTER 11 CASES

Case	View	Approach/Rationale	Statutory Language	Legis. History	Intent of BAPCPA	Consequences
38373, 2013 WL 3759795 (Bankr. D. Ariz. July 15, 2013)		decisions are binding; although the court tended to agree w/ *Friedman* dissent (see above), court adopted *Friedman* majority because it believed that it's binding.				
In re Gerard, 495 B.R. 850 (Bankr. W.D. Wis. Aug. 7, 2013)	Narrow	Acknowledges narrow view is majority; rejects debtor's reliance on §1115(b), concluding that §1115(b) merely codifies that DIP keeps his stuff while he's a DIP; concurs with *Gelin*.	Unambiguous	No legislative history suggests that amendments were intended to repeal APR.	Adopting *Gelin*, Court concludes that if Congress has intended on repealing APR, then it would have done so explicitly. Cites *Stephens* for the proposition that there is a presumption against repeal by implication. More likely interpretation is that §1115 merely adds to the estate, such that only post-petition property is exempted from APR.	Not discussed
In re Martin, 497 B.R. 349 (Bankr. M.D. Fla. Sep. 17, 2013)	Narrow	Departs from *SPCP v. Biggins* (broad view case) in light of the Circuit cases; sides w/ narrow view because (1) plain language supports it (does a limited grammatical analysis); (2) repeal by implication is disfavored; (3) narrow view consistent w/ BAPCPA purpose; and (4) BAPCPA changes simply harmonize treatment of individual Ch. 11/13 debtors.	Unambiguous	Not discussed directly, but it does make conclusions about the purpose of BAPCPA (see next column)	Relies on "no repeal by implication" doctrine, concluding that APR has been a part of bankruptcy practice for 100+ yrs and that there can be no erosion of past practice w/out clear intent. If Congress has intended on repealing the APR, then it would have done so explicitly. Narrow view consistent w/ BAPCPA because BAPCPA was intended to impose greater burdens on debtors to curb abuse and to increase payments. Wonders why Congress would add the means test and disposable	Not Discussed

SUMMARY OF ABSOLUTE PRIORITY RULE DECISIONS IN INDIVIDUAL CHAPTER 11 CASES

Case	View	Approach/Rationale	Statutory Language	Legis. History	Intent of BAPCPA	Consequences
					income requirement but then repeal APR. Also concludes it would be remarkable for a debtor to keep his stuff by paying pennies on the dollar. Agrees w/ 5th Cir. in *Lively* that purpose of BAPCPA is harmonize treatment of individual Ch. 11/13 debtors: It adds post-petition property to §541 but then modifies so that debtor does not have to give-up his post-petition income as a price for cramdown.	
In re Brown, 498 B.R. 486 (Bankr. E.D. Pa. Sep. 26, 2013) [Part 1]	Narrow	Acknowledges 2 views and summarizes the arguments made by both; recognizes that narrow view is now the majority; ultimately weighs the 2 views and concludes that the narrow view more accurately reflects Congress' intent.; purpose was to preserve APR (as explained in *Karlovich*)	No explicit finding	No history suggesting that Congress intended to change long-standing APR in individual cases.	Cites to Sup. Ct. prohibition against eroding past bankruptcy practice absent a clear indication from Congress. If Congress wanted to repeal APR then it would have done so in a far less convoluted way, especially given that APR is so well-established in bankruptcy (e.g. it could have changed the debt limits for Ch. 13 since Ch. 13 does not have the APR).	Even if decision appears to make confirmation more difficult for individuals, that difficult has existed since 1988 when Sup. Ct. applied the APR in *Ahlers.* In 2005, Congress decided to leave APR unchanged. Court's job is limited to enforcing that decision.
In re Batista-Sanechez, 505 B.R. 222 (Bankr. N.D. Ill. Jan. 31, 2014)	Narrow	In reviewing compliance w/ §1129, the Court, citing *Lively*, *Stephens*, and *Maharaj*, rejects debtor's *Shat*-inspired argument that APR does not apply in individual cases.	Not Discussed	Not Discussed	Not Discussed	Not Discussed
In re Brown, 505 B.R. 638 (E.D. Pa. Feb. 24, 2014)	Narrow	Acknowledges the split; starts w/ statute; cites to construction rules; if, and only if, it's ambiguous can	Unambiguous	L.H. is silent on whether Congress intended to repeal the APR, as the	There is nothing in the text or legislative history suggesting a clear intent to repeal APR. Therefore, agreeing w/ broad	

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Case	View	Approach/Rationale	Statutory Language	Legis. History	Intent of BAPCPA	Consequences
		the court consult extrinsic sources; concludes that it's not ambiguous; reviews the legislative history; turns to the Code, as a whole; concludes that narrow view is the better view, else § 1115 would render other Code provisions (e.g. 541) superfluous; broad view would render § 1129 meaningless because debtor could side-step full payment option in §1129 (an abuse that Congress could not have intended); errs on side of respecting the prohibition against repeal by implication.		L.H. merely reiterated the text.	view requires the conclusion that Congress meant to repeal APR implicitly, a conclusion that the Sup. Ct prohibits, esp. in bankr. Concluding that Congress intended to preserve APR is also consistent w/ BAPCPA goal of curbing bankruptcy abuses: w/out APR, creditors would be at mercy of debtors, for pennies on the dollar payouts (cites *Friedman*).	
In re Woodward, 2014 WL 1682847 (Bankr. D. Neb. Apr. 29, 2014)	Broad	The *Tegeder* judge acknowledges that the weight of authority has shifted towards the narrow view since the *Tegeder* decision; concluded that the logic of the narrow view is not overwhelming enough to "reverse course"; also concludes that the *Tegeder* decision has worked well in that jurisdiction; adopts *O'Neal* and, thus, concludes that the broad view is still the better view.	No Finding	Not Discussed	Agrees that the following question from *O'Neal* reveals the weakness of the narrow approach: "If Congress was not attempting to write out of individual Chapter 11 cases the absolute priority rule, what was the purpose of all of the BAPCPA amendments to Chapter 11, including section 1115, which were obviously borrowed from Chapter 13?" Although the Court recognizes that valid arguments can be made on both sides, it concludes that the broad view is the "better fit with the apparent overall goals of the 2005 amendments."	
In re Cardin, 2014 WL	Narrow	Performs a limited	No explicit	Not Discussed	Relies on the no repeal by	Recognizes that the

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Case	View	Approach/Rationale	Statutory Language	Legis. History	Intent of BAPCPA	Consequences
1887583 (6th Cir. May 13, 2014) (a/k/a *Ice House*)		grammatical analysis and concludes that §1115 merely adds to the "pile"; a pretty concise opinion, but it addresses issue on both sides.	finding, but it appears to find the language unambiguous (even if it requires close scrutiny)		implication doctrine, explaining that there can be no erosion of past practice without clear intent. If Congress has intended on repealing the APR, then it would have done so explicitly. All BAPCPA does is maintain pre-BAPCPA scope of APR.	disposable income requirement combined with the continuing APR is a sort of "double whammy" for debtors, but explains that it's job is to determine Congress' intent, not what is fair.
In re Wilson, 2014 WL 3700634 (Bankr. N.D. Texas Jul. 24, 2014)	Narrow	Cites ***In re Lively*** (5th Cir. 2013) to suggest that the judge had predicted correctly that the APR still applies in individual Chapter 11 cases.	N/A	N/A	N/A	N/A
In re Lucarelli, 517 B.R. 42 (Bankr. D. Conn. Sep. 4, 2014)	Narrow	**First**, the court determines that the statutory sections in question are ambiguous, as there are competing interpretations that are plausible and reasonable. **Second**, the court employs the canons of statutory interpretation, with an emphasis on choosing the canons that are most "relevant and useful" under the circumstances. In this case, the canon of "presumption against implied repeal" was the most relevant. **Third**, the court did not find a "clear indication" that Congress intended to	Ambiguous	Sparse; not helpful at all.	Not enough of a "clear indication" of Congressional intent to justify the broad view; disfavors "implied repeal."	• Broad view is more practical and functional; • Narrow view will make non-consensual confirmations difficult if not impossible; • Narrow view will likely make Chapter 11 less attractive for individual debtors; • Effectively, the narrow view amounts to a liquidation for the debtor; • Agrees with the "double whammy" criticism (i.e., combining the disposable income requirement with the requirement of satisfying the APR).

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Case	View	Approach/Rationale	Statutory Language	Legis. History	Intent of BAPCPA	Consequences
		depart from the APR in individual cases (i.e., it didn't find enough to justify repeal by implication). **Therefore**, the court adopted the narrow view, mainly because it felt bound to and despite the the potentially impracticable consequences.				
In re Akinpelu, 530 B.R. 822 (Bankr. N.D. Ga. May 4, 2015)	Narrow	Judge Diehl doesn't do a deep-dive into the statutory analysis. Rather, she presents the competing views and acknowledges the practical difficulties presented by the narrow view (particularly those described in *In re Lucarelli*). However, she concludes that a "natural reading of the operative terms" in the statutory sections in question is that those sections refer to additional property beyond § 541 and, thus, that a debtor may retain that additional property if the debtor satisfies the APR.	Unambiguous (most likely, given the reference to a "natural reading" of the provisions)	Not addressed.	Not addressed	• Appreciates the "practical issues" created by the narrow view; • Explicitly appreciates the concerns expressed in *In re Lucarelli*; • Court "does not take lightly" how the narrow view might make confirmation more difficult and even require the liquidation of the very asset that provides the income stream for repayment under the plan; • Nevertheless, a review of the authority and statutory language gave the court no other choice but to choose the narrow view and conclude that the APR "remains" viable in individual Chapter 11s.
In re Andrews, 2015 WL 4608091 (Bankr. M.D. Tenn. Jul. 31, 2015)	Narrow	Court indicated that it was bound by the 6th Circuit's ***In re Cardin*** decision, "double whammy" and all.	Adopts ***In re Cardin*** w/out analysis—see above.	Adopts ***In re Cardin*** w/out analysis—see above.	Adopts ***In re Cardin*** w/out analysis—see above.	Adopts ***In re Cardin*** w/out analysis—see above.

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Case	View	Approach/Rationale	Statutory Language	Legis. History	Intent of BAPCPA	Consequences
		However, it also considered whether the debtor had satisfied the **"new value" exception**—the only court that we're aware (as of that date) to have considered that exception, on the merits, in an individual case. Ultimately, the court concluded that the debtor did not satisfy the exception. **First**, in comparing the value of retained assets to the "new value" contributed, the debtor cannot count the 5 years of disposable income as part of the new value. **Second**, the court, relying on the non-liquidation going concern value of the retained LLC interest, concluded that the value of retained assets was less than the new value.				
In re Woodward, 537 B.R. 894 (8th B.A.P. Aug. 13, 2015)	Narrow	The court adopts the narrow view for 4 reasons. **First**, it analyzes the statutory language itself to conclude that the APR still applies. Reads § 1129(b)(2)(B)(ii) as "taking into the estate" certain property, which can only mean post-petition property and income, since all other property is already in the estate under § 541.	Unambiguous (since the court determines that the language, itself, supports a finding that the APR continues to apply in individual cases)	Points out the abrogation of the APR in individual cases is "conspicuously absent" from the legislative history.	Acknowledges the extent to which the 2005 amendments incorporated Chapter 13 concepts into Chapter 11 but also points out that it is not, nor can it be, a wholesale incorporation. If Congress had wanted to incorporate all of Chapter 13 into individual Chapter 11 cases, then it could have (but it didn't).	Not Discussed

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Case	View	Approach/Rationale	Statutory Language	Legis. History	Intent of BAPCPA	Consequences
		Similarly, the "in addition to the property specified in section 541" language in § 1115 suggests the same interpretation. **Second**, it analyzes the language in the context in which it's used and in light of the "broader context of the statute as a whole." Any other interpretation would render redundant the language in § 1115, it concludes. **Third**, the court agrees that there is no clear indication from Congress—if it intended to abrogate the APR, then it could have used clearer language. **Fourth**, the court finds comfort and assurance in the "overwhelming weight of authority" from the **4th**, **5th**, **6th**, and **10th** Circuits upholding the APR in individual cases.				
In re Farwell, 2015 WL 9438479 (Bankr. D. Md. Dec. 23, 2015)	Narrow	In reviewing a motion for a stay pending appeal of an order terminating the stay, the court cited ***In re Maharaj*** (4th Cir. 2012) in passing as a binding decision that holds that the APR still applies in individual Chapter 11 cases.	N/A/	N/A	N/A	N/A

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Case	View	Approach/Rationale	Statutory Language	Legis. History	Intent of BAPCPA	Consequences
Zachary v. California Bank & Trust, 811 F.3d 1191 (9th Cir. Jan. 28, 2016)	Narrow	Basically: Adopts ***In re Cardin/Ice House*** (6th Cir. 2014) and, in the process, explicitly overrules ***In re Friedman*** (9th Cir. BAP 2012) and abrogates ***In re Shat***. Reading §§ 1129 and 1115 as "defining a new class of property that is exempt from the absolute priority rule nicely harmonizes the new provisions."	No explicit finding, but it quotes ***In re Lively*** (5th Cir. 2013) which found the language unambiguous.	When Congress wanted to repeal or reinstate the APR, it did so explicitly.	Relies on the "no repeal by implication" doctrine. If Congress has intended on repealing the APR, then it would have done so explicitly.	Recognizes that the disposable income requirement combined with the continuing APR is a sort of "double whammy" for debtors. However, it also recognizes that the broad view "could exact a heavy penalty on a 'crammed down' creditor." Ultimately, its job is to determine Congress' intent, not what is fair.
In re Johnson, 546 B.R. 83 (Bankr. S.D. Ohio Feb. 26, 2016)	Narrow	In the context of a huge confirmation opinion, and in passing, the court points out that, under 6th Circuit's ***In re Carden (Ice House)*** decision, the APR still applies in individual Chapter 11 cases. There is not, however, an independent analysis or consideration of the APR. The narrower point that the court makes is that the APR only arises in cases where a "class of unsecured claims or equity interests is impaired and does not accept the plan."	N/A	N/A	N/A	N/A
In re Howard, 2016 WL 832839 (Bankr. D. New Mexico Mar. 3, 2016)	Narrow	As dicta, in an opinion reviewing the debtor's counsel's final fee	N/A	N/A	N/A	N/A

Case	View	Approach/Rationale	Statutory Language	Legis. History	Intent of BAPCPA	Consequences
		application, the court noted that, under ***In re Stephens*** **(10th Cir. 2013)**, the APR means that "individual Chapter 11 debtors cannot keep nonexempt property unless creditors accept the plan or the plan provides for payment in full." It has no other relevance to the APR.				
In re Rogers, 2016 WL 3583299 (Bankr. S.D. Ga. Jun. 24, 2016)	Narrow	Judge Coleman provides an overview of the broad view and the narrow view, recognizing that the courts adopting either view sometimes do so after determining that the statutory language is ambiguous and sometimes do so after determining that the statutory language is unambiguous. Ultimately, the court concludes that the narrow view decisions are "better reasoned." While those sections might not be "susceptible" to a "plain meaning" reading, the court finds that the "most natural reading" is that the 2005 additions to the Code create a limited exception to the APR for individual debtors. However, the court also recognizes that the "new value" exception applies in	Ambiguous (most likely—not "susceptible" to a plain reading)	Not addressed explicitly.	Based on ***Maharaj*** **(4th Cir. 2012)**, if Congress had intended to abrogate the APR, then it would have done so in a far less convoluted way.	Does not address.

Case	View	Approach/Rationale	Statutory Language	Legis. History	Intent of BAPCPA	Consequences
		in individual cases, too. Nevertheless, it recognizes that the new value exception is difficult to satisfy in individual cases because the new value has to come from a source other than the debtor. The new value determination is factually-intensive and based on the facts and circumstances of each case. Rejects the competitive bidding requirement from ***LaSalle***, **526 U.S. 434 (1999)**. Therefore, the court permitted the debtor to amend the disclosure statement to establish that the value of retained non-exempt property was equal to or less than the "new value" supplied by the debtor.				