



AMERICAN
BANKRUPTCY
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THE GREAT DEBATES

**Resolved: Official Form 22C
conclusively determines “projected
disposable income” for chapter 13
debtors with above-median income.**

PRO - Claire Ann Resop

von Briesen & Roper, SC; Madison, Wis.

CON - Hon. Robert D. Berger

U.S. Bankruptcy Court (D. Kan.); Kansas City

RESOLVED:

Official Form 22C Conclusively Determines “Projected Disposable Income” for Chapter 13 Debtors with Above-Median Income.

Presented by

The Honorable Robert D. Berger
United States Bankruptcy Court for the District of Kansas

And

Claire Anne Resop
von Briesen & Roper, SC, Madison, WI

PRO

- *In re Kagenveama*, -- F.3d --, 2008 WL 2485570 (9th Cir. (Ariz.) 2008). Ninth Circuit affirms plan confirmation projecting Form 22C disposable income over applicable commitment period. Section 1325(b)(2)-(3) is not absurd simply because it leads to results which are not aligned with the old law. “Disposable income” and “projected disposable income” are directly linked by the statute’s plain text.
- *In re Turner*, 384 B.R. 537 (Bankr. S.D. Ind. 2008). BAPCPA effectively eliminated pre-BAPCPA discretion with respect to above-median income debtors and calculation of their disposable income. Debtor could include mortgage payment on Form 22C for house he intended to surrender. Debtor’s \$250 a month plan payment was sufficient for confirmation given his Form 22C indicated a disposable income deficit.
- *In re Colclasure*, 383 B.R. 463 (Bankr. E.D. Ark. 2008). Above-median income debtors’ “projected disposable income” was their disposable income as calculated on Form 22C and extrapolated over their 60-month applicable commitment period. Co-debtor’s illness post-petition but pre-confirmation and resulting unemployment did not excuse debtors from proposing a plan which would pay unsecured creditors the disposable income determined by Form 22C.

- *In re Frederickson*, 375 B.R. 829 (B.A.P. 8th Cir. (Ark.) 2007).
Plain language of statute means “projected disposable income” is the Form 22C disposable income extrapolated over the applicable commitment period. If disposable income is negative, there is no applicable commitment period. Debtor’s plan confirmed for a period shorter than five years.
- *In re Simms*, slip copy, 2008 WL 217174 (Bankr. N.D. W. Va. Jan. 23, 2008) (unpublished).
The word “projected” modifies the defined phrase “disposable income” and does not create a separate definition. Congress created a statutory formula to replace pre-BAPCPA judicial discretion to adjust a debtor’s Schedules I and J to reach a more accurate prediction of a debtor’s ability to pay. Debtor’s plan could propose to pay the disposable income from Form 22C rather than the disposable income from Schedules I and J even though the amount from Form 22C was about half the amount indicated on Schedule J.
- *In re Buck*, slip copy, 2007 WL 4418145 (Bankr. E.D. Va. Dec. 14, 2007).
Congress intended the amount determined by Form 22C to be projected out over the applicable commitment period. The term “projected” does not allow the court to consider post-petition changes in income. Schedule J does not determine disposable income.
- *In re Dalton*, slip copy, 2007 WL 4554024 (Bankr. S.D. Miss. Dec. 19, 2007).
Plain meaning of §1325(b) requires calculating projected disposable income by use of Form 22C and not Schedule J. Above-median income debtors with a negative disposable income on Form 22C did not have to make a distribution to general unsecured creditors even though Schedule J showed disposable income.
- *In re Winokur*, 364 B.R. 204 (Bankr. E.D. Va. 2007).
Court has no discretion to disregard definition of “disposable income” and new process for calculating it under BAPCPA. Above-median income debtors who actually had income in excess of their “disposable income” did not violate their good faith obligation by proposing a plan which offered to pay only the amount calculated by Form 22C.
- *In re Brady*, 361 B.R. 765 (Bankr. D.N.J. 2007).
Debtors with surplus income of nearly \$600 per month based on Schedule J, but with negative disposable income based on Form 22C, did not have to pay a dividend to unsecured creditors.
- *In re Lawson*, 361 B.R. 215 (Bankr. D. Utah 2007).
Form 22C is dispositive of an above-median income debtor’s disposable income absent showing of “special circumstances” under §707(b)(2)(B). Debtor must subtract future average monthly expenses from their historical income as calculated on Form 22C.

- *In re Miller*, 361 B.R. 224 (Bankr. N.D. Ala. 2007).
Form 22C is dispositive with respect to an above-median income debtor’s projected disposable income. Trustee did not object to how debtors completed Form 22C which indicated a negative \$3,050.76 in disposable income, so debtors’ plan could be confirmed even though Schedule J indicated \$1,336.94 in disposable income.
- *In re Hanks*, 362 B.R. 494 (Bankr. D. Utah 2007).
“Projected disposable income” does not mean something different than “disposable income.” In projecting a return to general unsecured creditors, the court’s function is limited to multiplying the net disposable income as calculated on Form 22C by the applicable commitment period. Debtor’s loss of employment and substantial reduction in salary does not allow debtor to propose a plan paying a correspondingly smaller amount to unsecured creditors.
- *In re Mitchell*, 368 B.R. 845 (Bankr. D. Neb. 2007).
Even though debtor’s income available by comparing Schedules I and J exceeded the projected disposable income found on Form 22C, Form 22C controlled. Congress mandated the use of the calculations set forth in the means test to determine the debtor’s projected disposable income.
- *In re Kolb*, 366 B.R. 802 (Bankr. S.D. Ohio 2007).
Above-median income debtor proposed to pay unsecured creditors considerably less than what her Form 22C determined to be her disposable income because her six-month historical income was higher than her actual disposable income as determined by Schedules I and J. The court denied confirmation, finding it an unfortunate result of a Congressionally created system which removed court’s discretion and employed a rigid formula rather than debtor’s present financial reality and ability to pay.
- *In re Rotunda*, 349 B.R. 324 (Bankr. N.D.N.Y. 2006).
Court confirmed plan proposed by an above-median income debtor who proposed to pay the amount based on current monthly income as reported on Form 22C which excluded Social Security benefits which were otherwise reported as income on Schedule J.
- *In re Barr*, 341 B.R. 181 (Bankr. M.D.N.C. 2006).
Congress intended to adopt a specific test to be rigidly applied. Calculating disposable income for above-median income debtors under §1325(b) is now separated from a review of Schedules I and J.
- *In re Alexander*, 344 B.R. 742 (Bankr. E.D.N.C. 2006).
Form 22C is dispositive of projected disposable income: “[O]ne simply takes the calculation mandated by §1325(b)(2) and does the math.”

CON

- *In re May*, 381 B.R. 498 (Bankr. W.D. Pa. 2008).
Form 22C is the starting point. The debtor, creditors, or trustee may show the numbers are inaccurate and request the court to deviate. Form 22C is a rebuttable presumption and may be adjusted based on the evidence presented, as in this case involving changes in employment. The court found its analysis supports the goal of Chapter 13 and provides a working format to deal with the inevitable changes which occur to a debtor's finances.
- *In re Lanning*, 380 B.R. 17 (B.A.P. 10th Cir. (Kan.) 2007).
Debtor proved Form 22C disposable income figure did not accurately project debtor's future ability to fund a plan. Court held debtor may prove her case by presenting documentation similar to what is required by a Chapter 7 debtor rebutting the presumption of abuse and establishing "special circumstances." An appeal is pending at the 10th Circuit Court of Appeals.
- *In re Kibbe*, 342 B.R. 411 (Bankr. D.N.H. 2006), *aff'd*, 361 B.R. 302 (B.A.P. 1st Cir. 2007).
Debtor who obtained much higher-paying job just prior to filing, and whose actual current monthly income exceeded actual monthly expenses by more than \$2,000 per month, could not rest on her Form 22C (reflecting six months of under-employment) as an accurate statement of her "projected disposable income" for plan confirmation purposes.
- *In re Lisenko*, slip copy, 2008 WL 780703 (Bankr. N.D.N.Y. Mar. 24, 2008).
Form 22C is a "first look" at debtor's monthly disposable income and substantial disparity between Form 22C and debtor's Schedule J permits further inquiry into debtor's actual monthly disposable income "as of the effective date of the plan."
- *In re Liverman*, 383 B.R. 604 (Bankr. D.N.J. 2008).
Debtors' Form 22C disposable income was merely a starting point in determining their "projected disposable income." Form 22C was shown to be inaccurate going forward because debtor-husband was generally unemployed during six months immediately preceding petition date.
- *In re Wilson*, slip copy, 2008 WL 619196 (Bankr. M.D.N.C. Mar. 03, 2008).
Form 22C is presumed to be a correct statement of income; however, parties may rebut this presumption with Schedule I or other relevant evidence. Expenses for above-median income debtors must be determined by Form 22C but may also be adjusted by showing special circumstances.
- *In re Louviere*, 389 B.R. 502 (Bankr. E.D. Tex. 2008).
Form 22C current monthly income calculation remains meaningful only to the extent the

income stream upon which it is based remains constant. A substantial change in circumstances undermines a real-life calculation of projected disposable income. Debtor bears the burden to demonstrate changed circumstances which justify departure from Form 22C.

- *In re Edmondson*, 363 B.R. 212 (Bankr. D.N.M. 2007).
“Projected disposable income” must mean something other than the income computed on Form 22C and must take into account the debtor’s actual current income as reported on Schedule I. Strict adherence to Form 22C will result in absurd results – denying confirmation as *de facto* infeasible because debtor’s actual income is significantly lower than that reflected on Form 22C, or, conversely, confirming a plan which pays little to unsecured creditors even though debtor’s actual income shows an ability to pay more.
- *In re Slusher*, 359 B.R. 290 (Bankr. D. Nev. 2007).
Form 22C presumptively establishes debtor’s disposable income, but it is not an exclusive basis for calculating “projected disposable income” as used in §1325(b)(1)(A). In certain circumstances, such as gaining or losing a job, Form 22C is not dispositive and is only a starting point for an investigation which may include information from Schedules I and J.
- *In re Nowlin*, 366 B.R. 670 (Bankr. S.D. Tex. 2007).
Money used to repay a 401(k) loan in the first 24 months of a sixty-month plan should thereafter become part of debtor’s disposable income for the remaining months of the plan. Term “projected” could not be interpreted so narrowly as to limit debtor’s disposable income to the amount calculated on Form 22C and multiplied by the number of months in the debtor’s plan.
- *In re Watson*, 366 B.R. 523 (Bankr. D. Md. 2007).
Disposable income as calculated on Form 22C is debtor’s presumptive “projected disposable income”; however, parties may present evidence to show a substantial change in circumstances making Form 22C unreliable in predicting the debtor’s future budget. If the presumption is rebutted, the projected budget based on the evidence will govern the determination of “projected disposable income” for plan confirmation purposes.
- *In re LaPlana*, 363 B.R. 259 (Bankr. M.D. Fla. 2007).
Debtor’s future income tax refunds constituted “projected disposable income” subject to administration by Chapter 13 trustee.
- *In re Zimmerman*, slip copy, 2007 WL 295452 (Bankr. N.D. Ohio Jan. 29, 2007).
Court ordered an evidentiary hearing to determine whether debtor’s loss of a second job justified a permanent adjustment to debtor’s current monthly income.
- *In re Gordon*, 360 B.R. 679 (Bankr. S.D. Cal. 2007).

“Projected disposable income” is a forward-looking concept and does not require debtor to pay her historical current monthly income without regard to intervening changes in employment or other circumstances.

- *In re Riggs*, 359 B.R. 649 (Bankr. E.D. Ky. 2007).
Debtors’ plan could not be confirmed as satisfying the “projected disposable income” requirement even though it proposed to pay \$272 a month in excess of the \$18 in disposable income listed on Form 22C. The court was not limited to considering Form 22C when debtors’ Schedules indicated \$880 in disposable monthly income.
- *In re Hardacre*, 338 B.R. 718 (Bankr. N.D. Tex. 2006).
“Projected disposable income” must be based upon the debtor’s anticipated income during the term of the plan with reference to Schedules I and J and not based merely on an average of pre-petition income determined by Form 22C.
- *In re Jass*, 340 B.R. 411 (Bankr. D. Utah 2006).
“Projected disposable income” is different than “disposable income” and must necessarily refer to income the debtor expects to receive over the life of the plan, rather than the historical average income as determined solely by Form 22C. Debtor’s large medical expenses made Form 22C an inaccurate projection of disposable income during the plan. The court cited the overarching policy of the Bankruptcy Code to afford a debtor a fresh start.