UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IN THE MATTER OF	)	
	)	
BRUCE E. FOSTER and	)	CASE NO. 05-50448 HCD
PAULA J. FOSTER,	)	CHAPTER 13
	)	
DEBTORS.	)	

Appearances:

Loraine P. Troyer, Esq., attorney for debtors, 121 N. Third Street, Goshen, Indiana 46526;

Debra L. Miller, Standing Chapter 13 Bankruptcy Trustee, P.O. Box 11550, South Bend, Indiana 46634; and

Thomas E. Panowicz, Staff Attorney for Debra L. Miller, Chapter 13 Trustee, P.O. Box 11550, South Bend, Indiana 46634.

MEMORANDUM OF DECISION

At South Bend, Indiana, on September 11, 2006.

Before the court are the proposed Chapter 13 Plan of the debtors Bruce E. Foster and Paula J. Foster and the Trustee's Objection to Confirmation of Plan filed by Debra L. Miller, Esq., Trustee. The parties reached agreement on all of the Trustee's objections except one. The sole remaining issue is the debtors' failure to include annual bonuses in their Plan. The Trustee based her objection on 11 U.S.C. § 1325(b)(1)(B) and § 1325(a)(3) and (a)(4). At the confirmation hearing held on March 2, 2006, the court directed the parties to file a stipulation of facts and simultaneous briefs and responses in support of their respective positions. The court granted the parties' joint motion to extend the time for filing and took the matter under advisement on May 17, 2006. For the reasons that follow, the court sustains the Trustee's Objection to Confirmation of Plan.

Jurisdiction

Pursuant to 28 U.S.C. § 157(a) and Northern District of Indiana Local Rule 200.1, the United States District Court for the Northern District of Indiana has referred this case to this court for hearing and determination. After reviewing the record, the court determines that the matter before it is a core proceeding within the meaning of § 157(b)(2)(L) over which the court has jurisdiction pursuant to 28 U.S.C. §§ 157(b)(1) and 1334. This entry shall serve as findings of fact and conclusions of law as required by Federal Rule of Civil Procedure 52, made applicable in this proceeding by Federal Rule of Bankruptcy Procedure 7052. Any conclusion of law more properly classified as a factual finding shall be deemed a fact, and any finding of fact more properly classified as a legal conclusion shall be deemed a conclusion of law.

Background

A. *The Facts*

There are no facts in dispute. The debtors have received an annual bonus as part of an incentive plan for employees at Wesco Distribution.[1] Mrs. Foster, a District Administration Manager at Wesco for 20 years, was given the bonus in February or March of each year. The debtors stated that they believed they might continue to receive the bonuses in the future, including during the five-year period of their chapter 13 Plan. *See* R. 29 at ¶ 31.

On November 30, 2005, the debtors filed their joint voluntary chapter 13 petition. The case is governed by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"). The debtors' Schedule I reported a combined net monthly income of $5,528.98: Mr. Foster's income was stated to be $1,700.88; Mrs. Foster's income, which included an annual bonus divided into monthly amounts of $1,656.00, totaled $3,828.10. The debtors' monthly expenses were listed on Schedule J as $4,289.79. Their monthly aggregate net income, therefore, was reported to be $1,239.19.

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[1] The debtors reported that the following bonuses had been deposited in the debtors' bank account since 2003:

$8,745.95 on March 7, 2003;
$10,120.65 on March 5, 2004;
$12,410.05 on February 28, 2005, and
$12,782.26 on February 15, 2006.

R. 29 at 5.

The debtors also filed Form B22C, the Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income ("Form B22C"). Form B22C presented different figures and calculations from those of Schedules I and J.[2] It reported that the debtors' average gross monthly income for the six calendar months prior to filing the bankruptcy case (May 1, 2005 through October 31, 2005) was $2,198.69 for Mr. Foster and $4,264.00 for Mrs. Foster, for a total current monthly income ("CMI") of $6,462.69.[3] That figure did not include any portion of the annual bonus received on February 28, 2005. The debtors also calculated that their average allowed deductions were $5,953.98 and that their monthly disposable income was $508.71.

The debtors filed their Plan on January 6, 2006.[4] It too excluded any treatment of the annual bonus. The Trustee's objection focuses on the exclusion of that bonus from the Plan.

B. *Arguments of the Parties*

The Trustee objected to the debtors' decision not to report their bonus income. She claimed that the requirement of 11 U.S.C. § 1325(b)(1)(B) was not met because the debtors' projected disposable income did not

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[2] Form B22C requires an average of the debtors' monthly income for the six months prior to the petition. Schedule I requires an accounting of the debtors' monthly income as of the date of the filing of the petition. Expenditures are also calculated differently. The deductions listed on Form B22C are allowed by reference to I.R.S. national and local standards; the expenses on Schedule J are a calculation of the expenditures actually made by the debtors. It is not unexpected, therefore, that there would be discrepancies between the figures. *See, e.g., In re Guzman*, 345 B.R. 640, 642 (Bankr. E.D. Wisc. 2006) (finding that debtors' Form B22C income exceeded their Schedule I income); *In re Alexander*, 344 B.R. 742, 746-47 (Bankr. E.D.N.C. 2006) (finding that the Schedule I incomes of above-median debtors in that case exceeded their Form B22C income).

[3] The debtors' Form B22C indicated that their combined CMI is greater than the applicable median family income for Indiana. As above-median debtors, therefore, they are required to contribute all of their projected disposable income to their chapter 13 plan for the applicable commitment period of five years under 11 U.S.C. § 1325(b)(4)(A)(ii). The debtors have not disputed that their plan payments extend for five years.

[4] The debtors filed an Amended Plan on April 27, 2006. The Trustee objected to that amendment, as well, on the ground that the Amended Plan does not account for the annual bonus. However, the plan under consideration by the court in this Memorandum of Decision is the first plan submitted by the debtors.

include the annual bonus.[5] She also contended that the court could not confirm a plan that failed to meet the "best interest of creditors" requirement of § 1325(a)(4)[6] and the "good faith" requirement of § 1325(a)(3).[7] According to the Trustee, the debtors' plan was not proposed in good faith because it did not incorporate the annual bonus, which was property of the estate, in its payments. Moreover, without the bonus it did not provide the minimum liquidation amount to the unsecured creditors. The Trustee argued that the debtors knew that they regularly received an annual bonus in February or March of each year and actually received a bonus of $12,410.05 in February 2005. They were not in default on their mortgages or vehicle payments; their only significant financial burden, therefore, was almost $60,000 of unsecured credit card debt. The Trustee insisted that the debtors filed their chapter 13 bankruptcy case outside the 6-month period for the CMI so that they were not required to report that income and to commit it to the unsecured creditors. She concluded that the debtors would get a $12,000 windfall in uncommited bonus income every year, to the detriment of their creditors.

The debtors insisted that they were not required to list the bonus as income on the CMI. They pointed out that the period defined for the CMI under § 101(10A) is "the average monthly income from all sources that the debtor receives . . . during the 6 month period" before bankruptcy. Because their bonus was not received in the six months before they filed bankruptcy, they asserted, it was not income to be included in CMI. According to the debtors, neither the court nor the trustee should be allowed to circumvent the objective means test set out by Congress as the appropriate method by which to determine a debtor's ability to pay. The debtors claimed that

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[5] 11 U.S.C. § 1325(b)(1)(B) provides, in pertinent part: "If the trustee . . . objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan – . . . (B) the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period . . . will be applied to make payments to unsecured creditors under the plan."

[6] 11 U.S.C. § 1325(a)(4) provides: "[T]he court shall confirm a plan if – (4) the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date."

[7] 11 U.S.C. § 1325(a)(3) provides: "[T]he court shall confirm a plan if – (3) the plan has been proposed in good faith and not by any means forbidden by law."

§ 1325(b) was the exclusive test for determining the amount to be paid to unsecured creditors. Moreover, they argued, because the disposable income test of § 1325(b) conclusively established ability to pay, imposing an additional ability-to-pay test within the scope of the good faith standard of § 1325(a)(3) would undermine Congress' policy choices. In their Response Brief, the debtors also asserted that the bonus was not earned or accrued property of the debtor, like wages; it was received only because the debtor worked for her employer. Thus it could not be considered in meeting the "best interest of creditors" test of § 1325(a)(4).

Discussion

A. *11 U.S.C. § 1325(b)(1)(B)*

When a trustee objects to confirmation of a debtor's plan, 11 U.S.C. § 1325(b)(1) controls the court's analysis. "[T]he court may not approve the plan unless . . . the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period . . . will be applied to make payments to unsecured creditors under the plan." § 1325(b)(1)(B).

The Trustee in this case objects that the Debtors' plan does not include the annual bonus in the disposable income calculation. She points out that the debtors' bonus, received regularly in the past and anticipated in future years, is part of the debtors' *projected* disposable income *to be received in the applicable commitment period*, as § 1325(b)(1)(B) requires. On the other hand, the debtors insist that their disposable income, as defined by § 1325(b)(2) and § 101(10A), does not include the bonus because it was received prior to the 6-month period before filing their bankruptcy case. The court views this dispute as one of statutory interpretation: When a court, faced with an objection to confirmation of a chapter 13 plan, determines whether the plan provides for "all of the debtor's projected disposable income," as required under § 1325(b)(1)(B), does it use the new definition of the term "disposable income" in § 1325(b)(2) and § 101(10A)?

When construing a statute, the Supreme Court has set forth the bedrock principles: A court begins with the language of the statute; gives effect, if possible, to every clause and word in it; and declines to treat terms as surplusage. *See Duncan v. Walker*, 533 U.S. 167, 172-74, 121 S.Ct. 2120, 150 L.Ed.2d 251 (2001) (citations omitted); *see also Alaska Dep't of Envtl. Conservation v. EPA*, 540 U.S. 461, 489 n. 13, 124 S. Ct. 983, 157 L.Ed.2d 967 (2004) ("It is, moreover, a cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.") (internal citations omitted), *quoted in Square D Co. & Subsidiaries v. C.I.R.*, 438 F.3d 739, 745 (7th Cir. 2006). These principles were applied recently when interpreting § 330(a)(1) of the Bankruptcy Code in *Lamie v. U.S. Trustee*, 540 U.S. 526, 124 S. Ct. 1023, 157 L.Ed.2d 1024 (2004). Although the Supreme Court found the statute awkward and ungrammatical, it upheld the lower courts' conclusion that the plain language of § 330(a)(1) controlled. *See* 540 U.S. at 534-35, 124 S. Ct. at 1030-31. It also refused to read into the statute a word the appellants claimed to be inadvertently omitted because that interpretation would enlarge the statute beyond its intended scope. *See id.* at 538-39, 124 S. Ct. at 1032. This court's duty, therefore, is to enforce a statute according to its terms if it finds the provisions unambiguous.

This court begins with the statutory definitions. Section 1325(b)(1) provides:

> If the trustee . . . objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan – . . . (B) the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

11 U.S.C. § 1325(b)(1)(B). Although the term "projected disposable income" was found in the statute prior to the amendments under BAPCPA, it has no definition. However, § 1325(b)(2) provides a new BAPCPA definition of "disposable income":

> For purposes of this subsection, the term 'disposable income' means current monthly income received by the debtor (other than child support payments, foster care payments, or disability payments . . .) less amounts reasonably necessary to be expended [for maintenance, support, charitable contributions, or necessary business expenditures].

11 U.S.C. § 1325(b)(2). Current monthly income, or CMI, is another new term under BAPCPA and is defined in § 101(10A):

(10A) The term "current monthly income" —

> (A) means the average monthly income from all sources that the debtor receives (or in a joint case the debtor and the debtor's spouse receive) without regard to whether such income is taxable income, derived during the 6-month period ending on —
>
> > (i) the last day of the calendar month immediately preceding the date of the commencement of the case if the debtor files the schedule of current income required by section 521(a)(1)(B)(ii); or
> >
> > (ii) the date on which current income is determined by the court for purposes of this title if the debtor does not file the schedule of current income required by section 521(a)(1)(B)(ii); and
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> (B) includes any amount paid by any entity other than the debtor (or in a joint case the debtor and the debtor's spouse), on a regular basis for the household expenses of the debtor or 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, payments to victims of war crimes or crimes against humanity on account of their status as victims of such crimes, and payments to victims of international terrorism (as defined in section 2331 of title 18) or domestic terrorism (as defined in section 2331 of title 18) on account of their status as victims of such terrorism.

11 U.S.C. § 101(10A). BAPCPA thus provided definitions of "disposable income" and "CMI" but did not define "projected disposable income." Because BAPCPA is so new, there has been no appellate guidance concerning the relationship among these three terms. The court therefore turns to the bankruptcy case law for insight.

It is not surprising that bankruptcy courts universally acknowledge that the terms "disposable income" and "projected disposable income" are linked; in fact, there is clear agreement that courts must assign a meaning to the term "projected" because it has independent significance. *See, e.g.,In re Fuller*, 346 B.R. 472, 479 (Bankr. S.D. Ill. 2006)[8]; *In re Demonica*, 345 B.R. 895, 900 (Bankr. N.D. Ill. 2006); *In re Kibbe*, 342 B.R. 411, 414 (Bankr. D.N.H. 2006); *In re Jass*, 340 B.R. 411, 416 (Bankr. D. Utah 2006). Nevertheless, even though the courts appear to proclaim that the language of the statute is plain and clear, there is no clear agreement concerning the meaning of the term "projected." The great majority of courts to address the issue have characterized the term

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[8] This court agrees with the *Fuller* court that the definition of "projected disposable income" is not related to whether a debtor is above or below the median income. *See* 346 B.R. at 480. The court concluded that, "[w]hether a debtor is above or below the median income, parties must determine 'projected disposable income' by looking at Schedule I to determine the debtor's income at the date the petition was filed." *Id.* at 485.

"projected" as forward-looking. They have followed *In re Hardacre*, the first decision to analyze § 1325(b)(1) and (b)(2) in depth, and have concluded that "'projected disposable income' must be based upon the debtor's anticipated income during the term of the plan, not merely an average of her prepetition income." *In re Hardacre*, 338 B.R. 718, 722 (Bankr. N.D. Tex. 2006); *accord, e.g., In re Risher*, 344 B.R. 833, 836 (Bankr. W.D. Ky. 2006); *In re Grady*, 343 B.R. 747, 750-51 (Bankr. N.D. Ga. 2006); *In re Kibbe*, 342 B.R. at 414; *contra, In re Alexander*, 344 B.R. 742, 749 (Bankr. E.D.N.C. 2006) (disagreeing with *Hardacre* and its progeny, finding that, "in order to arrive at 'projected disposable income,' one simply takes the calculation mandated by § 1325(b)(2) and does the math").

Many courts have determined that the § 1325(b)(2) disposable income calculation of Form B22C is the starting point of the "projected disposable income" analysis, but not the ultimate measure. *See, e.g., In re Risher*, 344 B.R. at 836; *In re Grady*, 343 B.R. at 753; *In re McGuire*, 342 B.R. 608, 615 (Bankr. W.D. Mo. 2006); *In re Jass*, 340 B.R. at 415. Courts have recognized that sometimes, when debtors follow the § 1325(b)(2) methodology and calculate disposable income by considering only the income earned during the applicable 6-month look-back period, the CMI calculation "creates an opportunity for savvy debtors to artificially reduce CMI by intentionally avoiding prepetition income." *In re Johnson*, 346 B.R. 256, 264 (Bankr. S.D. Ga. 2006); *see also In re Alexander*, 344 B.R. at 747-48 (noting that the CMI calculation may allow some high-income debtors to pay less now than they would have paid previously but concluding that, because the statute itself was plain, the duty of the court was to enforce it according to its terms). Some have concluded that courts must use Schedules I and J, rather than Form B22C, to determine "projected disposable income." *See, e.g., In re Demonica*, 345 B.R. at 905; *In re Grady*, 343 B.R. at 753; *In re Kibbe*, 342 B.R. at 415.

The two bankruptcy courts in the Seventh Circuit that have defined "projected disposable income" agreed that a court must go beyond the "disposable income" CMI calculation under the B22C Form.[9] *See In re*

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[9] The issue in another Illinois bankruptcy case, *In re Beasley*, 342 B.R. 280 (Bankr. C.D. Ill. 2006), was the correct calculation of the "applicable commitment period" in § 1325(b)(1)(B). In dictum, however, the court (continued...)

Fuller, 346 B.R.at 482 ("Congress meant for the amount required to be committed to the plan in § 1325(b)(1)(B) be something more than the 'monthly disposable income under § 1325(b)(2)' indicated at line 58 of Form B22C."); *In re Demonica*, 345 B.R. at 900 ("'Projected disposable income' cannot, under the plain language of the statute, mean the average monthly income preceding the commencement of the case."). Judge Pepper's explanation in *Fuller* is persuasive:

> If the purpose of the § 1325(b)(1)(B) requirement that a debtor commit all of her 'projected disposable income' to a plan is to make sure that the debtor is paying as much as possible each month over the life of the plan to the people to whom she is indebted, however, it makes little sense to freeze the calculation of the debtor's income at a particular – possibly arbitrary – point in time and set that number in stone. It makes even less sense that the point in time at which the calculation is frozen is the time *before* the debtor even began making payments on the plan. Rather, it appears logical that on the day the debtor proposes a plan for repaying her creditors – theoretically, the date she files the petition for relief – the debtor's actual income as of that date should provide an appropriate starting point for determining how much she can commit to the plan.

In re Fuller, 346 B.R. at 483. However, each of those courts has reached a different result. *See In re Demonica*, 345 B.R. at 905 (finding that only Schedule I should be used to determine projected disposable income); *In re Fuller*, 346 B.R. at 485 (finding that a determination of projected disposable income required reliance on both the Form B22C calculation and Schedule I information).

The debtors disagree with this entire line of cases. In their view, their chapter 13 plan satisfies the requirements of § 1325(b), as revised by BAPCPA, and they are not required to commit the bonus to their plan under the new § 1325(b) analysis. They base their position on *In re Barr*, 341 B.R. 181 (Bankr. M.D.N.C. 2006), "a case exactly on point," they state. *Barr* recognizes the changes created by BAPCPA:

> Calculating "disposable income" for above-median-income debtors under new section 1325(b) is now separated from a review of Schedules I and J and no longer turns on the court's determination of what expenses are reasonably necessary for the debtor's support.

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[9](...continued)
followed the *Hardacre* analysis when commenting on the calculation of projected disposable income: "To give meaning to the term 'projected,' the Court must consider the 'income that the debtor reasonably expects to receive during the term of her plan.' *Hardacre, supra*, 338 B.R. at 723." *Id.* at 284.

Id. at 185. The *Barr* court found that an above-median debtor must follow the mandates of § 1325(b)(3); there is "no discretion with respect to the expenses and deductions that are to be deducted in arriving at disposable income." *Id.* The *Barr* court also realized that "a debtor may be left with uncommitted income that the debtor is not required to commit to the debtor's plan under the new section 1325(b) analysis." *Id.* Arguing that *Barr* is the better reasoned decision, the debtors urged the court to find that "[t]he figures on schedule I and J can be utilized in regard to feasibility of the plan but not on the issue of excess income. . . . Therefore, § 1325(b) is the exclusive test in regards to the amount to be paid to nonpriority unsecured creditors." R. 32 at 10-11.

This court declines to follow *Barr* in determining the debtors' projected disposable income to be paid to unsecured creditors. Indeed, *Barr* never mentioned "projected disposable income." *See In re Pak*, 343 B.R. 239, 245 (Bankr. N.D. Calif. 2006) (recognizing that *Barr* "did not base its decision on a construction of the phrase 'projected disposable income'"). In *Barr*, the Trustee had complained that the debtor's plan did not comply with the good faith requirement of § 1325(a)(3) because she had the ability to pay more to her creditors. The *Barr* court had overruled the Trustee's objection on the ground that "the debtor's ability to pay and whether the proposed plan commits all of the debtor's disposable income must be determined under section 1325(b) rather than as an element of good faith under section 1325(a)(3)." *Id.* at 186. *Barr* focused on the mandatory nature of § 1325(b)(3) without considering § 1325(b)(1) or (b)(2). The court finds, therefore, that *Barr* is not pertinent to the question to be established in this case: whether the debtors' annual bonus is to be included in their "projected disposable income."

After examining the new statute and case law concerning § 1325(b)(1) and (b)(2), this court determines to follow the clearly emerging line of authority. It finds that the historical "disposable income" calculation newly created under § 1325(b)(2) is not dispositive of the "projected disposable income" amount needed to fund a chapter 13 plan. It agrees with those cases finding that "projected disposable income" is different from "disposable income" and that Congress, by leaving the word "projected" in § 1325(b)(1)(B), intended a distinction between the terms. *See, e.g., In re Grady*, 343 B.R. at 750. It also agrees that the statutory term *projected disposable income to be received in the applicable commitment period* "requires the Court to consider both future and historical finances of a debtor in determining compliance with section 1325(b)(1)(B)." *In re Jass*, 340 B.R. at 416; *accord, In re Risher*, 344 B.R. at 836; *In re Grady*, 343 B.R. at 751; *In re Hardacre*, 338 B.R. at 723 (clarifying that "projected disposable income" is intended to be "income that the debtor reasonably expects to receive during the term of her plan"). This court therefore treats the CMI analysis as the initial but not the ultimate measure of the debtors' financial condition and ability to fund their plan.

> The numbers resulting from the calculations on Form B22C represent a starting point for the Court's inquiry. It represents a floor, not a ceiling. Such a construction gives the Court the ability to evaluate the debtor's past and current financial status to determine a debtor's disposable income when a debtor's circumstances change from the six months preceding the filing of the petition. It is also consistent with the Chapter 13 practice of allowing for modification of a plan upon a change of financial circumstances of a debtor.

In re Risher, 344 B.R. at 836-37.

The court therefore evaluates the debtors' past and current financial status to determine their projected disposable income.[10] That financial status includes regularly received annual bonuses. The court realizes that the bonus received in February 2005 was outside the 6-month period reported in the debtors' CMI. Judge Keith Lundin, in his Chapter 13 bankruptcy treatise, discusses the possible distorting effect of the 6-month window for CMI calculations:

> Because it is based on an average, CMI can be dramatically affected by the timing of the Chapter 13 petition. Filing before a debtor receives a large commission or vacation pay or waiting a few months after the debtor has lost a well-paying job will materially change the CMI calculation. That CMI indicates the debtor has substantial (average) monthly income to pay unsecured creditors through a Chapter 13 plan may distort the reality that for many months during the typical year, the debtor has little or no income after living expenses.

Keith M. Lundin, 5 *Chapter 13 Bankruptcy, 3d Edition* § 468.1 at 468-5 (2000 & Supp. 2006). However, Judge Lundin considers the possibility that such amounts can be included in CMI under § 101(10A)(B):

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[10] The court appreciates the comment made in *In re Guzman* that the CMI calculation is a "rear view mirror" reflection of a debtor's disposable income and Schedules I and J give a "crystal ball" view of current and future disposable income. *See In re Guzman*, 345 B.R. 640, 645 (Bankr. E.D. Wis. 2006) (concluding that the § 1325(b)(3) expense deductions of an above-median debtor are governed by Form B22C, not by Schedule J).

> This raises the question whether amounts paid by any entity other than the debtor on a regular basis for the household expenses of the debtor or a dependent of the debtor under § 101(10A)(B) are included in CMI even if not received by the debtor or derived within the six-month period described in § 101(10A)(A). Without the temporal limitation in § 101(10A)(A), the amounts included in CMI by § 101(10A)(B) could be amounts paid at any time so long as the conditions of regularity and use for household expenses are satisfied. This is likely to be a litigated issue when a debtor benefits from "regular" payments of household expenses from an outside source but the amounts paid are not "received" by the debtor and/or the payments were not within the applicable six-month period before the Chapter 13 petition.
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> Imagine a chapter 13 debtor who received a tobacco or crop subsidy nine months before the Chapter 13 petition. The payment is outside the applicable six-month period in § 101(10A)(A) and would not come into CMI through that subsection. But if the debtor receives such a payment every year and if the payment can be characterized as "for the household expenses of the debtor," the payment might be dragged into CMI by § 101(10A)(B). Perhaps more likely examples would include a home mortgage paid by an ex-spouse or a utility supplement paid during winter (or summer) months but not within six months before the petition.

Id. at 468-6. Persuaded by Judge Lundin's erudite observations of § 101(10A)(B), this court finds similarities between his examples and the regularly received bonuses that were not paid within 6 months before the debtors' petition. Those bonuses were deposited in the debtors' bank account and may well have been used to pay the debtors' household expenses. At least, there is no evidence that they were not used for payments of the debtors' household expenses.

Accordingly, the court determines that a proper calculation of "all of the debtor's projected disposable income to be received in the applicable commitment period" must include the debtors' past and current financial status. It finds that the debtors failed to commit to the plan all the annual bonuses they regularly received in the past and anticipated for the future. Consequently, the court sustains the Trustee's objection pursuant to § 1325(b)(1)(B).

B. *11 U.S.C. § 1325(a)(3), § 1325(a)(4)*

The Trustee also objected to confirmation of the debtors' chapter 13 plan under § 1325(a)(3) and (a)(4). She argued that, because the debtors did not contribute all their disposable income to funding their plan, their plan was not offered in good faith and did not meet the best interests of their creditors. The court notes, first, that the plan requirements listed in § 1325(a)(1)-(4) were not changed by BAPCPA. It therefore follows the Seventh Circuit's holding that the § 1325 mandate to determine the disposable income available for a chapter 13 plan was independent of the good faith requirement. *See In re Smith*, 286 F.3d 461, 468 (7th Cir. 2002). Moreover, the court has resolved the Trustee's objection pursuant to § 1325(b)(1)(B) as a matter of law. It therefore declines to consider the alternative fact-based objections of the Trustee by examining a chapter 13 plan that cannot be confirmed.

Conclusion

For the reasons presented in this Memorandum of Decision, the Trustee's objection to confirmation under 11 U.S.C. § 1325(b)(1)(B) is sustained. The chapter 13 plan of the debtors cannot be confirmed as proposed. The debtors are granted leave to file modifications of their Chapter 13 plan consistent with the conclusions of law presented in this Memorandum of Decision.

SO ORDERED.

/s/ Harry C. Dees, Jr.
HARRY C. DEES, JR., CHIEF JUDGE
UNITED STATES BANKRUPTCY COURT