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Navigating Through the Means Test

A Practical Approach
to Calculating Chapter 13 Disposable Income

by:

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BIOGRAPHICAL INFORMATION



Judge Rodriguez received his M.B.A. degree with high honors from Pan American University and his J.D. from Texas Tech University. Judge Rodriguez is a Certified Mediator and Board Certified in Consumer Bankruptcy Law by the Texas Board of Legal Specialization.

He was sworn in on July 31, 2015 as United States Bankruptcy Judge for the Southern District of Texas, McAllen Division. As a lawyer, Judge Rodriguez represented both debtors and creditors in multiple forms of bankruptcies and has acted as both receiver and Chapter 11 Trustee in various chapter 11 bankruptcy cases.

Judge Rodriguez has written and published numerous articles on consumer and business bankruptcy related issues and is a frequent speaker at bankruptcy seminars around the country. He is the past Chair of the State Bar of Texas's Bankruptcy Law Section and is a State Bar of Texas Robert B. Wilson Distinguished Service Awardee. Judge Rodriguez is also a past member of the State Bar of Texas Legal Services to the Poor in Civil Matters Committee, coordinates the Bankruptcy Section's Pro-Bono programs where he received an award for Outstanding Services from the State Bar of Texas, was previously one of six lawyers in Texas to receive the prestigious award for pro bono services from Legal Services Corporation in Washington, D.C., and the Texas Access to Justice Foundation. Judge Rodriguez serves as a member of the State Bar of Texas and Pro-Bono College and was named the 2015 Pro-Bono Champion by the Texas Bar Journal. Judge Rodriguez is also the recipient of the 2018 Judge Merrill Hartman Pro Bono Judge Award for his commitment to the provision of legal services to the poor.

OVERVIEW

1. Means tests used in Chapter 7 and in Chapter 13 serve two different purposes:
 - the former to guard the door to Chapter 7 relief (11 U.S.C. §707(b)(2))
 - the latter to determine how much should be paid to creditors in Chapter 13 (11 U.S.C. §1325(b))
 - The 1984 Bankruptcy Amendment and the Federal Judgeship Act of 1984, Pub. L. No. 98–3534, 98 Stat. 333 (1984), added the “disposable income” requirement, which provides that all of the debtor’s projected disposable income to be received in the three–year period beginning on the date that the first payment is due under the plan must be applied to make payments under the Chapter 13 plan, pursuant to 11 U.S.C. § 1325(b). This section applies only if there is an objection to the confirmation by the trustee or by the holder of an allowed unsecured claim.

2. The Bankruptcy Forms contain over 91 different entries to complete. Here is a quick check list of items to keep in mind:
 - ✓ Include all income from every source, except social security (within the 4th, 5th, 9th, and 10th Circuits anyway);
 - ✓ Do not take expense deductions that you are not entitled to take;
 - ✓ Take every deduction you are entitled to take;
 - ✓ If the expense amount is a National or Local standard amount, enter the correct amount—you do not get to adjust it;
 - ✓ Avoid double dipping. In other words, do not list the same expense under more than one category. As Albert Einstein said, “Not everything that counts can be counted and not everything that can be counted, counts.”

3. Chapter 13 Plans and related Bankruptcy Schedules should not contradict each other.
 - Be prepared to provide proof for everything, especially expenses that fall outside the National or Local Standards.
 - “Passing” or “Failing” the Means Test is a misnomer.

- o i.e., You can “fail” the Means Test by having to fill out 122C-2, but still “pass” the Means Test by having little or no disposable income available to pay general unsecured creditors.
4. The Applicable Commitment Period is only 3 or 5 years.
 5. Consumer debts are “debts incurred by an individual primarily for personal family, or household purpose.” 11 U.S.C. § 101(7).
 - “Primarily” means more than 50% of the scheduled debt.
 - Debtors whose debts are not primarily consumer debts are not required to undergo a Means Test
 - The test for determining whether a debt should be classified as a business debt is whether it was incurred with an eye toward a profit. *In re Booth*, 858 F.2d 1051 (5th Cir. 1988).
 6. Calculating the debtor’s disposable income.
 - Prior to the passage of the Bankruptcy Abuse Prevention and Consumer Protection Act (“BAPCPA”), bankruptcy courts calculated *disposable income* using a mechanical approach by multiplying monthly income, as determined from Schedules I and J, and then multiplying that amount by the number of months in the plan.
 - Post BAPCPA:
 - o If the debtor’s income is below the state’s median income level, the debtor’s Schedule I and J determine the debtors *projected disposable income*;
 - o If the debtor’s income is above the state’s median income level, then Form 122C-2 is required and only certain specified expenses are allowed in order to determine the Debtor’s *projected disposable income*.

Instructive Cases:

In re Ragos, 700 F.3d 220 (5th Cir. 2012)

Issue: Whether social security benefits are included in a debtor's *projected disposable income*.

Held: Social Security benefits . . . being statutorily excluded from the current monthly income used to calculate their "*disposable income*," were likewise excluded from "*projected disposable income*."

See also Mort Ranta v. Gorman, 721 F.3d 241, 251 (4th Cir. 2013); Matter of Welsh, 711 F.3d 1120, 1132 (9th Cir. 2013); In re Cranmer, 697 F.3d 1314, 1319 (10th Cir. 2012).

OFFICIAL FORMS

Official Form 122C-1

**Chapter 13 Statement of Your Current Monthly Income
& Calculation of Commitment Period**

- Currently Monthly Income (“*CMI*”) is completely backward-looking
 - The computation period is the six calendar months before the bankruptcy filing.
 - Example: If a bankruptcy case is filed on August 14 then report the debtor’s entire “income” from February 1 – July 31.
 - Potentially, it’s not “Current,” “Monthly,” or “Income”
- CMI has three components:
 1. A computation period
 2. Income inclusions
 - **Include:**
 - All income, both taxable and nontaxable, that the debtor receives;
 - In a joint case, all income, both taxable and nontaxable, that the debtor’s spouse receives; and
 - All other amounts that are paid on a regular basis for the household expenses of the debtor, the debtor’s dependents, and, in a joint case, the debtor’s spouse if not otherwise a dependent.
 3. Income exclusions
 - **Exclude:**
 - Benefits received under the Social Security Act (11 U.S.C. § 101(10A)(B)(ii)(I));
 - Payments to victims of war crimes;
 - Payments to victims of international or domestic terrorism.

Part 1: Calculate Your Average Monthly Income

Line 1 - Marital Status

There are only two choices:

- Not married: either single or divorced. “Separated” is still married. (*Complete only Column A*)
- Married: watch out for common law marriages. (*Complete both Column A & B*)

Line 2 - Gross wages, salary, tips, bonuses, overtime, and commissions

Include ALL income from EVERY source that is REGULAR (EXCEPT social security benefits), including:

- pay/shift differentials
- income, whether or not taxable
- part time jobs
- family contributions

Practice Tips:

- ✓ Figures are gross amounts, before any deductions.
- ✓ Look for bonuses, especially around the holidays.
- ✓ Compare year to date on the pay stubs to the amount on the check. If the year to date is higher, look for bonuses. If the year to date is lower, ask if there was a change (i.e., no more overtime.)

Line 3 - Alimony and maintenance payments

Include all domestic support obligations and alimony payments here.

Practice Tip: If the debtor is still married and provides regular contributions to the current spouse, do not include that here.

Line 4 - All amounts from any source which are regularly paid for household expenses, including child support

Include only those payments that are REGULAR, including:

- payments made monthly, quarterly, or annually
- payments regardless of written agreement
- payments from roommate, partner, parent, or relative regardless of whether living with the debtor
- payments made directly to creditors on behalf of debtor (i.e., rent, car)

Exclude any payments already listed on Line 3, plus:

- payments from non-filing spouse
 - o payments from non-filing spouse should be included as income on Column B

	Column A Debtor 1	Column B Debtor 2 or non-filing spouse
2. Your gross wages, salary, tips, bonuses, overtime, and commissions (before all payroll deductions).	\$ _____	\$ _____
3. Alimony and maintenance payments. Do not include payments from a spouse.	\$ _____	\$ _____
4. All amounts from any source which are regularly paid for household expenses of you or your dependents, including child support. Include regular contributions from an unmarried partner, members of your household, your dependents, parents, and roommates. Do not include payments from a spouse. Do not include payments you listed on line 3.	\$ _____	\$ _____

Line 5 - Net income from operating a business, profession, or farm

List gross income and ACTUAL expenses. The fact that debtor “doesn’t really make anything” does not excuse the debtor from filling in this section.

- Net can never be less than zero.
- Make sure the debtor is NOT including a draw for him/herself. Taking a draw is income, not an expense.

- Depreciation is not an expense.

Practice Tip: Avoid double dipping. If there is a vehicle expense used in the business, you don't get the same vehicle expense deduction here and on Form 122C-2, Line 12 or 13.

Line 6 - Net income from rental and other real property

List the gross rent paid to the debtor and then deduct for the debtor's mortgage, taxes, insurance, etc., on the property.

- Net can never be less than zero.
- Depreciation is not an expense.
- Debt service on rental property goes here:

6. Net income from rental and other real property	Debtor 1	Debtor 2		
Gross receipts (before all deductions)	\$	\$		
Ordinary and necessary operating expenses	- \$	- \$		
Net monthly income from rental or other real property	\$	\$	Copy here →	\$

Practice Tip: Avoid double dipping. Debt service on rental property DOES NOT go on Form 122C-2, Line 33. Form 122C-2 is discussed further below.

Line 7 - Interest, dividends, and royalties

The best place to find any one of these items is on tax returns.

Line 8 - Unemployment compensation

Enter any unemployment compensation here.

Chapter 13 Means Test Quick Reference Guide

- If the compensation is a benefit under the Social Security Act, do not list it in Column A or B, instead used these boxes:

	Column A Debtor 1	Column B Debtor 2 or non-filing spouse
7. Interest, dividends, and royalties	\$ _____	\$ _____
8. Unemployment compensation	\$ _____	\$ _____
Do not enter the amount if you contend that the amount received was a benefit under the Social Security Act. Instead, list it here: _____ ↓		
For you _____	\$ _____	
For your spouse _____	\$ _____	

Practice Tip: It is the UST’s official position that unemployment compensation is not a “benefit under the Social Security Act” and the UST will oppose any entry to the left of Columns A and B.

Line 9 - Pension or retirement income

Enter any retirement income here.

Include:

- from any source such as 401(k) and IRAs
- military pensions

Exclude:

- benefits received under the Social Security Act

Practice Tip: Review the debtor’s tax returns and bank statements.

Line 10 - Income from all other sources not listed above

Include miscellaneous income from sources such as:

- net gambling wins
- cash gifts
- litigation proceeds

- trust income
- private disability income
- foster care payments

Exclude:

- Social Security Act benefits
- income tax refunds
- loan proceeds

Practice Tip: Review the debtor's tax returns and bank statements.

Line 11 - Calculate your total average monthly income.

Add Lines 2 through 10 for each Column A and Column B. Then add the total both columns together to calculate total average monthly income.

Part 2: Determine How to Measure Your Deductions from Income

Line 12 - Copy your total average monthly income from line 11

Enter total average monthly income here.

Line 13 - Calculate the marital adjustment

Before getting to the calculation, it's helpful to understand the reason behind the marital adjustment:

- Schedules I and J include all the non-filing spouse's income in the income portion of the calculation and permit deduction of the non-filing spouse's expenses.
- Form 122C-1, however, excludes the non-filing spouse's income that is not regularly paid for the household expenses of debtor's dependents.
- Net effect of the above two calculations on the "bottom line" is similar, **BUT exclusion of income on Form 122C-1 reduces Current Monthly Income, while Schedules I and J do not.**

- Statutorily:
 - o To calculate the Applicable Commitment Period, 11 U.S.C. § 1325(b)(4)(A)(ii) requires that the CMI of the debtor and the debtor’s spouse be “combined”;
 - o However, unlike 11 U.S.C. § 707(b)(7)’s “presumption of abuse,” § 1325(b)(4)(A)(ii) makes no exception for spouses who are either legally separated or living separately.
 - o **NO EXCEPTIONS**
- Reason?
 - o Form 122C-1, Part 3 compares the debtor’s CMI to the state median income, determining whether Form 122C-2 must be used.
 - (i.e., the Means Test deductions must be used, per 11 U.S.C. § 1325(b)(3)’s “amounts reasonably necessary to be expended” language in calculating disposable income)
 - o However, § 1325(b)(3) (disposable income of *the debtor*) does not provide for the inclusion of the income of the debtor’s spouse.
 - o **THUS, Form 122C-2 attempts to honor the “combining” mandated by § 1325(b)(4) by including the non-filing spouse’s income while allowing deductions of the non-filing spouse’s income that are not regularly contributed towards household expenses of the debtor.**

Now on to the calculation . . .

The debtor has three options for calculating the marital adjustment for Line 13:

1. The debtor is not married → Enter a 0 on the “Total” line.
2. The debtor is married, and spouse is filing with the debtor → Enter a 0 on the “Total” line.
3. The debtor is married and spouse is NOT filing with the debtor.
 - o By selecting this option, the debtor contends that the income of a spouse should NOT be included as income in a non-joint filing.

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- o Debtor must fill in the amount of the income from Line 11, Column B (spouse), that was NOT regularly paid for the household expenses of the debtor (or dependents of debtor). For example:
 - o payment of spouse's tax liability,
 - o spouse's support of someone other than debtor or the debtor's dependents
 - o insurance
 - o retirement (mandatory such as 401(k) loans)
 - o child support payments
 - o gym dues, union dues, uniforms, loans from employer
 - o secured debt payments (i.e., cars, boats) that will not be listed on:
 - Form 122C-2, Line 13 (Vehicle Ownership); or
 - Form 122C-2, Line 33 (Debts secured by an interest in property).

Practice Tip: Watch out for car payments made by non-filing spouse, for which the non-filing spouse is liable, but where the car is driven by the debtor. Such payments **MUST** be taken as a marital deduction and are not considered contributions to the debtor's household expenses. *See* 11 U.S.C. § 707(b)(2)(A)(ii) ("the monthly expenses of the debtor shall not include any payments for debts").

- o student loans
- o repayment plans with the IRS
- o non-filing spouse's credit card debt payments:
 - Deduct the minimum monthly payment unless you can justify higher amounts via monthly statements

CAUTION: some of the expenses charged to a credit card could be amounts regularly contributed to the household expenses of the debtor (i.e., utilities), and thus constitutes income.

Practice Tips:

- ✓ It is the UST's official position to oppose any amount—other than 0—listed on Form 122C-1, Line 13.
- ✓ Avoid double dipping. If the debtor and non-filing spouse are liable for a car payment, do not list it as a marital adjustment on Form 122C-1, Line 13 AND Form 122C-2, Line 13. Use only Form 122C-2, Line 13.

Line 14 - Your current monthly income

Enter the difference between the amount on Line 12 and the amount on Line 13 (i.e., total average monthly income minus marital adjustment).

Line 15 - Calculate your current monthly income for the year

Enter the sum of the amount on Line 14 multiplied by 12.

Line 16 - Calculate the median family income that applies to you

Line 16 consists of three entries:

1. State where the debtor resides.
 - If the debtor is married and maintains households in different states, where the debtor resides is determined based on where most of the family members reside.
2. Household size includes the debtor, the debtor's spouse, and any dependents as defined in IRS Publication 501.
 - Exception: a household may consist of unmarried individuals and their children; however, if an individual is counted as a family member for median income purposes, then that individual's income should be included as income on Part 1 of the Form.
3. Enter median income from Census Bureau website for the debtor's state and household size.

Line 17 - How do the lines compare?

Compare Lines 15b and 16c to determine whether the debtor has “passed” or “failed” the Means Test.

1. If the amount on Line 15b is **less than or equal to** the amount on Line 16c, then disposable income is not determined under 11 U.S.C. § 1325(b)(3). Go to the first page of Form 122C-1 and check box 1.
 - Do not fill out Form 122C-2 (i.e., the debtor has **passed** the Means Test).
2. If the amount on Line 15b is **more than** the amount on Line 16c, then disposable income is determined under 11 U.S.C. § 1325(b)(3). Go to the first page of Form 122C-1 and check box 2.
 - Fill out Form 122C-2 (i.e., the debtor has **failed** the Means Test).

Check as directed in lines 17 and 21:
According to the calculations required by this Statement:

- 1. Disposable income is not determined under 11 U.S.C. § 1325(b)(3).
- 2. Disposable income is determined under 11 U.S.C. § 1325(b)(3).
- 3. The commitment period is 3 years.
- 4. The commitment period is 5 years.

Part 3: Calculate Your Commitment Period Under 11 U.S.C. § 1325(b)(4)

The Applicable Commitment Period is either 3 years or 5 years as determined by § 1325(b)(4).

Line 18 - Copy your total average monthly income from line 11

Enter the total from Line 11 here.

Line 19 - Deduct the marital adjustment if it applies

There are two options for Line 19a:

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1. If the debtor took the marital adjustment on Line 13, enter that number on Line 19a.
2. If the marital adjustment on Line 13 did not apply to the debtor, enter 0 on Line 19a.

On Line 19b, enter the difference between Line 18 and Line 19a.

Line 20 - Calculate your current monthly income for the year

There are three entries for Line 20:

1. On Line 20a, enter the amount from Line 19b.
2. On Line 20b, enter the sum of the amount of 19b multiplied by 12. This is the debtor's current monthly income for Part 3 of Form 122C-1. This may be different than the debtor's CMI on Line 15.
3. On Line 20c, enter the amount from Line 16c, the median family income for the debtor's state and household size.

Line 21 - How do the lines compare?

Compare Line 20b with Line 20c to determine the Applicable Commitment Period.

1. If the amount on Line 20b is less than the amount on Line 20c, the debtor's Applicable Commitment Period is 3 years. Go to the first page of Form 122C-1, check box 3.
2. If the amount on Line 20b is more than or equal to Line 20c, the debtor's Applicable Commitment Period is 5 years. Go to the first page of Form 122C-1, check box 4.

*See graphic on next page.

Check as directed in lines 17 and 21:

According to the calculations required by this Statement:

- 1. Disposable income is not determined under 11 U.S.C. § 1325(b)(3).
- 2. Disposable income is determined under 11 U.S.C. § 1325(b)(3).
- 3. The commitment period is 3 years.
- 4. The commitment period is 5 years.

Part 4: Sign Below

The debtor must sign Form 122C-1 under penalty of perjury, declaring that the information on the Form is true and correct.

Reminder: Review Lines 17a and 17b. If the debtor checked Line 14A, do not fill out Form 122C-2. If the debtor checked Line 17b, you must fill out Form 122C-2 and file it with Form 122C-1.

Official Form 122C-2

Chapter 13 Calculation of Your Disposable Income

Instructive Cases:

In re Nowlin, 576 F.3d 258 (5th Cir. 2009)

Facts:

- Above-median debtor's Plan provided for only \$195.00 per month for creditors due to deductions of \$1,134 per month to repay a 401(k) loan, and \$1,062 in new monthly contributions to the 401(k) plan with only \$980.45 or 3% total over 60 months of general unsecured claims.
- At confirmation the debtor testified that her 401(k) loan would be paid off in two years
- The bankruptcy court denied confirmation holding that "projected monthly income" required the debtor to dedicate the income freed up after paying off the 401(k) loan to her Plan, since the amount was reasonably certain to be available.

Held: While an above-median-income Chapter 13 debtor's "*projected disposable income*" presumptively consists of the debtor's statutorily defined "*disposable income*" mechanically projected into the future for the duration of the plan, any party may rebut this presumption by presenting evidence of present or reasonably certain future events that substantially change the debtor's financial situation. The Court rejected the debtor's position of applying just the mechanical projection of pre-petition income.

Hamilton v. Lanning, 560 U.S. 505 (2010)

Facts: The debtor had received a buyout from a prior employer during the six-month timeframe prior to filing bankruptcy, something that was not likely to occur again in the foreseeable future. However, the buyout still counted as an income event within the six-month period preceding the bankruptcy filing, thereby artificially inflating the means test income numbers.

Held: When a bankruptcy court calculates a chapter 13 debtor's *projected disposable income*, the court may account for changes in the debtor's income or expenses that are known or virtually certain at the time of confirmation.

In re Ransom, 562 U.S. 61 (2011)

Facts: The debtor listed a car that he owned free and clear of any liens but nonetheless claimed a car-ownership deduction of \$471.

Held: A debtor who does not make loan or lease payments may not take the car-ownership deduction in calculating his *projected disposable income* under the means test but may still be entitled to the operating costs deduction. The car-ownership category encompasses the costs of a car loan or lease and nothing more.

Part 1: Calculate Your Deductions from Your Income

Lines 1–4

Lines 1–4 are not used on Form 122C-2. They are applicable only in chapter 7 cases.

Line 5 - The number of people used in determining your deductions from income

Enter the number of people who could be claimed as a dependent on the debtor's federal income tax return and any additional dependents the debtor supports.

Note: This number could be different than the debtor's household size.

Practice Tip: You MUST use IRS National Standards to fill in Lines 6 and 7. You can obtain the National Standards at www.justice.gov/ust/means-testing.

Line 6 - Food, clothing, and other items

Using the number of people entered in Line 5 enter the amount for:

- apparel and services
- meals at home or away
- housekeeping supplies

- personal care products and services
- miscellaneous personal expenses

Line 7 - Out of pocket health care allowance

There are two separate categories that need to be filled out for Line 7: one for people under age 65 and one for people over age 65:

- Under age 65:
 - o Line 7a: Enter the out-of-pocket health care allowance amount from the IRS National Standards.
 - o Line 7b: Based on the number of people entered on Line 5, enter how many of those people are **under** age 65.
 - o Line 7c: Enter the sum of Line 7a multiplied by Line 7b.
- Over age 65 (IRS National Standards provide higher health care allowances)
 - o Line 7d: Enter the out-of-pocket health care allowance amount from the IRS National Standards.
 - o Line 7e: Based on the number of people entered on Line 5, enter how many of those people are **over** age 65.
 - o Line 7f: Enter the sum of Line 7d multiplied by Line 7e.

Practice Tip: Note that actual amounts expended by the debtor that exceed the IRS National Standards **and** that are not reimbursed by insurance **or** paid by a health savings account, may be claimed on Form 122C-2, Line 22 (additional health care expenses), but not here.

Line 8 - Housing and utilities – Insurance and operating expenses

Based on (i) county of residence and (ii) number of people entered on Line 5, enter the appropriate amount from the IRS Local Standards.

- Include:
 - o Maintenance and repairs
 - o Home and cell phones
 - o Insurance
 - o Gas
 - o Electricity
 - o Water
 - o Garbage collection

Practice Tip: You MUST use IRS Local Standards to fill in Lines 8 through 15. You can obtain the Local Standards at www.justice.gov/ust/means-testing.

Line 9 - Housing and Utilities – Mortgage or rent expense

Line 9a: Based on (i) county of residence and (ii) number of people entered on Line 5, enter the dollar amount from the IRS Local Standards for mortgage/rent.

Line 9b: Enter the total average monthly payment for all mortgages and other debts secured by your home, calculated by:

- Add all amounts that are contractually due (i.e., first and second liens) to each secured creditor in the 60 months after you file for bankruptcy;
- Divide that number by 60.

Practice Tip: Do not include ad valorem taxes or HOA fees. Those will be entered on Form 122C-2, Line 34 (debts necessary to secure your primary residence).

Line 9c: Subtract Line 9b from Line 9a. If the number is less than \$0, then enter \$0.

Practice Tip:

- ✓ Avoid double dipping. The debtor may not take the full amount of the IRS Local Standard for mortgage/rent on Form 122C-2, Line 9a and fail to deduct the monthly mortgage payment on Line 9b. This is so that the debtor benefits from the higher of either the IRS Local Standard or the actual mortgage payment, but not both.
- ✓ Surrender. If the home is surrendered, the debtor gets the IRS “operating expense” (to be claimed on Form 122C-2, Line 8), not the mortgage expense.
- ✓ One Deduction. If filing jointly, the debtors allowed only one IRS Local Standard mortgage/rent deduction, even if they are separated and maintaining two households.

Line 10 - If you claim that the U.S. Trustee’s Program’s division of the IRS Local Standard for housing is incorrect and affects the calculation of your monthly expenses, fill in any additional amount you claim.

Practice Tip: The UST notes that this line is often used improperly by debtors to claim housing expenses in excess of the IRS Standards and the UST will likely object.

Line 11 - Local transportation expenses.

Check the appropriate box that reflects the number of vehicles for which the debtor claims an ownership interest or operating expense.

- If the debtor has no vehicles, then proceed to Line 14.
- If the debtor has 1 or more vehicles, fill out both Line 12 and Line 13.

Practice Tip:

- ✓ It does not matter where the vehicle is located. For example, even if one of the vehicles is away at college with a dependent and the debtor has an ownership interest in it, it must be counted.
- ✓ Make sure that Form 122C-2, Line 11 matches Line 3 of Bankruptcy Schedule A/B. If the debtor claims two vehicles here and only one on Schedule A/B, the debtor will have some explaining to do.
- ✓ Vehicles that are not operational (i.e., don't have an engine) don't qualify for this expense.

Line 12 - Vehicle Operation Expense.

Enter *Operating Costs* for the debtor's Census region or metropolitan statistical area from the IRS Local Standards for the number of vehicles for which the debtor claims an operating expense.

Line 13 - Vehicle ownership or lease expense.

Describe and calculate the new ownership or lease expense for each of the debtor's vehicles. The debtor is limited to two vehicles here.

- **Lines 13a and 13d:** Enter the IRS Local Standard for the vehicle.
- **Line 13b and 13e:** To calculate the average monthly payment, add all amounts that are contractually due (including principal and interest) to each secured creditor in the 60 months after the debtor files for bankruptcy and divide by 60.
 - The total **may or may not** necessarily be the same as the debtor's monthly payment amount.
 - Ex: if the debtor has 42 payments over the next 60 months of \$600 each, the amount for Line 13b and 13e would be \$420.00 not \$600.00.
- **Line 13c and 13f:** Subtract the average monthly payment (Line 13b or 13e) from the IRS Local Standard (Line 13a or 13d).

- o If this number is less than \$0, then enter \$0, DO NOT enter a negative number.
- o The amount for Line 13 is **not** the current payoff on the debt. The payoff does not include unaccrued interest.

Practice Tip:

- ✓ You may not claim the expense if you do not make loan or lease payments on the vehicle. *Ransom v. FIA Card Services, N.A.*, 562 U.S. 61 (2011). Borrowing a vehicle without making payments does not qualify for an ownership expense.
- ✓ If the vehicle is being surrendered, you do not get to take the expense.
- ✓ Avoid double dipping. You cannot take the ownership or leasing expense on Form 122C-2, Line 13a and then fail to deduct the monthly lien payment on Form 122C-2, Line 13b. Line 13 allows the debtor to take the higher of the actual loan or lease payment and vehicle ownership expense.
- ✓ The ownership/lease expense **does not** go on Form 122C-2, Line 13 if the debtor is NOT liable for the debt. *See In re Hall*, 559 B.R. 463 (S. D. Tex. Corpus Christi, 2016) (In calculating her “projected disposable income,” above-median-income chapter 13 debtor was not entitled to standard vehicle ownership deduction for motor vehicles that were owned by her non-filing spouse).

Line 14 - Public transportation expense.

If the debtor claimed 0 vehicles on Line 11, then enter the Local Standard amount **regardless whether the debtor uses public transportation.** Enter \$0 on this line if the debtor claimed vehicles on Line 11.

Line 15 - Additional public transportation expense.

If the Debtor claimed 1 or more vehicles on Line 11, but also claims an additional public transportation expense, enter that expense here. The amount cannot exceed the IRS Local Standards for Public Transportation.

- Ex The debtor owns vehicles, but often rides the bus to and from work.

Other Necessary Expenses: In addition to the expense deductions listed above, the debtor is allowed the monthly expenses for the IRS categories that follow.

Line 16 - Taxes.

Calculate the monthly amount of taxes the debtor actually pays for federal income, social security, and Medicare taxes. (in other words, watch for over-withholding).

Practice Tip: Watch for over-withholding. This can affect plan feasibility issues.

- If the debtor receives a tax refund every year, then that amount must be divided by 12 and subtracted from the monthly amount.
 - o **Caution:** Ad valorem taxes do not go here, they go on Form 122C-2, Line 34.

Practice Tip:

- ✓ Watch for changes in income. If the debtor was making \$2,000 a month withholding \$340 but just started a new job earning \$5,000, the \$340 may not be enough.
- ✓ If the debtor takes the marital adjustment on Form 122C-1, Line 13 for a non-filing spouse, the UST will object if the debtor includes the non-filing spouse's tax deductions here.

Line 17 – Involuntary deductions.

Enter **mandatory** payroll deductions here.

- **Include:**
 - o Retirement, union dues, uniform costs, work shoes.
 - o **Caution:** Automatic is not necessarily mandatory (i.e., automatic deductions for savings for a trip to Las Vegas).

- **Exclude:**
 - Voluntary 401(k) contributions or other voluntary retirement, those go on Form 122C-2, Line 41;
 - United way or other charitable contributions;
 - Elective insurance.

Line 18 – Life Insurance.

Enter the monthly premiums for the term life insurance.

- **Include:**
 - only amounts for **term life** insurance.
 - If the debtor’s policy is whole life, you must determine what portion of the premium is attributable to term life.
- **Exclude:**
 - premiums for non-debtor spouse or children.
 - Form 122C-1, Line 13 should be used for the non-debtor spouse’s life insurance.

Line 19 – Court ordered payments.

Enter the total monthly amount that the debtor pays as required by the order of a court or administrative agency.

- **Include:**
 - Spousal or child support payments
- **Exclude:**
 - Payments on past due obligations for spousal or child support
 - Form 122C-2, Line 35 should be used for past due obligations

Practice Tip: This Line is for **court ordered** payments only. If debtor is making voluntary payments to a separated spouse, it does not go here. It might qualify for a change in income or expense on 122C-2, Line 46.

Line 20 – Education.

Enter the total monthly amount that the debtor pays for education.

- Employment education must be a condition of employment;
- Expenses for physically or mentally challenged dependent children who cannot be otherwise provided by public school system.

Practice Tip: Avoid double dipping. Expenses for challenged children are not allowed here if including them on Form 122C-2, Lines 21 or 29, described below.

Line 21 – Childcare.

Enter the total monthly amount that the debtor pays for childcare.

- **Include:**
 - o babysitting, nursery school, daycare, and preschool
- **Exclude:**
 - o Payments for any elementary or secondary school education

Line 22 – Additional health care expenses, excluding insurance costs.

Enter the monthly amount that the debtor pays for health care that is required for the health and welfare of the debtor or dependents.

- **Include:**
 - o Only unreimbursed, out-of-pocket expenses, exceeding the IRS National Standard amounts provided for on Form 122C-2, Line 7
- **Exclude:**
 - o Payments for health insurance or health savings accounts
 - o Health care expenses that are not necessary (i.e., expenses for cosmetic surgery)

Practice Tip: Avoid double dipping. If the debtor has a health savings account (Form 122C-2, Line 25) you must subtract that amount **and** the IRS National Standard allowance from the gross out-of-pocket to get the net out-of-pocket.

Line 23 – Optional telephones and telephone services.

Enter the total monthly amount that the debtor pays for telecommunication services for the debtor and the debtor’s dependents.

- **Include:**
 - Special long distance or business cell phone service, to the extent necessary for the debtor’s health and welfare or that of the debtor’s dependents, or for the production of income if not reimbursed by an employer.
- **Exclude:**
 - Home telephone, internet, or cell phone service.
 - Self-employment expenses such as those reported on Form 122C-1, Line 5, or any amount the debtor previously deducted.

Line 24 – Add all of the expenses allowed under the IRS expense allowances

Enter the sum of lines 6 through 23.

Additional Expense Deductions

Practice Tip: Avoid double dipping. Form 122C-2, Lines 25–32 allow for expenses **in addition** to those documented on Form 122C-2, Lines 6–24. **Do not duplicate the expenses.**

Line 25 – Health insurance, disability insurance, and health savings account expenses.

Enter actual monthly expenses for health insurance, disability insurance, and health savings accounts that are reasonably necessary for the debtor, spouse, and dependents.

Practice Tip: Review debtor’s paystub for these deductions. In some cases, it will not be on the debtor’s pay stub. For example, private disability insurance or COBRA (Consolidated Omnibus Budget Reconciliation Act) health insurance.

Line 26 – Continuing contributions to the care of household or family members.

Enter actual monthly expenses that debtor will continue to pay for the reasonable and necessary care and support of household or family members.

- **Include:**
 - Only actual, not anticipated expenses (i.e., it does not count if grandma is going to come live with the debtor sometime in the future).
 - Family member must live with the debtor or be a member of the debtor's immediate family (i.e., parent, grandparent, sibling, child, grandchild (list is not exclusive)).
 - Elderly, chronically ill, or disabled person must be **unable** to pay for his/her expenses.
- **May include:**
 - Contributions to an account of qualified ABLE program. 26 U.S.C. § 529A(b).

Line 27 – Protection against family violence.

Enter the reasonably necessary monthly expenses that the debtor incurs to maintain the safety of the debtor and family under the Family Violence Prevention and Services Act or other federal laws that apply. By law, the court must keep the nature of these expenses confidential.

Line 28 – Additional home energy costs.

Enter the **excess** amount of home energy costs that are more than the home energy costs included in expenses on Form 122C-2, Line 8.

- Must give the case trustee documentation of actual expenses;
- Must show that the additional amount claimed is reasonable and necessary.

Line 29 – Educational expenses for dependent children who are younger than 18.

Enter the monthly expenses that debtor pays for dependent children to attend a private or public elementary or secondary school.

- Child must be under 18 at time of filing;

- Amount may not exceed \$160.42 per child and is subject to adjustment every 3 years for cases filed after April 1, 2019;
- Must give the case trustee documentation of actual expenses and explain why the amount claimed is reasonable and necessary and not already accounted for on Form 122C-2, Lines 6–23.

Practice Tip: Avoid double dipping. Do not duplicate expenses from Form 122C-2, Lines 20 and 21.

Line 30 – Additional food and clothing expenses.

Enter the monthly amount by which the debtor’s actual food and clothing expenses are higher than the combined food and clothing allowances in the IRS National Standards.

- The amount cannot be more than 5% of the food and clothing in the IRS National Standard provided on Form 122C-2, Line 6.
- Must show that the additional amount claimed is reasonable and necessary.

Line 31 – Continuing charitable contributions.

Enter the amounts that the debtor will continue to contribute in the form of cash or financial instruments to a religious or charitable organization. 11 U.S.C. § 548(d)(3)–(4).

- Contribution is limited to 15% of gross income

Practice Tip:

- ✓ Key word is “**continued.**” Cannot be new contributions.
- ✓ Look at the debtor’s tax returns for such deductions.
- ✓ Verify that the deduction matches what the debtor actually pays, not what they would pay if they had more money. You can verify from a historical report from the charity.

Line 32 – Add all of the additional expense deductions.

Enter sum of lines 25 through 31.

Deductions for Debt Payment

Line 33 – For debts that are secured by an interest in property that you own, including home mortgages, vehicle loans, and other secured debt, fill in lines 33a through 33e.

To calculate the total average monthly payment, add all amounts that are contractually due to each secured creditor in the 60 months after the debtor files for bankruptcy. Then divide by 60.

- **Line 33a:** copy Line 9b here.
- **Line 33b:** copy line 13b here.
- **Line 33c:** copy line 13e here.
- **Line 33d:** list other secured debts.
- **Line 33e:** total average monthly payment. Add lines 33a through 33d.

Practice Tip: The amount of the payment **may or may** not necessarily be the same. (i.e., if the debtor has 42 payments of \$600 each, the amount for Line 33 would be \$420 not \$600). The amount for Line 33 is **not** the current payoff on the debt. The payoff does not include unaccrued interest.

Line 34 – Are any debts that you listed in Line 33 secured by your primary residence, a vehicle, or other property necessary for your support or the support of your dependents?

- If “no,” then go to Line 35.
- If “yes,” list the payments that are in addition to those listed on Line 33 to keep possession of the property (cure amounts).
 - Divide by 60.

Line 35 – Do you owe any priority claims – such as a priority tax, child support, or alimony – that are past due as of the filing date of your bankruptcy case? 11 U.S.C. § 507

- If “no,” then go to Line 36.

- If “yes,” fill in the total amount of all of these priority claims. Do not include current or ongoing priority claims, such as those you listed on Form 122C-2, Line 19.
 - Divide by 60.

Practice Tip: The Debtor’s attorney’s fees do not go here because those constitute an unsecured priority administrative claim, not a pre-petition priority claim. 11 U.S.C. § 507.

✓ **Official Form 122C-2 Committee Note:**

- “§ 1325(b)(1)(B) requires that *disposable income* contributed to a chapter 13 plan be used to pay unsecured creditors. A debtor’s attorney who has not taken a security interest in the debtor’s property is an unsecured creditor who may be paid from disposable income.”

Line 36 – Projected monthly Chapter 13 plan payment.

- Debtor must project a hypothetical chapter 13 plan payment to calculate the figure on Line 36.
- The multiplier for Line 36 can be found at www.justice.gov/ust/means-testing

Line 37 – Add all of the deductions for debt payment.

Enter the sum of lines 33e through 36.

Total Deductions from Income

Line 38 – Add all of the allowed deductions.

Enter the sum of all the allowed deductions from Lines 24, 32, and 37.

Part 2: Determine Your Disposable Income Under 11 U.S.C. § 1325(b)(2)

Section 1325(b)(2) - 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 for a dependent child made in accordance with applicable nonbankruptcy law to the extent reasonably necessary to be expended for such child) less amounts reasonably necessary to be expended—

(A)(i) for the maintenance or support of the debtor or a dependent of the debtor, or for a domestic support obligation, that first becomes payable after the date the petition is filed; and

(ii) for charitable contributions (that meet the definition of “charitable contribution” under section 548(d)(3) [11 USCS § 548(d)(3)]) to a qualified religious or charitable entity or organization (as defined in section 548(d)(4) [11 USCS § 548(d)(4)]) in an amount not to exceed 15 percent of gross income of the debtor for the year in which the contributions are made; and

(B) if the debtor is engaged in business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business.

Line 39 – Copy your total current monthly income from line 14 of Form 122C-1, Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period.

Copy Line 14 here.

Line 40 – Fill in any reasonably necessary income you receive for support for dependent children.

Enter the monthly average of any child support payments, foster care payments, or disability payments for a dependent child, reported in Part I on Form 122C-1, that you received in accordance with applicable nonbankruptcy law to the extent reasonably necessary to be expended for such child.

Line 41 – Fill in all qualified retirement deductions.

Enter the monthly total of all qualified retirement deductions.

- **Include:**

- o Wages withheld by the debtor's employer as contributions for qualified retirement plans, as specified in 11 U.S.C. § 541(b)(7).
- o All required repayments of loans from retirement plans, as specified in 11 U.S.C. § 362(b)(19).

Practice Tip: If a 401(k) loan is paid off during the term of the plan, the debtor's *projected disposable income* will increase by that amount. (clearly subject to projection)

- ✓ Be prepared to file a variable plan to capture that *disposable income* or face an objection by UST or Trustee.

Line 42 – Total of all deductions allowed under 11 U.S.C. § 707(b)(2)(A).

Copy Line 38 here.

Line 43 – Deduction for special circumstances.

Describe special circumstances and the associated expenses, if the special circumstances justify additional expenses and the debtor has no reasonable alternative.

- Must give the case trustee a detailed explanation of the special circumstances and documentation for the expenses.

Line 44 – Total adjustments.

Enter the sum of Lines 40 through 43.

Line 45 – Calculate your monthly disposable income under § 1325(b)(2).

Subtract Line 44 from Line 39.

Part 3: Change in Income or Expenses

Line 46 – Change in income or expenses.

This Line provisions for any change in income or expenses that have changed or are virtually certain to change after the bankruptcy is filed.

Instructive Case:

In re Garza, 575 B.R. 736 (Bankr. S.D. Tex. 2017)

Held: Upon considering the confirmation of the plan, the court determined that the Code, specifically § 541(b)(7) in conjunction with § 1325(b)(1)(B), permits debtors to exclude voluntary 401(k) contributions beginning post-petition from the *projected disposable income* calculation regardless if they were contributing pre-bankruptcy, provided debtors act in good faith.

- “Projected” adds to the definition of “*disposable income*” by making it forward looking.
 - o If there is an identifiable change in **future expenses**, take that into account. For example:
 - Paying off 401(k) loans;
 - Paying off direct secured debt (i.e., cars);
 - Domestic support obligation payments that may end;
 - Probation fees that may end;
 - o If there is an identifiable change in **future income**, take that into account. For example:
 - Domestic support obligation payments (as income) that may end;
 - A note receivable that may end (paid off);
 - A once-a-year bonus earned by the debtor.

Part 4: Sign Below

The debtor must sign Form 122C-1 under penalty of perjury, declaring that the information on the Form is true and correct.