

CHAPTER 13 MEANS TEST: STATEMENT OF CMI, CALCULATION OF ACP AND MDI

MEANS TEST GATEKEEPER FUNCTIONS

Debtors with annualized Current Monthly Income below the applicable median family income are eligible for Chapter 7.

Debtors with annualized CMI above the applicable median family income and a negative Monthly Disposable Income are eligible for Chapter 7.

Debtors with annualized CMI above the applicable median family income and a positive MDI are generally going to be forced into a Chapter 13 unless they can successfully overcome both the presumption of abuse and totality of the circumstances attacks by the UST.

Chapter 13 debtors with annualized CMI below the applicable median family income can propose a 36 month initial term plan; their plan payment / disposable income is based on schedules I and J.

Chapter 13 debtors with annualized CMI above the applicable median family income must propose a plan with a 60 month initial term; see in re Turner, 574 F.3d 347 (7th Cir. 2009). MDI is calculated by completing the entire Form B22C.

FORM 122C-1

Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period

Part 1 Calculate Your Average Monthly Income.

All income from all sources (except Social Security) received during the six calendar months prior to the calendar month the petition is filed. This includes any bonus, all overtime and any unemployment compensation. This also includes income from self employment, gross rental income (receipts), regular contributions toward household expenses by any party as well as pension and retirement income. This also included DSO receipts which are backed out in 122C-2 line 40 so that those amounts are not included in MDI.

Part 2 & 3 Calculation of Commitment Period and Determination of Applicability of § 1325(b)(3) For Determining MDI

Income from Part 1 reduced by any marital adjustment (debt payments or DSO payments the non filing spouse is solely responsible for, these must be documented).

If this annualized amount is below the applicable median the initial term is 36 months, do not complete Form 122C-2. Schedules I and J control as to calculation of disposable income.

If annualized part 1 income less any proper marital adjustment is above the applicable median income §1325(b)(3) and §707 (b)(2) control for determination of MDI; Form 122C-2 must be completed and the initial plan term is 60 months.

FORM 122C-2

Part 1 Calculate Your Deductions from Your Income

Lines 6-15: Deductions under IRS Standards

National Standards and Local Standards are taken from published tables; they include housing and transportation expenses.

Lines 16 – 24 Other Necessary Expenses are actual expenses, they must be documented in almost all cases and they should tie to schedule I or J. The primary expense in this category is income tax liability (exclude refunds).

Lines 25-32 Additional Expense Deductions must be actual, reasonable, necessary and documented.

Lines 33-37 Deductions for Debt Payment such as mortgage payments, car payments, mortgage arrears and pre petition priority debts are accounted for here. Deductions are not allowed for debts secured by property the debtor intends to surrender. The Seventh Circuit (in re Turner, 574 F.3d 347 (7th Cir. 2009) and Ninth Circuit (In re Martinez 418 B.R. 347) have ruled that above median debtors may not take deductions for debt on surrendered property or for debts secured by liens that are to be avoided or “stripped off”.

Line 38 Total Deductions from Income add the totals from each of the three sections listed above.

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

CMI from Form 122C-1 line 20b, reduced by child support income, reduced by qualified retirement deductions (contributions and loan repayments) less the total of all deductions from Part I and finally, reduced by (the rare) deductions for special circumstances equals Monthly Disposable Income Under §1325(b)(2), a/k/a MDI.

If MDI is a positive number, the plan must provide that general unsecured creditors will receive an amount at least equal to MDI x 60. If MDI is negative then §1325(b)(2) does not mandate any dividend to the GUC's.