

## Determining When Projected Disposable Income Test May Be a Basis for a Post-Confirmation Modification

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### Introduction

In order for a chapter 13 plan to be confirmed, the plan must provide that the debtor will contribute his projected disposable income towards his plan payments.<sup>1</sup> However, circumstances may change after confirmation of the chapter 13 plan, and the debtor or trustee may find themselves in need to modify the plan payment.<sup>2</sup> Under section 1329 of the Bankruptcy Code, the debtor, trustee, or an unsecured creditor may request to modify the plan after confirmation of the plan but before completion of the payments.<sup>3</sup>

Generally, bankruptcy courts have broad discretion to approve or disapprove a post-confirmation modification of a chapter 13 plan.<sup>4</sup> The bankruptcy courts' broad discretion "must be guided by a respect for the finality of the confirmation process."<sup>5</sup> The finality of the confirmation process should not be disturbed unless it is shown that the debtor has acted in bad

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<sup>1</sup> 11 U.S.C. § 1325(b) (2006).

<sup>2</sup> See *In re Salpietro*, 492 B.R. 630 (Bankr. E.D.N.Y. 2013) (Trustee requested upward modification in response to debtor's mortgage reduction); *In re Koonce*, 54 B.R. 643 (Bankr. D. S.C. 1985) (Trustee requested upward modification to secure debtor's state lottery winnings for unsecured creditors).

<sup>3</sup> 11 U.S.C. § 1329(a) (2006).

<sup>4</sup> See *Marrama v. Citizens Bank*, 549 U.S. 951 (2006); *Salpietro*, 492 B.R. at 637 ("This Court believes that the broad discretion allowed by section 1329(a) must be guided by a respect for the finality of the confirmation process balanced by the powers bestowed on a bankruptcy court to issue orders necessary to prevent an abuse of bankruptcy process and enforce Court orders.").

<sup>5</sup> *Id.*

faith, is not in compliance with the plan, or is unable to comply with the plan.<sup>6</sup> However, some courts held that the debtor having an increased projected disposable income may be the basis of a post-confirmation modification.<sup>7</sup>

Courts are split when determining whether to apply the projected disposable income test, under section 1325(b), after a party seeks a post-confirmation modification pursuant to section 1329.<sup>8</sup> Some bankruptcy courts held that the projected disposable income test cannot be a basis for post-confirmation modification.<sup>9</sup> These courts view the absence of section 1325(b) from section 1329 as proof that the projected disposable income test cannot be a basis for post-confirmation modifications.<sup>10</sup> Other courts opine that the fact that section 1325(b) is not absent from section 1329. Section 1329 provides that section 1325(a) applies to a post-confirmation modification.<sup>11</sup> This in turn opens the door to the application of the projected disposable income test through section 1325(a)'s first clause: "Except as provided in [section 1325(b)]."<sup>12</sup> Last, some courts maintain that the projected disposable income test should be applied to post-confirmation modifications to prevent the debtor from receiving a "windfall" that would be unfair to the creditors.<sup>13</sup>

In spite of the numerous changes made to the projected disposable income test and post-confirmation modifications since the enactment of the Bankruptcy Abuse Prevention and

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<sup>6</sup> *Id.*

<sup>7</sup> *See In re King*, 439 B.R. 129 (Bankr. S.D. Cal. 2010); *In re Keller*, 329 B.R. 697 (Bankr. E.D. Cal. 2005); *In re Solis*, 172 B.R. 530 (Bankr. S.D.N.Y. 1994); *In re Powers*, 140 B.R. 476 (Bankr. N.D. Ill. 1992).

<sup>8</sup> *See In re Campbell*, No. 02-02897, 2003 WL 25273833 at \*4 (Bankr. D. Idaho 2003) ("The applicability of § 1325(b) to post-confirmation plan modifications is a matter of some controversy"); *In re Sounakhene*, 249 B.R. 801, 804 (Bankr. S.D. Cal. 2000) ("Courts are split as to whether [disposable income tests] applies").

<sup>9</sup> *See In re Sunahara*, 326 B.R. 768 (B.A.P. 9th Cir. 2005); *In re Forbes*, 215 B.R. 183 (B.A.P. 8th Cir. 1997); *In re Salpietro*, 492 B.R. 630 (Bankr. E.D.N.Y. 2013); *In re Sounakhene*, 249 B.R. 801 (Bankr. S.D. Cal. 2000); *In re Statmore*, 22 B.R. 37 (Bankr. D. Neb. 1982).

<sup>10</sup> *See Id.*

<sup>11</sup> *See In re King*, 439 B.R. 129 (Bankr. S.D. Cal. 2010); *In re Keller*, 329 B.R. 697 (Bankr. E.D. Cal. 2005); *In re Solis*, 172 B.R. 530 (Bankr. S.D.N.Y. 1994); *In re Powers*, 140 B.R. 476 (Bankr. N.D. Ill. 1992).

<sup>12</sup> *See Id.*

<sup>13</sup> *See In re Edwards*, 190 B.R. 91, 93 (Bankr. M.D. Tenn. 1995) ("It is unlikely that Congress intended the debtor to enjoy financial good fortune, but that unexpected fortune would not be shared among the prepetition creditors.").

Consumer Protection Act of 2005 (BAPCPA), courts are still split on this issue.<sup>14</sup> This Article contains three parts. Parts I will discuss the plain meaning and the legislative intent, as viewed by the opposing courts, behind the relevant provisions of sections 1325 and 1329. Part II will discuss policy based arguments for and against the projected disposable income test in post-confirmation modifications. Finally, Part III contains an analysis of the different interpretations taken by courts post-BAPCPA.

## **I. Relevant Provisions of the Bankruptcy Code**

Generally, section 1325(b) requires the debtor to submit his projected disposable income to the calculation of the chapter 13 plan payment schedule if the trustee or unsecured creditor objects to the debtor's proposed plan.<sup>15</sup> Section 1329 allows the trustee or unsecured creditor to request the confirmed plan to be modified.<sup>16</sup> Among section 1329's many requirements, section 1325(b) is absent. This absence created a split among bankruptcy courts as to whether a section 1325(b) projected disposable income test may be a basis for a section 1329 post-confirmation modification.<sup>17</sup>

### **a. Section 1325 Projected Disposable Income Test**

Under section 1325(a), among other things, before a bankruptcy court may confirm a chapter 13 plan payment, the debtor must first propose a plan in "good faith."<sup>18</sup> If the trustee or the creditor objects to the proposed plan, then the debtor must submit his projected disposable income to be calculated towards the plan pursuant to section 1325(b).<sup>19</sup> A debtor's "projected disposable income," put simply, is calculated by subtracting the amounts reasonably necessary to

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<sup>14</sup> Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 110 Stat. 23.

<sup>15</sup> 11 U.S.C. § 1325(b) (2006).

<sup>16</sup> *Id.* § 1329.

<sup>17</sup> *Supra* note 7.

<sup>18</sup> 11 U.S.C. §1325(a) (2006).

<sup>19</sup> *Id.* § 1325(b).

be expended from the debtor's current monthly income.<sup>20</sup> The bankruptcy court may take into account known or virtually certain information about the debtor's future income or expenses.<sup>21</sup>

### **b. Section 1329 Post Confirmation Modification**

Under section 1329, after confirmation of the plan but before completion of the payments, the trustee or the debtor may request to upwardly or downwardly modify the plan payment subject to sections 1322(a), 1322(b), 1323(c), and 1325(a).<sup>22</sup> Ultimately, the decision of whether to approve a post-confirmation modification of the chapter 13 plan under section 1329(a) is left to the discretion of the bankruptcy court.<sup>23</sup> However, bankruptcy courts should respect the finality of the confirmation process.<sup>24</sup>

A bankruptcy court may approve a post-confirmation modification where the debtor acts in bad faith, is not in compliance with the payment plan, or is unable to comply with the plan.<sup>25</sup> Also, a court may decide to upwardly modify a debtor's chapter 13 plan payment if the trustee or creditor can show a "substantial and unanticipated" change in the debtor's circumstances, but this does not necessarily mean that a projected disposable income analysis is required.<sup>26</sup>

## **II. The Plain Meaning and Legislative Intent of Sections 1325 and 1329**

There is much disagreement over how to properly interpret section 1325(b)'s applicability to section 1329's post-confirmation modification process or what the legislative

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<sup>20</sup> *Id.* ("For purposes of this subsection, the term 'disposable income' means current monthly income received by the debtor . . . less amounts reasonably necessary to be expended").

<sup>21</sup> *See Hamilton v. Lanning*, 560 U.S. 505, 519 (2010) ("Consistent with the text of section 1325 and pre-BAPCPA practice, we hold that the when a bankruptcy court calculates a 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.").

<sup>22</sup> 11 U.S.C. §§ 1329; 1322(a); 1322(b); 1323(c); 1325(a).

<sup>23</sup> *See In re Powers*, 202 B.R. 618, 22 (B.A.P. 9th Cir. 1996).

<sup>24</sup> *See supra* note 4.

<sup>25</sup> *Id.*

<sup>26</sup> 3 COLLIER ON BANKRUPTCY, ¶ 1329, at 1329-8 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2009) ("Assuming that a trustee or holder of an unsecured claim can show a substantial and unanticipated increase in the debtor's income or decrease in the debtor's expenses, the court may decide to increase the debtor's payments. However, because section 1325(b) is not mentioned in section 1329, except for other discrete purposes, it does not appear that section 1325(b) is directly applicable to modifications under section 1329.").

intent behind it is.<sup>27</sup> Many courts disagree over the significance of section 1325(b)'s absence from section 1329's list of requirements.<sup>28</sup> Other courts debate the importance of the BAPCPA amendments in clarifying Congressional intent.<sup>29</sup> Last, some courts focus on the whether the good faith test of section 1325(a) requires the projected disposable income test in post-confirmation modifications.<sup>30</sup>

#### **a. The Plain Meaning**

The majority of bankruptcy courts held that section 1329 does not explicitly or implicitly require the application of the projected disposable income test under section 1325(b) at the time of a proposed post-confirmation modification.<sup>31</sup> The absence of section 1325(b) from section 1329 evinces Congressional intent that the projected disposable income test should not be a basis for a post-confirmation modification.<sup>32</sup>

Recently, in *In re Salpietro*, the bankruptcy court for the Eastern District of New York held that recalculation of debtor's net disposable income cannot be a basis for upward modification of a post-confirmation chapter 13 plan.<sup>33</sup> The trustee in *Salpietro* wanted to capture the debtor's savings received from a decrease in mortgage payments.<sup>34</sup> The court held that mortgage payment savings do not justify the use of the projected disposable income test to upwardly modify debtor's chapter 13 plan payment.<sup>35</sup> The *Salpietro* court noted that section 1329 specifically includes the requirements of section 1325(a) among its list of applicable Code

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<sup>27</sup> See Hon. W. Homer Drake, Jr., Hon. Paul W. Bonapfel & Adam M. Goodman, Chapter 13 Practice and Procedure 506 – 508 (2013).

<sup>28</sup> See *Id.*

<sup>29</sup> See *Id.*

<sup>30</sup> See 3 COLLIER ON BANKRUPTCY, ¶ 1329, at 1329-9.

<sup>31</sup> See *In re Forbes*, 215 B.R. 183, 190 (B.A.P. 8th Cir. 1997); *In re Burgie*, 239 B.R. 406, 409 (B.A.P. 9th Cir. 1999); *In re Statmore*, 22 B.R. 37,38 (Bankr. D. Neb. 1982).

<sup>32</sup> *Id.*

<sup>33</sup> *In re Salpietro*, 492 B.R. 630 (Bankr. E.D.N.Y. 2013).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 639 (“The capture of additional net income created solely due to a reduction of expenses, in this Court’s view, is not contemplated by the plan.”).

provisions, but excludes section 1325(b).<sup>36</sup> Following the reasoning of the majority of courts that ruled on this issue, the *Salpietro* court signified section 1325(b)'s absence as Congressional intent to exclude the projected disposable income test as a basis for a proposed post-confirmation modification.<sup>37</sup> In light of the majority's statutory analysis of section 1329, some courts focus more on the language in section 1325(a).

Despite the majority's plain reading of section 1329, some courts point toward the language of section 1325(a) to apply section 1325(b) to section 1329 "through the back door rather than the front."<sup>38</sup> Section 1325(a) implicates the provisions of section 1325(b), and section 1329 implicates section 1325(a).<sup>39</sup> For example, the court in *In re Powers* rejected the debtor's proposed upward post-confirmation modification on the ground that it did not accurately reflect her new disposable income as a result of selling her interest in real property.<sup>40</sup> The *Powers* court reasoned that section 1325(b) is implicated by section 1325(a)'s opening sentence: "except as provided in subsection (b)."<sup>41</sup> Because section 1329 lists section 1325(a) as a requirement, it indirectly incorporates section 1325(b) and its projected disposable income test as well.

However, some courts see a flaw with this line of reasoning.<sup>42</sup> An expansive reading of section 1325(a) would also require courts to consider the beginning clause of section 1325(b): "If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan,

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<sup>36</sup> *Id.* at 637.

<sup>37</sup> *See Id.*; *In re Forbes*, 215 B.R. 183, 91 (B.A.P. 8th Cir. 1997); *In re Sounakhene*, 249 B.R. 801, 804-05 (Bankr. S.D. Cal. 2000); *In re Coleman*, 231 B.R. 397, 401 (Bankr. S.D. Ga. 1999).

<sup>38</sup> *In re Powers*, 140 B.R. 476, 80 n. 5 (Bankr. N.D. Ill. 1992); Norton Bankruptcy Law and Practice, §150.2, at 150-13 (3d ed. 2013).

<sup>39</sup> *See Id.*

<sup>40</sup> 140 B.R. at 480 ("The debtor's amended plan does not meet statutory requirements for plan confirmation, and therefore the debtor's confirmed plan may not be modified in such a fashion. This plan would violate the disposable income test or best efforts test set out in §1325(b) of the Bankruptcy Code.")

<sup>41</sup> *Id.*; 11 U.S.C. § 1325(a)-(b) (2006).

<sup>42</sup> *See In re Salpietro*, 492 B.R. 630, 638 (Bankr. E.D.N.Y. 2013); *see also* Max Recovery, Inc. v. Than (*In re Than*), 215 B.R. 430, 37 (B.A.P. 9th Cir. 1997).

then the court may not approve the plan unless . . . [the debtor submits the projected disposable income].”<sup>43</sup> Section 1325(b) “cannot apply where the trustee or an unsecured creditor is the proponent of the modification” because the projected disposable income test must be triggered by an objection to the confirmation.<sup>44</sup>

### **b. Congress Responds – Amendments to Sections 1325 and 1329**

Proponents of a post-confirmation disposable income test strongly argue that Congress intended section 1325(b) to apply to section 1329, but many of those arguments are based on court decisions made before Congress amended the applicable provisions in 2005.<sup>45</sup> Congress amended section 1329 to briefly mention section 1325(a)’s applicability in very limited circumstances.<sup>46</sup>

Section 1325(b) is only referenced in regards to health insurance costs and maximum time period restraints.<sup>47</sup> “Thus, having the opportunity to provide that section 1325(b) applies in all respects to modifications, Congress chose not to do so.”<sup>48</sup> In light of the split among courts as to the applicability of the projected disposable income test to modifications, Congress refrained from amending section 1329(b)(1) to include section 1325(b) among its list of requirements for post-confirmation modification.<sup>49</sup> Therefore, Congressional intent evinces that the projected disposable income test is not required to approve proposed modifications because Congress

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<sup>43</sup> 11 U.S.C. § 1325(b); *see also Salpietro*, 492 B.R. at 638 (“Even if one were to read section 1329(a) as implicitly incorporating section 1325(b) – which this Court does not – section 1325(b), by its own terms, only applies when a ‘trustee or the holder of an allowed unsecured claim objects to . . . confirmation.’ This section simply cannot apply where the trustee or an unsecured creditor is the proponent of the modification.”).

<sup>44</sup> *Salpietro*, 492 B.R. 638; *see also Max Recovery, Inc. v. Than (In re Than)*, 215 B.R. 430, 37 (B.A.P. 9th Cir. 1997).

<sup>45</sup> *See In re Martin*, 232 B.R. 29 (Bankr. D. Mass. 1999); *In re Guentert*, 206 B.R. 958 (Bankr. W.D. Mo. 1997); *In re Klus*, 173, B.R. 51 (Bankr. D. Conn. 1994); *In re Solis*, 172 B.R. 530 (Bankr. S.D.N.Y. 1994); *In re Powers*, 140 B.R. 476 (Bankr. N.D. Ill. 1992). These cases were all decided before Congress amended section 1325 and 1329 in 2005. The 2005 amendments offer more evidence that the disposable income test is excluded from post-confirmation modification proposals.

<sup>46</sup> 3 COLLIER ON BANKRUPTCY, ¶ 1329, at 1329-9 (Alan N. Resnick & Henry J. Sommer eds., 16<sup>th</sup> ed. 2009).

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> 11 U.S.C. § 1329(b)(1) (2006).



declined to incorporate section 1325(b) into the language of section 1329 before and after the BAPCPA amendments.<sup>50</sup>

### c. Good-Faith Test

Other proponents of a post-confirmation disposable income test look to the “good-faith” provision of section 1325(a) for support.<sup>51</sup> Under section 1325(a), the court may only confirm a plan that has been proposed in good faith.<sup>52</sup> In *In re Brown*, the debtor’s monthly income increased after he refinanced his rental property.<sup>53</sup> The trustee sought to upwardly modify the debtor’s chapter 13 plan payment based on the projected disposable income test.<sup>54</sup> The court in *In re Brown* held that the “good-faith requirement” of section 1325(a) “requires consideration of whether there is excess income above the current plan payments that is available for the debtor to pay into the plan.”<sup>55</sup>

### III. Policy Considerations

Despite the lack of explicit language and strong Congressional support, some courts, like in *In re Edwards*, agree that “Congress probably intended the projected disposable income test to apply to post-confirmation modifications as a matter of policy.”<sup>56</sup> The *Edwards* court held that “if a debtor benefits from some income windfall, that the creditors should be allowed to share in that newly found income during the course of the [p]lan.”<sup>57</sup>

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<sup>50</sup> 3 COLLIER ON BANKRUPTCY, ¶ 1329, at 1329-9.

<sup>51</sup> 11 U.S.C. § 1325(a) (2006).

<sup>52</sup> *Id.*

<sup>53</sup> 332 B.R. 562 (Bankr. N.D. Ill. 2005).

<sup>54</sup> *Id.*

<sup>55</sup> *In re Brown*, 332 B.R. 562 (Bankr. N.D. Ill. 2005); *see also In re Keller*, 329 B.R. 697 (Bankr. E.D. Cal. 2005) (holding that the “good-faith” test requires the debtor to submit his projected disposable income); *In re Guentart*, 206 B.R. 958 (Bankr. W.D. Mo. 1997).

<sup>56</sup> *In re Edwards*, 190 B.R. 91, 93 (Bankr. M.D. Tenn. 1995); *In re Solis*, 172 B.R. 530 (Bankr. S.D.N.Y. 1994) (holding that the disposable income test is necessary to prevent debtors from gaining a windfall).

<sup>57</sup> *In re Edwards*, 190 B.R. at 93.



However, not all changes in a debtor's financial circumstances should be considered a windfall. The court in *In re Wilson* generally opposed the projected disposable income test in post-confirmation modifications, but realized that the court should utilize section 1325(b) in "egregious situations" to prevent abuse.<sup>58</sup> After all, courts hold the ultimate discretion in deciding whether to upwardly modify a proposed post-confirmation plan.<sup>59</sup> The projected disposable income test can justifiably be applied in scenarios that "shock the conscience."<sup>60</sup> Examples of situations that "shock the conscience" include a debtor who unexpectedly experiences an increase in annual income from \$80,000 to \$200,000<sup>61</sup> or a debtor who wins \$1,300,000<sup>62</sup> from the state lottery. These scenarios do constitute windfall, and bankruptcy judges have the duty and authority to "prevent an abuse of process" by ordering the debtor to submit a new disposable income analysis.<sup>63</sup>

However, not all situations amount to a debtor receiving a windfall. For example, savings from a reduction in mortgage expenses,<sup>64</sup> income from Social Security benefits,<sup>65</sup> and money borrowed from parents<sup>66</sup> do not rise to egregious situations that shock the conscience and require the projected disposable income test. The original projected disposable income analysis "should be afforded some finality and should not be disturbed solely on the basis of fluctuations in a debtor's expense."<sup>67</sup>

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<sup>58</sup> 157 B.R. 389, 91 (Bankr. S.D. Ohio 1993).

<sup>59</sup> See *In re Powers*, 202 B.R. 618, 22 (B.A.P. 9th Cir. 1996).

<sup>60</sup> *In re Wilson*, 157 B.R. at 91.

<sup>61</sup> *In re Arnold*, 869 F.2d 240 (B.A.P. 4th Cir. 1989).

<sup>62</sup> *In re Koonce*, 54 B.R. 643 (Bankr. D. S.C. 1985).

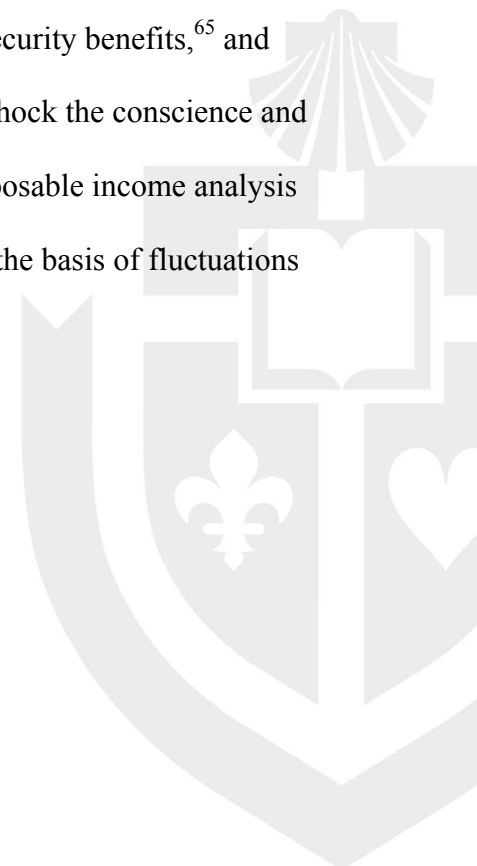
<sup>63</sup> *Marrama v. Citizens Bank*, 549 U.S. 951 (2006).

<sup>64</sup> *In re Salpietro*, 492 B.R. 630, 632 (Bankr. E.D.N.Y. 2013).

<sup>65</sup> *In re Hall*, 442 B.R. 754 (Bankr. Idaho 2010).

<sup>66</sup> *In re Easley*, 205 B.R. 334 (Bankr. M.D. Fla. 1996).

<sup>67</sup> *In re Salpietro*, 492 B.R. 638.



#### IV. Analysis

The majority's plain reading of section 1329, proffered in *Salpietro*, gives debtors the advantage in post-confirmation modifications because it allows debtors to avoid a new projected disposable income analysis when their financial circumstances have changed.<sup>68</sup> Some courts view this as the debtor receiving a windfall.<sup>69</sup> On the one hand, it can be considered a windfall where the debtor's change in circumstance is so egregious that it shocks the conscience.<sup>70</sup> In these situations, the debtor's financial circumstance has changed so drastically to his benefit that not allowing the creditor to capture some of the benefit would be unfair.<sup>71</sup> On the other hand, if the minority's view of required projected disposable income tests in post-confirmation modifications is accepted, it would be unfair to the debtor to submit a new projected disposable income test every time his income slightly fluctuates.<sup>72</sup>

The most reasonable approach to deciding whether to apply the projected disposable income test in post-confirmation modifications is on a case-by-case analysis. The "broad discretion allowed by section 1329(a) must be guided by a respect for the finality of the confirmation process balanced by the powers bestowed on a bankruptcy court to issue orders necessary to prevent an abuse of the bankruptcy process."<sup>73</sup> For instance, the confirmed chapter 13 plan of a debtor who wins the lottery should be modified because it would be egregious not to allow the unsecured creditor to capture some of the debtor's significantly increased income.<sup>74</sup> However, a debtor who is diagnosed with cancer and is approved for reduced monthly mortgage

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<sup>68</sup> *Id.*

<sup>69</sup> *In re Edwards*, 190 B.R. 91, 93 (Bankr. M.D. Tenn. 1995); *In re Solis*, 172 B.R. 530 (Bankr. S.D.N.Y. 1994).

<sup>70</sup> *See In re Wilson*, 157 B.R. 389, 91 (Bankr. S.D. Ohio 1993).

<sup>71</sup> *Id.*

<sup>72</sup> *See In re Salpietro*, 492 B.R. 630, 38 (Bankr. E.D.N.Y. 2013).

<sup>73</sup> *Id.* at 637.

<sup>74</sup> *See In re Koonce*, 54 B.R. 643 (Bankr. D. S.C. 1985).

payments should not be burdened with an upward post-confirmation of her chapter 13 plan payment because it is a result of her expected loss of income.<sup>75</sup>

## **Conclusion**

The disagreement over the statutory construction of sections 1325 and 1329 arose before the enactment of BAPCPA, yet the 2005 amendments to the Bankruptcy Code barely touched the issue of the projected disposable income test's applicability in post-confirmation modifications.<sup>76</sup> The inaction from BAPCPA leaves that decision to the courts since they ultimately have the discretion and the duty to prevent an abuse of the bankruptcy process.<sup>77</sup> Until the United States Supreme Court makes a ruling on the issue, bankruptcy courts will continue to disagree on the projected disposable income test's application in post-confirmation modifications.<sup>78</sup>

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<sup>75</sup> See *Salpietro*, 492 B.R. at 638.

<sup>76</sup> See 11 U.S.C. § 1329(b)(1) (2006).

<sup>77</sup> See *Marrama v. Citizens Bank*, 549 U.S. 951 (2006).

<sup>78</sup> See *Id.* (noting bankruptcy courts' broad discretion to approve or disapprove post-confirmation modifications).

