Bankruptcy Dollar Amounts Going Up

Bankruptcy Code § 104(b) provides that the exemption amounts and other dollar figures in the Code are automatically adjusted for inflation every three years. The adjustments are based on changes to the Consumer Price Index for All Urban Consumers published by the Department of Labor, rounded to the nearest $25.

New dollar amounts take effect on April 1, 2019, and will apply to all cases filed on or after that date. Consumer debtors who may benefit from the higher dollar amounts, particularly with respect to exemptions, the means test, and chapter 13 debt limitations, may wish to delay a bankruptcy filing until the new amounts take effect on April 1, 2019. Despite popular belief, many lower-income bankruptcy filers can retain all or almost all of their assets in a chapter 7 bankruptcy. The new higher exemption limits means that it is even more likely that consumers can protect their assets in a chapter 7 filing.

New Exemption Amounts Protect More Consumer Property

Consumers in states that have not opted out of the federal exemptions may claim the bankruptcy exemptions under Bankruptcy Code § 522(d), as discussed in NCLC’s Consumer Bankruptcy Law and Practice § 10.2.1.1 [1]. The federal bankruptcy exemptions may also be claimed if the “safe harbor” in Bankruptcy Code § 522(b)(3)(A) applies due to the consumer’s domicile for exemption purposes, even if the state in which the consumer’s domicile is located is otherwise an opt-out state, as discussed in id. § 10.2.1.2 [2]. Exemption amounts refer not to the value of property, but to the consumer’s equity in the property after deducting outstanding credit secured by that property. The exemption amounts in Bankruptcy Code § 522(d) are doubled when a married couple files a joint case. 11 U.S.C. § 522(m).

For a state-by-state summary of state exemption amounts that apply to bankruptcies in certain states and that also protect property from seizure by judgment creditors, see NCLC’s Consumer Bankruptcy Law and Practice Appendix J [3]. The same state-by-state survey is found in NCLC’s Collection Actions Appendix G [4].

As of April 1, the digital version of NCLC’s Consumer Bankruptcy Law and Practice [5] will be updated throughout showing the new higher dollar amounts, both in the chapters and the Bankruptcy Code appendix (with footnotes showing the old dollar amounts). The following are the new exemption amounts:

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| Homestead - § 522(d)(1) | $25,150 |
| Motor Vehicle - § 522(d)(2) | $ 4,000 |
| Household Goods - § 522(d)(3) | $ 625 (Per Item Limit) $13,400 (Aggregate Limit) | $ 1,700 |
| Jewelry - § 522(d)(4) | $ 1,325 |
| Wild Card - § 522(d)(5) | $ 12,575 (Any property) $2,525 (Unused homestead under § 522(d)(1)) |
| Tools of the Trade - § 522(d)(6) | $13,400 |
| Unmatured Life Insurance - § 522(d)(8) | $25,150 |
| Personal Injury Claims - § 522(d)(11)(D) | |

Exemption for Retirement Accounts

As discussed in NCLC’s Consumer Bankruptcy Law and Practice § 10.2.3.3 [6], the federal bankruptcy exemption for
retirement funds in pension plans and individual retirement accounts is available to all debtors, even those in “opt-out” states who would not otherwise be permitted to claim the federal exemptions. 11 U.S.C. § 522(d)(12) and § 522(b)(3)(C). The maximum dollar amount for this exemption also adjusts every three years. 11 U.S.C. § 522(n). The new maximum aggregate value of funds in retirement accounts that may be exempted will be $1,362,800.

Other Dollar Amount Adjustments in the Code

The inflation adjustment also applies to other dollar amounts in the Code, including:

- Priority for wages and employee benefits under Bankruptcy Code § 507(a)(4) will now be $13,650, and the priority for consumer debts under Bankruptcy Code § 507(a)(7) will be $3,025. Distribution to priority creditors is discussed in NCLC’s Consumer Bankruptcy Law and Practice § 3.5.4 [7] and § 18.5.5 [8].
- Debt limits for eligibility for chapter 13 under Bankruptcy Code § 109(e) will also go up—to $419,275 in unsecured debt and to $1,257,850 in secured debt. The chapter 13 debt limitations are discussed at id. § 4.2.1.3 [9].
- Threshold for the presumption of nondischargeability under Bankruptcy Code § 523(a)(2)(C) for purchases of luxury goods or services incurred within 90 days prior to filing will be $725 and for cash advances within 70 days prior to filing will be $1,000. A discussion of when these presumptions arise can be found at id. § 15.4.3.2.3.2 [10].
- Dollar amounts under the means test for determining whether a presumption of abuse exists, based on the debtor’s income after expenses over a 60-month period, will now be: (i) $8,175 ($136.25 per month based on 60 period) or 25% of nonpriority unsecured debt, whichever is greater, or (ii) $13,650 ($227.50 per month). 11 U.S.C. § 707(b)(2)(A)(i). These dollar amounts are discussed at id. § 13.4.6.1 [11].
- The cap on homestead property acquired within 1215 days before the bankruptcy filing under Bankruptcy Code § 522(p) or based on the commission of certain bad acts by the debtor under Bankruptcy Code § 522 (q) will be $170,350. These limitations on state homestead exemptions are discussed at id. § 10.2.3.4 [12].
- The minimum aggregate amount of property that a trustee may seek to recover as preference in a case filed by a debtor whose debts are primarily not consumer debts will now be $6,825. 11 U.S.C. § 547(c)(9). This limitation on a trustee’s ability to avoid transfers as a preference is discussed at id. § 10.4.2.6.4.2 [13].
- The amount in an education IRA, a section 529 tuition savings program, and a qualified ABLE account that is excluded from property of the estate, if placed in such an account between 365 and 720 days before the petition was filed, will now be $6,825. 11 U.S.C. §§ 541(b)(5)(C), 541(b)(6)(C), 541(b)(10)(C). This exclusion from the bankruptcy estate is discussed at id. § 2.5.3 [14].

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