

*Recommendation of National Bankruptcy Conference
to Make Chapter 13 Eligibility Debt Cap Permanent*

May 18, 2023

Recommendation

Bankr. Code § 109(e) currently provides:

Only an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated debts of less than \$2,750,000 or an individual with regular income and such individual's spouse, except a stockbroker or a commodity broker, that owe, on the date of the filing of the petition, noncontingent, liquidated debts that aggregate less than \$2,750,000 may be a debtor under chapter 13 of this title.

Absent congressional action, the language will revert on June 21, 2024, to separate debt caps of \$465,275 in unsecured debts and \$1,395,875 in secured debts. The National Bankruptcy Conference recommends that the current language be made permanent.

Background

Congress enacted the current debt cap in the Bankruptcy Threshold Adjustment and Technical Corrections Act § 2(c), Pub. L. No. 117-151, 136 Stat. 1298 (2022).¹ That act provides for an automatic sunset “on the date that is two years after the date of enactment.” The president signed the act into law on June 21, 2022, making June 21, 2024 the sunset date. On that date, section 109(e) will revert to its pre-2022 version:

Only an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than \$465,275 and noncontingent, liquidated, secured debts of less than \$1,395,875, or an individual with regular income and such individual's spouse, except a stockbroker or a commodity broker, that owe, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts that aggregate less than \$465,275 and noncontingent, liquidated, secured debts of less than \$1,395,875² may be a debtor under chapter 13 of this title.

Thus, the 2022 amendment worked two changes. First, it combined the separate secured and unsecured debts into one total debt cap. Second, it increased the amount of total debts a debtor could have and be eligible for chapter 13.

The 2022 statutory change largely tracks a 2016 recommendation where the NBC explained that home prices had increased much more rapidly than the Consumer Price Index

¹ The statute also extended the subchapter V debt threshold of \$7,500,000, which had been due to expire. The subchapter V threshold also will expire in 2024. The NBC has explained elsewhere its support for extending the subchapter V threshold. This paper only addresses the chapter 13 eligibility requirements.

² Technically, the official statutory language has debt caps of \$250,000 and \$750,000. Bankr. Code § 104 provides for inflation adjustments at three-year intervals through administrative action of the Judicial Conference of the United States. The dollar amounts above reflect the inflation-adjusted figures in effect on June 21, 2022.

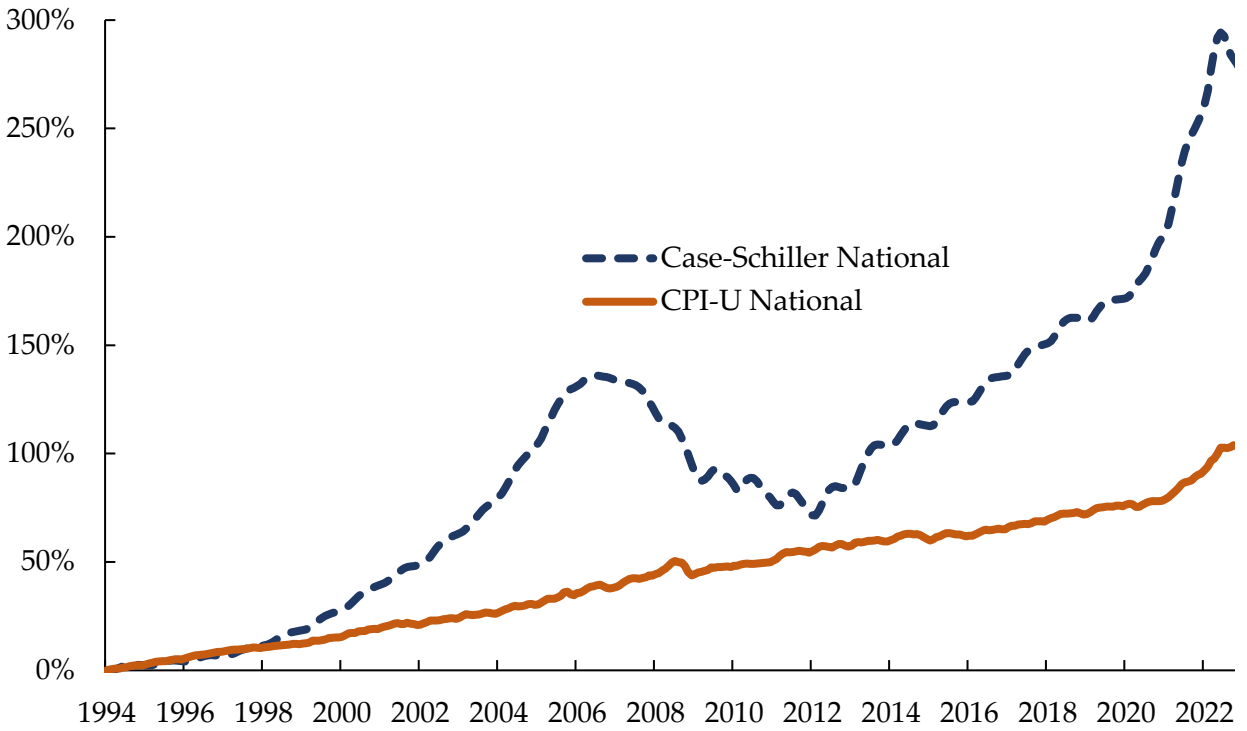
(CPI). Because the Bankruptcy Code uses the CPI to make inflation adjustments, the law had not kept pace with the financial realities of home debt. We also noted that, because of the boom-and-bust cycle of home prices and regional variation, anomalous cases arise where chapter 13 ineligibility can occur because a large mortgage deficiency takes a debtor over the unsecured debt cap. The NBC recommended in 2016 that Congress enact a total debt cap of \$2,000,000, which on an inflation-adjusted basis is close to the \$2,750,000 total debt cap Congress did enact in 2022.

Chapter 13 eligibility became anchored to the CPI in 1994, when Congress reset the unsecured debt cap to \$250,000 and reset the secured debt cap to \$750,000. At the same time, Congress directed that the CPI would provide an inflation adjustment for both figures moving forward. The problem is that CPI is an overall measurement of inflation, but the principal secured debt a chapter 13 debtor will have is a home mortgage. The following page graphically compares the rise in the CPI to the S&P's Case-Schiller Home Price Index, both nationally and for selected cities. Home prices have risen much more quickly than the CPI, meaning the CPI adjustment was not keeping pace with the secured debt a typical household might have entering chapter 13. The measurement tool had thwarted congressional intent.

Using the CPI to inflation adjust the 1994 unsecured debt cap, it would be \$504,000 today. The leading economic tool to track home prices is the S&P's Case-Schiller National Home Price Index, and that index would imply a corresponding increase in the 1994 secured debt cap to \$2,733,000 today. Those two figures together are over \$3,200,000 million, making the enacted \$2,750,000 total debt cap limit a modest reform.

The financial conditions that led to the NBC's recommendation remain salient and have even accelerated. Since the beginning of the COVID pandemic in March 2020, the CPI has risen 15.9%, but the Case-Schiller Home Price Index has risen 36.0%. After the 2022 changes many households that would have been ineligible under the old provision have had access to a tool to help them solve their financial problems that offers some repayment to creditors, as opposed to a chapter 7 where creditors often receive nothing. The trend that led to the 2022 changes has been developing for almost thirty years. The evidence is that the trend is only increasing, not reversing. Congress should make the 2022 changes to Bankr. Code § 109(e) permanent.

Case-Shiller National Home Price Index vs. CPI-U, 1994 - 2022



Selected Metropolitan Areas Case-Shiller Home Price Index vs. CPI-U, 1994-2022

