

How much will I have to pay each month in a chapter 13? What will my monthly chapter 13 payment be?

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The answer to this question is hard to predict until a proper analysis is completed. This analysis is based on applying the law to each person's unique financial circumstances. Everyone's payment amount is different. As I write, I am aware of one plan proposing to pay \$78.00/month, another paying \$130.00/month, and another paying about \$700.00/month...

Initially, realize that many people do not qualify for a chapter 13 because of various factors including the availability of disposable income. But assuming they do, here are some of the factors used to determine what the payment will be:

First, the "means test." This is the product of the new bankruptcy laws passed in 2005 when George W. Bush was President and the Republicans controlled Congress. It was designed to drive high-income debtors away from chapter 7 and into chapter 13. It was and remains to be highly criticized. What I can tell you is this, if you earn above the median income of your particular area, you may need to pay your disposable income for 5 years instead of 3. Also, your plan payment will be based on a statutory formula, with the possibility of an alteration, as opposed to being based on what you have left over after deducting your expenses at the end of the month.

Second, is the "best-interest of creditors test." This test provides that a creditor must make out better in chapter 13 than they would under a hypothetical chapter 7. Its affect is to make you pay over the life of your plan the amount equal to the value of the assets (those that you want to keep) that exceeds your exemptions. This takes some understanding of what an exemption is. An exemption is a certain amount of value in an asset that the law allows you to keep from creditors, and even if you file for bankruptcy. For example, you're allowed to retain \$X amount of value in an automobile or \$Y amount in a retirement account. So, in a chapter 13 plan, if you have for example \$20,000 in total assets and the law allows you to retain (exempt) \$19,000.00 of the value of those assets, you would have to pay \$1,000.00 for those assets over the life of your plan. Many people that file for chapter 13 do not have any amount of value of their assets that exceeds the amount of their exemptions, so this test does not require them to pay anything more. (Remember, this is only one part of the plan payment amount.)

Third, you must pay your projected disposable income. Basically, you add up your income and deduct your expenses (except the debt you are seeking to discharge). Generally, what is left over you must pay into the plan. One exception is when you have income above the median income, as stated above (means test), in which case your plan payment will be dictated by a specified formula (at least for the most part).

Fourth, some debts, deemed "priority debts" and "administrative debts" must be paid in full during the course of the plan. This can make a chapter 13 impracticable for some.

Lastly, it matters what you decide to pay through the plan and what you decide to pay directly to creditors. The more items in your budget you pay directly, the less the amount your plan payment will be.

As you can see, calculation of the plan payment is a complicated process and really can only be arrived at after some significant number crunching. If you think filing chapter 13 may be advantageous to you, feel free to give this office a call.

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