

IMPORTANT FACTS FOR CONSUMERS THINKING ABOUT FILING FOR PERSONAL BANKRUPTCY

CK Bankruptcy Series 2009

Before You File For Personal Bankruptcy: *What You Need to Know About Credit Counseling and Debtor Education*

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The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 launched a new era: With limited exceptions, people who plan to file for bankruptcy protection must get credit counseling from a government-approved organization within six months before they file. They also must complete a debtor education course to have their debts discharged.

The Department of Justice's U.S. Trustee Program approves organizations to provide the

mandatory credit counseling and debtor education. Only the counselors and



Significantly higher debt loads carried by more and more American consumers has resulted in millions of families seeking consumer bankruptcy protection.

educators that appear on the U.S. Trustee Program's lists can advertise

that they are, indeed, approved to provide the required counseling and debtor education.

By law, the U.S. Trustee Program does not operate in Alabama and North Carolina, in these states, court officials called Bankruptcy administrators approve pre-bankruptcy credit counseling organizations and pre-discharge debtor education course providers.

Source: Federal Trade Commission

www.ftc.gov

Counseling and Education Requirements *What must be complete before you file for bankruptcy*

As a rule, pre-bankruptcy credit counseling and pre-discharge debtor education may not be provided at the same time. Credit counseling must take place **before** you file for bankruptcy; debtor education must take place after you file. Generally, you

must file a certificate of credit counseling completion when you file for bankruptcy, and evidence of completion of debtor education after you file for bankruptcy, but before your debts are discharged. Only credit counseling organizations

and debtor education course providers that have been approved by the U.S. Trustee program may issue these certificates. To protect against fraud, the certificates are produced and numbered through a central automated system.

"the credit counseling organization is required to provide the counseling free of charge for those consumers who cannot afford to pay"



Pre-Bankruptcy Counseling

A pre-bankruptcy counseling session with an approved credit counseling organization should include an evaluation of your personal financial situation, a discussion of alternatives to bankruptcy, and a personal budget plan. A typical counseling session should last about an hour or so, and can take place in person, on the phone or online. The *counseling organization is required to provide the counseling free of charge for those consumers who cannot afford to pay*. If you cannot afford to pay a fee for credit counseling, you should request a fee waiver from the counseling organization before the session begins. Otherwise, you may be charged a fee for the counseling, which will generally be about \$50, depending on where you live, the types of services you receive, and other factors. The counseling organization is required to discuss any fees with you before starting the counseling session.

Once you have completed the required counseling, you must get a certificate as proof. Check the U.S. Trustee's website to be sure that you receive the certificate from a counseling organization that is approved in the judicial district where you are filing bankruptcy. By law credit counseling organizations *may not charge an extra fee for the certificate*

Post-Filing Debtor Education

A debtor education course by an approved provider should include information on developing a budget, managing money, using credit wisely, and other resources. Similar to pre-filing counseling, debtor education may be provided in person, on the phone or online. The debtor education session might last longer than the pre-filing counseling – about two hours – and the typical fee is between \$50 and \$100. As with pre-filing counseling, *if you are unable to pay the session fee, you should seek a fee waiver from the debtor education provider*. Check the list of approved debtor education at www.usdoj.gov/ust/eo/bapcpa/ccde/de_approved.htm or at the bankruptcy clerk's office in your district.

Once you have completed the required debtor education course, you should receive a certificate as proof. This certificate is separate from the certificate you received after completing your pre-filing credit counseling. Check the U.S. Trustee's website to be sure that you receive the certificate from debtor education provider that is approved in the judicial district where you filed bankruptcy. Debtor education providers *may not charge an extra fee for the certificate*.

Important Questions to Ask When Choosing a Credit Counselor

If you are in search of credit counseling to fulfill the bankruptcy law requirements make sure you receive services only from approved providers from your judicial district. Check the list at the U.S. Department of Justice website at www.usdoj.gov or at the bankruptcy clerk's office for the district where you will file. Once you have the list of approved organizations in your judicial district call several to gather information before you make your choice. Some important questions to ask are:

- What services do you offer?
- Will you help me develop a plan for avoiding problems in the future?
- What are your fees?
- What if I cannot afford to pay your fees?
- What qualifications do your counselors have?
- Are your counselors accredited or certified by an outside organization?
- What training do your counselors receive?
- What do you and your employees do to keep information about me (including my address, phone number, and financial information) confidential and secure?
- How are your employees paid? Are they paid more if I sign up for certain services, if I pay a fee, or if I make a contribution to your organization?



“Once you have the list of approved organizations in your judicial district call several to gather information before you make your choice”

Nonprofit Budget and Credit Counseling Agencies

Stringent Certification Requirements to Protect Consumers

Pursuant to Section 111 of the Bankruptcy Code to be approved by the U.S. Trustee (or the bankruptcy administrator, if any), a nonprofit budget and credit counseling agency shall, at a minimum: (1) have a board of directors the majority of which are not employed by such agency and will not directly or indirectly benefit financially from the outcome of the counseling services provided by such agency; (2) if a fee is charged for counseling services, charge a reasonable fee, and provide services without regard to ability to pay the fee; (3) provide for safekeeping and payment of client funds, including an annual audit of the trust accounts and appropriate employee bonding; (4) provide full disclosures to a client, including funding sources, counselor qualifications, possible impact on credit reports, and any costs of such program that will be paid by such client and how such costs will be

paid; (5) provide adequate counseling with respect to a client's credit problems that includes an analysis of such client's current financial condition, factors that caused such financial condition, and how such client can develop a plan to respond to the problems without incurring negative amortization of debt; (6) provide trained counselors who receive no commissions or bonuses based on the outcome of the counseling services provided by such agency, and who have adequate experience, and have been adequately trained to provide counseling services to individuals in financial difficulty, including the matters described in subparagraph (5); (7) demonstrate adequate experience and background in providing credit counseling; and (8) have adequate financial resources to provide continuing support services for budgeting plans over the life of any repayment plan.

Credit Counseling Statement

Required as of 2005

In 2005 there changes made to the U.S. Bankruptcy Code. One of the changes added a new eligibility requirement for all individual debtors. Section 109(h) of the U.S. Bankruptcy Code provides that a debtor "shall not be eligible for relief if the debtor has not received, within 180 days before the petition, a briefing from an approved nonprofit budget and credit counseling agency.

Section 521(b) of the U.S. Bankruptcy Code requires an individual debtor to file a certificate from an approved credit counseling agency stating that the debtor has received the briefing required by section 109(h). The agency providing the certificate must be one that has been approved by the U.S. Trustee or by the bankruptcy administrator to render counseling in the judicial district in which the

case is filed. If the certificate is not filed at the same time as the bankruptcy petition, Interim Bankruptcy Rule 1007 (c) requires that they be filed within fifteen days after the petition is filed.



The failure to obtain the required briefing prior to the case will usually lead to a motion to dismiss the case unless an exception to the pre-filing counseling is successfully claimed.



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Corzo and Kohrs, P.A. was founded by attorneys Will Corzo and Sam Kohrs. Our firm represents clients throughout the Central Florida area, including Orlando, Kissimmee, and other cities throughout Orange, Osceola, Polk, Seminole and Pinellas counties. We are ready to assist individuals and families with Chapter 7 and Chapter 13 Bankruptcy. Our law firm is committed to providing quality advocacy on behalf of our clients. Our goal is to stop creditor harassment and help you get back on your feet.

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