

11 U.S.C.A. § 111

(a) The clerk shall maintain a publicly available list of--

(1) nonprofit budget and credit counseling agencies that provide 1 or more services described in section 109(h) currently approved by the United States trustee (or the bankruptcy administrator, if any); and

(2) instructional courses concerning personal financial management currently approved by the United States trustee (or the bankruptcy administrator, if any), as applicable.

(b) The United States trustee (or bankruptcy administrator, if any) shall only approve a nonprofit budget and credit counseling agency or an instructional course concerning personal financial management as follows:

(1) The United States trustee (or bankruptcy administrator, if any) shall have thoroughly reviewed the qualifications of the nonprofit budget and credit counseling agency or of the provider of the instructional course under the standards set forth in this section, and the services or instructional courses that will be offered by such agency or such provider, and may require such agency or such provider that has sought approval to provide information with respect to such review.

(2) The United States trustee (or bankruptcy administrator, if any) shall have determined that such agency or such instructional course fully satisfies the applicable standards set forth in this section.

(3) If a nonprofit budget and credit counseling agency or instructional course did not appear on the approved list for the district under subsection (a) immediately before approval under this section, approval under this subsection of such agency or such instructional course shall be for a probationary period not to exceed 6 months.

(4) At the conclusion of the applicable probationary period under paragraph (3), the United States trustee (or bankruptcy administrator, if any) may only approve for an additional 1-year period, and for successive 1-year periods thereafter, an agency or instructional course that has demonstrated during the probationary or applicable subsequent period of approval that such agency or instructional course--

(A) has met the standards set forth under this section during such period; and

(B) can satisfy such standards in the future.

(5) Not later than 30 days after any final decision under paragraph (4), an interested person may seek judicial review of such decision in the appropriate district court of the United States.

(c)(1) The United States trustee (or the bankruptcy administrator, if any) shall only approve a nonprofit budget and credit counseling agency that demonstrates that it will provide qualified counselors, maintain adequate provision for safekeeping and payment of client funds, provide adequate counseling with respect to client credit problems, and deal responsibly and effectively with other matters relating to the quality, effectiveness, and financial security of the services it provides.

(2) To be approved by the United States trustee (or the bankruptcy administrator, if any), a nonprofit budget and credit counseling agency shall, at a minimum--

- (A) have a board of directors the majority of which--
 - (i) are not employed by such agency; and
 - (ii) will not directly or indirectly benefit financially from the outcome of the counseling services provided by such agency;
- (B) if a fee is charged for counseling services, charge a reasonable fee, and provide services without regard to ability to pay the fee;
- (C) provide for safekeeping and payment of client funds, including an annual audit of the trust accounts and appropriate employee bonding;
- (D) 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;
- (E) 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;
- (F) 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 (E);
- (G) demonstrate adequate experience and background in providing credit counseling; and
- (H) have adequate financial resources to provide continuing support services for budgeting plans over the life of any repayment plan.

(d) The United States trustee (or the bankruptcy administrator, if any) shall only approve an instructional course concerning personal financial management--

(1) for an initial probationary period under subsection (b)(3) if the course will provide at a minimum--

- (A) trained personnel with adequate experience and training in providing effective instruction and services;
- (B) learning materials and teaching methodologies designed to assist debtors in understanding personal financial management and that are consistent with stated objectives directly related to the goals of such instructional course;
- (C) adequate facilities situated in reasonably convenient locations at which such instructional course is offered, except that such facilities may include the provision of such instructional course by telephone or through the Internet, if such instructional course is effective;
- (D) the preparation and retention of reasonable records (which shall include the debtor's bankruptcy case number) to permit evaluation of the effectiveness of such instructional course, including any evaluation of satisfaction of instructional course requirements for each debtor attending such instructional course, which shall be available for inspection and evaluation by the Executive Office for United States Trustees, the United States trustee (or the bankruptcy administrator, if any), or the chief bankruptcy judge for the district in which such instructional course is offered; and
- (E) if a fee is charged for the instructional course, charge a reasonable fee, and provide services

without regard to ability to pay the fee.

(2) for any 1-year period if the provider thereof has demonstrated that the course meets the standards of paragraph (1) and, in addition--

(A) has been effective in assisting a substantial number of debtors to understand personal financial management; and

(B) is otherwise likely to increase substantially the debtor's understanding of personal financial management.

(e) The district court may, at any time, investigate the qualifications of a nonprofit budget and credit counseling agency referred to in subsection (a), and request production of documents to ensure the integrity and effectiveness of such agency. The district court may, at any time, remove from the approved list under subsection (a) a nonprofit budget and credit counseling agency upon finding such agency does not meet the qualifications of subsection (b).

(f) The United States trustee (or the bankruptcy administrator, if any) shall notify the clerk that a nonprofit budget and credit counseling agency or an instructional course is no longer approved, in which case the clerk shall remove it from the list maintained under subsection (a).

(g)(1) No nonprofit budget and credit counseling agency may provide to a credit reporting agency information concerning whether a debtor has received or sought instruction concerning personal financial management from such agency.

(2) A nonprofit budget and credit counseling agency that willfully or negligently fails to comply with any requirement under this title with respect to a debtor shall be liable for damages in an amount equal to the sum of--

(A) any actual damages sustained by the debtor as a result of the violation; and

(B) any court costs or reasonable attorneys' fees (as determined by the court) incurred in an action to recover those damages.

CREDIT(S)

(Added Pub.L. 109-8, Title I, § 106(e)(1), Apr. 20, 2005, 119 Stat. 39.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

2005 Acts. House Report No. 109-31(Part I), see 2005 U.S. Code Cong. and Adm. News, p. 88.