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Effective: December 22, 2010

United States Code Annotated Currentness
Title 11. Bankruptcy (Refs & Annos)
Chapter 1. General Provisions (Refs & Annos)

➞➞ § 111. Nonprofit budget and credit counseling agencies; financial management instructional courses

(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--

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(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

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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; and

(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; amended Pub.L. 111-327, § 2(a)(8), Dec. 22, 2010, 124 Stat. 3558.)
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.
Amendments
2010 Amendments. Subsec. (d)(1)(E). Pub.L. 111-327, § 2(a)(8)(A), struck out the period at the end and inserted "; and".
Pub.L. 111-327, § 2(a)(8)(B), made technical corrections requiring no change in text.
Effective and Applicability Provisions
2005 Acts. Amendments by Pub.L. 109-8 effective, except as otherwise provided, 180 days after April 20, 2005, and inapplicable with respect to cases commenced under Title 11 before the effective date, see Pub.L. 109-8, § 1501, set out as a note under 11 U.S.C.A. § 101.
Debtor Financial Management Training Test Program
Pub.L. 109-8, Title I, § 105, Apr. 20, 2005, 119 Stat. 36, provided that:
"(a) Development of financial management and training curriculum and materials.--The Director of the Executive Office for United States Trustees (in this section referred to as the 'Director') shall consult

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with a wide range of individuals who are experts in the field of debtor education, including trustees who serve in cases under chapter 13 of title 11, United States Code [11 U.S.C.A. § 1301 et seq.], and who operate financial management education programs for debtors, and shall develop a financial management training curriculum and materials that can be used to educate debtors who are individuals on how to better manage their finances.

"(b) Test.--

"(1) Selection of districts.--The Director shall select 6 judicial districts of the United States in which to test the effectiveness of the financial management training curriculum and materials developed under subsection (a) [of this note].

"(2) Use.--For an 18-month period beginning not later than 270 days after the date of the enactment of this Act [April 20, 2005], such curriculum and materials shall be, for the 6 judicial districts selected under paragraph (1), used as the instructional course concerning personal financial management for purposes of section 111 of title 11, United States Code.

"(c) Evaluation.--

"(1) In general.--During the 18-month period referred to in subsection (b) [of this note], the Director shall evaluate the effectiveness of--

"(A) the financial management training curriculum and materials developed under subsection (a) [of this note]; and

"(B) a sample of existing consumer education programs such as those described in the Report of the National Bankruptcy Review Commission (October 20, 1997) that are representative of consumer education programs carried out by the credit industry, by trustees serving under chapter 13 of title 11, United States Code [11 U.S.C.A. § 1301 et seq.], and by consumer counseling groups.

"(2) Report.--Not later than 3 months after concluding such evaluation, the Director shall submit a report to the Speaker of the House of Representatives and the President pro tempore of the Senate, for referral to the appropriate committees of the Congress, containing the findings of the Director regarding the effectiveness of such curriculum, such materials, and such programs and their costs."

[Amendments by Pub.L. 109-8 effective, except as otherwise provided, 180 days after April 20, 2005, and inapplicable with respect to cases commenced under Title 11 before the effective date, see Pub.L. 109-8, § 1501, set out as a note under 11 U.S.C.A. § 101.]

LAW REVIEW COMMENTARIES

Empty mandate or opportunity for innovation? Pre-petition credit counseling and post-petition financial management education. Karen Gross and Susan Block-Lieb, 13 Am. Bankr. Inst. L. Rev. 549 (2005).

"Herstory" Repeats: The bankruptcy code harms women and children. Peter C. Alexander, 13 Am. Bankr. Inst. L. Rev. 571 (2005).

LIBRARY REFERENCES

Corpus Juris Secundum

CJS Bankruptcy § 19, Nonprofit Budget and Credit Counseling Agencies; Financial Management Instructional Courses.

CJS Bankruptcy § 1044, Failure to Complete Financial Management Course.CJS Bankruptcy § 1209, Discharge--Grounds for Denial or Revocation of Discharge.

RESEARCH REFERENCES

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ALR Library
20 ALR, Fed. 2nd Series 321, Construction and Application of Requirement, in Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA), that Debtor Complete Course in Personal Financial Management (11 U.S.C.A. §§ 727(A)(11)...
11 ALR, Fed. 2nd Series 43, Validity, Construction, and Application of Credit Counseling Requirement Under Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA), 11 U.S.C.A. § 109(H).
2005 ALR, Fed. 2nd Series 3, Validity, Construction and Application of Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA).
Encyclopedias
107 Am. Jur. Proof of Facts 3d 97, Proof by Individual Debtor of Creditor's Contempt in Violation of Bankruptcy Discharge Injunction (11 U.S.C.A. § 524(A)(2)).
105 Am. Jur. Trials 125, Arbitration and Mediation of Bankruptcy Disputes.
Am. Jur. 2d Bankruptcy § 15, Major Amendments to the Bankruptcy Code.
Am. Jur. 2d Bankruptcy § 40, Prepetition Credit Counseling.
Am. Jur. 2d Bankruptcy § 460, Approval of Credit Counseling Agencies and Financial Management Courses.
Forms
Nichols Cyclopedia of Legal Forms Annotated § 30:6, Debtors, Generally; Exclusions, Prohibitions, and Prerequisites--Debtor Credit Counseling.
6A West's Federal Forms § 10191, Chapter 7 “Bankruptcy Basics”.
6A West's Federal Forms § 10271, Chapter 11 Basics.
6B West's Federal Forms § 10441, Chapter 12 Basics.
6B West's Federal Forms § 10511, Chapter 13 Basics.
9 West's Legal Forms § 4:1, Chapter 7--“Bankruptcy Basics”.
9 West's Legal Forms § 4:4, Certificate of Debtor Education.
9 West's Legal Forms § 10:1, Chapter 11 Basics.
9A West's Legal Forms § 17:1, Introduction.
9A West's Legal Forms § 20:1, Introduction.
9A West's Legal Forms § 19:30, Affidavit in Support of Motion for Entry of Discharge.
Treatises and Practice Aids
Bankruptcy Law Fundamentals § 1:3, Nonbankruptcy Alternatives--Contractual Composition or Extension.
Bankruptcy Law Fundamentals § 2:2, The Voluntary Petition, Particularly the Means Test and Credit Counseling.
Bankruptcy Law Fundamentals § 1:11, Misuse of the Bankruptcy Process--Consumer Abuse and the Means Test.
Bankruptcy Law Manual § 3:7, Ineligibility to Commence a Bankruptcy Case--Failure to Obtain Credit Counseling.
Bankruptcy Law Manual § 1:10, Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.
Bankruptcy Law Manual § 1:11, Bankruptcy Technical Corrections Act of 2010.
Bankruptcy Law Manual § 7:45, The Automatic Stay: Termination or Elimination of the Stay--Termination of the Stay After 30 Days in the Case of Certain Serial Individual Filers.
Bankruptcy Law Manual § 10:38, Grounds for Denial of Discharge--Failure to Complete the Debtor Education Course.
Bankruptcy Law Manual § 13:46, The Chapter 13 Discharge.
Bankruptcy Practice for the General Practitioner § 2:5, Expanded Role of the U.S. Trustee Under the BAPCPA--Certifying Credit Counseling Agencies and Providers of Financial Management Courses.
Bankruptcy Practice for the General Practitioner § 3:3, Failure to Obtain Budget and Credit Counseling Briefing.
Bankruptcy Practice for the General Practitioner § 7:8, Objections to Claims--Miscellaneous Objections.
Bankruptcy Practice for the General Practitioner § 3:29, Complete Personal Financial Management Course, and File Statement Regarding Completion of Course.

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Bankruptcy Practice for the General Practitioner § 5:13, Avoidance of Preferential Transfers--Defenses.
Bankruptcy Practice for the General Practitioner § 11:17, Denial of Discharge to Debtor--Generally.
Bankruptcy Service Lawyers Edition § 51:79, Credit Counseling Certification.
Bankruptcy Service Lawyers Edition § 57:53, Other Particular Circumstances or Specific Forms of Relief.
Bankruptcy Service Lawyers Edition § 59:77, Filing of Lists, Schedules and Statements.
Bankruptcy Service Lawyers Edition § 12:978, Legislative History.
Bankruptcy Service Lawyers Edition § 17:341, Other Particular Applications--Reopening of Case Warranted.
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Bankruptcy Service Lawyers Edition § 39:627, Specific Determinations.
Bankruptcy Service Lawyers Edition § 12:1202, Permanent Waiver of Prepetition Credit Counseling Requirement.
Bankruptcy Service Lawyers Edition § 12:1248, Text of Statute.
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Mertens: Law of Federal Income Taxation § 54:4, Bankruptcy Court.
West's Federal Administrative Practice § 7012, Commencing the Case--Eligibility for the Voluntary Petition.
West's Federal Administrative Practice § 7072, Commencing the Case--Eligibility for the Voluntary Petition.
West's Federal Administrative Practice § 7142, Commencing the Case--Eligibility for the Voluntary Petition.
11 U.S.C.A. § 111, 11 USCA § 111

Current through P.L. 112-122 (excluding P.L. 112-96 and 112-102) approved 5-30-12
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