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No Proof that Credit Counseling Requirement is Working

by Craig D. Robins, Esq.



CRAIG D. ROBINS, ESQ.

In earlier writings, I have commented extensively about the credit counseling requirement imposed by the Bankruptcy Act of 2005 (BAPCPA), which went into effect about a year and a half ago. As everyone now knows, it imposes a strict duty on debtors to obtain credit counseling as a mandatory prerequisite for being eligible to file for any kind of bankruptcy relief.

The Office of the United States Trustee has taken a very aggressive, hard-line position in seeking dismissal of those cases in which the debtor neglected to strictly adhere to this statutory requirement. A review of bankruptcy court opinions from around the country reveals that most of the courts are strictly

interpreting the law in those cases involving credit counseling.

I previously wrote that the credit counseling requirement has been very controversial as most people believe that it is merely a device to delay and to drive up the costs of bankruptcy protection for the very poorest people who can barely afford it. It now appears that the credit counseling requirement is not even achieving its original purpose of shifting some potential bankruptcy filers into non-bankruptcy payment plans. My opinion remains that it is a waste of consumers' money and an unnecessary nuisance.

In April 2007, the United States Government Accountability

Office (GAO) issued a fifty-five page report, at the request of Congress, reviewing the value of the credit counseling requirement. Its conclusion was that the value of credit counseling was not clear.

In requesting this investigation, Congress was concerned that the credit counseling requirement exposed consumers to abusive practices by credit counseling agencies and acted as a barrier to filing for bankruptcy. The GAO examined (1) the process of approving counseling and education providers; (2) the content and results of the counseling and education sessions; (3) the fees charged; and (4) the availability of and challenges to accessing the system.

Here are some of the conclusions reached by the GAO that I found most interesting:

- Very few credit counseling clients entered into non-bankruptcy payment plans administered by the credit counseling agencies.
- The evidence suggests that by the time most consumers receive the credit counseling, their financial situations are dire, leaving them with no viable alternative to bankruptcy. As a result, the requirement may often serve more as an administrative obstacle than as a timely presentation of meaningful options.
- The United States Trustee Program fails to track and monitor the outcomes of counseling sessions simply because the law does not require them to do so.
- Those debtors who are not represented by attorneys are affected the most, as they do not know how to meet the pre-filing credit counseling requirements.
- Perhaps most importantly, there is absolutely no proof that the credit counseling requirement is working or meeting its intended objective.

In addition to credit counseling, BAPCPA also imposes a debtor education counseling session at the conclusion of the bankruptcy as a requirement for the debtor to receive a discharge. The GAO reviewed the debtor education requirement as well and found that most participants in the debtor education program believed that this requirement, which basically consists of working through a general financial literacy course, was beneficial.

The GAO recommended that the Office of the United States Trustee implement a way to track and analyze the outcomes of those consumers who engage in credit counseling, as opposed to those consumers who eventually file for bankruptcy.

While Congress may be slowly assessing the failure or success of the new bankruptcy laws, it appears that there is unanimous opinion from the bankruptcy bar that the credit counseling requirement is just an enormous burden and expense that impedes and deters the consumer from obtaining bankruptcy relief. Perhaps a new Washington regime will work to do away with it.

Editor's Note (revised 2008): Craig D. Robins, Esq., a regular columnist, is a bankruptcy attorney who has represented thousands of consumer and business clients during the past twenty years. He has offices in Medford, Commack, Woodbury and Valley Stream. (516) 496-0800. He can be reached at CraigR@CraigRobinsLaw.com. Please visit his Bankruptcy Website: CraigRobinsLaw.com.