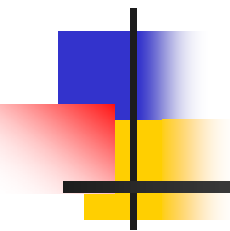




New Pre-Filing Credit Counseling Requirements

Applicable Statutes-11 U.S.C.
Section 109(h) and Section
521(b)



- **3A—109(h)(1)**
- **Subject to Paragraphs (2) and (3), and notwithstanding any other provisions of this section, an individual may not be a debtor under this title unless, such individual has, during the 180-day period preceding the date of the filing of the petition by such individual, received by an approved nonprofit budget and credit counseling agency described in section 111(a) an individual or group briefing (including a briefing conducted by telephone or on the Internet) that outlined the opportunities for available credit counseling and assisted such individual in performing a related budget analysis**



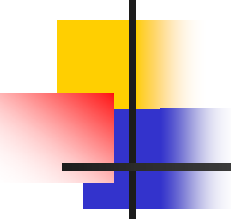
Language of the New Statute

11 U.S.C. Section 109(h)

- 3B—Key language: Must occur within 180 days before filing petition, and can be an individual OR group briefing (and can be in person, on the telephone or over the Internet).



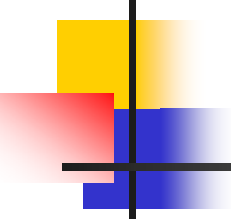
Extremely Limited Exemptions to this Requirement!!

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- 109(h)(2)(A)—Exemption only applies if United States Trustee fails to approve a credit counseling agency...but approval has already happened.



109(h)(3)(A) and (B) –Exemption allows for temporary waiver of 30 days post-filing, but Debtor must file with the Court a Certification that:

- A—Describes the “Exigent Circumstances”;
- B—States that Debtor requested credit counseling but was unable to obtain services within 5 days of request; AND
- C—Is satisfactory to the Court. (Seems to imply a hearing...do we have a New Local Rule on this issue?)
- D—Exemption limited to 30 days post-filing, but Court **may**, “for cause”, order an additional 15 days. Again, looks like a Motion, perhaps filed on an ex-parte basis due to time constraints. Seems to be 15 day, and **ONLY** 15 day, extension...no wiggle room for more than 45 days total.

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- 109(h)(3)(B)—Exemption allowed, after notice and a hearing, if Debtor UNABLE to complete the requirements because of disability, incapacity, or on active military duty IN COMBAT ZONE.

ADDITIONAL FILING REQUIREMENTS UNDER 11 U.S.C. 521(b) FOR INDIVIDUALS



- FROM the credit counseling agency that provided the services required under 109(h), describing the services provided; **AND**
- B—A copy of the debt repayment plan, if any, developed under 109(h) by the credit counseling agency.



PRACTICE TIPS



Practice Tips



- **A—Get the credit counseling certificate sent to you in a PDF format for easier ECF filing with the Court.**
- **B—Screen Credit Counseling Agencies. Prices and services vary. Find something that fits into your practice...telephone? Internet? Clients in your office or at home? Expect \$50-\$100 for combined pre- and post-filing counseling services. Also, examine billing options (Debtors pay-as-they-go, or counseling agency sends you a monthly statement and you pay it from monies collected from Debtor?).**



Practice Tips.....

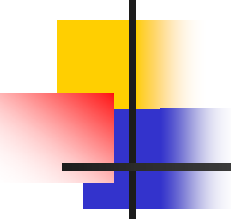
- **C—Restructure Practice/Office to have Attorney or Paralegal whose main responsibility is to sheppard clients pre-filing through all the new document requirements. Make a checklist.**

- D— Look for package deals that might give discounts for getting the pre-filing AND pre-discharge counseling together. Code does not require the pre-discharge counseling to be done DURING the case, consider doing both together up front, if possible.**

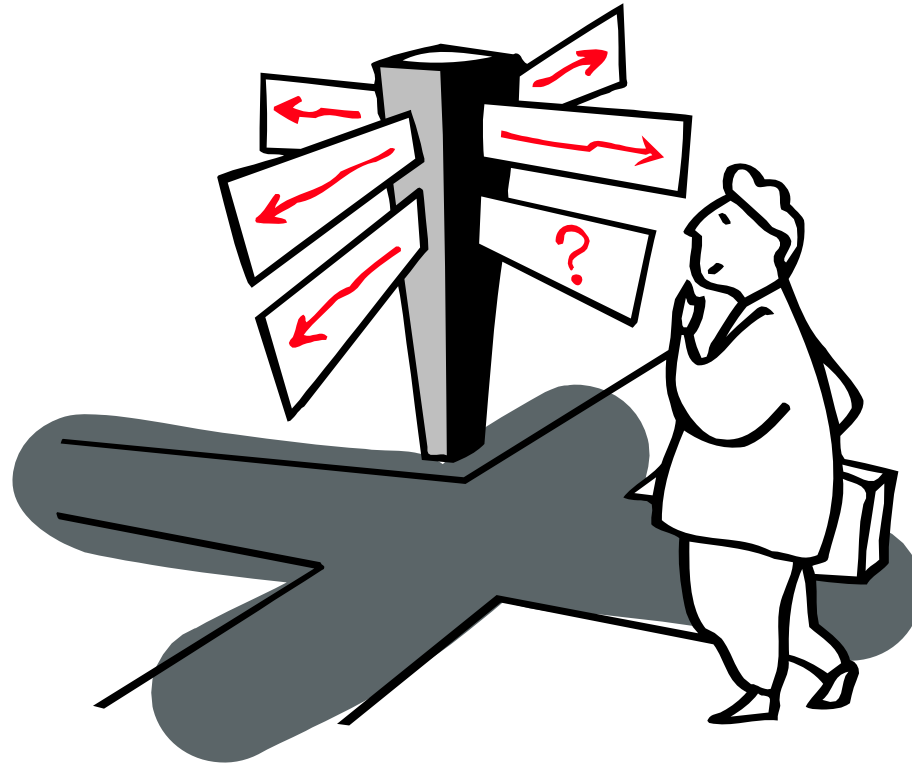
- **E—Merge intake forms for your clients with the credit counseling agency's own forms, to save time and avoid repetition. You will see the same info the credit counselor does.**

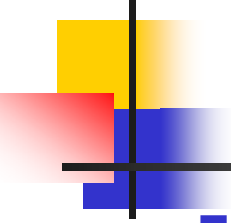
*DANGER DANGER
DANGER!!!!!!*

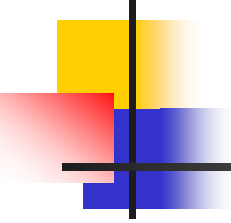


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- 10A—Credit Counseling requirements under 109(h) are **JURISDICTIONAL**, and found under the “who may be a Debtor” section of the Code. If not complied with, would seem to make the filing **INVALID**.

OPEN QUESTIONS/ISSUES



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- 11A—No timing requirement for filing certificate under 521(b)...Local Rule?
 - 11B—Why file “a copy of the debt repayment plan, if any”, compiled by the credit counseling agency, as required by 521(b)(2)? Court under no requirement to look at it or act upon it, and no other new sections seem to make it pertinent...**BUT** 109(h)(2)(B) gives possible reason, allowing the U.S. Trustee to **DISAPPROVE** an already-approved credit counseling agency “at any time”.

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- **AVAILABLE CREDIT COUNSELING AGENCIES, SOME APPROVED SOME AWAITING APPROVAL, AVAILABLE ON HANDOUTS IN BACK.**





Additional Documents to Provide To Debtors

- **SECTION 342(b) NOTICE ; GIVE PRIOR TO FILING**

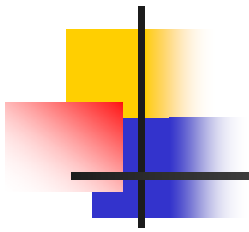
- – **SECTION 527(a) SUPPLEMENT; GIVE NO LATER THAN 3 BUSINESS DAYS AFTER DRA FIRST OFFERS BK ASSISTANCE.**

- – **SECTION 527(b) STATEMENT ; GIVE NO LATER THAN 3 BUSINESS DAYS AFTER DRA FIRST OFFERS BK ASSISTANCE.**



CONSEQUENCES

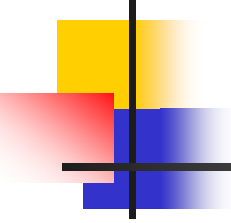
- DEBTOR'S DUTIES
- FAILURE TO FILE ALL INFO REQUIRED UNDER SEC. 521(a)(1) WITHIN 45 DAYS AFTER FILING PETITION = AUTOMATIC DISMISSAL EFFECTIVE THE 46TH DAY [521(i)(1)]

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- **ANY PARTY IN INTEREST MAY REQUEST DISMISSAL FOR FAILURE TO FILE INFO UNDER 521(a)(1) WITHIN 45 DAYS AFTER FILING PETITION. COURT SHALL ENTER ORDER NO LATER THAN 5 DAYS AFTER THE REQUEST. [521(i)(2)]**
 - **UPON DEBTOR'S REQUEST, WITHIN 45 DAYS OF FILING PETITION, THE COURT MAY ALLOW DEBTOR ADDITIONAL TIME NOT TO EXCEED 45 DAYS TO FILE INFO REQUIRED UNDER 521(a)(1), IF COURT FIND JUSTIFICATION.**



DEBT RELIEF AGENCY

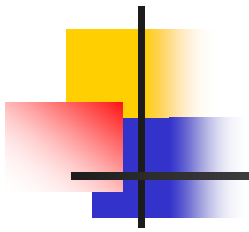
- ANY DRA SHALL BE LIABLE TO ASSISTED PERSON FOR FEES RECEIVED, FOR ACTUAL DAMAGES AND FOR REASONABLE ATTORNEY FEES AND COSTS IF DRA FOUND TO HAVE:

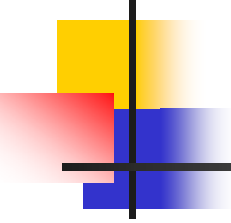
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- **(A) INTENTIONALLY OR NEGLIGENTLY FAILED TO COMPLY WITH SEC 527 OR 528;**
 - **(B) PROVIDED BK ASSISTANCE TO ASSISTED PERSON IN CASE THAT IS DISMISSED OR CONVERTED BECAUSE OF DRA'S INTENTIONAL OR NEGLIGENT FAILURE TO FILE ANY REQUIRED DOCUMENT INCLUDING THOSE UNDER 521; OR**
 - **(C) INTENTIONALLY OR NEGLIGENTLY DISREGARDED MATERIAL REQUIREMENTS OF THIS TITLE OR F.R.B.P. [526(c)(2)]**



FAILURE TO PROVIDE TAX RETURNS OR TAX TRANSCRIPTS

- IF TAX RETURN FOR PRIOR YEAR HAVE NOT BEEN PROVIDED TO TRUSTEE OR REQUESTING CREDITOR AT LEAST 7 DAYS BEFORE DATE FIRST SET FOR 341, COURT SHALL DISMISS CASE UNLESS DEBTOR SHOWS FAILURE TO COMPLY BEYOND DEBTOR'S CONTROL.
[521(e)(2)(B)(C)]

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- IF A DEBTOR FAILS TO FILE A TAX RETURN THAT BECOMES DUE AFTER COMMENCEMENT OF CASE OR TO OBTAIN AN EXTENSION, THE TAXING AUTHORITY MAY REQUEST DISMISSAL OR CONVERSION. THE COURT SHALL DISMISS OR CONVERT IF DEBTOR FAILS TO FILE THE RETURN OR OBTAIN AN EXTENSION WITHIN 90 DAYS AFTER THE TAXING AUTHORITY'S REQUEST.
[521(j)(1)(2)]

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- **FOR CHAPTER 13 DEBTORS, FAILURE TO FILE TAX RETURNS FOR THE PRECEDING 4-YEAR-PERIOD MEANS THE PLAN CANNOT BE CONFIRMED. [1308(a); 1325(a)(9)]**
 - **CHAPTER 13 TRUSTEES MAY HOLD OPEN 341 FOR A REASONABLE TIME IF TAX RETURNS REQUIRED UNDER 1308 HAVE NOT BEEN FILED BY THE FIRST SCHEDULED 341 DATE. SEE 1308(b) FOR THE EXTENSIONS OF TIME ALLOWED.**

1. PRE FILING CREDIT COUNSELING

- Proposed Local Rule USC 1 1007-3
- And
- 521(b), 109(h) (3)



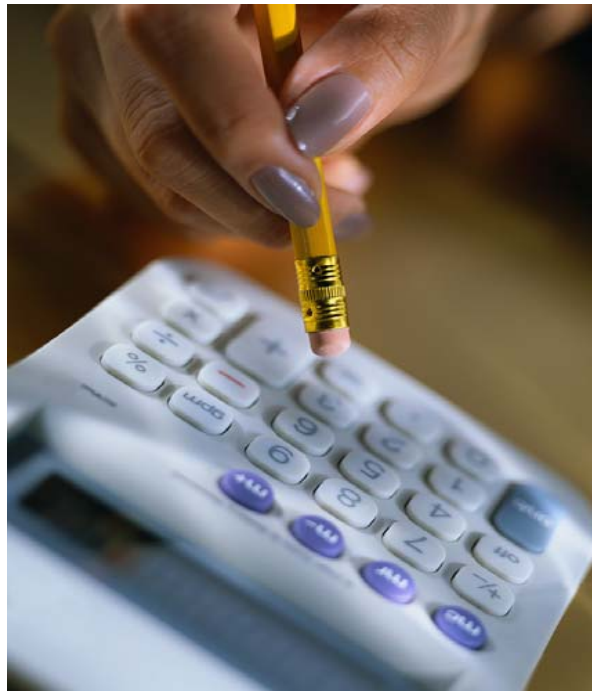
2. Attorney Statement

- **521(a) (1) (B) (iii) (I)**



3. Calculation of Monthly Net Income Pay Advices

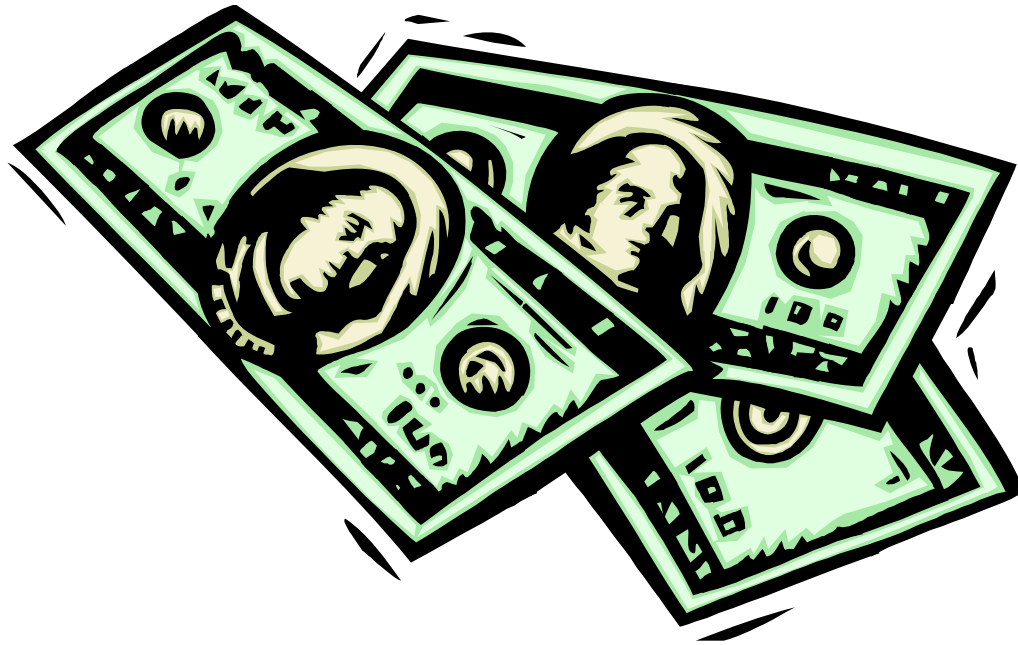
- **521(a) (1)(B) (IV)**





4. Monthly Net Income

- **521(a)(1)(B)(V)**





5. Increase in Income

- **521 (a)(1)(B)(VI)**



6. Tax Returns in General

- **521 (e)(2)(A)(B)& (C)**



7. Creditor Requested Documents

- **521(f) & (g)**



8. Tax Returns in Chapter 13 Cases

- 1308
- 521 (e)(3)



9. Credit Counseling Education After Filing

- 727(a)(11)
- 1328(g)

