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# Consequences of a Debtor's Failure to Receive Prepetition Credit Counseling

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## Consequences of a Debtor's Failure to Receive Prepetition Credit Counseling

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### Overview

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ([BAPCPA](#)) was passed in hopes of reforming the bankruptcy system by restoring personal integrity in the bankruptcy system and ensuring that the system is fair for debtors and creditors. Several of the new or amended provisions were enacted to improve financial literacy of debtors so that debtors will have the ability to make more informed decisions and potentially choose alternatives to bankruptcy filings.

Particularly relevant to this bibliography, Congress added a new eligibility requirement for individual debtors. Section 109(h) requires debtors to receive approved credit counseling, within 180 days of filing a petition for bankruptcy, in order to be eligible for relief. United States trustees and bankruptcy administrators must approve credit counseling agencies. These approved agencies prepare a budget based on a debtor's income and expenses and discuss available options for addressing the debtor's financial problems. Unfortunately, some debtors fail to receive the required credit counseling prior to filing a petition for bankruptcy.

A split of authority has developed regarding the proper consequence of failing to comply with the prepetition credit counseling requirements of 11 U.S.C. § 109(h). A majority of courts have determined that the credit counseling requirement is jurisdictional; therefore, a failure to comply automatically results in a dismissal of the debtor's case. This may cause the debtor to have to prove good faith in future filings. A few courts have concluded that the petitions should be stricken because a case was never commenced and because striking a case will further the anti-abuse purpose behind BAPCPA. Further, these courts conclude that because a case was not commenced the debtor was never eligible for protection of the automatic stay provided for in 11 U.S.C. § 362(a). The automatic stay is often seen as one of the biggest benefits of bankruptcy because it prevents creditors from reaching the debtor's assets. Finally, a growing number of courts have concluded that debtors can waive the strict prepetition credit counseling requirement because the requirement is not jurisdictional in nature and because dismissing the case or striking the petition would be inequitable for creditors. Until this split is resolved by Congress or the Supreme Court, if a debtor fails to comply with the prepetition credit counseling requirement, debtors, trustees, and creditors must look to the local bankruptcy court's determination of the proper consequence in order to determine whether a case commenced, whether the automatic stay applies, and whether a party may successfully move to dismiss a case.

### Disclaimer

This research guide is a starting point for a law student or an attorney to research the prepetition credit counseling requirement imposed by BAPCPA, courts' interpretation of it, and its application in bankruptcy cases. This is an evolving area of law, and it is important to KeyCite or Shepardize all cases and statutes before relying on them. This research guide should not be treated as legal advice or as a legal opinion on any specific facts or circumstances. If you need further assistance in researching this topic or have specific legal questions, please contact a reference librarian in the Georgia State University College of Law library or consult an attorney.

### Scope

This guide serves as an overview of the prepetition credit counseling requirement imposed by BAPCPA. This research guide is intended to assist students and attorneys with little to no familiarity with this subject matter in gaining a better understanding of the relevant law. Because courts evaluate the satisfaction of prepetition requirements on a case-by-case basis, this guide surveys the current status of law among United States Bankruptcy Courts to examine the current application of the prepetition credit counseling requirement. These cases serve as useful resources with which to analogize or distinguish a researcher's current facts. Additionally, this resource guide includes helpful laws, secondary materials, and Internet resources regarding prepetition counseling.

## About the Author

Karen Trapnell will graduate from the Georgia State University College of Law in May, 2011. While in law school, Ms. Trapnell served as the Business Editor for the Georgia State University Law Review and competed in the 2010 Georgia Intrastate Moot Court Competition. She also served as an extern in the Atlanta Office of the U.S. Trustee for Region 21. She is currently serving as a graduate research assistant for the Georgia State University Robinson College of Business Legal Studies Department. Before attending law school, Ms. Trapnell graduated from [Wake Forest University](#) with a Bachelor of Science in [Business](#). After graduation, she will join the Tax Practice of PricewaterhouseCoopers LLP in Atlanta, Georgia. For more information, please contact Professor Nancy Johnson via e-mail at [njohnson@gsu.edu](mailto:njohnson@gsu.edu).

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## Primary Sources

### U.S. Code

The prepetition credit counseling requirement is contained in title 11 section 109 of the United States Code. Courts disagree whether the automatic stay, one of the most profound protections available to debtors, applies to debtors who fail to obtain the prepetition credit counseling. The application and protections of the automatic stay are contained in title 11 section 362 of the United States Code. The United States Code can be found, free of charge, online from the [Cornell Legal Information Institute](#).

### [11 U.S.C. § 109](#)

Relevant subsections for this research guide:

- Subsection (h)(1) sets out the prepetition credit counseling requirement.

Subsection 109(h) provides that a debtor shall not be eligible for relief if the debtor has not received within 180 days before filing the petition, a briefing, from an approved nonprofit budget and credit counseling agency, that outlines opportunities for credit counseling and assists the debtor with a budget analysis.

- Subsection (h)(3) sets out the requirements for deferral of the prepetition credit counseling requirement through a certification to the court. The certification requirements include:

1. Describing exigent circumstances that merit a waiver of the counseling
2. Stating that the debtor requested credit counseling from an approved agency but was not able to obtain counseling within seven days of the request due to the exigent circumstances
3. Satisfying the court

- Subsection (h)(4) sets out the only exceptions to the prepetition credit counseling requirement. The exceptions include:

1. *Incapacity* – being so impaired by reason of mental illness or mental deficiency as to be incapable of making rational decisions about financial responsibilities
2. *Disability* – being so physically impaired as to be unable after reasonable effort to participate in in-person, telephone, or Internet briefing
3. *Active military duty in a combat zone*
4. *Unavailability of Counseling Services* – U.S. Trustee determines that counseling services are not reasonably available in debtor's district

### [11 U.S.C. § 362](#)

Relevant subsection for this guide:

- Subsection (a) sets out the actions that are precluded by the automatic stay. The precluded actions include:

1. Commencement of any action against the debtor to recover a debt that arose before the commencement of the bankruptcy case
2. Enforcement of any judgment entered before the commencement of the bankruptcy case
3. Any action to exercise control or domain over the debtor's estate
4. Any act to enforce a lien against the debtor's estate

5. Commencement of continuation of a proceeding before the United States Tax Court pertaining to corporate and individual debtors before relief is granted in the bankruptcy case

## Legislative History

The following sources explain the history of uniform bankruptcy laws and Congress's intent in passing the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), which created the prepetition credit counseling requirement.

- Bankruptcy Reform Act of 1978, Pub. L. no. 95-598, 92 Stat. 2549 (1978), accompanying S. Rep. No. 95-989 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, and accompanying H. Rep. No. 95-595 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5963
  - This act established a uniform law on the subject of bankruptcies and defined eligibility to be a debtor under bankruptcy laws.
- Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. no. 109-8, 119 Stat. 23 (2005) and accompanying H. Rep. No. 109-31 (2005), *reprinted in* 2005 U.S.C.C.A.N. 88
  - The 2005 Amendment added subsection (h) and thereby created the prepetition counseling requirement. Unfortunately, the amendment's silence about the consequence of failure to meet the requirements causes the current split in authority: (1) dismissal of the case, (2) waiver of the counseling requirement, and (3) striking the petition.
  - Current through P.L. 112-3 (excluding P.L. 111-296, 111-314, 111-320, 111-350, 111-377, and 111-383) approved 2-25-11.
- Presidential Remarks *reprinted in* 2005 U.S.C.C.A.N. S7
  - President George W. Bush stated that the purpose of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) was to restore integrity to the bankruptcy process, to strengthen our financial system, and to make the bankruptcy process fairer for creditors and debtors.

## Case Law

The following are notable cases in the history and development in the split of authority over the appropriate consequence for failing to comply with the prepetition credit counseling requirement imposed by BAPCPA.

### **COURTS DISMISSING THE CASE**

Most courts determine that the prepetition credit counseling requirement is mandatory and jurisdictional. Therefore, a failure to comply with the requirement automatically results in a dismissal.

#### **1st Circuit – U.S. Bankruptcy Court**

*In re Falcone*, 370 B.R. 462 (Bankr. D. Mass. 2007)

The court held that a debtor's case should be dismissed when a debtor makes no attempt to comply with the counseling requirement of 11 U.S.C. § 109(h)(1) before filing a petition for bankruptcy under Chapter 13 of the U.S. Bankruptcy Code. Here, the debtor received credit counseling two weeks *after* filing her petition. The court determined her circumstances did not meet the requirements for an extension of time. Further, this court pointed out that the majority of courts rule against debtors when they fail to obtain the required credit counseling.

#### **2nd Circuit – U.S. Bankruptcy Court**

*In re Seaman*, 340 B.R. 698 (Bankr. E.D.N.Y. 2006)

The court determined dismissal was the appropriate remedy for an individual debtor who completely failed to receive any credit counseling. The court held that the requirements for credit counseling and filing the certificate of completion are absolute prerequisites to filing a petition; therefore, a failure to comply results in a debtor's ineligibility. The court did not agree that striking the petition as void was an appropriate action because it would allow the debtor to immediately refile a petition without having to prove good faith and that could create uncertainties for creditors. The court determined these consequences would be apposite to Congress's intent in passing BAPCPA.

#### **5th Circuit – U.S. Bankruptcy Court**

*In re Jones*, 352 B.R. 813 (Bankr. S.D. Tex. 2006)

The court held that a debtor's case should be dismissed if the debtor fails to file a petition for bankruptcy within 180 days of receiving credit counseling because the requirement is statutory and the court has no discretion in the matter. Here, the debtor filed too late - 190 days after receiving counseling. The court determined that the appropriate action was to dismiss the debtor's case and recognized that the jurisprudence in the Southern District of Texas was split over whether a court should either "strike" the petition or "dismiss" the case.

#### **8th Circuit – U.S. Bankruptcy Court**

*In re Hedquist*, 342 B.R. 295 (B.A.P. 8th Cir. 2006)

This is the seminal case determining the constitutionality of the credit counseling requirement. The court held that the credit counseling requirement of 11 U.S.C. § 109(h) does not violate equal protection because individual debtors in *all* chapters are subject to the requirement. Here, the debtor failed to obtain any credit counseling and he subsequently argued that this requirement was unconstitutional because corporate debtors are not subject to the credit counseling requirement. The court found that compliance with the requirement is mandatory which leaves the court with no option but to dismiss the case.

#### **10th Circuit – U.S. Bankruptcy Court**

*In re Francisco*, 386 B.R. 854 (Bankr. D.N.M. 2008)

The court held that a debtor's case must be dismissed if she fails to obtain credit counseling *before* the date on which she files for bankruptcy. Here, the debtor obtained credit counseling on the same day that she filed for bankruptcy under Chapter 13. The court relied upon statutory interpretation and concluded that the language of 11 U.S.C. § 109(h) does not permit counseling and filing on the same day. Further, the court determined that dismissal was appropriate due to the reasoning in *In re Seaman* that was based upon (1) statutory interpretation, (2) legislative history, and (3) Congressional intent in the passage of BAPCPA.

#### **COURTS STRIKING THE PETITION**

A few courts have stricken petitions due to noncompliance with the prepetition credit counseling requirement. The inconsistent reasoning includes: (1) Congressional intent and legislative purpose; (2) the conclusion that courts have been granted power to take *all* appropriate actions to carry out title 11 under 11 U.S.C. § 105; and (3) the conclusion that a case cannot be dismissed because a case is never commenced by an ineligible debtor.

#### **2nd Circuit – U.S. Bankruptcy Court**

*In re Elmendorf*, 345 B.R. 486 (Bankr. S.D.N.Y. 2006)

The court examined three separate motions to dismiss and determined that 11 U.S.C. § 105(a) granted the court the power to take appropriate actions to carry out all provisions of title 11, including the power to determine whether a debtor's failure to receive credit counseling should result in striking the petition or dismissing the case. Most courts do not agree that 11 U.S.C. § 105(a) grants such expansive power to the courts and instead conclude that that language in 11 U.S.C. § 109(h) is mandatory and therefore a failure to obtain credit counseling requires a court to dismiss a case.

*In re Rios*, 336 B.R. 177 (Bankr. S.D.N.Y. 2005)

This is one of the first cases finding that courts may strike the petition of a debtor who fails to obtain credit counseling before filing for bankruptcy. Here, the debtor failed to obtain the required credit counseling and the court sensed abuse toward the bankruptcy system – the exact behavior BAPCPA was intended to prevent. The court examined congressional intent and found that dismissing the case would violate the intent and purpose behind BAPCPA because it would allow debtors to receive the benefits of the automatic stay when they are in fact ineligible to file for bankruptcy. The court concluded that the petition should be stricken because that action would preclude relief granted by the automatic stay.

#### **7th Circuit – U.S. Bankruptcy Court**

*In re Thompson*, 344 B.R. 899 (Bankr. S.D. Ind. 2006), *vacated by* 249 Fed. Appx. 475 (7th Cir. 2007)

This court took a unique approach in finding that a petition should be stricken when a debtor fails to obtain credit counseling before filing the petition for bankruptcy. Instead of relying on congressional intent and legislative history this court looked to other sections of title 11 and concluded that a case is never commenced by an ineligible debtor, one who fails to comply with 11 U.S.C. § 109(h); therefore, this debtor's case could not be dismissed and the only appropriate remedy was to strike the petition.

#### **COURTS WAIVING THE PREPETITION REQUIREMENT**

A growing number of courts are waiving the prepetition requirement when debtors try to use noncompliance in an abusive manner, as a fast ticket out of bankruptcy. Typically, a creditor or U.S. Trustee moves to dismiss a case instead of a debtor. The courts permitting waiver determined that 11 U.S.C. § 109(h) is a matter of eligibility rather than jurisdiction, which means that a court may grant waiver and is not required to dismiss a case due to a debtor's failure to receive credit counseling. Further, these courts often rely upon equitable principles such as laches and judicial estoppel to prevent these fickle debtors from unduly prejudicing creditors.

#### **4th Circuit – U.S. Bankruptcy Courts**

*In re Lilliefors*, 379 B.R. 608 (Bankr. E.D. Va. 2007)

This court used judicial estoppel to prevent the debtor from dismissing his case. Here, the debtor certified, under the penalty of perjury, that he received credit counseling but he never filed the certificate of completion. The court became concerned that the debtor was abusing the system by asserting inconsistent legal positions – first the debtor wanted the protection of the automatic stay and later he argued for a dismissal of his own case due to his failure to file the certificate of completion when the trustees determined his estate had more assets than he originally contemplated. The court concluded that a debtor may not benefit from his own non-compliance with 11 U.S.C. § 109(h).

#### **6th Circuit – U.S. Bankruptcy Courts**

*In re Amir*, 436 B.R. 1 (B.A.P. 6th Cir. 2010)

The appellate panel confirmed that the lower court has the discretion to determine a debtor's eligibility and that a debtor's strategic assertion of noncompliance with 11 U.S.C. § 109(h), the credit counseling requirement, is an abuse of the bankruptcy system. Here, the debtor did not move to dismiss his own case until he learned that the trustee planned to liquidate assets that he had purposely kept undisclosed. The appellate panel determined that the debtor had benefitted from the automatic stay for five months before raising any concern that he had failed to comply with the credit counseling requirement, and therefore by moving forward with his proceedings he had waived any right to move for a dismissal.

#### **8th Circuit – U.S. Bankruptcy Courts**

*In re Timmerman*, 379 B.R. 838 (Bankr. N.D. Iowa 2007)

The court held that the doctrine of estoppel and the doctrine of laches prevent a court from granting a debtor's own motion to dismiss a chapter seven case when dismissal will result in prejudice to creditors. Here, twenty-one months after filing for bankruptcy, the debtors moved to dismiss their case based upon their noncompliance with the credit counseling

requirement. The court emphasized that a debtor does *not* have an absolute right to dismiss a chapter seven case and that a court is not required to dismiss a case due to noncompliance with the credit counseling requirement. The court found the debtors were trying to abuse the bankruptcy system because they presented inconsistent legal positions by first falsely claiming they received the counseling and then later claiming they never received the counseling. Granting the dismissal would unduly prejudice creditors because it would create uncertainty among creditors and delay payments of priority claims to creditors.

#### 9th Circuit – U.S. Bankruptcy Courts

*In re Mendez*, 367 B.R. 109 (B.A.P. 9th Cir. 2007)

The court concluded that compliance with 11 U.S.C. § 109(h) could be waived by a debtor because it is a matter of eligibility rather than jurisdiction. The court followed the analysis in *In re Parker* and determined that this was another instance of abuse by a debtor trying to use the counseling requirement offensively as a ticket out of bankruptcy. Here, the debtor moved to dismiss her case based upon her noncompliance only after she learned that she might have to liquidate her house in the bankruptcy proceedings and she did not want to lose her house. The court concluded that although the debtor filed her credit counseling certificate late, she waived her right to assert noncompliance upon filing the certificate because the judge told her that her case would not continue unless she filed the certificate. Therefore, the filing constituted a voluntary relinquishment of her right to dismiss her case on grounds of failure to comply with 11 U.S.C. § 109(h).

#### 11th Circuit – U.S. Bankruptcy Courts

*In re Parker*, 351 B.R. 790 (Bankr. N.D. Ga. 2006)

This is the seminal case holding that the requirements of 11 U.S.C. § 109(h) are a matter of eligibility rather than jurisdictional; therefore, a debtor may waive strict compliance with the prepetition credit counseling requirement. This was one of the first cases where a crafty debtor tried to use his noncompliance with 11 U.S.C. § 109(h) as a way out of bankruptcy. Here, the debtor did not receive credit counseling from an “approved” agency until three weeks after filing his chapter seven petition for bankruptcy. The debtor actively participated in the bankruptcy proceedings for four months until he realized that the Chapter 7 Trustee intended to sell his houseboat to pay unsecured creditors. At this point, the debtor entered a motion to dismiss his case based upon his failure to comply with 11 U.S.C. § 109(h). First, the court determined that the credit counseling requirement is a matter of eligibility because the court has jurisdiction over the case of an ineligible debtor and therefore the status must be non-jurisdictional and waivable. Further, the court relied on *Collier on Bankruptcy*, which states that the requirement is non-jurisdictional. Here, the debtor waived his right to rely on his ineligibility because he actively participated in the proceedings for four months. Second, the court determined that judicial estoppel applied because granting the dismissal would create a mockery of the bankruptcy process: (1) the debtor used chapter seven bankruptcy to invoke the automatic stay and halt eleven lawsuits; (2) the Chapter 7 Trustee expended administrative resources to analyze debtor’s assets; (3) the debtor had received orders in his favor; and (4) unsecured creditors were patiently waiting for payments.

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## Secondary Sources

### Law Journal Articles

Below are notable law review and other periodic sources that contain relevant information to shed light on this topic. These sources are organized by author and can be found on [LexisNexis](#), [Westlaw](#), or [HeinOnline](#) for a fee.

#### **Adam Eric Miller, *Bankruptcy Reform Implementation*, 26 ANN. REV. BANKING & FIN. L. 155 (2007)**

This student note explores the constitutional and legal challenges to BAPCPA as well as cases pertaining to the credit counseling requirement found in 11 U.S.C. § 109(h). This note highlights Congress’s lack of guidance about the appropriate remedy for failure to comply with the credit counseling requirement. Mr. Miller suggests that dismissal may be the most appropriate remedy because it gives creditors certainty about the status of an individual debtor’s case.

#### **George H. Singer, *The Year in Review: Case Law Developments Under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005*, 82 N.D. L. REV. 297 (2006)**

Mr. Singer is a practicing attorney and an Adjunct Professor of Law teaching courses on secured transactions and bankruptcy. Mr. Singer discusses significant judicial decisions interpreting BAPCPA and provides an analysis of those decisions. Further, he exposes judicial holdings that shed light on the shortcomings of BAPCPA. Mr. Singer suggests that courts will have to spend time grappling with statutory interpretation and legislative intent to make sense of the legislation.

#### **Jean Braucher, *A Guide to Interpretation of the 2005 Bankruptcy Law*, 16 AM. BANKR. INST. L. REV. 349 (2008)**

This Comment argues that BAPCPA was poorly drafted and that the new requirements make access to bankruptcy more difficult for debtors. The author urges judges to stray from plain meaning analyses because they are fruitless due to the poor drafting. Instead, the author suggests courts should focus on the purposes behind BAPCPA and try not to create an unintended consequence – making access extremely difficult for nonabusers.

#### **Jeffery A. Deller, *Putting Order to the Madness: BAPCPA and the Contours of the New Prebankruptcy Credit Counseling Requirements*, 16 J. BANKR. L. & PRAC. 1 ART. 5 (2007)**

Jeffery A. Deller is a United States Bankruptcy Judge for the Western District of Pennsylvania. This article examines the confusion surrounding BAPCPA’s prebankruptcy credit counseling provisions. The Hon. Jeffrey A. Deller argues that failure to obtain the counseling should result in dismissal of the case rather than striking the petition because only dismissal is supported by the text of BAPCPA and dismissal prevents confusion among all of the parties in a bankruptcy proceeding (debtors, creditors, the trustee, the clerk of court, and the judge).

**Jeffrey D. Eaton, *Locked Out: The Unwary Debtor and BAPCPA's Pre-File Credit Counseling Requirement*, 32 T. JEFFERSON L. REV. 261 (2010)**

This student note argues that Congress should amend the Bankruptcy Code to eliminate the controversial prepetition credit counseling requirement. Mr. Eaton explores the detrimental effect of the consequences of failing to receive the prepetition credit counseling and suggests that the requirement is simply redundant because of the post-file credit counseling requirement codified in 11 U.S.C. § 727(a)(11).

**Joseph Satorius, *Strike or Dismiss: Interpretation of the BAPCPA 109(h) Credit Counseling Requirement*, 75 FORDHAM L. REV. 2231 (2007)**

This student note explores the judicial split over the proper remedy for petitions filed in violation of the credit counseling requirement. Mr. Satorius focuses on three remedies: (1) dismissing the case; (2) striking the petition; and (3) striking the petition with prejudice for future filings. Mr. Satorius argues that striking the petition is the most appropriate remedy because it will curb abuse of the bankruptcy system by preventing ineligible debtors from receiving protection of the automatic stay.

**Leslie E. Linfield, *Financial Education: No Debtor Left Behind?*, 30 AM. BANKR. INST. J. 24 (2011)**

Leslie Linfield is the executive director of the Institute for Financial Literacy. Ms. Linfield notes that BAPCPA created the U.S.'s most substantial financial literacy education effort to date. This article discusses various means of providing financial literacy education and urges financial literacy providers to focus on the desire to improve the financial condition of individuals rather than their own pecuniary interests.

**Lindsay Sherp, *To Strike or to Dismiss, That Is the Question: How Courts Should Dispose of Bankruptcy Cases Filed by Debtors Who Filed to Obtain Credit Counseling*, 60 BAYLOR L. REV. 317 (2008)**

This student note examines the difference between striking petitions as opposed to dismissing cases of debtors who failed to obtain credit counseling. Ms. Sherp argues that courts should dismiss these cases because dismissal results in greater protection for ineligible debtors while their cases are pending due the fact that the automatic stay applies. Additionally, Ms. Sherp asserts that dismissal curbs future abuse of the bankruptcy system because these ineligible debtors will have to prove any subsequent petitions are filed in good faith in order to avoid adverse consequences.

**Michael Newman, *BAPCPA's New Section 109(h) Credit Counseling Requirement: Is It Having the Effect Congress Intended?*, 2007 UTAH L. REV. 489 (2007)**

This Comment explores whether the credit counseling requirement is having the effect that Congress intended – improving consumers' financial literacy and in turn decreasing bankruptcy filings. Mr. Newman argues that BAPCPA is not having the effect that Congress intended and that BAPCPA was too vague about the consequences of failing to comply with the credit counseling requirement. He analyzes the split in case decisions and suggests that a debtor in a dismiss district should immediately file a new petition to extend the automatic stay and a debtor in a strike district should watch out for creditors' actions while preparing to file a new petition.

**Sean C. Currie, *The Multiple Purposes of Bankruptcy: Restoring Bankruptcy's Social Insurance Function After BAPCPA*, 7 DEPAUL BUS. & COMM. L.J. 241 (2009)**

This student note argues that the consumer credit counseling requirement imposed by BPACPA should be repealed because it does not steer debtors away from bankruptcy but instead makes filing more difficult for debtors too far into debt to seek another way out. Mr. Currie proposes that consumer credit counseling should be mandated *during* the bankruptcy proceedings so that debtors will emerge from bankruptcy with the skills to prevent future filings.

## Looseleaf Services

The looseleaf sources listed below can be found on [LexisNexis](#) or [Westlaw](#) for a fee.

***Debtor's Duties: Bankruptcy Court Has Discretion To Waive Debtor's Filing Requirement After Deadline*, 21 BNA Bank. L. Rep. 977 (BNA) (Jul. 16, 2009) (2009 BNA 2038065)**

This looseleaf article discusses courts' reactions to debtors' failures to receive credit counseling before filing petitions for bankruptcy. Further, this article supports waiving the credit counseling requirement and points readers to the underlying purpose behind BAPCPA – preventing abusive bankruptcy filings. BNA is available online through [LexisNexis](#) or [Westlaw](#).

**Sec. 109(h) Credit Counseling and Debtor Education, Bankr. L. Rep. (CCH) ¶ 7056B (2009 WL 2737513)**

This looseleaf article provides a general overview of 11 U.S.C. § 109(h) and explains the reasoning behind the prepetition credit counseling requirement. CCH looseleaf service provides laws, explanations, rules of procedure, forms, state exemptions, and court decisions. CCH is available online through [Westlaw](#).



## Books & Treatises

### Books and Treatises Discussing the Credit Counseling Requirement of 11 U.S.C. § 109(h)

**AMERICAN BAR ASSOCIATION, GUIDE TO CREDIT AND BANKRUPTCY (Random House 2006)** (Call number: [KF1524.G85 2006](#))

The American Bar Association (ABA) published this book to provide consumers with unbiased information about credit and bankruptcy. This book provides practical tips, plain English definition of legal terms, and instructions about where to go for more information on particular topics. Chapter seven explains the credit counseling requirement and discusses how to determine if a credit counseling agency is approved. Chapter twenty-two provides multiple websites with more information about filing for bankruptcy.

**CHARLES JORDAN TABB ET AL., THE LAW OF BANKRUPTCY 134-40 (Thomson Reuters/Foundation Press 2d ed. 2009) (1997)** (Call number: [KF1524.T33 2009](#))

Tabb published this book to provide law students, law professors, attorneys, and judges with a primary and comprehensive source of bankruptcy law in the United States. Chapter two focuses on the process of invoking bankruptcy relief. This book gives an in depth analysis of the credit counseling requirement imposed by BAPCPA and discusses how the requirement may not actually operate as the debtor protection that Congress intended.

**2-109 COLLIER ON BANKRUPTCY P 109.09 (Alan N. Resnick & Henry J. Sommer, eds., Matthew Bender & Co., Inc. 2011)**

Collier on Bankruptcy is the premier treatise covering bankruptcy law. Chapter one provides a succinct explanation of the prepetition briefing BAPCPA imposed on individual debtors. This treatise is available online through [LexisNexis](#).

**1 HENRY J. SOMMER, NATIONAL CONSUMER LAW CENTER, CONSUMER BANKRUPTCY LAW AND PRACTICE** (9th ed. 2009) (Call number: [KF1524.S65](#))

This manual is designed for attorneys and paralegals handling bankruptcy cases. The ninth edition contains case law interpreting BAPCPA and practice aids such as Bankruptcy Rules, pleadings and forms, and client handouts. Section 3.2.1.4 discusses the credit counseling briefing requirement in depth and cites to case law when describing the consequences of failing to obtain credit counseling before filing a petition.

**ROBERT E. GINSBERG ET AL., GINSBERG & MARTIN ON BANKRUPTCY F12-5** (Aspen Publishers 2011)

Ginsberg and Martin publish a practitioner's guide to bankruptcy law that provides a significant number of sample forms. Form 12-5 gives practitioners a form to follow in order to file a motion to dismiss for failure to comply with credit briefing requirements. This guide is available online through [LexisNexis](#).

**Robin Miller, Validity, Construction, and Application of Credit Counseling Requirement Under Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) (11 U.S.C.A. § 109(h)), 11 A.L.R. 2d 43 (2011)**

This legal encyclopedia article provides a general overview of the credit counseling requirement imposed by BAPCPA. Additionally, this article analyzes all federal cases discussing 11 U.S.C. § 109(h). This encyclopedia is available online through [LexisNexis](#) or [Westlaw](#).

**SALLY McDONALD HENRY, THE NEW BANKRUPTCY CODE 43 (American Bar Association 2005)** (Call number: [KF1511.597.H46 2005](#))

Author Henry designed this book to introduce attorneys to new requirements stemming from BAPCPA. The index includes slang and popular terms which may make the book more useful for attorneys less familiar with bankruptcy law. Further, this book provides a snapshot of BAPCPA credit counseling requirements and rare exceptions.

**SHEILA M. WILLIAMS & GEORGE M. BASHARIS, BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2005: LAW AND EXPLANATION (Annette M. Wilk ed., Aspen Publishers 2005)** (Call number: [KF1511.597.W55 2005 c.1](#))

This book is intended to give readers a better understanding of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA). Authors Williams and Basharis divided this book into three parts: (1) a comprehensive explanation of BAPCPA; (2) the full text of relevant legislation; and (3) related committee reports and legislative history. Section 54 discusses the purposes of credit counseling: (1) educating debtors about bankruptcy; (2) explaining alternatives to bankruptcy; and (3) detailing the consequences of filing for bankruptcy. Section 108 provides additional information pertaining to the credit counseling requirement. Finally, Section 2106 provides the language of the legislation enacting the credit counseling requirement.

**HON. WILLIAM HOUSTON BROWN & LAWRENCE R. AHERN III, 2005 BANKRUPTCY REFORM LEGISLATION WITH ANALYSIS 2D: COMMENTARY AND HIGHLIGHTED TEXT OF THE UNITED STATES BANKRUPTCY CODE AS AMENDED BY THE BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2005 PUBLIC LAW 109-8 (Thomson/West 2006)** (Call number: [KF1511.597.B76 2006](#))

Authors Brown and Ahern wrote this book for members of the bankruptcy bar and judiciary. This book provides checklists of new duties imposed by BAPCPA, Interim Bankruptcy Rules, and Official Bankruptcy Forms. Section 2:2 discusses prebankruptcy credit briefing. Section 7.22 explains how to obtain approved credit briefing, specific exceptions, and how to file a certificate of receipt of credit counseling. Section 7.22 also provides practice alerts pertaining to credit briefing waivers.

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## Interest Groups and Associations



## Interest Groups

Below are organizations that focus on credit counseling or provide a list of approved agencies.

### [American Bankruptcy Institute \(ABI\)](#)

The ABI focuses on research and education related to bankruptcy law. The Consumer Bankruptcy Center is available to the public free of charge and provides a list of approved credit counseling agencies for all fifty states.

### [Association of Independent Consumer Credit Counseling Agencies \(AICCCA\)](#)

The AICCCA is a national association representing non-profit credit counseling companies that provide consumer credit counseling, debt management, and financial education services.

### [National Foundation for Credit Counseling \(NFCC\)](#)

The NFCC is the nation's largest financial counseling organization providing counseling and education in all fifty states.

### [United States Trustee Program \(USTP\)](#)

The USTP oversees all bankruptcy proceedings. The website provides a list of approved credit counseling agencies and answers to frequently asked questions.

## Blogs/Podcasts

Below are a number of legal blogs and podcasts that focus on current issues in bankruptcy law. These sources analyze the evolving interpretations of changes that BAPCPA brought to bankruptcy law.

### [American Bankruptcy Institute Law Review](#), [ABI Bankruptcy Case Blog](#)

The ABI staffers focus on cutting-edge bankruptcy cases. Each post analyzes a progressive case's issue, holding, and resulting effect on bankruptcy law.

### [Bankruptcy Law Network](#), [Bankruptcy Law Network](#)

Bankruptcy Law Network is geared toward consumers and is run by bankruptcy attorneys and consumer advocates. This blog posts bankruptcy news and information in clear and concise text.

### [Kevin Chern](#), [The Bankruptcy Lawyer's Blog](#)

"Start Fresh Today" (SFT) is one of the nation's largest providers of consumer credit counseling. SFT founded this blog in 2005 in response to new requirements imposed by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA). This blog is designed to keep attorneys abreast of BAPCPA requirements and is an excellent resource for bankruptcy law updates. Further, the April 7, 2011 post provides a link, [www.bankruptcysoftware.com/startfreshtoday.shtml](http://www.bankruptcysoftware.com/startfreshtoday.shtml), to software that attorneys can use to help debtors integrate pre and post bankruptcy credit counseling. This software also makes it easier for attorneys to file certificates of completion with bankruptcy courts.

### [LexisNexis](#), [Bankruptcy Law Community Podcast](#)

The LexisNexis Bankruptcy Law Center provides free audio stories pertaining to both consumer and commercial bankruptcy law. The podcasts aim to keep listeners up to date on bankruptcy news. The podcasts cover the same information and cases that are included in the Collier Bankruptcy Case Update.

### [Steve Elias & Albin Renauer](#), [Nolo's Bankruptcy and Foreclosure Blog](#)

Attorney Steve Elias and author Albin Renauer explain bankruptcy law in plain English and aim to eliminate confusion about changes to bankruptcy law. This blog also highlights resources that will help debtors file for bankruptcy.

## Helpful Research Terms

- 11 U.S.C. § 109(h)
- BAPCPA
- Credit counseling
- Credit briefing
- Prepetition briefing
- Debtor education
- Financial management education
- Credit counseling certificate
- Approved credit counseling agency
- Strike
- Dismiss
- Waive

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