

**United States Bankruptcy Court
in the District of New Mexico**

CREDIT COUNSELING REQUIREMENTS FOR PERSONS

(This document is current as of March 8, 2017)

If you file a bankruptcy petition with or without a lawyer, you must obey the credit counseling requirements of 11 U.S.C. section 109(h). Carefully read this document which

- (1) states the law,
- (2) gives the Court's explanation of the law, and
- (3) tells you what you should do and what forms you should complete to comply with the law. These forms are available on the Court's website at nmb.uscourts.gov

FAILURE TO FOLLOW THESE PROCEDURES AND SUBMIT THE REQUIRED FORMS MAY RESULT IN DISMISSAL OF YOUR CASE.

Title 11, United States Code, Section 109. Who may be a debtor. The text of applicable paragraphs in sections 109 (h) (1), (3), and (4)¹ follows:

I. YOU MUST RECEIVE CREDIT COUNSELING BEFORE YOU FILE YOUR BANKRUPTCY PETITION.

THE LAW:

Section (h)(1) Subject to paragraphs (2) and (3) [below] and notwithstanding any other provision 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 filing of the petition by such individual, received from 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.

¹The United States trustee has approved several non-profit budget and credit counseling agencies who can provide counseling services in the District of New Mexico. Because these services are available, section 109(h)(2) does not apply in New Mexico.

COURT'S EXPLANATION:

If you file a bankruptcy case, you must complete budget and credit counseling during the 180 days **before you file your petition**.

The list of approved credit counseling agencies in New Mexico is available on the United States trustee's website: www.usdoj.gov/ust/eo/bapcpa/ccde/cc_approved.htm. These approved agencies provide counseling services in person, by telephone or via the Internet. If you and your spouse intend to file a joint petition, each of you must receive budget and credit counseling. The counseling agency should provide a certificate of completion of credit counseling to each person who completes the counseling.

WHAT YOU SHOULD DO:

COMPLETE CREDIT COUNSELING BEFORE YOU FILE. Ask the counseling agency to give you a certificate of completion of credit counseling.

If the agency provides you with a certificate of completion of credit counseling so that you are able to submit it with your petition, complete Part 5 of the petition (official form 101) by checking box #1, attach the certificate, and file with the petition.

If the agency does not provide you with a certificate of completion of credit counseling before you have to file your petition, complete Part 5 of the petition (official form 101) by checking box #2. You will have 14 days from the date of the filing of the petition to file the certificate of completion of credit counseling with the court.

IF YOU DO NOT SUBMIT THE CERTIFICATE WITH YOUR PETITION OR WITHIN 14 DAYS OF FILING YOUR PETITION, YOUR CASE MAY BE DISMISSED.

II. Under very limited conditions, you may ask for a waiver of the "pre-filing" requirement to receive credit counseling.

This is not a waiver of the requirement that you obtain the counseling, but a waiver of the requirement that you obtain the counseling before filing.

THE LAW:

Section (h)(3)(A) Subject to subparagraph (B), the requirements of paragraph (1) [*above*] shall not apply with respect to a debtor who submits to the court a certification

- (i) that describes exigent circumstances that merit a waiver of the requirements of paragraph (1);
- (ii) that states that the debtor requested credit counseling services from an approved nonprofit budget and credit counseling agency, but was unable to obtain the services referred to in paragraph (1) during the 7-day period beginning on the date on which the

debtor made that request; and

(iii) that is satisfactory to the court.

Section (h)(3)(B) With respect to a debtor, an exemption under subparagraph (A) shall cease to apply to that debtor on the date on which the debtor meets the requirements of paragraph (1) but in no case may the exemption apply to that debtor after the date that is 30 days after the debtor files a petition, except that the court, for cause, may order an additional 15 days.

COURT'S EXPLANATION:

If you need to file a bankruptcy case before you have received budget and credit counseling, **you must have "exigent circumstances" and you must have asked for but were not able to obtain credit counseling services within seven (7) days from the date you first made the request.**

Exigent circumstances: A situation that demands unusual or immediate action and that may allow people to circumvent usual procedures, as when a neighbor breaks through a window of a burning house to save someone inside. BLACK'S LAW DICTIONARY 236 (7th ed. 1999).

If the judge approves your excuse, you must obtain credit counseling no later than 30 days after you file your case, unless the court orders an extension for an additional 15 days. If you need an extension, you must file a motion for extension of time to obtain credit counseling *within the 30-day period*.

IF YOU DO NOT OBTAIN CREDIT COUNSELING, OR IF YOU DO NOT TIMELY FILE A MOTION FOR EXTENSION OF TIME, YOUR CASE MAY BE DISMISSED.

WHAT YOU SHOULD DO:

If you have "exigent circumstances" and you have NOT obtained budget and credit counseling PRIOR to filing your case, contact one of the approved budget and credit counseling services NOW. If you are not able to obtain counseling within 7 days of the date you first request counseling, complete Part 5 of the petition (official form 101) by checking box 3 and attaching a separate sheet explaining what efforts you made to obtain the briefing, why you were unable to obtain it before you filed for bankruptcy, and what exigent circumstances required you to file this case. You may use form NM LF 109(h)(3) for this purpose and file with

Credit Counseling Requirements
Outlined in 11 U.S.C. Section 109(h)

Page 3 of 5

the petition. THEN, obtain the counseling no later than 30 days after you file the petition.

FAILURE TO OBTAIN CREDIT COUNSELING WITHIN 30 DAYS OF FILING YOUR PETITION MAY RESULT IN DISMISSAL OF YOUR CASE.

III. The credit counseling requirement does not apply IF the court determines that you are unable to receive counseling because you are incapacitated, disabled, or on active military duty in a military combat zone.

THE LAW:

Section (h)(4) The requirements of paragraph (1) shall not apply with respect to a debtor whom the court determines, after notice and hearing, is unable to complete those requirements because of incapacity, disability, or active military duty in a military combat zone. For the purposes of this paragraph, incapacity means that the debtor is impaired by reason of mental illness or mental deficiency so that he is incapable of realizing and making rational decisions with respect to his financial responsibilities; and disability means that the debtor is so physically impaired as to be unable, after reasonable effort, to participate in an in person, telephone, or Internet briefing.

COURT'S EXPLANATION:

If the court determines that you are **incapacitated** (for example, you are impaired by reason of mental illness or mental deficiency so that you are incapable of realizing and making rational decisions with respect to your financial responsibilities) or **disabled** (for example, you are so physically impaired as to be unable, after reasonable effort, to participate in an in-person, telephone, or Internet briefing regarding budget and credit counseling) or **on active military duty in a military combat zone**, the court will enter an order confirming the determination and exempting you from the credit counseling requirement.

WHAT YOU SHOULD DO:

If you are incapacitated, disabled, or on active military duty in a military combat zone, complete Part 5 of the petition (official form 101) by checking box 4 and the appropriate box regarding incapacity, disability, or active military duty. You must also file a motion for waiver of credit counseling with the court. You may use form NM LF 109(h)(4) for this purpose. You may wish to attach supporting documentation to the form.

The court will hold a hearing on your request for a determination. If the court determines that you should be exempt from taking the credit counseling, the court will enter an order confirming the determination and exempting you from the credit counseling requirement.

If the court determines that you are not exempt from the requirement to receive credit counseling, the court will give you a time period by which you must obtain the counseling. Once you obtain the counseling, file the certificate of completion with the court.

IF YOU HAVE THIS SITUATION AND YOU DO NOT SUBMIT NM LF 109(h)(4) WITH YOUR PETITION, YOUR CASE MAY BE DISMISSED.

Please note: It is possible in a joint case (where husband and wife are both debtors on the petition) that one debtor is able to and does obtain credit counseling and submits the certificate of counseling with the petition while the other debtor cannot obtain credit counseling and needs to request a determination as provided in section 109(h)(4), and thus submits NM LF 109(h)(4).