

CREDIT COUNSELING AND DEBTOR EDUCATION REQUIREMENTS

If you are an individual debtor in a chapter 7 or 13 case [or in a chapter 11 case in which section 1141(d)(3) applies], do **not** confuse the *credit counseling requirement* with the *debtor education requirement*. They are **not** the same!

1. **Before** filing your case, you must undergo **credit counseling** (*see below*).
2. **After** filing your case, you must fulfill the **debtor education requirement** by taking a course in personal financial management (*see below*).

Credit Counseling Requirement: *Prior to* commencing a bankruptcy case, *all* individual debtors – filing under *any* of the Bankruptcy Code chapters that are available to individuals (*i.e.*, chapter 7, 11, 12 or 13) – must undergo **credit counseling** from a credit counseling service that the United States Trustee has **approved** for this judicial district (Southern District of New York). [To view the list of approved services for this district, go to http://www.justice.gov/ust/eo/bapcpa/ccde/cc_approved.htm, select **New York** from the pull-down menu, and scroll down to the listings underneath the heading, “*Southern District of New York.*”]

What and When to File: After receiving credit counseling prior to case filing, the debtor must fill out – *at the time of filing the petition* – Part 5 of the *Voluntary Petition for Individuals Filing for Bankruptcy*. Depending on how the debtor completes Part 5, the debtor must file – either at the time of case filing *or* within 14 days from the date of case filing – the **certificate** that was provided by the credit counseling service along with any **repayment plan** developed as part of credit counseling.

Request for Extension/Request for Waiver: A debtor who has not undergone credit counseling *prior to filing the petition* may request to have the court grant a **30-day extension** to receive credit counseling and file the certificate. As noted on **Part 5 of the Voluntary Petition for Individuals Filing for Bankruptcy**, a debtor requesting the extension must so indicate in the appropriate section of Part 5 and attach a separate sheet explaining what efforts the debtor made to obtain the briefing, why the debtor was unable to obtain it before the filing and what exigent circumstances required the debtor to file the case. Additionally, as noted in **Part 5**, **there are strict requirements for obtaining this extension**, and anyone thinking of making this request should first **read Part 5 very carefully**. Additionally, *at the time of filing the petition*, certain debtors may request to be **waived** of the credit counseling requirement based on having an incapacity or disability or being engaged in active military duty in a combat zone (*see Part 5*, which provides definitions for “incapacity” and “disability”). A debtor seeking the waiver must so indicate when completing **Part 5** and must also file a **separate written request**. The court’s website, www.nysb.uscourts.gov, has a form for use in making the separate written request for the waiver.

Consequences for Failing to Comply with this Requirement: Your case may be subject to dismissal, in which event you will be unable to obtain bankruptcy relief by means of the case that you filed. *See Part 5 of the Voluntary Petition for Individuals Filing for Bankruptcy.*

Debtor Education Requirement: *After* commencing the bankruptcy case, individual debtors in a chapter 7 or 13 case [or in a chapter 11 case in which section 1141(d)(3) applies] must fulfill a debtor education requirement by taking a **course in personal financial management**. This course must be taught by a course provider that the United States Trustee has approved for this judicial district (Southern District of New York). [To view the list of approved course providers for this district, go to http://www.justice.gov/ust/eo/bapcpa/ccde/de_approved.htm, select **New York** from the pull-down menu, and scroll down to the listings underneath the heading, “*Southern District of New York.*”]

What and When to File: After completing the course in personal financial management, the course provider will give a certificate to the debtor. In a joint case, each joint debtor must complete the course and obtain a certificate. The provider may notify the court that the debtor has completed the course. If the provider does not notify the court, the debtor (and joint debtor in a joint case) must file with the court a *signed, completed Official Form 423 (Certification About a Financial Management Course)*. When completing the form, the debtor should provide the **date the course was taken, the name of the approved provider and the certificate number** in the spaces that are provided on the form. Those seeking a waiver based on incapacity, disability or active military duty in a combat zone should complete the bottom portion of Official Form 423 and file it with the court with a separate motion. The applicable **deadlines** for filing Official Form 423, as set in Fed. R. Bankr. P. 1007(c), are noted below:

Chapter 7: File Official Form 423 within **60** days after the first date set for the § 341(a) meeting of creditors.

Chapter 11 or 13: File Official Form 423 no later than the last payment made by the debtor as required by the plan or the filing of a motion for entry of a discharge under § 1141(d)(5)(B) or § 1328(b) of the Code.

Those debtors seeking an extension of time (to file Official Form 423) must make their request to the judge **before** the expiration of the applicable deadline.

Consequences for Failing to Comply with this Requirement: Your case may be closed without entry of a discharge. To file Official Form 423 once the case is already closed, you will need to reopen the case and pay the case reopening fee.