

EXTERNAL INSTRUCTIONS
CREDIT COUNSELING
11 U.S.C. §§ 109, 521

1. **New Filing Requirement:**

An individual may not be a debtor unless they receive consumer credit counseling within 180 days before filing from an approved credit counseling service (this applies in all chapters – 7,11, 12, 13). If filing jointly, both debtors must satisfy this requirement.

These courses are offered by non-profit agencies that are approved by the UST. A list of approved agencies will be posted at each court's individual website. (See RI List attached).

There are 2 possible exceptions to this requirement:

- (1) when the UST declares suitable services are not available in a district, or
- (2) when a debtor requests a waiver due to exceptional circumstances. The only specific circumstances allowed are the incapacity or disability of the debtor, or if the debtor is on active military duty in a combat zone.

In addition, a debtor may file a Certificate of Exigent Circumstances stating that he or she attempted, but was unable to obtain credit counseling within five days from making the request. All Certificates are subject to review for acceptability and further action taken as appropriate. If Certificate is deemed acceptable, the Debtor will be given a 30 day extension of time to obtain the required credit counseling. Thereafter, the court can grant, for cause, an additional 15 day extension of time. The following information must be included in any Certificate of Exigent Circumstance:

- Explanation of the special exigent circumstance that prevented the filer from obtaining required credit counseling
- Date(s) credit counseling was attempted
- Reason(s) it was unsuccessful
- "I hereby affirm or attest that the above information is true to the best of my knowledge and belief"
- Signed by the Debtor.

2. New and Amended Forms to Implement Requirement:

The United States Trustee Program is developing a form certificate for credit counseling agencies to issue debtors, which will then be filed with the court. This form is still under development by the UST. This certificate should be filed by the debtor with the other official forms and schedules at case filing.

In addition to the certificate, there is a checkbox on the Voluntary Petition Form 1, Page 2, entitled, "Exhibit D" where the debtor indicates that Exhibit D has been completed and signed by the debtor and joint debtor if applicable. In addition, each debtor must file a separate Form 1 Exhibit D with one of the following:

- Copy of the Certificate of Completion of Credit Counseling;
- Motion for Exemption from Credit Counseling
- Certificate of Exigent Circumstances

There are two types of waiver conditions listed in §109(h)(3) and (4). If the waiver request is based on exigent circumstances such as inability to obtain the counseling within 5 days of making the request, it is really an extension of time request as opposed to a complete waiver of the credit counseling requirement. If the waiver request is based on subsection (h)(4) of §109, it is a true waiver request based on incapacity, disability or active military duty in a military combat zone.

3. Amended Federal Rules to Implement Requirement:

FRBP 1007

4. Amended Local Rule to Implement Requirement:

LBR 1007-1 - Credit Counseling Certificate will be due within two business days unless the debtor has:

- 1) checked box 2 on Exhibit D; or
- 2) checked box 3 or 4 on Exhibit D and has attached the Certification of Exigent Circumstance or Motion for Exemption.

5. Amended and New Clerk's Office Forms to Implement Requirement:

2 Business Day Notice of Missing Documents- Chapter 7, Chapter 13 and Chapter 11 Case.

6. New Events to Implement Credit Counseling Requirement

Certificate of Credit Counseling

Motion for Exemption from Credit Counseling (includes standard obj ddl)

Certificate of Exigent Circumstances (gives a 30 day extension of time)

Debt Repayment Plan

Exhibit D - (to be used only when the document is filed after the case has already been opened)

7. **Non Electronic Filing Procedure:**

(1) The Debtor should review Exhibit D, select the appropriate checkbox, and attach the corresponding document, if applicable. Failure to file Exhibit D within 2 business days will result in the case being automatically dismissed without further notice.

(2) If the debtor selects the first box, they must also file with the petition the **Certificate of Credit Counseling document**. Failure to file the certificate within 2 business days will result in the case being automatically dismissed without further notice.

(3) If the debtor selects box 2 indicating that they have taken credit counseling, but do not have the required certificate from the counseling agency, a 15 day notice of missing documents for the certificate of credit counseling will issue.

(4) If the debtor selects the 3rd or 4th box on Exhibit D, they must also file **either a Motion for Exemption from Credit Counseling** or a **Certificate of Exigent Circumstances**. If they do not file either of these documents with the petition, a 2 Business Day Missing Documents Notice will issue noting this deficiency. Failure to file either of these documents within 2 business days will result in the case being automatically dismissed without further notice.

(5) A subsection (h)(3) claim is based on exigent circumstances and in this situation, the debtor must file a **Certificate of Exigent Circumstances**. If this certificate is filed with the petition, it will give the debtors a 30 day extension of time for the credit counseling certificate.

(6) A subsection (h)(4) claim is based on incapacity, disability or active military duty in a military combat zone, and if situation applies, the debtor must also file a **Motion for Exemption from Credit Counseling**. The document will receive the standard 13 day objection period before determination. If no such motion or similar styled request is filed, the clerk will issue the 2 Business Day Missing Document Notice.

8. **Procedure for Filings Made Electronically**

(1) Debtor's attorney should determine if the debtor has satisfied the credit counseling requirement prior to filing the petition, or if one of the subsection (h) exceptions apply.

(2) Once the credit counseling certificate is obtained, the proper checkbox should be completed on Exhibit D. The certificate document and Exhibit D should be able to be

attached within the petition. If it is, the entire petition schedules, statements, certificate, etc., can be saved as one pdf file and attached in the Case Opening event of CM/ECF. If Exhibit D comes in AFTER the filing of the petition it should be docketing using the event "Exhibit D".

(3) If you use CaseUpload, there should be a new field in the event to attach the Credit Counseling Certificate.

(4) If the debtor checked the 3rd or 4th box on Exhibit D the debtor should file either a Motion for Exemption or a Certificate of Exigent Circumstances. Once the correct document is prepared, file the document using the correct event in CM/ECF.

Motion for Exemption from Credit Counseling (includes standard obj ddl)
Certificate of Exigent Circumstances (gives a 30 day extension of time)

9. Related Document Filings

Although this is not a requirement, in some instances the debtor may file a Debt Repayment Plan with the Certificate of Credit Counseling. Another new event, Debt Repayment Plan (under Other), is available for this type of filing. No deadline or action is taken once filed.

last edited: 10/13/06