

If you are considering filing a bankruptcy petition without the advice of a lawyer . . . please understand the credit counseling requirements outlined in 11 U.S.C. § 109(h)

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

Please carefully read the following if you are considering filing a bankruptcy case without the advice of a lawyer. What follows is the law which requires you to **complete credit counseling PRIOR to filing a bankruptcy case**, followed by the **Court's explanation** of the law. After each explanation, there is a section entitled "**What you should do**," which explains the forms you should complete to comply with the law. These forms are available on the Court's website at www.nmcourt.fed.us/web/BCDOCS/bcindex.html.

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

The Law:

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 CASE.

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.

Court's explanation: If you want to file a bankruptcy case, you must complete budget and credit counseling during the 6 months before filing.

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

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The list of **approved credit counseling agencies in New Mexico** is available from the court's or the U. S. trustee's websites:

<http://www.nmcourt.fed.us/web/BCDOCS/Files/newlaw.htm>
http://www.usdoj.gov/ust/eo/bapcpa/ccde/cc_approved3.htm#NM

These approved agencies provide counseling services in person, by telephone or on-line via the Internet. If you and your spouse intend to file a joint petition, each of you (both husband and wife), must obtain budget and credit counseling.

What you should do:

COMPLETE CREDIT COUNSELING BEFORE YOU FILE. If you have completed budget and credit counseling before filing your case, obtain a certificate of completion from the agency. The agency should provide a separate certificate of completion for each of you (both husband and wife). Complete and sign NM Form 503 and attach the certificate(s) of completion to the form. File NM Form 503 with your petition.

IF YOU DO NOT SUBMIT NM FORM 503 AND THE CERTIFICATE(S) WITH YOUR PETITION, YOUR CASE MAY BE DISMISSED.

II. Under very limited conditions, you may ask for a waiver of the requirement to receive credit counseling before you file. 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 5-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 receive credit counseling services within five (5) 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 both of these things are true, you must file the NM Form 504 certification with the court. You must also complete 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 complete credit counseling *within the 30-day period.*

IF YOU DO NOT RECEIVE 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 complete counseling within 5 days of the date you first request counseling, complete the NM Form 504 certification. State specifically what exigent circumstances you face and why you were unable to obtain counseling. Complete and sign NM Form 504 and submit it with your petition. THEN, complete the counseling no later than 30 days after you file the petition. Once you complete the counseling, submit NM Form 503 with the certificate of completion of counseling attached.

IF YOU HAVE THIS SITUATION AND YOU DO NOT SUBMIT NM FORM 504 WITH YOUR PETITION, YOUR CASE MAY BE DISMISSED. FAILURE TO COMPLETE CREDIT COUNSELING WITHIN 30 DAYS OF FILING YOUR PETITION AFTER YOU HAVE SUBMITTED NM FORM 504 WITH 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 required under paragraph (1).

Court's explanation: If the court determines that you are **(a) 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 **(b) 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 **(c) 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 NM Form 505 and submit it with your petition.

In this form, you are representing to the Court that you qualify for an exemption, and you are asking the court to determine that you qualify. 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. After the court enters an order granting the exemption, you should complete and file Official Form 23, noting that you are exempt from having to complete a course in personal financial management as well.

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 complete the counseling. Once you complete the counseling, submit NM Form 503 with the certificate of completion of counseling attached.

IF YOU HAVE THIS SITUATION AND YOU DO NOT SUBMIT NM FORM 504 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 complete credit counseling and submits NM Form 503 while the other debtor cannot complete credit counseling and needs to request a determination as provided in section 109(h)(4), and thus submits NM Form 505.

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