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VOLUME 9 CREDIT COUNSELING AND DEBTOR EDUCATION

CHAPTER 9-0 KEY TERMS

“Agency” means nonprofit budget and credit counseling agency.

“CCDE Unit” means the Credit Counseling and Debtor Education Unit within the Office of Oversight in the Executive Office for U.S. Trustees.

“CGS” means the U.S. Trustee Program’s Certificate Generation System.

“Debtor education” means personal financial management instructional course.

“EOUST” means the Executive Office for U.S. Trustees.

“QSR” means quality of service review.

“POA” means power of attorney.

“Program” means U.S. Trustee Program.

“Provider” means debtor education provider.

CHAPTER 9-1: INTRODUCTION

Individual debtors who file for bankruptcy protection must first obtain credit counseling from a U.S. Trustee Program (Program) approved nonprofit budget and credit counseling agency (agency) within 180 days *before* filing bankruptcy. In addition, to be eligible for a discharge of debts, individual debtors must complete a personal financial management instructional course (“debtor education”) from a Program approved debtor education provider (“provider”).

The Program approves organizations to provide the mandatory credit counseling and debtor education. Only approved agencies and providers may advertise their approval to provide the required credit counseling and debtor education, and only approved agencies and providers may issue credit counseling and debtor education certificates. These certificates are generated through the Program’s Certificate Generation System (CGS), and the certificates are both numbered and bar-coded to protect against fraud.

The Credit Counseling and Debtor Education Unit (CCDE Unit) within the Office of Oversight in the Executive Office for U.S. Trustees (EOUST) is responsible for ensuring agencies and providers comply with all applicable federal laws and regulations. The CCDE Unit’s principal functions include:

1. Reviewing the applications that agencies and providers submit seeking the United States Trustee’s approval to offer credit counseling and debtor education;
2. Maintaining lists of approved agencies and providers;
3. Investigating and resolving complaints against approved agencies and providers, and providing assistance to Program field personnel concerning credit counseling and debtor education issues;
4. Maintaining the CGS;
5. Evaluating an approved agency or provider’s performance and compliance with [11 U.S.C. § 111](#), and the Program’s regulations, through quality of service reviews (QSRs).

CHAPTER 9-2: CREDIT COUNSELING

Section 111 of title 11 provides that, in applicable jurisdictions, a United States Trustee may approve an application to become an approved agency only after the United States Trustee has thoroughly reviewed the applicant's qualifications and services. [11 U.S.C. § 111\(b\)\(1\)](#). Among other things, an applicant must establish it will:

1. provide qualified counselors;
2. maintain adequate provision for safekeeping and payment of client funds;
3. provide adequate counseling with respect to client credit problems; and
4. deal responsibly and effectively with other matters relating to the quality, effectiveness, and financial security of the services it provides. [11 U.S.C. § 111\(c\)\(1\)](#).

The EOUST provides the United States Trustees with notice of the credit counseling agencies whose applications have been reviewed and that EOUST recommends for approval, denial, or withdrawal from certain judicial districts, and requests any information concerning the agencies that is inconsistent with approval. Once an agency has been approved, the CCDE Unit will issue an approval letter to the agency. An agency approved to provide credit counseling services for the first time shall be approved for a six-month probationary period. Generally speaking, each approval period thereafter shall be for one year.

Limitations on Advertising

Any advertisements referring to the Program's approval of an agency shall state: "Approval to issue certificates in compliance with the Bankruptcy Code. Approval does not endorse or guarantee the quality of an Agency's services."

The Program maintains a [list of approved agencies](#). In addition, the Program's Web site supplies answers to [frequently asked questions](#) about credit counseling.

CHAPTER 9-3: DEBTOR EDUCATION

Section 111 of title 11 provides that, in applicable jurisdictions, a United States Trustee may approve an application to become a debtor education provider only after the United States Trustee has thoroughly reviewed the applicant's qualifications and instructional course. [11 U.S.C. § 111\(b\)\(1\)](#). Among other things, an applicant must establish it will:

1. provide trained personnel with adequate experience in providing effective instruction and services;
2. provide learning materials and teaching methodologies designed to assist debtors in understanding personal financial management;
3. if applicable, provide adequate facilities for providing an instructional course;
4. prepare and retain reasonable records to permit evaluation of the effectiveness of an instructional course; and
5. if a fee is charged, charge a reasonable fee, and provide services without regard to ability to pay the fee. [11 U.S.C. § 111\(d\)\(1\)](#).

Standing chapter 13 trustees are eligible to become approved providers. The chapter 13 trustee may only provide the debtor education course to debtors whose cases have been assigned to the trustee. The chapter 13 trustee may not charge the debtor a fee for providing the debtor education course.

The EOUST provides the United States Trustees with notice of the debtor education providers whose applications have been reviewed and that EOUST recommends for approval, denial, or withdrawal from certain judicial districts, and requests any information concerning the providers that is inconsistent with approval. Once a provider has been approved, the CCDE Unit will issue an approval letter to the provider. A provider approved to provide debtor education services for the first time shall be approved for a six-month probationary period. Generally speaking, each approval period thereafter shall be for one year.

Limitations on Advertising

Approved providers shall ensure that their debtor education courses contain no commercial advertising, and that providers will not market or sell financial products or services, solicit business of any type, or sell information about a debtor to any third party without the debtor's permission, whether the course takes place in a classroom, over the telephone, or on the Internet.

Any advertisements referring to the Program's approval of a provider shall state: "Approved to issue certificates in compliance with the Bankruptcy Code. Approval does not endorse or assure the quality of a Provider's services."

The Program maintains a [list of approved providers](#). In addition, the Program's Web site supplies answers to [frequently asked questions](#) about debtor education.

CHAPTER 9-4: COMPLAINTS

Submit complaints or concerns about approved credit counseling agencies or approved debtor education providers by e-mail to ust.cc.help@usdoj.gov (credit counseling issues), ust.de.help@usdoj.gov (debtor education issues), or ust.CCDE.complaint.help@usdoj.gov (complaints about either) by calling (202) 514-4100.

CCDE Unit personnel are responsible for providing assistance to the field, and may request support from field personnel. Such support may include obtaining additional relevant information from field office personnel within the scope of their personal knowledge, arranging or conducting interviews of witnesses or parties, corresponding with local court personnel, conducting Rule 2004 examinations or depositions, or preparing and/or transmitting document requests.

CHAPTER 9-5: FIELD RESPONSIBILITIES AND FREQUENTLY ASKED QUESTIONS

Program field offices may encounter a number of credit counseling or debtor education related issues on a recurring basis. The most common issue concerns the validity of certificates that are issued by the agency or provider after credit counseling or debtor education is completed. At least one person in each field office has been authorized to access CGS and can determine whether the certificate numbers in CGS are consistent with the certificate issuance times and judicial districts set forth on the certificates, as well as confirm the identity of the agency or provider that issued the certificate. Field personnel may also request assistance from the CCDE

Unit in determining whether a specific individual received credit counseling or debtor education as represented. However, because individuals obtain credit counseling before filing bankruptcy, and may choose not to file bankruptcy, the CGS does not record information concerning the identity of individuals who receive credit counseling, in order to protect the identity of those individuals. The CGS does collect information concerning the identity of debtors who receive debtor education after filing bankruptcy, as well as debtors' bankruptcy case numbers.

A second common question concerns the treatment of individuals who receive credit counseling or debtor education jointly. Program regulations require each individual to receive a separate certificate of credit counseling or debtor education. See 28 C.F.R. §§ 58.22(g) and 58.35(f). Although spouses may take courses jointly, a certificate listing both spouses is improper.

A third common question concerns the use of a power of attorney (POA) that authorizes a third party to take credit counseling or a debtor education course on behalf of an incarcerated debtor.

Under 11 U.S.C. §§ 109(h)(4), 727(a)(11) and 1328(g)(2), on motion to the court and a hearing, a debtor may seek to have the credit counseling and debtor education requirements waived only in cases of incapacity, disability, or active military duty in a military combat zone. (Incapacity and disability are defined in section 109(h)(4).) If the waiver is approved by the court under one of these circumstances, the debtor is not required to take credit counseling or a debtor education course.

However, since incarceration is not one of the grounds enumerated in the statute for a waiver, an incarcerated debtor may seek to satisfy the credit counseling and debtor education requirements by having another person act on his/her behalf, often through the use of a POA. When a field office becomes aware of an incarcerated debtor who cannot take credit counseling or a debtor education course because he/she does not have sufficient access to a telephone or the Internet, staff should encourage the debtor and the debtor's attorney to attempt to make special arrangements with the institution for such access so that the incarcerated debtor can complete the credit counseling or debtor education course himself/herself.

When such arrangements cannot be worked out or when the USTP does not have advance notice of an issue, then the office should attempt to determine whether there is a valid POA in place that is sufficient under state law where the bankruptcy petition was filed to permit filing a bankruptcy petition. In addition, some bankruptcy courts have addressed the issue of whether a person acting with a POA can take credit counseling or a debtor education course on behalf of a debtor and have made different determinations. Field offices should become familiar with the case law in their jurisdiction on this subject and should exercise sound discretion in deciding whether to move to dismiss a case or to object to the debtor's satisfaction of the debtor education requirement based on this and the specific facts and circumstances of the case. The debtor's failure to properly disclose that a third party took the counseling or debtor education course on the debtor's behalf, as discussed below, may be an additional factor to be considered by field offices in exercising their discretion.

When another individual takes the credit counseling and debtor education on behalf of the incarcerated debtor, then 28 C.F.R. § 58.22(o) and 28 C.F.R. § 58.35(m) require that the certificate evidencing completion of the credit counseling or debtor education course set forth both the name of the debtor and the name of the individual holding the POA who took the

counseling or debtor education course. In these situations, the certificate should refer both to the duly authorized representative acting pursuant to the POA as well as the debtor (e.g., John Doe, POA for Jane Doe). This makes clear to the court and other parties how the debtor attempted to satisfy the credit counseling and debtor education requirements and is consistent with regulatory requirements imposed on credit counseling agencies and debtor education providers.

For answers to other frequently asked questions, visit the [Credit Counseling FAQ](#) Web page and [Debtor Education FAQ](#) Web page. Additionally, you may contact the CCDE Unit for assistance.