

# LAW JOURNAL

## *Credit counseling condition: success or obstacle?*



### PERSONAL BANKRUPTCY

JEFFREY  
FREEDMAN

The credit counseling requirements of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 were intended to redirect some debtors into repayment plans that would allow them to pay their debts over a few years. The mandatory credit counseling provision of the new bankruptcy law has added to the time and cost for individuals to

file, and notwithstanding the intent of the law, the vast majority of debtors can not afford to repay their indebtedness.

During the debate in Congress over the new law, some lawmakers and creditors were of the opinion that bankruptcy was being abused by spendthrifts who were irresponsible and ran up big debts. Some said that debtors could repay their debts if they simply had more discipline. But that is not what credit counselors are reporting. Nationwide, credit counselors are not seeing spendthrifts — they are meeting people “with true hardships.”

With rare exceptions, the clients that retain our law firm are so far in debt they are clearly unable to undertake a repayment plan. In fact, in some cases the counseling agencies have even waived their fees because the debtors couldn't afford to pay it.

Most debtors file bankruptcy because of a job loss, divorce or catastrophic medical bills. Many are only interested in receiving their counseling certificate so they can progress with their bankruptcy filing, according to Sandra Fudala, supervisor of our firm's paralegals. Additionally, she says, the added documentation required by the new law is causing the processing of files to take twice as long, so the timing of the pre-petition counseling, which must take place within 180 days prior to the filing of the bankruptcy

petition, is a critical concern.

To expedite the counseling process, firms work with agencies such as Consumer Credit Counseling Services of Buffalo and Erie County. Clients are referred to CCCS, and they are contacted by the agency within 24 hours. The client then participates in the initial counseling session either in person or by phone. If necessary, CCCS can provide the pre-petition counseling almost immediately.

Clients, upon completing the pre-petition counseling process, promptly receive their certificate. The certificate is filed at the Bankruptcy Court when the bankruptcy petition is filed. Firms collect the fees from clients, then CCCS bills firms monthly for the total costs incurred by counseling the clients they have sent them.

The increase in demand for credit counseling has exceeded CCCS's expectations by about 30 to 40 percent, Paul Atkinson, president of the agency, tells me. CCCS is seeing clients six days a week, 13 hours a day, and has opened a new satellite office in Niagara County, bringing its total number of offices to 10.

Atkinson says that although CCCS does phone counseling, it is trying to set a standard to do face-to-face consultations because they feel people should come out of the process with something useful and meaningful. Currently, the agency is hiring and training new counselors to gear up for the clients all of whom must also undergo post-petition counseling. This second part of the counseling is required within 180 days after a Chapter 7 has been filed or prior to a Chapter 13 being discharged.

The training of these new counselors takes a minimum of three to four months, and that's for an ambitious person, Atkinson says. Most take longer. In order to obtain national certification, there are three and a half weeks of classroom training, then on-the-job supervised work with a certified counselor, and a series of 12

exams taken through the National Foundation of Credit Counselors.

Since the law took effect Oct. 17, we are just now reaching the stage where clients, who filed under the new Act, are ready for the second stage of counseling, which is going to increase the demand on the counseling agencies. Law firms will also have to process the additional paperwork ensuring the courts receive copies of the certificates clients receive after they've been through the financial education stage.

There's no doubt the Act is affecting the bankruptcy filing process, but it is not keeping people out of Chapter 7 or 13, and putting them into repayment plans. As Atkinson says, the one thing it has done is ensured that lawyers don't “dabble” in bankruptcy law. You have to know the new law inside and out.

I would have to add that it has also ensured credit counselors don't “dabble” in credit counseling. It's critical those attorneys who do practice primarily in the area of bankruptcy have credit counseling agencies they can refer their clients to who provide timely, knowledgeable services to debtors who are going through tough times, made tougher by the need for them to fulfill this requirement.

In my opinion, the credit counseling requirement of the new law has succeeded in making it more difficult for debtors to file. It has not succeeded in redirecting debtors into repayment plans.

As Hon. Frank Monroe, a U.S. bankruptcy judge, stated in a memorandum opinion, “Apparently, it is not the individual consumers of this country that make the donations to the members of Congress that allow them to be elected and re-elected and re-elected and re-elected.”

**Jeffrey Freedman** is senior partner at Jeffrey Freedman Attorneys at Law, a Buffalo-based firm that concentrates in bankruptcy, Social Security disability and personal-injury cases.