Bankruptcy Law's Consumer Credit Counseling Requirement

The saying "drowning in debt" is applied to people whose finances are out of control. For credit counseling agencies, there soon may be a new saying, "drowning in debtors."

"With the new Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCA) requiring all debtors filing Chapter 7 or Chapter 13 to obtain credit counseling, literally millions of debtors will be calling a very limited number of agencies for help," said Jeffrey Freedman, senior partner, Jeffrey Freedman Attorneys at Law.

Under the new law, debtors are required to undergo a briefing session with a nonprofit credit counseling service that has been certified by the U.S. Trustees' Office. The counseling session has to be held within six months of filing and following their filing, debtors must then receive financial education, also from an approved agency.

"The problem is that so far only about 50 agencies in the country have received this approval," Freedman said. "And website/Internet counseling is being held up. We don't know when that will be offered."

Last year nearly 1.6 million Americans filed bankruptcy and there is every indication this year the numbers will be higher. Additionally, the select approved agencies have only been approved for the initial briefing sessions, not for the follow-up educational component.

According to the Trustees' office more than 200 credit counseling agencies have applied and it is continuing to review applications. One complication, however, is that in recent years credit counseling agencies have come under the scrutiny of the Federal Trade Commission and the Internal Revenue Service.

"Some agencies see there is money to be made in this business. If they aren't reinvesting that money in the community and are paying dividends to individuals, banks and credit card companies then they aren't a nonprofit," said Paul Atkinson, president, Consumer Credit Counseling Services (CCCS) of Buffalo, and member of the Working Committee of the National Foundation of Credit Counselors (NFCC).

Members of the NFCC are certified and accredited and are funded by community and national grants. The FTC and the IRS are concerned some credit counseling agencies (those that don't have accreditation and are not members of NFCC) are subsidized by creditors.

Those agencies may have an interest in putting clients into repayment plans rather than counseling them about their options to file bankruptcy. Creditors are assured of getting more money back from a repayment plan than they would if the client files bankruptcy.

"The IRS also wants to ensure credit counseling agencies claiming to be nonprofit are supplying the education and human services that are provided for within their charters," Atkinson said.

Agencies that are really counseling people — teaching them about budgets and giving them assistance to cope with credit pressures — want Congress to keep the heat on and prevent those that are not doing their job from becoming certified.

Several of the agencies that have been approved so far are national organizations and will be serving a heavy volume of clients by phone. There is a concern that debtors will receive superficial or "drive-through" quality services from these companies.

"The face-to-face initial briefing session is supposed to be 90 minutes long and to consist of two segments," Freedman said. "The first 30 minutes is supposed to be spent on explaining the pros and cons of filing bankruptcy. The second part is a 60-minute review of the client's finances and budgeting. It's pretty complicated material to cover in a phone conversation."

Consumer advocates such as Travis Plunkett, legislative director of the Consumer Federation, an advocacy group in Washington, says this is not what Congress intended in the new bankruptcy act.

"Debtors looking for legitimate, effective credit counseling should have the choice of receiving it in person," Plunkett said.

With so few agencies approved and the forecast for many more agencies receiving approval in the near future looking bleak, many debtors are not going to get the help they need.

A few areas, where approved credit counseling agencies are "not reasonably able" to provide services (areas affected by Hurricane Katrina, for example) have been exempted from the counseling requirement. This is not, however, going to relieve the pressure this fall and winter when a flood of debtors arrive at the doors of the 50 or so agencies that have so far been approved by the U.S. Trustee.