

REFERENCES IN TEXT

The Federal Rules of Bankruptcy Procedure, referred to in subsec. (b)(2)(A), are set out in the Appendix to this title.

AMENDMENTS

2010—Subsec. (b)(2)(A). Pub. L. 111-327, §2(a)(7)(A), inserted “or on behalf of” after “from”.

Subsec. (h)(1). Pub. L. 111-327, §2(a)(7)(B)(i), in last sentence, substituted “filing for the debtor” for “filing for a debtor” and inserted “or on behalf of” after “from”.

Subsec. (h)(3)(A). Pub. L. 111-327, §2(a)(7)(B)(ii)(I), struck out “found to be in excess of the value of any services” after “paragraph (2)” in introductory provisions.

Subsec. (h)(3)(A)(i). Pub. L. 111-327, §2(a)(7)(B)(ii)(II), inserted “found to be in excess of the value of any services” after “(i)”.

Subsec. (h)(4). Pub. L. 111-327, §2(a)(7)(B)(iii), substituted “paragraph (3)” for “paragraph (2)”.

2007—Subsec. (7)(4)(A). Pub. L. 110-161 amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “Fines imposed under this subsection in judicial districts served by United States trustees shall be paid to the United States trustee, who shall deposit an amount equal to such fines in a special account of the United States Trustee System Fund referred to in section 586(e)(2) of title 28. Amounts deposited under this subparagraph shall be available to fund the enforcement of this section on a national basis.”

2005—Subsec. (a)(1). Pub. L. 109-8, §221(1), substituted “for the debtor or an employee of such attorney under the direct supervision of such attorney” for “or an employee of an attorney”.

Subsec. (b)(1). Pub. L. 109-8, §221(2)(A), inserted at end “If a bankruptcy petition preparer is not an individual, then an officer, principal, responsible person, or partner of the bankruptcy petition preparer shall be required to—” and added subpars. (A) and (B).

Subsec. (b)(2). Pub. L. 109-8, §221(2)(B), added par. (2) and struck out former par. (2) which read as follows: “A bankruptcy petition preparer who fails to comply with paragraph (1) may be fined not more than \$500 for each such failure unless the failure is due to reasonable cause.”

Subsec. (c)(2). Pub. L. 109-8, §221(3)(A), designated existing provisions as subpar. (A), substituted “Subject to subparagraph (B), for purposes” for “For purposes”, and added subpar. (B).

Subsec. (c)(3). Pub. L. 109-8, §221(3)(B), struck out par. (3) which read as follows: “A bankruptcy petition preparer who fails to comply with paragraph (1) may be fined not more than \$500 for each such failure unless the failure is due to reasonable cause.”

Subsec. (d). Pub. L. 109-8, §221(4), struck out par. (1) designation before “A bankruptcy petition preparer shall” and struck out par. (2) which read as follows: “A bankruptcy petition preparer who fails to comply with paragraph (1) may be fined not more than \$500 for each such failure unless the failure is due to reasonable cause.”

Subsec. (e)(2). Pub. L. 109-8, §221(5), added par. (2) and struck out former par. (2) which read as follows: “A bankruptcy petition preparer may be fined not more than \$500 for each document executed in violation of paragraph (1).”

Subsec. (f). Pub. L. 109-8, §221(6), struck out par. (1) designation before “A bankruptcy petition preparer shall not” and struck out par. (2) which read as follows: “A bankruptcy petition preparer shall be fined not more than \$500 for each violation of paragraph (1).”

Subsec. (g). Pub. L. 109-8, §221(7), struck out par. (1) designation before “A bankruptcy petition preparer shall not” and struck out par. (2) which read as follows: “A bankruptcy petition preparer shall be fined not more than \$500 for each violation of paragraph (1).”

Subsec. (h)(1). Pub. L. 109-8, §221(8)(B), added par. (1). Former par. (1) redesignated (2).

Subsec. (h)(2). Pub. L. 109-8, §221(8)(A), (C), redesignated par. (1) as (2), substituted “A” for “Within 10 days after the date of the filing of a petition, a bankruptcy petition preparer shall file a”, inserted “by the bankruptcy petition preparer shall be filed together with the petition,” after “perjury”, and inserted at end “If rules or guidelines setting a maximum fee for services have been promulgated or prescribed under paragraph (1), the declaration under this paragraph shall include a certification that the bankruptcy petition preparer complied with the notification requirement under paragraph (1).” Former par. (2) redesignated (3).

Subsec. (h)(3). Pub. L. 109-8, §221(8)(D), added par. (3) and struck out former par. (3) which read as follows: “The court shall disallow and order the immediate turnover to the bankruptcy trustee of any fee referred to in paragraph (1) found to be in excess of the value of services rendered for the documents prepared. An individual debtor may exempt any funds so recovered under section 522(b).”

Pub. L. 109-8, §221(8)(A) redesignated par. (2) as (3). Former par. (3) redesignated (4).

Subsec. (h)(4). Pub. L. 109-8, §221(8)(E), substituted “the United States trustee (or the bankruptcy administrator, if any) or the court, on the initiative of the court,” for “or the United States trustee”.

Pub. L. 109-8, §221(8)(A) redesignated par. (3) as (4). Former par. (4) redesignated (5).

Subsec. (h)(5). Pub. L. 109-8, §221(8)(A) redesignated par. (4) as (5).

Subsec. (i)(1). Pub. L. 109-8, §221(9), inserted introductory provisions and struck out former introductory provisions which read as follows: “If a bankruptcy case or related proceeding is dismissed because of the failure to file bankruptcy papers, including papers specified in section 521(1) of this title, the negligence or intentional disregard of this title or the Federal Rules of Bankruptcy Procedure by a bankruptcy petition preparer, or if a bankruptcy petition preparer violates this section or commits any fraudulent, unfair, or deceptive act, the bankruptcy court shall certify that fact to the district court, and the district court, on motion of the debtor, the trustee, or a creditor and after a hearing, shall order the bankruptcy petition preparer to pay to the debtor—”

Subsec. (j)(2)(A)(i)(I). Pub. L. 109-8, §221(10)(A)(i), struck out “a violation of which subjects a person to criminal penalty” after “any provision of this title”.

Subsec. (j)(2)(B). Pub. L. 109-8, §221(10)(A)(ii), substituted “has not paid a penalty” for “or has not paid a penalty” and inserted “or failed to disgorge all fees ordered by the court” after “a penalty imposed under this section,”.

Subsec. (j)(3). Pub. L. 109-8, §221(10)(C) added par. (3). Former par. (3) redesignated (4).

Subsec. (j)(4). Pub. L. 109-8, §1205, substituted “attorneys” for “attorney’s”.

Pub. L. 109-8, §221(10)(B), redesignated par. (3) as (4).

Subsec. (l). Pub. L. 109-8, §221(11), added subsec. (l).

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109-8, set out as a note under section 101 of this title.

EFFECTIVE DATE

Section effective Oct. 22, 1994, and not applicable with respect to cases commenced under this title before Oct. 22, 1994, see section 702 of Pub. L. 103-394, set out as an Effective Date of 1994 Amendment note under section 101 of this title.

§ 111. Nonprofit budget and credit counseling agencies; financial management instructional courses

(a) The clerk shall maintain a publicly available list of—

(1) nonprofit budget and credit counseling agencies that provide 1 or more services described in section 109(h) currently approved by the United States trustee (or the bankruptcy administrator, if any); and

(2) instructional courses concerning personal financial management currently approved by the United States trustee (or the bankruptcy administrator, if any), as applicable.

(b) The United States trustee (or bankruptcy administrator, if any) shall only approve a nonprofit budget and credit counseling agency or an instructional course concerning personal financial management as follows:

(1) The United States trustee (or bankruptcy administrator, if any) shall have thoroughly reviewed the qualifications of the nonprofit budget and credit counseling agency or of the provider of the instructional course under the standards set forth in this section, and the services or instructional courses that will be offered by such agency or such provider, and may require such agency or such provider that has sought approval to provide information with respect to such review.

(2) The United States trustee (or bankruptcy administrator, if any) shall have determined that such agency or such instructional course fully satisfies the applicable standards set forth in this section.

(3) If a nonprofit budget and credit counseling agency or instructional course did not appear on the approved list for the district under subsection (a) immediately before approval under this section, approval under this subsection of such agency or such instructional course shall be for a probationary period not to exceed 6 months.

(4) At the conclusion of the applicable probationary period under paragraph (3), the United States trustee (or bankruptcy administrator, if any) may only approve for an additional 1-year period, and for successive 1-year periods thereafter, an agency or instructional course that has demonstrated during the probationary or applicable subsequent period of approval that such agency or instructional course—

(A) has met the standards set forth under this section during such period; and

(B) can satisfy such standards in the future.

(5) Not later than 30 days after any final decision under paragraph (4), an interested person may seek judicial review of such decision in the appropriate district court of the United States.

(c)(1) The United States trustee (or the bankruptcy administrator, if any) shall only approve a nonprofit budget and credit counseling agency that demonstrates that it will provide qualified counselors, maintain adequate provision for safekeeping and payment of client funds, provide adequate counseling with respect to client credit problems, and deal responsibly and effectively with other matters relating to the quality, effectiveness, and financial security of the services it provides.

(2) To be approved by the United States trustee (or the bankruptcy administrator, if any), a

nonprofit budget and credit counseling agency shall, at a minimum—

(A) have a board of directors the majority of which—

(i) are not employed by such agency; and

(ii) will not directly or indirectly benefit financially from the outcome of the counseling services provided by such agency;

(B) if a fee is charged for counseling services, charge a reasonable fee, and provide services without regard to ability to pay the fee;

(C) provide for safekeeping and payment of client funds, including an annual audit of the trust accounts and appropriate employee bonding;

(D) provide full disclosures to a client, including funding sources, counselor qualifications, possible impact on credit reports, and any costs of such program that will be paid by such client and how such costs will be paid;

(E) provide adequate counseling with respect to a client's credit problems that includes an analysis of such client's current financial condition, factors that caused such financial condition, and how such client can develop a plan to respond to the problems without incurring negative amortization of debt;

(F) provide trained counselors who receive no commissions or bonuses based on the outcome of the counseling services provided by such agency, and who have adequate experience, and have been adequately trained to provide counseling services to individuals in financial difficulty, including the matters described in subparagraph (E);

(G) demonstrate adequate experience and background in providing credit counseling; and

(H) have adequate financial resources to provide continuing support services for budgeting plans over the life of any repayment plan.

(d) The United States trustee (or the bankruptcy administrator, if any) shall only approve an instructional course concerning personal financial management—

(1) for an initial probationary period under subsection (b)(3) if the course will provide at a minimum—

(A) trained personnel with adequate experience and training in providing effective instruction and services;

(B) learning materials and teaching methodologies designed to assist debtors in understanding personal financial management and that are consistent with stated objectives directly related to the goals of such instructional course;

(C) adequate facilities situated in reasonably convenient locations at which such instructional course is offered, except that such facilities may include the provision of such instructional course by telephone or through the Internet, if such instructional course is effective;

(D) the preparation and retention of reasonable records (which shall include the debtor's bankruptcy case number) to permit evaluation of the effectiveness of such instructional course, including any evaluation of satisfaction of instructional course re-

quirements for each debtor attending such instructional course, which shall be available for inspection and evaluation by the Executive Office for United States Trustees, the United States trustee (or the bankruptcy administrator, if any), or the chief bankruptcy judge for the district in which such instructional course is offered; and

(E) if a fee is charged for the instructional course, charge a reasonable fee, and provide services without regard to ability to pay the fee; and

(2) for any 1-year period if the provider thereof has demonstrated that the course meets the standards of paragraph (1) and, in addition—

(A) has been effective in assisting a substantial number of debtors to understand personal financial management; and

(B) is otherwise likely to increase substantially the debtor's understanding of personal financial management.

(e) The district court may, at any time, investigate the qualifications of a nonprofit budget and credit counseling agency referred to in subsection (a), and request production of documents to ensure the integrity and effectiveness of such agency. The district court may, at any time, remove from the approved list under subsection (a) a nonprofit budget and credit counseling agency upon finding such agency does not meet the qualifications of subsection (b).

(f) The United States trustee (or the bankruptcy administrator, if any) shall notify the clerk that a nonprofit budget and credit counseling agency or an instructional course is no longer approved, in which case the clerk shall remove it from the list maintained under subsection (a).

(g)(1) No nonprofit budget and credit counseling agency may provide to a credit reporting agency information concerning whether a debtor has received or sought instruction concerning personal financial management from such agency.

(2) A nonprofit budget and credit counseling agency that willfully or negligently fails to comply with any requirement under this title with respect to a debtor shall be liable for damages in an amount equal to the sum of—

(A) any actual damages sustained by the debtor as a result of the violation; and

(B) any court costs or reasonable attorneys' fees (as determined by the court) incurred in an action to recover those damages.

(Added Pub. L. 109-8, title I, §106(e)(1), Apr. 20, 2005, 119 Stat. 38; amended Pub. L. 111-327, §2(a)(8), Dec. 22, 2010, 124 Stat. 3558.)

AMENDMENTS

2010—Subsec. (d)(1)(E). Pub. L. 111-327 substituted “; and” for period at end and realigned margin.

EFFECTIVE DATE

Section effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109-8, set out as an Effective Date of 2005 Amendment note under section 101 of this title.

DEBTOR FINANCIAL MANAGEMENT TRAINING TEST PROGRAM

Pub. L. 109-8, title I, §105, Apr. 20, 2005, 119 Stat. 36, provided that:

“(a) DEVELOPMENT OF FINANCIAL MANAGEMENT AND TRAINING CURRICULUM AND MATERIALS.—The Director of the Executive Office for United States Trustees (in this section referred to as the ‘Director’) shall consult with a wide range of individuals who are experts in the field of debtor education, including trustees who serve in cases under chapter 13 of title 11, United States Code, and who operate financial management education programs for debtors, and shall develop a financial management training curriculum and materials that can be used to educate debtors who are individuals on how to better manage their finances.

“(b) TEST.—

“(1) SELECTION OF DISTRICTS.—The Director shall select 6 judicial districts of the United States in which to test the effectiveness of the financial management training curriculum and materials developed under subsection (a).

“(2) USE.—For an 18-month period beginning not later than 270 days after the date of the enactment of this Act [Apr. 20, 2005], such curriculum and materials shall be, for the 6 judicial districts selected under paragraph (1), used as the instructional course concerning personal financial management for purposes of section 111 of title 11, United States Code.

“(c) EVALUATION.—

“(1) IN GENERAL.—During the 18-month period referred to in subsection (b), the Director shall evaluate the effectiveness of—

“(A) the financial management training curriculum and materials developed under subsection (a); and

“(B) a sample of existing consumer education programs such as those described in the Report of the National Bankruptcy Review Commission (October 20, 1997) that are representative of consumer education programs carried out by the credit industry, by trustees serving under chapter 13 of title 11, United States Code, and by consumer counseling groups.

“(2) REPORT.—Not later than 3 months after concluding such evaluation, the Director shall submit a report to the Speaker of the House of Representatives and the President pro tempore of the Senate, for referral to the appropriate committees of the Congress, containing the findings of the Director regarding the effectiveness of such curriculum, such materials, and such programs and their costs.”

§ 112. Prohibition on disclosure of name of minor children

The debtor may be required to provide information regarding a minor child involved in matters under this title but may not be required to disclose in the public records in the case the name of such minor child. The debtor may be required to disclose the name of such minor child in a nonpublic record that is maintained by the court and made available by the court for examination by the United States trustee, the trustee, and the auditor (if any) serving under section 586(f) of title 28, in the case. The court, the United States trustee, the trustee, and such auditor shall not disclose the name of such minor child maintained in such nonpublic record.

(Added Pub. L. 109-8, title II, §233(a), Apr. 20, 2005, 119 Stat. 74.)

EFFECTIVE DATE

Section effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this