



The Bankruptcy Abuse & Prevention Consumer Protection Act of 2005 Q & A

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, a major reform of the United States bankruptcy system, was passed by Congress and signed into law on April 20, 2005. The changes instituted by this new law took effect on October 17, 2005. The U.S. Trustee Program, a component of the U.S. Department of Justice, oversees the administration of bankruptcy cases and private trustees.

NOTE: Bankruptcy law is a federal law not administered by the Department of Corporations. This fact sheet only provides general information. You may need to seek legal advice.

Does the new law require me to undergo credit counseling?

- Before filing for bankruptcy, applicants generally must undergo credit counseling during the 180-day period preceding the date of filing of the bankruptcy petition from an approved nonprofit budget and credit counseling agency. Certain exceptions may apply. Counseling must include an individual or group briefing (which may be conducted by telephone or on the Internet), which outlines the opportunities for available credit counseling and assists the individual in performing a related budget analysis. These programs are certified by the U.S. Trustee Program, which maintains a list of approved credit counseling agencies at http://www.usdoj.gov/ust/bapcpa/ccde/cc_approved.htm

I've heard that there are stricter criteria for certain kinds of bankruptcy filings. What are some of the key changes under the new bankruptcy law?

- Debtors who wish to file under Chapter 7 bankruptcy must meet the requirements as set forth under a new "means test." Under this test, if your current monthly income is less than the median income in your state, you can file under Chapter 7. But if your current monthly income is higher than the median in your state, and you can afford to pay \$100 per month toward your debt, you must file under Chapter 13. The main distinction between Chapter 7 and Chapter 13 is that under Chapter 13, the debtor (person filing for bankruptcy) enters into a 5-year repayment plan in which he or she must pay a certain amount toward creditors based on a strict expenses-to-income formula.

Under the new law, will declaring bankruptcy delay or halt legal actions against me such as child support, or eviction actions, etc.?

- There will be fewer "automatic stay" (a legal phrase meaning potential legal actions against debtors are halted) protections for bankruptcy filers under the new law. For example, filings for bankruptcy will no longer delay or stop eviction actions, driver's license suspensions, legal actions for child support, or divorce proceedings.

Do I have to attend a financial management education class?

- After the conclusion of bankruptcy proceedings, but before debts are settled, bankruptcy debtors must participate in a government-approved financial management education program. The U.S. Trustee Program also certifies these programs; you can view their list of approved programs at:

http://www.usdoj.gov/ust/bapcpa/ccde/de_approved.htm