

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF HAWAII**

CREDIT COUNSELING AND DEBTOR EDUCATION REQUIREMENTS

For certain individuals, the Bankruptcy Code requires:

1. **Credit Counseling** before the bankruptcy petition is filed; and
2. **Debtor Education** before a discharge may be issued.

CREDIT COUNSELING FAQs

Q *Who must obtain credit counseling?*

A All individual debtors. In a joint case, each spouse must obtain credit counseling.

Q *Does it matter whether my debts are consumer or business?*

A No. Do not confuse credit counseling with the means test in Chapter 7 (required only by individuals with primarily consumer debt). All individuals need to obtain credit counseling.

Q *Does it matter which chapter?*

A Credit counseling is required for all individuals filing petitions under chapters 7, 11, 12, and 13.

Q *When must I get the counseling?*

A Before filing the petition. Specifically, you must do the credit counseling during the 180-day period before filing for bankruptcy.

Q *May I get the counseling from any agency that offers help with debt counseling?*

A No. The agency must be a nonprofit budget and credit counseling agency that has been approved by the United States Trustee Program.

Q *How do I know if an agency has been approved?*

A A list of approved agencies is available at the Bankruptcy Clerk's Office and on the Internet at http://www.usdoj.gov/ust/eo/bapcpa/ccde/cc_approved.htm

Q *Must the counseling be done in-person?*

A The counseling may take place in-person, over the phone, or via the Internet.

Q *What happens if I can't get the counseling before I need to file the petition?*

A You must attempt to obtain the counseling before you file for bankruptcy. If you don't, your case is likely to be dismissed. However, if you attempt to get the counseling before filing for bankruptcy but cannot obtain it during the 5-day period after making the request, you may ask the court to allow you to obtain the credit counseling during the 30-day period after you file the petition. You must file a motion with your petition and describe in it "exigent circumstances" that merit making this exception, the name of the agency you contacted and the date you made your request. Check the box in section 3 of Exhibit D (see the attached form).

- Q ***Is anyone excused from the credit counseling requirement?***
A There are only 3 situations where credit counseling is not required:
(1) incapacity where the person is so impaired by reason of mental illness or deficiency that the individual is incapable of making rational decisions,
(2) disability where the person is so physically impaired that the individual is unable, after reasonable effort, to participate in an in-person, telephone, or Internet briefing session, and
(3) active military duty in a military combat zone.
You must file a separate motion with the petition if you want the court to grant you this type of exemption. Check the box in section 4 of Exhibit D (see the attached form).
- Q ***How do I show that I met the credit counseling requirement?***
A You must complete Exhibit D on page 2 of the petition form. There also is a separate 2-page Exhibit D which must be completed and signed under penalty of perjury. You must attach to Exhibit D a copy of the Certificate of Credit Counseling that the agency provides. **See the attached forms.**
- Q ***Do I need to give the court a copy of the Certificate of Credit Counseling?***
A Yes. It should be attached to Exhibit D to the petition.
- Q ***May I just provide the certificate number?***
A The Certificate of Credit Counseling itself is required. Your case will likely be dismissed if it is not filed.
- Q ***What should I do if I did the credit counseling but haven't received the certificate?***
A Check the box in section 2 of Exhibit D when you file your petition, then make sure you file the Certificate of Credit Counseling with the court within 15 days.
- Q ***What if the credit counseling agency also prepared a debt repayment plan?***
A You must file any debt repayment plan together with the Certificate of Credit Counseling.
- Q ***I am an attorney filing via ECF. How do I file the Certificate of Credit Counseling?***
A You should scan the certificate and save it as a PDF. Include it with the petition and schedules.
- Q ***What if my client does not have the certificate when the petition is being filed?***
A When filing the petition, make sure that the box in section 2 of Exhibit D is checked. When you receive a copy of the certificate, file it via ECF using the event **Miscellaneous Documents ... Credit Counseling Certificate.**
- Q ***I heard that the court would accept the certificate by fax or email. Is that true?***
A Effective October 1, 2006, the certificate must be filed electronically in ECF or submitted for filing on paper. Certificates that are faxed or emailed to the court by attorneys or debtors will not be filed.

DEBTOR EDUCATION FAQs

Q *Who must take “debtor education” courses?*

A Instruction in personal financial management, more commonly referred to as debtor education, is required for all individual debtors under chapters 7 and 13

Q *I obtained the credit counseling before filing. Why do I need more instruction?*

A The law sets forth two separate requirements - credit counseling before bankruptcy and a personal financial management course taken after you have filed your petition. The personal financial management course is more commonly referred to as “Debtor Education.” When you complete the instruction, you will receive a Certificate of Debtor Education.

Q *I still don’t understand the difference. Why 2 courses?*

A Credit counseling focuses on your existing debts. In some cases, the agency will prepare a debt repayment plan which may allow you to work out payments with your creditors without actually filing for bankruptcy. In contrast, the debtor education course attempts to teach you how to budget and responsibly manage your finances for the future.

Q *May I combine the credit counseling with the debtor education?*

A No, although you may choose to use the same agency if it is approved for both credit counseling and debtor education services by the United States Trustee Program. Remember that they must be done at separate times - credit counseling before bankruptcy and debtor education during bankruptcy.

Q *Is there a separate list of agencies approved for debtor education programs?*

A Yes. View the list at: http://www.usdoj.gov/ust/eo/bapcpa/ccde/de_approved.htm.

Q *Is there a deadline for taking the debtor education course?*

A Yes. In chapter 7, you must complete the course within 45 days after the first date set for your meeting of creditors. In chapter 13, you must complete it before making your last plan payment or before filing a motion requesting a discharge based on hardship.

Q *What happens if I don’t meet the deadline?*

A The court will send you a notice that you must complete the debtor education in order to obtain a discharge. The discharge is why you filed for bankruptcy. The discharge releases a debtor from personal liability for certain types of debts. In other words, obtaining a discharge means that you are no longer legally required to pay the debts that are discharged. If you go through bankruptcy but do not receive a discharge, you remain responsible for paying all your debts. If you wait too long, the court will close your case without a discharge.

Q *If closed without a discharge, can’t I reopen my case after getting the debtor education?*

A Yes. But you will be required to pay a reopening fee. Currently, the fee to reopen a chapter 7 case is \$220, and the fee to reopen a chapter 13 case is \$150.

- Q ***What do I need to show that I completed the debtor education course?***
A You must file Official Form 23 - Debtor's Certification of Completion of Instructional Course Concerning Financial Management. You must complete the form with the following information: **date you completed the course, the name of the debtor education agency, and the number of the Certificate of Debtor Education.** See the attached form.
- Q ***Do I need to attach the Certificate of Debtor Education for filing with the court?***
A No - you just need to enter the certificate number on Form 23. Unlike the Certificate of Credit Counseling, the Certificate of Debtor Education does not need to be filed with the court.
- Q ***May I file the Certificate of Debtor Education instead of Form 23?***
A No. You must file the Form 23 certification whether or not you file the actual certificate.
- Q ***Is there any exemption available?***
A The same as for the credit counseling - incapacity, disability, or active military duty in a military combat zone. If you think you qualify, you must indicate that on Form 23 - the Debtor's Certification of Completion of Instructional Course Concerning Financial Management.
- Q ***May I file Form 23 with my petition?***
A No. Form 23 concerns only the debtor education requirement, not the credit counseling requirement. You should not be filing Form 23 with your petition because you may not obtain the debtor education until after you are already in bankruptcy. You may not take the debtor education before you file the petition.
- Q ***I heard that I could fax or email my certification to the court. Is that true?***
A Effective October 1, 2006, Form 23 and any debtor education certificates must be filed electronically in ECF or submitted for filing on paper. Documents that are faxed or emailed to the court by attorneys or debtors will not be filed.
- Q ***I am an attorney filing though ECF. What event do I use for Form 23?***
A **Miscellaneous Documents ... Certification of Completion of Debtor Education (Form 23).** The actual certificate is not required. However, if you wish, attach it to Form 23.

SUMMARY

- Credit Counseling:** ***File Exhibit D to the petition AND the Certificate of Credit Counseling.*** Obtain the credit counseling BEFORE filing your petition, complete and sign Exhibit D with the Certificate of Credit Counseling attached. If you did the counseling but did not yet receive the certificate, file it within 15 days after you file the bankruptcy case or the case may be dismissed.
- Debtor Education:** ***File Form 23 Certification of Completion of Debtor Education with the number of the Certificate of Debtor Education (not the certificate itself).*** Complete the debtor education course AFTER filing your bankruptcy case and file the Form 23 Certification by the deadline stated above. You do not need the actual Certificate of Debtor Education issued by the agency - only the certificate number to complete Form 23. If you do not file Form 23, you will not be granted a discharge of your debts.

Debtor(s):	Case No.: (if known)
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EXHIBIT D - INDIVIDUAL DEBTOR’S STATEMENT OF COMPLIANCE WITH CREDIT COUNSELING REQUIREMENT

Warning: You must be able to check truthfully one of the five statements regarding credit counseling listed below. If you cannot do so, you are not eligible to file a bankruptcy case, and the court can dismiss any case you do file. If that happens, you will lose whatever filing fee you paid, and your creditors will be able to resume collection activities against you. If your case is dismissed and you file another bankruptcy case later, you may be required to pay a second filing fee and you may have to take extra steps to stop creditors’ collection activities.

Every individual debtor must file this Exhibit D. If a joint petition is filed, each spouse must complete and file a separate Exhibit D. Check one of the five statements below and attach any documents as directed.

1. Within the 180 days before the filing of my bankruptcy case, I received a briefing from a credit counseling agency approved by the United States trustee or bankruptcy administrator that outlined the opportunities for available credit counseling and assisted me in performing a related budget analysis, and I have a certificate from the agency describing the services provided to me.

Attach a copy of the certificate and a copy of any debt repayment plan developed through the agency.

2. Within the 180 days before the filing of my bankruptcy case, I received a briefing from a credit counseling agency approved by the United States trustee or bankruptcy administrator that outlined the opportunities for available credit counseling and assisted me in performing a related budget analysis, but I do not have a certificate from the agency describing the services provided to me.

You must file a copy of a certificate from the agency describing the services provided to you and a copy of any debt repayment plan developed through the agency no later than 15 days after your bankruptcy case is filed.

3. I certify that I requested credit counseling services from an approved agency but was unable to obtain the services during the five days from the time I made my request, and the following exigent circumstances merit a temporary waiver of the credit counseling requirement so I can file my bankruptcy case now.

[Must be accompanied by a motion for determination by the court.][Summarize exigent circumstances here.]

If the court is satisfied with the reasons stated in your motion, it will send you an order approving your request. You must still obtain the credit counseling briefing within the first 30 days after you file your bankruptcy case and promptly file a certificate from the agency that provided the briefing, together with a copy of any debt management plan developed through the agency. Any extension of the 30- day deadline can be granted only for cause and is limited to a maximum of 15 days. A motion for extension must be filed within the 30-day period. Failure to fulfill these requirements may result in dismissal of your case. If the court is not satisfied with your reasons for filing your bankruptcy case without first receiving a credit counseling briefing, your case may be dismissed.

4. I am not required to receive a credit counseling briefing because of:

[Check the applicable statement.] [Must be accompanied by a motion for determination by the court.]

Incapacity. (Defined in 11 U.S.C. § 109(h)(4) as impaired by reason of mental illness or mental deficiency so as to be incapable of realizing and making rational decisions with respect to financial responsibilities.);

Disability. (Defined in 11 U.S.C. § 109(h)(4) as physically impaired to the extent of being unable, after reasonable effort, to participate in a credit counseling briefing in person, by telephone, or through the Internet.);

Active military duty in a military combat zone.

5. The United States trustee or bankruptcy administrator has determined that the credit counseling requirement of 11 U.S.C. § 109(h) does not apply in this district.

I certify under penalty of perjury that the information provided above is true and correct.

Signature of Debtor: /s/ _____

Date: _____

Debtor:	Case No.:
	Chapter

**DEBTOR'S CERTIFICATION OF COMPLETION OF INSTRUCTIONAL COURSE
CONCERNING PERSONAL FINANCIAL MANAGEMENT (DEBTOR EDUCATION)**

*Every individual debtor in a chapter 7 or chapter 13 case must file this certification. If a joint petition is filed, **each spouse** must complete and file a separate certification. Complete **one** of the following statements and file by the deadline stated below.*

1. I, _____, certify that on the date below I completed an instructional course in personal financial management provided by the approved personal financial management instruction provider named below.

Name of Provider	Date Completed	Certificate No.

2. I, _____, certify that no personal financial management course is required because of:

Incapacity or disability, as defined in 11 U.S.C. § 109(h);

Active military duty in a military combat zone; or

Residence in a district in which the United States Trustee has determined that the approved instructional courses are not adequate at this time to serve the additional individuals who would otherwise be required to complete such courses.

/s/ _____

Signature of Debtor

Date: _____

Instructions: Use this form only to certify whether you completed a course in personal financial management (Debtor Education). (Fed. R. Bankr. P. 1007(b)(7). Do NOT use this form to file a certificate given to you by your prepetition credit counseling provider and do NOT include with the petition when filing your case.

Filing Deadlines: In a chapter 7 case, file within 45 days of the first date set for the meeting of creditors under § 341 of the Bankruptcy Code. In a chapter 13 case, file no later than the last payment made by the debtor as required by the plan or the filing of a motion for entry of a discharge under § 1328(b) of the Code. (See Fed. R. Bankr. P. 1007(c).)