

Bankruptcy Abuse Prevention and Consumer Protection Act of 2005



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Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA)

- Passed by Congress and signed into law by President Bush in April 2005.
- Tighten Eligibility requirements and made consumer education a requirement.

Key Changes of BAPCPA

- **Mandatory Credit Counseling**
- **Stricter Eligibility for Chapter 7 Filing**
- **Tax Returns and Proof of Income Required**
- **New Priority for Unpaid Child Support and Alimony**
- **Mandatory Financial Management Education**

Mandatory Credit Counseling under BAPCPA

- You now have to take a government approved credit counseling program before filing for Bankruptcy . This program is designed to educate you on debt management ,before having your debts discharge, in hopes to reduce the likelihood of a second bankruptcy petition.

Mandatory Credit Counseling under BAPCPA

1. Before Filing:

Credit Counseling must be taken within 180 days before filing for bankruptcy

- You'll go through this counseling with an approved provider.
- You'll review your personal finances.
- You'll discuss your bankruptcy alternatives
- You'll form a Personal budget plan.

Last about an hour and you will receive a certificate once you've completed the counseling requirement.

Mandatory Credit Counseling under BAPCPA

2. After Filing: Debtor Education

- You are required to complete an approved course on consumer debt before your debts are discharged.

Debtor education will cover topics like:

- Developing a budget
- Using Credit responsibly
- Managing Money.

This course last about two hours and you will receive a certificate once you've completed the course.

Stricter Eligibility for Chapter 7 Filing

The Mean Test:

- The Mean test determines if you can afford to pay 25% of your non-priority unsecured debt like credit card debt
- Stated that if your current monthly income was less than that of the median income for your state then you could file under Chapter 7.
- If your income was higher than the median income of your state and you're able to pay \$100 a month to slowly rid your debt, then you cannot file for Chapter 7. Instead you will have to file for Chapter 13. This is based on your monthly income, your expenses, and the total amount of your debt.

Tax Returns and Proof of Income Required

- BAPCPA 2005 requires that all those filing under Chapter 7 or Chapter 13 to show proof of their income through their federal tax returns from the last year.



Fewer “Automatic Stay” Protections for Filers

- BAPCPA eliminated some of the “Automatic Stay” protections that were abused by many of the people filing for bankruptcy. Automatic stay was what stopped many legal actions against the filer. So filing for Bankruptcy no longer stopped eviction actions, legal actions for child support, or divorce proceedings.

New Priority for Unpaid Child Support and Alimony

- People who are owed unpaid child support alimony take priority over any other creditor.





Mandatory Financial Management Education

- Before any debt can be discharge, filers must participate in a government approved financial management education program

Debtors

- The law pretty much was created to reduce the number of Chapter 7 petitions and increase Chapter 13 filings.
- In Chapter 7 Bankruptcy, your assets are liquidated and given to creditor, and your remaining debts are cancelled. Unlike a Chapter 13 Bankruptcy where a 5-year repayment plan is put in place.
- Many argued that this new law favored the credit card industry since they will benefit from the repayment plan.
- Lawyer liability, will have the attorney pay fees and fines if the client's case is found to be inaccurate. Means it'll be harder to find a bankruptcy attorney willing to file because of the liability and the additional work required to verify a client's information. Attorneys will charge the client more.





Creditors

- Many Chapter 7 filers didn't have assets that qualified for liquidation so many credit card companies and other creditors got nothing.
- Prevents consumers from abusing the bankruptcy laws to clear debts that many were able to pay.

Discussion

Do you feel like the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 adequately balanced the interests of creditors and debtors. Why or why not?

