

## **CERTIFICATE FOR EXEMPTION OF CREDIT COUNSELING**

A. Revised § 109(h)(1), requires individual debtors to complete credit counseling from an approved nonprofit budget and credit counseling agency within the one-hundred eighty (180) day period prior to the petition date. Completion of credit counseling is an eligibility requirement to be a debtor under Title 11. Section 109(h)(3) sets out circumstances under which the Court may grant the debtor an exemption from obtaining credit counseling. If the debtor certifies that there were exigent circumstances meriting a waiver of § 109(h)(1) and that debtor requested credit counseling pre-petition but was unable to obtain the credit counseling within the five (5) day period following the request, the Court may grant the debtor an exemption from pre-petition credit counseling. The exemption, if granted, expires thirty (30) days from the petition date, or an earlier date as otherwise ordered, although the Court may, for cause, order the extension of the exemption period for an additional fifteen (15) days. Thus if the request is granted, the debtor can comply with the credit counseling requirement of § 109(h)(1) by obtaining the required credit counseling within the exemption period and by filing a certificate that the debtor completed the required credit counseling within the exemption period.

A number of *pro se* debtors filing after BAPCPA took effect have requested that the Court allow them additional time to obtain the required credit counseling. To assist these debtors and prevent the harsh results that may come with the dismissal of a case, the Court has promulgated a form which provides some information necessary for the Court to issue an exemption under § 109(h)(3). The bar is also requested to use this form, or a substantially similar form, when making these requests on behalf of debtors.<sup>1</sup> If the Court is satisfied that the elements of § 109(h)(3) are met, it will issue an exemption without notice and a hearing. The Court will then issue an order setting forth that the exemption is granted and the date that the exemption expires. If the Court is not satisfied that the elements of § 109(h)(3) are met, it may schedule an immediate hearing, at which the debtor should be present, or it may deny the request for the exemption and order the dismissal of the debtor's case.

B. Debtors who are too mentally or physically disabled to obtain credit counseling and debtors who are on active military duty in a combat zone may also request a waiver of § 109(h)(1). Section 104(h)(4) defines "disability" and "incapacity." This request may be made by debtor's certification and the submission of supporting documentation for *in camera* review within five days of the certification. The Court has developed a form certification for debtors to be used to make a request under § 109(h)(4). Upon receiving the certification, a hearing may be scheduled if a party in interest objects after receiving notice of the certification.

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<sup>1</sup> The forms referenced herein are available on the Court's web page.