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Financial Education: No Debtor Left Behind?

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April is widely regarded as Financial Literacy Month. Proclamations will be signed at the state and federal level extolling the need for Americans to improve their personal financial knowledge. The media will write articles about organizations offering financial educational programs for schoolchildren, immigrants, members of the military and a plethora of other financial education opportunities offered every day. Most likely, the largest adult financial literacy undertaking within the U.S. each year, involving bankruptcy debtors and the organizations offering these mandatory courses, will go largely unnoticed.

The Mandate



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The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) contained the largest federal mandate for adult financial literacy education in American history. Section 727(a)(11) required that debtors seeking chapter 7 protection complete “an instructional course concerning personal financial management” prior to receiving their discharge. Consumer debtors seeking protection under chapter 13 or 11 must also meet this same requirement. This “instructional course concerning personal financial management” is separate from the pre-filing credit counseling that debtors must complete in the first place.¹

The origins of this requirement trace back to the National Bankruptcy Review Commission. In 1997, the commission

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released its final report to Congress, recommending that “all debtors in both chapter 7 and...13 should have the opportunity to participate in a financial education program.”² The commission understood that modern Americans were living in a complex financial world and that “a legal fresh start may not prevent repeated financial failure if debtors do not have the skills to manage the credit marketplace.”³ The report also stated that “[t]he

standards in financial literacy education⁶ post-date the insertion of the original language for the personal financial-management course. This language traces its origin back to BAPCPA’s first introduction in 1998,⁷ and therefore this guidance would not have been available to the original drafters.

The drafters of the first bill did turn to the commission’s 1997 report, wherein **Karen Gross** (Southern Vermont College; Bennington, Vt.) submitted a written report on how debtor education might be introduced into the bankruptcy system. “Bankruptcy provides us with a unique opportunity: there is a captive audience of over one million debtors who could be provided with education that will help them, their families, present and future creditors and society.”⁸

Consumer Corner

Commission will not attempt to spell out the details of a bankruptcy education program...how they might be evaluated, who should administer them, [and] how content should be determined.”⁴

When BAPCPA finally became law just shy of the eighth anniversary of the commission’s report, the task of oversight for this new bankruptcy education program fell to the Executive Office of the U.S. Trustees (EOUST). EOUST had, and continues to have, the responsibility of approving providers and the educational materials they offer to debtors.⁵

However, when BAPCPA passed, it was silent on the specifics of what the financial-management course should cover. There may be several reasons for this, but the most likely reason is that the two published sets of academic content

The legislative history for BAPCPA only notes the following: “The bill also requires debtors, after they have filed for bankruptcy, to participate in financial management instructional courses so they can hopefully avoid future financial distress.”⁹ Through an interim rule, EOUST requires the course be a minimum of two hours and cover basic budgeting, money management, the wise use of credit and consumer information.¹⁰

The Impact

There were 1,530,078 consumer filings in 2010, and there have been close

¹ See § 109(h)(1).

² National Bankruptcy Review Commission Final Report, *Bankruptcy: The Next 20 Years* (Oct. 20, 1997), per Pub. L. No. 103-394, § 608, 108 Stat. 4107, 4147 (1994).

³ *Id.* at 1.1.5.

⁴ *Id.*

⁵ See § 111.

⁶ National Standards for Adult Financial Literacy Education (2004; rev. 2007), Institute for Financial Literacy; National Standards in K-12 Personal Finance Education (1998; rev. 2008, 2010), JumpStart Coalition for Personal Financial Literacy.

⁷ Consumer Bankruptcy Reform Act of 1998, 105 H.R. 3150.

⁸ See n.2, appendix G-3a.

⁹ Report of the Comm. on the Judiciary, Bankruptcy Abuse Prevention And Consumer Protection Act of 2005, H.R. Rep. No 109-31, 109th Cong. 1st Sess., (2005).

¹⁰ 28 C.F.R. Part 58, Application Procedures and Criteria for Approval of Nonprofit Budget and Credit Counseling Agencies and Approval of Providers of a Personal Financial Management Instructional Course by U.S. Trustees Federal Register, Vol. 71, No. 128, July 5, 2006.

to 5.5 million consumer filings in the five years since the requirement first passed. When joint filings, which on average account for one third of all cases,¹¹ are factored in, the number of adults who have been subject to the mandatory personal financial-management course requirement jumps to more than 7.2 million American adults, which equals 3.3 percent of the U.S. adult population.¹² If filing rates continue their current trends, within 10 years an additional 6.5 percent of the U.S. adult population will be subject to this educational mandate. This means that almost 10 percent will have received financial education over a 15-year period.

With so many U.S. adults potentially being touched by this requirement, the question naturally arises as to the impact of this mandate. BAPCPA included a requirement that the EOUST develop financial-management training materials and then test the effectiveness of these materials in six judicial districts.

The EOUST was also required to report its findings to Congress,¹³ which it did in May 2008. Three key questions were studied: (1) Were debtors satisfied with the course?, (2) Did their knowledge increase because of the course?, and (3) Would they plan to change their financial behaviors because of the course? The report found that 97 percent of the responding debtors were satisfied, would recommend the course and indicated that their knowledge had increased because of the course. Immediately after the course, 44 percent of the debtors indicated at least one change in their financial practices. Unfortunately, the researchers reached an inconclusive finding on the actual knowledge gain. While the debtors did score better on their post-tests than they did on pre-tests, the researchers expressed concerns. Questions were raised about the content of the three different curriculums used, the evaluation tool itself and whether other sources, such as the pre-filing credit counseling session, contributed to the knowledge gain.¹⁴

In 2008, Angela Lyons published a study that looked at the effect of the educational requirement on financial knowledge and behavior. This study found that the debtors on average had a pre-test score of 80.3 percent and a post-test

score of 85.5 percent, for a net gain in knowledge of 5.1 percent and an overall percentage increase of 6.5 percent. With regard to their financial behavior, this study found that 98 percent of debtors felt that their overall ability to manage their finances had improved as a result of the education.¹⁵

In 2010, **Deborah Thorne** (Barnes & Thornburg LLP; Chicago) and **Katherine Porter** (University of Iowa College of Law; Iowa City, Iowa) published a paper that examined debtors' attitudes about the required course using data gathered as part of the ongoing work of the 2007 Consumer Bankruptcy Project. The study found that 72 percent of the respondents believed that the information from the class would be beneficial in the future and would help them avoid financial difficulties.¹⁶

A multi-year research study looking at the impact of BAPCPA's educational requirements has also recently been completed, and its results are scheduled for release in spring 2011. An advance brief in February 2011 found that, due to BAPCPA's educational requirements, "[l]ong-term financial goals are being set and achieved. Debtors...indicated post-bankruptcy that they had achieved, or were working towards achieving a number of long-term financial goals. These included saving more money, starting an emergency fund, starting a retirement fund, [and] re-establishing credit."¹⁷

Overall, the field of financial literacy education is still new, and research into its impact and effect is just beginning to emerge. Early indications show that well-designed programs that align with appropriate academic content standards and incorporate effective assessment tools provide students with the educational tools they need and desire.

The Providers

Concerns have begun to surface, however, as providers offering the financial-management courses have proliferated. EOUST has reported that there are approximately 270 approved educational providers. This compares with 157 nonprofit budget and credit-counseling providers. Factoring out roughly

50 approved chapter 13 trustees offering education in their local districts, there are still at least 60 more providers of financial education than nonprofit credit counseling agencies.

Why such a difference? Perhaps, not unlike what is happening in higher education with the growth of for-profit universities, the answer lies with profit motives. With a potential market of almost two million students per year, debtor education has become an entrepreneur's dream come true. The language in BAPCPA is the key to this opportunity. Unlike the credit-counseling requirement, which specifically states that the organization must be a "nonprofit,"¹⁸ the language of the educational requirement is ambiguous and has therefore opened the door to for-profit entities.

Section 111(a)(2) directs that "the clerk shall maintain a publicly available list of *instructional courses concerning personal financial management* currently approved by the United States trustee (or the bankruptcy administrator, if any), as applicable." (emphasis added). In this section, it would appear that EOUST has to approve the actual course material, but things get cloudy once you reach section (b):

Section 111(b)(1): 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: 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. (emphasis added).

With the introduction of the word "provider" in this section, the ambiguity began. A review of the list of approved providers in several large districts demonstrates the reality of the educational landscape. In one district in Texas, there are 95 approved providers: 46 are for-profits, 47 are nonprofits and two are

¹¹ Administrative Office of the U.S. Courts reported 35 percent of all cases in 2009 were joint filings.

¹² U.S. Census Bureau, 2005-09 American Community Survey, Age and Sex.

¹³ See § 105 of BAPCPA, Pub. L. No. 109-8.

¹⁴ U.S. Department of Justice, EOUST Report to Congress: Evaluation of Instructional Classes in Personal Financial Management for Consumer Bankruptcy Debtors, May 2008, per Pub. L. No. 109-8, § 105 (2005).

¹⁵ Lyons, A.C., White, T., and Howard, S., *The Effect of Bankruptcy Counseling and Education on Debtors' Financial Well-Being: Evidence from the Front Lines* (May 2008) University of Illinois and Money Management International.

¹⁶ Thorne, Deborah and Porter, Katherine M., "Debtors' Assessments of Bankruptcy Financial Education" (Aug. 6, 2010). University of Iowa Legal Studies Research Paper, No. 10-28, <http://ssrn.com/abstract=1654417>.

¹⁷ Lyons, A.C., Scherpf, E., and Howard, S., *Life after Bankruptcy: The Role of Credit Counseling and Debtor Education in Helping Debtors Obtain a Fresh Start* (2011), University of Illinois and Money Management International.

¹⁸ BAPCPA only requires nonprofit status, not tax-exempt § 501(c)(3) status.

chapter 13 trustees. In another district in California, there are 93 approved providers: 39 for-profits and 54 nonprofits. In yet another district in New York, there are 94 approved providers: 39 for-profits and 55 nonprofits.

Both for-profits and nonprofits must meet the same requirements under BAPCPA, such as providing trained personnel with adequate experience, offering learning materials and employing teaching methodologies designed to assist debtors in understanding personal financial management and offering fee waivers. Of course, a fundamental difference is in organizational philosophy. Providers without educational and charitable missions have focused on delivering low-cost, high-volume services. The question arises as to whether this has been done at the expense of a quality educational opportunity.

BAPCPA allows the financial-management instructional courses to be offered by telephone or the Internet, so long as the course is effective. In a report published in 2007, the National Foundation for Credit Counseling (NFCC) surveyed more than 100 of their members and found that delivering services was more expensive when done in-person (\$54.92) as compared to the telephone (\$52.47) and Internet (\$44.91).¹⁹ A review of the 94 approved providers from the above-referenced New York district revealed the following: 55 percent of for-profit providers offer only Internet delivery, compared with 42 percent of nonprofit providers; 36 percent of for-profit providers offer telephone delivery, compared with 47 percent of nonprofit providers; and 2 percent of for-profit providers offer in-person delivery, compared with 7 percent of nonprofit providers.

As most of the for-profit providers have opted to provide the less-expensive Internet delivery method, they have also been able to lower their prices. Most of the nonprofits are offering their services for approximately \$50, while the for-profits have engaged in an aggressive price war with each new entrant trying to out-do the next. Pricing has gone as low as \$9.99 for Internet debtor education. Marketing materials focus on being quick, easy, cheap and impossible to fail. This seems to indicate that a volume-based profit motive is the driving factor for these for-profits rather than providing effective education.

As further evidence that perhaps profit motives are at play here, a majority of these organizations were started in direct response to the opportunity that BAPCPA presented. Many named themselves with the goal of being toward the top of the approved list maintained by the EOUST. Examples include providers with names that begin with “AA” or “123.” When those names no longer get top billing, newer applicants (or existing providers) rename themselves beginning with “\$” and “0” to assure better placement. While this represents creative marketing savvy, it does not reassure observers that these providers’ primary focus is the educational value of their services.

A visit to some of the websites of these providers also does not instill confidence. If the intent was that debtors emerging from bankruptcy should have access to financial education to assist in the prevention of future financial difficulties, these providers may not be meeting the mandate. Here are some quotes from several websites approved from the New York district: “Easy - 100% pass!;” “Complete the ‘NO FAIL’ course;” “Super Low Price;” “Fast, easy payment using major credit cards and Money-back guarantee (up until when your certificate is generated).”

In order for a provider to be reapproved, several requirements must be met. One requirement appears to have been reasonable when drafted, but may have proven to be difficult to enforce. Section 111(d)(1)(D) requires “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.” The difficulty is that the drafters never define how to measure effectiveness or what benchmarks should be set and met. In effect, the EOUST’s hands have been tied by ambiguous drafting.

Since BAPCPA passed, best practices have been published in the area of financial literacy education.²⁰ The National Endowment on Financial Education also developed a financial education evaluation toolkit that organizations can use to develop evaluation and assessment tools for their education programs. It is critical to understand whether a financial literacy education program is effective regardless of the tax status of the entity delivering it.

Conclusion

BAPCPA created a unique opportunity to offer American adults with financial literacy education. If this last recession and mortgage crisis have shown us anything, financial illiteracy can be costly on a national, if not global, scale. Providers entering this arena should be driven primarily by the desire to improve the financial condition of the individuals they serve, not by pecuniary interests. In the largest financial literacy education effort in U.S. history, let us leave no debtor behind. ■

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¹⁹ *Consumer Credit Counseling and Education under BAPCPA: The Bankruptcy Abuse and Consumer Protection Act of 2005, Year One Report*, Silver Spring, Md.: NFCC, Oct. 16, 2006.

²⁰ *Best Practices Guidelines for Adult Financial Literacy Education* (First Ed. 2007), published by Institute for Financial Literacy; *Best Practices in K-12 Personal Finance Education* (2008, 2010), published by JumpStart.