From Debtors’ Prisons to Prisoner Debtors: Credit Counseling for the Incarcerated

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Recommended Citation
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The degradations endured by those unable to satisfy their creditors, imposed by English law prior to the middle of the nineteenth century, have been described by the authors of the time,¹ and decried by modern scholars.² Although debtors no longer suffer imprisonment because of their failure to pay their debts, the modern prisoner may still be in no position to satisfy his or her creditors. As a result, those who are incarcerated may seek relief from their debts through a bankruptcy case.

In most respects the Bankruptcy Code³ (the “Code”) purports to treat prisoners like any other prospective debtor seeking relief from his or her financial obligations. However, application of its ostensibly-neutral provisions has increasingly burdened prisoners attempting to take advantage of those provisions because of their lack of personal autonomy during the period of their imprisonment. In some cases, prisoners have been completely denied access to bankruptcy, despite the absence of any indication that Congress intended such a result.

In this Article I will discuss the new credit counseling requirements in the Code, and how they make it difficult, or even impossible, for imprisoned debtors to get bankruptcy relief due to their incarceration. First, I will examine the new requirements for pre-filing credit counseling and post-filing personal financial management courses. Then I will describe how those provisions have

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been applied to debtors who were incarcerated at the time of their bankruptcy
case. Finally, I will suggest that courts retain discretion to interpret the
provisions, and even to waive them, by declining to dismiss a case in which the
debtor was unable to comply with the new provisions. I believe that courts
should do so when necessary to ensure that inmates retain the protection of the
Bankruptcy Code.

I. STATUTORY REQUIREMENTS FOR CREDIT COUNSELING

Section 109 sets forth the eligibility criteria for being a debtor under the
Code.\textsuperscript{4} For individual debtors, the principal requirement is that he or she
"reside[] or [have] a domicile, a place of business, or property in the United
States."\textsuperscript{5} There are special requirements for a debtor under chapter 13,\textsuperscript{6} who
must be an "individual with regular income" within the meaning of § 101(30).\textsuperscript{7}
Because prisoners often do not meet this requirement during the term of their
imprisonment, they are frequently ineligible for chapter 13 bankruptcy (unless
their spouses have income).\textsuperscript{8} However, because prisoners are not likely to
have significant "current monthly income[,]"\textsuperscript{9} if they file a chapter 7 petition,
in most cases, they will not be subject to a motion to dismiss for abuse under
the new "means-testing" provisions of § 707(b).\textsuperscript{10}

But can a prisoner take advantage of chapter 7 or chapter 13? The new
credit counseling requirements, and their limited exceptions, make it especially
difficult for these prospective debtors.

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\textsuperscript{4} Id. § 109. All references in this Article to "section" are intended to refer to sections of the Code.
\textsuperscript{5} Id. § 109(a).
\textsuperscript{6} Id. § 109(e).
\textsuperscript{7} Id. § 101(30).
\textsuperscript{8} See, e.g., In re Crowder, 179 B.R. 571, 574 (Bankr. E.D. Ark. 1995); In re Sloan, 66 B.R. 567, 568
\textsuperscript{10} Under § 707(b)(2) (commonly referred to as the "means-testing" provisions), a chapter 7 bankruptcy
petition is presumed to be an abuse of the provisions of the Code if the debtor's current monthly income,
reduced by certain specified expenses, and "multiplied by 60 is not less than the lesser of" (i) the greater of
"25 percent of the debtor's nonpriority unsecured claims . . . or $6,575 . . . or (II) $10,950" (those dollar figures
having been adjusted as of April 1, 2007 and subject to adjustment every three years thereafter under § 104).
Id. § 707(b)(2) (2007). The debtor may rebut the presumption of abuse only by showing "special
circumstances that justify additional expenses or adjustments of current monthly income for which there is no
reasonable alternative," id. § 707(b)(2)(B)(i), and which cause the debtor to pass the "means test." Id.
§ 707(b)(2)(B)(iv). If the debtor's and debtor's spouse's current monthly income, multiplied by twelve, is not
more than the "highest median family income of the applicable State" for a family of the same number
of individuals, no judge, trustee, or other party in interest may bring a motion to dismiss a chapter 7 case under
the means-testing provisions. Id. § 707(b)(7)(A).
A. Prepetition Credit Counseling

Under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"), Congress added a new section, § 109(h), which states that no individual may be a debtor under the Code without receiving credit counseling from an approved nonprofit budget and credit counseling agency within 180 days prior to the date of filing. The ostensible reason for this new requirement was to ensure that the prospective debtor "will make an informed choice about bankruptcy, its alternatives, and consequences." Among the consequences is "the potentially devastating effect [bankruptcy] can have on their credit rating." A debtor demonstrates that he or she has complied with this new eligibility condition by filing

(1) a certificate from the approved nonprofit budget and credit counseling agency that provided the debtor services under section 109(h) describing the services provided to the debtor; and (2) a copy


Courts are split over whether the credit counseling may occur on the date of the filing of the bankruptcy petition, or must occur no later than the prior day. Compare In re Hudson, 352 B.R. 391, 396 (Bankr. D. Md. 2006) (permitting credit counseling on date of filing), and In re Spears, 355 B.R. 116 (Bankr. E.D. Wis. 2006) (same), and In re Warren, 339 B.R. 475, 479 (Bankr. E.D. Ark. 2006) (same), with In re Gossett, 369 B.R. 361, 370-71 (Bankr. N.D. Ill. 2007) (holding credit counseling on date of filing untimely), and In re Cole, 347 B.R. 70, 74 (Bankr. E.D. Tenn. 2006) (same), and In re Murphy, 342 B.R. 671, 673 (Bankr. D.D.C. 2006) (same).

12 Section 109(h)(1) reads as follows:
Subject to paragraphs (2) and (3), and notwithstanding any other provisions of this section, an individual may not be a debtor under this title unless such individual has, during the 180-day period preceding the date of filing of the petition by such individual, received from an approved nonprofit budget and credit counseling agency described in section 111(a) an individual or group briefing (including a briefing conducted by telephone or on the Internet) that outlined the opportunities for available credit counseling and assisted such individual in performing a related budget analysis.


of the debt repayment plan, if any, developed under section 109(h) through the approved nonprofit budget and credit counseling agency.\textsuperscript{15}

Exhibit D to Official Form 1 (Voluntary Petition) provides a form of certification to be signed by the debtor under penalty of perjury with respect to his or her compliance with the credit counseling requirement, or grounds for permanent or temporary waiver of that requirement.\textsuperscript{16} Under Federal Rule of Bankruptcy Procedure 1007(c), the certification must be filed with the bankruptcy petition in a voluntary case.\textsuperscript{17}

There are only three circumstances in which pre-filing credit counseling is excused under the statute. First, if the district in which the individual resides does not have approved nonprofit budget and credit counseling agencies reasonably able to provide adequate services to individuals required to obtain the counseling, the individual does not need to get the counseling.\textsuperscript{18} Because of the large number of approved credit counseling agencies, few litigants have used this basis to be excused from pre-filing credit counseling.\textsuperscript{19} In only one case has a court approved a waiver of the requirement under this provision, and that decision turned on the debtor's inability to speak or understand any

\textsuperscript{15} 11 U.S.C.A. § 521(b) (West 2007). Rule 1007(b) of the Federal Rules of Bankruptcy Procedure requires the filing of “a statement of compliance with the credit counseling requirement, prepared as prescribed by the appropriate Official Form.” FED. R. BANKR. P. 1007(b)(3) (interim rule). The statement is required to include the following:

- (A) An attached certificate and debt repayment plan, if any required by 521(b);
- (B) A statement that the debtor has received the credit counseling briefing required by 109(h)(1) but does not have the certificate required by 521(b);
- (C) A certification under 109(h)(3); or
- (D) A request for a determination by the court under 109(h)(4).

\textit{Id.} Although Rule 1007(b)(3) does not require the filing of a statement of compliance if the “United States trustee [or bankruptcy administrator] has determined that the credit counseling requirement of 109(h) does not apply in the district” (presumably under 109(h)(2)), \textit{id.}, Exhibit D to Official Form 1 contemplates that the certification be filed by all individual debtors, even those claiming the 109(h)(2) exception. \textit{FED. BANKR. FORM 1}, Exhibit D.

\textsuperscript{16} \textit{FED. BANKR. FORM 1}, Exhibit D.

\textsuperscript{17} \textit{FED. R. BANKR. P. 1007(c)} (interim rule). If the debtor certifies that he or she has completed the credit counseling briefing required by 109(h)(1) but has not yet received the certificate from the agency providing the briefing, the certificate must be filed within fifteen days of the order for relief. \textit{See id.}


\textsuperscript{19} The list of approved credit counseling agencies is available at http://www.usdoj.gov/ust/co/bapcpa/ccde/cc-approved.html for those districts served by the U.S. Trustee program, and at http://www.uscourts.gov/bankruptcycourts/approvedagencies.html for Alabama and North Carolina, which have bankruptcy administrators.
language except Creole (a language in which no credit counseling was available at the time).20

Second, an individual may receive a temporary deferral of the obligation to obtain credit counseling by submitting to the court a certification21 under §109(h)(3)(A). The certification must satisfy the following three requirements: (1) "describe[] exigent circumstances that merit a waiver of the requirements[]"22 (2) "state[] that the [individual] requested credit counseling from an approved nonprofit budget and credit counseling agency, but was unable" to obtain the services in the five days following the request,23 and (3) the court must find the certification "satisfactory."24

The term "exigent circumstances" is not defined in §109(h).25 In the absence of legislative guidance, many courts have turned to Black's Law Dictionary for help.26 Black's Law defines "exigent circumstances" as "[a] situation that demands unusual or immediate action and that may allow people

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23 Id. § 109(h)(3)(A)(ii).

24 Id. § 109(h)(3)(A)(iii).

25 See id. § 109(h).

to circumvent usual procedures.  

This definition suggests that exigent circumstances have a temporal component; something bad has not yet happened, but is about to happen, requiring the person who will be adversely affected to take action to prevent it. Absent a showing that some imminent harm would ensue from a delay in the filing of the bankruptcy petition, courts uniformly decline to find existent circumstances exist. Indeed, most cases in which debtors assert the existence of exigent circumstances involve repossession of an automobile, foreclosure on real property, eviction, or garnishment of wages. In these cases, some courts find the prospective loss of one's asset, before credit counseling can be obtained, sufficient in itself to establish exigent circumstances. Other courts criticize this approach as allowing debtors to wait until the last minute to obtain credit counseling, and then seek to excuse their own negligence. Instead, even in the face of imminent foreclosure, debtors cannot obtain a deferral of the credit counseling requirement from these courts unless they can explain to the court's satisfaction why they did not seek credit counseling earlier.

Even if "exigent circumstances" are present, the debtor must also certify that the debtor requested credit counseling from an approved credit counseling agency, and "was unable to obtain the services . . . during the 5-day period beginning on the date on which the debtor made that request." This separate requirement can, as some courts have noted, impose significant hardships. Even if the debtor faces "exigent circumstances," if the credit counseling agency can provide a briefing within five days of the request for counseling, the debtor is ineligible for a temporary deferral, even though filing after the counseling would not prevent the imminent harm creating the exigent circumstances.

At least one court has declined to give effect to the literal language of this provision, suggesting that the five-day period referred to in § 109(h)(3)(A)(ii) is intended to mean five days or the period between the request for credit counseling and the time of the bankruptcy filing compelled by exigent circumstances, whichever is shorter. This interpretation is consistent with the one urged by some leading bankruptcy commentators, who believe the phrase "unable to obtain the services referred to in [§ 109(h)(1)]," refers to prepetition credit counseling, not to credit counseling services in general.

Most courts, however, require the debtor to show both that he or she made a request for credit counseling services before filing a bankruptcy petition.

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and that the credit counseling services could not be provided within five days of that request. In the absence of either of these two showings, the debtor is ineligible for bankruptcy.

Assuming that the debtor includes the required statements in his or her certification, the court must still find the certification “satisfactory” before the pre-filing credit counseling requirement is waived. This requirement has been interpreted merely to invoke judicial review of the adequacy of the statements included in the certification under the statutory requirements of §§ 109(h)(A)(i) and (ii). Other courts view the third requirement as permitting the court to pass judgment on the form of the certification itself, rather than its content.

Even if the court accepts the certification and waives the pre-filing credit counseling requirement, the debtor still must get the required credit counseling within thirty days of filing the petition, unless the court, for cause, extends the period for an additional fifteen days.


See, e.g., In re Toccaline, No. 06-20218, 2006 WL 2081517, at *2-*3 (Bankr. D. Conn. July 17, 2006) (credit counseling services were in fact provided four days after request and four days after filing, and could have been provided prior to filing if debtor had the fee at that time); In re Burrell, 339 B.R. at 667 (debtor alleged that she could not receive credit counseling services before filing made to stop foreclosure, but could have received them within five days after request); In re Givhan, No. 06-40389-DRD, 2006 WL 4451481, at *1 (Bankr. W.D. Mo. Mar. 23, 2006) (debtor stated that she could not receive credit counseling before foreclosure sale triggering bankruptcy filing later that day, but not that credit counseling was unavailable in the next five days); In re Talib, 335 B.R. at 419 (debtor requested credit counseling prior to filing, and was told it could be completed two days later, but after foreclosure sale); In re Wallert, 332 B.R. at 887 (debtor requested credit counseling, but could not get it prior to foreclosure the next day). Cf. In re Westenberger, No. 0610477-BKC-RBR, 2006 WL 110508, at *1-*2 (Bankr. S.D. Fla. Mar. 15, 2006) (debtor was deemed unable to receive credit counseling within five days after request when debtor's bank account had been frozen and debtor had no funds to pay for credit counseling).


It is possible for an individual to be permanently excused from the required credit counseling, but only if the court determines, after notice and a hearing, that the individual “is unable to complete those requirements because of incapacity, disability, or active military duty in a military combat zone.” The exemption is intended to prevent “the absurd situation in which a debtor would be required to complete a course even if suffering from Alzheimer’s Disease or some other disability that would make the course meaningless or even impossible.”

Section 109(h)(4) defines “incapacity” as impairment “by reason of mental illness or mental deficiency” to the extent that the debtor “is incapable of realizing and making rational decisions with respect to his financial responsibilities.” A debtor is not disabled unless he or she “is so physically impaired as to be unable, after reasonable effort, to participate in an in-person, telephone, or Internet briefing” prior to filing. This requires not only a showing of an impairment, but the court must also determine that, first, the debtor has made a reasonable effort to participate in a briefing, and second, the debtor was unable, because of the disability, to participate meaningfully in such a briefing.

The exemption is rarely invoked successfully. In In re Tulper, the court excused joint debtors, one of whom was wheelchair bound, suffering from tremors, using an oxygen compressor/ventilator, and taking numerous prescribed medications, which her counsel suggested impaired her ability to understand communications. The other debtor was 81 years old, 97% deaf, and “had a 40% disability with respect to use of his hands and feet.” Neither debtor had access to a computer or computer skills. The court concluded that both debtors suffered from a “disability.” Although neither debtor had attempted to participate in credit counseling prior to filing, the court suggested that such participation would be meaningless because of their physical limitations.
condition, and therefore was unnecessary.\textsuperscript{57} The court further concluded that one of the debtors was incapacitated because her medications created a “mental deficiency” that impaired her ability to make rational decisions with respect to her finances.\textsuperscript{58}

Similarly, in \textit{In re Jarrell},\textsuperscript{59} the debtor had been diagnosed with bipolar disorder, schizophrenia, and clinical depression, and had been hospitalized multiple times for his mental problems.\textsuperscript{60} The court concluded that, although the debtor was not incapacitated within the meaning of § 109(h)(4), he was disabled.\textsuperscript{61} The debtor in \textit{In re Howard}\textsuperscript{62} had been in the intensive care unit of the hospital for the sixteen days before the bankruptcy filing for cardiac arrest, and after his release suffered from short-term memory loss, hearing loss, and limited mobility.\textsuperscript{63} The court excused credit counseling on the basis of disability.\textsuperscript{64} Disability was also the basis for a permanent exception for the debtor in \textit{In re Myers},\textsuperscript{65} who was confined to a nursing home with dementia.\textsuperscript{66}

\textbf{B. Postpetition Credit Counseling}

Under the new § 727(a)(11), after filing,\textsuperscript{67} an individual debtor must complete an instructional course concerning personal financial management in order to obtain a discharge in a chapter 7 case.\textsuperscript{68} A similar provision is now

\begin{itemize}
  \item \textsuperscript{57} \textit{Id.} at 327–28.
  \item \textsuperscript{58} \textit{Id.} at 328 n.13.
  \item \textsuperscript{59} 364 B.R. 899 (Bankr. N.D. Tex. 2007).
  \item \textsuperscript{60} \textit{Id.} at 902.
  \item \textsuperscript{61} \textit{Id.} at 905.
  \item \textsuperscript{62} 59 B.R. 589 (Bankr. E.D.N.C. 2007).
  \item \textsuperscript{63} \textit{Id.} at 590.
  \item \textsuperscript{64} \textit{Id.}
  \item \textsuperscript{65} 350 B.R. 760, 761 (Bankr. N.D. Ohio 2006).
  \item \textsuperscript{66} \textit{Id.}
  \item \textsuperscript{67} One court has allowed the debtor to obtain a discharge despite the fact that the personal financial management course was taken one day before filing, suggesting that the language of § 727(a)(11) was “ambiguous.” \textit{In re Hensinger}, No. BKR. No. 06-11319 EEB, 2006 WL 905313, at *1 (Bankr. D. Colo. Apr. 6, 2006).
  \item \textsuperscript{68} 11 U.S.C.A. § 727(a)(11) reads as follows:
    \begin{enumerate}
      \item The court shall grant the debtor a discharge, unless—
        \begin{enumerate}
          \item after filing the petition, the debtor failed to complete an instructional course concerning personal financial management described in section 111, except that this paragraph shall not apply with respect to a debtor who is a person described in section 109(h)(4) or who resides in a district for which the United States trustee (or the bankruptcy administrator, if any) determines that the approved instructional courses are not adequate to service the additional individuals who would otherwise be required to complete such instructional
included in § 1328(g)(1) as a condition to a chapter 13 discharge. An individual debtor indicates completion of the personal financial management course by filing a statement on Official Form 23. The certification must be filed “within 45 days after the first date set for the meeting of creditors under § 341 of the Code” in a chapter 7 case, and “no later than the date when the last payment was made by the debtor as required by the plan or the filing of a motion for a discharge under § 1328(b)” in a chapter 13 case.

The postpetition financial management course requirement for a chapter 7 or chapter 13 discharge is excused in only two circumstances. The first is when the debtor “is a person described in section 109(h)(4),” i.e., “a debtor whom the court determines, after notice and hearing, is unable to complete those requirements because of incapacity, disability, or active military duty in a military combat zone.” For example, an 81 year old, physically limited, 

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69 11 U.S.C.A. § 1328(g) reads as follows:

1. The court shall not grant a discharge under this section to a debtor unless after filing a petition the debtor has completed an instructional course concerning personal financial management described in section 111.

2. Paragraph (1) shall not apply with respect to a debtor who is a person described in section 109(h)(4) or who resides in a district for which the United States trustee (or the bankruptcy administrator, if any) determines that the approved instructional courses are not adequate to service the additional individuals who would otherwise be required to complete such instructional course by reason of the requirements of paragraph (1).

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71 FED. R. BANKR. P. 1007(b)(7) (interim rule).

72 FED. BANKR. FORM 23.

73 FED. R. BANKR. P. 1007(c) (interim rule).

74 Id.


76 Id. § 109(h)(4).
hearing-impaired debtor with prostate cancer whose prepetition counseling session took three hours and ended unsatisfactorily, was excused from postpetition counseling because of a disability.\(^7\) Another debtor, who suffered from dementia, memory loss, and a general state of confusion, was found to be incapacitated and, therefore, excused under § 727(a)(11).\(^8\)

One court has looked beyond the literal language of § 109(h)(4) to excuse a debtor from the personal financial management course requirement when the debtor was not incapacitated, disabled, or on military duty, but was in fact deceased, a circumstance not contemplated by the statute.\(^9\)

The requirement is also excused if the debtor “resides in a district for which the United States trustee (or the bankruptcy administrator, if any) determines that the approved instructional courses are not adequate to service the additional individuals who would otherwise be required to complete”\(^8\) the required instructional courses. The only case in which a court appeared to rely on this exception involved an inmate and will be discussed in Part II.

Unlike the prepetition credit counseling requirement under § 109(h)(3), there is no provision for deferral of the personal financial management requirement because of “exigent circumstances” or otherwise. However, Federal Rule of Bankruptcy Procedure 1007(c) explicitly contemplates an extension of time for the filing of “the schedules, statements, and other documents required under this rule,”\(^8\) which includes the statement evidencing completion of the postpetition credit counseling course under Rule 1007(b)(7), “for cause shown.”\(^8\) Therefore, some courts have indicated that “exigent and compelling circumstances” may justify an extension in some rare cases,\(^8\) although no court has yet granted such an extension. Instead, if the case has been closed without the grant of a discharge, the debtor is required to file a


\(^8\) In re Faircloth, No. 05-54214, 2006 WL 3731299, at *1 (Bankr. M.D.N.C. Dec. 18, 2006).


\(^8\) 11 U.S.C. §§ 727(a)(11), 1328(g)(2) (2000). This is comparable to the first basis for excusing prepetition credit counseling described in § 109(h)(2).

\(^8\) FED. R. BANKR. P. 1007(c) (interim rule).

\(^8\) Id.

motion to reopen the case under § 350(b), and may be required to pay an additional filing fee.\textsuperscript{85}

II. PRISONERS AND CREDIT COUNSELING

As was true for many debtors,\textsuperscript{86} some prisoners sought to file bankruptcy petitions before the effective date of the BAPCPA amendments, October 17, 2005. Those who succeeded, including those whose filings were deemed made before October 17, 2005, by application of the "prison mailbox rule,"\textsuperscript{87} were found not to be subject to the new requirements.\textsuperscript{88}

However, those prisoners whose petitions were filed after October 17, 2005, are clearly subject to the counseling requirements and have found them difficult to satisfy. They cannot make a physical appearance at an approved nonprofit budget and credit counseling agency because of their imprisonment. Congress explicitly contemplated that debtors would be able to satisfy the requirements by telephone or internet counseling, but prisoners are given

\textsuperscript{84} 11 U.S.C. § 350(b) states that "[a] case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor or for other cause." 11 U.S.C. § 350(b) (2000).


\textsuperscript{87} The "prison mailbox rule" was developed by the Supreme Court in \textit{Houston v. Lack}, 487 U.S. 266, 270 (1988). A pro se prisoner delivered a notice of appeal to prison authorities to forward to the clerk of court within thirty days of the entry of the judgment as required by Federal Rule of Appellate Procedure 4(a)(1), but it was not received by the clerk within the required time. \textit{Id.} at 268–69. The Court concluded that as long as the notice reached the clerk, it would be deemed filed as of the time the prisoner delivered the notice to the prison authorities. \textit{Id.} at 276. The prison mailbox rule requires that the prisoner is proceeding pro se and that he or she delivers the documents for filing to prison authorities within the required period. \textit{See, e.g., Stillman v. LaMarque}, 319 F.3d 1199, 1201 (9th Cir. 2003). The rule has been applied to various types of filings by pro se prisoners. \textit{See, e.g., Richard v. Ray}, 290 F.3d 810, 813 (6th Cir. 2002) (civil complaint); \textit{Jones v. Bertrand}, 171 F.3d 499, 508 (7th Cir. 1999) (habeas petitions); \textit{Caldwell v. Amend}, 30 F.3d 1199, 1201 (9th Cir. 1994) (Fed. R. Civ. Pro. 50(b) motion); \textit{Garvey v. Vaughn}, 993 F.2d 776, 777, 781–82 (11th Cir. 1993) (claims under 42 U.S.C. § 1983 and the Federal Tort Claims Act).

\textsuperscript{88} \textit{See, e.g.}, \textit{In re Luedtke}, 337 B.R. 918, 919, 921 (Bankr. E.D. Wis. 2006); \textit{In re Looper}, 334 B.R. 596, 601–02 (Bankr. E.D. Tenn. 2005).
limited access to telephones\textsuperscript{89} and computers with internet access.\textsuperscript{90} Even when they are allowed to use a telephone or a computer, they are often not permitted to remain on the line for the time necessary to complete the credit counseling.\textsuperscript{91} Despite this, inmates have had relatively little success in being excused from the prepetition or postpetition credit counseling requirements, either temporarily or permanently.

A. Permanent Exception for Lack of Availability of Credit Counseling Services

As discussed previously,\textsuperscript{92} an individual is not required to obtain prepetition or postpetition counseling if the United States trustee or bankruptcy administrator determines that the approved nonprofit budget and credit counseling agencies in the district in which the individual resides are not reasonably able to provide adequate services to individuals required to obtain the counseling.\textsuperscript{93} However, in bankruptcy cases involving prisoners, courts have generally found this exception inapplicable, noting that the United States trustee or bankruptcy administrator had not determined that the approved counseling agencies in the districts where the inmates were incarcerated were not reasonably able to provide adequate service to the inmates.\textsuperscript{94}

One could argue with this conclusion. The determination of the United States trustee or bankruptcy administrator is reviewable by the court.\textsuperscript{95} In

\textsuperscript{89} See, e.g., MICH. DEPT. OF CORRECTIONS, POLICY DIRECTIVE 05.03.130 (January 1, 2007) (stating that all telephone calls must be "on a collect or prepaid basis" and are limited to fifteen minutes, except for calls to attorneys, which are limited to twenty minutes). The only situation in which a prisoner may make a call outside normal times is for an emergency, such as "critical illness or death of an immediate family member, serious prisoner illness, or other situation as determined by the Warden or designee." \textit{Id}. A prisoner may only call individuals or organizations on a prisoner's approved telephone list, or those persons or organizations identified on the universal list of attorneys, court monitors, public interest groups, governmental agencies, and similar persons and groups. \textit{Id}. No credit counseling agencies are currently included on the universal list. \textit{Id}. at Attachment B.

\textsuperscript{90} See, e.g., MICH. DEPT. OF CORRECTIONS, POLICY DIRECTIVE 01.04.104 (July 1, 2007) (stating that "\{u\}nder no circumstances shall a prisoner be permitted to use a computer which has Internet access.").

\textsuperscript{91} For example, the inmate in \textit{In re} Walton, No. 07-41086-293, 2007 WL 980430, at *1 (Bankr. E.D. Mo. Mar. 5, 2007), was allowed only a one half-hour phone conversation, and only one call per month. He used his call to obtain credit counseling, but was put on hold by the credit counseling agency for twenty-five minutes, leaving insufficient time for the counseling. \textit{Id}. at *2.

\textsuperscript{92} See supra text accompanying notes 17-19, 80.


reviewing whether approved nonprofit budget and credit counseling agencies for the relevant district are reasonably able to provide adequate services to the debtor, the court arguably may consider whether the available agencies can provide adequate services to a debtor possessing the particular characteristics of the debtor seeking review.96

Thus, in In re Petit-Louis, the sole case in which a court has granted a permanent exemption from pre-filing credit counseling under § 109(h)(2), the court concluded that counseling services were not reasonably available unless they met the needs of debtors having the unique characteristics of the debtor in question.97 The debtor, Mr. Petit-Louis, spoke and understood only Creole rather than English.98 In the case of an inmate, the debtor may be entitled to an exemption if the counseling agencies do not provide adequate services to those who lack an ability to make an in-person visit to the agency or to reach it by internet or telephone (at least for the length of time necessary to complete the counseling). Perhaps credit counseling is not reasonably available to prisoners unless the agency providing the services is willing to make a “house call.”

The court in In re Vollmer seemed to adopt this analysis. Noting that the United States trustee had not located a credit counseling agency that would accept collect calls from an incarcerated debtor (the only circumstances under which the debtor would be able to complete credit counseling),99 the court concluded that “no credit counseling agency [was] reasonably able to provide adequate service to the Debtor in [that] District” and permanently waived compliance with the prepetition credit counseling requirements of §109(h)(1),

(ending that Congress left the determination to the United States trustee to be made on a “district wide basis”).

96 For example, commentators have suggested that:

[The United States trustee or bankruptcy administrator will have to decide whether adequate services are available if the only services available to some debtors are over the telephone or on the Internet. Not all debtors have access to the Internet and some debtors do not have a telephone or are unable to use a telephone due to hearing problems. Debtors in this situation may also find it difficult or impossible to travel to a distant agency due to the expense involved or for other reasons.]

2 COLLIER, supra note 40, ¶ 109.09(2), 109–59. See also id. ¶ 1328.08, 1328–39 ("This language is peculiar and raises questions about whether the lack of availability of courses can be found with respect to a particular group of individuals, such as those residing in a particular geographic area or those who speak only certain languages other than English.").

97 In re Petit-Louis, 344 B.R. at 700–01.

98 Id. at 700.

99 In re Vollmer, 361 B.R. at 814.
as well as the postpetition requirement for completion of a personal financial management course under § 727(a)(11).

B. Temporary Exception from Prepetition Credit Counseling for Exigent Circumstances

Some courts have allowed inmates to benefit from the temporary deferral of the prepetition credit counseling requirement because of "exigent circumstances," and have done so despite the inmate's failure to comply with the technical requirements of § 109(h)(3). For example, in In re Star, the court treated the debtor's motion to proceed without meeting the credit counseling requirement of § 109(h) as a motion to defer credit counseling under § 109(h)(3). The court then granted the motion, "given [the] debtor's current circumstance[s]." The debtor had neither requested credit counseling prior to filing, nor had the debtor shown any "exigent circumstances" other than the incarceration itself. Another court followed the statute more closely and allowed deferral when the state was seeking incarceration reimbursement from the inmate's IRA ("exigent circumstances"). The inmate had requested credit counseling five days prior to filing, but was unable to complete it because the agency put him on hold for twenty-five minutes, exhausting his available telephone time for the month.

Most courts have simply rejected requests by prisoners under § 109(h)(3), concluding that the debtors had failed to comply with the requirements for a temporary waiver.

100 Id. at 815.
103 Id. at 832.
104 Id. at 831. See also In re Vollmer, 361 B.R. at 814 (granting deferral "as it was not possible for the debtor to request credit counseling services prior to filing" because of incarceration).
106 Id.
107 See, e.g., In re Rendler, 368 B.R. 1, 4 (Bankr. D. Minn. 2007) (deferral of requirement would do inmate "no good" given ongoing inability to participate in credit counseling); In re Ruckdaschel, 364 B.R. 724, 728–29 (Bankr. D. Idaho 2007) (no showing of exigent circumstances by inmate); In re Martinez, No. 06 B 05861, 2006 WL 2239445, at *1–*2 (Bankr. N.D. Ill. Aug. 2, 2006) (dismissing case filed by inmate with limited knowledge of English for failure to file § 521(b)(1) certificate as to credit counseling); In re McBride, 354 B.R. 95, 98 (Bankr. D.S.C. 2006) (incarceration does not constitute "exigent circumstances"); In re Latovljevic, 343 B.R. 817, 822 (Bankr. N.D. W. Va. 2006) (debtor did not request that prison officials provide debtor sufficient telephone time for credit counseling, so no showing debtor was unable to receive counseling).
C. Permanent Exception for Incapacity, Disability or Military Service

Attempts by prisoners to secure a permanent exception from the prepetition counseling requirements on the basis of incapacity, disability, or military service, within the meaning of § 109(h)(4), have also been consistently unsuccessful. Prisoners are not on active military duty in a military combat zone. In addition, because the definition of "incapacity" in § 109(h)(4) requires a showing of "mental illness or mental deficiency," inmates have not argued for a waiver on this basis. However, "disability" is defined more broadly, requiring that the debtor be "physically impaired." One could certainly argue that imprisonment constitutes a physical impairment within the meaning of the statute, and that inmates should therefore be entitled to a permanent exemption.

Courts have considered whether incarceration constitutes "physical impairment." After considering the definition of "impaired" in the American Heritage College Dictionary, most courts have concluded that incarceration does not create a physical impairment within the meaning of the statute. Other courts have rejected the statute's applicability without a detailed analysis of the language.

Despite the fact that § 109(h)(4) clearly invites the court to determine on a case-by-case basis whether the debtor qualifies for the permanent waiver, the court in In re Rendler concluded that the incapacity and disability grounds for noncompliance with the prepetition credit counseling requirement were "strictly-defined and narrow." Furthermore, they do not permit waiver:

where, for instance, credit counseling services on an in-person basis are unavailable locally to the debtor; or where participating in counseling imposes personal inconvenience on the debtor in some other way; or, really, on the grounds of any other consideration that

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109 Id.
111 The definition states that "impaired" means: "1. Diminished, damaged, or weakened; 2. Functioning poorly or incompetently; 3. Having a physical or mental disability." AMERICAN HERITAGE COLLEGE DICTIONARY 694 (4th ed. 2004).
112 See, e.g., In re Ruckdaschel, 364 B.R. at 729; In re Vollmer, 361 B.R. at 813; In re Star, 341 B.R. at 831.
114 In re Rendler, 368 B.R. at 2.
stems from a debtor's personal circumstances, no matter how extreme.\footnote{Id. at 2-3 (emphasis added). The court went on to note that the inmate debtor, who was not excused from prepetition credit counseling under § 109(h)(4), would not have been excused from the requirement of § 727(a)(11) either. \textit{Id. at 4 n.4.}}

III. JUDICIAL DISCRETION TO EXCUSE NONCOMPLIANCE

Although arguments can be made to provide for permanent exceptions to the credit counseling requirement for inmate-debtors based either on their "disability" or the unavailability of credit counseling services in their district for debtors in their unique position, for those courts which find that such analyses strain the language of the statute too far, a more palatable approach lies in those cases that have examined the extent of judicial discretion to excuse noncompliance with the credit counseling requirements.


There are provisions in the Code that provide for mandatory dismissal of a case as a sanction for noncompliance with certain requirements. For example, failure of an individual debtor in a chapter 7 or a chapter 13 case to file all the information required by § 521(a)(1)\footnote{11 U.S.C. § 521(a)(1) requires that the debtor file:}

\begin{itemize}
\item[(A)] a list of creditors; and
\item[(B)] unless the court orders otherwise—
\begin{itemize}
\item[(i)] a schedule of assets and liabilities;
\item[(ii)] a schedule of current income and current expenditures;
\end{itemize}
\end{itemize}
triggers automatic dismissal of the case on the forty-sixth day.\textsuperscript{119} If a debtor does not file required tax returns within ninety days of a request by the taxing authority, the court is required to convert or dismiss the case, whichever is in the best interests of the creditors and the estate.\textsuperscript{120} In a chapter 13 case, if the debtor fails to file a tax return under § 1308, on request of a party in interest or the United States trustee, the court is required to dismiss the case or convert it to chapter 7, whichever is in the best interests of the creditors and the estate.\textsuperscript{121} The Code does not explicitly mandate dismissal of a bankruptcy case because of failure to satisfy the eligibility requirements of §109(h), nor for failure to file the required certificate from the approved credit counseling agency that provides the prepetition counseling.

In its decision analyzing the provisions of § 706(a),\textsuperscript{122} the Court of Appeals of the First Circuit distinguished the phrase “may convert” in that section from the phrase “shall dismiss” used in § 1307(b)\textsuperscript{123} to bolster its conclusion that a court has discretion to deny a debtor’s motion to convert under § 706(a).\textsuperscript{124} The Supreme Court recently affirmed that decision.\textsuperscript{125} Courts have made a

\begin{itemize}
  \item[(iii)] a statement of the debtor's financial affairs and, if section 342(b) applies, a certificate [with respect to the required notice under that section];
  \item[(iv)] copies of all payment advices or other evidence of payment received within 60 days before the date of the filing of the petition, by the debtor from any employer of the debtor;
  \item[(v)] a statement of the amount of monthly net income, itemized to show how the amount is calculated; and
  \item[(vi)] a statement disclosing any reasonably anticipated increase in income or expenditures over the 12-month period following the date of the filing of the petition.
\end{itemize}

\textsuperscript{120} Id. § 521(i)(1). \textit{See}, e.g., \textit{In re Reyes}, No. 06-32767, 2007 WL 338066, at *3 (Bankr. E.D. Tenn. Jan. 31, 2007); \textit{In re Spencer}, No. 06-60314, 2006 WL 3820702, at *1 (Bankr. D.D.C. Dec. 22, 2006); \textit{In re Ott}, 343 B.R. 264, 267 (Bankr. D. Colo. 2006). Upon request by the debtor within the forty-five day period, the court has discretion to extend the time for filing for an additional forty-five days, 11 U.S.C.A. § 521(i)(3) (West 2007), and upon a timely motion of the trustee, may even decline to dismiss the case “if the court finds that the debtor attempted in good faith to file all the information required by subsection (a)(1)(B)(iv) and that the best interests of creditors would be served by administration of the case.” \textit{Id.} § 521(i)(4).
\textsuperscript{123} Id. § 1307(b) (2000).
\textsuperscript{124} \textit{See In re Marrama}, 430 F.3d 474, 478 (1st Cir. 2005). The court declined to construe § 1307(b) to preclude any exercise of discretion by a bankruptcy court with respect to a motion to dismiss, stating that the issue was not before it. \textit{Id.} at 478 n.2. \textit{See also In re Cobb}, No. CIV. A. 99-3193, 2000 WL 17840, at *3 (E.D. La. Jan. 11, 2000); \textit{In re McCraney}, 172 B.R. 868, 869 (N.D. Ohio 1993) (finding court retains discretion with respect to the § 1307(b) right to dismiss).
similar distinction between the apparently mandatory language of § 1307(b) and the language of § 1307(c), which states that the court “may convert a case” for cause.\(^{128}\)

Nevertheless, when debtors have sought to keep their bankruptcy cases alive, despite technical noncompliance with the requirements of § 109(h), most courts have dismissed the case without even considering whether they had discretion to do otherwise. When they have considered the issue, most courts conclude that bankruptcy courts have no power to vary the specific requirements of § 109(h) based on the facts and circumstances of individual cases.\(^{127}\) For example, courts have dismissed the case\(^{128}\) when the debtor obtained credit counseling from an approved agency more than 180 days prior to filing the petition.\(^{129}\) They have also dismissed cases when the debtor

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\(^{126}\) See, e.g., In re Barbieri, 199 F.3d 616, 619–20 (2d Cir. 1999).


\(^{129}\) See, e.g., In re Gaddis, No. 07-40476, 2007 WL 1610783, at *1,*3 (Bankr. D. Kan. June 4, 2007) (186 days); In re Moon, 2007 WL 1087452, at *1–*2 (271 days); In re Ruckdaschel, 364 B.R. at 726, 728 (187
received credit counseling more than forty-five days after the petition was filed. \textsuperscript{130}

But other courts have allowed debtors who filed a petition without the required pre-filing credit counseling to remain in the bankruptcy court, noting that the provisions relating to dismissal of bankruptcy cases under § 707\textsuperscript{131} and § 1307\textsuperscript{132} are permissive rather than mandatory. \textsuperscript{133} Some courts have endorsed a six-factor approach to determining whether dismissal is an appropriate exercise of discretion for failure to satisfy § 109(h):

1. Whether the debtor filed the case in good faith;
2. Whether the debtor took all reasonably steps to comply with the statutory requirements;
3. Whether the debtor's failure to comply was the result of circumstances that were both extraordinary and beyond the control of the debtor;
4. Whether the debtor's conduct meets the minimum requirements of 11 U.S.C. § 109(h);
5. Whether any party would be prejudiced by allowing the case to proceed; and
6. Whether there are any unique equitable factors that tip the balance in one direction or the other.\textsuperscript{134}

\textsuperscript{130} See, e.g., Clippard, 365 B.R. 131. \textit{But cf. In re Curington,} 2005 WL 3752229, at *6 (debtors received credit counseling forty-four days after filing, but did not get court approval for deferral).

\textsuperscript{131} 11 U.S.C. § 707(a) (2000) ("The court may dismiss a case under this chapter only after notice and a hearing and only for cause ... ").

\textsuperscript{132} 11 U.S.C.A. § 1307(c) (West 2007) ("Except as provided in subsection (e) of this section [dealing with the failure of the debtor to file a tax return under section 1308], on request of a party in interest or the United States trustee and after notice and a hearing, the court may . . . dismiss a case under this chapter . . . for cause . . . ").


Another court has suggested that the following three factors are relevant in determining whether to dismiss a case based on noncompliance with the credit counseling requirement:

1. The debtor has a reasonable explanation for not participating in budget and credit counseling within 180 days prior to filing a bankruptcy petition;

2. The debtor participates in budget and credit counseling once the debtor learns that it is necessary; and

3. At the budget and credit counseling session, it is determined that the individual's debts could not have been paid outside of bankruptcy.135

Leading bankruptcy commentators have endorsed judicial discretion to waive the pre-filing credit counseling requirement, at least when the debtor has submitted an unsatisfactory certification in good faith and no other party has moved to dismiss the case.136

Nevertheless, even the courts that have exercised their perceived discretion to refuse to dismiss or strike a bankruptcy petition based on noncompliance with the pre-filing credit counseling requirement have only done so when the credit counseling actually occurred, although not on a timely basis.137 No

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136 2 COLLIER, supra note 40, ¶ 109.09[3], 109–60. In discussing the limited nature of the permanent exception to the requirement, they noted that, "in view of the serious consequences of dismissal, the court should find a way to allow a good faith case to proceed despite this nonjurisdictional defect." Id. at ¶ 109[4], 109–62.

137 See, e.g., In re Meza, No. 2:06cv1307MCE, 2007 WL 1821416 (E.D. Cal. June 25, 2007) (debtor received credit counseling from agency five months prior to enactment of BAPCPA and made payments pursuant to plan for one year thereafter, filing one month after terminating the program); In re Henderson, 364 B.R. at 906 (husband's credit counseling occurred one day after filing, and wife given forty-five days to get credit counseling); In re Nichols, 362 B.R. at 88 (debtors received credit counseling the same day as filing and no certificate was filed with petition because counsel thought debtor had forty-five days after filing to complete the counseling and file the certificate.); In re Manalad, 360 B.R. at 291–92, 297 (Bankr. C.D. Cal. 2007) (debtor participated in credit counseling session seven months after filing when ordered to do so before chapter 13 confirmation hearing); In re Bass, 2006 WL 1593978, at *1, *5 (pro se debtor received credit counseling more than forty-five days after filing, after being unable to attend earlier session due to lack of transportation); In re Kernan, 358 B.R. at 538, 540 (prior to filing debtor obtained credit counseling that did not comply with § 109(h) and, when she discovered the problem, obtained approved credit counseling that did comply and filed her certificate one day after filing); In re Hess, 347 B.R. at 492–93, 501 (one debtor received counseling from an agency that was not approved at the time and obtained counseling post-filing from an approved agency; second debtor's petition was erroneously filed by lawyer's office before counseling was
court has refused to strike or dismiss a petition filed by an inmate who failed to comply with the pre-filing credit counseling requirements and failed to meet the requirements for a permanent exception.

CONCLUSION

There is no reason to believe that prisoners as a class are in less need of bankruptcy protection than the public in general. Certainly Congress has never chosen explicitly to deny inmates the right to file a bankruptcy case.138Section 523(a)(17)139expressly acknowledges that a debtor may be a prisoner,140and the amendment made to that provision by the BAPCPA would be inconsistent with any congressional intention to preclude prisoners from filing for bankruptcy by other provisions of the BAPCPA.141Indeed, although there is no constitutional right to obtain a discharge through bankruptcy,142denying inmates the right to file for bankruptcy might be viewed as a violation of their due process right of access to the courts,143or their right to equal protection of the laws.144

completed ); In re Bricksin, 346 B.R. at 499, 503 (debtors received credit counseling, adhered to a payment plan for nine months, and then filed for bankruptcy four months later).
140 Section 523(a)(17) excepts from discharge any debt:

for a fee imposed on a prisoner by any court for the filing of a case, motion, complaint, or appeal, or for other costs and expenses assessed with respect to such filing, regardless of an assertion of poverty by the debtor under subsection (b) or (f)(2) of section 1915 of title 28 (or a similar non-Federal law), or the debtor’s status as a prisoner, as defined in section 1915(h) of title 28 (or a similar non-Federal law).

142 See, e.g., United States v. Kras, 409 U.S. 434, 446-47 (1973); In re Stewart, 175 F.3d 796, 812 (10th Cir. 1999); Sacred Heart Hosp. of Norristown v. Commonwealth of Pa., Dep’t of Pub. Welfare (In re Sacred Heart Hosp. of Norristown), 133 F.3d 237, 245 (3d Cir. 1998); In re Krohn, 886 F.2d 123, 127 (6th Cir. 1989).
143 Cf. Boddie v. Connecticut, 401 U.S. 371, 380-81 (1971) (ruling that states cannot constitutionally deprive indigents of access to the courts for the purpose of securing a divorce); Thompson v. Bond, 421 F. Supp. 878, 882 (W.D. Mo. 1976) (finding the Missouri civil death statute, which barred prisoners from filing any civil action other than one challenging validity or constitutionality of confinement, denied inmates reasonable access to the courts).
144 Cf. Mason v. Granholm, No. 05-73943, 2007 WL 201008 (E.D. Mich. Jan. 23, 2007) (amendment to state’s statute preventing discrimination in public services to exclude individuals serving a sentence of imprisonment violated Constitution’s guarantee of equal protection). Foreclosing access to a bankruptcy court is very different from the fee requirements of the Prison Litigation Reform Act that make filing more costly for
During the twelve month period ending June 30, 2006, there were 1,453,008 non-business bankruptcy filings.\textsuperscript{145} During the same period, the state and federal prison inmate population grew to 1,556,518.\textsuperscript{146} This is the equivalent of 497 inmates for every 100,000 U.S. residents.\textsuperscript{147} If one includes those U.S. residents in jail as well as those in prison, one in every 133 U.S. residents was incarcerated on June 30, 2006.\textsuperscript{148} 4.8% of all black men in the U.S. population, 1.9% of all Hispanic men, and 0.7% of all white men were in custody at that date.\textsuperscript{149} African-Americans are also disproportionately represented in bankruptcy.\textsuperscript{150}

In 1997, the last year for which such information was disseminated, 30.4% of federal inmates and 16.6% of state inmates were married.\textsuperscript{151} Although almost 60% of bankruptcy petitions are filed by married debtors,\textsuperscript{152} a higher proportion of individuals who are single or divorced file for bankruptcy than those who are married.\textsuperscript{153} Approximately 63% of federal prisoners and 55.4% of state prisoners were parents of minor children.\textsuperscript{154} By 1999, 1.5 million U.S. children had a parent in federal or state prison.\textsuperscript{155} Of the parents in federal prison, only 36% currently were married; 38% had never been married.\textsuperscript{156} For those parents in state prison, only 23% currently were married and 48% had never been married.\textsuperscript{157}
Bankruptcy filers are less likely than the national population to have obtained a college degree. The median education level for both groups was 12 years, with only 9.1% of federal inmates and 2.7% of state inmates having graduated from college. Debtors are, not surprisingly, also concentrated in the lower portion of the income distribution scale. About 36% of all jail inmates were unemployed before their arrest, and almost half reported income of less than $600 a month. Only 13.5% of jail inmates had personal income of $2,000 a month or more. About 22% of jail inmates reported receiving some sort of financial assistance from the government, such as welfare, Aid to Families with Dependant Children, and food stamps.

Inmates also suffer from physical or mental disabilities at a disproportionate rate. In 1997, 31% of state inmates and 23.4% of federal inmates reported having a learning or speech disability, a hearing or vision problem, or a mental or physical impairment. The rates were even higher among those inmates who were unemployed before their arrest. By mid-year 2005, it was reported that “more than half of all prison and jail inmates had a mental health problem.” Medical problems are one of the major reasons for bankruptcy filings.

Consumer bankruptcy has been shown to be attributable to higher than normal ratios of debt to family income. Compared to non-incarcerated debtors, prison inmates are unemployed in higher numbers prior to their imprisonment, and when they are employed, they make significantly less

158 See SULLIVAN ET AL., supra note 150, at 54.
159 See SULLIVAN ET AL., supra note 150, at 48, tbl. 4.1.
160 See SULLIVAN ET AL., supra note 150, at 61.
162 Id. at 4.
163 Id.
165 Id. at 9.
167 See SULLIVAN ET AL., supra note 150, at 144.
169 See id. at 86 (estimating that “between 83% and 93% of . . . debtors [are] employed at the time they file for bankruptcy”).
money. Prisoners are not able to work to support themselves and their families during their incarceration. Yet their debt, such as car payments, mortgage obligations, and child support, continues to accrue, increasing their debt-to-income ratio. Indeed, some states may seek reimbursement for the cost of the inmate's incarceration adding to his debt burden.\textsuperscript{170}

The impact of that debt on the inmate and his or her family can be devastating. Closing the bankruptcy court to a prisoner may result in the loss of a home or car, and reliance on public social services to care for his or her dependants. The incarceration of a loved one already places inordinate strain on a relationship, causing many couples divorce or otherwise separate.\textsuperscript{171} Marital disruption is itself a significant cause of financial collapse in a family.\textsuperscript{172} The innocent spouse and children can end up the real losers when an inmate is denied the opportunity to obtain a discharge of his or her debts. The societal costs of these indirect losses can far exceed the direct loss to creditors of the incarcerated would-be debtor.

No one is suggesting that inmates do not deserve the punishment that they have been sentenced, or that bankruptcy courts should become a haven for prisoners with too much time on their hands and too little activity to keep them occupied. But inmates suffer the same financial pressures that others do, and have at least the same need for discharge from their debts. Judges should not allow the BAPCPA to be interpreted in a manner that would have the unintended, and completely unwarranted, consequence of imposing on the penal population a punishment never contemplated by the criminal laws of this country, that is, denying them, and their families, relief for their economic distress. Bankruptcy judges may, through interpretation of the new credit counseling requirements, and through the exercise of their discretion in ruling on motions to dismiss based on ineligibility of the debtor, avoid turning the twenty-first century prison into the financial cesspools of the debtors' prisons of Dickens's time. Bankruptcy courts should be open to all.

\textsuperscript{170} See, e.g., ARIZ. REV. STAT. ANN. § 31-238 (2007); 730 ILL. COMP. STAT. 5/3-7-6 (2007); KY. REV. STAT. ANN. § 532.352 (2007); MICH. COMP. LAWS ANN. § 800.401-406 (West 2007); MO. ANN. STAT. § 217.825-841 (West 2007).
\textsuperscript{172} See SULLIVAN ET AL., supra note 150, at 181.