

**IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF ARKANSAS
LITTLE ROCK DIVISION**

**IN RE: EMANUEL PAUL HUGHES,
 Debtor**

**4:05-bk-40392 E
Chapter 7**

**ORDER DENYING MOTION FOR
EXTENSION OF TIME TO FILE CERTIFICATE**

Now before the Court is the *Motion for Extension of Time to File Certificate* (“**Motion for Extension**”) filed on January 9, 2006. On December 27, 2005, the Debtor filed a petition under Chapter 7 of the Bankruptcy Code. On the bankruptcy petition (Official Form 1), under the section titled “**Certification Concerning Debt Counseling by Individual/Joint Debtor,**” Debtor checked the box labeled “**I/we request a waiver of the requirement to obtain budget and credit counseling prior to filing based on exigent circumstances. (Must attach certification describing.)**” Debtor did not attach the certification at the time of filing or since. An “Order Regarding Deficiencies” dated January 4, 2006, was sent to Debtor stating that the Certificate of Credit Counseling was due within 15 days from the date the petition was filed. Debtor’s Motion for Extension requests an additional fifteen days to complete the credit counseling, alleging only that the Debtor has not had ample opportunity to complete the necessary counseling.

The requirement to obtain credit counseling prior to filing bankruptcy (the “**Credit Counseling Requirement**”) and to file a “**Certificate of Credit Counseling**” upon filing bankruptcy is a new requirement under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“**BAPCPA**”). *See* 11 U.S.C. § 109(h)(1) (2005). There are basically two exceptions to the Credit Counseling Requirement outlined in § 109(h)(2) and (4),¹ and one extension of time

¹Section 109(h)(2) provides that the Credit Counseling Requirement does not apply where the U.S. Trustee has made a determination that adequate counseling services are not available. The Bankruptcy Petition form (Official Form 1) does not provide a box to check if

for filing the Certificate of Credit Counseling under § 109(h)(3). Under § 109(h)(3), the Debtor may obtain a waiver or exemption² of the Credit Counseling Requirement for 30 days by filing a **certification** (as opposed to the “Certificate of Credit Counseling”) that: (1) exigent circumstances exist such that the Credit Counseling Requirement should be waived; and (2) the Debtor unsuccessfully attempted to procure credit counseling services within the five days prior to filing bankruptcy. 11 U.S.C. § 109(h)(3)(A)(i)-(ii). Additionally, such certification must be satisfactory to the Court. 11 U.S.C. § 109(h)(3)(A)(iii). Accordingly, if the Debtor seeks a waiver or exemption under this subsection, the Debtor should check the box provided on the bankruptcy petition providing for a waiver due to exigent circumstances, and proceed to docket the required Certification Regarding Exigent Circumstances (a separate document prepared by the Debtor’s counsel which meets the requirements set forth in § 109(h)(3)(A)) using the ECF event labeled “**Exigent Circumstances re: Credit Counseling**” (under miscellaneous events). **This procedure eliminates any need to file a motion requesting additional time to obtain credit counseling.**³ Additionally, where neither the required Certificate of Credit Counseling nor a Certification of Exigent

this circumstance is applicable. However, the U.S. Trustee has not made such a determination with respect to the Eastern and Western Districts of Arkansas, so it should not be an applicable exception to cases filed in this Court, at least at this time.

Section 109(h)(4) provides an exception for debtors who are incapacitated, disabled, or on active military duty in a combat zone. The Bankruptcy petition form does not provide a box to check if this circumstance is applicable, although the Court must determine whether the exception applies, after notice and hearing.

²Section 109(h)(3) actually provides an extension of time to submit the required Certificate of Credit Counseling, but the drafters of BAPCPA refer to this extension of time as both a waiver and an exemption.

³However, if the Debtor needs time in addition to the 30 days provided under § 109(h)(3)(B), the Debtor may file a motion seeking an additional 15 days to obtain credit counseling pursuant to § 109(h)(3)(B).

Circumstances under §109(h)(3) is filed with the bankruptcy petition, the Debtor's counsel will receive an Order Regarding Deficiency which grants a certain number of days to submit the missing certificate.

It is hereby

ORDERED that the Debtor's Motion for Extension is **DENIED**; the Debtor has until January 24, 2005, to file the required Certificate of Credit Counseling **or** a Certification of Exigent Circumstances, or the case will be dismissed without further notice or hearing.

IT IS SO ORDERED.



HONORABLE AUDREY R. EVANS
UNITED STATES BANKRUPTCY JUDGE

DATE: January 18, 2005

cc: Phil Shoffner, attorney for Debtor
M. Randy Rice, Trustee
U.S. Trustee