

**BAPCPA CREATES A NEW  
CATEGORY OF BANKRUPTCY  
SERVICE PROVIDERS CALLED**

**“DEBT RELIEF AGENCIES”**

## Section 101(12A)

Defines a **debt relief agency** as:

- Any person who provides any **bankruptcy assistance** to an **assisted person** in return for the payment of money or other valuable consideration, or who is a bankruptcy petition preparer under section 110.

Section 101(3) defines an  
**assisted person** as:

Any person whose debts consist primarily of consumer debts and the value of whose nonexempt property is less than \$150,000.

Section 101(4A) defines  
**bankruptcy assistance** as:

Any goods or services sold or otherwise provided to an assisted person with the express or implied purpose of providing information, advice, counsel, document preparation, or filing, or attendance at a creditors' meeting.

# Who IS a **Debt Relief Agency**?

- Attorneys for consumer debtors
- Bankruptcy Petition Preparers

## Section 101(12A) excludes from the definition of **debt relief agency**:

- Agents or Employees of BPP or pf persons who provide bankruptcy assistance;
- A nonprofit organization that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986;
- A creditor of such assisted person (to the extent helping to restructure debt);
- Depository institutions, Federal credit unions or State credit unions, or their affiliates or subsidiaries;
- An author, publisher, distributor, or seller of works subject to copyright protection under title 17, when acting in such capacity.

# Newly-created Sections Affecting Debt Relief Agencies

- **Section 526.** Restrictions on debt relief agencies
- **Section 527.** Disclosures
- **Section 528.** Requirements for debt relief agencies

# **A debt relief agency shall not:**

- Fail to perform a service it said it would provide. §526(a)(1)
- Make an untrue or misleading statement. §526(a)(2)
- Misrepresent the services that it will provide or the benefits and risks that may result if such person becomes a debtor. §526(a)(3)
- **Advise an assisted person to incur more debt in contemplation of filing or to pay an attorney or bankruptcy petition preparer fee or charge for services performed as part of preparing for or representing a debtor in a case under this title . §526(a)(4)**

# Five Documents/Notices that **Debt Relief Agency** must provide to an assisted person

1. Section 342(b)(1) Statement
2. Section 527(a)(2) Statement
3. Section 527(b) Statement
4. Section 527(c) Statement
5. Contract Between Assisted Person and Debt Relief Agency

# Section 342(b)(1) Statement\*

Must include:

- a brief description of chapters 7, 11, 12 and 13
- A brief description of the types of services available from credit counseling agencies
- A statement specifying that a person who knowingly and fraudulently conceals assets or makes a false oath or statement under penalty of perjury in connection with a case under this title shall be subject to fine, imprisonment, or both
- a statement specifying that all information supplied by a debtor in connection with a case under this title is subject to examination by the Attorney General.

\* Either the attorney, BPP, or debtor must file a certificate indicating that the assisted person received this notice. See 11 U.S.C. Section 521(a)(1)(B)(iii).

# Section 527(a)(2) Statement

- Must be provided to the assisted person not later than three days after a debt relief agency offers to provide any bankruptcy assistance.
- Must be a clear and conspicuous notice.
- Must put assisted persons on notice that:
  - Filings must be complete, accurate, and truthful
  - All assets and all liabilities are required to be completely and accurately disclosed
  - Current monthly income and disposable income are to be stated after reasonable inquiry
  - Case may be audited, and failure to provide information may result in dismissal of the case or other sanction, including a criminal sanction

## Section 527(b) Statement

- Provides general information about legal services and rights of an assisted person (e.g. right to a written contract with attorney or BPP)
- Must be a clear and conspicuous statement
- Must be a single document, separate from other documents or notices provided
- Must include the language contained in this subsection verbatim, or in a form that is “substantially similar.”

# Section 527(c) Statement

- Must include information on :
  - how to value assets at replacement value, determine current monthly income, the amounts specified in section 707(b)(2) and, in a chapter 13 case, how to determine disposable income in accordance with section 707(b)(2) and related calculations;
  - how to complete the list of creditors, including how to determine what amount is owed and what address for the creditor should be shown; and
  - how to determine what property is exempt and how to value exempt property at replacement value as defined in section 506.
- This statement is **not necessary** if the debt relief agency provides the necessary information itself after “reasonably diligent inquiry”

# Contract Between Assisted Person and Debt Relief Agency

- Contract must be executed not later than 5 business days after the first date on which such agency provides any bankruptcy assistance, but before filing a bankruptcy petition.
- Must explain clearly and conspicuously—
  - the services such agency will provide to such assisted person; and
  - the fees or charges for such services, and the terms of payment.
- A debt relief agency is required to provide debtors with a copy of the executed written contract.
- See, 11 U.S.C. § 528(a)(1) and § 528(a)(2).

# ADVERTISING BY DEBT RELIEF AGENCIES

- See, Section 528.
- Must clearly and conspicuously disclose that the advertised services or benefits are with respect to bankruptcy relief.
- Must use the following statement, or a substantially similar one, in all advertisements:  
**“We are a debt relief agency. We help people file for bankruptcy relief under the Bankruptcy Code”**

# Advertised Services Regulated Under BAPCPA

- descriptions of bankruptcy assistance in connection with a chapter 13 plan whether or not chapter 13 is specifically mentioned in such advertisement
- statements such as “federally supervised repayment plan” or “Federal debt restructuring help” or other similar statements that could lead a reasonable consumer to believe that debt counseling was being offered when in fact the services were directed to providing bankruptcy assistance with a chapter 13 plan or other form of bankruptcy relief under this title
- an advertisement, directed to the general public, indicating that the debt relief agency provides assistance with respect to credit defaults, mortgage foreclosures, eviction proceedings, excessive debt, debt collection pressure, or inability to pay any consumer debt