IT IS SO ORDERED.

Dated: November 20, 2025

Tyson A. Crist
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

In re:	:	
	:	Case No. 25-31656
Barbara Risden-Curnutte,	:	Chapter 7
	:	Judge Crist
Debtor.	:	
	:	

ORDER CONCERNING CREDIT BRIEFING REQUIREMENT OF 11 U.S.C. § 109(h) (DOC. 8) AND WITHDRAWING ORDER, *SUA SPONTE*, SCHEDULING: (1) SHOW CAUSE HEARING; AND (2) HEARING TO REVIEW ATTORNEY FEES, AND ORDERING OTHER MATTERS (DOC. 13)

On August 15, 2025, Barbara Risden-Curnutte (the "Debtor"), through her counsel, Andrew H. Johnston, filed a voluntary chapter 7 petition for bankruptcy relief. Doc. 1. The Debtor represented in her petition, which was signed under penalty of perjury, that she received a credit briefing from an approved credit counseling agency within 180 days ***before*** filing her bankruptcy petition, and that she received a certificate of completion. Doc. 1 at 5, Part 5, Item 15. The Court then issued an order (Doc. 7) on August 18, 2025, requiring the Certificate of Credit Counseling – Debtor to be filed within 14 days of the petition date. And on August 18, 2025, the Debtor filed a Certificate of Counseling (Doc. 8), which indicates Debtor completed the credit briefing in compliance with 11 U.S.C. § 109(h) on August 15, 2025, but at 4:34 p.m. (EDT), which was 44 minutes ***after*** filing her petition. *See* Vol. Pet. (Doc. 1), entered Aug. 15, 2025, 15:50:56.

On October 2, 2025, the Court entered an order sua sponte (Doc. 13) setting this matter for a show cause hearing as to why this case should not be dismissed for failure to complete the credit briefing required by 11 U.S.C. § 109(h) prior to filing her petition.[1] Debtor, by and through counsel, filed a Report to Court (Doc. 17) (the "Report") on October 28, 2025, and an Affidavit of Debtor (Doc. 18) in support of the Report on November 5, 2025. The Show Cause hearing was held on November 6, 2025.

The Report and Affidavit explained that Debtor is seventy-three years old, is not technologically savvy, and believed that she had completed counseling with Urgent Credit Counseling on July 24, 2025. In reality, Debtor had completed every step except for the final one, which requires a user to speak to a live credit counselor through a chat box that Debtor did not understand how to use. Following the filing of her petition, Debtor logged back into Urgent Credit Counseling to provide her certificate of completion to her attorney for filing and realized that she had not actually completed the final step. Debtor immediately completed the credit counseling and sent the certificate to her attorney for filing. At the hearing, Debtor, through counsel, apologized for the misunderstanding and requested that the case not be dismissed. The United States Trustee was similarly not in favor of dismissal, stating that this was the rare case where the Trustee would decline to ask for dismissal due to technical noncompliance with 11 U.S.C. § 109(h).

Under 11 U.S.C. § 109(h), an individual debtor is required to be someone who has, within 180 days of the petition date and prior to filing, "received from an approved nonprofit budget and credit counseling agency" a certificate of credit counseling. The parties agree that the Debtor in this case had not yet completed her credit counseling at the time of filing due to her confusion about completing the final step. However, 11 U.S.C. § 109(h)(3)(A) & (B) provides a three-part test by which a credit counseling requirement may be temporarily waived when there are exigent circumstances, the debtor requested services but could not complete the services within a seven-day briefing period, and it is satisfactory to the court.

Other courts have previously concluded that under 11 U.S.C. § 707(a) bankruptcy courts have discretion, based on very limited factual circumstances, to decline to dismiss a debtor's

[1] The Court also set the hearing to review the attorney fees of Debtor counsel, Andrew Johnston, pursuant to 11 U.S.C. § 329 and Rule 2017(a), Fed. R. Bankr. P. Doc. 13 at 2. However, that aspect of the hearing was contingent upon the show cause portion of the hearing, and as this case is not being dismissed there is no need to take any action to adjust Mr. Johnston's attorney fees in this case at this time.

bankruptcy case for failing to strictly comply with § 109(h). *See In re Hess*, 347 B.R. 489 (Bankr. D. Vt. 2006) (concerning a case in which both the U.S. Trustee recommended against dismissal when the debtor's failure to obtain credit counseling was due to a misunderstanding with the credit counseling company and was quickly rectified and holding that "under the totality of the circumstances, enforcing the plain language of § 109(h) would be both manifestly unjust and inconsistent with settled law" and the U.S. Trustee had not demonstrated cause for dismissal under § 707(a)), and *In re Kernan*, 358 B.R. 537 (Bankr. D. Conn. 2007) (finding that the Debtor was the "innocent victim of miscommunication" and declining to punish the debtor with dismissal). The *Kernan* case is especially instructive to resolution of the matter before this Court. Therein, the Bankruptcy Court observed that, "[h]ad Congress intended the recent amendments [of BAPCPA[2]] to provide a nondiscretionary dismissal of a case in the context presented here, it would have included provisions to achieve that result." *Id.* at 539. That Court further observed that "§ 707, which relates to dismissal of a case, employs the permissive 'may.' Moreover, the code section defining eligibility for bankruptcy relief, § 109(h), does not include a provision for mandatory dismissal." *Id.* In short, because § 707(a) "does not specifically provide for the dismissal of a case for the failure of a debtor to receive the requisite credit counseling," and employs the permissive "may," Congress granted bankruptcy courts discretion to deal with special circumstances such as this. *Id.*; *Hess*, 347 B.R. at 498. This is confirmed by § 109(h)(3)(A), which contains a three-factor requirement for certifications by debtors who seek an exemption, or an extension.[3]

The unique facts of this case, in which the Debtor earnestly attempted to comply with the requirements of the statute, substantially completed and credibly believed she had fully completed the credit counseling, and immediately took action less than an hour after learning the counseling was actually incomplete, justify a temporary (in this case, 44 minute) waiver under the three-part test that permits a temporary waiver of up to 30 days (or 15 additional days for cause). 11 U.S.C. § 109(h)(3)(A) & (B). The Court finds that the Affidavit of Debtor constitutes a certification and supports that there were "exigent circumstances" meriting a waiver under these very unusual and

[2] The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA").

[3] "At least one court has observed that designating this as an exemption rather than an extension in § 109(h)(3) is 'misleading diction[.]'" *In re Hess*, 347 B.R. at 494 n.4 (quoting *In re Elmendorf*, 345 B.R. 486, 494-96 (Bankr. S.D.N.Y. 2006)).

unique circumstances, the Debtor could not complete the briefing within the 7-day pre-petition period, and the certification is satisfactory to the Court. 11 U.S.C. § 109(h)(3)(A).[4]

The Court further finds that Debtor's bankruptcy was filed in good faith and with the belief that all requirements had been met; the Debtor took reasonable steps to complete timely credit counseling and immediately completed it upon realizing her technological mistake; the U.S. Trustee is not in favor of dismissal, in this very limited instance; and no creditor or party-in-interest appears prejudiced by the continuation of this bankruptcy case. Therefore, based on the specific and unique circumstances in this case, the Court declines to dismiss the case for cause under 11 U.S.C. § 707(a) and hereby withdraws its sua sponte order (Doc. 13) entered on October 2, 2025.

IT IS SO ORDERED.

Copies to:

All Creditors and Parties in Interest, Plus

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[4] The narrow circumstances involving a permanent waiver of the credit briefing requirement do not apply to this case. *See* 11 U.S.C. § 109(h)(4).