

**American Bankruptcy Institute  
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Information and Other Ethical Quandaries of the  
2005 Bankruptcy Reform Act**

Debt Relief Agencies, Assisted Persons, Disclosure, and  
Advertisements under Sections 526, 527, and 528 of the  
2005 Bankruptcy Reform Act: An Overview of Selected  
Ethical Issues©

by

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## I. Introduction

Sections 526, 527, and 528 are new with the passage of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("the 2005 Act").<sup>1</sup> The stated intent of Congress in enacting Section 526 and related provisions was to strengthen "professionalism standards for attorneys and others who assist consumer debtors with their bankruptcy cases."<sup>2</sup> Section 526 places certain restrictions on the activities of debt relief agencies.<sup>3</sup> Section 527 imposes several disclosure duties on debt relief agencies that provide bankruptcy assistance to assisted persons. Section 528 mandates certain duties with respect to retainer agreements and also requires debt relief agencies to include certain disclosures and other statements in advertisements.

The purpose of these materials is to describe and explain some of the ethical implications of these provisions for attorneys and others whose activities and practices will likely be impacted by the provisions. These materials are not intended to cover all of the issues or to analyze all possibly relevant issues. The purpose is to provide an overview of selected issues and a general analysis thereof.<sup>4</sup>

## II. "Prospective Assisted Person"

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<sup>1</sup> Pub. L. No. 109-8, § 227(a)(2005).

<sup>2</sup> H.R. Rep. No. 109-31, 109<sup>th</sup> Cong., 1<sup>st</sup> Sess. 17 (2005), reprinted in Appt. Pt. 10(b).

<sup>3</sup> Sections 526, 527, and 528 make reference to three terms that are new with the 2005 Reform Act and that are defined in Section 101 of the Code: "assisted person," "bankruptcy assistance," and "debt relief agency." Each of these definitions contain imprecise language that will likely create problems in application. A complete discussion of those issues is beyond the scope of these materials.

<sup>4</sup> Professor Wiggins is a contributing author to **Collier on Bankruptcy**. She wrote the chapters of **Collier** that analyze the new sections of the Code dealing with debt relief agencies. Some of the ideas expressed in these materials also appear in those chapters. Those chapters contain an extensive analysis of all three sections. See Restrictions on Debt Relief Agencies, Collier on Bankruptcy (15<sup>th</sup> ed. Lexis-Nexis Publishing 2005); Disclosures, Collier on Bankruptcy (15<sup>th</sup> ed. Lexis-Nexis Publishing 2005); Requirements for Debt Relief Agencies, Collier on Bankruptcy (15<sup>th</sup> ed. Lexis-Nexis Publishing 2005).

## **A. Section 526(a)-General Provisions**

As stated above, Section 526(a) places certain restrictions on the activities of debt relief agencies.<sup>5</sup> Those restrictions include the following:

- \* A debt relief agency shall not fail to perform any service that it informed an assisted person or prospective assisted person that it would provide in connection with a bankruptcy case or proceeding.

- \* A debt relief agency shall not make any statement or counsel or advise any assisted person or prospective assisted person to make any statement in a filed document in a bankruptcy case or proceeding that is untrue and misleading, or should have been known to be so upon the exercise of reasonable care by the agency.

- \* Section 526(a)(3) makes it unlawful for a debt relief agency to misrepresent to any assisted person or prospective assisted person the services the agency will provide or the benefits and risks of becoming a debtor under the Code. This section covers misrepresentations that are direct, indirect, affirmative, or by material omission.

- \* Section 526(a)(4) prohibits debt relief agencies from advising an assisted person or prospective assisted person to incur more debt in contemplation of filing a bankruptcy case or to pay an attorney or bankruptcy petition preparer for services performed as a part of preparing for a case under the Code.

## **B. Problems of Definition: Prospective Assisted Person**

One problem with Section 526(a) from an ethical perspective is the lack of a clear definition for the term "prospective assisted person." The term "assisted person" is defined in Section 101. (See Part III of these materials, supra.) However, the term "prospective assisted person" is not defined elsewhere in Section 526 or elsewhere in the Code. It will presumably be left up to the courts to provide interpretive guidance.

The lack of a precise definition for "prospective assisted person" is important because the remedial provisions of Section 526 appear to apply only to assisted persons and not to prospective

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<sup>5</sup> 11 U.S.C. § 526(a).

assisted persons.<sup>6</sup> It is thus important to be able to determine when an entity or individual who was a prospective assisted person becomes an assisted person entitled to the remedial provisions of the statute. Analogies to other areas of law, such as the ABA Model Rules of Professional Conduct, may be helpful but are certainly not definitive.

For example, the ABA Model Rules of Professional Conduct contain a similar term, "prospective client."<sup>7</sup> Under Rule 1.18(a) of the Model Rules, a prospective client is described as, "a person who discusses with a lawyer the possibility of forming a lawyer-client relationship with respect to a matter."<sup>8</sup> The Comments to Rule 1.18 state:

[1]Prospective clients, like clients, may disclose information to a lawyer, place documents or other property in the lawyer's custody, or rely on the lawyer's advice. A lawyer's discussions with a prospective client usually are limited in time and depth and leave both the prospective client and the lawyer free (and sometimes required) to proceed no further. Hence, prospective clients should receive some but not all of the protection afforded clients.<sup>9</sup>

[2]Not all persons who communicate information to a lawyer are entitled to protection under this Rule. A person who communicates information unilaterally to a lawyer, without any reasonable expectation that the lawyer is willing to discuss the possibility of forming a client-lawyer relationship, is not a "prospective client" within the meaning of paragraph (a).<sup>10</sup>

### **C. Toward a Workable Definition**

Analogizing from the Model Rules to Sections 526 and 101, a workable definition of "prospective assisted person" might be as follows: "A person who discusses with the lawyer the possibility of becoming an assisted person with respect to a bankruptcy case or

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<sup>6</sup> See Section 526(c)(1).

<sup>7</sup> Rule 1.18(a) of the ABA Model Rules of Professional Conduct (2004).

<sup>8</sup> Rule 1.18(a).

<sup>9</sup> Comment [1] to Rule 1.18(a).

<sup>10</sup> Comment [2] to Rule 1.18(a).

proceeding is a prospective assisted person.” Moreover, the observations in the commentary to Rule 1.18(a) also seem applicable to the bankruptcy context and might serve to place some reasonable constraints on those entitled to remedial protection under the Code. Prospective assisted persons might also engage a lawyer for purposes of disclosure or reliance. The lawyer’s discussions with the prospective assisted person will tend to be limited in duration and detail. Finally, unilateral communication without a reasonable expectation of a willingness to form a relationship should not be enough to make an individual or an entity an assisted person within the meaning of Section 101.

### **III. Assisted Person**

#### **A. The Definition and Potential Problems in Application**

As noted earlier, the 2005 Act does provide a definition of “assisted person.” Section 101 defines “assisted person” as “any person whose debts consist primarily of consumer debts and the value of whose non-exempt property is less than \$150,000.”<sup>11</sup> This term is new with the passage of the 2005 Act.

Although the expressed intent of Congress in enacting Section 526 and related provisions was to improve the conduct of professionals and others who assist consumer debtors with their bankruptcy cases, the definition of assisted persons might create problems in application. For example, the definition of “assisted persons” is so broad that it could be applied to most consumer debtors even though most consumer debtors do not actually use the services of traditional debt relief agencies. Additionally, the definition does not specify that the assisted person be a debtor *in bankruptcy* even though Section 526 and related provisions were apparently drafted to protect consumer debtors in bankruptcy. Certainly, arguments can (and will) be advanced in support of a narrow application of this and other overly-broad terms in these new provisions. However, until this and other definitions are clarified either through subsequent legislation or judicial interpretation, ethical guidelines likely suggest that attorneys err on the side of assuming that they are covered by the statute as opposed to assuming the reverse.

#### **B. Section 526 and Regulation of Attorneys**

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<sup>11</sup> 11 U.S.C. § 101(3).

Section 526, 527, and 528 are quite lengthy and this discussion is by no means intended to be an exhaustive account of their terms and likely implications. The purpose of this section of these materials is to highlight the provisions and then to discuss selected problems that might arise as these sections interact with ethical mandates for attorneys.

In addition to the restrictions contained in Section 526(a), Section 526 specifies that any waiver by an assisted person of any right or protection under Section 526 shall not be enforceable against the debtor by any court or by any other person, but that such a waiver may be enforced against a debt relief agency.<sup>12</sup> Section 526 also voids a contract for bankruptcy assistance between an assisted person and a debt relief agency if the contract is not in compliance with the material requirements of all three sections.<sup>13</sup> Section 526 also imposes monetary liability on debt relief agencies under specified circumstances and authorizes equitable relief by state officials or agencies in certain instances.<sup>14</sup>

Section 526 provides that it and related sections do not annul, alter, affect or exempt any person from complying with the law of any state, except to the extent that such law is inconsistent with these sections, and then only to the extent of the inconsistency.<sup>15</sup> Section 526 also states that it and related sections shall not be deemed to limit or curtail the authority or ability of a state to determine and enforce qualifications for the practice of law in that state. The section also makes the same legal claim for federal courts in their determination and enforcement of such qualifications.<sup>16</sup>

Although Section 526 is intended to reduce conflicts between its provisions and state regulations regarding the practice of law, such conflicts will no doubt arise and will need to be resolved. For example, state regulations on lawyer advertising may be affected and even preempted by sections of Section 528 that mandate the use of certain statements and descriptions in specified

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<sup>12</sup> 11 U.S.C. § 526 (b).

<sup>13</sup> 11 U.S.C. § 526(c).

<sup>14</sup> Id.

<sup>15</sup> 11 U.S.C. §526 (d).

<sup>16</sup> Id.

advertisements of bankruptcy assistance services directed to the general public.

### **C. Section 527 and the Duty to Provide Required Information**

Section 527 imposes several duties on debt relief agencies that provide bankruptcy assistance to assisted persons. First, the section requires a debt relief agency to provide certain written notices.<sup>17</sup> Second, the section requires a debt relief agency to provide a statement that contains certain information about bankruptcy assistance services from an attorney or bankruptcy petition preparer.<sup>18</sup> The section also obligates a debt relief agency to supply certain information on how to provide all of the information that the assisted person is required to provide pursuant to Section 521 of the Code.<sup>19</sup>

Section 527(c) obligates a debt relief agency to supply, to the extent permitted by non-bankruptcy law, reasonably sufficient information to an assisted person on how to provide all of the information the assisted person is required to provide pursuant to Section 521 of the Code. The agency is excused from this requirement to the extent that the agency provides the required information itself after reasonably diligent inquiry of the assisted person or others so as to obtain the information.

Section 527(c) is an odd provision. Under the terms of the section, a debt relief agency is excused from compliance if it provides the information itself. This means that attorneys and others covered under the definition of debt relief agency would be exempt because they routinely provide the relevant information themselves after inquiry for the purpose of completing required documents in a bankruptcy case.

Section 527(c) also contains other frustrating ambiguities that make the attorney's ethical and professional obligations unclear. First, it is unclear what the required time for notice is under Section 527(a)(1) because that section does not itself contain a time requirement. It merely refers to a time listed in Section 342(b)(1). As stated elsewhere in these materials, it is not at all clear, even after the enactment of these provisions, that

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<sup>17</sup> 11 U.S.C. § 527(a).

<sup>18</sup> 11 U.S.C. § 527(b).

<sup>19</sup> 11 U.S.C. § 527©.



attorneys have an independent obligation to provide notice under Section 342(b)(1), at least in individual consumer bankruptcy cases.<sup>20</sup> Additionally, several terms in Section 527(c) are extremely vague.<sup>21</sup> This will invite litigation and necessitate judicial clarification.

#### **D. Section 528, Contracts, and Disclosure in Advertising**

Section 528 mandates several duties on debt relief agencies with respect to retainer agreements between debt relief agencies and assisted persons.<sup>22</sup> The section also obligates debt relief agencies to include certain disclosures and statements in advertisements of bankruptcy assistance services directed to the general public.<sup>23</sup> The section provides that the debt relief agency must execute a written contract with the assisted person within a time specified and that the contract must explain, clearly and conspicuously, certain services, fees, charges, and payment terms.<sup>24</sup> Finally, the section requires the debt relief agency to give the assisted person a copy of the fully executed and completed contract.<sup>25</sup>

With respect to advertising, Section 528 requires the debt relief agency to disclose, in any advertising of bankruptcy assistance or services, the services it will provide under the Code. The section also mandates the use of specified language in advertisements.<sup>26</sup>

Given the broad definitions of several terms in these provisions, Section 528 would seem to require the execution of a written contract in a wide variety of situations. Yet, it is unclear what should be done, for example, if a debtor is unwilling or unable to sign a written contract within the required time frame

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<sup>20</sup> See Part V. B., supra.

<sup>21</sup> For example, see “reasonably sufficient information,” “reasonably diligent inquiry,” “reasonable accurately.”

<sup>22</sup> 11 U.S.C. § 528.

<sup>23</sup> 11 U.S.C. § 528(a).

<sup>24</sup> Id.

<sup>25</sup> Id.

<sup>26</sup> 11 U.S.C. § 528(a)(3), (a)(4), and (b).

or at all. Presumably, it would be sufficient for the debt relief agency or attorney to discharge its professional duty by signing and tendering the contract to the assisted person. However, an argument could be advanced that the attorney should, consistent with existing ethical mandates, undertake additional efforts to ensure compliance with the statute.

#### **IV. Selected "Safe Harbor" Provisions**

Section 526 and related provisions contain provisions that could provide safe harbors from strict compliance (or possibly from any compliance) with them.

##### **A. Section 526(d)-Sections 526, 527, 528 and Relation to Other Laws**

Section 526(d) indicates that no provision of section 526, 527, or 528 shall annul, alter, affect or exempt any person subject to those sections from complying with the law of any state, except to the extent that such law is inconsistent with those sections, and then only to the extent of the inconsistency. This section could arguably create a safe harbor if non-compliance with these sections would be required by state law. However, extreme caution is warranted. This section invites judicial interpretation over several questions. First, what constitutes an inconsistent law under section 526(d)? Second, what degree of inconsistency is required to be shown? Third, if such an inconsistency exists, then to what extent does the inconsistency create exemptions?

##### **B. Sections 527 and 528 and the meaning of "substantially similar"**

Where Sections 527 and 528 require debt relief agencies to provide disclosure or mandated information in advertisements, these sections frequently contain language indicating that either the language contained in the statute or language *substantially similar* thereto will suffice. This could create a safe harbor for attorneys who do not comply with the strict letter of the sections, but whose disclosure or information is consistent with the spirit of these sections.

## **V. Interviews**

Several sections of Section 526 and related provisions impose significant additional, bankruptcy-rooted obligations on attorneys who fit the definitions discussed earlier and in situations covered by those definitions. At the stage of interviewing prospective assisted persons or assisted persons, attorneys should be sensitive to these obligations.

### **A. Section 526(a)**

As indicated earlier, Section 526(a) places certain restrictions on the activities of debt relief agencies.<sup>27</sup> Among the issues that might arise at the interviewing stage include, but are not limited to, the following: Section 526(a) makes it unlawful for debt relief agencies to counsel prospective assisted persons or assisted persons to make untrue and misleading statements. Section 526(a) also prohibits debt relief agencies from misrepresenting services or the risks and benefits of bankruptcy. Of course, most of these actions are already prohibited under contract law, attorney conduct regulations, and other statutory law. Additionally, it is not clear that the remedial provisions of Section 526 contain remedies that would not otherwise be available under existing statutory and common law. Nonetheless, attorneys should educate themselves about these new provisions and conform their practices to them.

### **B. Sections 527(a), (b), and ©**

As indicated earlier, Section 527 requires the disclosure to assisted persons by debt relief agencies of certain information and the conveyance of certain information.<sup>28</sup> For example, Section 527(a)(1) requires a debt relief agency that provides bankruptcy assistance to assisted persons to give the written notice required under Section 342(b)(1) of the Code. The written notice under Section 342(b)(1) must also detail the types of services available from consumer credit counseling agencies.

Section 527(a)(1) contains a troubling ambiguity as it relates to the professional obligations of attorneys in individual consumer bankruptcy cases. The section requires that the debt relief agency

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<sup>27</sup> See Part II, infra.

<sup>28</sup> See Part III.C., infra.

give the written notice required under Section 342(b)(1). However, that section requires the clerk of the bankruptcy court to give such notice in cases involving individual consumer debtors. Therefore, it remains unclear whether the attorney handling a consumer bankruptcy case has an independent duty to provide the notices in cases involving individual consumer debtors.

## **VI. Follow-up**

Section 527(d) requires a debt relief agency to maintain a copy of the notices required pursuant to Section 527(a) for two years after the date on which the notice is given to the assisted person.<sup>29</sup>

This section is ambiguous because Section 527(a) refers to two different notice requirements and Section 527(d) fails to make clear which notice is relevant for purposes of triggering the application of the two-year time period in Section 527(d). Section 527(a)(1) does not itself contain a time period, but it instead refers to the written notice required under Section 342(b)(1). As indicated elsewhere in these materials, Section 527(a)(1) and Section 342(b)(1) raise several difficult issues with respect to coverage and interpretation. Section 527(a)(2) provides that to the extent covered in the Section 527(a)(1) notice, the debt relief agency must provide written notice of certain matters not later than three days after the first date on which a debt relief agency first offers to provide bankruptcy services to an assisted person. Since Section 527(a) refers to two different notice mandates, it is unclear which notice starts the running of the two-year time period in Section 527(d). Although an argument could be advanced that the deadline in Section 527(a)(2) is better because it is relatively easier to calculate, a definitive ruling or legislative clarification on the matter would go a long way toward clarifying the extent of an attorney's professional and ethical obligations under Section 527(d).

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<sup>29</sup> 11 U.S.C. § 527(d).

## VII. Consequences

What are the likely consequences of failing to comply with some of the new obligations imposed by Section 526 and related provisions?

Section 526 imposes monetary liability on debt relief agencies under specified circumstances. In addition to other state law remedies, the section authorizes certain state officials to bring enforcement actions to enjoin the violation and recover actual damages, costs, and reasonable attorney's fees. The section also provides that intentional violations can result in equitable relief or civil penalties. As earlier indicated, it is not clear that the remedial provisions of these sections add anything terribly new because existing statutory provisions, rules governing attorney conduct, and common law prohibitions against fraud already provide remedies for the kind of conduct the sections seek to regulate. Nonetheless, attorneys and other professionals in bankruptcy cases ignore these new sections at their peril.

## VIII. Selected Statutes

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### S.256

#### **Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Reported in House)** **SEC. 227. RESTRICTIONS ON DEBT RELIEF AGENCIES.**

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(a) ENFORCEMENT- Subchapter II of chapter 5 of title 11, United States Code, is amended by adding at the end the following:

**`Sec. 526. Restrictions on debt relief agencies**

`(a) A debt relief agency shall not--

`(1) fail to perform any service that such agency informed an assisted person or prospective assisted person it would provide in connection with a case or proceeding under this title;

`(2) make any statement, or counsel or advise any assisted person or prospective assisted person to make a statement in a document filed in a case or proceeding under this title, that is untrue and misleading, or that upon the exercise of reasonable care, should have been known by such agency to be untrue or misleading;

`(3) misrepresent to any assisted person or prospective assisted person, directly or indirectly, affirmatively or by material omission, with respect to--

`(A) the services that such agency will provide to such person; or

`(B) the benefits and risks that may result if such person becomes a debtor in a case under this title; or

`(4) advise an assisted person or prospective assisted person to incur more debt in contemplation of such person filing a case under this title 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.

`(b) Any waiver by any assisted person of any protection or right provided under this section shall not be enforceable against the debtor by any Federal or State court or any other person, but may be enforced against a debt relief agency.

`(c)(1) Any contract for bankruptcy assistance between a debt relief agency and an assisted person that does not comply with the material requirements of this section, section 527, or section 528 shall be void and may not be enforced by any Federal or State court or by any other person, other than such assisted person.

`(2) Any debt relief agency shall be liable to an assisted person in the amount of any fees or charges in connection with providing bankruptcy assistance to such person that such debt relief agency has received, for actual damages, and for reasonable attorneys' fees and costs if such agency is found, after notice and a hearing, to have--

`(A) intentionally or negligently failed to comply with any provision of this section, section 527, or section 528 with respect to a case or proceeding under this title for such assisted person;

`(B) provided bankruptcy assistance to an assisted person in a case or proceeding under this title that is dismissed or converted to a case under another chapter of this title because of such agency's intentional or negligent failure to file any required document including those specified in section 521; or

`© intentionally or negligently disregarded the material requirements of this title or the Federal Rules of Bankruptcy Procedure applicable to such agency.

`(3) In addition to such other remedies as are provided under State law, whenever the chief law enforcement officer of a State, or an official or agency designated by a State, has reason to believe that any person has violated or is violating this section, the State--

`(A) may bring an action to enjoin such violation;

`(B) may bring an action on behalf of its residents to recover the actual damages of assisted persons arising from such violation, including any liability under paragraph (2); and

`© in the case of any successful action under subparagraph (A) or (B), shall be awarded the costs of the action and reasonable attorneys' fees as determined by the court.

`(4) The district courts of the United States for districts located in the State shall have concurrent jurisdiction of any action under subparagraph (A) or (B) of paragraph (3).

`(5) Notwithstanding any other provision of Federal law and in addition to any other remedy provided under Federal or State law, if the court, on its own motion or on the motion of the United States trustee or the debtor, finds that a person intentionally violated this section, or engaged in a clear and consistent pattern or practice of violating this section, the court may--

`(A) enjoin the violation of such section; or

`(B) impose an appropriate civil penalty against such person.

`(d) No provision of this section, section 527, or section 528 shall--

`(1) annul, alter, affect, or exempt any person subject to such sections from complying with any law of any State except to the extent that such law is inconsistent with those sections, and then only to the extent of the inconsistency; or

`(2) be deemed to limit or curtail the authority or ability--

`(A) of a State or subdivision or instrumentality thereof, to determine and enforce qualifications

for the practice of law under the laws of that State; or

`(B) of a Federal court to determine and enforce the qualifications for the practice of law before that court.'

(b) CONFORMING AMENDMENT- The table of sections for chapter 5 of title 11, United States Code, is amended by inserting after the item relating to section 525, the following:

`526. Restrictions on debt relief agencies.'

## **SEC. 228. DISCLOSURES.**

(a) DISCLOSURES- Subchapter II of chapter 5 of title 11, United States Code, as amended by section 227, is amended by adding at the end the following:

### **`Sec. 527. Disclosures**

`(a) A debt relief agency providing bankruptcy assistance to an assisted person shall provide--

`(1) the written notice required under section 342(b)(1); and

`(2) to the extent not covered in the written notice described in paragraph (1), and not later than 3 business days after the first date on which a debt relief agency first offers to provide any bankruptcy assistance services to an assisted person, a clear and conspicuous written notice advising assisted persons that--

`(A) all information that the assisted person is required to provide with a petition and thereafter during a case under this title is required to be complete, accurate, and truthful;

`(B) all assets and all liabilities are required to be completely and accurately disclosed in the documents filed to commence the case, and the replacement value of each asset as defined in section 506 must be stated in those documents where requested after reasonable inquiry to establish such value;

`© current monthly income, the amounts specified in section 707(b)(2), and, in a case under chapter 13 of this title, disposable income (determined in accordance with section 707(b)(2)), are required to be stated after reasonable inquiry; and

`(D) information that an assisted person provides during their case may be audited pursuant to this title, and that failure to provide such information may result in dismissal of the case under this title or other sanction, including a criminal sanction.

`(b) A debt relief agency providing bankruptcy assistance to an assisted person shall provide each assisted person at the same time as the notices required under subsection (a)(1) the following statement, to the extent applicable, or one substantially similar. The statement shall be clear and conspicuous and shall be in a single document separate from other documents or notices provided to the assisted person:

**`IMPORTANT INFORMATION ABOUT BANKRUPTCY ASSISTANCE SERVICES FROM AN ATTORNEY OR BANKRUPTCY PETITION PREPARER.**

**`If you decide to seek bankruptcy relief, you can represent yourself, you can hire an attorney to represent you, or you can get help in some localities from a bankruptcy petition preparer who is not an attorney. THE LAW REQUIRES AN ATTORNEY OR BANKRUPTCY PETITION PREPARER TO GIVE YOU A WRITTEN CONTRACT SPECIFYING WHAT THE ATTORNEY OR BANKRUPTCY PETITION PREPARER WILL DO FOR YOU AND HOW MUCH IT WILL COST. Ask to see the contract before you hire anyone.**

**`The following information helps you understand what must be done in a routine bankruptcy case to help you evaluate how much service you need. Although bankruptcy can be complex, many**

cases are routine.

`Before filing a bankruptcy case, either you or your attorney should analyze your eligibility for different forms of debt relief available under the Bankruptcy Code and which form of relief is most likely to be beneficial for you. Be sure you understand the relief you can obtain and its limitations. To file a bankruptcy case, documents called a Petition, Schedules and Statement of Financial Affairs, as well as in some cases a Statement of Intention need to be prepared correctly and filed with the bankruptcy court. You will have to pay a filing fee to the bankruptcy court. Once your case starts, you will have to attend the required first meeting of creditors where you may be questioned by a court official called a `trustee' and by creditors.

`If you choose to file a chapter 7 case, you may be asked by a creditor to reaffirm a debt. You may want help deciding whether to do so. A creditor is not permitted to coerce you into reaffirming your debts.

`If you choose to file a chapter 13 case in which you repay your creditors what you can afford over 3 to 5 years, you may also want help with preparing your chapter 13 plan and with the confirmation hearing on your plan which will be before a bankruptcy judge.

`If you select another type of relief under the Bankruptcy Code other than chapter 7 or chapter 13, you will want to find out what should be done from someone familiar with that type of relief.

`Your bankruptcy case may also involve litigation. You are generally permitted to represent yourself in litigation in bankruptcy court, but only attorneys, not bankruptcy petition preparers, can give you legal advice.'.

`© Except to the extent the debt relief agency provides the required information itself after reasonably diligent inquiry of the assisted person or others so as to obtain such information reasonably accurately for inclusion on the petition, schedules or statement of financial affairs, a debt relief agency providing bankruptcy assistance to an assisted person, to the extent permitted by nonbankruptcy law, shall provide each assisted person at the time required for the notice required under subsection (a)(1) reasonably sufficient information (which shall be provided in a clear and conspicuous writing) to the assisted person on how to provide all the information the assisted person is required to provide under this title pursuant to section 521, including--

`(1) 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;

`(2) 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

`(3) how to determine what property is exempt and how to value exempt property at replacement value as defined in section 506.

`(d) A debt relief agency shall maintain a copy of the notices required under subsection (a) of this section for 2 years after the date on which the notice is given the assisted person.'.

(b) CONFORMING AMENDMENT- The table of sections for chapter 5 of title 11, United States Code, as amended by section 227, is amended by inserting after the item relating to section 526 the following:

`527. Disclosures.'.

## **SEC. 229. REQUIREMENTS FOR DEBT RELIEF AGENCIES.**

(a) ENFORCEMENT- Subchapter II of chapter 5 of title 11, United States Code, as amended by



sections 227 and 228, is amended by adding at the end the following:

**`Sec. 528. Requirements for debt relief agencies**

`(a) A debt relief agency shall--

`(1) not later than 5 business days after the first date on which such agency provides any bankruptcy assistance services to an assisted person, but prior to such assisted person's petition under this title being filed, execute a written contract with such assisted person that explains clearly and conspicuously--

`(A) the services such agency will provide to such assisted person; and

`(B) the fees or charges for such services, and the terms of payment;

`(2) provide the assisted person with a copy of the fully executed and completed contract;

`(3) clearly and conspicuously disclose in any advertisement of bankruptcy assistance services or of the benefits of bankruptcy directed to the general public (whether in general media, seminars or specific mailings, telephonic or electronic messages, or otherwise) that the services or benefits are with respect to bankruptcy relief under this title; and

`(4) clearly and conspicuously use the following statement in such advertisement: 'We are a debt relief agency. We help people file for bankruptcy relief under the Bankruptcy Code.' or a substantially similar statement.

`(b)(1) An advertisement of bankruptcy assistance services or of the benefits of bankruptcy directed to the general public includes--

`(A) descriptions of bankruptcy assistance in connection with a chapter 13 plan whether or not chapter 13 is specifically mentioned in such advertisement; and

`(B) 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.

`(2) 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 shall--

`(A) disclose clearly and conspicuously in such advertisement that the assistance may involve bankruptcy relief under this title; and

`(B) include the following statement: 'We are a debt relief agency. We help people file for bankruptcy relief under the Bankruptcy Code.' or a substantially similar statement.'

(b) CONFORMING AMENDMENT- The table of sections for chapter 5 of title 11, United States Code, as amended by section 227 and 228, is amended by inserting after the item relating to section 527, the following:

`528. Requirements for debt relief agencies.'