

DEBT SETTLEMENT

Debt Relief: A Growing Necessity for Many Consumers



Submitted by:

The United States Organizations for Bankruptcy Alternatives, Inc.

For the Consideration of the:

Federal Trade Commission
Bureau of Consumer Protection

Report submitted in accordance with the information request of the Federal Trade Commission pertaining to the Debt Settlement Workshop to be held September 25, 2008

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THE GROWING NECESSITY FOR DEBT RELIEF

Consideration of the current financial and economic environment brings immediate attention to “consumer need” for debt relief. The recent problems with adjustable rate mortgage products coupled with rising oil prices (and the subsequent impact on the prices for many consumer goods escalating oil prices result in), has caused an increase in consumer payment delinquencies.

According to an April 3, 2008 press release by American Bankers Associationⁱ media representative Carol Kaplan, consumer credit delinquencies reached their highest level in the fourth quarter of 2007 since 1992. In Ms. Kaplan’s report she states:ⁱⁱ

All eight-loan categories experienced increased delinquencies during the fourth quarter, a rare occurrence. The ABA report defines delinquency as late payments that are 30 days or more overdue.

In a more recent press release by Ms. Kaplan on July 2, 2008, she notes how the trend continues.

Continued stress in the housing market combined with general weakness in the overall economy contributed to an increase in the delinquency rates for home equity lines of credit (HELOCs) and bank cards during the first quarter of 2008, according to the American Bankers Association's Consumer Credit Delinquency Bulletin.

The percentage of HELOC accounts that were more than 30 days past due rose 14 basis points to 1.10 percent during the first quarter (seasonally adjusted). This was the highest recorded rate for this category since 1997, although the HELOC delinquency rate remains lower than all other consumer credit categories. In the same period, bank card delinquencies rose 13 basis points to 4.51 percent. This is slightly above the five year average delinquency rate of 4.40 percent for this category.

Ms. Kaplan cites ABA chief economist James Chessen in her report emphasizing this consumer epidemic.

ABA chief economist James Chessen said that more consumers are having trouble meeting their obligations because of the confluence of anemic personal income growth, falling home equity and stock values, job losses, and rising food and energy prices.

"It was a tough quarter for some people," Chessen said. "Faced with rising food and gas prices and little income growth, fewer resources have been available to manage debt."

Given the information provided by the American Bankers Association regarding consumer delinquencies, it is easy to speculate that millions of consumers are seeking solutions for their ongoing financial challenges. The need for consumers to find a way to lower monthly payments to fit into their budgets continues to grow.

In a study conducted between September 2001 and September 2005 by a United States Organization for Bankruptcy Alternatives (USOBA)ⁱⁱⁱ Advisory Board Member, over 20,000 consumers looking for debt relief were interviewed.^{iv} The Advisory Board Member's software development company analyzed the participants' personal cash flow and cross-referenced that information with data from several debt relief service providers.

The software development company compiled information from debt management and debt settlement firms regarding what qualifications a consumer would need to satisfy in order to afford to subsidize the debt relief options available. With the help and direction of service providers, the interview process was determined to involve collecting the following data:

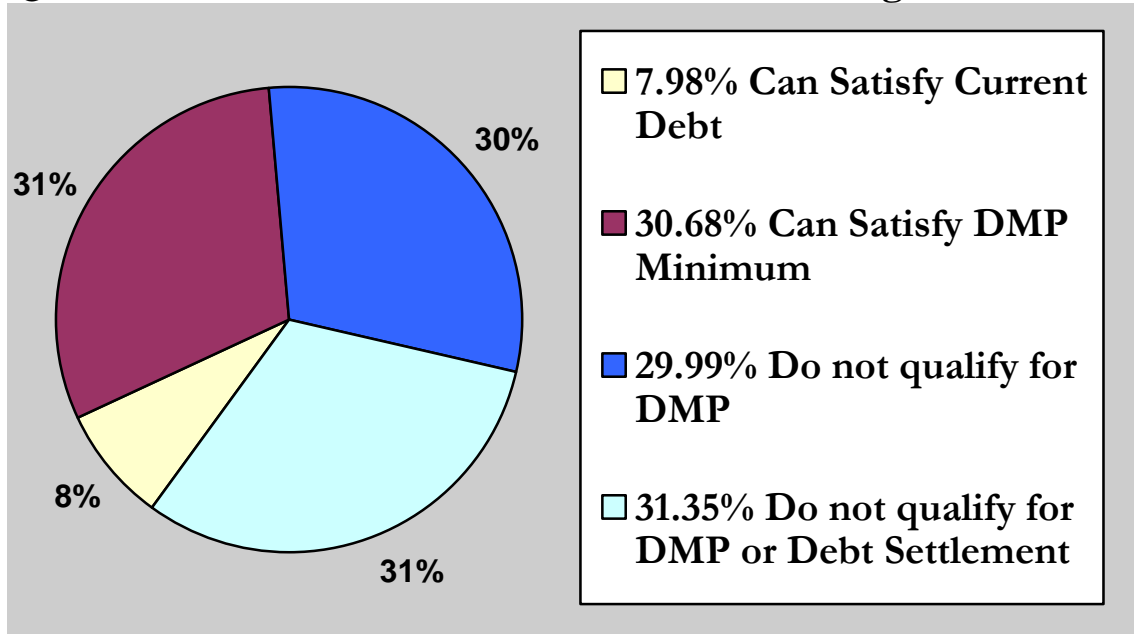
- Monthly net income for the household
- Total monthly living expenses
- Total monthly secured debt payment obligations
- Total monthly unsecured debt payment obligations

The company compiled the data collected from consumers who agreed to participate in the interview, and cross-referenced it with the information collected from service providers regarding minimum payments each consumer would be required to satisfy.

From the consumers who were interviewed, enough data was collected from 18,161 participants to draw the following conclusions:

- 7.98% (1,450) of consumers interviewed appeared to have enough cash flow to satisfy their monthly financial obligations.
- 30.68% (5,571) of consumers were unable to satisfy their monthly obligations, but appeared to have the ability to satisfy the monthly obligations for the payments to a debt management service.
- 29.99% (5,447) of consumers interviewed appeared to lack sufficient cash flow to subsidize the monthly payments required for a debt management service. These individuals were gainfully employed and expressed a sincere desire to avoid filing for bankruptcy protection. It appears that the individuals who lacked sufficient cash flow to satisfy the payment requirements for a debt management service, appear to be able to satisfy the payment requirements for a debt settlement service.
- 31.35% (5,693) of consumers interviewed appeared to lack the ability to satisfy any of the above debt relief options.

Qualification Breakdown for Consumers Seeking Debt Relief



It is USOBA's position that fair and reasonable legislation for the debt settlement industry is necessary to continue to provide relief for a seemingly large sector of debt-distressed consumers. As the Federal Trade Commission (FTC)^v continues to explore how to protect debt-distressed consumers, USOBA believes the aforementioned data must be considered in order to avoid disenfranchising a potentially large group of consumers who fail to satisfy the financial requirements of debt management programs, yet appear to be unable to satisfy the requirements for filing for personal bankruptcy protection.

Additionally, it should be noted that the current financial environment as outlined by the American Bankers Association is seemingly worse than the financial environment during the period of time when the above data was collected.

Debtor's Prison

"To many creditors in Saudi Arabia, jailing debtors is the best solution to pressure them into pay back their debts."^{vi}

Most Americans are of the understanding that debtors prisons do not exist in the United States. Unfortunately, most Americans would be wrong. Depression, agoraphobia, anxiety disorder and many other conditions have been described to those suffering from these conditions as a feeling of being in prison. Consumers experiencing severe financial hardship have also described their situation as "prison-like." The feeling of being imprisoned can exist without physical bars or cells containing the individual.

When a debtor is facing financial hardship and seeking out debt relief, they deserve every option our country can offer. Currently, there are four primary choices a consumer can make: 1) pay

back debt(s) in full with budgeting assistance, 2) participate in a debt management plan service, 3) participate in a debt settlement program, or 4) file for bankruptcy protection.

As shown above, approximately 30% of consumers seeking debt help appeared to lack sufficient cash flow to subsidize the monthly payments required for debt management services. However, they did appear to be able to satisfy the payment requirements for a debt settlement plan and thereby, avoid filing for bankruptcy protection.

Some states have already passed laws that make it effectively impossible for debt settlement companies to provide services to the consumers of those states. Essentially this leaves 30% of their debt-distressed residents seeking debt assistance in a form of debtor's prison. This 30% that are left with few choices: pray for a windfall of money, hope to obtain a substantial promotion or raise, or wait until their situation is so dire that they can qualify to file for bankruptcy protection.

According to the American Bankers Association web site,^{vii} bank card (credit card) delinquencies rose 13 basis points to 4.51 percent, slightly above the five-year average. If unfair and unreasonable legislation is enacted that would effectively ban debt settlement, hundreds of thousands of debt-distressed consumers could be disenfranchised and left with no realistic debt relief option.

In a state such as Texas where, according to the 2000 Census^{viii} had over 8.157 million households, more than 110,000 debt-distressed households could be "imprisoned" by the lack of the debt settlement option. This estimate is based on the following equation:

8.157 million households multiplied by the 4.51% delinquency rate = 376,881 potentially delinquent households

376,881 potentially delinquent households multiplied by 29.99% estimated percent of consumers who can't afford debt management but can afford to avoid bankruptcy = 110,327 disenfranchised debt-distressed families with no alternative to bankruptcy.

Apply this potential trend nationwide with its more than 112 million households, and more than 1.5 million hard-working debt-distressed families could find themselves in a similar prison.

OVERVIEW OF DEBT SETTLEMENT

General Understanding of Debt Settlement

"The late 1980s/early 1990s saw banks ease up on their consumer lending practices. This unfortunately was followed by a recession, which placed many consumers in financial hardship. Not wanting to take big losses on outstanding consumer debt, banks set up debt settlement departments. The ability to collect some part of debt rather than nothing (which is what would happen if the consumer wound up filing bankruptcy) seemed to make a lot of sense back then, and still does."^{ix}

By definition, debt settlement is the process by which a company negotiates with a consumer's unsecured creditors over time for a reduction in principal, which is usually less than the current balance owed. History shows us that an offer from creditors, collection agencies, debt buyers, and attorneys can range from as little as 5% of the outstanding claim to as much as 90% of the outstanding claim.

Based on a consumer's situation, amount of money saved, and the creditor's criteria, a verbal or written offer is submitted to the creditor. If this offer is rejected, a counter offer is usually provided by the creditor. The nature of a negotiation process allows for the process to repeat itself until all parties involved are satisfied with the outcome. Once mutually agreeable terms have been finalized, the creditor will provide a settlement offer letter, which outlines and details the terms of the offer. Settlement offer letters will include, but are not limited to, the current outstanding balance, the consumer's account number with the creditor, a reference number, the agreed upon settlement amount, and the date or dates by which the settlement amount(s) are due. This letter serves as a record of the negotiation process, and as long as the terms of the settlement offer letter are met, serves as a confirmation that the creditor will record a loss on the remaining portion of the debt and will cease collections.

The process of debt settlement is, in theory, simple. A financially troubled consumer resolves an outstanding account, alleviating the consumer of that financial responsibility. The bank liquidates an account, saving the account from total loss. Unfortunately, there are numerous variables that will affect the process of settling a debt with a creditor. These variables include, but are not limited to, the consumer's employment status, monthly income, credit history, history with a particular creditor, and the consumer's state residency.

Consumers may negotiate directly with creditors, for lower interest rates and/or settlement or pay off amounts. Consumers who do this, without proper research or advisement from a knowledgeable party will often fall into the precarious position of not having received a written agreement of compromise that was verbally discussed before making payments to creditors. The consumer may make the verbally agreed upon payment(s) to a creditor and believe that the account has been resolved. In reality, if the consumer does not have the agreement in writing, the creditor can raise the interest rate the following month or can continue to collect on the outstanding balance owed. It is a common occurrence for a representative working for a creditor or collection agency to verbally agree to an arrangement, only for the consumer to find out at a later time that the arrangement was only for a few months, the arrangement was never approved by management, or in fact, that the consumer had no arrangement at all.

At this point a consumer may begin looking for assistance from consumer credit counseling companies, debt settlement companies, or may consider filing for bankruptcy protection. Some consumers may decide to ignore the problem altogether. The realization by the consumer that he or she is not equipped to deal with the creditors may lead the consumer to seek help from a third party.

The Debt Settlement Process

Most consumers normally begin the debt settlement process by searching online through various search engines, such as, Yahoo, Google, MSN, ASK, etc. Consumers will type in a keyword or key phrase, such as “debt help” or “debt assistance” and the search engine will provide both natural and advertised results. Natural results are provided through the search engine’s spiders. The more hits on a website combined with relevant keywords, terminology and other variables, the higher on the search results page the information will appear. For the advertised results, companies bid on keywords and phrases. This process is similar to, while in direct competition with, consumer credit counseling, bankruptcy, mortgage refinancing to include debt, home equity loans, and consolidation loan marketing. In many instances, a consumer will see multiple advertisements from different agencies, in the same or different industries, providing an abundance of information and marketing. Other means of advertising include national radio, television, newspapers, and magazines. Most advertisements specifically target consumers who are in financial trouble.

Once a consumer has preliminarily qualified for and decided upon a debt settlement company, the consumer receives an agreement for services, a creditor information form, a budget form, limited power of attorney, a permission to communicate form, and instructions on how to complete the package. Once the consumer has completed the package, a designated employee, typically management or a specifically trained employee is responsible for reviewing the package to ensure that the consumer meets the criteria to qualify for the program. The qualification process is a timely process, which includes a complete review of the client’s monthly budget form, the list of creditors on the creditor worksheet, the client’s history with those creditors (current, delinquent, how long the account has been open, cash advances, balance transfers), and the client’s ability to make the recommended monthly payment.

Upon acceptance into a program, the consumer is provided with a Welcome Package, a New Client Package, or a review of the program. This usually includes debt settlement company expectations, consumer expectations, creditor expectations and instruction on how to handle creditor and collection agency letters and phone calls.

Consumers who enter a debt settlement program are given an estimated monthly savings amount, and the company will provide a form that details the break down of all fees and when the fees will be due.

The consumer begins saving money either in a personal account or in a specialized account through an independent third party. The debt settlement company does not have access to client funds and cannot initiate transactions on the client account without express client approval. The debt settlement company will provide communication, in the form of a limited power of attorney or a permission to communicate form, to the creditors enrolled in the program. Creditors are most receptive to discuss settlement after an account is at least 120 days delinquent. This means that for most of the beginning months of the program, negotiating with creditors is limited should the consumer be current or up to date with the creditors enrolled in the program. For consumers who are behind, negotiations can begin almost immediately depending on how much money the client is saving on a monthly basis.

Once the debt settlement company has calculated the amounts of funds the client has available to offer a creditor or collection agency, the debt settlement company will contact the creditor or collection agency to obtain the current balance. At this time, the debt settlement company will determine whether or not the client is financially able to offer a settlement or accept any settlement arrangement that a creditor or collection agency offers.

It is common for debt settlement company representatives to have a relationship with specific contacts at creditor offices or collection agencies that they work with in the negotiation process. Some creditors and collection agencies have developed, or are in the process of developing, specific departments that work exclusively with debt settlement companies. For these creditors and collection agencies, working with debt settlement companies allows them to handle a large quantity of accounts with a limited amount of manpower, minimizing the costs associated with collection activity and maximizing liquidation percentages.

For creditors and collection agencies that do not have specific departments in place to work specifically with debt settlement companies, the process can be more complicated. The debt settlement company must work with a representative or collector who is assigned to the account. This does not always mean that the representative or collector is familiar with debt settlement and how it works. Normally in this situation, the debt settlement company will have to negotiate several times before there is an acceptable offer received from the creditor or collection agency. In some cases, it is necessary for the debt settlement company to speak directly to a member of management, or wait for approval of a settlement from a member of upper management. The consumer is given ultimate control to accept or reject any settlement offer, through notification of every offer that is made by a creditor or collection agency. While the consumer does have the option to take any settlement offer that is provided by the creditor or collection agency, that does not mean that the debt settlement company will recommend that a consumer take the first available offer. Since most debt settlement companies have historical data regarding past settlement amounts with a creditor or collection agency, they should be able to advise the consumer of whether or not a lower or “better” settlement offer is a realistic possibility. This is one unique example of how a debt settlement company, working solely on behalf of the consumer, is able to ensure the debt ridden consumer realizes the best possible settlement amount.

When a consumer and a creditor or collection agency reach a mutual agreement, the debt settlement company will then obtain the permission of the consumer to request the agreement in writing. Once the agreement has been received and a copy of the written agreement has been provided to the consumer, the debt settlement company will then obtain express authorization from the consumer to arrange payment to the creditor, whether from the consumer’s personal account or from the consumer’s specialized account.

After the final payment is processed by the creditor or collection agency, a request for a confirmation letter is made showing the settlement agreement amount has been paid, along with the settlement agreement and copies of payments to the creditor or collection agency which serve as a record that the account has been satisfied and no outstanding balance is owed.

This process will be repeated until all of the consumer's accounts enrolled with a debt settlement company have been settled or satisfied. Depending on a consumer's situation, the length of time in a debt settlement program could be shorter or longer than the original quote provided to the consumer. A major determining factor of how long a program takes is the consumer's ability to continually make the required monthly payments. It is not uncommon for a consumer to request to delay a monthly payment, or to become unemployed for a short period of time. Normally, in these instances, a debt settlement program will run longer than originally anticipated. Unlike consumer credit counseling and bankruptcy, there is no immediate need to terminate a consumer from a debt settlement program. This is a comfort, especially if the consumer only requires a short term adjustment to the plan. The flexibility of a debt settlement program allows the consumer to handle any sudden financial fluctuation without losing out on a low interest rate (as with a DMP)^x (traditionally administered by credit counseling agencies^{xi}), or having the Chapter 13 bankruptcy^{xii} dismissed because of missed or late payments.

Along with consumers who require additional time, debt settlement companies will experience consumers who have the ability, after being in the program for several months, to make larger monthly payments or add extra funds to their program. Consumers in this position benefit from the excess payments by usually completing the program in less time than originally anticipated.

An important component of the debt settlement process is consumer participation. Consumers who enroll with debt settlement companies must understand the importance of keeping open lines of communication with the debt settlement company. The consumer inevitably suffers when there is a break down in communication, no matter where the fault lies. To prevent an interruption in communication, debt settlement companies maintain a separate customer service or client relations department whose purpose is to remain in constant contact with consumers, and keep the consumer's contact information and financial situation current.

Comparison of For-Profits vs. Non-Profits

While many regulators, press representatives and legislators express their concern and the FTC continues its due-diligence regarding the growth of "for-profit" debt relief entities, previous findings from a report by the Consumer Federation of America (CFA)^{xiii} and the National Consumer Law Center (NCLC)^{xiv} should be noted. The report titled, "Credit Counseling in Crisis: The Impact on Consumers of Funding Cuts, Higher Fees and Aggressive New Market Entrants," states:^{xv}

One of the inherent contradictions in the credit counseling industry is that the more the agencies engage in competition, the more they behave like for-profit businesses. Yet nearly every agency in the field is a non-profit. This raises fundamental questions about the nature of the industry. The truth is that non-profit status has been abused to such an extent in this industry that it is virtually meaningless.

Credit counseling agencies seek (and get) federal 501(c)(3) tax exempt status for a variety of reasons. Tax-exempt 501(c)(3) status makes them eligible for exemptions from federal and state corporate income taxes. Most states automatically allow corporations that qualify for federal tax-exempt status to also qualify for state tax exemptions. This

status is required to receive many public and private grants. In addition, individual and corporate donors may receive tax deductions for gifts to tax-exempt nonprofit corporations. Another advantage is that the directors, trustees, officers, and employees of non-profit corporations are shielded from personal liability for corporate debts or liabilities.

Agencies also seek non-profit status to comply with applicable state laws. As discussed below, most state laws that regulate debt management services exempt at least some non-profit organizations. Other states restrict debt management services in the state to non-profits. In addition, creditors have traditionally required non-profit status to initiate Fair Share plans.

Perhaps most important, agencies use non-profit status as a marketing tool. They promote the non-profit label as a mark of respectability, appealing to consumer trust that non-profit organizations are “above-board” and about more than just making money.

Subsequent to this report, the Internal Revenue Service (IRS)^{xvi} has revoked the tax-exempt status of dozens of credit counseling/debt management providers. The impact on the consumer/customers of these agencies is difficult to quantify. However, with fair and reasonable legislation allowing for-profit entities to provide debt relief to consumers, this same scenario can easily be avoided.

It is understood that the intent behind requiring “non-profit” status is to provide consumers with what would be considered a “safe-haven” when seeking debt relief. However, as the Consumer Federation of America and National Consumer Law Center discovered, the “non-profit” status was used more as a “marketing tool” instead of providing the safe-haven that was intended.

The average consumer is unaware of the difference between “for-profit” and “non-profit” entities. The term “non-profit,” as the CFA and NCLC discovered, can mislead consumers as to the way that specific entity is operated. As we know, the term “non-profit” does not mean the entity lacks the ability to generate profit but merely means that all of the money donated to or earned by the organization, must be spent. Not all of this money is spent on the organization’s cause or mission.

The CFA/NCLC report referenced earlier stated:

Agencies that meet the charitable or educational purpose test may still violate IRS regulations if they are organized or operated to benefit individuals associated with the corporation including directors, officers or members. This is also known as the ban on private inurement.

It appears that the ban on private inurement is violated by some agencies. Numerous media reports during the past few years have documented these abuses, including lavish salaries for agency directors and self-dealing in purchasing real estate

and in creating close connections with for-profit businesses such as lenders or payment servicers.

Many agencies do not even try to hide connections to for-profit businesses. One counselor in our survey specifically told us that his agency could help a consumer get a loan and pay off the balance on unsecured debt after only seven months on a DMP. He said that the agency refers consumers to lenders. Other agencies include links to lenders and other businesses on their web sites. It is unclear to what extent improper affiliations with for-profit businesses permeate the industry. The media has reported what may simply be the tip of the iceberg.

In addition, we found a number of questionable practices related to compensation of company officers and employees. For example, Cambridge Credit Counselors reported in 2000 paying President and Director John Puccio \$312,000 plus nearly \$80,000 in benefits. Director Richard Puccio received the same compensation. Each also received separate compensation from a related organization, Brighton Credit Corporation, of \$156,000, while John Puccio received an additional \$26,000 from Debt Relief Clearinghouse, yet another related organization. The company also reported paying its general manager a salary of \$394,122 plus benefits and its sales manager just over \$150,000 plus benefits. Another Massachusetts-based agency, American Consumer Credit Counseling, reported in 2000 paying its president a salary of \$462,350 plus just over \$130,000 in benefits. Genus Credit Management, in 2000 reported a lower, but still lavish sum of \$246,000 for its Chairman. Phoenix-based Credit Counselors of America reported compensation in 1999 for its President Michael Hall of \$371,542 plus benefits while Florida-based Consolidated Credit Counseling reported paying its Director/President in 2000 a salary of \$275,000 plus benefits with just over \$170,000 in compensation provided to the company vice-president. For comparison purposes, BusinessWeek reported in 2001 that the average top salary nationally for comparable non-profits was \$134,000.⁸⁴

NFCC agencies were not immune from this overcompensation trend. In its 2001 tax report, the Foundation reported paying its former president and CEO Durant Abernethy \$365,695 plus benefits. There was a wide range in salaries paid by NFCC member agencies in our survey, with most salaries at lower levels than those above. There were some exceptions, however, such as Consumer Credit Counseling of Greater Atlanta (with 2001 compensation for its President at \$173,600 plus benefits) and Consumer Credit Counseling of Massachusetts (with 2001 compensation for the Chief Executive Officer at \$198,800 plus benefits and \$191,244 plus benefits for the Chief Operating Officer).

Furthermore, research into several IRS 990 forms (See Appendix A) confirmed that non-profit entities outside of the debt relief industry also accrue lavish amounts of compensation. For instance, in 2005 the five highest paid employees of the American National Red Cross^{xvii} each earned more than \$287,000 annual salaries. The chart below will outline the full compensation structure for these individuals.

Title and average hours per week devoted to position	Compensation	Contributions to employee benefit plans & deferred compensation	Expense account and other allowances
SVP, Human Resources 60	287,424	24,452	150,388
VP, Sales & Marketing 60	387,430	44,213	7,925
CEO, Arc-Gny 60	378,159	28,281	3,994
SVP, Quality & Regul 60	337,948	32,333	4,935
GNY, Chf Bus & Fr off 60	325,170	21,348	0

USOBA is in no way implying that the wages were not earned or deserved, quite the contrary. Simply stated, it is difficult to generalize about the comparative cost of a non-profit versus for-profit organization; there may be internalized profit in a nonprofit organization.

Another important distinction between a non-profit and for-profit entity, in the context of debt relief agencies, is that for profit entities are not compensated in any form by anyone other than the consumer they are advocating for. Fair share and grants received by many non-profit debt management plan providers have dwindled over the years, although that was the form of compensation received, in majority, from the creditor and collection industries.

For-Profit Fee Structures

At this time, there are numerous business models with a wide variety of fee structures available to consumers. For the purpose of this report, we will discuss the most widely utilized fee structures that debt settlement companies employ.

One common fee structure in the debt settlement industry utilizes the following mathematical formula: $\text{fee} = \text{percentage} * \text{principal debt}$. This percentage can vary, from as low as thirteen (13%) to as much as twenty (20%) percent and can be passed on to the consumer in several ways. Some business models call for the fee to be paid up front in its entirety, over the first several months of the program prior to any negotiating with creditors takes place. Other business models include this percentage fee into a consumer's monthly payment, deducting a portion of the monthly payment and applying that portion towards the overall fee amount.

Another common fee structure used today is the savings fee structure which utilizes the following formula: $\text{fee} = \text{percentage} * \text{savings}$ (or the difference between the amount of the creditors claim at the time of the settlement and the actual settlement amount). Utilizing this fee structure, a company will negotiate with creditors as funds become available. Once a mutual agreement between the creditor and consumer has been reached, the company will calculate the savings fee using the formula previously mentioned. The percentages can vary, from 15% percent to 35% percent of the amount saved by the consumer on that particular account. So if a consumer enrolls with ten accounts, the consumer will be charged a separate fee for each account, assuming that all of the accounts have differing balances and settle at different percentages.

Some business models include an enrollment fee, along with either a percentage of principal fee or savings fee. The enrollment fee is assessed at the beginning of the consumers program, and can be separate from any other fees charged to the consumer, or n be included in one of the previously mentioned fee structures. Enrollment fees are typically charged to cover the cost of setting up the client.

Monthly maintenance or monthly administration fees are charged separately from all other fees. These fees typically range from \$19.00 to \$85.00 per month, based on the services provided to the consumer by a debt settlement company. Examples of such services include monthly financial education plans, an attorney network (in the event that a creditor or collection agency decides to pursue legal collection tactics) and the administrative services the debt settlement company provides the client. Any and all fees, regardless of which business model is used, are disclosed to the consumer both verbally and through written agreements for services.

There are no financial ties or contracts, either written or verbal between a debt settlement company and a bank, creditor, collection agency, debt buyer, or attorney. Internal compliance for both the creditor and the debt settlement company is of the utmost importance, and ensures that the consumer is not only protected, but the company is working in the best interest of the consumer.

CONSUMER BENEFITS

Ensuring Consumer Protection

A debt settlement company's primary concern is to protect the consumer and utilize each representative's knowledge and expertise to accurately represent all options in and out of the realm of debt settlement. It is important to remember that a consumer in debt is often desperate, unknowledgeable of their options and vulnerable. Therefore, from the start of the process the most effective way to protect the consumer is by evaluating the consumer's situation honestly and clearly communicating the consumer's options in an effort to determine their best solution.

USOBA's Best Practice Standard (See Appendix B) is enforced by British Standards Institution Management Systems (BSI)^{xviii}, and is a compilation of guidelines relating to consumer protection of finances and personal information, internal security through proper training and regulation of debt assistance personnel, accurate and honest advertising, and clear verbal and written communication between company representatives and consumers. Many of USOBA's members are currently, or in the process of undergoing internal audits enabling them to become accredited by BSI of America. This accreditation reflects the companies' compliance with meeting the best practice standards as required by ISO 9001:2000^{xix} or the USOBA Best Practice Standard. The states of Colorado, Delaware, Rhode Island and Utah have made accreditation a requirement prior to licensing any debt settlement company.

Regardless of their accreditation status, most debt settlement companies strive to adhere to the industry's standards, as well as, the standards of the FTC. Debt settlement companies are frequent visitors to the FTC site to continually review the standards and recommendations of the FTC.

The first standard brought to our attention relates to the protection of consumer finances and personal information. Although debt settlement companies may not personally handle consumer funds, all companies must adhere to the safeguarding rules of the Graham-Leach-Bliley Act^{xx}. This act and its safeguarding rules provide structure and guidelines that outline debt settlement companies' responsibilities in protecting consumers' personal information. These safeguarding rules have been embraced by the industry and are incorporated into the USOBA Best Practice Standard.

In addition, various security measures are in place for third party service providers. Any third party that provides services to the consumers is equally scrutinized. Such examinations include checking all references, certifications, disclosures, memberships in civic, professional and consumer organizations and verification of any past or ongoing legal action. Frequently, a debt settlement company will dispatch representatives to verify the vendor company's legitimacy first-hand.

The next referenced standard deals with the company's internal security through proper training and regulation of debt assistance personnel. Initially, all applicants for company positions must submit to a complete background check and conduct multiple interviews. This multi-faceted new hire process is meant to ensure that every applicant is sufficiently qualified for the particular position in question. Once a position is offered and accepted, all employees are required to participate in extensive training and often certification processes. The purpose of this specific training is to ensure that all employees not only understand the debt settlement process, but are able to clearly, accurately and truthfully communicate with the consumer. Colorado, Delaware, Rhode Island and Utah require that debt assistance personnel be certified as debt specialists.

Obviously, it is important that internal security does not end here. Calls are frequently monitored or recorded in order to ensure the highest quality communications between the consumer and employee. It is common for compliance department personnel to monitor telephone calls in order to resolve any errors in communication. Continued training of all employees is crucial to running any business. Operations such as MSTAR^s^{xxi}, offer live, interactive, virtual training to debt settlement companies at every level of expertise and regarding numerous industry topics of interest. This type of training is highly recommended by USOBA and many USOBA members participate and benefit from the MSTAR program.

The third element of USOBA's Best Practice Standard applies to accurate and honest advertising. It is very important that debt settlement companies do not mislead consumers in any communications, verbal or otherwise. The more extensively and accurately informed a consumer is the more confident, secure and successful they are likely to be in their debt settlement program.

As documented in USOBA's Best Practice Standards, it is incredibly important that all debt settlement companies have clear verbal and written communication between company representatives and consumers. This is precisely why disclosures are included as a requirement of the USOBA Best Practice Standards. This guarantees that all services, fees, timetables, expectations and conditions of the consumer's debt settlement program are clearly

communicated to the consumer. Companies incorporate these disclosures into their contract's constituents and typically arrange a documented telephone conversation upon receipt of the signed contract.

For many individuals suffering from debilitating debt, debt settlement is a consumer's last hope before filing for bankruptcy. Throughout the settlement process the consumer will see his/her debts settled individually, learn how to budget, how to save, how to plan and will gain fiscal education that will enable them to live a life free of financial strain. However, it is important that fair and reasonable regulation is implemented to ensure the continuance and success of the debt settlement industry and protection of the consumers it serves. It is for this reason that USOBA created the Best Practice Standards and continues to do what is necessary to protect the consumer's rights, their personal information and above all, the consumer's best interests.

Providing Consumer Education

The ultimate goals of a debt settlement company is that every consumer enrolled in a debt settlement program successfully completes their program and continues to utilize the tools provided to them that enables and empowers them to continue the habit of making smart financial decisions in the future.

A consumer "graduates" the program when the agreed upon settlement has been paid in full or in some instances, the consumer leaves early due to a positive financial change in circumstances. For example, the consumer may have inherited a large sum of money, procured a substantial raise or was able to borrow the remainder owed from a relative or friend.

The secondary goal, but no less important, is that every graduate leaves the program armed with the educational tools and discipline required to make well informed financial decisions so that they do not find themselves in a future financial crisis. Therefore, it is an integral part of the debt settlement process to provide the consumer with adequate debt education. Depending on the company, extensive educational components such as phone conferences, newsletters, webinars, links to blogs and news articles, interactive websites and more may be offered.

Debt settlement companies generally provide consumer education services to all inquiring consumers to a certain degree. Unfortunately, due to the large amount of time and funding required to develop and facilitate a well-established educational program, not all resources are available to consumers not enrolled in the company's debt settlement program.

However, whether a debt settlement company has an educational program for consumers already set in place or not, there are numerous free resources available to the general public. Helpful tips, industry news, debt calculators and links to other available resources are frequently found on a debt settlement company's website. Often times, member companies of USOBA will include a link to the consumer section of the USOBA website where a free newsletter (See Appendix C) specifically designed for consumers can easily be obtained. In addition, DebtFree.com^{xxii} offers valuable resources for the consumer to utilize, including an extensive budget analysis that helps direct a consumer to the appropriate debt relief option based on the information provided.

DebtFree.com also provides a tool to assist the consumer in controlling their budget on an ongoing basis. This analysis is based on an extensive 4 year study of almost 20,000 debt burdened individuals seeking financial guidance and assistance (outlined and referenced previously). Another excellent program available online and/or CD, in English and Spanish and provided by the Federal Deposit Insurance Corporation (FDIC)^{xxiii} is a 10 module financial course called *Money Smart*^{xxiv}.

These and other free financial assistance programs are typically referenced on debt settlement company websites, in reference material provided to the consumer and given verbally to the consumer.

Within the debt settlement industry, hardship is a term used frequently and is important when negotiating with creditors. Most consumers who find themselves in need of debt settlement services have had something extraordinary occur that caused the unexpected financial distress. Some examples of common hardships are: divorce, death of a loved one, employment lay off, prolonged illness or suffering from a natural disaster. These extraordinary events can lead to profound emotional, financial and even physical distress.

In the financial review required and outlined in the USOBA Best Practice Standards, it is commonly found that the consumer does not have a budget and is unaware of his or her income vs. expenditures or the true picture of their cash flow.

Lastly, once enrolled in a debt settlement program, the consumer is introduced to and expected to maintain the habit of saving money. Every month, the consumer is required to set aside a predetermined amount of money that will be used to settle outstanding debts with his or her creditors. This process is vital to completing the program within the pre-determined time frame. It is the goal of debt settlement companies that after completing their program the consumer will develop a life long habit of saving, budgeting and managing their financial affairs, so they will never have to seek debt settlement assistance in the future.

EXAMINING VARIOUS DEBT RELIEF OPTIONS

In the current economic climate where consumers are leveraging their income and personal property to hold on to their homes and just meet their monthly financial obligations; there is an ever increasing amount of unsecured debt which they are unable to pay. The effects of the decline in the real estate market have increased the need for alternatives when coping with otherwise unmanageable unsecured debt in the form of consumer debt, payday advances, and delinquent taxes. There are many alternatives to dealing with this debt. Some of the most commonly used are consumer credit counseling, debt settlement, Internal Revenue Service (IRS) offers in compromise, and filing for bankruptcy protection. Due to the unavailability of reliable statistics as to completion rates for all of these programs, the data presented is based on what information is publicly available, gathered by practitioners, and anecdotal data.

Consumer Credit Counseling and Debt Management Plans

The Consumer Credit Counseling Industry has been in the United States since 1951. The National Foundation for Credit Counseling (NFCC)^{xxv} was created by credit grantors to “monitor

legislative and regulatory activity for its retail credit members” and “also conduct public awareness campaigns on credit.” The preceding statement was provided by W. Patrick Boisclair, Chairman of the NFCC’s Board of Trustees during the testimony before the Subcommittee on Oversight of the House Committee on Ways and Means on November 20, 2003.^{xxvi} The stated objective upon forming the foundation was to promote financial literacy and to help consumers avoid filing bankruptcy. In the 1960s, the first franchise of local consumer credit counseling agencies emerged, providing services directly to consumers.

The recent turmoil in the Consumer Credit Counseling Industry, specifically the revoking of the non-profit status of major companies by the IRS and the changes in bankruptcy laws, has left consumers with little to no options when resolving excessive outstanding debts. This void has been filled by the debt settlement arena. Debt settlement companies help consumers who can’t afford debt management plans, whose consumer credit counseling company has been shut down, or who do not qualify for or cannot afford to file bankruptcy.

Credit counseling services were developed specifically to financially educate a consumer, while trying to provide a neutral recommendation to help the consumer resolve their debt situation. This is normally done through the recommendation of a Debt Management Plan (more commonly known as DMP). A DMP requires that a consumer consent to a recommended monthly payment, and agree to not open or utilize any lines of credit while in the plan. The plan is intended to lower interest rates and fees, which allows the consumer to make significant progress on paying off the overall debt amount owed to each creditor. The length of time to complete the process varies depending on a consumer’s creditors and financial situation, and is typically lengthier than a debt settlement program.

Fees are heavily shouldered by the consumer through the form of “voluntary contributions”. The creditors provide for “fair share”, a percentage of the payment that a DMP makes to each individual creditor, to the consumer credit counseling agency. It can range from 4% of the payment to 12% of the payment. In recent years, the credit counseling industry has seen a drop in the average fair share percentage, and a significant rise in the number of “voluntary contributions”.

According to a report published in April 2003 by the Consumer Federation of America and National Consumer Law Center, fair share contributions dropped from an average of 9% in 1999 to an average of 8% in 2002. A press release dated April 9, 2003 from the Consumer Federation of America states, “...a trend that started in the mid 1990s. Credit card issuers historically paid agencies 15% of the debt recovered from borrowers in DMP’s. By 2002, however, on credit counseling trade associations (the National Foundation for Credit Counseling) was reporting an average of just 8%....As available revenue has declined, most agencies have curtailed the range of services they offer and have increased the fees they charge to consumers.”^{xxvii}

That same press release also states, “...In the last four years, five of 13 major credit card issuers have increased the interest rate they offer to consumers in DMP’s...Only two creditors have lowered rates during that same period....which generally charges interest rates above 20%, continues to refuse to negotiate any discount....The increasing refusal of creditors to offer

significantly lower interest rates causes more consumers to drop out of credit counseling and to declare bankruptcy.”

“By slashing agency funding, and charging credit counseling consumers interest rates that are too high, credit card companies are leaving debt choked Americans with few options other than bankruptcy,” said Travis B. Plunkett, the Legislative Director of CFA. “It is hypocritical for the credit card industry to demand that Congress give them relief by enacting the bankruptcy bill, while closing off credit counseling as an effective alternative to bankruptcy for many consumers.” Congress and the creditors did give the consumers debt settlement as an alternative, which is a way to legally pay back the creditors, without have to file bankruptcy and or be in a DMP that has no end in site and charges exuberant fees or “voluntary contributions”.

So now, consumers are not only faced with credit counseling agencies that charge more and offer less for services; but consumers aren’t guaranteed that a creditor will even accept an arrangement. It is becoming more common for consumer credit counseling agencies to enroll consumers into a DMP that does not include all of their unsecured creditors, leaving the consumer no options for these accounts when it comes to creditors who do not accept certain DMP’s or who do not work with certain agencies.

Consumer credit counseling may also provide short term relief for consumers burdened by debt due to loss of employment, medical problems, or other short-term hardships, but when it comes to completely eliminating the debts, a DMP may not be the consumer’s best option.

The following diagram gives an in depth comparison between a DMP and a debt settlement plan.

	Debt Management Plan	Debt Settlement Plan
Total Debt	\$20,000.00	\$20,000
Total Number of Accounts	6	6
Monthly Service Charge	\$39.00	\$39.00
Monthly Payment (to debt)	\$480.00	\$411.00
Total Monthly Payment	\$519.00	\$450.00
Est. Plan Duration (mos)	48	43
Total Repaid	\$24,912.00	\$19,350.00
Estimated Fees	\$4,912.00	\$6,527.00
Est. Fair Share Contribution	\$1,651.20	\$0.00
Total Fees Earned	\$6,563.20	\$6,527.00

*DMP fees based on 7% overall interest, \$39 per month service fee and fair share estimated at 8%.

** Debt Settlement fees based on settlements at 63% of original balance, 15% service fee, 25% settlement fee and \$39 per month administrative fee.

Debt Settlement

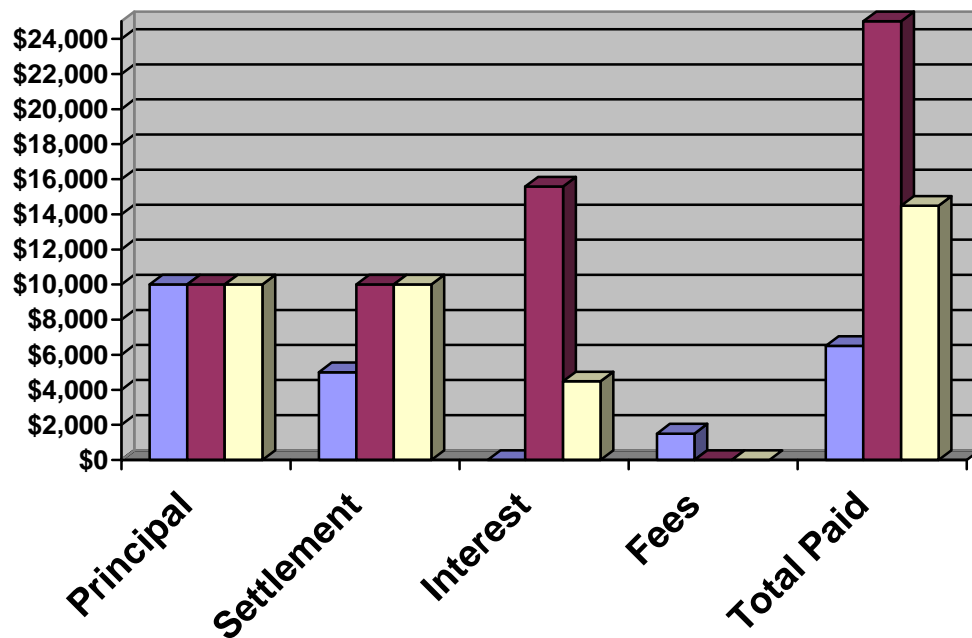
Debt settlement is the practice of settling an unsecured debt for less than what the debtor owes the creditor. Most state regulations define debt settlement as the practice of acting as a third party

intermediary between a debtor and the debtor’s creditor for the purpose of settling or altering terms of the payment due. The debt settlement industry is not only regulated by the FTC and the varying states laws, but debt settlement associations like the USOBA are working hard towards self-regulation by use of its “Best Practices Standards” that was created in the presence, and with the assistance of state regulators,

Unlike bankruptcy, the consumer does not have to turn over all of his/her non-exempt assets over to the bankruptcy trustee, nor must the consumer include all of his/her debt into the plan. There is an education requirement under some state laws, but many debt settlement companies recommend or offer financial education even where it is not required. This education increases the likelihood that the client will remain in the program and achieve his/her goals. Consumers set aside the amount of money they can afford each month and when there is enough set aside to settle a debt; the debt settlement company negotiates with the creditor for the final reduced payment. The process continues one debt at a time until all debts are paid, or until debtor elects to discontinue the program.

The following chart displays the difference between paying the minimum required on a \$10,000 credit card with a 15% APR, at 2% of the outstanding balance, and 4% of the outstanding balance, and utilizing a debt settlement plan.

\$10,000 in Debt at a 15% Interest Rate



■ Debt Settlement Plan ■ 2% Minimum ■ 4% Minimum

* Credit card data is based off of a calculator available to the public on www.e-wisdom.com. See Appendix D)

** Debt settlement data is based on historical data provided by a member company.

The following conclusions can be drawn:

- Although all options begin with a principal of \$10,000, a debt settlement company may be able to bring that down 50% to \$5,000 (varies with each particular client).
- While a person paying the 2% minimum will owe \$15,574.52 in interest, and a person paying the 4% minimum will owe \$4,483.45, a consumer enrolled in a debt settlement program will not owe anything above the settled amount of \$5,000.
- The typical fee a debt settlement company would charge a consumer under these circumstances is only \$1,500. Neither credit card nor debt settlement miscellaneous fees (enrollment, administrative, annual, etc) were calculated into this, as some companies and creditors may or may not charge these fees.
- Ultimately, a consumer paying the minimum at 2% per month will pay \$25,574.52 over the course of 30 years, and a consumer with the same card paying the minimum at 4% per month will pay \$14,483.45 over the course of 13.5 years. However, a consumer enrolled in a debt settlement plan will pay only \$6,500 over the course of 3 years.

Remember, the majority of consumers enrolled in a debt settlement plan neither qualify for bankruptcy nor debt settlement. Therefore, they would be stuck paying these minimums or ignoring the debt all together before bankruptcy could be an option. Neither the consumers nor creditors benefit from these circumstances.

Graduation rates are difficult to track because “graduation” can be defined in more than one way. So it is difficult to say with absolute certainty what percentage of clients actually complete a three to five year program and settle all the debts originally included in their debt settlement program. The impact a debt settlement program can have on a consumer can vary as follows:

- The consumer can complete the program by having all of their debt scheduled for negotiation successfully settled
- A debt settlement program can improve the consumer’s financial situation by settling a portion of their debt. This result can provide enough relief whereby the consumer can cancel negotiations on remaining debt and satisfy their financial obligations on his/her own.
- A debt settlement program can allow a consumer added time to find a way to improve their financial situation through enhanced employment – again allowing the consumer to begin to satisfy their financial obligations on his/her own.

The definition of success within a debt settlement service can and possibly should be defined as providing a means to consumers whereby they can effectively avoid the need to file for bankruptcy protection.

The United States Organizations for Bankruptcy Alternatives is currently undertaking an initiative with Auriemma Consulting Group^{xxviii} to create a standardized reporting and tracking system that will better calculate graduation rates, debt settlement rates, costs to the consumer, and cancellation statistics. This will help to better serve the consumer.

The fees that debt settlement companies are allowed to charge under applicable state laws vary from state to state. However, the industry standard tends to be around 15% of the total debt entered into the program. There are additional monthly maintenance fees which may range anywhere from \$40 to \$75, to cover bank charges and other customer service matters. Typically debt settlement companies attempt to settle debts for at least 50% of the principal balance (the average settlement ranging from 40% to 60%). Ultimately, after fees and settlements, the clients still come out ahead saving thousands of dollars, and are able to avoid bankruptcy and maintain their daily living expenses during the settlement process.

IRS Offers in Compromise

An offer in compromise (OIC) is an agreement between a taxpayer and the IRS that is typically negotiated by a tax attorney or certified tax preparer. It's intended to settle the taxpayer's unpaid tax debt. The IRS has the authority to settle a taxpayer's liabilities by accepting less than full payment due to: Doubt as to Liability (whether the assessed tax is correct); Doubt as to the ability to collect (doubt exists as to the taxpayer's ability to pay the full amount owed); or Effective Tax Administration (exceptional circumstances exist such that collection of the full amount would create economic hardship or where compelling public policy or equity considerations provide sufficient basis for compromise).^{xxix}

Taxpayers must meet specific requirements to qualify for an offer in compromise, and must provide a substantial non-refundable down payment and application fee just to be considered for an offer in compromise. These requirements include: the taxpayer is not a debtor in an open bankruptcy proceeding, a \$150 application fee, a signed "Income Certification for Offer in Compromise Application Fee and Payment" form, and the taxpayer must make and satisfy timely tax filings for the next five years, or until the OIC is paid in full, or risk defaulting on the OIC. Additionally; if a taxpayer is applying for a "lump sum" payment plan they must submit a 20 % down payment and pay the balance in five or fewer payments, usually within six to nine months. If the taxpayer qualifies for a periodic payment offer (typically, six or more payments over a few years), they must pay the first installment in full. These payments are non-refundable should the IRS reject the OIC, however, the payment will be deducted from the liability. Moreover, any liens which the IRS has acquired on the taxpayer's property will not be removed until the debt is paid in full.

The IRS reportedly does not track the success or completion rate of those whose OIC is accepted. However, the tax attorneys and certified tax preparers who provide such services claim, and available published indicates, that only approximately 20% of the OIC's accepted are completed successfully. This percentage is derived from the estimation that about only 25% of the offers are accepted and the IRS claims that 80% of those are successful.^{xxx} In the event that a taxpayer does not successfully complete the program they are liable for the original amount due, less any payments made.

The costs associated with filing an OIC application vary, dependant upon whether a taxpayer attempts to file on their own, hires an attorney or tax preparer, and the total amount that is owed. Rates charged vary widely as the fees allowed are not capped, as is the case in debt settlement or bankruptcy. However, published reports do indicate settlement amounts as low as seventeen cents on the dollar.

Chapter 13 Bankruptcy Protection

In a Chapter 13 bankruptcy, the debtor makes monthly payments to a court appointed trustee for a period of 3 years if their income is below the state median, or 5 years if it is above the state median. The amount paid is as much as the debtor can afford to pay – meaning reasonable living expenses are subtracted from the debtor’s income, and everything left over goes to the trustee. Chapter 13 is a desirable solution if the debtor owes large tax debts that cannot be eliminated by a Chapter 7 and the debtor wants to stop accruing interest and penalties by forcing the IRS to take a payment plan; the debtor owns real estate that is being foreclosed on; or the debtor doesn’t qualify for a Chapter 7 and wants to stop pending lawsuits.

To qualify for a Chapter 13 Bankruptcy the debtor must be an individual, who has regular income such that his/hers can afford plan payments, the debtor’s unsecured debts must be less than \$307,675 and secured debts less than \$922,975, and also the debtor must complete a credit counseling course.^{xxxi} The debtor must prepare and file a bankruptcy petition along with the accompanying schedules of assets and debts, a statement of income and financial affairs, and a repayment plan. Due the complexity of these forms and filing requirements, it is in the debtor’s best interest to hire an attorney or petition preparer to assist in preparing and filing the bankruptcy petition. Moreover, the debtor is required to attend a meeting of creditors, attend a hearing to confirm the repayment plan, address (or oppose) offers of proof, and complete a financial management course.

One of the main benefits of filing bankruptcy is the automatic stay which prevents creditors from attempting to collect on the debt or initiating suits against the debtor. Furthermore, a Chapter 13 plan will allow a debtor to impose a repayment plan on lenders or the IRS enabling them to catch up on delinquent payments they may otherwise have been able to afford. However, in addition accepting to the plan payment, the debtor must remain current on their recurring debts – house payments, and future tax liabilities. Nationally, around 75% to 80 % of Chapter 13 filers fail to complete the repayment plan. Some filers use an asset to pay the balances; others simply stop making their payments because they are too burdensome.^{xxxii}

The costs of filing and completing a Chapter 13 bankruptcy vary throughout the country. The fees an attorney can charge are determined by the district in which the bankruptcy is filed. Currently the allowed attorney fees range from \$1,800 to \$4,000.^{xxxiii} The attorney’s fees typically only include the preparation and filing of the petition, attending the two mandatory hearings. If there are additional motions to be filed, hearings to attend, or objections to be raised these usually incur additional fees. There is an additional \$274 government filing fee, and the government gets a percentage of the total debt paid. Moreover the pre- and post-petition education requirements typically cost \$50 per class per petitioner, increasing the debtors cost by as much as \$200.

ADVERTISING AND MARKETING IN THE DEBT SETTLEMENT INDUSTRY

This article includes information regarding sales and marketing in the debt settlement industry. The overview of marketing in the industry will include enforcement action regarding marketing claims, website content and will also touch on the relationships with lead providers. Sales practices in the industry will also be outlined, including training requirements set forth, as well as suggested corrective action for any legal enforcements.

Founded in 2004, USOBA was initiated with the objective to work with and inform members of legislative and regulatory requirements, and consumer concerns and awareness in order to best serve the needs and purpose of the industry and the consumer. In February of 2006, USOBA launched the first accreditation program in the debt settlement industry, which includes a section for marketing requirements. USOBA feels that since the launch of this accreditation program (See Appendix E), the awareness has been raised of accountability of claims made. USOBA considers this measure taken to be preventative action for the possibility of false and outrageous claims.

USOBA makes its members aware of relevant government enforcement actions, such as Case No. CV06-3654 ABC (VBK)^{xxxiv}, United States of America versus Credit Foundation of America, et al, in which the FTC alleged false claims by a debt settlement company such as a “reduction of the interest rates they pay on their debt obligations to as low as zero percent”, “stopping or lessening their creditors’ debt collection efforts” and that “the payments consumers make to defendants are not tax deductible.”

Other enforcement actions such as Case No. SA CV 06-701 DOC (RNBx)^{xxxv}, Federal Trade Commission versus Dennis Connelly, et al, and Civil Action No. CV-07-4087-JG-AKT^{xxxvi}, Federal Trade Commission versus Edge Solutions, Inc. are sent to member companies via email, newsletter and also located within the member login section of the USOBA member portal found on the USOBA website.

USOBA continually provides updates to its members as corrective action to prevent these types of fraudulent marketing practices. One of the informational guides provided to USOBA members is the “USOBA Sales & Marketing Compliance Suggestion Guide”. (See Appendix F) This suggestion guide is one way that USOBA uses to promote awareness and to provide both corrective and preventative measures for its members.

The enforcement action listed in the above paragraph is summarized for USOBA’s members within the suggestion guide in an effort to alert its members of these types of claims in an effort to prevent such false and misleading claims from taking place. (USOBA Logo License Agreement, Appendix G). The ethical and proper operating criteria outlined in this guide helps USOBA members market their services, including internet marketing, in an appropriate and ethical manner. At the bi-annual conferences hosted by USOBA, such as the most recent one this summer, material

is provided to the member and non-member attendees regarding advertising claims. An order provided by Venable, LLP on behalf of the FTC specifically addressed ‘how different types of messages must be delivered to match the particular way the claims are made.’^{xxxvii} Because debt settlement is an alternative to bankruptcy, USOBA strongly believes that one of the strongest focuses of the industry is to ensure that consumers have been thoroughly and accurately interviewed to ensure proper qualification for debt settlement services.

USOBA continually endeavors to inform its member companies with regards to proper and ethical marketing, and has suggestion topics on the following: client testimonials, settlement statistics postings, terms and conditions and a suggested lead provider’s interview. USOBA advocates that any client testimonial is accompanied by an affidavit from the consumer as well as ensuring that the testimonial comes from a state in which the company operates. Settlement statistics posted on a debt settlement company’s website should also be reflective of the agency the debt was settled with, in which permission should be granted from the issuer, agency or buyer to post the statistic. Terms and Conditions should be clearly stated on the company website, and should be easily accessible on any home page, theme site or landing page. Another suggestion is the company does a thorough interview before establishing a relationship with a third party marketing company or lead provider.

Lead providers in the debt settlement industry serve as marketing arms of debt settlement companies, often aiding in the generation of prospective customers through marketing and advertising efforts such as television and radio commercials, email campaigning and website applications in order to gather and collect contact information. All advertising on website generation should be compliant with the standards of the member company, especially if the member company is USOBA Accredited through BSI Management. The USOBA Accreditation states that “All applicable advertising, including web pages, shall not use any unfair or deceptive representations, inducements, or other communications.” In order to successfully complete this section of the accreditation, the companies must provide proof of the marketing claims made on their websites and any other advertising materials. USOBA absolutely believes that this requirement be followed to the furthest extent possible to not only protect consumers searching for a debt-reduction company, but to also avoid the need for enforcement actions.

CONCLUSION

Debt Settlement as a Viable Alternative to Bankruptcy

Debt settlement companies benefit the consumer, the creditors, and the economy. They help the overloaded bankruptcy courts by working with consumers to resolve their outstanding debt and help avoid bankruptcy all together. Creditors who work with debt settlement companies quickly learn that their liquidation rates improve monthly while their overall expense to maintain and work accounts decreases. The consumer benefits by effectively eliminating the outstanding unsecured debt, allowing the consumer to become more financial stable and work on eliminating the secured debt, such as a mortgage, car loan, or student loan. The economy benefits by the creation of new employment, in which most positions do not require a college degree. Certifications for employees are available, and training programs such as MSTARs help educate and properly train new employees.

Debt settlement is a viable alternative to bankruptcy. While debt settlement is still evolving and fair and reasonable regulation for debt settlement is in its infancy at both the state and federal levels, it is important to note that industry organizations, such as USOBA, have taken steps to initiate and communicate with governing bodies to enact regulation that will protect the consumer and the debt settlement company. Prudent debt settlement companies regulate themselves to remain in compliance with both federal and state statutes.

Properly operated debt settlement services are a viable alternative to bankruptcy. Currently, debt settlement is still evolving and industry associations such as the United States Organization for Bankruptcy Alternatives are steadfast proponents for fair and reasonable legislation that will protect the consumer and provide debt settlement service providers clear and comprehensive guidelines from which to operate. As the legislation process for debt is currently in its infancy, USOBA is committed to facilitating the objectives of all interested parties by providing information and understanding that can be used to draw substantive conclusions.

The Irony

“Deal Paves the Way for Poor Nations’ Debt Settlement” ^{xxxviii}

The title of this article is benign and the author goes on to state, “Britain and the United States have overcome their differences on debt relief, setting the stage Friday for a potentially historic agreement among G8 countries to cancel \$15-billion owed by the poorest countries.” If the plan is approved the Group of Eight industrialized nations would cancel 100% of the debt that poor countries owe to multilateral institutions such as the World Bank, the International Monetary Fund and the African Development Bank. This plan would take a giant step toward relieving the heavy financial burdens of countries like Bolivia, Ghana and Mali.

A second article states, “The debt settlement will contribute to the further economic stabilization of Bulgaria”, Minister Ivaylo Kalfin told Deputy Treasury Secretary Robert Kimmitt, who praised the agreement that allowed Bulgaria to get 30% of the sum owed.

Again, great news for the parties involved. Everyone seems to be settling debt without hindrance or mention of restrictive laws, rules and fee limitations, no enforcement actions have been directed at these entities and no penalties levied.

Corporations, partnerships, local, state and federal governments all exercise the right to negotiate and settle debts. Many of these settlements are for vast sums of money and require legal representation on both sides of the negotiation table, yet there is no mention of the fees assessed in the articles cited.

The American consumer should have the same freedom to exercise that option. Actually, there are a few that can and have express permission to do so.

“The types of debts that are subject to debt settlement requirements include:

- Amounts owed to commercial vendors:
- Debts arising from advances by individuals (e.g., staff using personal funds or credit to purchase goods and services on behalf of the committee);
- Debts arising from loans from political committees or individuals, including candidates.116.7(b)

The debt settlement rules do not apply to disputed debts, which are covered by other rules (see 116.7(c)(2)

They also do not apply to bank loans, though the Commission recognizes that under extraordinary circumstances, such as the death or bankruptcy of the candidate, settlement of bank loans may be appropriate. (The Commission will consider specific requests on a case-by-case basis.)”^{xxxix}

This excerpt is from the Federal Election Commission Campaign Guide for Congressional Candidates and Committees (April 2008). Luckily, our countries capitol does not have any regulation on debt settlement or surely the candidates would have to rewrite their guide in order to be in compliance. It would appear that taxation without representation comes with at least one benefit, for now.

The fact remains that debt settlement has been and will continue to be a necessary tool for many entities, including individual consumers. USOBA supports fair and reasonable regulation, consumer protection and consumer education. USOBA does not, however, condone activity that would limit a consumer’s choices or rights to those choices when seeking debt assistance.

Every industry can be improved; the industry recognized this first and founded USOBA in order to see the improvements come to fruition. The most important task for USOBA is to disseminate compliance information to companies that would otherwise be unable to pay private counsel to

provide. Our comprehensive state law guide serves as a jumping off point for our member companies and helps them to understand that many factors can affect their ability to provide services in a compliant manner.

ⁱ **American Bankers Association:** Founded in 1875 and now based in Washington, DC, the American Bankers Association represents banks of all sizes on issues of national importance for financial institutions and their customers. The ABA, on behalf of the more than two million men and women who work in the nation's banks, brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership -- which includes community, regional and money center banks and holding companies, as well as savings associations, trust companies and savings banks -- makes ABA the largest banking trade association in the country.
<http://www.aba.com/about+aba/default.htm>

ⁱⁱ Carol Kaplan. American Bankers Association: Consumer Delinquencies up in fourth quarter 2007
<http://www.aba.com/Press+Room/040308ConsumerDelinquencyBulletin.htm>

ⁱⁱⁱ United States Organizations for Bankruptcy Alternatives (USOBA): USOBA's mission is to represent the debt negotiation industry by creating state specific agendas and to advocate for fair regulation and protection of consumers. The United States Organization for Bankruptcy Alternatives (USOBA) was founded by leading members in the debt negotiation industry seeking representation outside of credit counseling and bankruptcy law. USOBA brings individual representation together as a united front to protect the debt negotiation industry and to secure its future. We are committed to working with and informing legislatures, regulators, consumers, creditors, and governmental bodies to better understand the industry. www.USOBA.org

^{iv} Tower Financial Corp. "Regulation That Can Disenfranchise or Embrace more than 1.5 Million Debt-Distressed Families."

^v Federal Trade Commission: The FTC deals with issues that touch the economic life of every American. It is the only federal agency with both consumer protection and competition jurisdiction in broad sectors of the economy. The FTC pursues vigorous and effective law enforcement; advances consumers' interests by sharing its expertise with federal and state legislatures and U.S. and international government agencies; develops policy and research tools through hearings, workshops, and conferences; and creates practical and plain-language educational programs for consumers and businesses in a global marketplace with constantly changing technologies. <http://www.ftc.gov/ftc/about.shtm>

^{vi} Laura Bashraheel. Arab News: Wisdom of jailing debtors questioned:
<http://www.arabnews.com/?page=1§ion=0&article=112707&d=12&m=8&y=2008&pix=kingdom.jpg&category=Kingdom>

^{vii} Carol Kaplan. American Bankers Association: Weak economy pushes consumer delinquencies higher in first quarter 2008 <http://www.aba.com/Press+Room/070208DelinquenciesFirstQuarter08.htm>

^{viii} US Census Bureau <http://quickfacts.census.gov/qfd/>

^{ix} Certified Consumer Debt Specialist Training Manual, Center for Financial Certifications

^x Debt Management Plan: the agency negotiates lower interest rates and monthly payments with credit card companies and other [creditors](#). Monthly payments are consolidated into a single payment that DMP participants make to the credit counseling service, which then disburses the funds to creditors as scheduled.
<http://www.nolo.com/article.cfm/ObjectID/6455D2EC-BB47-4CD1-B7069333C64A8142/catID/8DA53DB0-172E-4CFD-94C67EF8DD1E31BA/213/208/212/ART/>

^{xi} Credit Counseling: Counseling that explores the possibility of repaying debts outside of bankruptcy and educates the debtor about credit, budgeting, and financial management. Under the new bankruptcy law, a debtor must undergo credit counseling with an approved provider before filing for bankruptcy.
<http://www.nolo.com/definition.cfm/Term/E3A52F79-0EA4-449F-BFC2AD10C5D548C5/alpha/C/>

^{xii} Chapter 13 Bankruptcy The reorganization [bankruptcy](#) for consumers, in which you partially or fully repay your debts. In Chapter 13 bankruptcy, you keep your property and use your income to pay all or a portion of the debts over three to five years. The minimum amount you must pay is roughly equal to the value of your [nonexempt property](#). In addition, you must pledge your disposable net income -- after subtracting reasonable expenses -- for the period during which you are making payments. At the end of the three-to five-year period, the balance of what you owe on most debts is erased.

<http://www.nolo.com/definition.cfm/term/96360D3E-8F7E-421E-A3818924DAED2082>

^{xiii} Consumer Federation of America: CFA (Consumer Federation of America) is an advocacy, research, education, and service organization. As an advocacy group, it works to advance pro-consumer policy on a variety of issues before Congress, the White House, federal and state regulatory agencies, state legislatures, and the courts. As a research organization, CFA investigates consumer issues, behavior, and attitudes using surveys, polling, focus groups, and literatures reviews. As an education organization, CFA disseminates information on consumer issues to the public and the media, as well as to policymakers and other public interest advocates. Conferences, reports, books, brochures, news releases, a newsletter, and a website all contribute to CFA's education program. Finally, as a service organization, CFA provides support to national, state, and local organizations committed to the goals of consumer advocacy, research, and education. <http://www.consumerfed.org/about.cfm>

^{xiv} National Consumer Law Center: NCLC works to defend the rights of low-income consumers and to advance economic justice. We concentrate on working for fairness in financial services, wealth building and financial health, a stop to predatory lending and consumer fraud, and protection of basic energy and utility services for low income families. NCLC devotes special attention to vulnerable populations including immigrants, elders, homeowners, former welfare recipients, victims of domestic violence, military personnel, and others. Below is a summary of some of the issues on which we advocate on behalf of our low income clients. http://www.consumerlaw.org/about/action_agenda.shtml

^{xv} National Consumer Law Group and The Consumer Federation of America: Credit Counseling in Trouble: The Impact on Consumers of Funding Cuts, Higher Fees and Aggressive New Market Entrants http://www.consumerfed.org/pdfs/credit_counseling_report.pdf

^{xvi} Internal Revenue Service: The IRS is a bureau of the Department of the Treasury and one of the world's most efficient tax administrators. The IRS Mission (is to) provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and by applying the tax law with integrity and fairness to all. <http://www.irs.gov/irs/article/0,,id=98141,00.html>

^{xvii} American Red Cross: Since its founding in 1881 by visionary leader Clara Barton, the American Red Cross has been the nation's premier emergency response organization. As part of a worldwide movement that offers neutral humanitarian care to the victims of war, the American Red Cross distinguishes itself by also aiding victims of devastating natural disasters. Over the years, the organization has expanded its services, always with the aim of preventing and relieving suffering. Today, in addition to domestic disaster relief, the American Red Cross offers compassionate services in five other areas: community services that help the needy; support and comfort for military members and their families; the collection, processing and distribution of lifesaving blood and blood products; educational programs that promote health and safety; and international relief and development programs. www.redcross.org

^{xviii} British Standards Institution: We lead the world in advocating, defining and implementing best practice across every field of human endeavour, from business continuity to food safety. Since its foundation in 1901, BSI Group has grown into a leading global independent business services organization that inspires confidence and delivers assurance to customers with standards-based solutions. Originating as the world's first national standards body, the Group has over 2,250 staff operating in over 100 countries through more than 50 global offices. www.bsiamerica.com

^{xix} ISO9001:2000 About ISO: <http://www.iso.org/iso/home.htm>; Obtain information about Tax-Exempt Companies www.guidestar.com

^{xx} The Graham-Leach-Bliley Act <http://www.ftc.gov/os/2002/05/67fr36585.pdf>

^{xxi} MSTARS The MSTARS Virtual Training System is the most powerful and effective training system in the industry. Our comprehensive training covers everything from entry level agent training, advanced agent sales training, compliance training, and professional communications development. Consumers are being fed information from every angle and it's the agents responsibility to provide quality financial consultation and help their clients make the right decision. www.mstarsinc.com

^{xxii} www.debtfree.com

xxiii The Federal Deposit Insurance Corporation (FDIC) is an independent agency created by the Congress that maintains the stability and public confidence in the nation's financial system by insuring deposits, examining and supervising financial institutions, and managing receiverships. <http://www.fdic.gov/about/mission/index.html>

xxiv MoneySmart by FDIC <http://www.fdic.gov/consumers/consumer/moneysmart/>

xxv National Foundation for Credit Counseling (NFCC): Each year, more than one million people receive counseling and educational services from NFCC member agencies. More than one-third of all consumers who come to an NFCC agency for counseling are able to manage their debt on their own after receiving financial education and counseling. NFCC member agencies provide a variety of services, including budget counseling and education, debt management plans, counseling referral services, financial literacy courses and housing counseling. Every client of NFCC member agencies receives comprehensive money management services based on their individual needs. Members provide free and/or affordable services, which are offered in-person or by phone. Many agencies also offer Web-based services. Housing counseling is also provided by many members for consumers who want to purchase homes and those who have fallen behind on their mortgage payments. http://www.nfcc.org/AboutUs/aboutus_01.html

xxvi November 20, 2003 Chairman, Board of Trustees, National Foundation for Credit Counseling, Inc – Testimony Before the Subcommittee on Oversight of the House Committee on Ways and Means

xxvii Credit Counseling in Crisis: The Impact on Consumers of Funding Cuts, Higher Fees and Aggressive New Market Entrants – Written by Deanne Loonin, Staff Attorney, National Consumer Law Center and Travis Plunkett, Legislative Director, Consumer Federation of America – April 9, 2003

xxviii **Auriemma Consulting Group (ACG)** provides solutions that are *practical* and *actionable*. Solutions that make sound financial and business sense. Solutions that can be clearly communicated to stakeholders and successfully implemented. <http://www.acg.net/>

xxix <http://www.irs.gov/businesses/small/article/0,,id=108356,00.html#1>

xxx Taxpayer Advocate Service — 2007 Annual Report to Congress — Volume One

xxxi 11 U.S.C. § 109(e)

xxxii *The Bankruptcy Adviser* by Justin Harelik , May 2006

xxxiii *Bankruptcy Reform: Dollar Costs Associated with the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005*, United States Government Accountability Office, June 2008

xxxiv Case No. CV06-3654 ABC (VBK) <http://www.ftc.gov/os/caselist/0423044/0423044.shtm>

xxxv Case No. SA CV 06-701 DOC (RNBx) <http://www.ftc.gov/os/caselist/0523091/0523091.shtm>

xxxvi Civil Action No. CV-07-4087-JG-AKT <http://www.ftc.gov/os/caselist/0723025/index.shtm>

xxxvii Jonathan L. Pompan: Venable LLP: **Avoiding Compliance Can Be Penny-Wise and Pound-Foolish: Ten Steps to an Efficient and Effective Compliance Program**
http://www.venable.com/publications.cfm?action=view&publication_id=1729&publication_type_id=2

xxxviii http://www.sptimes.com/2005/06/11/Worldandnation/Deal_paves_way_for_po.shtml

xxxix <http://www.fec.gov/pdf/candgui.pdf>

APPENDIX A

EXCERPT FROM IRS FORM 990

SCHEDULE A
(Form 990 or 990-EZ)

Organization Exempt Under Section 501(c)(3)

(Except Private Foundation) and Section 501(e), 501(f), 501(k),
501(n), or 4947(a)(1) Nonexempt Charitable Trust

OMB No 1545-0047

2005

Supplementary Information—(See separate instructions.)

▶ **MUST be completed by the above organizations and attached to their Form 990 or 990-EZ**

Department of the Treasury
Internal Revenue Service

Name of the organization
American National Red Cross & Its Constituent
Chapters and Branches

Employer identification number
53-0196605

Part I Compensation of the Five Highest Paid Employees Other Than Officers, Directors, and Trustees
(See page 1 of the instructions. List each one. If there are none, enter "None.")

(a) Name and address of each employee paid more than \$50,000	(b) Title and average hours per week devoted to position	(c) Compensation	(d) Contributions to employee benefit plans & deferred compensation	(e) Expense account and other allowances
D Eric Pogue 2025 E ST NW WASHINGTON, DC 20006	SVP, HUMAN RESOURCES 60	287,424	24,452	150,388
Douglas Look 2025 E ST NW WASHINGTON, DC 20006	VP, SALES & MKTG 60	387,430	44,213	7,925
Theresa Bischoff 150 AMSTERDAM AVE NEW YORK, NY 10023	CEO, ARC-GNY 60	378,159	28,281	3,994
C William Cherry 2025 E ST NW WASHINGTON, DC 20006	SVP, QUALITY & REGUL 60	337,948	32,333	4,935
Rosemary Mackey 150 AMSTERDAM AVE NEW YORK, NY 10023	GNY-CHF BUS & FR OFF 60	325,170	21,348	0
Total number of other employees paid over \$50,000	7,130			

Part II-A Compensation of the Five Highest Paid Independent Contractors for Professional Services
(See page 2 of the instructions. List each one (whether individual or firms). If there are none, enter "None.")

(a) Name and address of each independent contractor paid more than \$50,000	(b) Type of service	(c) Compensation
Chimes Inc 5455 Corporate Drive Suite 303 TROY, MI 48098	Temp staff for IT	12,888,611
Kelly Scott Madison 35 East Wacker Dr 14th Floor CHICAGO, IL 60601	Brand advertising	4,722,317
National Genetics Institute 2311 Pontius Ave LOS ANGELES, CA 90064	Plasma testing	6,242,576
Northrop Grumman 8110 Gatehouse Rd FALLS CHURCH, VA 22042	Biomed computer syst	3,369,812
JP Morgan Securities 277 Park Ave 15th Floor NEW YORK, NY 10172	Investment advisory	2,454,868
Total number of others receiving over \$50,000 for professional services	198	

Part II-B Compensation of the Five Highest Paid Independent Contractors for Other Services
(List each contractor who performed services other than professional services, whether individual or firms. If there are none, enter "None". See page X for instructions.)

(a) Name and address of each independent contractor paid more than \$50,000	(b) Type of service	(c) Compensation
SATELLITE SPECIALIZED TRANSPORTAION 102 NW NEWPORT AVE BEND, OR 97701	KATRINA LOGISTICS	30,542,160
ACS EDUCATION SERVICES 1 WORLD TRADE CNTR STE 2200 LONG BEACH, CA 90831	KATRINA CALL CENTER	6,187,417
PATRIOT COMMUNICATIONS LLC 8544 SUNSET BLVD LOS ANGELES, CA 90069	DONATION LINE SUPP	6,183,600
GRIZZARD COMMUNICATIONS GROUP 229 PEACHTREE ST NE SUITE 900 ATLANTA, GA 30303	DIRECT MAIL CAMPAIGN	5,492,110
QUICK INTERNATIONAL COURIER POBOX 35417 NEWARK, NJ 07193	BLOOD TRANSPORTATION	4,212,544
Total number of other contractors receiving over \$50,000 for other services	247	

APPENDIX B

USOBA BEST PRACTICE STANDARDS

**USOBA STANDARD:
Consumer Debt Negotiation Companies**

1. SCOPE

(a) This Standard establishes general requirements for best practices for Consumer Debt Negotiation Companies (CDNCs) which the CDNC's may use in adopting and utilizing more detailed procedures designed for their own individual circumstances.

(b) This Standard establishes requirements that each individual CDNC is permitted to use to create its own measurable procedures. A CDNC's internal procedures and policies must be in compliance with each element of this Standard.

2. DEFINITIONS

Accreditation: Approval process for Members who have met the criteria for the written Standards established by USOBA.

Accredited Member: Those Members who have met the criteria for accreditation according to USOBA's written Standards as certified by a third party accreditation company approved by USOBA.

Cancellation/Termination: Used interchangeably, both "cancellation" and/or "termination" shall be collectively herein referred to as "cancel", "cancelled", or "cancellation". This refers to any point in time, following the right of rescission period, in which either the member or its client gives notice to the other of their intent to end the agreement or program.

Creditor: Creditors, authorized representatives of the creditors, and any other person or entity that has lawful authority to collect the alleged debt account.

Customer or Client: Any consumer that contracts with, or otherwise agrees, to obtain Debt Negotiation Services from a Debt Negotiation Services Provider.

Debt Negotiation Services: Negotiating or offering to negotiate to reduce the principal obligations of a consumer with respect to credit extended by others.

Debt Negotiation Services Provider: Any individual or entity engaged in the business or practice of debt negotiation services.

Fees: The good and valuable consideration given to a Member by, or on behalf of, a Client.

Member: Any individual or entity, other than a Vendor as defined in this Standard, that is current in paying its annual USOBA dues, has met the requirements as stated in the USOBA Member Licensing Agreement, and provides an alternative to bankruptcy to consumers.

Policies and Procedures: The defined measures, conditions, actions and parameters of conduct in written form that the Member and its Representatives must adhere to in a uniform manner to avoid any discrimination or disparity of provided services.

Principal Location: The primary physical location which includes the Member's name, physical address, and telephone number associated with that physical address.

Representatives: Including, but not limited to a Member's officers, directors, employees, agents, affiliates, contractors and sub-contractors.

Third Party Accreditation Company: Any unrelated entity that offers an accreditation program approved by USOBA.

Vendor: Any individual or entity that is current in paying annual USOBA dues and markets, sells, provides or offers to provide goods or services to Member entities or other entities and vendor entities in the debt negotiation services industry.

3. GENERAL

- (a) The Member and its Representatives shall adhere to this Standard at all times while in the business of providing Debt Negotiation Services.
- (b) The Member and its Representatives will only provide Debt Negotiation Services to a Client that is qualified based on financial review, hardship and/or current default status.
- (c) The Member Must:
 - i) Demonstrate the ability to consistently achieve settlements of consumer debts that are mutually agreeable to both debtor and creditor, as applicable.
 - ii) Have written agreements with all clients. (See Addendum III)
 - iii) Have written procedures to prevent unauthorized access to or misuse of a client's confidential information.
 - iv) Have a written fee policy.
 - v) Have written procedures outlining Member's negotiation process.
 - vi) Maintain reasonable and regular business hours and post their hours of operation clearly to their clients.

4. MARKETING

- (a) A Member shall not engage in any sales or marketing that uses any unfair or deceptive representations, inducements or other communications.
- (b) All print advertising, including electronic media, shall contain a Principal Location.
- (c) A Member shall ensure that all marketing materials and statements that contain examples of past performance are truthful and contain the statement: "This statement is an example of past performance and is not intended to be a guarantee of any future settlement results."
- (d) A Member shall ensure that all marketing materials and statements that contain projected savings must be truthful, and must state whether the projected savings include Member fees.

- (e) All required statements in this section shall be clear and conspicuous if in print or other written media, or shall be clearly disclosed at the time the statement is made.
- (f) All advertising content (and data supporting the claims made) shall be saved for five years.

5. SALES PRIOR TO CONTRACT

- (a) A Member shall generally disclose the following:
 - (1) The estimated total Debt Negotiation Service costs including Member's fees;
 - (2) Estimated length of program;
 - (3) The Member cannot stop creditors from contacting the consumer;
 - (4) The Member is not making regularly scheduled payments on the consumer's behalf to creditors;
 - (5) Non-payment to creditors may have a negative impact on the consumer's credit report;
 - (6) Creditors may continue to charge interest and other fees prior to settlement;
 - (7) The Debt Negotiation Service is not credit counseling, debt consolidation, legal advice or credit repair, or a loan;
 - (8) Forgiveness of a debt of over \$600 may be reported by your creditor to the IRS as income;
 - (9) All statements are estimations only and are not intended to be guarantees.
- (b) Each Member shall conduct a financial review for the consumer.
- (c) Each Member shall describe its services so that each consumer can make an informed decision as to whether or not the Member's services are a viable option for that consumer.

6. CLIENT AGREEMENTS

- (a) Members shall maintain current written agreements with their Clients at all times.
- (b) Member agreements with Clients must:
 - (1) List every debt to be included in program at time of enrollment in the Member's program, the creditors' names and identifying information and the approximate total of all such debts.
 - (2) List the terms and conditions of funding the Member's program, including –
 - (i) a reasonable estimate of all Fees to be paid by the Client to the Member or to any other person over the term of the agreement;
 - (ii) the estimated amount of money needed to fund settlements; and,
 - (iii) the estimated number of installments necessary to fund the program;
 - (3) Contain a description of the services to be performed by the Member and its Representatives, including –
 - (i) the approximate date by which the performance of the services will be complete; or
 - (ii) the estimated length of time necessary to perform such services;
 - (4) State the name, a physical address and telephone number of the Member;
 - (5) Contain a full list of disclosures (See Addendum III)

(6) Contain a clear and conspicuous statement in bold face type as mandated by applicable laws, in immediate proximity to the space reserved for the client's signature on the agreement, which reads as follows: "You may rescind this agreement without penalty or obligation at any time before midnight of the 3rd business day after the date on which you signed the agreement. See the attached notice of rescission form for an explanation of this right."

(7) Have clearly defined cancellation policies and procedures.

(c) Agreements between Members and Clients must allow the Client to rescind the agreement with reasonable notice to the Member. The Member must return all Fees in the event of rescission of the agreement.

(d) Right to Rescind Agreement:

(1) In General. A Client may rescind the agreement with a Member at no charge by notifying the Member in writing within three (3) business days of signing the agreement and any Fees paid to the Member during the three (3) business day period will be refunded.

(2) Rescission Form and Other Information. Each agreement shall be accompanied by a form, in duplicate, which has the heading 'Notice of Rescission' and contains in bold face type the following statement:

'You may rescind this agreement, without any penalty or obligation, at any time before midnight of the 3rd day which begins after the date the agreement is signed by you.

'To rescind this agreement, mail or deliver in person a signed, dated copy of this rescission notice, or any other written notice to [name of MEMBER] at [address of MEMBER] before midnight on [date]

'I hereby rescind this transaction,

[date]

[purchaser 's signature].'

(d) Client Copy of Agreement Required. Any consumer who enters into any agreement with any Member shall be given, by the Member:

(1) a copy of the completed current agreement, and

(2) a copy of any other document(s) the Member requires the client to sign.

7. SERVICING THE CLIENTS AND SERVICE DELIVERY PROCEDURES

(a) Members shall establish policies and procedures that include, but are not limited to, the following elements:

(1) Types of services to be provided;

(2) Job descriptions;

(3) Service accessibility and availability (eg: hours of operation and mechanisms of communication with clients);

(4) Timeliness and accuracy of Service;

(5) Maintain records of communications with Clients and actions taken on their behalf;

(6) To respond to Client communications or service complaints within a specified time frame;

(7) An internal Client dispute resolution process that provides for fair and prompt resolution of any Client dispute with the Member;

- (8) Measure the performance of the service and service delivery processes against established objectives and communicate outcome internally;
- (9) Establish a performance improvement review process.
- (b) Members shall obtain a Client's approval of settlements, which may consist of a prior blanket or general approval.
- (c) Members shall adopt and follow internal procedures for the periodic review of a Client's progress through its debt negotiation program.
- (d) Members shall establish policies and procedures to promptly correct or prevent errors or lapses in service.
- (e) Members must obtain written settlement agreements that contain language of final debt forgiveness before payment is made to the creditor.
- (f) Members shall notify the Client or ensure creditors are paid on or before the due date(s) set forth in the settlement terms.
- (g) Members must provide clients with copies or access to copies of each settlement agreement achieved and if applicable, proof of payment.
- (h) Members shall adopt procedures for clients to use to evaluate the performance of Member services, including methods for measuring client satisfaction.

8. CREDITORS

- (a) Members shall establish policies and procedures and adhere to their own set of systems of communications with Creditors. This system must include standards for response time to communications from various Creditor inquiries.
- (b) Members shall be open to Creditor inquiries and explaining how debt negotiation works
- (c) Members must accurately communicate appropriate information to Creditors about their Clients, as necessary. Members will indicate source of said information.
- (d) Members must provide creditors with fair and clear settlement proposals based on the Clients' ability to pay.
- (e) If a Client's agreement is cancelled, Members must inform the applicable creditors, in writing, within a reasonable time period, following receipt of such written notice.
- (f) Member shall not receive compensation from Client's Creditors.

9. FINANCIAL MANAGEMENT AND INTERNAL CONTROLS

- (a) Members that hold client funds or have a third party trustee hold client funds shall have an annual independent audit of all financial transactions and records by a qualified third party .
- (b) Members shall provide clients with monthly statements regarding the activity on their accounts.
- (c) If the Member holds client funds the Member shall:
 - (1) Not co-mingle, borrow or convert to their own use any client funds with any other funds whatsoever.
 - (2) Not leave earned fees in the client trust account.
 - (3) Keep separate and specific accounting for each client as to funds received, funds disbursed to creditors and fees deducted.
 - (4) Render to clients at any time, on request, an up to date accounting within 3 business days of receipt of such request.

10. INSURANCE COVERAGE

Members shall maintain reasonable insurance coverage to protect the company, its staff, and clients; or as otherwise required by law.

11. LEGAL COMPLIANCE

No Member shall have been, in the past 3 years, the subject of any action by a governmental body or governmental unit which resulted in the imposition of any civil or criminal penalty, whether by settlement, judgment or order, under any debt adjusting, debt pooling, prorating, credit service organization, unfair and deceptive trade practices, false advertising, consumer deception law or regulation or any other law or regulation of similar definition or words of similar import.

12. RESELLER AND SUBCONTRACTING REQUIREMENTS

Members shall adopt policies and procedures to ensure that subcontractors they work with comply with all applicable sections of this standard and take appropriate action to remedy and non-compliance.

13. RECORD KEEPING REQUIREMENTS

(a) Members follow a records retention policy that ensures records of all Client contracts and transactions including those stored electronically are preserved for at least 3 years from the date the Client completes or otherwise terminates the Member's program or as required by law.

(b) Members shall maintain a record keeping system to:

- (1) Prevent records from being altered;
- (2) Provide policies and procedures for correcting erroneous information in records;
- (3) Safeguard records from damage or deterioration;
- (4) Recover or reconstruct damaged or deteriorated records;
- (5) Protect records from unauthorized access.

14. PERIODIC REVIEW

Members shall be reviewed for compliance with this Standard 1 year from the date of Accreditation.

APENDIX C

USOBA CONSUMER NEWSLETTERS

 *send this to a friend*



Living the Good Life in Tight Times

by Maureen Wild

Staying motivated toward any goal requiring self-discipline is a constant battle. As time goes by, you feel deprived and restricted. It's important to incorporate small rewards into your plan to keep you motivated. For instance, when dieting, you can eat foods low in calories and fat. By allowing yourself to eat generous portions of these, you feel fuller. You might also eat smaller meals more often, which will combat the feeling of deprivation. By using these simple methods, you're more apt to stay faithful to your diet.

The same techniques can be adapted to your debt repayment schedule. By avoiding the feelings of deprivation and restriction, you're far less likely to slip into bad spending habits and undermine your financial goals.

Here are some helpful tips to help you enjoy life while remaining faithful to the limitations of the debt-elimination plan you've worked out.

Grocery budgets can often be very tight, and eating at a high-class restaurant seems

out of reach. But that doesn't mean you can't enjoy fancy meals. Try making them yourself at home. Thanks to the popularity of programming on the Food Network, there are scores of delicious, healthy, and inexpensive recipes available online. Most of these recipes use less of the high-fat and high-priced ingredients like meat and cheese, thus cutting your costs significantly. Serve them on an elegant table, put on some good music, and bon appetit!

And while we're talking food, don't give up entertaining because of your budget. Try having an impromptu party. Ask the guests to bring a favorite game to play and a snack to go around. This is an enjoyable way to relax and have fun without anyone bearing the burden of the expense. This can also be a great way to get together during the football season to watch the game. You'll feel much less restricted by your budget if you're able to entertain in your home periodically.

Missing the feeling of being pampered you used to get by spending money? Try getting some friends together and having a home demonstrator do facials and manicures. This is a wonderful way to pamper yourself without the cost. You'll also get the added benefit of being able to purchase some cosmetics with the credit earned from any other sales made at your party. There are many different types of party plans which allow you to earn credit toward your own purchases, and they can be very entertaining.

Are you a big moviegoer? You can compensate for not going to the shows for little or nothing. Just check out your local library. Most libraries carry an assortment of DVDs that can be taken out for free with your library card. Supply your own popcorn and drinks and enjoy yourself in the comfort of your own home. Not enough can be said about a good public library! I highly recommend you check into it as one of the best-kept secrets available to anyone on a limited budget. You'll find a multitude of resources at your fingertips.

If you enjoy classes and seminars to keep you active, the library often offers them free of charge on a variety of topics. If museums, zoos, and parks are your activity of choice, many library systems in larger cities offer free passes to these attractions in your area.

If you wish you could spend a little money fixing up your home, try checking out some works of art from your local library to add a little class. All of these services and more are yours free with the aid of your library card.

Don't forget our national and state park systems. Have you been longing for a vacation to some beautiful spot, but it's just not in the budget? For many of us, the sights right near home have never really been explored. Take this opportunity to see what your own state has to offer. Check out your state tourism office online for information on all the activities and destinations available near you. Many of them are free or cost very little. You'll be amazed at the beauty and interests right under your nose.

This is a wonderful country with many resources available for little or no cost. Take advantage of what you've been paying for with your taxes. Live the good life now without sabotaging your future.

Student Financial Aid Web Source

Looking for a great resource for student financial aid information, advice and tools? Look no further than www.finaid.org.

Access to FinAid is free for all users and the site has earned a stellar reputation in the educational community as the best web site of its kind. It's comprehensive, it's informative, it's objective -- and it's the first stop on the web for students looking for ways to finance their education.

Every major newspaper and personal finance magazine in the country has reviewed the site. The *New York Daily News* called FinAid "the hottest site on the Internet for financial aid tips." It is "the best place to begin a search" according to the *Chicago Sun-Times*, and "the grand-daddy of all Web sites" according to the *Boston Globe*. *Yahoo Internet Life* said to "make FinAid your first stop. This site offers some of the best 'how to' guidance on securing financial aid."

The site has won awards from the College Board, the National Association of Student Financial Aid Administrators, the National Association of Graduate and Professional Students and the American Institute for Public Service.

EASY RECIPE

Quick Jambalaya

Prep Time: 15 min

Total Time: 35 min

Makes: 6 servings

- 1 Tbsp. oil
- 1/2 lb. hot Italian sausage, sliced, quartered
- 1 medium onion, chopped
- 1 can (14 oz.) diced tomatoes, undrained
- 1 can (14-1/2 oz.) chicken broth
- 1 medium green pepper, chopped
- 1/2 cup KRAFT Original Barbecue Sauce
- 1 lb. frozen cooked shrimp, thawed
- 2 cups MINUTE White Rice, uncooked

HEAT oil in large nonstick skillet on medium-high heat. Add sausage and onion; cook and stir until sausage is no longer pink.

ADD tomatoes, chicken broth, green pepper, barbecue sauce, shrimp and rice; mix well. Bring to boil; cover.

REMOVE from heat; let stand 5 minutes. Stir gently before serving.

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United States Organizations for Bankruptcy Alternatives
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 *send this to a friend*



About Face

Supporting Your Financial Turnaround



Beware of Credit Repair

You see the advertisements in newspapers, on TV, and on the Internet. You hear them on the radio. You get fliers in the mail. You may even get calls from telemarketers offering credit repair services. They all make the same claims:

- "Credit problems? No problem!"
- "We can erase your bad credit -- 100% guaranteed."
- "Create a new credit identity -- legally."
- "We can remove bankruptcies, judgments, liens, and bad loans from your credit file forever!"

Do yourself a favor and save some money, too. Don't believe these statements. Only time, a conscious effort, and a personal debt repayment plan will improve your credit report.

The Scam

Everyday, companies nationwide appeal to consumers with poor credit histories. They promise, for a fee, to clean up your credit report so you can get a car loan, a home mortgage, insurance, or even a job. The truth is, they can't deliver. After you pay them hundreds or thousands of dollars in fees, these companies do nothing to improve your credit report; most simply vanish with your money.

The Warning Signs

If you decide to respond to a credit repair offer, look for these tell-tale signs of a scam:

- companies that want you to pay for credit repair services before they provide any services.
- companies that do not tell you your legal rights and what you can do for yourself for free.
- companies that recommend that you not contact a credit reporting company directly.
- companies that suggest that you try to invent a "new" credit identity -- and then, a new credit report -- by applying for an Employer Identification Number to use instead of your Social Security number.
- companies that advise you to dispute all information in your credit report or take any action that seems illegal, like creating a new credit identity. If you follow illegal advice and commit fraud, you may be subject to prosecution.

You could be charged and prosecuted for mail or wire fraud if you use the mail or telephone to apply for credit and provide false information. It's a federal crime to lie on a loan or credit application, to misrepresent your Social Security number, and to obtain an Employer Identification Number from the Internal Revenue Service under false pretenses.

Under the Credit Repair Organizations Act, credit repair companies cannot require you to pay until they have completed the services they have promised.

The Truth

No one can legally remove accurate and timely negative information from a credit report. The law allows you to ask for an investigation of information in your file that you dispute as inaccurate or incomplete. There is no charge for this. Everything a credit repair clinic can do for you legally, you can do for yourself at little or no cost. According to the Fair Credit Reporting Act (FCRA):

- You're entitled to a free report if a company takes adverse action against you, like denying your application for credit, insurance, or employment, and you ask for your report within 60 days of receiving notice of the action. The notice will give you the name, address, and phone number of the consumer reporting company. You're also entitled to one free report a year if you're unemployed and plan to look for a job within 60 days; if you're on welfare; or if your report is inaccurate because of fraud, including identity theft.
- Each of the nationwide consumer reporting companies -- Equifax, Experian, and TransUnion -- is required to provide you with a free copy of your credit report, at your request, once every 12 months.

The three companies have set up a central website, a toll-free telephone number, and a mailing address through which you can order your free annual report. To order, click on annualcreditreport.com, call 1-877-322-8228, or complete the Annual Credit Report Request Form and mail it to: Annual Credit Report Request Service, P.O. Box 105281, Atlanta, GA 30348-5281.

Do not contact the three nationwide consumer reporting companies individually. They are providing free annual credit reports only through annualcreditreport.com, 1-877-322-8228, and Annual Credit Report Request Service, P.O. Box 105281, Atlanta, GA 30348-5281. You may order your reports from each of the three nationwide consumer reporting companies at the same time, or you can order your report from each of the companies one at a time.

Otherwise, a consumer reporting company may charge you up to \$9.50 for another copy of your report within a 12-month period.

You can dispute mistakes or outdated items for free. Under the FCRA, both the consumer reporting company and the information provider (that is, the person, company, or organization that provides information about you to a consumer reporting company) are responsible for correcting inaccurate or incomplete information in your report. To take advantage of all your rights under this law, contact the consumer reporting company and the information provider.

Do-It-Yourself Credit Check-Up

Even if you don't have a poor credit history, some financial advisors and consumer advocates suggest you review your credit report periodically

- because the information it contains affects whether you can get a loan or insurance -- and how much you will have to pay for it.
- to make sure the information is accurate, complete, and up-to-date before you apply for a loan for a major purchase like a house or car, buy insurance, or apply for a job.
- to help guard against identity theft. That's when someone uses your personal information -- like your name, your Social Security number, or your credit card number -- to commit fraud. Identity thieves may use your information to open a new credit card account in your name. Then, when they don't pay the bills, the delinquent account is reported on your credit report. Inaccurate information like that could affect your ability to get credit, insurance, or even a job.

EASY RECIPE

Classic Baked Penne Casserole

Ingredients:

8 ounces of Penne pasta, cooked and drained
1/2 pound ground beef, cooked and drained (add some spices while cooking if desired)
1 26-ounce jar of your favorite pasta sauce (or about 3 cups of your homemade sauce)
2 c. Mozzarella cheese, shredded (you can also add a little parmesan cheese if you have it on hand)
Parsley, dried or fresh and chopped
Salt and Pepper to taste

Directions:

- Preheat oven to 350 degrees.
- In a large bowl, mix together cooked pasta, beef, sauce and 1 c. of the shredded cheese.
- Place pasta mixture into baking dish and cover with lid or aluminum foil. Bake for 30-35 minutes.
- Take dish out of the oven and remove cover, top with remaining 1 c. of shredded cheese and sprinkle with parsley. Bake for another 8-10 minutes. Makes 4-6 servings. This recipe can be double easily and cooked in a 10x13 baking pan.

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APPENDIX D

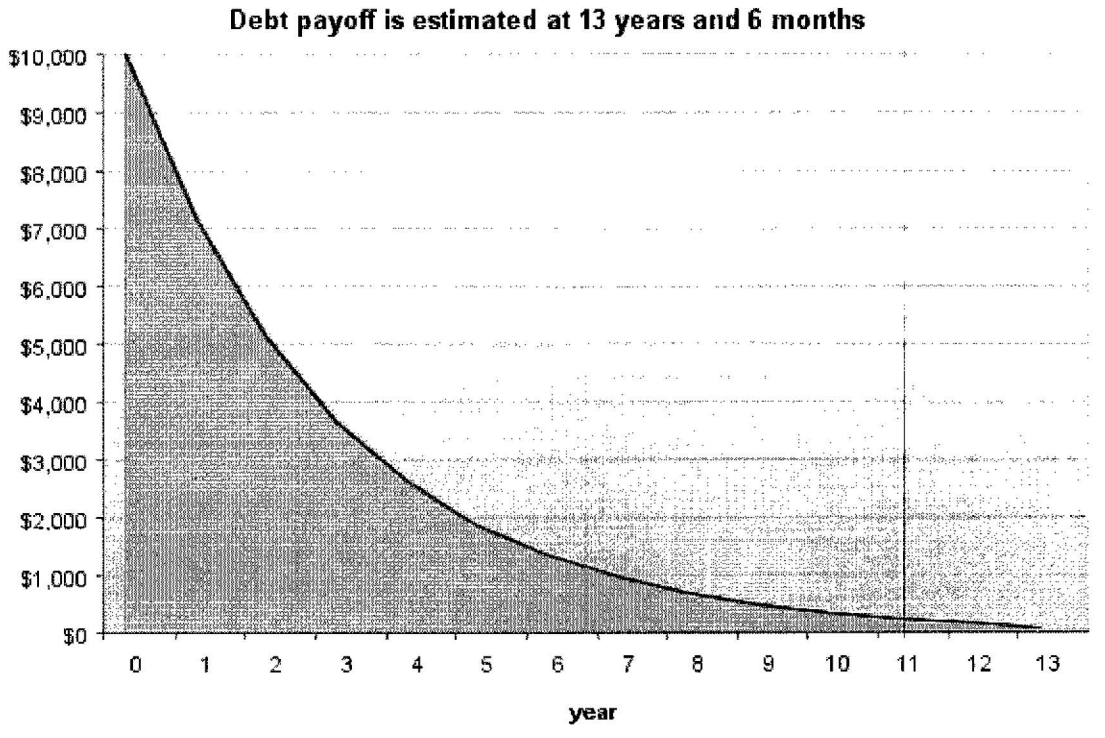
CREDIT CARD CALCULATOR

WWW.E-WISDOM.COM

Credit Card Minimum Payments

Minimum payments will take 13 years and 6 months to payoff your debt.

You owe a total of \$10,000.00 having a total monthly payment of \$400.00. If you continue to make the minimum payments it will take you 13 years and 6 months to payoff this debt. The total interest paid will be \$4,483.45.



Debt Summary

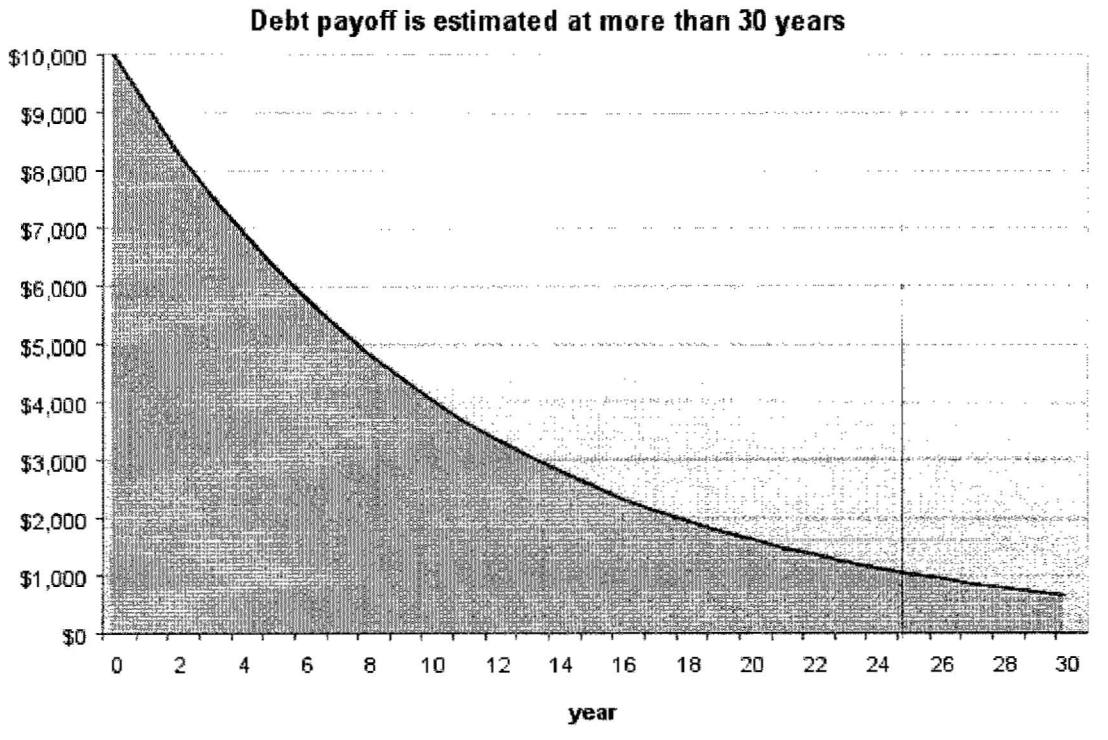
	Balance	Interest Rate	Monthly Payment	Interest Owed	Total Payments	Time to Payoff	Payment Type
Credit card 1	\$10,000.00	15.00%	\$400.00	\$4,483.45	\$14,483.45	162 months	Minimum
Totals	\$10,000.00	15.00%	\$400.00	\$4,483.45	\$14,483.45	13 years and 6 months	

Information and interactive calculators are made available to you as self-help tools for your independent use and are not intended to provide investment advice. We can not and do not guarantee their applicability or accuracy in regards to your individual circumstances. All examples are hypothetical and are for illustrative purposes. We encourage you to seek personalized advice from qualified professionals regarding all personal finance issues.

Credit Card Minimum Payments

Minimum payments will take more than 30 years to payoff your debt.

You owe a total of \$10,000.00 having a total monthly payment of \$200.00. If you continue to make the minimum payments it will take you more than 30 years to payoff this debt. The total interest paid will be \$15,574.52.



Debt Summary

	Balance	Interest Rate	Monthly Payment	Interest Owed	Total Payments	Time to Payoff	Payment Type
Credit card 1	\$10,000.00	15.00%	\$200.00	\$15,574.52	\$25,574.52	30 + Years	Minimum
Totals	\$10,000.00	15.00%	\$200.00	\$15,574.52	\$25,574.52	more than 30 years	

Information and interactive calculators are made available to you as self-help tools for your independent use and are not intended to provide investment advice. We can not and do not guarantee their applicability or accuracy in regards to your individual circumstances. All examples are hypothetical and are for illustrative purposes. We encourage you to seek personalized advice from qualified professionals regarding all personal finance issues.

APPENDIX E

USOBA ACCREDITATION PRESS RELEASE



United States Organizations for Bankruptcy Alternatives (USOBA) Announced Best Practice Standard Accreditation Program at the 2006 Winter Conference in Austin, TX

USOBA announced its Best Practice Standard Accreditation Program which is the first program of its kind for the debt negotiation industry. A 2nd party audit will determine if the program participants are in compliance with the USOBA Best Practice Standard. This standard was drafted and unanimously approved by the USOBA membership in order to establish consumer protection guidelines and best practice procedures and policies. This accreditation program will be based on the USOBA Best Practice Standard and will represent the first opportunity for consumers to make informed choices about debt negotiation companies with more assurance.

Houston, TX (PRWEB) February 10, 2006 -- United States Organizations for Bankruptcy Alternatives (USOBA) announced Best Practice Standard Accreditation Program at the 2006 Winter Conference in Austin, TX.

USOBA announced its Best Practice Standard Accreditation Program which is the first program of its kind for the debt negotiation industry. A 2nd party audit will determine if the program participants are in compliance with the USOBA Best Practice Standard. This standard was drafted and unanimously approved by the USOBA membership in order to establish consumer protection guidelines and best practice procedures and policies. This accreditation program will be based on the USOBA Best Practice Standard and will represent the first opportunity for consumers to make informed choices about debt negotiation companies with more assurance.

"USOBA has developed a good set of best practices," commented Tom Shelley, VP, Marketing for BSI Management Systems. "The best practices include ensuring companies are not engaging in any misleading advertising; that they clearly explain upfront to consumers the costs and timescales, and include this in the agreements, communicate regularly with consumers and much more besides. What is even better is that the requirements have been written in unambiguous and therefore auditable terms. This means that BSI can truly verify that each accredited company is really doing what they should be doing."

USOBA concluded its 2006 Winter Conference on Friday, February 3. The 2 day conference, held in Austin, TX, welcomed distinguished guests and regulators from 6 states. These industry conferences provide a vital arena for regulators and legislators to participate in shaping the debt negotiation industry by presenting valuable information to the USOBA membership regarding the expectations of state governments. Speaker Leslie Linfield from the Institute for Financial Literacy remarked, "I enjoyed the opportunity to meet the membership and found them to be engaging and particularly interested in the topic of financial literacy and educating their clients."

USOBA, as the oldest and largest trade association representing 75 debt negotiation companies, was founded by members of the industry seeking representation specifically for debt negotiation outside of credit counseling and bankruptcy law. USOBA represents and advocates for the fair regulation of the industry and the protection of consumers.

With record levels of consumers filing for bankruptcy each year, the credit counseling industry under fire from the IRS, FTC, U.S. Senate and House, consumer advocates and the state legislatures, USOBA members are often the last line of help to aid consumers that wish to avoid bankruptcy.

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Contact Information

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713-290-9029

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APPENDIX F

USOBA SALES AND MARKETING GUIDE



USOBA Sales & Marketing Guide

Compliance Suggestion Guide

Compliance Suggestion Guide

Purpose of Suggestion Guide

Advocate for fair consumer protection

Maintain USOBA reputation

In This Guide:

General Purpose

FTC Workshop Announcement

Marketing Practices:

Advertising Claims

Website Content

Sales Practices

Accountability

Training

General Purpose Summary

USOBA's mission has always been to represent the debt negotiation industry by creating state specific agendas and advocate for fair regulations and protection of consumers.

This organization chooses to promote and safeguard the industry, and this suggestion guide should be general advice regarding the sales and marketing practices of your debt settlement company.

Due to the rapid expansion of the industry, USOBA bases this information on recent trends, practices, industry complaints and agreements.

FTC To Host Debt Settlement

Will Examine Industry Trend Toward For-Profit Consumer Debt Relief Services

The Federal Trade Commission staff will host a workshop on September 25, 2008, to learn about the growth of for-profit debt relief entities and examine how the for-profit debt relief model is affecting consumers and businesses. Consumer advocates, industry representatives, and state and federal regulators will discuss a range of issues, including the history and expansion of the industry, the advertising and marketing of debt relief services, the role of third-party lead generators and other service providers, legal developments in the regulation of the industry, and ways to address consumer protection issues and education needs.

In preparation for the workshop, FTC staff welcomes original research, surveys, and academic papers regarding for-profit consumer debt relief services. These materials are due by August 15. More information on the workshop will be available soon, including information about participating as a panelist.

The workshop is free and open to the public; it will be held at the FTC's Satellite Building Conference Center, 601 New Jersey Avenue, NW, Washington, DC.



Marketing Practices

Compliance Suggestion Guide

Advertising Claims

ENFORCEMENT ACTION

Examples of False Claims and Terms to Stay Away From:

FTC Case No. SA CV 06-701 DOC–August 2006 by the FTC
(Refer to case for Defendants)

- “consumers will be able to pay off their credit-card”
- failed to disclose suits are a possibility
- failed to disclose interest continuously accrues

FTC Complaint: Debt-Set, March 2007 settled with the Federal Trade Commission:

- “Reduce Debt Now”
- “Eliminate Harassing Calls”
- “Fifty cents on the dollar”
- “50 to 60 percent”

Attorney General, Washington State & FTC– ‘Telemarketing Group’, May 23, 2007– Settled Charges with FTC.

- ‘substantially lower interest rates’
- ‘reduced monthly payments’
- ‘elimination of debt three to five times faster than otherwise would be possible’

PREVENTATIVE ACTION

USOBA Logo License Agreement:

- “All applicable advertising, including web pages, shall not use any unfair or deceptive representations, inducements, or other communications”

USOBA Best Practices Accreditation:

- Must contain statements: “This statement is any example of past performance and is not intended to be a guarantee or any future settlements”
- “Shall ensure that all marketing materials and statements that contain projected savings must be truthful, and must state whether the projected savings include member fees.
- All required statements shall be clear and conspicuous if in print or other written media, or shall be clearly disclosed at the time the statement is made.
- “Any Member shall not engage in any sales or marketing that uses any unfair or deceptive representation, inducements or other communications”

Website Content

OPPORTUNITIES

Client Testimonials :

- Testimonials– Does your company have affidavits from clients? Are the testimonials from consumers in working business states?

Settlement Statistics Postings :

- Do your settlement postings on your website reflect the original creditor, debt buyer or agency? Has permission been granted for use of these settlement postings?

Terms and Conditions :

- Does your company clearly post Terms and Conditions? When you receive a form submission from any landing page, does your prospect agree to Terms of Use or a Privacy Policy?

Lead Provider Interview :

- Does your company interview the lead provider, audit their advertising on landing pages, or analyze the contract you sign with them?

DOCUMENTATION

USOBA Provided/ Requested Documentation:

USOBA Summer 2008 Conference: Handouts provided for Tenenbaum/Pompan Sessions, March 2008

Articles:

- “Print Messages must be in a type size and location sufficiently noticeable for an ordinary consumer to comprehend it and shall contrast with the background”

USOBA Logo License Agreement :

- “All Applicable Web Pages must list physical address and phone number.”
- “All applicable web pages must be registered with a domain that publicly publishes the registrant’s physical address and phone number.”



Sales Practices

Compliance Suggestion Guide

Accountability

ENFORCEMENT ACTION

Examples of False Claims and Terms to Stay Away From:

FTC Charge: Edge Solutions, October 2007, settled with the Federal Trade Commission:

- Misrepresented services- will contact creditors and pay off within several weeks after consumers join program
- Failed to disclose the percentage that consumer's debt will be reduced
- Promised to negotiate and/or start paying creditors within a specific time frame
- Failed to disclose all fees and costs, including when and how consumers will pay them
- Failed to disclose the approximate time before settlements will be achieved

FTC Complaint: Debt-Set, March 2007 settled with the Federal Trade Commission:

- 'Misrepresented that they would not charge consumers any up-front fees before obtaining the promised debt relief, and that participation in their program would stop creditors from calling or suing them to collect debt.'

PREVENTATIVE ACTION

USOBA has implemented sales prior to contract requirements:

USOBA Best Practices Accreditation :

- Any Member shall generally disclose the following:
- The estimated total Debt Negotiation Service costs including Member's fees
- Estimated length of the program
- The Member cannot stop creditors from contacting the consumer
- The Member is not making regularly scheduled payments on the consumer's behalf to the creditors
- Non-payment to creditors may have a negative impact on the consumer's credit report
- Creditors may continue to charge interest and other fees prior to settlement
- The debt negotiation service is not credit counseling, debt consolidation legal advice, credit repair or a loan
- Forgiveness of a debt over \$600 may be reported by your creditor to the IRS as income
- All statements are estimations only and are not intended to be guarantees.

Training

OPPORTUNITIES

Debt Specialist Certification :

- Does your company's sales department go through a certification at the inception of employment?

Quality Assurance :

- Does your company have a Quality Assurance Board that audits the sales department's calls and scripts on an ongoing basis? Does your company send surveys to clients to ensure understanding and service?

Call Recordings :

- Does your company record the sales calls? How often are the calls audited for Quality Assurance? Does your company record a disclosure agreement call?

Educational Programs :

- Does your company have more than 3 educational programs? Do you outsource or create internally?

DOCUMENTATION

USOBA has implemented sales prior to contract requirements:

Uniform Debt Management Services Act (CO) :

- "Evidence of Certification - Provide a list of all credit counselors and debt specialists with dates of hire. At application or within twelve months after initial employment, as applicable, provide evidence of certification for each of the Applicant's credit counselors and debt specialists from an organization approved by the Administrator."
- "Educational Programs- Provide a description of the three most commonly used educational programs that the Applicant provides, or intends to provide, to consumers in Colorado and a copy of any materials used in those programs."
- "Financial Analysis of Consumers- Provide a description, including form(s) or electronic model(s), of the Applicant's financial analysis."



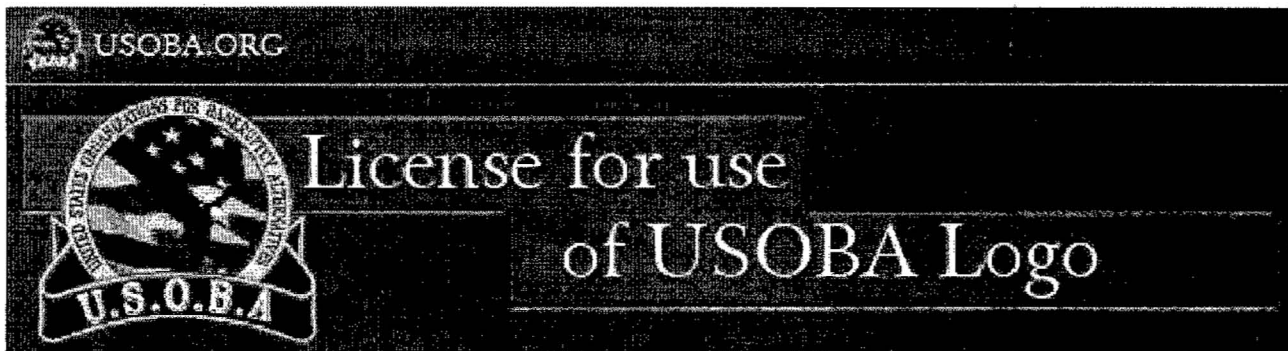
Sources and Resources

Refer to the following for more information quoted within this guide:

- **USOBA: USOBA Best Practices Checklist & USOBA Logo License Agreement**
- **Case No. SA CV 06-701 DOC (RNBx) Federal Trade Commission v. Dennie Connelly, Richard Wade Torkelson, Joanne Garneau, Homeland Financial Services, National Support Services, United Debt Recovery, Freedom First Financial and USA Debt Co.**
 - <http://www.ftc.gov/os/caselist/0523091/070223prosperfinangarneautlmt.pdf>
- **Civil Action No. CV-07-4087-JG-AKT- United States District Court Eastern District of New York, Stipulated Order and Judgment for Permanent Injunction**
 - <http://www.ftc.gov/os/caselist/0723025/080805edgeorder.pdf>
- **Civil Action No. CV06-3654 ABC(VBKx) United States of America v. Credit Foundation of America, TTT Marketing Services, Inc. Credit Defenders of America, Inc., Credit Shelter of America, Inc., Sure Guard Credit Corporation, Inc., and Anthony P. Cara**
 - <http://www.ftc.gov/os/caselist/0423044/060615cfacomplaint.pdf>
- **“Debt Reduction Companies Settle with FTC”, Released February 14, 2008-**
 - <http://www.ftc.gov/opa/2008/02/debtreduct.shtm>
- **“Debt Elimination Defendants Settle FTC Charges”, Released May 23, 2007-**
 - <http://www.ftc.gov/opa/2007/05/dsi.shtm>
- **“Debt Management Telemarketers Settle FTC Charges”, Released June 15, 2007-**
 - <http://www.ftc.gov/opa/2006/06/cfa.shtm>
- **“Debt Meltdown Program Marketers Settle with FTC; Charged with Failing to Deliver Promised Debt Reduction Services”, Release August 5, 2008**
 - <http://www.ftc.gov/opa/2008/08/edge.shtm>
- **Uniform Debt Management Services Act**
 - <http://www.udmsa.org>
- **Venable Articles by Jonathan L. Pompan, March 2008**
 - <http://www.venable.com/publications.cfm>

APPENDIX G

USOBA LOGO LICENSING
AGREEMENT



The USOBA logos and name are the property of the United States Organizations for Bankruptcy Alternatives ("USOBA") but may be used by USOBA members in good standing in accordance with the terms and conditions set forth below. Use of one or more of the logos shall constitute consideration for, agreement to, and acceptance of, the terms and conditions of this license by the user. User agrees to the following:

1. The attached USOBA logos (the "logos") are registered with the U.S. Copyright Office and are the sole and exclusive property of USOBA. These logos may be used only by USOBA members in good standing if and only if such use is made pursuant to the terms and conditions of this limited and revocable license. These logos may not be distributed or sublicensed to any individual, corporation, agency, association, partnership, affiliate, subsidiary, or other entity without the specific prior written consent of USOBA. Any failure by a user to comply with the terms and conditions contained herein may result in the immediate revocation of this license, in addition to any other sanctions and legal remedies imposed by USOBA. The interpretation and enforcement (or lack thereof) of these terms and conditions, and compliance with them, shall be made by USOBA in its sole discretion.
2. As set forth on the Attachment, the logos are made available to USOBA members in good standing in color and black-and-white. The logos may not be revised or altered in any way, and must be displayed in the same form as produced by USOBA.
3. The logos may be used in a professional manner on the user's business cards, stationery, literature, advertisements, internet web sites, store-front window, or in any other comparable manner to signify the user's membership in USOBA. The logo may never be used independent of the term "MEMBER". Notwithstanding the foregoing, the logos may not be used in any manner that, in the sole discretion of USOBA: discredits USOBA or tarnishes its reputation and goodwill; is false or misleading; violates the rights of others; violates any law, regulation or other public policy; or mischaracterizes the relationship between USOBA and the user, including but not limited to any use of the logos that might be reasonably construed as an endorsement, approval, sponsorship, or certification by USOBA of the user, the user's business or organization, or the user's products or services, or that might be reasonably construed as support or encouragement to purchase or utilize the user's products or services.
4. Use of the logos shall create no rights for users in or to the logos or their use beyond the terms and conditions of this limited and revocable license. The logos shall remain at all times the sole and exclusive intellectual property of USOBA. USOBA shall have the right, from time to time, to request samples of use of the logos from which it may determine compliance with these terms and conditions. Without further notice, USOBA reserves the right to prohibit use of the logos if it determines, in its sole discretion, that a user's logo usage, whether willful or negligent, is not in strict accordance with

the terms and conditions of this license, otherwise could discredit USOBA or tarnish its reputation and goodwill, or the user is not an USOBA member in good standing.

5. The USOBA logos may not be used without certification of the following:
 - A. All applicable web pages must list physical address and phone number.
 - B. All applicable web pages must be registered with a domain registrant that publicly publishes the registrant's physical address and phone number.
 - C. All consumers that the organization contracts with must have gone through a reasonable budget analysis to determine appropriateness for debt negotiation.
 - D. No commissions or compensation shall be paid based solely on the outcome of any analysis to determine appropriateness for debt negotiation.
 - E. All work with consumers must be based on a written contract.
 - F. Agency must advise consumers that are not appropriate for debt negotiation of other available resources including bankruptcy and credit counseling.
 - G. Use of the logo must not imply endorsement of the organization, its services or affiliations.
 - H. All contracts with consumers shall disclose the full legal name, state of incorporation and legal address of the organization.
 - I. All applicable advertising, including web pages, shall not use any unfair or deceptive representations, inducements or other communications.
 - J. The logo shall not be used in any electronic mail advertising.
6. Any use of the USOBA logo in any advertisement, Internet web page or Internet web site shall be noticed to USOBA by sending a copy of the advertising or URL location in writing to USOBA at 5405F T.C. Jester Blvd, #3310 Houston, TX 77091 or by electronic mail to info@USOBA.org.
7. This license and the enforcement and interpretation of this license agreement is subject to the laws of the State of Texas. The user hereby consents to the exclusive jurisdiction and venue of the courts, tribunals and agencies located in the State of Texas for any dispute arising from use of the logos.
8. Any questions concerning use of the logos or the terms and conditions of this license should be directed to the USOBA Executive Director at 281-820-0666 or in writing to USOBA at 5405F T.C. Jester Blvd, #3310, Houston, TX 77091, or by electronic mail to info@USOBA.org.

I am authorized to accept this license on behalf of the company indicated below and accept the terms and conditions of this License of USOBA Logos to Members:

Name: _____

Title: _____

Company: _____

Date: _____

Return this agreement to USOBA with copies of the following:

_____ Copies of all web pages using or intending to use the USOBA logo.

_____ Verification that all applicable web pages are registered with a domain registrant that publicly publishes the registrant's physical address and phone number.

_____ Copy of the budget analysis used for consumers that the organization contracts with to determine appropriateness for debt negotiation.

_____ All written contracts used with consumers.

_____ Copy of notice used to advise consumers that are not appropriate for debt negotiation of other available resources including bankruptcy and credit counseling.