

USOBA Best Practice Checklist

Company and Location _____

Date _____

SMO _____

General	USOBA Member Standards: Consumer Debt Negotiation Companies - ALL		
(a)	Member shall provide a toll-free communication system, staffed to service during ordinary business hours and clearly post their hours of operation in writing or on their website.		
(b)	Member shall maintain an internet Web site and shall disclose all of the following: Member name, principal location, telephone number (toll free), email address.		
Client Consulting	USOBA Member Standards: Consumer Debt Negotiation Companies - SALES		
(a)	Member must provide evidence that, within 30 days of initial employment, each of the Member's sales people become undergone formal job training in sales of debt settlement. <i>Note to Members – must establish formal training plan and have records showing completion and competence for all sales staff</i>		
(b)	Member must make available educational programs or materials for Clients. These Programs are to specifically focus on financial literacy.		

Marketing	USOBA Member Standards: Consumer Debt Negotiation Companies - ALL		
(a)	All print advertising, including electronic media, shall contain a Principal Location .		
(b)	Member shall ensure that all marketing materials and statements that contain examples of past performance are truthful, typical and customary, 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."		
(c)	Member shall ensure that all marketing materials and statements that contain projected savings must be truthful, typical and customary and must state whether the projected savings include Member fees.		
(d)	Member may only indicate typical or customary results relating to the time necessary to achieve represented results.		
(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. This includes website content.		
(g)	Member may not make representations that it will furnish money to pay bills or prevent attachments.		
(h)	Member may not guarantee satisfaction of a certain amount or range of indebtedness.		
(i)	Member may not make representations that state participation in a Program will or may prevent litigation, garnishment, attachment, repossession, foreclosure, eviction, or loss of employment.		

(j)	Member may not misrepresent that it is a not-for-profit entity under the law of the state in which it was formed.		
Disclosures Prior to Agreement	USOBA Member Standards: Consumer Debt Negotiation Companies – SALES		
(a)	Each Member shall conduct a financial analysis for the consumer. Member shall review the financial analysis and determine if the consumer is both qualified and can meet the requirements of the Program. <i>Records of this activity must be maintained</i>		
(b)	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.		
(c)	Each Member shall have a written fee policy.		
Agreements	USOBA Member Standards: Consumer Debt Negotiation Companies - – SALES		
(a)	Member must have written agreements with their Clients at all times. If a backend company is used, the sales office must have access to the contracts.		
(b)	Any consumer who enters into any agreement with any Member shall be given by the Member a copy of the completed current agreement and a copy of any other document(s) the Member requires the Client to sign. Delivery of an electronic record must be sent in a format that is retrievable, savable, and printable.		
(c)	If a Member communicates with a Client primarily in a language other than English, the Member shall furnish a translation of the agreement into the primary language used.		
(d)	Agreements must be in writing, dated, and signed by Client.		

(e)	Member may present disclosures/agreement by means of the Internet or other electronic means if Client has affirmatively consented to such use.		
(f)	With respect to agreement by means of an Internet Web site – The screen or multiple screens that contain disclosures must be presented before proceeding to assent to formation of a Program.		
(g)	Member Agreement shall display the following provisions, prominently and clearly on the front page: <i>If contract is delivered electronically (e.g., docusign), this is what the client must first see when logging on. For hard copies, this all must be at the beginning of the contract; it can roll to the next pages, but must be the first details the client sees).</i>		
(1)	Total amount of debt brought into the Program.		
(2)	Every debt to be included in the Program at the time of the enrollment along with the creditor’s names and identifying information (when possible).		
(3)	Estimated amount of money needed to fund settlements.		
(4)	The amount and method for determining the amount of all Client fees, individually itemized.		
(5)	Estimated total amount of fees reasonably anticipated to be paid by the Client over the term of the agreement. <i>In other words, do the math for the client that adds up the individual fees listed above in #3</i>		
(6)	Estimated number of installments necessary to fund the Program through completion <u>and</u> the approximate date by which the performance of services will be completed.		

(h)	Member Agreements shall include: <i>Items noted with (USOBA Disclosure) are found on the optional USOBA disclosure. You may use the USOBA Disclosure as part of your agreement (recommended) or have these items incorporated into your agreement with like language. Please review the USOBA disclosure to ensure you are capturing the full spirit of the disclosure in your agreement.</i>		
(1)	The name and address of Client.		
(2)	The name, principal address, and telephone number of Member.		
(3)	A description of services to be performed by the Member and its representatives.		
(4)	The Client has the right to terminate the Member Agreement at any time by giving the Member written or electronic notice. Termination of the Member Agreement becomes effective immediately upon receipt of Member, at which time all powers of attorney granted by the Client to the Member are revoked and ineffective.		
(5)	Member will charge no additional fees that have not already been earned for services performed after termination of agreement. <i>(USOBA Disclosure)</i>		
(6)	Any power of attorney only authorizes the provider to communicate with creditors for the purpose of negotiating settlement offers and to initiate transfer of funds.		
(7)	Some Programs are not suitable for some individuals. <i>(USOBA Disclosure)</i>		
(8)	The conduct of the Program may negatively affect the Client's		

	credit rating or credit scores. <i>(USOBA Disclosure)</i>		
(9)	Nonpayment of debt may lead creditors to increase finance and other charges or undertake collection activity, including litigation. <i>(USOBA Disclosure)</i>		
(10)	Unless the Client is insolvent, if a creditor settles for less than the full amount of the debt, the Program may result in the creation of taxable income to the Client, even though the Client does not receive any money. <i>(USOBA Disclosure)</i>		
(11)	Specific results cannot be predicted or guaranteed. <i>(USOBA Disclosure)</i>		
(12)	The program requires the Client to meet certain savings goals in order to maximize settlement results.		
(13)	Unless otherwise authorized or professionally licensed, does not provide accounting or legal advice to Clients. <i>(USOBA Disclosure)</i>		
(14)	Member does not receive compensation from the Client's creditors, banks, or third party collection agencies.		
(15)	Member cannot force negotiations or settlements with creditors but will advocate solely on behalf of the Client.		
(16)	Member cannot stop creditors from contacting the consumer and creditors and collectors may continue to call a consumer pending resolution of the debt. <i>(USOBA Disclosure)</i>		
(17)	Accounts are settled in succession.		
(18)	The Member is not making regularly scheduled payments on the consumer's behalf to creditors. <i>(USOBA Disclosure)</i>		
(19)	The Debt Negotiation Service is not credit counseling, debt		

	consolidation, legal advice or credit repair, or a loan.		
(20)	Member will not take possession or control of consumer's funds, other than receiving fees owed. Consumer is responsible for depositing and transferring any funds that are required for any settlements and for payment of fees. <i>(USOBA Disclosure)</i>		
(21)	If Member uses a third party designee to transfer, deposit, withdraw or disburse funds, consumer may be subject to paying additional fees to the third party designee, if any, for handling your transactions. Member may provide consumer information and forms from companies and/or banks that can act as your designee, but consumer use of a designee and agreement with such a designee is separate from agreement with Member. <i>(USOBA Disclosure)</i>		
(22)	Member Agreement shall 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." <i>If another statement is used, it must be in the same spirit and have at least a 3 day rescission period.</i>		
(23)	Rescission Form and Other Information: Each agreement shall be accompanied by a form which has the heading 'Notice of Rescission' and contains in bold face type the following statement: <i>'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</i>		

	<i>] before midnight on [date] 'I hereby rescind this transaction, [date] [purchaser's signature].'</i>		
Negotiations	USOBA Member Standards: Consumer Debt Negotiation Companies - BACK END		
(a)	Members shall have written procedures outlining the negotiation process.		
(b)	Members shall adopt and follow internal written procedures for the periodic review of a Client's progress through the debt negotiation Program.		
(c)	Members shall establish written policies and procedures and adhere to their own set of systems of communications with Creditors. This procedure must include standards for response time to communications from various Creditor inquiries.		
(d)	Members shall be open to Creditor inquiries and explaining how debt negotiation works.		
(e)	Members must accurately communicate appropriate information to Creditors about their Clients, as necessary. Members will indicate source of said information.		
Record Keeping	USOBA Member Standards: Consumer Debt Negotiation Companies – ALL		
(a)	Members follow a 'Copy of Agreement Policy' that ensures records of all Client contracts and transactions, including those stored electronically, are preserved for at least 5 years from the date the Client completes or otherwise terminates the Member's Program.		

(b)	Members shall maintain a Copy of Agreement system to:		
(1)	Prevent records from being altered.		
(2)	Provide Copy of Agreement 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.		
Contractor Requirements	USOBA Member Standards: Consumer Debt Negotiation Companies – ALL		
(a)	Members shall adopt written 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. <i>Includes relationships with banks (e.g., GCS, Noteworld) and marketing/lead providers representing your product – you are responsible for the content of your lead provider’s ads and should have a procedure to ensure they are properly representing your company.</i>		
Financial Management, Internal Control	USOBA Member Standards: Consumer Debt Negotiation Companies – ALL		
(a)	Members that hold Client funds for remittance to creditors or other third party payees shall provide an annual independent audit of all financial transactions involving the Client accounting relating to the receipt and disbursement of Client funds.		

(b)	Member cannot force a Client to deposit funds into a specific financial institution. However, the Member can furnish the Client with a preferred FDIC-insured institution.		
(c)	Members shall provide Clients with monthly statements regarding the activity on their accounts. They may include online access through a 3 rd party. If a Client does not have internet access and requests hard copy statements, the Member is responsible for ensuring they or the third party trustee is able to provide this to the Client.		
(d)	Member shall provide an accounting record upon the settlement of a debt. The record shall include the total amount and terms of the settlement, the amount of debt when the creditor agreed to the settlement, and the specific determination of applicable fees.		
(e)	Member shall provide an accounting record upon cancellation or termination of an agreement.		
(f)	Member shall provide an accounting record within five business days after a Client request but not be required to comply more than one request in any calendar month.		
(g)	If the Member holds Client funds the Member shall not co-mingle, borrow, or convert to their own use, any Client funds with any other funds whatsoever.		
(h)	If the Member holds Client funds the Member shall not leave earned fees in the Client trust account.		
(i)	Member can only initiate a transfer of funds to or from a Client's bank or other financial institution without client authorization if there is a return of money to the Client.		

(j)	Member can only initiate transfer of funds to or from a Client's bank or other financial institution if the transaction has been expressly approved in writing or recorded statement directly with the member. -OR- Member can only initiate a transfer of funds to or from a Client's bank or other financial institution if the transaction has been expressly directed by the Client to the bank or financial institution.		
(k)	Member can only initiate a transfer of funds to or from a Client's bank or other financial institution if, before payment is made, the Client or Member receives written confirmation by the creditor that the payment is in full settlement, or is part of a payment plan that is in full settlement.		
(l)	Members must provide Clients with copies or access to copies of each settlement agreement achieved and if applicable, proof of payment.		
(m)	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. (If the creditor has previously been notified that the Client is working with the Member).		
Legal Compliance	USOBA Member Standards: Consumer Debt Negotiation Companies – ALL		
(a)	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 a final judgment of liability or guilt relating to 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 that was based on admission of guilt by the Member.		
(b)	Member shall not purchase a debt or obligation from its Clients.		
(c)	Member shall not include any secured debt into a Client Program.		

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(d)	Member shall not require Client to purchase ancillary services provided outside of contractual obligation for debt settlement services.		
Client Service and Success	USOBA Member Standards: Consumer Debt Negotiation Companies – ALL		
(a)	Members shall establish written policies and procedures that include, but are not limited to, the following elements:		
(1)	Prevent unauthorized access to or misuse of a Client’s confidential information including the disclosure of a Client’s identity or identifying information (except to a Client’s creditor, to the extent necessary to secure the cooperation of the creditor in a Program)		
(2)	Types of services to be provided		
(3)	Job descriptions		
(4)	Service accessibility and availability (i.e., hours of operation and mechanisms of communication with Clients)		
(5)	Timeliness and accuracy of service		
(6)	Maintain records of communications with Clients and actions taken on their behalf		
(7)	Have clearly defined internal cancellation policies and procedures		
(b)	Member shall establish an internal formal complaint policy that creates a process for Member to receive, review, and address or resolve formal complaints internally. Procedure will include requirements to respond to and research any complaint initiated by a Client within 7 days of receipt and resolve each complaint in a prompt and reasonable manner. The availability of this process shall be communicated in writing to enrolled Clients.		
(c)	Member shall establish written policies and procedures to promptly correct or prevent errors or lapses in service.		
(d)	Member shall measure and track the performance of the service and service delivery processes against established objectives and		

	communicate outcome internally.		
(e)	Member shall establish a performance improvement review process.		
(f)	Member shall adopt written procedures for Clients to use to evaluate the performance of Member services, including methods for measuring Client satisfaction.		

Document History

Rev 0	1/11/06	Original Issue
Rev 1	1/26/06	Added * as needed to indicate written procedure required
Rev 2	4/14/06	<ul style="list-style-type: none"> - Removed insurance requirement - Added "...that was based on admission of guilt by the Member" to Legal Compliance section - Clarified and expanded the Financial Management portion on external audit and monthly statements - Added * to servicing, c
Rev 3	5/17/06	- Modified creditor, e to add "if the creditor has previously been notified that the client is working with the Member"
Rev 4	3/30/09	<ul style="list-style-type: none"> - Removed/moved some requirements (contact Jennifer.Eckstein@bsigroup.com if you need details) - Added requirement for signed attachment, added requirement for USOBA list in contract
Rev 5	4/7/09	- Clarified that the disclosure statements may be included in the contract, the additional paper not required
Rev 6	4/29/09	- Replaced sign off disclosure with new wording

Rev 7	5/28/10	- Major rewrite. Contact Jennifer.Eckstein@bsigroup.com for previous revisions
Rev 8	3/2/11	- Merged and amended contract and disclosure before sale requirements - Amended Client Consulting A and B; Disclosures Prior to Agreement C; Financial Mgmt & Internal Control J & K



United States Organizations for Bankruptcy Alternatives, Inc.

By signing this form I am affirming that _____ has not, in the past three years, been 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 that was based on the admission of guilt by the Member.

I understand that if this statement is found to be false, it will result in the termination of my certification through BSI of the USOBA Best Practice Standards.

Printed Name: _____

Title: _____

Signature: _____

Date: _____

If you use electronic contracts/signatures, please read and sign below:

By signing this form I am affirming that _____ is in compliance with the electronic signatures regulations outlines in the Global and National Commerce Act, 15 U.S.C. § 7001, et seq.

I understand that if this statement is found to be false, it will result in the termination of my certification through BSI of the USOBA Best Practice Standards.

Printed Name: _____

Title: _____

Signature: _____

Date: _____



The United States Organizations for Bankruptcy Alternatives

U.S.O.B.A. Required Standard Disclosures

As a member of the United States Organizations for Bankruptcy Alternatives (USOBA), **COMPANY NAME [hereinafter "We"]** regularly receive and have access to support and information regarding best practices in the debt settlement services industry. This includes information about state and federal laws, best marketing practices, consumer protection and more. As a USOBA member company, we are committed to providing the best possible customer care experience. **If you, as a customer of a USOBA member company, would like to contact USOBA regarding your experience with us, please feel free to do so by calling 877-76-USOBA or emailing us at info@usoba.org.**

Following a debt resolution plan requires a long-term commitment from both you and us. It is important that you realize that there are potential benefits and potential obstacles to successfully completing any program.

Please take a moment to review the following disclosure document because it is important that you understand each item listed. Please request further explanation if you need clarification regarding any disclosure included in this document.

By initialing each item below, you are attesting that We fully explained each disclosure listed, you were provided time to review each disclosure, and you understand each disclosure.

____ (1) **PROGRAM SELECTION AND ALTERNATIVES.** We determine your eligibility for a debt settlement program, but we do NOT evaluate your unique credit and debt situation to determine the best debt relief option for you. It is your responsibility and choice to evaluate and determine which option is best for you.

____ (2) **CREDIT RATING IMPACT.** While participating in a debt settlement program, your credit score may be negatively impacted. Your credit report may reflect the fact that you have ceased paying your creditors.

Furthermore, upon completion of a debt settlement program a debt settled for less than the full amount of the amount owed may result in a negative notation on your credit report. Please visit www.myfico.com for further information about credit ratings.

____ (3) **TAX LIABILITY.** If you settle a debt with a creditor for less than the full amount of that debt, you may have to pay income taxes on the amount the debt was reduced for settlement. We are neither able to provide assistance with the completion of your tax return, nor advise how you should or should not treat income tax payable on debt that has been forgiven through a debt settlement program. We do recommend, however, that you consult with a tax advisor to guide you through this process and determine if you qualify for exemption. More information and links to the *Bankruptcy Tax Guide, IRS Form 982 and Reduction of Tax Attributed to Discharge of Indebtedness* is available at www.irs.gov.

____ (4) **CREDITOR COLLECTION ACTIVITY.** While you are enrolled in a debt settlement program, late fees, penalties, and interest will likely continue to accrue on your debt until your creditor accepts a settlement offer and the settlement is completely satisfied as agreed. If negotiations are unsuccessful, you may be responsible for payment of the entire new balance.

Taking the time to understand the benefits and the risks involved with a debt settlement program will provide you with knowledge that can help to ensure your debt settlement program will be successful. As with any debt resolution, there are no 100% guarantees as there are factors that may be beyond your control and the control of your service provider. Open communication with your service provider is essential; please update your service provider as soon as any pertinent information regarding your financial situation, your personal contact information or changes in the status of your enrolled accounts.

BY SIGNING BELOW, YOU ARE STATING COMPANY NAME HAS EXPLAINED, AND THAT YOU UNDERSTAND, THE AFFORE MENTIONED DISCLOSURES.

Client's Signature

Date

Co-Client's Signature

Date

If you do not or cannot remit your monthly minimum payment, you will be in default of your agreement with your creditor(s) resulting in an increased interest rate. If you do not or cannot pay your monthly minimums for one credit card, that may cause a default in your other credit cards subjecting you to a higher default interest on those credit cards.

Participation in a debt settlement program, like any failure to pay creditors on time, will likely increase collection activity, including increased phone calls and correspondence from the creditor or debt collector.

By failing to pay creditors in accordance with the terms of the contractual agreements with those creditors, you may be in violation of the agreements with those creditors, which may result in litigation. If a judgment has been obtained, a creditor may garnish your wages or seize any available assets or property. State laws regarding judgments vary. Please consult an attorney licensed to practice in your state regarding possible judgment consequences.

____ (5) **NO SPECIFIC REDUCTION GUARANTEED.** We cannot guarantee that your debt will settle for any particular percentage within any particular time period, or that we will be able to settle any of your accounts at less than full value.

Any individual creditor may use a number of different criteria in determining that creditor's willingness to settle a debt or the amount acceptable in settlement, including, but not limited to the amount of the debt, the current status of the debt, the reasons you are seeking debt settlement, the debt settlement program, the type of debt, and the amount of your disposable income.

____ (6) **LEGAL ADVICE.** Under no circumstances have or will we provide you legal advice.

____ (7) **FEE LIABILITY.** You may terminate the program at any time, but you may be liable for fees already earned for services performed under the terms of your agreement with us.

____ (8) **FUNDING RESPONSIBILITY.** You understand that we cannot and will not settle any debt without your authorization and it is your obligation to fund any settlements negotiated by us. We cannot and will not make any payments of any debts on your behalf.

____ (9) **POSSESSION OF FUNDS.** You understand that we will not take possession or control of any of your funds, other than receiving fees owed to us under the terms of our agreement with you. You or your designee is responsible for depositing and transferring any funds that are required for any settlements and for payment of our fees under the terms of your agreement with us.

____ (10) **THIRD PARTY OBLIGATIONS.** If you are using a third party designee to transfer, deposit, withdraw or disburse funds, you may be subject to paying additional fees to the third party designee, if any, for handling your transactions. We may provide you information and forms from companies and/or banks that can act as your designee, but your use of a designee and your agreement with such a designee is separate from your agreement with us.

COMPANY NAME: COMPANY NAME
ADDRESS: ADDRESS
CITY, STATE ZIP CODE
PHONE NUMBER: PHONE NUMBER
EMAIL ADDRESS: EMAIL ADDRESS