



**U.S. Department of Justice**

Executive Office for United States Trustees

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**INSTRUCTIONS FOR APPLICATION FOR APPROVAL AS A  
NONPROFIT BUDGET AND CREDIT COUNSELING AGENCY**

**Introduction.** A nonprofit budget and credit counseling agency seeking probationary or annual approval by the United States Trustee, in accordance with 11 U.S.C. § 111, (hereinafter “Agency”) shall submit an application to the Executive Office for United States Trustees (EOUST) in the form described below. The Agency shall provide all information and documents required by the EOUST or the United States Trustee responsible for each judicial district in which the Agency seeks approval. Unless otherwise stated, the application and appendices shall be type-written and include an original and one copy.

**Deadline for Submission of Application for Re-Approval.** Unless terminated earlier, an Agency’s approval to provide budget and credit counseling services terminates at the conclusion of either the initial six-month probationary period, if the Agency was not approved previously, or the annual approval period. To ensure the timely review and re-approval of agencies, applications for re-approval must be submitted to the EOUST no earlier than sixty (60) days and not later than forty-five (45) days prior to the expiration of the applicable time period. Failure to submit the application within the required time period may result in expiration of the Agency’s approval and removal from the list of approved nonprofit budget and credit counseling agencies.

**Mailing Instructions, Information Requests, and Notifications.** The application package should include the completed application, all documents and information requested, and one copy of all documents contained in the application package. Once completed, the entire package should be sent by overnight mail to the following address:

Executive Office for U.S. Trustees  
Credit Counseling Application Processing  
20 Massachusetts Avenue, NW  
8<sup>th</sup> Floor  
Washington, DC 20530

(202) 514-4100

Supplemental information requests and notifications will be sent to the principal contact identified in the application. Responses to requests should be submitted to the address stated above unless otherwise instructed. The Agency has a continuing duty to promptly notify the

EOUST of any circumstances that would materially alter or change a response to any section of the application. Notification must be in writing, include all pages of the application and/or appendices that are affected by the change and a newly executed “certification and signature” (section 9 of the application).

Applications should be completed in their entirety before submission. An incomplete application may result in delay or denial of the application. Upon receipt of the application, the Agency will receive, as soon thereafter as practical, an acknowledgment letter that the application has been received.

**Application Form and Instructions.** The application form and instructions consist of the following sections:

- Section 1. General Information Concerning the Agency
- Section 2. Status as a Nonprofit Organization
- Section 3. Quality, Experience, and Background in Providing Credit Counseling Services
- Section 4. Counseling Services and Fees
- Section 5. Qualifications of Counselors
- Section 6. Administration of Debt Management Plans and the Safekeeping and Payment of Client Funds
- Section 7. Activity Report for Approved Agencies
- Section 8. Acknowledgments, Agreements, and Declarations
- Section 9. Certification and Signature
- Appendix A. Acknowledgments, Agreements, and Declarations in Support of Application for Approval as a Nonprofit Budget and Credit Counseling Agency
- Appendix B. Judicial Districts
- Appendix C. Counseling Methods and Business Locations
- Appendix D. Matrix of Current Counselors
- Appendix E. Activity Report for Approved Agencies

**Burden Statement.** Respondents are not required to complete this form unless it contains a valid OMB number. The public reporting burden for this application is estimated to average ten hours for an initial application and eight hours for a re-application, including time for reviewing instructions, gathering information, and completing the application. Comments regarding this burden estimate or any other aspect of this application, including suggestions for reducing the burden, should be directed to the Executive Office for United States Trustees, Credit Counseling Application Processing, 20 Massachusetts Avenue, NW, 8<sup>th</sup> Floor, Washington, DC 20530.

## **Section 1. General Information Concerning the Agency**

1. Name of Agency. In response to Section 1.1, the name of the Agency should be the name under which the Agency is incorporated or organized as designated with the appropriate state agency. Any other alias, d/b/a, or fictitious name should be stated in Section 1.4 of the application.

2. Judicial Districts. Following either the probationary or annual approval of the Agency’s application, if the Agency requests authorization to commence providing credit counseling services in any judicial district in which it was not previously approved, the Agency must submit an amended application, reflecting all material changes that will occur due to the addition of judicial districts and include a newly executed “certification and signature”.

If an Agency, after submitting an amended application, is approved to provide credit counseling services in any judicial district where it was not previously approved, the approval for the additional judicial district(s) shall terminate in conjunction with the expiration of the last approved application.

If an Agency requests authorization to cease providing credit counseling services in any district in which it was previously approved, the notification must be in writing and signed by an authorized official.

3. Complete Section 1 of the Application.

## **Section 2. Status as a Nonprofit Organization**

1. Nonprofit. The Agency must be organized and operated as a nonprofit entity and have an independent board of directors, board of trustees, or other governing body, the majority of which – (i) are not employed by such Agency and (ii) will not directly or indirectly benefit financially from the outcome of the counseling services provided by such Agency. An Agency should avoid any conduct or transactions that generate or create the appearance of generating a private benefit for any individual or group related or connected to the Agency.

2. Complete Section 2 of the Application.

## **Section 3. Quality, Experience, and Background in Providing Credit Counseling Services**

1. Generally. The Agency shall operate in a prudent business manner and shall deal responsibly and effectively with matters relating to the quality, effectiveness, and financial security of the services it provides.
2. Business Experience. The Agency must have adequate experience and background in credit counseling. To meet this requirement, the Agency must have provided credit counseling services for the last two years. Alternatively, if an Agency fails to meet the two-year requirement, the Agency must currently employ in each office location that serves clients at least one office supervisor with experience and background in providing credit counseling for no less than two of the last three years.
3. Compliance with Laws and Regulations. The Agency must be in compliance with all applicable laws and regulations of the United States and each state, commonwealth, district, or territory of the United States in which the Agency

conducts counseling services. Nothing contained in these instructions, the application, or the appendices thereto is intended to preempt any applicable law or regulation governing the conduct or operations of an Agency.

4. Complete Section 3 of the Application.

**Section 4. Counseling Services and Fees**

1. Adequate Credit Counseling Services. An Agency shall provide, at a minimum, adequate briefings, budget analysis, and credit counseling services to clients that include an outline of available counseling opportunities to resolve a client's credit problems, an analysis of the client's current financial condition, discussion of the factors that caused such financial condition, and assistance in developing a plan to respond to the client's problems without incurring negative amortization of debt. The average length of an adequate counseling session is 60 to 90 minutes.
2. Prohibition Against Legal Advice. Unless authorized by law, a credit counselor employed by an approved nonprofit budget and credit counseling agency may not provide legal advice on any matter.
3. Providers of Telephone Services or Internet Services. In addition to meeting all other requirements, an Agency that provides telephone services or Internet services must demonstrate sufficient experience and proficiency in designing and providing services over the telephone or Internet.
4. Reasonableness of Fees. Fees, contributions, or payments received from clients for counseling services shall be reasonable in amount. The Agency must provide services without regard to a client's ability to pay and not withhold a certificate of counseling because of a client's inability to pay. The Agency must advise the client of the fee schedule before services are provided and inform the client that services are available for free or at a reduced rate based on a client's ability to pay.
5. Certificates of Counseling. The Agency agrees to issue certificates of counseling in conformance with the directives established by the EOUST or the United States Trustee.
  - The Agency shall issue a certificate to any client who completes credit counseling and a budget analysis, regardless of whether a client agrees to participate in a debt management plan and without regard to the client's ability to pay.
  - The Agency shall issue the certificate within one business day to a client after completion of the required counseling and upon the earlier of the following: (1) a request by a client for the issuance of a certificate; or (2)

the completion or termination of a counseling session, which may include the administration of a debt management plan.

- The Agency shall not charge a separate fee for the issuance of a certificate of counseling unless the Agency has clearly disclosed such fee before the initial credit counseling session.
- The Agency shall issue a certificate to each spouse whether counseling was provided separately or in a joint session.
- The Agency shall maintain adequate records to issue replacement certificates and to verify the authenticity of certificates filed by bankruptcy debtors.

6. Complete Section 4 of the Application.

## **Section 5. Qualifications of Counselors**

1. Trained Counselors. The Agency must provide trained and experienced counselors.
2. Certification and Experience. A counselor shall be deemed to have adequate training and experience to provide credit counseling and budget analysis if the counselor is accredited or certified by a recognized independent organization, or has successfully completed a course of study acceptable to the United States Trustee and has worked a minimum of six months in a related area, including personal finance, budgeting, and debt management. The United States Trustee Program does not endorse any specific course or certification program. With regard to each counselor who has completed a course of study, attach a statement to Appendix D setting forth the name and provider of the course, an outline of the course materials, and the criteria for passing the course. With regard to each counselor who is accredited or certified by an independent organization, attach a statement to Appendix D setting forth the organization's name, contact information, and the criteria for obtaining the accreditation or certification.
3. Criminal Background Check. The Agency shall conduct a state and federal criminal background check at least every five years for each person providing credit counseling services, if such criminal background check is authorized under state law. The state criminal background check shall be conducted in the state where the counselor resides. If a criminal background check is not authorized by state law, the Agency shall obtain a sworn statement from each counselor, at least every five years, which attests to whether the counselor has been convicted of any felony or a crime involving fraud, dishonesty, or false statements. The Agency shall not employ as a counselor anyone who has been convicted of any felony or a crime involving fraud, dishonesty, or false statements, unless the United States Trustee determines, upon review and in his or her discretion, the circumstances warrant a waiver of this employment requirement.

4. Complete Section 5 of the Application.

**Section 6. Administration of Debt Management Plans and the Safekeeping and Payment of Client Funds** (This section applies only to Agencies offering debt management plans.)

1. Financial Security. The Agency must have adequate financial resources to provide continuing support services for debt management plans over the life of any plan, and provide for the safekeeping of client funds.
2. Banking. The Agency shall deposit all client funds into a trust account insured by a federal institution with respect to each client up to the maximum amount allowable by the federal institution.
3. Accounting. The Agency shall keep and maintain books, accounts, and records to provide a clear and readily understandable record of all business conducted by the Agency.
4. Bonding. Agencies that offer debt management plans must provide the following:
  - A surety bond payable to the United States in an amount which is the lesser of: (1) two percent of the Agency's prior year disbursements made from trust accounts; or (2) equal to the average daily balance maintained in all trust accounts for the six months prior to submission of the application. At a minimum, the bond must be \$5,000.
  - An Agency may receive an offset/credit in the surety bond amount required by the United States Trustee as follows: (1) the Agency has obtained a surety bond, or similar cash, securities, insurance (other than employee fidelity insurance), or letter of credit, in compliance with the requirements of the state, commonwealth, district, or territory ("state") in which the Agency seeks approval from the United States Trustee; (2) the surety bond, or similar cash, securities, insurance (other than employee fidelity insurance), or letter of credit provides protection for the clients of the Agency; (3) the surety bond, or similar cash, securities, insurance, or letter of credit, must be written in favor of the state or the appropriate state agency; and (4) the offset/credit is based on the annual disbursements or average daily bank balance directly related to the clients in the particular state. *See Example 1 below.*
  - Proof of adequate employee bonding or fidelity insurance. The amount shall be 50 percent of the surety bond amount calculated prior to any offset/credit that the Agency may receive for state bonds. At a minimum, the employee bond or fidelity insurance must be \$5,000.

- An Agency may receive an offset/credit in the employee bond/fidelity insurance amount required by the United States Trustee as follows: (1) the Agency has obtained an employee bond or fidelity insurance in compliance with the requirements of a state, commonwealth, district, or territory in which the Agency seeks approval from the United States Trustee; (2) the deductible cannot exceed a reasonable amount considering the financial resources of the Agency; and (3) the offset/credit is based on the annual disbursements or average daily bank balance directly related to the clients in the particular state. *See Example 2 below.*

***Example 1: Surety Bond Offset/Credit***

An Agency with total annual disbursements of \$3,000,000 seeks approval in judicial districts located in three states. The disbursements for the clients in each state are \$1,000,000. State 1 has no bonding requirement; State 2 has a fixed surety bond of \$15,000; and State 3 has a bonding requirement of 10 percent of total annual disbursements. The Agency would determine the appropriate U.S.Trustee bonding requirement as follows:

State	Disbursements	2% Bond Requirement *	State Bond Amount	UST Bond Amount
1	\$1,000,000	\$20,000	\$0	\$20,000
2	\$1,000,000	\$20,000	\$15,000	\$5,000
3	\$1,000,000	\$20,000	\$100,000	\$0
<b>Total</b>				\$25,000

\* In lieu of 2% of total annual disbursements, an Agency may use its average daily balance maintained in all trust accounts for the six months prior to submission of the application.

To the extent that an Agency has offset/credited bonds obtained in compliance with state regulations, the Agency must provide a bond calculation, similar to the example above, with the original surety bond provided in compliance with the Application for Approval as a Nonprofit Budget and Credit Counseling Agency.

**Example 2: Employee Bond/Fidelity Insurance Offset/Credit**

An Agency with total annual disbursements of \$2,000,000 seeks approval in judicial districts located in two states. The disbursements for the clients in each state are \$1,000,000. State 1 has no employee bonding or fidelity insurance requirement and State 2 has an employee bonding or fidelity insurance requirement of 10 percent of monthly average disbursements (\$83,000). The Agency would determine the appropriate U.S. Trustee employee bonding or fidelity insurance requirement as follows:

State	Disbursements	Surety Bond Prior to Any Offsets/Credits*	50% of Surety Bond	State Insurance Amount	UST Insurance Amount
1	\$1,000,000	\$20,000	\$10,000	\$0	\$10,000
2	\$1,000,000	\$20,000	\$10,000	\$8,300	\$1,700
<b>Total</b>					\$11,700
* In lieu of the surety bond calculation based on total annual disbursements, an Agency may use the average daily balance maintained in all trust accounts for the six months prior to submission of the application.					

To the extent that an Agency has offset/credited employee bonding or fidelity insurance obtained in compliance with state requirements, the Agency must provide an insurance calculation similar to the example above when providing proof of the employee bonding or fidelity insurance in compliance with the Application for Approval as a Nonprofit Budget and Credit Counseling Agency.

5. Complete Section 6 of the Application.

**Section 7. Activity Report for Approved Agencies** (This section applies only to Agencies who have previously been approved by the United States Trustee and are seeking re-approval.)

1. Complete Section 7 of the Application. Upon application for re-approval, the Agency must furnish an estimate of the information requested, projected to the end of either the probationary period or annual period. Within thirty (30) days after the completion of either the probationary period or annual period, the Agency must furnish an amended Appendix E which includes the actual information. The information on debt management plans will not be used a sole criterion for approval or disapproval, but may necessitate further inquiry into an Agency’s business practices.

**Section 8. Acknowledgments, Agreements, and Declarations**

1. Agreement to Disclose Information to Clients. The Agency must provide full disclosure to a client, including funding sources, counselor qualifications, possible impact on credit reports, the cost of services to be paid by the client, and how the cost will be paid. A disclosure form must be provided to those clients seeking pre-bankruptcy counseling services regardless of whether they enter into a debt management plan. The Agency must advise the client of the fee schedule before services are provided and inform the client that services are available for free or at a reduced rate based on a client’s ability to pay.
2. Acknowledgment of Prohibitions, Limitations, and Obligations Regarding Operations. By executing and submitting the Application for Approval as a Nonprofit Budget and Credit Counseling Agency, the Agency acknowledges the prohibitions, limitations, and obligations set forth in Appendix A,



Acknowledgments, Agreements, and Declarations in Support of Application for Approval as a Nonprofit Budget and Credit Counseling Agency.

3. Complete Section 8 of the Application.

**Section 9. Certification and Signature**

The Agency's president, chairman, trustee, or other authorized official is required to declare, by signing the application, that such individual is authorized to complete the application on behalf of the Agency; that such individual has read and knows the contents of the application and all enclosures and attachments submitted; and that such individual affirms under penalty of perjury that all of the representations and statements contained therein are true and correct to the best of such individual's knowledge, information, and belief.