

**U.S. BANKRUPTCY ADMINISTRATOR
EASTERN DISTRICT OF NORTH CAROLINA**

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

Introduction. A nonprofit budget and credit counseling agency seeking approval of the Bankruptcy Administrator, in accordance with 11 U.S.C. § 111, (“Agency”) must submit an application to the Bankruptcy Administrator in the form described below. The Agency must provide all information and documents required by the Bankruptcy Administrator for the judicial district in which the Agency seeks approval. Unless otherwise stated, all information and documents must be in writing. All documents either must be original or a conformed copy.

Mailing Instructions, Information Requests, and Notification. The application package must include the completed application and all documents and information requested. Once completed, the entire package should be sent to the following address:

US Bankruptcy Administrator
434 Fayetteville Street, Suite 640
Raleigh, NC 27601
Attn: Lesley Cavanaugh
(919) 334-3887

Supplemental information requests and notifications will be sent to the principal contact identified in the application. Responses to requests must be submitted to the address stated above unless otherwise instructed.

Applications should be completed in their entirety, including all appendices and supplemental documents and information that are requested, before submission.

An incomplete application may result in delay or denial of the application. Upon receipt of the application, the Bankruptcy Administrator will, as soon as practical, send an acknowledgment letter which may include a request for additional information. Written inquiries concerning the status of an application must be directed to the above address.

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

- Section 1. General Information Concerning the Agency and Nonprofit Status
- Section 2. Agency Background, Certifications and Management
- Section 3. Experience and Training of Counselors
- Section 4. Counseling Services
- Section 5. Adequate Facilities
- Section 6. Reasonableness of Fees

- Section 7. Disclosures, Tax Returns and Tax Information Authorization
- Section 8. Debt Management Plans
- Section 9. Acknowledgments, Agreements, and Declarations
- Section 10. Certification and Signature

- Appendix A. Tax Information Authorization
- Appendix B. Matrix of Counselor Experience
- Appendix C. Agency Checklist for Adequacy of Facilities
- Appendix D. Acknowledgments, Agreements, and Declarations in Support of
Application for Approval as an Agency of a Nonprofit
Budget and Credit Counseling Agency

Duty to Notify the Bankruptcy Administrator of Material Changes. The Agency has a continuing duty to promptly notify the Bankruptcy Administrator of any circumstances that would materially alter or change a response to any section of the application regardless of whether they occur while an application to become an approved Agency is pending before the Bankruptcy Administrator or after the Agency has been approved. Notification to the Bankruptcy Administrator must be in writing, signed by an authorized official, and include all pages of the application and/or appendices that are affected by the change. Notification of a material change must be transmitted in the same manner as the application.

In addition, the Agency must immediately notify the Bankruptcy Administrator in writing of any failure by the Agency to comply with any standard or requirement specified in 11 U.S.C. § 111, or the terms under which the Bankruptcy Administrator approved it to act as an approved Agency. The Agency must also immediately notify the Bankruptcy Administrator in writing of any of the following events:

1. Cessation of business by the approved Agency or by any office of the Agency, or withdrawal from any federal judicial district(s) where the Agency is approved;
2. Any investigation of, or any administrative or judicial action brought against, the approved Agency by any governmental unit;
3. Any action by a governmental unit or a court to suspend or revoke the Agency's articles of incorporation, or any license held by the Agency, or any authorization necessary to engage in business; or
4. A suspension, or action to suspend, any accreditation held by the Agency, or any withdrawal by the Agency of any application for accreditation or any denial of any application of the Agency for accreditation.

Approval Period, Deadline for Submission of Application for Renewal, and Standard for Renewal. Any agency that does not appear on the approved list immediately before submitting an application must complete a probationary period not to exceed six months. Therefore, unless terminated earlier, an agency approved to provide pre-bankruptcy credit

counseling for the first time will be approved for a probationary period not to exceed six months. At the end of the probationary period, the Bankruptcy Administrator may approve the Agency for an additional one-year period if the Bankruptcy Administrator finds that the Agency has met the standards for approval during the probationary period and can satisfy those standards in the future. 11 U.S.C. § 111(b)(4). Agencies on probation must submit their applications for renewal no earlier than 60 days and no later than 45 days before their probationary period expires.

If the Bankruptcy Administrator approves the Agency for a one-year period following the expiration of the probationary period, the Agency must submit an application for renewal each year thereafter. Each approval period thereafter will be for a period of one year. The Agency must submit its application for renewal no earlier than 60 days and no later than 45 days before the expiration of its existing approval period. The Agency is responsible for monitoring the expiration date, and for timely submitting an application. The Bankruptcy Administrator will not send application deadline reminders to the Agency.

So long as the Agency has submitted a complete and timely application for renewal, it may continue to provide pre-bankruptcy credit counseling while its application for renewal is under review by the Bankruptcy Administrator. If the renewal application is approved for an additional one-year period, that renewal period will begin on a) the date its current application expires, or b) the date the Bankruptcy Administrator approves the application, whichever is later.

If the Agency does not submit an application for renewal before the expiration of its current removal period, the approval will automatically expire, the Agency will no longer be authorized to act as an approved agency, and the Agency must apply for a new six-month probationary period before providing pre-bankruptcy credit counseling to debtors pursuant to 11 U.S.C. § 111.

Limitations on Advertising. Approved Agencies may not contact any debtor by U.S. Mail, other mail carrier, or electronic mail for the purpose of soliciting debtors to use the Provider's instructional course, unless:

- (1) Any such solicitations include the phrase "This is an advertisement for services" or "This is a solicitation" prominently displayed at the beginning of each page of the solicitation in a font size larger than or equal to the largest font size otherwise used in the solicitation; and
- (2) Any such solicitations include only logos, seals, or similar marks that are substantially dissimilar to the logo, seal, or similar mark of any agency or court of the United States government, including but not limited to the Bankruptcy Administrator program.

Privacy Act Statement. Section 111 of title 11, United States Code, authorizes the collection of the information requested in the application. The primary use of this information is by the

Bankruptcy Administrator to approve nonprofit budget and credit counseling agencies. Disclosure of this information may be provided to a bankruptcy trustee when the information is needed to perform the trustee's duties, to the appropriate federal, state, local, regulatory, tribal, or foreign law enforcement agency when the information indicates a violation or potential violation of law, or to a complainant or victim when such information is necessary to provide an explanation concerning the results of an investigation of which they complained or were a victim. Additional disclosure of the information may be to the Bankruptcy Administrator in other federal districts or to the Executive Office of the United States Trustee. The information will not be shared with any other agencies unless allowed by law.

APPLICATION AND INSTRUCTIONS

Section 1. General Information Concerning the Organization

Item 1.3—Name of Agency. List the Agency's legal name as designated by the state of incorporation or organization, and list any and all names under which the Agency will conduct business, including any d/b/a, alias, or fictitious name. Also list any and all names used by the Agency during the previous three years.

Item 1.6—Federal Tax ID No. or Social Security No. An agency should furnish its social security or tax identification number with its application. Furnishing the Social Security number, as well as other data, is voluntary, but failure to do so may delay or prevent action on the application.

Items 1.11 and 1.12—Nonprofit Status. The Agency must disclose whether it is a nonprofit entity pursuant to state law in the state of organization. The Agency will complete Appendix A authorizing the Bankruptcy Administrator to request information about the Agency's nonprofit status.

Attachments. The Agency should attach a copy of all documentation requested in Section 1.

Section 2. Agency Background, Certifications, and Management

Items 2.1 and 2.3—Business Experience. The Agency must have adequate experience and background in providing credit counseling. To meet this requirement, the Agency must have experience providing credit counseling for the previous two years. If the Agency has not provided credit counseling for the last two years, then it must employ in each office location that provides credit counseling, at least one supervisor with experience in providing credit counseling for no fewer than two of the last five years.

Item 2.5—Current and Former Owners, Officers, Directors, Partners, or Trustees. Provide the requested information about individuals currently serving as officers, directors, or trustees,

and individuals who have served in those capacities within the last three years.
“Compensation” includes both direct compensation, such as wages and salaries, and indirect compensation, such as bonuses, deferred compensation, and noncash compensation.

Items 2.6 and 2.7—Referrals. An agency may not pay or receive fees or other consideration for the referral of clients to the Agency. The Agency must provide information about individuals or entities who provide referrals to the Agency. The Agency must disclose any oral as well as written referral agreements and arrangements.

Item 2.8—Transactions with Interested Parties. Disclose all contracts and other transactions between the Agency and any officer, director, shareholder, affiliate, subsidiary, or related individual or entity within the last year. A “related entity” includes a business in which an officer, director, or employee of the Agency, or a relative of an officer, director, or employee of the Agency, holds, directly or by nominee, any ownership or financial interest, except for ownership of stock or shares in a publicly traded entity.

Item 2.9—Independent Contractors. Provide information about any independent contractor that performs credit counseling services on behalf of the Agency, or that provides goods and services to the Agency. The term “independent contractor” means a person or entity that provides any goods or services to the Agency other than as an employee and as to whom the Agency does not:

- (1) direct or control the means or methods of delivery of the goods or services being provided;
- (2) make financial decisions concerning the business aspects of the goods or services being provided; and
- (3) have any common employees.

The term “independent contractor” does not include an employee of the Agency.

Items 2.15 and 2.16—Compliance with Laws and Regulations; Legal, Disciplinary, and Enforcement Actions. The Agency must be in compliance with all applicable laws and regulations of the United States and each state of the United States in which the Agency conducts counseling. Nothing contained in these instructions, application, or appendices, is intended to preempt any applicable law or regulation governing the conduct or operations of the Agency. The Agency must list all legal actions, proceedings, investigations, arbitrations, mediations, audits by federal or state agencies, and potential bond or other claims in which the Agency, an affiliate, or an officer, director, trustee, employee, or agent of the Agency is a party or has been a party within the last three years, and the disposition of those actions. The Agency must provide the same information with respect to disciplinary and enforcement actions.

Attachments. The Agency should attach a copy of all documentation requested in Section 2, including the resume of any experienced supervisor if the Agency has operated for less than two years, and a copy of any written referral contracts, contracts with interested parties, and contracts with independent contractors.

Section 3. Experience and Training of Counselors

Guidelines

General Requirements Regarding Counselor Experience and Training. The Agency must employ counselors with adequate experience and training in providing credit counseling services. The Agency must complete and attach Appendix B, the Matrix of Counselor Experience, for each location that will be staffed by counselors providing counseling to clients through any method of delivery.

General Requirements Regarding Counselor Qualifications. The Agency must employ, at a minimum, an individual who holds at least one of the following current certifications, or who has equivalent training or experience, to supervise counselors:

- (1) A state teacher's certificate in any subject;
- (2) Certified Financial Planner (CFP);
- (3) Certification as a credit counselor by the National Foundation for Credit Counseling;
- (4) Certification as a credit counselor by the Association of Independent Credit Counseling Agencies;
- (5) Accredited Financial Counselor (AFC);
- (6) Certification by the American Association of Family and Consumer Sciences;
- (7) Registered Financial Consultant (RFC); or
- (8) Certified Public Accountant (CPA).

Specific Instructions

Attachments. In addition to Appendix B, the Agency must attach a copy of any written standards, procedures, or guidelines provided to counselors.

Section 4. Counseling Services

Guidelines

General Requirements. The Agency should provide an adequate written analysis, particularized to the client, of the client's current financial condition, including a discussion of the factors that caused their condition, budget analysis, consideration of alternatives to resolve a client's financial problems, and a formation of a plan to respond to the financial problems. The typical length of an adequate counseling session is 60 minutes. Counselors may not provide legal advice.

Counseling Procedures. The Agency must ensure that the following procedures are followed.

(1) Generally

The Agency must provide to each client the disclosures described in Section 7 below.

- The Agency must require each client to provide proof of identification, and to sign in and sign out of the session.
- The counseling must be a minimum of 60 minutes in length. Counseling offered via the Internet or telephone should be designed for average completion within a minimum of 60 minutes.
- At the end of the counseling, the Agency must provide each client with the opportunity to complete a counseling evaluation. The evaluation must be in a form acceptable to the Bankruptcy Administrator and may not be signed by the client. The Agency may not withhold a client's certificate for failure to complete the counseling evaluation.

(2) In-Person Counseling

- A counselor must be present for purposes of counseling for each client.

(3) Telephonic Instruction (*For Agencies offering counseling session through telephonic instruction.*)

- The Agency must use a toll-free telephone number.
- The Agency must comply with the Americans with Disabilities Act ("ADA") and also include a toll-free telephone number for deaf or hearing impaired clients, e.g., TTY, TDD, or Text Telephone.
- The Agency must employ adequate procedures to ensure that the client is the individual who completed the counseling.
- A teacher must be present telephonically for purposes of counseling and interaction with clients.
- Written copy of the counseling materials must be provided to clients before the telephonic counseling session.

(4) **Internet Instruction** (*For Agencies offering counseling session through Internet instruction.*)

- The Agency must comply with the ADA and its application to the Internet.
- The Agency must employ adequate procedures to ensure that the client is the individual who completed the counseling.
- A counselor must respond within 24 hours to a client's questions or comments.

Telephonic or Internet Counseling. In addition to meeting all other requirements, any agency who conducts telephonic or Internet counseling must demonstrate effectiveness and proficiency in designing and providing services over the telephone or the Internet.

Specific Instructions

Item 4.8—Web Address and Test Access Information. The Agency must provide the web address for any Internet counseling materials, a test username, and password for accessing the counseling materials online, and any necessary instructions for accessing the counseling materials online.

Item 4.9—Protections of Personal Identifiable Information (“PII”). The Agency must attach a copy of written procedures and policies implemented by the agency to maintain the confidentiality of PII collected from clients, including the agency's incident response plan in the event that this information is compromised. List the name(s) and contact information for agency personnel responsible for maintenance of confidentiality of PII collected from clients.

Attachments. The Agency must attach a copy of any forms used in relation to credit counseling services, including a budget analysis form, a sample of the contract entered into with clients receiving credit counseling or entering into debt management plans (DMPs), if applicable, and a fee or suggested contribution schedule for all fees and contributions to be paid by the client in connection with a DMP.

Section 5. Adequate Facilities

Guidelines

Generally. The Agency must ensure that any facility used by clients complies with all applicable laws and regulations, including, but not limited to, the ADA, and all federal, state, and local fire, health, safety, and occupancy laws, codes, rules, or regulations.

Specific Instructions

Attachments. The Agency must complete and attach Appendix C, the Agency Checklist for Adequacy of Facilities, for each classroom location.

Section 6. Reasonableness of Fees

Guidelines

Generally. Fees, contributions, or payments received from clients for counseling must be reasonable. The Agency must provide services without regard to a client's ability to pay, and may not withhold services because of an inability to pay. The Agency may not unilaterally increase its fees without prior approval from the Bankruptcy Administrator.

Specific Instructions

Attachments. The Agency must attach a copy of the Agency's fee schedule or suggested contribution schedule, and a copy of the Agency's fee waiver policy.

Section 7. Disclosures, Tax Returns, and Tax Information Authorization

Guidelines

Agreement to Disclose Information to Pre-Bankruptcy Credit Counseling Clients. The Agency must disclose the following information to each client before the client pays for a credit counseling session:

- The Agency's fee schedule, including any cost to the client in addition to the counseling fee.
- A statement that the counseling is offered to clients without regard to the client's ability to pay.
- The qualifications, including educational and training background, of the Agency's counselors.
- A schedule of counseling dates, times, and locations, if applicable.
- A statement that the Agency does not pay or receive fees or other consideration for the referral of clients to the Agency.
- A statement that, upon completion of the counseling, the Agency will provide a certification of credit counseling to the client.

Specific Instructions

Attachments. The Agency must attach to the application its Income Tax Returns for the two years immediately preceding the filing of the application, and a copy of the disclosure forms provided to clients. The Agency must also attach to the application the completed Appendix C, Tax Information Authorization.

Section 8. Debt Management Plans (DMP)

This section applies to Agencies offering DMP's. If the Agency does not offer or manage DMP's, continue to Section 9.

Guidelines

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 safekeeping of client funds.

Banking. The Agency must deposit all client funds into a trust account insured by the FDIC (up to \$100,000) with respect to each client. The Agency must provide evidence of the trust account by providing the account number and name of the financial institution to the Bankruptcy Administrator.

Accounting. The Agency must keep and maintain books, accounts and records, and provide a clear and readily understandable record of all business conducted by the Agency.

Bonding. Agencies that offer DMP's must provide proof of adequate employee bonding or fidelity insurance. The amount must be greater of 5% of the applicant's prior year disbursements made from trust accounts, based upon the information provided in the last annual audit, or \$5,000. If providing a surety bond, the surety bond must be made payable to the United States Bankruptcy Administrator.

Administration by Independent Contractors. Subject to the exceptions below, if the Agency has contracted with an independent contractor to administer any part of its DMP's, the independent contractor shall either be an approved agency or shall meet specific bonding requirements. Specifically, an independent contractor that is not an approved agency shall be specifically covered under the Agency's surety bond or

- (1) Have a surety bond sufficient to meet the requirements of the Agency, and

- (2) Agree in writing to allow the Bankruptcy Administrator to audit the independent contractor's trust accounts for DMP's administered on behalf of the Agency, and to review the independent contractor's internal controls and administrative procedures.

Exceptions to bonding requirement. If the independent contractor holds funds for transmission for 5 days or less, then the amount of the required surety bond shall be \$500,000; or, if the independent contractor performs electronic fund transfers on the Agency's behalf, then the independent contractor need not satisfy the bonding and auditing requirements during such time the independent contractor is authorized by the National Automated Clearing House Association to participate in The Automated Clearing House system.

Specific Instructions

Item 8.9(a), Item 8.9(b), and Item 8.9(e)—Attachments to be Provided by All Agencies. All Agencies must attach to the Application proof of adequate employee bonding or fidelity insurance; calculations used to determine the appropriate level of all required bonds; and the first page of the most recent bank statement for each trust account identified in Item 8.8. If the Agency's bank account information has not changed since the most recent application was approved, the first pages of bank statements need not be provided.

Item 8.9(c)—Additional Attachments to be Provided by Agencies Using the Services of an Independent Contractor to Administer or Process Any Aspect of its DMP. The following additional attachments are required in response to Item 8.9(c):

- If an agency lists an independent contractor in response to Item 8.6, and the Agency indicates in response to Item 8.7 that the independent contractor holds funds for transmission for 5 days or less, the Agency must attach proof of the required surety bond in the amount of \$500,000.00.
- If an agency lists an independent contractor in response to Item 8.6, and the Agency indicates in response to Item 8.7 that the independent contractor is an approved agency, the Agency need not attach any additional attachments.
- If an agency lists an independent contractor in response to Item 8.6, and the Agency indicates in response to Item 8.7 that the independent contractor is covered under the Agency's surety bond, the Agency must attach proof that the independent contractor is covered under the Agency's surety bond, unless proof of such coverage has already been provided in response to Item 8.6(a).
- If an agency lists an independent contractor in response to Item 8.6, and the Agency indicates "none of the above" in response to Item 8.7, the Agency must attach proof of bonding sufficient to meet the requirements of the Agency, and a copy of its written agreement to allow the Bankruptcy Administrator to audit the independent contractor's trust accounts for DMP's administered on behalf of the Agency and to review the independent contractor's internal controls and administrative procedures.

Item 8.9(d)—Attachments to be Provided by All Agencies Using the Services of an Independent Contractor to Administer or Process Any Aspect of its DMP. If the Agency lists an independent contractor in response to Item 8.6, the Agency must attach a copy of any service agreements or contracts between the Agency and each independent contractor.

Item 8.9(f)—For Alabama only: The Agency must attach a current copy of the Agency's Sale of Checks license that is required for those offering debt management plans to residents of the state of Alabama.

Section 9. Acknowledgments, Agreements, and Declarations

The Agency must complete and attach Appendix D, the Acknowledgments, Agreements, and Declarations in Support of Application for Approval as a Nonprofit Budget and Credit Counseling Agency. 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 D and acknowledges that failure to comply with such prohibitions, limitations, and obligations may result in denial of the application and the Agency's removal from the list of approved Agencies

Section 10. Certification and Signature

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