United States Organizations for Bankruptcy Alternatives, Inc.

March 16, 2011

Uniform Debt Management Services Act Standby Committee
Uniform Law Commission
111 N. Wabash Ave., Suite 1010
Chicago, IL 60602

RE: 2011 Proposed Revisions to the Uniform Debt Management Services Act (UDMSA)

Dear UDMSA Committee Members:

On behalf of the United States Organizations for Bankruptcy Alternatives, Inc. (USOBA), I would like to extend my thanks to the standby committee for allowing the submission of our comments. USOBA has been involved in the process while this act has been crafted, drafted and redrafted. USOBA firmly believes that a uniform approach to regulating this, and any other, industry is paramount to assisting legal understanding and compliance.

Currently, USOBA represents approximately 80 companies, primarily in the debt settlement arena. We have recently witnessed a sharp decline in the number of participants in the debt settlement industry and we believe that strong, consumer protective regulation, like that of the Federal Trade Commission regulations in the Telemarketing Sales Rule, has made a huge impact in reducing the number of 'bad actors' in this industry. We estimate the industry has been reduced by as much as 60-70% within the last six months.

Unfortunately, these regulations also forced many good small to medium companies out of business because of their inability to subsidize all operational costs for up to a year while making the fee structure transition. Even with this unintended and distressing consequence, the protection of debt ridden consumers must be the focus of this and all regulation going forward.

It is with that sentiment in mind that USOBA respectfully offers the following comments and suggested changes to the current form of the proposed draft of the UDMSA.

Sincerely,

Jenna Keehnen
Executive Director

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USOBA Submission, Proposed Amendments 2011 UDMSA Draft

1. **Non Profit vs. For Profit:** USOBA commends the forward thinking committee on eliminating the distinction in regulation for entities that pay taxes and entities that do not. It is the firm belief of USOBA that tax status has little to no bearing on whether or not a company is acting in good faith or performing services adequately. By removing the distinction, the Uniform Law Commission has taken a great step toward building a foundation of equality among providers and ensuring that each company will act within the consumer protective guidelines set forth, regardless of corporate structure.

2. **Trust Accounts (Sec.22):** The need for varying services in the debt relief realm is very apparent. It is not the wish of USOBA to put <u>any</u> of those vital services at risk through the regulatory process. Even though the issue of trust accounts, as outlined in section 22 of the draft, does not generally affect traditional debt settlement companies, we would caution the committee members against creating undue burden on those entities most affected. Our stance has been amply covered by many submissions thus far and in an effort to curb repetition, suffice it to say that we believe the discord in this language will be harmful to providers and consumers alike. We request that the language is modified to be in line with the FTC TSR and does not add the undue burden of forcing a drastic and costly business model change to those that currently administer their own trust accounts.

3. **Power of Attorney (Sec.28):** For the sake of enhanced consumer success, uniformity and an increased efficiency in the debt settlement process, USOBA believes that the power of attorney option be preserved. The limited power of attorney employed is very restricted and specific. It only allows a debt settlement company greater ability to facilitate a settlement between a creditor and a consumer. USOBA suggests aligning the power of attorney language to that of the FTC TSR.

4. **Bond Requirements (Sec.13):** While USOBA does not oppose a bond requirement in general; it does oppose the requirement that the company be A rated nationally. In our many conversations with insurance and bond carriers and issuers, we have been informed that this requirement is unreasonable and the same protections could be afforded with a slightly lesser rating. We urge the committee members to seek counsel

from an insurance and bond agent in order to determine the best and most reasonable requirements for this section.

5. **Fees and Other Charges (Sec.23):** As you may be aware, USOBA's membership policies have changed in order to be in harmony with the fee requirements under the FTC TSR. USOBA supports the consumer protective measures the fee restriction creates and as stated previously, we believe this provision has done a great deal to rid the industry of 'bad actors'. USOBA strongly suggests that the committee members conform to the letter and the intent of the FTC TSR, as currently drafted it is contradictory to the FTC TSR.

   Of particular concern is the requirement that the execution of term settlement agreements, or installment payments, would trigger a term or installment payment scenario with regard to the fees collected. This provision not only goes against the FTC TSR but it also reads as if the basic functions of debt settlement are misunderstood.

   It is the directive of the debt settlement company to perform negotiations in order to procure a beneficial settlement agreement between the creditor and the consumer and make sure that either the lump sum settlement is paid or at least the first payment in an installment plan is made. It is not the responsibility of the debt settlement company to sit in the consumer's home each month and ensure that they are writing out timely checks in accordance with their agreement, nor could the company ensure this even if directed to.

   The FTC TSR already dictates that a debt settlement company can perform all of the services it was contracted to perform and the consumer still has the right to reject a settlement offer and thereby refuse to pay the company for services rendered. It is unjust and unreasonable to suggest that a debt settlement company further portion out the collection of an <u>earned</u> fee based on an activity 100% out of the debt settlement company's control.

   As currently drafted, consumers would suffer because debt settlement companies would be much less inclined to accept or propose installment settlement offers. While I'm sure this is not the intention, it will be the result. It is understandable that the goal of this committee is to find regulatory structure that protects debt ridden consumers but removing ALL culpability from the consumer is not only irrational but also makes insulting assumptions about the American public in general.

6. **Fiscal Concerns:** Since its inception in 2004, USOBA has diligently worked with states to create and pass consumer protective legislation that would regulate the debt settlement industry. As disappointing as it has been, USOBA has often been witness to great legislation ultimately failing to pass into law because of the high fiscal impact to the state. With a dramatically smaller pool of debt settlement providers available for licensure it is unlikely that states will be able to overcome the fiscal hurdle and pass this legislation.

   We believe the Uniform Law Commission could assist in the state's fiscal crisis by creating a version of the UDMSA that captures the consumer protective measures but lessens the burdens on the states looking to adopt it. While some states have assigned the UDMSA a 'zero fiscal impact' label in the past (when there were close to 1500 active companies in the industry), we believe it unlikely this would happen in the present as a majority of entities are no longer around to share the financial burden.

Thank you for taking the time to review the enclosed comments and suggestions. It is vital that consumers are protected and laying a foundation of uniformity helps everyone involved.