UTAH DEPARTMENT OF COMMERCE

Division of Consumer Protection

Maintenance Funding Provider Legal Funding Report for 2020

February 18, 2022

Revised on March 3, 2022

Overview

Legal funding,[1] also known as lawsuit loans, maintenance funding, or litigation funding, is the practice of lending money to an individual[2] in exchange for the right to collect payment out of a future settlement, judgment, award, or other verdict in a civil court proceeding. In Utah, a business entity[3] that provides this kind of funding is referred to as a maintenance funding provider (MFP).[4]

The MFP does not collect any money from the individual unless the individual wins their legal case. For example, if a person is involved in an accident and then sues their insurance provider for $10,000 in medical expenses the individual could receive funding from an MFP. The MFP may extend an offer of $5,000 in funding to the individual with the agreement that if the individual wins their case the individual will pay back the $5,000 plus an additional fee of $1,000, and keep the additional $4,000 awarded by the court. If the individual loses in court, the individual does not pay back the MFP the $5,000 or the $1,000 fee.

During the 2020 legislative session Utah lawmakers enacted the Maintenance Funding Practices Act (MFPA), Utah Code § 13-57-101 *et al.* which created a regulatory structure intended to protect and educate Utah consumers. The Utah Division of Consumer Protection (the Division) is tasked with enforcing the MFPA.

A business entity cannot operate as an MFP in Utah without first registering with the Division. [5,6] After registering with the Division an MFP is required to renew its registration annually.[7] MFPs are also required to submit a report, under oath, to the Division on or before April 1st of each year detailing the number of funding agreements entered into, the total dollar amount of legal funding provided, and the **annual rate of return** for each funding agreement.[8]

The Division is required to analyze and summarize the information submitted by MFPs and publish the analysis and summary on the Division's website[9] for the purpose of educating the general public regarding legal funding in Utah.[10]

Maintenance Funding Provider Operational Requirements

Utah Code § 13-57-202[11] sets the conditions under which an MFP may provide funding to an individual and restricts certain acts by MFPs.

MFPs may not pay a referral fee to an attorney, a healthcare provider, or to any individual that works for an attorney or a healthcare provider. Additionally, an MFP may not refer an individual to an attorney or to a healthcare provider or accept a referral payment from an attorney or a healthcare provider.

An MFP may not intentionally advertise false or misleading information about its services. An MFP may not attempt to influence a decision related to a legal matter where the MFP has provided legal funding. An MFP may not knowingly pay for or offer to pay for court costs, filing fees, or attorney fees.

After entering into a maintenance funding agreement with an individual an MFP must provide an individual with a copy of the signed maintenance funding agreement.

Maintenance Funding Agreement Requirements

When an MFP enters into a funding agreement with an individual, the funding agreement has to meet certain requirements detailed in Utah Code § 13-57-301.[12] The agreement must be in writing, and an individual must be able to cancel the agreement without penalty within five days of entering into the agreement. Individuals may cancel the agreement in person at the MFP's office or by certified mail. If an individual has already been given funds the individual must return the funds to the MFP at the time of cancelation.

Maintenance funding agreements must contain certain disclosures[13] these include the right of rescission and a statement that the funded amount and agreed to charges shall be paid only from the proceeds of the individual's legal claim. Agreements must disclose to the individual the amount of funding that will be provided to the individual, an itemization of one-time charges, a payment schedule, the total amount that will be paid to the MFP if the individuals case is resolved, a provision stating that the MFP will not charge any additional fees other than those disclosed in the agreement, and a provision stating that the individual will not owe the MFP anything unless there are proceeds available from the individual's legal action. The agreement may not require payments that are based on a percentage of the recovery from the individual's legal action.

Enforcement

If an MFP violates a provision of the MFPA, a funding agreement associated with the violation is unenforceable by the MFP. The Division may also revoke or suspend an MFP's registration, impose fines of up to $1,000 per violation or $10,000 per willful violation, or order the MFP to make restitution to an individual.[14] An individual's legal claim against an MFP is not affected by the division's enforcement powers.

Maintenance Funding Providers in Utah

Beginning in 2020, all MFPs must register with the Division prior to operating in Utah; the Division maintains a list of all registered MFPs on its website. A list of all registered MFPs can be found here.

Report Methodology

Eighteen MFPs were registered with the Division during the 2020 reporting period. Seventeen of the MFPs provided their annual reports to the Division; one MFP provided an incomplete report to the Division. The Division requested revisions to that report, but the MFP never provided any additional information. The following summary and analysis reflect only the data collected from the 17 MFPs that provided reports to the Division.

In this report, three measures are used to show the cost of a maintenance funding agreement to the individual: **annual rate of return**, **dollar cost** to the individual, and the **rate of return** to the MFP. The annual rate of return is required by statute. The other measures are included by the Division as part of its analysis and summary of the data.

MFPs are required to report the **annual rate of return** for funding agreements that were concluded during the reporting period. Many funding agreements were completed in less than a year while some agreements were completed after two years or more. An **annual rate of return** is not a standard measurement that is used in the industry, the term is not defined in the MFPA.

The Division calculated the **annual rate of return** by subtracting the total funded amount from the total payments made by the individual to the MFP and then dividing that number by the total amount funded.

The result is then divided by the number of days from start to finish of the agreement. That number is then multiplied by 365 and then again by 100.

For example if an MFP entered into an agreement with an individual where the MFP provided $5,000 in funding, the agreement lasted for 160 days, and the MFP was paid $6,000 at the conclusion of the agreement then (((($6,000-$5,000)/$5,000))/160)*365)*100=38.02% annual rate of return.[15]

The **dollar cost** to individuals that entered into an agreement with an MFP has been calculated by subtracting the original amount borrowed from the total amount collected by the MFP. So, if an individual borrowed $5,000 and returned $6,000 the dollar cost to the individual is $1,000 ($6,000-$5,000=$1,000).

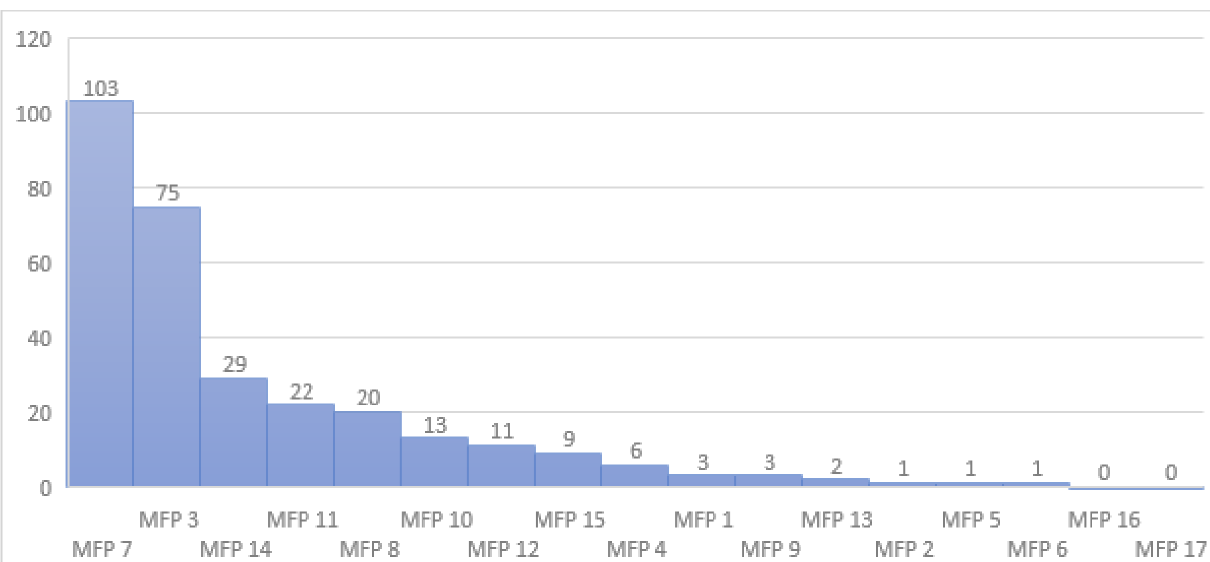
The **rate of return** to the MFP has been calculated by dividing the total amount collected by an MFP by the amount that the individual borrowed. So, if the individual borrowed $5,000 and the MFP collected $6,000 then the **rate of return** is 120% (6,000/5,000=1.2).

The **annual rate of return**, **dollar cost**, and **rate of return** were not calculated for any agreements that are still in process since individuals do not pay back any money until the end of the agreement.

Summary and Analysis

For the reporting period beginning on January 1, 2020, and ending on December 31, 2020, 17 MFPs submitted reports to the Division. One company comprised 34% of all reported funding agreements and the top two companies comprised over half of all reported funding agreements. Two companies reported no funding agreements. Figure 1 shows how many agreements each MFP had that were either in process or that concluded during 2020.

Figure 1

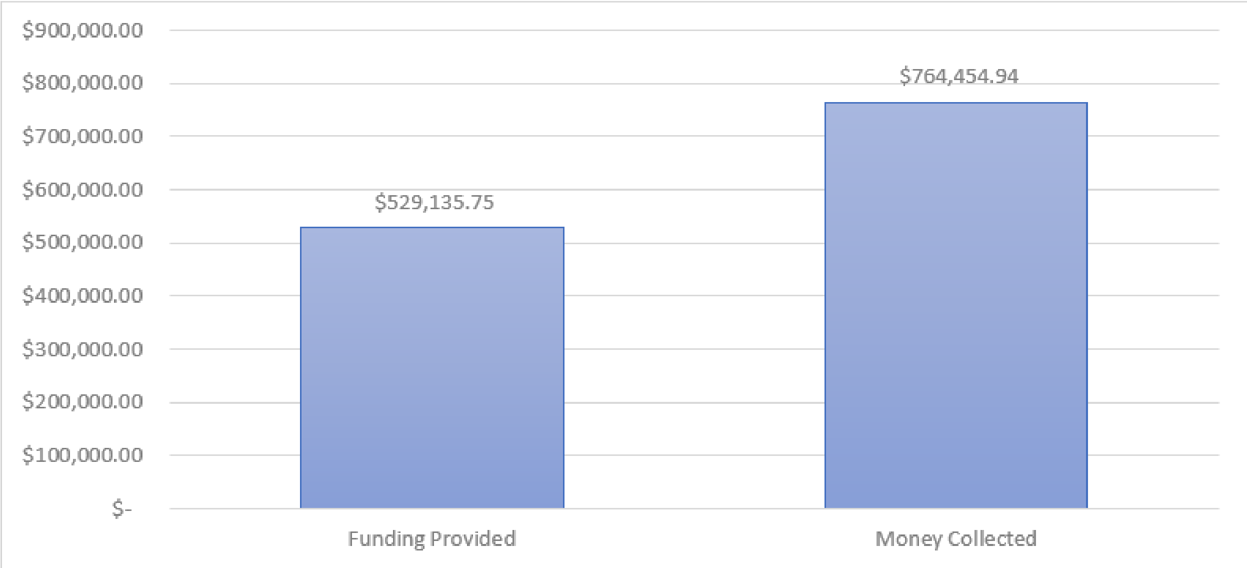


MFPs reported 98 concluded agreements and 201 in-process agreements for a total of 299 agreements. As noted previously, an individual only pays back funding when the individual wins the case. MFPs chose winning lawsuits over 97.9% of the time, reporting only two losses and 96 wins in concluded agreements. Figure 2 shows how many wins and losses MFPs reported for cases that concluded in 2020.

Figure 2

MFPs reported a total of $1,493,625 in funding agreements including completed and in-process agreements.[16] For agreements concluded in the 2020 reporting period, MFPs provided individuals with $529,135 in funding and collected $764,454 for a profit margin of $235,319. Figure 3 shows how much money was provided to individuals by MFPs and how much money MFPs collected for agreements that concluded in 2020.

Figure 3



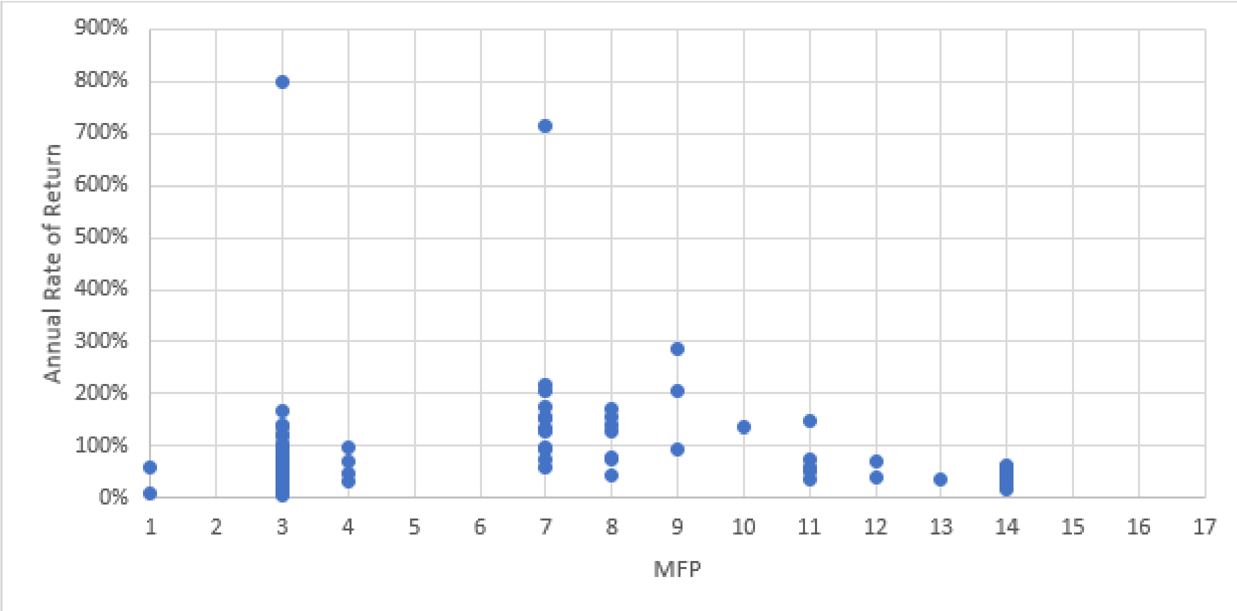
Funding ranged from $465 to $102,350 with a median funding amount of $2,000 and a mean of $5,399 for those agreements. Table 1 shows the average amount of funding provided to individuals by each MFP for all agreements concluded or in process in 2020.

Table 1[17]

MFP	Average Amount Funded
MFP 1	$ 8,316.67
MFP 2	$ 1,500.00
MFP 3	$ 2,080.67
MFP 4	$ 3,145.00
MFP 5	$ 10,000.00
MFP 6	$ 1,500.00
MFP 7	$ 3,927.90
MFP 8	$ 1,793.75
MFP 9	$ 3,543.33
MFP 10	$ 2,022.62
MFP 11	$ 3,100.00
MFP 12	$ 21,096.41
MFP 13	$ 16,940.50
MFP 14	$ 14,760.97
MFP 15	$ 4,574.79
MFP 16	$ -
MFP 17	$ -

Agreements that concluded in 2020 lasted between 18 and 1,376 days with a median of 227 days and a mean of 364 days. The **annual rate of return** for concluded agreements that resulted in a win was between 6.45% and 797.24% with a median of 59.05% and a mean of 90.9%. Figure 4 shows all concluded agreements that resulted in a win, the annual rate of return for each agreement, and the MFP that provided the funding.

Figure 4[18]



The **dollar cost** to individuals for those agreements that resulted in a win was between $100 and $62,091 with a median cost of $993 and a mean cost of $2,476. The **rate of return** for those agreements was between 105% and 300% with a median return of 137% and a mean return of 153%.

MFPs entered into 206 new agreements in 2020 amounting to $918,229 in funding provided to individuals. The average amount funded was $4,457 and the median was $2,000. Forty-one of the agreements entered into in 2020 were also concluded in 2020, and MFPs collected $208,591 from those concluded agreements. The **annual rate of return** for those 41 agreements averaged 142.85% and the median was 96.4%. The average **dollar cost** to individuals for those agreements was $988 and the median was $580. The **rate of return** averaged 130.74% and the median was 131%. Agreements entered into and closed in 2020 averaged 106 days to conclusion with a median of 101 days. There were no agreements that were entered into and concluded in 2020 that resulted in a loss.

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[1] "'Legal funding' means a payment of $500,000 or less to an individual in exchange for the right to receive an amount out of the potential proceeds of any realized settlement, judgement, award, or verdict the individual may receive in a civil legal action." Utah Code § 13-57-102(6).
[2] "'Individual' means a person who: (a) resides in this state; and (b) has or may have a pending legal action in this state." Utah Code § 13-57-102(5).
[3] "'Business entity' means a sole proprietorship, partnership, limited partnership, limited liability company, corporation, or other entity or association used to carry on a business for profit." Utah Code § 13-57-102(1).
[4] "'Maintenance funding provider' means a business entity that engages in the business of legal funding. (b)'Maintenance funding" does not include; (i) an immediate family member of an individual; (ii) an accountant providing accounting services to an individual; or (iii) an attorney providing legal services to an individual." Utah Code § 13-57-102(8)(a).
[5] Utah Code § 13-57-503 specifically exempts some businesses including banks, deferred deposit lenders, title lenders, and creditors from the requirements of the MFPA.
[6] "Except as provided in Subsection (4), a business entity may not act as a maintenance funding provider in this state without registering with the division." Utah Code § 13-57-201(1).
[7] "Each year a maintenance funding provider shall renew the maintenance funding provider's registration by submitting to the division an application for registration renewal." Utah Code § 13-57-201(3).
[8] Utah Code § 13-57-203.
[9] The Division's website can be found at www.dcp.utah.gov.
[10] Utah Code § 13-57-402.
[11] Utah Code § 13-57-202.
[12] Utah Code § 13-57-301.

[13] [Utah Code § 13-57-302.]
[14] [Utah Code § 13-57-502.]

[15]

$$\left(\frac{\dfrac{\text{Payments to MFP} - \text{Funded amount}}{\text{Funded amount}}}{\text{Number of days to conclusion of agreement}} \right) \times 365 \times 100$$

[16] Concluded agreements may have been entered into during prior years.
[17] MFP 16 and 17 reported that they had no funding agreements in process or concluded for 2020.
[18] MFPs 2, 5, 6, 15, 16, and 17 did not report any concluded agreements for 2020.