UTAH DEPARTMENT OF COMMERCE

Division of Consumer Protection

Maintenance Funding Provider Legal Funding Report for 2022

July 20, 2023

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 the 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 repay the $5,000 the individual borrowed nor pay the $1,000 fee that the MFP would have charged if the individual won.

The *Maintenance Funding Practices Act* (MFPA), Utah Code § 13-57-101 *et seq.*, was enacted during the 2020 General Session. The MFPA 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] An MFP is required to renew its registration annually.[7] An MFP is 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, whether the agreement concluded as contracted or for a lesser amount, and the annual rate of return for each funding agreement.[8]

The Division is required to analyze and summarize the information submitted by each MFP 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 the MFP.

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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.

An MFP 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 the 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 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 business days after the day they enter into the agreement. Individuals may cancel the agreement in person, at the MFP's office, or by insured, certified, or registered U.S. 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 disclosures,[13] including 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 after the settlement of all liens, fees, and other costs. 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.

The Division issued one citation against an MFP in 2022[15].

[12] Utah Code § 13-57-301.
[13] Utah Code § 13-57-302.
[14] Utah Code § 13-57-502.
[15] Citations are public records and can be accessed by making a GRAMA request or through a search of legal actions on the Division's website: www.dcp.utah.gov.

Maintenance Funding Providers in Utah

An MFP must register with the Division prior to operating in Utah; the Division maintains a list of all registered MFPs on its website. For the 2022 reporting period, there were 18 MFPs registered in Utah.

Report Methodology

The Division received 19 annual reports from MFPs for the 2022 reporting period. Eighteen of the MFPs were registered with the Division and one was operating with an expired registration. Unlike previous years, there were no MFPs that failed to provide an annual report to the Division.

In this report, several 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.

An MFP is required to report the **annual rate of return** for funding agreements that were concluded during the reporting period. Many funding agreements are completed in less than a year, while some agreements are 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, then dividing that number by the total amount funded. The result was then divided by the number of days from start to finish of the agreement. That number was then multiplied by 365, then again by 100.

For example, if an MFP entered into an agreement with an individual in which the MFP provided $5,000 of 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)=45.63% annual rate of return.[16]

For this report, the Division calculated the **dollar cost** to individuals that entered into an agreement with an MFP by subtracting the original amount borrowed from the total amount collected by the MFP. For example, 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).

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

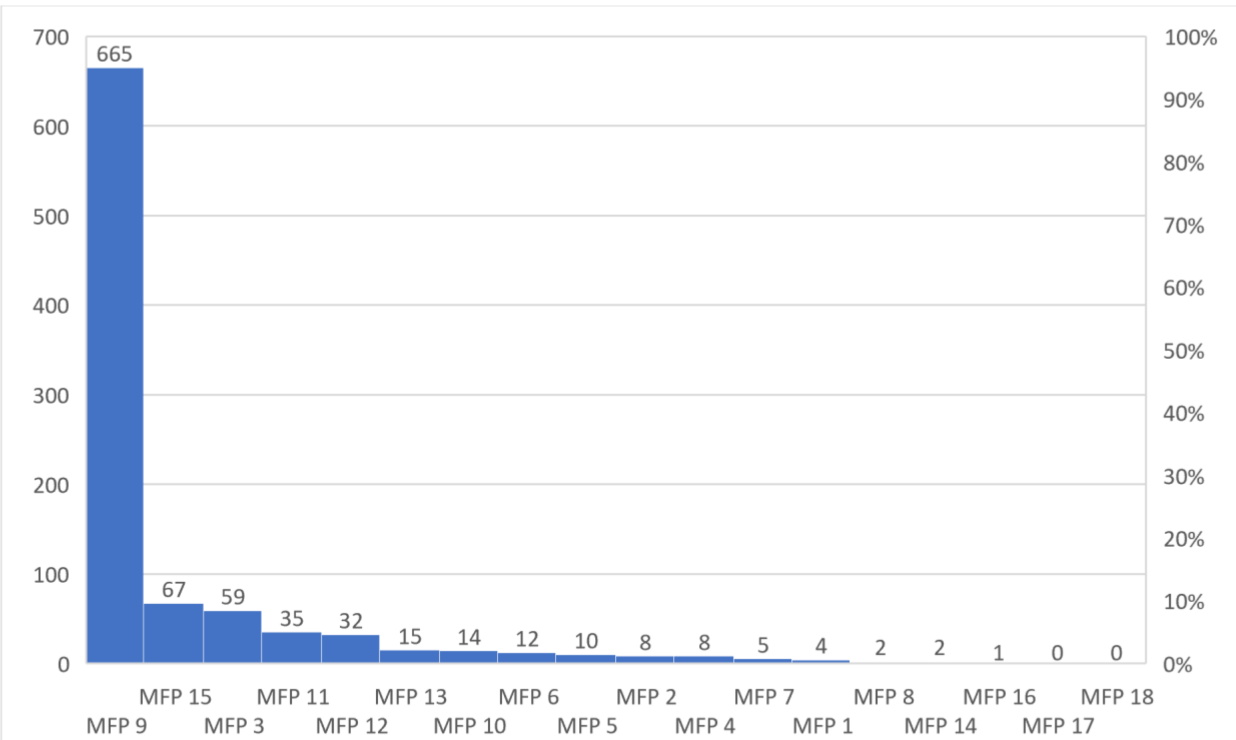
For this report, the Division calculated the MFP's **rate of return** by dividing the total amount collected by the MFP by the amount that the individual borrowed. For example, if the individual borrowed $5,000 and the MFP collected $6,000, the **rate of return** is 120% (6,000/5,000=1.2).

The **annual rate of return**, **dollar cost**, and **rate of return** were not calculated for any agreements that are still in process because individuals do not pay back any money until the end of the agreement. These measures are the same measures used in the 2020 summary and analysis published by the Division.

Summary and Analysis

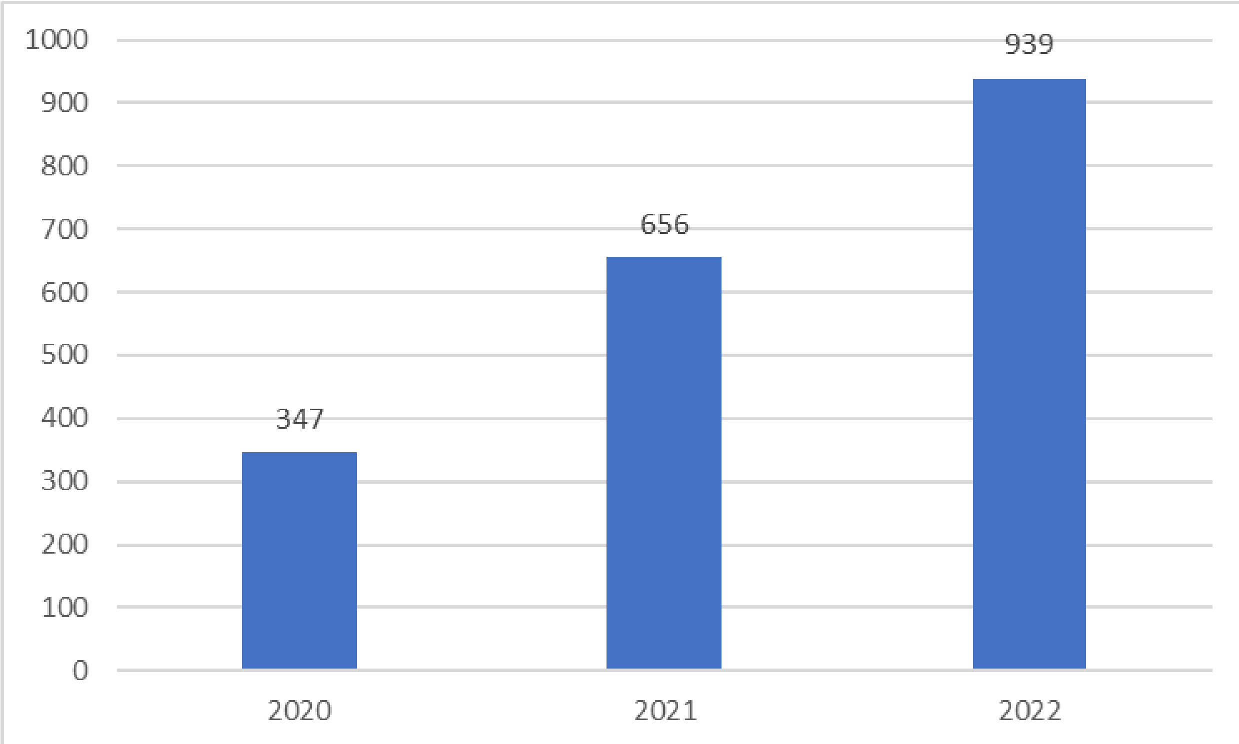
For the reporting period beginning on January 1, 2022, and ending on December 31, 2022, 19 MFPs submitted reports to the Division. One MFP's agreements comprised over 70% of all reported funding agreements. Three providers reported no funding agreements, and one provider reported only one in-process agreement. Figure 1 shows how many agreements each MFP had that were either in process or that concluded during the 2021 reporting period.

Figure 1



MFPs reported 328 concluded agreements with 225 agreements concluded "as contracted" and 103 agreements concluded as "less than contracted." MFPs also reported 609 in-process agreements, for a total of 939 agreements up from 656 in 2021, and 347 in 2020. Figure 2 shows the number of agreements reported for each of the three reporting periods.

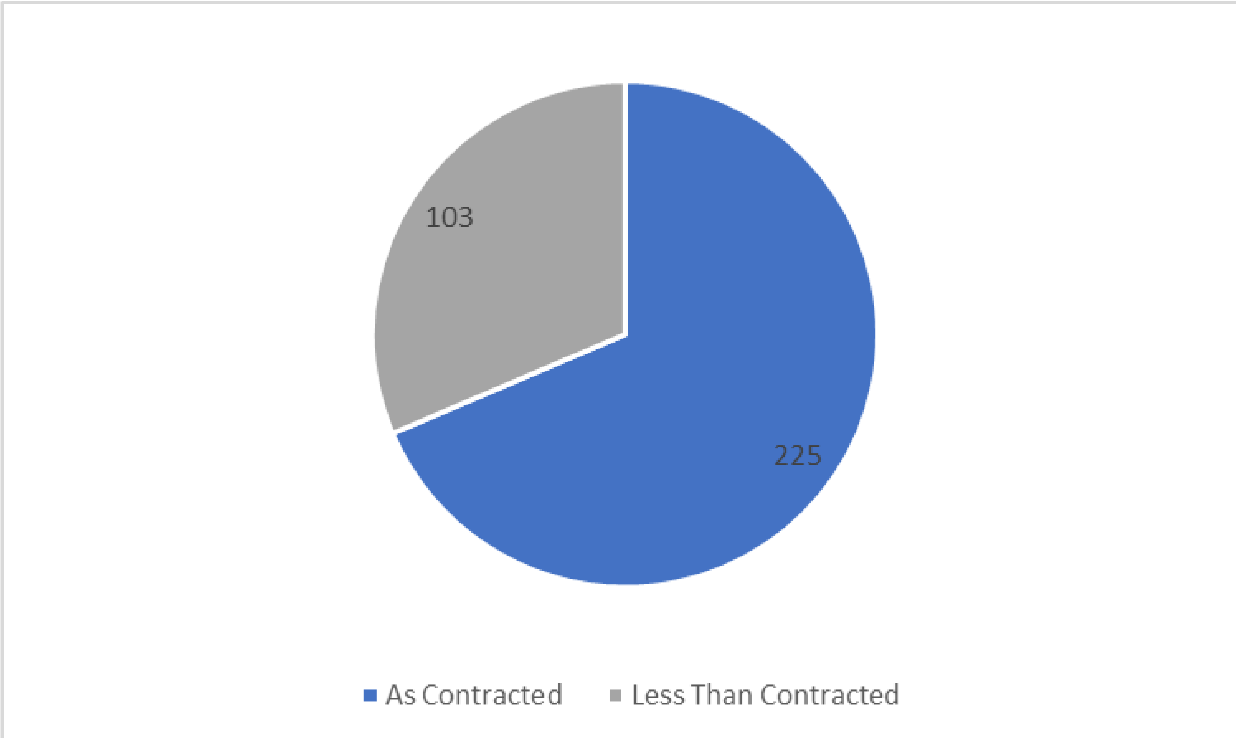
Figure 2



As noted previously, an individual only pays back funding to the MFP only to the extent there are available proceeds from the legal action. Out of 228 cases, MFPs chose recovered more than the funded amount about 96% of the time, reporting only 12 agreements in which the MFP was paid back $0.00. In eight other agreements, the MFP was repaid an amount equal to or less than the amount it had provided to the individual. Taking into consideration all 20 cases in which an MFP lost money on the agreement or earned no money on the agreement, MFPs picked profitable cases about 94% of the time.

MFPs also report to the Division whether an agreement is concluded as contracted or as less than contracted. For the 2022 reporting period, MFPs reported that 225 agreements were concluded as contracted and the remaining 103 agreements were concluded at an amount less than contracted. Figure 3 shows all concluded contracts and whether they were concluded as contracted or as less than contracted. The amount collected by MFPS in less than contracted cases varies widely. One such agreement was entered into in December, 2020, where the individual borrowed about $99,000.00, and concluded in December, 2023, with the individual paying back about $157,000.00; a rate of return of around 159%. Another agreement was entered into in September, 2020, where the individual borrowed about $800.00, and concluded in in April, 2022, with the individual paying back about $900.00; a rate of return of about 110%. Rates of return for agreements concluded as less than contracted fall between about 0% (where the consumer paid back only the exact amount borrowed) to about 283%.

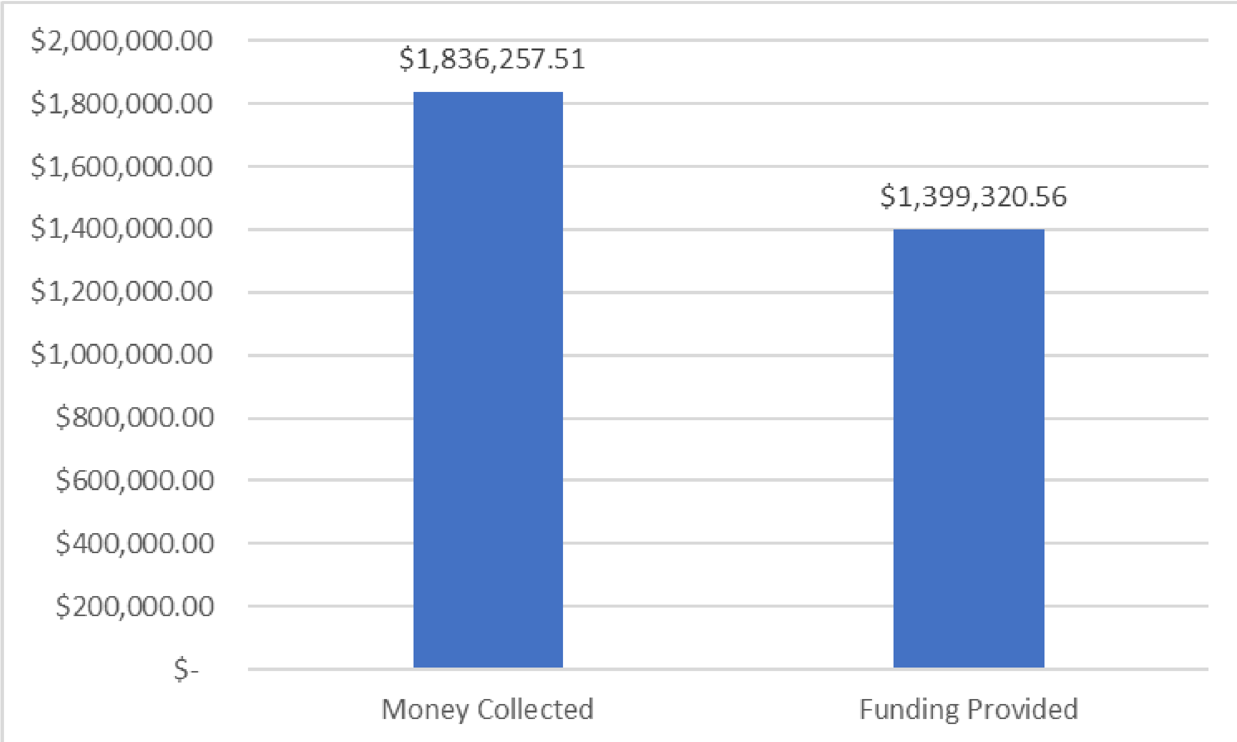
Figure 3



MFPs reported a total of $3,688,810.06 in funding agreements (including completed and in-process agreements), up from $2,767,707.07 in 2021 and $1,964,679.60 in 2020.[17] For agreements concluded in the 2022 reporting period, MFPs collected $1,836,257.51 from consumers for profit earned of $436,936.95. Figure 4 shows how much money was provided to individuals by MFPs, and how much money MFPs collected for agreements that concluded in the 2022 reporting period.

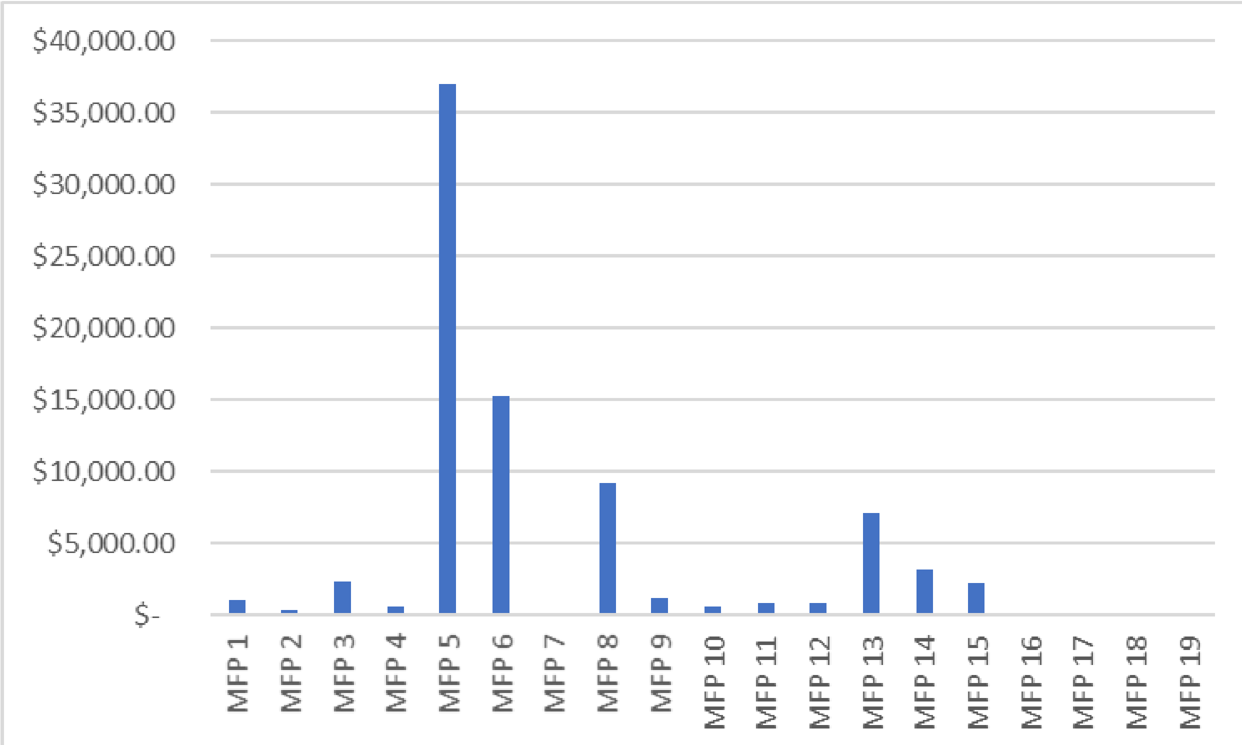
[17] Concluded agreements may have been entered into during prior years.

Figure 4



Funding agreements concluded in 2022 ranged from about $150.00 to about $197,500.00 with a median amount of $1,660.00. Figure 5 shows the average amount of funding collected from individuals by each MFP for all agreements concluded in the 2022 reporting period.

Figure 5[18]

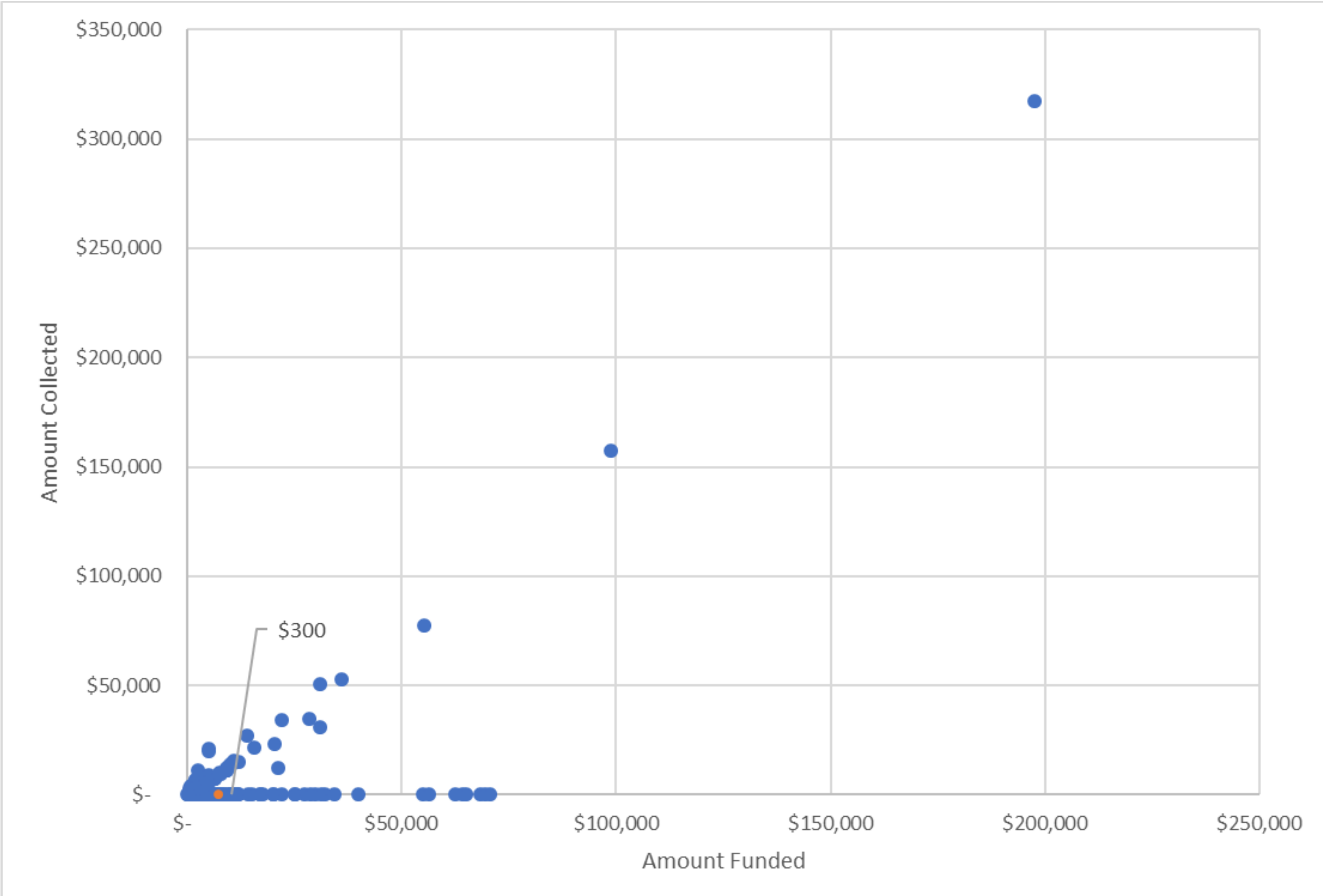


Agreements that concluded in 2022 lasted between 12 and 2,138 days, with a median of 269 days. The **annual rate of return** for concluded agreements that resulted in a win was between 0% and 606%, with a median of 72%. The **dollar cost** to individuals for those agreements that resulted in a win was between -$10,000.00 and about $120,0000.00 with a median cost of $775.58. The **rate of return** for those agreements was between about 3% and about 574%, with a median return of about 150%.

An agreement has a negative dollar cost when an individual pays the MFP less than the amount the MFP funded. For example, in the agreement highlighted in figure 6, the MFP provided the individual with $10,300.00 in funding, but only received $300 as payment at the conclusion of the agreement. Figure six shows all agreements reported by MFPs in for the 2022 reporting period by the amount of funding provided and the amount collected by the MFP at the conclusion of the agreement.

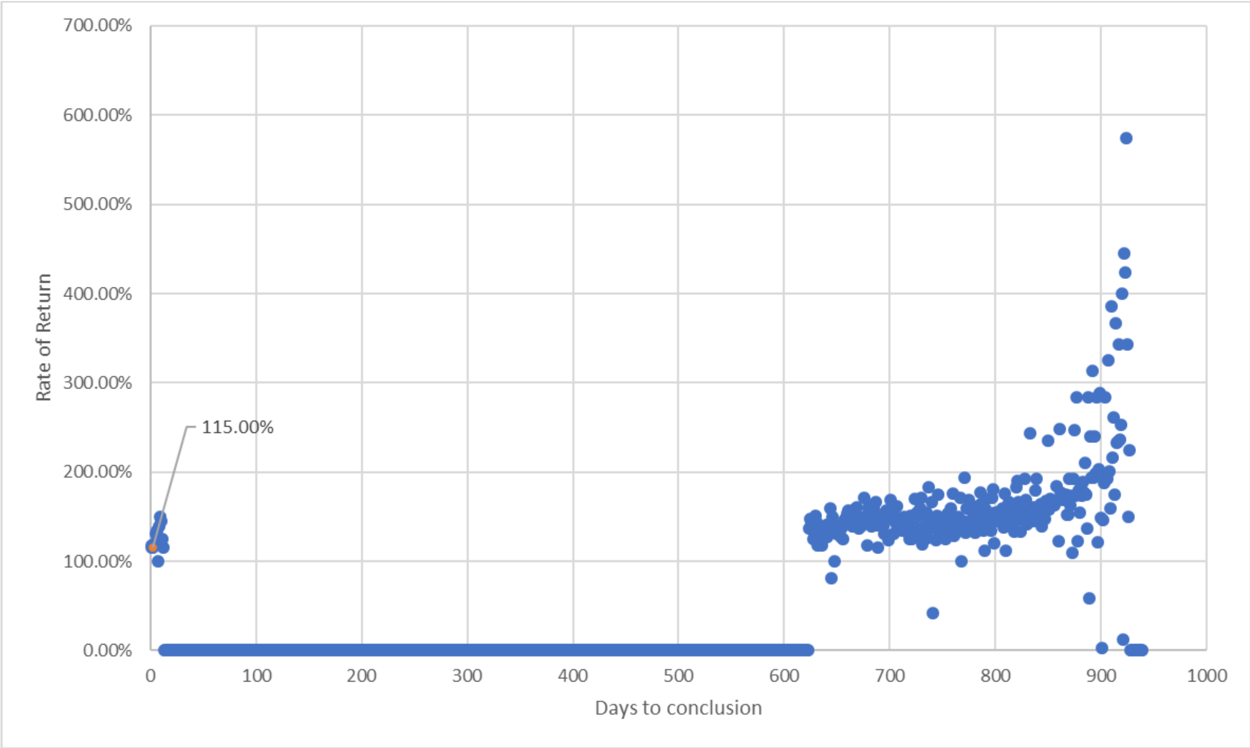
[18] MFPs 7, 16, 17, 18, 19 reported no concluded agreements for the 2022 reporting period.

Figure 6



Generally speaking, the longer an agreement is open the more an individual will pay to the MFP when the agreement concludes. However, even the shortest lasting agreements can be costly to the individual as illustrated by the agreement highlighted in Figure 7. That agreement was concluded only 13 days after it was entered into. The individual borrowed about $2,900.00 and less than two weeks later paid back about $3,350.00. Figure 7 shows all agreements reported by MFPs for the 2022 reporting period, the rate of return for the agreement, and the number of days to conclude each agreement.

Figure 7



MFPs continue to take on more agreements each year. Those agreements usually result in the MFP making a profit. The profits made by MFPs on each agreement vary widely, but the typical rate of return is very high.