Utah Department of Commerce
Division of Consumer Protection

Maintenance Funding Provider Legal Funding Report for 2023

September 17, 2024

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 type 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] Each 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 for the purpose of educating the general public regarding legal funding in Utah. [9] [10]

Maintenance Funding Provider Operational Requirements

Utah Code § 13-57-202 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.

Under the law, 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,
- refer an individual to an attorney or to a healthcare provider or accept a referral payment from an attorney or a healthcare provider, intentionally advertise false or misleading information about its services
- attempt to influence a decision related to a legal matter where the MFP has provided legal funding, and
- 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 must meet requirements detailed in Utah Code § 13-57-301.[11] 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.[12] These disclosures must include

- a notice of the right of rescission,
- a statement that the funded amount and agreed charges shall be paid only from the proceeds of the individual's legal claim,
- 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 individual's 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.

Finally, 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

[11] Utah Code § 13-57-301.
[12] Utah Code § 13-57-302.

of up to $1,000 per violation or $10,000 per willful violation, or order the MFP to make restitution to an individual.[13] An individual's legal claim against an MFP is not affected by the Division's enforcement powers.

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 2023 reporting period, there were 25 MFPs registered in Utah.

Report Methodology

In this report, the Division uses three independent measures to illustrate the cost of a maintenance funding agreement to the individual: **annual rate of return**, **rate of return** to the MFP, and **dollar cost** to the individual. 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 nor does the MFPA define the term.

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.[14]

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).

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

[13] Utah Code § 13-57-502.

[14]

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

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).

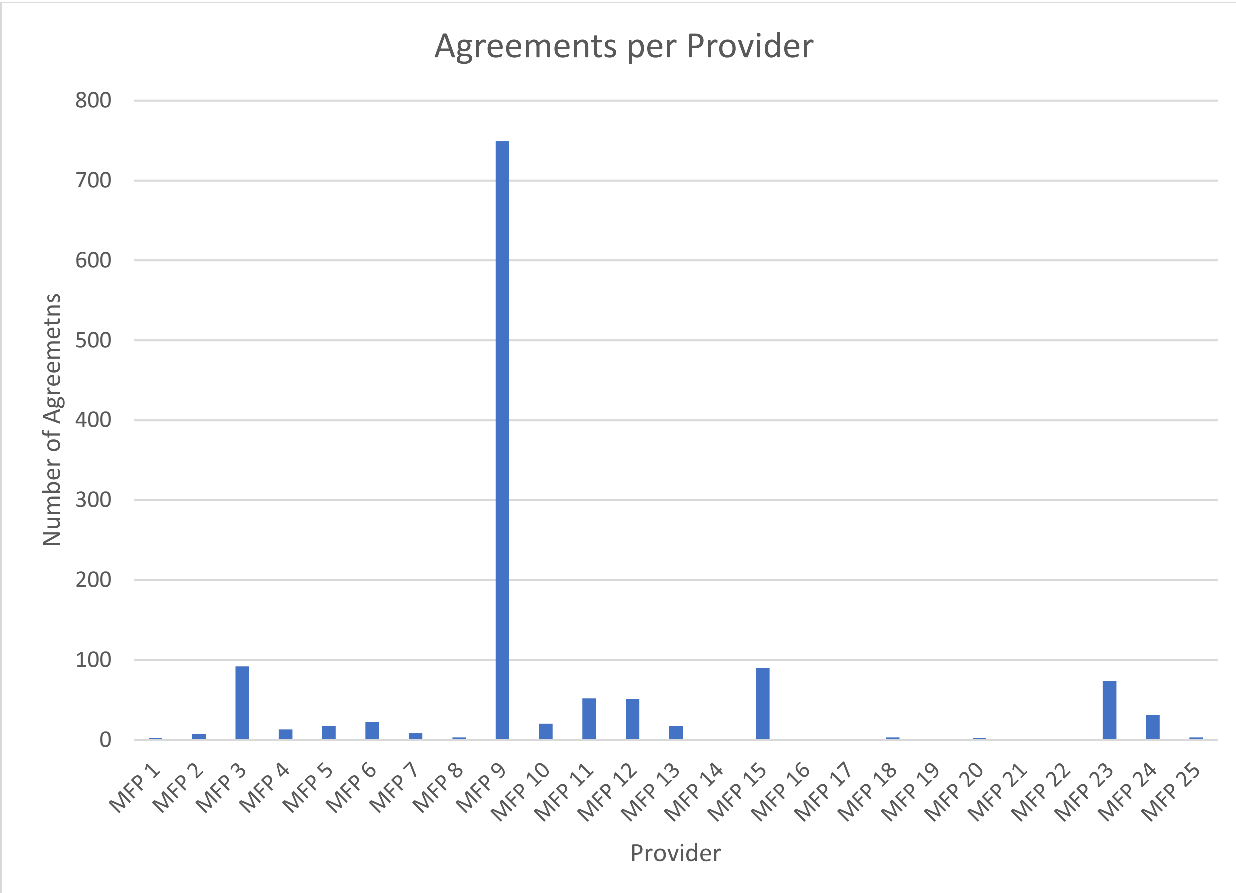
The **annual rate of return**, **dollar cost**, and **rate of return** were not calculated for any agreements that are still in process because individuals do not pay back any money until the end of the agreement. These measures are the same measures used in prior summaries and analyses published by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

Summary and Analysis

The **annual rate of return** for concluded agreements was between 0% and 1,564%, with a median of 135%. The **dollar cost** to individuals for those agreements was between about -$10,000.00 and about $44,000.00 with a median cost of $1,078.07. The **rate of return** for those agreements was between 0% and about 562%, with a median return of about 164%.

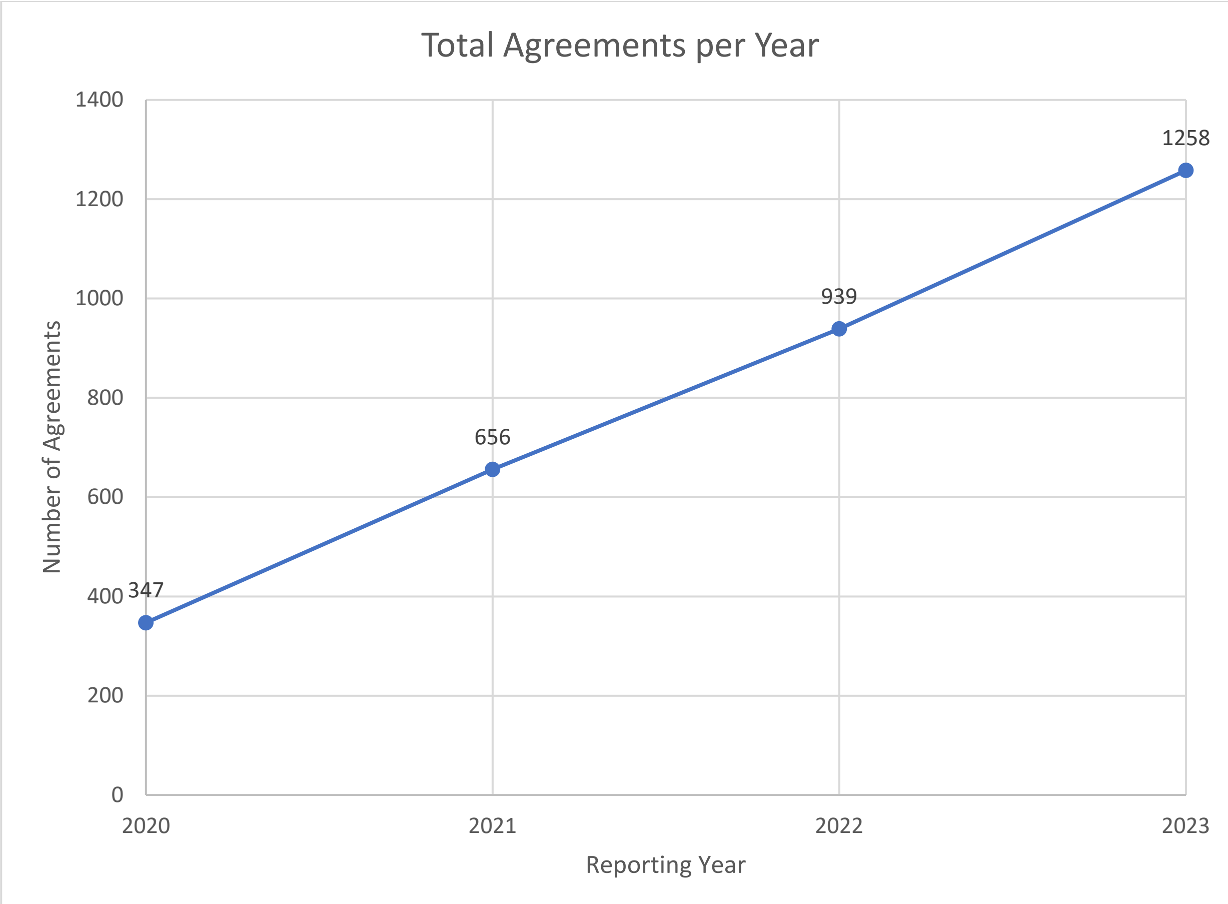
For the reporting period beginning on January 1, 2023, and ending on December 31, 2023, 25 MFPs submitted reports to the Division. This is an increase from 19 reports submitted a year prior. One MFP's agreements comprised about 60% of all reported funding agreements. Eight providers reported no funding agreements, and nine providers reported only ten or less agreements. Figure 1 shows how many agreements each MFP had that were either in process or that concluded during the 2023 reporting period.

Figure 1



MFPs reported 424 concluded agreements with 276 agreements concluded "as contracted" and 153 agreements concluded as "less than contracted." MFPs also reported 829 in-process agreements, for a total of 1,258 agreements up from 939 in 2022, 656 in 2021, and 347 in 2020. Figure 2 shows the number of agreements reported for each of the three reporting periods.

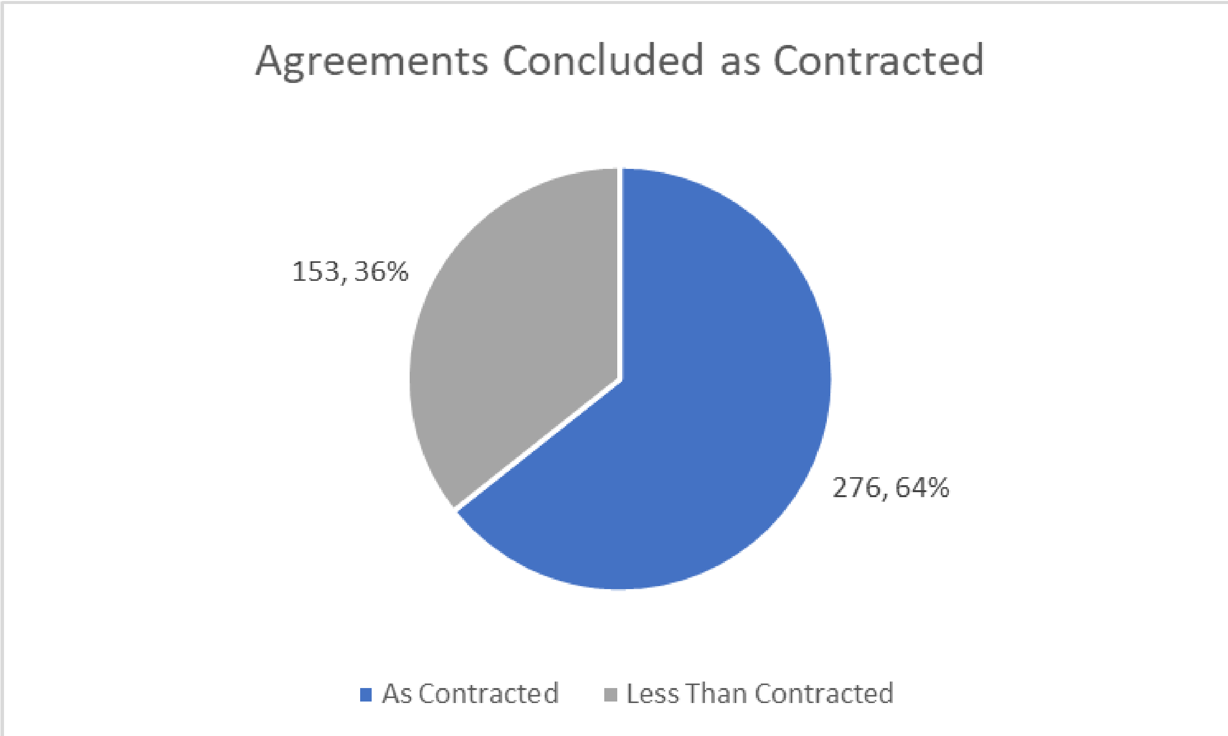
Figure 2



As noted previously, an individual pays back funding to the MFP only to the extent there are available proceeds from the legal action. Out of 424 cases, MFPs reported only 9 agreements in which the MFP was paid back $0.00. In 11 other agreements, the MFP was repaid an amount equal to or less than the amount it had provided to the individual. MFPs recovered some money about 99% of the time.

MFPs also report to the Division whether an agreement is concluded as contracted or as less than contracted. For the 2023 reporting period, MFPs reported that 276 agreements were concluded as contracted and the remaining 153 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.

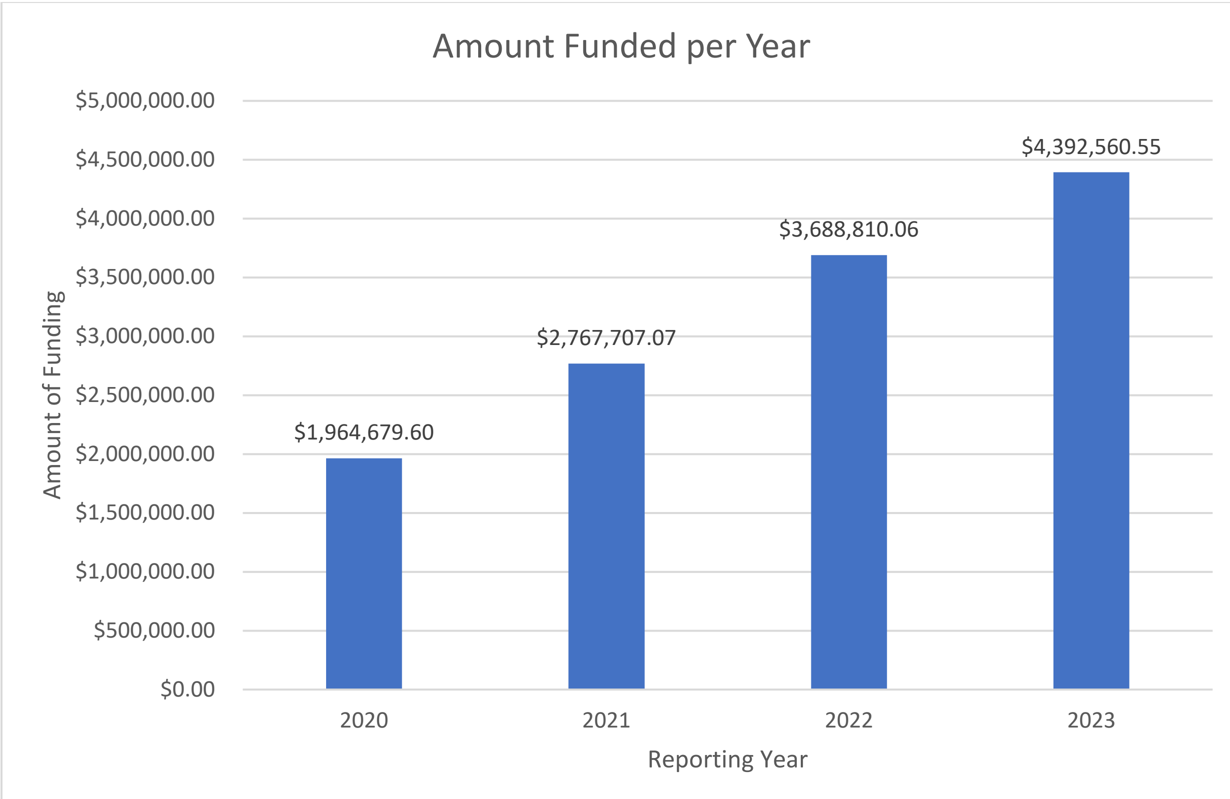
Figure 3



MFPs reported a total of in $4,392,560.55 funding agreements (including completed and in-process agreements), up from $3,688,810.06 in 2022, $2,767,707.07 in 2021 and $1,964,679.60 in 2020.[15] Figure 4 shows the funding amounts for each year beginning in 2020 and ending in 2023.

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

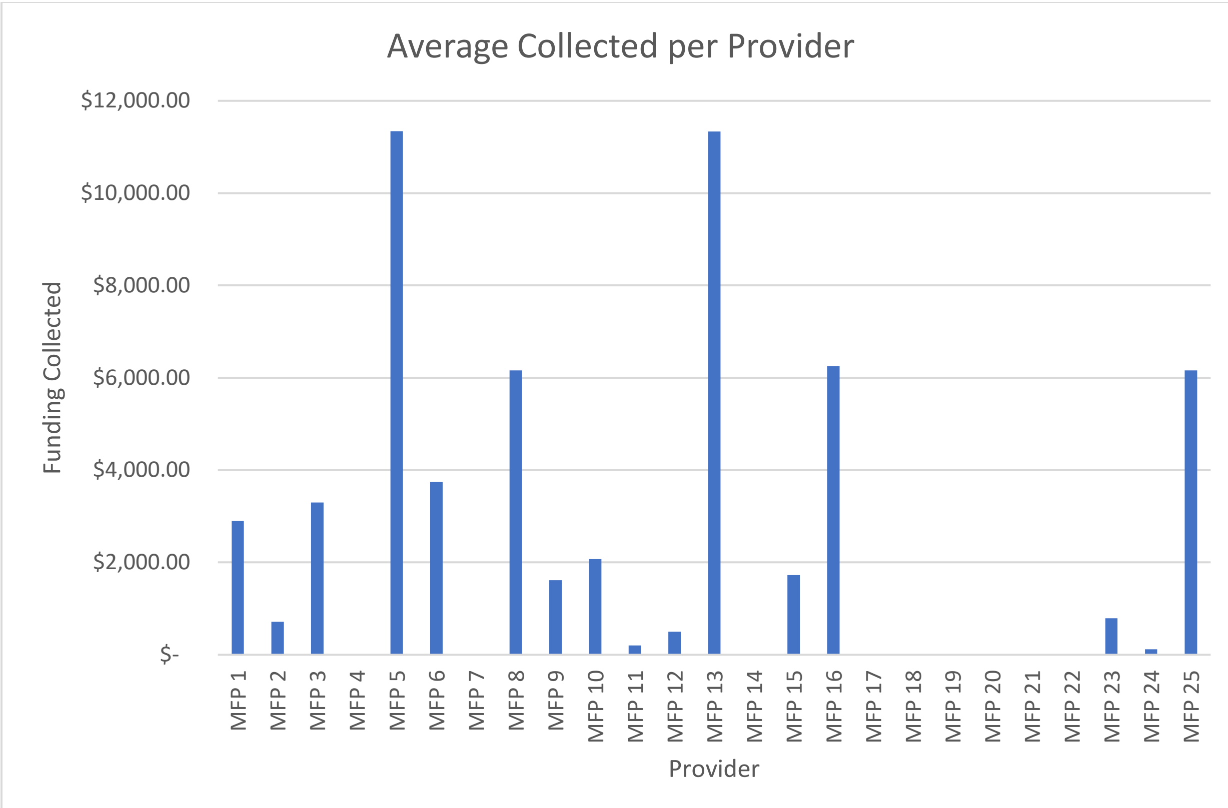
Figure 4



For agreements concluded in the 2023 reporting period, MFPs collected $2,327,460.53 from consumers for profit earned of $835,133.50.

Funding agreements concluded in 2023 ranged from about $100.00 to about $70,500.00 with a median amount of $1,955.00. Figure 5 shows the average amount of funding collected from individuals by each MFP for all agreements concluded in the 2023 reporting period.

Figure 5



Agreements that concluded in 2023 lasted between 7 and 2,272 days, with a median of 287 days.

Conclusion

Maintenance funding is a growing industry in Utah with new MFPs entering the market each year. 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. In the 2023 reporting period, MFPs brought in about $835,000.00 in earning profit and funded over 1,200 agreements.

The amount of funding provided varies from small dollar amounts of around $100.00 to amounts in the tens of thousands of dollars. Over half of all agreements are in place for less than a year, but even agreements in place for as little as a week can result in high dollar costs for individuals.

One MFP continues to hold most maintenance funding agreements in Utah at around 60% of all agreements.