Attachment D

COLORADO

Department of Regulatory Agencies

2014 Sunset Review:

Colorado Uniform Debt-Management Services Act

Office of Policy, Research and Regulatory Reform
October 15, 2014

COLORADO
Department of
Regulatory Agencies
Executive Director's Office

October 15, 2014

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The mission of the Department of Regulatory Agencies (DORA) is consumer protection. As a part of the Executive Director's Office within DORA, the Office of Policy, Research and Regulatory Reform seeks to fulfill its statutorily mandated responsibility to conduct sunset reviews with a focus on protecting the health, safety and welfare of all Coloradans.

DORA has completed the evaluation of the Colorado Uniform Debt-Management Services Act. I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2015 legislative committee of reference. The report is submitted pursuant to section 24-34-104(8)(a), of the Colorado Revised Statutes (C.R.S.), which states in part:

> The department of regulatory agencies shall conduct an analysis of the performance of each division, board or agency or each function scheduled for termination under this section...
>
> The department of regulatory agencies shall submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination....

The report discusses the question of whether there is a need for the regulation provided under Part 2 of Article 14.5 of Title 12, C.R.S. The report also discusses the effectiveness of the Administrator of the Uniform Consumer Credit Code designated by the Attorney General in carrying out the intent of the statutes and makes recommendations for statutory changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

Barbara J. Kelley
Executive Director

1560 Broadway, Room 1550, Denver, CO 80202 P 303.894.7855 F 303.894.7885 www.colorado.gov/dora

COLORADO

Department of Regulatory Agencies

2014 Sunset Review
Colorado Uniform Debt-Management Services Act

SUMMARY

What Is Regulated?
Debt-management and debt-settlement providers must be registered in order to provide services to Colorado residents. A debt-management provider works with creditors to obtain concessions such as lowering interest rates and waiving fees. Then a consumer makes one monthly payment, which is disbursed to each of the creditors in the plan. They may charge a fee for enrollment and a monthly fee for service. Rather than helping consumers to pay off the full amount of debt owed, debt-settlement providers negotiate with creditors to persuade them to accept a portion of the debt owed. Debt-settlement providers require clients to deposit money into an account to build up at least 50 percent of the balance owed. They do not begin to negotiate with creditors until consumers have accumulated at least 50 percent of the debt owed, and no disbursements are made to creditors until a settlement is reached.

Why Is It Regulated?
Regulation of companies that provide debt-management and debt-settlement services is critical for consumer protection because consumers who seek these services are already in serious financial trouble and susceptible to abuse. Regulation helps to prevent additional harm to these consumers.

Who Is Regulated?
With limited exceptions, anyone who acts as an intermediary between an individual and a creditor for the purpose of obtaining concessions on behalf of a Colorado resident must be registered. In fiscal year 12-13, there were 41 registered debt-management providers and 7 registered debt-settlement providers.

How Is It Regulated?
The Administrator of the Uniform Consumer Credit Code designated by the Attorney General in the Colorado Department of Law (Administrator) is vested with the authority to enforce the Colorado Uniform Debt-Management Services Act (Act). The Administrator protects the public by examining the books, accounts and records of registered providers. The Administrator has the authority to deny, suspend or revoke a registration. The Administrator may issue a cease and desist order, order a violation to be corrected, and prosecute a civil action, and the Administrator may intervene in a civil case brought about by an individual to recover fees, charges, money, payments, compensatory damages, punitive damages, and reasonable attorney fees and costs.

What Does It Cost?
In fiscal year 12-13, the total expenditures to oversee the program were $292,009, and there was 1.0 full-time equivalent employee associated with the program.

What Disciplinary Activity Is There?
Between fiscal years 08-09 and 12-13, the Administrator issued 26 cease and desist orders, completed 38 stipulated agreements and final agency orders, denied 4 licenses, and obtained 4 consent decrees and 4 determinations or judgments against debt-management and debt-settlement providers.

Key Recommendations

Continue the Act for nine years, until 2024.
Regulation of companies that provide debt-management and debt-settlement services is critical for consumer protection because consumers who seek these services are already in serious financial trouble and susceptible to abuse. Regulation helps to prevent additional harm to these consumers.

Limit debt-settlement fees to 15 percent of the debt forgiven from a completed settlement.
By basing fees on the total amount of debt owed, debt-settlement providers are provided a financial incentive to acquire clients with large amounts of debt, but not to obtain the best settlement for a client. Fee caps in other states are often set at 10 to 15 percent of the amount of debt forgiven, not the amount of debt owed. Structuring the fees based on savings would create a financial incentive for debt-settlement providers to obtain the best possible settlement for the client and ensure that debt settlement provides some benefit, taking into account all the costs of a settlement agreement including income tax and the inherent risks of the settlement process.

Authorize registration fees to be assessed depending on the type of provider.
Since the Act defines both types of businesses as providing "debt-management services," the line between these two types of services is blurred, and both types of providers are charged the same amount in registration fees. However, the regulation of debt-settlement providers costs significantly more than regulation of debt-management providers. Debt-settlement providers represent 87 percent of the complaint activity and 81 percent of the enforcement activity in this program. Debt-settlement providers should be assessed registration fees consistent with the cost of regulation.

Major Contacts Made During This Review

American Fair Credit Counsel
Association of Credit Counseling Professionals
Association of Independent CCC Agencies
Bell Policy Center, The
CCCS of Greater Dallas
CCCS of San Francisco
Center for Responsible Lending
ClearPoint Credit Counseling Solutions
Colorado Bankers Association
Colorado State Banking Commissioner
Colorado Department of Law
Consumers United Association
Freedom Debt Relief
Greenpath
Money Management International
MPowered
National Foundation of Credit Counseling

What is a Sunset Review?
A sunset review is a periodic assessment of state boards, programs, and functions to determine whether they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with protecting the public. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the ability of businesses to exist and thrive in a competitive market, free from unnecessary regulation.

Sunset Reviews are prepared by:
Colorado Department of Regulatory Agencies
Office of Policy, Research and Regulatory Reform
1560 Broadway, Suite 1550, Denver, CO 80202
www.dora.state.co.us/opr

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Background

Introduction

Enacted in 1976, Colorado's sunset law was the first of its kind in the United States. A sunset provision repeals all or part of a law after a specific date, unless the legislature affirmatively acts to extend it. During the sunset review process, the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria[1] and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are based on the following statutory criteria:

- Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;
- Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;

[1] Criteria may be found at § 24-34-104, C.R.S.

- Whether the agency through its licensing or certification process imposes any disqualifications on applicants based on past criminal history and, if so, whether the disqualifications serve public safety or commercial or consumer protection interests. To assist in considering this factor, the analysis prepared pursuant to subparagraph (i) of paragraph (a) of subsection (8) of this section shall include data on the number of licenses or certifications that were denied, revoked, or suspended based on a disqualification and the basis for the disqualification; and
- Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

Types of Regulation

Consistent, flexible, and fair regulatory oversight assures consumers, professionals and businesses an equitable playing field. All Coloradans share a long-term, common interest in a fair marketplace where consumers are protected. Regulation, if done appropriately, should protect consumers. If consumers are not better protected and competition is hindered, then regulation may not be the answer.

As regulatory programs relate to individual professionals, such programs typically entail the establishment of minimum standards for initial entry and continued participation in a given profession or occupation. This serves to protect the public from incompetent practitioners. Similarly, such programs provide a vehicle for limiting or removing from practice those practitioners deemed to have harmed the public.

From a practitioner perspective, regulation can lead to increased prestige and higher income. Accordingly, regulatory programs are often championed by those who will be the subject of regulation.

On the other hand, by erecting barriers to entry into a given profession or occupation, even when justified, regulation can serve to restrict the supply of practitioners. This not only limits consumer choice, but can also lead to an increase in the cost of services.

There are also several levels of regulation.

Licensure

Licensure is the most restrictive form of regulation, yet it provides the greatest level of public protection. Licensing programs typically involve the completion of a prescribed educational program (usually college level or higher) and the passage of an examination that is designed to measure a minimal level of competency. These types of programs usually entail title protection - only those individuals who are properly licensed may use a particular title(s) - and practice exclusivity - only those individuals who are properly licensed may engage in the particular practice. While these requirements can be viewed as barriers to entry, they also afford the highest level of consumer protection in that they ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Certification

Certification programs offer a level of consumer protection similar to licensing programs, but the barriers to entry are generally lower. The required educational program may be more vocational in nature, but the required examination should still measure a minimal level of competency. Additionally, certification programs typically involve a non-governmental entity that establishes the training requirements and owns and administers the examination. State certification is made conditional upon the individual practitioner obtaining and maintaining the relevant private credential. These types of programs also usually entail title protection and practice exclusivity.

While the aforementioned requirements can still be viewed as barriers to entry, they afford a level of consumer protection that is lower than a licensing program. They ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Registration

Registration programs can serve to protect the public with minimal barriers to entry. A typical registration program involves an individual satisfying certain prescribed requirements - typically non-practice related items, such as insurance or the use of a disclosure form - and the state, in turn, placing that individual on the pertinent registry. These types of programs can entail title protection and practice exclusivity. Since the barriers to entry in registration programs are relatively low, registration programs are generally best suited to those professions and occupations where the risk of public harm is relatively low, but nevertheless present. In short, registration programs serve to notify the state of which individuals are engaging in the relevant practice and to notify the public of those who may practice by the title(s) used.

Title Protection

Finally, title protection programs represent one of the lowest levels of regulation. Only those who satisfy certain prescribed requirements may use the relevant prescribed title(s). Practitioners need not register or otherwise notify the state that they are engaging in the relevant practice, and practice exclusivity does not attach. In other words, anyone may engage in the particular practice, but only those who satisfy the prescribed requirements may use the enumerated title(s). This serves to indirectly ensure a minimal level of competency - depending upon the prescribed preconditions for use of the protected title(s) - and the public is alerted to the qualifications of those who may use the particular title(s).

Licensing, certification and registration programs also typically involve some kind of mechanism for removing individuals from practice when such individuals engage in enumerated proscribed activities. This is generally not the case with title protection programs.

Regulation of Businesses

Regulatory programs involving businesses are typically in place to enhance public safety, as with a salon or pharmacy. These programs also help to ensure financial solvency and reliability of continued service for consumers, such as with a public utility, a bank or an insurance company.

Activities can involve auditing of certain capital, bookkeeping and other recordkeeping requirements, such as filing quarterly financial statements with the regulator. Other programs may require onsite examinations of financial records, safety features or service records.

Although these programs are intended to enhance public protection and reliability of service for consumers, costs of compliance are a factor. These administrative costs, if too burdensome, may be passed on to consumers.

Sunset Process

Regulatory programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials, representatives of the regulated profession and other stakeholders. Anyone can submit input on any upcoming sunrise or sunset review via DORA's website at: www.dora.colorado.gov/opr.

The regulatory functions of the Administrator of the Uniform Consumer Credit Code designated by the Attorney General in the Colorado Department of Law (Administrator) as enumerated in Part 2 of Article 14.5 of Title 12, Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2015, unless continued by the General Assembly. During the year prior to this date, it is the duty of DORA to conduct an analysis and evaluation of the administration of the Uniform Debt-Management Act by the Administrator pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed regulation of debt-management providers should be continued for the protection of the public and to evaluate the performance of the Administrator. During this review, the Administrator must demonstrate that the regulation serves to protect the public health, safety or welfare, and that the regulation is the least restrictive regulation consistent with protecting the public. DORA's findings and recommendations are submitted via this report to the Office of Legislative Legal Services.

Methodology

As part of this review, DORA staff interviewed the Administrator and program staff, reviewed complaint and disciplinary actions, interviewed officials with state and national industry associations, interviewed stakeholders, reviewed Colorado statutes and program rules, and reviewed the laws of other states.

Profile of the Industry

Consumers with serious debt problems may work with debt-management providers (Management Providers), also known as credit-counseling agencies, in order to pay off their debts. Management Providers educate and counsel consumers on how to manage money, and they help consumers to develop budgets. If a consumer has too much debt, they may recommend enrolling in a debt-management plan (management plan).[2]

In a management plan, a Management Provider works with creditors to obtain concessions such as lowering interest rates and waiving fees. Then a consumer makes one monthly payment to the Management Provider, which is disbursed to each of the creditors in the plan. Management plans are limited to unsecured debt such as credit cards, personal loans, medical bills, retail store cards and unpaid collection accounts.[3] Management providers may charge a fee for enrollment and a monthly fee for service.[4]

Essentially, Management Providers help consumers manage their debts.

Management Providers offer one type of business model for consumers who are over extended in debt. Another business model is debt settlement. Rather than helping consumers to pay off the full amount of debt owed, debt-settlement providers (Settlement Providers) negotiate with creditors to persuade them to accept a portion of the debt owed.[5] Essentially, they settle debts.

Settlement Providers typically require clients to deposit money into an account to build up at least 50 percent of the balance owed. They do not begin to negotiate with creditors until consumers have accumulated at least 50 percent of the debt owed, and no disbursements are made to creditors until a settlement is reached.[6]

Consumers may negotiate directly with creditors without using a Settlement Provider, but consumers with little financial literacy may not know that they can settle debts themselves or they may be intimidated by the process.

Management Providers may be nonprofit or for-profit companies. Settlement Providers are for-profit entities. Nine states prohibit for-profit companies from providing debt-management services, including debt settlement.

Most states regulate companies that provide management plans or settle debts for compensation. Colorado requires companies that provide debt-management services, including debt settlement, to be registered, and it does not distinguish between nonprofit or for-profit providers.

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[2] Federal Trade Commission. *Choosing a Credit Counselor.* Retrieved on July 24, 2014, from http://www.consumer.ftc.gov/articles/0153-choosing-credit-counselor

[3] Fair Credit. *Debt-Management Program.* Retrieved on July 24, 2014, from http://www.faircredit.org/services_dmp.asp

[4] Colorado Department of Law. *Colorado Uniform Debt-Management Services Act: Information for Consumers.* http://www.coloradoattorneygeneral.gov/sites/default/files/uploads/DM%20Brochure%20for%20Web.pdf

[5] National Conference of Commissioners on Uniform State Laws. *Uniform Debt-Management Services Act: Prefatory Note.* March 6, 2008.

[6] Colorado Department of Law. *Colorado Uniform Debt-Management Services Act: Information for Consumers.* http://www.coloradoattorneygeneral.gov/sites/default/files/uploads/DM%20Brochure%20for%20Web.pdf

Legal Framework

History of Regulation

Colorado first regulated debt adjusters in 1965 under the authority of the Colorado Banking Board (Board) and the State Banking Commissioner (Commissioner). From 1965 to 1991, there was only one licensed debt adjuster in Colorado. In 1992, the Board approved two new licenses.

In 1993, the program underwent a sunset review, and the Department of Regulatory Agencies (DORA) recommended that the program sunset when it found little evidence of harm to the public. DORA found that the Board and the Commissioner had been exceptionally passive in regulating the industry; one provider had operated for 25 years without a license. DORA also found few complaints against debt adjusters. The program, however, was continued.

In 1999, DORA conducted another sunset review of debt adjusters and recommended that the program sunset. DORA reported that less than one complaint a year was filed against debt adjusters, and none had resulted in a finding of a violation of the statute or regulations.

At the time, there were only five licensed debt adjusters in Colorado. DORA reported that the numerous exemptions in the licensing statute allowed the majority of debt adjusters to operate without a license. Only debt adjusters who collected a fee were required to be licensed. Although the majority of revenues generated through debt-management services resulted from fair share payments,[7] of which a debt adjuster could retain all or a portion, fair share payments did not, according to the Board, constitute a fee. Also, debt adjusters from out of state could operate and charge fees without any regulatory oversight.

The General Assembly repealed the debt adjuster licensing program in 2000.

In 2007, the General Assembly passed the Colorado Uniform Debt-Management Services Act (Act), effective January 1, 2008. The Act requires anyone who acts as an intermediary between an individual and a creditor for the purpose of obtaining debt concessions to register with the Colorado Department of Law.

[7] Fair share payments: Creditors compensate debt adjusters, or debt-management providers, as much as 15 cents for every dollar repaid through a debt-management plan.

In 2011, the General Assembly removed a number of requirements that were deemed unnecessary, including the requirements for companies to be accredited and debt counselors and debt specialists to be certified. It also removed the fee cap on debt-settlement plans, which had been set at four percent of debt owed to enroll a client and no more than 18 percent of the total principal debt owed. However, the fee cap for debt-management plans, set at no more than $50 a month, was not removed. The General Assembly also removed the requirement to carry a $1 million insurance policy.

Summary of Current Laws

The laws governing debt-management providers (Management Providers) and debt-settlement providers (Settlement Providers) are located in Part 2 of Article 14.5 of Title 12, Colorado Revised Statutes (C.R.S.). The Administrator of the Uniform Consumer Credit Code designated by the Attorney General (Administrator) oversees the regulation of Management and Settlement Providers.[8]

The Act defines "debt-management services" as acting as an intermediary between an individual and a creditor for the purpose of obtaining concessions.[9]

In the Act, "debt-management services" refers to both debt-management services (management services) and debt-settlement services (settlement services). This report, however, differentiates between management services and settlement services since they represent two different business models.

Anyone who provides management or settlement services must register with the Administrator in order to provide services to an individual who resides in Colorado.[10]

The Act does not apply to a provider who:[11]

- Has no reason to know that the client resides in this state,
- Receives no compensation for management or settlement services,
- Provides management or settlement services only to persons who incurred debt in the conduct of business, or
- Is subject to the Colorado Foreclosure Act.

[8] §§ 12-14.5-202(1) and 5-6-104(1)(g), C.R.S.
[9] § 12-14.5-202(10)(A), C.R.S.
[10] § 12-14.5-204(a), C.R.S.
[11] § 12-14.5-203(b), C.R.S.

The Act also does not apply to:[12]

- A judicial officer,
- A person acting under an order of a court or an administrative agency,
- An assignee for the benefit of creditors,
- A bank,
- A title insurer,
- An escrow company, or
- Any other person who provides bill-paying services as long as debt-management is incidental to the bill-paying services.

To register as a provider, an applicant must:[13]

- Submit an application,
- Pay a fee,
- Obtain a surety bond,
- Identify all trust accounts,
- Authorize the Administrator to review and examine the trust accounts,
- Provide proof of compliance with Colorado law governing corporations and associations, and
- Provide evidence of nonprofit and tax-exempt status, if applicable.

Every officer and employee authorized to conduct transactions to accounts held in trust for management or settlement clients must submit to a state and national fingerprint-based criminal history record check.[14]

A provider must renew its registration annually.[15]

The Administrator may deny registration if:[16]

- The application contains information that is materially erroneous or incomplete;
- An officer, director, or owner of the applicant has been convicted of a crime, or suffered a civil judgment, involving dishonesty or a violation of state or federal securities laws;
- The applicant — or any of its officers, directors or owners — has defaulted in the payment of money collected for others; or
- The Administrator determines that — based on financial responsibility, experience, character or general fitness of the applicant or its owners, directors, employees or agents — the business will not be operated in compliance with the Act.

[12] § 12-14.5-203(c), C.R.S.
[13] § 12-14.5-205(b), C.R.S.
[14] § 12-14.5-206(14), C.R.S.
[15] § 12-14.5-211(a), C.R.S.
[16] § 12-14.5-209(b), C.R.S.

The Administrator must deny or approve an application for registration within 90 days of receiving the application. If the Administrator requests additional information, the Administrator may extend the application period up to 30 days.[17]

A provider must act in good faith in all matters under the Act.[18]

A provider must maintain a toll-free number with sufficient staff to allow a client to speak to a counselor, debt specialist or customer service representative, as appropriate, during regular business hours.[19]

Before providing or contracting to provide services, a provider must give an individual an itemized list of goods and services, with a description and charges of each good and service.[20]

In order to provide management or settlement services, a provider must also educate the client on managing personal finances and prepare a financial analysis for the client.[21]

If an individual is going to make regular, periodic payments, then the provider must prepare a management or a settlement plan that is suitable for the client and likely to be accepted by the client's creditors, and the provider must make a determination that with the information available, the client will be able to meet all of his or her obligations under the plan.[22]

Before an individual agrees to a management or a settlement plan, a provider must:[23]

- Provide the individual with a copy of the financial analysis and the management plan;
- Provide a toll-free number that the individual may call to discuss the analysis and plan; and
- Provide a list of all the creditors the individual is indebted to and a determination on whether each creditor is likely to participate in the plan, and whether each creditor is likely to grant concessions.

[17] § 12-14.5-210(a), C.R.S.
[18] § 12-14.5-215, C.R.S.
[19] § 12-14.5-216, C.R.S.
[20] § 12-14.5-217(a), C.R.S.
[21] § 12-14.5-217(b), C.R.S.
[22] § 12-14.5-217(b)(3), C.R.S.
[23] § 12-14.5-217(c), C.R.S.

Also, before an individual agrees to a management or a settlement plan, a provider must also disclose to consumers, on a separate sheet of paper, specific information detailed in statute including:[24]

- The name and the business address of the provider,
- Other ways to deal with indebtedness,
- How the plan may affect the consumer's credit rating,
- Any compensation the registered provider may receive from creditors,
- That debt forgiveness may create taxable income, and
- The possible outcomes of defaulting on debt.

The form and contents of a management or a settlement agreement are outlined in statute. In addition to other information, the agreement must disclose:[25]

- The services to be provided,
- The fees to be paid by the individual,
- The schedule of payments,
- The amount of time necessary to complete the plan,
- Any creditors to which the provider will not direct payment,
- The fact that an individual may terminate the agreement,
- The contact information for the Administrator, and
- The fact that an individual may contact the Administrator with an inquiry or complaint.

If the plan includes a settlement offer, the agreement must disclose the amount of money the individual must accumulate before the provider will make a settlement offer to each creditor or debt collector.[26]

If the plan includes regular payments to creditors, the agreement must disclose:[27]

- The creditors to which payment will be made,
- The amount owed to each creditor,
- Any concessions the provider anticipates the creditor will offer, and
- The schedule of payments to each creditor, including the dates and amounts.

The agreement must state that the individual may cancel the agreement at any time, without penalty or obligation, through written or electronic notice. In case of cancellation, the provider must refund any money retained for the payment of the individual's debts, and all powers of attorney granted by the individual are revoked.[28]

[24] § 12-14.5-217(d), C.R.S.
[25] § 12-14.5-219(a)(6), C.R.S.
[26] § 12-14.5-219(a)(6)(C.5)(ii), C.R.S.
[27] § 12-14.5-219(a)(6)(D), C.R.S.
[28] § 12-14.5-219(d)(1), C.R.S.

In addition to the agreement, a provider must supply a Notice of Right to Cancel that includes the following language:[29]

> **You may cancel this agreement, without any penalty or obligation, at any time before midnight of the third business day that begins the day after you agree to it by electronic communication or by signing it.**
>
> **To cancel this agreement during this period, send an e-mail to (E-mail address of provider) or mail or deliver a signed, dated copy of this notice, or any other written notice to (Name of provider) at (Address of provider) before midnight on (Date).**
>
> **If you cancel this agreement within the 3-day period, we will refund all money you already have paid us.**
>
> **You also may terminate this agreement at any later time, but we are not required to refund fees you have paid us.**
>
> **I cancel this agreement, _____ Print your name**
> **_____ Signature _____ Date**

The Notice of Right to Cancel must be provided on a separate form, in bold-faced type, and surrounded by bold black lines.[30] Notice is given on the date that the notice is mailed.[31]

All money paid to a provider for distribution to creditors must be held in trust. A provider must deposit funds within two days of receipt.[32] The provider may not combine funds held in trust for management clients with the funds of other persons.[33] At all times, the trust account balance must equal the sum of the balances of each individual's account.[34] A provider must reconcile the trust account at least once a month.[35]

A provider may not impose any fees or collect any money for management services until an agreement compliant with the Act is signed by both parties.[36]

[29] § 12-14.5-220(b), C.R.S.
[30] § 12-14.5-220(b), C.R.S.
[31] § 12-14.5-220(a), C.R.S.
[32] § 12-14.5-222(a), C.R.S.
[33] § 12-14.5-222(d), C.R.S.
[34] § 12-14.5-222(e), C.R.S.
[35] § 12-14.5-222(f), C.R.S.
[36] § 12-14.5-223(b), C.R.S.

If the agreement is for a plan that anticipates creditors reducing finance charges or fees for late payment, default or delinquency, a registered provider may impose the following management fees:[37]

- An initial fee not to exceed $50 for consultation, obtaining a credit report and setting up an account; and
- A monthly service fee not to exceed $10 multiplied by the number of creditors in the plan, and no more than $50 a month.

If the agreement is for a plan that anticipates creditors or debt collectors settling debts for less than the principal amount of the debt, a provider may not assess any settlement fees until and unless:[38]

- The provider has settled the terms of at least one debt according to the agreement;
- The individual has made at least one payment according to the agreement with creditors or debt collectors; and
- The fee or consideration either bears the same proportional relationship to the total fee for settling the terms of the entire debt balance as the individual debt amount bears to the entire debt amount at the time the debt was enrolled in the service, or is a percentage of the amount saved as a result of the settlement.

When an agreement for settlement is obtained, an individual may not be charged fees that exceed the total principal amount of the debt when the fees are added to the aggregate of offers of settlement obtained by the provider.[39]

A provider may impose only one type of fee: either management fees or settlement fees.[40] A provider may also impose a fee not to exceed $25 if an individual fails to make a payment to a provider as agreed.[41]

A provider who extends management or settlement services to an individual may not, among other things:[42]

- Purchase a debt or obligation of the individual,
- Accept a promissory note or other negotiable instrument other than a check or a demand draft,
- Accept a post-dated check or demand draft,
- Lend money or provide credit to the individual, or
- Obtain a mortgage or other security on behalf of the individual.

[37] § 12-14.5-223(d)(1), C.R.S.
[38] § 12-14.5-223(d)(2)(A), C.R.S.
[39] § 12-14.5-223(d)(2)(D), C.R.S.
[40] § 12-14.5-223(d)(3), C.R.S.
[41] § 12-14.5-223(f), C.R.S.
[42] § 12-14.5-228(b), C.R.S.

If a provider charges a fee or receives money other than those authorized in the Act, an individual may cancel an agreement and recover, through civil action, three times the total amount of fees, charges, money and payments made by the individual to the provider in addition to reasonable attorney fees and costs.[43]

The prohibited acts and practices include, among other things:[44]

- Misappropriating or misapplying money held in trust;
- Settling a debt without a valid contractual agreement;
- Structuring a plan in a manner that would result in a negative amortization of any of an individual's debts, unless a creditor that is owed a negatively amortizing debt agrees to refund or waive the finance charge upon payment of the principal amount of the debt;
- Paying employees based on the number of individuals that the employee convinces to enter into agreements;
- Settling a debt without receiving certification from the creditor that payment is in full settlement of the debt;
- Representing that the provider will furnish money to pay bills or prevent attachments;
- Representing that paying a certain amount will satisfy a certain amount or range of indebtedness;
- Representing that participation in a plan will prevent litigation, collection activity, garnishment, attachment, repossession, foreclosure, eviction or loss of employment;
- Misrepresenting that the provider may give legal advice or perform legal services;
- Misrepresenting that it is a nonprofit entity, except that, if the provider represents that it is a nonprofit entity and the provider does not have tax-exempt status under section 501 (c) (3) of the federal "Internal Revenue Code of 1986", as amended, the provider shall state, in a clear and conspicuous manner and in close proximity to the representation: "We are not an educational, charitable, or religious organization granted tax-exempt status by the Internal Revenue Service.";
- Obtaining a confession of judgment or power of attorney to confess judgment against an individual;
- Employing an unfair, unconscionable, or deceptive act or practice; or
- Advising, encouraging, or suggesting to the individual not to make a payment to creditors under the plan.

[43] § 12-14.5-235(b), C.R.S.
[44] § 12-14.5-228(a), C.R.S.

The Administrator has the authority to:[45]

- Receive complaints, respond to complaints, or act on his or her own initiative to determine compliance with the Act;
- Investigate and examine, by subpoena or otherwise, a provider's activities, books, accounts and records;
- Charge a provider for reasonable expenses to conduct an examination;
- Require or permit an individual to file a statement under oath as to all the facts and circumstances under investigation;
- Seek a court order to seize any or all money, books, records, accounts and other property of the provider that is in the control of the bank and relates to individuals who reside in this state;
- Adopt rules necessary to implement the Act;
- Enter into cooperative arrangements and share information about providers with another state or federal agency having authority over providers; and
- Set reasonable fees in rule to administer the Act.

The Administrator has the following enforcement authority:[46]

- Order a provider to cease and desist from violating the Act;
- Order a provider to correct a violation;
- Order restitution;
- Fine a provider up to $10,000 per violation;
- Fine a provider up to $20,000 per violation for violating an order to cease and desist, to correct a violation or to pay restitution;
- Intervene in private civil action for violations of the Act; and
- Maintain an action to enforce the Act in any county.

The Administrator may recover reasonable costs including attorney fees for any of the above enforcement actions.[47] Additionally, any of these enforcement actions must commence within four years of the conduct that is the basis for the complaint.[48]

[45] § 12-14.5-232, C.R.S.
[46] § 12-14.5-233, C.R.S.
[47] § 12-14.5-233(d), C.R.S.
[48] § 12-14.5-237(a), C.R.S.

The Administrator may also suspend, revoke or deny renewal of registration to a provider for:[49]

- Having a fact or condition that would be grounds to deny registration to a provider;
- Committing a material violation of the Act, rules, or an order of the Administrator;
- Becoming insolvent;
- Refusing an examination by the Administrator;
- Failing to file a statement under oath within 15 days of the request by the Administrator; or
- Making a material misrepresentation or omission when filing a statement under oath as required by the Administrator.

The Administrator may order a summary suspension of a provider's registration if the provider fails to reconcile its trust accounts on at least a monthly basis or if the Administrator finds the public health, safety or welfare is in immediate risk.[50]

The Act also allows for a private cause of action. If a provider violates the Act, an individual may recover, through civil action, from the provider and any person that caused the violation:[51]

- Compensatory damages for injury, including noneconomic injury;
- Whichever is greater, $5,000 or three times the total amount of fees, charges, money and payments made by the individual to the provider in addition to reasonable attorney fees and costs;[52]
- Punitive damages; and
- Reasonable attorney fees and costs.

The Administrator must assist an individual in enforcing a judgment against a surety bond.[53]

[49] § 12-14.5-234(b), C.R.S.
[50] § 12-14.5-234(c), C.R.S.
[51] § 12-14.5-235(c), C.R.S.
[52] These minimum damages do not apply in a class action suit, unless the registered provider attempts to improperly transfer money from an individual's bank account or with another person. § 12-14.5-235(d), C.R.S.
[53] § 12-14.5-235(g), C.R.S.

Further, an individual must begin any of the above private enforcement actions authorized in the Act within two years of:[54]

- The last transmission of money to a provider,
- The last transmission of money to a creditor at the direction of the provider,
- The last disbursement to a creditor of the individual,
- The last accounting to an individual as required by the Act,
- The date on which the individual discovered or reasonably should have discovered the facts giving rise to the individual's claim, or
- Termination of actions or proceedings by the Administrator for a violation of the Act.

A provider must notify the Administrator within 30 days of being served with a notice of civil action for violation of the Act by or on behalf of a Colorado resident.[55]

[54] § 12-14.5-237(b), C.R.S.
[55] § 12-14.5-229, C.R.S.

Program Description and Administration

Anyone who acts as an intermediary between an individual and a creditor for the purpose of obtaining concessions on behalf of a Colorado resident must be registered under the Colorado Uniform Debt-Management Services Act, located in Part 2 of Article 14.5 of Title 12, Colorado Revised Statutes (C.R.S.) (Act).

In the Act, debt-management providers include companies that offer debt-management services (management services) and companies that offer debt-settlement services (settlement services). However, these companies represent two different business models. To avoid confusion, going forward, this report will distinguish between:

- "Debt-management providers" (Management Providers), who offer debt-management plans (management plans) to help consumers pay off the full balance of their debt; and
- "Debt-settlement providers" (Settlement Providers), who negotiate with creditors to settle debts for a portion of what is owed.

The Administrator of the Consumer Credit Code designated by the Attorney General in the Colorado Department of Law (Administrator) is vested with the authority to enforce the Act, register providers, take consumer complaints, investigate and examine providers, adopt rules, enforce compliance, and establish fees to cover the cost of regulation.

The period under review represents the entire life of the program. Anyone providing management or settlement services was required to be registered by July 1, 2008.

Table 1 shows the expenditures and staffing of the program over the five years under review.

Table 1
Agency Fiscal Information

Fiscal Year	Total Program Expenditures	Full-Time Equivalent Employees (FTE)
08-09	$106,530	1.0
09-10	$95,672	1.0
10-11	$145,741	1.0
11-12	$197,724	1.0
12-13	$292,009	1.0

The expenditures reported in Table 1 reflect staffing, indirect operating, legal and administrative costs. The fluctuations in expenditures are generally due to legal services.

The staff dedicated to the program includes one Financial Examiner II (1.0 FTE), who handles applications for registration, investigates complaints, conducts compliance examinations, reviews annual report data, and works with registered providers to address discrepancies, provides information to registered providers, and investigates and assists with the prosecution of unregistered activity.

In addition to the 1.0 FTE officially allocated to the program, other members of staff assist with the administration of the program, including:

- An Administrator, who oversees the program and the program staff and is responsible for implementing and enforcing the Act and the rules;
- A Supervising Credit Examiner, who supervises the work of the financial examiners and support staff and works with the Administrator to determine appropriate enforcement action when necessary;
- A Financial Examiner I, who handles applications for registration, investigates complaints, conducts compliance examinations, and investigates and assists with the prosecution of unregistered activity; and
- A Program Assistant I, who updates the departmental databases, logs consumer complaints and issues complaint letters to providers.

Table 2 provides the fees in fiscal year 12-13.

Table 2
Registration Fees

Fee Type	FY 12-13
Initial Registration Fee	$1,000
Annual Renewal Fee	$1,000

The program is cash funded by registration fees. However, the registration fees do not cover the cost of regulation. The program is located within the Consumer Credit Unit, which enforces the Uniform Consumer Credit Code (UCCC), the Colorado Fair Debt Collection Practices Act, and the Act, and the remaining funds are allocated from the UCCC cash fund. UCCC regulates consumer credit transactions, such as payday loans, automobile loans, second mortgages, state-issued credit cards and signature loans.

Fees for registered providers are set by rule, which makes it difficult to adjust fees annually to pay for the cost of the program.

Registered providers must renew their registration by June 30 each year.

Registration

To register, an applicant must submit an application and the fee to the Consumer Protection Section of the Colorado Department of Law.

Prior to application, every officer and employee (or employee of a third-party designee) who is authorized to initiate transactions to the applicant's trust account must undergo a state and national fingerprint-based criminal history record check.

When an application is complete and there are no problems, the Administrator issues a certificate of registration. The Administrator must approve or deny an application within 90 days. A 30-day extension is allowed if the Administrator requires additional information.

Table 3 shows the registration activity for Management Providers over five fiscal years.

Table 3
Registered Management Providers

Fiscal Year	Initial	Renewed	Active*
08-09	33	0	33
09-10	3	33	34
10-11	5	34	37
11-12	4	37	41
12-13	3	38	41

*The active column represents the total number of registered providers at the end of the fiscal year.

Table 3 shows some growth in the number of registered Management Providers in Colorado over the five-year period.

On average, Management Providers represent 78 percent of all registered providers.

Table 4 provides the registration activity for Settlement Providers over five fiscal years.

Table 4
Registered Settlement Providers

Fiscal Year	Initial	Renewed	Active*
08-09	9	0	9
09-10	9	9	15
10-11	1	15	14
11-12	0	8	8
12-13	1	6	7

*The active column represents the total number of registered providers at the end of the fiscal year.

On average, Settlement Providers represent 22 percent of all registered providers.

In fiscal year 09-10, the year following the first year of registration, the number of registered Settlement Providers increased sharply. The increase is likely from businesses that were initially operating without registration. The number of registered Settlement Providers decreased considerably in fiscal year 11-12 after the Federal Trade Commission (FTC) prohibited companies from collecting fees prior to settling any debts. Many of these providers filed for bankruptcy.

Examinations

The Administrator may examine the books, accounts and records of a registered provider to ensure compliance with the Act. The examination fee is $60 an hour plus reasonable and actual travel costs.

It is the policy of the Administrator that all registered providers will be examined at least once. However, staff considers several risk factors when determining when to examine a particular registered provider. Some of these factors include the size of the company, the likelihood that excess fees are being charged, and the number and type of consumer complaints against a provider.

When a provider is examined, staff takes the following steps:

- Requests a list of Colorado clients enrolled with the provider;
- Selects a sample of clients from the list;
- Requests client files and accounting statements;
- Requests copies of any advertising materials; and
- Reviews consumer files, accounting statements and advertising materials.

Staff examines providers to ensure that:

- Prerequisite actions have been taken,
- The content of agreements meet requirements outlined in the Act,
- Consumer disclosures are provided, and
- Fees and advertising are compliant with the Act.

Staff also examines providers for any other violations of the prohibited acts outlined in the Act.

An examination results in a report to the registered provider that includes corrective actions if any violations have been found. Some registered providers correct violations voluntarily. When a registered provider does not correct violations, the Administrator seeks stipulated agreements and final agency orders and may file a law suit.

Table 5 shows the number of examinations of registered providers over a five-year period.

Table 5
Examinations

Fiscal Year	Management Providers	Settlement Providers
08-09	0	0
09-10	0	1
10-11	0	14
11-12	4	0
12-13	3	1

In fiscal year 10-11, staff examined 14 Settlement Providers, substantially more than in any other year. The reason for this was a change in federal law and the impact this new law might have on Settlement Providers. The FTC amended the Telemarketing Sales Rule to prohibit Settlement Providers from collecting fees until a settlement has been reached. The Administrator was concerned that this might cause some Settlement Providers to go out of business, which could result in significant harm to the clients whose money they were holding.

Staff did not perform as many examinations in other years because the program lacked the resources. Only 1.0 FTE is dedicated to the program, and much of the program activity revolves around litigation related to unregulated activity. The Administrator expects unregulated activity to decrease as the program matures.

Complaints and Disciplinary Actions

Any consumer in a management or settlement plan may file a complaint with the Administrator. When complaints are received, program staff reviews complaints to determine whether the agency has jurisdiction.

If the Administrator has jurisdiction, staff forwards a copy of the complaint to the provider for a response, and then staff may open an investigation.

If the Administrator does not have jurisdiction, staff will refer the complaint to the proper authority (e.g., the Colorado Office of Attorney Regulation, the Federal Trade Commission, and regulatory agencies and attorneys general in other states).

A review of the complaint files found that nearly all of the complaints in fiscal years 11-12 and 12-13 were against unregistered providers. The following tables, Table 6 and Table 7, provide the basis for the complaints against registered and unregistered providers.

Table 6 shows the complaints against Management Providers over a five-year period.

Table 6
Consumer Complaints
Against Management Providers

Type	FY 08-09	FY 09-10	FY 10-11	FY 11-12	FY 12-13
False/Misleading Representations	1	3	3	1	1
Issues with Agreement	4	3	1	0	0
Disputed Fees	0	0	0	0	2
Insufficient Refunds	0	0	0	0	0
Disbursements Issues	1	1	2	0	0
Marketing Issues	0	0	0	0	0
Unregistered Activity	0	1	0	0	1
Statements Not Provided	0	0	0	0	0
Issues with Trust Account	0	0	0	0	0
Total	**6**	**8**	**6**	**1**	**4**
Referred to Other Agencies	4	1	1	0	1

Complaints against Management Providers represent approximately 12 percent of complaints against all registered providers.

Approximately two-thirds of the complaints against Management Providers concern false and misleading representations or issues with the agreement. Other complaints concern disputed fees, problems with disbursements and unregistered activity. Most disbursement issues stem from Management Providers going out of business and no disbursements being made until, and unless, a portfolio is absorbed by a new owner and clients are transferred to the new provider.

Table 7 provides the complaints against Settlement Providers over a five-year period.

Table 7
Consumer Complaints
Against Settlement Providers

Type	FY 08-09	FY 09-10	FY 10-11	FY 11-12	FY 12-13
False/Misleading Representations	7	37	35	18	19
Issues with Agreement	4	2	4	0	4
Disputed Fees	1	1	0	2	3
Insufficient Refunds	1	3	4	0	1
Disbursements Issues	5	3	4	3	2
Marketing Issues	6	0	0	3	2
Unregistered Activity	0	2	1	1	1
Statements Not Provided	0	0	1	0	0
Issues with Trust Account	0	0	0	0	1
Total	**24**	**48**	**49**	**27**	**33**
Referred to Other Agencies	2	15	15	6	10

Complaints against Settlement Providers represent approximately 87 percent of complaints against both types of providers.

Settlement Providers received complaints in all complaint categories. Approximately two-thirds of all complaints against Settlement Providers concern false and misleading representations. Typically, these complaints are the result of consumers understanding that the settlement provider will disburse money to creditors every month as would be done in a management plan. However, in a settlement plan, the money is deposited into an account until a certain amount has been accrued, which usually takes years. When consumers are sued for non-payment, they often file a complaint.

Other complaints of false and misleading representation stem from a Settlement Provider charging a fee to settle debts and failing to reduce the debt as promised. Consequently, the consumer's debt increases because of accumulated interest and late fees. As of 2010, advance fees to settle a debt are prohibited.

Most of the other complaints involve issues with agreements, problems with disbursements or marketing issues. For Settlement Providers, disbursement issues often stem from a creditor failing to mark a debt as settled and then later selling the debt to a collection agency. Complaints concerning marketing often have to do with robocalls to consumers who allege that they are on the federal "Do Not Call" list.

The Administrator has the authority to deny, suspend or revoke a registration. The Administrator also has the authority to issue a cease and desist order, order a violation to be corrected and prosecute a civil action, and the Administrator may intervene in a civil case brought about by an individual to recover fees, charges, money, payments, compensatory damages, punitive damages, and reasonable attorney fees and costs.

Table 8 provides the number of final agency actions taken by the agency against Management Providers.

Table 8
Final Agency Actions
Management Providers

Type	FY 08-09	FY 09-10	FY 10-11	FY 11-12	FY 12-13
Cease & Desist Orders	3	0	0	0	0
Stipulations & Final Agency Orders	2	3	2	1	0
Denials	0	0	0	0	0
Revocations	0	0	0	0	0
Consent Decrees	0	0	1	0	0
Determinations/Judgments	0	1	0	0	1
Total	**5**	**4**	**3**	**1**	**1**

Enforcement actions taken against Management Providers represent 19 percent of the enforcement activity against all registered providers.

Stipulations and final agency orders are the most frequent form of all enforcement actions taken against Management Providers. A stipulation and final agency order may entail, among other things, an injunction, penalties, restitution, refunds or a requirement to register, to change practices or to perform an audit.

No applications from Management Providers were denied over the five-year period, and the Administrator did not revoke the registration of any Management Providers.

Table 9 provides the number of actions taken by the agency against Settlement Providers.

Table 9
Final Agency Actions
Settlement Providers

Type	FY 08-09	FY 09-10	FY 10-11	FY 11-12	FY 12-13
Cease & Desist Orders	16	2	1	1	2
Stipulations & Final Agency Orders	16	8	3	1	1
Denials	0	1	0	3	0
Revocations	0	0	0	0	0
Consent Decrees	1	0	0	1	1
Determinations/Judgments	0	0	0	1	0
Total	**33**	**11**	**4**	**7**	**4**

Enforcement actions taken against Settlement Providers represent 81 percent of enforcement actions taken against all registered providers.

Stipulations and final agency orders comprise half of all enforcement actions taken against Settlement Providers. A stipulation and final agency order may entail, among other things, an injunction, penalties, restitution, refunds or a requirement to register, to change practices or to perform an audit.

Of the stipulations, six involve the attorney exemption. In short, an attorney who is licensed to practice law in Colorado may provide management or settlement services to a Colorado consumer, as long as it is part of an attorney-client relationship.

According to the Administrator, some large, national debt-settlement companies are providing services to Colorado consumers without being registered in Colorado although attorney involvement in the settlement services is negligible. The Administrator achieved six stipulated agreements with settlement companies without entering into litigation and has litigated seven additional cases involving the attorney exemption.

Over the five-year period under review, the Administrator denied four applications from Settlement Providers, but the Administrator did not revoke the registration of any Settlement Providers.

The Administrator has the authority to impose a civil penalty not to exceed $10,000 per violation. In some cases, the Administrator may obtain a civil penalty up to $20,000 per violation through a civil suit.

Table 10 shows the number and amount of civil penalties assessed against Management and Settlement Providers over a five-year period.

Table 10
Administrative and Civil Penalties

	Management Providers		Settlement Providers		
Fiscal Year	Orders	Amount	Orders	Amount	Total Amount
08-09	2	$15,500	17	$296,000	**$311,500**
09-10	3	$24,000	8	$91,250	**$115,250**
10-11	2	$6,250	3	$47,500	**$53,750**
11-12	2	$711,000	1	$5,405,000	**$6,116,000**
12-13	0	$0	3	$255,000	**$255,000**

The amount of administrative and civil penalties awarded in fiscal year 11-12 was much higher than in other years because of a default judgment against a Settlement Provider, which resulted in a civil penalty of $5,366,000. An examination of the provider identified numerous violations, including:

- Enrolling Colorado consumers prior to registration,
- Failing to provide Notice of Right to Cancel,
- Failing to provide refunds at termination as required by the Act, and
- Engaging in prohibited acts.

The civil penalties were based on approximately 2,683 Colorado consumers. At this time, no money has been recovered from this judgment.

Penalties were imposed on other providers for the following violations of the Act:

- Failing to meet prerequisites before enrolling clients, such as preparing a suitable plan for the client or providing consumer disclosures,
- Failing to provide Colorado consumers with agreements that conform to the requirements of the Act, and
- Charging fees that do not comply with the Act.

The Administrator also has the authority to order restitution of money or property.

Table 11 shows the amount of restitution and refunds awarded to consumers over a five-year period.

Table 11
Restitution and Refunds

	Management Providers		Settlement Providers		
Fiscal Year	Number	Amount	Number	Amount	Total Amount
08-09	3	$29,433	31	$1,151,870	**$1,181,303**
09-10	7	$19,215	21	$929,268	**$948,483**
10-11	7	$58,388	32	$455,582	**$513,970**
11-12	7	$915,379	6	$3,839,809	**$4,755,188**
12-13	4	$321,279	3	$39,749	**$361,028**

Restitution is primarily awarded to consumers when a provider acts as an intermediary between an individual and a creditor for the purpose of obtaining concessions for a Colorado resident without a registration. Restitution is also often awarded to consumers when a registered provider charges fees in violation of the Act. However, restitution may be awarded to consumers for any violation of the Act.

Companies will sometimes voluntarily refund money to consumers who file a complaint with the Administrator without being ordered to do so by the Administrator or by the courts.

The restitution was much higher in fiscal year 11-12 because of a default judgment against one company. The case was filed after an examination of the company discovered numerous violations of the Act.

General Provider Activity

Registered providers are required to report client information to the Administrator in order to renew registration. Tables 12 through 18 present the data as reported to the Administrator by the registered providers in 2013.

Table 12 provides the number of agreements that 45 providers reported over a five-year period. Of these providers, 38 offer management agreements, five offer settlement agreements, and two offer both types of agreements.

Table 12
Number of Agreements

Calendar Year	Management	Settlement
2008	7,342	2,871
2009	7,912	4,101
2010	6,664	2,982
2011	5,111	1,261
2012	4,285	1,406

The number of management agreements and settlement agreements peaked in 2009, following the recession. After 2009, the number of management agreements dropped steadily each successive year. In 2010, a number of Settlement Providers filed for bankruptcy, causing a sudden drop in the number of settlement agreements in the following year.

Table 13 shows the average debt per consumer as reported by provider type over a five-year period.

Table 13
Average Debt per Consumer

Calendar Year	Management	Settlement
2008	$21,050	$30,788
2009	$22,802	$29,996
2010	$22,222	$28,940
2011	$20,531	$26,541
2012	$18,872	$24,838

The average debt per consumer in a management plan has remained relatively stable over the five-year period. The average debt owed per consumer in a settlement plan peaked in 2008 and dropped gradually each successive year. The decrease in the amount of debt owed is most likely due to the tightening of the credit market during the recession.

Table 14 demonstrates the average fees collected for both types of providers.

Table 14
Average Fees Collected
Per Consumer per Year

Calendar Year	Management	Settlement
2008	$495	$1,666
2009	$362	$998
2010	$188	$1,208
2011	$203	$918
2012	$280	$785

While the average fees collected vary from year to year, consumers in management plans paid an average of $306 in fees a year, and a consumer in a settlement plan paid an average of $1,115 in fees a year.

Settlement plans cost consumers nearly four times as much in fees as management plans. Consumers may be willing to pay more in fees to Settlement Providers because they expect to reduce their overall debt balance, while consumers in management plans typically pay off the entire principal balance.

Management Activity

In a management plan, a provider works with creditors to lower interest rates, fees, and monthly payments. A client pays monthly payments to a registered provider that is then disbursed to all of the creditors in the plan. A plan may take as long as six years for consumers to pay off the full principal amount of debt owed.

In the following table, a completed plan means that all the debts in the plan were paid in full. A terminated agreement means that either the provider or the consumer ended the agreement before all the debts were settled or paid.

Table 15 provides the number of completed, active and terminated management plans as of the end of calendar year 2012 as reported by registered providers.

Table 15
Management Activity as of 2012
By Year Consumer Enrolled

Type	2008	2009	2010	2011	2012
Completed Plans	24%	11%	5%	7%	1%
Active Plans	9%	33%	50%	59%	79%
Terminated Plans	67%	56%	44%	33%	20%

For consumers enrolled in a management plan in 2008, 24 percent successfully completed the management plan by the end of 2012. Nine percent of those enrolled in 2008 were still enrolled and paying off debts, but 67 percent had terminated the plan, which means they did not successfully complete the management plan.

Settlement Activity

In a settlement plan, a provider negotiates with creditors to settle debts for less than the balance owed. Unlike management plans, regular payments are not made to creditors. Instead, a consumer makes regular payments into an account, and Settlement Providers do not attempt to negotiate a settlement until a certain balance in the account has been reached, typically about half of what is owed.

If consumers do not continue to pay their creditors and they default on their debt, their debt will increase through the accumulation of interest and late fees, and the creditors may initiate collection activities.

In the following table, a completed plan means that all the debts in the plan were paid in full. A terminated agreement means that either the provider or the consumer ended the agreement before all the debts were settled or paid.

Table 16 illustrates the number of completed, active and terminated settlement plans as of the end of calendar year 2012 as reported by registered providers.

Table 16
Settlement Activity as of 2012
By Year Consumer Enrolled

Type	2008	2009	2010	2011	2012
Completed Plans	26%	21%	12%	8%	1%
Active Plans	6%	15%	24%	38%	67%
Terminated Plans	68%	64%	65%	54%	33%

Table 16 demonstrates the percentage of consumers who complete settlement plans in Colorado. Of those consumers that enrolled in 2008, 26 percent completed a settlement plan by the end of 2012. About 6 percent were still enrolled in settlement plans, and 68 percent terminated the agreements before settling all the debts in the plan.

Table 17 provides the total debt owed in settlement plans as reported by registered providers in each calendar year.

Table 17
Total Debt in Settlement

Calendar Year	Amount
2008	$72,551,619
2009	$119,787,227
2010	$86,299,569
2011	$33,467,842
2012	$34,461,371

In 2010, many Settlement Providers went out of business, which accounts for the drastic decrease in settlement plans in the following year.

Table 18 demonstrates the total debt balances of consumers who successfully completed settlement plans in Colorado each calendar year, showing the original debt balance, the debt balance at time of settlement, and the full amount paid to the creditors upon settlement.

Table 18
Debt Settled by Calendar Year

Type	2008	2009	2010	2011	2012
Balance at Enrollment	$17,983,083	$25,448,071	$24,688,862	$22,569,658	$15,448,438
Balance at Settlement	$21,624,265	$30,345,851	$28,722,420	$26,594,457	$17,756,135
Amount Settled	$11,184,895	$13,448,316	$12,746,166	$11,470,022	$8,430,531

Consumers often completely stop making payments to creditors when they enter into settlement agreements, which results in increased fees and rates. By the time a consumer completes a settlement plan, debt balances increase an average of 18 percent.

Over the five-year period under review, Settlement Providers settled debts at an average of 54 percent of the total amount of debt enrolled in a plan. In 2012, on average, Settlement Providers settled debts at a rate of 55 percent of the original balance at enrollment, but the settlement average varies from year to year, ranging from as low as 51 to as high as 62 percent.

Creditors are sometimes willing to settle for these amounts since by the time settlement plans are sought, the only alternative for many of these consumers is bankruptcy. However, creditors are under no obligation to settle debts, and some debts may be settled for as much as 90 percent of the debt owed.

Analysis and Recommendations

Recommendation 1 – Continue the Colorado Uniform Debt-Management Services Act for nine years, until 2024.

The laws that govern debt-management providers (Management Providers) and debt-settlement providers (Settlement Providers) are located in the Colorado Uniform Debt-Management Services Act, located in Part 2 of Article 14.5 of Title 12, Colorado Revised Statutes (C.R.S.) (Act). The Administrator of the Uniform Consumer Credit Code designated by the Attorney General in the Department of Law (Administrator) oversees the registration of companies that provide debt-management services (management services) and debt-settlement services (settlement services).

Sunset reviews are guided by statutory criteria found in section 24-34-104, C.R.S., and the first criterion questions whether regulation is necessary to protect the health, safety and welfare of the public.

The debt-management industry first appeared in the early part of the 20th century. Known as debt adjusters, these companies were for-profit businesses that negotiated with creditors to obtain partial debt forgiveness on behalf of their clients. A debt adjuster operated by collecting a payment from a client and then distributing payments to creditors. Often these companies collected such excessive fees that there was very little remaining in the accounts to pay creditors. By the 1950's more than half the states had outlawed the business model based on numerous accounts of theft of client money and deceptive advertising.[56]

While many states banned debt adjusters, consumers with large debt balances still needed help, so many states allowed nonprofit organizations to provide management services, and a new business model emerged.

Credit card companies backed the formation of nonprofit credit-counseling agencies – referred to as Management Providers in this report – so that consumers could avoid bankruptcy and pay off their debts in full.[57]

Since Management Providers helped creditors to recover their money by managing a consumer's debt, the creditors paid these agencies as much as 15 cents for every dollar repaid. This practice is called "fair share" payment. Management Providers also solicited charitable contributions from other sources, and many charged a small fee to consumers. This business model continues to exist today.[58]

[56] National Conference of Commissioners on Uniform State Laws. *Uniform Debt-Management Services Act: Prefatory Note.* March 6, 2008.
[57] National Conference of Commissioners on Uniform State Laws. *Uniform Debt-Management Services Act: Prefatory Note.* March 6, 2008.
[58] National Conference of Commissioners on Uniform State Laws. *Uniform Debt-Management Services Act: Prefatory Note.* March 6, 2008.

In the 1990's, consumer debt rose sharply following increases in consumer income and relaxed underwriting standards by creditors. This led to an increase in consumers who defaulted on their debt, and another business model began to emerge.[59]

These companies relied heavily on telemarketing, advertising and aggressive marketing strategies, and many completely eliminated credit counseling as part of the business model, focusing entirely on debt-management plans (management plans). By doing this, companies were able to decrease costs significantly.[60]

Since many states prohibited management services to be provided by for-profit companies, these companies were organized as nonprofit organizations, but they charged high fees and enrolled all their clients into management plans without evaluating an individual's financial situation or ability to succeed in the plan. Although these companies were operating as nonprofit organizations, they were generating more revenue than necessary to cover the cost of their operations, and the excess revenue was distributed to affiliated entities and used to pay executive salaries that were disproportionate to their nonprofit status.[61]

This practice has largely been curtailed by changes to the federal Internal Revenue Code, but the for-profit model still exists.

Creditors responded to the increased use of management plans and excess revenue generated by these companies by reducing concessions to consumers and fair share payments to Management Providers. Many creditors have stopped making fair share payments altogether and compensate Management Providers based on other criteria.[62]

In addition to the nonprofit and for-profit debt-management business models, another business model exists.

Settlement Providers are similar to the debt adjusters that were outlawed in the 1950's. Rather than helping consumers to pay off the full amount of debt owed as Management Providers do, these companies negotiate with creditors to accept a portion of the amount of debt owed. Essentially, they settle debt.[63]

[59] National Conference of Commissioners on Uniform State Laws. *Uniform Debt-Management Services Act: Prefatory Note*. March 6, 2008.
[60] National Conference of Commissioners on Uniform State Laws. *Uniform Debt-Management Services Act: Prefatory Note*. March 6, 2008.
[61] National Conference of Commissioners on Uniform State Laws. *Uniform Debt-Management Services Act: Prefatory Note*. March 6, 2008.
[62] National Conference of Commissioners on Uniform State Laws. *Uniform Debt-Management Services Act: Prefatory Note*. March 6, 2008.
[63] National Conference of Commissioners on Uniform State Laws. *Uniform Debt-Management Services Act: Prefatory Note*. March 6, 2008.

Settlement Providers generally require clients to deposit money into an account to build up a specific amount that can be used to settle the debt. Settlement Providers do not begin to negotiate with creditors to settle debts until consumers have accumulated at least 50 percent of the debt owed.[64]

In 2005, the National Conference of Commissioners on Uniform State Laws (NCCUSL) determined that companies that provide management and settlement services were found to be using predatory practices, and consumers were unable to distinguish between companies that were predatory and companies that were not. In response, NCCUSL adopted the Uniform Debt-Management Services Act to address the problems that it found in the industry.

NCCUSL also found that Settlement Providers were encouraging clients to default on their debts.[65] For consumers, this practice is risky since it causes consumers to accumulate more debt in finance charges and delinquency fees, and creditors may take consumers to court to garnish their wages or place liens on their property.[66]

In 2007, the General Assembly passed the Act, which is modeled on the Uniform Debt-Management Services Act developed by NCCUSL.

Regulation of companies that provide management and settlement services is critical for consumer protection because consumers who seek these services are already in serious financial trouble and susceptible to abuse. Regulation helps to prevent additional harm to these consumers.

The Act provides the following important consumer protections to consumers who work with these companies:

- A three-day right to cancel an agreement,
- Consumer disclosures,
- Financial assessment,
- Prohibited acts,
- Fair agreements, and
- Trust account oversight.

Providing consumers the right to cancel an agreement within three days is an important consumer protection measure. Entering into a management or a settlement plan will impact a person's financial well-being for many years. After signing up with a provider, a consumer may realize that a plan or the provider is not suitable, and the rescission period allows a consumer time to reflect over an agreement.

[64] Colorado Department of Law. *Colorado Uniform Debt-Management Services Act: Information for Consumers.* http://www.coloradoattorneygeneral.gov/sites/default/files/uploads/DM%20Brochure%20for%20Web.pdf
[65] National Conference of Commissioners on Uniform State Laws. *Uniform Debt-Management Services Act: Prefatory Note.* March 6, 2008.
[66] National Conference of Commissioners on Uniform State Laws. *Uniform Debt-Management Services Act: Prefatory Note.* March 6, 2008.

The consumer disclosures required by the Act allow consumers to make informed decisions, so that consumers understand the limitations of management and settlement plans, and they also provide consumers with important information about how their money will be handled.

Regulation ensures that consumers are not funneled into management plans when other remedies, such as credit counseling or bankruptcy, may be more appropriate. The Act requires providers to perform an analysis of the client's financial situation to determine a suitable plan.

The prohibited acts are necessary for consumer protection and include, among other things:

- Misappropriating money held in trust;
- Settling a debt on behalf of a client without the client's approval of the terms;
- Using power of attorney after a client has terminated an agreement;
- Taking a confession of judgment against a client;
- Using an unfair, unconscionable, or deceptive act or practice; and
- Advising a client not to make payments to creditors under the plan.

The Administrator has the authority to deny, suspend or revoke registration. He or she may issue a cease and desist order, order a violation to be corrected, and prosecute a civil action. The Administrator may also intervene in a civil case brought about by an individual to recover fees, charges, money, payments made by the individual to a provider, compensatory damages, punitive damages, and reasonable attorney fees and costs.

The Administrator has been proactive in regulating Management and Settlement Providers. During this review, 41 providers were registered in Colorado. Over a five-year period which also represents the entire life of the program, staff handled 206 consumer complaints and took 77 actions against Management and Settlement Providers.

The Administrator protects the public by performing criminal history record checks on the officers of Management or Settlement Providers and the employees who are authorized to conduct transactions on clients' trust accounts. Historically, there have been problems with misappropriation of client money in this industry. Criminal history record checks serve to protect consumers from providers or their employees who are entrusted with considerable amounts of client money and sensitive financial information.

The Administrator protects the public by examining the books, accounts and records of registered providers. Considering the risk of financial harm to consumers, examinations are necessary to ensure that companies are operating with appropriate precautions to protect the public.

During the five-year period under review, staff examined 23 Management and Settlement Providers. In an examination, the Administrator through his or her staff ensures that companies are providing credit counseling and performing a financial analysis prior to enrolling each client. Staff also ensures that client agreements, consumer disclosures, fees and advertising are compliant with the Act.

Much of the program's activities are concerned with bringing unregistered providers into compliance and filing lawsuits against those that continue to harm consumers through unregistered activity.

As authorized in section 24-34-104, C.R.S., the General Assembly may continue this program for any period between 1 and 15 years.

This program is relatively new, and the General Assembly has recently amended the Act to address excessive requirements and changes in federal law. Consequently, during the sunset review, only a few issues were identified. Considering the risk of harm to the public, the regulation of Management and Settlement Providers as it is presently structured is appropriate.

Therefore, the General Assembly should continue the Act for nine years, until 2024.

Recommendation 2 – Limit settlement fees to 15 percent of the debt forgiven from a completed settlement.

A Settlement Provider negotiates with a creditor to convince it to forgive a portion of what a consumer owes on unsecured debt.

Debt settlement is an appealing idea – consumers can settle their debts for a portion of what they owe. It is aggressively marketed as an alternative to bankruptcy, and it is also purported to save consumers more money than management plans or other means of handling debt.

Consumers who work with Settlement Providers are hoping to become debt free, but many end up in a worse financial situation than when they began.

Sunset criteria question whether regulation by the agency is necessary to protect the health, safety and welfare of the public, and if it is necessary, whether the existing statutes establish the least restrictive form of regulation consistent with the public interest.

In 2011, the General Assembly repealed the settlement fee cap. Prior to its repeal, Settlement Providers were limited to charging, in aggregate fees, 18 percent of the total amount of principal debt owed.

The General Assembly took this step in response to a change in federal law, which prohibits Settlement Providers from taking advance fees and requires them to obtain prior approval from the client before settling a debt. The idea is that Settlement Providers are now paid for performance.

The Federal Trade Commission amended the Telemarketing Sales Rule after it determined that Settlement Providers were charging financially distressed consumers thousands of dollars to settle their debts and then failing to settle the debts or provide refunds as promised, and as a result consumers were getting even further into debt.

Now, Settlement Providers can no longer collect substantial fees without settling any debt for the consumer. However, this does not address the fact that, in Colorado, Settlement Providers are charging substantial fees to consumers who are already in serious financial trouble.

Since the 18 percent fee cap was removed, the settlement fees in Colorado have soared as high as 25 percent. This is a seven percent increase over the original fee cap.

In 2012, Colorado residents paid on average 55 percent of the principal debt owed to creditors to settle debts and up to 25 percent of the total debt owed to Settlement Providers. In total, consumers paid an average of 80 percent of the original debt owed. On top of that, any debt that was forgiven was reported to the IRS as taxable income, and this does not take into account the increased balances of any debt that was not forgiven.

For those who settle a portion of their debts, the amount they actually save is further reduced by the growth in any debt that is not settled.[67] According to data reported to the Colorado Department of Law, 74 percent of consumers do not complete a settlement plan in five years.

Further, the settlement amount paid on an individual basis varies depending on the individual debts, and the average rate of settlement varies considerably from year to year, fluctuating between 51 and 62 percent over the five-year period under review.

This all occurs under the mantle of debt relief or debt forgiveness. When everything is taken into account, most consumers are negatively impacted by working with Settlement Providers, and for those who are successful in settling their debts, the amount of debt relief they obtain is significantly reduced by the fees charged by settlement providers.

While Settlement Providers are currently charging fees as high as 25 percent based on the principal amount of debt enrolled in a settlement plan, the fees they charge could increase even more.

[67] National Consumers Law Center. *Model Debt Settlement Law for States.* Retrieved on July 10, 2014, from https://www.nclc.org/images/pdf/legislation/model_laws/state-model-law-2011.pdf

At this time, Colorado law allows a Settlement Provider to charge fees up to the total principal amount of debt when the fees are added to the aggregate of offers of settlement obtained by the provider. Because consumers will have to pay taxes on any debt forgiven, they could potentially end up owing even more than when they enrolled in a settlement plan. Clearly, this is not debt relief.

At 18 percent, the Colorado fee cap that was in place prior to 2011 was already lenient.

The reason for removing the fee cap in 2011 was that Settlement Providers would be paid for performance since they could no longer collect large fees and fail to deliver on the promised services. However, they are not, in fact, being paid for performance. By basing fees on the total amount of debt owed, Settlement Providers are provided a financial incentive to acquire clients with large amounts of debts, not to obtain the best settlement for a client.

Setting a more reasonable fee cap based on the amount of debt forgiven and ensuring that a settlement is completed would guarantee that Settlement Providers were truly paid for performance.

Fee caps in some states are set at 10 to 15 percent of the amount of debt forgiven, not the amount of debt owed. Structuring the fees based on savings would create a financial incentive for Settlement Providers to obtain the best possible settlement for the client, and setting a reasonable fee cap would ensure that debt settlement provides some benefit, taking into account all the costs of a settlement agreement including income tax and the inherent risks of the settlement process.

Therefore, the General Assembly should limit settlement fees to 15 percent of the debt forgiven, based on the principal balance of the original debt enrolled, on a completed settlement.

Recommendation 3 – Authorize the Administrator to set fees depending on the type of service provided.

Since the Act defines both Management Providers and Settlement Providers as providing "debt-management services," the line between these two types of services is blurred and both types of providers are charged the same amount in registration fees.

However, the regulation of Settlement Providers costs significantly more than regulation of Management Providers. Settlement Providers represent 87 percent of the complaint activity and 81 percent of the enforcement activity in this program.

Settlement Providers should be assessed registration fees that cover the cost of regulation for these types of providers.

Therefore, the General Assembly should authorize the Administrator to set fees depending on the type of service provided.

Recommendation 4 – Repeal fee setting by rule and allow the Administrator to set fees administratively, based on the cost of regulation.

Section 12-14.5-232(e), C.R.S., requires the Administrator to establish registration fees by rule to cover the cost of enforcing the Act.

Setting fees by rule is cumbersome and inefficient, and the cost of the program changes from year to year, depending on the regulatory activity and the cost of litigation.

The Colorado Secretary of State publishes the administrative rules in the Code of Colorado Regulations. Notice of rulemaking, proposed rules, new and amended rules, and Attorney General rule opinions are published twice monthly in the companion publication, the Colorado Register (Register).[68]

The rulemaking process requires the following steps.

- First, the agency must notice the rules by the 15th or the end of the month, to be published in the Register by the 25th of the month or the 10th of the following month, respectively.
- At the same time, the proposed rule must be filed with the Department of Regulatory Agencies (DORA).
- At the request of any person, DORA may require a regulatory analysis to be performed.
- If a regulatory analysis is required, the agency must provide it to the public at least five days before the scheduled hearing.
- The agency must make the proposed rules available to the public at least five days before the scheduled hearing.
- A hearing may be held 20 days after notice is published in the Register.
- The agency then has 180 days after the final hearing to adopt any permanent rules or terminate rulemaking.
- Once rules are adopted, the agency has 20 days to request an opinion from the Attorney General, receive an opinion from the Attorney General, and file the adopted rules with the Secretary of State and the Office of Legislative Legal Services.
- If all of these steps have been accomplished by the 15th of the month or the end of the month, then the rule may be published in the Register by the 25th of the month or the 10th of the following month, respectively.
- The final rule becomes effective 20 days after publication.

Instead of setting fees by rule, the Administrator should evaluate the cost of regulation and set registration fees based on an assessment of the future costs of the program. If fee setting is removed from the rulemaking process, then the Administrator would still be required to justify any fee changes through the appropriation process.

[68] Colorado Secretary of State. *Code of Colorado Regulations.* Retrieved on October 7, 2014, from http://www.sos.state.co.us/CCR/Welcome.do

Therefore, the General Assembly should repeal the requirement to set registration fees by rule and allow the Administrator to set fees administratively to cover cost of the program.

Recommendation 5 – Direct penalties collected pursuant to the Act to be credited to the General Fund.

Section 12-14.5-233, C.R.S., authorizes the Administrator to impose a penalty on providers who violate the Act. It also authorizes the Administrator to prosecute or intervene in a lawsuit to obtain a civil penalty. Although the Act directs registration fees to be deposited in the cash fund, it does not direct where civil penalties should be deposited.

According to the Administrator, any penalties that are ordered by a civil court are deposited in the General Fund. However, there is no statutory language that requires it. Further, the penalties that are ordered through administrative action are deposited into the cash fund.

Penalties, whether ordered administratively or through a civil action, should be directed to the General Fund. There are two reasons for ensuring that this is done.

Typically, penalties are credited to the state's General Fund. This is done so that the state agency has no incentive to impose penalties other than taking legitimate disciplinary action. Otherwise, it may create the perception that the state agency is imposing penalties in an attempt to increase its revenue.

For agencies that are cash funded, any increase in revenue can require them to reduce fees. Administrative and civil penalties are meant to be used for discipline, not to raise revenue.

Over a five-year period, the Administrator collected a total of $922,848 in penalties, of which $401,500 was deposited into the cash fund.

DORA does not have any evidence that the Administrator is imposing penalties to increase revenue. The purpose of the recommendation is simply to avoid any such perception.

Therefore, the General Assembly should direct administrative and civil penalties collected for violations of the Act to be credited to the state's General Fund.