

Report From Agency

STATE OF WISCONSIN DEPARTMENT OF FINANCIAL INSTITUTIONS

RULE REPORT TO THE LEGISLATURE Clearinghouse Rule 24-049

Relating to authorizing one or more additional fee structures and establishing maximum fees or charges that may be made thereunder by adjustment service companies and modifying DFI-Bkg 73 to incorporate certain requirements of the federal Telemarketing Sales Rule.

Attached: Proposed rule and accompanying agency report (*Final Report and Recommendations Concerning Telemarketer-Sold Debt Relief Services*), fiscal estimate and economic impact analysis, and Clearinghouse report to agency.

Governor's approval: The Governor approved this rule on April 24, 2025.

Basis and purpose of the proposed rule: Section 218.02 of the Wisconsin Statutes requires the licensure and regulation of “adjustment service companies,” a term that includes credit counselors, debt management providers, debt relief or debt settlement companies, and any others engaged in the business of “negotiat[ing] a reduction or extended payment on behalf of the debtor for the outstanding debt of the debtor.” *Morgan Drexen, Inc. v. Wis. Dep’t of Fin. Insts.*, 2015 WI App 27, ¶ 11, 361 Wis. 2d 271, 862 N.W.2d 329 (quoting *JK Harris Fin. Recovery Sys. LLC v. Wis. Dep’t of Fin. Insts.*, 2006 WI App 107, § 15, 293 Wis. 2d 753, 718 N.W.2d 739). Section 218.02(7) imposes several legal duties upon the Department of Financial Institutions - Division of Banking, including duties to “protect debtors from oppressive or deceptive practices of licensees,” to “regulate advertising and solicitation of business by licensees,” to “prevent evasions of this section,” and to “determine and fix by general order”—i.e., administrative rule—“the maximum fees or charges that such companies may make.”

Since 1991, the Wisconsin Administrative Code has allowed adjustment service companies to charge customers a monthly fee of up to \$120 or 10 percent of the money paid by the customer for distribution to creditors, whichever is less, plus a one-time set-up fee of up to \$50. Wis. Admin. Code § DFI-Bkg 73.01.

Due to subsequent changes in federal law, however, some adjustment service companies—namely, debt settlement services that solicit customers by telemarketing across state lines—are required to utilize fee structures that differ from those contemplated in Wis. Admin. Code § DFI-Bkg 73.01. In 2010, the Federal Trade Commission modified its Telemarketing Sales Rule to prohibit such companies from accepting any fees for their debt relief services unless and until at least one of the debtor’s debts is successfully settled. The updated federal rule requires such companies to utilize one of two types of fee structures: (1) the “percentage of debt” structure, in

which the company takes a fixed percentage of the customer's total enrolled debts as a fee for settling those debts, regardless of any savings achieved; or (2) the "percentage of savings" structure, in which the company takes a fixed percentage of the savings achieved for the customer through settlement (measured as the difference between the amount owed at the time the customer enrolled the debt with the company and the amount of the negotiated settlement).

The proposed rule would authorize and establish the maximum charges that adjustment service companies may impose under the "percentage of savings" structure, subject to consumer protections. It does not authorize the use of the "percentage of debt" structure in Wisconsin. The proposed rule also makes further revisions to ch. DFI-Bkg 73 that are consistent with the Telemarketing Sales Rule. The details of these revisions, and the Division's reasons for proposing them, are explained in greater detail in the agency's *Final Report and Recommendations Concerning Telemarketer-Sold Debt Relief Services*, a copy of which is included with this submission.

Summary of comments, agency's response, and explanation of any modifications as a result of comments or testimony at the preliminary public hearing:

At the July 20, 2023 preliminary public hearing, the Division received written comments from two trade groups representing the debt relief services industry (the American Fair Credit Council¹ and the Consumer Debt Relief Initiative), as well as a company that provides account management services for industry members (Global Holdings, LLC). Their comments, and the Division's responses thereto, are summarized as applicable in sections II.A through II.E of the Division's April 2025 *Final Report and Recommendations Concerning Telemarketer-Sold Debt Relief Services*, a copy of which is included with this submission.

No modifications to the scope statement were made as a result of these comments.

Summary of comments received at the final public hearing:

At the September 27, 2024 final public hearing on the rule, the Department received written comments from the two industry trade groups identified above, as well as a company that provides support services and education for industry members and their customers (Dealing with Debt) and two consumer advocacy organizations (AARP of Wisconsin and the National Consumer Law Center). Their comments, and the Division's responses thereto, are summarized as applicable in sections II.A through II.E of the Division's April 2025 *Final Report and Recommendations Concerning Telemarketer-Sold Debt Relief Services*, a copy of which is included with this submission.

The comments resulted in some modifications to the proposed rule, which are summarized in section II.E of the *Final Report and Recommendations*.

Changes to analysis or fiscal estimate: None.

¹ The American Fair Credit Council changed its name to the American Association for Debt Resolution on or about August 1, 2023. From 2005 to 2011, the organization was known as The Association of Settlement Companies.

Response to legislative council recommendations: All of the Council's recommendations, which related to form, style, placement in the Administrative Code, clarity, grammar, punctuation, and use of plain language, were adopted. The Council did not raise any substantive concerns.

Final regulatory flexibility analysis, changes to energy impact report, housing impact analysis, and response to any report prepared by the SBRRB: Not applicable.