STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
DOA-2049 (R09/2016)

DIVISION OF EXECUTIVE BUDGET AND FINANCE
101 EAST WILSON STREET, 10TH FLOOR
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MADISON, WI 53707-7864
FAX: (608) 267-0372

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis	2. Date
☒ Original ☐ Updated ☐ Corrected	June 4, 2024

3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable)
DFI-Bkg ch. 73

4. Subject
Authorizing one or more additional fee structures and establishing maximum fees or charges that may be made thereunder by adjustment service companies, and modifying chapter DFI-Bkg 73 of the Wisconsin Administrative Code to incorporate certain requirements of the federal Telemarketing Sales Rule.

5. Fund Sources Affected	6. Chapter 20, Stats. Appropriations Affected
☐ GPR ☐ FED ☐ PRO ☐ PRS ☐ SEG ☐ SEG-S	N/A

7. Fiscal Effect of Implementing the Rule
☒ No Fiscal Effect ☐ Increase Existing Revenues ☐ Increase Costs ☐ Decrease Costs
☐ Indeterminate ☐ Decrease Existing Revenues ☐ Could Absorb Within Agency's Budget

8. The Rule Will Impact the Following (Check All That Apply)
☐ State's Economy ☒ Specific Businesses/Sectors
☐ Local Government Units ☐ Public Utility Rate Payers
☐ Small Businesses **(if checked, complete Attachment A)**

9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1).

$The proposed rule authorizes an additional fee structure that aligns with the requirements of the federal Telemarketing Sales Rule, but it would not eliminate or reduce the maximum fees that current licensees may charge under existing fee structures authorized by Wis. Admin. Code ch. DFI-Bkg 73. For that reason, the Division does not anticipate the proposed rule would materially impact existing licensees or result in appreciable implementation or compliance costs.

For consumers, updating Wis. Admin. Code ch. DFI-Bkg 73 to allow alternative fee structures subject to fee caps is likely to increase the number of licensees offering debt settlement services, while protecting consumers from being charged unreasonable fees for the services provided.

10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be $10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)?
☐ Yes ☒ No

11. Policy Problem Addressed by the 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 s. DFI-Bkg 73.01.

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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. Under this fee structure, upon the settlement of each debt the customer has enrolled with the company, the customer pays a fixed percentage of the enrolled debt as a fee to the company for its services in settling the debt. The amount of the fee depends on the balance of the debt at the time the customer enrolled the debt with the company for settlement, rather than the savings achieved for the consumer.

(2) The "percentage of savings" structure. Under this fee structure, upon the settlement of each debt the customer has enrolled with the company, the customer pays the company a fixed percentage of the savings achieved for the customer. The savings achieved is the difference between the amount owed at the time the customer enrolled the debt with the company and the amount the customer paid to satisfy the settled debt.

The proposed rule would authorize and establish the maximum charges that adjustment service companies may impose under the "percentage of savings" structure authorized by the Telemarketing Sales Rule, subject to consumer protections. The proposed rule also makes further revisions to ch. DFI-Bkg 73 consistent with the Telemarketing Sales Rule.

12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments.

The Division held a preliminary public hearing on the scope statement for this proposed rule and received written comments and other materials from three organizations affiliated with the debt relief industry. The Division also considered the experiences and approaches of regulators in other states, as well as its experience in regulating adjustment service companies doing business with Wisconsin residents, including investigating and resolving consumer complaints against them and bringing legal action as necessary.

13. Identify the Local Governmental Units that Participated in the Development of this EIA.

No local governmental units participated in the development of this EIA.

14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

The proposed changes do not seek to impose new restrictions on licensees doing business under current law, but rather to authorize an additional fee structure subject to appropriate safeguards. Based on the Division's knowledge and experience in administering chapter DFI-Bkg 73, existing licensees that are compliant with the current version of chapter DFI-Bkg 73 will not need to modify their business practices to comply with the revisions proposed herein. The changes seek to clarify the law and to enable those companies that are subject to the Telemarking Sales Rule to utilize a fee structure contemplated by that rule, subject to consumer protections. Consequently, the Division expects that the rule's economic and fiscal effect on those companies that are licensed to lawfully engage in business as adjustment service companies in the state will be negligible.

15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

The benefits of implementing the proposed rule include creating an alternative fee cap that is more suitable for

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companies governed by the Telemarketing Sales Rule, while protecting consumers by deterring unfair practices, reducing risks, and establishing baseline conditions that telemarketer-sold debt relief services must satisfy when doing business with Wisconsin debtors. Not implementing the rule may result in fewer licensed options available for those Wisconsin debtors who seek the services of an adjustment services company.

16. Long Range Implications of Implementing the Rule

Adopting the proposed rule to allow alternative fee structures subject to fee caps is likely to increase the number of licensees offering debt settlement services, while protecting consumers from being charged unreasonable fees for the services provided.

17. Compare With Approaches Being Used by Federal Government

In 2009, using its authority under the Telemarketing Act, the Federal Trade Commission commenced a rulemaking proceeding aimed at curbing problematic practices in the debt relief industry. While the Telemarketing Act did not grant the FTC the power to regulate the amount of fees that debt-relief services charge —that power rests with the respective states —it did provide the FTC with jurisdiction to prohibit abusive and deceptive practices by those debt relief services that engaged in telemarketing.

The federal Telemarketing Sale Rule requires telemarketer-sold debt relief services to utilize one of the two alternative fee structures referenced above, while leaving it to the states to determine which structures are permissible and the maximum fees that such companies may charge their residents. Fee caps are generally established on a state-by-state basis by statute or administrative rule.

18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Illinois authorizes licensees to charge total fees of up to 15 percent of the savings achieved for the debtor, while Iowa and Minnesota each authorize fees of up to 30 percent of the savings achieved. Iowa, Michigan, and Minnesota also permit licensees to charge fees as a percentage of the total enrolled debt, with caps ranging from 15 to 18 percent.

The proposed rule follows the precedent of Illinois, Iowa, Minnesota, North Dakota, and several other states in authorizing a performance-based fee calculated as a percentage of the savings negotiated for the debtor, subject to a cap of 30 percent (the maximum fee in Iowa, Minnesota, North Dakota, and several other states).

See Section 7 of the Statement of Scope for this rule for a list of state fee caps nationally.

19. Contact Name	20. Contact Phone Number
Matt Lynch, Chief Legal Counsel	(608) 266-7968

This document can be made available in alternate formats to individuals with disabilities upon request.

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ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

N/A

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

N/A

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

☐ Less Stringent Compliance or Reporting Requirements
☐ Less Stringent Schedules or Deadlines for Compliance or Reporting
☐ Consolidation or Simplification of Reporting Requirements
☐ Establishment of performance standards in lieu of Design or Operational Standards
☐ Exemption of Small Businesses from some or all requirements
☐ Other, describe:

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

N/A

5. Describe the Rule's Enforcement Provisions

N/A

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

☐ Yes ☒ No