State of Wisconsin
Department of Financial Institutions

Report and Recommendations Concerning Telemarketer-Sold Debt Relief Services

June 2024

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I. Background

A. Context and Relevant State Law Governing Debt Relief Services

Debt relief services are "adjustment service companies" under Wisconsin law. Section 218.02 of the Wisconsin Statutes and chapter DFI-Bkg 73 of the Wisconsin Administrative Code govern adjustment service companies, a term that includes credit counselors, debt management providers, debt settlement or debt relief services, and any others engaged in the business of negotiating payment reductions or extensions on behalf of Wisconsin debtors.[1]

Such companies must obtain a license from the Department's Division of Banking.[2] The Division is responsible for enforcing (and preventing evasions of) section 218.02 and related administrative rules.[3]

State law requires the Division to set maximum fees. State law requires the Division to "determine and fix" the maximum fees or charges that such companies may impose when doing business with Wisconsin residents.[4] The Division sets those maximum charges in section DFI-Bkg 73.01 of the state's Administrative Code, which presently authorizes a monthly fee of $120 or 10 percent of the money paid by the debtor for distribution to creditors, whichever is less, plus a set-up fee of $50.[5]

Nature of current licensees. There are presently more than 50 adjustment service companies licensed to operate in the state. Consistent with historical patterns, most are nonprofit organizations or small financial management businesses, many with physical offices located in Wisconsin.

B. The Proliferation of Telemarketer-Sold Debt Relief Services, and the Enactment of the Federal Telemarketing Sales Rule

Growth of national, for-profit adjustment service companies. Beginning around the turn of this century, there was a proliferation of for-profit adjustment service companies that sought to operate on a national scale, often soliciting clients through telemarketing.[6] Some of these companies—sometimes referred to as "debt relief" or "debt settlement" companies—

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[1] *Morgan Drexen, Inc. v. Wis. Dep't of Fin. Insts.*, 2015 WI App 27, ¶ 11, 361 Wis. 2d 271, 862 N.W.2d 329. *Accord Payday Loan Resolution, LLC v. Wis. Dep't of Fin. Insts.*, 2019 WI App 28, ¶ 21, 388 Wis. 2d 117, 931 N.W.2d 279; *JK Harris Fin. Recovery Sys., LLC v. Wis. Dep't of Fin. Insts.*, 2006 WI App 107, ¶¶ 16-25, 293 Wis. 2d 753, 718 N.W.2d 739.
[2] WIS. STAT. § 218.02(2)(a).
[3] WIS. STAT. §§ 218.02(7), 220.02(2)(b).
[4] WIS. STAT. § 218.02(7)(d).
[5] WIS. ADMIN. CODE § DFI-Bkg 73.01. An adjustment service company may also accept voluntary contributions in limited amounts from the customer's creditors, *see id.*, but that practice is atypical for telemarketer-sold debt relief services.
[6] 75 Fed. Reg. 48458, 48459.

employed aggressive marketing campaigns and charged excessive fees, resulting in more than 200 actions brought against them by state and federal regulators between 2002 and 2010.[7]

Limited federal regulation of telemarketer-sold debt-relief services. In 2009, using its authority under the federal 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[8]—that power rests with the respective states[9]—it did provide the FTC with jurisdiction to prohibit abusive and deceptive *practices* by those debt relief services that engaged in telemarketing.

The advance fee ban. One such abusive or deceptive practice, the FTC concluded, was the collecting of substantial service fees from debtors prior to negotiating any of their debts. Therefore, the FTC modified its Telemarketing Sales Rule to prohibit telemarketer-sold debt relief services from accepting fees from debtors before settling one or more of their debts,[10] while requiring them to utilize one of two types of fee structures[11]:

> **Option A: The "percentage of debt" structure**. Under this fee structure, upon the settlement of each debt the individual has enrolled with the debt relief service provider, the individual pays a fixed percentage of the enrolled debt as a fee to the provider for its services in settling the debt. The amount of the fee depends on the size of the debt at the time the customer engaged the provider's services, rather than the amount of savings the provider negotiates for the consumer.
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> **Option B: The "percentage of savings" structure**. Under this fee structure, upon the settlement of each debt the individual has enrolled with the provider, the individual pays the company a fixed percentage of the savings achieved through settlement. 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 later paid the creditor to settle the debt.

C. THE IMPACT OF THE FEDERAL TELEMARKETING SALES RULE ON STATE FEE CAPS

State laws not preempted. When making its rule changes, the FTC observed that many states had "enacted laws or regulations restricting industry members in various ways, including setting maximum fees and, in some cases, even banning certain debt relief services."[12] The Telemarketing Sales Rule did not preempt or replace those state regulations, and the FTC "emphasized that state laws can impose additional requirements so long as they do not directly conflict" with federal law.[13]

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[7] *Id.* at 48509-48516.
[8] *Id.* at 48488.
[9] *Id.* at 48481.
[10] 16 C.F.R. §§ 310.2(o), 310.4(a)(5)(i).
[11] 16 C.F.R. § 310.4(a)(5)(i)(C).
[12] 75 Fed. Reg. 48458, 48480.
[13] *Id.* at 48481 n.312.

States harmonize their fee caps with the Telemarketing Sales Rule. At the time, the laws of some states—including Wisconsin—capped fees in a manner that was different than the percentage-of-debt or percentage-of-savings structures contemplated by the federal rule.[14]

During and after the FTC's rulemaking proceeding, several states revised their state fee caps to include alternatives calculated under the "percentage of debt" or "percentage of savings" structures contemplated by the Telemarketing Sales Rule. Regionally, **Illinois** authorized licensees to charge total fees of up to 15 percent of the savings achieved for the debtor,[15] while **Iowa**, **North Dakota**, and **Minnesota** each authorized fees of up to 30 percent of the savings achieved.[16] Iowa and Minnesota also permitted licensees to calculate fees as a percentage of the total enrolled debt, but with lower limits.[17]

Wisconsin has not revised its fee caps to accommodate telemarketer-sold debt relief services. To date, Wisconsin has not joined its neighbors in establishing an alternative fee cap more suitable for companies governed by the Telemarketing Sales Rule, such as a maximum fee calculated as a percentage of the savings achieved for the debtor. Likely for that reason, while multiple telemarketer-sold debt relief service providers are licensed in Illinois, Minnesota, Iowa, or North Dakota, none are currently licensed in Wisconsin.

D. WISCONSIN'S EFFORTS TO CURB UNLICENSED ACTIVITY BY OUT-OF-STATE DEBT RELIEF SERVICES

The Division has in recent years taken steps to curb unlicensed activity by telemarketer-sold debt relief services in this state, such as publishing consumer guidance,[18] sending cease-and-desist letters, and—where necessary—bringing enforcement actions.[19] These actions have revealed certain problematic practices by some industry members, such as using misleading tactics to generate consumer leads; offering scripted sales pitches rather than individualized consideration of each debtor's circumstances; and charging fees that are disproportionate to the work performed or the results obtained.

For example, earlier this year the Division and the Wisconsin Department of Justice (in conjunction with the Consumer Financial Protection Bureau and other states) obtained an injunction against Strategic Financial Solutions, a New York-based debt relief services provider.

[14] These state regulations did not directly conflict with the federal rule, the FTC noted, because they did not *require* telemarketer-sold debt relief services to charge advance fees. A telemarketer-sold debt relief service could in theory comply with both sets of regulations by forgoing fees until one or more debts have been settled, and thereafter refraining from accepting fees to the extent they exceed state limits. *Id.*

[15] 2009 Ill. Laws 1420.

[16] 2009 Iowa Laws 34; 2009 Minn. Ch. Laws 37, art. 4, § 26; 2011 N.D. Laws 108.

[17] Minnesota allows licensees to charge fees totaling up to 15 percent of the enrolled debt, while Iowa allows fees of up to 18 percent of the enrolled debt. MINN. STAT. § 332B.09, subdiv. 2(1); IOWA CODE § 533A.9.4.b(1).

[18] WISCONSIN DEPARTMENT OF FINANCIAL INSTITUTIONS - DIVISION OF BANKING, GUIDANCE ON UNLICENSED ADJUSTMENT SERVICE COMPANIES (Apr. 29, 2020).

[19] *See Payday Loan Resolution, LLC*, 2019 WI App 28; *Morgan Drexen, Inc.*, 2015 WI App 27; *JK Harris Fin. Recovery Sys. LLC*, 2006 WI App 107; *State v. Legal Helpers Debt Resolution LLC*, No. 2013CX11 (Dane County Cir. Ct. filed June 12, 2013). *See also Consumer Fin. Prot. Bur., et al. v. Strategic Fin. Solutions, LLC*, No. 24-cv-40-EAW-MJR (W.D.N.Y. filed Jan. 10, 2024).

The court-appointed receiver found that Strategic spent $135 million a year to inundate debt-distressed residents of Wisconsin and other states with two to three million personalized letters per week—sometimes including fake checks—claiming that the recipients were "pre-approved" for debt consolidation loans at attractive rates. When recipients called to inquire, Strategic's sales representatives—referred to internally as "FCs"—executed a bait-and-switch. As the Receiver summarized:

> The FC's job is to sell—specifically to contact leads and enroll the consumer. . . . Once a lead is secured, the FC's sales mission appears to be to immediately dissuade the consumer from the supposedly pre-approved consolidation loan that led them to [Strategic] in the first place. This sales process is dictated by tightly choreographed scripts that include rebuttal responses to every possible consumer push back. . . .
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> Once the loan consolidation option has been discarded, the FC is directed to follow detailed scripts describing and selling [debt relief services]. . . . FCs explain the logistics as follows: consumers will open FDIC-insured accounts solely in their names, where monthly payments will be deposited, and which will remain under their control; they are told to stop making payments to creditors and stop using any cards to be settled; and consumers are asked to sign Powers of Attorney to enable the [company] to represent the consumers in negotiations with their creditors.

Debtors who ceased paying their creditors defaulted on their loans. To settle those now-defaulted debts, Strategic charged debtors fees of up to 27 percent of the principal balance upon enrollment, regardless of the settlement amount—fees that exceed the applicable cap in every state that has one.[20] In light of these business practices, the Court observed there were "other options that may be available, and more beneficial, to many consumers, including bankruptcy, debt-consolidation or debt-counseling, contingent fee debt-relief plans, or even calling creditors to work out a payment plan on their own."[21]

E. Reasons for this Rulemaking

The Wisconsin Legislature has long recognized the risk that for-profit debt relief services may take unfair advantage of debtors. Despite these risks, it did not ban those services altogether, as legislatures in several states have done.[22] Instead, after concluding that "regulation and supervision are necessary to prevent abuse,"[23] it enacted section 218.02[24] and charged the

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[20] *Strategic Fin. Solutions, LLC*, dkt. 115-1, at 16-22, 29. For a list of state fee caps under the "percentage of debt" model, see section 7 of the Statement of Scope for this rule.

[21] *Id.*, dkt. 183, at 51 n.30.

[22] States that prohibit for-profit debt relief services include North Carolina, New Jersey, Massachusetts, Arkansas, New Mexico, West Virginia, Hawaii, and Wyoming. N.C. Gen. Stat. § 14-424; N.J. Stat. § 17:16G-2; Mass. Ann. Laws ch. 180, § 4A; Ark. Code § 5-63-302; N.M. Stat. § 56-2-2; W.V. Code § 61-10-23; Haw. Rev. Stat. § 446-2; Wyo. Stat. § 33-14-102.

[23] Report of the Wisconsin Banking Commission and Interim Advisory Legislative Committee to Investigate Finance Companies, at 56 (1935).

[24] 1935 Wis. Laws ch. 515.

Division with regulating advertising and the solicitation of business by such companies, establishing their maximum fees, preventing evasions of the law, and otherwise "protect[ing] debtors from oppressive or deceptive practices" in any form.[25]

The Division seeks to meet those responsibilities in the proposed rule, which aims to deter unfair practices, reduce risks, and establish baseline conditions that telemarketer-sold debt relief services must satisfy when doing business with Wisconsin debtors. If the potential downsides of such services can be contained, then debtors in appropriate circumstances can benefit from their potential upside: experienced assistance in settling debts for less than the amount owed. According to a report from state officials in Maryland, which was submitted by an industry group for the Division's consideration in preparing this rule, on average debtors who used such services between 2011 and 2014 settled debts for roughly 50 percent of the principal balance on enrollment.[26] That value proposition can deteriorate, however, when one considers the other costs imposed on debtors engaging those services. The 50 percent average savings does not include the debt relief services' fees, nor does it account for the credit downgrades and other risks of the aggressive strategies often employed by those services (such as advising debtors to intentionally default on debts).

The proposed rule aims to moderate those additional costs to preserve the value proposition for Wisconsin debtors, while reducing incentives for companies to aggressively solicit and enroll those who are unlikely to obtain savings sufficient to offset the downside risks. To serve these goals, the proposed rule follows the lead of several neighboring states by authorizing adjustment service companies to charge fees on a "percentage of savings" basis—subject to a fee cap and related protections against excessive fees and other consumer risks of doing business with out-of-state, telemarketer-sold debt relief services.

F. Facts and Materials Considered by the Division

In preparing the proposed rule, the Division considered (1) 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; (2) the experiences and approaches of regulators in other states; (3) litigation materials and published decisions or reports from other jurisdictions; and (4) comments and other materials received from three organizations affiliated with the debt relief industry[27] in connection with the July 2023 preliminary hearing on the scope statement for this rule.

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[25] Wis. Stat. § 218.02(7).

[26] Consumer Debt Relief Initiative, Supplemental Comments Concerning Statement of Scope SS 037-23 (July 19, 2023), at 2 (citing Maryland Office of the Commissioner of Financial Regulation and the Consumer Protection Division of the Office of the Attorney General, Report to the Senate Finance Committee and House Economic Matters Committee on the Maryland Debt Settlement Services Act (2016)).

[27] Comments were received from two industry trade groups (the Consumer Debt Relief Initiative and the American Fair Credit Council, which was subsequently renamed the American Association for Debt Resolution), as well as Global Holdings, LLC, which provides support services for members of the industry.

II. Summary of the Proposed Rule

A. The Proposed Rule Authorizes Adjustment Service Companies to Charge Fees Based on Their Performance in Negotiating Savings for Wisconsin Debtors

The proposed rule follows the precedent of Illinois, Iowa, Minnesota, North Dakota, and several other states[28] in authorizing a performance-based fee calculated as a percentage of the savings negotiated for the debtor. This fee structure aligns the financial interests of debt relief services with those of debtors, rewarding companies that negotiate the most savings for debtors while discouraging them from enrolling debtors who are unlikely to obtain substantial benefits (and may be better suited for lower-risk alternatives).

To illustrate this structure, assume a debtor engages an adjustment services company to settle debts totaling $30,000. In exchange for its services, the company imposes fees equal to 30 percent of the savings negotiated (the statutory maximum in Iowa, Minnesota, and North Dakota). Under that structure, the company receives higher fees when it produces better results for the debtor, and lower fees when it performs worse:

Savings negotiated on behalf of debtor	**Payments to creditors**	**Fees to debt-relief company (30% of savings negotiated)**	**Total cost to debtor to settle $30,000 in debt**
20% savings	$24,000	$1,800	**$25,800**
30% savings	$21,000	$2,700	**$23,700**
40% savings	$18,000	$3,600	**$21,600**
50% savings	$15,000	$4,500	**$19,500**
60% savings	$12,000	$5,400	**$17,400**

Performance-based fee models are commonly employed in other result-driven professional services, such as financial advisers and litigation attorneys, to build trust and apportion consumer risk. These models also encourage companies to exercise discretion when soliciting new clients, focusing on those circumstances in which their services add the most value.

Moreover, because the size of a company's fee is dependent on its performance, the rule effectively prevents underperforming companies from generating profits at the expense of Wisconsin debtors. It may deter them from seeking licensure in this state until they have further

[28] States that have authorized the "percentage of savings" model include Connecticut (fees limited to 10 percent of the savings achieved), Illinois (15 percent), Maine (15 percent), North Dakota (30 percent), Rhode Island (30 percent), Virginia (30 percent), Iowa (30 percent), and Minnesota (30 percent). *See* section 7 of the Statement of Scope for this rule.

honed their negotiating tactics or gained additional insights that will enable them to secure more favorable settlements.

<u>Industry comments and the Division's response</u>: In their written comments, the two trade organizations representing the telemarketer-sold debt relief services industry expressed support for the inclusion of a "percentage of savings" fee model as an alternative to the fee structures currently addressed in section 73.01 of the Wisconsin Administrative Code.

B. The Proposed Rule Does Not Adopt the "Percentage of Debt" Fee Structure

The proposed rule declines to authorize licensees to charge fees on a "percentage of debt" basis. Fees under the "percentage of debt" structure depend on the amount of debt a consumer brings to the company for settlement, rather the amount of savings the company negotiates on that person's behalf. So long as the debt is settled, the company receives the same fee regardless of its performance.

To illustrate, assume the hypothetical debtor discussed in the preceding section instead chose to settle $30,000 of debts using an adjustment service company that charged fees on a "percentage of debt" basis at 18 percent (the legal limit in Iowa for fees calculated on that basis). Under that structure, the company's fees bear no relation to the results it produces for the debtor:

Savings negotiated on behalf of debtor	**Payments to creditors**	**Fees to debt-relief company (18% of enrolled debt)**	**<u>Total cost to debtor to settle $30,000 in debt</u>**
20% savings	$24,000	$5,400	**$29,400**
30% savings	$21,000	$5,400	**$26,400**
40% savings	$18,000	$5,400	**$23,400**
50% savings	$15,000	$5,400	**$20,400**
60% savings	$12,000	$5,400	**$17,400**

This fee structure creates a misalignment of company and consumer interests. Whereas the "percentage of savings" model requires companies to be selective in enrolling only those debts where substantial savings can be achieved through settlement, the "percentage of debt" model encourages companies to enroll as many debts as possible—even debts that are unlikely to be settled for savings sufficient to offset the credit downgrades, litigation risks, and other adverse side effects of aggressive debt-negotiation strategies.

The "percentage of debt" fee structure also undercuts the value proposition for debtors, who retain providers for their experience in negotiating debts and their expertise in evaluating settlement offers from creditors. If the debt relief service providers' fees are the same regardless of the settlement amount, then there is less incentive to use that expertise for the debtors' maximal benefit. For the same reason, debtors have less reason to trust their providers' advice when weighing settlement offers—unsure whether those offers are the best their providers can really negotiate, or whether their providers are trying to obtain their pre-arranged fees without expending additional time and effort.

Regionally, **Illinois** and **North Dakota** follow the approach of the proposed rule, authorizing and establishing maximum fees under a "percentage of savings" structure but not a "percentage of debt" structure.[29] **Iowa** and **Minnesota** authorize both structures (and set different caps for each), while **Michigan** authorizes licensees to use the "percentage of debt" structure (also subject to a cap).[30]

<u>Industry comments and the Division's responses</u>: In their written comments, the two trade organizations representing the telemarketer-sold debt relief services industry urged the Division to include a "percentage of debt" structure in the proposed rules. One group stated that the "percentage of debt" structure is commonly used by industry members and is more advantageous to consumers, because consumers' fees are "locked up at the time of enrollment" and "not subject to the future escalations of the credit account balances."[31]

The Division has considered these arguments, and for the following reasons it finds that neither argument justifies the inclusion of a "percentage of debt" alternative in the proposed rule:

● ***The "percentage of debt" model imposes greater variability and risk on consumers than the "percentage of savings" model.*** While the "percentage of debt" model relieves some financial uncertainty for <u>providers</u>—they earn the same fees for settling debts regardless of how well they negotiate them down—that model *creates* more uncertainty for <u>consumers</u>, requiring them to bear the full risk that their providers will underperform. This can be illustrated in the tables on the preceding pages: a customer using the "percentage of savings" model at Iowa's maximum rate pays between \$17,400 and \$25,800 to settle \$30,000 in debt, depending on how successfully the provider negotiates the debts, whereas a customer using the "percentage of debt" model at the maximum Iowa rate pays between \$17,400 and \$29,400. Thus, from a consumer's perspective, the "percentage of savings" model provides lower risk, greater certainty, and a much tighter range of potential outcomes than the "percentage of debt" structure.

● ***Neither fee model is subject to future escalations in credit balances.*** While it is certainly accurate that the "percentage of debt" model is not subject to future escalations in credit account balances, neither is the "percentage of savings" model. The proposed rule, like the Telemarketing Sales Rule, calculates the percentage of savings by comparing the settlement amount to the balance of the debt at the time the customer enrolled it with the licensee's service—not the balance when the debt is settled.

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[29] 225 ILL. COMP. STAT. § 429/125; N.D. CENT. CODE § 13-11-21.
[30] MINN. STAT. § 332B.09, subdiv. 2(1); IOWA CODE § 533A.9.4.b(1); MICH. COMP. L. § 451.428(1).
[31] Consumer Debt Relief Initiative, Position Statement on SS 037-23, at 3 (July 14, 2023).

C. THE PROPOSED RULE AUTHORIZES ADJUSTMENT SERVICE COMPANIES TO CHARGE FEES OF UP TO 30 PERCENT OF THE SAVINGS ACHIEVED

Among the states that have authorized and established maximum fees under the "percentage of savings" model, the maximum allowable fees range from 10 percent (Connecticut) to 30 percent of the savings achieved.[32] Regionally, Illinois caps fees at 15 percent of the savings achieved, while Iowa, Minnesota, and North Dakota have adopted 30 percent caps.[33]

The proposed rule follows the lead of Iowa, Minnesota, and North Dakota in capping fees at 30 percent of the savings negotiated for the consumer. This structure ensures that telemarketer-sold debt relief companies will have a financial stake in their performance for Wisconsin debtors, with greater rewards going to those companies that are most successful in negotiating down their debts. For that reason, the Division anticipates that the rule will attract those telemarketer-sold debt relief services that generate the highest savings for consumers.

At the same time, the Division anticipates that a performance-based fee structure may deter low-performing telemarketer-sold debt relief companies from seeking to do business in the state, while requiring others to be selective in the consumer debts they enroll for negotiation—focusing on their efforts where they can obtain the greatest savings for Wisconsin debtors.

Industry comments and the Division's responses. In their written comments, all three organizations associated with the telemarketer-sold debt relief services industry urged the Division to set no limits on the amount of fees industry members may charge Wisconsin debtors. That is not a permissible outcome under Wisconsin law. The Legislature has assigned the Division the statutory duty to establish "the maximum fees or charges that such companies may make" when doing business with Wisconsin debtors,[34] and it would violate that duty—and harm Wisconsin debtors—to authorize those companies to charge unlimited fees.

In the alternative, one industry group urged the Division to authorize fees of up to 45 percent of the savings achieved, citing a 2016 joint report from two Maryland regulators finding that debt relief companies in an uncapped environment charged Maryland residents fees averaging 46.3 percent of the savings negotiated from 2011 to 2015.[35] But that data merely revealed what companies *did* charge consumers in an unrestricted market; it did not establish that those fees were reasonable for the work performed. Maryland's Division of Consumer Protection reviewed that data and concluded—consistent with this proposed rule and the laws of several other states—that debt-relief company fees should be capped on a "percentage of

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[32] For a list of state fee caps, see section 7 of the Statement of Scope for this rule.

[33] 225 ILL. COMP. STAT. § 429/125; IOWA CODE § 533A.9.4.b(2); MINN. STAT. § 332B.09, subdiv. 2(2); N.D. CENT. CODE § 13-11-21.

[34] WIS. STAT. § 218.02(7)(d).

[35] MARYLAND OFFICE OF THE COMMISSIONER OF FINANCIAL REGULATION AND THE CONSUMER PROTECTION DIVISION OF THE OFFICE OF THE ATTORNEY GENERAL, REPORT TO THE SENATE FINANCE COMMITTEE & HOUSE ECONOMIC ACTIVITIES COMMITTEE ON THE MARYLAND DEBT SETTLEMENT SERVICES ACT, at 9-10 (2016), attached as Ex. B to the Consumer Debt Relief Initiative's July 20, 2023 Supplemental Statements on SS 037-23.

savings" basis to protect consumers.[36] Both then and now, state caps on fees calculated as a percentage of savings basis ranged from 10 percent to 30 percent.

D. THE PROPOSED RULE ADDRESSES ADDITIONAL CONSUMER RISKS RELATING TO TELEMARKETER-SOLD DEBT RELIEF SERVICES

Excessive fees are not the only consumer risks posed by telemarketer-sold debt relief services. While regulation alone cannot eliminate those risks, it can help to mitigate their impacts by requiring those companies to provide Wisconsin debtors with complete, accurate information regarding their services, the associated risks, and how to reduce them. The proposed rule furthers those objectives in two ways:

● ***Requiring disclosure of material information about their services.*** The proposed rule requires such companies to include in their contracts key information regarding their services, including each debt that the debtor is agreeing to enroll for settlement, the amount of money the debtor must accumulate before the company will make an offer to creditors, the expected time to achieve any represented results, the debtor's right to withdraw from the company's services without penalty, and contact information and available hours for customer inquiries.

● ***Imposing special protections before advising a Wisconsin debtor to default.*** Many telemarketer-sold debt relief services employ aggressive negotiating strategies, such as advising debtors to stop making payments (and thereby default) on certain unsecured debts. That approach can create leverage with creditors, who may prefer to recover a portion of a bad debt via settlement rather than incurring the expense and uncertainty of debt collection and lawsuits. But if the debt relief service's adversarial strategy does not work, it is the debtor who suffers the financial fallout and strain of collection letters, court judgments, and liens.

Given the high stakes of this strategy for debtors, it should not be undertaken without knowledge and planning for its potential consequences. Therefore, before advising a client to default on a debt, the proposed rule requires licensees to make verbal and written disclosures to debtors regarding the adverse effects of defaulting on their debts—including damage to their creditworthiness, potential lawsuits and other collection activities, and additional creditor fees and interest. In addition, the proposed rule requires a licensee to provide information to help the debtor obtain assistance in the event of a lawsuit related to the defaulted debt, including whether the licensee will provide legal counsel for the debtor.

Industry comments. The two trade groups submitted comments indicating support for the proposed disclosure requirements described in the first bulleted paragraph above. Their preliminary comments did not address whether licensees should be required to provide the additional information described in the second bulleted paragraph before advising debtors to default on their debts.

[36] *Id.* at 13.

E. The Proposed Rule Authorizes the Use of Dedicated Accounts and Makes Other Updates

Under current law, licensees must maintain any payments received from debtors in a trust account at an approved bank.[37] Many for-profit debt relief services use a different model, instead requiring debtors to make deposits into a debtor-controlled bank account administered by a third party (commonly Global Holdings, LLC).

Consistent with the Telemarketing Sales Rule, the proposed rule would amend current law to authorize the use of debtor-controlled accounts, subject to consumer protections against conflicts of interest. Moreover, because debtors are unable to choose their own dedicated account providers, the proposed rule requires the licensee to ensure that any monthly maintenance or other fees charged to the debtor by the account provider are reasonable and in line with market rates for comparable services.

Finally, the proposed rule eliminates obsolete requirements, updates recordkeeping requirements to include copies of advertisements and other marketing materials, and makes non-substantive revisions to correct errors and reflect current drafting practices.

Industry comments. Each of the three industry comments supported revisions to existing rules to authorize the use of dedicated accounts with protections against conflicts of interest. Their preliminary comments did not address or propose provisions to protect debtors against unreasonable fees for dedicated account services.

[37] WIS. ADMIN. CODE § DFI-Bkg 73.03 (3).