State of Wisconsin
Department of Financial Institutions

Tony Evers, **Governor** Kathy Blumenfeld, **Secretary**

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GUIDANCE ON UNLICENSED ADJUSTMENT SERVICE COMPANIES

This Department licenses and regulates "adjustment service companies,"[1] a Depression-era term referring to organizations that "attempt to adjust the debts of individuals" by "making agreements" with their creditors.[2] Ever seen an ad for a company promising to scale down your debts by negotiating with your creditors? That's an adjustment service company.[3]

Adjustment service companies with strong ethics can play an important part in times of economic hardship. People need help making budgets, developing strategies to reduce debt, and negotiating with creditors, and they need it from organizations that will treat them fairly and keep fees to a minimum. Adjustment service companies can fill this role, provided they act with the character this moment demands of us all.

But some of them won't, at least if history is any guide. During the Great Depression, the Wisconsin legislative committee tasked with investigating the industry concluded that "certain abuses seem to be obvious."[4] Regulators found a range of abuses during the last recession, as well, including misleading consumers with false promises,[5] charging upfront fees before

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[1] WIS. STAT. § 218.02.

[2] REPORT OF THE WISCONSIN BANKING COMMISSION AND INTERIM ADVISORY LEGISLATIVE COMMITTEE TO INVESTIGATE FINANCE COMPANIES 56 (1935); 44 WIS. ATT'Y GEN. 164, 167 (July 20, 1955).

[3] 44 WIS. ATT'Y GEN. 164, 167 (July 20, 1955) (adjustment service company industry involves a "persuasive negotiator who attempts to prorate the debtor's earnings among various creditors" and "scale down the debts"); *Morgan Drexen, Inc. v. Wis. Dep't of Fin. Insts.*, 2015 WI App 27, §§ 7-14, 361 Wis. 2d 271, 862 N.W.2d 329 ("prorating" within the meaning of the adjustment service companies statute occurs "when one negotiates a reduction or extended payment on behalf of the debtor for the outstanding debt of the debtor," and a "broad interpretation of the [adjustment service companies] statute is in keeping with the statutory intent" to "prevent evasions" of it) (quoting WIS. STAT. §§ 218.02(1)(a), 218.02(7), and *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).

[4] REPORT OF THE WISCONSIN BANKING COMMISSION AND INTERIM ADVISORY LEGISLATIVE COMMITTEE TO INVESTIGATE FINANCE COMPANIES at 56 (1935). The Report concluded that "regulation and supervision are necessary to prevent abuse" in the industry. *Id.*

[5] *Debt settlement company banned in West Virginia*, COLLECTION & CREDIT RISK, Apr. 2011 (Credit Collections Defense Network); *Missouri AG Gets Refunds for Debt Settlement Customers*, COLLECTION & CREDIT RISK, Jan. 2011 (Elite Financial); *Debt Settlement Companies Settle Charges in Vermont*, COLLECTION & CREDIT RISK, Aug. 2010 (SCF State Capital Financial and Mossler Law Firm); Darren Waggoner, *Illinois AG Sues Debt Settlement Firms, Executives*, COLLECTION & CREDIT RISK, Mar. 2010 (Clear Your Debt, Swiftrock Financial, Orion Processing, DebtOne Financial, Debt Consultants of America, American Debt Arbitration, and Nationwide Asset Services); Darren Waggoner, *Alabama AG Closes Debt Settlement Operation, Seizes $12 Million*, COLLECTION & CREDIT RISK, Mar. 20, 2010

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negotiating any settlements with creditors,[6] impersonating government agents,[7] misleading consumers into believing they were lawyers,[8] and trying to evade regulatory limits on their fees.[9] This Department sued one unlicensed debt settlement company that tried to evade those limits, obtaining a final judgment that required the company to pay a $1.89 million fine and give back all fees paid by Wisconsin customers.[10]

That might sound like a good outcome, but the company fought the case for years—and injured customers can't afford to wait years to get their money back. This Department can better protect you if you stick to licensed adjustment service companies. (We keep a list of them here.) These companies must meet state character and fitness requirements.[11] They are required by state law to provide low-cost services to clients.[12] Many are non-profit organizations. And because they are licensed by the Department, if you have a complaint against them, we can normally resolve it quickly.

We can't make the same assurances if you do business with unlicensed adjustment service companies. They haven't obtained a license with this Department, so we've never

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(Allegro Financial Services and Allegro Law); Darren Waggoner, *Minnesota AG Sues Six Debt Settlement Companies*, COLLECTION & CREDIT RISK, Mar. 20, 2010 (American Debt Settlement Solutions, Debt Rx USA, FH Financial Service, Morgan Drexen, Pathway Financial Management, State Capital Financial); *Settlements in Vermont For Debt Settlers*, AMERICAN BANKER, Dec. 7, 2009 (Financial Freedom of America and Debt Settlement USA).

[6] Megan Crepeau, *Alleged student loan scammers target of new Illinois lawsuits*, REDEYE CHICAGO, July 14, 2014 (First American Tax Defense and Broadsword Student Advantage); Rachel Witkowski, *CFPB, Justice Seek Shutdown of Two Debt Settlement Firms*, AMERICAN BANKER, May 8, 2013 (Mission Settlement Agency and Premier Consultant Group); Rachel Witkowski, *CFPB and State AGs Win First Case Against Debt Settlement Firm*, AMERICAN BANKER, Dec. 24, 2012 (Payday Loan Debt Solution); *Missouri AG Gets Refunds for Debt Settlement Customers*, COLLECTION & CREDIT RISK, Jan. 2011 (Elite Financial); David Streitfield, *New York accuses two debt settlement firms of fraud*, N.Y. TIMES, May 20, 2009 at B1 (Nationwide Asset Services and Credit Solutions of America); Sarah Ovaska, *N.C. blocks two debt settlement companies; Florida companies deny they sought fees upfront and then failed to pay clients' bills*, Raleigh, N.C. NEWS & OBSERVER, Feb. 16, 2008 (Hess-Kennedy Chartered and the Consumer Law Center).

[7] Rachel Witkowski, *CFPB, Justice Seek Shutdown of Two Debt Settlement Firms*, AMERICAN BANKER, May 8, 2013 (Mission Settlement Agency).

[8] *Attorney General Morrisey files suit against debt settlement business; AG's Office says debt collection business misrepresented hundreds of West Virginia consumers*, MOUNTAIN MESSENGER, Jan. 18, 2014 (Legal Helpers Debt Resolution).

[9] Rachel Witkowski, *CFPB Hits Payment Processor Over Illegal Debt-Collection Fees*, AMERICAN BANKER, Aug. 26, 2014 (reporting regulatory action against a payment processor used by "roughly 800 debt-relief settlement companies" to evade federal regulations that prohibited them from charging upfront fees); *Lawsuit Claims Debt Settlement Firm Misled Consumers*, COLLECTION & CREDIT RISK, Apr. 2011 (reporting regulatory action against company that used a "rent-a-lawyer" scheme by using lawyers, who are exempt from bans on up-front fees, as a front to evade prohibitions on up-front fees by debt settlement firms).

[10] *See generally Morgan Drexen, Inc. v. Wis. Dep't of Fin. Insts.*, 2015 WI App 27, 361 Wis. 2d 271, 862 N.W.2d 329.

[11] WIS. STAT. § 218.02(3)(b).

[12] WIS. ADMIN. CODE § DFI-Bkg 73.01.

approved their fitness and character. They may not know (or consider themselves subject to) Wisconsin law requiring them to provide low-cost services. And while this Department will continue to seek redress when they abuse Wisconsin customers—including fines, forfeitures, and personal judgments against their owners,[13] if necessary—formal legal processes take time and recovering assets from out-of-state, unlicensed companies can be uncertain.

For these reasons, Wisconsinites should take care before hiring a company to help them tackle their debts. Several resources can point you in the right direction. The Consumer Financial Protection Bureau has a coronavirus financial guide with information on federal relief programs and a host of consumer tools, including guidance on working with creditors to reduce debt or lower regular payments. The Consumer Financial Protection Bureau (here), the Federal Trade Commission (here), and the Better Business Bureau (here) all offer guidance on what to look out for when considering debt relief services and the various alternatives. And finally, you should check this Department's licensee list to find adjustment service companies that have agreed to comply with Wisconsin law requiring low fees, honest advertising, and character and fitness. Doing so will better ensure that you end up working with an organization whose primary focus is helping people in need, rather than taking advantage of them.

[13] *Payday Loan Resolution, LLC v. Wis. Dep't of Fin. Insts.*, 2019 WI App 28, 388 Wis. 2d 117, 931 N.W.2d 279.

CERTIFICATION

I have reviewed this guidance document or proposed guidance document and I certify that it complies with sections 227.10 and 227.11 of the Wisconsin Statutes. I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is not explicitly required or explicitly permitted by a statute or a rule that has been lawfully promulgated. I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is more restrictive than a standard, requirement, or threshold contained in the Wisconsin Statutes.

/s/Matthew R. Lynch
Chief Legal Counsel
Department of Financial Institutions
Authorized delegate for guidance document certifications pursuant to Wis. Stat. § 15.02(4)