COLORADO

Department of Regulatory Agencies

Colorado Office of Policy, Research & Regulatory Reform

2023 Sunset Review

Uniform Debt-Management Services Act

October 13, 2023

COLORADO
Department of Regulatory Agencies
Executive Director's Office

October 13, 2023

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 Colorado General Assembly established the sunset review process in 1976 as a way to analyze and evaluate regulatory programs and determine the least restrictive regulation consistent with the public interest. Pursuant to section 24-34-104(5)(a), Colorado Revised Statutes (C.R.S.), the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) at the Department of Regulatory Agencies (DORA) undertakes a robust review process culminating in the release of multiple reports each year on October 15.

A national leader in regulatory reform, COPRRR takes the vision of their office, DORA and more broadly of our state government seriously. Specifically, COPRRR contributes to the strong economic landscape in Colorado by ensuring that we have thoughtful, efficient, and inclusive regulations that reduce barriers to entry into various professions and that open doors of opportunity for all Coloradans.

As part of this year's review, COPRRR has completed an evaluation of the Uniform Debt-Management Services Act. I am pleased to submit this written report, which will be the basis for COPRRR's oral testimony before the 2024 legislative committee of reference.

The report discusses the question of whether there is a need for the regulation provided under Part 2 of Article 19 of Title 5, C.R.S. The report also discusses the effectiveness of the Office of the Attorney General in carrying out the intent of the statutes and makes recommendations for statutory changes for the review and discussion of the General Assembly.

To learn more about the sunset review process, among COPRRR's other functions, visit coprrr.colorado.gov.

Sincerely,

Patty Salazar
Executive Director

Sunset Review: Uniform Debt-Management Services Act

Background

What is regulated?

The Uniform Debt-Management Services Act (Act) regulates entities that offer and provide debt management services to Colorado residents. These entities are known as Debt Management Service Providers. They include non-profit and for-profit Credit Counseling companies, along with Debt Settlement companies. The Act is enforced by the Administrator of the Uniform Consumer Credit Code in the Office of the Attorney General (Administrator).

Why is it regulated?

Companies that provide debt-management services are acting as an intermediary between a consumer and a creditor for the purpose of obtaining concessions, such as reductions on interest and principal. These companies are regulated to prevent predatory practices against Colorado residents.

Who is regulated?

During fiscal year 21-22, there were 41 active registrants under the program. This included 26 Credit Counseling companies and 14 Debt Settlement companies.

How is it regulated?

Any person, organization, or company that provides services must register with the Administrator. This includes paying an application fee, obtaining a surety bond, identifying all trust accounts used by clients, authorizing review of those trust accounts, and proving compliance with Colorado business laws or nonprofit laws.

What does it cost?

Total program expenditures in fiscal year 21-22 were $158,066.09. The Administrator allotted 1.4 full-time equivalent employees to administer the program.

What disciplinary activity is there?

During the sunset review period of fiscal years 17-18 through 21-22, 85 complaints were filed, and the Administrator took 10 disciplinary actions.

Key Recommendations

- **Continue the Act for 11 years, until 2035.**
- **Require registrants to maintain records of the education they provide to consumers.**
- **Require any settlement agreements between a consumer and creditor to be in writing.**

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Background

Sunset Criteria

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 Colorado Office of Policy, Research and Regulatory Reform (COPRRR) within 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 guided by statutory criteria and sunset reports are organized so that a reader may consider these criteria while reading. While not all criteria are applicable to all sunset reviews, the various sections of a sunset report generally call attention to the relevant criteria. For example,

- In order to address the first criterion and determine whether the program under review is necessary to protect the public, it is necessary to understand the details of the profession or industry at issue. The Profile section of a sunset report typically describes the profession or industry at issue and addresses the current environment, which may include economic data, to aid in this analysis.
- To address the second sunset criterion--whether conditions that led to the initial creation of the program have changed--the History of Regulation section of a sunset report explores any relevant changes that have occurred over time in the regulatory environment. The remainder of the Legal Framework section addresses the fifth sunset criterion by summarizing the organic statute and rules of the program, as well as relevant federal, state and local laws to aid in the exploration of whether the program's operations are impeded or enhanced by existing statutes or rules.
- The Program Description section of a sunset report addresses several of the sunset criteria, including those inquiring whether the agency operates in the public interest and whether its operations are impeded or enhanced by existing statutes, rules, procedures and practices; whether the agency or the agency's board performs efficiently and effectively and whether the board, if applicable, represents the public interest.
- The Analysis and Recommendations section of a sunset report, while generally applying multiple criteria, is specifically designed in response to the fourteenth criterion, which asks whether administrative or statutory changes are necessary to improve agency operations to enhance the public interest.

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

These are but a few examples of how the various sections of a sunset report provide the information and, where appropriate, analysis required by the sunset criteria. Just as not all criteria are applicable to every sunset review, not all criteria are specifically highlighted as they are applied throughout a sunset review. While not necessarily exhaustive, the table below indicates where these criteria are applied in this sunset report.

Table 1
Application of Sunset Criteria

Sunset Criteria	Where Applied
(I) Whether regulation or program administration by the agency is necessary to protect the public health, safety, and welfare.	• Profile of the Industry • Legal Framework • Recommendation 1
(II) Whether the conditions that led to the initial creation of the program have changed and whether other conditions have arisen that would warrant more, less, or the same degree of governmental oversight.	• History of Regulation
(III) If the program is necessary, whether the existing statutes and regulations establish the least restrictive form of governmental oversight consistent with the public interest, considering other available regulatory mechanisms.	• Legal Framework
(IV) If the program is necessary, whether agency rules enhance the public interest and are within the scope of legislative intent.	• Legal Framework • Recommendation 3
(V) 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.	• Legal Framework • Recommendation 2 and 4
(VI) Whether an analysis of agency operations indicates that the agency or the agency's board or commission performs its statutory duties efficiently and effectively.	• Not Applicable
(VII) 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.	• Not Applicable
(VIII) Whether regulatory oversight can be achieved through a director model.	• Not Applicable
(IX) The economic impact of the program and, if national economic information is not available, whether the agency stimulates or restricts competition.	• Profile of the Industry

Sunset Criteria	Where Applied
(X) If reviewing a regulatory program, 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 or regulated entity.	• Complaint Activity • Disciplinary Activity • Recommendation 2
(XI) If reviewing a regulatory program, whether the scope of practice of the regulated occupation contributes to the optimum use of personnel.	• Program Description and Administration
(XII) Whether entry requirements encourage equity, diversity, and inclusivity.	• Not Available
(XIII) If reviewing a regulatory program, whether the agency, through its licensing, certification, or registration process, imposes any sanctions or disqualifications on applicants based on past criminal history and, if so, whether the sanctions or disqualifications serve public safety or commercial or consumer protection interests. To assist in considering this factor, the analysis prepared pursuant to subsection (5)(a) of this section must include data on the number of licenses, certifications, or registrations that the agency denied based on the applicant's criminal history, the number of conditional licenses, certifications, or registrations issued based upon the applicant's criminal history, and the number of licenses, certifications, or registrations revoked or suspended based on an individual's criminal conduct. For each set of data, the analysis must include the criminal offenses that led to the sanction or disqualification.	• Collateral Consequences
(XIV) Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.	• Recommendations 1-4

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 on COPRRR's website at coprrr.colorado.gov.

The functions of the Administrator of the Uniform Consumer Credit Code in the Office of the Attorney General (Administrator), as enumerated in Part 2 of Article 19 of Title 5, Colorado Revised Statutes (C.R.S.), shall terminate on September 1, 2024, unless continued by the General Assembly. During the year prior to this date, it is the duty of COPRRR to conduct an analysis and evaluation of the Administrator pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed regulation should be continued and to evaluate the performance of the Administrator. During this review, the Administrator must demonstrate that the program serves the public interest. COPRRR's findings and recommendations are submitted via this report to the Office of Legislative Legal Services.

Methodology

As part of this review, COPRRR staff interviewed Office of the Attorney General staff, registrants, and officials with national industry associations and reviewed Colorado statutes and rules, and laws of other states.

The major contacts made during this review include, but are not limited to:

- American Fair Credit Council
- Center for Responsible Lending
- Office of the Attorney General
- Financial Counseling Association of America
- National Consumer Law Center

In July 2023, COPRRR staff conducted a survey of all registered debt-management service providers. The survey was sent to 48 registrants and no emails were returned as undeliverable. The survey received seven responses, which is a 14.58 percent response rate. Survey results may be found in Appendix A.

Profile of the Industry

In a sunset review, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) is guided by the sunset criteria located in section 24-34-104(6)(b), Colorado Revised Statutes (C.R.S.). The first criterion asks whether regulation or program administration by the agency is necessary to protect the public health, safety, and welfare.

To understand the need for regulation, it is first necessary to recognize what the industry does, who it serves and any necessary qualifications.

Debt-management services are services used to assist consumers with serious debt problems.

Although consumers have the option to negotiate directly with creditors, those with little financial literacy may not be informed or may be intimidated by the process. For these consumers, debt-management services can serve as an intermediary between themselves and the creditor.

In Colorado, two types of debt-management services are regulated: credit counseling agencies and debt settlement companies.

Credit counseling agencies are typically nonprofit entities that provide financial education to consumers, counsel consumers on how to manage money, and help consumers to develop budgets.[2] If a person has too much debt, the credit counseling agency can negotiate payment plans with creditors.[3] Under such a plan, the credit counseling agency reaches out to the consumer's creditors to negotiate terms such as interest rate reductions, lower fees, re-aging of delinquent accounts, and lower monthly payments.[4] As part of the plan, a consumer might make monthly payments to a trust account.[5] Funds from the account are then disbursed to creditors on behalf of the consumer.[6]

[2] Consumer Financial Protection Bureau. *What's the difference between a credit counselor and a debt settlement or debt relief company?* Retrieved August 21, 2023, from www.consumerfinance.gov/ask-cfpb/whats-the-difference-between-a-credit-counselor-and-a-debt-settlement-or-debt-relief-company-en-1449/
[3] Consumer Financial Protection Bureau. *What's the difference between a credit counselor and a debt settlement or debt relief company?* Retrieved August 21, 2023, from www.consumerfinance.gov/ask-cfpb/whats-the-difference-between-a-credit-counselor-and-a-debt-settlement-or-debt-relief-company-en-1449/
[4] Consumer Financial Protection Bureau. *What's the difference between a credit counselor and a debt settlement or debt relief company?* Retrieved August 21, 2023, from www.consumerfinance.gov/ask-cfpb/whats-the-difference-between-a-credit-counselor-and-a-debt-settlement-or-debt-relief-company-en-1449/
[5] Consumer Financial Protection Bureau. *What's the difference between a credit counselor and a debt settlement or debt relief company?* Retrieved August 21, 2023, from www.consumerfinance.gov/ask-cfpb/whats-the-difference-between-a-credit-counselor-and-a-debt-settlement-or-debt-relief-company-en-1449/
[6] Consumer Financial Protection Bureau. *What's the difference between a credit counselor and a debt settlement or debt relief company?* Retrieved August 21, 2023, from www.consumerfinance.gov/ask-cfpb/whats-the-difference-between-a-credit-counselor-and-a-debt-settlement-or-debt-relief-company-en-1449/

Another service model is debt settlement. Rather than helping consumers to pay off the full amount of debt owed, debt settlement companies negotiate with creditors to persuade them to accept a portion of the entire debt owed.[7] Settlement companies typically require clients to deposit money into an account to build a significant portion of the amount owed.[8]

It should be noted that many entities provide these services nationwide. In Colorado, every registrant under the program is headquartered outside of the state.

The ninth sunset criterion questions the economic impact of the program and, if national economic information is not available, whether the agency stimulates or restricts competition.

Consumer debt continues to grow in the United States. In the second quarter of 2023, total household debt increased by $16 billion to reach $17.06 trillion.[9] Debt is a pervasive issue for Americans. Nationwide, 26 percent of consumers have significant debts in collections.[10] In Colorado, approximately 21 percent of residents have large amounts of debt in collections.[11] Thirty-six percent of Colorado residents from communities of color have significant debts.[12]

[7] Consumer Financial Protection Bureau. *What's the difference between a credit counselor and a debt settlement or debt relief company?* Retrieved August 21, 2023, from www.consumerfinance.gov/ask-cfpb/whats-the-difference-between-a-credit-counselor-and-a-debt-settlement-or-debt-relief-company-en-1449/
[8] Consumer Financial Protection Bureau. *What's the difference between a credit counselor and a debt settlement or debt relief company?* Retrieved August 21, 2023, from www.consumerfinance.gov/ask-cfpb/whats-the-difference-between-a-credit-counselor-and-a-debt-settlement-or-debt-relief-company-en-1449/
[9] Federal Reserve Bank of New York. *Center for Microeconomic Data: Household Debt and Credit Report*. Retrieved August 29, 2023, from www.newyorkfed.org/microeconomics/hhdc
[10] Urban Institute. *Debt in America* Retrieved August 18, 2023, from apps.urban.org/features/debt-interactive-map/?type=overall&variable=totcoll
[11] Urban Institute. *Debt in America* Retrieved August 18, 2023, from apps.urban.org/features/debt-interactive-map/?type=overall&variable=totcoll&state=8
[12] Urban Institute. *Debt in America* Retrieved August 18, 2023, from apps.urban.org/features/debt-interactive-map/?type=overall&variable=totcoll&state=8

Legal Framework

History of Regulation

In a sunset review, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) is guided by the sunset criteria located in section 24-34-104(6)(b), Colorado Revised Statutes (C.R.S.). The first sunset and second sunset criteria question:

> Whether regulation or program administration by the agency is necessary to protect the public health, safety, and welfare; and
>
> Whether the conditions that led to the initial creation of the program have changed and whether other conditions have arisen that would warrant more, less or the same degree of governmental oversight.

One way that COPRRR addresses this is by examining why the program was established and how it has evolved over time.

In 1965, Colorado began regulating debt-related services under the authority of the Colorado Banking Board (Board) and the State Banking Commissioner (Commissioner). Up to 1991, there was only one licensed debt adjuster in Colorado. In 1992, the Board approved two new licenses.

The program underwent a sunset review in 1993 and in 1999. Both reviews recommended that the program sunset as little to no harm was found. The 1999 review, for example, found less than one complaint a year against debt adjusters. None of these complaints resulted in a finding of a violation of the statute or regulations. The General Assembly agreed and subsequently repealed the debt adjuster licensing program in 2000.

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 abusive practices.[13] Such practices included deceiving consumers into unnecessary plans, charging excessive costs, and self-dealing.[14] In response, NCCUSL adopted the Uniform Debt-Management Services Act to address the problems that it found in the industry.[15]

In 2007, the General Assembly passed the Uniform Debt-Management Services Act (Act) based off the model from the NCCUSL. The Act requires anyone who offers debt-management services in the state to register with the Colorado Department of Law.

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[13] *Uniform Debt-Management Services Act*, National Conference of Commissioners on Uniform State Laws (2008), p. 3.
[14] *Uniform Debt-Management Services Act*, National Conference of Commissioners on Uniform State Laws (2008), p. 3.
[15] *Uniform Debt-Management Services Act*, National Conference of Commissioners on Uniform State Laws (2008), p. 4.

In 2011, the General Assembly passed House Bill 11-1206. This removed a number of requirements in the Act that were deemed unnecessary such as a fee cap on debt settlement plans, which had been set at 4 percent of debt owed to enroll a client and no more than 18 percent of the total principal debt owed.

The Act saw its first sunset review in 2014, which recommended, among other things, that the Act continue until September 1, 2024.

Finally, in 2019, the General Assembly recodified Title 12, C.R.S, and relocated the Act to its current home in Title 5, C.R.S.

Legal Summary

The third, fourth and fifth sunset criteria question:

> Whether the existing statutes and regulations establish the least restrictive form of governmental oversight consistent with the public interest, considering other available regulatory mechanisms;
>
> Whether agency rules enhance the public interest and are within the scope of legislative intent; and
>
> 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.

A summary of the current statutes is necessary to understand whether regulation is set at the appropriate level and whether the current laws are impeding or enhancing the agency's ability to operate in the public interest.

In Colorado, the Administrator of the Uniform Consumer Credit Code in the Office of the Attorney General (Administrator) oversees the regulation of debt-management services. The Act defines 'debt-management services" as any service acting as an intermediary between a consumer and a creditor for the purpose of obtaining concessions.[16] Any entity that offers debt-management services to a consumer residing in Colorado must be registered.[17]

The Act uses multiple terms synonymously for both types of business models regulated. For purposes of this report, a "provider" refers to both credit counselors and debt management companies simultaneously.

[16] § 5-19-202(8)(A), C.R.S.
[17] § 5-19-204(a), C.R.S.

To register as a provider, an applicant must:[18]

- Submit an application,
- Obtain a surety bond,
- Identify all trust accounts used by consumers or clients,
- Authorize the Administrator to review and examine trust accounts,
- Provide proof of compliance with Colorado law governing corporations and associations, and
- Provide evidence of nonprofit and tax-exempt status (for credit counseling companies).

Applicants must also provide the results of a state and national fingerprint-based criminal history records check, conducted within the immediately preceding twelve months of an application.[19] A fingerprint-based criminal history records check must take place for every officer of the applicant, every employee of the applicant, or every employee of a third-party designee who is authorized to initiate transactions for trust accounts.[20]

Applicants submit their fingerprints via an approved vendor of the Colorado Bureau of Investigation to conduct fingerprint processing. These results are used to assist the Administrator in deciding character fitness of the principals of applicants. Results are not utilized for any purpose other than in connection with the application.

The Administrator must deny or approve an application for registration within 90 days of receiving the application.[21] Renewals of registrations must occur annually.[22]

The Administrator has the authority to suspend, revoke or deny renewal of a registration to a provider for:[23]

- Having a fact or condition that would be grounds to deny registration to a provider,
- 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 Act spells out certain requirements for how providers work with individual consumers. Before providing any negotiating services with their creditors, a provider

[18] § 5-19-205, C.R.S.
[19] § 5-19-206(12), C.R.S.
[20] § 5-19-206(12), C.R.S.
[21] § 5-19-210(a), C.R.S.
[22] § 5-19-211(a), C.R.S.
[23] § 5-19-234(b), C.R.S.

must prepare for each client an itemized list of goods and services, with a description and charges of each good and service.[24] A provider must also educate their clients on managing personal finances.[25] Lastly, there must be an agreement between the provider and client.

An "agreement" is defined as an agreement between the provider and their client for the performance of debt-management services.[26] The agreement must disclose:[27]

- The services to be provided,
- The fees to be paid by the individual,
- The schedule of payments,
- The amount of time necessary to complete a 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.

After an agreement is made, the provider will start negotiations with the client's third-party creditors.

The Act also refers to "plans", which are defined as the particular strategies in which the service provider furnishes debt-management services to an individual.[28] Depending on the business model, plans will have different requirements.

Credit counseling plans typically anticipate creditors reducing finance charges or fees for late payment, default or delinquency. For these plans, a provider may impose the following management fees on consumers:[29]

- 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.

Debt settlement plans typically aim to settle debts for less than their principal amount. A provider may not assess any settlement fees until and unless:[30]

[24] § 5-19-217(a), C.R.S.
[25] § 5-19-217(b)(1), C.R.S.
[26] § 5-19-202(3), C.R.S.
[27] § 5-19-219(a)(6), C.R.S.
[28] § 5-19-202(13), C.R.S.
[29] § 5-19-223(d)(1), C.R.S.
[30] § 5-19-223(d)(2)(A), C.R.S.

- 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 or is a percentage of the amount saved as a result of the settlement.

Any money paid to a provider for ultimate distribution to creditors is held in trust.[31] The provider may not combine funds held in trust for management clients with the funds of other persons.[32] At all times, the trust account balance must equal the sum of the balances of each client's account.[33] As such, providers are required to reconcile trust accounts at least once a month.[34]

Providers have certain recordkeeping responsibilities. A provider must maintain records for each consumer for whom it provides debt-management services for five years after the final payment made.[35] It must furnish a copy to consumers within a reasonable time after a request by that consumer.[36] The provider may use electronic or other means of storage of the records.[37]

There are numerous prohibited actions established in the Act, including:[38]

- 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 a consumer's debts;
- Compensating employees based on the number of consumers 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;

[31] § 5-19-222(a), C.R.S.
[32] § 5-19-222(d), C.R.S.
[33] § 5-19-222(e), C.R.S.
[34] § 5-19-222(f), C.R.S.
[35] § 5-19-227(c), C.R.S.
[36] § 5-19-227(c), C.R.S.
[37] § 5-19-227(c), C.R.S.
[38] § 5-19-228, C.R.S.

- Misrepresenting that the provider may give legal advice or perform legal services;
- Falsely representing that it is a nonprofit entity;
- Obtaining a confession of judgment or power of attorney to confess judgment against a consumer;
- Employing an unfair, unconscionable, or deceptive act or practice; or
- Advising, encouraging, or suggesting to the consumer not to make a payment to creditors under the plan.

Complaints about registrants can be made to the Administrator, who may investigate and examine the activities, books, accounts, and records of registrants that provide or offer to provide debt-management services.[39] The Administrator has the authority to issue a subpoena in order to review these records.[40] In connection with the investigation, the Administrator may also seek a court order authorizing seizure from a bank at which the registrant maintains a trust account.[41]

In cases where violations were found warranting corrective action, the Administrator may undertake disciplinary action as follows:[42]

- 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; and
- Maintain an action to enforce the Act in any county.

In addition, private causes of action can be made if providers violate the Act. In such cases, plaintiffs may be awarded compensatory damages, punitive damages, reasonable attorney fees, and any amounts paid to the provider (except for amounts disbursed to creditors).[43]

If a provider is not registered, an individual may void the agreement and recover all money paid or deposited by or on behalf of the individual pursuant to the agreement.[44] If an individual voids an agreement, there is no claim available for a provider against the individual for breach of contract or for restitution.[45] If a provider imposes a fee not authorized by the Act, a consumer may recover in a civil action three times the total

[39] § 5-19-232(b), C.R.S.
[40] § 5-19-232(b), C.R.S.
[41] § 5-19-232(b)(3), C.R.S.
[42] §§ 5-19-233(a), (b) and (c), C.R.S.
[43] §§ 5-19-235(a) and (c), C.R.S.
[44] § 5-19-235(a), C.R.S.
[45] § 5-19-225(c), C.R.S.

amount of the fees, charges, money, and payments made by the individual to the provider.[46]

These requirements do not apply to Colorado-licensed attorneys acting under an attorney-client relationship, certified public accountants acting under an accountant-client relationship, or enrolled tax representatives acting in an agent-client relationship.[47] The Act further exempts service providers who:[48]

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

[46] § 5-19-235(b), C.R.S.
[47] § 5-19-202(8)(A), C.R.S.
[48] § 5-19-203, C.R.S.

Program Description and Administration

In a sunset review, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) is guided by sunset criteria located in section 24-34-104(6)(b), Colorado Revised Statutes (C.R.S.). The fifth sunset criteria questions:

> 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.

In part, COPRRR utilizes this section of the report to evaluate the agency according to these criteria.

The Uniform Debt-Management Services Act (Act) is administered by the Administrator of the Uniform Consumer Credit Code in the Office of the Attorney General (Administrator). In general, the Act regulates debt management services by requiring those who offer credit counseling services and debt settlement services to Colorado consumers to register with the Administrator.

Credit counseling agencies are entities that provide financial education to consumers, counsel consumers on how to manage money, and help consumers to develop budgets.[49] If a person has too much debt, the credit counseling agency can negotiate payment plans with creditors.[50] Under such plans, the credit counseling agency often negotiates terms such as interest rate reductions, lower fees, re-aging of delinquent accounts, and lowered monthly payments.[51]

Rather than helping consumers to pay off the full amount of debt owed, debt settlement companies negotiate with creditors to persuade them to accept a portion of the entire debt owed.[52] Settlement companies typically require clients to deposit money into an account with the purposes of building a significant percentage of what may be owed.[53] This occurs via monthly deposits into trust accounts. Funds are usually not disbursed to creditors until an agreement has been reached.

[49] Consumer Financial Protection Bureau. *What's the difference between a credit counselor and a debt settlement or debt relief company?* Retrieved August 21, 2023, from https://www.consumerfinance.gov/ask-cfpb/whats-the-difference-between-a-credit-counselor-and-a-debt-settlement-or-debt-relief-company-en-1449/
[50] Consumer Financial Protection Bureau. *What's the difference between a credit counselor and a debt settlement or debt relief company?* Retrieved August 21, 2023, from https://www.consumerfinance.gov/ask-cfpb/whats-the-difference-between-a-credit-counselor-and-a-debt-settlement-or-debt-relief-company-en-1449/
[51] Consumer Financial Protection Bureau. *What's the difference between a credit counselor and a debt settlement or debt relief company?* Retrieved August 21, 2023, from https://www.consumerfinance.gov/ask-cfpb/whats-the-difference-between-a-credit-counselor-and-a-debt-settlement-or-debt-relief-company-en-1449/
[52] Consumer Financial Protection Bureau. *What's the difference between a credit counselor and a debt settlement or debt relief company?* Retrieved August 21, 2023, from https://www.consumerfinance.gov/ask-cfpb/whats-the-difference-between-a-credit-counselor-and-a-debt-settlement-or-debt-relief-company-en-1449/
[53] Consumer Financial Protection Bureau. *What's the difference between a credit counselor and a debt settlement or debt relief company?* Retrieved August 21, 2023, from https://www.consumerfinance.gov/ask-cfpb/whats-the-difference-between-a-credit-counselor-and-a-debt-settlement-or-debt-relief-company-en-1449/

Table 2, below, illustrates, for the fiscal years indicated, the Administrator's expenditures and full-time equivalent (FTE) employees dedicated to administration of the Act.

Table 2
Agency Fiscal Information

Fiscal Year	Total Expenditures	FTE
17-18	$129,706	1.4
18-19	$176,315	1.4
19-20	$242,225	1.4
20-21	$150,160	1.3
21-22	$158,066	1.4

During fiscal year 17-18, costs were not specifically allocated to the program, hence the low amount of expenditures.

Below is a description of the program's staff positions. The Administrator does not interact with the program on a daily basis unless disciplinary measures are being taken, hence they are not calculated as part of the program's FTE.

- Financial Credit Examiner – 1.0 FTE - Conducts examinations of the books and records for debt settlement and credit counseling firms. Investigates consumer complaints, processes initial and renewal registrations, and composes draft discipline documents.
- Compliance Specialist - 0.4 FTE - Responsibilities related to the Debt-Management program include supervising a financial examiner who registers debt-management providers, performs compliance examinations, resolves consumer complaints, reviews and approve registration applications and renewals, and notifies providers regarding registration and examination results.

The program is cash funded through fees paid by registrants. Table 3 illustrates, for the fiscal years indicated, the fees assessed.

Table 3
Registration Fees

Fiscal Year	Initial Fee	Renewal Fee
17-18	$1,000	$1,000
18-19	$1,000	$1,000
19-20	$1,000	$1,000
20-21	$1,000	$1,000
21-22	$1,000	$1,000

The fees have remained unchanged during the time period examined for this sunset review.

Registration

The eleventh sunset criterion questions whether the scope of practice of the regulated occupation contributes to the optimum use of personnel.

In part, COPRRR utilizes this section of the report to evaluate the program according to this criterion.

Any entity that offers debt-management services to a consumer residing in Colorado must be registered.[54] This, however, does not include Colorado-licensed attorneys acting under an attorney-client relationship, certified public accountants acting under an accountant-client relationship, or enrolled tax representatives acting in an agent-client relationship.[55] None of the approximately 40 currently-enrolled registrants are headquartered in Colorado, as they provide services nationwide.

Table 4 below indicates the number of registrants in Colorado.

[54] § 5-19-204(a), C.R.S.
[55] § 5-19-202(8)(A), C.R.S.

Table 4
Number of Registrants

Fiscal Year	Initial Applications	Credit Counseling/Debt Management	Renewed	Credit Counseling/Debt Management	Total Active Registrants
17-18	5	1 / 4	37	29 / 8	42
18-19	3	2 / 1	38	28 / 10	41
19-20	1	0 / 1	39	29 / 10	40
20-21	6	0 / 6	38	27 / 11	44
21-22	2	0 / 2	39	26 / 13	41
22-23	1	0 / 1	40	26 / 14	41

The number of registrants has remained consistent over the time period examined for this sunset review.

Table 5, below, contains data showing the average debt of consumers who sought services from registrants.

Table 5
Average Debt per Consumer

Year	Credit Counseling	Debt Settlement
17-18	$16,476	$20,804
18-19	$13,796	$22,058
19-20	$17,271	$24,392
20-21	$16,682	$21,282
21-22	$17,368	$19,331

The average debt per consumer in a credit counseling plan remained moderately stable over the previous five fiscal years. The average debt owed per consumer in a debt settlement plan peaked in fiscal year 19-20, then dropped in each successive year.

Before providing any negotiating services with creditors, an agreement must be made between providers and a consumer. An "agreement" is defined as an agreement between the provider and a consumer for the performance of debt-management services.[56] Agreements must disclose:[57]

[56] § 5-19-202(3), C.R.S.
[57] § 5-19-219(a)(6), C.R.S.

- 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.

Table 6 shows the number of new individual agreements that were entered into between service providers and consumers for each year.

Table 6
Number of Agreements

Year	Credit Counseling	Debt Settlement
17-18	2,296	5,627
18-19	2,091	6,687
19-20	2,737	5,588
20-21	2,252	3,940
21-22	1,704	3,529

The number of agreements with credit counseling companies shows a relatively stable amount of new enrollments each year. After 2019, the number of debt settlement agreements dropped each year. This is primarily due to a decrease in business activity during COVID-19.

After an agreement is reached, the provider will start negotiations with third-party creditors and create a "plan." Credit counseling plans typically involve the provider negotiating with creditors to reduce finance charges, fees for late payment, lowered interest payments, or other terms of the debt. Debt settlement plans, on the other hand, aim to settle debts for less than their principal amount.

Tables 7 and 8 indicate the amount of completed, active, and terminated plans made by service providers for their consumers.

Table 7
Number of Credit Counseling Plans

Type	17-18	18-19	19-20	20-21	21-22
Completed Plans	2,124	2,623	1,828	1,471	1,797
Active Plans	4,193	4,465	5,549	5,686	4,621
Terminated Plans	3,163	3,338	3,644	3,025	3,141

Table 8
Number of Debt Settlement Plans

Type	17-18	18-19	19-20	20-21	21-22
Completed Plans	1,064	748	1,397	2,099	4,064
Active Plans	7,976	10,952	12,174	11,624	10,931
Terminated Plans	4,728	5,135	6,546	6,791	6,493

There was a significantly larger amount of debt settlement plans in comparison to plans set up by credit counseling agencies, indicating that there is more business activity in conjunction with debt settlement companies.

Complaints

The tenth sunset criteria requires COPRRR to examine 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 or regulated entity.

In part, COPRRR utilizes this section of the report to evaluate the program according to these criteria.

The Administrator may act on their own initiative or in response to complaints.[58] They may receive complaints, take action to obtain voluntary compliance, and seek or provide remedies as provided in the Act.[59]

After complaints are first received, the staff conducts an initial review process of the provider and the complainant to determine if the complaint indeed falls under the Act. If it does fall under the Act, and the provider is registered, staff usually sends the complaint to the provider, who is then required to respond within 14 days. If no

[58] § 5-19-232(a), C.R.S.
[59] § 5-19-232(a), C.R.S.

response is received, staff may refer the case to the Administrator to determine whether other action is needed.

If violations were found that warrant corrective action (disciplinary or non-disciplinary), staff reaches out to the Administrator. If corrective action is warranted, the staff will still try to initiate some sort of resolution between the provider and complainant and close the complaint as resolved. For complaints that relate to providers who are unregistered, the Administrator will issue a cease-and-desist order until the provider becomes registered under the Act.

Table 9, below, illustrates the number of complaints received in the five fiscal years indicated.

Table 9
Complaints Received by Registrant Type

Type	17-18	18-19	19-20	20-21	21-22
Credit Counseling Agencies	0	1	0	0	0
Debt Settlement Companies	9	4	10	12	9
Other	4	9	15	6	6
Total	**13**	**14**	**25**	**18**	**15**

As Table 9 illustrates, most of the complaints the Administrator receives are related to debt settlement companies or are classified as "other." "Other" complaints were complaints received for unregistered and exempt entities, or for services that were debt-related but not necessarily covered by the Act. In these instances, the cases were referred to the proper agency, if possible.

The one complaint pertaining to credit counseling agencies was related to customer service issues.

Table 10, below, indicates a breakdown of complaints received specifically for debt settlement companies.

Table 10
Complaints Received – Debt Settlement Companies

Type of Complaint	17-18	18-19	19-20	20-21	21-22
False/Misleading Representations	0	1	2	1	1
Issues with Agreement	0	0	0	0	2
Disputed Fees	0	0	0	2	0
Marketing Issues (Lead Generator)	2	2	0	1	2
Customer Service	2	0	0	0	0
Unregistered Activity	5	1	8	6	4
Total	**9**	**4**	**10**	**10**	**9**

Unregistered activity is the most common type of complaint. Entities often provided services to Colorado residents without knowing they had to be registered. In fiscal year 20-21, two complaints were referred to other agencies and were hence not counted in this table.

Examinations

The Act states that the Administrator may investigate and examine, by subpoena or otherwise, the activities, books, accounts, and records of a person that provides or offers to provide debt-management services to determine compliance.[60]

Disciplinary Activity

The tenth sunset criterion requires COPRRR to examine 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 or regulated entity.

In part, COPRRR utilizes this section of the report to evaluate the program according to this criterion.

In cases where violations were found warranting corrective action, the Administrator may order a provider to cease and desist from violating the Act and order a provider to correct a violation.[61] The Administrator may also suspend, revoke or deny renewal of a registration to a provider.[62]

[60] § 5-19-232(b), C.R.S.
[61] §§ 5-19-233(a) and (b), C.R.S.
[62] § 5-19-234(b), C.R.S.

Little to no enforcement action took place relative to credit counseling agencies since fiscal year 17-18. There was only one type of action—a stipulation—reached in 2017. No fines or penalties were collected from credit counseling agencies.

Although still quite low, debt settlement companies have seen more instances of enforcement action. Table 11 shows the actions taken since fiscal year 17-18.

Table 11
Enforcement Actions for Debt Settlement Companies

Type of Action	17-18	18-19	19-20	20-21	21-22
Revocations	0	0	0	0	0
Denial	0	0	0	0	0
Determinations/Judgements	0	1	0	0	0
Consent Decrees	0	0	0	0	0
Stipulations and Final Agency Orders	2	0	2	1	3
Cease and Desist Order	0	0	0	0	0
Assurance of Voluntary Compliance	0	0	1	0	0
Total Enforcement Actions	**2**	**1**	**3**	**1**	**3**

The Administrator may fine a provider up to $10,000 per violation and up to $20,000 per violation for violating an order to correct a violation or a cease and desist.[63]

Table 12 shows the amount of fines collected from debt settlement companies.

Table 12
Fines Collected from Debt Settlement Companies

Year	Number of Fines Imposed	Total Value of Fines Collected
17-18	2	$7,000
18-10	1	$25,000
19-20	1	$10,000
21-22	0	0
22-23	0	0

As these data indicate, the Administrator has not imposed many fines and has not imposed any since fiscal year 19-20.

[63] § 5-19-233(a), C.R.S.

The Administrator has the authority to order a provider to correct any violation, including making restitution of money or property to a person aggrieved by a violation.[64] Table 13 shows the amount of restitution and refunds to affected consumers in disciplinary actions.

Table 13
Restitution and Refunds to Consumers

	Credit Counseling		Debt Settlement		
Year	Number of consumers	Amount	Number of consumers	Amount	Total
17-18	381	$38,403.14	91	$51,749.79	$90,152.93
18-19	0	0	220	$575,000.00	$575,000.00
19-20	0	0	362	$175,263.60	$175,263.60
20-21	0	0	12	$12,859.63	$12,859.63
21-22	0	0	43	$44,688.70	$44,688.70

Only one instance of restitution by credit counselors took place, in fiscal year 17-18.

Because of the larger number of debt settlement providers, more disciplinary action took place in comparison to credit counseling agencies. Hence, more restitution was ordered. One violation may have required restitution to multiple consumers, which is why numbers fluctuate each year.

Collateral Consequences

The thirteenth sunset criterion requires COPRRR to examine whether the agency, through its licensing, certification or registration process, imposes any sanctions or disqualifications on applicants based on past criminal history and, if so, whether the sanctions or disqualifications serve public safety or commercial or consumer protection interests.

COPRRR utilizes this section of the report to evaluate the program according to this criterion.

The Administrator may deny registration if an officer, director, or owner of a provider has been convicted of a crime or suffered a civil judgment, involving dishonesty or the violation of state or federal securities laws. [65] Applicants must also provide the results of a state and national fingerprint-based criminal history records check, conducted within the immediately preceding twelve months of an application. [66] The fingerprint-

[64] § 5-19-233(a)(2), C.R.S.
[65] § 5-19-209(b)(2), C.R.S.
[66] § 5-19-206(12), C.R.S.

based criminal history records check must cover every officer, every employee of the Applicant, and every employee of a third-party designee who is authorized to initiate transactions for trust accounts. These results are used to assist the Administrator in deciding character fitness of the principals of applicants. Results are not utilized for any purpose other than in connection with the application.

The Administrator has not recorded any instances of issuing denials based off criminal history during the five previous fiscal years. Consequently, this sunset review cannot report on them.

Analysis and Recommendations

The final sunset criterion questions whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest. The recommendations that follow are offered in consideration of this criterion, in general, and any criteria specifically referenced in those recommendations.

Recommendation 1 — Continue the Uniform Debt-Management Services Act for 11 years, until 2035.

In 2005, the National Conference of Commissioners on Uniform State Laws (NCCUSL) found that companies that provide debt management and settlement services were often using abusive practices.[67]

Some examples of these abusive practices included the encouragement of clients to default on their debts, which 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. Many of these practices persist today.

The NCCUSL adopted the Uniform Debt-Management Services Act (UDMSA) to address the problems that it found in the industry. The Colorado General Assembly followed suit in 2007 and passed their own version of the UDMSA. Such entities had not been regulated in Colorado for five years.

The Uniform Debt-Management Services Act (Act) provides for the oversight of the debt-management industry, which offers debt-management services. Debt-management services are provided by any entity acting as an intermediary between a consumer and a creditor for the purpose of obtaining concessions.[68] The Administrator of the Uniform Consumer Credit Code in the Office of the Attorney General (Administrator) oversees the registration of these entities.

The Administrator has been active in the regulation of debt-management providers. They have the authority to issue, deny, suspend, or revoke registrations. Forty registrants were active as of the previous fiscal year. Although there were a relatively low number of complaints, the Administrator took disciplinary action, including ordering restitution to consumers, for any violations. Such enforcement actions helped more than 1,000 consumers recover such losses since fiscal year 17-18.

The Administrator can also issue cease and desist orders, order a violation to be corrected, and intervene in civil actions. In addition, the applicant submits criminal

[67] *Uniform Debt-Management Services Act*, National Conference of Commissioners on Uniform State Laws (2008), p. 3.
[68] § 5-19-202(8)(A), C.R.S.

history record information of officers and any employee that conducts transactions on clients' trust accounts.[69]

During the sunset process, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) staff interviewed stakeholders including staff of the Administrator, professional associations, and consumer-advocate groups. Most stakeholders agree that the Administrator is necessary to oversee companies offering debt-management services, and to ensure they are not using abusive, unfair, or deceptive practices that leave consumers in more debt than they began with. Although instances of these predatory practices have gone down since the nationwide effort to adopt the UDMSA, stakeholders indicate that the potential for abuse of consumers still exists today.

The Act contains a significant number of protections for consumers, including pre-requisites to provide services. These include a series of required disclosures that must clearly be made to consumers so that they understand what they are agreeing to.[70] It also requires providers to perform an analysis of the client's financial situation to determine a customized, suitable plan for each consumer.[71] Lastly, the Act also provides many legal remedies and avenues for consumers to gain some form of restitution or recovery of fees, compensatory damages, or punitive damages in the event of a violation.

Sunset reviews are guided by statutory criteria found in section 24-34-104, Colorado Revised Statutes (C.R.S.), and the first criterion questions whether regulation is necessary to protect the health, safety and welfare of the public. Based on how proactive the program is, how much restitution it has delivered to consumers, and based on the potential for harm to consumers, the Act is necessary to protect the safety of the public.

Therefore, the General Assembly should continue the Act for 11 years, until 2035. An eleven-year continuation period is justified as the need for oversight of this industry is likely to continue for the foreseeable future.

[69] § 5-19-206(12), C.R.S.
[70] § 5-19-217(e)-(g), C.R.S.
[71] § 5-19-217(b)(2), C.R.S.

Recommendation 2 — Require registrants to maintain records of the education they provide to consumers.

The Act currently states that providers may not furnish services unless they provide the consumer with reasonable education about the management of personal finance.[72] This is critical to ensure that consumers have a basic understanding of their finances, and that they understand the upcoming steps if they choose to continue with debt-management services.

The requirement to provide basic education before entering services derives from the UDMSA, which states that a provider must "provide reasonable education about the management of personal finance." The UDMSA highlights that the basic education and counseling be provided at no charge.[73] The education must meet the minimum standard of "reasonable," as determined by the Administrator or the courts.[74] To avoid creating a disincentive to exceed the minimum requirement, the UDMSA authorized the Administrator to allow charges for education if the Administrator determines that a provider's education or counseling services exceed the minimum standards for the basic service.[75]

The Act incorporated these elements from the UDMSA. Education about personal finance must be provided, and it must be reasonable.[76] It is prohibited for providers to charge individuals any fees in connection with furnishing basic, personal finance education.[77] However, for any services past basic education, the Administrator may authorize a provider to charge a fee based on its nature and extent.[78]

Nevertheless, it is often challenging for providers to demonstrate that this pre-requisite has been met. Because there is no recordkeeping requirement, there is no avenue for the Administrator to know if providers are even giving such education before enrolling consumers into agreements. There is no method of verifying whether such education, if provided, is being done so free-of-charge.

An applicant for registration must already provide a description of the educational programs that the applicant intends to provide, along with a copy of any materials used or to be used in those programs. However, an additional recordkeeping requirement would help to ensure that these materials are being used and the required education delivered.

[72] § 5-19-217(b)(1), C.R.S.
[73] *Uniform Debt-Management Services Act*, National Conference of Commissioners on Uniform State Laws (2008), Section 23, Comment 3, p. 63.
[74] *Uniform Debt-Management Services Act*, National Conference of Commissioners on Uniform State Laws (2008), Section 23, Comment 3, p. 63.
[75] *Uniform Debt-Management Services Act*, National Conference of Commissioners on Uniform State Laws (2008), Section 23, Comment 4, p. 63.
[76] § 5-19-217(b)(1), C.R.S.
[77] § 5-19-228(b)(7), C.R.S.
[78] § 5-19-223(c), C.R.S.

The potential for harm certainly exists should entities try to evade the education pre-requisite and try to provide services without giving basic information about personal finance. This may be a disservice to consumers, all of which would benefit from having the basic education. Such knowledge ensures they reasonably understand the debt-management service they are about to purchase, and properly evaluate whether it is right for them.

The fifth sunset criterion asks whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes. The tenth sunset criterion asks whether investigatory procedures adequately protect the public.

Requiring providers to maintain records of the education they provide will assist the Administrator in ensuring registrants are being compliant with the Act and that consumers are understanding the services offered.

For all these reasons, the General Assembly should require registrants to maintain records of the education they provide to consumers.

Recommendation 3 — Require any settlement agreements between a consumer and creditor to be in writing.

Debt settlement plans typically aim to settle debts for less than their principal amount. Unlike credit counselors, debt settlement companies typically provide these plans.

The Act currently prohibits a settlement company from settling a debt without the individual agreeing to it.[79] This is a vital safeguard that ensures consumers provide consent to settlements at a certain negotiated amount. However, there is no requirement in the Act that memorializes this consent by the consumer.

The Administrator maintains that some debt settlement companies are evading this requirement. Companies may rely on a written settlement offer from the creditor to suffice as evidence of the terms of the settlement, without communicating anything to the individual. There were even instances described where companies would communicate with the individual, but only via simple means such as a phone call or text message asking "yes" or "no" to a settlement. This is all antithetical to the intention of the Act.

This poses a threat to consumers in that they may not understand what exactly they are agreeing to. In order to ensure that a consumer fully assents to a debt settlement offer, the Act should be amended to explicitly require a written agreement by the consumer to any debt settlement amounts. Although the creation of an additional document may seem burdensome in the process, as the point of a provider is to act as

[79] § 5-19-228(a)(2), C.R.S.

the intermediary, a written document can ensure that the individual understands and gives proper consent to the terms or amounts listed on settlement offers.

The fourth sunset criterion asks whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes.

Requiring a written agreement would assist the Administrator in ensuring that consumers are being protected from potentially unfair or predatory settlement offers.

Therefore, the General Assembly should require that any settlement agreements between a consumer and creditor be in writing.

Recommendation 4 — Repeal fee setting by rule and allow the Administrator to set fees administratively, to cover the cost of the program.

The Act requires the Administrator to establish registration fees by rule to cover the cost of enforcing the Act.[80]

Setting fees by rule is cumbersome and inefficient, as 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).

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 cost-benefit analysis to be performed.
- If a cost-benefit analysis is required, the agency must provide it to the public at least ten 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

[80] § 5-19-232(e), C.R.S.

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. Removing the requirement to set fees by rule will also align the Act with other fee-setting statutes permitted in Title 3.

The fifth criterion evaluates whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, or procedures. Setting fees administratively is more efficient than establishing them by rule.

Hence, 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.

Appendix A — Customer Service Survey

In July 2023, COPRRR staff conducted a survey of all registered debt management service providers. The survey was sent to 48 registrants and no emails were returned as undeliverable. The survey received seven responses, which is a 14.58 percent response rate. Survey results may be found below.

What is your relationship to the Debt Management Services Act?

Relationship	Percentage
Debt Settlement Agency	28.6%
Credit Counseling Agency	71.4%

Please indicate your years of experience.

Years of Experience	Percentage
1 to 2 years	0%
2 to 5 years	0%
5 to 10 years	28.6%
10 to 15 years	0%
15 to 20 years	28.6%
20 plus years	42.8%

In the past year, how many times have you interacted with the Credit Unit? Please count all forms of interaction (telephone, e-mail, internet or website, regular mail, in person).

Number of Interactions	Percentage
I have not interacted	0%
1 to 2 times	28.6%
2 to 4 times	42.8%
4 to 6 times	14.3%
6 to 8 times	14.3%
8 or more times	0%

If you have interacted with the Consumer Credit Unit, what was your primary purpose in doing so?

Purpose of Interaction	Percentage
Licensing or registration	57.1%
Inspection, audit or examination	42.9%
To file a complaint	0%
To learn about the requirements for a profession/occupation	0%
To learn about the functions of (insert name of program/agency)	0%
To obtain help with an issue	0%
Respond to a complaint	0%
Respond to a request made to you	0%
Participate in a board, committee, commission, taskforce or working group for the agency	0%
Comment on or learn about existing/proposed rules or legislation	0%
Continuing education	0%
Update my information	0%
Questions about the scope of practice	0%
Not applicable	0%
Other	0%

Overall please rate the service provided by the Consumer Credit Unit.

Service Provided	Percentage
Excellent	42.8%
Good	14.3%
Fair	14.3%
Poor	14.3%
Unacceptable	0%
Not Applicable	14.3%

Please rate the usefulness of the Consumer Credit Unit's website in answering your questions or providing needed information.

Website Usefulness	Percentage
Excellent	28.6%
Good	14.3%
Fair	14.3%
Poor	0%
Unacceptable	0%
Not Applicable	42.8%

Please rate the usefulness of the Consumer Credit Unit's communications in answering your questions or providing needed information.

Communications Usefulness	Percentage
Excellent	42.8%
Good	14.3%
Fair	0%
Poor	14.3%
Unacceptable	0%
Not Applicable	28.6%

Regardless of the outcome of your most recent issue, do you feel the Consumer Credit Unit listened to your concerns?

Listening to Concerns	Percentage
Excellent	42.8%
Good	0%
Fair	14.3%
Poor	14.3%
Unacceptable	0%
Not Applicable	28.6%

Please rate the timeliness of the Consumer Credit Unit in responding to your issues.

Response Timeliness	Percentage
Excellent	28.6%
Good	14.3%
Fair	0%
Poor	14.3%
Unacceptable	0%
Not Applicable	42.8%

Please provide the number and types of interactions that were required to resolve or address your most recent issue. (Please select all applicable types of interactions used AND the number times for each type of interaction selected.)

Number of Interactions	Type of Interaction				
	Phone	Website	E-mail	In Person	Regular Mail
0 times	5	2	2	5	4
1 to 2 times	2	3	2	0	1
3 to 4 times	0	0	1	0	0
5 to 6 times	0	0	2	0	0
7 or more times	0	0	0	0	0

Please rate the helpfulness of the Consumer Credit Unit in resolving your issue or need.

Helpfulness	Percentage
Excellent	42.8%
Good	0%
Fair	14.3%
Poor	14.3%
Unacceptable	0%
Not Applicable	28.6%

Please rate the professionalism of the program's staff.

Professionalism	Percentage
Very professional	57.1%
Professional	14.3%
Somewhat professional	0%
Not very professional	0%
Unprofessional	0%
Not applicable	28.6%

Please rate the accuracy of information provided by agency.

Professionalism	Percentage
Very accurate	42.85%
Accurate	14.3%
Somewhat accurate	0%
Not very accurate	0%
Inaccurate	0%
Not applicable	42.85%