Utah Department of Commerce

Division of Consumer Protection

Maintenance Funding Provider Legal Funding Report for 2021

August 31, 2022

Overview

Legal funding,[1] also known as lawsuit loans, maintenance funding, or litigation funding, is the practice of lending money to an individual[2] in exchange for the right to collect payment out of a future settlement, judgment, award, or other verdict in a civil court proceeding. In Utah, a business entity[3] that provides this kind of funding is referred to as a maintenance funding provider (MFP).[4]

The MFP does not collect any money from the individual unless the individual wins their legal case. For example, if a person is involved in an accident and then sues their insurance provider for $10,000 in medical expenses, the individual could receive funding from an MFP. The MFP may extend an offer of $5,000 in funding to the individual with the agreement that if the individual wins the case, the individual will pay back the $5,000 plus an additional fee of $1,000, and keep the additional $4,000 awarded by the court. If the individual loses in court, the individual does not repay the $5,000 the individual borrowed nor pay the $1,000 fee that the MFP would have charged if the individual won.

The *Maintenance Funding Practices Act* (MFPA), Utah Code § 13-57-101 *et seq.*, was enacted during the 2020 General Session. The MFPA created a regulatory structure intended to protect and educate Utah consumers. The Utah Division of Consumer Protection (the Division) is tasked with enforcing the MFPA.

A business entity cannot operate as an MFP in Utah without first registering with the Division. [5,6] An MFP is required to renew its registration annually.[7] An MFP are also required to submit a report, under oath, to the Division on or before April 1st of each year detailing the number of funding agreements entered into, the total dollar amount of legal funding provided, whether the agreement concluded as contracted or for a lesser amount, and the **annual rate of return** for each funding agreement.[8]

The Division is required to analyze and summarize the information submitted by each MFP and publish the analysis and summary on the Division's website[9] for the purpose of educating the general public regarding legal funding in Utah.[10]

Maintenance Funding Provider Operational Requirements

Utah Code § 13-57-202[11] sets the conditions under which an MFP may provide funding to an individual and restricts certain acts by the MFP.

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[1] "'Legal funding' means a payment of $500,000 or less to an individual in exchange for the right to receive an amount out of the potential proceeds of any realized settlement, judgement, award, or verdict the individual may receive in a civil legal action." Utah Code § 13-57-102(6).
[2] "'Individual' means a person who: (a) resides in this state; and (b) has or may have a pending legal action in this state." Utah Code § 13-57-102(5).
[3] "'Business entity' means a sole proprietorship, partnership, limited partnership, limited liability company, corporation, or other entity or association used to carry on a business for profit." Utah Code § 13-57-102(1).
[4] "'Maintenance funding provider' means a business entity that engages in the business of legal funding. (b)'Maintenance funding" does not include; (i) an immediate family member of an individual; (ii) an accountant providing accounting services to an individual; or (iii) an attorney providing legal services to an individual." Utah Code § 13-57-102(8)(a).
[5] Utah Code § 13-57-503 specifically exempts some businesses including banks, deferred deposit lenders, title lenders, and creditors from the requirements of the MFPA.
[6] "Except as provided in Subsection (4), a business entity may not act as a maintenance funding provider in this state without registering with the division." Utah Code § 13-57-201(1).
[7] "Each year a maintenance funding provider shall renew the maintenance funding provider's registration by submitting to the division an application for registration renewal." Utah Code § 13-57-201(3).
[8] Utah Code § 13-57-203.
[9] The Division's website can be found at www.dcp.utah.gov.
[10] Utah Code § 13-57-402.
[11] Utah Code § 13-57-202.

An MFP may not pay a referral fee to an attorney, a healthcare provider, or to any individual that works for an attorney or a healthcare provider. Additionally, an MFP may not refer an individual to an attorney or to a healthcare provider or accept a referral payment from an attorney or a healthcare provider.

An MFP may not intentionally advertise false or misleading information about its services. An MFP may not attempt to influence a decision related to a legal matter where the MFP has provided legal funding. An MFP may not knowingly pay for or offer to pay for court costs, filing fees, or attorney fees.

After entering into a maintenance funding agreement with an individual an MFP must provide the individual with a copy of the signed maintenance funding agreement.

Maintenance Funding Agreement Requirements

When an MFP enters into a funding agreement with an individual, the funding agreement has to meet requirements detailed in Utah Code § 13-57-301.[12] The agreement must be in writing, and an individual must be able to cancel the agreement without penalty within five days of entering into the agreement. Individuals may cancel the agreement in person at the MFP's office or by certified mail. If an individual has already been given funds the individual must return the funds to the MFP at the time of cancelation.

Maintenance funding agreements must contain disclosures,[13] including the right of rescission and a statement that the funded amount and agreed to charges shall be paid only from the proceeds of the individual's legal claim. Agreements must disclose to the individual the amount of funding that will be provided to the individual, an itemization of one-time charges, a payment schedule, the total amount that will be paid to the MFP if the individuals case is resolved, a provision stating that the MFP will not charge any additional fees other than those disclosed in the agreement, and a provision stating that the individual will not owe the MFP anything unless there are proceeds available from the individual's legal action. The agreement may not require payments that are based on a percentage of the recovery from the individual's legal action.

Enforcement

If an MFP violates a provision of the MFPA, a funding agreement associated with the violation is unenforceable by the MFP. The Division may also revoke or suspend an MFP's registration, impose fines of up to $1,000 per violation or $10,000 per willful violation, or order the MFP to make restitution to an individual.[14] An individual's legal claim against an MFP is not affected by the division's enforcement powers.

The Division issued two citations against MFPs in 2021.

Maintenance Funding Providers in Utah

Since 2020, an MFP must register with the Division prior to operating in Utah; the Division maintains a list of all registered MFPs on its website.

Report Methodology

[12] Utah Code § 13-57-301.
[13] Utah Code § 13-57-302.
[14] Utah Code § 13-57-502.

Nineteen MFPs were registered with the Division during the 2021 reporting period. Seventeen of the MFPs provided annual reports to the Division; two MFPs did not provide a 2021 report to the Division. One of the non-reporting MFPs did not file a report in 2020; the other non-reporting MFP reported 8 in-process agreements in their 2020 report.

MFPs reported 52 agreements that should have been, but were not, reported in their 2020 reports. The Division has amended the 2020 summary and analysis to reflect those agreements, and has republished the summary on its website.[15]

The following summary and analysis reflect only the data collected from the 17 MFPs that provided reports to the Division.

In this report, several measures are used to show the cost of a maintenance funding agreement to the individual: **annual rate of return**, **dollar cost** to the individual, and the **rate of return** to the MFP. The annual rate of return is required by statute. The other measures are included by the Division as part of its analysis and summary of the data.

An MFP is required to report the **annual rate of return** for funding agreements that were concluded during the reporting period. Many funding agreements were completed in less than a year, while some agreements were completed after two years or more. An **annual rate of return** is not a standard measurement that is used in the industry, the term is not defined in the MFPA.

The Division calculated the **annual rate of return** by subtracting the total funded amount from the total payments made by the individual to the MFP, then dividing that number by the total amount funded. The result was then divided by the number of days from start to finish of the agreement. That number was then multiplied by 365, then again by 100.

For example, if an MFP entered into an agreement with an individual in which the MFP provided $5,000 of funding, the agreement lasted for 160 days, and the MFP was paid $6,000 at the conclusion of the agreement, then (((($6,000-$5,000)/$5,000))/160)*365)*100=38.02% annual rate of return.[1]

The Division calculated the **dollar cost** to individuals that entered into an agreement with an MFP by subtracting the original amount borrowed from the total amount collected by the MFP. For example, if an individual borrowed $5,000 and returned $6,000, the dollar cost to the individual is $1,000 ($6,000-$5,000=$1,000).

The Division calculated the MFP's **rate of return** by dividing the total amount collected by the MFP by the amount that the individual borrowed. For example, if the individual borrowed $5,000 and the MFP collected $6,000, the **rate of return** is 120% (6,000/5,000=1.2).

The **annual rate of return**, **dollar cost**, and **rate of return** were not calculated for any agreements that are still in process because individuals do not pay back any money until the end of the agreement. These measures are the same measures used in the 2020 summary and analysis published by the Division.

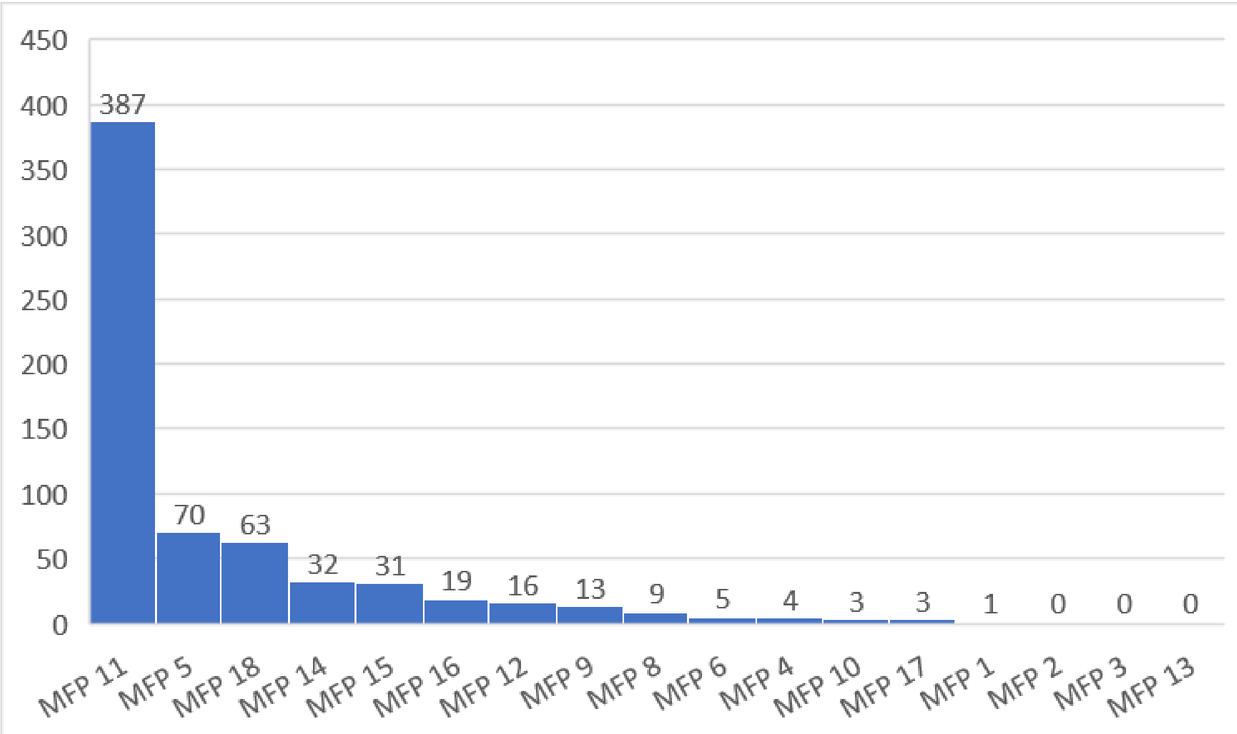
Summary and Analysis

For the reporting period beginning on January 1, 2021, and ending on December 31, 2021, 17 MFPs submitted reports to the Division. One MFP's agreements comprised nearly 60% of all reported funding

[15] Information regarding the MFPA can be found on the Division website at https://dcp.utah.gov/businesses/maintfund.html

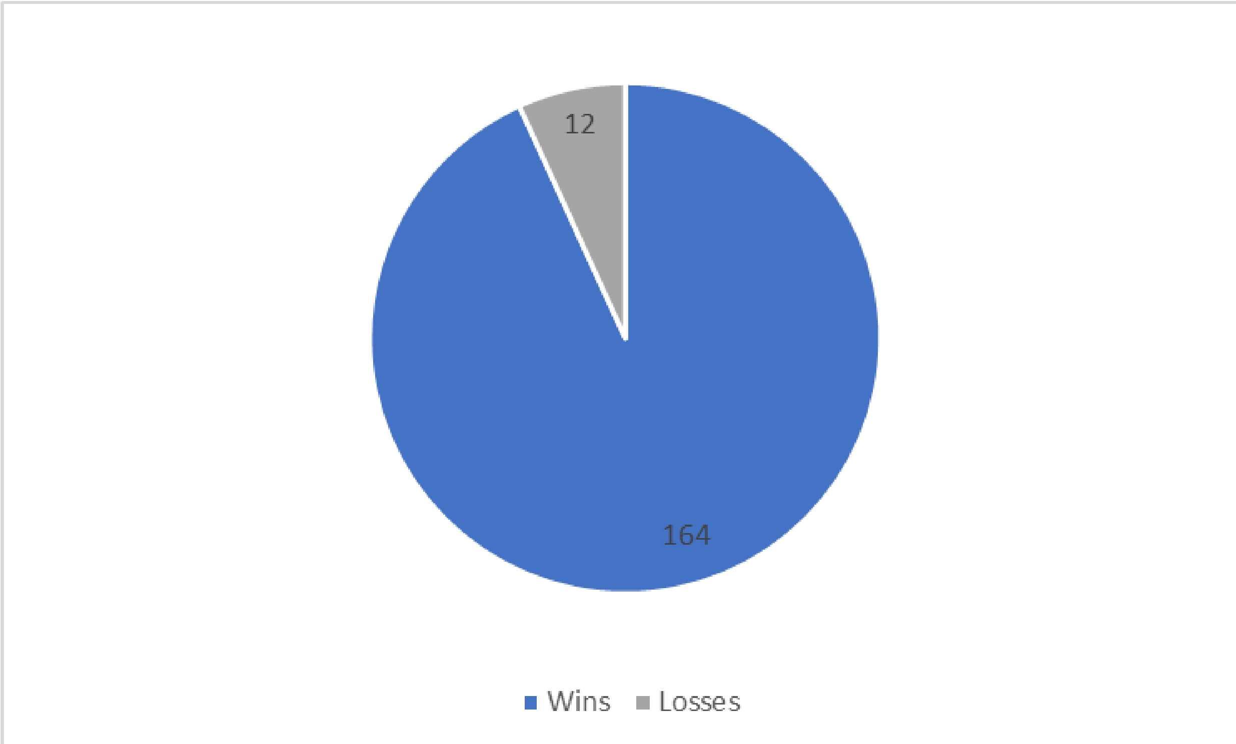
agreements, and the top three providers combined reported nearly 80% of all agreements. Three providers reported no funding agreements, and one provider reported only one in-process agreement. Figure 1 shows how many agreements each MFP had that were either in process or that concluded during 2021.

Figure 1



MFPs reported 176 concluded agreements with 124 agreements concluded "as contracted" and 52 agreements concluded as "less than contracted." MFPs also reported 480 in-process agreements, for a total of 656 agreements. As noted previously, an individual only pays back funding when the individual wins the case. MFPs chose winning lawsuits over 96% of the time, reporting only six agreements in which the MFP was paid back $0.00. In three other agreements, the individual won the case but the MFP received less back than it had provided to the individual. In three other cases, the individual won the case but the MFP received the same amount back as it provided to the individual and earned no profit. Taking into consideration all twelve cases in which an MFP lost money on the agreement or earned no money on the agreement, MFPs picked profitable cases about 93% of the time. Figure 2 shows how many wins and losses MFPs reported for cases that concluded in 2021. Cases in which the MFP earned no profit were counted as losses.

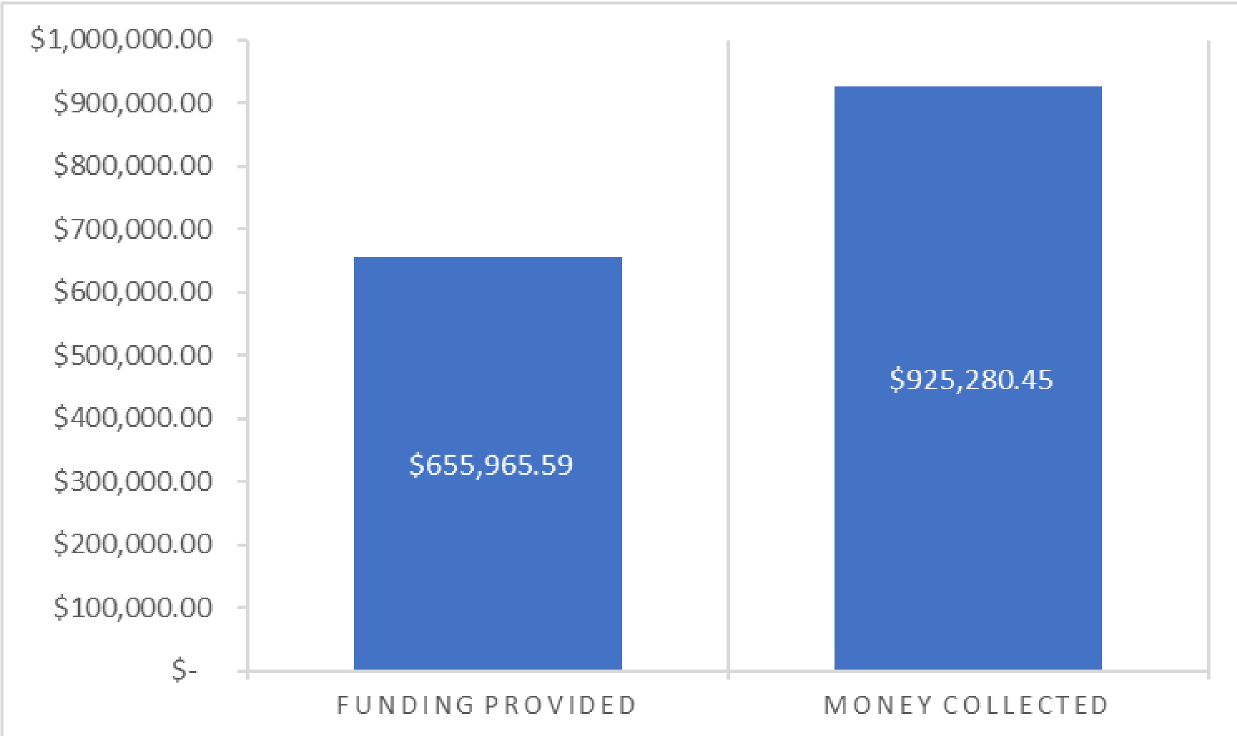
Figure 2



MFPs reported a total of $2,767,707.07 in funding agreements including completed and in-process agreements.[16] For agreements concluded in the 2021 reporting period, MFPs provided individuals with $655,965.59 in funding and collected $925,280.45 for an earning profit of $269,314.86. Figure 3 shows how much money was provided to individuals by MFPs, and how much money MFPs collected for agreements that concluded in 2021.

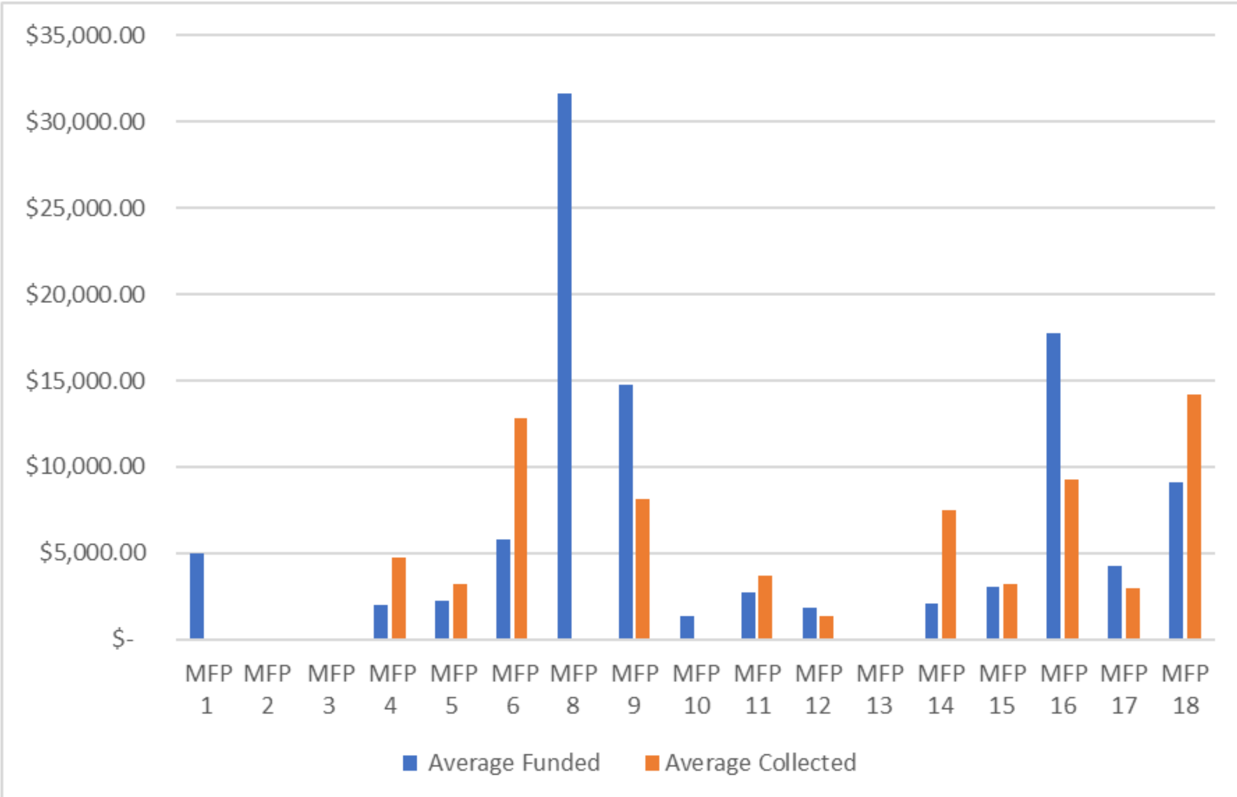
[16] Concluded agreements may have been entered into during prior years.

Figure 3



Funding for agreements concluded in 2021 ranged from $335 to $85,450, with a median funding amount of $2,000, and a mean of $3,727 for those agreements. Figure 4 shows the average amount of funding provided to and collected from individuals by each MFP for all agreements concluded or in process in 2021.

Figure 4[17]

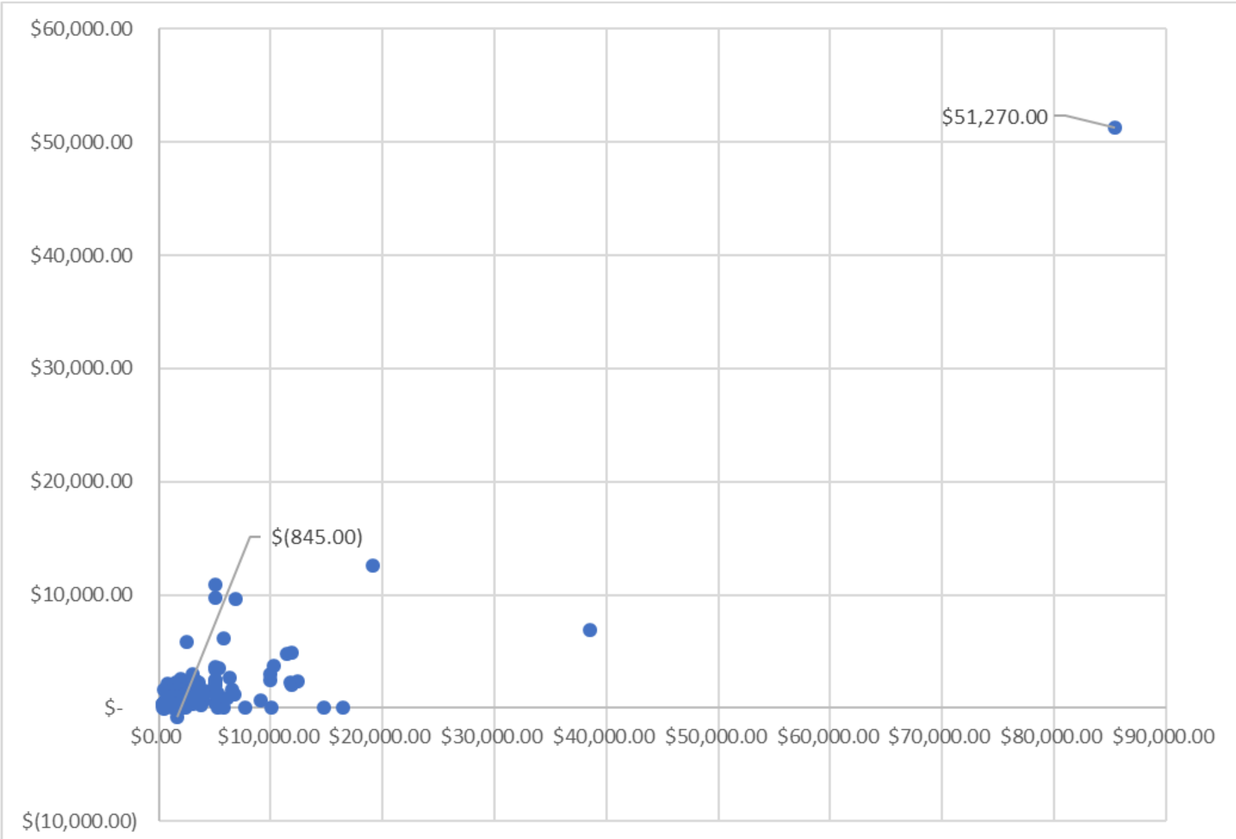


Agreements that concluded in 2021 lasted between 14 and 1,978 days, with a median of 246 days, and a mean of 354 days. The **annual rate of return** for concluded agreements that resulted in a win was between 6.45% and 797.24%, with a median of 59.05%, and a mean of 90.9%. Figure 4 shows all concluded agreements that resulted in a win, the **annual rate of return** for each agreement, and the MFP that provided the funding.

The **dollar cost** to individuals for those agreements that resulted in a win was between -$845 and $51,270, with a median cost of $993, and a mean cost of $2,476. The **rate of return** for those agreements was between 105% and 300%, with a median return of 137%, and a mean return of 153%. An agreement has a negative dollar cost when an individual pays the MFP less than the amount the MFP funded. For example, in the agreement highlighted in figure 5, the MFP provided $1,650 in funding, but received $805 as payment at the conclusion of the agreement.

[17] MFP 16 and 17 reported that they had no funding agreements in process or concluded for 2020.

Figure 5



MFPs entered into 405 new agreements in 2021 amounting to $1,270,423.95 in funding provided to individuals. The average amount funded was $3,192.02, and the median was $1,660. Sixty-eight of the agreements entered into in 2021 were also concluded in 2021, and MFPs collected $292,676.61 from those concluded agreements. The **annual rate of return** for those 68 agreements averaged 159.6%, and the median was 96%. The average **dollar cost** to individuals for those agreements was $860.38, and the median was $614. The **rate of return** averaged 129.8%, and the median was 129.7%. Agreements entered into and closed in 2021 averaged 129 days to conclusion, with a median of 121 days. One agreement resulted in a total loss, and two additional agreements paid back less than the funded amount.

1 $$\left(\frac{\dfrac{\text{Payments to MFP} - \text{Funded amount}}{\text{Funded amount}}}{\text{Number of days to conclusion of agreement}} \right) \times 365 \times 100$$