UNITED STATES OF AMERICA

FEDERAL TRADE COMMISSION

PUBLIC FORUM ON DEBT RELIEF AMENDMENTS

TO THE TELEMARKETING SALES RULE

WEDNESDAY, NOVEMBER 4, 2009

9:00 a.m.

FEDERAL TRADE COMMISSION

6TH AND PENNSYLVANIA AVENUE, N.W.

WASHINGTON, D.C.

I N D E X

P R O C E E D I N G S

- - - - -

MR. WINSTON: Good morning. We are going to get started now. I would like to welcome you to the Federal Trade Commission and today's public forum. My name is Joel Winston, I am the FTC's Associate Director for Financial Practices in the Bureau of Consumer Protection.

We're here this morning in this important room in this historic new era. I see one of our former commissioners here who spent time in this room, Andy Strenio. This is the Commissioners's room where they conduct formal business, for example deciding whether to bring lawsuit against someone who violated the law. And soon the Commission will be making a decision about the proposed rule that we'll be examining today, which would amend the Telemarketing Sales Rule to address practices by debt relief services.

I am delighted that we have here today a diverse group of stakeholders from the public and private sectors who will be discussing the key aspects of the proposed rule and the important consumer protection issues it addresses.

Needless to say, this forum could not be more timely. These are difficult times for many consumers.

Americans today are holding record levels of unsecured debt. In fact, some estimates place the average U.S. household's credit card debt as probably the largest source of consumer indebtedness at over $10,000 per person. More and more consumers are finding themselves in financial distress, struggling to pay their bills to stay afloat. It is in this environment that the for-profit debt relief industry has burgeoned.

While the Commission applauds efforts to educate and assist people who are struggling with their debt, too often, unscrupulous debt relief companies deceive consumers into paying large sums of money that they can ill afford to pay, only to get little or no results in managing or settling their debts.

The many cases brought by the FTC and state law enforcers are a catalog of fraud and abuse, including such practices as making false claims about the amount and timing of fees, making promises of successful results that never happened, misrepresenting refund policies, and failing to alert consumers about the negative consequences that can flow from these services -- for example, that consumers may accumulate late fees on their debt, adding to their debt load, and may damage their credit history.

These problems are exacerbated by one of the predominant fee models used by debt relief companies, large and nonrefundable upfront fees that are paid over the initial months of enrollment. Under these circumstances, what protections do consumers have against fraudsters who collect these fees then do not deliver? In many of our cases, debt relief firms took hundreds or thousands of dollars from consumers, without making any serious effort to help them pay off their debt. I don't know about you, but that sounds a lot like grand larceny to me. And these unlawful practices continue to plague this industry.

Last September, a little over a year ago, the FTC held a public workshop on debt settlement and other forms of debt relief. That workshop, which many of you here today attended, advanced our collective understanding of the issues that we face. Subsequently, in July of this year, the Commission announced its proposed rule for public comment. We received over 220 written comments by the October 26th deadline.

Today, we are providing another opportunity to share information and views to augment the record in this rulemaking. We will be focusing on the three pillars of the proposed rule: First, the ban on collecting advance fees; second, prohibitions on materially false claims; and third, six proposed mandatory disclosures that are designed to ensure that consumers understand the basic mechanics, fees and potential negative consequences of enrolling in a debt relief service.

Considering these remedies, there are a few overarching issues that we need to address. Does the proposed rule cover the right entities? Do the problems and their solutions vary depending on whether the service is debt settlement, debt negotiation or credit counseling? Do the proposed remedies establish the right incentives for providers to treat consumers fairly? Will the rule reduce deceptive and unfair practices in this industry? Are there other remedies the Commission should consider, either in addition to or in lieu of the three primary remedies? And finally, to what extent are there legitimate for-profit debt relief services, and what impact would the rule and the specific remedies we have proposed have on their ability to operate their businesses?

Now, with regard to that last point, we have sought for some time empirical data about this industry. Are the abuses we have encountered repeatedly in our law enforcement efforts pervasive and systematic, or are they simply bad apples in an otherwise functioning industry. In particular, we ask the debt settlement industry for evidence showing that there's a significant segment of that industry that provides valuable services to consumers commensurate with the fees that they charge.

We did receive some survey results during the comment period, but questions have been raised about its completeness, objectivity and probative value. We hope to discuss these studies in more depth today, and in the mean time we're seeking the underlying data to help us evaluate the studies.

I think at this point, it's fair to say that we do not feel that we have a definitive answer on this issue. The panelists assembled today represent a wide spectrum of stakeholders. They include: Advocates, state law enforcement officials, federal regulators, academics, nonprofit credit counselors and representatives of the for-profit debt relief service companies and industry groups.

We will be dividing the day into several panels, each corresponding to a significant component of the proposed rule. The two panels this morning will focus on the proposed advance fee ban, then we'll break for lunch. After lunch, we will discuss the proposed disclosures and prohibited misrepresentations in the rule. The final panel this afternoon will address the proposed definition of debt relief services.

Now, following the afternoon panels, which will come to a close around 4:15 or so, we will be holding an open mike session during which both audience members and panelists are free to participate.

Now for the ground rules for our discussion today. First, each panelist has a paper table tent, when you want to say something that responds to a question, please turn your table tent up, vertically, and we'll try to call on you. We do want to try to give everyone an opportunity to speak. So, please keep your remarks as focused and as concise as possible. I am going to try to call on each speaker by name so that the court reporter can attribute your remarks accurately.

Next, please speak only when called upon by the moderator, and don't interrupt others when they are speaking. One of the last sessions I attended that the Commission held on the debt collection industry in Chicago, within about 15 minutes, the panelists were all shouting at each other and speaking at the same time, at which point the court reporter got up and said I cannot possibly transcribe this, talk one at a time. So, please try to do that. And keep in mind that this forum is designed to be a respectful give-and-take discussion and not a platform for delivering speeches. The panel moderators will be gentle, but insistent in ensuring that the rules are followed and that the discussion is productive.

And now for the all-important housekeeping announcements. First, and most importantly, the bathrooms are located right outside the door here, to your left. Also keep in mind that if you leave the building you will need to pass through security again to re-enter. So, you need to allow time for that. We have slotted one hour for lunch, which is not a lot of time, so if you are leaving the building, make sure you allow enough time to get back in. In particular, we ask our participants in the first afternoon panel to be careful to budget their time when leaving the building because we do want to start that panel sharply at 1:30.

One time-saving lunchtime option is the FTC's Top of the Trade cafeteria, a famous place, it's located on the 7th floor of this building, take the elevators up. It's actually quite good. In case you don't want to go there, we have distributed a list of local establishments where you can find a bite to eat.

Finally, in the event of an emergency, in the event of fire or evacuation, the alarms will sound, and we ask you if you hear that alarm, you gather your personal belongings, if you have time, and you leave the building in an orderly fashion. Once outside the building, make your way across the street to the National Gallery of Art at the corner of 7th and Constitution and enter the National Gallery, that's our gathering point. If you like, you can go see the Rembrandts while you're there. When you get there, check in with Kara Redding when you get to the National Gallery. Kara, are you around? She's outside, we'll introduce her when she comes in.

In the event it's safer to remain inside, you will be advised where you should report while inside the building. There will be information and updates distributed by the public address system. And also if you do spot suspicious activity, please alert one of us or security staff.

Again, thank you for coming here today, we look forward to a robust and interesting discussion.

Let's move to our first panel and first topic of discussion: The Proposed Rule's Ban on the Collection of Advance Fees. Not surprisingly, this is the subject that drew the most public comment during the comment period by quite a wide margin.

To proponents of the advance fee ban, it is necessary to have this measure to protect consumers from deception and abuse in an industry that is ripe with those problems. To opponents, a ban would make it impossible for the many legitimate debt relief services to survive to the detriment of competition and consumers.

As I mentioned earlier, we will be discussing this issue in two separate segments this morning. The first panel will focus on the fundamental question of whether the Commission should impose an advance fee ban; is it necessary and what would be its impact on consumers and industry.

After our break, around 10:45, we will move to a discussion of implementation issues. If the Commission does decide to impose some type of ban on advance fees, how should it work?

PANEL 1: The Proposed Advance Fee Ban

MR. WINSTON: Now I would like to introduce our panelists. We are going in alphabetical order around this way. First is John Ansbach, the chairman of the Legislative Committee for the United States Organization For Bankruptcy Alternatives, USOBA, where he develops legislative and public policy for the debt settlement industry, working closely with federal and state regulators and legislators. John is a graduate of Texas A&M University and the University of Texas School of Law. Go 'horns.

Michael Bovee, who is next, is the founder of consumer recovery network, a company dedicated to educating and assisting consumers who are struggling with debt. Michael has been helping financially troubled consumers for the past 14 years.

Norman Googel is next, he is an Assistant Attorney General at the West Virginia Attorney General's Division of Consumer Protection, where he's been since 1995. Prior to coming to the AG's office, Norman was employed as a legal aid lawyer for nearly 15 years in two cities in West Virginia. While at the Consumer Recovery Network in the AG's office, Norm has worked on a number of matters, including unscrupulous debt relief schemes.

Mark Guimond, there you are. Mark Guimond is the executive director of the American Association of Debt Management Organizations, AADMO. AADMO is the largest trade association for the credit counseling and debt management industry. Mark has worked directly in advocacy for the credit counseling industry for the last 12 years. And prior to that, he served in the Washington, D.C. office of U.S. Senator Pete Wilson from California. Guimond, I am told, I am sorry, I got your name wrong. Mark Guimond.

MR. GUIMOND: That's okay.

MR. WINSTON: After graduating from the University of California at Berkley, he became a lobbyist in private practice. He notes in his bio that his favorite legislative victory was the repeal of the 55 mile per hour maximum national speed limit.

MR. GUIMOND: Go 'horns.

MR. WINSTON: Gail Hillebrand, an old friend, is a senior attorney at the West Coast office of Consumers Union where she manages the credit and finance advocacy team and leads Consumers Union's financial services campaign. Her issues at Consumers Union include banking, consumer credit, payments, identity theft, the Community Reinvestment Act, arbitration reform, electronic commerce, consumer legal rights and remedies, and the UCC revision process. You must be very busy.

Andrew Housser cofounded Freedom Debt Relief, and its parent company, Freedom Financial Network, in 2002. Previously, Andrew worked in the financial services industry. Andrew received his MBA from Stanford Business School, and bachelor's from Dartmouth College. He is here on behalf of The Association of Settlement Companies, or TASC.

Bob Hunt is an assistant vice president of the Federal Reserve Bank of Philadelphia. He became director of the bank's payment card center in 2009. Prior to this appointment, he was a senior economist in the bank's research department. Bob's published research includes studies of the dynamics of the consumer credit reporting industry, credit counseling organizations, the collection industry, and others. Before joining the bank in 1998, Bob worked for the U.S. Congressional Budget Office, which is a very busy place these days. Bob received a Ph.D. in economics from the University of Pennsylvania and a bachelor's in political science and economics from Butler University.

Jim Keiser is speaking today on behalf of the National Association of Consumer Credit Administrators, which is an association of state financial regulators. Jim started as a field examiner in the consumer credit bureau of the Pennsylvania Department of Banking in 1982, and he's currently an administrator for nondepository institutions for the department, and spends most of his time on policy development.

Jane McNamara is president and chief executive officer of GreenPath, Inc. GreenPath is a national not-for-profit organization that provides consumers with counseling and education on financial literacy topics. Before assuming the CEO responsibilities, Jane served as the chief operating officer of GreenPath. She's a graduate of Michigan State University, my home state, but not my home school. She earned her bachelor's degree in consumer services, at Michigan State, her master's in family economics and management, with a specialty in family financial counseling. She currently serves on the board of the National Foundation For Credit Counseling, where she is the chair of the finance and audit committee.

Jean Noonan, we all know very well, spent many days in this room. Jean is a partner at the Washington, D.C. office of Hudson Cook. Prior to joining Hudson Cook, she was employed by Lovells, another law firm, served as general counsel of the Farm Credit Administration, and worked at the Federal Trade Commission for many years in numerous positions, including basically being my predecessor as the Associate Director for Credit Practices in the Bureau of Consumer Protection. Jean is a graduate of Oklahoma State University and the University of Texas Law School.

Johnson Tyler, down at the end, has worked at South Brooklyn Legal Services since 1989. His interest in debt settlement began in 2006, when a client of his of limited means lost $1,400 to a debt settlement company that California had already sanctioned. He has litigated consumer cases under the FDCPA, New York's Deceptive Acts Law and other statutes. He is a graduate of Yale College and CUNY Law School, City University of New York.

Derek Witte, Professor Witte teaches contracts and commercial law at the Thomas M. Cooley Law School in Grand Rapids, Michigan. Professor Witte also provides in-house legal services to Credit Solutions of America, a leader in the debt settlement industry. Before joining Cooley Law School, Professor Witte was a litigator at Jenner & Block in Chicago and then in Grand Rapids.

Wesley Young, general counsel of American Debt Exchange and sits on the executive board of TASC, where he serves as the legislative director and he plans, drafts, lobbies and testifies regarding legislation affecting the industry. From 1996 to 2006, he was a senior associate with the law firm Baron & Budd in its asbestos litigation group. He is admitted to practice by the state bar of Texas, and received his bachelor's from Baylor University in 1992, and his law degree from Baylor Law School in 1995.

So, as you can see, we have a very distinguished group, and knowledgeable group of speakers. And now I would like to get the discussion started.

So, we're talking about advance fees, and kind of a fundamental question I have is how widespread is the practice of charging large advance fees? And what are the fee models used within the industry and does it vary with the type of service, debt relief, debt settlement, debt negotiation, credit counseling? Do the fee models vary depending on the type of organization?

Who wants to start us off with sort of a general discussion about how advance fees are prevalent in the industry?

Gail?

MS. HILLEBRAND: Thank you, good morning, I appreciate the opportunity to be here and appreciate what the Commission is doing in this area.

I am going to speak to the fee models that we have seen, or observed, in the debt settlement arena and some of the other fee models and other forms of debt relief.

There is a form of advance fee -- I cannot tell you how prevalent they are statistically, but I can tell you how prevalent they are in terms of what the industry has been seeking in state legislatures, both in states where debt settlement is already illegal and in states that have not spoken.

There is a fee model that's being actively promoted by the industry, adopted in a couple of states, stalled out in a couple more, last year, where there is a set-up fee, Dr. Breisch says two to four percent, but the bills I have seen in the state laws are four percent and use of a model six percent, due on signing, but commonly spread out over the first -- commonly spread out, not required by law, but spread out over the first three months of the savings, and then deducted directly from the savings -- the savings pool -- fees are going -- payments are going in, and fees are coming out during the first three months.

So, two to four percent, Dr. Breisch's study says, but the USOBA model would allow that to be six percent, and there are a couple of models that authorize a four percent upfront, purely upfront fee, but there is an additional form of advance fee in the debt settlement within this model, and that is an acceleration of the remaining fees on a percentage of debt basis. Dr. Breisch's study says 14 to 18 percent, we have seen state laws at 17, 18 and 20 percent.

And this is an advance fee. The industry calls it pay-as-you-go, but it's pay-as-you-go even if you don't get there, and it's pay-as-you-go in full over the first half of the contract, and these laws commonly have an additional provision that permits further acceleration beyond that first half if there are offers on half of the accounts.

So, if a consumer comes in owing a couple of small credit cards and one big one, and they get offers on the two small accounts, that would, under this fee model, allow further acceleration of the entire percentage fee on the original debt.

That's a form of advance fee, even though it is not fully in advance, it is certainly well in advance of results. I am going to pause there, except I do want to say that I think that the advance fee model corresponds to more than the bad apples. There are two different problems we see in debt settlement. One is the sort of traditional bad apple, take the money and run, no services are provided, no benefit, but the other is the signing up of people who cannot benefit, either because they cannot save enough, or because the savings are immediately drained by this front-loaded fee structure, or because their creditors simply won't deal with debt settlement. And that's a deeper problem that also can be addressed by the advance fee ban.

MR. WINSTON: Andrew Housser?

MR. HOUSSER: So, I can only speak for the TASC members that I represent, but based on my experience, the vast majority of companies spread fees out over a period of time, typically 18 to 24 months. And that is consistent with the work that's being done. It is not in advance of the work that's being done.

To give an example, our company typically doesn't take the first fee until after about a month to six weeks of work has already been done and vested in the company.

So, this allows the consumers to pay as they go, and it allows the debt settlement companies to earn fees for the work they are doing. I am not aware of a single company that has ever made a fully contingent fee model work, and the reason for that is simple: There is a lot of work to do in this business. It is a complicated business. It sounds really easy in theory, like losing weight is easy, burn more calories than you consume, debt settlement is easy, just settle debt for 50 cents on the dollar.

It is really hard to execute. It takes a lot of people, we have over 500 employees, TASC members have over 10,000 employees. And it takes a lot of processes, investment, technology and infrastructure, and no company has made the contingency fee model work because you cannot make it work, you cannot get consumers through the program and settle debts if you cannot do the work, and you need to get paid to do the work.

MR. WINSTON: Jean Noonan?

MS. NOONAN: Well, we just disagree that the model does not work. Accord is an organization of companies that are dedicated to making the model work. And we have members who are making the model work.

I say we have to agree with Gail's comments about the concern about these state laws, and setting -- regulating fees based on the amount of the debt as opposed to the services that are performed. Consumers sign up for debt settlement services because they want their debts settled. Performance is settling the debt. Performance is not marketing, budgeting, or anything else that happens before the debt is settled.

To be effective, the Commission needs to do two things, two provisions in this rule to make it effective, and I think we can probably all agree around this table on one objective, and that is that we do not want consumers to be worse off from signing up with the debt settlement company than they were had they not signed up.

Those of us in the industry are here committed to helping consumers get out of debt, and to do so as efficiently, as effectively as possible. That's what the debt settlement business strives for. To do it effectively, we have to not take fees until the debt is paid. That's number one. Number two, the amount of our fees should be proportionate to the amount of the consumer's savings. Anything else can leave the consumer worse off than before they contacted the debt settlement company.

MR. WINSTON: Jean, if I could follow up on that, are you aware of firms that operate without charging significant advance fees?

MS. NOONAN: Yes.

MR. WINSTON: And how do they finance their operations?

MS. NOONAN: Organizations have to be well capitalized. This is not a business that is well served by poorly capitalized, in-it-for-the-moment or fly-by-night companies. You know, some businesses work fine that way, easy entry in, easy entry out. We saw a lot of those problems with the mortgage brokerage business in the last couple of years. It is an expensive business to operate properly.

I agree with the comment that you have a lot of employees, you have a big investment in infrastructure and technology. It is a business that requires a big capital investment. And like a lot of businesses that require that, you have to have the capital to be in it in order to begin working for consumers and accept your fees after the creditors are paid.

MR. WINSTON: Yeah, and I want to give everyone a chance, I see there are a lot of people who want to talk, but if I could ask everyone to focus specifically on this issue of can a legitimate debt relief business function without charging an advance fee, or do they need a certain amount of money up front before they can provide their services?

So, let's turn to Wesley.

MR. YOUNG: Well, Jean was mentioning in her comments, it's an expensive business to run. Absolutely, it is. Our members have looked at the staffing of a couple of these decent sized credit counseling company and debt settlement company and the number of staff that a debt settlement company hires to manage its clients is one staff person for every 85 clients, approximately. For credit counseling, the numbers approached one staff person for every thousand clients.

So, there's a significant amount of resources that must be spent on employees and all the things that come with employees, benefits, health insurance, 401(k)s and things like that. So, it's a very expensive business to run, and the companies need the fees to provide the ongoing services to get to where you want to be. I mean, I think our paper, our TASC paper shows that we provide significant benefits to the consumers, but in order to get to that point, that's a lot of work.

MR. WINSTON: Wesley, if I could just follow up on that, to what extent are these costs that you refer to that need to be paid through the advance fees are costs that go correctly to the service being provided versus marketing and client generation?

MR. YOUNG: Very approximately, the costs in marketing were approximated between 15 and 25 percent of the total cost. I think that was in Nationwide Support Services paper.

MR. WINSTON: And there's empirical data that shows that or is this an estimate?

MR. YOUNG: It was a study done by themselves.

MR. WINSTON: Okay.

MR. YOUNG: On their own costs.

MR. WINSTON: Okay. Michael Bovee?

MR. BOVEE: To my knowledge, there's about three or four, and now perhaps another one through public commentary, leading up to today, that provide full settlement services without charging any kind of fee. We're kind of a hybrid, and when we started out, before we became Consumer Recovery Network, we were DCA, and for 18 months, we charged no fee, absolutely none, zero, and it was not a success. And we had some costs outlaid, we sent books out, education, that's our format, is consumer education, and we ran multi-six figures in uncollected fees, as a result.

No, we did not use escrow funds, so that was kind of a -- a handicap for being able to access those fees as settlements were done, but we launched further into our consumer educational focus and became Consumer Recovery Network and we have immense success working in the fashion that we do providing education, encouraging consumers to do as much if not all of the settlements on their own, and thereby charging no "contingent fees" for direct settlement services.

When we do perform those services, we do charge a fee, and it's based on success after the creditor is funded, and often times there's terms associated with the offers made by banks and their assignees. As a result of that, sometimes it's six months, 90 days from the actual settlement, and the final funding of it split into three payments.

Before we would realize a fee, and then often times, again, we find that the next offer is on the table, and if our goal is to get the consumer out of debt as quickly as possible and avoid litigation and all of the knock-on effects of aggressive collection tactics, we do not collect our fees, as that would further lose the strategy and the focus being getting the consumer out of debt. We forego the fee to the degree we have got a couple of clients right now that are done, they've graduated from our program, they've settled, sometimes as much as $150,000 worth of debt all the way down to $15,000 worth of debt. We never collected the contingency fee and now we're on a payment plan with them.

So, that's our goal, and we stay focused, but I can tell you this, we would not be able to get there were it not for our education and our focus on providing unmatched education, focusing consumers' attention on their ability to settle, and it is that cost outlay, it is that funding, that membership arrangement, that helps us break even in states where we cannot charge a contingency fee.

We do not make a profit, per se, but we do deliver full settlement services, just at cost, for all intents and purposes. And my position on this is it would be next to impossible to deliver the degree of adequate services that a consumer, every measure of stress and emotion from collection calls, from family, from anything can upset the apple cart. We can get three phone calls in a day, we can get three phone calls in a week, and then some consumers we work with are sophisticated enough that we hear from them once every two months. So, it's a mix of everything in between and it's the consumers that need the most attention that deserve the best attention and it should not be somebody who is just answering phones and has little to no background or history in working with consumers.

That's an expensive cost. And finding advocates that populate the specialists that work with our members, needle in a haystack, finding people that are motivated to help people and not profit, but they still have bills to pay.

So, my position is while there are a couple of companies, and I would suggest that Consumer Recovery Network is one of them, although something of a hybrid, it's -- it would be next to impossible to defer or defray those costs, waiting up until five months before the first settlement is available.

A lot of the public commentary that's been submitted up to today suggests that there's no way a company can survive for two or three years. I do not think that was the recommendation. I read it to say, I believe it was phrased so that at each time each settlement is done, you can fund yourself. That's doable, for a well capitalized company, because we're talking five months. That's all we're talking before you reach that first settlement. So, the consumer success.

And then one other thing is most of my concern, leading up to last year, even, and my criticism to the industry is the sales process. It's the high commissions. I am not -- 25 percent for sales driven would be perhaps applicable to a company who does no outside referrals, does their own advertising, runs their own ads, radio, television, newspaper, but for companies that are taking referrals from outside sales companies, which we tried to do, last year, and it was an abysmal failure, those companies wouldn't get it from us, but prior to working with us, they were referring to Hess Kennedy, and receiving much larger than 25 percent finders fee, or commission. We were a pitstop, and then they went on to Allegro.

So, these outside sales companies are going to look for the dollar, they're going to look for the high commissions. The internal companies in this industry that are doing good work that manage and control their own sales team typically, you do not find problems and a massive amount of complaints with those companies.

MR. WINSTON: Thanks. Derek Witte, if you could focus on the question of capitalization, and what I am not clear about is what makes this industry different from lots of industries where you do not pay until the services are fully provided? If I go into my doctor's office and have a procedure done, I do not pay up front, I pay when it's done, and obviously there are a lot of industries where that's the case. Why can't that be the case for this industry?

MR. WITTE: Well, I do not think it's that simple, but we do agree with you that you should pay for what you get as you get it. Where we disagree is that it's our position Credit Solutions and other members of industry understand that that's what we're doing and what we advocate. We start working for the consumers on the first day.

One of the things that we could share with the FTC in our submission is the number of offers that we get for our customers, and the data set was all of the people in the past three years who were customers of CSA. And in the first month, we are able to get 56 percent of the people one offer and 28 percent of the people five or more offers, just in the first month. And I think everyone can agree that's pretty remarkable and sort of stands against what was in the NPRM that no work is being done at the beginning.

So, we're doing work for the beginning advocating with the credit card companies. We're also fielding these calls, and I agree with Michael, part of our function is hand-holding, and I think the TASC paper said that, too. We cannot stop the creditor calls, we cannot. But we do field the calls with people who are well trained, through a series of certifications, to provide the other support on a day-to-day basis for the people who are going through this, and so these are the things that are part of our performance.

It's not the end result, it's not the goal, but that is what we're saying you need to pay for as you go. And my concern is, and Credit Solutions' concern is, if we are asked to have a fee model that only allows us to be compensated upon settlement, that is not what's best for protecting consumers.

Not only do we know, according to the TASC survey, or I am sorry, the USOBA survey, that 84 percent of their members who responded to that believed they would go out of business, if they had to have that fee model, but we see an even bigger problem. I do not know that we could stay in, because what would happen is the consumers who stay in longer, and who do not cancel, and we can talk about many of the very legitimate reasons to cancel, would end up subsidizing the fees for the people who take those day-to-day services from day one, who we field their calls, we call the credit card companies on their behalf, we invest in resources to protect them, but then we cannot collect from them, so who pays?

And, so, what we would see, it is not a capitalization problem, it is that the consumer is not best served because the fees would go up. And what I think is remarkable, although I agree with Jean that in a perfect world, we could have this system, we're not in a perfect world, people will cancel, and the end result is the consumers who stay in longer, settle more accounts, save the way they should, foot the bill.

If you look at the FCS paper that we were instructed to look at as one of the exemplars to prepare for today, there is something missing. How high are their fees? Our fees do not exceed 15 percent. And, frankly, we are working to be more and more efficient, and I hope we can do better than that. But the only way to be the best independent consumer advocate and protect all our consumers is to have a pay-as-you-go system where everyone we are investing in resources pays for what they are getting.

MR. WINSTON: Thank you. Bob Hunt?

MR. HUNT: I always have to start with the disclaimer, these are my views, not those of the Federal Reserve Bank or the Federal Reserve System. Just an interesting observation. We have really been talking about working capital in this industry, and in any industry, there are a variety of sources of working capital. We can have a long conversation about the flow of work that gets you to a settlement, and then the settlement, but as I listen to this, I think about doing a home improvement project, at the end of the day, I want that thing finished and I backload my contract with my builder so that that happens. But my builder also needs working capital as well.

The difference is that I am not a credit and liquidity constrained consumer where I am essentially loaning my funds at an opportunity cost of 25 to 30 percent a year. And, so, we have to ask ourselves whether the way that we are funding these activities are being funded from the lowest cost provider of those funds. I think that that should be part of that conversation.

MR. WINSTON: Mark Guimond?

MR. GUIMOND: I think I need to throw in a little different twist, too, on the credit counseling model versus just the debt settlement model. Credit counseling on the front-end fees is highly regulated by the states, and if you see a large advance fee for credit counseling, it's an anomaly, it's not -- it's usually not -- it would not be a licensed or registered entity, it's just something that's out there that's a bad apple.

One of the interesting things in credit counseling is credit counseling does receive continuous ongoing monthly funding. There is a nominal start-up fee but continuous funding that goes on throughout the preparation of a DMP. So, an advance fee is not necessarily required.

One of the things I would like to note is I think the impact of the advance fee ban on the for-profit debt settlement industry will be very bad. I think it's going to put most of the industry out of business, and I am hoping that the Commission's intent is not to fill this void with nonprofit credit counseling, because I am going to quote Jean, I cannot see Jean down there, but hi, as she said, the debt settlement is expensive to operate, has a big capital investment and is investment heavy, and if the Commission desires to throw this business or this block of consumers over to the nonprofit tax-exempt world, I do not know how those particular statements from Jean are going to be met by these nonprofit charitable entities.

So, I am hoping that the consequence of this, that is not an unintended consequence in that the nonprofit world is not going to be able to fill that void.

MR. WINSTON: John Ansbach, if I can ask you, to the extent that the fees are front loaded, and you have somebody who is dropping out of the program after three months, five months, seven months, and have paid in quite a lot of the fee, do you think it's appropriate, fair to the consumer that they forfeit all that money? Do you think that the services that are being performed for that person who has dropped out before any settlement has taken place, are those fees that they have paid commensurate with the services that have been performed?

MR. ANSBACH: Frankly, it's an excellent question, and to understand the answer to the question, you have to get to what services are being provided. And with all due respect to Jean down there on the end, I have not worked at the FTC before, but I have worked at a debt settlement company, and maybe I am not the best source on this issue, but if you asked 700 employees who do this work every day, 75 percent of whom, unlike the people at this table, are on the front lines talking to consumers, at least once a day, if you asked them what they do, what is the service that they provide, in fact what is the primary service that they provide, you look at the survey results, and they will tell you, 65 percent of those people said that the primary service was something other than the settlement of the debts.

All due respect, Jean, you saying that performance is the only -- performance is settling the debt, nothing else is performance, people that do this work for a living will tell you that it is financial literacy and education, it is how to deal with creditor harassment or threats, it is hand-holding and emotional support. Coincidentally, is hand-holding and emotional support something valuable? Forty-seven percent of the people that responded to this survey said that suicide was mentioned in the debt settlement process in terms of dealing with harassing creditors. Hand-holding, emotional support, program coaching, budgeting support.

To understand what is charged in this model, you must understand the service that's being provided. And 65 percent of people that do this for a living will tell you it's not settling debt, that is not the primary service. It is all of the things that have happened before you ever get to that first settlement. And Michael's comment was that that was about five months in with Michael's program, our data in the folks that I have talked to, it seems to indicate it's closer to 12 months.

So, the question becomes this, because you have a number of questions here in the last 25 minutes on this issue, but you do ask, you said, can a legitimate debt relief option provider function without advance fees? And if you account for all of the things that these people do, that these companies do to help consumers during this time period, the answer by 84 percent of our members is no. In fact, 84 percent of our members will tell you that if this -- you call it an advance fee ban, if this passes, they will fail. And 95 percent of them will not only fail, but 95 percent said they would lay people off.

So, if you're looking to understand the impact of an "advance fee ban," and you asked are large advance fees charged, the vast majority of our members operate under the half life of the program, which, Gail, you said it was promoted by the industry, you failed to mention it's not the industry's bill, the UDMSA is not the industry's bill. We back the UDMSA. It is promoted by NCCUSL, the Uniform Law Commission.

So, this concept that you can operate a business for a year or more without revenue, I do not have a Ph.D. in economics, but that seems entirely implausible to me. And you might be able to do it like Jean's client, you may be able to do it if you do not provide any services, but how does that possibly help the consumer, to have a limited service provider fill this space? That absolutely cannot be the case, it cannot be the Commission's intent with this rule.

MR. WINSTON: Let me just ask you, and I apologize if I missed this, you refer to this survey where 65 percent said that the primary service they received was something other than --

MR. ANSBACH: Settlement of the debt.

MR. WINSTON: -- settlement of the debt. This is a survey of who?

MR. ANSBACH: At the time that we took the numbers, and there have been more since then, but 700 employees of debt settlement companies who help consumers every day. These are the people who do this work for a living.

MR. WINSTON: But this is not a survey of the consumers themselves, right?

MR. ANSBACH: It's the people who help the consumers.

MR. WINSTON: Are you aware of any surveys of what consumers actually perceive to be the services that they're receiving?

MR. ANSBACH: Actually, the best evidence, I think to this point, and certainly with this group, would be consumer testimonials that have been received, which if I have read all of them correctly, run about 40 to 1 in support of the services that are being provided to those consumers.

MR. WINSTON: Johnson Tyler?

MR. TYLER: Yeah, I have a response. People go to debt settlement companies because they're desperate. They're not looking for hand-holding, they're looking for a solution to their problem. The fact that all of the capital that -- the expenses that the debt settlement industry needs is due to hand-holding.

Well, hand-holding doesn't get them anywhere. They need results. And the eight clients that I have helped, if you look at the fee structure and how it strips the escrow account, they always end up with less money. Whether they're in there for five months, whether they're in there for 24 months. And the fee structure is such that whatever time you look at it, they're paying $500 a month, if they're paying $600 a month, if they're paying $300 a month, the majority of that monthly payment is going to fees, and they do not end up with anything.

The question is how can you make this business model work? Well, we need to learn how to screen people who could benefit from it, and that's where the problem is with the debt settlement fee structure. It promotes people, it promotes businesses to take all comers.

I have a client who is on SSI. SSI is a need-based program, it's a welfare program. You have no assets. You cannot have more than $2,000 in assets to qualify for it. It pays $700 a month. She had $30,000 in credit card debt. How is she possibly going to get a debt settlement? That person should never have been signed up for debt settlement. To the extent that that would become a loss to the company, well, the company, the reason they're taking that client is because the fees allow them to make a profit off of it. If they're going to provide a service, they need to screen clients who would benefit from it. And frankly, I've never run across someone who could benefit from it. Anyone who could benefit from a debt settlement company could benefit from a traditional debt negotiation company. Because they just do not have enough money. They do not have enough money to create that mass that's going to enable them to settle debts.

One last point I want to make is the idea that you get offers that you're providing value. I just do not think it's true. I had a client who got three offers. She had no money in the escrow account. She had no money to pay the offer. The offer was for $4,000 on a $10,000 debt. How is she going to come up with $4,000? She didn't have any escrowed money. So that a lot of the empirical evidence that goes towards trying to show the value that's received, I think is a losing proposition.

MR. WINSTON: I just want to remind everybody to please speak into the microphone, otherwise it's not picked up on the web cast. I am sure you all want to be heard. So, it sounds like we have a difference of opinion. Surprisingly.

(Laughter.)

MR. WINSTON: On this basic question of what services are being provided and whether they are commensurate in some sense with the fees that are being paid up front. But that's useful to know.

Let's try Jean McNamara, could you comment?

MS. McNAMARA: Thank you. I want to give you a perspective from the not-for-profit credit counseling world. Under IRS 501(q), we are not able to charge a client fee because of a consumer's inability to pay that fee, or because of their unwillingness to participate in a debt management program.

When a consumer comes to us, we do an assessment of their situation, we review what their income is, what their expenses are, and what possible solutions are for them. We spend about an hour doing that. We prepare a specialized budget for them. They are given an action plan, and it is up to them whether or not they want to establish a debt management program, if that's appropriate.

In Michigan, for example, we are unable to charge the client a fee until we have 51 percent of the creditors who agree with the program and 51 percent dollar amount of the debt that is owed. Our fees are highly regulated, and the maximum fee that we charge on a monthly basis, and this is common within members of the National Foundation for Credit Counseling, the maximum fee we charge is $50. We charge a nominal set-up fee, but again, those fees, we cannot take from the consumer until we actually have cooperation from the creditors.

We have approximately one employee, one and a half, to every 200 clients that we work with. They take ongoing calls from those consumers, they teach them how to budget, they work with their creditors and they disburse money to those creditors.

The consumer has a right to cancel the agreement they have with us at any point in time, and they are not charged any more fees. We do not get fees based on what work we may do in the future. So, it's on a month-to-month basis.

MR. WINSTON: Thank you, that's very interesting. And I would ask people to focus on this issue as well: Is there a difference between the amount of work that is necessary to be performed by a credit counseling outfit versus a debt settlement outfit, such that the debt settlement outfit needs these large advance fees to fund operations, but apparently the credit counselors do not. So, what is the difference, I guess? Let's try somebody who hasn't spoken yet. Norman, Norman Googel?

MR. GOOGEL: I am afraid I've had my mind focused on the preceding topic, but I -- what I want to address and what I observed here today and have observed over the years is that there is a basic tension between the fact that the debt settlement industry, and I guess to an extent the nonprofit credit counseling industry, also, is trying to find a way to make a living, and in some cases, make gigantic profits from a group of consumers who are so upside down in debt that it looks like up to them.

Now, how can you do that? Obviously, although some debt settlement companies have come and gone, many have been highly, highly profitable. They are spending lots of money on lobbying, on marketing. Where is this money coming from? It is coming from the people who are least able to afford it.

And in order to make that happen, you have got to do things that are not serving the consumers. And I think the mission of the regulatory agencies, including the Federal Trade Commission, is to protect consumers, not to protect the industry.

Now, there's no intent to be unfair to the industry, but what has happened is the way things have gone now, with the advance fees, it is basically shifting the entire risk of a very risky approach to helping people with debts to the consumers. And that has not worked well for the consumers.

And no doubt, many debt settlement companies do settle accounts, generally not all of them, not as much as they should, and certainly, not as much -- not something that justifies not only the high fees that are charged, but the fact that the fees are charged in advance. And the focus should not be on -- in looking at advance fees, it shouldn't be about, well, if we cannot charge advance fees, then we won't -- then the industry will not be able to survive.

Well, maybe that is true. If that is true, then maybe you have to question the legitimacy of the industry, or just question the entire approach.

If there is validity to the concept of telling consumers to stop paying your debts, and there is legitimacy to that, and I have advised people to stop paying their debts over the last 30 years, because they didn't have any money left, and they were paying credit card debts and letting their house payments go. So, I have advised them of that as a lawyer. But when I do that as a lawyer, I have evaluated all their circumstances and in some circumstances, I say, well, if you get sued on this claim, you are on your own, because you do not have any defenses.

But on the other hand, if you get sued on this other claim, I am going to defend it, or maybe file counterclaims based upon abusive debt collection practices. But in the debt settlement industry, consumers are not getting that.

And I do just want to make one brief comment about hand-holding, and I agreed with the gentleman down there, that hand-holding is not what the people want, but I will say that those consumers who have sought hand-holding, in our experience, once the debt settlement companies have gotten their fees and the energy and focus has been on signing people up and getting the fees, later on when they might need some hand-holding, consumers have complained that they cannot reach anybody. So, they call us. We do the hand-holding. Or they contact legal aid lawyers and they do the hand-holding. I do not see the hand-holding going on.

So, we certainly do not accept the idea that large expenses are justified for hand-holding or other types of activities. Basically the service, the concept of debt settlement could really be done as a lean, mean, fighting machine, and it's not necessary to spend tons of money on marketing or lobbying, just do the job that people need, and maybe you will not get rich doing it, but you can have a viable business without exploiting the consumers who have the least money.

You cannot finance this industry on the backs of people who are totally drowning in debt. There has to be a better way to do it, and the risk has to be borne by the company, and if it doesn't have the capital or competency to bear the risk, then they should not be in the business.

MR. WINSTON: Thank you. And if I could just take a moment, I neglected to introduce the staff from the FTC who have put this proposed rule together, and is going to be making a recommendation on a final rule. On my left is Allison Brown, and my right Evan Zullow. Behind me, we have Keith Anderson from our Bureau of Economics, Katie Harrington McBride and Stephanie Rosenthal. So, these are the folks who you can either thank, or blame.

(Laughter.)

MR. WINSTON: Andrew Housser, could you address this issue about the difference between credit counseling where apparently the services they perform do not require a big upfront payments on debt settlement?

MR. HOUSSER: Obviously I am here representing our industry, so I am going to have strong feelings about this. But I think it's important to recognize that a lot of our critics have their self interest in mind and actually have a lot to benefit by having our industry removed from the competitive landscape. In particular the nonprofit credit counselors. It's a service that is valuable to a certain segment of the population, the same way that debt settlement is, but debt settlement is fundamentally a much more labor intensive business than credit counseling. It's just a fact.

Credit counseling is primarily an automated bill-paying service set up up front by the credit counselor with pre-arranged agreements with the credit card companies to lower interest rates. Again, a valuable service for consumers who can afford a DMP, which is significantly more expensive and longer than a debt settlement program.

Debt settlement is not a pre-arranged agreement. It is negotiation. And it is hand-holding. Everybody who says hand-holding is not valuable. Sure, the outcome is not hand-holding, but you cannot get to the outcome if you do not hold their hands. You cannot. Consumers cannot. They need you to marshal them through the program. And that hand-holding and that negotiation is, as Wesley mentioned, over ten times as labor intensive based on our survey of credit counseling companies and debt settlement companies.

And a lot of the criticism, I think if you think about it, the financial crisis we're in, one valuable lesson is if you use bad data and you use bad analysis, you're going to make a bad decision. And I think every criticism that we have heard today is bad data and bad analysis. We are looking at a couple of enforcement actions that are not representative of our industry. We are looking at eight anecdotes, which, not to minimize those, every one of those is serious and they need to be addressed, but those are eight anecdotes. We have the data.

TASC is on track to settle a billion dollars of debt this year. Call me provincial, but I think even by Washington, D.C. standards, that is a lot of money. A billion dollars. 200,000 accounts TASC members are going to settle for consumers.

So, look at the real data. And why bad analysis? Because we're looking at every study that I have looked at that quotes a graduation rate of one percent, you're looking at a consumer population that's been enrolled for a year, six months, two years. How can you graduate from a three-year program if you've only been enrolled one year? It's pretty -- it doesn't take a Ph.D. to figure that out.

So, what did we do at TASC? We looked at, okay, it takes three years on average to graduate, let's look at a pool of consumers that signed agreements three or more years ago.

MR. WINSTON: Not to cut you off, but we're going to address that a little bit later. I do want to hear from Jane McNamara about this specific issue of credit counseling versus debt settlement, and what the differences are in terms of up-front expenses.

MS. McNAMARA: There are many similarities, and we are not opposed to a debt settlement type product, by any means. In fact, a task force was put together with the Association of Independent Credit Counseling Agencies, as well as National Foundation For Credit Counseling organizations, and the large credit card grantors, to actually create a less than full balance product that would be acceptable to not only the financial institutions, but the regulators as well. Chase right now is in the process of piloting such a program with credit counseling organizations.

We spend a tremendous amount of time, ten to 15 hours, establishing a debt management program for an individual. It is not a bill-paying service, because there are ongoing reviews with that consumer with regard to their situation, are they following their home budget. We're also teaching them to manage money so that they do not get into trouble in the future. Many similarities, no doubt.

MR. WINSTON: Let me move to a related topic. I know everyone wants to weigh in on this issue, but I am mindful of the time. Obviously, there has been a lot of debate about the prevalence of unfair, deceptive and abusive conduct in the debt relief industry, and whether there's at least a substantial part of the industry that is providing valuable services to consumers commensurate with what they charge.

In the comment period, we received at least two studies that bear on this, the studies from TASC, and the study from a Professor Breisch, I believe. What do people think about these studies on the prevalence of deceptive or unfair conduct? Are they methodologically sound, do they provide us with any answers to this question? Should we be relying on these studies?

Let's start with Mark.

MR. GUIMOND: I have a little different twist on it. There was a study, we did a FOIA request of the FTC consumer complaints that were conducted against debt relief agencies in the 2008-2009 period, and taking the 2008 data, there were 7,308 complaints filed by consumers against debt relief agencies. We found that over half the complaints within that data pool were against creditors themselves.

So, I think if you're looking at the consumer complaint data, it needs to be matched up with the industry data as well, in order to put that out as an observation, we did file comments, our Excel file on the data analysis did not load, I've spoken with counsel and they will be providing that later on to everyone, and if you look at the complaints within the FTC, for the unfair deceptive trade practices that are alleged, I mean, you have 464 complaints that have no designation at all as to company name or problem. Unable to make an identification to a company name, there's a hundred HSBC, a creditor, has 1,036 complaints out of 7,308.

So, I think if we are looking at numbers and statistics, I would like everybody to review that in comparison to industry data as well to find whether those problems were with not only the debt settlement folks, but with the credit counseling, because I do not think it's as big as you're seeing.

MR. WINSTON: Let me just give a little more detail on this. As I read the TASC study, which was characterized by the author of the study as preliminary, and I think at this point we do not yet have the sort of underlying methodology, but what it found was that 34 percent of the clients of these companies substantially completed their plans or were still saving, meaning 66 percent dropped out.

Over 70 percent of the debts enrolled in the programs that were still active had been settled, but again, this did not account for dropouts. That the aggregate debt reduction in settlements was twice what the fees were. So, that was a benefit.

Again, what can we draw from this study?

Gail?

MS. HILLEBRAND: I would like to comment on the TASC study, and also note, Dr. Weinstein's paper, which was not data heavy, did have a point that was surprising to me, on page 6, this is the USOBA study, he talks about the sign-up process and contracting process occurring first, and the consumer being told, after signing the contract, what the monthly payment would be. And that's a piece of evidence I had not seen before.

Dr. Breisch's study is very upfront about the limits of data. One company surveyed, there's no information about the fee structure for that company, but he documented a 60 percent cancellation rate for that company with a median cancellation time of five to six months. Consumers dropping out fairly soon after the time period at which they would have paid a pretty substantial set-up fee under the prevalent so-called flat, but truly advance, fee model in the industry.

And then Dr. Breisch is pretty clear that he doesn't tell us what happened to all of the other 40 percent. Instead he tells us what happened to the portion of that other 40 percent who received either offers or settlements. But we do not know if that was 10 percent of that 40 percent, one out of four or two out of four or some other number.

But the TASC study has some very interesting numbers on what happened to the people who dropped out, that I think is helpful to look at, and then I want to comment on the point you raised about the 25 percent.

TASC says that $101.5 million in debt was settled, and those were from people who still had at least 25 percent of their debt left. And then it says that those folks paid $55.6 million in fees.

MR. HOUSSER: That's all people that dropped out, regardless of how much debt they had left?

MS. HILLEBRAND: Right, these are people who dropped out, they had some debt settled, $105 million, and they paid $55 million in fees. If we add into that the amount that those consumers must have paid in the settlements, we get at the TASC rate, which is on the next page of 45, they say 45 percent for that same year, 2008, those consumers would have paid $47.295 million, $47.3 million.

So, these consumers who had $105 million in debt settled would have paid $47.3 million for the settlements themselves and $55.6 million in fees, in other words their total fiscal obligation on dropping out would have been $102.9 million on settled debt of $105 million. In other words, they saved two cents on the dollar.

So, to say people dropped out and got benefit, without looking at the combination of the fees paid, the amount paid in settlement, and that doesn't even account for the amount by which the remaining unsettled debt remains owed and has grown, I think is methodologically flawed. And I thought that was a valuable and useful piece of information about what happens to people who drop out. And that is new information.

There are, of course, other dropout numbers, the Colorado Attorney General number, certainly for people who signed up in '08, some of those signed up recently, some of those since they were ongoing customers in '08, probably reflected a larger group of people. They found less than one percent of -- it's a snapshot, it's not a history of the customer relationship. Less than one percent of consumers in debt settlement of the annual reports in Colorado had all of their debts settled in '08. Now, some of those signed up last month, some have been on for three years or longer, but one percent is not a good indication that we are going to get there for 100 percent of customers.

And finally I would note on the TASC report, that 34 percent that they cite as completed or active, almost 10 percent of those 9.8 percent were still active, and that TASC sample was only people who had been in debt counseling for at least three years.

So, after three years, the TASC numbers show us that almost 10 percent were still trying to get rid of all their debt, that almost 25 percent had completed under a definition of getting rid of between 75 and 100 percent of their debt. After three years, only a quarter of the customers had gotten what we think people sign up for debt relief for, which is to get out of debt, to get rid of their debt, to start over. Certainly when things are advertised as an alternative to other methods of starting over, the implication is created. I found those numbers a little shocking, even though we do not know a lot about the methodology and we will talk about that later, but that suggests to me that consumers are not getting what they expected to get, if only 25 percent are even getting close.

MR. WINSTON: Thank you. Wesley Young?

MR. YOUNG: Yeah, and I will address Gail's comments directly, but I think there is a glaring hole in our prior discussion about credit counseling versus debt settlement and that is that we do not receive a fair share from the creditors. And I understand that the fee, they are saying that it's not what the consumer is paying, but that fair share is taken out of the consumer's payment to the -- and given to the provider. And if you follow Johnson's comments about financial motivation, I mean, the credit counseling in a sense has a motivation to make that monthly payment as large as possible, because they receive a percentage of that payment. So, I wanted to point that out.

Addressing Gail's comments on the TASC data, one thing that I think -- it's hard to compare the benefits of -- which I think are significant for debt settlement, the benefits of debt settlement and the benefits of other debt relief options, because with debt settlement, I think what's left out of the equation often is the fact that consumers normally pay interest, in any other debt relief option that they have. Whether it be making minimum payments, or going through the credit counseling route, where they pay between 13 and 16 percent interest per annum, on the payback of their debt.

The terminated clients, the numbers that Gail used, if two years after I enroll in a program, and I have settled all my debt, but I paid what I owed, when I enrolled, and I have not incurred basically any interest. That's still a big consumer benefit.

So, I think that you need to look at the debt settlement benefits in light of the fact that a lot of times interest is excluded.

With Colorado, those numbers, obviously, I think it's a problem with a lot of the data that you see out there, including, I think, data that the FTC has relied on, in that the pool of consumers looked at have not really been given an opportunity to complete the program. And that's why TASC's pool, and this goes somewhat to the methodology, only includes people who have been in for three years. And I think that actually puts our data at a disadvantage, because I think if you look at, for instance, the settlement rates, the settlement rates have been going down. We have been able to save our consumers more money as we have been going.

So, the complication that a consumer who enrolls today is more likely to succeed through the program because we have been improving in our services than a consumer that enrolled three years ago. But to look at the limited pool of consumers who have had a fair chance to actually do something by enrolling in the debt settlement program, that's why we limit it to the three-year pool, to people who have been enrolled for three years.

And of the 10 percent of people that are still active, I do not think it's fair to exclude them, because of those 10 percent, they have settled 70 percent of their debt, so they are well on their way to moving on towards succeeding in the program.

Out of the 35 percent of folks that have completed the program, our data shows that that's for consumers who settled 75 percent or more of their debt, but 80 percent of those folks actually settled 100 percent of their debt. So that this percentage of people who didn't get to the hundred percent point is pretty small.

And then, I understand Gail's comment about the percentage, that this 35 percent is a low completion number, but it is not when you look at the debt relief industry as a whole. When you look at Chapter 13 bankruptcy, the U. S. Trustee's office reported that they have a 33 percent completion rate. The NFCC has reported that nonprofit credit counseling has between a 21 to 26 percent completion rate.

So, when you compare the debt settlement numbers to those other options that consumers have, the debt settlement numbers look really good.

MR. WINSTON: Let's hear from the economist, Bob Hunt?

MR. HUNT: Getting back to this question about the value of debt settlement relative to the alternatives that the consumer has available, I'll throw out one thing and just move on. One of the things that the consumer has to think about is what does their credit score look like depending on which choice they make, and assuming they're successful at that choice, whether it's completing the settlement or completing a debt management plan, and those outcomes are different, but let's set that aside for later.

The sort of background assumption is, in fact, we're talking about consumers that are not able to pay on original terms, they do not have that cash flow, and they're quite likely not to be able to pay a debt management plan, and this may be where the debt settlement product fits in.

And, so, if that's the target population, then what I would suggest is if we focus on the cash flow that the consumer has to have, in the roughly three-year period that these settlements work, to understand what we're asking them to be able to produce, and then compare that to what the first three years of a debt management plan could look like. For example, set aside the later years, because if we're right, they cannot support a DMP, that debt is gone anyway. It's not really relevant.

So, if you take the kind of numbers that are in the record and you just do some algebra, and I am assuming here that the debt settlement fee is about 14 percent of the original principal, for example, what you find is that take the sum of the payments that a consumer would make over 36 months, on a debt management plan, an ordinary debt management plan, that's going to be about the same amount of money as a debt settlement plan, if the haircut is about 40 percent on the original principal. If the haircut is larger, then maybe the consumer in total is doing better in terms of paying a little bit less over those 36 months, okay?

Now, in the first 18 months, they might actually be paying more, because with the tendency to front load the payments, the DMP payment will be a little bit lower than will those first four to 18 months, and then afterwards, it sort of reverses, and so that's the sort of sweet spot to be thinking about where these products would fit.

Now, we do not have less than a full balance plan, but if we did, roughly speaking the algebra would say that these two products would have about the same cash flow requirement on the consumer over 36 months if the haircut on a debt settlement plan was about 75 percent.

So, those two numbers that I described, 40 percent and 75 percent, are a good way to think about it, and of course there are settlement numbers in the record that suggest that at least some people are getting that. But that is the way that I see how these things line up, in terms of the sort of immediate problem the consumer has, which is very limited cash flow, and having to make choices about how they are going to pay their debts.

MR. WINSTON: A couple of questions for the industry members, and let me know if you can answer these. What is the membership number for TASC and what percentage of the industry is TASC members comprising? And the TASC study, who can talk more about the methodology of that study?

Andrew?

MR. HOUSSER: So, TASC represents 200 members. We believe that we represent about 25 percent of the debt settlement industry. The methodology, I am going to try to call a truce with Gail. This one percent graduation rate in one year, I'll commit to getting you guys all the data you want, if you'll commit to stop using that terrible analogy. It just doesn't make sense.

A consumer in a three-year program is not going to graduate in one year. We have heard it, it makes a great headline, but it's not at all based in any reality.

So, we are going to get you the data. The data was, because of this fundamental problem we have been having, we have had a bad PR bomb with this one percent number thrown around incorrectly is we said let's look at the three-year pool. Let's look at every consumer, and we got TASC companies that represented 75 percent of our consumers to participate in the study. We tried to get the eight -- we tried to go after the largest TASC members which represented 80 percent and we got responses from enough companies to represent 75 percent of all TASC members.

Every consumer that signed an agreement and made a payment three or more years ago, regardless of whether the consumer dropped out after one month, two months, three months, four months, went on to completion or is still active today. The whole pool.

And then we looked at what debts were settled for those consumers, and what fees did they pay. And across that pool, $444 million in debt were settled and

$126 million in fees were paid.

And, Gail and I have a difference of opinion on the terminated pool. I think it's actually pretty interesting that the people that were least successful in our program still got debt settled well in excess to their fees and debt reduction two cents more than their fees, whatever it was. That is a significant point that I think is very interesting. The people that were least successful got a benefit from that program. The people that were very successful got a huge benefit. Multiples, four times -- three, four times their fees in debt settlement and debt reduced.

MR. WINSTON: These were self-reported data, right? Coming from --

MR. HOUSSER: Self reported, the data was reported from the TASC member companies to an accounting firm who then blinded the data and sent it to me and then I did the analysis on it.

MR. WINSTON: Let me move to something a little bit different, and that is the question of whether the advance fee prohibition is necessary to protect consumers from the deception and abuse that occurs in some part of this industry. Are there other remedies that would be as effective or do we really need an advance fee ban?

Derek?

MR. WITTE: I think it's not that simple, because I think we are having a definitional problem here, and hope we don't have at the end of the day. In your opening remarks, Assistant Director, you said, well, the fact came in with the thought that the predominant model, I think your words were, was a large upfront, mostly nonrefundable fee, and we sort of heard that refrain.

When I read the notice of proposed rulemaking, there was a description of basically three fee models: One largely upfront the first three months; one what we say is more like what the industry follows, which is a pay-as-you-go or half of the debt settlement program; and the other would be a truly back end.

So, and just so everyone here knows, Credit Solutions has gone to an even pay, where we have our fees as contemplated by the UDMSA, they are not front-loaded, they are even every month, and so I don't want to throw every fee model into this jargon of advance fee ban.

And also, you are not going to get any argument from me, and I think from several members of the industry, that a front-loaded fee is bad. And as I read the NPRM, all the horror stories in there, and there weren't too many, but we are talking about this super front-loaded fee. We agree, and we can agree, that a true advance fee ban, a true advance fee ban, we would support.

What I am concerned with is the case that has been laid out says here is our argument and here is our syllogism or why we only need to allow fees upon settlement, but all of the supporting data is against that truly front-loaded fee.

So, getting finally back to your answer, like an attorney takes three minutes to get there, I think that the right solution may be a true advance fee ban, and then everything else is solved with the mandatory disclosures that prohibit misrepresentations. We agree. If you get people in the program who don't know what they are buying, problems abound. And we really want to be your partner and the other regulators' partner to make sure the people who are contracting with us to get the service know what they are getting, because that is where the problem arises. Preventing us from being compensated fairly for what we actually provide does not fix that misunderstanding, and it does not fix the problems that come from it.

MR. WINSTON: What do people think about this idea of instead of banning all fees before settlement, that we focus on this large advance fee, which I think I said it was one of the predominant fee models in the industry.

MR. WITTE: Sorry.

MR. WINSTON: That's okay. But allow the collection of some fees during the course of the program?

James Keiser?

MR. KEISER: In a perfect world where consumers sign up for a program and follow it to completion, I don't know that the advance fee would be a problem, because they pay fees, they get what they want. I think one problem might be is too many people might be getting into programs that aren't appropriate for them that they cannot afford, and that's where you hear the horror stories. I paid a lot of money and nothing was done, nothing was done because the consumer dropped out of the program. This might be a function of screening on the part of the industries, and I am not familiar enough with the debt settlement industry to say that or not, but I would just toss that out as a suggestion.

I think the industry is saying we need money to do what we do, to do the hand-holding, to help the consumer. I think some type of nominal operating fee might be far preferable to having a very large up-front fee, which I understand is one of the models today.

MR. WINSTON: What do others think of this idea? Michael Bovee?

MR. BOVEE: My comments that I submitted leading up to today allowing for what was just referenced, a nominal fee to defray operational costs on a daily basis, monthly basis, commensurate with your actual client load, the amount of consumers that you are serving, $50 a month, it also tracks very well with debt management plan providers, and with our business model, at Consumer Recovery Network, that's sufficient to allow us to do everything that we do, the education, the focus on the consumer getting as much, if not all of the settlements done on their own, so there is no contingency fee or any additional fees. We can support that.

The high up-front fee in the model that's being referred to as this three-month loaded, six-month loaded, that's my criticism with the years of that abuse, in my opinion, where you are setting up the consumer for failure, because they can get some very dynamic deals with their creditors quick, very quick, what I have referred to as five months. That has been our model for years, and we have been extremely successful with it.

So, barring that, and we are a more enrollment fee, and I am not talking about a $50 maintenance fee anymore, but more of a several hundred dollar enrollment fee, that should be if it were contemplated fully refundable, and maybe that fully refundable period is somewhere between 90 days and six months.

If you are doing a good service, if you are controlling your suitability requirements for enrollment with the members that you bring on board, you have got a committed person from jump street, you are hopefully providing materials that maintain that commitment and you are hopefully providing customer service that has that person stick with you.

Look, if they made a bad decision and they got somebody that's money grabbing and fee grabbing with nominal fees like that, they have just like, I think it was Breisch that put forward the cell phone company and the jumping around to different places with a monthly nominal $50 service fee, so to speak, and even contemplating a couple of hundred dollar enrollment fee. You've got somebody who if they feel their needs are not being met, they will be able to jump onto a competitor, and that is the original company's fault for not servicing, and/or if they made false representation.

MR. WINSTON: I would like to get other views on this, and to focus it specifically on the issue of creating the right incentives. If one of these firms is able to take all of this payment up front, what incentive do they have to actually settle the debts?

So, Jean?

MS. NOONAN: I guess I should start by saying that it is always dangerous when a lawyer tries to talk like an economist. But the great thing about the advance fee prohibition, and I am talking about complete advance fee prohibition, is that it perfectly aligns the company's interest with the consumer's interest. And you can accomplish that without trying to figure -- I mean, I cannot imagine the Federal Trade Commission getting into the price-setting business for the debt settlement industry. Some of the states have done that. I think it's a terrible mistake. It just is not what the Commission typically does.

What you can do with the advance fee ban is perfectly align the company's interests and the consumer's interests. If we don't get paid until the creditor gets paid, that gives me the maximum incentive to first pick the best customers. Don't pick the SSI person who can never hope to pay. Don't pick the person who wants to hold back three credit cards so they could continue living their life as they were before, because the creditors will see that, and they will not want to make a deal with them. Pick the consumers for whom this program is the most appropriate, and it is someone between bankruptcy and full repayment on a debt management plan.

So, no one is happy with the 65 percent dropout rate, although I certainly agree with Wesley that debt settlement compares very favorably to the alternatives of bankruptcy and nonprofit consumer credit counseling. But it would be better still if people who were not suitable were not in there.

Now, some of the dropouts occurred not because the consumers were not suitable, but because the consumers, for whatever reason, did not have the ability to continue, even though they looked like they might have when they began. Maybe more disasters befell them, maybe they are just too financially undisciplined to be helped. Who knows. Probably all of those things happened to some extent.

But what you have here is with a simple rule that says, no fees until the creditor is paid, then you have the company working as hard as it can to get the creditor paid. And I agree with John, that a very important part of our business is hand-holding. I don't think that consumers hire us to be hand-holders. They may hire their therapists or their best friends or something else to be the hand-holders, but they hire us to get their debts settled. We may have to hold their hands in the process of doing that, but that's not the end product that they are looking for. The end product that they are looking for is a good outcome with their creditors in becoming debt free.

MR. WINSTON: John?

MR. ANSBACH: Just on the last point, I could not agree more with what you said and I am hopeful that Norman, you will get a chance to read this stat in consumer testimonials, which were submitted by people who have not experienced settlements yet. I don't want to get into an it's all about hand-holding, it's all about hand-holding, but when you send a cease and desist letter to a creditor that's harassing, and everyone at this table knows that the number one complaint that the FTC has received is about collection efforts, so let's try and focus on what we are trying to do for consumers.

The incentives question is a really important question, and I am actually reading Super Freakonomics, which is all about economic incentive, and I won't veer off course with that, but we have thought a lot about this question and it's an important one. And actually, we disagree on this issue.

If the creditor gets paid when the consumer's advocate gets paid, then what you have essentially done with this ban, to the consumer's detriment, is you have aligned the advocate, the debt settlement provider or the credit counseling provider with the creditor. And we know that this is the case.

And here is what happens, and by the way, as a former contingent fee lawyer, I am very familiar with this model, because I had defense lawyers starving me to death to try and get me to do things that were adverse to my client's interest. That's exactly where this heads.

The creditors, as soon as the creditor knows that the consumer's advocate, and by the way, debt settlement firms are the only truly independent advocates, we do not get paid by creditors, okay, and that's incredibly important, I am glad Wesley pointed that out.

But what happens is as soon as the creditor finds out that the advocate, the debt settlement provider, will not get paid or compensated in any way, until, or even nominally, by the way, until there is settlement, then the incentive for the creditor is to hold out and the incentive for the creditor is to offer smaller settlements, because then the advocate, to survive, is incentivized to take whatever it can and go back to its client and say, well, I know it's not great, but it's a pretty good deal. Because they are now trying to survive. What you have essentially done is you have aligned the creditor with the advocate.

A couple of other points I really do want to make and I know -- I really respect your tough job here because you have a lot of voices on a lot of issues, but I wanted to say a couple of things that I thought were really incredibly important on this stuff.

Bob mentioned about focusing on the cash flow, and it certainly is one place that you could focus on. But it seems to us -- and by the way, we represent 200 members as well. It seems to us that why not focus on the reason that consumers are not successful in these programs? Our survey indicates, again, from the people that do the work, 40 percent of the people who aren't completing these programs are harassed out by creditors.

And Dr. Breisch addresses this in his study as well, and I know it may not be a popular topic with the ABA, but bankruptcy has protection precisely for this reason. If you can protect consumers while they are working a bankruptcy program, or in this case, a debt settlement program, in some respect, as Breisch points out that if you have ten creditors who are in a program, and nine of them are willing to participate in a debt settlement program, but one of them does not, the one can literally harass the program into failure.

So, why would we not want to look at some protection for people that are actively working a debt settlement program?

Just a couple of last things, and I know there are, like I said, a lot of people who want to talk on this point. I really did want to point out, and Wesley mentioned it, but if NFCC's members are willing to not take any money from creditors during DMPs, we'll absolutely find a way to work on our programs, too, for free. It is equally unrealistic. You mentioned it, and I have to bring this up. You said apparently large advance fees are only needed by debt settlement companies. Nothing could be farther from the truth. They, the nonprofit folks, are getting paid by consumers and fair share payments up front, as the lingo is being used here.

We are not asking for anything different. We are asking to fund our operation so we can provide the service. It is a critical, important distinction, and it is in the Colorado, it actually taints the Colorado report as well. If you take a snapshot and look at the Colorado report, it says money paid by consumers and it compares the average fees, but it does not indicate how much was received from the creditor during the program. Both providers are getting paid. I find it hard to believe that anybody at this table is saying that providers should be able to operate for free for any period of time.

MR. WINSTON: John, I have been reading that the creditors are getting very reluctant to provide fair share payments these days. So, can you give an estimate of how frequently the fair share payments are received and in what range are they?

MR. ANSBACH: Yeah, and I would certainly defer to Jane on that, but I can tell you that in terms of creditor behavior, what we have seen, and I suspect that Andrew would tell you the same, Wesley would tell you the same, I suspect Mark will as well, that in these current times, with the economic conditions being what they are, the primary need for financial institutions is liquidity. And I won't name -- I will not name the creditor here, I think it would be inappropriate to do so. I will say that it has been one that has been alleged won't work with debt settlement companies, but I will tell you that one of our largest members had a financial institution call up and say, we would like to scrub our financial data against yours and offered 25 cents on the dollar. There is tremendous effort and incentive, which is appropriate, on creditors to seek out liquidity when it is to their advantage and they are doing so. And if you are a creditor, this makes sense.

If I push these folks into bankruptcy, I am going to get five cents on the dollar. If, however, I offer 25 or 35 cents on the dollar, I have extremely mitigated my loss and I come out in a much better place. And the reality is, and certainly the focus of this public forum is, customers ultimately will benefit. And again, and I hate to keep bringing it up, but we asked consumers to participate in this process, and 209 consumers and citizens indicated, and they took it on their own volition to write in, and 98 percent of them said, please don't take away debt settlement as an option, it is helping us and we are settling our debts.

Gail was using a lot of great aggregate numbers, and I like to think those are -- I like aggregate numbers, because when I added up a number of the data that were submitted from CSA and TASC and some of our members, it appears that almost $3 billion in debt has been resolved by these providers. That's half a million accounts.

MR. WINSTON: Yeah, we are running short on time and I wanted to nail this down with Jane. What is the status of fair share payments these days?

MS. McNAMARA: Well, with all due respect, IRS code 501(q) provides limitations on the revenue that we can actually receive from creditors. Contributions from creditors are voluntary. They are far from mandated. And fair share is minimal. Most of the large credit card issuers have gone to a granting process. We do not know what their basis is for granting funds to organizations. And, frankly, the smaller organizations, smaller agencies, within the NFCC, are struggling, because the revenue is down dramatically.

We are also restricted under IRS code 501(q), we cannot refuse to make payments to a creditor on behalf of a consumer, because we don't get a contribution from them. Those contributions are voluntary, but we are restricted as to what percentage of our revenue can actually come from creditor contributions.

MS. NOONAN: What is that percentage?

MS. McNAMARA: It's on a sliding scale. The 501(q) was passed in August of 2006, part of the Pension Reform Act. The first year, no more than 80 percent of your revenue could come from creditors, the second year it was 70, it went down to 60, and ultimately the ceiling is going to be no more than 50 percent of your revenue can come from creditors.

Anecdotally, in the case of GreenPath, less than 20 percent of our revenue comes from creditor contributions or grants.

MR. WINSTON: We have got just a couple of minutes left, and at the risk of running over, I wanted to just go around the entire panel and just, in a very short concise statement, tell me what you think the FTC should do about advance payments.

Start with John.

MR. ANSBACH: Can I go last?

MR. WINSTON: You can go last. Go that way.

Wesley?

MR. YOUNG: We really think that this is a state issue. We think that the uniform law provides significant other protections that would minimize the need to really exclusively regulate the industry with the fee.

MR. WINSTON: Derek?

MR. WITTE: Well, I just go back to actually Assistant Attorney General Googel, frankly, we need a lean, mean, fighting machine that's truly independent on behalf of the consumer advocate. Advocating on behalf of the consumer. That's what we are trying to do. We want to do so meaningfully, but we cannot do it in a way that burdens customers who cancel early for legitimate reasons and drives fees up. So, we would advocate a true advance fee ban, but not something that puts everything onto the back end.

MR. WINSTON: Okay. Johnson?

MR. TYLER: We support a fee ban up front. The attorney generals of each state speak for the citizens, they have brought many actions against TASC and USOBA members. They cite 127 actions that are either litigation settlements or investigations of 127. Forty of them involve TASC or USOBA people.

So, the idea that the industry can police itself and that they have a benign and helpful view of helping these clients, I think is belied by all of the attorney general actions.

MR. WINSTON: This may be useless to say, but if you feel like there's a middle ground here, something between a total ban on advance fees before settlement and no ban whatsoever, we would be interested in hearing about that.

Jean?

MS. NOONAN: We have thought about that, Joel, and the problem that we come into is that it starts getting into very prescriptive regulation. That is why we like the simplicity of the simple plan, where there is no fee until the creditor is paid. And that is kind of an important point, because -- and I disagree that it aligns our interests with the creditor rather than with the consumer, because the other important corollary there is that the amount of our fee is proportionate to the amount of our savings. So, therefore, we have the greatest incentive to get the debts settled on the very best terms for consumers, because we share in their savings.

If the best we can do is 80 percent of the debt, well then our fee is very small. We will lose money on that settlement. But that's okay. On average, we would do fine.

MR. WINSTON: Jane?

MS. McNAMARA: Large advance fees for the consumer are a problem, and I have examples of case studies of clients, individuals that have come to GreenPath where they have been harmed by large advance fees. We are not opposed to service fees. You have to have revenue. No money, no mission. But it needs to be fair and equitable for the consumer.

MR. WINSTON: James?

MR. KEISER: Some states might regulate that there are some advance fees, but there should definitely not be advance fees before some type of substantial performance is done.

MR. WINSTON: Bob?

MR. HUNT: We have had some discussion about the importance of having some screening on suitability. This came up also in the credit counseling experience about ten years ago when there was a concern that not everybody was doing the screening that they should do for selecting the DMPs.

One of the solutions that at least some of the creditors came up with was this idea of having graduated fair share. In other words, for the first couple of months of fair share, the payment was a certain level, if the consumer was performing well, the fair share payments would actually get a bit bigger. And it was an -- the idea there was trying to better align the incentives so that you got people performing on the plans. And, so, that's something to think about.

MR. WINSTON: Andrew?

MR. HOUSSER: I think the FTC staffers working on the rule should defer their salaries until the rule comes out. No, I'm just kidding.

I think that would create weird incentives for this rule, which needs to be well thought out, the same way I think an advance fee ban would create weird incentives that John created, or mentioned, with respect to our negotiations with creditors.

I do think disclosures need to be improved. I do agree with Wesley that the state regulators can provide, and are providing, we need to get NCCUSL into more states. And I do think one of the things that was mentioned was that any firm that does provide guaranteed settlements in their marketing, if you're guaranteeing settlements, then the service that you are providing is the guaranteed settlement, absolutely, those companies should have their fees mandated.

MR. WINSTON: Thank you. Gail?

MS. HILLEBRAND: Thank you. It would be no surprise that we would like to see the rule adopted as proposed. Tying the fee to the result of debt reduction is the way to align the incentive in the marketplace. It also fundamentally changes what is a bad lead in a way that ought to cause folks who are paying for those leads to either screen the customer more carefully or screen the lead generators and their promises more carefully, which is an important additional side effect value.

It would be a terrible waste here to artificially divide the universe into pure upfront fees and call those the only form of advance fees. The payoff of half the contract is an advance fee. The consumer is paying fees well in advance of settling all their debts, and those consumers are paying quite a bit more than the Uniform Debt Management Services Act.

Under the Colorado, 18 percent, and Dr. Breisch's $24,000 average debt, that consumer is going to pay $224 a month in months four through 18. Under the USOBA, they pay the $10 -- or excuse me, under the Uniform Loan Act, they would pay only $10 per creditor after a $400 set-up fee.

So, it's just fundamentally not true that that's the theme commonly being done in the states. But let's not pretend a flat fee is not an advance fee. It is, particularly when it's accelerated. Thank you.

MR. WINSTON: Mark?

MR. GUIMOND: To the first part of the question, do we need an advance fee ban, speaking just for credit counseling specifically, I don't think it needs to be included in the proposed amendment. Credit counseling, for-profit and nonprofit, which the Commission is not going to regulate the nonprofit side. For-profit credit counseling is highly regulated by almost every state, and so I don't think the credit counseling needs to be included in the general parameters.

To the second part of the question, is there an alternative, I think the Commission should look to things that are working. I think the Uniform Act provides very good regulatory structure for the states, but I have actually taken the time and studied their system for debt management plans and I will discuss this in disclosures this afternoon, but I think it would be beneficial for people to familiarize themselves with systems that work in the UK, this is a regulated activity and they seem to do it well, and if anybody wants me to go back to London to study that, I would volunteer gladly.

MR. WINSTON: Norm?

MR. GOOGEL: The regulatory actions that were referred to here and that are attached to the letter filed by the 41 states, these are all driven by complaints. The states don't have the resources to go out and chase the debt relief industry or any other industry, so we deal with what comes in the door. And the classic complaint that I think most states have received is consumers who have paid thousands and thousands of dollars up front, who probably weren't even suitable candidates for debt settlement, then after a year, even a year and a half, with no settlements, they drop out, they asked for a refund, they don't get a refund, they complained to us.

That's how the investigations start, then we issue subpoenas and we learn, typically with those companies, that many consumers had the same experience.

The advance fee ban, we think is very simple and brilliant, while on the one hand the disclosures that are part of the rule are not controversial, many companies already make them, but I think we all agree that that does not really address the heart of the problem, which is the fees. If we have an advance fee ban, the complaints will stop, and even consumers who are not getting the service, they are not going to be complaining, they will not have been harmed that much, and also, what the limited money that they have had, perhaps can go to much earlier settlements, and then the system will start working early on as it should, rather than somebody a year and a half in the program getting nothing except creditor abuse. Or collection agency abuse.

MR. WINSTON: Mike?

MR. BOVEE: Theoretically, I am completely aligned with an advance fee ban, okay, that's the best of all worlds. Jean mentioned it, and yes, it definitely aligns, hey, the more I save you, the more I get paid. It's all results driven. We have been there, we have done that, we continue to do that, outside of our educational perspective. So, it does not affect, at all, our ability to negotiate with creditors. We are not in a weakened position.

In fact, I find that the specialists that work with our members, we are in a better position to work with creditors who are typically more adverse or treat their parties more adverse, because in some states we are not even going to get paid, and then in other states they know we are not getting this huge fee.

So, we are looked upon and have relationships that are, I am pretty sure, I don't know this, more favorable than other industry participants.

I have already kind of addressed a model, something unique in my prior comment as to if an advance fee ban is not the way to go, what is an alternative? I believe a nominal monthly fee to help defray operational costs, and then have your fees based on success, after that, and even offset the original enrollment fee, whether it's a couple of hundred dollars and then a maintenance of $50 a month, have that apply as an offset to future contingency fees so in effect you are not charged twice for something. That is an option. Plus an aggressive refund policy.

MR. WINSTON: John?

MR. ANSBACH: The question is what should the FTC do. Before it does anything, it needs to think long and hard about what the effect of an "advance fee ban" would be. I have said it a number of times, and nobody has refuted it, roughly nine in ten debt settlement companies will fail. Thousands of people will be out of work. And if you don't care about those folks, then you ought to care about the tens of thousands of existing consumers that they serve and the many other tens of thousands of consumers that need this one of the only three available options that are out there in these tough economic times.

To be very clear, USOBA, and I believe TASC as well, we are advocating for the preservation of consumer options. Credit counseling is an incredibly important service and should be preserved. Bankruptcy in some cases is an incredibly important option and should be preserved. Debt settlement is an incredibly important consumer option and should be preserved, and an advance fee ban as it's defined here would absolutely shut down nine in ten and shut that off to consumers in need.

So, the question is what should you do. It occurs to us that finding a reasonable solution that will protect consumers, and Gail, you and I have sat across the table from each other in Sacramento, and I think that we are actually having good discussions on how to do this, I think it's one of the reasons that none of us are here saying disclosures are a bad idea, they are a great idea.

I think that the Telemarketing Sales Rule was designed for telemarketing. We should be using it here to have prohibited misrepresentations, all of those things are incredibly important. The states are doing a tremendous amount of work on fees, they should be allowed to continue to do that.

With all due respect, when you say that the attorney generals speak for the citizens, the citizens and their elected officials have a way of speaking for themselves. The states of Colorado, Utah, Delaware, Rhode Island, Montana, Oregon, Minnesota, Connecticut, have all adopted some form of debt settlement law, and if I am not mistaken, only one has gone on with a radical, simple, blunt instrument that could kill an industry.

So, we would certainly respectfully ask the FTC, let the states work on fees, and if you are still compelled to go the fee regulation route, then don't take industry's viewpoint, don't take the consumer's viewpoint, let's maybe look to the folks that have everybody together. Look to NCCUSL, look to the Uniform Law Commission who created the Uniform Commercial Code. Let's use what has been adopted in most states. Let's use a pay-as-you-go or prorated fee structure, whatever you want to call it, and let's protect consumers from large up-front fees, let's spread them out over time, but let's allow those entities to continue to provide those needed services.

MR. WINSTON: That is actually a very good segue to our next panel, after the break, where we will talk about state law and industry standards. We are going to take a break until 11:10. So, please be back by then. I want to thank this panel, before you all get up. I want you to join me in thanking this panel for a superb discussion.

(Applause.)

(Whereupon, there was a recess in the proceedings.)

PANEL 2: Implementation Issues Raised
by the Proposed Advance Fee Ban

MR. WINSTON: Again, I want to thank the first panel for a great discussion and for following the rules at the beginning. Nobody shouted at each other, everyone was nice and professional and that makes for a good workshop, I think.

The second panel is going to get into more of the implementation issues of the advance fee ban. At the end of the first panel, we talked about if the FTC should impose an advance fee ban and what should it look like, and now I want to get into more depth on that.

Focusing on what's the right solution, what state models, what industry code models are there that we should be looking to. And then, what the alternatives are, and what it is that we should be considering in making this decision.

But let's go around and introduce the panelists. So, let's see, we switched order. John Ansbach is still here, and he's still the chairman of the legislative committee for USOBA. We have William Binzel, who is a senior advisor and counsel for the National Foundation for Credit Counseling. He joined NFCC in May 2004, and served as its executive vice president and general counsel until January 2009. Prior to his work at NFCC, he served on the board of directors of Consumer Credit Counseling Services of Greater Washington, on the Governing Board Advisory Council and Research Committee of the Credit Research Center, the McDonough School of Business of Georgetown University. He was also a vice president for MasterCard. He's a graduate of the University of Wisconsin and Capitol University Law School.

Mike Bovee is still here and he is still the founder of Consumer Recovery Network.

We have Mike Croxson, who has served as president of CareOne Services since 2005. He has nearly 25 years of experience in the financial services industry. He has worked in credit granting organizations, management consulting firms, and in debt relief credit counseling companies. He earned his undergraduate degree from the University of Virginia and completed advanced studies at Duke University.

Robert Davis is a partner at the law firm K&L Gates. He represents clients in administrative and Grand Jury investigations, internal investigations, conferences, trials and appeals. From '82 to '83, he served as Deputy Assistant Attorney General in the Tax Division at the Department of Justice.

Ron Elwood is a staff attorney at the Legal

Services Advocacy Project, where he advocates on behalf of low-income consumers regarding consumer law, landlord/tenant and housing law, and other areas. He has successfully developed and advocated for laws protecting consumers, including landmark Minnesota legislation that governs debt settlers. He earned his J. D. from William Mitchell College of Law in St. Paul, Minnesota, a Ph.D. in cinema studies from New York University, a masters in cinema in the University of Southern California and a bachelor in communications from Queens College of the City University of New York. Must have been in college until you were 40.

(Laughter.)

MR. ELWOOD: Try 60. Talk about debt.

(Laughter.)

MR. WINSTON: Good point.

MR. LINDERMAN: We would be glad to help you.

MR. WINSTON: Norm Googel from the West Virginia Attorney General's Office is still with us.

Then we have Michael Kerr, who is the legislative director for the National Conference of Commissioners on Uniform State Laws, which came up for some discussion earlier today.

MR. KERR: A little bit.

MR. WINSTON: Will come up for more discussion this morning. He is responsible for the planning and execution of nationwide enactment efforts for the Uniform and Model Acts. Prior to joining NCCUSL, he was deputy legislative counsel for the State of California, and he holds a bachelor's degree in public policy from Stanford, a J. D. from the University of Southern California, and a certificate of government practice from the McGeorge School of Law at the University of the Pacific. You've been in school a lot, too.

Robert Linderman is the general counsel of Freedom Financial Network, the holding entity for Freedom Debt Relief, the nation's second largest debt settlement firm. He started his career with the SEC's Division of Corporation Finance, before joining Pillsbury Madison & Sutro and later Howard & Rice, two law firms. He also served as the secretary of First Nationwide Bank, where he had responsibility for all financing, M&A and regulatory matters. Since then, Mr. Linderman has specialized in all forms of consumer finance, both secured and unsecured. He holds a law degree and bachelor's from Boston University.

Travis Plunkett is with us. Travis directs federal legislative and regulatory efforts for the Consumer Federation of America, which is a nonprofit association of 300 organizations that advances the consumer interest through research, advocacy and education, with a combined membership of 50 million Americans. Travis focuses primarily on financial services issues for CFA, including credit reporting, bankruptcy, credit counseling, consumer privacy and insurance. He holds a bachelor of arts degree from the University of Denver, and served in the U.S. Army Intelligence and Security Division.

Then, finally, we have Steve Sakamoto-Wengel, deputy chief of the Consumer Protection Division of the Maryland Attorney General's Office, where he has worked since 1986. Steve has been actively involved in the legislation concerning the debt management and debt settlement industries before the Maryland General Assembly. He is a 1984 graduate of the University of Maryland School of Law and undergrad degree from Penn State.

So, again, we have a very august group of experts to talk about advance fee implementation.

So, what I would like you to assume for a moment is that the FTC has decided that requiring disclosures and prohibiting misrepresentations may not be enough, and again, this is just an assumption. If that's the case, what restrictions, if any, on fees, should the FTC be imposing? Should certain fees be allowed or should it be a blanket ban on advance fees? Should companies be allowed to escrow funds from consumers? Should there be any exemptions from the advance fee ban, and what can the state experiences tell us?

So, I would like to ask the opening question and please put up your cards if you would like to join in. What should be the main features of advance fee ban and should it vary depending upon whether we're talking about credit counseling, debt management or debt collection? That's the question. Debt settlement, I am sorry. It's been a long morning already.

So, who wants to jump in?

MR. LINDERMAN: I would be glad to jump in.

MR. WINSTON: All right, Robert?

MR. LINDERMAN: Thank you very much for the opportunity. I think it's important when we're talking about how the advance fee ban is going to affect the operations of the company that we make sure we properly segment between debt settlement, between credit counseling, and between any other form of debt relief, such as bankruptcy or the very new debt negotiation.

You heard a lot this morning about credit counseling being in effect. I think one of the points that was made this morning was that debt settlement companies have a ratio of approximately 11 times the staffing that most credit counselors have. There's good reason for that. We have at Freedom Debt Relief in excess of 150 people in customer service, and there was also some commentary made about whether or not there's a suitability analysis performed, and I think it's important to note both of these facts in the context of how our operations would be affected under an advance fee ban.

In the context purely of a suitability analysis, we have, I would say, probably 25 to 30 people who do nothing more than analyze the information we receive from consumers regarding the appropriateness of the program for these consumers. We have a ratio of approximately 22 to 1 of people who touch us for information or file a request for a contact with a debt counselor, and of those 22 people, approximately one enrolls in our program. Simply because we take the time to do a thorough suitability analysis.

I believe Ms. McNamara said this morning that for her credit counseling association, they spend about an hour for initial suitability. Our client enrollment cycle is far longer. We generally have about six to eight customer contact calls, each one of which can last as much as two hours. And at the end of that process, the customer is asked to submit all of the information, which goes to that 22-person group that I mentioned earlier.

On the customer service side, we have over 150 people who engage in what was colloquially called hand-holding this morning, however that is a far more intensive form or consumer friendly, far more educational concept than mere hand-holding would be. Hand-holding you think of somebody calling in and saying, my God, what am I going to do. In fact, that is one of the functions these people perform, but they also perform budget analysis, they also perform consumer education, financial analysis.

So, all of these functions would be placed at risk if an advance fee ban were put into place, because as I mentioned earlier, we're talking about an 11 to 1 ratio of employees to consumer credit counselors.

When you're looking at an operation that is as customer-intensive, as consumer-centric and as highly invested in the human capital and the technology we need to deliver an exceptional service to a very afflicted group of consumers, you are putting at risk many of these functions. And we think that if an advance fee ban were put into place, many of these things would be compromised.

I'm sorry, would you like me to stop? Because I have additional material for you.

MR. WINSTON: I'm sure you do. I'm sure you do. Why don't you hold it for a while.

(Laughter.)

MR. WINSTON: You will have other opportunities. But let me just ask you specifically, do you think there should be any restriction on fees that are charged, how they are charged, when they are charged, how much?

MR. LINDERMAN: Yes, I do. And in fact, we work both at the Freedom Debt level and at the TASC level, of which I am proud to be a board member as well, very closely with Mr. Kerr on passing the UDMSA in various states. We have had great success over the last 18 months and we anticipate continued success. We believe that not only are the states the most appropriate venues for looking at these fee restrictions, but the UDMSA, with a fee structure that allows for the projection of a completely transparent, completely consumer-aware fee structure that is conveyed to the consumer prior to contract formation, along with adequate disclosures about the ups, the downs, the risks, the rewards of debt settlement, it is a highly appropriate mechanism and we are proud to support the UDMSA nationwide.

MR. WINSTON: Ron Elwood?

MR. ELWOOD: Thank you, and thank you for inviting me to participate and I am very happy to be here today. I also want to thank the staff of the FTC because the session I was here for last year at about this time was incredibly valuable, and I just really appreciate the work of the staff. I was a staffer at a government agency for a long time and I know they don't ever get the right degree of appreciation.

A couple of things. One thing that strikes me is that there has been this discussion this morning about if we have this advance fee, only 10 percent of the folks are going to make it in the industry, and then we have another group that's been formed, apparently, that believes it can actually make a go of the model.

So, my question is if 10 percent can succeed, why can't the rest? If a group of folks are here saying, we can do it, we want to do it, we think it's the right way, why are they any different from any of the other players in the industry?

The point also struck me that I have heard that between TASC and USOBA, apparently, they do not represent even the majority of debt settlement companies that are out there operating. While they make the most noise, and of course have the greatest resources here, and in states that I know both TASC and USOBA spent a lot of time in Minnesota when we were passing our law this last legislative session, but if they are not really representing the majority of the industry, the fact is if we have a shakeout and 10 percent of folks are doing it under the advance fee model, the customers that would otherwise go to these either people that are out of business or people that aren't even members of associations, then all the customers that are suitable will wind up going to these companies that can do it without charging upfront fees.

So, that's my point for the moment. Thank you.

MR. WINSTON: I just want to point out that we talked this morning about TASC and USOBA and the size of the organizations. We also had some discussion from Jean Noonan about a new organization called Accord, I believe, I would just point out that the membership of that organization is far smaller. I think it's in the single digits, but Jean will be on a later panel, she can talk more about that.

Mike Croxson?

MR. CROXSON: I want to make sure that I answer your question the way you've asked it, which is assuming that the advance fee ban was the determination of the FTC, what would be the issues with implementing it?

MR. WINSTON: Well, more a question of what should it look like. There's one possibility is a total ban on collecting fees until settlement, but are there other iterations of fee restrictions that we should be considering.

MR. CROXSON: Right. Well, I think as the only other company who has been here today who does provide the entire spectrum between settlement and credit counseling, I would tell you that from our position on the proposed fee ban is that it makes sense. It's a very difficult, challenging decision for the industry, because it's different, but in the context of this being about consumer protection, we think that it is the right approach, it is the right step to take, and that companies truly interested in serving this consumer set and really understanding what products and services are suitable for them along the way, they will make whatever process changes are necessary to accomplish that.

Now, that being said, it's baseball season, and it's three to two. So, forgive the analogy, but the most important aspect, and the states have learned this already, the most important aspect of this particular issue, however the fee thing plays out, is that if the baseball folks, if the Major League Baseball has concluded, and everyone agrees, that fundamentally, steroids should be illegal, applying this law to only companies in the for-profit sector is sort of like applying the no-steroids rule only to the American League, and letting the National League play differently.

If this is truly about consumer protection, where all companies of all ilks do advertising, and this is about changing the Telemarketing Sales Rule, they do advertising, they put their word and their name out there in front of consumers, everyone should have to live by the standard of definition that is debt relief.

That's the real concern that I have on behalf of consumers, who will continue to hear messages from companies that won't be covered under the way that it's being proposed to put it out there. And I think the states, and I know that Michael probably will talk about this, also, the states have recognized, look, this is about regulating a product, the service that's being delivered. It is about making sure that whatever the fees are, whatever the disclosures are, whatever consumers are being told, everyone is being told uniformly, and everyone is playing by the rules. And if you're licensed to play by the rules, then the consumer should know you're legit.

MR. WINSTON: I just want to point out that while I think you make a legitimate point, that we actually don't have the jurisdiction to regulate the nonprofit industry. So, we don't have the option of imposing the advance fee ban on everyone in the industry. And given that, should we impose it on the for-profits?

MR. CROXSON: And if I may, to sort of fast forward into your last question of the first panel, is what should the FTC do? I actually believe that post haste the FTC should be in Congress asking them for the authority to make this, and before you implement something, go after permission to make it uniform.

MR. WINSTON: Okay, thank you. William Binzel?

MR. BINZEL: Thank you, and given your point about not having the authority over nonprofits, I won't -- is this on? Okay? I won't spend a lot of time there, but I think we should put out on the table, there are fundamental differences between a nonprofit credit counseling agency and a for-profit debt settlement, debt relief company. And that is if you're a 501(c)(3) credit counseling agency, you're in the business of providing consumers with financial education and financial counseling. A for-profit company is in exactly that business, they're in business to make a profit, and they make a profit by selling a product.

So, the fundamental question in terms of if you're looking at the "industry" or the "sector", you've got the nonprofits who are in the business providing education. A debt management plan may be a part of that process, but that's not their primary product. Versus a debt settlement company, which is a for-profit debt counseling entity, they're in business to sell a product to a financially strapped consumer, and may or may not have the best interest of the consumer at heart.

I would also point out, in terms of the sector, 501(c)(3) agencies are also covered by section 501(q) of the Internal Revenue Code, which are very restrictive as to what you can and cannot do. They are also subject to the core analysis tool of the IRS, again, restrictive as to what you can and cannot do. Most of them are also participating in bankruptcy counseling and subject to the stringent requirements of the Executive Office for United States Trustees, so there are a set of regulations that are out there that are applicable to nonprofit 501(c)(3) agencies that are not applicable to the for-profit sector.

So, it really is an apples to oranges comparison, and it's probably not worth spending a lot of time trying to compare the two, because they really aren't comparable.

MR. WINSTON: Thank you. Steve?

MR. SAKAMOTO-WENGEL: Thank you. You know, I do agree, there are significant differences between the debt management industry and the debt settlement industry. In the debt management industry, when the consumer signs up for a debt management plan, they know what they're getting, they know what the creditors agree to, they know what their payments are going to, and the credit counseling agency is earning its fees each month and that debt is being paid down.

When a member signs up for a debt settlement plan, they have no idea whether any of their debts are ever going to be settled, they're not going to know for two or three years down the road whether those debts are going to be settled. So, they really don't know what they're signing up for at the time.

And in complaints and the investigations that we have had, at the state level, what we have found is that rather than the trained counselors that Mr. Linderman talked about, a lot of the people that are hired as counselors are really salespeople, without counseling experience, without financial experience, but they're there to sell a product.

We believe that with the debt settlement industry, the full advance fee ban was the only way to provide an incentive to make sure that people are properly screened to make sure they belong in that program, to make sure that people fully understand what they're getting themselves into.

Frankly, from the complaints we have gotten, the investigations we have had, the reason that hand-holding is necessary is because people who sign up for these plans don't fully understand that the calls from creditors are not going to stop, that their payments are not going to be going to pay down their debt, and so I think that the advance fee ban is really the appropriate way to go to make sure that those consumers are protected.

MR. WINSTON: Thank you. John?

MR. ANSBACH: A couple of points that I want to make on this, and first, really quickly, because it was brought up, Ron made the point that there are a group of folks out there saying they can make it with this advance fee model. The group you're referring to has one member. It has one member. It has one member with three different plans and it was formed, oh, I don't know, about 65 days ago.

I find it ludicrous to consider implementing a rule based on the experience of one company taking what I would consider efforts to use the rulemaking process to find competitive advantage. You have 400 members, and not just members, but this idea that, well, USOBA and TASC don't represent the majority, so let's let the other people do it.

USOBA and TASC are the only people who represent folks who have signed up to abide by ethics programs, best practices programs, compliance audit programs, secret shopper programs. We may not represent the full majority of the industry, but I suspect, and I would certainly respectfully submit that the people that have joined these organizations are interested in providing honest, ethical services, and to drive 90 percent of them from the marketplace would hardly be doing consumers justice.

To the point of what we should do here, I was really struck, and I have to admit, I hadn't even given this any thought before your opening comments. The assumption is that disclosures and misrepresentation regs don't work, so should we move to fees? And let's assume that we move to fees, what should it look like?

I don't know why it hadn't occurred to me before, but why do we do that? If we assume that disclosures and misrepresentation regs are not working, and by the way, USOBA certainly supports the vast majority of what's been proposed here with this rule, we are aware, and Mike would know better than probably anybody at the table, that the UDMSA, the Debt

Settlement Services Act, Montana's law, Oregon's law, I believe Connecticut's law, all include additional consumer protections that we have not even discussed today. Licensing, registration, background checks, insurance, surety bonds, the creation of causes of action that can be brought by the state or private citizens.

Importantly, accreditation. All of these are important industry-supported consumer protection measures that work in concert with appropriate, reasonable fee regulation, that result in what I think is the goal here, strong consumer protection.

I had a very good conversation with a legislator down in my neck of the woods, down in Texas, on this issue, and she was making the point, she's the chairman of the committee, and she was making the point that consumers need to know who these companies are. And they need to have faith that when a company has gone through this process, that it has been vetted by the state, that it's passed background checks and the states are making their determination how significant those checks are, they need to be sure there's financial stability, the things that everybody wants.

So, when a consumer goes to one of those companies and the providers, that they have confidence that they are working with somebody who is above board, who is not a fly-by-night.

So, I don't want it to get lost in the discussion that this Commission has got two things down that I think are widely supported, the disclosures and misrepresentations, before you jump into what is arguably the most disruptive and would preempt a multitude of states who are doing this, remember that the states have a number of tools that they are doing themselves, and that are evolving, and I suspect many more will do in the coming year.

The only last point I wanted to make on this issue, well, two quick last points, and I have not met Bill before, and I like Bill, he's a good guy and he's well spoken, but I heard this argument at the NCCUSL, and Bill, the idea that nonprofits have no interest in self survivability and self sustainability, and that for-profits are evil, it just kills me. It's like saying that I know Microsoft is a reasonably profitable corporation over the years, but they have not really helped consumers, despite the fact that Windows is basically used by everybody in the globe, and I am a Mac user, so I am not even biased. I don't even want to have this discussion, because it's basically like saying that the Commission needs to codify a business model.

You need to put for-profit folks out of business because they cannot possibly have the interest of consumers at heart. You need to let the nonprofit folks do this. I could not disagree more, and don't listen to me, listen to the volume of consumer testimonies we have received.

And finally, the last thing I wanted to mention, and, Steve, you made this point, that counselors are basically salespeople. I know you're familiar with the IAPDA training program that is debt management and debt counseling. The UDMSA requires accreditation. Our members that are abiding by the UDMSA where it is in effect go out and get accredited, not in sales and marketing techniques, in debt management and credit counseling techniques, in financial education and financial literacy.

One of my companies right now is going through this process, and we are bringing IAPDA in, they will train everybody on the floor in the inappropriate technique. So, it's not sales and marketing, it's the things that we need to pay for to appropriately service consumers.

MR. WINSTON: John, I appreciate your zealousness and advocacy on behalf of your organization, but I want to be sure that everybody is clear on one thing, when I said that assume disclosures and prohibitions are not adequate, I am assuming that for the purposes of this discussion, because I want to focus the discussion on advance fee bans and alternatives to that. The Commission has not made any determination whatsoever. We put out a proposed rule, the Commission will be looking at an entire record, including the transcript of this forum, and they will decide what they think is appropriate. But we have not prejudged any of these issues. So, I want to make that clear.

Robert Davis?

MR. DAVIS: Yes. If I may, I would like to follow up on something John Ansbach said today, this morning, and again a moment ago, which is that the advance fee ban might eliminate those for-profit debt settlement organizations that exist today.

MR. WINSTON: Just remind everyone to speak into the mike, please.

MR. DAVIS: No one doubts that there is a need for debt settlement services. I don't think anyone can fairly say that the dramatic growth of debt settlement services, companies, organizations, is a phenomenon that's temporary. It's here, in large volume, there's obviously a need. The question I would like to address is whether what form the debt settlement services may take and how can they be delivered in the future.

I really have been historically a tax litigator for 50 years. I have tried tax cases involving tax-exempt organizations, and have represented dozens of tax-exempt organizations for many years. The question is, could a debt settlement organization, or could a credit counseling organization shift across and pick up some of the responsibilities in the debt settlement area? There will be this vacuum created by the elimination of many, perhaps all, who knows, of the debt settlement service companies.

Where will that gap be filled? By whom will it be filled? And those who speculate that credit counseling organizations can fill that gap, I think are in error. The reason I believe that is they are tax exempt, under section 501(c)(3), chiefly on the basis that they provide education to the people who have debts, and need educational help.

If they shift out of that tax protected area, into another area, which is not tax protected, and here I am talking about this kind of debt counseling, or rather a debt settlement function, if they shift into that function, it is not within those functions that are exempt under section 501(c)(3) of the Internal Revenue Code. When you blend the two together, it disqualifies the organization as an entirety from eligibility.

So, not only would it not be possible for federal tax reasons to combine these functions in a single entity, the same is true on the state side. Many organizations derive their ad valorem tax exemption based upon the existing protection that is available to them from tax, under the federal law, because they are exempt under 501(c)(3), they are also exempt from ad valorem taxation on their personal and real property. That protection would also disappear if they lost their 501(c)(3) exemption.

I apologize for my voice, I've got youngsters at home and they have given me something that's making it difficult. I apologize.

But I think the conclusion is really beyond ready debate. It won't work.

I also had another question, I am not qualified to address, but I raise it for others to consider who are qualified to address. Would credit counseling organizations even be willing to negotiate debt settlements with their long-term friends and sponsors, the banks and credit card companies? Can you visualize a picture where a bank is paying fair share compensation or other affiliated payments to an organization that provides credit counseling, and then facing a hostile negotiation or an adversarial process involving the same people? I think there would be an obvious conflict of interest, and I would speculate, and it's only speculation, because I am not qualified, but I would speculate that they would not, and if they did, they would do so with a very soft voice, and not with a warm zeal that might be required to meet an appropriate compromise.

MR. WINSTON: Thank you. I want to go off on a slight tangent for a minute because there's something that I don't quite understand, and by not understanding, I mean I literally don't understand, not that I have reached some judgment or something. But we have heard a lot this morning, and it just came up again, about how up to 90 percent of the industry, the debt settlement industry would go out of business if there were an advance fee ban. And what I don't understand is why can't a model work where the company charges for services that they perform later in the relationship, whether it's at the very end, after they've settled the debts, or whether it's at some earlier point, why can't debt be built into the cost structure of the company and the fee structure that they use to charge their fees? I guess I'm not sure why that's the case, and maybe somebody can enlighten me on that? Bob?

MR. LINDERMAN: Thank you. I think it's really important to look at the kinds of organizations that the Commission has examined when they have imposed an advance fee ban, for example, mortgage loan origination, excuse me, mortgage loan modifications. There you've got a very short cycle, perhaps two months at the very most, where the actual service is then delivered against the fee.

So, there is a very short period of time where the organization has to bear the risk. Debt settlement programs, as you've heard, time and time and time again, can run anywhere from two to three and sometimes even longer years. And, so, tying revenue events to having a program that runs three years would force companies to in effect fund the operations for an innumerable amount of consumers for a three-year period of time.

Remember I told you that my organization has more than 11 times the population of a comparable credit counselor. We have over 500 people. If we were to look at structuring a program where the first revenue event is tied to a payout that could come anywhere from two to three years down the road, that would be an untenable revenue situation for us, and what would happen is that you would get incredible compression at the customer service level, you would get an abbreviation of the service levels that we provide, you would get an abbreviation of the counseling that we provide, of the suitability analysis that we provide, and you would wind up with an unfortunate circumstance where those who were successful in the program actually subsidized those who were not successful, people who came into the program with unrealistic demands. I'll only settle for a nickel on the dollar. Well, that's not really a realistic settlement, but yet if I take that person into the program, I can wind up providing services over a two or three-year period of time, and have that person exit with no penalty, if you will.

So, asking a debt settlement provider to fund the operations over a three-year period of time is tantamount to saying that you cannot provide that service to anyone, because you will not be able to staff appropriately to provide it.

MR. WINSTON: Is there another viewpoint on that?

Travis?

MR. PLUNKETT: Thank you, Joel. I think the focus has to be on what's happening to the consumer, what's the fair result for the consumer, and not on the impact on a business model that is clearly very flawed. A better analogy, in terms of existing law would be the Credit Repair Organizations Act enacted by Congress in

1998, where many so-called credit doctors were making promises that they could remove legitimate factual information on credit reports, and this deception was being fueled by their ability to accept fees before the service that they claimed they could render was actually rendered.

The process could take many months, sometimes years, and Congress decided that because the source of that deception was the ability of the firms to take advance fees, that they would prohibit advance fees. And what we have seen is that credit repair firms have not disappeared, but there are fewer of them, and those that do exist, some of them are still quite problematic. I mean, we have not removed credit repair as a problem for consumers, but overall, the industry is smaller and treating consumers better and not making claims that are deceptive.

So, to me, that is a better analogy here. One of the points I want to re-emphasize that did not come out too much on the first panel, debt settlement does not render debt reduction. Credit counseling, month by month, does render debt reduction. It is absolutely appropriate to say in a circumstance where debt reduction is not occurring, and that the essential promise of the firm is that it will occur, it's absolutely appropriate to say that a fee cannot be accepted until that occurs, especially given the track record of abusive and deceptive practices of this industry.

MR. WINSTON: I think that's a useful way of looking at it, not the only way, obviously, but it's almost a question of who has to accept the risk, is it the consumer or the business? Clearly there's some risk that there will be consumers who take some services from the company and don't pay. If there's an advance fee ban, the consumer at the end of the road may say, well, I won't settle unless it's five cents on the dollar, or may drop out during the course of the program at some point, and they will have gotten some value, and not had to pay for it.

So, there's a risk there, but should the risk be on the company, which can presumably build that into their fees? It's a cost. Presumably they can build that into their fees, the risk of providing services to people who don't pay, or should the risk be on the consumer, who is paying all this money up front, and then at the end of the day, may never get his debts settled and is taking the risk that he is dealing not with one of the legitimate operations, but with one of the fraudulent ones who is just there to take their money and never makes any effort to settle the debt.

So, one thing I would like to hear more about is this risk issue.

Let's go to Michael.

MR. BOVEE: I don't know if I can stay on that, but thank you. The beginning question of assuming that disclosures and misrepresentations aren't enough and what would the fee ban address there, and it really boils down to suitability. Last summer, when we did a test with two marketing companies, they did everything "right," in their sales process, they were all recorded, their third party verifications, before they were transferred over to us, these disclosures, if you answered no to any of these seven to nine questions, what have you, they stopped the call, they go back to the salesperson and address the issue until they are going to get a yes answer.

The focus is suitability. Somebody is going to focus on relief. When you quote some, hey, we're going to save you this much money over this much period of time, you cannot pay $900 a month, but you can pay $450 a month, that's their focus. They lose sight of all of the disclosures. I don't think the disclosures are enough, based on all of the reviews that I did last summer, why are we having worse than a 60 percent refund ratio with these two sales companies that are referring two people over, they're making all the right disclosures. These people didn't belong in our program. And these sales companies weren't prepared for the fact that these consumers were receiving comprehensive education that I submitted last year to the Commission at one of these. And it doesn't jibe well. And these people are within a week saying, yeah, I think bankruptcy is good, yeah, I think debt roll-up is good. Okay.

So, the restrictions, or beefing up these disclosures, which the good, ethical, to a degree, companies, that I still think charge far too much, and allow for too long of program lengths, all things considered, they're making those disclosures.

So, the fee ban will take it to the level that more suitability factors are going to be the criteria for success, because you're not going to enroll somebody if you're not going to get paid your contingency fee down the road.

Now, firmly, I think the industry has the wrong approach. I've been told over the years that CRN has the wrong approach. Apparently we have the right approach, in that two to three years for a successful settlement is absolutely ridiculous. If I wanted to, I could settle debt in 90 days of delinquency, okay? It's not going to be at the best savings rate, and so it's not in the consumer's best interest, but it's definitely doable. We get offers all the time. We work directly with creditors and we can facilitate that.

But more particularly, or more often, you're going to find these five-month time frames. Can a company do that? Absolutely. We do it all day long, okay? But we also encourage the consumer to do as much of this on their own, okay?

In the commentary I submitted leading up to today, 51 percent of the accounts that are enrolled are submitted, and part of their list of creditors when a consumer becomes a CRN member, 51 percent of those accounts, lifetime, are settled by the consumer, because we give them the tools, we give them the coaching, we're ongoing there for them, to facilitate that. While 49 percent are done with us.

The disparity between the settlement amounts that we do on behalf of consumers and consumers do on behalf of themselves are separated by three percent, okay, in the thirties. I think it's 32 and 35. something, respectively. So, consumers can do this on their own.

The reference to CROA that Travis made is very applicable, it's a letter-writing campaign. Years ago when companies were charging obnoxious fees for this, consumers were able to, and still can, do this on their own with some letter writing. Settlement is no different, the consumer can effectuate this on their own.

So, I want to draw some distinctions that what are you providing and how soon can you provide it? Two years, three years, that's unfathomable to me. I just don't see how the industry can use that as a benchmark. It should be five months, and then incrementally from there.

So, are you waiting five months to get paid? Okay. Did that payment, that contingency fee, suffice enough to where you can sustain your business and your margins? You've just got to survive five months. That is going to be hard for new entrants and operating capital in place. For companies that already have operating capital, that already have an established marketing pipeline, I don't see how they have to fold. I don't see where 90 percent have to fold. Unless they are structured in a capacity that is more attributable to a Ponzi scheme, where the people coming in and the fees that are associated with that are paying for the support for the people that enrolled two years ago.

So, and I doubt that's the case. I sincerely doubt that's the case, with reputable, strong companies that are part of some of the associations, and maybe even sitting at this table, I don't know. But I definitely don't think 90 percent will leave.

Some of the things that --

MR. WINSTON: Why don't we just, if you don't mind.

MR. BOVEE: Sure.

MR. WINSTON: I wanted to again focus in on this issue of risk.

Mike Kerr, do you have thoughts on that?

MR. KERR: I think the Uniform Act has been described and discussed a bunch of times, and I think it's probably helpful to talk about what the Uniform Act's conclusions are with regard to that assignment of risk. And the Uniform Act does much, much more than just set up fee limits. And I think John did a pretty good job of describing it. It's a comprehensive statute, everything from consumer remedies to refunds of set-up fees.

But with regard to the question you asked, which is how do you balance that risk, I think in 2003, when we started the process of formulating Uniform Act, which took about three years to develop, the Uniform Law

Commission is not a provider of debt relief services. Nor do we represent banks. I mean, we are a neutral, hopefully expert drafter of statutes that try to solve specific narrow problems. And we, I think, were convinced that debt settlement as a consumer option is going to be around for a while. I mean, it really kind of sprung up around 2004, and we were halfway through our drafting process, and we decided we needed to include them.

The balance of risk is this: Under the Uniform Act, we do allow for a set-up fee, an advance fee, but we limit it. It's the lesser of $400 or four percent of the debt enrolled at inception. That's there because we were convinced that there are costs associated with setting up the account, the initial counseling, all of the things that the industry will talk about. We also allow for a regular sort of monthly fee of up to $50. Again, that's because you do have continuing costs.

But the Uniform Act is drafted in its original form, in its official form, it puts the majority of the settlement fee as a contingency model, 30 percent of the difference between what the settlement actually is, and what the original principal was.

Now, when we have gone out to the states and we have really started that process in earnest the last year and a half, we have negotiated a slightly revised version of that contingency fee model, which is probably 70 percent of the fees all together, with a flat fee model, and this is because we were across the table from the industry, and there were significant and continuing discussions about what the outcome needed to be. But with a flat fee model, the only reason we agreed to it is because it had to extend over at least half a length of the plan.

That's the status quo in two states right now, Nevada and Tennessee, there are several states that have the pure UDMSA with the contingency fee model only. Next year there's 12 states are likely to introduce and probably enact the UDMSA.

The impact of an advance fee ban from this proceeding, or this process, would probably be to take out that set-up fee that we allow for in the Uniform Act, the four percent/$400, and would probably restrict the settlement fee models to contingency fee only.

And I'll let the industry talk about whether or not that's viable for them as a business model. I mean, the Uniform Law Commission agrees with the idea that you need to align incentives, but we're also, I think, sensitive to the fact that there are actual continuing costs with debt settlement, and how you align those incentives and those fees makes a big difference as to whether or not the industry is available as an option for consumers to engage in.

So, I think it's sort of in the middle, the Uniform Act in terms of how you align the risk of the nonpayment. I mean, there's a little bit up front, the four percent, the $400 up front, under the Uniform Act, and then in the uniform version of it, most of it is on the back end on contingencies as each debt is settled.

MR. WINSTON: Thanks, that's very good to know.

Norm, do you want to comment on this?

MR. GOOGEL: Just a few comments. I think the reason we're here today is because the fee model that has been used has not worked for the consumers, because they have been bearing all of the risk, in essence, an industry has been created to help consumers who have the least money and are using those consumers as their bank, and I think if they cannot fund this on their own, if it is a valid, valuable product, it will work.

And interestingly enough, one of the great sales points of the industry is that we are an alternative to bankruptcy, and many companies say, we all know that you want to pay your debts, and you don't want to file for bankruptcy. And in fact, that's true. They do want to pay their debts, and when they had money, they did. And when they have money again, they will.

And, though, unfortunately, they don't really tell consumers what bankruptcy really is. So, consumers sign up for this product, not knowing that bankruptcy is probably a better product, but if debt settlement provides a legitimate product, when the service is provided, these consumers will pay you, because as you said in the beginning, we know you want to pay your debts, and they will. So, now they're going to set aside what little money they have to pay for a service that's truly helping them.

And I just want to say briefly that in all the settlements that we have made with debt settlement companies, they generally involved ending the service and at the end a letter is sent to these consumers, because many of these consumers did not complain, they were enrolled in the program, so now all of the sudden that the service ends, so we feel we have to tell them something.

Well, most of them get money back, usually all of their money back, at least money that hasn't already been paid out in the settlement, so what happens to these people? And I've interviewed at least 100 of these folks, lengthy interviews. Two things happen: Some of them go out and settle their debts, very quickly, all of the sudden they have some money and they settle them, so it shows that the debts could have been settled sooner; but the vast majority of them, when they finally learn for the first time what bankruptcy really is as opposed to having the myths and understanding or misunderstandings exploited or misrepresented to them, they go, oh, the majority of them end up filing for bankruptcy, which is something they should have done in the first place.

So, we really think if it's a legitimate product, or service, that the industry should fund it, and it will work. And if it doesn't work that way, then there's a real question about whether it was legitimate at all.

MR. WINSTON: I want to follow up on one thing you raised with Bob. Bob, you had mentioned that there was a concern that consumers would sort of go through the process and at the end demand that settlement be five cents on the dollar, and at that point, you've put a lot of time and money into the consumer and the consumer is not going to go through with it, and if there's an advance fee ban, then those are costs that you are losing.

Why would a consumer do that? I guess two questions: One is, how often does that happen; and what incentive would a consumer have to go through this entire process and then at the end make such outlandish demands that they get nothing out of it?

MR. LINDERMAN: That's a great question. It is not a common practice in a circumstance where a consumer is paying as you go, because the consumer recognizes that there's an opportunity to settle for a legitimate price with his or her creditors. When you make it a riskless proposition, then you'll be attracting a far greater cross section of consumers, some of whom may not have any intention of paying.

So, there's always the question of who bears the sunken cost of the debt settlement opportunity.

But I would like to focus on one thing that both Norman and Travis have brought up, and that is the question of value. And I am truly delighted that they opened this door, because I think that our story has not been told in absolute dollar terms, and I think now is a great time to do it.

To the extent that Freedom Debt, our experience alone speaks, we deliver tremendous value. I think when Andrew Housser described the methodology that we use to analyze our population this morning, we took a look at people who have been in the program for at least three years to see what the representative experience of that population would be, and I think you'll be surprised to learn that the average client in a pool of almost 8,000 consumers received more than $7,900 on average in debt reduction, while paying less than $2,700 in fees. Bottom line, we delivered more than three times in debt reduction what we were paid in fees.

And more significantly, that includes people who made one payment into the program, but may not have completed the program. So, we're looking at all terminations, all successful program participants and whatnot. When you include everybody into that calculus, you get a benefit that is more than three times the value of the fees that are paid in.

I guess, as a coda to that argument, you might look at what a comparable debt settlement plan would yield when compared with credit counseling or when compared with making your monthly payments to a credit card company at penalty interest. With our numbers, we believe that if you had a debt of $30,000 yielding 25 and change = percent to a credit card company, over 20 years you would pay in excess of $110,000.

If you entered that same program with a debt management plan where your interest was reduced to 12 percent but your principal was not touched, over a five-year debt management plan, you would pay in excess of $42,000.

If you entered a debt settlement program, and settled according to Freedom Debt's historic norms, you would pay a total of $17,100. That's inclusive. That's inclusive, Norman, of all fees in the program.

So, we're looking at a benefit to the consumer of $17,000 over three years, compared to $42,000 over five years, compared to $110,000 over 20 years. And I think you can see that we are delivering value. This is to the point that Travis raised.

I mean, a deeply flawed model cannot produce these kinds of results for the consumers. We have a track record of serving over 72,000 consumers, 32,000 of whom are currently active in my system.

So, I would say to Michael, we aren't a Ponzi scheme. We represent more than 37,000 consumers and we're settling more than $27 million of debt every single month.

MR. WINSTON: Steve?

MR. SAKAMOTO-WENGEL: I did have a question, I don't know if the savings claims in the TASC report and the savings claims you just mentioned, are they based on the debt that's originally enrolled in the program or the debt that builds up with the additional fees and penalties that are accrued during the time that the consumer is in the debt settlement plan?

MR. LINDERMAN: Great question. May I answer the question?

MR. WINSTON: Sure.

MR. LINDERMAN: That's a great question and I am really glad you raised it, because you're striking to the very core of what Gail Hillebrand this morning pointed out as in her view a flawed methodology that we employ. The fact of the matter is that from the time of enrollment, to the time of settlement, and these are statistics, by the way, that we provided or will be provided to Bob Hunt for his own analysis, his independent third party validation, but the accretion within the account from time of enrollment to time of settlement is approximately 10 percent.

Now, I can only speak for Freedom Debt, I cannot speak to TASC members, but I think that John would validate this as far as his USOBA members are concerned, and I think we can validate it as far as TASC is concerned. The accretion in the account from the time of enrollment to the time of settlement is approximately 10 percent.

So, if I am telling a consumer I am going to settle your debts for 42 percent, which is what we're settling now, a little less, actually, but if I tell a consumer that I can settle your debts for 42 percent of the dollar, I am telling the consumer that I am actually settling the enrolled debt for 42 percent, plus approximately 10 percent.

So, 42 percent of the debt at the time of settlement translates into an approximate amount of 52 percent at the time of enrollment. Ten percent accretion over the period of time from enrollment to settlement, that does not represent an enormous doubling, tripling, quadrupling that Ms. Hillebrand mentioned this morning.

MR. WINSTON: I want to get two or three other opinions if possible, and then I want to move to a different topic.

So, Ron, do you want to respond?

MR. ELWOOD: To answer your question about risk bearing, the question that is raised in my mind is during the period that no settlement was actually taking place and the people are accruing the money to amass the money to have the settlement offered, the consumers are paying for I guess what I would call ancillary services that folks are touting, whether it's the hand-holding or whether it's the education, which financial literacy education, consumer education, which by the way they can get free in most states, for at non-profits, government agencies elsewhere, and also, and probably most importantly, paying for the -- and I don't know if this is millions or billions of dollars in advertising. I know in my state, I cannot turn on the TV, any time of the day or night, without seeing dozens of ads for the companies, plus the lobbying fees, which I cannot imagine how much money that is all.

Now, that's not really going for any service to the consumer. So, if the question is, well, we need money to kind of keep us going, what are we actually funding for the upfront fees? I mean, I think the issue earlier came up about an appropriately capitalized firm. In Minnesota, a couple of years ago, the statute was amended regarding the mortgage brokers, based on a lot of the abuse that was taking place, and I understand the analogy that somebody suggested was an inappropriate analogy, but in terms of the consumer abuse, I think that piece of it is fairly analogous.

What Minnesota did was to say that you cannot be a mortgage broker in Minnesota, unless you come up with a significant demonstration of net worth that you've got some skin in the game, that you're going to be able to be here. You're going to be around here. You're not going to just fly by night.

So, to me, and the differentiation between nonprofits and the profit-driven debt settlement industry, I think this idea of we need to level the playing field so it's fair, I think it's specious, because I think nonprofits are, A, mission driven, they don't have all of these advertising -- if they did have that kind of money, we probably wouldn't have this problem, because they would have a vast majority of the consumers. So, that's one thing.

Also on the Uniform Act, I just want to talk about that for a second. I think this idea of a flat fee paid over half the plan, I don't see where that benefits consumers at all, because if they have not settled, they're still just paying all their money. It's up front. I mean, up front is either in three months, five months, a year, it's still before the service is performed.

Also, if I'm not mistaken, the Uniform Act, the way it's structured, while there is some cap on it, you can collect the money and then you have to give it back if it's over the cap. So, that's an odd structure, to me.

And finally, in terms of the five cents request at the end of the line, my understanding is most of the contracts that are signed provide a minimum amount that the consumer would agree that at settlement, this is a price point at which you're authorized to make a settlement.

So, I don't understand how that could actually happen, if they already authorize in a contract up front that at this point, you're allowed to go ahead and agree to a settlement.

MR. WINSTON: I apologize for those who have more to say about this issue, but we only have about ten minutes left, and I do want to get to the issue of escrows. Under the proposed rule, consumers can pay their fees into an escrow account that the provider cannot access until the services are performed. What I am interested in is what people think of that approach, and I am also interested in an alternative approach, which would be whether the provider could require the consumer to put the fees into escrow.

For example, if we said that the settlement company could not collect advance fees, but could require that the consumer put those fees into escrow, it seems like that might solve one of the concerns that the settlement companies have raised, which is that consumers won't pay at the end of the road and they will have to go out and try to collect from them.

It does not solve the problem, of course, of having those funds available to fund the services that they're performing. But some people have suggested that as an alternative, that the consumer is protected because the money is going into escrow, they get it back if the company doesn't deliver, the company is protected from the consumer who doesn't pay their fees.

So, again, what do you think of the proposal that we have made and are there alternatives that should be considered?

Start with John.

MR. ANSBACH: First of all, when we discuss escrow accounts, what we, I think, in the industry, are typically accustomed to is the idea of this is a difference between self-saving settlement models and using a third party, and I think the evidence generally reflects, and I apologize, I don't have studies for you, but I think that it's widely understood that models that are self-saving are typically not as successful as models that use a process or that obviously the money remains in the control of the consumer, that is critically important that debt settlement companies should not be controlling the funds of the consumer. We have this discussion a lot.

MR. WINSTON: Thank you for clarifying that, too, because I am not referring to that kind of escrow.

MR. ANSBACH: Right.

MR. WINSTON: I'm talking about the fees.

MR. ANSBACH: And, so, you brought up an example earlier about a doctor, and it certainly speaks to the point about earning your money. This is sort of akin to going to a doctor, and the doctor sits down with you and takes your blood pressure and then he says to you, you need to quit smoking, you need to eat healthier, you need to lose some weight. But I recognize that you have not done any of those things yet and that you're still overweight and your lungs are filled with tar. So, until you get healthy, lose your weight and stop smoking and don't get cancer, why don't you just put the money in the escrow account and I won't collect it.

That's what escrowing money is. I mean, we were thinking about this earlier. My parents get Consumer Reports, but is it the case that even though Consumer Reports puts it together and sends it to my folks, until they actually read it, buy a car that works, they shouldn't pay Consumer Reports?

I mean, I know there's a big discussion here about what value is actually being provided and that somehow hand-holding is something. We're not discussing what's actually happening, and let me say this, I truly appreciate the folks that are here that are on behalf of the consumers, because at the end of the day, debt settlement companies are independent consumer advocates. There are 110 of them that sit out in front of my office every morning, and we are all at this table, we are having this discussion about what works for consumers and what doesn't, but I don't know how many of you at this table have had a chance to read the consumers that wrote in.

I mean, Mike, I fully respect your business model, I happen to think that lots of models should be available, but the idea that consumers can do this themselves --

MR. WINSTON: John, let's stick to the issue of escrows.

MR. ANSBACH: Absolutely, but escrow is about value, and you cannot put money aside when value is being created and delivered. There are customer testimonials that talk about, I tried to contact my creditor, and they told me to go pound sand. If you're going to have an advocate, you have to allow them to get paid to do that.

MR. WINSTON: Let me focus it a bit differently, because I am not sure the doctor analogy works. Assume for the purposes of this discussion that we have a record which shows widespread abuse in this industry, and the issue is how do we protect consumers from that kind of abuse, how do we protect consumers from having to take the risk that they're going to be paying this money over a period of time, which could be in the thousands of dollars, and at the end, the company says, see you later, and collect the money.

So, one way of dealing with that would be to put the money in escrow. I don't think that consumers have that much concern about doctors collecting money over a long period of time and then saying, sorry, we're not going to do the surgery that we planned.

So, if I could get people to focus, again, on does an escrow system make sense and what should it look like?

Mike?

MR. CROXSON: Thanks. There are some states, there is certainly one state that already has imposed a fee prohibition, upfront fee prohibition, they allow fees to only be paid upon success. So, maybe if we talk about this in the context of success fees being escrowed, because I guess part of your decision is, well, do you allow some other kind of fee, which would sort of speak for itself in terms of how that transaction happens with the consumer.

So, it's really the success component. We do operate in a state that has a fee ban, effective fee ban, that says you cannot accept any fees until after the fact. We do escrow in the consumer's account the money for that success to be paid. We cannot and would not be paid until the money goes out to the creditor.

So, in the context of how this escrow should work, I think you have it exactly right, and that is, an escrow can be built over time, fees accrue along with what's available to use as settlements. When a settlement occurs, the average consumer going on to a settlement plan has six accounts, has settlements actually occur, there's actually money there to pay the fee that you get along the way, and at the end of the day, if you get to the sixth account, you've been paid, the creditors have been paid, and the consumer is satisfied and happy.

MR. WINSTON: Okay, thanks. Travis?

MR. PLUNKETT: On that point, the consumer groups that joined in writing comments have agreed that the advance fee ban should allow consumers to use legitimate escrow services that they control. So, that means no fees should be allowed to be deducted by the firm until the services are provided and a fully executed settlement agreement is made and shown to the consumer.

So, in that case, it would seem that an escrow account would be fine.

MR. WINSTON: Yeah, Mike?

MR. BOVEE: Yeah, I would like to speak to this, because we don't use escrow, never have, but we firmly recognize that the benefit to the market and the industry providers, it almost requires it. We wouldn't have over six figures of uncollected fees outstanding right now if we used that model. We have just opted not to. We have looked into it, all the way into application, and then just decided to put it on hold.

So, it's absolutely necessary, and to the extent of what I spoke earlier in the earlier topic, as far as a monthly, nominal maintenance fee, that can be paid direct to the company. There's these escrow accounts that are structured and the providers that offer them where the consumers are in control and can withdraw their funds at any time. They're still protected and the company's interests are protected because they're only negotiating, when they have funds, they can see them, they're there, they're not wasting the creditor's time. And they are also likely to look at that and say, I can get this done and collect my fee at that time, and incrementally you do get to this sixth account and there is something adverse in the consumer's account and they wind up dropping or not get to that last account or what have you, the industry provider was funded for the first five. So, nobody is out anything.

I still strongly support some type of monthly maintenance fee, and I also want to take an opportunity to say that I didn't mean anything inflammatory from the Ponzi comment earlier, just to say that I mean, in fact, anybody that's here represented by anybody or at this table or in the audience, I would almost guarantee is not doing business that way, it was just more of a comment backwards looking to say, Hess Kennedy or Allegro.

MR. WINSTON: I see we have about two minutes left and one thing I have always lived by at these workshops is never be late for lunch. Does somebody want to say something in the last two minutes or we could go early for lunch?

Bill?

MR. BINZEL: In the course of this morning and this panel, there has been a very impassioned defense of debt settlement itself, the product of debt settlement, and I think there is a consensus in this room, and I think the consensus in the comments that I read that the product of debt settlement in itself, whether we call it debt settlement or less than full balance settlement, whatever that is, there is a consumer need for that.

What is at issue here, though, are the deceptive and abusive practices that are rampant within the debt settlement industry. And that's what I think the Commission is seeking to address. They are not seeking to abolish the product of debt settlement, but it's those exploitive practices that are harming consumers, and that are replete in the comments that were filed in the actions of the attorneys general and others who filed comments.

So, I think it's well and good, I understand the need for debt settlement, we may not spend a lot of time talking about it, but we really need to get at the heart of these exploitive and deceptive and abusive practices.

MR. WINSTON: Great, thank you. I think we're batting two for two this morning, two terrific panels. I want to thank everyone on this panel who contributed to this.

(Applause.)

MR. WINSTON: A couple of quick reminders. One is that these mikes are live, still. So, if you've got something to say that you don't want other people to hear, go out some place else. We are going to be back at 1:30 sharp. We are going to start right at 1:30. If you leave the building, you have to allow enough time to get back in. And I do recommend the 7th floor cafeteria, it's very good. Thank you.

(Whereupon, at 12:30 p.m., a lunch recess was taken.)

AFTERNOON SESSION

(1:30 p.m.)

PANEL 3: The Proposed Disclosure & Misrepresentation Provisions

MS. BROWN: Hi, we're going to get started. My name is Allison Brown, I'm a senior attorney in the Division of Financial Practices. Our assistant director for financial practices, Alice Hrdy, was supposed to be moderating this panel, but she cannot be here today, so Joel Winston and I are going to moderate the panel. So, we're sorry that she's not here with us today.

First, one quick announcement. We do have some time after this panel and the next panel, at about 4:15, for open microphone. So, if anybody in the audience, or if you're a panelist but you didn't get to say something, you're welcome to make some comments to us at open microphone, and those will be on the public record, and we will be able to consider those in our deliberations.

There is a sign-up sheet, if you want to speak at the open microphone, between now and the end of the next break, please walk out to the desk where we were doing the sign-ins and the panelist name tags and add your name to the list so we have a general sense of how many people want time to speak at the open microphone time.

And panelists, I'll just remind you to speak into the microphone and maybe if you could look out for your fellow panelists and move the mikes over when somebody starts speaking, that would be really helpful so we can capture all of the comments on the web cast that we are projecting now and will be available on our website as an archive that people will be able to refer back to later.

First I will start with introductions, and I'm just going to say the names of the people that were up here this morning, and then give the short bios to the people who are new to the panels.

Starting over here, our first panelist is Bill Binzel from the National Association of Credit Counseling. Next we have Norman Googel from the West Virginia Attorney General's office. To his right we have Susan Grant.

Susan Grant is director of consumer protection at Consumer Federation of America, a nonprofit association of some 300 nonprofit consumer groups that was established in 1968 to advance the consumer interest. Ms. Grant works specifically in the areas of privacy, deceptive marketing, online safety and security, fraud, electronic and mobile commerce, and general consumer protection issues.

We'll probably have joining us Mark Guimond, from AADMO, who is joining us right now.

MR. GUIMOND: Security.

MS. BROWN: Next we have Gail Hillebrand from Consumers Union. Next to her is Andrew Housser, representing TASC.

Next we have Scott Johnson, he's the CEO of U.S. Debt Resolve. He has participated in the drafting of various state-level legislation. In 2008 he was a panelist at the FTC Debt Settlement Workshop, and he has testified before various state legislatures and other entities.

Next to Scott, we have Jenna Keehnen. Jenna is the executive director for the United States Organization for Bankruptcy Alternatives, or USOBA. Before serving as the executive director of USOBA, she served as the director of operations at USOBA, and before that, she served as the director of operations for AADMO, which is the American Association of Debt Management Organizations.

And then we have Jim Keiser, from the State of Pennsylvania, who was on our panels this morning.

Next to him we have Michael Mallow. Michael is a lawyer who regularly defends companies and individuals sued in class actions and by governmental agencies. He is at Loeb & Loeb, and he also counsels companies on how to avoid and prepare for litigation before it happens. Mr. Mallow's clients come from a broad spectrum of industries, including entertainment, automotive, telecom, debt settlement, dietary supplement, electronic mail marketing, Internet commerce and lead generation.

And next to him we have Robert Manning, a specialist in the consumer credit and financial services industry. He's the author of Credit Card Nation, an in-depth study, Living With Debt, sponsored by Lendingtree.com, and he's been featured in Danny Schechter's documentary, In Debt We Trust, and he has widely written and published on these issues.

Going around the table, we have Johnson Tyler from South Brooklyn Legal Services.

And our final new panelist is Dr. Bernard Weinstein, he is the associate director of the Maguire Energy Institute and an adjunct professor of business economics in the Cox School of Business at SMU in Dallas. From 1989 to 2009, he was director of the Center for Economic Development and Research at University of North Texas.

Thank you, everybody, for being here today, and continuing our discussion of these really important issues. We want to start by talking a little bit about the prevalent marketing practices that are employed by debt relief companies. Some of the comments raised the use of lead generators as a growing practice. One of the things we want to talk about is how lead generators operate and whether anybody has any other specifics to add to the marketing practices about lead generators.

Okay, Mark?

MR. GUIMOND: We have consistently taken the position on the credit counseling side that lead generation is a chronic problem. Just as a frame of reference, what we have done at AADMO, we have filed 12 federal lawsuits over the past couple of years against lead generators for using the AADMO logo when they had no affiliation with us whatsoever. So, I think the credit counseling side is pretty consistent in saying we have a real problem with lead generators.

MS. BROWN: Do you have a sense of what percentage of the business of debt relief companies comes in through lead generators?

MR. GUIMOND: I can speak for the credit counseling side of it, I would say slim to none. There are some referral services out there that comprises certain elements, but the strict idea of the lead generator, which is somebody generally on TV or on the

Internet which takes and sells that lead in turn, the credit counseling side, it's mostly prohibited by federal law, and most of the state laws, too, so there is not all that much lead generation on the credit counseling side.

MS. BROWN: Can you describe what you mean by a referral company?

MR. GUIMOND: Referral company, well, NFCC and AADMO and the AICCA, we all have customer locator services where a customer can call in to a number and find a referral to a company, but they're expecting from point A that they're going to find a company at point B, and we vet on the AADMO side all of those agencies to make sure where a consumer is coming from, that the agency they end up with is licensed, but there's no fees for that. The consumer is not being charged as some of the lead generation does, there's no marketing costs along with that. So, it's a different set-up than traditional lead generation.

MS. BROWN: Other than those that you mentioned, what you call traditional lead generation and the referral services, are there any other referral types of entities that you know of?

MR. GUIMOND: I think that's about it. I think the biggest problem that we've seen is TV advertising that says that you're going to be referred to a nonprofit agency. They have a variety of options and we can refer you to a nonprofit or debt settlement or whatever the X happens to be, and at the outcome, it's not going to the nonprofit agencies, it's going to other agencies in the debt settlement side or other debt resolution, not credit counseling.

MS. BROWN: Andrew, do you want to speak to this point?

MR. HOUSSER: I wanted to say first of all that we are going to find a lot of common ground here. It's in everyone's best interest to have fully informed customers coming into the programs. It's a problem for everyone when there are not fully informed customers. I think at a minimum, whether you call them lead generation or whatever you call them, the claims they are making are substantiated by the companies that they are sending those leads or referrals to. I think that's a very reasonable assumption.

But like I said, fully informed customers is what we all want. It's not a quick sale process. It's not a process where the product is sold in a day or a call, typically a consumer is enrolled over a two-week period, typically four phone conversations happen before enrollment, and it involves a real strict suitability analysis to get the right consumer into the right program.

Our company, in addition to doing the disclosures, the suitability analysis, a separate one-page with nothing on it but the fees, do a compliance call as well to verbally disclose to the consumer the important disclosures that are included in the agreement.

So, it's in everyone's best interest to get the right consumer in to not create confusion, and lead generators should be held to that same standard of making representations that come back up through the companies that they're sending them to.

MS. BROWN: Is there communication between lead generators and companies in terms of how would a lead generator substantiate certain claims?

MR. HOUSSER: There certainly should be. We don't purchase their agreements, so I can't speak from first-hand experience, but there certainly should be.

MS. BROWN: How prevalent are lead generators in the industry?

MR. HOUSSER: Again, this is going to be based on anecdotal evidence. I would guess when everyone talks about the TV ads they see all the time and the radio ads, ESPN, I would guess the majority, the vast majority of the commercials you are seeing are lead generators as opposed to providers.

MS. BROWN: Andrew, if your company doesn't use lead generators, what are the marketing techniques that you use to obtain clients?

MR. HOUSSER: We have an internal marketing department that directly markets to consumers.

MS. BROWN: What types of marketing?

MR. HOUSSER: What types of mediums?

MS. BROWN: Right.

MR. HOUSSER: Internet, radio, TV, pretty much everything except for email marketing.

MS. BROWN: And some of the earlier comments also discussed debt relief providers that operate solely online or without using telemarketing. Does anyone have any specifics to add to that point?

Mike?

MR. MALLOW: I cannot tell you how many companies currently do their marketing exclusively online, but I would predict that if the regulation of debt settlement is done through the TSR, versus then some other method or some other statute, the number of companies that market exclusively online will rise dramatically as an end run around the application of the TSR, which, when we're talking about the marketing issues here, what we really have, this whole discussion really has two discussions in it.

One is does the regulation of the industry make sense? Is the substance the right substance to be talking about? The second is, and I think equally as important, is how we are going to do it, and does it make sense to do it in the context of the TSR, is it proper to do it, is it an authorized way, are you going to be creating unintended results.

And one of the unintended results that I think will be created is you will see a rise in companies using solely the Internet or some form of marketing that does not involve the telephone. So, you will actually see less consumer interaction in terms of trying to avoid the TSR, which is why, at least from my perspective, the TSR is not the right way to go about doing this. But I'm sure we can talk about that more at another point.

MS. BROWN: Will you describe how the sales pitch would happen over the Internet? Are you saying that the entire sales pitch would happen over the Internet, are you talking about email or can you be a little more specific?

MR. MALLOW: It could, theoretically, all occur online. How would that happen? There could be video presentations that are part of a website in terms of the marketing. All of the forms that could be filled out could be filled out online. The communications could be through live chat, online. All of these methods are currently available to communicate directly with the consumer and not use the telephone as a medium.

So, again, I think you will see a rise in that.

MS. BROWN: Are you seeing any today where the entire sales pitch is delivered online?

MR. MALLOW: I don't have any clients who do it that way. I am told by some clients that they are aware of companies who are doing most, if not all of their marketing online, and are able to enroll clients online, but I have not personally seen that yet.

MS. BROWN: Jim?

MR. KEISER: From a regulatory perspective, Internet marketing has always been a problem, primarily, because you can go on the Internet, all of the information can be submitted electronically, and we have no idea who is putting out the marketing, who is receiving the information, because many times it's just not available from the website.

So, from a regulator perspective, Internet-only marketing can be a serious problem.

MS. BROWN: Susan?

MS. GRANT: I just wanted to say that right now, the most prevalent means of advertising seems to be television, radio and direct mail. Ads on the Internet that induce consumers to call a toll free number, the fact that in the future there may be more marketing by the Internet only is not a reason not to act now to deal with the current problem that we have.

MS. BROWN: Bill?

MR. BINZEL: I think Susan captured that very well, and just to clarify, another distinction between 501(c)(3) agencies and for-profit entities are 501(c)(3)s are prohibited from paying for referrals. So, as a result, nonprofits don't use lead generators, per se. We do operate a locator line, but that's as a result of a consumer calling the NFCC and saying, I would like counseling, where should I go, and then we refer them to an agency and we use fees from the agency, a $3 fee from the agency to support that operation, which has been approved by statute.

But going back to the definition of debt relief services, I think what you're hearing, I think -- and it sounds like there is a consensus, even, that the definition of debt relief service needs to be fairly broad relating to advertising, encouraging, assisting, soliciting, brokering, et cetera, either leading to or intending to lead to debt settlement services. So, the point being that the final definition of debt relief service needs to be broad enough to cover the lead generating and the activities related to lead generating.

MS. BROWN: We are going to talk more about definitions in the next panel, but focusing on the prevalent marketing, can anybody speak to what the prevalent claims are out there today in terms of how debt settlement companies are presenting themselves to consumers?

Gail?

MS. HILLEBRAND: Thank you. We see claims like cheaper than credit counseling, we see claims of lower monthly payment, we see references to a monthly payment, which in my view are inherently deceptive, because they imply that there is a payment on the debt, as opposed to a payment to someone who is going to use it for future purpose. We see words like "debt free" and "debt elimination." Sometimes a company by an asterisk "individual results may vary," but I don't think you can dispel the implication created by words like "debt free, debt elimination, get out of debt in three years," with that kind of an asterisk.

So, we certainly do see those kinds of claims.

And we also see claims that I've got a couple off the Internet here, "our typical settlements are able to reduce debts by approximately 50 percent, reduces debt 40 to 60 percent." The implication of these claims is that you are going to get out of all your debt for that amount, and based on what we heard in the morning about the percentage of consumers who still have significant remaining debt at the end of the program, I think those are problematic.

MS. BROWN: Norm?

MR. GOOGEL: Just something I touched upon in the last panel, we think the industry is really exploiting consumers' myths and misconceptions about bankruptcy. For example, by saying we really want to pay your debts and don't want you to file for bankruptcy, which is true, then instead of doing the true screening and helping a consumer to determine what they really need, which in our view, in the vast majority of the cases, maybe even 90 percent or more, is bankruptcy, often Chapter 7.

Instead, they are sold a product by a company that only sells one product. So, we have been particularly concerned about the claims relating to bankruptcy and presenting itself as an alternative to bankruptcy. And then, of course, as it was just mentioned, the concern about debt free, that we will help you become debt free in two to three years, and in our view, the references to debt free actually invoke our credit services statute, or credit repair, because while it is true that your credit score will go down if you use a debt settlement service, and that often is disclosed, on the other hand, the real message is, we're going to help you get debt free. Assuming that's true, we see that as a form of helping you with credit, which would then require the industry to register as a credit repair company in the state, which they do not do.

MS. BROWN: Andrew?

MR. HOUSSER: Well, I agree with Norman to the extent that there needs to be a suitability analysis. Now, I disagree that 90 percent of consumers would choose bankruptcy if they had all the facts. In fact, one of the biggest things that you will see in those testimonials, the 200 positive testimonials on the FTC site, on the testimonials we've brought here, is how proud and how happy people are to have avoided bankruptcy, and I don't think you can discount that.

But a suitability analysis is a really important part of the process, getting the right consumer to the program. You're absolutely right. Some consumers cannot afford to deal with a debt settlement program, other consumers are better suited for a nonprofit credit counseling program. And as Bob mentioned in the earlier panel, our company has 25 people whose entire job is trying to screen out consumers.

So, I do agree with you, with respect to the suitability analysis that has to be an important part of the whole package.

MS. BROWN: Scott, do you want to speak to this issue?

MR. JOHNSON: I do. I think what I look at in the reports that we get back is I think in reference to the claims that companies are making, and to say a debt reduction of 70 percent, and this might even tie into the online advertising, there was a race. First company put 70, then 75, then 80, then 85 and 93. My question is that there is no question that we get settlements reduced that amount.

My issue that I see on that disclaimer that folks are making is what percentage of the clients actually receive that 60 percent reduction, that 40 percent reduction? You know, from us, internally what we do in our analysis is all numbers. So, when we look at our historical performance, correlates to what we advertise on the website.

So, I think if the question may be if a company is open for six months making a claim of reduce your debt by 40 percent, 60 percent, do it in 12 to 30 months, where is the empirical data to prove that you can actually do that?

I think that gets into some disclosures, that if a consumer knows more about maybe the way a company performs, it would at least maybe make them choose a different company.

Now, in respect to I can just say on the debt free, if it can provide substantial numbers that that happens in a two to three-year period of time for a significant amount of people, and I can only speak internally on our data that we collect.

MS. BROWN: We are going to drill down in a minute as to how you might substantiate some of those claims, but let me give Tyler a chance to talk and then we will move on.

MR. TYLER: The claims that seem to get my clients and get their attention is that in 24 or to 48 months, depending on the size of the debt, you will be debt free. And there usually is a disclaimer that goes along with that, is that, you know, we cannot stop the creditors from using their enforcement techniques. The reality is, and the reality I have seen, is that the creditors always respond to not being paid, and they will sue the client, the customer, in five to seven months.

That's what undermines the whole program, because most people can understand some of the risks, but that's a risk that they really have never had any experience with. They've never been to court before on some sort of debt collection matter, they don't understand that, well, you can get a judgment against you and now your wages will be garnished, and how easy that is to do. They don't understand that their assets can be taken, that their bank accounts can be frozen.

All of those things happen very quickly. I have seen it happen all the time in New York, very quickly, and they shortcircuit the whole debt settlement idea.

MS. BROWN: Bernard?

DR. WEINSTEIN: I just wanted to echo Andrew's point, that we talk about debt settlement and other options to bankruptcy, and I agree, bankruptcy is appropriate for some people. In fact, we're having record number of bankruptcy filings running at 130,000 a month, four times the level three years ago, but there are long-term economic and social costs associated with bankruptcy. I think what's important is that we have various options in terms of debt relief that need to be pursued.

MS. BROWN: We want to drill down into the proper way that debt relief entities might be able to make truthful performance or success claims that might comply with the proposed misrepresentation provisions. Let's isolate a claim that some of you have mentioned as a claim that's often made by debt relief providers.

For example, we will eliminate your debt in 18 to 36 months, or you will become debt free in 18 to 36 months. The standard for substantiation is that the Commission requires competent and reliable evidence of any claim that a debt relief provider is making.

So, with that preliminary information, let's talk about what type of competent, reliable evidence would substantiate the claim that a debt relief provider will eliminate a consumer's debt in 18 to 36 months.

Any takers? Gail?

MS. HILLEBRAND: I think the only competent and reliable information there would be evidence that they have, in fact, done so for a very large majority, whether it's 100 percent or 95 percent or some other large percentage of their clients for all of the debt for those clients. I actually think that the substantiation question is in some ways the wrong question. I think it is inherently impossible to make a truthful claim about historic performance because of the implication it creates that you will get the historic performance.

Dr. Breisch's study has a very wide standard of deviation in his table 5. I invite you to take a look at it. Suggesting that even mean results don't tell you very much about what the individuals get. We know it's very subject to the individual's budget, to the decisions that were made by an individual's creditors, whoever they are at the time, or become later, about the individual's ability to save, and about whether or not the savings amount is realistic for that customer and has really been explained to them what they are getting into.

MS. BROWN: Let me stop you for a minute. One of the things we look at here is what consumers take from a claim. Do you think consumers when they see a claim like this, does that mean to them that 100 percent of the people who enroll get the claimed results?

MS. HILLEBRAND: I think when you say consumers get 50 cents on the dollar is I'm going to save 50 cents on the dollar for all of my debt, and that does not account for tax consequences, does not account for the very serious impact of the unsettled debt, and I would like to talk about that a little bit more, whatever the appropriate time is, and it does not account for the fees that will be paid.

But more importantly, it does not account for the fact that many of those consumers are going to finish without settling all of their debt. So, if I owe $10 and I save 50 cents on the dollar for half of it and I still owe the other half, I haven't saved 50 cents on the dollar, maybe I've saved 25 cents on the dollar minus the fees.

MS. BROWN: Do others have views about what consumers take from eliminating debt in a certain amount of time? Do you want to go ahead?

MR. HOUSSER: Sure. Obviously we all agree that disclosures need to be accurate. I think one of the fundamental misperceptions of our industry that I think still exists today is that our consumer group is very unsophisticated. In fact, the average consumer in a debt settlement program is above average income, above average education. Most people don't know that. They're people who have run up $30,000 in credit card debt and had a one-time life event where they got into a really difficult situation that they need help with.

That said, so, do I think that on average, including accretion of accounts, I'm settling debts on 50 cents on the dollar, and if I tell a consumer that I'm settling on 50 cents on the dollar, subject to you meeting your obligations, savings obligations, I'm settling for 50 cents on the dollar. The vast majority of consumers that drop out of the program drop out because they're not able to make their savings obligations. The vast majority of consumers that stick to their savings obligations get those settlements.

MS. BROWN: And what's the basis for your statements that the vast majority of consumers who drop out do so because of the issue with savings obligations?

MR. HOUSSER: It's based on just one company's data, and anecdotal data from a lot of other companies in the industry that consumers that made their savings payments on time every month had great success in this program.

MS. BROWN: When you mentioned one company's data, what are you referring to?

MR. HOUSSER: Freedom Debt relief, I'm sorry, my company.

MS. BROWN: So, your knowledge of your own internal data?

MR. HOUSSER: We have done 45,000 settlements so far this year, it's a significant data sample.

MS. BROWN: When you say there is a significant data sample, in terms of why consumers have dropped out, is that based on consumer interviews after the fact or some other type of information?

MR. HOUSSER: It is based on looking at the percentage of consumers that drop out who have missed one or more payments along the way, and it is significant. The vast majority, to be honest. It is very rare for someone to be sticking to the same program every month and then have it not work out for them.

MR. WINSTON: Can I follow up on that? As Allison said, a lot of the substantiation issue comes down to what claim do consumers take from an ad, and I think under pretty well accepted deception law, if you're making a claim that you will receive a certain result, then the consumer reasonably expects that they will receive that result. If it's a claim about not identifying a specific consumer and what they will get, but just as, you know, save 30 percent off your debt, usually the word that we apply to that is that's going to be the typical result. That maybe not everyone is going to get that result, that's going to be the typical result.

So, what I'm wondering is, given that, is there a way to make a much more qualified claim that would be more easily substantiated? For example, if I could say the consumers who stay with my program for 36 months, 50 percent of them achieve a reduction, and the average reduction in debt is 30 percent. And assuming that's what the data shows.

Is that the sort of claim that we think is okay, or do we think that's problematic?

MR. JOHNSON: I'll respond to that. And I'm going to start on the claims that are made. I'll speak specifically to my company, why we make a general claim, is on the 40 to 60 reduction is because historically our numbers for five years reflect that this is the results that we get for the consumers.

The thing that we use as a modeling called batch tracking is we know, depending on the scenario of each different consumer, we know the historical performance with a debt buyer, certain debt buyers, certain collection agencies, certain issuers, certain law firms. So, when we're doing that consultation process with them, that's what we have to make the adjustments to say, we'll take on debt under $500, but we know the performance on that is going to be X, or we will say, it changes from time to time, that issuers move their position with us on debt sold. So, one month it could be down to 15 cents, the next month it could be up to 60 cents.

So, we're doing a lot of forecasting on this. So, the issue probably more comes from there's no third party audit that's happening to debt settlement companies, and no standard model to see if everybody's using the same performance standards.

Last year, in 2008, I used one of my slides where understanding your inventory and take your total debt, under management, divide that over a period of time, and are you successfully moving clients along that program?

When I did that, when I mentioned that my model was at that time 210 days, the account's age, divided by an average term of the program. When we saw those results starting to happen a lot quicker, we changed it to total data under management from day one. And now we divide that by a 30-month period of time.

So, when we look at performance, we look at are we moving the inventory, are we settling the settlement percentage we used. We use that on original balance, not current balance, because I think there was a claim about a 10 percent move. I think if you look at the Colorado numbers, it reflected that that debt grew 20 percent. So that when you're using a disclosure to say, oh, it's going to be 20 months before you settle your first account, and I am not trying to get into a fee structure discussion, but if a consumer waits that long a period of time, it's more about the total cost of the program that would significantly increase.

So, even though you say 40 percent settlement average and 15 percent, the numbers that actually what the total cost for that consumer could rise significantly. So, an additional 20 percent on the original debt for the average consumer, $30,000 in debt, could cost them $6,000 more. And that's where you typically see some of the cancellations, because the budget doesn't fit that.

So, a way to handle this is probably not under the FTC, is to have more third party audits, and have some standard modeling so that we at least be able to have some general practices on how we measure the success of consumers.

MS. BROWN: In terms of measuring the success, how do you calculate dropouts? What do you do with the consumers that made one payment and dropped out or three payments and dropped out?

MR. JOHNSON: Well, there are certain things that are beyond our control, and as we look at things and say unemployment rate has hit 9.8 percent, and we look at that and categorize is it the fault of the program or is it the fault of something changes on the consumer's side?

Now, we do in the enrollment, we have a 30-point checklist we go through on the budget analysis to make sure we know the performance going forward on the debt. So, I think our screening process helps out a lot more to make sure that somebody is committed to the program.

Our average consumer that drops out is around 24 months is the starting point. There's just not a lot of -- if they're on track, I think this will reflect what Andrew said, if they have the ability to stay on that budget, there is a high success rate. We try to give them tools to be able to manage their budgets better. Unfortunately, second bread winner in the house loses the job, the issue they get in in the first place, somebody loses the job and now the second one loses the job and it becomes totally unreasonable for them to continue.

So, we do an exit interview with everybody that cancels to find out what their reasoning is, and for us the majority of the people is that they cannot afford our program anymore, therefore it becomes bankruptcy.

MS. BROWN: So, you're saying that you telephone everybody and ask them and do an exit interview over the telephone or is it a written survey?

MR. JOHNSON: It's an exit, because we look at the folks that file bankruptcy, we also collect the data to know what law firm that they are using so that we can send out correspondence to make sure that the law firm that now has that client isn't going to get them into violating. But the majority of them are. It's loss of additional income. It could be the price of gas going up to $5. That $200 a month can be very tricky in a lot of the average consumers' budget, so there's outside things that usually will push somebody out of the program, not necessarily the program design itself.

MS. BROWN: Can you walk us through, then, for these different group of consumers, whether you are then including some of them? It sounds like you are including some of them but not all of them?

MR. JOHNSON: We include them all. If I was to break it down with my data sheets, I will tell you depending on how much debt they have, depending on what their age group is, the balances that they come in on the account, what type of program they sign up for, for me it's not one simple question on this is the 30 percent of the people that drop out of the program through the entirety that never make it to the end. What happened to them?

I put attributes on each different consumer type to say, somebody less than $15,000 is one of our highest cancellation rates. The folks that get over $150,000 start to fall into that category as well, but the consumers that fall as the average, $30,000, that's by far the most successful.

So, there's a breakdown for each different group. We've tagged everybody to understand how they perform and then we tie that information into the initial consultation to make sure we select the right program for them.

MR. WINSTON: More specifically, and I will open this up to anybody, if a company is making a claim that they'll save 30 percent off your debt, when they know that a significant percentage, whether it's 30 percent or 50 percent or 80 percent of their customers drop out before they get that result, should those dropouts be factored into the calculation of the success rate?

Susan, do you want to respond?

MS. GRANT: Sure. Well, I should start by saying that we think that any success claims are inherently misleading, and would like to see them prohibited. For all the reasons that we've talked about here, it's really impossible to know whether the consumer is going to be successful at the point where they're thinking about enrolling, and you can try to make the claim more nuanced as you suggest with having to be in this program for X number of months and you might see the success, and that might satisfy the lawyers in the room, but it's certainly not going to be meaningful to consumers. They don't have any way of knowing how long they're going to be in the program, or whether this is going to be successful for them, whether their creditors are going to cooperate, whether they're going to be able to fund settlements, or any of the other contingencies that might come up.

And, so, I'm very uncomfortable with any success claims being allowed, but if they are allowed, then certainly companies should factor in everybody who has been enrolled over the specific period of time in question.

MR. WINSTON: Just to follow up on that, do you think it's okay in that scenario to make a claim that says, for those of our customers who stay in the program through the full length of the program, 70 percent of them achieve a certain level of success?

MS. GRANT: I just think it's meaningless for consumers who are thinking about enrolling, because they don't have any way of knowing whether they're going to be part of that 70 percent or the other 30 percent.

MS. BROWN: Johnson, so you wanted to say something?

MR. TYLER: Yeah, I was going to say along those lines, Andrew and Scott have both said that things happen along the way that people cannot anticipate. The thing that I found with my clients that happened that they really have downplayed when talking to their counselor is they're going to be sued, and that is what terminates debt settlement for them. All of the sudden, they do not feel protected, and the next thing they know, they have their wages garnished, or their bank accounts frozen.

So, and that is a predictable result from debt settlement. It's something that needs to be disclosed in ways much more than simply the creditor has a right to pursue their legal remedies.

MS. BROWN: Bob?

MR. MANNING: I think what's really striking over the last few years is really the lack of empirical baselines for making these assessments. I mean, there's clearly here an apples and oranges issue. First is the client matched up with the most appropriate program, and second, if they go into a partial payment plan, what's the appropriate payment structure?

Right now we're facing a crisis with credit counseling, we're seeing less than 10 percent of people, because we're talking as if credit counseling is going to absorb a lot of these people. Less than 10 percent of people who call are eligible for credit counseling.

We know that that's a success rate of less than 25 percent.

What happens to people who drop out of credit counseling? You know, we have a conflict of interest, because GreenPath had mentioned that their revenue flows are shifting away from debt management plans and a lot of it has to do with because they are going to bankruptcy and counseling programs.

The real key issue here is do we have some kind of standardized metrics that can say to the consumer on the point of you're in the appropriate plan and now here is what your success rate could be based on. And in the last year, since we had the last meeting, I put together a program, a very sophisticated algorithm we have put through about 15,000 people which looks at -- calculates adjusted gross income, looks at deductions, puts them on a bankruptcy allowable schedule for the district of residence, looks at state and federal taxes, household structure, home ownership status, tax filing status and all secured obligations, and comes up with a net cash flow analysis.

Now, from that, the big problem with creditors is, and my big criticism of the debt settlement model, is that you're negotiators. You're not estimating debt capacity. If somebody comes in and they can pay 40 percent through their cash flow, either at the individual or household level, are you putting them on a 40 percent plan, and conversely, if the person can only pay 20 percent, are you still putting them on the 40 percent plan, and from the creditor perspective, if you have someone who can pay 60 percent and you're putting them on a 40 percent plan, they don't know what is the appropriate pay-off. And as a result, you can very easily come up with a set of disclosures with an empirical analysis of a means test of a client, that person comes in at 40 percent --

MS. BROWN: We will try to get back to this, but we do want focus for now on what kind of evidence could actually substantiate a claim that people get out of debt in 18 to 36 months.

MR. MANNING: What I am saying is if you bring people into a program that the most they can pay is 25 percent and you put them into a 45, 50 percent plan, they're doomed from the outset. There is no way possible they can go through a 36-month plan. So, if your screening process is correct, then you are going to reduce that.

MS. BROWN: We will try to get back to that.

On the substantiation issues, Mike, do you want to add anything on the substantiation issue?

MR. MALLOW: Yeah, let me weigh in on this, because not only do I counsel clients on this issue of substantiation, but I've actually litigated the issue and litigated the issue with the Federal Trade Commission on this very subject in this very industry.

Look, there is a well-known body of law related to substantiation. There is nothing unique about debt settlement, as it relates to that law. You have to have a reasonable basis in which to make the claims that you make. If you have empirical data that has been accumulated over a sufficient period of time, that provides the reasonable basis in which to make the claim, you're allowed to make the claim.

So, if you have data over five years that shows historical achievements on a per account basis, then you should be able to represent to the consumer that information based on that data.

Now, what the danger is, and the real analysis needs to be, is on what is actually being represented. So, to sit here and have a discussion about amorphous claims and what data and what evidence do you need about amorphous claims is somewhat of a useless exercise.

MR. WINSTON: Let me follow up on that. I think that's a good point. The amount of substantiation required is based on the claim. You might need different levels of substantiation if you say you may get this result, you will get this result, some people get this result, you will get this result if you stay in the program for 36 months, all those are at least theoretically different claims that could require different levels of substantiation.

What I'm wondering is whether it would be useful in this rule to lay out some of these issues and provide as much guidance as possible on what kind of substantiation we expect for which kind of claim. Would that be useful, people?

MR. MALLOW: Let me approach the question this way: First, I don't think the rule is the right mechanism to do what the FTC is trying to do. For a number of reasons.

MR. WINSTON: But putting that aside, just getting to the issue.

MR. MALLOW: If, for example, you were talking about FTC guidance, which it has done in other areas, where you can use and you have the ability and the flexibility of laying out specific examples and what kind of substantiation the Commission would be looking or expecting to see, of course that would be useful. The industry is dying for guidance. It wants specific guidance. And specific guidance has been lacking.

So, yes, it would be useful. If you turned around and gave examples such as if you were making a claim that a consumer will settle all their debts or can settle all their debts on 50 cents on the dollar, attrition rates may very well be a useful piece of information and a necessary piece of information. If you are stating to consumers, we settle credit card accounts at or have historically settled credit card accounts on an average of, or within a range, then do you need all the attrition information? Probably not, because we're talking about specific accounts.

So, you've got to tie it to the claim, and if you were dealing with a guidance document, I think the FTC has far more flexibility to raise examples, specific examples that can be used for debt settlement companies to model in their marketing and advertising. That's why I think the TSR is the wrong way to do this.

MR. WINSTON: What do other people think about whether the FTC should or it would be useful if the FTC provided that sort of guidance and whether it should be in this rulemaking or through some other mechanism?

Jenna?

MS. KEEHNEN: I agree with Michael Mallow as far as the avenue or the vehicle to move forward on this. It seems like the constrictions and parameters in the telemarketing rule are either too broad in some instances and way too narrow in others.

As far as substantiations and seeking guidance and that kind of thing, absolutely. If you're looking for something from us, I mean, Stephanie was gracious enough to be at our last conference and we're begging for what can we do? What can we do to "make you guys happy?" And what it comes down to is, well, I cannot really tell you that. Well, I cannot really tell you that. Well, here, let me make something up, but then I cannot answer any direct questions.

I'm not sure if you have noticed or not, but at least I'm not a mind reader, I don't know about anybody else here, and without that guidance, I am not sure. I guess it seems to me that you would keep it so broad that you could encompass anybody at any time, and that you might like it that way. And I don't think that that would be your intention.

So, yes, we would welcome it. Absolutely.

MR. WINSTON: Who do we have here? Mark?

MR. GUIMOND: As I referenced this morning, the UK has a system in place with the Office of Fair Trading which has actually issued guidance for debt management generally, including debt settlement, credit counseling and everything what would be called debt relief right now. And I wanted to quote what they did with their guidance when it came out and I think it's wholly relevant to the question they asked, this is the Office of Fair Trading in the UK, "Our main finding is a 70 percent reduction in the number of consumer complaints we've had since the guidance was issued."

This applies mostly, as we're talking to you right now, about advertising, marketing and promotion. I think if there is a guidance, though, clearly if that can be the result in the UK, we can probably do a lot better than that here. I meant it that way.

(Laughter.)

MS. HILLEBRAND: I'm reminded that the headline is UK Breaks Up Large Banks, but that's a topic for another forum.

(Laughter.)

MS. HILLEBRAND: The TSR is a good place to start on this issue. We heard the TASC folks say four phone calls over two weeks to sign up the client, we heard the Freedom Debt folks in the prior panel say eight phone calls. Phone conversations, signing up the client, telemarketing and telephone communications are a big piece of how consumers get signed up.

There's a fundamental disconnect between substantiation of a claim of savings and substantiation of a claim of results. The statement we save 50 cents, we settle debts for 50 cents on the dollar, implies that the result is your financial obligation at the end is 50 percent of what you started with. The problem is if that's true, if the statement, we settle for 50 cents, makes people think you're going to owe 50 cents at the end, then the substantiation would have to include not only the savings amount off the original debt, without whatever amount of accretion occurs after enrollment, but subtracted from those savings would have to be the fee, the amount that is paid to pay that settlement, because reduction of debt doesn't mean you pay zero, you pay something to fund that settlement, and accounting for the remaining debt, where the company's own records show that lots of consumers have remaining debt.

I actually ran those numbers under the USOBA fee model and the Accord fee model for the median Dr. Breisch's average debt of $24,000. I made it just two debts of $12,000 each to simplify the math. If one of those debts settles at 50 percent, the consumer has to come up with $6,000 to fund that settlement, and then is going to pay the USOBA 20 percent fee of $4,800. The remaining debt of $1,200, the consumer's total financial obligation there is going to be $22,800. That consumer is going to be 95 cents on the dollar from where they started. It may be more accurate to say you save five cents on the dollar, not counting the tax claims.

The Accord model is quite similar, it would be accurate to say there that you save 12 and a half cents on the dollar. The true fact that settlements occur at 50 cents on the dollar when combined with the obligation to pay fees and the remaining unsettled debt makes that true fact misleading.

MS. BROWN: Andrew?

MR. HOUSSER: So, I want to say, the question of whether the TSR is the right place to do it is not for me, that's up to the lawyers. I do think that we would just appreciate the guidance, absolutely.

I think the real question is we all agree that the settlements have to reflect actual results. The question is what do you do with the people that are unsuccessful? And Gail is arguing that we factor that into the overall average, but I think that's almost more confusing.

If 50 percent of my people are getting 50 percent of their debt reduced, completely reduced, and then 50 percent are getting zero percent, just to make up numbers, to say our average client is going to get 25 percent debt reduction, that's almost more confusing to me.

You know, which is why I kind of would lean towards your original proposal is, hey, give the settlement results for people that are successful and then make it absolutely clear what it takes to be successful and who is and is not successful. I think that provides a more accurate picture than blending in the average of two completely separate groups into one number.

MR. WINSTON: That's where this issue bleeds into the disclosure issue and why it's difficult to provide the sort of certainty and guidance that we would issue. And that is because the amount of substantiation you need depends on what consumers take the claim to be. And it may be that you can make a more qualified claim about just the people who get through your program, in which case the substantiation you need is going to be very different from a claim that all of your consumers get a certain result, or that the average consumer gets a certain result.

The problem we face is that ascertaining what claim consumers take from a particular advertisement is very difficult, and often you need to do testing of consumers to find out exactly what it is that they understand it to be.

So, when we've done this sort of guidance in the past, and we have in many other industries, we've always said, if consumers are taking your claim to mean X, then this is what we expect in terms of substantiation. But if they're taking a different claim, then it's a different level of substantiation. And it's very hard to tie it to specific language, because the interpretation consumers take from a particular ad depends on all of the elements in the ad working together, it's not from one phrase or the use of one term, but everything in the ad, and it's very hard to predict what it is.

So that where that leads us to is that the issue of disclosures is very relevant to the issue of substantiation, and we will get to that in a few minutes.

MS. BROWN: Johnson?

MR. TYLER: Yeah, I was struck that assuming some people benefit from debt settlement, it sounds like it's very fact-specific. It's fact-specific as to whether they have assets, like a 401(k), whether they have a rich uncle, and it also depends on their tolerance of litigation, because I find it very hard to believe that people aren't being litigated on these debt collection issues. And because the set-up fee is such a lucrative way to collect money without providing a service, it enables debt settlers not to differentiate between who is going to succeed and who is going to fail. And that's why the fee provision is important to stop having all these people lumped together, some will succeed, some will fail, and the debt settlement companies get paid regardless of the outcome.

MR. JOHNSON: I would like to just respond.

MS. BROWN: Scott?

MR. JOHNSON: I would like to respond to that. And I will sit here and say, my fee structure model at U.S. Debt Resolve is that we take the payments evenly out over the entirety of the program. So, as we talk about litigation, as we have been able to track that over the years, we saw that as an issue. It spikes and changes on the outside.

So, in order to lessen any of the litigation, is why we push the fees further out so the consumer had more money up front. So, if we talk about the six accounts and we are able to settle two of those within the first 12 months, we already reduced the opportunity for litigation by 33 percent.

The other factor that we have done is what we have done over the last two years is reach out to get agreements in place already with the creditors. And if I do a quick definition on creditors, we have issuers, we have agencies, we have debt buyers and law firms.

So, when I mentioned on the batch tracking, if we see something spikes on XYZ law firm, and I say that as an ISO 9000, we create a corrective and preventive action form, we come up with a policy and procedure to change all that, and then we also know that if they do pay 80 percent back on one account to get them back closer to the average, we will leverage our relationships to decrease another account so that the overall outcome for them is managed right at their budget.

Now, so in litigation, you start garnishment, that's all done in the consultive way we go through it. We have a whole matrix on all 50 states to understand what the potential is for garnishments, in that we will forego fees for several months and tie it onto the back end so that the consumer can make that payment before the actual litigation goes in.

So, those are kind of like business designs, which I'm sure people do, but if we're talking the generalities on how we operate, there are some things that become out of our control. Because we work with, as debt settlement, to clarify this, we work with over 2,500 different entities, where the DMPs are working about 150. Collection agencies, debt buyers, issuers, that's where we're working, so that's where we become more labor intensive.

So, to make a design to actually project or forecast the future, what's going to happen. So, if a new debt buyer pops up, there's work that we have to do that could change a claim that we're making day one as opposed to day 28.

MS. BROWN: Michael?

MR. MALLOW: I think there is a certain irony in the discussion in that we're talking about substantiation and claims and positions that debt settlement takes, and yet we are not requiring that same level of substantiation for a number of the positions that are being maintained at this table.

Specifically, it would be a logical assumption to say that if a creditor is not getting paid, they're suing their debtor or the borrower.

MR. TYLER: Certainly.

MR. MALLOW: It would make a logical assumption, but the stats don't bear it out.

MR. TYLER: In New York they do.

MR. MALLOW: They don't bear it out. I have canvassed a number of my clients to ask what is the statistical percentage of your clients that actually get sued? Put aside the threat, put aside the phone calls, put aside a whole lot of the chest pounding that creditors will do to get clients to fall out of a program, put that aside, the actual filing of the paperwork, it happens about ten to 12 percent of the time. I've had seven or eight different companies that are vastly different come back with that same statistical range.

What's really happening is that you have the creditors utilizing the telephone, pounding these clients into submission, essentially, for dropping out of the program. You heard John, I think, used the statistic, it was 40 percent.

So, what they are using is not the reality of litigation, it's the threat of litigation. Okay? And remember, debt settlement is part of the collection process continuum. There is a place that debt settlement occupies. It goes in between the creditor and the borrower; as a creditor is either -- is going to try to collect what the creditor believes is owed to it.

So, it would make sense to me that if you were looking at the issue holistically, what you need to do, you cannot take this piecemeal, you would be looking at the creditor activities, in conjunction with the debt settlement activities. So, if you're going to say debt settlement companies, you should be making these representations, or you should have these fee limitations or whatever, you cannot just look at that in isolation without looking at the other side, and that other side is the creditor activities.

So, there is a very, very easy way of bringing benefit to the consumers and recognizing what I think has been determined to be value in debt settlement, and that's to say if a consumer has a debt settlement company representing them or acting as an intermediary, then the creditor can only contact that intermediary and cannot pound on the consumer separate and apart from that intermediary.

MS. BROWN: And we do have a lot to cover today, so I think we're going to segue into the disclosures portion of the discussion, so I'll turn it over to Joel to focus on proposed disclosures.

MR. WINSTON: Thanks, Allison.

As you know, the proposed rule requires six additional disclosures, in conjunction with the basic disclosures that are in the Telemarketing Sales Rule. And I want to go through those a little bit in a few minutes, but just to tie up the loose ends on the discussion we're having now, the issue, I think, is whether or not a debt settlement company can make a qualified claim that can be substantiated by something less than the kind of data that we're talking about.

In other words, could I make a claim that many of the consumers who enter my program drop out before they get results, but if those who stay in until the end, the average benefit is such and such. And I'll tell you my prior on this, that's kind of called a prior, what I think, and it's based on a lot of work this agency has done over a lot of years, and testing consumers, and doing research, and what we've found is that generally speaking, it's very hard to qualify an efficacy claim, a success rate claim. And that you may think that you're putting in language that says, well, we're giving you all the qualifiers here, we're telling you under what circumstances you're going to be successful and what you're not, but in most of the testing we've done, what we find is that the consumers just don't understand the qualifiers, and they look at it as they're telling me I'm going to be successful.

An example that we've tested a lot is what we call an up-to claim, where a company will say, buy our gas saving device and your mileage will go up up to 20 percent. Now, we may sit here and think about that and say, well, they're saying it might be 20 percent or it might be less. They're saying up to 20 percent.

When you do the copy test, you find that everyone thinks they're going to get 20 percent. They just don't understand the qualifiers.

So, the basic question I have is what do people think about the possibility of making more qualified claims and, for example, being able to substantiate a claim without including the dropouts in the pool?

Anyone want to comment on that?

MR. JOHNSON: You say that on the dropouts. Here's the thing, though: See, when I see all the claims that I read out there, it seems to be sometimes results are for a small group of people, and that has got to be the biggest factor. So, when somebody uses a number, if they've settled a lot of debt, they'll say, look, we've settled this much, you know, millions and millions in debt, but it's how much should you have settled?

So, if you show the performance on anybody, there's about eight to 16 of the consumers that will go through the program because of the design, who they are, how they have their finances together. So, without evaluating the dropouts, you're not getting a real big picture. It would be like an investment to say, oh, I'm a great investor, because, you know, here's all these people that made millions of dollars, but here's the 90 percent that made nothing.

So, when we're making claims on people, and I would just reference that people can see claims relatively quickly. So, we talked about two years to settle a debt. I can make a claim that we settle our first account for 92 percent of our clients, the first account, within 90 to 180 days. And by making that claim, that ought to give them the choice to say, if a company can only perform at doing it 14 months or 24 months, the consumer would have more information to make a decision on the company.

So, when you say my settlement average is 40 cents, what percentage of those consumers receive that 40-cent settlement, and is that originally occurring, and has that been audited by an independent third party. Because there's a misconception on you can make claims, but if it's only for one person or a few, then that's where they get misguided.

MR. WINSTON: I think that's a good indication of the complexity of this.

Susan?

MS. GRANT: Joel, you just made a very cogent argument for my position that there should not be any success claims allowed. And let's not forget two other factors that I think are important, and that may distinguish this from some other situations. We have an industry in which there are a lot of problems, and we have consumers who are really, really vulnerable at the time that they're being solicited with these pitches. People who are in financial and emotional distress. We're asking them maybe to parse these very convoluted explanations which may not apply to them of how this has worked out for other people, and I just don't think that it's going to give consumers the realistic picture and the protection that we are aiming for here.

MR. WINSTON: Just to clarify, I may have made a cogent argument in favor of your position, that doesn't necessarily mean I favor your position.

MS. GRANT: Yes, I understand.

MR. WINSTON: No judgments on that.

(Laughter.)

MR. WINSTON: Jenna?

MS. KEEHNEN: It seems to me that the consensus around the table is we are making claims like this because of what you said, however you make the claim, whatever, the consumer just doesn't understand. So, might I suggest that the Federal Trade Commission pull way back on this and make a big rule so that I stop seeing it with diet pills, I stop seeing it with investments.

I don't think, if consumers are truly taking that away from our claims, I would believe that surely they're taking them away from all of the claims they're seeing out there. Is it something that you would consider instead of targeting one little tiny industry and their claims or broaden this to target the entire world and their ridiculous claims?

(Laughter.)

MR. WINSTON: How do you feel about that, Jenna? I couldn't quite tell. We actually have put out a lot of guidance on the limitations of disclosures and qualifying claims. That's not to say it's impossible. Obviously it's possible in some cases. Qualifications can be effective if they're done appropriately.

It brings to mind another recent example, we did a lot of testing on the issue of consumer testimonials. We have a guide that says, if you -- we had a guide that said, if you use a consumer testimonial in your ad, like I lost 50 pounds using this product, it either has to be the typical result that consumers would achieve, or there has to be disclosure that the results aren't typical. And everyone went along for many, many years, saying, gee, that sounds right, there's a disclosure, it qualifies the claim. Then we did some testing and discovered that people didn't get results not typical. People thought they would lose 50 pounds.

We tested a variety of other disclosures, to see whether there is some way to explain to consumers that these are the people who are getting the best results, that you may not get those results. And the only thing that worked at all was basically having the ad disclose what the average result is.

So, it will say, I lost 50 pounds using this product, average weight loss, six pounds. I'm wondering whether there's an analogy here, whether a disclosure of sort of the average result. I realize how complex it is to say what the average result is in something like this, because it depends on a lot of variables, but that's sort of the principle that I think we have looked at.

But moving to the specific disclosures we've proposed. So, there are three existing disclosures in the Telemarketing Sales Rule. The first being that you have to disclose the total cost to purchase, receive or use the quantity of any goods or services that you are offering. So, basic cost disclosures.

The second requires disclosures of all material restrictions, limitations or conditions on the purchase. The third is that if the seller has a policy of not making refunds, then you have to disclose that fact to consumers. Those are the three basics.

Now, we've proposed six additional disclosures. My questions will be, so you can be thinking about them, individually are these good disclosures, and collectively, is this a good way of educating consumers, or are we throwing so much information at them in the context, particularly of a telephone call, or sales pitch is being made, that consumers are going to be confused or just not understand at all?

So, here are the six disclosures we've proposed: The first is the amount of time necessary to achieve the represented results, and to the extent that the offered service may include the making of a settlement offer to one or more of the customer's creditors, the specific time by which the debt relief service provider will make such a bona fide settlement offer.

So, in other words, you would have to disclose how long it takes to get the results, and how long it will take before the settlement offers are made.

The second is that if you are purporting to make settlement offers on behalf of your customers, you have to disclose the amount of money or the percentage of each debt that the customer must accumulate before a settlement offer would be made. So, how much money you would have to save up.

The third would require a disclosure that not all creditors or debt collectors will accept a reduction in the balance, interest rate or fees a customer owes to that creditor. So, your results may not be typical.

Then the fourth, disclosure of the pending completion of service, the customer's creditors may pursue collection efforts and may initiate lawsuits. So, the consequences.

Fifth, to the extent that any aspect of the service relies upon or results in the customer failing to make timely payments to creditors, disclosure that the use of that service will likely affect adversely the customer's creditworthiness, it may result in the customer being sued by the creditor, and it may increase the amount that the customer owes because of the accrual of late fees and interest.

And then finally, six, the telemarketer of debt relief services must disclose that the savings the consumer realizes from the use of the service may be taxable income.

So, I think most people would agree that this is all useful information, good things to know. The question is, should they all be mandated, and if so, are they likely to be effective, and maybe we can touch first, let's touch about the disclosure of the amount of time necessary to achieve the represented results, and I know there have been some comments that that's a very hard thing to calculate, and it depends on so many things that predicting it in advance, with respect to any consumer, is going to be very difficult.

What comments do people have about that kind of disclosure?

MR. HOUSSER: I mean, I think all these disclosures are no-brainers and anyone, member of TASC or USOBA, does these in one form or another multiple times throughout the process.

I think you raise a valuable issue if you start throwing too much at people; does the message get lost, but I think each one of these is valuable and important. I think time to results, like you said, you don't have a crystal ball, you can never predict it perfectly, but people do have historical settlement results. I think it's important to take into account accretion when you're estimating the time to results compared to the customer's payment. It's obviously important to take into account fees when you're talking about time period results.

But I think something the more sophisticated companies have started to do, which is really important, which Scott alluded to earlier, is looking at this on a creditor-by-creditor basis. You cannot just use 50 percent across the board and assume that the time to results is just some mathematical certainty. It depends on the creditor, it depends on the consumers being in the situation.

So, it's impossible to become perfectly accurate about it, but there are ways to dial in. But in general, these are things that, like I said, all TASC and USOBA members do, and I think it's very beneficial to consumers.

MR. WINSTON: Jim?

MR. KEISER: From a technical standpoint, the proposed rulemaking affects all debt relief services, and it should be noted that the likelihood of creditors suing or tax implications under a debt management service, when exists, there should probably be something that that disclosure might be required when it's applicable, but for debt management service, those disclosures probably would not be applicable.

MR. WINSTON: Thank you. Mark?

MR. GUIMOND: I would mirror that a lot of these do not apply and I think the proposals in the rule do not apply to for-profit credit counseling, we just haven't seen the number of problems arise. I think this is limited to a debt settlement issue and I think the Commission might want to look at removing for-profit credit counseling from the rule entirely, particularly for disclosures.

MR. BINZEL: I know you wanted to focus specifically on the time disclosures, but based on what Andrew said, and I know you don't speak for everyone, but it sounded like there was almost immediate consensus around the six disclosures that the Commission has recommended, and that's why I jumped in and I would add that we think that there ought to be a couple of other requirements in this, and we think that the disclosures ought to be made in writing, and that there be a written contract with a provider of debt settlement services.

We think there ought to be, and I'll just mention four other things quickly that we think ought to be part of the disclosures. The first being the legal name of the company providing the services, and also their d/b/as. There are a lot of different entities out there that are causing consumers confusion, and we also think there ought to be the corporate address, where is this entity based, where are they located. And the license or registration number, if applicable, if operating in the consumer state and if it's required.

And fourth, it sounds really simple, but a phone number during normal business hours where the consumer can reach the company, because we hear it on a daily basis that consumers come in, signed up for a plan, and then can never get ahold of the company or get a call back, and there needs to be a mechanism by which consumers can reach the company and talk to a live human being.

MR. WINSTON: I should mention in case I'm starting to get a little bit arrogant here, I'm sitting in the chairman's chair, this is this is as close as I'm ever going to get to being chairman of the FTC, but please excuse me.

Norm?

MR. GOOGEL: Just a brief comment. I do think that the disclosures are very good, as was said earlier, very useful information. Can't possibly hurt, can only help, although disclosures alone have limited value without stronger stuff like the advance fee ban that we talked about earlier, but I think the danger on the disclosures is that they could be swallowed up by certain other claims that are made, and I think in particular the claim that debt settlement would help somebody become debt free and all the variations of that are so inherently deceptive and misleading and in a way impossible to provide any data to really substantiate that it probably shouldn't be used at all. And I think the other disclosures are just going to get lost in the shuffle or overshadowed.

MR. WINSTON: In that vein, rather than going through these individually, do people think there are any of these six disclosures that aren't necessary that we could jettison in the interest of better communication, and conversely, are there additional disclosures, Bill mentioned some, that people think we should mandate?

MR. MALLOW: I think the concept behind the six disclosures makes sense, I think some of the wording might be problematic, as written, for example, on the first disclosure, talking about the amount of time necessary to achieve represented results, and the specific time by which the debt relief service provided will make a bona fide offer. I think probably these are meant to be the projections that the companies are using. It doesn't say projections, but I think that's a change that needs to be made to really understand what is supposed to be represented to the consumers.

MR. WINSTON: I can change it right here, what language do you want to use?

(Laughter.)

MR. MALLOW: I'll be more than happy to send the redline along with some other redlines that I owe to the Commission.

MR. WINSTON: I'll bet you would be.

MR. MALLOW: The other thing that might be missing from here but I think ties into the fee issue is, perhaps a uniform manner in which debt settlement companies would disclose their fees. I think one of the reasons that the market forces that would otherwise govern expenses related, or the compensation to debt settlement companies is not working or is perceived to be not working is the fact that consumers have a difficult time really comparing one product to another. The cost of one product or one service to a competitor.

So, what might be a good way of trying to deal with that issue is to have fees represented across different companies in a more uniform manner to allow consumers to literally be able to say, wait a second, it's going to cost me X, Y, this much in this program, and based on the following fee structure, it will cost me this much in this program, based on a different fee structure, but having it represented in a way that people could really do an apples-to-apples comparison and let's get the market forces and have the consumers really dictate how much the compensation should be for debt settlement companies.

MR. WINSTON: It sounds like an annual percentage rate approach.

MR. MALLOW: Schumer Box similarity.

MR. WINSTON: Schumer Box. I think from our standpoint, we don't want to be in the business of dictating what kinds of fees people can charge.

MR. MALLOW: That's not really the suggestion, it's not telling them what they can charge, but how to represent what they've decided to charge.

MR. WINSTON: You know, there could be companies who want to charge -- well, this gets back into the advance fee ban, maybe we shouldn't go there, but that sounds like a good suggestion. While people are thinking about what disclosures we should add or subtract from this list, something you raised, Mike, and Bill raised, should these disclosures be in writing in some fashion, and I'm thinking about the model for land sales contracts, transactions, under the Interstate Land Sales Act.

If you're buying a parcel of land in Florida, on a land sales contract, before the transaction is consummated, they have to provide you with a series of written disclosures, an actual booklet with a lot of information, and you have basically a ten-day, or I think it's a ten-day cooling off period, where you can back out of the deal. Is that something that's possible here? Particularly given, again, that I have some question whether disclosing a lot of information in the context of a sales phone call, where you really don't know exactly what it is the salesperson is going to say, you don't know how they might try to neutralize the effect of the disclosures, it's hard for people to listen to an entire, what could be a several minute long sales presentation, would it help to have something in writing and give consumers an opportunity to review it, before they're locked in?

Susan?

MS. GRANT: Thanks, Mike. Cold pills are starting to fail me. Just, I'll answer that, and have some other thoughts, too, about disclosures. I agree that it probably would be more accurate to talk about some of these things like the time it will take and the amount of money that you have to save up for a settlement in terms of estimated. And I think that some of the other concerns about some of the disclosures not necessarily being applicable to all models of debt relief could just be dealt with by saying if applicable, which some have suggested.

If success claims are allowed, then I think it would be really important for the FTC to mandate specific language making clear that success isn't guaranteed, and that everybody is different.

We have called for there to be a mandatory cancellation period, and whether that happens or just thinking about the companies' own voluntary cancellation periods, which some of them give, it would be useful to mandate that that be disclosed. And I think that disclosures probably need to happen multiple times. They need to happen in the initial phone call. They can be reinforced by something being sent to the consumer in writing, but shouldn't only be sent to the consumer in writing. And maybe even shouldn't be part of the contract, but should be a separate piece of paper so consumers will hopefully pay a little bit more attention to it.

MR. WINSTON: I'm glad you raised that last point, because I'm interested in people's thoughts about where the disclosures should go and whether putting them in the contract is a good place or not a good place.

Jenna?

MS. KEEHNEN: I'll just speak to USOBA members. We do require this and much more as far as disclosures go. We require that they present it on the initial contact call with the consumer, and we require that it also be in their written contracts with the consumer. Again, if you're worried about things getting lost, I would at least for simplicity reasons, if you're going to consider making this mandatory in written form, to not put forth parameters like in exactly these same words, or with nothing else on the page, because the state laws that are working very well right now in this debt settlement industry all have certain specific requirements. I've seen some of our contracts that have three separate pages of disclosures, because each one requires it to be written a little bit differently.

So, those kinds of parameters, I think, are absolutely counterproductive, and I would just encourage that if you are going to make those kinds of recommendations, you keep that in mind.

MR. WINSTON: Which raises another question which people might think about, which is should we be looking at the state laws as a safe harbor? In other words, if you are complying with the applicable state law, then you are complying with the federal standard?

Gail?

MS. HILLEBRAND: Absolutely not. In the disclosure area, that is a trickier question. There are some newer state laws, there are some older ones that take a more direct just who can be in the business and who cannot and do not take the disclosure route, but there is a long tradition of federal law providing a consumer floor and allowing states to require more, and there's no reason to vary from that here.

I wanted to agree with Susan's point about the frequency in time about the disclosures. There is a point in the sales process where the decision is made, and that point may very well be during the sales communications and not at the time the contract is signed. So, moving these to the very back when the contract is signed would definitely be too late, although it would be helpful, as USOBA folks said, to get at each communication in which the upcoming transaction is being discussed. I think it is helpful to have it in writing, but in writing only would be too late in the decision process.

You asked the question about what else might be disclosed. I would like to see the dropout rates disclosed.

MR. WINSTON: Save that, that was my next topic.

MS. HILLEBRAND: I have one more for the next one, then, thank you.

MR. HOUSSER: I just want to say again I agree with Gail, it's amazing, I would love to have you down at our office about 30 minutes down the road, we are seeing eye to eye on more things than I would have guessed, so that makes me happy.

I absolutely think that verbal and written disclosures are required. And in fact, I think they're equally important, and what we do to gear concern that during the sales process that disclosures may be lost, we require the written disclosure, a disclosure during the sales process and then a verbal disclosure from somebody after the sales process who is not on the sales team that we found very effective because it makes good sense to get consumers into the program, but understand what the program is. Any company that has taken a long-term perspective has that same view.

MR. WINSTON: So, your members?

MR. HOUSSER: I'm sorry, I'm talking about my company. And many of the TASC members do that as well, yeah.

MR. WINSTON: You're talking in that last one about somebody from the company, not the salesperson, calling the consumer?

MR. HOUSSER: Exactly.

MR. WINSTON: And repeating the disclosures?

MR. HOUSSER: Exactly.

MR. WINSTON: Michael?

MR. MALLOW: Joel, only because I get this question from clients often about, you know, when do they have to make the disclosures, how do they have to make the disclosures? So, the FTC law on this is pretty clear, it has to be prior to contracting.

Now, what does that mean has a little more complexity to it. I think it becomes, again, we have to watch out for the law of unintended consequences. You cannot have the same disclosures repeated over and over again, because they kind of lose effectiveness. There are going to be places in different phases of the discussions with the consumers who are contemplating going into a debt settlement program. Some disclosures are going to be very relevant to certain parts of that conversation. Others will be lost.

So, to tie the disclosures into a repetitive process is probably a good idea, but mandating it show up in every phase of the process is probably going to be counterproductive and a bad idea. I think what should be clear, and what is already clear, is prior to the time of contracting, all necessary disclosures and all necessary information has to be provided, but you've got to provide some flexibility as to when they are, in fact, provided, because they're going to be relevant at some times and irrelevant in others and people will tune out if you try to make the same mantra over and over again.

MR. WINSTON: Johnson?

MR. TYLER: I agree with Andy, actually, that most of the contracts actually have all these disclosures in them. I've pored over the contracts and they say all of these disclosures right now, the ones that I have looked at. For that reason, I think it's important to move the disclosures closer to the sales pitch, and what you were saying, Joel, about I lost 50 pounds, but the average is eight on this pill, is really where it needs to be. Because people are sold by the time they're hearing the disclosures. They've heard the possibility of getting out of this problem, and they're sold on it.

And having looked at what my clients have signed and initialed and some of the stuff that's been presented to them orally as well, there are actually tapes of the people agreeing to everything that's in the disclosures. They are sold on the idea of just getting out of this debt.

MR. WINSTON: Let's move to the 400-pound gorilla or elephant or whatever the cliche is, and that is should there be disclosure of dropout rates? Who wants to lead it off?

Jenna?

MS. KEEHNEN: Okay, I guess to have a disclosure, you need to probably first understand and define what you're talking about, and that's the biggest issue that the industry has faced is the uniformity, which I think definitions is next, and that might be a good time to thoroughly explore that, and I believe it was Susan that said, yes, you need to put everybody, whether they fall out for bankruptcy, for this, for that, and consider that kind of a strike against you.

I cannot see any reason why that would be truthful or beneficial to anybody looking at any statistics at an agency and their dropout rate or their success rate. But I think Scott and Andrew have both already said, if this person has a horrible life event that prevents them from continuing, we count that as a dropout, as if we've done something horribly wrong, but that's the way it would look. So, to me, those numbers wouldn't make any sense unless they were actually further broken down.

So, I think until you get at the heart of what you're asking for, and the manner in which you would like to see it, I couldn't really give you a good educated opinion about whether or not it should be disclosed until it's defined.

MR. WINSTON: I think some people might respond to that and say, it doesn't really matter why the consumer dropped out, whether it's the company's fault or somebody else's fault, but that it would be useful for consumers to know that historically, 50 percent or 60 percent or whatever the number is of people that don't make it through the program.

MS. KEEHNEN: Then would it be considered by Susan or Gail misleading to then qualify it further and say 50 percent of the people did not complete, and 45 percent of that was from creditor harassment or an altering event or whatever. Does that then put us back to square one that, well, then, the average consumer who is I guess not thought too highly of in the brains department around this table, but do they now think that that's their typical result?

So, can we qualify it? Are you just looking for a really slanted number that isn't representative of what we're talking about?

MR. WINSTON: I'm not looking for a really slanted number that's not what we're talking about.

(Laughter.)

MR. WINSTON: Maybe some other people are, but I'm not.

Michael?

MR. MALLOW: I think along the lines of what Jenna was saying, but slightly different take on it is, again, defining what a dropout is. Is a dropout somebody who signs the contract and doesn't pay anything? Is that a dropout? Is a dropout somebody who comes into the program with seven accounts, has six accounts settled and then goes, you know what, I got the last one on my own, and in some fee models, there is a financial incentive for the consumer to say, hey, listen, I've got this last one on my own, I can deal with it one on one. Is that a dropout? Is it a dropout that somebody has settled 85 percent of their debts and decided, again, I don't need the company to do this for me any longer? Are those dropouts, also?

Until we understand what a dropout is, forget why they drop out, I agree, if you come up with a definition, then that person is in the definition. But first we have to define what is a dropout for the calculus.

MR. WINSTON: Jim?

MR. KEISER: This is in response to Jenna's comments. Hopefully, a company will do an analysis of a consumer to make sure that their program is suitable for them. If I look at two different programs and if I see that one has a much higher dropout than another one, presumably they will both have people that have life events, but if I see one that has a much higher dropout than another one, to me that's a red flag that maybe the second company is not doing a suitable analysis, that they're putting people in programs that aren't appropriate, and as both a regulator and if I were a consumer on one of these things, I would want to know is this company likely to put me into an inappropriate program.

MR. WINSTON: Susan?

MS. GRANT: If success claims are allowed, and if any kind of significant advance fee is allowed, then I think the dropout rate disclosure becomes very important, and perhaps less important if there is no fee, if the model is totally success-based, and if there are no success claims that are allowed.

MR. WINSTON: Andrew?

MR. HOUSSER: I just want to say that regardless of the disclosures that are decided upon, whether it's a Schumer Box or whether some way of looking at dropout rates, if we're able to define it, a request that the same rules apply to everyone in the debt relief industry, not-for-profit, for-profit, debt settlement, debt negotiation, so we're all on a level playing field in terms of how we're disclosing data to consumers.

MR. WINSTON: Gail?

MS. HILLEBRAND: I think it would be helpful to get a disclosure of the dropout rate as a market-shaping device to help reward those companies that actually are doing decent screening for suitability, because there is value to a consumer in knowing more people who signed up here stuck or didn't stick. I am reminded we have just been through this with mortgages where people said, well, they gave me a loan, they must have thought I could afford to repay it. Well, I was accepted into debt settlement, must have thought that if I saved the program amount, my debts would go away. There is that same risk and implication. However, I just want to caution that all of these disclosures, including a dropout disclosure, don't substitute for a lending incentive, which is the fee issue.

MR. WINSTON: Mark?

MR. GUIMOND: I will disagree with Andrew for a half a second. I think for credit counseling, it's a different scenario. You have somebody who is in a 60-month plan, and the idea that they may only get two, three, four years into that plan and be able to self manage through education or financial counseling, consider that to be a dropout, it's probably a success. So, I don't think the credit counseling side can be equated fairly with it, but I won't take any more time with it.

MR. WINSTON: Anyone else on this issue?

(No response.)

MR. WINSTON: We have a few minutes left, so let me raise something different that I was just thinking about. There has been some discussion today, and I guess there are some state laws that relate to qualifying the customer before they're put into a plan and doing the financial analysis to make sure they're appropriate. Is there any sense to the FTC regarding its rule as to financial analysis, or is it just impractical?

Why don't we start with Bill.

MR. BINZEL: I think it's an area that would take some consideration, but I think the underlying premise is very sound, and something that certainly is worth serious consideration, and frankly, I think maybe the debt settlement companies might support it as well, and from what I'm hearing Andy say, that a number of companies are doing it, and that is they want to do business with consumers who meet the criteria necessary for a successful plan, and to the extent that there can be a universal assessment done with individual consumers to see if they will meet the necessary criteria, then there may be a consensus around the table that that is a good area to go, although I will say the devil is in the detail, but the concept is worthy of further consideration.

MR. WINSTON: Bob?

MR. MANNING: I think it's crucial at this point that the evolution of this industry has gotten to the point where it shouldn't be playing horseshoes, and I can tell you with a program that in the algorithm that I developed, that it takes 15 to 30 minutes with a verification to follow. And what's astounding to me, I can look at somebody in, say, Texas, where there's no state income tax, and we know what the predictability of the different payoff is, compare that exact same person that moves to California, and the amount that household can afford to repay based on their debt capacity, has changed markedly.

I don't see that incorporated at the credit counseling level, I don't see it at the debt buyer level and I don't see it at the debt settlement level. And I can tell you that the degree of efficiency, that would not take a lot of work that would put people in appropriate programs, with more precise estimates of their debt capacity means that creditors would be much more likely to accept a plan that they know is reasonable.

The other issue that I haven't heard at all is the distinction between individual level liability versus household debt capacity, and a lot of creditors, a lot of issues here, a lot of wiggle room. Persons take on a contract individually, but households make a decision as to how they repay. For example, mortgage. And one of the problems in this period of time is with adjustable rate mortgages, at any point in time the ability of a household to pay can change based on the secured loan obligation. That's not incorporated in any of those issues.

I actually incorporated it, for example, in this algorithm where we look at what point the adjustable rate mortgage would rise and when it would affect the ability to make that payment. I think there's tremendous ability of making precision, when we're talking about $6 to $100 to $1,000 being spent on marketing, and I'm hearing dollars literally in terms of the horseshoes that are being played to assess a consumer, I think until you get to that degree of precision, everything else in terms of disclosure becomes, again, a black box of how you come to that, and the ability of the consumer to succeed, without that empirical verification, again, raises a whole issue of credibility for a program.

MR. WINSTON: Thanks. Norm?

MR. GOOGEL: I think that would be a very good idea to require suitability analysis. Many of us would argue that the failure to conduct a suitability analysis has been one of the big issues, and we would say it's an unfair or deceptive act or practice, already unlawful under our state laws. And also, one of the best ways to require or to bring about a suitability analysis, without even specifically requiring it, would be the advance fee ban, because then there would be that, you know, meeting of interest, it would be in everybody's interest to do it.

MR. WINSTON: Jenna?

MS. KEEHNEN: Norm.

As far as the financial analysis being required in this venue, I know that we require it of our members. I know that TASC requires it of their members. I don't see the general requirement for a review or financial analysis being objectionable for any reason, but again, I would caution to not put something here that is going to contradict with other states as far as exactly what form to fill out and those kinds of things.

If it is like Gail said, this should be very, very broad, and states can go in and make it stricter, stronger, bigger, then we should allow them to do that and not try to micromanage on this level.

MR. WINSTON: Are there particular state laws on this issue that you think are good?

Gail?

MS. HILLEBRAND: The Minnesota law, I think we're going over it on the next panel, you can quiz him about it in more detail, it requires a determination of national, it looks at the income and the debts, it requires that that be done in writing and a copy given to the consumer. It requires that a written determination be made both of suitability of the -- I'm not sure about suitability, requires a written determination that there will be a tangible net benefit to the consumer of participating in the program, and it also requires as part of that pre-analysis process that the creditor actually tell the consumer which of their current creditors will deal with the debt settlement company, based on their having actually been a settlement with that company for another client in the past six months, or based upon an actual communication that the debt settler engages in with the creditor.

Now, the owner of a debt can change over time, but at least that tells the consumer before they sign the contract, you owe three debts, two of your current creditors won't deal with us, and that's useful information that the consumers want.

MR. WINSTON: Andrew will be the last word.

MR. HOUSSER: The Uniform Law Commission

requires a financial analysis that is disclosed to the consumer before the time of enrollment, which I think is a terrific result for all consumers. I do want to point out that we think we do a pretty good job and TASC members think they do a pretty good job of suitability analysis of consumers, which is proven in our data, and I do want to point out that the companies that advocate for a contingency fee ban, none of them have shown any data that it's actually working. So, in fact, the suitability analysis is working and getting relief for our customers.

MR. WINSTON: Thank you. Thank you to the panel for another great discussion.

(Applause.)

MR. WINSTON: We are going to break until 3:30.

(Whereupon, there was a recess in the proceedings.)

PANEL 4: Definitions & Scope

MS. BROWN: Thanks, everyone, for coming back here for our last panel of the day, and then we're going to have the open microphone time. We have a number of people who have signed up and everyone who has signed up has three minutes to speak, so as you're thinking about what you might say, give us your best information in three minutes.

So, we do appreciate everybody being here. I'm going to walk around the table and just say the names of the people who have already been up at the table and give a little brief biography for people who have not been a part of the panel yet today.

Starting to my right is Michael Croxson. Next we have Ron Elwood. Next to him is Susan Grant. Across the table is John Ansbach, and he's actually substituting for Jenna Keehnen right now, she's on the agenda, but he's going to be representing USOBA's views for this panel. Next is Jim Keiser. Next is Michael Kerr. Then we have Robert Linderman.

We have Tony Manganiello, and he serves as a member of the advisory board of USOBA. He attends meetings with government officials, providing testimony regarding the needs consumers face in today's economically challenging times. He's the president and

CEO of Centricity, Inc., and he's also produced the Debt-FREE and Prosperous Living system.

Next to Tony we have Jane McNamara. Then Jean Noonan. And then Jim Sheeran. Jim Sheeran has served as a general counsel for Tidewater Finance Company, which is located in Virginia Beach, Virginia, since 1999. He's also been a member of the Virginia State Bar since June of '75, served in the U.S. Army, and he's a member of the Law Committee of the American Financial Services Association. He's here today on behalf of AFSA, the American Financial Services Association.

Well, we're going to jump right in today to definitions, and I'm sorry, I didn't get all the way around the table. Next we have two people that have already been on our panels, and one is Dr. Bernard Weinstein, and then the next is Wesley Young.

Now we're going to jump right in, and first we're going to talk about the proposed definition of debt relief service. Debt relief service, as we've proposed it, means any service represented directly, or by implication, to renegotiate, settle or in any way alter the terms of payment or other items of the debt between a consumer and one or more unsecured creditors or debt collectors, including, but not limited to, a reduction in the balance, interest rate or fees owed by a consumer to an unsecured creditor or debt collector. And I'll ask people around the table, is the proposed definition of debt relief service appropriate and necessary for protecting consumers?

Over here, Jim?

MR. KEISER: Yes. We feel that it should specifically exclude the creditors themselves and people servicing for the creditors. I think this is directed for people who are operating on behalf of the consumers, that's not clear in the definition. It could appear to also include people acting on behalf of the creditors.

MS. BROWN: Mike?

MR. KERR: With regard to that point, I think if you have an exclusion for people acting as an agent of a creditor, you better be careful with it so it continues to include credit counseling and those that are taking fair share and grant contributions.

MS. BROWN: Any other comments on this issue?

Wesley?

MR. YOUNG: I think the definition is fairly complete, but I think that the concern is that maybe jurisdictionally, as broad as the definition can be, there are people that are excluded. One, nonprofits, and number two, I think it's unclear whether or not attorneys are included in this. I know that recently there was the challenge by the ABA on the red flag rule to exclude lawyers from the FTC's rules. And I think that the concern is that if you're only regulating part of the industry, are you really effective at accomplishing your goals. I think Johnson Tyler's comments, I think he had eight consumers that he cited where there were some problems, and I think a large number of those were law firms.

So, the question is whether or not maybe even whether the TSR is really an appropriate rule to use in order to regulate the industry since you can't regulate everybody.

MS. BROWN: Will you spell out for us what argument you think people might use to argue that attorneys are not covered by the language in the proposed rule?

MR. YOUNG: I think they would put forth the same arguments that were used in the red flag rule, the argument that there are sufficient protections because lawyers are regulated and they're separately licensed by state bar associations, that they shouldn't be regulated by the FTC.

MS. BROWN: Is there some way to craft an exemption for some activities of some attorneys that would allow some legal activities to take place without being a big loophole for all kinds of people to offer debt settlement services that are not covered by the rule?

MR. YOUNG: I know that some states have the definition that has an exemption for lawyers, but it says, as long as the debt settlement or debt relief service being provided is incidental to the practice of law, then they're excluded. The problem is that that is a very vague exemption or exclusion, and so I don't have the perfect solution, but it's something that the FTC should think about.

MS. BROWN: Do you know how that particular language is working in practice? Is that one that people are circumventing on a regular basis or has that been narrowed by enforcement work?

MR. YOUNG: I think it's been inconsistent in terms of perhaps enforcement, and then of course depending on the states and the activity and the strength of the bar association and the extent to which the bar association may oppose that, and obviously the bar associations are quite influential and that plays a big part in it.

MS. BROWN: I would like to stay on the attorney issue for a moment. Are the people who have their tents raised interested in speaking regarding the attorney issue?

John, would you speak to that, please?

MR. ANSBACH: I would just add a little bit to what Wesley said. We do see, and I don't know, Mike might be able to know better than I, but I believe in almost every state that we are working on enacting or drafting legislation in that matter, that there is an exemption for attorneys and it is precisely because they are already separately licensed by state bars.

I can't speak to the red flag rule. The reasoning behind it, but I am aware, and probably you all know better than I, because that's presently before the Commission, I am aware that that is a significant issue, and part of the reason they're having implementation issues with red flag.

So, I happen to think that on behalf of our members, we do know of lawyers that do this work, they do it very well, they have their own ethics and complaint system and we do think that lawyers should be exempted from this rule.

I do want to point out, I guess two little things. Number one, there is already carve-out here, the nonprofits are carved out of this rule. And when you look at debt resolution as a whole, starting with the TSR, that is part of the challenge for you all to be able to use the TSR as the vehicle, because you don't have the jurisdiction to regulate those folks, they are carved out, lawyers likely can be and probably ought to be carved out. They cannot be subject to the rule, should be carved out. Which leaves now a much smaller swath of folks who are providing this work, and then we get into the issues that we've talked about today.

So, I do think there are a lot of challenges with it as it's worded right now.

MS. BROWN: Mike?

MR. CROXSON: I want to talk about debt relief, not the lawyers.

MS. BROWN: Let's hold that. Ron?

MR. ELWOOD: I don't think the definition currently exempts lawyers, it doesn't seem to. And it strikes me that we don't have the debt settlement law in Minnesota, but other laws I believe we have, and I will try to provide them to you after this, when I get back home, that do include lawyers, if it's not their primary function, and I think there's a little bit more specificity than the concern that Wesley was talking about it being too vague.

But my main point on this, at the risk of offending all my fellow lawyers and maybe getting kicked out of the lawyer club, it strikes me that the existing regulatory structure, the bar associations, the ethics codes, a lot of the ethics stuff is aspirational, anyway, and if you don't do it, there's not a whole lot of stick.

And second of all, if you violated the provisions of this, if you were exempted as an attorney, you violated the provisions, what would be the ethical violation that you've committed, because you're not subject to the prohibition. So, where would there be a claim to be made at a bar association, even from a sanctioning point?

So, I would argue that by exempting lawyers, you have the potential of creating a huge loophole by having some unscrupulous folks shuffle their business to lawyers and thereby avoid compliance with the rule.

MS. BROWN: What about attorneys representing consumers and filing bankruptcy? There is a way to read the proposed definition that might include them. Do you think an exemption for those attorneys would be warranted?

MR. ELWOOD: I do. I think if we're talking about a bankruptcy representation, that's a whole different deal, and going down a different path. So, yes, I think there should be a distinction made there.

MS. BROWN: Bob?

MR. LINDERMAN: Yeah, thanks. This may be somewhat of a retro grade comment, but part of what we see in the debt settlement business is the emergence of what we call the legal model, the law firm model, and to the extent that the red flag rule decisions preclude the Commission from asserting jurisdiction over the way that lawyers operate, I think you'll find a fair amount of energy devoted by some debt settlement companies to ally with lawyers, and that can be done lawfully, as service providers to counsel.

If that were to occur on a broad scale, things such as the advance fee prohibition, which again, this is something we dealt with in great detail this morning, but it would be a fairly straightforward matter to simply avoid that prohibition by allying with a lawyer, instituting whatever fee the debt counselor and the debt settlement provider believed was an appropriate one and then go about our merry way without worrying about what the FTC says about advance fees.

So, the availability of the Commission or the unwillingness of the Commission, or however it shakes out, to address the issue of how lawyers are regulated in the context of debt settlement, is going to in effect offer an opportunity to alter whatever kind of regulation you do decide to do.

MS. BROWN: What about something narrowly crafted for lawyers filing bankruptcy for consumers?

MR. LINDERMAN: I agree with Ron, lawyers filing bankruptcy have a completely different brief, if you will. They are sanctioned by the Court, it's an act of the Court to file a bankruptcy case. You have to be licensed to practice before the bankruptcy court. So, I think it's an entirely different set of circumstances. We do not offer bankruptcy advice, because that's inherently illegal in nature, and we don't offer legal counsel to our clients.

MS. BROWN: Do you know of any entities that actually look at a consumer's situation and advise either debt settlement or bankruptcy depending on the situation and debt counseling and have all those range of options?

MR. LINDERMAN: If you remember the step that I offered up today, for every 22 people that come into our company seeking information, we enroll one, approximately. The remaining 22 are steered into an appropriate credit counseling company, we work with CareOne, we have a relationship with bankruptcy companies across the country.

So, I think any reputable debt settlement association will steer people to an appropriate resolution. It doesn't have to be credit counseling, it doesn't have to be debt settlement, it doesn't have to be bankruptcy, but somewhere along the continuum, we will make a suitability determination for our clients and steer them into a solution that's appropriate for them.

MS. BROWN: Jean?

MS. NOONAN: Clearly when a law firm or a lawyer is acting as a debt settlement company, it ought to be subject to the rules for debt settlement companies. I think it is going to be important, though, to make a distinction between the lawyer who meets the definition in a one-off situation. So, for example, if I am practicing law and a client comes in and said, I was just served this summons by ABC bank, credit card issuer, what can you do? And I call counsel for the bank and say, listen, is it possible that we can settle this? You know, dismiss the suit, we will send you a check, that happens all the time, and I don't think any of those lawyers, small-town people, would even have on their radar screen that they might be engaged in the business of debt settlement.

Similarly, someone might come into the legal services office and say, my God, I'm getting beleaguered by debt collectors, and the legal services lawyer might try to intervene on their behalf, even without a summons.

So, I think that when it is a de minimus, incidental part of the business, it ought to be excluded. When it is the principal business, or even more than de minimus, it ought to be included.

As a practical matter, when law firms, and we've seen, we have a lot of experience with law firms acting as credit repair clinics, law firms acting as debt collectors. There's a long, noble history of the FTC dealing with these issues, and the Commission has always taken the position that when you are acting that is who you are. And that is very different, I think, from red flags. When the lawyer is acting as a lawyer and was still covered by red flags, because they were a creditor, they met the technical definition of a creditor, too.

That's not what we are talking about here. I think that even though there is some potential for imprecision, at the margins, between the lawyer who helps a client on an intermittent basis, who is being sued on the one hand, or being threatened with suit on another, versus the lawyer who is running a debt settlement business, this is a rule that's enforced by the Commission, and I think the Commission is going to be able to figure out whether or not the lawyer is circumventing the law by using his or her status as a lawyer.

MS. BROWN: Wesley?

MR. YOUNG: The reason I raised this, I mean, it is really the exclusion of certain large players in the debt relief industry from the rule. The problem is that it causes an anticompetitive market. You have some people that are very heavily regulated and very heavily restricted and others that are not. I think Mike Croxson had mentioned this earlier with regards to the nonprofit credit counselors, I mean, I think our initial first position would be that the best thing to do would be for the FTC to get authority from Congress to regulate all of these parties.

That being said, I think that my position, personally, and I believe TASC's position would also be that taking out the advance fee ban, the disclosures and mandatory disclosures don't skew the market so much that it would be too anti-competitive that we feel like we couldn't compete. Throwing the advance fee ban into the mix really would skew the market so much that I think people would suffer from this anticompetitive effect and then move to try to avoid that effect by going to a lawyer model.

MS. BROWN: Tony?

MR. MANGANIELLO: Just regarding the issue of the lawyer model and the lawyer questions, in past conferences at USOBA, I have had the opportunity to talk with a couple of different attorneys general representing a couple of different states, and that term incidental to the practice of law was a question I asked, what does that mean? And one of the representatives from the attorney general's office from one state responds, somewhat paraphrased, was if you're a lawyer, we don't care. And the other representative from another state said, basically started to get very specific with what that meant in their state.

So, my concern would be, as Wesley brought up earlier, is that the states' inconsistencies could possess a fairly difficult path to navigate from a federal perspective, because of those inconsistencies and what they define as incidental to the practice of law.

So, my question would be, what would be the proposed mechanism that would be put in place to develop some consistency since the states have, as I understand it, the right to determine what they want their own state law to be.

MS. BROWN: Or is there language that's more precise than incidental to, do you have any suggestions on that front?

MR. MANGANIELLO: I would say, I think, was it Jean who made the comment that if you are representing yourself as that, then you are. At the same time, when you have, for instance, a probate attorney, who is going through the process of settling an estate, they are representing themselves out to be a settlement type attorney, but that's not what they are actually in practice.

So, incidental would have to be something that would have to be defined, and I don't know if I could actually define it. Maybe a percentage of revenue generated from that activity, I don't know how the FDCPA eventually wound up applying to attorneys as well, but it would have to be something that would need to be addressed from a bigger scope, if that was going to be included.

MS. BROWN: Susan?

MS. GRANT: I agree that lawyers should be not exempted, if they are in the business of debt relief, and I think that the FTC can do fact finding in particular instances to determine that, to look at things like advertising, for instance, to see if that seems to be a large part of what a law firm does.

I would also note that if you go to ripoffreports.com or any other complaint websites to look for complaints on this subject, a lot of the complaints that you will find will be about law firms, in many cases the same law firms over and over again. Clearly, these are firms that are in the business and they should be covered.

MS. BROWN: John?

MR. ANSBACH: Yeah, I am not from the American Bar Association, so I suspect that they might be better suited to comment on whether attorneys should be exempted, but I want to be sure that we are all considering one factor, and Bob pointed it out, for the majority of the debt settlement companies that have been talking today, and those of us who represent them, we don't provide legal services.

What is the plan when you create a rule, an advance fee ban, if that's the case, that you are then going to apply to a law firm that doesn't just do debt negotiation and debt settlement, but prepares answers, but prepares responses to petitions, prepares answers to requests for disclosure, interrogatories, requests for production. Is the plan now that we are not going to let them charge for those legal services of those products until a debt is settled?

Including lawyers, and I agree, I don't think the current rule as written excludes lawyers. I think if you don't exclude them, you are opening up a significant other front that is going to require a lot of discussion.

MS. BROWN: Mike?

MR. CROXSON: I wanted to talk about the debt relief definition in general again, and it's been touched on a little bit here, but I had some additional information that I wanted to share, because there was a question about, well, how big can this industry be, and the people that participate in it. And people have heard me for years say, there ought to be a level playing field. You know, you have done a very, very good job here at defining broadly what constitutes debt relief, and that's the way it should be.

Consumers coming into a provider don't know where they belong, typically, in the continuum of services that they need. But, just to give you some context, in the context of advertising, this data is from T&S Media Intelligence, it's a market research firm that looks at where advertisement has been placed. Specifically in the category of debt relief for all of 2008, this does not include public service announcements, it does not include radio spots, this is direct media in Internet and TV. There was $174,873,000 spent in the debt relief category of advertising. Of that $175 million, $106 million was spent by nonprofit credit counseling agencies in advertising to the public. $106 million.

So, my point is, messages are getting out to consumers, this is an industry that needs to be regulated in a uniform way. And there is a huge loophole. Eighty percent of the providers, 60 percent of the media that's being spent are not going to be covered by this definition. And that is not to imply that they don't do a good job. My experience with nonprofit credit counselors is that they do a very good job.

What I can also tell you is, from having attended the national meetings of ACA and the NFCC and AADMO, over the past year, is that each and every one of them is talking to their members about expanding into doing less than full balance, because a debt management plan is the repayment of the full balance that's owed, plus some interest with some concessions from the creditors. Whereas less than full balance is code for settlement, but the bottom line is, the nonprofits are expanding into doing exactly what this definition is. And it's not about before you pay taxes or you don't pay taxes. The consumer protection is if you're serving the consumer, in this definition, then you should be covered.

And I acknowledge that from the great work many of the nonprofits do with HUD counseling or bankruptcy counseling or other things, that they have to meet a standard around those specific kinds of activities, to be paid. They do that and they are paid to do those.

This is different. This is a different set of standards, it's a different set of things that you are doing for a consumer, and you should have to meet those standards as well. And I am actually, quite frankly, surprised that the large trade organizations in the nonprofit, representing the nonprofits, have been very quick to say, everybody else ought to live by these rules. In fact, they want to throw in a few more. But they have not just voluntarily stepped up to the mike and said, we would be more than happy for our membership to meet these standards, even if the FTC can't enforce it that way. But not a single one has been willing to do that.

MS. BROWN: I think we understand what you are saying.

Jane, do you want to respond?

MS. McNAMARA: Thank you. Yes, Allison, I would.

We provide financial literacy to consumers through counseling and education. That is our primary mission. And debt management programs are just a portion of what we do. We provide money management education, we provide financial counseling, housing counseling, bankruptcy counseling and education, counseling to consumers through employee assistance programs, credit union members, community banks.

We are already regulated by the 501(c)(3) provisions, the core analysis tool of the IRS, 501(q), EOUST, the Department of Housing & Urban Development, state regulatory bodies with laws that mirror those activities of debt settlement companies, professional and ethical standards by trade associations, as well as accrediting bodies.

We are already highly regulated, and while the EOUST's jurisdiction is over the bankruptcy counseling that we do, they also audit our debt management activities, as do states throughout the United States. There are 49 states that have laws that regulate what we do, 37 of them have fee caps.

So, we are already regulated for the debt management services that we provide, and, therefore, presently, under the jurisdiction of the FTC, you don't have authority to regulate our activities. I understand there are suggestions that you do so, but we are already highly regulated.

Anecdotally, I can tell you for my organization, it used to be that regulatory compliance was a part-time job. I now have three people that do nothing but regulatory compliance, because of all these different bodies that regulate us. We have states that send out auditors, many of them are from banking departments, that come in to review our debt management activities.

So, we are highly regulated right now.

MS. BROWN: Mike Kerr, did you still want to talk?

MR. KERR: Well, just on the point of the level playing field argument that Mike brought up, one of the policy conclusions of the Uniform Act is that there is a spectrum of services. There is credit information and budgeting education, there is DMPs, there are settlements, there emerging sort of combination of DMPs and settlements, and our conclusion was that all of these players, regardless of their nonprofit status, needed to be regulated by a single regulation at the state level. Because state regulators are much closer to the activities that are being questioned.

Jurisdictionally, states have a greater capacity and authority to do things like require surety bonds, to put in insurance requirements, to require registration or licensing, to conduct audits as part of applications.

I guess my point is that if the federal overlay provides a floor about marketing and deceptive claims, that by itself doesn't go far enough. Because as other people have said, you're not covering nonprofits. In my testimony, written testimony, I urge you to extend, if necessary, it's not clear to me why you can't do this, but to cover Internet communications, and you want to also make sure the coverage extends to lead generators.

But setting aside that, even if you cover the entire rule, what the FTC is proposing, it doesn't go far enough. It doesn't address the fact that these folks that are taking funds, either to escrow or to trust funds, they need to be subject to fiduciary standards. When someone is providing these kinds of services, they need to disclose the business history of their officers. They need to have, you know, an errors and omission insurance. There is a whole panoply of regulatory tools that states can do that.

The FTC under its authority, as I understand it, can't, and probably shouldn't.

MS. BROWN: Let me pick up on one of the issues you raised, lead generators, and I'm wondering if you or anybody else around the table are aware of lead generators that sell services over the telephone, through telephone calls? Has anybody seen that at all?

MR. KERR: Mostly I have heard Internet, I have seen Internet advertising. I mean, this is personally. We have not done a study to this, and I think the industry should probably respond to this, but it seems to be focused on Internet advertising, broadcast television, 1-800 centers where referrals happen, but it's not my area of expertise.

MS. BROWN: Robert?

MR. LINDERMAN: I have some experience with lead generation activities. I can tell you that the vast majority of lead generation activity is done over the Internet. Lead generation activity that's done through Internet and television is mostly aggregation and bulk sales. So it's really not significant. Well, I wouldn't characterize it as a significant element of the lead generation business.

MS. BROWN: What do you mean by aggregation?

MR. LINDERMAN: Well, it is the harvesting of names without getting any kind of supporting data. So, call in here, leave a voicemail, that kind of thing. I do not think that the use of the -- let me rephrase that. I think the use of the Internet for lead generation activity is far more prevalent than the use of any other media.

MS. BROWN: Are there any categories of debt relief that the Commission didn't mention in its notice of proposed rulemaking?

Jim?

MR. KEISER: Yeah, the proposed rules strictly address unsecured loans, and we are thinking that, number one, there are secured loans that could be addressed, both real estate secured and secured by personal property. I know that that's not really the focus of most of the debt relief services now, but I wouldn't want to exclude it in case it becomes more of a focus in the future.

MS. BROWN: And the Commission is looking at real estate secured loans in the context of a different rulemaking. We issued an ANPR, I believe in the beginning of June or the very end of May of this year and that is an ongoing proceeding.

So, setting aside loans secured by real estate for a minute, what are people seeing in terms of debt settlement of secured debts of other personal loans, auto debts or other types of secured debt? Is debt settlement going on today? If anybody can speak to that.

Jim?

MR. KEISER: Like I said, we are not seeing it right now, and of course the fact that the loans are secured and there are repossession options available to creditors makes it difficult to do. Debt relief services, we think it would be an oversight to limit it to strictly unsecured.

MS. BROWN: What are other people seeing, Ron?

MR. ELWOOD: Well, I can't say what I am seeing, but I was going to point out the definition of the Minnesota statute, which refers to a debt incurred for primarily for personal, family or household purposes, which is sort of that, you know, kind of common thing, which I think that would cover --

MR. KERR: Mortgages.

MR. ELWOOD: Well, but the FTC rule would exclude it. So, I mean, right.

MS. BROWN: That's what we're contemplating right now.

MR. ELWOOD: You are excluding that, so that would trump the statute. I just bring that to your attention, because that may be a way of dealing with the issue without getting into the secured/unsecured, what should be and what shouldn't be. Because I think that's the idea, this is a personal debt, this isn't a commercial kind of thing. I think the cut rather than secured/unsecured is probably more appropriately made between personal debt and commercial debt. That's all my point.

MS. BROWN: Any follow-up on that in terms of why you think that that should be the cut and focusing in on unsecured isn't the best way to go?

MR. ELWOOD: I think the point is, so, for example, you could go to a pawn shop and pawn your ring, or something, and it's a secured debt, but why would that not be covered? Whereas I know we are talking about probably the common thing you think about is your car or your house. But there could be personal property could potentially be covered within this that probably ought to be swept in.

And, so, that's why that definition seems to me to be less important than what are we really getting at here? We are getting at consumer debt. Personally, individual, rather than your business. And I think that's why we chose that definition because we went through the same thought process and it was that's kind of where we landed and I just offer that as our experience.

MS. BROWN: Mike?

MR. KERR: I would like to relate to you that during the three years we were developing the Uniform Act, this conversation happened over and over and over again about how to define it and what to cover and what not to cover, and I will just say that I think you've got it right with limiting it to unsecured debt, because if you try to expand it or you leave the definition open, there is a very real possibility that you are going to run into, for example, I put on a different act hat right now, the Uniform Commercial Code Article 9, Secured Transactions.

When someone buys a couch on credit, I mean, all of that repossession interest, they're sold as collateralized debt traunches. I think it just gets very complicated if you go into secured lending.

MS. BROWN: Anybody else have comments along those lines?

(No response.)

MS. BROWN: What about debt relief products? There has been a little bit of discussion in the comments about debt relief products and whether they should be covered. Does anybody here have an opinion on whether debt relief products should be covered? And can you also talk about what debt relief products you have seen on the market?

MR. MANGANIELLO: What is the definition of a debt relief product?

MS. BROWN: Well, one of the questions is what should the definition be.

(Laughter.)

MS. BROWN: But to make it a little more concrete than that, for example, a CD or a book that would go along these same lines.

Tony?

MR. MANGANIELLO: Well, you mean if you write a book that teaches people how to get out of debt, you have to give it away and wait for them to pay you until they've limited their debt?

(Laughter.)

MR. MANGANIELLO: Is that under the Freedom of Speech Act?

MS. BROWN: And are there products out there that go a little bit further and don't just put a book out there but say, here's a how-to guide, this is what we're going to sell you so you can do this yourself. Is there any justification to include those type of products, or maybe there's not?

MR. MANGANIELLO: I would have to say that they should be absolutely excluded because it's completely on the merit of the person who purchased the book to follow through with the plan, whereas a service where you are being paid to support the process, as opposed to providing education. Education which is completely to the consumer's opinion as to whether or not they want to follow through with it.

I mean, they are going to have to purchase the book, and then actually follow through with it, and they may not, they may choose, well, I don't want to do it, or they may do it for a while and then not do it. So, there's no support that goes into what is taught in the book. And there's classes all over the country that are being provided that, again, if we are talking you can't charge an up-front fee, the publishing industry is going to have a lot to say about that.

MS. BROWN: What about a product, a software download or a CD that guarantees results, if you buy my product, you will be guaranteed to be debt free? Is there any difference there?

MR. MANGANIELLO: Yeah, again, when it comes to something that is helping people to just figure out how to work numbers, so that they can accelerate the payment of their debt without incurring any type of intervention on the part of their creditor to tell someone, that would be like going into a biweekly mortgage, or CDs that say, if you pay your debt this way, the math speaks for itself. And again, that's a downloaded product that if somebody were to follow that plan could take one, two, three, seven years.

So, you would essentially take those products off the market, you would essentially eliminate the educational piece that people so sorely need because of the financial literacy problems in this country. No one is going to give away a book and wait for years to get paid for it. It's got to be something in my opinion that would be strongly recommended has to be excluded because there is no service provided to it.

If there is a service tied to it saying, buy my book and I will show you how to intervene with your creditors and otherwise alter the original agreement, that's a different story, but for the most part, educational products are not altering the agreement when it comes to the products I have seen. They're just saying, if you budget yourself differently, you can accelerate the payment of these debts without altering the agreement because it's like if you tell somebody how to prepay a mortgage or prepay any debt, a lot of books do specifically that, but they don't intervene on behalf of the creditor and the consumer with regard to the terms of that loan.

I think what we are talking about here from debt relief is fundamentally altering the terms of the original agreement with the creditor, whether it be with credit counseling, they are going in and negotiating different interest rates, with debt settlement they are going in and negotiating the balance.

MS. BROWN: Right, so we see what you are saying there, so I wonder if I can move on to Robert, do you have additional comments on that front?

MR. LINDERMAN: Yeah, I think you raise a very interesting point, Allison. When we were looking at the whole proposal, the issue, and I believe the Commission solicited input on this, is whether or not the extension of a guarantee should be the break point for the imposition of an advance fee ban, and I think, with all due respect to what Tony says, and I actually agree with most of it, any time that you have a situation where a provider, and whether that provider is an author or a debt settlement services provider or a credit counselor or any other form of relief that's available to a consumer, when that's accompanied by a guarantee, when that's accompanied by a warranty, to the extent that you follow my program, I guarantee you I will settle your debt for 50 cents on the dollar, I think then it's an appropriate exercise to impose an advance fee ban to allow collection of compensation at the back end, because at that point in time, you are offering up a guarantee of results.

And by the way, just as a coda to that, I sharply disagree with some of the comments made on the earlier panel that utilizing historic performance guidelines for settling debt at a particular settlement rate should not be allowed to be used in advertising. I think if I can prove to you --

MS. BROWN: We have limited time for definitions here, so we are going to move on.

Susan, do you want to respond to some things on definitions?

MS. GRANT: We provided definitions because we thought services might be tempted to reposition their services as products rather than call them services, but I think if you look at the definition as a whole, the rest of the definition which talks about offering to alter or reduce your debts, that it would exclude things like books that are just sold without anything else in connection with them anyway. So, I don't have the same concern that others do.

MS. BROWN: Do others have concerns that products sold could be used to circumvent prohibitions if products aren't specifically included?

(No response.)

MS. BROWN: Tony?

MR. MANGANIELLO: I just think from a definition standpoint, it would need to be considered that if the product makes a proposal to a plan that alters fundamentally the original agreement with a creditor, that might need further consideration, but if it does not do that, if it's just saying by being wiser with your money and paying your bills faster and this is how to do that, without altering a contractual agreement between the consumer and the creditor, that should be exempted.

MS. BROWN: Mike?

MR. KERR: I think maybe what the problem is, when you have service providers that are trying to bundle books and CD-ROM programs and download services and so forth, that was one of the prohibited acts that we included in the Uniform Act, for good reason. At this 50,000 foot level of regulation, I'm just not sure that you need it at the FTC level with regard to products where there isn't a person or entity or service in between the debtor and the creditor, because you're going to run into those First Amendment issues.

So, but I just wanted you to know that the Uniform Act and other state laws are including that sort of bundling prohibition, which really is a problem.

MS. BROWN: Does anybody else have comments on bundling specifically? We just have one or two minutes left here, if anybody has comments on this issue? Bernard?

DR. WEINSTEIN: This isn't about bundling, but I am probably one of the few non-lawyers on this panel and the previous panel, but one of the recurring themes that I heard this afternoon was that we need more and better data and information, and not just anecdotes, and that's true of substantiation, disclosure, qualification standards, advance fee bans or just the general performance of the industry.

So, I wanted to make that point, because I spent two years with the Bureau of Economics here at the Federal Trade Commission, and our policy recommendations to the Commission were always based on sound and thorough research. So, the point I wanted to make is that I hope that in that rule-making process, you will recognize, number one, that there has been a limited amount of academic research done in a lot of these areas, and there is more to come and you should take advantage of what's out there.

MS. BROWN: And it looks like Jim wants to make one final comment.

MR. SHEERAN: Allison, I think the way the Commission could address this is to define service, and if you define service in a way that excludes books, such as was mentioned earlier, that are sold in a bookstore, rather than things that are sold with the intention of effecting debt relief service, then you can get around this issue of what is a product and what is a service and where the distinction is between them.

MS. BROWN: Well, thank you, everybody, for your comments and participation today.

OPEN MICROPHONE

MS. BROWN: We are going to move into the mike session which is a real important chance for people who have been sitting in the audience to provide input to the Commission. We do have about 16 people signed up, so we are going limit people to three minutes a piece. Kara Redding is standing up at the microphone, so please when we call your name, walk up to Kara and we will let you know when it has been three minutes and you will be finishing up then.

So, we will give people a minute to shuffle and then Nick Cowling, can you come up, and then next on board, if you could be ready, is Andrew Smith. We are going to go in the order in which you signed up. So, we will call two or three people at a time to be ready. Is Nick Cowling here?

MR. COWLING: Thank you very much for the time. I just wanted to bring an idea, we have been talking a lot about data hard numbers, as we were discussing options for the consumers, I want to make sure that we are actually hearing their voices. So, I just wanted to read one testimonial that we submitted, and this is included in the CSA's official testimony.

In January 2003, I had major surgery to remove a massive tumor from my stomach, which turned out to be cancer. As soon as I was able, I contacted my creditors to let them know I would be having chemo, and because I had some type of disability with them my bills would be covered. However, when I contacted them, I was told that I had no such coverage, and would be expected to continue my payments.

In May of 2004, I again had surgery due to complications and decided to refile my claim. They accepted my disability but claimed that instead of paying off the account, they would put me on hold. Although the contract said it should have been paid out, they declined to do so.

In 2006, the calls for money started. I did try to pay, but with only $5,500 a month in disability, I just couldn't. They were never satisfied with what I could send. By August of '07, the interest had compounded so much that the balance was over $10,000. Credit Solutions was able to settle with them for just over $3,000. Today I no longer depend on credit cards. Would I ever get another credit card? When hell freezes over. Would I recommend Credit Solutions to family and friends? In a heartbeat. Thank you.

MS. BROWN: Thank you. Andrew Smith next, and then John Walsh will be after that. And if I'm calling your name as second, feel free to come up here and sit in the front here.

MS. SMITH: I am Andrew Smith, from the law firm of Morrison & Forrestor, I am representing a client here today, but I am speaking just for myself with these comments.

What we are talking about here, the most fundamental part of the proposal, a ban on collecting payment as services are rendered, or a prohibition on collecting payment before a signed settlement is delivered and agreed to is a really drastic remedy, and it's a remedy that the Commission has only undertaken in three other instances in the context of the Telemarketing Sales Rule. It's a remedy that's really more appropriate for Congress to be undertaking than an administrative agency like the Commission, but one of the things that Travis Plunkett said today struck me, and he said that a good analogy is CROA, the Credit Repair Organizations Act, which also includes the same type of strict liability payment regulation, and I disagree with Travis to the extent that I don't think that debt settlement is like credit repair, I don't think that debt settlement is fraudulent, I think that debt settlement provides a valuable service to consumers, but I do agree with Travis Plunkett to the extent that strict liability payment regulation isn't going to end well. It didn't end well with CROA and it may not end well here either.

With respect to CROA, as Travis said, there's still plenty of bad credit repair out there, plenty of fraudulent credit repair. And the credit repair is as bad as it ever was.

With respect to the FTC, providing the FTC with tools that it needs to bring law enforcement actions, CROA has done nothing. There has never been a credit repair case that was ever brought by the Commission without evidence of fraud. And I would submit to you that there never would be, because it wouldn't be in the public interest to sue a company that's otherwise legitimate, simply because it's violating the technical provisions that deal with how it needs to be paid under the Credit Repair Organizations Act.

Finally, I would argue that what CROA shows is that it makes it very difficult for legitimate companies to engage in the business of providing valuable services to consumers, but it does absolutely nothing to weed out the bad actors from the industry, and we know, from the Credit Repair Organizations Act lesson, that legitimate companies, like Suze Orman, or MyFICO, or Experian, Transunion and Equifax, who provide credit monitoring and credit, these types of credit scoring services to consumers are all being labeled credit repair and it makes it impossible, or at least very, very difficult for them to operate.

And we cited in our comment letter numerous cases where these companies had been sued. But the message here is that this type of substantive, strict liability payment regulation frequently doesn't end well, and it's the kind of remedy that's drastic and only needs to be undertaken in the most drastic of circumstances.

MS. BROWN: Thank you. Okay, we have John Walsh, and then we have Tony Manganiello.

MR. WALSH: Thank you. My name is John Walsh, I'm the general counsel for Debt Regret, a company in Dallas, Texas. I would personally like to thank the FTC for putting on a great program. I think the dialogue here was very good.

Listening to the panel, the thing that came across to me was, it seems like most of the people agreed in at least principle on about 90 percent of the stuff. They had one issue that came up was the advance fee issue. And I think the reason that's a real sticking point is because there is a real concern that it could potentially destroy the industry. I have spent time talking to a number of debt settlement companies and even some collection companies who are familiar with this, and they all seem to agree that this is really going to destroy a number of the companies.

And, so, what I would just ask the FTC is, to seriously consider implementing the 90 percent that people can agree on and hold off on the advance fee issue and see if the other regulations take care of some of the issues that have been raised today.

And the second point I would like to make is, again, if the FTC does implement the advance fee rule, prohibition against advancement of fees, and it does destroy a significant portion of this industry, what's going to happen with all these consumers who are basically going to freak out when they find out a debt settlement company has gone out of business.

So, again, I think these are drastic issues to take and I think there's a lot of agreement on principle that I think can take care of these issues and just table the advance fee issue at this point. Thank you.

MS. BROWN: The next person up is Tony, and then after that is Michael Mallow and then the person after Michael Mallow, we're having trouble reading the name, so if you remember when you signed up, please also come forward.

Tony.

MR. MANGANIELLO: Actually, I have three points I would like to make. One, earlier, during the panels today, there was a comment made, I believe someone on Social Security had $30,000 in credit card debt. My question is how in the world do creditors extend that much credit to someone on Social Security? We are trying to clean up a mess that's not created by us, but created by an overreaching lending environment that we are operating in.

Then to go a step further on that, the second point is, when it comes to debt relief, many people at the tables today were talking about debt relief being when the debt is settled. That is obviously a very significant, salient element of the debt settlement process, but in my experience, and I believe the experience most people have had in the industry, the greatest relief we provide immediately is when we can help someone alter their budget so they can actually begin to pay their bills and have some relief from a budgetary standpoint every month.

Which goes to my final point, which the gentleman before me was talking about what would happen if this rule were to severely impact the number of good players in the industry being in operation. Between 2001 and 2006, my firm did analysis on around 20,000 consumers, and what we discovered was, out of those people, who are looking for help with their debt, only 7.92 percent could afford to pay their bills. Of the remaining 90-plus percent, almost equally, in thirds, 30 percent down the road, 30 percent can afford the debt management plan, 30 percent could not afford the debt management plan, but could afford to avoid bankruptcy through a settlement service, and then 30 percent could not afford any of the above.

It's been our experience that given that type of an approach to determining suitability, which was the term used very often today, that type of process or analysis on the front end, where I think you asked the question earlier, is there any company out there that was doing, you know, referring people out, a couple of people mentioned it, there is a way to analyze an individual consumer before we even discuss what type of relief they should be enrolled in.

And if we are going to make some rules here that are going to have severe impact, we need to make sure that we understand that given those percentages, as well as the percentage of households in America experiencing difficulty, there is roughly a million households that are in need of a service that provides some form of debt relief but cannot afford a debt management plan.

So, I just want to make sure that as the Commission goes forward, that the bigger perspective as far as consumer protection, one way to protect the consumer is to continue to provide them options that could help them with the debt relief they need to have. Thank you.

MS. BROWN: Michael Mallow?

MR. MALLOW: I basically have two comments, and they are somewhat interrelated. The first is, while I think the discussion that's going on today and the investigation that the FTC is doing in terms of the industry is a very, very good one, and I believe that guidance is absolutely necessary, I am very concerned that the process that is being contemplated in terms of modifying an existing rule as a work-around the lack of authority that the FTC has to implement a new rule that governs the debt settlement industry is a real problem. And it casts a pall over the entire process that is being discussed.

It is certain irony in the FTC doing a work-around a law to try and achieve a result that it is otherwise unauthorized to achieve. And nothing says it better than Chairman Liebowitz's letter to the Energy Committee saying basically give us the authority to do what you guys are going to try to do in the context of amending the TSR. It has a lot of problems with it.

One, you are going to find a conversion, and we talked about it a little bit, from the use of telephone to Internet to work around the TSR. Two, can you have the fee limitations that you want to have, within the context of the TSR? Does it make sense to stick debt settlement regulation under telemarketing as opposed to a stand-alone?

So, while I think that all of the work that is being done is very useful and can go a long way to creating a new guidance document that the FTC can put out, which would give a lot of flexibility for the FTC to say, look, this is what we are going to interpret as a violation of Section 5, and here are certain concerns that we have related to the charging of fees and is it a fee generating business or is it a legitimate benefit business, you have that flexibility, if you issue guidance.

You do not have that flexibility if you do it in the context of a rule, and as has been spoken a number of times today, or misspoken, this is the contemplation of a new rule. No matter where you house it, that's what's going on right here. And there is no authority for that. And it is going to distract from what is otherwise some good work being done by the FTC in investigating this issue.

So, what I would implore the Commission to do is go about what you are doing and authorized in a proper way, which means go by way of guidance or get the authority from Congress to implement the new rule or change the process to get a new rule, which is what Chairman Liebowitz is trying to do.

MS. BROWN: We are running through the list and the next name was a little hard to read, but it might be Bob Manning. Did you sign up, Bob?

MR. MANNING: I did.

MS. BROWN: You are next and Philip Corwin is after this.

MR. MANNING: I think it's really crucial that we look at the industry as a whole. For instance, there has been a lack of discussion between the charge-off and its implications to consumers. And really the issue is how do we have consumers that are most and best informed and crucial I guess is are they in the right program first and how is that determined, what's the retention rate that we can expect in each individual program.

So, it becomes standardized. And I have heard a lot of misinformation, for example, as if fair share wasn't an expense in credit counseling. So, if we are going to come up with a program where consumers are informed and they're saying, here is what it costs to go to credit counseling, here is what it costs for a partial payment plan, here is what it costs for bankruptcy. We have to standardize the terms so the costs are clear.

And I cannot overemphasize that there is a tremendous amount of imprecision in an industry that is going to become ever more important, and I caution you to be prepared for a huge increase in the demand for consumers who are going to be incapable of making a full DMP in the next two to three years. These are the groups of people who will get jobs, the people who don't get jobs are going through bankruptcy today, and the real question is how are they going to be served best, and you're the one who is going to give the guidance, because when I have my studies, I get kind of the backlash about why government isn't giving us a better understanding of the appropriate course of action to follow, and without an empirical basis that becomes standardized across all sectors, it's hard to understand the conflicts of interest within the sector.

But most importantly, I think we need to understand that if you start off at the credit counseling level, that sector has an obligation to serve that client to the best of their ability, and when they fall out, there needs to be an understanding that the consumer understands what's the most appropriate option available to them, and if they fall out of that program, the fees have been paid, then there should be an obligation that they're counseled to the most appropriate program that follows. That's what I see is lacking. And I think guidance like this will at least help consumers make more informed decisions.

MS. BROWN: Thank you. The next person is Philip Corwin and then Jane McNamara.

MR. CORWIN: Is there any way that I could sit because there is no way I can hold this and flip through my notes.

MS. BROWN: Sure, go ahead.

MR. CORWIN: Thank you. Good afternoon, I'm Philip Corwin, I'm a partner at Buterra & Andrews here in Washington, I'm appearing on behalf of the Association of Independent Consumer Credit Counseling Agencies, our member agencies currently see several million consumers with financial problems and are currently handling about half a million debt management plans.

On their behalf, our by-laws require all of them to be IRS 501(c)(3) tax exempt entities, and many of them are also participating in the required bankruptcy counseling program under the 2005 Bankruptcy Act, and therefore subject to the Department of Justice approval and oversight.

Our member agencies regularly see the victims of unscrupulous debt settlement companies, so we applaud this FTC initiative. We are concerned that because the only thing that keeps our members out of the very sweeping definition of debt relief services in the bill is the general exemption for nonprofit agencies in the FTC Act and the fact that Congress right now is in the midst of considering establishing the Consumer Financial Protection Agency to which some or all of the FTC's authority over consumer financial products would be transferred. And that bill not only has no exemption for nonprofits, but it explicitly encompasses credit counseling that we would like to see an explicit exemption in this proposed rule for tax-exempts, and as for the suggestion we heard today that we should be volunteering for FTC regulation, as soon as we see for-profit entities volunteering to be audited and regulated by the IRS and the Department of Justice, we'll give that some consideration.

We do support the proposed TSR amendments regarding material disclosures, and the banning of material misrepresentation, and we support the ban on advance fees. If an explicit exemption is not provided for nonprofit entities in the rule, we would like it to recognize that for existing debt management plans and perhaps for less than full balance plans, and there is nothing wrong with debt settlement, what is wrong is the way some companies do it and market it that recognize that modest set-up fees for the administrative costs of getting those plans off the ground should be permitted.

Beyond that, what else did I want to say here? In terms of the existing regulatory burden on nonprofits subject to IRS approval and audit, as well as Department of Justice, if they're in the bankruptcy counseling, we would note that we have seen a dramatic reduction in the number of nonprofit credit counseling agencies in the United States recently. A few years ago, there were more than --

MS. BROWN: Your three minutes are up, so if you can just finish this one thought.

MR. CORWIN: Now we are down to just over 300, and that is why we would like to not see any further unnecessary and duplicative regulatory burden, and thank you for the opportunity to appear here today.

MS. BROWN: Okay, the next person is Jane McNamara and then up after that is Jean Noonan.

MS. McNAMARA: Thank you for the opportunity today to participate in the panels. This has been a good sharing of opinions on the industry. We support a debt settlement type product. Our concern is with fees, our concern is with disclosures. We will continue to work with the creditor community as well as our fellow agencies in AICCA to develop a not-for-profit type debt settlement product. I appreciate your understanding and support, thank you.

MS. BROWN: Okay, next up is Jean Noonan, after that is Derek Witte.

MS. NOONAN: Three quick points in my three minutes. The first concerns the definition that I hoped we would have had an opportunity to get to in the last panel, we did not, and that is the definition of what is success or completion of services that would entitle a debt relief service company to collect its fee. I think it is in the context of debt settlement, it is critical that that be defined as a creditor payment, not merely a signed contract, as I think someone else, maybe Travis, mentioned earlier today.

Anything less than a payment to the creditor is going to really eviscerate the power of the advance fee ban. So, if you are not willing to do that, you may as well save yourself some trouble and give up on the advance fee ban. One opinion.

Number two, there was a really fascinating discussion on success claims. The one thing that I would add to that that was not mentioned, is that there needs to be a common denominator for any success claims, unless you decide to outlaw them completely. I don't favor that, I think that truthful success claims can be very valuable to consumer choice. But the common denominator is that the amount of the reduction that is achieved when that is part of the claim ought to be based on the amount of the enrolled debt, not the debt at the time of settlement. Because anything else gives a debt settlement company the benefit of having waited a long time to settle the debt, and let the fees increase. And it also depends on whether the big debt is settled first or the small debt is settled first. What FCS has always done is made these claims based on the amount of the debt at time of enrollment.

The third point is that there was an excellent question about do we need disclosure, mandatory disclosures about dropout rates. Do we need mandated suitability studies? The one thing I would say there is, if you have a ban on advance fees, these other disclosures become virtually unnecessary, because no one will have an incentive to have a high drop-out rate, they won't be paid for those clients. No one will be --

everyone will continue to have an incentive, as we do now, to do a proper suitability study, because we won't want unsuitable people in our plans.

So, one more plug for the advance fee ban is it simplifies a lot of the other issues that you have struggled with. Thanks.

MS. BROWN: Next up is Derek Witte, and then after that is Michael Bovee.

MR. WITTE: I don't know why this is scarier than actually sitting at the table.

(Laughter.)

MR. WITTE: It's the stern looks you're giving me. In any event, I think today was kind of remarkable. It didn't exactly go how I thought, but what the hell do I know.

What I heard agreement on is there is nothing wrong with debt settlement as a product or as an idea, it's how it is being offered. And from some people who I thought perhaps were adversaries of the for-profit debt settlement industry were saying this, I think it is also remarkable that they want to provide a nonprofit version of it. I don't know where that fits in right now. I know there is not one out there, but where we stand today, it seems like, is that everyone agrees that debt settlement has value and right now, for-profit debt settlement companies are the only ones who because they're truly independent can stand as an adversary to the credit cards and get the principal down and get some relief for people that's in between a traditional debt management plan, which is still pretty expensive, and Chapter 13, which now is a lot harder to get into.

So, we agree on that market niche and we agree that debt settlement can be done and should be done, I think what's left for the FTC is how do you guys regulate this in a way that gives you the teeth to enforce the industry and keep the bad actors out without preventing the good actors from continuing to provide this valuable service.

I wish I had a silver bullet right now, I think the discussion has started with some of the research, and I think the research and academic work can be criticized on both sides right now, and needs to become more robust. But I think there's a solution. I think the associate director said, well, where is the middle road?

Credit Solutions, for one, is interested in figuring out what that is. We don't think it's requiring payment only upon settlement, because number one, because we are consumer-focused, that makes the cost for the consumers who save and settle accounts and stay in go up, and even if we were not put out of business, I don't know if we should stay in if the costs go that high, for the consumers who stay.

And number two, I forgot what I was saying number one and number two were supporting, so I guess I will stop there.

I am surprised, but I am also encouraged. I also really appreciate the sincerity with which you guys have conducted this, and if there is any way that we can be of assistance further, we would like to.

MS. BROWN: Thanks. And next is Michael Bovee and the final person is Jeff Takle.

MR. BOVEE: First, let me thank you guys for inviting me to participate as a panelist and also reiterate that my comments coming up to today's event, while I was panelling and while I am standing here today are coming from a position of a company who has done nothing but success-based fees for settlement when we performed a service, and that's all we have known for over five years.

The 60/60 plan, and these are notes that I had taken that I either didn't get a chance to get to or from later afternoon sessions. The 60/60 plan will not benefit a struggling economy for that period of time, that five years, a settlement process, when done correctly, will assist the struggling economy within two years. Who is to say a 60/60 plan with creditors will last, they change on a dime, we deal with that frequently.

Since arriving in Washington and in the last two days, I have received four confirmed Chase direct offers to consumers to enroll in a 60/60 plan, I reviewed a copy of them, they are zero percent for the five years, there are no fees, it's a limited time offer, so probably a pilot program they are doing right now. The letter suggests that they will charge off the one specifically that I reviewed at 79 days delinquency is going to charge off as soon as they enroll, so they have an immediate R-9 on their credit report, and it's going to be updated to reflect a settlement once the last payment is made, so five years from now. So, the consumer is going to be damaged with a charge-off and then damaged again as soon as a fresh settlement is reported on the credit report.

There is also an IRS disclaimer, at the bottom, so there is likely to be a five-year window, an unknown liability where a consumer is struggling financially right now may be insolvent. Five years from now, maybe not. So, what are they actually getting and saving?

Lead generators should share compliance.

Web-based marketing will create more competition, and better suitability. I am in disagreement with what was covered earlier today in that I believe that people on the website, you know, surfing, comparing, are probably more sophisticated than somebody picking up a phone and dialing from a radio or telephone commercial.

People are not typically sued inside of six months. In fact, litigation risk typically only begins after six months. Success claims are a two-edged sword. I don't like them. They will be relied upon, rather right or wrong. Lawsuit risk is generally downplayed by the industry, which damages the whole plan, if it occurs. And I would like to see maybe some addition to risk of litigation being inclusive of the longer these debts go unpaid, the more likely and the higher those risks are.

I don't like averages, but drop-outs do skew things and I don't think that would be a correct representation of success.

One of the things I failed to mention earlier today is 80 percent, and I agree with a lot of the industry participants. 80 percent of the work that CRN does with consumers is consumer work. Twenty percent, if not less, is set aside for the actual settlements that we do perform.

Projections can't be relied upon, due to creditors moving the goal posts frequently, especially in this economy. And the consumer with an aggressive approach to settling can't even rely on those projections. Length of -- I covered that.

MS. BROWN: And your time is almost up, so if you could finish your thought.

MR. BOVEE: Expanding the definition to include books, whether print or audio, would be an effective book ban. Self-help resources are affordable and should be the first thing available to struggling consumers. I support a modest monthly fee of $50, a nominal refundable in 60 to 90 days, all of which is used to offset fees that may later be charged if there are players in the industry that cannot survive a change of that nature, then if other companies are allowed for a $50 monthly service fee, they will absorb those other failed companies and the consumers that signed up for their services. Thank you.

MS. BROWN: Thanks. Jeff Takle?

(No response.)

MS. BROWN: Anybody else who would like a couple of minutes of the open mike?

(No response.)

MS. BROWN: In that case, I want to thank everybody who participated as a panelist and attended in the audience.

(Applause.)

MS. BROWN: Today's discussion has provided us with valuable insight that will really help us as we work to create the final debt relief amendments to the Telemarketing Sales Rule. We have certainly covered a lot of ground and we have a lot to consider as we move forward with the rulemaking process. We have gotten this question a number of times, but we don't have a specific timeline on when any next step would take place. We haven't come to any final conclusions and the Commission hasn't come to any final conclusions, but we will be taking these views and the many concerns addressed at the forum today and in the comments, which are over 270 now, that we have received in this rulemaking, and we will be taking all of that information under consideration. Thank you very much.

(Applause.)

(Whereupon, at 4:50 p.m., the forum was concluded.)

C E R T I F I C A T I O N   O F   R E P O R T E R

DOCKET/FILE NUMBER: R411001

CASE TITLE: PUBLIC FORUM ON DEBT RELIEF AMENDMENTS

DATE: NOVEMBER 4, 2009

I HEREBY CERTIFY that the transcript contained herein is a full and accurate transcript of the notes taken by me at the hearing on the above cause before the FEDERAL TRADE COMMISSION to the best of my knowledge and belief.

DATED: 11/13/09

SALLY JO QUADE

C E R T I F I C A T I O N   O F   P R O O F R E A D E R

I HEREBY CERTIFY that I proofread the transcript for accuracy in spelling, hyphenation, punctuation and format.

SARA J. VANCE