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UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION

COLLECTING CONSUMER DEBTS:  
THE CHALLENGES OF CHANGE

Thursday, October 11, 2007  
9:00 a.m. to 4:00 p.m.

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## 1 P R O C E E D I N G S

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## 3 INTRODUCTION AND WELCOMING REMARKS

4 MR. KANE: Okay, good morning, folks, and  
5 welcome back to the Federal Trade Commission's two-day  
6 workshop. For those of you who weren't here yesterday,  
7 I'm still Tom Kane. I'm an attorney in the Division of  
8 Financial Practices, and like yesterday, I have a few  
9 administrative items that I want to pass on before I  
10 introduce today's official welcomer.

11 Thanks, first of all, for getting back to your  
12 seats promptly yesterday so we could stay on schedule.  
13 That really helped. I also want to ask again that you  
14 turn off any sound on any sort of electronic devices.  
15 We had a few beeps and bells yesterday, so we would  
16 appreciate that. And the final item is that if you've  
17 run out of audience question cards, please find them at  
18 the front desk, because we welcome your questions.

19 And now that we've gotten that out of the way,  
20 I'm happy to introduce the Director of FTC's Bureau of  
21 Consumer Protection, Lydia Parnes.

22 (Applause.)

23 MS. PARNES: Thank you, Tom, and good morning to  
24 everyone. Thank you all so much for coming back for day  
25 two.

1           I'm very pleased to be here to welcome you and  
2 to thank you for all of your contributions to the  
3 discussions that we're having regarding current issues  
4 and problems in the debt collection industry. I'd like  
5 to thank our distinguished speakers, our panelists, and  
6 all of the attendees who participated in the workshop.  
7 We have much to cover today, so I'll be brief.

8           At the FTC, we believe in the marketplace. You  
9 all know that. We also believe in the marketplace of  
10 ideas. We recognize that the intensity with which  
11 arguments are presented at our workshops is a reflection  
12 of the passion that participants feel for the ideas  
13 being debated, and a candid and robust exchange of  
14 arguments advances the development of public policy at  
15 the FTC. Playwright Oscar Wilde once said, "I dislike  
16 arguments of any kind. They are always tense and vulgar  
17 and often are convincing." So, in this spirit, on with  
18 the debate.

19           Yesterday, we examined trends in consumer debt  
20 and developments in the debt collection business. We  
21 also heard the concerns of consumers, collectors, and  
22 creditors about the current state of legal and  
23 regulatory restrictions on debt collection. Consumer  
24 advocates describe debt collection practices that they  
25 believe raise particular concerns: Collectors who

1 repeatedly seek to collect from the wrong consumer; fail  
2 to provide proper verification of a consumer's debt;  
3 report false information to credit bureaus; and use  
4 illegal litigation tactics to collect debts.

5 Debt collectors, creditors, and debt buyers  
6 described industry best practices to respond to these  
7 concerns, such as adhering to local and state licensing  
8 requirements, developing quality assurance programs to  
9 ensure that shared consumer information is accurate, and  
10 establishing a code of conduct for collection employees.

11 The debt collection industry also proposed some  
12 legal and regulatory changes that they believe would  
13 eliminate confusion about specific provisions of the  
14 Fair Debt Collection Practices Act. For example, an  
15 industry representative suggested modifying the FDCPA to  
16 make it clear that collectors may leave telephone  
17 messages that contain information about the collection  
18 agency.

19 Today, each of our panels will address specific  
20 concerns from both the consumer and collection industry  
21 perspectives. Our first panel will delve into the  
22 technological difficulties involving skiptracing,  
23 determining the correct amount of and the flow of  
24 information from creditors to debt collectors and debt  
25 purchasers. In many key respects, the FDCPA implicates

1 information, how good it is and how the information  
2 flows.

3 We need a better understanding of how creditors  
4 and debt collectors identify and locate consumers and  
5 what information creditors convey to debt collectors and  
6 debt buyers. This understanding will help the FTC  
7 evaluate what it can do to help prevent collectors from  
8 attempting to collect from the wrong consumers, failing  
9 to provide proper verification of accounts, and  
10 attempting to collect more than consumers owe.

11 The second panel will examine the intersection  
12 of debt collection and credit reporting. The issues to  
13 be discussed include how creditors and debt collectors  
14 use the credit reporting systems, how these uses may  
15 injure consumers, and what should be done to respond to  
16 any such harm. This panel will also consider whether  
17 the information creditors and other furnishers provide  
18 to credit reporting agencies are accurate and whether  
19 the agencies are conducting adequate investigations when  
20 consumers dispute negative credit history information.  
21 Then, we'll let you eat.

22 After lunch, we'll consider debt collection  
23 litigation. This panel will address concerns about  
24 abuses of the legal process, use of so-called default  
25 mills and mandatory arbitration. Using the legal

1 process to collect on debts raises important consumer  
2 protection issues. Federal benefits payments, such as  
3 Social Security, generally are exempt under federal law  
4 from garnishment orders. Our distinguished colleague,  
5 Steven Fritts of the FDIC, will discuss federal banking  
6 agency initiatives that encourage depository  
7 institutions to try to prevent such funds from being  
8 garnished, where to mitigate the consumer harm from any  
9 such garnishment.

10 In addition, we anticipate a lively discussion  
11 concerning debt collectors taking action to collect  
12 time-barred debts, as well as the merits of arbitration  
13 as an alternative forum for disputes. The panel  
14 discussion will enable the FTC to get a richer  
15 appreciation of current debt collection litigation  
16 issues and elicit possible solutions.

17 Finally, during our last session, we will  
18 identify the main debt collection problems identified  
19 during the workshop and discuss the merits of possible  
20 solutions to these problems. We hope that this session  
21 will identify common ground among participants as well  
22 as the key points to take away from the arguments  
23 advanced and debated in this two-day marketplace of  
24 ideas.

25 So, that's what we have got planned for you.

1 It's really a very rich day, and I hope that you'll all  
2 take advantage of the discussion that goes on.

3 Before I close, I would like to thank the team  
4 in the Bureau of Consumer Protection who worked long  
5 hours to put this very excellent, thought-provoking  
6 workshop together. The people who deserve special  
7 mention are Tom Kane, who's introduced me and who's been  
8 our master of ceremonies -- (applause); Katie  
9 Harrington-McBride -- Katie, stand up. Karen Hickey,  
10 Seth Coburn, Tom Pahl -- I see you, Tom. And I'd also  
11 like to thank, scattered around here, the BCP honors  
12 paralegals who help with this and every other workshop  
13 that we put on, and they have done a fabulous job.  
14 Thanks to all of the FTC staff, and thank all of you for  
15 attending.

16 (Applause.)

17 MR. KANE: Thank you, Lydia.

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1                                   LOCATING THE CORRECT CONSUMER  
2                                   AND DETERMINING THE CORRECT AMOUNT OWED

3                   MR. KANE: Our next session is called, "Locating  
4 the Correct Consumer and Determining the Correct Amount  
5 Owed" and is going to be run by Tom Kane, a young  
6 Commission attorney, and so I'll ask Tom and his panel  
7 to come up. I've very carefully placed everybody's -- I  
8 moved all the tags around -- no.

9                   We were going to have Sonya Smith-Valentine, but  
10 unfortunately, she was unable to make it, a bit of a  
11 health issue, but I think she's doing fine. So, Lauren  
12 Saunders has very generously agreed to step in. Sonya  
13 is an attorney in private practice, a consumer advocate  
14 attorney, and Lauren Saunders, as those of you who met  
15 her yesterday know, is a managing attorney of National  
16 Consumer Law Center's D.C. office. So, she will add a  
17 great deal to the discussion.

18                   The session today focuses on two different  
19 topics, skiptracing and debt verification, both of which  
20 were touched on yesterday. Now, because collector  
21 contacts with the wrong consumer and the failure to  
22 provide sufficient verification have been subjects of  
23 many complaints and because they are complex issues, we  
24 decided to include them in one of these targeted  
25 sessions in the second day of the workshop. The other

1 two targeted sessions will address credit reporting  
2 issues and collection litigation issues.

3 First, I'd like to introduce the panelists who  
4 will share their insights on skiptracing verification.  
5 First we have Mike Lamb who's Vice President and Chief  
6 Counsel of Lexis-Nexis Risk Information and Analytics  
7 Group, Incorporated. It's a very large skiptracing  
8 company, and he will be our skiptracing expert on the  
9 panel.

10 We have Jim Sheeran, who's General Counsel of  
11 Tidewater Finance Company, which purchases retail and  
12 auto loans and mortgage loans.

13 Tom Haag is President and CEO of State  
14 Collection Service, Incorporated, which is a contingency  
15 collection agency.

16 Robin Pruitt is Senior Vice President and  
17 General Counsel of Encore Capital Group, which is a  
18 large debt-buying company.

19 And Gina Calabrese is a -- I might be  
20 mispronouncing that --

21 MS. CALABRESE: That's correct.

22 MR. KANE: -- going back to my Sicilian roots --  
23 Associate Director for Elder Law Clinic at St. John  
24 University's School of Law.

25 MS. CALABRESE: And a clinical law professor.

1           MR. KANE: And a clinical law professor there.  
2           So, now that you've met our panel, we'll get started.  
3           We will start with skiptracing and then move on to debt  
4           verification.

5           So, Mike Lamb, you're our expert on skiptracing,  
6           and I'm hoping you'll set the stage for us. Talk a  
7           little bit about how skiptracing worked in the past, how  
8           it works today, and then how it might be working in the  
9           near future.

10          MR. LAMB: Great. Thank you, Tom, and thank you  
11          to the FTC for giving us the opportunity to be part of  
12          this workshop, which we think is a very important record  
13          being created for decisions on how to improve how the  
14          industry operates and, frankly, how the credit system  
15          operates.

16          Now, I should clarify one thing. Lexis-Nexis is  
17          not a skiptracing company. We provide skiptracing  
18          technology and services to the industry. So, we provide  
19          the data and the services and the solutions that  
20          collections firms and first-party collections use to  
21          identify and locate the debtor, and so from that  
22          background, we have, I think, a perspective on certainly  
23          how our customers use our services today and where we  
24          think they are going to be headed in the future.

25          But I think to invoke Tom, I'll start with the

1 spirit of skiptracing past --

2 MR. KANE: Thanks.

3 MR. LAMB: -- and talk a little bit about where  
4 everything started, and I think that just sets the stage  
5 even though everyone in the room has a good handle on  
6 it, but it really shows you the difference in where we  
7 are today.

8 Historically, 20 years ago, somebody who needed  
9 to locate a debtor had the credit file and a telephone,  
10 and that credit file might have name, address, some  
11 references. The address or phone number would be in  
12 there. They're probably out of date or you wouldn't be  
13 skiptracing. You might call the references. You might  
14 try to find neighbors. You had to often go physically  
15 to the location to ask around. Debtors in a small town,  
16 you might even call the local Post Office and see if  
17 they knew where someone had gone.

18 A more advanced firm would have telephone  
19 directory books from many cities. It might even have  
20 some paper-reverse directories where you could locate  
21 phone numbers for neighbors. But that was the nuts and  
22 bolts of how it worked. And obviously there was a lot  
23 of difficulties, and I think those difficulties would be  
24 enormous today, because our society is so much more  
25 mobile and transient.

1           You know, the challenges today of locating John  
2 Brown from New York City who's moved, and you don't know  
3 where. Did John Brown move to Chicago, Miami, rural  
4 Arkansas? Those are the challenges the industry faces,  
5 and they need to do that very cost effectively, you  
6 know, and that challenge, luckily, has been met by a  
7 combination in the industry and in support services like  
8 those that we offer, a combination of technology and  
9 data.

10           Today -- and this is -- I'm not here to promote  
11 our services, but I'll talk about how ours work as an  
12 example, because that's what I know well. Today, we  
13 offer an interface to somebody who's involved in  
14 skiptracing where they can very readily, on their PC, if  
15 they're going to search for an individual consumer, if  
16 they enter the name, the Social Security number ideally,  
17 because that really is a key link that differentiates  
18 one individual from someone else with a similar name,  
19 and they'll tell us what data they want back on the  
20 consumer.

21           Often, it's just best address, best telephone  
22 number, and we'll search our databases, and I'll touch a  
23 little bit on how that works, and we'll just provide  
24 that very simple, straightforward data. If they  
25 actually want to replicate a more detailed, traditional

1 skiptracing, where they are going to look at contacts  
2 and look at background, they will enter the same data,  
3 but we can provide a more detailed report on the  
4 individual, which would include best address, best  
5 telephone, but also would include the history of  
6 addresses that individual has had; would include  
7 associates, people who lived at those same addresses in  
8 the same time frames, and we do the linking, and these  
9 are people that you might want to contact to try to  
10 locate the debtor; will include known relatives.

11 A lot of this is factual, a lot of this is  
12 analytics, where you're making a surmise. We can't  
13 guarantee that somebody's a relative, but it's somebody  
14 for a skiptracer to contact. And the very same kind of  
15 data and analytics are used, in our case, by law  
16 enforcement to locate people who they're trying to find.  
17 It's no different. It's accurate location technology  
18 and data.

19 As we look at how they use this in the flow of  
20 their business in skiptracing, again, often, the  
21 skiptracer is entering an individual's name and number  
22 and looking at what's of interest to them based on what  
23 they see in the file, but also, often, much of it's very  
24 high scale. We process what are called batch requests  
25 where we'll receive thousands of inquiries in a single

1 batch, and we'll process it back, and maybe we'll just  
2 update 10,000 names and Socials with our view of current  
3 address and current telephone number, you know, and that  
4 allows the contacts, whether they're by letter or actual  
5 telephone contacts, to occur.

6 Obviously, accuracy is important to our  
7 customers, important to consumer advocates. We do our  
8 analytics to try to make sure our data is as accurate as  
9 possible. It is part science and part art. You know,  
10 you're providing information to be used as part of a  
11 location investigative process. It's not something like  
12 a credit report where somebody made or did not make a  
13 payment. It's more these are information trails to  
14 pursue if you're skiptracing. And that was true back in  
15 the days of paper, and it's true electronically, also.

16 Just to touch briefly on what's behind that  
17 interface, because I think that's important to  
18 understanding how electronic skiptracing works, we  
19 collect data primarily from public record sources, real  
20 estate records, court records, marriage records, death  
21 records, and from both public and nonpublic sources,  
22 telephone numbers, Social Security numbers, and the  
23 like, and we link that in our database with an  
24 identifier, so that then when a search is done, we can  
25 pull all the data that we've associated very quickly,

1 using our super-computer, and make it available in  
2 whatever format is requested to the skiptracer. It's  
3 efficient, it's fast, and, you know, it's part of what  
4 makes this business as efficient and as productive as it  
5 is today.

6 Now, I'll sort of pause there in my history and  
7 overview and just touch on a policy issue that we see  
8 pending, and that is in our service, in the background,  
9 it's very critical that we use Social Security numbers  
10 as one of those linking devices, to link John Brown in  
11 Chicago to John Brown who just showed up in Arkansas.  
12 The debt collection industry, they usually have a Social  
13 Security number. They'll submit it to us. We've done  
14 our linking using it with what we have.

15 There's recent legislation actually enacted in  
16 Minnesota and several bills pending in Congress today  
17 that would restrict the use of Social Security numbers  
18 for these purposes, and we think that that would be a  
19 very anti-consumer legislation, just to touch on that.  
20 If we cannot use Social Security numbers, both  
21 internally, behind the scenes, for what we do, and to  
22 actually give it to the collections industry, our data  
23 would be less accurate. There would be more wrong party  
24 contacts.

25 And we're going to receive Social Security

1 numbers anyway, because all the pending legislation  
2 allows them to be given to us for law enforcement  
3 purposes. We'll just have our hands tied, because if  
4 this bill were enacted as it's currently sitting, and  
5 there are a couple of different bills in the House, in  
6 using it to serve the collections industry, and we're  
7 optimistic that those bills will be changed, and we're  
8 also optimistic the Minnesota law will be changed before  
9 it goes into effect I think next summer, but if it  
10 doesn't, then there are issues about whether or not we  
11 can either receive Social Security numbers to use, to  
12 serve this industry, or whether we can give them to our  
13 customers in the industry.

14 Now, to touch on sort of where we see  
15 skiptracing going in the future, today, often our  
16 service is either transactional or batch service, but  
17 it's very distinct. The debt collection agency takes  
18 it, and they enter it into their system. In the future,  
19 we see even more technology within the agency, with  
20 their work flow software, and our data will  
21 automatically populate, just as the data they receive  
22 from the creditors automatically populates to make it  
23 even more efficient, so you will have the phone number  
24 from the credit file right next to our best phone number  
25 contact, and it will be an automatic contact process.

1           In addition to that sort of operational change,  
2 there's been a lot of discussion about emails and cell  
3 phones and the like, and we do think that those, if  
4 there are changes in the law, could become, you know,  
5 the type of data that we provide, but I think today, the  
6 issues with emails and the difficulty of do you give the  
7 mini-Miranda in email versus having, you know, somebody  
8 other than the debtor see the email are exactly the same  
9 as what we've discussed a few times with respect to  
10 voicemails, and I don't think that those will be readily  
11 used, you know, as a source of contact, even though it's  
12 a very consumer friendly source of contact, and until  
13 there's some clarification on the risk to the industry.

14           And then one last thing, we hope that debt  
15 skiptracing doesn't change as it evolves where there's  
16 enough risk and enough litigation that services like  
17 ours are used only to get the address to send a few  
18 letters and then you proceed to litigation. The  
19 interaction over the telephone is obviously the most  
20 productive in terms of actually collecting debts, and  
21 we're hoping that the threat of litigation and the  
22 uncertainty there doesn't lead to enough cost in the  
23 industry that they go straight to letters followed by  
24 litigation, because that's in no one's interest.

25           MR. KANE: All right, thank you very much.

1           I have a few follow-up questions on that. I  
2 think you said something like you use analytics and you  
3 might have the right person. What's the likelihood that  
4 you have the right person when somebody sends you --  
5 somebody says, you know, here are ten names. What's the  
6 likelihood that you're identifying the ten correct  
7 people?

8           MR. LAMB: If they give us ten names with a  
9 Social Security number and we have those names in our  
10 database -- and we probably do, I think we have about 20  
11 percent more names in our database than the credit  
12 bureaus have, because there are a number of people who  
13 are not in the credit bureau world. They're -- you  
14 know, they're so-called thin file names. Highly likely  
15 that we will have the right person, but then you list,  
16 what data are you receiving from us? We'll give fairly  
17 competently address and telephone number, but we'll have  
18 other possible telephone numbers, and they're not always  
19 correct. You know, they are a possible lead. It  
20 depends on the source. And we'll present them as such,  
21 you know, this is a possible telephone number.

22           MR. KANE: Good, thanks.

23           I guess I should step back and say, why do we  
24 need skiptracing in the first place or why -- are we  
25 finding that more and more consumers are trying to avoid

1 detection or is it because they're moving, they're just  
2 harder to find, even though they're not intentionally  
3 trying to avoid detection? What's your sense?

4 MR. LAMB: Skiptracing, it really is in several  
5 categories or buckets. There are those people who have  
6 just moved, and maybe they didn't give a forwarding  
7 mail. They're not trying to avoid their debt. They  
8 just moved. People are very transient. Not everyone  
9 pays their bills. Not everyone gives a forwarding. And  
10 if they're located, they'll probably pay that bill.  
11 That's why you need skiptracing.

12 There are others who might be moving to try to  
13 get a fresh start. Psychologically, you know, they're  
14 obviously in some type of straits if they're in a  
15 skiptracing collection situation, but then if they are  
16 located and they actually have a dialogue with the  
17 collections agency, they can work out a plan to pay that  
18 bill.

19 Somebody who's actually being skiptraced because  
20 it was a fraudulent transaction, they're not going to  
21 pay probably under any circumstances, and they are very  
22 hard to find, because they are going to try to stay off  
23 the radar, and if you do find them, frankly, it probably  
24 will not be a productive phone call.

25 MR. KANE: And you have a -- what about the --

1 what about, you know, the telephone call skiptracing, is  
2 there still a need for that, or is it -- these  
3 electronic databases, are they sufficient to find  
4 anybody?

5 MR. LAMB: Oh, I think very much there's a need  
6 for that. The electronic databases will give you what  
7 seems to be based on records, credit headers from the  
8 credit bureaus, other records, maybe signing up for  
9 various services, where your data goes into the public  
10 domain, you give contact information, but often, the  
11 electronic records and the ability to contact a relative  
12 or a neighbor in a very controlled way, as our  
13 skiptracers do, can actually identify somebody who may  
14 have moved so recently, and many of these people have  
15 moved recently or they wouldn't be in a skiptracing  
16 situation, where they may not have shown up in the  
17 electronic databases yet. So, there's still very much a  
18 need to be able to make telephone contacts, not just to  
19 the debtor, obviously, in doing collections, but to  
20 others.

21 MR. KANE: I guess I read one commenter, one  
22 organization that submitted a comment, said that there  
23 are many more debt collectors using skiptracing in the  
24 past two years than in previous years. Is that your --  
25 is that what you've seen? Do you have a sense of that?

1           MR. LAMB: Well, I think they've always done  
2 skiptracing. The question is --

3           MR. KANE: Do they need it for a larger  
4 percentage of the accounts they try to collect or --

5           MR. LAMB: I think that it may be -- and I will  
6 turn to some of the others on the panel, but what we see  
7 is that it is a more mobile, transient society, and then  
8 the subset of people who are subject to skiptracing,  
9 high likelihood that they have moved in the past 12  
10 months, you know, perhaps 30 to 40 percent likelihood at  
11 least; otherwise there wouldn't be a skiptracing  
12 activity to locate them. So, you do need to do  
13 skiptracing and have the dialogue about the debt  
14 repayment.

15           In terms of using electronic services like us,  
16 there are still a number of agencies, they tend to be  
17 the very small agencies, who do the electronic version  
18 of the old paper files. They look around on the  
19 internet for white pages directories and the like. But  
20 we find that our service, many, many of our customers  
21 are the small agencies, as well as the largest agencies  
22 who are in this room, you know, a debt collection agency  
23 with five or ten people might be using our services, and  
24 so they tend to -- the targeted electronic skiptracing  
25 is used sort of at all levels of the industry today.

1           MR. KANE: And your company and probably some  
2 others also have some other products where they've run  
3 lists of names through bankruptcy filings and things  
4 like that. What are some other products that are out  
5 there, yours or other companies'?

6           MR. LAMB: Sure. Well, what's important sort of  
7 is to put things into the large categories or buckets.  
8 Our Accurint product, which is used for skiptracing, is  
9 subject to Gramm Leach Bliley, because some of our data  
10 is GLBA data, and tight security. We also have an array  
11 of FCRA services, such as our Banko product, where we  
12 notify creditors if somebody's filed for bankruptcy, you  
13 know, it's an alert product, as well as --

14          MR. KANE: Alert product, you mean it beeps the  
15 company when somebody files bankruptcy, or how does it  
16 work?

17          MR. LAMB: Basically they'll submit names or  
18 Socials to us. We'll alert them when there's a filing.  
19 So, it's more than a beep, but it describes the filing,  
20 and that way they can, you know, comply with the  
21 bankruptcy stay and the like.

22          MR. KANE: So, if they send you a portfolio of  
23 10,000 credit card accounts, for example, you will run  
24 it through Banko --

25          MR. LAMB: Either run it through or maintain it

1 for a subsequent filer, too, depends on the nature of  
2 the product, but that's our FCRA-governed product,  
3 because there you are really in the are you granting  
4 credit or not, are you no longer going to grant credit,  
5 and that's under the FCRA.

6 MR. KANE: So, Tom Haag, in your contingency  
7 collection agency, what kind of skiptracing do you all  
8 do? Do you use large electronic suppliers like this  
9 or --

10 MR. HAAG: Yeah, I think the first comment I  
11 should make is that Michael talked way back 20 years  
12 ago, and I'm about 40 years in the industry, so believe  
13 it or not, Michael, 40 years ago, we did skiptracing as  
14 well.

15 We actually use Michael's service along with  
16 some others. We have a program we've developed called a  
17 waterfall, and the waterfall actually takes a group of  
18 debtors and puts them through a search of the database  
19 that Michael represents.

20 I think you asked the question, is there a lot  
21 of bad information or do you have a lot of partial or  
22 whatever? My observation is that if they're not sure,  
23 if they don't have whatever the point value is in terms  
24 of common information, they're not going to give us a  
25 hit. They're not going to give us that information.

1 So, the information we get is generally pretty darn  
2 accurate.

3           What they do send us, however, is maybe half of  
4 the names back saying we have no current information.  
5 If that's the case, we roll that to a second database,  
6 just somebody else that does -- a competitor of  
7 Lexis-Nexis, for example, and they will check that  
8 database, and of those five, maybe we'll find one or two  
9 more in that, and actually roll to as many as three  
10 databases to find the information.

11           The reason it's done that way today is because  
12 these services are available, and 20 years ago, these  
13 services simply weren't available. There was no other  
14 way to do it other than to pick up the phone and call.

15           Now, just kind of to respond, what happens when  
16 we get that information, are we confident that the  
17 information is good, do we just forge ahead or what do  
18 we do? Really, what we do is we put those files that  
19 come back from one of those databases in a special  
20 either status code or disposition code, and the people  
21 that work that file, the people that will make the phone  
22 calls on those particular files, know that this data  
23 came from a database, and so if the first words out of  
24 the consumer's mouth when you call them is, "I don't  
25 know anything about this, I never heard about this, I've

1 never lived there, I've never done this," or whatever,  
2 that's a huge red flag, and we go to plan B, which is to  
3 try to verify the information. Where did this go wrong?  
4 If it did go wrong, what should be the next step? So,  
5 really, there's a lot of care that's taken in that  
6 process from the original request to get updated  
7 consumer information to actually correcting that  
8 information or communicating with the consumer and  
9 making a collection.

10 MR. KANE: Mike, in general, in your industry,  
11 does it cost pennies per credit card account or other  
12 kind of account to send it through a system? Does the  
13 cost vary upon what level, or is it a matter of dollars  
14 per account?

15 MR. LAMB: It varies based on what kind of data  
16 you're looking for, but typically, in high volume,  
17 you're paying per inquiry, and it's under dollars, not  
18 over dollars, but we also -- you know, we have an array  
19 of pricing where -- price per search, price per person  
20 doing the search, on a subscription basis, for basic  
21 information, with incremental pricing for additional  
22 features sometimes.

23 MR. KANE: So, how much could it cost for -- and  
24 just in general, again, could it cost \$10 to find a  
25 consumer?

1 MR. LAMB: Typically less.

2 MR. KANE: Less, okay.

3 Okay, Tom, and I'm sorry, once you receive the  
4 information, one electronic service is able to provide  
5 roughly 50 percent of the names or --

6 MR. HAAG: Oh, that's just -- I pulled that  
7 right out of the air.

8 MR. KANE: Okay, but then you go to another and  
9 you go to another electronic database --

10 MR. HAAG: If we get no hit -- what we consider  
11 a hit is updated information, new phone, new address,  
12 you know, those are the two critical pieces of  
13 information we're looking for generally. If they don't  
14 have that information, we will then put that -- roll  
15 that to a second database that probably has different  
16 sources for information than Michael's organization, and  
17 we may get, again, just a small percentage of hit, maybe  
18 only one or two out of ten, but we -- you know, we do  
19 work through a number of different databases and  
20 ultimately find, you know, a significant percentage of  
21 people.

22 MR. KANE: And do you send all your accounts, as  
23 soon as you -- as soon as a portfolio is assigned from a  
24 creditor for you to collect, do you send the whole  
25 portfolio through a company like Mike's?

1 MR. HAAG: No, no.

2 MR. KANE: Or do you try to contact consumers,  
3 and when you can't reach them, then you send it through?  
4 Is that correct?

5 MR. HAAG: Right. The majority of the files we  
6 receive have an address and phone number attached. So,  
7 these are only files lacking information, lacking a  
8 phone number, lacking an address, or, you know, for  
9 example, you send the initial notice to the consumer,  
10 that notice is returned. You have no way of  
11 communicating with them. That will roll into that  
12 batch, and that will go generally right to a skiptracing  
13 database.

14 The other question that was asked, are there  
15 more of these than there used to be, and I guess my  
16 comment on that is that that's -- I don't know that  
17 there's any real upswing or anything like that, but what  
18 we do see is, among other things, the Post Office is  
19 real particular about how you address your mail.

20 I don't know how closely you all watch the mail  
21 that comes back in your various organizations, but, you  
22 know, depending on the Post Office, you'll have a good  
23 address with no apartment number, and the mail will be  
24 returned. You'll have a good address, including an  
25 apartment number, and a wrong zip code, and that mail is

1 returned.

2           There is a tremendous amount of incorrect  
3 information in that respect that actually causes  
4 accounts to become skip accounts, if you will,  
5 inadvertent skips. The people didn't give them the  
6 wrong zip code, but somebody keyed the wrong zip code  
7 early on, and that's the reason for that.

8           MR. KANE: And then when you get -- after these  
9 accounts, they come back to you or they didn't have a  
10 good address to begin with or they come back to you  
11 because there's -- you know, it says the consumer has  
12 moved or something, then you run it through electronic  
13 databases?

14           MR. HAAG: Yep.

15           MR. KANE: What do your people do with that  
16 information?

17           MR. HAAG: They get that. That -- when it comes  
18 back to us, it's put in a disposition or a status code  
19 all by itself. It's a group of business, a group of  
20 accounts, that have to be -- that we know the  
21 information -- the current information we had received  
22 from a skiptracing source or resource, and so they have  
23 that knowledge when they pick up the phone and call the  
24 consumer. They know that this is -- they believe the  
25 information to be correct, but they're sensitive to the

1 fact that a consumer may say, "Oh, I've never gotten a  
2 bill," which they may have never gotten, because the  
3 address may have been incorrect from day one, but  
4 they're sensitive to that.

5 So that if somebody calls -- if we place a call  
6 to somebody and they give us that information, if they  
7 tell us they don't know anything about it or whatever,  
8 we're on that track. We understand that, and we'll ask  
9 pointed questions, specific questions, to try to  
10 determine whether or not our information is, in fact,  
11 correct or, in fact, incorrect.

12 Now, you know, again, I'm not here to sell  
13 Michael's product, but if he gives me a lot of bad  
14 information, I'm his former customer. I'm not his  
15 current customer. You know, I want good information,  
16 and, you know, most of these databases are very clean  
17 information, very good information.

18 MR. KANE: And if they can provide the  
19 information, if they say this is -- if they can provide  
20 it, then it's usually reliable, but if they can't  
21 provide it, then they make that clear to you?

22 MR. HAAG: That's right.

23 MR. KANE: Okay.

24 MR. HAAG: That's exactly right.

25 MR. KANE: And what are some of the other kinds

1 of companies? What kinds of information do those other  
2 companies use after you've gone through Michael's  
3 database?

4 MR. HAAG: I don't -- frankly, I don't know what  
5 Michael uses. That's a -- I think it's pretty much  
6 trade secret amongst them, where their resources are or  
7 what they -- how they acquire the information, but --

8 MR. KANE: So, when you go to another company,  
9 as far as you know, they're basically -- it's very  
10 similar to Mike's. They just might have slightly  
11 different data.

12 MR. HAAG: Right. That's right.

13 MR. KANE: It's not like it's an entirely  
14 different kind of --

15 MR. HAAG: It is different data, and it --

16 MR. KANE: But it is not an entirely different  
17 kind -- it's not, oh, this is a separate database of  
18 just, I don't know, state transactions or something like  
19 that, state liens.

20 MR. HAAG: Right.

21 MR. KANE: Okay, okay, good. Well, thanks.

22 Jim, how do you guys do skiptracing?

23 MR. SHEERAN: Well, we do it at several levels.  
24 At the first level, the collectors have sources  
25 available to them in which -- and the first thing that

1 they always try to do is to do it the least expensive  
2 way, so their first recourse is to the free services  
3 that are available on the internet.

4 MR. KANE: I'm sorry, I should point out, you're  
5 the creditor. So, you actually -- you have the  
6 accounts, so you have a lot of information, very --  
7 fresher information than sometimes that Tom has or Robin  
8 has.

9 MR. SHEERAN: That's correct. We've usually  
10 been in contact with the customer right along, and when  
11 we can't get in touch with somebody, it's generally  
12 because they've moved. It goes through all different  
13 levels, and there are any number of people who will try  
14 to avoid us, but in terms of -- when I say any number,  
15 it's also a very small percentage of our entire  
16 portfolio, so -- and it particularly occurs with  
17 automobiles, because automobiles are highly  
18 transportable, and they can be moved quickly from one  
19 end of the country to the other, and people often take  
20 them with them, with the liens on them and without  
21 paying for them, of course, so we're skiptracing and  
22 trying to find the auto, and it takes a while sometimes.

23 MR. KANE: So, do you use outside sources?

24 MR. SHEERAN: We do use outside sources.

25 MR. KANE: Do you use electronic databases and

1 that sort of thing?

2 MR. SHEERAN: Yes, we do.

3 MR. KANE: Okay. And then once you get the  
4 information, like Tom, you folks -- do you have separate  
5 people who do -- who take this new skiptrace information  
6 or this recently acquired information and make those  
7 calls?

8 MR. SHEERAN: Once it gets past 90 days, then --  
9 and it's an automobile, then it gets turned over to  
10 someone whose specialty is skiptracing.

11 MR. KANE: Okay. And is that person the person  
12 who contacts the electronic database companies?

13 MR. SHEERAN: Yes.

14 MR. KANE: And so do they have -- I should ask  
15 this: Do they have all this information on their screen  
16 at their desk or do they have to send the information  
17 out to an electronic database and get it back? In your  
18 experience, and then I'll ask Mike.

19 MR. SHEERAN: They get the information on their  
20 screen by going to that electronic database.

21 MR. KANE: Okay. On the internet? Is it like  
22 an internet interface?

23 MR. LAMB: It's a secure internet interface  
24 where -- they will use it on a transactional basis in  
25 this case, where they'll search for Mike Lamb with my

1 Social, if they were looking for me, and it will come up  
2 with data, and they can choose what data that they  
3 attain. Do they just want telephone numbers? Do they  
4 want past addresses? It depends on the nature of the  
5 skiptracing activity.

6 MR. KANE: But for the cost, they would want  
7 everything, right?

8 MR. LAMB: No, because time is a big cost.  
9 Often, a whole array of data might be available for the  
10 set price. It's just what's most useful to them.

11 MR. KANE: Okay.

12 MR. LAMB: There's very few features that are  
13 actually premium features.

14 MR. KANE: Okay. What are the premium features?

15 MR. LAMB: Sometimes additional phone numbers.

16 MR. KANE: Okay, all right.

17 MR. SHEERAN: You don't always need, Tom, all of  
18 their past addresses for the last 20 years. You need  
19 that sort of information, though, when it comes to  
20 determining who's the correct person, and so there's  
21 certainly a link here between what we're talking about  
22 and identifying the correct person.

23 MR. KANE: Sure, sure. So, if you have the past  
24 five addresses, what would the skiptracer do? It gets  
25 to another conversation, what we're going to talk about

1 later, but is that one of the factors you use when a  
2 consumer says, "I don't remember this debt"? Something  
3 like that?

4 MR. SHEERAN: It certainly is, because if five  
5 years ago they bought something and they put down a  
6 particular address on their application and it shows up  
7 in going back five years that they lived at that  
8 address, then it's much more likely to be the correct  
9 person.

10 MR. KANE: Um-hum, that makes sense.

11 Robin, how do you all do your skiptracing, from  
12 beginning to -- as soon as you get a portfolio, what are  
13 the steps you take?

14 MS. PRUITT: Let me start by saying debt buyers  
15 start with the best information that a creditor has.  
16 So, the information that we get in a portfolio of debt  
17 is given to us under the terms of a contract where the  
18 seller will represent and warrant that the information  
19 in the file that we're receiving is, to the best of  
20 their knowledge -- and what I'm speaking here of, Tom,  
21 is industry practice -- is to the best of their  
22 knowledge the best information that they have on the  
23 consumer and the debt at the time that the file is  
24 transmitted to us.

25 And as I think has become clear, though, a

1 number of people -- a number -- a fair amount of that  
2 data won't be correct. The address and phone and  
3 contact information will be outdated. So, we as an  
4 industry are doing our very best to locate a debtor who,  
5 for whatever reason, did not inform the creditor when he  
6 moved, and to do that, we rely on the accuracy of data.

7 What we have -- what we want to do is connect  
8 the right person and his Social Security number with the  
9 right address and phone number so that we can contact  
10 them about the right debt, because the properly  
11 identified consumer does owe the debt, and that is all  
12 that we're trying to do.

13 So, as a result, that highlights the importance  
14 of our access to personal identifiers such as Social  
15 Security numbers. It also is imperative that companies  
16 like Michael's company have accurate data sources. We  
17 rely on the professionals in the data accumulation  
18 business to provide us with that accurate data to fill  
19 in those gaps.

20 So, large debt buyers these days, I think it's  
21 fair to say that a department of human skiptracers in  
22 large debt buyers today is a thing of the past. So,  
23 with small debt buyers, they may still be doing some  
24 manual skiptracing, but as one of the key speakers  
25 yesterday mentioned, debt collection today is a volume

1 business and a national business.

2 So, by and large, we're using the batch request  
3 process that Michael referred to in seeking to append  
4 the or update the correct contact information on the  
5 accounts where it is apparent that we don't have that,  
6 or if we learn when we call an account and it becomes  
7 clear that we're not talking to the right consumer, then  
8 that would go into a file that we would seek to refresh.

9 By the way, let me mention that before any  
10 collection action is taken, it is customary -- probably  
11 beyond customary -- to send the file out to be scrubbed  
12 for bankrupt and deceased accounts. The last thing we  
13 want to do is attempt to contact a consumer who has died  
14 or to violate the bankruptcy stay by contacting a  
15 consumer who has filed bankruptcy.

16 MR. KANE: I'm sorry, Robin, so I think Mike's  
17 company has those products.

18 MS. PRUITT: Yes.

19 MR. KANE: So, when you send -- you will send a  
20 whole portfolio through Mike's company or one of his --  
21 one of the others --

22 MS. PRUITT: To be scrubbed for --

23 MR. KANE: To be scrubbed, okay.

24 MS. PRUITT: Actually, very often the creditor  
25 would do this as well, but the creditor does not want to

1 be selling bankrupt and deceased accounts either.

2 MR. KANE: So, the seller has sent the entire  
3 portfolio through Banko and also -- or some equivalent  
4 database, and they've also sent it through a deceased  
5 persons database. Is that right?

6 MS. PRUITT: Well, I can't speak for exactly  
7 what creditors have done, but it's my understanding that  
8 it would be common for creditors to try not to sell  
9 those. Among other things, those accounts would be  
10 classified as unqualified accounts under a standard  
11 portfolio purchase agreement, which means that even if  
12 we receive them, we've got the right to just turn around  
13 and send them back to the creditor and be reimbursed for  
14 the purchase price. They don't want to be selling those  
15 accounts; we don't want to be buying those accounts.

16 MR. KANE: Do you ever see -- are there ever  
17 sales of portfolios where there isn't that agreement in  
18 it, where the buyer is automatically permitted to kick  
19 it back? Do you ever see contracts like that?

20 MS. PRUITT: Ever, yes. In other words,  
21 portfolios where there is no right to return accounts?

22 MR. KANE: Yes. That's a better way to say it.

23 MS. PRUITT: It can happen, but I would say it's  
24 not the customary practice.

25 MR. KANE: And so when you get -- you've sent a

1 portfolio, 10,000 names, through Mike's company or  
2 another company, what do you get back from them?

3 MS. PRUITT: We will get updated information.  
4 If -- well, it's very much as Mike specified. It  
5 depends on what we ask for, because there are different  
6 levels, as he said. There are different levels of match  
7 that we can require. So, it's going to --

8 MR. KANE: But don't you want the best match  
9 possible?

10 MS. PRUITT: We want the -- oh, absolutely, we  
11 want the best match possible, but given the example of a  
12 few minutes ago, we may not want or need 10 or 20 years  
13 of past address information. We pay for all of the --  
14 as Tom said -- all of hits, which means all of the  
15 information that is responsive to the request that we  
16 make. So, two things: We only want to ask for what we  
17 need, and it -- I mean, it wouldn't serve the purpose to  
18 have every piece of information.

19 MR. KANE: Wouldn't that be the same thing every  
20 time? Wouldn't the level of detail be the same every  
21 time? How would it vary based upon a portfolio, you  
22 know, in beginning of March, how would that be different  
23 than the end of March?

24 MS. PRUITT: If I have a good phone number, I am  
25 not going to be requesting all phone numbers or all data

1 necessary. If what I need is an updated address, then  
2 we would request updated address information. So -- and  
3 it's going to depend on -- this can, as you can tell,  
4 get pretty complex pretty fast. It will depend on the  
5 type of asset that one is collecting, but to be clear,  
6 we're always seeking the most accurate and up-to-date  
7 information that we can get.

8 MR. KANE: But -- so, I'm sorry, you get a  
9 portfolio, let's shrink it down to 100 files. You're a  
10 very large company and your portfolios are much larger.  
11 Do you break them out before you send them to an  
12 electronic database and say for these, we only need  
13 phone numbers; for these, we only need a new address;  
14 for these, we -- how do you -- or can they -- how do  
15 you -- how do you tell the database what to give you?

16 MS. PRUITT: You know, that's a level of  
17 granularity that I couldn't answer and certainly  
18 couldn't answer on behalf of all debt buyers today.  
19 There are -- suffice it to say there are ways for a  
20 requester of information to convey a specific request to  
21 a data provider, and they have different products that  
22 respond to different levels of need.

23 So, once again, you know, we're seeking -- we  
24 depend on accuracy of their information. We don't have  
25 visibility to where they get their data. So, as an

1 industry, we have to depend on them having continued  
2 access to accurate data and robust data sources, and as  
3 Tom said, also, it's customary for debt buyers to use a  
4 variety of vendors to get the best information.

5 So, again, as Tom said, you may send it through  
6 one vendor, and then if there are still holes in the  
7 data, you may send it to another vendor. Because the  
8 vendors have different sources of information, you can  
9 get different results. We're going to be focused on  
10 using the data sources or the sources of data to give us  
11 the most accurate information, and as Tom said, if it  
12 proves to be otherwise, we would be former customers  
13 very quickly.

14 MR. KANE: Let me ask, when you ask for an  
15 address, for instance, on an account, are you given  
16 several potential accounts and you then call all three  
17 of them? If they give you three, do you call all three  
18 of them or do you send letters to all three of them?  
19 How does that work?

20 MS. PRUITT: Not all at once. So, as I believe  
21 Michael said, there's going to be a -- call it a best  
22 address. The same thing could happen, sometimes there  
23 may be a variety -- multiple addresses or phone numbers  
24 that we get in the information that we get from the  
25 creditor, and so you can send to what is believed to be

1 the best address, and if that mail is returned, then you  
2 might proceed with the different addresses and different  
3 contact information. And different -- again, different  
4 debt buyers will do it differently.

5 MR. KANE: And let me just ask one question. Do  
6 all portfolios sold have Social Security numbers, and if  
7 not, what's the percentage that have them or don't have  
8 them? That's the first question from the audience.  
9 They're piling up.

10 Mike, do you have a sense of that? When you --  
11 well, I guess --

12 MR. LAMB: I don't have a sense of what's sold.  
13 We do have inquiries where there's no Social Security  
14 number associated with it, where it's name and address,  
15 and we will run our search and come back with what we  
16 believe to be the individual, including Social Security  
17 number that we have in our database for that individual.

18 Or sometimes there are miskeyed or transposed  
19 numbers, and we can do data hygiene automatically to say  
20 this is -- this appears to be transposed, here's what we  
21 believe is the correct Social, if they give us the wrong  
22 Social and two numbers are switched, for example.

23 MR. KANE: Okay. Robin, what's your sense of  
24 how often -- what percentage of accounts in portfolios  
25 have no Social Security number? I'm sorry, Robin.

1 MS. PRUITT: It's going to vary. Let me say  
2 that a portfolio is certainly far more useful and of  
3 more value to the debt buyer to have a higher proportion  
4 of Social Security numbers. It would be rare for a  
5 large debt buyer to have much, if any, interest in a  
6 portfolio of debt that did not have a high proportion of  
7 Social Security numbers.

8 MR. KANE: So, 98 percent is common or 80  
9 percent is common?

10 MS. PRUITT: It's going to vary, Tom.  
11 Ninety-eight percent would be -- we would be delighted.

12 MR. KANE: Okay. Let me see, Mike, where does  
13 Lexis-Nexis obtain its data?

14 MR. LAMB: It's a massive undertaking, and it's  
15 not done just for the collections industry. I don't  
16 know if that would be cost-effective. We collect our  
17 data, and we serve law enforcement, both federal and  
18 state. We use the same data for identity authentication  
19 services, for anti-money laundering, and for debt  
20 collection. Because of the efficiency of using the data  
21 for the multiple purposes, we can afford to collect it  
22 primarily from public records.

23 We collect almost every property record that is  
24 filed in any county in the United States. We collect a  
25 nationwide -- if you're obtaining those property records

1 through some of the very common internet websites, for  
2 example, if you're a real estate buff, they probably  
3 obtained that real estate record from us, and we use  
4 those same real estate records as part of our  
5 skiptracing analysis and analytics to serve the  
6 collections industry.

7 We also collect it from nonpublic sources. We  
8 get credit header data, which includes name, address,  
9 and telephone number. Often, the credit bureaus don't  
10 update that data, and so they get hits from multiple  
11 sources. So, there may be a lag before they update it,  
12 but when they do, that's a fairly reliable or very  
13 reliable source. So, that's the array of sources, and  
14 we're constantly looking for new sources of information.

15 MR. KANE: Actually -- this question is  
16 actually -- some people have asked panelists to move  
17 closer to the microphones. I'd like you to handle that,  
18 Tom. Sorry, didn't mean to point you out.

19 Let me see. Is there any process for the debt  
20 collector or consumer to inform the database provider  
21 about information provided that didn't turn out to be a  
22 useful lead? We'll come back to that later.

23 Let me see. You know, I am confident that  
24 skiptracers often locate the correct consumer, that is,  
25 the one who truly owes the debt, but many consumers tell

1 us they've been contacted by debt collectors about debts  
2 they don't owe, and sometimes the consumer's confused.  
3 They don't know -- they haven't figured out that it's  
4 actually a ten-year-old account or five-year-old account  
5 or they don't remember, but sometimes it's just the  
6 wrong consumer.

7 So, Lauren, do you have a sense of how big this  
8 problem is? It's unfair to put her on the spot, because  
9 Sonya was going to be able to talk about this. Do you  
10 have a sense of how big?

11 MS. LAUREN SAUNDERS: Well, obviously, everybody  
12 wants numbers and nobody has numbers. All I can tell  
13 you is from our experience, if you talk to any consumer  
14 attorney around the country -- and everybody has these  
15 stories. Everybody has stories that the client was the  
16 victim of identity theft or was just the wrong person,  
17 and, you know, there's just enough of it, we hear enough  
18 of it from enough people from enough locations to think  
19 that it's a real problem.

20 Is it a massive percentage of, you know, the  
21 debts being collected out there? Probably not, but  
22 especially, you know, as we're collecting older debts,  
23 you know, it's becoming a bigger problem, and the  
24 information age I think makes it worse, because there's  
25 more information out there that can make it look like

1 you've got a match when you don't.

2 Sonya Smith-Valentine, who was supposed to be  
3 here this morning, you know, coined the term "zombie  
4 debt," debt that never dies even when you show that it's  
5 not you, because she was seeing enough of that in her  
6 practice to get concerned about it, and she started  
7 talking to the local media about publicizing the  
8 problem, not because of, you know, one client, but a  
9 number. So, we just hear a lot of these stories, and,  
10 you know, it does seem to be an increasing problem.

11 MR. KANE: And Sonya also talked about in our  
12 planning calls the fact that sometimes the information  
13 is not -- the wrong information that's put on a  
14 consumer's credit report, it, of course, can damage  
15 their ability to get credit, and it can damage their  
16 ability to get a security clearance. So, it's important  
17 to all of us that collectors find the right consumer.

18 MS. LAUREN SAUNDERS: Right, and let me just  
19 mention -- then I'll pass it on to Gina -- about credit  
20 reports, I wasn't expecting to be up here this morning,  
21 so I didn't refresh myself, but a couple months ago, you  
22 know, Congress had a hearing about credit reporting, and  
23 there was substantial testimony about a large volume of  
24 mixed files in the credit reporting agencies, because  
25 they use partial matches to decide whether this debt

1 goes with this consumer.

2           They may match the last name and just four  
3 digits of the Social Security number. You know, with  
4 the population that we have today, that's often wrong,  
5 and there's a lot of, you know, combined files that the  
6 CRAs have. I don't know to what extent the CRA files  
7 factor in your all analysis of whether this is the right  
8 person, but, you know, it may be Gonzales with an S or  
9 Gonzales with a Z, and there seems to be a lot of  
10 disregarding of red flag information. The wrong middle  
11 initial, that should tell you it's not the right person,  
12 and yet the collection efforts often continue even after  
13 the collector is told this isn't me.

14           MS. CALABRESE: And my conversations with New  
15 York legal services advocates are consistent with  
16 Lauren's, that while the mistakes don't seem to be a  
17 huge part of our caseloads, they are a regular part of  
18 our case loads, even if they are a small part, but the  
19 concern there is that when there is a mistake, it takes  
20 an extraordinary effort to get that mistake corrected.  
21 So, what needs to be in place for the skiptracers and  
22 the debt buyers and the collectors are better and more  
23 efficient processes for correcting errors when it's  
24 brought to their attention.

25           I don't think any consumer is able to get that

1 kind of error corrected without getting an attorney,  
2 because most people who come to us for help -- and we  
3 see -- we're a legal services clinic at a law school.  
4 We're a teaching clinic. So, we take even fewer cases  
5 than legal services does. The people who come to us  
6 have usually tried to get information corrected on their  
7 own.

8           And let me add one other thing, Mike, St. John's  
9 University School of Law loves Lexis. The customer  
10 service reps are great, you give us nice little  
11 presents, pens and notes and little packet versions of  
12 the Constitution, but it took us between four to six  
13 months to get a judgment that had been satisfied  
14 expunged from Lexis' records, and you can imagine how  
15 surprised the student interns were, because every  
16 dealing they had had with Lexis in the past has been  
17 great, and our client had satisfied a judgment.

18           It took quite an effort to make sure the  
19 satisfaction was filed, because the collection attorney  
20 didn't file it correctly. That took about half a year  
21 to straighten out. Once it was filed, we brought it to  
22 the attention of Lexis. They said that their vendor  
23 probably had not picked up the satisfaction yet and that  
24 it would take some time to look into the matter. The  
25 next semester started, and the judgment was still on

1 there, even after we had faxed the satisfaction to Lexis  
2 with proof that it was filed in the court.

3 So, that's just one example of the effort it can  
4 take to get even these few errors corrected, because the  
5 consequences to the consumer are quite serious when  
6 they're not corrected, like Lauren talked about, errors  
7 on the credit reports and so forth.

8 MS. LAUREN SAUNDERS: Just one personal anecdote  
9 to add. We have had our current phone number for about  
10 four years, and I think the woman who had it before  
11 passed away at some point, presumably before we got her  
12 phone number. We regularly get calls, you know, for  
13 this woman, and, you know, it's either the same  
14 collector calling again and again or she's got some huge  
15 number of debts or something in between, but, you know,  
16 her reports are not being scrubbed for deceased person.

17 So, I think she was a local, I think she lived  
18 in the area forever, her family is still in the area.  
19 So, it's not like, you know, the death records are off  
20 in Guam somewhere.

21 MR. LAMB: Just to touch on the corrections  
22 issue, and it's an important one, the various array of  
23 services that we offer, such as Banko, that are FCRA  
24 services, where the data might be used to grant credit,  
25 to determine whether or not somebody gets a job or gets

1 housing, those we have a very detailed FCRA-compliant  
2 corrections process. The Accurint database is largely  
3 public records driven or comes from other identified  
4 sources, and there, the data is used to find somebody,  
5 whether it's by law enforcement or by a skiptracer, and  
6 if a consumer wants to come to us and say that's not my  
7 phone number, none of those are mine, and none of those  
8 are my addresses, it's only going to make them hard to  
9 find, and the person who might want to do that is a  
10 person who doesn't want to be found by a skiptracer or  
11 by law enforcement.

12           What we do is we have a team that works closely  
13 with consumers to point them back to our data sources.  
14 Our job is to reflect what's in the county records or to  
15 reflect if we received it from a credit header data.  
16 We'll send them back to the source, the credit header  
17 data, so it can be corrected at the source. That, in  
18 the end, prevents fraud where somebody wants to just  
19 pull themselves out of the database and not be found,  
20 and at the same time, gives them a tool, a vehicle, when  
21 they say, "Well, where did you ever get that for me?"  
22 We will point them back to the source, the original  
23 source.

24           MR. KANE: That actually moves me into the next  
25 topic we want to cover --

1           MS. PRUITT: Tom, if I could address the initial  
2 question which you asked Lauren, which is how prevalent  
3 is the problem of contacting the wrong consumer, I do  
4 recognize that virtually all of the issues on this topic  
5 that Lauren and Gina hear about are going to be  
6 problems; however, as an industry, we contact -- we --  
7 not billions of individual consumers, but there are  
8 billions of calls and letters sent by this industry  
9 every year, and, again, we're doing everything we can to  
10 contact the right consumer about the right debt.

11           All of the millions of people who are contacted  
12 and have successful resolution of their situation aren't  
13 contacting Lauren and Gina. So, I recognize there are  
14 issues, even one is a problem, and, you know, we're  
15 doing our best to correct that, but there are -- I'd  
16 hate for the few examples to obliterate the massive  
17 success on a large scale that we are able to achieve.

18           MR. KANE: Thanks, yeah, and I agree with you.  
19 I think it's likely that for the most part, companies  
20 and electronic databases are finding the right person.  
21 I'm just -- you know, I don't have any evidence of that,  
22 but that sounds reasonable to me. But for every  
23 consumer, every time a collector is given the wrong  
24 information, that's a substantial problem, and it really  
25 becomes a problem when the collector ignores the

1 consumer's statements that they truly don't owe the  
2 debt.

3           There's another problem that we need to address,  
4 and that is when a consumer truly owes the debt and says  
5 they don't or the consumer doesn't remember whether they  
6 owe the debt, so how often -- Tom, how often do you  
7 think -- how often does it happen that a consumer says  
8 they don't owe the debt when, in fact, they do? And how  
9 often does it happen where the consumer says I don't owe  
10 the debt when, in fact, they just can't remember or  
11 they're confused?

12           MR. HAAG: I don't have any hard numbers on  
13 that. My experience tells me that we occasionally get a  
14 consumer that will deny any knowledge of a debt when, in  
15 fact, it's clearly their debt, but in those cases, we  
16 normally have sufficient information to conclude that it  
17 is their debt, and if we believe firmly, we will refer  
18 it back to the creditor or to an attorney for  
19 litigation. So, that's a rare -- truly a rare  
20 situation.

21           MR. KANE: A rare situation when the consumer  
22 says I don't owe the debt when, in fact, they do and you  
23 have to go to litigation?

24           MR. HAAG: Yes, that's right, yeah. Let me  
25 answer the second half of your question --

1 MR. KANE: Sure.

2 MR. HAAG: -- which, if I don't forget what it  
3 was now --

4 MR. KANE: Sure, I asked you two questions.

5 MR. HAAG: -- how many people don't actually  
6 remember the debt? Interesting, I forget the question.

7 MR. KANE: I did, too, if that's any help.

8 MR. HAAG: But that is -- frankly, that may be  
9 less unusual than the people that are trying to avoid  
10 payment, and I mention that because it is not unusual  
11 for creditors to have some kind of a small problem in  
12 their statement process where the actual bill of  
13 particulars doesn't get to the consumer. They never get  
14 the statement. So, they don't pay the bill.

15 My own personal experience is I had a bill for  
16 some hospital tests in January, and only last week I got  
17 the initial bill saying my insurance company rejected  
18 the bill. So, that's like nine months from the date of  
19 service to that, and I had never, ever gotten anything  
20 else. Now, if they didn't have my correct address, it  
21 might have been two or three years before I got the  
22 bill. So, it's really not unusual.

23 It's also -- I don't want to make this  
24 necessarily about health care, but, you know, if you  
25 have a health care bill, when you go in the hospital,

1 you don't get a single bill; you get a physician bill,  
2 you get hospital charges, you get the -- you know, the  
3 charge for lab work, and so forth, and these all come  
4 generally from different sources. So, people will  
5 assume, for example, that when they get the hospital  
6 bill, they've paid everything that's owing, when, of  
7 course, if they get the hospital bill, that's only one  
8 element of what they're actually owing.

9 So, the fact that people don't think they owe a  
10 bill or don't recall a bill or something like that,  
11 they've never seen the doctor that did the lab test, so  
12 they don't recognize that doctor's name at all, because  
13 that was done somewhere off site. So, that's a, I would  
14 say, a more frequent kind of a situation.

15 MR. KANE: Tom, what are your collectors trained  
16 to do if a consumer says it's not me? Your folks and,  
17 you know, from your experience --

18 MR. HAAG: Yeah, typically, they would -- they  
19 would verify the consumer's name, including middle  
20 initial, and whether there's a junior and senior  
21 involved, something like that; confirm current address  
22 and previous address. We would have some basic  
23 information on the nature of the service. Maybe it's a  
24 utility bill, for example. Did you live at this address  
25 during this period of time, and so on and so forth.

1 Those would be the questions, and generally two or three  
2 questions into that routine, you'd have a pretty clear  
3 understanding that either you have the right person or  
4 you have the wrong person.

5 And, you know, if we're not 100 percent  
6 satisfied that the information that we have is accurate  
7 or complete, we will terminate the call. We'll probably  
8 indicate to the person that we'll do some additional  
9 research, in which case we go back to the credit grantor  
10 and explain to the credit grantor what we have heard and  
11 ask them if they could provide any additional detail.

12 MR. KANE: Do you ask about Social Security  
13 number, last four of the Social? Do your folks ask  
14 about that?

15 MR. HAAG: Well, you know, I haven't even  
16 mentioned the Social Security number, but let me just  
17 say this about Socials, that in my judgment, the Social  
18 is probably the single best identifier -- clearly the  
19 best identifier known to man, so to speak, and when we  
20 have that information, that makes it much, much easier  
21 for us to determine factually who that consumer is or  
22 whether or not we have the right consumer. When that  
23 number doesn't match, equally as important, when that  
24 number doesn't match, we clearly understand we don't  
25 have the right person.

1           MR. KANE: When you say it doesn't match, do  
2 your collectors ask, are these your last four digits, or  
3 do they say tell me your last four digits?

4           MR. HAAG: They may ask that. Well, one way or  
5 the other, they may ask that question, yeah.

6           MR. KANE: But a consumer is not as likely to  
7 give their last four digits. Isn't that right? I would  
8 be very reluctant.

9           MR. HAAG: I think it's fair to say they're not  
10 as hesitant to give the last four digits of their Social  
11 Security number. We also frequently have date of birth,  
12 for example, and, you know, date of birth is a less  
13 sensitive issue than Social Security number, but I think  
14 consumers, when they have a problem with giving any  
15 Social Security number information, it's really driven  
16 by the stories they read of people that had identity  
17 theft.

18           And, you know, I'm not aware of any of those  
19 situations that identity theft occurred because the  
20 information was provided from a credit grantor to the  
21 contingent fee debt collector. That's simply not a -- I  
22 mean, we have a lot of sensitive information in close  
23 care and custody, and, you know, we simply don't -- you  
24 know, we control very closely any and all of that  
25 information.

1           MR. KANE: Jim, and then Robin, how do you --  
2           what do you ask? If a consumer says it's not me, what  
3           are your collectors trained to say?

4           MR. SHEERAN: Our collectors are trained to  
5           determine the accuracy of the information that -- or to  
6           verify the accuracy of the information that we have, and  
7           it goes through starting with the name and the spelling,  
8           the date of birth, address, prior addresses, and the  
9           last four of the Social Security number, and our  
10          collectors verify last four of the Social Security  
11          number in ways that are up to them, either offer the  
12          last four or they ask for the last four, and if they  
13          verify -- if they match, of course, then there's  
14          verification.

15          The more difficult problem comes about when  
16          someone has been the victim of identity theft, and that  
17          gets much more complicated then.

18          MR. KANE: Thanks.

19          Robin, what do your collectors do?

20          MS. PRUITT: Similarly, our collectors will try  
21          and establish the correctness of our information and  
22          provide additional information about the debt. So, for  
23          instance, we are a debt buyer. We are not the original  
24          creditor. So, it may simply be an issue that the  
25          consumer doesn't recognize our name. So, you know, a

1 debt buyer faces that challenge, which can be easily  
2 overcome. We can talk about this, this is your XYZ Bank  
3 credit card, do you remember that, and so forth.

4 If that is not sufficient, then my company and  
5 other debt buyers have specific departments where the  
6 individuals are specially trained for dealing with  
7 disputes and things of that nature, and they can ask  
8 further questions, and if need be, seek additional  
9 backup information from the creditors on the account.

10 MR. KANE: All right, thank you all very much.

11 I want to move on now to debt verification, and  
12 as we know, Section 809 of the FDCPA requires that if a  
13 consumer disputes a debt in writing within 30 days of  
14 receiving a validation notice, which some panelists  
15 yesterday were calling the G-notice, the debt collector  
16 must cease collection efforts until it has sent a  
17 consumer verification of the debt.

18 Now, two federal circuit courts have held that  
19 the threshold for what a debt collector has to provide  
20 under the FDCPA, as it's written now, that the threshold  
21 of what they have to provide to a consumer who's  
22 disputed is quite low, but what I'd like to talk about  
23 now is something we talked about to some extent  
24 yesterday, is not the level of documentation that the  
25 FDCPA currently requires, but basically, what

1 documentation or media would permit collectors to  
2 adequately address most consumer disputes, how to get  
3 that documentation into collectors' hands, and then when  
4 that should happen.

5 So, Jim, let me start out with you from the  
6 creditor side. What sort of documentation do your  
7 in-house collectors have available to respond to a  
8 consumer's dispute?

9 MR. SHEERAN: In almost every instance, we will  
10 have the original contract available.

11 MR. KANE: Okay. So, if the consumer says, you  
12 know, if they have any questions about the amounts, if  
13 they -- you have the signed contract.

14 MR. SHEERAN: We have the signed contract.  
15 We'll have a payment history, and we will have -- with  
16 the notes that we've collected along the way, which give  
17 us the prior contacts and prior addresses and prior  
18 phone numbers for this particular individual.

19 MR. KANE: Okay. So, do you convey that same  
20 information to your contingency collection agencies?

21 MR. SHEERAN: When we refer something out to an  
22 attorney -- we do not send it to collection agencies,  
23 but when we send something out to an attorney for  
24 collection, they get either a copy of or the original  
25 contract, and they get the information that we have that

1 has permitted us to ascertain that the person we are  
2 asking them to collect from is the person that owes the  
3 debt.

4 MR. KANE: And then do you -- I can't remember,  
5 do you sell portfolios to debt --

6 MR. SHEERAN: We do not.

7 MR. KANE: You do not, okay.

8 Tom, what sort of documentation do contingency  
9 collectors generally get from companies that hire them,  
10 creditors that hire them?

11 MR. HAAG: Tom, if I can back us up for a second  
12 and just say since we're talking about validation --

13 MR. KANE: Sure.

14 MR. HAAG: -- there was a fair amount of  
15 discussion yesterday amongst the groups about the  
16 validation, the minimal requirements, I think as it was  
17 cited or something like that, that really all that's  
18 required of the debt collector is to provide the balance  
19 and the date of service and a statement that verified  
20 the information. That's really not what happens today.

21 I mean, what really happens, when somebody  
22 requests -- when somebody denies the debt, you know, we  
23 have to remember, we're bill collectors. The goal here  
24 is to collect the money, and so if somebody says, "I  
25 don't think I owe that," if I simply send them a

1 statement that says, "Well, you owe this amount and it  
2 was done on this date," I'm probably not going to  
3 satisfy them.

4 So that really the first effort that we would  
5 make -- and I think I'm speaking for the industry now --  
6 is to find out what the nature of the confusion, what  
7 the nature of that dispute is, and what -- you know, is  
8 the issue I don't owe that much? Is there a balance  
9 question? I don't remember the service. I paid the  
10 bill. Whatever it happens to be, whatever that request  
11 is, typically validation to the industry is provide  
12 documentation of the transaction, which is either a  
13 statement of services rendered or perhaps a copy of the  
14 contract, as Jim mentioned, specific information.

15 And we do that not because the law requires us  
16 to do it. We do it because it makes good sense if you  
17 want to collect the money to satisfy the consumer that  
18 they owe the debt. That's the whole basis of this.

19 Now, let me go one step further.

20 MR. KANE: But we've heard some stories from  
21 consumers who say "I didn't get anything" or "they  
22 ignored me."

23 MR. HAAG: Yeah, and you know what, every  
24 consumer that -- every debt we receive, we send the  
25 initial required validation notice, and we still have a

1 percentage of people that say they didn't receive it.  
2 Well, we don't argue about that. What's the point of  
3 arguing? If they didn't receive it, they didn't receive  
4 it. We have a follow-up notice, we'll send them another  
5 notice, but if they didn't receive it, I think the law  
6 provides us five days after the initial communication.  
7 So, we're talking to the consumer, and on the heels of  
8 that, after we complete that, we'll send out a second  
9 validation notice or the second initial notice.

10 The point is, you know, we don't -- we really  
11 don't much care what the reason the consumer is asking  
12 for the information for. What we want to do is we want  
13 to get them the best information, do our best to satisfy  
14 their request, because that generally will lead to  
15 payment, and payment is what it's all about. We're  
16 trying to collect the money. I mean -- and, you know,  
17 I'm with you. I've heard stories, I've read stories,  
18 about a very different method of doing business, but  
19 that to me is, frankly, really foreign, and --

20 MR. KANE: So, what sorts of documentation do  
21 you generally get from your creditors?

22 MR. HAAG: We get -- it depends on the nature of  
23 the debt, but we will get -- in many cases, we'll get a  
24 copy of the bill of particulars or statement of services  
25 when we receive the initial listing. Most of this

1 information comes electronically. We can -- they send  
2 us the account detail, we can actually recreate the  
3 account detail and create an image file and attach that  
4 file to the collection account, so that when we're  
5 talking to the consumer, in many cases, we have the data  
6 right in front of us, which I think is -- you know,  
7 that's a big plus from our point of view. So, you know,  
8 we seldom get limited information, but from time to  
9 time, we get limited information.

10 MR. KANE: Robin, what sorts of information do  
11 debt buyers generally receive?

12 MS. PRUITT: It is going to vary depending on  
13 the type of underlying debt and the issuer. As became  
14 clear on the panel yesterday, issuers vary in whether  
15 they provide full documentation at the time of sale.  
16 That's wonderful when it happens. It certainly is not  
17 the end of the story, though. It is industry practice  
18 to negotiate in the purchase contract the right to  
19 receive from the creditor, upon request, as needed to  
20 satisfy disputes and validation requests and for the  
21 legal process, account documentation for a particular  
22 amount of accounts in the portfolio and/or for a  
23 particular period of time, and --

24 MR. KANE: I'm sorry, when would you obtain  
25 that? That comes with the portfolio?

1           MS. PRUITT: It is available -- and, again, this  
2 is going to depend on negotiations between the debt  
3 buyer and the creditor, and it can happen in various  
4 ways. Again, sometimes you will get all the  
5 documentation at the time of purchase; however, I would  
6 say it's more common that we get a contractual right to  
7 make a request for documents on an as-needed basis from  
8 the creditor.

9           And I will say, as a reminder, actually, a very  
10 small percentage of all accounts end up with a dispute.  
11 I can't give you a hard percentage, but it's not the  
12 majority of the cases, and it is our experience that,  
13 generally speaking, we are able to obtain the documents  
14 that are necessary to resolve disputes arising in the  
15 validation context or are needed for the legal process.

16           Now, what those documents are is going to vary,  
17 again, depending on the length of time that has passed  
18 since the account charged off, say, may be a statement;  
19 it may be the -- it can be a very full file with the  
20 original contract, depending on the type of debt.

21           MR. KANE: What's your sense of what happens on  
22 the second sale or the third sale of the portfolio? Is  
23 there still the same amount of data traveling, the same  
24 media?

25           MS. PRUITT: Again, it would be industry

1 practice to negotiate for the right to go back up the  
2 chain and get the data.

3 MR. KANE: Yeah. I mean, how much of a problem  
4 is that in a debt-buying scenario? Are creditors  
5 reluctant to provide the media to the third debt buyer  
6 down the line?

7 MS. PRUITT: Generally speaking, it's hard to --  
8 actually, it's hard to speak generally about this, but  
9 the creditors, if they still have the data, and there is  
10 going to be some data that simply becomes unavailable  
11 through the passage of time, but the creditor still has  
12 a relationship with the entity that first purchased from  
13 them, and the general practice is that -- like if we  
14 purchased from purchaser A, who purchased from the  
15 creditor, then we would arrange to go to purchaser A,  
16 who would have an obligation to us to make the request  
17 from the creditor, because that's where the relationship  
18 originally was.

19 MR. KANE: And would the media go literally  
20 through -- would it go through purchaser A, they would  
21 hold it for a little -- for a short time, and then they  
22 would pass it on to you?

23 MS. PRUITT: In that circumstance, there would  
24 be no reason for them to hold it for a certain time.

25 MR. KANE: Okay. But would it be conveyed

1 electronically to purchaser A and they would just hit  
2 "forward" and send it to your company?

3 MS. PRUITT: Again, that is going depend on the  
4 nature of the "documentation" and the relationship  
5 between the parties.

6 MR. KANE: But that can happen?

7 MS. PRUITT: That can happen, yes.

8 MR. KANE: Okay. Lauren, you yesterday created  
9 a list of sort of the documentation that would be  
10 necessary in most situations for verifying a debt, when  
11 a consumer disputes a debt. You listed some things like  
12 original creditor, the chain of title if it's been  
13 sold -- correct me if any of these are wrong -- any  
14 defenses to the debt that the consumer has raised,  
15 whether the debt has been discharged in bankruptcy, any  
16 allegations that the consumer (sic) violated the FDCPA  
17 in collecting the debt. Can you think of any more that  
18 I've missed or I couldn't write fast enough?

19 MS. LAUREN SAUNDERS: And for people who  
20 couldn't write it down fast enough yesterday, this is on  
21 pages 27 and 28 of our comments on the FTC's web site.  
22 What we said is that before, you know, any collection  
23 activity can begin, you know, the law ought to mandate  
24 that you have a certain amount of information. You  
25 know, maybe in the best case scenario, it's happening

1 right now, and in a lot of cases, it's not.

2           You know, we have heard talk of the billions of  
3 contacts and billions of debts being collected. Well,  
4 0.1 percent of a billion is a million, and so even if  
5 it's a tiny fraction of a problem, it's still a pretty  
6 massive problem. So, the, you know, basic information  
7 before a collection activity should begin that we  
8 mentioned were, you know, the proof of indebtedness by  
9 the consumer, you know, signed contract; the date that  
10 the debt was incurred and the date of the last payment;  
11 the identity of the original creditor as known to the  
12 consumer; the amount of the debt principal and an  
13 itemization of all interest fees or charges added to it  
14 by the original creditor and all subsequent holders; and  
15 the chain of title if the debt has been sold. That's  
16 sort of, you know, the core minimum before you ought to  
17 even be allowed to collect on a debt. And I think, you  
18 know, any debt collector who is here would want to have  
19 that information. It is obviously going to make it  
20 easier to resolve real disputes.

21           Then, you know, before a debt can be sold or  
22 assigned, you know, the subsequent information that the  
23 collector, you know, comes into possession of needs to  
24 be passed on. Any defenses to the debt and all related  
25 communications; any validation requests or responses or

1 lack thereof; whether any settlement has been reached  
2 concerning the debt; whether the debt is beyond the  
3 statute of limitations; whether the consumer's been  
4 represented by an attorney and the attorney's contact  
5 information; whether the consumer has informed the  
6 collector that a time or place is inconvenient for  
7 communication; whether the debt has been discharged or  
8 listed in bankruptcy; any illness or disability claimed  
9 by the consumer or known to the collector; and any known  
10 or claimed violation of the FDCPA.

11 And, you know, the frustration we see is that  
12 even when, you know, the consumer or the consumer's  
13 attorney communicates with the collector and raises a  
14 bunch of problems, maybe in the end it's just not worth  
15 it to that collector. I mean, we hear it's a volume  
16 business, and, you know, if there's significant  
17 questions about this debt, they're not going to bother,  
18 but instead of, you know, that being the end of the  
19 matter, it just gets passed on without this information  
20 being passed on, and it's not going to happen on a  
21 routine basis, you know, unless the law requires it.

22 MR. KANE: So --

23 MR. HAAG: Tom, if I could --

24 MR. KANE: Yes, Tom?

25 MR. HAAG: -- just make a comment, validation --

1 I served on a task force for ACA, the Ethics Review Task  
2 Force. The challenge of that task force was to take a  
3 look at the existing Code of Ethics, understanding  
4 current industry practices, and updating those  
5 practices. Beyond that, we actually spoke with a number  
6 of regulators and credit grantors, other agencies, and  
7 determined that actually the primary concern, the thing  
8 that tended to begin the bad relationship between the  
9 consumer and the creditor or the consumer and the  
10 agency, was a failure to validate the debt.

11 The law does require a minimum amount of  
12 validation; that is -- we've discussed that. So, it was  
13 the task force's challenge to convince the industry, the  
14 ACA members, that we should go beyond what the FDCPA  
15 requires us to do, because we felt that was the single  
16 best thing we could do to minimize complaints. Hence,  
17 we changed the Code of Ethics and as it relates  
18 specifically to debt validation, and I think you're  
19 familiar with the new code, and if you'll allow me to,  
20 I'll read about a paragraph of what that new code is --

21 MR. KANE: Sure, sure.

22 MR. HAAG: -- so that we get I think a better  
23 sense for where the industry is on the issue of  
24 validation.

25 This is -- I'm reading in part from Rule 2, 3:

1 "If the member is a debt collector as defined in Section  
2 803-6 of the FDCPA, upon receipt of a written request  
3 for verification of a debt from a consumer, suspend all  
4 collection activities on the account, provide  
5 verification of the debt. If such member does not or is  
6 unable to provide verification of the debt in response  
7 to the consumer's written request for verification, the  
8 member will cease all collection efforts, direct or  
9 request removal of the item from the consumer's credit  
10 report or report the item as disputed to the appropriate  
11 credit reporting agency," and that I think addresses  
12 some of the concerns here.

13 "When closing and returning the account, notify  
14 the credit grantor, client, or owner of legal title of  
15 the debt that the activity in the account was terminated  
16 due to the inability to provide verification of the  
17 debt," and then finally, "If requested by the consumer  
18 in writing, notify the consumer that collection efforts  
19 have been terminated by the member."

20 That was subject to the Federal Trade Commission  
21 providing a formal advisory opinion that that would be  
22 an acceptable practice, which I am pleased to understand  
23 has just occurred.

24 MR. KANE: Yes.

25 MR. HAAG: So that we're talking, to some

1 extent, about what used to happen, and the industry's  
2 sensitive to that. The industry has done its best to be  
3 one step ahead of the Federal Trade Commission and the  
4 consumer bar.

5 MR. KANE: That's great. Thank you, Tom.

6 MS. LAUREN SAUNDERS: Could I respond just  
7 quickly?

8 MR. KANE: Sure.

9 MS. LAUREN SAUNDERS: First of all, one caveat  
10 in everything that you read just now was a written  
11 validation request by the consumer. I mean, we've heard  
12 so much, you know, yesterday about, you know, the  
13 importance of oral communications and reaching the  
14 consumer on the phone, and that's the point of when they  
15 say, "It's not my debt, the amount's wrong, they didn't  
16 credit my payment," whatever, and, you know, putting the  
17 onus on the consumer to have to jump through another  
18 hurdle before it gets dealt with properly is just not  
19 appropriate, and one of the changes we've asked for is  
20 an oral dispute ought to be sufficient.

21 MR. HAAG: Let me kind of respond to that, if I  
22 can. You remember what I said about determining the  
23 right person and so on and so forth early on? I said  
24 validation didn't -- wasn't -- that the minimal  
25 requirements of validation weren't really an issue for

1 the industry, because the industry's in business to  
2 collect money, and the way you're going to collect from  
3 somebody that doesn't believe they owe is to show them  
4 that they owe the debt.

5 So, you know, I can't speak for the industry. I  
6 can tell you that my company, when they receive that  
7 kind of a phone call from somebody, we follow the same  
8 practice that we would follow if it was within the  
9 30-day validation period, and in keeping with saying  
10 that, if we receive that request for validation and it's  
11 40 days, it doesn't make any difference to us. We don't  
12 care. We will provide the validation, because that is  
13 the shortest way to collect the money. That's the whole  
14 deal.

15 MR. KANE: Tom, I'm pleased to hear that your  
16 company does that. We've certainly heard plenty of  
17 stories of debt collectors, some debt buyers, some not,  
18 not providing documentation or just not having it. So,  
19 why don't they have it?

20 Robin, why don't debt buyers have the list of  
21 documents that Lauren just ran through?

22 MS. PRUITT: Well, I guess the simple reason is,  
23 as we said, most of the time, it isn't needed, and we  
24 find that they're available when we do need it. In  
25 other words, we didn't need to have them on hand. We

1 are debt collectors, we're not warehouses, and it would  
2 impose a burden and a cost unnecessarily on the system,  
3 in our view -- and I believe creditors would share this  
4 view -- if, you know, massive amounts of documentation  
5 were -- if it was a prerequisite to taking any activity  
6 to have to have a whole bunch of documentation that is  
7 rarely called for transferred all the way through the  
8 system.

9 I've got a couple of other things I want to  
10 mention about that. First, a clarification of something  
11 Lauren said. I referred to billions of contacts, a  
12 billion or more contacts made by the industry every  
13 year, not billions of debts, and there are multiple  
14 contacts per debt. So, I just want to clarify that.

15 Regarding the importance of having the consumer  
16 specify their dispute in writing, let me just say, you  
17 know, fundamentally, we believe this is a system -- the  
18 system that is set up under the regulatory environment  
19 today works most of the time, but in order for it to  
20 work, all of the touch points in the system need to take  
21 responsibility for their part of it, and if a consumer  
22 has a legitimate dispute, I do think that it is in their  
23 interests to express it clearly, and consumers, their  
24 expression of their disputes is not always clear.

25 So, for instance, what would you do under

1 today's regulatory environment when the consumer says,  
2 "Cease and desist all collection efforts on this debt  
3 and send me the full file of documentation"?

4 MR. KANE: Actually, I can't get into that now,  
5 because I need to talk about -- if I could, let me ask  
6 you about --

7 MS. PRUITT: Well, Tom, just to finish --

8 MS. CALABRESE: Tom, I'd like to get a few words  
9 in on this topic as well.

10 MR. KANE: Yes.

11 MS. PRUITT: -- we can't address the dispute  
12 unless the dispute is clearly stated. So, when a  
13 consumer says "I paid that debt," they may well have  
14 made a payment on another account with the same  
15 creditor. We can flesh that out if the dispute is  
16 clearly rendered, and it is very, very helpful to have  
17 that in writing. So, I think that that is a point that  
18 is actually in the consumer's best interest.

19 MR. KANE: Great. Gina, yes, thanks.

20 MS. CALABRESE: Well, one of the issues is that  
21 a lot of consumers, particularly our population, the  
22 elderly, are just not very articulate and are not as  
23 articulate as the professionals who are working in this  
24 industry in terms of disputing their debts. They do the  
25 best they can.

1           You know, it was mentioned yesterday that the  
2 elderly being one of the growing populations affected by  
3 debt collection, and I know that two people from  
4 National Consumer Law Center, Dan Lunin and Elizabeth  
5 Grimrach (phonetic), wrote an article about the growing  
6 debt among elderly consumers, and it's not the baby  
7 boomers. It actually is the parents of the baby  
8 boomers, people who lived through the Depression and who  
9 have been conservative in their use of credit over the  
10 years, who just, at least with our claims, they just  
11 can't make ends meet on their limited Social Security  
12 income, all of which is exempt.

13           Most of our clients with debt problems, and  
14 about 20 percent of our calls concerning debt problems,  
15 are subsisting on less than a thousand dollars a month.  
16 It seems that collectors don't give up on trying to  
17 collect from them even though they know all of their  
18 money is exempt and even after we get involved.

19           In terms of the validation, I would like to -- I  
20 mean, even though it seems like the industry is looking  
21 toward making changes, one of the glaring examples where  
22 we had concerns, a woman in her seventies who bought  
23 some goods from a door-to-door salesman in 1990, made a  
24 deposit, never got the goods, assumed she had just been  
25 scammed, and then seven years later, got her first

1 dunning notice. Between 1997 and 2003, she got four  
2 dunning notices from -- I think the first was a  
3 third-party collector and the last three were debt  
4 buyers. She had come to us by that point.

5 At that point, we wrote letters disputing the  
6 debt, requesting verification, never got the  
7 verification, thought the matter was over, and a year or  
8 two years later, another dunning letter would come from  
9 a new collector, and the third collector actually  
10 offered her a credit card to use to pay off the debt.  
11 Each time the dunning notice came, there was a different  
12 amount claimed to be due, so there's one validation  
13 issue. We don't know the basis for the changes in the  
14 amounts.

15 It took a lawsuit to finally stop the action,  
16 and our theory in the federal lawsuit was that the  
17 continued sale of disputed debts where no validation was  
18 provided was a continuing collection activity. So, we  
19 believe even under the current system, there is a  
20 theory, although there are no cases on point, but we  
21 agree to follow the changes that NCLC has recommended.

22 Just last year, to show that this is still going  
23 on, just last year, our interns called regarding  
24 verification of a debt for an elderly man and was told  
25 by the collector, "Oh, we don't have anything like that.

1 If you send us a cease and desist letter, we'll just  
2 sell the debt to another debt buyer." So, these are the  
3 real stories we are hearing from the field, no matter --  
4 I know there's a lot of industry denial, but this is  
5 what we are seeing.

6 Even when we go to court, and I know that  
7 there's going to be another panel on the court process,  
8 I've been to court with collection attorneys who have  
9 nothing more than a printout with them, an internal  
10 computer printout with the name of the debtor and the  
11 amount owed. They don't have any underlying documents,  
12 which is why when these cases are being challenged --  
13 and very few of them are just because of resources --  
14 oftentimes the debt buyer is unable to meet their burden  
15 of proof to even make the case, you know, go on past  
16 discovery or past summary judgment.

17 Only recently have I actually gotten original  
18 documents, and that is from a case that's currently in  
19 litigation. I was able to finally get some of the  
20 recent credit card -- some of the credit card  
21 statements, which do show that the person purchased  
22 about \$700 worth of goods, and about \$2,300 of the bill  
23 was late fees and default rates of interest and all  
24 sorts of penalties.

25 MR. KANE: Yeah, that is -- the amount -- the

1 breakdown is a big problem in verification.

2 Let me ask about something that was raised  
3 yesterday, and it was -- we heard something about  
4 lock-out agreements, which I frankly had never heard  
5 about it, where the --

6 MS. PRUITT: I have been in this industry for a  
7 long time, and I have never heard of a lock-out  
8 agreement.

9 MS. LAUREN SAUNDERS: I mean, we have, and on  
10 more than one occasion, and whether it's a formal  
11 lock-out agreement or just, you know, there isn't the  
12 back and forth that, you know, that you seem to have --

13 MR. KANE: I'm sorry, I should -- one of us  
14 should say what the -- if somebody doesn't remember or  
15 they weren't here yesterday. What was the lock-out  
16 agreement again? Can you explain, Lauren?

17 MS. LAUREN SAUNDERS: It's when a creditor, when  
18 they sell their portfolio, have an arrangement that  
19 you're not allowed to come back to us for any further  
20 documentation, validation.

21 MS. PRUITT: I just want to make it clear that  
22 that does not represent industry practice, standard  
23 industry practice.

24 MR. KANE: I'm glad to hear that.

25 MS. LAUREN SAUNDERS: And whether it's a formal

1 term of the contract or just the way it operates in  
2 practice, we just see it over and over again, and, I  
3 mean, everybody seems to agree that this information can  
4 be useful and it can help you in your collection  
5 efforts. If it, you know, is mandated, it can become  
6 standardized, it can become cheaper, and in this day and  
7 age, nobody has to have, you know, reams and reams of  
8 warehouse space, you know, you could all have it on  
9 computer. You know, as long as you have it available,  
10 we're not saying you have to have it sitting there, you  
11 know, printed out on your desk.

12 But it's simple in this day and age to develop  
13 systems, make them standardized, you know, have industry  
14 come up with ways of doing it, and I think you just  
15 solve a whole host of problems that we all see, even if  
16 it may not -- the problems we see may not be the best  
17 practices, you know, that we've been hearing about.  
18 It's rampant. The problem is just -- it's probably the  
19 biggest single frustration, I mean more so than, you  
20 know, the wrong person, is just the inability to  
21 validate and, you know, and the dispute over what is a  
22 real validation.

23 MR. KANE: Now, why isn't more media going with  
24 the account? Why aren't all the things on Lauren's list  
25 being conveyed? Is it cost? Is it privacy concerns?

1 What are the reasons?

2 MS. PRUITT: Actually, I thought we had already  
3 covered that, but it is that it doesn't seem to be  
4 necessary. It would seem to be an additional cost and  
5 logistical burden imposed on a system that seems to work  
6 without physically conveying all that documentation that  
7 has gone on. Again, we --

8 MR. KANE: Could you somehow get it in hand as  
9 soon as a consumer disputes? I mean, maybe it doesn't  
10 have to -- could you -- there are times when this  
11 information is necessary.

12 MS. PRUITT: There are certainly times, and  
13 there are times clearly when there is a time lag for us  
14 to get it, and that may actually create some of the  
15 confusion in consumers' minds. So, if you make a  
16 request, and due to system conversion issues when banks  
17 have acquired other banks or for whatever the reason, or  
18 simply age and the documents are in a warehouse, for  
19 whatever reason, if it does take time for us to get that  
20 information, while we have had to cease all collection  
21 activities. So, we can't go back to a consumer and say,  
22 "We've made the request, but it's taking time," and the  
23 consumer may feel that we're ignoring their need and the  
24 like.

25 MS. LAUREN SAUNDERS: Well, I mean, that's --

1           MR. KANE: That's not most of the consumers I'm  
2 hearing from.

3           MS. PRUITT: And if I could add, that is clearly  
4 the case -- again, I don't want to minimize the problem.  
5 When a problem occurs, it's a bad problem, and we want  
6 to do everything we can to stop that from happening, but  
7 at the end of the day, I think proper contact with the  
8 right consumer is a cleaner answer. All the  
9 documentation in the world isn't going to help it if  
10 we're talking to the wrong person. The wrong person is  
11 not going to pay the debt.

12           And if you've got the right person, generally  
13 speaking, outside of the very confusing health care  
14 context that Tom mentioned where there were service  
15 providers that you had no idea existed because labs are  
16 separate and so forth, generally speaking, the consumer  
17 knows the debt that you're talking about when you get  
18 the right consumer on the phone.

19           MR. KANE: I agree with you, that's often the  
20 case.

21           Let me ask you one last question, and that's to  
22 Lauren or Gina. When should debt buyers, collectors,  
23 have this media in hand?

24           MS. LAUREN SAUNDERS: I mean, you know, I think  
25 we have identified the core that they ought to have or

1 have available when they collect a debt, and, you know,  
2 they can maybe have an arrangement to get it from the  
3 creditor, but it's a business decision. That's clearly  
4 what we're hearing, is if you don't have the information  
5 available when you need it, well, then stop your  
6 collection efforts until you have it. If that's too  
7 expensive, to have, you know, immediately accessible,  
8 well, then it's a trade-off, but there's a core of  
9 information you need to have and have access to before  
10 you can collect a debt, and before you walk into court,  
11 you better have it all in your briefcase.

12 I'm sorry, I mean, I just -- the idea that you  
13 can go to court to litigate a matter without having your  
14 evidence there with you is just shocking to me as a  
15 lawyer.

16 MR. KANE: Robin, if you will respond briefly,  
17 and then we'll cut it off.

18 MS. PRUITT: Yeah, there's a separate litigation  
19 panel this afternoon that I'm sure can amply speak to  
20 this, but I do want to point out that, you know,  
21 business records are admissible in court, and we have  
22 business records, and the creditor has business records,  
23 and debt buyers acquire this debt under contracts  
24 where -- you know, that are subject to -- or in  
25 transactions where we have undergone due diligence

1 reviews of information, substantial due diligence  
2 reviews, I might add, and where the creditors are  
3 representing and warranting -- you know, they're  
4 standing behind the information that we receive.

5 And so I just think that it is highly inaccurate  
6 to state that we have "no information" or nothing  
7 short -- nothing more than a simple list of amounts due  
8 on which we're relying when we collect this debt.

9 MR. KANE: Okay. On that note, thank you all,  
10 panelists, very much.

11 (Applause.)

12 MR. KANE: We will break until 11:00. See you  
13 back here then. Thanks.

14 (A brief recess was taken.)

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1 CREDIT REPORTING AND DEBT COLLECTION:

2 KEY CONCERNS

3 MR. KANE: Welcome back.

4 Today's second session will address the  
5 interaction between debt collectors and the credit  
6 reporting system, concerns this interaction raises, and  
7 possible responses to these concerns. The moderator is  
8 Becky Kuehn, an Assistant Director in the FTC's Division  
9 of Privacy and Identity Protection, which that's the FTC  
10 office charged with primary enforcement of the Fair  
11 Credit Reporting Act. So, that's why we roped her in to  
12 run this panel.

13 Thank you very much, Becky.

14 MS. KUEHN: Thank you, Tom. Good morning.  
15 We've turned the mikes up. So, hopefully that will  
16 address some of the problems people were having hearing.

17 I would like to give just a second for each of  
18 our panelists to introduce themselves to you. We have a  
19 great panel here this morning, and I think we are going  
20 to have a lively discussion. Because of the number of  
21 topics and the amount of discussion we anticipate and  
22 the amount of questions that we anticipate -- we will  
23 remind the audience if you do have questions to write  
24 them on cards and hand them up -- we are going to  
25 dispense with anything like an opening statement, but we

1 will allow everyone to introduce themselves.

2 So, first, April.

3 MS. BRESLAW: Good morning. It seems like the  
4 mike is working here. My name is April Breslaw. I'm  
5 the Acting Associate Director for Compliance Policy in  
6 the FDIC Division of Supervision and Consumer  
7 Protection, which is a mouthful, but we, as you may  
8 know, the FDIC supervises about 5000 state-chartered  
9 banks, and so in my office, we deal with consumer  
10 protection policy on a wide range of issues, including  
11 FCRA and Fair Debt Collection, as sometimes applies to  
12 banks, though not always, and other consumer statutes.

13 MR. ELLMAN: Good morning. I'm Eric Ellman with  
14 the Consumer Data Industry Association, CDIA. We are a  
15 trade association that represents the consumer reporting  
16 industry as well as debt collectors.

17 MR. LYNGLIP: Good morning. My name is Ian  
18 Lyngklip. I'm a consumer attorney. I am also the  
19 co-chair of NACA, the National Association of Consumer  
20 Advocates.

21 MR. REDMOND: Good morning. My name is Don  
22 Redmond. I'm Corporate Counsel with Portfolio Recovery  
23 Associates, which is primarily a debt buyer.

24 MR. TORMEY: Good morning. I am Mike Tormey. I  
25 am from Advantage Network Systems, Co-Chairman. I'm a

1 contingency debt collection agency and the only attorney  
2 in front of you.

3 MS. KUEHN: Well, that gives you a special mark.

4 I wanted to start first with an issue that's  
5 come up, was mentioned on the last panel, and it came up  
6 all during the course of the discussions yesterday, and  
7 that's the issue of disputed accounts, and I heard  
8 references yesterday during the discussions,  
9 particularly from the consumer bar, that after consumers  
10 are raising issues, that the accounts aren't being  
11 reported as disputed.

12 So, I thought I would first address one issue  
13 that came up probably in one of the last panels  
14 yesterday, which is an apparent confusion on what it  
15 means to have an account be disputed. So, I'd like to  
16 first start with April, from FDIC, to talk about sort of  
17 maybe the statutory framework for when an account is  
18 considered disputed under the Fair Credit Reporting Act.

19 MS. BRESLAW: Sure. Well, as probably many of  
20 you know, under FCRA, furnishers are required to report  
21 accurate information to credit bureaus, and I guess our  
22 perspective would be that if there's a dispute, that  
23 there's a question about whether the information is  
24 accurate, so we would mark it by that.

25 MS. KUEHN: Are there any difficulties from the

1 debt buyer and contingency collector, to the extent you  
2 have got aging credit reporting, on determining when it  
3 is that a consumer's dispute relates to the accuracy --  
4 I believe the statute refers to completeness as well,  
5 though that may be a little less relevant -- of an item,  
6 either Don or Mike.

7 MR. TORMEY: I'll start with it.

8 One thing you have to keep in mind, even if it's  
9 not a written dispute, when a consumer notifies the  
10 agency that the debt is in dispute, we cease reporting  
11 it, because we can no longer verify the accuracy or the  
12 completeness of that data, and that can be done verbally  
13 or in writing.

14 MS. KUEHN: But are there any questions, I  
15 guess, or ways of determining when it is a consumer has  
16 actually disputed it? One question we've heard on the  
17 last panel was, you know, is a request for verification  
18 under the FDCPA sufficient to raise essentially a  
19 dispute about accuracy or completeness? And have you  
20 guys looked at that issue and how do your companies  
21 address that?

22 MR. TORMEY: Again, I'll respond first, then  
23 perhaps Don can add to it.

24 In our own operation, our position is is that  
25 when a request for verification comes out, we cease

1 reporting it until the 30 days has passed and we've  
2 responded to the consumer.

3 MR. REDMOND: I'd just like to answer your first  
4 question, which is I don't think it's confusing when  
5 somebody disputes a debt. I've rarely seen an occasion  
6 where there are interpretation problems over whether  
7 something's disputed or not. It's also just been my  
8 experience that when people dispute debts, they're  
9 generally, you know, vehement about it, so I don't think  
10 there are a lot of occasions when you can't recognize a  
11 dispute.

12 MS. KUEHN: Ian, from the consumer perspective?

13 MR. LYNGKLIP: Well, I think -- there's two  
14 circumstances that I think that you need to be able to  
15 address. One is when you're getting direct  
16 communications as a collector from the consumer, and the  
17 second is when it's coming in over the ACDV system. The  
18 problems that we see, first and foremost, are that the  
19 debt collectors are not acknowledging or taking  
20 appropriate action to mark the debts as disputed when  
21 those disputes come in over the ACDB system.

22 In other words, when the consumer is challenging  
23 the item not his or hers, challenging the balance,  
24 challenging whether they owe it at all, and the bureaus,  
25 in turn, forward that on to the debt collectors, the

1 debt collectors are not returning those ACDBs with a  
2 dispute code. That is as clear a dispute, a written  
3 dispute, as clear as any other that the debt collectors  
4 would receive directly from the consumer. That's a  
5 problem that we see, and that is on an industry-wide  
6 basis, that we do not see those dispute codes coming  
7 back, and that is one which should be well included  
8 within the definition of "dispute" for purposes of the  
9 FDCPA.

10 When the dispute is coming in directly to the  
11 debt collector, any time that the consumer is noting  
12 that they don't owe the money or owe the amount that's  
13 being sought, that's enough to put them on notice, and  
14 that dispute code has got to be thrown under E-8.

15 MS. KUEHN: Now, about the point that Ian  
16 raises, about whether there's a difference in when you  
17 note something as disputed, either through coming  
18 through what we call the re-investigation system, where  
19 it's referred from the consumer reporting agency to the  
20 debt collector, versus a dispute that's raised directly  
21 from the consumer with the debt collector, are there any  
22 differences, as Ian has noted, at least from his  
23 experience with his consumers, from your perspective,  
24 Don or Mike, in whether you note something as disputed  
25 or what industry practice is in that regard?

1           MR. REDMOND: I am going to give you my personal  
2 opinion, and that is a dispute is a dispute. It doesn't  
3 matter to me what avenue it comes through.

4           MR. TORMEY: Well, I agree, and I think as the  
5 earlier panel talked, the more we want to have a  
6 communication with the consumer, the better we are. The  
7 last thing you want to do is to minimize the amount of  
8 information that's provided. So, whether it comes  
9 through ACDB or directly from the consumer, we will  
10 treat a dispute as a dispute.

11           MS. KUEHN: Ian's observation leads us to a  
12 follow-up question which relates to the re-investigation  
13 process itself and handling of disputes that are routed  
14 through the consumer reporting agency process. Some of  
15 the comments that have been filed in advance of this  
16 conference have raised issues with what kind of  
17 information that debt collectors and debt buyers,  
18 contingency collectors, may be able to get in responding  
19 to consumers' disputes that they have filed through the  
20 consumer reporting agency, and this is a theme I think  
21 we've heard yesterday, and it's continued through this  
22 morning, about the adequacy of information from the  
23 credit perspective, the creditor perspective, that  
24 should be available to debt collectors, contingency  
25 collectors, who are performing re-investigations.

1           And I wonder whether, Don or Mike, you have any  
2 observations about your ability to conduct the  
3 investigations after receiving disputes from the  
4 consumer reporting agencies.

5           MR. REDMOND: Well, I mean, obviously  
6 information is key, and, you know, we got into this when  
7 we had the conference call, and everybody has raised  
8 that issue. The debt buyers who have sat up here have  
9 raised that issue; the consumer attorneys who sue people  
10 for a living, like Ian, have sat up here and raised that  
11 issue. I think one thing everybody agrees on is that  
12 the best information we have or can have is key to the  
13 process. You will get no disagreement from me on that.

14           MR. TORMEY: Within our own experience and our  
15 own practice, when we receive a dispute and the company  
16 whom we are representing does not have adequate  
17 information to support that dispute, we close and return  
18 the debt. We will not continue to pursue it.

19           MS. KUEHN: That sounds similar to what the  
20 prior panel was talking about with ACA's Code of Ethics,  
21 which is if they can't get adequate verification of the  
22 debt, that they notify the creditor and cease collection  
23 on the debt. You also take the step of ceasing to  
24 report on the debt, or how does that relate to your  
25 reporting efforts?

1           MR. TORMEY:  If I may, the one thing you have to  
2 remember, that under Fair Credit Reporting is that if we  
3 can no longer verify a debt, we are prohibited from  
4 reporting it.  So, we close it.  We notify the credit  
5 reporting agencies that the information is no longer  
6 valid, and they delete that from the file.

7           MS. KUEHN:  Ian, you look like you want to make  
8 an observation.

9           MR. LYNGLIP:  I do, and I guess -- I think I  
10 understand what the practice is that you folks are  
11 engaging in, and it sounds to me like if you don't have  
12 those documents, you're returning it, and that seems  
13 like the appropriate thing to do.  I think that may be  
14 going a step beyond what you may be required, but I  
15 am -- what we see on an industry-wide basis, the  
16 prevailing trend is that debt buyers and contingent  
17 collection agencies do not treat the verification  
18 process as one which is meeting the requirements of the  
19 current case law.

20           Under the current case law, verification means  
21 you've got to check original documents, and we do not  
22 see any attempts to -- I shouldn't say that.  We see few  
23 and far between attempts to check original documents as  
24 part of that verification process either when it's  
25 coming in as a G-dispute or whether it's coming in as a

1 Fair Credit Reporting Act dispute over the E-OSCAR  
2 system, and the position we have gotten consistently,  
3 time and time again is, "We don't have to have these  
4 documents on hand, we have got a balance, we have  
5 records, internal records, emails or data logs, showing  
6 that this money is owed."

7 That's not enough under the case law, and the  
8 inquiry really has to focus on, what do we mean by  
9 verification? I think the case law is pretty clear.  
10 That's not enough.

11 MS. KUEHN: I think that that actually raises an  
12 issue that came up yesterday as well, which is the  
13 difference between the verification requirements under  
14 the FDCPA and the way they have been interpreted and  
15 what kind of information you need to verify a debt  
16 versus the courts that have looked at the  
17 re-investigation process and what it means to properly  
18 investigate a debt.

19 Ian, you have a fair amount of litigation  
20 experience. What's been your experience with the  
21 difference in the way the courts have looked at those  
22 issues?

23 MR. LYNGLIP: Well, I think that on the  
24 G-notice side, on the verification of debts on the G  
25 side, the standard has been far below what we would see

1 under the Fair Credit Reporting Act. You see the Fourth  
2 Circuit case in Chaudrey (phonetic), and in some  
3 circumstances, the courts are willing -- and I think the  
4 Ninth Circuit has now sided with them, I think that  
5 issue is pretty well put to rest -- that in some  
6 circumstances, you can rely on the creditor and what  
7 they're telling you, but to take that as a blanket rule,  
8 that you can do that in every circumstance, that's not  
9 right.

10           You've got to respond to the actual information  
11 that you've got in front of you. If there's a consumer  
12 who is sending you statements or is giving you specific  
13 information, detailed information, about account  
14 histories that you don't have available, I don't think  
15 that just relying on the creditor's documents that  
16 they've conveyed to you at the time of assignment is  
17 going to be enough.

18           Now, under the Fair Credit Reporting Act, we  
19 have a much different standard, and that standard  
20 pervades throughout everything that happens under that  
21 Act, and that is that we're striving for reasonable  
22 procedures to assure maximum possible accuracy, a much  
23 higher standard than we're dealing with. So, I think  
24 that what's interesting is that I have seen a number of  
25 debt collectors, when responding to a dispute under

1 1692-G, make the efforts to go and get the original  
2 documents. We do not see that same effort being  
3 extended when they're getting the disputes in under the  
4 Fair Credit Reporting Act, which to me is anomalous,  
5 because you have such a much higher standard for the  
6 accuracy that they have to bear when they're trying to  
7 verify debts under the Fair Credit Reporting Act.

8           And one of the things that I would impress is  
9 that if the consumer is providing specific information,  
10 that specific information must be responded to in  
11 whatever the process it is, and that leads us to a  
12 problem that we have with the e-OSCAR system, which is  
13 that the e-OSCAR system itself is not capable of  
14 conveying all relevant information to the data  
15 furnishers, and we don't see the data furnishers pushing  
16 back on the industry looking for better conveyance  
17 mechanisms. We don't see documents being traded back  
18 and forth over it. And it seems to us that that system  
19 is inadequate to meet the needs of the consumer under  
20 either of those two statutes.

21           MS. KUEHN: Eric, I'll give you an opportunity  
22 to respond. I think this is a criticism you might have  
23 heard before.

24           MR. ELLMAN: Sure. I think it's a very  
25 important point, Becky, for you and for everyone else to

1 understand, that we and the consumer reporting industry  
2 want successful re-investigations. Everyone wants a  
3 successful re-investigation. Consumers want their  
4 disputes handled quickly and they want their disputes  
5 handled efficiently. They want action.

6 One of the greatest challenges, though, in a  
7 re-investigation process is the attempted credit repair  
8 of these collection trades. In fact, it's well  
9 established that about one-third of all consumer contact  
10 with credit bureaus are a result of credit repair, and a  
11 significant high percentage of those disputes are from  
12 the credit repair outfits continuing to pound and pound  
13 and pound on those accounts in the hope that they will  
14 beat the data furnisher into submission to have that  
15 information removed from the file.

16 But let's talk about how re-investigations are  
17 successful first. The FRB and the FTC, as you well  
18 know, cited some data in you recent report from  
19 TransUnion which showed that 95 percent of all disputes  
20 are handled to the satisfaction of the consumer, and  
21 only 5 percent of consumers keep coming back to dispute  
22 that same information again. And we should keep in mind  
23 that just because there's a repetitive dispute isn't  
24 necessarily indication that the process is failing  
25 because of this whole credit repair problem.

1           Disputes, in fact, are handled very quickly, 54  
2 percent of all disputes submitted by consumers come over  
3 the phone or the web. The use of these channels, in  
4 fact, is increasing because consumers want their  
5 disputes handled quickly and efficiently.

6           MS. KUEHN: Eric, could you speak a little  
7 closer to your mike?

8           MR. ELLMAN: Sure, of course. Is that better?

9           Forty-four percent of the consumers who  
10 submitted data in writing, about 85 percent submitted  
11 only a standardized form or letter; approximately 10  
12 percent involved an identity theft report. So, really  
13 only 2 or 3 percent of all communications involve other  
14 information. It's clear from this data that very few  
15 disputes, in fact, involve extensive data from  
16 consumers, and most of the consumers are coming in, like  
17 I said, through the web or the telephone, and that is  
18 increasing as well.

19           MR. LYNGKLIP: If I can address one of the  
20 points that Eric was making about credit repair  
21 organizations, there is no question that the credit  
22 repair organizations are distorting the marketplace in  
23 being able to allow the credit reporting industry to do  
24 what it needs to do, which is to provide accurate  
25 information. There is no question that they are bogging

1 down the credit bureaus and raising the costs so that  
2 consumers cannot get the same level of service that we  
3 would hope they would.

4 But one of the things that I would say is that,  
5 you know, is that consumers may want action fast, but  
6 they don't want action fast at the cost of a \$500,000  
7 mortgage that's hanging in the balance. We want these  
8 disputes responded to within the time frames provided by  
9 the statute, and we want to make sure that the  
10 information that's going back accurately reflects what  
11 the state of affairs of the underlying documents were.

12 Well, one of the problems that we see is that we  
13 have not had the opportunity and in many ways we're  
14 prohibited as a consumer bar from taking action against  
15 the credit repair organizations who are preying on  
16 consumers, trying to get them to give them money to push  
17 letters on the bureaus. The mandatory arbitration  
18 clauses have really prohibited us from being able to use  
19 the statutory remedies which have been provided to us  
20 which would otherwise be very helpful to us to eliminate  
21 those, and we would hope that the industry would support  
22 us in allowing us to use those statutes, and we can't do  
23 it as the market is currently configured.

24 MS. KUEHN: We had a question dealing with I  
25 guess an overarching understanding of the industry, and

1 this goes to you, Mike, which is how often is an item  
2 reported by a contingent collector as opposed to, say,  
3 the original creditor reporting it as in collection?  
4 What's your practice as an example?

5 MR. TORMEY: In our practice, when we report the  
6 data on a consumer, we retain it and maintain it with  
7 the credit reporting agency as long as we have that  
8 assignment of the debt. Once the assignment ends, then  
9 that is removed from the credit reporting agency.

10 I rarely see that when a credit grantor has  
11 already reported the information to the credit reporting  
12 agency, that they continue to report it as in  
13 collection. So, we don't see a duplicate entry of that  
14 data on the file.

15 MS. KUEHN: There were some examples yesterday,  
16 and perhaps it's the nature of the industries involved,  
17 one involved a utility reporting, which is that the  
18 first collection they refer to that they don't actually  
19 do credit -- that those collection agents don't do  
20 credit reporting for those accounts, but if they need  
21 further efforts, they may send them to a separate  
22 collection agency that actually does reporting for  
23 different periods of time.

24 Have you guys seen distinctions with your  
25 customer base as to what their directives are on

1 reporting or are they involved in what the decisions  
2 are, when to report, how to report?

3 MR. TORMEY: From one industry to another, I  
4 think they're all pretty much the same. It's when it's  
5 assigned, if it's truly an assignment of the debt to us,  
6 then it is all reported, to the exception of -- I can  
7 only think of one of my clients who -- a medical agency  
8 who doesn't want any of their information reported, and  
9 we, of course, oblige them and block that data.

10 MS. BRESLAW: One thing I would just add from  
11 the banking agency's perspective is that we I guess  
12 leave these choices to the parties, but what we would  
13 expect to see would be that in the agreements between  
14 the parties that it's clear who has the responsibility,  
15 and not just at first but ongoing, so it's the party's  
16 choice, but we want to make sure everybody addresses it  
17 clearly.

18 MS. KUEHN: And does that lead to issues of who  
19 handles the disputes or is there some sort of  
20 arrangement -- it sounded like, at least in the initial  
21 instance, in the information that debt buyers, at a  
22 minimum, perhaps collectors are getting from the  
23 creditors at the outset may not have all the information  
24 to address a consumer's dispute.

25 Do you guys deal with credit reporting, for

1 example, by contract with the entities from whom you  
2 purchase debt or on whose behalf you collect debt as far  
3 as being able to handle disputes timely within the FCRA  
4 guidelines and to be able to obtain the information  
5 necessary to respond to consumers' disputes about  
6 reporting?

7 MR. ELLMAN: Let me jump in for a second here,  
8 if I could.

9 To Ian's point about, yes, speed is important,  
10 but, of course, so is efficiency, and we are obviously  
11 in regular communication with all data furnishers to  
12 make sure the re-investigation process goes not just  
13 quickly but also very efficiently, and I think what we  
14 heard just a few moments ago was, from the debt buyers  
15 and the debt collectors, was the information was good,  
16 but it's not just a question of the information is good,  
17 it's a question of the right kind of information, and  
18 the data furnishers have been telling the consumer  
19 reporting agencies that the information that they are  
20 getting is sufficient to meet their re-investigation  
21 obligations.

22 MS. KUEHN: Okay, Don or --

23 MR. REDMOND: If we're furnishing the data, we  
24 think it's accurate.

25 MS. KUEHN: And what happens after you receive a

1 dispute based on that if the information that you have  
2 in your files either doesn't address the dispute that  
3 was raised or doesn't seem to have a piece of  
4 information that you need?

5 MR. REDMOND: Well, again, I think any  
6 responsible data furnisher tries to be as accurate as  
7 possible. If any responsible data furnisher can't  
8 report accurately, they shouldn't report.

9 MR. TORMEY: I would mirror the same sentiments.  
10 When, as a contingency agency, we will receive a  
11 dispute, we will go back to the firm that forwarded the  
12 data or the assignment to us and seek validation, and in  
13 that respect, if the information that we have in the  
14 file is not adequate to answer the inquiry, more times  
15 than not, upwards of 90 percent, they are the -- the  
16 generated request that comes from the credit repair  
17 plans, which is very generic, "This is not my debt,  
18 period."

19 MS. KUEHN: That's what I was going to ask, as  
20 far as your experience in handling disputes that have  
21 come through the credit reporting system, you know, we  
22 have heard talk about the credit repair problem. What  
23 has been your experience with -- you know, you just gave  
24 a figure of 90 percent.

25 MR. REDMOND: We get burdened by that stuff,

1 too, by the way. I mean, we get tons of the same form  
2 letter that says the same thing from 20 different  
3 websites where some poor soul bought that garbage for a  
4 fee and mailed it out to all of their accounts, and, you  
5 know, I think it's a terrible problem, terrible enough  
6 that it's one of the only things I put in my comment  
7 letter to the FTC, is that there is now an industry of  
8 people who's out there to dispute things for a fee, and  
9 I think you have to recognize that when you look at  
10 credit reporting and similar issues.

11           There are people all over the internet today  
12 trying to sell people -- lots of times, you'll see  
13 documents that are fake legal documents. One of them I  
14 get all the time is the "Petitioner's Private  
15 International Administrative Remedy Demand." Some  
16 lawyer in the room tell me what that means. We get that  
17 same document over and over and over. It's like 40  
18 pages long. It's full of all kinds of crazy things, you  
19 know, quoting House Joint Resolution something or other.  
20 It's nonsense.

21           MS. KUEHN: And by the 10th or 15th time you've  
22 seen it, you realize it's a form letter.

23           MR. REDMOND: By the 10,000th time I've seen it.  
24 That's how I know the name.

25           MR. LYNGKLIP: The credit repair organizations

1 are -- the clinics are clearly a problem, but that  
2 doesn't really address the underlying question, which is  
3 how you're dealing with actual disputes from consumers  
4 which provide a reasonable amount of information saying  
5 that the information is disputed, and what are you doing  
6 in that process to get -- to get accurate information  
7 back into the system.

8           And what we see, time and again, over the --  
9 certainly over the ACDV system, is that there's not  
10 really the same level of effort that's given to getting  
11 those baseline documents, those foundational  
12 transactional documents, to verify that debt, and that's  
13 really what's at issue, at least for the consumers.  
14 We're talking about the consumers tendering legitimate  
15 disputes. What's the industry doing for them?

16           MS. KUEHN: Well, it sounds like from our  
17 current panel's perspective that they have procedures in  
18 place, but I did want to talk about an issue that you  
19 raised, Ian, I think prior to our panel today, which is  
20 the issue of reporting items as disputed and whether  
21 there should be some requirement to go back and correct  
22 prior reporting to note that an item is disputed, if you  
23 could sort of summarize what your issue is, please.

24           MR. LYNGKLIP: Yeah. The difficulty is this,  
25 that currently the way that the commentary to the FDCPA

1 is structured, there is no affirmative obligation to  
2 credit report. What we see is that credit reporting  
3 will continue on after a consumer has disputed this debt  
4 and sought validation. This is a problem for a number  
5 of reasons, but the chief one is that the debt  
6 collectors are required to cease all collection activity  
7 after there is a dispute that's tendered by the  
8 consumer, and so if you're getting a timely dispute from  
9 a consumer in response to a G-notice, you've got to stop  
10 credit reporting during that time period until that debt  
11 is validated and verified back to the consumer directly.

12 And so we don't see that happening, and one of  
13 the problems is that we see the collectors relying on  
14 the commentary for that and for other practices, like  
15 just cease -- by stopping reporting in the face of  
16 litigation.

17 MS. KUEHN: Well, I think to look at that  
18 question and to really sort of examine it, we have to  
19 understand sort of the nature of the frequency of  
20 reporting by debt collectors and contingency collectors.  
21 In comparison, most creditors, I understand, report on a  
22 routine, frequent basis. Is that --

23 MS. BRESLAW: That's correct, yes.

24 MS. KUEHN: So, if something comes up, a dispute  
25 has arisen, they can report it as disputed in the next

1 update, the next report, on that particular consumer?

2 MS. BRESLAW: Right, that's what we would  
3 normally see on the banking side.

4 MS. KUEHN: And what I understand is the  
5 reporting may be different or slightly different in the  
6 collection area, or is that not the case?

7 MR. REDMOND: It's not been my experience. We  
8 furnish data constantly.

9 MS. KUEHN: About the same consumers, whether  
10 there's changes or no changes or --

11 MR. REDMOND: Absolutely.

12 MS. KUEHN: How about you?

13 MR. TORMEY: Indeed, the practice, at least with  
14 the credit reporting agencies we deal with, is we  
15 actually dump our last data from the last report, and we  
16 supply an entire inventory of this week's data, and  
17 that --

18 MS. KUEHN: Because I think --

19 MR. LYNGKLIP: That is, by the way, our  
20 experience as well, and one of the things that's  
21 interesting is that the position that we see from the  
22 debt collectors is, well, if we haven't changed this  
23 data, if this data has not been updated in some way, we  
24 are not affirmatively reporting, even though they are  
25 consistently doing exactly as described. They are doing

1 a complete data dump of all of their accounts -- all of  
2 their receivable accounts.

3           When we get further down the road into  
4 litigation and we see that, you know, there's a tape  
5 that's going out every month with this information, we  
6 can show that, yeah, they have been engaging  
7 affirmatively in collection activities, but the view of  
8 the industry is as long as we haven't updated that and  
9 there is no change in the status of this debt, we don't  
10 report it. Well, that's how -- it's acting out --  
11 that's how it is that they're interpreting that on a  
12 day-to-day basis, and it's leaving a lot of consumers  
13 without actually having the benefit of the rights that  
14 they've got under 1692-G, which is to have the debt  
15 collector cease reporting until such time as they have  
16 verified this debt.

17           MR. TORMEY: Let me clarify something. When I  
18 use the word "dump," I mean that they remove all of the  
19 data that we had previously reported and resupply it  
20 with the current data. So, there's the difference  
21 there. So, if a consumer disputes a debt with us on  
22 Monday, we key that into our system. Friday, when we  
23 generate the tape and transmit it to the credit  
24 reporting agencies, they remove all the previous data,  
25 and that data is subsequently blocked from reporting.

1 So, it disappears from the credit reporting file until  
2 we resolve the dispute.

3 MS. KUEHN: So, it's no longer reported at all  
4 regardless of --

5 MR. TORMEY: That's correct. That's our  
6 practice.

7 MR. LYNGKLIP: But that is not what we see as an  
8 industry practice. We see that those trade lines  
9 continue to persist all throughout the validation  
10 period, and sometimes the validations, when we're  
11 dealing with ID thefts or other complicated issues, they  
12 take months, and these items are still sitting on the  
13 reports.

14 MS. KUEHN: What about the situation -- it  
15 doesn't sound like, Don or Mike, that either of you are  
16 one of these type of reporters, but there are what we  
17 call the occasional furnishers. Eric, maybe you can  
18 talk about that, sort of if there still are people  
19 within the industry who only report when something has  
20 changed or they report initially when they obtain an  
21 account for collection and don't provide sort of that  
22 regular updates, regular tapes.

23 MR. ELLMAN: Right, that's obviously the case.  
24 There are businesses like that, and we fully expect that  
25 anybody who furnishes to a consumer reporting agency,

1     whether they do it once a year or once a month, shares  
2     the values that we share, which is to create a precise  
3     credit reporting system that's in full compliance with  
4     the FCRA.

5             MS. KUEHN:  And I guess one of the ways that  
6     this question has been posited and has come up are for  
7     those what I call occasional reporters, that when they  
8     reported it, the debt wasn't disputed, for example, but  
9     that they no longer report on the account or the account  
10    has been sold or transferred -- and we are going to talk  
11    a little bit more about that -- but that the statute, at  
12    least the Fair Credit Reporting Act, when it deals with  
13    reporting, talks about when you furnish the information  
14    and you know there's a dispute, you need to mark it as  
15    disputed.

16            Is one of the issues that, you know, the FTC  
17    should look at and address dealing with the situation  
18    where there's been a previous report of information that  
19    has not been updated, no further tapes have been  
20    submitted, but a dispute has come in after the reporting  
21    has done?  And is that something, Ian, that you've seen  
22    or --

23            MR. LYNGKLIP:  Well, again, there's a disparity  
24    between what we see the practice actually is and that  
25    legal requirement.  It seems to us that because the debt

1 collectors are, in fact, making monthly reportings that  
2 we can look at them and say, yeah, you are furnishing  
3 data on this consumer and you are reporting and you are  
4 in violation if the consumer has disputed it and you  
5 have not updated it and marked it with a dispute code,  
6 or if now we know this debt is not actually valid, and  
7 you are allowing your trade line to persist in the  
8 credit files and the bureaus.

9           The occasional reporters, we're not seeing quite  
10 so many of those, and so -- and it's very difficult to  
11 know at first blush, when you get into one of these  
12 cases, whether or not you are dealing with an occasional  
13 reporter. I mean, you've got to do some serious  
14 investigation to find out whether you're dealing with  
15 them. So, it's not a problem that we've dealt with.  
16 Most of the problems that we've seen have been with  
17 regular reporters who, monthly, do their tape drops to  
18 the bureaus.

19           MS. KUEHN: We have a good question from the  
20 audience, which is perfect for Eric to answer. Since  
21 we're speaking in acronyms up here, and when you do FCRA  
22 work here, there is a tendency to fall into acronyms, if  
23 you could explain what the e-OSCAR and ACDV systems are.

24           MR. ELLMAN: Sure. The e-OSCAR system is an  
25 automated system for processing disputes that come in to

1 start the re-investigation process obviously under the  
2 FCRA, which is the Fair Credit Reporting Act. The  
3 dispute will come to the consumer reporting agency,  
4 although as a result of the FACT Act, consumers can also  
5 directly dispute to data furnishers, which we think is a  
6 very positive step to promote the accuracy of the credit  
7 reporting system.

8 The e-OSCAR system is, like I said, it's an  
9 automated system. In fact, we're very proud of the fact  
10 that the use of e-OSCAR has gone up from -- the use of  
11 e-OSCAR has gone up from 83 percent in August 2006 to 94  
12 percent in June of 2007, which is really only good news  
13 for consumers, because that means that 72 percent of all  
14 consumers, their disputes are now being resolved in 14  
15 days or less.

16 MS. KUEHN: I wanted to just move off of this  
17 for a little bit, a couple other issues we need to  
18 cover, and the second one deals with -- and I think this  
19 is an issue that's maybe a little more unique to the  
20 debt collection industry than it is, perhaps, in the  
21 creditor realm, even with the purchase and repurchase  
22 and repurchase and consolidation of banks, which is the  
23 multiple reporting of a single debt collection account,  
24 where a debt collection account shows up multiple times.

25 A number of commenters, prior to the conference,

1 raised the issue that there will be multiple account  
2 numbers associated with a single collection account,  
3 will be different collection agencies, they show up  
4 differently, they have different balances, they have  
5 different amounts, and that from the creditor's  
6 perspective, it can be difficult to interpret whether or  
7 not these are multiple collection accounts or a single  
8 account that's been reported a different way.

9 How does that impact, from the creditor  
10 perspective, their ability to fairly evaluate a  
11 consumer's creditworthiness?

12 MS. BRESLAW: Well, certainly the -- you know,  
13 we're furnishers, but we're also users of this  
14 information, and I think echoing what's been said maybe  
15 for different reasons, it's certainly very important to  
16 creditors to have as accurate information as possible so  
17 that they can make accurate credit decisions about  
18 people. So, I think that's certainly a concern of those  
19 who are granting credit.

20 MS. KUEHN: Now, I understand that CDIA has  
21 issued some guidance, particularly for the debt  
22 collection industry, on reporting in an effort to sort  
23 of, I think, address this issue. I wonder if you could  
24 summarize -- closely to the mike, please -- for the  
25 audience, Eric, what CDIA has put out.

1           MR. ELLMAN: First, before I get into that, it's  
2 important for us to recognize that we don't support  
3 duplicate reporting. I don't think that any collector  
4 supports duplicate reporting either. A debt that's been  
5 sent out for collection, we should make clear, will  
6 often have two trade lines. It will have the original  
7 debt, and it will have the collection account.

8           However, the Credit Reporting Resource Guide and  
9 the Metro 2 format, the Credit Reporting Resource Guide,  
10 which is a guide we provide to data furnishers to help  
11 to ensure they are partners in the accuracy process of  
12 the credit reporting system, is quite clear in that  
13 collection agencies and debt purchasers must delete  
14 accounts that have been cancelled and returned to the  
15 creditor or sold to another entity. That's been made  
16 very clear.

17           We regularly provide specialized notices to  
18 certain data furnishers, groups of data furnishers. We  
19 have done it for student loans. We have done it for  
20 debt collectors and debt purchasers and others, and we  
21 have recently re-issued, just in the last week or so,  
22 again, specific notice to reinforce the fact that  
23 collection accounts, collection agencies and debt  
24 purchasers, have to delete the information if the debt  
25 has been sold or transferred.

1           MS. KUEHN: And that includes going back to the  
2 original creditor or is it just only in the instance  
3 where it's sold or transferred?

4           MR. ELLMAN: Well, the point of the precise  
5 reporting and the point of our notices is to make sure  
6 that the information that's on the credit file is, in  
7 fact, precise, which means that if the debts are sold or  
8 transferred, then anything that doesn't belong on the  
9 report is not on the report.

10          MS. KUEHN: Ian, you're chomping at the bit.  
11 Have you seen this? Have you seen this experience, that  
12 they do remove the items when they sell or transfer  
13 debt?

14          MR. LYNGKLIP: Well, sometimes they do,  
15 sometimes they don't, but this goes to a deeper problem.  
16 Most of the problems that we have with debt collectors  
17 reporting debt and the errors that we see them -- things  
18 like re-aging, providing false balances, all of this  
19 information can be easily verified through historic  
20 records of the original creditors who had this, and mind  
21 you, we're living in a marketplace where portfolios of  
22 debt are incredibly fluid. I mean, you know, they're  
23 moving from bank to bank, to bank to bank, they're being  
24 sold and resold, and then they're getting transferred to  
25 collection agencies or contingent collectors, and then

1 they're being sold to multiple debt buyers up and down  
2 the line.

3           These same trade lines, these same debts, can  
4 acquire, you know, upwards of a dozen account numbers  
5 before, you know, before we get to the final end of  
6 these problems, and one of the problems is, the first  
7 problem is, we do not have any record retention  
8 requirement in the Fair Credit Reporting Act to allow us  
9 to trace these items back, so that somebody can actually  
10 look at what has been reported and use the data,  
11 assuming that it was accurate in the first place, so  
12 that we can go back, trace the audit trail of this data,  
13 and be able to show, look, this account came from here  
14 and was transferred there and there and there, acquired  
15 these different names, these different account numbers,  
16 was disputed umpteen times, and was ultimately deleted  
17 because somebody figured it out. We don't have that  
18 record trail, that audit trail.

19           MS. KUEHN: And that's what -- in the comments  
20 filed by NCLC, they mentioned this earlier, the idea of  
21 a chain of title or a chain of custody.

22           MR. LYNGLIP: Well, that's chain of title, but  
23 this also goes straight to the idea that, you know, in  
24 this era where I can go down to the local computer store  
25 and buy a terabit server, we can't preserve any of the

1 Metro 2 data? We know the bureaus discard this data  
2 regularly, and we can't trace it back. We have no way  
3 of doing it. Once they discard the data from the data  
4 furnishers, we have got very limited mechanisms to be  
5 able to identify what happened, and we should be seeing  
6 that these reportings at least are retained during a  
7 limitations period that's applicable to the reporting.

8           The second problem -- I'm sorry, but the second  
9 problem is that the format itself, the Metro 2 format,  
10 recognizes that there's a need for being able to  
11 identify an originating creditor, and they've got a  
12 whole special segment that's set out for identifying  
13 that, and the problem is that that doesn't help us  
14 identify a complete chain of title, nor does it help us  
15 identify original account numbers or subsequent account  
16 numbers or when a fraud account, by a major credit  
17 cardholder or a credit card issuer, takes a fraud  
18 account, closes the fraud account, and re-opens a new  
19 balance with it, and creates a new account.

20           Each of those accounts, we've seen, you know,  
21 those accounts take parallel, separate lives, but they  
22 both wind up on the consumer's report in the hands of  
23 different debt collectors, and the problem is that the  
24 Metro format itself does not provide a mechanism and  
25 does not provide the -- I want to say the requirement.

1 There is no industry requirement that that prior data,  
2 the limited amount that's here, be provided.

3 That data, if a debt collector cannot provide an  
4 original creditor, original balance, and a date on which  
5 the account was opened, the information that is in the  
6 base segment of this, the base information that  
7 identifies that account, that data should be rejected as  
8 inadequate, because it's inherently unreliable and  
9 unverifiable. If you don't have the information about  
10 the account, it's unverifiable and unreliable and  
11 inaccurate and not from a reliable source.

12 MS. KUEHN: I am going to -- go ahead, I'll let  
13 you answer, Don, then we'll circle back to my  
14 original --

15 MR. REDMOND: You have made that point like 20  
16 times in the last 45 minutes, and the point you just  
17 made, which you made the first time I heard you  
18 filibuster on this point about an account having upwards  
19 of a dozen account numbers, is just not true. I have  
20 never seen an account with a dozen account numbers. I  
21 would love to see an example of it if somebody's got  
22 that. That is not typical of the industry. You've made  
23 it up or you have seen a very, very strange case. I'd  
24 love to see an example of a dozen account numbers.

25 MR. LYNGLIP: You know, when these accounts get

1 transferred from a small, local bank to -- that is  
2 bought up by large -- larger national bank, which is  
3 transferred to another one, I mean, we can look right  
4 straight to the Bank of America. I have accounts that,  
5 you know, I can trace from local banks that go through  
6 four separate national banks before they begin hitting  
7 the debt collection industry, and acquire at each of  
8 those new banks, acquire a new account number, at least  
9 one new account number, because they're boarded by them,  
10 they may retain an original account number initially,  
11 but then change it when they want to restructure their  
12 portfolios.

13 MS. KUEHN: Well, that sounds like an issue with  
14 the creditor side on the transfer of debts from creditor  
15 to creditor and not so much in the debt collection  
16 industry.

17 MR. LYNGLIP: Well, let's say that a dozen is  
18 not the --

19 MR. REDMOND: Someone does not typically just  
20 willy-nilly change an account number every time they get  
21 an assignment from somebody who owns an account. That  
22 doesn't help anybody collect. How would assigning new  
23 account numbers every time a collection agency gets an  
24 account help anybody collect? If it's different every  
25 time, you can't identify it. That doesn't make any

1 sense at all.

2 MR. LYNGKLIP: Obviously everybody has their own  
3 internal account numbers on these -- you know, on the  
4 initial dunning letters. You know, this is the original  
5 account number, here's redacted to whatever it is, and  
6 here's our internal number, and we see those internal  
7 numbers being used as the reporting number, and we've  
8 got a provision for it in the manual here, and maybe a  
9 dozen is too many for industry standard, but it is not  
10 uncommon, by the time a debt collector gets this or a  
11 debt buyer gets this, to see an account have three or  
12 four account numbers. That is a normal process, and  
13 there's still, no matter what, not a mechanism to track  
14 that account through the system.

15 MR. REDMOND: It is not a normal process for an  
16 account to have three or four account numbers. That is  
17 not normal.

18 MR. LYNGKLIP: Do you know what account numbers  
19 have been assigned by prior collection agencies,  
20 contingent agencies? Do you get that information?

21 MR. REDMOND: What I get is the account number,  
22 the original account number, and that's the same one  
23 that we use.

24 MS. KUEHN: Well, let's -- let's --

25 MR. LYNGKLIP: If it's been returned, you

1 wouldn't --

2 MS. KUEHN: Ian, I have to cut you off a little  
3 bit, because we are going to run out of time if we  
4 don't, but April wanted to say something, and then I had  
5 a specific question about that.

6 MS. BRESLAW: I guess all that I would add to  
7 this is that if accounts are being transferred within  
8 the world that I know, which is, you know, among the  
9 creditors, among the banks that you just described, you  
10 know, not just the FDIC, but I think all the banking  
11 agencies would expect would be that banks involved have  
12 policies and procedures in place to make sure that  
13 accurate reporting always happens, starts from the  
14 beginning and always happens.

15 So, if they make the business decision to change  
16 account numbers for some reason, that's okay, but they  
17 need to make sure that the reporting to the credit  
18 bureau remains accurate, and that's what we would hold  
19 our institutions to.

20 MR. ELLMAN: And the Metro 2 format has a  
21 standard to require -- or has a standard to establish  
22 that the original creditor is reported by a debt  
23 collector or debt buyer.

24 MS. KUEHN: And is it also the case -- and this  
25 is a good question from the audience -- about sold and

1 transferred accounts and their reporting under Metro 2,  
2 if you could explain a little bit, Eric, on that.

3 MR. ELLMAN: Well, just to reinforce what I said  
4 earlier, again, because we all share in the importance  
5 of creating a precise credit reporting system, is that  
6 to prevent the multiple reporting of information like  
7 Ian is talking about is to establish that when a debt is  
8 sold or transferred, that there is an established  
9 procedure that it be deleted so it doesn't show multiple  
10 collections, which don't, in fact, exist anymore.

11 MS. KUEHN: And that was going to be my question  
12 to Don and Mike, to give you guys an opportunity to  
13 actually respond.

14 The question is, is the guidance provided by  
15 CDIA about, in essence, deleting the reporting or  
16 removing the reporting of accounts once they're sold and  
17 transferred, is this something you've seen being adopted  
18 in the industry? Is this something that you guys have  
19 followed? What is your experience with that?

20 MR. TORMEY: Well the one thing I can say is  
21 that, you know, even before the changes from CDIA and  
22 the industry going back to Fair Credit Reporting 101 30  
23 years ago or whenever it was is when you can no longer  
24 validate or verify a debt, you can no longer report it.  
25 So, when your assignment of a debt is terminated by your

1 client, and whether they take it back in-house and write  
2 it off or they sell it to a secondary source, I cannot  
3 ethically or legally continue to report that  
4 information, and we delete it, and that is the common  
5 practice in the industry.

6 MS. KUEHN: Don?

7 MR. REDMOND: It's no surprise that the Credit  
8 Reporting Resource Guide is sitting here up on the  
9 table. It's an excellent source of information. It is  
10 very much the standard that everyone uses, and there are  
11 good reasons for that.

12 MS. KUEHN: And it sounds like, at least, one of  
13 the main problems that Ian has identified, which there  
14 possibly being multiple chains of accounts or multiple  
15 collection accounts reported with respect to a single  
16 collection account, can be addressed at least in some  
17 part by, you know, no longer reporting on accounts that  
18 you're no longer collecting on. Mike wants to say  
19 something.

20 MR. TORMEY: If I could talk to that a little  
21 bit, what Ian was referring to is, let's say he has a  
22 MasterCharge account with bank A. Bank A subsequently  
23 decide to sell their MasterCharge business to bank B,  
24 and then subsequently goes to bank C and bank D and bank  
25 E. When you look at the credit report itself, there

1 will be those listings of those accounts, but it will  
2 show zero balances, and it will show the account  
3 experience that that bank had with that consumer for the  
4 period of time that they owned the debt.

5 Then often, it will say "sold" or "transferred,"  
6 and then you can see that chain of accounts, and the  
7 original opening date of the trade line will stay the  
8 same. Now, the account numbers may vary, but actually,  
9 for credit reporting purposes, it's very important to  
10 know that bank A had it for six months, bank B had it  
11 for three years, bank C had it for two years, or  
12 whatever the case may be, going back to the statute of  
13 limitations. So, it's not inaccurate and it's not  
14 duplicate; it is that those are different times that  
15 those accounts belonged to a different vendor or a  
16 different vendor of that credit.

17 And then, subsequently, if the information or  
18 the debt becomes delinquent and it is then assigned to a  
19 collection agency, then you'll get an additional trade  
20 line showing the collection being assigned from the last  
21 creditor.

22 MR. LYNGKLIP: If that account is reported with  
23 a zero balance and only the -- the creditor is only  
24 reporting the payment grid, that's correct. I mean, you  
25 can show the historical data and the zeros, but I'm not

1 talking about zeros. I'm talking about when the first  
2 bank doesn't zero the trade line or maybe the bank, bank  
3 one, zeros it, but bank two, bank three doesn't, or debt  
4 collector two or three doesn't zero their trade line.

5 One of the problems is, again, there is no  
6 affirmative obligation, at least in the FDCPA, that  
7 prior reportings be retracted. So, theoretically, under  
8 the way that the FTC is interpreting this, that could  
9 persist on the report even if it's not in the same way  
10 that the CDIA is recommending that those data furnishers  
11 actually handle it. The law does not actually comport  
12 with what the industry standard is, at least.

13 Theoretically, if the industry standard was  
14 being followed, that would go a large way to helping the  
15 problems, but one of the issues is that we don't see  
16 compliance, and we don't see the bureaus kicking back  
17 that data, and we do not see the mechanism for the  
18 bureaus to be able to recognize those account numbers  
19 and correspond them to each other if there's a new  
20 account number that's being assigned.

21 MS. KUEHN: And it sounds like that's one of the  
22 challenges of a voluntary reporting system, that, you  
23 know, as far as what information is reported, what  
24 information the bureaus can, you know, ask for.

25 MR. ELLMAN: Can I make a couple of comments to

1 some of the things that have been said?

2 MS. KUEHN: Sure.

3 MR. ELLMAN: Becky, you are exactly spot on.  
4 This is, in fact, a voluntary system, and that's what  
5 makes it unique, and that's what makes it quite  
6 beneficial, as we've heard from all the testimony in  
7 Congress as a result of the FACT Act and other things,  
8 which is a good segue into the point that the credit  
9 reporting agencies -- that a precise credit reporting  
10 system, an accurate credit reporting system, does not  
11 happen and cannot happen in a vacuum.

12 We rely on data furnishers, we rely on users of  
13 users of consumer reports, and, in fact, Congress  
14 recognized this when they went through the FACT Act  
15 debates in 2003, and it imposed new and significant  
16 obligations on data furnishers that had never existed  
17 before, and obviously the FTC and others are going  
18 through the rulemaking process for furnisher rules and  
19 accuracy, integrity and all that, and if, in fact, there  
20 are deficiencies on the furnisher side, perhaps they  
21 will be addressed in the rulemaking process.

22 MR. LYNGLIP: I will just point out that the  
23 system is not voluntary for those people who are  
24 disputing debts. They are clearly disputing debts, they  
25 think they have a good reason to dispute them, and for

1       them it is completely involuntary that these items  
2       persist on their reports.

3               MR. REDMOND:  You know, something else we have  
4       got to recognize, Becky, credit reports to anybody, even  
5       people who do this stuff for a living, it's just  
6       complicated material, and I think it's certainly true --  
7       Mike was pointing out, you know, sold or transferred to  
8       so and so.  I mean, when you look at a credit report,  
9       it's not easy for anyone to understand all the data  
10      that's there sometimes.

11              I know from what I have seen, there are many  
12      times when somebody is concerned about their credit  
13      report, but they simply don't understand what's there,  
14      and one of the problems is it's kind of like linear  
15      algebra.  There is no way to make it simple.  And so  
16      when people are looking at these, I think many times  
17      they just don't realize what they've got there, even  
18      though it's perfectly correct.

19              MS. KUEHN:  There may be no errors; it's just  
20      confusing and hard to understand.

21              MR. REDMOND:  And there certainly are times when  
22      there are errors, but I'm saying one of the things that  
23      makes it difficult for any consumer, let alone the least  
24      sophisticated consumer, dealing with a credit reporting  
25      issue, is that the stuff is just complicated, and it's

1 hard to understand when you look at it.

2 MS. KUEHN: Well, let's go to two other areas as  
3 we're closing in on our time, I want to make sure we  
4 have adequate time to talk about these, and one of them  
5 that came up I think in a number of comments filed in  
6 advance of the workshop was the issue of what we like to  
7 call re-aging of debt, and you guys had asked for a  
8 definition in advance of discussing that.

9 In essence, that is a situation in which a debt  
10 collector, a subsequent debt buyer, a subsequent  
11 furnisher of information about an account, changes the  
12 date of delinquency, i.e., the date that obsolescence of  
13 the information is determined. In other words, the Fair  
14 Credit Reporting Act -- I'm sure everybody in this room  
15 knows this -- has limitations on how long negative  
16 information about a consumer can be reported, and that  
17 is keyed to the date on which the consumer has been  
18 determined delinquent, the date of delinquency, and  
19 there's some specific rules on that.

20 One concern we've heard, and we have heard this  
21 from the consumer side and a number of commenters, is  
22 that there are those in the debt collection industry who  
23 are changing the dates or basically changing the date in  
24 such a way, moving it forward in time, so that the  
25 accounts stay on the report longer than that.

1           I wanted to let Ian briefly have an opportunity  
2 to talk about sort of, you know, what he's seen with  
3 respect to that problem and then talk about maybe ways  
4 in which we can address that.

5           MR. LYNGLIP: Well, I think the -- and I'm not  
6 sure that I want to say that this is an industry-wide  
7 problem, because certainly there are -- we see a lot of  
8 accurate information, at least as it relates to this  
9 particular problem. We do see some of the market  
10 players, the same market players, doing this over and  
11 over again, and the way that this comes about is that  
12 there's a specific piece of information that's required  
13 by the Metro 2 code, and it's the date of first  
14 delinquency, and what we see the debt collectors doing  
15 is substituting in either the date on which they  
16 acquired the portfolio or the date of the last payment  
17 for the date of first delinquency, and there could be a  
18 very big difference between these dates. And sometimes  
19 we've seen -- sometimes -- that this is due to a simple  
20 error of them not understanding, but after a debt  
21 collector has been sued a couple times for making the  
22 same error, we tend to doubt that that's actually an  
23 error. It looks more like a policy to us.

24           One of the things, again, back to the idea that  
25 having a record retention requirement for the Metro data

1 that's coming in from the original creditors or having  
2 an actual chain reflected of the original creditor with  
3 their date of first delinquency and any subsequent  
4 assignees in the format, that would solve this problem  
5 immediately, which is that we could always look back to  
6 that data which is reported every single time and be  
7 able to say, okay, the date of first delinquency that  
8 the creditor had was January 1st, and all of a sudden,  
9 it changes.

10 MS. KUEHN: And this is a question for April,  
11 this issue, and I think it relates to the amount of  
12 information that's provided from the creditors when they  
13 sell debt or when they assign it for collection. Should  
14 there be some requirement on banks or other issuers to  
15 provide the original date of delinquency? Is there some  
16 existing requirement when they're selling the debts to  
17 debt buyers or on down the chain?

18 MS. BRESLAW: Well, again, you know, I'm sorry,  
19 I'm beginning to sound like a broken record here, but  
20 our, you know, approach is very much that the parties,  
21 when they're selling debt or engaging in these  
22 transactions, can make whatever arrangements make  
23 business sense to them, but we would hold our banks  
24 responsible for reporting accurate information, and they  
25 would have to have a defensible date of first

1 delinquency when they start off. And I think we would  
2 also expect that in the transaction, that this would be  
3 covered in the transaction documents to make sure that  
4 problems of that nature don't arise in the future.

5 MS. KUEHN: Don and/or Mike, about the  
6 information that you obtain from creditors when you  
7 purchase debt or you obtain it for collection, is this  
8 information that you routinely get as part of the  
9 information you do get on a consumer?

10 MR. REDMOND: Sure. We purchase date of  
11 delinquency, and, you know, if anybody takes date of  
12 delinquency -- it's supposed to be 2002, and they put  
13 2005 for the purpose of extending the reporting period,  
14 they're breaking the law, and no responsible player in  
15 the industry would condone that.

16 MS. KUEHN: Mike?

17 MR. TORMEY: I would also add that the  
18 marketplace takes care of some of this on its own, again  
19 an anecdote, but some years ago when I was associated  
20 with one of the credit reporting agencies, it came to  
21 our attention of one of the people in the marketplace  
22 was manipulating those dates. We barred them from  
23 posting data to the database and did so for about five  
24 years, and that had a severe impact on it.

25 I think in the case -- if Ian has an agency that

1 he knows about, if he takes that information to the  
2 three major players, they would probably take a serious  
3 look about whether they want to continue to do the  
4 maximum reporting accuracy standard with that particular  
5 agency.

6 MS. KUEHN: Let Eric jump in here. Sorry, Ian.

7 MR. ELLMAN: And Mike obviously highlighted an  
8 important value, and that is CDIA and its members  
9 strongly believe the data furnishers want to report data  
10 that, in fact, is accurate and in full compliance with  
11 the law. The date of first delinquency is specifically  
12 regulated by the FCRA. It's specifically the subject --  
13 it's the subject of specific guidance in the Credit  
14 Reporting Resources Guide. There is one and only one  
15 date of first delinquency, and that date never changes,  
16 and it's clear in the statute, it's clear in the  
17 guidance that we provide to data furnishers, and, again,  
18 if this is an area and this is -- perhaps this is a  
19 subject that's best addressed in a data furnisher rule  
20 or, as I think we've heard from our panelists who  
21 represent the business side, that there doesn't appear  
22 to be a widespread problem.

23 MS. KUEHN: Don, we had a question of  
24 clarification about your comments. You had said  
25 something about purchasing the date of first

1 delinquency?

2 MR. REDMOND: When we purchase a file, that is a  
3 type of data that is included in the file.

4 MS. KUEHN: Okay, and that's -- so, you're not  
5 purchasing files where you don't have that information,  
6 or is that not the case?

7 MR. REDMOND: That doesn't -- it doesn't do us  
8 much good. I mean, the point is to get as much data as  
9 we can. That doesn't mean that occasionally, you know,  
10 a record won't come through that's incomplete. That  
11 happens any time you get 5000 of anything. You might  
12 have some that are wrong, but that's -- you know, or  
13 incomplete, but that's obviously not the point. The  
14 point is we try in every file to purchase certain data,  
15 including the date of delinquency.

16 MS. KUEHN: I think one of the tensions here,  
17 and I think this may be a question raised by the desire  
18 to make sure we're not having multiple accounts reported  
19 but at the same time making sure that the dates of  
20 delinquency aren't reported.

21 What I call the alternative date of delinquency  
22 rules that came out in the last amendments to the FCRA  
23 depend on first knowing whether or not the account has  
24 ever been reported before, and for, you know, accounts  
25 that are, say, other than credit accounts, that have

1 traditionally been reported historically, that they may  
2 only be reported first time in the collection process or  
3 not, and you don't know, is that the sort of  
4 information -- do you get history of what's been  
5 reported by your prior debt owner, either a creditor or  
6 a different kind of a debt owner, that reflects what's  
7 been reported to the CRAs before it's come to you? In  
8 other words, no the just the date of first delinquency,  
9 but what information has been previously reported to the  
10 CRAs.

11 MR. REDMOND: I'm not aware of having a credit  
12 reporting history.

13 MS. KUEHN: Do you have any experience with  
14 that, Mike?

15 MR. TORMEY: Most of my clients have never  
16 reported before. A large portion of our business is  
17 medical. So, they're not in the general part of  
18 reporting on a routine basis. So, the first time it  
19 hits the credit file, it's from us.

20 MS. KUEHN: Well, last --

21 MR. ELLMAN: One last point, if I could, before  
22 we leave this topic, and that not only, of course, is  
23 referring to the obligation dealing with the  
24 establishment of the date of delinquency, but the new  
25 component of the FACT Act puts a new standard of

1 liability on data furnishers that prohibits them from  
2 furnishing data that they know or have reasonable cause  
3 to know is not accurate.

4 MS. KUEHN: What I want to talk about last is  
5 sort of intersection of FDCPA and FCRA, and it deals  
6 with the issue of accounts that are reported to the  
7 consumer reporting agency prior to a consumer knowing  
8 that a debt collector or a debt buyer has the account  
9 for collection. One of the proposals, specific  
10 proposals, that's been raised is a proposal that the  
11 debt collector, debt buyer, should delay reporting until  
12 after the expiration of the initial 30-day notice under  
13 the FDCPA.

14 The first question I want to ask relates to the  
15 credit user industry, in other words, the credit  
16 issuers. You know, what effect would that have, sort of  
17 delaying by 30 days the reporting of accounts that are  
18 sent to collection, on the data that credit issuers rely  
19 on?

20 MS. BRESLAW: Obviously everyone wants the most  
21 accurate and current information possible, so I think  
22 that that, you know, would have -- it's only 30 days,  
23 but I think that it would have some degree of  
24 impairment, I guess, on the ability to make accurate  
25 credit decisions.

1           I guess my own view is that, on balance, if  
2           there was a serious consumer problem with that, that  
3           might outweigh the concern that creditors might have  
4           with it.

5           MS. KUEHN: I want to throw this to Don and  
6           Mike, because this is a proposal that would affect  
7           obviously your industry. So, the specific proposal is  
8           to say once you send the 30-day notice, but you can't  
9           actually report on the debt until after that period has  
10          expired, you know, is that something that -- you know,  
11          what kind of impact would that have?

12          MR. REDMOND: Well, I think it's a bad idea for  
13          the credit economy overall. I mean, our credit economy  
14          depends on accurate reporting. If people have debts  
15          that aren't showing up on their credit reports, that's  
16          not accurate. I agree, it's only 30 days, so the  
17          prejudice that would result may not be huge, but I think  
18          in the end, credit reporting is not about helping people  
19          or hurting people or anything of the like. It's about  
20          being able to make -- for future credit grantors to be  
21          able to make good decisions based on accurate  
22          information, and I think the credit reporting system is  
23          going to work the best when the information is as  
24          accurate as it can be.

25          So, if people have debts that shouldn't be on

1 their credit report, that's not accurate, that's a bad  
2 idea, but if they have debts that aren't showing up on  
3 their credit report, that's a bad idea, too. So, I  
4 think, on balance, I don't think it's a great idea.

5 MS. KUEHN: I am going to let Mike jump in  
6 before you, Ian. I see you're ready to go.

7 MR. TORMEY: One last thing that I would add to  
8 that is I would think that we would see a further  
9 chilling effect in the housing market, that particularly  
10 in the C&D level paper, where marginal buyers are trying  
11 to get into the housing market, that 30-day delay in  
12 accurate information on a credit report could really  
13 have an adverse effect on that market, which, frankly,  
14 doesn't need any help right now.

15 MS. KUEHN: Ian?

16 MR. LYNGKLIP: This goes directly to a practice  
17 that we -- you know, we see time and time again, which  
18 we refer to as parking the debt on the consumer's  
19 report. One of the most important concepts behind the  
20 entire FDCPA is this notion that the consumer has got an  
21 ability and a right to dispute this debt, and so, when  
22 they do dispute these debts, to get the debt collector  
23 to take a look at whether or not this debt is valid in  
24 toto or whether it just is to some of the amounts that  
25 they are being requested that they pay.

1           The problem that we see over and over again is  
2           that debt collectors will park these items on the  
3           consumer's report without ever sending the validation  
4           notice, and so we see items on the reports for months  
5           and years at a time before there's any contact with the  
6           consumer, and the consumer does not have the ability,  
7           does not have even the right to invoke the rights under  
8           the Act to dispute the debt. The G-notice doesn't go  
9           out, because the debt collector is not communicating.

10           And what's happening is that -- this is a  
11           practice of report first, validate much, much later, and  
12           what we're talking about is, you know, a very, very  
13           limited period, and, in fact, you're raising what is  
14           effectively a strawman, which is that, oh, somehow or  
15           another this item is going to come off the report for  
16           the 30 days, and the credit granting community is going  
17           to be completely deprived of this data. Not so.

18           I mean, you can provide in your agreements for a  
19           time of reporting. You can provide your buy/sell  
20           agreements for these portfolios, that the original  
21           creditor or the other debt buyer from whom you are  
22           acquiring this debt will continue their reporting of  
23           this item, and, in fact, we see them doing it anyways.  
24           I mean, that's what we just talked about, that these  
25           items continue on the report and there is no obligation

1 for them to actually remove it.

2           These items can persist on the report during the  
3 validation period but should not do so under the new  
4 debt collector or new debt buyer's trade line until they  
5 have validated this debt or at least given the consumer  
6 the opportunity. The relevant trigger on the FDCPA is  
7 the first communication with the consumer, and if that  
8 communication doesn't ever occur, then this item can  
9 stay on the report for, you know, for a very long time  
10 under the current statute.

11           MS. KUEHN: So, something akin to the negative  
12 information notice, for example, that's required of  
13 creditors prior to providing negative information on a  
14 consumer report.

15           MR. LYNGKLIP: Absolutely, but at the very  
16 least, even if we don't say you can't report during the  
17 validation period, and I think that that would be --  
18 that that is not, you know, what the FDCPA reflects  
19 currently, at least if there's going to be reporting,  
20 there should be the opportunity for the consumer to  
21 dispute, have that be a trigger, which is permissible,  
22 to allow the consumer to dispute.

23           So, once a debt collector decides that they're  
24 going to send this information onto the bureau, they  
25 should be required to send out some kind of a notice

1 that allows the consumer to activate their rights under  
2 1692-G.

3 MS. KUEHN: Mike, you have got the microphone.

4 MR. TORMEY: Yeah, I do. In the real world out  
5 there, I don't know of any collector that would choose  
6 not to send a notice to a consumer upon the assignment  
7 of a debt. We're asking for payment. And if we don't  
8 want to get paid, sure, we won't send the notice, but  
9 that's kind of silly. The point is is that we will send  
10 that notice, and I believe in Colorado -- Laura Udis I  
11 think is in the room, she may tell me whether I'm right  
12 or not -- I think we're required to send that notice  
13 within five days of the assignment of the debt, and so  
14 no one would just park the debt on a guy's credit report  
15 hoping that somehow they'll be turned down for credit  
16 and they'll come looking to you to make the payment.  
17 You won't represent your client very long if you do  
18 that.

19 MR. REDMOND: Well, you just said stuff can get  
20 on somebody's credit report, and I don't know where the  
21 word "parking" came from, but it will get on somebody's  
22 credit report and a notice won't go out for years.

23 Well, who --

24 MR. LYNGKLIP: Or ever sometimes.

25 MR. REDMOND: -- who would do that? Who would

1 do that, do a debt and never try to collect it?

2 MR. LYNGLIP: A collector who is collecting a  
3 debt that is less than \$100 and doesn't want to spend  
4 the money on a stamp when only paid 37 cents for the  
5 debt, that's who, and that's where we see it most  
6 commonly in the context of, with all due respect, for  
7 medical debts for a single blood test where there's a  
8 \$57 debt or where there's an outstanding check.

9 Small debts are a prime target of that, and  
10 certainly when you're dealing with a large debt, a  
11 \$40,000 debt or a credit card debt of some kind,  
12 absolutely, the debt collector needs to make contact and  
13 needs to try and get out there and talk with the  
14 consumer, find out whether arrangements can be made,  
15 whether they intend to pay the debt, to do what is  
16 appropriate to get that debt paid.

17 MS. KUEHN: And it is only when the consumer is  
18 applying for credit years down the road that they  
19 discover that this account has been reported.

20 MR. LYNGLIP: Well, there are -- I see that  
21 time and time again for some of my consumers. I see it  
22 for -- for others, you know, it may be just that they've  
23 gotten their regular annual free credit report,  
24 something like that.

25 MS. KUEHN: I was going to mention that. Thank

1 you for bringing that up.

2 MR. LYNGKLIP: You know, these things turn up in  
3 the oddest ways, but we do see consumers coming to our  
4 offices, and it may be that simply the debt collector  
5 has not actually effectively skiptraced them and found  
6 them, the consumers have not received a notice. Now,  
7 that may not necessarily be a situation where you didn't  
8 send the G-notice, but we see consumers regularly  
9 showing up at our offices with items on their report  
10 that they've never received contact from a debt  
11 collector, most frequently with very small debts that  
12 would not merit sending a notice and invoking an entire  
13 FDCPA compliance protocol under 1692-G.

14 MS. KUEHN: Well, it doesn't sound like, at  
15 least with respect to our panelists, that's a practice  
16 that they're familiar with and or with the debts that  
17 they handle.

18 MR. REDMOND: I just don't know why anyone would  
19 not try to collect the debt they have, and so the idea  
20 that somebody would park a trade line without trying to  
21 collect the debt just doesn't sound logical to me.

22 MS. KUEHN: So, at least with respect to the  
23 debts that you guys are involved with, an initial notice  
24 is going out, you guys are making that attempt to  
25 collect, and so the consumers are at least aware of your

1 existence, that you have the debts.

2           You know, with respect to, you know, there are  
3 collectors who are reporting on debts but who choose for  
4 whatever reason at the time being not to collect on a  
5 debt or they're waiting until a consumer's credit has  
6 improved before attempting to collect on a debt, you  
7 know, what's your view of a requirement, similar to the  
8 negative information notice, that would at least  
9 require, at the bare minimum, letting a consumer know  
10 before any reporting is done on them?

11           You know, obviously I'm not sure it would  
12 greatly affect you as much, because you are already  
13 sending the initial notice, but is that something  
14 that -- you know, do you see any downsides or pitfalls  
15 to that?

16           MR. TORMEY: I do in one particular case. Let's  
17 say we received an account from one of our clients  
18 today, and when we put it into our database, we have  
19 seven or eight other accounts that have already been  
20 assigned, and the address that this client has given us  
21 is an address we know to be bad. We know that we can't  
22 find this person. This is already in a skiptrace  
23 situation.

24           Now, if we're prohibited from reporting that  
25 information until we can actually make a bona fide

1 attempt at validation, you could put that information  
2 out there in limbo land for a long time and would deny  
3 credit grantors accurate information.

4 MS. KUEHN: And the person could be -- you know,  
5 and that was an issue that was discussed on the last  
6 panel, to be able to sort of trace the right consumer  
7 and give notice to them, you may not actually be able to  
8 get notice to them, you know, if they've moved, if  
9 they've changed addresses, and you haven't been able to  
10 locate them.

11 MR. TORMEY: True.

12 MR. LYNGLIP: But that assumes that the  
13 requirement would be that the consumer receives it, you  
14 know, it's simply addressed by providing that the notice  
15 has to be sent to the best available address. I mean,  
16 once you've provided for that, then, you know, you can  
17 send the notice. Send the notice and start your  
18 reporting. And if you get no -- and if the consumer  
19 contacts you later and says, by the way, I see on my  
20 report, and they're talking with you, and now we've got  
21 a G-notice as a backstop to provide you with the  
22 opportunity to validate that debt.

23 MS. KUEHN: Well, guys, I am going to wrap this  
24 up, because we started a few minutes early, and say  
25 thank you to this panel. It's been very lively. The

1 questions have been great. Thank you so much.

2 (Applause.)

3 MR. KANE: Thank you very much, Becky and  
4 panelists. I want to say, we are going to extend lunch.  
5 Instead of an hour, we are going to make it an hour and  
6 15 minutes, but we are still going to end today at the  
7 same time. So, if you all would get back by 1:30 rather  
8 than 1:15, we will need to start promptly at 1:30.  
9 Thank you very much. Enjoy your lunch.

10 (Whereupon, at 12:15 p.m., a lunch recess was  
11 taken.)

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AFTERNOON SESSION

(1:32 p.m.)

DEBT COLLECTION LITIGATION:

CURRENT ISSUES

MR. KANE: Thanks for coming back from lunch.  
We'll get started now.

This first panel this afternoon will examine collection litigation practices that have caused concern among consumers as well as potential responses to these concerns, and our moderator will be Reilly Dolan. He's an Assistant Director in the Division of Financial Practices.

Reilly?

MR. DOLAN: Thank you, Tom.

Well, as I sat here for the last day and a half I kind of felt that my panel was being touted as the be-all and end-all I hope that I can live up to those expectations.

I want to introduce our panelists and quickly identify the topics we're hoping to cover today, and as you've heard throughout the day, if you have questions, if you write them on the cards, we have people walking around to collect those and hand them to me, and I will try and fold them into the flow of the conversation where appropriate, and if they don't quite fit into the

1 flow of conversation, I'll see if there's time at the  
2 end.

3 This whole panel was scheduled to go to 2:30.  
4 Because we extended the lunch to an extra 15 minutes, I  
5 am going to extend this panel, keep its original time  
6 slot, just shift the whole panel by 15 minutes, so that  
7 we should be ending by 2:45.

8 The panel includes, to my immediate left, Lynn  
9 Drysdale. She is a consumer protection attorney with  
10 the Jacksonville Area Legal Aid, where she represents  
11 consumers through litigation and legislative advocacy.  
12 She has provided testimony to the Federal Reserve Board,  
13 the U.S. Senate, as well as state and local authorities,  
14 and she is a member of the National Association of  
15 Consumer Advocates.

16 To Lynn's left is Roger Haydock, who is the  
17 Managing Director of the National Arbitration Forum and  
18 a professor of law at the William Mitchell College of  
19 Law. He has taught dispute resolution and consumer law,  
20 among several other topics, and he has extensive  
21 experience as a lawyer, a mediator, and as an arbiter.  
22 He has practiced as a consumer lawyer with the Southern  
23 Minnesota Legal Services and is of counsel with Robins,  
24 Kaplan, Miller & Ciresi. And I apologize if I butchered  
25 that name.

1 MR. HAYDOCK: I'm not one of those.

2 MR. DOLAN: Next we have Steve Fritts, who is a  
3 29-year veteran of the FDIC. His responsibilities have  
4 included corporate functions, including safety and  
5 soundness supervision, bank resolutions, and consumer  
6 protection compliance, and he was appointed as the  
7 associate director for risk management policy in July  
8 2002 within the FDIC's Division of Supervision and  
9 Consumer Protection.

10 To his left should be Bob Hobbs, who is the  
11 Deputy Director of the National Consumer Law Center. He  
12 specializes in Fair Debt Collection law, and all I'm  
13 going to say is he seems to have a lot of publications  
14 on the topic. If you want the specific publications,  
15 they are in the biographies that are in the materials.  
16 Mr. Hobbs also is the former Treasurer of the National  
17 Association of Consumer Advocates and a former member of  
18 the Federal Reserve Board's Consumer Advocacy Council.

19 To his left is Manny Newburger, who is the  
20 president of the Fair Debt Consultants, LLC and the law  
21 firm Barron, Newburger, Sinsley & Wier. He and his  
22 attorneys in the firm have represented creditors,  
23 collection agencies, debt buyers, and law firms in  
24 FDCPA-related cases in a number of states. He also has  
25 a fairly large number of publications to his credit.

1           Finally, last but not least is Adam Olshan, who  
2           is a partner with the Law Offices of Howard Lee Schiff,  
3           located in Connecticut. He also is licensed to practice  
4           in New York, Massachusetts, and New Hampshire,  
5           collecting consumer debt for a variety of national  
6           clients, including financial institutions, health care  
7           providers, debt purchasers, utility providers, retail,  
8           and student loan providers. He is the Past President of  
9           the National Association of Retail Collection Attorneys  
10          and is the founder of the Connecticut Creditor Rights  
11          Attorneys Association.

12           The one thing that I would like to remind each  
13          of the panelists is that to the extent possible,  
14          identify if you are representing the views of your  
15          particular organizations or if they're your personal  
16          views, just so we have a sense when we reculling through  
17          the record what your comments are relating to.

18           The four topics we were hoping to reach today --  
19          and I do think that there's a lot to cover, so, again, I  
20          apologize to the extent that there may be more depth  
21          that we could get into in any particular one, but in  
22          essence, to try and reach all four with anything more  
23          than a cursory look, some depth may need to be  
24          sacrificed -- include garnishment of federally protected  
25          funds; litigation to collect on time-barred debt; the

1 abuse of the court process, focusing specifically,  
2 although not necessarily entirely, on the use of the  
3 default mills; and finally, mandatory arbitration.

4           What I am hoping to do is to be able to dig a  
5 little bit deeper than some of the topics that may have  
6 already been addressed earlier in the workshop, but I  
7 also want to avoid going down any rabbit holes. We've  
8 heard a lot of broad, many times subjective perspectives  
9 as to the prevalence of some of this conduct. By  
10 analogy, I would say that over the last day and a half,  
11 some people believe that the ice caps will be melting  
12 tomorrow, and others believe that the ice caps will be  
13 covering the entire globe by tomorrow. My suspicion is  
14 that it is somewhere in the middle, so in discussing the  
15 topics that we're going to discuss today, I'm asking the  
16 panelists to give, to the extent possible, some sort of  
17 objective perspective rather than just the subjective  
18 "we're doomed or we're saved" kind of prognostications.

19           Moving on to the first topic, garnishing exempt  
20 income, Adam, can you give like a 60-second synopsis of  
21 the garnishment process, realizing that it does differ  
22 state to state?

23           MR. OLSHAN: Absolutely, and my comments would  
24 be as Past President of the National Association of  
25 Retail Collection Attorneys.

1           Essentially the state level or state court judge  
2 enters against a consumer. Once a judgment enters,  
3 generally speaking, because laws do vary from state to  
4 state, the judgment creditor is then able to levy a bank  
5 execution against the consumer's bank account. The  
6 plaintiff will apply to the court for an execution  
7 order. They will get the order back from the court.  
8 They will send it to a marshal. The marshal will then  
9 go to a bank and serve it on the bank. The bank will  
10 then, pursuant to state statute, review their records to  
11 see if this individual has any account with their  
12 organization. If so, pursuant to the state statute,  
13 they'll freeze the funds. That's generally how a bank  
14 execution order works in our country currently at the  
15 state level.

16           MR. DOLAN: What evidence or support is the  
17 local clerk of court looking for when signing that order  
18 of garnishment?

19           MR. OLSHAN: These are general questions,  
20 Reilly, because, again, it will vary from state to  
21 state, but generally when the judgment creditor applies  
22 to the court for a bank execution, the court clerk will  
23 confirm that the application filled out by the plaintiff  
24 is accurate, the judgment information has been entered  
25 accurately, that the judgment date is there accurate.

1 If so, the application will be approved and sent back to  
2 the attorney for levying by marshal.

3 MR. DOLAN: Perhaps or most likely a rhetorical  
4 question, but is there any inquiry by the clerk's office  
5 about the likelihood that there may be federally  
6 protected or even state protected funds within the  
7 accounts that you're seeking to include in your  
8 garnishment order?

9 MR. OLSHAN: Well, there's not, and I think the  
10 reason not is because the clerks in the court know that  
11 where the attorneys do send interrogatories  
12 post-judgment to the consumer, that we get them back  
13 next to never. So, I have personally attempted  
14 projects, if you will, where I've sent certified  
15 post-judgment interrogatories to judgment consumers,  
16 asking whether they have exempt funds, and if so, where,  
17 and the rate of return was far less than 1 percent. So,  
18 I believe that the court clerks recognize and understand  
19 that that's the case. So, for the attorney, it's not  
20 likely that they'll be in a position to know whether  
21 there are exempt funds.

22 MR. DOLAN: To Lynn or Bob, how prevalent is the  
23 garnishment of federally protected funds based on your  
24 experience in your organizations?

25 MS. DRYSDALE: I can tell you that in my office,

1 and this is in Florida -- and I want to thank you for  
2 the opportunity to speak today -- I can tell you that in  
3 my office that I represent an awful lot of the elderly  
4 people, pensioners, veterans, and disabled people, and I  
5 have to tell each and every one of them that if they  
6 have a judgment against them, then their bank account  
7 will likely be garnished.

8 I have to tell them, also, that their funds are  
9 exempt from garnishment, but that doesn't necessarily  
10 mean that they're not going to be without their funds  
11 for rent, medicine, as long as they've got a bank  
12 account, which most of them are required to do to get  
13 their benefits. Then if they have a judgment, their  
14 assets are going to be frozen.

15 MR. DOLAN: Bob, do you have anything to add to  
16 that?

17 MR. HOBBS: It's an area of a great deal of  
18 complaint from legal services offices across the  
19 country, and I could not quantify it, but I think that  
20 the question is really not the right question. I think  
21 if there's one grandmother out there who's losing all of  
22 her assets for two weeks, that that's one too many.

23 MR. DOLAN: You may have actually bled right  
24 into the very next question, which is what is the injury  
25 resulting from a consumer whose funds are temporarily

1 frozen?

2 MR. HOBBS: So, there's a recent decision by the  
3 Seventh Circuit that dealt with the situation where the  
4 debt collector was told before they obtained the  
5 judgment that the consumer was disabled. They were told  
6 at the point after the judgment that the consumer was  
7 disabled and was on disability, which is a nickname for  
8 a type of Social Security. Usually the person who's  
9 receiving disability will often be receiving less than  
10 \$1,000 a month on which to live, and that disability was  
11 then frozen for two weeks before it was released when  
12 both the collection attorney and the consumer showed up  
13 in court.

14 The court said that that was not unfair under  
15 the Fair Debt Collection Practices Act, but maybe the  
16 Federal Trade Commission could act, and I hope they do.

17 MR. DOLAN: Lynn, do you have something on that?

18 MS. DRYSDALE: Well, also, in my -- when I  
19 advise people that that's going to happen, I also tell  
20 them to write the plaintiff's attorney a letter and to  
21 put in the letter that the only income that they receive  
22 is Social Security, if that's the case, that the only  
23 money in their account is the Social Security benefit.  
24 Oftentimes, when the writ of garnishment is issued and  
25 the bank is frozen, we will go into the court file and

1 the fact information sheet, which they're required to  
2 fill out in Florida, is filled out, and that information  
3 is contained in the court file, and yet their funds will  
4 be garnished because it's being done by a firm that  
5 handles thousands and thousands of cases, and they don't  
6 have time to check on this before they go through their  
7 routine procedure of obtaining the writ of garnishment  
8 through the clerk's office.

9 MR. DOLAN: Adam or Manny, in your experience on  
10 the other side, how frequent are accounts with federally  
11 protected funds being garnished?

12 MR. OLSHAN: Well, Rob, if I'm thinking of the  
13 same Seventh Circuit case you are, I'm not certain, but  
14 in that case, I don't believe the attorney had actual  
15 knowledge that the funds were exempt ahead of time.

16 But to answer your question, Reilly, the  
17 collection attorneys currently don't have any way of  
18 knowing whether or not there are exempt funds in the  
19 account. As a result, we will apply for bank  
20 executions. I agree with Lynn, that in many instances,  
21 unless we have a place of employment and we're allowed  
22 to attach wages -- in Florida, head of household, we  
23 can't, other states we can't, but generally we can, and  
24 unless the defendant is making payments voluntarily, we  
25 will in many cases attempt the bank execution.

1           If we know for a fact that the judgment  
2 defendant has no ability to pay outside of exempt funds,  
3 then generally -- and a lot of what I say will be  
4 industry norm -- I know that NARCA attorneys will not,  
5 as a general matter, attach bank accounts where they  
6 know for a fact that there's nothing in that account but  
7 exempt funds, but frankly, we just don't know that a  
8 lot.

9           So, my answer, Reilly, would be that it is  
10 happening, and when it does happen and the consumer,  
11 through personal responsibility, lets us know and  
12 demonstrates to us that those funds are exempt, that  
13 generally the attorneys will release the funds right  
14 away and not go to a hearing.

15           MR. DOLAN: You had commented that in many  
16 cases, you posit that the attorneys do not know. Are  
17 there any particular factors that attorneys should be  
18 considering, such as, for instance, the age of the  
19 debtor, which most likely, if they're of a certain age,  
20 Social Security is going to be their primary if not only  
21 source of income? Are any of those kind of factors that  
22 attorneys are or if not should be considering when  
23 deciding whether to proceed with a garnishment order?

24           MR. OLSHAN: I believe there might be certain  
25 situations where a judgment defendant is perhaps

1 elderly, ill, in a nursing home, these sort of  
2 scenarios, where the file is and should be simply closed  
3 without proceeding to the next levels; however, simply  
4 because someone is elderly doesn't mean that they have  
5 funds that are unattachable. So, I wouldn't agree that  
6 when someone hits a certain point of age, that a bank  
7 execution is no longer a desirable remedy.

8 MR. DOLAN: Manny, do you have anything to add?

9 MR. NEWBURGER: Well, I can tell you that --  
10 actually, first of all, I would like to thank the  
11 Commission for inviting the Commercial Law League to  
12 send me. I have defended lawyers in Fair Debt matters  
13 across the country, and in all the time I have done that  
14 work, I have had exactly one case where a lawyer was  
15 accused of garnishing exempt funds, and it wasn't Social  
16 Security, and the plaintiff was trying to overturn a  
17 hundred years of case law to assert that the garnishment  
18 in question couldn't be done.

19 Now, I think we know it happens. If it didn't  
20 happen, people wouldn't be here. The question is, is it  
21 newsworthy because it's news because it happens rarely  
22 or is it newsworthy because it's happening a lot and it  
23 shouldn't? And I can only tell you as an attorney who  
24 defends law firms, I'm not seeing clients sued very  
25 often for that particular type of conduct.

1           MS. DRYSDALE: Reilly, just one response. I  
2 think the problem is that your question presupposes that  
3 you have an attorney that is paying attention to each of  
4 these thousands of files that are being processed, and  
5 that's not normally the case. That's not what we're  
6 seeing.

7           Instead, you've got the attorney who is aware of  
8 the federal laws which make these funds exempt, and they  
9 also have the tools to determine what the funds are, but  
10 instead, they're going through the process, and then  
11 when the debtor does file an affidavit to unfreeze the  
12 accounts after checks have been bouncing and rent is not  
13 paid, then they will file affidavits saying that the  
14 funds are not protected and require the consumer to go  
15 to a hearing, and that's what we're seeing on a routine  
16 basis, because they're not being handled on a case by  
17 case. They're being handled by mill firms that don't  
18 pay that much attention.

19           MR. DOLAN: Slightly jumping ahead of me, thank  
20 you for having that at least out there as a placeholder,  
21 but I did want to quickly pull us back to Steve to  
22 discuss, from the banking side of things, at least, as  
23 the banking supervising agency side of things, at least  
24 one commenter has argued that banks should not honor  
25 garnishment orders if the account has protected funds,

1 and the FDIC and I believe the OCC along with the FDIC  
2 recently issued proposed guidance that would at least  
3 try and address some of the concerns and potential  
4 consumer injury from these types of orders when  
5 federally protected funds are involved.

6 Can you, for the record, kind of say what the  
7 guidance is, what's the status of the guidance?

8 MR. FRITTS: Sure, I'd love to, thank you.

9 I would say this: While there isn't good data  
10 on this issue, what we hear from a lot of different  
11 sources is that it is a growing problem --

12 UNKNOWN SPEAKER: Mike?

13 MR. FRITTS: Whoops, I'm sorry.

14 UNKNOWN SPEAKER: Bring it closer.

15 MR. DOLAN: The green light should be on. Just  
16 need it pretty close.

17 MR. FRITTS: Thank you for the opportunity.

18 What we hear, and data is very difficult to come  
19 by, that this is a growing issue, and it's a growing  
20 problem, and what we can determine from a factual  
21 standpoint is that typically this is happening, don't  
22 have any good data on how often it's happening, and that  
23 the process in and of itself causes a good deal of the  
24 hardship on the consumer. It's where the state law and  
25 the federal law intersect, and it doesn't intersect at

1 least very nicely in many cases, and it does put both  
2 the consumer, especially, and the financial institution  
3 in a tough place in trying to resolve that intersection  
4 of the law.

5 And we and the other agencies on September 28th,  
6 we issued proposed guidance for comment, we and all the  
7 federal banking agencies, and basically there were two  
8 pieces to that guidance. We identified nine best  
9 practices that while we don't believe those will  
10 necessarily totally solve the problem, they certainly  
11 can go a long way to minimize the hardship on the  
12 consumer, and the second piece of that issuance in the  
13 Federal Register was asking some specific questions of  
14 the public, both of the industry and other interested  
15 parties, as to gather more factual information as to how  
16 the process intersection works or doesn't work.

17 MR. DOLAN: Stupid question: Why do banks just  
18 not honor the orders?

19 MR. FRITTS: I'm sorry --

20 MR. DOLAN: I am trying to bring it down to the  
21 very base level of why the banks are even in that  
22 difficult position, because someone will say, "Well, the  
23 banks should just not honor the order," and then there's  
24 no -- it's a difficult position for the bank.

25 MR. FRITTS: Well, I think there are two or

1 three issues there that make it complex. One, they may  
2 not know themselves whether the funds are exempt. Two,  
3 the funds may be commingled. And three, the order may,  
4 on its face, be unclear as to the scope of it. And the  
5 last piece is -- and I think this is the most difficult  
6 piece of the intersection, and I think where the legal  
7 uncertainty is -- is it a absolute bar and who enforces  
8 that bar from an enforcement standpoint, or is it an  
9 affirmative defense on the part of the consumer? And I  
10 think -- I'm not a lawyer, but our lawyers and other  
11 federal banking agency lawyers tell us that's a still  
12 somewhat murky issue.

13 MR. DOLAN: Bob?

14 MR. HOBBS: I would like to say there's a  
15 pending class action in the Southern District of New  
16 York that has to do with the legality of banks freezing  
17 Social Security accounts, and there's banks who are  
18 defendants in that suit, and they are fighting a final  
19 judgment in that case.

20 On the other hand, there's numerous banks in New  
21 York City which do say their policy is not to freeze  
22 Social Security accounts. So, some banks seem to be  
23 able to identify which accounts are Social Security, and  
24 it's information which moves electronically through the  
25 banking system, is my understanding.

1           MR. DOLAN: Adam, I notice that you want to say  
2 something here, and I'm going to ask you, but I also  
3 then want you to respond to my very next question, which  
4 is, what are the obligations on the attorneys and the  
5 obligations on consumers in dealing with the threat of  
6 garnishment, the actual garnishment, post-garnishment?

7           MR. OLSHAN: Okay. The attorney's obligation is  
8 to collect debt fairly. That's an obligation that all  
9 attorneys owe to their state supreme courts due to the  
10 fact that they hold a license to practice law.

11           As such, the attorney -- where the attorney  
12 knows for a fact that funds are exempt, in my opinion  
13 and the opinion of NARCA colleagues, those are funds  
14 that should not be intentionally attached. Where an  
15 attorney files a bank execution -- and bank execution --  
16 to answer your first question about why do banks do  
17 this, it simply goes to Fair Debt Collection.

18           When a state court enters a judgment against an  
19 individual, that order entitles the judgment creditor to  
20 a court order payment that should be honored. Where the  
21 defendant does not pay that, fairness dictates and the  
22 judgment plaintiff should have remedies whereby they can  
23 voluntarily get that judgment paid. A bank execution is  
24 one that goes back many centuries.

25           Where the attorney hears that funds are exempt,

1 I believe that they have an obligation to inquire of the  
2 judgment debtor more information. The judgment debtor  
3 certainly has an obligation to inform the attorney that  
4 funds are exempt. If the bank doesn't know that the  
5 funds are exempt, the attorney certainly can't know.

6 My opinion is that the judgment debtor has an  
7 obligation to communicate that. Where the attorney gets  
8 this information, they should then investigate it, and  
9 if they determine through receiving bank statements or  
10 whatever information they get that those funds are, in  
11 fact, exempt and there's no question of commingling,  
12 then in that case, the matter should be released, and I  
13 don't believe the consumer should need go down to a  
14 hearing. That should happen very quickly.

15 MR. DOLAN: Does anyone else have anything to  
16 add, because I want to move on to the next set of  
17 topics. Hearing none, we shall continue.

18 One of the other major issues that has been  
19 raised throughout the last day and a half is the threats  
20 of suit or actual suits on time-barred debts, and just  
21 kind of for laying the ground work, generally there are  
22 state statutes. They vary throughout the states -- some  
23 are fairly short, some are fairly long -- that prohibit  
24 filing lawsuits to collect on debts at some point under  
25 the statute of limitations. In some states, it is a

1 total ban; others raise it as an affirmative defense.

2 The first question I have -- and I am going to  
3 throw this out to Manny, Adam, Lynn, and Bob, and I  
4 guess I'll start with Bob this time and then move on --  
5 is what is the consumer injury for filing a lawsuit on a  
6 time-barred debt? Assuming that it is the correct  
7 consumer and the correct amount on the debt, the only  
8 issue is statute of limitations has expired?

9 MR. HOBBS: Well, the problem is is the debt  
10 reaches a stage where it's stale, and particularly when  
11 you're talking about people who are lower income, they  
12 don't have an attic where they can store their bills for  
13 10 or 20 years, and the records that the debt collector  
14 has may be no longer in existence, and so society has  
15 said -- so, that's one policy, is debts that get old are  
16 less acceptable to proof.

17 The other problem is how long a person is asked  
18 to engage in paying back a debt that they can't afford,  
19 and we have policies in place that try to make this the  
20 country of hope and opportunity rather than the country  
21 of perpetual despair. I'm reminded of the popular song  
22 when I was a child where the refrain was, "I owe my soul  
23 to the company store."

24 In Massachusetts, if you get a judgment on a  
25 debt -- and consumers are never represented on debt

1 collection matters in Massachusetts courts -- that  
2 judgment is good for at least 20 years, and if the  
3 judgment creditor goes in at 20 years, it's perpetual.  
4 It earns 12 percent interest each year, which means  
5 that's doubling every, what, six years? And I think  
6 that part of what the business that's going on now is  
7 creating perpetual debt, and people should be paying  
8 their debts, but people also need, at certain points, a  
9 fresh start or they are simply pressed down so hard that  
10 they give up hope.

11 MS. DRYSDALE: Well, I think I see three  
12 problems with suing on time-barred debts. One is the  
13 obvious, that if the consumer is not going to have proof  
14 of payment, they are not going to be able to provide any  
15 defenses to the debt that they would have previously  
16 had. The other problem I think is highlighted in --  
17 I'll give an anecdote which is very typical of what I  
18 see.

19 An 82-year-old veteran had come into the office,  
20 and he was on the beginning stage of dementia, and he  
21 had an account with Chase, and he had opened the account  
22 in 1999, and he had opened it to pay off three credit  
23 cards. So, it started out at about \$6,000. When they  
24 finally sued him in 2007, they sued him for over  
25 \$16,000. And generally, when I see the lawsuits, you

1 see that the card was a \$500 limit card, and the  
2 lawsuits are generally going to be for \$1,500 to \$2,000.

3 But in his particular instance, for I guess  
4 eight years, there had been an accumulation of  
5 over-the-limit fees, late fees. Chase had charged him  
6 with eight different products, including credit  
7 protection, life insurance, payment stoppage insurance,  
8 all different types of payment protection, credit  
9 reporting insurance. It sold him all of these products.  
10 So, for six or seven years, you had had this  
11 accumulation and ever-growing of debt that absolutely  
12 provided absolutely no benefit to the gentleman who was  
13 being sued.

14 During that time period, they had instituted an  
15 automatic withdrawal from his bank account every month,  
16 so every month, they were getting \$200 of his limited  
17 Social Security benefits while they were charging him  
18 for all of these junk charges, late fees, and  
19 over-the-limit fees. So, by the time they filed the  
20 lawsuit, he had paid back probably three times more than  
21 the actual amount at the beginning of the debt, yet he  
22 still owed \$16,000 on a \$6,000 debt. So, that's the  
23 other problem that you have on suing on debt that has  
24 just been sitting there accumulating over the years.

25 Also, I think there's a greater chance of suing

1 the wrong person. I know you wanted to limit our  
2 comments to people that owe the actual debt, so I'll  
3 save that comment if you prefer, but that is the other  
4 problem.

5 MR. DOLAN: You can go ahead and --

6 MS. DRYSDALE: Well, I know in one of the  
7 earlier panels today they were talking about skiptracing  
8 and about how reliable this was and it's a great  
9 resource for making sure that you're suing the right  
10 person. Well, I think that the longer you wait to sue  
11 someone, the greater chance you are going to have that  
12 you're going to sue the wrong person. I don't know how  
13 many times I've sat in my office with a client in front  
14 of me who is being sued on a debt.

15 I call the law firm, and we have about five or  
16 six law firms in Florida that file most of these cases,  
17 and I get one of the managing partners on the phone, and  
18 he says, "You know, I know that you work for Legal Aid  
19 and you don't have that many resources available to you  
20 and we spend a lot of money to make sure that we're  
21 suing the right person," and he went through this whole  
22 spiel about their whole skiptracing and all the efforts  
23 they took to make sure they were suing the right person,  
24 and he said, you know, "I know you're supposed to  
25 believe what your clients tell you --" and I hear this

1 all the time -- "but your client is a 40-year-old  
2 deadbeat that works for the Post Office and he just  
3 doesn't want to pay his bill."

4 I replied to him, "Well, if he's 40 -- if he's  
5 40 -- if he's 40 years old, he really didn't age well,  
6 because he's sitting across the table from me, he's 72  
7 years old, he's not presently working, he has never  
8 worked for the Post Office, and he doesn't have a common  
9 name. So, I'm telling you that I don't know how much  
10 you paid for the skiptracing, but it's not working."  
11 So, that's the other problem.

12 MR. DOLAN: That, again, raises kind of the next  
13 series of questions regarding time-barred debts.

14 MR. OLSHAN: Reilly, if I could just speak  
15 briefly? It's unfair to an extent to discuss these sort  
16 of anecdotal stories where the collection attorney isn't  
17 here to answer for that, and I understand that anecdotal  
18 discussion has a time and place, but I just wanted to  
19 make that point.

20 MR. DOLAN: Well, that actually -- that does, as  
21 I was about to say, bleed into, from your perspective,  
22 you and Manny, what are the obligations of the attorney  
23 in deciding whether to proceed with a case that may or  
24 is known to be beyond the statute of limitations?

25 I realize that Lynn's example was raising other

1 issues because it was raising the skiptracing, but it  
2 does -- bringing it back to this topic, it does deal  
3 with -- you have a client who comes in with a case, says  
4 I want you to go sue this person, and what is your  
5 obligation as a lawyer?

6 MR. NEWBURGER: Well, you know, that's really  
7 such a great question. It goes to the heart of what  
8 I've been listening to hearing my clients take shots for  
9 the last day and a half. I represent debt buyers, I  
10 represent attorneys, and I've heard esteemed adversaries  
11 on the other side of the consumer law docket talk about  
12 issues such as you just raised, documentation, due  
13 diligence, and investigation by the attorneys.

14 Now, when a consumer walks into a consumer  
15 lawyer's office and says, "The car dealer lied to me  
16 about the car," the consumer lawyer doesn't say, "I  
17 won't represent you or file your suit because you don't  
18 have a videotape of it or three witnesses." When a  
19 consumer walks into a consumer lawyer's office and says,  
20 "The bill collector cursed at me," now, some of them  
21 will tell them what tape recording machine to get at  
22 Radio Shack and how to set it up and call back again and  
23 see if they can get them to repeat it, but for the most  
24 part, they don't turn down the case because there's not  
25 a recording and not three witnesses.

1           The people in this room, the debt-buying  
2 industry, the law firms, what are they getting their  
3 information from? They're not getting it from a pool of  
4 consumers who -- and I will answer the question  
5 earlier -- every minute of the day are denying owing  
6 money that they are established in court to owe. They  
7 are getting their information from nationally chartered  
8 banks, regulated by the United States Government,  
9 charged with keeping accurate records, required to  
10 maintain those records, and that is the source of their  
11 information, and those banks are representing to the  
12 debt buyers and the lawyers that this information is  
13 correct, that these are the people who owe the money,  
14 that this balance is the balance that was due at the  
15 time of charge-off, and they are relying on people  
16 regulated by the United States Government.

17           If there was a problem with that, part of the  
18 problem is the right people aren't here today, because  
19 the United States Government has decided that banks only  
20 need to keep records for two years. If you want to go  
21 in and get the Federal Government to change Reg Z, 12  
22 CFR 226.25, to say you have to keep the records for  
23 seven years and transfer them when you sell the debt, a  
24 lot of the complaints I've heard today may go away. But  
25 to criticize the people in this room for relying on the

1 information furnished by a federally regulated  
2 institution when the consumer bar does not hold itself  
3 to the same standards is deeply troubling.

4           And the answer is, no one in the collection bar  
5 is going to tell you that they should get to sue on  
6 time-barred debts if they've read the law. The policies  
7 of Adam's entire organization, the Commercial Law League  
8 of America, are lawyers don't sue on time-barred  
9 consumer debt. You asked what is the injury? There  
10 isn't any injury. If people were damaged by  
11 out-of-statute suits, you could sue for suing on any  
12 cause of action that was time-barred. The injury is we  
13 have a federal consumer statute that's been interpreted  
14 to say you may not do this with regard to consumer debt,  
15 and every prudent collection lawyer in the country  
16 reviews the file, reviews the data, looks at the  
17 information furnished, and does his or her best not to  
18 sue on a time-barred debt.

19           Are there people who screw up? Yes. Are there  
20 people who sometimes break the law because they don't  
21 read the law? Sure. But the majority of the industry  
22 works very hard to ensure they're not suing on  
23 time-barred debts.

24           MR. OLSHAN: Reilly, before the attorneys open  
25 their file, the attorneys will look at statute of

1 limitations information. The attorneys will look at the  
2 date the account was opened or the date that the account  
3 was last paid, the date that the account was charged  
4 off. This is information that is sent to the attorneys  
5 in the regular course of business either by the  
6 originator creditor or by a debt buyer client.

7 The attorneys do this because the FDCPA  
8 specifically states that one can't misrepresent the  
9 legal status of the debt. So, for us to threaten suit  
10 where the legal status of the debt is such that we can't  
11 sue, it would be misrepresentation, and our obligation  
12 and everyone's goal in this room, I would expect, is  
13 fair debt collection. So, for that reason, we don't  
14 support those suits.

15 MS. DRYSDALE: Can I just briefly respond?

16 MR. DOLAN: Sure.

17 MS. DRYSDALE: Just to briefly respond, I  
18 certainly didn't mean to infer that any entity that's  
19 regulated by the Federal Government would do anything  
20 wrong, and I would also say that to talk to the two  
21 gentlemen that have been my clients that I spoke of,  
22 generally, I speak of them because they're  
23 representative of many of my clients, and I don't think  
24 that they would agree that there has not been an injury.

25 Lastly, you speak about prudent business

1 practices. I don't know that with the type of review  
2 that you're talking about, from what my experience, fits  
3 into the business model of the mill firms that we're  
4 going against. They do not have the time, nor the  
5 attorney hours, to review each of the files for each of  
6 these cases that they're filing. If they are reviewing  
7 them, then it's not like any type of practice of law  
8 that I've ever been engaged in.

9 MR. DOLAN: Let me use that as a starting point  
10 to Adam and/or Manny. If an attorney is not reviewing  
11 the file with a level of detail that Adam was suggesting  
12 and they are filing a case knowing that it is  
13 potentially close, if not beyond, the statute of  
14 limitations, there have been some who have argued the  
15 statute of limitations, at least in many states, is an  
16 affirmative defense.

17 Is that attorney acting properly to say, "I'm  
18 going to bring that lawsuit and let the consumer raise  
19 it as an affirmative defense," because attorneys say  
20 affirmative defenses are waivable?

21 MR. NEWBURGER: I think the answer to that is  
22 no, it's not proper. The courts have spoken pretty  
23 clearly on that, and in my experience, most of the  
24 collection attorneys I encounter around the country have  
25 built that into their practices. They are trying not to

1 play games.

2 Keep in mind, statutes of limitations are an  
3 interesting discussion topic. One claim would be  
4 subject to multiple causes of action, depending on how  
5 it is pled. Statutes of limitations can be tolled under  
6 a variety of circumstances. But in terms of saying it's  
7 an affirmative defense, I'm going to ignore the statute,  
8 and it's the consumer's look-out to raise it, I think  
9 the federal courts have been absolutely consistent on  
10 that.

11 I see Bob nodding. I'd be interested in hearing  
12 if we have any disagreement, but I suspect we don't.

13 MR. HOBBS: I wish I could tell you the name of  
14 the defendant, but we're engaged in a class action now  
15 in the upper midwest against a collection agency which  
16 we believe is filing routinely time-barred suits. I  
17 think it happens. I don't think it's the best  
18 practices. I don't think probably anybody who's  
19 testified in this room who's in the business would be  
20 engaged in that business, but I think there are  
21 companies and there are employees who do violate the  
22 Fair Debt Collection Practices Act.

23 But we need to tailor the act so that it  
24 addresses the problem collectors and doesn't hinder the  
25 legitimate collectors, and that's the task, and we're

1 not trying to cast aspersions saying that what we're  
2 describing describes the entire industry, but it  
3 certainly describes what we need to take care of,  
4 because it hurts consumers.

5 MR. DOLAN: Let me twist the question a little  
6 bit. I have heard throughout the last day and a half a  
7 number of attorneys who have said it doesn't happen or  
8 it happens only in isolated instances, and the reason  
9 why is because I love my law license or I need my law  
10 license or whatever particular interpretation there is  
11 there, and the logical conclusion of that is the FDCPA  
12 doesn't need to address this issue; the state bar  
13 already addresses it.

14 The question that I want to have each of the  
15 four of you respond to is, is the state bar a  
16 necessary -- excuse me, an appropriate and efficient  
17 check on those attorneys that are not complying with the  
18 statute of limitations on time-barred debts or not  
19 complying with the case decisions that say that one  
20 should not be bringing an action to enforce a  
21 time-barred debt?

22 MR. OLSHAN: The state bar -- does that work?  
23 No. The state bar is certainly, unequivocally, an  
24 excellent actor to enforce that with regard to  
25 collection attorneys. I do love my license. Thanks to

1 my license, quite a few people are employed for the New  
2 England region, as well as with my law partners, and as  
3 I mentioned before, we have an obligation to collect  
4 fairly. All collection attorneys have that same  
5 obligation.

6 In this instance where -- I agree with Manny,  
7 where it's clear that there's an act that should not be  
8 taken, when we're cavalier about it, or as you put it,  
9 Reilly, if we cut close to the lines and take some  
10 chances hoping no one watches, I'll hear it from the  
11 judge, who is taking note; from the Attorney General,  
12 who is watching. I will place my license in jeopardy  
13 and my livelihood.

14 So, I believe that this is a perfect example of  
15 how there are state nuances around the country and how  
16 it's very relevant and important to let the state actors  
17 enforce these obligations which attorneys have.

18 MR. NEWBURGER: One other additional point apart  
19 from the state bar, there's the credibility with the  
20 courts. If I were talking to my law students about  
21 this, I'd be pointing out, this is your reputation with  
22 the judges before whom you practice. As Lynn points  
23 out, the attorneys of who she complains are in front of  
24 those judges all the time. If you're an attorney with a  
25 volume practice and you lose your credibility with the

1 judges before whom you appear, you have a problem in  
2 representing your clients and making a living, and that,  
3 too, is a pretty important check on the system.

4 MR. DOLAN: Bob?

5 MR. HOBBS: In connection with one of my  
6 publications, I used to routinely review the opinions of  
7 the state bar associations on ethical debt collection  
8 practices by lawyers, and I must say, I haven't done it  
9 in about 15 years just because there were so few  
10 decisions. I would not think that it would -- I would  
11 think the bar people might be responsive if there was a  
12 complaint filed, but I don't think there's many  
13 complaints filed.

14 MR. DOLAN: Lynn?

15 MS. DRYSDALE: I think that the state bars are  
16 definitely a valuable resource for regulating and for  
17 overseeing this, but I don't think that it's something  
18 that we should leave solely to the state bars to  
19 regulate.

20 Manny mentioned how the lawyers lose credibility  
21 when they practice this way in front of judges, but,  
22 again, the business model that we see in Florida is  
23 these lawyers aren't the ones that are actually going to  
24 court. They file the cases. We're in Jacksonville, in  
25 Northeast Florida. All of these firms are in South

1 Florida. They get some local attorney to show up,  
2 thinking that there won't be much to do, because it will  
3 just go by default and they can get their judgment. So,  
4 there is a real disconnect between the attorneys that  
5 are filing the lawsuits and the attorneys that are  
6 actually prosecuting them or acting as agents of the  
7 attorneys in other areas.

8 I think one thing we do have to make sure is  
9 that we -- if the -- for the Fair Debt Collection  
10 Practices Act, that we don't allow the litigation  
11 privilege to be broadened any further so that it  
12 precludes effective enforcement through that Act of  
13 these types of practices to save the consumers as well  
14 as those who collect debts in a more legal way.

15 MR. DOLAN: That definitely is jumping into the  
16 next topic, so I want to hold off on that.

17 Bob had mentioned that he was tracking opinions  
18 and gave up at some point. Adam, Manny, are you aware  
19 of any attorneys who have been sanctioned or disbarred  
20 for mistreating consumers in debt collection cases?

21 MR. OLSHAN: Well, yes, and -- thank you, Manny.

22 Yes, as a matter of fact, the Boston Globe  
23 series, which ran a year ago last summer, which I'm sure  
24 we'll talk about very shortly, was spawned by the acts  
25 of one Massachusetts collection attorney who lost a

1 license to practice law. I know of others as well over  
2 the years.

3           It was -- well, Rob was looking at me. There  
4 was one attorney in Massachusetts who committed such  
5 perceived bad acts that that series ran, and we'll leave  
6 it at that. I have seen it, and it's a very real  
7 remedy, and it's something that all collection attorneys  
8 think about every day as they build their practices.

9           MR. NEWBURGER: And I can confirm to you, a New  
10 York law firm, in Buffalo, in fact, one that I  
11 essentially shut down in Texas, because like the old  
12 defense, he needed killing, and there are people who  
13 need to be sued, was subjected to disciplinary action by  
14 the State Bar in New York. One of the lawyers  
15 surrendered his license. The other has been  
16 indefinitely suspended. And I will tell you that no one  
17 in this room that I know would endorse any of the  
18 conduct being perpetrated by those attorneys, but the  
19 bar did take action, and they're not practicing law  
20 anymore.

21           MR. HOBBS: I was just shaking my head because  
22 the fellow who was the debt collector and was  
23 highlighted as a person who was seizing cars of people  
24 to coerce payments was disbarred, but he was disbarred  
25 for cheating a creditor, not for cheating consumers.

1           MR. DOLAN: What remedies were available, if  
2 any, to the consumers who or the debtors who were being  
3 the other side of these particular attorneys that you  
4 were referencing? You said the attorneys were  
5 disciplined, but what happened to the consumers who were  
6 injured by their practices?

7           MR. NEWBURGER: Well, I know that a number of  
8 NACA members actually filed suit against the guys from  
9 Buffalo. Of course, now that they're disbarred, some of  
10 those judgments are going uncollected, but nevertheless,  
11 there were a fair number of lawsuits that were filed  
12 across the country against them.

13           I know of at least one bankruptcy case involving  
14 contempt sanctions for violating a stay. Truthfully,  
15 they were facing criminal contempt sanctions in my case  
16 when they decided maybe they'd quit collecting debts in  
17 Texas.

18           MR. DOLAN: One of the questions that came from  
19 the audience backs up to some points that Lynn was  
20 making. What is the average caseload of an attorney in  
21 a debt collection law firm? And kind of related to  
22 that, what is the average rate of default by defendants  
23 in these cases?

24           MR. OLSHAN: I'll pick that one up. The answer  
25 truly does vary from state to state, from firm to firm.

1 The industry is such now that, as Bob Markoff talked  
2 yesterday about, we're into the habit of not taking down  
3 trees unnecessarily. So, electronic information is  
4 passed from clients to attorneys every second through  
5 very secure channels.

6 The attorneys, whether they choose to  
7 meaningfully review or not, to some extent is their  
8 choice due to some recent case law; however, I know with  
9 NARCA, most attorneys will, in fact, meaningfully  
10 review.

11 Speaking to Lynn's point, I myself meaningfully  
12 review quite a bit of information, as do my partners and  
13 the attorneys in my office, and I think that's a norm  
14 within NARCA. As a result, we're able to view  
15 electronic information throughout the day in order to  
16 ensure that it meets our high standards.

17 Suits are filed later on if the consumer hasn't  
18 paid or entered into a payment arrangement which is  
19 substantial, but to answer the question pointedly, we  
20 will open up perhaps hundreds of files in a week  
21 pursuant to the electronic information available to us  
22 based on today's technology.

23 MR. DOLAN: What is "meaningful review" in your  
24 perspective?

25 MR. OLSHAN: Well, today what the attorneys do

1 is the attorney will take a look at the information sent  
2 electronically by the clients, and the attorneys will  
3 ensure that there is essentially a prima facie case to  
4 go forward, and by prima facie case, I'm referring to  
5 the name of the original creditor, the original account  
6 number, that there is either an open date, so that the  
7 attorney knows when the account was originally opened,  
8 or a last payment date or a charge-off date. This is  
9 information, I believe, that makes a case prima facie,  
10 and if it were to go before a court, on its face would  
11 be subject to a default judgment. So, attorneys who are  
12 meaningfully reviewing files are ensuring that, at a  
13 minimum, that type of information is there to proceed.

14 MR. NEWBURGER: And, Reilly, the difficulty with  
15 your question is it sort of assumes some facts as if the  
16 debts were identical. The answer may vary from type of  
17 debt to type of debt. If you've got a firm that  
18 collects bad checks, it could take a second and a half  
19 or less to view the front and back side of a check. If  
20 you were doing mortgage foreclosure, I would hope that  
21 the review would be fairly substantial. And so  
22 depending on the type of debt, the manner in which the  
23 data is translated, all that's going to affect it.

24 I'd give you a slightly different answer than  
25 Adam did, but I think it translates the same. An

1 attorney's review is meaningful when the lawyer is doing  
2 the things that the state bar disciplinary rules say  
3 that a lawyer has to do to be awake at the switch, and  
4 that means supervising your nonlawyer staff, putting in  
5 procedures to ensure that the suits you file are  
6 correct.

7 But lawyers rely on information furnished by  
8 their clients, rely on work done by their support staff,  
9 and to that degree, they're no different than any other  
10 professionals. You go to your doctor, the doctor  
11 doesn't weigh you, the doctor doesn't take your blood  
12 pressure, your temperature, your pulse.  
13 Paraprofessionals do that. The doctor walks in, reads  
14 the chart, and in 20 seconds tells you you've got the  
15 flu.

16 Lawyers rely on their staff to assemble the  
17 data, put the data together in a useful format so the  
18 lawyer can come in, look at it, and decide, is this the  
19 case we want to file? Is this one to which I want to  
20 sign my name?

21 MR. DOLAN: Lynn, response?

22 MS. DRYSDALE: To answer your earlier question,  
23 we see the major law firms, they're filing hundreds of  
24 lawsuits each month, and that's just in our city, and so  
25 if -- they work state-wide, so that it's easily

1 thousands of lawsuits each month. I would say that  
2 anywhere from 75 to 80 percent are going by default or  
3 going by the person showing up at the hearing and being  
4 told that this is the amount that they have to pay.

5 Usually -- and I'm limiting this to credit card  
6 cases -- all of them will use a form complaint. The  
7 form will not contain the date that the account was  
8 opened. It will not -- it will rarely provide the date  
9 that it was -- the date of default, and it will not --  
10 the complaint will not contain any signed document that  
11 has been signed by the defendant, and most of the time,  
12 it doesn't -- there's no attachment at all.

13 MR. DOLAN: We could spend who knows how much  
14 longer on this particular topic, and I need to move on  
15 because of the other two that we want to get to. The  
16 next one, and I am going to use a comment that I -- I  
17 apologize, I don't remember if Manny or Adam  
18 mentioned -- is looking to have prima facie evidence so  
19 that he can get a default judgment. Default judgments  
20 have, as a result of the Boston Globe article, become  
21 one of the lightning rods of debt collection practices  
22 employing litigation where, as the Boston Globe article  
23 was saying, that there are mills out there that  
24 basically just file lawsuits and get the default  
25 judgment and then move on from there.

1           What is the appropriate obligation of an  
2 attorney before filing a lawsuit as well as proceeding  
3 in that lawsuit? And the couple things I want you to  
4 focus on in answering it is two issues that we hear a  
5 lot about anecdotally are filing the lawsuit in one  
6 jurisdiction, but the consumer may not live in that  
7 jurisdiction and may be in a neighboring county;  
8 relating to that, sending a notice to one address, but  
9 when it comes time to serve the default judgment order,  
10 serving it on the corrected address; and the other issue  
11 has more to do with firms that file many lawsuits and  
12 get defaults, but as soon as the consumer walks in the  
13 door to contest it, they immediately drop the lawsuit.

14           MR. OLSHAN: Sometimes it's hard to speak to the  
15 anecdotes that have been shared over the past day and a  
16 half, as I know that a lot of the consumer organizations  
17 in the room have people walking in the door with very  
18 challenging stories, and the challenge is that  
19 oftentimes the consumer advocates aren't hearing the  
20 success stories where things worked well.

21           Generally speaking, the attorney with NARCA has  
22 an obligation to be fair, that when an attorney utilizes  
23 the power of the court, the attorney and the judge and  
24 all players involved need to ensure that the public  
25 trust is being advanced. That is our obligation. Our

1 obligation is Fair Debt Collection.

2 There is a unique power in utilizing the court;  
3 however, it's certainly fair and effective to use a  
4 court to collect a debt which has not been paid after  
5 years of debt collection efforts in many cases.

6 The attorneys today will receive electronic  
7 information in many cases from their clients.

8 Generally, the balances that are placed are charge-off  
9 balances. As Manny stated before, the charge-off  
10 balance, the balance which federal bank examiners and  
11 the FDIC will approve. If these balances are reliable  
12 to the FDIC, then yes, the balances are reliable to us  
13 as coming from our clients.

14 We will review the account, take the charge-off  
15 balance, and ensure that we have a certain amount of  
16 information in many cases to backstop some sort of prima  
17 facie case. I've stated twice already that the  
18 attorneys will ensure that we have the originator's  
19 name, the credit card number.

20 I want to say, speaking of the Boston Globe,  
21 following that series last summer, the Chief Justice of  
22 the Massachusetts District Court put together a working  
23 group of 25 professionals. Rob Hobbs was on that group  
24 along with me. There were judges on that group, small  
25 claims magistrates, clerks, legislative representatives,

1 consumer advocates, and two collection attorneys.

2 Through the course of discussion over a 12-month  
3 or longer period, we reached consensus on a number of  
4 areas, and through discussing this question of default  
5 judgments and what's appropriate, it was determined by  
6 this group that the most reasonable and appropriate way  
7 to proceed is to ensure that there is a certain modicum  
8 of information shared in the initial complaint;  
9 essentially, sharing information that backstops a prima  
10 facie case. The originator's name, the originator's  
11 account number, the date that the account last paid or  
12 the date that the account went delinquent, the  
13 charge-off principal balance, any damages added to the  
14 account after charge-off, broken out.

15 This information gives the consumer defendant an  
16 opportunity to best understand what this debt is about,  
17 and I subscribe to exactly what happened in  
18 Massachusetts, and I think that that recommendation is  
19 about to go to the public. I think that similar  
20 discussions need to occur at state levels across the  
21 country.

22 I was talking to Marla Tepper yesterday about  
23 discussions like that that should occur in New York and  
24 I believe which will. Discussions like that have  
25 occurred in California. They're occurring in Michigan,

1 as we speak, and they're beginning to occur in  
2 Connecticut.

3 My point is that through that sort of discussion  
4 with consumers, collection attorneys, and the judiciary,  
5 we can reach fair ground. Keep in mind that state  
6 courthouse budgets have fallen through the floor. At  
7 the same time, the charge-offs have gone through the  
8 ceiling, and placements to attorneys have gone through  
9 the ceiling. As a result, we need to back up the clock  
10 a bit. Abe Lincoln was a collection attorney many years  
11 ago. In the 1870s, with the advent of telephone  
12 technology, attorneys fell into background. Agencies  
13 sprung up and began to collect most paper.

14 In the 1970s and '80s, attorneys began to get  
15 used again, and as the volume began to get higher and  
16 those attorneys began to be in court more and more, my  
17 impression is that the attorneys developed relationships  
18 of trust with the judges and the clerks and the marshals  
19 and the sheriffs, and as the volume got higher through  
20 the eighties and nineties, the courts began to lean on  
21 those attorneys more and more with respect to this  
22 volume that was striking.

23 In the 1970s, maybe it was appropriate for an OB  
24 doctor to take a female patient into an office and treat  
25 her. Today, there is an appearance of impropriety

1 there. You need a female intern. Today there's an  
2 appearance of impropriety when a judge says to a number  
3 of defendants, "Go into a hallway, speak to attorney  
4 Olshan about these 15 cases, you can trust him, you'll  
5 work it out." That might have worked in the seventies.  
6 It doesn't work today, Reilly.

7 My point is I think that this occurred due to  
8 the relationships of trust that developed through the  
9 seventies, eighties, and nineties. Today, we need to  
10 address how to assist with the massive volume in the  
11 courts, and I think through the state-level discussions,  
12 we will reach solutions, as we already have in  
13 Massachusetts.

14 MR. DOLAN: Lynn, Adam was discussing where  
15 Massachusetts is now compared to where it was probably a  
16 year ago. You're in Jacksonville, Florida. Same story,  
17 different story?

18 MS. DRYSDALE: Well, it's the same story as far  
19 as the problem goes. I remember -- I know one of the  
20 earlier panels today, they were talking about having  
21 lack of verification of the debt and not having the  
22 paperwork. I think the quote was "we are collectors,  
23 not warehouseers." Well, when you get to court and you  
24 file a complaint and you don't even have the information  
25 as to when the account was opened and you don't have the

1 statements, at least the statements of the account, you  
2 don't have anything in writing signed by the defendant,  
3 you have a serious problem of not having the proof that  
4 the debtor owes the debt, nor of the amount of the debt.

5           And somehow I think what I'm starting to hear as  
6 we go through the process today is people are sort of  
7 losing sight as to where the burden of proof lies once  
8 you get to court. The burden of proof first lies upon  
9 the creditor to show that there was an account, to show  
10 that this account belongs to this debtor, and to show  
11 the amount, and as far as things in Florida are going,  
12 we have a lot of the judges that are becoming very  
13 frustrated with the way their courts are being used, but  
14 at this point, we don't have any process that has been  
15 set up to try to remedy this problem.

16           MR. DOLAN: Okay, I have one more kind of  
17 question on this and then I want to move to the next  
18 topic, so I am going to throw it out to the panel, and  
19 anyone who wants to answer can answer in 30 seconds or  
20 less.

21           Is there an appearance of impropriety or more  
22 than just an appearance of impropriety if an attorney is  
23 filing a number of lawsuits and dropping any lawsuit in  
24 which a consumer is actually contesting the allegations  
25 alleged?

1           MR. OLSHAN: No. If the attorney brings a  
2 lawsuit with prima facie evidence and they're able to  
3 proceed to obtain a default judgment with that and in  
4 some cases an affidavit of debt, then the suit is  
5 certainly appropriate and justified. In instances where  
6 a defendant files a bona fide dispute -- and "bona fide"  
7 is the key phrase -- a bona fide dispute, the plaintiff  
8 attorney can then go back to the client and determine  
9 whether or not that client chooses to pay extra funds to  
10 obtain the extra information necessary to prove the case  
11 or to send a witness to court.

12           Again, as Ira Leibsker stated yesterday, only 15  
13 or 20 percent of these accounts will pay. Based on that  
14 ratio, the client has to make a determination as to  
15 whether they want to spend more money on this account to  
16 prove their case to the next level.

17           MR. DOLAN: And that was a little bit more than  
18 30 seconds. Do Bob or Lynn want to give a 30-second  
19 rebuttal?

20           MR. OLSHAN: Not much more, though.

21           MR. HOBBS: Actually, I would like to go back to  
22 the Massachusetts experience. I want to make clear that  
23 the Globe series had results that were very positive,  
24 but the small claims study group's proposals have not  
25 been adopted by the courts. They're simply proposals,

1 but there were results. The banking department decided  
2 that every debt buyer had to be licensed in  
3 Massachusetts, and they denied a license to the debt  
4 buyer that was highlighted in the series, because he was  
5 disbarred for treating a -- for taking money that  
6 belonged to Sears.

7 And there's bills that have been introduced in  
8 the Massachusetts Legislature that they have passed  
9 raising exemption levels so that people who are can't's  
10 are not made into wills, but there's a lot that still  
11 needs to be done in Massachusetts, and hardly anything  
12 has been done yet except a report that's been issued  
13 with recommendations for rules.

14 MR. DOLAN: Okay. I would like to move on to  
15 the final discussion, which is mandatory use of  
16 arbitration in collection cases, and I want to turn it  
17 over to Roger to explain what the mandatory arbitration  
18 process is, and I know he's going to challenge my use of  
19 terms at the very beginning.

20 MR. HAYDOCK: Well, good afternoon. I  
21 appreciate the opportunity to be here in my role as an  
22 educator and help explain how arbitration works so that  
23 people can better understand it, how it can benefit  
24 consumers and creditors, and how they can receive fair  
25 and impartial services and results.

1           There are various types of arbitration.  
2           Mandatory arbitration is generally known as arbitration  
3           mandated by government or government agency. There is,  
4           for example, state governments, the state legislatures  
5           pass bills imposing mandatory arbitration for  
6           automobile, personal injury, no-fault health care  
7           disputes. Contractual arbitration, which is the focus  
8           of this afternoon, is arbitration based upon an  
9           arbitration agreement that exists in a contract.

10           The Federal Arbitration Act governs the  
11           enforceability and acceptability of those arbitration  
12           agreements and is the vehicle to legitimate the  
13           enforcement of awards issued by arbitrators in those  
14           contractual arbitration agreements.

15           The typical arbitration clause includes a  
16           reference to a provider, and that provider operates,  
17           whether it's the National Arbitration Forum or the  
18           American Arbitration Association, operates like a clerk  
19           of court who administers, from the filing on of the  
20           case.

21           In addition, parties, if they're unable to agree  
22           on an arbitrator to resolve their case, the provider has  
23           panels of arbitrators that are available, and those  
24           arbitrators then are appointed. The parties can  
25           challenge them and remove them for cause and strike them

1 as a peremptory challenge to ensure that they are  
2 getting someone who is fair and impartial.

3 There are tens of thousands of arbitrators in  
4 America and throughout the world. They tend to be  
5 former judges, very experienced lawyers, who are legal  
6 experts in a specific area. They do not take a case  
7 unless they complete a conflicts of interest check to  
8 make sure that there's no conflicts. They will be  
9 appointed to a case or receive a case if the parties  
10 accept them or do not challenge them. They take an oath  
11 to remain neutral at all times. They take an oath not  
12 to allow self-interest to affect their judgments, just  
13 like judges do in civil court.

14 One of the measurements to determine the  
15 fairness and neutrality of arbitrators and the fairness  
16 of the results is to compare the results in arbitration  
17 cases to litigation outcomes, and an objective and  
18 impartial review of the data available shows that  
19 consumer and business outcomes in arbitration are the  
20 same or very similar to the outcomes in court, and the  
21 underlying data supporting that statement appears in the  
22 FTC comments filed by the forum, as well as some  
23 supplemental columns that will be made available  
24 sometime next week.

25 MR. DOLAN: Roger, a point of clarification. In

1 your comment, the data the that you were comparing were  
2 for all cases and not limited to debt collection cases.  
3 Is that correct?

4 MR. HAYDOCK: Yes, and we have now separated the  
5 data in our secondary comments to separate on collection  
6 cases from contested cases. So, we'll provide the  
7 information to support that statement along with  
8 anecdotal stories from consumers who report success and  
9 satisfaction with their arbitration experience.

10 MR. DOLAN: If the creditor is enforcing the  
11 arbitration clause, and I live in Washington, D.C.,  
12 where is my arbitration panel going to be sitting?

13 MR. HAYDOCK: The hearing -- the in-person,  
14 face-to-face hearing takes place in the community where  
15 the respondent, in that case the consumer, resides or  
16 does business. So, it's the same general area location  
17 as the courthouse, federal or state courthouse.

18 In addition, the type of hearing available in  
19 modern arbitration, under modern arbitration rules,  
20 includes, besides a face-to-face hearing, which every  
21 party has a right to, an opportunity to provide  
22 telephone or have witnesses appear by telephone,  
23 opportunity to submit information and evidence both in  
24 writing and by email, so that in terms of the new  
25 technology available, we can provide much better

1 services to the parties with a dispute given their  
2 various locations.

3 MR. DOLAN: And is arbitration or are the  
4 arbitration clauses a one-way street or a two-way  
5 street? By that I mean, if it's in my contract and for  
6 some reason you choose to hand my paper over to Adam to  
7 collect on me and he decides to sue me, can I use that  
8 arbitration clause to say, "Oh, no, no, no, no, I agreed  
9 to go to arbitration first"?

10 MR. HAYDOCK: The majority of the courts have  
11 upheld that. The mutuality is a part of the  
12 consideration for an enforceable arbitration agreement.  
13 So, the arbitration agreement, binding arbitration, is  
14 mutual. So, both sides have an obligation to arbitrate,  
15 not litigate.

16 I just wanted to follow up with just a little  
17 bit of background, because there is this confusion over  
18 the due process protections afforded both individuals  
19 and businesses. If you look at the standard rules of  
20 procedure, because courts guarantee the fairness by  
21 reviewing the published rules of procedure, determining  
22 if they're fair, and provide due process protection, and  
23 review the fee schedules that arbitration providers  
24 provide and make sure that they're affordable and  
25 accessible for consumers or that the costs are shifted

1 from the business, so the consumers pay no more in  
2 arbitration than they would in litigation for those  
3 costs, and they also are able to look at the panel of  
4 prospective arbitrators and determine the qualifications  
5 of those individuals, and then they're also able to look  
6 at the awards the arbitrators complete to determine if  
7 those awards meet fairness and due process standards as  
8 well.

9 In addition, the rules themselves are really a  
10 reflection of modern due process protection. Claims  
11 have to be detailed with accounting documentation to  
12 provide some of the -- to eliminate some of the  
13 complaints we have heard over the past couple of days,  
14 with inadequate information being provided the  
15 decision-maker. Responses can be in handwriting.  
16 Consumers can tell their own story in their own words.  
17 There are no formal rules of pleadings required for  
18 that.

19 All claims and defenses, rights and remedies are  
20 available in arbitration just as they are in court.  
21 Discovery is available. Parties have an obligation to  
22 exchange information before the case gets to a hearing.  
23 I've already discussed the opportunity the parties have  
24 to choose different types of hearings and location for  
25 that, and the arbitrator selection process, again,

1 arbitrators can be challenged for cause or stricken if  
2 the parties are unable to agree on their own particular  
3 arbitrator.

4 In collection cases, I'm just going to finish  
5 up, where the consumer does not respond, it's important  
6 to note that in arbitration cases, under the forum  
7 rules, there are no pure default decisions allowable.  
8 The arbitrator as to review the submissions and the  
9 claim form and determine if that case has been proven,  
10 and if not, the arbitrator can insist and require more  
11 information to provide for the accuracy and verification  
12 of the information. Only then can an award be issued on  
13 the merits of the claim, not just because the consumer  
14 failed to respond.

15 MR. DOLAN: Bob, I would like to get you to  
16 highlight some of the injuries that you are seeing with  
17 this type of process and also to give me a sense of how  
18 prevalent you think those injuries are.

19 MR. HOBBS: Well, the Public Citizen in the last  
20 few days has released a report analyzing the data which  
21 is required to be reported to the State of California  
22 with regard to the arbitrations that happened with its  
23 citizens, and I think that report stands on its own  
24 feet. The National Arbitration Forum is collecting a  
25 huge, huge number of debts, mostly MBNA credit card

1 debts, and almost overwhelmingly, those judgments are  
2 entered against consumers, but I think the reason that  
3 report was written has to do with anecdotes, and the  
4 only thing we have, except in California, is anecdotes,  
5 because arbitration proceedings are secret.

6 It's like a secret court. The results are  
7 secret. How many cases -- and there is a fear that the  
8 hearing officers are biased because they're not paid by  
9 the state. They're, in effect, being paid by filing  
10 fees by MBNA and that maybe MBNA filing fees might  
11 represent 90 percent of their income and that that could  
12 result in bias. It certainly would result in the  
13 appearance of impropriety if it was a judge. There's no  
14 appeals or there's no appeals on the merits.

15 They are not bound by the law, because they're  
16 arbitrators, so that if a consumer is represented by a  
17 lawyer and the lawyer raises a Fair Debt Collection  
18 Practices Act claim, it's up to the arbitrator whether  
19 they follow the law that the consumer is entitled to  
20 attorneys' fees. I have other anecdotes where they  
21 don't get attorneys' fees. So, if consumers' attorneys  
22 don't get attorneys' fees, the consumers will not be  
23 represented. And --

24 MR. DOLAN: Can we just -- just because we're --

25 MR. HOBBS: -- and one last point, there are

1 separate rules for arbitration, so a Massachusetts  
2 consumer who's representing themselves might be faced by  
3 the rules of civil procedure for district courts, the  
4 rules for small claims courts, and now the rules for  
5 NAF, and it's a very -- it's a complex area. I have not  
6 read the rules of all three, but I've skimmed through  
7 them, and I would say that they're beyond the  
8 comprehension of most consumers.

9 MR. DOLAN: One of the questions from the  
10 audience -- and I know, Lynn, you want to say  
11 something -- but I want to at least get this question  
12 out there, and then I'll give Lynn the first chance to  
13 answer that and give any comment she wanted.

14 It is because each party must pay part of the  
15 arbiter's fee, can't arbitration be used by creditors  
16 and collectors to strong-arm consumers to make payment  
17 under the disputed debt? And quite frankly, I can't  
18 read a lot of the rest of this, but I think the sense is  
19 because the consumer has to pay the fee up front, they  
20 may feel that it's cheaper to pay a debt that they're  
21 disputing rather than go through the process, whereas if  
22 it were in court, they as the defendant don't have to  
23 pay a fee up front just to participate in the process.

24 I want to let Lynn -- although Roger is itching  
25 to respond as well -- so, Lynn, your thoughts on that,

1 as well as whatever other point you were itching to  
2 make, and then I'll turn it to Roger, and then the panel  
3 is going to have to end.

4 MS. DRYSDALE: Okay, just very quickly, the  
5 answer to that is yes, because it is very expensive for  
6 the consumer to participate in arbitration, because they  
7 do have to pay to respond, which they don't in court, as  
8 well as they have to pay the expenses of the arbitrator.

9 Also, I think it's somewhat -- I don't agree  
10 that it's a mutual obligation, because a creditor has --  
11 a mortgage company gets to go through a foreclosure, a  
12 car company can repo a car, a payday lender can take  
13 money out of a bank account, without having to resort to  
14 arbitration, where a consumer is blocked from the  
15 courthouse and blocked from their right to a judge and a  
16 jury.

17 I'm not sure that I agree that it's impartial.  
18 Just quoting from the Public Citizen report, from the  
19 records from California where they do have to report  
20 this sort of thing, and the records from 2003 to 2007  
21 for the NAF arbitrators with more than 100 cases, and  
22 only 3.3 percent of the time did the consumers win in  
23 those cases, and for the MBNA cases, only 2.8 percent of  
24 the time did the consumer win.

25 Also, there is a limitation of remedies, and in

1 many of the consumer arbitration clauses I see, they  
2 prohibit class actions, which is a very important  
3 enforcement tool, particularly with payday lending,  
4 because you've got debts of 100 to 500 for people who  
5 clearly can't afford attorneys, and also you have NAF  
6 advertising to the creditors that their process is one  
7 where there's not much discovery, if any at all, and  
8 that they can avoid the scrutiny of the courts.

9 I had the opportunity in a case of mine about  
10 ten years ago of going through box after box after box  
11 of information that NAF had to give to us as a result of  
12 a subpoena, and predominantly, every case that we saw  
13 where an arbitration award had been awarded to a  
14 business, there was absolutely no supporting  
15 documentation.

16 MR. DOLAN: Roger, the panel has ended, but I  
17 promised you rebuttal, so 30 seconds.

18 MR. HAYDOCK: Thank you.

19 Well, let me just begin by saying with all due  
20 respect to Bob and Lynn, who as a former legal services  
21 lawyer, I happen to like, they're just plain wrong on  
22 virtually everything they just said. There are no  
23 secret hearings. A party can ask for a transcript.  
24 People can be present for that. There are no mandatory  
25 response fees by consumers. The cost is half to

1 consumers. They pay no more in an arbitration case than  
2 they would pay for the filing fee that it would cost in  
3 litigation.

4 I'm happy they brought up the Public Citizen  
5 data, because it proves how fair and impartial  
6 arbitration is. Here's the data comparing apples to  
7 apples from court default cases. Studies that have been  
8 documented -- and again, these appear on the website --  
9 96 to 99 percent of the time, creditors win. Consumers  
10 lose 1 to 3 percent of the time in court cases, which is  
11 the equivalent of the same data the Public Citizen  
12 reported in our California data.

13 We're no better -- or from some people's  
14 perspectives, perhaps no worse -- than the litigation  
15 system in providing access to civil justice for those  
16 individuals, and there's no provider that prohibits  
17 class action arbitrations. I could go on, but in  
18 fairness to time, I'll end.

19 MR. DOLAN: And I wouldn't let you. Very  
20 quickly, Bob, because we need to move on to the next  
21 panel.

22 MR. HOBBS: I would like to say that in some  
23 courts where consumers were represented by attorneys,  
24 they're winning 100 percent of the time.

25 MR. DOLAN: And with that, I want to thank the

1 panel. I hope we got into these issues a little -- at  
2 least a little more depth than we had before.

3 (Applause.)

4 MR. KANE: Thank you, Reilly. We will take a  
5 break until 3:00. I'll see you back here at that time  
6 for the final session.

7 (A brief recess was taken.)

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1 PIVOTAL ISSUES AND PROPOSED SOLUTIONS:

2 NEXT STEPS

3 MR. KANE: Okay, folks.

4 Welcome back for our final session of the  
5 workshop.

6 Folks, if you will take your seats?

7 This panel will discuss the main issues that  
8 arose over the past two days and will debate recommended  
9 changes to policy and law, including recommendations for  
10 amending the FDCPA. The moderator is Peggy Twohig, the  
11 Commission's Associate Director For Financial Practices.  
12 Thanks, Peggy.

13 MS. TWOHIG: Good afternoon, everyone, and I'm  
14 delighted to be moderating this final panel, and I have  
15 to say I'm delighted and somewhat surprised and amazed  
16 to see so many of you still here. We often have, in our  
17 workshops, quite a drop-off by the end of the day and by  
18 the end of a second day, and so perhaps we hit a nerve,  
19 I guess, with this topic and with some of the discussion  
20 that's been had so far. So, we've got an hour to go.

21 I've been asked -- we are a little behind  
22 schedule, but not to worry, we will get you out as close  
23 as possible to 4:00 as we can. I know that many people  
24 have travel arrangements, and we will try to honor the  
25 schedule. Just to re-assure you, I will have some

1 closing remarks, but they will be very brief. We will  
2 try to leave most of the room for the discussion in this  
3 panel.

4 In the last two days we've heard from many  
5 different perspectives, we've heard different ideas,  
6 we've heard complaints, we've heard statistics, we've  
7 heard anecdotes. We've heard about problems faced by  
8 both consumers and debt collectors in connection with  
9 debt collection, and so this panel is about, given all  
10 this information, some of it very rough in terms of some  
11 of the things we've heard, not -- it's going to take us  
12 a while to sort this through, for all of us to sort this  
13 through, but the main question right now we want to try  
14 to address is, where do we go from here?

15 Given these views, what do we need in terms of  
16 changes in the law? And that could be not just the  
17 FDCPA. What about changes outside the law? What do we  
18 need in terms of enforcement, in terms of the  
19 enforcement scheme, in terms of the regulatory  
20 structure? What, if anything, do we need to think about  
21 in terms of next steps? So, we're going to be talking  
22 about those issues.

23 If possible, I'd like to try to develop any  
24 areas where we have consensus on those topics, and we  
25 have -- it's a pretty tall order, given all the issues

1 we've talked about for the last two days, so let's  
2 begin.

3 I have a distinguished panel to talk about these  
4 issues and to try to wrap things up. First, going down,  
5 to my left, Rozanne Andersen, who you've heard from  
6 before, who's General Counsel and Vice President of ACA  
7 International. We have Richard Riese, who's Director  
8 with the American Bankers Association. We have Margot  
9 Saunders, who's Of Counsel with the National Consumer  
10 Law Center.

11 We have Laura Udis, who's an administrator with  
12 the Colorado Collection Agency Board. We have Cindy  
13 White, who's Executive Director of the National  
14 Association of Retail Collection Attorneys. And  
15 finally, we have Gary Wood, who's President of Collins  
16 Financial Services and also President of DBA  
17 International.

18 So, the topics for this panel are going to be  
19 the following: We're going to try to structure it to  
20 first discuss what changes, if any, are needed in the  
21 law, and in particular, what changes, if any, would  
22 those recommend to the Fair Debt Collection Practices  
23 Act? Then we're going to try to turn to what changes,  
24 if any, are needed in the public or private enforcement  
25 scheme, things like remedies issues or arbitration

1 issues, things like that. And those two areas may  
2 overlap as we proceed with the discussion.

3 And then, I'd also like to try to get out on the  
4 table what changes, if any, are needed outside of the  
5 legal structure, things like financial literacy,  
6 self-regulatory efforts, things like that. And so to  
7 get things going, sticking first to what changes, if  
8 any, are needed in the legal requirements, I'd like to  
9 go down the row just to get things out on the table and  
10 ask every panelist to say what are your top three  
11 priorities for changes in the law and why.

12 Rozanne, if you would start first, we will just  
13 go straight down.

14 MS. ANDERSEN: All right, first, for the record,  
15 I would like to clarify and comment on the first thing  
16 that I am going to reference as a desire in terms of  
17 changes in the Fair Debt Collection Practices Act, and  
18 that would be ACA is not seeking to eliminate the  
19 individual states' rights to enforce the law or to  
20 investigate complaints and to take appropriate action  
21 per the law.

22 Having said that, what we are interested in is a  
23 further dialogue about the possibility of federal  
24 preemption, a single, uniform collection practices act  
25 which controls the communications, conduct, and behavior

1 of debt collectors in the industry. So, I hope I have  
2 made that point clear.

3 I will quickly refer to my other two points, but  
4 I want to hold you at the edge of your seat and explain  
5 this. When you step back and you listen to the comments  
6 that we've heard throughout this two days, I'd like to  
7 say that we also need to, together, collectively,  
8 determine who are we talking about and what law  
9 appropriately applies? If we only talk about federal  
10 laws, whether stated or referenced during this  
11 conference, you have to realize that every topic we  
12 address also touches the Federal Communications  
13 Commission, who seems to think we are telemarketers, who  
14 puts us in a category with telemarketers and prohibits  
15 us from using some of the technology that makes  
16 compliance all that much more possible.

17 We look to the IRS that talks about a 1099-C  
18 requirement, where debt buyers are required to report to  
19 the IRS about forgiven debt, because they are called  
20 "lenders."

21 We talk about other comments and opportunities  
22 going on in the next few months. The Office of the  
23 Comptroller of the Currency, the National Credit Union  
24 Association, the Federal Reserve Board, they're holding  
25 comment periods on garnishment, yet we're talking here

1 as debt collectors about garnishment, but we are not at  
2 that table.

3 There are comments in hearings asking about  
4 Social Security numbers and who should have access to  
5 that, and yet we're spending two days talking about how  
6 do we get to the right party and having any question  
7 about who has access and need for personal identifiers?  
8 So, I give that backdrop, because I think that that adds  
9 a certain perspective.

10 And finally, we've barely touched on bankruptcy,  
11 and yet we know that law is most likely going to be open  
12 again, yet one of the greatest problems we have as debt  
13 collectors is inappropriately, accidentally -- whatever  
14 word you want to fill in the blank -- communicating with  
15 a consumer that has filed bankruptcy but for which we do  
16 not have notice.

17 So, I just wanted to state that -- and then I  
18 will respectfully be quiet -- but explain that we also,  
19 as a legislative wish, believe that one solution to this  
20 whole communication issue with consumers has to do with  
21 giving them not only, as the law allows now, the  
22 opportunity to tell us the appropriate method and place  
23 of communication -- the law currently permits consumers  
24 to tell us the appropriate time and place of  
25 communication. We suggest that we need to add method to

1 that consumer right.

2 And finally, as an industry, we seek a right to  
3 cure requirement, a 45-day notice, heads-up, opportunity  
4 to cure any problem that is alleged by a consumer as  
5 being a violation of the law. Obviously further  
6 dialogue is needed, but that would summarize our top  
7 three issues.

8 MS. TWOHIG: Thank you, Rozanne.

9 Rich?

10 MR. RIESE: Thank you, Peggy, and I want to say  
11 the American Bankers Association appreciates the  
12 invitation to participate on this panel and to have  
13 attended these last two days, and I want to particularly  
14 acknowledge Chairman Majoras' opening remarks, which I  
15 think were very balanced about the importance of  
16 consumer credit and the issues that we're facing in  
17 dealing with this workshop, and I think actually set a  
18 tone of civility. As an old litigation attorney, I  
19 thought that this was a very constructive workshop, and  
20 I look forward to participating in activities that have  
21 been spawned by it, to work with the parties involved to  
22 advance the priorities that we are trying to talk about  
23 here.

24 I'd like to characterize my three priorities  
25 really being policy priorities with respect to the

1 FDCPA. I am not going to presume that they require  
2 legislative correction or regulatory or guidance or  
3 whatever it may be, but it's certainly clear in my view,  
4 from listening to the discussions and from our  
5 perspective, that probably the top two priorities, first  
6 off, is bringing -- addressing what I'd call  
7 communication convenience, and I say convenience because  
8 of the orientation to the reality of what people, what  
9 consumers, want to use and the means by which they want  
10 to communicate, and I think we need to match the  
11 realities and preferences better, and I think that's  
12 clearly a number one priority that I've been hearing  
13 echoed throughout this.

14 I think second is the credit validation. There  
15 is no way you could have sat through the last two days  
16 and not identified credit validation as an important and  
17 primary issue here, and what I would underscore as my  
18 view of the FDCPA is really that it is establishing a  
19 fairness standard. It is not the standard by which  
20 states set forth the requirements for proof of debt.  
21 We're not looking for the FDCPA, I wouldn't think, to  
22 supplant state law on debt, you know, collection, proof  
23 of contract, and those kinds of issues. That does mean  
24 that we're struggling with a variety of jurisdictional  
25 standards, but I think FDCPA looks to put on a veneer of

1 commonality and an approach of consensual fairness to  
2 the system, and I think that credit validation should be  
3 looked at from that perspective.

4 I would like to say that I think in considering  
5 that issue, that we identify really two elements of  
6 that, one being the identification issue, the  
7 identification. Do we have the right borrower with the  
8 right account debt issue? That I believe to be much  
9 more practical from my members' perspective, who have  
10 substantial obligations to identify their customers. It  
11 comes from a variety of statutes as well as established  
12 practice, but I think that that's an area that we should  
13 be able to tackle and make substantial progress on to  
14 narrow that gap to as small as practical on that side.

15 I think the other issue is the question of debt  
16 amounts and what components of debt and some of the  
17 other features that have been talked about in the  
18 various panels and I think proposed as part of NCLC's  
19 comment letter, and I think all those should be on the  
20 table for further discussion among all the parties to  
21 work out what that set of fair elements are so that we  
22 know that the debt being pursued is being pursued in  
23 good faith.

24 And then third, something that probably hasn't  
25 been talked about much but was mentioned I think

1 yesterday, and I think is important in our industry, is  
2 greater clarity about the exemption really of mortgage  
3 servicers from the FDCPA. I think we are certainly in a  
4 market at this time that is trying to underscore -- in  
5 fact, I don't know how many of you got your emails today  
6 that Secretary Paulson has announced a new program that  
7 involves a number of members involved in the mortgage  
8 industry to make renewed effort to try to keep people in  
9 homes and to work out the debt issues that we are facing  
10 in this current economic environment, and I think that  
11 that is best accomplished by clarity that mortgage  
12 servicers are not under the FDCPA.

13 Those would be my three priorities.

14 MS. TWOHIG: Thanks, Rich.

15 Margot?

16 MS. MARGOT SAUNDERS: Well, we have lots of  
17 suggestions, but I'll try to keep them brief to our top  
18 three.

19 One relates obviously to the information  
20 exchange. The verification should be the second step.  
21 We think every first communication from a debt collector  
22 to a consumer should include in it the name of the  
23 original creditor, the principal of the debt, and the  
24 itemization of fees and interest.

25 Second, the collection should only proceed if

1 the collector has reasonably determined that the  
2 previous verification requests, if there were any, have  
3 been satisfied. In other words, it should be  
4 inappropriate or illegal under the Fair Debt Collection  
5 Practices Act for a collector to collect on a debt which  
6 has not -- for which the consumer has requested  
7 verification and it has not been provided. That's what  
8 we see all the time, consumers who are faced with  
9 continued debt collection efforts relating to the same  
10 debt, supposedly, from serial debt collectors who  
11 serially cannot verify the debt.

12 Third, we need -- and in that category, the  
13 collection should not proceed if the collector has  
14 determined or can determine that the statute of  
15 limitations bars the debt. That would address a number  
16 of serious problems.

17 And next, we need updated remedies,  
18 significantly. We do not have now in the industry, we  
19 think, the incentives to comply with the law, because  
20 the remedies are almost 30 years old, and we need  
21 statutory damages to be -- therefore, must be increased,  
22 and injunctive relief is a good way of dealing with  
23 continued bad faith violations of the Act by some  
24 collectors.

25 I'd like to take one minute to respond to the

1 previous -- the suggestions of the previous people on  
2 the panel or -- do you not want me to do that?

3 MS. TWOHIG: Not now. We are going down the  
4 line and then we will get back to all of them, I  
5 promise.

6 Laura?

7 MS. UDIS: Thank you, and first I want to  
8 mention that my comments will be my own comments and not  
9 those of the Colorado Attorney General's Office or  
10 necessarily those of other state regulators, and if you  
11 count very carefully, you might see that three equals  
12 four in my list, but I'll be very quick.

13 First of all, I think that it's important that  
14 the federal Fair Debt Collection Practices Act be  
15 amended so that consumers obtain, in writing, notice of  
16 their right to cease communications. Consumers have  
17 that right in the statute, but they are not notified of  
18 it. They are notified of their right to dispute a debt  
19 in the validation notice, but there's no disclosure to a  
20 consumer of their right to cease communication.

21 And I would guess I speak for the majority of  
22 state regulators that the vast number of calls to our  
23 office are from consumers who say, "The collector won't  
24 stop calling, what do I do?" And we tell them put it in  
25 writing, mail it, usually certified mail, return receipt

1 requested, due to somebody's inability to either deliver  
2 or receive mail, but if consumers knew that right, I  
3 think that would go a great way in helping to ensure  
4 that some of these disputes that interminably go on and  
5 on would get resolved.

6           Secondly -- and I will be very brief on this --  
7 despite the federal court cases that we've heard about,  
8 there has to be -- I think we would all admit here in  
9 this room -- there has to be better verification of a  
10 debt than simply, to quote or borrow from a recent  
11 movie, than from the creditor or collection agency says,  
12 "Because I said so." There has to be more than that.  
13 There has to be more than the creditor saying this  
14 consumer owes the debt on a written piece of paper.  
15 That cannot be sufficient verification of the debt.

16           The other issue I wanted to address is -- and  
17 Margot did -- continual re-assignment of a debt,  
18 particularly among debt buyers. It's incredibly  
19 frustrating for a consumer to dispute a debt or file an  
20 identity theft affidavit and the debt collector stops  
21 communicating with them, but several months later,  
22 there's a new collection agency doing the same thing.  
23 There has to be some obligation on the part of the  
24 collector and perhaps on the part of the creditor to  
25 transmit that communication down the line, so it's not a

1 game of every time you get contacted by a different  
2 agency, you must send the same written information.

3 But the primary issue which I wouldn't have  
4 mentioned but for the ACA's filed comment in June with  
5 respect to this meeting is federal preemption of state  
6 laws, and as I'm sure you all know, currently, the  
7 status of the federal law is that states can enact laws  
8 that provide greater consumer protection in the area of  
9 debt collection, but the written proposal from the ACA  
10 would repeal that section and replace it with something  
11 that would say a state cannot enact a law with respect  
12 to any subject matter regulated under the FDCPA.

13 Now, Rozanne has perhaps clarified today that  
14 this is not an intent to do away with state licensing,  
15 but I assume, if I'm understanding correctly, that this  
16 would mean that states could either pass an identical  
17 version of the federal Fair Debt Collection Practices  
18 Act or perhaps not and just enforce the federal law but  
19 with no state variation, and while I'm, of course,  
20 sympathetic to the comments of any business that has to  
21 comply with 50 state laws, that is reality. Even if  
22 there is federal preemption of state law, every debt  
23 collector will have to deal with 50 state statutes of  
24 limitations, for example. Federal preemption doesn't  
25 solve that problem.

1           And there was someone on a panel yesterday from  
2 Ford Motor Credit. Ford Motor Credit has to make sure  
3 that when it sells or writes financing contracts in each  
4 state, that it complies with those states' laws on  
5 interest rates, right to cure, delinquency fees.  
6 Perhaps the consistent model is Truth in Lending. Truth  
7 in Lending, like Fair Debt Collection, allows states to  
8 pass laws that provide greater protections, and quite  
9 frankly, states typically can move more quickly than a  
10 federal agency in both passing legislation and bringing  
11 lawsuits.

12           With all due respect to the FTC, given its  
13 variety of responsibilities, typically perhaps a debt  
14 collection suit is filed maybe once a year, once every  
15 couple of years, where states can move much more  
16 quickly, and states that regulate debt collection  
17 typically investigate and resolve every consumer  
18 complaint filed with them, in part because they receive  
19 a smaller piece of that complaint basket, and they have  
20 resources to do it.

21           I think there's a place for both federal and  
22 state law. I think if there is federal preemption of  
23 state laws, you will see more private lawsuits and  
24 perhaps more class action lawsuits under the federal  
25 act, and, quite frankly, states have actually passed

1 some pretty good laws that both protect consumers and  
2 put some logic into that framework.

3 For example -- and there was some mention of  
4 this earlier this morning -- in Colorado, we have passed  
5 a couple of variations from the federal act. We have  
6 had on the books for over five years a law that says  
7 that in our state version of the Fair Debt Collection  
8 Practices Act that a debt collector cannot place  
9 something on a credit report before the end of the  
10 30-day validation period. Two reasons for this: One is  
11 the whole purpose of the validation notice is to  
12 informally resolve disputes and ensure that the  
13 collector has the right consumer. If that can be done  
14 before something's put on a credit report, great. If  
15 not, it's something that can be done 30 days later.

16 In addition, we heard a little bit of  
17 information about a phrase that someone coined about  
18 "parking" a debt on a credit report, and that was a  
19 situation that we were seeing with some collectors,  
20 contingency collectors, that were charging very low  
21 commissions that would not make it worth it to actively  
22 work an account, and consumers wouldn't know about that  
23 until they went to refinance their house and see it on  
24 their credit report. So, we passed that specific  
25 statute, and we would encourage Congress to do that on

1 the federal level.

2 In addition, we have had in our statute for  
3 years a possible solution to the Foti (phonetic) case  
4 where our law says that, yes, a collector must provide  
5 meaningful disclosure of their identity, but only after  
6 the other party to the call is identified as the debtor.  
7 Maybe that's a solution to this problem.

8 Finally, our law requires that the validation  
9 notice include a reference to our website where  
10 consumers can get information about their rights. That  
11 might be something that the FTC might want to think  
12 about as well in recommendations to Congress.

13 But the point is, there can be good  
14 state-specific laws, and for those reasons, we would  
15 oppose federal preemption, and, in fact, perhaps a good  
16 solution might be to add to the FDCPA a specific  
17 provision that state AGs and state debt collector  
18 regulators can specifically enforce the federal Fair  
19 Debt Collection Practices Act.

20 MS. TWOHIG: Thank you, Laura.

21 Cindy?

22 MS. WHITE: Okay, thank you. I am here on  
23 behalf of NARCA, and, of course, our perspective is from  
24 attorneys that are doing debt collection as litigators,  
25 and I think one of the first points that is important to

1 us is to step back and take a look at the purpose of the  
2 Fair Debt Collection Practices Act.

3 When it was enacted, its proponent was talking  
4 about including attorneys under the Act because  
5 attorneys were acting as debt collectors. They were  
6 making phone calls and writing letters. But what's  
7 happened over the past few years is that courts have  
8 broadened the impact of the Act so that now, when  
9 attorneys are involved in litigation and they've filed a  
10 case in court, when a case is in court, it's under the  
11 jurisdiction of the judge. It's under the jurisdiction  
12 of, you know, the clerks and any opposing counsel they  
13 may have, and the need for continuing protections from  
14 the Fair Debt Collection Practices Act, we just don't  
15 see that.

16 And I think the previous panelists who have  
17 spoken on behalf of NARCA and on behalf of themselves as  
18 attorneys in court would confirm that there are many  
19 problems with attempting to put the requirements of the  
20 Fair Debt Collection Practices Act on top of a  
21 litigation situation, which is already appropriately  
22 dealt with through the court system.

23 And on the last panel, Adam Olshan and Bob Hobbs  
24 were mentioning that, yes, they had sat down with the  
25 judges and with the consumers to talk about issues that

1 came up in Massachusetts, and from our perspective,  
2 that's where a lot of these problems can be dealt with,  
3 that each state has its own particular laws and its own  
4 particular rules of procedure, and we're looking for a  
5 litigation exemption.

6 The gentleman, Mr. Riese, mentioned a mortgage  
7 exemption. Well, we just think that litigation was  
8 never really intended to be dealt with by this Act and  
9 that the most important thing we're looking for is to  
10 pull the litigation away from the Fair Debt Collection  
11 Practices Act.

12 The other things that are important for our  
13 members are going to be things like safe harbor letters.  
14 One of the things that we see constantly is what is the  
15 proper language for the letters? Members get -- members  
16 and collect agencies, too, are sending out a letter  
17 campaign of 10,000 letters at a time. If you've sent  
18 out one wrong letter, you've sent out 10,000 wrong  
19 letters, and nobody really wants to send out a wrong  
20 letter, but, you know, you want to say -- give -- we  
21 have had people sued for giving too much information to  
22 the debtors. It's not -- I think we need to work on a  
23 better way to standardize what's said in the validation  
24 letters, what kind of verification there is, and I agree  
25 with some things that have been talked about up here. I

1 think we disagree with some others, but, you know, this  
2 is a dialogue that I think can happen over the next few  
3 months.

4           The third point that we want to talk about is  
5 all of the technology issues surrounding communications  
6 with debtors. I think it's been made clear that being  
7 able to call a debtor is most likely to result in  
8 resolution of the case. Litigation is a last resort.  
9 Only 5 percent of collection matters go to litigation in  
10 the first place. So, it's important that everyone be  
11 able to contact debtors, and, you know, when the FDCPA  
12 was passed, we all recognize that a lot of the modern  
13 technologies just weren't available, and we need to  
14 amend the Act, if that's what it takes, to accomplish  
15 the methods of communication that debtors are using that  
16 makes it more likely that they'll respond, that will get  
17 it straightened out, is this the right person, is this  
18 the right debt, and not wait until something gets into  
19 court to solve it.

20           So, those are going to be our three top issues.

21           MS. TWOHIG: Thank you, Cindy.

22           Gary?

23           MR. WOOD: Thank you, Peggy, and I'm going to  
24 tell you how much we appreciate the opportunity to  
25 appear here both yesterday and today. I will also tell

1 you that when you're sitting at this end of the table,  
2 you don't get many opportunities to be original. I  
3 would recommend that we have tuna fish sandwiches on  
4 Thursday. That's about all that's left.

5 We're very interested, and I'm representing --

6 MS. TWOHIG: That's okay. We've got a long list  
7 to cover, so if you don't have anything to add, that's  
8 okay.

9 MR. WOOD: I'll make it brief. We're interested  
10 in improved communication opportunities with our  
11 customers as defined under the Gramm Leach Bliley Act.  
12 We are interested, although this is not legislative, we  
13 are interested in seeing more responsibility taken by  
14 everyone that's involved in this process, the debtor,  
15 the collector, the debt buyer, the issuer. We think  
16 that there's too many places where responsibility is  
17 just not being taken.

18 We're interested -- as Bob Hunt and Bill  
19 Hampel's report yesterday pointed out, there's not much  
20 information about what goes on in this business. They  
21 were forced to use graphs that were based on data that  
22 was five or six years old or based on data that was  
23 probably almost made up. We ought not to have to do  
24 that. There ought to be more research.

25 And the final thought I have, Peggy, before

1 passing it back is, we think that the enforcement role  
2 of the Federal Trade Commission with regard to this type  
3 of activity should be enhanced and that your budget  
4 should be increased and we should be subject to less  
5 private rights of action which give us state court  
6 decisions that are a crazy quilt of almost unbelievable  
7 complexity that we should try to deal with, so we would  
8 very much like to see you guys have the opportunity and  
9 the budget to do a better job on the enforcement.

10 MS. TWOHIG: Well, we are going to spend a lot  
11 of time on that.

12 Actually, I'd like to -- this is a long list,  
13 and so we have our work cut out for us in trying to  
14 cover all this, and we just won't be able to, but I'd  
15 like to tease out some of the common themes.

16 One common theme pretty clearly is verification  
17 issues. That's been just a consistent theme over the  
18 last two days. And so I want to see if we have any  
19 common ground here, and over the last two days, some  
20 things I've heard is debt collectors of all types, debt  
21 buyers, collection attorneys, contingent collectors, say  
22 that it's very important for them to have the  
23 information they need to know that it's actually a valid  
24 debt, especially if the consumer disputes it. They want  
25 to get paid, that's their business, so that's important

1 to them.

2 Consumer groups obviously think it's one of the  
3 most important issues, especially as debts are sold and  
4 resold. I believe ACA International, we heard that it  
5 was so important, they made it a key portion of the  
6 revised Code of Ethics, and we heard I think just on the  
7 last panel from collection attorneys that there is --  
8 the list of minimum amount of information that I believe  
9 he said he wanted before he -- that he thinks attorneys  
10 should have before they file suit is very similar to  
11 NCLC's list in the comment that they filed.

12 And so, just -- so, I want to know, is there a  
13 general consensus around the notion that there needs to  
14 be a basic set of information, perhaps more than is  
15 required under the court cases that were referred to,  
16 the bare minimum, when debt collectors -- debt is  
17 collected by a third party, sold to a third party,  
18 perhaps when verification is requested by the consumer,  
19 and certainly before filing suit? Could I get thoughts  
20 on that as briefly as possible? Is there a consensus  
21 around that basic principle? Anyone want to go first?

22 MR. RIESE: I'd be glad to go first, because I  
23 think that you can work toward this consensus. I'm not  
24 sure that there's an identical set for every type of  
25 credit. I'm not sure that in a world where people can

1 enter into credit obligations on the internet, where  
2 there are no signatures, as signatures, that you can say  
3 a minimum requirement is the original agreement with a  
4 customer signature.

5 I'm not sure that in the health care situation,  
6 where labs do tests, that you're going to find the  
7 customer signature saying that, yes, I agreed that this  
8 lab would charge me that amount. So, I'm not sure that  
9 for all types of debt you have the same elements, but I  
10 do think that there are probably some basic group of  
11 elements that can be teased out of this process, and  
12 we've heard, as you said, a number of things that seem  
13 to be practiced. So, I think that there is that  
14 potential to sit down and define those practices that  
15 exist now and identify those gaps and see what can be  
16 done to fill them.

17 MS. TWOHIG: So, I think that's a fair point,  
18 that it may differ depending on the type of debt. If we  
19 could stipulate to that, what about the basic principle?

20 Rozanne?

21 MS. ANDERSEN: We would absolutely agree that a  
22 resolution has to be identified for this whole  
23 verification issue, largely because it's creating such  
24 confusion. In terms of the specific elements, I think I  
25 would have to defer to Tom Haag's recommendation that

1 the whole point of a dispute and a request for  
2 verification is so that the consumer's particular  
3 concern is resolved, so we also have to keep that in  
4 mind.

5 In talking somewhat casually at this conference,  
6 so if nothing else, Peggy, you have brought a number of  
7 people together to give them an opportunity to visit, I  
8 think that there may also be an opportunity to use  
9 technology in the form of the fair credit reporting  
10 system to identify some solutions that we have not  
11 fleshed out, but I think that additional dialogue and  
12 future dialogue is critical.

13 I think the bottom line is it has to be easy, it  
14 has to make sense, it has to be cost-effective, it has  
15 to be meaningful to the consumer, and it has to survive  
16 time.

17 MS. TWOHIG: Okay. Any other thoughts on just  
18 the basic principle? And then I want to move to how we  
19 work through the issues of exactly what that means,  
20 perhaps in different kinds of debt situations. Any  
21 thoughts on the basic principle?

22 Margot?

23 MS. MARGOT SAUNDERS: I think we've agreed on  
24 the basic principle.

25 MS. TWOHIG: Okay, we're all agreed on the basic

1 principle. Okay, great.

2 So, then, thoughts on -- I think Rich raised a  
3 legitimate point, which is it's easy to talk about a  
4 basic principle. It's harder when you dig down deeper  
5 into the details. How do we get there?

6 We're in a situation where one of the reasons  
7 the FTC is having this workshop is so we could flesh out  
8 the issues, try to find out if there's common areas of  
9 consensus, where there's problems that do need to be  
10 addressed. How do we go from here in trying to figure  
11 out some of those issues? We are an agency that does  
12 not reinforce the law, but we have no regulatory  
13 authority under the Fair Debt Collection Practices Act,  
14 so we don't have any formal mechanism -- we don't, as an  
15 agency -- to sort through this kind of information and  
16 get comments on the record other than in, perhaps, you  
17 know, another workshop just on this topic.

18 How do we go from here or what do you think  
19 about the process of sorting through that kind of issue  
20 to try to help move forward? In other words, would it  
21 help if the FTC had regulatory authority or some agency  
22 to try to sort through this kind of issue so that when  
23 problems arise in the industry or with debt collection,  
24 some proposals can be made and can be discussed and  
25 debated publicly? Any thoughts on that?

1           In other words, we won't be able to today, in  
2 this panel, to figure out the answers to those questions  
3 in terms of different kinds of debts, what is the bare  
4 minimum in different kinds of situations, so where do we  
5 go from here, next steps, on moving forward on these  
6 very important and pervasive verification issues that  
7 we've all talked about?

8           MS. MARGOT SAUNDERS: Well, can we -- can I go  
9 middle ground and let me just try -- it seems to me that  
10 you need to sponsor more conversations and that they do  
11 not necessarily need to be as formal and large as this,  
12 but you can, as I know you are able to do and have done,  
13 sponsor negotiations or just discussions between various  
14 groups that are here today, and I know we would be happy  
15 to participate.

16           We've been doing that, actually, Rozanne and I  
17 are old friends, because we have been negotiating for  
18 years, and actually, there's a lot that we agree on, and  
19 I think the suggestion that Laura made about changing  
20 the law to provide a notice of the right to cease  
21 communications was one of the issues that NCLC has been  
22 asking to have a change in the law that I believe ACA  
23 had agreed to, and just we're not able to agree to some  
24 of the other parameters of that issue moving forward.  
25 So, yes, I think you should sponsor more information,

1 more meetings.

2 But can I just drill down just a little bit on  
3 what shall be included in the -- in this -- in the  
4 verification, because I don't think it's that  
5 complicated.

6 MS. TWOHIG: Sure, okay. Why don't you try, and  
7 then we're probably going to need to move on to some of  
8 the other issues.

9 MS. MARGOT SAUNDERS: Right. It seems to me  
10 that health and medical related issues are in a separate  
11 category and that those should be perhaps pulled out  
12 because of privacy concerns, but everything else, all  
13 other consumer-related debt, which is the only thing  
14 that FDCPA is supposed to cover, should -- can have a  
15 fairly routine -- routinized set of information that  
16 must be provided or that should be required by the law  
17 to be provided to the debt collector before the debt  
18 collector proceeds.

19 The debt collector should be required to have a  
20 copy of the original contract, and the original contract  
21 may be electronic. The original contract always is  
22 going to have a signature. It may be an electronic  
23 signature, may be a handwritten signature, but it's --  
24 or it may just be a checkmark or an "I agree," but there  
25 is some reflection of the original contract that the

1 debt collector need not provide but the debt collector  
2 should have before they proceed.

3           They definitely should provide to the consumer  
4 the name of the original creditor, the amount of the  
5 debt before it went into default, the amount of interest  
6 and fees that have been added. In this day and age,  
7 when electronic information is so easy to gather, that  
8 information should be provided to the consumer up front.  
9 Just think of how many requests for verifications won't  
10 be necessary if that's provided to the consumer in the  
11 first contact.

12           MS. TWOHIG: Okay, I want to move on to some  
13 other issues, but I also do want people to address the  
14 process issue here, because one -- Margot, I think your  
15 list -- we have talked about it over the last two days,  
16 NCLC's list, and I think it's probably fair to say that  
17 the list five years ago might have been different, in  
18 other words, as technology changes, that list might be  
19 able to, in a low-cost way, grow, change, as contracts  
20 change, as the form of contracts change.

21           So, how do we -- in other words, are you saying  
22 that the list should be literally written out in the  
23 statute and that any time that changes are needed,  
24 Congress needs to pass the law, and Congress needs to  
25 add to the FDCPA exactly what validation is required for

1 medical debts, for credit card debts, for these kinds of  
2 debts? Is that what you're proposing as the legal  
3 scheme to address an issue like verification going  
4 forward?

5 MS. MARGOT SAUNDERS: We would propose we start  
6 with a minimum in the law and then the FTC have  
7 regulatory authority to add to it as necessary.

8 MS. TWOHIG: And any other thoughts? I'm  
9 interested in the process issues, because we just don't  
10 have time to sort through, you know, the substance. I  
11 wanted to try to see if there was consensus on the basic  
12 principle but then also talk about next steps in terms  
13 of process.

14 MS. ANDERSEN: Well, I would like -- I'm sorry,  
15 Laura, go ahead.

16 MS. UDIS: I was going to say that I would also  
17 be supportive of Congress giving the FTC rulemaking or  
18 regulation authority, and that would be one way to do it  
19 as well, but it seems as though you could almost proceed  
20 as if you had rulemaking or regulatory authority, but  
21 then, at some point, you either have to go to Congress  
22 or perhaps issue an advisory, interpretive letter, for  
23 what that's worth.

24 MS. TWOHIG: Some courts, it's worth something;  
25 some courts, it's not worth much. It depends on the

1 court, I think, is what the legal record shows.

2 MS. WHITE: I think it would be -- I know  
3 amending the law is not an easy process. People have  
4 worked for years to get amendments passed to the FDICPA,  
5 and I think if we can come together in some way to work  
6 on issues, it would be great. It's not going to have  
7 the effect of a law or even a regulation. It's hard to  
8 say where to go from here, because it's going to be  
9 voluntary if it's not written in the law.

10 MR. RIESE: If I can just say -- and you know  
11 that I'm a reformed regulator, and I do think that for  
12 the banking industry in particular, we do have a very  
13 involved regulatory structure with a lot of supervisory  
14 oversight, and so I certainly do think that they need to  
15 be involved at the table on this and can help at least  
16 on the depository institution creditor side. We have  
17 seen the FDIC's participation, and I know the other  
18 agencies have been here attending, so I think that  
19 that's another avenue to pursue.

20 MR. WOOD: And Peggy -- I'm sorry?

21 MS. TWOHIG: No, I keep promising Rozanne to get  
22 to her. Go ahead, Gary. She will have the last word.  
23 Go ahead.

24 MR. WOOD: Go ahead.

25 MS. ANDERSEN: No, I get the last word.

1           MR. WOOD: I forgot what I was going to say, so  
2 you go ahead and I'll think of it.

3           MS. ANDERSEN: I just want to say that we  
4 believe that there are a couple of options you have  
5 short of changes in the law, but I think, really, after  
6 listening to this dialogue, we may be all skirting  
7 around the elephant in the living room. I mean, if  
8 that's what it takes, that's what it takes in terms of  
9 the next step. If you're bringing creditors, consumers,  
10 debt buyers, debt collectors, together, I would like to  
11 think that through further discussion and really  
12 documentation of the information that we're really  
13 sharing almost somewhat casually here, I think we can  
14 move the ball forward.

15           I would just like to say, on behalf of ACA  
16 International, I'm chomping at the bit to have further  
17 dialogue. I just simply think that for some of us  
18 sitting at this panel, it's just very difficult to go  
19 through a checklist and agree right at this moment, but  
20 I think that the people that we do represent want to be  
21 at that table and not to be obstacles to progress.

22           MR. WOOD: I was just going to say that some of  
23 the information that Margot was asking for, you have to  
24 go beyond people that are sitting at this table to get  
25 it. It just doesn't come to the collector, doesn't come

1 to the debt buyer, and in some cases, it probably  
2 doesn't exist.

3           There are no signatures on a lot of telephone or  
4 internet-created cards, and in general, the approval  
5 process that the debtor goes through is when they sign  
6 the charge slip, it says, "I agree to all the terms and  
7 conditions," and all the terms and conditions change  
8 periodically, and you keep signing and you keep agreeing  
9 to them. It's very hard to keep up with which one's in  
10 place.

11           MS. TWOHIG: And I think that, for the two  
12 reasons Rozanne and Gary mentioned, is why I was  
13 throwing out the idea of regulatory authority, because  
14 you can have meetings, you can talk to individual  
15 groups, you can gather information, but you don't know  
16 for sure if you're hitting all interested parties, if  
17 you're getting all views, unless it's on the record in a  
18 fairly formal proceeding. So, that's why I wanted to  
19 get thoughts on that.

20           I want to move on to another common theme that's  
21 been discussed the last couple days and certainly was  
22 mentioned by several of you, and that is methods of  
23 consumer contact, or another way to put it is, are there  
24 changes in the law that are needed to keep up with  
25 modern communication technology and the way consumers in

1 2007 and maybe will change in the future? Thoughts on  
2 that? Gary?

3 MR. WOOD: You guys are going to have to wait  
4 now.

5 It's been discussed ad infinitum at this  
6 meeting, Peg, that the case is -- you know, cell phones  
7 didn't exist, recorders didn't exist. We just need to  
8 bring the -- and some of it's beyond your control, it's  
9 at the FCC -- but we need to somehow bring into the 21st  
10 Century the ways that we can communicate with people who  
11 are, in fact, by definition our customers, and we don't  
12 want to communicate with them in ways that are illegal,  
13 but we have to communicate with them.

14 And it's been suggested that maybe it could all  
15 be done with letters, but with every 10,000 letters we  
16 send, we probably get back 9000 of them because we don't  
17 know where they are. They're returned mail. So, we  
18 need to be able to communicate with them in whatever way  
19 they approve of, whatever way is convenient for them,  
20 certainly within the time frame. But as was also  
21 pointed out, if I've got my Texas cell phone and I'm up  
22 here in Washington, D.C., the time zones are not the  
23 same, and nobody's going to know where I am. So, we  
24 need to deal with that issue as well.

25 MS. TWOHIG: And is there any consensus around

1 that issue? Laura, Margot, do you want to address -- is  
2 there anything that you've heard -- in the discussions  
3 that you've heard that would lead you to think that  
4 there is a common ground there?

5 MS. UDIS: Well, I am very sympathetic to the  
6 debt collectors on the issue of cell phones and time  
7 zones. You can't make that assumption anymore, and I  
8 don't know what the solution is to that, but there has  
9 to be a way to call a cell phone if the consumer agrees  
10 to contact by cell phone when you don't know where that  
11 person is in the world. So, I'd certainly support any  
12 clarification that could be done statutorily on that.

13 On the issue of cell phones, I don't personally  
14 think it's that complicated. I think if you get the  
15 consumer's permission -- and I would say not when the  
16 contract's created, but when the collection process  
17 starts -- then call the consumer at the cell phone if  
18 the consumer provides permission.

19 MS. TWOHIG: Rozanne?

20 MS. ANDERSEN: I would just like to say that  
21 Congress in '77 didn't even contemplate permission to  
22 call a land line, and I think that it would be a little  
23 archaic to still view this as permission to use these  
24 types of reasonable, commonplace forms of communication.  
25 So, I resubmit, I mean, what we're really saying is I

1 think it's a powerful tool to presume certain reasonable  
2 forms of communication are okay within the confines of  
3 the law and request, urge, whatever you want to put, the  
4 consumer needs to just simply say -- and that story  
5 about the individual who works ten hours a day and only  
6 has a cell phone that came up yesterday, I mean, the  
7 answer would be, one comment, "Please do not call me on  
8 my cell phone," and then the communication would shift  
9 to another form.

10 I personally think that -- we never thought,  
11 Laura, about your suggestion about the meaningful  
12 disclosure, but not only is the method of communication  
13 an issue, and I think that we could reach some consensus  
14 on that, it's also there's a very, very troubling  
15 disclosure problem that we have under the FDCPA, that  
16 the FTC has respectfully suggested -- the courts have  
17 resolved it for us, but it really hasn't been resolved,  
18 and it's meaningful identity upon placement of a phone  
19 call.

20 MS. TWOHIG: Answering machines or any  
21 recorded --

22 MS. ANDERSEN: Answering machines, leaving  
23 messages with other parties, I mean, really,  
24 fundamentally, the law refers to placement of a phone  
25 call.

1 MS. TWOHIG: So --

2 MS. ANDERSEN: It's archaic. I mean, there's  
3 caller ID technology, there's all kinds of call  
4 screening devices. What Laura suggests is the  
5 meaningful disclosure would kick in possibly once you  
6 know that you're communicating with the debtor. Right  
7 now, that's a -- we can see the issue from both sides,  
8 and you have an industry that is in distress over that  
9 very issue.

10 MS. TWOHIG: Margot?

11 MS. MARGOT SAUNDERS: I'm very aware of the  
12 clock, and I would just propose that this is a great,  
13 great point of conversation for future meetings where we  
14 can tease out all of these.

15 I really want to put on the record the absolute  
16 critical need to update the remedies section of the Fair  
17 Debt Collection Practices Act, because even if we triple  
18 your budget, that still won't be enough to enforce this  
19 Act and to create an incentive in the industry to comply  
20 with the law. So, unfortunately, the facts of the  
21 situation is that without private enforcement of this  
22 law, there would be almost no compliance with it, and we  
23 need to improve the mechanism for private enforcement in  
24 order to stay up to date.

25 Now, I'm happy to talk about all these other

1 issues, but given that it's five to 4:00, I wanted to  
2 make sure that's on the record.

3 MS. TWOHIG: Okay. I want to -- but before I --  
4 I think I do want to shift to some legal enforcement  
5 structure and remedies issues, but before we go back  
6 there, I just want to close the loop, not that we can  
7 decide all things, on the method of consumer contact.  
8 The consumer contact, based on what I heard -- and not  
9 just now but over the last two days -- it sounds like  
10 the way -- it seems to me is that there are issues that  
11 need to be clarified legally, that perhaps that if  
12 there's clarification that allows consumers to be  
13 contacted perhaps with consent in certain ways, like by  
14 cell phone, there might need to be a corresponding right  
15 of a consumer to say no at a certain point in time.

16 In other words, it might be not just a  
17 clarification, you can do this, but there might be a  
18 restriction on it, too, that needs to go with that. Is  
19 that -- Margot is looking puzzled. It doesn't seem to  
20 me from the discussion like there's that much consensus  
21 around these issues. There's ideas floated. There's  
22 different thoughts. There's a need from industry  
23 clearly to want to get to the consumer, talk to the  
24 consumer, try to resolve the debt as soon as possible.  
25 There's concerns by the consumer groups about what that

1 means in terms of possible abuse and harassment.

2 So, it seems like there's some issues that need  
3 to be sorted through there as well. And so, again, any  
4 ideas -- and perhaps less consensus on exactly where you  
5 go from here. I see nods, so I'll take that as a  
6 somewhat fair summary.

7 Any ideas, other than just more discussions, on  
8 next steps, on literally sorting through where the line  
9 should be drawn or what the rights should be beyond  
10 whatever the clarification is?

11 Laura?

12 MS. UDIS: Well, not to keep touting Colorado  
13 law, but I will. I was just noticing we have a  
14 difference in our statute, another difference, where  
15 under 805, communication in connection with debt  
16 collection, where the federal law says that the  
17 collector cannot communicate at any unusual time or  
18 place known to be inconvenient, Colorado law says time  
19 or place or manner known to be inconvenient. So, that  
20 could answer the cell phone problem.

21 MS. ANDERSEN: Right, manner. That's manner --  
22 that's what we're trying -- that's the same section of  
23 the FDCPA we're looking at, Laura, time, place,  
24 manner -- I said method, but manner, and that's -- we  
25 think that's a powerful tool for the consumer as well.

1           MS. TWOHIG: Okay, I want to turn to, in the  
2 brief time we have left, some issues of the legal  
3 structure, the enforcement structure. I think perhaps  
4 federal preemption may fall into that. A couple of you  
5 mentioned it. And so let's start with that, and then  
6 we'll also talk about remedy issues some more so you can  
7 respond to what Margot put on the table there.

8           But in terms of federal preemption, Rozanne, you  
9 put that as your number one, and you already said why.  
10 Laura said from the state perspective why that would not  
11 be agreeable to them. Other thoughts on that?

12           MS. MARGOT SAUNDERS: Well, I'd like to add, I  
13 think the consumer community would vehemently oppose any  
14 bill that preempted state law on this, because there are  
15 so many state laws that go so much farther than the  
16 federal law. For one thing, many state laws cover  
17 creditors, which the federal law doesn't, and until we  
18 get anything equivalent to that in the federal regime,  
19 there's no way we could even discuss it.

20           Not only do they cover creditors, many state  
21 laws say that there's a statutory penalty for every  
22 violation, and the statutory penalty for every violation  
23 is indexed, so that it's now worth between \$3,000 and  
24 \$4,000. So, if you're looking at federal preemption,  
25 the starting place is at the best state law, but even

1 then, it's -- for all the good reasons that Laura  
2 articulated, which I won't repeat but I underline, we --  
3 I can't imagine that there would be a bill that we would  
4 agree to.

5 MS. TWOHIG: And, Rozanne, before we continue  
6 on -- I think I saw Gary wanted to say something, but  
7 before we continue on, I just wanted to try to get some  
8 clarity from you, and maybe you haven't thought about  
9 this specifically, but are you talking about all state  
10 and local laws, licensing laws, the licensed collectors?

11 MS. ANDERSEN: No. What I tried to say at the  
12 very outset, we are absolutely not talking about state  
13 regulations, state licensing laws. We are talking  
14 specifically -- and if you would like to say it this  
15 way -- provisions of the Fair Debt Collections Practices  
16 Act, if you want to look at it -- if we are afraid to  
17 just say "the law," but there are clearly certain  
18 provisions in the FDCPA that we believe should apply  
19 uniformly, across the board, to debt collector  
20 communication and behavior and the corresponding  
21 consumer rights, and if we have to bring people to the  
22 table to discuss the optimum result, that's fine, and  
23 just -- you know, I mean, this is where the future  
24 dialogue is necessary.

25 I know Margot has her nonstarters. For example,

1 with us, for the record, I mean, injunctive relief is a  
2 nonstarter when it comes to private consumer enforcement  
3 power. So, I think you're going to -- as we push on  
4 some of these, you'll see less consensus.

5 MS. TWOHIG: And in some of the federal statutes  
6 that do have preemption, like the Fair Credit Reporting  
7 Act, it has substantial preemption, not complete  
8 preemption, but the states have the power to enforce the  
9 federal law. What would you say about that if you were  
10 proposing preemption under the Fair Debt Collection  
11 Practices Act?

12 MS. ANDERSEN: Well, I would look first to our  
13 executive committee and board of directors of just how  
14 far I can go with the response to that question, but I  
15 would say that if we could identify uniform practices  
16 and uniform standards, that I would at least have to say  
17 that we would be open to a meaningful discussion of  
18 that, because we also understand your enforcement  
19 challenges.

20 MS. TWOHIG: Cindy?

21 MS. WHITE: I think I've talked with Rozanne  
22 about this, but when we're talking about collection  
23 itself, I think that a uniform standard across the  
24 country would be important, and it is something that I  
25 think we'd like to discuss. Once again, I have to

1 reiterate, I think that NARCA members are looking for  
2 exemption for litigation. So, as long as we're not  
3 talking about litigation standards across the country  
4 because those are governed by state law, and we don't  
5 think that that's appropriate to preempt.

6 MS. MARGOT SAUNDERS: Can I say something?

7 MS. TWOHIG: Sure.

8 MS. MARGOT SAUNDERS: I am really astonished  
9 that we're talking about preempting stronger state laws  
10 in a system that is so clearly broken. I mean, we have  
11 a catastrophe on our hands with debt collection, and I  
12 understand that perhaps -- I'm sure none of the debt  
13 collectors in this room are responsible for that, but  
14 nevertheless, around the country, consumers, low-income,  
15 elderly, disabled consumers are paying debts that they  
16 don't owe, are being dunned for debts that are long  
17 since past the statute of limitations.

18 We shouldn't even be talking about preempting  
19 better state laws until we have at least on the table a  
20 very strong, comprehensive federal law that we're  
21 nowhere near even contemplating.

22 MS. ANDERSEN: We would submit that that's part  
23 of the conversation.

24 MS. MARGOT SAUNDERS: Well, it's just -- when  
25 you look at what's happened with other preemption of

1 other laws, all we have had is catastrophe. So, the  
2 model is not good.

3 MS. TWOHIG: Okay. And Margot had also raised,  
4 in addition to the point she just made, some issues of  
5 remedies. Anyone want to respond to that before we move  
6 on?

7 MR. WOOD: I'd like to catch up on what just  
8 happened, if I can understand what that was. There has  
9 been an awful lot of information provided that has to do  
10 with anecdotal evidence of what happens in particular  
11 law offices or whatever and then the extrapolation of  
12 that to the assumption that it covers everyone on the  
13 planet. I once did a study when I was in college to try  
14 to find out how many people had bad teeth, and so I set  
15 myself up right outside of a dentist's office, and  
16 everybody I talked to had bad teeth, and I think  
17 everybody that goes into some of these offices is going  
18 to have a problem with a collector, but that doesn't  
19 mean that everybody has a problem with collectors.

20 I think that if -- there has been an attempt to  
21 paint rampant compliance issues out of hand and that our  
22 industry and the collection industry are out of control  
23 and need to be reined in. I think that's failed. I  
24 think that we have wound up with some areas that  
25 everybody agrees we need work on. We need work on

1 compliance, I'll give you that, we need work on  
2 communications, we need work on strengthening the  
3 ability of your organization to enforce the law.

4 I'm not too sure how I feel about rulemaking.  
5 I'd have to talk to our guys about that, but I just want  
6 to say that I think we slipped off the cog just a little  
7 bit by extrapolating from some specific cases, which I  
8 readily admit should never have happened. None of us  
9 here wants that to happen. Our association, Rozanne's  
10 association, we fight like the devil to keep our members  
11 from misbehaving, and --

12 MS. ANDERSEN: Gary, I would just like to add,  
13 too, to that that another perspective -- and the reason  
14 one of our recommendations for nonlegal changes would be  
15 a serious consideration and effort made for an  
16 alternative dispute resolution program for consumers,  
17 because we think they need the ability to be able to  
18 resolve their disputes.

19 You have your purposes for your use of  
20 complaints. We believe that to put enforcement solely  
21 on the backs of the United States citizens who, to  
22 listen to some in this room, although I do not  
23 stereotype people, are indigent, challenged in terms of  
24 their literacy, and to put full enforcement on their  
25 backs in terms of filing lawsuits, going to court,

1 answering interrogatories, responding to discovery  
2 requests, and that's the solution?

3 I think that is a disservice to put that on the  
4 backs of those private individuals who apparently need  
5 our help the most, and that is why ACA International  
6 supports an alternative dispute resolution program that  
7 does not draw the ire and all the negatives that  
8 apparently came out, and I would hope -- and this is a  
9 pretty bold statement -- but I would hope that any true  
10 disdain for an alternative dispute resolution program  
11 has absolutely nothing to do with consumer lawyer  
12 interests.

13 MS. MARGOT SAUNDERS: Well, can I respond to  
14 that?

15 MS. TWOHIG: We are actually over time, so my  
16 apologies to the audience when I said we would try to  
17 stick on the schedule, but since I don't see people in  
18 droves leaving the room and am fairly interested in the  
19 discussion, we will continue a little bit longer here.

20 Margot, if you could respond to that, and I  
21 would actually like to turn to and open it up to  
22 nonlegal regulatory enforcement solutions possibilities,  
23 whether it's technology, alternative dispute resolution,  
24 financial literacy. I know Gary mentioned as two of his  
25 suggestions more research, and so I would like to throw

1 out and try to talk about some of the nonlegal solutions  
2 in terms of next steps and how do we get there, but go  
3 ahead, Margot.

4 MS. MARGOT SAUNDERS: I think that the consumer  
5 community would not be adverse at all to an alternative  
6 dispute resolution program so long as it was not binding  
7 and it was open and free to the consumers. You're  
8 absolutely right, Rozanne, there needs to be an  
9 alternative, an additional way to resolve these problems  
10 without going to court. We are not, at the National  
11 Consumer Law Center, looking for litigation  
12 opportunities. We are looking for ways to change the  
13 current structure of the law, of the situation, so that  
14 so many consumers are not so troubled.

15 We respond to legal services and private  
16 attorneys who are representing consumers for free. So,  
17 again, we would like to -- whatever we can do to resolve  
18 the overall situation, not create litigation  
19 opportunities. At the moment, preserving access to the  
20 courts seems to be the best way to enforce this law and  
21 to create an incentive to ensure that debt collectors  
22 don't behave in abusive ways.

23 MS. TWOHIG: So, what would be the next step in  
24 exploring that from anyone's perspective, in exploring  
25 that possibility, of developing that?

1 MS. ANDERSEN: Well, I think the FTC has given  
2 us some guidance in past speeches and recommendations  
3 themselves about the auto manufacturer industry, the  
4 advertising industry. There are apparently some  
5 alternatives that are already out there and working, and  
6 the National Council of Better Business Bureaus was  
7 referenced yesterday. I know as industry, sometimes  
8 groups come together and move those initiatives forward.

9 MS. TWOHIG: Okay. I think we do need to wrap  
10 up, but I don't want to stop without talking about  
11 Gary's idea, because it was pretty apparent from the  
12 very opening session, the researchers and economists  
13 that we had said from the get-go, we don't know a lot.  
14 There's a lot of basic information about the industry  
15 that just is not out there. Any thoughts on how that  
16 changes?

17 MR. WOOD: I didn't think I was going to have to  
18 come up with an answer. I just said it was a problem.

19 I don't know, because so much of what -- you  
20 know, we've got four publicly traded companies that buy  
21 debt. The rest of us are all private. It's very hard.  
22 DBA International has worked to try to get its  
23 membership to report information that might be useful in  
24 fleshing out some of these issues, and it's very  
25 difficult to do that, and I don't really -- anybody --

1       guys, do you have an idea?

2               MS. ANDERSEN: I have a suggestion, Gary, just  
3       to state one obvious --

4               MR. WOOD: Go ahead.

5               MS. ANDERSEN: -- is that as the chief  
6       enforcement authority -- and granted, we're not here to  
7       talk about your limitations due to financial  
8       resources -- but if there's one organization, entity in  
9       this United States that would have a reasonable basis to  
10      do research, you have statisticians, you have those  
11      kinds of resources, I think that that is -- that would  
12      be one logical source.

13              And I know the Federal Reserve Board fellow,  
14      everyone was running around yesterday talking about what  
15      opportunities can we do as an industry to start  
16      conducting some research. So, boy, out of the gate, I  
17      think it's safe for me to say that we would applaud  
18      that, to give you that ability, to really dig down and  
19      have a better statistical understanding of the industry  
20      you are the enforcement authority of.

21              MR. WOOD: And Bob Hunt pointed out that he's  
22      fascinated by this field, and perhaps that would be a  
23      good place to start.

24              MS. TWOHIG: We will just hire Bob.

25              Margot, one last comment.

1           MS. MARGOT SAUNDERS: I think that would be a  
2 great idea for you all to lead an investigatory effort.  
3 I would like to caution, however, that you look at the  
4 questions in terms of raw numbers and not just  
5 statistics. We're not dealing with just one million  
6 debt collections. We're dealing with a billion debt  
7 collections. So that if you have a 2 percent problem --  
8 and my example is just by way of example -- if there's a  
9 2 percent problem, 2 percent of a billion is a whole lot  
10 of -- it's a very big problem, so --

11           MR. WOOD: And the other side of that is 69,000  
12 complaints on a billion contacts is a very small  
13 percentage.

14           MS. TWOHIG: Well, we won't go back over that  
15 territory. We don't have enough time for that.

16           I think we're going to need -- I am going to  
17 stand up just to give some final closing remarks.

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## 1 CLOSING REMARKS

2 MS. TWOHIG: Thank you all, again, for coming  
3 and especially to our distinguished panelists here and  
4 the previous panelists for their thoughtful  
5 contributions to this workshop. We're very pleased that  
6 so many of you came and that we had so much  
7 participation in the process, and I know many of you  
8 traveled from far away to attend, and we really  
9 appreciate that.

10 I want to thank the folks that really made this  
11 come together. Lydia Parnes, our Bureau Director,  
12 mentioned some of them this morning, but I want to thank  
13 them again, and that is mostly this group sitting here.  
14 I think I see everyone, Tom Pahl --

15 (Applause.)

16 MS. TWOHIG: -- Tom Pahl, one of my Assistant  
17 Directors, Tom Kane, Katie Harrington-McBride, Karen  
18 Hickey, and they all were basically the planning team,  
19 as well as Seth Coburn -- where is Seth? Okay, he's --  
20 okay, he's -- he's not sitting right there, but we  
21 applaud them all.

22 And we also had, as you know, other FTC staff,  
23 including Chuck Harwood, Director of Our Northwest  
24 Regional Office, Alice Hrdy, one of my Assistant  
25 Directors, Reilly Dolan, another Assistant Director, as

1 moderators, and they all contributed significantly, and  
2 I just want to thank them all. They had the job of not  
3 only planning the substance, but putting together all  
4 the nitty-gritty details that went into getting this off  
5 the ground. I think things ran pretty smoothly, despite  
6 some problems with the microphones -- we won't go back  
7 there -- but I am really grateful for all your hard  
8 work.

9           And so I just want to close with a quote from  
10 Ethel Watts Mumford, an American novelist and humorist,  
11 once remarked that, "In the midst of life, we are in  
12 debt." Well, judging from the past two days, truer  
13 words have never been spoken. We have all been talking  
14 about debt and debt and debt. Matters of life and debt  
15 impact all of us, some professionally, some personally,  
16 and we've learned a great deal. I know I have learned a  
17 huge amount over the last two days, and we have a lot to  
18 process.

19           Clearly, the debt collection industry has been  
20 in a period of significant change. Consumer debt levels  
21 continue to rise. We have the subprime mortgage market  
22 fallout that will likely only add to some consumer debt  
23 troubles. We have technological advances that have made  
24 a difference but will also continue to make a difference  
25 as things change, and so we have our work cut out for

1 us.

2 Here at the FTC, we believe we have a duty to  
3 try to keep abreast of these issues and examine these  
4 issues, and especially when there's periods of change,  
5 when we see -- and especially in times where, for  
6 whatever reason -- we're not going to debate it -- we  
7 do, in fact, see continuing consumer complaints and a  
8 rise in complaints in proportion to other complaints,  
9 and so that's the reason why we're here, the reason  
10 why we're trying to gather information on as systematic  
11 basis as possible, and so we appreciate your  
12 efforts.

13 We will, of course, continue with our law  
14 enforcement approach. An important part of our mission  
15 is consumer education as well as business education, but  
16 this event is really critical in trying to gather some  
17 information that before the last two days we had a sense  
18 of but didn't really know. I know much of it, some of  
19 it was anecdotal, but it still helps to hear different  
20 views on the different issues of the day.

21 We are planning to do a report on this workshop.  
22 The report will summarize what we have learned. We will  
23 try to synthesize all of this information as best we  
24 can, and we will consider whether we will be making  
25 recommendations or what our next steps will be, and so

1 you can look forward to that. I'm not going to make any  
2 promises exactly when that's going to be out, I'm afraid  
3 to, but we will be working hard on that. We will do our  
4 best.

5 As you can tell from the work we've put into  
6 this, this is a priority, to try to sort through some of  
7 these issues, figure out what we think about it. We  
8 will be continuing to reach out to you to get further  
9 information, and I just thank you so much for all of  
10 your participation.

11 (Applause.)

12 (Whereupon, at 4:16 p.m., the hearing was  
13 concluded.)

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1 C E R T I F I C A T I O N O F R E P O R T E R

2 DOCKET/FILE NUMBER: P074805

3 CASE TITLE: COLLECTING CONSUMER DEBTS

4 DATE: OCTOBER 11, 2007

5

6 I HEREBY CERTIFY that the transcript contained  
7 herein is a full and accurate transcript of the notes  
8 taken by me at the hearing on the above cause before the  
9 FEDERAL TRADE COMMISSION to the best of my knowledge and  
10 belief.

11

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DATED: 10/29/2007

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SUSANNE BERGLING, RMR-CLR

17

18 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

19

20 I HEREBY CERTIFY that I proofread the transcript  
21 for accuracy in spelling, hyphenation, punctuation and  
22 format.

23

24

25

SARA J. VANCE