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FEDERAL TRADE COMMISSION

DEBT COLLECTION DIALOGUE

A conversation between government and business

Monday, June 15, 2015

1:30 p.m.

Burchfield Penney Art Center

1300 Elmwood Avenue

Buffalo, New York

Reported by: Richard B. Whalen, CM

FEDERAL TRADE COMMISSION

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FEDERAL TRADE COMMISSION

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Division of Financial Practices  
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Federal Trade Commission

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

1  
2 DR. BANNON: Good afternoon, ladies and  
3 gentlemen. I'm Tony Bannon. I'm director here at the  
4 Burchfield Penney Art Center and I'm very, very pleased  
5 that you have come to the center of arts in Western New  
6 York.

7 We have exhibitions. You're free to visit with  
8 us. We're dedicated to the American watercolorist  
9 Charles Burchfield and also to other artists at  
10 Burchfield's behest who have served the culture of the  
11 western part of New York State.

12 You have our clearly marked emergency exits.  
13 The restrooms are directly across the corridor. I think  
14 you're in good shape.

15 It comes to me as a great pleasure to introduce  
16 Eric Schneiderman, our 65th Attorney General of New York  
17 State and the highest-ranking law enforcement officer  
18 thereby.

19 He's taken on the tough fights to protect New  
20 Yorkers. We all know that. The hallmark of his  
21 practice is that he believes that there has to be just  
22 one set of rules for everybody, no matter how rich or  
23 powerful, and that includes corporations and politicians  
24 and big banks.

25 Let's just pick out one field of activity about

1 the banks. He's played a leading role in the national  
2 effort to hold banks accountable for the misconduct that  
3 has caused the housing crisis. He's secured roughly  
4 60 million in penalties.

5 He's used some of those funds to create the  
6 homeowner protection program which has helped 40,000 New  
7 Yorkers at risk of foreclosures to stay in their homes.

8 In his four years as our Attorney General, he  
9 has recovered more than 20 billion for more than 17,000  
10 workers who were cheated out of that pay by their  
11 employers.

12 Mr. Schneiderman has also taken on the big  
13 financial institutions that use illegal tactics referred  
14 to as insider trading 2.0 to gain unfair advantage over  
15 average investors.

16 Now, before becoming our Attorney General,  
17 Mr. Schneiderman was a leading reformer in the New York  
18 State Senate, notably winning each of his six elections  
19 by landslide numbers.

20 And before he was elected to the Senate, he  
21 served as a public interest lawyer representing tenants  
22 trying to evict drug dealers from their buildings, women  
23 seeking access to health clinics, and taxpayers in  
24 historic lawsuits against the MTA.

25 He spent 15 years in private practice at the

1 firm of Kirkpatrick & Lockhart. And I must point out  
2 also that he has served good time with his feet on the  
3 ground. He served as a deputy sheriff in Berkshire  
4 County.

5 He is a graduate, I'm obliged to say this, at  
6 Buffalo State College, he's a graduate from Amherst  
7 College in 1977, and the Harvard Law School in 1982.

8 Ladies and gentlemen, may I present our Attorney  
9 General.

10 (Applause.)

11 WELCOME

12 MR. SCHNEIDERMAN: Good afternoon. Thank you,  
13 Dr. Bannon, for hosting us here. This is a spectacular  
14 space. I've held programs here before.

15 This one is I think very important and I'm glad  
16 that we have a good turnout today because the Federal  
17 Trade Commission has been speaking with my office and  
18 been working together for some time but they've made a  
19 determination to launch a symposium on consumer debt  
20 collection and to keep this conversation going.

21 So this is the kickoff, but they're going to be  
22 in other cities also with other combinations with their  
23 colleagues in government.

24 And I'm very pleased we're starting here in  
25 Western New York as we do have -- we have a lot of

1 business here of debt collection and related services.  
2 We have a lot of good folks trying to do business  
3 legitimately and we have some folks who are trying to  
4 take advantage of debtors when they're feeling weak.

5 But the work that's been done in this area by my  
6 office, the FTC, we're also joined by our colleagues  
7 from the Consumer Financial Protection Bureau and the  
8 New York State Department of Financial Services, the  
9 enforcement has been robust.

10 And I think that it is important to recognize  
11 that forums like this are critically important ways to  
12 open lines of communication that are essential.

13 I'm going to mention a few of my colleagues who  
14 are going to come up here and speak on a panel as soon  
15 as I'm done, but we're joined by Jessica Rich, the  
16 Director of Consumer Protection at the Federal Trade  
17 Commission; from my office, Assistant Attorney General  
18 Jim Morrissey; Christopher Koegel, the Assistant  
19 Director of the Division of Financial Practices at the  
20 FTC; Greg Nodler, Senior Counsel For Enforcement Policy  
21 and Strategy at the Consumer Financial Protection  
22 Bureau; and a distinguished alumnus of the New York  
23 State Attorney General's Office, Joy Feigenbaum, the  
24 Executive Deputy Superintendent for Financial Frauds and  
25 Consumer Protection for the New York State Department of

1 Financial Services.

2 Each of these women and men has important and  
3 valuable insights to share with you. We want to make  
4 sure that people can comply with all applicable laws and  
5 regulations and make that as easy to do as possible.

6 It's very important to me, and I think you  
7 should recognize that you have a lot of cops on the beat  
8 here.

9 And that sends a message that this is an area we  
10 take very seriously, but it also sends a message that  
11 we're trying to coordinate our efforts because one of  
12 the things I get complaints about from people from  
13 various sectors in business is the one thing they don't  
14 like is when state and federal regulators and  
15 prosecutors don't coordinate.

16 And you hear one thing from one person and you  
17 think you're settled, someone else shows up. This area  
18 of work, and I have to give credit to the FTC for really  
19 helping make this possible, is an area where we are  
20 coordinating very well. We want to have one solid  
21 message for everyone in the community.

22 Our job is to go after the bad actors, but in my  
23 view, it's also to help the good actors. And as is true  
24 in every sector of the economy, one of the best sources  
25 of information about the bad actors are the good actors

1 in the business, because really there are two victims  
2 whenever someone is committing a fraud in collecting a  
3 debt, the debtor who is being abused, but also the  
4 legitimate debt collection companies who aren't  
5 committing fraud and have served what amounts to a  
6 competitive disadvantage to the bottom feeders who will  
7 do and say anything. And believe me, there are folks  
8 out there who will do and say anything.

9 As people in law enforcement and as regulators,  
10 again, we really want to make sure that people are not  
11 victimized.

12 This is our first mandate, but the -- and I do  
13 not want to -- I want to stress that my office and our  
14 colleagues in government, we have very strong laws on  
15 the books to protect consumers and to protect --  
16 specifically to protect debtors and we will enforce  
17 those laws.

18 We have seen companies that threaten consumers  
19 with arrest and civil lawsuits they don't intend to  
20 file. Folks who have contacted friends, relatives, or  
21 the employers of a debtor. We've seen cases in which  
22 consumers were sued for debts they didn't actually owe.

23 And the New York State Debt Collection  
24 Procedures Law and our federal counterparts are very  
25 clear and strong statutes.

1           So our commitment to protect consumers is  
2    ironclad, but for my part, I always favor a balanced  
3    approach. At the end of the day, the goal is not just  
4    to catch more and more bad guys. At the end of the day,  
5    the goal is to have reforms in place so there are fewer  
6    bad guys to catch.

7           And we want to listen to you as well as speak to  
8    you and make our position clear, but I really have to  
9    again thank my colleagues in government. This is a  
10   tremendously valuable project for anyone in the  
11   industry: Having all of the various cops on the beat  
12   together in one place so you can get a unified message  
13   and having the ability to communicate with them.

14          This is the right way to get things done. So we  
15   will continue to coordinate closely with all of our  
16   colleagues in government and to continue to have  
17   conversations with folks in the industry who provide us  
18   with information.

19          This is the right way to do regulation and law  
20   enforcement. I don't believe in law enforcement by  
21   surprise. No one should be surprised about what the  
22   rules are or how we're enforcing them or who is  
23   enforcing them.

24          So I hope that you can leave today with a  
25   clearer sense of what we're doing and we can leave today

1 with better information and a better understanding of  
2 what's going out there in the wild world.

3 And so now it's my honor to introduce the  
4 Director of the FTC's Consumer Bureau of Protection  
5 Jessica Rich, who oversees hundreds of attorneys and  
6 investigators and support personnel working to protect  
7 consumers from deceptive and unfair practices.

8 She has been at the FTC for 25 years in several  
9 senior positions; has received the Chairman's Award, the  
10 agency's highest award for meritorious service; and is  
11 often imitated but never duplicated.

12 Ladies and gentlemen, it's my pleasure to  
13 introduce Jessica Rich.

14 (Applause.)

15 OPENING REMARKS

16 MS. RICH: Well, thanks so much to the Attorney  
17 General for joining us here today. We have a great  
18 partnership with his office, so it's wonderful that we  
19 could work that out today.

20 I want to welcome everyone to the Debt  
21 Collection Dialogue here in Buffalo. I've never been  
22 here before. I wish I could stay longer so I could see  
23 Niagara Falls, which I've always wanted to see, but I  
24 have to return tonight.

25 I just had a wonderful lunch, but I should have

1 ordered the Buffalo wings and not the mahi-mahi. What  
2 was I thinking?

3 For those of you who are tweeting, the hashtag  
4 for this event is #debt dialogue. Is that up? There it  
5 is. Good.

6 So as many of you know, for more than 30 years,  
7 the FTC was the sole federal enforcer of the Fair Debt  
8 Collection Practices Act, a law you're probably quite  
9 familiar with.

10 The states were on the job during that time, but  
11 it was just the FTC at the federal level. Starting a  
12 few years ago, we welcomed another federal cop on the  
13 beat, the Consumer Financial Protection Bureau.

14 And they've been an excellent partner. Greg  
15 Nodler from the CFPB is here and he'll talk shortly  
16 about that agency's enforcement and educational  
17 activities.

18 We are very lucky to have partners like the  
19 Attorney General's Office and CFPB as we combat illegal  
20 debt collection activities to protect both consumers and  
21 law-abiding debt collectors.

22 Our debt collection work is important for a lot  
23 of reasons. When Congress passed the Fair Debt  
24 Collection Practices Act, it noted the pervasive and  
25 harmful effects that abusive practices have on both

1 consumers individually as well as on the economy as a  
2 whole.

3 Among other things, Congress noted that abusive  
4 debt collection practices contribute to personal  
5 bankruptcies, marital instability, loss of jobs, and  
6 invasions of privacy.

7 These practices are debilitating to consumers  
8 and in some cases, cause them to pay debts they don't  
9 owe at all.

10 This affects enormous numbers of consumers.  
11 Studies have found that about 15 percent of adult  
12 Americans, that's nearly 30 million people, have an  
13 account in collections.

14 Viewed another way, over 35 percent of Americans  
15 with credit records have past-due debt on their credit  
16 reports. And those debts are significant, averaging  
17 over \$5,000.

18 I would add that the cumulative amount of this  
19 debt is significant to the economy as a whole. In 2010,  
20 the total amount of consumer debt in the U.S. reached  
21 nearly 2.5 trillion.

22 We at the FTC also know that debt collection is  
23 a significant industry. Congress recognized this when  
24 it passed the FDCPA. Indeed, one of the purposes of the  
25 act was to ensure that law-abiding collectors are not

1 competitively disadvantaged.

2 Somewhere between 4- to 5,000 firms are engaged  
3 in the third-party collection of debts. If you include  
4 employees collecting debts on behalf of the original  
5 creditor, the Bureau of Labor Statistics estimates that  
6 as many as 456,000 people work as bill collectors.  
7 These collectors make perhaps as many as 1 billion  
8 contacts with consumers every year.

9 So unless you're a recluse living off the grid,  
10 debt collection issues are directly affecting you or  
11 someone you care for.

12 The consumer complaints we receive at the FTC  
13 confirm this. In fact, we continue to receive more  
14 complaints about debt collection than about any other  
15 industry. We received 283,000 in 2014 alone. And our  
16 experience has shown that these complaints are the tip  
17 of the iceberg. Most consumers don't complain.

18 There doesn't need to be this much abuse. As  
19 many of you know, and as Congress noted when it enacted  
20 the FDCPA, debts can be effectively collected without  
21 resort to deception or abuse.

22 For all of these reasons, the FTC has made debt  
23 collection one of its strategic priorities for many  
24 years now. This is reflected in the many law  
25 enforcement actions that we have brought.

1           For example, last year, the FTC filed 10 new  
2   debt collection cases against 56 different defendants.  
3   We obtained nearly 140 million in judgments and those  
4   judgments banned 47 companies and individuals from ever  
5   participating in debt collection again.

6           And we are continuing this vigorous enforcement  
7   work this year. So far in 2015, we've already filed  
8   eight new debt collection cases and we are only halfway  
9   through the year.

10          The FTC's debt collection work isn't confined,  
11   though, to just law enforcement. Our focus on debt  
12   collection is also reflected in the workshops and  
13   roundtables we've held, the reports we've issued, and  
14   the amicus briefs that we have written, and of course,  
15   the many speeches we've made. This will continue to be  
16   the case going forward.

17          In each of the last several years, the FTC has  
18   expanded its work in the debt collection area, and I see  
19   that trend continuing until the abuses in this area  
20   abate.

21          This event is yet another strategy for fighting  
22   abusive debt collection and this is our first event of  
23   its type, so thank you for being here at our first  
24   event.

25          We're scheduling several more around the

1 country. The second and third will be in Dallas and  
2 Atlanta this fall, so if you have a really good time  
3 here, you can come to -- travel around the country and  
4 come to more.

5 At each of these dialogues, FTC staff will join  
6 with our state and federal enforcement colleagues in  
7 those regions to share information with industry members  
8 and answer questions from the audience.

9 We see these as opportunities for you to meet  
10 the agencies who police the industry and for us to get  
11 to know you. We hope to highlight areas of concern,  
12 share our strategic priorities, and generate ideas for  
13 compliance.

14 We also hope that we can find ways to partner  
15 with industry to reduce the abuses in this area and to  
16 stop the bad actors who give the legitimate actors a bad  
17 name.

18 These events are structured to provide ample  
19 opportunity for give and take. There will be at least  
20 an hour at the end of the day for participants to ask  
21 questions of all the panelists.

22 You will hear today from the FTC, the CFPB, the  
23 New York Attorney General's Office, and the New York  
24 Department of Financial Services.

25 All of us have jurisdiction over these difficult

1 debt collection issues. That's why it's so important  
2 that we collaborate. These collaborations have always  
3 led to great results.

4 This spring, we brought our first joint case  
5 with the CFPB, the Green Tree Financial case, to address  
6 alleged debt collection and debt servicing violations.

7 We obtained a strong order and substantial  
8 consumer redress and penalties. And over the last year,  
9 we have filed three cases jointly with the Buffalo  
10 office of the New York Attorney General against National  
11 Check Registry, Vantage Point Services, and Four Star.  
12 These collaborations have been clear successes, and we  
13 will continue to look for opportunities in New York and  
14 elsewhere.

15 We chose Buffalo for our first venue for a  
16 reason and it's not just because the organizers of this  
17 event, Chris Koegel and Tom Kane, love Buffalo wings and  
18 wanted to go over the Falls in a barrel.

19 The Buffalo area is important because there are  
20 so many debt collectors here. The Bureau of Labor  
21 Statistics shows that the Buffalo-Niagara Falls area has  
22 approximately 4,700 collectors.

23 As of May 2014, only three metropolitan areas  
24 had a higher percentage of their employed residents  
25 working in the collection industry.

1           The Buffalo area is also home to many companies  
2           that are the subjects of debt collection complaints at  
3           the FTC that we receive on a regular basis.

4           It has gotten so bad that people are writing  
5           books about the situation. Because so many consumers  
6           complain about the practices of Buffalo collectors, the  
7           FTC has filed six cases against Buffalo collection  
8           enterprises just in the last year-and-a-half.

9           But we see these egregious practices continuing  
10          and they do need to stop. Chris Koegel, who, as I  
11          mentioned, is the FTC's assistant director in charge of  
12          our debt collection program. He will talk about these  
13          cases in more detail and there are also the  
14          descriptions of them out on the table.

15          For those of you in the room who work in debt  
16          collection, we need your help. Please help all of the  
17          law enforcement agencies that you meet here today stop  
18          abusive debt collection practices.

19          Many of you in this room are in the perfect  
20          position to learn which collection agencies, collection  
21          law firms, debt sellers, and debt buyers are breaking  
22          the law. Please tell us about these companies. Give us  
23          a call, send us an E-mail. We regularly hear about  
24          abusive practices this way.

25          It will help us and help consumers throughout

1 this country. It will also help you. We know how tired  
2 you are of seeing and hearing criticisms of the debt  
3 collection industry in the press and elsewhere. Help us  
4 get rid of the bad actors who are damaging your  
5 industry's reputation.

6 Thank you again for coming today. I look  
7 forward to hearing the presentations, and just as  
8 important, the questions and comments that you in the  
9 audience all make.

10 Thank you.

11 (Applause.)

12 INTRODUCTION

13 MR. KANE: Thank you, Jessica.

14 My name is Tom Kane. I am in the Federal Trade  
15 Commission's Division of Financial Practices and I'm  
16 going to serve as sort of an MC at various moments here.

17 I'm going to now introduce and bring up the four  
18 panelists, the four representatives of the state and  
19 federal agencies. And they'll each talk for about 20  
20 minutes.

21 Then we'll have a break and then we'll have a  
22 question-and-answer session for an hour. All or most of  
23 you, at least, have a couple of question-and-answer  
24 cards.

25 While they're giving their presentations, we

1 will be accepting questions. We'll wait till the Q&A  
2 session, but please hold up your hand with a card and  
3 we'll have people running up and down with baskets  
4 collecting them. And then during the Q&A session, I  
5 will read from them and ask the panelists questions.

6 So let me just start with the first panelist is  
7 Jim Morrissey from the Office of the New York State  
8 Attorney General.

9 PRESENTATIONS

10 MR. MORRISSEY: Thank you, Tom.

11 It's wonderful to be here today and to see this  
12 full room. And this symposium speaks to the cooperation  
13 among law enforcement to combat abusive, and I stress  
14 the word "abusive" debt collection practices not only  
15 here in Buffalo, New York, but nationwide, but it also  
16 speaks to our desire to reach out to you, to debt  
17 collectors, proactively and start a dialogue on how we  
18 may all reach I think the goal that we want and that is  
19 to rid the debt collection industry of abusive debt  
20 collectors.

21 We're here in the Burchfield Penney Art Center,  
22 which is one of many wonderful cultural institutions of  
23 Buffalo and, in fact, as any Buffalo sports fan will tell  
24 you, our cultural institutions are much stronger than our  
25 sports teams.

1           So let's just talk about New York State law  
2 enforcement. The Attorney General gets his power to  
3 investigate debt collectors primarily from three  
4 sources.

5           The three sources are Executive Law Section  
6 63(12), which I think is a wonderfully elegant statute.  
7 It says basically that whenever any person engages in  
8 repeated fraudulent or illegal acts, the Attorney  
9 General can go to court to try to stop them. It's a  
10 little longer than that, but that's essentially what it  
11 says.

12           And there are probably three words there you  
13 need to understand in order to give meaning to that  
14 statute. The first word is "repeated." What does  
15 "repeated" mean? It means more than once. It could be  
16 twice, it could be three times, it could be a thousand  
17 times.

18           What does "fraudulent" mean? And for the  
19 attorneys in the audience, the word "fraudulent" bears  
20 very little in common with the concept of common law  
21 fraud.

22           Fraudulent means that a business practice has  
23 the tendency to deceive a consumer, the tendency or  
24 capacity. And understand that we're not talking about  
25 Einstein in terms of deception. We are talking about

1 the credulous and the unthinking consumer as well as the  
2 sophisticated consumer.

3 The Attorney General, to make a case out under  
4 63(12), is not required to show intent, is not required  
5 to show that anyone intended to deceive a consumer, and  
6 the Attorney General is not required to show reliance on  
7 the misrepresentation. He simply must show the  
8 tendency or capacity to deceive.

9 Now, even before the Attorney General files an  
10 action, he can issue subpoenas to require the production  
11 of documents and sworn testimony.

12 In terms of relief, the relief is really quite  
13 broad. We can seek injunctive relief, which means  
14 simply we can proscribe or prescribe certain behavior.  
15 We can seek restitution on behalf of consumers, damages  
16 on behalf of consumers, and disgorgement of ill-gotten  
17 gains.

18 As elegant as 63(12) is, I think Section 349 of  
19 the General Business Law is even more elegant:  
20 Deceptive acts or practices in the conduct of any  
21 business in this state are hereby declared unlawful.

22 What does a "deceptive act" mean? It has the same  
23 definition as fraudulent acts for the purposes of  
24 63(12), the capacity or tendency to confuse the consumer.

25 Now, the relief that the Attorney General can

1 seek under Section 349 is very similar to the relief  
2 he can seek under 63(12) and that is restitution,  
3 damages, disgorgement, and injunctive relief with one  
4 pretty important addition.

5 Under Section 350-d of the General Business Law,  
6 the Attorney General can seek and a  
7 Court can award civil penalties of up to \$5,000 for each  
8 and every deceptive act committed by a business.

9 As you can see, that can amount to a fairly  
10 substantial amount of money pretty quickly. And  
11 understand that if you are involved with elderly  
12 consumers, the fines and penalties are even more.

13 The third and final source I'll discuss is the  
14 New York State debt collection statute, Article 29-H of the General  
15 Business Law. In very sharp  
16 contrast to the FDCPA, this statute applies to principal  
17 creditors as well, not solely to third-party collectors.

18 The prohibited practices under the New York law  
19 are really quite similar to the FDCPA except they're not  
20 quite as detailed. There's no private right by a New  
21 York State consumer under that statute, and that also is  
22 in contrast to the FDCPA. But any person who violates  
23 Article 29-A of the General Business Law can be  
24 prosecuted and found guilty of a misdemeanor, which is a  
25 crime in the State of New York.

26 The Attorney General is given a very broad and

1 powerful set of statutes and we have used them pretty  
2 actively here in the Buffalo area.

3           Since the Attorney General has taken office, we  
4 have collected more than a million dollars in  
5 restitution and penalties. We've shut down at least a dozen businesses,  
6 barred persons from the collection industry, including  
7 attorneys who were involved in the consumer debt  
8 collection industry. We have prosecuted cases  
9 criminally, and we have required dozens of businesses to  
10 fundamentally change their business practices.

11           Now, I could stand here and I could describe to  
12 you the stuff that we see every day, that Karen Davis in  
13 our office hears every day, but I thought rather than  
14 describe that, I'm going to play two telephone calls for  
15 you.

16           Now, I've got to set the first one up. The  
17 collector calls the consumer, and you know, I'm Irish  
18 and I tend to exaggeration, but I'm not exaggerating.

19           He calls the consumer. The consumer says, "My  
20 wife just died in the home." The collector thinks about  
21 it for a second and terminates the call.

22           He immediately calls back and says, "Where is  
23 your dead wife being taken?" The consumer says, "She is  
24 being taken to" -- or "the funeral home is going to be  
25 picking her up directly."

1           And the collector immediately challenges him and  
2           says, "That's not how it's done. She has to be taken a  
3           medical examiner. You'd better not be fooling with me  
4           about your dead wife." The call terminates.

5           The debt collector calls the consumer's parole  
6           officer to see if the consumer can be violated for  
7           quote, unquote, fraud, that is, having failed to pay the  
8           debt. The parole officer says of course not, but the  
9           parole officer confirms the death of the wife.

10           Now, we are talking about calls that are taking  
11           place boom, boom, boom. Now we have a third call, and  
12           that's the call I want you to hear.

13           (Recording of telephone call played.)

14           MR. MORRISSEY: There is no "attorney network."

15           Ooh, he perked up.

16           His wife died in the home.

17           He was typing that.

18           Did you hear that line? His dead wife is in the  
19           home. "Tomorrow's not promised to anyone."

20           What if they scheduled in court the same day of  
21           her funeral?

22           (Playing of recorded telephone call ended.)

23           MR. MORRISSEY: Let's try one more call. This  
24           is a call, he calls a school and threatens to forcibly  
25           remove the teacher from the classroom in front of her

1 students.

2 (Recording of telephone call played.)

3 MR. MORRISSEY: Of course, he's not an  
4 investigator. He did not identify himself as a debt  
5 collector.

6 (Playing of recorded telephone call ended.)

7 MR. MORRISSEY: You get the idea. The call goes  
8 on. I mean, I'm not going to catalog the violations in  
9 those two calls because we'd be here until approximately  
10 5:00 o'clock if I did so, but these are the level of  
11 calls that we're dealing with on a day-to-day basis.  
12 And they're outrageous and it's one of the reasons we  
13 become so impassioned about these cases.

14 But we don't just police individual collectors,  
15 although we do a lot of that. We also try to engage in  
16 systemwide activities and activities that will have a  
17 larger impact than on the individual cases.

18 For example, I'm going to give you three quick  
19 examples. We investigated four debt buyers that were obtaining  
20 judgments against consumers when the  
21 underlying debt was well beyond the statute of  
22 limitations.

23 The investigation into the cases  
24 resulted in the debt buyers vacating 7,800 default  
25 judgments worth \$35.7 million, paying \$1.2 million in

1 costs and penalties and, of course, fundamentally  
2 changing their business practices.

3 Payday loans. What's a "payday loan" in New York  
4 State? A payday loan in New York is a loan that is for  
5 \$25,000 or less made for personal or household purposes  
6 by an unlicensed or unchartered lender that has an  
7 interest rate of more than 16 percent.

8 Are payday loans legal in New York State? No,  
9 they are not. You will not see a brick-and-mortar  
10 payday loan company in New York State.

11 But what we did learn is we had New York debt  
12 collectors that were collecting on payday loans given to  
13 New Yorkers by out-of-state businesses.

14 We began an investigation against four or five  
15 different companies, got about \$300,000 in restitution,  
16 \$30,000 in penalties, and reversals of 8,500 negative credit  
17 reports. One company was banned from collecting  
18 \$3.4 million in payday loans and, of course, we required  
19 a fundamental change in business practices.

20 Do you know what a payday loan title loan is?  
21 Well, it's the same as a payday loan except the consumer  
22 pledges the title to the vehicle in repayment of the  
23 loan.

24 This one presented a tough wrinkle for us  
25 because many of the title payday loan companies are

1 Native American tribes, and under the doctrine of  
2 sovereign immunity, it wasn't possible for us to go  
3 directly against the tribes.

4           So we figured out, well, what can we do? Well,  
5 we said why don't we go against those businesses that  
6 repossessed the vehicles on behalf of the tribes?  
7 Because if the tribe calls and says, "I want a vehicle  
8 at 123 Main Street, Buffalo, New York, repossessed" and  
9 they get "no" as an answer, maybe they won't make payday  
10 loans in New York State.

11           And that's exactly what happened. We reached  
12 agreements with about a dozen businesses that repossess  
13 vehicles, several of them nationwide, and they now  
14 categorically refuse to repossess where the underlying  
15 loan is a payday loan.

16           So I've gone over quickly that we do individual  
17 actions and we do systems, but we also do policy  
18 advocacy and the recent OCA regulations are an example.

19           Now, if you're a debt buyer or a creditor and  
20 you go to get a default judgment, the Office of Court  
21 Administration just made the regulations much, much more  
22 stringent and accepted many of the recommendations that  
23 had been made by Attorney General Schneiderman.

24           Creditors and debt buyers now must submit  
25 specific evidentiary affidavits that, among other

1 things, establish a chain of title to that debt.  
2 For the first time, they're going to be required to have  
3 as an exhibit to an affidavit a credit agreement and a  
4 final account statement.

5 There's a requirement of an additional notice  
6 that will go to the consumer that the Court itself sends  
7 out to the consumer to make sure that the notice is  
8 effective because God knows we've done so many sewer  
9 service cases I won't begin to recount them.

10 And there also must be an attorney affirmation  
11 that that debt is not beyond the statute of limitations.  
12 A very, very stringent set of new regulations.

13 Our fourth approach is cooperation with our law  
14 enforcement partners. And in the last year, it's just  
15 been wonderful from our perspective. We've filed three  
16 actions with the Federal Trade Commission, and I'll  
17 have -- and Chris will speak to that.

18 We are undertaking a couple of investigations  
19 with the CFPB. Unfortunately, we can't talk about  
20 those, but they are ongoing. You're going to hear from  
21 Joy today about a new set of regulations enacted by the  
22 Department of Financial Services that give us a whole  
23 new set of tools.

24 Remember I said that the Executive Law allows us  
25 to take action where there's illegality? Well, an

1 example of illegality would be violating the regulations  
2 of the Department of Financial Services. And we  
3 cooperate with all law enforcement investigations, both  
4 civil and criminal.

5 Now, in conclusion and with abject apologies to  
6 David Letterman, I'd like to go over the top 10 myths  
7 that debt collectors commonly say, "This is what will  
8 keep the Attorney General off our back."

9 Number one, spin off as a payment processor to  
10 keep your hands in debt collection and say, "We don't  
11 collect debt, we only process payments for debt  
12 collectors."

13 Number two, use an out-of-state address when you're  
14 located right here in New York. To give an example, we had a collector  
15 that said he was located in Toronto and Chicago. An informant came into  
16 our office and said the collector was four blocks away from our office.  
17 They think that we're not going to find them, but we do find them. And much  
18 of that credit goes to Karen Davis.

19 Number three, use an attorney's name who has no meaningful  
20 involvement in the business and threaten to sue. We  
21 have bounced attorneys out of the debt collection  
22 business because they have permitted their names to be  
23 used by debt collection agencies and they have no  
24 involvement with the agency.

25 Number four, this one is really common. Debt collectors think that if  
26 you don't collect from New York consumers, the Attorney General will have no

1 interest in the case. Wrong. The Attorney General has  
2 a strong interest to make sure that the businesses that  
3 operate out of the state of New York operate in a lawful  
4 fashion. You can expect to hear from us.

5 Number five, use false business names because the AG won't  
6 discover them. Yes, we will. I mean, every case we've  
7 brought, people have used false business names that we  
8 have managed to figure out, oftentimes with not that  
9 much trouble.

10 Number six, file a couple of civil lawsuits so then you can  
11 say, "Hey, we're going to threaten everybody with a  
12 lawsuit. So we're going to file two lawsuits in the  
13 civil court in Buffalo and then we're going to threaten  
14 10,000 people with civil lawsuits based on those  
15 filings."

16 Number seven, create multiple shops and then just shift the  
17 debt among the multiple shops. If you've ever been in  
18 New York City, you know the shell game, you know,  
19 "Where's the pea?" You know, we're usually pretty good  
20 at finding that pea in sharp contrast to the games that  
21 I've seen in New York.

22 Number eight, constantly change your name, your phone number,  
23 your address. That only piques our interest. I  
24 mean, come on. If you constantly are changing that

1       stuff, that by itself is going to get our attention.

2               Number nine, and this one I want you to listen closely to. Buy  
3 portfolios and place them with shops that consistently  
4 violate the law.

5               If you think that's a safe harbor as a debt  
6 buyer, you'd better think again because if you're  
7 placing debt with people that consistently violate the  
8 law, we're going to go after the debt collector, of  
9 course, but we're going to go after you as well.

10              And number 10, and this is my favorite, if you  
11 receive a subpoena from our office, don't send us a box  
12 of chocolates.

13              Talk about piquing our interest, why would  
14 someone send us a box of chocolates after we just  
15 subpoenaed them? By the way, we returned them.

16              What we're really interested in is just  
17 to stop egregious debt collection practices. And I know  
18 you agree, and we certainly welcome this dialogue here  
19 today to see how we just can work together to meet that  
20 end. And with that, I'll turn it over to Chris Koegel.

21              Chris.

22              (Applause.)

23              MR. KOEGEL: Thank you, Jim.

24              Good afternoon, everyone. Thank you for joining  
25 us today for this dialogue.

1           With my time, unfortunately, I'm not as clever,  
2   I don't have any David Letterman top 10 lists, but I am  
3   going to talk a bit about the recent cases that we've  
4   brought against companies in the Buffalo area and also  
5   about the FTC's enforcement priorities in the debt  
6   collection area.

7           Along the way, I hope to highlight some  
8   practices that we really don't want to see ever again,  
9   and hopefully give everyone in this room some ideas as  
10  to how we can all work together and partner up to try to  
11  make some of these abuses abate a little bit.

12           First, though, let me give the standard  
13  disclaimer: The views I express today are my own and  
14  not those of the FTC or of any commissioner.

15           But let's talk now for a minute about some of  
16  the recent activity that all of you I'm sure have been  
17  noticing up in Buffalo.

18           In the past year-and-a-half, in addition to the  
19  cases the FTC has brought against collectors in other  
20  parts of the country, we've now brought six cases  
21  against companies based in the Buffalo area.

22           The first was against an operation run by Mark  
23  Briandi and William Moses that used names such as  
24  Federal Check Processing, Federal Recoveries, and United  
25  Check Processing.

1           The second recent case against a Buffalo area  
2 company was announced in July of last year, and that was  
3 our first endeavor with the New York AG's office. That  
4 operation was run by Joseph and Diane Bella and Luis  
5 Shaw. And it went by the name National Check Registry,  
6 eCapital Services, and Buffalo Staffing.

7           In January of this year, we filed a case again  
8 with our friends at the New York AG's office against an  
9 enterprise that went by the names Vantage Point  
10 Services, Payment Management Solutions, and Bonified  
11 Payment Solutions. This enterprise was run by Greg  
12 MacKinnon, Angela Burdorf, Megan Vandeviver, and Joseph  
13 Ciffa.

14           Shortly thereafter, the FTC and the New York  
15 Attorney General teamed up yet again to shut down an  
16 operation that went by the names 4 Star Resolution,  
17 Profile Management, International Recovery Service,  
18 Check Solutions, Check Fraud Service, Merchant Recovery  
19 Service, and Fourstar Revenue Management.

20           I guess a good question would be if you're going  
21 to run a compliant, upstanding business, why you would  
22 need so many business names. That operation was run by  
23 Travell Thomas, Maurice Sessum, and Charles Blakely,  
24 III.

25           Most recently, though, just last month in fact,

1 the FTC sued and shut down two more Buffalo area  
2 collection enterprises. These two cases were part of  
3 the FTC's Messaging for Money sweep which highlighted  
4 compliance challenges companies face when they choose to  
5 use text messaging to collect debts.

6 The first of these cases was against Unified  
7 Global Group, which also did business as Accredited  
8 Receivables, ARM WNY, and Audubon Financial Bureau. And  
9 that operation was run by Anthony Coppola and Dominick  
10 D'Angelo.

11 On the same day, we also sued and shut down  
12 Premier Debt Acquisitions, which also called itself PDS,  
13 PDA Group, Prizm Debt Solutions, Samuel Sole and  
14 Associates, and Imperial Processing Solutions. That  
15 operation was run by Jacob Kirbis and Charles Glander.

16 We printed out the press releases and the  
17 complaints for each of these cases and they're available  
18 out in the hallway. I encourage everyone to pick up a  
19 copy and take a look. As a group, these form a  
20 veritable handbook of what not to do as the operator of  
21 a collection organization.

22 The abusive and deceptive collection practices  
23 of these six different enterprises, while not identical,  
24 were remarkably similar. Five of the six companies lied  
25 that they were working for government agencies,

1 including the FBI and other federal and state  
2 organizations.

3 Five of the companies also consistently made  
4 false threats that consumers would be arrested if they  
5 didn't pay their alleged debts within a short time.

6 Five made a habit of threatening lawsuits when  
7 they had no plans to sue. Four of them frequently  
8 called consumers' family members, friends, and  
9 coworkers, and told them about the alleged debts,  
10 another clear-cut violation of the FDCPA.

11 And four of the companies refused to provide  
12 verification when consumers disputed the debts and  
13 instead just continued their abusive collection  
14 practices.

15 These practices are absolutely unacceptable but,  
16 unfortunately, they are all too prevalent. Far too  
17 often, we see collectors threatening arrest, claiming to  
18 be process servers, extorting consumers with threats of  
19 litigation they have no intent to file, or failing to  
20 give required disclosures and notices.

21 These are not close calls. And it has become so  
22 prevalent in this area that I've heard people refer to  
23 it as "the Buffalo treatment."

24 By now, it should be apparent given all the  
25 cases we've filed up here recently, but let me say it

1        anyway, the FTC has zero tolerance for this nonsense.  
2        Consonant with the gravity of the violations committed  
3        by these operations, the FTC, along with the New York  
4        Attorney General's Office, has sought very serious  
5        remedies.

6                In each case, that I just referred to, the FTC  
7        sought and the Court granted temporary restraining  
8        orders that suspended the company's operations, froze  
9        all of the assets, not only of the company but of the  
10       individuals running them, and appointed receivers to  
11       take over the businesses, and granted the FTC and the  
12       receiver immediate access to the business premises so  
13       that we could secure the evidence.

14               This means, among other things, that the  
15       individuals named in these complaints had their bank  
16       accounts frozen for weeks and even months.

17               We've already gotten stipulated preliminary  
18       injunctions in the United Check Processing case, the  
19       National Check Registry case, the 4 Star case, and the  
20       Premier Debt Acquisitions case. There's a PI hearing  
21       coming up next month in the Unified Global Group case.

22               One group of defendants, however, the Vantage  
23       Point Services case defendants, chose to fight the FTC's  
24       request to turn the temporary restraining order into a  
25       preliminary injunction.

1           After extensive briefing, however, the Court  
2           granted the FTC all of the relief that we requested,  
3           further vindicating the case that we brought along with  
4           the New York AG's office, and finding that the FTC and  
5           the New York AG are likely to succeed on the merits of  
6           the case should it proceed to trial.

7           As in many of our debt collection actions and  
8           because the violations in these cases are so egregious,  
9           we will be seeking to ban the defendants in these cases  
10          from the industry, including the individuals who ran the  
11          operations, and we will also seek significant monetary  
12          relief.

13          For example, it's common for courts to order our  
14          defendants to sell their cars and their real estate, and  
15          turn over all their liquid assets such as their bank  
16          accounts. In short, being under an FTC order is  
17          painful. It is not something you want to experience.

18          Once we have a company or an individual under an  
19          order that includes a ban, we put that company or  
20          individual on our public list of banned collectors.

21          The FTC publishes this Hall of Shame on its  
22          website at the address you see up above. We also  
23          brought hard copies of this list today, and they are  
24          again available on the table outside.

25          All of the companies and individuals on this

1 list are subject to Court orders prohibiting them from  
2 participating in the debt collection business. No one  
3 in the debt collection industry should be doing any debt  
4 collection business with anyone on this list. That  
5 includes hiring them in any capacity to help collect  
6 debts, buying debts from them, or selling debts to them.

7 I'm telling you now that one sure way to get the  
8 FTC to investigate you is to do debt collection business  
9 with anyone from this list.

10 If you work with them, you're opening yourself  
11 up to a lot of unnecessary scrutiny and potentially a  
12 Court order of your own. Don't do it.

13 Another way to get the FTC's attention, and I  
14 heard Jim mention this a few minutes ago, is to  
15 constantly change your business name.

16 It is an all-too-obvious tactic that we see with  
17 companies engaged in unlawful practices. They respond  
18 to complaints not by cleaning up their act, but instead  
19 by changing their business name.

20 It should be obvious by now to anyone who is  
21 paying attention that this doesn't work. We figure this  
22 out very quickly and it only confirms for us that the  
23 operation in question is not interested in complying  
24 with the law.

25 Read any of the complaints or other pleadings

1 from the cases I've been talking about today and you'll  
2 see that we solved that puzzle rather easily. If you  
3 are serious about being in this industry, and doing this  
4 work the right way, pick a company name and build a  
5 positive reputation around that name.

6 On a related note, I want to talk for a minute  
7 about responding to inquiries from state regulators.  
8 One of the reasons that the FTC has partnered with the  
9 New York AG's office recently on so many cases is that  
10 we wanted to emphasize the importance of taking state  
11 regulator inquiries and investigations seriously.

12 If you read some of the briefs in our joint  
13 cases with New York, you'll see that in many of those  
14 cases, the defendants have been investigated previously  
15 by a state regulator and/or signed assurances of  
16 discontinuance. But instead of taking those orders and  
17 inquiries seriously, they chose to continue their  
18 illegal behavior.

19 This kind of scofflaw, recidivist behavior is  
20 not acceptable. It astronomically increases the  
21 likelihood that the FTC and/or the State AG is going to  
22 take an even closer look at you and take even more  
23 serious action.

24 I now want to shift gears a bit and talk about  
25 the FTC's strategic priorities in the debt collection

1 area.

2 Every year or two in our debt collection  
3 program, we try to identify three to four issues or  
4 emphases on which we will focus our energies.

5 Our most recent priorities included data  
6 integrity and security, egregious collection practices,  
7 the use of emergent technologies in the collection of  
8 debts, and the collection of debts from vulnerable and  
9 underserved populations.

10 So, for example, the FTC's recent Messaging for  
11 Money sweep addresses unlawfully sent text messages in  
12 the collection of debts. Some guidance, by the way, for  
13 those of you who are interested in how to use text  
14 messages in debt collection in a lawful manner is  
15 available on this website. And again, we've printed out  
16 that guidance and it's available with the materials out  
17 in the back.

18 We also held recently a roundtable last October  
19 with our friends at the CFPB addressing debt  
20 collection in the Latino community.

21 Recently, however, we took a fresh look and  
22 decided to adjust our priorities slightly for the  
23 next 18 to 24 months. Our new priorities at the FTC  
24 from a law enforcement perspective in the debt  
25 collection area are now going to be continuing to look

1 at the egregious practices much like the cases we've  
2 been filing up here in Buffalo recently, data integrity,  
3 and security of consumer information in the debt  
4 collection process, and a new one, which is the  
5 collection of student loans.

6 We will also be devoting significant time and  
7 energy to the CFPB debt collection rulemaking efforts,  
8 analyzing their proposals, and if appropriate, working  
9 on an official comment to their eventual notice of  
10 proposed ruling.

11 So now let me sort of build out some of these  
12 priorities with you for a minute.

13 The first priority is egregious collection  
14 practices. Generally speaking, this is the bottom of  
15 the barrel, the worst of the worst. I think everybody  
16 in this room knows it when they see it or -- like Jim  
17 just played a minute ago -- when we hear it.

18 These are the practices that generally end up  
19 with us seeking our most drastic relief, things like  
20 asset freezes, receiverships, and lifetime bans from the  
21 industry. Unfortunately, the practices vary widely.

22 One of our first cases in this vein was one that  
23 I filed as counsel back in 2011, the Rumson, Bolling  
24 case in California.

25 In that case, among the roll call of

1 abominations, the defendants threatened to kill or rape  
2 consumers if they didn't pay, and also threatened  
3 consumers who owed money to funeral homes that they  
4 would exhume the bodies of the dead children if the  
5 consumers didn't pay up.

6 Some of you probably don't believe this actually  
7 happens. I wish you were right. Unfortunately, I have  
8 the call recordings to prove it and it's sickening.

9 Most recently, as you can tell from our cases,  
10 we're seeing a lot of collectors who seem to be having  
11 some kind of identity crisis. These collectors are not  
12 content with just being good, law-abiding collectors.

13 Instead, they want to pretend to be process  
14 servers, law enforcement officers, lawyers, or court  
15 officials. And they want to threaten consumers with  
16 things they either can't do, like have them arrested, or  
17 have no intention of doing, like suing them.

18 We are also seeing a lot of collectors,  
19 particularly up here in New York, who are trying to  
20 collect fees and charges that are not permitted by law  
21 or authorized by the underlying credit agreement. This  
22 often comes in the form of a payment processing fee.

23 These fees, however, are not permitted by New  
24 York law. Therefore, this practice is expressly  
25 forbidden by Section 808(1) of the FDCPA, something

1 you've seen us allege in several of our recent cases out  
2 here.

3 Some other common egregious practices include  
4 telling third parties about the consumer's debt as a way  
5 of shaming them into paying and failing to give the  
6 validation notice required by the FDCPA.

7 Our second strategic priority is the security  
8 and accuracy of data in the debt sales market as well as  
9 crooked debt brokers and sellers who misuse that market  
10 for their illegal purposes.

11 We've seen a lot of complaints about collection  
12 efforts made on debts that consumers either already have  
13 paid or they don't owe at all. Consumers who are  
14 subjected to these false and often aggressive collection  
15 efforts suffer significant harm.

16 Focusing on the debt sales market is actually a  
17 continuation of the cases that we've brought recently  
18 against phantom debt collectors such as Pinnacle Payment  
19 Services, a company run by collectors who got their  
20 start up in here in Buffalo.

21 The FTC recently settled with two companies,  
22 Cornerstone & Company and Bayview Solutions. Cornerstone  
23 and Bayview were debt sellers that in trying to sell  
24 debt portfolios posted consumers' unredacted bank  
25 account and credit card numbers, birth dates, contact

1 information, employer names, and information about the  
2 debts on a very public website.

3 Under the settlements, the defendants now have  
4 to establish and maintain security programs that will  
5 protect consumers' sensitive personal information.  
6 Companies will also have to have their security programs  
7 evaluated both initially and every two years by a  
8 certified third party.

9 Lax data security and the dubious market for old  
10 debts and online payday loan debts were even the focus  
11 of a recent book about the Buffalo debt collection  
12 market, as well as a recent academic article.

13 The FTC is not going to tolerate companies or  
14 individuals who sell the same debt portfolio to multiple  
15 buyers simultaneously.

16 Collectors who steal portfolios or consumer  
17 information and collect on those debts unlawfully or  
18 collectors who try to shake down consumers who don't  
19 even owe the alleged debts, these practices undermine  
20 the debt collection and credit system as a whole and  
21 only make your jobs harder.

22 If you find yourself unwittingly in the  
23 possession of a portfolio of debts that looks like it's  
24 been compromised or contains bogus debts, it is  
25 incumbent on you to stop collection efforts immediately

1 on that portfolio and isolate it so that no further harm  
2 comes to consumers.

3 I encourage you also to share information you  
4 may have with the FTC if you think you know someone up  
5 to no good along these lines.

6 I also want everyone in this room to reexamine  
7 their data security practices. Make sure that only  
8 those employees who actually need access to the consumer  
9 information are given that access. Put technology  
10 protections in place that make it difficult for a rogue  
11 employee to steal consumer information.

12 The FTC, in consultation with DBA International,  
13 the debt buyers association, published some data  
14 security guidelines recently and you can find it at this  
15 website. Again, also available in print-out form at the  
16 back table. Please take one and do everything you can  
17 to try to stop these practices.

18 Our third law enforcement priority is student  
19 loan debt collection. A student loan is one of the  
20 biggest financial commitments most consumers will ever  
21 make. Student loan debts are a sizable portion of the  
22 debts in collection and that portion is growing.

23 A 2011 ACA International study showed that  
24 12 percent of debts in collection were student loan  
25 debts. More than 39 million borrowers currently owe

1 over a trillion dollars in student loan debt.

2 Moreover, student loan debt collection is unique  
3 in that the Department of Ed only contracts with about 20 or  
4 so collectors for the collection of federally guaranteed  
5 loans. And these collectors have to follow unique  
6 procedures like offering rehabilitation and disability  
7 discharges.

8 This is something that we're looking at closely  
9 to make sure that those programs like rehabilitation and  
10 disability are being offered and explained to consumers  
11 without deception.

12 Given the many consumers who owe student loans  
13 and the huge amounts of money they owe, we at the FTC  
14 have to work hard to prevent collection practices that  
15 deceive or abuse those consumers, so this is something  
16 we will certainly be looking at closely going forward.

17 I'm about ready to turn it over to Greg here,  
18 but again, I want to thank everyone for coming out here  
19 today and I do hope that we can find ways to work  
20 together and partner on these issues.

21 At the FTC, like at the New York State Attorney  
22 General's Office and I'm sure the other two agencies, we  
23 recognize that these are difficult challenges that we're  
24 facing, but I think we all have skin in this game and I  
25 think the best way to find solutions is for us to

1 partner together to figure out how we can stop this.

2 Thank you.

3 (Applause.)

4 MR. NODLER: Thanks, Chris.

5 So, I'm honored to be up here for the CFPB, and  
6 you know, like everyone else has said, I really hope  
7 that our appearances together can signal the seriousness  
8 with which we take debt collection violations.

9 First, like Chris, I have to give this  
10 disclaimer, that these views are just my own, they don't  
11 necessarily reflect the Bureau or its director, the  
12 views of the Bureau or its director.

13 So I came to the CFPB in early July of 2011  
14 before the Bureau's official startup date. Before  
15 coming to the Bureau, I was a consumer lawyer in private  
16 practice and with Legal Aid in Texas.

17 I was originally brought in to be an enforcement  
18 attorney. I worked on the Bureau's first enforcement  
19 action, which was against Capital One Bank, and the  
20 Bureau's first debt collection action, which was against  
21 American Express.

22 Now I focus on enforcement policy and strategy  
23 with a more narrow focus on payday lending and debt  
24 collection issues. I coordinate with other offices such  
25 as markets and rulemaking and supervision and can --

1 during the question-and-answer session, I can talk a  
2 little bit about their actions, but you know, most of what  
3 I know about is enforcement.

4 So the Bureau has filed several lawsuits either  
5 administratively or in District Court that involve debt  
6 collection. Many of these have been resolved by  
7 settlements and some are still in active litigation.

8 I hope that you can understand that the ones  
9 that are still in active litigation I'm not going to be  
10 able to talk very much about, but starting with the  
11 Bureau's first debt collection case, I'm going to  
12 briefly describe all of our public enforcement actions  
13 related to debt collection.

14 And then I'm going to talk about some of the  
15 guidance that the Bureau has put out that, you know,  
16 debt collectors who are wanting to follow the law can  
17 refer to.

18 So the first case was the American Express  
19 action. And this arose out of a multipart investigation  
20 with the CFPB, the FDIC, the Federal Reserve, the OCC  
21 and the Utah Department of Financial Institutions.

22 It was the Bureau's third public enforcement  
23 action and the first one involving debt collection. It  
24 also involved deceptive marketing of an awards program,  
25 unlawful late fees, age discrimination, and a violation

1 of the FCRA, but I'm going to talk about the debt  
2 collection issues.

3 There were two claims related to debt collection  
4 and these were brought under the CFPA, the Consumer  
5 Financial Protection Act or the Dodd-Frank Act as  
6 opposed to the FDCPA because, you know, American Express  
7 is generally not a debt collector.

8 But I'm going to talk about all these just  
9 because a lot of the same issues would apply to the debt  
10 collectors.

11 So the first was that American Express wrongly  
12 told some consumers that if they paid off their old  
13 debt, including debt that was past the date of  
14 obsolescence for credit reporting, that AmEx would  
15 report the payment to the credit bureaus and that that  
16 could improve their credit score.

17 In fact, due to the age of the debt, AmEx was  
18 not reporting the payments to the credit bureaus and  
19 even if it had been, it wouldn't have been  
20 affecting the consumers' credit score.

21 The second was that AmEx was telling some  
22 consumers that if they paid off a portion of their  
23 debt -- or if they paid off their debt, the settlement,  
24 then a part of it would be waived or forgiven.

25 And in fact, when the consumers later applied

1 for American Express cards, they found out that the --  
2 none of the debt was actually waived or forgiven, that  
3 they needed to repay it in order to get a new American  
4 Express card.

5 So as part of a public enforcement action  
6 against the three American Express entities, AmEx was  
7 ordered to pay about \$85 million in refunds and to pay a  
8 civil money penalty -- or civil money penalties to the  
9 CFPB and the other regulators totaling \$27.5 million.

10 Some, but not all, of the \$85 million, a  
11 significant amount went to consumers who were harmed by  
12 the debt collection violations. Specifically consumers  
13 who made payments after being falsely told that their  
14 payments would be reported to credit bureaus were  
15 refunded those payments in full plus interest.

16 And consumers who were promised that their debt  
17 would be forgiven and were denied new credit cards  
18 because the debt was not really forgiven were each paid  
19 \$100 and provided with a preapproved offer for a new  
20 card with terms acceptable to the CFPB and the FDIC.

21 And for those consumers who went ahead and paid  
22 the supposedly waived or forgiven amount in order to get  
23 the new card, they got that money back plus interest.

24 AmEx was also ordered to disclose when  
25 collecting debt that was too old for litigation or

1 credit reporting and to cease collecting debt when not  
2 in possession of documentary evidence that includes at a  
3 minimum, the complete terms and conditions of each  
4 account and the complete transactional history of the  
5 debt.

6 The Bureau's next two public enforcement actions  
7 related to debt collection were both brought against  
8 payday lenders. Like AmEx, these were brought under the  
9 CFPA and not the FDCPA.

10 In the first one, which was also the Bureau's  
11 first enforcement against a payday lender -- there's  
12 a lot of firsts because, you know, the Bureau is not  
13 very old -- was against Cash America International.

14 And in that case, in addition to other  
15 violations, the Bureau found that -- or in addition to  
16 other violations related to exam misconduct and  
17 overcharging service members in violation of the  
18 Military Lending Act, the Bureau found that Cash America  
19 had certified certain affidavits and pleadings without  
20 proper review, which is, you know, commonly known as  
21 robo-signing.

22 Cash America agreed to provide full restitution  
23 and to refund about \$14 million to 14,000 consumers and  
24 to pay a \$5 million civil money penalty.

25 The next one, ACE Cash Express, was another case

1 that I was involved in. And it involved a variety of  
2 unlawful collection practices, most of which would be  
3 pretty plain-vanilla violations of the FDCPA had Ace  
4 Cash been a third-party debt collector.

5 These included excessive calls, third-party  
6 disclosures, misrepresenting the consequences of failing  
7 to pay a debt before it gets transferred to a new  
8 collector, making false threats of litigation and  
9 criminal prosecution, some of which were implicit  
10 references to attorneys and legal departments.

11 One of the third-party collectors that AmEx was  
12 using to collect debt that -- sorry, that ACE Cash was  
13 using to collect debt that would not be the subject of  
14 litigation was an outfit called National Attorney  
15 Collection Services, that when they called consumers,  
16 they would refer to themselves as, you know, "This is  
17 National Attorney calling about your debt." And we  
18 found that that was a, you know, false threat of  
19 litigation.

20 The FTC had taken an action against National  
21 Attorney a little while before we came out with our ACE  
22 Cash Express case.

23 ACE was ordered to pay a \$5 million civil money  
24 penalty and to provide \$5 million in refunds to  
25 consumers.

1           The Bureau's first FDCPA case was filed against  
2           the Frederick J. Hanna law firm. I imagine that some  
3           people here are familiar with that case.

4           It was against the law firm and its three  
5           principal partners for operating what the Bureau alleges  
6           in the complaint is a collection mill law firm that uses  
7           illegal tactics to intimidate consumers into paying  
8           debts that sometimes they, you know, may not owe.

9           According to the complaint, one attorney at the  
10          Hanna firm signed nearly 140,000 consumer debt lawsuits  
11          over two years, which if you do the math, it breaks out  
12          to being 1,300 suits per week. I am not that good of a  
13          lawyer.

14          Many of the lawsuits were alleged accompanied by  
15          affidavits that the Hanna firm knew or should have known  
16          contained false testimony, specifically that the  
17          affidavits were that the affiants had personal knowledge  
18          of the validity and ownership of the debt.

19          The Bureau alleges that Hanna's acts violated  
20          the FDCPA and the CFPA -- the Dodd-Frank Act -- by  
21          falsely representing that attorneys were meaningfully  
22          involved in preparing and the filing debt collection  
23          lawsuits and by using affidavits that contained false  
24          testimony.

25          The Bureau is seeking compensation for victims,

1 a civil penalty, and an injunction against the law firm  
2 and its partners. And, you know, this is still pending  
3 litigation, so there's not going to be much that I can  
4 say beyond that.

5 The next three public actions involving debt  
6 collection involve student lending, auto lending, and  
7 lending to service members.

8 The first one was against Corinthian College.  
9 Now, that case was primarily about marketing and lending  
10 bad student loans, but there were also debt collection  
11 components.

12 The Bureau alleged that Corinthian violated the  
13 FDCPA and the CFPA -- there were some ways that they were  
14 covered under the FDCPA -- by pulling students out of  
15 class and disclosing the debts to instructors and other  
16 staff.

17 Part of this action was resolved in February  
18 when the Bureau and the Department of Education  
19 announced more than \$480 million of loan forgiveness.

20 The next one was the Bureau's first case against  
21 a "Buy Here/Pay Here" auto dealer. It was against  
22 DriveTime Financial.

23 And in that matter, DriveTime was ordered to pay  
24 an \$8 million civil money penalty for harassing  
25 consumers at work, harassing third-party references,

1 making excessive and repeated calls to wrong numbers,  
2 providing inaccurate information to consumer reporting  
3 agencies, failing to investigate FCRA disputes, and  
4 failing to implement reasonable credit reporting  
5 procedures.

6 In addition to paying the CMP, DriveTime agreed  
7 to reform its collection and credit reporting practices  
8 and to disclose to consumers that they have a right to  
9 limit DriveTime's calls.

10 In December of last year, the Bureau, along with  
11 the North Carolina and Virginia Attorneys General, sued  
12 Freedom Furniture Stores for engaging in unlawful  
13 collection practices against service members.

14 We alleged that that creditor violated the CFPA  
15 by suing thousands of consumers of service members in  
16 Virginia who didn't live in Virginia and who hadn't  
17 signed any underlying contracts in Virginia. Many of  
18 these lawsuits resulted in default judgments.

19 Freedom was also alleged to have harassed  
20 service members by disclosing the debt to their  
21 commanding officers and to have made unauthorized  
22 withdrawals from consumers and from other people's bank  
23 accounts. Freedom was ordered to pay \$2.5 million in  
24 restitution and a \$100,000 civil money penalty.

25 The next one was against an outfit called

1 National Corrective Group and several of its related  
2 entities. This was for deceptively threatening  
3 consumers with criminal prosecution and jail time for  
4 bouncing checks.

5 The Bureau alleged that National Corrective,  
6 while running a bad check diversion program with  
7 District Attorneys' Offices, created a false impression  
8 that they were District Attorneys and by using DA  
9 letterhead and facsimile signatures.

10 Language in those letters, we also alleged, implied  
11 that consumers faced criminal prosecution if they didn't  
12 enroll in these bad check diversion programs, but in  
13 fact, our investigation uncovered that less than  
14 1 percent of the consumers who received even the final  
15 warning letter from National Corrective ever had their  
16 cases referred to prosecutors' offices.

17 National Corrective was ordered to stop using DA  
18 letterhead and DA signatures or otherwise  
19 misrepresenting that they are law enforcement while  
20 they're running these bad check diversion programs.

21 They can also no longer state that failure to  
22 enroll in the program will result in prosecution and  
23 they must inform consumers that many of the cases are  
24 never prosecuted. They also were ordered to pay a \$50,000  
25 civil money penalty and to undergo increased DA

1 oversight.

2           So the next one in April, this is more similar I  
3 think to the actions that Chris and Jim were talking  
4 about, the Bureau filed a lawsuit against the  
5 ringleaders of a robo-call phantom debt collection  
6 operation, their companies, and their service providers.

7           This lawsuit alleges that company owners Marcus  
8 Brown of Buffalo, New York, and Mohan Bagga of Atlanta,  
9 who were each sued in their individual capacity, lead a  
10 group of individuals and entities who used various  
11 aliases like LRS Litigations, IRS Equity, Worldwide  
12 Requisitions, and Arbitration Resolution to threaten  
13 consumers with arrest, wage garnishment, and financial  
14 restraining orders in attempts to collect debt from  
15 consumers that was not owed to these companies and, you  
16 know, in many cases, wasn't owed to anybody.

17           According to the complaint, Brown's wife,  
18 sister, ex-wife, and another individual, Sumant Khan,  
19 also helped carry out the scheme. And they were also  
20 named as parties to the lawsuit as were the service  
21 providers.

22           The complaint alleges that Global Connect, a  
23 telemarketing company, sent millions of automated  
24 messages that it knew contained unlawful conduct, and  
25 that Brown and Bagga could not have run a successful

1 operation without the assistance of their payment  
2 processors, Global Payments, Pathfinder, Frontline, and  
3 Electronic Merchant Systems, who were alleged to have  
4 ignored numerous red flags of illegal conduct, including  
5 consumer disputes that described the scheme, and  
6 communication problems with collectors.

7           The Bureau alleged that by enabling the debt  
8 collectors to accept payment by credit card and debit  
9 card, the payment processors helped to legitimize the  
10 collectors' business and facilitated millions of dollars  
11 in ill-gotten profits.

12           Like the Hanna firm, this is still in pending  
13 litigation, so there's not going to be a lot I'm able to  
14 talk about that one.

15           As Director Rich mentioned, also in April, the  
16 CFPB and the FTC announced a joint action against a  
17 large mortgage servicer, Green Tree.

18           The agencies alleged that Green Tree was using  
19 unlawful debt collection tactics such as making an  
20 excessive number of calls, falsely threatening  
21 prosecution, and disclosing the existence of debt to  
22 third parties such as employers all while collecting  
23 distressed mortgage debt.

24           Some of the mortgages were acquired post  
25 default, which brought a lot of the activity under the

1 FDCPA, in addition to the CFPA and the FTC Act, which,  
2 you know, they enforce the FTC Act and we enforce the  
3 CFPA.

4 There were also numerous violations unrelated to  
5 debt collection. Green Tree was ordered to provide  
6 \$48 million in consumer redress and to pay a \$15 million  
7 civil money penalty to the CFPB.

8 The penalties that are paid to the CFPB then go  
9 to consumers or to consumer education, which is somewhat  
10 unique about our agency.

11 So in addition to reviewing the Bureau's debt  
12 collection enforcement, debt collectors who are looking  
13 for guidance from the Bureau should review something  
14 called Supervisory Highlights, which are published by  
15 our Office of Supervision, or could also review  
16 bulletins that are posted on the CFPB website.

17 The CFPB's Office of Supervision examines larger  
18 participant debt collectors, which are defined as those  
19 that take in more than \$10 million in annual receipts.  
20 They publish these Supervisory Highlights quarterly.  
21 They describe the issues that they observed while, you  
22 know, examining companies.

23 And each issue covers a few different market  
24 areas. The spring 2014 and winter 2015 issues both  
25 covered debt collection, among other topics.

1           So some of the unlawful and problematic  
2 practices observed by examiners and noted in those  
3 highlights are excessive telephone calls, the failure to  
4 investigate FCRA disputes, deceptive representations such  
5 as overstating the benefits of student loan  
6 rehabilitation, and making misleading representations in  
7 litigation. And I'll talk a little bit more in detail  
8 about that.

9           As part of one or more examinations, examiners  
10 found that in 70 percent of debt collection lawsuits  
11 when the consumer filed an answer, one or more entities  
12 would dismiss the suit because they were unable to  
13 locate documentation to support their claims, despite  
14 one or more entity's express or implied representations  
15 to consumers that they intended to establish that  
16 consumers owed a debt and the amount claimed in court  
17 filings, in numerous instances, one or more entities  
18 misled consumers because they had no intention.

19           If that sounded, you know, awkward, you know,  
20 talking about that one or more entities and, you know,  
21 one or more times, it's because the Bureau's  
22 examinations are nonpublic and there's nothing in the  
23 Supervisory Highlights that could -- or there shouldn't  
24 be anything in there that would enable anybody to  
25 identify the subject of the examination.

1           So, like in that one, we can't -- we're even not  
2           saying if it was one examination or five examinations  
3           where we saw that issue.

4           There are three bulletins that I thought would  
5           be of particular interest to this crowd that have been  
6           put out by the Bureau. And they are the Debt Collection  
7           UDAAP Bulletin, the Credit Score Representation  
8           Bulletin, and the Responsible Conduct Bulletin.

9           The Debt Collection UDAAP Bulletin was put out  
10          in 2013 and it's there to make clear that first-party  
11          collectors are subject to the general prohibitions  
12          against unfair, deceptive, and abusive acts or  
13          practices, you know, under the Dodd-Frank Act and that  
14          many of those same kind of restrictions -- or many of  
15          the kinds of restrictions that are found in the FDCPA  
16          would apply to them as well under this other act.

17          That bulletin may not be as necessary now since  
18          we've taken several actions against first-party  
19          creditors, but that's why it's there, you know, and  
20          should give comfort to third-party collectors just to  
21          know that we're looking at, you know, everybody.

22          The Credit Score Representation Bulletin warns  
23          companies that they should be careful when they make  
24          statements about how paying a debt will affect a  
25          consumer's credit score, credit report, or

1 creditworthiness.

2           And then the Responsible Business Conduct  
3 Bulletin was also issued in 2013. This was issued to  
4 inform those subject to the Bureau's enforcement  
5 authority there are certain activities that they can  
6 engage in both before and after the conduct in question  
7 has occurred that the Bureau may favorably consider in  
8 exercising its enforcement discretion.

9           Specifically, a party may proactively  
10 self-police for potential violations, promptly  
11 self-report to the Bureau when it identifies potential  
12 violations, quickly and completely remediate the harm  
13 resulting from violations, and affirmatively cooperate  
14 with any Bureau investigation going above and beyond  
15 what's required by law.

16           If a party meaningfully engages in these  
17 activities, which the bulletin collectively refers to as  
18 responsible business conduct, then it may favorably  
19 affect the ultimate resolution of a Bureau enforcement  
20 investigation.

21           It could lead to lower civil money penalties or  
22 even no civil money penalties or it could even lead to  
23 us deciding not to take a public action against your  
24 company.

25           And then finally, I want to mention our

1       whistleblower hotline as everyone else up has talked  
2       about how much we all rely on tips from industry. I  
3       just wanted to make a call for that.

4                Tips can be sent to whistleblower@cfpb.gov.

5       And, you know, whenever those are coming in, we always  
6       appreciate, you know, as many details as we can get  
7       about who is making them, but we also understand that,  
8       you know, there are some people who just don't want to  
9       give their name or anything like that and the only way  
10      to get the tip is to get it anonymously.

11              And those can be made through that E-mail  
12      address or also to a toll-free number (855)695-7974,  
13      which is also on our website.

14              And with that, I will pass it on to the  
15      Department of Financial Services, to Joy.

16              (Applause.)

17              MS. FEIGENBAUM: Thank you. Good afternoon.

18              I'm going to make a similar disclaimer as my  
19      colleagues have, that the views that I express today are  
20      my own and not necessarily those of the Superintendent  
21      of Financial Services or the Department.

22              And I just want to begin by saying you've heard  
23      today about some of the worst abuses that have resulted  
24      in numerous enforcement actions by my colleagues and  
25      their offices.

1           And as I will discuss, like my colleagues, DFS  
2           has enforcement authority and we are pursuing  
3           investigations and enforcement in this area, but I'm  
4           going to spend the majority of my time on the  
5           Department's new regulation.

6           We believe that our regulation should not only  
7           stop bad practices, but also enable consumers to be  
8           assured that they're being collected by an entity with a  
9           legitimate right to collect, and that the amount being  
10          collected is accurate, and that should hopefully result  
11          in payment in settlement of legitimate debts.

12          So under the Financial Services Law, the  
13          Department of Financial Services has the authority to  
14          both regulate and enforce rules against certain  
15          providers of financial products and services unregulated  
16          by other agencies, what we refer to at the Department as  
17          our gap authority.

18          And that authority covers any financial product  
19          or service offered or sold to consumers in New York  
20          except those that are regulated under the exclusive  
21          jurisdiction of a federal agency, regulated for the  
22          purpose of consumer or investor protection by another  
23          New York State agency, or where DFS rules would be  
24          preempted by federal law.

25          And in the development of the New York Financial

1 Services Law, the drafters envisioned debt collection as  
2 an area for the Department to address by regulation.

3 The Department also gave -- the FSL, I'm sorry,  
4 gave the Department authority to enforce the federal and  
5 New York State Fair Debt Collection Practices Act.

6 While many debt collectors operate legally and  
7 responsibly, the Department has received numerous  
8 complaints regarding debt collection practices, and debt  
9 collection abuse is often the most frequent financial  
10 complaint filed by consumers nationally and in New York.  
11 The Department's debt collection regulations were  
12 designed to address the most common issues impacting  
13 consumers.

14 The Department's first major initiative under  
15 the Financial Services Law gap regulatory authority was  
16 our regulation of third-party debt collectors and debt  
17 buyers, which covers pre-litigation collection activity  
18 throughout New York State.

19 Following review of comments to proposed rules  
20 and meetings with interested parties, final rules were  
21 adopted in November of 2014 and the rules became  
22 effective in March of 2015 while certain provisions go  
23 into effect on August 30th, 2015.

24 The rules are enforceable under Section 408 of  
25 the Financial Services Law by fines of up to \$5,000 per

1 violation. And the Department also began accepting and  
2 mediating consumer debt collection complaints during  
3 this period.

4 So I'm going to walk you through the regulation  
5 in Section 1.2, required initial disclosures by debt  
6 collectors.

7 Within five days after the initial communication  
8 with a consumer in connection with the collection of any  
9 debt, a debt collector is required to provide a  
10 disclosure including the consumer protections under the  
11 Fair Debt Collection Practices Act.

12 In addition, the disclosure should include  
13 protections under the New York Exempt Income Protection  
14 Act.

15 And for the collection of any charged-off debts,  
16 within five days after the initial communication with a  
17 consumer in connection with the collection of a debt, a  
18 debt collector must provide information identifying the  
19 debt including the name of the original creditor and an  
20 itemized accounting of the debt.

21 In order to give debt collectors time to gather  
22 information and develop internal procedures, this  
23 requirement to provide information on charged-off debts  
24 does not become effective until August 30th, 2015.

25 Moving to Section 1.3, covering the statute of

1 limitations. Suing to collect a debt on which the  
2 statute of limitations has expired violates the Fair  
3 Debt Collection Practices Act.

4 If a debt collector sues on an expired debt,  
5 despite being a violation of federal law, in New York,  
6 the alleged debtor must assert in court as an  
7 affirmative defense his or her right to dismiss the case  
8 due to the expiration of the statute of limitations on  
9 the debt.

10 And while a debt collector may not be able to  
11 sue on an expired debt, the debt collector can still  
12 attempt collection on the expired debt outside of  
13 litigation.

14 Now, some debt collectors take advantage of New  
15 York consumers' lack of awareness of the statute of  
16 limitations defense when collecting on debts for which  
17 the statute of limitations has expired.

18 Consumers who are typically not represented by  
19 counsel may fail to assert their rights in court. Some  
20 debt collectors may mislead consumers into believing  
21 that they can lawfully sue to collect a debt in order to  
22 get the consumers to make a payment on their debt.

23 And in some cases, making such a payment could  
24 restart the statute of limitations, giving the debt  
25 collector a renewed ability to sue on an old debt.

1           The regulation requires in Section 1.3 that a  
2           debt collector must maintain reasonable procedures for  
3           determining the statute of limitations applicable to a  
4           debt it is collecting and whether such statute of  
5           limitations has expired.

6           If a debt collector knows or has reason to know  
7           that the statute of limitations for a debt may be  
8           expired, before accepting payment on the debt, the debt  
9           collector must provide the consumer notice that the  
10          statute of limitations has expired.

11          And the notice must be given in the same medium  
12          by which the debt collector will accept payment. For  
13          example, if payment is being taken over the phone, the  
14          disclosure should be provided on the call.

15          Debt collectors can use this model disclosure  
16          provided in the regulation or another disclosure that  
17          includes the required information.

18          And now I'll turn to Section 1.4, substantiation  
19          of consumer debts. The Department found that when debts  
20          are charged off and sold to debt buyers, sometimes  
21          multiple times over many years, debt collectors may only  
22          receive minimal or inaccurate records.

23          And this can lead to collectors contacting the  
24          wrong consumer or if prior payments are not recorded,  
25          claiming the consumer owes more than he or she actually

1 does.

2 Bad actors may sell the same portfolio of debts  
3 multiple times and a consumer may be contacted to pay a  
4 debt he or she has already paid.

5 Consumers are confused when a debt collector who  
6 is not the original creditor contacts the consumer about  
7 debts that haven't been collected on for years.

8 Consumers often don't recognize the collector or don't  
9 remember the debt.

10 The regulation in Section 1.4 creates a  
11 mechanism for consumers to request information on  
12 charged-off debts to help ensure that collectors are  
13 collecting from the correct parties and that consumers  
14 can be confident that they are repaying legitimate  
15 debts.

16 If a consumer disputes the validity of a  
17 charged-off debt or the right of a debt collector to  
18 collect on a charged-off debt, the debt collector can  
19 treat this as a request for substantiation or the debt  
20 collector must inform the consumer how he or she can  
21 request substantiation of the debt.

22 And a debt collector must provide substantiation  
23 to the consumer within 60 days of receiving the request  
24 for substantiation. And once a consumer makes a request  
25 for substantiation of a debt, the debt collector must

1       cease all collection until substantiation has been  
2       provided.

3               Substantiation should consist of the signed  
4       contract or application that created the debt or, if  
5       neither exists, a copy of a document demonstrating that  
6       the debt was in fact incurred by the debtor; and the  
7       account statement at charge-off or an equivalent  
8       document that the original creditor issued to the  
9       consumer; and a statement describing the complete chain  
10      of title from the original creditor to the present  
11      creditor; and records showing the amount and date of any  
12      prior debt settlement agreement in connection with the  
13      debt agreed to after the effective date of these  
14      regulations, which was March 3rd, 2015.

15              And in order to give debt collectors time to  
16      gather documentation and develop internal procedures,  
17      the requirement to provide substantiation of a debt does  
18      not become effective until August 30th, 2015.

19              And now I'm moving to debt payment and debt  
20      settlement procedures in Section 1.5 of the regulation.

21              Many consumers complain that after agreeing to a  
22      debt payment schedule, their debt is sold to a new  
23      creditor who no longer honors their payment plan.

24              Many consumers also complain that after making  
25      payments on a debt, debts are sold with inaccurate or

1 out-of-date records which fail to show prior payments.

2 The debt settlement procedures I'll now discuss  
3 are designed to ensure that debt collectors and  
4 consumers have documentation of agreements and payments  
5 to avoid disputes and encourage settlements.

6 If a consumer agrees to a debt payment schedule  
7 or other debt settlement agreement, the debt collector  
8 must within five business days provide the consumer with  
9 a written copy of the agreement.

10 And the written confirmation of a settlement  
11 agreement should also include a disclosure of the  
12 consumer's rights under the New York Exempt Income  
13 Protection Act.

14 If a consumer agrees to a debt payment schedule  
15 or other debt settlement agreement, the debt collector  
16 must while the consumer is making scheduled payments  
17 provide the consumer with an accounting of the debt on  
18 at least a quarterly basis.

19 And if a debt collector provides monthly account  
20 statements, this would suffice and start from either the  
21 agreement date or on a calendar-year basis.

22 And after a consumer satisfies his or her debt,  
23 the debt collector must send to the consumer written  
24 confirmation of satisfaction of the debt within 20  
25 business days.

1           Now I'll be referring to communication through  
2       electronic mail in Section 1.6 of the regulation.

3           So in order to provide consumers and debt  
4       collectors faster and easier ways to communicate, the  
5       regulation permits debt collectors to communicate and  
6       provide required disclosures by E-mail if the consumer  
7       voluntarily provided an E-mail account which the  
8       consumer has affirmed is not the E-mail account  
9       furnished or owned by his or her employer and the  
10      consumer consented in writing to receive correspondence  
11      from the debt collector by E-mail regarding the specific  
12      debt.

13          And finally, debt collectors seeking additional  
14      information about the regulations can find answers to  
15      frequently asked questions at the website listed. And  
16      we are going to be posting additional FAQs either later  
17      today or tomorrow.

18          So thank you very much.

19          (Applause.)

20          MR. KANE: Thank you very much, Joy, and the  
21      other three presenters.

22          We're now going to take a brief break. We're  
23      running a little behind schedule, so I'm going to ask  
24      you to be back here in, I know it's a really short time,  
25      six minutes.

1           We're just going to start in six minutes and you  
2           guys can get back in as soon as you can, but we want to  
3           leave as much time as possible for all your questions.

4           (Whereupon, a recess was taken.)

5                           QUESTION-AND-ANSWER SESSION

6           MR. KANE: We're going to get started now with  
7           the questions. Our four panelists or agency  
8           representatives can join us on stage. Thank you.

9           We'll start off with a long one. We have a few  
10          that were -- people typed up and handed to us. I think  
11          they're rather representative.

12          The first one is: Many individuals and  
13          companies in this industry have become increasingly  
14          compliant over time.

15          While they acknowledge that they cannot  
16          guarantee that every attempt to collect on a consumer  
17          debt is fully compliant with the law, they believe  
18          they're making significant progress toward operating in  
19          a more compliant and lawful manner.

20          Those same entities are fearful that misconduct  
21          in their past or the misconduct of a predecessor company  
22          may be imputed upon an entity that is presently making  
23          significant efforts toward lawful operation.

24          Thus, what criteria do the respective agencies  
25          consider when determining whether or not to A, start a

1 formal investigation of a company or an individual; and  
2 B, commence an enforcement action against a company or  
3 individual?

4 Is the inquiry limited in time or scope? Are  
5 there any allegations or circumstances that may make an  
6 enforcement action more likely?

7 So this is to anyone at the table that wants to  
8 address it.

9 MR. KOEGEL: I'm happy, Tom, to take a first  
10 crack and then let other people pipe in their  
11 experiences.

12 Let me just first say that, you know, just  
13 because you turned over a new leaf or maybe there was a  
14 change in ownership, that doesn't wipe the slate clean.  
15 Those consumers were still harmed.

16 But, I will say that at the FTC, anyway, we take  
17 into account a number of factors when making a decision  
18 about whether to open an investigation and then what is  
19 the appropriate, you know, approach in terms of  
20 remedies.

21 And you know, as you might imagine, it's a bit  
22 of a fluid decision. These are -- some of this is  
23 subjective, some of it is objective, and we weigh all  
24 these things together. It's not precise calculus, but  
25 here are some of things that we look at.

1           First of all, you know, we are going to look at  
2           the number of violations or the number of complaints,  
3           you know, the frequency of the unlawful practices.

4           Second, we're going to look at the extent of  
5           consumer injury. You know, along with that is going to  
6           be the egregiousness of the violation. If somebody just  
7           forgets, you know, one account falls through the cracks  
8           and doesn't get a validation notice, that's very  
9           different from repeated violent threats or threats of  
10          arrest.

11          We also look at the apparent willfulness of the  
12          violation. So, you know, again, we would factor in was  
13          there a real compliance program that was in place? Were  
14          there real efforts to try to monitor compliance? And I  
15          think I alluded to this in some of my comments as well.

16          We're also looking very closely at the FTC at  
17          the history of regulatory actions and FD CPA lawsuits.  
18          So are you already under a recent order for the same  
19          conduct?

20          You know, did you flout it anyway? Are you  
21          being responsive to consumer complaints that either come  
22          in to your office, come to the BBB, come to the State  
23          AG's office, or coming into the CFPB? Are you making  
24          real efforts to address the complaints in that respect?  
25          And how are you responding to private FD CPA lawsuits?

1           We balance a lot of that stuff, of course, with  
2           the size of the company in terms of the number of  
3           violations versus the size of your operation, you know.

4           We are also looking, again, I think I alluded to  
5           this earlier, are you frequently changing your name? Do  
6           you have multiple d/b/a's? Do you have some kind of  
7           elaborate corporate structure for no apparent business  
8           reason other than to try to evade liability for your  
9           actions?

10           And then, you know, once we get into the  
11           situation with you, you know, how responsive are you  
12           during the investigation? How cooperative are you?  
13           Have you taken intermediate action to address and fix  
14           some of the problems that we're finding?

15           So, you know, we're looking, at least at the  
16           FTC, at all of these things at the same time. So, you  
17           know, you don't -- like I said, you don't get a clean  
18           slate just because you turn over a new leaf, but it does  
19           get factored in.

20           MR. MORRISSEY: To say that we don't look for  
21           perfection would be an understatement. Certainly not  
22           perfection in terms of what each individual collector  
23           may do on an individual call.

24           If you look at the cases that our office has  
25           investigated, we are looking at, for the

1 most part hundreds of complaints.

2 And they may be complaints that have come into  
3 our office. They may be complaints that have come into  
4 the FTC. And we check both databases to see the  
5 behavior of the collection business, but I can guarantee to you that  
6 we have not brought a case based on the poor behavior of  
7 one single collector.

8 When we talk about the number of violations,  
9 it's important to talk about the number within the  
10 context of the size of the company.

11 40 violations with a company that has five  
12 collectors looks very different to me than 40 violations  
13 at a company that has 200 collectors. So when we talk  
14 about number of violations, I just want to add that it's  
15 also relative to the size of the company.

16 But there is one thing that will automatically  
17 result in an investigation and that is if you falsified  
18 your address, or you falsified  
19 your name, because one of the reasons we don't have  
20 complaints is that you've represented that you're in  
21 California and the complaints are going to the AG in  
22 California and not to us.

23 So falsification of address is pretty automatic,  
24 at least in our book, at least to start an  
25 investigation.

1           And falsification of your website. We had a  
2 case where the website had falsified the address. It  
3 falsified everything that the company did. It even had  
4 pictures of people that weren't real people that worked  
5 for the company.

6           So that kind of deliberate falsification of a  
7 website immediately causes us to undertake an  
8 investigation.

9           MR. NODLER: I would add to the same things that  
10 they said, you know, about number of complaints and the  
11 egregiousness of the conduct.

12           Something else on the CFPB -- or for the CFPB is  
13 a lot of our investigations come out of examinations.  
14 And a lot of times, as I was alluding to before about  
15 the responsible business conduct, that when our  
16 examiners uncover some unlawful activity, if the company  
17 really steps up and, you know, is: "Okay. We're going to remediate.  
18 We're going

19 to pay back all this money that we collected, you know,  
20 while doing this, while making this deceptive claim or  
21 while doing whatever," then that's something that can,  
22 you know, go a long way with the CFPB to decide, okay,  
23 we're going to maybe focus our enforcement resources on  
24 the company that's not volunteering to refund all of the  
25 money, so. But, and everything else that everyone said.

1 MS. FEIGENBAUM: And I would echo what my  
2 colleagues have said. Self-report. Certainly if there  
3 are past violations, they still need to be addressed,  
4 but self-reporting and more recent compliance and  
5 cooperation are certainly factored in in any  
6 investigation and enforcement action.

7 MR. KANE: Thanks.

8 This is for our New York law enforcers: Some  
9 states require debt collectors to post a bond in order  
10 to operate. When will we see New York adopt this  
11 regulation?

12 MR. MORRISSEY: I probably should have started  
13 at the beginning of my remarks to say that my views are  
14 only my views and I neglected to do that.

15 It's something that requires a legislative fix and  
16 it's not something as an Assistant Attorney General that  
17 I can comment on because it's not an appropriate role of  
18 me to comment on political solutions as contrasted with  
19 lawsuits, but I feel your pain.

20 MR. KANE: This is for -- anybody at the table  
21 can address this:

22 Is there are any appetite for a self-disclosure  
23 program for companies looking to improve compliance and  
24 start fresh? I envision something similar to  
25 Medicare/Medicaid self-disclosure statutes.

1           Anybody?

2           MR. NODLER: I would bring up the responsible  
3 business conduct again. At the CFPB, where when  
4 somebody does self-report a violation, then it is  
5 certainly looked upon favorably.

6           We also actually have another project in our  
7 office? I think it's in markets. Catalyst, John, is  
8 that in markets?

9           MR. McNAMARA: Yes, Catalyst.

10          MR. NODLER: Yes. So we also have a project  
11 called Project Catalyst --

12          MR. McNAMARA: I'm sorry, Greg. That's front  
13 office.

14          MR. NODLER: Oh, front office. Okay.

15          So we have a project at the CFPB where companies  
16 who are looking to try something out, try something new  
17 in financial services that may be a disclosure that  
18 wouldn't align exactly with current -- a current  
19 disclosure in a regime but they think it might be better  
20 for consumers than the existing law, then they can come  
21 and they can present that idea to the Bureau and  
22 sometimes get some kind of safe harbor to try something  
23 out, which, you know, I don't know how appropriate that  
24 would be with debt collection, but I mean, anybody who  
25 is a covered person can submit applications.

1           MR. KANE: This one is for Joy:  
2           If a debt collector sends a settlement agreement  
3 offer to the consumer in writing and the consumer  
4 accepts it by paying per terms, must any further  
5 documents be required? would a further document be  
6 required?

7           MS. FEIGENBAUM: No, that agreement initially  
8 sent will suffice.

9           MR. KANE: If a company is shut down for fraud,  
10 why is the no action brought -- why is there no action  
11 brought against the data provider or software vendor?

12          MR. KOEGEL: I'll take a crack at this since I  
13 think we've been in the business of filing cases that  
14 seem to end up with really bad debt collectors being put  
15 out of business.

16          You know, I guess generally what we've been  
17 seeing in the cases that have resulted in asset freezes  
18 and receiverships has been behavior that, you know, we  
19 attribute entirely to the debt collector itself and the  
20 debt collection practices.

21          They are not violations that generally stem  
22 from, you know, some issue with the software or  
23 something like that.

24          So, for instance, in cases that we've brought  
25 recently in Buffalo as I described before, the common

1 threads have been, you know, false threats of arrest,  
2 false threats of litigation, wanton and willful  
3 disclosure of debts to third parties, failure to give  
4 required notices.

5 None of those things stem from, you know, a bad  
6 phone vendor or software vendor or anything like that.  
7 Now, if we found a debt buyer -- or a debt seller out  
8 there, I should say, who is wilfully selling bogus  
9 portfolios of debts or who is double-selling the same  
10 portfolio to multiple debt collectors, that's a  
11 different story.

12 Then when the debt collector who buys that  
13 portfolio goes and collects on that debt, if he does so  
14 in good faith thinking that he's got a good portfolio,  
15 he really has very little culpability there and we will  
16 be looking at the person who wilfully is violating the  
17 law and committing the deception there, the debt seller  
18 who is selling bogus portfolios.

19 So the short answer to that question is, if the  
20 facts present themselves in such a way that the service  
21 provider is culpable, that's absolutely something that  
22 we would look at within the bounds of our statutory  
23 authority, but generally the cases we've pursued  
24 recently haven't presented those fact patterns.

25 MR. NODLER: And I'll say for the CFPB,

1 something that's in the Dodd-Frank Act and the CFPB,  
2 it's unlawful for the covered person to commit an  
3 unfair, deceptive, or abusive act or practice, but it's  
4 also unlawful for someone who provides substantial  
5 assistance to the commission of a UDAAP.

6 And in one of the cases that I mentioned where,  
7 you know, there are a million names and we refer to it  
8 as the Universal Debt case because that was one of the  
9 companies, but we also brought actions against the --  
10 you know, the telephone company and payment processors.

11 And for that, it's that they have to -- it's  
12 "know or should have known" and we allege that they  
13 should have known they were providing assistance to  
14 unlawful practices.

15 MR. MORRISSEY: And we have issued subpoenas to  
16 software developers. And the simple fact is we've never  
17 seen any evidence to suggest that there was any  
18 collusion, frankly, between software developer and the  
19 particular company.

20 But believe me, we've looked at it because when  
21 we saw the same program coming up over and over again,  
22 it did pique our interest.

23 When you refer to the data provider, I'm not  
24 sure what that means, but if you're referring to the  
25 debt buyer who places debt with a shop that is shut

1 down, why aren't we going back to the debt buyer? Please  
2 don't make the assumption that we're not.

3 MR. KANE: Thanks. Another one of our typed  
4 questions:

5 The dividing line between the FTC and CFPB is  
6 murky as both agencies are either enforcing claims on  
7 behalf of the Federal Government.

8 We understand that the agencies share some  
9 information. We also understand that the statutes  
10 giving each agency its jurisdiction vary in scope and  
11 conduct covered.

12 What distinguishes cases that are taken by the  
13 FTC versus those taken by the CFPB? To what extent are  
14 the agencies sharing information?

15 MR. KOEGEL: Greg, you want me to go first?

16 MR. NODLER: Go for it.

17 MR. KOEGEL: So the short answer is we are  
18 coordinating and sharing extensively. And I think  
19 frankly that's been reflected in the work that we've put  
20 out there both on our own and jointly.

21 So just going back to the beginning, the  
22 Dodd-Frank Act anticipated coordination. The two  
23 agencies have signed the memorandum of understanding  
24 that created and implements a safe framework for  
25 coordination and cooperation, but it does not divvy up

1 areas.

2 So among other things, coordination means that  
3 we ensure that each agency knows what the other agency is  
4 doing, that we have consistency in approaches where  
5 practical and appropriate, that we avoid duplication of  
6 efforts, and that we avoid unintended double-teaming.

7 The coordination does not preclude a joint or  
8 coordinated investigation. In fact, we just did that in  
9 Green Tree this spring.

10 It doesn't mean that either agency is going to  
11 abdicate its authority or its role, particularly here in  
12 debt collection. I think you see that. We're both up  
13 here at the table.

14 And it doesn't mean that either agency is going  
15 to become the primary regulator or enforcer. There's  
16 enough bad behavior going around right now, so we don't  
17 need to do that.

18 So how do we coordinate? If you're interested,  
19 there are senior-management-level meetings twice a year.  
20 There are midlevel management meetings on a quarterly  
21 basis.

22 There are staff-level working groups that Greg  
23 and I helped start, frankly, when we were in prior  
24 positions that meet even more frequently than that. And  
25 there's frequent informal communications amongst staff.

1           We have a database that's set up that  
2           automatically notifies the other agency whenever one of  
3           our agencies opens an investigation or is getting ready  
4           to file a complaint or is getting ready to settle a  
5           case. And some of those same systems are in place when  
6           the CFPB is undertaking a supervisory examination.

7           So the lines of communication are varied and  
8           wide open and we factor all of this stuff in. You know,  
9           if the CFPB is getting ready to do an examination of a  
10          collector, you know, do I really want to use my limited  
11          resources at the FTC to open up a separate  
12          investigation? In all likelihood, no.

13          So I think that's primarily how we've been  
14          addressing it at the FTC, is trying to have those varied  
15          and open communication channels.

16          MR. NODLER: I agree with everything that Chris  
17          said. I mean, I would also say that some of that is  
18          true for the way that the CFPB works with the states and  
19          I imagine the way that the FTC works with the states.

20          And we share enforcement authority over the  
21          FDCPA with the FTC, you know, as well as the private  
22          consumers. We share enforcement authority of the  
23          Dodd-Frank Act with State Attorneys General.

24          So, you know, we all work together. And I mean,

1 we're all sitting at the table and we're all trying to  
2 cover the same issues, but not to duplicate efforts in  
3 an inefficient way or in a way that wouldn't be fair to  
4 industry either.

5 MS. FEIGENBAUM: And I would just add that we've  
6 certainly -- that, you know, as Greg is saying, the  
7 states and the FTC and CFPB are coordinating a lot in  
8 this space.

9 We coordinated with the New York AG's office on  
10 meetings with OCA on their new rules on default judgment  
11 applications, coordinated with the CFPB on New York's  
12 proposed rule before issuing it.

13 And we have enforcement -- we are coordinating  
14 on enforcement and investigations with all of our  
15 colleagues here today.

16 MR. KANE: Joy, this is a question for you:

17 The DFS has proposed an amendment to  
18 substantiate -- to substantiation that eliminates  
19 producing a judgment. Does the DFS expect debt  
20 collectors to validate old judgments?

21 MS. FEIGENBAUM: Okay. So the answer to the  
22 second question is no. The rule applies to  
23 pre-litigation collection activity and for that reason,  
24 we are amending the rule that allows for provision of a  
25 judgment as a basis for substantiation, but that really

1 shouldn't impact collectors at all.

2 MR. KANE: Are there any plans for any regulator  
3 to commence investigations or take action against  
4 attorneys that operate under the guise of being a  
5 consumer advocate and launch frivolous lawsuits against  
6 legitimate agencies for the purpose of self-gain and  
7 enrichment?

8 This one is for half the audience.

9 MR. NODLER: We brought actions against  
10 foreclosure rescue scams. That was actually the very  
11 first, you know, lawsuit that CFPB filed, was against  
12 the Gordon Law Firm because it was operating, you  
13 know, a foreclosure rescue scam.

14 I know that's not what people are talking about  
15 here, but it's a law firm, you know, saying that he's  
16 protecting consumers when we didn't think that was the  
17 case.

18 MR. MORRISSEY: I also think importantly  
19 there is a bit of a self-regulating device there and  
20 it's called Rule 11 of the Federal Rules of Civil  
21 Procedure.

22 And Rule 11 requires when a lawsuit is filed in  
23 the Federal District Court that it be signed by the  
24 attorney.

25 And if it is a completely frivolous suit, then

1       there may be Rule 11 sanctions against that attorney.  
2       And so there is a bit of a self-regulatory mechanism in  
3       there as well.

4               MR. KOEGEL: By the way, if anybody has more  
5       questions, please feel free to scribble something out or  
6       raise your hand and get them over to Tom.

7               MR. KANE: Many companies -- and this is a long  
8       one. Many companies in the Western New York region and  
9       elsewhere have come together in the hope of developing  
10      an open, honest, and transparent dialogue regarding  
11      regulation of consumer debt collection on the federal  
12      and state level.

13              Part of that discussion includes  
14      contemplating -- contemplation of forming or  
15      strengthening industry lobbying groups at the state and  
16      federal level.

17              In the event that such groups were to request an  
18      opportunity to work with the FTC, CFPB, or New York AG,  
19      would those entities be willing to sit down to discuss  
20      guidelines, protocols, and commonsense legislation that  
21      will lead to a more professional and better regulated  
22      industry.

23              MR. KOEGEL: Well, I speak for myself at the FTC  
24      on this one, but if anybody is here from DBA or ACA or  
25      some of the other industry organizations and some of the

1 debt collection vendors and service providers that are  
2 in the audience, they will tell you that my door is open  
3 and I am willing to meet and discuss, you know, any  
4 issues that are in the industry.

5           You know, please feel free to come up to me  
6 after this event is over. I've got a whole bunch of  
7 business cards and I would be happy to meet with you,  
8 learn from you, hear what issues you've got.

9           Unfortunately, Congress and the Constitution  
10 have yet to grant me authority to pass legislation.  
11 Perhaps that's a comfort to some of you. But I'm always  
12 eager to learn more and hear what's going on from your  
13 perspective.

14           MR. NODLER: I'd say the same thing. I'd also  
15 say, you know, feel free to contact me, but John  
16 McNamara here in the front row is also with the CFPB  
17 and, you know, some of you may be more comfortable  
18 talking to John.

19           MS. FEIGENBAUM: And I just might add, since the  
20 questioner did not mention DFS, but we have issued our  
21 new regulation and we've been meeting on a regular basis  
22 with numerous industry groups to clarify, to make sure  
23 there's understanding of the regulation, that -- and  
24 we've issued clarifications as we have seen, you know,  
25 practical considerations that need to be factored in.

1           So our door is open as well.

2           MR. KANE: This question is: Why do you believe  
3 that vendors, autodialers, payment processors should be  
4 aware of bad accounts -- or bad acts, I guess?

5           MR. NODLER: I mean, I imagine that that's  
6 directed at me. So in our case where we -- you know,  
7 where we sued vendors, it was because we said that they  
8 knew or should have known. There were various red  
9 flags, they were described in the lawsuit, such as  
10 consumer complaints and, you know, things like that.

11          AUDIENCE MEMBER: What kind of red flags?

12          MR. NODLER: They're going to be described more  
13 in there. Let me see. I think I have some of them just  
14 noted on here. Just give me a second.

15                They were -- sorry, just one second.

16                I think they're going to be described with more  
17 detail in the complaint, which I don't have with me, but  
18 what I have on here is to remind myself about consumer  
19 disputes that described the scheme and communication  
20 problems that they were having with the debt collectors  
21 themselves.

22          MR. MORRISSEY: It's important to  
23 understand that what we think and a dollar will buy you  
24 the Buffalo News.

25                I mean, it's an evidentiary question ultimately

1 and so the answer to the question is we have to present  
2 evidence of it. I mean, if we file an action, we  
3 appropriately bear the burden of proof of proving  
4 whatever allegations are contained in that complaint.  
5 And that's as it should be.

6 So the answer to the question is, is it an  
7 evidentiary one that we undertake before we file a  
8 complaint in the first place.

9 MR. KOEGEL: I guess just to build off of Jim's  
10 point there, if you were just to look at, for instance,  
11 say the three cases that we filed jointly with New York  
12 in the last year-and-a-half, I think I described for you  
13 earlier a lot of the really drastic preliminary relief  
14 that we got: asset freezes, receivership, immediate  
15 access to business premises.

16 We didn't just get that because we wanted it.  
17 We asked the Court for those powers and the Court has a  
18 high burden of proof before it will grant those kinds of  
19 relief.

20 And in every one of those cases, we presented  
21 overwhelming evidence and the Court was very comfortable  
22 granting those kinds of relief.

23 So, you know, nobody is just acting on their own  
24 here. We are presenting, as Jim noted, extraordinary  
25 evidence of these kinds of things.

1           And, you know, we are very careful. We're not  
2 looking to hold people accountable for behavior that  
3 they're not really culpable for.

4           MR. MORRISSEY: And what does Chris mean by  
5 that? Well, the Four Star case involved 42 consumer  
6 affirmations. It involved affirmations from  
7 ex-employees.

8           I mean, this is the type of evidence that we  
9 present when we present cases to courts and the type of  
10 evidence that the Court will consider before it issues  
11 the drastic relief that we request.

12           This is not an easy haul, believe me. It's a  
13 very tough one.

14           MR. KOEGEL: Call recordings, you know. We're  
15 getting, you know, scripts from the former employees  
16 that we talk to. You know, this is overwhelming  
17 evidence when we go on these things.

18           MR. KANE: Will a registry be developed for  
19 notifying compliant debt collectors about noncompliant  
20 individual collectors who are not owners?

21           MR. KOEGEL: I guess let me just start by saying  
22 that I'm not sure that that's within the bounds of our  
23 statutory authority at the FTC, you know, absent Court  
24 orders, you know, holding those people accountable or  
25 banning them from the industry.

1           I know I talked earlier about the Hall of Shame,  
2           so to speak, the list of banned debt collectors. Again,  
3           I want to make sure everybody in this room understands  
4           that's not just people Chris Koegel doesn't like. Those  
5           are people who are under Federal Court orders that  
6           specifically ban them from your industry.

7           And so, you know, at this point, we are looking  
8           at banning the people and the companies that are most  
9           culpable, most responsible, who are profiting the most  
10          from the unlawful behavior.

11          You know, with great power comes great  
12          responsibility. It's not just all profits and  
13          happiness. You have to make sure that your people are  
14          doing business the way you want them to do it.

15          MR. MORRISSEY: Was it Joan Rivers who used to  
16          say, "Can we talk?" I mean, can we talk for a second  
17          here?

18          We were given statistics on the number of  
19          collectors that are in -- that are employed in New York  
20          state. And I understand that question and I think the  
21          question is a great question.

22          And what we see is collectors go from agency to  
23          agency to agency to agency and oftentimes they bring in  
24          with them the scripts that they've gathered, you know,  
25          at other agencies.

1           And boy, I don't mean to say for a second that  
2           this is an easy haul. It's not an easy haul, but I have  
3           to reinforce what Chris said.

4           When we went in in our immediate access, which  
5           meant we were permitted to go into the business premises  
6           looking for evidence of violations of the FDCPA, what  
7           did we see?

8           We went from cubicle to cubicle to cubicle to  
9           cubicle. And at every cubicle, oftentimes sheets  
10          thumb-tacked right on the cubicle, were scripts that  
11          were violative of the FDCPA.

12          I want to stress, because I think it's important  
13          to stress this, that the evidence that we have had when  
14          we've brought these cases has been overwhelming.

15          And if I were running one of these agencies, how  
16          would I know? I would simply look at the scripts that  
17          were posted in the cubicles.

18          So I wish we could come up with a list of debt  
19          collectors that in our experience -- and frankly, we're  
20          the ones that see it -- in our experience were not good  
21          collectors so that we could warn you about it. As a  
22          practical matter, it's just not going to happen and the  
23          ultimate responsibility lies on your shoulders.

24          MR. KOEGEL: Yes. You know, I cannot stress  
25          enough: compliance management, call recordings, call

1 monitoring, just walking around your facility looking  
2 for what scripts people are having. You know, take a  
3 look at the account notes.

4 That is your responsibility as the owner and  
5 operator of these collection agencies. It's just not  
6 going to get all pushed down to the guy making \$10 an  
7 hour.

8 MR. KANE: A question for Joy:

9 Regarding substantiation under Section 1.4(c),  
10 does the requirement to produce prior settlement  
11 agreements refer to prior agreements with that  
12 particular agency or include the entire history of the  
13 account?

14 MS. FEIGENBAUM: I'm sorry, can you repeat the  
15 last portion?

16 MR. KANE: That particular agency or does it  
17 include the entire history of the account?

18 Does the requirement to produce prior settlement  
19 agreements refer to prior agreements with that  
20 particular agency or include the entire history of the  
21 account?

22 MS. FEIGENBAUM: It's prior agreements entered  
23 after the effective date of the regulation, which is  
24 March 3rd. So, you know, it would cover, with time now,  
25 it could cover with another collector for a prior -- you

1 know, with a prior collector.

2 MR. KANE: This one is to Greg:

3 Could you talk about the CFPB's priorities in  
4 the current rulemaking process? What are things that  
5 are common practice today but may be frowned on or  
6 outlawed in the future?

7 MR. NODLER: Could I talk about that? Probably  
8 not.

9 MR. MORRISSEY: It's actually for the Amazing  
10 Kreskin.

11 MR. NODLER: Right. I mean, the rule makers are  
12 looking at a lot of issues. I've heard from debt  
13 collectors who are being, you know, investigated or  
14 examined, "Oh, well, I saw this topic mentioned in the  
15 advance notice of proposed rulemaking. That must mean  
16 that the CFPB is undecided on if something is unlawful  
17 or not."

18 I mean, everything is in the advance notice of  
19 public rulemaking, just a soup-to-nuts on, you know,  
20 things that the CFPB would consider.

21 But you know, there's never been a rulemaking  
22 under the FDCPA, but there's -- there have been a lot --  
23 there's been a lot of activity that is clearly unlawful.

24 So I don't -- I don't see the -- you know, the  
25 rules are going to be covering existing law is my

1 personal view of it. I'm not -- again, I'm not speaking  
2 for the Bureau, I'm not speaking for the Director, I'm  
3 not speaking for the rulemaking team.

4 But just because there's a pending rulemaking,  
5 it's not like we're changing existing rules. If there  
6 was already a rulemaking and we were going to be  
7 amending it, that would be a different story, but there  
8 are no rules.

9 There's a statute that says don't engage in  
10 deceptive acts and practices, et cetera.

11 MR. KANE: How can an attorney ethically  
12 represent a client in arguing an unresolved issue of law  
13 if the attorney is subject to FDCPA liability due to  
14 unresolved issue of bona fide error defense for mistakes  
15 of law?

16 MR. KOEGEL: From what? What was the last  
17 clause there, Tom?

18 MR. KANE: Subject to FDCPA liability due to  
19 unresolved issue -- an unresolved issue of a bona fide  
20 error defense for mistakes of law.

21 MR. NODLER: I don't know that we understood the  
22 question.

23 MR. KOEGEL: Can you try it one more time, Tom?

24 MR. MORRISSEY: Maybe the person who asked it  
25 could.

1           MR. NODLER: Yes, or if the person who asked  
2 wants to try and rephrase it.

3           AUDIENCE MEMBER: The German case left open the  
4 issue of a bona fide error defense or mistakes of law.  
5 We agree on that. No, wait. Mistakes of law, of state  
6 law.

7           So if there's an unresolved issue of state law,  
8 how do you presume an attorney can make the argument on  
9 an unresolved issue of state law if there's a chance  
10 they're going to be sued for a fair debt violation?

11          So if the state law is unclear and you want to  
12 argue on behalf of your client on an issue of an unfair  
13 or unresolved state law, how can you do that ethically  
14 if you could be sued for unfair debt?

15          I don't think there's an answer actually. The  
16 problem is this. The problem -- this is the dilemma we  
17 face and it may be more for the Attorney General.

18          The German case is clear, the Supreme Court said  
19 we don't know if there could be a bona fide error  
20 defense if an attorney is wrong on state law.

21          How would the Attorney General view that?

22          MR. MORRISSEY: Can you give an example? It  
23 might help.

24          AUDIENCE MEMBER: An example: Imagine if  
25 there's a summary judgment motion made and you argue

1 that state law permits a claim to proceed and the debtor  
2 argues that you can't -- that there's a defense that  
3 applies.

4 The Court of Appeals has never ruled on it. The  
5 departments are split on the issue. How about a statute  
6 of limitations defense, which is -- where it's not  
7 clear.

8 And I'll give you a great example: indirect  
9 lending. What is the statute of limitations for  
10 indirect loans? Is it four or six years? It's unclear.

11 MR. MORRISSEY: You're right. I don't have an  
12 answer for you.

13 AUDIENCE MEMBER: No, any -- it's kind of --  
14 it's the frustration. And I have to tell you, and  
15 respectfully, and I think what you guys are doing is  
16 great, but I'm sitting here saying this seems so easy to  
17 you, maybe.

18 AUDIENCE MEMBER: Right.

19 AUDIENCE MEMBER: It's not so easy to us. And  
20 how -- I mean, I don't know if any of you have ever  
21 practiced on the creditor act, but we work really hard  
22 and we put up with a lot more abuse from the other side  
23 than you may think.

24 I don't know what the statistics are for abuse  
25 from the creditor perspective, but if all of us are

1       trying to comply with the law and we don't know what the  
2       law is, that's tough.

3               And I know you're not -- it's a rhetorical  
4       question, it really was, because you mentioned earlier  
5       you're not in a position of legislating.

6               MR. KOEGEL: I think, you know, at least from a  
7       government enforcement perspective, you don't see us,  
8       you know, playing a game of "gotcha" on things that are  
9       close calls, you know.

10              It may be -- it sounds like more of an issue for  
11      you with private plaintiff attorneys. But the stuff  
12      that we've been talking about up here today I think is a  
13      whole different class of thing.

14              AUDIENCE MEMBER: But respectfully, though, I  
15      mean -- and again, I do think the Attorney General  
16      Attorney General would be a good part -- if there's a  
17      violation and you lose for a very technical,  
18      nonintentional violation, what attorney could practice?

19              It's unethical, is it not, if I could be sued,  
20      if I could have financial liability?

21              MR. MORRISSEY: Yes, I'm really bad at abstract  
22      questions and I understand why courts don't give  
23      advisory opinions. What I need is a set of facts so  
24      that I can understand.

25              What I'm hearing is a very abstract question,

1 and it sounds like --

2 AUDIENCE MEMBER: I can give --

3 MR. KANE: We're going to move on to the next  
4 question. Thank you very much, though.

5 So if it's the firm's typical practice to file  
6 lawsuits, is it okay for that to be in the initial  
7 collection letter, even if that particular case turns  
8 out to be an exception?

9 And a follow-up question or related question:  
10 Can a debtor be served at work?

11 MR. KOEGEL: I think, Tom, based on my  
12 experience looking at some of this case law myself, you  
13 know, throughout the country, generally I would  
14 characterize it as it has to be a present and specific  
15 intent for that particular consumer.

16 So I think Jim alluded to this a little bit in  
17 his top 10 list. You can't think that if you sue a  
18 couple of consumers that therefore you get to blanket  
19 threaten every consumer whose debt you're trying to  
20 collect with a lawsuit. That's not how it is under the  
21 law.

22 You know, there are certainly courts and  
23 differences between circuits and different District  
24 Courts, but based on my research, I think you could  
25 distill it down to: Do you have a present and specific

1 intent as to that particular consumer to whom you're  
2 making that representation to?

3 And so that's -- and also, of course, have the  
4 authority and the ability to carry out that threat as  
5 well.

6 MR. MORRISSEY: And that made our top 10 list  
7 because that was the result of one of the investigations  
8 we did. And there were literally two or three cases  
9 that had been filed in Buffalo City Court and then  
10 thousands of threats of civil actions were made  
11 thereafter.

12 With respect to service of process, it's just  
13 not something, you know, we're permitted to give legal  
14 advice on, whether you can serve at work or not at work.

15 That is the reason you get private attorneys and  
16 that's a question that's better directed to a private  
17 attorney than to a government attorney. It's just not  
18 something we're permitted to answer. I don't know if  
19 you are, but I'm not.

20 MR. KANE: Joy, this is a question to you:

21 Can you speak to the narrower definitions of  
22 debt collector under the new regs?

23 MS. FEIGENBAUM: So while our enforcement  
24 authority covers state and federal fair debt  
25 collection -- enforcement of state and federal fair debt

1 collection practices, our debt collection regs are  
2 focused on transactions where credit has been offered.

3 So let me just say first, a lot of the  
4 definitions of debt collector are similar to those under  
5 the FDCPA. And for those who are practicing in New York  
6 City, those are the regulations that people -- that  
7 companies operate under in New York City, but in  
8 addition, we also have the provision that the  
9 transactions have to involve the extension of credit and  
10 that is somewhat narrowed.

11 MR. KANE: This question is:

12 Why the reluctance to proceed against debt  
13 buyers thus far, especially as to usurious loans?

14 MR. KOEGEL: Reluctance to proceed against debt  
15 buyers?

16 MR. KANE: That's what it says.

17 MR. KOEGEL: Is that it, Tom?

18 MR. KANE: Yes, yes. It surprised me. That's  
19 what it says.

20 MS. FEIGENBAUM: I don't think anyone should  
21 presume there is a reluctance.

22 MR. KOEGEL: That stands in stark contrast to  
23 the facts.

24 MR. MORRISSEY: We gave you an example of the  
25 companies that were collecting on payday loans. And

1 certainly if you were to look at the constellation of  
2 defendants in the actions that we've brought, you will  
3 see in that constellation debt buyers.

4 MR. KOEGEL: Let me see if I can try to gather  
5 what they may be getting at here. You know, there is a  
6 business model out there, I think, that, you know,  
7 somebody buys a debt and then farms it out to different  
8 collectors to collect rather than collecting on it  
9 themselves.

10 And again, Jim, that top 10 list is just  
11 fantastic. You know, this is something that Jim alluded  
12 to. That doesn't get you out of liability.

13 MR. MORRISSEY: No.

14 MR. KOEGEL: And now we're going to get into  
15 some technical legal standards and authorities that we  
16 use at the FTC and that Jim has been using as well, but  
17 the liability goes to participation and control, who is  
18 actually controlling the enterprise, who is the one  
19 that's setting the collection practices, who is the one  
20 that's profiting.

21 And we use at the FTC a legal concept called the  
22 common enterprise. So if there are a multitude of  
23 companies that share employees, share office space, have  
24 common ownership, common control, you know, they're  
25 commingling funds, these are factors that have been

1 enumerated by the Second Circuit.

2 If we can establish those factors, we can  
3 broaden out the liability and make what looks like on  
4 paper to be a multitude of corporations, they get  
5 characterized in the Court's eyes as one enterprise.

6 And so, you know, this may be lost in some of  
7 the details of some of the complaints, but absolutely,  
8 we are going after the entire enterprise on these things  
9 and we are using these authorities to get at the people  
10 that we believe are actually controlling these unlawful  
11 practices.

12 MR. MORRISSEY: And Chris mentioned the case,  
13 the Vantage Point case, and there's a decision by Judge  
14 Skretny, a preliminary injunction decision that goes  
15 into the concept of common enterprise and what  
16 constitutes a common enterprise, but we've been moving  
17 pretty forcefully with respect to naming the common  
18 enterprise and not just the debt collector.

19 MR. KOEGEL: We want the people actually  
20 responsible for this, the people who are setting the  
21 policies, and we will use our authorities to get at  
22 that.

23 MR. MORRISSEY: Yes.

24 MR. KANE: Can anything be done to enable laws  
25 and regulations to be less ambiguous and open to

1 interpretation of various judges?

2 Can anything be done to better define laws, such  
3 as Foti, protects against class action lawsuit but still  
4 vulnerable to third-party disclosure on a  
5 single-plaintiff basis?

6 MR. NODLER: Yes, something can be done. And  
7 there's a rulemaking that's -- the Bureau is looking  
8 into a rulemaking that would clarify a lot of  
9 ambiguities under the FDCPA.

10 As to where it's going to go, you're asking the  
11 wrong person, but the purpose of the rulemaking is, you  
12 know, among other things, to clarify ambiguities.

13 MR. KANE: What advice would you give an agency  
14 buyer that contracts for a portfolio that turns out to  
15 be bogus or illegal or both, especially if the seller  
16 threatens or brings suit for breach of contract and  
17 refuses to take the portfolio back?

18 MR. KOEGEL: If I was you, I'd stop collecting  
19 on that immediately.

20 MR. NODLER: Yes.

21 MR. KOEGEL: Once you know or have reason to  
22 know that that portfolio is bogus or compromised and  
23 then you continue to collect on that debt, you've now  
24 exposed yourself to liability and very serious  
25 liability, I might add, the kinds of remedies that we've

1       been talking about here today.

2                You know, the next step I think would be gather  
3       up all your evidence and give me a call because I'm  
4       going to be real interested in that case and that debt  
5       seller, the guy that sold you the bogus portfolio.

6                You know, as to how you proceed on your own with  
7       that person, I'll leave that to you, but that is just  
8       the kind of case and just the kind of unlawful practice  
9       that I'm real interested in at the FTC.

10               I see a lot of the problems in debt collection  
11       as symptomatic of that underlying disease is this bad,  
12       you know, information about debts and these bogus  
13       portfolios.

14               MR. NODLER: Yes. I think everybody at this  
15       table would be interested in, you know, knowing about  
16       that.

17               And to add to what Chris was saying about that  
18       being a knowing violation, under the Dodd-Frank Act, if  
19       it's a knowing violation, the civil penalty for that is  
20       \$1 million a day per violation, so it can get pretty  
21       high pretty quick.

22               MR. MORRISSEY: Remember when I was giving the  
23       list of what could be an automatic investigation? And I  
24       said the falsified website, falsify your address. If  
25       you know you're collecting on bogus debt, that's

1 automatic.

2           The other point I would add is that there seems  
3 to be an actual rule, and certainly, Joy, the  
4 regulations reflect that in getting away from this just  
5 exchanging spreadsheets with electronic information on  
6 it to, you know, firmly establishing chain of title with  
7 respect to these debts that you purchase, that, you  
8 know, this is a "buyer beware."

9           I think ultimately you're the ones that have to  
10 protect your own interests by insisting upon a proper  
11 chain of title for those portfolios that you purchased  
12 and not simply accepting an electronic file that you  
13 download into -- you know, onto your network.

14           You are the ones that are best able to protect  
15 your own interests in that regard, certainly much more  
16 than what we can do here.

17           MR. NODLER: Yes. I mean, whether you know that  
18 it's a bad portfolio or not, it's unlawful to collect an  
19 inaccurate amount. So obviously if you know, then, as  
20 Chris said, immediately stop collecting and take other  
21 steps.

22           But you also should know more about, you know,  
23 your buyer and your sellers and things like that so you  
24 ideally wouldn't get in that situation where you end up  
25 with a portfolio of bad debt.

1 MS. FEIGENBAUM: And in New York under our  
2 regulation, you cannot -- if you can't substantiate the  
3 debt, you can't collect on the debt.

4 And if you are not -- as a third-party collector  
5 not in a position to extinguish the debt, then you need  
6 to in your, you know, contracts where you're purchasing  
7 the debt make clear that if you're not going to be able  
8 to substantiate the debt, then the debt is going to be  
9 extinguished because you will not satisfy your  
10 obligations under our regulations by simply giving the  
11 debt back to the seller.

12 MR. KOEGEL: I think I would also implore  
13 everyone in this room to pay attention to the patterns.  
14 Don't just look at it as, you know, each individual debt  
15 or account and there may be a problem with that one  
16 particular debt.

17 You need to be aware of patterns in that  
18 portfolio so that you know when you've been sold, you  
19 know, a bill of goods.

20 You know, is it exhibiting a high percentage of  
21 disputes? You know, are there other, you know,  
22 systematic or identifiable patterns of issues with that  
23 portfolio? You need to be paying attention to that.

24 MR. NODLER: And you need be leery of buying  
25 other portfolios from that seller because even if they

1 would take back the one bad portfolio, if you're  
2 continuing to purchase from them, then you're getting  
3 into a whole different category, or at least how the  
4 CFPB views it as, you know, a "know or should know"  
5 violation.

6 MS. FEIGENBAUM: But again, I would just add  
7 that in New York, you can't give back a bad portfolio.

8 MR. NODLER: Right.

9 MS. FEIGENBAUM: And avoid a violation of law.

10 MR. NODLER: Right, yes.

11 MR. MORRISSEY: I will give you a piece of  
12 practical advice and that is, read the regulations of  
13 the Department of Financial Services and develop today  
14 or tomorrow your procedures for making sure they're  
15 followed, because if you get a subpoena from our office,  
16 I guarantee to you, I guarantee to you one of the  
17 demands for documents will be your policies and  
18 procedures that show compliance with the regulations of  
19 the Department of Financial Services.

20 And you'd better be able to show that you know  
21 and understand those regulations and that you are fully  
22 compliant with them because, as I said, under Executive  
23 Law Section 63(12), illegality includes a violation of a  
24 state statute or regulation and if you're not in  
25 compliance with the Department of Financial Services

1 regulations, you're going to have a problem.

2 MR. KANE: Does the FTC take the position that  
3 those individuals on the banned debt collector list -- the  
4 Koegel list -- are barred from all collection activity or  
5 simply consumer or FDCPA debt?

6 MR. KOEGEL: You know, you need to consult  
7 generally each order. The language is pretty standard  
8 but it has evolved slightly over time, but generally  
9 speaking, I believe the language is broad enough to  
10 include the collection of commercial debt as well.

11 You know, there are at times exceptions like if  
12 you are working for a small retail business and the  
13 collection of, you know, a debt is very incidental and  
14 infrequent, that kind of thing, sometimes gets excluded,  
15 but for the most part I believe -- and I'm going off  
16 memory here, so don't hold me to it -- that our standard  
17 ban does include, you know, general commercial debt  
18 collection as well as consumer debt collection.

19 MR. MORRISSEY: And Chris, we've just finished  
20 up an agreement with the FTC and in fact that is the  
21 case, it includes commercial debt as well. But you do  
22 have to consult the agreement itself.

23 MR. KOEGEL: So the list should be a red flag  
24 and a starting place. And then the list itself on the  
25 website has hyperlinks for you to see the actual

1 language of the order.

2 But generally speaking, everybody in this room I  
3 think is probably mostly involved in consumer debt  
4 collection, you'd better have a real good reason to be  
5 doing business with the folks on that list.

6 MR. KANE: I'm going to ask three more questions  
7 and then we'll wrap it up.

8 What is the incentive for a company to be a  
9 whistleblower on the -- about wrongful collection  
10 activity of another company?

11 MR. NODLER: Well, I mean, for one, they can --  
12 we're always hearing debt collectors talk about how  
13 "We're not the bad ones," you know, "you guys should be  
14 going after the ones that are saying 'we're going to dig  
15 up your deceased child'" or whatever, that kind of  
16 thing.

17 I mean, cleaning up the industry helps  
18 everybody. But then for another -- you know, I may  
19 sound like a broken record, but responsible business  
20 conduct is very important to us and that would be -- a  
21 that would be part of it.

22 MR. KOEGEL: You know, nobody in here I'm sure  
23 likes hearing the things that we're saying about this  
24 industry and it draws a lot of scrutiny from Congress  
25 and state legislatures and everybody else, and so the

1 more of this bad behavior is out there, there's more of  
2 that scrutiny.

3 I think just more generally, and this is  
4 something that Congress recognized when it passed the  
5 FDCPA back in the '70s, these harmful debt collection  
6 practices, these abusive and deceptive debt collection  
7 practices do real harm to legitimate debt collectors as  
8 well.

9 They are taking business away from you. They  
10 may be driving down or driving up the cost of certain  
11 debt portfolios.

12 And so there is a lot of collateral damage to  
13 the law-abiding debt collectors from these egregious  
14 practices and I think it's clear to me.

15 Are you going to get, you know, a \$1,000 reward  
16 or something for it? No, but I think it does inure to  
17 your benefit quite a bit.

18 MR. MORRISSEY: I would ask what is the  
19 disincentive to reporting someone who is violating the  
20 Fair Debt Collection Practices Act if you're a  
21 legitimate debt collector?

22 MR. KOEGEL: I think there's also a lot of -- it  
23 reads as a lot of lack of confidence and skepticism from  
24 the consumers that you're trying to collect from.

25 The more of this behavior that's out there, the

1 more difficult it becomes for the law-abiding collectors  
2 to collect on the debts they already have because of all  
3 the skepticism and lack of confidence in the system as a  
4 whole that consumers are starting to have.

5 MR. NODLER: For sure.

6 MR. KANE: How is a debt collector -- debt  
7 collection agency supposed to know if a debt has been  
8 charged off of the lender's books? Will an affidavit  
9 protect them?

10 MR. NODLER: You mean charged off? Generally  
11 when it's charged off, it doesn't mean it's not owed  
12 anymore.

13 MR. KANE: Does anybody --

14 MR. MORRISSEY: Charge off, my understanding of  
15 charge off is after 180 days, for example, a credit card  
16 company can no longer carry that debt -- 180 days of not  
17 paying -- can no longer carry that debt as inactive on the  
18 books and that frequently those are the ones that go out  
19 for collection.

20 My understanding is that virtually any debt you  
21 can collect on, if that's a definition you're using, is  
22 charged-off debt.

23 MR. NODLER: But I mean, that's an accounting  
24 principle.

25 MR. MORRISSEY: Yes. Is that what you mean or

1 do you mean something different?

2 AUDIENCE MEMBER: Yes. I mean, depending on the  
3 debt, it is the general accounting principles, right?  
4 Some debts don't even have, you know, a strict timeline  
5 of when debt can be charged off.

6 MR. MORRISSEY: Do you mean charged off by the  
7 creditor?

8 AUDIENCE MEMBER: Charged off for the account as  
9 inactive, it's charged off the books as a bad debt,  
10 right?

11 MR. MORRISSEY: Okay.

12 AUDIENCE MEMBER: So how is a third-party  
13 collection agency supposed to know for sure if a debt  
14 has been charged off the books of the original lender?

15 MR. NODLER: You mean no longer owed --

16 AUDIENCE MEMBER: Does an affidavit protect  
17 them?

18 MR. NODLER: Do you mean no longer owed at all?

19 AUDIENCE MEMBER: No, charged off doesn't mean  
20 no longer owed.

21 MR. NODLER: Yes, I know, but I don't understand  
22 why the repeat question, what the significance would be.

23 MS. FEIGENBAUM: I think I can speak to the  
24 significance because some of the disclosures need to be  
25 provided only as to charge -- as to charged-off debt.

1           And that's something that the debt -- the  
2           third-party debt collector when they're obtaining the  
3           information from their collectors then -- I'm sorry,  
4           from the creditors, they need to get.

5           And that's one of the reasons why we've given  
6           additional time for the provision of the regulation on  
7           identification of the debt for which, you know, as to  
8           charged-off debt, that you go back and get the  
9           information.

10           AUDIENCE MEMBER: So just simply, all you can  
11           do -- unless you audited their books, all you can do is  
12           ask the question or get an affidavit.

13           MS. FEIGENBAUM: Well, going forward, it's when  
14           you purchase the debt, that should be at the top, but  
15           going backwards, that's why we're giving you more time.

16           AUDIENCE MEMBER: (Inaudible.) How would you  
17           know?

18           MS. FEIGENBAUM: That's something that you need  
19           when you take -- when you take that work on, you need to  
20           get that information from the -- you know, from the  
21           creditor.

22           AUDIENCE MEMBER: That's what I'm asking.  
23           Is it -- my question was, would an affidavit protect the  
24           third-party collection agency, an affidavit from the  
25           lender saying this debt is not charged off?

1 MS. FEIGENBAUM: If the debt is -- it's the  
2 responsibility of the third-party collector of the  
3 charged-off debt to give the disclosures under the  
4 regulations, so it's the collector's obligation to  
5 determine, to get that information from the creditor.

6 And I'm not going to, you know, pass on what --  
7 you know, that's for you to figure out or your  
8 attorneys, what level of evidence that you're going to  
9 get from the parties you enter into service arrangements  
10 with.

11 CLOSING REMARKS

12 MR. KANE: Great. Thank you all very much. And  
13 thank you to all of our four panelists.

14 (Applause.)

15 (Whereupon, the proceeding was concluded.)

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## 1 CERTIFICATE OF REPORTER

2

3 MATTER NUMBER: P154803

4 CASE TITLE: DEBT COLLECTION DIALOGUE,

5 A conversation between government and business

6 HEARING DATE: JUNE 15, 2015

7

8 I HEREBY CERTIFY that the transcript contained  
9 herein is a full and accurate transcript of the steno  
10 notes transcribed by me on the above cause before the  
11 FEDERAL TRADE COMMISSION to the best of my knowledge and  
12 belief.

13

14 DATED: JUNE 18, 2015

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17 RICHARD B. WHALEN, CM

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