FEDERAL TRADE COMMISSION

DEBT COLLECTION DIALOGUE

A conversation between government and business

Tuesday, September 29, 2015
1:30 p.m.

Southern Methodist University
Karcher Auditorium
3315 Daniel Avenue
Dallas, Texas

Reported by: Michelle Munroe, CSR
FEDERAL TRADE COMMISSION

Welcoming Remarks:  
Mr. Thomas Kane, Senior Attorney, Division of Financial Practices, FTC  

Opening Remarks:  
Ms. Jennifer Collins, Dean, Dedman School of Law, Southern Methodist University  

Introduction:  
Mr. Christopher Koegel, Assistant Director, Division of Financial Practices, FTC  

Panel 1:  
Moderator: Mary Spector, Professor, SMU  
Panelists:  
Christopher Koegel, FTC  
Gregory Nodler, CFPB  
Kenneth Lennon, Office of the Comptroller of the Currency  
Michael Frost, CBE Companies  
Patricia Baxter, DBA International  

Panel 2:  
Moderator: Dama Brown, FTC  
Panelists:  
Christopher Koegel, FTC  
Gregory Nodler, CFPB  
Jessica Lesser, Office of the Texas Attorney General  
Robert L. Foehl, ACA International  
Joann Needleman, NARCA
MR. KANE: I want to thank you all for coming. My name is Tom Kane. I'm an attorney with the Federal Trade Commission's Division of Financial Practices and we are the team that put together this dialogue. We're very glad you're here.

And I just want to introduce Jennifer Collins, who is the dean of this wonderful law school hosting us here and can we have a round of applause for Dean Collins for welcoming us.

(Applause.)

MS. COLLINS: Thank you so much. I am just here to welcome you all and let you know how delighted we are that you are spending your afternoon at Dedman School of Law. It's truly an honor for us to host you today.

There are some very important people who did all the heavy lifting who I need to take a minute to acknowledge for making this event possible. First, in the Federal Trade Commission I would like to acknowledge Christopher Koegel, Assistant Director of Financial Practices who created the vision for these debt dialogs.

Southwest Regional Director David Brown, along with Senior Attorney Tom Carter have
been instrumental in planning the program and bringing it to SMU today. My special thanks to Dama and Tom as well as their predecessors and the many other attorneys at the FTC, Jim Elliott, who have supervised our law students for so many years as experts.

Professor Spector told me she has seen some of those students here today, and there is no better privilege or wonderful moment as a professor or dean than seeing our former students and knowing that the work experience you provided for them made a difference in their career development.

Thank you, also, to Tom Kane who you just saw who has been absolutely essential to planning for this dialogue. I know some folks are outside, but could you join me in thanking all these amazing folks in the FTC.

(Applause.)

MS. COLLINS: Finally, I need to thank the folks from SMU who are responsible putting this event together. First, I would like to acknowledge Professor Mary Spector who does such outstanding teaching and scholarship in the consumer credit area and is just a wonderful teacher and mentor to our students.
I'd also like to thank Rebecca Bell who put together the logistics and all of the little event planning details that go into making this kind of event possible. They have both put in a tremendous amount of time and energy, and please join me in thanking Professor Spector and Ms. Bell.

I hope you all have a wonderful afternoon. If SMU can be of assistance to you in any way as you spend the afternoon with us, please let us know. Enjoy the rest of your dialogue.

MR. KOEGEL: Thank you, Dean. This is a beautiful facility, a beautiful law school. And we at the FTC are eternally grateful to you and to Mary especially for providing us a wonderful room for our meeting today. We are really grateful for this.

So welcome everyone to today's debt dialogue. Let me see if I'm conversant in PowerPoint here. We are going to be using a hash tag today for twitter if anybody is into that. The hash tag is going to be #debdialogue.

I am Christopher Koegel. I'm the assistant director of the FTC's Division of Financial Practices. And I have been working on the debt collection issues for about six years now and supervised our debt collection law enforcement
program for the last three.

This is obviously the second of our three dialogues. We have got another one of these coming up in November down in Atlanta. But I'm very grateful that all of you have come out to join us today in this conversation.

As many of you know, for over 30 years the FTC was the sole enforcer of the Fair Debt Collection Practices Act. The states were on the job as well during that time, but it was just the FTC at the federal level.

Several years ago we were joined and we welcomed another federal cop on the beat, the Consumer Financial Protection Bureau. And they have been an excellent partner with us in that time on these issues.

Greg Nodler from the CFPB is here today and he's going to join us in the conversation. And he'll talk a lot on two panels today about the CFPB's enforcement.

We at the FTC are extremely lucky and fortunate to have partners like the CFPB, like the State AG, and like other state and local law enforcement agencies as we combat unlawful debt collection activities in an effort to both protect
consumers and also to protect the interests of
law-abiding debt collectors.

The FTC's debt collection work is
important for a lot of reasons. When Congress passed
the FDCPA, it noted the pervasive and harmful effects
that abusive practices have on both consumers
individually as well as on the economy as a whole.

Among other things, Congress noted
that abusive collection practices contribute to
personal bankruptcies, marital instability, loss of
jobs and invasions of privacy. Abusive collection
practices are debilitating to consumers and in some
cases cause them to pay amounts that they do not owe.

This affects enormous numbers of consumers.

Studies have found that approximately
15 percent of adult Americans, nearly 30 million
people, have an account in collections. Viewed
another way, over 35 percent of Americans with credit
records have past due debts on their credit reports.
And those debts are significant, often averaging over
$5,100.

I would add that the cumulative amount
of this debt is significant to the economy as a
whole. In 2010, the total amount of consumer debt in
the U.S. reached nearly $2.5 trillion. We at the FTC
also know that debt collection is a significant
industry.

Congress recognized this when it
passed the FDCPA. Indeed, one of the purposes of the
act was to ensure that law-abiding collectors are not
competitively disadvantaged.

Somewhere between 4 to 5,000 firms are
engaged in the third-party collection of debts. And
if you include collectors directly employed by the
original creditor, the Bureau of Labor Statistics
estimates that as many as 456,000 people work as bill
collectors. These collectors make perhaps as many
as one billion contacts with consumers each year.

The consumer complaints that we
receive at the FTC confirm all this. In fact, we
continue to receive more complaints about debt
collection practices than about any other industry.
We received over 283,000 in 2014 alone, and our
experience has shown these complaints are just the
tip of the iceberg.

There doesn't need to be this much
abuse and this much unlawful activity. As many of
you know, as Congress noted when it passed the FDCPA,
debts can be effectively collected without resort to
deception or abuse.
For all these reasons, the FTC has made debt collection one of its strategic priorities for many years now. This is reflected in the many law enforcement actions we have brought. For example, last year the FTC filed 10 new debt collection cases against 56 different defendants and obtained nearly $140 million in judgments. Those judgments also banned 47 companies and individuals from ever participating in debt collection again because the violations in those cases were just so egregious. So far in 2015 we have already filed eight new debt collection cases, and we still have three months to go.

The FTC's debt collection work, however, is not just confined to law enforcement. Our focus on debt collection is also reflected in the workshops and roundtables we have held, the reports we have issued, the amicus briefs we have written and the many speeches we’ve made. This will continue to be the case going forward.

In each of the last several years, the FTC has expanded its work in the debt collection area and we see that trend continuing.

These debt collection dialogues -- and this is the second of three planned so far -- are yet
another strategy for addressing unlawful debt collection practices. We held the first one in Buffalo in June, and the third one will be in Atlanta a little bit more than a month from now, in mid-November.

We see these dialogues as opportunities for you to meet the agencies who police the debt collection industry. And we have got the CFPB here today. For the first time, we have got the Office of the Comptroller of the Currency joining the conversation, and we have got Jessica Lesser here today from the Texas State Attorney General's office.

We hope to learn more about your industry and the issues that matter most to you through these dialogues. We also hope to highlight areas of concern that we have, share our strategic priorities directly with you, and perhaps generate some ideas for compliance management together.

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

During today's two panels, you will hear from me from the FTC, from Greg Nodler at the CFPB and from Ken Lennon at the OCC, as well as
Jessica Lesser from the Texas Attorney General's offices. All of our agencies have jurisdiction over these difficult debt collection issues, and that's why it is so important that we all communicate with each other and collaborate. These collaborations have led to great results.

This spring, for example, we brought our first joint case with the CFPB against Green Tree Servicing to address debt collection and debt servicing violations. We obtained a strong order and substantial consumer redress in penalties in that case.

And over the last year we have filed three cases jointly with the New York Attorney General. And I think if you go back a little bit more than a year, it's now four or five, as well as one with the Illinois Attorney General. Those collaborations have been clear successes. And we will continue to look for those opportunities in New York, Illinois and elsewhere.

But certainly as important as the law enforcers and regulators on our panels today are going to be the collection industry representatives who are going to join us in the conversation. There
will be two on each panel today.

On panel one, we'll have Mike Frost of CBE Companies, who is also an officer of ACA International; and Trish Baxter of Recovery Management Systems Corporation, who is an officer of DBA International.

On panel two, we'll have Rob Foehl, who is ACA's vice president and general counsel, as well as Joann Needleman of Clark Hill and an officer of the National Association of Retail Collection Attorneys.

Our moderators will be Mary Spector, a professor here at the Dedman School of Law, and Dama Brown, the director of the FTC's Dallas office.

They'll ask questions of the industry representatives as well as the federal and state reps, and through these questions and answers, we hope to address many topics of grave interest to collection agencies, debt buyers, collection attorneys, creditors and service providers.

We also hope to leave about 10 minutes or so at the end of each panel to take some questions from the audience. So I know all of you received comment cards in your packets. Please feel free to pass those up to anybody with the FTC and we'll get
those up to the moderator for that time at the end of each panel.

Before we move on -- and I promise, I'm almost done -- I want to again thank some folks who were absolutely wonderful in helping us put together this event today.

First and foremost, again, I want to thank the law school and Mary Spector, the dean, and Rebecca Bell and the facilities team here. We literally could not have done it without them.

Tom Morgan, I want to give a special thanks to him, he's with the ACA of Texas, for helping us to get the word out about this event. With DBA, Jan Stieger and Trish Baxter, again, also helped us get the word out. And at ACA, Rob Foehl and Mike Frost similarly helped. And Joann Needleman and NARCA were also very helpful.

I also want to thank some of the other panelists before we get too far into this. Greg with the CFPB, Jessica with the Texas State OAG, Ken with the OCC, thank you for joining us in the conversation today. And as always, our fantastic team at the FTC. Dama Brown and Tom Carter from the Dallas office and my right-hand man in DC, Tom Kane. Thanks, Tom.

One final note before we get started,
I have to give the standard disclaimer on behalf of myself and Greg for the CFPB and Jessica and Ken. The views we express today are our own and are not necessarily those of our respective agencies, so that way all of us don't have to give this silly disclaimer.

But everyone here, thank you again for coming today. I look forward to sharing the FTC's perspective on many of these topics and hearing the perspective of other law enforcers and the industry representatives here today. Thank you.

(Applause.)

PANEL 1:

MR. KANE: Our first panel is coming up and Mary will moderate it.

MS. SPECTOR: We're good to go. Thank you all again for coming. I'm going to add my thanks to everyone, and so let's get started.

I'm going to start with Chris and Greg. Can you share with us a little bit about -- you mentioned your strategic priorities for the coming year. Can you talk a little bit about what they are in the area of debt collection?

MR. KOEGEL: Do you want to start? I have been talking a lot or I'm happy to get the
party started.

MR. NODLER: I'll start. So in general, we have three primary goals with any enforcement action that we take. We want to generally deter wrongdoing and promote legal behavior. We want to specifically deter the charged wrong-doer from future misconduct and remediate consumer harm.

Because of the breadth of our laws and our finite resources, we have to make very strategic decisions on how we use those resources. We don't want to use all our time cleaning up the last financial crisis while ignoring something else that's coming down the pike.

And so because of that, we have these issue teams and strategy people who will look at all of the new issues. And just to be really clear, I am not getting into any of the real specifics -- I apologize.

MS. SPECTOR: Right.

MR. NODLER: Anyway, we have teams of people at the agency who are in charge of strategic thinking for different areas such as debt collection and mortgage servicing. So I'm the person for debt collection, and then we have teams of enforcement
attorneys who are subject matter experts in those areas who regularly meet with us. And we are charged with coming up with the strategic plan, addressing each issue and making sure we're consistent with it or changing it, when necessary.

MR. KOEGEL: So like Greg, we at the FTC recognize that we have limited resources and we have to use those as wisely as we can. And so when we are thinking about which cases to open, there are a couple of things that factor in.

First is what is our strategic plan. And I'll get to some of the areas that we have highlighted that are going to be priorities for us in debt collection in the next 12 to 18 months in a second. That guides our targeting very strongly.

That said, it is not an exclusive list of things that we can do. There are going to be times when other factors dictate that we jump on something.

So, for instance, if we get significant pressure from the Hill, a congressman or any of our committees, to jump on an issue, that's certainly something that's going to draw our attention. If something new pops up in the press or otherwise that is obviously hot and needs to be
addressed, that is something that's going to have
high priority for us.

Absent one of those two situations,
though, our strategic plan guides us when we are
doing our targeting. And for this period, probably
for the next 12 to 18 months, we have identified
three main topics that are of high interest to us in
debt collection.

The first is student loan debt
collection. We recognize at the FTC that student
loans are one of the biggest financial commitments
that most consumers make, similar to children and
houses and cars and medical bills, and that student
loan debts are a sizable portion of debts in
collection and that that portion is growing.

So I believe there's a 2011 ACA study
showing that about 12 percent of debts in collection
were student loan debts and that more than 39 million
borrowers currently owe over $1.1 trillion in student
debt.

Student loan debt collection also is
unique in that the Department of Education contracts with a
limited number of collectors for federally guaranteed
loans, and those collectors have to follow some
unique procedures for offering rehabilitation or
disability discharge and things like that. That's
certainly one big priority for us.

The second one is data transfer and
security. We have seen obviously a real rise in what
we call phantom debt collection in the last couple
years, collectors collecting on debts that either the
consumer does not owe or that they have no authority
to collect on it. And we have brought those cases.

We're now trying to figure out where
they are getting the consumer information that makes
that kind of fraud possible and credible with
consumers. So we have brought a couple of cases
already, Cornerstone and Bayview last fall, where
there were debt brokers who were being fast and loose
in posting consumer information from their portfolios
on public websites. And so it is very important for
us to figure out how is it this consumer information
is getting into the wrong hands.

The third and final big strategic priority
is the egregious practices. So this has been really
the highlight of a lot of the cases we have brought
over the last couple years. These are the collectors
who aren't just flirting with the line; they're
leaping over it or don't even know it exists. You
know, threatening arrests, threatening litigation
when they never file lawsuits, impersonating

government agencies, you know, threats of violence

and things like that.

We have spent a lot of time and we

have brought a number of cases up in Buffalo where

this seems to be a prevalent thing. And those are

the cases that end up with ex parte TRO's. We freeze

the assets and put a receivership in charge of the

business. At the end of the case, we put these

people out of your industry.

So that is going to continue to be a

priority for us to make sure that we put an end to

that incredible consumer harm with that in the

market.

Finally, one last addition.

Obviously, the CFPB is working on something important

there. We are going to be devoting resources to

providing our input and experience into that process

as well.

MS. SPECTOR: Thank you. We'll talk

about rule-making in a little while.

I would like to follow up with y'all a

little bit. Because you're both doing enforcement,

how do you decide which agency does what? How do you

divide up or do you divide up that big pie?
MR. NODLER: We meet regularly and we keep in touch to make sure that we're not wasting resources, you know, not investigating the same entity unless it's something joint.

MR. KOEGEL: And we have a lot of processes in place to keep a continuous conversation going with the CFPB. So we have senior management level meetings twice a year, midlevel management meetings quarterly -- I'm consulting this because I want to make sure I get those right -- staff level working groups that meet regularly and quarterly. And in addition to all that, frequent informal communications amongst staff.

Greg and I have been working together for several years now on debt collection issues. We know when to call each other and we have the database in place so each of us knows when we open an investigation of somebody, when we're getting ready to take an action, when we're getting ready to settle. So there is never duplication of effort that is not intentional.

MS. SPECTOR: While we're talking about cooperation, can you tell us how you might coordinate with other agencies?

MR. NODLER: Sure. So in addition to
our enforcement work, the CFPB also conducts examinations, and similar to not stepping on each other's toes in investigations, we work with the prudential regulators or with state examination agencies to coordinate our examination so that we're -- so they can be conducted at the same time or so it's not too burdensome on the industry.

We also have taken actions with -- in addition to the one with the FTC, we have taken actions with all the prudential regulators as well. The very first debt collection case was against American Express.

There was -- we did with the OCC, the FDIC and Federal Reserve as well. It wasn't one, but we all had several actions. In fact, the Bureau's very first enforcement action at all, we did that with the OCC.

Recently with the OCC and then with 47 state attorneys general and D.C., we took action against Chase Bank for their debt sales practices, which as I said before, we're not getting too deep into our specific strategic priorities. But you can look back on recent CFPB actions and see that the debt sales and substantiation are pretty important.

MS. SPECTOR: And that's related to some of the data integrity also; is that right?
MR. NODLER: Yes.

MS. SPECTOR: Okay. You talked about different ways and enforcement. You talked about investigation, supervision. What are the different ways in which an enforcement action might resolve?

MR. KOEGEL: So there's several different options. First, we make an initial decision when we open a matter as to how we want to investigate it, looking at the nature of the violations or the nature of the consumer complaints that we see and some of the initial evidence that we have. We have to make a decision whether we're going to proceed with notice to the target or without notice.

And that leads down two very different paths for us in our investigation. If the company is one that is not constantly changing its name and the violations are not of an entirely egregious nature, you know, maybe it's more around the line rather than way past it, we will proceed by a CID, a civil investigative demand, to the target. We are not concerned in that situation that they'll just close up shop and run and we'll never find them.

If, however, the violations are really egregious, no-brainers or we see the company
constantly changing its name to evade detection, we will investigate them ex parte. We don't let them know that we're looking. We amass all of our evidence from third parties. We talk to a lot of consumers. And ultimately those lead down different paths at the very end of the case as well.

So the first one where we talked to the target, a lot of times we'll end up trying to engage in consent negotiations, work up an order that has injunctive provisions that helps steer that company back down the right path of compliance.

That, you know, often means, however, that there will be a monetary component so there'll be either a redress or a civil penalty.

In the other instance where we're proceeding ex parte, a lot of times we file those cases with courts and we ask for very drastic relief. We are asking for asset freezes, receiverships. We freeze the assets of the individuals running the companies. And sure, you don't want to be on that end of -- the receiving end of one of those. It's not fun. But those are the two main paths that we take in our enforcement actions.

MR. NODLER: So for the CFPB, similar to the FTC, we'll look at the number of victims, the
severity of the harm, things like that when we decide how to open an investigation. We also conduct them ex parte or we'll start them out with a civil investigative demand.

Once we have conducted the investigation, as it's ending we often will make what's called NORA, NORA standing for notice and opportunity to respond and advise, similar to what the SEC does, before we recommend to our director that we think there should be a public enforcement action.

And we don't do those every time. Obviously, if we're going to go and get a TRO or something like that, we're not going to contact the company first to ask them if they want to provide an opinion on it.

But when you're making that recommendation, we look at the facts that we have uncovered in the investigation. Two other things that we always look at are whether or not the company engaged in any, what we call responsible business conduct. We issued a bulletin on that.

And what we consider responsible business conduct would be when a company self-polices, self-reports, remediates and
cooperates. And if companies go really above and beyond what the law requires, then that can be looked upon very favorably by the Office of Enforcement and can lead to a -- maybe it's a case that came out of a supervisory examination. It might be resolved non-publicly through a supervisory process or it may lead to a public enforcement action, whether a limited civil money penalty or even no civil money penalty.

We also look at -- our statute requires that we look at certain mitigating factors when assessing a civil money penalty. So we look at the size and financial resources and good faith of the company, the gravity and severity of the harm and history of previous violations.

This is all before we have made a recommendation to the director, who ultimately decides whether or not we should go forward with the public.

MS. SPECTOR: Did you want to follow up?

MR. KOEGEL: Yes. I just wanted to add something I know that folks in the industry are interested in hearing some of the things that we look at when we're trying to make a decision. I wanted to
amplify some of the things that Greg's mentioning from an FTC perspective.

So, you know, these are factors that we look at when we're deciding whether to open, how to open and what ultimate action to take. So we look at, again, the number of violations or complaints to the extent of consumer injury.

We look at that through the lens of what we understand to be the size of the company as well. We try to keep those things in relation. We look at the egregiousness of the violation, the apparent willfulness of the violation. We also look pretty closely at the history of regulatory actions and FDCPA lawsuits, so how is your company reacting to consumer complaints and the CFPB's portal. How are you dealing with FDCPA lawsuits from consumers. Are you cleaning up your practices after a state takes action against you.

And then, as I said before, factor in are you frequently changing your name, do you have multiple d/b/a's, is there some elaborate corporate structure for no apparent business reason. These are all red flags for us. And then later on in the case if it's something we have proceeded with notice to a company and we take into account how responsive and
cooperative they were during the investigation, have you taken any intermediate steps to address any problems that have been identified.


MR. LENNON: Yes, ma'am.

MS. SPECTOR: Can you tell us a little bit about where the OCC fits into this and what led your agency to become involved in issuing guidance on debt sales?

MR. LENNON: Sure. By way of background, and I apologize, I am new coming on the panel and obviously my name to a bunch of you is probably new.

I'm the assistant director in the OCC's Community and Consumer Law Division. By way of background, just for the folks in the room who don't know what the OCC does, we're responsible for supervising national banks and federal savings associations.

And last time I checked -- it has been a while -- national banks and FSA's represented about 70 percent of the banking assets in this country, so obviously a big chunk of the nation’s banking assets are under my
organization's supervision.

Getting back to Mary's question about how we got involved with debt sales, I think really you have to go back a couple of years. The debt sales guidance was issued, I believe, August 4, 2014. And, obviously, that guidance only applies to the institutions that we supervise.

It doesn't apply, for example, to debt buyers. We don't have jurisdiction over debt buyers, but obviously, we have jurisdiction over the banks we supervise in connection with their activities with debt buyers. But that guidance really had its genesis about 4 years before that.

Back in 2010 or so, my agency's large bank examiners were looking through the portfolios in mortgage loans and were uncovering things that were of great concern to them regarding mortgage servicing and foreclosure activities.

And two themes kept coming up: Failure to keep control over third parties who are working on behalf of the banks and the banks' documentation practices generally. So like any good examiner, the folks at the large banks basically said, well, what other parts of the bank rely on third parties and what other parts of the bank involve heavy amounts of documentation.
They realized that these same issues might apply to debt collection and debt sales. So starting in April of 2011, at the largest banks we supervise, the examiners started looking at those practices. And they came up with what has been referred to as the Best Practices document, and it is pretty much what it sounds like. If you look at the largest of the large banks, the examiners compiled a list of those banks’ best practices in terms of selling charged-off consumer debts. About two years later in July of 2013, the OCC delivered a statement to the Senate Subcommittee on Financial Institutions and Consumer Protection, and that statement addressed debt collection and debt sales. It made a number of points, principally amongst them that our agency was very concerned about the risk that debt sales activities posed for banks that engaged in it. And there was a strong emphasis on the fact that banks that engaged in debt sales had to have appropriate risk management in place.

There was also language in that statement that made reference to the best practices document. And there was a commitment made in the statement that we would take that best practices document
and add what we had learned subsequent to its development -- it was developed in 2011, so you have a couple of years -- as we continued to examine banks and then issue guidance. So the guidance would reflect the compilation of what we had learned through subsequent supervision as well as the original best practices.

Basically, what we committed to in 2013 was to put out guidance to the industry we supervised. About 13 months later in August of '14, we honored that commitment. We delivered that guidance document to the industry.

MS. SPECTOR: Thank you. So were there -- there were areas of particular concern that were identified in some of those examinations. Can you be more specific about what they were? Was it -- you mentioned who they were choosing as the third-party collectors.

MR. LENNON: Well, let me take it a little differently, if I could, Mary. Let me focus on two enforcement actions that we have taken in the last five or six months. I think it was May 29th of this year, the OCC issued a notice of assessment of
civil money penalty. The civil money penalty is exactly what it sounds like, it's a fine. We fined Bank of America $30 million, and that basically was a result of two things.

Number one, we had concerns with B of A's practices in terms of its efforts at complying with SCRA, the Service Member Civil Relief Act. And secondly, we were concerned about their debt collection litigation practices. So that basically was the genesis of that CMP.

Along with that notice of assessment of the CMP, Bank of America executed a consent cease and desist order, which basically spells out findings of fact made by the OCC, the deficiencies that we found there. And I'll get to those in a couple of seconds.

About six weeks later in early July of this year, the OCC issued a second $30 million civil money penalty, this one against three institutions that we supervise under the JPMC umbrella, so basically three banks that we were dealing with. And obviously, JPMC had both state and federal banks.

The three federal banks that we supervised got assessed with a $30 million CMP.

And those three institutions had, actually
prior to July of this year, executed a consent C&D. So the question became if you put the two C&D orders up against each other and put the findings of fact up against each other, what do you see. Are there any commonalities? And clearly there were common threads when you looked at the two documents.

First of all, what we were finding -- or what the examiners found, excuse me, was that affidavits that had been filed by the bank, or frankly by third parties on behalf of the bank, weren't based on the personal knowledge of the party who was actually signing the affidavit or weren't based on an appropriate review of underlying documentation.

Second, documents weren't being properly notarized. Third, the examiners found that the banks themselves lacked, in some cases, appropriate controls over third parties who were acting on their behalf. So in other words, collection attorneys.

And finally, the banks failed to dedicate appropriate managerial resources to their debt collection activities. So, in effect, basically they didn't focus on it enough.

When you look at those facts and say
there's a common theme from one action to the other. The banks, all of them actually, were required, in addition to paying a fairly significant fine, to basically study the accounts that had been set up for collection and analyze whether or not the folks who were on the short end of those collection efforts were entitled to remediation, and if they were, to then make remediation.

I can't address B of A's remediation amount. Frankly, it's too recent, and I just don't have that information. I can tell you that in connection with JPMC, with this one caveat, JPMC's restitution goes not just to debt collection activity; it also goes to unsafe or unsound practices involving SCRA. I can tell you that collectively JPMC's three institutions have already paid in excess of $50 million in restitution.

MS. SPECTOR: Thank you. We're going move off the regulators a bit and talk to Trish and to Mike. I'm going to ask you compound questions and let y'all take it from there.

Tell us a little bit about your organizations and the entities that your organizations represent. Who are the members and what percentage of the industry do you think you-all represent?
MS. BAXTER: Thank you, Mary. I'm very pleased and honored to be part of the panel here today with my co-presenters. As I look out at the audience members, I see many familiar faces, representatives from industry members. And I thank you for your time and your investment being part of this important conversation today.

I'm on the board of DBA International. We are a nonprofit trade association and we represent nearly 600 member companies. We were founded in 1997, so almost 20 years old. Most of our member companies are private, but we do have a few public member companies. And some of our largest companies employ over 1,000 staff members. We have companies that operate in all 50 states.

I also want to share with you that most of our companies aren't debt collectors. Most of our members are debt buyers. We also have members from other areas of our businesses. We have vendor members. We have consumer law firm members, collection agency members. We have international members, and we even have credit issuers who are members of our association.

I think it's important that you know that the community of debt buyers participate in the
market in a variety of asset classes. You may be familiar that we purchase debt portfolios of credit card accounts and consumer loan accounts.

But the market is a little broader than that. Buyers participate by buying both performing and nonperforming assets in those areas as well as other areas of consumer loans, such as auto deficiency balance accounts, utilities, telecom accounts and student loans.

Although we can't be sure exactly the percentage of debt buyers that are members of our association, what we do estimate is that more than 90 percent of the debt portfolios that are traded in the market today are being purchased by companies who are members of our association.

MS. SPECTOR: Can you tell us that percentage again?

MS. BAXTER: It's more than 90 percent.

We also want to share that our association plays a very important role in advocacy for our members. We certainly represent our members with credit issuers, with regulators and with lawmakers. We have a very robust committee structure for federal advocacy as well as state advocacy. We
engage professional consultants who are subject
matter experts in their fields to make sure they give
us proper guidance on positions and issues that
affect our industry.

And then finally, we provide a variety
of educational opportunities, not only to our
members, but also for the public at large. We hold
annual conferences. We hold webinars. We hold
teleconferences. We have various publications. And
many times we have opportunities to have regulators
and lawmakers and members of the industry yourselves
participate on panels at our variance conferences.

One final thought about the debt
buying market is to make sure that you know what our
position is. We think it's a very valuable and important
part of the economy. We think creating the market to
purchase receivables from credit issuers,
financial institutions and banks is very important.

We return money to them, reducing their
losses, improving shareholder value, and ultimately
being able to have them have more capital to extend
credit to consumers.

MS. SPECTOR: Thank you.

Mike?

MR. FROST: Mike Frost. I'll send out
a special thank you for all the members here today as well from our industry.

MS. SPECTOR: Mike is here from Iowa today.

MR. FROST: Fun flight after you just drive from Denver, Colorado. If you see me yawning, I'm still recovering from a little bit of travel.

CBE Companies is a third-party collection agency and first-party collection agency. We do call center work and actually working in some of the data infrastructure areas as well. So the company has been around for several years. They haven't changed their name much, maybe a few times.

It's interesting, I'm also on the board of ACA International and that association represents -- I'm not going to throw out any numbers. I'm not sure what the numbers are. It does represent the entire credit cycle as well. So you can think about creditors first and third-party debt collection agencies, debt buyers, attorneys in the defense areas, collection attorneys as well. So we have -- we pretty much run the gamut on the membership from the entire credit -- life cycle of the credit industry.

So that's really what the organization
does. A lot of the same stuff that Trish was saying, we have annual conferences. We do a lot of work on the compliance front. So we have a member attorney program that routes a lot of different webinars, a lot of different conference schemes. We actually have different types of compliance processes set up throughout that group.

The association -- I'm not exactly sure how many debt collectors there are in the United States. We also have an international focus as well. I would say there's a large majority of the ones that don't change their name often, I would represent, in ACA for sure. I'm not sure on the percentage of the industry, but it is currently a large portion of it.

MS. SPECTOR: Can you tell us -- we have heard a lot about different enforcement actions and some very specific ones, some more general. How do they affect what your constituents -- how they do their business?

MS. BAXTER: Thank you for the question, Mary. All the enforcement actions and supervision activity have had a significant impact in our industry.

First of all, I think we would all acknowledge there has been contraction in the market
participation from several levels. First of all, many of the credit issuers who were selling ceased selling years ago and have not restarted. And indications are many of them are not going to resell as a result of the supervision activity or enforcement action.

Secondly, those issuers that have continued to sell have changed the processes in which they will accept approved buyers. They have raised the bar and that has created a situation where many buyers are not able to participate because they can't meet those requirements.

The other thing is that the issuers that are selling, they reduce the number of approved buyers. Where typically we had wider opportunities to compete to purchase directly from credit issuers, the situation over the last few years is that those companies have decided because of the compliance cost, they were going to reduce the group of approved debt buyers that could participate in those sales. So we have that contraction happening.

One, there are barriers to entry to even be approved. And then they are specifically limited by capping the number of companies
that can participate in the sales process.

The most important thing about the
contraction in the market issue that I want to raise
with the group is there's either an absolute
prohibition or restriction on resale. It has
absolutely extinguished the ability of many of our
smaller buyers to participate in the market.

And we see that because even though
many of the companies that were originally selling
may have had in a contract provision rights to sell,
as a result of enforcement actions or a result of
some of the guidance documents, bulletins from our
regulators, the banks have looked together at what's
happening with them and they have all reacted
similarly and either taken the position that though
that contract right exists, they are going to
prohibit the right to resell and not give you
approval to resell.

And then those that are allowing
companies to participate as debt buyers continuing
over the last few years have absolutely removed that
resell from contractual rights.

MS. SPECTOR: Now, that would relate
to the institutions or the issuers that Ken's agency
overseas. What about some of the other credit
issuers like medical debt or things of that nature?

    MS. BAXTER: We see a little more
flexibility in some of the alternative markets, I
will say that; whether it's medical sales or other
industries. Although, I will say many of them do
have strict approval rights for resell.

    So in the past where there may have
been discretion afforded to the debt purchaser to
allow them to sell to downstream buyers, and the
standards at the time had things, for example, in
good standing in their state, in good standing as a
member of the either Mike Frost's association or my
association.

    Now those standards are changed and
the credit issuers, whether they're banks or other
financial institutions, credit issuers have different
standards. And they are usually approving individual
purchasers downstream as well rather than allowing
the debt buyer to approve whoever they're selling to.

    MS. SPECTOR: Ken, I think -- well,
all of the regulators talked a little bit about
looking at the businesses' ability to self-regulate;
are they good corporate citizens, responsible
business practices.

    Do your agencies have any say in or
have any authority or guidance for your members --
the member constituents of your organizations?

MS. BAXTER: Well, the DBA Association
has implemented a certification program. About three
years ago we developed it, and we consider it to be
the gold standard for industry best practices for our
member companies.

The program has a very important
deadline coming up in March of next year. When it
was implemented three years ago, it was available for
debt buyer member companies. And they agreed that
there would be a requirement to be certified with the
program by that date. So if a company hasn't
completed certification, they'll no longer be able to
be members of the Debt Buyer Association.

MS. SPECTOR: Can you tell us what
kind of things are included in the certification
program without disclosing any secrets or anything?

MS. BAXTER: Yes. First of all, the
development process of the program has been very
transparent. From the very beginning, we included
our regulators in the conversation. In fact, I
believe one of the standards having to do with data
security was drafted by the FTC and we accepted that
language. And there are other examples of that in
the development of the program.

For certification purposes, we have counsel that's an independent party that has oversight of the program, and they continuously monitor it and update the program to make sure it's current.

We have representatives on the council from consumer groups as well as from credit issuers. We make sure others have a voice at the table and help us to shape an effective, self-regulatory certification program. Some of the standards that companies must adhere to have to do with things like account documentation, data security, complaint management systems, vendor management systems, and resale requirements.

In addition to company certification, we also have an individual certification. That person typically serves as a chief compliance officer. And in both cases, the company certification and the individual certification, they have to go through a rigorous background check. And the company's certification background check includes a background check for principals as well.

So we thank the regulators who are taking enforcement action against bad actors in our
industry because that helps us as well. We simply don't want them in the industry. We think they reflect poorly on our industry members. It helps us because we don't want to be doing business with those bad actors.

So part of the development of the certification program has been additional transparency with our federal and state regulators in sharing information. We have cooperated with them a number of different times when they may be conducting investigations of member companies or nonmember companies.

To the extent we're able to encourage those members to cooperate with regulators, we do. Or if we as an association have information that's relevant to an investigation, we certainly have been providing that.

The last thing I want to say about the certification program is that we instituted a very important component of an independent audit. I think that's important because companies are required to renew their certification every two years, and they have to go through an audit process in order to do that. And if the audit finds deficiencies, they will lose certification. They have a brief window in
which to complete remediation. And if they fail to
meet the remediation standard, they no longer can be
certified.

MS. SPECTOR: Thank you.

MR. FROST: From a preparedness
standpoint from our association area, we have members
that actually provide preparedness examinations. So
we independently pay for those as agencies. A third party
cconducts an examination annually that is prepared very similar
to the 7 modules found in the CFPB examination manual.

So the fact that they were actually
published beforehand allows us to take third-party
examinations in a mock setting and actually conduct
those audits. It also allows for remediation plans
to be developed, very similar to the CFPB examination
process. They can identify before any type of examination may take
place for an agency what deficiencies you might have.

It allows an opportunity to remediate.

Obviously, the agencies have -- on a
case-by-case basis they have the decision if they
want to if they are future examiners of the CFPB
process. They can disclose those pre-examination
findings. So for agencies that do those
pre-examination processes, they can actually utilize
that to show that and self-report any deficiencies they may have and identify the remediation steps they took to identify those as well.

So there's some processes that have been developed because of the openness frankly of the CFPB's examination process to allow us to prepare for those processes, which didn't exist before those modules were created. So it's provided a little bit of additional information to us.

And that's really what the industry is looking for. I think you mentioned earlier flirting of the line. We don't want to flirt with the line. We want to know what the line is. A lot of times that line is a little bit ambiguous, especially when you're dealing with some of the regulations.

Those issues need clarity for us to be able to identify -- that's what we want to do as an association and members within this industry is find ways that are compliant processes to make sure the consumer gets the right experience, and at the end of the day, we're doing the job for the creditors or the companies that are placing accounts with us for collections.

So really, that's helped us identify exactly what those examinations are supposed to look
like and what the key elements are for us to be able to build those mock audits.

MS. SPECTOR: So like a mock trial or a mock court that students might do here at the law school, y'all are engaging in to prepare for your examinations.

Are there other things that -- areas -- it sounds like you use the Bureau's materials to help you prepare.

Are there other areas where you think there might be cooperation in the future between your members and the regulators.

MR. FROST: Absolutely. I think both the association level and individual agency level, we have had numerous discussions with the CFPB on various areas in market research. It's great for us because we get an opportunity to be able to talk about business deficiencies and business processes.

So as they start to promulgate rules and start looking down the path of the future, they can say it doesn't make sense to actually create a rule that requires X, Y and Z and the business process is A, B, C.

So to have those conversations and that dialog is imperative, I think, to our industry
to be able to explain what it is that we do, how some
of those outcomes could be maybe corrected or how the
rules can be promulgated to make sure that, one,
we're protecting the rights of consumers in every
transaction, and also allowing us to conduct our
business without making everybody go broke through
the compliance process.

MR. NODLER: Just real quickly. John
McNamara from CFPB is in the front row here, and he
is our markets guy. I'm sure a lot of you folks
know him well. For those who don't, he's where we
get all of our market developments from.

MR. FROST: We have had conversations
with the CFPB, whether it's related to healthcare
debt or student loan work, we work -- CBE companies
will work in pretty much every facet of debt
collections outside of the debt purchasing arena.

So it's a great dialogue to be able to
share business perspectives on specific areas and be
able to hopefully influence regulations to required
outcomes. Some things that get put into law are
almost impossible. If you have the conversation
ahead of time and are able to walk through this
process and understand how the business operates,
there's ways to get to the same end means and create
a great type of consumer protection without creating
a law that's very difficult to be able to comply
with.

MS. SPECTOR: Trish, anything to add?

MS. BAXTER: Yes. With DBA
International, we will continue our outreach on several
different levels. We have an active program with AG
offices. We have professional consultants who guide
us in that.

We have been working to meet with
members of the consumer protection divisions in the
AG offices. We certainly have worked with them on
investigations. In fact, this past two years there
was an investigation through the AG's office in one
state. They came to us to let us know there was a
member company and they were investigating some
illegal conduct.

And as a chair of the ethics
committee, I investigated that company as well. We
took adverse action against that company as far as
membership with the association.

So we look forward to working with
regulators when they are conducting investigations to
know about those bad actors. Certainly as members of
an institution, we want to make sure that they are
adhering to the law and also to the member code of ethics.

In addition to working with the AG's, we also have a very active state committee outreach program to state regulators and lawmakers. We regularly work with state regulators when they're implementing new rules as relates to our businesses; in particular, in the areas of licensing and notices to consumers and out-of-statute accounts, all of these hot topics in the industry.

MS. SPECTOR: I think those are going to be talked about on the second panel.

MS. BAXTER: Those are all important to us that we do have a seat at the table working with state regulators. We have a very strong reputation of being an association with members who are committed and will work with consumer groups and sponsors to make sure that the legislation makes sense for consumers and for businesses.

And then, also, we're going to continue our federal outreach policies. We have recently initiated a new task force to look at consumer response data, specifically with the CFPB complaint portal. And there's a group within the CFPB that's going to be working with members of the
task force, some of them are here today.

And the idea is that we're all
interested in making sure that consumer complaint
data is effective and useful, not only for our member
companies and our obligations to properly investigate
and respond to those complaints, but for the
consumers as well.

One of the concerns that we noted and
raised with the CFPB and we expect continued dialogue
on it is that we understand that about 50 percent of
the consumer complaints in the portal are not
available to the public-facing website.

And what we understand from the CFPB
is those complaints have been determined to be not
actionable or referred to other regulators. And so
we think perhaps maybe some of the data is being
reviewed and skewed because there are a number, up to
50 percent of the complaints, our companies aren't
able to respond.

So we think actually we have a very
high resolve and response rate when it comes to the
number of complaints that have been attributed to
member companies.

MS. SPECTOR: Okay. We could talk a
little more about complaints or we could talk about
compliance clause. I heard that phrase used in your responses. And we have different regulators. We have bank regulators. We have the FTC. We have the state regulators.

   Mike, can you tell us what happens with those, who bears the cost?

   MR. FROST: Just speaking from information that we received through the association members, I think essentially that the cost for a CFPB auditor on the CFPB -- of course, I haven't received an invoice yet.

   MS. SPECTOR: Oh, here, they asked me to give it to you.

   MR. FROST: Interesting aspect of that process is there's an understanding with the Conference of State Bank Supervisors. That means that state agencies that have audited or examined collection agencies normally did it remotely. So they send a request for information. They send that information to them and get responses back or share additional information clearing up any issues.

   Today through this memo of understanding, instead of getting 15 examiners coming into your office at one time from CFPB, you're actually getting another 15 on top of it,
potentially, 10 to 15 from the Conference of State Bank Supervisors, which is composed of 10 to 12 additional states.

The interesting thing from an efficiency standpoint is the state is actually charging for their examination, which adds having them come to the facility, actually creates additional cost than what you have seen in the past. And, in fact, the CFPB actually when they conduct their investigations, they send a request for information about 60 days prior, I believe, or maybe 90 days. It's a sufficient amount of time prior. You're able to get that information to them.

The Conference of State Bank Supervisors asks for similar information. You can give that information to them ahead of time. We have heard issues where each state or each state regulator has a different regulation; therefore, they're asking the same type of question or asking for financial information in different data sets. So you're having 30 auditors in your building at one time during the week. And then having to provide financial information or other information to those auditors in 10 different formats.
makes it somewhat cumbersome to coordinate.

So I think that the intent of that process is really good. The intent is to combine all of those efforts into one fell swoop so you don't have to go through that process. That's not what we're seeing today. We're seeing separate entities come in with 10 or 12 different requests very similar in nature but divided up in a different way. And then you actually bear the cost of that. So the costs we have seen come in thus far are about 10 to 15 times the expense of what we saw before.

MS. SPECTOR: Ten or 15 times?

MR. FROST: Correct.

MS. SPECTOR: Wow. Ken, does your agency coordinate at all with the state in doing examinations?

MR. LENNON: Well --

MS. SPECTOR: Or do they have similar -- any overlap with community banks, for example?

MR. LENNON: The organizations that we regulate are federally chartered.

So generally speaking, our coordination really is at the federal level. We are the federal regulators as opposed to the state regulators. The banks that we regulate are
not state-chartered. They're federally-chartered. So we probably wouldn't be dealing regularly with the state folks. We would, however, be dealing regularly with other federal regulators, including the CFPB. And I think getting to the theme of this topic about coordination and trying to reduce costs, for example, the OCC and the CFPB are both part of what's known as the FFIEC, the Federal Financial Institutions Examination Council.

Basically what that is designed to do, it's a group of federal regulators, among other things, they're empowered to issue uniform standards for examining banks so that candidly you don't have five different organizations walking in and giving you all different approaches to things.

Specifically with regards to the CFPB, I'll try make to make this short and sweet. In 2012, the prudential regulators -- in other words, the federal bank regulators -- and the CFPB entered into what's known as the MOU on Supervisory Coordination. And that's actually statutorily required. It's required as part of Dodd-Frank.

Basically what it says is that we should be coordinating our supervisory efforts in connection with the large banks, basically the banks
that have more than 10 billion dollars in assets. Because
Greg's group is responsible for ensuring compliance by those large banks
with what are known as the federal consumer financial
laws. There are about 18 of those laws.

And my organization is responsible
basically for everything else at the large banks. So
obviously, if his examiners and my examiners show up
on the same day at a large bank and haven’t talked to
one another, that could be a mess.

Well, the MOU on Supervisory
Coordination is designed basically so the involved
parties -- obviously, you add on top of the fact that
large banks usually have a holding company. Well,
that MOU is designed frankly to ensure coordination
in terms of information exchanges, in terms of exam
schedules, to avoid duplication of efforts. We're
attempting to reduce costs for the organizations that
we supervise.

And to take it one step further, the
OCC and the FTC also have an MOU. So to the extent
that we're looking at the same thing, we have an MOU
that basically allows us to share information. And
more recently, our two organizations have tried to do a better
job of opening up the lines of communication. So,
for example, the fact I'm here today tells you that
we're cognizant of the need to work together and exchange information when appropriate to do so, and to the extent it's possible, to reduce costs for the organizations that we regulate.

MS. SPECTOR: Okay. Thank you.

MS. BAXTER: I just wanted to add as far as compliance cost from our industry's perspective, what we're seeing is that with the supervision activities and the new requirements placed on the credit issuers as far as third-party oversight of debt buyers, the companies that I represent are now being treated as they would be had they been first-party servicers or third-party servicers for the credit issuers.

The issue is this: Typically a debt buyer is obviously purchasing receivables and purchasing right title and interest in those receivables and assumes the risk at the cost of that purchase. It has business models for determining whether or not a portfolio may be recoverable and whether it's going to be profitable. And they evaluate what their costs to recover those portfolios would be.

The issue with the compliance burden is that there are extended audit rights, extended
data security requirements, extended insurance requirements that aren't necessarily consistent with the risk of those debt sales.

So our companies have been burdened with additional compliance costs that make the profitability question really a big problem for the industry. Because all they can plan for is what they know to be the operational recovery. The compliance costs are generally not known. It is difficult to plan for that. And many times it's going to take people out of the market. That's the issue for us as far as adhering to requirements that aren't necessarily matched up to the rest of the world.

MS. SPECTOR: Before we go on, you have cards. If you have questions, hold up your hand and someone will come by and pick them up from you. So we'll get to those at the end of our time.

Let's move to a different topic. I'm going to direct this to Greg. A question on many people's mind is the ANPR for the debt collection rules. The ANPR was issued November of 2013. We're coming up on two years. The comment period is officially closed. A lot has happened in that time. What are the next steps? What do you see coming in the future.
MR. NODLER: So unfortunately, I don't have any big news to give on it like an official timeline.

MS. SPECTOR: No date?

MR. NODLER: No date. I'm sorry. I couldn't say if I knew it. I also don't know it. But I can say what the next steps are going to be.

So the very next thing to happen will be called a SBREFA proposal, and what that means is -- I forgot the exact thing that it stands for. It's part of the Small Business Act. We just did this. It's where an agency, if it's a really significant rule-making, what they are required to do is to convene a panel of small businesses that will be affected by the rule and first to put out an outline of where we think the rule is going to go, called the SBREFA report.

And then we convene the small businesses. It wouldn't be just debt collectors. It could be maybe debt service providers or something like that, companies who would be affected by the rule.

And then we meet with them. They review the proposal. They let us know how much this is going to cost them and give us -- it's not really
a comment. It's heightened I would say. So they may
issue a report that says, you know, what we should do
and what we shouldn't do.

And then the Bureau takes that all
into consideration, and then we will issue a notice
of proposed rule-making. And there will be another
comment period that comes out after that. Then, of
course, we'll take back those comments and go from
there.

MS. SPECTOR: How long would each of
those comment periods take, that process that you
described? The first one --

MR. NODLER: I told you I believe that
there is a statutory requirement, exactly how long it
is, it can't be longer than -- I don't remember it
now.

MS. SPECTOR: At least about 30 days
each probably?

MR. NODLER: More than 30 days.

MS. SPECTOR: Okay. Trish and Mike,
he's here. Are there things that you want to see in
those rules when they come out?

MR. FROST: How much time do we have?

MS. SPECTOR: We can talk about
certainty.
MR. FROST: That's what we're looking for. I think Chris is the one that said -- you know, talking about walking that fine line. And for us, I mean, the ANPR issues are out there. They're really questions that we see because there's ambiguity in regulations.

You're never going to have regulations that are perfect. What we're really looking for is clear guidance. A good example would be the leaving messages issue for debt collection. That's a question that has been in the ANPR. There's a couple cases. So what type of message can you leave for a consumer? Can you leave a message at all?

It's a good example of what we're really seeking as an industry is clarity. None of us that are in ACA or DBA or NARCA or any of the associations want -- we want to have the best and most positive consumer experience. That's what's required by our client. That's what's required by the associations in our organization.

So it's not that we don't want to follow the rule. A lot of times, especially in the debt collection or the debt litigation area. Litigation is really an area where there is ambiguity in the law. There's litigation filed against
agencies, and a lot of the time ends in settlement. The only reason it's there is because of ambiguity. Our request is how can we find clarity. We think we'll find that in the NPR. That's really what we're striving for as an industry. Give us clarity or tell us what we can and can't do and we're going to do it.

MS. BAXTER: We echo those comments. I will also add that while the case law is shaped, the FDCPA certainly has affected business practices. For the last few years, the supervision activity and enforcement action of the federal regulators has really changed the businesses to make the situation one in which we can look at the consent orders and we can get a glimpse of what conduct is considered noncompliant conduct.

But that doesn't necessarily make it a standardized rule that's applicable across all businesses so there's an equal playing field.

MS. SPECTOR: Are there any particular -- Mike mentioned messages. Anything that's on your list?


MS. SPECTOR: The short list.

MS. BAXTER: Documentation is one. I
would comment that some of the supervision activities
that came in a way of the guidance document and
bulletin for OCC was directed to the banks regarding
debt sales has been beneficial to our industry
members.

   For example, when they talk about
providing certain documents in the debt sales
process, we all benefited from that. There were
other provisions in the guidance documents that we
also think should be included in the rules, things
having to do with provisions in the purchase and sale
agreements.

   Historically, the industry operated
with purchase and sale agreements that had broad
warranty disclaimers. And if I think correctly, the
regulators pointed out issues with that. It was the
OCC's guidance document to the bank was you need to
stand behind your data accuracy and validity.

   And so the benefit to the companies in
our industry is that we were able to use those
guidance documents as a tool in our negotiations.
The banks did respond and we have been able to get
more improved contractual terms in those areas.

   I have to say today, though, that the
last year I have seen a little bit of diminishing of
the value of having reps and warranties from the bank
on data accuracy and validity. I have seen some
provisions offered in purchase and sale agreements
which seek to limit those reps and warranties in the
way of limiting indemnity for those, in either scope
or duration. Maybe an absolute cap on damages that
run to those reps and warranties or even a limit on the
time period, the term may be one or two rather than a
perpetual rep and warranty.

So those are my comments as far as
what we have seen and what we would like to see.
Again, I just emphasize that we would appreciate
having a voice and opportunity to work with the
regulators when the rules are published.

We did respond and submit detailed
responses to the ANPR and we're pleased to be able to
be here and participate today and give you our
thoughts. I don't -- if you want more information on
our position on this, I just want to say we do keep
all this information available on our website. And
you can look at www.dbainternational.org.

I do offer the president and the board
members as far as what we're doing as far as
association to work closely with regulators as is
evidenced by what we're doing today.
MS. SPECTOR: That's not password protected?

MS. BAXTER: That's open to the public.

MS. SPECTOR: This is a question that came from the audience. It's related to this issue about the sales of debt from the issuers. The message that people are hearing is that it's really hard to resell the debt, right. It's not -- they can't -- it can't be resold.

But if the industry issuers change, their documents improve, can that message change to permit small -- you talked about contraction, Mike, that open the market up. And would that be a positive thing that we want to encourage?

MR. FROST: I'll leave the debt sale portion to Trish. But I think the issue of consolidation is occurring not only in the debt purchasing market, it's happening in third-party contingency states as well as the banks have the regulation from Ken's group. A lot of those are flowing downstream. So we're seeing the banks coming in or other creditors that may be the governed by those entities that are basically saying, hey, we are not going to use 39 agencies anymore, even though...
there are specialties in each area. So my agency may
not be a specialist in out-of-statute debt where
another agency is.

What's happened is there's a
consolidation going and there's an oversight
requirement with all these different entities that
the banks would rather have oversight over four or
five agencies than 39.

So people that may not be specialists
in those specific areas are now having to become
specialists in those areas because they're
consolidating the requirement to do more with less
agencies. So while it's an issue in debt purchase,
it's a different issue in third-party. We're seeing
that same type of issue on our end as well.

MS. SPECTOR: Okay. Let's go back to
complaints. We heard -- we started talking -- unless
anyone wants to add anything on the ANPR before we
move on.

We started talking about complaints
and the FTC takes complaints, the CFPB takes
complaints. Is there any -- I mean, some would say
that many of those complaints are clearly bad actors,
the bad guys, the ones who change their name all the
time.
How do you weed those out -- how can
you -- so that they're not -- the industry isn't
attacked for that bad conduct?

MR. KOEGEL: Well, I'll take the first
shot at this. I am sensitive to the fact that a lot
of the folks in this room feel like they're being
painted with a broad brush. I have heard that. And
there are some who say that some of the folks that
the FTC in particular has been suing and putting out
of business the last couple of years are really more
fraudsters than they are debt collectors.

The reality of it from where I sit and
how I perceive it is that these people are engaged in
debt collection, except for the true phantom debt
collectors who are just making things up or stealing
things. These are people who have purchased debts
and they are attempting to collect payment on those
debts, where they have otherwise gotten permission
from a creditor and they are trying to collect on
those debts.

You know, so the reality of it is from
where I sit and from how I have to protect consumers
is that those people are collecting on debts and they
are doing so in an egregious fashion that absolutely
abuses and harms consumers.
And it is why I have been saying for three years now, I know you guys hate it when it comes up in the press and they're talking about us debt collectors. Help me get them out of your industry. You don't like it. I don't like it. It's terrible for consumers.

Let's work together on this and deal with it. I don't think we can deal with it by putting our heads in the sand and saying they're not really debt collectors. I just don't think that's going to be a solution. I don't think the press is going to ever say they're not debt collectors. They are collecting on debts.

So, you know, in terms of like trying to segregate complaints in Sentinel into one category or the other, that is just not how Chris Koegel sees the world at the moment.

You know, I think the more productive path here is let's have this conversation and figure out ways we can work together to minimize this activity period, regardless of what label we put on it.

I do recognize that, you know, there are collectors out there who are trying to do the right thing. And like I said, that's why they're --
you know, that's why we take different kinds of actions, depending on what we see in the complaints. You know, it's not a one-size-fits-all approach at the FTC. And we can work together on that end as well in terms of the companies that actually do want to comply, and we can try to work together to help you do that to the best of your ability as well.

MS. BAXTER: We do analyze the data from various sources of the FTC's database, the CFPB's database and also the Better Business Bureau. And we obviously take complaints against industry members very seriously.

One of the things that was important to us and we developed the certification program was to require companies to have specific policies and procedures around this topic of consumer complaint management.

We also have a restriction under our resale standard regarding the inability or the restriction to sell accounts if an account is subject to a complaint or dispute. And then finally, we have a credit reporting standard that requires our members to obviously adhere to the law to make sure they're in compliance with investigating and responding to consumer complaints.
As I mentioned earlier, we have a recent addition to our consumer response data task force to work closely with the CFPB so that we can understand the data. We're actually having member companies from small, medium-size and larger debt buyer companies share their data with CFPB so that there is a good knowledge transfer and we can have a more effective use of that consumer complaint forum.

I think it's interesting to look a little bit at statistics. We do review data and the Better Business Bureau publishes annual statistics on complaints by industry. For 2014, complaints against collection agencies were a little over 21,000. That's in the U.S. That's down 3,000 from the prior year.

From the Better Business Bureau's perspective, there has been a reduction in the number of complaints against collection agencies. The other thing published by the Better Business Bureau in that statistic is that of all of those 21,000 complaints, 82 percent of them were responded to and resolved by the collection agency companies. And that's higher than the national averages for all the industries, somewhere around 78 percent.

We want to assure our regulators here
and we will continue to work with you and address this issue. It's certainly something that concerns us as well. And we have an ethics committee as part of the association that regularly reviews complaints. So if we have a complaint that's against a member company, whether it's from a consumer, state regulator or federal regulator, we investigate that company and respond as well.

MR. NODLER: I'll just say on complaints, something that -- I'm sure everybody here, you're familiar with the consumer response and the complaint process. It provides the company with an opportunity to respond to the consumer.

And, you know, being in enforcement, we obviously look at complaints and we consider complaints. We also look very closely at a lot of the responses. And so like if a consumer is sending a complaint saying they don't owe a debt, they have some kind of dispute and the response is, well, you missed your deadline to dispute so go fly a kite or something, then that's not looked upon favorably.

Whereas when companies step up to the plate like, yeah, you're right or, you know, we have looked closer at this and refunds money or something like that, then we don't take that they admitted to
something wrong. That's responsible conduct that a
company should do if they got something wrong. If
they're getting something wrong all the time, then
that's a different story.

MR. FROST: At the end of the day, it
doesn't make sense for debt collection agencies to
respond with a nonresponsive response to a consumer.
Because you're not going to collect the debt still
due and owing. So it's not in our best interest to
not respond to those complaints either. So I don't
think that's the intent.

The one thing I would say from my
perspective -- and I have done a lot of the work.
The one thing that's still problematic from my
perspective is the sheer numbers out there. It's a
volume issue.

And there's a picture painting that
there's X number of complaints that are filed against
collection agencies through the CFPB portal. I think
they're down over what they were three months ago.
But is that a true and accurate picture. I don't
think we take into consideration, well, there's
agencies' names that are placed out there and it
shows they have a high volume of accounts. If you
look at them, it's really coupled with the type of
work that they do, and that's never been addressed.

We have had discussions about that in the past. Hopefully we're still working through those issues and trying to come up with some resolution. Companies get painted in kind of a picture that may not be completely true. If you work low volume, high balance accounts versus high balance, low volume accounts, the composition of the number of complaints that you're going to see in the portal against your agency are completely different.

So if you take companies that work in those types of sectors and you're getting 10,000 placements a month from one creditor, you're going to end up with more complaints. And if you look at all those complaints, the consumer is the one that chooses what company they're complaining against.

So if they file a complaint against CBE, that shows up against my numbers in the portal although the complaint may actually be against either the creditor or some other company. But that still remains on my list and the numbers that I actually show as complaints.

So that has been somewhat of an obstacle for us in the industry, to explain to our creditors as well. We're working with them to say,
your question is, too, why are you towards the top.
I'll be one to admit, we were probably in the top 25.
We do a lot of high volume, low balance work. So the vast number of complaints we get in the portal come from that side of the business and it's simply from touches.

There's more consumers that you interact with on a regular basis. And if they're unhappy with whatever the service was they were provided, you were the last person that spoke to them, they hadn't paid the debt they owe on that service, that complaint is going to be showing up against me and not somebody else.

So I painted a picture that shows there's a vacuum of debt collectors. And truly, if you really look at the underlying criteria and what consumers complain about, it's usually not. I would venture to say that about 75 to 80 percent of my complaints that come in have complaints that are not against our company. But it contributes the vast majority of the complaints that come in.

Then we're challenged how do we respond to a complaint that I don't even have anything to do with it. The underlying transaction we're working with has some other issues that they
dealt with during that credit facilitation or that service process.

That's one of the things that we as an industry would like to see. If there's going to be numbers that are thrown out that are put on the website or there's information that's out there, how do we credit or justify those numbers based on -- is there actually a complaint associated with a debt collector or was it just a consumer chose that company name to actually facilitate that complaint.

MS. SPECTOR: I want to explore that more, but this may not be the place to do it. One thing you said is the company responds. Maybe that's a good company. Maybe the ones who don't respond, that's maybe --

MR. FROST: So regardless if I respond or regardless if I don't respond, which we respond to everything we get. Even if we didn't respond, it still shows that number of complaints that comes out against my agency. So how do I explain that to other people in the industry.

We're not a bad actor. We get a lot of complaints. It's based on the industry or the number of touches that we have. If your numbers are down in those categories, we're making a billion
contacts a year, I think we're doing a pretty good
job. There's different ways to slice and dice
information. The numbers, while there are going to
be complaints, there's going to be complaints in
every industry today.

If you look at the total number of
attempts and consumer contacts that this industry
makes on a daily basis and based on the information
that we're speaking to them about, which nobody wants
to hear about an underlying bad debt, I think the
numbers vote fairly low for me.

MS. SPECTOR: We can talk about that.
I have had a couple of questions about the TCPA,
Telephone Consumer Protection Act. And is that
right, did I get it right?

MR. NODLER: It is right. None of us
enforce it.

MS. SPECTOR: Then why do we have a
the question. Okay. I'll put that one down. That
was easy.

Let me go back to -- I think we
have -- we're right at about 10 minutes left. This
is time for questions, but I do want to see if there
are any others -- let me give everybody a chance to
say just 30 seconds or so of areas for continuing
concern for Mike and Trish and things that you want the people to leave knowing about before we -- make sure you say before the panel is over.

    MR. KOEGEL: Why don't I start with a little plug for some of the FTC's resources for business. So if you are interested in getting some thoughts on what the FTC thinks businesses should be doing to try to get ahead of things a little bit on the compliance side, we have got a good website for you.

    It can be found at business.ftc.gov and we are trying -- we're in the process right now of creating a one-stop debt collection page there where you can find all of the FTC's debt collection materials. You know, our amicus briefs, our cases, our business education articles, our blog posts on debt collection.

    So the idea would be go to business.ftc.gov. There should be a button there for debt collection in the not-too-distant future. Click that. We have got a blog, a business blog as well. So, for instance, in the back on the right side there's a table back there with printouts of some of our materials. I think we have got a printout of our list of banned debt collectors back there. We have
got some data security guidance for the buying and
selling of debts that we worked closely with the DBA
in creating. We have that back there. And I think
we have some stuff maybe on text messaging as well.

Just a little flavor of some of the
materials that the FTC has available to try to help
businesses get ahead of the game on the compliance
side.

MR. NODLER: I would echo everything
Chris said, especially on the amicus briefs. The
Bureau – the Consumer Financial Protection Bureau – and
the FTC often file joint amicus briefs in the debt collection
space. I think they're a great read if you want to
see how the agency views certain areas of the law.

I would also -- I'm for enforcement so
I'm going to stress that people look at the
enforcement actions. Although, of course, you know,
only the company in the order is bound by the
actions. The rest of the industry really could do
well by reviewing them to look at what kind of
activities that company was engaged in and so you can
look and see if you are engaging in the same kind of
things.

Two recent ones are the ones on
Encore and PRA. Those are both my cases so I love
talking about them. Besides just looking at the facts and the violations to see if they're violating the law or you may be violating the law, I think it's good to look at the injunctive relief, which again, only the company who is bound is actually bound by that injunctive relief. But it's a good way to see how the Bureau thinks that these companies engaging in these practices were able to comply going forward. We think that's a really good resource.

The other thing I would highlight is John McNamara is here in the front row. He's a hell of a nice guy. I'm sure a lot of you know that. Just saying that he can help get the message that you guys have to us.

MS. BAXTER: Thank you. We would like to see a broader adoption and support for our certification program. For our federal regulators, we would like to see the certification program as adopted to meet examination standards.

And then we would also like to see at the state level having a certification program in that status, either meet licensing requirements or meet some of the standards for licensing in the various states where we're required to be licensed.

My final thought is the preamble to
the FDCPA says that that law should create a level playing field. And so we are looking to see in the rules or expected rules that are fair and balanced and don't burden industry. Thank you.

MR. FROST: I would say just thank you all for being open to discussing a lot of the issues. You always have been. For years I have worked with Chris and John and a lot of other people at the CFPB and the Federal Trade Commission. It's always been a great dialogue.

From our perspective, what regulators need to do is to be able to see both sides of the coin and understand what our businesses have to go through on a daily basis. The intent is to comply. The intent is to work with regulators. Also, to get the bad actors out of the industry. If there's a way we can work with you on that because they're giving us a bad name.

It's actually something that we want to avoid dealing with, companies that are attempting to collect on unfair debt and things that nature. At the end of the day, we're all looking at a customer experience, the best customer experience that we can find both from our clients' perspective and also from ourselves and from the regulators.
I think we're all on the same teams.

We just need to continue to have a good dialogue about what works on every facet of the business and then be able to promulgate results that provide clarity so we know exactly what it is that we should and shouldn't be doing.

MR. LENNON: Again, thanks very much for having me here. Picking up on what Mike just said, I guess what I would say to this group, to the extent that you don't work for one of the regulators -- excuse me, one of the entities that my organization regulates, but nonetheless, feel that the guidance we issued about a year or so ago has had perhaps unintended consequences or perhaps the regulator didn't realize what it was writing when it wrote it and that guidance needs to be tweaked or clarified or the like, we are interested in your thoughts.

Please understand we do not view things like guidance as cast in stone. We do listen to comments that we get from the industry as well as from industries we don't necessarily regulate. So to the extent that any of you folks in this room have messages that you want me to be carrying back to Washington, I'm obviously happy to carry them with me.
I cannot promise you anything is going
to change. I can tell you that whatever concerns you
have will be fully considered and, if necessary, we
will make adjustments. So to the extent there
are things you want me to know and things you want me
to carry back, please let me know that.

MS. SPECTOR: Thank you. Thank you to
everyone. Before I have a stack of questions, are
there any more? Let's see if I can get ones relevant
though. I think this -- I think that one -- this
question is about compliance costs.

Again, what are you talking about when
you're talking about compliance costs? And I think
the question is directed to the regulators. Do you
understand even if y'all are footing the bill, that
there may be changes in software that are necessary,
testing, increased legal representation, process
changes, manual changes, again TCPA, new enhanced
third-party management costs.

Is this all factored in? Is that
something you're factoring into the cost when you
talk about them or are you just talking about payment
for people to come on-site?

MR. FROST: All I was talking to
earlier was the cost of the examinations from the
combined joint efforts of the MOU. The cost of compliance is exorbitant in our industry.

Just an example, I have spent -- my business alone $400,000 on an annual basis just on quality reviews. So we invested in voice analytic software probably eight years ago, and that's a multimillion dollar investment along with annualized cost of a couple hundred thousand dollars just to maintain it.

On top even further and put about 18 individuals that listen to calls all day long and spend about $400,000 a year on that. We're doing everything we can to make sure we're doing the right thing on the phone. The costs are so extreme some of that will continue for us and some of it may not, just because it's very difficult for us to be able to sustain that in the market that we're in today.

So we want to do as much as we possibly can in the industry to move that deal forward and increase compliance. That comes with a cost. If that cost is too great to bear, it doesn't mean we're not going to be compliant. It means we might not spend as much as we need to or go as far as above and beyond the regulations of the state.

MS. SPECTOR: Okay. Thank you.
Someone wants me to press Greg on when rules for debt collection are going to come out. He said he couldn't tell us but the question asks, 2016, first quarter, second quarter?

MR. NODLER: I honestly wish I knew. I was going to say nobody wants these rules to be out as much as I do.

MR. FROST: Can I make one other comment about compliance?

MS. SPECTOR: Yes.

MR. FROST: One of the areas that we really focused on in the industry in the last couple years is one of the major complaints we see in the CFPB portal is wrong number calls. So what the industry is really doing, there's a lot of vendors out there. I won't mention any names. They are really trying to find higher probability right party contacts.

So in the past as an industry we used to take a lot of numbers in and call a lot of people to try to get ahold of a customer. Today the approach is a bit different. We're really focused on that right number. What's the highest probability that that consumer is residing at that phone number when we pick up that phone.
We're starting to see a trend in the reduction of wrong number complaints. So a lot of this comes from good data and identifying how to segment that information and identify that properly. The industry is working really hard. And it's less intrusive on people that don't owe debt, contacting people that have wrong numbers. And we don't want to do that. It costs us more money to do that. We want to contact the right consumer at the lowest cost available to us as quickly as we possibly can.

There's a lot of infrastructure-type research and development that's going on in the industry today to try to curb that process as much as we possibly can.

MS. SPECTOR: I think that's it. We have run out of time for our first panel. Please join me in thanking the panelists.

(Applause.)

MR. KANE: Thank you. We're going to have a break now for 15 minutes, so we'll come back and we'll start again at 3:30.

(Break taken.)

PANEL 2:

MS. BROWN: Good afternoon. I'm Dama Brown, I'm the regional director of Southwest Region.
My office is based here in Dallas so it's my pleasure to be here today and to host several colleagues, some of whom I have worked with for years. This is a really terrific event and thank you all for being here today.

We have a lot of ground to cover so I am not going to make too much delay, and let's just get started right away.

A number of the speakers, Chris Koegel and Greg Nodler, who you have heard from already. Chris is, of course, with the FTC's Division of Financial Practices and Greg Nodler from Consumer Protection Bureau.

We also have in the middle Jessica Lesser. She is the Managing Attorney in the Dallas office of the Attorney General's Office. And we're delighted to have her here today.

We have Joann Needleman and also Rob Foehl. And Joann is with NARCA, and Rob is another member from the ACA. And so they bring a lot of experience about the industry. And we are again very delighted to have them join us and engage in this conversation.

I'm going to start with Jessica. She is the new regulator on the board. And, Jessica, let
me start by asking you if you would tell us a little bit about the Texas Attorney General's Office, if you would.

MS. LESSER: Thank you very much. When she says I'm a new regulator on the board, I really am the new regulator on the board as of April 20th of this year. However, I was there originally back in '97.

It's great to see you. Some of you-all I've never met before. Those of you that know my past have had cases against me so it's nice to finally meet you in person.

At the AG's office, Consumer Protection Division, we primarily enforce Deceptive Trade Practices Act. And one note there, you might not realize the elements required for a case under a public enforcement action versus a private action are completely different.

And so maybe some of the laws which would apply in a private individual suing is not the same as would be for the public. Because we are -- it's fraudulent misleading acts or conduct, intertrading commerce. So that is our element that we have to establish.

One of the remedies that we have there
is going to be your injunctive relief, similar to
what you have heard from other regulators, of going
in and having, whether it's a temporary injunction,
an asset freeze, if it appeared that the business
merited that approach. Hopefully people in this room
would not be in that. It would be more of a -- more
investigative and knowledge before a suit's filed and
you're able to work through it.

Under remedies, it's restitution.

That's probably the biggest thing because that's what
we're really about is to try to get back money back
into the consumers' hands. There's also civil
penalties.

And similar to what you have heard is
the factors that go into civil penalties. They're
laid out in the DTPA. It's looking at your conduct,
past conducts, the severity of the act that we're
investigating and then remedies you take into place
and also whether or not it's going to penalize you.
So those amounts may be different for different types
of companies and sizes.

When it comes to collection, also, you
have the State Debt Collection Act. Those that do
not know, it does apply to creditors as well as
third-party debt collectors. There's also an
electronic ID theft, which can apply to lawyers.

This panel is discussing a lot more collection lawyers, which is why I bring that up. Because many lawyers don't realize that they can have a responsibility and a duty to safeguard information under Texas state law.

One thing to note, my apologies for my voice. I'm very much allergic to ragweed so that's why it's hoarse. I also was at a function last week for several days so I lost it there I think.

You know, our investigation process, I found on my return -- this very interesting because I heard feedback from industries that say regulators aren't reasonable or that maybe the power is too big. And when you look behind the curtain, there is a very straight process how cases are opened, whether or not we open an investigation, how we investigate it, do we use -- what type of investigation demand, sworn statements, the AG's investigator power. It's discovery.

And then if I want to file suit, that also has to be approved. It's quite a big approval chain. And so you're not going to run into a situation where you have just some random Assistant AG at an office in Dallas that just kind of does it.
There is a lot of oversight to ensure that we are protecting the public in the right way. And that has been the message that has been carried on when I began was we do what's right. Because one of the elements that is in the civil penalty that you look at is as justice is required. And justice goes both ways. So it's not just maybe that unreasonable regulator approach of really looking at a business and each case is different. Do you have good compliance policies? Is this a one-time infraction?

As far as in particular with the AG's Office as with the previous panel, I just wanted to make note that our complaints -- we do take complaints from consumers. But unlike years ago, we do not have a process where those complaints are distributed to businesses.

So one thing I would want to stress, and I think it's very important for businesses, regardless of what industry you're in, is to really look closely at your own internal complaint system. Don't rely on complaints coming from regulators and investigations, but your local BBB. We typically have very good relationships with the BBB and value what their opinion is.

I stress that very much since our
former investigator now is with the BBB so I very much value Ms. Slaughter's opinion. So I would say really establish a relationship with the BBB because that is one of the sources of where we find whether or not cases should be investigated. And along with our own complaint database where, yes, the collection industry is always the number one complaint. Not right this second, because of diplomas. That's a reason for it.

But we have actually segregated them, unlike others, where we do take the fraudsters out. We get two different ZIP codes. So that started 18 months ago. When we say that we have 1,500 complaints this year, that's 1,500 complaints against the collection industry that is being represented more in this room. So that was a change.

A lot of things people ask me, how do you do a case, how does it start, what happens. Well, you know, one case could move into another case could move into another case, so that's where things evolve. So we may be investigating one entity that leads us to another or to another or to a different one.

We try to be very transparent with companies and putting them on notice that there's an
investigation, not always, and that can vary.

MS. BROWN: Let me ask the other
regulators here, Chris and Greg. Chris, I know that
the FTC works with the states quite a bit. I imagine
the CFPB does as well; is that correct?

MR. NODLER: So the most recent
example would be the Chase order. Ken Lennon from
the OCC mentioned a little about it when he said that
among other things, that they ordered Chase to pay
a $30 million CMP. The CFPB and 47 states and the
District of Columbia took action the same day and
ordered Chase to pay $136 million, and also to go
through some of the same injunctive relief and
restitution as the OCC did.

So, you know, we share FDCPA authority
with private consumers and with the FTC. We share
Dodd-Frank Act authority with the states. And so
that's part of how we have been able to take some
actions with them.

We took another debt collection action
with the Attorneys General of Virginia and North
Carolina involving debt collection targeted at
service members.

MR. KOEGEL: And from the FTC's
perspective, just so everybody else in the audience
can understand, we have made a concerted effort over
the last few years to coordinate more with our
brethren in the states.

So just to give everybody in the
audience an example of some of the more structured
things that we do, we have a monthly call with the
State AG's who work on debt collection issues. We
also have periodic calls and meetings with the
National Association of Collection Agency Regulatory
Authorities. That's quite a mouthful, NACARA. I
think they're having their big annual conference
tomorrow.

MR. NODLER: We're going to be there
so if anybody wants to see me again.

MR. KOEGEL: It's the Greg Nodler road
show. Colin Hector from our office will be at that
meeting talking about our work there as well.

We also work with state authorities
and law enforcers in our conferences and workshops.
That was a big priority for us when we set up this
meeting was to try to get somebody from the Texas
Attorney General's Office. We had people from
Buffalo at our Buffalo dialogue. And we bring joint
cases with the states. We find there's a lot of
benefit. They provide a lot of local knowledge of
the market for us. They have a lot of local contacts
that we don't have. And we find it's a really
efficient way to use our resources. Hence, we
brought all those joint cases with New York and
Illinois recently. And the plan is to do that more.
So like the CFPB, we try to coordinate
with states as much as possible to make sure that
we're not stepping on each other's toes, duplicating
efforts and the like.

MS. BROWN: And Jessica had given a
little prelude to our discussions today. But, Joann,
can you talk to us a little bit about the attorney
members that you have and how some of the interests
of your attorney members are different than other
debt collectors?

MS. NEEDLEMAN: Sure. I'll take this
one. First, I want to thank the FTC for inviting me
here today. And I am honored to say that I have had
a very good working relationship with Tom Kane and
with Chris. And it has been a couple years and I'm
really happy to be participating. Thank you again
for inviting me.

So what we have done over the past
couple years, in case I haven't met you, my
apologies. My name is Joann Needleman. I'm the
president of NARCA, soon to be past president.

And our position as a collection

attorney in this space I always say is very unique.

It's really fitting that we're here at a law school.

I hope that there are law students here. Because

when we all went to law school, we all learned about

what it was to represent a client and the rules and

the ethics rules that we had to abide by in

representing clients.

And that is the key difference between

my constituents and maybe some of the constituents at

ACA. As attorneys, I hear a lot about certification

and I'm all for that. I think certification is a
terrific thing for this industry.

However, as attorneys we're kind of

already certified. We have a license. And in many,

many states we have to every year go get continuing

legal education to ensure that we are engaging

ourselves as attorneys properly and understanding the

rules.

But because we have clients and we are

in the litigation process, we have an adversarial

system. And that means you can have one side of the

table and the other side of the table. My job as an

attorney is I have to represent my client. That's my
duty. Under the Rules of Professional Conduct, I must zealously advocate for the interest and rights of our client.

Sometimes in this space that becomes extraordinarily blurred, especially when we talk about consumer protection. We all believe in this room that consumers need to be protected. There's not a member at NARCA that doesn't believe that and wants to ensure that.

Sometimes the rights of our clients are going to supersede the rights of our adversary who may be a consumer and in many instances a consumer who is self-represented or pro se. So that's how we identify the struggle in this space for attorneys.

I hope during this panel we can start to have a little bit of a dialogue about that and what some of the issues are. That has been our biggest concern, how do we balance our responsibilities for our clients while at the same time ensuring -- making sure the consumer, once they're involved in the litigation process, their rights are protected but we don't otherwise trump our clients' rights as well.

MR. FOEHL: Good afternoon, everybody.
I want to thank the FTC for inviting me here. My name is Rob Foehl. I'm the vice president and general counsel for the ACA International. The last panel we heard from Mike Frost a little bit about ACA and the breadth of the industry that ACA represents from creditors collecting their own debts, third-party debt collectors, debt buyers. We also have collection attorney members as well as defense attorneys and affiliates and service providers to the industry.

I think Joann is absolutely right in what she is saying about the differences that attorneys who are collecting debts have with third-party debt collectors. I think the finer point that I would put on that has to do really with the separation of powers from the judicial branch and the executive branch.

So attorneys since at least the 18th Century have been regulated by the judicial branch of government. That has been by design. And so that's the other big thing that is a difference between attorneys and the conduct of attorneys than just third-party debt collectors. Third-party debt collectors obviously are regulated by the executive branch through the administrative agencies. But
attorneys collecting debts are regulated primarily by
the judicial branch.

MS. BROWN: I have a question targeted
at some of the findings the FTC has made in the past
pertaining particularly to debt collection
litigation.

But before I get there, let me ask the
regulators, do you have any reaction to the issues
that Joann raised about the tension or the issues for
debt collection attorneys?

MR. KOEGEL: I don't mind wading into
that briar patch a little bit. I guess I don't
entirely agree -- I'm sure this is not a huge
surprise to Rob and Joann -- that the FTC in
particular should take a step back and just let the
state bars or the judiciary regulate this conduct.

I think of the enforcement authorities
there as being sort of co-extensive and not mutually
exclusive. I think that it is -- there is no tension
there when I say that, you know, the FTC can enforce
the concept that when an attorney is attempting to
collect a debt, that they cannot engage in deception
or unfair practices.

I think you can absolutely represent
your client in a debt collection litigation
attempting to collect a debt and do so without
engaging in deceptive or unfair conduct. I don't
think that there's necessarily a tension there.

So, you know, my experience has been
that perhaps the state bars are not always as
vigorous in their enforcement of some of these
things. That's why I think there is still a role for
the Federal Trade Commission in enforcing, you know,
the FDCPA and the Federal Trade Commission Act with
respect to collection attorneys in
litigation.

MR. NODLER: I would echo that and
just say that the FDCPA does apply to attorneys for
the private consumer who is suing an attorney, an
attorney debt collection firm. So I would disagree
that just because there are attorneys that are state
bar regulated, they don't also have to follow the
FDCPA or the Dodd-Frank Act.

MR. FOEHL: The first thing I would
say is I don't think any of us up here are arguing
that there is some sort of tension about collecting
debts in the litigation process and using deceptive
or dishonest tactics to do so. I don't think that
our disagreement would be with that.

I think the broader question is the
question of who is the right -- what is the right enforcement mechanism when you're in court if things would happen to get that way. And quite honestly, from our perspective, I mentioned before since the 18TH century the right to regulate attorneys has been historically with the judicial branch. We can disagree on whether or not that is the proper separation of powers or whatnot. We could certainly have a robust dialogue that might bore everybody else in the audience.

But from our perspective, the judiciary is the primary authority body for attorneys and the practice of law in court.

MS. LESSER: If I might comment, just because to me when I was looking over the materials for today and when you look at the Texas Act in particular, there is a theme of misrepresentations made in court proceedings.

Well, that would suggest lawyer conduct, misrepresentations made within a court proceeding. You have violations for securing admissions from consumers that the debt was for necessity. That's a specific violation.

Many times in my previous life I would see requests for admissions that said exactly that,
this debt was incurred for necessity. For those that
don't know, it's nondischargeable in bankruptcy, so
that type of -- whether it should or not be there.
But I think when you look at the statutes themselves,
it demonstrates conduct that does overlap.

Also, when you look at the Deceptive
Trade Practices Act in Texas, it has a venue
provision for when you sue a consumer. And I think
it's always the -- is it the -- who made that
decision to sue that consumer in which jurisdiction
and whether they sued them in the right jurisdiction.
So that would be my comments on that.

MS. NEEDLEMAN: Let me say -- and I
appreciate Greg and Chris' perspective on this. I
think when I talk about the conflicts that arise, I
think that any attorney before they file a complaint
who is doing traditional debt collection activity,
making a phone call, sending a letter, is absolutely
bound by the FDCPA.

The problem -- two issues. One,
many states have Unfair Trade Practices Acts, Pennsylvania,
I think is one and there are about 18 or 19 others. There are clear
exceptions for attorney conduct. So the UTF, as I
call it, the Unfair Trade Practices Act, says you
can't do -- and a lot of people are very familiar
with the FDCPA. You can't make false
misrepresentations. You can't do a lot of things
that the FDCPA says.

I think a lot of legislatures
recognize that when parties get into the courtroom,
in and of itself, the playing field is supposed to be
level. That's where the protections within the court
system will protect the unrepresented consumer and
the parties there.

So I just want to point that out.

There are many states that do recognize that there is
a line when you get to the courthouse door. But I
would agree that there are things that attorneys do
that traditional debt collectors can do. They must
abide by either the State Consumer Protect Act or the
FDCPA.

MS. BROWN: That brings me to my next
question which really dealt with the FTC studies
about debt collection litigation. And five years
ago, the Federal Trade Commission had issued a report
called Repairing A Broken System.

And in that report, the Federal Trade
Commission identified five main concerns as it
related to specifically to debt collection
litigation. That was the prevalence of filing cases
with insufficient evidence, providing consumers with
insufficient notices of filed lawsuits, the high
default judgment rates that collection attorneys were
obtaining, improper garnishment or garnishment of
social security or other benefits exempt from
garnishment, and suing or threatening to sue on
time-barred debt.

I know in preparation of the panel, a
number of people said, I can't believe it has been
five years. Let's talk a little bit about what the
climate is now, what are we seeing in litigation on
these points.

And can I start with maybe Joann.

MS. NEEDLEMAN: Sure. When we were
doing our prep calls, I mentioned that I was thinking
about this. And I went back and I was like, it's
five years old. I remember when we did the panels
for that. It was actually longer than that.

And I went back and re-read Repairing
A Broken System. We also disagree about some of the
conclusions there. But there were some key points
that the FTC talked about which you just mentioned.

And I look at what has happened in
five years. And since that time -- and I'm going to
speak for my industry. In that time, industry has
spent -- again, whether we can agree about the report or not, we heard you and have spent small fortunes -- Mike Frost talked about this -- about addressing these concerns that you saw in litigation about documentation, about consumer participation. And there has been certainly a significant push on the state level to reform a lot of court rules. You saw recently in New York, again, that was a collaboration -- that was between industry and advocates -- to develop a lot of the rules in the New York statute which mirror what was said in Repairing A Broken System: Disclosure of statute of limitations, affidavit issues, documentation. So we have spent five years really listening and really looking at these issues. But unfortunately, I have to say -- one of the biggest concerns in Repairing A Broken System was consumer participation. And there were conclusions in the report that there was no clear reason why consumers don't come to court. And we still don't know why consumers don't come to court. The industry has feelings as do the regulators. One of the conclusions was, well, we need to provide more information. So there has been a plethora of new rules in various states. It's hard
to measure how those rules are doing. They're relatively new. For example, California was about a year and a half ago. It only refers to new cases, not subsequent cases. New York just started. It will be interesting in six months to see how that's coming along.

One state, Maryland, enacted very significant debt collection rules, I believe, in 2013. So I asked NARCA members in Maryland to pull data as to what the default judgment rate was prior to the rules and subsequent to the rules.

Now, the Maryland rules pretty much mirror the -- as I had said, the main points of Repairing A Broken System. Prior to 2011, the default rate was about 64 percent, with a consent order rate, meaning people came to court and they decided to settle the case, at 6 percent.

Since the rules were enacted, the default rate is 68 percent. The consent order percentage rate is the same at 6. So here we have five years later, we have asked, we have -- there has been certainly a lot out there about debt collection, debt collection litigation.

A report asked the public to inform consumers why they should participate. We have
enacted these rules, and consumers are still not participating. I think we really need to have a really good discussion what do we want, what is our end game.

We have done a lot in the last five years to in some way satisfy the consumers with the concerns you have. And these rules have been enacted, but they're still not participating. I don't have the answer. I wish I did. We need to continue to work on that.

MS. BROWN: Let me get to Rob.

MR. FOEHL: What she said.

MS. BROWN: Jessica?

MS. LESSER: This is an unusual question for me because prior to April, my job, as some of you know quite well, was to defend consumers who were being sued in court.

And I can say that post 2010, there was a dramatic difference in the paperwork that I saw in those cases. And that would be a compliment to industry and a compliment to the lawyers who are involved in that.

I think so much it basically may not be profitable to do that anymore, so congratulations, which is part of my new job. Thank y'all so much for
complying. But there is a response in that because I can say that people listened and I saw evidence of that. And I think these types of dialogues/conversations as a regulator now prompted me to think differently because I get different input.

And as I said, it's not -- the lines do get blurred. And when I was a private practice attorney, my job was to get mine. I had to get paid. Right. And that was my client reimbursement. That is not necessarily the way a regulator perspective always is. And so it's finding those right results and encouraging compliance within an industry. And it makes that a different dialogue happen.

But I think the work the Federal Trade Commission has done to show these are problem areas have really assisted in making the industry a cleaner -- is that an appropriate word -- marketplace.

MS. BROWN: Greg, do you have any impression on the last five years?

MR. NODLER: Sure. Actually, like Jessica, I used to be a private practice attorney representing consumers with debt issues and in a legal aid office. I came to DC in July of -- was
it July 2011 or 2010?

    MS. LESSER: I think it was right at '10.

    MR. NODLER: July 2010. So in practice, you know, in the courtroom -- I'm not there anymore -- in the county courtrooms or the justice of the peace courts, but I could see things changing some right before I left. This is all just anecdotal.

    I think there's still -- we still do see a big problem. We still get a lot of complaints about it. We still in our investigations uncover real problematic practices in debt collection litigation.

    MS. BROWN: Chris?

    MR. KOEGEL: Yes. So what I have heard over and over and over from the collectors that I speak with is that more than anything, collectors want consumer participation. They want to open the lines of communications with consumers, and that debt collectors don't necessarily want default judgments because they may just be an empty piece of paper. The most profitable pathway, I have been told, is to get that communication going with the consumer.

    What I have seen in the last five
years is that there have been some state, county and
local jurisdictions that have experimented with some
solutions to the issue of the low consumer
participation in these lawsuits. You know, Maryland
New York City, I think Fairfax County, Virginia and
others. I don't have the data right now in front of
me, the statistics about the before and after effects
of those reforms that have been tried.

What I would caution everybody in this
room to do is not to rush to judgment, and let's be
systematic and study this. Let's look at each of
those jurisdictions, see what each of them
specifically has tried and let's look at some data on
that.

I think this is a really important
issue because I was reading some of the CFPB's recent
work on the plane ride down here, the PRA and the
Encore orders. What I saw in there, and maybe I
misinterpreted this, but I thought I saw something
that said in the PRA order that consumers had
responded to less than 6 percent of the litigations
filed there.

And so I'm hearing from industry that
that's not what they want and that's certainly not
what the Federal Trade Commission and the CFPB want;
yet, it is apparently persistent.

I also see in the work that the CFPB did in the PRA and Encore cases that there are significant problems with litigations, collection litigations being filed where the consumer doesn't owe the debt or the wrong information is in those litigations or they're filing cases where it's very clearly past the statute of limitations.

And so what I think is that everybody has an interest in solving the problem of too many default judgments, too little participation by consumers in these litigations. And we need to just slow down and study this problem and study the potential solutions and not rush to any judgments.

What I don't want is for people to come out of today's conversation and say what the FTC suggested in Repairing A Broken System is clearly not working, because I don't know that we're ready to make that judgment yet.

I'm certainly not ready -- I'm certainly not ready to make the flip side of that judgment either, which is that the FTC has solved the problem. That hasn't happened clearly either, sort of like how I think about federalism. We need to give some room for experimentation on different
solutions here. And I'm fairly confident that everything that the Federal Trade Commission suggested in Repairing A Broken System is not the entirety of the potential solution here. I'm sure there are other ideas out there. We need to get them on the table and test them out.

MS. BROWN: And another thing, mentioning CFPB recent litigation, you made the same point that I was looking at. That's this year the CFPB has announced two important matters that address at least some of the practices that were covered in the Repairing A Broken System report.

And one was in September. There was an administrative consent order that the CFPB entered into with Encore Capital Group, which I think was doing business as Midland Funding, Midland Credit & Asset Acceptance. In that suit, the CFPB had accused the collection company of filing suits with insufficient evidence. They had allegedly purchased portfolios in which the seller had expressly disclaimed the accuracy of the debts.

The CFPB also accused the company of attempting to procure a default judgment and suing or threatening to sue. There was some other practices
as well, but clearly those harken back to the same
types of practices covered in Repairing A Broken
System report.

Similarly, earlier this year the CFPB
had filed a complaint against the law firm Frederick
Hanna & Associates alleging that the firm was
violating FDCPA and the CFPB Act by preparing and
filing collection lawsuits without "meaningful
attorney involvement" was the phrase that was used.

And according to the CFPB, one lawyer
in that firm had signed 138,000 lawsuits over the
course of a year, which would have necessitated that
lawyer to spend less than one minute on each file,
assuming that he worked five days a week for a full
year with no vacation. So we are still seeing some
of the same practices.

Greg, we were going to talk a little
bit -- are there lessons that collection attorneys
can take away from these cases the CFPB has filed?

MR. NODLER: Sure. We touched a
little bit in the last panel. I think it's a good
idea for debt sellers, debt collectors, and debt buyers
to look at these enforcement actions, Encore, PRA and
also the JPMorgan Chase one that we talked about
earlier had more to do with selling, to see if
they're engaging in the type practices that the CFPB found to be violations of the CFPA and the Dodd-Frank Act.

On the Hanna case, I can't get into it too much because it's still active litigation. We actually filed it over a year ago. We're just passed the one-year anniversary of filing it. The court ruled, denied a motion to dismiss on a lot of those issues, attorney review and whether the Bureau has jurisdiction over attorneys and other things.

It's a 70-page opinion that is, I think, a good one to read on the beach or something like that. But I think that it's -- it would be a good idea for people to review those actions. We haven't gone into too much detail about the actual violations in the Encore and PRA order, so I'll just quickly run through them.

We found that they were collecting debt without a reasonable basis, because they were collecting debt that had been disputed by consumers or that, based on past practices with the debt seller, they were on notice, knew or should have known that there were problems with the debts, that may have been inaccurate, and that upon that red flag coming up, they didn't take any further steps to
verify the data. We found that that was deceptive under the FDCPA and Dodd-Frank Act. And then there was a claim for filing -- threatening and filing lawsuits without the intention of proving the debt when contested. That had to do with documentation. There were several deceptive affidavit issues. There was collecting debt by misrepresenting it was legally enforceable was another one of the claims in there. There are others. Those are the main ones that had to do with what we're talking about right now.

MS. BROWN: There was an allegation that the company regularly sought to sue on debt knowing that if the consumer came forward and protested, that they would ultimately dismiss the case; is that correct?

MR. NODLER: I don't think it was framed that way. Yeah, that was the gist of it. That was the -- suing without the intention of proving the debt.

MS. BROWN: Chris, is there anything that the FTC takes away from seeing a sister agency CFPB file cases like this and pursue matters of this nature?

MR. KOEGEL: Yes. I think the takeaway is something that I alluded to in my last
answer. This is still a problem. This is still an issue for consumers that we all need to figure out solutions to. You know, the hard debt issue is apparently still out there. The filing of lawsuits with no intention of ever really proving it and relying on the default judgment, that is the -- that's our worst fear.

That's why we are concerned with this systematic problem of consumers not responding to these lawsuits, for whatever reason that that's happening. That's why we are trying to address that fundamental dynamic of, you know, why aren't consumers responding to these lawsuits, are they getting the notice, is there something else that we can do to get them to wake up and notice these things and participate in the process and engage with the debt collector on their debts.

MS. BROWN: I was going to direct the next question to you, but go ahead with your comment first.

MS. NEEDLEMAN: I just want to make a comment about the consent orders, the PRA and Encore consent orders. Greg, you said in the last panel, you said it's important for us to look at the concept, believe me, a lot.
But the problem with some of these consent orders is that it rewrites practices that we have utilized and have done throughout the years, and even in some cases that have been judicially recognized as appropriate. So while the consent orders may give us some -- so what we're looking for are what you think are bad practices. And I think the industry reads it very carefully and should make the necessary adjustments when those consent orders come out. But it creates a lot of confusion.

Number one, as you said before, it only applies to those two particular defendants. But guess what, we all look at it and say that could apply to me tomorrow. So people pay attention to that.

I'll just throw it out. I don't know if it's PRA or Encore. There was an issue in there about assuming the debts to be valid. I know part of that had to do with affidavits. But the scheme of the FDCPA is this. This is what Congress -- the statute says. A debt collector gets a debt. We're required to communicate with that consumer to say, we are the debt collector and here are your dispute rights. And we call that the G Notice.

The G Notice really serves two
purposes. Number one, to allow the consumer to dispute but also to let us know that we have the right person. And the assumptions in the G Notice are if we don't hear from the consumer, we get to assume that the debt is valid. Agree.

It doesn't mean that you're going to win your case. It doesn't mean that you have a basis that you can go file a lawsuit and I should get a default judgment because the consumer didn't respond. No, it doesn't mean that. But it gives us, quote, the reasonable basis for us to proceed because we don't hear from consumers.

The way I read some of the consent orders is that has been reversed. And if we don't hear from the consumer of a dispute, that's not enough. And somehow now we have to start guessing whether the consumer disputed, do we have the right dispute. I think that creates a little bit of tension and it creates some practice issues.

MR. NODLER: Sure. So those were in the Encore order. And something that Encore was engaging in was that a consumer would dispute outside of the G Notice period. They have more than 30 days to dispute outside of that. And regardless of the nature of the dispute, Encore would continue
to collect it the exact same way, unless the consumer
could effectively prove that they didn't owe the
debt.

And that's not the way that we read
this section of the FDCPA. We looked at it like that
creates a temporary fiction that I think the debt is
valid. It doesn't mean that...

MS. NEEDLEMAN: Some courts decide the
other way, too. So that kind of makes it -- I hear
what you're saying. I think it's maybe you have an
issue. But the problem is, and I think NARCA has
been one. We met with the association years ago. We
said to you years ago, I wish you had rules. That's
the problem with not having rules.

We have all been subject to court
decisions that have said "A" one day, "B" the other.
But as an industry, that's what we have been
following. So, again, when we read, sometimes we
read some of those consent orders, they address
practices that we've gotten judicial case law that
says it's okay to do that, but then we have a consent
order that says the opposite. I think that creates a
problem.

MR. NODLER: I understand that. I
think really the gist of that is that regardless of
when a consumer's dispute comes in, if a consumer disputed it and put a debt collector on notice, its information is inaccurate, that for the debt collector to just say, I'm not going to consider this information you're providing me, that means, at least the way we found in those cases, was that they were basically putting their head in the sand.

Regardless of the 1692g rights, if a collector knows or should know that something is inaccurate, they shouldn't be collecting it. They shouldn't continue to collect without taking further steps.

MR. FOEHL: Let me make sure. So I think Joann hits on a really good point here. And the point that I find troubling about these and other enforcement actions is the fact that it seems like the enforcement ship is the cart before the horse here. And the horse is natural rule-making that really defines what the conduct needs to be and/or need not be when it comes to collecting debts.

And, of course, the rule-making is subject to notice and comment from interested parties, including industry, that needs to be considered by the agency that makes the rules.

And so I think the troubling thing
from our perspective related to these and other
enforcement actions are there's essentially
rule-making that's happening through enforcement
action. We always hear the comments, oh, well, this
enforcement action is only specifically related to
the entities that are subject to the enforcement
action. But then you hear you should be taking a
good close look at them to understand what conduct we
find problematic. I would rather see the problematic
conduct defined by the rule-making process.

MS. BROWN: Chris, for the benefit of
the folks here who have not thankfully been subject
to enforcement action or CFPB enforcement action or
Texas AG enforcement action, could you outline
roughly the approach in fashioning final relief, the
injunctive provisions? And maybe that will give a
little illumination about how the order should be
interpreted.

MR. KOEGEL: So generally speaking, we
have what I would call two different levels of
injunctive provisions in most of our orders. The
first should be sort of readily apparent when you
read at least the FTC orders, which is that you'll
see us say -- we'll mirror all of our complaint
counts with language that basically amounts to don't
violate the law again.

So if you threaten to arrest, that violates I think section 807(2) or 807(5) -- I can't remember -- of the FDCPA. And you'll see that complaint count. And then you'll see a section in our order that says, you know, the defendants are prohibited from misrepresenting certain material facts in the collection of debts. And then you'll see A, B, C, D, E, F. One will be falsely threatening arrests. And the three or four other are misreps we found and are alleged in our complaint. That's all basic. That's just us restating don't violate the law the same way you did the last time.

There will then be another level generally of injunctive provisions in our orders. And that will try to deal with more structural changes and fixes that seem to underlie the problems that manifested themselves in violations.

So, for instance, if there were problems with the collection of unsubstantiated debt, maybe the collector was collecting on debts that were in dispute or that it should have known that its information was unreliable.

We'll set out some more specific guidance for that collector and what might be
required about what we want them to do the next time something like this happens again. So the next time a consumer disputes a debt, you know, the order will say that the collector has to consult these three sources of information or they have to take these four steps in order to substantiate that debt before it can go ahead and try collections again.

And you'll see something similar like, let's say, there's a problem with too many calls repeated or continuous calls being attempted to harass or abuse. We will have provisions in there that will more specifically outline how many calls is too much or what they need to do before they can call again if a consumer said stop calling me.

So that's, you know -- those are provisions that are not specifically -- we're not saying to the world that you have to do this if you're a collector that hasn't been sued. But if I was a compliance officer or legal counsel for a collector, I would take a look at those and I would say, you know what, these make sense to me. Those seem like best practices. If I do that, I have a better chance of staying very clear of the FTC and the CFPB's group.
MS. BROWN: So it's fair to say that sometimes the order goes above and beyond what is actually required of the law; is that correct?

MR. KOEGEL: Absolutely. It's a concept called fencing-in relief. It is embodied in fundamental Supreme Court case law. The basic concept is once a defendant is found to have violated the law, fencing-in relief to prevent them from violating the law in similar or slightly different ways the next time is entirely warranted.

MS. LESSER: I want to say that this concept of the injunctive relief since I have returned back to the AG's office, I used to always say, look, when I was on the other side defending cases against the FTC and the AG, I wanted very specific relief. And I wanted to know what from my company's sake what I was supposed to tell my clients to do to fix the problem.

And so then you hear, well, no, that's too specific from an industry-wide perspective, but we worked the same way. Each case is very different. And so the injunctive relief you will have the more global and filing a petition order. And that's a big component, though, to ensure compliance at a later date. And many times it is the defendant who wants
MR. NODLER: There are times when the injunctive relief includes a lifetime ban from engaging in the industry. I don't think anybody would read an order like that to say, if I did such and such, that means that I'm now suddenly banned by the FTC or the CFPB or the Texas AG.

MS. NEEDLEMAN: Quick question.

Following up with what Chris just said outlining what you have to do, one of the things also about the PRA and Encore consent order that was a little puzzling to me is you talked about substantiation. It wasn't defined anywhere and that I think made it very difficult for industry. Again, we're looking at those two individuals, but in the same token one industry take fees and those consent orders made it really difficult to do.

MR. NODLER: Sure. So the order says that they need to -- they shouldn't make any representations they can't substantiate the representation. We basically said, at a minimum this includes, in these circumstances it includes X, Y and Z, but those aren't all of the circumstances. We're describing some common areas where Encore or PRA could be put on notice that
there's something wrong. But there can be other areas also where they could be put on notice that what they're saying now is no longer substantiated.

MS. NEEDLEMAN: I think just in analyzing and talking to my clients and reading this order, you did break it down a little bit, but I think it left a lot of room for interpretation. I think for the non-PRA and Encore clients who are in that space, it really created an oh, my God, what is enough substantiation.

I think you gave us the bare bones minimum of what your expectation was, but I think it creates a huge void as to what is -- what's good substantiation, what's bad substantiation. I think it's going to be an issue that a lot of the players in the industry are going to be figuring out.

MR. NODLER: Also, on substantiation, there are several FTC cases that deal with it as well beginning in the advertising context.

MS. NEEDLEMAN: And in assets, I think there was debt -- substantiation was defined.

MR. KOEGEL: Look, substantiation, I think, is a really important concept in debt collection. It can manifest itself with a lot of -- if you're not doing it right can be a disease that
results in a lot of different symptoms. It is something that the FTC has been working on and addressing over the course of many years. And candidly, it has been an evolution. It started in the advertising concept as something that has now evolved into the debt collection landscape.

You know, I think it is something that if you were looking for an answer on that, my recommendation and advice to industry is don't just look at the Encore and PRA orders. I think you have to look at it intelligently over the course of several orders.

The FTC started this, I think with the case called CBCS. It also came up in Allied Interstate. It also came up in Asset Acceptance. More recently it was addressed in more detail in the Expert Global Solutions case and in the Green Tree Servicing case we did jointly with the CFPB.

You need to look at that with your lawyer's hat on and recognize, okay, some of those older cases, those were the first baby steps and the FTC and now the CFPB is building upon that concept. You need to look at all that together and start to formulate your own best ideas for compliance.

And I realize that, you know, that's a
bit of a challenge maybe for folks in the collection
industry.

MS. NEEDLEMAN: It's going to keep me
very busy.

MR. KOEGEL: I strongly suspect based
on no insider knowledge whatsoever that this is
something that may come up as well in the
rule-making, a conversation that probably will at
least continue through the notice of proposed
rule-making.

MS. BROWN: I do have a question
handed to me. Will the CFPB's FDCPA rule-making
offer greater clarity on the documentation issue?
Are you able to comment on that?

MR. NODLER: I honestly don't know.

Rule-making, it's in flux. They're still being
worked on. I'd hate to give somebody the wrong
impression.

MS. BROWN: Let me go to Rob now, if I
can. Rob, is there anything in particular that you
think that regulators can do that would help both
your members as well as consumers? Are there things
that occur to you?

MR. FOEHL: I mean, we can talk about
this for a long, long time. You know, the two things
that just immediately pop into my mind is, quite honestly, issue a rule and give it as much clarity as possible.

Our members want to comply with the law. They just need to have an understanding of what they need to do, and so that has been our feedback. One of our points of feedback with the CFPB is, you know, when you issue a rule, make sure that it's absolutely as clear as possible because our members want to comply.

This idea of having to go through and look at enforcement actions and try to guess at what's happening, what applies specifically to the individuals in the enforcement action versus what doesn't. Let alone the fact that, you know, I feel sorry for the people that are the first subject in an enforcement action and have no notice of any of this stuff to begin with. So I think that's the first thing.

I think the second thing that comes to mind is there ought to be an encouragement of dialogue between the debt collector and the consumer. I think all too often what we see is what appears to be trying to put a barrier between the dialogue between debt collector and consumer. I don't think
that serves anybody, the debt collector nor the consumer well. All that does is end up driving more things to the legal process.

So the more that the government agencies, the regulators can encourage a proper dialogue between the debt collector and the consumer, the better off the whole process and the whole system is going to be.

MS. BROWN: Would you mind explaining what you mean by barrier?

MR. FOEHL: Yeah. You can take a look at a number of different things. One of the things again that comes immediately to mind is the action letters that the CFPB put out a while ago without comment from the industry. In releasing those comment -- or those action letters you can take a look at it. There isn't a real flavor for encouraging consumers to have open, legitimate dialogue with legitimate professional debt collectors. That's just one example.

MS. BROWN: Go ahead, Joann. I would like your thoughts, too.

MS. NEEDLEMAN: To enhance on what Rob just said, I think that -- and I talked with the CFPB and FTC about this. I think the critical thing that
we have to establish in the rules is our dispute
process. I mean, I think that is just so -- that is
what is going to solve a lot of our problems.

Right now it is a very fragmented
dispute process. The way that the FDCPA is even
enacted now is confusing. And we really -- and I
think there's got to be responsibility on both sides.
I think that certainly debt collectors when they
receive a dispute, and certainly it doesn't need to
be in writing anymore, it can be oral, needs to
respond to consumers when disputes are made or do
whatever needs to be done to address that dispute.

But on the same token, we need to also
encourage consumers to be specific about what their
dispute is. In the credit reporting world, it's not
perfect, but at least there is, it's not me, I didn't
sign. You have your little checklist. A lot of
times, you know, my members report to me that
sometimes the dispute is, I dispute. What is it that
you dispute, is it me, is it the wrong amount, is it
the wrong balance? We just don't know.

There is not a safe environment, or we
don't have a safe environment right now where I think
consumers feel comfortable in communicating with debt
collectors to articulate what it is that they are
disputing, nor do we have a good dispute process for
us to address it.

So I would say to regulators, please,
let's try to work and figure out a good dispute
process. If we can get that done, I think a lot of
these issues go away immediately.

MS. BROWN: And from the questions I
am seeing, I see a lot of interest in that topic. I
have one question: Are you saying that a consumer
does not have to dispute it within 30 days, and if
so, is the required validation notice required by the
FTC?

Greg, I think that's you.

MR. NODLER: Are you asking me?

MS. BROWN: I think that may be
related to the case -- is that a correct
characterization of what the CFPB intended?

MR. NODLER: What those orders
address, especially the Encore order addresses, is when a
consumer has a dispute outside of that period. I
don't think there's anything in that order that says
that -- that really changes the language of the FDCPA
1692g. The orders don't say that the -- it's just --
they are different. There's a dispute that happens
beforehand. There's a dispute that happens
afterwards. Disputes are covered in the FDCPA in more than one place, and that's the way that is answered. Several recent court decisions have reviewed it as well.

MR. KOEGEL: I would add that I think it's in the collector's best interest to address a valid dispute after that 30-day period. You know, I would think you wouldn't want to waste your time talking to somebody when you have got the wrong person or that's not valid.

So, you know, I think it's in everybody's interest to address valid disputes, even outside of that original 30-day period. You know, in a perfect world, yeah, we get all those issues wrapped up in that first 30 days and move on.

But, you know, we're dealing with consumers who are having a lot of challenges in their life, obviously. So I don't know that it's always realistic to expect that they are going to have their life all together and be ready to deal with this in that first 30 days.

MS. LESSER: I think, too, the problems become when you have a consumer who has gone through a creditor or debt buyer, another debt buyer, four collectors over here, some more over there, they
have got maybe five debts and so they have got -- you
know, many times they just don't know which is which and what is what.

And taking the time to just discuss
with a consumer versus collect when a consumer has a dispute, that dispute, you know, very well may be solvable. But if collections -- you don't find that information out, that's really what I think Greg is getting at, is this comment that goes before like lawsuits. And so you may have a consumer who the collection agency before that collection agency was told something completely different and the amounts are changing.

So when you have conduct and misrepresentations made in the course of collecting that debt later creates problems because they're disputed at that point and the consumer is lacking information.

MS. BROWN: And, Joann, I don't know if you got to the second part of my initial question that began this relating to what more can the regulators do that would benefit consumers and industry?

MS. NEEDLEMAN: I think Rob said it. You know, if we can figure out a framework within the
rules to have a robust dispute process. I just think
that would be helpful for everybody, and we could
document it. I think technology can get involved.

I use this example all the time, I
will admit. I'm on Amazon way too much and I return
stuff. If you go on Amazon, you go on Amazon and
this thing pops up, do you want to have a chat. And
I always talk to the person, I'm returning this,
blah, blah, blah. And when I'm done, I get an e-mail
and the e-mail is my entire conversation of my person
at Amazon.

We need to be thinking of ways of
driving consumers to us and ways not us calling them
all the time, letting them say, you know what, I have
a dispute. Where can I go where I have a safe
environment to make that dispute so we can understand
what the dispute is.

I think there's such potential with
the technology that we have today to really figure
out really creative ways to do that with. I hope we
can really get to that point. I think with our whole
world being this, that we can figure out ways to do
that. I hope that we can learn about that.

But I will tell you one of my
clients -- many clients have portals. And when they
send their initial letters, they write their portal address on the web address and they ask the consumer to go to portal. Right now the response rate for that is so low and that's a shame.

I think that's probably the safest -- we can talk about the other issue -- the most private place for a consumer to go where they can communicate and again it can be documented. So I hope we can get to that point, within a regulatory framework.

MR. FOEHL: I agree with what Joann says with respect to hashing out a better dispute process. Let's make sure we keep this all in perspective. Disputes happen less than 1 percent of the time. If I want to take the FTC's own statistic as it relates to the debt-buying context where the claim disputes are higher because of the age of the debt, the FTC's percentage is 3.2 percent. So you're talking 97 percent of the time or more, consumers aren't -- don't have a dispute related to their debt.

So we need to -- I agree it's something we need to hammer out and make sure those consumers who have legitimate disputes are getting information and that sort of thing, but let's make sure we keep it all in perspective. The vast majority of -- I mean the vast majority of account
placements do not result in a dispute whatsoever.

MS. BROWN: If I can, I was going to
pick up on a theme mentioned in the first panel, the
cost of compliance. I think Trish had talked a
little bit about some of the compliance expenses.
I think Mike Frost did as well.

Joanne, do you have any figures on
what the cost of regulatory compliance is for debt
collectors?

MS. NEEDLEMAN: I do. I can speak for
debt collection attorneys. So in responding to the
ANPR we gave that data up through 2013. And the cost
of compliance up through 2013 for debt collection
attorneys went up 327 percent. So, I mean, our
members, as I indicated when we started this panel,
have spent small fortunes to enhance compliance,
whether it be video cameras in their law firms,
whether it be enhanced accounting and lockbox and
keys and pass codes.

There is evidence most of the law firm
paralegals and people that work in law firms cannot
have a cell phone on their desk. Everything is
password protected. And this is coming not from
necessarily the CFPB by some sort of rule or consent
order; it's coming from the top down.
The fact that we are in this regulatory environment, obviously, our clients who are subject to certain consent orders are very, very serious about future risk. So that is all being pushed down to my members.

And I will tell you a funny story. We were at a CFPB meeting about six months ago talking with some of your folks. They said, well, you can raise your rates. I'm like no, no, no. It doesn't work that way. So the margins are so small. I mean, they just keep getting smaller. I hope rules will solve that, but I can't say that it will.

MS. BROWN: Rob, do you have any figures?

MR. FOEHL: I don't have any figures. The costs of compliance are crippling at this point in time. I think there's a -- what does that result in, I think, is the big question and certainly public policy question.

What happens when compliance cost goes up. What happens when there are no regulatory requirements. I think it would serve everyone involved to look at the Federal Reserve Bank of Philadelphia working paper on debt collection agencies and the supply of consumer credit.
In that report from the Philadelphia Fed, they did the economic analysis and indicated that -- they did what we all, I think, inherently know. That's stricter debt collection regulations reduce the number of debt collectors and lower recovery rates on debt, and that this in turn leads to a constriction of credit.

So I think what that really says is we need to be very careful about what we do when we protect -- when the CFPB comes out with debt collection rule-making. Because it has a practical effect on the amount of debt that's going to be recovered and the amount of credit that's going to be available to our consumers who live in a credit-based economy.

So yes, our members are being crushed by the cost of compliance right now, and we haven't even seen a debt collection rule yet that, by all likelihood, will put into place additional regulatory requirements which will make them incur additional costs which will make the number of debt collectors go down which will make the number of -- will lead to lower recovery rates and a further decrease in the credit that's available to our citizens.

MS. BROWN: Go ahead.
MS. NEEDLEMAN: I have said this for many, many years. We have to remember we're in a credit ecosystem. And we have got -- I think you have to see the CFPB recognize that and they said that in a lot -- in many things that they publish. But when push comes to shove you really have to believe that. And at some point, something is going to give either way. We have to really consider that people should be paying legitimate debts.

No one in this room wants someone to pay something that they don't owe, if it's not them or the wrong balance. We really -- that gets very muddled in the conversation. And we must be able to recover money, put it back into the economy to keep the economy moving again. I have said that for a long time, and hopefully that would be the outcome of all these rules.

MS. BROWN: Any response from the regulators on these issues?

MR. NODLER: I would say that the cost of credit and how credit access can be affected by these rules or any other rules as well. I mean, we regulate the whole credit transaction. We regulate the lending, the collection, the servicing. We think about all of it when we do anything.
MR. KOEGEL: I guess I'm confused about do you want a rule now or do you not want a rule now? I'm just teasing you, Rob.

MR. FOEHL: We know one's coming so I hope it's sooner so we can see what we need to do to comply.

MR. KOEGEL: I will echo what Greg said. I also want to say to Joann that not only do we say those things, we do believe them. We recognize it's important and there are trade-offs and that there are costs to some of those things. We do try to factor those in.

It's why we need you to be part of the conversation with us to identify those costs to us. Because, you know, I have never been a debt collector in my life. Big shock. So I may not think of all these things that you may think of. That's why we need you guys to be part of the conversation.

MR. NODLER: Also, that's why we do a panel and all of that. I wanted to correct just one thing about the panel. Someone asked me during a break how he could get the preview of the rules. How do you get on the panel to get a preview of the rules. And I'm not exactly sure how to get on the panel. But I will say that you don't get a preview
of the rules by being on the panel. When we are putting together the panel, everybody can see the SBREFA outline. It will be published on our website.

MS. BROWN: Okay. Thanks for correcting that. I had asked Rob and Joann what they would like to see from the regulators. Let me ask the flip side. Regulators, what would you like to see from industry to help improve debt collection practices?

Chris, I'll start with you.

MS. LESSER: I'll go first. I'm in the middle. I'm not the federal government rule-making authority. I think the number one thing that I recommend is listen to your customer and remember that that consumer is your customer and not a debtor. That's the part that regardless, that debtor is a customer of yours, and so customer service within that industry will really solve a lot of problems for a lot of people, I think.

And I realize it's hard. I have been on that side. As a matter of fact, Rob and I used to work together. I've flipped around on different sides. I understand the cost of compliance. But I also remember many times with companies where somebody would say, this is not my debt and in
private practice where I have got letters upon letters upon letters of senior citizens saying, not my debt, not my debt. You're talking about my grandson. No response from companies, and then lawsuits are filed.

And so that type of activity when you have got somebody screaming at you, just please listen to me, or they made the complaint with the BBB or they made a complaint. And usually we'll have a response of, well, you need to go file a police report or we're not going to consider it unless you file a police report. Well, that's not necessarily every case.

So I think it's -- I would just say it's a personal thing. Just listen to your customers and remember the customers and treat them like that. I think you would find less problems from a private sector and within the public sector.

MS. BROWN: Greg, is there anything you want to add?

MR. NODLER: I would also echo that on taking disputes seriously and complaints about communicating with consumers. I also think that it's very important that companies know who they're dealing with so that debt sellers, you know, are
careful about who they're selling to, the debt buyers
are careful who they're buying from and track the
types of -- look at the past practices. And if a
seller has sold inaccurate debt before, then they, in
my opinion, shouldn't be buying debt from that seller
anymore.

MS. LESSER: There's actually
violations of the Texas State Act for buying a debt that
you know violates the law. So these concepts are not
brand-new. We have always -- they have always been
there. I also want to say also watch out with your
third parties. That's the number one complaint that
we see is third parties contacted them over and over
again. That's usually the number one complaint that
we have had.

MR. NODLER: We see a lot as well.

MS. BROWN: Chris?

MR. KOEGEL: I guess I would echo what
Jessica and Greg have both said. I will say that
there are certain issues that I see out there with
some companies in terms of the number of calls and
calling the wrong person over and over again that I
believe could be solved with the right technology and
the right software.

In some of our enforcement actions we
have seen cases where consumer says, "I'm not the
Chris Koegel that you're looking for. I don't live
in Maryland. I live in Wyoming. Why are you calling
me?" That collector says, "I'll take you off." He
takes him off the database. The account goes back
and the number goes right back into the Chris Koegel
in Wisconsin, just stuff like that. It may be that
some companies solved that already. I'm just using
that illustratively.

There are problems out there that I
think can be solved with the right technological
solutions, not to say that's a panacea for
everything.

The other thing that I will note is I
have a concern we need to do better on data security.
Again, I see, particularly these older debts but
other things, that end up in the hands of, you know,
the fraudster types, the really egregious bad guys
that have no right to be collecting on those debts or
they're making up debts based on consumer information
that they have gotten from somewhere.

You know, I want us to all explore
whether we're doing enough to keep that consumer
information out of the hands of these bad actors.
Because those kinds of phantom debt collections and
things like that, they are not credible; they don't work as scams if the collector does not have that consumer information.

And then the last piece, sort of standard thought for me at this point, but work with me, come talk to me about what we can do about some of these bad actors and egregious practices. Flag for me when you see something out there. Flag for me when you see somebody that I should be looking at.

Let's get past that point of the conversation as well and think more globally about what we can do creatively together to address these problems. Because, you know, we have been trying some of these things for a couple years and they're not enough.

So let's get to the next level of conversation collectively between government and business to try to explore new and different solutions to some of these issues.

MS. BROWN: And Joann and Rob, obviously, as professionals in your industry, you really do set the bar for ethics. I know you care very deeply about ethical collection practices.

What would you say are areas of opportunities where the collection industry can do
better?

MS. NEEDLEMAN: Well, it's interesting. I'll tell you, it's interesting what you said about customer service. I was a collection attorney and I still am for quite a long time. And one -- I had a very small practice, at most I think seven or eight people, which I could not survive in today's world. I think that is the point. You want customer service. They are consumers. They are customers for the brief time you might be communicating with them.

But the best way to possibly do that is when something is smaller and not bigger. Unfortunately, the way the industry is morphing now, there is such consolidation in our industry. We see our member firms consolidating. We see agencies consolidating.

And when you get to these -- there's no mom and pop. There's Lowe's and Home Depot. There's not the corner hardware store. The little law firm with the shingle outside in the debt collection industry is gone. Everything is a big mammoth firm.

And the fear I have is that the customer service will be lost. So I would say to my
members, remember the customer service, remember to continue to work with these consumers. Our job is to resolve debt. That's what collection is. It's about resolution. And we have to continue to remember to do that. That's what I would hope the industry would take awake from it.

MR. FOEHL: For me I would just say generally, not to be complacent. I think that complacency is the thing that would be the most problematic. Just because industry has done something a certain way for a number of years, that doesn't necessarily mean it's going to be good enough today or going forward.

I think Chris was hitting on that just a little bit in terms of talking about technology and giving the anecdotal situation of having a skip trace repopulate that information into a system. So I think where industry can do better is taking a look at their operations and ensuring that they're not being complacent in the things that they do just because it's done that way quite a bit, even for a number of years, sometimes through multi generations.

So I think that would be the one thing that I would think of when -- what can the industry do better is to make sure we're not getting
complacent about how we have done things in the past.

MS. BROWN: Chris, you mentioned a couple times about phantom debt collection. I'm wondering if you could explain what is meant by phantom debt collectors, and what special concerns do you have as it relates to phantom debt collection?

MR. KOEGEL: When the FTC talks about phantom debt collection, we're really talking about two different concepts that have sort of the same result for the consumer.

The first is where the consumer does not owe the debt that the collector is trying to collect. It just didn't exist. It's something that's made up or it has been paid off a long time ago.

The other concept under that phantom debt umbrella is maybe the debt is real but the collector does not have the authority to collect on that debt. So maybe the consumer in some instances makes the payment and then gets a call from a guy that does have the authority. You have to start all over again.

It is one of the most, if not the most, egregious practice that we deal with in the debt collection sphere at the FTC. It's something
that we have been addressing and seeing for several years now going back to the American Credit Crunchers case and the Broadway Global Master case, you know, up through this year even.

It is something that we have been trying to deal with from that angle from going after the actual phantom debt collector themselves. Increasingly those folks seem to be migrating over to India and other places which presents challenges.

But I would like us at the FTC to try to deal with, you know, what makes it possible for these scams to exist in the first place. I have said a couple of different times today, you cannot fool a consumer into paying a debt like that unless you have got information that can convince the consumer you have it right. You start reciting the consumer's bank account numbers and social security numbers and all kinds of other information.

We have been studying now for a couple years where are those fraudsters getting this information from. Like I said, we brought the Cornerstone cases where we found out that that broker who was out there just posting an entire Excel sheet of his portfolio on a public website, tens of thousands of consumers' information out there, social
security numbers and addresses and employers and bank
account numbers. That's certainly one way it can
happen.

I strongly suspect that some of this
information is migrating to fraudsters because
somebody, a collector or another employee at a
legitimate debt collector, is stealing that consumer
information somehow.

And there are other ways. It could be
a debt broker is double-selling a portfolio to
different people, which obviously would be unlawful
as well. What I think is incumbent on everybody in
this room, and I think also again in your own
financial interest, is let's think about cost
effective ways that we can increase the security for
that data and cut off at least that source of
consumer information.

You know, I was at a collection agency
north of Baltimore earlier this week and they had
lockers for all their collectors. The collectors
were not allowed to bring their cell phones on the
floor, and there were security cameras in the room as
well.

I recognize that those things have a
cost, but I suspect that there's a little bit of
return on investment for the collector as well in
that he knows that his prized valuable commodity,
those consumer portfolios, are that much more secure
because of those security measures.

I would like to have a conversation
with folks in the industry about what you all are
doing already in terms of data security and
protection, what you could be doing additional to
that that might be new and different and perhaps
helpful and also what the cost of those new measures
might be, recognizing that there are going to be
trade-offs here. That is a conversation I would like
to start engaging in now.

And by the way, again, we have got I
think some information in the back that we developed
in consultation with DBA in terms of data security and
debt buying and selling. I regard that guidance as
the basics, the first baby steps. That is not the
gold standard at this point, but those were easy
things that we could agree on in the first instance
to start setting that forward.

MS. BROWN: And Joann, clearly every
industry is affected by data security issues, cyber
security, data breaches, and it's affecting every
industry in the country. It is not unique to yours.
What do you -- what standards do you feel that your organizations are setting for debt collectors?

MR. FOEHL: I appreciate that the recognition that it isn't a debt collection industry issue only. Data security is certainly a concern broadly; from a person who might get some information and remember it from a collection floor to the large data breaches at Target and other data breaches within our own federal government. So data breaches are -- data security is a very important topic.

Of course, the question -- you asked a loaded question because debt collectors, including collection attorneys, debt buyers, third-party debt collectors and creditors collecting their own debt, they come in all shapes, all sizes, collect all different types of debt, have all different types of information.

So there isn't -- to my knowledge, there isn't any one gold standard related to data security. There's different obligations that they have under the law. There's different obligations their clients put on them. There's just different things that they need to do for their own individual businesses.
So I can't sit here and say there's a certain standard or certain technologies or certain best practices that carry across the board given the unique nature of the different types of debt collectors out there, the different sizes, the different industry or the different verticals that they're in, different -- they're placed along the debt collection marketplace.

MS. NEEDLEMAN: I'll be really candid, when we were first having this conversation, I was really -- it kind of hit me because I'm not hearing that. I know that our firms do a lot to ensure data security and they talk about the video cameras, no cell phones on the desk. That is a huge part of any compliance management program. You should target any compliance procedures in the law firms that are members of NARCA.

But to be honest, I haven't heard any reports where law firm information has been compromised. So I was a little surprised when you talked about this issue coming up. I think it's a really important issue and something that I would be very concerned about.

I guess I would like to hear more from the FTC and the data that you're seeing, where are
you seeing it, in what form, so that I can inform my
members that this is going on. But until we had this
conversation, I didn't really hear much about it from
the collection attorney space.

MS. BROWN: Greg, has the CFPB put up
any guidance on data security issues?

MR. NODLER: If we have, it's not
something I'm aware of. I will say debt collection,
like Chris is, you know, making sure the collectors
are collecting the right debt from the right consumer
is very central to the Bureau's views on debt
collection. And, you know, debt sales are a big part
of that.

If debts are getting sold multiple
times at the same time to different buyers or if debt
portfolios are getting stolen, all of those things
are problems that we're seeing like the FTC is
seeing.

MS. BROWN: Jessica, I'm familiar with
the Texas AG's great work on identity theft issue on
your website.

Do you have any guidance for
businesses on data security?

MS. LESSER: You know, I think I echo
what everybody said. I think it's a very
difficult -- it is a constantly evolving area. I remember when the GLBA first came out. I remember trying to comply -- how can a company corporate client comply with information safeguarding rules.

It's very difficult because small companies, law firms, small firms, big firms, but the obligations are uniform. Something is going on because this information with debt, particularly with this sale on debt, if you hear from these consumers what is going on, you realize where are they getting this information from.

You usually find it more in a payday loan sector, I think, than anywhere else, which is different, really more of a client base that seems more susceptible in the area of phantom debt. I don't know why. You see utilities more so. I mean, but it's where are they getting information.

I think it's -- the problem with any type of rules is next year it's different because technology is different. And so it just is ever-changing. I don't think there's ever a strict mark that goes in there.

But I think when you run into -- as in y'all's customer base of a consumer who has been a victim of identity theft is just to listen to them at
least on that one basis and it might be true. If you
know of a company who is a phantom debt company or
some -- we're talking fraudulent criminal misconduct,
is to let a regulator know about it. Because that's
our biggest problem, who is it. We don't know who it
is. So that's where I think that cooperation may be
helpful.

MR. NODLER: That reminded me we had
one case where the payday lender was getting a list
of consumers and depositing money in their accounts and
then contacting them and saying are you getting --

(Simultaneous speaking.)

MS. BROWN: So, Chris, you referenced
earlier the business guidance on the FTC's website.
There's also information there on data security as
well, correct?

MR. KOEGEL: Yes.

MS. BROWN: Did you bring some of
those materials here? Are they in the back or no?

MR. KOEGEL: I think some of it.

Again, I think that's another opportunity to plug
business.ftc.gov. We've got I think some things
relevant to data security. That's a big enforcement
priority for our Division of Privacy and Identity
Protection as well.
MS. BROWN: Then I have a number of audience questions. They might be a little bit scattershot. This might be like a little jeopardy around here. We'll get through them. There's some really good questions here.

The first one I'll do: Many of the recent CFPB settlements have been resolved by stipulated judgment filed in federal court rather than administrative consent letters. And I think folks are interested in understanding what is the reasoning for settling in one forum versus the other.

MR. NODLER: There's a ton of things on that. I can say that the authority to bring actions in federal district court and administratively, there could be all kinds of internal reasons why.

MS. BROWN: And the FTC takes the same approach sometimes doing administrative orders and sometimes federal court orders, correct?

MR. KOEGEL: In the aggregate, yes. Although I can't remember the last time that we did a debt collection case administratively. We have found that that there's such a long and rich history of FDCPA litigation, both with the Federal Trade Commission as plaintiff and with private plaintiffs.
But there is no real reason to go to an administrative law judge.

Typically, you go to an ALJ and do the administrative litigation, in part, because you need certain expertise from the judge to understand your case. And we have not found that necessary in the debt collection context. Federal judges seem to be fully capable of dealing with these issues as we present them.

MS. BROWN: This is a question for the regulator. It says, regarding the discussions of data analysis, what if after reviewing all of the recent regulation and its effect on businesses, the only discernible trend is American consumers are failing to pay their debts more than ever before, would such a finding prompt the regulators to dial it back?

MR. KOEGEL: I'm going to jump on that grenade first and I'm going to say no. Okay. Let me tell you why. I'm talking obviously from a law enforcement perspective.

I believe very firmly that collection of debts is an important part of our credit system and that the enforcement of the FDCPA and the Federal Trade Commission Act is equally important in order to
protect both consumers and to provide a level playing field for law-abiding debt collectors.

Just because a consumer owes a debt does not mean that he has forfeited his right to be treated with dignity, respect and honesty. That is just fundamental. So, you know, this isn't -- the FDCPA was not enacted just to make sure that consumers pay their debts or to help the FTC or CFPB enact regulations that would boost the repayment of debts. This is also about treating people with basic human dignity and respect, making sure that they are not abused or deceived into paying debts and that they are paying their debts, not somebody else's and in the right amount.

If a consumer is paying a debt that either they don't owe or they're paying more than they owe, then you are in a sense hurting the economy as a whole in some small respect as well. Because you are impairing that consumer's ability to put that money back into use for his own household and for other purposes.

MR. NODLER: I'll echo what Chris said, and also, to highlight that, the debt collection laws aren't there only to protect consumers who don't owe debts. They're also there to protect consumers
who do legitimately owe the debt. What the CFPB often does is order restitution in debt collection cases where there -- it's not relating to a question of whether or not the debt is owed but that it was unlawfully collected. So, I mean, our jobs are to enforce the law.

MS. BROWN: Here is another one for the regulators. The gist of it is how can there be consumer participation in litigation without legal representation? And if a consumer doesn't have access to attorneys, does anyone really think it's likely that they will defend pro se in court?

MS. LESSER: I'll take that one, rather than Greg's previous experience because I have seen more of it. I do think that's one of the major problems that you do have is without legal representation, I think consumers do not have proper information. And the process works when there's advocates on both sides.

The problem is consumers who owe money usually do not have enough money to go hire a lawyer, and that's a problem spot. I think it's hard to -- for that consumer, it may be more you see things in a court environment which here you do have different rules for justice courts for debts for people who are
suing on debts than you have in the district or county court. It's a $10,000 limit. I have found that people tend to defend themselves more in the justice court surrounding than they would elsewhere. I have also had consumers tell me, "I was told it would do no good."

That's where I would have more of a concern is whether or not this influence is because collection activities have falsely made a representation, maybe during a collection process, about the litigation.

And so if that is coming into play where consumers are in a situation that I was told there was no reason to hire a lawyer, that lawyer is just going to -- in our legal system, yes, just because somebody may owe a debt does not mean they are going to have a judgment against them.

And there are some collection activities that will say it's just -- it's an automatic process. But I think it's a very difficult area if consumers do not have representation. It's very hard to represent consumers in that area.

MR. NODLER: I would also echo consumers having the wrong idea about the lawsuit,
thinking that there's no point in defending
themselves. Another issue when I was a legal aid
lawyer, I would often have consumers coming in,
I would usually start my consultation by saying, first I want
you to know that you can't be arrested for this. And
sometimes they would just stand up and say, "That's
all I needed, okay," and leave.

MS. BROWN: Okay.

MS. NEEDLEMAN: I think a lot of
courts will tell you they are addressing this. There
have been many county courts, local courts, smaller
claims courts that tend to encourage consumers. But I'm
dealing in Philadelphia with a judge who worked with
me who started the mortgage diversion program seven or
eight years ago. There were so many foreclosures,
nobody was coming up to save their house. She thought
that was crazy.

This idea of the face-to-face
encouraging by them in the courthouse, whether to do
a separate docket, through a specially appointed
judge, I see that trend happening in lots of smaller
courts across the country. I hope in six or eight
months, we'll have better data to see how that's
working.

I think there have been a lot of
efforts on courts now, efforts for the courts to
address because these are obviously -- the dockets
are more heavily loaded with those types of cases, so
opportunities where again creating environments where
consumers feel comfortable.

A lot of them never -- maybe they
never went to jury duty before. Some of them have
never walked into a courthouse in their life so it's
intimidating. I completely get that. But we have to
create environments where they can come in and
communicate and get the information.

Some of the projects I'm working on
there will be the young people. They volunteer for
the indigent where they come in and donate their
time. A lot of law schools have pro bono clinics. I
encourage you to start thinking about that. It will
be very helpful.

MS. BROWN: We have lots more
questions but we are out of time. Thank you so much
for coming. It was a great conversation.

(Whereupon, the proceeding was
concluded.)
CERTIFICATE OF REPORTER

CASE TITLE: DEBT COLLECTION DIALOGUE,

   A Conversation between government and business

HEARING DATE: SEPTEMBER 29, 2015

I HEREBY CERTIFY that the transcript contained herein is an accurate transcript of the steno notes transcribed by me on the above case before the FEDERAL TRADE COMMISSION to the best of my knowledge and ability.

DATED: OCTOBER 7, 2015

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MICHELLE L. MUNROE, CSR