

FEDERAL TRADE COMMISSION

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DEBT COLLECTION DIALOGUE

A conversation between government and business

Wednesday, November 18, 2015

1:00 p.m.

Latin American Association

2750 Buford Highway

Atlanta, Georgia

Reported by: Brenda W. Thompson

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Southeast Region, FTC

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Member, ACA International Board of Directors

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The Consumer Relations Consortium

Brett Soldevila, Chief Compliance Officer

Security Credit Services, LLC

Chair, Certification Standards Committee

DBA International

P R O C E E D I N G S

1
2 MR. KANE: Good afternoon, folks. My name's Tom
3 Kane. I'm a senior attorney with the Federal Trade
4 Commission's Division of Financial Practices in
5 Washington, D.C., and we are delighted that you all have
6 come to join us on this rainy day here in Atlanta, and
7 we're delighted to be here in Atlanta.

8 My first honor is to introduce Georgia's
9 Attorney General, Sam Olens. Sam was re-elected to a
10 second term as Georgia's 53rd Attorney General on
11 November 4, 2014. As Attorney General he's committed to
12 serving Georgians by defending the U.S. and Georgia
13 constitutions and upholding the rule of law. He's fought
14 for stronger laws to protect Georgians.

15 In 2011 he worked with legislators to strengthen
16 the penalties for sex trafficking, making Georgia's law
17 one of the toughest in the nation. In 2012 he
18 spearheaded the first comprehensive revision of Georgia's
19 sunshine laws in more than a decade.

20 In 2013 he led the effort to stem the epidemic of
21 prescription drug abuse with a law that requires pain
22 management clinics to be licensed and regulated.

23 Olens currently is chair of the Southern Region
24 of the National Association of Attorneys General. In
25 addition to co-chairing the Federalism Preemption

1 Committee, he serves on the following committees: Energy
2 and Environment; Substance Abuse; Human Trafficking; Law
3 Enforcement and Prosecutorial Relations; Internet Safety,
4 Cyber Privacy, and Security.

5 Prior to being elected Attorney General, Olens
6 was chairman of the Cobb County Board of Commissioners,
7 serving from August 2002 through March 2010.

8 Olens also devotes much of his time to assisting
9 various nonprofit organizations. He's the recipient of
10 numerous awards and honors, including the Charles L.
11 Weltner Freedom of Information Award and the 2013 Emory Law
12 School Distinguished Alumni Award.

13 And for the past 11 years, Georgia Trend magazine
14 has listed Sam Olens as one of the 100 most influential
15 Georgians. In 2011 the Cobb Chamber of Commerce honored
16 Olens for his dedication to community and philanthropic
17 service by naming their annual community service award
18 the Sam Olens Business Community Service Award.

19 He graduated from the Emory University School of
20 Law in 1983. He's a registered mediator/arbitrator with
21 the Georgia Office of Dispute Resolution. He's been
22 admitted to the practice of law in Georgia and the
23 District of Columbia, and as important as all of those,
24 he and his wife Lisa have two children, Lauren and
25 Jonathan.

1 Please welcome Attorney General Sam Olens.

2 (Applause.)

3 ATTORNEY GENERAL OLENS: It's a pleasure to be
4 with you today. If I sound nasal, it's because I have
5 whatever most of you probably had two weeks ago, and I've
6 now been given it.

7 So it's a pleasure to be with you. It's my
8 understanding that, thanks to walk-ins, we actually have
9 potentially a bigger crowd than the FTC had at both
10 Buffalo and Dallas, so it's fun to see that Atlanta got a
11 bigger crowd.

12 And it's good to see the FTC reaching out among
13 the states to do this type of program. Many of the
14 issues we're here to talk about today, consumer affairs,
15 are nonpartisan. I think people are way too quick to
16 couch consumer protection in partisan politics.

17 All consumers have the right to be treated
18 fairly, consistent with the law. There's not a
19 Republican way or a Democrat way. And we need in this
20 hyperpartisan world to start looking at these issues in a
21 perspective based on justice rather than politics.

22 So it's a quick overview of my office, so as a
23 general statement, we represent the executive branch. I
24 used to say we sometimes represent the judicial branch,
25 the sovereign citizens principally and that we didn't

1 represent the legislative branch, but I just agreed to
2 represent for the first time in five years, so I guess
3 one in five years.

4 We handle a lot of fraud against the State,
5 public corruption, Medicaid fraud. We handle the capital
6 felony appeals, so that takes a lot of the time of our
7 office.

8 This past July -- and I'm looking at John Sours;
9 I want to see his response to this -- we inherited the
10 Governor's Office of Consumer Protection, so it's now the
11 Consumer Protection Division.

12 Is the word "inherit" acceptable?

13 MR. SOURS: I am your legatee.

14 ATTORNEY GENERAL OLENS: Yeah. You know, I
15 literally went on Google yesterday, trying to figure out
16 what would be a nice way of saying that they're now in
17 our office, rather than under the influence of the
18 governor. "Inheritance" was the best I could come up
19 with, but if you and John want to work on that, I'm open
20 to suggestions.

21 And it's been very good and very positive, and
22 they're now coming within the fold and everyone's working
23 well together, as it should. In fact, going totally off
24 my script, I see a couple folks in about the sixth row or
25 so on my right that are here from Georgia Watch.

1 And one of the neat things that we have done is
2 partnered with Georgia Watch to do an educational
3 pamphlet for the military and their family members, so
4 that they will better know what the law is both under the
5 federal act and the state law, that they will have
6 worksheets to understand what they can afford and what
7 they can't afford. And I'm really looking forward to the
8 product going out next year and for us to go all around
9 the bases next year to help educate our active service
10 members and their families.

11 Partnerships with the nonprofit community should
12 be the norm with government, rather than the exception,
13 so we're looking forward to that partnership expanding.

14 So the goal of our office is to make sure that
15 companies abide by the rules of law, whether state or
16 federal. And clearly having the FTC come here is a great
17 way for the public to see that we actually do want to
18 work together and do need to work together.

19 We also need to make the statement that consumers
20 play a role, too. It's great to have the state
21 government and federal government, but y'all are our eyes and ears.
22 So if you get a call that
23 doesn't smell right, you got to call us.

24 We can't know what's going on, what scams are
25 going on, without your help. And it's really been very

1 interesting, because all of a sudden now we're getting
2 folks that are reporting the conversations, and they send
3 us the tape, and those are really nice.

4 And in fact, one day I got 17 phone calls from
5 this guy at my home number, who told me that I was going
6 to be arrested really shortly and that I had an unpaid
7 debt, and I needed to immediately pay it before I was
8 arrested.

9 I sent the tapes on to the FTC and am awaiting the
10 process. But I think more and more we have the
11 technology to literally say, This is the phone number,
12 this is the time, go do your work; go take care of these
13 bad guys.

14 But we need to understand the public's got a
15 role. You need to be vigilant, you need to be actually
16 looking out for yourself before you ask others to look
17 out for you.

18 We actually received over a thousand complaints
19 in the past year regarding debt collection. It was
20 number three. Number one is autos; number two is
21 landlord-tenant. Number three was debt collection. And
22 most of them were in a very particular area, and, you
23 know, a thousand's a lot. And so clearly it takes a lot
24 of John Sour's time and his employees there.

25 We also run into a problem where more and more

1 debt collection firms are making believe they're law
2 firms, so that they can better scare the public up front.
3 We also have the law firms that are making believe
4 they're debt collection firms, so we have both sides of
5 that.

6 But the more that you record, the more you send
7 us the information, the more you tell us what's out
8 there, the more we can be responsive. I actually talked
9 to a legislator on my way here. His wife had an injury,
10 they had an annuity. This company keeps calling him to
11 buy out the annuity.

12 And I said, Well, is there every anything in
13 writing? He says, No, it's always over the phone. And I
14 said, Well, you really ought to ask them to send you an
15 email on it because, you know, first of all, it's
16 illegal; secondly, it becomes a taxable event rather than
17 nontaxable event. That would be a good company to go
18 after. So the more we can get in writing or recorded,
19 the better it is.

20 We also have an issue of the debt collection area
21 of these companies that keep buying debt. So by
22 definition, the problems tend to multiply when it's the
23 third and fourth purchaser of the debt. And then we find
24 that we have a real problem where they really don't know
25 how much is due and how much debt there was that you need

1 to pay before you're arrested, so that's a huge problem.

2 We actually had a meeting, John and I, where I
3 was giving some quotes to an association, and at the end
4 of the call they decided they didn't really want to have
5 a story on me in their next monthly email, because I
6 didn't answer the questions the way they wanted.

7 John and I answered the questions that it's a
8 problem, these third and fourth purchasers of the debt,
9 and they wanted me to say that it wasn't a problem. So
10 it is.

11 We like working with the FTC. We were involved
12 in the Operation Collection Protection. We like dealing
13 with them where we both do assurance of voluntary
14 compliances, and it's the type of thing where I think the
15 public gains more when we're working together.

16 Having said that, I do believe in a balanced
17 approach. Companies make mistakes, just like people make
18 mistakes. And at those times where it's literally a
19 mistake, that's not where you try and throw someone out
20 of business. That's the time you try and work with them
21 so they don't repeat the mistake.

22 So we need to use a sensible approach to know
23 when the hammer is really necessary and where, for
24 instance, an assurance of voluntary compliance is really
25 necessary.

1 As an aside, we have a lawsuit where we're
2 talking to the FTC, as we speak, against the company
3 Western Sky, out of South Dakota. Georgia law, for any
4 lending you have to be licensed with the insurance
5 commissioner. Maximum interest rate is 10 percent.

6 They're one of these internet companies that
7 didn't think they needed to be licensed with the state,
8 and we've seen them charge up to 340 percent. So we are
9 in litigation with them, and I unabashedly will tell you
10 I'm really trying to take them out of business.

11 AUDIENCE MEMBER: They're the company that was
12 licensed by the Indian reservation?

13 ATTORNEY GENERAL OLENS: Well, they claim they
14 are licensed by an Indian reservation. The problem is
15 they're not. One of the principal owners is a native
16 American, but not the reservation. And the other problem
17 is they're heartless. I mean, that's the type of company
18 that we need to shut down.

19 A couple of my colleagues did big splashes of news
20 when they sued them, and then they settled for like five
21 cents on the dollar. Well, you know, I'm sorry, but if
22 you settle for five cents on the dollar, you're pretty
23 worthless when you're talking about a company that's
24 charging 340 percent when the maximum under state law is
25 10.

1 Your job really is to take them out. You know, I
2 talked just before about a balanced approach and treating
3 people fairly. They should not be treated fairly. They
4 should be out of business. They should never be in our
5 state again.

6 So policing the debt collection industry is
7 everyone's responsibility, as I said before, to include
8 educating consumers. We need to work better together,
9 state and federal agencies, and we need to challenge
10 everyone to do a better job. We can do a better job, the
11 FTC can do a better job, consumers can do a better job.

12 But it's great to see all of you here. The goal
13 is after this program that everyone will work better and
14 that we'll work more collaboratively and that we'll
15 protect our consumers more and more as they expect us to.

16 So once again, thank you very much for having me.
17 I look forward to two great discussions as part of the
18 program.

19 Thank you very much.

20 (Applause.)

21 MR. KANE: Thank you, Attorney General Olens.

22 I now get to introduce my boss, Chris Koegel.
23 He's an assistant director in the FTC's Division of
24 Financial Practices in Washington, DC, and he coordinates
25 our enforcement and education program.

1 Welcome, Chris.

2 MR. KOEGEL: Thank you, Tom, and thank you,
3 Attorney General Olens, for those remarks.

4 And I want to say thank you also to the Latin
5 American Association for giving us the opportunity to
6 hold our event in your wonderful facility today. We're
7 really grateful for that.

8 And welcome, everybody, to today's debt
9 collection dialogue. Tom is going to hit the button
10 here, and we've got a hashtag that -- for anybody that
11 uses Twitter, if you want to tweet today, we can use that
12 hashtag. That's a hashtag we used for the other two
13 events.

14 As Tom said, I am an assistant director in the
15 Division of Financial Practices. I've been in that
16 position for about three years now. I've been at the
17 Federal Trade Commission for about six years. I was in
18 private practice for a number of years before that.

19 In my current position, among other things, I do
20 supervise the FTC's debt collection law enforcement
21 program, as well as our payday loan enforcement program.
22 And that means that, you know, that I'm supervising the
23 cases that we're bringing against debt collectors, our
24 investigations into debt collectors.

25 I also work very closely with our Division of

1 Consumer and Business Education, to try to provide
2 consumer and business education articles and materials,
3 so that we can try to combat the issue of unlawful debt
4 collection from that perspective as well.

5 As many of you know, for over 30 years the
6 Federal Trade Commission was the sole enforcer at the
7 federal level of the Fair Debt Collection Practices Act.
8 The states were on the job during that time, but it was
9 just the FTC, basically, at the federal level.

10 Starting a few years ago, we welcomed another cop
11 on the beat, the Consumer Financial Protection Bureau,
12 and I'm glad that John McNamara and Greg Nodler were able
13 to join us here today and be part of the conversation as
14 well.

15 They've been a wonderful partner, and we have
16 worked very closely with them on enforcement and
17 education activities. We're lucky to have partners like
18 the CFPB, like the state AGs, and like other state and
19 local law enforcement agencies as we combat illegal debt
20 collection activities, in an effort to protect both
21 consumers and law-abiding debt collection companies.

22 The federal government's debt collection work is
23 important for a lot of reasons. When Congress passed the
24 FDCPA, it noted the pervasive and harmful effects that
25 abusive practices have on consumers individually, as well as

1 on the economy as a whole.

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

8 This affects enormous numbers of consumers.
9 Studies have found that approximately 15 percent of adult
10 Americans, nearly 30 million people, have an account in
11 collections. Viewed another way, over 35 percent of
12 Americans with credit records have past-due debts on
13 their credit reports. And those debts are significant,
14 averaging over \$5100.

15 I would add that the cumulative amount of debt is
16 significant to the economy as a whole. In 2010 the total
17 amount of consumer debt in the U.S. reached nearly \$2.5
18 trillion.

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

24 Somewhere between 4- and 5,000 firms are engaged
25 in the third-party collection of debts. And if you

1 include collectors directly employed by original
2 creditors, the Bureau of Labor Statistics estimates that
3 as many as 456,000 people work as bill collectors. These
4 collectors make perhaps as many as 1 billion contacts with
5 consumers each year.

6 The consumer complaints that we receive at the
7 FTC confirm all of this. In fact, we continue to receive
8 more complaints about debt collection practices than
9 about any other industry. We received over 280,000 in
10 2014 alone, and our experience has been that these
11 complaints are just the tip of the iceberg.

12 There simply doesn't need to be this much abuse.
13 As many of you know and as Congress noted when it enacted
14 the FDCPA, debts can be effectively collected without
15 resorting to deception and abuse.

16 For all these reasons, the FTC has made debt
17 collection one of its strategic priorities for many years
18 now. This is reflected in the many law enforcement
19 actions we have brought. For example, last year the FTC
20 filed 10 new debt collection cases against 56 different
21 defendants. We obtained nearly \$140 million in
22 judgments. And those judgments banned 47 companies and
23 individuals from your industry.

24 And we are continuing this vigorous enforcement
25 work this year. So far, in 2015, we've already filed 11

1 new debt collection cases, and we still have another
2 month to go.

3 Three of the cases that the Commission filed this
4 year were announced just two weeks ago as part of
5 Operation Collection Protection. That operation was the
6 first coordinated federal-state enforcement initiative
7 targeting deceptive and abusive debt collection. It
8 encompassed 30 brand-new law enforcement actions by
9 federal, state, and local law enforcement authorities
10 against collectors who used illegal tactics such as
11 harassing phone calls, false threats of litigation,
12 arrest, and wage garnishment.

13 The cases announced as part of Operation
14 Collection Protection brought to 115 the total number of
15 actions taken so far this year by the more than 70 law
16 enforcement partners in the initiative.

17 Operation Collection Protection, though, is just
18 the start of this new initiative by the FTC to
19 collaborate more closely with our state, federal, and
20 local partners on these issues.

21 Today's event is another example of that effort
22 to work with our partners at the state and local level,
23 and we are very pleased to co-host today's event with the
24 Georgia Attorney General's Office.

25 As we said when we announced Operation Collection

1 Protection, this is the beginning, not the end, of our
2 efforts to team up to stop these unlawful practices. The
3 FTC's debt collection work is not confined, though, to
4 just law enforcement. Our focus on debt collection is
5 also reflected in the workshops and roundtables we've
6 held, the reports we have issued over the years, the
7 amicus briefs that we file, and the many speeches that we
8 give.

9 This will continue to be the case going forward.
10 In each of the last several years, the FTC has expanded
11 its work in this field, and we see that trend continuing.

12 These debt collection dialogues -- this is the
13 third of three planned so far -- are yet another strategy
14 for addressing unlawful practices. The first event we
15 had was in Buffalo, in June; the second was in Dallas, in
16 September. We see these dialogues as opportunities for
17 you to meet the agencies who police the debt collection
18 industry and for us to learn more about the industry and
19 the issues that matter to you.

20 We hope to highlight areas of concern that we
21 have at the state and federal level, share our strategic
22 priorities, and generate ideas for compliance management.
23 We also hope that we can find ways to partner with
24 industry to reduce the abuses in this area and to stop
25 the bad actors who are giving this industry a bad name.

1 During today's two panels you will hear from me,
2 from the FTC; Greg Nodler, from the CFPB; Ken Lennon,
3 from the Office of the Comptroller of the Currency; John
4 Sours, from the Office of the Georgia Attorney General;
5 Carri Grube Lybarker, of the South Carolina Department of
6 Consumer Affairs; Olha Rybakoff, from the Office of the
7 Tennessee Attorney General.

8 All of our agencies have jurisdiction over these
9 difficult debt collection issues; that's why it's so
10 important that we collaborate. These collaborations have
11 always led to great results.

12 This spring, for example, the FTC brought its
13 first joint case with the CFPB, the Green Tree Servicing
14 case, to address debt collection and debt servicing
15 violations. And over the last year we have filed three
16 cases jointly with the New York Attorney General's
17 Office, and one with the Illinois Attorney General's
18 Office.

19 Those collaborations have been clear successes,
20 and we will continue to look for those opportunities.
21 But certainly as important as the law enforcers and
22 regulators on our panels today are the four collection
23 industry representatives who will be speaking.

24 On the first panel we'll have Nick Jarman,
25 representing ACA International. On the second panel

1 we'll have three industry representatives: Tim Bauer,
2 representing the Consumer Relations Consortium; Harvey
3 Moore, representing NARCA; and Brett Soldevila,
4 representing DBA International.

5 Our moderators today will be Cindy Liebes, who
6 runs the FTC Southeast Region and is based here in
7 Atlanta; and Tom Kane, our wonderful staff attorney who
8 works with me in our DC office.

9 They'll ask questions of the industry
10 representatives as well as the federal and state reps,
11 and through these questions and answers, we'll address
12 many topics that I hope will be of great interest to the
13 collection agencies, debt buyers, attorneys, and
14 creditors that are here today.

15 We hope to leave about 10 minutes at the end of
16 each panel for those of you in the audience to ask
17 questions of the panelists; I think we've got some
18 comment cards that we've passed out. And you can raise
19 it when you're ready, and somebody in the audience will
20 pick it up and bring it up to the moderator.

21 Before we move on, I want to thank some folks who
22 were absolutely wonderful in helping us set up today's
23 event. For the Latin American Association, Diane Roman;
24 from the ACA of Georgia, I want to thank Roger Medlin for
25 helping to drum up interest in this event.

1 From ACA International, Rob Foehl, as always, was
2 wonderful in getting the word out about this event.

3 DBA International, Jan Stieger; from NARCA, Mark Dobosz;
4 and from the FTC we've had wonderful support from our
5 Southeast Region, Cindy. Thank you so much to Robin
6 Rock, Doris Walton, Trinita Williams, and I'm sure others
7 that I'm forgetting.

8 And, Tom, as always, wonderful job. Thank you.

9 One final note before we get started. I'm going
10 to give the standard disclaimer once on behalf of myself
11 and our other government reps so that we all don't have
12 to do it. We're all here today expressing our personal
13 views. They're not necessarily those of our respective
14 agencies, but we're the ones doing the work.

15 So thank you again for coming today. I look
16 forward to sharing the FTC's perspective on many
17 different debt collection topics and hearing the
18 perspective of industry as well. Thank you so much.

19 (Applause.)

20 MR. KANE: Thanks. We'll now have Panel 1, and
21 our moderator, as Chris said, will be Cindy Liebes, from
22 our office, and Cindy will introduce our panelists. The
23 topic of this first panel is State Issues, State Debt
24 Collection Issues.

25 The second panel, later this afternoon, will be

1 on Federal Issues. Thanks.

2 Cindy.

3 MS. LIEBES: Thank you. This is a great turnout.

4 Thank you all for coming. I'm Cindy Liebes; I'm the
5 regional director for the FTC's Southeast Regional
6 Office, and I just want to extend my thanks for all of
7 the folks that are here today.

8 It's a wonderful turnout and, as the Attorney
9 General said, it looks like we've gotten quite a few
10 people, hopefully more than in the other dialogues, but
11 it's a great turnout.

12 We also have a wonderful panel today. I'll
13 introduce them. We have Nick Jarman; he's the president
14 and COO of Delta Outsource Group, and he's also a member
15 of ACA International's board of directors.

16 Next we have Carri Grube Lybarker. Carri and I
17 have worked together a lot. We've worked together on
18 many, many different cases. She's the administrator of
19 the South Carolina Department of Consumer Affairs.

20 Then Ohla Rybakoff, she's senior counsel with the
21 Tennessee Attorney General's Office. And finally John
22 Sours, the director of the Consumer Protection Unit at
23 the Georgia Department of Law.

24 It's a wonderful panel of -- especially the state
25 regulators. We've worked very, very closely at the FTC

1 with these state regulators and many others.

2 Our regional office extends to the seven
3 southeastern states, but I've been with the agency 28
4 years, and in the last several years we've worked even
5 more closely with our state partners, with our other
6 federal partners, and jointly, especially in the area of
7 debt collection, we've worked collaboratively to bring
8 law enforcement actions and do a lot of consumer
9 education in this area, so that we can root out the bad
10 companies and actually make it more of a level playing
11 field for the good ones.

12 So that said, I'll start out with the initial
13 questions. The first one is to Nick. What are some of
14 the state regulation and enforcement issues that ACA has
15 been seeing as especially important?

16 MR. JARMAN: Thank you. And first I'd just like
17 to take this time to thank, on behalf of my organization,
18 ACA International, the Georgia Collectors Association and
19 all the members of the industry. We appreciate these
20 dialogues. To Chris, Tom, Cindy, we appreciate having
21 the opportunity to speak from you.

22 You know, one of the things that we look at when
23 we look at state regulations is really, what is the intended purpose of
24 the regulation and what is the expected outcome that you're
25 looking for, going through the process?

26 By definition, to regulate is simply to

1 try to regulate conduct and putting rules in place to do
2 that. And so, you know, here today I can only speak on
3 behalf of legitimate debt collectors.

4 And from listening to Attorney General
5 Olens and Chris and -- there seems to be a clear
6 distinction that we're starting to see between legitimate
7 debt collectors and illegitimate debt collectors.

8 And, you know, while the media or some actions
9 may tend to think that there's widespread wild
10 west type action going on, us within the industry see it
11 quite differently.

12 And we look at it from the same
13 standpoint as you; we want to get rid of the bad actors.
14 We want to partner, you know, as an organization with the
15 attorneys general, with the regulators on how do we weed
16 out the bad actors.

17 And, you know, the reality is that phantom debt
18 collection, what we all hear about, is a very
19 unsophisticated criminal action: You come up with a
20 name, you come up with a large bank, you come up with a

1 dollar amount, and you have a phone. And a lot of these
2 bad actors are what's causing the issues for us.

3 So we do not feel that necessarily that more
4 regulation is going to have an impact on what the
5 intention is to stop. If you have a criminal and they
6 have an intent to commit a crime, regardless of what that
7 is, more regulation will not stop them from doing that.

8 Weeding them out and putting them, you
9 know, in their place and getting rid of them will. What
10 we fear is that what we've seen with some of the
11 regulations, that we can talk about a little bit later
12 on, is that more regulation ends up hurting the
13 legitimate businesses, and ultimately the unintended
14 consequences are that it hurts the consumers that it's
15 actually there to protect.

16 One of the things that regulation does is it
17 limit the amount of opportunities that a collector has
18 to contact a consumer.

19 From an inside-the-industry perspective, year over
20 year over the last five to ten years, as we've looked at
21 caller ID and the dialing technology and the mobile uses
22 of cell phones, the contact rates of collection agencies
23 from a voluntary basis continues to go down every single
24 year, with or without the regulation.

25 And so our fear is that continued regulation will

1 ultimately reduce the amount of opportunities that we as
2 debt collectors have to contact a consumer voluntarily.

3 And regardless of what you hear or people may
4 say, you know, debt collectors do not want to bring
5 lawsuits against consumers. It's not
6 productive, it's not profitable.

7 You know, the desire is to always resolve it
8 voluntarily, and our concern is that the more regulation
9 that gets put in place, the less opportunity that we're
10 going to have to contact the consumers, which ultimately
11 the unintended consequence to the consumer is negative
12 action, negative CBR reporting, lawsuits, judgments,
13 liens, levies, whatever the individual state laws allow.

14 And as Chris alluded to, one of the reasons that
15 we're here is because of how much our actions touch
16 consumers. The reality is that when you have a billion-
17 plus touchpoints with consumers every year, it's going to
18 cause waves, and it's going to affect so many
19 people, and so that gets a lot of the attention that's in
20 there.

21 But I think it's important to also understand
22 what we're intending to regulate, and when we look at all
23 of the complaints -- and we'll just kind of use the
24 consumer complaint database with the CFPB -- and out of
25 those 30 to 50 million people that might be touched by

1 consumers, you have less than 5 percent of that
2 population that has filed a complaint.

3 And out of that 5 percent, 65 percent of that has
4 been complaining about the balance, about the dispute,
5 about the -- you know, something of that nature. So
6 when we talk about regulation, we recognize that that's
7 an issue.

8 So let's gear toward some of the talk
9 as to what the consumers are complaining about, which 65
10 percent of all complaints with the CFPB have some
11 relation to do with the balance, the existence of the
12 debt, the dispute. Less than 2 percent have to do with
13 threatening any type of legal action, as was alluded to.

14 And so, you know, we don't have anything in
15 particular that we're for or against when it
16 comes to the state regulation; we just really want to be
17 cognizant of what the purpose is and making sure that we
18 have the outcome.

19 We do ask for consistency. We really want to see
20 some consistency as it goes. And clarity, clarity is a
21 very big, important thing for us. One of the things that
22 we saw this year with the New York State coming out with
23 the laws was a lot of unclear regulations, so much so
24 that they issued a frequently asked questions
25 and held subsequent dialogues so that people could

1 understand what a debt meant; what did they mean by
2 chargeoff, and to really address that.

3 And so, you know, as we move through the process
4 and we talk about regulation, from industry's standpoint,
5 we really want to see that consistency, and we want to
6 see the clarity, because the bottom line is if
7 we understand what the rules are, then those that are
8 legitimate -- and by that I mean licensed, insured,
9 bonded -- we're going to play by those rules.

10 We may not agree with them all the time, but the vast majority of
11 the industry is going to do that. And so that's really kind of where we
12 are.

13 As far as the enforcement actions, again, we're all on the same
14 team when it comes to that:

15 root out the bad actors. The enforcement actions, the
16 only thing that we as industry would like to see if the
17 difference between a fundamental difference of business
18 opinion that a regulator may have and comparing that to
19 an egregious act.

20 And so we're seeing some of those starting to
21 play out in the courts, and so we share your
22 concerns about the bad actors, and we want to do what we
23 can to partner with you and to continue these type of
24 dialogues on the state level and on the federal level.

25 And lastly, you know, when we look at ACA and we

1 look at the consistency of the makeup of what
2 ACA is, it's important to also note that when it comes to
3 state regulations, that is determined by the individual
4 state units that ACA has.

5 ACA is made up of a federation of 40 different
6 state units, including the Georgia Collectors
7 Association. So when issues become prominent here in
8 Georgia, while ACA is there to give support and to
9 provide guidance, ultimately it the Georgia Collectors
10 Association's leadership and it is the Georgia Collectors
11 Association members that would get involved -- same as
12 with South Carolina and Tennessee -- to help navigate
13 those policy decisions.

14 MS. LIEBES: Great. So based on what Nick had to
15 say, for each of your states, for the regulators, could
16 you tell us a little bit about your debt collection
17 licensing and enforcement regulations so we can talk
18 about that, sort of addressing some of the things Nick
19 brought up in that area.

20 MS. LYBARKER: Again, I'm Carri Grube Lybarker,
21 with the South Carolina Department of Consumer Affairs.
22 In South Carolina we do not have a debt collection
23 licensing statute. There is no industry-specific
24 licensing statute.

25 We do, however, have the Unconscionable Debt

1 Collection Practices Act. We are a Uniform Consumer
2 Credit Code state; there are about 10 of us that have
3 similar laws in that area. But I think this one is a
4 little bit different as it goes state by state, and it's
5 just basically a list of do's and don't's that has some
6 similarity to the Fair Debt Collection Practices Act as
7 far as not being able to harass a consumer, use obscene
8 language, misrepresent or mischaracterize a debt, things
9 of that nature.

10 But debt collectors do also have to comply with
11 the unfair trade practices statute; there's jurisdiction
12 under the Consumer Protection Code for us to bring
13 actions, as well as for the Attorney General's Office.

14 Our office is a standalone consumer protection
15 agency, but the Attorney General's Office has general
16 unfair trade practices authority as well.

17 We have recently, though -- even though there is
18 not a specific industry licensing statute in our state --
19 have issued interpretations that debt buyers do have to
20 obtain licenses, dependent on the types of loans that
21 they are purchasing.

22 So as an example, for supervised loans in our
23 state, which are consumer loans where an interest rate or
24 APR in excess of 12 percent is being charged, persons who
25 enter into those transactions or take assignments and

1 enforce rights under those transactions have to obtain a
2 license in our state.

3 So debt buyers who are purchasing those loans,
4 whether or not they are current or if they are in
5 chargeoff status, also have to obtain a supervised
6 lender's license.

7 Same thing with deferred presentment
8 transactions, which a lot of people think of as payday
9 loans. Again, that's another one of those
10 definitions that varies state by state, but if you have
11 someone who is purchasing charged-off accounts or accounts
12 that are deemed uncollectible, they have to obtain a
13 deferred presentment provider license before they can
14 purchase those.

15 So those are just some of the laws that we have in
16 South Carolina that would apply to debt collectors. And
17 I think 2010 was the last time that we attempted
18 to have a debt collection licensing statute passed in our
19 state, but it was unsuccessful.

20 It is certainly something that we want to look at
21 as complaints in the debt collection area are typically
22 our number-one complaint category. At our department we
23 take complaints that consumers have against any business,
24 and if they're regulated by somebody else, we refer them.
25 If they're not regulated by anybody, we mediate them out.

1 We get between 4,000 and 5,000 complaints
2 annually, and debt collection is usually in the 10 to 15
3 percentile of complaints that we get there. I think last
4 year was the first year in at least four or five years
5 where it was actually the third complaint category
6 instead of being number one.

7 So that's what we have in South Carolina.

8 MS. RYBAKOFF: Hi. And just to remind everyone,
9 my name is Olha Rybakoff; just think "hello" in Spanish
10 and you'll get the first name down pat.

11 I work with the Tennessee Attorney General's
12 Office. I am in the Consumer Protection Division. And
13 my role with debt collection comes into play in the
14 context of enforcing our generic consumer protection
15 statute, which is often what folks refer to as a little
16 FTC Act, or unfair, deceptive acts and practices statute.

17 We do have a regulation scheme in Tennessee. Our
18 Department of Commerce and Insurance handles the
19 registration function and also has a collections board
20 which deals with violations of the laws.

21 I see the issues on the debt collection side
22 when -- typically when they arise in marketing or sales
23 cases, where, for example, we may have -- and to give you
24 a real-life example, we had a military lender that was
25 operating out of Fort Campbell, Kentucky/Tennessee, and

1 targeting soldiers with extremely high interest, usurious
2 rates with tripled prices for computers and the like;
3 very grotesque exploitation.

4 And typically what we see in cases is if somebody
5 is operating in, I think to use Nick's word, in an
6 outrageous or egregious manner to begin with, there are
7 going to be issues across the board that we see.

8 And in this particular case, there were also debt
9 collection issues, where the company created a captive
10 debt collection company, hoping to circumvent the Fair
11 Debt Collection Practices Act but engaged in a number of
12 improper activities, including calling the commanding
13 officer of the soldiers, tracking people down through the
14 platoon, doing everything they could to embarrass the
15 person.

16 We even had a horrendous situation where one
17 soldier was found beheaded on the streets of Iraq, and we
18 asked that collector to lay off the family, and they kept
19 collecting for another eight months, until we had the
20 court address it.

21 But that's what you get on the really bad side of
22 the scale of what we see. Typically these people are not
23 licensed. Typically they operate under the radar. Often
24 they cannot be reached through regular licensing or
25 registration schemes that exist for various reasons.

1 So the type of interaction and the type of work
2 that we do touches on debt collection, just using our
3 generic consumer protection act.

4 And we argue that if it's a violation of the Fair
5 Debt Collection Practices Act or another statute, it's a
6 deceptive practice, and it's a violation of our statute,
7 and we've argued that successfully.

8 So that's a little bit of a snapshot of how I
9 interact with the bad guys on the debt collection side.

10 MS. LIEBES: Does Tennessee have a licensing
11 statute for debt collectors?

12 MS. RYBAKOFF: We have a regulatory scheme in
13 place, and there's a separate -- unfortunately, it's not
14 an agency that I interact with directly, other than
15 perhaps to occasionally get licensing papers, but we do
16 have a scheme in place and a board that regulates and
17 hears complaints about violations of that scheme.

18 So we do have a system in place, but from our
19 standpoint, the folks I interact with typically aren't
20 licensed. The licensed individuals would be handled by
21 the board.

22 MS. LIEBES: Okay. John?

23 MR. SOURS: In the words of the late Mel Allen,
24 Hello, everybody. I'm John Sours; I'm from the
25 government. I'm not necessarily here to help you. I may

1 be, or may be not.

2 Our agency's been around since 1975, started as
3 the Governor's Office of Consumer Protection. Effective
4 July 1 of this year, we moved administratively --
5 though, thank God, not physically -- to under the
6 Attorney General. We're now the Consumer Protection
7 Unit of the State Law Department.

8 Our titles have changed a little bit, but the
9 statutes we enforce and the things we do and the people
10 we are have all remained the same. Our basic statute is
11 the Fair Business Practices Act, which was passed back in
12 1975; it's been amended about 27 times since then.

13 For those of you who love statutory
14 interpretation and construction, I can tell you it has
15 gone from about 17 pages to about 132 over that period
16 of time, rivaling, probably, the mechanic's lien law, if
17 any of you lawyers are familiar with that.

18 It seems whenever we enact a statute, we don't
19 take anything out; we just add stuff to it. And
20 unfortunately, that's how this act has developed.

21 Some of the language in our statute is very
22 broad. We broadly condemn unfair and deceptive trade practices.
23 But on the other hand, we have very specific requirements, such as
24 for health spas.

25 We do not have in Georgia a licensing statute that pertains

1 to collectors or to debt buyers. Georgia has over 50 --
2 I think it's now 55 -- different statutes that regulate
3 various trades and occupations and businesses. We
4 regulate auctioneers, cosmetologists, and so forth, but
5 not this industry.

6 I have seen no real sentiment for that, and I
7 have to say, based on what I see, our legislature is not
8 particularly inured to regulation. So I don't think
9 that's going to happen anytime soon.

10 I'm not so sure that it really would be much help
11 to us; depends, I guess, on what kind of a statute it
12 was, but we feel like we have pretty much all the tools
13 that we need to do the job that we're now doing.

14 General Olens said that we get 1,000 debt collection complaints a
15 year. That's a little low. It was actually closer to 1200
16 last year, about abusive debt collection. There's a
17 common denominator to these. It's a revelation to me to
18 hear that that's only 2 percent of all consumer problems, because within
19 that 2 percent, we must see about 80 percent of the 2 percent.

20 Almost every such complaint we get -- and we get
21 them almost every day, certainly every week -- has three
22 or four common denominators: a threat to prosecute or
23 jail someone, sometimes even summarily: If you don't pay
24 by four o'clock, you're going to be in jail by 6:00;

1 sometimes even a threat of bodily harm; calling
2 repeatedly; calling at all hours of the day and night;
3 several other things; including, you know, abusive and foul
4 language. Those are common denominators that we see
5 again, again, again, and again.

6 Now, 90-some percent of those complaints that we
7 get involved smaller, generally more localized or regionalized
8 firms; not too many that are about larger or national firms, although
9 the line's not quite as bright as some may hope it to be.

10 We do get complaints -- and we have some right
11 now -- about large debt collection firms; not a lot, but
12 we do have them, and we take them seriously, like we do
13 all the others.

14 We proceed against, oh, probably a dozen to 20 of
15 these per year. And what we always do when we do that is
16 we proceed against the principals of the business as well
17 as the entity itself. We exact penalties where we think
18 it's appropriate. I'm most interested in changing
19 business practices, though, so our AVCs tend to be rather
20 lengthy, because there are a lot of practices that we
21 want to see stopped, and that sometimes takes a lot of
22 verbiage, but that's kind of where we're coming from.

23 MS. LIEBES: Do any of you have any comments
24 based on what each other said?

25 Or, Nick, how about you? Any thoughts on what

1 the states' regulators said or --

2 MR. JARMAN: Absolutely.

3 (General laughter.)

4 MR. JARMAN: So as it relates to, you know, what
5 you're intending to regulate -- and maybe this is more
6 for John and Carri, that do not already have licensing
7 statutes.

8 But a lot of the violations that you're referring
9 to -- threats to put in jail, bodily harm, calling at all
10 times of the day -- obviously those are
11 absolutely egregious, and all of those are banned under
12 the Fair Debt Collection Practices Act.

13 So, what would be the hope -- and I
14 know, John, you said that the legislature currently
15 doesn't have an appetite necessarily for the regulation,
16 but what -- the regulation is already there to
17 say that, from a federal level, this is illegal
18 activities.

19 So what else is needed to kind of get
20 ahold of these illegitimate debt collectors, for the most
21 part?

22 MR. SOURS: For once, I think I would agree with
23 an industry member who says we don't need any more
24 regulation and we don't need licensing. I think it would
25 be of marginal utility, because most of the people who

1 are going to engage in that kind of activity,
2 unfortunately, they're going to do it whether they're
3 licensed or not, because they just don't give a damn, a
4 lot of these people.

5 And so I'm more interested in going after the
6 activity at the roots and pulling it out by those than I
7 am in starting yet another proceeding to revoke
8 somebody's license and having them contest it. It all drags on for a year
9 or two. I'd rather
10 just get to the meat of the problem, if it's that
11 serious, and deal with that per se.

12 Like I said, we require, whenever we involve one
13 of these companies in discussions about settlement, that
14 the principals of the company be bound equally with the entity itself.

15 And we oftentimes use what is colloquially called
16 hammer clauses in terms of designing penalties; that is, for example,
17 you're going to pay X, but if you violate this agreement, you're then
18 going to pay 3X. We also believe in monitoring settlements
19 effectively on a continuing basis for a year or two.

20 I think all those things are a lot more helpful
21 than invoking yet another procedure under a licensing
22 law. That's my personal opinion.

23 MS. LYBARKER: And for us in South Carolina, I
24 think it was about 68 to 70 percent of the complaints

1 that we get are dealing with unconscionable conduct, and
2 it also includes validation of the debt, verification of
3 the debt, time-barred debt. So those are the kinds of
4 issues that we would want to see addressed in any kind of
5 legislation in our state, to make it clear to
6 consumers -- giving consumers meaningful notices and
7 meaningful process to dispute the debt, making it clear,
8 as Nick was addressing earlier, as to what the
9 responsibility of that debt collector is and providing
10 such information to the consumer and just making sure
11 that everyone is educated on that process across the
12 board.

13 But the debt buyer situation is also an issue
14 that we're seeing as far as not being able to provide the
15 information that the consumer is disputing. So if the
16 consumer is saying, I don't believe the balance is this;
17 I believe it's X, and the debt buyer not being able to
18 provide that kind of information, stringing the consumer
19 along, and continuing to engage in those kinds of debt
20 collection practices.

21 And then notice to consumers, whenever there is
22 time-barred debt, about the type of action that the debt
23 collector could take if they affirm that debt, basically
24 with the statute of limitations being upped again.

25 So those are kind of the issues that we have

1 focused on, and we actually had provided some comments to
2 the CFPB when they were doing their debt collection rule,
3 based on the complaints that we had that detailed
4 that a little bit further.

5 MR. JARMAN: And just to piggyback on that a
6 little bit, so, you know, we hear a lot about the issues
7 with debt buyers or substantiation of debts or debt
8 verification. We look at the CFPB database, and we see
9 that 65 percent of them have something to do with
10 disputes or -- with that of the debt.

11 Is there an expected outcome, maybe, from the
12 CFPB that you're hoping will eliminate this, because, you
13 know, as we continue to look at it, a complaint is a
14 complaint. Right? It's an expression of discontent,
15 and everybody might look at them differently. But these
16 are a lot of numbers that are thrown out there. There's
17 a lot of touchpoints that debt collectors are making.

18 From the industry side, and as somebody within
19 the operations, what I can attest to is that a
20 lot of disputes generally tend to be stall tactics, in a
21 sense, for consumers to delay having to deal with the
22 debt.

23 Now, you can go into a lot of consumer-based
24 websites, and one of the first things that it'll tell you
25 is, just dispute the debt, and it'll buy you some time.

1 And so we see that within agencies; we
2 see that within the complaint trends. Is there any
3 concern that, you know, when you're dealing with credit
4 repair companies, which is a very big issue right now,
5 where they will send multiple disputes, and in
6 a lot of cases the consumer is not even aware that their
7 debt's being disputed.

8 They'll send them to credit reporting agencies,
9 constantly having to -- the agency having to vet those
10 issues. Is there any onus to put back on --
11 you know, right now all of the responsibility is on the
12 collector. All the consumer has to say is, It's not my
13 debt. And then they file the complaint.

14 Is there anything that you've looked at, or that
15 you're hoping to see guidance from a
16 regulatory body, like the FTC or the CFPB, relating to
17 what is causing the majority of the complaints?

18 MS. LIEBES: You know, I just want to comment on
19 that, just from my perspective, having been doing this
20 for a long time. The Fair Debt Collection Practices Act
21 puts requirements on the industry to provide notification
22 to consumers.

23 And quite often that's where, from a consumer
24 perspective, the frustration seems to come from, is that,
25 assuming they're not just filing some sort of frivolous

1 claim that they don't owe the debt or the number is
2 wrong, a lot of times what they want is some sort of
3 verification, some piece of paper to show how much they
4 owe, why they owe it, how they owe it, who the original
5 creditor is.

6 And that's where I've seen the frustration, and
7 like you may be saying, it may not necessarily be more
8 regulation; it may in fact be that the laws as written
9 are sufficient. However, I will tell you, from our
10 perspective seeing complaints, it is the number-one
11 complaint category.

12 And from my own personal
13 perspective, having the first case I ever worked on,
14 like I said, 28 years ago, was a case against a debt
15 collection company, and it was those type of things,
16 where consumers were complaining: I don't owe the debt,
17 or I don't owe this amount, and I can't get any
18 resolution, because all I'm getting is stall tactics.

19 MS. LYBARKER: And to answer your question of
20 whether or not getting some federal guidance would be
21 helpful, yes, 100 percent yes, because I do think that
22 there are some gaps that could use the clarity that we
23 were discussing earlier.

24 But also, with that initial communication with
25 the consumer, something that our office gets a lot of

1 calls about, too, that was previously mentioned are
2 scams. I mean, in this day and age of technology and
3 security breaches, someone can call up a consumer with
4 their social security number and tell them that they owe
5 a debt.

6 Like they're able to get these other kind of
7 personal information points and data to make their scam
8 seem more legitimate, and so what separates you from that
9 scam artist is being able to provide information that
10 shows, yes, we have this account. This is the
11 information that we have that shows that you owe it; this
12 is the amount that's owed.

13 And I would imagine that that kind of information
14 would be readily available; again, not looking to the
15 debt buyer chain, where oftentimes that doesn't get
16 passed along as the debt is sold.

17 MR. SOURS: My experience is this: The more
18 remote from the original transaction one gets, the
19 greater the volume of these complaints and,
20 correspondingly, the greater the problem for anyone
21 trying to collect it in proving what the original debt
22 was.

23 We get a couple dozen complaints every year about
24 such situations; that
25 we look into them, and what we find is the party trying to
26 collect the debt usually has no idea what the original

1 amount of the debt was, what the terms of it were, what
2 the interest rate was, who even sometimes the original
3 creditor was.

4 And, of course, a fraction of those -- and I
5 think it's probably a growing one, as you allude to --
6 is this whole thing was a scam to begin with. They're
7 just making it all up.

8 And while we're talking about making it all up,
9 somebody mentioned credit repair. That's another
10 problem, related but separate.

11 It seems like there are a growing number of
12 people out there who think that they are credit repair
13 experts. They have no particular training in financial
14 matters. They just say they are credit repair experts.

15 Sean Conroy is famous in our office for going
16 around, pulling off leaflets from utility poles and trees
17 and so forth, and probably half of them say, Credit
18 Repair, with a phone number.

19 And inevitably those are just scams. Those are
20 people with no education. Those are people who have no
21 proper concern for the folks they're dealing with. They
22 just want to get a fee up front and get down the road.

23 That's a growing problem, and we're going to have to continue
24 to address it.

1 With respect to whether additional federal
2 guidance would be helpful, yes, depending on what that
3 guidance is and how clearly it's disseminated, it
4 probably would, but the fact is a lot of this stuff is
5 common sense.

6 I think all of you would agree you shouldn't be
7 holding yourself out as a credit repair expert when
8 you don't know anything about financial affairs. We
9 don't need any guidance to establish the wisdom of that.

10 MS. LIEBES: One of the biggest problems I think
11 that we see is a lot of times the differentiation
12 between -- there's a lot of fraudulent debt collectors,
13 credit repair operations out there, and it does hurt the
14 legitimate industry.

15 The legitimate collection industry is being
16 severely hampered by a lot of these what we call phantom
17 debt collection operations, phantom -- credit repair
18 operations that are purely fraudulent, and so I think you
19 all have seen that, and oftentimes the regulations
20 themselves aren't going to cover those types of
21 companies.

22 MS. RYBAKOFF: And I was also going to add that
23 this is an area, unlike others, where consumers can also
24 become extremely emotional. And we all know that when
25 we're emotional, we're not necessarily at our best or

1 make the best decisions.

2 So from the regulation-enforcement standpoint, we
3 recognize that some of the folks that may be complaining
4 or reporting to us are hyped up emotionally and angry,
5 and we may not be getting the complete story. But that
6 is something that we try to do carefully and to sort
7 through the facts, because we recognize that just
8 because a consumer is complaining doesn't mean
9 that it's, you know, 100 percent accurate. We certainly
10 recognize that.

11 MS. LIEBES: Nick.

12 MR. JARMAN: And I think that as -- we
13 could have an entire dialogue on credit repair companies,
14 but that's for another time and another day.

15 But to -- I think that everybody here -- and I'll
16 speak on behalf of the industry on this point. We agree
17 that there should be better documentation, and
18 it starts with the originator of the debt and then who's
19 ever getting that.

20 So, I can say that, especially on
21 behalf of ACA, my organization, who we deal with and
22 others, that, you know, commonplace, whether that's
23 guidance from the CFPB or best practices that are put out
24 there from ACA, we would all be in favor of
25 substantiation, documentation of the debt.

1 As a debt collector and having been one for 15
2 years, the worst thing that we could ever have as a debt
3 collector is not enough information.

4 And so there is absolutely nothing against or
5 that we're not for as a debt collector to get more
6 information. It starts with the onus on the originator,
7 and we would like to have that.

8 And then just to note also, that anytime you're
9 asking somebody to pay money, it's an awkward and
10 sometimes uncomfortable situation, especially when you're
11 doing that to a stranger.

12 So if you've ever lent money to anybody and they
13 didn't pay you back and they were family or friends, it's
14 a little bit awkward to them and say that. Try doing
15 that, you know, on the telephone.

16 So, you know, inherently what debt collection is
17 awkward and uncomfortable. And, you know, it's our
18 job and the pendulum has swung to really try
19 to make that experience that the consumer has totally
20 against what we're seeing complaints filed with.

21 You know, we expect professionalism, we expect
22 respectfulness. We understand that not everybody is
23 doing it, but at the same point, the vast majority are.
24 But like anything else, it's the bad apples that spoil
25 the bunch.

1 MR. SOURS: I want to tell you a brief story. I
2 have about 40 people in my Sunday School class, and as
3 luck would have it, three of them -- and I'm a Baptist --
4 three of them are debt collectors. One of them is a
5 supervisor.

6 So we've had some of these conversations, and
7 here a couple weeks ago, the guy brought in a sheaf of
8 paper. Said, I want you to look through this. He had
9 20 letters from people that he had dealt with, who he was
10 trying to collect money from -- some he succeeded, some
11 he didn't -- that were complimentary to him.

12 He said, You don't see this sort of thing. And I
13 said, No, you're right. Said, Thirty-five years as a
14 lawyer in private practice, I represented contractors. I
15 never had one come to me and pay me a couple hundred
16 dollars an hour to tell me how successful his most recent
17 project was; they bring you problems.

18 And so this guy said, You need to understand.
19 We're not all like that, and we don't all, you know,
20 operate this way. And I read through them; they were
21 very complimentary letters, very specific.

22 And so I understand that I'm dealing with the
23 bottom level here, for the most part, of a process that's
24 very large. But within that I do have to say that the
25 biggest problematic area is remote debt collection; that

1 is, people who are debt buyers to the third and fourth
2 level. The percentage of bad operators, it seems to me,
3 is marked higher at that level than it is anywhere else.

4 So that's something, you know, that I have
5 learned experientially. This is my fifth year on the
6 job. Never had anything to do with this industry before
7 I took it. But I have to say that is an area that is
8 very problematic that we're going to have to be looking
9 further at.

10 Whether we need further regulation or not, I'm
11 kind of agnostic about that, because whether you have a
12 regulation scheme or a statutory scheme, everything is
13 ultimately fact dependent.

14 If you're violating the law, we've got to prove
15 it, and to do that, we've got to investigate and come up
16 with facts. That why our investigations all take so
17 long.

18 But you, too, have a burden to inform yourselves
19 factually about what you're doing and what you're asking
20 people to respond to when you contact them. I know that
21 we can intellectually all agree on that, but the problem
22 is out there where the rubber meets the road.

23 MS. LIEBES: Just for those in the audience, if
24 any of you have questions, please submit them. I guess
25 everyone's been given one or two cards. Submit the

1 questions, and we'll get to them later.

2 Carri, I know you had a question for Nick.

3 MS. LYBARKER: Sure. Just to kind of round out
4 the discussion of state and federal laws, is there any
5 kind of regulatory framework that ACA has seen in a state
6 where they think it's done right?

7 I mean, we were talking about New York that you
8 weren't so much in favor of the holes that were contained
9 in that statute that needed to be clarified.

10 From the other perspective, is there a state that
11 you would say, yes, it's a fair, balanced approach to
12 regulation of industry?

13 MR. JARMAN: Probably not. And I say that from
14 the standpoint that it's all over the board. You know,
15 most of what we find in states that have the regulation
16 are they essentially mirror the FDCPA, with a couple of
17 nuances.

18 With that being said, you know, when we look at
19 the State of New York and some of the things that they've
20 done, you know, when you look at New York, for instance,
21 not only do you have to deal with the State of New York,
22 you have to deal with the City of New York, you have to
23 deal with the City of Yonkers. And so you also have
24 other cities that are within that jurisdiction.

25 One of the ones that are -- is always concerning

1 to us is Massachusetts. In the State of
2 Massachusetts, the regulation of several phone
3 call attempts to a home number in a seven-day period, one
4 phone call attempt to an employer in a 30-day period, is
5 not, you know -- it's kind of the other end of the
6 spectrum of calling somebody two to three times a day,
7 that, just from a business standpoint, it doesn't make
8 sense.

9 But, you know, the concern is -- and while I'm
10 interested to see the numbers, I don't have them -- is
11 what do the lawsuits on the consumer side look like in
12 Massachusetts, where it is very difficult to reach the
13 consumer?

14 I know that from our work strategy, as a
15 collection agency that's licensed nationwide, you know,
16 we put very little effort into an account that's in
17 Massachusetts, because of the strict regulation, and what
18 happens is those end up going back to the originator, and
19 then at that point most of them will tend to go through
20 the court system to collect the debt, because they do not
21 have a valid opportunity. Calling somebody three times a
22 month is not necessarily going to yield the type of calls
23 that you need to establish the contact.

24 So I think it's all across the board.
25 Massachusetts we would find as the extreme that I think

1 causes more harm than necessarily good.

2 MS. LIEBES: One of the questions, as a
3 regulator, that we regularly get when I give
4 presentations, is, how do you decide which, in this case,
5 debt collection companies to investigate, and what steps
6 do you guys take in your investigations?

7 One of the things I was going to comment on
8 before passing it on is how closely we work together. At
9 the FTC, one of the ways we get our investigations,
10 whether it's of a more legitimate debt collection company
11 or against one of the phantom debt collection companies,
12 is referrals from our state partners.

13 We get a lot of our cases -- in fact, one of the
14 largest cases my office worked on was a case against a
15 very, very large debt collection entity that was referred
16 directly from the Tennessee Attorney General's Office.

17 So we get a lot of our information and complaints
18 from our state regulators. Chris will probably get into
19 it more, but the other place we get a lot of our
20 complaints is from industry competitors, because what we
21 find is quite often it's unfair.

22 There's not a balanced or level playing field
23 when the collector down the road is engaged in abusive
24 and harassing debt collection tactics or they're going to
25 an originator, as you call it, or a creditor and saying,

1 You know, Company A down the road, they're not going
2 to violate the FD CPA, but we will.

3 They don't quite say it that bluntly, but they
4 actually say it. And we get a lot of complaints on the
5 local level and, I assume, in DFP; we get a lot of
6 complaints from legitimate, competitive debt collection
7 companies who say, It's not fair. I'm doing it all
8 correctly, and my competitor down the road is not.

9 But to pass it on to you guys, how do you get
10 your investigations, and tell me a little bit about how
11 you pursue your investigations.

12 MS. RYBAKOFF: Sure. And this probably comes as
13 no surprise to anyone in the room, but generally we are
14 complaint driven, so the more we hear about a particular
15 company, the more likely it is that that company is going
16 to get some attention.

17 And the example, Cindy, actually that you gave
18 about that large Memphis debt collector is a classic
19 example. All of a sudden, out of the blue, we -- in the
20 State of Tennessee we began to get -- first it was
21 dozens, and then it was hundreds, and then it was just a
22 frightening boatload of complaints, which told us there
23 was a serious problem.

24 And there's also, you know, a part of this that
25 demonstrates how well we can work together as law

1 enforcement and cooperate with each other. We were able
2 to work up the case from the Tennessee perspective and
3 basically share it with the Federal Trade Commission.

4 There were fair debt collection issues that we're
5 not able to tackle as a state attorney general directly
6 under the federal law, but the FTC was, and ended up
7 getting a very, very good result.

8 But one of the things that got this company on
9 the radar quickly was the fact that a large number of
10 complaints resulted.

11 The other thing that I'll mention is for
12 complaints to get to our attention, that means they're
13 generally unresolved complaints. So, again, I think as
14 Nick pointed out earlier -- and I think General Olens
15 touched on this as well -- when you have players in the
16 industry who make bona fide mistakes -- maybe they're new
17 or on a learning curve -- law enforcement isn't
18 interested in going after companies for that.

19 And when companies take care of their customers
20 or, in the debt collection world, take care of mistakes,
21 we won't hear about it. The complaint gets resolved; it
22 may rarely, if ever, get past the initial complaint
23 stage.

24 But the ones that don't resolve, I mean, these
25 are the bad actors, the ones that could care less what

1 happens. Those are the ones that will make their way to
2 us, get in the database, and on the radar.

3 But in that particular case we had a very, very
4 good result. And the FTC also has national enforcement
5 authority, so they were able to help all the folks that
6 were victimized throughout the country.

7 MS. LYBARKER: And in South Carolina it's the
8 same way, where we could get referrals from our federal
9 partners, from local law enforcement partners, from other
10 state agencies, because the regulation of the lending
11 industry is spread across different regulatory agencies
12 in South Carolina, so they may get a tip that one of
13 their licensees has hired a debt collector and may not
14 have been acting appropriately.

15 But in South Carolina as well, before a consumer
16 can file an action against a debt collector, they have to
17 notify our office, and there has to be a 30-day waiting
18 period. So sometimes we'll get notice of inappropriate
19 action through the attorney filing.

20 MR. SOURS: It all works similarly for us in Georgia. Information
21 passes back and forth both ways. I got a referral
22 yesterday from Cindy's office, for example. Thank you.
23 And we do have to compare notes.

24 One of the problems that any state agency has is
25 jurisdiction outside the state. This is why we work with

1 the FTC, why we band together under the aegis of the
2 National Association of Attorneys General to bring
3 complaints that often involve 30, 40, 45 states against
4 particular organizations.

5 That's true not only with respect to debt
6 collection but just about any industry that you can name.
7 But what we do, given the fact that we're a small
8 agency -- we have fewer than 50 employees out of total of
9 110,000 employees in the state government - we set
10 priorities.

11 We ask ourselves several questions: Do we have
12 primary jurisdiction over this matter? If it's a debt
13 collection matter, probably. Where is the alleged
14 offender located? How many people seem to be affected by
15 this activity? What is the magnitude of it, potentially,
16 in terms of economic effect?

17 So we have to assess all those things, and
18 perhaps the biggest factor is how many complaints have we
19 had in the last six months or the last year about this particular entity?

20 If this is the first one, unless it involves a
21 million-dollar scam, frankly we're not going to go very
22 far with it. But if this is the tenth one, you better
23 believe that we're going to go pretty far with it.

24 So there's no hard and fast rule, but it's kind

1 of like if any of you have been in the military, you're
2 familiar with the military medical term "triage." That's
3 kind of the way, in a loose sense, we look at this
4 problem.

5 MS. LIEBES: How do you guys investigate your
6 cases? Can you describe a little bit about what an
7 investigation looks like in the debt collection area?
8 Any of you?

9 MS. RYBAKOFF: I'm happy to talk about what we
10 do. Typically the first step is to make contact with the
11 complainant, and as Cindy pointed out, it can sometimes
12 be a competitor, and frankly, we appreciate those
13 contacts and those relationships, because we learn a lot
14 and are often educated about the industry from
15 complaining competitors.

16 Sometimes, you know, we might be making an
17 assumption that's not correct, so we have some good
18 partnerships and relationships with folks in the industry
19 that help us evaluate a situation or provide input that
20 helps educate us about how to approach a situation.

21 The complainant typically has information and
22 documents that we'll review. Depending on whether it's a
23 lean year or a fat year for government, we may or may not
24 have investigators available, and in many cases the
25 attorneys act as the investigators, but we will interview

1 victims; we will discuss possible scenarios in terms of
2 what may have happened.

3 Depending on the company -- and some companies
4 have gone to, I'll say, great lengths to establish a
5 dialogue or a rapport -- for example, there's one segment
6 in a particular industry where we actually have periodic
7 meetings with industry representatives, and we can
8 dialogue generally about problems that we're seeing.

9 Other times we will reach out and contact the
10 particular industry or -- I'm sorry -- particular
11 business involved, and if it's a situation that may have
12 particularly egregious components like, let's say, for
13 example, elderly folks are clearly being targeted, or the
14 military are being targeted, or some vulnerable consumer
15 group is being targeted, we might not make contact with
16 the company at all, but we may send a subpoena.

17 And I will say I know that that's a potentially
18 unpleasant thing for anybody to get, but the one thing
19 I'll emphasize is the response to the subpoena and the
20 level of cooperation or interest in working with us often
21 tells us a lot.

22 And while we understand that there are concerns
23 and privacy issues and legal concerns and ways of doing
24 things that, you know, they just have to be done or the
25 lawyer advised this or that, the companies that tend to

1 not work with us -- and like I said, these -- in my
2 universe they tend to be unlicensed to begin with and not
3 playing by the rules -- they're the ones that end up with
4 full-scale serious investigations, and more often than
5 not, some type of enforcement litigation.

6 MS. LIEBES: Anybody else?

7 MR. SOURS: I would generally agree, except this:
8 We have a practice, wherever practicable, wherever
9 possible -- and this is true 90 percent or more of the
10 time -- we make a serious effort to contact the business
11 against whom the complaint is raised, because we feel
12 like, if we can work things out quickly, that's
13 to everybody's advantage. Nobody has to get lawyered up
14 and spend a lot of management time and so forth dealing
15 with this.

16 We annually produce more than a million dollars
17 in adjustments and settlements simply that way, and I
18 think that's good. We, if anything, have deepened that
19 effort in the time that I've been in charge of our
20 agency, and that will continue.

21 In terms of where we get our complaints, as these
22 folks have indicated, sure, consumers are one source. Ex-
23 employees who feel that they have been mistreated,
24 surprisingly a number of those contact us. And that's certainly
25 true in the debt collection industry.

1 A woman who called in a few months ago said, I
2 just can't take it anymore, the things they're asking me
3 to tell people. I said: Tell her to come on in and tell us what
4 she's telling people. So she did.

5 And this is to be expected. I served for seven
6 years on the State Election Board in Georgia, and we
7 found out that over time the leading source of complaints
8 about election fraud came from candidates who had lost an
9 election. Isn't that surprising?

10 And sometimes they were quite right. Sometimes
11 they weren't. And that's the way it is in the collection business
12 as well.

13 MS. LIEBES: Carri, are there any things that you
14 guys do differently? Do you generally reach out using
15 the subpoena, or do you reach out voluntarily to the
16 companies?

17 MS. LYBARKER: Yeah. Either -- it depends on
18 whether or not we have investigators available. Usually
19 we like to send an investigator to talk to the business,
20 or we may send something in writing at first.

21 Before there's any kind of formal action, usually
22 before a subpoena or anything like that is issued, there
23 has been contact with the business, after we've already
24 done kind of some front-end footwork, getting as much
25 information from the complainant as possible; maybe doing

1 some back-end research with the Secretary of State and
2 some other information gathering before we've made that
3 contact.

4 But before we take that initial true enforcement
5 step forward, there usually is contact with the business.

6 MS. LIEBES: We generally -- at the FTC level, at
7 the local level here, we generally will issue a civil
8 investigative demand rather than just voluntarily seeking
9 information. We formerly used to get almost everything
10 voluntarily, but we found that oftentimes that would just
11 lead to a second step issuing a civil investigative
12 demand.

13 But one thing I think I could pass along from my
14 perspective is when you get a subpoena, do reach out to
15 the agency, reach out to us, talk to us. We're often
16 willing to talk to the entity, to find out how you keep
17 the records, and not be overburdensome. That's not our
18 intent, to be overburdensome.

19 Quite often our intent is purely to get the
20 information, to obtain the information in the easiest way
21 possible and not to delay. And sometimes we found --
22 this is my perspective. I found oftentimes if we have to
23 play a game of constantly begging for the information or
24 even trying to enforce our subpoena, it's a much more
25 frustrating process and often can lead to a lot more

1 litigation.

2 Okay. Also, why don't -- from each of the
3 regulators, why don't you tell me about a case or two
4 that you have worked on, and maybe describe it in a
5 little bit more detail, if you would.

6 Carri, do you want to start?

7 MS. LYBARKER: Well, we haven't had a lot of big
8 cases in the debt collection arena in the recent past,
9 due to internal resources and allocation.

10 We have done some undercover work jointly with
11 our federal counterparts to assist to that level, but as
12 far as a recent investigation, we really haven't had that
13 many, but we are looking to ramp up within the next year or
14 so.

15 We've done some internal restructuring, and the
16 economy has improved, so state government resources have
17 improved.

18 MS. LIEBES: Carri is one
19 of those that regularly sends the FTC the complaints that
20 they're receiving in South Carolina. We often
21 discuss a lot of the issues she's seeing in South
22 Carolina, because if she sees them in South Carolina,
23 especially with a nationwide debt collection entity,
24 we'll see them nationwide.

25 MS. RYBAKOFF: One case I can talk about in

1 general terms, because obviously it's active, has to do
2 with a series of affiliated entities in the travel and
3 vacation industry.

4 And through a series of companies, these so-
5 called travel products are being sold, and one of the
6 alleged issues has to do with upfront misrepresentations
7 in the sales process. You know, the consumer is promised
8 A, B, C on the front end, and they get X, Y, Z or less
9 when they actually get the product on the back end.

10 So right from the start there is an issue about
11 whether the consumer owes the money. And you can imagine
12 that both sides dig in and hold fast to their positions.

13 And what happens and what's happened in this case
14 is that a captive affiliate was created for the purpose
15 of collecting the debt. The consumers adamantly believe
16 that they were misled and deceived or generically, as
17 they say, lied to, so they do not view themselves as
18 owing the debt.

19 The company, in the meantime, believes that the
20 sales process was perfectly fine, and there's a little
21 room for stretching the truth a bit, if you will. By the
22 way, we don't ever see that there's room for stretching
23 the truth. But in this case some of these are really big
24 stretches.

25 And we do see a large segment of elderly being

1 targeted. I mean, all the things that, you know, get
2 somebody on the radar quickly. But to make a long story
3 short, on the debt collection side of it, the consumers
4 are being reported to the credit bureaus. The ones that
5 try to dispute the debts, you know, they'll have the
6 dispute noted. It goes nowhere.

7 Collection steps are heightened and aggressive,
8 and it is tough, from my end, to hear -- I
9 think the most dramatic case, the eldest consumer was 92
10 years old. And he's spending his days, day after day
11 after day, agonizing over this debt. That's all he's
12 obsessed with.

13 And I thought, you know, what a way to spend your
14 retirement or, you know, your last years on this earth.
15 And it -- the family is concerned about him, and you
16 really see what an impact it has.

17 So that's something that we have going in my
18 office at this time.

19 MS. LIEBES: And, John, do you guys have any
20 current or recent debt collection cases you'd like to
21 talk about?

22 MR. SOURS: Let me tell you a brief story
23 about the most outlandish one that I ever dealt with.
24 This was during my -- this was back in 2011, first year
25 that I was there.

1 We received several complaints about an operation
2 out in Gwinnett County, Lawrenceville or Snellville area.
3 And it turned out that the business was being conducted,
4 at least nominally, by a woman, whose husband was the
5 vice president and director of operations.

6 Well, it further turned out this guy was on
7 parole from New York, where he had been convicted and
8 imprisoned for several types of fraud.

9 So in addition to everything else, we contacted
10 his parole officer, who said he was very grateful to know
11 where this guy was and to know what he was doing, because
12 he wanted to revoke his parole, because he had discovered
13 that while this fellow had been in prison, he was
14 conducting a debt collection business from his cell.
15 Imagine that, calling people up when you're a prisoner
16 and threatening them with imprisonment if they don't pay
17 some alleged debt.

18 So we were very pleased to be able to
19 participate in exporting him back to Sing Sing Prison in New
20 York to serve out the rest of his sentence.

21 But we've entered into about 15 AVCs this year
22 having to do with debt collection. I've got a couple of
23 them here that Sean Conroy dug out before we came over here, and
24 it's the usual litany of stuff: threatening people with
25 imprisonment, calling them repeatedly, calling them

1 before 8:00 a.m. and after 9:00 p.m., pretending to be a
2 law enforcement officer, a lawyer, and/or an
3 investigator. That's the latest thing: "This is
4 Investigator Smith, which is supposed to put
5 some sort of fear into you.

6 Our enforcement position is that since Georgia
7 does regulate both criminal and civil investigators --
8 they have to be licensed -- unless you're one of those,
9 you have no right to call yourself an investigator when
10 dealing with people in a situation where there are legal
11 consequences.

12 So in this particular case, the debt collector
13 agreed to go out of business for five years, have no
14 affiliation with any other business that engaged in this
15 kind of activity, and released 9200 accounts, aggregating
16 about \$4 million.

17 So that's a typical kind of case at issue.

18 MS. LIEBES: Great. Thank you.

19 Nick, I know you have a question that you wanted
20 to follow up with.

21 MR. JARMAN: And this is for everybody
22 on the panel. When you're looking at bringing these
23 actions, how important is it for you -- and again I'm
24 going back to differentiating between, you know, somebody
25 that's legitimate and illegitimate.

1 And by legitimate I mean, one, are they
2 licensed if you require that? Are you bonded? Are
3 you -- things that you can look at. And I know we'll
4 touch on it here in a little bit with one of the
5 questions. Are they a member of ACA International, which
6 is obviously a voluntary trade association.

7 Do you take any of that into account when you get
8 that, to see exactly kind of maybe who you're
9 dealing with as that party to your investigations?

10 MR. SOURS: I don't typically know what their
11 affiliations are at that stage. If they want to tell us,
12 that's fine. That really doesn't cut much ice either
13 way, to be honest with you.

14 What we care about is the operative facts: What
15 is it that the -- what is the activity that they're
16 engaging in? How widespread is it? How many people does
17 it involve? How much money? And precisely what is the
18 alleged illegitimate activity they're perpetrating?

19 I have to tell you, I have found that most of
20 the -- while I've found that most of these organizations
21 and people do not belong to any affiliated group, I've
22 found people that are charter members that operate this
23 way.

24 And there are some situations, too, we realize
25 and we come to find this out, where you have a rogue

1 employee. The policy isn't to operate this
2 way, your people are instructed to the contrary, but
3 somebody gets out of line; maybe they just enjoy talking
4 tough to people on the phone, and so they do
5 this.

6 Well, one of the questions we ask is what have
7 you done about this employee? And if the answer is,
8 we've terminated him, I say, Good, let's see the
9 termination slip. And if the answer is, Well, we'll
10 counsel them, that's not a very good answer, frankly.

11 MS. RYBAKOFF: Quite candidly, I do look at that.
12 It tells me whether -- I'll almost describe it as a
13 presumption of credibility. I would rather be dealing
14 with somebody that I view as more credible versus
15 somebody that might be sitting in their shorts in the
16 basement on the computer with all kinds of -- well, we
17 don't have to go into that.

18 But, you know, that -- for me that's a starting
19 point, and certainly the information goes from there.
20 Now, I will say -- and the rogue employee is an excellent
21 point, because we recognize that happens -- but I will say
22 we've also encountered situations where somebody seems to
23 have 15 rogue employees, which that translates into, you
24 know, bad management, looking the other way, or in some
25 cases, even rewarding conduct.

1 So from a starting point, it does, I
2 think make some difference.

3 MS. LIEBES: I think from our perspective
4 oftentimes when we issue our civil investigative
5 subpoenas and we'll ask for the policies and the
6 practices and procedures, and we'll see that most
7 companies, especially the legitimate ones, will have
8 policies and procedures in place.

9 But the real question is, are those policies and
10 procedures being followed and are they being enforced.
11 And so, yes, there are times when it is a rogue employee
12 or when there's just one problem in a company.

13 But oftentimes following through with the
14 enforcement is something that we don't see, or that they
15 keep disciplining the same collector over and over and
16 over, yet nothing is happening to that person; they're
17 still being paid very large commissions, and there's an
18 incentive for collectors to engage in the same
19 problematic practices, just because the incentive is
20 monetary.

21 Any other follow-up, Nick, to that?

22 John?

23 MR. SOURS: Let me talk about the other end of
24 things? Rogue employees can work anywhere, including in
25 official capacities, you know. In my five years I've

1 caught one employee who was telling people, We've been
2 keeping our eye on you, and we're going to do such and
3 such. Well, that happened about two o'clock in the
4 afternoon, and at five o'clock in the afternoon, that
5 employee's computer was locked out, their badge was
6 taken, and they were shown the door.

7 That's how I act and would act in a case like
8 that. Now, that's one time in five years. But I'm
9 prepared to believe that that happens occasionally
10 everywhere on every side of any kind of law enforcement
11 activity.

12 So when you tell me, This was a rogue employee, I
13 say, Well, I'm sorry to hear that. But what have we done
14 about it?

15 Cindy mentioned -- and she's correct -- that
16 almost every legitimate and even some illegitimate
17 collection firms have a policy, procedure, statement,
18 manual, what-have-you.

19 That's good and that's necessary, but the real
20 issue is how is that being implemented in practice? Is
21 it in fact being followed? And if it is, that does go a
22 long way in alleviating our concerns.

23 If it is not, then it becomes a red flag. And so
24 that's something we have to think about.

25 MS. LIEBES: You know, I've seen -- or we've seen

1 a huge uptick in the really fraudulent debt collection
2 companies lately. We've seen a really big problem with
3 what we call phantom debt collection companies that Chris
4 referred to, those that are threatening to throw folks in
5 jail immediately, those that are threatening someone that
6 they're going to take away their homes.

7 Have you seen that same thing, and what are
8 you doing about that, if anything?

9 MS. LYBARKER: We've seen it in South Carolina.
10 Debt collection scams is one of the top type of scams.
11 We have telephone scams, debt collection, and imposter,
12 or sometimes they can all kind of merge into one.

13 But we've seen an uptick in these fraudsters or
14 scam artists utilizing government names to say, you know,
15 we're with the attorney general's office, and we're going
16 to enforce -- but again, as I kind of brought up earlier,
17 they have portions of the consumer's social security
18 number; they have the consumer's address; they have the
19 consumer's name, and so they have this extra information
20 that is making that kind of a threat seem even more
21 legitimate, and they are still putting, of course, this
22 time limit -- you know, it's always a time-sensitive
23 offer to have to go get that prepaid debit card and pay
24 me the debt right now, or else we are going to come and
25 send the sheriff's office to your house, or the attorney

1 general's office to your house.

2 So we have certainly seen an increase and have,
3 again, been working -- most of the times it's internet
4 crimes, it's cross-border crimes, and so that's where the
5 collaborative efforts are certainly coming into play in
6 trying to make sure that we have those open lines of
7 communications with local, state, and federal law
8 enforcement agencies.

9 MS. RYBAKOFF: And I just wanted to mention one
10 case we had recently that involved an imposter situation.
11 We were actually getting complaints about certain law
12 firms and certain debt collectors that we were little
13 surprised to hear these complaints, but they were
14 consistent.

15 And to make a long story short, this particular
16 company was actually a telemarketing company, but it also
17 did collection work, which is the one in remote east
18 Tennessee.

19 We came for a visit, unannounced, with a court
20 order, which is a very effective way with the really,
21 really bad guys to get information. And we found that
22 their scripts they actually had stolen from their own
23 lawyers and debt collectors and continued to use the law
24 firm's names and collectors' names, not even bothering to
25 change them. It was pretty amazing. But, you know, you

1 just never know.

2 MS. LIEBES: Nick, I know you had a comment.

3 MR. JARMAN: Yeah. Kind of elaborating a little
4 bit on the debt collection scams and understanding that,
5 you know, I think one of the things that, you know, we
6 like to point out, from a legitimate collector's
7 standpoint, is kind of the perfectionist environment that
8 a legitimate debt collector is expected to work under.

9 When we look at the FDCPA, it is a strict
10 liability statute, and an analogy that my good friend
11 that represents a lot of creditors, Rick Furrh, likes to
12 say, is, Imagine walking into McDonald's and ordering a
13 cheeseburger with no pickles.

14 And you get your cheeseburger, you go sit down,
15 you open it up, and there's pickles on the cheeseburger.
16 You bring it back, you ask for another cheeseburger, they
17 give it to you, this time with no pickles.

18 You eat it, you then leave the restaurant, you
19 call your attorney, you tell him want to sue McDonald's
20 for \$1000 and attorney fees, because they didn't get the
21 order right, if that's what they were required to do.

22 And so a lot of the issues that happen within
23 debt collection that we see from the legitimate players
24 tend to be technical in nature and far different than any
25 type of scam.

1 And so it's, you know, understanding
2 what we go through on a daily basis with policies and
3 procedures and when we talk about -- whether
4 it's seminars or webinars and it relates to the CFPB in
5 particular, it does go back to the policies and
6 procedures, but it goes back to do what you said you were
7 going to do, because we've found that, you know, a lot of
8 the enforcement actions that we've looked at have shown
9 that, when -- there are the policies and
10 procedures in place, and you're correct. But the actions
11 don't back that up.

12 So we support that, and I guess this is where,
13 from a debt collector's standpoint, you know, I don't
14 know if this is a smart thing or a bad thing, but I
15 subscribe to Google Alerts and "debt collector."

16 And I get three to four articles every morning
17 about debt collectors, and none of them start off with,
18 Criminals posing as debt collectors, criminal activity.
19 It's all debt collectors.

20 And so that's where we really want to distinguish
21 between the legitimate and the illegitimate. And it also
22 brings up the fact of whether it would be, I
23 guess from the state's opinion, if there was -- you know,
24 we're obviously not for extensive regulation, but one of
25 the things that gets batted around all the time is how

1 does a consumer know if they're dealing with a legitimate
2 business?

3 And I'm in Missouri. Missouri does not require
4 any type of licensing; there's no debt collection laws.
5 And so the conversation at the unit level is
6 always, should we go forward and proactively put
7 something out there that has a list of whatever that may
8 be to differentiate the big issue that we're seeing
9 between legitimate actors and bad actors.

10 Is there any preference on the state side,
11 especially -- obviously with Tennessee they're licensed;
12 the consumer can go on and see if you're dealing with a
13 licensed agency.

14 But what about from South Carolina and Georgia?
15 Has there been anything that -- maybe there's no
16 regulation passed, but maybe there's something that can
17 identify the proper people.

18 MS. RYBAKOFF: I just -- I won't speak to the
19 question, but I just wanted to tell you, Nick, that all
20 the warm, fuzzy, good, legitimate lawyers in this room
21 totally relate.

22 (General laughter.)

23 MS. LYBARKER: For us that would be very helpful,
24 because that's one of the issues that we have with not
25 having a licensing process, is even from that square one

1 when we get a complaint against somebody, what if we
2 can't get the information to that business because the
3 address that was provided to us by the complainant isn't
4 accurate anymore, and we don't have a listing of those
5 organizations that are collecting debts in our state.

6 The only thing that we have right now would be a
7 listing from the Secretary of State's Office to even try
8 and look up a name, which a lot of times those persons
9 are not registered with the Secretary of State's Office,
10 and they're not categorized, either. We would certainly
11 just have to know exactly what they're called.

12 So having some kind of process there would be
13 helpful, because outside of the -- education is a core
14 component of our mission, and the Department of Consumer
15 Affairs in South Carolina, for business and consumers
16 alike, and right now the only thing that we can tell them
17 is if someone is giving you a time limit,
18 they're asking you for money over the phone right now --
19 and especially on a prepaid debit card or wiring money --
20 that those are kind of the red flags that we've seen in
21 these kinds of debt collection scams, and then making
22 those kinds of threats, too, that are pretty common here.

23 So even if it were just a registration with some
24 minimal information that would have to be offered, that
25 would be, I think, beneficial.

1 MR. SOURS: Nick, let me just say this. I would
2 love to be able to call up Roger Medlin and say, We're
3 investigating XYZ Collection Agency. What is their
4 reputation?

5 I can't do that; my people can't do that, because
6 our investigations are confidential. What we can do is
7 receive information. I would imagine -- and I think this
8 is likely to be true increasingly as time goes by -- if
9 these private organizations, such as ACA and its state
10 affiliates and the other organizations in the industry,
11 increasingly establish a reputation for credibility and
12 all the good stuff that we're looking for, they're going
13 to be receiving complaints about bad practices and bad
14 activity and so forth.

15 Tell those people to call us, and tell them to
16 tell us that you told them to. I would love to hear
17 that. I haven't ever heard that from anybody who's filed
18 a complaint with us. I don't see any reason why you
19 couldn't do that.

20 And I would solicit that kind of cooperation from
21 not only your organization but all of the organizations
22 that deal with this industry.

23 MR. JARMAN: And I -- and to everybody up here,
24 but I have a question that's something that happened
25 recently in our office, as recent as last week.

1 I had one of our managers come to me, and he
2 became aware of somebody that used to live in Missouri,
3 now lives in Arizona, that is basically doing debt
4 collection out of their house on debts that are truly
5 nonexistent.

6 You know, it was not anything that was very large
7 in scale, so, our advice, hey, we're contacting
8 the Arizona Attorney General; start there and work your
9 way down.

10 But one of things that it seems to, you know, you
11 kind of come down to is your resources available to
12 really limit what -- or prioritize who you're going
13 after.

14 And so if it's do you anticipate a
15 more streamlined process, or is there something that can be done from the
16 enforcement side of, rather
17 than only going after the large players that are the bad
18 actors, but also all of these smaller ones that are --
19 you know, they might only need 5- to \$6,000 a month to
20 support their criminal activity, not 500,000.

21 But that 5,000 times, you know, 100, 200, 300
22 people that, with your office so far this year going
23 after 17, it doesn't really put a dent into them.

24 Is there anything that can be done from the
25 enforcement side, whether that's on the federal level or

1 the state level, to tackle these smaller ones that --

2 MS. LIEBES: I'd like to comment on that. That
3 is one of the reasons that we jointly did pursue the
4 Operation Collection Protection recently, is to work
5 together with all the state agencies and federal agencies
6 and criminal agencies.

7 We're all working together, and oftentimes it's
8 not necessarily the FTC or the AG's office that will be
9 able to actually bring a law enforcement action against,
10 let's say, some guy in his basement who's in his shorts, just
11 calling people up and telling them they owe debt.

12 But what can happen and what often does happen is
13 we can get with the local law enforcement agencies, and a
14 lot of police departments are really excited about these
15 kinds of cases.

16 We have a division called our Criminal Liaison
17 Unit, and they not only work with the US Attorney's
18 offices across the country, they work with local law
19 enforcement to bring cases or to encourage them to bring
20 these types of cases.

21 We've seen just such a big uptick in these
22 phantom debt collection areas, but we are really trying
23 to get them, because they're criminal. We're doing it
24 civilly, we're doing it with the states, and we're also

1 pursuing -- or trying to have them pursued criminally by local
2 law enforcement, local DAs.

3 So that's a way that we're doing it, but we
4 really do want referrals. I can say from our
5 perspective, put the -- you know, give us the complaints.
6 Complain to the CFPB. Complain to the states. Because
7 it really does make a difference.

8 And when we get the complaints directly from
9 folks that we know are legitimate industry players,
10 oftentimes we take that very, very seriously, and we do
11 look at -- especially when we get it from a trade
12 association. It's really important.

13 MR. JARMAN: And just to kind of touch on the
14 trade association part and only speaking on behalf of
15 ACA, but in regards to some of the other trade
16 associations, I think it's just -- it is also important
17 to note that, you know, these trade associates are not
18 for profit. We are completely voluntary, and it's a
19 membership comprised of a lot of competitors.

20 And so ACA in particular, the mission
21 is to provide educational offerings, educational
22 opportunities, advocacy on behalf of the members to
23 inform and educate, to make sure that they have the
24 resources available to comply.

25 You know, ACA had never set up to self-police or
26 to be a self-regulatory organization, but we do strive to

1 provide our members, who chose to
2 be a part of that voluntarily, with as much information
3 as they can to comply, especially as debt collection
4 becomes more and more national and less localized with
5 all the varying different state laws that we've
6 referenced here today.

7 MS. LIEBES: I'm looking at some of the
8 questions, and it's about time I'm going to break for it.

9 One of the questions that I've just received
10 is a question that I get quite often.
11 And I'm not trying to pick on ACA or any other trade
12 association, but does the ACA or any of the other trade
13 associations have the ability or do anything to police
14 its members?

15 When they see a problematic member engaged in
16 problematic conduct, is there anything ACA can do or does
17 ACA do anything to police its members?

18 MR. JARMAN: Sure. So it's obviously a touchy
19 standpoint. Yes, ACA has a code of ethics. Yes, ACA has
20 an ethics committee. Any time there is a complaint filed
21 against an agency that's a member, that goes to ACA, it
22 goes to the ethics committee, and from that standpoint
23 they do take a review of the facts.

24 The reality is, though, that a lot of those facts

1 don't come out a lot of times, because of the
2 confidential nature of the actions that have been taken,
3 and so, you know, again, from -- by design, as a
4 voluntary trade association and not a self-policing
5 regulatory body, we rely more so on the local
6 AGs, the FTC, the CFPB to enforce.

7 If we find out about egregious action, then, you
8 know, there is no reason why that could not be reported
9 or, you know, brought to your attention, but as far as us
10 taking action on limited information and not an
11 association of what we're designed to do, you know, we
12 generally find that those aren't members.

13 Because we look at the news, we see who they are.
14 We look -- the membership database is out there, and it's
15 accessible. You can find out who the members are, and
16 the vast majority of the time they're not members of ACA.

17 MS. LIEBES: I'm going to switch now to some of
18 the questions that we got, because we only have about 10
19 minutes left on this panel, and we've got some really
20 great questions.

21 One of them that I saw, and it's a question for
22 the regulators: What are some of the things that you are
23 doing -- or you're looking for in a debt collectors
24 compliance program. If they were to have a compliance
25 program, what are you looking for that makes for a good

1 compliance program?

2 MS. LYBARKER: Well, you're obviously looking for
3 those basic policies and procedures, trying to make sure
4 that there is training at certain checkpoints, that
5 you're training at least annually on those policies and
6 procedures; that you're testing to see if there are
7 updates that are needed.

8 I mean, it's just a well rounded compliance
9 management system, to where you're not just putting the
10 policies and procedures out there, but that you're
11 training on them, you are adjusting them as you see
12 needed or as the laws change, that you're keeping up with
13 the laws.

14 You know, sometimes it depends on the size of the
15 organization as to whether or not that's a duty for one
16 person or for many to be able to; and that you're
17 communicating with the regulators as you're doing that as
18 well.

19 Because, I mean, our office, we're not
20 just here to enforce -- take
21 enforcement actions; we're here to guide you, to provide
22 guidance on what the do's and don't's are under our law.
23 So utilize us as a resource as well.

24 MS. LIEBES: Excellent. Any other comments?

25 MR. SOURS: One of the statutory mandates that we

1 have in Georgia is to provide consumer education. And
2 I've taken that very seriously. I've accepted
3 invitations -- I think I may have been the first person
4 to hold this job who has -- to go out and speak to
5 collectors groups.

6 I'm more than willing to do that. I don't want
7 to be seen solely as an adversary. I will be if need be,
8 but I would welcome any opportunity to speak to any
9 legitimate group of business people in this or any other
10 industry about what the law provides and what our
11 expectations are and what we want to see in terms of
12 legitimate business conduct.

13 AUDIENCE MEMBER: You also produce a newsletter.

14 MR. SOURS: Yeah, we do. We produce a biweekly
15 newsletter. It's free. We send it out by email; we have
16 about 3500 subscribers now.

17 If any of you want to leave a business card with
18 me or with Sean Conroy, we'd be delighted to send it to
19 you. It covers every possible range of subjects.

20 We've written about debt collection practices
21 probably seven or eight times. I think we've got about
22 135 issues out now. One just came out earlier this week,
23 had to do with landlord-tenant problems.

24 So, anyway, we'd be delighted to provide that to
25 anyone who cares, and if we do, we would simply ask that

1 you send it on. It's free. Our view is, steal our
2 information.

3 (General laughter.)

4 MS. LIEBES: Another really good question
5 is how do you measure the effectiveness of the government
6 measures? Do you look for fewer complaints? Is there
7 a way you measure effectiveness?

8 MR. SOURS: No, in a broad sense, but I think an
9 increased number of complaints may be a good measure of
10 effectiveness, because it's getting the word out there
11 that as a regulator you care about what you're doing and that you are
12 prepared to and do take effective action.

13 So when I see the number of complaints going
14 down, I get worried.

15 One thing I look at is how many people are
16 looking at our websites? And that number goes up 7, 8,
17 10 percent every year, and I think that's a pretty good
18 indication.

19 But even so, in a state with 10 million people,
20 to have only 900,000 hits on your website, that's not
21 that many. I would love to see that double or triple.

22 MS. LYBARKER: And we have different
23 accountability measures that are kind of more on a
24 broader agency-wide scale with licensing and enforcement,

1 with how many enforcement actions have we taken, and with
2 our -- I guess our efficiencies in our investigators
3 going out.

4 We have five investigators, and we kind of look
5 at their mileage in going out, as well as how many
6 compliance reviews and advisories, because not only do
7 they do compliance reviews for businesses or
8 investigations and inspections, they do advisories of the
9 laws that people are supposed to be complying with
10 whenever a new business comes up.

11 So we kind of look at those numbers in
12 association.

13 MS. LIEBES: In each of your states can a collection
14 agency see the number of complaints that have been filed against them?

15 MS. LYBARKER: So in South Carolina, in January
16 of 2014, we launched an online complaint system that
17 businesses can sign up for and have an account, so
18 consumers can file a complaint on line, businesses can
19 respond on line. You'll see a record of any complaint
20 that has been filed against your business from that point
21 forward, as well as your responses.

22 But that's only from January 1, 2014, forward.
23 If you wanted anything prior to that time, you would have
24 to submit a request to our office. But it's really --

1 it's pretty nifty.

2 So our website is consumer.sc.gov if you'd like
3 to take a look. You can also search any complaint that
4 has been filed in that database as well.

5 MS. RYBAKOFF: With respect to the Tennessee
6 Division of Consumer Affairs, which is the agency that
7 drives the complaints to the AG's office, the answer is
8 yes, but I honestly don't know the answer in terms of our
9 collections board. So hopefully it's on the internet
10 somewhere or you can call them and insist that you can.

11 MR. SOURS: The answer is both yes and no. Yes,
12 we will tell you how many complaints have been filed
13 against your business in a particular period of time or
14 forever.

15 But remember we make a practice -- and we do this
16 in excess of 90 percent of the time -- to contact the
17 business on the front end, tell them about the complaint.
18 And unless we are asked not to for some reason, we will
19 disclose the name of the complaining party.

20 If the complaining party does not want their name
21 disclosed, we will not do so -- so that pretty much
22 pretermits, I think, the question, because somebody who
23 asks us how many complaints have been filed, all they have
24 to do is look in their email or look in whatever paper
25 trail they have.

1 And if they're throwing them away, that's up to
2 them, but they've already -- they already can
3 substantially answer that question before posing it.

4 MS. LIEBES: In Georgia, unlike with the FTC,
5 do you investigate or at least contact the company every
6 time you receive a complaint?

7 MR. SOURS: I'd say about 90 percent of the time.

8 MS. LIEBES: At the FTC we do not do
9 that. When we receive a complaint, it generally goes
10 into the Consumer Sentinel database. We use that
11 database in part to determine which companies we're going
12 to look at, and it's a very, very rich database, with
13 millions of consumer complaints about a variety of
14 consumer issues.

15 But we do not contact the company on behalf of
16 the consumer who complains, and also we don't intervene
17 on behalf of that consumer when they do complain.

18 MR. SOURS: Cindy, let me ask you a question, and
19 I ought to know the answer to this, I guess.

20 Consumer Sentinel is a wonderful store of
21 information. Is that accessible in any way by private
22 entities?

23 MS. LIEBES: No.

24 MR. SOURS: No.

25 MS. LIEBES: It is only accessible to law

1 enforcement, and it is accessible 24/7 from their
2 desktop. Law enforcement across the country and in
3 certain international law enforcement agencies use
4 Consumer Sentinel.

5 Now, certain non-law enforcement agencies do put
6 information into the database, including the Better
7 Business Bureau and some other entities -- AARP. But it
8 does not -- no non-law enforcement agency can get
9 information out.

10 And we have two minutes left. I'll pick one more
11 follow-up question. These are great questions.

12 This is kind of a follow-up: Is there a way to
13 identify which collection agencies are under
14 investigation or post-investigations?

15 I'll tell you from the FTC's perspective, only if
16 the investigation or only if a public filing has
17 occurred -- in other words, if we've brought a law
18 enforcement action against the company -- will that be
19 publicly disclosed.

20 I don't know if your non-public investigations
21 are -- someone can access that in the other states?

22 MS. RYBAKOFF: In Tennessee, yes. All of our
23 public actions are posted on our website and disclosed,
24 as are settlements.

1 MR. SOURS: We post our settlements, but our
2 investigations are considered private until some
3 resolution one way or another or some public filing is
4 had. Generally we follow the same policy the FTC does.

5 MS. LYBARKER: In ours, for ongoing
6 investigations we can't disclose any information, but
7 post we usually don't put settlement agreements on our
8 website, but we would put cases.

9 MS. LIEBES: Okay. Well, great.

10 Nick, I don't know if you had any follow-up in
11 the last one minute we have, if you want to --

12 MR. JARMAN: No, I mean, other than just, you
13 know, again, we appreciate the opportunity to speak and
14 be heard. We appreciate the opportunity to hear from the
15 regulators, both state and federal.

16 And at the end of the day I think we all have the
17 same intention, and that is to root out the bad actors,
18 to work together with that, and, you know,
19 we'll continue.

20 I mean, it's a -- we're one of the heaviest regulated
21 industries, with 20 different sets
22 of federal laws and not even including the state laws.
23 So, you know, with the rules still to come from the CFPB
24 and what's out there, we just look to have some
25 consistency and some clarity and work together.

1 MS. LIEBES: Thank you very much. My thank-you
2 to the rest of you out there. We're here in Atlanta. We
3 want to hear from you. We're more than willing to take
4 complaints that you might pass along to us, but also to
5 work with you.

6 We want to work with the industry. We feel like
7 we're most effective when we work with the industry, and
8 that consumers benefit from all of us working together.

9 So I hope to get to meet many of you in the
10 future. Thank you.

11 (Applause.)

12 MR. KOEGEL: I think we're going to take a break
13 until about 3:15 or so. Is that right, Tom?

14 MR. KANE: 3:16.

15 (General laughter.)

16 MR. KOEGEL: Everybody sync their watches up.

17 (A brief recess was taken.)

18 MR. KANE: Okay. Everybody come on back in.

19 My name, again, is Tom Kane, and this panel deals
20 with Debt Collection Issues from the Federal Perspective,
21 federal issues.

22 On the panel we have Chris Koegel, Assistant
23 Director, FTC Division of Financial Practices; Greg
24 Nodler, who's Senior Counsel for Enforcement Policy and
25 Strategy at the Consumer Financial Protection Bureau; Ken

1 Lennon, who's an Assistant Director, Community and
2 Consumer Law Division, Office of the Comptroller of the
3 Currency; Harvey Moore, who's president of the Moore Law
4 Group and also president this year of NARCA, the National
5 Creditors Bar Association; Tim Bauer is president of
6 InsideARM, and he's also Co-Executive Director of a group
7 called the Consumer Relations Consortium; and last but
8 not least, Brett Soldevila, who is Chief Compliance
9 Officer at Security Credit Services, LLC; he's also chair
10 of the Certifications Standards Committee at DBA
11 International.

12 So thank you all very much for coming today and
13 being on our panel.

14 First I want to start off by talking to -- asking
15 Chris, Greg, and Ken, if you each could tell us about your
16 agency's oversight of the collection industry, including
17 laws and regulations you enforce.

18 And first of all, let me get a show of hands of
19 everybody on this panel who enforces the Telephone Consumer
20 Protection Act, the TCPA.

21 (General laughter.)

22 MR. KANE: Okay. None of you do. Just want to
23 get that out, because I -- a lot of people ask us
24 questions about TCPA, and these guys don't really know
25 that much about it, because it's all handled by the FCC.

1 But anyway, so let me start with Greg, from the
2 CFPB.

3 MR. NODLER: All right. Great. Thanks.

4 Hi, everybody. I'm Greg Nodler from the CFPB.
5 Thanks for having me.

6 So I work for the Office of Enforcement, but in
7 addition to enforcement, the CFPB is pretty active in the
8 debt collection space. We're writing rules right now on
9 the FDCPA and UDAAP, so debt collection rules.

10 We also have an Office of Consumer Response that
11 takes in complaints, and similar to the gentleman from
12 Georgia, who was talking about how they send all of their
13 complaints to the companies that are being complained
14 about, that's something that we do also with -- in our
15 Office of Consumer Response.

16 And as I'm sure you can imagine, a lot of those
17 have to do with debt collection. We also have an office
18 that does education on consumers' rights. We have an
19 Office of Supervision that examines debt collectors,
20 among other institutions, and then we have the
21 Office of Enforcement that I'm with.

22 The laws that we enforce are the FDCPA -- we share
23 jurisdiction on that with the FTC and then with,
24 obviously, private consumers, who are the ones who are
25 bringing most of the FDCPA cases.

1 Then, you know, there's also other statutes that
2 just happen to relate to it, like the Electronic Funds
3 Transfer Act, the Fair Credit Reporting Act, and we also
4 enforce the Dodd-Frank Act, or the Consumer Financial
5 Protection Act.

6 And with -- for that one we share jurisdiction
7 with the states. And it's an interesting law. I mean,
8 it's basically a UDAP statute, but it has -- besides
9 unfairness and deception, it also has abusiveness, and it
10 has a real wide range of remedies.

11 The Act allows us to get restitution, rescission
12 of contracts, disgorgement, damages, and a number of
13 other things, including also civil money penalties. And
14 it's the civil money penalty structure is -- it can be a
15 million dollars a day for a knowing violation. That's
16 per violation, or \$25,000 a day for a reckless
17 one, or 5,000 when it's not even reckless; that's, again,
18 per day, per violation.

19 So it's pretty easy, when it's a systematic
20 violation, to get to just really kind of Monopoly money.
21 And so we have statutory mitigating factors that bring
22 down those numbers.

23 So those are going to be based on the financial
24 resources and good faith of the company, the severity of
25 the harm, things like that.

1 Then we also have something called a responsible
2 business conduct policy, which is when a company self-
3 polices, self-reports, self-remediates, and cooperates
4 with the investigation, and that's something else that
5 can bring down civil money penalties or can lead to us
6 not even bringing an enforcement action.

7 I forgot. Did you ask about some of our recent
8 activity, or just about the laws that we enforce?

9 MR. KANE: Well, I'm going to come back to that.

10 MR. NODLER: Okay. Great. I've talked for a
11 while, so I'll pass it on.

12 MR. KANE: Good. Chris, tell me about, what do
13 we do at the FTC?

14 MR. KOEGEL: Not a whole lot. Right, Tom?

15 So at the FTC our debt collection program has
16 broadly three main facets: enforcement, policy work, and
17 education.

18 On the enforcement end our authority is very
19 similar to the CFPB's; we enforce the Fair Debt
20 Collection Practices Act, and we have since that statute
21 was enacted about 35 years ago.

22 And, you know, you may recognize us from many of
23 the cases that we've filed. We've filed about 11 so far
24 this year. We spearheaded Operation Collection
25 Protection, and we may be talking in a few minutes about

1 recent enforcement actions, but that's always been a big
2 part of our work.

3 We do a lot of cases where we get civil
4 penalties; we also get equitable monetary relief, so that
5 means things like disgorgement or trying to get consumer
6 redress.

7 We get injunctive provisions in our orders that
8 say, Don't violate the law this way. You know, put in
9 place this kind of program to make sure it doesn't happen
10 again.

11 And the big part of our enforcement actions over
12 the last five years or so is something that we call bans
13 in our orders, where, for the worst of the worst, the most
14 egregious folks, we ban them from the industry. We get
15 them out of your industry altogether.

16 We actually published a list of those collectors,
17 those companies and individuals that we've banned from
18 the industry on our website. It's available to anybody
19 in this room if you go to ftc.gov and you just type in
20 the search box "banned debt collectors," you will get
21 that list.

22 And I would encourage everybody here who's doing
23 business with somebody new for the first time to check
24 that list first, because if you start doing business with
25 those folks in debt collection, I'm going to want to know

1 why. That list I think is up around 100 folks at this
2 point. We're adding some of our recent orders in this
3 week.

4 On the policy side we try to do things like this
5 event, where we go out and we listen, we hear what the
6 issues are. We also do amicus briefs on debt collection
7 issues in other cases throughout the country, primarily
8 in the courts of appeals. We've held workshops, for
9 instance, also with the CFPB. We did one on data
10 integrity and debt collection; about a year ago we did
11 one with the CFPB on how debt collection issues affect
12 the Latino community. So that's important work for us as
13 well.

14 And equally important to the policy and
15 enforcement work that we do is our education work. So we
16 have two websites that are of interest. One is called
17 consumer.ftc.gov where we have a consumer blog. This is
18 designed for consumers; we have consumer education
19 materials and articles, and we are constantly trying to
20 find new ways to reach consumers to help inform them
21 about how to approach the collection process.

22 We also have business education materials and a
23 website for that, which is business.ftc.gov, where again
24 we have some articles on business education. I think a
25 couple of recent examples, and we have a blog there as

1 well, we have articles about how not to use text
2 messaging in the collection of debts and what are some of
3 the dos and don'ts there. We also have an article on
4 that website about data security in the buying and
5 selling and collection of debts. And I'm proud to say
6 that we worked closely with DBA, the Debt Buyers
7 Association, to come up with some of the, I would say,
8 initial first step guidelines in that respect.

9 So that's really the three main facets of our
10 program: enforcement, policy and education.

11 MR. KANE: Thanks, Chris.

12 Ken, so tell us about the OCC and the overlap
13 with debt collection.

14 MR. LENNON: Good afternoon, folks. First of
15 all, I'd like to obviously thank Chris and Tom for being
16 gracious enough to invite me here.

17 For those of you folks who don't know me -- I
18 imagine that's the lion's share of you -- my name is Ken
19 Lennon. I'm an assistant director in the OCC's Community
20 Consumer Law Division. Basically, for those of you who
21 don't know what the OCC is, it's the principal regulator of
22 national banks and FSAs, federal savings associations.
23 My information, candidly, is a little dated, but the last
24 time I knew, we're responsible for regulating about 70
25 percent of the banking assets in this country.

1 I guess I was kind of wondering how warm of a
2 reception I was going to get here today, and the reason
3 being, as soon as I sat down someone -- and I won't
4 identify who -- towards the front sat there and said, Oh,
5 geez, it's a panel full of G-men. And I wondered about
6 that.

7 Anyway, let's see, I'm trying to avoid
8 overlapping what's already been said, but the OCC
9 basically has enforcement authority, it's codified in
10 four statutes. 12 USC 1818 is the place to find it. If
11 you go to 1818(b), basically that's our cease and desist
12 authority. In other words, we can stop institutions that
13 we regulate from engaging in behavior that we consider to
14 be unacceptable, for example, unsafe and unsound banking
15 practices or violations of laws that we're responsible
16 for enforcing.

17 1818(c) is a little more draconian; that's a
18 temporary cease and desist order. In other words, we
19 don't need to go to an administrative hearing to get it
20 enforced. It's unilateral; we can impose it on you if
21 your conduct is so egregious that we feel we need to act
22 immediately, and obviously your relief is to go into
23 federal court and attempt to get it lifted.

24 1818(I) that's civil money penalties. That's
25 exactly what it sounds like, it's punitive fines: what

1 was your conduct and do we have a basis to impose a fine
2 on you. And very candidly, the same factors that Greg
3 mentioned are the same factors that we use in determining
4 whether or not we have a basis to impose a CMP and then
5 the size of it.

6 And then finally, as Chris mentioned, we have the
7 authority to ban people from the industry we regulate for
8 life. That's found in 1818(d). That's a lifetime
9 prohibition and obviously if you go to our website you
10 will find a laundry list of people who have been banned
11 for life for whatever they did in the banking industry.

12 So that's sort of a general overview of the OCC's
13 enforcement authority. Obviously, a couple of years ago
14 the CFPB basically changed everything, changed the entire
15 landscape -- excuse me -- the Dodd-Frank Act changed the
16 entire landscape. It gave the CFPB the authority for
17 ensuring compliance with so-called federal consumer
18 financial laws by institutions that are bigger than \$10
19 billion. That's basically now in Greg's bailiwick. So
20 within those what are called federal consumer financial
21 laws, you have a number of laws that obviously you folks
22 would be concerned about, things like ECOA, FCRA, EFTA,
23 GLB, and things like that. So obviously, for banks that
24 are larger than \$10 billion, that's basically Greg's
25 bailiwick; for banks that are \$10 billion and smaller,

1 that remains with me in the bailiwick of my organization.

2 In addition to what we have in the federal
3 consumer financial laws, I mentioned this earlier, the
4 OCC has authority to basically bring actions to stop what
5 we refer to as unsafe and unsound banking practices. So
6 obviously, that could theoretically be debt collection or
7 debt sales activities by institutions that we regulate.
8 We also have authority under Section 5 of the FTC Act to
9 basically stop somebody who was engaging in either an
10 unfair or deceptive act or practice, again in connection
11 with either debt sales or debt collection activities.

12 And I guess that's about where I'd like to stop,
13 unless you have any questions.

14 MR. KANE: Great. Thank you, Ken.

15 Chris, Greg, and Ken, briefly talk about a few of
16 your recent enforcement and regulatory actions, and then
17 I'll start asking some questions of our industry members.

18 MR. KOEGEL: So I'll kick it off. I think
19 there's basically two main categories of enforcement
20 actions that I'd like to talk about that the FTC has
21 taken in the last year or so. The first and more
22 numerous of the two is just the egregious actors, and I'm
23 going to cast sort of a wide net with that, but these are
24 people that we have looked at and said the behaviors are
25 so beyond the pale that we have taken drastic action

1 against these folks, and that has included going into
2 court ex parte without any notice, getting an order from
3 the judge that gives us the opportunity to freeze the
4 assets of the company, go in with a receivership, take
5 over the company, get immediate access to all the records
6 of the business and shut the business down right away.

7 And those cases conclude with orders that take
8 all of the assets of the company and of the individuals
9 who run them, so a lot of times we are getting things
10 like boats and houses and cars, we are emptying bank
11 accounts. These are obviously drastic remedies, and we
12 understand that, but the practices fully warrant the
13 actions that were taken.

14 So we've taken a number of actions like that over
15 the course of the last several years. These folks are
16 the folks that have ended up on our list of banned debt
17 collectors. Oftentimes we are referring
18 these cases and these folks to our criminal liaison unit
19 and we are working with criminal authorities to try to go
20 after these actors. Some of the practices that we're
21 seeing in these cases are disturbingly familiar over the
22 last couple of years. We are seeing a lot of people
23 pretending to be process servers or pretending to be
24 lawyers or threatening lawsuits, threatening arrest,
25 pretending to be the local sheriff's office. This stuff is

1 not even remotely kosher and that's why we're going in so
2 heavy handed. And you guys don't even want to be
3 associated with these people.

4 Another big category of folks in the egregious
5 practices camp are the phantom debt collectors. These
6 are people collecting on debts that don't exist or that
7 the consumer has already paid off or that the collector
8 has no authority to collect on that specific debt, he's
9 stolen it, he's stolen the consumer information, and he's
10 using that to perpetrate a fraud on the consumer and get
11 them to pay money that they don't even owe.

12 Which is sort of a good transition to the other
13 bucket of enforcement actions from the last couple of
14 years that I think is important enough for me to talk
15 about today, and that would be our sort of data security
16 cases. A fraudster cannot pull off a phantom debt scam
17 against a consumer without having certain consumer
18 information that makes their threats and their approach
19 to the consumer that much more credible. Otherwise, the
20 consumer is going to say I don't know what you're talking
21 about, get out of here, and never talk to them again.

22 Unfortunately, these fraudsters have things like
23 the consumer's bank account information, their Social
24 Security number, and a lot of other very personal
25 information about the consumer that makes their scam very

1 credible and makes the consumer start to doubt whether
2 they really know everything they know about a debt that's
3 purportedly five, six, seven years old.

4 The FTC brought a couple of cases about a year
5 ago now against two companies, one called Cornerstone &
6 Company, the other called Bayview Solutions, and what we
7 found there was that those companies were advertising
8 portfolios on a very well known, at that time, very public
9 websites used by the debt collection industry where they
10 were just posting the entire portfolio or the entire
11 spreadsheet on this very public website so that anybody
12 could see the consumers' information, right down to who
13 their employers were, who their
14 friends and neighbors were, their bank account
15 information, their routing numbers, their Social Security
16 numbers, the whole kit and caboodle. And so we went in,
17 got preliminary orders from the court to get that
18 information off the web in the first place.

19 This is something I think we may touch on later
20 in the panel, but we've been suing the phantom debt
21 collectors for several years now. I think we've sued
22 seven or eight of them, shut them down, taken all their
23 assets, banned them. We're now very interested in where
24 are these fraudsters getting this consumer information
25 from. You can't pull the fraud off without the

1 information, and so we are exploring aggressively whether
2 there are holes in data security in the debt collection
3 industry, whether lead generators are doing something
4 improper with this information.

5 We see a very close nexus and correlation between
6 these phantom debt scams and payday loans, online payday
7 lending, and so we are exploring a number of different
8 options for how is this information getting into
9 the scammers' hands. So that's the other big bucket of our
10 enforcement actions.

11 I think you've seen both of those manifested in
12 the outreach efforts that we made and that were
13 publicized a couple of weeks ago with our Operation
14 Collection Protection announcement. The FTC recognizes that
15 we can't stop these practices by ourselves. We have
16 limited resources and we have wide jurisdiction in other
17 practices well beyond debt collection, and so we are
18 trying to partner much more aggressively now with our
19 federal partners, like the CFPB and the OCC, and with our
20 partners in the state attorney general offices and state
21 regulatory offices and also with partners at more of a
22 local level, like the New York City Department of
23 Consumer Affairs and the L.A. Department of Consumer
24 Affairs. So that's also sort of a new evolution of our
25 enforcement program here at the FTC.

1 MR. KANE: Thanks.

2 Greg, any recent enforcement actions by the CFPB
3 in the debt collection area?

4 MR. NODLER: Sure. The CFPB hasn't been
5 around all that long, so just about everything that we've
6 done is recent. But in our short life, in enforcement
7 cases that had to do with debt collection, we've ordered
8 companies to provide over \$200 million in restitution and
9 ordered them to cease collecting over a billion dollars
10 in alleged debts.

11 Rather than go through all of the ones that are
12 related to that or just all of our debt collection cases,
13 I thought I would just talk about a few of them. The
14 very first one was against American Express, and I see a
15 lot of familiar faces here so I won't spend too much
16 time on that because I think I've talked about it at the
17 two previous ones, so I'll mostly just talk about one
18 that I talked about at the very last one, which were the
19 cases brought against Chase Bank involving their debt
20 sales practices, and then against Encore and PRA, two
21 large debt buyers, about their debt buying practices.
22 And then I'm also going to talk a little bit about our
23 two most recent settlements that didn't have anything to
24 do with debt buying. They were against original
25 creditors, but they were collecting debts that related to

1 auto finance. One of those was a lender that specialized
2 in service member accounts.

3 So first, to go back to the Chase case, this was
4 brought by the CFPB along with 47 state attorneys general
5 and the District of Columbia -- and the OCC, as Ken may
6 talk about, brought a similar action at the same time --
7 and the basic gist of the case was that Chase Bank was
8 selling and collecting on debt that it knew or should
9 have known had inaccuracies, was sometimes unenforceable,
10 sometimes unsupportable by documentation.

11 One of the things that the Dodd-Frank Act has is
12 that we can bring claims for companies engaging in
13 unfair, deceptive and abusive practices, but we can also
14 bring claims for companies recklessly providing
15 substantial assistance to others who engage in unfair,
16 deceptive and abusive practices. And so in the Chase
17 case, we brought a claim against Chase for selling
18 inaccurate debt to debt buyers when Chase knew or should
19 have known that they were going to be collecting that
20 inaccurate debt, and therefore, deceiving consumers.

21 As part of the settlement, Chase agreed to
22 provide \$50 million in refunds to consumers, to cease
23 collecting about 500,000 accounts, and to pay \$136
24 million in civil money penalties to the CFPB and to the
25 various states, and then the OCC's action, to pay another

1 \$30 million to the OCC.

2 Chase also agreed to injunctive relief that
3 really overhauled their debt sales practices. Going
4 forward, there are a number of types of debts that Chase
5 no longer can sell, such as debts owed by service
6 members, debts that are past the statute of limitations,
7 debts that are owed by someone who is deceased. They
8 also can't sell debts that they don't have documentation
9 to back up, and so when they sell a debt they have
10 to also agree to provide a certain amount of
11 documentation that needs to show certain things.

12 One of the things that I thought was very
13 interesting about it is they have to send consumers a
14 letter whenever they sell debt, letting them know that
15 they sold it and who they sold it to, and telling the
16 consumer that if you have questions about this or if you
17 want to see the documentation, let us know and we'll
18 provide it to you for free. Part of that was because
19 something that we were seeing was that consumers were
20 being collected from debt buyers, when they would dispute
21 the debt buyer would say the original creditor told me
22 this was the amount, so I don't know what to tell you.
23 And then they would go to the original creditors and the
24 original creditor would say I sold this, I have nothing
25 to do with it anymore, so I'm not going to provide you

1 documentation, I'm not going to do anything. And so
2 consumers were caught in this Catch-22 being bounced back
3 and forth, so we're hoping that at least that won't
4 happen anymore with debts that are sold by Chase.

5 So then the next two that had to do with this
6 were brought against Encore and PRA. I imagine that
7 everybody here is familiar with them; they're the two
8 largest debt buyers in the market. And in those cases we
9 found that Encore and PRA were violating the Fair Debt
10 Collection Practices Act and the Consumer Financial
11 Protection Act, the Dodd-Frank Act, by collecting without
12 a reasonable basis. This is something that kind of grew
13 out of substantiation doctrine from FTC cases.

14 We said that Encore and PRA, they were doing that
15 because they were continuing to collect debt after they
16 were on notice that there was something suspect about it
17 and that they didn't take any further steps to verify it.
18 That by telling a consumer that they owed the debt in a
19 specific amount with a specific interest rate or
20 something like that, that there should have been
21 something backing that up and that once these red flags
22 had been raised, when they didn't do anything, there
23 wasn't anything really backing it up anymore. So there
24 was that claim.

25 There was also one for misrepresenting their

1 intent to prove the debts, and this was through their
2 lawsuits and their threats of lawsuits. Encore and PRA,
3 as I'm sure you know, file tens of thousands of
4 lawsuits regularly and a lot of the lawsuits that they
5 were filing, they weren't making sure that they had what
6 they needed to go forward should a consumer contest the
7 lawsuit.

8 We brought a similar case against the Hanna Law
9 Firm, which is out of Georgia, and I'm not going to talk
10 about that one very much because it's still in active
11 litigation but there was, I think, in my opinion, a great
12 decision that came out on it defeating the motion to
13 dismiss. It was a seventy-page opinion, it's very well
14 thought out. I don't know that everybody here is going
15 to agree with what's in it, but I think we can all agree
16 it was very well written.

17 (General laughter.)

18 MR. NODLER: So then there were also claims in
19 Encore and PRA about filing misleading affidavits,
20 affidavits that misrepresented the level of review
21 of the affiants of documents that weren't attached.
22 Specifically, in the Encore case there was a claim about an
23 affidavit that said the consumer received a 1692g notice
24 and didn't dispute it and so per the FDCPA the debt is
25 valid. I imagine that everybody here is familiar with

1 the section that they're talking about, and you probably
2 also know that it doesn't say that. It says it's presumed
3 valid by the debt collector. And later on in that
4 section it says that it doesn't assume the validity in
5 court, that it can't be used, that a court shouldn't
6 assume that the debt is valid based on the failure to
7 dispute under 1692g.

8 We also brought claims in there for collecting
9 time-barred debt by implying that it was still legally
10 enforceable. And then there were other specific
11 violations just against Encore or just against Portfolio
12 Recovery Associates. Together they were ordered to pay
13 about \$60 million in restitution, \$18 million in civil
14 money penalties, and to cease collecting on about \$128
15 million of alleged debts.

16 So then the last two that I was going to talk
17 about were very recent settlements. These were against
18 SNAAC and Wilshire/Westlake. SNAAC stands for the
19 Security National Automotive Acceptance Company. They're
20 an auto finance company that specifically lends to
21 service members, and the claims in that case involved
22 deceptive representations they were making about the
23 failure to pay the debt, like telling service members
24 that it was going to affect their security clearance,
25 that they were going to be able to garnish wages without

1 getting a judgment, that they were going to sue them soon
2 when they weren't. But then the real meaty claim in that
3 involved telling consumers that if they didn't pay they
4 were going to tell the commanding officer about the debt,
5 and they were, in fact, telling the commanding officer
6 about the debt.

7 This was mentioned, kind of buried in the fine
8 print of their contracts where they said, you know,
9 you're agreeing that we're going to contact your
10 commanding officers if you don't pay the debt. But we
11 alleged in that case that consumers were often unaware of
12 that language, that they couldn't have bargained it away
13 even if they were aware of it, and that they also
14 couldn't have anticipated the nature or the frequency
15 with which they would be contacting commanding officers.

16 That one recently settled, and per the settlement
17 they have to stop engaging in all of those practices,
18 they can't put that language in their contracts anymore,
19 they can't enforce the language that's there. They also
20 have to pay about two and a quarter million dollars in
21 redress to consumers and then another million dollars of
22 civil money penalties.

23 And the last one that I'll mention was against
24 another auto finance company, Westlake and Wilshire --
25 one of them owns the other one. They provide financing

1 for auto loans and also for title loans. And in that
2 case we uncovered that they were using a company called
3 SkipTracy -- that some of you may be familiar with -- so
4 that when they would call a consumer it would show up on
5 their caller ID as something besides Wilshire/Westlake.
6 It would maybe say that they were the repo company when
7 they weren't, or it might say they were the flower shop,
8 or it might say that it was one of the consumer's friends
9 or family members. This would obviously get the consumer
10 to answer the phone when maybe they wouldn't have
11 otherwise answered it.

12 On the ones that came from the repo company, we
13 found that that brought someone who wouldn't have
14 ordinarily been subject to the FDCPA because they were
15 originating the loans, well, now they were collecting
16 under someone else's name so that brought them into the
17 FDCPA. We didn't make that same claim for when
18 they were saying they were the flower shop or one of
19 their friends or family members. They were using that
20 just to get somebody on the phone or to get them to admit
21 where the vehicle was that they were trying to locate by
22 saying something like I'm trying to deliver some flowers
23 to you.

24 So in that one, besides having to stop the
25 practices, they were also ordered to pay about \$44

1 million in redress -- a lot of that was debt
2 cancellation -- and there was also about \$25 million in
3 cash refunds. And I'll pass it on.

4 MR. KANE: Thanks.

5 Ken, I didn't leave you much time so if you'll
6 just briefly mention stuff.

7 MR. LENNON: Keep it short.

8 MR. KANE: Yes. Thanks. And then I'll move on
9 to our industry members.

10 MR. LENNON: Absolutely. Let me see if I can cut
11 this to the chase. Taking the concept of recent being
12 really recent, I'm only going to look at two matters that
13 happened in the last eight months.

14 First of all, late May of this year the OCC
15 issued a cease and desist order against Bank of America.
16 We also assessed a \$30 million civil money penalty or a
17 \$30 million fine against the bank. And basically, the
18 cease and desist order went to, as opposed to violations
19 of law, it went to unsafe and unsound banking practices
20 involved in BofA's debt collection litigation activities.
21 So that was late May.

22 About six weeks later in July -- and Greg
23 obviously already touched upon the actions that were
24 taken against JPMC -- we took an action against three
25 entities under the JPMC umbrella. Again, we assessed a

1 \$30 million CMP -- Greg mentioned that -- and we had
2 previously taken a cease and desist order against those
3 three banks, again in connection with unsafe and unsound
4 practices involving debt collection litigation
5 activities. But keep in mind, those cease and desist
6 orders also went to other matters, other concerns that we
7 had at those banks, for example, the banks were found to
8 have violated the Servicemembers Civil Relief Act, so we
9 had violations of law as well as unsafe and unsound
10 practices at both banks.

11 If you take both consent orders and put them up
12 against each other, you'll find two things. First of
13 all, they had findings of fact -- and that's kind of
14 normal for what we do -- but if you look at the findings
15 of fact, you'll find some similarities in terms of
16 concerns we had at both banks. Affidavits, for example,
17 affidavits were being filed that weren't based on
18 personal knowledge or a review of the relevant documents.
19 Documents were being filed that weren't properly
20 notarized. The bank wasn't spending sufficient
21 managerial resources to basically manage its outside debt
22 collection litigation activities. So there are sort of
23 common themes at both banks.

24 In addition to the problems that we saw there,
25 the examiners also found that basically the bank's

1 clients risk management program was deficient. That, in
2 part, led to the problem, so we criticized that and told
3 them to fix that as well. Both banks were ordered to
4 basically determine whether or not any of the collection
5 accounts should be eligible for remediation, and if so,
6 then to remediate them.

7 And again, trying to save a little time here for
8 everybody else, I can tell you that basically the BofA
9 order, candidly, is a little too recent so I don't have
10 information about where restitution is at right now. But
11 I can tell you in connection with the JPMC order with one
12 caveat, and the idea is that restitution that was ordered
13 there, as well as at BofA, involves more than just debt
14 collection, it involves, obviously, the SCRA violations,
15 and I don't have a breakdown between the two, but I can
16 tell you that as of a couple of months ago the three JPMC
17 entities had already paid more than \$50 million in
18 restitution.

19 Is that sufficiently brief?

20 MR. KANE: Thank you very much, Ken.

21 Let me move on to the industry members, and for
22 each of you, I'd like you to tell us briefly about your
23 company that you actually work for, then the organization
24 that you're representing here today, and then tell us
25 what your organization sees as the most significant

1 issues facing the collection industry today, and then
2 we're going to work through those issues for the rest of the remaining
3 hour that we have.

4 So Tim, can you tell us a bit about insideARM and
5 your other organization, and then some of your concerns?

6 MR. BAUER: Sure. And we'll give the Reader's
7 Digest version here to keep us moving. First of all,
8 thank you again for letting us participate.

9 As Tom mentioned, I'm president of insideARM.
10 insideARM is a provider of specialized information to the
11 debt collection industry. We do that through a daily
12 newsletter that we send out if you subscribe to it -- you
13 must subscribe. We have a website devoted to this
14 industry. We do conferences. A couple of the more
15 familiar are our annual Larger Market Participant
16 Conference in the spring, and we just finished a
17 conference in the fall, I think the first of its kind, on
18 First Party Outsourcing that we held last month.

19 I'm also co-executive director of the Consumer
20 Relations Consortium, and I suspect many in this room
21 have never heard of us. We are known as the CRC. We
22 were formed in 2013 by a group of industry executives
23 that looked around and said, you know what, we think
24 there's got to be a better way for this industry to work
25 to accomplish goals for the industry, and as mentioned by

1 our introductory speaker today, we think one of those
2 ways that the industry should work is work with consumer
3 groups, not against them. And the CRC has been doing
4 that since our formation, and we'll talk about that later
5 on. I know you've got a question you're going to ask me
6 about that.

7 You asked us also to talk about what we think are
8 the most significant issues facing the industry today,
9 and I'll just do two and I'm going to be brief on them
10 because I also know we're going to talk about both of
11 these.

12 One is communication, and you might say why is
13 that an issue today, and the fact of the matter is there
14 is less and less communication between legitimate debt
15 collectors -- not the criminals and thieves that are
16 using debt collection as their disguise to conduct their
17 criminal activity, but legitimate debt collectors, and
18 consumers. And the communication is going down, the
19 amount is going down year after year and that's a
20 problem, and we will talk about that in detail later.

21 The next item -- and those of you who know me
22 well are going to be shocked, I think, when I say this --
23 I think the next critical issue facing our industry is
24 litigation is out of control. And I say this as a
25 recovering lawyer; I spent fifteen years in private

1 practice in Minnesota with a creditors rights group. But
2 litigation is out of control, and I say that it's out of
3 control from both sides of the house, from the consumer
4 suing the debt collection industry, the consumer
5 advocates that have turned this into a cottage industry,
6 it's out of control, to the fact of the matter is I think
7 collection litigation is out of control as well. And
8 it's costly, and it's costly to the consumer that may owe
9 the money and it's costly to the consumers out there that
10 don't owe the money because we're paying for that
11 litigation in consumer goods, in higher interest rates,
12 et cetera, et cetera.

13 MR. KANE: Thanks.

14 Harvey?

15 MR. MOORE: Gee thanks, Tim.

16 MR. BAUER: I warned you.

17 MR. MOORE: I was warned.

18 So first of all, as everyone else has, I want to
19 thank Chris and Tom for inviting me to come and speak at
20 this dialogue.

21 A little bit about myself and my firm. The Moore
22 Law Group employs approximately sixty-five attorneys and
23 non-attorney support staff and compliance and accounting
24 staff and audit staff in three states: California,
25 Colorado and New Mexico. Our primary practice is

1 representation of original credit grantors, and in
2 addition to having a collection practice, we also have a
3 defense practice.

4 The philosophy in our firm is that we're
5 committed to practicing debt collection law in accordance
6 with the maxim that although compassion and understanding
7 cannot be legislated, they're vital components of the
8 practice of law, and our goal, and I think for most of the
9 NARCA members, is to practice legal collections in such a
10 manner that those with whom we interact are treated with
11 dignity, respect, compassion and professionalism, and
12 that's something that we train everybody in our firm to
13 do.

14 So this year I took over the position of
15 president of NARCA, the National Creditors Bar
16 Association. Founded in 1993, NARCA was originally the
17 National Association of Retail Collection Attorneys.
18 This year our membership approved by-law changes so that
19 NARCA is now a professional trade organization dedicated
20 to serving all attorneys engaged in the practice of
21 creditors rights law. NARCA member firms not only
22 collect credit card debt, there are also commercial
23 obligations, judgments, auto loans, credit union
24 obligations, medical bills, student loans, medical liens,
25 mechanic's liens, lease obligations, utilities, and

1 governmental obligations, including tax obligations and
2 past due family support.

3 In addition, NARCA members represent creditors
4 and issuers in bankruptcy, foreclosure, probate and
5 subrogation matters, and also defend creditors and debt
6 collectors in connection with suits brought alleging
7 violations of the various regulatory schemes, including
8 the FDCPA, TCPA, FCRA, and their state equivalents.

9 So Tom asked what we think are the most
10 significant issues facing the collection industry today,
11 and I have three, and I will also do the Reader's Digest
12 version because I know we're going to touch on most of
13 them later.

14 The first one that NARCA members see as a primary
15 issue is we are seeing increased regulation of the
16 practice of law by regulators which is often in conflict
17 with the actual legal practice in the courtrooms. As
18 attorneys bound by codes of ethics, attorneys have a
19 fiduciary duty to zealously represent our clients, yet
20 regulators are creating a conflicting duty towards
21 consumers as well.

22 And I want to point out that despite regulatory
23 assertions that the system is broken, the system is not
24 broken. There is much cooperation between the
25 consumer bar, the debt collection bar and the courts and

1 the legislatures in our respective states to try to
2 create more access to the system, to try to get
3 communication going. The system is not broken, the
4 system might need tweaking, but the system is definitely
5 not broken.

6 The second issue that I want to point out is,
7 again, as Tim has said, the inability to communicate with
8 consumers, and we'll talk about that in much greater
9 detail as we go on.

10 And the third is that creditor law firms are
11 struggling with regulatory uncertainty. Not knowing
12 what's expected of us creates real challenges for us as
13 attorneys. If you combine that with the increased cost
14 of regulation, what we're creating is an environment
15 where all but the largest firms will succeed, so that
16 what we're facing is smaller firms are becoming too small
17 to succeed in this environment. Is an environment
18 dominated by a handful of national or regional firms
19 truly what is best or in the best interest of consumers?
20 And I'm not saying the large firms are bad, but can they
21 serve all of the entities, including the mainstream
22 businesses, hospitals, small credit unions, doctors,
23 dentists and others that need debt collection services?
24 I don't think where we're headed is going to serve the
25 public interest.

1 MR. KANE: Thanks.

2 Brett, can you tell us about your organization
3 and your concerns?

4 MR. SOLDEVILA: Again, thanks for having me, Tom
5 and Chris. I'll try to keep this brief, I know we're
6 still on introductions.

7 To start, I work for Security Credit Services.
8 We acquire nationwide consumer and commercial receivables
9 from financial institutions, and we manage that
10 collection process. We're a DBA certified company, an
11 ACA member, and we're also compliant with PCI DSS, as
12 well as SSAE 16. We have an office in Oxford,
13 Mississippi, also here in Atlanta.

14 I'm here on behalf of the DBA, which is a
15 nonprofit trade association that has approximately 600
16 members. Of those members, you have debt buyers, you have
17 issuers, collection agencies, law firms and other
18 industry-related service providers. DBA also plays an
19 important role in advocacy for its members through
20 meeting with the issuers, the regulators, and lawmakers.
21 They also provide extensive networking and educational
22 opportunities through an annual conference. There are
23 symposiums that are held, also publications that are
24 issued. There's also a certification program which we'll
25 touch on, I believe, later in this dialogue, but that

1 certification program is based on industry best
2 practices, as well as regulatory requirements.

3 And regarding the issues that the industry faces,
4 I'm looking at this from more of a higher level than what
5 was mentioned by some of my colleagues. The negative
6 perception I think that the general public has on the
7 industry is really one of the big issues that we're
8 facing now, and it's a perception that extends
9 into other types of financial services industries as
10 well. In recent history it can likely be
11 attributed to dating back to some of the business
12 scandals we saw that led to the Sarbanes-Oxley Act in
13 2002, and then more recently with the bank failures that
14 led to implementation of the Dodd-Frank Act in 2010, which
15 in turn led to the creation of the CFPB.

16 But with that said, I think we've come a long way
17 since then. Just in the past five years
18 this industry has come a long way. I think that's
19 evident in some of the initiatives by some of these trade
20 associations represented on this panel. I think there
21 was a lack of self-regulation before but I think there is
22 a much stronger presence of that today. I think that
23 the industry, all the members and the government need to
24 continue to try to work together to try to find some type
25 of balance that's not only to the benefit of the

1 consumers but also to the benefit of the issuers, the
2 taxpayers and the economy as a whole.

3 MR. KANE: Great. Thank you very much, Brett.

4 I think soon I'm going to be the only one that
5 has a working mic, so I'm just going to ask myself
6 questions.

7 (General laughter.)

8 MR. KANE: So clearly, communication between
9 consumers and debt collectors is a big issue, and I want
10 to move into that now and spend a good bit of time on it.
11 So industry members, where is the breakdown in
12 communication between consumers and debt collectors, and
13 from your perspective, what are the causes for the
14 breakdown?

15 MR. BAUER: Well, I'll jump in first and I'll
16 give you several.

17 Technology has dramatically impacted the lack of
18 communication, whether it is caller ID, voice messaging
19 services that are available now everywhere, the consumer
20 moving from land lines to cell phones, et cetera. The
21 new consumer, the Millennials, I put my children in that
22 category, I can leave a voice message for my daughter all
23 day and she'll never listen to it. If I send her a text
24 message, she'll call me. Consumers are worried about the
25 scammers and the criminals and thieves, and it's hard to

1 read a newspaper, turn on a TV, go to the local news, go
2 to "20-20" or "60 Minutes" without another story about
3 thieves/criminals using debt collection as their
4 disguise, and it's got people nervous.

5 If we had more time I was going to play to the
6 group today two messages I have on my cell phone from one
7 of the companies that purportedly are from the IRS coming
8 to arrest me and my children and my family and take us
9 all away. And they're not going away. But that has a
10 very chilling effect, and I don't think we can ignore
11 that chilling effect.

12 Finally, from the debt collector side of the
13 house, debt collectors are very nervous about litigation
14 against them and laws have not kept up with technology.
15 We've got inconsistent opinions from the courts
16 throughout the country on what kind of voice messages we
17 can leave, we've got inconsistent opinions as to how many
18 times you can call, when you can call, et cetera, et
19 cetera. These things are also diminishing communication.

20 So with that, I'll move it on.

21 MR. MOORE: So the last time I spoke at a panel,
22 Tom was there, and it was the LEP Latino conference, and
23 after the panel I spoke to an attorney who runs a project
24 in San Diego representing under-represented consumers,
25 and we were having a discussion about how do you make

1 sure you're talking to the right consumer, because our
2 clients have told us as attorneys we're not allowed to
3 give to get. It's a standard concept: I can't tell you
4 the last four of your Social, I can't tell your address,
5 I can't give you any information, I have to get it from
6 you to make sure that I'm talking to the right consumer.

7 However, the consumer advocates are telling the
8 consumers: You can't give any of this data because if
9 you're giving this data to someone, they're going to use
10 that data against you and then you're going to have
11 problems. So one of the biggest problems we face is how
12 do we make sure we're talking to the right person.

13 If we cannot communicate with an individual --
14 and Tim has said litigation is out of control, but let me
15 tell you why there is so much litigation today. I am an
16 attorney, I don't pretend to be an attorney, I am an
17 attorney, I'm licensed to practice in my state. When I
18 talk to somebody I need information so that I can make
19 sure I'm talking to the right person, and if I am talking
20 to the right person, I want to talk to them and settle
21 the case. Filing a lawsuit is a failure of
22 communication, but if I can't get the data necessary to
23 make sure that I'm speaking with the right consumer, I
24 can't negotiate the debt or I'm going to be in violation
25 of a third-party disclosure, even if I'm talking to the

1 right person because I can't validate that I'm talking to
2 the right person. So we have real problems with that.

3 Tim was talking about Millennials. I have six
4 kids. They don't talk to each other on the
5 phone. The phone is a horrible thing. We're a nation of
6 cell phones, let's face reality here. The cell phone is
7 life. If you lose your cell phone you lose your
8 contacts, you lose your tweets, you lose your texts.
9 People communicate by text, they communicate by
10 Instagram, they chat, they use Facebook, but we have an
11 environment today where we cannot use the technology
12 because the laws are behind the curve, the laws are very
13 old.

14 And we're also facing a situation where not only
15 don't we know what message we can leave, but if we were
16 to call using the wrong type of phone system -- and
17 again, I understand there's nobody here that enforces
18 TCPA, but the challenge to the regulators is this: does
19 it make a difference if I'm calling a cell phone using an
20 auto dialer or a manual dial. And I contend that it
21 doesn't make a difference. Whether a call goes out, it
22 goes out. And so we're facing challenges with technology
23 where we're trying to take laws that were written before
24 the technology existed and we're trying to enforce it in
25 a world that is forty years later and it's cutting down

1 on communication.

2 I want to talk to people, I want to cut a deal, I
3 don't want to spend all the time it takes to go to trial,
4 get a judgment and enforce a judgment, because I am much
5 better off and the consumer is inherently better off if
6 we talk to each other, if we communicate. So it's
7 absolutely imperative that we find ways to communicate.

8 MR. KANE: Brett, is your group finding similar
9 problems?

10 MR. SOLDEVILA: I agree with what's been said. I
11 think they covered it pretty well. I know we're not
12 talking about the TCPA, but yes, the FCC ruling did make
13 the process of communicating with consumers much more
14 difficult and manual, and by doing this, it limits the
15 communication channels with consumers, which results in
16 having to rely on much more aggressive tactics, such as
17 filing suit. I think we're currently still in a stage
18 where there's just too much ambiguity with the current
19 requirements, and this has led to a vast amount of
20 litigation against the collection industry and the need
21 to rely on case law just to interpret what those rules or
22 requirements were meant to state.

23 And I agree with the technology as well. That's
24 advanced significantly since over the past, whereas a lot of the
25 requirements governing

1 the debt collection industry are fairly outdated. So
2 this is another challenge that we face.
3 That said, I want to get more clarity around how to
4 communicate with the consumer, by the phone, for example.
5 It's probably wise to look at other avenues to
6 communicate with the consumer, whether that be through
7 text messaging, email, web chat, other forms of social
8 media. There's not a lot of guidance around that just
9 yet, but I think that's one area that collectors can look
10 into to see if there's other ways to communicate.

11 MR. KANE: I asked Tim about his group's
12 suggestions in this area, but first the elephant in the
13 room is more guidance is necessary and we all know the
14 CFPB is working very hard on rulemaking. But because I've
15 talked to Greg about this quite a bit, Greg, tell us what
16 you are able to say about the rulemaking at this point.

17 MR. NODLER: Sure. And it's not that I'm unable to
18 say it because I'm a jerk or anything; I don't know
19 a lot of it. But so I can say what the next steps are
20 likely to be, and they are going to be that the bureau
21 convenes what's called a SBREFA panel, and for those of
22 you who aren't familiar with it, SBREFA stands for Small
23 Business Regulatory Enforcement Fairness Act. And what
24 that is is that when certain agencies are promulgating
25 rules that are going to have a heavy effect on small

1 businesses, then it requires that we basically bring in
2 some small businesses to hear about it, to hear about
3 what's going to happen and how it's going to affect them,
4 so we can take that all into consideration.

5 And so specifically, the next steps are going to
6 be that the bureau will convene a small business review
7 panel, per the SBREFA guidelines, and that's going to
8 have people from government agencies, from the CFPB, the
9 SBA and OMB. And then the CFPB and the SBA are going to
10 pick some representatives of small businesses that are
11 likely to be affected by the rulemaking, it's usually
12 about fifteen or twenty different representatives, and
13 those representatives then will -- actually, the very
14 next step would be that the bureau would issue a SBREFA
15 outline, would let these representatives and everybody
16 else -- because we would give it to them at the same time
17 we give it to all of you -- know kind of where we think
18 the rules are going to go.

19 We just did this with a payday small lending
20 SBREFA outline as well.

21 So we'll issue that and then the small business
22 review panel will meet with those representatives and
23 they'll hear their thoughts on the SBREFA outline, and
24 they can submit written comments as well. That meeting
25 between the panel and the representatives is not a public

1 meeting, but all of the materials that are used will be on
2 our website as well as a summary of the discussion will
3 also be on the website.

4 So then within sixty days of that meeting, the
5 small business review panel will issue a report that will
6 basically say here is what the small businesses said,
7 these are their thoughts about the rule, this is how it's
8 going to affect them. The report may say here's how
9 we've changed some things in response to that, or it may
10 say here are some alternatives that we considered that
11 would be less costly. But in any event, that report will
12 come out at the same time as the notice of proposed
13 rulemaking.

14 And then once we've done that, then all of you
15 and consumer advocates and whoever can all submit
16 comments giving us their thoughts on the rules, and we
17 then take those into account and then we'll issue a rule.

18 MR. KANE: Great. Thanks. And so getting back
19 to specifically communication between consumers and the
20 collection industry, Tim's group, the CRC, has just come
21 up with some guidance, and Tim, tell us about it.

22 MR. BAUER: Well, thanks, Tom.

23 Just today we announced an initiative that we
24 were involved in with a group called Consumer Action, and
25 Consumer Action is a nonprofit organization that focuses

1 on financial education for low to moderate income and
2 limited English-speaking consumers. And they also
3 advocate for consumers rights nationwide and look to
4 promote industry-wide change.

5 Together with them we've been working on this for
6 about the last six months, and it reminds me of I think
7 it's a Mark Twain quote: if you want me to do a five-
8 minute speech, I'll need at least three months to prepare
9 for it. Well, this is a two-page document that took
10 about six months to prepare, same type of deal, because
11 we wanted it to be short, concise, clean, readable, and
12 this guide is called: When a Collector Calls: An
13 Insider's Guide to Responding to Debt Collectors. And
14 it's a free guide that Consumer Action will circulate
15 throughout the United States to the various offices and
16 groups that they work with.

17 And it provides tips for consumers and how to
18 deal with an agency, how to spot a fraudster from a
19 legitimate agency, and it provides simple things like a
20 little chart: is the caller rude to you; is the language
21 accelerated that they turn it to eleven on the volume
22 knob from the start of the call forward; does the caller
23 ask for your full Social Security number; things like
24 that to help them move forward. And last, it will tell
25 them will the caller provide you their full name, address

1 and phone numbers, and does the caller push back when the
2 consumer wants to exercise their rights to dispute the
3 debt.

4 So we think this is a first step among many to
5 help educate and help promote communication.

6 MR. KANE: Great. Thanks very much, Tim.

7 So let me see, I want to move on to some other
8 topics folks raised. One of them was generally
9 uncertainty because of too many regulations or perhaps
10 conflicting regulations. Industry folks, tell us a
11 little bit more of that, and then I'll ask the federal
12 folks to comment. What sorts of issues or problems are
13 there that are being caused by regulations?

14 Harvey, do you want to start?

15 MR. MOORE: Where do I begin? Alphabetically.

16 So you know, it's very interesting because
17 listening to the first panel, I think there was a
18 consensus that we don't need more regulation, we need to
19 enforce the laws that we already have. As attorneys
20 practicing law, we're already subject to our state bar
21 regulations.

22 One of the things that I did before I came is I
23 went and I looked back at how many different laws am I
24 subject to in addition to the federal laws. So in
25 California we have the Rosenthal Act, we have our state

1 bar code of conduct and rules of ethics, but we also have
2 a specific law that says that an attorney practicing debt
3 collection law has to do A, B, C, D and E, and if you
4 fail to comply with those laws, it can be something that
5 is subject to attorney discipline. So if I violate the
6 Rosenthal Act and the FDCPA, I can lose my license to
7 practice law in the state of California.

8 So it's not a question of do we need more
9 regulation; it's a question of do we need certainty.
10 I'll give you a good example, and we're going to talk
11 about phone messages.

12 There are a lot of different possible ways you
13 can leave a message for a consumer, and it's been said,
14 maybe they don't listen to the messages in the first
15 place, because our callback rate is about 2 percent or so
16 off of messages left, but we have conflicting
17 regulations.

18 We have the regulation that says that if you
19 communicate with the consumer, you're supposed to make
20 certain disclosures; there's a regulation that says that
21 a telephone call to a consumer where you leave a message
22 may or may not be a communication per se, and then
23 there's a question of what can you leave.

24 So we have the Foti case, which is from
25 Hosseinzadeh, which is from the J.J. McIntyre case from

1 my state, and then you have the Zortman case which is a
2 completely different line of thinking about what can you
3 leave on the phone because you may or may not be leaving a
4 message on that consumer's answering machine. So there's
5 conflicting regulation there.

6 And I think at the end of the day, if you tell an
7 attorney what it is he's supposed to do, he'll do it
8 within the parameters of zealously representing his
9 client and I think the regulations that we're seeing or
10 that we're anticipating may not particularly allow
11 lawyers to practice law in a way that zealously
12 represents their clients.

13 MR. KANE: Chris, do you have any comments on
14 what Harvey said so far?

15 MR. KOEGEL: Yes. I have a reaction to Harvey.
16 I think a couple of things resonated for me the last
17 couple of minutes. One is, yes, a certain amount of
18 communication with consumers is certainly desirable. I
19 think one thing I would note is where there is a need to
20 communicate information that the consumer is not already
21 abundantly aware of, yes, we need to make sure that there
22 are pathways to communication.

23 One thing that we see at the FTC when we look at
24 the complaints we get from consumers is that there are
25 collectors out there who are not using phone calls and

1 text messages as a way to necessarily communicate to
2 consumers but as a way to bludgeon them and wear them
3 down into paying. So that is a concern that we see in
4 terms of the volume that goes through.

5 Reacting a little bit more to what Harvey just
6 noted, what I heard from you, Harvey, is there is very
7 little return on these voice messages that are being
8 left -- I think you said 2 percent callback rate.

9 MR. MOORE: I think that's correct. I think what
10 we're finding is that the old model of call and collect
11 doesn't work as well as it used to because they know
12 who's calling. The first message we leave, if they don't
13 respond to that, they're probably not going to respond to
14 the second, third, fourth and fifth. I think a lot of
15 law firms are moving to not making outgoing calls.

16 MR. KOEGEL: So my point here is that the FDCPA
17 does not provide a right for a collector to communicate
18 in any particular fashion, but if you choose to
19 communicate by any mode of communication, you choose to
20 send text messages, you choose to leave a voice mail, you
21 have to realize that you have to do that in a way that
22 complies with the FDCPA, and one of those things is that
23 you have to make sure that you are not disclosing
24 somebody's debt to a third party. So if you are leaving
25 voice messages that in some way may disclose a debt

1 potentially to a third party or fail to give disclosures,
2 you are taking a risk.

3 And what I hear from everybody here is that the
4 reward is probably not worth that risk, you're getting a
5 2 percent rate of return on those voice messages, we're
6 hearing everybody talk about how Millennials don't really
7 respond to voice messages or phone calls anymore. I
8 think we do have to find new ways to reach consumers to
9 communicate information that they need and that they do
10 not already have. If something is getting ready to go
11 into litigation, a consumer may want to know that, and I
12 understand that. But we have to marry all these facts
13 that we're all discussing up here today, that voice
14 messages are not really reaching consumers, they're not
15 having the desired effect, and that if you do leave voice
16 messages, you are taking certain risks.

17 MR. MOORE: So here's the challenge for the
18 regulators: provide safe harbors. Don't just tell us
19 what's wrong, give us some safe harbors so that at the
20 end of the day we know that if we leave a specific
21 message that we're going to be okay.

22 MR. NODLER: And again, I know Chris already said
23 it but I'll say it again. This is just me speaking for
24 myself and not speaking for the agency. First of all, I
25 agree with everything that Chris just said. The FD CPA

1 doesn't provide a safe harbor today that you can always
2 communicate in this particular fashion.

3 You know, I hear a lot about these conflicting
4 statutes, and I don't think that they're conflicting at
5 all, I think that it's actually pretty clear. I think
6 that the Foti decision was pretty clear. Sorry. This
7 is, again, just me speaking. I think that what it said
8 was if you're communicating with a consumer about a debt,
9 you need to tell them that you're a debt collector.
10 That's easy to understand. And it said that you can't
11 disclose the debt to a third party, that's easy to
12 understand. And so I think that that case pointed out
13 that, hey, if you're leaving a message on an old
14 fashioned answering machine that's going to play the
15 message where somebody else is going to hear it, somebody
16 else might hear it, and if they do, then it's been
17 disclosed. But I don't think it says you need to leave a
18 message, it doesn't say you have an absolute right to
19 leave a message.

20 And then just going back to what you were saying
21 before about the 2 percent, if a consumer is getting the
22 message and doesn't want to call back, doesn't want to
23 deal with telephone collections, that's that consumer's
24 right. And then you have other options, then you can sue
25 the consumer, and we would hope that it not be done in

1 the manner of the Hanna Law firm or the Encore and PRA.
2 It's not confusing to me.

3 MR. BAUER: Well, I keep looking at eyes rolling
4 out in the audience and that people who are doing this
5 for a living are going, geez, I'm confused and I do this
6 every day.

7 The point I want to get back to is I think we
8 have to make the fundamental leap that it is better to
9 have more communication than less communication. And let
10 me tell you why, and I'll just use a very quick example.
11 If I gave you a hundred accounts today and said I don't
12 care what method you use to collect those or to attempt
13 to collect them, whether you use an outside agency, call
14 yourself, or you sue, the reality is unless you
15 communicate, the only alternative is to put more of them
16 into suit, and that's not good for the consumer.

17 MR. NODLER: I think it's up to the consumer
18 what's good for the consumer. I mean, if the consumer --
19 it's like with the cease communication. Congress said
20 that consumers have a right to send a letter to decide I
21 don't want you to contact me anymore, and then debt
22 collectors can respond back and say, well, okay, but we
23 might sue you. And so that's up to the consumer to
24 decide. If the consumer doesn't want -- if they're
25 getting a letter and they don't want to respond to it,

1 then that's their right under the law.

2 MR. MOORE: But Greg, if they don't respond, so
3 we send out the 1692g letter, we get absolutely nothing
4 in response, we make two or three phone calls, wouldn't
5 the best thing a consumer could do is pick up the phone
6 and call us back and say I understand that the account
7 has been placed with you for collection, I don't want you
8 to call me anymore, or I understand the account has been
9 placed with you for collection, what can we do to talk
10 about it, as opposed to not doing anything. Because if
11 we're talking about consumer protection, the best thing a
12 consumer can do is pick up the phone, call me and say:
13 Hey, Harvey, I understand that XYZ Bank or the City of
14 Tulsa, Oklahoma is asking you to collect a debt on a
15 parking ticket that I didn't pay and now it's time for me
16 to negotiate that off. But doing nothing is not the
17 answer, doing something, communicating with us is what
18 we're trying to facilitate.

19 MR. KANE: I'll leave Harvey with the last word
20 on that subject. We'll move on to the OCC has issued
21 guidance on debt sales and vendor management, and I want
22 to talk about that briefly. We have about eighteen
23 minutes left, so if you guys will indulge me, maybe we
24 can take twenty.

25 So Ken, can you tell us a little bit, just very

1 briefly, about these two types of guidance, and then I'll
2 ask industry folks to let me know what the impact has
3 been on them.

4 MR. LENNON: Okay. Let's see, we're basically
5 just going to try and go through the guidance real quick
6 and not reason as to why we go there. Let's see, when
7 you folks are mentioning vendor management guidance, I
8 think what you're referring to is the guidance that my
9 organization issued in October of 2013. Basically it's
10 risk management over third-party relationships.

11 I think you've got basically four key themes in
12 that document. First of all, banks are expected to adopt
13 risk management practices that are commensurate with the
14 level of risk and the complexity of their third-party
15 relationships. So obviously, you should have risk
16 management that basically matches up against the
17 complexity and the risks posed by your third-party
18 relationships.

19 Secondly, management and board are expected to be
20 actively involved in risk management involving the use of
21 these third-party relationships.

22 Third, you need to have effective risk
23 management, especially when we're talking about so-called
24 critical activities.

25 And then finally, keep in mind that risk

1 management is supposed to cover the entire life cycle of
2 the third-party relationship, so it's not just at the
3 beginning or at the end, it's the whole way through, from
4 basically planning when you're deciding what relationship
5 stance you're into all the way through termination, so it
6 should cover the entire gamut of the relationship. So
7 that's that one.

8 The second one is debt sales guidance. That's
9 one that's a little more recent. It was issued, I
10 believe, in August of 2014. And basically, it covers,
11 again, a series of fairly basic principles. It basically
12 details the OCC's supervisory expectations -- excuse
13 me -- for institutions that engage in debt sales. We
14 expect that the institutions we regulate are going to
15 have appropriate policies and procedures in place if they
16 get into debt sales. They're going to engage in
17 appropriate due diligence before contracting with a debt
18 purchaser. They're going to ensure that whatever
19 contracts they enter into with debt purchasers cover all
20 the important issues that need to be covered. They're
21 going to provide comprehensive and accurate information
22 when they sell debt. In other words, they're going to
23 make sure that whatever they're selling is the complete
24 package.

25 Let's see, under the debt sales guidance, banks

1 are expected to comply with all applicable laws, and
2 obviously there are some laws that are applicable when a
3 bank engages in debt sales. And then finally, you need
4 to have appropriate oversight and monitoring over the
5 relationship, so if you're engaging in debt sales, you
6 need to be doing so in an appropriate manner with
7 appropriate monitoring.

8 MR. KANE: Great. Thanks.

9 Brett, since your industry is most directly
10 impacted by at least the debt sales, how is it affecting
11 your industry, and do you have any suggested changes that
12 Ken could take back to his people?

13 MR. SOLDEVILA: I'll start off with debt sales
14 and the impact that I think it has in regard to the
15 collection industry. This guidance has caused many banks to either cease
16 or refrain from selling their debt portfolios. I do
17 think the bulletin on the debt sales did provide some
18 good guidance as it related to the due diligence that's
19 required prior to a sale, the notification to consumers,
20 much of what Ken already mentioned, also the verification
21 that the account information is accurate and complete.

22 However, it also restricts and restrains
23 certain types of legitimate debts from being sold and also cautions
24 against
25 downstream buyers from reselling that debt. The DBA, in

1 response to this has several standards in place within
2 the certification program that the DBA maintains that
3 address the purchase and sale process, and a lot of that
4 was taken directly from the OCC guidance, because we did
5 see some very good points made.

6 The DBA is also looking
7 to expand on the purchase and sale requirements within the certification
8 program.

9 Certain states require specific data elements during the
10 purchase and sale, and we are also looking at the recent consent
11 orders with Chase, PRA and Encore just to see if there's
12 any requirements that were pushed down that could be
13 beneficial or considered best practices for the industry.

14 Members of the DBA have also met with the OCC
15 on a frequent basis to discuss this standard specifically
16 just to get feedback, ask questions on what certain
17 guidance actually meant, and also to get feedback on the
18 purchase and sale standards within the program that the
19 DBA maintains to make sure that the two align,
20 essentially.

21 Moving on to the vendor oversight
22 guidelines for the third-party risk management guidance, I
23 think that many banks have taken this guidance and
24 applied this to arm's length sales transactions.
25 You have cases where many buyers are continuing to be
26 audited post sale even when they're no longer actively

1 purchasing from a bank. So I think there's a little
2 mixup there. If proper due diligence is
3 performed prior to a sale, then there's not a need to
4 continuously monitor post sale. I think that's uncommon
5 in most arm's length sales transactions.

6 I will say that I think this bulletin had some
7 very good guidance for vendor oversight, however, I think
8 it would be helpful if the OCC made the distinction
9 between the due diligence that's required prior to a sale
10 as opposed to the continuous oversight that's required
11 under the vendor management guidance.

12 In addition, there's reference to the risk
13 assessment within the guidance which that's kind of one
14 of the buzz words we've heard and I think a lot of members
15 within the industry are confused over how do you do a
16 risk assessment.

17 So if there was additional guidance as to what
18 steps you can take to perform a risk assessment, members in the industry
19 would benefit. In my mind the risk assessment should define
20 frequency and extent of procedures that are required over
21 vendors, so I think that's another area that could
22 use some clarification by the OCC.

23 MR. KANE: Great. Thanks.

24 I'm actually going to squeeze in something that
25 we didn't talk about before. We just sort of said that

1 we would talk about it and we talked it about it at our
2 other two dialogues and people have asked about it, and that's this:
3 Greg and Chris, would you tell us, between the two of you
4 take four minutes to tell us how you bring your
5 investigations and how do you start them and how do you
6 run them, and then we'll get back to the industry's
7 topics.

8 MR. KOEGEL: So the thumbnail version of it is
9 that we open investigations for a number of different
10 reasons. One, it could be that we see a pattern or a
11 volume in our Consumer Sentinel database of complaints
12 that disturbs us about a particular company or a
13 particular practice. We may become aware of certain
14 practices in the industry because of media reports or
15 something that's sensational in the press.

16 Also, we get referrals, so we get referrals from
17 trade associations when they see somebody that is acting
18 well beyond the pale, we get referrals from former
19 employees who tell us about disturbing practices, so
20 those are just some of the sources for why we may start
21 looking at a company.

22 Once we start looking at a company, either before
23 we formally open the investigation or very early in the
24 investigation, we look at things like the number of
25 complaints, the severity of the conduct involved, the

1 number of consumers affected. Is this something that an
2 investigation or an action could send an important
3 message to the industry that we want to get out there?

4 We did a sweep of three cases last spring on the
5 use of text messaging and debt collection. We compare
6 that information to other known measurables. So we look
7 at the size of the company, if it's a company that's
8 making millions and millions of contacts over the course
9 of a year but we only have, say, ten complaints in our
10 database, that's not a very compelling case for us to
11 open an investigation.

12 But if we know the company is small and maybe ten
13 to twenty collectors and they're amassing hundreds of
14 complaints in the course of a year, knowing what we know
15 about how the number of complaints we receive are
16 just the tip of the iceberg, that then becomes a very
17 compelling matter for us to bring.

18 Another factor that's very important for us when
19 we are looking at a company in the investigation stages,
20 you know, how are they responding to BBB coming to them
21 and alerting them to complaints, how are they responding
22 when a state AG or a local enforcement agency takes an
23 action, how are they responding after there's an AVC or
24 an order against them, are they continuing unabated. If
25 that's the case, then it's time for the Federal Trade

1 Commission to maybe step in.

2 Are they responding by maybe changing their name
3 and opening up a whole new corporation so that the complaint meter
4 starts running all over again? Well, yes, then we're
5 going to come after you. Or instead, are they putting in
6 place real compliance measures, are they trying to do
7 better? Then that's a different story.

8 So, Tom, you said four minutes, I'm trying to be
9 as brief and fast as I can. Those are the highlights.
10 There are other factors that we'll look at, but I think
11 those are the biggies. Did I miss any, Greg?

12 MR. NODLER: No. That sounds right, and we look
13 at a lot of the same things.

14 Another thing that we do is we have a lot of
15 different laws that we enforce, and so we try and cover
16 the waterfront. I mean, there are a lot of CFPB
17 enforcement attorneys, but there aren't enough to really
18 hit everything all the time.

19 You know, we often talk about how we could devote
20 all of our attorneys to doing nothing but Buffalo, New
21 York phantom debt cases, or just looking for the guy in
22 his shorts in his basement that they were talking about
23 before, and we could all be very busy and probably have a
24 lot of fun doing that, but we would be ignoring TILA and
25 RESPA and our other laws.

1 So we try to think strategically about
2 how to address certain issues and also to make sure that
3 we're not just spending two years working on something
4 that by the time we're done isn't even an issue anymore;
5 you know, always fighting the last battle. So we
6 try and break it up very strategically.

7 But in general, all of our enforcement actions
8 are brought either to provide general deterrents to
9 the marketplace, specific deterrents, or to provide
10 remediation to consumers.

11 And then a lot of our cases come in just through
12 organic investigations that are based on complaints or
13 media reports or tips from people in industry,
14 consumer advocates, other regulators, and then we also
15 have a lot that come in through our examinations, our
16 supervisory examinations.

17 And I think I've probably gone over four minutes.

18 MR. KANE: Great.

19 MR. KOEGEL: And, Tom, I wanted to just build on
20 something Greg said, and I think it touches on a question
21 that I saw come in on one of the cards.

22 I think the work that the FTC does dovetails
23 really nicely with the strengths and weaknesses of both
24 our agency and the Consumer Financial Protection Bureau.

25 The CFPB has the authority to do its supervisory

1 examinations of the larger market participants, and the
2 CFPB has certainly brought a number of cases against the
3 larger participants in the industry over the last several
4 years.

5 The FTC, I think, complements that work really
6 nicely by we have been looking, at least in the last
7 couple of years, at some of the smaller and medium-size
8 collectors who are engaging in the really egregious
9 practices. So I think between our two agencies you see a
10 federal enforcement effort that I think covers pretty
11 fairly both smaller and larger participants in the
12 industry.

13 MR. NODLER: I think that's right, but I don't
14 think that there's a solid line because we've also
15 brought cases against some of the small actors and
16 you guys do against some of the larger ones too. We
17 don't want anybody to think we only have the FTC to worry
18 about, we don't have to worry about the CFPB, or vice
19 versa. But I think that that's worked out well.

20 MR. KOEGEL: Totally agree.

21 MR. KANE: So I'm going to turn to a few of the
22 questions that have come in.

23 What types of debt collection complaints are you
24 seeing most: student loan, traditional, medical, et
25 cetera? I guess we're seeing a real cross-section in our

1 agencies.

2 MR. KOEGEL: You know, we have noticed that the
3 student loan debts are growing and an important part of
4 the portfolio of debts that are out there in
5 third-party collections right now. I think the last
6 numbers that are sticking in my mind are somewhere
7 between 12 and 18 percent. Obviously, those loans and
8 debts tend to be bigger than your average credit card
9 debt, and so that's something that the FTC certainly
10 keeps its eye on.

11 We see with the cases that we bring against the
12 truly egregious debt collectors, we see a lot of them
13 collecting on old online payday loans, and so that's
14 certainly a disturbing trend. So those are the two that
15 stick out in my mind. I also know from my research on
16 this industry that medical debts is a big and
17 important part, and that's something that we are
18 monitoring as well.

19 MR. NODLER: I echo that entirely. And I will
20 say on the payday debt, two cases that we've brought have
21 had been against online lenders and we don't have the
22 ability to impose a usury cap, but we have brought cases
23 against these unlicensed online lenders that are making
24 these usurious loans and we've brought them under the
25 theory that it's unfair, deceptive and abusive to collect

1 on loans that are void under state law.

2 MR. KANE: Great. Thanks. We have time for one
3 more topic, and we're going to talk a little bit about
4 industry certification and self-regulation. So to the
5 whole group, what role can industry certification and
6 self-regulation play in improving the collection
7 experience for both consumers and the collection
8 industry? I know Brett has worked quite a bit on a DBA
9 certification task force, so we'll try to cover this
10 whole topic in about five minutes.

11 MR. SOLDEVILA: I think self-regulation promotes
12 accountability. I think there's room for both self-
13 regulation and government regulation to coexist, but I
14 think it's good to find that balance between the two
15 to make sure that not only the consumers are protected and that
16 the issuers, their shareholders, the taxpayers as well
17 are also brought into the equation.

18 The DBA addressed the need for self-regulation.
19 In 2013 with the creation of a certification program. It
20 consists of an individual and a company-based
21 certification that's required for the debt buying
22 members.

23 There's also voluntary certification for the debt
24 collection agencies and the collection law firms which
25 are members of the DBA. The program itself consists of

1 right at thirty standards which address areas such as
2 purchase and sale requirements, data security, vendor
3 oversight, complaint resolution, and various other compliance
4 and operational type of issues.

5 And it's also important to note that companies must
6 first perform a self-audit as a company. Once the company attests to that,
7 you're audited by an independent and third-party
8 firm for compliance with the standards. The program
9 itself is one that continually evolves, as do the industry best practices
10 and regulatory requirements.

11 Also, the DBA is made up of various
12 committees. One of those committees is the standards
13 committee. The standards committee is responsible for
14 making sure that the standards are current, they're
15 responsible for reviewing the standards, making any
16 enhancements to the standards. The members within that
17 committee consist of various members of organizations in the industry,
18 there's issuers, debt buyers, collection agencies, law
19 firms, and a representative from an audit firm as well on
20 that committee. At least monthly the committee
21 meets to go through the standards.

22 Any proposed revisions, once approved by the
23 standards committee, then go to a DBA counsel for review
24 and approval. If approved by the counsel, it then goes
25 to the DBA board for review and approval. So it's a very
26 methodical moving process and I believe it's now in the

1 fifth version in less than three years.

2 MR. KANE: Great.

3 MR. KOEGEL: FTC gets last word. I do applaud
4 the DBA for undertaking this self-regulatory program. I
5 believe, personally, that the issues that we're seeing in
6 debt collection with unlawful practices and with the
7 phantom debt collectors and others, I think these are
8 issues that call for multi-faceted solutions. I think
9 the FTC, for a long time when we were the sole cop on the
10 beat, we did our best, but these problems have persisted.
11 The CFPB has been on the case with us for the last
12 several years and certainly they've made some great
13 strides and brought some important things to the table.

14 But I'm a firm believer that these are the kinds
15 of issues that need to be dealt with with consumer
16 education, with business education, with law enforcement,
17 with regulation, with work at both the state and federal
18 level, and also with some self-regulatory efforts on the
19 industry level.

20 You know, the DBA's program, the certification
21 program, is by no means perfect. It's still, in my mind, in
22 its infancy. I applaud them for putting it in place and

1 for making a continual effort to improve it. Any self-
2 regulatory program has to have certain key attributes in
3 order to truly be successful, things like transparency,
4 things like real teeth, things like real specific
5 guidance. I think the DBA has been making strides on all
6 of those, and I just hope that they continue to work on
7 those things because I think it could be an important
8 part of a solution here.

9 MR. KANE: Great.

10 Well, thank you all very much for being on the
11 panel and for suffering through the broken microphones,
12 and thank you all very much for coming.

13 (Whereupon, at 4:45 p.m., the dialogue was
14 concluded.)

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IN RE: FTC Debt Collection Dialogue
LOCATION: Atlanta, Georgia
DATE: November 20, 2015

I do hereby certify that the foregoing pages,
numbers 1 through 160, inclusive, are the true, accurate,
and complete transcript prepared from the verbal
recording made by electronic recording by Brenda W.
Thompson before the Federal Trade Commission.

11/25/2015

Brenda W. Thompson