FEDERAL TRADE COMMISSION

DEBT COLLECTION DIALOGUE
A conversation between government and business

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Reported by: Brenda W. Thompson
FEDERAL TRADE COMMISSION

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

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

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

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

Olens currently is chair of the Southern Region of the National Association of Attorneys General. In addition to co-chairing the Federalism Preemption
Committee, he serves on the following committees: Energy and Environment; Substance Abuse; Human Trafficking; Law Enforcement and Prosecutorial Relations; Internet Safety, Cyber Privacy, and Security.

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

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

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

He graduated from the Emory University School of Law in 1983. He's a registered mediator/arbitrator with the Georgia Office of Dispute Resolution. He's been admitted to the practice of law in Georgia and the District of Columbia, and as important as all of those, he and his wife Lisa have two children, Lauren and Jonathan.
Please welcome Attorney General Sam Olens.

(Applause.)

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

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

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

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

So it's a quick overview of my office, so as a general statement, we represent the executive branch. I used to say we sometimes represent the judicial branch, the sovereign citizens principally and that we didn't
represent the legislative branch, but I just agreed to represent for the first time in five years, so I guess one in five years.

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

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

Is the word "inherit" acceptable?

MR. SOURS: I am your legatee.

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

And it's been very good and very positive, and they're now coming within the fold and everyone's working well together, as it should. In fact, going totally off my script, I see a couple folks in about the sixth row or so on my right that are here from Georgia Watch.
And one of the neat things that we have done is partnered with Georgia Watch to do an educational pamphlet for the military and their family members, so that they will better know what the law is both under the federal act and the state law, that they will have worksheets to understand what they can afford and what they can't afford. And I'm really looking forward to the product going out next year and for us to go all around the bases next year to help educate our active service members and their families.

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

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

We also need to make the statement that consumers play a role, too. It's great to have the state government and federal government, but y'all are our eyes and ears. So if you get a call that doesn't smell right, you got to call us. We can't know what's going on, what scams are going on, without your help. And it's really been very
interesting, because all of a sudden now we're getting folks that are reporting the conversations, and they send us the tape, and those are really nice.

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

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

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

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

We also run into a problem where more and more
debt collection firms are making believe they're law
firms, so that they can better scare the public up front.
We also have the law firms that are making believe
they're debt collection firms, so we have both sides of
that.

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

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

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

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

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

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

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

So we need to use a sensible approach to know when the hammer is really necessary and where, for instance, an assurance of voluntary compliance is really necessary.
As an aside, we have a lawsuit where we're talking to the FTC, as we speak, against the company Western Sky, out of South Dakota. Georgia law, for any lending you have to be licensed with the insurance commissioner. Maximum interest rate is 10 percent.

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

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

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

A couple of my colleagues did big splashes of news when they sued them, and then they settled for like five cents on the dollar. Well, you know, I'm sorry, but if you settle for five cents on the dollar, you're pretty worthless when you're talking about a company that's charging 340 percent when the maximum under state law is 10.
Your job really is to take them out. You know, I talked just before about a balanced approach and treating people fairly. They should not be treated fairly. They should be out of business. They should never be in our state again.

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

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

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

Thank you very much.

(Applause.)

MR. KANE: Thank you, Attorney General Olens.

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

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

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

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

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

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

I also work very closely with our Division of
Consumer and Business Education, to try to provide consumer and business education articles and materials, so that we can try to combat the issue of unlawful debt collection from that perspective as well.

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

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

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

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

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

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

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

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

Somewhere between 4- and 5,000 firms are engaged in the third-party collection of debts. And if you
include collectors directly employed by original
creditors, the Bureau of Labor Statistics estimates that
as many as 456,000 people work as bill collectors. These
collectors make perhaps as many as 1 billion contacts with
consumers each year.

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

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

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

And we are continuing this vigorous enforcement
work this year. So far, in 2015, we've already filed 11
new debt collection cases, and we still have another
month to go.

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

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

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

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

As we said when we announced Operation Collection
Protection, this is the beginning, not the end, of our efforts to team up to stop these unlawful practices. The FTC's debt collection work is not confined, though, to just law enforcement. Our focus on debt collection is also reflected in the workshops and roundtables we've held, the reports we have issued over the years, the amicus briefs that we file, and the many speeches that we give.

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

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

We hope to highlight areas of concern that we have at the state and federal level, share our strategic priorities, and generate ideas for compliance management. We also hope that we can find ways to partner with industry to reduce the abuses in this area and to stop the bad actors who are giving this industry a bad name.
During today's two panels you will hear from me, from the FTC; Greg Nodler, from the CFPB; Ken Lennon, from the Office of the Comptroller of the Currency; John Sours, from the Office of the Georgia Attorney General; Carri Grube Lybarker, of the South Carolina Department of Consumer Affairs; Olha Rybakoff, from the Office of the Tennessee Attorney General.

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

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

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

On the first panel we'll have Nick Jarman, representing ACA International. On the second panel
we'll have three industry representatives: Tim Bauer, representing the Consumer Relations Consortium; Harvey Moore, representing NARCA; and Brett Soldevila, representing DBA International.

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

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

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

Before we move on, I want to thank some folks who were absolutely wonderful in helping us set up today's event. For the Latin American Association, Diane Roman; from the ACA of Georgia, I want to thank Roger Medlin for helping to drum up interest in this event.
From ACA International, Rob Foehl, as always, was wonderful in getting the word out about this event.

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

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

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

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

(Mr. Kane: Thanks. We'll now have Panel 1, and our moderator, as Chris said, will be Cindy Liebes, from our office, and Cindy will introduce our panelists. The topic of this first panel is State Issues, State Debt Collection Issues.

The second panel, later this afternoon, will be
on Federal Issues. Thanks.

Cindy.

MS. LIEBES: Thank you. This is a great turnout. Thank you all for coming. I'm Cindy Liebes; I'm the regional director for the FTC's Southeast Regional Office, and I just want to extend my thanks for all of the folks that are here today.

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

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

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

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

It's a wonderful panel of -- especially the state regulators. We've worked very, very closely at the FTC
with these state regulators and many others. Our regional office extends to the seven southeastern states, but I've been with the agency 28 years, and in the last several years we've worked even more closely with our state partners, with our other federal partners, and jointly, especially in the area of debt collection, we've worked collaboratively to bring law enforcement actions and do a lot of consumer education in this area, so that we can root out the bad companies and actually make it more of a level playing field for the good ones.

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

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

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

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

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

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

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

And, you know, the reality is that phantom debt collection, what we all hear about, is a very unsophisticated criminal action: You come up with a name, you come up with a large bank, you come up with a
dollar amount, and you have a phone. And a lot of these bad actors are what's causing the issues for us.

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

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

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

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

And so our fear is that continued regulation will
ultimately reduce the amount of opportunities that we as
debt collectors have to contact a consumer voluntarily.

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

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

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

But I think it's important to also understand
what we're intending to regulate, and when we look at all
of the complaints -- and we'll just kind of use the
consumer complaint database with the CFPB -- and out of
those 30 to 50 million people that might be touched by
consumers, you have less than 5 percent of that population that has filed a complaint.

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

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

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

We do ask for consistency. We really want to see some consistency as it goes. And clarity, clarity is a very big, important thing for us. One of the things that we saw this year with the New York State coming out with the laws was a lot of unclear regulations, so much so that they issued a frequently asked questions and held subsequent dialogues so that people could
understand what a debt meant; what did they mean by chargeoff, and to really address that.

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

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

As far as the enforcement actions, again, we're all on the same team when it comes to that: root out the bad actors. The enforcement actions, the only thing that we as industry would like to see if the difference between a fundamental difference of business opinion that a regulator may have and comparing that to an egregious act.

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

And lastly, you know, when we look at ACA and we
look at the consistency of the makeup of what ACA is, it's important to also note that when it comes to state regulations, that is determined by the individual state units that ACA has. ACA is made up of a federation of 40 different state units, including the Georgia Collectors Association. So when issues become prominent here in Georgia, while ACA is there to give support and to provide guidance, ultimately it is the Georgia Collectors Association's leadership and it is the Georgia Collectors Association members that would get involved -- same as with South Carolina and Tennessee -- to help navigate those policy decisions.

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

MS. LYBARKER: Again, I'm Carri Grube Lybarker, with the South Carolina Department of Consumer Affairs. In South Carolina we do not have a debt collection licensing statute. There is no industry-specific licensing statute. We do, however, have the Unconscionable Debt
Collection Practices Act. We are a Uniform Consumer Credit Code state; there are about 10 of us that have similar laws in that area. But I think this one is a little bit different as it goes state by state, and it's just basically a list of do's and don't's that has some similarity to the Fair Debt Collection Practices Act as far as not being able to harass a consumer, use obscene language, misrepresent or mischaracterize a debt, things of that nature.

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

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

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

So as an example, for supervised loans in our state, which are consumer loans where an interest rate or APR in excess of 12 percent is being charged, persons who enter into those transactions or take assignments and
enforce rights under those transactions have to obtain a license in our state.

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

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

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

It is certainly something that we want to look at as complaints in the debt collection area are typically our number-one complaint category. At our department we take complaints that consumers have against any business, and if they're regulated by somebody else, we refer them. If they're not regulated by anybody, we mediate them out.
We get between 4,000 and 5,000 complaints annually, and debt collection is usually in the 10 to 15 percentile of complaints that we get there. I think last year was the first year in at least four or five years where it was actually the third complaint category instead of being number one.

So that's what we have in South Carolina.

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

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

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

I see the issues on the debt collection side when -- typically when they arise in marketing or sales cases, where, for example, we may have -- and to give you a real-life example, we had a military lender that was operating out of Fort Campbell, Kentucky/Tennessee, and
targeting soldiers with extremely high interest, usurious
rates with tripled prices for computers and the like;
very grotesque exploitation.

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

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

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

But that's what you get on the really bad side of
the scale of what we see. Typically these people are not
licensed. Typically they operate under the radar. Often
they cannot be reached through regular licensing or
registration schemes that exist for various reasons.
So the type of interaction and the type of work that we do touches on debt collection, just using our generic consumer protection act.

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

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

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

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

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

MS. LIEBES: Okay. John?

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

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

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

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

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

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

We do not have in Georgia a licensing statute that pertains
to collectors or to debt buyers. Georgia has over 50 --
I think it's now 55 -- different statutes that regulate
various trades and occupations and businesses. We
regulate auctioneers, cosmetologists, and so forth, but
not this industry.

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

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

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

Almost every such complaint we get -- and we get
them almost every day, certainly every week -- has three
or four common denominators: a threat to prosecute or
jail someone, sometimes even summarily: If you don't pay
by four o'clock, you're going to be in jail by 6:00;
sometimes even a threat of bodily harm; calling repeatedly; calling at all hours of the day and night; several other things; including, you know, abusive and foul language. Those are common denominators that we see again, again, again, and again.

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

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

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

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

Or, Nick, how about you? Any thoughts on what
the states' regulators said or --

MR. JARMAN: Absolutely.

(General laughter.)

MR. JARMAN: So as it relates to, you know, what

you're intending to regulate -- and maybe this is more

for John and Carri, that do not already have licensing

statutes.

But a lot of the violations that you're referring
to -- threats to put in jail, bodily harm, calling at all
times of the day -- obviously those are

absolutely egregious, and all of those are banned under

the Fair Debt Collection Practices Act.

So, what would be the hope -- and I

know, John, you said that the legislature currently
doesn't have an appetite necessarily for the regulation,

but what -- the regulation is already there to

say that, from a federal level, this is illegal

activities.

So what else is needed to kind of get

ahold of these illegitimate debt collectors, for the most

part?

MR. SOURS: For once, I think I would agree with

an industry member who says we don't need any more

regulation and we don't need licensing. I think it would

be of marginal utility, because most of the people who
are going to engage in that kind of activity,
unfortunately, they're going to do it whether they're
licensed or not, because they just don't give a damn, a
lot of these people.

And so I'm more interested in going after the
activity at the roots and pulling it out by those than I
am in starting yet another proceeding to revoke
somebody's license and having them contest it. It all drags on for a year
or two. I'd rather

just get to the meat of the problem, if it's that
serious, and deal with that per se.

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

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

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

MS. LYBARKER: And for us in South Carolina, I
think it was about 68 to 70 percent of the complaints
that we get are dealing with unconscionable conduct, and it also includes validation of the debt, verification of the debt, time-barred debt. So those are the kinds of issues that we would want to see addressed in any kind of legislation in our state, to make it clear to consumers -- giving consumers meaningful notices and meaningful process to dispute the debt, making it clear, as Nick was addressing earlier, as to what the responsibility of that debt collector is and providing such information to the consumer and just making sure that everyone is educated on that process across the board.

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

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

So those are kind of the issues that we have
focused on, and we actually had provided some comments to
the CFPB when they were doing their debt collection rule,
based on the complaints that we had that detailed
that a little bit further.

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

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

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

Now, you can go into a lot of consumer-based
websites, and one of the first things that it'll tell you
is, just dispute the debt, and it'll buy you some time.
And so we see that within agencies; we see that within the complaint trends. Is there any concern that, you know, when you're dealing with credit repair companies, which is a very big issue right now, where they will send multiple disputes, and in a lot of cases the consumer is not even aware that their debt's being disputed.

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

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

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

And quite often that's where, from a consumer perspective, the frustration seems to come from, is that, assuming they're not just filing some sort of frivolous
claim that they don't owe the debt or the number is
wrong, a lot of times what they want is some sort of
verification, some piece of paper to show how much they
owe, why they owe it, how they owe it, who the original
creditor is.

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

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

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

But also, with that initial communication with
the consumer, something that our office gets a lot of
calls about, too, that was previously mentioned are scams. I mean, in this day and age of technology and security breaches, someone can call up a consumer with their social security number and tell them that they owe a debt.

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

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

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

We get a couple dozen complaints every year about such situations; that we look into them, and what we find is the party trying to collect the debt usually has no idea what the original
amount of the debt was, what the terms of it were, what
the interest rate was, who even sometimes the original
creditor was.

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

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

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

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

And inevitably those are just scams. Those are
people with no education. Those are people who have no
proper concern for the folks they're dealing with. They
just want to get a fee up front and get down the road.
That's a growing problem, and we're going to have to continue
to address it.
With respect to whether additional federal guidance would be helpful, yes, depending on what that guidance is and how clearly it's disseminated, it probably would, but the fact is a lot of this stuff is common sense. I think all of you would agree you shouldn't be holding yourself out as a credit repair expert when you don't know anything about financial affairs. We don't need any guidance to establish the wisdom of that.

MS. LIEBES: One of the biggest problems I think that we see is a lot of times the differentiation between -- there's a lot of fraudulent debt collectors, credit repair operations out there, and it does hurt the legitimate industry. The legitimate collection industry is being severely hampered by a lot of these what we call phantom debt collection operations, phantom -- credit repair operations that are purely fraudulent, and so I think you all have seen that, and oftentimes the regulations themselves aren't going to cover those types of companies.

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

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

MS. LIEBES: Nick.

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

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

So, I can say that, especially on behalf of ACA, my organization, who we deal with and others, that, you know, commonplace, whether that's guidance from the CFPB or best practices that are put out there from ACA, we would all be in favor of substantiation, documentation of the debt.
As a debt collector and having been one for 15 years, the worst thing that we could ever have as a debt collector is not enough information.

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

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

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

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

You know, we expect professionalism, we expect respectfulness. We understand that not everybody is doing it, but at the same point, the vast majority are. But like anything else, it's the bad apples that spoil the bunch.
MR. SOURS: I want to tell you a brief story. I have about 40 people in my Sunday School class, and as luck would have it, three of them -- and I'm a Baptist -- three of them are debt collectors. One of them is a supervisor.

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

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

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

And so I understand that I'm dealing with the bottom level here, for the most part, of a process that's very large. But within that I do have to say that the biggest problematic area is remote debt collection; that
is, people who are debt buyers to the third and fourth level. The percentage of bad operators, it seems to me, is marked higher at that level than it is anywhere else. So that's something, you know, that I have learned experientially. This is my fifth year on the job. Never had anything to do with this industry before I took it. But I have to say that is an area that is very problematic that we're going to have to be looking further at.

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

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

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

MS. LIEBES: Just for those in the audience, if any of you have questions, please submit them. I guess everyone's been given one or two cards. Submit the
questions, and we'll get to them later.

Carri, I know you had a question for Nick.

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

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

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

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

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

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

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

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

So I think it's all across the board. Massachusetts we would find as the extreme that I think
causes more harm than necessarily good.

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

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

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

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

There's not a balanced or level playing field when the collector down the road is engaged in abusive and harassing debt collection tactics or they're going to an originator, as you call it, or a creditor and saying,
You know, Company A down the road, they're not going to violate the FDCPA, but we will. They don't quite say it that bluntly, but they actually say it. And we get a lot of complaints on the local level and, I assume, in DFP; we get a lot of complaints from legitimate, competitive debt collection companies who say, It's not fair. I'm doing it all correctly, and my competitor down the road is not. But to pass it on to you guys, how do you get your investigations, and tell me a little bit about how you pursue your investigations.

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

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

And there's also, you know, a part of this that demonstrates how well we can work together as law
enforcement and cooperate with each other. We were able
to work up the case from the Tennessee perspective and
basically share it with the Federal Trade Commission.

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

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

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

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

But the ones that don't resolve, I mean, these
are the bad actors, the ones that could care less what
happens. Those are the ones that will make their way to us, get in the database, and on the radar.

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

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

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

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

One of the problems that any state agency has is jurisdiction outside the state. This is why we work with
the FTC, why we band together under the aegis of the
National Association of Attorneys General to bring
complaints that often involve 30, 40, 45 states against
particular organizations.

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

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

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

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

So there's no hard and fast rule, but it's kind
of like if any of you have been in the military, you're familiar with the military medical term "triage." That's kind of the way, in a loose sense, we look at this problem.

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

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

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

The complainant typically has information and documents that we'll review. Depending on whether it's a lean year or a fat year for government, we may or may not have investigators available, and in many cases the attorneys act as the investigators, but we will interview
victims; we will discuss possible scenarios in terms of what may have happened.

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

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

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

And while we understand that there are concerns and privacy issues and legal concerns and ways of doing things that, you know, they just have to be done or the lawyer advised this or that, the companies that tend to
not work with us -- and like I said, these -- in my
universe they tend to be unlicensed to begin with and not
playing by the rules -- they're the ones that end up with
full-scale serious investigations, and more often than
not, some type of enforcement litigation.

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

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

In terms of where we get our complaints, as these
folks have indicated, sure, consumers are one source. Ex-
employees who feel that they have been mistreated,
surprisingly a number of those contact us. And that's certainly
ture in the debt collection industry.
A woman who called in a few months ago said, I just can't take it anymore, the things they're asking me to tell people. I said: Tell her to come on in and tell us what she’s telling people. So she did.

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

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

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

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

Before there's any kind of formal action, usually before a subpoena or anything like that is issued, there has been contact with the business, after we've already done kind of some front-end footwork, getting as much information from the complainant as possible; maybe doing
some back-end research with the Secretary of State and some other information gathering before we've made that contact.

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

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

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

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

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

Carri, do you want to start?

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

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

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

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

MS. RYBAKOFF: One case I can talk about in
general terms, because obviously it's active, has to do
with a series of affiliated entities in the travel and
vacation industry.

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

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

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

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

And we do see a large segment of elderly being
targeted. I mean, all the things that, you know, get
somebody on the radar quickly. But to make a long story
short, on the debt collection side of it, the consumers
are being reported to the credit bureaus. The ones that
try to dispute the debts, you know, they'll have the
dispute noted. It goes nowhere.

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

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

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

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

MR. SOURS: Let me tell you a brief story
about the most outlandish one that I ever dealt with.
This was during my -- this was back in 2011, first year
that I was there.
We received several complaints about an operation out in Gwinnett County, Lawrenceville or Snellville area. And it turned out that the business was being conducted, at least nominally, by a woman, whose husband was the vice president and director of operations.

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

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

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

But we've entered into about 15 AVCs this year having to do with debt collection. I've got a couple of them here that Sean Conroy dug out before we came over here, and it's the usual litany of stuff: threatening people with imprisonment, calling them repeatedly, calling them
before 8:00 a.m. and after 9:00 p.m., pretending to be a
law enforcement officer, a lawyer, and/or an
investigator. That's the latest thing: “This is
Investigator Smith, which is supposed to put
some sort of fear into you.

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

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

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

   MS. LIEBES: Great. Thank you.

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

   MR. JARMAN: And this is for everybody
on the panel. When you're looking at bringing these
actions, how important is it for you -- and again I'm
going back to differentiating between, you know, somebody
that's legitimate and illegitimate.
And by legitimate I mean, one, are they licensed if you require that? Are you bonded? Are you -- things that you can look at. And I know we'll touch on it here in a little bit with one of the questions. Are they a member of ACA International, which is obviously a voluntary trade association.

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

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

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

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

And there are some situations, too, we realize and we come to find this out, where you have a rogue
employee. The policy isn't to operate this way, your people are instructed to the contrary, but somebody gets out of line; maybe they just enjoy talking tough to people on the phone, and so they do this.

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

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

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

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

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

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

Any other follow-up, Nick, to that?

John?

MR. SOURS: Let me talk about the other end of things? Rogue employees can work anywhere, including in official capacities, you know. In my five years I've
caught one employee who was telling people, We've been
keeping our eye on you, and we're going to do such and
such. Well, that happened about two o'clock in the
afternoon, and at five o'clock in the afternoon, that
employee's computer was locked out, their badge was
taken, and they were shown the door.

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

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

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

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

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

MS. LIEBES: You know, I've seen -- or we've seen
a huge uptick in the really fraudulent debt collection companies lately. We've seen a really big problem with what we call phantom debt collection companies that Chris referred to, those that are threatening to throw folks in jail immediately, those that are threatening someone that they're going to take away their homes.

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

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

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

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

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

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

We came for a visit, unannounced, with a court order, which is a very effective way with the really, really bad guys to get information. And we found that their scripts they actually had stolen from their own lawyers and debt collectors and continued to use the law firm's names and collectors' names, not even bothering to change them. It was pretty amazing. But, you know, you
just never know.

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

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

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

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

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

And so a lot of the issues that happen within debt collection that we see from the legitimate players tend to be technical in nature and far different than any type of scam.
And so it's, you know, understanding what we go through on a daily basis with policies and procedures and when we talk about -- whether it's seminars or webinars and it relates to the CFPB in particular, it does go back to the policies and procedures, but it goes back to do what you said you were going to do, because we've found that, you know, a lot of the enforcement actions that we've looked at have shown that, when -- there are the policies and procedures in place, and you're correct. But the actions don't back that up.

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

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

And so that's where we really want to distinguish between the legitimate and the illegitimate. And it also brings up the fact of whether it would be, I guess from the state's opinion, if there was -- you know, we're obviously not for extensive regulation, but one of the things that gets batted around all the time is how
does a consumer know if they're dealing with a legitimate
business?

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

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

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

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

(General laughter.)

MS. LYBARKER: For us that would be very helpful,
because that's one of the issues that we have with not
having a licensing process, is even from that square one
when we get a complaint against somebody, what if we can't get the information to that business because the address that was provided to us by the complainant isn't accurate anymore, and we don't have a listing of those organizations that are collecting debts in our state.

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

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

So even if it were just a registration with some minimal information that would have to be offered, that would be, I think, beneficial.
MR. SOURS: Nick, let me just say this. I would love to be able to call up Roger Medlin and say, We're investigating XYZ Collection Agency. What is their reputation?

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

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

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

MR. JARMAN: And I -- and to everybody up here, but I have a question that's something that happened recently in our office, as recent as last week.
I had one of our managers come to me, and he became aware of somebody that used to live in Missouri, now lives in Arizona, that is basically doing debt collection out of their house on debts that are truly nonexistent.

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

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

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

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

Is there anything that can be done from the enforcement side, whether that's on the federal level or
the state level, to tackle these smaller ones that --

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

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

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

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

We've seen just such a big uptick in these phantom debt collection areas, but we are really trying to get them, because they're criminal. We're doing it civilly, we're doing it with the states, and we're also
pursuing -- or trying to have them pursued criminally by local law enforcement, local DAs.

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

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

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

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

You know, ACA had never set up to self-police or to be a self-regulatory organization, but we do strive to
provide our members, who chose to
be a part of that voluntarily, with as much information
as they can to comply, especially as debt collection
becomes more and more national and less localized with
all the varying different state laws that we've
referenced here today.

MS. LIEBES: I'm looking at some of the
questions, and it's about time I'm going to break for it.
One of the questions that I've just received
is a question that I get quite often.
And I'm not trying to pick on ACA or any other trade
association, but does the ACA or any of the other trade
associations have the ability or do anything to police
its members?

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

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

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

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

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

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

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

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

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

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

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

MS. LIEBES: Excellent. Any other comments?

MR. SOURS: One of the statutory mandates that we
have in Georgia is to provide consumer education. And I've taken that very seriously. I've accepted invitations -- I think I may have been the first person to hold this job who has -- to go out and speak to collectors groups.

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

AUDIENCE MEMBER: You also produce a newsletter.

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

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

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

So, anyway, we'd be delighted to provide that to anyone who cares, and if we do, we would simply ask that
you send it on. It's free. Our view is, steal our
information.

(General laughter.)

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

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

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

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

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

MS. LYBARKER: And we have different
accountability measures that are kind of more on a
broader agency-wide scale with licensing and enforcement,
with how many enforcement actions have we taken, and with
our -- I guess our efficiencies in our investigators
going out.

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

So we kind of look at those numbers in
association.

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

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

But that's only from January 1, 2014, forward.

If you wanted anything prior to that time, you would have
to submit a request to our office. But it's really --
it's pretty nifty.

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

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

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

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

If the complaining party does not want their name disclosed, we will not do so -- so that pretty much pretermits, I think, the question, because somebody who asks us how many complaints have been filed, all they have to do is look in their email or look in whatever paper trail they have.
And if they're throwing them away, that's up to them, but they've already -- they already can substantially answer that question before posing it.

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

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

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

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

MR. SOURS: Cindy, let me ask you a question, and I ought to know the answer to this, I guess. Consumer Sentinel is a wonderful store of information. Is that accessible in any way by private entities?

MS. LIEBES: No.

MR. SOURS: No.

MS. LIEBES: It is only accessible to law
enforcement, and it is accessible 24/7 from their
desktop. Law enforcement across the country and in
certain international law enforcement agencies use
Consumer Sentinel.

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

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

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

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

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

MS. RYBAKOFF: In Tennessee, yes. All of our
public actions are posted on our website and disclosed,
as are settlements.
MR. SOURS: We post our settlements, but our investigations are considered private until some resolution one way or another or some public filing is had. Generally we follow the same policy the FTC does.

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

MS. LIEBES: Okay. Well, great.

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

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

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

I mean, it's a -- we're one of the heaviest regulated industries, with 20 different sets of federal laws and not even including the state laws.

So, you know, with the rules still to come from the CFPB and what's out there, we just look to have some consistency and some clarity and work together.
MS. LIEBES: Thank you very much. My thank-you to the rest of you out there. We're here in Atlanta. We want to hear from you. We're more than willing to take complaints that you might pass along to us, but also to work with you.

We want to work with the industry. We feel like we're most effective when we work with the industry, and that consumers benefit from all of us working together. So I hope to get to meet many of you in the future. Thank you.

(Applause.)

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

MR. KANE: 3:16.

(General laughter.)

MR. KOEGEL: Everybody sync their watches up.

(A brief recess was taken.)

MR. KANE: Okay. Everybody come on back in. My name, again, is Tom Kane, and this panel deals with Debt Collection Issues from the Federal Perspective, federal issues.

On the panel we have Chris Koegel, Assistant Director, FTC Division of Financial Practices; Greg Nodler, who's Senior Counsel for Enforcement Policy and Strategy at the Consumer Financial Protection Bureau; Ken
Lennon, who's an Assistant Director, Community and
Consumer Law Division, Office of the Comptroller of the
Currency; Harvey Moore, who's president of the Moore Law
Group and also president this year of NARCA, the National
Creditors Bar Association; Tim Bauer is president of
InsideARM, and he's also Co-Executive Director of a group
called the Consumer Relations Consortium; and last but
not least, Brett Soldevila, who is Chief Compliance
Officer at Security Credit Services, LLC; he's also chair
of the Certifications Standards Committee at DBA
International.

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

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

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

(General laughter.)

MR. KANE: Okay. None of you do. Just want to
get that out, because I -- a lot of people ask us
questions about TCPA, and these guys don't really know
that much about it, because it's all handled by the FCC.
But anyway, so let me start with Greg, from the CFPB.

MR. NODLER: All right. Great. Thanks.

Hi, everybody. I'm Greg Nodler from the CFPB.

Thanks for having me.

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

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

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

The laws that we enforce are the FDCPA -- we share jurisdiction on that with the FTC and then with, obviously, private consumers, who are the ones who are bringing most of the FDCPA cases.
Then, you know, there's also other statutes that just happen to relate to it, like the Electronic Funds Transfer Act, the Fair Credit Reporting Act, and we also enforce the Dodd-Frank Act, or the Consumer Financial Protection Act.

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

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

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

So those are going to be based on the financial resources and good faith of the company, the severity of the harm, things like that.
Then we also have something called a responsible business conduct policy, which is when a company self-polices, self-reports, self-remediates, and cooperates with the investigation, and that's something else that can bring down civil money penalties or can lead to us not even bringing an enforcement action.

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

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

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

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

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

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

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

And, you know, you may recognize us from many of the cases that we've filed. We've filed about 11 so far this year. We spearheaded Operation Collection Protection, and we may be talking in a few minutes about
recent enforcement actions, but that's always been a big part of our work.

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

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

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

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

And I would encourage everybody here who's doing business with somebody new for the first time to check that list first, because if you start doing business with those folks in debt collection, I'm going to want to know
why. That list I think is up around 100 folks at this point. We're adding some of our recent orders in this week.

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

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

We also have business education materials and a website for that, which is business.ftc.gov, where again we have some articles on business education. I think a couple of recent examples, and we have a blog there as
well, we have articles about how not to use text
messaging in the collection of debts and what are some of
the dos and don'ts there. We also have an article on
that website about data security in the buying and
selling and collection of debts. And I'm proud to say
that we worked closely with DBA, the Debt Buyers
Association, to come up with some of the, I would say,
initial first step guidelines in that respect.

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

MR. KANE: Thanks, Chris.

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

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

For those of you folks who don't know me -- I
imagine that's the lion's share of you -- my name is Ken
Lennon. I'm an assistant director in the OCC's Community
Consumer Law Division. Basically, for those of you who
don't know what the OCC is, it's the principal regulator of
national banks and FSAs, federal savings associations.
My information, candidly, is a little dated, but the last
time I knew, we're responsible for regulating about 70
percent of the banking assets in this country.
I guess I was kind of wondering how warm of a reception I was going to get here today, and the reason being, as soon as I sat down someone -- and I won't identify who -- towards the front sat there and said, Oh, geez, it's a panel full of G-men. And I wondered about that.

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

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

1818(I) that's civil money penalties. That's exactly what it sounds like, it's punitive fines: what
was your conduct and do we have a basis to impose a fine on you. And very candidly, the same factors that Greg mentioned are the same factors that we use in determining whether or not we have a basis to impose a CMP and then the size of it.

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

So that's sort of a general overview of the OCC's enforcement authority. Obviously, a couple of years ago the CFPB basically changed everything, changed the entire landscape -- excuse me -- the Dodd-Frank Act changed the entire landscape. It gave the CFPB the authority for ensuring compliance with so-called federal consumer financial laws by institutions that are bigger than $10 billion. That's basically now in Greg's bailiwick. So within those what are called federal consumer financial laws, you have a number of laws that obviously you folks would be concerned about, things like ECOA, FCRA, EFTA, GLB, and things like that. So obviously, for banks that are larger than $10 billion, that's basically Greg's bailiwick; for banks that are $10 billion and smaller,
that remains with me in the bailiwick of my organization. In addition to what we have in the federal consumer financial laws, I mentioned this earlier, the OCC has authority to basically bring actions to stop what we refer to as unsafe and unsound banking practices. So obviously, that could theoretically be debt collection or debt sales activities by institutions that we regulate. We also have authority under Section 5 of the FTC Act to basically stop somebody who was engaging in either an unfair or deceptive act or practice, again in connection with either debt sales or debt collection activities.

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

MR. KANE: Great. Thank you, Ken.

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

MR. KOEGEL: So I'll kick it off. I think there's basically two main categories of enforcement actions that I'd like to talk about that the FTC has taken in the last year or so. The first and more numerous of the two is just the egregious actors, and I'm going to cast sort of a wide net with that, but these are people that we have looked at and said the behaviors are so beyond the pale that we have taken drastic action
against these folks, and that has included going into
court ex parte without any notice, getting an order from
the judge that gives us the opportunity to freeze the
assets of the company, go in with a receivership, take
over the company, get immediate access to all the records
of the business and shut the business down right away.

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

So we've taken a number of actions like that over
the course of the last several years. These folks are
the folks that have ended up on our list of banned debt
collectors. Oftentimes we are referring
these cases and these folks to our criminal liaison unit
and we are working with criminal authorities to try to go
after these actors. Some of the practices that we're
seeing in these cases are disturbingly familiar over the
last couple of years. We are seeing a lot of people
pretending to be process servers or pretending to be
lawyers or threatening lawsuits, threatening arrest,
pretending to be the local sheriff's office. This stuff is
not even remotely kosher and that's why we're going in so
heavy handed. And you guys don't even want to be
associated with these people.

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

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

Unfortunately, these fraudsters have things like
the consumer's bank account information, their Social
Security number, and a lot of other very personal
information about the consumer that makes their scam very
credible and makes the consumer start to doubt whether
they really know everything they know about a debt that's
purportedly five, six, seven years old.

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

This is something I think we may touch on later
in the panel, but we've been suing the phantom debt
collectors for several years now. I think we've sued
seven or eight of them, shut them down, taken all their
assets, banned them. We're now very interested in where
are these fraudsters getting this consumer information
from. You can't pull the fraud off without the
information, and so we are exploring aggressively whether
there are holes in data security in the debt collection
industry, whether lead generators are doing something
improper with this information.

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

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

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

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

Rather than go through all of the ones that are related to that or just all of our debt collection cases, I thought I would just talk about a few of them. The very first one was against American Express, and I see a lot of familiar faces here so I won't spend too much time on that because I think I've talked about it at the two previous ones, so I'll mostly just talk about one that I talked about at the very last one, which were the cases brought against Chase Bank involving their debt sales practices, and then against Encore and PRA, two large debt buyers, about their debt buying practices. And then I'm also going to talk a little bit about our two most recent settlements that didn't have anything to do with debt buying. They were against original creditors, but they were collecting debts that related to
auto finance. One of those was a lender that specialized in service member accounts.

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

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

As part of the settlement, Chase agreed to provide $50 million in refunds to consumers, to cease collecting about 500,000 accounts, and to pay $136 million in civil money penalties to the CFPB and to the various states, and then the OCC's action, to pay another
$30 million to the OCC.

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

One of the things that I thought was very interesting about it is they have to send consumers a letter whenever they sell debt, letting them know that they sold it and who they sold it to, and telling the consumer that if you have questions about this or if you want to see the documentation, let us know and we'll provide it to you for free. Part of that was because something that we were seeing was that consumers were being collected from debt buyers, when they would dispute the debt buyer would say the original creditor told me this was the amount, so I don't know what to tell you. And then they would go to the original creditors and the original creditor would say I sold this, I have nothing to do with it anymore, so I'm not going to provide you
documentation, I'm not going to do anything. And so consumers were caught in this Catch-22 being bounced back and forth, so we're hoping that at least that won't happen anymore with debts that are sold by Chase.

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

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

There was also one for misrepresenting their
intent to prove the debts, and this was through their
lawsuits and their threats of lawsuits. Encore and PRA,
as I'm sure you know, file tens of thousands of
lawsuits regularly and a lot of the lawsuits that they
were filing, they weren't making sure that they had what
they needed to go forward should a consumer contest the
lawsuit.

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

(General laughter.)

MR. NODLER: So then there were also claims in
Encore and PRA about filing misleading affidavits,
affidavits that misrepresented the level of review
of the affiants of documents that weren't attached.

Specifically, in the Encore case there was a claim about an
affidavit that said the consumer received a 1692g notice
and didn't dispute it and so per the FDCPA the debt is
valid. I imagine that everybody here is familiar with
the section that they're talking about, and you probably also know that it doesn't say that. It says it's presumed valid by the debt collector. And later on in that section it says that it doesn't assume the validity in court, that it can't be used, that a court shouldn't assume that the debt is valid based on the failure to dispute under 1692g.

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

So then the last two that I was going to talk about were very recent settlements. These were against SNAAC and Wilshire/Westlake. SNAAC stands for the Security National Automotive Acceptance Company. They're an auto finance company that specifically lends to service members, and the claims in that case involved deceptive representations they were making about the failure to pay the debt, like telling service members that it was going to affect their security clearance, that they were going to be able to garnish wages without
getting a judgment, that they were going to sue them soon when they weren't. But then the real meaty claim in that involved telling consumers that if they didn't pay they were going to tell the commanding officer about the debt, and they were, in fact, telling the commanding officer about the debt.

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

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

And the last one that I'll mention was against another auto finance company, Westlake and Wilshire -- one of them owns the other one. They provide financing
for auto loans and also for title loans. And in that
case we uncovered that they were using a company called
SkipTracy -- that some of you may be familiar with -- so
that when they would call a consumer it would show up on
their caller ID as something besides Wilshire/Westlake.
It would maybe say that they were the repo company when
they weren't, or it might say they were the flower shop,
or it might say that it was one of the consumer's friends
or family members. This would obviously get the consumer
to answer the phone when maybe they wouldn't have
otherwise answered it.

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

So in that one, besides having to stop the
practices, they were also ordered to pay about $44
million in redress -- a lot of that was debt cancellation -- and there was also about $25 million in cash refunds. And I'll pass it on.

MR. KANE: Thanks.

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

MR. LENNON: Keep it short.

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

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

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

About six weeks later in July -- and Greg obviously already touched upon the actions that were taken against JPMC -- we took an action against three entities under the JPMC umbrella. Again, we assessed a
$30 million CMP -- Greg mentioned that -- and we had previously taken a cease and desist order against those three banks, again in connection with unsafe and unsound practices involving debt collection litigation activities. But keep in mind, those cease and desist orders also went to other matters, other concerns that we had at those banks, for example, the banks were found to have violated the Servicemembers Civil Relief Act, so we had violations of law as well as unsafe and unsound practices at both banks.

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

In addition to the problems that we saw there, the examiners also found that basically the bank's
clients risk management program was deficient. That, in part, led to the problem, so we criticized that and told them to fix that as well. Both banks were ordered to basically determine whether or not any of the collection accounts should be eligible for remediation, and if so, then to remediate them.

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

Is that sufficiently brief?

MR. KANE: Thank you very much, Ken.

Let me move on to the industry members, and for each of you, I'd like you to tell us briefly about your company that you actually work for, then the organization that you're representing here today, and then tell us what your organization sees as the most significant
issues facing the collection industry today, and then
we're going to work through those issues for the rest of the remaining
hour that we have.

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

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

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

I'm also co-executive director of the Consumer
Relations Consortium, and I suspect many in this room
have never heard of us. We are known as the CRC. We
were formed in 2013 by a group of industry executives
that looked around and said, you know what, we think
there's got to be a better way for this industry to work
to accomplish goals for the industry, and as mentioned by
our introductory speaker today, we think one of those ways that the industry should work is work with consumer groups, not against them. And the CRC has been doing that since our formation, and we'll talk about that later on. I know you've got a question you're going to ask me about that.

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

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

The next item -- and those of you who know me well are going to be shocked, I think, when I say this -- I think the next critical issue facing our industry is litigation is out of control. And I say this as a recovering lawyer; I spent fifteen years in private
practice in Minnesota with a creditors rights group. But litigation is out of control, and I say that it's out of control from both sides of the house, from the consumer suing the debt collection industry, the consumer advocates that have turned this into a cottage industry, it's out of control, to the fact of the matter is I think collection litigation is out of control as well. And it's costly, and it's costly to the consumer that may owe the money and it's costly to the consumers out there that don't owe the money because we're paying for that litigation in consumer goods, in higher interest rates, et cetera, et cetera.

MR. KANE: Thanks.

Harvey?

MR. MOORE: Gee thanks, Tim.

MR. BAUER: I warned you.

MR. MOORE: I was warned.

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

A little bit about myself and my firm. The Moore Law Group employs approximately sixty-five attorneys and non-attorney support staff and compliance and accounting staff and audit staff in three states: California, Colorado and New Mexico. Our primary practice is
representation of original credit grantors, and in addition to having a collection practice, we also have a defense practice.

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

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

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

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

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

And I want to point out that despite regulatory assertions that the system is broken, the system is not broken. There is much cooperation between the consumer bar, the debt collection bar and the courts and
the legislatures in our respective states to try to create more access to the system, to try to get communication going. The system is not broken, the system might need tweaking, but the system is definitely not broken.

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

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

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

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

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

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

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

But with that said, I think we've come a long way since then. Just in the past five years this industry has come a long way. I think that's evident in some of the initiatives by some of these trade associations represented on this panel. I think there was a lack of self-regulation before but I think there is a much stronger presence of that today. I think that the industry, all the members and the government need to continue to try to work together to try to find some type of balance that's not only to the benefit of the
consumers but also to the benefit of the issuers, the
taxpayers and the economy as a whole.

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

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

    (General laughter.)

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

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

    Technology has dramatically impacted the lack of
communication, whether it is caller ID, voice messaging
services that are available now everywhere, the consumer
moving from land lines to cell phones, et cetera. The
new consumer, the Millennials, I put my children in that
category, I can leave a voice message for my daughter all
day and she'll never listen to it. If I send her a text
message, she'll call me. Consumers are worried about the
scammers and the criminals and thieves, and it's hard to
read a newspaper, turn on a TV, go to the local news, go
to "20-20" or "60 Minutes" without another story about
thieves/criminals using debt collection as their
disguise, and it's got people nervous.

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

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

So with that, I'll move it on.

MR. MOORE: So the last time I spoke at a panel,
Tom was there, and it was the LEP Latino conference, and
after the panel I spoke to an attorney who runs a project
in San Diego representing under-represented consumers,
and we were having a discussion about how do you make
sure you're talking to the right consumer, because our clients have told us as attorneys we're not allowed to give to get. It's a standard concept: I can't tell you the last four of your Social, I can't tell your address, I can't give you any information, I have to get it from you to make sure that I'm talking to the right consumer.

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

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

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

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

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

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

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

And I agree with the technology as well. That's advanced significantly since over the past, whereas a lot of the requirements governing
the debt collection industry are fairly outdated. So
this is another challenge that we face.
That said, I want to get more clarity around how to
communicate with the consumer, by the phone, for example.
It's probably wise to look at other avenues to
communicate with the consumer, whether that be through
text messaging, email, web chat, other forms of social
media. There's not a lot of guidance around that just
yet, but I think that's one area that collectors can look
into to see if there's other ways to communicate.

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

MR. NODLER: Sure. And it's not that I'm unable to
say it because I'm a jerk or anything; I don't know
a lot of it. But so I can say what the next steps are
likely to be, and they are going to be that the bureau
convenes what's called a SBREFA panel, and for those of
you who aren't familiar with it, SBREFA stands for Small
Business Regulatory Enforcement Fairness Act. And what
that is is that when certain agencies are promulgating
rules that are going to have a heavy effect on small
businesses, then it requires that we basically bring in
some small businesses to hear about it, to hear about
what's going to happen and how it's going to affect them,
so we can take that all into consideration.

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

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

So we'll issue that and then the small business
review panel will meet with those representatives and
they'll hear their thoughts on the SBREFA outline, and
they can submit written comments as well. That meeting
between the panel and the representatives is not a public
meeting, but all of the materials that are used will be on our website as well as a summary of the discussion will also be on the website.

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

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

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

MR. BAUER: Well, thanks, Tom.

Just today we announced an initiative that we were involved in with a group called Consumer Action, and Consumer Action is a nonprofit organization that focuses
on financial education for low to moderate income and
limited English-speaking consumers. And they also
advocate for consumers rights nationwide and look to
promote industry-wide change.

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

And it provides tips for consumers and how to
deal with an agency, how to spot a fraudster from a
legitimate agency, and it provides simple things like a
little chart: is the caller rude to you; is the language
accelerated that they turn it to eleven on the volume
knob from the start of the call forward; does the caller
ask for your full Social Security number; things like
that to help them move forward. And last, it will tell
them will the caller provide you their full name, address
and phone numbers, and does the caller push back when the consumer wants to exercise their rights to dispute the debt.

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

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

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

Harvey, do you want to start?


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

One of the things that I did before I came is I went and I looked back at how many different laws am I subject to in addition to the federal laws. So in California we have the Rosenthal Act, we have our state
bar code of conduct and rules of ethics, but we also have
a specific law that says that an attorney practicing debt
collection law has to do A, B, C, D and E, and if you
fail to comply with those laws, it can be something that
is subject to attorney discipline. So if I violate the
Rosenthal Act and the FDCPA, I can lose my license to
practice law in the state of California.

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

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

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

So we have the Foti case, which is from
Hosseinzadeh, which is from the J.J. McIntyre case from
my state, and then you have the Zortman case which is a
completely different line of thinking about what can you
leave on the phone because you may or may not be leaving a
message on that consumer's answering machine. So there's
conflicting regulation there.

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

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

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

One thing that we see at the FTC when we look at
the complaints we get from consumers is that there are
collectors out there who are not using phone calls and
text messages as a way to necessarily communicate to consumers but as a way to bludgeon them and wear them down into paying. So that is a concern that we see in terms of the volume that goes through.

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

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

MR. KOEGEL: So my point here is that the FDCPA does not provide a right for a collector to communicate in any particular fashion, but if you choose to communicate by any mode of communication, you choose to send text messages, you choose to leave a voice mail, you have to realize that you have to do that in a way that complies with the FDCPA, and one of those things is that you have to make sure that you are not disclosing somebody's debt to a third party. So if you are leaving voice messages that in some way may disclose a debt
potentially to a third party or fail to give disclosures, you are taking a risk.

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

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

MR. NODLER: And again, I know Chris already said it but I'll say it again. This is just me speaking for myself and not speaking for the agency. First of all, I agree with everything that Chris just said. The FDCPA
doesn't provide a safe harbor today that you can always communicate in this particular fashion.

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

And then just going back to what you were saying before about the 2 percent, if a consumer is getting the message and doesn't want to call back, doesn't want to deal with telephone collections, that's that consumer's right. And then you have other options, then you can sue the consumer, and we would hope that it not be done in
the manner of the Hanna Law firm or the Encore and PRA.

It's not confusing to me.

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

The point I want to get back to is I think we have to make the fundamental leap that it is better to have more communication than less communication. And let me tell you why, and I'll just use a very quick example.

If I gave you a hundred accounts today and said I don't care what method you use to collect those or to attempt to collect them, whether you use an outside agency, call yourself, or you sue, the reality is unless you communicate, the only alternative is to put more of them into suit, and that's not good for the consumer.

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

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

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

So Ken, can you tell us a little bit, just very
briefly, about these two types of guidance, and then I'll
ask industry folks to let me know what the impact has
been on them.

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

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

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

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

And then finally, keep in mind that risk
management is supposed to cover the entire life cycle of
the third-party relationship, so it's not just at the
beginning or at the end, it's the whole way through, from
basically planning when you're deciding what relationship
stance you're into all the way through termination, so it
should cover the entire gamut of the relationship. So
that's that one.

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

Let's see, under the debt sales guidance, banks
are expected to comply with all applicable laws, and
obviously there are some laws that are applicable when a
bank engages in debt sales. And then finally, you need
to have appropriate oversight and monitoring over the
relationship, so if you're engaging in debt sales, you
need to be doing so in an appropriate manner with
appropriate monitoring.

MR. KANE: Great. Thanks.

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

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

However, it also restricts and restrains
certain types of legitimate debts from being sold and also cautions
against
downstream buyers from reselling that debt. The DBA, in
response to this has several standards in place within
the certification program that the DBA maintains that
address the purchase and sale process, and a lot of that
was taken directly from the OCC guidance, because we did
see some very good points made.

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

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

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

Moving on to the vendor oversight
guidelines for the third-party risk management guidance, I
think that many banks have taken this guidance and
applied this to arm's length sales transactions.

You have cases where many buyers are continuing to be
audited post sale even when they're no longer actively
purchasing from a bank. So I think there's a little mixup there. If proper due diligence is performed prior to a sale, then there's not a need to continuously monitor post sale. I think that's uncommon in most arm's length sales transactions.

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

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

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

MR. KANE: Great. Thanks.

I'm actually going to squeeze in something that we didn't talk about before. We just sort of said that
we would talk about it and we talked it about it at our
other two dialogues and people have asked about it, and that's this:
Greg and Chris, would you tell us, between the two of you
take four minutes to tell us how you bring your
investigations and how do you start them and how do you
run them, and then we'll get back to the industry's
topics.

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

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

Once we start looking at a company, either before
we formally open the investigation or very early in the
investigation, we look at things like the number of
complaints, the severity of the conduct involved, the
number of consumers affected. Is this something that an
investigation or an action could send an important
message to the industry that we want to get out there?

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

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

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

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

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

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

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

You know, we often talk about how we could devote all of our attorneys to doing nothing but Buffalo, New York phantom debt cases, or just looking for the guy in his shorts in his basement that they were talking about before, and we could all be very busy and probably have a lot of fun doing that, but we would be ignoring TILA and RESPA and our other laws.
So we try to think strategically about how to address certain issues and also to make sure that we're not just spending two years working on something that by the time we're done isn't even an issue anymore; you know, always fighting the last battle. So we try and break it up very strategically.

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

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

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

MR. KANE: Great.

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

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

The CFPB has the authority to do its supervisory
examinations of the larger market participants, and the CFPB has certainly brought a number of cases against the larger participants in the industry over the last several years.

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

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

MR. KOEGEL: Totally agree.

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

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

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

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

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

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

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

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

There's also voluntary certification for the debt collection agencies and the collection law firms which are members of the DBA. The program itself consists of
right at thirty standards which address areas such as purchase and sale requirements, data security, vendor oversight, complaint resolution, and various other compliance and operational type of issues.

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

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

Any proposed revisions, once approved by the standards committee, then go to a DBA counsel for review and approval. If approved by the counsel, it then goes to the DBA board for review and approval. So it's a very methodical moving process and I believe it's now in the
fifth version in less than three years.

MR. KANE: Great.

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

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

You know, the DBA's program, the certification program, is by no means perfect. It's still, in my mind, in its infancy. I applaud them for putting it in place and
for making a continual effort to improve it. Any self-
regulatory program has to have certain key attributes in
order to truly be successful, things like transparency,
things like real teeth, things like real specific
guidance. I think the DBA has been making strides on all
of those, and I just hope that they continue to work on
those things because I think it could be an important
part of a solution here.

MR. KANE: Great.

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

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

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