FEDERAL TRADE COMMISSION

AND

CONSUMER FINANCIAL PROTECTION BUREAU

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ROUNDTABLE ON DATA INTEGRITY IN DEBT COLLECTION: LIFE OF A DEBT

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THURSDAY
JUNE 6, 2013

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The roundtable met at the FTC Satellite Building Conference Center, 601 New Jersey Ave, NW, Washington, D.C., at 9:00 a.m.

PRESENT

JULIE BRILL, Commissioner, FTC
STEVEN ANTONAKES, Acting Deputy Director, CFPB
HEATHER ALLEN, Senior Attorney, Division of Financial Practices, FTC
CHAD BENSON, President and Chief Operating Officer, CBE Group
BRANDON BLACK, Consultant/Former Chief Executive Officer, Encore Capital Group, Inc.
LAWRENCE COSTA, Executive Vice President of Business Development, Capital Management Services, LP
DANIEL DWYER, Attorney, Division of Financial Practices, FTC
MANOJ HASTAK, Professor of Marketing Kogod School of Business, American

University
COLIN HECTOR, Attorney, Division of Financial Practices, FTC
PETER HOLLAND, Clinical Instructor, Consumer Protection Clinic, University of Maryland Carey School of Law
BOB HUNT, Vice President & Director, Payment Cards Center, Federal Reserve Bank of Philadelphia
ALICE HRDY, Deputy Assistant Director, Office of Supervision Policy, CFPB
THOMAS KANE, Senior Attorney, Division of Financial Practices, FTC
CHRISTOPHER KOEGEL, Assistant Director, Division of Financial Practices, FTC
W. THOMAS LAWRIE, Assistant Attorney General, Office of the Maryland Attorney General
IAN LYNGKLIP, Partner, Lyngklip & Associates, Consumer Law Center, PLC
LORAINE LYONS, Senior Vice President and General Counsel, FMA Alliance, Ltd.
KAREN MEYERS, Director, Consumer Protection Division, Office of the New Mexico Attorney General
RICHARD MUNROE, President, Capital Financial Group, Inc.
BEVIN MURPHY, Senior Attorney, Northeast Region, FTC
JOANN NEEDLEMAN, Vice President, Maurice & Needleman, P.C., and President-Elect, National Association of Retail Collection Attorneys (NARCA)
MANUEL NEWBURGER, Partner, Barron & Newburger, P.C.
DENISE NORGLE, Vice President and Division General Counsel, TransUnion
DAVID PAUKEN, Chief Executive Officer, Convoke Systems
DAVID PHILIPPS, Senior Partner, Philipps & Philipps, Ltd.
IRA RHEINGOLD, Executive Director, National Association of Advocates
JESSICA RICH, Associate Director, Division

of Financial Practices, FTC

HON. ANNETTE RIZZO, First Judicial District of PA, Philadelphia, Court of Common Pleas

COREY STONE, Assistant Director, Office of Deposits, Cash, Collections, and Reporting Markets, CFPB

LARRY TEWELL, Senior Vice President, Consumer Credit Solutions Division, Wells Fargo

TOM THURMOND, Division President, Resurgent Capital Services

JOHN TONETTI, Program Manager, Office of Deposits, Cash, Collections, and Reporting Markets, CFPB

A-G-E-N-D-A

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

9:01 a.m.

MS. RICH: I'd like to just briefly introduce our opening speakers. First, we have Julie Brill who's one of the Commissioners here at the Federal Trade Commission. Since Julie's early days as an assistant AG in Vermont, she's been highly interested and focused on financial consumer protection issues including debt collection and that continues now, which is why she's here to introduce this roundtable on behalf of the FTC. So we're delighted to welcome Julie. Julie Brill.

(Applause)

COMMISSIONER BRILL: Thank you, Jessica. Good morning, everybody. It's great to see such a big crowd and I assume that we've got people on the web, so good morning to all of you as well.

I really appreciate the opportunity to open up this really important discussion today. And I'm also delighted to be here with

Steve Antonakes and other members of the CFPB to kick off again this very important event.

Today's roundtable is intended to bring together all of the stakeholders in debt collection, industry members, consumer advocates, technology providers and regulators at both the state and federal level to discuss the debt collection process and how that process can and should be improved. Everyone here has a deep interest in ensuring that the system is fair and transparent.

I want to start by acknowledging the hard work of the folks that organized this event. The roundtable is a joint effort of the FTC and the CFPB and I think it demonstrates our strong partnership and ability to leverage our collective assets and expertise.

Tom Kane and Dan Dwyer of the Division of Financial Practices spearheaded this effort for the Federal Trade Commission. And John Tonetti and Corey Stone of the Office of Deposits, Cash Collections and Reporting

Markets served as leads for the CFPB. Thanks to the four of you and for everyone else at our two agencies who worked so hard to bring together so many key players for this important event.

This morning I'd like to talk about the impetus for holding this workshop and describe some of the important work that the FTC has done in debt collection that I think will inform our discussions today as well as our discussions in the months to come.

It will probably come as no surprise to anyone in this room that debt collection is a booming business. One of the lingering results of the financial crisis in the U.S. is that U.S. consumers are in debt to the tune of $11.23 trillion. Eight percent of that debt, or about $900 billion is delinquent with $678 billion being seriously delinquent, that is, 90 or more days late.

This may provide opportunity for the debt collection industry, but it signals something quite the opposite for consumers.

Consider some of the things that financially distressed consumers face. Unemployment or underemployment, lack of health insurance and proper healthcare, and difficulties in paying for critical needs like food, housing and childcare.

Add in the efforts by legitimate debt collectors to lawfully collect debts that consumers owe, telephone calls, late notices, repossessions, garnishment orders, and you have consumers who become even more financially distressed than before.

Now, add to the mix the bad actors, the debt collectors who engage in unscrupulous if not illegal practices. The ones who call at all hours of the night, the ones who lie and make threats they cannot follow through on, the ones who engage in robo-signing or otherwise sue without any basis for doing so, the ones who use subterfuge to obtain monetary judgments and garnishment orders. These are below-the-belt punches aimed at consumers who are already being pummeled.

Please don't get me wrong. I don't mean to imply that all debt collectors and debt buyers engage in these unscrupulous practices because they don't. Indeed, debt collection plays an important role in our economic system both reminding consumers of their obligations to pay debt and helping to ensure that credit continues to flow to consumers. But the sloppy and bad practices of some industry players harm both consumers and competitors who play by the rules.

We at the FTC have engaged in appropriate aggressive enforcement to weed out these bad practices. And our extensive and scholarly research has identified vulnerabilities in the debt collection system that give rise to these practices. I believe our enforcement efforts and policy work should play an important role as we consider appropriate reforms in the coming months.

Shortly after I became a

Commissioner 3 years ago we released a report, "Repairing a Broken System," which painted a troubling picture with respect to how debt collection claims are litigated and arbitrated.

Our report showed that debt collectors have filed hundreds of thousands of lawsuit against alleged debtors with the vast majority of these actions resulting in default judgments, in some jurisdictions upwards of 90 percent of the time.

Our report also addressed some systematic problems with the data debt collectors possess, problems that are at the heart of some of the issues we will discuss at today's workshop. We concluded that debt collectors often lacked documentation about debts to properly support litigation. We also found that debt collectors often have no ability to obtain relevant data about the debt, and any data the debt collectors have may be inaccurate due to contractual or other limitations.

As a result of poor or no information

about the underlying debts debt collectors often do not have the information necessary to respond to consumers' disputes or requests for debt validation.

The harm to consumers is magnified when debt collectors report erroneous information to credit bureaus. Consumers may be denied employment, insurance, or credit as a result.

Our 2010 report recommended significant reforms to improve efficiency and fairness to consumers. Since debt collectors file their lawsuits in state courts, our recommendations urged states to adopt measures to make it more likely that consumers will know about the litigation and have the means to defend themselves, including by requiring collectors to provide more information about the purported debts when they initiate litigation. This would enable consumers to understand why they're being sued and to prevent judgments on empty assertions.

You'll be hearing much more about the findings and recommendations in our 2010 report later this afternoon from Bevin Murphy and Colin Hector, two of our FTC attorneys. You'll also hear from some states that have adopted some of our recommended reforms.

While this is good news, and there is good news about efforts being made to make some of these appropriate reforms, unfortunately since we issued our 2010 report it appears that in most respects very little has changed. As was true in 2010 the FTC continues to receive more complaints about debt collection than any other industry. In 2012 we received more than 125,000 separate consumer complaints representing 25 percent of all the complaints that we received.

Because of the continued importance of this issue we have continued to study the industry. In January of this year we announced the results of a first of its kind study of debt buyers, companies that are in the business of buying consumer debt and attempting to collect on it.

The debt buyers in our study who were nine of the nation's largest debt buyers collectively purchased for pennies on the dollar nearly 90 million consumer accounts with a face value of $143 billion.

There's no doubt that debt buying plays an important role in consumer credit. Proceeds from sales of delinquent accounts have helped reduce creditors' losses from lending money, allowing them to provide more credit at lower prices.

We found, however, that debt buying raises many of the same significant consumer protection concerns that we described in our 2010 report. Most notably, that debt buyers may have insufficient or inaccurate information when they collect on debts which may result in collectors seeking to recover from the wrong consumer or recover the wrong amount. You'll hear more about our debt buyer study later this morning from Heather Allen, who will describe the findings as well as some of the recommendations in that report.

Our enforcement work has likewise identified aspects of the industry that are ripe for reform. Over the past 3 years, the FTC has brought more than a dozen actions against unscrupulous third party debt collectors. Some of our cases have addressed groundbreaking issues like attempts to collect on time-barred debt, debt that is so old that courts won't allow the debt collector to sue to collect on it.

We've also brought enforcement actions against debt collectors that involve the same types of data integrity issues identified in our reports, including collecting on portfolios that were missing basic identifying information for consumers or missing key documents from the original creditors that would substantiate the alleged debts.

Finally, I'd just like to mention an issue that I am particularly concerned about and one that I hope you'll have an opportunity to discuss at some point today. Debt collectors now use all manners of technology, cell phones, social media, and email to reach consumers. But the Fair Debt Collection Practices Act that governs their activities was passed in 1977, a year that I happened to graduate from high school and a time when these technologies, social media and the like, were not even contemplated.

We need to ensure through enforcement, rulemaking, or amendments to the FDCPA that our policies adequately address how debt collectors use new technologies.

I'm sure today's discussions will be fruitful and will serve to establish some common ground among all of us, consumer advocates, collection industry members, technology providers, and state and federal regulators as we seek solutions to problems caused by the flow and integrity of information used in collections. So thank you very much.

(Applause)

MS. RICH: Thanks, Commissioner Brill. Next we have Steve Antonakes. He's the Acting Director of the CFPB, the Consumer Financial Protection Bureau, in case anyone in here doesn't know what that is.

Steve has a vast wealth of experience on financial consumer protection issues, like Commissioner Brill, much of it as a state official. So we're delighted he could help us open this event today. Steve Antonakes.

(Applause)

MR. ANTONAKES: Good morning. So I'd like to thank everyone for joining us today. I certainly want to thank Commissioner Brill and her colleagues at the FTC for hosting today's event.

Really since the Bureau launched in July 2011 we have come to realize that we could not have asked for a better group of partners to work with to protect consumers across the country.

Today's event follows similar

industry roundtables on debt collection practices that the FTC has organized. These have proven valuable in surfacing important issues and allowing a wide range of stakeholders to air their views and discuss policy solutions. So again, we're delighted to be here today.

As we continue to emerge from the devastating crisis of 2007 and 2008 we now find that collection is a central issue of our times. Currently there are 30 million consumers, nearly 1 out of every 10 Americans, with at least 1 debt in collections for amounts that average about $1,500 apiece.

At the Bureau we recognize that debt collection is an essential part of the credit system. Debt collectors remind borrowers that repaying debt is a serious obligation and that not repaying has consequences.

But we also recognize that this is a market where consumers can't vote with their feet. While many debt collectors play by the rules and are simply doing their jobs trying to collect what is legally owed there are also those who cut corners on compliance and others who are simply bad actors.

From the complaints we get at the Bureau on credit cards and mortgages we know many consumers find dealing with debt collectors to be frustrating and often stressful.

These complaints raise a number of concerns. We worry whether the consumer is being told the straight story about the consequences of not making payments. We worry whether the debt being claimed is for the right amount. And we worry whether it's the right person being called. We hear too often about such problems.

My hope is that today's roundtable allows us to gather information and work towards making this industry better for consumers and the honest businesses that are doing good work. Our job and that of our partners at the FTC is to take appropriate action against collectors that violate the law.

Not only do bad actors hurt consumers but they also are a detriment to every debt collector who is faithfully following the law. In fact, a stated purpose of the Fair Debt Collection Practice Act is that Congress wanted to ensure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged.

The Bureau began its supervision of debt collection practices at large bank lenders and payday lenders to make sure they're complying with federal consumer financial law.

Then in January of this year we started something that had never been done at the federal level. We began examining the larger non-bank debt collection firms. We monitored these debt collectors just as we monitored the large bank lenders. We make sure that the company's business practices are in accordance with the law.

This supervisory authority extends to about 175 debt collectors and debt buyers which account for over 60 percent of the industry's annual receipts in the consumer debt collection market. More broadly, the shared objective of both the FTC and the Bureau is to seek broader solutions to overall challenges in this market.

The focuses of today's roundtable, the integrity of the record-keeping processes and data that are used to collect on a debt is also one of the important focuses of our early supervision and enforcement efforts in this industry.

Data accuracy and availability and the maintenance of the accuracy across different market participants are critical for having collection processes that are fair and for having communications that consumers can trust. Questions of data integrity in the collections process are the subject of many of today's panels.

Allow me to illustrate three areas of focus. First, is the accuracy of the data that debt collectors are using to pursue consumers and that is communicated to consumers who may owe a debt. When third party collectors or debt buyers are involved, this issue becomes important. Original creditors should ensure that a sufficient amount of information about the debt is being made available. So we paid close attention to whether debt collectors have accurate information when they're collecting debts.

Second is the extent to which the accuracy of the information, including such fundamental facts as the consumer's identity and the amount of the debt, deteriorates as it ages or gets passed down the line to secondary or tertiary buyers. If any piece of the information is incorrect, or if the owner of the debt has changed, debt may become unrecognizable.

Third, consumers need to be able to dispute debts they believe to be incorrect. If the debt collector has furnished information about the debt to a credit reporting company the collector has additional obligations under the Fair Credit Reporting Act to investigate disputes and inform the company of any inaccuracies it finds. Given the impact that a credit report can have on a consumer's life, it is critical that the credit reporting companies have accurate and up-to-date information.

Another topic is the information that is required as evidence in debt court cases. This issue, as Commissioner Brill discussed, has been highlighted by the FTC in its 2009 roundtable and report on debt litigation, "Repairing a Broken System."

This has proven to be an influential report and has helped spur reforms in court rules and rules of evidence in a number of states to assure that consumers receive proper notice that they are being sued and that plaintiffs adequately document their claims before they obtain judgments.

As litigation has become an

increasingly used collections activity we have been following the court reforms and their impact on evidentiary requirements. We're also aware that states are looking into these issues and what records should be maintained and provided to consumers when creditors pursue debt collections through the courts.

Today's roundtable brings together many stakeholders in the debt collection process. These include creditors, collection agencies, debt buyers, consumer advocates, plaintiffs' lawyers, attorneys general, academics, court officials, technology vendors, and regulators. All of us have a stake in ensuring the integrity of information that's used in the debt collection process. It's fundamental to fairness and transparency that consumers are able to trust the information they receive from collectors and to make decisions that are in their best interest.

But the nature of information is that it's a systemic responsibility. Multiple market participants create, communicate, update and use common sets of information or even shared information systems in their roles in the debt collection process. So each of us has a role to play in formulating solutions, whether they are technologies, record-keeping practices, data standards, or designing new systems, disclosures, or rules.

We ask for your help today in identifying solutions. We want to create a system where accurate information is maintained in this market so that collectors are calling on the right consumer to collect the right amount. And we want consumers to feel confident when answering the phone that they will get a straight story, hear accurate information, and be able to make their best choices given their circumstances.

This in turn will be another step towards our collective goal of moving towards a debt collection market in which consumers are treated fairly, they retain their dignity and are prompted appropriately to pay their legitimate debts.

We're looking forward to our collaboration on these significant issues. Again, I greatly appreciate and thank everyone for coming today.

(Applause)

MR. DWYER: Good morning, everyone, and welcome to the Debt Collection Data Integrity Roundtable co-hosted by the FTC and the CFPB. My name is Dan Dwyer and I'm an attorney in the Division of Financial Practices here at the FTC.

We're delighted that you've all joined us today for what promises to be an interesting and thought-provoking discussion about the information debt collectors have throughout the stages of the debt collection process.

Those of you joining us in person will see several note cards in your event folder. Please write down any questions you have for our panelists on these cards. If you hold them up a member of the workshop team will come and pick them up from you.

Also, if you're tweeting about the workshop on Twitter today please use the hash tag #debtdata.

After three presentations to set the stage for the day, most of the rest of the day will involve four discussion panels that focus on the role of information and the importance of its availability and accuracy in four different phases of the debt collection life cycle.

The first will be about the notices provided to consumers under Section 1692(g) of the FDCPA. What's specified under the statute and what under the spirit of the law is helpful to the consumer in recognizing the debt and his or her rights.

The second panel will be about what happens when a consumer disputes a debt, what information is required to substantiate it and what sort of investigation must be undertaken to obtain this information.

The third will be about debt collection litigation. What happens at the end of the line when other collection methods have been exhausted. This panel will discuss proposed court rules and rules of evidence to assure the right consumer is being sued for the right amount.

Our final panel of the day will be about debt that has reached the statute of limitations and which implications of this fact can or must be disclosed to the consumer.

Our panels today will include consumer advocates, creditors, collection agencies, debt buyers, collection attorneys, academics and regulators. At each point in the cycle of debt we'll be asking questions about what problems exist with respect to the handling and use of evidentiary information, current harms that result when it is handled sloppily or dishonestly, and what solutions can be put in place to make the market function better.

Solutions can include anything from better state court rules to enforcement of existing statutes, introductions of new technologies, and rule-writing by the CFPB.

Depending on the panel each panelist will begin with either a brief introduction or brief remarks. The moderator will then lead a conversations for most of the length of the panel. The moderator will then take some time to ask panelists as many questions as possible from the ones we've received from those here in the conference room and from our webcast viewers.

Before we continue I have a few housekeeping items that I need to go over. The bathrooms if you aren't already aware are across from the entrance to the conference center past the security desk to the left. Anyone that goes outside the building without an FTC badge will be required to go through the magnetometer and X-ray machine prior to reentry into the conference center.

In the event of a fire or evacuation of the building please leave the building in an orderly fashion. Once outside the building you will need to orient yourself to New Jersey Avenue. Across from the FTC is the Georgetown University Law Center. Look to the right front sidewalk. That is our rallying point. Everyone will rally by floors. You'll need to check in with the person accounting for everyone at the conference center.

In the event that it is safer to remain inside you will be told where to go inside the building. If you spot suspicious activity please alert security in the front.

And this event may be photographed, videotaped, webcast, or otherwise recorded. By participating in the event you are agreeing that your image and anything you say or submit may be posted indefinitely at ftc.gov or on one of the Commission's publicly available social media sites.

And finally, please turn off your

cell phones if you haven't already or put them on vibrate. Again, we really look forward to having a productive day and open discussion, and once again thank you all for coming.

At this time I'd like to introduce Bob Hunt, the vice president and director of the Payment Card Center at the Federal Reserve Bank of Philadelphia. Bob.

(Applause)

MR. HUNT: All right. Well I want to thank the organizers for including me in this very interesting roundtable. It's an honor.

I always have to begin with a disclaimer. Everything I'm going to say today are my views and not those of the Federal Reserve Bank of Philadelphia or the Federal Reserve System.

My job today is to present an overview. Many of the points that I'm going to sketch are going to be discussed in much greater detail in the panels later on today.

Now we can't have a conversation

about debt or the consequences of default without first recognizing that we are living in the aftermath of the worst recession that the United States has experienced since World War II.

So let's just think about the labor market for a moment. What I've done here is I've plotted the jobs in the U.S. economy relative to the peak of the business cycle. The blue line is the recession that we've just experienced and we're living through.

And as you can see we lost 6 percent of our jobs over a 3-year period. And we've managed to replace about half of those jobs over a 4 and a half year period of time. So both in terms of magnitude and duration the U.S. economy has not experienced anything like this since the very short recession after World War II or the Great Depression. And anybody who studies credit cards knows that this is automatically going to feed into defaults.

But the other thing that happened is

that a great deal of consumers' household worth was also destroyed. In this case it was about $15 trillion in the net worth of consumers in the United States that was wiped out over a 2-year period of time.

And very fortunately we've regained about half of that mostly through the gains in the stock market that have occurred subsequently. But very little of this improvement has come from the housing market. Because of course home prices continued to fall for quite a while and it is only just recently that we've begun to see an appreciation in home prices.

And so one of the major safety valves that consumers had in the two thousands, the equity in their homes that they could use to refinance the liabilities in their balance sheet continues to be unavailable for most Americans.

And this of course translates directly into what is happening in the consumer credit market. So there are two lines on this figure. The black line at the bottom is the one you usually see. So that is non-business bankruptcy filings over time.

And with the exception of that spike that you see right before the Bankruptcy Reform Act of 2005 came into force you see that typically there are 1 to 2 million bankruptcy filings ever year.

The red line is probably one you haven't seen very often, and this is the number of consumers that are seriously late on at least one debt as reported in credit bureau data. In this case this is TransUnion data.

These are debts that are 120 days late but they haven't been charged off yet. And so these are consumers that will soon face collections activity if they're not already exposed to collections activity. And you can see that in good times that's roughly 4 million consumers and in bad times it's as many as 8 million consumers.

So one thing to think about here then

is for every consumer that seeks bankruptcy protection in part because they want protection from collections activity there are four consumers that either are exposed or are going to be exposed and who are not going to file for bankruptcy right away. In fact, a significant share of consumers that are exposed to collections never file for bankruptcy. And then of course in bad times it's even worse.

One of the interesting things at the far end of this graph is the fact that the number of consumers who are exposed really hasn't fallen very much even though the economy is in recovery. It's only fallen a little less than a million.

And to see why that's the case in this figure you can see the different types of liabilities that consumers are falling behind on. So the blue line at the bottom is credit cards, the yellow line is mortgages, and the brown line are installment loans.

And as you can see actually the

seriously late credit card loans have been falling for quite a while, and that's simply a consequence of the speed with which bad credit card loans got charged off and went into the collection process beginning in the latter half of 2008.

And even in the case of mortgages what you see is that there are about a million fewer consumers that are seriously late on their mortgage that have not already gone into foreclosure. Those mortgages that have gone into foreclosure or come out of foreclosure are not in this figure. But that has also fallen.

So the one line that's rising of course is the installment loans. And about a million more consumers are seriously late on those installment loans than a few years ago.

And I have a pretty strong suspicion that what we're seeing there are the student loans. And that's a story that's going to play out. So another lesson from this figure is that the composition of loans that are going to go into collections is going to change fairly rapidly over time.

Now the next thing that I want to do -- well, first of all, let's just talk about credit cards for a second. So, in this figure what you see is the absolute amount of credit card lending that was written off in a very short period of time beginning in 2008.

And in both absolute and relative terms this is the biggest credit shock to the credit card product in its entire history. As the chart shows about $161 billion has been charged off. All of that is working through the collections process over the next several years.

Now, what I want to do now is turn to the collections process itself. And I'm going to make an observation that we've already heard a little bit from our previous speakers which is that collections involve very many participants.

Obviously it starts with a consumer that has some form of financial or non-financial debt. And the flip side of that of course is that there's an organization out there that is owed those funds. So for example, it will be a lender or it could be a non-financial firm that is providing goods and services to consumers.

For example, hospitals and doctors and utilities. Or it could be the government that is owed taxes or fines or parking ticket, for example. And it is not uncommon for any of these organizations to try and collect on these late debts themselves. We call that first party collections.

And the economics of first party collections as well as some of the legal treatment of first party collections is somewhat different from the next item here, third party collections which of course these are the firms that specialize in collecting on the defaulted debts that are owed to other organizations, mostly on a contingency basis. And that simply means that for every dollar that is recovered the collection organization retains a certain portion of that as their own revenues.

But as was just mentioned a few moments ago there's also this active debt-buying market that exists. And I'll turn to that later on in my remarks.

Another very important observation, and this was alluded to a few moments ago, are the abundant service providers to all of these other organizations. And they're in the business of providing either information or communications, technology, or risk management technology to first- and third party collectors.

So for example, credit bureaus, providers of location services, so when consumers move or change their phone numbers this is the way to find where those consumers are. In the industry that's called skip tracing although that's not always a popular term.

We all know about credit scoring when we apply for credit but of course there's also collection scoring, that technology which tells collectors what are the most fruitful accounts to allocate resources to. And then of course there are the call centers and the increasingly complex auto-dialers and predictive dialers that collection organizations use, voice over internet, and all of the abundant computing resources that are required in order to do modern collections.

Now not every debt that goes into default is going to wind up being litigated in court. But to the extent that they are of course that brings in a whole new set of participants.

Obviously you have to have attorneys that are filing those cases in order to get judgments, liens, or garnishments. And then you have to have the courts themselves. And so for most consumer debts that's a state or a local court. And there's a great deal of variation in the organization and the process that is used to handle all of those collection cases.

So very often it's going to be a county court and in some states it may be a small claims court. In some other states it may be a superior court. There's a very significant variation in the procedures but also in the level of automation that is used in these courts as opposed to the higher-level state courts or the federal district courts, for example. And as a researcher I can tell you that that creates a whole lot of difficulties in terms of understanding how that litigation works.

And of course there's legislation and regulation, abundant legislation and regulation of the collection process at the state and federal level. So for example, at the federal level depending on the role that you play there's at least four pieces of legislation that may apply to you.

And there's at least four potential regulators out there although the two principal ones, our hosts today, the Federal Trade Commission and the Consumer Financial Protection Bureau. But if you're a bank and it's a first party collection activity then you may also have a Prudential supervisor that will be involved.

And then of course there are state attorney generals and there are state agencies that are also in the business of licensing and supervising collection firms at the state level.

So now what I'm going to do is I'm going to talk a little bit about who engages in collections. And the best way to do that is simply to decide what industries hire bill and account collectors. And that's what you see in the next figure here.

There's a qualification. This is domestic employment. To the extent that collection activity is outsourced abroad you're not going to see it in the numbers that are here. But what you do see is that third party collection agencies hire the largest proportion of collectors in the country, about 100,000 people in recent years, a little more than a quarter of all bill collectors in the entire economy.

And then if you add together the

collectors that work in finance or insurance or in healthcare then you nearly have two-thirds of all of the bill and account collectors in the U.S. economy. And then the next three categories, wholesalers and retailers, the legal and accounting sector, and government. Well, that's about another 15 percent. And then the remainder are distributed pretty evenly across the rest of the economy.

Now the next several slides that I'm going to show you are focused on the third party collections industry. So by that I mean the firms that do contingency collections and the debt buyers. But it does not include the law firms who may perform some role in the collections process.

So here's a quick snapshot. We're talking about 4,000 or so firms that are active on a 12-month basis. About 150,000 employees across the country. Roughly speaking about $55 billion in gross collections that are returned to either commercial creditors or consumer creditors in the United States.

And the industry itself retains about $12 billion of those collections in its own revenues, mostly through the contingency collection but also collecting on purchase defaulted debt. A little bit older data tells us that about 70 percent of that $12 billion represents collections on consumer debts.

I don't think I have to tell you that collections is a volume business so at least by one measure there are four consumer contacts for collection purposes of every adult in the United States every year.

And then the next set of numbers give you a sense of the growth of this industry over time. So over the last 40 years this has been a period of fairly rapid growth in consumer credit in the U.S. economy. Even adjusting for inflation it's gone up by about three and a half times. And if I was to calculate the growth of the defaulted debt it would actually be a little more rapid than that.

And yet the collections industry has grown even more rapidly both in terms of employment but especially in terms of revenue over that 40-year period of time. And in fact these measures alone show you that the collections industry has experienced fairly impressive productivity growth for the services part of the U.S. economy.

Now in the next slide what I'm going to do is I'm going to show you some typical measures of the performance of a collections firm. And I'm going to use median values. So what you should think of here is these are measures that would be typical of a smaller collection firm out there. As I'll show you in a little bit there's tremendous variation in the size of collections firms and so the measures that you would see for a larger collection firm would look somewhat different than what I'm about to show you.

So this is data from one of the leading trade associations for the industry, ACA

International. And again these are the median values reported in their recent benchmarking survey.

Recoveries are about 13 cents on the dollar. That is the face value of the debt is $1, the recovery is about 13 cents. On a per-account basis that means the median recovery is $69 on a median balance of about $540.

The commission rate, that is the portion of the gross collections that the firm is going to retain is about 26 percent of that. And so the median then would be $22 an account. That's the revenue that the collection firm will retain.

The median operating expense on a per-account basis is about $16. And that leaves a median gross profit of about $2 an account. And because I'm using medians here they don't add up in the way that you ordinarily would see with averages. But if I was giving you the average profit per account it would only be about $10 or $12 for firms of this size. So obviously this is a business that is built on volume.

And as the last bullet shows even for these relatively smaller firms every year they're bringing in about 70,000 new accounts to collect upon on behalf of several hundred clients that they have. And they're mailing out about 120,000 or more letters a year for -- to consumers.

Now what I want to do is jump back to the agreement measures for a few moments because I want to give you some long-run trends in the collections industry. So I mentioned a few moments ago that for a very long period of time collections has been a growth industry. And so here's a measure of employment in the industry over that 40-year period of time.

But if you just focus on the years between 1987 and 2007 what you see is that employment tripled in that period of time which is really a very impressive period of growth. And this is also reflected in the revenues of the industry.

So again, adjusting for inflation if you focused on the 10-year period 1987 to 1997 revenues just about doubled. And then if you focus on the subsequent decade, 1997 to 2007 you see that revenues again just about doubled.

So a way of thinking about that is this is an industry where inflation-adjusted revenue is growing at about 7 percent a year for more than 20 years. And so there are a lot of industries and a lot of firms that would like to be able to claim that kind of history in terms of its development.

That said, the market changed significantly as the housing market peaked and then the United States went into recession. And so in this slide what you see is that revenues peaked around 2005 and 2006 and really have not come back. That's in part I believe because of the home equity refinancing channel being shut down and the fact that the credit supply to consumers also tightened significantly thereafter. And so the ability to refinance short-term debts especially became much more difficult for consumers.

Now I don't have numbers here for 2011 or 2012. I do expect the industry resumed growing in those years. But a very important but unanswerable question at the moment is whether the collections industry remains a growth industry or in fact whether we have reached an inflection point for this industry. It's just something that we're going to find out over the next several years.

Now what I want to do next is review some changes in the market structure of the collections industry. And this is going to take me a few minutes to explain.

This is a very busy figure but what I've done is I've broken up the collections firms into different sizes based on the number of employees, so fewer than 20 or as many as more than 500 employees. And then I've plotted the share of the entire industry's payroll by these size categories of firms.

Now I'd like to use revenues but I don't get that revenue data as frequently. But we do know that the payroll and the revenue data move together so it's pretty much going to be the same story.

And so the big picture here is that over a 20- to 30-year period of time there clearly has been a change in the size distribution of collection firms. What's been happening is that there are more large collection firms and the large collection firms have gotten larger over time.

So back in 1990 those collection firms that had fewer than 20 employees accounted for half of the entire payroll of the collections industry. And today it's about 27 percent. It's fallen quite a bit.

On the other side those firms that have 500 or more employees, they used to account for 22, 25 percent of the entire payroll of the industry. Well now it's about 45 percent.

And what you can see, the most rapid

period of this transition in the industry occurred in that middle period, 1998 to 2004. And the movement sort of before and after is it's still there but it's just not as rapid as what we saw in that middle period which actually corresponds to a period of very ample credit supply for most consumers.

Now, what I am not saying here is that the era of small collection firms is over. In fact, even today three-quarters of all collection firms have less than 20 employees. And as you can see they still account for 27 percent of all payroll.

And usually when you look at data like this, say, for the banking sector what you would see is that the number of firms would have shrunk a great deal. That's certainly true for banks, for example.

But in fact there's only been a very small decline in the number of firms in the collection industry. So it appears that there's still a lot of entry that's going on and that barriers to entry in collections haven't changed a lot.

But once you've entered it's also the case that the market is sort of separating into two segments, a very large segment of smaller collection firms that are out there, and then a smaller segment of firms that have become much larger and represent now a much larger proportion of the revenues and payroll than used to be the case.

Now next I want to discuss the mix of customers that are served by these third party collection firms. And so again I'm going to use some data from ACA International.

This is the book of accounts being collected on weighted by the value of those accounts in 2010. And as you can see here healthcare represents about one-third of the total book.

Now, a number of collection firms working on behalf of the healthcare sector are collecting not just on old debts or defaulted debts, but they're also collecting on current bills. And so if I took out the current bills that part of the pie would be smaller. But nevertheless it would still be very substantial. Healthcare is a very important part of the collections book.

Obviously credit cards is another important part. That's 20 percent of the pie as you see in the figure.

And then you see that the remainder is kind of equally divided between the other loans by finance companies and banks, and student loans which are 12 percent of the book, and utility and telecom, about 13 percent of the book, and then about 7 percent of the book is debts that are owed to governments.

Now, obviously these types of loans are very different and so the collection strategies for these types of loans are going to be different. And in fact in a number of instances the law is going to be different as well.

And so here is some additional ACA data that tells you something about those kinds of debts. So the largest balances are student loans, about $4,000, and then credit cards and loans to banks and finance companies are well more than $1,000. And then the smaller balance accounts in collection are doctor's bills and bills that are owed to the government or utilities, for example.

And then -- and these are all median values again. And then you see the recovery rate on that debt as reported by ACA. Recoveries on the government debt are generally higher, and the credit card recovery number looks pretty good too. Student loans are lower.

Now, in the data what you would see is that the recovery rates for this kind of debt will vary by the size of the collection firm. So this is again more representative of the median collection firm as opposed to the largest collection firms.

Now I want to return to this question

about debt buying for a few moments and talk about that. So, what we know is that this has become pretty substantial. There's one consulting firm that suggested that about $6 billion of the gross collections that occurred in 2007 were on defaulted debt that was purchased, which would be a pretty significant share of total receipts in the industry. And there's roughly 500 active participants in this marketplace.

But at the same time debt buying is a much more concerned market than collections as a whole. So as you see on the chart about 10 firms could account for nearly all of the charged off credit card debt that is purchased in recent years.

Compare that to the overall concentration of revenues in collection. So in 2007 if you added up all the revenues of the top 20 collection firms in the United States it would only account for 35 percent of industry revenues. That's a fairly modest level of concentration by most standards. So debt buying is definitely a much more concerned business than is collections as a whole.

And as you can see if you're going to buy that debt you have to have a balance sheet that supports it. And so publicly held collection firms certainly buy a significant share of this paper. And prior to the crisis Wall Street was also providing a fair bit of capital in order to facilitate the purchases of this defaulted debt. Probably a lot less so today.

And there's some reasonable evidence that the price of the debt that is bought follows the business cycle. At least the numbers that you see in the Nilson Report, they were higher at the peak of the U.S. economy and they fell quite a bit thereafter. There has been some recovery since then.

But the numbers here are actually high when you compare them to what you see in the annual reports of some of the largest collection firms that engage in debt buying.

Now this next figure you have to take a little bit with a grain of salt because it will include debt that is purchased and sold more than once. So there's some double counting in the data.

But the underlying point here is that this is a market that is large and it was growing very rapidly in the first half of the two thousands. And then of course there was a contraction with the economy after the housing market peaked. And there may be some evidence of a recent recovery in the last couple of years.

Now I want to conclude with some final observations that I suspect are going to be reflected in a number of the other panels later on today. So I think we've already made the observation that effective collections is important for credit markets. There's absolutely no doubt about that.

At the same time there are these important consumer protection issues. And as a researcher I can tell you that both of these aspects require much more rigorous research to understand these issues well. And I'll be honest with you, the industry is going to have to help us in order to do that research.

The other important observation is that consumer and commercial collections are really very different animals. As was alluded to earlier millions and millions of consumers are exposed to collections. Many, many millions of accounts are placed for collections each year.

But compared to a commercial or industrial loan, or even a mortgage, we're talking about balances that are relatively modest, two orders of magnitude smaller. And then of course the recoveries are another order of magnitude smaller. And so that immediately means that the strategy and the technology that you use to engage in collections or to litigate in court is going to be different.

This next point is extremely

important, and that is that the U.S. collection marketplace is disintegrated. You could think of a collection model in which everything is done in-house. Everything would be first party collection. All of the data would be there and all of the underlying technology and systems would be built in-house. That is not the U.S. marketplace. It does not exist.

Instead we have first party collections. We have this very large third party collection industry. We have the debt buying industry. We have collection attorneys. We have the court system. We have all of those service providers that I alluded to earlier. And of course all of this involves a very significant transmission of information back and forth that we've been talking about.

It doesn't have to be this way but it is. And it's very important to understand why it is that way and the implications for the marketplace and also for consumers. And that really is at the core of what we're going to be talking about the rest of today.

As I alluded to this is an activity and an industry that is large and changing rapidly. The market is segmenting between those smaller and the larger firms. We have very wide spread of the sophisticated adoption of information technology. And you can see in the industry surveys it's very rapid, this technology adoption.

And I didn't allude to this but the industry is also responding to the consolidation of consumer lending more generally which has occurred over the last 10-year period.

We've already mentioned the significance of the legal collection process being a local phenomenon which means it has a lot of diversity, it has a lot of idiosyncrasies and to some extent it is still a very paper-based system. And that means that at least some of the reforms that we would expect to see are going to happen at that local level. And it also means that it's a challenge for researchers to really understand that part of the process.

And as I already alluded to the regulatory environment is highly complex. Fair Debt Collection Act was passed in 1977. If you remember that was the year the first Clash album came out. So that was a while ago.

And anybody who understands this law also understands that the requirements of this law vary so much depending on the specific role you're playing, the specific activity, and the specific point in your interaction with the consumer. And that requires very sophisticated compliance and training to be able to do well. And there are much better qualified people in the room to speak to that point than I do. But that complexity of the regulatory environment certainly influences what we see today. And with that I will close my remarks.

(Applause)

MR. DWYER: Thank you, Bob. And now for a presentation about how information flows through the collection process from John

Tonetti, Program Manager in the Office of Deposits, Cash, Collections and Reporting Markets at the CFPB.

(Applause)

MR. TONETTI: Good morning. And thank you all for coming or for watching on the webstream. As Dan said my name is John Tonetti and I'm the Program Manager for Debt Collections at the Consumer Financial Protection Bureau in the Research Markets and Regulations Division.

I came to the Bureau with over 30 years of experience in the debt collection industry. In my career I've been a senior executive for collections and recovery at three creditors, I've been the president of a large collection agency, and I have brokered sales of distressed consumer debt. Now I'm a regulator.

My presentation describes the flow of information in what we refer to at the Bureau as the debt collections ecosystem, and it's based upon my experience. It is representative of how information flows through the system but it will not describe every transaction as there are many variations and permutations depending upon the individual players in the space.

However, it is illustrative of the many flows and dependencies within the industry and of areas in which there is potential for error, omission, and discrepancy. As Bob has described, there are billions of dollars and millions of accounts flowing through the ecosystem and it is important to understand that even errors that occur in a small percentage of cases can result in large absolute numbers of consumers experiencing or potentially experiencing consumer harm.

In the beginning there was just the lender and the borrower. All of the borrower's financial and demographic information is maintained on the creditor's system of record. Information maintained would be payments, charge activity, and interest rates as well as the consumer's name, address, credit history and any other contact information the lender might have.

And as long as the consumer makes his payments and has no issues that's pretty much the extent of the information flow. Although the creditor may report his consumer credit performance to the credit reporting agencies.

The creditor may also receive updates from the credit reporting agencies about the borrower's experience with other creditors.

From time to time the creditor may have a question or problem with this account. Most of the time these issues are documented or memorialized in the creditor's relationship management or CRM system. This would contain information on customer questions, notes from conversations, disputes, and complaints. Most often there may be some limited feeds between the system of record and the CRM. But if you want the full story you'll likely need to review the CRM information.

For the vast majority of American consumers this is likely the flow of the information for the entire life cycle of the lender-consumer relationship.

Now suppose our borrower had some financial difficulties causing him to miss or be late on some payments? At that point there is an information flow from the lender's system of record to the lender's internal collections system. Most of the time demographic and financial information from the system of record is passed to the internal collections system so that the lender's representatives can contact the consumer and knows what the consumer's payment history has been like.

In most collections systems this information flows one way. Conversations and correspondence are recorded on the collections system but very little information flows back to the system of record other than perhaps some notations that the account is being collected upon.

If the borrower pays, it is likely that the information flow to the collections system stops once there is a payment that brings the account current again. After some period of time it is likely that the borrower's record will be purged from the internal collections system so that prior history will be lost, or at least not easily available.

If the borrower doesn't pay at some point the account will be charged off. Usually this is when a portion of the balance has been unpaid for 6 months with credit cards or 4 months with other types of loans.

At that point many lenders move the borrower to a new system, a recovery system. In some cases information from the collections system is passed to the recovery system, in some cases it isn't. In some cases the internal recovery system now becomes the system of record. In some cases the system of record remains as the original system of record.

The internal recovery system, like the collections system, is an inventory control system and a receptacle for note-taking and documenting as well as helping to manage third party vendors such as collection agencies.

In most cases, some but not all of the lender's information is transmitted to the agency so the collector can recover on their behalf. Often missing is information gathered by the lender previously such as the history of disputes, what the lender's representative heard from the consumer, what they may have told the consumer, and similar information.

What is conveyed is most often demographic and financial information so the consumer can be contacted, the balance on the account, and perhaps some information on recovery prospects such as a collections score. This information is used to prepare the FDCPA-required g-notice which is a notice sent by collectors advising the consumer that they have been assigned the debt, who the creditor is, their balance, and a notice of their consumer rights under the FDCPA as well as any applicable state disclosure requirements.

So with a minimum of information available, the external collection agency begins to collect from the consumer. Information that the consumer may have conveyed to the lender is unavailable to the collection agency so the consumer must go through this information once again with the agency.

It is important to recognize that the assignment to a collection agency is a point of stress to the consumer. For the first time they're being contacted by a company of which it's likely they've never heard.

Further complicating this is the debt may also be referred to by the name of a lender the consumer may not recognize. For example, the consumer may have a retail card and they're familiar with the retailer. They may not be familiar with the bank that underwrote and managed the debt. The collector will often refer to this bank when describing the debt to the consumer in a call or letter making it possible that the consumer does not recognize the debt.

In some cases the collection agency may report the debt to credit reporting agencies. The lender may stop reporting but it's also possible that they will continue to report. Collectors may also receive information from the CRAs such as scores or triggers that indicate the consumer may now be more able to pay.

If the consumer makes payments to the collection agency the agency will inform the lender so that it can update the system of record and hopefully any credit reporting they do. It is possible that this doesn't happen or it doesn't happen on a timely basis.

It is important to note that in most cases the system of record is now that of the collection agency as well as the creditor. Synchronization and updating of these two systems of record is important and may be subject to time lags.

Recently we have heard that some

lenders are requiring their collection agencies to work from the lender's collection system and therefore the lender's system of record, meaning that all financial and demographic information is maintained at the lender which minimizes the risk of systems being out of sync.

When there are two systems of record the timeliness of financial and demographic updates is often dependent upon how sophisticated the players are. The more sophisticated the lenders and agencies the more likely these updates are timely and accurate.

Most companies have elaborate balancing and reconciliation routines to ensure that errors are found and fixed quickly. But still, timeliness can be an issue as well as the intersection between when the information flows from the lender to the agency to the credit reporting agency and through the ecosystem.

If the consumer doesn't pay an agency it is likely that the lender will recall the account and place it with another agency.

Again, this is fed from the lender to the second or third or subsequent agencies so that any information that the first agency gathered such as disputes or the reason the consumer may not be paying is not available to subsequent collectors and must again be conveyed by the consumer to the new collection agency.

Furthermore, it is possible that agency 1 receives an account for a payment that is now with agency 2. This needs to get reconciled so the lender gets paid and agency 2 gets paid, and the information reported to the reporting agencies and the balance agency 2 is trying to collect is accurate. Again, timeliness and accuracy of this information transfer can become an issue.

As these agencies may also report to the credit reporting agencies, at least theoretically the other agency ceases reporting. Otherwise the same credit line may be reported multiple times.

But this takes discipline within the

collection agency as credit reporting may often not be part of their primary business. Many lenders do not allow their agencies to report to CRAs as long as they still own the account as they wish to control reporting of their accounts.

At some point a lender may decide that the best recovery strategy is to sell the account. Usually this occurs when the lender feels the sales price exceeds the net present value of the expected stream of collections.

But a sale can also occur for other reasons. For example, capacity amongst its collection agencies or a feeling that collection efforts have been exhausted.

There has been a lot written about the discount to face value buyers may pay to obtain these accounts. Frequently the expression "pennies on the dollar" is used. In my experience virtually all sales of distressed consumer debt are the result of a competitive bidding process.

The discount reflects the market

valuation of the debt and is a function of the expectation of collectability by the buyer, the seller and other bidders.

Once a debt sale occurs information generally flows from the selling creditor to the debt buyers but little to no information flows from the buyer to the bank. An exception to this may be the buyers may request information from the bank. For example, copies of statements or other documents. As you will hear later the FTC found that there were quite often limits or restrictions on how much, how often and what types of documents buyers may receive, and how much it would cost the buyer to obtain them.

It is also important to note the information given by the lender to the debt buyer for collection purposes is minimal. Usually it is an electronic spreadsheet that contains basic demographic information and some financial information. Usually the same type and amount of information that the lender originally conveyed to its collection agencies.

As part of the purchase usually the buyer obtains the right to obtain some documentary evidence such as statements, applications, affidavits, and things of that sort. Again, there may be limits to how many documents the buyer can obtain, how often, and for how long they can obtain them, and there may be an additional charge for these documents.

As time elapses and the volume of documents requested increases it is not unusual for the price of documentation to increase as well.

Debt buyers too may report to credit reporting agencies at which point the original lender and their collection agencies should stop reporting or at least report that the account has been sold.

In some cases debt buyers will also use collection agencies or attorneys to collect their purchased debts. This can be even more confusing to the consumer as now they're getting calls from a collector they've never heard about a creditor, the purchaser, that they've likely never heard of either.

Although some buyers and collectors may disclose who the originator was there is no federal requirement that this information be in the initial g-notice to the consumer. To make the debt even harder to identify purchasers have a legal right to assess interest on their purchased accounts. This can make the balance unidentifiable to the consumer as well.

So now you have a collector that the consumer has never heard of collecting for a creditor/buyer the consumer has never heard of about a balance that the consumer doesn't recognize. Also, the consumer may report to credit reporting agencies as well, further confusing the consumer should they look at their consumer credit report.

If an account remains uncollectible with the first agency it is possible that the buyer will recall the account and place it with a secondary or tertiary collector, or retain an attorney to file a lawsuit. If a lawsuit is filed a new process kicks in in which the consumer is served a notice to appear in court. Again, should the consumer receive the service, and there is some evidence that service is not always reflected accurately, there is a probability that the consumer will not recognize the creditor or the debt and fail to appear in court.

Should this happen it is likely the attorney will file a motion for default judgment and if granted the consumer may be subject to wage garnishment or asset attachment to satisfy the debt. If the consumer does appear it seems that quite often the plaintiff is unprepared with documentary evidence as quite a few of these cases are dismissed.

If the buyer determines for some reason that there is no point in filing a lawsuit and they've exhausted their collection avenues they may decide to sell the account to a secondary buyer. Industry practice is to sell accounts with the balance as it was when the account was charged off by the original lender. This means that any interest in fees the buyer had assessed previously have to be rolled back or at least the original charge-off balance reinstated.

The secondary buyer may now also decide to assess interest. And if he calculates on a different basis now the balance does not only resemble the original charge-off balance, it also doesn't resemble the balance the previous owner was attempting to collect.

Additionally, it is important to note that the secondary buyer has no relationship with the original lender. Should the secondary buyer wish to obtain additional information or documents they must go through the first buyer to go to the lender for it, which can be time-consuming, error-prone and subject to lack of fulfillment of the request.

Secondary buyers may decide to sell as well, and again they convey information to their buyer. But if that buyer wishes more information they must go back through the chain potentially exacerbating the time, the errors and confusion on the part of the consumer.

It is easy to see the potential for errors and certainly the difficulty collectors, attorneys, and debt buyers can have in obtaining information and documentation to ensure that the consumer could identify the debt as being theirs. In this type of ecosystem it is no wonder that consumers complain that they are being called about debts they don't owe or debts they don't recognize.

Recently we have heard that the industry is taking steps to correct some of these problems. Lenders are subjecting their potential buyers to more scrutiny, wanting to make sure they are dealing with more reputable companies such as making sure they have audited financials.

Lenders are also examining their buyer processes for document handling and requiring contractually that their buyers only litigate accounts for which they've obtained evidentiary documents.

The DBA International, the association of which many debt buyers are members, recently instituted a certification program to help regulate and police the industry. Some lenders are requiring that their buyers not outsource to third party collection agencies and have in-house collectors to collect on purchased debt.

And some lenders are restricting the debt buyer from reselling their accounts, either prohibiting it or requiring that the lender approve the sale beforehand.

Agencies are feeling the pressure too. Many lenders are consolidating the number of agencies they use so many agencies are seeing reduced market share and increased scrutiny of their operations.

In some instances, banks are changing the way they compensate their agencies, putting less emphasis on commission in the hopes this would reduce the incentive for collectors to push the envelope and perhaps violate the law. This can lead to narrower margins for the agencies.

Requiring the agency to use the lender's collection system as I talked about earlier reduces the agency's autonomy and their ability to revise collection strategies. Within both the debt-buying and collection industry there is a move to consolidations as players sell their portfolios or get acquired by some of the larger, more sophisticated participants.

The flow of information in the collections ecosystem is complex and there are many opportunities for missteps and errors. As I said earlier the number of consumers involved is large, estimated to be at least $30 million annually.

Even a relatively small error rate can lead to a large number of consumers harmed.

Again, I welcome you to this conference and I look forward to your input today as to how we can work together to solve these issues and make it easier for consumers to resolve their debts. Thank you.

(Applause)

MR. DWYER: Okay. Thank you, John. Well, we are going to break now. I'd like it if we could start again at 10:40.

And just a quick note on seating. We have a lot of reserved seating up front. I think during the break we're going to take some of those reserved seats away. So please feel free to file in forward. Okay, thank you.

(Whereupon, the foregoing matter went off the record at 10:19 a.m. and went back on the record at 10:43 a.m.)

MR. DWYER: Okay, so I am not in fact Heather Allen despite the name tent up here but I'd like to call Heather Allen forward. Heather is a senior attorney here in the Division of Financial Practices at the Federal Trade

Commission.

(Applause)

MS. ALLEN: Good morning, everyone. I'm delighted to be here today to share with you some of the highlights of a report that the Agency released earlier this year called "The Structure and Practices of the Debt-Buying Industry."

We believe this report is the first of its kind. And it represents the culmination of an extensive, multi-year study of the industry.

Before I begin let me make the usual disclaimer that the views I express here are my own, not those of the FTC or any individual Commissioner. However, I will be referring primarily to the Debt-Buyer Report which is a Commission publication and does reflect the Commission's positions.

The FTC commenced this study back in late 2009 to gain a better understanding of the industry. As the Commission has said previously the advent and growth of debt buying has been the most significant change in the debt collection business in recent years and thus it's important to us for policy and law enforcement purposes that we have a very good understanding of it.

As part of the study we wanted to explore any possible links between debt buying and some of the consumer protection concerns that we've seen in the debt collection industry, and in particular information flow issues that may lead to collection attempts against the wrong consumer or for the wrong amount.

The primary source of data for this study came directly from nine of the largest debt buyers in the U.S. In 2008 they collectively purchased over three-quarters of all debt sold.

The Commission issued to these nine debt buyers what are known as 6(b) orders that required them to produce extensive data about their business practices and how they receive, acquire, and transfer information about consumer debts.

In response we received from the debt buyers data from more than 5,000 portfolios that they purchased during a 3-year period between 2006 and 2009. Within those 5,000 portfolios there were nearly 90 million consumer debt accounts with a total face value of almost $143 billion.

Now, the vast majority of the portfolios that the study debt buyers purchased were bought from original creditors as opposed to resellers of debt. And most of them were portfolios of credit card debt although we did see portfolios of all other types such as medical, telecommunications, utility and the like.

Now, there are some important limitations to the study that are mentioned throughout the report. I just want to mention two of them.

First, we did not obtain data from smaller debt buyers or from debt buyers who purchased most of their debt from other debt buyers, the resellers. And as it stated in the report the Commission's experience suggests that those types of debt buyers that are likely to be a source of significant consumer protection problems and may be an area of further study.

In addition to the data we received from the nine debt buyers we also considered research and professional literature related to debt buying as well as publications from industry, consumer groups. And we met with some interested shareholders such as consumer advocates, industry representatives and the CFPB.

And of course we relied on our own extensive experience in debt collection. The FTC in the past three decades has brought more than 80 law enforcement actions against debt collectors.

Now the report does provide a good background on the legal framework for debt buying as well as the history of the debt buying market and an explanation of the debt buying process. Many of those topics were touched on by the previous presentation so I'm going to skip over them now but please if you haven't had a chance you can view the report in its entirety on the FTC's website at ftc.gov.

Now moving straight to some of the findings in the report. In terms of the prices paid we found that on average the buyers in our study paid 4 cents for each dollar of debt. And our economist did a statistical analysis to help determine what factors tended to influence the price of the debt.

We found that buyers paid less for older debt not surprisingly. And we saw that the type of debt also mattered. Relative to credit card debt we saw that buyers paid substantially more for mortgage debt and significantly less for medical and utility debt.

The buyers also paid less for debt where sellers had previously hired third party collectors. Now we did not find a significant difference in price for debt that was sold by resellers as opposed to the original creditors after we controlled for other factors like the age and the type of debt.

As part of the study we also took a look at a sampling of some of the purchase and sale agreements that the buyers and sellers of debt entered into during these debt sale transactions.

And it does appear that the sellers draft these documents. We noticed that when different buyers entered into agreements with the same seller the structure, organization, and phrasing of these agreements tended to be the same.

Now, of course there were some differences across the different sellers in the terms and conditions, but there were a few features that were fairly common that I would like to highlight.

First, the debt were generally sold

as is. That is, sellers typically disclaimed all representations and warranties regarding the accuracy of the information they provided about individual debts.

Most of the contracts also provided very limited put-back rights. In other words, if a buyer discovered there was missing or inaccurate information about any of the individual debts there was usually no right to put back that debt or get a refund from the seller.

There were also typically limitations on the rights of buyers to acquire documents about the debt. Usually the sellers would provide a certain number of documents at no charge up to a certain period of time, generally 6 months to 3 years after the sale of debt.

And once that maximum number of documents was reached or after that period of time the buyers would typically charge between $5 and $10 per document. And there would usually be a point of time after which the sellers would no longer be obligated to provide any documents at all.

Also in the contracts usually the original sellers had no obligation to provide documents to secondary and later buyers. So as was mentioned in one of the previous presentations those requests had to be forwarded up the chain through their original purchaser. And sometimes these resellers charged fees of their own to request these documents.

One final note about the purchase and sale agreements. We also often saw restrictions in how buyers could use the names of the original creditors in communications with consumers.

For example, some contracts expressly forbid buyers from using the name of the original creditor in the subject line of letters sent to consumers. And as the Commission said in the report it's these types of restrictions that can make it more difficult for consumers to identify the debts.

We also took a very close look at the information and documentation that the debt buyers received about the debts. There are a lot of numbers and tables in the report that I can refer you to. You can go in and look how often, for example, a consumer's home phone number was included in the data file that was given to the buyer upon the sale.

So I'm just going to highlight a few things here. First, we found that buyers typically did have all the information that the Fair Debt Collection Practices Act currently requires buyers to provide consumers in the validation notices that are sent to consumers at the beginning of the collection process. And that's namely the amount of the debt and of course they know the name of the current owner of the debt who is the debt buyer itself.

But we found that the buyers also typically received from sellers additional information that could help consumers identify that debt if that information were included in those notices. That includes the name of the original creditor, the original creditor's account number, the date of last payment and the date of charge-off.

Again, those are all pieces of information that we found in our study the buyers usually did get. And that, as we mentioned in the report, may be helpful to include in notices sent to consumers to help consumers identify the debt.

There were some pieces of information that buyers typically did not get in our study. They did not get dispute and verification history. And as stated in the report this type of information, knowing whether a consumer had previously disputed a debt could be very relevant to debt buyers in assessing whether the consumers in fact owed the debt or if the amount of the debt is correct.

The buyers also typically did not receive information that would allow the buyers to break down the amounts owed into principal, interest and fees. And again, the Commission has previously found that that type of information also would help consumers in determining whether the amount owed is incorrect.

In terms of account documentation we found that buyers obtained very few documents about debts at the time of sale or afterwards. For example, at the time of sale buyers received documents for just 12 percent of debt accounts. And those were highly concerned within particular portfolios the vast majority of which were credit card portfolios.

Now, if the buyers did receive documentation it was usually one of three types: account statements, terms and conditions, or account applications.

We also looked at the information that debt buyers conveyed when they resold debts to later debt buyers. And we found it was very similar to what they were originally provided.

So in other words these debt buyers were not discarding information they received from original creditors but they were also not supplementing it with information to reflect their own experience in collecting on the debts.

In terms of the dispute rate we found that consumers disputed 3.2 percent of all the accounts on which debt buyers attempted to collect themselves as opposed to sending out to third party collectors. And if this 3.2 percent rate were applied across the entire debt buying industry it would result in consumers disputing a million debts a year. And as the Commission stated in the report this is a significant consumer protection concern.

However, even this 3.2 percent rate likely understates the prevalence of information problems. For example, consumers may not receive the validation notices. Those that do may not open them, may think they're junk mail, or may not even bother sending in a dispute.

The rate may not be reflective of the industry overall. As I mentioned earlier we did not survey the smaller debt buyers, the debt buyers who purchase largely from resellers. And the dispute rate does not include disputes raised in third party collection efforts.

One final note on the dispute rate. I will say our analysis did not reveal any statistically significant relationship between the likelihood of a debt being disputed and a debt's age or face value.

We also took a look at how often debt buyers verify debts that consumers disputed. As you know under the FDCPA if a consumer disputes the debt in writing within 30 days of receiving a validation notice the collector must cease collection efforts on the debt until the collector obtains verification of the debt.

In our study the debt buyers reported that they verified about half of all disputed debts. They were more likely to verify debts obtained from the original creditor as opposed to other debt buyers. They were less likely to verify debt that was more than 6 years old compared to debt that was less than 3 years old. And they were less likely to report verification of medical, telecommunications, and utility debt as compared to credit card debt.

Some caveats about this verification rate data. The Commission itself did not determine that the debts were verified. These were all self-reported rates of verification by the buyers and the Commission does not know what the buyers did to verify the debts.

In terms of resale of disputed debt our survey found 2.9 percent of disputed debts were resold. And that breaks down to 4.9 percent of verified -- or self-reported as verified disputed debts and 0.8 percent of unverified disputed debts.

Now, only two of the debt buyers in our survey had the data on this topic, the resale of disputed debt. So this is another area where further study may be needed.

The final major topic that the report covers is debt age. We found in our study that most of the debt was not particularly old or beyond the statute of limitations. In most states the statute of limitations for credit card debt is between 3 and 6 years old. And in our study almost 70 percent of the debt was less than 3 years old, and just a little over 12 percent was older than 6 years.

Now, again I note that our study, we were looking at buyers who generally bought from the original creditors so we would expect them to have newer debt. And indeed when we isolated portfolios that were bought from resellers we saw that the age of the debt did increase.

We did not obtain data on how often the debt buyers filed suit on out-of-statute debts, but we did find that debt buyers generally know the age of the debt they are collecting because they do typically receive the date of last payment or the charge-off date.

Now of course there are a number of questions the study did not address including why buyers did not seek more information or documentation post sale, or why nearly one-half of disputed debts were not verified.

It also did not address the litigation practices of debt buyers which is a frequent source of consumer protection problems as noted in one of the FTC's prior reports and as will be discussed this afternoon. And the study also did not directly examine the accuracy of the information that buyers receive and use. And as the Commission notes in the report it's these and other areas of debt buying that may benefit from further study.

Thank you again for your attention and again if you want to read the whole report it is available on the FTC's website. Thank you.

(Applause)

MR. DWYER: Okay. Thank you, Heather. Just a few announcements before we enter into the first panel discussion.

Just so that people know, we've been getting questions, this morning's presentations will eventually be posted online at our event website. That website is -- the URL is a little long, but ftc.gov/bcp/workshops/lifeofadebt which is this workshop's title.

And the FTC policy reports that we've been referring to over the course of the morning are posted there now. But in a matter of a few days I think the PowerPoint presentations we've had will be online.

I'd also like to let people know that as we enter into the panel discussions now is the time to be asking questions. So please fill out question cards if you do have questions for the panels. We're in a little bit of a time crunch to answer them but we'll take as many of them as we can. When you have filled out a question card please just wave it up and we'll have volunteers coming around to pick them up.

Okay. Well, then at this time I'd

like to call up Tom Kane from the Federal Trade Commission and the members of the first panel.

MR. KANE: Thank you, folks. Welcome to the first of our four panels. We're hearing that the mics are -- people can't hear sometimes on the webcast unless we're talking close to the mic, so let's -- I guess if you can hear it like this, you can hear the reverb, then you know people on the webcast can hear you.

So our panel today, the first panel, is called "Information Available to Debt Collectors at the Time of Assignment or Sale." But in fact we're going to go -- we're going to talk about that and we're also going to talk about the information that debt collectors convey to consumers in their Section 1692(g) validation notices and the information in their preliminary collection calls.

So we're going to do our best to narrow it to just that early part of the collection process. We're going to try not to talk about the dispute process or the litigation process which will be talked about in the next two panels. It'll be hard, but we'll do our best.

So I'll also ask you folks that, if you're submitting questions, please have them focus on this first part, the information that debt collectors obtain early on and also the information that they share with consumers.

So now I'll ask the five panelists to introduce themselves and give a couple of sentences about their organization. And so we'll start -- we'll go in alphabetical order because that seemed to work out so well with the tents.

MR. HASTAK: Okay, so I guess that's mine. I'm saying that without any fumbling so I managed the alphabetical order well.

I'm Manoj Hastak. I'm professor of marketing at the Kogod School of Business at American University. And I'm also a longtime consultant at the Federal Trade Commission on a variety of issues related to consumer perception, consumer information processing and interpretation of information, including disclosures.

And so I'm assuming I've been invited to be on the panel because of my work on disclosures. I've worked on a number of different projects at the FTC and at other agencies on disclosures, both very short disclosures and disclaimers in advertising and much longer disclosures and communication efforts, such as the ones we'll be talking about today.

MS. LYONS: Thank you. I'm Loraine Lyons. I'm the senior vice president and general counsel for FMA Alliance, a third party collection agency.

I've been in the collection industry for 20 years, and my involvement includes that I am active with the American Collectors Association of Texas and I'm a board member for ACA International, the credit and collection industry trade association.

In our industry, we do service a diverse set of clients and that's been mentioned earlier. We do service government clients, financial institutions, retailers, healthcare providers, and asset buyers. And the data we receive is going to be dependent on the type of debt we're collecting.

In our collection efforts, we will have telephone calls to consumers. We will send letters to consumers. We will identify the creditor, the amount of the debt, include the validation notice that's been referred to as the G notice.

And we've evolved, too. Nineteen seventy-seven was a long time ago. Our industry recognizes that consumers need more information to identify debts that have been sold or to identify debts where the creditor is not the name they're familiar with, like a retailer, even a hospital. So we do provide additional information to help consumers.

In our pre-litigation process that

we're going to keep the focus here, our industry wants to do what's best for the consumer, whether it's pre-litigation or litigation. We do want to do what's best for the consumer.

But in the pre-litigation process, we feel that what would be important to help the consumers establish a higher level of confidence is to have uniform national standards based on best practices. And with these standards we can achieve the goal to help the consumer understand the debt being collected.

On behalf of ACA International and FMA Alliance, I want to thank the FTC and the CFPB for providing this opportunity to be on this panel. Thank you.

MR. PAUKEN: My name is David Pauken. I am the chief executive officer of Convoke Systems. Convoke is a software company located here in the Washington DC area, Arlington, Virginia.

Convoke has developed a software solution that enables two-way information mobility between credit issuers and their collection channel partners. These collection channel partners include collection agencies, legal networks, collection attorneys, and debt buyers.

The vision of the company is to bring what we call information integration to the collections industry by automating processes. And we do that by reducing friction in the supply chain of information.

Convoke provides access to all forms of data, documents and audio files through a cloud-based information exchange platform. And it contains tools for issuers and other users to bring security, vendor oversight, the ability to audit, edit, track and analyze the information. We've also developed tools to track chain of title for sold debt.

Our customers and our users include credit issuers and their collection channel partners, and simultaneously serves consumers, industry and the regulatory environment.

Convoke is one of several technology companies that operate in this space that try to bring information mobility to the industry. Thank you.

MR. RHEINGOLD: I'm Ira Rheingold. I'm the executive director of the National Association of Consumer Advocates. We're the association of private attorneys, legal services attorneys, public interest attorneys who represent consumers in courts across this country every single day.

The perspective I hope to bring this morning is probably a little bit different than a lot of people here. I believe that the debt collection system is broken.

I think that it's fantastic -- I'm really excited to be in a room packed like this today because I think people are on notice that there are substantial problems in this industry; that there are things that need to be fixed; that we cannot go on like this anymore.

We cannot -- the damage that's being

done both to our economy and our judicial system by the bad debt collection practices that we see every day. I have conversations every single day with consumer attorneys across this country and the abuses that we see, the poor information that we see throughout the process is causing great harm, particularly to the communities that we care most about, low- and moderate-income communities.

And we think that our economic recovery in many ways is dependent upon getting some of this debt overhang taken care of and making sure that consumers aren't forced to pay debt they don't owe but in fact can contribute to our economy in a more productive way. And I'm very pleased to be here today.

MR. TEWELL: Thank you. Hi, everyone. Larry Tewell. I'm in the Consumer Credit Solutions Division of Wells Fargo, where my primary responsibilities are for card collections and specialty accounts. Specialty accounts include outstanding unpaid consumer debts.

I'm also an active member at Consumer Bankers Association where I'm vice chair on the Default Management Committee. It's a privilege to be here today representing the industry.

And I think the only thing I'll offer and we can get underway, Tom, is there's been much said this morning already about the importance in resolving unpaid consumer obligations as it's contributory toward credit availability and credit affordability.

The one thing that hasn't been said yet from the creditor-seller perspective is that creditors only sell unpaid consumer financial obligations after every effort has been made to work directly with their customers that we care so much about. Thank you. And we appreciate the opportunity to be here.

MR. KANE: Great. Thank you, Larry. As we can hear we're getting this feedback and I'm told by people who know more about this than I do that it's cell phones that are somehow near --

(Laughter)

MR. KANE: I don't know, it could be mine. I have six. One of mine could be doing it. How are we doing? I think that's it. I think back pocket is probably good.

So as I said, we're going to talk about information received by debt collectors and then information conveyed to consumers. And so first we're going to talk about information received by debt collectors.

And I'm going to break that down even further and start out, let's talk about contingency collectors, that is, often called collection agencies. And then we'll talk about debt buyers.

So, what information do contingency collectors currently receive -- or receive access to -- at the time a creditor assigns a debt to them. Do they get Excel spreadsheets? Do they get media? What other stuff?

Some of it has been talked about this morning already, but to the extent you guys can tell us about that. Loraine, as a collection agency representative, what do you all receive when an account is assigned to you?

MS. LYONS: All right. Thank you, Tom. Again, it's going to depend on the type of a debt and the sophistication of the collection agency and the creditor.

There are typically electronic interfaces that -- where information is exchanged through various software. Then you're going to have some minimums. That's common with all types of debt, which would be like the name of the consumer, their address, phone number, the amount that's due. Those are very minimal requirements that are going to be contained.

We're going to have access to data depending on the type of debt, depending on the creditor. In some cases, we have access to the creditor's system to obtain this data, again depending on the sophistication of the parties. So it will vary and it varies widely.

But as an industry we want to have the good data so that we collect legitimate debts. That is our objective. We want to contact the right consumer and collect the legitimate debts.

MR. KANE: Great. Loraine, John Tonetti mentioned a couple of different systems that creditors seem to have. The customer relationship management system, when everything is going smoothly. Then the internal collections system, and then internal recovery system after charge-off. Do contingency collectors tend to get information from the internal recovery system?

MS. LYONS: Well, I can't comment exactly which system we're getting the information from, but I can tell you there is a constant flow and exchange of information between us and the creditors, between us receiving data, us uploading new information back to the creditor. And it's a daily process. It's daily interface exchange of data.

MR. KANE: So you buy a portfolio of 30,000 accounts. There's some information that is conveyed right from the beginning and then there's some back and forth?

MS. LYONS: I'm talking from the perspective of a third party debt collector, not as an owner of a portfolio.

So there is exchange of data daily. We may learn of a request for verification of debt. We're going to notify our creditor client of that and obtain the information that's needed to satisfy the request.

We may also reflect a payment has been made, or reflect a settlement has been entered into. And so we have this constant flow of information so that we are reconciling with each other's systems.

MR. KANE: So, do you as a contingency collector, do you receive any media when you first buy -- now I referred to portfolio. I know that's what they call it when you sell a bunch of debts to a debt buyer. Is there a different term for a whole bunch of accounts that are conveyed to a collection agency?

MS. LYONS: Generally we might just refer to accounts as being placed, placements. Because we don't own the debt. And I think that's some of the educational pieces that's missing in the whole process, the process where consumers aren't entirely clear of what is the role of each party. Our role is to collect the debt as a contingency collection agency. We are not the owners of that debt. There are some folks who are the owners of that debt and that's a different role.

And then of course what I mentioned earlier, there is some debt that's just confusing to the consumer because they're used to seeing on, say, a charge card my retailer. This is where I went to buy my goods. This is where I went to get my hammer and nails. But that's not the creditor. It's a different name.

And so that's when we would communicate to the consumer that, yes, the creditor, because required by law I have to disclose who's the creditor that's owed the debt. But then to let them know that they're the creditor that issued that card for you. The store that you're familiar with, and we will give them the name of that store.

Because again we believe to have any type of effective exchange you've got to have good communication on both parties.

MR. KANE: Thanks. And so, Larry, it's my understanding that Wells Fargo sells debt but also places debt with collection agencies. Is that right?

MR. TEWELL: I think what I'll do is say instead of focusing on Wells Fargo let's focus on what does the industry do.

And the way I would couch that is creditors in general have four primary options when debt has gone unpaid for a duration that causes us to comply with charge-off requirements.

And those four primary options are to work the unpaid debt internally, inside the bank somewhere. We could indeed as an industry place it with an agency. Third, we might sell it into the debt-buying ecosystem. Or we may choose to work with attorneys and litigate through the judiciary across the country. So those would be the four primary things that creditors have at their disposal to work through the need for all consumers' benefit to resolve unpaid debt.

MR. KANE: And so when you -- when creditors are conveying information to their collection agencies do you have anything else you think that the collection agencies are receiving that we haven't mentioned yet?

MR. TEWELL: No. I mean I think the industry in general provides the information necessary for the consumer to recognize the debt, to understand the debt, their financial situation, and what their options are. I wouldn't have anything to add to what Loraine said.

MR. KANE: Okay, thanks. So Ira, do you think the information that contingency collection agencies are receiving at the time a group of debts are assigned to them, is that sufficient for them to collect do you think?

MR. RHEINGOLD: Well, I don't have -- I mean, I'm hearing what's being said here today. I don't have actual information about what is being transferred.

I mean I have real concerns. I think our biggest concern currently is the debt buyer industry but I think there's also debt collection practices that are off as well.

I think when we think about the information that a debt collector has I think it's important as Larry said that they have information that the consumer can understand what that debt is.

The original contract needs to be

part of it. I think the original contract has to be part -- one of the concerns that we always have is that when consumers see the amount of the debt that's owed it's not broken down.

Is that actually -- is that information actually being provided? Do we get information about what's the principal, what's the interest, what's the fees. We have real concerns that when the debt collection process happens it's because you don't have that broken down; you have interest on interest.

So I don't have the data, I can't speak for the industry in terms of what information they convey to each other, but I can tell you that the concerns we have in terms of the-- I think the key concerns are that the original contract needs to be in place, the credit history needs to be in place.

There needs to be an understanding about what the amount is composed of so that the consumer has a better opportunity to dispute if necessary.

MR. KANE: And you think this is important at the very beginning of the process before they collect.

MR. RHEINGOLD: I don't think there's any doubt about it because I think that information to start with is essential. Because as the -- I mean I think it was sort of as John Tonetti walked through sort of the life of a debt. You know, the further you move away from that original creditor it's sort of like a game of telephone, right? The information gets worse every time it moves along.

And I think when you begin that process the -- if you're starting with not-perfect information as you move along the process, the information just is going to get worse and worse and worse. So I think it's essential that that first step of the process, I think it's essential that the banks, the credit, I mean all people who are sending debt out to be collected have real information. Track this stuff in ways that are meaningful and have the documents to back all of that up.

MR. KANE: Let's talk some about debt buyers and what they currently obtain at the time they buy a particular debt. To the extent we can talk about particular debts rather than portfolios, what information does a debt buyer generally obtain about a consumer's account at the time they purchase the debt? Do they get Excel spreadsheets, media, collector's notes, prior disputes? Larry, what's your understanding of what debt buyers receive from -- at least from primary creditors.

MR. TEWELL: Thank you, Tom. I'm going to cheat and I'm going to reference the FTC study that was done because it represents the industry as a whole. And I think what they said, and I'm just going to read this, was common was the consumer name or names, account number or the last four digits, Social Security numbers, phone numbers as was mentioned this morning, last known address, date account opened, date account charged off, and balance at the time of charge off. So those would be the more common things that are currently provided.

But I think what this topic really moves us to is a point that I think a couple of people have made. If we could have uniform national standards relative to data and media, that would go a long way to help all the participants in the debt collection ecosystem function well and most importantly would have the tendency to improve the customer experience.

MR. KANE: Okay, thank you. I think that's something we're going to talk about before we close this session, some sort of national standards.

So, Dave, you're with Convoke Systems and you work I think quite a bit with debt buyers. Can you tell us briefly again how does it work? How does the system work? Who hires you and where does the data come from and what do you do with the data?

MR. PAUKEN: So a credit issuer sells a portfolio to a debt buyer. They reach their own financial arrangement, and they sign a contract. Like any asset that's sold, there's a contract behind it.

Following that sale, they would load onto Convoke a listing of the accounts that they've sold with generally all of the information Larry just mentioned, plus some. Often you will find in many cases principal balances, interest balances, other information breakdowns, Social Security numbers, what is commonly called in the industry “row-level data.” And that information is provided to the debt buyer. They confirm that that is what they in fact bought.

And then different issuers have different approaches to delivering documents. Some deliver documents at the time of sale. They'll provide the last 6 or 12 months of statements. Others make them available upon request, either through our system or, if they're not using Convoke, another system and get the documents as they need them. And that's how it works.

MR. KANE: Great. Okay. So what sorts of documents -- are there any sorts of documents -- I think you might have mentioned in a previous conversation some kinds of documents that your database could hold that you aren't being asked to hold at this point?

MR. PAUKEN: We can capture just about any type of document. I will say that the predominant requirements from the debt buyers are the charge-off statement and the last statement that reflects either a payment or a charge. We're generally able to deliver nearly 100 percent of those. Not 100 percent, but nearly 100 percent, of those in a relatively short period of time. And that seems to satisfy many of the requirements of the debt buyer.

If that doesn't satisfy it and they need applications, terms and conditions, we can provide all of that information. And many credit issuers are doing that with or without Convoke. Our goal is to do that in a more efficient way. But we have observed that the industry does make an attempt to provide that.

MR. KANE: Okay. So the information that debt buyers are obtaining at the time of sale. Ira, does that seem sufficient to you?

MR. RHEINGOLD: Guess what my answer's going to be. But I want to pull back for a second here because I think there's actually a predicate here. And I am going to talk about debt buyer information.

But I come out of representing homeowners in the mortgage world and the fights that we've had with the servicers. And we talk about information that's being sold to the debt buyers as if that information to start with is reliable.

And I think that one of the experiences that we've had over the last 4 or 5 years is I have real doubts, and I think anybody who's been paying attention should have real doubts about credit issuer's ability to maintain good information.

I mean we've seen it time and again where the amounts that they say are owed are wrong. We've seen a consolidation in the banking industry where systems from one bank to another did not match. And you saw all sorts -- I mean how many bankruptcy claims are there where proof of -- I mean there's a judge in New Orleans who pretty much on a daily basis provides a spreadsheet to the banks so that they can do an audited account of the amounts that are owed because banks have shown an inability to keep records accurately. So I think that's a predicate to our discussion here.

Because I think some of the information -- so we talk about what the banks provide to debt buyers. I think there are some real internal questions about creditors and about the information that they are keeping and their ability to keep it accurately. And I think we saw that in the mortgage market and I think we see it even more in the debt market. So

I think that's one point.

Now, in terms of the information that's being sold I think we all believe in having the marketplace sort of dictate some of these things that are happening. And I would just -- the question that keeps wrapping around my -- I was talking to Dave beforehand. The thing that keeps rapping me in my head and the thing that I can't get my brain around is, if this information is so accurate and it's so good, why is it being sold for 3 and 4 cents on the dollar, and 2 cents on the dollar, right? I mean I don't understand that.

So I think if in fact you were providing valuable information that would be useful in terms of collecting debt, that actually was reliable, that provides sufficient proof that this was the right person and this is the right amount of money that they owe, and here's the original contract, and here's an accounting all along, that would be worth a lot more than 2 and 3 and 4 cents. But it's not.

And I think the market's valuation of that makes my point, that the information being transferred to the debt buyer is insufficient.

And then the question is, well, are the debt buyers happy with that? Well, maybe they're happy with it because they can sell -- I mean that goes into the discussions we're going to have later today about how the use of litigation maximizes the 2 and 3 and 4 cents they're paying for this sort of information that is at best tenuous.

MR. KANE: So I guess you have a basic -- you question the data that banks have, the original creditors have.

MR. RHEINGOLD: Right.

MR. KANE: I guess --

MR. RHEINGOLD: Just to an additional layer.

MR. KANE: So let's -- for our purposes today what kinds of documents or information, whether it's media or whatever, that debt buyers are not getting now should they get at the time of sale? As opposed to having available to them at the time of dispute or for litigation.

MR. RHEINGOLD: Right. I mean again I don't know why that information isn't simply provided initially, and why that information has to wait till the moment of dispute. I think the system would work so much better if in fact all of the information that would be necessary to collect that debt, including proceeding with litigation. And there's a number of debt buyers we know that's what their business model is. Their model is to take this debt and litigate it.

I don't see any reason why the amount -- what the information the debt buyer will need to prove that in fact whether it's a court of law, whether it's sufficient so that if a consumer disputes a debt either from the G notice or on a credit report I believe the information they receive initially should be all of that information. And they shouldn't have to go back.

One, we've seen the contracts and a lot of times they can't go back or they're limited in how much information they should get. I believe they should have all that information at their fingertips at the moment of sale.

I think a lot of the issues that we see today in terms of the disputes that are happening, in terms of the problems in litigation, would be mitigated if in fact that information was provided at that initial moment.

MR. KANE: Okay, thanks. Larry, what do you think? Should everything be conveyed at the time of sale when you sell a portfolio? Is it possible? Is it possible to do something in between everything and what is being conveyed now?

MR. TEWELL: Words like "everything" are really hard to work with, but a little bit of humor aside. This goes back to the basic premise that it's not a matter of information availability, it's a matter of information variability.

And so the idea that there are different positions represented in this panel and in this room introduces two basic things that we can do as leaders of our industry to better serve our consumers. And that's, one, create the standards together rationally.

And, two, I'd like to really see some good old-fashioned discipline around test and control where, instead of folks representing that they know what's best for the consumer, instead learn by when we add a disclosure, we add vernacular to a letter, that we then test and see if that information indeed improved the consumer understanding, consumer awareness.

So "everything" and "all information" it's hard to work with, but the basic premise of getting it right for the consumer is a goal that we share in common.

MR. KANE: Okay, thanks. What would be the benefits to having consumers -- I mean having debt buyers receive more information at the time, Ira? At the time of purchase.

MR. RHEINGOLD: I think it makes the process work. I mean I think if in fact the debt buyer gets all the information that the original creditor has I think it just makes everything that -- one, I think it could cost more money, which I think would be good for the creditors. And I think theoretically it should be better for the debt buyers because I think it would be easier for them to actually go ahead and collect the debt.

I think when you provide -- I mean I think we'll get into this. I mean this is sort of a question down the line, but I think when you provide that original notice I think you can solve some of the problems about disputes when all of that information is on that original notice, right. So when was the date accrued, who was the original creditor. We have your original contract. Here is a breakdown of the debt we owe.

I think some of the issues that I

always hear from the industry are well, you know, everybody just disputes it and it's just a general dispute. And we verify it because we don't really have a breakdown of information.

Well, in fact I think some of that gets short-circuited. And I think some of the issues that -- and some of the fighting that takes place both in the letter process and in the dispute process and later on in litigation would get solved if in fact it was a common practice that the debt buyer really was standing in the shoes of the creditor and in fact had the full information so that that collection would work much better.

MR. KANE: Ira and Larry, what do you guys think of some sort of technical solution, some sort of repository similar to Convoke Systems or something like that? Could that solve some of these issues?

MR. RHEINGOLD: Well, I'll go first. But the only reason I laughed when you said repository is I think of MERS and I think of the nightmare that that created in the mortgage industry. No offense to anybody here who might be connected to MERS.

(Laughter)

MR. KANE: But you created a nightmare if you were connected.

MR. RHEINGOLD: Nonetheless -- I mean but I've always believed in the mortgage place. I mean I think -- there's no reason why technology can't do that. I don't think there's any reason why this information can't be created, why you cannot have that information in a usable, reliable, legally reliable form and be able to transfer it.

I don't think we have that system. MERS certainly didn't do it. But is it something that can be accomplished through technology? I don't think there's any reason why it can't be. I think the question really has to be is what is this industry going to look like in 5 years from now.

I mean we see it -- again, the

parallels to me are so obvious in terms of the unwillingness of banks to spend the money necessary to make mortgage servicing work properly. And I think it's a question of expending capital for future gain. Building a system where the information flows in a reliable manner so that people can depend on it. I don't think that's impossible.

I think there's a general unwillingness to do it because it's going to require initial capital outlays to make it work. But I think fundamentally if we are -- we have all of this technology at our hand. We've got somebody here who works on the technologies. I don't think any of this stuff is impossible.

I think there has to be a will. And I think maybe it actually is going to require regulatory pushes and/or litigation pushes or, you know, to make that happen. But I think those opportunities are there and I think it can work. I don't see a willingness from the creditor side for making that work.

And I think if I was a debt buyer trying to collect debts I think ultimately if they don't see -- I think the writing is on the wall that this is the way this industry is going to have to operate.

MR. KANE: Dave, do you have any -- I'm sorry, I cut Larry off. I guess you've mentioned national standards. Do you have any suggestions about things that could be in national standards for what is conveyed at the time of sale? And then I'll ask Dave. Larry, I'll ask you and then Dave if you'd follow up on what Ira and Larry have said.

MR. TEWELL: Well, first a couple of things. The industry is very interested in providing the information necessary for consumers to understand their obligations, their financial situation, and work through it. So there's clearly a willingness on the industry's part to make the information available that benefits the consumer.

Second, we are huge proponents of

technology. Technology equals efficiency, and so obviously the credit-granting institutions across the country are interested in being efficient in all aspects of the ecosystem, and we invest millions and millions of dollars every year to make sure that's the case.

With respect to the specific question about data, are there good ideas out there. I think what you've heard today is that some credit originators and sellers provide a great deal of information and some provide less. And so at the risk of repeating myself that's why we need a standard.

The ideas that I see that are good and would be beneficial include things like the original creditor name. In that notice, however, it's important not to confuse where the obligation resides in terms of ownership. And so we want to avoid that type of consumer confusion.

Loraine mentioned that; while it's not required, providing last payment date and amount are also potentially helpful. So yes, the industry believes there are some additional things that would be helpful to the consumer. And I don't see any impediments to why we couldn't make those things available.

MR. KANE: Okay. Great, thank you. Dave, what do you think about how some of the repositories, yours or some others, how they might help with this information at the time of sale?

MR. PAUKEN: I think a repository or an exchange platform can bring great value to the industry. There's no reason why you couldn't have a defined set of data standards and document standards that could be provided to any one of the collection channels on placement or sale. Everybody would agree on those standards, and if as the debt moves from one collection channel to another, from one agency to a lawyer to a debt buyer, all of that information would be readily available to whoever has a permissible purpose to the account, if it's been placed to them or if it's been sold to them.

So I'm very interested in this area. Obviously I have a business that focuses on it. And I think it can be a big part of the solution. Whether it's Convoke or any other technology company out there.

MR. KANE: Thank you. I want to move now to the information that debt collectors convey to consumers in their validation notices and when they first contact consumers by phone.

First, I want to talk about the validation notices. And it's written communications to consumers for which the FTC has benefitted from Manoj's help for 20 years or something like that, a long time.

So, Manoj, I think the validation notice, the 1692(g) notice -- debt collectors are required to notify consumers that if they dispute within 30 days, the collection process will be suspended until they provide documentation. But debt collectors also must provide the amount of the debt, the name of the creditor to whom the debt is currently owed.

Some would say that some of these disclosures, because they just track the language of the statute, that they’re hard for a consumer to follow. How do you think these disclosures to consumers might be improved? What are your thoughts in general about sharing information to consumers when debt collectors contact them?

MR. HASTAK: Well, as you mentioned, Tom, I've been working in this area for some time. And it's an area fraught with challenge and frustration, let me say that.

And I really want to make two broad points. And then we can talk a little more specifically about the disclosure at hand here.

But I think there's sort of a point to be made stepping back from these specific disclosures to the idea of how to develop disclosures and how one tests them.

Larry mentioned the concept of consumer testing, which is really half my pitch today. And so let me start with that first.

It seems to me that the most important point I can make is that disclosures ought to be tested with consumer research. This is not done as often as one might believe. In a lot of situations when I am called in to comment on disclosures, there is a reluctance to test disclosures.

And part of the challenge is that many disclosures simply look pretty clear on the face of it. You know, people -- this is not just lawyers, for example, developing disclosures. There's a joke at least within the FTC that lawyers with disclosures can be dangerous.

But even people who claim to be experts in consumer research such as myself often find that the disclosures that they've created don't work. So I want to start off with that. Disclosures often don't work. It's quite a challenge to develop good disclosures.

Consumer testing can also be expensive. That's part of the issue. People are sometimes appalled when I tell them that a qualitative study with 50 respondents is going to cost -- I'm making this number up so don't panic -- $100,000. And people say that's $2,000 a respondent. What is it that this person is telling you that's so valuable?

(Laughter)

MR. HASTAK: You know, they are charging more than most of the top lawyers sitting in this room I think. So, but the value of testing disclosures is not only that you learn which disclosures aren't working. And I'll give you some examples as we go forward here. But also that you can look for unintended effects.

And this is particularly important in a setting where different audiences are looking for different things from the disclosure. And that's certainly true here.

So there are people who might be looking at disclosures from the consumer's perspective. What is it that the consumer should learn? What is it that will maximize consumer welfare, that will influence consumer decision-making? Not bias them, but let them make better decisions.

But then there are unintended consequences. And one of the points that I think folks talked about in an earlier call we made was that if consumers understand, for example, that they have the right to stop communication from the collector, that this will lead to more lawsuits.

I don't know if this is the case, this is not my specific area of expertise, but these kinds of tradeoff issues come up all the time.

One quick example I'll give is work I did on privacy disclosures under the GLBA, which are complex privacy statements that consumers get from banks or financial institutions.

And initially it seemed very simple to simply cleanly tell people whether a bank provides opt-outs or not for their information collection. I mean, this is pretty straightforward. Consumers would like to know if you give them choices and we should tell consumers.

The testing revealed that when you test a bank that doesn't give any opt-outs because it collects no information or, sorry, it shares no information, that that's probably an ideal situation. I don't share, so I don't need to give you a choice.

Consumers misunderstood that. The lack of -- so consumers sort of have this opt-out mentality that says that if a bank doesn't offer opt-outs there's something shady going on here. That's a very thorny problem. So designing disclosures that are neutral that meet multiple objectives is very challenging in the absence of consumer research.

And finally, on testing the point I would make, and this again ties into the comment I think that Ira made. This notion that the better information will actually improve consumer choice. They'll better understand what is going on, they'll make better choices.

A long-term study after introducing a disclosure is very important and again rarely done. So we look at the FTC debt study, for example, which among other things was looking at what factors influence the price of a debt. It was very interesting.

But it's just one idea. You could do something similar after good disclosures have been introduced to look at what are the factors that influence consumers. Because, again, even though good disclosures are desirable, it isn't clear on the face of it that the disclosure will necessarily impact consumer decision-making, reduce the number of lawsuits, perhaps have people more paying back their debt.

I mean I don't fully understand why people aren't paying their debts, but it's got to be a complex factor. And the role that information plays in that process isn't clearly understood. So, my main kind of plea would be for looking at research as a way of improving disclosures and testing their value, whether it's very limited or it's substantial in influencing consumer decision-making.

MR. KANE: Good. I'll ask you some more about the disclosures that debt collectors are providing now.

So, Loraine, what sorts of information are debt collectors currently providing to consumers in their validation notices, their 1692(g) notices?

MS. LYONS: Well, commonly we will track the statute as it's written. We will provide the information that's required, you know, the name of the creditor to whom the debt is owed and the amount that's due. And then, of course, tracking the language we'll inform the consumer of how they can obtain verification of the debt.

But then some industry members have gone beyond that. Like I've mentioned, if it's a retailer that's not the creditor they will identify the retailer. Or even if it's an asset buyer they're collecting for, not as the owner of the debt but as an agency, some --

MR. KANE: An asset buyer is often called a debt buyer?

MS. LYONS: Debt buyer, yes. Some industry members will list the original creditor and the current creditor, and the original account number and the current account number. That's not uncommon.

Because again we want to make sure consumers understand why we're contacting them and the debt that is owed. Those are important elements.

And that's where we go back to if we can have some uniform national standards based on best practices with validation of research that this does, this new information we're going to give helps them, we're in favor of that. We want to have a good experience with that customer or with that consumer. That's important to us.

And I have to do this because my experience in this industry has been diverse. It has been with primarily collection agencies but to think that the value of debt being sold is based on the information is I think an area we need to be careful with.

Because I can tell you 20 years ago I worked for an asset buyer, a debt buyer who did buy assets as you might commonly hear for pennies on the dollar. We had everything. We had the entire paper portfolio.

But the value is not necessarily of the data received, it's the value of that portfolio. And I can tell you the seller was the government. Resolution Trust Corporation.

MR. KANE: So didn't the fact that you had all this other stuff sometimes come in handy? And sometimes make it easier to say to the consumer, “I'm sorry, Mrs. Johnson, here's the documentation that shows that you owe it.” Or, “We're sorry, Mrs. Johnson, as it turns out, you're the wrong Mrs. Johnson.”

MS. LYONS: Not necessarily. It gave us -- that information was available quicker because we -- I was working for a debt buyer. It was available to us to give to the consumer who requested verification of the debt. But it didn't make the debt more collectable. It didn't make the debt more valuable. But it was available.

And I think as we've moved in technology, and I want to embrace technology because having paper like that in today's environment would just almost kill a national forest. We want to be green in our ecosystem. I think we can embrace like some new technology or interfaces where we can house this information that's critical, that will improve the collection process.

But to know whether it will improve or not, we're going to need some research and some best practices.

MR. RHEINGOLD: I want to respond to that a little bit. Because I think the information -- we talk about the lack. I think there's minimal information being provided to the debt buyers. And I think that's intentional. And I think right now there's no need to provide them with any more information because of the way debts are collected today.

I think what we -- and again, this is a later session and I know you want to keep it here, but I don't think you can sort of ignore the fact that the reason why minimal information is necessary is because of the way debts are collected today.

And that's the litigation model where you overwhelm the courts and you don't need a lot of information because 99 out of 100 times people don't show up in court and that minimal information will provide you with the ability to get a judgment against that debtor.

And I think as we move to a new system where courts will no longer rubber stamp hundreds of cases, when we actually have a judicial system that is fair and neutral, that doesn't simply take the word of an attorney because they're overwhelmed in that courtroom, then that information that we're talking about, that I'm saying is necessary, will become necessary.

Because that's going to be the model for collecting the debts if in fact litigation is the model that needs to be used. So I think it all sort of flows together. And that information is essential because I think that litigation model is dangerous and is causing enormous problems in this country and it will be fixed.

MR. KANE: Larry, when you talk about a national standard, is that something that the Consumer Bankers Association is pushing or is that something that you personally think is a good idea?

MR. TEWELL: I'd say from my conversations around the industry inside and outside of associations and with other creditors I think the industry recognizes that, if there are standards that could be made common that make the ecosystem work together more effectively, that benefits everyone. So I think there's a consensus generally speaking that if we can find common ground it'll benefit everyone.

MR. KANE: Okay. Do you have any ideas just personally of some additional information that would be useful for debt collectors to convey to consumers in their validation notices? And then what should they convey in a collection call?

MR. TEWELL: Well, first they should be consistent between the collection call and the letter certainly. And I don't want to speak for the debt collection industry.

But just consumer, we're all consumers. I'm a consumer. I think a couple of good ideas are the original creditor name in the proper context. I think the last payment date, these are good things.

I worry about overwhelming the consumer, and it's not because we don't want to provide the information. We as an industry collectively and consumers do better when we're mutually engaged. So it's important and in our best interest to provide information so customers can recognize a debt, can engage with us, and then have it resolved.

The thing that Manoj is mentioning and that I introduced was the concept of good old basic test and control is that our experience collectively as an industry is that if you provide suddenly too much information and the consumer begins to feel overwhelmed we shouldn't be posturing up here about what's right to include or not to include. We should be testing and learning through that and making sure that what those final standards work out to be truly benefit the customer. That's what we're most interested in.

MR. KANE: Okay, thanks. Before I move onto talking about collection calls, I do want to get Manoj's thoughts about what people have said about validation notices. What are your thoughts?

MR. HASTAK: Sure. Going further than Larry sort of mentioned. One of the difficulties I think in this case is that you are dealing with long, complex disclosures. It's hard enough to design one-line disclosures, as easy as that sounds. Testing often shows problems with them.

But one of the issues with longer disclosures is that it's tempting to use the disclosure as a vehicle for consumer education. And I mean, it's only natural. You're dealing often with an area where the consumer really doesn't know what the disclosure is trying to accomplish.

We had that problem when we did the privacy notices work, for example. We found that people simply didn't understand a lot of the terminology. They didn't know what "affiliates" meant. In fact, people misunderstood the concept of a privacy notice to begin with.

When you call something a privacy notice, we found that people thought that meant that that bank or that institution protects their privacy. They didn't see it as something saying here is where we tell you what we do and what we do may be pretty bad from your perspective or may not be. I'm not taking a position here. So we recommended a change in the name itself.

But you need to sort of try to separate those two things out. And so my two comments here are longer disclosures pose particular problems where I think testing is important. And disclosures provided verbally are also very challenging because in a situation where somebody calls you and in that process makes you a disclosure. I'm sure you've all gotten as just one example from somebody raising money for your local fire department. And there is a disclosure in there that says they are paid to make that call. I've never been able to pick up that disclosure. It's there if I listen very carefully. But because it's presented in context, the impact of the disclosure is different.

And the context in an oral presentation changes. It's malleable. It can be changed maliciously or it could simply happen accidentally. But even so it poses challenges there. But it brings me back to the notion again that testing is the only way here.

MR. KANE: Thank you. Loraine, is the information that collection agencies or just any debt collectors convey to consumers in a validation notice, is that different from the information that they convey to consumers in the early debt collection calls where they're first communicating with the consumer?

MS. LYONS: No, not necessarily. We're going to in addition to the validation notice what's required in their 1692(g). I mean we're going to state we're a debt collector and we're attempting to collect a debt and any information obtained will be used for that purpose.

And then when we go into the collection calls we're going to say the same things, that why we're -- well, let me add that. Yes, we will. Because when we're on the phone with someone, we're going to identify ourselves. And say if I'm the person, as an example, that's making the call I identify myself. I'm Loraine Lyons with FMA Alliance.

But I don't want to use FMA in particular because I'm here for the industry. So let's say I'm Loraine Lyons for Collector ABC and I'm trying to reach a certain consumer. And then I have to verify I've got the right party. Because it's important that I convey information I have with the correct party. So we go through that process.

MR. KANE: In part because there's a provision in the FDCPA, the Fair Debt Collection Practices Act, that prohibits disclosing information to third parties, is that right? Is that your concern?

MS. LYONS: Yes. Yes. And also to protect privacy. And secondly, it does me no good to talk to the wrong person. So I want to make sure I'm talking to the right person.

And then we will have the disclosure of “I'm a debt collector.” We will have other disclosures. Some industry members are recording calls, so they'll give a disclosure that the call is being recorded. Because this is a live conversation, it's different than a written document.

And then they will discuss the creditor, the amount that's due. If there's an original creditor, there may be a conversation with that.

The consumer may inquire about the last payment, if we have that information, which some placement files or debt collection files will have that. So we can provide that information, the last payment amount, if that's helpful to the consumer.

But sometimes it's because the

information we're disclosing is a live conversation it can vary. And it can vary to meet that consumer's situation.

They may be contacting us to find out if they can settle the account. And then if we get into conversations of settlement we may have to disclose what we call a 1099 disclosure to let them know that if they do settle the account there may be tax consequences.

And so it can vary greatly between what happens on a phone call versus a written communication. But there's going to be some minimums that's consistent in both oral communications and written communications.

MR. KANE: Great. Thank you, Loraine. If anybody has a very brief response or follow-up, that would be great. Otherwise I'm going to move into some of the questions that folks have submitted to us. Great, I'll take that as a -- I'll move into it.

So, let me see. Somebody asked the question “Can we get concrete information about the incremental cost of uploading more information, statements, et cetera." The person asks, "Doesn't Convoke know this? Wouldn't a bank know this?" So, Larry or Dave, do you want to address this?

MR. PAUKEN: Certainly all technology has costs, right. It's not free. To provide the information that's being discussed here today, whether it's data, a standard, documents of any sort, it's not free to provide that.

The issuers incur costs to deliver it and pull it out of their systems. The debt buyers incur costs to pull it in. The collection agencies have costs to request and obtain it. So it's important that as we think about providing information in a more efficient way that it also has to be cost effective. Because if the price gets too outrageous then there's no business here for anybody. And the collection environment suffers.

We think that it can be done at a

price that is very efficient for everybody involved. And it depends on the unique circumstances of the issuers primarily in our business and their users. And so rather than quoting specific dollars and cents, which I think wouldn't make any sense in this venue, I can say that it can be done at an efficient cost.

MR. TEWELL: And I would only add, and this is my personal opinion so maybe the industry friends won't beat me up too bad after this, but I'm actually not concerned about the cost. If it adds value, we'll find a way to do it.

What I'm more concerned about on the consumer's behalf is that throughout the ecosystem when we move data, when we move media, when we house it, are we safeguarding the customer's information? Are we protecting consumer privacy? And so those would be my more specific concerns, if in fact there were concerns to be had.

MR. KANE: Thanks. This question I

think is best directed to Loraine. “Can you comment further on advantages/disadvantages of agencies utilizing the creditor system versus using their own standalone systems?”

MS. LYONS: Well, again it's going to vary by the sophistication of both parties.

So, if -- there is a benefit to using a creditor system because it is a better system, then I think that's a conversation that has to be had between the creditor and the collection agency.

Now, as far as benefits, I think because I say the word "better," is it better. Does it have more information that's meaningful based on perhaps if we can get to some uniform national standards that would be great.

But if that information can be passed to the collection agency, then we're really in the same position. So I think you have to look at the parties involved and the type of debt being collected. Those would be some critical factors.

MR. KANE: And here's one that I'll throw out first to Ira and then anybody else. “Do you think consumers would identify debts more readily if a copy of the charge-off statement was attached to the validation? Would this be beneficial to consumers? Would it be beneficial to collectors?”

MR. RHEINGOLD: I think a breakdown of the cost, maybe the last billing statement would be the most useful thing for consumers to have. I'm not exactly sure what's in a charge-off statement that internally the creditor uses. If in fact it's the last statement that has their account, and has the cost, and shows sort of the life of that debt they owed, I think that would be extremely useful.

I think one of the problems that we see all along here is that people don't know what the debt is. There's no connection to this debt. You know, they get something from Midland and it says Midland, you owe $458.32 to Midland. They're like, “Who's Midland? I have no idea who that is." So I think the more information you provide that sort of gives them some context that this is in fact a debt related to them.

And I think some of the problems are that -- I mean one is oftentimes we've seen far too often the debt is not related to them. But two, I think if a consumer actually sees that this is a debt that they owe, then that makes the process work that much better.

And I think, you know, I think that's a necessary part of this process, that consumers have enough information to make a decision. Whether or not they're going to dispute this debt, whether they're going to fight it, or whether or not there's going to resign themselves to figure out a way to pay for as much -- pay what they can afford based on their current economic situation.

MR. KANE: Thanks. Does anybody else have anything else they want to add about that question? Okay.

This is to Manoj. "How many

unsophisticated consumers could understand the validation notice as written in the FDCPA?”

(Laughter)

MR. KANE: Can you suggest better language?

MR. HASTAK: Thank you for putting me on the spot there. Let me just make a side comment before I get into the question. And believe me, I'm not trying to duck it.

When I found out I was going to be on this panel and I believe I've mentioned this already, this is -- this particular debt collection area is certainly not my area of expertise. But I Googled -- "validation notice" wasn't a term I had heard before and got a whole bunch of hits on Google. Almost all of them had to do with advising consumers on how to ask the debt collector to validate the debt, if I'm using that language correctly. It was quite interesting.

But almost nothing on what a validation notice looks like. I was trying to see an example or two of how the disclosure is included in the notice whose main purpose is to inform consumers that they owe a debt.

And so with that sort of background let me just say having said that consumer testing is the key it doesn't behoove me to now speculate about how good or bad this disclosure is or how it could be improved.

But let me just say one thing. One of the things you find with complex disclosures is that even the best disclosures achieve moderate levels of comprehension and success. And so, if you simply test even a good disclosure in isolation, you may get numbers like 50 percent of people get it, or 60 percent of people get it, which allows everybody to declare victory.

The people who like disclosures say, “Well, you know we are communicating well with so many people.” And the ones who don't like disclosures say, “Well, people aren't getting it. How good is this research? What have we really accomplished here?”

So, the one thing that I think is worth doing here, and in situations like this, is creating more than one alternative. And you could actually have alternatives coming from different interest groups where people trying to create disclosures that achieve different objectives could try and create them.

And the testing would then sort of look at the ability of these disclosures to improve comprehension. I think that's the best goal we can achieve.

Again, with the privacy notices project that I keep going back to, these are complex notices. And the original notices were 10 pages long and started with "We love you and we would never hurt you in any way."

(Laughter)

MR. HASTAK: And then end on page 5 with, “We are sharing information with whoever we please.”

(Laughter)

MR. HASTAK: I'm going a little

beyond.

MR. KANE: I think we'll probably be able to keep it under five pages I think. But this is a good question. In fact, it's one that I meant to pin down and really didn't. So I'm glad somebody posed it. It might be one of my people over here. But good question.

“Do the contingency collection agencies or debt buyers get information about consumer disputes with the creditor or even previous collection agencies?” What do you guys say about that?

MR. PAUKEN: I think currently I don't see a lot of that happening. I will say that the customers that we're working with, that is on the table for them to begin to provide. So I think there's a high level of interest to be able to provide this information and it's just finding a tool to be able to do that in an efficient and effective way.

MR. KANE: So the consumer information that we're talking about, are we talking about recorded phone calls? Is that a possibility?

MR. PAUKEN: Well, everything is on the table right now. I think back to some of the points that have been made here before. It might be helpful to identify what is the standard type of information to provide for a dispute. But I think anything is possible. Written communication, audio recordings, anything like that could be provided.

MR. KANE: Okay. Ira?

MR. RHEINGOLD: And I think you've hit on a really important point. And part of the consumer experience that is so sort of disillusioning, both in the debt collection dispute process and the credit reporting dispute process, is we talked about earlier the life of the debt and how it keeps getting resold.

And so what happens is a consumer may dispute a debt and they may be right, or the debtor certainly can't validate because they don't have the original information, so they take it off of the credit report, or they stop collecting it because it was a valid dispute.

So what happens to that debt? Does it go away? Does it disappear off the credit report? No, it gets sold to a next -- somebody next down the line who does the exact same thing and doesn't have that information. And I think that's a really essential part of making the system work better is that history, when a consumer disputes a debt, that that has to be part of the information that gets transmitted along that train.

MR. KANE: Loraine, what happens if a consumer disputes to, say, the first contingency collector that a creditor hires? What does collection agency number one do with that information?

MS. LYONS: Well, my experience in the industry is that what would happen is there's the exchange of information. So the initial agency would then submit that information to the creditor and the disputes would investigated.

My experience is the creditors do not want to give us disputed accounts. Now, and keep in mind disputes are either justified or unjustified. I have seen in various settings where creditors have contemplated or have actually seen some situations where creditors will give us -- or not necessarily us in the industry, give accounts with dispute information not because they were justified. They were not justified so that the agency is aware of the situation.

And I can tell you one of the biggest areas that consumers -- it has to do with education. They may not be educated on the type of debt they obtained, whether that debt is something that would, say, be dischargeable in the bankruptcy process. And so there may be confusion in that and it's already been investigated. And that information may flow to various collection agencies so they're aware that there was a previous unjustified dispute.

So that when it comes up again

instead of having the consumer go through the process of disputing the debt in writing, obtain verification of debt. I mean of course they can request that and it will be fulfilled, but you can have a good conversation about the debt.

MR. KANE: Great, thank you. So we have 4 minutes until lunchtime. And it's a brief lunchtime, so we'll end in 4 minutes. So to do that, I want to ask each of you starting in alphabetical order to give three to four sentences on the subject of what we've been talking about.

And because our goal today is to try to move the ball forward, to try to reach agreement, give suggestions for where there might be common ground and what suggestions we can have for making things better for consumers. Manoj?

MR. HASTAK: I'm going to repeat a couple of the comments I've made and throw in one new idea related to designing disclosures.

Number one, I'd like to emphasize

that developing good disclosures is challenging activity. But number two, that testing is the only route to having any chance of success, especially with complicated disclosures.

Number three, that looking for absolute levels of success with disclosures is problematic. And that was, by the way, my point with the FDCPA disclosure, Tom. I want to emphasize I wasn't suggesting it was as bad as the 10-page privacy disclosure. I don't want to leave that impression. But rather that you want to compare it to another disclosure, perhaps an improved one, to see how much improvement you get.

And one last thought I want to throw in there is that standardizing disclosures generally is a good idea but poses significant challenges as well. And I've worked on several projects where we've been able to get different parties, again with different points of view, to a standardized disclosure. Standardization helps consumers. In my mind, there's no doubt about it. Whether it achieves all the objectives of the parties interested in the disclosures is a somewhat different issue.

So rather than consumers seeing 10 different disclosures from different providers, if there is a way to standardize so consumers see the same language, the same format, again and again. It reduces impediments to comprehension. Thank you for the opportunity to be on the panel.

MR. KANE: Great, thank you. Loraine?

MS. LYONS: Thank you, Tom. I want to pick up on one of Manoj's suggestions is the standardized notice. Our industry would welcome model language. And it would be uniform to all consumers.

Our industry would welcome unified standards in the pre-litigation context so that consumers can have an expectation of information that will be received. And I believe that will help improve the level of confidence in the collection process. Thank you.

MR. PAUKEN: Tom, I have a quick observation and a recommendation. I'm new to the industry, 3 years in the industry. I come with no biases. And in my experience with my customers and the customers that I'm talking to, and that includes credit issuers, debt buyers, agencies and attorneys, it's my belief that by and large they're very interested in improving their processes and benefitting the consumer to the greatest extent possible and reasonable. I honestly believe they're trying hard.

And I think from the consumer and regulatory side, I think they're doing a very good job of trying to understand the issuer and collection side of things. So I believe the environment is probably right for everybody coming together to agree on the right approach.

And Convoke, or whether it's us or anybody else, any other technology company out there I think as part of that solution, we're not the total solution, but part of it. And I would just encourage the community to work towards finding the common ground.

MR. KANE: Ira?

MR. RHEINGOLD: Well, I think I've made my points a few times but I'll make them a last time. I think it's in everybody's common interest to make sure that when debt is sold the information that it's sold with is complete in every manner possible, including the disputes.

I think the only way this system works properly is if the people who buy that debt or collect that debt have complete access to trustworthy information that is reliable and everybody can rely on. And I think that's the only way this thing can work.

And I really believe it's in everybody's best interests. I'm just not sure why we can't get there.

MR. KANE: And, Larry, wrap it up for us?

MR. TEWELL: Thank you. I'll do it and I'll even bring the microphone close. So five quick things.

First, it's absolutely in the common interest of all of us here to do what's best for the customer and help them succeed financially.

Second, we want to provide all the information necessary such that a customer can identify the debt, understand their financial situation, know what their options are, and work through those. We want to be conscientious of not overwhelming the consumer.

Which leads to my third point that Manoj and I have been making today around the importance of test and control to remove posturing and to make sure the consumer is best served.

Fourth, I'm going to say it in a complete way. Uniform national standards relative to data, media and then common definitions relative to disputes and complaints when interjected into the ecosystem will benefit all the participants but most importantly the consumer.

And then finally consumer education. Financial literacy. And that's a big topic but the piece that's most on my mind relative to this panel is encouraging all consumers to stay engaged with their creditors because when they do the best possible outcomes will occur.

And so that's how I see it at a high level. And I know that the industry is interested in working with government and others to get it right. Thank you for having me.

MR. KANE: Thank you. And thank you all, all the panelists, for your time and all your thoughts.

(Applause)

MR. DWYER: Thank you everyone. It's lunchtime now. We'll reconvene at 1 o'clock.

(Whereupon, the foregoing matter went off the record at 12:18 p.m. and went back on the record at 1:00 p.m.)

MR. DWYER: Hello, everyone.

Please take your seats. Thank you for sticking around for our afternoon session and our afternoon panels. At this time I'd like to introduce Corey Stone, Assistant Director of the Office of Deposits, Cash Collections, and Reporting Markets at the CFPB.

MR. STONE: Thank you, Dan. And welcome to this afternoon. This is the panel that actually started in the last panel where we started to talk about consumer's dispute of a debt. And that's going to be the focus of this next section.

I'm going to quickly introduce my panelists then talk about our subject a little bit to frame it. Then they'll each have comments. Then we'll open for questions.

To my immediate left is Chad Benson who is COO of CBE Group which is a collections agency. Ian Lyngklip is a consumer advocate and attorney. Rich Munroe is president of Capital Financial Corporation, a debt buyer. Manny Newburger of Barron & Newburger, PC, is an attorney, a collections attorney and scholar in this field, teaches on this subject. And Denise Norgle is VP and division general counsel for TransUnion.

And if you want to learn more about each of these colleagues their bios are in your packet along with their Social Security numbers and credit card accounts.

(Laughter)

MR. STONE: So I won't go into those details or announce those on the webcast.

So if you think about this information ecosystem the first moment in which information comes to play is in the initial notice, the G notice to the consumer, and the transfer of data from original creditors to either agencies to which debts are assigned or to debt buyers.

The next moment of truth in testing information is when after contact the consumer disputes a debt. So we want to address some questions today. What are the steps the debt collectors currently take to investigate and verify debts that consumers have disputed either orally or in writing. Are these adequate? If not, are there additional steps that debt collectors should take.

And what additional information should they have to give to consumers in response to a dispute. What would be the cost and benefits of requiring debt collectors to take these steps and provide this information.

When debt collectors receive disputes about debts currently do they notify the owners of the debt collectors. This is an issue that Ira brought up in the previous panel. Should they be required to notify the owners of a debt that a dispute has occurred. Again, what would be the costs and benefits of requiring that kind of disclosure.

Are the requirements for verifying disputes under the FDCPA different from those for investigating disputed debts under the FCRA. The information that is -- when a debt's being disputed arguably the information about the debt is being disputed and that is the information that a collector or first party creditor or a debt buyer may be reporting to a credit bureau. Are these the same? Are these different? Should they be treated as the same?

What does the available data show about the experience of consumers in disputing debts? We have some useful statistics from the FTC debt buyers study with a 3 percent dispute rate more or less of debt that's been purchased by debt buyers. Presumably it was higher at earlier stages but we don't really know what those numbers are. What can we learn about the rates of disputes?

And is the consumer's experience ones that we can also quantify? How are these disputes investigated and resolved?

Does the information the debt collectors use to verify the debts degrade over time? Is it more difficult to verify disputes as additional parties are involved in the process? If so, how much does such degradation affect consumers and how can this information degradation be prevented?

So that's the framing for this panel. I've asked each of the panelists rather than to address these questions serially to kind of sum up about 5 minutes each from their personal and their industry points of view how they address and think about disputes.

So I think just because Tom set such a good precedent going from left to right, or right to left I will start with Chad.

MR. BENSON: Great. First of all, I'd like to thank the Federal Trade Commission and the CFPB for bringing us all together and giving us an opportunity to talk about these important issues.

CBE Group is a third party debt collection company located in Cedar Falls, Iowa. We have the fortune of being able to work lots of different markets. So we get to see FDCPA from a dispute process work where an issuer and a granter is actually managing the process. We also have the opportunity to see it from an FCRA perspective where we are doing that exact thing for our clients.

I think one of the things that before I jump in I would like to say is I think the -- if you look at over the last year I think the Federal Trade Commission released the stats for complaints.

And I think one of the things we have to recognize is that year over year `11 to `12 complaints were actually down in our industry by close to 14 and a half percent. And so I think what that at least hopefully as a collective group gives us excitement and energy around is that we can find a way to continue to improve the consumer experience.

And I think the first panel set a great stage for the fact that there are multiple stakeholders in making this whole process function and work. And to the degree that something is right or wrong I think fundamentally it's about how do we make it better. And that would be my perspective on this day is that we have a great context for how to go away and make it better and actually take action.

I think one of the things that you find in data is that we are talking about lots of different systems under the construct of one process. So one of the things that I took the time to do over the last couple of weeks is do an analysis.

We've been using voice analytics for the better part of 2 years. And it's a very powerful application. We looked at 75,000 random first party -- or I'm sorry, random right-party contacts a month, 2.3 million contacts over the last year.

And what we found through that analysis is when you look at the words "dispute" and "credit report" approximately 0.21 percent or 4,900 contacts surface as it relates to dispute and credit report.

And so one of the things I think is also important for us to understand is the system as a whole is fundamentally working for part of the population. What we get into is where it's not, for smaller parts. Just as important is where it's not working. We have to solve those opportunities.

Under FDCPA a collection agency is required to send a validation G notice. And it gives the consumer 30 days to dispute the account. Most industry practices would allow that dispute to take place over the full placement of the account. We get an account for 6 months and as a contingency agency typically.

So the idea that we could 3 months into it have somebody that disputed account, we would and most of us in the industry would stop collections, put that account depending on how it is being disputed, acknowledge that back to the issuer and granter. And so that information today I think over the last 2 or 3 years has made -- the information exchange has gone up significantly in the case where a collection agency is not the reporting agency that is the granter.

Under FCRA if we as a collection agency are actually reporting and we have a dispute we have to investigate that. And so we go about the communication with a client. I think one of the things that is very simple and straightforward is we get the documentation relative to validation that this is truly, truly a disputed account and we communicate with the consumer and let them know that it is being returned to the customer as a disputed account.

If we receive nothing I think a good practice is basically allowing a letter to out to the consumer and say hey listen, we're not going to continue to contact you because we haven't gotten any information. And at the end of that placement it gets returned with a disputed code.

I think one of the things when we look at the process holistically I think John, like it or not, did a really nice job of being able to lay out the context of the process. And when you think about simplification I think the data as I indicated in the 2.3 million right-party contacts we looked at is where issuers and granters are the reporting agency. Clearly, clearly the process is more cleaner for the consumer. We have less disputes. And I think there's a lot of reasons that you could get into as to why that's done.

CBE Group shows up on the trade line. They're not quite sure what that -- whether it's a hospital, a wireless company, a utility, they're not sure what that is. And so where that process is managed end to end through the life of the debt I think that becomes a big point of focus.

I think the other thing is when you step back and look at 4,000 collection agencies, 800 attorney firms, a few hundred plus debt buyers, the idea that the variations of the process going back to the earlier panel and

Larry's lead. A standard I think is extremely, extremely important.

How can we expect thousands of -- hundreds of millions of consumers and thousands of different constituents and stakeholders to get the process right without some kind of standard. And I can't stress that enough.

I think in closing there's no question that our industry is looking to improve. There should be no question about that. There are a lot of good people that are working very hard hopefully hand in hand with you to make it better. And I look forward to being able to answer questions along the way. Thank you.

MR. LYNGKLIP: Good afternoon. My name's Ian Lyngklip. I'm a private attorney. I represent consumers who are the people that these statutes are intended to protect.

I have a pretty broad experience with the Consumer Credit Protection Act from beginning to end, from the moment that a TILA disclosure is given to the moment that it's reported initially by a creditor. Throughout that entire ecosystem that was described this morning I've got a hand in helping people with that.

I think that one of the first things we've got to recognize is that when we talk about protecting people we're talking about an ecosystem where we are injecting potentially bad debt into that ecosystem. That bad debt, debt which does not relate to a consumer, which isn't owed, which is time-barred, which is in some way or another impaired as to the consumer we're talking about.

That debt, and having that debt in that environment, in that ecosystem is toxic to the system. It hurts everybody in the system. It hurts the consumer who is the victim of the credit calls, who may be a victim of credit reporting. It hurts the creditors who do not get the opportunity to lend that person money. It hurts the debt collector who may be out there trying to collect that debt and may wind up being a target of a lawsuit.

Having bad debt in the system is toxic to the system. It's dangerous and it's unsafe in the same way that we saw an entire agency come to be just because we had toxic debts in the system.

We have a landscape that is out there that ostensibly is designed to protect consumers. And one of the things that I think has got to be the keystone of our efforts here is that we have got to be dealing with accurate information and verifiable information. And these are terms that are defined in the Fair Credit Reporting Act or arise in the Fair Credit Reporting Act and arise in the Fair Debt Collection Practices Act. We see debt collectors having to verify debts throughout this process.

In this context we have a legal landscape that does help us. We know what accurate debt is or what accurate data is. It's information that's objectively true. It is complete. It is not materially misleading about the consumer.

And we have as lawyers a definition of "verifiable." It may not comport with what we see right now in the landscape from the FDCPA case law but we know what it means to verify something as lawyers. We sign verification all the time. It's testimony. It's truthful information given to a court under oath.

Now, that may not be necessarily what we've got but it is part of our legal landscape and our experience collectively as an industry dealing with legal obligations.

Creditors and debt collectors alike under the Fair Credit Reporting Act and the Fair Debt Collections Reporting Act both have the obligation to furnish only accurate and true data.

They likewise have the obligation at every turn when they learn that a debt has been disputed by the consumer to note that debt as disputed and as an industry the credit-reporting industry has already identified those dispute codes as significant enough that they can use them to disregard the effect of a trade line when a consumer is in a serious dispute.

Credit reporting agencies that receive these notices of dispute, they have to report those disputes as well.

Within the ecosystem that we have seen defined today what we're talking about is in the context of a debt buyer providing data to a credit reporting agency their reporting of debts for which they have no evidence in hand which facially based on what we've seen here cannot be verifiable. It is not verifiable. Because there is no evidence. There is no testimony. There are not even warranties to suggest that the debts and the data is in fact correct and accurate.

Notwithstanding the fact that in that environment we have no reason that would be legally sufficient to say that's verifiable debt, and even though the statute has required that we be reporting verifiable and accurate debt we continue to allow those debts to be reported to credit reporting agencies and to impact adversely on the consumers.

They have no possible way of verifying this debt through a dispute process, whether that is an FDCPA dispute process, at least not at hand, and certainly no through a Fair Credit Reporting Act dispute process.

More importantly, throughout the life of the debt we see that debt collectors and creditors alike change account numbers regularly. And to the consumer this is a nightmare in the making.

Credit reporting agencies identify debts by a unique combination of a subscriber code together with an account. And when those subscriber codes change and when those account numbers change we effectively cast those consumers who have disputed perhaps even successfully, who have disputed those debts, we relegate those people to having to do it all over again. That is the standard within the industry right now.

From that perspective we see the dispute process does not in the Fair Credit Reporting context provide for accuracy, accuracy meaning objectively truthful, complete, and not materially misleading. If that's what we're striving for the process is intended and is right now driven exclusively by a process which we refer to as data conformity. Your computer data matches our computer data. Also known by some courts as parroting.

That is not an accuracy process. It's not a process that helps the consumer to just match the data between two computer systems if what you're going to do is test the objective truthfulness of the underlying data.

From that background we see consumers experiencing a common set of problems. I see these walk in my office every day. We see consumer disputes to the bureaus being resolved without any meaningful human review of anything on any end. That has led to such processes as the computer batch processing where data is being transferred wholesale without ever having anybody review a consumer's dispute.

Being reviewed on the furnisher end from when it's being turned around by the bureaus to somebody who has nothing more than a blip on a screen that reflects an entry in an Excel spreadsheet. That is not ensuring underlying truthfulness, it's only again ensuring data conformity.

We see bureaus resolving disputes with hidden standards which consumers could easily comply with if they knew what to do. But those standards are being protected tightly by the bureaus. They won't disclose what kinds of documents can actually be used to support but nonetheless they use them. Again, an opaque process that hides this from consumers.

Consumer data can reappear on credit reports without prior notice. People lose jobs, people lose houses, people lose credit cards. People are at risk. And these again are people who are at risk from inaccurate data.

We see consumers engaged in absolutely fruitless disputes precisely because we see only an effort to match data and ensure data conformity. It doesn't go anywhere for the consumer.

We see consumers being thrown back again into this same process as these debts are being transferred. We see again a lack of tracking between debts and even if those account numbers were to follow the debts without being able to track the subscriber codes that they were initially assigned to, even that process would not help the consumer.

We see consumers having to re-explain in what is effectively consumer service nightmare explain to every single person that they ever talk to the complete history of their disputes when this data is sitting in repositories and systems that are available and can be made available but by contract are being shielded from downstream purchasers.

These are things that are easily corrected and we should correct. We need fixes immediately and I think the first and most important fix that we have to have is we have to put in the hands of consumers the ability to actually correct a credit report.

There is no statutory procedure to allow a consumer to correct a credit report. There's a statutory to write another letter again and again and again. And when Director Cordray came to Detroit I sat in back of a woman who has been reported dead for the last 5 years by the bureaus and was, you know, it was an item of humor for the audience. It's not an item of humor. That woman cannot walk into a court and get an injunction requiring somebody to correct that credit report. We need that immediately.

We need everybody to implement the standards of accuracy that have already been deployed by the courts which is that the information has to be objectively truthful, complete and not misleading. And everybody has to be on board with that and use that across the board, furnishers and credit reporting agencies and debt collectors alike. And it cannot be the standard of simple data conformity. That is not a surrogate for accuracy.

We need to adopt a uniform standard of verifiability which goes hand in hand with the G obligations as well as the standards in the Fair Credit Reporting Act under (i) and (s)(2)(B) that say that only verifiable data can be verified.

We need the industry to transfer all account disputes so that consumers don't have to tell their story every single time to every single person they see. We need to impute notice of those disputes to downstream purchasers so that there is an industry incentive to get it right.

We need to require that credit reporting agencies actually implement policies, procedures and practices to track debts. Make your furnisher supply you the provenance of that debt. Make them provide the prior account numbers and subscriber numbers and dispute history. Make them do that. They have that ability right now as a matter of contract and they can dictate that and not provide access to their database unless that information is there. Yet they don't do that.

And then finally we need to see that -- we need to see that there is an audit and bar procedure put in place by the bureaus where they audit debt collectors to find out whether or not they've got the information that would lead somebody to believe that they're holding verifiable information. If a downstream debt buyer never receives documentation that would allow them to verify a debt or participate in a dispute process for Fair Credit Reporting purposes they should not be allowed to participate.

So in the end I simply say that we

need right at this point to make sure that the information is accurate and verifiable. Debt that is not accurate and verifiable is unsafe in the hands of any debt buyer and in any amount in this economy.

MR. MUNROE: Thanks, Ian. I'd like to thank Corey for inviting me here today. Richard Munroe with Capital Financial Group. I am also the current president of DBA International which is the debt buyers trade association that was formed in 1997 with over 600 member companies.

We've worked very closely with the CFPB and the FTC along with state legislators and attorney generals across the country to attack all of these issues that we're talking about today.

And one of the things that we've spent a lot of time and resources on is developing a certification program for all of the DBA members that is something that's mandatory for you to be a member to be certified.

And we've heard a lot today about standards and things that we can all agree on that makes everything in synch for the consumer. And we've formed a task force that comprised of large debt buyers, medium debt buyers, small debt buyers, original creditor, collection agency representation along with law firms representation to basically talk about what are these standards, let's define them.

There's 19 different standards that we've put in place that include the dispute process. That is very clear as an industry that our best practices are, first of all, if you get a dispute it's something that is a very high priority for that collector to identify what the situation is. And in the event that information is needed to be verified that we request that information from the original creditor to provide to that consumer.

Ian talked about bad debt, toxic. It does none of us any good to spend time and resources on accounts that are valid disputes that we're not going to be able to collect. So from a logical standpoint once a dispute is identified we're making it very clear that's not something that we're going to send to another collection agency. That's not something that I'm going to sell to another debt buyer.

From the originator creditor standpoint when they have a dispute that's identified this is not common practice for them to sell us a dispute to begin with. They exclude those from the sale. So obviously disputes exist and they need to be handled in that manner but this is something that we feel very strongly through these best practices and these standards which we've also gotten commentary from the CFPB and the FTC on specific things that they'd like to see in what we're putting in place.

This is something that is going to evolve over time and we're going to continually make changes to it. And so now that task force has formed into a council with a process in place to identify things that we can improve on.

And I'm really looking forward to this workshop to hopefully take back some of those things that we can all put in place from the debt buying perspective.

We've talked a little bit about accurate data. We heard earlier today on the summary of the FTC debt buyer study. And it was very clear from that study that it was consistent when one debt buyer sells an account to another debt buyer that the information that they obtain from the original creditor is in fact consistent through the process. So when we talk about accurate data that we get from the original creditor I'm in no disagreement we can get more information than we're currently getting and we're working towards that.

But from an industry best practices that information flow from the originating creditor to the debt buyer is being passed along through the process. And that's the last point I'd like to make.

MR. NEWBURGER: Hello, I'm Manny

Newburger with Barron & Newburger in Austin, Texas. I first would like to thank the CFPB and the FTC for inviting me. I very much appreciate that.

My background is a little bit different. I did my first debt case in 1982 clerking for a consumer protection firm during my third year of law school. In the early years of my practice I represented consumers. Today I mainly do defense and compliance solutions for collection industry members across the U.S. and India and the Philippines.

I've taught consumer protection law since 1999. My views are probably a little bit different in that I'd like to think that I've got less of an agenda and a somewhat broad view on some of the issues. And what I would say to my law students because I'm in my 30th year of doing statutory litigation is that we have to start with definitions.

We use the word "dispute" but I'm not convinced we all agree on what that means. Is a general denial a dispute? What about “the U.S. never went off the gold system”? You laugh but every industry member in this room has had that dispute.

What about “I don't care that the judge ruled in your favor and the court of appeals says she's right, I still don't think I owe this and I dispute it”? "Come back here I'll bite your leg off" is amusing when Monty Python says it. It's a serious problem when we're defining the word "dispute." Is that a dispute?

I've urged for years “don't talk to me about the quality of a dispute. I don't care if you think it's crazy. If someone says they dispute it, mark it in dispute. What's the harm?”

And I've advocated that for a very long time because I think that letting collectors start making qualitative decisions about people's disputes is a very dangerous thing. And so at least the industry members with whom I work don't care if you say the U.S.

didn't go off the gold system, or your identity was stolen. Either way it's a dispute. A dispute is a dispute is a dispute.

Until we start getting into questions of what is the significance of that and how was it dealt with. And then all of a sudden we really do have to return to that question and say that -- and it's the difference I think between 1692(e)(8), the FDCPA duties, and the FCRA obligations. If you say it's disputed the debt collector is supposed to note it as disputed.

But once we start talking about the degree of investigation, the levels of verification, the number of times you're going to respond, the number of times someone can demand various types of information this definitional issue becomes very, very important.

Because if we don't get the definition there's not going to be compliance. You cannot achieve compliance without clearly defined definitions, standards and guidelines, and I think that's why you're hearing a call for a national standard from the industry people.

Because for the most part what the industry people are saying to Washington is: "Tell us how you want us to do it and we'll do our damnedest to do it that way." So I think that's got to be the starting point.

Now, beyond that it seems to me when we're talking about disputes and the dispute processes we really hit four basic concepts, reliability, accuracy, retention and availability. And these four things are very important.

Reliability is just the critical starting point. If you're a trial lawyer you know this because the United States Supreme Court says when we talk about business records and the business records exception to the hearsay rule that the most critical hallmark of a business record is the reliability of its source. If bank records aren't reliable they're not going to be admissible as business records.

Just as importantly if the banks aren't reliable sources of data the credit reporting agencies aren't going to be able to accept their data. Now, the government can say banks aren't reliable sources of data. It is an option. But the danger then comes that you will crash the system.

First of all, if creditors can't prove their debts in court then it's going to be harder for people to get credit. Not a good thing.

If banks can't make informed credit risk decisions by having access to credit history they've got lending problems. So we have to start with at least some recognition that inherently the system does treat bank records as reliable.

What I find ironic is as a guy who spent a lot of time fighting for consumers against the FDIC and its gone but not lamented sister the RTC it's amazing to me that when a bank fails the courts and the U.S. Code deem the bank's records to be pretty much inviolate. You can't dispute it. We've got doctrines like D'Oench Duhme and 12 U.S.C. Section 1823(e) that take away virtually all defenses. If the bank's records said you owed that debt on the day it failed it doesn't matter what you think, you owe it. And so there needs to be a level playing field.

What is good for a failed bank whose principals went to jail at least ought to be good enough for a thriving bank that's serving its customers. And so reliability really seems to me not to be the issue.

Now we can talk about accuracy. The FTC recently did a report on credit reporting and I think the report shows for the most part the system is pretty accurate. There's no system I know that doesn't have room for improvement but for the most part the report indicates that there's a reasonable degree of success.

And so what I would suggest to you is that what I hear a lot of not just today but in my practice in general is issues about retention and availability. And let's face it, Reg Z has a 2-year document retention period. That makes no sense, at least it doesn't to me.

We have a credit reporting period that is substantially longer and it seems to me that the records sensibly should be available coexistent with the credit reporting period. And that means that what we really ought to have is a document retention period that looks more like 7 years. And that would do a tremendous amount.

But someone has to write this rule because from a business perspective you can't expect banks to sit here and say “Well, we're going to incur a tremendous expense to do something the law doesn't require.” This has to come with some sort of regulatory push.

Along with that is obviously availability. When an account is sold the records either have to be transferred or warehoused in a way that's available. You've got companies here today that do that. You've got Convoke, and “You've Got Claims”, both companies in the business of transmitting data between credit grantors and agencies and law firms. The technology is there. It's possible to do this. But the starting point has to be a mandate of retention and the second has to be a mandate of transfer or availability if yousell. And I think if those things are done a lot of what Ian's complaining of will go away. It'll be there. It'll be accessible. People can get it. It'll be available quickly and disputes will be much easier to address assuming we can define "dispute."

MS. NORGLE: There's a lot of benefit to being last on this panel one of which is that these gentlemen have laid out a lot of what I planned to say so I can keep my remarks short.

I do want to point out that as

TransUnion is one of the nationwide credit reporting companies we do appreciate the chance to sit at the table here because we do play a role in the process and the life cycle, and we rely very heavily on the other parties who are here or who are represented through the consumer counsel that's here.

We rely on the data from the original creditor, the third party collection agencies, the debt buyers, the consumers. I mean we depend on all of them to make sure our data is accurate. And as others have said today it really is our overarching goal to make sure that the data is accurate.

Inaccurate data does not serve anyone. I think Ian said it perfectly earlier. It doesn't serve the creditor in the first instance. It certainly doesn't serve the consumer. It doesn't serve us. It doesn't serve the other creditors who rely on our credit reports. So our overarching goal is the accuracy of the data.

As the earlier panel today discussed and I was talking to Corey earlier. I said I'm a data hog. The more information we can get about something the better the chance we have to get it right. So the more consumer identifying information that's associated with an account the better chance we have of getting it associated with the right consumer. The more data about the history of the account, who the original creditor is, the better chance we have of getting it right and making sure the consumer understands it.

I think the number one -- we looked at a little bit of data in anticipation of this panel today and the number one dispute consumers have with us about collection accounts is that they don't recognize the debt.

And I think it goes to the point that Loraine and others made this morning where if you just identified the creditor and the consumer is saying I don't do business with that creditor it's because he's thinking about it in terms of the retailer whose name is on that card. So the more we can do to communicate clearly to the consumer what this debt is and who it was owed to and when it was incurred again I think the fewer problems we have.

We don't pretend that the system is perfect. We don't pretend that we don't make mistakes. And when we do we have a dispute process that Congress set down for us.

Congress recognized that a credit reporting company is not in a position to be able to determine whether the consumer is liable for that collection account because his cell phone didn't work or the service was no good. We can't make that determination. That's between the consumer and his creditor, you know, the cell service company and what that contract said and what the service levels were. So Congress in the FCRA directed us to contact the furnisher of the information to verify the accuracy of the data.

Now that said I will take issue with

something Ian said about parroting. We don't just parrot the dispute or parrot what the creditor tells us in response to a dispute. We do exercise discretion. Many times we're able to take an action based on information the consumer provides us at the front end. We don't even have to ask the creditor.

Or on the back end if the consumer says he doesn't recognize an account, it's not his, and the information comes back from the creditor and the items of identification don't match up we're not going to leave that account on his credit file. We're going to take it off. So we really do try to get it right.

We're not perfect. We don't get it right every time. We're happy to be here at the table to talk about the process and ways to improve the process. And I think with that I'm going to rely on what my peers have said for the other remarks and let Corey get on with the panel.

MR. STONE: Great. Thank you,

Denise, and thank you all of you for these remarks to kick this off.

I think Manny probably raised a kind of basic table stakes issue here which is when is an FDCPA dispute a dispute. What constitutes a dispute? And I'll go to Chad and Ian just for starters.

MR. BENSON: Okay. So, I think when you think about FDCPA and what constitutes a dispute if a consumer contacts a third party agency, contacts a debt buyer and says hey, I'm disputing this account the process for stopping collections at that time is of most importance. And the process to now go through the steps to get investigation and closure on that process in the case of FDCPA and the third party collection agency. We would return that account back to the creditor.

MR. STONE: But if it's a simple denial, not mine, don't recognize it, is that a dispute? Is that sufficient? Or what makes you in your mind initiate that process to cease collection?

MR. BENSON: Well, I think obviously walking through the -- first of all, you have to have the conversation. So I think it goes back to the idea that you have to be communicating with the consumer. And assuming you're communicating with the consumer you're walking through the validation of the issuer, the balance.

In some cases we're getting more -- the one thing I will say is we're getting more and more information to be able to have a conversation with the consumer on. And we find that in many cases that, you know, I will say about 30 percent of the time you get to the point where based on our data the consumer says yes, I got this, now I understand.

It could be as pointed out earlier the fact that you had -- it might have been a private label card, it might have been factors that were influencing, you know, seeing things differently than maybe originally when the credit was issued. So I think that conversation, the amount of information and the flow that you go through getting to that point if you can then eventually you've got to send it back to the creditor.

MR. STONE: Yes, I don't mean to put you on the spot but you're sort of describing the conversation that results in a resolution. I'm just talking about is there an obvious moment early in the conversation where the light goes on and you say this is a dispute that I need to resolve and either cease collections or -- and institute an investigation. Obviously if the consumer realizes you're right that's a different outcome. But I'm talking about sort of earlier in the process. Is there a clear definition of --

MR. BENSON: No. I mean I think the challenge when it comes to the information provided is being able to walk through the conversation with that consumer and being able to acknowledge hey, this is, you know.

And they could dispute and say hey, listen, this was fraud. It could be an early placement and this is fraud and that process may be a little bit different than if somebody said hey listen, there's something else related to my account, that balance is incorrect. And so each one of those cases throughout the whole process may be a little bit different. So I don't think you can point to one thing. There's multiple aspects to that conversation that could elevate.

MR. STONE: Thanks. Ian, is it clear when a dispute happens in your experience? Collectors have a common standard?

MR. LYNGKLIP: I think it's a false issue. I mean you're talking about mandating or defining a term for the purpose of limiting people who are contesting the validity of the monetary system. I mean, I didn't come ready for that conversation.

The majority of the disputes that we're talking about and I think Ms. Norgle identified. She did a survey. She's got people are sending in legitimate disputes. The quality of the consumer dispute is not the issue that we're here to discuss. We're talking about a meaningful process to the consumer where the consumer is -- whether the people who are handling these disputes are handling in a way that they would want their own disputes handled.

I mean if your house was on the line, if you were not going to get a mortgage, or you were going to be denied a job would you want somebody sitting in front of a screen matching account numbers. And the answer is no.

And if that person had already -- if you had already disputed the debt and with as much information as you had available, namely I got a credit report that says GEMB. Well, GEMB issues cards for dozens, hundreds of people. WFNNB, hundreds of people. It tells the consumer nothing and what's the consumer supposed to do? I mean we're talking about a dispute process.

We have to make a process that works

for the majority of the consumers. We're not going to pick up everybody. And the processes that consumer reporting agencies and debt buyers and debt collectors go through to manage those disputes, they're not going to be perfect every time. But nobody says that the credit bureaus have to be perfect every time. They have a negligence standard which means you've got to have a level of culpability there for what they've done.

And debt collectors have for their purposes, they have that same negligence standard although they have a little different burden of proof. It's the bona fide error.

Everybody lets -- the law allows for those kinds of honest mistakes about fringes, about the fringe of what's a dispute. What I want to know is what are you doing at the outset. Because debt collection doesn't start with a dispute. I see clients walk in my office all the time particularly with small debts where they have been the subject of debt collection efforts using the consumer reporting agencies, the credit reporting process potentially for years before a dispute is ever launched. Because they don't know that they've been the subject of credit reporting.

They don't know that they've been paying more for their car insurance and their credit cards and their mortgages and everything else that they buy. They don't know that they have been the subject of that process.

The question is the data that's going into the system at the outset when the collection starts. So what has the debt collector got in their hands in order to be able to pump out that data to a consumer reporting agency and say he owes it.

And if you're not holding in your hands at the time that you're making that report something that makes it verifiable and accurate that data should never come into the system and we shouldn't have to put a consumer in the position where they affirmatively have to disprove something that isn't supported by evidence anyway.

MR. STONE: So I think that certainly the consumer reporting fallout from bad data which you've talked about is extremely important here. But early in the collection process before there might have been anything reported I think there's basically Manny's question of what's a dispute.

MR. LYNGKLIP: I think he answered the question and I agree with him. If somebody says I dispute the debt then you mark it as disputed.

The problem with that from Manny's end is he thinks --

MR. STONE: So and my question was simply is that -- in the market today is that happening. If a consumer says I dispute it is it being recognized as such?

MR. MUNROE: I'm sorry. I think it's pretty clear that through the process as the collector is identifying the question of whether or not it is a dispute obviously if they're unable to verify or confirm with that consumer that it is in fact their debt with the information they have available to them at that point you then as a part of the verification process go back and whether you have internal resources to obtain documents or you go back to the creditor it's at that point that you go through that research.

And depending on the type of debt, obviously with credit cards it would be a credit card statement that shows the charges that the consumer made. With auto it might be, you know, obviously the documents that originated the debt.

And once it's in that dispute status if you are unable to through that process obtain those documents or verify or confirm with the consumer that that is in fact their debt then you don't pursue the consumer. It's flagged as a dispute and you close it out.

MR. STONE: Let me push on that for

a second because I think this is probably maybe where you want to go, Ian, too. But you're pretty clear when a dispute has happened.

If you are a debt buyer and just kind of following on the debt buyer study that we heard about earlier this morning if you've received a portfolio with an as-is, no reps and warranties on the accuracy of the data, and that's the data that you rely on to investigate a dispute, have you satisfied the requirement to investigate it and verify the debt?

MR. MUNROE: Well, you can only work with the information that you have available to you. So most of the contracts that I've seen don't typically do an as-is sale. So you should always have direct access back to the originator for that information. The originator is not -- it's not in their best interest to sell their consumers and not to have them served appropriately. It's not in my best interest to continue doing business with that originating creditor if I'm not able to serve the consumer's needs.

So as an industry broad strokes I'm really not familiar with kind of these as-is sales that just say this is it, you're done. That's not something that I'm familiar with.

MR. NEWBURGER: And I may be able to address a bit of that, Corey. Because certain things have been in a state of flux over the last few years.

Generally you will find a certain lack of certain types of warranties. That's going to be true because the data changes by the millisecond. From the moment you sign a contract till the moment you deliver the accounts the portfolio has changed dramatically. So no one wants to warrant that but there are representations.

The banks are typically not selling disputed accounts. My industry clients aren't reselling disputed accounts. DBA has come out strongly against reselling disputed accounts.

The thing I think you have to

recognize though is there's almost a false assumption in this dialogue which is that it's the debt buyer's trade line that's the only thing out there. The truth is when these accounts are sold the issuer's trade line remains. It most typically says “account sold” but the original trade line is still there.

And what I typically see is a dispute saying, and Ian, sometimes it truly is identity stolen, not me. God knows, Juniors, Seniors, et cetera, mistakes happen. I tend to see the discussion about the debt buyer's trade line but the fact remains there's an underlying trade line. It's still there and no one's saying that one's inaccurate except in the circumstances that you and I would both agree on, Ian, which are the ones where there really is a dispute.

But to assume that getting rid of a debt buyer's trade line or turning it into one reflected as disputed solves the problem makes an assumption that is incorrect. The underlying line is still there. It's been there all along and it didn't go away when it was sold.

MR. LYNGKLIP: Well, it does have an effect. But I want to directly answer -- you asked a very direct question which was what am I seeing and what's my experience.

And my experience is that over the last I'd say 5 years I've seen a marked improvement by the debt buying industry in coding the disputes. So if a consumer has disputed a debt when we see the credit reports we will see that that dispute code has been triggered. And the industry is doing a much better job of doing that.

By the same token we see that the banks are doing a terrible job. The banks almost uniformly use a compliance condition code which effectively at the end of resolving a Fair Credit Billing Act dispute process, in other words a consumer writes directly to a creditor and says hey, this is not mine, or I dispute this. There was a billing error. It's an identity theft, whatever it is. The bank will do its dispute process and at the end of that they trigger a code saying no longer disputed. It's not disputed anymore. And it winds up staying on the credit report. And again, the consumer has no remedy to get that off.

And while I disagree slightly with Ms. Norgle on her view of what the role of the reporting agency is in relation to determining who owes the debt, here's one thing I do know. It doesn't matter whether the bureaus have that responsibility. What really matters right now is whether or not the consumer can go to court and get it fixed. Because if the consumer could go to the court and get it fixed with a declaration or an injunction that would be a non-issue for us here today. We could have a venue for that resolution for that credit reporting dispute.

But we don't have that and the bureaus have uniformly taken the position that they don't have to listen to anybody who is reporting data up to them about debts, that they have the right to continue reporting even if you tell them to stop. And so consumers have to go to court and have to have a remedy in order to be able to stop credit reporting. And there is no such remedy.

MR. STONE: Denise, I'm going to give you a chance to respond.

MS. NORGLE: Well, thanks, Corey. I think consumers have more remedies and I think there is -- the functionality does exist to have information removed from the report. Certainly they can dispute it directly with the consumer reporting agency.

If we can't verify it with the data furnisher it comes off. If the data furnisher can't provide us sufficient identifying information that matches the consumer's identification it comes off.

There's also the direct dispute rule under the FCRA. I mean I think -- I don't know to what extent consumers are availing themselves of that because by definition it doesn't run through our systems. But anecdotally I hear consumers are availing themselves of the direct dispute rule.

And we certainly do get collectors, debt buyers and first party creditors having us change, correct, delete information. So it does happen.

Certainly there are mistakes where it doesn't happen, I agree. In terms of the remedies under law I have the privilege of managing our litigation as well so I happen to know that there are a lot of times where we are in a lawsuit with the original creditor and the debt collector and the CRA is present.

And sometimes we're actually able to step back and say we don't know what the right answer is here. We don't know whether the consumer is really liable for this debt. So you know what we're going to do? We're going to suppress the account on the credit report until you guys figure it out in this litigation.

And at the end of the day of course

we're going to report it or not report it in the way that the outcome of the litigation determines, whether it's by settlement or by court order. So I think it's a little bit of an overstatement to say that you can't get the thing taken off the credit report.

MR. STONE: Can we address the issue that Ira raised in the last panel which is just the persistence of the fact of a dispute when it hasn't been verified.

So we heard from the debt buyer study presentation that about -- I'm going to get this not quite right -- but about half of the debts that are disputed are not verified. So that means there's an outstanding dispute, collection ceases. If that isn't sold that's fine. If it is sold or if it's assigned to an agency the fact of that dispute is an important element.

What we don't know from the study is if the dispute arose at an agency but wasn't forwarded back to the owner of the debt, the debt buyer, was that part of the account of disputes. What do we know about that forwarding of information about disputes that are not verified or do we just not know enough? Anybody want to?

MR. NEWBURGER: I can tell you my debt buyers do require their agencies and law firms to inform them of disputes. Those that are connected directly into the systems. Certainly we find that with the offshore debt collectors and even domestically I've got debt buyer clients whose lawyers report directly into their system.

We expect the dispute to be communicated. It goes right into their system and it stays there. They've got it.

MR. STONE: Is there a timing issue around that? I think, Chad, you were sort of suggesting or I might have this wrong, that the reporting of a dispute has to happen by the end of the assignment period. But that could be a long chunk of time if the dispute happened right at the beginning. Does the dispute happen --

does it come -- is it reported up promptly or do you hang onto it until the end?

MR. BENSON: So I can't -- we don't -- our third party firm does not work for debt buyers so I can't speak specifically for that. But I can say where -- on a contingency basis where we may have a dispute and we've used or exhausted the information that's available to us to help the consumer validate that or not we would then close that account.

On the other side of it where we are working for a client that has -- we are reporting, we are held to obviously a different standard. We have to investigate it.

So to the degree that we have exhausted all efforts to investigate it which means we have to interact with our client to get information to validate that debt we would go through that process until it was time for us to return it. We would also be communicating with the consumer, letting them know until we get that information and can validate it we would not be collecting on it.

MR. MUNROE: And Corey, I could respond as far as from a debt buyer's perspective. In the industry it's kind of called a close and return. So if my agency is working the account depending on the statement of procedures that you set up with that agency typically either on a weekly basis or a monthly basis or a daily basis.

We're not going to wait till the end of the 6 months to capture that information because we're also looking at other types of statuses, for bankruptcies, and we want to make sure that those accounts are pulled out of the collections process appropriately.

So for the most part that information is fed back to the debt buyer and making sure that if it is a case where like we talked about earlier you cannot verify the dispute then that's coded as such and not pursued.

MR. STONE: Okay. One more

question just before we go to questions from the audience. I'll direct it at you, Denise. But just if you take Ian's description of this ecosystem which is a sort of nice term to use in describing the fact that there are multiple participants and handoffs.

If there is an environment where again going back to the existence of contracts in which there are no reps and warranties, and where it's an as-is condition, and that is the basis on which an agency or a debt buyer is reporting to you the status of the debt, does that give you pause? Would that fail an audit if you were to do such a thing of a debt buyer or a collector?

MS. NORGLE: Well, I think there's a couple of assumptions in your question, Corey, that I frankly haven't seen. I mean we haven't seen, you know, this notion that these debts are sold as is. I think historically, I've been around this business a long time kind of like Manny but historically I think that may have been the case. But there's almost always some reps and warranties as to the accuracy of the data.

And in terms of the data furnishers who furnish data to a consumer reporting agency I think to a large degree we should be able to rely on the Fair Credit Reporting Act obligations for them to report accurately. You can't knowingly report inaccurate information.

If a consumer disputes the information to the furnisher the furnisher can't continue to report it unless they indicate that it is disputed. So those two protections right there and the interplay between those protections I think give consumers that safety valve if you will that there's absolutely -- it's a violation of law to knowingly report incorrect information.

And even if the consumer disputes it and as a data furnisher you believe it's still correct fine, continue to report it, but you have to so indicate that it's disputed. So I think the notion that these debts are kind of as is and the furnishers take no responsibility for the accuracy is not something that -- that's not a practice that we see or accept on the credit reporting side of the business.

MR. STONE: If a collector is reporting and a consumer disputes the debt under the FDCPA should that be considered an FCRA dispute?

MS. NORGLE: If they dispute it directly to the collector? Luckily I'm not the collection agency so I'm not sure I'm qualified to answer that question maybe.

MR. LYNGKLIP: I've got an easy answer for that. No. What we're talking about is completely unenforceable provisions of the FCRA. They're not enforced by anybody. So since it's not enforced it's not really complied with.

We talked about a safety valve of requiring accurate information in. The consumer has no prima facie remedy against a furnisher for that and the consumer has no remedy against a furnisher for writing and direct dispute. They're completely unenforceable and that's one of the reasons we see the lack of compliance with those.

The reason that we see better compliance at least in terms of reporting dispute codes out of debt collectors is because there is an obligation that is actionable under the FDCPA. So when that dispute comes in they mark it as disputed and they -- I'm happy to say I see a lot of those dispute codes being properly thrown. I'm glad to see that there's compliance by and large on that. I don't see wholesale violations like I did 10 years ago.

MR. NEWBURGER: That's because the consumer bar aggressively enforced 1692(e)(8) and actually worked a change. I mean in all fairness to you and Ira and the consumer lawyers we know that that's part of what happened.

You've got two different processes, Corey, and they work differently. You've got this duration during which you can request validation and dispute for 1692(g) and you've got a lifetime opportunity to dispute it for the credit reporting purposes under (e)(8). And the consumer bar really I think caused that change.

MR. LYNGKLIP: And that is the value of private attorney general and private enforcement which is the way that that statute was set up. And I can say with regard to something like the G notice with those kinds of disputes I don't see debt collectors refusing to comply with that and respond. That's not what walks into my door is a debt collector refusing to do that, where you've got a violation for which that violation can be established on paper and there's a trail of that. And there's private enforcement on the other end we see more compliance.

Where there is not a paper trail we see lack of compliance. And where there's no enforceability we see far less compliance which is precisely the things we're talking about which is obligations under the Fair Credit Reporting Act (s)(2)(B)(1). Completely unenforceable so why take something off a consumer's report if you're a creditor and you're not subject to the FDCPA? There's no right of action there.

MS. NORGLE: I think characterizing some of those requirements as unenforceable does a disservice to the state and federal agencies that do enforce the act.

MR. LYNGKLIP: Well, I mean unenforceable by the consumer. And I said it within the context of your comment which was simply that there's a safety valve for the consumer. I don't think that is for the consumer. It is for the agencies to do their work.

MS. NORGLE: Well, I think there are plenty of consumers who can take their complaint to their state AG's consumer protection division or the Federal Trade Commission or now the CFPB. I think the consumer response complaint portal is opening up. So there is that remedy through these agencies. It just may not be a litigation remedy in private litigation.

MR. LYNGKLIP: It just simply has to be enforceable. It's not reliable. And to ask -- and I don't really have access to the volume of data that you do about how many consumers are disputing.

But I don't think that you're going to see any state or any of the agencies we're dealing with litigate on behalf of the volumes of consumers who are making those disputes. I certainly know my state AG which literally has one, one attorney in the entire consumer protection division, they're not litigating any ever. The last time I think they litigated any consumer or Fair Credit Reporting Act case was when they joined the AG settlement back in 1997 -- `92, I'm sorry.

MS. NORGLE: That's okay. I was there.

(Laughter)

MR. LYNGKLIP: But you know, that's not an active remedy for them. It's not a meaningful remedy within what I would advise my consumers as my clients. I would never advise my consumer by the way, you really need as the next step to take your dispute letter to the AG because that's where you're going to find your remedy. I don't think that that's good advice for them.

MR. STONE: So let's start with some questions from the audience. This one for Ian. What form of review do you propose from or by creditors or debt buyers to ensure the accuracy or truthfulness in accounts rather than just data consistency or conformity? What's the sufficient evidence of a debt? It's an important question of substantiation.

MR. LYNGKLIP: I think that that is -- it depends on the context. And by the way, we're talking about that data conformity process in two separate contexts. So I want to be clear about what that means.

So in the Fair Credit context that data conformity process is where the consumer writes a dispute to the credit bureau and the credit bureau sends a notice to the furnisher and says the consumer has disputed. That process offers data conformity on two ends. The bureau is looking to have their data match what the furnishers are and the furnishers are looking -- at that point really they should be checking the underlying substance of that account.

I would also suggest that the case law says that the bureaus have to engage in a meaningful substantive investigation and I know we differ on that. But that data conformity is the thing that I think is not sufficient between the bureau and the creditor, the furnisher.

If the consumer is supplying an affidavit which wouldn't necessarily just be an affidavit of fraud which triggers special rights, but if they've got an affidavit of their own, if they've got account statements that validate that or if they can show -- maybe it's a roofer who's financed something through a bank card. And the job is terrible. You know, there's a dispute there that's legitimate. They've got an -- I think that the bureaus have an obligation to do more than simply look at, okay, do the numbers match, verified. That's the data conformity we do not want. That's not a process that's meaningful for the consumer to get their credit report corrected.

MR. STONE: Thank you. Let me go onto another question. And this one is really for Manny. What are the best practices for recognizing when a dispute falls under the FDCPA or when a dispute falls under the FCRA or both?

MR. NEWBURGER: To me FDCPA is fairly easy. I dispute. I'm comfortable with that. I expect any collector who hears a consumer say "I dispute" to note the account in dispute.

Now, it may be that in the course of the call the collector can say "Have I resolved your dispute?" I encourage them to ask that question. If a consumer says "I'm satisfied" well then it may not still be in dispute. But it's a dialogue that ought to be had.

And unfortunately you can't introduce undue suspicion here. If someone says “I dispute” there may be good reason. Everything from, as Ian says, private label cards to what I frequently see which is “I've never heard of your company.” But if you can satisfy someone.

I've heard brilliant things done by collectors who were trying to create very customer-centric conversations. One of my favorites I heard last year doing some training, we were actually working with a call and the consumer got very concerned and suspicious.

And the collector didn't want to give out Social Security numbers and account numbers over the phone. He said: ”This might make you feel better. I see that you made your last payment on this date in this amount.” And the consumer said ”Yes, that's exactly right.

Wow, you really are who you say you are.” And so if there's a dialogue there's the ability to resolve disputes and perhaps satisfy people. But the word "dispute" is sufficient to do it.

Now, when we get into FCRA and the data furnisher rule, I know CFPB has been actively looking at that. And in all fairness your people have been asking very sophisticated questions. There are procedures in place to deal with it when it's more formalized. We get something in writing. There is an initiation of an e-OSCAR dispute or a direct written dispute to a creditor.

The difference is at least FDCPA is clearly intended to capture nothing more than a conventional “I dispute.” And if someone says it orally that's enough for FDCPA as far as I'm concerned. And I think that the companies I work with have all recognized that and really, I've seen a tremendous buy-in to that for any number of reasons.

But I think particularly as more and

more have said “we value our business reputations, we value our customer relationships, and those are important things to invest in,” you find a lot more recognition of that in companies that are doing that. I think you heard a little bit of that from Larry earlier. That's I think what a lot of the institutions are trying to achieve.

MR. STONE: Thank you. Here's a question that might -- and pretty much anybody could answer. And it really comes down to the obligation of a collection agency in the event of a dispute.

Should the collection agency, the employees of the collection agency have the duty to figure out whether charges creditors have added to the principal are legal? This is going back to the contract, going back to the original relationship. Did the creditor get it right?

MR. LYNGKLIP: If they're there trying to collect the debt and they've got their hand out looking for money they should be in a position to explain it to the consumer.

MR. STONE: Chad or Rich or?

MR. MUNROE: Well, so I understand the question. So the principal balance and explain any additional charges on top of the principal balance?

MR. STONE: That came from the creditor and them presumably also charges that have been added since the date of purchase or the date of assignment.

MR. MUNROE: Yes, right. Well, I would say in both cases and obviously speaking more from the debt buyer's perspective at the point we acquire the account the vast majority of the time the account has already been charged off and we have a fixed principal balance that really it's up to the originator to kind of validate that number, right.

So from that point forward if there's any other additional interest that gets charged based on the terms and conditions of the original contract that also can be itemized from the debt buyer's perspective.

MR. STONE: Chad?

MR. BENSON: Yes, so from a contingency standpoint the ability to reconcile the charge-off balance and be able to have the conversation with the consumer related to the charge-off balance, absolutely. If the consumer decides they want to dispute the differences between what those buckets look like then that would be I think as Manny pointed an opportunity for us to get more information or return that back to the creditor.

MR. STONE: Just going back to sort of the moment of assignment or the moment of charge-off where typically a creditor would have accumulated interest and fees that moment then becomes, correct me if I'm wrong, the principal balance that's then sold to a debt buyer or then goes into collection. What happens now in response to a consumer who says I don't recognize this number? We've talked about data standards and I think one of the early and most obvious elements of standards goes back to differentiating principal from interest and fees.

And we've got two clocks starting here. We've got the one that started at the moment of charge-off and the one that started before that. We may have another clock that started at the moment of purchase. How do we keep track of all these different clocks, potentially all these different methods of calculating interest? What's the best solution here for the consumer?

MR. LYNGKLIP: I can tell you what the consumer's experience is on that end. And it goes back to just your immediately preceding question. The consumer's experience of that process of not recognizing a balance, not knowing where that number comes from is irrespective of whether they're having that discussion with a collection agency, an ARM, or whether they are having it with a debt buyer. That conversation proceeds along the lines of I don't recognize this charge and the answer is well, you'll need to take that up with the creditor.

And when they call the creditor they get the answer that well, we've sold your debt and we can't talk to you about this anymore. So really the customer experience at that point is you're not a customer anymore and we don't have to service you and nobody does.

And nobody's got to give you an explanation now because the debt buyers don't have the data to actually do that. Whether the ARMs have that data or are accessible some of them may or may not, and some of them may provide that service. I don't know how that actually happens because I know that some of them have access, direct access, and are linked in very tightly and maybe can.

But the answers are very clearly that the collection agencies are not there to provide the level of consumer service that the creditor is and so they don't get it. They don't get that level of service.

MR. MUNROE: I think it goes back to the verification process we talked about earlier. So as a debt buyer if I get word back from a collection agency that it is in fact a dispute and whether the consumer has contacted the creditor themselves or not as a debt buyer I need to go back myself to the creditor and find out if we can verify that information.

And like I said earlier, if you can't then there's no reason you should continue to try to collect that account.

MR. BENSON: I guess I would agree. I mean the process for disputing is fundamentally about do you agree with the balance or not. And if you don't then as a third party collection agency you're going to allow them to dispute and go back to the creditor and hopefully that issue gets resolved through that process. I can't necessarily speak to that but I would assume that that would get handled in the appropriate way.

MR. STONE: Let me, since we're right at the end of our time here just ask just following Larry's comment at the end of the last panel about the notion of data standards.

Does that help in this dispute process? And if you can say anything about what those standards might look like. Any comments on that would be helpful.

MR. BENSON: So obviously relevant, not necessarily more data, but relevant data. I think we've talked a lot about it in this panel and in the first panel.

But the more information that we can have relative to charge-off dates, balances, last payments, that context of conversation with consumers to some of the discussion going on, helping the dialogue to bring forward in some cases what may be 12, 15, 24 months of time lapse between when an account charged off or last payment was made and the discussion that's happening with the consumer today would be extremely relevant.

I think the idea that information can be passed if it's from agency to agency that hey, this account was disputed, it was validated, it was agreed upon and here we are from agency 1 to agency 2, that would be helpful.

Because I think what ends up happening is at some point you have somebody who's doing this potentially through the process most of the time that's going to get caught. I truly believe when it comes to disputes this industry has come a long way over the last 3 to 5 years. And a dispute's a dispute. And at the end of the day we've got to verify it and if we can't that should be it.

MR. STONE: Thanks. Ian?

MR. LYNGKLIP: Fundamentally the dispute process has to be a process that results in accurate verifiable data. These are standards that are already out there, that are already prevalent in the industry and prevalent within the law.

And we have to make sure that the

data that's coming in to both the debt buyers and to the agencies and to the credit bureaus all meets that currently applicable standard which is the data has got to be objectively true, it's got to be complete and it cannot be misleading.

And if the process that we put the consumer into does not result in that then the person who's trying to collect it should not be allowed to collect it and the person who is reporting it should not be allowed to report it. And the credit bureau that has got the data should not be able to put that data on the report. That should be the objective of the dispute process and that data that we have.

MR. MUNROE: I talked earlier about the 19 certification standards that DBA has put in place. And number one is laws and regulations. As a debt buyer you have to follow the Fair Debt Collection Practices Act, the FCRA and all these other state and regulatory bodies.

But number two is account documentation. And you know, like I've said we view this process as an evolving process. So the industry feels that we've got a starting point on it. What we would want to call a standard data flow, standard information that can be consistent across the board. And again, look at it as a starting point so that we continue to when we can add additional information to it.

MR. STONE: Manny, I just want to say that I've been reading your reliability, accuracy, retention and availability bullets. And if I add those all up they stand for RARA.

(Laughter)

MR. STONE: So if this would be the RARA standard. I don't know if you want to say anything more than that.

MR. NEWBURGER: Well, now I feel like I've got to jump up and down and cheer. Look, I remember when data was expensive, Corey. Cake box hard drives and it cost a lot of money to store. It doesn't.

Data storage is relatively cheap. Yes, there's a cost to implement it. There's a cost to keep it. But the reality is mandating that should not be a problem.

You've got at least three companies here in this room I know that do that. I saw some folks from Global Debt Registry. You've got Convoke. You've got YGC. You've got companies that do that. The capability is there. If it costs some money to have to acquire that, well you know what, some industry members may have to eat it.

But to your question I think you were asking, the idea of saying there's certain fields, certain quanta of data that we believe should always go with the sale of an account I'm not sure I think that's at all a bad idea. I think it would help everybody.

If there's a mandate, a national standard, you sell an account, these are the things you will transmit I think that helps everybody. That's a quality improvement standard and it would be a very good thing.

MR. STONE: Great, thanks.

MS. NORGLE: Well, Corey, I said at the beginning I'm a data hog and I'm still a data hog. I think that more standardized data reporting on the front end will reduce the errors and reduce the questions consumers get. We won't be putting accounts on the wrong file or matching information incorrectly. So standard identifying elements for the consumers that stay with that reporting from the original creditor through the collection agencies to us will definitely help the accuracy.

I think that the point that we teased out a little earlier in terms of the principal versus the interest versus the late fees, you know, I think about where credit card statements have come since Dodd-Frank. And I think about those types of disclosures. And if that sort of thing became a standard and consumers were able to see the amounts that would probably be helpful as well.

Because we get it on first party debt and we get it on collection debt where they say this balance isn't right. Because the consumer is not thinking about the late fee or the overdraft fee or the interest charges. So I do think that that greater level of detail following the life of the debt so that the collection agency or the debt buyer, the first party can explain it to the consumer is very important and would help the process.

MR. STONE: Great. Thank you all. We go to our next presentation in 2 minutes and rah rah.

(Applause)

MR. DWYER: We will have a break after this presentation but right now I'd like to move as quickly as possible.

So I'd like to call to the stage Bevin Murphy and Colin Hector from the FTC to give an overview of the FTC's report "Repairing a Broken System" and changes in the law since the report was issued.

MS. MURPHY: Hi folks. Sorry to stand between everyone and their break but we have another 20 minutes and then you have a well-earned chance to break.

I'm Bevin Murphy with the FTC and I'm going to be giving an overview of the FTC's debt collection litigation and arbitration report from 2010. This was called "Repairing a Broken System."

Like my colleagues I do have to give a brief notation that any views expressed up here are my own and do not necessarily reflect those of the Commission or of any Commissioners.

Our 2010 report "Repairing a Broken System" looked at litigation and arbitration in the debt collection context. To give you a bit of background on this we held roundtables in 2009, 5 days of them.

These roundtables actually followed the Commission's 2009 report on debt collection. In that report we identified some concerns with debt collection litigation and arbitration but concluded that more information was needed, hence the 5 days of roundtables.

These were nationwide, two in Chicago, two in San Francisco, one here in D.C. We had nearly 100 expert panelists, solicited public comments. I believe we received close to 90 of those. And issued the report in 2010.

This report had recommendations to improve efficiency and fairness to consumers. And I'm going to briefly with the time we have allotted highlight some of the more salient ones for the flow of data in debt collection.

So, on the litigation side we issued findings and recommendations in four main areas: consumer participation, evidence of indebtedness, time-barred debt, and garnishment of bank accounts.

In terms of time-barred debt I know that we have an excellent panel coming up later this afternoon on that very topic so I will say that in terms of the FTC's findings in this area we noted that the rules surrounding statutes of limitations and especially for the revival of time-barred debt are often unrecognized and misunderstood by consumers.

Consumers may believe that collectors can sue on time-barred debt and they may pay debt collectors not knowing that perhaps even a small payment can revive the debt and start the statute of limitations anew.

In this area the FTC in the report recommended greater clarity surrounding state statutes of limitations. When collecting on time-barred debts the report recommended that collectors disclose in fact that a debt is time-barred, they cannot sue on it, and that even a partial payment could revive the statute of limitations.

Another subject I want to talk about is consumer participation. We had findings in this area as well. And pretty much across the board we found that consumers do not show up. They don't appear, they don't defend.

There was very little empirical data on why consumers don't show up. Unfortunately they are -- by the very fact that they're not there we can't ask them and that certainly limits data collection there.

There were a number of possibilities posited by our panelists and our commentators. Possibly lack of familiarity with litigation. Costs of participating may have been prohibitive. Consumers may have felt that appearing or defending would be futile. And another possibility was that there were problems with service of process and notice. And on this regard the Commission recommended in this report improving notice and service of process.

And in this area in particular it's pretty clear how this would implicate the flow of data. So in terms of service of process you need the consumer's correct name, so you need the correct consumer, and a current address. And this can be problematic depending on the type of debt.

Another area in which we had findings and recommendations was evidence of indebtedness. And this is what I started referring to in terms of consumer participation but this is sometimes called the wrong consumer, wrong amount problem.

So throughout the roundtables and in the comments we heard concerns that complaints are being filed against the wrong person and/or for the wrong amount. We also heard concerns with the content of complaints filed in court, that there was inadequate information about the alleged debts and that there was inadequate information about the underlying credit contracts.

In this area we did issue recommendations in our report for what the complaints filed in court should include. And that information was the following: the original creditor, so the name of the original creditor, and the original account number redacted; the default and charge-off dates, and the amount that was due at that time; the current owner of the debt; the total amount currently due; and for that amount a breakdown of principal, interest, and fees.

And now if the complaints do not set forth that information above in the report we recommended that courts should ensure they obtain that information in some way. And now, mindful of other concerns we heard expressed at the roundtables that this could perhaps increase the costs of litigation we did recommend that jurisdictions consider applying any existing court rules to ensure that courts do have that information or consider specifying documents or explanations in lieu of documents that must accompany these complaints.

And this would contribute to solving a twofold problem. The consumers recognize the debt and are able to respond to it and that courts have enough information to rule on it.

And now I know that we are discussing litigation here today but I did just want to put a brief notation on the other half of our report that dealt with arbitration.

And by arbitration we looked at

arbitration that was pursuant to mandatory, pre-dispute arbitration clauses in credit contracts. And of course as many of you know this sort of large-scale mandatory pre-dispute arbitration is certainly not occurring to the extent that we saw in those previous years. But it could again.

And the Commission did in this report identify two pieces of fundamental criteria that would need to be present for a fair arbitration system. And that was meaningful choice, the consumers are able to in fact choose whether and how to arbitrate, and a fair process.

In terms of this fair process this would also implicate a number of the data flow and data collection issues we're discussing today. So similar to in the litigation context improving notice, making sure that consumers know if a claim for arbitration has been filed.

And again, similar to litigation we would need to know the name of the consumer, that it's the correct consumer, and current address.

Another recommendation we had as part of fair process were reasoned awards. And that too would implicate the flow of data because in order for a forum to issue a reasoned award with a written opinion they would need to know what I specified before in terms of complaints. So need to know the current amount due as well as a breakdown of principal, interest and fees.

With that I'm going to turn it over to my colleague Colin Hector who's going to give us an update on some of the recent developments in laws since this report was issued.

MR. HECTOR: Hi, my name is Colin Hector and like Bevin any views expressed are my own and should not be attributed to the FTC or any of its individual Commissioners. I'm an attorney in the Division of Financial Practices where I frequently work on matters related to debt collection.

I'm going to give a very brief presentation on some recent debt collection reforms on the state level following on from

Bevin's presentation on "Repairing a Broken System."

Before I begin I want to make two quick notes. First, as I said this presentation is going to be very brief, between 5 and 8 minutes. As such it will be neither comprehensive nor exhaustive. And a lot of these debt collection reforms involve considerable nuance. And that's just not something that's going to be able to come across in such a short presentation.

The second note I wanted to make is although I'm following on from Bevin's presentation I don't want to suggest that any of the state actors involved in these reforms were necessarily influenced by the "Repairing a Broken System" report although as you'll see some of the reforms are certainly consistent with the recommendations in that report.

So to begin I'm going to go through three areas of state reforms. The first and main one regards the evidence of a debt that collectors need to set forth either during the debt collection litigation process or before the collection process begins or the before the litigation process begins. And then I'm going to touch on some proposals that deal with time-barred debts and the levy of bank accounts.

I'll begin with Delaware. Delaware recently initiated a directive 2012-2 which superseded a similar directive that was passed in 2011. It set standards for debt collection evidence at both the pleading stage and the default judgment stage.

With regards to the pleading stage it requires the debt collectors set forth a sufficient description of the original creditor, the last four digits of the account being collected on, as well as a breakdown of the principal owed as well as any interest, fees, or other charges.

With respect to default judgments the directive requires debt collectors to set forth some evidence establishing the chain of assignment and the underlying legal obligation. Although the directive does not specify what exact forms of evidence are required it does say that copies of documents evidencing the legal obligation need to be attached.

Maryland also recently changed its court rules to address some issues related to the evidence in debt collection litigation. These rules are fairly detailed but at a broad level one of the things that these rules does is for judgment by affidavit it requires certain documentation establishing proof of the existence of an account and proof that the plaintiff owns the account in question.

And the Maryland rules actually do specify certain forms of evidence or documentation that needs to be set forth. And like the Delaware directive it also requires an itemization of post-charge off fees and charges.

Texas very recently changed its court rules with respect to its justice courts. Like the Delaware directive it requires debt collectors to set forth certain information at the pleading stage including the account number, the amount owed and whether the plaintiff seeks interest. And it also require the date of issue, origination, and the dates of charge-off if that information is known.

In addition, it requires debt collectors to set forth some additional information if the account has been transferred or assigned.

But in contrast to the Delaware and Maryland changes the Texas rules -- I think the import of the Texas rules is that an affidavit that is signed by one of the plaintiff debt collector or debt buyer employees which attests to the validity of the debt is one form of evidence that can be set forth to support a motion for a default judgment.

And in fact the rules go on to say that a judge cannot reject such an affidavit only because it is not made by the original creditor or because the documents attested to were created by a third party.

Something a little bit different. Massachusetts recently changed some of its rules regarding the evidence that needs to be provided to a consumer in response to a timely request for validation. These rules actually affect creditors under the Massachusetts rules and "creditor" includes a passive debt buyer but may not include a third party debt collector.

And under the Massachusetts rules creditors need to provide certain information or documentation that may be in their possession when a consumer makes a timely written validation request. It also imposes a related automatic stay while that information or documentation is being produced.

I also wanted to mention one proposed law in California which was Senate Bill 890. It's been renumbered Senate Bill 233 as it's been reintroduced this session.

It addresses a few things. Before collection takes place a debt collector would need to have specified information about the account and access to a contract or other document evidencing the underlying agreement.

Like the Massachusetts rule it would require debt buyers to produce certain information in response to a validation request. And like some of the other reforms I've talked about it would require debt buyers to submit a contract or other documentation to evidence the debt during the debt collection litigation process.

Very quickly I wanted to mention that certain jurisdictions have been passing reforms to address issues with the collection of time-barred debts. In New Mexico the attorney general promulgated a rule that requires debt collectors to determine whether accounts are time-barred and requires a disclosure to be given to consumers where the account is determined to be beyond the statute of limitations.

California's proposed rule would

impose a similar disclosure on debt buyers. And the Massachusetts rule that I mentioned actually imposes a similar disclosure on creditors.

And finally, the proposed California rule that I mentioned has one provision that affects the procedures related to the levy of a bank account. It would require a notice of state exemptions to be provided to a consumer prior to that levy taking place.

As I said, this presentation was going to be very brief and it has been. But I hope that it highlights some changes in debt collection reform that provide discussion points during the rest of the panels. Thank you.

(Applause)

MR. DWYER: Excellent. Thank you, Bevin and Colin. Okay, now it is break time again. Please come back ready to reconvene at 3 o'clock.

(Whereupon, the foregoing matter went off the record at 2:41 p.m. and went back on the record at 3:00 p.m.)

MR. DWYER: All right, everyone. If you could please take your seats. All right, well I'm going to turn over the microphone to Chris Koegel, the Assistant Director in the Division of Financial Practices to talk about our third panel.

MR. KOEGEL: Good afternoon, everyone. Again, thank you all for coming. This panel's going to be dealing with the questions of how the passage and quality of information and data in the debt collection ecosystem affects the litigation process.

And so what I'd like to do first is just to remind all our panelists that we've got a lot of great fans out there watching this panel on the webcast and so please try to talk into the microphone so that they can all hear us just as well.

And first if we could just start with brief, 2-minute introductions of yourselves and talk just about what perspective you bring to this issue and how your experience is relevant to the topic we're going to talk about.

So, Brandon, can you start?

MR. BLACK: Sure. So my name's Brandon Black. I think my title today is father to Aidan, Trevor, and Lia. Yesterday I was the CEO and director of Encore Capital Group. So I was the chief executive for 8 years and had been with the company for 15 total.

Encore is one of the largest debt buyers and so I think I can bring a national perspective to the discussion. I think that there are many topics that have come up today that I think I can shed light on.

An example from earlier today was the notion of buying a portfolio for pennies on the dollar and then doing things like litigation where you collect more. Just to set the record straight we do spend pennies on the dollar, maybe we spend 5 cents on the dollar and we collect about 11 back.

So there's this notion that we spend

5 and somehow get 60. I wish that was the case as a public company CEO. Our returns would be a lot better and the banks probably wouldn't sell it to us.

But the mere fact is 8 out of 10 people do not pay after their account charges off. And litigation unfortunately is a necessity at times because there are only three means of collections. You can send a letter, you can make a phone call, and you can pursue litigation. That's all we can do. And in some ways collections is a simple business.

And we live in a day and age where I turn my phone off but everyone in the room here today has got a phone. You probably got a call today and you can see who called you and you can decline that pretty easily or you can accept it. So if you're a consumer who's certainly going through a difficult process of collections you're going to probably decline that call. You don't want to have the conversation.

And then the second thing we can do

is send you a letter. And you can choose to call us back or not.

But if you choose not to call us back we're left with one and only one choice, and that choice unfortunately is to pursue litigation if we think the consumer has the ability to pay. And if we do it is the last choice for us because it's the most expensive thing we do. It's not something we take lightly. It costs us about 40 cents on a dollar to collect a dollar through litigation. It costs us about 10 cents on the dollar if we pursue it through making a phone call or sending a letter.

So I think I can talk about the economics of the business. I can talk about it from a national perspective and hopefully bring some data and some information to a discussion which is very emotional. It's charged with a lot of anecdotes. I'm sure it's very scary for people to go through the litigation process. And hopefully I can bring some of those information to light and help inform the discussion.

MR. KOEGEL: Thank you, Brandon. Looking forward to your contributions. Peter Holland?

MR. HOLLAND: Hi, thank you. My name's Peter Holland. I'm currently at the University of Maryland Law School where I run a consumer protection clinic where we defend a lot of debt buyer cases.

My background really is private practice, however, for most of my career. And I come to this having known really nothing about debt buyers. I never really heard of them. And as far as the litigation I had no idea what went on until I kind of stumbled upon it. And I was really shocked because what I found is that there's a shadow system out there in our courthouses. I went into courtrooms with no judges in them. People summoned to court to sit down and a plaintiff's lawyer has the court file, says how much would you like to pay. So I was kind of really interested.

I've studied it. And Maryland was actually one of the states where a number of the debt buyers didn't make any phone calls, didn't send any letters because their position was they were just this passive entity and their lawyer was doing all of the suing. So their first line of offense was not a phone call or letter, but a lawsuit.

So where I come from is looking at these cases every day, defending them every day. And frankly despite all the rules changes I continue to be shocked, amazed, and disappointed in just how shoddy the paperwork is that I see filed in court.

MR. KOEGEL: Thank you, Peter. And now we have Thomas Lawrie.

MR. LAWRIE: Hi. My name's Tom Lawrie. I'm an assistant attorney general, state of Maryland. I represent the Commissioner of Financial Regulation and the State Collection Agency Licensing Board.

In that position we've brought

several major actions against some of the large national debt buyers. They have to be licensed as collection agencies in Maryland. So we brought actions. I won't name names but I'm sure they're glaring at me right now.

But the -- we brought several actions. The first one was back in 2009. We brought another one in the 2011-2012 time frame. And we brought actions against several smaller debt buyers. And it was all for the collections-related litigation practices.

We also have brought action -- we brought at least one action against a law firm that was licensed as a collection agency that was bringing actions on behalf of the debt buyers.

So in addition to the enforcement piece we also drafted the proposed changes to the Maryland rules that went into effect on January 1, 2012. And that came about in part based on a recommendation by the Department of Legislative Services in Maryland and in part based on the FTC report.

The Office of the Attorney General and the Licensing Board, we drafted a proposed change, submitted that to the Maryland judiciary and that was hotly debated throughout a lot of 2011. And those were finally passed by the Court of Appeals and went into effect on January 1, 2012. So I have that perspective as well.

MR. KOEGEL: Thank you, Tom. Joann?

MS. NEEDLEMAN: Hi, good afternoon. My name is Joann Needleman. I am vice president of Maurice & Needleman. I also wear another title. I am also the incoming president of the National Association of Retail Collection Attorneys. So we talk about debt collection attorneys, they are our members. They are our member law firms. We have over 700 nationwide.

And I want to thank the CFPB and John Tonetti and the FTC for inviting me. I was part of the roundtables here in Washington when we talked about "Repairing the Broken System." So I appreciate that they were willing to call me back.

A little bit about NARCA. As I said NARCA is a national trade association. We have over 700 law firms nationwide that makes up our membership. And NARCA members are not only licensed attorneys but abide by a code of conduct that NARCA enacts that we want to treat consumers with dignity and respect, and that we want to observe our professional and ethical standards not only to our client but also to adhere to the public trust as attorneys do.

I have been a collection attorney for 17 years. Part of my practice in the last 6 or 7 years has been the defense of FDCPA and FCRA cases. So I have seen this world from both sides.

I respect the court system and I think that while the system needs to be improved, I would like to have a discussion, I don't know whether it's necessarily broken. But does it need to be enhanced and help the consumer? Absolutely.

And I hope we can have that dialogue here today to make the -- and we're talking about small claims courts. And we're talking about cases that are small. And I hope that we can have a productive dialogue about how to make consumers not afraid if the last avenue of any communication we're having with them is the litigation process that they are not scared and frightened to come to court, and that the court is a place to protect them. And it should protect them. It should protect all litigants. So I hope we have that discussion.

Some of the topics I know we're going to be talking today is why do -- how come consumers don't appear. We talked about that in 2009. I don't have the answer to that question. And to the gentleman from American University who spoke on the first panel maybe that's a research issue. Maybe we need to really find out why consumers don't appear. I can make a lot of guesses and I'm sure Mr. Lawrie and Mr. Holland have a lot of reasons why they're not showing up as well.

But we really need to understand why because you just saw there have been really nice collaborative efforts to change and enhance the local court rules to provide consumers with more information. And yet I'm still seeing even with all this information being put out there to consumers, being put in complaints, they're still not coming to court. So I think we really need to look at that and really need to talk about why that is.

Because as we've heard all day we want to communicate with consumers. We want to help them resolve a bad situation and not make them feel that because they're in this situation they're any less important in this process. Thank you.

MR. KOEGEL: Thank you, Joann. And Your Honor?

JUDGE RIZZO: Hi, my name is Annette Rizzo. Good afternoon. No, good afternoon. I want a little response. I never get it. I wish I would have brought my robes, it's freezing in here. At any rate, I'm from the First Judicial District of Pennsylvania, Philadelphia, and I'm so glad to be here. I am affiliated as a CAB advisor, Consumer Advisory Board member of the CFPB. A lot of alphabet there.

And I am so glad our panel was later in the day for me to learn and react to. And I'm also glad I'm at the end of this panel because I have some things to say.

Last I checked I'm probably the only member of the judiciary in the room. Is anyone with me? Any other colleague? And yet a lot of discussion is about the broken system of the courts. So I'm here. I'm here to listen. I'm in a listening session myself. And I'm here to impart. So I am going to get a little bit on my soapbox when I get to speak and tell you all what you've got to do.

(Laughter)

JUDGE RIZZO: And part of it is to

step up. And I mean it, I mean it. And so I'm going to be sharing some things with you.

I want to just tell you a little bit about myself. I actually came from -- it's interesting, I call it a Nor'easter of life. When I was in college at Penn I ran a consumer group that was quite effective. Went on, got the law degree and all that. Ended up serving in government, a law firm, doing a lot of litigation. I was with a major insurance company in-house, did government affairs and sort of saw the corporate side.

Then took the oath of office to the bench for 15 years. And then my present docket is with major civil cases. In the past I've had a docket that has involved all these debt type cases. But I also oversaw and I developed with others in the First Judicial District the Mortgage Foreclosure Diversion Program.

Here's the deal. We've learned a lot from that. I have lessons learned to impart that may have some direct applicability in this arena.

Who likes Venn diagrams? Raise your hand. Who likes them? Okay. This is a Venn diagram discussion. Because many of the people who come through my court in foreclosure, and what we do is a conciliation, a mandatory conciliation process, that's our story, we're sticking to it. Really have another side of the story. It's complex, right, and a lot of them have this kind of debt with them. A lot of times to get the deal for their home requires some resolution of this credit card debt and other debts such as this hospital debt, et cetera. So I want to share some things with that.

And I can tell you one thing with respect to your FTA rate, failure to appear rate, when we started the program 5 years ago, we're celebrating an anniversary next week, 90 percent failure to show. But now we have a 70 percent show rate, 30 percent. I'm going to tell you how, all right? Stay tuned.

MR. KOEGEL: I'm a little worried

that nobody's got an opinion on this group.

(Laughter)

MR. KOEGEL: In all seriousness, this promises to be a real lively discussion and I think we've got this issue really surrounded from a variety of different perspectives here. So I look forward to hearing some recommendations from people and seeing if we can find a little common ground.

So, why don't we start just by reminding ourselves what we just heard in the last presentation. So in the roundtables leading up to the FTC's "Repairing a Broken System" report, participants reported that as many as 90 to 95 percent of debt collection lawsuits end in default judgment for the collector or the creditor.

In response to those kinds of findings and those facts, the FTC recommended in that same report that debt collection complaints should include the following minimal pieces of information. And again this is something Bevin touched on just a few minutes ago. The name of the original creditor, the last four digits of the original account number, the date of default or charge-off, the amount due at the time of charge-off, the name of the current owner of the debt, the total amount currently owed, and a breakdown of the amount by principal, interest, and fees.

We've also heard from Colin that since that report came out, various states, Texas, Delaware, Maryland, for example, have implemented some of these recommendations and in some cases tried some things of their own.

And so I'm curious at first to see what has been the effect of those kinds of changes. And I know we've got some people from Maryland here. Maybe they could start the conversation for us a little bit, talk about what they tried and what they've found to be the effect of those changes in Maryland.

MR. LAWRIE: So the rules that went into effect in Maryland on January 1, 2012 included all of the proposed recommendations in the FTC report, plus a lot of other types of information.

Those were followed by various efforts to provide assistance to consumers in understanding the lawsuits. There was a -- the Maryland State Bar Association, the pro bono arm of that, set up some clinics at courts where they would help consumers fill out notices to defend and that type of thing. Peter Holland's clinic at the University of Maryland provides free legal representation in these types of suits. So there was a lot of effort to try to increase consumer participation in addition to implementing the rules.

And what we found is still over 90 to 95 percent of consumers still don't participate in the process. And it's complicated.

I mean we're talking about these aren't -- they don't tend to be upper middle class individuals. These are, many are underprivileged or vulnerable populations. You have the poor, the elderly, non-English speakers, minorities, immigrants. You have a lot of people that simply don't -- even if they understand the debt part of it with the new rules where the information -- they just might understand the debt, many of them still have no idea how the legal process works or what to do about a lawsuit.

So even if you get to the point where they understand the original creditor and the nature of the debt they may not understand the legal paperwork. They may not even be able to read the legal paperwork. They may not be able to -- if they can't understand it they still may not understand the legal process or how to defend the suit if they want to.

And if you get past all of that then you have the problem with, okay, so how does a consumer go about defending his suit for $1,000. I mean, if you hire a private attorney it's going to cost you more in attorney's fees than the suit's worth. So that's unviable.

Some will be able to have the wherewithal to hook up with a non-profit organization or a pro bono organization or a law school clinic. Most don't. So they can either try to muddle through the defense process themselves or they can do nothing. And so what I think you're probably having is consumers doing nothing a lot of times.

But it's a very complex -- the real answer is going to be when the research is said and done it's going to be very complex, multifaceted reason that people aren't participating.

But all that goes to the fact that since we knew 90 to 95 percent of consumers weren't participating at the time we drafted the rules, the rules were drafted with that in mind, with that assumption that they would not be participating. So the rules that went into effect were meant to protect not just the 5 to 10 percent that are participating but also the

90-95 percent that aren't. So for any states adopting rules I think they need to make sure that they're fair and just for all of the consumer defendants, not just the ones that participate in the process.

And I would finally note that I think that the states need to recognize that -- because the debt buying industry certainly understands -- that the overwhelming number of consumers are not going to participate. That's the model that the industry is founded upon. The business model wouldn't work if the consumer participation rate was 70 percent. The model is founded on an assumption that the overwhelming number of consumers will never participate in the process.

MR. KOEGEL: If I could just have one follow-up and I'll come back to you, Brandon. Tom, did the rules changes have any effect on the number of collection lawsuits that were filed in Maryland?

MR. LAWRIE: Initially they went --

well maybe Peter could answer that at this point.

MR. HOLLAND: Yes. I mean, not really. There was a steep -- before the rule went into effect there was a huge ramp-up. So you were seeing some people filing, one entity, 5,000, 6,000 cases a month at a time when they have maybe 4 or 5 or 6 lawyers in the entire state. So you know, 1,000 lawyers caseload per lawyer, 2,000 per lawyer. There was a spike, then a drop. And right now it's kind of getting nearer to where it was.

If I could just add though, what the new rules were designed for was affidavit judgments only. That would be if the person doesn't show.

But my vantage point is where I'm actually defending these cases. So theoretically I'm defending, you know, they should be the best of the best cases. They should be fully documented, you've had a lawyer screen it, you've had them talk to their client to get the best documents. And what I find is that they're just as shoddy as they ever were.

I looked at a case the other day, it was actually New York, not Maryland, but the affidavit to prove that this account was sold to this debt buyer was from a different seller to a different buyer.

I had one in Maryland recently where the bill of sale that proves this was sold under the penalty of perjury they file it, one of them with the complaint, and then we get into the case and another one under the penalty of perjury, two different dates the same account sold.

So I just see this general sloppiness and it's just really disappointing. The kind of integrity of the court system really is at stake.

And I just don't really want to get into well, why don't the people answer. That's a whole `nother conversation. But the quality of the cases being filed in litigation I think is really deeply troubling.

MR. KOEGEL: Brandon, you had

something you wanted to add.

MR. BLACK: Just a thought. I actually think the best thing that could happen to a debt buyer is that people show up in court. Because right now part of the problem is, okay, we have a judgment, great. We haven't had contact with the consumer. We don't really know their situation. And so now we're going to spend a period of time to actually get in touch with them and figure it out.

Had they shown up, (a) we probably would have had a conversation in advance and never gotten there. But if they showed up we can negotiate something right there in front of the judge. So I actually think the model would be much better off, quite frankly. The economics would be much better off if people showed up.

And so I think you'll find this industry is very much in favor of hearing Judge Rizzo's proposal because I think what we all believe is that the legitimate debt collection is better off when there's a conversation between the individual and between the creditor, whether it's a debt buyer, whether it's an issuer. And if we can find a way to make that happen.

I do believe the problem is not one of figuring out the magical combination of documents. Part of the reason in Maryland the volume drops is as a debt buyer, a national debt buyer, we have 50 states making rules all the time. And we have some judges who may take their own idea and we have to create processes for every single one of them.

And so the reason there's a drop is not because the information is not available, there's a drop because we now have to change our process, build new technology, create new systems and put them in place. And once they're in place then we just go back to what we were doing before.

But it's not a lack of information. The problem we have is a lack of engagement. We have people who are in fear of collections. And it starts with the letters and the phone calls. We're always on opposite sides of the table.

The people who are on the consumer side think the debt buyers -- I mean "debt buyer" almost sounds like "crack dealer" to some people when you use it. And it's used in that way because it sounds sensational but at the end of the day we all have the same goals. I believe we all think people who legitimately borrow money that can pay it back should. We all believe that people who can't should not be hounded by collectors. We all believe people should get the information they need to pay their debts.

Nobody who's a legitimate company is trying to create processes that circumvent a natural communication and allows for the repayment of debts that need to be repaid for the system to work.

And so I just think if we could talk -- we should talk about what the right information is. I think you'll find all the big debt buyers are -- and collection agencies will provide, and the issuers will provide us the data to substantiate the claim. But people still aren't going to show up as you found in Maryland.

In the state of New Jersey the court sends out three certified notices, the court does it. Eight out of ten people don't show up. And so this whole notion of trying to get more information, more documents in front of people is not solving the problem. And we've got to find a way to turn this into an engagement discussion and away from what's the right field and the right document and the right place.

And what we don't need is 50 states coming up with their own rules. And so if there is any way for the CFPB in partnership with the FTC to create a set of rules that we could apply in one place it would be great. Judge Rizzo will probably tell me that's crazy.

But that's part of the problem here is 50 different states, thousands of jurisdictions, different rules. You've got to comply with all of them.

MR. KOEGEL: Joann, do you have any perspective or experience from maybe some other states other than Maryland that's similar?

MS. NEEDLEMAN: Well, I can certainly talk about Pennsylvania and I'm familiar with Judge Rizzo's court because I've been in it several times. And I can talk a little bit about New Jersey.

One thing I want to point out to Mr. Holland's point. No attorney should -- my philosophy is be prepared, try our case. So no attorney should be unprepared, no attorney should come to court trying to use the system in a way that the system is not there for people to use.

But we need to be very, very clear when we're talking about litigation there's two aspects to litigation. There's the pleading stage which is a notice of claim and then there's the evidentiary stage which is proof of your case.

And while I can appreciate what Mr. Holland is saying because he's dealing with consumers directly on a day-to-day basis and he's seeing the worst of the worst situations, quality of evidence is a determination by a judge. And we can't forget that.

The way the courts are set up, whether it's a matrimonial case, whether it's employment law, doesn't matter what civil action you're talking about, you have to file a complaint to give notice of your opponent of the claim.

And then as you proceed, even in small claims court as you proceed that is the opportunity to bring forth your evidence. And if you get to that point where the evidence is bad, you know, judges, many of the smaller courts are using -- in Philadelphia they call them trial commissioners. Thank you. They have the opportunity to evaluate. I mean that's where the discussion has to be.

But I don't think it's appropriate

for adversaries -- I mean that's their job is to object to the evidence and say that they haven't proven what they needed to prove. But ultimately it's the judge and the court that makes that decision.

To Brandon's point, yes, I mean as the judge will tell you we need to create environments. Things get done when people are meeting face to face or you give consumers an opportunity to be a part of the system where they're not feeling inferior.

One of the discussions I had recently is, you know, you have single moms with four kids. They have three jobs. They've run into some credit issues. They can't take 4 hours off and come to court. Why can't they call in by phone? I mean I think there's other opportunities to allow consumers to participate. I mean I think those are issues that we have to think through. But I think there's a lot of options in this day and age to make the court system more user-friendly.

JUDGE RIZZO: Okay, I've got to step in.

MS. NEEDLEMAN: I gave you the lead.

JUDGE RIZZO: Thank you, that was great. We're a tag team. All right, I'm not going to devour this panel but if you think about what's been said up to this point it's all about the court, the court, the court.

I want you to just step back a moment. And as much as you all have in your respective constituent groups the mission, the mission of the judge in the court is really to do justice, right? We have to worry about something called DP, due process. Anybody hear about that? Right.

So what we are seeing as the court -- and I just want you to understand the stressors on the court system. Yes, we're overburdened. Yes, we have too many cases. Yes, there's a cut in budget. Yes, all of that. And that's been in experience throughout really the universe, right? Just like it's all about communication, right, and there's all these standards that we can apply.

From the court's perspective, and what I really am very admiring of just the judiciary is that we're finally taking pause to see that there is this cadre of cases with pro se -- we now call them self-represented litigants -- to the point of where there's actually training at judicial colleges to deal with this.

I dialogue all the time, even out of the arena of credit card cases and these types of cases the stressors on the court system to provide that level playing field because that's what it's about. All parties stand equally before the court.

When you have someone who does not have representation it really already creates that imbalance. Your problem I'm hearing which really distresses me to say the model is built on not showing up for court? Not having your right to be heard? Well that's a disgrace on everyone's part. So I think we have to look at the various touch points for these cases to maybe fix it before you even have to use the court system.

Or once in to really sit down in terms of really problem-solving from all aspects to assist the court, assist the court on how to develop a system that works. You may not like always the answers but it's a system where if everyone feels when they come out, hey, I've been heard. That's what it's about. So you really have to work diligently on that.

I'm going to just share a minute it is about the -- it is all about the face to face. I call it the George Bailey model. Nightline came in a few years ago and did a whole thing on our program.

And I'll tell you what it does. And it may not exactly work because of the nature, the volume, and the amount of these cases and what is at stake. But for foreclosure where your house is at stake we have easy-read notices that must be served with the complaint of foreclosure that says you've just been sued. Call a hotline. We have a hotline ready, willing, and able, lawyer trained, they triage. But not 2 minutes. They spend almost an hour with homeowners to decide what it is, what track, and refer them on to housing counselors who can work through it. Whether the demographics show you're a senior, you have senior counselors who help on special issues, language issues, et cetera.

And then when you come into the room it is all about the face to face. But we don't leave it to that because we actually have door knock. We have outreach of community members who go out and say did you just get sued in foreclosure? Oh yes, I got -- did you get the notice? Did you call the hotline? Did you call the hotline? The service is free. Here's my cell phone, call the hotline now.

Will that work in all of these kinds of cases? I don't know. But it's all about the person-to-person touch. It's all about structure.

Maybe cattle calls certain days where everyone is wired up in the room from the various constituent groups to deal with these cases right there, hands on, under the supervision of the court to make sure DP, due process, is had.

There is a way. There is a way to deal with this. And I just can't -- all these amazing, brilliant minds and models, we've got to focus on the issues to bring the parties together. You can do this. Of that I am sure.

MR. KOEGEL: Joann, did you want to add something?

MS. NEEDLEMAN: Yes, I just had -- and Judge Rizzo, you may know. There's a small, tiny, little county, Blair County --

JUDGE RIZZO: Yes.

MS. NEEDLEMAN: -- in Pennsylvania that Judge Carpenter actually spoke at the FTC workshop back in 2009. He set up his credit card court exactly modeled after Judge Rizzo.

And what happens is you file your complaint. Before you can even start judgment process the parties have to come to court. And the consumer has to show up, the attorney has to show up. If the consumer wants to see documents, wants to see evidence, the attorney has to provide it.

And I don't know -- I have no data, I apologize. I don't know what the appearance rate is. I think it's probably better than average. But again it's the face to face. But I know Judge Carpenter was touting this program in 2009 and the ability to resolve. And again, we're talking small credit card cases, less than $5,000. The ability to get the ones who at least do appear resolved. I don't think there's a case that's gone to trial. I can probably count on a couple of hands since that court has started. So I think that there is lessons and there's models that a lot of us can use.

MR. KOEGEL: I'm interested --

Joann and Brandon if you could comment on -- I'm not hearing you guys object that there are major additional costs to the debt buyer or to the collections attorney for these kinds of changes that we're talking about, the ones already instituted by Maryland or the ones that have been tried in some of these other courts that Judge Rizzo is explaining. Do I have that right?

MS. NEEDLEMAN: You're correct. I'll speak just from the consumer attorneys and what's been said in all three panels. We want to talk to the consumer. We want to get that communication. And if it means -- I'm not seeing additional cost but if you were telling me it is going to be additional cost I think that it's something -- a cost worth paying.

MR. BLACK: And I'm not familiar with the one case but I do think that's a novel approach. It's something that hasn't been tried. Certainly what's been put in place today, the get more documents doesn't cost a lot more other than time, money, and effort. And it certainly doesn't change the economics.

And I think what Judge Rizzo is talking about is something different than we've been talking about as it relates to this issue. To date it's been more documents, different documents, different wording. And it's not about creating a dialogue, creating engagement, creating it earlier so you're never actually in court.

No one wants to go to court. We don't want to go to court. I can only speak for the company I ran. Nobody has any desire to go to court with a consumer. The goal is to engage early on. It gives the consumer a lot more flexibility, a lot more choice.

Because ultimately if we have to go to court our flexibility goes down. We're incurring additional cost that we then take out of the flexibility of discounts to the consumer. If you go through the legal process you're going to pay us 90 cents on the dollar. If you talk to us voluntarily you're going to pay 65 cents on the dollar.

The difference between the two is the cost we have to incur. So the consumers lose, we lose, nobody wins. We should be talking about engagement earlier, not new documents. And I think you'll find us all get right behind that.

MR. KOEGEL: You know, Judge Rizzo and maybe Joann as well, I'd like to see if we could dive a little deeper, maybe get a little more specific about some of the things that have been tried in the mortgage foreclosure cases and in that credit card court to see if we can get specific here and find a couple of things we can all get behind. And why we think they may have worked.

JUDGE RIZZO: I just want to talk about why you think they didn't show up. Part of it is they get bombarded with a lot of notices, bankruptcy. This is all obvious, right? They get papered. That's why if we break that juggernaut by actually having the person-to-person contact kind of puts it in perspective.

A lot is at stake. And there's an explanation that if you don't step up in this case you may lose your home, right. So that's a horrendous thing.

The other is a study was done actually by University of Pennsylvania to show aligned with people in foreclosure proceedings that there was such a -- and this is an obvious finding I would think, but documented now -- there's an uptick of really a lot of medical issues. And I can assure you in discussions with distressed borrowers for housing that this tick-up meant more medical services, meant that if they were trying to scratch together money to pay to not be in default of mortgage they were credit carding all the rest of their living expenses.

Do you see this, right? You see this scenario, right? You're nodding your heads. This is what happens. They're living on their credit cards. And they're not intending necessarily to pay them timely because they don't have the money. And then they get more ill.

So we know we have unemployment. That's the overlay to why they're in this situation. But the health issue is very, very interesting. So when we break it down, childcare, elder care. Elderly. Estate issues. There's just so much that overlays and overlaps. So it's complexity at its best. And those of you who are in the pit living it, you understand that.

So you break it through with the person-to-person contact with that person. There's no one else in the room but me and you. I'm talking about you and your matter. That's what counts, right? That's what it is.

So you have to find ways among yourselves to do the outreach. And maybe flip the infusion of resources, financial and otherwise, to what would be a new way to deal with an old problem. Let's look at the new problem and deal with it the old way, person to person, face to face. I would just suggest that we try to do that in terms of shaking it up.

And aligning with the court to make sure that there is input on what you think are better rules of procedure to -- by court administrators as well as the court. And I just think you cannot step by the sidelines.

You know what I call them? Back of the bussers. You're in the back of the bus complaining? Step up, tell us what it is, engage the court, engage your local communities to actually get some change that you think helps your community.

MR. KOEGEL: What are the one, two, or three changes you think that were made that got the participation -- just got the consumer into the court and flipped the participation rate from 90 to 95 percent not showing up to only 30 percent not showing up?

JUDGE RIZZO: What happened was a

complete infusion of bombardment. Our Mayor, Michael Nutter, was really great to align, to give us what are called these neighborhood action committees that actually went out door to door. They knew the people, one.

Two, in utility bills there were statements with his beautiful face on it -- he'll like me saying that -- to say if you're sued in foreclosure call the hotline. Everything was singular message, one message. Call this hotline. Once you're in that chute we can assist you and direct you otherwise. It's the touch point.

I often say to the lender servicers we're doing your job. We're doing the outreach to make that connection that starts the important dialogue. So there was a lot of media around it. There was a lot -- the PSAs. There was a lot on buses. There was a lot continually out there to say one message, call this hotline, we're going to get you into the chute. And that's what really I think made a difference.

MR. KOEGEL: Tom or Peter, do you have any ideas on how something like that could be implemented in a debt collection context to try to bump up that participation rate, get them in the courtroom to have a conversation?

MR. LAWRIE: Well, one of the things that I would caution. I know that -- I don't think Judge Rizzo mentioned it but I know in her program each of those consumers is represented by an attorney or some other advocate on their behalf.

JUDGE RIZZO: Well, that's -- once you're in the chute it's alignment with housing counselors. There's also credit counseling. We also are attached to financial literacy and work with a local lender, PNC, to actually finance under it because what I want is sustainability. I don't want re-default. I don't want you back. I got you in once, I don't want you back. So I agree with you.

Pro bono attorneys have donated $2 million, $2.5 million worth of pro bono services to date in 5 years. But you're right, it is an engagement of not -- what would be again not a level playing field with just a borrower and a lender -- credit attorney.

MR. LAWRIE: So that's one of the concerns is in -- I've heard in various states where there's courts that will put the consumer, an unrepresented consumer, together with the attorney representing the debt buyer and lo and behold they would work out a settlement.

Well, that's because the consumer was coerced into the settlement by the attorney from the other side. So it's something that courts should be very careful about doing, putting an unrepresented party together with a sophisticated plaintiff and their counsel on the other side. That's one thing I would note.

Then I'd also like to add there was a discussion -- or there was a mention that getting more documents isn't a problem. The business model doesn't work that way. In forward flow agreements, in the numerous agreements that we've reviewed from many different debt buyers they might get 10 percent of documents for free, or something along those lines. You know, it can vary from 5 to 20 percent or whatever.

But it's a fraction of the underlying account documents that the debt buyer can get for free from the original creditor. After that there's a substantial cost not just for all the documents but per page or per document. So if they have to get a lot of underlying account documents that might be necessary to justify a lawsuit to show that they actually own the debt, or the existence of a contract, or what the terms and conditions of that debt really are, the economics may not work.

I just respectfully disagree. There's -- if right now they get 10 percent for free, if they have to start paying for every single account it wouldn't work. Economically it just would not work.

MR. BLACK: On that one, just so

we're clear, we actually sue a very small percentage of the accounts that we acquire. So as a company I think on average we sue between 6 and 8 percent of the accounts ultimately get sued.

So even in a model where there's constrained media and quite frankly we can factor that into the economic equation. We can make a decision at the account level. So maybe that increases the minimum balance with which you could pursue litigation. It doesn't fundamentally change the economics of the business.

So you've got a small number of consumers as a percentage who actually go into the system. And it's my belief that today and I think through a lot of the good work that's been done by the CFPB and other places provisions of media have gotten tremendously better. I mean we buy from a lot of issuers where we get 12 or 18 months of statements at the point of acquisition.

So I think you've done good work with many of the rules that have been put in place today. And the industry has evolved. And the economics can be modeled to the point where if it costs a little more, fine.

But I believe that if we work on engagement we'll never actually get to the courtroom. If we work on the problem of getting people to have a conversation where they're going to have more flexibility, more choice, more optionality, where they're going to pay less, we're not going to need the court system as much.

If we continue to drive a wedge between the companies who are trying to collect and the individuals the outcome really is if they don't pick up their telephone, if they don't call us back, the only thing, the only thing. There's not five, six, seven, there's one, and that's to pursue litigation. And if we continue to drive a wedge around engagement we're going to end up right back to this conversation again because people -- there's nothing else to do. And if you think the person can pay that's all you can do. There's nothing else.

And so I think it's going to allow for more dialogue. The economics -- you can certainly take care of it. The world has evolved a lot I think because of a lot of good work that you've put in place. Asking for more documents means the issuers have to provide more. We're all learning, we're all growing, but we haven't fixed the engagement problem. We're dealing with the symptoms of the problem, not the actual problem itself.

MR. KOEGEL: Peter, you wanted to add something?

MR. HOLLAND: Yes. The theme here is data integrity. So what I would hope we could walk away all agreeing, I think there's two and only two documents that would really make a huge difference. Judge, they would keep people out of court. They would never get into court. And that is if you would provide with every lawsuit a copy of the forward flow agreement.

And here's why that's so important. What the forward flow agreements I've said -- and by the way, someone in the prior session said they don't have as-is anymore. I would encourage everybody to go to www.documentcloud.org and search for forward flow agreement. And I think you'll see some there that have lots of as-is.

And the as-is when it's spelled out may say the data hasn't been verified. It may say the bank has no duty to verify the accuracy. It may say that the accounts might have already been settled or the person might have been dead or bankrupt, identity theft.

And I have one that I like the most which says that the account balances are only approximate. And so what happens then is that now it's put into litigation and they won't give you that forward flow agreement. They won't show it to the judges that say this data is inherently suspect, it's inherently unreliable.

On the contrary, they argue to the judge every day, Judge, we all know banks are highly regulated and they have high reporting duties so you can trust this data. It's inherently reliable and accurate.

And so I would hope we could walk out of here maybe agreeing that those need to be made public. What I experience is people ask for a protective order when you subpoena it. I think it should be stamped on every bill of sale, a website where you could go to read and download that forward flow agreement.

Because that is after all referred to specifically in every single bill of sale in every lawsuit. It says this is defined pursuant to the terms and conditions in this forward flow agreement.

The second thing I think would make a huge difference that we've heard throughout the day that I hope we could agree on is giving the breakdown of all of the principal versus interest and fees, and not the post-charge off, the same information that the bank has.

So if the bank sued you and you said well I contest the amounts here. I don't think I agreed to that interest rate. They have no contract, remember, and the only way you could get interest or fees would be pursuant to a contract. That's important in a credit card case. It's really important in what I'm seeing more of, payday lender cases where the interest rate may be seven, eight hundred percent APR. And so the bulk of what they're collecting is interest that would only be allowed if they had a contract and would break it down. So those two items I would hope we could walk out of here with agreement on.

MR. KOEGEL: Joann and Brandon, I'd be interested to hear from you what you think about that idea. Is there a downside to providing those two things?

MS. NEEDLEMAN: Let me take charge-off and I'll have Brandon do forward flow since that's more what used to be his space.

Look, and we talked about it in a couple of other panels. Bank information as Manny said is inherently reliable. The issue is accessibility. That's fine. If you want to laugh about that, that's fine. But there are four federal agencies that regulate charge-off balance, the Federal Reserve, the OCC, the FDIC, and the SEC. And as Manny said, when a bank closes its doors tomorrow every single balance on there is deemed to be reliable.

I don't have a problem with -- and I know in many of the courts, I know in Maryland speaking with my colleagues, I know in some of the other states, recently Minnesota, California, some of the states that the gentleman from the FTC showed us of the new collection laws, courts are rejecting pre-charge off itemization because they understand that charge-off is inherently reliable.

I do agree that after somebody gets an account they should absolutely itemize any other fees and charges that they're going to tack on because it's probably not appropriate. And it should be itemized.

But I think that chart -- in Connecticut there's a special rule regarding charge-off. So any discussion about information and balance, and especially when you're talking about default. And most of these, by the time these get to even a collection agency they are post-charge off. The discussion has to begin and end with charge-off, and anything after that has to be itemized and has to be documented very, very clearly.

MR. BLACK: You know, we often run into this pre-charge off itemization issue. And I like to describe it as saying if you wanted to sell a used car you had to track everywhere it went along the way, that the odometer reading actually isn't any good. So when you say my car has 65,000 miles on it, the only way to prove that it did is you had to track everywhere you went, add it all up and prove it added to $65,000.

That's ridiculous.

The bank's data is accurate and it's something where it is regulated. The charge-off functions as what they put in their loan loss reserves and it should be the foundation for every single beginning of collection.

And the practice we have as a company is we use that balance. We subtract any payments we've gotten between the time we acquired it and -- part of litigation and that becomes the balance. So we give the consumer the lowest balance possible. We don't assess interest in between.

So we find ourselves with a balance that I think is -- you can go back to federal regulations and prove it up, and you can show your math going in between. So I think charge-off balance is a great one.

As it relates to contracts, look, it's a private party transaction. No one's trying to hide it. If Judge Rizzo asked to see the contract we would show it to her under protective order. But we don't want it in the public domain. It has pricing. It has conditions. It's something that needs to be in place.

But let me be really clear. I ran a public company. We spent $550 million last year. We did not buy a single account with an as-is clause, not one. Five hundred and fifty million dollars we spent last year. So I'm sure somebody somewhere in the system did it. And maybe if you went back 10 years ago you could find it.

But I guarantee you we have a contract that says we're buying this portfolio as is with the exception of these reps and warranties which include accuracy of data, which includes the treatment of the account prior to us getting it, which includes the institution's knowledge, their knowledge that no one is dead or bankrupt or deceased.

Who would possibly in today's day --

think about -- we're having this meeting. Who would ever intentionally sell an account in dispute, would intentionally an account where someone was dead? It makes no sense. You're just going to end up back here in a lot of trouble.

So I love -- I have a complete belief that we need to be able to provide information to prove that we own the account, that it was part of a transaction, that the data is accurate and there should be a way to do that. But putting all of our contracts out in the public domain is not something I think we should think about.

MR. HOLLAND: Well, I guess the point is rather than me saying I have seen contracts that have those and you saying they don't exist and I say they do exist, why not make them public? They are integral to the bill of sale. It says you could only understand this pursuant to the reps and warranties in the forward flow agreement. And you're saying well, you don't do that. Well, why can't we see those documents?

MS. NEEDLEMAN: Can I address that? I mean we're getting back to proofs. What does a forward flow agreement have to do with proofing the debt? What does it have to do with balance? I mean that's, as Brandon said, it's a private transaction. I think it's more prejudicial than it is probative.

MR. HOLLAND: But if it says the balance is only approximate and then your lawyers are going to say the balance is accurate to the penny you don't think that's relevant, Judge?

(Laughter)

MR. HOLLAND: I know, I know, but we have a judge.

MS. NEEDLEMAN: I was going to let her answer.

(Laughter)

MR. KOEGEL: I've lost all control up here. I'm just going to step down.

(Laughter)

JUDGE RIZZO: And I'm going to get it back to you. First of all, I'm out of jurisdiction so I can't say. I mean all of this really does come in.

So here's the real rub with it. So a judge in Cincinnati may say, you know, you are going to produce that, it will be part of it, it will be part of public domain. And yet another judge in Nebraska may say it's under seal. And another judge in California may say I don't need it. Right? So you have all of these inconsistencies.

So I know we're going back, and boy, if you don't see the theme you have been asleep or on your phone too much. It's all about getting some sort of generic dialogue, some sort of rulemaking that will make it consistent. But I'm going to suggest another forum for that and that'll be in a minute.

But to your point on all this, we -- I mean again, parallel with this in the mortgage world. The whole thing is we need to see the servicing agreement, you know, all of these types of things.

I have not -- I should just as a backstop to this, I did not really handle the adjudicatory matter of these cases. I actually kept myself in a chute to only deal with the conciliation process of trying to get these cases turned around. Once they came into the court system conciliation by intent and by title. Because for the most part the debt was owed. If there were some legal issues with the contract they had to go a litigation route, no one was going to take that away. But for the most part it was a discussion of, you know what, my husband lost his job and I have a kid who's really sick who needs long-term medical care and we just couldn't make the payments. So what do we do with that. And that's where the reality overlay of the face-to-face could make the deal happen.

So with terms of actually adjudicated matters where things are at stake the whole panoply of evidentiary rulings, it must be reviewed. It could be in camera, it could be whatever it is. It's that individual judge in that case making the ruling. And I've got to tell you it's a checkerboard. You're going to have it all over the map. So you have to submit on papers to me and I'll give you my ruling. It's held under advisement.

MR. KOEGEL: Maybe we’ll try to transition a little bit here briefly. Judge, is it feasible to think that courts can review complaints at the time of filing to ensure that they have sufficient documentation and information?

JUDGE RIZZO: So here's where, you know, and I saw all of that and I said wow, that would be -- that's one of those issues where you've got to have people from the court system to deal with this. And it could be that pre-review, but that's a mechanism that is costly and may not be affordable or permissible, permissible under the rules as they exist either in the state or local rules. So that's number one.

And what really would be the mechanism is you file the statement of claim or the complaint, whatever it is in your jurisdiction. And of course it could be contested by way of what we have called preliminary objections or whatever you want to do to dismiss it. You're not going to have that mechanism in these pro se's. And that goes back to my problem trying to deal with special handling when we have self-represented litigants defending. So you can have volunteer lawyers, you can have help with all that, but I do think it would be a difficult process.

If the rules were up front, okay, different story. But we actually have a rule in Pennsylvania that anything that comes across the desk of the prothonotary -- I'm going to have you have a new word to take away, prothonotary. There's only two in the whole country. That's our clerk of court. You love that old English term. They are required to take whatever is filed with the fee and then it's worked out later. I mean that's just the requirement to have that open process.

So I think it would be difficult but I think with rules up front and understanding it would actually change culture and shift what would be filed to accommodate and to make it work.

MR. KOEGEL: Joann, you indicated you had something to add.

MS. NEEDLEMAN: Yes. I think to the judge's point I think efficiencies weigh into that decision of whether a court should review complaints.

But remember too, especially if the pleadings are being filed by an attorney, if an attorney's filing something and it's wrong or I mean they're filing it under Rule 11 or whatever your equivalent Rule 11 may be in your jurisdiction. If that's false or wrong, I mean wrong to the point where it's sanctionable I mean that's where the protections lie. That's where the court system has inherent -- has those mechanisms to ensure that we as officers of the court are being truthful.

And you can all snicker and say, oh, that doesn't work. Well, I mean I do a lot of work in New Jersey and the courts take that very seriously. So we have to rely on the officers who enforce those type of things and understand that we as officers of the court need to dot our i's and cross our t's, right Tom?

MR. LAWRIE: I wish it was that straightforward and that's what was being done. But unfortunately we have cases, multiple cases where we have evidence of the affiant for the debt buyer robo-signing affidavits, where literally they're filing, 400, 500, up to, say 900 affidavits a day.

Those are being filed by the debt buyer's affiant. And then the complaints are being robo-signed by the law firms where you might see 10 different signatures for the same attorney in one court file. So, and a judge may not see that.

MS. NEEDLEMAN: Are you making those referrals to your disciplinary board?

MR. LAWRIE: We do everything we can with all of those. But you know, sometimes they're hard to prove but it's not an uncommon -- it's not an uncommon occurrence here, especially since the attorneys a lot of times are -- everything that they're doing is being directed by the debt buyers.

The agreements, the operating agreements that we've reviewed between the debt buyers and the attorneys, the debt buyer calls all the shots. They say when it -- everything that has to be filed, what the attorney has to notify them about. And the profit that the attorneys are making is very small on these cases. So they're relying on a large volume as well.

So, which is why they're subject to regulation. They're subject to the FDCPA, the attorneys are, and they're subject to state regulators as well. So it's -- if everyone in the process was doing the right thing I would agree with you. But everyone in the process is not doing the right thing.

JUDGE RIZZO: Well, we've learned though -- I'm sorry, just from foreclosure we've learned, right? The robo-signing which is now a common phrase. We've learned that when you come under radar, that's what I'm saying, lessons learned from what has happened is sort of leading all this. And a culture shift has existed or the court's going to impose it as they did in New Jersey and froze everything.

And then what happened is the bigger lenders obviously took in house to say we're stopping the business, we're getting our internal act together, we're doing our due diligence, we're putting the M word, the moratorium. We're holding things back to get our act together. So the hope is learning from that industry that this would occur as well here.

MS. NEEDLEMAN: And I'm not saying everything is perfect, you're right. But there are mechanisms in place that when people don't do right things, especially officers of the court, that's when you as a court officer, as an AG, myself, if I see an attorney not acting and following the rules, I have a duty to report.

MR. LAWRIE: Sure, but that doesn't help the consumer in an individual case which is why it's important that the court actually have the ability to review the file and make its own determinations on whether they've sufficiently proved liability and damages.

JUDGE RIZZO: Well, the way I understood the question it would be at the time of filing they would review the complaint.

MR. KOEGEL: And thank you for that, Your Honor, because what I'd like to do here, we've got about 20 minutes left and I'd like to save at least 5 at the end for at least one or two questions from the audience.

What I'd like to do now is switch the

focus from the time of filing the complaint to now when the debt collector is requesting default judgment and what kinds of information are being included in that request for default judgment and would adding additional requirements or information affect the process at all for consumers in any way.

So maybe, Tom, you could launch us a little bit by talking about what's currently required in a default judgment application.

MR. LAWRIE: Well, in Maryland -- I don't know how many other states actually have this judgment on affidavit process. But in Maryland that's almost every debt buying case is filed under a judgment on affidavit, a process where they hope to never even go to trial.

The case, if a consumer doesn't file a notice of intention to defend, the judge can grant judgment automatically without a trial at all. So that's kind of the intention of the rule.

I mean that's what it's there for is

if everything is filed correctly and if the court finds that it's acceptable, what's filed, then they can grant judgment on affidavit with no trial whatsoever. And that's -- I mean the defendant has the opportunity to participate but this assumes that the defendant doesn't.

But then what happens is in Maryland if a judgment on affidavit is denied the case isn't necessarily thrown out. It can go to, depending on the judge and how they treat the cases, it can go to a -- it will be set for trial. And then there can be a default judgment at that point.

Now, the changes to the Maryland rules that went into effect requires judges to consider all of the same factors or all of the same requirements, documents, information in the affidavit judgment rule as they do in the default judgment rule. So they're going to be looking at all the same types of documents.

So what I would say that is important in this context, first of all I'd say you have to take two things into account before you -- at the onset of drafting any type of rules.

One would be that debt buyer plaintiffs owe, and any collection agency including the attorneys, owe consumer defendants a higher standard of care than any plaintiff owes any defendant in any other type of litigation. Under the FDCPA they owe them a least sophisticated consumer standard of care and that's higher than the normal standard of care that a plaintiff owes a defendant in a lawsuit.

So they should be filing -- the lawsuits that they're filing should be as good as or better than any other type of lawsuit that's being filed. The reality is a lot of times they're much worse than what's actually being filed.

The second issue that we have to take into account is that this isn't just trying to collect on the debt. This is trying to take an unsecured debt and turn it into a debt secured by a judgment where they can garnish wages, file liens, and do all sorts of other things to collect.

So it's important from a regulatory perspective, it's important that if the debt buyers want to take that step to litigation that they dot all their i's and cross all their t's and follow the letter of the law in all these cases.

So what are some of the things that we found to be important in these cases? One is to prove standing, prove that they actually own the debt. And part of the new Maryland rules, the -- at any assigned debt case they have to provide the assignment documents in an unbroken chain from the original creditor to the current plaintiff.

And each of those assignment documents has to specifically reference the consumer's debt being sued upon. And we're finding that that's a problem in a lot of these cases where these assignment documents in some instances just don't exist.

And they're either -- we've seen cases where there's something created after the fact to give kind of a historical summary of what allegedly occurred, or other types of things that are being filed that supposedly show the consumer's debt was part of the assignment.

But there might be the Excel database that shows all the consumer debt information. It's not part of the database that was actually included with the assignment documents. So in a lot of instances these assignments just don't exist. But we think that's important, to be able to prove standing in this.

Another document that's very important we think is proof of the existence of the contract. So, in a normal contract action you would provide the original contract signed by the defendant or proof of some -- some other means of providing written proof of the existence of the contract.

And what the Maryland rules require is if you don't have the proof of the existence of the contract, for example, in a credit card case because there is no signed contract by the consumers, you have to show the existence of the contract. And how do you do that? You have to provide account statements that show actual use of a credit card by the consumer, a charge at Target, or you know, something along those lines, or an actual payment on the account.

That's not the charge-off statement that comes 6 months later which is what the debt buyers typically acquire in -- when they purchase accounts. So the charge-off statement doesn't prove the existence of the account under the Maryland rules. So that's something that we think is important that they should have to file.

MR. KOEGEL: Tom, we have about 10 minutes left, so if we could get through what else is required for default judgment in Maryland then get some comments from the other panelists.

MR. LAWRIE: A couple of other things are, let's see, depending on whether they're asking for principal or interest, certified or otherwise properly authenticated copies of the terms and conditions of the contract.

Now, that's not an exemplar contract. A lot of times you'll see the exact same photocopy of a Sears agreement filed in multiple different cases. But that's not the contract necessarily applicable to that specific consumer. So it needs to be the terms and conditions applicable to that consumer.

And all of these documents need to be properly certified or authenticated. And the downstream debt buyer can't certify those documents. Those are something that needed -- and this is a big problem industry-wide is those are documents that need to be certified by the original creditor because they're the ones that know the business practices that was made at or near the time of the event, all those things that go into business record certification.

And the last thing is our new rule took from the old rule but it's still hotly litigated is the issue of personal knowledge, that the affiant for the plaintiff has to file their affidavit based on personal knowledge.

And what we have learned is a lot of times the affidavits say we've reviewed all the account documents and I have personal knowledge of the account and it's true and correct and all that.

But in reality is at that point they haven't even seen the original account documents because they haven't purchased them from the original creditor yet. We'll see cases where we see an affidavit swearing to personal knowledge based on review of the account documents and if you look at the time line in the case what happens is if a defendant files a notice of intention to defend the attorneys will notify the debt buyer that they need additional documents. Those will come from the original creditor. But the original affiant never had those documents at the time they swore their affidavit.

So there are issues that the personal knowledge is important. The proof of the account. The unbroken chain of assignments specifically referenced in a consumer's account. Those are some of the ones that we focused on.

MR. KOEGEL: And so what I'd like to do here, just to kind of be quick about this, is I'd like to get Judge Rizzo's perspective on whether these kinds of documents and information would be helpful for the court, hear from Peter maybe on what effect this would have for consumers, and then lastly Joann and Brandon or one of you weigh in on what would this mean for debt collectors or debt buyers or other costs or benefits from their perspective. So, Judge Rizzo, maybe?

JUDGE RIZZO: Just really quickly. What's suggested is that this type of case is treated differently than others. And I just don't know if other jurisdictions would necessarily jump on that bandwagon, because then there would be other constituent groups that say that they would want their cases handled a certain way. But there could be some fixes to what would be the state rules or local rules that would from an evidentiary as well as just a processing standpoint regulate that.

I should also note we didn't talk about service that much. Big issue. Big issue up front. And we have a mechanism of alternative service which I would always be dealing with in a very detailed fashion. So if the service isn't right from the beginning you can't start anything, right? So that's what that is about.

What's suggested would be extremely helpful if consistently that would be the packet absolutely where the court would have faith that this is complete, accurate, verified, all the things that would meet all evidentiary thresholds under the rules and under what is a fair process then of course that would be helpful to move cases forward.

But again there would have to be agreement and understanding of what that template would be. But also taking into consideration that it's each consumer, each case is individual and stands on its own. So it has peculiarities.

MR. KOEGEL: So it would give you a little bit more confidence that you're doing justice here, that we've got the right debtor and the right amount.

JUDGE RIZZO: There's no -- and again that's learned from foreclosure, the assignments. That's a huge issue, huge issue and every court, every judge may deal with it differently because there's not consistency of that. To have that template where the industry embraces that and does that and knows that's what's going to be acceptable. Because this judge is not going to accept anything less than you got it.

MR. KOEGEL: Peter, what about from a consumer perspective? I realize we're talking about people who are not in court.

MR. HOLLAND: Well, let's talk about people who are in court, that's my point. So what I see is a contested case. I represent people, my students do. So again theoretically this should be the best of the best, the proof.

I go to court. There is no witness for the plaintiff. They refuse to bring a witness for the plaintiff. One plaintiff I subpoenaed and the lawyer called me and said you know, they don't even have any employees, okay, literally that's what I was told.

And so what I see over and over is just basically lawyers testifying, handing in affidavits that they have no knowledge of. The person who signed them, you know, had no knowledge of anything.

And it's really, we really are talking about a breakdown of the rule of law. I mean we are a self-governing profession and we have courtrooms in this country with no judges. We have courtrooms with judges who allow people -- who allow lawyers to testify. You can't cross examine.

And so again I think that there's a big dirty secret here. And the big dirty secret is guess what? The forward flow agreement says this information is inherently suspect. Notwithstanding that banks, you might believe banks are highly regulated and highly reliable. Even if we accept that, this batch of accounts we are telling you buyer beware, as is, inherently suspect. And that document is not being shown to the judges, to the consumers, to the lawyers, or to the public. And I really think it needs to change. And I think it would really have a huge impact on cleaning up what's a really shameful industry right now.

MR. KOEGEL: Joann and/or Brandon, any comment on the costs and benefits of these four pieces of information that Tom is talking about being required to be attached to a motion for default judgment?

MS. NEEDLEMAN: I agree -- I'm sorry. Go ahead, Brandon.

MR. BLACK: I was going to say I think we get off task when we get down to these conversations in some respects. Even in Maryland we're saying still 95 out of 100 people don't show up. Didn't change the volume.

The only thing I've heard thus far that changes the fundamental engagement is what's happening in Philadelphia. I don't know if it could happen in the collection of unsecured debt. But it's around engagement. It's literally not around more documents and more time.

We have found the way. It's there, the data is there. It's changing not only in Maryland, it's changing -- quite frankly it's changing in every state, what's required. And yet time and time again we're able to meet those needs.

And again, Peter, I don't know the

agreements you reference but I can tell you that in 2013 given the financial crisis we went through, given all the scrutiny about everything, the last thing a large financial institution and a large debt buyer, a large collector wants to do is enter into an agreement that has any ambiguity around the accuracy of the data.

And it just doesn't happen. It sounds great in front of all these people in this room. It's not what happens in practice. I do believe we need to find a way to engage differently and better, and I love the standard, but it's not more documents.

And there aren't a lot of people going around hiding their contracts. Quite frankly we had to give them all to the CFPB. They looked at them. And so there's a party in this room that's actually seen all of our agreements. And I think even they would go through it and say you know what? Even though we used the language earlier these guys get reps and warranties. It's clear that there's title that's being transferred. And so there is a party in this room that knows exactly what you're worried about and they're not. At least I don't hear it from them.

MR. LAWRIE: We are worried about it.

MR. BLACK: I understand.

MR. LAWRIE: Because the forward flow, there might -- there might be representation and warranties as to account amounts, but there's certainly lots of aspects of the sales agreement or the forward flow agreements where there's no representations or warranties.

And that goes including to the actual account, underlying account documents. I've yet to see a forward flow agreement where the seller reps the authenticity and the accuracy of the underlying account documents that are being sold. I have not seen one.

MR. KOEGEL: Joann, did you have

anything you wanted to add?

MS. NEEDLEMAN: Well, I mean you have to think about what litigation is about. It's about, you know, you file a lawsuit and there has to be an end. And default judgment is one of the ends -- there's three possibilities when you file a lawsuit. You file a lawsuit and someone defends and you go to court. You file a lawsuit and you settle which is what most judges want you to do. Or you file a lawsuit and nobody responds and you get a default judgment.

So I want to be clear that when we talk about default judgments don't necessarily -- that that's like this horrible thing. It is a logical conclusion to the end of litigation.

I agree with Tom and Peter that there has to be some reliability to the information. If you're going to ask a consumer to pay some money that the pleadings that you're making have to be valid, they have to express information, and the consumer needs to be aware. And when you're making representations to the court they have to be truthful.

So I'm not going to get into the weeds of what Maryland is. It's been -- you guys have collaborated with your bars and you've come up with rules and they seem to work. Or you seem to be satisfied with them. But understand litigation is a process. And there's conclusions to the process. So unfortunately default judgment may be one of them.

And to think that there is this idea that we want a default judgment. You know what that means? It's part of the process, it gives the consumer an idea that there's an obligation maybe down the road to be owed. But again as Brandon talked about it's just more money that our clients have to pay then to start to enforce it. So it's not always a positive ending.

MR. KOEGEL: Well, I want to thank everybody. I want to give us a minute or two so we can transition to the next panel. But this is an incredible and lively discussion and thank you all for helping.

(Applause)

MR. DWYER: Thank you so much. And now I'd like to call to the stage Alice Hrdy, Deputy Assistant Director in the Office of Supervision Policy at the CFPB, and all the members of our fourth and final panel.

MS. HRDY: If everyone could take their seats we'll go ahead and get under way. Okay, here we are. Kudos to our Federal Trade Commission colleagues for keeping us on time. Here we are at 4:20 starting panel 4.

And we have a very distinguished panel batting cleanup today. And I salute our collective stamina for this tremendous day of what I think has been very lively and productive dialogue.

So we'll get under way with this fourth panel talking about time-barred debt. And this is a very specialized kind of debt. And just to level-set definitionally when we talk about time-barred debt we're talking about debt that is beyond the period of time as prescribed by state law that a consumer can be sued for it.

So we just had a very lively panel about that period of time when a consumer can be sued for debts. We're now venturing into the territory, the period of time where that is not the case, where under state law the statute of limitations has expired and the consumer cannot be sued. And as many of you know in very specific detail that state laws vary and the statute of limitations can be as short as 2 years or as long as 10 years.

And so I think what we'll do for this panel is I'll ask each of our panelists to open up the conversation with just a couple of minutes giving us their perspective on time-barred debt. And we'll begin with Larry Costa.

MR. COSTA: Thank you. I'm Larry Costa. I'm the executive vice president of Capital Management Services. We are a third party collection agency. We perform all level of collections for our clients, from the beginning stages as we talked about today, the life cycle of debt in the pre-charge off world all the way to the end of the life cycle of debt.

A very small portion of our operations is focused on the collection of time-barred debt. And of course we do this in complete compliance with all federal, state and local regulations.

Now, our perspective is very simple. As you've witnessed today there are tremendous variation between the various states and localities. We're looking for consistency.

And of course in the collection of time-barred debt it should also be noted that consumers have an opportunity at a significantly lower cost to address their obligation.

I'm going to turn it over to my distinguished panelist Karen Meyers.

MS. MEYERS: My name is Karen Meyers. I'm the head of the Consumer Protection Division for the state of New Mexico attorney general.

And as it was mentioned before we

have a time-barred debt regulation. That regulation was developed after we saw a significant practice in our state for efforts to collect affirmatively through litigation on time-barred debt.

So litigation ensued against one particular debt collector and that case was ultimately settled through consent decree. After that we decided that it was appropriate to look at whether or not under our regulatory authority we should promulgate a rule that would apply to all debt collectors who sought to pursue time-barred debt in New Mexico.

I thought it was interesting the comment about testing that was made before because we did two things. One is we determined that just common sense it seemed like knowing that a debt was time-barred debt people would want to know about that, that it would be material to a consumer's determination about what to do, what their choice was at responding to a letter from a debt collector.

But we did not just limit ourselves to our own best sense or common sense. So we actually engaged with a University of New Mexico social scientist and asked if he would test that. And he did. He had a significantly significant study. And got control groups and provided, you know, did the social science process. As you can tell I'm not a social scientist.

And confirmed that for the participants in the study -- and it's interesting because the participants ranged over the demographic. So you had young people, you had older people, you had people with high incomes, low incomes. People who had significant debt, people who had very little debt. But generally it was material to them whether or not they were told that the debt could not be sued on. And that was material to them determining how to respond.

With that information we promulgated a rule which you have in your materials. It's been in effect for 3 years now.

And we -- I will talk about it later so I don't take too long but we have looked at what has been the impact of that and we have some follow-up information from debt collectors about what they did as a result of it.

MS. HRDY: Thanks, Karen.

MR. PHILIPPS: Hi, my name is Dave Philipps. I run an involuntary compliance department for the collection industry. I sue debt collectors. And I represent the elderly and disabled primarily. I represent about 300 consumers a year exclusive of class actions.

And I guess really this part should be, you know, our whole discussion here today was life of debt and this is when debts will never die. And I don't say that lightly. Some of these debts just never die. I've litigated with Arrow where they bought a huge portfolio of Parisian debts which I learned in the case was the Marshall Field's of the South, or the Neiman Marcus, or the Saks of the South.

And the debts were 15 to 20 years old

and most of them were subject to bankruptcies. But because the collection industry, the debt buyers don't want the stop signs and just want the blips of data they ignored that and they started collecting on these debts and threatening litigation.

In that case we ultimately got data. We got somebody from Saks who was fired the day of her deposition who had gone to the hard drive that she knew that actually had the bad stuff on it and printed it all out. Unfortunately these debts won't die.

And you know, my position would be stop collecting on time-barred debt, period. Now, I doubt that's going to happen. At the very least I think you have to make disclosures. What's the date of last payment. What's the statute of limitations. Now, that's all complicated by the 50 states' statute of limitations and choice of law and all kinds of problems like that.

A further example of the problem in

this industry is despite the FTC's best efforts to get a big Michigan-based debt buyer to start making disclosures on time-barred debt and change the way they're doing things, and despite that Michigan-based debt buyer being told in Indiana that the statute of limitations was 6 years. They were told that in 2010. And then the FTC entered into a consent decree in January of 2012. 2013 they were filing proofs of claim on 15-year-old debts in bankruptcy courts.

So there's a real problem here on collecting these time-barred debts. People don't have 15 years of records to show I already paid that. People don't even have necessarily the documents to show I went bankrupt after 15 years.

And in fact, LexisNexis Banko won't even pick up any bankruptcy that's older than 7 years. So there's a real problem here that needs to be solved.

MR. THURMOND: Okay. Good afternoon. As Alice mentioned my name's Tom

Thurmond. I'm division president of Resurgent Capital Services. Resurgent is the master servicer for affiliated debt buyers with over 600 employees in South Carolina, Texas, and Ohio offices.

Previously I was in various operational roles with Capital One and prior to that I served as a bank examiner for the Federal Reserve System.

I'd like to thank the FTC and the CFPB for the invitation to participate in today's roundtable and I hope that today's discussion will prove to be a valuable source of information for the policymakers at both entities.

As mentioned a little bit previously determining the statute of limitations on a debt is often not nearly as easy to determine as one might think. As a debt collector or as a consumer there is not a simple table or chart to look at that says in this state it's 3 years but in this state it's 4 years. When does the clock start? Do you use the statute for written contract? Or do you use one for oral contracts? Is it an open account? Is it a retail card? Is it a bank card?

Some states have complex determinations on how a statute of limitations is calculated such as using what is known as the choice of law clause as stated in the contract between the consumer and the creditor. Or the place of incorporation of the issuing bank is used as the state instead of where the consumer actually resides.

To date almost every state allows the collection of time-barred debt through traditional means such as letters and phone calls while only a few states have completely extinguished the debt once the statute of limitations has passed. And to date courts have refused to find violations of FDCPA with respect to the collection of past-statute debts where there were no threats of suit.

It should be noted that if the state

statute of limitations is relatively short the debt may still be reported on the consumer's credit bureau as a trade line for a time period that actually exceeds the statute of limitations.

The Fair Credit Reporting Act allows for a trade line to be reported for 7 years while the statute of limitations in most states is between 3 and 6 years.

For consumers who have not had their debts discharged in bankruptcy it can often take more than 3 or 4 years to recover from whatever traumatic event caused their financial difficulties. So allowing collections on time-barred debt extends the consumer's opportunity to improve their creditworthiness.

As with any well-intended outcome there are unintended consequences. If states move to shorten the statute of limitations or prohibit the traditional collection of time-barred debt the reality of the collection cycle will be that the cost of credit in that state will dramatically increase and collectors and credit grantors will file more suits than they otherwise would.

As a matter of corporate policy Resurgent does not allow its agencies or law firms to threaten suit if the statute of limitations has expired or if no suit is intended.

In addition, Resurgent does not allow payments that are made by consumers after the statute of limitations has passed to re-toll the statute, even in states where that practice is permissible. Once an account has become time-barred Resurgent will continue to work with the consumer for voluntary payments and no suit will be threatened nor filed.

With respect to disclosures two states, Massachusetts and New Mexico, and one city, New York City, have enacted laws requiring disclosures to be given to consumers that inform them that they cannot be sued if the statute of limitations has passed.

Disclosures are intended to provide clarity to the consumer but often such disclosures are written in legalese and most are not nearly as clear to the "least sophisticated consumer" as they were intended.

In addition, there are also complex legal issues in making legal determinations and legal representations as a debt collector who is not an attorney and who is not counsel to the consumer. Even collection attorneys hired by a debt buyer or creditor may have issues with disciplinary and ethical rules governing attorneys and the giving of legal advice to non-represented parties.

Lastly, I want to reiterate that Resurgent will not knowingly allow a suit to be filed on an account that is past statute. We do not desire to shift the burden of declaring an affirmative defense to the consumer and we do not wish to defend the related FDCPA action.

However, we do feel that the consumer should not avoid the obligation and that the repayment of the debt benefits not only the consumer but the entire credit cycle. Thank you for your consideration today and I look forward to the discussion.

MS. HRDY: Thank you, Tom, and thank all of you for those excellent opening comments.

So I want to pick up on our previous panel and one comment in particular from Brandon Black who said that in his view or in his experience 8 out of 10 consumers do not pay debt after charge-off.

So presuming that's true, and feel free to take issue with that if you have a different view. And again in the time-barred debt space. So we're talking about almost always post-charge off debt, what is the benefit to collecting when the statistics appear to say that so few consumers will pay? And I'll start with Larry.

MR. COSTA: The benefit in collecting is that there are consumers that do pay. And 2 out of 10 is a reasonable ratio. And again it gives the opportunity to the consumer at a significant discount to take care of their obligation so that there is money to be collected as long as it is done in a compliant manner. So 20 percent is a reasonable batting average in this type of segment.

MS. HRDY: Great. Karen?

MS. MEYERS: I couldn't comment on the data. I think that I can comment on the impact.

What we see are attempts to collect from people who are the wrong people, who clearly don't have access to any information because it's so old to necessarily either verify it themselves or dispute it. And so I think that you get a compounding of the problem by allowing those efforts to continue.

I also think that one of the problems that we see is -- I ask the question of myself during one of the earlier panels which is is there a difference in response when a consumer contacts you, a debt buyer or a debt collector, or when the attorney general's office challenges and asks for verification, or when a private attorney does. Because it appears to us that there is.

When we have consumers come in and file a complaint we have a voluntary dispute resolution process. They come in and file a complaint arising from a debt collection effort. Oftentimes they'll tell us the story of I called, I talked to so and so, I wrote, I called, I talked to so and so, I told them I wasn't the right person. I told them this wasn't my debt. I told them whatever I had available to challenge it. And they're still doing it, or they sold it to somebody else, and now they're doing it.

When we call or we write suddenly there's a different response. And I think that what that raises is somewhat what the judge was talking about which is a much bigger issue which is an access to justice issue which is if you can get help, if you can get intervention versus if you're a self-litigator, a pro se litigant, the experience is very different. So I don't think that the cost-benefit analysis that Larry is proposing necessarily tips the balance for consumer protection.

MS. HRDY: Okay. Dave?

MR. PHILIPPS: Well, I think that the rest of the debt buying industry at a minimum should follow LVNV's example and not sue on time-barred debt. You shouldn't rely on a broken system to catch time-barred debt.

I lectured to the Indiana Judicial College and the judges there were furious at the debt buying industry because there was no date of last payment, there was no who was the original creditor, just basic information that would allow somebody who actually wanted to defend a suit to defend it.

And this oh, we need to do some study to find out why consumers don't show up in court. They can't afford to. Duh.

MS. HRDY: Okay, Tom.

MR. THURMOND: I mean specifically

to one of the things Karen said about attempting to collect on time-barred debt from the wrong person. What that speaks to typically in the older debts is not that the consumer did not have an account with a particular bank, it's the result of a bad phone number. So what collectors are trying to do is locate the person and talk to them to work out the debt.

So they might be trying to contact David Philipps. They get a phone number through a skip trace service that says it's Dave Philipps. So they call Dave Philipps. Now all of a sudden Dave Philipps is freaking out because he's been called about a debt that's clearly not his.

So what we've spent the better part of 2 years working on as part of our operation is trying to remove what we call known bad phone numbers at the account level. Great concept, sounds really easy. It's actually fairly complicated from a technical standpoint.

We think at the end of the day it is

the obligation of the industry to do that. So if you know one collection agency has reached out to a consumer, got the wrong number, got the wrong consumer, you should have an obligation to attach it to the account and make sure that permeates the system for the life of that account and eliminate collecting on the wrong folks.

MR. PHILIPPS: But unfortunately the industry doesn't do that.

MS. HRDY: So let's --

MR. PHILIPPS: In fact -- hang on. In the debt buying industry -- you cut me off before. In the debt buying industry we have dozens and dozens of cases where the consumer is represented by counsel, tells the debt buyer I can't pay the debt, gives the debt buyer an affidavit of their income and assets, and that debt buyer closes it down and sells it to another debt buyer without any of that data because they don't want to transfer that media. And it's a big problem.

MS. HRDY: So Larry, I'll turn it to

you. In light of these problems and some of the solutions that Tom is implementing or trying to implement can you talk a little bit more specific to time-barred debt about the best practices that a collector should be engaging in when they are collecting on debt which in most states is permitted.

And as Tom noted, the consumers need to know that if they do make a payment and in some states if they simply make a promise to pay that the clock starts over in terms of the statute of limitations. And so the statute of limitations begins again. So in light of that could you talk about some best practices?

MR. COSTA: Well, clearly as earlier mentioned today verification is very important. So you need to spend time on verification. As I've already talked about earlier, it's engaging with the consumer. If it isn't the right consumer then you need to report it.

We don't buy debt. We strictly do

in the contingency role we collect for people that do purchase time-barred debt. So it's informing the purchaser of that debt that it is the wrong party and we have an obligation to do that and we do do that.

MS. HRDY: I'm sorry, say that again? It's important to do what?

MR. COSTA: To inform the owner of the debt that it is the wrong party. And we do that. And we make sure that we do that because they have no interest in pursuing somebody who doesn't owe the debt. There's no upside to that. There's no reason to do that. The person doesn't owe the debt, let's notate it and let's move onto the, you know.

That's the proper practice. That's the question I guess. That's the proper practice.

And then when you're engaged with the consumer it is not to be deceptive. The people we collect for do not -- I believe the word was re-toll. They do not follow that practice.

We won't collect for people that follow that practice.

Our collection techniques are very simple. It's a settlement. It's a very low settlement for the ability -- for the consumer to pay that obligation. Goods, services were purchased by that consumer. Once it's verified and it is the correct consumer it's an opportunity to pay at a significant discount. That's our practice and we think that's a good, sound practice.

We don't sue, we don't garnish, we don't engage in any of those practices and we won't engage in any of those practices. We're strictly a third party contingency collection agency and again it's a very small portion of what we do.

MS. HRDY: And Larry and then Karen, let's talk about the question of what notice -- how you accomplish giving notice to consumers given that even under the best circumstances when the consumer is maybe only 30 days past due and you have to try and give a validation notice.

And we've talked at length today about the challenges. Here it's even a more complicated picture of what you have to try and explain to consumers about the debt. So Larry and then Karen, can you talk about this challenge of communicating clearly to consumers what the consequences are, what the debt is and what the consequences are if they pay or make a promise to pay.

MR. COSTA: Well again --

MS. HRDY: If there are consequences.

MR. COSTA: Again, there are no legal consequences of time-barred debt.

MS. HRDY: But if they make a payment. In some states.

MR. COSTA: We provide all the necessary disclosures that all the regulators indicate. So we're not engaged in the re-tolling process. We're just not involved in that process. We take voluntary payments for amounts owed. That's really the way we proceed.

And when consumers ask questions we can't give them legal advice because we're not attorneys. We can't give them tax advice because we're not tax experts. We simply explain to them the situation, offer them the settlement. If they don't want to pay it, that's fine.

MS. HRDY: Karen?

MS. MEYERS: Some of the issues that have been raised in response to the kind of notice and how do -- the question of how do we decide what the statute of limitations is. And I understand we're talking about one state.

What was interesting to us is after passing our regulation we did a follow-up to a random sample of debt collectors to find out how they were complying. And we had several debt collectors write back and say we have not added the required language to our notice because we're not collecting time-barred debt anymore in your state. We have implemented appropriate technology that all of that debt is scrubbed and we do not seek to pursue it.

So the thought that that struck me with when I saw those letters was well I guess you do have the capacity to make those fine-tuned determinations through some data system and determine based on some algorithm I would assume what debt is time-barred at least for New Mexico.

And so I wonder why that couldn't be done being as sophisticated as we are technologically at this point for multiple states. I don't think it is rocket science.

For us it's, you know, we have a defined statement. There's specific safe harbor language that most creditors have adopted. And it is also required that it be disclosed at certain points during a telephone conversation contact.

But it's -- and frankly I'm not sure we can say that we know how -- what the impact is. But we do know from anecdotal review of the complaints we've gotten is that there clearly are people coming into our office who have received that notice, that they're clearly concerned about the fact that it's an old debt and they've read the notice, and that even though they've told the debt collector that it wasn't them, or the debt was old, that the debt is still being pursued not through suit but through debt collection efforts until we get involved.

MS. HRDY: So Dave and then Tom, would you react to Karen's statement it can't be rocket science to use technology to sort through the different statute of limitations and marry it up with the debt portfolios?

MR. PHILIPPS: I don't think it's rocket science but it's an issue of the disclosures being blended into all the other disclosures and the nationwide debt collectors, debt buyers, third party collectors burying it in plain sight with a New York resident notice and a Chicago resident notice and a Colorado-only resident notice and the validation notice.

You heard the professor earlier in the day talk about the validation notice, he hadn't studied it. I did. I paid an expert to study it. It reads at a 17th grade reading level. Now I did the math so you don't have to worry about that, that's grad school level. So it's incomprehensible.

At least the asset acceptance disclosure that the FTC got and the disclosure that New Mexico have read I think at a sixth or seventh grade reading level. So they're actually readable if you can find them.

So I think one of the things that if we're going to have more disclosure, if we can't eliminate the practice we have to make disclosures unique to a state and not have them buried in plain sight.

MR. THURMOND: Well, there are two or three things floating around in that. One was the notion of consumers coming to Karen's office and the distinction between the debt being old and them being the wrong person.

If the debt's old and they've been disclosed to I don't see a problem. If it's the wrong person we've already -- I do think that's a problem.

As far as the scrubbing of the portfolio to determine if the account's in or out of stat we do that regularly. So from a technology standpoint it is very doable.

The hardest part of that process is building the underlying logic to interpret all the state laws. So some states are very easy, I will acknowledge that, but there are a myriad of others that are very difficult.

And it's a moving target. Minnesota changed theirs last week I think. Arizona changed theirs earlier in the year.

Then there's someone files suit and all of a sudden choice of law becomes prevalent in that state where it didn't exist before. So getting the logic right, that's the hard part. The technology is there though.

And then I think the other part was

Dave's point. He and I talked about this the other day. The disclosures are difficult to read. And one of Dave's issues is all of the disclosures being on all the letters even though the person doesn't live in that state.

It's sort of a safety issue for the debt collector to prevent mistakes. Because we know when we make a mistake we pay for it. And given the volume nature of our business we don't make one mistake, you know, 100 accounts will get the wrong disclosure. So it's kind of a belts and suspenders approach.

MS. HRDY: Okay. So, in the instance that a consumer does make a payment on a time-barred debt and in the instance where they then stop paying and a collector decides to initiate a lawsuit because the statute of limitations has been reactivated currently in most states if the statute of limitations then ultimately does run that's an affirmative defense that consumers have to raise. So if the statute of limitations runs and they are then ultimately sued the consumer has to raise that as an affirmative defense.

Could we talk about the relative pros and cons of keeping that burden of pleading on the consumer versus shifting it to the collector, the plaintiff who's suing the collector for the debt? Larry?

MR. COSTA: I don't really think that we have any issue with eliminating that clause. I think that it's a time-barred debt. I don't think the clock should restart. I don't think anybody in the industry really is in that position to really advocate that position. It's time-barred debt. If they make several payments or they make payments, the clock shouldn't restart. So we're not opposed to the elimination of that clause.

MS. HRDY: And so then if say the statute of limitations runs and then the consumer is still sued and in that instance the consumer has a defense that the statute of limitations has run do you think it should be --

the burden should be on the consumer to raise that defense in litigation? Or again should we be thinking about the pros and cons of making the plaintiff --

MR. THURMOND: Alice --

MS. HRDY: Yes.

MR. THURMOND: Since -- I'll jump in for Larry. They don't do a lot of litigation work so Larry is that okay? Okay. I'm sure Larry's okay with that.

(Laughter)

MR. COSTA: I'm good, Tom.

MR. THURMOND: I think effectively the various attorneys general and the courts have already decided that, that if you do any sort of systemic suing of accounts that are past the statute of limitations they're going to pull you in as an unfair and deceptive practice.

So it's unconscionable to us. So if -- you have your defense if it's a mistake but I don't think any reputable debt buyer is sitting there going how can we sue out of stat debts and hope the people don't show up. So no, we wouldn't put that burden.

MS. HRDY: Dave?

MR. PHILIPPS: I think it's too patchwork to be left up to individual AGs some of whom are, you know, one minute consumer enforcers and then there's a change in administration and they disappear from the scene.

I think the problem with the 90 percent default rate is too much of an epidemic to rely on the consumers. A consumer who is making minimum wage can't take off to participate in the litigation process for four or five court appearances. They just can't do it to defend a $1,000 or $2,000 or $3,000 debt. It's just impossible. Even if they had the documents to do it they can't leave work and come in for the first hearing and in Cook County sit through a court call for 3 or 4 hours only to have an order entered of, okay, we'll continue this for documents. That's what they do, we'll continue it for documents. And then they'll give them another chance to continue it for documents.

And at some point the consumer is going to slip up. Either they give up, or they couldn't get off from work, or they're late on their bus. It's just not a system that should be relied upon. It should be barred on a nationwide basis.

MS. HRDY: So -- oh, Karen.

MS. MEYERS: Yes, I'd like to add something. One of the things that we're aware of from our consumer bar is that there are instances where there are recorded payments entered into a record in order to bring it into statute.

And since payment in New Mexico does revive the debt that's something that's very difficult to prove but it happens. So I think that the equities really do argue to, one, across the board not allow a payment to revive a time-barred debt.

I think that if what Larry is saying which is that the interest is, you know, where a consumer really wants to pay on the debt that that should be a voluntary thing but not to put them in jeopardy then of being put into a -- that their effort to be responsible or be responsive should not then undercut any protections that they've realized because of the passage of time.

And so I think that would be something very helpful and very important to do to balance out the equities in this area.

MS. HRDY: And so what I'm hearing in the conversation here is when it becomes the point in time where whether a collector sues or not, but if the consumer does want to pay and that is -- a partial payment, and that is going to revive the debt, and it does become in a litigation model.

Picking up on some of the discussion of our previous panel and some of the recommendations that Judge Rizzo was commending to us I'd like to ask the panel is there an application to those kinds of new strategies that could be applied in this area as well?

I mean, we were talking about debt collection sort of writ large in the previous panel, but are there any particular -- did you see any particular application to what was discussed in that panel to this area? Tom, I'll start with you.

MR. THURMOND: I'm not sure I understand the question. Ask again?

MS. HRDY: Okay. So if what we're saying is there a consumer comprehension problem. And so if we're in a time-barred debt situation and a consumer is sued, so it's what Dave was talking about. Do you see what Judge Rizzo was talking about, some outreach to consumers? Is there some additional outreach to consumers once they are in litigation to be useful in this area? And Dave, maybe you have experience that you would want to bring to bear whether that's even -- could be effective.

MR. THURMOND: So you asked

explicitly about time-barred debt. I think it would be more beneficial for the education to occur prior to litigation, just general consumer awareness, particularly in the states where it is easy to interpret the statute of limitations.

But it is complicated. You know, some states start at the date of default. You know, there was a slide up earlier that said, it said the default/charge-off date and the amount at that time. Those are two different dates. So understanding that is -- I understand that as a former regulator, former banker, and a debt buyer. I'm not sure the consumer can digest that very easily.

So certainly any educational efforts are the right thing to do pre or post litigation. I guess that's the best way I would answer it.

MS. HRDY: Okay. So -- oh, Karen, did you want to mention something?

MS. MEYERS: Yes. I think it goes back to the Maryland rule as an example.

Because with the high incidence of defaults you have to I think put together that reality with the experience for most consumers.

And what will make a difference is to educate the courts at what to look for so that if it's time-barred the way the court will know it's time-barred because the consumer is not there to raise it. And if it's inappropriately being sued on it's under the radar is to put in the date of default, to put in the last payment so that that is evident.

And then the supporting documentation. You have to increase and raise the bar on what has to be submitted to substantiate a claim.

When I bring a lawsuit I may be able to get a default but I don't get a damage award or restitution or injunction without proving something. I mean no judge -- I would love it if they would, if they'd just say great, Karen, you know, whatever you say it must be true. It's never happened to me in 30 years. And yet that's what happens with these default judgments.

And so to raise the bar on that so that there is an appropriate level of proof even if it's a default.

MS. HRDY: Okay. I wanted to ask a different question now and that's about when collectors are seeking to collect on a debt that's past the statute of limitations. And let's say it's past the statute of limitations but it could still be furnished to a consumer reporting agency and still appear on a consumer's credit report.

What are some of the sort of red flags that you've seen in terms of claims that are made to consumers about the effect on their creditworthiness if they do make a payment on the time-barred debt?

MR. COSTA: Well first of all, you can't make any claim to the consumer. You can't indicate to the consumer what effect it'll have.

MS. HRDY: And why is that, Larry?

MR. COSTA: Because that's clearly

defined by the regulations. You don't know. You have no idea what effect it's going to have.

Again, it's -- time-barred debt is very simple. It's a voluntary payment of an obligation. And that's all it is. It really isn't anything other than that as far as we are concerned. Again, we have no representation as to legality, we have no representation as to the effect on their bureau. Okay, we just again in a very simple way ask them to pay us at a substantially discounted rate.

So now there are some adverse effects that could affect a consumer if you were to bar collection of time-barred debt. So let's go back to this, you know, and we always have to use these crazy examples to make a point, right.

So let's say someone's looking for employment, are going to be gainfully employed and they have a time-barred debt by a state that has a 3-year statute and it's been on the report -- it'll be on the report for another 4 years. How do they affect that? How do they get that off their bureau if the collection of time-barred debt is no longer allowed? Again, crazy example but it does happen.

A lot of the things we talked about today are crazy examples because some statistics, you talk about 3 percent, 2 percent, 1 percent. So we tend to regulate the exception. We tend to regulate the non-typical behavior. So let's look at these situations. And so there are some adverse effects that could occur if you bar the collection of time-barred debt.

MS. HRDY: So I'd like Dave and then Tom to react to that. Because Dave, I know you're out, your sort of first position is we should bar the collection. There should be a prohibition.

MR. PHILIPPS: I think the instances where the statute of limitations has expired and it's still credit reported are very rare. The vast majority of them, it's time-barred, it's beyond the statute, changing that entry on the credit bureau isn't going to affect their credit score one bit.

Usually it's collected upon at a closing table in a real estate matter where they can't get into the nuances of oh, is this time-barred, should it be off the credit report, shouldn't it be -- it's just no, you've got to pay this if you want to close on this loan, if you want your house. You're stuck. You're paying at the butt of a gun.

And you know, maybe there are some instances where there might be some benefit but that's not what I see. I see they're just trying to collect on time-barred debt and hoping they get a default judgment. Not from LVNV but from a number of LVNV's competitors. It's a very profitable market, they pay almost nothing for time-barred debt, just like they pay almost nothing for bankrupt portfolios but they still collect on those.

I want to give all my money to Mr. Black. You know, he made it sound like it was bad business to pay 5 cents and get 11 cents. I'll be happy to double my money up.

MS. HRDY: Tom and then I think Larry wanted to say something.

MR. THURMOND: So a couple of things. If the account is still on the credit bureau because the original question is why can't you say that, right?

MS. HRDY: Or you know, can you say it and what should a consumer think about if that is a representation that is made to them.

MR. THURMOND: So the reason that doesn't get represented, common sense would tell you if you make a payment and pay off the debt that should improve your credit score. The reality is the credit score is a vastly complicated moving target that has to do with open to buy on other lines, the total amount of utilization on your credit cards, are you late on any other accounts. So there's never an isolated event that occurs. It's constantly being evaluated.

So that's why you can't use common sense in this business because if you said that and the guy goes and pulls his credit score and the credit score went down I have misled the consumer. So you can't do that.

The other part -- that's all I'll say on that.

MS. HRDY: Okay. Larry, did you have something?

MR. COSTA: Well again, all along the life cycle of debt the consumer has an opportunity to take care of this obligation. This is not the first phone call they've received. This is not the first letter they've received. So all along the life cycle they've had the opportunity.

And again, our position is very clear. We're offering a low, very low opportunity to settle this obligation. And that's our approach to time-barred debt. Again, it's a very small portion of our business.

MS. HRDY: Karen, did you want to

weigh in on this? No. Okay. So we have about 10 minutes left. I have one question so far from the audience. Recommend or commend you the question cards. If you need one I'm sure there are extra.

And I'll ask the audience if you don't necessarily have a question in light of everything you've heard particularly on this panel if there's one thing you would change about the collection of time-barred debt including a vote for barring it across the board I'd love to sort of get a crowdsourcing reaction from everyone. And I'm certainly going to ask the panelists as well.

Okay. So I'll go to the audience questions now. And here's one question. For those who collect on time-barred debt in states where no disclosures are required what information if any is conveyed to the consumer about the litigation status of the debt? I take that to mean about the fact that if the statute of limitations has run that they cannot be sued on it. And perhaps I'll ask this of Tom.

MR. THURMOND: Say the first part again?

MS. HRDY: So, if you're collecting on time-barred debt in a state that does not have a law that requires an affirmative disclosure.

MR. THURMOND: Yes.

MS. HRDY: What if anything should a collector be saying to the consumer? Or what practice do you see in your company and in others?

MR. THURMOND: Well, speaking to how I think it should work for everyone you certainly shouldn't imply or threaten a lawsuit. And then if asked a direct question, answer it. Can I be sued on this account? No. So you need to have a common sense no deception honesty policy for all your debt collectors. That should be the standard way you should operate.

MS. HRDY: Dave, I don't know if you want to chime in on this in terms of what you think would be the best practice?

MR. PHILIPPS: I already said stop collecting them.

MS. HRDY: Okay, right, right. Thank you. So here's a question from our Twitter feed. What happens when consumers move from a state where the debt is out of statute to a state where the debt is in statute? I'll open it up to anyone who might want to answer that puzzle.

MR. THURMOND: It's now in statute.

MS. HRDY: Dave?

MR. PHILIPPS: Good question. Back to choice of law. And if it's dead I don't think you revive it by moving.

MS. HRDY: Is it governed by -- are you saying, Dave, it's governed by the credit contract?

MR. PHILIPPS: Well, I think if I ever saw one of the credit contracts from a debt buyer, from an original creditor, and the right credit contract. Instead if we get a credit contract from a debt buyer and we actually look at the revision date we have a debt that was charged off in 2005 and the debt collection attorney is proud to produce a contract for terms and conditions that's from 2009. I don't think that's probably the correct one.

So it's a moving target. It's a lack of documentation, the inability to discover what contracts involved. Is there a choice of law in there. You know, it's almost an Abbott and Costello routine. Who's on first, what's on second, and I don't know is on third base.

MS. HRDY: Any other comments?

MS. MEYERS: I think you'd have -- I have not researched this but I think you'd have a serious Constitutional question on the right to travel if that were to happen.

MS. HRDY: Okay. We have a comment. I get a call every month from a new collector for a person I have never heard of. How do I make this stop? I tell them every time to note that they have the wrong number.

Any thoughts? I mean that's sort of

a general --

MR. COSTA: That falls on us as the collection agency is that we have to make sure our collectors notate that the person won't be called anymore. Stop calling. Remove the number. That falls on us. And we will make sure that happens.

MS. MEYERS: Can I ask a question?

MS. HRDY: Yes.

MS. MEYERS: Well, so we've been talking about all these practices and most of the panelists say well, that's not what we do. And I take them at their word. So who is doing this? Because we're seeing this stuff and where are they?

And what do we do to bring the people who are violating the law and engaging in what I think would be deceptive or unconscionable practices to a place where they are compliant?

And I think that's not just a question for consumer advocates or attorneys general. And I guess I should say I'm speaking for myself, not my attorney general when I say any of these things.

But you know, it's also a question for the industry.

MS. HRDY: Does anyone want to answer Karen's question?

MR. PHILIPPS: It's such a loaded question. Find a good NACA member, National Association of Consumer Advocates. Find a consumer attorney in your state and sue that debt buyer for not following these best practices.

MS. HRDY: And I would note for the person who submitted the question about getting the calls, I would always recommend that you file a complaint with your attorney general, with the Federal Trade Commission. And once the Consumer Financial Protection Bureau starts taking debt collection complaints I would recommend filing a complaint there as well.

In addition to telling them that they have the wrong person and they should not call you back.

MR. THURMOND: Alice, I think that's a great point. Because the complaint process that exists today that's being enhanced as well, you know, serious debt collectors review those complaints on a regular basis and they not only remediate that specific person's issue, they're looking for systemic problems. Is there a break somewhere in their internal or external operations that there's another one of these out there.

And I personally review every complaint every month. And that's what I'm looking for is if there's one out there is there another one. I want to find it before Dave does.

MR. PHILIPPS: And if your phone's a cell phone find a NACA member and sue under the TCPA because there's no consent to call you.

MR. COSTA: That will be a topic for tomorrow, the TCPA.

(Laughter)

MR. COSTA: Just so you know your iPhone is an automated dialer by that definition.

MS. HRDY: And we'll just note for folks who don't know what the TCPA, almost everyone here does, the Telephone Communications Protection Act which is enforced by the FCC. Just noting that.

(Laughter)

MR. COSTA: To build on Tom's point --

MS. HRDY: It's a technical point.

MR. COSTA: And to build on Tom's point, the people that we collect for, they hold us to very high standards. We don't want to generate any complaints. We don't want to have that conversation because the people we collect for, if we generate complaints we will no longer be collecting for them. So that takes care of all the economics and all the other decisions.

We try and do things the best way possible and we're going to continue to strive. When we make a mistake, we make a mistake, we own up to it, we pay the fine and we move on.

MS. HRDY: So in the final minutes I'm going to ask -- I sadly didn't get any crowdsourcing response. It's not too late to wave your magic wand and say what's one thing that you would change if you could.

So I'll start with Tom and Tom, it's up to you. You can wave your magic wand and say what's one thing you would change in regards to the collection on time-barred debt. Or any other comment or any other thing that you feel needs to be said before we close out today.

MR. THURMOND: I won't add much here because I think, you know, it's easy for a debt buyer and particularly a national debt buyer to be able to wish for a uniform set of standards.

And I hope the CFPB is successful with the FTC in that. I think it's a practical impossibility given our Constitution and how the states are chartered. And as a debt buyer we've signed up to navigate those waters, try to treat consumers respectfully and make a profit. And that's what we'll try to continue to do.

MS. HRDY: Thanks, Tom. Dave?

MR. PHILIPPS: I think we've said enough.

MS. HRDY: Really? Karen.

MS. MEYERS: Pass.

MS. HRDY: Really, wow. Because it's almost 5:10. Larry, you have the final word. What will it be?

MR. COSTA: Again, we're looking for consistency. We're looking for not necessarily regulation on the exception but we've got to take a sensible approach to all this. And some of the things we're going to talk about tomorrow, some of these -- especially the TCPA which puts all of us in a very, very difficult light.

So we welcome the opportunity to work with the industry. We thank you so much for inviting us. And we'll do everything we can to make sure we stay compliant.

MS. HRDY: So I want to thank our panelists for a terrific discussion. And thank you, audience, for the questions.

(Applause)

MS. HRDY: And I'm turning it over to Jessica Rich, the Associate Director for the Division of Financial Practices, who will give us closing remarks today.

MS. RICH: Well, hello. Glad people stayed; it's great. Thanks to everyone for participating in our roundtable. It was a great discussion. I think we all learned a lot.

We like to sum up these meetings at the end so the audience can at least hear what some of the people organizing it think they heard. And so that's what I'm doing.

So, as you all know, the focus of this event was the availability and accuracy of data throughout the debt collection life cycle. These issues are important because if data is inaccurate or incomplete, it can lead to collection of debts from the wrong consumer, or the wrong amount. Or consumers who owe debts may not be able to recognize that they owe the debt and make informed decisions about whether to pay them.

We looked in particular at four key phases in the debt collection life cycle. What consumers are told at the beginning of collection, what happens when a consumer disputes a debt. That is, what information is required to substantiate the debt and what sort of investigation must be undertaken.

What happens when debt collectors pursue a debt in court. What information is included in the complaints and whether consumers have a fair opportunity to participate in the process. Lots of discussion on that.

And finally, what if the debt is beyond the statute of limitations. What should consumers be told about this.

We heard there are problems and concerns at each of these phases, barriers that prevent collectors from obtaining underlying documentation and records from collectors. Questions about whether debt collectors provide adequate information to consumers about their debts so they can evaluate whether they owe the debts and should pay them.

Questions about whether debt collectors are taking adequate steps to verify debts that consumers have disputed. Concerns about the low level of consumer response to debt collection lawsuits, lawsuits that impose real liability on them and have a real consequence for their financial well-being.

Concerns about the information included in court complaints and whether it provides sufficient notice to consumers and to the courts about the claims being asserted. And general lack of disclosures to consumers about when debt is time-barred and unenforceable through a lawsuit.

From where I was sitting, and I'll admit I went upstairs because it was cold in here but I was listening the whole time on my computer, I didn't hear agreement on the solutions to all of these issues. But I did hear some areas of agreement, and in particular repeated reference on every panel, to the need for consistent standards. And I did hear agreement that the issues we talked about today are the essential ones to address as we evaluate how the FDCPA is working and whether the balance between legitimate debt collection activities and consumer protection is sitting right or out of whack.

Moving forward, the issue with data integrity in debt collection is on the forefront of both agencies' agendas. And the discussion here was incredibly valuable as we develop solutions to the issues which may range from stepped up enforcement of existing statutes, to the use of technology to improve data availability and accuracy, to enactment by more states of rigorous court rules, and of course rulemaking by the CFPB.

So we're hardly done. We're right in the middle of a continuing process of improvement. And there's going to be a lot more on this.

In closing, I'd like to thank the team that put today's roundtable together. It does take a lot of people to put a roundtable like this together.

The planning team at the CFPB is Corey Stone, John Tonetti, Nate Viebrock, Heidi Johnson, Kristin McPartland and Tom Pahl. At the FTC, it's Dan Dwyer, Tom Kane, Chris Koegel and Tiffany George. And our friends in Consumer and Business Ed and other offices who made the event run smoothly include Carrie Gelula, Samantha Konstandt, Gail Kingsland, Lara Busby, Wayne Abramovich, Cheryl Hackley, Bruce Jennings, Kenethia Felder, Amanda Savitt, Monica Naranjo Correa and a number of great law clerks. So thank you so much for participating today.

(Applause)

(Whereupon, the foregoing matter went off the record at 5:14 p.m.)