

FEDERAL TRADE COMMISSION

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DEBT COLLECTION DIALOGUE

A conversation between government and business

Tuesday, September 29, 2015

1:30 p.m.

Southern Methodist University

Karcher Auditorium

3315 Daniel Avenue

Dallas, Texas

Reported by: Michelle Munroe, CSR

FEDERAL TRADE COMMISSION

I N D E X

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25

Welcoming Remarks:	PAGE:
Mr. Thomas Kane, Senior Attorney, Division of Financial Practices, FTC	3
Opening Remarks:	
Ms. Jennifer Collins, Dean, Dedman School of Law, Southern Methodist University	3
Introduction:	
Mr. Christopher Koegel, Assistant Director, Division of Financial Practices, FTC	5
Panel 1:	14
Moderator: Mary Spector, Professor, SMU	
Panelists:	
Christopher Koegel, FTC	
Gregory Nodler, CFPB	
Kenneth Lennon, Office of the Comptroller of the Currency	
Michael Frost, CBE Companies	
Patricia Baxter, DBA International	
Panel 2:	85
Moderator: Dama Brown, FTC	
Panelists:	
Christopher Koegel, FTC	
Gregory Nodler, CFPB	
Jessica Lesser, Office of the Texas Attorney General	
Robert L. Foehl, ACA International	
Joann Needleman, NARCA	

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

2                   MR. KANE: I want to thank you all for  
3 coming. My name is Tom Kane. I'm an attorney with  
4 the Federal Trade Commission's Division of Financial  
5 Practices and we are the team that put together this  
6 dialogue. We're very glad you're here.

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

11                   (Applause.)

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

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

24                   Southwest Regional Director David  
25 Brown, along with Senior Attorney Tom Carter have

1     been instrumental in planning the program and  
2     bringing it to SMU today. My special thanks to Dama  
3     and Tom as well as their predecessors and the many  
4     other attorneys at the FTC, Jim Elliott, who have  
5     supervised our law students for so many years as  
6     experts.

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

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

18                   (Applause.)

19                   MS. COLLINS: Finally, I need to thank  
20    the folks from SMU who are responsible putting this  
21    event together. First, I would like to acknowledge  
22    Professor Mary Spector who does such outstanding  
23    teaching and scholarship in the consumer credit area  
24    and is just a wonderful teacher and mentor to our  
25    students.

1 I'd also like to thank Rebecca Bell  
2 who put together the logistics and all of the little  
3 event planning details that go into making this kind  
4 of event possible. They have both put in a  
5 tremendous amount of time and energy, and please join  
6 me in thanking Professor Spector and Ms. Bell.

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

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

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

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

1 program for the last three.

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

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

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

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

21 We at the FTC are extremely lucky and  
22 fortunate to have partners like the CFPB, like the  
23 State AG, and like other state and local law  
24 enforcement agencies as we combat unlawful debt  
25 collection activities in an effort to both protect

1 consumers and also to protect the interests of  
2 law-abiding debt collectors.

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

8           Among other things, Congress noted  
9 that abusive collection practices contribute to  
10 personal bankruptcies, marital instability, loss of  
11 jobs and invasions of privacy. Abusive collection  
12 practices are debilitating to consumers and in some  
13 cases cause them to pay amounts that they do not owe.  
14 This affects enormous numbers of consumers.

15           Studies have found that approximately  
16 15 percent of adult Americans, nearly 30 million  
17 people, have an account in collections. Viewed  
18 another way, over 35 percent of Americans with credit  
19 records have past due debts on their credit reports.  
20 And those debts are significant, often averaging over  
21 \$5,100.

22           I would add that the cumulative amount  
23 of this debt is significant to the economy as a  
24 whole. In 2010, the total amount of consumer debt in  
25 the U.S. reached nearly \$2.5 trillion. We at the FTC

1 also know that debt collection is a significant  
2 industry.

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

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

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

21 There doesn't need to be this much  
22 abuse and this much unlawful activity. As many of  
23 you know, as Congress noted when it passed the FDCPA,  
24 debts can be effectively collected without resort to  
25 deception or abuse.



1                   For all these reasons, the FTC has  
2                   made debt collection one of its strategic priorities  
3                   for many years now. This is reflected in the many  
4                   law enforcement actions we have brought. For  
5                   example, last year the FTC filed 10 new debt  
6                   collection cases against 56 different defendants and  
7                   obtained nearly \$140 million in judgments.

8                   Those judgments also banned 47  
9                   companies and individuals from ever participating in  
10                  debt collection again because the violations in those  
11                  cases were just so egregious. So far in 2015 we have  
12                  already filed eight new debt collection cases, and we  
13                  still have three months to go.

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

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

24                  These debt collection dialogues -- and  
25                  this is the second of three planned so far -- are yet

1 another strategy for addressing unlawful debt  
2 collection practices. We held the first one in  
3 Buffalo in June, and the third one will be in Atlanta  
4 a little bit more than a month from now, in  
5 mid-November.

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

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

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

23           During today's two panels, you will  
24 hear from me from the FTC, from Greg Nodler at the  
25 CFPB and from Ken Lennon at the OCC, as well as

1 Jessica Lesser from the Texas Attorney General's  
2 offices.

3 All of our agencies have jurisdiction  
4 over these difficult debt collection issues, and  
5 that's why it is so important that we all communicate  
6 with each other and collaborate. These  
7 collaborations have led to great results.

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

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

22 But certainly as important as the law  
23 enforcers and regulators on our panels today are  
24 going to be the collection industry representatives  
25 who are going to join us in the conversation. There

1 will be two on each panel today.

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

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

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

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

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

1 those up to the moderator for that time at the end of  
2 each panel.

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

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

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

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

25                   One final note before we get started,

1 I have to give the standard disclaimer on behalf of  
2 myself and Greg for the CFPB and Jessica and Ken.  
3 The views we express today are our own and are not  
4 necessarily those of our respective agencies, so that  
5 way all of us don't have to give this silly  
6 disclaimer.

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

12 (Applause.)

13 PANEL 1:

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

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

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

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

1 party started.

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

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

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

19 MS. SPECTOR: Right.

20 MR. NODLER: Anyway, we have teams of  
21 people at the agency who are in charge of strategic  
22 thinking for different areas such as debt collection and  
23 mortgage servicing. So I'm the person for debt  
24 collection, and then we have teams of enforcement

1 attorneys who are subject matter experts in those  
2 areas who regularly meet with us. And we are charged  
3 with coming up with the strategic plan, addressing  
4 each issue and making sure we're consistent with it  
5 or changing it, when necessary.

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

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

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

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



1 addressed, that is something that's going to have  
2 high priority for us.

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

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

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

21 Student loan debt collection also is  
22 unique in that the Department of Education contracts with a  
23 limited number of collectors for federally guaranteed  
24 loans, and those collectors have to follow some  
25 unique procedures for offering rehabilitation or

1 disability discharge and things like that. That's  
2 certainly one big priority for us.

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

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

19           The third and final big strategic priority  
20 is the egregious practices. So this has been really  
21 the highlight of a lot of the cases we have brought  
22 over the last couple years. These are the collectors  
23 who aren't just flirting with the line; they're  
24 leaping over it or don't even know it exists. You  
25 know, threatening arrests, threatening litigation

1 when they never file lawsuits, impersonating  
2 government agencies, you know, threats of violence  
3 and things like that.

4                   We have spent a lot of time and we  
5 have brought a number of cases up in Buffalo where  
6 this seems to be a prevalent thing. And those are  
7 the cases that end up with ex parte TRO's. We freeze  
8 the assets and put a receivership in charge of the  
9 business. At the end of the case, we put these  
10 people out of your industry.

11                   So that is going to continue to be a  
12 priority for us to make sure that we put an end to  
13 that incredible consumer harm with that in the  
14 market.

15                   Finally, one last addition.  
16 Obviously, the CFPB is working on something important  
17 there. We are going to be devoting resources to  
18 providing our input and experience into that process  
19 as well.

20                   MS. SPECTOR: Thank you. We'll talk  
21 about rule-making in a little while.

22                   I would like to follow up with y'all a  
23 little bit. Because you're both doing enforcement,  
24 how do you decide which agency does what? How do you  
25 divide up or do you divide up that big pie?

1                   MR. NODLER: We meet regularly and we  
2 keep in touch to make sure that we're not wasting  
3 resources, you know, not investigating the same  
4 entity unless it's something joint.

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

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

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

25                   MR. NODLER: Sure. So in addition to

1 our enforcement work, the CFPB also conducts  
2 examinations, and similar to not stepping on each  
3 other's toes in investigations, we work with the  
4 prudential regulators or with state examination  
5 agencies to coordinate our examination so that  
6 we're -- so they can be conducted at the same time or  
7 so it's not too burdensome on the industry.

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

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

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

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

1 MR. NODLER: Yes.

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

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

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

24 If, however, the violations are really  
25 egregious, no-brainers or we see the company

1 constantly changing its name to evade detection, we  
2 will investigate them ex parte. We don't let them  
3 know that we're looking. We amass all of our  
4 evidence from third parties. We talk to a lot of  
5 consumers. And ultimately those lead down different  
6 paths at the very end of the case as well.

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

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

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

24           MR. NODLER: So for the CFPB, similar  
25 to the FTC, we'll look at the number of victims, the

1 severity of the harm, things like that when we decide  
2 how to open an investigation. We also conduct them  
3 ex parte or we'll start them out with a civil  
4 investigative demand.

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

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

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

23           And what we consider responsible  
24 business conduct would be when a company  
25 self-polices, self-reports, remediates and



1 cooperates. And if companies go really above and  
2 beyond what the law requires, then that can be looked  
3 upon very favorably by the Office of Enforcement and  
4 can lead to a -- maybe it's a case that came out of a  
5 supervisory examination. It might be resolved  
6 non-publicly through a supervisory process or it may  
7 lead to a public enforcement action, whether a limited  
8 civil money penalty or even no civil money  
9 penalty.

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

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

20 MS. SPECTOR: Did you want to follow  
21 up?

22 MR. KOEGEL: Yes. I just wanted to  
23 add something I know that folks in the industry are  
24 interested in hearing some of the things that we look  
25 at when we're trying to make a decision. I wanted to

1 amplify some of the things that Greg's mentioning from an  
2 FTC perspective.

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

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

19           And then, as I said before, factor in  
20 are you frequently changing your name, do you have multiple  
21 d/b/a's, is there some elaborate corporate structure  
22 for no apparent business reason. These are all red  
23 flags for us. And then later on in the case if it's  
24 something we have proceeded with notice to a company  
25 and we take into account how responsive and

1 cooperative they were during the investigation, have  
2 you taken any intermediate steps to address any  
3 problems that have been identified.

4 MS. SPECTOR: Okay. Thank you. Ken,  
5 Greg talked about prudential agencies or prudential.  
6 That's you, I think.

7 MR. LENNON: Yes, ma'am.

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

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

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

22 And last time I checked -- it has been  
23 a while -- national banks and FSA's represented about  
24 70 percent of the banking assets in this country, so  
25 obviously a big chunk of the nation's banking assets are under my

1 organization's supervision.

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

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

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

19           And two themes kept coming up: Failure  
20 to keep control over third  
21 parties who are working on behalf of the banks and  
22 the banks' documentation practices generally. So like  
23 any good examiner, the folks at the large banks  
24 basically said, well, what other parts of the bank  
25 rely on third parties and what other parts of the  
26 bank involve heavy amounts of documentation.

1                   They realized that these same issues might  
2     apply to debt collection and debt sales. So starting in  
3     April of 2011, at the  
4     largest banks we supervise, the examiners started  
5     looking at those practices. And they came up with  
6     what has been referred to as the Best Practices  
7     document, and it is pretty much what it sounds like.

8                   If you look at the largest of the  
9     large banks, the examiners compiled a list of those banks'  
10    best practices in terms of  
11    selling charged-off consumer debts. About two  
12    years later in July of 2013, the OCC delivered a  
13    statement to the Senate Subcommittee on Financial  
14    Institutions and Consumer Protection, and that  
15    statement addressed debt collection and debt sales.

16                  It made a number of points,  
17    principally amongst them that our agency was very  
18    concerned about the risk that debt sales activities  
19    posed for banks that engaged in it. And there was a  
20    strong emphasis on the fact that banks that engaged  
21    in debt sales had to have appropriate risk management  
22    in place.

23                  There was also language in that  
24    statement that made reference to the best practices  
25    document. And there was a commitment made in the statement  
26    that we would take that best practices document

1 and add what we had learned subsequent to its  
2 development -- it was developed in 2011, so you have  
3 a couple of years -- as we continued to examine banks  
4 and then issue guidance. So the guidance would reflect  
5 the compilation of  
6 what we had learned through subsequent supervision as  
7 well as the original best practices.

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

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

19           MR. LENNON: Well, let me take it a  
20 little differently, if I could, Mary. Let me focus  
21 on two enforcement actions that we have taken in the  
22 last five or six months. I think it was May 29th of  
23 this year, the OCC issued a notice of assessment of

1 civil money penalty. The civil money penalty is  
2 exactly what it sounds like, it's a fine. We fined  
3 Bank of America \$30 million, and that basically was a  
4 result of two things.

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

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

17           About six weeks later in early July of  
18 this year, the OCC issued a second \$30 million civil  
19 money penalty, this one against three institutions  
20 that we supervise under the JPMC umbrella, so  
21 basically three banks that we were dealing with. And  
22 obviously, JPMC had both state and federal banks.  
23 The three federal banks that we supervised got assessed  
24 with a \$30 million CMP.

25           And those three institutions had, actually

1 prior to July of this year, executed a consent C&D. So  
2 the question became if you  
3 put the two C&D orders up against each other and put  
4 the findings of fact up against each other, what do  
5 you see. Are there any commonalities? And clearly  
6 there were common threads when you looked at the two  
7 documents.

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

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

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

25 When you look at those facts and say



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

9 I can't address B of A's remediation amount.

10 Frankly, it's too recent, and I just don't have that information. I can  
11 tell you that in connection with JPMC, with this one  
12 caveat, JPMC's restitution goes not just to debt  
13 collection activity; it also goes to unsafe or  
14 unsound practices involving SCRA. I can tell you  
15 that collectively JPMC's three institutions have  
16 already paid in excess of \$50 million in restitution.

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

21 Tell us a little bit about your  
22 organizations and the entities that your  
23 organizations represent. Who are the members and  
24 what percentage of the industry do you think you-all  
25 represent?

1                   MS. BAXTER: Thank you, Mary. I'm  
2 very pleased and honored to be part of the panel here  
3 today with my co-presenters. As I look out at the  
4 audience members, I see many familiar faces,  
5 representatives from industry members. And I thank  
6 you for your time and your investment being part of  
7 this important conversation today.

8                   I'm on the board of DBA International.  
9 We are a nonprofit trade association and we represent  
10 nearly 600 member companies. We were founded in  
11 1997, so almost 20 years old. Most of our member  
12 companies are private, but we do have a few public  
13 member companies. And some of our largest companies  
14 employ over 1,000 staff members. We have companies  
15 that operate in all 50 states.

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

24                   I think it's important that you know  
25 that the community of debt buyers participate in the

1 market in a variety of asset classes. You may be  
2 familiar that we purchase debt portfolios of credit  
3 card accounts and consumer loan accounts.

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

10 Although we can't be sure exactly the  
11 percentage of debt buyers that are members of our  
12 association, what we do estimate is that more than  
13 90 percent of the debt portfolios that are traded in the  
14 market today are being purchased by companies who are  
15 members of our association.

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

18 MS. BAXTER: It's more than  
19 90 percent.

20 We also want to share that our  
21 association plays a very important role in advocacy  
22 for our members. We certainly represent our members  
23 with credit issuers, with regulators and with  
24 lawmakers. We have a very robust committee structure  
25 for federal advocacy as well as state advocacy. We

1 engage professional consultants who are subject  
2 matter experts in their fields to make sure they give  
3 us proper guidance on positions and issues that  
4 affect our industry.

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

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

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

23           MS. SPECTOR: Thank you.

24           Mike?

25           MR. FROST: Mike Frost. I'll send out

1 a special thank you for all the members here today as  
2 well from our industry.

3 MS. SPECTOR: Mike is here from Iowa  
4 today.

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

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

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

25 So that's really what the organization

1 does. A lot of the same stuff that Trish was saying,  
2 we have annual conferences. We do a lot of work on  
3 the compliance front. So we have a member attorney  
4 program that routes a lot of different webinars, a  
5 lot of different conference schemes. We actually  
6 have different types of compliance processes set up  
7 throughout that group.

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

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

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

24           First of all, I think we would all  
25 acknowledge there has been contraction in the market

1 participation from several levels. First of all,  
2 many of the credit issuers who were selling ceased  
3 selling years ago and have not restarted. And  
4 indications are many of them are not going to resell  
5 as a result of the supervision activity or  
6 enforcement action.

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

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

21           One, there are barriers to entry to  
22 even be approved. And then they are specifically  
23 limited by capping the number of companies

1 that can participate in the sales process.

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

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

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

23 MS. SPECTOR: Now, that would relate  
24 to the institutions or the issuers that Ken's agency  
25 oversees. What about some of the other credit



1 issuers like medical debt or things of that nature?

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

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

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

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

25 Do your agencies have any say in or

1 have any authority or guidance for your members --  
2 the member constituents of your organizations?

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

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

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

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

1 the development of the program.

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

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

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

24 So we thank the regulators who are  
25 taking enforcement action against bad actors in our

1 industry because that helps us as well. We simply  
2 don't want them in the industry. We think they  
3 reflect poorly on our industry members. It helps us  
4 because we don't want to be doing business with those  
5 bad actors.

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

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

18 The last thing I want to say about the  
19 certification program is that we instituted a very  
20 important component of an independent audit. I think  
21 that's important because companies are required to  
22 renew their certification every two years, and they  
23 have to go through an audit process in order to do  
24 that. And if the audit finds deficiencies, they will  
25 lose certification. They have a brief window in

1       which to complete remediation. And if they fail to  
2       meet the remediation standard, they no longer can be  
3       certified.

4                       MS. SPECTOR: Thank you.

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

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

19                      Obviously, the agencies have -- on a  
20      case-by-case basis they have the decision if they  
21      want to if they are future examiners of the CFPB  
22      process. They can disclose those pre-examination  
23      findings. So for agencies that do those  
24      pre-examination processes, they can actually utilize

1 that to show that and self-report any deficiencies  
2 they may have and identify the remediation steps they  
3 took to identify those as well.

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

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

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

24 So really, that's helped us identify  
25 exactly what those examinations are supposed to look

1 like and what the key elements are for us to be able  
2 to build those mock audits.

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

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

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

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

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

24 So to have those conversations and  
25 that dialog is imperative, I think, to our industry

1 to be able to explain what it is that we do, how some  
2 of those outcomes could be maybe corrected or how the  
3 rules can be promulgated to make sure that, one,  
4 we're protecting the rights of consumers in every  
5 transaction, and also allowing us to conduct our  
6 business without making everybody go broke through  
7 the compliance process.

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

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

18 So it's a great dialogue to be able to  
19 share business perspectives on specific areas and be  
20 able to hopefully influence regulations to required  
21 outcomes. Some things that get put into law are  
22 almost impossible. If you have the conversation  
23 ahead of time and are able to walk through this  
24 process and understand how the business operates,  
25 there's ways to get to the same end means and create



1 a great type of consumer protection without creating  
2 a law that's very difficult to be able to comply  
3 with.

4 MS. SPECTOR: Trish, anything to add?

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

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

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

22 So we look forward to working with  
23 regulators when they are conducting investigations to  
24 know about those bad actors. Certainly as members of  
25 an institution, we want to make sure that they are

1 adhering to the law and also to the member code of  
2 ethics.

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

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

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

20                   And then, also, we're going to  
21 continue our federal outreach policies. We have  
22 recently initiated a new task force to look at  
23 consumer response data, specifically with the CFPB  
24 complaint portal. And there's a group within the  
25 CFPB that's going to be working with members of the

1 task force, some of them are here today.

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

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

13 And what we understand from the CFPB  
14 is those complaints have been determined to be not  
15 actionable or referred to other regulators. And so  
16 we think perhaps maybe some of the data is being  
17 reviewed and skewed because there are a number, up to  
18 50 percent of the complaints, our companies aren't  
19 able to respond.

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

24 MS. SPECTOR: Okay. We could talk a  
25 little more about complaints or we could talk about

1 compliance clause. I heard that phrase used in your  
2 responses. And we have different regulators. We  
3 have bank regulators. We have the FTC. We have the  
4 state regulators.

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

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

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

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

22 Today through this memo of  
23 understanding, instead of getting 15 examiners coming  
24 into your office at one time from CFPB, you're  
25 actually getting another 15 on top of it,

1 potentially, 10 to 15 from the Conference of State  
2 Bank Supervisors, which is composed of 10 to 12  
3 additional states.

4           The interesting thing from an  
5 efficiency standpoint is the state is actually  
6 charging for their examination, which adds having  
7 them come to the facility, actually creates  
8 additional cost than what you have seen in the past.

9           And, in fact, the CFPB actually when  
10 they conduct their investigations, they send a  
11 request for information about 60 days prior, I  
12 believe, or maybe 90 days. It's a sufficient amount  
13 of time prior. You're able to get that information  
14 to them.

15           The Conference of State Bank  
16 Supervisors asks for similar information. You can  
17 give that information to them ahead of time. We  
18 have heard issues where each state or each state  
19 regulator has a different regulation; therefore,  
20 they're asking the same type of question or asking  
21 for financial information in different data sets.

22           So you're having 30 auditors in your  
23 building at one time during the week. And then  
24 having to provide financial information or other  
25 information to those auditors in 10 different formats

1 makes it somewhat cumbersome to coordinate.

2                   So I think that the intent of that  
3 process is really good. The intent is to combine all  
4 of those efforts into one fell swoop so you don't  
5 have to go through that process. That's not what  
6 we're seeing today. We're seeing separate entities  
7 come in with 10 or 12 different requests very similar  
8 in nature but divided up in a different way. And  
9 then you actually bear the cost of that. So the  
10 costs we have seen come in thus far are about 10 to  
11 15 times the expense of what we saw before.

12                   MS. SPECTOR: Ten or 15 times?

13                   MR. FROST: Correct.

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

17                   MR. LENNON: Well --

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

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

23 So generally speaking, our coordination really is at  
24 the federal level. We are the federal regulators as  
25 opposed to the state regulators. The banks that we regulate are

1 not state-chartered. They're federally-chartered.

2 So we probably wouldn't be dealing  
3 regularly with the state folks. We would, however,  
4 be dealing regularly with other federal regulators,  
5 including the CFPB. And I think getting to the theme  
6 of this topic about coordination and trying to reduce  
7 costs, for example, the OCC and the CFPB are both  
8 part of what's known as the FFIEC, the Federal  
9 Financial Institutions Examination Council.

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

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

23 Basically what it says is that we  
24 should be coordinating our supervisory efforts in  
25 connection with the large banks, basically the banks

1 that have more than 10 billion dollars in assets. Because  
2 Greg's group is responsible for ensuring compliance by those large banks  
3 with what are known as the federal consumer financial  
4 laws. There are about 18 of those laws.

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

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

19 And to take it one step further, the  
20 OCC and the FTC also have an MOU. So to the extent  
21 that we're looking at the same thing, we have an MOU  
22 that basically allows us to share information. And  
23 more recently, our two organizations have tried to do a better  
24 job of opening up the lines of communication. So,  
25 for example, the fact I'm here today tells you that



1 we're cognizant of the need to work  
2 together and exchange information when appropriate  
3 to do so, and to the extent it's possible, to reduce  
4 costs for the organizations that we regulate.

5 MS. SPECTOR: Okay. Thank you.

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

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

24 The issue with the compliance burden  
25 is that there are extended audit rights, extended

1 data security requirements, extended insurance  
2 requirements that aren't necessarily consistent with  
3 the risk of those debt sales.

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

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

18           Let's move to a different topic. I'm  
19 going to direct this to Greg. A question on many  
20 people's mind is the ANPR for the debt collection rules.  
21 The ANPR was issued November of 2013. We're coming  
22 up on two years. The comment period is officially  
23 closed. A lot has happened in that time. What are  
24 the next steps? What do you see coming in the  
25 future.

1                   MR. NODLER: So unfortunately, I don't  
2 have any big news to give on it like an official  
3 timeline.

4                   MS. SPECTOR: No date?

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

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

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

23                   And then we meet with them. They  
24 review the proposal. They let us know how much this  
25 is going to cost them and give us -- it's not really

1 a comment. It's heightened I would say. So they may  
2 issue a report that says, you know, what we should do  
3 and what we shouldn't do.

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

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

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

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

19 MR. NODLER: More than 30 days.

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

23 MR. FROST: How much time do we have?

24 MS. SPECTOR: We can talk about  
25 certainty.

1                   MR. FROST: That's what we're looking  
2 for. I think Chris is the one that said -- you know,  
3 talking about walking that fine line. And for us, I  
4 mean, the ANPR issues are out there. They're really  
5 questions that we see because there's ambiguity in  
6 regulations.

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

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

21                   So it's not that we don't want to  
22 follow the rule. A lot of times, especially in the  
23 debt collection or the debt litigation area.  
24 Litigation is really an area where there is ambiguity  
25 in the law. There's litigation filed against

1 agencies, and a lot of the time ends in settlement.

2 The only reason it's there is because  
3 of ambiguity. Our request is how can we find  
4 clarity. We think we'll find that in the NPR. That's  
5 really what we're striving for as an industry. Give  
6 us clarity or tell us what we can and can't do and  
7 we're going to do it.

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

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

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

23 MS. BAXTER: Sure. Documentation.

24 MS. SPECTOR: The short list.

25 MS. BAXTER: Documentation is one. I

1 would comment that some of the supervision activities  
2 that came in a way of the guidance document and  
3 bulletin for OCC was directed to the banks regarding  
4 debt sales has been beneficial to our industry  
5 members.

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

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

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

24 I have to say today, though, that the  
25 last year I have seen a little bit of diminishing of

1 the value of having reps and warranties from the bank  
2 on data accuracy and validity. I have seen some  
3 provisions offered in purchase and sale agreements  
4 which seek to limit those reps and warranties in the  
5 way of limiting indemnity for those, in either scope  
6 or duration. Maybe an absolute cap on damages that  
7 run to those reps and warranties or even a limit on the  
8 time period, the term may be one or two rather than a  
9 perpetual rep and warranty.

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

15 We did respond and submit detailed  
16 responses to the ANPR and we're pleased to be able to  
17 be here and participate today and give you our  
18 thoughts. I don't -- if you want more information on  
19 our position on this, I just want to say we do keep  
20 all this information available on our website. And  
21 you can look at [www.dbainternational.org](http://www.dbainternational.org).

22 I do offer the president and the board  
23 members as far as what we're doing as far as  
24 association to work closely with regulators as is  
25 evidenced by what we're doing today.



1 MS. SPECTOR: That's not password  
2 protected?

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

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

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

16 MR. FROST: I'll leave the debt sale  
17 portion to Trish. But I think the issue of  
18 consolidation is occurring not only in the debt  
19 purchasing market, it's happening in third-party  
20 contingency states as well as the banks have the  
21 regulation from Ken's group. A lot of those are  
22 flowing downstream. So we're seeing the banks coming  
23 in or other creditors that may be the governed by  
24 those entities that are basically saying, hey, we are  
25 not going to use 39 agencies anymore, even though

1       there are specialties in each area. So my agency may  
2       not be a specialist in out-of-statute debt where  
3       another agency is.

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

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

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

20                      We started talking about complaints  
21      and the FTC takes complaints, the CFPB takes  
22      complaints. Is there any -- I mean, some would say  
23      that many of those complaints are clearly bad actors,  
24      the bad guys, the ones who change their name all the  
25      time.

1                   How do you weed those out -- how can  
2     you -- so that they're not -- the industry isn't  
3     attacked for that bad conduct?

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

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

21                  You know, so the reality of it is from  
22    where I sit and from how I have to protect consumers  
23    is that those people are collecting on debts and they  
24    are doing so in an egregious fashion that absolutely  
25    abuses and harms consumers.

1                   And it is why I have been saying for  
2                   three years now, I know you guys hate it when it  
3                   comes up in the press and they're talking about us  
4                   debt collectors. Help me get them out of your  
5                   industry. You don't like it. I don't like it. It's  
6                   terrible for consumers.

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

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

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

23                  I do recognize that, you know, there  
24                  are collectors out there who are trying to do the  
25                  right thing. And like I said, that's why they're --

1 you know, that's why we take different kinds of  
2 actions, depending on what we see in the complaints.  
3 You know, it's not a one-size-fits-all approach at  
4 the FTC. And we can work together on that end as  
5 well in terms of the companies that actually do want  
6 to comply, and we can try to work together to help  
7 you do that to the best of your ability as well.

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

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

18 We also have a restriction under our  
19 resale standard regarding the inability or the  
20 restriction to sell accounts if an account is subject  
21 to a complaint or dispute. And then finally, we have  
22 a credit reporting standard that requires our members  
23 to obviously adhere to the law to make sure they're  
24 in compliance with investigating and responding to  
25 consumer complaints.

1           As I mentioned earlier, we have a  
2 recent addition to our consumer response data task  
3 force to work closely with the CFPB so that we can  
4 understand the data. We're actually having member  
5 companies from small, medium-size and larger debt  
6 buyer companies share their data with CFPB so that  
7 there is a good knowledge transfer and we can have a  
8 more effective use of that consumer complaint forum.

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

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

25           We want to assure our regulators here

1 and we will continue to work with you and address  
2 this issue. It's certainly something that concerns  
3 us as well. And we have an ethics committee as part  
4 of the association that regularly reviews complaints.  
5 So if we have a complaint that's against a member  
6 company, whether it's from a consumer, state  
7 regulator or federal regulator, we investigate that  
8 company and respond as well.

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

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

22 Whereas when companies step up to the  
23 plate like, yeah, you're right or, you know, we have  
24 looked closer at this and refunds money or something  
25 like that, then we don't take that they admitted to

1 something wrong. That's responsible conduct that a  
2 company should do if they got something wrong. If  
3 they're getting something wrong all the time, then  
4 that's a different story.

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

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

17 And there's a picture painting that  
18 there's X number of complaints that are filed against  
19 collection agencies through the CFPB portal. I think  
20 they're down over what they were three months ago.  
21 But is that a true and accurate picture. I don't  
22 think we take into consideration, well, there's  
23 agencies' names that are placed out there and it  
24 shows they have a high volume of accounts. If you  
25 look at them, it's really coupled with the type of



1 work that they do, and that's never been addressed.

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

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

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

23                   So that has been somewhat of an  
24 obstacle for us in the industry, to explain to our  
25 creditors as well. We're working with them to say,

1 your question is, too, why are you towards the top.  
2 I'll be one to admit, we were probably in the top 25.  
3 We do a lot of high volume, low balance work. So the  
4 vast number of complaints we get in the portal come  
5 from that side of the business and it's simply from  
6 touches.

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

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

22           Then we're challenged how do we  
23 respond to a complaint that I don't even have  
24 anything to do with it. The underlying transaction  
25 we're working with has some other issues that they

1       dealt with during that credit facilitation or that  
2       service process.

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

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

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

22                      We're not a bad actor.  We get a lot  
23      of complaints.  It's based on the industry or the  
24      number of touches that we have.  If your numbers are  
25      down in those categories, we're making a billion

1 contacts a year, I think we're doing a pretty good  
2 job. There's different ways to slice and dice  
3 information. The numbers, while there are going to  
4 be complaints, there's going to be complaints in  
5 every industry today.

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

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

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

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

21 Let me go back to -- I think we  
22 have -- we're right at about 10 minutes left. This  
23 is time for questions, but I do want to see if there  
24 are any others -- let me give everybody a chance to  
25 say just 30 seconds or so of areas for continuing

1 concern for Mike and Trish and things that you want  
2 the people to leave knowing about before we -- make  
3 sure you say before the panel is over.

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

11 It can be found at [business.ftc.gov](http://business.ftc.gov)  
12 and we are trying -- we're in the process right now  
13 of creating a one-stop debt collection page there  
14 where you can find all of the FTC's debt collection  
15 materials. You know, our amicus briefs, our cases,  
16 our business education articles, our blog posts on  
17 debt collection.

18 So the idea would be go to  
19 [business.ftc.gov](http://business.ftc.gov). There should be a button there for  
20 debt collection in the not-too-distant future. Click  
21 that. We have got a blog, a business blog as well.  
22 So, for instance, in the back on the right side  
23 there's a table back there with printouts of some of  
24 our materials. I think we have got a printout of our  
25 list of banned debt collectors back there. We have

1 got some data security guidance for the buying and  
2 selling of debts that we worked closely with the DBA  
3 in creating. We have that back there. And I think  
4 we have some stuff maybe on text messaging as well.

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

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

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

24 Two recent ones are the ones on  
25 Encore and PRA. Those are both my cases so I love

1 talking about them. Besides just looking at the  
2 facts and the violations to see if they're violating  
3 the law or you may be violating the law, I think it's  
4 good to look at the injunctive relief, which again,  
5 only the company who is bound is actually bound by  
6 that injunctive relief. But it's a good way to see  
7 how the Bureau thinks that these companies engaging  
8 in these practices were able to comply going forward.  
9 We think that's a really good resource.

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

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

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

25 My final thought is the preamble to

1 the FDCA says that that law should create a level  
2 playing field. And so we are looking to see in the  
3 rules or expected rules that are fair and balanced  
4 and don't burden industry. Thank you.

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

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

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



1                   I think we're all on the same teams.  
2       We just need to continue to have a good dialogue  
3       about what works on every facet of the business and  
4       then be able to promulgate results that provide  
5       clarity so we know exactly what it is that we should  
6       and shouldn't be doing.

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

18                  Please understand we do not view  
19      things like guidance as cast in stone.  We do listen  
20      to comments that we get from the industry as well as  
21      from industries we don't necessarily regulate.  So to  
22      the extent that any of you folks in this room have  
23      messages that you want me to be carrying back to  
24      Washington, I'm obviously happy to carry them with  
25      me.

1           I cannot promise you anything is going  
2 to change. I can tell you that whatever concerns you  
3 have will be fully considered and, if necessary, we  
4 will make adjustments. So to the extent there  
5 are things you want me to know and things you want me  
6 to carry back, please let me know that.

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

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

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

24           MR. FROST: All I was talking to  
25 earlier was the cost of the examinations from the

1 combined joint efforts of the MOU. The cost of  
2 compliance is exorbitant in our industry.

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

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

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

25 MS. SPECTOR: Okay. Thank you.

1       Someone wants me to press Greg on when rules for debt  
2       collection are going to come out. He said he  
3       couldn't tell us but the question asks, 2016, first  
4       quarter, second quarter?

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

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

10                      MS. SPECTOR: Yes.

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

19                      So in the past as an industry we used  
20       to take a lot of numbers in and call a lot of people  
21       to try to get ahold of a customer. Today the  
22       approach is a bit different. We're really focused on  
23       that right number. What's the highest probability  
24       that that consumer is residing at that phone number  
25       when we pick up that phone.

1                   We're starting to see a trend in the  
2                   reduction of wrong number complaints. So a lot of  
3                   this comes from good data and identifying how to  
4                   segment that information and identify that properly.  
5                   The industry is working really hard. And it's less  
6                   intrusive on people that don't owe debt, contacting  
7                   people that have wrong numbers. And we don't want to  
8                   do that. It costs us more money to do that. We want  
9                   to contact the right consumer at the lowest cost  
10                  available to us as quickly as we possibly can.

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

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

18                  (Applause.)

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

22                  (Break taken.)

23                  PANEL 2:

24                  MS. BROWN: Good afternoon. I'm Dama  
25                  Brown, I'm the regional director of Southwest Region.

1 My office is based here in Dallas so it's my pleasure  
2 to be here today and to host several colleagues, some  
3 of whom I have worked with for years. This is a  
4 really terrific event and thank you all for being  
5 here today.

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

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

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

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

24 I'm going to start with Jessica. She  
25 is the new regulator on the board. And, Jessica, let

1 me start by asking you if you would tell us a little  
2 bit about the Texas Attorney General's Office, if you  
3 would.

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

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

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

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

25 One of the remedies that we have there

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

9 Under remedies, it's restitution.  
10 That's probably the biggest thing because that's what  
11 we're really about is to try to get back money back  
12 into the consumers' hands. There's also civil  
13 penalties.

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

22 When it comes to collection, also, you  
23 have the State Debt Collection Act. Those that do  
24 not know, it does apply to creditors as well as  
25 third-party debt collectors. There's also an



1 electronic ID theft, which can apply to lawyers.  
2 This panel is discussing a lot more collection  
3 lawyers, which is why I bring that up. Because many  
4 lawyers don't realize that they can have a  
5 responsibility and a duty to safeguard information  
6 under Texas state law.

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

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

21 And then if I want to file suit, that  
22 also has to be approved. It's quite a big approval  
23 chain. And so you're not going to run into a  
24 situation where you have just some random Assistant  
25 AG at an office in Dallas that just kind of does it.

1                   There is a lot of oversight to ensure  
2                   that we are protecting the public in the right way.  
3                   And that has been the message that has been carried  
4                   on when I began was we do what's right. Because one  
5                   of the elements that is in the civil penalty that you  
6                   look at is as justice is required. And justice goes  
7                   both ways. So it's not just maybe that unreasonable  
8                   regulator approach of really looking at a business  
9                   and each case is different. Do you have good  
10                  compliance policies? Is this a one-time infraction?

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

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

25                  I stress that very much since our

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

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

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

24 We try to be very transparent with  
25 companies and putting them on notice that there's an

1 investigation, not always, and that can vary.

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

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

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

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

24 MR. KOEGEL: And from the FTC's  
25 perspective, just so everybody else in the audience

1 can understand, we have made a concerted effort over  
2 the last few years to coordinate more with our  
3 brethren in the states.

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

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

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

18 We also work with state authorities  
19 and law enforcers in our conferences and workshops.  
20 That was a big priority for us when we set up this  
21 meeting was to try to get somebody from the Texas  
22 Attorney General's Office. We had people from  
23 Buffalo at our Buffalo dialogue. And we bring joint  
24 cases with the states. We find there's a lot of  
25 benefit. They provide a lot of local knowledge of

1 the market for us. They have a lot of local contacts  
2 that we don't have. And we find it's a really  
3 efficient way to use our resources. Hence, we  
4 brought all those joint cases with New York and  
5 Illinois recently. And the plan is to do that more.

6 So like the CFPB, we try to coordinate  
7 with states as much as possible to make sure that  
8 we're not stepping on each other's toes, duplicating  
9 efforts and the like.

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

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

23 So what we have done over the past  
24 couple years, in case I haven't met you, my  
25 apologies. My name is Joann Needleman. I'm the

1 president of NARCA, soon to be past president.

2                   And our position as a collection  
3 attorney in this space I always say is very unique.  
4 It's really fitting that we're here at a law school.  
5 I hope that there are law students here. Because  
6 when we all went to law school, we all learned about  
7 what it was to represent a client and the rules and  
8 the ethics rules that we had to abide by in  
9 representing clients.

10                   And that is the key difference between  
11 my constituents and maybe some of the constituents at  
12 ACA. As attorneys, I hear a lot about certification  
13 and I'm all for that. I think certification is a  
14 terrific thing for this industry.

15                   However, as attorneys we're kind of  
16 already certified. We have a license. And in many,  
17 many states we have to every year go get continuing  
18 legal education to ensure that we are engaging  
19 ourselves as attorneys properly and understanding the  
20 rules.

21                   But because we have clients and we are  
22 in the litigation process, we have an adversarial  
23 system. And that means you can have one side of the  
24 table and the other side of the table. My job as an  
25 attorney is I have to represent my client. That's my

1 duty. Under the Rules of Professional Conduct, I  
2 must zealously advocate for the interest and rights  
3 of our client.

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

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

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

25 MR. FOEHL: Good afternoon, everybody.



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

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

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

1 attorneys collecting debts are regulated primarily by  
2 the judicial branch.

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

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

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

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

24 I think you can absolutely represent  
25 your client in a debt collection litigation

1 attempting to collect a debt and do so without  
2 engaging in deceptive or unfair conduct. I don't  
3 think that there's necessarily a tension there.

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

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

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

25           I think the broader question is the

1 question of who is the right -- what is the right  
2 enforcement mechanism when you're in court if things  
3 would happen to get that way. And quite honestly,  
4 from our perspective, I mentioned before since the  
5 18TH century the right to regulate attorneys has been  
6 historically with the judicial branch. We can  
7 disagree on whether or not that is the proper  
8 separation of powers or whatnot. We could certainly  
9 have a robust dialogue that might bore everybody else  
10 in the audience.

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

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

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

24 Many times in my previous life I would  
25 see requests for admissions that said exactly that,

1 this debt was incurred for necessity. For those that  
2 don't know, it's nondischargeable in bankruptcy, so  
3 that type of -- whether it should or not be there.  
4 But I think when you look at the statutes themselves,  
5 it demonstrates conduct that does overlap.

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

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

20 The problem -- two issues. One,  
21 many states have Unfair Trade Practices Acts, Pennsylvania,  
22 I think is one and there are about 18 or 19 others. There are clear  
23 exceptions for attorney conduct. So the UTP, as I  
24 call it, the Unfair Trade Practices Act, says you  
25 can't do -- and a lot of people are very familiar

1 with the FDCPA. You can't make false  
2 misrepresentations. You can't do a lot of things  
3 that the FDCPA says.

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

10 So I just want to point that out.  
11 There are many states that do recognize that there is  
12 a line when you get to the courthouse door. But I  
13 would agree that there are things that attorneys do  
14 that traditional debt collectors can do. They must  
15 abide by either the State Consumer Protect Act or the  
16 FDCPA.

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

22 And in that report, the Federal Trade  
23 Commission identified five main concerns as it  
24 related to specifically to debt collection  
25 litigation. That was the prevalence of filing cases

1 with insufficient evidence, providing consumers with  
2 insufficient notices of filed lawsuits, the high  
3 default judgment rates that collection attorneys were  
4 obtaining, improper garnishment or garnishment of  
5 social security or other benefits exempt from  
6 garnishment, and suing or threatening to sue on  
7 time-barred debt.

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

13 And can I start with maybe Joann.

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

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

23 And I look at what has happened in  
24 five years. And since that time -- and I'm going to  
25 speak for my industry. In that time, industry has

1 spent -- again, whether we can agree about the report  
2 or not, we heard you and have spent small fortunes --  
3 Mike Frost talked about this -- about addressing  
4 these concerns that you saw in litigation about  
5 documentation, about consumer participation. And  
6 there has been certainly a significant push on the  
7 state level to reform a lot of court rules.

8           You saw recently in New York, again,  
9 that was a collaboration -- that was between industry  
10 and advocates -- to develop a lot of the rules in the  
11 New York statute which mirror what was said in Repairing A  
12 Broken System: Disclosure of statute of limitations,  
13 affidavit issues, documentation.

14           So we have spent five years really  
15 listening and really looking at these issues. But  
16 unfortunately, I have to say -- one of  
17 the biggest concerns in Repairing A Broken System was  
18 consumer participation. And there were conclusions in  
19 the report that there was no clear reason why  
20 consumers don't come to court. And we still don't  
21 know why consumers don't come to court. The industry  
22 has feelings as do the regulators.

23           One of the conclusions was, well, we  
24 need to provide more information. So there has been  
25 a plethora of new rules in various states. It's hard



1 to measure how those rules are doing. They're  
2 relatively new. For example, California was about a  
3 year and a half ago. It only refers to new cases,  
4 not subsequent cases. New York just started. It  
5 will be interesting in six months to see how that's  
6 coming along.

7 One state, Maryland, enacted very  
8 significant debt collection rules, I believe, in  
9 2013. So I asked NARCA members in Maryland to pull  
10 data as to what the default judgment rate was prior  
11 to the rules and subsequent to the rules.

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

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

24 A report asked the public to inform  
25 consumers why they should participate. We have

1 enacted these rules, and consumers are still not  
2 participating. I think we really need to have a  
3 really good discussion what do we want, what is our  
4 end game.

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

11 MS. BROWN: Let me get to Rob.

12 MR. FOEHL: What she said.

13 MS. BROWN: Jessica?

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

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

23 I think so much it basically may not  
24 be profitable to do that anymore, so congratulations,  
25 which is part of my new job. Thank y'all so much for

1 complying.

2 But there is a response in that  
3 because I can say that people listened and I saw  
4 evidence of that. And I think these types of  
5 dialogues/conversations as a regulator now prompted  
6 me to think differently because I get different  
7 input.

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

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

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

22 MR. NODLER: Sure. Actually, like  
23 Jessica, I used to be a private practice attorney  
24 representing consumers with debt issues and in a legal  
25 aid office. I came to DC in July of -- was

1 it July 2011 or 2010?

2 MS. LESSER: I think it was right at  
3 '10.

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

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

15 MS. BROWN: Chris?

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

25 What I have seen in the last five

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

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

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

23           And so I'm hearing from industry that  
24 that's not what they want and that's certainly not  
25 what the Federal Trade Commission and the CFPB want;

1 yet, it is apparently persistent.

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

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

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

20 I'm certainly not ready -- I'm  
21 certainly not ready to make the flip side of that  
22 judgment either, which is that the FTC has solved the  
23 problem. That hasn't happened clearly either, sort  
24 of like how I think about federalism. We need to  
25 give some room for experimentation on different

1 solutions here.

2 And I'm fairly confident that  
3 everything that the Federal Trade Commission  
4 suggested in Repairing A Broken System is not the  
5 entirety of the potential solution here. I'm sure  
6 there are other ideas out there. We need to get them  
7 on the table and test them out.

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

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

23 The CFPB also accused the company of  
24 attempting to procure a default judgment and suing or  
25 threatening to sue. There was some other practices

1 as well, but clearly those harken back to the same  
2 types of practices covered in Repairing A Broken  
3 System report.

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

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

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

20 MR. NODLER: Sure. We touched a  
21 little bit in the last panel. I think it's a good  
22 idea for debt sellers, debt collectors, and debt buyers  
23 to look at these enforcement actions, Encore, PRA and  
24 also the JPMorgan Chase one that we talked about  
25 earlier had more to do with selling, to see if



1 they're engaging in the type practices that the CFPB  
2 found to be violations of the CFPA and the Dodd-Frank  
3 Act.

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

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

18           We found that they were collecting  
19 debt without a reasonable basis, because they were  
20 collecting debt that had been disputed by consumers  
21 or that, based on past practices with the  
22 debt seller, they were on notice, knew or should have  
23 known that there were problems with the debts, that  
24 may have been inaccurate, and that upon that red flag  
25 coming up, they didn't take any further steps to

1 verify the data. We found that that was deceptive  
2 under the FDCPA and Dodd-Frank Act. And then there  
3 was a claim for filing -- threatening and filing  
4 lawsuits without the intention of proving the debt  
5 when contested. That had to do with documentation.  
6 There were several deceptive affidavit issues. There  
7 was collecting debt by misrepresenting it was legally  
8 enforceable was another one of the claims in there.  
9 There are others. Those are the main ones that had  
10 to do with what we're talking about right now.

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

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

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

24 MR. KOEGEL: Yes. I think the  
25 takeaway is something that I alluded to in my last

1 answer. This is still a problem. This is still an  
2 issue for consumers that we all need to figure out  
3 solutions to. You know, the hard debt issue is  
4 apparently still out there. The filing of lawsuits  
5 with no intention of ever really proving it and  
6 relying on the default judgment, that is the --  
7 that's our worst fear.

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

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

21           MS. NEEDLEMAN: I just want to make a  
22 comment about the consent orders, the PRA and Encore  
23 consent orders. Greg, you said in the last panel,  
24 you said it's important for us to look at the  
25 concept, believe me, a lot.

1                   But the problem with some of these  
2 consent orders is that it rewrites practices that we  
3 have utilized and have done throughout the years, and  
4 even in some cases that have been judicially  
5 recognized as appropriate. So while the consent  
6 orders may give us some -- so what we're looking for  
7 are what you think are bad practices. And I think  
8 the industry reads it very carefully and should make  
9 the necessary adjustments when those consent orders  
10 come out. But it creates a lot of confusion.

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

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

25                   The G Notice really serves two

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

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

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

20 MR. NODLER: Sure. So those were in  
21 the Encore order. And something that Encore was  
22 engaging in was that a consumer would dispute outside  
23 of the G Notice period. They have more than  
24 30 days to dispute outside of that. And regardless  
25 of the nature of the dispute, Encore would continue

1 to collect it the exact same way, unless the consumer  
2 could effectively prove that they didn't owe the  
3 debt.

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

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

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

24 MR. NODLER: I understand that. I  
25 think really the gist of that is that regardless of

1 when a consumer's dispute comes in, if a consumer  
2 disputed it and put a debt collector on notice, its  
3 information is inaccurate, that for the debt  
4 collector to just say, I'm not going to consider this  
5 information you're providing me, that means, at least  
6 the way we found in those cases, was that they were  
7 basically putting their head in the sand.

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

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

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

25                   And so I think the troubling thing

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

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

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



1 violate the law again.

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

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

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

24                   We'll set out some more specific  
25 guidance for that collector and what might be

1 required about what we want them to do the next time  
2 something like this happens again. So the next time  
3 a consumer disputes a debt, you know, the order will  
4 say that the collector has to consult  
5 these three sources of information or they have to  
6 take these four steps in order to substantiate that  
7 debt before it can go ahead and try collections  
8 again.

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

16           So that's, you know -- those are  
17 provisions that are not specifically --  
18 we're not saying to the world that you have to do  
19 this if you're a collector that hasn't been sued.  
20 But if I was a compliance officer or legal counsel  
21 for a collector, I would take a look at those and I  
22 would say, you know what, these make sense to me.  
23 Those seem like best practices. If I do that, I have  
24 a better chance of staying very clear of the FTC  
25 and the CFPB's group.

1                   MS. BROWN: So it's fair to say that  
2 sometimes the order goes above and beyond what is  
3 actually required of the law; is that correct?

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

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

19                  And so then you hear, well, no, that's  
20 too specific from an industry-wide perspective, but  
21 we worked the same way. Each case is very different.  
22 And so the injunctive relief you will have the more  
23 global and filing a petition order. And that's a big  
24 component, though, to ensure compliance at a later  
25 date. And many times it is the defendant who wants

1 that specific relief. It's very much negotiated.

2 MR. NODLER: There are times when the  
3 injunctive relief includes a lifetime ban from  
4 engaging in the industry. I don't think anybody  
5 would read an order like that to say, if I did such  
6 and such, that means that I'm now suddenly banned by  
7 the FTC or the CFPB or the Texas AG.

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

18 MR. NODLER: Sure. So the order says  
19 that they need to -- they shouldn't make any  
20 representations they can't substantiate the  
21 representation. We basically said, at a minimum this  
22 includes, in these circumstances it includes X, Y  
23 and Z, but those aren't all of the circumstances.

24 We're describing some common areas  
25 where Encore or PRA could be put on notice that

1       there's something wrong. But there can be other  
2       areas also where they could be put on notice that  
3       what they're saying now is no longer substantiated.

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

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

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

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

22                   MR. KOEGEL: Look, substantiation, I  
23      think, is a really important concept in debt  
24      collection. It can manifest itself with a lot of --  
25      if you're not doing it right can be a disease that

1 results in a lot of different symptoms.

2 It is something that the FTC has been  
3 working on and addressing over the course of many  
4 years. And candidly, it has been an evolution. It  
5 started in the advertising concept as something that  
6 has now evolved into the debt collection landscape.

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

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

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

25 And I realize that, you know, that's a

1 bit of a challenge maybe for folks in the collection  
2 industry.

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

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

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

15 MR. NODLER: I honestly don't know.  
16 Rule-making, it's in flux. They're still being  
17 worked on. I'd hate to give somebody the wrong  
18 impression.

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

24 MR. FOEHL: I mean, we can talk about  
25 this for a long, long time. You know, the two things

1 that just immediately pop into my mind is, quite  
2 honestly, issue a rule and give it as much clarity as  
3 possible.

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

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

20 I think the second thing that comes to  
21 mind is there ought to be an encouragement of  
22 dialogue between the debt collector and the consumer.  
23 I think all too often what we see is what appears to  
24 be trying to put a barrier between the dialogue  
25 between debt collector and consumer. I don't think



1 that serves anybody, the debt collector nor the  
2 consumer well. All that does is end up driving more  
3 things to the legal process.

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

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

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

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

23 MS. NEEDLEMAN: To enhance on what Rob  
24 just said, I think that -- and I talked with the CFPB  
25 and FTC about this. I think the critical thing that

1 we have to establish in the rules is our dispute  
2 process. I mean, I think that is just so -- that is  
3 what is going to solve a lot of our problems.

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

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

22 There is not a safe environment, or we  
23 don't have a safe environment right now where I think  
24 consumers feel comfortable in communicating with debt  
25 collectors to articulate what it is that they are

1 disputing, nor do we have a good dispute process for  
2 us to address it.

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

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

13                   Greg, I think that's you.

14                   MR. NODLER: Are you asking me?

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

18                   MR. NODLER: What those orders  
19 address, especially the Encore order addresses, is when a  
20 consumer has a dispute outside of that period. I  
21 don't think there's anything in that order that says  
22 that -- that really changes the language of the FDCPA  
23 1692g. The orders don't say that the -- it's just --  
24 they are different. There's a dispute that happens  
25 beforehand. There's a dispute that happens

1 afterwards. Disputes are covered in the FDCPA in  
2 more than one place, and that's the way that is  
3 answered. Several recent court decisions have  
4 reviewed it as well.

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

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

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

22 MS. LESSER: I think, too, the  
23 problems become when you have a consumer who has gone  
24 through a creditor or debt buyer, another debt buyer,  
25 four collectors over here, some more over there, they

1 have got maybe five debts and so they have got -- you  
2 know, many times they just don't know which is which  
3 and what is what.

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

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

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

24                   MS. NEEDLEMAN: I think Rob said it.  
25 You know, if we can figure out a framework within the

1 rules to have a robust dispute process. I just think  
2 that would be helpful for everybody, and we could  
3 document it. I think technology can get involved.

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

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

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

24 But I will tell you one of my  
25 clients -- many clients have portals. And when they

1 send their initial letters, they write their portal  
2 address on the web address and they ask the consumer to go to  
3 portal. Right now the response rate for that is so  
4 low and that's a shame.

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

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

20 So we need to -- I agree it's  
21 something we need to hammer out and make sure those  
22 consumers who have legitimate disputes are getting  
23 information and that sort of thing, but let's make  
24 sure we keep it all in perspective. The vast  
25 majority of -- I mean the vast majority of account

1 placements do not result in a dispute whatsoever.

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

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

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

20 There is evidence most of the law firm  
21 paralegals and people that work in law firms cannot  
22 have a cell phone on their desk. Everything is  
23 password protected. And this is coming not from  
24 necessarily the CFPB by some sort of rule or consent  
25 order; it's coming from the top down.



1                   The fact that we are in this  
2 regulatory environment, obviously, our clients who  
3 are subject to certain consent orders are very, very  
4 serious about future risk. So that is all being  
5 pushed down to my members.

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

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

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

20                   What happens when compliance cost goes  
21 up. What happens when there are no regulatory  
22 requirements. I think it would serve everyone  
23 involved to look at the Federal Reserve Bank of  
24 Philadelphia working paper on debt collection agencies  
25 and the supply of consumer credit.

1                   In that report from the Philadelphia  
2 Fed, they did the economic analysis and indicated  
3 that -- they did what we all, I think, inherently  
4 know. That's stricter debt collection regulations  
5 reduce the number of debt collectors and lower  
6 recovery rates on debt, and that this in turn leads  
7 to a constriction of credit.

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

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

25                   MS. BROWN: Go ahead.

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

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

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

20 MR. NODLER: I would say that the cost  
21 of credit and how credit access can be affected by  
22 these rules or any other rules as well. I mean,  
23 we regulate the whole credit transaction. We  
24 regulate the lending, the collection, the servicing.  
25 We think about all of it when we do anything.

1                   MR. KOEGEL: I guess I'm confused  
2 about do you want a rule now or do you not want a  
3 rule now? I'm just teasing you, Rob.

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

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

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

19                   MR. NODLER: Also, that's why we do a  
20 panel and all of that. I wanted to correct just one  
21 thing about the panel. Someone asked me during a  
22 break how he could get the preview of the rules. How  
23 do you get on the panel to get a preview of the  
24 rules. And I'm not exactly sure how to get on the  
25 panel. But I will say that you don't get a preview

1 of the rules by being on the panel. When we are  
2 putting together the panel, everybody can see the  
3 SBREFA outline. It will be published on our website.

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

10 Chris, I'll start with you.

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

20 And I realize it's hard. I have been  
21 on that side. As a matter of fact, Rob and I used to  
22 work together. I've flipped around on different  
23 sides. I understand the cost of compliance. But I  
24 also remember many times with companies where  
25 somebody would say, this is not my debt and in

1 private practice where I have got letters upon  
2 letters upon letters of senior citizens saying, not  
3 my debt, not my debt. You're talking about my  
4 grandson. No response from companies, and then  
5 lawsuits are filed.

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

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

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

21 MR. NODLER: I would also echo that on  
22 taking disputes seriously and complaints about  
23 communicating with consumers. I also think that it's  
24 very important that companies know who they're  
25 dealing with so that debt sellers, you know, are

1 careful about who they're selling to, the debt buyers  
2 are careful who they're buying from and track the  
3 types of -- look at the past practices. And if a  
4 seller has sold inaccurate debt before, then they, in  
5 my opinion, shouldn't be buying debt from that seller  
6 anymore.

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

16 MR. NODLER: We see a lot as well.

17 MS. BROWN: Chris?

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

25 In some of our enforcement actions we

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

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

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

22 You know, I want us to all explore  
23 whether we're doing enough to keep that consumer  
24 information out of the hands of these bad actors.  
25 Because those kinds of phantom debt collections and



1 things like that, they are not credible; they don't  
2 work as scams if the collector does not have that  
3 consumer information.

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

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

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

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

24 What would you say are areas of  
25 opportunities where the collection industry can do

1 better?

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

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

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

24 And the fear I have is that the  
25 customer service will be lost. So I would say to my

1 members, remember the customer service, remember to  
2 continue to work with these consumers. Our job is to  
3 resolve debt. That's what collection is. It's about  
4 resolution. And we have to continue to remember to  
5 do that. That's what I would hope the industry would  
6 take away from it.

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

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

23 So I think that would be the one thing  
24 that I would think of when -- what can the industry  
25 do better is to make sure we're not getting

1       complacent about how we have done things in the past.

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

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

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

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

23                      It is one of the most, if not the  
24      most, egregious practice that we deal with in the  
25      debt collection sphere at the FTC. It's something

1 that we have been addressing and seeing for several  
2 years now going back to the American Credit Crunchers case and  
3 the Broadway Global Master case, you know, up through  
4 this year even.

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

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

19                   We have been studying now for a couple  
20 years where are those fraudsters getting this  
21 information from. Like I said, we brought the  
22 Cornerstone cases where we found out that that broker  
23 who was out there just posting an entire Excel sheet  
24 of his portfolio on a public website, tens of  
25 thousands of consumers' information out there, social

1 security numbers and addresses and employers and bank  
2 account numbers. That's certainly one way it can  
3 happen.

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

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

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

24 I recognize that those things have a  
25 cost, but I suspect that there's a little bit of

1 return on investment for the collector as well in  
2 that he knows that his prized valuable commodity,  
3 those consumer portfolios, are that much more secure  
4 because of those security measures.

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

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

22 MS. BROWN: And Joann, clearly every  
23 industry is affected by data security issues, cyber  
24 security, data breaches, and it's affecting every  
25 industry in the country. It is not unique to yours.

1                   What do you -- what standards do you  
2                   feel that your organizations are setting for debt  
3                   collectors?

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

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

19                  So there isn't -- to my knowledge,  
20                  there isn't any one gold standard related to data  
21                  security. There's different obligations that they  
22                  have under the law. There's different obligations  
23                  their clients put on them. There's just different  
24                  things that they need to do for their own individual  
25                  businesses.



1                   So I can't sit here and say there's a  
2                   certain standard or certain technologies or certain  
3                   best practices that carry across the board given the  
4                   unique nature of the different types of debt  
5                   collectors out there, the different sizes, the  
6                   different industry or the different verticals that  
7                   they're in, different -- they're placed along the  
8                   debt collection marketplace.

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

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

24                  I guess I would like to hear more from  
25                  the FTC and the data that you're seeing, where are

1     you seeing it, in what form, so that I can inform my  
2     members that this is going on. But until we had this  
3     conversation, I didn't really hear much about it from  
4     the collection attorney space.

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

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

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

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

22                   Do you have any guidance for  
23    businesses on data security?

24                   MS. LESSER: You know, I think I echo  
25    what everybody said. I think it's a very

1 difficult -- it is a constantly evolving area. I  
2 remember when the GLBA first came out. I remember  
3 trying to comply -- how can a company corporate  
4 client comply with information safeguarding rules.

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

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

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

23           But I think when you run into -- as in  
24 y'all's customer base of a consumer who has been a  
25 victim of identity theft is just to listen to them at

1 least on that one basis and it might be true. If you  
2 know of a company who is a phantom debt company or  
3 some -- we're talking fraudulent criminal misconduct,  
4 is to let a regulator know about it. Because that's  
5 our biggest problem, who is it. We don't know who it  
6 is. So that's where I think that cooperation may be  
7 helpful.

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

12 (Simultaneous speaking.)

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

17 MR. KOEGEL: Yes.

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

20 MR. KOEGEL: I think some of it.  
21 Again, I think that's another opportunity to plug  
22 business.ftc.gov. We've got I think some things  
23 relevant to data security. That's a big enforcement  
24 priority for our Division of Privacy and Identity  
25 Protection as well.

1 MS. BROWN: Then I have a number of  
2 audience questions. They might be a little bit  
3 scattershot. This might be like a little jeopardy  
4 around here. We'll get through them. There's some  
5 really good questions here.

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

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

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

20 MR. KOEGEL: In the aggregate, yes.  
21 Although I can't remember the last time that we did a  
22 debt collection case administratively. We have found  
23 that that there's such a long and rich history of  
24 FDCPA litigation, both with the Federal Trade  
25 Commission as plaintiff and with private plaintiffs.

1 But there is no real reason to go to an  
2 administrative law judge.

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

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

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

22 I believe very firmly that collection  
23 of debts is an important part of our credit system  
24 and that the enforcement of the FDCPA and the Federal  
25 Trade Commission Act is equally important in order to

1 protect both consumers and to provide a level playing  
2 field for law-abiding debt collectors.

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

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

22 MR. NODLER: I'll echo what Chris  
23 said, and also, to highlight that, the debt  
24 collection laws aren't there only to protect  
25 consumers who don't owe debts. They're also there to protect consumers

1 who do legitimately owe the debt. What the CFPB  
2 often does is order restitution in debt collection  
3 cases where there -- it's not relating to a question  
4 of whether or not the debt is owed but that it was  
5 unlawfully collected. So, I mean, our jobs are to  
6 enforce the law.

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

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

20 The problem is consumers who owe money  
21 usually do not have enough money to go hire a lawyer,  
22 and that's a problem spot. I think it's hard to --  
23 for that consumer, it may be more you see things in a  
24 court environment which here you do have different  
25 rules for justice courts for debts for people who are



1       suing on debts than you have in the district or  
2       county court.  It's a \$10,000 limit.

3                       I have found that people tend to  
4       defend themselves more in the justice court  
5       surrounding than they would elsewhere.  I have also  
6       had consumers tell me, "I was told it would do no  
7       good."

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

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

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

24                      MR. NODLER:  I would also echo consumers  
25      having the wrong idea about the lawsuit,

1 thinking that there's no point in defending  
2 themselves. Another issue when I was a legal aid  
3 lawyer, I would often have consumers coming in,  
4 I would usually start my consultation by saying, first I want  
5 you to know that you can't be arrested for this. And  
6 sometimes they would just stand up and say, "That's  
7 all I needed, okay," and leave.

8 MS. BROWN: Okay.

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

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

25 I think there have been a lot of

1 efforts on courts now, efforts for the courts to  
2 address because these are obviously -- the dockets  
3 are more heavily loaded with those types of cases, so  
4 opportunities where again creating environments where  
5 consumers feel comfortable.

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

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

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

21 (Whereupon, the proceeding was  
22 concluded.)

23

24

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## 1 CERTIFICATE OF REPORTER

2

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4 CASE TITLE: DEBT COLLECTION DIALOGUE,

5 A Conversation between government and business

6

7 HEARING DATE: SEPTEMBER 29, 2015

8

9 I HEREBY CERTIFY that the transcript contained

10 herein is an accurate transcript of the steno notes

11 transcribed by me on the above case before the

12 FEDERAL TRADE COMMISSION to the best of my knowledge

13 and ability.

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16 DATED: OCTOBER 7, 2015

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MICHELLE L. MUNROE, CSR

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