>> Carole Reynolds: Welcome to everyone to panel 2. This is Misrepresentations and Other Consumer Protection Issues in Motor Vehicle Leasing. Our distinguished panelists here today are to my left, Tom Domonoske, Of Counsel with Legal Aid Justice Center. Next we have Terry O'Loughlin, Director of Compliance, Reynolds and Reynolds. Next to Terry, we have Greg Grzeskiewicz, Assistant Attorney General, Illinois Office of the Attorney General. Next to Greg, we have Keith Whann. And among other posts, Keith is General Counsel with the National Independent Automobile Dealers Association. Next to Keith we have Jack Gillis. Jack is Director of Public Affairs with the Consumer Federation of America. And after Jack, we have Stuart Rosenthal. Stuart is Vice President of Legal Affairs and General Counsel. He's with the Greater New York Automobile Dealers Association. The bios of all of our distinguished panelists are in your folder. We're very glad to have all of you here today. I'm Carole Reynolds. I'm your moderator. In this panel, we're going to focus on issues, particular issues that may affect different kinds of leasing, different kinds of entities and perhaps consumers with different focuses and that come from different backgrounds. We're gonna start off in the area of advertising. Certainly, advertising and promotional materials can bring very important information to consumers. It can generate interest and be very helpful about particular products and services. Of course, how ads bring this information to consumers can also raise issues for them. Do automobile ads or promotional materials draw consumers into the leasing process in particular ways that may raise issues? Who would like to start this off for us? Jack?

>> Jack Gillis: I think one of the biggest concerns that we have about leasing is fundamentally, leasing will cost you more than owning a car. And in the advertising of leases, you see low monthly payments that are extraordinarily attractive. Those low monthly payments which quite often are very accurately disclosed -- There's nothing wrong with that particular payment -- fails to include what we call the sticker shock at the end of a lease. Leases are easy to get into and hard to get out of. So I think the main problem wit

>> Stuart Rosenthal: I want to suggest that perhaps the problems are not nearly as widespread or as difficult as they may be made to make out here. Most consumers that come into dealerships who want leases come in asking for a lease. They've seen the advertising. They know what the price is for the car based on the issues that are disclosed in the ad, which are required under Regulation M. They're required terms. They're trigger

>> Greg Grzeskiewicz: Yeah. I would just add, you know, it's a problem that I don't think we're currently seeing, but we saw a couple of years ago or a year ago where a lot of manufacturers in their advertising, one of the manufacturers was offering, I think, something called a "smart buy." And so the ads were out in commerce in Illinois. And part of the problem for the consumer was that it was kind of hybrid between a lease and a buy. You had an option to turn your car in or buy it, so it wasn't a true straight purchase. And so some of the consumers were confused by the term smart buy. They thought maybe it was, like, a smart purchase or a smart buy. And so, it did create some problems in Illinois, where we had some confusion for consumers. So I think that would be an example of where a kind of quasi-lease ad, just on its face, caused some concern for consumers.

>> Tom Domonoske: Yes, it does. And it occurs for the same reason in leasing that it occurs in credit contracts. And there are two categories of car dealers. There's the category of car dealer who will put -- Can I use this?

>> Terry O'Loughlin: Sure.

>> Tom Domonoske: ...a complicated credit contract or a complicated lease -- This is the standard Reynolds and Reynolds lease. Right? And this isn't even the back page. Will put this in front of someone to sign when the car dealer is not agreeing that they are gonna follow those terms if the consumer signs. That's one type of car dealer. There's another type of car dealer who would only put this lease in front of a consumer if the car dealer has gotten all the stipulations met with whoever they intend to sell it to. I was talking to David Blassingame, who was up here earlier and he said that’s how he runs his car dealers and he thinks that's how the car dealer industry should be run, that you don't put this contract in front of a consumer to sign with all these complex terms unless you, as a car dealer, are going to honor that contract. It's the same situation that occurs in leases. It's same situation that occurs in credit contracts. There are two types of car dealers in America. There are those who are honest with the consumer. They give them this complex thing. When the consumer signs it, the deal is done. And there are the car dealers who give the consumer this complex thing and later, if they find that the finance market won't pay them the amount of money that they wanted as a profit when they put this on the table, if they find they're not happy with the terms that the finance market will give them for this piece of paper, they call the consumer up and say, "The deal is off. We have to do a new deal.” I did one of these cases in Ohio, I argued it in front of the Ohio Supreme Court, and it's called Whittaker v. M.T. Automotive. The consumer was flipped from purchasing a car on credit to then having that vehicle on a lease because he was told they couldn't get him financed but they could get him leased. Signs the lease, and then he got the call two weeks later and said, "You've got to come back. You've got to do a different deal.” And that case was eventually won by a consumer's lawyer in front of a jury. The jury actually awarded tremendous amount of damages, and it was up on appeal because of the amount of damages that had awarded. But in terms of misrepresentation, the core misrepresentation in any lease starts with what kind of car dealer's on the other side of the transaction. And the consumer doesn't know that. The consumer gets a finance manager who says,

"You've been approved. Here's your monthly payment. Sign here." Whether it's a lease or a credit transaction, the same thing gets said by the finance manager. The consumer does not know which car dealer they're interacting with.

>> Carole Reynolds: Terry.

>> Terry O'Loughlin: I would like to politely disagree with what Tom said to some degree. Underwriting guidelines for leasing are far more narrow, and so consequently when the franchise dealer leases vehicles and they place the lease contract, they pretty much understand whether or not it's going to be underwritten by the leasing company. Secondly, dealers, franchise dealers do not have the number of leasing companies to turn to. So, a Chevrolet dealer will lease through Allied Bank, for example. Or a Ford dealer will lease through Ford Credit. They aren't able to shop the transaction as they would for a retail contract. So consequently, spotting that vehicle and so forth, I don't think is as apparent or as capably done for a dealer. Now, could someone flip from a retail to a lease contract? They do that sometimes. But generally speaking, the underwriting guidelines are pretty strict for leasing and dealers know what leasing company they going to use. They don't have a whole list of them that they can call upon for that leasing transaction.

>> Carole Reynolds: Keith?

>> Keith Whann: I would agree with what Terry just said. I think, in a leasing situation, you have fewer options. You're more likely to know whether or not that that financing has been placed or not. But if we still take a step back, I think, to Tom's point. If you got a dealer who's gonna cut corners, you got a dealer who will cut corners. That's gonna happen. So we're always gonna have that as an issue. We do have situations and we do have states with spot deliveries are legal. And we have people jumping through the hoops to do that. And in some cases -- And I've been one of those consumers who wanted to leave with a car that day. Best case scenario -- We i-dot, t-crossed,

>> Terry O'Loughlin: It's not confusing by any means. [Laughter]

>> Keith Whann: I'm thankful that he's got that because I will tell you -- I've done some work in this area. In fact, I've worked and talked with Terry about some of these documents. We've run out of space to try and put everything on there that's required by the law. So what we've done here, I think, in an automobile transaction is, we have so overwhelmed the consumer with disclosure that we've got to a point where, I think, the overall transaction's becoming meaningless. Jack, you were talking about the ads -- same type of thing. Are there certain things that should bear higher weight or be more prevalent than other things? Probably so. But anytime you've somebody who's going to leave the dealership and the deal is not done in a complex transaction, bad things can happen -- even if you i-dotted and t-crossed everything.

>> Carole Reynolds: Jack?

>> Jack Gillis: Well, we've heard three things here. One, we've heard that one of the problems is the regulations are requiring too much disclosure and all this disclosure makes it very hard for consumers. That's really not true. That disclosure is critically important to consumers for the second reason that we've heard about the problems that are going on right now -- the extraordinary complexity of this transaction. This piece of paper is very profoundly revealing because this is such an extraordinarily complex transaction. And most of us do not have the ability to process it. I've gone through the purchase of a car myself and anyone who has walked out of a car dealership either with the leasing papers or car purchase papers walks out with a wad of papers that I guarantee you people don't read. And the third thing is, with all due respect to Stuart, the consumers that we've talked to that lease more often than not say, "Well, you know, I'm really not quite sure what happened, but do I this because it's easy," or, "I do this because I think this is a good deal." And I sit down with these folks, and I walk them through the cost of doing this, and it's not that much more complex to buy a car than lease a car, and it's always going to cost you more. So I'm not sure that consumers fully understand the enormous cost associated with leasing vehicles -- even in a perfect lease where there is no fraud or there is no deception. But because it's such a

>> Carole Reynolds: Tom?

>> Tom Domonoske: I just want to be really clear when we were talking about yo-yo sales, I was talking about a consumer being misled into thinking they're approved. Fraud and misleading happens at the point of sale. It doesn't happen in documents that are stacked high, that the consumer, you know, may have a signature on or not. It's at the point of sale when that document is given to the consumer to sign. What has the consumer been led to think? And if the consumer's been led to think that this is a done deal and the car dealer is making that offer and by signing it they're accepting it. And that is a problem for the market. Because, really, what they're supposed to do with these Reg M disclosures is not sign them. What they're supposed to do is leave with a copy and go think about it and go look at it and go comparison-shop. And they can only do that if what they are comparison shopping is an offer by the car dealer that is an offer that when they sign they're accepted and bound. So when I talk about a yo-yo sale, I'm talking about a consumer being misled about the status of a deal in order to get the consumer to sign, which takes the consumer out of the marketplace. That stops our marketplace from functioning. And when our marketplace stops functioning, we then get a market distortion and the prices and terms of deals no longer reflect the best prices and terms and that leads eventually to a market failure.

>> Carole Reynolds: Keith?

>> Keith Whann: I just want to be clear on my viewpoint on this, 'cause it occurred to me from what Jack said -- I may not have stated it clearly enough. I'm not saying that we're necessarily over regulated. I'm not making the value judgment today whether these regulations are necessary or not. What I'm saying is we have so much regulation now and there's so much information going to the consumer and the dealer that it's overwhelming. And if you look at the contract, we've got a fed box. And a fed box on a contract is supposed to be the major terms. But then if you go look at that contract, there's some pretty major stuff that's all over there. And then you go into a situation in many states where, under the state UDAP statute, all materials and statements have to be reduced to writing integrated into the contract. So therefore, if I'm dealing with the purchase contract or a retail lease agreement, which is really the purchase agreement for the lease with the dealer, now

I've documents that I can somehow incorporate by reference. But if I get to the finance document, now we're talking about everything that has to be included under a single document rule. Now it's all on one piece of paper, which is why we get documents that are that long. Is it better to have something that long on two sides that becomes an eye test that you didn't understand, or should we have 15 pieces of paper that we're integrating by reference? I don't know if it's all necessary or not, but I do know what we've created here is something so complex that I don't know that if anyone sits down and reads that you really do know where you are before you throw in the complexities of the difference between a sale and a lease and spot delivery and everything else that can go wrong in a car transaction. It's a very complex thing, and I don't think virtually anyone understands what's in all those documents.

>> Carole Reynolds: Stuart and then Terry, and then we're going to examine some other aspects of this spot-delivery issue. Stuart.

>> Stuart Rosenthal: I want to agree to some level with what Jack said about the complexity of leasing. Leasing is not a simple transaction. There are a lot of pieces to leasing, and there is an attempt in the forms, in the required Reg M form, and even in the required advertisements for Reg

att'rnehhanI ictl3-1(l)-2do(')don't understally ofheisbuthe'reheme, an(t)-2(h4-2(t)-2(')5(s)-1pahe)-5(r)-t(l)-(y of)3r gonna run them over a period of time? What do they need to put up front for this car? What's their obligation at the end of the lease? That's really the essence of what goes on in a lease. I disagree with Jack wholeheartedly as to whether it's more expensive to lease a car than it is to buy a car. When you buy a car, you're laying out all the money for the value of the car up front and you're either taking it out of an account somewhere or you're borrowing that money and paying interest on that whole amount for the whole time. When you lease the car, you're paying for that period of time that you're using that car. And there are a few ancillary charges that may be associated with that. But it's still far less expensive to lease a car than it is to buy a car, and then you're taking the

>> Carole Reynolds: When a lease yo-yo occurs, what are some examples of the terms that can

can change, and the problem with leases is, they can change in a way that a consumer won't even recognize is adverse to them.

>> Carole Reynolds: Stuart.

>> Stuart Rosenthal: I want to say that, from the dealers, again, that I've spoken to in my area, lease yo-yo sales are not occurring. They do not have that scenario because, as was explained before, number one, the dealers know that there is a different market for leasing than there is for financing, that there is no subprime leasing market, for example; that they're not leasing used cars at all. It's a much narrower market than the overall market that's available. So they are not doing it. Secondly, they know they have a really good set of parameters because they typically deal with one or, at most, two leasing companies. They typically deal with their captive finance company because that's where they know that they have a certain -- either an incentive or a benefit that may be coming to the consumer, in terms of financial incentive, on that vehicle. They have an idea. They have a very solid idea of what's gonna be expected and what's going to be permitted in terms of leasing. So they know which consumers will fall into those parameters. As to whether consumers understand what they're doing when they come into that -- there is a huge opportunity for consumers to educate themselves about what's going on in a lease transaction as there is with a sale transaction. You have a marvelous little brochure that the FTC and several other organizations put together on the keys to leasing, which describes exactly what the terms are. It talks about what monthly payments are, what early termination is. It defines each of these terms. It's very accessible. Other associations, such as my own, have put out their own brochures over the years comparing leasing and buying and giving consumers guidance as to when you should be looking at leasing, when you shouldn't be looking at leasing, and what leasing and buying are and what they mean and how to understand the difference between the two. There is a raft of material available on the Internet from, you know, a million Websites. Every car Website that you go to on the Internet, from Edmunds on to cars.com to everybody else, talks about what leasing is, how it works, what it costs, what the relative benefits are versus somebody else's. The Consumer Federation put out a book -- "Driving a Bargain: Coming Ahead at the End of Your Auto Lease." There is just an enormous amount of information that's available to a consumer so they can figure out whether leasing works for them or not and what happens when they go in for a lease.

>> Carole Reynolds: Jack?

>> Jack Gillis: In spite of the fact that I do disagree with Stuart in terms of the cost of leasing, I do believe that he's correct in the sense that the yo-yo experience is much more predominant with a purchase than a lease. However, Tom makes an important point. And it's something that we've worked with a number of dealers about. The concept of yo-yoing, whether in lease process or the purchase process, takes that consumer out of the marketplace and harms the free marketplace. And there are a number of dealers that actually acknowledge this problem, refuse to participate in yo-yo dealerships and do what Tom said -- the two types of dealers. One, we've got a contract. That contract is protecting the dealer as well as the consumer. And they're gonna honor it. There are too many dealers that simply give you the paperwork, with no intention of honoring the contract, and that have yo-yoing as a standard business practice. And why this is such an insidious practice is because those people who tend to be victims of yo-yoing are the ones who are most dependent on their vehicle for livelihood. It is not the people in this room. You become a victim of yo-yoing, you can probably handle it. But if you lose your vehicle through the process of yo-yoing and you lose your job or you lose your ability to bring your child to daycare or you lose any number of critically important things that the vehicle means to you, that is significant. And why we're participating in this exercise is 'cause we appreciate the fact that by looking into this subject, the FTC is acknowledging this is happening. And we call upon dealers to step up and strongly take a position against this practice because it's hurting the good dealers as much as it's hurting consumers.

>> Carole Reynolds: Terry.

>> Terry O'Loughlin: I just want to follow up with that. I want to distinguish between fraudulent spot-deliver transactions and spot delivery itself. I spent 15 years at the Florida Attorney General's office, and I prosecuted a number of cases dealing with fraudulent spot activities, or yo-yo transactions, where dealers were having consumers sign documents that they knew they weren't going to be able to have underwritten by a lender. Honest dealers also include with the lease contract some form of rescission agreement, which explains, "This contract until such time it can't

be bought by a third party.” We sell those documents. Reynolds and Reynolds is in the document business. We sell those documents. We sell a lot of them because honest dealers will inform the consumers that they're taking the vehicle, subject to the transaction not being underwritten, whether conditions precedent or conditions subsequent -- one of the two. The reality is that the dealers that do it in a very dishonest way -- It's clear fraud, and I don't think anyone in this room think that's a good way to treat the public. So, but the honest dealers, they do handle it in a different way.

>> Carole Reynolds: Greg?

>> Greg Grzeskiewicz: Just to add -- What we're seeing in Illinois with spot delivery and back to what Tom said and some of the other comments made today. We obviously see a lot more spot delivery and yo-yo sales in the purchase process. But we also do see some in the leasing process. And you asked, what can change? I mean, anything can change -- You know, from the payment price to any of the terms in the lease contract. So I just want to, you know, echo, though, it's probably a problem that's with our dealers not doing things honestly. It's an area that we enforce a lot on. To Echo what Terry said, spot delivery and yo-yo is a concern in Illinois and, although it's not as prevalent with leasing sales, we do see some spot delivery.

>> Carole Reynolds: Keith.

>> Keith Whann: I wanted to just follow up quickly on what Terry and a couple of others said. But first of all, did you just say "Condition precedent and condition subsequent in a car transaction"?

>> Terry O'Loughlin: I did, indeed.

>> Keith Whann: Okay. I guess that's where we are. But aside from that, spot delivery may serve a purpose. What we're talking about with a yo-yo sale, and, Terry, I think that was a really good point to be made -- If somebody is, you know, "I'm an old car guy,” is de-horsing someone to take him out of the market and try and capture a customer, that's a problem. And it's the same type of problem when somebody is running, whether it's a new car or a used car and they're including

him in the eye and say, 'You know, this isn't a done deal. We're not actually agreeing to any of these terms. We won't know for two weeks.'" The finance managers say, "No. I never say that." They say, "You're approved. When the finance manager says, "You're approved," and gives this document to a consumer to sign, to stick in a rescission agreement on page 10 is a fraudulent transaction.

reality is that a lot of things are spot delivered and the consumer never knows, no one of knows that it wasn't totally completed on that point. The dealer's quite confident that it'll be underwritten and so forth, but there are steps that underwriters go through to verify credit applications and all the other details concerning employment and so forth. The bad cases are what Tom's describing. And once again, the ones where the dealer can't get the deal bought and calls the consumer back and does it intentionally, that is truly fraud, deception, procedurally unconscionable, and all kinds of other things -- civil theft possibly. And I took action against those transactions. But to castigate all spot deliveries as being a problem, I think that's a little too broad.

>> Carole Reynolds: Let's turn to the area of add-ons, add-ons and amounts that may be added to agreements at the dealership. They may offer items of interest to consumers. The questions and

fares, add-ons, and this is how much it's going to cost you. It is your choice." For the most part, however, those add disclosed, if they know what they're purchasing and make an informed decision and it's reduced to writing, then you don't have those types of problems. There are certain things, as Stuart is relating to, in particular, leasing a vehicle, stuff like mats. And, you know, we need to be careful with the insurance thing because that's a state issue. Even Terry mentioned gap. Gap is a waiver in some states. Gap is insurance in other states, so we have to be really careful as to the labels we put on them, but I would agree. Gap is one thing, Terry. If the bank is not already including it, that is something, given the way the markets do with used vehicles, I'd be looking at gap. Do I want an extended the service contract or not? I think that depends upon the length of time that I'm going to finance this vehicle in the lease contract and whatap.4r-1(/1(e(h)1yeb(d)1(w)3(h)1(-1(s)1(i)4(s)5(v)1* [(stY)-1 consumers don't act rationally. And I'm not saying that's a bad thing. Computers act rationally, right? We're people. We're not computers. So the statement that we don't act rationally is nothing more than the statement, "We're not computers." People who sell cars on the lot know that what they sell is they sell the idea of loving the car. When the consumer loves the car, then rest of the transaction happens. And I'm not criticizing that, that people can go, they can spend money, and

>> Carole Reynolds: Jack.

>> Jack Gillis: I think the FTC could do an entire investigation on add-ons and the pros and cons. And I'm here between two very experienced and effective sales people. And, you know, I've often thought for a second, "Maybe I should protect those special alloy wheels with some kind of an insurance policy." The bottom line is, these products are, in my opinion, and in the opinion of many consumer advocates overpriced. And they are being sold to us in an environment where it is difficult, if not impossible, to shop around. But there's one other point that I'd like to touch on. And that's this concept of gap insurance. I'd like to see the automobile industry signal to consumers that if you need gap insurance, either for financing or for the leasing process, then you shouldn't be in that car. Gap insurance is a sign that something's wrong with that deal, that you need extra protection. That means you've bought more car than you really can afford. So, you know, again, I'd like to see the dealers step up and say, "Hey. Gap insurance is a sign something's wrong with this deal." And maybe we can talk about that for a little bit.

>> Carole Reynolds: Keith?

>> Keith Whann: Well, oftentimes, there is something wrong with a car deal. And if you were buying or leasing a truck or a sport utility vehicle three years ago when our lack of a comprehensive energy policy drove gasoline prices through the roof and people... Excuse me. ...then were in a situation, if they totaled the car and had a $8,000 or $9,000 deficiency, then gap insurance is needed -- or a gap waiver, depending the state you're in. So you can come up pretty much, if you've got the experience that most of us have here, with an argument for everything and against everything. The question is making an informed decision. And I'm certainly not gonna go where Tom went and say that the home mortgage crisis was on the backs of individual consumers. Unfortunately, I paid attention to Dodd-Frank. That's some of why we're here today. So I think it has a lot to do with other things than a consumer wanting more house than they could afford. There is a measure of oversight. There is an effort of disclosure. And, once again, you know, David, you've been used as the example of a new-car dealer -- good, bad or indifferent. And you've been told not to ever sell a service contract on a new car. Now, unfortunately, I've looked at a number of service contracts. And there can be differences in terms of the deductible or a buy down on

something or wear and tear and all sorts of other things. Now, whether you have the expertise to make that decision -- is it good or bad? -- I guess is up to the consumer in how you shop or perhaps the car dealer who decides to offer it. I would like to think, at your dealership, you're not gonna offer something to a customer that's of no value, that you're gonna do that research before you say, "We think it's a good idea to at least offer this to one of our customers," because if you take your customers and all you do is make them bad, you get bad CSI scores, and the manufacturers don't like that, do they? And that affects a whole lot of other things economically to the dealership. And that's a little bit different from a new-car dealer than an independent. The independent just loses a customer. So I think what we have to be careful here is just painting some of these things as so much black and white because we could go good or bad on almost everything that's here.

>> Carole Reynolds: Stuart and then Terry, and we need to move on.

>> Stuart Rosenthal: I want to try to keep this in the framework of leasing, but before we totally eliminate consumer free choice up here and reduce the ability of consumers to decide for themselves what they want to drive and how they want to drive it and where they want to drive it, whether it's off road and therefore, they're taking chances on breaking something on the vehicle, or whether they like driving car that may be more expensive than they would ordinarily be able to buy because it's either more gas-efficient, safer, larger, because now they have a bigger family and they need room to carry more people. They've made some determination as to what they would like to be driving and how they would like to drive it for whatever reason they've chosen. That leasing does afford them that opportunity to drive a car that's more expensive than what they might otherwise have driven. Somebody who had two kids and now has a third, for example, might feel that the subcompact they were driving around in doesn't accommodate the size of their family anymore and they really need a small S.U.V. or a large sedan, which costs substantially more than that subcompact that they were used to driving and leasing gives them that opportunity to be able to afford that larger car without having to go deep into their savings or retirement account or whatever to be able to afford to it, to get them through those times that they need to do that. So the notion that consumers are irrational when they decide to drive something that's more expensive than what they could afford to buy by leasing it and, therefore, being able to afford it is, I think, off the mark and really not someplace that we want to go very far.

>> Carole Reynolds: Stuart?

>> Stuart Rosenthal: At the risk of perhaps being shocked by one of my members, Jack, I'd like to invite you to come and sit in a dealership's office one day and listen to the negotiation that goes on when consumers come in. First of all, the consumers have shop. The dealers advertise very heavily. Ask any newspaper person, you know, what percentage of their revenue comes from automobile dealer advertising, and they'll probably tell you that, in a bad year, it's 25%. In a good year, it's closer to 40%. So the dealers advertise like crazy, and they advertise price. And they advertise competitively because they know that they need to. In order to be able to attract consumers, they've got to be competitive so that there is a huge amount of that almost pre-negotiation that the dealer takes out of it because they've Td   [(a)-1(d)aEl ()-2( )(y ne)-1(e) tha>1Td   (1(b)1(eca

consums chaingt rom .725 Td   [(a)-1(dve)-1(r)-2(t)3(.)1(o61(t)-2( )do(t)-2(he)-1( )5(ne)-1(got)-2em)8(e)r(ne)-1(g being actually to understand how it works, and they're so complex that most people --

>> Carole Reynolds: Very quickly, we see rent-to-own transactions in electronics, furniture and appliances. Do these also occur in the auto area? We seem to have heard that they do in panel one. And what misrepresentations or other issues do we see in that area? Terry?

>> Terry O'Loughlin: Yeah. There are two developments in the automobile world, one of which is rent-to-own. And there are about 24 states or so -- 24 or 28, I forget which -- that have actual statutes that address rent-to-own. It's quite a quilt of differences in the various states. And it creates, I believe, a far more complex transaction than leasing for consumers because each state is unique -- pretty much unique -- in how it presents the transaction to a consumer. Another development is Lease Here Pay Here pay, which is a development in the buyer/payer world, which is far superior because it abides by Regulation M and the transaction is presented in that manner. As a footnote, I think most attorney generals truly dislike rent-to-own, I think, because it does create -- It can create, I shouldn't say it does. It can create a financial burden to consumers in a way that a lease transaction won't.

>> Carole Reynolds: Keith?

>> Keith Whann: Just in the interest of time, yes, it does exist, and as Terry said, yes, there's a patchwork of regulations. Some of the statutes say cars can be include. Some say they're excluded. And in some cases, it winds up being a lease, and then you wind up with lease-to-own or Lease Here Pay Here.

>> Carole Reynolds: Tom, and then we need to turn to the audience.

>> Tom Domonoske: The real problem with rent-to-own goes back to 1980 decision out of the 5th circuit called Smith v. ABC that started articulated this idea that if a lease is terminable at will, then it is not subject to the Consumer Leasing Act. The actual facts of that case are totally different than a rent-to-own transaction, and I think there is a growing problem of rent-to-own in car transactions, and it can be shut down simply by effective enforcement action under the theory that the Consumer Leasing Act actually does apply to that. Pursuant to its ordinary definition, there's no reason those rent-to-own deals aren't accompanied by Reg M disclosures. And renting is no

different than leasing. Rent-to-own, lease-to-own -- It's a lease. It's under the Consumer Leasing Act. And the string of court cases that are talking about how rent-to-owns aren't under the Consumer Leasing Act are actually fact-specific to something other than what the term "rent-to-own" currently applies to.

>> Carole Reynolds: Do we have questions from the audience? I'm sorry.

>> Female Speaker: One of the big problems we've had in California, where law enforcement has gotten involved, is some dealerships, including some major dealerships were switching consumers from purchases to leases. And I was wondering if you could comment on that. And the other thing is, we've seen problems with dealers selling add-ons and then they just pocket the money. You know, they sell the gap insurance, the extended service contract and everything. And a number of them do this and this and then go out of business. And how big a problem do you think that is?

>> Greg Grzeskiewicz: I'll take that. In Illinois, we've seen the same problem. We've had quite a few dealerships go out of business and pocket the extra add-ons. Obviously, we didn't get into flipping today. I think we ran out of time. But that's obviously, -- You know, we've talked a lot about the two types of dealers. And an area that we have a lot of enforcement is when a consumer is yo-yoed on a purchase. And then they bring them back in and put them in, you know, obviously a different contract term or put them into a lease, so, you know, with disadvantages -- not good terms.

>> Carole Reynolds: Stuart, did you want to respond?

>> Stuart Rosenthal: In our area, we're not seeing the flipping. The leasing is 40% of the business in New York. And the high line-brands -- Some of the dealers have told me as much as 90%, 95% of their business. Consumers come in looking for leases. Also, the fact that leasing is more restrictive, in that there's no subprime leasing, means, again, there's a narrower audience. We're just not seeing any issues of flipping from buys to leases, you know, by the dealerships.

>> Carole Reynolds: Two real quick comments here. Terry, did you have a quick comment?

>> Terry O'Loughlin: The Flip concept was pretty common in the '90s, prior to Regulation M, where consumers would come in wanting to buy a vehicle, and they were flipped into a lease because in those days, the terms weren't clear. They didn't understand the disclosures were not manifest in the document itself. So that was quite common because there was a tremendous incentive to do that. Subsequent to Regulation M, that practice doesn't go on nearly as much as it used to.

>> Carole Reynolds: Keith.

>> Keith Whann: Independent dealers are much different than franchise dealers. You either lease cars or don't. And if you're an independent dealer and you're leasing cars, that's probably what you do. So when you're going into an independent dealer, you're either buying the car or leasing the car. And that's probably all they do. If a dealer pockets the money for products, that's just wrong and always has been.

>> Carole Reynolds: I think there was a question over here and then back over here.

>> Male Speaker: Yeah, it is on. Two quick -- One quick question and then a longer question for you, Carol. Tom, I'm curious how many Court cases you know where you have adversarial attorneys in a contract case, where they agree on contract terms? And I'd love to see the statistics on that. More specifically, Carole, does the FTC have any statistics on how many vehicles are leased every year and as a percentage and then how many complaints the FTC gets on the various issues that have been discussed today?

>> Carole Reynolds: We're actually very interested in obtaining data on all the topics that we've been addressing today -- leasing as well as all the others that you'll see this afternoon. So we would like to see that data on leasing.

>> Male Speaker: But in terms of the complaints?

>> Carole Reynolds: In terms of the complaints, the data that we've released already is on our Website. And we do reports every year on the most common topics that are the subject of consumer complaints. There was a question over here?

>> Joe Goldberg: Uh, yeah. My name is Joe Goldberg. I'm a private practitioner with a consumer law practice in Pennsylvania. I want to disagree with the assertion that was made on both panels that there is no subprime leasing. In the last four or five years, I've seen a proliferation of it. The new-car dealers aren't seeing it, obviously, because they're not part of it. But the NIADA members and other independent nonmembers are engaging in it at an increasing rate. And I guess I'd throw this out to the FTC that, as part of your follow-up to this, that you do look into this problem. It's partly Buy Here Lease Here, and it's partly the rent-to-own. But it is on the upswing, and it's directed at the lower-income segment of the population.

>> Carole Reynolds: This is the last question, so the gentleman over here, and then we have to stop.

>> Male Speaker: Thanks. There's been a lot of discussion of the assertion that you rarely get the best deal when leasing. I guess my question is, is there anything that precludes a consumer from negotiating the price of the vehicle that ultimately a loan a lease will be based upon and shopping that around?

>> Carole Reynolds: And this should be fairly quick, both of you. Terry and then Stuart.

>> Terry O'Loughlin: Absolutely not. I mean, consumers can shop -- I mean, quite honestly, really well-informed consumers drive these bargains. I mean, they can go from dealer to dealer to dealer, knowing full well what they've been offered. In my years at the Attorney General's, I've talked to hundreds, if not thousands, of consumers, advising them to do just that. Seek out the best price. Go to a number of dealers, do your homework. And the saddest part of all this -- there's so much information available that consumers don't spend the time. The ones that sadly are sometimes taken advantage of don't spend the time and preparation by doing just that -- shopping around and educating themselves so they can make the best deal.

>> Carole Reynolds: Stuart, can you wrap up quickly?

>> Stuart Rosenthal: Very quickly, I agree with what Terry said. [Laughter]

>> Carole Reynolds: Thank you. That was terrific, and join in thanking all of our panelists here today. [Applause]

>> Lesley Fair: Oh, no, it won't.

>> Nancy Wilberg Ricks: I'm just kidding. I'm Nancy Wilberg Ricks. I'm a policy analyst at the National Council of La Raza, NCLR. We have approximately 300 affiliates throughout the nation, and actually 50 of those 300 are housing counseling affiliates. They also offer financial advice. So

opportunity-cars model, where it's a highly subsidized auto lot. They're donated cars. And our families find good deals there. We have also found very strong credit unions who do a fantastic job in serving our families. Self-help is -- I'm not sure if any of you are familiar with self-help. And they find that they have that one-on-one with their client. They even equip them with advice to bring in the car. They bring in the car, they have it checked out. I mean, these credit unions are kind of going above and beyond, and they will even equip the consumer with a check. And once they get onto an auto lot, something happens. And they don't necessarily know how to translate what happens, but they all of a sudden find that, you know, the best rate is, you know, on the lot. And the fact that we have some of these sort of qualitative pieces working for us for our Latino families -- I mean, we keep an eye on that, and that seems to be happening regularly.

>> Lesley Fair: If I could break in, you said something happens. What, from your perspective, is happening, Nancy?

>> Nancy Wilberg Ricks: Well, they end up basically foregoing the deal that the credit union gave them and end up with other products and other pieces with which they were unfamiliar before.

>> Lesley Fair: Rosemary?

>> Rosemary Shahan: If you look at the data, the Consumer Federation of America, the National Association of Consumer Agency Administrators, and the North American consumer investigators annually compile data on consumer complaints that are filed with state and local consumer-protection agencies, and perennially, auto sales top the chart, and this is a problem that's pervasive around the country. And, also, if you look at complaints to the Better Business Bureau about new-car dealers and used-car dealers, if you put the two of them together, they separate them, and they rank. I believeh Amosemnts(ge)-p8[(c)-1 Td [(A)(sem)2(n)5(tr)-2(aTd (-)Tj o)6(n)1(rnr)-2inv0r55bs tm, prn3,

>> Lesley Fair: Michael, I think you had something to add.

>> Michael Archer: Yes, ma'am. Consumers' complaints are chronically under-reported. And as an illustration of that, I had the opportunity to talk to someone that was running the FTC's Military Sentinel, and they had shown that there was a quarter -- I don't recall which one. It's of the recent years. But a three-month period of time, they looked at their data, and according to the FTC Military Sentinel, not one marine was ripped off in any deal anywhere, or landlord matter, car deal, anything, which certainly surprised me, having being at Camp Lejeune, and every two days, we have 30 to 50 clients lining up at the door, and many of them are consumer matters. So the first point is that consumer complaints are certainly chronically under-reported. And then secondly, as for data, the Center for Responsible Lending did a survey asking consumers essentially do you know that the dealer can mark up and have their dealer reserve. This is shy of 80% of the consumers said and the respondents said, "I didn't know that. I didn't know they could mark me up. I didn't know they didn't have to tell me what the buy rate is, and I think there ought to be a law that says they can't do that." And if the CRL has not already submitted that data, I think that I could prevail on them to do so.

>> Lesley Fair: I think any empirical data we would love to see on the record. So, Damon?

>> Damon Lester: So, just to point out something, what Rosemary just noted with their statistics, but if you look at as a whole in 2010, there were well over 11 million vehicles, new cars, sold, and just to point out that 23,000 complaints out of 11 million, you're looking at a finite group of individuals that have a complaint. Whatever form or faction that complaint is, it is true to Andy's point that it looks like there is a significant amount of education, as he pointed out with the 58% of the consumers are satisfied and have some type of information as far as how to purchase a vehicle.

>> Lesley Fair To what extent could there be problems with under-reporting and I guess what experts would call kind of a yea-saying bias? Are consumers likely to perceive of themselves as

coming onto a lot? Damon, do you want to start off? I know you're active in the same coalition that Andy had mentioned.

>> Damon Lester: I mean, in addition to being a board member of AWARE, I Googled what auto financing is on Google, and there's over 1.6 million search results. So to say that there's a lack of information or a lack of educational financial-literacy packages, in addition to autofinancing101.org, you know, I have to disagree with that. There's not a consumer that's out here that doesn't go into a dealership that doesn't have an idea of what that price is, what they're willing to pay, 'cause everything is geared towards what they want to pay for or what they can afford. So I think that there's a plethora of auto-financing options outside of independent entities. You have each manufacturer that has information on their Websites about auto financing or consumer financing. You have the dealerships that have materials on their Websites about auto financing. So there's a lot of information out there that --

>> Lesley Fair: Well, let me stop you right there. Is that sometimes a con rather than a pro? Some folks at other roundtables have raised the concern about information overload, that there is so much information, how do consumers know. You know, getting it from the 10 million hits on Google to inside the head of th

>> Lesley Fair: It'd like to certainly finish with a more nuts and bolts suggestions on what needs to be done, but I think we need just a few minutes on the issue of business education, too. Are the lines clear to salespeople and to car dealers about what practices are lawful and what practices are beyond the law?

>> Andy Koblenz: Can I take that one?

tracks of workshops, and a large portion of that is dedicated to compliance. As I said, Paul and Brad do sessions. Brad was up in New York at Stuart Rosenthal's association just last Thursday talking about the latest developments in the worlds of tax and tax compliance. It's not just limited. We do a lot in the consumer-credit area, but we do a lot in OSHA and labor. There's a raft of regulations that the dealers need to comply with, but there is an overwhelming disposition towards compliance. The dealers are crying out for it. They're asking us. The state dealer-association execs like Stuart Rosenthal are calling us all the time, and that's just NADA. Then there are the private companies that do it. Michael Benoit, Tom Hudson from Hudson Cook are going to be on the panel later. They do it. That's part of their business. Rob Cohen, who was on one of the panels in Detroit, his business is dealer compliance. He does hundreds of dealership-compliance audits a year. There is just a tremendous quantity of compliance activity going on. It's essential, and the dealers are trying to keep up, but the notion that there isn't a cry for it from the community is wrong, and the notion that there isn't really quality, understandable information being pushed out to them is not true. So it's important. I really thank you for putting it on the agenda, because it's an often overlooked aspect. There's just one other thing. We don't leave our messages to our members at the “what you need to do to comply” stage. We also try to take all of the other stuff on financial literacy and package it up for them because it's not gonna happen if we leave it at the national level. NADA can't educate the world, AFSA can't educate the world, Rosemary's organization can't educate the world. We need to push it down. And we have 17,000 members out there. This is a financial-media tools for NADA members that we distributed at last year's convention. We produced this in conjunction with our partners and our friends at AFSA, and it lays out how you can volunteer. What can you do to get involved? It identifies organizations -- Junior Achievement, Jump$tart Coalition. It talks about MoneySKILL, which is another program that AFSA has. It talks about AWARE. We are trying to make this successful, not just for the consumers, but we're also trying to make it because, you know, a dealership, not withstanding Michael's comments that the dealer shouldn't be involved in pushing this information out. We think they should be and that they are and they can be very effective deliverers of that information.

>> Lesley Fair: Can you give us an example of what's worked in that area?

>> Damon Lester: We have an annual conference which we do a lot of dealing with the compliance issues, both federal and state. We also work with a lot of third-party entities to educate our members by way of, you know, paper mailing, as well as Webinars, as well as conference calls, as well. I do want to add that dealers are afraid not to be compliant. I mean, there is a fear of what could happen if they're not compliant, which is why you do have a thirst for knowledge for within the dealership, because we don't know what could happen at any given day if they're found to be in compliance. But for us, we do think, as well as what Andy said, is that we have to be as well-abreast to it, because it's consistently changing. I think there's well over 80 federal regulations, and that doesn't even include just the state mandate, the different state regulations that a dealer has to comply with.

>> Michael Archer: Compliance requires a knowledge of what the rules are, and Andy has some good ideas about educating dealers. Compliance, particularly when the incentive is to say whatever you need to say to sell a car, also requires some vigorous enforcement. And I know this panel is about education, but we need to look at the universe as a three-legged stool with regulation, education, and enforcement. And if you forget any one of those, then you have nothing, and I think we need to keep sight of that.

>> Lesley Fair: We go to our last question, in the interest of time. We want to start with small, concrete steps. We've heard a lot of big-picture issues. You know, it would be great if all second graders could calculate an APR to the 12th decimal place. But, you know, short of an act of God or an act of Congress, what is it that each of us can do in the next year that will result in a more transparent car-buying process for at least some consumers and dealers. The one thing that I can pledge is through business.ftc.gov, which is the FTC's site for businesses, the federal portal directly for members of the automot

language, as well. It's a huge part of the population. They're the highest-growing minority population in the U.S.

>> Lesley Fair: Virtually everything on ftc.gov.

>> Nancy Wilberg Ricks: Sure, sure, yeah. And, also, with some of these programs -- you know, NCLR is a national program, but we really, really, value our community-based organizations. So when it comes to partnerships, we're really trying to, you know, ensure that folks actually, you know, are getting the information despite other issues of the grander issues, pie-in-the-sky requests that we have, you know, of enforcement and all of those pieces. We do think that those partnerships aren't to be overlooked.

>> Lesley Fair: One concrete step, Damon?

>> Damon Lester: I think just sharing information, just looking at everyone's Websites. I would suggest that, you know, NCLR have a link to autofinancing101.org on their site and we link NCLR to ours, that there should be just a linking, a locking of arms across the board.

>> Michael Archer: I've already mentioned online video, how to buy a car, how to avoid ripoffs. And I think in my world, I think the Secretary of Defense could help with mandating certain carrots and sticks for troops that complete consumer-education classes.

>> Andy Koblenz: Yeah. I just want to hold up the "Understanding Vehicle Financing" that was produced by NADA, AFSA in cooperation with the FTC, and its Spanish version. As an example of the kind of collaborative, harmonized, positive, neutral, good financial-literacy education that we could do. If we could all embrace this approach to financial literacy, which tells you to shop around. It says -- and I just want to read -- "before visiting the dealership," it says, "compare annual percentage rates and financing terms for multiple financing sources, such as a bank, finance company, and credit union." This kind of broad-based, neutral financial-literacy approach, if we could all embrace that, is what I would suggest is our step.

>> Rosemary Shahan: Okay. We plan to focus on assisting consumers in using the private market to buy used cars. I know with new cars, that are monopolies in each state, so they don't have that option usually, but we want to see that market work a lot more effectively. We would also challenge the dealers not to bludgeon the mainstream media when they cover car-buying stories by pulling ads.

>> Lesley Fair: I just want to finish. I looked up in our archives and found a 1983 publication on some pretty cool paper, "Facts for consumers from the FTC -- car ads, low-interest loans, and other offers." A lot has happened in how we communicate with consumers and businesses in the past 30 years, and I think multimedia approach seems like the best way across the board. Before we finish, I would just like to mention we're gonna be breaking until 1:45. We do plan to come back a few minutes early, because if you do leave the building, you will have to go back through security. There are some unbiased sources of lunch-option information in your packets. We're a big believer in that, too. And please join me in thanking our panel this morning. [Applause]