

FEDERAL TRADE COMMISSION

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DEBT COLLECTION DIALOGUE

A conversation between government and business

Wednesday, November 18, 2015

1:00 p.m.

Latin American Association

2750 Buford Highway

Atlanta, Georgia

Reported by: Brenda W. Thompson

FEDERAL TRADE COMMISSION

I N D E X

Welcome:

PAGE:

By Thomas Kane, Senior Counsel 5
FTC Division of Financial Practices

Opening Remarks: 7

By Sam Olens
Attorney General, State of Georgia

By Christopher Koegel, Assistant Director
FTC Division of Financial Practices

Panel 1: 24

Moderator:
Cindy Liebes, Director
Southeast Region, FTC

Panelists:
Nick Jarman, President and COO
Delta Outsource Group, Inc.
Member, ACA International Board of Directors

Carri Grube Lybarker, Administrator
South Carolina Dept. of Consumer Affairs

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I N D E X (cont.)

Panel 1: (cont.):

Olha N.M. Rybakoff, Senior Counsel
Tennessee Attorney General's Office

John Sours, Director
Consumer Protection Unit
Georgia Department of Law

Panel 2:

94

Moderator:

Thomas Kane, Senior Staff Attorney
FTC Division of Financial Practices

Panelists:

Christopher Koegel, Assistant Director
FTC Division of Financial Practices

Gregory Nodler, Senior Counsel
Enforcement Policy and Strategy
Consumer Financial Protection Bureau

Kenneth Lennon, Assistant Director,
Community and Consumer Law Division
Office of the Comptroller of the Currency

FEDERAL TRADE COMMISSION

I N D E X (cont.)

Panel 2: (cont.)

Harvey Moore, President

The Moore Law Group

President, NARCA

The National Creditors Bar Association

Tim Bauer, President

InsideARM

Co-Executive Director

The Consumer Relations Consortium

Brett Soldevila, Chief Compliance Officer

Security Credit Services, LLC

Chair, Certification Standards Committee

DBA International

P R O C E E D I N G S

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

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

15 In 2011 he worked with legislators to strengthen
15 03j-ren of Finania's

1 Please welcome Attorney General Sam Olens.

2 (Applause.)

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

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

12 And it's good to see the FTC reaching out among
13 the states to do this type of program. Many of the

16 couchseeu, concprotection in partisan politics.

17 Allseeu, cons have the right to be treated
18 aptulo seeu,istent with the law. Thee 's not a
19 Republican wayconcd Democrat way. And we need in this
20 hyperpartisan world to start looking at these issuaAfin a
21 perspective based on justice rather than politics.

22 So it's a quickoverview of my office, so as a
23 general statement, we represent the executive branch. I

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

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

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

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

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

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

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

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

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

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

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

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

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

25 We also run into a problem where more and more

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

6 But the more that you record, the more you send
7 us the information, the more you tell us what's out

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 Thank you very much.

20 (Applause.)

1 Welcome, Chris.

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

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

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

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

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

25 I also work very closely with our Division of

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

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

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

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

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

1 on the economy as a whole.

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

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

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

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

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

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

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

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

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

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

25 As we said when we announced Operation Collection

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 From ACA International, Rob Foehl, as always, was
2 wonderful in getting the word out about this event.
3 DBA International, Jan Stieger; from NARCA, Mark Dobosz;
4 and from the FTC we've had wonderful support from our
5 Southeast Region, Cindy. Thank you so much to Robin

1 with these state regulators and many others.

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

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

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

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

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

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

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

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

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

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

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

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

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

25 And so our fear is that continued regulation will

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 We do, however, have the Unconscionable Debt

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

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

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

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

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

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

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

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

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

20 It is certainly something that we want to look at
21 as complaints in the debt collection area are typically
22 our number-one complaint category. At our department we

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

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

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

11 I work with the Tennessee Attorney General's
12 Office. I am in the Consumer Protection Division. And
13 my role with debt collection comes into play in the
14 context of enforcing our generic consumer protection

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

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

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

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

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

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

1 be, or may be not.

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

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

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

18 It seems whenever we enact a statute, we don't
19 take anything out; we just add stuff to it. And

1 to collectors or to debt buyers. Georgia has over 50 --
2 I think it's now 55 -- different statutes that regulate
3 various trades and occupations and businesses. We
4 regulate auctioneers, cosmetologists, ierse9 forth, but
5 not this industry.

6 I have seen no real sentiment for that, iersI
7 have to say, based on what I see, our legislature is not
8 particularly inured to regulation. So I don't think

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

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

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

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

94 0 awarded. He stopped and then said (20) in 2001, at the time where there are angifromers.

13

13

OlleNick, mayw -- abog, ?ar. yes, thoainenAnd ws.

1 the states' regulators said or --

2 MR. JARMAN: Absolutely.

3 (General laughter.)

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

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

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

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

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

1 are going to engage in that kind of activity,

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

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

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

25 So those are kind of the issues that we have

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

amount of the debt was, what the terms of it were, what

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

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

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

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

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

1 make the best decisions.

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

11 MS. LIEBES: Nick.

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

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

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

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

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

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

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

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

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

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

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

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

22 And so I understand that I'm dealing with the
23 bottom level here, for the most part, of a process that's

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 That's true not only with respect to debt
6 collection but just about any industry that you can name.

1 of like if any of you have been in the military, you're
2 familiar with the military medical term "triage." That's

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

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

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

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

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

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

6 MS. LIEBES: Anybody else?

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

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

21 In terms of where we get our complaints, as these
22 folks have indicated, sure, consumers are one source. Ex-
23 employees who feel that they have been mistreated,
234 surprisingly a number of those contact us. at aomcomp ascertainly

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

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

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

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

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

1 litigation.

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

6 Carri, do you want to start?

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

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

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

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

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

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

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

13 And what happens and what's happened in this case

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 MS. LIEBES: Great. Thank you.

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

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

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

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

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

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

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

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

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

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

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

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

22 John?

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

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

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

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

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

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

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

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

14.3 generally is of little use to your House. have certainly seen an increase and have, se. 14.3

1 just never know.

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

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

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

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

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

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

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

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

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

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

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

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

10 Is there any preference on the state side,
11 especially -- obviously with Tennessee they're licensed;

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

6 The only thing that we have right now would be a
7 listing from the Secretary of State's Office to even try
8 and look up a name, which a lot of times those persons

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 compliance program?

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

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

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

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

24 MS. LIEBES: Excellent. Any other comments?

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

have in Georgia is to provide consumer education. And

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

3 (General laughter.)

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

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

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

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

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

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

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

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

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

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

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

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

1 it's pretty nifty.

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

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

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

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

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

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

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

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

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

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

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

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

23 MS. LIEBES: No.

24 MR. SOURS: No.

25 MS. LIEBES: It is only accessible to law

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

5 Now, certain non-law enforcement agencies do put
6 information into the database, including the Better

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

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

9 MS. LIEBES: Okay. Well, great.

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

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

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

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

1 Lennon, who's an Assistant Director, Community and
2 Consumer Law Division, Office of the Comptroller of the
3 Currency; Harvey Moore, who's president of the Moore Law

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 We see a very close nexus and correlation between
6 these phantom debt scams and payday loans, online payday
7 lending, and so we are exploring a number of different
8 options for how is this information getting into
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1 MR. KANE: Thanks.

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

4 MR. NODLER: Sure. The CFPB hasn't been

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

3 So first, to go back to the Chase case, this was
4 brought by the CFPB along with 47 state attorneys general
5 and the District of Columbia -- and the OCC, as Ken may
6 talk about, brought a similar action at the same time --

1 \$30 million to the OCC.

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

12 One of the things that I thought was very
13 interesting about it is they have to send consumers a
14 letter whenever they sell debt, letting them know that

1 documentation, I'm not going to do anything. And so
2 consumers were caught in this Catch-22 being bounced back

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

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

17 (General laughter.)

MR. NODLER: So then there were also clsTid a conssj0.8418 0 TD(17)Tj2.

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

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

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

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

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

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

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

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

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

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

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

4 MR. KANE: Thanks.

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

7 MR. LENNON: Keep it short.

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

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

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

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

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

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

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

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

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

19 Is that sufficiently brief?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 MR. KANE: Thanks.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 on communication.

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

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

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

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

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

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

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

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

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

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

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

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

5 Together with them we've been working on this for
6 about the last six months, and it reminds me of I think
7 it's a Mark Twain quote: if you want me to do a five-
8 minute speech, I'll need at least three months to prepare
9 for it. Well, this is a two-page document that took
10 about six months to prepare, same type of deal, because
11 we wanted it to be short, concise, clean, readable, and
12 this guide is called: When a Collector Calls: An

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

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

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

7 So let me see, I want to move on to some other
8 topics folks raised. One of them was generally
9 uncertainty because of too many regulations or perhaps
10 conflicting regulations. Industry folks, tell us a
11 little bit more of that, and then I'll ask the federal
12 folks to comment. What sorts of issues or problems are
there that are ber9ohj3n bmany regulati?are 12

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 potentially to a third party or fail to give disclosures,

2 you are taking a risk.

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

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

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

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

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

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

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

1 then that's their right under the law.

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

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

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

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

4 MR. LENNON: Okay. Let's see, we're basically
5 just going to try and go through the guidance real quick
6 and not reason as to why we go there. Let's see, when
7 you folks are mentioning vendor management guidance, I
8 think what you're referring to is the guidance that my
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1 management is supposed to cover the entire life cycle of
2 the third-party relationship, so it's not just at the
3 beginning or at the end, it's the whole way through, from
4 basically planning when you're deciding what relationship
5 stance you're into all the way through termination, so it
6 should cover the entire gamut of the relationship. So
7 that's that one.

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

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

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

8 MR. KANE: Great. Thanks.

9 Brett, since your industry is most directly
10 impacted by at least the debt sales, how is it affecting
11 your industry, and do you have any suggested changes that

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

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

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

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

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

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

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

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

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

23 MR. KANE: Great. Thanks.

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

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

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

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

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

1 number of consumers affected. Is this something that an

1 Commission to maybe step in.

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

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

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

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

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

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

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

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

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

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

20 MR. KOEGEL: Totally agree.

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

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

1 agencies.

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

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

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

1 on loans that are void under state law.

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

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

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

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

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

5 And it's also important to note that companies must

1 fifth version in less than three years.

2 MR. KANE: Great.

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

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

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

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

9 MR. KANE: Great.

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

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

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IN RE: FTC Debt Collection Dialogue

LOCATION: Atlanta, Georgia

DATE: November 20, 2015

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

11/25/2015

Brenda W. Thompson