FEDERAL TRADE COMMISSION

CONSUMER PROTECTION AND DEBT SETTLEMENT INDUSTRY

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FEDERAL TRADE COMMISSION

I N D E X

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P R O C E E D I N G S

MS. GOTTOVI: Good morning, everyone. I think we're about ready to get started. So, if we could move to some chairs, that would be great.

My name is Sara Gottovi and I'm a staff attorney here at the Federal Trade Commission in the Division of Financial Practices. Welcome to all of you this morning. We're glad to see you. I have a few important security announcements to give before I have the pleasure of introducing our Director of the Bureau of Consumer Protection.

For all of you who have come in through security this morning, I know you experienced a little bit of a line. You should know that any time you leave the building today, you'll have to go back through security on your way in. So, if you step out during a break or during lunch, please be prepared to spend a couple of extra minutes coming back through security on your way back to the room.

In the event of a fire or other evacuation of the building, our rally location for the conference center is across the street at Georgetown Law School. You should see somebody holding a sign that says conference center. We will try to account for everyone in the room over at the Georgetown Law School.

In the event of an evacuation where it's better that we remain in the building, the so-called shelter-in-place evacuation, you'll be receiving instructions to go down the stairwell, which is directly behind us through the pantry into the parking garage. And if you see any suspicious activity today, please don't hesitate to report it to security.

With that, it is my pleasure to introduce to you Lydia Parnes, our Director of the Bureau of Consumer Protection for our opening remarks.

(Applause.)

OPENING REMARKS BY LYDIA PARNES

MS. PARNES: Sara, thank you, thank you so much and good morning to everyone. We do a lot of workshops at the FTC and I'm sure many of you know that. Our experience usually is we start early at around 8:30 because we have days that are very packed and we usually begin with a room that is filled with, you know, some people, mostly FTC folks at 8:30 in the morning. So, this is really quite impressive to see all of you out here this early. And I thank you all for that. I think it just underscores how important the issues are that we're discussing today.

The workshop, of course, is on consumer protection and the debt settlement industry and we're joined by so many knowledgeable experts from industry, academia, creditors, consumer groups, and the government. And we greatly appreciate all of your participation and attendance in this event.

As you know, I guess unless you have been under a rock somewhere, we are experiencing extraordinary change in our financial sector, and the spotlight understandably has been on the mortgage market. But, yet, credit card debt continues to play a very significant role in consumers' financial lives. Indeed, the latest studies from the Federal Reserve Board reveal that revolving consumer debt is at an historical high, over $963 billion and growing. And as a result of these debt levels, more and more consumers are struggling to pay their debts. Perhaps, not surprisingly, this situation has created a growing market for companies offering debt relief services to consumers.

The focus of today's workshop is on one subset of that debt relief industry, debt settlement. And we're here today to educate ourselves and the public about the debt settlement industry. We think this is a particularly timely subject for our consideration because consumers facing increasing amounts of debt don't seem to have adequate debt relief options available to them.

For decades, debt relief was almost exclusively the province of non-profit credit counselors. Then and now, these counselors work with consumers to develop debt management plans, essentially budgets that let consumers pay off their entire debt over a specified period of time. But, recently, the landscape has changed.

Non-profit credit counselors report that although the number of consumers contacting them about debt has increased by about 33 percent, the percentage of consumers who meet the income requirement for debt management plans is down over 40 percent. Many consumers, who don't qualify for participation in debt management plans, turn to the debt settlement industry for help. Indeed, one major creditor told us that since July 2007 they have seen a 700 percent increase in contacts from debt settlement companies on behalf of consumers. That is just huge.

In planning this workshop, it's become clear to us that people outside the industry don't necessarily understand the distinction between credit counseling and debt settlement. When we use the term "debt settlement," we're referring to a certain subset of debt relief services. Most commonly, the services are offered by for-profit companies that promise to obtain lump sum settlements for consumers' unsecured debt. These services address credit cards and other unsecured debt, not mortgages or secure debts. And the companies typically promise that settlements will be for amounts less than the full balance owed by the consumer.

Consumer debts and negotiations related to those debts is an area in which the FTC actually has some expertise. The Commission has jurisdiction over the third party debt collection industry and a long history of both law enforcement and consumer and business education initiatives in this area. And, significantly, through consumer complaints and many FTC and state enforcement actions, we have seen several problems in the debt settlement industry.

Over the past three years, we've brought cases alleging that certain debt settlement companies have made deceptive marketing claims, including the failure to disclose substantial up-front fees and misrepresentations that credit or collection activities would stop during the duration of the debt settlement program. In one case, the Commission alleged that unqualified claims that the defendant would reduce debts by up to 60 percent were deceptive. In another, we alleged that the defendants falsely claimed they would begin negotiating with consumers' creditors within weeks. Obviously, these are all from the consumers' perspective, these are all highly material claims.

While enforcement of current Federal and state laws is critical, it's not clear that enforcement of current laws is adequately protecting consumers in this growing marketplace. Therefore, we have several goals today. First, to understand the background of the industry; second, to hear about current trends and marketing practices; and, finally, to begin a discussion about where we should go from here.

The agenda for today's session is an ambitious one. That's why we started at 8:30. We expect some lively discussions from all of you about these issues.

The first of four panels will present an overview of the for-profit debt settlement industry, including its origins, and how it compares to the non-credit industry.

In the second session, we'll be discussing current trends and practices in the for-profit debt settlement industry.

The third panel this afternoon will be a discussion of consumer protection challenges in the industry.

And, finally, our last panel will look to the future of the for-profit debt settlement industry.

So, what do we hope to achieve today? Well, we encourage everyone who touches the life cycle of unsecured debt to think creatively about how to move forward. Let's ask ourselves, are current laws sufficient to protect consumers? What roles do consumer and business education play in this industry? What role should self-regulation play? Are there any alternatives to the current debt relief options? And if so, how can these alternatives be developed?

I'd like to extend my thanks to the panelists who are here with us today, both for the time that they've given us and for their efforts to share their insights and experience in this area. I'd especially like to thank all the members of state law enforcement for being here today, as well as all the panelists and audience members who traveled significant distances to be here.

With this impressive group, I expect we will learn more about how state and Federal enforcement can best protect consumers and promote competition as well as how businesses can implement best practices for marketing debt settlement services.

Of course, as a final note, let me express my special thanks to the FTC staff in the Division of Financial Practices who worked long and hard to put this together. Sara Gottovi, who introduced me and who's back there; Stephanie Rosenthal who's right here; Victoria Budich, over there; and Dalia Abu-Eid.

It should be clear to all of you that the Commission is absolutely committed to thinking critically about the issues surrounding the debt settlement industry and working collaboratively with all of you as we move forward. Again, I really appreciate your attendance here.

We are going to now go to the video. Commissioner Rosch, who is very, very interested in these issues and wanted to be here, unfortunately couldn't because of another engagement. So, he's taped remarks that we're going to show right now. So thank you all.

(Applause.)

WELCOMING REMARKS BY COMMISSIONER ROSCH

COMMISSIONER ROSCH: Good morning. I'm Tom Rosch. I'm very pleased to welcome you here today to the Federal Trade Commission's workshop on Consumer Protection and the Debt Settlement Industry. As you all know, the point of today's workshop is to explore issues related to the growth of the for-profit debt settlement industry and to examine its impact on consumers and businesses.

The Commission holds workshops like this in order to bring together a wide range of experts and advocates representing many different viewpoints to help us gather information, identify critical issues, and propose possible solutions. This is an important part of the FTC's mission. And I'd like to thank you for participating in this effort.

This workshop is being convened at a critical time. I say that for two reasons. First, the state of the economy itself. The unemployment rate reached a five-year high in August. Consumer debt is also at an all-time high, and it's expected to continue to trend upward. It seems clear to me, at least, that more and more people are going to need some sort of assistance to get out of debt.

We know that the for-profit debt settlement industry is growing and it seems likely that will only continue. Now is the perfect time to learn more about developments in this industry, to examine their effects on consumers and to consider changes in law or policy that can help the Commission in our consumer protection mission. To the extent that the Commission and other regulatory and law enforcement agencies can get out in front of these issues, all the better.

Hopefully, we can learn a lesson from the mortgage lending situation, and by preparing ourselves now, we can identify and prevent the practices that can lead to devastating consumer injury.

The second reason I think the timing of this workshop is significant is the exact opposite. The debt settlement industry has been around for a long time and it’s not going anywhere, no matter what the economy looks like. Exploring issues related to the growth of the debt settlement industry and its impact on consumers helps the FTC in its understanding of these issues and it will help us fulfill our mission to protect consumers. By devoting time and resources now to analyze and study consumer protection challenges in the debt settlement industry, hopefully, we’ll all be able to help steer things in the most productive direction.

I’d like to close by telling you about

something I heard a few months back that really struck a cord with me. I was listening to a radio program in San Francisco. It was discussing advertising practices in the debt settlement industry. Even though the commentator was a consumer protection activist and was arguably advocating for a particular interest, she was remarkably even-handed.

She pointed out that on the one hand the vulnerability of the audience for this kind of advertising makes it ripe for misrepresentation and exploitive practices. But she also acknowledged that debt settlement, even at a cost, can play an important role in solving what may seem like insurmountable problems of indebtedness faced by many consumers. I thought those remarks were right on. And I'm hopeful that among other things this workshop will help us separate the wheat from the chaff.

Thank you again for your participation in this workshop today and for your ongoing work in this area.

MS. GOTTOVI: Thank you very much, Lydia and Commissioner Rosch, for those great remarks this morning.

While our first panel is coming up to the podium and getting settled, I have a number of administrative and housekeeping matters to discuss with all of you this morning. First, if you haven't taken a moment to silence or turn off your cell phone, please take a moment now to do that. There's nothing more disruptive to a speaker than a ringing phone.

For all of you here today, the bathrooms are located back out through the lobby behind the elevators and hang a left. So, you do need to leave this area to go to the closest restroom.

In addition, if you need to take a call or use your cell phone, cell phones are prohibited immediately outside of this conference center because it interferes with our webcasting abilities. So, please take any calls out in the main lobby of our building.

You'll note in your packet today, your FTC folder, that you've been given some question cards. All of our panels will be taking questions from the audience. Those questions need to be written down on your card. Hold your card up in the air, one of our crack paralegal staff will come pick it up from you and deliver it to the moderator of the panel. So, that's how the questions will be asked today. If you run out of cards, we have additional cards available for you.

Very importantly, the record for this workshop in terms of written comments is going to remain open through December 1st. The comment link on our website will be available to provide follow-up information that you may think is necessary after hearing what everybody has to say today at the workshop. So, if there's any other written material you decide to provide, please do so. That's going to be open, again, until December 1st.

For those of you here in attendance today, the transcript of the proceedings, as well as the archive of the webcast, will be available on the FTC website in the debt settlement workshop area within about a week. So that will be available quite shortly if you want to read the transcript or review one of the panels.

For those of you on the panels, Andrew here in the front row will be our official timekeeper. He's going to be holding up cards informing all of you and the moderator of the time remaining today. And also, for those of you who are panelists, these microphones have a somewhat limited radius. If you want to be heard on our webcast, make sure you do try to speak pretty well into the microphone.

I think that concludes my administrative matters for this morning and with that, without further adieu, I'm happy to introduce my colleague, Stephanie Rosenthal, the moderator of our first panel.

PANEL 1: OVERVIEW OF THE FOR-PROFIT DEBT SETTLEMENT INDUSTRY: UNDERSTANDING THE ORIGINS OF THE INDUSTRY

MS. ROSENTHAL: Thank you, Sara. Good morning, everyone. Our first panel today will provide an overview of the debt settlement industry. It will include a discussion on the background of the industry, changes in the industry, and how we got where we are now. This discussion is intended to be a foundation for more in-depth discussions later in the day in the other panels.

Each of our four panelists will make a brief presentation based on his area of expertise. After each presentation, the other three panelists will have an opportunity to comment on the panel. This morning, we will first hear from Steve Grodnitzky, a manager in the IRS's Exempt Organizations National Office in Washington, D.C.

Next, we'll hear from William Binzel, the Executive Vice President and General Counsel for the National Foundation for Credit Counseling.

Following William's presentation, we'll hear from Mark Guimond, the Executive Director of the American Association of Debt Management Organizations.

Our final presentation this morning will be from Professor Robert D. Manning, Research Professor and Director of the Center for Consumer Financial Services at the Sanders College of Business at Rochester Institute of Technology and the author of Credit Card Nation.

And to echo what Sara just said, I would encourage everyone with questions to write them and send them up and hopefully, time permitting, we'll be able to ask some of those to the panel. So, why don't we get started. Steve?

MR. GRODNITZKY: Thank you for inviting me here today. I have been asked to talk about the IRS's role in the non-profit credit counseling industry. So, a little diversion from the for-profit debt settlement, but I think that is why they asked me to go first.

I think the two big questions here are, why is the IRS involved, number one, and two, how did we get involved? What is the confluence of events that has happened that put the IRS involved in the credit counseling industry? Well, why we're involved is actually a pretty easy question for me to answer. And it comes down to taxes.

Credit counseling organizations are or have been exempt from Federal income tax and my office, at least, regulates organizations that are exempt under 501(C)(3). So taxes or the tax exemption from Federal income tax is the reason why the IRS is involved.

I think a little longer story, so to speak, is how we got involved and really what the IRS has been doing over a number of decades. I'm really going to hit the highlights because, as Stephanie said, I have a very limited amount of time. I think I have ten minutes, so I'm just going to try and hit the big events over the past couple of years that the IRS has been involved in.

I'm going to start out back in the 1960s when the IRS formally got involved in the non-profit area with regard to these organizations. We issued two rulings, one in 1965 and one in 1969, and really kind of set up a framework for what a compliant credit counseling organization needs to look like. I think the overarching theme of these rulings were the organization, at least with respect to 501(C)(3), needs to educate, educate consumers, educate the public. We gave some examples of types of education that the organization could be involved in to show that, you know what, this is my core mission, this is really what I'm all about.

Over the next several decades, we've had a number of organizations that have come to the IRS requesting exemption from Federal income tax under 501(C)(3), and for quite a number of years, we have granted those exemptions. However, recently in the past ten years or so, we started hearing from a number of sources that the marketplace was changing. That the organizations that had come in for exemption in the '70s and even the '80s, the new organizations were quite different from the ones that had come in 20 or 30 years ago.

We started hearing that from the press. There were a number of press accounts, not only in the newspaper but on TV. We also started hearing this from other government agencies both on the Federal level and on the state levels that some, and I say some, of these organizations looked more like a commercial entity as opposed to a non-profit organization.

Congress got involved in 2003 and 2004 and held hearings both on the House side and on the Senate side and really started to take a look and investigate into some of these organizations and really into the industry and saying, all right, are these organizations educating consumers? Are the organizations looking out for the best interests of the public as opposed to looking out for the best interests of directors and officers? Shortly after these hearings, the Senate issued a report detailing their findings.

At around the same time, the IRS started ramping up its operations in this area. What we did is we got a team together within the IRS and this included folks from our litigation team, from agents in the field as well as managers in the field and attorneys in my office as well. What we did is we tried to put together some kind of a strategy so that we could really take a look at the industry to ensure that organizations that are holding themselves out as exempt under 501(C)(3) are actually doing what they're supposed to be doing to meet those requirements.

One of the things we did is we developed an examination program and we identified a number of organizations that are exempt under 501(C)(3). A number of the initial organizations were the pretty large credit counseling organizations. So, we were looking at their books and records, looking at their operations. We wanted to see, are you doing what you say you're doing? We increased the scrutiny in our application process. So new organizations that are coming in, applying for exemption, we're taking a harder look at the representations that they're giving us.

At or around the same time that we developed these programs, we issued additional guidance to the community, to the tax bar, to taxpayers. We put this guidance on our website. We had realized that, you know what, the marketplace has changed. There really hasn't been anything formally out there. Well, we had some stuff in the '60s and even a court decision in the late

1970s, but it’s been some time that there’s been anything formal out there. So, we issued some guidance. We tried to articulate and really characterize organizations that -- you know, this organization is educating the consumer, it’s looking out for the public benefit, this is what this organization looks like.

On the flip side, we characterized organizations that really weren’t educating consumers and weren’t looking out for the public benefit. So, those guidance documents are still on our website. You can still find them, but we were trying to get as much information out there as possible.

Later on in 2006, Congress had picked up on a lot of what we were doing and passed the Pension Protection Act, and what the Pension Protection Act did was it included and added a new code section called 501(Q) that is geared directly towards credit counseling organizations and provides some additional requirements that these organizations have to comply with in order to be exempt.

Most recently, the tax court issued a decision called Solutions Plus. It’s a court case and what the court held was that this organization, its mission, its core purpose was not to educate consumers, but its mission was to set up folks on DMPs. So, those are really the highlights of kind of what -- the events that have transpired over the past several years.

So, where we are today. Well, we do have an ongoing examination program. The initial 63 organizations that were identified for exam, the majority of them have either been revoked, terminated, which means they went out of business, or we've issued proposed revocation letters and the case is somewhere in the administrative process. After picking the initial 63, we then diverted our attention to the remainder of the industry, and through additional research and questionnaires we picked another 200 or so organizations to examine.

These organizations are in various stages of the administrative process, so I don't have any numbers for you on those. The types of issues we're looking at have not changed. We're looking at education and we're looking at whether the organization is benefitting the public. A couple new things that we're starting to see, that I think I would be remiss in not at least bringing up, particularly in light of what's going on in the economic industry right now, is we're starting to see issues dealing with housing and organizations getting involved in some type of housing counseling.

Bankruptcy is also another hot issue. We're also starting to see credit counseling organizations getting involved in bankruptcy counseling as well.

I was just told that I was out of time and I do want to try and keep on the agenda, but that's really where we are at this point. Again, the types of issues that we're looking at have not changed. Again, education and whether the organization is operated for a public benefit. Thank you.

MS. ROSENTHAL: Thanks, Steve.

(Applause.)

MS. ROSENTHAL: At this point, I would ask the panelists if they have any questions or comments based on Steve's presentation.

MR. GUIMOND: We submitted a study for the FTC's webpage on the number of credit counseling agencies that are actually out there compared to the number of audits. We came out with a study that said that there are 250 credit counseling agencies that operate in the tax exempt world. That pretty much coincides with the number of audits being done.

Is it your expectation that the bulk or the majority of tax exempt credit counseling agencies are going to be audited?

MR. GRODNITZKY: Well, I'll speak into the microphone. As of right now, we have the 200 that are under exam and the 63 that we have picked up. We haven't had any discussions at this point whether we're going to initiate any additional examinations. 200 exams is a lot of exams for us, quite frankly. So, we're really in the process of working through those.

I think at the end of the day we'll have to decide whether we believe there's evidence that warrants us to look at additional organizations. But really as of right now, we really haven't made any decisions of whether we're going to be opening up additional exams or not.

MS. ROSENTHAL: Anything else?

(No response.)

MS. ROSENTHAL: Okay. And just one question from the audience. How many new 501(C)(3) approvals have there been since 2006?

MR. GRODNITZKY: Very few, quite honestly. There's a couple of reasons for that. First of all, we've received -- well, since 2006, we've received very few new applications from organizations wishing to engage in credit counseling. So, the actual number of applications we're getting are so few and far between. I'm actually not even sure how many we have gotten since 2006. Maybe a handful. And, again, we really are taking a hard look at these organizations. If an organization is truly educating the public and operating for the benefit of the public, meeting the requirements of (C)(3) we would definitely grant an exception, but we do look at all the facts and circumstances. But, honestly, we're just not seeing that many new applications.

MS. ROSENTHAL: One other question from the audience. What is the IRS's view of the coordination between the non-profits and for-profits to deliver education and counseling or do you have a view on that?

MR. GRODNITZKY: Well, I mean, I guess I could give my personal view which no one may care about.

(Laughter.)

MR. GRODNITZKY: But the IRS view, I mean, our office, our mission is to look at non-profit organizations. And we want to ensure that if you're exempt from Federal tax, particularly with respect to this industry, you're educating the public. Now, I mean, that is kind of the official position of the Exempt Organizations Office. I suppose that if a for-profit wants to also provide education, that's also a good thing. Particularly now when consumers -- there's so much information going on and we're in such a huge financial crisis.

But as far as the Exempt Organizations Office, I mean, our goal is to ensure that these types of organizations that are exempt under 501(C)(3) or want to be exempt under 501(C)(3) need to be educating the public.

MS. ROSENTHAL: Great. I think that takes us to the end of this segment. So, I guess, Bill, are you ready?

MR. BINZEL: I'm ready.

MR. GRODNITZKY: Okay, thank you.

MS. ROSENTHAL: Thanks, Steve.

MR. BINZEL: Good morning. I'm getting old and I need my glasses to look at my notes. Otherwise, I'll start talking about things that aren't related.

What I am here to talk about this morning is just to provide some background and some definitions in terms of the entities that we're considering in the course of this workshop. I'm going to begin with non-profit credit counseling agencies. As Steve alluded to, these have been the traditional community-based 501(C)(3) non-profit organizations that have focused on credit counseling, financial education and, where appropriate, helping consumers work through their debt through a management plan or some other type of voluntary arrangement with creditors.

As Steve said, what we have seen in the 1990s and even the early part of this decade was a rise of new entrants into the field, entities that came in under the guise of being a 501(C)(3) but really operating under a for-profit model. And as the report that Steve referenced from the Permanent Subcommittee on Investigations from the U.S. Senate said, when profit motive is injected into a non-profit industry, it should come as no surprise that harm to consumers will follow. And that's exactly what happened.

Consumers were being harmed. As a result, there were press stories, there were media events, Congress began to hold hearings. The IRS responded to the hearings with the core analysis tool and guidance that Steve outlined. Congress responded with the enactment of Section 501(Q) in 2006. All of those efforts, I should put on the record, were strongly supported by the National Foundation for Credit Counseling. And just in a sentence, the NFCC is the nation's largest and longest serving network of community-based non-profit credit counseling agencies. We were founded in 1951 and have 108 members and provide services in 850 offices and communities across the country.

We're very proud that the Permanent Subcommittee on Investigation report, when looking at abuses within the sector, looked at the NFCC, looked at our accreditation standards and our member quality standards and said, that if the industry would have followed the NFCC's accreditation and member quality standards, it would have addressed most of the abuses found in the sector. We take great pride in that.

As Steve talked about in 2006, Congress passed what became part of the Internal Revenue Code under 501(Q). I assume most of you are familiar with that and I'm happy during Q&A to go through provisions of that, but I'll take it on the faith that most of you are at least vaguely familiar with them.

Let me shift to the for-profit counseling companies. And what we've seen as a result of companies being pushed out of 501©, many have reemerged or are morphing into for-profit entities and, in some cases, debt settlement companies. Their focus is, as a for-profit company, selling a product. They're not regulated by the IRS, they're not covered by 501(Q). And few states have the resources to actively monitor them and enforce laws against them.

As a result, many of the for-profits have aggressively sought to change the laws in states with regard to -- that require you to be a 501(C)(3) to provide counseling in that state. They offer really three arguments that I think are pretty novel. The first is really novel. In essence it says, because the regulators are forcing companies that are operating illegally out of business, we need you to change the law so it will create a safe haven for those very same companies.

Their second argument is because the IRS is cracking down, pretty soon there won't be any non-profits left and consumers won't have access to counseling services. Now, we know that's not true because if the IRS was intending or Congress intended to close all the 501(C)(3)s down, the IRS would not have done the core analysis tool and Congress would not have enacted 501(Q). So, it's just not true.

The third argument is we're just like the non-profits only we pay taxes. But, again, keep in mind, the for-profit business model is to sell products to financially troubled consumers in order to make a profit. At the very least -- it's really ironic right now, at the very least, consumers have more protection when dealing with a non-profit under 501(Q) than they have dealing with a for-profit. At the very least we should apply the provisions, the consumer protection provisions of 501(Q) to the for-profit companies.

Now, closely associated with the for-profit companies are, what we're here to talk about today, are the debt settlement companies. Let's look at their business model. Advertise aggressively on TV and radio. Promise consumers that they will stop collection calls and settle debts quickly and easily for pennies on the dollar. Be secretive about the fees. Have counselors working on commission. Collect huge up-front fees before providing any services. Provide little or nothing in the way of financial counseling or education. Require monthly payments from the consumer. Deduct a service charge but make no payments to the creditor on behalf of the consumer. Hold the consumer's money for months and months until there's enough money in the account to offer a settlement to one creditor and then start the process all over.

What does the consumer get out of this deal? The consumer gets to pay exorbitant fees and monthly payments. He gets little or no disclosures. He gets little or nothing in the way of professional services. He has virtually no ability to cancel the agreement. His debts get bigger and bigger as they amass more interest and late charges. He's subject to legal collection efforts, including litigation, judgments, garnishment of wages. His credit history is trashed. And at the end of the day, he gets a bill from the IRS for tax liability. Hardly a pro-consumer business model.

How have they been allowed to operate so long and how did they develop? Well, largely by associating themselves with the for-profit entities. They have been very successful about blurring the lines between what they do and what the traditional non-profit credit counseling agencies have done. They have been very aggressive in going state to state so to allow for for-profit companies and debt settlement companies to be legitimized and to do business in individual states.

And I'll give you one example of that. That's under the National Conference of Commissioners on Uniform State Laws or NCCUSL. In 2003, at the height of the problems with Ameridebt and some of the other phony non-profits, NCCUSL set out to draft a uniform law. While the initial draft did not include for-profits or debt settlement companies, it has been expanded now to include them both under some ubiquitous title, uniform debt management services.

How did that expansion happen? Well, some have suggested that the fact that the American Bar Association advisor to the drafting committee is a paid lobbyist on behalf of the for-profit industry might have something to do with it, but I'll let you draw your own conclusions.

Just to give you an idea of how bad the NCCUSL draft has become, originally it required that a certified counselor be involved in the debt management process. That’s been changed now. Something that the debt settlement companies said that they have very aggressively sought and it’s now a certified -- it’s now a debt specialist.

Again, to set the stage for this workshop, it’s important to understand the differences between non-profit credit counseling, for-profit entities and debt settlement companies. Let me wrap up by saying if debt settlement companies are going to be allowed to do business, they should be subjected to strong Federal legislation. At a minimum, the legislation should define the scope of the services that may be provided; define the scope of services that must be provided; set caps on the range of fees that may be charged and ensure that the fees are commensurate with the services being provided; prohibit the collection of fees until actual services are provided; require full disclosure to consumers to inform them of the fees that are being charged, the potential consequence of utilizing debt settlement, the potential impact of debt settlement services on their credit history and the tax consequences of debt settlement.

It should require them to provide consumers with a minimum of a six-month rescission period to cancel the agreement and to fully recover their set-up fees and payments made. It’s a subject they’re advertising in their practices to close scrutiny under the FTC Act and impose significant financial and criminal sanctions to deter violations. The Federal legislation should set the floor for regulations. States should be free and encouraged to adopt more stringent provisions and consumer protections.

I want to close by commending the FTC for holding this workshop. I think it’s a very, very important first step. I hope it is a first step in dealing with a serious problem. The NFCC looks forward to working with the FTC, with Congress and state legislatures to address it. Thank you.

(Applause.)

MS. ROSENTHAL: Could you clarify, just for everyone’s information, what are the key relevant provisions of 501(Q)?

MR. BINZEL: Sure.

MS. ROSENTHAL: Because I don’t think everyone is familiar with those.

MR. BINZEL: Under 501(Q), again, it’s for a 501(C)(3) credit counseling entity and it provides that you must provide credit counseling services that are tailored to meet the needs and circumstances of the client. You may not make loans to a client. You may not negotiate loans on behalf of a client. You may not engage in credit repair activities or charge a separate fee for credit repair activities. You may not refuse to provide credit counseling services due to a consumer's inability to pay or a consumer's ineligibility or unwillingness to go on a debt management plan. You may only charge reasonable fees for the services. You may not, unless allowed by state law, base fees on a percentage of the client's debt, DMP payments or savings from enrolling in a DMP. You must have a governing that represents the broad interest of the public. You may not make or receive referral fees and you may not solicit contributions from a client during the initial session or while the client is receiving services.

Those are kind of the broad consumer protections that are part of 501(Q). There are additional provisions that really are limited, and rightfully so, to a non-profit entity and that is restrictions on ownership of a for-profit subsidiary, restrictions on what's called fair share, which is contributions or support coming directly from the creditors as a result of the DMP activity.

So, we think that 501(Q) really creates a very strong layer of consumer protection and, frankly, think it ought to be applied uniformly across the industry.

MS. ROSENTHAL: Thanks. And I'm going to ask if any of the panelists have any questions.

MR. GUIMOND: I don't have a question. I'd just say I don't necessarily disagree with Bill. That's probably a surprise for some people to hear. There's an absolute need for the for-profit sector to have the same protections that are there for the non-profits, including education and some of the other elements that you put in there.

MS. ROSENTHAL: Anyone else before I move on to some of the questions from the audience? One question was if the credit counseling organizations get a fair share from the credit card industry, how can they be purely consumer advocates or do they have some conflict of interest there?

MR. BINZEL: That's actually a very good question and it's one that comes up all the time. Several factors in that is in terms of -- again, fair share is the term, let me say that. A consumer that goes on a debt settlement plan, it's a voluntary plan in which they make regular payments and then those payments are then remitted back to the original creditor. In exchange for going on a debt management plan, creditors will give concessions, they'll reduce interest rates, they'll stop the accruement of late fees and several other things that are currently being debated more and more, but there are concessions related to the debt. Some creditors will send to the counseling agency, and, again, it's not contractual, it's strictly voluntary, a payment based on what they receive as part of debt management plans and that's called fair share.

If we had to do it all over again, we could go back 50 years, that fair share would have never existed. We think it's important. We think creditors have a very important role and should be responsible for helping to fund credit counseling and financial literacy. I mean, they have a vested interest and they should be supporting it. The fact that it's tied to DMPs, again, it started long before I got involved and it probably ought to be something different.

Toward that goal, what 501(Q) does is phase in a cap, a limit on how much revenue a non-profit entity may get from a creditor as a result of fair share. We support that. We think that's very important.

In terms of is there a conflict of interest, that's exactly what the Internal Revenue Service is looking at and they should look at that. If an agency, an entity is nothing more than a debt collector on behalf of a creditor, they're going to lose their 501(C)(3) status. And they should. They should be about providing financial counseling, financial education. And therein that's really the level of protection that exists now that didn't exist five years ago.

MS. ROSENTHAL: Great, thanks. I think that takes us to the end of our time here. So, Mark, if you're ready.

MR. GUIMOND: Sure. Good morning, everybody. I'd first like to start by saying thoughts and prayers to everybody in Houston. That's where my family and my friend are and they're not able to watch this because we don't have any power or any food, stores, water. So, let's all think about them for just a moment.

I'm here today to talk about the state law developments that essentially have given rise to debt settlement over the past couple years. I am the Executive Director of the American Association of Debt Management Organizations. We're the largest trade association for the credit counseling industry. We represent tax exempts, we represent taxable non-profits and for-profits. We represent the majority of licensed agencies throughout the United States.

In some states, for example Maryland, we represent 86 percent of licensees in that state. Montana, we represent 82 percent of the licensees. Mississippi, 79 percent. If you run through the listing of state licensees throughout the United States, you will find that most of those are members of AADMO.

In the tax exempt world, if you go through the list of tax exempt agencies, non-profits, if you look at the ten largest agencies in the United States, those are all members of AADMO. If you look at the 17 largest -- out of the largest 20, those are also AADMO members. So, we represent not just tax exempt non-profits, but we represent for-profits and the entire credit counseling industry trying to better everybody and to create a level playing field for all participants in credit counseling.

We submitted several comments to the FTC through the website. As I reference some elements here you might want to go and look at those in the FTC website and some of the citations of law and other areas that I'll give in these few minutes, we'll submit as well to the FTC. So, if you need those for later use, those will be available.

I think it's fundamental to discuss the differences between debt settlement, and Bill gave us a little bit of a summary on that. Credit counseling is a traditional program where a consumer goes in with a personal budget analysis, a financial review. The agency finds the suitability of that person to go into some type of program, whether that's a debt management program or self-management or referral to bankruptcy. That is your traditional program with credit counseling. Fostering usually a debt management program where a consumer pays on a monthly basis and the agency then disburses that to creditors and the consumer obtains concessions such as interest rate reduction or the elimination of interest in its entirety.

Debt settlement usually works in a one-time, lump sum, less than full balance payment. So, they are two completely different business models that really have no bearing on each other whatsoever.

Why the growth in debt settlement over the past couple years? As our two other speakers have noted, in about 2002 -- 2003 and 2004, there was great scrutiny on the counseling industry by the IRS and Congress with the Permanent Subcommittee on Investigations. Everybody saw the Ameridebt nightmare, all the horror stories that were on the news, and then the IRS came along and put credit counseling on its list of scams. This was a perfect segue for the debt settlement industry to say, hey, we're not credit counseling, come over and take a look at us.

At the same time the debt settlement had those claims against credit counseling, there were states who were starting to look at kind of this wild west environment in both credit counseling and debt settlement and all of the debt relief programs and a lot was inspired by the fiasco that happened with Ameridebt over the years.

California changed its law several years ago and created the pro rata definition where a debt settlement company or credit counseling agency is one that receives and disburses funds on behalf of the consumer to creditors. That was an epiphany moment for debt settlement because they asked the regulator from California, if we don’t touch the money are we then not regulated? The answer was, the statute speaks for itself. If you don’t touch the money, you’re not considered in this definition.

Great moment for debt settlement, realized now suddenly they could go out and operate in an unregulated environment on a state-by-state basis. In my belief, my estimation, that is exactly what happened because you saw immediately after that a huge explosion in advertising and media for debt settlement.

As debt settlement grew and grew in the states, credit counseling, of course, became more and more regulated. The state laws were going into effect further regulating credit counseling, which really needed to be at the time, but the states were not adopting the definitions that allowed for debt settlement to be included in there. That’s not to say that there weren’t laws that came along. Some of the states, like South Carolina and Kansas, brought in definitions on their state law that said, if you are negotiating or offering to negotiate on behalf of the consumer, you’re covered under their applicable laws. Kansas, as well, negotiating or offering negotiating to defer or reduce an obligation, going in without looking at the touching of the funds. So, the loophole that might have been there for debt settlement for years and years and years was slowly being closed.

For those who have ever done lobbying on a state basis trying to look at all 50 states plus the District of Columbia, Guam and all the other territories is a very long, lengthy taxing process. So, it’s slow. We’re only looking at a couple of years here, but there have been major changes in the law.

The Uniform Act, the NCCUSL’s Uniform Debt Management Services Act was really the first comprehensive approach to regulating credit counseling and debt settlement simultaneously. The Uniform Act has two separate areas of a single act which covers credit counseling in its traditional definition and debt settlement in its own traditional definition.

I think one of the benefits of the Uniform Act is that for debt settlement, along with credit counseling, the elements that are important for all consumers to have are included in that. That includes education, mandatory education, certified counselors and accreditation. I won't draw on what Bill said too much on the certified debt specialist. I think the states have the ability to regulate and enforce their laws to say if they want that certified counselor, that debt specialist to mean something, the state can impose those standards. I don't think we need to reject that outright simply because we don't like the way it sounds.

The accreditation requirement that's included in the Uniform Act, traditionally there haven't been accreditation programs available for anything but tax exempt non-profit organizations. The debt settlement industry has developed their own accreditation program which is being accepted by the states. And my organization, even though it represents credit counseling and not debt settlement, we have created the first nationwide accreditation program for for-profit credit counselors. So, if we want to talk about the systemic problems that we need to alleviate, these are some of the measures that are going to do it.

There have been some changes, if you look at the dynamics of the states that have adopted the Uniform

Act, Colorado, Utah, Rhode Island and Delaware for example, there are very few or maybe no debt settlement companies registered in those states. So, the Uniform Act is coming in and legitimizing debt settlement only to the extent that it's allowing debt settlement to occur, but there's no debt settlement occurring because of it. So, I think it's an important nuance to look at.

If you also look at some states such as Kansas and South Carolina, which I alluded to earlier, they're also in the same situation. There are no or very few licensed debt settlement companies. I looked at South Carolina last night, I couldn't determine if there were any at all, and I don't believe Kansas has any. And I'm getting a nod on that.

The closing of the loopholes that have occurred, Illinois looked at this in 2004, in August of 2004 and put a measure into place to bring debt settlement into its state definition. So, it closed it's loophole by adding the word "indirectly." So, if an agency indirectly receives or disperses funds or evidences thereof, it's suddenly brought in. So, debt settlement became regulated in Illinois by that measure. California, which I said had the epiphany moment of opening debt settlement up to lack of regulation, closed its loophole recently with a court case. That court decided that money is not merely currency or coin. It doesn't resolve the receiving and dispersing issue in that and the agency that they were looking at didn't actually do the settlement until they had an evidence of the money to provide the settlement. So, California closed its loophole indirectly, but, again, the receiving and dispersing element was in there.

There are also elements that we need to look at, too, for debt settlement in the unauthorized practice of law. If you look at some of the state UPL statutes, it addresses both credit counseling fairly and debt settlement as well. So, closing loopholes or opening doors need to be looked at in both of those areas.

Some of the things that have come out recently, 60/60 plans under bankruptcy reform are also being looked at as debt settlement activities. The Uniform Act drafters stated in January of this year that 60/60 plans resemble debt settlement plans and that is how the Act treats them. So, if a non-profit agency is providing 60/60 services under bankruptcy reform, they are inherently also a debt settlement firm. That was picked by the U.S. Department of Justice and the EOUST in their proposed rules for bankruptcy reform in February of this year as well.

What are the real problems with debt

settlement? I would mirror the earlier comments. I believe it's the advertising practices. We submitted an extensive paper on the website on this. It's an enticing offer to eliminate 75 percent of your debt or to get out of debt in 12 months, but if that's not what's occurring, it's an absolutely worthless claim.

I would say, just as a closing note, AADMO does support Federal legislation and state regulation that regulates both credit counseling and debt settlement, but not necessarily together. Thank you.

(Applause.)

MS. ROSENTHAL: Do any of the panelists have questions? Go ahead, Bob.

MR. MANNING: Mark, how do you recommend that members report DS plans in regard to creditors? Are they workouts, charge-offs? And at what point would a creditor report this in terms of its tax liability, the beginning of the program, middle of the program or at the execution of the settlement? What's your recommendation?

MR. GUIMOND: I'd have to work at it. My members don't do debt settlement, so they don't have a tax implication on the programs that they provide. Our members provide credit counseling services, so there's no reduction in the principal debt, so there's no tax obligation that goes along with that. But I would be happy to work with you to develop a comprehensive answer.

MS. ROSENTHAL: Anyone else? One question, could you clarify what some of the differences in states that have adopted the Uniform Act are, or do they adopt the Act precisely the same way in each state?

MR. GUIMOND: You mean the uniformity of the Uniform Act which isn't uniform at all?

(Laughter.)

MR. GUIMOND: Generally speaking, the largest change that came out of the Uniform Act was going into Colorado. And for the purposes of debt settlement, which I like to stick to most, Colorado adopted significant fee differences versus what the other states put into place.

Some of the changes that have come around in the Uniform Act -- and, you know, I jokingly say it's uniform and can pick on it. But at the same time, you know, there's some things that just didn't work. We did a reality check. There was an insurance requirement with a zero deductible to that. We found that insurance underwriters were not willing to do those types of policies. So, we have gone along and worked with them to adopt amendments that have changed it.

So, the Uniform Act is not uniform anywhere, but I think it's getting closer. We're looking at amendments in other states. But I think the biggest deviation, in terms of uniformity, was the debt settlement fee structures that went into place in Colorado.

MS. ROSENTHAL: And what do you think are sort of the key provisions of the act? Can you just highlight those briefly?

MR. GUIMOND: I'd say the key provisions, in terms of the uniform benefits, are things like trust accounts, background investigations, bonds and insurance, mandatory disclosures, mandatory education, certified counselors. All of these, these elements that are under the consumer protection measures can be uniformly adopted in both debt settlement and credit counseling without really adversely impacting either industry and purely benefitting consumers. So, I think the Uniform Act has a very good starting point if other states are looking at adopting new laws or Federal law. That being said, though, we have recommendations that we have been given to the NCCUSL extensively and we're still talking to them about those changes as well as states that have adopted -- those four states that have adopted it already.

MS. ROSENTHAL: Great. Well, I think that takes us to the end of this discussion. So, we will move on to our final presentation from Bob Manning.

MR. MANNING: I think I'm the only one who's got technology here. Ah, there we go. I don't know what's more daunting for my presentation, trying to collapse four hours of my seminar into this ten minutes or asking you to absorb what I'm going to say in the next ten minutes.

So, with that, I have to thank Federal Chairman of the Reserve Ben Bernanke who said the other day in response to all of this conflicting information and the policy implications of his presentation, he said, I'm just a college professor. So, with that being said, that's my disclaimer of a lot of issues that I'm going to be presenting here today.

Ultimately, the one issue that I want to do here is to try to come up with a system that integrates, which tends to be a discrete presentation of credit counseling non-profit, debt settlement for-profit, bankruptcy, a variety of different forms of bankruptcy counsel for Chapter 7s and 13s, and ask the real question about how you come up with an assessment of what is a worthy debtor and, ultimately, what concessions are associated with a worthy debtor.

So, in that context, I've got four key themes that I want to present today. One as somebody who's been studying consumer debt now for about 20 years, what are the trends and is there some significant issues particularly in the aftermath of the 2005 Consumer Bankruptcy Reform Act?

So, first is trends. Second is, I want to show what I think is unique about what I refer to as the consumer-led recession and why it’s going to create more of this debt bulge of people I refer to as the near bankrupt. The third is looking specifically about what means testing has meant in terms of credit card discharge rates under bankruptcy and we’re going to see quite an expected increase. And the last part is looking at the algorithmic development that I have been working on, which is a mouthful, I know, but it’s my consumer debt capacity assessment algorithm. Indeed, the key here is how do we get an understanding of what an appropriate concession would be throughout the different strata of people in financial distress?

So, with that being said, I think it’s very clear early in my work, when I first began working on consumer credit and debt on credit cards 15 years ago, the real question was how much dependence consumers were going to have on consumer credit, and from the consumer side, what kinds of disclosures, what kinds of issues dealing with the cost of credit and how much of a drain that’s going to be on the average American households.

That being said, I simply want to present this chart because a lot of arguments have been, gee, Americans have been getting more and more debt, but we have been getting a lot more asset development. One of the key issues that I have tried to emphasize is the volatility both in terms of the stock market, and I think everyone can appreciate that right now, but also in terms of asset formation which is housing, which is the primary form of wealth formation in America.

I have been emphasizing that I believe that with this housing correction, the net asset accumulation of the bottom 50 percent of Americans will be wiped out between the two asset bubbles. This has very serious implications of the marshaling of consumer sentiment in terms of driving this economy when we have had consumers taking on more debt because of the presumed increase asset value that they have in homes and stocks. And now that that's gone, how do they pay this back?

So, one of the key issues is you look at the third column of total debt. This has really been a period of time of debt formation, not asset formation. And especially as we look at 2007 numbers, this is a three-year survey, we're going to see that debt not only has increased more, but, of course, assets have gone as well.

It raises the real question about arguments about individual versus other forms of responsibility of consumer debt. This is what economists tend to do. So, we look at the Gini co-efficient of inequality in America. The big question, of course, is why have Americans gotten into so much debt? Is it something that they can't change? Is it something that's gone on systematically in American society or is there something about competitive consumption and the rising standard of living in America where it's Americans' individual responsibility to get their debt house in order?

Of course, as in most complex issues, the answer is both, but the key issue here is if you see that big jump in the middle, it begins early in the Clinton administration, it's the issue of rising income and equality in America. So, what you see really here is, as expected, a lagged effect as people are finding their wages are going down with inflation and rising costs of other expenses. We saw this compensated with a big increase in consumer debt. Well, that shouldn't surprise us, per se. The real issue is the underwriting standards and the expectation of an industry of how much they can afford to repay of that bulge.

One of the key issues here and one of my big criticisms of Federal debt statistics is they really don't tell us the real story. And if you look at the first column here, many people are shocked to know that average Americans spend more on their outstanding debts than they take in after their personal income and taxes have been paid. And, of course, the biggest increase here is housing. But what's really changed for the deregulation policies, again as we're debating today with the housing market crisis, is how much of that mortgage debt is actually mortgage debt? How much of it is artificial appreciation because of hybrid and exotic loans? And how much of that is refinanced credit card debt?

That has serious implications today because if people could default on credit card debt rather than refinancing it into their mortgages, there would be many, many more people that would not be in a foreclosure situation today.

But the key issue here is lending now, the categories that used to be very clearly compartmentalized don't tell us the same story today as they did before. People have a huge amount of mortgage debt, so they're taking on other debt obligations after they pay their mortgage because there's not much left.

One of the key issues that I always have concerns about is how do we report the growth in consumer credit card debt? We can look at aggregate numbers reported by the industry in terms of receivables and try to estimate the net amount. That's what the blue figure is. But we also have surveys that ask questions like the Triennial Survey of Consumer Finance, how much credit card debt do you have? And here's a really important issue because credit card debt is underestimated at least 50 percent in these official government surveys, and especially the numbers get manipulated and manufactured because the real question isn't how much the average debt is, the real question is how much debt does a family in debt have?

So, what we're seeing here is that the official numbers just don't jive with reality of the average American. So, it shouldn't be surprising to us that we find people in distress that have far more serious problems than anticipated.

The other issue here, if you look at 2008, I'm looking here at trends in credit card debt. I always get journalists that say, gosh, Americans got their financial house in order because credit card debt hasn't been increasing much in the mid to late 2000s. The real issue here, of course, is that Americans were paying off their credit cards with their mortgages and it was simply postponing the crisis.

So, in terms of doing some simulations, I estimated that between the 2001 and 2007 area, at least $350 billion in credit card debt was refinanced into home equity loans and mortgages. That really gives us a more accurate understanding of how much credit card debt there is, and in household terms, that would average over $20,000.

The most striking trend, of course, is now we can't look at these compartmentalized figures artificially distinguished credit card from mortgage debt. The reality is now Americans have to pay them all, they've got exotic mortgages, they really don't understand then, why did they get into so much debt?

What this table shows is looking at the decline in median income. What we see as median income declines, underwriting standards have lessened. Underwriting was not based on how much you earned in the 2000s, but what your household income was and some mythical assessment of asset value in your home which meant that you could take on far more debt because the assumption was you would pay off your credit card debt with a refinance or a home mortgage.

So, clearly, larger macroeconomic conditions in the United States are combined with changing underwriting standards in the industry that has led to this huge debt bubble and now with the end of the housing market the question is, how do consumers pay it off and can they?

No surprise then, it's in a situation that people have gotten into debt and maintained their traditional economic behavioral approaches, the money, people can't say any more and then they go into debt. So, as we know, we've been going into a negative savings environment. And it shouldn't surprise us, yeah, we are maxed out. The question is, what is the extent and how do we get out of it?

This is a table that I have been working on in terms of comparing a consumer-led recession versus the last three recessions. For our purposes here, I would say that we've just gone from the consumer-driven vulnerability in terms of adjustment to interest rates. We saw how profound that impact was on the housing market.

The second phase of this recession is the job loss phase. You can look in the middle -- and this doesn't control for the size of the economically active population -- we're just in the middle of the job loss phase which is going to have more severe implications in terms of collections, charge-offs and defaults. But, most importantly, look at some of the differences that we see already with this recession. We know about housing, which is completely off the chart in terms of prior recessions. We see, of course, that the stock market has had an effect as well. But look at the increase, for example, in bankruptcy rates compared to earlier recessions. Clearly, bankruptcy will be well over a million this year.

But look at the amount of household unsecured debt and secured debt and how much that's increased since 2001. This is unprecedented levels of debt. It has very important pretentious consequences in terms of what's going to be different and far more severe and prolonged in the long term about the American standard of living in the aftermath of this recession. So, Americans have painted themselves into a corner, they've taken on far more debt. The question is, who is responsible for it and then, ultimately, how do we resolve this debt bubble?

I've referred to this as the double financial bubble, that the manipulation of housing prices between 2002 and 2006 encouraged lenders to offer much higher levels of credit card debt because they knew that people could refinance it or take a home equity line of credit and, so basically, it widened the gap between the cost of credit on credit cards and its ultimate risk since it was indirectly secured by housing prices.

We can look at what's really tremendous about the growth of the sub-prime debt and there was a big article in card management this month in a magazine about how securitization of credit cards is very different from securitization in terms of asset-backed security portfolios with mortgages. And I would argue that's a very, very dangerous conclusion. Because if you understand the double financial bubble, you realize that people have taken on far more debt than they can afford given current underwriting standards, and the charge-off rates are clearly going to increase. This, again, is going to have implications as we see the ripple effect of what our lack of understanding is of the sub-prime lending environment.

What's astounding right now is for the first time in American history we're below 50 percent of home equity value. Part of it is the decline, but part of it has been asset extraction. What's crucial to understand here is you can see typically that home values doubled in metropolitan areas in this period of time. So, the correction is still ongoing which means people are not going to get any more relief in terms of home equity extraction in the future. Prices are clearly going to go down for at least two more years.

I would say that we're in the cusp now of the second phase of the sub-prime lending crisis as we're looking at the jumbo loans that will be resetting in 2009 and 2010. The higher the quality credit people have, the longer the time period of the resets which means, of course, we're prolonging. It has very important implications to the bail-out which, of course, obviously, I would disagree with it in its current format. But what we're seeing now is there are going to be a lot of people who have this 4, 6, $800,000 mortgages are trying to make up the difference with credit cards and that's one of the reasons we're seeing a new phase of much highly indebted consumers.

Now, intriguingly, to show how underwriting standards have this big effect, we saw an inverse relationship in the first time between the rate of bankruptcy and unemployment in the late 1990s. By that I mean is if people are unemployed, creditors would tend to tighten their standards and you would actually see a decline in terms of the amount of debt that would be discharged. Most importantly, here we would expect to see bankruptcy rates would rise as unemployment rises. Actually, in the late '90s, bankruptcy rates rose as employment got improved and, actually, unemployment rates declined. So, there's something very significant, again, about underwriting standards and unsecured credit card debt.

What really is striking here in terms of the debt statistics and bankruptcy and the means test is we know there's been a dramatic reduction, of course, from almost two million bankruptcy filers in 2005 to 400,000. But what hasn't changed is the amount of discharged debt. In other words, almost three times the amount of average debt discharged per bankruptcy filer than prior to the 2005 laws and you can see that. And this is really striking because this is this group, the near-bankrupt now that's emerging, particularly as we see the pressures of these jumbo loans, and as the resets hit, we're going to see more and more of these people with huge amounts of credit card debt, which leads us to the question of what should we be doing?

We know there's a bulge now in the amount of unsecured debt that middle America is going to be bringing. And what happens if you can't qualify for a full payment credit counseling program?

Well, let's look at this as an example of some work that I've been doing in California. Look at changing underwriting standards. '98, a $50,000 salary. $250,000 house. Person gets into $30,000 in credit card debt, maybe a 50 percent recovery. The boom period, the magic of 2001, 2006, now a $60,000 salary, a modest increase, houses more than doubled, $60,000 dollars in debt. No problem. Let's pay it in full with a refi or a HELOC loan.

But now we get to 2008. Modest increase in salary, home values plummet, $75,000 in credit card debt. What's the recovery rate now when the recovery can only be based on income for that household? A third or less.

So, what I have developed is the consumer debt assessment capacity algorithm which is robust or efficient across all 50 states, looking at existing bankruptcy household schedules incorporating whether a person files an itemized or a non-itemized tax return, looking at state income taxes, et cetera, and really trying to look at, whether you're looking going into a full payment, partial payment or bankruptcy program, what is the debt capacity of that particular individual and what's the best match in terms of a debt management program?

So, the point was really to say, why should we be looking at these groups very differently? If people are in financial distress, we should be able to essentially underwrite them through a means test provision and say which program they should go into and, most importantly, what the debt concessions should look like. In this case, you can see just a reset in a mortgage has a huge impact in a short period of time of what the repayment to creditors could be and this shows you, as I did the algorithmic assessments, of how different payments and collection rates would be simply on whether you're in a state with taxes or not a cost of living.

In other words, we can't use the horseshoe approach that you're going to have a 40 percent settlement because we say it's a 40 percent settlement. Someone might be able to afford 60, someone should be able to afford 30. We need to have a means test that says people are going to pay what they can afford to pay. That leaves us, of course, with today, financial conditions are only going to worsen in the short term. We're not going to see a huge improvement in the near term, especially as we see the increase in real income. Thank you.

(Applause.)

MS. ROSENTHAL: I guess at this point I'll open for any panelist questions generally. Anything?

(No response.)

MS. ROSENTHAL: To close the panel, I guess I would ask all the panelists if you could discuss what you consider to be the most important changes in the industry to date and why.

MR. GUIMOND: Well, Bob's not going first. I will.

MS. ROSENTHAL: You can go.

MR. GUIMOND: I think for the credit counseling side the emergence of for-profit credit counseling is the most significant change. I think it's a red herring for people to say that there's going to be profits here and all of these other bad things that go along with for-profit credit counseling. We just haven't seen it. In the states that have opened up for allowing for-profit credit counseling, there hasn't been a rise in consumer complaints, there's not a rise in enforcement actions, there's not a significant change in licensing except that more and more agencies are now becoming licensed. So, I'm not sure it's a valid argument.

There's a potential for it, sure. There's always wrongdoing that's going to occur in the world, but if it's properly regulated and you throw it into a statute and you make it enforceable with criminal and civil penalties, you're going to reduce the likelihood or at least have some recovery if somebody does something wrong. So, I think the bandying about of for-profit as being a negative in credit counseling is the biggest change.

MR. BINZEL: I'll agree in part and disagree in part. No surprise, Mark. I agree that the biggest change has been the arrival of the for-profit model into what was traditionally a non-profit sector. And the for-profit model largely unregulated and it's spun way out -- from my perspective, way out of control with the debt settlement companies. I mean, I've got a stack of -- I just asked our agencies informally, what are you hearing from your clients with regard to their experience with debt settlement companies and received, literally -- I haven't counted them -- but many, many, many anecdotes and none of them are a positive story.

It's a largely unregulated field in terms of the for-profit sector. States simply do not have adequate laws or the resources to properly regulate these entities. And, so, there really is a need for strong Federal legislation as a floor to protect consumers and to provide some scope of regulation for these for-profit entities.

MS. ROSENTHAL: Do you want to respond, Mark?

MR. GUIMOND: Not really respond, I just want to tie on to that. I mean, I disagree to a certain extent that there's not been any enforcement. I mean, the last two weeks, we saw Idaho issue three enforcement actions against debt settlement companies. We saw West Virginia issue three settlements or actions against debt settlement companies. I think the laws are there. They need to be bumped up, they need to be enforced. And if there are not laws in place, they need to be put in place.

But I think the key is having the laws in place, having laws enforced and bringing about actions that remedy the problems.

MR. MANNING: And I wanted to respond. I see this non-profit/for-profit binary as an artifact of the '60s in terms of the regulatory environment that really doesn't reflect the reality here of the changing circumstances of consumers. I mean, what happens when somebody, average household income is $100,000, can't come close to qualifying for a full payment program? They have no other option other than bankruptcy or to seek some program that they could do to at least satisfy, to some degree, their creditors.

So, non-profit or for-profit belies the reality, particularly with the collapse of the housing market, that people who saw that as an option of addressing their over indebtedness in the short term means they're not concerned if it's for-profit or non-profit, they want to see what happens if they don't qualify for a full payment program. That, I think, is really the key issue.

MS. ROSENTHAL: Steve?

MR. GRODNITZKY: I think from our perspective there's two issues that are important. I'll pick up really what Mark and William had said, is that we are seeing the traditional credit counseling organization that was tax exempt under 501(C)(3), a number of them have now kind of moved over to the for-profit sector.

But, in addition to that, what we are finding is that organizations that are tax exempt that may not have been kind of the abusive Ameridebt types, but also may not have been, you know, kind of strictly meeting the requirements of 501(C)(3) are really starting to change. Maybe that's because the IRS has been out there. I like to think that because IRS has been out there, we've been conducting exams and putting out guidance, but we've started to see that some of these organizations are really starting to change the way they operate. Those that are exempt under 501(C)(3) are really making education the focus of their operations.

So, from our perspective, and particularly from my office, we think that's a good thing.

MS. ROSENTHAL: Great. I think that takes us to the end of our time. I really want to thank all of the panelists for their preparation and providing a helpful discussion to get us started for the rest of the day.

(Applause.)

MS. ROSENTHAL: We are on break until 10:15 when our second panel starts.

(Panel 1 concluded.)

PANEL 2: THE FOR-PROFIT DEBT SETTLEMENT INDUSTRY TODAY: PERSPECTIVES ON CURRENT INDUSTRY TRENDS AND PRACTICES

MS. GOTTOVI: Thank you for returning for our second panel this morning. Again, my name is Sara Gottovi and I'm a staff attorney here at the Federal Trade Commission in the Division of Financial Practices. It's my pleasure to be moderating today's second panel.

In this panel today, we are going to be focusing on current industry trends and practices for the debt settlement industry and we're focusing from the perspective of settlement industry members, as well as creditors and consumers in this morning's panel.

I'm delighted to have an excellent group assembled today: John Ansbach, General Counsel, EFA Data Processing; Jack Craven, President of Debt Settlement USA; Scott Johnson, CEO of U.S. Debt Resolve; Ginny O'Neill, Senior Counsel, Center for Regulatory Compliance of the American Bankers Association; and Travis Plunkett, Legislative Director of the Consumer Federation of America.

This panel is going to operate -- each member of my panel will have ten minutes for an opening statement on their perspective on the current industry trends and practices, and when all those opening statements are done, we're going to have a directed discussion.

Before we get started, I wanted to make a note for all of you who are writing in questions on question cards, Stephanie reports she had an overwhelming number of questions that were asked in the first panel and she couldn't get to nearly all of them. We encourage you to continue to write in your questions. What we are going to do is, at the conclusion of the workshop, we will circulate these questions that we didn't get to in written form to our panelists and invite them to post any responses via our comment link. So, those will be available to the public. So, don't be discouraged if your questions didn't get answered. There will be another chance. So, keep writing in those questions. Thank you very much.

With that, I'd like to introduce our first speaker for this panel, Scott Johnson, CEO, U.S. Debt Resolve.

MR. JOHNSON: I would like to thank Sara and the group for the opportunity to speak in front of everybody today. My focus is going to be primarily on graduation rates and probably a nice explanation on some different models on how debt settlement operates. These are some generalities. Examples, they're not specifics. I try to do everything at a really macro level.

So, as I start off, I think what I'm looking at is just some of the stats on who is the consumer out there and what the average person looks like. I do focus, and I think this kind of correlates with something that Dr. Manning said, some of the numbers are similar. I think where we got our information from might be a little different than his. But, more importantly, what we look at and I look at the consumers that a typical debt settlement company takes in. You can see that the debt load has now doubled.

I move on and I think the focus that we look at across the board is what I call, and this is kind of maybe terminology we use within our companies, the four Cs of debt settlement. I think this is the approach that our industry takes and that is looking at what's good for the client, and not every program that's out there available for them, you know, other than debt settlement might be the best fit.

We look at a creditor and we kind of tie that into not only the issuers and the lending institutions, but third parties as well. We also look at things that benefit or promote good business practices and how that affects the company.

The council, as I refer to it, would be consumer advocacy groups regulated both in Federal and state and to say that the opportunity with that settlement as an option for consumers, you can get a yes from everybody involved.

The first, I think, differentiator that's out there is the difference between self-savers and the trust account. I guess I'll use the term "trust account" kind of loosely because there's some variations that are out there and I'll talk to that here in a second. An example of a self-saver is just someone that saves their funds on their own, their accounts and they verify balances. Typically, it's either done by phone, fax or a statement with a debt settlement company.

One of the things that I think may be a downside to the self-savers is the propensity for the consumer to spend without any education. For the creditor, there's probably not a big impact for them because it's difficult to verify the funds that are available for someone to not only make a lump sum settlement or any payment plan that they have involved. And then the company -- and I know the difficulties can be there is, it's hard to forecast what settlements actually can be accomplished throughout the duration of the consumer's program.

A trust account. Typically, that is a company subcontracted sometimes with a third party. It alleviates the debt settlement company for holding the funds or having anything other than verification of the funds, they have no access to disburse those funds, but it gives the visibility of the account balances and the disbursement of funds.

We believe that -- or it's my personal belief that this starts to ensure some financial behavior change for a consumer, that they're set up on a budget and it can start to indicate and give us the ability to provide creditors not only the account status, but ensure the follow-through on payment plans. It allows the company, also, to start using accurate savings data to forecast and start prioritizing settlement. I think this is some of the basics and this is probably not the differentiator.

How do we do our calculations on a determination of what the cost is going to be for a consumer? I think, for the most part, it's relatively straightforward and there's really four key factors. It varies by company to company. We charge a fee based on a percentage of the debt that the consumer enrolls in. The savings is done on an estimate. I think, typically, you'll find either companies use a national average that's out there or they provide their own statistics on what they're doing internally as a company.

We add those two together and that's how you come up with what we're looking at as a program cost. Then the monthly payment is typically determined by a division on how long the consumer is enrolled in the program.

So, as in detail on a front-end loaded program, and this is probably the area that, in a general sense, that divides how people collect different fees in different ways. I know some of these terms might be used, but defined differently. It is my opinion that a front end-loaded model looks at that 40 percent or more of the service fee is collected within the first three or four months and, then typically, the remainder of the service fee paid by the consumer to the company is paid over a 12-month period of time, sometimes even less.

What you can look at is there are models out there, that you have a flat fee and the example of that is that the fee is paid over 50 percent of the duration of the time that it's in the program. So, if somebody is enrolled in a 36-month program, typically, the service fee is paid over 18 months.

A back-end type program is -- and I'll kind of make some reference to the UDMSA -- is they talk about some fees, 4 percent of that not to exceed $400. And then there's some provisions that the debt settlement company will be paid $50 a month and then some percentage thereof of the savings that's passed on to the consumer.

When I look at the next slide, it's a comparison of funds availability. This is for as far as ensuring that a consumer knows that their program's actually working for them. And it looks at in month one, typically, how much is the settlement company receiving, month two through four, month five. I think in the grayed area that you can see under every column is a -- and the final at funds with six months. This is more of an impact to an issuer is, how much funds does the consumer have to actually do a settlement?

On the front-end loaded model, you'll see $236. On the flat fee program, you'll see the consumer now has $924. And on the back-end model, you'll see the consumer has $632 available, but there is a change on that, which I'll show in the next slide.

So, when I look at the settlement in comparison to settlement opportunities that I look on a front-end loaded and I look at the probably large square that has the average consumer debt load of $1,673. Typically on a front-end loaded program -- I'm not saying that it's incorrect -- but the opportunity for the average consumer will not have the ability to settle. The savings to the creditors is not actually savings for the creditors, but savings for the consumer to give to the creditor. If you look at a flat fee program that a consumer could look at within a reasonable period of time, typically less than 180 days, they have the opportunity and their companies have the ability to settle an account and that way consumers know that the program is working for them. And then as a back-end model that when you look at the settlement and savings that are available to creditors because of fees that have been earned, the consumer, once again, is in a position to settle with an issuer prior to charge-off.

The next thing that I look at is relating to graduation rates and I say understanding your inventory, which I'll get on in addition. Companies that have been around for a period of time, graduation rate is just kind of a defined. 100 percent of the accounts have been settled and the consumer has successfully gone through the debt settlement program. The success rate which we see typically a lot of times is the consumer situation improves financially and, therefore, maybe not all the accounts are settled through a debt settlement program, but they're now in the position to start making repayments to their creditor at that time on their own.

Then we have some completion rates that at least we see a benefit to the consumer. If 65 percent or more of the clients' balances have been resolved, it's an improvement from when they came into the program.

So, I look at macro calculations of inventory on how we can successfully track a consumer's progress throughout a debt settlement program and a simple calculation is just the number of accounts that someone has entered into the program that if, say, aged over less than 210 days, give or take, in the average length of the program. This is after, typically, the debt moves to a third party. So, if you have an average 10,000 clients and they have an average of five-year accounts you can sit there that have aged over 210 days, are you moving the inventory successfully every single month so that the creditor's happy, the consumer sees progress and the company is resolving and doing what it said?

The same can be said as far as the dollars on the account settled. So, an example that I used on the bottom is just simply looking at how many accounts a debt settlement company should be moving per month or dollar volume and that's an indication for forecasting on to know what your completion rates should be.

One of the things I think are some of the flaws in design is retention and attrition. I think sometimes what we can look at is some different averages. I will say these are not my company numbers on anything that

I've used. They are purely examples. So that when we look at people that are enrolled in the program, that we have to look at what the success rate is as far as graduation, partial completions.

It is my opinion and the purpose of this industry is to provide the protection regarding settlement practices and ensure the settlement success of the program for the clients. I believe that through our appropriate practices, the creditors will get an effective and worthwhile program for partial repayment on the principal amount. I think the company needs to maintain the success for both parties, the consumers' personal finance and the creditor's repayment potential.

In conclusion, I believe that our industry is willing to assist consumers and the protection agencies, state and Federal regulators, in turn, need to trust companies providing debt management or debt settlement services.

MS. GOTTOVI: Thank you very much, Scott. We're going to move directly to the statement of our next speaker, John Ansbach.

MR. ANSBACH: Good morning, everybody. Thank you very much for certainly allowing me the opportunity to contribute to an important discussion. A special thanks to the Federal Trade Commission as well as Sara

Gottovi for moderating our panel.

I began working in this industry just about a year ago. Prior to this work, it's important to note since we're talking about consumer protection, that I spent my legal career as a consumer advocate. I worked in a number of law firms in Dallas, Texas, advocating on behalf of consumers, protecting them from companies that had gone awry and caused them both personal injury and, in the cases of some, death and recovery to their families.

What I do now as General Counsel for my company is I guide my company in regulatory compliance where needed, I memorialize the relationships that we have as a third-party outsourcer with a number of debt settlement companies or independent debt settlement agencies. A term most of you are familiar with is IDSAs. I certainly provide support directly to those IDSAs in my capacity, again, where needed.

Our role, our company's role, like other BPOs or business process outsourcers, is to provide service to companies in the debt settlement industry. There are certainly many roles the BPOs play in this industry. Our company focuses on direct consumer service. This type of BPO is a bit similar if you're trying to find an analogy when you are -- let's say you have a Dell computer and you need to call customer service. Most of you in this room are aware that when you call customer service at Dell, you are generally not connected with somebody in Roundrock, Texas, the company's headquarters, but, in fact, typically Bob in India. Our particular company is based right here in the United States.

See, Jack, I told you we were going to skip right to you.

MR. CRAVEN: Thanks. Thanks, John.

MR. ANSBACH: That's okay. Thank you. Because of the role that we play as a business process outsourcer, I was asked by the FTC to briefly comment a little bit about the role of third parties in our industry. I'll add to these comments a little bit in terms of customer feedback because our company is on the front lines of consumer service. We heard a little bit ago some comments about whether or not we're providing good service or the results of that, and I thought that I might be somebody -- since our company and our representatives are on the front lines of that service -- to provide you with some of the feedback that we get.

One item that I wanted to add was certainly to share in the comments that were made by the Commissioner at the outset by video as well as the Director of Consumer Affairs Division with regard to the current environment, it cannot be any more clear at this point that American consumers are in deep trouble in this country. By larger and larger number, consumers are failing to keep up with rising costs of health insurance, education, energy, housing. The events of recent weeks, months and even days now, show the continuation of the downward slide of the American consumer.

I don't know if -- since we have been here all morning I'm not sure how many of you are aware, but the Department of Labor issued its unemployment information this morning. The news -- would anyone like to guess, good or bad?

AUDIENCE: Bad.

MR. ANSBACH: Right. Unemployment claims have reached a seven-year high since immediately following September 11, 2001, and 12 states reported a thousand claim or better increase from the prior week.

We visit today in a time of overwhelming need by consumers who are burdened and overburdened by debt, much of it credit card debt. So, it just occurred to me that we ought to have this discussion on consumer protection, understanding that people in the debt settlement industry, the consumer credit counseling industry, as well as practitioners of bankruptcy, all exist to protect consumers. At the end of the day, I would not disagree that we in the for-profit sector certainly exist to operate profitable companies, but the reality is this entire sector is about protecting consumers in a time of need.

With regard to what we do, first and foremost, I want to add just some information about the process. As the FTC is certainly aware, there are more and more entrants into our sector. There are more and more debt settlement companies that join us every day. Some are certainly well organized. Others are not. Some certainly join us with a tremendous amount of expertise. Others do not.

When IDSA contemplates what business model it will operate, one of the first things it does is it decides what we will do in-house and what will we outsource to other companies. The two most common areas of outsourcing at this point are financial services administration and direct consumer service. Financial services certainly involves the collection of monies being paid for services rendered by the IDSA, as well as, in some instances, the set-up of a savings account for the consumer which is, as we would all note, directly controlled and wholly controlled by the consumer. The consumer, in these instances, can use this savings account for disbursements to creditors that he or she owes, again, only if and when directed by the consumer.

Companies like mine, who are direct consumer servicing BPOs, are retained by IDSAs to service their customers directly. One thing that I wanted to note before I talk about how that happens, many BPOs that do this work will not work with some IDSAs for certain reasons. There are criteria they must qualify for. Certainly, one of those criteria is that the IDSA be compliant with all relevant state laws, which certainly includes advertising, which I know has been discussed.

In this scenario, once the consumer enters into his or her program with the IDSA, our representatives provide the service directly to those consumers setting up their accounts; collecting their information; answering questions they have; certainly negotiating directly with the creditors, which is a huge part of what we do; providing them with education about debt and debt settlement where needed; and helping them to structure a plan for addressing their credit obligations which, of course, are often extensive.

I would like to share with those of you who are here today some of what some of my representatives have shared with me about these consumers because, again, we're on the front lines. We held a training session about a month or two ago to be sure that we were providing the highest level of consumer service. And I was, frankly, very surprised at some of the things that I heard. You certainly take our consumer as we get them. Many of you maybe will not be as surprised.

These are not just burdened consumers, right? These are consumers that are distraught, these are consumers that are crying, and I am sad to report to you that more often than not my representatives shared with me that these are people that are actually suicidal. Maybe some of you are not surprised by that, I was certainly taken aback by that. They are in this state because they have been for months and often years paying only the interest or the minimum payments on their credit cards with rates reaching 15, 17, 18, 25 percent plus penalties.

Many of them are reporting to us that they received their first credit card in the mail when they were freshmen in college earning nothing. This is the financial reality that many of the consumers that we service find themselves in. The emotional reality is equally as burdensome and distressing.

As third party BPO representatives, we work directly with these consumers, we guide them through the process, we help them to cope with, and where we are able, we help them to stop abusive and threatening phone calls that they’re receiving from collection agencies and those abuses, I think, are fairly well-documented.

The last thing that I want to share with you in the time that I have left is the results. We certainly get, as the BPO, as the third party servicer, we assist our client companies in handling the negative responses, the negative feedback. We do that by helping to handle complaints from the Better Business Bureau in any locale, State Attorney General offices, Minnesota, Delaware, South Carolina, West Virginia, North Carolina, Illinois, Texas, state departmental offices including the Department of Corporations in California and Texas Finance Commission, my home state, not to mention the number of states that have actually passed some of the UDMSAs that we have spoken about.

I would point out that given all of this current regulatory scheme that exists, albeit inconsistent, it would be wholly inaccurate, I think, and unfair to say that there is no regulation in this industry. I am General Counsel for a company in this industry and I will be the first person to tell you that there is regulation here, we work with it all the time.

When a complaint is received under any of these schemes, we certainly assist in responding to that, do so appropriately and where applicable and where necessary provide a partial or full refund when there has been either -- simply there has been work that has not been performed or it was expedient to do so.

The last thing that I want to do in the time that I have left because, again, we're on the front lines of this, I wanted to share with you -- and, Christian, if you can come up just a second. I wanted to share with you some of the results that we are seeing. I shared with you some of the negative consequences of some of the behavior in our industry. I would be remiss not to also share in their own words, if you could put up the first, some of the actual notes that we receive. We get these almost on a weekly basis.

This particular one from the Watkins family, was kind enough to send in. I know you all can't see it all over there, so I'll read it for you. Having two children to raise and gas prices like they are, we were headed downhill. But thanks to you and your company, we have hope. Thanks to you and your company, we have hope.

The next one, please, if you would. I could tell you about these, and many of my colleagues in this room could share their own experiences, but these are in their own words. I am so touched by the time you took to write me. It really made my day knowing that there is hope. God bless you and thank you ever so much for your assistance.

I mean, I'm not a professor. Admittedly, I'm not a professor and that's not what I do, but I can share with you just what we're seeing. The last two, if I could, please, and then I'll finish up.

My husband not having a job, money is really tight. Bills got piled up and after paying all those, I had little money left over. I was with credit counseling. They were never helpful. All they cared about was getting their money. With you, it's so wonderful knowing that I have people on my side willing to help me in a time when I need it.

And the last one, please. The theme of this is obvious. It isn't that one model is better than any other model. The feeling was incredible. I felt like the weight of the world had been lifted off my shoulders for somebody that had completed the program. Thanks to you and your company, I am out of debt. I so very much want to thank you and all the good people there. You probably saved my life. You saved my life. I know you saved my sanity. May God bless you all for the wonderful work that you do.

We can all bring testimonies up, good and bad. But let's not kid ourselves. These are people in need, the need is expansive and there needs to be a variety of business models that are available to address that need.

I want to thank you all for allowing me to be part of this and I look forward to contributing to the discussion. Thank you.

(Applause.)

MS. GOTTOVI: Thank you, John. I'd like to recognize now our next speaker, Jack Craven, President, Debt Settlement USA.

MR. CRAVEN: Good morning. My name is Jack Craven, President of Debt Settlement USA, and I'm pleased to be here today. Sara, thank you very much for inviting me and allowing us to participate on the panel on this very important topic.

Below -- and I'll go to my next slide here. Below or on this slide is really what I want to talk about today. Hopefully, you can all see that okay. I want to talk about Debt Settlement USA just for a few moments with you, give you sort of a background on who we are and what we do; the consumer interest in debt settlement today; the importance of full disclosure, which is really the focus of my discussion today and really the focus of what our company does; the consequences of poor disclosure; and the need for industry standards.

Debt Settlement USA is a privately held company with 165 employees in Scottsdale, Arizona. All our operations are self-contained in one building, one location and we service over 17,000 customers. Since inception five years ago in 2003, we've settled more than $140 million in balances and unsecured accounts, primarily. We feel our program and we know our program is an honorable and ethical alternative to bankruptcy. It helps people to cope with hardships associated with job loss, divorce or onerous medical bills.

We work strictly for customers and for consumers. We do not receive fees from any third parties, collection agencies, debt buyers or creditors. We never cold call or use any kind of telemarketing to gain new customers.

In the past year alone, we have experienced a more than 50 percent increase in the number of consumers who have turned to us and turned to debt settlement as an alternative to bankruptcy. I think it's very important, ladies and gentlemen, to understand some things that we have all seen and read recently about what's going on out there in the financial services industry.

According to some recent numbers released by the Federal Reserve, the total amount of consumer credit in the U.S. today, not counting mortgages, stands at nearly $2.6 trillion. The average is nearly $8,500 per person or more than $22,000 her household, up over 24 percent in the last five years, which is staggering. I think Bob Manning alluded to that earlier. To put it into perspective, in 1990, consumer debt was at 60 percent of the GDP of this country. In 2000, the number was around 70 percent, and eight years later, we're above 100 percent.

The economic situation is adding to that pressure and making consumers more vulnerable, more vulnerable to financial hardships than ever before. Since 2000 some 10 million Americans, 10 million Americans have filed for bankruptcy. One in seven families is dealing with a debt collector today. In the past two years, more than three and a half million homeowners have received foreclosure notices. Three and a half million people.

We believe that legitimate debt settlement provides many of these consumers with a viable alternative to bankruptcy and helps them to get out of debt, helps them to get out of debt regardless of what kind of hardship they are facing. However, as we all know, there are problems with the industry and fraudulent practices are more common than not. Consumers need to understand the debt settlement itself and be able to distinguish legitimate debt settlement companies from those that are not. Able to distinguish those that are legitimate and those that are not.

And really getting to the heart of the matter, the importance of full disclosure. Consumers need to know what they're signing up for and what they're getting into, what they're getting into when they join a debt settlement program, what risks are involved with debt settlement, what should consumers be looking for when selecting a debt settlement firm. All very valid questions.

What I'll talk about next on the next two slides are 11 disclosures that we feel are non-negotiable in discussing with customers the viability of them entering a debt settlement program or not, without exception. All program fees and costs must be disclosed up-front. The customer must commit to saving money for settlements. They've got to have the discipline, the self-discipline and the desire to get out of debt. We can't do that for them. The possibility of wage garnishment if a creditor obtains a judgment. That's going to happen if they get sued.

A debt settlement program will likely have an adverse impact on the customer's credit score. No question. No waffling about that. That's very true. Creditors are going to be paid by the customer, not the debt settlement company. We do not nor should any legitimate debt settlement company pay creditors on behalf of the customer.

Amounts greater than $600 in savings obtained through a settlement may be reported to the IRS. Again, this has to be disclosed to consumers.

Continuing on the importance of full disclosure. Perspective customers, again, should know that a legitimate debt settlement firm should not escrow their money, should not control their money. And, again, I want to say that for emphasis, they should not control their money.

The right of offset and its effect on customer. The customer should know what the right of offset is and how it can affect them. Never, never tell customers to stop paying their creditors. In fact, if they can pay their creditors, they should not be in a debt settlement program. Period.

Creditors may continue to call customers even after signing a limited power of attorney or power of attorney. So, they're going to continue to get collection calls, no doubt about it, and that needs to be disclosed up-front as well. Meaningful negotiations with creditors are not entered into until funds are available to obtain settlements. Results are still not guaranteed.

Again, very important to tell people that, if you're a legitimate firm, you do not guarantee results. You do not guarantee results.

Well, what happens if you don't properly disclose to the customer what can happen to them? Certainly, failure to provide services is as stated in the contract, if there even is a contract. All right? The contract up-front should state everything, the good, the bad and the ugly that can happen to this customer. Unfortunately, many companies give unreasonable time frames to customers in which they are told they can come back free. This is just not going to happen.

Unrealistic expectations of settlements, we've heard some of this today. 70 percent settlements, 80 percent settlements, unrealistic and it should not be the case ever that a customer is told this.

The customer has no idea of how much the services will cost. It's very important for a customer to come into a program knowing every penny they're going to pay in that program over the length of time they're going to be in that program. No questions asked. And we believe and feel very strongly that a legitimate debt settlement company does not escrow customer funds because that's where there's the potential for fraud. That's where the potential is for people's money to be taken away from them and stolen.

Last, but not least, it's very important for the debt settlement industry to call for industry standards. We want reasonable and germane, industry-specific, regulatory oversight, one, to ensure consistency of service delivery, and two, to ensure that full disclosure becomes the norm rather than the exception for the industry. Thank you.

(Applause.)

MS. GOTTOVI: There's no requirement that you leave your seat if you feel more comfortable.

This is Virginia O'Neill, Senior Counsel, Center for Regulatory Compliance, American Bankers Association.

MS. O'NEILL: Good morning. As you can imagine, there's quite a bit on the plates of those of us at the ABA and the bankers. So, I hope you read into my presence being here today the importance of this to -- I'm sorry. I hope that you all read between the lines that the fact that I am here today underscores the importance of this issue to the banking industry.

The ABA, let me just say at the outset, we're really only going to discuss the debt settlement industry. In ten minutes, I can't possibly touch on the for-profit consumer counseling agencies, but they are seen as a lesser problem. So, I'm focusing on debt settlement.

ABA has never really focused on this issue. We have many standard issues, debt settlement isn't one of them. But when the FTC asked us to look into it, what we did to get sort of an industry view was to reach out to members of several working groups, our payment systems and our credit card council, and raise discussions with them about the things that FTC wanted to hear. I also had very detailed, one-on-one conversations with seven large credit card banks. My point in saying this all is to let you all know that what I am saying I do believe is representative of the industry view on this. Obviously, all the banks aren't in lockstep, but my remarks today represent a majority opinion.

Their message was very simple and it is that they do not see the debt settlement industry as a necessary player. They see it as very harmful both to the consumer, and I know you'll be less concerned with this, but to the bank. They don't see it as providing any value. They want, above all, to come out of this with you all understanding that the banks, when they agree to a settlement that has been presented by a debt settlement company, it is no different than an agreement that they might have reached had that customer come to them directly.

When they consider a person who is in hardship, they take a very careful look at that person's individual hardship, their finances and their accounts, and that's what they make their decision based on applying their own parameters and policies. It doesn't matter that a debt settlement company is in there. I mean, the analysis never changes. So, this notion that a consumer needs to go to debt settlement, that they can't possibly get the same kind of a deal is just simply false. And in the eyes of the bank, consumers are coming out the losers as they are.

More specifics about how banks deal with the debt settlement industry, basically one of the things they asked, the FTC asked was, do banks have written procedures and policies in place? The vast majority do not. Two banks that I spoke to did. They were unusual. I think the others are sort of reacting to the fact that the debt settlement industry is very inconsistent and rather opaque, so they simply have not been able to draft procedure.

In the absence of procedure what they do is they treat -- when they find out that a customer has engaged a debt settlement company, they treat that or they fall back to procedures they would have followed if they were dealing with an authorized third party. So, when the bank gets a cease and desist or a properly authorized power of attorney or limited power of attorney, what they do is they cease communications by the debt collection department of the bank. It then usually, in most of the cases, goes to either outside counsel or in-house counsel. So, it gets treated differently.

I know that one of the panelists said that communication does continue and that consumers need to be aware of that. That's not really true. Most of the banks that I spoke to said that they no longer contacted -- the collections department no longer contacted them. Outside counsel may initiate litigation and, of course, garnishment can proceed if there's a judgment. But they're no longer making the phone calls.

Anyway, when that communication ends is where the banks identify the problems that result to consumers. At that point, they can't reach out to the consumer and say, you know what, we have options. And they do have options. In 2008, I know the economy that we're in, they're working very aggressively to develop different options and suddenly that bar has gone up and they can no longer communicate to say if you come to us, if you work with us, we'll give you the same result.

At the same time, when they can no longer communicate, they can inform the consumer what is and is not happening. And I think that needs to be said clearly. When a debt settlement company advises a consumer to stop paying, that does nothing in terms of sort of tolling the account. The account interest continues to accrue, fees continue to accrue, regular reporting to credit bureaus continues. So, while the bank would like to let the consumer know that, they feel like they cannot.

They also can't tell the consumer about the fact that they're not receiving the payments, they can't tell them that in the vast majority of cases months go by and these move to charge-off and are charged off and that that's reported to the consumer. So, clearly, from the bank's point of view, this sort of inability to speak to the consumer is an enormous problem.

The banks also disagree with this notion that the consumer that goes to debt settlement is somebody who can't be helped otherwise. They see that consumer as someone who has demonstrated a willingness and, often, an ability to pay the debt that, because of all the advertising that's going on, gets led down that path. The message that they want out there is that kind of a consumer is exactly the kind of consumer that they want to deal with and that they can deal with.

They also want it to be known that when a debt settlement company does take action on behalf of the consumer, very often that action -- it does have no impact on the settlement that's ultimately reached and it really just harasses the bank personnel, the bank collection department.

What they find is there is tons of paper. They talk about jammed faxes with requests for debt validation that are unnecessary. When they respond to the debt validation request, they then receive requests that come in saying that the information was incomplete. They receive many challenges to the validity of the debt. They don't see any evidence that the consumer actually does challenge the validity of the debt. Often, they're unsigned, they're unspecific. Yet they have to respond to them and they do respond to them.

They also see often very specious claims about the right of the bank to collect the debt. Although I didn't hear it so much today, some debt settlement companies assert, because I think these are good debt settlement companies, but some debt settlement companies are asserting that they can help the banks avoid reputational damage. The banks -- you know, ridiculous, they don't see that at all. In fact, they see a problem that as the consumer becomes more aware of what's going on internally with the debt settlement company, that if they were at all seen as working with them, that it's only going to come back to haunt them.

The last thing I want to say is that I intended to throughout contrast the debt settlement industry with the not-for-profit consumer credit counseling agencies. When I came down to writing my remarks, I really didn't have the time to do so. The banks really support that and the education and the programs available there. And in closing, I'll just say that they support any efforts at reform. They certainly want some minimum standards of disclosure, licensing certification. Thank you.

MS. GOTTOVI: Thanks, Ginny.

(Applause.)

MS. GOTTOVI: Last but not least, we have Travis Plunkett, Legislative Director, Consumer Federation of America.

MR. PLUNKETT: Hello, everybody. It's good to be here. I would like to thank the Federal Trade Commission and the Division of Financial Practices for both holding this much-needed seminar and for their last four years of work pursuing unfair and deceptive acts and practices in the debt settlement industry.

We would agree that there is a need for an alternative for consumers between bankruptcy on the one end and debt management or credit counseling on the other end. There clearly is a need for it, there clearly is demand for it. But the evidence so far, based on enforcement actions by the FTC, State Attorneys General and some information we have regarding how these companies operate, is that this is the wrong business model to fill that need and protect consumers.

We have six major concerns with this business model overall. First, settlement firms often mislead consumers about the likelihood of a settlement. This has been the subject of much of the FTC litigation against settlement firms. Evidence that very few consumers ever complete a debt settlement program exists in the few cases we have where these companies have been forced to open up their books and reveal what's actually going on.

The case study here is the litigation against -- by the FTC against the National Consumer Council. When the receiver forced the NCC to open their books, it was determined that 1.4 percent of customers successfully completed the program and settled their debts. 43 percent of their clients canceled the program after incurring fees of 64 percent of the amount remitted to the NCC.

We are also receiving anecdotal reports that some of the information that is put out by debt settlement firms regarding graduation or completion rates are inflated because of the process involved in settling where fees and higher interest charges often accumulate during the period of time when the consumer is saving money for a settlement and not paying their creditors.

Second concern, unlike credit counseling, there is no guarantee, no guarantee or reasonable chance of a guarantee of a reduction in the amount of debt owed by consumers who meet required conditions. In fact, some creditors insist that they won't settle. Business Week reported just in March that Bank of America and Discover say that they will not negotiate with debt settlement firms.

It's not like there isn't some responsibility here on the part of the credit card industry for the fact that the debt settlement industry is surfacing and appears to be growing. Creditors do share some responsibility for this growth. As I mentioned, there's demand and CFA has documented over the last decade that credit card issuers have reduced the concessions, the benefits that they offer to consumers in credit counseling. So, therefore, the demand for an alternative has been even stronger. And we'd like to see creditors work harder in their work-out programs, their individual one-on-one programs, to meet the needs of the consumers who clearly have a hardship and clearly need some form of a settlement.

However, once again, settlement firms are promising something that, in many cases, they can't deliver. It appears to be a crap shoot. It's not like settlement doesn't occur, but it does appear -- there does appear to be significant evidence that these firms are greatly exaggerating the number of settlements that do occur.

Next concern, settlement firms often mislead consumers about the effect of the settlement process on their credit worthiness. Withholding payment and settling multiple debts is a very long process, and this is a key distinction that is often not highlighted between settlement and other alternatives. In insurance, we often talk about a long tail line between when you pay your premium and when you might need the insurance. Medical malpractice insurance, for example. Six or eight years is the average time between when you first purchase a policy and might finally need a pay-out.

Well, we have a long tail line here between when you start paying often front-loaded fees to settlement firms and then, eventually, at some point in the future, get a settlement. It's a very long process.

In the meantime, consumers are getting nothing and their credit is usually deteriorating.

Next concern, fees are so high that consumers don't end up saving much in the so-called reserve account. It's a little unclear what the current overriding business model is for fees, there appears to be, as you've heard, several models. It does appear that the front-loaded model that you heard about that often requires up to 40 percent of the total fees to be paid in the first year is becoming the more dominant model.

What this means is that the people who are targeted, the settlement firms say they're targeting, are actually the least likely to be able to afford the service and then be able to get a settlement on a timely basis. These are folks, by the settlement industry's own statements, they have to have a certain amount of unsecured debt, 10, 12,000 is the minimum you often see. They're paying significant fees up-front. They usually have a hardship whether it's been an interruption in income or high unexpected bills.

And you would think that these are folks who are the least likely to succeed in a program like this, especially if, as some have contended, there's no coercion or suggestion or even hint that the consumer should stop paying their creditors. In other words, the target group for this kind of model would appear to be fairly small if the business performs legitimately.

Final concern, it really is unclear what professional services most debt settlement companies offer to assist debtors while they save for settlement. Once again, this long tail line, this long delay, we see complaint after complaint from consumers that their feeling is that absolutely nothing happens for a very long period of time while the consumer accumulates enough money to offer a settlement. And the settlement firms really haven't been clear at all about whether they're offering a service during that period.

So, what are the solutions here? There are market-based solutions and there are regulatory solutions. One of the market-based solutions that's very promising are the ongoing efforts by creditors and credit counseling agencies to develop what I think is a much more viable and a consumer-friendly alternative to bankruptcy and to, on the other extreme, a traditional debt management plan. That is a reduced principal debt management plan paid out over a period, a typical period of, I would say three to five years, which is a typical period for a debt management repayment, that offers the possibility of a significant reduction in principal, but also a possibility that doesn't exist with many debt settlement firms, which is, you can pay it off gradually over a period of years. We're very encouraged by the fact that credit card issuers and credit counseling agencies are now seriously talking about this option.

Regarding legislative or regulatory possibilities, the first thing we need is good information. This is a very murky industry. It's not just consumers who have a hard time getting real information on what's really occurring. We need empirical information that's independently verified. Based on what we have seen in the industry, it has to be independently verified.

And we don't need anecdotes. If we want to get into the anecdote situation, I could point to half a dozen consumer complaint websites with literally thousands of complaints regarding debt settlement firms. We need the industry to open its books and I would encourage the Federal Trade Commission and State Attorneys General to start pursuing very serious investigations based on their own findings of whether there is an inherent fraudulence to the business model here.

I would encourage the FTC to contemplate, based on their own legal action, whether subpoenas are necessary to get the kind of information we really need to know as to whether this business model is working for consumers.

Regarding regulatory steps, I mean, there are many things to talk about and we heard about some of them in the first session. But the first thing to consider is that there is really no service that's being offered until there is a settlement. And just like credit repair organizations are forbidden under the Credit Repair Organizations Act from charging up-front fees for services, we think there should be a prohibition on up-front fees for services here because the major service that's being promised, the only service consumers really want is a settlement. If you can't get a settlement, you shouldn't have to pay a fee.

So, regarding regulatory measures, there are many that need to be considered, but that should be the first one. Thank you very much.

(Applause.)

MS. GOTTOVI: Thank you, Travis. We have about 15 or so minutes left to have a discussion among the panelists on some issues that have come up during these opening statements and also from the audience throughout the course of the talks. As you can see, I have quite a substantial stack of questions here. Thank you for providing them. If you have more, continue to send them up.

I think the first issue, and this was introduced in our first presentation with Scott, was the issue of the timing of the fees in the debt settlement industry and the prevalence of different models for fees. I know that in a number of our enforcement actions one of the issues with consumer expectations has been the prevalence of this up-front fee model where consumers are required to pay a substantial portion of the fees to the debt settlement company before settlements are entered. This has caused the consumer some concern. This is, I think, the front-end model that Scott was discussing in his presentation.

Do you have information on the prevalence of the front-end model? Can you give some information about how beneficial that model is for consumers versus the industry, some opinions on the model of the front-end fees?

MR. JOHNSON: As far as different models, I think we're in an industry that we constantly have a moving target. So, sometimes the designs, and I'll say internally and I'll speak maybe more specifically to my company. And then I'm going to put you on the spot here a little, Jack, so maybe you can talk a little bit more about the self-savers. Because I'm not saying that I don't think any one model is right or wrong. I think what I look for is it really comes down to the success of the consumer.

So, when I look at comments that are made about fees and what services that we provide or that credit card companies will actually do a settlement program, I think what we come down through is even on our initial consultation, I think we're already doing an education process and that the debt settlement firm can typically handle all five accounts for the client. So, as far as the front-end loaded, for me, I think there is concern on protection for the consumer because at different points in times the settlement firm will collect 65 percent of the fees in six months and the client won't have any results at that point in time.

In addition to -- and Travis, just to point out to you, and I'm only going to speak for my company. We take any and all debts. So, we have no restrictions on a thousand dollars. We do the disclosures if people do debts under $300. In addition to that, we have a percentage of our clients that we do pro bono, the people that truly can't afford our program and still want to make good on those obligations. So, it's not a complete profiteering scenario. I think some of the fees that are collected, I do question that myself sometimes.

MR. CRAVEN: Thank you. Yes, in terms of the model we use, we charge basically 14 percent of the balances brought into the program paid over 11 months. The fee is paid over 11 months. There is a $29 non-refundable application processing fee which, frankly, is in place to make sure that people are serious in the first place about proceeding with the debt settlement program. We're more concerned about the fact that people know exactly what they're going to pay when they enter the program. There are no hidden, no back-end fees. We quote up-front and the customer is very aware because we walk through that process with them on the phone and it's recorded in every instance what their program will entail in terms of costs.

So, by the time we are completed with that application process, the client knows exactly what their fees are going to be over the length of their program. So that, again, is what our focus is. Making sure they know exactly what their costs will be and there will be no surprises on the back end.

MS. GOTTOVI: Other comments?

MR. ANSBACH: Yeah, I have several on the fee structure. The information that exists for consumers and also for those who are trying to get a more macro view of the fee structure of the industry, as I mentioned, is not widely available. This is not a very transparent industry. For example, you go on almost any website for a settlement firm and you can't find a simple explanation of what will be charged in general based on whatever, say a fee schedule.

It is all directed towards getting you to provide them information about the extend of your debts, perhaps sometimes very private information. Before they will offer you any information about the real costs. I think that that is not just an individualized approach, but a marketing ploy.

Regarding more broadly available information, we have gotten information from sources in the industry that talk about this front-end structure that Jack mentions here. Fifteen to 20 percent of the total debt enrolled in the program is collected in the first year of the program. So, if you have $50,000 in debt, we're talking about $7,500 or more in the first year. Once again, as I mentioned, that makes it very difficult for most people to afford a program for which they have received nothing at that point.

Secondly, why is this pegged to the percentage of debt that's owed? Has anybody questioned that? I mean, we've gotten away from that in the credit counseling industry. The amount of debt you owe has nothing to do with the amount of work, the actual service that is provided by the settlement firm. Why should it be pegged as a percentage of the debt that is owed? Why shouldn't there be a flat fee on the back end after the service is provided based on the amount of work that is performed?

MS. GOTTOVI: Other comments on this topic?

MR. PLUNKETT: Yeah, I just want to make one -- a couple of quick comments. First of all -- and again, Sara has pointed out that we're hoping that this will be a collaborative effort. I would point out the fact that it does appear to me, from the folks in the front lines that do this for a living, that there is considerably more effort required in settling a $50,000 credit debt than there is a $5,000 credit debt.

Second of all, in terms of transparency -- and I agree, by the way, the fee structure must be appropriate for consumers, particularly these consumers that are so vulnerable. And I agree that there should be transparency in the industry. I disagree that there is not transparency broadly. I would look to any number of consumer service agreements that we've seen that flat out reflect what will be paid in which month and when. I'm not sure how much more transparent those can be, but I am certain that there are some that are not that transparent.

Finally, the last comment, I think the heart of this issue, Sara, is about what is the service. If you define the service as simply being settlement, then that leads you to one place and one place only. But I disagree with that. My representatives that are working with consumers every day structure a savings program early on for consumers that they cannot often do on their own. They often provide cease and desist letters to stop. And, Ginny, I would agree, I think a lot of times it's not the banks, but it's certainly the collection entities who are sending those often threatening letters and phone calls to the C and D letters that we send out.

So, for this particular model that is fees up-front, I think it's a mistake to say that there's no service provided because the reality is that there is.

MR. CRAVEN: Yeah, I'd like to second that. I mean, it's very important to understand that if a lot of consumers could go directly to the creditors and work out settlements, they would do that. The debt settlement industry would not exist. The problem is the customers will go to creditors and the creditors have pre-established matrixes that basically say, look, if you're 30 days past due, 60 days past due, this is the only settlement amount we'll give you and they basically hang up the phone and that's the end of the discussion.

So, these people really come to us because they can't work with the creditors, even though they try to. And that's a very common statement we hear from people.

Also, to Travis' point, it takes a great deal of time and effort to work with creditors on behalf of customers to get settlements. The negotiation process is not just one phone call or two phone calls, it can be 20, 30, 40, 50 phone calls. All creditors are different. Some creditors are very difficult. Some aren't. Some creditors understand that they can do much better working directly with a debt settlement company when their client has come to us to actually get a better net settlement to their company from a net cost perspective because they don't have to place that account with a collection agency or a collection attorney. They actually return to the bank and a net basis is better. Some banks, some top five banks actually understand that.

The other thing that I wanted to respond to, I think Travis mentioned this, is that I guess in the article about B of A and Discover, this year we have a run rate to expect about 9,000 or do 9,000 settlements with the top ten creditors. Twelve percent of those will be with Bank of America.

So, on the one hand, publicly they're not saying they're selling with us, but behind the curtain, they're selling with us all day long. That's what's going on. I mean, I just wanted to make sure that I responded to that point.

MR. PLUNKETT: Okay. Well, just to that point then, that reinforces my concern that this is a crap shoot. Without the creditors involved in the process of saying here are the criteria for settlement and if you meet these criteria you qualify, without the consumer being able to assert at the beginning of the process that if they make the sacrifices required in the program they will receive the settlement benefit that is being promised, it is not a business model that works. Because you can't guarantee for any particular consumer that it's actually going to occur.

MR. CRAVEN: Well, I can tell you that for --

MS. GOTTOVI: Can I cut the conversation off so we can address one more topic?

MR. CRAVEN: I'm sorry.

MS. GOTTOVI: Another issue that's come up in our first panel and today is the issue of state compliance and keeping track of 50 divergent sets of regulations. Particularly for those in the industry, how do you go about tracking your compliance obligations in the various states? What do you do when a new law is passed? How do you keep control of all of your obligations?

MR. ANSBACH: The short answer is very carefully.

(Laughter.)

MR. ANSBACH: And I wish it was more of a joke than it is. With USOBA as well as with TAFSCA, two of the leading associations in this industry, we have been working hand in hand with regulators, we have been done so -- in the last year, we did so with California for a long time until that process ended in August. We hope to pick it up again next year. I believe that -- this pre-dates me -- but I believe the California legislation was a product of industry input with regulators and continues to be that. But it is difficult because although it follows the uniform law to some extent, as was pointed out earlier, there are oftentimes deviations from that.

So, what we now see, and I don't have a particular point to make on this, but the reality is that we see different regulations coming out of different states with some similarity, but still some differences. On top of Attorneys General who are doing their own enforcement actions, on top of also monitoring reputations at the BBB level and other levels.

So, right now, it’s a fairly complicated scheme and I would certainly suggest for any company that is operating in the industry that they ensure that wherever they’re operating, whether it’s advertising or settlement or negotiation, whatever the service, that they are very well aware of the applicable regs in that particular location because they do vary.

MR. CRAVEN: To follow up to that statement, in the spirit of full disclosure we recently found out that we were not in compliance with the states of Idaho or South Carolina. We had clients in our program for quite a while from those two states. We immediately began to refund and are refunding back to the customers all fees that they have paid into the program. And they continue -- actually, we continue to work on settlements for those people. We will not cancel their programs. We’ll continue to work for them for free basically. But their fees have been returned.

So, we retained outside counsel to help us try to stay ahead of the game on that. We have our own general counsel who also tries to stay ahead of the game on that. As John said, 50 states, territories and so forth, it’s very hard to keep up. So, again, when we are notified that there’s an issue in any state, we immediately refund the fees to those customers from those states. We continue to operate or continue the program for those customers until they're basically out of debt. That's our policy.

MS. GOTTOVI: Scott, do you have anything to add?

MR. JOHNSON: If I was to say something, I think the Federal regulation for nationwide is just one law, one rule because we do -- you know, I was trying to avoid the question, because when I think of the matrix that we have on how many different areas, on the complexity of everything, it's -- we end up spending a lot more time trying to manage just the aspects of trying to stay in compliance and less time on whether it's the service and education programs we do for our clients or to sit there and establish relationships with creditors.

MS. GOTTOVI: Question from the audience. What, if any, is the financial education mission of a debt settlement company?

MR. JOHNSON: Our education piece in that we look at -- and I think in Colorado you can see that there are requirement of education programs available. So, as far as defining actually what a consumer wants to participate in, I think that the programs can be wide and expansive. So, we outsource our education program to a third party. What we do is we give access to our clients from everything to be able to talk to a registered investment advisor, someone that's licensed in their state. They have access to an attorney, CPA. Each person's and consumer's needs are so individualized, we choose to use that as an outsourcing.

Within our own system, we have education products and guidelines for the consumer to follow and we track sometimes their progress. I'm in favor of, and I think everybody has, some type of educational piece designed in their program.

MR. CRAVEN: I think from our perspective we feel that our disclosures pretty much educate them on the pros and cons of debt settlement. If we do our job well, they're going to know coming into the program how it's going to affect them. We don't believe that we should try to duplicate the efforts of the banking industry to educate consumers on the ins and outs of their credit card accounts. That's just not our role. I would never advocate that we would do something like that. But it is our role to ensure and to reinforce in customers that come into the program exactly what they're getting into, how it's going to affect them and what the results can be. That should be our role. I think education for us -- education for us would not be something that would be appropriate in my mind.

But, again, going back to what John, I think, and Scott said earlier, from a regulatory standpoint as well, we support certainly a Federal oversight versus a state oversight, and I wanted to make that point as well.

MS. GOTTOVI: Other comments?

MS. O'NEILL: If I could make a comment in response to something that Jack said, which is a suggestion that a lot of his people come to him saying that they have not been able to work with the debtor. I would just respond that that's largely, I would imagine, attributable to the advertising, the pervasive advertising that will settle your debt for pennies on the dollar so that when people do have discussions directly with the bank, expectations are so far out of line. I think that mischaracterizes it.

MS. GOTTOVI: Travis?

MR. PLUNKETT: I would just add that unless there's a requirement in law, it's not realistic to expect a for-profit firm, unlike say a non-profit firm, to provide education. And to us, in talking about credit counseling, that is one of the benefits of non-profit credit counseling. But in the debt settlement context regarding Jack's comments, I think it is fair unless there’s a requirement in law to hold these firms to a high standard in terms of what they say about the advantages and disadvantages of debt settlement and also of debt settlement, vis-a-vis, other options.

I can tell you from reviewing, once again, some of the website for some of these firms, including the two firms represented on this panel, I didn’t see outright fraudulent representations, but I saw a lot of what I would consider to be misleading information, especially about the cons of the alternatives to debt settlement. Calling, for example, credit counseling, quote, “robbing Peter to pay Paul.” While that might be true in certain circumstances, making a generalization is very misleading. It just depends on the person.

Or saying, for example, that bankruptcy will, quote, “stay with you for the rest of your life.” Well, actually, that’s not true. It will stay with you on your credit report for ten years. So, once again, while not fraudulent or perhaps deceptive, we see a lot of very misleading information on these websites regarding the advantages of debt settlement and the disadvantages of alternatives.

MS. GOTTOVI: We are out of time on this panel. So, I would like to thank everyone for their great contributions today. At this point, we’re having our lunch break and we will resume at 12:45.

(Applause.)

(Panel 2 was concluded.)

(A luncheon recess was taken.)

PANEL 3: PROTECTING THE CONSUMER: A DISCUSSION OF CONSUMER PROTECTION CHALLENGES

MS. GOTTOVI: Welcome back from lunch, everybody. If we could all settle into our seats, we will get started. I'm happy to introduce our third panel of today's workshop, moderated by our own assistant Director, Alice Hrdy. Alice?

MS. SAKER HRDY: Thank you, Sara, and thank you, everyone. I'm delighted to be here with these distinguished panelists. I think we're going to have a great conversation in this third panel. So, the goal of this panel we're calling a discussion of consumer protection challenges is to address the key consumer protection challenges raised by the debt settlement industry and, particularly, its current marketing practices or some common market practices. By challenges, we mean challenges for consumers, for the industry, for creditors and for law enforcers and the regulators. So, we really do want to take a holistic view of what the challenges are for everyone.

I'm going to have each panelist introduce themselves. They're going to give a sound byte that summarizes one key point that they would like all of us to know before we launch into our conversations. So, we'll begin with Steven Hannan.

MR. HANNAN: I'm Steve Hannan. I'm the Executive Director of Maryland Consumer Rights Coalition. Frankly, I believe that the entire industry is a consumer protection challenge for consumers. This is something they have never dealt with, it is something they are not familiar with. It is not a car they're buying, it's not a truck they're buying. It's a service that they don't even know when they will benefit from it. So, I'm not sure there are any consumer protections as we currently speak regarding the industry.

MS. SAKER HRDY: Thank you, Steve. Moving on.

MS. LYBARKER: Hi, I'm Carrie Grubey Lybarker, and I am happy to represent state regulators on this panel and for the workshop as a whole. I'm an attorney with the South Carolina Department of Consumer Affairs and we are not with the AG's Office, we are not with the Governor's Office. We are a separate agency that brings our own enforcement actions and administers the laws. We recognize the need for state regulation for the industry and protecting consumers that are seeking debt relief and educating those consumers on the debt relief models that are out there.

MR. MALLOW: Good afternoon, I am Michael Mallow. I am a trial lawyer based in California and I both counsel and defend debt settlement companies who have been unfortunate enough to catch the attention of either state or Federal regulators, including the Federal Trade Commission.

In doing this panel, I have to give a disclaimer, which is as a counseling and trial attorney, I have somewhat of a split personality. When I am counseling clients, I tend to be very conservative in trying to push them into the safest way of marketing that I know or anticipate in terms of regulation. As a trial lawyer who defends the industry, I have yet to see a practice that is not defensible. That is actually an overstatement. For today's purposes, however, I'm going to be wearing predominantly my counseling hat. So, if there are regulators who want to try to use anything I say against me later on in a defense case, you clearly didn't understand what I said, I disclaim having ever said it and I will deny it immediately.

(Laughter.)

MR. MALLOW: My sound byte comes as follows. Up until today and even we've seen a lot of it today, the industry has taken on essentially a one size fits all marketing model that has certain problems. The antagonists of the industry have taken on a no size fits any approach to the industry. I believe that neither of those particular perspectives is correct or fruitful for assisting consumers.

Essentially based on stuff that you have heard from Dr. Manning, I see the industry as follows: The marketing goal of a good debt settlement company should be to identify that 40 percent that you heard Dr. Manning mention who don't really qualify for consumer credit counseling, but do not want to take on the stigma, and this is a very emotionally driven issue for consumers, of being a bankrupt, a failure. And the marketing that needs to be put into place is one that is going to provide consumers with a reasonable understanding as to what service is going to be delivered and what potential success is going to be achieved.

Right now, the industry is in such a state of infancy or immaturity that substantiating claims is going to be the most challenging aspect of marketing.

MR. YOUNG: Good afternoon. My name is Wesley Young. I'm the in-house counsel for a debt settlement company called Debt Settlement America. I'm also the Legislative Director for TASC, which stands for The Association of Settlement Companies, and our mission is to set standards for our industry and to self-regulate those standards, standards that promote both good business practice and consumer protection.

And I did want to add thank you, Alice and the

FTC, for having this opportunity to address you and everyone here. We really hope that this is just the first step of a continuing dialogue that we can have with the FTC.

My sound byte is in addressing the position that debt settlement as a model has no benefit to consumers. I think for people that take that position, I think it's mostly because of the people that they have been dealing with, the consumers that they have heard from. I think it's important to hear the consumers, the many, many, many other consumers that we have on the other side, some that John Ansbach had mentioned, testimonies about how their lives were in shambles, they're drowning in debt, they had no hope, and how after being in our program they are now saving money, setting aside money for college for their kids, setting aside money for investments and retirement, even saving up for a home.

In this economy, especially when we have Fortune 100 companies, who can't manage their finances, consumers are obviously going to struggle likewise. And the difference is that they're not going to have a bail-out program. Debt settlement may be the closest thing that they have to a bail-out program. I did want to -- do I step up to the podium?

MS. SAKER HRDY: Come up here.

MR. YOUNG: Share just a few slides with you. This first testimony just emphasizes what we've mentioned before, that a consumer expressed that he had no options other than debt settlement. He had tried consumer credit counseling, he had tried bankruptcy. Debt settlement was the one that worked for him. If you take away that option from those consumers, that's not consumer protection, that's abandoning that consumer.

This client survey I wanted to point to is a survey that was done by one of our member companies of clients that completed the program and it was done by a third party survey company to about 1,500 clients. There was only about a 10 or 15 percent response rate, but the responses were material enough and significant enough to be representative of the entire pool. I just took three out of about 20 questions. But 90 percent said that they were glad that they chose a debt settlement program, 90 percent also said that they would refer a friend to the debt settlement program. 97 percent of the people were happy, either thought that settlements were excellent, good or fair, settlements as a result of following the program.

This last slide emphasizes that it's -- settling a debt is obviously a main goal, the main point behind the program. But we really feel that we provide an educational component to the service that we provide. In this case, 75 percent of consumers after finishing our program decided they were going to change their spending habits. They were going to change the way they had used credit cards in the past. 75 percent said, no, we're going to a cash basis until I can afford to otherwise.

The reason is, in a 36-month program which is typical of our programs, the consumer has been contacted 50 to 60 times by an individual client service representative. That's 50 or 60 times to help educate the consumer, to encourage them to save money, to stay on budget, to keep them accountable, and after two or three years of that kind of education when they finish a program, these are the results.

The other slide that I had was a -- the results of what would -- or the question was: What are you going to do with the money that you were setting aside as part of the debt settlement program? Fifty percent of the people said, I'm going to set it aside for savings, investments or retirement or some kind of other savings. So, the educational component of our program is very strong and this demonstrates that there is absolutely a benefit to our program. Thanks, Alice.

MS. SAKER HRDY: Thanks, Wesley. By way of information, Wesley Young, on behalf of TASC, submitted the full PowerPoint as a comment to the workshop record and it's available on our website. Anna Flores?

MS. FLORES: Hi, I'm Anna Flores and I'm Vice President of Consumer Affairs with American Express. And I work here in our Washington office and Alice asked us to provide a little flavor to our bio. I don't know how flavorful this is, but I have been with the company about ten years working in the area of consumer affairs, but have been working in the area of consumer protection, education and advocacy for over 20 years and have worked with many of the consumer advocates who are here present with us today and FTC staff on a number of policy issues and educational initiatives, particularly in the area of financial education and financial literacy. And while I have been with the company ten years, the company itself has a reputation of being consumer sensitive and responsive to consumers for decades. This is not new to the company, it's something we have been doing for years.

We are actively engaged in consumer protection. Our interest in the session this afternoon is really from a consumer protection perspective in that we want to ensure that consumers and, particularly our card members, are provided with choices and information that they can use to make educated decisions about their individual financial circumstances. We also believe that consumers should be afforded the adequate protections as they make these critical decisions, as they affect their financial future.

Now, what I am not here to do today is to represent the industry. That was Ginny's job in the panel before lunch. I am here merely representing the views of American Express and we're delighted to be here and look forward to an interesting conversation.

MS. SAKER HRDY: Thank you, Anna. Steve has asked just for a very brief rebuttal.

MR. HANNAN: Very brief. Consumer benefit and consumer protection are not equal. Consumer benefit is something that we're not discussing here. Consumer protections are what we're discussing. Consumer protections are what are there to make sure that what is represented is provided, it is what recourse do consumers have and how can they get to that recourse. And I think that's what we're discussing here, not consumer benefit.

MS. SAKER HRDY: Thanks, Steve. Let me outline some goals of our panel and a bit of a roadmap. So, we're going to tackle some of the issues we have heard this morning in the form of a mock advertisement, which I'll unveil in just a minute, which will help us issue spot what we’ve all been hearing this morning about the kinds of advertising that occurs on websites, also on television and radio, and just sort of go through the process of the marketing of debt settlement services. And I’ll have some particular questions to pose to the panel.

So, we’ll go through the initial advertisement, the telemarketing sales pitch, and the consumer sales contracts and talk about those. We’ll also address other issues such as third party lead generators, collection calls, credit reporting, and then we’ll just discuss particularly what American Express is doing in terms of its policies and practices with regard to debt settlement. Then, finally, sort of the potpourri round, we’ll talk about current state laws and what that means for industry and consumers, enforcement challenges, the role of education for businesses and consumers and the role of self-regulation.

I don’t, of course, have sound bytes of my own, but looking through my notes this morning I highlighted a few. If any of you watch ESPN Center, you know they have the top ten plays and they queue them up. So, there were so many, it’s hard to choose. But to start our conversation, what I heard this morning that we hope to address here, some of the statements were made that, for instance, we need to create a level playing field for all players in the industry. If a company makes a claim that they can reduce debts by 70 percent in 12 months and it's not possible, that is an absolutely worthless claim. Consumers are in deep trouble and they are in need of assistance. A contract for services should say everything that will happen and it's very important for consumers to know where every penny they are spending, what it's going towards to pay for services.

We heard that a debt settlement service is providing nothing different than what a creditor would have done if the individual consumer had contacted that creditor. The analysis of each settlement never changes whether a debt settlement company is involved or not.

I think there were a couple of more. In terms of the fees, the fee structure is not widely available to consumers. Businesses don't seem to be competing in the broadcast advertising on fees. There's no simple explanation. So, I think that gives a good start in addition to many of the other things we heard.

So, I introduce to you a totally fictitious company called Acme Debt Relief. This is just a product of the FTC's very talented staff in the Division of Consumer and Business Education, completely fictional, but also sort of drawn from real world enforcement experiences and what we are seeing in the advertising. So, we're going to use this fake advertisement to draw out some of the issues that we have been talking about.

So, let me just start with these core claims that we see on the website and we've talked about all morning. We'll reduce your debt up to -- by 60 to 70 percent and be debt free in 12 to 24 months. Let's set aside the asterisk for right now. Let me ask the panel, what do you think these claims convey to a consumer? What specifically from a reasonable consumer's perspective? Steve, I'll start with you. What should a consumer take from this?

MR. HANNAN: Well, let's start with what the consumer is going to see first, guaranteed to eliminate your debt. Then we're going down to the reduce your debt by 60 to 70 percent. Number one, the consumer is going to see guaranteed. They're going to see eliminate your debt. They're going to see money savings and they're going to see a time frame.

MS. SAKER HRDY: But, specifically, when they see -- okay, so they're going to see a time frame. When it says reduce your debt within a certain period of time and I'm a consumer who has, say, $50,000 of unsecured debt. What do you think a consumer takes from that ad? I'm going to put in my information. What do they think they're going to --

MR. HANNAN: They think in 24 months they're going to be sitting pretty.

MS. SAKER HRDY: Okay. Michael, do you have a different view?

MR. MALLOW: Unfortunately, I do not have a different view. I tell my clients that if they use the word "guaranteed" in their marketing, the only thing that they're guaranteeing is an enforcement action.

MS. SAKER HRDY: There's a sound byte.

MR. MALLOW: There are people in this audience who have heard that sound byte before. Statistical percentages are very problematic. I don't know what the consumer is going to take from this because I don't understand what it means myself looking at it. I don't know if this means 60, 70 percent, including fees, excluding fees, whether it means at origination, whether it means at the time of settlement. I don't know if it means 12 to 24 months from the time that people start saving or 12 to 24 months from the time of enrollment in a program.

The problem is, in and of itself, it's open to many, many interpretations, and according to the Federal Trade Commission, when you have many, many interpretations, you can be guaranteed that it's the interpretation -- the consumer will take an interpretation that they think is most beneficial to them which will be least beneficial to the marketer. I think it is an extremely problematic marketing technique.

MS. SAKER HRDY: Carrie?

MS. LYBARKER: I think -- you know, when we say a reasonable consumer, what would the reasonable consumer do, a consumer that often goes to seek these kinds of services is not of the reasonable mind. They're a reasonable consumer in that situation where they have $50,000 worth of debt or $25,000 worth of debt and they're trying to scratch their way out of it. If you put those glasses on, I think they look at it for exactly what it says and what Steve said, my debt is going to be reduced by that percentage within that time period, it's my saving grace. That's what it is.

MS. SAKER HRDY: Do we have a consensus here that in order for this claim -- if they're going to make the claim, in order for it to be true, do we have consensus that these performance claims have to be true for most people? I'm trying to get at the issue that's been discussed about success rates. Does this claim have to be true for most people in order for ACME to make the claim truthfully? Michael?

MR. MALLOW: I know I'm going to get picked on a lot today. That is an issue that has been the subject of litigation. Unfortunately, it has not been resolved. The way that the claim is phrased, the common sense argument is, yeah, it should apply to most people. The problem is, I don't know how you would define the universe of most people in terms of that question. Is it most people who have been in the program for a sufficient amount of time for it to be meaningful?

In other words, if you have 10,000 clients of which 7,000 of them have only been in the program three months, most of your clients will not have experienced because they haven't been seasoned long enough for that to occur. Much like the statistic that we heard in the earlier session regarding the National Consumer Council where the graduate rate was only 1.4 percent. Well, at the time that that 1.4 percent was measured, 98 percent of the clients were in that program less than three years, which was the anticipated time frame.

MS. SAKER HRDY: So, Michael, would you say if you don't have a historical basis in your own database as a company to make this claim, should you be making the claim?

MR. MALLOW: I counsel clients that if -- that you need substantiation that is accurate to the representation made. So, if you're telling people we'll get you out -- you know, we'll save you 60 to 70 percent in 24 months and you have been around for two weeks, that's going to be a problem.

MS. SAKER HRDY: Moving into the smaller claims, there's a bullet fees only when you save, which from my review of the ad is the only indication that fees will be charged. Although there are subsequent marketing materials that we'll talk about in a minute. What's the view of the panel in terms of how best to advertise what this service costs? We know this is just the first advertising that a consumer is going to see. They're going to perhaps submit their information or just call directly the toll-free number and they're going to talk to a salesperson on the telephone. But in terms of competing on -- this is both a competition issue and a consumer protection issue.

If debt settlement companies want to compete for business and they want to compete on the fees that they charge and how reasonable they are, what's the best way at least in this initial salvo to consumers, and we know a lot of consumers do shop and do comparison shopping on the Internet, it's so easy to do that. How do you get across to consumers that this does cost and get their attention on that? Wesley?

MR. YOUNG: First of all, I did want to say that our position on this ad is -- TASC's position and our member companies is that this absolutely does not fit a good ad, it violates many of the TASC disclosures that we require members to make to consumers.

But regarding the fee, there was some comment today earlier about why isn't the fee disclosed up-front, is that being opaque and not transparent? And I think the thing that you need to remember is that this is a service, it's not a fixed product that comes packaged and is the same for everybody. The plans that we put up or create or set up for our consumers are very, very customized. And that's another thing is that we like to differentiate ourselves from the credit counseling industry. Our program is very labor intensive. And we found that typically for the same number of consumers being serviced, the debt settlement company will hire ten times as many employees as the credit counseling company will.

So, the reason why the cost is not right here on the front of the webpage is because that cost can't really determine or the cost to the consumer may not be determined until you go through an extensive conversation with the consumer. I mean, we have consulting calls with our clients 45 minutes to 90 minutes long, and that's just the first call.

MS. SAKER HRDY: Wesley, in light of that, do you think then the website, or do you think a best practice, particularly in website advertising and perhaps also television advertising, is just to be silent on the fees and then just sort of make sure you're very explicit in the subsequent marketing call? Because the consumer right now just has no idea how much this is going to cost looking at this initial ad.

MR. YOUNG: I think that it's -- I mean, there's no question that the consumer knows that there is going to be a fee for the charge, it's not going to be free. I think that a consumer is well educated enough to know that. So, we don't have a position on whether you have to disclose the fee on the webpage or not or that it will give a ballpark as to what the fee will be. But we do have a very clear policy that the fees must be completely broken down and clear on the client agreement and they must understand that before they enter the program and before they sign off on the program.

MS. SAKER HRDY: Carrie, do you have anything to share with us about what either your state laws or other state laws have to say about fees?

MS. LYBARKER: Sure. Our state law caps the fees, so it puts everybody on an even playing field. So, if they were to advertise those fees, then we would just say it had to be compliant with state law. And that's what most of them do. Most of our licensees will put down what fees are going to be charged just outright because it's a monthly fee.

MS. SAKER HRDY: Is that representative of other state laws?

MS. LYBARKER: You know, they really vary. Some just say the fees have to be reasonable, some set dollar caps, some set percentage caps. Like I said earlier, state laws really are varying on those issues. But, again, it goes back to making sure you're in compliance, as difficult as it may be.

MS. SAKER HRDY: Carrie, what's your advice to consumers, you know, a South Carolinian who might see this ad and say, hmm, I wonder how much they're going to charge me, does my state have any laws that would pertain to this?

MS. LYBARKER: And we get a lot of phone calls, too, especially from this web advertising and, luckily, we've done a heavy consumer education program in South Carolina so that they know to contact us and we send them a little brochure on their rights, including the fee caps and things of that nature. Sometimes -- and they always call to see if somebody is licensed and if they're not they say, well, what if I go ahead and contract with them, and I say, well, have fun. Here is my number because you may need it later on because I can't guarantee that your rights won't be violated if they're not complying with state law. So, it definitely goes back to that consumer education aspect.

MS. SAKER HRDY: Steve, we heard this morning that there's a concern that some marketing does not -- for debt settlement companies does not always distinguish a debt settlement service versus the traditional debt consolidation services offered by non-profit credit counseling agencies or others. Do you think consumers can tell the difference when looking at this ad or what should consumers be looking for if they happen to know there is two different kinds of debt services?

MR. HANNAN: This particular ad I don't believe they can differentiate. The one thing that they can tell, though, is that this is a better alternative to credit counseling. So that the ad tells you up-front one thing. And that is, that if you are equating non-profits with credit counseling, this is the better alternative to it.

Debt Relief is the name of the company, it's not debt settlement. So, there's no outward sign of that. The other thing that's here that the consumers are going to latch onto is the 100 percent money back guarantee. So, the question is, what does save mean? Does it mean whether they save money or whether they've saved enough money for the settlement actually to take place? And what does the guarantee mean? Because it has no ability at the moment to find out.

MS. SAKER HRDY: Anna, I'm going to ask you a question that I didn't tell you I was going to ask you. It just occurred to me, thinking about what we heard this morning from Ginny O'Neill that consumers see these ads, these performance claims promising fairly dramatic results and that when they are trying to contact their creditor or look at these claims, see what their options are, their hopes are raised perhaps that this is what they should be able to get when they call the creditor.

From American Express' perspective is that also your sense that when consumers see these kinds of claims and then they call up American Express, perhaps they're delinquent or looking for a work-out that they're not prepared to hear actually what the reality of the work-out options are for consumers, for them?

MS. FLORES: Our primary goal as a company is to work directly with our card members in resolving these sorts of issues. We don't feel that there is anything, any service or benefit that a debt settlement company can offer one of our card members that we can't offer ourselves directly.

Taking a look at this ad, as a company, we’re no strangers, we’re part of a very regulated industry and our problem, I guess, with the ad is that it’s sort of not so much what’s in the ad, but what’s not in the ad in terms of disclosures.

MS. SAKER HRDY: Well, that’s a perfect segue to our next issue which is, you know, we’ve heard what outside counsel here has said is best practices in terms of not making performance claims that you can’t back up. But say that ACME is pretty stubborn, Michael. They really want to make this claim. They think they do have consumers who have achieved these results and they do want to make the claim. But they want to qualify. They’re listening, Michael. They’re listening to what you’re saying.

And, so, you see they’ve added some asterisks, I don’t know -- except those of you who are very close to the screen, I don’t know if you can read the disclosure that says -- the disclosure associated with the asterisk says actual results will vary based on individual situations and your ability to save sufficient funds. Then it goes on. That’s kind of the core, I think, qualification there.

Michael, can this claim be qualified before we even get to the text of what they're trying to do?

MR. MALLOW: The answer is, can it be qualified? I guess, in theory, it can be qualified. Is the qualification that's on this particular marketing piece sufficient? Probably not. Because it's lacking specific information for a consumer to understand what it is that they're actually looking at. So, I think you can qualify a representation. It is definitely not the most conservative approach, it is an approach that would probably require the client to keep a good retainer with my firm.

MS. SAKER HRDY: Because I'm sure you'll be talking with them about the principles of clear and prominent disclosures under the FTC Act.

MR. MALLOW: Correct. Unfortunately, I'm just a little bit north of 40, so I have yet to purchase glasses to help me read close up.

MS. SAKER HRDY: Oh, that would be the prominent part of --

MR. MALLOW: But I can tell you the size of this font is difficult for me to see.

MS. SAKER HRDY: We're being a little obvious here. But, obviously, one of the key tenants of a clear and prominent disclosure is that the consumer can actually read it, in addition to being placed in a place on the ad that a consumer will read it. They can and they will read it.

MR. MALLOW: Correct. And we talk about above the fold and under the fold and Internet advertising is basically when you have things -- and this may very well be below the fold from what I'm looking at right now. Yeah, the disclaimers have to be in a place where somebody will readily see and understand the information and the representations that are being made.

Let me just backtrack one second on the fees. This marketing piece actually does make a representation regarding fees, and one that I think is probably worth talking about for two seconds. In the bullet below, reduce your debt by 60 to 70 percent, there's a statement that says, fees only when you save. That is an awfully dangerous statement regarding fees because the interpretation is going to be that the consumer doesn't pay a penny until there's a settlement that is consummated and paid and there is an actual savings. So, the company that's marketing under this piece, if they take any money before that event occurs, it's likely they're going to get themselves in trouble.

So, this is a good example of a tiny bit of information can get you in a whole lot of trouble if it's not consistent with what your practices are. So, we talked about fees, but I wanted to point out that there is something on this document regarding fees.

MS. SAKER HRDY: Let me segue to a question from the audience for Wesley Young. Wesley, could you explain the basis for your earlier statement that consumers know that debt settlement services have fees even if the ad doesn't disclose this fact? For example, many consumers may assume that there are non-profit or government-sponsored debt settlement services that are free to consumers just as there are non-profit organizations offering credit counseling services. Your clarification, please.

MR. YOUNG: Sure. In our experience, the consumers that come to us are well-educated. When they call a debt settlement company, it's rarely -- unless it's the first one that they call and they'll call two or three or four or five others. They call around and shop around before they decide on which debt settlement company they want to go with. So, consumers shop around. They're in for a good deal. They do their homework before they decide on which debt settlement company to go with.

MS. SAKER HRDY: Okay. Questions are coming in. I'll try and multi-task and keep the discussion flowing and look at questions. So, a consumer has looked at this website and said, you know, I would like to call and get some more information. So, they pick up the phone and they call the toll free number. So, now we're on to the telemarketing sales presentation.

Just the first question is -- and they have seen these performance claims. How does the telemarketer appropriately -- and I think we are of the mind that this claim needs some qualification. How do the telemarketers appropriately qualify and explain these performance claims, that they'll be able to reduce the debt in a certain time period? I throw it open to anybody. I've been picking on Michael.

It looks like I'm going to continue to pick on Michael. Or Wesley.

MR. MALLOW: Putting aside the initial problems of the marketing, at this point it's going to be very, very critical for the debt settlement company to make sure that they do articulate what the basis is for the claims in the marketing piece and in a manner that is going to be consumer understandable. And I would suggest that, again, overlooking the initial problems and they may be insurmountable in this piece. Not to suggest that you can necessarily correct the marketing issues that we see here, but for the purposes of discussion let's pretend that they are correctable. Not only would the telemarketer have, when asked, the obligation to clearly and simply identify the basis of the numbers, but based on this piece, I would say he probably has an affirmative obligation to do so. So, not to wait for the question to come in, well, what do you mean you can save me 60 to 70 percent?

Given that that representation is just hanging out there and you're trying to put some sense to it, part of the telemarketing campaign would be probably to address that affirmatively and not wait for the question. But, again, that assumes that we're in a world where this can be a correctable representation.

MS. SAKER HRDY: Okay, Steve, did you have something you wanted to say?

MS. HANNAN: I guess my question, also, though, would be, does the person on the other end of the phone, not the consumer but the business, are they telling them that ACME Debt Relief isn't going to be doing anything for the consumer, it's going to be somebody that they farm it out to because that's the second asterisk?

MS. SAKER HRDY: We hadn't gotten there yet, Steve.

MR. HANNAN: We haven't gotten there yet, but it's still another problem with who the consumer is dealing with.

MS. SAKER HRDY: So, Steve is referring to the second disclaimer that's beneath the asterisk that says -- and, again, for those of you who aren't close up to the screen -- ACME Debt does not directly offer any financial or legal advice or provide any financial or legal services. By filling out an application, you'll be referred to a registered licensed third party in the ACME Debt Network. Companies and law firms in the ACME Debt Network are registered licensed in your state and are in the highest standing with state and Federal entities where applicable.

So, what Steve is asking is if this is -- if ACME Debt Relief is actually not offering the services, what does this mean for consumers?

MS. LYBARKER: Can I jump in there, too?

MS. SAKER HRDY: Yes, Carrie.

MS. LYBARKER: Because I think that makes the substantiation even more difficult. Because if you're farming this out to all these third parties, then how do you really know the percentages that debt's being reduced by and the time period and things like that? I think it muddies the water to make substantiation even more difficult for them.

MS. SAKER HRDY: Although, just by a note, is ACME Debt Relief under the same obligation? If they're making the claims, are they under the same obligation as if they were actually providing the services?

MS. LYBARKER: Under our law, we would say so.

MS. SAKER HRDY: Yes, and I would agree. I think we have agreement with that. But Carrie's point is, if you are the lead generator and you're actually not providing the services, then it is your obligation to ensure that the claims that you're making on behalf of somebody are truthful and not deceptive.

MS. LYBARKER: And that would be more difficult to prove that, so they shouldn't be made in the first place.

MR. MALLOW: And let me step in a second and say, if you're a company that is acquiring leads from entities or from marketing pieces such as this, be careful because you may be buying the representations of the lead generation company that you're acquiring a lead from. You know, lead gen should be a very vanilla, very plain, no representation wherever possible kind of generation because, otherwise, like I said, if you're buying that lead, you may be very well buying this marketing piece as well.

So, do your due diligence on companies you're obtaining leads from to know that you're not buying this headache and this problem.

MR. YOUNG: And on behalf of TASC, we are constantly growing and learning and maturing. As the industry goes on, one of the issues that we do face now is realizing is, well, what kind of control do we have over lead generation providers that do provide us with some referrals? I think that is critical, it is something that we, as an organization, are looking at.

I did also want to address the telemarketing issue which -- and, obviously, with the understanding as the totality of this ad here is way off base and violates many standards. But this is still an ad. I think there needs to be a distinction between advertising and the actual consultation or the sale, so to speak, to the consumer. The ad should really be to generate interest. It needs to be fair, it needs to be accurate.

But are you going to be able to provide every disclosure in this ad? No. I mean, the debt settlement company needs to spend time on the phone with the consumer making sure they understand the risks of the program, make sure they understand how it operates and the obligations of the consumer in the program. But that takes time and it can’t all be done on an ad like this.

MS. SAKER HRDY: And that reflects, Wesley, a question that I received from the audience. Why is there a focus on getting the fees listed in the initial advertisement? Other industries do not advertise price, for instance, lawyers, doctors. What makes debt settlement so different?

Steve, do you have a view on that?

MR. HANNAN: Well, these are licensed and registered. They just don't say what they're licensed in or registered as. Debt settlement companies have many business models. I don't know how many are actually law firms, how many are private citizens. We don't know what the training standards are for the individuals that are going to be doing the debt settlement. We don't know if they're front-loaded or back-loaded fee schedules.

We have lead generators, we have -- the contracts that I have seen that the industry has with people that are lead generators pay for the number of leads provided. So, there are a number of things here that impact the consumer that they have no knowledge or information regarding. So, if you're a doctor or a lawyer, the consumer is going to know two things, one is you passed the bar and you're a member of the bar of your state or you have a license to practice medicine.

With debt settlement companies, I guess in South Carolina you have to be licensed if you're going to -- no matter where you're located, if you're going to do business there.

MS. SAKER HRDY: Soliciting or contracting with South Carolina consumers.

MR. HANNAN: So, the only thing that the consumers have is if there is a state licensing -- there is not in all states -- they can go to that licensing bureau if they know about it, and South Carolina does do a good job of getting their message out. For instance, though, in Maryland, we have debt management companies that are licensed but not debt settlement companies.

MS. SAKER HRDY: So, picking up on the fee discussion in light of these questions, for Michael and Wesley, so the bulk of this consultation and the screening process that happens during the telemarketing sales pitch and is also reflected in the sales contracts that we understand are fairly common, what is the best practice -- in terms of explaining to consumers once you have an understanding of what their personal debt profile is, what's the best practice in explaining to them what the fees are? How do you be transparent so that they really understand, as someone said this morning, where every penny that they're going to pay you goes?

MR. MALLOW: First of all, just to make sure that my statements were clear, I don't believe that there's an obligation to put a fee structure in your advertising up-front. I think if you say a little, you may have to say a lot, but I don't think there's an affirmative obligation to say what the structure is, what the actual fee is going to be. It is not something that I think is a required disclosure in an initial marketing piece, again, being mindful of if you say a little, you may have to say a lot.

In terms of the transparency, I'm not sure if your question means are you --

MS. SAKER HRDY: How do you get consumers to understand?

MR. MALLOW: There are different models and some models are more complex than others. I mean, there's the we're going to charge you 15 percent up-front. That is a very simple model to explain. How much debt are you taking under the program and you simply go through the math with the consumer.

Other business models, and they all have some advantages and disadvantages, are a little more complex and you have to spend the time to go through the consumer. I recommend to my clients that basically in the initial -- in the initial discussion with the consumers where you have an understanding of their debt profile, let's take somebody with a back-end model where there's a small up-front charge, a maintenance fee and a back-end success fee.

Going through each individual aspect with the consumer on the phone. Once you get a picture of their financial situation, giving them, to the extent possible, concrete numbers on what they are to pay to the extent it's somewhat contingent based on a successful settlement, putting down at least a mathematical calculation and what is identified as a clear example. In other words, you don't want to have the consumer mistake an example for what they believe is going to be a representation of what they will achieve. And getting confirmation from the consumer that they understand the basis of the fees.

MS. SAKER HRDY: Wesley, jump in at any time. How best to get confirmation that consumers understand whatever fees it is that the company is going to charge?

MR. MALLOW: Most of the clients that I deal with have a recordation process, a voice recording process in addition to initialed written disclosures. Then there's obviously better and less better practices on how to deal and when to do recording.

MS. SAKER HRDY: Wesley, do you have anything you want to chime in with on this?

MR. YOUNG: TASC standards are that we do make sure that the exact payment, the timing of the payment, the amount of the payment all be broken down in a written contract. We also, likewise, have the written disclosures to make sure that they understand that and then we require all of our written disclosures to be covered again on the phone with the consumer and most good debt settlement companies will record that conversation to make sure that that has been made clear so that they can prove that they were transparent with that.

MS. SAKER HRDY: Can you talk a little bit about -- I know TASC has, I think, some standardized customer service contracts, Wesley, is that right, that they hold out as perhaps models?

MR. YOUNG: We have standards in a lot of different areas. We have standards for marketing, we have standards for client agreements, client service, negotiation standards, record-keeping standards. So, yes, we don't dictate a specific form, but we do dictate that that client agreement must contain certain things. And our TASC requirements that they must meet for each of those areas is lengthy. It's six or seven pages long. So, it is very detailed.

MS. SAKER HRDY: I take it there's consensus, but I'm asking. Is there a consensus that once a consumer gets that contract that nothing in that contract should be contradicting what they've heard in the telemarketing sales presentation or in the initial ad? That's a highly leading question, but --

MR. YOUNG: Absolutely.

MS. SAKER HRDY: Presuming the answer is yes, how do you, as a compliance matter, ensure that that happens?

MR. YOUNG: Ensure that the?

MS. SAKER HRDY: Ensure that the telemarketers are saying everything that's conforming, that conforms with a contract so that the consumer doesn't see two -- you know, isn't faced with a conflict between what the telemarketer said and then what they see in a contract.

MR. YOUNG: There is a lot of repetition in terms of covering the materials again with them. Again, most companies will have a kind of closing call is what they call it. At the end, before the consumer is let off the phone, they have a list of things that they're required to cover with the consumer to make sure that they understand those things and, again, they record that phone call.

MS. LYBARKER: I have a question as well with regard to this.

MS. SAKER HRDY: Yes, Carrie?

MS. LYBARKER: Because in South Carolina, you have to have a written contract. There's no verbal contracts permitted. But other states I'm not sure. Just to ask, is the contract entered into on the phone and that's why the phone verification is given and then the written contract is sent in a majority of cases or when is the contract considered entered into in most situations?

MR. YOUNG: The TASC standards are that there must be written contracts.

MS. LYBARKER: Okay. So, the consumer can get the written contract and say, wait a minute, wait a minute, it looks different than what I heard from the sales call, I don't want the service.

MR. YOUNG: Right. Or I see a disclosure that, you know, for whatever reason wasn't made or I didn't really note it when we went through this 90-minute conversation. I kind of forgot about it, but here it is in writing. Yeah, I forgot about that, I don't like that. The consumer is given that opportunity.

MR. MALLOW: Alice, let me answer your question on how do you make sure. Essentially, I provide clients with somewhat of a guideline. How you make sure, number one, is a good training program for your employees, teach them to do the right things, teach them why doing the right things makes the best sense for them both economically and in terms of fairness to the consumer.

Number two is oversight. Checking the voice recordings against the contracts. Checking with consumers to make sure that they understand.

Number three is correction. When you see a problem as a result of the oversight program, correct it. Not only at the employee level and correction means dealing with the employee and if the employee is not panning out, regardless of how many consumers they bring into the program, you got to get rid of them. But, also, correction with the consumer. Go back. Do it again. Make sure the consumer understands.

Number four, and this is probably the most important one, is watch your complaint history. You can tell a lot about compliance based on what you're hearing from consumers by way of complaint. Don't wait for BBB. Make sure your customer service is monitoring what they are hearing on the phone. If you hear over and over again, well, I didn't know or you told me and it's inconsistent, you got to track that down. That's your first sign you may have a problem.

And then the fifth is be proactive. Meaning watch what other companies are potentially having as problems and try to fix them before they become yours. So, that's how I would advise clients in terms of making sure that the program is working.

MS. SAKER HRDY: We have a question from the audience that I would like to ask now. The question is, if each consumer situation is so different and each program is so customized, how can a debt settlement company possibly make any debt reduction or time frame claims at all? I throw that out there. Go ahead.

MR. YOUNG: Well, there are certain time frames. I mean, obviously, the reason the programs are 36 months long is because the statute of limitations in many states are four years. So, the program must be completed by that time before the creditor absolutely is forced to take some kind of legal action.

The timing of it is based on our experience. We have been very successful, the results we have gotten from our consumers are based on relationships we have with creditors, or even if they're not good relationships, with the past history of how we have been able to deal with those companies. So, there's no question that our programs do work for consumers. So, the timing is based on what we've experienced in the past.

MS. SAKER HRDY: We have another question. How can a consumer save, by that I think the person meant save money for a possible settlement, if the consumer presently is unable to pay his or her current debt load?

Creditors equate consumer involvement with the debt settlement company with a cessation of payment. Is that the scheme under which a consumer begins to save?

MR. YOUNG: The way I understand the question is even national consumer groups will acknowledge that for consumers to get out of debt, there needs to be -- for many of them, there needs to be some reduction in the amount of debt. The consumers that come to us, what we do is we pre-screen our clients. We understand that debt settlement is not for every consumer out there. Bankruptcy is appropriate for some people, credit counseling is appropriate for some people. Debt settlement is appropriate for a group of people as well.

And in evaluating that, again, we don't tell the consumers not to make payments to the creditors, but by the nature of what we do, the consumer can't afford to make those minimum payments. Because the anticipated pay-off of this debt is less than what they owe, let's say 50 percent, the amount of money that they're going to set aside will be less than what they are currently paying to their creditors in minimum payments.

So, what ends up happening is the amounts that they were paying creditors that they can't afford to make now goes towards their savings and that's how they save up for those settlements.

MS. SAKER HRDY: And in that situation, Wesley, if you can expound on it, what communication is made to the creditor if the consumer is at the point of just saving for a settlement and using their savings toward the settlement instead of paying monthly?

MR. YOUNG: It all depends on the consumer. Again, it's very labor intensive and very customized depending on which creditor we're dealing with, even maybe down to which collection agency we're dealing with. Some creditors, we have good relationships with that we will engage right away from day one. We'll tell them this consumer is in our program. They're committed to setting aside money to make payment back. They're not trying to default on their debt. They do want to pay you back. They can't pay you in full. And we have creditors that say, fine, okay, well, we'll stop the collection efforts. You know, we will kind of postpone that until your consumer can save enough money.

We have other creditors that aren't quite as friendly to us, but do work with us and we may not engage them until a consumer has enough money saved up already.

MS. SAKER HRDY: That brings up another point, Wesley, I wanted to mention. We have been talking a lot and a number of these questions that are coming up here are about what creditors' policies are with respect to debt settlement companies. We've heard that, obviously, some creditors are dealing with debt settlement companies, they don't all have written policies. Some are saying that they don't deal with debt settlement companies and, yet, I know there's -- there are industry members here who say that we're settling debts with them all the time.

But knowing that and based on what you said, Wesley, that some creditors are perhaps more willing to work with debt settlement companies than others, what's the obligation in this screening call of the debt settlement company once you hear all the details of a particular consumer's debt profile to explain to them which debts are more likely to be settled than others?

MR. YOUNG: I think it's good policy as well as good practice to set proper client expectations. I mean, I think everyone will agree that complaints come when consumers don't get what they expect. And, so, if there is a creditor that at that point is being very aggressive and that is being difficult, it is, I would say, the responsibility of the debt settlement company to disclose that and make that clear to the consumer.

Now, some of the things that we do see, though, is that with creditors their policies constantly change. Some creditors that were difficult to deal with six months ago are now working very well with us. So, again, that's part of the ebb and flow of operating a debt settlement company and representing the consumer in a debt settlement plan.

MS. SAKER HRDY: So, speaking of creditors, Anna, do you want to just talk a little bit more about American Express' policy regarding debt settlement companies?

MS. FLORES: Sure, I'd be happy to. Contrary to what may have been discussed in the panel before and as some of my colleagues on the panel might contradict this as well, our policy is not to work -- not to accept settlements from debt settlement companies. Our goal, our objective is to work primarily with our card members. We think we offer a range of solutions to our card members and we don't really feel that debt settlement companies are doing anything more, providing any more value to consumers than we could do dealing with them directly.

Having said that, we do, when necessary, when appropriate, we do refer consumers, as appropriate, to non-profit credit counseling services. We feel that those organizations offer a more holistic approach to dealing with consumers. It's not just the issue of let's settle this debt. The issue is more, okay, let's settle the debt but how are you going to alter, what are you going to learn, how are you going to change your behavior going forward so that you have a strong financial footing as you get past whatever the current financial circumstance is?

We feel that non-profit credit counseling services offer those types of value services that debt settlement companies -- there was some discussion this morning as to whether they do or don't. We're not convinced.

MS. SAKER HRDY: Michael wants to say something.

MR. MALLOW: Let me jump in on this. Because I think what's happening, to some extent, with this industry is certain statements are being focused on to the exclusion of what's actually occurring. This notion of debt negotiation companies are telling consumers not to pay their debts or debt negotiation companies --

MS. SAKER HRDY: You mean debt settlement.

MR. MALLOW: Debt settlement companies. Debt settlement companies do not educate consumers on what to do in terms of their financial situation. Both of those statements in the abstract are very misleading and deceiving.

MS. SAKER HRDY: Well, unless Amex is speaking on behalf of their own experience, right, Michael? You wouldn't deny them their experience.

MR. MALLOW: Well, let me comment because I think it's appropriate for Amex as well. When a person is signing up for a debt settlement company, what is initially happening is they're taking their available income and they're stabilizing their debt situation. So, Dr. Manning is talking about the spiraling downturn of a consumer who gets more entrenched in debt with increasing debt obligation and having to service that debt.

So, initial income, initial available income is used to stabilize the person's situation. How are they doing that? Well, you need to live without your credit cards. You can only buy that which you can afford. Because one of the requirements of a debt settlement is that you don't keep spending on credit cards, so you stabilize the situation. Now, what have you taught the consumer?

MS. SAKER HRDY: How do you enforce that? You're telling a consumer you shouldn't be using your credit card. How does a debt settlement company enforce that?

MR. MALLOW: That is actually very easy to enforce. What happens is creditors are usually the ones who will let you know, wait a second, you're telling me this person cannot afford to pay their debts? Why is it that they just opened up another credit card and are increasing their spending? How do they know that? The credit card companies have access to credit reports.

So, number one, the consumer is being stabilized. The consumer must learn to live and purchase only that which the consumer can afford to purchase at that time. They have to start living on a cash basis. Once you do the financial plan and you determine what does that person need to live, the excess money is usually used to help put into savings to relieve the debt situation.

So, as a necessary component of a successful debt settlement program not only is the consumer being taught how to budget, they're being forced how to live that way. And education, as we all know from going through school, oftentimes you need to force people to go to school and to study and to learn rather than just suggesting that that might be a good idea. So every debt settlement program that's successful has a necessary education component to it. That is not only an education component, but a forced way to live.

And the notion that people are telling consumers to stop paying their debts is a misnomer as well. What they're saying is use the money first that you have to pay for those necessary expenses in life so that you stabilize your debt situation and don't continue to spiral down. With the remainder, pay off what you have that's in backlog.

MS. LYBARKER: Just to add to that as well, in my experience through our enforcement efforts in South Carolina, we have seen several contracts that say stop paying your creditors. If a lawsuit is filed, this is what you do. Of course, we have several problems with that, too. I don't know if stabilizing is really the proper word to use because we're also seeing creditors being more litigious. They can go to magistrate court for a credit card debt up to $7,500, and it's cheaper for them to do that than to hire a third party debt collector or whatever else to go ahead and get a judgment against the consumer. Because the environment has changed.

Creditors are hurting for money as well as consumers. They're lowering credit limits and trying to squeeze whatever they can out of the consumer. So, the environment is definitely changing, but I have had that same experience with the stop paying your creditors and the unauthorized practice of law issues, too, that comes along with saying this is what you do when a lawsuit has been filed.

MS. SAKER HRDY: I wanted to follow up with

Anna. We've heard from you, but also from Ginny O'Neill that this is -- and some of these questions are reflecting -- and this morning, too. This is something a consumer could do him or herself.

So, Anna, what is American Express' advice to a consumer who has an Amex card and is delinquent and is looking at all these different options and what can that consumer expect, in the first instance, when they call American Express and they're trying to get a customer service representative on the phone? What can they expect if they're delinquent and they're trying to determine what the work-out options are?

MS. FLORES: Well, first of all, we want our card members to call us. We do want them to call us. And they will get a live customer service professional trained person on the phone who will discuss their individual circumstance with them. If they're not able to resolve the issue during that initial phone call, we have a specialized unit of trained customer care professionals who will then work with that consumer to work out whatever the solution may be. It can be a repayment plan, it can be a settlement, it can be any number of things, but it's also very unique and very -- it depends on every individual circumstance. There is no one size fits all.

I can't tell you, you know, when a consumer calls this is what's going to happen and this is all that's going to happen. It varies depending on what our card members' needs are and what we believe is an equitable solution.

MS. SAKER HRDY: In terms of current trends, Anna, can you speak to any trends that this specialized unit might be seeing in terms of not just call volume but the types of work-outs that are being offered? Is there sort of current discussions in Amex about what kind of work-out options?

MS. FLORES: I really don't have that information, but I can certainly follow up and provide it for the record.

MS. SAKER HRDY: That would be great.

MR. YOUNG: Can I make a comment about the -- there's been several statements today about how a consumer could do this on their own. There might be a small subset of consumers that could do this on their own. I mean, they could do it on their own. I mean, you could change your oil on your own, you can do many things on your own.

But the problem we have here is you have consumers that are in financial difficulty. Many of them have gotten there because of that exact lack of discipline or inability to handle their own finances. So, to say that a consumer could do this on their own, sure, they could, but could they use the help? Absolutely, they could use the help. Just like someone who is working out trying to get in shape. What does the trainer do? Holds the person's hand, guides them, gives them encouragement, provides some accountability, keeps them on track. And that's kind of the service that we provide.

I'd also like to add that a lot of consumers are really fearful. I mean, they're behind on their debt, they're getting collection calls. The last thing they want to do is pick up the phone and talk to the creditor. A lot of people don't really know, well, what do I say, what do I do? And I understand the policy of we want to work with consumers, but the reality is a lot of these consumers need someone who they feel is on their side as an advocate for them to help them through this.

And the last thing is that for someone like American Express to look at a consumer and say, I'm going to help you with your debt, it's a very narrow view because all you're looking at or all that creditor is looking at is that one debt with that consumer.

MS. SAKER HRDY: Can I just ask Anna, is that true, that when you call Amex they're only concerned about the Amex debt? Do they make any inquiries about their other unsecured debt?

MS. FLORES: When we work with individual consumers as is our primary goal, it really differs with every circumstance. Every answer is not the same for any consumer. But I wanted to get to something that Wesley just said in terms of as a company we don't believe that debt settlement, in and of itself, is a bad thing. What we are concerned about is the reason why we are here today, is that there are many more problems and concerns not so much with the so-called good debt settlement companies, but there are consumer protection issues that Travis raised earlier this morning. He had a list of six or seven.

We have the same concerns. We don't have the same level of experience with debt settlement companies because we don't work with them. But we do encourage other organizations and Federal authorities, such as the Federal Trade Commission and the state, to look into the issue as you are doing today and ensure that consumers are protected across the board, not just from a select few of agencies.

MS. SAKER HRDY: Wesley, I know you might have had one other thing to say, but let me just throw out another question for everyone on the panel. In light of our discussion about the sales presentations that consumers are receiving from debt settlement companies, do our panelists think that the current laws, both Federal and state, are adequate to protect consumers specifically as to fees? We know that there are fee caps, as Carrie has talked about, in the states, but there are no such limitations at the Federal level.

So, do you believe that as it stands today the current laws protect consumers and provide a sufficient competitive marketplace for businesses in this industry? Steve?

MR. HANNAN: I trust state level before I trust Federal level. I trust --

MS. SAKER HRDY: So, is your answer yes, you think the state laws are adequate?

(Laughter.)

MR. MALLOW: No, because not all states have laws. So, the answer to the question is no. There's no adequacy except in the states where they have licensing and the ability to do audits and those kinds of things because they actually impact the companies with consumer protections.

The other thing that we have here is we're talking about small percentages of this except nobody talks about how much the rejection rate is. There should be a rejection rate at all of these companies.

MS. SAKER HRDY: What do you mean by rejection rate, Steve?

MR. HANNAN: Consumers that don't meet the standards that they've set for debt settlement.

MS. SAKER HRDY: So, is that a consumer who doesn't even enroll or is that a consumer who pays in --

MR. HANNAN: That's a consumer that comes to them to try to enroll that shouldn't because it's not proper. And we have heard that only 40 percent of those that don't qualify for debt management should qualify for debt settlement. But nobody has told us that they've rejected any consumer that showed up with the fee.

So the question is, are there rejections being made?

MS. SAKER HRDY: And because the laws don't apply to that, you're saying then the laws are not adequate?

MR. HANNAN: Well, we don't have those laws in every state and we don't have any fee caps at the Federal level. And we have no way that an individual consumer with a Federal statute can seek a recourse with a company that may be in another state because these are poor people to start with, they don't have any money, they're not going to hire an attorney. So, there's no recourse available to them.

MS. SAKER HRDY: Carrie?

MS. LYBARKER: I love South Carolina’s law. It’s a great law with fee capping regulations. But there’s always room for improvement and we’re actually looking at a regulation right now to make sure -- now that we have seen everything with all the industries because our law actually applies to several industries to make sure that it’s serving its purpose. But at the same time -- and we also have a private cause of action in South Carolina under the law. It has taken four years for that to be utilized. I’m waiting to be called as a witness or something. It would be exciting to take part in it.

But it’s against debt settlement companies from the West Coast. And there are two class actions that are filed against two different ones, so it will be interesting to see how those play out. But I always think there’s room for improvement when you’re drafting regulations and laws. You can’t take every scenario into account or see what’s going to play out. But I definitely think that there is a need for fee caps whether it be in a dollar amount or a percentage amount. I don’t think the word --

MS. SAKER HRDY: And how does South Carolina’s law operate?

MS. LYBARKER: We're caps at dollars. We do dollar amounts for the initial consultation as well as monthly maintenance. Some state laws say reasonable. What is reasonable? I mean, you can ask ten different people and get ten different answers. So, I think that there has to be some sort of definitive cap or percentage rate that is consumer protective in every state and I think that the state level regulation is a great place for it just because we're more on the front lines than the Federal level and we're very appreciative of our FTC counterparts at the Federal level and the help we have gotten from them, as well. But the feds are strapped for cash and time and things like that, as well, so I think it's nice to have it at the state level, too, because we may have more of an opportunity to go after it and, then hopefully, to do joint state actions, as well.

MS. SAKER HRDY: Michael?

MR. MALLOW: In terms of fees, the truth is, that is a place that the market should, should determine what is competitive and what's not competitive. The problem is with an absence of good guidance, a good regulatory scheme to ensure an even playing field in terms of the delivery of service, the consumers cannot do apples to apples comparison and it does not give the market an ability to determine what is a reasonable and appropriate fee for the services being rendered.

So, unlike Steve, I think that a Federal scheme would be much better for the industry as long as it creates an even, competitive field for debt settlement companies so that they can attract customers through good customer service and competitive rates.

And Carolyn mentioned this. There were plenty of people out there who were willing to enforce a regulatory scheme if there's a private right of action. The plaintiff's class action lawyer is very robust, and if they have a scheme in which to play off of, you'll see extraordinary enforcement efforts. Dare I say that you would have more company versus company interaction to ensure compliance because the good companies who are following a scheme that is appropriate would actively regulate by pursuing actions against those competitors who do not follow the scheme and create a competitive advantage that way.

MS. SAKER HRDY: So, Michael, in terms of the state of the market right now, do you think there should be more robust fee caps along the lines of the South Carolina law?

MR. MALLOW: I don't think fee caps are necessarily a good idea. The reason for this is I don't know that enough study has been done on the costs of delivering the service in order to do --

MS. SAKER HRDY: And how do we get those studies?

MR. MALLOW: Well, you would have to have cooperation and a level of trust established with the regulators to get that cooperation so that a meaningful study can be done or, alternatively, let the market decide what an appropriate fee is, but, again, creating a level playing field for all competitors so that price becomes a distinguishing factor between one company to another.

MS. SAKER HRDY: Wesley?

MR. YOUNG: Yeah, I wanted to address a few things. First, the question of whether or not we reject clients that call us. Absolutely, we reject. We have pre-screening qualifications, eligibility guidelines. We want to make sure, number one, can they afford the program? I mean, if they don't have a job, they can't afford the program. Do they make too much money? I mean, if they have -- after we do a budget with them, if they have $2,000 left over, they just need to start paying more money to their creditors, add to their minimum payments.

We screen based on what type of debt it is, based on the age of debt, maybe the stage of collection. There's a lot of different factors that come into play in screening a client. We refer clients to credit counseling. We refer clients to bankruptcy. So, absolutely, we reject clients. So, I did want to address that.

The second thing with regards to the fees, the market is remarkably efficient. As I said, the consumers call, you know, five, six different debt settlement companies comparing costs and comparing prices. We found that with, at least in the states where they have the flat fee cap, not a $50 a month type of cap, we found that the market usually is below those fee caps.

Now, in terms of a state like South Carolina, the reason why the debt settlement companies usually have a problem with that fee cap is that our programs are not that long. That kind of a fee structure where it's based on a monthly basis, if you have a five or six-year program where you're collecting $50 a month, that fee adds up significantly over a long period. But our programs usually last no more than three years, sometimes around two years. And to limit us in terms of our fee to a monthly basis doesn't match what our business model structure is. It doesn't compensate us correctly, so to speak.

And, again, I would like to emphasize the labor cost involved in running our business. We estimate that for the same number of clients we hire ten times more employees to help run and manage and deal with the customized client service that's needed for each consumer.

So, are there adequate laws out there? In some states, there are in terms of consumer protection. But we do disagree with a lot of the fee caps because they're not structured to meet our business model. A lot of the laws that are out there were designed based on credit counseling companies. I know that there was some discussion about that. We're a mature industry, but, frankly, we haven't really come into play and weren't considered in the regulations when they were drafted until maybe the last two or three years. So, any law that was drafted more than three years ago was based on the credit counseling model.

MS. SAKER HRDY: So, let me just ask a question there, Wesley, because there are a lot of questions coming in about fees. What makes you different -- a for-profit debt settlement company, if you're offering credit counseling and you're working with a creditor to try and get a debt settlement, your overhead is substantially higher -- I'm asking. Is your overhead substantially higher than the non-profit credit counseling agency who can live with those caps?

Can you sort of explain what -- in terms of the business model, why your overhead is so much higher than a non-profit credit counselor who could have as many sales or customer representatives in their phone room as you do?

MR. YOUNG: Well, the reason is the credit counseling model is based off of an agreement and a structure that is set up from day one. It's an amortized payment schedule over five years or so. But that never changes, so the consumer doesn't have to be contacted because what they do is they just make their fixed monthly payment to the provider who forwards that on to the creditor. There's not much interaction required between the credit counseling or debt management plan provider and the consumer.

For us, it's a moving target. We have to keep up with where the debt is, which collection agency it's with, what the outstanding debt amount is, is the consumer saving, and that's really the key. You know, we contact that consumer usually no less than monthly -- that doesn't include the consumer contacting us -- to find out are you on target with your savings, are you keeping up with your budget that we set up with you and the plan that we set up for you or do you have any extra savings that you might be able to put aside so that we can try and settle this debt more quickly?

It's just a much more involved with the consumer on a regular contact basis that requires a lot more client services, client outreach or client calls. We get a lot of documentation from them. We get updates on what's going on on the collection side of things, what actions are the creditors taking. So, there's so much interaction between us and the consumer throughout the life of the plan that makes it more expensive for us.

MS. SAKER HRDY: Okay. In light of what you just said, what is TASC's about the front-loaded fee business model where the debt settlement company is taking hundreds, maybe thousands of dollars up-front in their fee before the consumer is saving anything for the debt settlement fund?

MR. YOUNG: TASC does --

MS. SAKER HRDY: Do you need all of that up-front fee to cover your overhead even if it means the consumer is tapped out by the time they pay the up-front fee and, so, they can't participate in the settlement program.

MR. YOUNG: Well, TASC doesn't take a position on making you follow a certain fee model. I can tell you that we have members that have offered both fee models, both the front fee model where the fee is spread out over half the length of the program versus the back-end fee model where it's based off a percentage of savings. Those members that have offered that found that nine out of ten consumers chose the flat fee model. I believe because it's simpler and usually ends up being a lower cost.

MS. SAKER HRDY: Are there any members who are doing the front end, like basically the up-front fee structure where they pay the fee in total up-front before they start saving for the settlement?

MR. YOUNG: No, I think that one of the fee models that was explained was that there was maybe a larger portion of the fee that was collected in the first four months, but the fee is still spread out over the entire -- over at least half the length of the program. TASC has sponsored legislation or supported legislation or even suggested language that said the fee must be spread out over no less than half the length of the program. Because the consumer does -- you have to set them up for success and you have to have some means for the consumer to save.

So, while we don't have a written policy that says, no -- to have a policy that says we won't do any service for you until you've paid the fees in full is not -- I don't think is a supportable fee model.

Now, one thing I have, I can say is one of the problems that we do face on a practical reality level, is even on a fee schedule where it's spread over the first half of the program, we graduate consumers earlier than they finish paying us. We now have a problem collecting the fee. And I think that may be a problem, also, for the back-end fee models who collect the bulk of their fee on the back end. All of a sudden, do we become a creditor of the consumer? It gets messy and it's difficult for the debt settlement company when we have done the service and then we don't get paid.

MS. SAKER HRDY: Do you want to say something, Steve?

MR. HANNAN: I guess my question is, if you do it a front-end loaded fee schedule over half the length of the program, don't you create a situation where you have a liability to the company for the second half of that program rather than any benefit that would keep them working for the consumer? Don't you have to keep consumers coming in the front door in order for the company to continue to function?

MR. YOUNG: That's a cash flow issue and the company needs to look at that from an accounting standpoint. They need to make sure they've got enough savings to make sure that they can -- if they were to close the door for some reason, I guess, to be able to service the consumers for the rest of the time but that's -- is that what you were asking?

MR. HANNAN: That's what I'm asking. I mean, that's the classic ponzi scheme. So, that's why I'm wondering if that's what we would be running into with a front loaded fee schedule.

MR. YOUNG: I know that we've discussed whether or not there's an incentive for the debt settlement company to continue servicing the consumer after they have been paid. Every company I know compensates their negotiators based on how well they negotiate. So, there's a built-in incentive for the debt settlement company to still do as well as they can for the consumer and perhaps get the consumer out of the program as quickly as possible so that they're not a liability on the books.

MS. SAKER HRDY: So, let me follow up and just raise something that Travis Plunkett said this morning and throw it open to everyone. In light of, Wesley, what you've discussed about TASC's guidelines not favoring necessarily one fee structure over another, given that consumers who come to debt settlement companies are generally in a pretty vulnerable precarious financial state, is there a policy argument that settlement companies shouldn't take any fees until the service is provided?

In other words, Travis made the argument that it should be like the Credit Repair Organizations Act that says until a service is provided, the company cannot take any fees for the services.

MR. YOUNG: Our position on that is we know very few, if any, businesses other than credit repair organizations as mandated by Congress, that don't allow a company to get paid for work that they're doing and wait until the very end.

MS. SAKER HRDY: Any other views?

MS. LYBARKER: I think it may be a question just from the models that I've seen as far as front-end fee paying or fee payment, is that the work doesn't occur until the fee is paid in full. So, what are you getting paid for? It may not be the model that your members abide by or anything like that, but just from what we have seen from the contracts and stuff like that through the enforcement efforts.

I think that addresses that problem of what are they paying for and maybe there shouldn't be any sort of payment until activity starts beginning on the account.

MR. YOUNG: I can tell you one result of that would be that you would have no new companies entering the market because they wouldn't get paid for three years. You'd have only very large companies that can fund that kind of a fee model in place and you'd lose competition.

MR. MALLOW: They like that.

MS. LYBARKER: Are you saying we're wondering if that's a con or not?

(Laughter.)

MR. MALLOW: Yeah, I wasn't wondering whether you thought that was a con or not, despite the southern hospitality and the accent. I have no doubt where your position is on that.

Let me say this, number one, it's somewhat disingenuous to suggest that debt settlement companies not make a single penny until there's a settlement achieved because that's not the model that is being used by consumer credit counseling services as we speak now. I mean, fair share is generally paid on a distribution basis and state fees, such as in California where a consumer credit counseling is permitted to take 10 percent of distribution as a fee on to the consumer is taken when essentially the consumer credit counseling service acts as a conduit.

So, they have done really nothing other than let the money flow through their account into the account of the creditor and for which they're getting a fair share and potentially additional fees from the consumer. So, it's not a fair suggestion, it's not a fair question, it's somewhat disingenuous in my opinion.

MS. SAKER HRDY: I will just interject that I got a question that said lawyer's fees are usually a percentage based on success, the lawyer takes the risk of not making any money if unsuccessful, why should this be any different?

MR. MALLOW: I can tell you that's not my fee model.

(Laughter.)

MR. MALLOW: I suspect when the FTC comes knocking at a perspective client's door, I can tell you that the up-front fee is much higher than it would be when the company is coming to me asking for counseling, for example. So, you know, a much lower chance of success, a much higher fee and retainer up-front. Yes. I don't get to draw down on that retainer until I've billed my hours. But I have used hours as the unit of measurement to determine how much work I have done.

There are other lawyers who will say I want -- my fee is you pay me a flat fee up-front to defend the case. It's a non-refundable retainer. So, that unit of measurement is taking on the case. I'm obligated to then work through the case. Other lawyers will take a contingency fee on the back end, the unit of measurement being the entire length of the case and then the fee being determined on the success. So, even in the lawyer model, you have various models depending on the nature of the work done and how you distinguish the unit of work.

I don't believe that in a debt settlement company the unit of work is the successful completion of the settlement and the satisfaction thereof. There is significant work that goes into play ahead of time. There is relationship built with or a history built in terms of being able to deliver on promises not only to the consumer, but the promises that are made to creditors on how their clients will perform if there's a structured settlement or will perform when you make the statement to a creditor that, hey, we have somebody in our program who is trying to save up money to make a settlement to the best of their ability.

So, all of that gets taken into consideration in the fee model. It's not a matter of whether there should be up-front, it's a matter of how much and how much is appropriate, how much can the market bear with the idea that, theoretically, the better companies will ensure greater success and have done the analysis necessary to determine what dollar figure up-front ensures the greatest return for both the consumer and the company.

MS. SAKER HRDY: So, in light of this last bit of discussion, I have several questions directed to TASC that go to monitoring. It's one thing and it's a very important thing for a trade association to have guidelines and models for their members, but then it's a whole other thing to know what happens in practice in terms of the members.

This also goes to a point that was made this morning in terms of knowing what actually happens, what are the actual statistics that are happening to consumers who enroll in debt settlement companies? Because unless there's an enforcement case, there isn't any data really to help us all understand what's happening to consumers.

So, first, Wesley, the question, a couple of questions, does TASC monitor its members, does it have any way to assess how they're complying with their guidelines?

MR. YOUNG: We do monitor our members. We feel comfortable with our standards now and we started and implemented what we call a secret shopper program. This is a third party vendor that does this work that we pay them for. They pose as a consumer and they call every single one of our member companies. We've asked them to make at least two calls per company over a four-month period. We're about two months into the program.

So, they will go through and they've got a list of what our standards are, what disclosures the debt settlement company is supposed to make and they go through and pose as a shopper all the way through getting a contract. So, they will report back to us if there is any companies that are not in compliance with our standards. What we will do is we will address those with the company, we will give them an opportunity to fix the problems and we will continue to secret shop them.

If they do not fix the problems that we have asked them to, that they have been lacking in compliance in, then we will take their membership away.

The other thing --

MS. SAKER HRDY: And will you make that public?

MR. YOUNG: Yes.

MS. SAKER HRDY: Any of that public? How would you make that public?

MR. YOUNG: You mean the results?

MS. SAKER HRDY: Um-hum.

MR. YOUNG: I don't know if we've decided --

MS. SAKER HRDY: Just from a consumer

standpoint, if they say, ooh, this is a member of TASC, I can trust this debt settlement company. But if, in fact, the membership is revoked, how does the consumer know that?

MR. YOUNG: Well, all of our members have to use a TASC logo on their website to identify them as a TASC member and, further, that logo links to the disclosures, kind of a PDF file of the disclosures that we require our members to make. So, they will not be able to use that any more. Their name will be removed from our website. So, the public will know that --

MS. SAKER HRDY: And you monitor that? You monitor that?

MR. YOUNG: Yes. In fact, what we usually monitor is companies that place our logo on their website and aren't actually members is a big problem for us.

So, yes, we do monitor that. We are rolling out in five days another compliance program, which is a website review, kind of like this ad that we were looking at today. We've set up some standards for advertising and what they can -- because so much of our business is done online, consumers do research online, we thought it was important enough that we need to make sure that our members are representing their services properly online before they get to talk to a live telemarketing person.

So, we'll do the same thing. We'll give them an opportunity -- if they are not compliant on their website, we'll give them an opportunity to fix that. If they don't fix it, then that is grounds for revoking their membership

MS. SAKER HRDY: Wesley, another question for you. Does TASC require specific credentialing for its debt settlement counselors? If not, then how can you ensure that these counselors will effectively negotiate debt settlements that are better than what or maybe the same as what consumers could achieve on their own?

MR. YOUNG: Those are two different roles. One is presenting what the program is and what the plan is. The other is the actual servicing and negotiating of the debt, and those are separate. We have, number one, a certification program through which both of those individuals or client service people in the company can be certified.

We also have an accreditation program which is very popular. It's an extremely detailed audit of the company to make sure that they are following TASC guidelines and other extra guidelines. The backlog for making an appointment with that accreditation company -- it's a company called BSI -- is six months. So, if you wanted to try and get accredited today, you would have to wait, at the very minimum, six months, and the wait's probably longer now. But that's how anxious our members are to try and get accredited.

MS. SAKER HRDY: I know Michael wants to say something about self-regulation. But before we get there, we've had a couple of questions and it was on our list of questions to talk about the interaction between debt settlement companies and third party debt collectors and debt buyer companies.

So, if you're a consumer who has gotten to the point where you have a third party debt collector calling you to collect on a delinquent debt and you're calling a debt settlement company, Michael or Wesley or Anna, if you want to explain what happens next in terms of the debt settlement companies' interaction with the debt collector? Or the consumer, what does the consumer say to a debt collector if they've enrolled into a debt settlement program? How does that sort of all play out for a consumer?

MR. YOUNG: I mean, part of our disclosure is, obviously, we cannot stop a creditor from calling and trying to collect on the debt. That's part of our disclosure. We need to make sure that the consumer understands that as part of entering our program. But what we can do is we can help train or educate the consumer as to their rights. We can help them try to manage the calls. Obviously, one of the big issues for our clients is credit harassment, getting calls all the time and at work. So, that is a big concern. One of the most common questions we get when we get a call from a client is what do I do, how can I do this? We've got lots of resources to help them with that.

MS. LYBARKER: I have a question regarding that. Do you guys ever refer the consumer to the consumer protection agency? Most states have an individual Debt Collection Practices Act as well that may go further than the Federal law. So, the consumer may have more rights than you may be aware of. Do you guys refer them to us so that they know their rights and the state law as well?

MR. YOUNG: We require our client services folks to have a copy of the FDCPA and just be able to present that to the client. Other than that, in terms of state specific, no, we don't, because that does get very complex.

MS. SAKER HRDY: Wesley, I want to make sure I understood your answer. Will a debt settlement company, once they know that the consumer is being called by a third party debt collector or a debt buyer, will the debt settlement company then begin to negotiate with that third party debt collector or the debt settlement company -- or the debt buyer company? Sorry.

MR. YOUNG: Yes.

MS. SAKER HRDY: I just wanted to get that out, that part of it out.

MR. YOUNG: We do negotiate absolutely with original creditors. With every major creditor out there, we negotiate with. We negotiate with the collection agencies they assign debt to and then we negotiate -- if the creditor sells the debt to a debt buyer, we negotiate with them as well.

MS. SAKER HRDY: And when that's happening, is that when the consumer can expect that the debt collector will stop calling them because the debt collector is negotiating with the debt settlement company? Is that something a consumer could expect?

MR. YOUNG: Usually those are two different departments. The people we negotiate with aren't the same people that are calling the consumer to collect on their debt. But --

MS. SAKER HRDY: Is there a way to get those two people to talk to each other so that a consumer isn't under -- you know, isn't getting those calls? If you're talking, if you're engaging in conversation with the collections department?

MR. YOUNG: It depends on the relationship we have with the creditor. With some, we are able to get them to pull back on their collection efforts; some we're not.

MS. SAKER HRDY: Okay. Any other comments on this topic?

Michael, you had noted you wanted to talk a little bit more about self-regulation and what ideas there might be for initiatives.

MR. MALLOW: This is a comment that goes back to, I think, some of my initial opening remarks of the discussion regarding debt settlement is one size fits all, being a criticism of debt settlement marketing, and no size fits any, which is a criticism of regulatory and non-governmental consumer watchdog organizations' view towards debt settlement.

One of the resources that consumers traditionally rely on to determine whether a company is good, bad or indifferent is turning to the Better Business Bureau. Unfortunately, there are a number of regional Better Business Bureaus. Most notoriously, the place where I practice law and have an office, that take the position that we don't care what your consumer complaint history is, we don't care if you're the greatest company on earth, if you're debt settlement, you get an F. Period. End of story. Because we give everyone in the industry an F.

Well, what good does that provide to the consumer? What good does that provide to -- or what incentive does that provide to companies to try to do better in terms of customer service, in terms of responding to customer complaints when all you will get is an F? Well, the answer is, it does no good for anybody.

There's also an interesting problem that's created. There is the NAD at the Better Business Bureau, other industries get to go after competitors who make false or deceptive statements and create an improper competitive advantage by making misrepresentations. You can -- and a company can bring another company before the NAD and the NAD will make a voluntary suggestion as to how to rectify the problem. And I can tell you that although it's couched in voluntary terms, if you do not follow the recommendation that the NAD makes after a competitive challenge, the next stop for your company is the Federal Trade Commission who has an extraordinarily high rate of responding to NAD referrals.

MS. SAKER HRDY: And if you could just wrap up, then we'll do a big wrap-up.

MR. MALLOW: Unfortunately, with the Better

Business Bureau taking the position that debt settlement is not a legitimate industry, there is very little incentive for members of the industry to bring NAD litigation against a competitor who is making representations that are false or deceptive to their competitive injury. So, that is, unfortunately, a self-regulating mechanism that is not really available right now to this industry.

MS. SAKER HRDY: But that’s one that you propose as --

MR. MALLOW: It is available if there was a more open mind towards the industry.

MS. SAKER HRDY: So, we’re just about out of time. I know Steve had a closing comment and I would like to offer to any of our panelists to wrap it up.

MR. HANNAN: Well, I was just wondering if Michael then would be in favor of state regulation because that gives consumers a place to go to check complaint histories.

MR. MALLOW: The problem is with state regulation is if there was uniformity and the states were able to shake off a lot of their preconceived and often incorrect notions of debt settlement, it wouldn’t be a problem. But I think there’s a lot of history, a lot of misinformation and too much variability to make it a workable scheme at this point.

MS. SAKER HRDY: Carrie?

MS. LYBARKER: And just in defense of the state regulators, our door, the Department of Consumer Affairs, is an open one and we've had several conversations with the industry. I think it can be attested to out here. But, unfortunately, there's never any evidence, it's just all talk. We have requested things, especially in the area of fee regulation in the past, and have never received. So, our notions are there because there's been nobody showing anything to contradict if there are any notions present.

Then, also, just to state that just because there are certain laws that regulate the industry, there are other laws as well that often apply. If anybody ever has any questions regarding state laws, I recommend contacting the regulator because that's a proactive measure that can be taken so that you can avoid any problems later on.

MS. SAKER HRDY: Briefly, Michael?

MR. MALLOW: Briefly. I suggest that given the state of the economy marketing should be more perceived as a filter to get the right people than as a means of enticing anybody through the door. If you get the right people, then you will see your complaints histories go down and regulator activity decrease precipitously.

MS. SAKER HRDY: Wesley?

MR. YOUNG: We understand there's criticism of our industry. We understand that there are players that are not good in our industry, but I don't think that should detract from the service that we can offer if done in the right way and we believe organizations like TASC help accomplish that.

MS. SAKER HRDY: Thank you. Anna?

MS. FLORES: Given all of the concerns we've heard about today and we'll continue to hear about for the next hour or so, we think there's an appropriate role for state and Federal authorities to take whatever steps they need to take to protect consumers.

MS. SAKER HRDY: Thank you and thank you to our panelists and the many wonderful questions we got from the audience. I'm sorry I couldn't get to all of them, particularly some directed to American Express I didn't get to. But, as Sara mentioned, our hope is that we can have our participants, our panelists answer some of these questions we didn't get to and post them on the workshop website. Thank you very much and, now, we're breaking for 15 minutes.

(Applause.)

(Panel 3 concluded.)

PANEL 4: THE FUTURE OF THE FOR-PROFIT DEBT SETTLEMENT INDUSTRY: WHERE WILL THE INDUSTRY GO FROM HERE?

MS. GOTTOVI: Thank you, everybody, for sticking with us through the entire day today. I know several people had to go catch their flights, but we're delighted that we still have such a nice crowd for this last panel of the day.

I'm pleased to introduce our Associate Director in the Division of Financial Practices, Peggy Twohig, who will be contemplating the future with her panel.

MS. TWOHIG: Good afternoon, everyone. My thanks, also, for sticking with us. It's been a long, very intense, very meaty day, I think, in terms of all the issues raised and the information provided. So, we're going to try to wrap up here. In part, we will be continuing a discussion that was started throughout the day -- sprinkled throughout the day, we have had thoughts and opinions and views on where do we go from here. So, we are going to try to extend that discussion, dig a little deeper and get this panel's views on those issues.

Before I begin, I just want to say all the questions that I will be raising, we're interested in everyone's thoughts and comments. As has been mentioned, we're going to be collecting comments through December 1st. So, I encourage any of you who have thoughts, information, opinions to also submit your comments, your views on where we go from here.

The three main areas I would like to cover with the panel are where do we go from here in terms of legal requirements, are current laws adequate to protect consumers, why or why not? That’s big picture number one. We will be spending quite a bit of time on that as you heard the earlier panel and others have already mentioned that.

The second issue, again, somewhat sprinkled throughout the day is in terms of the issues that have been raised, is self-regulation going to be sufficient to deal with some of these issues we’ve heard about?

And, finally, what are the alternative models out there that are possible or being developed, is that a solution? And, if so, how does that happen? How do those models get further developed? What needs to happen to provide alternatives to consumers than some of the current models that are out there?

So, I want to, first of all, welcome -- we have an excellent panel to wrap things up and I will let them introduce themselves and after they do, before we talk about where we go from here, I just want them to each mention what are the most important issues that need to be addressed going forward? In the interest of time, I want you to pick two. What are the two most important issues you think we need to address going forward?

And, Alan, we'll start with you and just go down the line.

MR. FRANKLIN: I'm Alan Franklin. I'm President of American Credit Alliance, which is a non-profit consumer counseling agency. I have been doing this work 18 years. Prior to that, I was working for American Express and I worked in Industry Affairs and I help -- or I should say was originally involved in writing the Fair Debt Collection Practices Act. So, I go back that far.

The issues that I think are most important, considering that the consumer credit counseling industry as non-profits are present here, is that up until now we have offered either a vanilla or chocolate product. Either we offered a full debt management plan for people who needed it or we sent them off to bankruptcy. What I think is critical is that we somehow create an alternative product which involves the idea of settlements through a triage type of an arrangement with a debtor and the creditors to make a determination, essentially as a non-profit, that would create a repayment plan for the debtor, in this case, that would meet the creditor criteria.

One of the things that was not mentioned today, which I think is critical, is what are the ages of accounts that are currently going into debt settlement? My understanding is that at the time of settlement an account is no longer carried on the books of a creditor. You can't offer a settlement to a creditor if an account is current, it would be inappropriate. But why shouldn't you be able to if, in fact, the customer, at that point, a client who would only have the ability to repay say 80 percent of the debt, 36 or 48 months forward and that type of an idea.

In terms of regulatory, which I think is second most important, is that it ought to be a Federal standard, and what I would ultimately love to see personally is the controller of the currency being the regulator, and I say that because they regulate every single credit card issuer in the United States. There is not a single credit card company that is regulated by a state regulator.

So, what we have instead is a mismatch of state regulations in an attempt to try and protect consumers. But, in fact, we have an FTC which has that role from a Federal perspective. I think as an enforcement arm of the controller of the currency, it would be an ideal marriage for the future and benefit of consumers, particularly with the housing issues and other things that are now before my industry.

MS. TWOHIG: Thanks, Alan. Mike?

MR. KERR: Hi, my name's Michael Kerr. I'm the Legislative Director for the National Conference of Commissioners on Uniform State Laws and I'm just going to take a second to let you know who we are because lots of people probably have never heard of us. We are a state governmental group. Every state appoints commissioners to represent them before our national conference.

We have been around since 1892. We're the folks that brought you the Uniform Commercial Code. We write statutes in a wide variety of areas. But the most important thing for you to know is that we're not an interest group. We're not a regulator, per se, we're not a consumer group, we're not a banking group. Our only constituents are the states that we work on behalf of. We'll be talking about the Uniform Act that we worked on and revised this past year, but I just wanted to introduce who I am and where I'm coming from.

The two issues, I think, that are most important, the first is interstate consistency. There's two ways to get that. There's having laws that are the same or similar from state to state, which reduces compliance costs and improves the ability of regulators to enforce reasonable rules.

The other way is Federal preemption. And for lots of reasons, the decision so far, at least, has been to keep the regulation at the state level. And I assume we'll talk about that, too. So, that's one big issue I think we should talk about.

The second is how fees for debt settlement are structured. One of the core policies of the Uniform Act is that while there's flexibility, there's a set-up fee, there's monthly fees and all that's legitimate and part of just providing services, the Uniform Act has a fee cap. That fee cap is based on a percentage of the savings that the consumer enjoys over the course of the agreement. It's not front-loaded, it's not back-loaded, but that principle that fee cap should be based not just on the amount of debt brought in, but on what sort of savings the consumer realizes is one of the core principles in the Uniform Act.

So, those are the two things that I would mention.

MS. TWOHIG: Thanks, Mike. Ed?

MR. MIERZWINSKI: I'm Ed Mierzwinski. I'm Consumer Program Director with the Federation of State Public Interest Research Groups, known as USPIRG. We're a non-profit consumer advocacy group and I've worked on these kinds of issues with Peggy and her staff and the other consumer groups over the years. I apologize that I'm late. You may have heard that -- I was here for most of the last panel, but I missed the morning, that Hank Paulson wants to make the U.S. taxpayers into stockholders without any power or any authority in the largest debt settlement management firm ever.

(Laughter.)

MR. MIERZWINSKI: And the least regulated, even less regulated than you people are. So, that's been keeping us busy on Capitol Hill.

And the two points that I would mention is that as we're heading into this credit crisis that is only growing worse, we need to make sure that we come up with good consumer education to educate consumers that bankruptcy may still be their best alternative, and non-profit consumer credit counseling -- I have not been convinced that any of the other for-profit alternatives, including debt settlement, are better, but we need good consumer education out there on that.

On the comment earlier today, by the way, the Better Business Bureau is not fair to this industry. Well, heck, if the Better Business Bureau, consumer groups, the banks and the credit card companies all agree, then I think the industry has got to move, not the

Better Business Bureau.

So, the first point is better consumer education about people's choices in a bad economy because they're going to be offered a lot of bad choices about how to get out of their debts when they're desperate.

Secondly, strong enforceable laws starting at the state level. If we have a Federal law, the states should be allowed to go further. The states should always be allowed to go further. Thank you.

MS. TWOHIG: Thanks, Ed. Jenna?

MS. KEEHNEN: I'm Jenna Keehnen, the Executive Director of the United States Organizations for Bankruptcy Alternatives, or USOBA. We're the oldest active trade association in the debt settlement industry representing over a hundred companies. We advocate for consumer protection and fair legislation across the country. We're very pleased to be here. I'm proud to be a part of this process, that's a very necessary process.

I guess for my two issues I would certainly have to agree with Michael on the uniformity of legislation, be it one route or the other. At this point, it's so muddied, it's difficult at best to have your attorney be able to comprehend and understand and lead you through all of those waters untouched.

The second would be uniformity in the industry standards and procedures and practices themselves. To my knowledge, I don't think anyone on this panel throughout the day has been able to draw you a diagram of exactly what a debt settlement company is because they're all so very different. So, uniformity a little bit in those two areas I think is necessary.

MS. TWOHIG: Thanks, Jenna. Carla.

MS. WITZEL: I'm Carla Witzel. I'm a partner in a law firm in Baltimore, Gordon, Feinblatt. My clients are debt settlement companies, debt management companies, for-profit and non-profit, extenders of credit from the largest banks to payday lenders.

I think that what we need to do is start recognizing that there is a continuum of debt relief, and it ranges from debt management, debt settlement to bankruptcy. As we study it and approach it and think about new laws to enforce consumer protections, we need to stop focusing on artificial 20th Century distinctions like profit and non-profit and start really focusing on what's important, which is consumer protection, the efficient delivery of services and transparency of the product.

MS. TWOHIG: Thank you, Carla. So, the first subject we're going to discuss more generally in terms of where we go from here, and some have mentioned their views already, are current laws adequate to protect consumers? We've heard throughout the day some mention of some of the state laws. I'm going to give Mike a chance to say a little bit more about the Uniform Act and about the state of that and various state laws. Thanks.

MR. KERR: One of the things that we do before we start a project is we typically do a survey of existing state legislation. I didn't bring enough for everybody, but I brought a summary of state laws applicable to debt settlement. But it's true. State laws are kind of all over the map.

There are six states that basically don't regulate at all. There are 13 states that say only non-profits and there's a whole host of states in the middle that do part in some, but not the other. Fee caps vary widely. Disclosures, when states have them differ, quite a bit. So, I think it's fair to say that state regulation right now is very much a mixed bag.

The Uniform Act was a three, now four-year development project to try to come up with a statute that was a comprehensive solution, at least a regulatory framework for the three principal kinds of services that we call debt management services in the Act.

By way of background, the Uniform Act was adopted in four states and we saw some implementation issues with it. So, we went back to the table, had an open drafting committee meeting and took some amendments to help with those implementation issues. For what it's worth as a point of conversation, right now it looks like between 15 and 25 states are going to be running the Uniform Act in the upcoming legislative session. So, to the extent that state regulation is going to be the chief enforcement mechanism, I think we'll talk about advertising and the FTC separately. There is the possibility at least of significant harmonization of state laws.

So, I think that that's pretty much a summary of where states are. I can go into more detail if you'd like.

MS. TWOHIG: I would like to go down the line and just get this out. Is Federal regulation a regulation needed? Yes or no? Alan?

MR. FRANKLIN: I say yes.

MS. TWOHIG: That's all. We're going to come back.

(Laughter.)

MS. TWOHIG: Mike?

MR. KERR: Yes, for advertising.

MS. TWOHIG: Ed?

MR. MIERZWINSKI: As a floor, but states should be allowed to go higher.

MS. KEEHNEN: I agree with Ed.

MS. WITZEL: Yes.

MS. TWOHIG: Okay. So, we have a consensus on Federal legislation. I realize maybe not in terms of details. That's what I want to go to next. I think, Mike, you already gave me the answer to this. And, Al, I'm sorry, I let them go a little further than you. So, I'll let you say a little bit more.

But I would like to focus first on many of the states, as has been mentioned, part of law is requiring certain disclosures. So, for those of you who might think, you know, let's pretend we're a committee and we need to come up in the next hour with a recommendation to Congress on what Federal legislation of the debt settlement and/or debt relief industry should look like.

Let's just put that aside for a moment. What should -- if you think that there should be requirements for disclosure of particular information to consumers, what would the list be? Maybe I'll throw out some ideas. Again, we'll go down the line to see if you agree or disagree. Should there be disclosure of all fees?

MR. FRANKLIN: Yes.

MS. KEEHNEN: Yes, absolutely.

MS. TWOHIG: Any disagreement with that? Mike, I know you’re on record as saying Federal legislation for advertising only. So, I wouldn’t go that far to necessarily disclosure. Let’s come back to that in terms of what would be an ad.

What about disclosure of completion rates, of the numbers of consumers that historically of a particular company had completed the program? Any thoughts on that?

MR. FRANKLIN: I think that’s where one of the problems comes in with the state idea. If you are an agency operating in multiple states, then you have to have multiple audits. With a Federal audit, it would seem so easy to have a standard much like the Comptroller of the Currency does with banks. They send them out a one-day letter which says this is what we’re going to audit and one of the things in there would be the percentage of completions and, also, a multitude of other important data that could be used for other reasons.

MS. TWOHIG: Any other thoughts on that? Disagreements?

MS. KEEHNEN: I think you were asking primarily if that should be disclosed to the consumer, is that correct?

MS. TWOHIG: Correct.

MS. KEEHNEN: I would say in percentages. I’m not sure that it's really relevant to 11,982 have completed when two million were there. So, I mean, percentages would be more important.

MS. TWOHIG: Let me broaden the question a little bit. Do you think consumers should be told anything or that it should be mandatory for consumers to be told anything about completion rates?

MS. KEEHNEN: Not without standardization in the industry on what a completion rate is.

MS. TWOHIG: Okay. And what if there was standardization, would you think that's acceptable?

MS. KEEHNEN: I don't know why it would need to be disclosed for a privately held company. But I don't know that anybody would disagree to disclose it. I don't see that it's necessary, no.

MS. TWOHIG: Okay. Any other thoughts? Ed?

MR. MIERZWINSKI: Well, I think a number of states have -- I'm not sure that they solve all of the problems of payday lending, but a number of states have database requirements that provide excellent data to researchers about that. So, I would support disclosure to regulators and disclosure to consumers. And I think you need more than just this one number. You need to know -- I don't know if you're going to go through all the numbers.

MS. TWOHIG: Well, why don't you just keep the discussion going. Go ahead. Throw out some other ideas.

MR. MIERZWINSKI: You would need to know more about other numbers, like how many consumers who had $10,000 in debt completed the program. How much did they pay on average, what's the median, what's not the median? You know, how many consumers with $5,000 in debt completed the program and how long did it take them, in addition to the number that Peggy is asking for.

But I'm astonished. I don't know, again, because I missed the morning, has anybody disputed the incredible numbers from the National Consumer Council audit how low completion rates really are? That's why we need disclosure to both consumers and to agencies.

MS. TWOHIG: Jenna, did you want to comment on that?

MS. KEEHNEN: I was going to ask, did you mean all of that should be disclosed to the consumers, how many $10,000 clients?

MR. MIERZWINSKI: I think it would be good to have kind of a chart that says $10,000 clients, 2 percent finish; $5,000 clients, 3 percent finish or whatever the numbers are.

MS. KEEHNEN: I would love to see that in the credit counseling industry, too.

(Laughter.)

MS. TWOHIG: So, that's an issue in terms of whether all of these requirements or any of them that are applicable should apply to the credit counseling side of the industry as well. What about the typical time to complete the program? Is that something consumers should know up-front?

MS. WITZEL: Yes.

MS. KEEHNEN: They're typically told.

MS. TWOHIG: I'm talking about a legal requirement, a federal legal requirement that would mandate, which may be different than what is done by some or perhaps most, but what are the views on that? Should that be part of what's required by those who think there should be a Federal law that has some sort of disclosure requirement?

MS. KEEHNEN: Stating that your estimated time of a program would be 36 months? Is that what you're -- kind of like a disclaimer of what are you --

MS. TWOHIG: Some sort of information, I don't know what the details would be, on the typical time before your debts are settled. It could be an average. I mean, the details would, obviously, have to be worked out.

MS. KEEHNEN: That's on just about every

website I've ever seen for debt settlement. As far as mandating it, I don't see any problem with giving a parameter.

MS. TWOHIG: Any other thoughts on that? Ed?

MR. MIERZWINSKI: Well, I think it has to be customized to the consumer based on how much debt they have and what their income is. This is the kind of regulation we tried to get for credit cards in the bankruptcy law. We wanted every consumer to be told that if you make the minimum payment this month and you owe this much money at this interest rate, you would take 17 years, 12 years, whichever, but I would like to see it customized.

MS. TWOHIG: Ed, that seems like it might be pretty difficult to both have a law or a regulation that would write that and then enforcement if it's customized. What --

MR. MIERZWINSKI: I would recommend to the Congress they refer that to a rule-making by the Federal Trade Commission.

(Laughter.)

MR. MIERZWINSKI: Sorry. I know you have too many rule-makings already. But to the extent that it's feasible, I think a customized -- at least at some categories level. If you owe between this and this and your income is between this and this, there ought to be some sort of way to figure it out.

MS. TWOHIG: Just going down -- the list I'm using by the way is just some ideas that folks have raised during the day, some that already disclose these things. What about impact on credit score or likely impact on credit score? Should there be a mandated disclosure about that? I see some heads nodding. Any disagreement with that?

MR. KERR: Other than the condition precedent that it's a Federal statute, not a state one, I think that's absolutely something that needs to be in the law.

MS. TWOHIG: Okay. What about tax consequences or likely tax consequences?

MR. FRANKLIN: I think the whole issue with 1099Cs has to be looked at from a multiple of perspectives. When I've spoken to debt buyers who pay less than they collect and they then have to issue a 1099C, which has already been a loss from a prior creditor, I find that to be an interesting non-disclosed item in that it would seem so reasonable that if you're going to get a perceived benefit of a settlement saving that you ought to know the other side of the transaction, which is that you have a tax consequence unless you are in a hardship that could be proven and as to who has the right to prove a hardship.

MS. TWOHIG: What about anything else you all heard? Some things were mentioned. I'm just interested in any thoughts on some of these possible disclosure items, that wages may be garnished, that there's no guarantees that they can settle all debt, no guarantees that creditors will stop calling. Any thoughts on those types of items?

MS. KEEHNEN: As far as mandating that these disclaimers be made, I know that both organizations have mandatory disclaimers and have disclaimers and standards that their member companies have to provide that encompass almost everything you have said so far.

MS. TWOHIG: So, you're saying that that could be used as a model for Federal legislation in terms of requirements?

MS. KEEHNEN: I think it -- yes.

MS. TWOHIG: Any thoughts on -- well, actually, given there's possibly many things that consumers need to know that are already required by members of certain organizations. Any ideas on -- and the list could be pretty long. One thing we've learned at the Federal Trade Commission from our work in enforcing some laws that require a lot of disclosures is that sometimes the key information can get lost in that. Any thoughts or ideas before we move on on what the most important things are that consumers need to know, that must be disclosed? In other words, that you would have to -- no matter how you advertise, what you say, that any consumer has to be told?

MR. KERR: I think they have to be informed about alternatives with regard to debt settlement. I mean, they have to know that there's credit counseling out there, that there's debt management plans as alternatives, that bankruptcy may actually be the right answer for you. In addition to the other sort of disclosures -- well, these are really disclaimers, warnings, if you will, that people should be -- make sure they understand prior to entering into one of these settlement agreements.

MS. TWOHIG: Any other thoughts on the critical items?

MR. MIERZWINSKI: You know, Peggy, I would support what Michael just said in terms of a general Miranda. I think there should be a general kind of a Miranda that -- Alexandra Tatarova in Smart Money had a good article last year that I had in my files. What The Debt Settlement Companies Won't Tell You. She's got 7 bullets. Debt settlement may not be right for you. That gets to the bankruptcy as an alternative. Your credit will suffer. You are in this debt settlement program. Your credit gets worse over time. That one probably won't get through. You could get sued by the creditor. There are tax consequences we've already discussed. Services may be illegal in some states. Do all the websites say that now? I don't know.

MR. KERR: With the exception of the last one, I would just point out the Uniform Act contains all of those disclaimers.

MS. TWOHIG: Right. Any other thoughts on the critical items that consumers need to know?

MR. FRANKLIN: Lastly, I would harp on the 1099C is the major issue.

MS. TWOHIG: Say a little bit more about that.

MR. FRANKLIN: Well, right now what happens is people go into a settlement. They may contact an agency, a consumer credit counseling agency who talks to them about a debt management plan. One of the other due diligence efforts that the same consumer would be making prior to deciding on what to take, they may respond to an ad either on the Internet or on television that tells them to contact a debt settlement company and save 50 percent on the debt. Unless they get that early disclosure that they may have the tax consequence, they may opt for the -- what sounds to be the better of the two, which would be the debt settlement, which might not be the best solution for them.

So, there has to be some sort of a disclosure that says look, this is it. If you're going to settle a debt for greater than $600, you're going to have an IRS tax consequence this year.

MS. TWOHIG: I would like to move to whether you all think, if you agree that there should be some sort of Federal legislation or law, would disclosures be sufficient? Is that sufficient? Is disclosure to the consumers sufficient to address some of the problems that some have talked about today or should there also be some substantive requirements on the business?

For example, any thoughts, this was already discussed in the earlier panel, on whether fees should be restricted in any way, either in terms of the model of the fees or fee caps? Anyone?

MR. KERR: I would have to say we'd be opposed to that being in Federal law. The substantive registration and enforcement of fee caps and business practices and disclosures, the Uniform Laws Commission believes that that should remain at the state level, but I have already said that a couple of times. So, anyone else?

MS. KEEHNEN: I have a hard time with mandating any kind of fee caps. Certainly, maybe some ground rules as to collection, but if you fully disclose and your consumer understands with clarity exactly what this program is and with the same debt and they made minimum payments for 20 years, they'd pay six times what they enrolled in with you, even if they pay up to 100 percent of the entire debt, they didn't save a single penny with your fees included of the principal amount that they enrolled, they're still thankful and they're still happy. It's still a huge savings from minimum payment for the next 20 years. So, I don't really understand what the purpose would be.

MS. TWOHIG: So, that's a no.

MS. KEEHNEN: Yeah.

MS. TWOHIG: That's a no, okay. Any other thoughts on that? Ed?

MR. MIERZWINSKI: Peggy, to clarify my views on, again, preemption, as I understand it there are a number of states that don't have a law. So, I believe that the Federal law needs to be robust to cover those states. So, the provisions of the Uniform Act, I think, should be seriously considered, all the provisions so that we get coverage nationwide. But, again, states should have the right to have stronger laws than those. There may be state licensing and registration provisions that, obviously, remain at the state level. State private rights of action, of course, which don’t usually be provided by Federal law we need to keep.

So, I would say that we need to look at more than just the advertising in the Federal law because I’m worried about the consumers who live in the states without a law. I want there to be a floor to protect them.

MS. TWOHIG: So, Ed, just to clarify, I understand what you’re saying about states, no preemption, but do you think any Federal legislation or regulation should have substantive restrictions of some type?

MR. MIERZWINSKI: Well, that’s what I was saying. Yes, because I admit that under the stronger state law system that consumer advocates favor, there may be states that don’t have a law. So, if you are going to have a Federal provision that applies in those states, it needs to be broader and it needs to include those substantive provisions, including fee caps.

MS. TWOHIG: What about the issue of the consumer controlling the account? Should there be a requirement that the consumer has to control the account, any account that is accumulating savings to settle the debt? Any thoughts on that?

MR. KERR: I think if you have the settlement company exercising control of the account, then a slew of fiduciary obligations ensue upon that fact. I think a lot of the industry has been very careful to say that they don't have that kind of control, and that's probably for the best. But if you're going to have anything but a situation where the consumer can withdraw the money, then you really need to look at significant fiduciary controls on those companies.

MS. WITZEL: I think the uniform law has those controls for the trust account. I think that the industry now is not touching the money or controlling the money to get around the various state laws that would restrict them if they were touching the money or controlling the money. I think that debt management companies have been controlling the money for years and years. There have been a lot of state laws set up to protect the money. It is probably the more efficient way to do the business. So, to me, that's not a necessary consumer protection.

MS. TWOHIG: Any other thoughts on that?

MS. KEEHNEN: I'm not sure that it's accurate to say that most debt settlement companies don't take the money so they can avoid laws. I think that it's good business and just like Michael said, when you are holding people's money, it opens it up to a whole other level of fiduciary duties that most companies would opt not to have.

MS. TWOHIG: So, they opt not to have it, Jenna. But do you think that it would be appropriate or needed to have a prohibition on controlling the money?

MS. KEEHNEN: I guess if you want to have one on the books, I don't know of a single debt settlement company that holds or controls funds and haven't for years.

MS. TWOHIG: So, it may not be needed.

MR. FRANKLIN: But if it was a consumer credit counseling agency that was offering an alternative repayment debt management plan based on the actual ability of the debtor to service the debt in whatever time line was forward, the consumer credit counseling agency already has those internal controls in place because all of them have surety or they can't operate within the state where the debtor lives. That is a wonderful consumer protection in place for that particular industry.

If you try and extrapolate that onto a for-profit industry, it changes the dynamics because they may not be able to get the same type of surety that our industry has had.

MR. KERR: To follow up on something Alan said, it’s our conclusion at the Uniform Law Commission that you have players in this broader arena of debt management services, be they credit counseling agencies that offer settlement options, be they debt management companies that offer DMPs with settlement features, that there’s a continuum of services out there and not any one service is going to be right for every single consumer.

And, increasingly, I think you’re going to see a hybridization of these companies. That’s one of the reasons why, much to consternation of some of the folks at the table back in 2004, we said a statute needs to be integrated, comprehensive and cover all three kinds of services with similar qualification requirements, similar disclosures, similar consumer protections, similar sureties and all under the same regulator. That’s one of the points of the Uniform Act that gets lost sometimes.

MS. TWOHIG: By all three you mean the non-profit credit counseling and --

MR. KERR: Credit counseling, profit or non-profit, debt management plans and debt settlement should be under the same statute to the same regulator and have the same kind of disclosures because a lot of these companies or entities are offering more than one flavor of ice cream.

MS. TWOHIG: Let's open up to that. Is whatever further regulation is out there, state or Federal, what are the advantages and disadvantages of trying to cover all the types of debt relief services under one law? Is that needed, is that appropriate, is that desirable?

MR. FRANKLIN: Well, I'd like to give this a try. If you had the same regulator who regulates the credit card industry, regulating all of the other aspects of collecting that debt, whether it's horizontal through a debt management plan or through any of the other alternatives, then you have total control of that consumer's opportunity and liability. Because if it's the same regulator, you can get on the same page as to what is needed.

The difficulty now is that, for example, in my agency we focus mostly in the Northeast, we don't offer national type of services and that is because of the licensing issues and the difficulty of operating what would appear to be a call center, and we're not interested in doing that. After getting through the initial requirements of education in order to meet the payroll, we have to rely on mostly debt management income. And I know firsthand that the cost of compliance being in multiple states through multiple audits is enormous.

One of the things that I see happening, which is one of the reasons I wanted to come here today, is the same creditors -- what we have seen is a concentration of the creditor industry, the Bank of Americas and the MBNAs and the fact that there has been no Department of Justice supervision in terms of antitrust issues. Well, you've had a clear concentration of an industry with the surviving culture of the surviving bank that acquired the portfolio and that then falls to the consumer who becomes under the new acquirer's policies. At the same time, it appears as though my industry has partially underwritten the cost of these acquisitions because I can tell you that when we started doing this 18 years ago, the fair share contribution, which was clear from the creditors, was 15 percent and we charged the debtor zero or maybe $5 a month.

That burden has fallen now to the debtor, who is in dire straits, and now the contributions from the creditors is between zero and 8 percent. And, therefore, that means that if you have twice as many clients that you're trying to provide all of these extensive services for, which are ongoing counseling -- someone in an earlier panel mentioned that once a person signs up for a debt management plan that that's it, you sign them up and they're out of debt five years later. Hello, goodbye, you never met them. Well, that's not true. You talk to them continuously because they do need a continuous hand holding.

Therefore, we have ongoing, ever-increasing expenses and I know that if we could sit around a table with the comptroller of the currency we could make that case and, at the same time, reduce the debtor fees and help people get through this mess that they find themselves in because they are -- everyone is listening to what their needs are.

What we see here instead is we've seen an industry morph, a settlement industry. It's because the people couldn't pay the bill that they had because they acquired much too much debt. They shouldn't really be in bankruptcy, although many of them ultimately will end up in bankruptcy. And once a person is told or finds themselves that they're unable to service the debt because they ran out of other servicing capability from taking cash advances from other credit cards, then you find that they are either a bankruptcy candidate, a no pay at all or a consumer credit counseling.

Yet, I would find it difficult that in this room there is an obvious need for debt settlements and the question is by whom and who the beneficiaries are.

The creditors benefit from a non-bankruptcy charge-off. Once an account is charged off today, what happens is it goes to a debt buyer, the debt buyer buys it for seven or eight cents on the dollar, they offer the debtor a 50 percent settlement if they can pay it off in three payments because that's a time value of money issue. Instead what happens is the debtor who can't make that payment either goes underground, stops communicating, the accounts then migrate from one collection agency to a secondary agency to a tertiary agency within the statutes. And if they can find that the debtor is a homeowner, he's going to get sued. If he's not a homeowner, he's not going to get sued. That's pretty much how these portfolios operate.

MS. TWOHIG: So, Alan, just to wrap it up in terms of where we go from here. What does all of that mean for where we go from here in terms of Federal law, regulation or oversight? What's your view on that?

MR. FRANKLIN: Well, my view is that it's time to bring in the regulators who regulate the National Banks, the comptroller of the currency, at this type of a meeting to sit down with them and say, look, this is the situation. Let's all participate in finding a common solution because you regulate the banks, you regulate the fair share contribution, you should pardon the expression. Okay?

On the other hand, we have an industry -- the consumer credit counseling industry itself has gotten tainted from only a couple of very bad players, the Ameridebts and the debt settlement industry and the Andrew Kaposha's (phonetic) of the earlier days, which many of you have never heard of, who wrote the book on this business. Yet no one has gone to jail. We have an industry that is in flux. We have huge housing issues. We have people coming in for debt management plans.

I want to add something here. It's very important. There is an unintended consequence of the pension law. This year, consumer credit counseling agencies can derive only 80 percent of their income from debt management plans. That means they have to find 20 percent of their income from probably donations, usually through foundations and grants or sell used clothing or get something that somebody can qualify for a 501(C)(3) tax deduction. Next year, it goes to 70 percent.

Now, if you have the same industry that would normally be very generous in terms of foundation opportunity, in an industry that now the 200 or odd consumer credit counseling agency different companies out there that have to now go to them for grants in order to make up the 30 percent next year, what will happen, I predict, is that a lot of these agencies, in trying to revise their business model, won't be able to meet that test because they will lose their 501(C)(3)s and the same consumers who in this kind of an economy should be coming to them for help, they'll have to turn away because they'll exceed 70 percent of the debt plans.

MS. TWOHIG: Okay, Alan, so I understand you're saying that it's going to get worse for non-profits because of these requirements. You've put out there the notion that the comptroller of the currency should be more involved in I guess just informal discussions on these issues, not necessarily regulation.

Any thoughts on that from the rest of the panel, in terms of that being a solution or part of the picture of where we go from here?

MR. KERR: I think the world of debt settlement is bigger than just credit cards. They're clearly the number one source of unsecured debt. But that doesn't mean that there aren't other unsecured or even secured debts that can be the subject of settlement or management and payment plans.

MS. TWOHIG: What about the comptroller's role in terms of the credit card debt?

MR. KERR: Well, I think that solves part of the issue potentially. But I think that the Office of the Comptroller of the Currency is probably not going to be doing individual audits for small settlement companies any time soon. I don't think that they're going to cover all the debts that this industry is currently working in. I think it's -- obviously, it's clear that credit counseling, because of the fair share income, is very concerned. And it's clear that the number of creditors is going down and the contributions of fair share are going down. But there are more animals in this forest than non-profit credit counseling.

MS. TWOHIG: Any other thoughts on that?

MR. MIERZWINSKI: Peggy, I would just say your original question, I'm going to punt it to somebody who is not here, but I'll find out what Deanna Lunan (phonetic) thinks about how we should regulate the three parts of the industry, whether it should be under one statute, and I would defer to her. I don't know what her comments were on that point, on the Uniform Law, but I would ask you to check in with them as I'm sure you're already doing.

On the matter of the Comptroller, I know we don't have time to bash the Comptroller, so you can look at my website to see some bashing of the Comptroller. But I think that the consumer groups would prefer to take away -- or not to take away from the Comptroller authority that he doesn't use, but instead to give the FTC UDAP authority and maybe some additional authority to regulate national banks in certain consumer protection matters. That's the way we would prefer to do it.

I do want to say, even though I'm associating myself with some of the things that the creditors have said today about this industry, the debt settlement industry, I strongly agree with everything Travis Plunkett said this morning about the creditors and how they have just really squeezed the credit counseling on the fair share and on the fees that they're paying.

MS. TWOHIG: Any other thoughts before we move on? Carla?

MS. WITZEL: I think that we're going to see the OCC and the regulators and the creditors get bashed plenty. I think we're going to see a lot of changes on a going forward basis. But we have a today problem with debt settlement and I think thinking too large for a legislative or regulatory fix for some real burning problems is a mistake, that we can attack certain things, perhaps through a trade regulation rule and get some guidance on advertising or rules on advertising to solve many of the problems that were talked about today. And then see what unfolds with the crisis we're currently in and see how creditors change their pattern and then react to that.

MS. TWOHIG: Carla, I assume when you say trade regulation rule, just so everyone knows, you're talking about an FTC Act trade regulation rule?

MS. WITZEL: That's right.

MS. TWOHIG: Just for everyone's information, there is authority under the FTC Act for the FTC to promulgate a trade regulation rule. It's a fairly long cumbersome process unless it's done as a regulation under say the Telemarketing Sales Act which would be APA rule-making or some other act where it's notice and comment APA rule-making, but there is authority under the FTC Act. It would need to be declaring or under the rubric of something being unfair or deceptive practice to be able to get there. So, you're putting that possibility out on the table.

Jenna, did you have something you wanted to add?

MS. KEEHNEN: I just have a couple of clarification points really quickly. Just they're all over the place. Bear with me.

On the front end fee model, there was a lot of talk about that. We have been talking about fees today. I think a consumer in a debt settlement program has the expectation that this is a three-year program. I don't know what difference it makes if they pay up-front, at the back or anything. They have no other reasonable expectation that at the end of three years all the services and everything will be complete. Period.

MS. TWOHIG: You're saying that consumers do have that expectation or they should begin --

MS. KEEHNEN: They do. At the end of three years. That's what it says in their contract. This is three years, we will eliminate these debts. They have no other expectation whatsoever.

As far as enforcements, I wanted to clarify --

MS. TWOHIG: I'm sorry. What does that mean in terms of up-front fees?

MS. KEEHNEN: It means it doesn't matter. They're going to pay that the same amount, they're going to get the same services in that three-year period that they have contracted with a debt settlement company for, whether they pay all up-front, whether they pay all in the back, they're going to pay that amount. So, what difference does it make when you're fulfilling your obligation at the end of that three-year program, you have done what you said you're going to do and they've done what they said they're going to do. That was just, like I said, clarification.

As far as -- most of the panel today has drawn on examples of debt settlement companies that have been in some sort of enforcement action or trouble or in the news and that kind of thing. I didn't want anybody to be misled that that is a typical debt settlement company and that that's what this industry looks like. I'm sure it's nice to grab out there, but when I'm going to describe an attorney to you, I don't go look at the disbarred attorneys list to tell you how to act as a good attorney.

The other thing is qualifications which Michael and Alan touched on quite a bit earlier. As far as disclosing there are other options, I don't know of any debt settlement company, at least in our organization, that will take a client no matter what their circumstances are. There's certainly a qualification process. So, while telling them about the services is one thing, most of our companies that I know of won't take them if they're not appropriate anyway.

So, you can tell them about bankruptcy, but if they couldn't qualify, what's the point? You can tell them about counseling, but if they couldn't afford it, what's the point? So, the qualification process may be something that needs to be addressed more than go explain every service out there to them. That's all.

MS. TWOHIG: I would like to move to the idea of are there alternatives to the current basic models that are out there for consumers, the debt management plan or the debt settlement models of the type that perhaps has more variation for consumers, the 40 percent number of those that has been talked about, the in between, those that can afford the debt management versus bankruptcy, the continuum.

Are there better models that can be developed, alternatives to the current choices available for consumers typically and how do we get there, if so?

MR. FRANKLIN: If I can lead off on this.

MS. TWOHIG: Sure.

MR. FRANKLIN: Having become a HUD approved housing counseling agency in the past year and dealing with people in pre-foreclosure, we think that one of the products that may evolve, which we need some regulatory help on, would be what I call the truth product. It takes an individual debtor circumstance who wants to stay in the house that they are now either in a reset or in an upside down mortgage, and because they can’t sell the house, if they were to do a deed in lieu of, it still does not help them through the mess.

So, it would seem to me reasonable that if we could take this person and do the math, determining what their total debt is and what their total debt servicing requirements are, and to say that, look, once the mortgage issues are settled then what is remaining is this other debt and in order for you to even make that mortgage payment and stay in the house, you're going to have to get some forgiveness on the balances of these unsecured creditors because my fear is that if it goes to the -- ultimately, if the bankruptcy law gets revised and the courts get the right to write down the value of a first mortgage, we won't have much of a country left because every consumer who feels they have a high mortgage will simply file what would then be a Chapter 7 petition.

MS. TWOHIG: Any other thoughts on alternatives that could be developed and how we --

MS. KEEHNEN: I think it's going to be an ever-evolving industry. Things are going to change. I don't know that anybody could have predicted how dire the situations are today and the ways that we would have all adapted to deal with them. I don't know that it can be decided today what the evolutionary process is going to be, but I think it's probably certain to evolve.

MS. TWOHIG: Carla?

MS. WITZEL: Right now, we have debt management where the consumer pays the entire principal balance over time, gets concessions and it's a long-term program, and debt settlement where principal is reduced substantially. You know, there can be an in between. I understand there's some pilot projects going on now where the in between is reducing principal somewhat, getting concessions and doing it over a period of time. That will require cooperation between creditors and debt settlement, debt management and all of the players.

MS. TWOHIG: It will requires cooperation to both develop the alternatives and to put them into play.

MS. WITZEL: That's right.

MS. KEEHNEN: I think there's only one alternative that I can think of right now and that would be -- I'm curious if the banks, especially the banks that were represented here today and that are so dedicated to their customers, if they would call any of them and offer them five cents on a dollar before they sell them to a debt buyer. Just curious.

MS. TWOHIG: So, any other thoughts? So, Carla, how do you think we can -- what needs to happen to make that happen? Is it going to happen naturally, some of those alternatives?

MS. WITZEL: I think some of them will happen naturally as we see the current crisis unfold.

MS. TWOHIG: Is there anything that could be done -- are there any impediments, legal, practical, market, otherwise to those happening? And, if so, how could those be overcome?

MR. KERR: Well, there's a hybrid now called a 60/60 plan, which is pay 60 percent of the debt within the 60 months. But the impediments is that you have to go into the bankruptcy proceeding in order to get into that pool and it's fairly limited. That might be a reasonable model of a hybrid between settlement and debt management. I don't know if that's going to happen, but that's something that's a possibility, I guess.

MS. TWOHIG: Do you think that model would be beneficial for some consumers?

MR. KERR: Sure.

MS. TWOHIG: So, impediment is what, that it's only allowed under --

MR. KERR: It's hard to get into. There's a pretty high bar before you get into the universe where that's an option. I'm not advocating that as a solution for creditors or settlement companies or anything, but you asked for hybrids and new developments. That's one of them.

MR. WITZEL: Then, of course, there's legal impediments to offering a program like that.

MS. TWOHIG: Carla, say more about that.

MR. WITZEL: Well, because you have all of the hodgepodge of different state debt adjustment laws, some of which don't permit for-profits to participate and all that have different rules and different pricing. So, in a way, the barriers to entry are also barriers to coming up with some creative solutions.

MR. KERR: Which is why, you know, the Uniform Act tries to put all the industry into a single statute with a single regulator, so it's easier for that sort of thing to develop potentially.

MS. TWOHIG: Ed, did you want to add something?

MR. MIERZWINSKI: I was just going to say that, you know, I'm just thinking outside the box at the other end of the spectrum, consumer groups who would very much like to more and better regulate the credit card companies and other creditors, reinstate user resealings, maybe say that you can only collect debts at fair interest rates, but if you gouge the consumer with 36 percent APR, give a judge the right to waive some of that debt more easily. Anyway, on the other side of the coin, there are some things we can do as well.

Then the other thing we need to do is education of consumers, better education of consumers so they don't take advantage, if it's the right word so that they don't get into any of these programs that may hurt them.

MS. TWOHIG: Ed, say a little bit more about that. With respect to debt settlement, how could we better educate consumers when, how, who does it?

MR. MIERZWINSKI: Well, the unfortunate problem is that government and non-profit agencies just have fewer resources than they used to have. If we could figure out a way to allocate more resources to make it clear to people. I mean, some of the best PSAs, like kids in the back or whatever about car safety, have been pretty simple. So, if we could figure out a way to spend some money on messaging this, then they'll come up with better ideas than I can come up with off the top of my head right here.

MS. TWOHIG: Alan, did you have something you wanted to --

MR. FRANKLIN: Yes. When we first started our agency many years ago it was to be a nemesis to bankruptcy. The whole idea of going into consumer credit counseling plan, a debt plan, was that you would avoid filing bankruptcy. But what's happened today is the industry, the industry that I am still in, no longer offers the same product because it has been so chopped up by creditors in this consolidation of this industry where people go into these programs and, quite frankly, the benefits that they would have gotten at one time are no longer there because the creditors continue to look at our industry as somewhat of a cash cow.

So, the debt settlement alternative comes when the person either abandons being in a debt plan because they cannot see the end of the benefit or they find that they can no longer manage the debts and then are looking for some sort of bargain.

One of the things that I would like to see clarified is that the accounts that go into these settlement programs are either very seriously delinquent or charged off as bad debt and usually sold off to either debt buyers or in collection at the time they are settled. Because you can't settle an account that's current, the creditor couldn't do it even if they wanted to because of the way they're currently regulated.

MS. TWOHIG: I just want to give the panelists a chance to talk about self-regulation as one of the things we need to think about in terms of where do we go from here in addressing some of these issues. What is the role of self-regulation, will that be sufficient down the road? And then we'll turn to some of the questions that have been posed by the audience.

Self-regulation, anyone?

MR. KERR: Well, I think self-regulation is necessary, but not sufficient. It's in the interest of debt settlement companies to make sure that the bad apples, as it were, are excluded from the associations that accredit them or represent them. The more strongly that happens, the better off the remaining market participants will be in terms of reputation and also in terms of a whole host of things. So, that's self-regulation I think, but it's not enough because I think there's also consumer protections, disclosures, sureties that need to be in place.

MS. TWOHIG: Ed?

MR. MIERZWINSKI: I totally agree. The only self-regulatory schemes that I've seen that work are also the ones where you don't always just throw people out, but you also impose penalties on them. That is fiscal penalties, monetary penalties when they break your rules. When you have audit systems in place to verify that companies are actually complying with your rules. I'm thinking of the former NASD (phonetic), the FINRA (phonetic) now and some of the Better Business Bureau advertising regulations are probably places where it's best.

And then I would also add that the -- a lot of the new associations of payday lenders and possibly these agencies, I haven't reviewed all the best practices of all the associations, but I'm basically unimpressed. It's like put out some best practices and put up a website and that's all they do.

MS. KEEHNEN: I take offense to that.

MR. MIERZWINSKI: I didn't say all of the associations.

MS. TWOHIG: I think both associations are moving in much the same direction. Just like the evolution of the industry, we are all going to have to evolve. We also have our new UCAP program. It's the voluntary compliance audit that we have. It's a little different than TASC's, but essentially the same thing. You'll be called four times in a month. The calls are recorded. The company is met with once a month to go over those calls and not only are they penalized if they can't do it, but the right tools at that time and training are given to them to improve how they do business and how they do sales calls and what their website -- it's all-inclusive, website included.

As far as penalties and that kind of thing, I'm not opposed to it. But I don't know that that's necessarily the -- I think when you take away the credibility, that's a worst punishment than paying $5,000 to overcome it. But either way I think it's very, very important, just like Michael and Ed said, for the organizations to continue to evolve along with this industry and keep stepping up the game because I think there's not a debt settlement person in this room that wouldn't really like some barrier to entry right now.

I mean, at this point, everybody and their car can start performing debt settlement, they think. So, I don't think that those are issues that anybody would argue with. I think we're all looking at the same goal, the same direction.

MS. WITZEL: I don't think that self-regulation is sufficient without real regulation.

MS. KEEHNEN: I agree.

MS. TWOHIG: Okay. One -- I'm sorry, Alan, did you --

MR. FRANKLIN: I was just going to say that any industry historically that is an easy entry industry will tend to attract people whom they may not want to attract. So some sort of regulatory and industry standard is wonderful. The trade associations, I think, have done a very good job in trying to do that even though essentially it was done to keep the regulators away. I think that's a very good standard. That's a very good guide.

MS. TWOHIG: A lot of questions that have been submitted get back to the issue of legislation, Federal legislation and some questions about what the requirements might be. But before I move there, we have focused today on credit card debt. One question was, is debt settlement only for credit card debt, are there debt settlement companies that settle medical or other types of debt, if we could just get some information out there on that.

MS. KEEHNEN: There are, but those aren't the groups that we represent or that I represent. I know that some specialize in student loans. I received an email yesterday, one specializing in medical debt, but primarily, I would say that a very, very high percentage of all the accounts that we are dealing with in the industry today are primarily credit card.

MS. TWOHIG: Does anyone else have information on that?

MR. FRANKLIN: The only information that I have would model basically what we get in consumer credit counseling, which would be the same debts as you're describing. There are people with cell phone debts, $1,200, $1,500 cell phone bills, medical debts. And I think most consumer credit counseling agencies take on those accounts and, often, they're in very late delinquency collection, so that, I would think, would be a normal part of this industry.

MS. TWOHIG: And in terms --

MR. FRANKLIN: Unsecured credit.

MS. TWOHIG: Anyone else?

MR. KERR: There's a big distinction between secured and unsecured credit, obviously. So, there's a limited universe out there of accounts that get so big that people are threatened with bankruptcy. So, you're talking about big number accounts, student loans, medical debt. There's probably some other categories we can come up with. I think that these companies, if we're going to -- you know, assuming that the state or Feds regulate and allow the them to exist, they should be able to cover those debts. But it's an ever-changing world.

MS. TWOHIG: One question in terms of Federal recommendation legislation, why shouldn't they model 501(Q)? Would that work as Federal legislation for the for-profit sector?

MS. WITZEL: That's pretty skimpy.

MS. TWOHIG: Pretty skimpy? Say more about that.

MS. WITZEL: Well, the requirements are pretty skimpy in terms of what the credit counseling agency has to do. There are several requirements that really don't make sense applied to a for-profit, profit operation. I think that it makes much more sense to follow the UDMSA which has a comprehensive licensing and consumer protection program.

MS. TWOHIG: Any other thoughts on that? Jenna?

MS. KEEHNEN: I would like to just touch on the UDMSA. I think someone did earlier as well. Thus far, to my knowledge, the only state that has had any licensees or applicants for licensure for debt settlement companies is Colorado, and that version of the UDMSA is the most dramatically different from the original. I think that something uniform is absolutely warranted and I do not think, in its current form, that it is the UDMSA.

MR. WITZEL: Why? Is it just the Cs?

MS. KEEHNEN: No, it's a host of issues. I don't know if you have transcripts from our last conference in Chicago, but it's a host of issues. And it's also very, very, very expensive for a company to become licensed when the risks on the other end don't weigh -- I'm sorry weigh too much to even worry about trying to put something like that together. It's supposed to be a self-funded mechanism and if no one gets licensed, this is not going to be funded. So, it would be put there as a barrier to entry for sure but for just about everybody. But I enjoy working with you.

(Laughter.)

MR. KERR: Well, first, let me know that I think there are some differences of opinion about whether or not debt settlement companies can live with the substantive provisions of the Uniform Act. I have spoken with regulators and gotten the registrant list and the applicant list and it's true, there's not that many debt settlement companies applying. Colorado varies from the Uniform Act pretty much only with respect to fees. So, I'm not sure what the other issues are. Certainly, they do have a registrant there and there was an application in Utah.

But that being said, we just amended the act to address some of those issues. The cost of insurance and the surety are significantly lower because we put in, at the request of both the industry and regulators, a $5,000 deductible. A lot of the regulators, the states that were on the sidelines for this Act, are going forward in the coming session. So, I would say that, you know, give peace a chance and see what happens.

(Laughter.)

MR. KERR: Because I think there's some flexibility there with regard to fees and that there's been some significant fixes to the Act that became active in March of this year. So, the proof will be what happens in the coming session.

MS. TWOHIG: Two other questions and then I think we need to wrap up. We talked about fees and a disclosure of fees, what the total fees were, what the fee structure is to consumers. What are thoughts on whether fees should be disclosed to the public, in other words, whether there should be a disclosure? Travis talked about the inscrutability of some of the fee structures and the difficulty of understanding what the companies charge from an outsider's perspective. Any thoughts on that, whether that should be mandated?

MR. FRANKLIN: I'll start because I'm closest. In a consumer credit counseling debt management plan, we are required to disclose all fees up-front and we try and give a measure of benefit. I don't see why that would be difficult for the debt settlement industry to do for their clients to give them, if you will, an offer. If they don't respond in three days, it becomes the offer. So, it's just a good way to disclose it, here's the deal, take it or leave it, here's the benefits, take it or leave it. It confirms what was said by the representative who was selling the program.

MS. TWOHIG: And what about disclosing that generally to the public? That's what your organization does.

MR. FRANKLIN: That is to the public. And they would disclose that to the public. Yeah, we do that, absolutely.

MS. TWOHIG: Like on the website?

MR. FRANKLIN: No, the majority of it is is on the website.

MS. KEEHNEN: I think we looked at ten credit counseling websites sitting in here earlier and not a single one lists what fees they have or what they charge. I don't see any benefit to just an average passerby to see what our fees are. Give us a call, let us tell you about the program. The fees are irrelevant if you don't even know what services we provide. And just as Alan said, everybody is required to provide all of that information to any client that calls prior to signing of any contract. It's fully disclosed and I do not think it should be -- there's any benefit to listing it on a website.

MS. TWOHIG: Mike?

MR. KERR: The fees, especially for debt settlement where you have different kinds of creditors and different kinds of debt are probably going to vary on the individual circumstances of the consumer.

MS. TWOHIG: So, you're saying it would be difficult to --

MR. KERR: I think it would be difficult to say, well, this is company X and our fee is 18 percent.

And this is company Y and our fee is seven and a half because it’s going to vary depending on who comes into the program. I just think that’s reality.

Should they disclose that to the consumer? Absolutely. Should they disclose the fees and their average fee or however you want to quantify it to the regulator? Sure. But that’s accumulated data. I don’t think that it’s going to be one size fits all for settlement.

MS. KEEHNEN: I agree.

MS. TWOHIG: Ed, did you want to --

MR. MIERZWINSKI: I agree with Travis Plunkett and I agree with his predecessor, Louis Brandeis. Sunlight is the best disinfectant. Electric light, the best policeman.

MS. TWOHIG: What about a disclosure that a consumer could and should contact his creditor to find out what work-out options are available before they proceed with a debt settlement program? Thoughts on that?

MS. KEEHNEN: Most have. I have never heard the information quite like I heard it today from the banks, because the stories we get are very different than that. Again, if they’re offering all of these offers of compromise and around and round, you know, let them buy it back at five cents on the dollar before you sell it. I mean, I don't see these things happening. I don't think there's a whole lot of validation in the fact that any consumer can call. Plus, let's say the consumer has six cards, now he's calling six banks, getting a different person every time, explaining his hardship every time. I mean, this guy's probably got a job you would hope. I don't understand the problem with our being their advocate and doing those things on their behalf for them, as a service to them.

MS. TWOHIG: What would you say about a requirement of a prohibition on telling the consumer they cannot contact their creditor?

MR. KERR: That's a triple negative there.

MS. KEEHNEN: Let me think about that one.

MS. TWOHIG: Jenna?

MS. KEEHNEN: No, they should not tell the consumer. Typically, our clients are already behind. I mean, this is -- again, the qualification process, I think that's what needs to be addressed here, or not here obviously in 30 seconds, but in the future. They're already behind or they're already in a dire situation. If they're taking cash off one card to pay another card, it's too late.

MS. TWOHIG: Too late. But you'd have no

problem with a prohibition that a debt settlement company could not tell a consumer they cannot contact the creditor.

MS. KEEHNEN: No.

MR. KERR: I see what you’re trying to say. Can I make it positive?

MS. TWOHIG: Did you get that? Make it positive. Thank you, Mike.

MR. KERR: If there was a disclaimer, something that had to be in the communication to the consumer saying, oh, and by the way, you should think about calling your credit card directly before entering the program to see if you can work something out, period, put that in the boilerplate, that’s the active voice.

MS. TWOHIG: No, that’s one concept. I understood Jenna to be saying that most consumers know to do that, so that disclaimer -- or have already done that, so the disclaimer wouldn’t be helpful. I’m trying to switch gears. We have heard, and we have seen in some of our enforcement actions, that some debt settlement companies tell the consumer do not contact your creditors. I’m wondering what you all think about a legal requirement that says you can’t do that.

MS. KEEHNEN: Oh, I thought you were asking if they said stop paying your creditor.

MS. TWOHIG: Stop paying, stop contacting them, any of the above. Do you have a different answer for the different --

MS. KEEHNEN: No, no. I think that no company should tell a consumer to do any of those things.

MS. TWOHIG: Okay. We've run out of time. So, I think we're going to wrap up here. Very quickly going forward, just down the line, what's the one thing that needs to be done from here to address some of these issues we have heard about? Alan.

MR. FRANKLIN: Well, I would say I would be very happy if there was a requirement that the person going into a debt settlement program was told that they have a 1099C issue.

MR. KERR: The Uniform Act does that and I think you're going to see at least 15 introductions in new states in the coming year and, hopefully, there will be progress there. If anybody wants a copy, I brought as many as I could carry.

MS. KEEHNEN: That means I'll be seeing him all over the place next year.

MR. MIERZWINSKI: I would call for somehow we need more academic research in this area. That means we need more data available to academics and independent professors and government researchers and economists. I don't know where we're going to get that data, but this industry needs to be looked at to answer some of the questions that had been raised.

MS. TWOHIG: Jenna?

MS. KEEHNEN: I would like to say that we have already done that. We've contracted with REM, a consulting group who performs the same for all of the major creditors and lenders, and that is actually being announced next month. So, we will be gathering all of that data through a third party entity.

MS. TWOHIG: So, what one thing we need to do to --

MS. KEEHNEN: Qualifications. I think qualifications would answer a lot of these questions. The disclaimers are all about, you know, we're taking consumers that don't belong here. Well, then, let's get together, make a formula, there's enough of them out there for everybody. I don't think that we all want to take consumers that don't belong to us. They're not going to be successful in these programs. So, let's get some qualifications together.

MR. MIERZWINSKI: Could I just ask a question?

MS. TWOHIG: Sure.

MR. MIERZWINSKI: Is it going to be a proprietary database or is the database available to other researchers?

MS. KEEHNEN: I don't know. I have never been asked.

MR. KERR: Jenna, I know you're going to say it's a trade secret when you get it. Come on.

(Laughter.)

MS. TWOHIG: Carla?

MS. WITZEL: I think we need to see something done quickly in the area of advertising.

MS. TWOHIG: And, quickly, in terms of more regulation of advertising?

MS. WITZEL: More regulation, more guidance to try to get the information out there in a truthful fashion.

MS. TWOHIG: Okay.

MS. KEEHNEN: I agree.

MS. TWOHIG: Okay. I want to thank the panel.

(Applause.)

MS. TWOHIG: Very meaty discussion. I'm supposed to do closing remarks but I'm not going to.

(Laughter.)

MS. TWOHIG: Everyone is relieved. I can see many smiles there. It's been a very long, jam-packed day and so I just want to thank you all for coming. But I do want to take the time to do the following. I don't know if you realize this, but it takes quite a bit of effort on the part of the FTC to put on one of these workshops. So, I want to thank all the folks that I can for making this happen.

Sara Gottovi. Sara, stand up. Sara was the lead of this project.

(Applause.)

MS. TWOHIG: Actually, all of you stand up as I say your names if you're here. Stephanie Rosenthal, Leah Frazier, Victoria Dudich, Dalia Abu-Eid, Andrew Hernicky, Loula Little, Bev Gates, Carrie Redding, Brian Figueroa, I'm not done. But, actually, this is just because this is how many folks it takes to put on. That's the Financial Practices staff and we had help from a number of paralegals that work for the agency, Miriam Ahn, Andrew Hastey, Joseph Kennedy, Amy Suntoak, Colin Connerton, Sage Graham.

We also had help from our Division of Consumer and Business Education, the wonderful advertisements that Alice used in her panel as well as the logo and many other items, T.J. Peeler. Wayne Abramovitz, Jessica Skretch, Debra Clark. We have our media team helping us, Bruce Jennings, Kenethia Felder, James Murray, Conference Coordinator Kerry McLaughlin. And, finally, and last but certainly not least, for Public Affairs, Gail Kingsland.

So, I just want to thank all of the FTC staff.

(Applause.)

MS. TWOHIG: That's the amount of effort it took to put this on. Thanks mostly all of you for coming and for participating. It's been a great discussion. File your comments and you'll hear more from us.

(At, 4:06 p.m., the workshop concluded.)

C E R T I F I C A T I O N   O F   R E P O R T E R

MATTER NUMBER: P084808

CASE TITLE: CONSUMER PROTECTION DEBT SETTLEMENT INDUSTRY

DATE: OCTOBER 10, 2008

I HEREBY CERTIFY that the transcript contained herein is a full and accurate transcript of the notes taken by me at the hearing on the above cause before the FEDERAL TRADE COMMISSION to the best of my knowledge and belief.

DATED: OCTOBER 10, 2008

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ROBIN BOGGESS

C E R T I F I C A T I O N   O F   P R O O F R E A D E R

I HEREBY CERTIFY that I proofread the transcript for accuracy in spelling, hyphenation, punctuation and format.

____

ELIZABETH M. FARRELL