

>> Joel Winston: Hello. We're going to introduce the panelists. So let's see. We switched order. John Ansbach is still here, and he's still the chairman of the legislative committee for USOBA. We've got William Binzel, who's a senior advisor and counsel for the National Foundation for Credit Counseling. He joined NFCC in May 2004 and served as its executive vice president and general counsel until January 2009. Prior to his work at NFCC, he served on the board of directors of Consumer Credit Counseling Services of Greater Washington, on the advisory council and research committee of the Credit Research Center of the McDonough School of Business of Georgetown University. He was also vice president for public affairs for Mastercard. He's a graduate of the University of Wisconsin and Capital University Law School. Mike Bovee is still here, and he's still the founder of Consumer Recovery Network. And we have Mike Croxson, who has served as president of Care One services since 2005. He has nearly 25 years of experience in the financial services industry. He's worked in credit granting organizations, management consulting firms and in debt relief credit counseling companies. He earned his undergraduate degree from the University of Virginia and completed advanced studies at Duke University. Robert Davis is a partner at the law firm K&L Gates. He represents clients in administrative and grand jury investigations, internal investigations, conferences, trials, and appeals. From '82 to '83, he served as deputy assistant attorney general in the tax division at the Department of Justice. Ron Elwood is staff attorney at the legal services advocacy project, where he advocates on behalf of low income consumers regarding consumer law, landlord tenant and housing law and other areas. He has successfully developed and advocated for laws protecting consumers including landmark Minnesota legislation that governs debt settlers. He earned his JD from William Mitchell College of Law in St. Paul, Minnesota, a Ph.D. in cinema studies from New York University, a Masters in cinema from the University of Southern California and a Bachelor's in communications from Queens College of the City University of New York. Must have been in college until you were 40. That's very impressive.

>> Ron Elwood: Try 60.

>> Joel Winston: I'm jealous.

>> Male Speaker: Talk about debt.

>> Joel Winston: Wow. Good point.

>> Male Speaker: We'll be glad to help you.

>> Joel Winston: Norm Googel from West Virginia attorney general's office is still us with. Then we have Michael Kerr, who is, there you are, legislative director for the national conference of commissioners on uniform state laws which came up for some discussion earlier today. And we'll come up with more discussion this morning. He is responsible for the planning and execution of nationwide enactment efforts for the uniform and model acts. Prior to joining NCCUSL, he was deputy legislative counsel for the state of California. And he holds a Bachelor's degree in public policy from Stanford, a JD from the University of Southern California and a certificate in government practice from the McGeorge School of Law at the University of the Pacific. He's been in school a lot, too. Robert Linderman is the general counsel of Freedom Financial Network, the holding entity for freedom debt relief, the nation's second largest debt settlement firm. He started his career with the SEC's Division of Corporation Finance. Before joining Pillsbury, Madison and Sutro and later Howard & Rice, two law firms. He also served as the secretary of First Nationwide Bank and where he had responsibility for all financing, M & A and

regulatory matters. Since then, Mr. Linderman has specialized in all forms of consumer finance, both secured and unsecured. He holds a law degree and Bachelor's from Boston University. Travis Plunkett with us. Travis directs federal, legislative and regulatory efforts for the Consumer Federation of America which is a nonprofit association of 300 organizations and advances the consumer interest through research, advocacy and education with a combined membership of 50 million Americans. Travis focuses primarily on financial services issues for CFA including credit reporting, bankruptcy, credit counseling, consumer privacy and insurance. He holds a Bachelor of Arts degree from the University of Denver and served in the U.S. Army intelligence and security command. Then finally, we have Steve Sakamoto-Wangle, deputy chief of the consumer protection division of the Maryland attorney general's office, where he's worked since 1986. Steve's been actively involved in legislation concerning the debt management and debt settlement industries before the Maryland General Assembly. He is a 1984 graduate of the University of Maryland School of Law. And undergrad degree from Penn State. So, again, we have a very august group of experts to talk about advance fee implementation. So what I'd like you to assume for a moment is that the FTC has decided that requiring disclosures and prohibiting misrepresentations may not be enough. And, again, this is just an assumption. If that's the case, what restrictions, if any, on fees should the FTC be imposing? Should certain fees be allowed, or should it be a blanket ban on advanced fees? Should companies be allowed to escrow funds from consumers? Should there be any exceptions from the advanced fee ban? And what can the state experiences tell us? So I'd like to ask the opening question and please put up your cards if you would like to join in. What should be the main features of advanced fee ban, and should it vary depending on whether we're talking about debt management, debt nego -- I'm sorry, credit counseling, debt management or debt collection? I'll ask that question.

>> Female Speaker: Debt settlements.

>> Joel Winston: Debt settlements, sorry. It's been a long morning already. So who wants to jump in?

>> Robert Linderman: I'd be glad to jump in.

>> Joel Winston: All right, Robert.

>> Robert Linderman: Yeah, thank you very much for the opportunity. I think it's important when we're talking about how the advanced fee ban is going to affect the operations of the company that we make sure we properly segment between debt settlement, between credit counseling and between any other form of debt relief such as bankruptcy or the very new debt negotiation. You heard a lot this morning about debt -- excuse me, about credit counseling being in effect --

>> Male Speaker: I'll have you do it. I'm having you do it now.

>> Robert Linderman: I think that one of the points that was made this morning is that debt settlement companies have a ratio of approximately 11 times the staffing that most credit counselors have. There's a good reason for that. We have at Freedom Debt Relief in excess of 150 people in customer service. And there was also some commentary made about whether or not there's a suitability analysis performed. And I think it's important to note both of these facts in the context of how our operations would be affected under a debt settlement -- excuse me, under an advanced fee ban. In the context purely of a suitability analysis, we have, I would say, probably 25 to 30 people who do nothing more

than analyze the information we receive from consumers regarding the appropriateness of the program for these consumers. We have a ratio of approximately 22-to-1 of people who touch us for information or file a request for a contact with the debt counselor. And of those 22 people, approximately one enrolls in our program simply because we take the time to do a thorough suitability analysis. I believe Miss McNamara said this morning that for her credit counseling association, they spend approximately an hour on initial suitability. Our client enrollment cycle is far longer. We generally have about six to eight customer contact calls, each one of which can last as much as two hours. And at the end of that process, the customer is asked to submit all of the information, which goes to that 22-person group that I mentioned earlier. On the customer service side, we have over 150 people who engage in what was colloquially called hand holding this morning. However, that is a far more intensive, far more consumer-friendly, far more educational concept than mere hand-holding would be. Hand holding, you think of somebody calling in and saying, "My God what am I going to do?" In fact, that is one of the functions these people perform, but they also perform budget analysis. They also perform consumer education, financial analysis. So all of these functions would be placed at risk if an advanced fee ban were put into place because, as I mentioned earlier, we're talking about an 11-to-1 ratio of employees to consumer credit counselors. When you're looking at an operation that is as customer intensive, as consumer centric, and as highly invested in the human capital and the technology we need to deliver an exceptional service to a very afflicted group of consumers, you're putting at risk many of these functions. And we think that if an advanced fee ban were put into place, many of these things would be compromised. I'm sorry, would you like me to stop? Because I have additional material for you.

>> Joel Winston: I'm sure you do. I'm sure you do. Why don't you hold it for a while? And you'll have other opportunities. But let me just ask you specifically, do you think there should be any restriction on fees that are charged, how they're charged, when they're charged, how much?

>> Robert Linderman: Yes, I do. And, in fact, we work both at the freedom debt level and at the TASC level of which I'm proud to be a board member as well, very closely with Mr. Keer on passing the UDMSA in various states. We've had great success over the last 18 months, and we anticipate continued success. We believe that not only are the states the most appropriate venues for looking at these fee restrictions, but that the UDMSA, with a fee structure that allows for the projection of a completely transparent, completely consumer aware fee structure that is conveyed to the consumer prior to contract formation along with adequate disclosures about the ups, the downs, the risks, the rewards of debt settlement. It's a highly appropriate mechanism, and we're proud to support the UDMSA nationwide.

>> Joel Winston: Ron Elwood?

>> Ron Elwood: Thank you, and thank you for inviting me to participate. I'm really honored to be here today. I also just want to thank the staff at the FTC 'cause the session that I was here last year about this time was incredibly valuable. And I just really appreciate the work of the staff. I was on a staff for a government agency for a long time, and I know they don't ever get the right degree of appreciation. A couple things. One thing that strikes me is that there's been this discussion this morning about, if we have this advanced fee, only 10% of the folks are going to make it. And the industry, knowing another group of -- a new group that's been formed apparently that believes it can actually make a go of the model. So my question is, if 10% can succeed, why

can't the rest? If a group of folks are here saying, "We can do it, we want to do it. We think it's the right way." Why are they any different from any of the other players in the industry? Point I'd also -- it struck me that I've heard that between TASC and USOBA, apparently they do not represent even the majority of debt settlement companies that are out there operating. While they make the most noise and, of course, have the greatest resources here and it states that, I know, both TASC and USOBA spent a lot of time in Minnesota when we were passing our law this last legislative session. But if they're not really representing the majority of the industry, the fact is, if we've got a shakeout, and 10% of folks are doing it under the advanced fee model, the customers that would otherwise go to these, either people that are out of business or people that aren't even members of associations, then all the customers that are suitable will wind up going to these companies that can do it without charging up front fees. So that's my point for the moment. Thank you.

>> Male Speaker: I just want to point out that we talked this morning about TASC and USOBA and the size of the organizations. We also had some discussion from Jean Noonan about a new organization called Accord, I believe. I would just point out that membership of that organization is far smaller. I think it's in the single digits. But Jean will be on a later panel. She can talk more about that. Mike Croxson?

>> Mike Croxson: I want to make sure that I answer your question the way you've asked it, which is, assuming that the advanced fee ban was the determination of FTC. What would be the issues with implementing it?

>> Joel Winston: Well, more a question of, what should it look like? There's a -- one possibility is a total ban on collecting fees until settlement. But are there other iterations of fee restrictions that we should be considering?

>> Mike Croxson: As I think probably the only company who's been here today who does provide the entire spectrum between settlement and credit counseling. I would tell you that from our position on the proposed fee ban is that it makes sense. It's a very difficult, challenging decision for the industry because it's different. But in the context of this being about consumer protection, we think that it is the right approach. It is the right step to take. And that, if companies are truly interested in serving this consumer set and really understanding what products and services are suitable for them along the way, they will make whatever process changes are necessary to accomplish that. Now that being said, you know, it's baseball season, and it's 3-2. So forgive the analogy, but the most important aspect -- and the states have learned this already -- the most important aspect of this particular issue, however the fee thing plays out, is that if the baseball folks -- if Major League Baseball has concluded and everyone agrees that fundamentally steroids should be illegal, applying this law to only companies in the for-profit sector is sort of like applying the no-steroids rule only to the American League and letting the National League play differently. If this is truly about consumer protection, where all companies of all ilks do advertising -- and this is about changing the telemarketing sales rules. They do advertising. They put their award and their name out there in front of consumers. Everyone should have to live by the standard of definition that is debt relief. That's the real concern that I have on behalf of consumers who will continue to hear messages from companies that won't be covered under the way that it's being proposed and put out there. And I think the states -- I know that Michael probably will talk about this also -- the states have recognized, look, this is about regulating the product, the service that's being delivered. It is about making sure that whatever the fees are, whatever the disclosures are, whatever consumers are being told, everyone

is being told uniformly. And everyone is playing by the rules. And if you're licensed, to play by the rules. Then the consumers should know you're legit.

>> Male Speaker: I just want to point out that while I think you make a legitimate point, that we actually don't have the jurisdiction to regulate the nonprofit industry. So we don't have the option of imposing advanced fee ban on everyone in the industry. And given that, should we be imposing it on the for-profits?

>> Male Speaker: And if I may, to sort of fast forward into your last question of the first panel, was what should FTC do? I absolutely believe that, post-haste, FTC should be in Congress asking them for the authority to make this. Before you implement something, go after permission to make it uniform.

>> Joel Winston: Okay, thank you. William Binzel?

>> William Binzel: Thank you. And given your point about not having the authority over nonprofits, I won't -- is this on? Okay. I won't spend a lot of time there. But I think we should put out on the table, there fundamental differences between a nonprofit credit counseling agency and a for-profit debt settlement, debt relief company. And that is, if you're a 501-C3 credit counseling agency, you're in the business of providing consumers with financial education and financial counseling. If you're in -- a for-profit company is in that's exactly that business. They're in business to make a profit. And they make a profit by selling a product. So the fundamental question, in terms of, if you're looking at the "industry or the sector," you've got the nonprofits who are in the business of providing education, a debt management plan may be a part of that process. But that's not their primary product. Versus a debt settlement company, versus a for-profit counseling entity, they're in business to sell a product to a financially strapped consumer. And may or may not have the best interest of the consumer at heart. But also point out in terms of the sector, 501-C3 agencies are also covered by section 501-Q of the Internal Revenue code, which are very restrictive as to what you can and cannot do. They're also subject to the core analysis tool of the IRS. Again, restrictive as to what you can and cannot do. Most of them are also participating in bankruptcy counseling and subject to the stringent requirements of the executive office for United States trustees. So there are a set of regulations that are out there that are applicable to nonprofit 501-C3 agency that's are not applicable to the for-profit sector. So it really is -- it's an apples to oranges comparison. And it's probably not worth spending a lot of time trying to compare the two because they really aren't comparable.

>> Joel Winston: Thank you. Steve?

>> Steve Sakamoto-Wengel: Thank you. I do agree. There are, you know, significant differences between the debt management industry and the debt settlement industry. The debt management industry, when the consumer signs up for debt management plan, they know what they're getting. They know what the creditors agreed to. They know what their payments are going to. And the credit counseling agency is earning its fees each month, and the debt is being paid down. When a consumer signs up for a debt settlement plan, they have no idea whether any of their debts are ever going to be settled. They're not gonna know for two or three years down the road whether those debts are going to be settled. So they really don't know what they're signing up for at the time. And in complaints and the investigations that we've had at the state level, what we found is that rather than the trained counselors that, you know, Mr. Linderman talked about, a lot of the people that are hired as counselors are

really sales people. Without counseling experience, without financial experience. But they're there to sell a product. We believe that with the debt settlement industry, the full advanced fee ban was the only way to provide an incentive to make sure the people are properly screened, to see if they belong in that program, to make sure that people fully understand what they're getting themselves into. Frankly, from the complaints we've gotten and the investigations we've had, the reason that hand-holding is necessary is because people who sign up for these plans don't fully understand that the calls from creditors are not going to stop, that their payments are not going to be going to pay down their debt. And so we think that the advanced fee ban is, you know, really the appropriate way to go to make sure that those consumers are protected.

>> Joel Winston: Thank you. John?

>> John Ansbach: A couple of points that I want to make on this, and first, let me just, really quickly, 'cause it was brought up. I hadn't planned on bringing it up, but Ron made the point that there's a group of folks out there saying they can make it with this advanced fee ban model. The group you're referring to has one member. It has one member. It has one member with three different plans, and it was formed about, I don't know, 65 days ago. I find it ludicrous to consider implementing a rule based on the experience of one company taking what I would consider appropriate efforts to use the rulemaking process to find competitive advantage. You have 400 members, and not just -- not just members, but this idea that while USOBA and TASC don't represent the majority, so let's let the other people do it. USOBA and TASC are the only people that represent folks would have signed up to abide by ethics programs, best practices programs, compliance audit programs, secret shopper programs. We may not represent the full majority of the industry. But I suspect, and I would certainly respectfully submit to the people that have joined these organizations are interested in providing honest, ethical services, and to drive 90% of the them from the marketplace would hardly be doing consumers justice. To the point of what we should do here, I was really struck. And I have to admit, I hadn't given this any thought before your opening comments. The assumption is, the disclosures and misrepresentation regs don't work, so should we move to fees? And let's assume that we move to fees, what should it look like? I don't know why it hadn't occurred to me, but why do we do that? If we assume that disclosures and misrepresentation regs are not working, and by the way, USOBA certainly supports the vast majority of what's been proposed here, we are aware, and Mike would know better than probably anybody at the table that the UDMSA, the debt settlement services act, Montana's law, Oregon's law, I believe Connecticut's law all include additional consumer protections that we haven't even discussed today. Licensing, registration, background checks, insurance, surety bonds, the creation of causes of action that can be brought by the state or private citizens. Importantly, accreditation. All of these are important, industry supported consumer protection measures that work in concert with appropriate, reasonable fee regulation that result in what I think is the goal here, strong consumer protection. I had a very good conversation with a legislator down in my neck of the woods, down in Texas on this issue. And she was making the point, she's the chairman of the committee, and she was making the point, consumers need to know who these companies are. And they need to know, they need to have faith that when a company has gone through this process, that it has been vetted by the state. That it's passed background checks, and the states are making their determination how significant those checks are. They need to be sure there's financial stability, the things that everybody wants. So when a consumer goes to one of those -- one of those companies and the providers, that they have confidence they're working with somebody who is

aboveboard, who is not a fly-by-night. So I don't want it to get lost in the discussion that this commission has got two things down that I think are widely supported. The disclosures and misrepresentations. Before you jump into what is arguably the most disruptive, and would preempt a multitude of states who are doing this, remember that the states have a number of tools that they are doing themselves that are evolving, and I suspect many more will do in the coming year. The only last point that I wanted to make on this issue -- two quick last points. I have not met Bill before. I like Bill. I do. He's a good guy. He is well-spoken. But I heard this argument at the NCSL. And, Bill, the idea that nonprofits have no interest in self-survivability or sustainability, and that for-profits are evil, it just kills me. It's like saying, you know, I know Microsoft is a reasonably profitable corporation over the years, but they haven't really helped consumers. Despite the fact that Windows is basically used by everybody on the globe. And I'm a MAC user, so I'm not even biased, okay? I don't want to have this discussion because it is basically like saying that the commission needs to codify a business model. You need to put for-profit folks out of business because they can't possibly have the interest of consumers at heart. You need to let the nonprofit folks do this. I could not disagree more. And don't listen to me. Listen to the volume of consumer testimonies we've received. Finally, the last thing that I wanted to mention, and Steve, you made this point, the counselors are basically sales people. I know you're familiar with the IAPDA training program that is debt management and debt counseling. The UDMSA requires accreditation. Are members that are abiding by the UDMSA where it is, in effect, go out and get accredited, not in sales and marketing techniques, in debt counseling and debt management techniques in financial education and financial literacy. I worked -- one of my companies right now is going through this process. We're bringing IAPDA in. They'll train everybody on the floor in the appropriate technique. So it's not sales and marketing. It's the things that we need to pay for to appropriately service consumers.

>> Joel Winston: John, I appreciate your zealous advocacy on behalf of the organization. But I want to make sure everyone is very clear on one thing. When I said that assume that disclosures and misrepresentation prohibitions are not adequate, I'm assuming that's for the purposes of this discussion. I want to focus the discussion on advance fee bans and alternatives to that. The commission is not made any determination whatsoever. We put out a proposed rule. The commission will be looking at the entire record, including the transcript of this forum, and we'll decide what they think is appropriate. But we have not -- we have not prejudged any of these issues. I want to make that clear. Robert Davis?

>> Robert Davis: Yes. I'd like to follow up on something John Ansbach said today, this morning and again a moment ago. Which is that the advanced fee ban might eliminate those for-profit debt settlement organizations that exist today. No one, I think, doubts --

>> Joel Winston: Make sure you speak into the mic. Just remind everyone to speak into the mic, please.

>> Robert Davis: No one doubts that there is a need for debt settlement services. I don't think anyone can fairly say that the dramatic growth of debt settlement services companies, organizations is a phenomenon that is temporary. It's here in large volume. There's obviously a need. The question I would like to address is whether -- what form the debt settlement services may take and how can they be delivered in the future? I really have been historically a tax litigator for 50 years. I have tried tax cases involving tax-exempt organizations and have represented dozens of tax-exempt organizations for many

years. The question is, could a debt settlement organization -- or could a credit counseling organization shift across and pick up some of the responsibilities in the debt settlement area? There will be this vacuum created by the elimination of many, perhaps all, who knows, of the debt settlement service companies. Where will that gap be filled? By whom will it be filled? And those who speculate that credit counseling organizations can fill that gap, I think are in error. And the reason I believe that is, they are tax-exempt under section 501 C-3 chiefly on the basis that they provide education to the people who have debt and need educational help. If they shift out of that tax protected area into another area which is not tax protected, and here I'm talking about this kind of debt counseling -- rather, debt settlement function, if they shift into that function, it is not within those functions that are exempt under section 501 C-3 of the Internal Revenue code. When you bring the two together, it disqualifies the organization as an entirety from eligibility. So not only would it not be possible for federal tax reasons to combine these functions in a single entity, the same is true on the state side. Many organizations derive their ad valorem lower tax exemption based upon the existing protection that's available to them from tax under the federal law. Because they're exempt under section 501 C-3, they're also exempt from ad valorem taxation on their personal and real property. That protection would also disappear if they lost their 501C3 exemption. I apologize for my voice. I've got youngsters at home. They have given me something that's making it difficult. I apologize. But I think the conclusion is really beyond ready debate. It won't work. And I also had another question. I'm not qualified to address, but I raise it for others to consider who are qualified to address. Would credit counseling organizations even be willing to negotiate debt settlements with their long term friends and sponsors, the banks and credit card companies? Can you visualize the picture where a bank is paying fair share compensation or other affiliated payments to an organization that provides credit counseling? And then facing a hostile negotiation or an adversarial process involving the same people? I think there would be an obvious conflict of interest. And I would speculate, and it's only speculation because I'm not qualified. But I would speculate they would not. And if they did, they would do so with a very soft voice and not with a warm seal that might be required to achieve an appropriate compromise of liabilities.

>> Joel Winston: Thank you, thank you. I want to go off on a slight tangent for a minute, because there is something I don't quite understand. And by not understand I mean I really literally don't understand. Not that I've reached some judgment or something. But we've heard a lot this morning, and it just came up again, about how up to 90% of the industry, debt collection and the debt settlement industry, would go out of business if there were an advanced fee ban. And what I don't understand is why can't a model work where the company charges for services that they perform later in the relationship? Whether it's at the very end after they settled the debts or whether it's at some earlier point? Why can't -- why can't that be built into the cost structure of the company and the fee structure that they use to charge their fees? I guess I'm not sure why that's the case. And maybe somebody can enlighten me on that?

>> Male Speaker: Thank you. I think it's -- it's really important to look at the kinds of organizations that the commission has examined when they've imposed an advance fee ban. For example, mortgage loan origination -- mortgage loan modifications. There you've got a very short cycle, perhaps two months at the very most, where the actual services then delivered against the fee. So there's a very short period of time where the organization has to bear the risk. Debt settlement programs as you've heard time and time and time again can run anywhere from two to three and sometimes even longer years. And so tying

revenue events to having a program that runs three years would force companies to in effect fund the operations for an innumerable amount of consumers for a three-year period of time. Remember, I told you that my organization has more than 11 times the population of a comparable credit counselor. We have over 500 people. If we were to look at structuring a program where the first revenue event is tied to a payout that could come anywhere from 2 to 3 years down the road, that would be an untenable revenue situation for us. And what would happen is that you'd get incredible compression at the customer service level. You'd get an abbreviation of the service levels that we provide. You'd get an abbreviation of the counseling that we provide, of the suitability analysis that we provide. And you would wind up with an unfortunate circumstance where those who were successful in the program actually subsidized those who were not successful. People who came into the program with unrealistic demands. Only settle for a nickel on the dollar. Well that's not really a realistic settlement, but yet if I take that person into the program, I can wind up providing services for a two or three year period of time and have that person exit with no penalty fee, if you will. So asking a debt-settlement provider to fund the operations over a three-year period of time is tantamount to saying that you cannot provide that service to anyone because you will not be able to staff appropriately to provide it.

>> Male Speaker: Is there another viewpoint on that? Travis?

>> Travis Plunkett: Thank you, Joel. I think the focus has to be on what's happening to the consumer. What's the fair result for the consumer and not on the impact on a business model that is clearly very flawed. A better analogy, in terms of existing law, would be the Credit Repair Organizations Act enacted by Congress in 1998 where doctors were making promises where they could remove legitimate factual information on credit reports and they were -- this deception was being fueled by their ability to accept fees before the service that they claim they could render was actually rendered. The process could take many months, sometimes years, and Congress decided that because the source of that deception was the ability of the firms to take advance fees that they would prohibit advanced fees. What we've seen is that credit repair firms have not disappeared. But there are fewer of them. And those that do exist, some of them are still quite problematic. I mean we have not removed credit repair as a problem for consumers. But overall, the industry is smaller and treating consumers better and not making claims that are deceptive. So to me, that is the better analogy here. One of the points I want to re-emphasize that did not come out too much on the first panel, debt settlement does not render debt reduction. Credit counseling, month by month, does render debt reduction. It is absolutely appropriate to say in a circumstance where debt reduction is not occurring and that the essential promise of the firm is that it will occur, it's absolutely appropriate to say that a fee cannot be accepted until that occurs. Especially given the track record of abusive and deceptive practices of this industry.

>> Joel Winston: I think that's a useful way of looking at it. Not the only way, obviously. It's almost a question of, who has to accept the risk? Is it the consumer or the business? Clearly, there's some risk that there will be consumers who take some services from the company and don't pay. If there's an advanced fee ban, the consumer at the end of the road may say, "Well, I won't settle unless it's 5 cents on the dollar," or may drop out during the course of the program at some point. And they will have gotten some value and not have to pay for it. So there's a risk there. But should the risk be on the company which can presumably build that into their fees? It's a cost. Presumably, they can build that into their fees, the risk of providing services to people who don't pay. Or should the risk be on the consumer, who is paying all this money

up front, and then at the end of the day may never get his debt settled? And is taking the risk that he's dealing, not with one of the legitimate operations, but with one of the fraudulent ones who is just there to take their money and never makes any effort to settle the debt. You know, one thing I'd like to hear more about is this risk issue. Let's go to Mike.

>> Michael Bovee: Thank you. The beginning question of assuming that disclosures and, you know, misrepresentations aren't enough, and what would the fee ban address there? And it really boils down to suitability. Last summer when we did a test with two marketing companies, they -- you know, they did everything "right." In their sales processes, they were all recorded. Their third party verifications, before they were transferred over to us, these disclosures. If you'd answer no to any of these seven to nine questions, what have you, they stopped the call. They go back to the sales person and address the issue until they're going to get a yes answer. The focus is suitability. You know, somebody's going to focus on relief when you quote some, "Hey, we're going to save you this much money over this much period of time, you can't pay \$900, but you pay \$450 a month," that's their focus. They lose sight of all of the disclosures. I don't think the disclosures are enough. Based on all of the reviews that I did last summer, why are we having worse than a 60% refund ratio with these two sales companies that are referring people over? They're making all the right disclosures. These people did not belong in our program. And these sales weren't quite prepared for the fact that these consumers were receiving comprehensive education that we -- I submitted last year to the commission at one of these. And it doesn't jibe well. You know? And these people are within a week saying, "Yeah, I think bankruptcy is good. Yeah, I think debt rollup is good." Okay. So the restrictions or, you know, beefing up these disclosures which the good, you know, ethical to a degree companies that I still think charge far too much and allow for too long program lengths, all things considered, they're making those disclosures. So the fee ban will take it to the level that, more suitability factors are going to be the criteria for success. Because you're not going to enroll somebody who, if you're not going to get paid your contingency fee down the road. Now I firmly -- I think the industry has the wrong approach. I've been told over the years that CRN has the wrong approach. Apparently we have the right approach. In that two to three years for a successful settlement is absolutely ridiculous. If I wanted to, I could settle debt in 90 days of delinquency, okay? It's not going to be at the best savings rate, so it's not in the consumer's best interest. But it's definitely doable. We get offers all the time. We'd work directly with creditors, and we can facilitate that. But more particularly, or more often, you're going to find these five-month time frames. Can a company do that? Absolutely. We do it all day long. Okay? But we also encourage the consumer to do as much of this on their own. To the degree, in the commentary I submitted leading up to today, 51% of the accounts that are enrolled are submitted in part of their list of creditors when a consumer becomes a CRN member. 51% of those accounts lifetime are settled by the consumer because we give them the tools, we give them the coaching. We're ongoing there for them to facilitate that. While 49% are done with us. The disparity between the settlement amounts that we do on behalf of consumers and consumers do on behalf of themselves are separated by 3%, okay, in the 30s. I think it's 30 and 35-point-something respectively. So consumers can do this on their own. The reference to CROA that Travis made is very applicable. It's a letter writing campaign. Years ago when companies were charging obnoxious fees for this, consumers were able to and still can do this on their own with some letter writing. Settlement is no different. The consumer can effectuate this on their own. So I want to draw some distinctions that, what are you providing and how soon can you provide it? Two years? Three years? That's just -- that's

unfathomable to me. I just don't see how the industry can use that as a benchmark. It should be five months, and then incrementally from there. So are you waiting five months to get paid? Okay. Did that payment, that contingency fee, suffice enough to where you can sustain your business and your margins? You just gotta survive five months. That is going to be hard for new entrants and operating capital in place for companies that already have operating capital, that already have an established marketing pipeline. I don't see how they have to fold. I don't see where 90% have to fold, unless they are structured and of capacity that is more attributable to a Ponzi scheme, where the people coming in and the fees that are associated with that are paying for the support for the people that enrolled two years ago. Okay? And I doubt that's the case. I sincerely doubt that's the case with reputable, strong companies that are part of some of the associations and maybe even sitting at this table. I don't know, but I definitely don't think 90% will leave. Some of the things that --

>> Joel Winston: Why don't we just, if you don't mind, I want to again focus in on this issue of risk. Mike Kerr, do you have thoughts on that?

>> Michael Kerr: I think the Uniform Act has been described and discussed a bunch of times. And I think it's probably helpful to talk about what the Uniform Act's conclusions are with regard to that assignment of risk. And the Uniform Act does much, much more than just set up fee limits. And I think John did a pretty good job of describing it. It is a comprehensive statute, everything from consumer remedies to refunds of settlement fees. But with regard to the question you asked, which is, how do you balance that risk? I think in 2003 when we started the process of formulating Uniform Act, which took about three years to develop, we -- The uniform law commission is not provider of debt relief services. Nor do we represent banks. I mean, we're a neutral, hopefully expert drafter of statutes that try to solve specific narrow problems. And we, I think, were convinced that debt settlement as a consumer option is going to be around for a while. I mean, it really kind of sprung up around 2004. And we're halfway through the drafting process. And we decided we needed to include them. The balance of risk is this. Under the Uniform Act, we do allow for a setup fee, an advance fee, but we limit it. It is the lesser of \$400 or 4% of the debt enrolled at inception. That's there because we were convinced that there are costs associated with setting up the account, the initial counseling, all the things that the industry will talk about. We also allow for a regular sort of monthly service fee of up to \$50. Again, that's because you do have continuing costs. But the Uniform Act is drafted in its original form, and its official form puts the majority of the settlement fee as a contingency model. 30% of the difference between what the settlement actually is and what the original principle was. Now when we've gone out to the states, and we really started that process in earnest the last year and a half, we've negotiated a slightly revised version of that -- that contingency fee model, which is probably 70% of the fees altogether, with the flat fee model. And this is because we were across the table from the industry, and there were significant and continuing discussions about what the outcome needed to be. But with a flat fee model, the only reason we agreed to it is because it had to extend over at least half the length of the plan. That's the status quo in two states right now, Nevada and Tennessee. There are several things that have the pure UDMSA with the contingency fee model only. Next year, 12 states are likely to introduce and probably enact the UDMSA. The impact of an advanced fee ban from this proceeding or this process would probably be to take out that setup fee that we allow for the Uniform Act, 4% or \$400 and probably restrict the settlement fee models to contingency fee only. And I'll let the industry talk about whether or not that's viable for them as a business model. I mean, we --

the uniform commission agrees with the idea that you need to align incentives. But we're also, I think, sensitive to the fact that there are actual continuing costs with debt settlement. And how you align those incentives and those fees makes a big difference as to whether or not the industry is available as an option for consumers to engage in. So I think it's sort of in the middle. The Uniform Act in terms of how you align the risk of the nonpayment. I mean there's a little bit up front, the 4%, \$400 up front under the Uniform Act. And in the uniform version of it, most of it's on the back end at contingency as each debt is settled.

>> Joel Winston: Thanks, that's very good to know. Norm, do you want to comment on this?

>> Norman Googel: I think the reason we're here today is because the fee model that has been used has not worked for the consumers. Because they have been bearing all of the risk, in essence, an industry has been created to help consumers who have the least money and are using those consumers as their bank. And I think if they -- if they can't fund this on their own, if it is a valid valuable product, it will work. And interestingly enough, one of the great sales points of the industry is that we are an alternative to bankruptcy. And many companies say, "We all know that you want to pay your debts and you don't want to file for bankruptcy." And, in fact, that's true. They do want to pay their debts. And when they had money, they did. And when they had money, again, they will. And though unfortunately they don't really tell consumers what bankruptcy really is. So consumers sign up for this product not knowing that bankruptcy is probably a better product. But if debt settlement provides a legitimate product when the service is provided, these consumers will pay you because, as you said in the beginning, we know you want to pay your debts. And they will. So now they're going to set aside what little money they have to pay for a service that's truly helping them. And I just want to say briefly that, in all the settlements that we made with debt settlement companies, they generally involve ending the service. And at the end, a letter is sent to the consumers. Many of these consumers did not complain. They were enrolled in the program. So now all of a sudden, the service ends. So we feel we have to tell them something. Well, most of them get money back, usually all of their money back, at least money that hasn't already been paid out in the settlement. So what happens to these people? I interviewed about 100 of these folks, lengthy interviews. Two things happen. Some of them go out and settle their debts, very quickly. All of a sudden, they have some money, and they settle them. So it shows the debts could have been settled sooner. But the vast majority of them, when they finally learn for the first time what bankruptcy really is as opposed to having the myths and understandings -- or misunderstanding exploited or misrepresented to them, they go oh, the majority of them end up filing for bankruptcy, which is something they should have done in the first place. So we really think, if it's a legitimate product or service, that the industry should fund it. And it will work. And if it doesn't work that way, then there's a real question about whether it was legitimate at all.

>> Joel Winston: I want to follow up on one thing you raised with Bob. Bob, you mentioned that there was a concern that consumers would sort of go through the process, and at the end, demand that any settlements be 5 cents on the dollar. At that point, you've put a lot of time and money into the consumer and the consumer is -- is not going to go through with it. And if there's an advanced fee ban, those are costs that you are losing. What -- why would a consumer do that? I guess two questions. One is, how often does that happen? And what incentive would a consumer have to go through this entire process and then, at the end, make such outlandish demands that they get nothing out of it?

>> Robert Linderman: That's a great question. It is not a common practice in a circumstance where a consumer is paying as you go. Because the consumer recognizes that there's an opportunity to settle for legitimate price with his or her creditors. When you make it a riskless proposition, then you'll be attracting a far greater cross section of consumers, some of whom may not have any intention of paying. So there is always the question of, who bears the sunken costs of the debt settlement opportunity? But I'd like to focus on one thing that both Norman and Travis have brought up. And that is the question of value. I'm truly delighted that they opened this door because I think that our story has not been told in absolute dollar terms. And I think now is a great time to do it. To the extent that freedom debt, our experience alone speaks. We deliver tremendous value. When I think Andrew Houser described the methodology that we use to analyze our population this morning, we took a look at people who have been in the program for at least three years to see what the representative experience of that population would be. And I think you'll be surprised to learn that the average clients in a pool of almost 8,000 consumers received more than \$7,900 on average in debt reduction while paying less than \$2,700 in fees. Bottom line, we delivered more than three times in debt reduction what we were paid in fees. And more significantly, that includes people who made one payment into the program, but may not have completed the program. So we're looking at all terminations, all successful program participants and whatnot. When you include everybody into that calculus, you get a benefit that is more than three times the value of the fees that are paid in. I guess as a coda to that argument, you might look at what a comparable debt settlement plan would yield when compared with credit counseling, or when compared with making your monthly payments to a credit card company at penalty interest. Our numbers, we believe if you had a debt of \$30,000 yielding 25% and change to a credit card company, over 20 years, you'd pay in excess of \$110,000. If you entered that same program with a debt management plan where your interest was reduced to 12%, but your payments -- but your principal was not touched over five year debt management plan, you'd pay in excess of \$42,000. If you entered a debt settlement program and settled according to freedom debt's historic norms, you'd pay a total of \$17,100, that's inclusive. That's inclusive, Norman, of all fees in the program. So we're looking at a benefit to the consumer of \$17,000 over three years compared to \$42,000 over five years, compared to \$110,000 over ten years. I think you can see that we are delivering value. This is to the point that Travis raised. I mean, this is a deeply flawed model. Cannot produce these kinds of results for their consumers. We have a track record of serving over 72,000 consumers, 37,000 of whom are currently active in my system. So I would say to Michael, you know, we aren't a Ponzi scheme. We represent 37,000 consumers, and we're settling more than \$27 million of debt every single month.

>> Joel Winston: Steve?

>> Steve Sagamoto-Wengel: I did have a question. I don't know if the savings claims and the TASC report and the savings claims you just mentioned, are they based on the debts originally enrolled in the program, or the debt that builds up with the additional fees and penalties that are accrued during the time that consumer's in the debt settlement plan?

>> Male Speaker: May I answer the question? That's a great question, and I'm really glad you raised it. Because you're striking to the very core of what Gale Hildebrand pointed out as, in her view, a flawed methodology that we employ. The fact of the matter is that from the time of enrollment to the time of settlement -- and these are statistics, by the way, that we provided or will

be providing to Bob Hunt for his own analysis, his independent, third party validation. But the accretion within the account from time of enrollment to time of settlement is approximately 10%. Now, I can only speak for freedom debt. I can't speak to TASC members. But I think that John would validate this as far as his USOBA members are concerned, and I think we can validate it as far as TASC is concerned. The accretion in the account, from the time of enrollment to time of settlement, is approximately 10%. So if I'm telling a consumer, I'm going to setting your debts for 42%, which is what we're settling now, a little less, actually. But if I tell a consumer that I can settle your debts for 42% of the dollar, I'm telling the consumer that I'm actually settling the enrolled debt for 42% plus approximately 10%. So 42% of the debt at the time of settlement translates into an approximate amount of 52% at the time of enrollment. 10% accretion over the period of time from enrollment to settlement that does not represent an enormous doubling, tripling, quadrupling that Miss Hildebrand mentioned this morning.

>> Joel Winston: I want to get one or two other opinions quickly, if possible, and then I want to move to a different topic. Ron, do you want --

>> Ron Elwood: Thank you. To answer your question about risk bearing, the question that is raised in my mind is, during the period that no settlement was actually taking place and people are accruing the money to -- amass the money to have the settlement offered, the consumers are paying for what I guess what I would call ancillary services that folks are touting. Whether it's the hand-holding, or whether it's the education, financial literacy education, consumer education, which by the way, they can get free in most states at nonprofits and government agencies, elsewhere. And also and probably most importantly paying for the -- I don't know if this is millions or billions of dollars in advertising. I know in my state I can't turn on the TV any time of the day or night without seeing dozens of ads for the companies. Plus the lobbying fees which I can't imagine how much money that is all. Now that's not really going for any service to the consumer. So if the question is, well we need money to kind of keep us going, what are we actually funding for the up front fees? I mean I think the issue earlier came up about an appropriately capitalized firm. In Minnesota, a couple years ago, the statute was amended regarding the mortgage brokers based on a lot of the abuse that was taking place. And I understand the analogy that somebody suggested, an inappropriate analogy. But in terms of the consumer abuse, I think, that piece of it is fairly analogous. And what Minnesota did was to say that you cannot be a mortgage broker in Minnesota unless you come up with a significant demonstration of net worth that you've got some skin in the game. That you're going to be able to be here. You're going to be around here. You're not just going to be a fly-by-night. So to me, and the differentiation between nonprofits and the profit-driven debt settlement industry, I think this idea of, we need to level the playing field, is all fair. I think it's specious. I think nonprofits are "a," mission driven. They don't have all the advertising -- if they did have that kind of money, we probably wouldn't have this problem because they'd have a vast majority of the consumers. So that's one thing now. Also on the Uniform Act, just want to talk about that for a second. I think this idea of a flat fee paid over half plan is -- I don't see where that benefits consumers at all. Because if they haven't settled, they're still just paying all their money. It's up front. I mean, up front is either in three months, five months, you know, a year. It is still before it is -- the service is performed. And also if I'm not mistaken, the uniform act, the way it is structured, while there is some cap on it, you can collect the money and then you have to give it back if it's over the cap. So that's an odd structure to me. And finally, in terms of the 5 cents request on the -- at the end of the line, my understanding is most of the contracts that are signed

provide a minimum amount that the consumer would agree that at a settlement -- this is a price point at which you're authorized to make a settlement. So I don't understand how that could actually happen if they already authorized in a contract up front that at this point, you're allowed to go ahead and make -- agree to a settlement.

>> Joel Winston: I apologize to those who have more to say about this issue, but we only have about ten minutes left. I do want to get to the issue of escrows. Under the proposed rule, consumers can pay their fees into an escrow account that the provider can't access until the services are performed. And what I'm interested in is what people think of that approach. And I'm also interested in an alternative approach which would be -- the question of whether the provider could require the consumer to put the fees into escrow. For example, if we -- if we said that the collector, the settlement company, I'm sorry, the settlement company could not collect advance fees but could require that the consumer put those fees into escrow, seems like that might solve one of the concerns that the settlement companies have raised, which is that consumers won't pay down at the end of the road. They'll have to go out and try to collect from them. It does not solve the problem, of course, of having those funds available to fund the services that they're performing. But some people have suggested that as an alternative. The consumer is protected because the money is going into escrow. They get it back. If the company doesn't deliver, the company is protected from the consumer who doesn't pay their fees. So again, what do you think of the proposal that we have made, and are there alternatives that should be considered? Start with John.

>> John Ansbach: First of all, when we discuss escrow accounts, what we, I think, in the industry are typically accustomed to is the idea this is a difference between self-saving debt settlement models and using a third party. And I think the evidence generally reflects, and I apologize, I don't have studies for you. But I think it's widely understood that models that are self saving are typically not as successful as models that use a processor that obviously the money is -- remains in the control of the consumer. That's critically important. That is something the companies should not be controlling the funds of the consumer. We have this discussion a lot. I think --

>> Joel Winston: Thank you for clarifying that, too. I'm not referring to that escrow. But you're talking about the fees.

>> John Ansbach: And so this is sort of -- you brought up this example earlier about a doctor. And it certainly speaks to the point about earning your money. This is sort of akin to going to a doctor, and the doctor sits down with you and takes your blood pressure, and then he says to you, you need to quit smoking. You need to eat healthier, you need to lose some weight. But I recognize that you haven't done any of those things yet, and that you're still, you know, overweight and your lungs are filled with tar. So until you get healthy, lose your weight and stop smoking and don't get cancer, why don't you just put the money in the escrow account, and I won't collect it? I mean that's -- that's what escrowing money is. It is, you know, I mean we were thinking about this earlier. My parents get Consumer Reports. But is it the case that even though Consumer Reports puts it together and sends it to my folks, until they actually read it, buy a car that works, they shouldn't pay Consumer Reports? I mean this concept of -- I know there's a big discussion here about what's -- what value is actually being provided and somehow handholding is something. We're not discussing what's actually happening. And let me say this, I truly appreciate the folks that are here that are on behalf of the consumers. Because at the end of the day, debt settlement companies are independent consumer advocates. There

are 110 of them that sit out in front of my office every morning. And we are all at this table. We are having this discussion about what works for consumers and what doesn't. But I don't know how many of you at this table have had a chance to read the consumers that wrote in. I mean, Mike, I fully respect your business model. I happen to think that lots of models ought to be available. But the idea that consumers can do this themselves --

>> Joel Winston: John, we have to stick to the issue of escrows.

>> John Ansbach: Absolutely, but escrow is about value. You cannot put money aside when value is being created and delivered. There are customer testimonials that talked about, I tried to contact my creditor and they told me to go pound sand. As an advocate, you've got to allow them to get paid to do that.

>> Joel Winston: Let me just focus it a little differently because I'm not sure the doctor analogy works. Assume for the purposes of this discussion that we have a record which shows widespread abuse in this industry, and the issue is how do we protect consumers from that kind of abuse? How do we protect consumers from having to take the risk that they're going to be paying this money over a period of time which could be in the thousands of dollars. And at the end, the company says, "See you later," and collect the money. So one way of dealing with that would be to put the money in escrow. I don't think, you know, consumers have that much concern about doctors collecting money over a long period of time and then saying, "Sorry, we're not going to do the surgery that we planned." So if I could get people to focus, again, on doesn't escrow system make sense? And what should it look like? Mike? You want to talk?

>> Michael Kerr: Thanks. You know, there are some states -- there's certainly one state that already has imposed a fee prohibition up front. Fee prohibition, they allow fees to only be paid upon success. And so maybe if we talk about this in the context of success fees, being escrowed because I guess part of your decision is, well, do you allow some other kind of fee that would sort of speak for itself. However, that transaction happens with the consumer. So it's really about the contingency of the success component. And what I would tell you is that we do operate in the state that has a fee ban, effective fee ban that says you cannot receive any fees until after the fact. We do escrow in the consumer's account the money for that success to be paid. And we cannot and would not be paid until the money goes out to the creditor. So in a context of how this escrow should work, I think you have it exactly right. And that is an escrow can be built over time. Fees accrue along with what's available to use as settlements. When a settlement occurs, the average consumer going on to a settlement plan has six accounts. As settlements occur, there is actually money there to pay the fee that you get along the way. And at the end of the day, if you get to the sixth account, you've been paid. The creditors have been paid, and the consumer's are satisfied and happy.

>> Joel Winston: Okay, thanks. Travis?

>> Travis Plunkett: On that point, the consumer groups that joined in writing comments have agreed that the advance fee ban should allow consumers to use legitimate escrow services that they control. So that means no fees should be allowed to be deducted by the firm until the services are provided, and a fully executed settlement agreement is made and shown to the consumer. So in that case, it would seem that a escrow account would be fine.

>> Michael Croxson: Yeah, I'd like to speak to this because we don't use escrow, never have. But we firmly recognize that the benefit to the market and

the industry providers, it almost requires it. We wouldn't have over six figures of uncollected fees outstanding right now if we used that model. We've just opted not. We've looked into it all the way to application and then just decided, you know, to put it on hold. So it's absolutely necessary and to the extent that, you know, what I spoke earlier in the earlier topic as far as a monthly nominal maintenance fee, that can be paid direct to the company. There's these escrow accounts that are structured and the providers that offer them where the consumers are in control and can withdraw their funds at any time. They're still protected, and the company's interests are protected because they're only negotiating when they have funds. They can see them, they're there. They're not wasting the creditors time and they also are likely going to look at that and say I can get this done and I can collect my fee at that time and incrementally. And if you do get to the sixth account and for some reason there is an adverse effect in a consumer's life and they do end up having to drop and not do that last account or what have you, the industry provider was funded for the first five. So nobody's out anything. I still strongly support some type of monthly maintenance fee. And I also want to take an opportunity to say that I didn't mean anything inflammatory from the Ponzi comment earlier. In fact, anybody that's here represented by anybody or at this table or in the audience, I would almost guarantee you is not, you know, doing business that way. It was more of a comment backwards looking to save.

>> Joel Winston: I see we have about two minutes left. One thing I've always lived by these workshops is never be late for lunch. Does somebody want to say something in the last two minutes or go early to lunch? Bill?

>> William Binzel: In course of this morning and this panel, there has been a very impassioned defense of debt settlement itself, the product of debt settlement. And I think there's a -- it is a consensus in this room and I think the consensus in the comments that I read that the product of that settlement itself whether you call it debt settlement or less than full balance settlement, whatever that is, there is a consumer need for that. What is at issue here, though, are the deceptive and abusive practice that's are rampant within the debt settlement industry. And that's what I think the commission has -- or is seeking to address. They're not seeking to abolish the product of debt settlement. But it's those exploitive practices that are harming consumers. And that are replete in the comments that were filed in the actions of the attorneys general of the -- and others who filed comments. So I think it's well and good. Understand the need for debt settlement. We need not spend a lot of time talking about it. But we really need to get at the heart of these exploitive and deceptive and abusive practices.

>> Joel Winston: Right. Thank you. I think we're batting two for two. Two terrific panels. I want to thank everyone on this panel who contributed to this. A couple quick reminders. One is that these mics are live still. So if you have something to say that you don't want other people to hear, go out some place else. We're going to be back at 1:30 sharp. We're going to start right at 1:30. If you leave the building, you have to allow enough time to get back in. I do recommend the seventh floor cafeteria. It's very good. Thank you.