

>> Allison Brown: Thanks, everyone, for coming back here for our last panel of the day, and then we're gonna have the open-microphone time. We have a number of people who have signed up, and everybody who has signed up for open-microphone time will have three minutes to speak. So, as you're thinking about what you might say, give us your best information in three minutes. So, we do appreciate everybody being here. I'm gonna walk around the table and just say the names of the people who have already been up at the table and give a little brief biography for people that have not been part of a panel yet today. Starting to my right is Michael Croxson. Next we have Ron Elwood. Next to him is Susan Grant. Across the table is John Ansbach, and he's actually substituting for Jenna Keehnen right now. She's on the agenda, but he's gonna be representing USOBA's views for this panel. Next is Jim Keiser. Next is Michael Kerr. Then we have Robert Linderman. Then we have Tony Manganiello. And he serves as a member of the advisory board of USOBA. He attends meetings with government officials, providing testimony regarding the needs consumers face in today's economically challenging times. He's the president and C.E.O. of Centricity, Inc., a consulting firm specializing in resolving the issues created by bad consumer debt, and he's also produced the Debt Free and Prosperous Living system. Next to Tony we have Jane McNamara, then Jean Noonan, and then Jim Sheeran. Jim Sheeran has served as a general counsel for Tidewater Finance Company, which is located in Virginia Beach, Virginia, since 1999. He's also been a member of the Virginia state bar since June of '75, served in the U.S. Army, and he's a member of the Law Committee of the American Financial Services Association, and he's here today on behalf of AFSA, the American Financial Services Association. Well, we're gonna jump right in today to definitions, and -- Oh, I'm sorry. Didn't get all the way around the table. Next, we have two people that have already been on our panels, and one is Dr. Bernard Weinstein, and then the next is Wesley Young. Now we're jump right in, and first, we're gonna talk about the proposed definition of debt-relief service. Debt-relief service, as we've proposed it, means any service represented directly or by implication to renegotiate, settle, or in any way alter the terms of payment or other items of the debt between a consumer and one or more unsecured creditors or debt collectors, including, but not limited to, a reduction in the balance, interest rate, or fees owed by a consumer to an unsecured creditor or debt collector. And I'll ask people around the table, is the proposed definition of debt-relief service appropriate and necessary for protecting consumers? Over here. Jim.

>> James Keiser: Yes. We feel that it should specifically exclude the creditors themselves and people servicing for the creditors. I think this is directed for people who are operating on behalf of the consumers, but that's not clear in the definition. It could appear to also include people acting on behalf of the creditors.

>> Allison Brown: Mike?

>> Michael Kerr: With regard to that point, I think, if you have an exclusion for people acting as an agent of the creditor, you better be careful with it so it continues to include credit counseling and those that are taking fair share and grant contributions. For profit.

>> Allison Brown: Any other comments on this issue? Wesley?

>> Wesley Young: I think the definition is fairly complete, but I think the concern is that, maybe jurisdictionally, as broad as the definition can be, there are people that are excluded. One, nonprofits, and, number two, I think it's unclear whether or not attorneys are included in this. I know that recently there was the challenge by the A.B.A. on the red-flag rule to exclude lawyers from the FTC's rules. And I think that the concern is that if you're only regulating part of the industry, are you really effective at getting rid of all the -- accomplishing your goals. I think Johnson Tyler's comments, and he had, I think, eight consumers that he cited where there were some problems. And I think a large number of those were law firms. So the question is whether or not maybe even whether the TSR is really the appropriate rule to use in order to regulate the industry since you can't regulate everybody.

>> Allison Brown: Will you spell out what argument you think people might use to argue that attorneys are not covered by the language in the proposed rule?

>> Wesley Young: I think they would put forth the same arguments that were used in the red-flag rule argument, that there are sufficient protections because the lawyers are regulated and they're separately licensed by state bar associations, that they shouldn't be regulated by the FTC.

>> Allison Brown: Is there some way to craft an exemption for some activities of some attorneys that would allow some legal activities to take place without being a big loophole for all kinds of people to offer debt-settlement services that are not covered by the rule?

>> Wesley Young: I know that some state regulations have a definition that has an exemption for lawyers, but it says as long as the debt settlement or debt-relief service being provided is incidental to the practice of law, then they're excluded. The problem is that that is a very vague exemption or exclusion, and so I think -- I don't have the perfect solution, but it's something that the FTC should think about.

>> Allison Brown: Do you know how that particular language is working in practice? Is that one that people are circumventing on a regular basis, or has that been narrowed by enforcement work?

>> Wesley Young: I think it's been inconsistent, perhaps, in terms of enforcement and then, of course, depending on the states and the activity, the strength of the bar association and the extent to which the bar association may oppose that, and obviously, the bar associations are usually quite influential. That probably plays a big part in it.

>> Allison Brown: I'd like it stay on the lawyer issue for a minute. Are people that have their table pens raised, is that on the attorney issue? John, will you speak to that, please?

>> John Ansbach: I would just add a little bit to what Wesley said. We do see... I don't know that in every -- Mike might be able to know better than I, but I believe in almost every state where we are working on enacting or drafting or enacting legislation in this matter that there is an exemption for attorneys, and it is precisely because they are already separately licensed by state bars. I can't speak to the red-flags rule, the reasoning behind it, but I am aware, and probably you all know better than I because that's presently before the commission, I am aware that that is a significant issue, and part of the reason they're having implementation issues with red flag. So I happen to think that, on behalf of our members, we do know of lawyers that do this work. They do it very well. They have their own ethics and their own complaint system. Obviously, attorneys do. We believe that lawyers should be exempted from this rule. I do want to point out, I guess, two little

things. Number one, there's already the biggest carve-out -- there is already a carve-out here. The nonprofits are carved out of this rule, and when you look at debt-resolution as a whole, starting with the TSR, that is part of the challenge for you all to be able to use the TSR as the vehicle because you don't have the jurisdiction to regulate those folks. They are carved out. Lawyers likely cannot be and probably ought to be carved out, cannot be subject to the rules, should be carved out, which leaves now a much smaller swathe of folks who are providing this work. And then we get into the issues that we've talked about today. So I do think there are a lot of challenges with it, as it's worded right now.

>> Allison Brown: Mike?

>> Michael Croxson: Talk about debt relief.

>> Allison Brown: Okay, let's hold that for a minute. And, Ron?

>> Ron Elwood: I don't see the definition currently exempts lawyers. It doesn't seem to. And it strikes me that -- I think we have -- not the debt-settlement law in Minnesota but other laws I believe we have, and I'll try to provide them to you after this when I get back home, that do include lawyers in a similar -- if it's not their primary function, and I think there's a little bit more specificity than Wesley -- the concern that Wesley was talking about about it's too vague. But my main point on this is that, at the risk of offending all my fellow lawyers and maybe getting kicked out of the lawyer club, it strikes me that the existing regulatory structure, the bar associations, the ethics codes -- a lot of ethics stuff is aspirational anyway, and if you don't do it, there's not a whole lot of stick. And, second of all... I mean, if you violated the provisions of this -- if you were exempted as an attorney and you violated the provisions, what would be ethical violation that you committed? Because you're not subject to the prohibition. So where would there be a claim to be made at a bar association, even from a sanctioning point? So I would argue that, you know, by exempting lawyers, you have the potential of creating a huge loophole by having some unscrupulous folks shuffle their businesses to lawyers and thereby avoid compliance with the rule.

>> Allison Brown: What about attorneys representing consumers in filing bankruptcy? There's a way to read the proposed definition that might include them. Do you think an exemption for those attorneys would be warranted?

>> Ron Elwood: I do. I think, if we're talking about a bankruptcy representation, that's a whole different deal and going down a different path. So, yes, I think there -- there should be a distinction made there.

>> Allison Brown: Bob?

>> Robert Linderman: Yeah, thanks. This may be somewhat of a retrograde comment, but part of what we see in the debt-settlement business is what emergence of what we call the legal model, the law-firm model. And to the extent that the red-flag-rule decisions preclude the Commission from asserting jurisdiction over the way that lawyers operate, I think you'll find a fair amount of energy devoted by some debt-settlement companies to ally with lawyers, and that can be done lawfully, as service providers to counsel. And if that were to occur on a broad scale -- things such as the advance-fee prohibition, which, again, this is something we dealt with in great detail this morning, but it would be a fairly straightforward matter to simply avoid that prohibition by allying with a lawyer, instituting whatever fee model the counsel and the debt-settlement provider believed was an appropriate one and then go our merry way without worrying about what the FTC says about advance fees. So, the inability of the Commission or the unwillingness of the Commission or however it shakes out to address the issue of how lawyers are regulated in the context of debt settlement is going to, in effect, offer an opportunity to avoid whatever kind of regulation you ultimately do decide to implement.

>> Allison Brown: And what do you think about something narrowly crafted just to address lawyers filing bankruptcies for consumers?

>> Robert Linderman: I agree with Ron. Lawyers filing bankruptcies have a completely different brief, if you will. They're sanctioned by the court, it's an act of the court to file a bankruptcy case, you have to be licensed to practice before the bankruptcy court. So I think that it's an entirely

different set of circumstance. We do not offer bankruptcy advice because that's inherently legal in nature, and we don't offer legal counsel to our clients.

>> Allison Brown: Do you know any entities that actually look at a consumer's situation and advise either debt settlement or bankruptcy, depending on situation, or credit counseling and have all of those range of options?

>> Robert Linderman: Well, if you remember the stat that I offered up earlier today, for every 22 people that come into our company seeking information, we enroll one, approximately. The remaining 22 are steered into an appropriate credit-counseling facility. We work with CareOne quite often. We have relationships with bankruptcy firms across the country. So I think any reputable debt-settlement organization will steer people to an appropriate resolution. It doesn't have to be credit counseling. It doesn't have to be debt settlement. It doesn't have to be bankruptcy. But somewhere along the continuum, we will make a suitability determination for our clients and steer them into a solution that's appropriate for them.

>> Allison Brown: Jean?

>> Jean Noonan: Clearly, when a law firm or lawyer is acting as a debt-settlement company, it ought to be subject to the rules for debt-settlement companies. I think it is going to be important, though, to make a distinction between the lawyer who meets the definition in a one-off situation. So, for example, if I'm practicing law and a client comes in and said, "I was just served this summons by ABC Bank, a credit-card issuer. What can we do?" And I call counsel for the bank and say, "Listen, is it possible that we can settle this?" You know, "Dismiss the suit. We'll send you a check." That happens all the time, and I don't think any of those lawyers, small-town people, would even have on their radar screen that they might be engaged in the business of debt-settlement. Similarly, someone might come into the legal-services office and say, "My God, I'm getting beleaguered by debt collectors." And the legal-services lawyer might try to intervene on their behalf, even without a summons. So I think that when it is a de minimis, incidental part of the business, it ought to be excluded. When it is the principal business or even more than de minimis, it ought to be included. As a practical matter, when law firms -- and we've seen -- we have a lot of

experience with law firms acting as credit-repair clinics, law firms acting as debt collectors. There's a long noble history of the FTC dealing with these issues, and the Commission has always taken the position that when you're acting in that capacity, that's who you are. And that's very different, I think, from red flags -- when the lawyer is acting as a lawyer and was still covered by red flags. Because they were a creditor, they met the technical definition of a creditor, too. That's not what we're talking about here. I think that, even though there is some potential for imprecision at the margins between the lawyer who helps a client on an intermittent basis who is being sued, on one hand, or being threatened with suit on another, versus the lawyer who's running a debt-settlement business, this is a rule that's enforced by the Commission, and I think the Commission is gonna be able to figure out whether or not the lawyer is circumventing the law by using his or her status as a lawyer.

>> Allison Brown: Wesley?

>> Wesley Young: The reason I raise this -- I mean, it's really the exclusion of certain large players in the debt-relief industry from the rule. The problem it causes is that it causes an anti-competitive market. You've got some people that are very heavily regulated and very heavily restricted and others that are not. And I think Mike Croxson had mentioned this earlier, with regards to the nonprofit credit counselors. I think our initial, first position would be that the best thing to do would be for the FTC to get authority from Congress to regulate all of these parties. That being said, I think that my position, personally, and I believe TASC's position would also be, is that taking out the advance-fee ban, the disclosures and mandatory disclosures don't skew the market so much that it would be too anti-competitive that we feel like we couldn't compete. Throwing in the advance-fee ban into the mix really would skew the market so much that I think people would suffer from anti-competitive effect and then move to try to avoid that effect by going to a lawyer model.

>> Allison Brown: Tony?

>> Tony Manganiello: This regarding the issue of the lawyer model and the lawyer questions, in past conferences at USOBA, I have had the opportunity to talk with up a couple different attorney

generals representing different states, and that term incidental to the practice of law was a question I asked -- "What does that mean?" And one of the representatives from the Attorney General's office from one state response, somewhat paraphrased, was, "If you're a lawyer, we don't care." And the other representative from another state said -- basically, he started to get very specific with what that meant in their state. So my concern would be, as Wesley brought up earlier, is that the state's inconsistencies could pose a fairly difficult path to navigate, from a federal perspective because of those inconsistencies and what they define incidental to the practice of law. So my question would be, what would be proposed mechanism that would be put in place to develop some consistency since the states have, as I understand it, the right to determine what they want their own state law to be?

>> Allison Brown: Or is there language that's more precise than incidental, too. Do you have any suggestions on that front?

>> Tony Manganiello: I would say, I think -- was it Jean who made the comment? -- that if you're representing yourself as that, then you are. At the same time, when you have, for instance, a probate attorney who is going through the process of settling a debt because of -- settling an estate, they're representing themselves out to be a settlement-type attorney, but that's not what they are actually in practice. So "incidental" would have to be something that would be defined, and I don't know if I could actually define it. Maybe a percentage of revenue generated from that activity. I don't know how the FTCPA eventually wound up applying to attorneys, as well, but it would have to be something that would need to be addressed from a bigger scope, if that was gonna be included.

>> Allison Brown: Susan?

>> Susan Grant: I agree that lawyers should be not exempted if they are in the business of debt relief, and I think that the FTC can do fact-finding in particular instances to determine that -- to look at things like advertising, for instance, to see if that seems to be a large part of what a law firm does. I would also note that if you go to ripoffreports.com or any number of other complaint websites to look for complaints on this subject, a lot of the complaints that you'll find will be about

law firms -- in many cases, the same law firms over and over again. Clearly these are firms that are in the business, and they should be covered.

>> Allison Brown: John?

>> John Ansbach: Yeah. I'm not from the American Bar Association, so I suspect that they might be better suited to comment on whether attorneys should be exempted, but I want to be sure that we're all considering one factor. And Bob pointed it out. For the majority of debt-settlement companies that have been talking today and those of us who represent them, we don't provide legal services. What is the plan when you create a rule -- an advance-fee ban, if that's the case -- that you're then going to apply to a law firm that doesn't just do debt-negotiation and debt-settlement but prepares answers, but prepares responses to petitions, prepares answers to requests for disclosure, interrogatories, requests for production? Is the plan now that we're not gonna let them charge for those legal services or those products until a debt is settled? You, including lawyers -- and I agree. I don't think that the current rule, as written, excludes lawyers. I think if you don't exclude them, you are opening up a significant other front that is gonna require a lot of discussion.

>> Allison Brown: Mike?

>> Michael Crosson: I wanted to talk about the debt-relief definition in general again. And it's been touched on a little bit here, but I had some additional information that I wanted to share, because there was a question about, well, how big can this industry be and the people that participate in it? People have heard me for years say, "There ought to be a level playing field." We've done a very, very -- You've done a very, very good job here at defining broadly what constitutes debt relief, and that's the way it should be. Consumers coming into a provider don't know where they belong, typically, in the continuum of services that they need. But just to give you some context -- in the context of advertising -- This data is from TNS Media Intelligence. It's a market-research firm that looks at where advertisement has been placed, specifically in the category of debt relief for all of 2008. This does not include public-service announcements. It does not include radio spots. This is direct media in Internet and TV. There was \$174,873,000 spent in the debt-relief category of advertising. Of that \$175 million, \$106 million was spent by nonprofit

credit-counseling agencies in advertising to the public. \$106 million. So my point is, messages are getting out to consumers. This is an industry that needs to be regulated in a uniform way. And there's a huge loophole. 80% of the providers, 60% of the media that's being spent, are not gonna be covered by this definition. And that's not to imply that they don't do a good job. My experience with nonprofit credit counselors is that they do a very good job. What I can also tell you is, from having attended the national meetings of A.C.A. and the NFCC and AADMO over the past year is that each and every one of them is talking to their members about expanding into doing less than full balance. Because a debt-management plan is the repayment of the full balance, plus some interest, with some concessions from the creditors, whereas less than full balance is code for "settlement." But the bottom line is, the nonprofits are expanding into doing exactly what this definition is. And it's not about whether you pay taxes or you don't pay taxes. The consumer protection is, if you're serving the consumer in this definition, then you should be covered. And I acknowledge that, from the great work that many of the nonprofits did with H.U.D. counseling or bankruptcy counseling or other things, that they have to meet a standard around those specific kinds of activities to be paid. They do that, and they are paid to do those. This is different. This is a different set of standards. It's a different set of things that you're doing for a consumer, and you should have to meet those standards, as well. And I'm actually, quite frankly, surprised that the large trade organizations in the nonprofit, representing the nonprofits, haven't stepped up. They've been very quick to say, "Everybody else ought to live by these rules." In fact, let me throw in a few more. But they haven't just voluntarily stepped up to the mike and said, "We'd be more than happy for our membership to have to meet these standards, even if the FTC can't enforce it that way." But not a single one has been willing to do that.

>> Allison Brown: Okay, I think we're -- Right. I think we understand what you're saying. And, Jane, do you want to respond? Will you hand her a mike?

>> Jane McNamara: Thank you. Yes, Allison, I would. We provide financial literacy to consumers through counseling and education. That is our primary mission. And debt-management programs are just a portion of what we do. We provide money-management education, we provide financial counseling, housing counseling, bankruptcy counseling and education, counseling to consumers through employee-assistance programs, credit-union members, community banks. We

are already regulated by the 501(c)(3) provisions, the Core Analysis Tool of the IRS, 501(q), EOUST, the Department of Housing and Urban Development, state regulatory bodies with laws that mirror those activities of debt-settlement companies, professional and ethical standards by trade associations, as well as accrediting bodies. We are already highly regulated. And while the EOUST's jurisdiction is over the bankruptcy counseling that we do, they also audit our debt-management activities, as do states throughout the United States. There are 49 states that have laws that regulate what we do. 37 of them have fee caps. So we are already regulated for the debt-management services that we provide, and, therefore, presently under the jurisdiction of the FTC, you don't have authority to regulate our activities. I understand there are suggestions that you do so. But we are already highly regulated. Anecdotally, I can tell you, for my organization, it used to be that regulatory compliance was a part-time job. I now have three people that do nothing but regulatory compliance because of all these different bodies that regulate us. We have states that send out auditors. Many of them are from banking departments that come in to review our debt-management activities. So we are highly regulated right now.

>> Allison Brown: Mike Kerr. Did you still want to talk?

>> Michael Kerr: Well, I was just on the point of the level playing field argument that Mike brought up. One of the policy conclusions of the Uniform Act is that there's a spectrum of services. There's credit information and budgeting education, there's DMPs, there's settlements, there's emerging, sort of, combination of DMPs and settlements. And our conclusion was that all these players, regardless of their nonprofit status, needed to be regulated by a single regulator at the state level. Because state regulators are much closer to the activities that are being questioned. Jurisdictionally, states have a greater capacity and authority to do things like require surety bonds, to put in insurance requirements, to require registration or licensing, to conduct audits as part of applications. I guess my point is that if the federal overlay provides a floor about marketing and deceptive claims, that by itself doesn't go far enough. Because, as other people have said, you're not covering nonprofits. In my written testimony, I urged to extend, if necessary -- and it's not clear to me why you can't do this -- but to cover Internet communications and to also make sure that the coverage extends to lead generators. But setting aside that, even if you covered the entire world, what the FTC is proposing doesn't go far enough. It doesn't address the fact that these folks

that are taking funds either to escrow or into trust funds, they need to be subject to fiduciary standards. When someone's providing these kinds of services, they need to disclose the business history of their officers, they need to have errors and omission insurance. There's a whole panoply of regulatory tools that states can do that the FTC, under its authority, as I understand it, just can't and probably shouldn't.

>> Allison Brown: Let me pick up on one of the issues you raised, which was lead generators. And I'm wondering if you or anybody else around the table is aware of any lead generators that sell services over the telephone -- through telephone calls. Has anybody seen that at all?

>> Michael Kerr: Mostly I've heard Internet -- I've seen Internet advertising. This is personally. We haven't done a study of this, and I think the industry should probably respond to this, but it seems to be focused on Internet advertising and broadcast radio and television 800 numbers to call centers, where referrals happen. But it's not my area of expertise.

>> Allison Brown: Robert.

>> Robert Linderman: Yeah. I have some experience with lead-generation activities. I can tell you that the vast majority of lead-generation activity is done over the Internet. Lead-gen activity that's done through radio and television is mostly aggregation and bulk sale, so it's really not as signi-- Well, I wouldn't characterize it as a significant element of the lead-generation business.

>> Allison Brown: What do you mean by aggregation?

>> Robert Linderman: Well, it's the harvesting of names without getting any kind of supporting data. So, "Call in here, leave a voicemail," that kind of thing. It's not -- I don't think that the use of -- Let me rephrase that. I think the use of the Internet for lead-generation activity is far more prevalent than the use of any other medium.

>> Allison Brown: Are there any categories of debt relief that the Commission didn't mention in its notice of proposed rule-making? Are -- Oh, Jim?

>> James Keiser: Yeah. The proposed rules strictly address unsecured loans. And we're thinking that, number one, there are secured loans that could be addressed -- both real-estate secured and secured by personal property. I know that that's not really the focus of most of the debt-relief services now, but I wouldn't want to exclude it in case it becomes more of a focus in the future.

>> Allison Brown: And the commission is looking at real-estate secured loans in the context of a different rule-making. We issued an ANPR, I believe, in the beginning of June or the very end of May of this year, and that is an ongoing proceeding. So setting aside loans secured by real estate for a minute, what are people seeing, in terms of any debt settlement on secured debts of other personal loans? Auto debts or other types of secured debt. Is debt-settlement going on today? If anybody can speak to that. Jim?

>> James Keiser: Like I said, we're not seeing it right now, and, of course, the fact that the loans are secured and there are repossession options available to creditors makes it difficult to do debt-relief services, but we think it would be an oversight to limit it to strictly unsecured.

>> Allison Brown: What are other people seeing? Ron?

>> Ron Elwood: Well, I can't say what I'm seeing, but I just was gonna point out the definition in the Minnesota statute, which refers to a debt incurred primarily for personal, family, or household purposes, which is sort of that kind of common thing, which is -- I think that would cover --

>> Male Speaker: Mortgages.

>> Ron Elwood: Well, but the FTC rule would exclude it, so, I mean, right.

>> Allison Brown: That's what we're contemplating.

>> Ron Elwood: You're explicitly excluding that, so then, obviously, that would trump the -- I just say that, I bring that to your attention, because that may be a way of dealing with the issue without

kind of getting into the secured/unsecured -- you know, what should be and what -- Because I think that's the idea is this is a personal debt. This isn't a commercial kind of thing. I think the cut rather than secured or unsecured, is probably more appropriately made between personal debt and commercial debt. That's all. My point.

>> Allison Brown: Any follow-up on that in terms of why you think that should be the cut and the focus on unsecured isn't the best way to go?

>> Ron Elwood: Well, I think the point is, you know... So, for example, you could go to a pawn shop and pawn your ring or something, and, you know, it's a secured debt, but why would -- why wouldn't that be covered, whereas -- I know we're talking about probably -- The common thing you think about is your car or your house. But there could be -- Personal property could potentially be covered within this, that probably ought to be swept in. And so that's why it's hard -- That definition seems, to me, to be less important than -- What are we really getting at here? We're getting at consumer debt -- personal, individual, rather than your business. And I think that's why we chose that definition, as oppo-- Because we went through the same thought process, and that's kind of where we landed, and I just offer that as our experience.

>> Allison Brown: Mike?

>> Michael Kerr: I would like to relate to you that, during the three years we're developing the Uniform Act, this conversation happened over and over and over again about how to define it and what to cover and what not to cover. And I will just say that I think you've got it right with limiting it to unsecured debt, because if you try to expand it or you leave the definition open, there's a very real possibility that you're going to run into, for example -- and I put on a different act hat right now -- the Uniform Commercial Code, article 9, secured transactions. When someone buys a couch on credit -- I mean, all of that repossession interest -- they're sold as collateralized debt tranches. I think it gets very complicated if you go into secured lending.

>> Allison Brown: Anyone else have comments along those lines? What about debt-relief products? There's been a little bit of discussion in the comments about debt-relief products and

whether they should be covered. Does anybody here have an opinion on whether debt-relief products should be covered, and can you also talk about what debt-relief products you've seen on the market?

>> Tony Manganiello: What is the definition of a debt-relief product?

>> Allison Brown: Well, one of the questions is, what should the definition be? [Laughter] But one way -- to make it a little more concrete than that, for example, a CD or a book that would go along these same lines. Tony? [Laughter]

>> Tony Manganiello: Well, you mean if you write a book that teaches people how to get out of debt, you have to give it away and wait for them to pay you until they've eliminated their debt? [Laughter]

>> Allison Brown: Well... The question is --

>> Tony Manganiello: Is that not covered under the Freedom of Speech Act?

>> Allison Brown: And are there products out there that go a little bit further and don't just put a book out there but say, you know, "Here's a how-to guide." "This is what we're gonna sell you so you can do this yourself." Is there any justification to include those type of products? Or maybe there's not.

>> Tony Manganiello: I would have to say that they should be absolutely excluded because it's completely on the merit of the person who purchased the book to follow through with the plan, as opposed to a service, where you are actually being paid to support the process, as opposed to providing education -- education which is completely to the consumer's opinion as to whether or not they want to follow through with it. I mean, they're gonna have to purchase the book and then actually follow through with it, as opposed to -- And they may not. They may choose, "Well, I don't want to do it," or they may do it for a while and then not do it. There's no support that goes into what is taught in the book, and there's classes all over the country that are being provided that,

again, if we're talking "you cannot charge an up-front fee," the publishing industry is gonna have a lot to say about that.

>> Allison Brown: What about a product -- a software download or a CD that guarantees results -- "If you buy my product, you will be guaranteed to be debt-free"? Is there any difference there?

>> Tony Manganiello: Yeah, again, when it comes to something that is helping people to just figure out how to work numbers so that they can accelerate the payment of their debt without incurring any type of intervention in part of the creditor to tell someone, such as -- that would be like going into a biweekly mortgage, you know, or CDs that say, "If you pay your debt this way, the math speaks for itself." And again, that's a downloaded product that, if somebody were to follow that plan, could take one, two, three, seven years. So you would essentially take those products off the market. You would essentially eliminate the educational piece that people so sorely need because of the financial-literacy problems in this country. No one's gonna give away a book and wait for years to get paid for it. It's got to be something that, in my opinion, I strongly would recommend has to be excluded because there is no service being provided with it now. If there is a service tied into it saying, "Buy my book, and I'll show you how to intervene with your creditors and otherwise alter the original agreement," that's a different story. But for the most part, educational products aren't altering the agreement when it comes to -- for the products I've seen. They're just saying, "If you budget yourself differently, you can accelerate the payment of these debts without altering the agreement. It's like if you tell somebody how to prepay a mortgage or prepay any debt, a lot of books out there do specifically that. But they don't intervene on behalf of the creditor and the consumer with regard to the terms of that loan. I think what we're talking about here from debt relief is fundamentally altering the terms of the original agreement with the creditor, whether it be with credit counseling -- they're going in, negotiating different interest rates. With a debt settlement, they're going in, negotiating the balance.

>> Allison Brown: Right, okay. So we see what you're saying there. So I'm wondering if I can move on to Robert. Do you have additional comments on that front?

>> Robert Linderman: Yeah, I think you raise a very interesting point, Allison. When we were looking at the whole proposal, the issue -- and I believe the Commission solicited input on this, is whether or not the extension of a guarantee should be the break point for the imposition of an advance-fee ban. And I think, with all due respect to what Tony says, and I actually agree with most of it, anytime that you have a situation where a provider -- and whether that provider is an author or a debt-settlement services provider or credit counselor or any other form of relief that's available to a consumer -- when that's accompanied by a guarantee, when that's accompanied by a warranty, to the extent that, "You follow my program, I guarantee you I will settle your debt for 50 cents on the dollar," I think then it's an appropriate exercise to impose an advance-fee ban to allow collection of compensation at the back end, because at that point in time, you're offering up a guarantee of results. And by the way, just as a coda to that, I sharply disagree with some of the comments made on the earlier panel that utilizing historic performance guidelines for settling debt at a particular point in time -- excuse me, a particular settlement rate -- should not be allowed to be used in advertising. I think if I can prove to you --

>> Allison Brown: Okay, and we have limited time for definitions here, so we're gonna move on. Susan, you want to respond to some things on definitions?

>> Susan Grant: We suggested that products be included because we were concerned that if they weren't, services might be tempted to reposition their offers as products rather than calling them services. But I think if you look at the definition as a whole, the rest of the definition which talks about offering to alter or reduce your debts, that it would exclude things like books that are just sold without anything else in connection with them anyway, so I don't have the same concern that others do.

>> Allison Brown: Do others have concerns that products sold could be used to circumvent prohibitions if products aren't specifically included? Tony?

>> Tony Manganiello: I just think, from a definition standpoint, it would need to be considered that, if the product makes a proposal to a plan that alters, fundamentally, the original agreement with the creditor, that might need further consideration. But if it does not do that, if it's just saying,

"By being wiser with your money and just paying your bills faster, and this is how to do that," without altering the contractual agreement between the consumer and the creditor, that should be exempted.

>> Allison Brown: Mike?

>> Michael Kerr: I think maybe what the problem is, when you have service providers that are trying to bundle books and CD-ROM programs, download services and so forth, that was one of the prohibited acts that we included in the Uniform Act for good reason. At this 50,000-foot level of regulation, I'm just not sure that you need it at the FTC level with regard to products where there isn't a person or entity or service in between the debtor and the creditor, because you're gonna run into those first-amendment issues. But I just wanted you to know that the Uniform Act and other state laws are including that sort of bundling prohibition, which really is a problem.

>> Allison Brown: Does anybody else have comments on bundling specifically? We just have one or two minutes left here. Anybody has comments on that specific issue. Bernard.

>> Dr. Bernard Weinstein: This isn't about bundling, but I'm probably one of the few non-lawyers on this panel and the previous panel. But one of the recurring themes that I heard this afternoon was that we need more and better data and information and not just anecdotes, and that's true of substantiation, disclosure, qualification standards, advance-fee bans, or just the general performance of the industry. So I wanted to make that point because I spent two years with the Bureau of Economics here at the Federal Trade Commission, and our policy recommendations to the commission were always based on sound and thorough research, so the point I want to make is that I hope, in this rule-making process, you'll recognize, number one, that there has been a limited amount of academic research done in a lot of these areas, and there's more to come, and you should take advantage of what's out there.

>> Allison Brown: And it looks like Jim wants to make one final comment.

>> Jim Sheeran: Allison, I think the way that the commission could address this is to define service. And if you define service in a way that excludes books such as was mentioned earlier that are sold in a bookstore rather than things that are sold with the intention of effecting debt-relief service, then you can get around this issue of what is a product and what is a service and where the distinction is between them.

>> Allison Brown: Okay, well, thank you, everybody, for your comments, for your participation today. We're gonna move into the open-mike session, which is gonna be a real important chance for people that have been sitting in the audience to provide their input to the Commission. We do have about 16 people signed up, so we're gonna limit people to three minutes apiece. And Kara Redding here, who's standing up with the microphone is -- So, please, when we call your name, walk up to Kara, and we'll let you know when it's been three minutes, and you'll be finishing up then. So, we'll give people a minute to shuffle, and then we'll -- Nick Cowling, if you could come up, and then, next on board, if you could be ready, is Andrew Smith. And we're gonna go in the order of which you signed up, so we'll kind of call two or three people at a time to be ready. Is Nick Cowling here? Okay, then we're gonna... Okay, so -- So we should have somebody.

>> Female Speaker: Oh. No.

>> Male Speaker: All right, thank you very much for the time. I just wanted to bring -- We were talking a lot about datas, hard numbers. As we're discussing options for the consumers, I want to make sure that we're actually hearing their voices. So I just want to get one testimonial that we submitted. And this is included in the CSA's official testimony. "In January 2003, I had major surgery to remove a massive tumor from my stomach, which turned out to be cancer. As soon as I was able, I contacted my creditors to let them know I would be having chemo, and because I had some type of disability with them, my bills would be covered. However, when I contacted them, I was told I had no such coverage and would be expected to continue my payments. In May of 2004, I again had surgery, due to complications, and decided to re-file my claim. They accepted my disability but claimed that instead of paying off the account, they would put me on hold. Although the contract said it should have been paid out, they declined to do so. In 2006, the calls for money started. I did try to pay, but with only \$5,500 a month in disability, I just couldn't. They were

never satisfied with what I could send. By August of '07, the interest had compounded so much that the balance was over \$10,000. Credit Solutions were able to settle with them for just over \$3,000. Today, I no longer depend on credit cards. Would I ever get another credit card? When Hell freezes over. Would I recommend Credit Solutions to family and friends? In a heartbeat.”
Thank you.

>> Allison Brown: Thank you. Andrew Smith next, and then John Walsh will be after that. And if I'm calling your name as second, feel free to come up here and sit in the front row.

>> Andrew Smith: Thank you. I'm Andrew Smith. I'm from the law firm of Morrison & Foerster. I'm representing a client here today, but I'm speaking just for myself with these comments. What we're talking about here, the most fundamental part of the proposal, a ban on collecting payment as services are rendered or prohibition on collecting payment before a signed settlement order is -- a signed settlement is delivered and agreed to is a really drastic remedy, and it's a remedy that the Commission has only undertaken in three other instances in the context of the telemarketing sales role. It's a remedy that's really more appropriate for Congress to be undertaking than an administrative agency like the Commission. But one of the things that Travis Plunkett said today struck me. And he said that a good analogy is CROA, the Credit Repair Organizations Act, which also includes the same type of strict liability payment regulation. And I disagree with Travis to the extent that I don't think that debt settlement is like credit repair. I don't think that debt settlement is fraudulent. I think that debt settlement provides a valuable service to consumers. But I do agree with Travis Plunkett to the extent that strict liability payment regulation isn't gonna end well. It didn't end well with CROA, and it may not end well here, either. With respect to CROA, as Travis said, there's still plenty of bad credit repair out there, plenty of fraudulent repair. It's done. And the credit repair is as bad as it ever was. With respect to the FTC, providing the FTC with tools that it needs to bring law-enforcement action, CROA's done nothing. There's never been a credit-repair case that was ever brought by the Commission without evidence of fraud. And I would submit to you that there never would be because it wouldn't be in the public interest to sue a company that's otherwise legitimate simply because it's violating the technical provisions that deal with how it needs to be paid under the Credit Repair Organizations Act. Finally, I would argue that what CROA shows is that it makes it very difficult for legitimate companies to engage in the business of

providing valuable services to consumers, but it does absolutely nothing to weed out the bad actors from the industry. And we know from the Credit Repair Organizations Act lesson that legitimate companies, like Suze Orman or myFICO or Experian Trans Union and Equifax, who provide credit monitoring and these types of credit-scoring services to consumers are all being labeled credit repair, and it makes it impossible, or at least very, very difficult, for them to operate. And we cited in our comment letter numerous cases where these companies have been sued. But the message is that this type of substantive, strict liability payment regulation frequently doesn't end well, and it's the kind of remedy that's drastic and only needs to be undertaken in the most drastic of circumstances.

>> Allison Brown: Okay, thank you. Okay, we have John Walsh, and then we have Tony Manganiello.

>> Male Speaker: Thank you. My name is John Walsh. I'm the general counsel for Debt Regret, a company in the Dallas, Texas, area. First, I'd like to thank the FTC for putting on a great program. I think the dialogue here was very good. Listening to the panel, the thing that came across to me was it seems like most of the people agreed, in at least principal, on about 90% of the stuff. The one issue that came up was the advancement-of-fee issue. And I think the reason that's a real sticking point is 'cause there's a real concern that it could potentially destroy the industry. I spent time talking to a number of debt-settlement companies and even some collection companies who are familiar with this, and they all seem to agree that this is really going to destroy a number of the companies. And so what I would just ask the FTC is to seriously consider implementing the 90% that people can agree on and hold off on the advancement-of-fee issue and see if the other regulations take care of some of the issues that have been raised today. And the second point I'd like to make is, again, if the FTC does implement the advancement-of-fee rule -- the prohibition against advancement of fees -- and it does destroy a significant portion of this industry, what's gonna happen with all these consumers who are basically gonna freak out when they find out a debt-settlement company is going out of business? So again, I think these are drastic issues to take, and I think there's a lot of agreement on principal that I think can take care of these issues and just table the advancement-of-fee issue at this point. Thank you.

>> Allison Brown: Okay, my next person up is Tony, and then after that is Michael Mallow, and then the person after Michael Mallow, we're having trouble reading the name, so if you remember when you signed up, please also come forward. Tony?

>> Tony Manganiello: Okay. Actually, I have three points I'd like to make. One, earlier, during the panels today, there was a comment made. I believe someone on the Social Security had \$30,000 of credit-card debt. My question is, how in the world do creditors extend that much credit to someone on Social Security? We are trying to clean up a mess that's not created by us but created by an overreaching lending environment that we're operating in. And then to go a step further on that, the second point is, when it comes to debt relief, many people at the tables today were talking about debt relief being when the debt is settled. That is obviously a very significant, salient element of the debt-settlement process. But in my experience and, I believe, the experience most people have had in the industry, the greatest relief we provide immediately is when we can help someone alter their budget so they can actually begin to pay their bills and have some relief from a budgetary standpoint every month, which goes to my final point, which the gentleman before me was talking about, what would happen if this role were to severely impact the number of good players in the industry being in operation. Between 2001 and 2006, my firm did analysis on around 20,000 consumers, and what we discovered was, out of those people who were looking for help with their debt, only 7.92% could afford to pay their bills. Of the remaining 90-plus percent, almost equally in thirds -- 30% along down the road -- 30% can afford the debt-management plan, 30% could not afford the debt-management plan but could afford to avoid bankruptcy through a settlement service, and then 30% could not afford any of the above. It's been our experience that, given that type of approach to determining suitability, which was the term used very often today, that type of process or analysis on the front end, where -- I think you asked the question earlier -- is there any company out there that was doing -- you know, referring people out. A couple people mentioned it. There is a way to analyze an individual consumer before we even discuss what type of relief they should be enrolled in. And if we are going to make some rules here that are gonna have severe impact, we need to make sure that we understand that, given those percentages, as well as the percentage of households in America experiencing difficulty, there's roughly a million households that are in need of a service that provides some form of debt relief but cannot afford a debt-management plan. So I just want to make sure that, as the Commission goes forward, that the

bigger perspective is given to, as far as consumer protection -- One way to protect the consumer is to continue to provide them options that can help them with the debt-relief needs they have. Thank you.

>> Allison Brown: Okay, Michael Mallow.

>> Michael Mallow: I basically have two comments, and they are somewhat interrelated. The first is, while I think the discussion that's going on today and the investigation that the FTC is doing, in terms of the industry, is a very, very good one, and I believe that guidance is absolutely necessary, I am very concerned that the process that is being contemplated, in terms of modifying an existing rule as a work-around, the lack of authority that the FTC has to implement a new rule that governs the debt-settlement industry is a real problem. And it casts a pall over the entire process that is being discussed. And there's a certain irony in the FTC doing a work-around a law to try to achieve a result that is otherwise unauthorized to achieve. And nothing says it better than Chairman Leibowitz's letter to Energy Committee, saying, basically, "Give us the authority to do what you guys are gonna try to do in the context of amending the TSR." There's a lot of problems with it. One, you're gonna find a conversion, and we talked about it a little bit, from the use of telephone to Internet to work around the TSR. Two, can you have the fee limitations that you want to have within a context of the TSR? Does it make sense to stick debt-settlement regulation under telemarketing, as opposed to a stand-alone? So, I think that all of the work that's been done is very useful and can go a long way to creating a new guidance document that the FTC can put out, which would give a lot of flexibility for the FTC to say, "Look, this is what we're going to interpret as a violation of section 5, and here are certain concerns that we have in light of the two, the charging of fees, and is it a fee-generating business, or is it a legitimate benefit business?" You have that flexibility if you issue guides. You do not have that flexibility if you do it in the context of a rule, and that has been spoken a number of times today -- or misspoken. This is the contemplation of a new rule. No matter where you house it, that's what's going on right here, and there's no authority for that. And it's gonna distract from what is otherwise some good work being done by the FTC in investigating this issue. So, what I implore the Commission to do is, go about what you're doing in an authorized, in a proper way, which means go by way of guidance or get authority from Congress

to implement the new rule or change the process in which to get a new rule, which is what the Chairman Leibowitz is trying to do.

>> Allison Brown: Okay, we are running through the list, and the next name was a little hard to read, but it might be Bob Manning. Did you sign up, Bob? Okay, good. You're next. And let me just let Philip Corwin know that he's after this.

>> Bob Manning: Yeah, I think it's really crucial that we look at the industry as a whole. There's been, for example, a lack of discussion between the distinction between charge-off and collections and its implications to consumers. And really, the critical issue is, how do we have consumers that are most and best informed. And crucial, of course, is, are they in the right program first, and how is that determined? What's the retention rate that we can expect in each individual program so it becomes standardized. And I've heard a lot of misinformation. For example, as if fair share wasn't a -- Am I gone? Okay. So, if we're gonna come up with a program where consumers are informed, and they're saying, "Here's what it costs to go credit counseling. Here's what it costs for a partial payment plan. Here's what it costs to bankruptcy. We've got to standardize the terms so the costs are very clear. And, of course, I can't overemphasize the fact that there's just tremendous amount of imprecision in an industry that's gonna become ever more important, and I would caution you to be prepared for a huge increase in the demand for consumers who are gonna be incapable of making a full DMP in the next two to three years. These are the groups of people who will get jobs. The people who don't get jobs are going through bankruptcy today, and the real question is, how are they gonna be served best? And you're the one who is gonna give the guidance, because, when I do my studies, I get kind of the backlash about why government isn't giving us a better understanding of the appropriate course of action to follow. And without an empirical basis that becomes standardized across all sectors, it's hard to understand the conflicts of interest within the sector. But most importantly, I think, we need to understand that if you start off at the credit-counseling level, that sector has an obligation to serve that client to the best of their ability, and when they fall out, there needs to be an understanding that the consumer understands what's the most appropriate option available to them. And if they fall out of that program and fees have been paid, then there should be an obligation that they're counseled to the most appropriate program had

that follows. That's what I see it's lacking, and I think guidance like this would at least help consumers make more informed decisions.

>> Allison Brown: Thank you. The next person is Philip Corwin, and then Jane McNamara.

>> Philip Corwin: Is there any way I can sit? Because there's no way I can hold this and flip through my --

>> Allison Brown: Sure. Go ahead.

>> Philip Corwin: Thank you. Thank you. Good afternoon. I'm Philip Corwin. I'm a partner at Butera & Andrews here in Washington. I'm appearing on behalf of the Association of Independent Consumer Credit Counseling Agencies. Our member agencies currently see several million consumers with financial problems each year and are currently handling about half a million debt-management plans on their behalf. Our bylaws require all of them to be IRS 501(c)(3) tax exempt entities, and many are also participating in the required bankruptcy counseling program of the 2005 Bankruptcy Act and therefore subject to Department of Justice approval and oversight. Our member agencies regularly see the victims of unscrupulous debt-settlement companies, so we applaud this FTC initiative. We are concerned that because the only thing that keeps our members out of the very sweeping definition of debt-relief services in the bill is the general exemption for nonprofit agencies in the FTC act and the fact that Congress right now is in the midst of considering establishment of the Consumer Financial Protection Agency to which some or all of the FTC's authority over consumer financial products would be transferred, and that bill not only has no exemption for nonprofits, it explicitly encompasses credit counseling that we would like to see an explicit exemption in this proposed rule for tax exempts. And as for the suggestion we heard today that we should be volunteering for FTC regulation, as soon as we see for-profit entities volunteering to be audited and regulated by the IRS and the Department of Justice, we'll give that some consideration. We do support the proposed TSR amendments regarding material disclosures and the banning of material misrepresent, and we support the ban on advance fees. If an explicit exemption is not provided for nonprofit entities in the rule, we would like to recognize that for existing debt-management plans and perhaps for less than full balance plans, which -- and there's

nothing wrong with debt settlement. What's wrong is the way some companies do it and market it, that it recognized that modest setup fees for the administrative costs of getting those plans off the ground should be permitted. Beyond that... What else did I want to say here? Oh. Yeah, in terms of the existing regulatory burden on nonprofits subject to IRS approval and audit, as well as Department of Justice, if they're in bankruptcy counseling, we would note that we've seen a dramatic reduction in the number of nonprofit credit-counseling agencies in the United States recently. A few years ago, there were more than --

>> Allison Brown: Three minutes are up, so if you can just finish this one thought...

>> Philip Corwin: Okay. And now we're down to just over 300. And that is why we'd like not to see any further unnecessary and duplicative regulatory burden, and thank you for the opportunity to appear here today.

>> Allison Brown: Okay, the next person is Jane McNamara, and then up after that is Jean Noonan.

>> Jane McNamara: Thank you for the opportunity today to participate in the panels. This has been a good sharing of opinions on the industry. We support a debt-management -- excuse me, a debt-settlement type product. Our concern is with fees. Our concern is with disclosures. We will continue to work with the creditor community, as well as our fellow agencies in AICCCA to develop a not-for-profit type debt-settlement product. Appreciate your understanding and support. Thank you.

>> Allison Brown: Okay, next up is Jean Noonan, and after that is Derek Witte.

>> Jean Noonan: Three quick points in my three minutes. The first concerns a definition that I hope we would have had an opportunity to get to in the last panel. We didn't. And that is the definition of, what is success or completion of services that would entitle a debt-relief service company to collect its fee? I think, in the context of debt-settlement, it is critical that that be defined as a creditor payment, not merely a signed contract, as I think someone else -- maybe

Travis -- mentioned earlier today. Anything less than a payment to the creditor is going to really vitiate the power of the advance-fee ban. So if you're not willing to do that, you may as well save yourself some trouble and give up on the advance-fee ban. One opinion. Number two, there was a really fascinating discussion on success fee -- excuse me -- success claims. The one thing that I would add to that that wasn't mentioned is that there needs to be a common denominator for any success claims, unless you decide to outlaw them completely. I don't favor that. I think that truthful success claims can be very valuable to consumer choice. But the common denominator is that the amount of the reduction that is achieved when that's part of the claim ought to be based on the amount of the enrolled debt, not the debt at the time of settlement. Because anything else gives a debt-settlement company the benefit of having waited a long time to settle the debt and let the fees increase. And it also depends on whether the big debt is settled first or the small debt is settled first. What FCS has always done is made these claims based on the amount of the debt at time of enrollment. The third point is there were excellent questions about do we need mandatory disclosures about dropout rates, do we need mandated suitability studies. The one thing I would say there is, if you have a ban on advance fees, these other disclosures become virtually unnecessary. Because no one will have an incentive to have a high-dropout rate. They won't be paid for those clients. No one will be -- Everyone will continue to have an incentive, as we do now, to do a proper suitability study because we won't want unsuitable people in our plans. So, yet, one more plug for the advance-fee ban is it simplifies a lot of the other issues that you've struggled with. Thanks.

>> Allison Brown: Okay, next up is Derek Witte, and then after that is Michael Bovee.

>> Derek Witte: I don't know why this is scarier than actually sitting at the table. [Laughter] It's the stern looks you're giving me. [Laughter] In any event, I think today was kind of remarkable. It didn't exactly go how I thought, but what the hell do I know? [Laughter] What I heard agreement on is there's nothing wrong with debt settlement as a product or as an idea. It's how it's being offered. And from some pretty -- People who I thought, perhaps, were adversaries of the for-profit debt-settlement industry were saying this, I think it's also remarkable that they want to provide a nonprofit version of it. I don't know where that fits in right now. I know there isn't one out there. But where we stand today, it seems like, is that everyone agrees that debt settlement has

value, and right now, for-profit debt-settlement companies are the only ones who, because they're truly independent, can stand as an adversary to the credit cards and get the principal down and get some relief for people that's in between a traditional debt-management plan, which is still pretty expensive, and chapter 13, which now is a lot harder to get into. And so if we agree on that market niche and we agree that debt settlement can be done and should be done, I think what's left for the FTC is, how do you guys regulate this in a way that gives you the teeth to enforce the industry and keep the bad actors out without preventing good actors from continuing to provide this valuable service? And I wish I had the silver bullet right now. I think the discussion has started with some of the research, and I think the research and academic work can be criticized on both sides right now and needs to become more robust, but I think there's a solution. I think the associate director said, "Where's the middle road?" Credit Solutions, for one, is interested in figuring out what that is. We don't think it's requiring payment only upon settlement because, number one, because we're consumer-focused, that makes the cost for the consumers who save and settle accounts and stay in go up, and even if we weren't put out of business, I don't know if we should stay in if the costs go that high for the consumers who stay. And, number two -- I forgot what I was saying number one and number two were supporting, so I guess I'll stop there. [Laughter] I am surprised, but I'm also encouraged. I also really appreciate the sincerity with which you guys have conducted this, and if there's any way we can be of assistance further, we'd like to.

>> Allison Brown: Thanks. And next is Michael Bovee, and then the last, final person is Jeff Tackle.

>> Michael Bovee: First, let me thank you guys for inviting me to participate as a panelist and also to reiterate that my comments coming up to today's event, while I was paneling and while I'm standing here today, are coming from a position of a company who has done nothing but success-based fees for settlement when we perform the service, and that's all we've known for over five years. The 60/60 plan -- and these are notes that I've taken that I didn't either get a chance to get to or from later afternoon sessions. The 60/60 plan will not benefit a struggling economy for that period of time, that five years. The settlement process, when done correctly, will assist a struggling economy within two years. Who's to say a 60/60 plan offered by creditors will last? They change on a dime. We deal with that frequently. Since arriving in Washington, in the last two day, I've

received four confirmed -- what was mentioned earlier this morning -- Chase direct offers to consumers to enroll in the 60/60 plan. I reviewed a copy of them. They are 0% for the five years. They are no-fees. It's a limited-time offer, so probably a pilot program that they're doing right now. The letter suggests that they will charge off, the one, specifically, that I reviewed, at 79 days delinquency is gonna charge off as soon as they enroll, so they've got immediate R9 on their credit report. And it's gonna be updated to reflect a settlement once the last payment's made. So five years from now. So the consumer's gonna be damaged immediately with a charge-off and then damaged again as soon as a fresh settlement is reported on the credit report. There's also an IRS disclaimer at the bottom, so there's likely to be a five-year window, an unknown liability where a consumer struggling financially right now may be insolvent, five years from now, maybe not. So what are they actually getting and saving? Lead generators should share compliance. Web-based marketing will create more competition and better suitability. I'm in disagreement with what was covered earlier today, in that I believe that people surfing, comparing are probably more sophisticated than somebody picking up a phone and dialing from a radio or telephone commercial. People are not typically sued inside of six months. In fact, litigation risks typically only begins after six months. Success claims are a two-edged sword. I don't like them. They'll be relied upon, whether right or wrong. Lawsuit risk is generally downplayed by the industry, which damages the whole plan if it occurs. And I'd like to see maybe some addition to risk of litigation being inclusive of the longer these debts go unpaid, the more likely and the higher those risks are. I don't like averages, but dropouts do skew things, and I don't think that would be a correct representation of success. One of the things I failed to mention earlier today is 80% -- and I agree with a lot of the industry participants -- 80% of the work that CRN does with consumers is consumer work. 20%, if not less, is set aside for the actual settlements that we do perform. Projections can't be relied upon due to creditors moving the goal posts frequently, especially in this economy. And the consumer with an aggressive approach to settling can't even rely on those projections. Length of -- I covered that.

>> Allison Brown: And your time is almost up, so if you could finish your thought...

>> Derek Witte: Expanding the definition to include books, whether in print or audio, would be an effective book ban. Self-help resources are affordable and should be the first thing available to

struggling consumers. I support a modest monthly fee of \$50 that will promote best practices, a nominal enrollment fee that is refundable for 60 to 90 days, all of which should be used as an offset to success fees that may later be charged. If there are players in the industry that cannot survive a change of that nature, then if other companies are allowed for a \$50 monthly service fee, they will absorb those other failed companies and the consumers that signed up for their services.

>> Allison Brown: Thanks. Jeff Tackle? Okay, anybody else who would like a couple minutes of the open mike? Well, in that case, I want to take a minute to thank everybody who participated as a panelist and attended in the audience. And, um... [Applause] Today's discussion has provided us with valuable insight that will really help us as we work to create the final debt-relief amendments to the telemarketing sales rule. We've certainly covered a lot of ground, and we have a lot to consider as we move forward with the rule-making process. We've gotten this question a number of times, but we don't have a specific timeline on when any next step would take place. We haven't come to any final conclusion, and the Commission hasn't come to any final conclusions, but we'll be taking these views and the many other concerns addressed at the forum today and in the comments, which are over 270 now, that we've received in this rule-making, and we'll be taking all of that information under consideration. Thank you very much.