

>> Tom Pahl: Thank you, and welcome back for our final panel of the day, which is going to address the issue of garnishment of bank accounts. And I will be the moderator of this panel. I'm Tom Pahl. For those of you who weren't around this morning, I introduced myself. I'm an assistant director in the Division of Financial Practices here at the FTC. After our discussion, like the format we've used before, Joel Winston, the associate director in our Division of Financial Practices, will come up, give some thoughts, and try to summarize. And then he will give us some very brief closing remarks, and we will finish up for the day hopefully on time at 5:00. So, without further ado, I'll go take my seat and we'll get started. All right, well, thank you. Our last topic involves the garnishment of bank accounts that contain exempt funds. One thing that we frequently look at is funds that are exempt under federal law, although, then, of course, there are state-law exemptions for funds that are in bank accounts, as well. And I think one thing that would be useful to just hear from members of our panel -- particularly, I think representatives of consumer interest -- is, you know, to what extent is the freezing or garnishment of bank accounts with exempt funds really occurring at this point in time. And maybe we can start with that question. But first I'd like to go around and introduce each of the members of our panel, some of whom have been on the prior panels. But I'll just introduce everybody very quickly so that we can get started. Beginning on my right is Hiram Carpenter, who's a judge in the 24th Judicial District Court of Pennsylvania, Blair County. To his left is Fern Fisher, who is a judge in the New York City Civil Court. On my far right, at the head of the panel, is James Flanagan, who is a judge in Suffolk County 1st District Court. To his left is Gary Grippo, for the United States Department of the Treasury. Immediately to my right is Kathleen Kerrigan, who is with the Bank of America. To my left is Lorraine Nordlund, who's a judge in the General District Court of Fairfax County, Virginia. On to her left is Adam Olshan, who's with Law Offices of Howard Lee Schiff. And to his left is Mark Tenhundfeld, who is with the American Bankers Association. Continuing around the table, we have Johnson Tyler, who's with the Southern Brooklyn Legal Services. And finally, we have Claudia Wilner, who is with the Neighborhood Economic Development Advocacy Project. To go back to the question that I started with -- To what extent are exempt funds in bank accounts of consumers right now being frozen or garnished? And maybe can hear from -- Maybe Johnson or Claudia can speak to that.

>> Claudia Wilner: Sure. Well, I can tell you that -- Well, first of all, we have a legal-services practice, essentially. So what we do is help low-income people with consumer debt issues. And I can tell you that up until January 1st of this year, the main thing that we did at our office was trying to get exempt funds released. We spent a lot of time trying to get people access to their Social Security and their other benefits that, you know, had been retrained by creditors, you know, even though those benefits are supposed to be and are, by law, exempt from restraint. So it's a huge problem. And I hear, you know, also from advocates all around the country that it's a problem in their states. You know, we have a wonderful, new law in New York that has really helped to address that problem. So I hope we'll have time to talk about the solution that we've found in New York. So it's really not been such a problem for us anymore to the degree that it was before. But I'm sure that it continues to be, you know, rampant in other parts of the country that don't have the protections that we do.

>> Tom Pahl: Johnson or Adam, if you'd like to add something, that'd be helpful.

>> Johnson Tyler: I've been a legal-services attorney since 1989 and I specialize in Social Security. I actually never dealt, until 2001, with a frozen bank account involving a Social Security recipient. And after that, it's just been a steady increase until the new law was put into effect in New York that we'll talk about. But just to give you an idea, I would get three to six calls, in 2008, a day from people, in part because they call 311, which is like the hotline number in New York City, which sends them to the bar, who then sends them to me. So I was getting a lot of things. But if you look at the numbers, in New York City, there are about 500,000 Social Security recipients who get direct deposit and who live in poverty. 90% of their income comes from that Social Security check. You know, in a five-year period -- and we're not even talking about 2008 and 2009 -- there were over 2 million judgments entered in New York, just in the five boroughs. So, lots of those involved people on Social Security. And in New York, because they have a discovery tool that is just incredible, they can do electronic searches of bank accounts once you have a judgment. So freezing a bank account in New York State until the amendment of this new law in 2009 was as simple as simply clicking your mouse. It was so easy that you could freeze bank accounts over and over and over again. So it's been a huge problem in New York.

>> Adam Olshan: Thanks. Simply put, it is never the intention of a collection attorney to attach exempt funds, period. It's a knowledge issue -- when we receive knowledge that funds are exempt. And in some cases, the attorneys will release upon being asked to. In other cases, attorneys will ask for some evidence of that, whether it's a bank statement or something else -- something simple, brought to their attention as quickly as possible. They will release. It is never the intention of the collection attorney to attach exempt funds. It's a knowledge issue.

>> Tom Pahl: Let me just back up a little bit. And perhaps if I could hear a little about what happens to consumers when their bank accounts are frozen, even though they contain exempt funds? What are their practical implications for, for example, recipients of Social Security benefits, if their funds in their bank accounts are frozen?

>> Johnson Tyler: Well, in New York, what happens is they get a notice from the bank which says, "We've frozen your account under order. If you want to discuss this, you need to call the attorney who did it." So then they call the attorney, saying, "You froze my bank account. And I know Adam believes this happens, but most times -- I would say in 30% of the cases where I've actually called and submitted documents, they do not want to release the account without a payment plan. That is their condition. And in those cases, I'm not talking about -- You know, I'm a legal-services lawyer. I'm not representing people with money and deep pockets. They still want a payment plan. They want \$50 a month. They want \$100 a month. So it's a practical matter. Once the account is frozen, the debt collector has an incredible amount of leverage now to try to work out a payment plan with the client, who is, if they're on Social Security -- and as I said -- If you look at the statistics, 37% of Social Security recipients rely on that check for 90% of their income. And the average payment is \$1,000 a month. They don't have a deep pocket. So entering in a payment plan with a creditor when you're in essence execution-proof, when you're living from check to check, it gets around the exemption provision of the Social Security Act.

>> Adam Olshan: But we don't want to attach it, either, Johnson. We don't want to attach that money. That's not the goal of the collection lawyer. We don't want it attached. We understand that it's exempt, and that's not our goal. It really comes down to knowledge.

>> Claudia Wilner: Well, I think it depends a lot, from attorney to attorney. I mean, often -- Again, we've had some, you know, solutions that have really helped. But before, you know, when we would advise clients -- they had a frozen bank account, they had exempt income -- that they would call the creditor's attorney. They might have to send some bank statements to prove that they had exempt income. And then, you know, we would hear, "Oh, that's not actually exempt," or, "Oh, I found a dollar of non-Social Security money in there, so the account's commingled, so we won't release it," or just endless challenges, you know, to be able to hold on to those accounts. And you asked what the harm to people was when their accounts were frozen. I mean, we've had clients who -- Well, first of all, people don't find out about it in advance. So when they find out about it is when they're going to use their card. Maybe they're trying to buy groceries at the store because they have no food, and now their card doesn't work. They have no access to money. And so we have people who need to go to food pantries, who need to borrow money from relatives to survive. But maybe they don't have any relatives or friends. We have had clients who are, you know, disabled in wheelchairs, living in public housing, whose SSI benefits are frozen. They have difficulty getting them unfrozen. We've had clients getting eviction notices because they weren't able to pay their rent because of the frozen bank accounts. And then with the direct deposit, usually once an account is frozen, it might be the first check, but then if they don't get it resolved quickly, then they can't stop the next check from going in. So it's not just one month of benefits. It's multiple months of benefits, and it causes severe hardship for people. And if I could say it's for people on Social Security -- But it's not just for people on Social Security. It's people who are receiving unemployment. It's low-wage workers who are making the minimum wage and they're living check to check, too. And that money is also exempt under wage laws, and they have same problems as people on Social Security. So this is a systemic problem that causes a lot of hardship to low-income people all over the country.

>> Tom Pahl: Okay, well, you know, since the practice is a violation of federal law, I think it'd be helpful to hear from the folks up here who have connections with banks, as to, you know, why do banks freeze funds which are supposed to be exempt under federal law?

>> Kathleen Kerrigan: That would be me.

>> Tom Pahl: Kathleen and Mark, I think, would be the two folks to respond to that.

>> Kathleen Kerrigan: Well, banks are subject to state garnishment law, which -- When a bank is served with garnishment, there's a mandate to freeze accounts, hold accounts. And also within the state process, or procedure, I should say -- the garnishment procedure -- there is generally a claim process whereby, historically, it was thought that the individual claiming the exemption could fill out the paperwork, go to court, claim their exemption, and have that process work. And that is, you know -- When a bank is served with a garnishment, there is potential liability, not just to the customer -- to our own customer, if we get it wrong. There's potential liability to a creditor if we get that wrong. So of course banks are not the only garnishees. Obviously they're the main, you know, focus. But there is a kind of neutral, if you will, position, unfortunately, to be maintained there.

>> Hiram Carpenter: Kathleen, can I ask a question? Do you think -- This is a big problem in Pennsylvania, the banks doing this. Are they -- And you were saying, Adam, it's a knowledge issue. Do the banks, do you think, kind of get caught between what they think the law might be or what it is, and a court order? Is there confusion that is causing some of this?

>> Kathleen Kerrigan: Well, I don't know if it's confusion, but I think we'll have some good news shortly to talk about, in terms of the discussions that the industry and Treasury and the American bankers have had. But I think there's enough case law out there for banks to be advised that they have to be careful.

>> Hiram Carpenter: Is investigation the problem?

>> Kathleen Kerrigan: No, I think it's -- Historically, I think the main focus has been, this is an issue between the debtor and the creditor and that, you know, the bank should take some action and then the conversation moves to the debtor and creditor and the courts to make sure that everyone is sorting out whatever legal issues there are there.

>> Mark Tenhundfeld: To, if I could just jump in. My location on this panel is exactly where it should be -- between the creditor and the debtor here. Because that's exactly where banks are in this process. I would only amplify on what Kathleen said by noting -- and this may be responsive to your question, Judge -- that the issue for banks is the fungibility of money. When we're talking about direct deposits of Social Security or V.A. or whatever, into a deposit account that has other funds in it, there's no way to know which electronic blip is a Social Security electronic blip, which came from anybody else. And so the banks, as Kathleen was noting quite accurately, find themselves between the proverbial rock and a hard place, where they have exposure both ways. If they dishonor the garnishment order, in some cases, they are liable for twice the amount of the judgment. If they pay funds that are protected under the Social Security Act and other federal statutes, they have liability to the client. And so the banks, caught in that situation, often find that the only solution that they can come up with that really preserves the interest of both sides is to say, "Let's just call a time-out on this. We're just going to put a hold on this account. And we're going to let the parties work it out." Now, that said, I'll be the first to acknowledge the hardship that has been pointed out. And the banks are not saying that the current solution is the best solution, because there are some very real-world hardships that arise from that. What we have been talking with Treasury and with the banking agencies and with the other agencies about is coming up with a way that preserves a lifeline amount -- if you want to call it that -- so that you don't have a situation where a Social Security recipient can't buy food or can't, you know, pay the heating bill.

>> Hiram Carpenter: Writing bad checks, yeah.

>> Mark Tenhundfeld: Well, the solution that I think we're all aiming for is maybe not perfect, depending on your perspective, but at least from what I can tell thus far, looks like it might be the best solution that addresses as many interests as we can.

>> Tom Pahl: Let's hear from Judge Nordlund quickly. And then, perhaps, Gary, if you could talk a little bit more about what the banking agencies have been talking to the banking community about.

>> Lorraine Nordlund: And this segues from what Mark has said. In Virginia, we still follow the rule from a 1982 case -- Bernardini versus Central National Bank of Richmond. And in that case, it's a pretty hard rule that says that the moment that funds are commingled -- that is if you have an account which has an automatic deposit of these exempt funds -- and any money comes into it from any other source and begins to be used for general purposes, then the very fact that the funds have been commingled means that the funds lose their exempt status. And under those circumstances, unless the creditor is willing to allow them to trace a portion of that account, the entire account is subject to the garnishment. This has been brought forth before a number of courts. One of the most recent was in the city of Richmond in a 2006 case, where they upheld the Bernardini case. And one of the things that was pointed out in that case was that the Supreme Court, in Bernardini, distinguished their ruling from Philpott versus Essex County, which was a U.S. Supreme Court case. And in distinguishing it, they held that the federal law regarding Social Security benefits being exempt was distinguished in part because of the evidence of commingling. So they did make that distinction. And so we are probably due for a change in the law. Whether it comes from the state or it comes from the federal law, who knows? But I can tell you that Virginia still follows that. Now, what happens is that the banks, recognizing that they may be caught between a federal law and a state practice or which is set forth by case law, dating back to 1982, what they do is normally they will hold the funds, pending direction from the court. And most times, they will waive the fees that come from writing these bad checks. There is a spirit of cooperation that exists, once again, that may be unique. But I know that many times I've had a situation where a person or a couple is coming in, "Those are my Social Security benefits. What am I going to do? I can't live." And I look to the attorney, and the attorney says, "Just send them out in the hallway with me. We'll talk about it." And they come back in, and usually they've agreed to trace a portion of those accounts and exempt a portion of those accounts. But that doesn't always happen. And we can't compel it. We cannot compel it. So, many times, we do have to impose that hard and fast rule.

>> Tom Pahl: Okay. Gary, perhaps if you could speak to what the federal banking regulators have been considering.

>> Gary Grippo: Well, it's been the Treasury Department, along with the benefit agencies -- not so much the banking regulators, but the benefit agencies, which are the entities that have these anti-garnishment statutes, not the bank regulators -- that have been working together to issue a rulemaking that would address this issue and, for the first time, give clear guidance and really give full effect to the anti-garnishment statutes that exist in most federal benefit programs. And so we've been working on a rulemaking that would address this. A proposed rulemaking is forthcoming. Invite comment from everybody on that when it comes out. And this rule would deal explicitly with this practice of account freezes, and it would be a rule that essentially regulates financial institutions. It would have three goals to it, at a high level. One would be to establish some protected amount, pursuant to the anti-garnishment authorities, which could not be frozen or seized or turned over to a judgment creditor. A second component would be to make it very simple for the financial institutions to determine whether to institute this protected amount, in that they would not have to do any complex accounting or exercise some judgment to figure out what particular dollar was protected or not. And thirdly, it would provide financial institutions with a safe harbor from liability if they complied in good faith with this. So it tries to balance these interests of giving effect to the anti-garnishment statutes and protecting funds, giving clear instructions to banks to get them out of that position of being between that rock and a hard place, and providing a safe harbor, if they do that.

>> Tom Pahl: Well, that sounds very conceptually similar to what I know some states have done, like California and Connecticut and I believe New York. I was wondering if anyone on the panel has had experience with those kinds of state-law approaches and how those have worked.

>> Adam Olshan: You know, Thomas, I wouldn't go so far as to say that Connecticut or New York are simple or even fair. But the Connecticut statute is. And if I may mention what that is. I've spoken to Mark and to Gary and to Kathleen a bit earlier today about the Connecticut model. I think it's a very fair one. In Connecticut, the consumer bar sat down with the bankers and creditors back in 2002, And through that, again, collaborative state-level discussion, an agreement was reached through consensus, as follows -- Where a judgment debtor has exempt funds deposited into their account readily identifiable electronically within 30 days of the attachment, the bank, upon receipt of the attachment, leaves \$1,000 aside as immune from

attachment and doesn't touch it. Anything above that is subject to the attachment. And if the debtor disputes anything above \$1,000, they have the right to a hearing. But that's the current process. I believe that it's fair to the bank and that it's, as you mentioned, a simple process for the bank. And the banks do, I think, agree with that. I think it's fair to the consumer. Johnson had mentioned that the average monthly payment is \$1,000. And this is \$1,000 immunity. I also think that it's fair to the banks and that it gives them some assurance with regard to liability. It's a clear rule that they can apply. I will say it's also fair to the creditor community. There's no debt avoidance here. I think it's very reasonable. \$1,000 should not be subject to attachment under situations like this. And it's up to \$1,000, so if there's \$800 in the account and if only \$200 turns out to be Social Security, still, the full \$800 gets exempted. And I think that that's a very reasonable compromise for everybody, and it works for everybody. I

>> Gary Grippo: If I could add. We've looked at how these statutes operate at the state level -- there are different flavors -- and have tried to learn as much as we can and build on that. In our instance, at the federal level, we think a model like this works. Our concern is to ensure that it works well across all federal programs. And we're not just talking about Social Security or retirement benefits. There are probably a couple of dozen types of benefits with anti-garnishment protections. Everything down to Medal of Honor recipients are exempt from garnishments. It's amazing how many different programs that this covers. And so our approach is to come up with some method that would cover all of these in one uniform manner, such that a financial institution would not need to worry what type of benefit it was and would apply a very simple rule to protect a certain amount. I think the other thing that we're trying to do at the federal level -- I know we're doing, since we're responsible for these things at Treasury -- is to better encode our direct-deposit payments to permit, by means of both visual inspection of a deposit, either on a customer-service account screen or on a bank statement, or through an automated inspection of electronic entries, to more readily determine if a benefit is in fact exempt. And so we intend to make some of those changes in the coming months. And this would allow not just financial institutions, but hopefully most consumers, to be able to look at a bank statement to see whether a transaction represents exempt funds.

>> Kathleen Kerrigan: And from the financial-institution perspective, a couple of points following off of those. The states California, Connecticut, and New York, which have established what we should call an automatic exemption amount, differ in the sense -- Primarily, California -- I'm sorry -- New York, and Pennsylvania is this way, as well as other states -- where there is an ongoing restraint. The restraining notice in New York, which is valid for a year. Garnishments in Pennsylvania which are ongoing present a complete operational obstacle for banks to be able to get that money to the customer. And one of the things that we as the industry, in the course of our conversations with Treasury, have tried to emphasize that -- And I guess we'll get into this maybe for a future vision. But that has been a real stumbling block in terms of the way a bank account works. In other words, if you have a system like Connecticut where the garnishment hits, and whatever is in the account on that day -- the safety amount, you know, the automatic exemption -- is left in there. The rest is pulled out to a general ledger account. The customer can freely use their account. In New York, that is not the case, because the bank is obligated to restrain any additional money that comes in. And the other point, on the payment side, the federal government follows the Green Book, which is, say, if you will, their version of the National Automated Clearing House Association, the NACHA rules for ACH. And we have electronic files that come into the banks from the federal agencies for the payments, and they have strings of data. And what we're hoping for is a fairly bright line rule that says "Okay, we're going to put identifiers here and here." And, believe me; this is all manual at this point. When the bank employee is looking to try to identify that federal exempt benefit payment, they will have some fairly bright line rule within the NACHA rules to follow. But it does not mean that we have gotten to the point of automation. A lot of that has to do with the downstream systems within banks and what data they pull from that original amount of data that comes in.

>> Mark Tenhundfeld: Tom, can I just add one thing to your question about what the banking agencies have been doing? Before Treasury got deeply enmeshed in this issue, the banking agencies went out for comment with proposed guidance. And this was I think in September of 2007. The problem with the guidance -- And I think the banking agencies -- I don't know if there are any representatives. I don't recognize anybody from the banking agencies here. But I think they would acknowledge that the problem with that guidance was that it put the onus on banks to distinguish exempt from nonexempt funds. And again, when you're dealing with direct deposits

and electronic funds, electronic flow of funds, you just can't have a system premised on that. And so I think to their credit, they haven't officially withdrawn the guidance, but they have I think put the brakes on it. And the momentum now has shifted over to Treasury and the paying agencies to try to fix the problem.

>> Johnson Tyler: I just want to say that the New York rule, which creates this bright line, works very well, except in the situation where Kathleen mentioned where the balance exceeds -- It's the \$2,500 rule in New York. If someone gets direct-deposit Social Security, and the account has less than \$2,500, nothing happens, there's no fee. And if it's a dollar above, the dollar gets frozen. The whole account gets frozen for future payments. A person has \$2,500. And this is where the problem arises, because Bank of America, for example -- and I'm not blaming you for the problem. But the problem is they can't deal with the next check. So what they do is they freeze the whole thing, they tell you -- Actually, I'm not going to speak for Bank of America. I'll speak for Chase, since they're not here, 'cause I know what Chase actually does. What Chase does is they freeze the whole account and they send a notice saying, "Come into the office, the local branch, if you want to get your money. But if there are any outstanding checks, they are going to bounce." So that person who's got \$1 more than the limit ends up with a lot of bounced checks. Then the next Social Security check goes into the account. And it's for this reason I think that Gary and what the Treasury is doing is terrific because it will -- if I understand, from reading all these e-mails -- it's going to adopt the Connecticut approach, which is a snapshot approach of looking at what's in the account on that day so that we don't have this problem of this ongoing -- the problem we have in New York. So I think it's a terrific thing for that.

>> Gary Grippo: Yeah, let me -- As I said, we're in the middle of a rulemaking, or we will be issuing a rulemaking, so I don't want to comment on any specific provision in it right now. But as a matter of principle, in creating this reg, we feel that all of this must be a one-time event for the parties. If you can identify an exempt deposit and apply a protected amount, what should flow from that is a one-time action that does not need to be revisited. And there are different ways to implement that, but our goal would be to have a financial institution take one action, one time, upon one account review, without having to revisit it, or to have an account holder have to assert something in the future.

>> Tom Pahl: One thing I did want to ask, and what Johnson had been talking about kind of raises this. Under the current system, if a bank account is frozen and fees are assessed, and it turns out that the freeze was improper 'because in fact there were exempt funds in the account. I'd just like to ask people's thoughts as to whether banks do and whether they should refund the fees that the consumers were charged because of that improper freezing of the account.

>> Claudia Wilner: One of the things that the New York law provides is that if a bank receives a freeze or a garnishment order and -- Or maybe I should go back and explain a little bit the way our law works, because Johnson explained part of it, but it was only a partial explanation. And actually, it's pretty similar to the Treasury proposal. It's actually a two-tiered protection. So for accounts that have had readily identifiable deposits of exempt funds within 45 days prior to the issuance of the restraining notice, there is a protected amount in that account of \$2,500. And for all other accounts, there's a protected amount of \$1,740, and that amount is tied to the minimum wage, and it goes up if the minimum wage goes up. And if the account balance is less than that amount, then the restrain or garnishment order is void. And we really don't have any problems, ongoing restraint problems. The account is not frozen. Our understanding -- because we talked quite a bit with the banks at the time -- that, you know, the bill was being worked out. And a lot of banks did say that it was their policy -- for example, in California and Connecticut, which is what we were looking at as models -- not to place fees on accounts that were not frozen because they had less than the protected amount in them. And the New York law also says that no fees can be charged if an account is not frozen. And we're not seeing a big problem with fees being charged in those circumstances. So my understanding is that in general, banks are not charging fees when they're not freezing accounts. And let me say that these fees are substantial. The fee for freezing an account is \$125 or in that neighborhood. So that's a lot of money. And when you're only getting, you know, \$700 in Social Security, that's a big chunk of your income. I'll just say, in addition to that, we have a procedure in place that's almost a nonjudicial procedure, to deal with the situations when an account has more than that protected amount in the account. And it's basically a simple form that somebody can check off to claim that the rest of the money in the account isn't exempt. And that process has also worked pretty well. I think we've been able to help

people, even when there is some freezing in the accounts, to get those accounts released usually within a week or two.

>> Tom Pahl: Judge Nordlund.

>> Lorraine Nordlund: Now, when I said that we have no federal exemptions if it's commingled, please understand, now, we do have a statute which indicates that the certain level will be exempt. But the effect of the case with our statutes regarding exemptions is that it places the onus on the bank-account holder, or owner, rather than the bank. So it shifts the burden from the bank to the bank-account owner, that they are the parties that must file the exemptions with the court, and it's not the bank's responsibility to determine classification of various funds within the account. So it's just simply a shifting of that onus. There are still certain levels of funds which are exempt from garnishment, but it's just who has the responsibility of notifying the court.

>> Tom Pahl: We have a question from the audience that sort of follows up on our discussion that I think would be useful to ask and have answered. And the question is -- "Under the snapshot approach favored by California, Connecticut, and the Treasury, can a creditor garnish an account repeatedly?" So, if someone could speak to that question.

>> Adam Olshan: What was the question? I missed the end part of it.

>> Tom Pahl: Sure. "Under the snapshot approach favored by California, Connecticut, and the Department of Treasury, can a creditor garnish an account repeatedly?"

>> Kathleen Kerrigan: I know that, in California -- Or at least my understanding is that in California, there is no limitation. And that question may come about because in New York there is a restriction. A creditor may only issue two restraining notices a year -- the first one without court approval, and the second one they have to get court approval for. So, in the snapshot situation in California, theoretically, the creditor could come back repeatedly.

>> Adam Olshan: And, Tom, in Connecticut, the rule does allow the judgment creditor to come back repeatedly. The practice is that through the execution process, if the collection attorney learns that all of the money in the account is exempt, generally speaking, they'll flag the account and they won't send a marshal back out for the account. I just want to mention that, in the New York practice right now, \$4,250 is automatically immune from exemption, which appears to be the total that Claudia had mentioned -- \$2,500 plus \$1,750. That's just way too much money. I think that the California rule's about \$2,200, which, again, is -- \$1,000 is a reasonable number. And my only add-on to the Connecticut rule, which I would suggest, would be some sort of expedited hearing in cases of I'll call it brutal need. Kathleen had sent me an interesting 1982 law review article about this, and brutal need was talked about there. In cases where there is brutal need -- the money over the \$1,000 is brutally needed to live on -- or where there's money over the \$1,000 that's exempt, I would suggest that if Treasury is going to issue a new reg, that it encourages state to look at state-level add-ons to, in cases of brutal needs and exempt funds over the \$1,000, allow the judgment debtor to go to the bank, authorize the bank to sidestep privacy and e-mail the exemption form to the state court so that the state court can be required to docket a hearing within seven calendar days, which can then result in this money being released quickly. I think through that process, all parties are treated fairly.

>> Tom Pahl: Judge Fisher?

>> Fern Fisher: That's an awful lot to ask some state courts, to do a hearing within seven days. That's a burden that needs to be discussed. I mean, when the legislature adopts new legislation, they don't often give the courts the resources that they need to implement that legislation. So I'm just putting that on the record.

>> Adam Olshan: I understand, Judge.

>> James Flanagan: And in response, earlier, to what Mr. Tyler and Miss Wilner said, in my court, we don't get a lot of accounts that are garnished with the exempt funds. But I'm now in my sixth year in my court. And my clerks have devised a process with me that if the person brings in the proof and demonstrates it -- Now, I grew up. My father had a bar, and he cashed a lot of checks.

And I learned at a very young age, the 1st of the month was your pension check, the 3rd of the month was the Social Security check. That's the way it was. If I see an account that has the same amount of money coming in the 1st and/or the 3rd every month, and they attach that to the order to show cause, I'll send it down for -- And when I say immediate -- as quickly as possible. But I will lift the garnishee the garnishment and I'll also direct that everybody appear, which normally we don't do on our motion calendar. We're usually a submit motion. So we try to take care of these things. It's not that we let them lie. But that doesn't happen that often, but when it does, if they provide the proof -- Now, the one stumbling block that happens all the time -- we'll get an adult parent with an adult child. And they'll claim that the money -- the adult child is the one who the garnishment is against and they have a joint account. And then what happens is, the mom comes in and says, "It's all my money. It's not Sonny Boy's." And it turns out most of it is Sonny Boy's, if not all of it. But Mom's on the account for whatever reason. Those are the ones that really give us the biggest problems. So, but we try and do it. And my question is, what are we going to define as "brutal"?

>> Adam Olshan: That's for state-level collaboration. I think that in Pennsylvania -- In New York and California, the current laws resulted from the bank and the consumer bar discussing this. I don't think that the creditor bar was part of that discussion. I think that there, through discussion, as happened in Connecticut, you reached good results.

>> Johnson Tyler: I would just like to point out that SSI, which is essentially a federal welfare program for people who are disabled and elderly, they have a \$2,000 asset limitation. The federal government has already decided that people are impoverished if they only have \$2,000 in the account, and they're giving -- These people are eligible for this benefit, \$700 a month. So I think bringing it down below \$2,000 is -- You're going to have a lot of SSI recipients going into courts trying to get that other \$1,000 if you bring it that low. There's no reason to bring it that low.

>> Claudia Wilner: I would just add that, in speaking to Connecticut advocates, especially, legal-services advocates and people who work with the elderly about their \$1,000 amount, you know, their one criticism of their statute was that \$1,000 wasn't enough for our clients. And \$1,000 was not enough for people in New York. I mean, I realize not every area is as expensive on a daily

basis as New York is. But many people's rents are more than \$1,000, so I just disagree with the idea that \$1,000 is enough money to really give somebody, you know, that sort of basic, minimal, subsistence-level protection, which is what this is all about. And not to keep arguing back and forth over our statute -- and we can talk about other things -- but I don't believe that our exemptions are stacked per account. So it's not accurate to say that \$740, or whatever it is, is an exempt amount. It's one or the other.

>> Tom Pahl: One question we got from the audience that I think follows up on a point that Judge Flanagan had made is to ask -- "Is segregation of funds feasible for consumers? Should there be a mechanism to provide consumers with advanced notice of a need to segregate their funds? If so, what should that mechanism be?" Sort of ask the question of, you know, how easy it to separate out funds is. And if that's something that should be done, how can consumers be informed that that is something they should be considering?

>> Adam Olshan: You know, Tom, an exempt-income account, from the collection-attorney perspective, would be fantastic. Because as I mentioned initially, we don't want to attach this money. And if there was an exempt-income account that was set up where the judgment debtor can have those exempt funds electronically deposited deposit into this account that's exempt from attachment, this would all go away. I understand that it may not be easy for the banks because it's another account they have to set up and there might be an expense to those accounts. But if there could somehow be a forgiveness of the fees on these exempt-income accounts, it might be a win-win all around.

>> Kathleen Kerrigan: We would probably have to look into that on the operational side. It sounds like what they're positing is an identified ACH direct deposit -- One? Just one? More than one? I don't know -- coming into an account that otherwise somehow is restricted from any credits going in, whether it's someone transferring something in online banking or depositing something, you know, through an ATM or whatever. I think that would need some real operational sort of brainstorming.

>> Gary Grippo: And one of the things that, at the federal level, we're always concerned about is assuming or policing some requirement on banks that relates to servicing benefit recipients. And if there's a presumption that some extra service or extra account might be needed to properly service a beneficiary, then that's more expensive, and banks would be less likely to service those recipients. So that's something to think about. Going back to what I said earlier, I think banks would be able to come up with unique and effective solutions when the federal government is very clearly encoding its deposits as exempt, because solutions may not be there now. But if a DDA system can clearly identify an exempt deposit automatically, I'm sure that both the large banks and the small banks that use other software products will be able to do things to segregate those monies somehow.

>> Johnson Tyler: This idea was advanced, I think, in 1999, and they were called ETAs as an acronym. I'm not sure actually what it stands for. And they never picked up. And some people say it's because the banks didn't push them. Some people say the consumers didn't want them. As a legal-services person, I can say that the problem of commingling -- and I've advocated on behalf of clients' released accounts 200, 300 times, and to look through the bank records. And people do add money to their account. They need to add money to their account. They have to have a check clear. They have to make sure rent passes. That sort of stuff. And I think even Bank of America said in their comments that when they did analysis, 92% of SSI and Social Security recipients commingled their accounts. And I can understand the banks are saying, "Well, we don't know how to deal with this commingling." Us advocates believe you can. But be that as it may, the value of what Treasury is thinking of doing is, by establishing this bright line, no one cares about commingling. The question is, you know, is the balance below this amount? If it's above the amount, set that money aside for the creditor --

>> Adam Olshan: For the hearing.

>> Johnson Tyler: For the hearing, whatever. But that's the way to do it. And that is the value. It makes the bank's life easier. And it deals with the reality of the low-income person. You know, I have clients who collect bottles and cans and turn them in and put the money in so that they can then make sure their debit card doesn't bounce. I have other clients who use debit cards. And the

debit card, you swipe that, "Oh, I'm going to return this. I don't need it." That goes in as a new credit. I've had creditors say to me, "It's commingled. There's a credit there." I'm like, "Well, that was the debit card. Look, it's the exact same number as here. It was a returned item." But the law is if you take the money out, you can't just put it back in and keep the exemption status. So there are all sorts of reasons that the idea of setting up separate accounts really will not work. The consumer doesn't want it. And the banks -- It's been out there and hasn't worked. And more importantly, the idea of the Treasury setting a bright-line rule really has a lot of value in protecting and really giving meaning to the exemption provisions of the Social Security act.

>> Tom Pahl: Go ahead.

>> Mark Tenhundfeld: I would agree with everything Johnson just said. We looked into that at the point when we were putting together a comment letter I think in response to the post guidance. Because one of the ideas that was discussed amongst the banks was, "Well, how about the idea of dual accounts?" And people pretty quickly came to the realization that we're actually asking a lot of the consumer in that case to have to manage two accounts. There would be two fees associated with the accounts. It's more of a hassle for the consumer to try to construct that and maintain that going forward than it seemed to be worth. And so I would agree with Johnson, that I think the better, cleaner approach would be something like the Connecticut statute where there is just a safe harbor. You know, the consumer has enough to live on. But the rest of the process is fairly automatic after that.

>> Adam Olshan: On commingling, Tom, just to throw this out there. It may be moot now with what Treasury's talking about doing. But Judge Donnelly in the Chicago roundtable had a terrific suggestion in Illinois that resulted from, yes, again, state-level collaboration between the consumer bar, the creditor bar, and the bench. And they agreed that when there's commingling, if you look back 90 days at the bank account. You look at what monies were deposited from exempt sources, what monies were deposited from other sources. Take the percentage. I should say identify the percentage of each, and then look at the money that was actually attached and apply those percentages and divvy it that way. And that was actually an agreement in Illinois which was discussed, which was interesting.

>> Tom Pahl: I want to ask one more question that we have received from the audience which relates to essentially when a bank has garnished exempt funds when they should not have. And the question is -- "What are the panelists' views on creating a private right of action for actual damages, statutory damages, attorneys' fees and cost to enforce federal protection of exempt bank funds?" Like I said, the idea would be that there would be a private action to enforce the current federal prohibition on garnishing exempt funds. Someone like to speak to that?

>> Adam Olshan: The collection attorney has no knowledge. So if the collection attorney is potentially liable, that would be wrong.

>> James Flanagan: And who would the private action be against? The bank is going to get in now?

>> Tom Pahl: Yeah, I think that would be the import of the question.

>> Johnson Tyler: Our office, South Brooklyn Legal Services, did sue Bank of America, Norfolk Bank, and a smaller bank for freezing an account that -- Actually for freezing the accounts of three clients that had only direct-deposit money in. We did not seek any monetary damages. I mean, we understood that the bank was following New York law. We were challenging the Constitutionality of the law. So I think creating a law that requires the banks to do all the thinking of trying to decide whether the account is completely clean and not commingled actually isn't really the best results here. Because you're going to have low-income clients who need their money, who use their debit card and return items, or get a birthday check or collect cans. And the real relief is really what Treasury is offering, which will provide much better relief that we could have gotten out of our lawsuit. And frankly, creating a cause of action like this against banks, it's really not going to help the consumers as much as a bright-line rule.

>> Kathleen Kerrigan: And we would agree with that. I think the walking the tightrope rope that banks have to do between the interests that the creditors are asserting and the interests of our own customers to open things up to a right of action if we happen to get it wrong or just happen to

misinterpret it. Not to mention, in my bank, we handle over a million such garnishments and so forth a year with, you know, the requisite number of full-time employees working on those matters, trying to make sure they're trained and can read legal documents and so on. And the concept of the garnishee, who is in between these other two parties trying to sort out and figure all of that out. And the cost of it is really -- I think it throws things way out of proportion.

>> Claudia Wilner: I'd say, as an advocate for consumers, I mean, I'm always happy to have another remedy that I can use, you know, to protect my clients' rights when their rights are violated. But I would say, you know, I want to push back on this idea that the collection agency or the collection attorney has no idea what's in the account, can't find out and is just at the mercy of, you know, the system. I mean, that's not the case. Collection attorneys have plenty of discovery tools. They can find out what's in the account by sending an information subpoena. So I would really actually be interested in seeing more of a duty on the collection bar to determine what's in the account before they freeze it. And I think it should be a violation of the Fair Debt Collection Practices Act and an unfair trade practice for a collection lawyer to seize or garnish exempt funds, and subject to bona fide error. Let's adopt some procedures to make sure that it doesn't happen. And if you have your procedures in place, you're not going to be held liable. But I'd like to see everyone across the country, you know, who is involved in garnishing accounts, developing some procedures and putting some energy into making sure that that's not happening anymore.

>> Tom Pahl: Well, that was an issue that we heard about at our San Francisco roundtable. That suggestion was made that there are some states, like Washington state, which require a debt-collection attorney when they go to a court and seek a garnishment order, that the debt-collection attorney has to certify that they believe that the funds that they're seeking to garnish are not exempt. And I'd be interested in people's thoughts as to that as an idea.

>> Adam Olshan: Tom, if I may. Connecticut had a district-court case at some point with Shrestha versus State Credit Adjustment. It's a U.S. district court, Connecticut district, 2000 case. And the judge stated that exemptions are not self-executing, that the attorneys can't read the judgment debtor's mind. With regard to a duty to investigate, I have tried in the past, Claudia. I sent

information subpoenas. And I spoke in October of '07 at the FTC workshop on this, and I answered the same question. I sent out hundreds of information subpoenas and I got maybe a handful back. I think to put that duty on attorneys is debt avoidance. I don't think an attorney would ever be able to sign that affidavit because we just don't have the information. We don't want to attach those accounts. We don't do it purposefully. We're just trying to collect the judgment debt. And we don't have any way to know what's in there. So I think what Treasury is talking about is terrific. And I spoke to Gary a bit in the hallway before this program. I look forward to further dialogue and being able to participate in the comment period on that proposed rule. I like the bright-line test, also. I do think that \$1,000 is a very reasonable number for the reasons I've already mentioned. But I don't think there's a duty to investigate, nor should there be, fairly.

>> Claudia Wilner: Well, all I can say is that I've seen collection logs where the collection log says, you know, SSI income or Social Security income, and still the account was frozen. So, you know, if you and your office may have a certain set of ethical procedures and you don't want to restrain exempt funds. But I don't think that's true of, you know, the entire collection bar, because we see too many problems, you know, for everyone to be acting as you're acting.

>> Adam Olshan: If the collection attorney has actual information that the money in the account is from an exempt source and they attach it anyway, that's a problem. But I can say -- Your case is an anecdotal one. I can say, in general, attorneys do not attach exempt funds on purpose.

>> Johnson Tyler: If I can just comment on this, 'cause I'm really hoping the Treasury will come out with this rule. But in the event they don't, I want to make clear a couple of things that intersect here. HSBC, a fairly big bank. I once called them about a frozen bank account. And the person said, "Oh, our log shows we told the creditor that this money was exempt." I said, "Why did you freeze it?" They told us, "We had to freeze it. Maybe they wanted their attention." I said, "Really?" She said, "Yeah, actually, we have a whole list of attorneys we do not call anymore on this issue because they've always told us they want it frozen when we confront them that the account is exempt. So banks can tell. And if any of you have parents who are retired, look at their bank statement. It says "Social Security," as the judge was saying, on the 3rd of the

month. That's when Social Security comes in. Comes in once a month, and it says "Social Security." Your parent is not an employee of the Social Security Administration. Banks do know it's based on that. There's a regulation that requires bank statements to be readable by consumers and to translate where the electronic transfers come from. And I guarantee you, every bank statement that you see will not have coding or just numbers. It says "Social Security." So banks do know. I agree the banks find it difficult to deal with this concept of commingling, whether the account contains nonexempt money. But every state has accounting principles that are fairly simple. There are basically only two different kinds. So banks can figure it out if they want to. And Citibank has figured it out. Banco Popular has figured it out. A teeny bank, a little, teeny bank, New York Community Bank, they know how to do it. They do this. They protect exempt money. So banks can do it if they choose to do it.

>> Mark Tenhundfeld: If I could just respond on that. I think the issue of coding is as important for the efficiency point as it is for the ability to know, by looking at a statement, where the funds come from. But it's the commingling that we really have a hard time with. If you have an account where all you have is month after month a deposit of Social Security payments, that's fine. I mean, the bank can clearly identify that as funds that are exempt. But the moment you deposit something that's not potentially exempt, you then muddy the water. And it's very difficult, and from what I hear from the banks that I've spoken with, it's impossible for the bank to know reliably what's exempt and what's not. Now, you could put in place last in, last out, or first in, first out -- some sort of construct to try to get around that. But with that said, I actually think that the Connecticut solution or whatever Treasury is working toward is probably a cleaner way to do that. You just say to the consumer, "Boom, here's the amount of money that you that can live on, and the rest is subject to the garnishment procedures."

>> Gary Grippo: And I think that is the approach we're investigating. So that if there is any exempt deposit in the account, to whomever -- the account holder, someone for whom they are a representative payee, a child. As an exempt deposit, we should apply these protections. And following a rule like that solves all the questions about commingling of funds, joint ownership, whether there is an exception to the exemption for garnishment, which there is for alimony and child support. And any other number of facts or attributes that may be attached to a particular

case. And so as I said earlier, we're in favor of a very simple bright-line test of exempt deposit from whatever source to whomever in the account triggers this protection without forcing the bank or any other party to sift through and make judgments about a particular dollar or other attributes of the account.

>> Mark Tenhundfeld: Can I make one last -- well, not one last, but one additional comment about the notion of expanded private rights of action? You probably all have seen the FDIC survey of on-bank and under bank that just came out this week, and I don't have the precise figure off the top of my head, but there's a significant percentage of Americans that are unbanked and a larger percentage that are underbanked. The more private rights of action that you create associated with accounts that could be used to further reach out to the unbanked and underbanked, the more problematic it's going to be to close that gap. And if there are cleaner, more efficient solutions to the problem, I think everybody benefits -- not just banks but consumers, the people -- the creditors. Everybody ultimately wins from a less adversarial process.

>> Gary Grippo: That's a comment that I sort of echoed earlier. Anything that adds cost or risk or uncertainty to providing banking services to beneficiaries would lead to some unintended consequences that we need to be mindful of.

>> Adam Olshan: You know, Tom, the collection lawyers just want clear rules, clear law. That's a wonderful point, and we agree completely with it. Right now, there's a lot of gray out there, and the gray may work for some people, but it doesn't work when you're attempting to work within a fair system. And we want clarity, and we look forward to participating in the discussion with the Treasury.

>> Claudia Wilner: And from our perspective, I mean, clarity benefits the consumer as well, particularly when determining an exemption. It's much better to have, you know, an amount that you can tell immediately than to spend hours and weeks, you know, faxing back and forth with the collection attorneys. So, just to be clear, I mean, we think that the Treasury approach that's coming out, you know, is going to be wonderful, so we support it, and it sounds like -- You know, we hope it'll be available soon.

>> Tom Pahl: One question that I ask is to what extent do consumers understand what their rights are not to have these funds garnished, and is there a need to do more to inform consumers of what their rights are?

>> Gary Grippo: I can say we are considering, as part of our rulemaking, a model or standard notice that we would ask financial institutions to issue upon receipt of a garnishment order and identification that there are exempt funds in the account. So, a very simple, plain-language notice that any financial institution could forward on, sent along, perhaps, with any other required notices or claims forms that a state might require or sent by itself is something that we're considering to make sure that there's more disclosure here.

>> Tom Pahl: Okay.

>> Johnson Tyler: You know, I think it varies depending on the sophistication of the consumer. I had a very intelligent guy make the exemption claim directly to the debt collector. In fairness to Adam, what happens is you're not dealing with lawyers when you call a debt collector who's frozen your bank account. You're talking to someone who's working on commission, I think. I think that's how it works. You're definitely not dealing with lawyers. I mean, this guy said, "Oh, Social Security -- that only applies if something really bad happened to you, like you lost your leg or you only have one lung." I kid you not. So, knowing your exemption doesn't necessarily get you anywhere other than if you can find a lawyer, like a legal-services lawyer, to help you, and there are just not many that can help you, and then you're basically stuck having to -- You know, and then you have to have the temerity to go to court and actually assert your exemption. Some people just walk away from \$300, \$400 in the bank account. So, I think it depends. I actually think education, as a solution to this problem, so that people know their rights and go to court more or try to find me or Claudia -- we've already got enough work to do -- is not the solution. I think the solution really is to make it automatic so people actually don't need to know this right and their account's just safe. That's what a bank account is for. It's supposed to be safe, so...

>> Tom Pahl: I just want to ask one last question to follow up on something we had heard in prior round tables as an idea, and one thing that we had heard is that part of the challenge is that banks would freeze accounts and they would have up to 30 days to answer a garnishment order. And one of the proposals that we had heard is that if the amount of time that banks had to file an answer to the garnishment were shortened from 30 days to like 10 days, for example, that that would be helpful to consumers. I'd be interested if anybody has any thoughts as to whether shortening the time during which banks have to respond to the garnishment order would be useful or not.

>> Mark Tenhundfeld: I'll take a crack at it. To the extent there is a freeze that is placed on the account, there's still hardship that's going to be imposed on the consumer. And so, again, going back to the notion if there is a more elegant solution, if you will, then I think we would all benefit from that. So, you know, 10 versus 30 reduces the hardship, but it doesn't eliminate it.

>> Tom Pahl: Okay. One last question from some of our folks who are participating through our website. I think Kathleen is probably the best person to answer this. The question is, can banks create standardized coding for exempt accounts so that specific deposits can be coded as exempt when they come into the account?

>> Kathleen Kerrigan: Well, that has -- The concept of coding an exempt deposit is part of the conversation that we have been having for quite some time, and we support, you know, the concepts that Gary is describing that the Treasury is working on. Coding an account as exempt falls into the problem that we've discussed from a practical standpoint. You may be able to code an account in a certain way, but that -- How does that draw the fence around putting any other funds in or, you know, the practical use of the account? So, it's -- I don't -- I'm not quite sure I understand it, but I think that we've kind of alluded to some of the difficulties in trying to do that. The coding of benefits, I think -- and if we're talking about the future state, one of the things that we've been discussing with the NACHA group and that they have also participated in the discussions with treasury is that the standard entry class code, which is a three-letter code -- and eventually we would like to see that become a rule -- that would be a more time-consuming change to the way benefits are, you know, transmitted out there -- so that we know not just the

federal exemptions but also state exemptions. Right now -- And I'm interested in seeing the federal notice that may go out to a consumer, but you may layer a very nice, simple, federal notice over top of a slightly more complex state notice that says, "Here's what you do if you have federal exemptions. Here's what you do if you have state exemptions." And then you may have two different processes there. So, ultimately, I think, for consumers and for garnishees -- you know, banks, large, small, whatever -- the idea of creating a kind of a uniform, a very, very, very simple but practical and efficient manner of transmitting those payments so that, we hope -- I think there still are some operational questions on the software side for banks -- We hope that that will lead to something that will be more automated eventually.

>> Adam Olshan: Hey, Tom, if I could just clarify one thing about the Connecticut rule that I mentioned before -- I mentioned Social Security funds. I want to clarify that the types of exempt income that are relevant for the Connecticut analysis are as follows -- veterans benefits, federal veterans benefits, number one. Number two, Social Security benefits. Number three, child-support payments received from the State Division of Child Support. I just wanted to clarify that.

>> Tom Pahl: Well, we've heard a lot of things about what the Department of Treasury is doing and a lot of approaches at the state level, one I thing I wanted to ask the panelists or give anyone an opportunity to ask is is there anything going forward that the FTC could help with this problem concerning the garnishment of exempt funds? Anything more we at the FTC can do?

>> Johnston Tyler: I have an idea. I had one -- I brought a Fair Debt Collection Practice Act against a lawyer who forced me, essentially, to go to court -- I'm in Brooklyn -- all the way out in Hempstead to claim my exemption for my client.

>> Tom Pahl: Quick train ride.

>> Johnston Tyler: A quick train ride, right. Even though I gave him all the documentation, and he actually already -- In New York, what you do is you freeze the account and then you execute on the account. You take the money after that. So, he'd already had the money. He had \$1,500 in Social Security and child-support payments. So, I gave him all the bank statements showing it all

went in, and he wouldn't give it back to me. He said, "Well, we'll enter a payment plan, or you can go to court." I was like, "I don't want to go to court. I got to go all the way up to Mineola to file this thing." So, we did it. I got the money back. I actually had a decision written up by the judge -- he didn't even show up -- which got published, so that was nice. But then I brought a Fair Debt Collection Practice Act against him. And the FTC makes recommendations about that. You know, the statute penalty is 1,000 bucks. That's all I can get for the damages here. I could get actual damages, but my client -- Well, for whatever reason, we didn't get the actual damages. That's what we got. That's what the limit is -- put it that way. And they should raise the limit. It's a parking fee. I mean, it really is no deterrent. The attorneys' fees are much more of a deterrent, and legal-services offices that represent these sort of individuals can't collect them under the way the laws are, so that there really isn't anything making them concerned about -- at least this gentleman -- about violating the Fair Debt Collection Practice.

>> Tom Pahl: Yeah, one thing I would just note is that \$1,000 amount has been the statute since 1977. The FTC prepared and sent to Congress a workshop report earlier this year in which the FTC suggested to Congress they consider at least increasing that amount to reflect increase in cost of living since 1977. Adam?

>> Adam Olshan: Tom, just two points, very briefly. First off, I can see increasing the \$1,000 where it's appropriate to do so. The challenge is that in 1977, the FDCPA was crafted to be a defensive shield against unfair debt collection and abuse of practices. In many cases, the FDCPA is now being used as an offensive sword inappropriately to generate attorney fees, and I think that that needs to be taken into account when that \$1,000 is potentially raised. Also, I'd be remiss if I didn't mention that this discussion, there's been a lot of consensus, and there's been consensus because the world has changed. Electronic commerce is the way of the 21st century, and for that reason, the Treasury is going to discuss rulemaking for the same reason. The 21st century is a different age than we were in just 20 years ago, and evidence has changed. And I wanted to make that point with regard to proof of indebtedness, because I do think that information is now evidence in the 21st century that supports our claim.

>> Tom Pahl: Well, thank you very much. I think we will finish up at this point. We're gonna have some sort of summary remarks from Joel Winston and then some closing remarks for the entire round table today. I want to thank you all of you for an enlightening and interesting discussion about garnishment. So, uh, Joel?

>> Joel Winston: Nobody's running out the door. Terrific. Let me just summarize in a couple of minutes what I heard here in this last panel. Then I'll talk more generally. Somebody's cellphone? Okay. I was gonna congratulate the panel on having such a civil discussion until about the last two minutes, when things got a little dicier, but, in general, I think this was a really good discussion from three different perspectives -- from the bank perspective, from the consumer-advocates perspective, and from the creditor, the collection, perspective. And there seemed to be a fair amount of agreement that there is a problem here -- at least there is now -- but that there seem to be solutions that are in sight, both through these new state laws and the Treasury proposal. And perhaps technology is the answer here. There was a discussion about how frequently exempt funds are frozen and why that happens. Is that something that's done inadvertently, or are there other reasons? There was some discussion also about the dilemma that banks have when they get a garnishment order and is there any way they can tell whether funds are exempt that are subject to that order? Is there any way that that can be segregated? And what we heard from the bank representatives is that, basically, money is fungible and they can't really identify where the exempt funds come from-- where the funds come from, whether they're exempt or not. I think there was some disagreement on that over the course of the panel. There was some discussion about the commingling problem, that if a consumer puts money into the same account that has exempt funds in it, that it may lose its exempt status, and that's a concern. And there was some discussion about whether there should -- what should be the amount of money that is available to consumers while the issue of exemptions are -- exempt funds is thrashed out. Should it be \$1,000, \$2,000? Should it be more? But I think everyone agreed, at least in general, that there ought to be enough money that the consumer can access immediately to live on, so I thought that was a good discussion, as well. And then there was discussion about whether there should be a duty on the collection lawyer and whether the lawyer, before filing for the garnishment, should be doing some due diligence to ensure that they're not going after exempt funds, perhaps with the safe harbor based on bona fide error. And, finally, discussion of private

rights of action, the pros and cons of that, as well as how do we make sure that consumers do understand what their rights are, and some good ideas, I think, on that, the treasury is considering. So, again, a very civil discussion, I think, and very useful. But let me talk more broadly, just to close this up, and it's 5:00 on Friday, so I'm going to keep it very short. First, I want to thank our staff who put together this workshop, in particular, Tom Pahl, Julie Bush, Bevin Murphy, Parrish Bergquist, Kara Redding, and a host of others who made this thing go as smoothly as it did. So, thank you. [ Applause ] But I also want to give a special thanks to all the participants, who are uniformly excellent. I've been to a lot of these, and this is one of the best I've seen in a long time, so thank you to all the participants. [ Applause ] And I hope that, over the course of the day and the course of our the three workshops -- round tables -- that we've done in the last couple of months that we've moved the ball forward some and not just kicked the can down the road. And I think we have. Let me just lay out some of the major themes I heard and where we might go from here. Throughout these round tables, we talked about really the whole life cycle of debt-collection litigation, you know, from servicing -- I mean, from the servicing process all the way through to garnishment and collection of judgments. And I think everyone would agree that there are no simple answers here, much to my regret. Throughout these round tables, there was a vigorous debate about what the problems are, how prevalent are they, what the impact on consumers is, and what are the solutions to these problems. And, again, I think it's fair to say that there are a lot of good ideas, a lot of good initiatives going on out there, but no one magic bullet. Personally, I wish we had more data. When we make recommendations here, we like to make sure that they're based on real-world data. And while there's a lot of discussion about, again, the prevalence of these problems -- how often is service of process ineffective or thrown in the sewer, for example - - why aren't consumers participating more in the litigation of their lawsuits? And all of these different questions, I think, are really empirical questions, and I realize that there really isn't much data. And I think that's something that we should all think about -- is there a way of getting better answers on the scope of these problems and what we can do about them. I think everyone would agree -- at least I think -- you know, I think that's the case -- that the consumer experience in debt-collection litigation can be improved, that it can be made fairer, it can be made easier to navigate and more transparent. I think we would all agree that facing collection litigation is a daunting prospect for consumers. It's scary, it's confusing, it's inconvenient, there are many barriers to participation, and, you know, just in general, I think it's a very difficult process for

consumers. And through the course of these round tables, I think we came up with some good ideas for improvements in each aspect of debt-collection litigation. In service of process, there were a number of ideas about how we could make that better. Better disclosures about the process for the consumers. Better education for consumers on their rights and responsibilities and more information about the specifics of their case, including what evidence there is against them. I think there can be improvements in how the statute-of-limitations issue is handled, which I think is, as I said before, a particularly thorny issue. This is an area where there's a lot of consumer ignorance and misunderstanding and where the consequences of that can be very particularly serious for consumers. So, I think, again, we need to go back to the drawing board and think about how we can resolve those issues. I think there can be improvements in the extent to which there are safeguards to ensure that collection suits are well grounded and that the pleadings allow the courts and consumers to make at least a preliminary assessment about the merits of the case. And I think there can be improvement in the collection-of-judgment process to ensure that consumers' funds that are exempt are not garnished. So, all of those are areas for improvement. So, how do we go about making these improvements? Well, that's stickier. And I think it's important to recognize that there are legitimate competing interests and legitimate competing views on these problems. The consumers have a legitimate interest in having a fair and accessible process where their lawsuit is adjudicated. And the collectors have a legitimate interest in having a cost-effective way to obtain judgments against those who don't pay their debts. Both sides have responsibilities as well to ensure that the process works as it should. And as always, we all collectively face the issue of how do we go about stopping the abuses without unduly harming or unduly burdening those who follow the system properly. I think there have been a lot of promising initiatives that have been begun, particularly in the local courts. I think a lot of the ideas that the judges came up with and are implementing in their courts seem to have been successful. But, of course, every initiative has its consequences, some intended, some not. There's some discussion, for example, of the privacy issue. The notion of much fuller disclosure of the specifics behind the lawsuit, including account names, account numbers, and that sort of thing, runs into the privacy issue. So, how do we balance all of those things out? And it's one of these situations where you push in here and something pops out over there, so we need to be careful. And that's why we at the FTC undertake these reviews, these sorts of round tables that we do. We like to think that we're very thorough, we're very thoughtful, and we're very deliberate in

coming up with our recommendations. Some would take all that and say that we're slow. Well, maybe we are, but we want to make sure we get it right, and we want to hear all the sides and we want to make sure everyone has a voice in the process. So, where do we go from here? Well, we're still collecting information. The comment period is ongoing till January 8th -- not July 8th, January 8th, for those who were here this morning. And we will be reaching out, I'm sure, to a lot of you to get our questions answered, and, ultimately, the end product is some sort of report, perhaps with recommendations to Congress, perhaps with other ideas on how to address these issues. But, again, I think it's really important that we all collectively try to move this ball forward. There won't be a magic answer, but we can certainly make things better, I think, for all sides. So, again, thank you for all attending. Thanks to the participants, and have a good weekend. [ Applause ]