>> Carole Reynolds: Welcome to everyone to panel 2. This is Misrepresentations and Other Consumer Protection Issues in Motor Vehicle Leasing. Our distinguished panelists here today are to my left, Tom Domonoske, Of Counsel with Legal Aid Justice Center. Next we have Terry O'Loughlin, Director of Compliance, Reynolds and Reynolds. Next to Terry, we have Greg Grzeskiewicz, Assistant Attorney General, Illinois Office of the Attorney General. Next to Greg, we have Keith Whann. And among other posts, Keith is General Counsel with the National Independent Automobile Dealers Association. Next to Keith we have Jack Gillis. Jack is Director of Public Affairs with the Consumer Federation of America. And after Jack, we have Stuart Rosenthal. Stuart is Vice President of Legal Affairs and General Counsel. He's with the Greater New York Automobile Dealers Association. The bios of all of our distinguished panelists are in your folder. We're very glad to have all of you here today. I'm Carole Reynolds. I'm your moderator. In this panel, we're going to focus on issues, particular issues that may affect different kinds of leasing, different kinds of entities and perhaps consumers with different focuses and that come from different backgrounds. We're gonna start off in the area of advertising. Certainly, advertising and promotional materials can bring very important information to consumers. It can generate interest and be very helpful about particular products and services. Of course, how ads bring this information to consumers can also raise issues for them. Do automobile ads or promotional materials draw consumers into the leasing process in particular ways that may raise issues? Who would like to start this off for us? Jack?

>> Jack Gillis: I think one of the biggest concerns that we have about leasing is fundamentally, leasing will cost you more than owning a car. And in the advertising of leases, you see low monthly payments that are extraordinarily attractive. Those low monthly payments which quite often are very accurately disclosed -- There's nothing wrong with that particular payment -- fails to include what we call the sticker shock at the end of a lease. Leases are easy to get into and hard to get out of. So I think the main problem with advertising. And we don't necessarily have a solution. But the main problem with advertising of leasing is, there's tremendous amount of expense associated with leasing that is not disclosed in that low monthly payment.

>> Carole Reynolds: Keith, do you have a response?

>> Keith Whann: Well, not so much a response as maybe just to add on to that. I think a lot of it depends upon the type of advertising being done, which medium we're using because if you get to television, I think most of us, at least as you grow older, you have trouble reading the fine print that's moving at the bottom anyhow. So I don't know if you're ever gonna understand that. So that's just an advertising situation in and of itself. When you get to the more static forms of advertising like newspaper or -- I think this is one of the areas where the Internet and Web has helped. If you're looking at a Website, you probably have the room to be able to disclose all of that and understand it. If there's one thing that's probably misleading -- And I would say this is not done by dealers who are doing it correctly -- is when you start having a very low buy price or a buy price and then you have a lease payment. And somebody comes in thinking they've negotiated or they're buying the price of the car down and then they switch to the lease payment, and they realize that it's on a different capitalized cost, as we just learned in the earlier session. So when you start mixing buys and leases in an ad, they're both confusing enough. But when you put them together, it's very difficult to ascertain what you're doing.

>> Carole Reynolds: Let's move into some of the types of ads that are particularly used in the automobile context. There may be, of course, a variety of them. Are there any in particular that you see fairly commonly? And that you may see more issues with than others? Tom?

>> Tom Domonoske: Well, following up what Keith said, the real issue is whether the ad is structured as a lease ad and it's very clear to someone looking at it that it is a lease or whether the ad has got buy terms on it. It's even more problematic when you get to what's essentially an ad on a car. So it's got a new car and it's got a Monroney sticker on it that has a dollar price on that Monroney sticker, but, then, there might be a monthly payment lease number that's elsewhere on that car, and unless the consumer starts out knowing that they are getting information about a lease versus getting information about a sales transaction, it's not really information. It's just confusion.

>> Carole Reynolds: Stuart?

>> Stuart Rosenthal: I want to suggest that perhaps the problems are not nearly as widespread or as difficult as they may be made to make out here. Most consumers that come into dealerships who want leases come in asking for a lease. They've seen the advertising. They know what the price is for the car based on the issues that are disclosed in the ad, which are required under Regulation M. They're required terms. They're triggering terms that trigger the requirements for those disclosures. Consumers walk into dealerships, and they say, "I want to lease a car." Very typically that's what the experience at the dealership level is. Consumers come in, they know that there's a price involved, they know that it fits their budget or if it doesn't that they're gonna try to negotiate that price, and they come in looking for the lease. So I think that the reality is that at the dealership level, there's not as much confusion about, you know, what's it going to cost to get in and out of this lease car as may be made out.

>> Carole Reynolds: We just heard reference to the use of both buying terms and lease terms in ads. There can, of course, be a variety of types of terms for both credit and leases that occur in different ads for automobiles. Can these raise more complex issues for consumers in terms of sorting through what the deal is? For example, suppose there are both lease payments and credit payments in the same ad? Have any of you seen issues in that area?

>> Stuart Rosenthal: I'll tell you that, at least in the ads that I've seen from the dealers in the New York area, that they don't typically carry both the finance terms and the lease terms in the same ad. There might be an ad that might say, "You could buy this car for $25,000, or you could lease it for $199 a month." And then it'll go on once it has the monthly requirement, the monthly fee to disclose all of the required terms of what else is required under the regulation to lease the vehicle. But it's very clear that, you know, one is marked as a "buy for" price and one is marked as a lease price. But I've never seen an ad that will go on the say, "You can buy it for $25,000, or you can finance it for $350 a month, or you can lease it for $199." I just don't see that kind of advertising. And the fact that consumers come in pretty much asking for a lease, or asking for financing seems to indicate that they know when they're coming in what they're looking for and what they can afford and what it is that they want.

>> Carole Reynolds: Greg?

>> Greg Grzeskiewicz: Yeah. I would just add, you know, it's a problem that I don't think we're currently seeing, but we saw a couple of years ago or a year ago where a lot of manufacturers in their advertising, one of the manufacturers was offering, I think, something called a "smart buy." And so the ads were out in commerce in Illinois. And part of the problem for the consumer was that it was kind of hybrid between a lease and a buy. You had an option to turn your car in or buy it, so it wasn't a true straight purchase. And so some of the consumers were confused by the term smart buy. They thought maybe it was, like, a smart purchase or a smart buy. And so, it did create some problems in Illinois, where we had some confusion for consumers. So I think that would be an example of where a kind of quasi-lease ad, just on its face, caused some concern for consumers.

>> Carole Reynolds: Keith?

>> Keith Whann: I think Stuart's point is a good one. And I think familiarity in this area definitely a big help. If you're someone who has leased a car before and you're coming in for a lease, you pretty much have been down this road, and you know what you're expecting to see. And most of what we're talking about, I think, in advertising is, if you're trying to attract a customer on the buy side or on a lease side, if you clutter it up all with all sorts of different terms, the ad is probably not as effective. We don't see as much probably in the independent dealer space with first-time lessees because of the fact that, you know, you're talking about a used car, and I think probably what happens is, many of these people have maybe leased a car prior, and then they're coming in. Because leasing isn't as prevalent in the independent dealer space, they probably have some experience. But I think that is clearly one of the things, if you have some experience in leasing and you're coming in, you probably know a little better what you're negotiating.

>> Carole Reynolds: Jack?

>> Jack Gillis: I think looking at the big picture -- In general, advertising is a problem. I would agree with Stuart that it's rare that you would see advertised leasing and buy prices for the same vehicle. However, you will see leasing and buy prices on the same page from the same dealer for very similar cars. And that's very confusing to consumers. Clearly, auto dealers have had

historical problems with properly presenting information about their offerings in advertisements. In the Washington, D.C., area, Montgomery County has a particularly effective and aggressive dealer-advertising monitoring program. That isn't true throughout the country. And in various parts of the country, there's a tremendous amount of fine print that goes missing. But also, even in Montgomery County, here in the Washington, D.C., area, reading the fine print is challenging. But when you sit down and you read the fine print and you see that there may only be one vehicle offered for lease at that price, that's not something consumers are sensitive to and aware of. And when they get to the dealership and they find that car is gone, or they get up-sold to another car, it's almost impossible for the thousands of people that see a particular advertisement to go in and get that vehicle at that price. So it's not that there's precisely something wrong with the advertising. It's just that the concept of communicating a tremendous amount of complex information about one of the most complex purchases we're ever make is difficult in an advertisement. And because of that difficulty, consumers can be easily led astray.

>> Carole Reynolds: Sorry. Stuart and then Terry, and then we need to move on to another topic.

>> Stuart Rosenthal: I want to expand a little bit on what Keith said. In the new dealer space, the fact is that as we heard from the prior panel, people who lease tend to lease again so that a lot of leases that are being written are for consumers who are not only familiar with the lease process and the lease paper work, but at some point may even become close to expert on I want because they've done it 3, 4, 5 times previously over the last 10, 12, 15 years. The retention rate for leasing from the dealers in our area -- those I've spoken to at least -- is in excess of 60%. So when somebody leased a car, 60% of those folks come back and lease yet another car from the same dealer, which is an indication of a couple of things. One is that they understood the process and secondly that they were pleased with the process because otherwise, they wouldn't be back either from leasing or wouldn't be back to the same dealer or both of those. So that there's -- The Mystique that was leasing 20 years ago, when only a few professionals -- lawyers, doctors and architects -- might be leasing vehicles through their business seems to have disappeared because there's leasing going on at all levels to people who are not necessarily in business, for people who it just fits the way that they need a car. That is, they don't drive 30,000 miles a year, they take care of a car, the leasing becomes a very attractive alternative so that they really do have that opportunity to do that and they

do it again and again. So, the advertising is really more -- At that point, if someone's looking at advertising, they're looking for price. They want to see "If I'm interested in "X" car, can I get it at a price that fits my budget, or can I look at these 18 dealers in the 20 miles around my home and see which car best fits my budget? Where do I get the best deal for those cars?" So it becomes that kind of an issue. The requirements are extensive. As Jack says, "Reading the fine print sometimes is difficult." Well, that's because there's a lot is required under the regulations in the fine print. There's a notorious amount of disclosure that has to be made when you're doing either lease or, alternatively, credit financing. And that all has to be fit somehow on the page. For And for a dealer who's paying, you know, $10,000 a half page, $20,000 a page in a newspaper, they need to be able to put enough information and draw enough return on that investment of the advertising that they need to get information on that page. And they can't put just one car in that ad and have it pay. So there will be multiple cars on that page and it does create problems when they have to comply with a multitude of regulation.

>> Carole Reynolds: Terry, and then we need to move on.

>> Terry O'Loughlin: Just to follow-up on what Stuart said. I think the challenges for dealers to advertise is somewhat daunting for leasing. And I say that because there are a great number of regulations concerning what has to be disclosed. And leasing, by its very nature is a complex transaction. So, unfortunately, advertising and whole-leasing transaction, the matter can be made simpler, but it can't be made simple. And I think that's where the problem is. We all want to have transparency in advertising, we want transparency in transactions. Unfortunately, not all transactions can be presented and advertised or presented at the point of sale or purchase as simply as we would like, because there are some complexities there that, unfortunately, need study and further explanation. So I think that's the problem.

>> Carole Reynolds: Let's turn to the area of spot delivery and yo-yos. In the prior roundtables, we've seen these issues affecting financing with automobiles. Does this area also occur in leasing? Tom.

>> Tom Domonoske: Yes, it does. And it occurs for the same reason in leasing that it occurs in credit contracts. And there are two categories of car dealers. There's the category of car dealer who will put -- Can I use this?

>> Terry O'Loughlin: Sure.

>> Tom Domonoske: ...a complicated credit contract or a complicated lease -- This is the standard Reynolds and Reynolds lease. Right? And this isn't even the back page. Will put this in front of someone to sign when the car dealer is not agreeing that they are gonna follow those terms if the consumer signs. That's one type of car dealer. There's another type of car dealer who would only put this lease in front of a consumer if the car dealer has gotten all the stipulations met with whoever they intend to sell it to. I was talking to David Blassingame, who was up here earlier and he said that's how he runs his car dealers and he thinks that's how the car dealer industry should be run, that you don't put this contract in front of a consumer to sign with all these complex terms unless you, as a car dealer, are going to honor that contract. It's the same situation that occurs in leases. It's same situation that occurs in credit contracts. There are two types of car dealers in America. There are those who are honest with the consumer. They give them this complex thing. When the consumer signs it, the deal is done. And there are the car dealers who give the consumer this complex thing and later, if they find that the finance market won't pay them the amount of money that they wanted as a profit when they put this on the table, if they find they're not happy with the terms that the finance market will give them for this piece of paper, they call the consumer up and say, "The deal is off. We have to do a new deal." I did one of these cases in Ohio, I argued it in front of the Ohio Supreme Court, and it's called Whittaker v. M.T. Automotive. The consumer was flipped from purchasing a car on credit to then having that vehicle on a lease because he was told they couldn't get him financed but they could get him leased. Signs the lease, and then he got the call two weeks later and said, "You've got to come back. You've got to do a different deal." And that case was eventually won by a consumer's lawyer in front of a jury. The jury actually awarded tremendous amount of damages, and it was up on appeal because of the amount of damages that had awarded. But in terms of misrepresentation, the core misrepresentation in any lease starts with what kind of car dealer's on the other side of the transaction. And the consumer doesn't know that. The consumer gets a finance manager who says,

"You've been approved. Here's your monthly payment. Sign here." Whether it's a lease or a credit transaction, the same thing gets said by the finance manager. The consumer does not know which car dealer they're interacting with.

>> Carole Reynolds: Terry.

>> Terry O'Loughlin: I would like to politely disagree with what Tom said to some degree. Underwriting guidelines for leasing are far more narrow, and so consequently when the franchise dealer leases vehicles and they place the lease contract, they pretty much understand whether or not it's going to be underwritten by the leasing company. Secondly, dealers, franchise dealers do not have the number of leasing companies to turn to. So, a Chevrolet dealer will lease through Allied Bank, for example. Or a Ford dealer will lease through Ford Credit. They aren't able to shop the transaction as they would for a retail contract. So consequently, spotting that vehicle and so forth, I don't think is as apparent or as capably done for a dealer. Now, could someone flip from a retail to a lease contract? They do that sometimes. But generally speaking, the underwriting guidelines are pretty strict for leasing and dealers know what leasing company they going to use. They don't have a whole list of them that they can call upon for that leasing transaction.

>> Carole Reynolds: Keith?

>> Keith Whann: I would agree with what Terry just said. I think, in a leasing situation, you have fewer options. You're more likely to know whether or not that that financing has been placed or not. But if we still take a step back, I think, to Tom's point. If you got a dealer who's gonna cut corners, you got a dealer who will cut corners. That's gonna happen. So we're always gonna have that as an issue. We do have situations and we do have states with spot deliveries are legal. And we have people jumping through the hoops to do that. And in some cases -- And I've been one of those consumers who wanted to leave with a car that day. Best case scenario -- We i-dot, t-crossed, and everything is done. There are some instances where it's not. Now, when you have a complex transaction that is not complete and we're gonna spot-deliver a car, then you're like to have issues in terms of this complex transaction. And I didn't want anyone to misconstrue when Terry's lengthy, confusing contract was held up.

>> Terry O'Loughlin: It's not confusing by any means. [Laughter]

>> Keith Whann: I'm thankful that he's got that because I will tell you -- I've done some work in this area. In fact, I've worked and talked with Terry about some of these documents. We've run out of space to try and put everything on there that's required by the law. So what we've done here, I think, in an automobile transaction is, we have so overwhelmed the consumer with disclosure that we've got to a point where, I think, the overall transaction's becoming meaningless. Jack, you were talking about the ads -- same type of thing. Are there certain things that should bear higher weight or be more prevalent than other things? Probably so. But anytime you've somebody who's going to leave the dealership and the deal is not done in a complex transaction, bad things can happen -- even if you i-dotted and t-crossed everything.

>> Carole Reynolds: Jack?

>> Jack Gillis: Well, we've heard three things here. One, we've heard that one of the problems is the regulations are requiring too much disclosure and all this disclosure makes it very hard for consumers. That’s really not true. That disclosure is critically important to consumers for the second reason that we've heard about the problems that are going on right now -- the extraordinary complexity of this transaction. This piece of paper is very profoundly revealing because this is such an extraordinarily complex transaction. And most of us do not have the ability to process it. I've gone through the purchase of a car myself and anyone who has walked out of a car dealership either with the leasing papers or car purchase papers walks out with a wad of papers that I guarantee you people don't read. And the third thing is, with all due respect to Stuart, the consumers that we've talked to that lease more often than not say, "Well, you know, I'm really not quite sure what happened, but do I this because it's easy,” or, "I do this because I think this is a good deal.” And I sit down with these folks, and I walk them through the cost of doing this, and it's not that much more complex to buy a car than lease a car, and it's always going to cost you more. So I'm not sure that consumers fully understand the enormous cost associated with leasing vehicles -- even in a perfect lease where there is no fraud or there is no deception. But because it's such a complex process, my thought is most consumers walk away from that really not understanding it.

>> Carole Reynolds: Tom?

>> Tom Domonoske: I just want to be really clear when we were talking about yo-yo sales, I was talking about a consumer being misled into thinking they're approved. Fraud and misleading happens at the point of sale. It doesn't happen in documents that are stacked high, that the consumer, you know, may have a signature on or not. It's at the point of sale when that document is given to the consumer to sign. What has the consumer been led to think? And if the consumer's been led to think that this is a done deal and the car dealer is making that offer and by signing it they're accepting it. And that is a problem for the market. Because, really, what they're supposed to do with these Reg M disclosures is not sign them. What they're supposed to do is leave with a copy and go think about it and go look at it and go comparison-shop. And they can only do that if what they are comparison shopping is an offer by the car dealer that is an offer that when they sign they're accepted and bound. So when I talk about a yo-yo sale, I'm talking about a consumer being misled about the status of a deal in order to get the consumer to sign, which takes the consumer out of the marketplace. That stops our marketplace from functioning. And when our marketplace stops functioning, we then get a market distortion and the prices and terms of deals no longer reflect the best prices and terms and that leads eventually to a market failure.

>> Carole Reynolds: Keith?

>> Keith Whann: I just want to be clear on my viewpoint on this, 'cause it occurred to me from what Jack said -- I may not have stated it clearly enough. I'm not saying that we're necessarily over regulated. I'm not making the value judgment today whether these regulations are necessary or not. What I'm saying is we have so much regulation now and there's so much information going to the consumer and the dealer that it's overwhelming. And if you look at the contract, we've got a fed box. And a fed box on a contract is supposed to be the major terms. But then if you go look at that contract, there's some pretty major stuff that's all over there. And then you go into a situation in many states where, under the state UDAP statute, all materials and statements have to be reduced to writing integrated into the contract. So therefore, if I'm dealing with the purchase contract or a retail lease agreement, which is really the purchase agreement for the lease with the dealer, now

I've documents that I can somehow incorporate by reference. But if I get to the finance document, now we're talking about everything that has to be included under a single document rule. Now it's all on one piece of paper, which is why we get documents that are that long. Is it better to have something that long on two sides that becomes an eye test that you didn't understand, or should we have 15 pieces of paper that we're integrating by reference? I don't know if it's all necessary or not, but I do know what we've created here is something so complex that I don't know that if anyone sits down and reads that you really do know where you are before you throw in the complexities of the difference between a sale and a lease and spot delivery and everything else that can go wrong in a car transaction. It's a very complex thing, and I don't think virtually anyone understands what's in all those documents.

>> Carole Reynolds: Stuart and then Terry, and then we're going to examine some other aspects of this spot-delivery issue. Stuart.

>> Stuart Rosenthal: I want to agree to some level with what Jack said about the complexity of leasing. Leasing is not a simple transaction. There are a lot of pieces to leasing, and there is an attempt in the forms, in the required Reg M form, and even in the required advertisements for Reg M, to disclose the essential elements of it to a consumer. You get into that with any kind of commercial transaction. I don't think that you could say that consumers really understand, you know, what makes up a finance rate either. If you ask the consumer, "How does the bank arrive at the rate at which they determine how much money to lend you or how much they're going charge you for that money?" there's no consumer who understands that. I think sometimes there are times I think the people at the bank barely understand that. But that's a complex transaction. It requires a great deal of understanding. It requires an effort to understand. It's not beyond understanding. It just requires a lot of effort and a lot of work. That's the truth in any commercial transaction. I walk out of a closing on a home with a stack of papers 10 times this, and my head is spinning. And I'm an attorney, and I still don't understand all of those papers, but they're there, and that's part of the requirements. Some of it is imposed as an attempt to make it more understandable to me as the consumer in that transaction. Some of it is there because it needs to be there for the commercial purposes that it's intended to serve. So the lease transaction is complicated, but it can be and often is distilled down to some basic elements. How much is it gonna cost the consumer? What's it

gonna run them over a period of time? What do they need to put up front for this car? What's their obligation at the end of the lease? That's really the essence of what goes on in a lease. I disagree with Jack wholeheartedly as to whether it's more expensive to lease a car than it is to buy a car. When you buy a car, you're laying out all the money for the value of the car up front and you're either taking it out of an account somewhere or you're borrowing that money and paying interest on that whole amount for the whole time. When you lease the car, you're paying for that period of time that you're using that car. And there are a few ancillary charges that may be associated with that. But it's still far less expensive to lease a car than it is to buy a car, and then you're taking the chance that when you go to sell the car three or four years from now, if that's when you intend to be out of the car, you're taking the risk that the market is gonna be good for your car as a used car. If the market's not good, you're going take a bath on the depreciation on that car as well. So the expense when you buy a car is much greater, and the exposure is much greater than when you lease a vehicle.

>> Carole Reynolds: All right. Terry, and then we're going to examine some other points here.

>> Terry O'Loughlin: You know, I just want to say that the Federal Reserve board doesn't get many compliments these day, but I'm gonna give them a compliment. Regulation M, which took effect in 1998, I think was a model regulation in how it corrected a severe problem. I spent years in the Attorney General's office in Florida policing lease fraud. And after Regulation M took effect, the number of complaints precipitously dropped. And, I mean, a great reduction in complaints by consumers because, I think, the regulation really lays out the transaction in a relatively understandable way, or, at the very least, it forces the dealer to make disclosures it may not want to make under normal circumstances. So the consumer can track the whole transaction. So I guess I disagree with Jack on "too many regulations” because I think Regulation M has been terrific. I want to add to that that states were passing other legislation at the same time in the '90s and they pretty much stopped as of 1999. There are about 18 states or so that have state statutes. Why? Because Regulation M was so capable in redressing and addressed consumer issues with disclosure. So hats off to the Federal Reserve.

>> Carole Reynolds: When a lease yo-yo occurs, what are some examples of the terms that can change and what happens to the consumer? Tom?

>> Tom Domonoske: Well, in the case I did, one of the terms that they changed was, they said that he had to have a co-signer. And he had to come back and get someone else to co-sign. And other situations we've seen, they've come back and said, "Well, we had to adjust these terms," you know, capitalize cost and be residual value. Now, I understand that there are sophisticated people out there who get excited about their cars and understand numbers and that sometimes those people walk on a car lot and they know what's happening with the capitalized cost and they know what's happening with the residual value and they understand how those two numbers are working. But the ordinary American doesn't. These terms in the lease don't have the same meaning. What the ordinary American actually knows is how they, between the salesmen, sell cars, whether they are selling a lease or whether they're selling it on credit, they sell monthly payment. And they sell monthly payment in part because in order to talk to the consumer and get the consumer to say, "Yes, I'll buy that car," they actually have to talk to the consumer in something the consumer understands. There's other reasons why they sell monthly payment that are deceptive, but at least the consumer understands, "Every month, I got to make this payment." Those numbers actually work. Once we talk residual value and capitalized cost and reduction, people are lost. They don't do the math. They don't understand the math. And they don't always necessarily want to admit they don't understand the math. They may come in and throw around the terms, but on the yo-yo sale, then, when they're called back in, the terms start to change on them, and they don't understand the significance of it. What they will understand is if their monthly payment changes, if the amount of money they have to bring in to close the deal changes, they'll definitely understand that. But it's possible to restructure a deal, leave the monthly payment the same, and have the deal be on far worse terms to the consumer than the deal that they originally signed. And in that instance, you'll have a consumer who was yo-yoed, who was taken out of the market by false representations that it was a done deal, who lost the opportunity to take their business to a car dealer who was going to truthfully say, "This is the deal that we're willing to do," and get flipped into a different lease on more adverse terms than the consumer wouldn't even know, because what they know is how much money they got to bring at the beginning, how much the monthly payment is. So a lot of the terms

can change, and the problem with leases is, they can change in a way that a consumer won't even recognize is adverse to them.

>> Carole Reynolds: Stuart.

>> Stuart Rosenthal: I want to say that, from the dealers, again, that I've spoken to in my area, lease yo-yo sales are not occurring. They do not have that scenario because, as was explained before, number one, the dealers know that there is a different market for leasing than there is for financing, that there is no subprime leasing market, for example; that they're not leasing used cars at all. It's a much narrower market than the overall market that's available. So they are not doing it. Secondly, they know they have a really good set of parameters because they typically deal with one or, at most, two leasing companies. They typically deal with their captive finance company because that's where they know that they have a certain -- either an incentive or a benefit that may be coming to the consumer, in terms of financial incentive, on that vehicle. They have an idea. They have a very solid idea of what's gonna be expected and what's going to be permitted in terms of leasing. So they know which consumers will fall into those parameters. As to whether consumers understand what they're doing when they come into that -- there is a huge opportunity for consumers to educate themselves about what's going on in a lease transaction as there is with a sale transaction. You have a marvelous little brochure that the FTC and several other organizations put together on the keys to leasing, which describes exactly what the terms are. It talks about what monthly payments are, what early termination is. It defines each of these terms. It's very accessible. Other associations, such as my own, have put out their own brochures over the years comparing leasing and buying and giving consumers guidance as to when you should be looking at leasing, when you shouldn't be looking at leasing, and what leasing and buying are and what they mean and how to understand the difference between the two. There is a raft of material available on the Internet from, you know, a million Websites. Every car Website that you go to on the Internet, from Edmunds on to cars.com to everybody else, talks about what leasing is, how it works, what it costs, what the relative benefits are versus somebody else's. The Consumer Federation put out a book -- "Driving a Bargain: Coming Ahead at the End of Your Auto Lease.” There is just an enormous amount of information that's available to a consumer so they can figure out whether leasing works for them or not and what happens when they go in for a lease.

>> Carole Reynolds: Jack?

>> Jack Gillis: In spite of the fact that I do disagree with Stuart in terms of the cost of leasing, I do believe that he's correct in the sense that the yo-yo experience is much more predominant with a purchase than a lease. However, Tom makes an important point. And it's something that we've worked with a number of dealers about. The concept of yo-yoing, whether in lease process or the purchase process, takes that consumer out of the marketplace and harms the free marketplace. And there are a number of dealers that actually acknowledge this problem, refuse to participate in yo-yo dealerships and do what Tom said -- the two types of dealers. One, we've got a contract. That contract is protecting the dealer as well as the consumer. And they're gonna honor it. There are too many dealers that simply give you the paperwork, with no intention of honoring the contract, and that have yo-yoing as a standard business practice. And why this is such an insidious practice is because those people who tend to be victims of yo-yoing are the ones who are most dependent on their vehicle for livelihood. It is not the people in this room. You become a victim of yo-yoing, you can probably handle it. But if you lose your vehicle through the process of yo-yoing and you lose your job or you lose your ability to bring your child to daycare or you lose any number of critically important things that the vehicle means to you, that is significant. And why we're participating in this exercise is 'cause we appreciate the fact that by looking into this subject, the FTC is acknowledging this is happening. And we call upon dealers to step up and strongly take a position against this practice because it's hurting the good dealers as much as it's hurting consumers.

>> Carole Reynolds: Terry.

>> Terry O'Loughlin: I just want to follow up with that. I want to distinguish between fraudulent spot-deliver transactions and spot delivery itself. I spent 15 years at the Florida Attorney General's office, and I prosecuted a number of cases dealing with fraudulent spot activities, or yo-yo transactions, where dealers were having consumers sign documents that they knew they weren't going to be able to have underwritten by a lender. Honest dealers also include with the lease contract some form of rescission agreement, which explains, "This contract until such time it can't

be bought by a third party." We sell those documents. Reynolds and Reynolds is in the document business. We sell those documents. We sell a lot of them because honest dealers will inform the consumers that they're taking the vehicle, subject to the transaction not being underwritten, whether conditions precedent or conditions subsequent -- one of the two. The reality is that the dealers that do it in a very dishonest way -- It's clear fraud, and I don't think anyone in this room think that's a good way to treat the public. So, but the honest dealers, they do handle it in a different way.

>> Carole Reynolds: Greg?

>> Greg Grzeskiewicz: Just to add -- What we're seeing in Illinois with spot delivery and back to what Tom said and some of the other comments made today. We obviously see a lot more spot delivery and yo-yo sales in the purchase process. But we also do see some in the leasing process. And you asked, what can change? I mean, anything can change -- You know, from the payment price to any of the terms in the lease contract. So I just want to, you know, echo, though, it's probably a problem that's with our dealers not doing things honestly. It's an area that we enforce a lot on. To Echo what Terry said, spot delivery and yo-yo is a concern in Illinois and, although it's not as prevalent with leasing sales, we do see some spot delivery.

>> Carole Reynolds: Keith.

>> Keith Whann: I wanted to just follow up quickly on what Terry and a couple of others said. But first of all, did you just say "Condition precedent and condition subsequent in a car transaction"?

>> Terry O'Loughlin: I did, indeed.

>> Keith Whann: Okay. I guess that's where we are. But aside from that, spot delivery may serve a purpose. What we're talking about with a yo-yo sale, and, Terry, I think that was a really good point to be made -- If somebody is, you know, "I'm an old car guy," is de-horsing someone to take him out of the market and try and capture a customer, that's a problem. And it's the same type of problem when somebody is running, whether it's a new car or a used car and they're including

rebates and discounts and things they're not gonna get to take that customer out of the market and get to their dealership. That's wrong, that's against the law, and that's a problem. So if we have dealers doing that, then we need to have some action taken to prevent that. Now, beyond that, we can get into the discussion if a spot delivery is a good thing or a bad thing. Terry, you mentioned the document. And what a dealer should be doing if they are spot-delivering a car and the transaction is not going to be completed upon those terms is providing a consumer document when they come back in telling them they have the right to walk away and they do not have to purchase from that dealer. But I also understand, to Jack's point, if it's someone who really needs a car and isn't like some of us who could walk away, make a phone call for a second vehicle, we're on a slippery slope because now we're getting into economic conditions. So I think we need to be careful in this area because there's pro and continue to a lot of stuff as to why these things occur. But I think everyone here can agree on the fact that if we're talking a yo-yo sale to de-horse someone, take him out of the market, and they have no intention of delivering the car on those terms, that's wrong -- always has been and should be.

>> Carole Reynolds: Jack.

>> Jack Gillis: A question for Terry. On that document that acknowledges the consumer may be called back and the deal may being changed, does that document also include the ability of the consumer then walk away from the deal?

>> Terry O'Loughlin: Absolutely. Yes.

>> Carole Reynolds: Tom.

>> Tom Domonoske: Following up that idea, I just heard the phrase that there was fraudulent spot delivery and there were spot deliveries and there's spot deliveries that weren't fraudulent. I've been dealing with fraud for over 12 years almost exclusively -- except until I recently started doing foreclosure defense also. But I've never seen a non-fraudulent spot delivery. The spot delivery, the yo-yo sale at the core is misrepresenting to the consumer that the deal is done. And I've talked with finance managers, and I've said "So, when you give these documents to a consumer, do you look

him in the eye and say, 'You know, this isn't a done deal. We're not actually agreeing to any of these terms. We won't know for two weeks.'" The finance managers say, "No. I never say that." They say, "You're approved. When the finance manager says, "You're approved," and gives this document to a consumer to sign, to stick in a rescission agreement on page 10 is a fraudulent transaction. But more importantly, these disclosures -- and I agree that Reg M is a fairly good thing. These disclosures are designed for a consumer to shop before signing. So if you understand that these disclosures are given by a car dealer to me so that I can leave with that and determine which is the better deal to take, by going and looking at another dealer and maybe getting Reg M disclosures from them, and then deciding in my own home, with maybe, you know, a computer and calculator, which is the better deal. That's the idea. That's the idea to make our market economy work -- Create an informed consumer who makes a knowledgeable choice. You can't have a knowledgeable choice when you look at an Reg M disclosure at the kitchen table and comparing it between the car dealer like David Blassingame's dealerships, who that is a legitimate offer that they have put on the table, that they are going abide by if you sign, and the car dealer who, if you decide you want those terms, when you come in after you sign it and after you sign another document and after you sign the warranty document and after you sign the document verifying that you are, they then have you sign document that's a rescission agreement, that says, "Oh, by the way, that's not really a deal." The fraud has actually been completed when the consumer decides, "I'm going to sign the document after comparison shopping with another dealer who presented a term they were willing to abide by. As a consumer lawyer, I represent consumers who are victims of fraud, but the real victim in that rescission agreement is the car dealer who is honest with the consumer, gives them a deal, and says, "These are the terms I'm willing to honor." And a rescission agreement later down the road, after the consumer started signing documents, is just actually proof how the underlying transaction was fraudulent.

>> Carole Reynolds: Terry, and then we need to move to some other topics.

>> Terry O'Loughlin: If one defines spot delivery as a transaction where the contract, the lease contract or the retail contract, is not underwritten, the vast majority of spot delivery, you never hear about because they're ultimately underwritten and the consumer never knows that the deal hadn't been funded on that day. Now, they'll know if it's in the rescission agreement, obviously. So the

reality is that a lot of things are spot delivered and the consumer never knows, no one of knows that it wasn't totally completed on that point. The dealer's quite confident that it'll be underwritten and so forth, but there are steps that underwriters go through to verify credit applications and all the other details concerning employment and so forth. The bad cases are what Tom's describing. And once again, the ones where the dealer can't get the deal bought and calls the consumer back and does it intentionally, that is truly fraud, deception, procedurally unconscionable, and all kinds of other things -- civil theft possibly. And I took action against those transactions. But to castigate all spot deliveries as being a problem, I think that's a little too broad.

>> Carole Reynolds: Let's turn to the area of add-ons, add-ons and amounts that may be added to agreements at the dealership. They may offer items of interest to consumers. The questions and issues we'll be looking at is how those items are added or how they're included and what may be raised in that process. Are there add-ons that are characteristically added in a lease transaction? Terry.

>> Terry O'Loughlin: There might be a need for gap in some cases, which is guaranteed a short protection, or a policy which will protect in case of an early termination. That's possible. And many of leasing companies have done away with that because they have gap waivers or the gap coverage is included in the document. But from time to time, there may be need for a gap policy.

>> Carole Reynolds: Jack.

>> Jack Gillis: We think add-ons are a huge problem. They're a huge problem for two fundamental reasons. One, they're often unnecessary and over-priced, and, two, they are presented at a time in the transaction when most consumers are totally beaten down and desperate to get out of that dealership and go home and bring their car home or come back later and get their car. Add-ons can be of value. You may want, you know, special floor mats. You may somehow be convinced that paint sealant is a good thing or having someone add $150 worth of fabric sealant to your fabric on your seats is a good thing. But it's rarely disclosed in terms of the full price and what's involved in the product. Those dealers that are responsible in terms of offering add-ons provide consumers with a fully disclosed sign in the shop or a piece of paper that said, "These are

fares, add-ons, and this is how much it's going to cost you. It is your choice.” For the most part, however, those add-ons are thrown at you in the financing room or where you're signing the papers and most consumers, at that point, don't have the ability to make an informed decision as to whether they are good or bad. And they, the add-ons themselves, can turn what you've worked hard to get as a good deal into a not-so-good deal.

>> Carole Reynolds: Stuart.

>> Stuart Rosenthal: I want to suggest that some of the add-ons that we're talking about are add-ons that consumers actually come in looking for. Consumers have read a lot, and they know a lot. They know what an extended warranty is. They know about the various products that are available. They can decide if they want that set of winter floor mats because they live in an area that gets a lot of snow. They can decide whether they want the wheel and tire insurance that becomes available in those areas where potholes are prevalent in the spring and they blow out expensive low-profile tires with $600 alloy wheels and now they're no longer are be required to pay for that because they've taken some insurance against it. The add-ons are often presented in a menu. They are made available to the consumers. Consumers aren't beaten down. And if they are, the easiest way for them to put an end to that is to say, "I'm not interested, thank you very much,” and walk out. Nobody has tied them down to a chair. There's no ball and chain around their ankle holding them in the F&I office or any other office requiring them to sell that. In those circumstance where somebody is sold, "Oh, you can't get the car without it,” that would be a fraudulent practice, and certainly, that would be something to be wary of and that action should be taken against them and that there should be enforcement of. But to offer the consumer an option to obtain items, services, goods that they may want is beneficial and there's absolutely no reason not to do it.

>> Carole Reynolds: Keith?

>> Keith Whann: Well, I think, when we get to the F&I side of the business -- which obviously is where we are, no one's putting a label on it -- if it's been a long, arduous process and the consumer is worn-out, yeah. They may make some poor decisions in it. But I think this comes down to, like everything else, if the dealership is operated properly, if the F&I products and services are

disclosed, if they know what they're purchasing and make an informed decision and it's reduced to writing, then you don't have those types of problems. There are certain things, as Stuart is relating to, in particular, leasing a vehicle, stuff like mats. And, you know, we need to be careful with the insurance thing because that's a state issue. Even Terry mentioned gap. Gap is a waiver in some states. Gap is insurance in other states, so we have to be really careful as to the labels we put on them, but I would agree. Gap is one thing, Terry. If the bank is not already including it, that is something, given the way the markets do with used vehicles, I'd be looking at gap. Do I want an extended the service contract or not? I think that depends upon the length of time that I'm going to finance this vehicle in the lease contract and what the warranty is on the vehicle. You want to make an informed decision. Obviously, I would think that a dealer's not gonna sell an extended service contract on a vehicle that the coverage is duplicative of what the manufacturer provides. That would seem to me to be illusory. You wouldn't do that. But a good car deal is a good car deal. A bad car deal is a bad car deal. And if you have an uninformed consumer who's in a dealership who is not properly disclosing what is happening on the F&I side, then bad things can happen. But if it's done right, then you should have an informed consumer working with the dealership staff to make and informed purchasing decision and everything should reduced to writing.

>> Carole Reynolds: Tom and then Jack.

>> Tom Domonoske: Well, What I just heard was that no one would really want to sell an extended service contract on a new car that was duplicative of the warranty that was on that new car, except that the reality is that I see that in at least 50% of my cases, where someone was buying a new car and when they were in the F&I office, they got -- said, "Well, you want the extended service contract to protect you, don't you?" And the person -- By the time they are in the F&I office, and they're signing documents, and they shake their head "yes" and sign the document. And there is not the rational thought process. I heard that in the last session. I heard illusions to it here. The consumers are making rational decisions, so everything is okay. That was actually how we justified the complete collapse of our mortgage industry. Because, well, people were making rational decisions to get these loans, and, you know, no one would make a bad buying decision or borrowing decision 'cause that wouldn't be helpful, so we don't have to worry. And the thing is,

consumers don't act rationally. And I'm not saying that's a bad thing. Computers act rationally, right? We're people. We're not computers. So the statement that we don't act rationally is nothing more than the statement, "We're not computers." People who sell cars on the lot know that what they sell is they sell the idea of loving the car. When the consumer loves the car, then rest of the transaction happens. And I'm not criticizing that, that people can go, they can spend money, and they can buy something they love, and then they feel good about themselves. Right? People don't make rational buying decisions. What they actually do is, they make emotional buying decisions. They buy products that they love. I agree with Jack about leasing. The core of leasing -- In fact, why we're all talking about leasing is, the core sell on leasing is someone can lease more vehicle than they can afford to buy. And that really juices them. And that's, you know, not a bad thing. If someone wants to decide that "I'm gonna lease more vehicle than I can buy," there's actually an underlying tradeoff which is, "Well, at the end of the lease, I don't own it. So I'm agreeing that I'm gonna pay the car industry set amount of my monthly income every month, but I'm gonna be driving a vehicle that is more than I could drive if I bought it." People make those choices. But that's not a rational choice. What's interesting is, from the car industry, I understand why they say, "That's a rational choice." It's rational for the car industry to say, "That's a rational choice because it puts more money in their pocket." You know, any business always views their consumers as making a rational choice by coming to them. But it's not really a rational choice by a consumer to blow all their money on a fancy car. I mean, you know, it's a tool. You drive it around. It takes you places. But we internalize it. It's more than a tool. It's a reflection of ourselves. That's not a bad thing. But it's not a rational choice.

>> Carole Reynolds: As we continue discussing these points, please also respond to whether you see misrepresentations in these add-on presentations.

>> Tom Domonoske: Really quick, I think that the whole idea of selling someone a service contract on a new car is at the core a misrepresentation. There's no reason anyone should be sold a service contract on a new car until the warranty has expired. Until that expired, even offering them a service contract is a misrepresentation because you're offering like you're offering something good when actually you're taking money out of their pocket.

>> Carole Reynolds: Jack.

>> Jack Gillis: I think the FTC could do an entire investigation on add-ons and the pros and cons. And I'm here between two very experienced and effective sales people. And, you know, I've often thought for a second, "Maybe I should protect those special alloy wheels with some kind of an insurance policy." The bottom line is, these products are, in my opinion, and in the opinion of many consumer advocates overpriced. And they are being sold to us in an environment where it is difficult, if not impossible, to shop around. But there's one other point that I'd like to touch on. And that's this concept of gap insurance. I'd like to see the automobile industry signal to consumers that if you need gap insurance, either for financing or for the leasing process, then you shouldn't be in that car. Gap insurance is a sign that something's wrong with that deal, that you need extra protection. That means you've bought more car than you really can afford. So, you know, again, I'd like to see the dealers step up and say, "Hey. Gap insurance is a sign something's wrong with this deal." And maybe we can talk about that for a little bit.

>> Carole Reynolds: Keith?

>> Keith Whann: Well, oftentimes, there is something wrong with a car deal. And if you were buying or leasing a truck or a sport utility vehicle three years ago when our lack of a comprehensive energy policy drove gasoline prices through the roof and people... Excuse me. ...then were in a situation, if they totaled the car and had a $8,000 or $9,000 deficiency, then gap insurance is needed -- or a gap waiver, depending the state you're in. So you can come up pretty much, if you've got the experience that most of us have here, with an argument for everything and against everything. The question is making an informed decision. And I'm certainly not gonna go where Tom went and say that the home mortgage crisis was on the backs of individual consumers. Unfortunately, I paid attention to Dodd-Frank. That's some of why we're here today. So I think it has a lot to do with other things than a consumer wanting more house than they could afford. There is a measure of oversight. There is an effort of disclosure. And, once again, you know, David, you've been used as the example of a new-car dealer -- good, bad or indifferent. And you've been told not to ever sell a service contract on a new car. Now, unfortunately, I've looked at a number of service contracts. And there can be differences in terms of the deductible or a buy down on

something or wear and tear and all sorts of other things. Now, whether you have the expertise to make that decision -- is it good or bad? -- I guess is up to the consumer in how you shop or perhaps the car dealer who decides to offer it. I would like to think, at your dealership, you're not gonna offer something to a customer that's of no value, that you're gonna do that research before you say, "We think it's a good idea to at least offer this to one of our customers," because if you take your customers and all you do is make them bad, you get bad CSI scores, and the manufacturers don't like that, do they? And that affects a whole lot of other things economically to the dealership. And that's a little bit different from a new-car dealer than an independent. The independent just loses a customer. So I think what we have to be careful here is just painting some of these things as so much black and white because we could go good or bad on almost everything that's here.

>> Carole Reynolds: Stuart and then Terry, and we need to move on.

>> Stuart Rosenthal: I want to try to keep this in the framework of leasing, but before we totally eliminate consumer free choice up here and reduce the ability of consumers to decide for themselves what they want to drive and how they want to drive it and where they want to drive it, whether it's off road and therefore, they're taking chances on breaking something on the vehicle, or whether they like driving car that may be more expensive than they would ordinarily be able to buy because it's either more gas-efficient, safer, larger, because now they have a bigger family and they need room to carry more people. They've made some determination as to what they would like to be driving and how they would like to drive it for whatever reason they've chosen. That leasing does afford them that opportunity to drive a car that's more expensive than what they might otherwise have driven. Somebody who had two kids and now has a third, for example, might feel that the subcompact they were driving around in doesn't accommodate the size of their family anymore and they really need a small S.U.V. or a large sedan, which costs substantially more than that subcompact that they were used to driving and leasing gives them that opportunity to be able to afford that larger car without having to go deep into their savings or retirement account or whatever to be able to afford to it, to get them through those times that they need to do that. So the notion that consumers are irrational when they decide to drive something that's more expensive than what they could afford to buy by leasing it and, therefore, being able to afford it is, I think, off the mark and really not someplace that we want to go very far.

>> Carole Reynolds: Terry and then -- Oh, I'm so sorry.

>> Stuart Rosenthal: I just wanted to say. And I'll be very brief about this because I'm sort of -- I agree that when you're leasing a car and you're leasing it for 36 months, for example, there is no excuse for that consumer to be sold a five-year warranty on the car. The car's gonna have a manufacturer's warranty that covers probably the entire time of the lease, and there is absolutely no reason or excuse or rationale to sell that consumer an extended warranty because they got bumper-to-bumper coverage for the whole time. It's a different issue, of course, when they buy the car and they own it and they're gonna have exposure. And there are very rational reasons to buy an extended warranty, if that's what they want. There are cars that are notorious for having blow-outs of the tires and the tires are not covered under any kind of extended warranty or initial warranty from road hazards. As you drive around, some of the high-line vehicles, in particular -- low profile tires, very expensive wheels. That extended service contract on those wheels and tires is a very rational thing to do to minimize your exposure to the expense of replacing them. So I just want to put that in perspective.

>> Carole Reynolds: Terry, and then we need to move on.

>> Terry O'Loughlin: I'd like to make two points -- one a specific point, the other one a general one. The specific point is -- Dealers are doing something now that I think is a very good idea, something that helps in explaining aftermarket items. And that is what's called menu selling, presenting consumers with actual menus of how each product would affect their payment and overall cost. It's a great step forward, in my opinion, in transparency so that consumers are walked through each of these aftermarket items, whatever they are, to see how they affect their monthly payment and the overall cost of the transaction. So I think that's a very good thing that dealers are doing. Secondly, I think the underwriting process for the banks and the captive finance companies in the automobile world is far, far superior, has been far, far superior to what happened in the mortgage world. I mean, you never saw an automobile transaction where there was negative amortization or interest and principal. I mean, there's not an underwriter of a vehicle who would ever undertake a transaction such as that. And they were much more cautious all these years in

underwriting vehicles. So I think the rationality of underwriting in the automobile world has been far better than what has been in the mortgage world.

>> Carole Reynolds: We're going move to the next topics more briskly. We've heard of markups in the financing context. Do markups also occur in the leasing area? Who would like to respond to that?

>> Terry O'Loughlin: They do. Yes. There is part of the underwriting processes -- I wouldn't call it markups. They're more like a retail margin in the transaction. And that's all part of doing business.

>> Carole Reynolds: And In terms of dealer reserve or dealer participation, who would set these markups in a lease?

>> Terry O'Loughlin: The leasing company does.

>> Tom Domonoske: When you say the leasing company, what do you mean?

>> Terry O'Loughlin: I mean, the lessor, the underwriter. The underwriter does allow the dealer to fashion the transaction within some parameters.

>> Carole Reynolds: Jack?

>> Jack Gillis: I think the biggest markup, and I'd like to expound on something that John said in the prior panel. I disagree with the other panelists in that consumers are negotiating for leases. They really aren't negotiating for leases. It's a complex process, and very few consumers that we've ever experienced go in and negotiate for a lease. And that's essentially the markup. You're ending up paying some pre-determined price for a vehicle, and that generates the leasing cost, and so I think that's the fundamental markup. In terms of dealer kickbacks and percentages and things of that nature, we just tell consumers that's a way of life and that's gonna happen. You just want to get the best price on that vehicle, but you rarely get the best price when you lease.

>> Carole Reynolds: Stuart?

>> Stuart Rosenthal: At the risk of perhaps being shocked by one of my members, Jack, I'd like to invite you to come and sit in a dealership's office one day and listen to the negotiation that goes on when consumers come in. First of all, the consumers have shop. The dealers advertise very heavily. Ask any newspaper person, you know, what percentage of their revenue comes from automobile dealer advertising, and they'll probably tell you that, in a bad year, it's 25%. In a good year, it's closer to 40%. So the dealers advertise like crazy, and they advertise price. And they advertise competitively because they know that they need to. In order to be able to attract consumers, they've got to be competitive so that there is a huge amount of that almost pre-negotiation that the dealer takes out of it because they've advertised at a good rate to begin with in order to attract consumers to their showroom. Secondly, the consumers come in, and they do advertise. They do negotiate, rather. They negotiate on what they know it's going to cost them. They negotiate the monthly payment. They negotiate the down payment. They negotiate for the mileage sometimes. "Oh, you can really give me 14,000 miles instead of 12,000 at that price." They will negotiate almost any point that's discussed in the course of resolving that lease issue.

>> Carole Reynolds: We're going to move very quickly through issues and misrepresentations that consumers may see, if they exist, in the area of early-termination or end-of-lease costs, be they excess mileage or excess wear and tear. Tom?

>> Tom Domonoske: Early termination starts out being regulated by the federal statute that says the early termination clause has to be reasonable. And it has to be reasonable. And it has to be reasonable, and then it goes on. It says, "in light of the anticipated or actual harm, the difficulties of proof, the inconvenience or non-feasibility of obtaining an adequate remedy. Unfortunately, what people tend to accept as reasonable is what's been done in the past. And so these cases get litigated over the issue of, we have early termination clauses that are horribly complex and difficult to understand, but at the core, in many situations, will cause a consumer to pay more money to terminate a lease early than if they'd kept the car and made the payments over time. And there's a really disagreement about what's reasonable in terms of early termination costs. So the first thing is

being actually to understand how it works, and they're so complex that most people -- and I've litigated some of these cases -- lawyers arguing in front of judges. And the judge saying, "Look, I just one of you to explain to me how it works," and the lawyers genuinely having two different understandings of what that contract term meant in terms how to calculate the early termination. The last misrepresentation that occurs on these is, even if you have a clear termination clause, as was pointed out earlier, we've seen some finance companies or assignees running just their own computer program to calculate the early termination fee, without regard to whether that program tracks the language in the contract. It is a huge problem.

>> Carole Reynolds: Keith and then Jack, and then we're going to move on very quickly. I'm sorry Greg and then Jack.

>> Greg Grzeskiewicz: That's fine. That's fine. One of the areas that we see in Illinois, where we get quite a few of leasing complaints is -- You know, I know we're on time constraint, but it's wear and tear. And that's where the finance company or the assignee of the lease... You know, after a consumer turns in their car, we get multiple -- often complaints about excess wear and tear. And some of the complaints, you know, it's pretty obvious that the bank's just reaching to retain a security deposit or set a further bill. So that is an area that we've seen a lot of problems in Illinois, where consumers will turn in that lease and they'll be charged quite a bit for, you know, scratches, you know, tires they're saying that are damaged and stuff like that.

>> Carole Reynolds: Jack?

>> Jack Gillis: Just to reinforce both Tom and Greg's point -- One, there are too many early-termination agreements that actually cost you more than keeping the car, and, two, as I said earlier, with leasing, the sticker shock comes at the end of the lease, when you're handed a bill because your kid spilled chocolate milk on the backseats and you got a couple of extra scratches and the inside of your trunk isn't as clean as it should be. So those are things that consumers are totally unaware of and most of the time quite surprised when they get these charges.

>> Carole Reynolds: Very quickly, we see rent-to-own transactions in electronics, furniture and appliances. Do these also occur in the auto area? We seem to have heard that they do in panel one. And what misrepresentations or other issues do we see in that area? Terry?

>> Terry O'Loughlin: Yeah. There are two developments in the automobile world, one of which is rent-to-own. And there are about 24 states or so -- 24 or 28, I forget which -- that have actual statutes that address rent-to-own. It's quite a quilt of differences in the various states. And it creates, I believe, a far more complex transaction than leasing for consumers because each state is unique -- pretty much unique -- in how it presents the transaction to a consumer. Another development is Lease Here Pay Here pay, which is a development in the buyer/payer world, which is far superior because it abides by Regulation M and the transaction is presented in that manner. As a footnote, I think most attorney generals truly dislike rent-to-own, I think, because it does create -- It can create, I shouldn't say it does. It can create a financial burden to consumers in a way that a lease transaction won't.

>> Carole Reynolds: Keith?

>> Keith Whann: Just in the interest of time, yes, it does exist, and as Terry said, yes, there's a patchwork of regulations. Some of the statutes say cars can be include. Some say they're excluded. And in some cases, it winds up being a lease, and then you wind up with lease-to-own or Lease Here Pay Here.

>> Carole Reynolds: Tom, and then we need to turn to the audience.

>> Tom Domonoske: The real problem with rent-to-own goes back to 1980 decision out of the 5th circuit called Smith v. ABC that started articulated this idea that if a lease is terminable at will, then it is not subject to the Consumer Leasing Act. The actual facts of that case are totally different than a rent-to-own transaction, and I think there is a growing problem of rent-to-own in car transactions, and it can be shut down simply by effective enforcement action under the theory that the Consumer Leasing Act actually does apply to that. Pursuant to its ordinary definition, there's no reason those rent-to-own deals aren't accompanied by Reg M disclosures. And renting is no

different than leasing. Rent-to-own, lease-to-own -- It's a lease. It's under the Consumer Leasing Act. And the string of court cases that are talking about how rent-to-owns aren't under the Consumer Leasing Act are actually fact-specific to something other than what the term "rent-to-own" currently applies to.

>> Carole Reynolds: Do we have questions from the audience? I'm sorry.

>> Female Speaker: One of the big problems we've had in California, where law enforcement has gotten involved, is some dealerships, including some major dealerships were switching consumers from purchases to leases. And I was wondering if you could comment on that. And the other thing is, we've seen problems with dealers selling add-ons and then they just pocket the money. You know, they sell the gap insurance, the extended service contract and everything. And a number of them do this and this and then go out of business. And how big a problem do you think that is?

>> Greg Grzeskiewicz: I'll take that. In Illinois, we've seen the same problem. We've had quite a few dealerships go out of business and pocket the extra add-ons. Obviously, we didn't get into flipping today. I think we ran out of time. But that's obviously, -- You know, we've talked a lot about the two types of dealers. And an area that we have a lot of enforcement is when a consumer is yo-yoed on a purchase. And then they bring them back in and put them in, you know, obviously a different contract term or put them into a lease, so, you know, with disadvantages -- not good terms.

>> Carole Reynolds: Stuart, did you want to respond?

>> Stuart Rosenthal: In our area, we're not seeing the flipping. The leasing is 40% of the business in New York. And the high line-brands -- Some of the dealers have told me as much as 90%, 95% of their business. Consumers come in looking for leases. Also, the fact that leasing is more restrictive, in that there's no subprime leasing, means, again, there's a narrower audience. We're just not seeing any issues of flipping from buys to leases, you know, by the dealerships.

>> Carole Reynolds: Two real quick comments here. Terry, did you have a quick comment?

>> Terry O'Loughlin: The Flip concept was pretty common in the '90s, prior to Regulation M, where consumers would come in wanting to buy a vehicle, and they were flipped into a lease because in those days, the terms weren't clear. They didn't understand the disclosures were not manifest in the document itself. So that was quite common because there was a tremendous incentive to do that. Subsequent to Regulation M, that practice doesn't go on nearly as much as it used to.

>> Carole Reynolds: Keith.

>> Keith Whann: Independent dealers are much different than franchise dealers. You either lease cars or don't. And if you're an independent dealer and you're leasing cars, that's probably what you do. So when you're going into an independent dealer, you're either buying the car or leasing the car. And that's probably all they do. If a dealer pockets the money for products, that's just wrong and always has been.

>> Carole Reynolds: I think there was a question over here and then back over here.

>> Male Speaker: Yeah, it is on. Two quick -- One quick question and then a longer question for you, Carol. Tom, I'm curious how many Court cases you know where you have adversarial attorneys in a contract case, where they agree on contract terms? And I'd love to see the statistics on that. More specifically, Carole, does the FTC have any statistics on how many vehicles are leased every year and as a percentage and then how many complaints the FTC gets on the various issues that have been discussed today?

>> Carole Reynolds: We're actually very interested in obtaining data on all the topics that we've been addressing today -- leasing as well as all the others that you'll see this afternoon. So we would like to see that data on leasing.

>> Male Speaker: But in terms of the complaints?

>> Carole Reynolds: In terms of the complaints, the data that we've released already is on our Website. And we do reports every year on the most common topics that are the subject of consumer complaints. There was a question over here?

>> Joe Goldberg: Uh, yeah. My name is Joe Goldberg. I'm a private practitioner with a consumer law practice in Pennsylvania. I want to disagree with the assertion that was made on both panels that there is no subprime leasing. In the last four or five years, I've seen a proliferation of it. The new-car dealers aren't seeing it, obviously, because they're not part of it. But the NIADA members and other independent nonmembers are engaging in it at an increasing rate. And I guess I'd throw this out to the FTC that, as part of your follow-up to this, that you do look into this problem. It's partly Buy Here Lease Here, and it's partly the rent-to-own. But it is on the upswing, and it's directed at the lower-income segment of the population.

>> Carole Reynolds: This is the last question, so the gentleman over here, and then we have to stop.

>> Male Speaker: Thanks. There's been a lot of discussion of the assertion that you rarely get the best deal when leasing. I guess my question is, is there anything that precludes a consumer from negotiating the price of the vehicle that ultimately a loan a lease will be based upon and shopping that around?

>> Carole Reynolds: And this should be fairly quick, both of you. Terry and then Stuart.

>> Terry O'Loughlin: Absolutely not. I mean, consumers can shop -- I mean, quite honestly, really well-informed consumers drive these bargains. I mean, they can go from dealer to dealer to dealer, knowing full well what they've been offered. In my years at the Attorney General's, I've talked to hundreds, if not thousands, of consumers, advising them to do just that. Seek out the best price. Go to a number of dealers, do your homework. And the saddest part of all this -- there's so much information available that consumers don't spend the time. The ones that sadly are sometimes taken advantage of don't spend the time and preparation by doing just that -- shopping around and educating themselves so they can make the best deal.

>> Carole Reynolds: Stuart, can you wrap up quickly?

>> Stuart Rosenthal: Very quickly, I agree with what Terry said. [Laughter]

>> Carole Reynolds: Thank you. That was terrific, and join in thanking all of our panelists here today. [Applause]

>> Lesley Fair: We're taking a stand-in place, momentary break. And if the panelists could please approach, I'd appreciate it. Nancy, Damon, Michael, and then Rosemary. If we could have our panelists for the next panel, please. We're ready to start our next panel if you'd take your seat, please. We're shifting our focus a little bit. We're now moving from the area of leasing into the area of what have we learned from the roundtables and, most importantly, where do we go from here. My name is Lesley Fair with the Bureau of Consumer Protection. And in the interest of full disclosure, since isn't this what today is all about, I come from the world of litigating false-advertising cases and about five or six years ago moved into the consumer- and business-education arena. Therefore, unlike the rest of my FTC colleagues, I represent no expertise in car financing. So I'm the consumer here, which is why I'm thrilled we have such experts. I shouldn't say no expertise. The only expertise I do have is parked downstairs. It is my mint 1995 Chevy Camaro, my prized possession, red with "T" tops. Sweet. And so, as I said, I bring a different perspective, one as a consumer, here. At the Federal Trade Commission, we approach every transaction, including the second-largest transaction most Americans make, with one basic premise. With apologies to the Syms department store, we believe that an educated consumer is the best customer. We believe that consumer advocates believe that, and we also believe that honest businesspeople who want to remain in business for the long haul take that as their mantra, too. I'm gonna start things a little differently today, since I am to a little extent an outsider in this area, and I am going to ask my panelists, Nancy, Damon, Michael, Andy, and Rosemary, to take 45 seconds to introduce themselves, focusing on their organization or group's interest in the area of consumer and business education. I said 45 seconds. You're on the clock. Nancy.

>> Nancy Wilberg Ricks: This is gonna take me like five minutes at least -- but no.

>> Lesley Fair: Oh, no, it won't.

>> Nancy Wilberg Ricks: I'm just kidding. I'm Nancy Wilberg Ricks. I'm a policy analyst at the National Council of La Raza, NCLR. We have approximately 300 affiliates throughout the nation, and actually 50 of those 300 are housing counseling affiliates. They also offer financial advice. So we're huge proponents of one-on-one financial counseling, and we focus particularly on modest-income Latino families and how they're impacted by fringe products and healthy products.

>> Lesley Fair: And Damon.

>> Damon Lester: My name is Damon Lester. I'm the president of the National Association of Minority Automobile Dealers, or NAMAD for short. We represent all ethnic minority new-car dealerships in the country. Our goal is to achieve parity in which currently acting minority dealers have less than 5% representation in the country.

>> Lesley Fair: Michael?

>> Michael Archer: Good morning. I'm Michael Archer. I'm a retired Marine Corps judge advocate. I served on active duty for 20 years, I was a legal-assistance attorney on four separate occasions. I am now the director of legal assistance for a multi-installation organization called Marine Corps Installations East. As you might expect, my clients are military service members and their families.

>> Lesley Fair: And happy Marine Corps birthday last week.

>> Andy Koblenz: I'm Andy Koblenz. I'm the vice president of legal and regulatory affairs for the National Automobile Dealers Association. We represent all the franchise new-car dealers in the country. I'm also the vice chairman of the AWARE Coalition, Americans Well-informed on Automobile Retailing Economics, which is a dedicated consumer-financial-literacy coalition in the auto-financing space. And our members agree with you about the Syms note. And as I'll be happy

to share, we actually have data to support it that an informed consumer is a happy consumer and one that we want to keep. Our members want consumers for life, and that's why we're committed to consumer education.

>> Rosemary Shahan: Hi. I'm Rosemary Shahan, president of Consumers for Auto Reliability & Safety. I've been working on auto issues on behalf of consumers since 1979. And our biggest concern and priority is that we see affordability as the biggest challenge on a number of fronts for car owners, and we'd much rather see them for the same amount of money getting electronic stability control, side air bags, much better product rather than wasting more money on excessive financing and worthless products.

>> Lesley Fair: I think that brings us to the first topic, or what I'll call issue one. We wouldn't be here if there wasn't a concern that there are parts of a typical transaction -- let's focus on the typical transaction -- that consumers are finding difficult to understand. What are those parts of the transaction that seem to be opaque to consumers, and why is that? Jump on in.

>> Michael Archer: Well, frankly I don't think consumers understand any of it. And worse than that, they don't know what they don't know. They don't know that they don't understand finance. And they don't understand these things for a couple of reasons. First of all, car dealers, their incentive is to sell cars and that's what human nature is going to tell them to do, and there may be sometimes where there's misrepresentation or just not being clear about things. In addition to that, as many of the panelists have alluded to before, the transaction is inherently complex. It involves the purchase of the vehicle itself. It involves trade-in values. It involves financing and a whole host of add-on products. And so partly it's the nature of the contract and the transaction, and partly it's the nature of the Incentives that are involved.

>> Lesley Fair: Nancy, do you see things the same, differently?

>> Nancy Wilberg Ricks: Yeah. I mean, I certainly agree with that. You know, we're all for the informed consumer, and we fight very strongly for that. As I mentioned, we really, really embrace one-on-one financial counseling, and we have studied two different models, and one is sort of the

opportunity-cars model, where it's a highly subsidized auto lot. They're donated cars. And our families find good deals there. We have also found very strong credit unions who do a fantastic job in serving our families. Self-help is -- I'm not sure if any of you are familiar with self-help. And they find that they have that one-on-one with their client. They even equip them with advice to bring in the car. They bring in the car, they have it checked out. I mean, these credit unions are kind of going above and beyond, and they will even equip the consumer with a check. And once they get onto an auto lot, something happens. And they don't necessarily know how to translate what happens, but they all of a sudden find that, you know, the best rate is, you know, on the lot. And the fact that we have some of these sort of qualitative pieces working for us for our Latino families -- I mean, we keep an eye on that, and that seems to be happening regularly.

>> Lesley Fair: If I could break in, you said something happens. What, from your perspective, is happening, Nancy?

>> Nancy Wilberg Ricks: Well, they end up basically foregoing the deal that the credit union gave them and end up with other products and other pieces with which they were unfamiliar before.

>> Lesley Fair: Rosemary?

>> Rosemary Shahan: If you look at the data, the Consumer Federation of America, the National Association of Consumer Agency Administrators, and the North American consumer investigators annually compile data on consumer complaints that are filed with state and local consumer-protection agencies, and perennially, auto sales top the chart, and this is a problem that's pervasive around the country. And, also, if you look at complaints to the Better Business Bureau about new-car dealers and used-car dealers, if you put the two of them together, they separate them, and they rank. I believe in 2010, new-car dealers, they said they had 23,906 complaints. They rank number three in terms of industries most complained about. And used-car dealers, 13,902. They were ranked number six. If you put the two together, they rank number one. And this is at a time when we had the mortgage meltdown and a lot of complaints about banking entities, and people were complaining a lot about car dealers. So there's a problem that exists in the consumer's mind that we believe is very real, where they're going to dealers and they're being cheated. And there's a game

changer out there, and that is mandatory, binding arbitration in car contracts, because it used to be if you were a victim of fraud, you could take a dealer to court and have any number of consumer-protection laws against dollar fraud, salvage fraud, a number of other totally indefensible practices applied in your case, and that served as a deterrent. That deterrent no longer exists.

>> Lesley Fair: How do you view things, Andy?

>> Andy Koblenz: Well, I actually think that Rosemary's invocation of data or request for data is an important one, and we filed comments at the beginning of the process in April in which we went through the FTC's own Consumer Sentinel evidence, which is fed by loads of AG systems around the country, a number of Better Business Bureau systems, and there are millions of complaints in there. And when you analyze that data, you see not what Rosemary just said, but you'll see a dearth of concerns being filed by the consumers over that. But I also have to point out, those are complaints. There's also data out there about the level of understanding of financial literacy with respect to vehicle financing, and the AWARE Coalition that I mentioned actually did some surveying a couple years ago, and I'll give you the results. It's good news. It's not great news, but it's good news. 58% of those surveyed said that they were informed about the vehicle-finance process. And, by the way, as a footnote -- I alluded to this when I opened my comments -- we also asked them how satisfied they were with their overall vehicle-purchasing experience, and a statistically significant, larger number of people were satisfied with their experience when they felt that they informed about the process. And that's the business imperative here for consumer literacy is that people actually are -- that informed consumer is the satisfied customer and is happier. But 58% self-described as being informed about the process. That's good news. That's nearly 6 in 10 are there. That means there's also 4 in 10 that we need to do a better job and why we need to even ratchet up even further our financial-literacy efforts and consumer efforts, and I'm sure that we're gonna get into those concerns. So, the complaint data I don't think is as clear-cut as Rosemary says. In fact, I think it cuts dramatically the other way. As I said, we laid that out in our comments, the written comments. They're up on the FTC's Website. And with respect to the financial-literacy issue, I think we have some good news, but not great news, and we can talk about how to improve that from an education perspective.

>> Lesley Fair: Michael, I think you had something to add.

>> Michael Archer: Yes, ma'am. Consumers' complaints are chronically under-reported. And as an illustration of that, I had the opportunity to talk to someone that was running the FTC's Military Sentinel, and they had shown that there was a quarter -- I don't recall which one. It's of the recent years. But a three-month period of time, they looked at their data, and according to the FTC Military Sentinel, not one marine was ripped off in any deal anywhere, or landlord matter, car deal, anything, which certainly surprised me, having being at Camp Lejeune, and every two days, we have 30 to 50 clients lining up at the door, and many of them are consumer matters. So the first point is that consumer complaints are certainly chronically under-reported. And then secondly, as for data, the Center for Responsible Lending did a survey asking consumers essentially do you know that the dealer can mark up and have their dealer reserve. This is shy of 80% of the consumers said and the respondents said, "I didn't know that. I didn't know they could mark me up. I didn't know they didn't have to tell me what the buy rate is, and I think there ought to be a law that says they can't do that." And if the CRL has not already submitted that data, I think that I could prevail on them to do so.

>> Lesley Fair: I think any empirical data we would love to see on the record. So, Damon?

>> Damon Lester: So, just to point out something, what Rosemary just noted with their statistics, but if you look at as a whole in 2010, there were well over 11 million vehicles, new cars, sold, and just to point out that 23,000 complaints out of 11 million, you're looking at a finite group of individuals that have a complaint. Whatever form or faction that complaint is, it is true to Andy's point that it looks like there is a significant amount of education, as he pointed out with the 58% of the consumers are satisfied and have some type of information as far as how to purchase a vehicle.

>> Lesley Fair To what extent could there be problems with under-reporting and I guess what experts would call kind of a yea-saying bias? Are consumers likely to perceive of themselves as not getting a good deal?

>> Nancy Wilberg Ricks: Well, a couple things. I mean, I really can't emphasize enough how few people actually have even heard of a markup. I think to that point, I think exactly they absolutely do not know what they don't know. And I don't think the concept of a markup in and of itself is a bad thing, but I don't think people know. They think their deal comes from what they see, that big price tag that they see on the car. They don't know what occurs after that and some of the elements of what can be added after that. So I think to say that an uninformed consumer can negotiate and have, you know, some of those assets at their fingertips, but I don't think by any means that they even know those pieces exist. Second, I think as mentioned, complaints are entirely under-reported, and there are not a lot of successes. You know, with arbitration in mind, there are not a lot of successes that we see in recourse. So, I mean, even anecdotally, we recommend people make complaints, but they know to what end, you know, what will that profit them in the end.

>> Lesley Fair: Andy? And, again, let's try to get our focus on that education angle.

>> Andy Koblenz: That was gonna be the last comment I made. With respect, I just do have to respond. With respect to the knowledge of the markup, we can't ignore the fact that two governmental agencies, the Federal Reserve Board and the Federal Trade Commission, have studied the wisdom of telling a consumer about the dealer compensation, and both have concluded -- the space between the two conclusions is almost 30 years -- that this would be a bad idea. It's not something that helps the consumer. The most recent data says that it will confuse the consumer and cause home to buy the wrong thing. And I kind of laid this out in the Detroit panels. You need to be singularly focused on the total cost. You know, disclosing one element is really just not that helpful. You know, nobody's talking about disclosing the cost of funds that a bank has. That's not a particularly useful disclosure, because it's not the total cost to the consumer. I would welcome to see the questions. We couldn't find the questions that were actually asked and noted in their advocacy research and their advocacy paper. But there's no one hiding the fact that this is negotiable. It's on the front of every contract that I've seen. Terry O'Loughlin was up here from Reynolds and Reynolds on the last panel. They produce most of the contracts that are used in this country for retail-installment sales contracts, and every one of them has the fact that the rate is negotiable and that the dealer may retain a portion of it. If in fact 79% don't know that it's negotiable, then we have a job to do early, early on in the process, well before the transaction is

considered, back in high school, back in grade school to start getting people more financially literate about these transactions. And I'd really like to talk about some ways how to improve that and get to that, the purpose of this panel.

>> Lesley Fair: Let's talk about just that. I think Rosemary, if you could swing your comments into that direction.

>> Rosemary Shahan: Okay, sure. And one thing that we'd like to ask the FTC to take a look at and consider doing is assisting consumers more in navigating the private market, because, you know, in terms of whether you're on an equal playing field with the seller and what your rights are against the seller, you actually may have more protection. In fact, I'd say you would have more protection in a private sale. But there are consumers out there who are unlicensed dealers, and it would be really helpful if consumers are informed more about how to make sure that this individual actually owns the car, that they have title to the car. You know, if you go to a car dealer, a lot of dealers are selling vehicles where they don't have title or the liens are not paid off. Huge problem for consumers. Some dealers have been selling stolen cars, and when consumers bring this to their attention, they don't give them a refund right away. They make them sue.

>> Lesley Fair: Let's start talking about solutions to this, especially the kind of education. If it sounds to me that the one thing we can agree on, perhaps the only thing we can agree on, is that making sure that consumers are well educated, have the information they need to do what's in their best interest. How do we accomplish that? I mean, I've used the phrase consumer education. Andy has talked about the phrase financial literacy. And forgive me, but I think the phrases are starting to sound like "eat your vegetables," and it seems to me that we need to do more in that area. And what remind me of this is just a few weeks ago, I found myself kind of humming a song. I won't sing it for you, but I realized, you know, what was going through my head was this phrase -- "Only Mustang makes it happen. Only Mustang makes life great. Mustang moves you. Mustang grooves you. Mustang, Mustang '68." It was the 1968 jingle. 43 years later, I remember that. So it seems to me we have an industry uniquely skilled -- uniquely skilled in the conveying of important information to consumers. So based on that, what can we start doing, all of us, in representing each of our sectors? What can we start doing to make sure we have savvier customers

coming onto a lot? Damon, do you want to start off? I know you're active in the same coalition that Andy had mentioned.

>> Damon Lester: I mean, in addition to being a board member of AWARE, I Googled what auto financing is on Google, and there's over 1.6 million search results. So to say that there's a lack of information or a lack of educational financial-literacy packages, in addition to autofinancing101.org, you know, I have to disagree with that. There's not a consumer that's out here that doesn't go into a dealership that doesn't have an idea of what that price is, what they're willing to pay, 'cause everything is geared towards what they want to pay for or what they can afford. So I think that there's a plethora of auto-financing options outside of independent entities. You have each manufacturer that has information on their Websites about auto financing or consumer financing. You have the dealerships that have materials on their Websites about auto financing. So there's a lot of information out there that --

>> Lesley Fair: Well, let me stop you right there. Is that sometimes a con rather than a pro? Some folks at other roundtables have raised the concern about information overload, that there is so much information, how do consumers know. You know, getting it from the 10 million hits on Google to inside the head of the folks walking through, you know, getting ready to buy a car, you know, how do we use technology effectively in a real nuts and bolts sense for educating consumers? I'll throw that open, since all five have something to say.

>> Michael Archer: Sure.

>> Lesley Fair: I'll step back and get ready to rumble.

>> Michael Archer: I think that technology has great potential to help educate consumers, but there's too much out there. At this point, there's too much of everything. As a lance corporal might say, the good information gets lost in the sauce. You can't determine the difference between good consumer information that helps you figure out what a value for the trade-in is as opposed to advertising from the dealership that is just designed to get you in a showroom. And so I think that's a problem. Frankly, I would like to see the Federal Trade Commission come up with a video, how

to buy a car. And, you know, you have to determine the attention span, and it needs to be detailed enough to be useful at the same time, so those are competing interests. But you go there, and you press a button, and you have this, how to buy a car, how to avoid some of the pitfalls of that. And then you have television advertisements that say we have this. This is where you can go to learn about these things.

>> Lesley Fair: How are those television ads going to get disseminated and paid for, Michael?

>> Michael Archer: Your wonderful budget is going to. [Laughter]

>> Lesley Fair: Well, certainly. Let me open it up to others, since it seems like everybody has something they'd like to add on this critical point.

>> Andy Koblenz: I think Nancy was first.

>> Nancy Wilberg Ricks: Hey. So, a couple of things. Yeah, I agree there needs to be an easily accessible multimedia campaign for how to purchase a car. But I think, you know, we fought very hard the carve-out NCFPB. And, you know, hopefully, the FTC can take that element on. I do think, you know, a public education campaign is a great thought and something that is definitely lacking out there. I don't think any of us mentioned any type of lack of information out there. Time and time again from -- you know, we've had our housing counselors for more than a decade, and we know that when you cater to individuals with the financial advice that pertains to their particular budget and case that they end up having a much better mortgage agreement than if they did not have that disinterested third party there helping them. And what you're dealing with is expert to expert, not someone who goes in every 5 to 10 years to purchase a car, and then they leave the lot hoping never to remember that experience again. So I think, you know, what we find is very beneficial is that sort of that one on one. And we fought hard to once again secure $35 million for that, and, you know, we usually have $60 million, but this is an appropriations deal for us. So that’s how we build those relationships where communities who need it the most, can least afford financial advice, they are actually getting it. And so to me, that’s a big asset. But technically, basically, those experts would have to go into the F&I office with them.

>> Lesley Fair: We've talked about one-on-one counseling, video. Andy, any other suggestion?

>> Andy Koblenz: Yeah, well, I don't think the fact that there's 1.6 million hits is a bad thing. I think that we got to find people where they are, and we have to go a very, very multifaceted, very differential approach, and there's not gonna be one size fits all. There's not gonna be one single thing. Just a few things that we've done, we have for many, many years worked with “Time” magazine to have an insert every November time frame where we talked about important topics in the auto industry, and very frequently that has been on understanding the vehicle-financing process. Now, that is an important thing. This gets to all of “Time's” readers, but all of “Time's” readers is only a very small subset, and perhaps it's a more educated subset. So that's not by any means exclusive, but it's the kind of creative activity. We need to be trying to find ways to push information down into community-based organizations and the faith-based organizations and meeting people where they are. The AWARE Coalition that we've discussed has adopted a train the trainer approach, and a lot of the materials there are for people who can then use it to go into their church meetings and to go into the schools, and there are PowerPoint presentations that can be presented, and so we're trying to leverage the resources. But I actually am involved in an educational review in my faith-based organization that I'm a member of, looking for ways to increase the learning in our faiths the way that our faith delivers it to the members of our congregation, and one thing that came out of that discussion -- it was a three-year process, and it came out that the best way, that when people were asked, "What's your best, most effective learning experience?” it wasn't the classroom. It wasn't the sermon. It wasn't any of the more traditional, face-to-face educational. It was experience learning. It was being exposed to things -- in situ, the lawyers would say. And just as an example -- and again, I'm trying to think outside of the box here -- but we're all familiar with Junior Achievement. Junior Achievement has an idea, and they've actually piloted it in a couple of places across the country of things they call finance villages. And finance villages are actual, physical places -- now, this takes a little money. I understand that, and that's your next question. But there's a car dealer there. There's an insurance salesman there or an office. There's a mortgage company there. There's a bank there, and there are probably other institutions where there's financial activity going on, and kids from the high school will come in for Wednesday afternoon, and there will be actually populated by local mortgage brokers or local

insurance brokers or local car dealers or local bankers who often are the sponsors of these, and they can come in, and they can apply for a loan, or they can apply for insurance, and they can do it, and they can learn the way and find out how much it costs. And you can do that kind of experiential learning. We can develop materials for math teachers to introduce the concept of math through having a checkbook. My wife actually is a fifth-grade math teacher in Washington, D.C., area, and she has her checkbook project every year. We get local banks to donate the checkbook registers and everything like that, and the kids have jobs, and they have salaries, and then she has a lot of fun with them. She has things that happened to them, like all of a sudden, there's a tornado, and their house is destroyed. Did you buy insurance? Oh, well, now you have to find a way to borrow money to fix your house. So we need to find ways to make it come alive for people, and there are ways to do it, and we're ready to roll up our sleeves to help out.

>> Lesley Fair: We want to definitely touch on that experiential. I want to make sure we get Rosemary's take on this.

>> Rosemary Shahan: Okay. Thanks. Couple suggestions. One is the FTC, other consumer-protection agencies, consumer advocates are always telling consumers before you buy a used car, make you get it inspected. And, you know, today's cars are so complicated, it actually takes diagnostic equipment and computers to really analyze what's going on with them. You know, I'm old enough, I remember when you used to be able to lift the hood and kick the tires and kind of know what you need to know. Those days are long gone. So consumers are at an inherent disadvantage regarding the product and also regarding the transaction. And there are things that we can do to help consumers know, like, how do you find a good mechanic to inspect the car? You know, just very practical nuts and bolts. How do you go about configuring that transaction so that you get the car inspected before you buy? 'Cause usually, my group and other groups, we hear from consumers after they buy the car and they take it home, and maybe they don't even get home and the car breaks down. And if you look at like Ken Bensinger series in “The L.A. Times” recently about buy here/pay here transactions, there are a number of things that are striking about that. One is that consumers are paying more than Blue Book very often for these vehicles, so they have cash in the form of a down payment or a trade-in that they could be using to get a decent car from an individual if they weren't going to a dealer and getting into this ridiculous financing that

sinks them, and they might actually get a car that's in better condition, as well. And I think, you know, when you look at the market, there's a very robust consumer-to-consumer market that often gets ignored, and it's important to emphasize educating consumers how you can get financing independently from the dealer. You know, our leading recommendation to consumers is never get financing at the dealership -- never.

>> Andy Koblenz: That wouldn't be part of our program.

>> Rosemary Shahan: I'm sure, I'm sure. [Laughter]

>> Lesley Fair: Small disagreements. Michael, what can you add into this mix of things that ought to be considered?

>> Michael Archer: Well -- you might be surprised -- I agree with Andy on a couple of things. One is I like the idea of training the trainer. I mean, we have 40,000 to 50,000 troops at a large military base. We're not going to get to all of those folks, especially because they're going to be gone somewhere pretty soon. I think that experiential learning is an interesting avenue to explore. However, I don't think that the people that ought to be training the consumers should be the automobile dealers or the lenders. I mean, we have had a horrible experience historically, for example, with life-insurance salesmen coming in, teaching people about finance, and we've gone through a number of horrible experiences with that. So if the industry wants to help train the trainers, fine, fine, but I would keep them away from masses of consumers, because, again, the temptation is great to simply be there as a salesman for their own place.

>> Lesley Fair: [Inaudible] But could you sort of summarize from your perspective the unique about education that arise?

>> Michael Archer: Thank you for that question. Well, first of all, you have mostly young consumers have an acute lack of time. We may be talking about the only time they have is a Saturday morning or a Saturday afternoon. They got to go in. They got to buy the car, and that's the only time they have. You know, we all have access to the Internet. Access to the Internet for

the private first class at school -- well, you won't have any at the school of infantry, but he's gonna walk down to the local library and then wait for his turn on one of the computer terminals that he can get to. There's certainly a lack of sophistication. In some cases, the naiveté of young service members is extraordinary. They are transient more than perhaps anybody. Here today, gone tomorrow, and their court access, even if there weren't any arbitration clauses, is practically zero. They are also, because there's such large concentrations, you know, one of the effects of BRAC, the Base Realignment and Closure, was that the big bases get bigger, and the little bases go away, and so you have larger and larger concentrations of service members in one place, and I think that's tempting to bad dealers to say, "Wow. Look at all these young people that we can fool into bad deals."

>> Lesley Fair: Well, in addition to the military, other segments of the community that have unique needs of their customers. [Inaudible]

>> Nancy Wilberg Ricks: I mean, I think we have probably similar issues, and sometimes we do work with military counterparts, but yeah. You know, the Latino community, you know, forming in certain areas and in central California and other place, you know, they're regularly targeted by, you know, fringe dealers or bigger lots, or, you know, that's all they have access to. You know, sort of, on some above-board products, the Spanish-language element is an issue, and, you know, while there might be some pieces of legislation out there that have, you know, required enforcement and require that the contracts are in Spanish language, they are often not, and so the communications that happen and the, you know, Spanish-speaking auto dealer, you know, may not present the documents in their language, and so they end up signing on something other than they can, you know, initially understand. But, yeah, the communities, they, too, you know, are often trying to decide between what they see as auto lots, but we see the distinction between, you know, sort of the buy here/pay here versus the franchise, you know, and so on. So that for us is something we always keep an eye on.

>> Andy Koblenz Yeah. I just need to respond to a couple of things. You know, I jokingly responded to Rosemary's comment, but it actually goes to a more fundamental issue. The financial-literacy education in this area needs to be neutral. It needs not to be demonizing any particular

participant in the marketplace. Dealers should be on the shopping list. The consumers benefit tremendously from the access to and the competitive value that the existence of dealer-assisted financing brings to them. It is not the only item on the shopping list, and the financial-literacy education needs to be neutral. And, Michael, you know, I hear you, what you said about the dealers or the lenders shouldn't be involved in the education. The education is not marketing. It should not be an attempt to sell a product. But I defy you to go to the AWARE Website -- and I forgot to mention our good partner in AWARE is the American Financial Services Association. Chris Stinebert is over here. He is the actual chairman of AWARE. Go to the autofinancing101.org Website, and you're gonna find some remarkable things there. We tell people to go the credit unions. We tell people to go to the banks. We tell them to do that before you come to the dealership. Leverage the competitive powers of the marketplace to your benefit. I hear what Rosemary says. She says don't go to the dealer. Don't get your financing there. We say shop it around. I don't think the banks, the credit unions, and the folks like Rosemary ever say shop it around and shop it at the dealership. The education needs to be neutral. We'll do the marketing over the side. There needs to be a line. But if you look at the programs that we have set up for financial literacy, you'll see that neutrality. And I'll just point out, we haven't left out the military. This is Military Money magazine. The cover story was buying your next car. It was an article that Chris and I wrote based not in our roles as president of AFSA or vice president of NADA, but in our roles of chairman, as vice chairman of AWARE, to give good, neutral advice to military service members about what they should be looking for when you're buying your next car. And the neutrality, non-demonization should be the centerpiece of the financial-literacy education.

>> Damon Lester: Yeah, well, I don't want to make it an AWARE commercial, but it's true. I mean, you have a third-party, neutral entity of which, you know, we both belong to, and it's on our namad.org Website, although we market our members and anyone that want to support to buy a vehicle from a minority dealer. We felt as though it's very important, also, to give consumers something to understand how the importance of financing or what their options are, no matter where you go and purchase a vehicle, but that information is out there. I do want to agree with Nancy that we have to do a better job even with those 1.6 million hits with putting more bilingual information out there and making them more grassroots, making that more of a grassroots effort to assist with the language barrier. So I think all in all, information is out there, and even with the

FTC's Website, and you do a great job of defining the terms, but even using something to what the train the trainer is, what we already have on autofinancing101.org, is a good tool to have even on your Website just to provide that additional information.

>> Rosemary Shahan: I'm gonna agree with Mike archer and Nancy that multimedia approaches are really helpful. I would urge you to look at languages, not only Spanish, but other languages. In California, we have a requirement that auto contracts and other similar contracts be provided in the five most prevalent languages in the state. That isn't always done, but it is the law, and that would be really helpful. We do have a literacy problem in the country. People buy cars who have literacy issues, and so multimedia could be really helpful. And not to demonize, but just as a matter of putting something on the record regarding financing at dealerships, one of the biggest problems is, like, advertising where the zero is the biggest thing in the ad, and then there's the tiny print "upon approved credit.” And the AP did a story, and they asked Art Spinella at CNW, who's one of the major number crunchers in the industry, how many consumers actually get 0% who are seeking that, and he said about 9%. So 89% who go to the dealer thinking, "I can't do better than 0%,” right? "I don't even need to shop around. You can't do better than that,” are not getting it. And he also said that consumers who went to dealers expecting 0% were less likely to negotiate. And the markups are anything but transparent, and as Andy mentioned, the Fed and the FTC looked at that and decided that disclosures could be confusing, which is one reason in the car buyer's bill of rights, we said there should be a cap, a hard cap on the compensation, because disclosure doesn't cut it. It's inadequate. And we'd hoped that the FTC would consider caps on markups. We've heard from, just to give you one example --

>> Lesley Fair: Focus on education here.

>> Rosemary Shahan: Okay. On education, as an example, a very sophisticated borrower who had impeccable credit bought a motor home and was marked up 3%. Over the 15-year life of the loan, that was gonna add $30,000 onto the loan. He had no idea that he had been marked up. When it became evident through a class-action and we found out, he was furious. And I think there are a lot of consumers who are in that boat that would never complain. They would never say that they were dissatisfied because they don't even know how badly they've been ripped off.

>> Lesley Fair: It'd like to certainly finish with a more nuts and bolts suggestions on what needs to be done, but I think we need just a few minutes on the issue of business education, too. Are the lines clear to salespeople and to car dealers about what practices are lawful and what practices are beyond the law?

>> Andy Koblenz: Can I take that one?

>> Lesley Fair: I would expect you.

>> Andy Koblenz: We agree that compliance education is an essential element of the marketplace, but the good news is that the industry is clamoring for it. Paul Metrey is sitting in the back. He's on a panel later. You should ask him what his travel schedule is like. The state dealer associations -- the phone is ringing off the hook at our office, "Can Paul come out? Can Brad Miller come out? Can Andy come out and give our members the guidance that they need on the red-flags rule that came out a few years ago?" Paul spoke -- we kept count, because I was trying to impress my boss at how hard we were working. We touched 4,000 dealership employees. 4,000 employees listened or heard Paul's presentations on how to implement the red-flags rule.

>> Lesley Fair: Let me ask right now. The knowledge of what goes on at the dealerships to me is limited to seeing a couple episodes of "Men of a Certain Age." [Laughter] Tell us, what was it that was done to convey that information?

>> Andy Koblenz: Well, I mean, multimedia is the name of the game. We have Webinars. We have documents, guides that we produce. In fact, we work very closely, and we want to thank the FTC. When we generate a compliance guide, we always on an informal basis -- there's no imprimatur, no approval, but we absolutely share the compliance guides with the agencies to ensure that we're giving the kind of guidance that is going to get it right, and the agencies give us comments and tell us "No, we don't think that one's right." It's not an approval. We never hold it out to our members as this has been blessed by any agency. But we want their input, and we get it. There are written guides. There are Webinars. We have a convention in which we have eight

tracks of workshops, and a large portion of that is dedicated to compliance. As I said, Paul and Brad do sessions. Brad was up in New York at Stuart Rosenthal's association just last Thursday talking about the latest developments in the worlds of tax and tax compliance. It's not just limited. We do a lot in the consumer-credit area, but we do a lot in OSHA and labor. There's a raft of regulations that the dealers need to comply with, but there is an overwhelming disposition towards compliance. The dealers are crying out for it. They're asking us. The state dealer-association execs like Stuart Rosenthal are calling us all the time, and that's just NADA. Then there are the private companies that do it. Michael Benoit, Tom Hudson from Hudson Cook are going to be on the panel later. They do it. That's part of their business. Rob Cohen, who was on one of the panels in Detroit, his business is dealer compliance. He does hundreds of dealership-compliance audits a year. There is just a tremendous quantity of compliance activity going on. It's essential, and the dealers are trying to keep up, but the notion that there isn't a cry for it from the community is wrong, and the notion that there isn't really quality, understandable information being pushed out to them is not true. So it's important. I really thank you for putting it on the agenda, because it's an often overlooked aspect. There's just one other thing. We don't leave our messages to our members at the “what you need to do to comply” stage. We also try to take all of the other stuff on financial literacy and package it up for them because it's not gonna happen if we leave it at the national level. NADA can't educate the world, AFSA can't educate the world, Rosemary's organization can't educate the world. We need to push it down. And we have 17,000 members out there. This is a financial-media tools for NADA members that we distributed at last year's convention. We produced this in conjunction with our partners and our friends at AFSA, and it lays out how you can volunteer. What can you do to get involved? It identifies organizations -- Junior Achievement, Jump$tart Coalition. It talks about MoneySKILL, which is another program that AFSA has. It talks about AWARE. We are trying to make this successful, not just for the consumers, but we're also trying to make it because, you know, a dealership, not withstanding Michael's comments that the dealer shouldn't be involved in pushing this information out. We think they should be and that they are and they can be very effective deliverers of that information.

>> Lesley Fair: Can you give us an example of what's worked in that area?

>> Damon Lester: We have an annual conference which we do a lot of dealing with the compliance issues, both federal and state. We also work with a lot of third-party entities to educate our members by way of, you know, paper mailing, as well as Webinars, as well as conference calls, as well. I do want to add that dealers are afraid not to be compliant. I mean, there is a fear of what could happen if they're not compliant, which is why you do have a thirst for knowledge for within the dealership, because we don't know what could happen at any given day if they're found to be in compliance. But for us, we do think, as well as what Andy said, is that we have to be as well-abreast to it, because it's consistently changing. I think there's well over 80 federal regulations, and that doesn't even include just the state mandate, the different state regulations that a dealer has to comply with.

>> Michael Archer: Compliance requires a knowledge of what the rules are, and Andy has some good ideas about educating dealers. Compliance, particularly when the incentive is to say whatever you need to say to sell a car, also requires some vigorous enforcement. And I know this panel is about education, but we need to look at the universe as a three-legged stool with regulation, education, and enforcement. And if you forget any one of those, then you have nothing, and I think we need to keep sight of that.

>> Lesley Fair: We go to our last question, in the interest of time. We want to start with small, concrete steps. We've heard a lot of big-picture issues. You know, it would be great if all second graders could calculate an APR to the 12th decimal place. But, you know, short of an act of God or an act of Congress, what is it that each of us can do in the next year that will result in a more transparent car-buying process for at least some consumers and dealers. The one thing that I can pledge is through business.ftc.gov, which is the FTC's site for businesses, the federal portal directly for members of the automotive industry, Business@ftc.gov. Grab a stack of business cards on the way out. And there's certainly more that we can and should and will be doing with regard to making information accessible for businesses, as well as continuing what goes on with consumers. What's one small, concrete step that you see, Nancy?

>> Nancy Wilberg Ricks: I would just say the materials that we're talking about -- and I do think some of these adjustments have been great -- you know, ensure that they're actually in Spanish

language, as well. It's a huge part of the population. They're the highest-growing minority population in the U.S.

>> Lesley Fair: Virtually everything on ftc.gov.

>> Nancy Wilberg Ricks: Sure, sure, yeah. And, also, with some of these programs -- you know, NCLR is a national program, but we really, really, value our community-based organizations. So when it comes to partnerships, we're really trying to, you know, ensure that folks actually, you know, are getting the information despite other issues of the grander issues, pie-in-the-sky requests that we have, you know, of enforcement and all of those pieces. We do think that those partnerships aren't to be overlooked.

>> Lesley Fair: One concrete step, Damon?

>> Damon Lester: I think just sharing information, just looking at everyone's Websites. I would suggest that, you know, NCLR have a link to autofinancing101.org on their site and we link NCLR to ours, that there should be just a linking, a locking of arms across the board.

>> Michael Archer: I've already mentioned online video, how to buy a car, how to avoid ripoffs. And I think in my world, I think the Secretary of Defense could help with mandating certain carrots and sticks for troops that complete consumer-education classes.

>> Andy Koblenz: Yeah. I just want to hold up the "Understanding Vehicle Financing" that was produced by NADA, AFSA in cooperation with the FTC, and its Spanish version. As an example of the kind of collaborative, harmonized, positive, neutral, good financial-literacy education that we could do. If we could all embrace this approach to financial literacy, which tells you to shop around. It says -- and I just want to read -- "before visiting the dealership," it says, "compare annual percentage rates and financing terms for multiple financing sources, such as a bank, finance company, and credit union." This kind of broad-based, neutral financial-literacy approach, if we could all embrace that, is what I would suggest is our step.

>> Rosemary Shahan: Okay. We plan to focus on assisting consumers in using the private market to buy used cars. I know with new cars, that are monopolies in each state, so they don't have that option usually, but we want to see that market work a lot more effectively. We would also challenge the dealers not to bludgeon the mainstream media when they cover car-buying stories by pulling ads.

>> Lesley Fair: I just want to finish. I looked up in our archives and found a 1983 publication on some pretty cool paper, "Facts for consumers from the FTC -- car ads, low-interest loans, and other offers." A lot has happened in how we communicate with consumers and businesses in the past 30 years, and I think multimedia approach seems like the best way across the board. Before we finish, I would just like to mention we're gonna be breaking until 1:45. We do plan to come back a few minutes early, because if you do leave the building, you will have to go back through security. There are some unbiased sources of lunch-option information in your packets. We're a big believer in that, too. And please join me in thanking our panel this morning. [Applause]