

Mike Bevel, insideARM:

Welcome. And thank you to everyone for attending this Ontario Systems webinar, Navigating the PayFac Era: Rules, Regulations, and Electronic Payment Processing Requirements, produced by us here at insideARM. Among other topics that I'm sure may come up, we're going to be discussing understanding the payment facilitator model; understanding Visa and MasterCard rules, and their impact on collection payments; understanding the rules and regulations, controlling convenience fees, surcharges, and service charges; and understanding electronic payment requirements -- along with any questions that you guys might want to throw at us. Today I'm joined by my very good friend and industry expert. Rozanne Andersen, Rozanne serves as Vice President and Chief Compliance Officer for Ontario Systems, LLC, the leading provider of software contact management and compliance consulting services to the ARM and healthcare receivables industry. In 2020, Rozanne was awarded the 2019 International Compliance Officer of the Year award for her work as a compliance leader in the ARM industry.

Mike Bevel, insideARM:

And, and because I forgot to mention it at the beginning. Hi, I'm Mike Bevel, Director of Education for insideARM and the iA Institute, as well as an editor for insideARM.com. I've got three pieces of housekeeping to go over with you before I let Rozanne lead us through her presentation. First note that there is a questions feature for you. So if you would submit your questions via that rather than via the chat box, it makes it much easier for us to organize questions as they come in. You can also send comments through there as well. If you want to underline something Rozanne said, you know, treat it as a way to talk to us. The second thing is this webinar will be up on insideARM website later for rewatching. So look for that in the next day, the final bit of housekeeping, I am going to read some legalese on the record.

Mike Bevel, insideARM:

So please bear with me. This information is not intended to be legal advice. It may not be used as legal advice. Legal advice must be tailored to the specific circumstances of each case. Every effort has been made to assure this information is up to date. It is not intended to be a full and exhaustive explanation of the law in any area, however, nor should it be used to replace the advice of your own legal counsel. Any opinions expressed are the opinions of the speaker and not their organization. And with all of that out of the way, I think I'm going to hand things over to Rozanne to get us started

Rozanne Andersen, Ontario Systems:

Well special thanks to you, Mike. I know we do go back a very, very long time and it's a pleasure to be here this afternoon and welcome everyone. Yes, today's topic is going to be all about payments. One of my opening comments, I, for anyone who knows me, you know, I think a lot about the, accounts receivable management industry right or wrong. It's just kind of part of my DNA at this point. And something that occurred to me that I wanted to share at the outset of this is regardless of the reason that you are on this call, whether it's for practical purposes or whether it's to really understand the process or charge fee model, it doesn't really matter. One thing I wanted to say -- and on the off chance, sometimes the CFPB is listening to this sort of thing -- I think we are actually at a transition point. Not only in our society because of events such as COVID, but with the evolution of our industry itself. And for years, obviously we can rattle off the Fair Debt Collection Practices Act like your children's names. It's collection practices, collection practices, collection practices, and I'm underscoring that because it's kind of occurring to me that we should begin to think of ourselves as a payment practices industry, because what we do as opposed to -- I'm going to exaggerate the point -- begging people to pay. We are now at a

point where we present people with opportunities to pay in the way in the manner, the time, et cetera, that they prefer. So I'm just, as I'm speaking, I'm kind of changing the dynamic years ago. I used to talk about the evolution of the the descriptor we use for the person who's supposed to pay money.

Rozanne Andersen, Ontario Systems:

It's gotten from deadbeat to to debtor to consumer. And now we're evolving into customers. So to, is our industry involved, evolving in terms of our own identity. So with that backdrop, I wanted to talk about another major change in our evolution. For those of you who know me again in years past, I think it was all the way back to 96. I began my career in this industry and at ACA International, the reason I'm mentioning that is because it was in those early years from 96 to 2005, let's say maybe even a little bit later than that. I cannot tell you how many times we had as advocates on behalf of the industry. We were in front of visa and MasterCard. We were in front of legislature, legislators, regulators, you name it, trying to explain. There is a reason we are not like I I'm high risk oddball, nuanced, weird, you know, side.

Rozanne Andersen, Ontario Systems:

We are a critical part of the credit and collect, you know, the credit cycle. And the reason I mentioned that is because the bias against the collection industry really was well entrenched with visa MasterCard at, during those early years, I'm referencing hopefully with appropriate permission ACA, for those of you who are ACA members, they happen to have a fast facts document 95, nine five one zero. And it's all about the acceptance of credit cards by collection agencies. And look at the date. It was last updated in 2014. And the interesting thing about that date to me is it almost identifies the, the turning point between when we were that kind of a viewed as a more of a risk industry to more of a mainstream industry. And really in those old days, visa and MasterCard, their bylaws themselves actually suggested that their cards could not be used to repay debts.

Rozanne Andersen, Ontario Systems:

They hoard the balance transfer programs. That was like a fundamental violation. If you will, of the Visa, MasterCard rules, or sometimes referred to as card brand rules. And many, many agencies came to us. So those early years, because they were denied merchant status, they were not approved because of their name because of the business they were in because they were using, you know, collecting debt to pay off a charged off debt, et cetera, all the mystery about our industry just kind of came down in a cloud and some people and they were, we denied merchant status. What does that mean? It means they couldn't accept credit cards or debit cards at that time either. Now there is a ha ha ha ha healthy degree of caseload on this subject at this time. But even going with back into the early two thousands, it was clear that accepting a card payment to satisfy a a charged off debt was not in violation of the FDCPA.

Rozanne Andersen, Ontario Systems:

So it was really industry bias that locked the industry out. And for those who were welcomed into the industry as merchants, the transaction fees, the processing fees, the charge that you paid the processor to actually process that payment transaction was in the 5%, four or five. I think I remember one fellow calling me and it was in excess of 5%. I mean, it was just, it was, those were the bad years for the, for the industry with regard to card payment and as a result it wasn't really ingrained in our, you know, every website, every conversation, et cetera. And now it is, and there's a reason for why the card brands have changed their tune, if you will. And I'm going to talk about that today. One thing I do want to, to also just

share, I was at a meeting of leaders of our industry in the early two thousands. I can't tell you the day, I'm not going to tell you the people who said this, but I know who they are. And they said, well, when it came time to share a best idea, the best idea innocently presented to the group was charge a convenience fee, charge, an administrative fee. That'll help you recoup some of the cost of paying for this exorbitant five, 4% transaction fee that you'd have to pay the card processors. And it became embraced as what a brilliant idea. Well, it was not long before.

Rozanne Andersen, Ontario Systems:

It was long, not long before the consumer attorneys began to view that as a basis for a class action lawsuit I'm referring to as the convenience fee chart. So what do we know again, from days past, we know that as far back as 96, that there were some cases in our favor, there was one case that a fee that was actually presented to the consumer as a payment option, like you don't have to pay the fee, but if you'd like to pay the fee to help move this transaction forward that was deemed to be a legal fee, but that was when the amount was not paid to the collection agency or any entity that it was control that controlled it also in 97, they a very significant case held that it was lawful for the debt collection agency to pass on a 5% churn surcharge.

Rozanne Andersen, Ontario Systems:

That important words were assessed by the processor. So that kind of lays the groundwork for what we're going to talk about today. And it, in my words, and then came the payment facilitator. I just find, you know, I'm at a point in my life where I keep thinking there's not another statute, another issue, another body of law that I should have to learn memorize digest and regurgitate. Okay. I just keep thinking at some point, have I not consumed, but sure enough, there's another one. It's all the, these, the card brand rules have turned for me have become front and center as part of my compliance work. And what I have found, I want to tell a little bit, a little short story about this because people may not know what a payment facilitator is, but remember I talked about the backdrop of the skepticism, if not discrimination against debt collectors.

Rozanne Andersen, Ontario Systems:

In the early years visa MasterCard were aware of that. The marketplace was aware of that, and other industries not led by the collection industry, but other industries have actually paved the way for our collection industry to find its own way into the card brand world and a lot loving it to embraced for, to embrace the collection industry as a as another merchant and the way they did it was if you think about Uber, if you think about going to a flea market, if you think about how local stores even if you think about your own self. I know for myself, even as recently, as a couple of years ago, I went to a toy store near our cabin and asked if I could pay with my debit card. And the guy looked at me like I had, you know, five years in two horns.

Rozanne Andersen, Ontario Systems:

He said, Oh no, Oh, I know we only accept cash. And I felt like saying, are you aware of the payments anyway he obviously did not want to and could not achieve merchant status. And because of those anecdotal situations where people were literally unable to become an approved merchant for visa, MasterCard, visa, MasterCard, and said, you know, we've got to have somebody in between the merchant and the acquiring bank and I'll, and, and our visa, MasterCard companies. And so they, they allowed and built an entire structure and it's called the payment facilitators structured. And what the payment facilitator really does is it stands between the merchant. And you'll see, I'm going to call them

a submergent, which you can put the name of the collection agency or anyone else in that category. They stand between that submergent and the acquiring bank that the payment facilitator must have a relationship with in order to process and move payments with their processor.

Rozanne Andersen, Ontario Systems:

Now, the payment facilitator itself really provides that infrastructure. It almost creates the platform if you will, but I don't mean it in a software sense per se, but they create the they lay out the groundwork for the summer. And so that those merchants can accept card payments, card payments. In my context, referred to debit and credit, the payment facilitator actually underwrites and onboards the submergence. And for all practical purposes, they really are legally merchants, but we call them submergence because they're kind of under the, the umbrella or the arms of the payment facilitator, as, as they, as they present themselves to visa, MasterCard, the facilitator also provides the technology for the submergence to actually process their electronic payments and have their various accounts funded. So for your it, for anyone who's interested, I have found these very interesting, but I've included in, you'll see this when you receive the deck, a link to the 2002, April, 2020 visa, MasterCard rules and this particular page shows you the way to the payment facilitator rules themselves.

Rozanne Andersen, Ontario Systems:

Now let's just talk for a couple of slides about these parties in this chain, because it helps you to know where you are, particularly if you're going to have any pay any attention to what do the card brand rules actually say? I think this is my observation. I could be way off, but I think a lot of us, you know, cross our fingers and become merchants, cross our fingers. And w w you know, are told from S told somebody else tells you, this is what you need to do to comply, but you don't really have access necessarily to where these rules are coming from, what, from the card brands. And so that's why I'm really, really kind of underscoring. How do you find access to the rules themselves, and to know how to navigate them? So, first of all, the merchant, in this case the payment facilitator actually holds merchant status with visa, MasterCard.

Rozanne Andersen, Ontario Systems:

They've gone, jumped through the hoops and done everything required to become a merchant in its own, right? And that merchant status actually describes the relationship that direct relationship and a contract between the merchant and in acquire, or between a sponsored merchant and a payment facilitator. And it outlines all of their duties and rights, et cetera. Now, the submergence, those are the business that are actually onboarded by the payment facilitator to start accepting those payments that may be in the form of a physical storefront, then accepts card transactions or an online type of transaction with a there's no card present. The submergent actually must be underwritten and onboarded to the payment facilitators infrastructure, and the original limit on 1 million in transactions that was you know, w w visa MasterCard was stepping into this space. They kind of said, well, you know, you can only have some merchants that we don't want them.

Rozanne Andersen, Ontario Systems:

If they're, if they're transacting more than a million dollars a year in transactions, maybe they should just be a merchant. Well, that has since been abandoned. And that's, that's no longer a restriction. Pro the facilitator may still process transactions for parties that transact more than 1 million per year. Now, additional payments that I've mentioned or participants who I've mentioned would be the acquiring bank, and that's an actual financial payment, like a bank institution that is really licensed directly by the

card networks to to act on and authorized and certified if you will, the facilitator in any merchants or something, which is in the chain processors, along with that acquiring bank will actually hold, you have to have a relationship with a processor, the company that actually transmits the money you know, from run electronic sequence of code, if you will, to another.

Rozanne Andersen, Ontario Systems:

And so it's moving money from from the it's moving money as a charge, as a credit charge, if it's a true credit card transaction or moving money as a debit payment through the process. Now, I do want to mention this right now. It doesn't have anything to, with this particular slide, but when you think as we go through this exercise today and discuss all of these issues, what I want to make clear at the outset is this. If you say, Oh, we just process all our cards as credit cards, we don't really care if they're debit or not. It's, it's kind of not true. It's because the, how something is processed behind the scenes, whether it's pushed as a credit card or a debit card does not define the actual card presented to you by the consumer. So if you, if you are collecting debt from me, and I tell you, I would like to pay with my debit card and you take that number and he processed the payment, and it goes to the payment transaction process, just because it's processed by the processor as a credit card, doesn't magically turn my debit card into a credit card or vice versa.

Rozanne Andersen, Ontario Systems:

That's just how things are set up and how they're built on the backend that is, does not change the nature of what the consumer is actually presenting to you for payment.

Rozanne Andersen, Ontario Systems:

So I'm not going to read this whole slide to you, but I did think that it was think it might be helpful to show some of them sources for the kind of comments that I'm sharing with you today. It is right out of the link to the document I shared earlier in the slide deck. And I, I think you may find it helpful to understand the relationship between the various parties. Now let's move forward. Let's talk about today. What's the state of card breath card processing in 2020? Well, when I think about the conversations I have with our clients and Ontario Systems, we have conversations that span all of the following requirements, because you can't really just look at one piece of the payment processing puzzle. If you will, as your be all end all to your compliance program, you have to understand the card brand rules.

Rozanne Andersen, Ontario Systems:

You certainly have to understand the impact of the fair debt collection practices act. If you are functioning as a third party debt collector, you need to understand the unfair, deceptive, or abusive acts and practices section of Dodd Frank, or you dab, because you all know if something doesn't pass the smell test, if it kind of seems icky is icky. They don't like regulators. Don't like it. Consumers are confused and material impact, you know, harmed is caused to the consumer and throw the kitchen sink into it. If anything just doesn't seem right, it's basically grounds to bring you down action against a party, whether it's the processor collection, agency, hospital, you name it or payment facilitator, anyone in the chain. But that, by the way, just to, as a reminder, you dev actions can only be brought by in a regulatory body, such as the CFPB.

Rozanne Andersen, Ontario Systems:

Also, there is a CFPB guidance, a bulletin on, I think they call them pay by phone fees. I consider that kind of a euphemism, I mean, yeah, it does say pay by phone, but I can't believe the CFPB really when you read it. I don't think they really mean only if the person is paying by phone. Do those guidance principles apply very well. If anyone wants a copy, it's very easy to find on the CFPB website and where I can send you one. Also we're gonna talk heavily about electronic payment restrictions that pertain to convenience fees, surcharges, and third party processor charged fees. Because aside from all the, the talk and all the focus I can shed on the card brand rules and how the processing world has really evolved over the past 15, 20 years, really what it comes down to is what is the state of the law for collection agencies in particular on convenience fees, surcharges, and these third party processor charge fees that have more names than, I don't know, I can think of many agencies and businesses still lack the infrastructure to qualify for merchant status in their own, right?

Rozanne Andersen, Ontario Systems:

Yet they are no longer locked out of the opportunity to process card payments because of the payment facilitator structure. There's not a significant change in case law. It's clearly not a violation of the FTC PA to accept card payments, but agencies charging fees in connection with a card payment may violate where to in green agreements, as well as the FTC VA and state law. And that is really my focus for today's presentation. So if you're looking at the FTC PA, and you're wondering, you need a reminder as to why does the FTC PA create a problem with these fees? These, when I say fees, I don't mean the fee. By the way, if you want to process a payment, let's say I present my credit card team for \$100 payment. And you run that through the payment processing cycle that does, that is not a free service processors.

Rozanne Andersen, Ontario Systems:

Someone is going to charge you or the party that's moving it through the system. They will charge you a percentage. Earlier. I mentioned that the early in the early days, it was like 3% for, I mean, it was 4%, 5%, even in excess of 5%. Now those fees have come down substantially depending on who you're visiting with. But nonetheless, that is not a convenience fee. That is a fee to process the payment period. And it comes with, let's call it a certain amount of pain for the party who has to pay that fee. It's expensive. So you have been in a taxi where the person says I will, I'll be in the seat and I'll go, do you take credit cards in the old days? Do you take credit cards? No. I said, are you sure that I know really well? Okay. Because they really don't want to have to pay the extra fee on those card payments.

Rozanne Andersen, Ontario Systems:

Well, that's the fee that I'm talking about. The one that, that hurts a lot. So under the FTC BA, or they can, I shouldn't say it hurts a lot, but it's just the way of the world. It costs money to process a payment. I did collect your may not use unfair or unconscionable means to collect or attempt to collect any debt. And the example of that in the FTC PA is under 15 USC, 6092 apps, subsection one, the collection of any amount, including any interest fee, charger, expense, incidental to the principal obligation, unless the amount is expressly authorized by the agreement, creating the debt or permitted by law, you know, before you memorize anything else. When he, and I know it's tough to open the doors every day, the regulations seem to change daily, but it is helpful to memorize unless the fee or the interest or the charge or whatever you're calling it.

Rozanne Andersen, Ontario Systems:

I don't care if it's happy days, fee technical fee, a fun fee, a super fast efficiency fee, whatever you want to call it. If it's not expressly authorized by the agreement between the consumer and there, the creditor that created the debt or expressly permitted by law, that doesn't mean silence. You can't add it as a, as a third party debt collector. And that literally means you cannot add it. That does not mean other parties who are not selling due to the FTC. PA cannot add it. Okay. The debt collector cannot also under 1692 E it provides that a debt collector may not use any false deceptive or misleading representation or means in connection with the collection of a debt. For example, the false representation of the character amount or legal status of the debt. You can't say something that you are collecting costs \$105. If in fact it costs \$100.

Rozanne Andersen, Ontario Systems:

You have to be accurate about the amount or legal status of the debt. A few cases for those who follow the case law choose it goes, I just pulled them from 2014 and 15. Again, in the first one, it shows debt collectors assessment of a \$5 processing fee on credit card payments was a violation of the FTC PA. How does this differ from the slide I showed you earlier? Because I showed two sides in a couple of instances where the actual, the court said, well, the charge was actually assessed by the processor, not the debt collector. That's why in the other cases, it was okay to have the \$5 fee assessed, but here where the debt collector attempted to assess the \$5 fee, it was not okay. The second case Lindblom claim against Western union, this is an interesting one, but mostly for people who are vendors, not necessarily for the debt collectors themselves, although, you know, in our industry, when consumer attorneys decide to figure out who they're to list as defendants, they list everybody in the brother and you all know that they list you, they list your creditor, they list the any vendor they can find along the way.

Rozanne Andersen, Ontario Systems:

As defendants in this case held for the, it was kind of scary because it was a claim against Western union for wiring, you know, the wire money under the FTC PA for the collection of a processing fee. But the fee was dismissed at the outset at the pleading stage, you know, before they got into any rulings on the case, the court said, I have to dismiss this case, or it would call for an unprecedented expansion of the definition of debt collector. Suddenly, simply because Western union in all say a connection, not collaboration, Western union was identified by the debt collector and Santander bank actually was, was identified by one of the subsidiaries of Santander as a third party debt collection context, they were, they were viewed to be a defendant, a codefendant that was almost complicit in the charge of this processing fee and by the debt collector.

Rozanne Andersen, Ontario Systems:

And what ended up happening is the court. The plaintiff's attorney said, well, you know what? I think we've, I think Western union is a debt collector. They're visible on the website. They're, you know, all the attributes of a debt collector, or there is an indirect communication and connection with the collection of the debt and the court. This card said, no, no, no, no, no, no. We're not going to start expanding the definition of debt collector to a company like Western union, which gave everyone who is in the processing world, along with Western union, a big sigh of relief, because you don't want to become a debt collector when you're not just like debt collectors do not want to become a allegedly responsible as a payment processor when they are not. We want the phrase, I hear everybody saying, we want to stay in our swim lanes. So what does this mean to you? You do need to stay in your swim lane. If you're the debt collector act like one, if you're a processor take responsibility for being one, there's no insurance more effective than that, which is achieved by meaning teeny and clear lines of

responsibility between all parties in this processing framework. That's those are my words. It doesn't come from a case. I'm just a comment.

Rozanne Andersen, Ontario Systems:

So let's talk about some of these details, a state surcharge law debt collectors do not intentionally charge surcharges, assess church surcharges. And I say it this way, a surcharge is also known as kind of a checkup fee. Remember that toy store that I was talking about that actually doesn't, I think they closed down because of covert, but they were in Annandale, Minnesota, that, that toy store, if it had stepped into the world of card processing processing, it would have thought about, is there any sort of an extra fee I could charge when the consumer is paying by credit card, for example, that would at least cover the costs that I have to pay for processing that credit card payment. Well, that, that extra charge placed bottom by a merchant on a, on the price of goods sold, or the service sold is called a surcharge.

Rozanne Andersen, Ontario Systems:

In many States, the card brand rules have a specific section addressing who and when is surcharge meet, who can assess when it, when it can be assessed five Dodd two bout one. I think it is the surcharge law is this, this it's kind of this incentive to pay by cash and a dis and a way to discourage payment payments by credit card in the States of Colorado, Connecticut, Kansas, Maine, and Massachusetts, the surcharges are banned, lawful but risky because of the murkiness of the law. And the lack of clarity would be present in California in New York, Texas, and Florida, but they're not States that I would ever put in the band category. But what I want people to hear at this point is a sadly, I'm sad to say that when legislators, state legislators actually craft the language for these darn surcharge Eliza's laws, excuse me, surcharge laws, they use the word merchant or seller we're gender seller.

Rozanne Andersen, Ontario Systems:

And what have we been talking about? You've got pay facts that are merchants. We've got some merchants that are out merchants. We've got merchants all over the place when it's, when you start to talk about card processing. So anyone who is conservative and their interpretation of the law would want to recognize that even though you don't think you're a merchant in terms of selling something like a toy, you are the debt collectors are merchants in the sense that they are providing a service pay facts are emergence in the sense that they are providing service, the original creditors, a merchant, because it is providing a service. And because of all the three parties to this process could all allegedly be merchants. My personal opinion, not my legal recommendation, because I cannot give you legal advice, advice, and you can't rely on my comments such is that avoid Colorado, Connecticut, Kansas, Maine, and Massachusetts.

Rozanne Andersen, Ontario Systems:

And I would not dabble in the world of surcharge, subject to your lawyers approval. Yeah. Now let's take a look at convenience fees. Again, convenience fees now are also recognized and addressed in the card brand rules under I think it's, I think surcharges five.one.one. Then now we're into five.one dot two. And this is the rule that the card brands I've already talked about. The FTC FTC CPA's concerns about convenience fees, and it doesn't really give any, any of us, a green light to assess convenience fees as the merchant, as the third party debt collector, in my opinion. However, let's see what the card brands do say about convenience fees, because maybe somebody in this processing environment can charge that fee. It says, first of all, a convenience fee has to be charged for an actual convenience. It has to be in

the form of some kind of an alternative payment channel outside of the merchants customary payment channel.

Rozanne Andersen, Ontario Systems:

So for example, one of the original exempt I'm saying example twice in the same sentence, forgive me. But one of the examples that they've used in explaining this rule is that for example, if you are a museum and you have tickets at a ticket window, that people can come and buy and, and, and, and now you suddenly offer an online version for buying tickets to the consuming public. Now they explained that if your customary channel was coming to the window of the museum in LA, you know, in person kind of a point of sale kind of exchange and there is no charge, but then now you go to the website, the, the museum's website, Oh, look at that. Now there's a convenience fee charged by that merchant for the convenience of being able to pay online. So what we're going to be looking for, whatever we talk about a convenience fee being assessed is in it, in fact, a convenience and is the merchant who is assessing that fee actually, is this an alternative payment channel or not?

Rozanne Andersen, Ontario Systems:

The convenience fee also has to be added all the way to a transaction that's completed in a card absent environment, the kind where you're not standing there and point of sale in the museum example, not charged at the merchant, operates exclusively in a card absent environment, because then it really wouldn't be all that convenient. What it's marrying the point of sale, kind of that example of the inconvenient way to buy a ticket with the convenient way to buy a ticket or the inconvenient way of paying a debt like by writing a check and putting, finding envelope and teaching the person how to address an envelope. I know that's a little condescending, but that seems to be a reality in today's world and buying a stamp that's inconvenient, but a convenient way to handle the movement of that payment would be by perhaps the credit card processing charge or a processing approach.

Rozanne Andersen, Ontario Systems:

So anyway, and guess what, it can only be charged by the merchant that provides the goods or services to the card holders holders. Now, this is where I'm going to ask you to join me in this Minecraft exercise. What I mean by that is that, and I'm going to say it in a way that I don't mean to sound as basic, but sometimes if I don't understand it in basic terms, then I can't understand it. So this is why the way I look the way I digested this information, if we're talking about the creditor that sold the goods or the services, or extended the opening credit card to the consumer, then if they're charging the convenience, that original creditor, then that, and then, sorry, as a card brand rules, and they would be charging as a merchant. They're a merchant that's charging a convenience fee for their goods or services in the world of DEC third party debt collection.

Rozanne Andersen, Ontario Systems:

I mentioned earlier that debt collectors are merchants too, or submergence, but legally they're in the same boat for purposes of interpreting these visa card, the visa, MasterCard card brand rules. But anyway, the merchant, guess what? It's services, it's the service that it's actually providing to the creditor of collecting the debt. I don't know that we can make the it's tough for me to make the argument that the service that the debt collector is performing is really a service to the consumer to help them pay the debt. I think it's a little bit of a stretch, but regardless, we've got the empty CPA hanging over our head, and it's pretty much saying don't charge convenience fees, period, no matter how kind by the way I talked to someone recently, no matter how lovely and generous you are with your

explanation of the fee, if it's being assessed by the third party debt collector, it better be in the underlying agreement between the consumer and the creditor, or you find the state and then call me because I can't find the state where it's expressly permitted by law.

Rozanne Andersen, Ontario Systems:

Now in the payback situation, there's another, there's a service taking place there. And guess what it is, the payback can be positioned in front of the consumer to offer a service of processing a card fee so long as it is an alternative payment channel outside of the merchant's customary payment channel and not charge solely for the acceptance of a card and that amount can be added to, Oh, this isn't important. The last bullet about a domestic unintended transaction. I mean, it's important, but I don't want to go into the right side of the side. The, the fee would be applicable, no matter who's charging it. It has to be applicable to all forms of X payment accepted in the payment channel. So you, you can't actually say I'm charging a fee for American express and discover because I hate those cards. By the way, I don't really mean that I hate them, or you hate them, but just if you're thinking is costume, I don't want to deal with those guys.

Rozanne Andersen, Ontario Systems:

I only, I'm only an accept a visa credit card. You can't do it that way. And then there are some rules about how, how, how, and when you can limit it to only accept visa, only accept MasterCard, only accept, discover. And there are certain rules as to why, and when you may not be able to be forced to charge, let's say the discovered American express, we're not going to go into that, that you can work out with your visa representative or your payphone. Now the fee has to be disclosed clearly to a card holder, as a charge for the alternative payment channel and for that convenience. And it has to be disclosed before they complete the payment transaction. The card holder, the consumer has to be given the opportunity to kind of back out of this. And it has to be included as part of the total amount of the transaction and not collected separately.

Rozanne Andersen, Ontario Systems:

So here's where I have gone round and round with people. I simply adore in our industry, but when I'm talking about a pay FAC charging, a consumer, it convenience fee for processing a card payment, they are the merchant, it's their service. And that, for that reason that it says here that the total amount of the transaction can not be, there is no separate to the service. The cost of the service offered by the payback is the convener is the kick out of the convenience fee to the consumer. They're not buying anything else. They're buying the service so that you don't have you can't and should not merge this into the debt collectors payment amount, because guess what, what will, what will that look like? It will look for, well, first of all, the Caribbean rules say, it must be disclosed separately. Second of all, you don't want to have your, all these transactions showing up on the consumer statement as payable to ABC collection agency has charges to you.

Rozanne Andersen, Ontario Systems:

It would show up as a charge to ABC collection agency for the principle amount, in my example, of \$100. And if the charge was actually a sales legally and properly with the appropriate scripts by the payback, it would show up Emma on the consumer statement as a separate charge for \$5. You may example to the payphone. So the consumer can clearly see who charged that fee. Also, it's not charged on a recurring transaction or an installment transaction. You know how I said, I hate, I never thought I would have to keep learning whole new bodies of law. Well, that's because it's tiring and what I do, and it's my job. And

I love it. But as recently as this past January, the rules, the, these, the MasterCard basically passed a chiton, enacted a change to their rules, that if anyone had any doubt about what they meant about a recurring transaction, and the fact that you can't charge a fee on a recurring transaction, they put it in plain English. They said, we'll show you on the slight affective, January 20th, a transaction, and a series of transaction that represents cardholder agreement for the merchant to initiate one or more future transactions over a fixed period of time for a single purchase of goods or services or the repayment of a single debt. Basically they have changed the definition. You go back a slide.

Rozanne Andersen, Ontario Systems:

Yeah. This is where they have changed. The dish definition that effective on January 20th, you, you can't that the card processor, nobody can be adding these fees to the recurring transaction. So my test question on the left side, which I'm not literally going to pull you, but with regard to charging a third party processor charge fee, with regard to that fee, who is the merchant?

Rozanne Andersen, Ontario Systems:

The merchant is the third party processor, not the collection agency, not the creditor in our world. In this example, I'm going to go into it a little bit more detail. The actual party charging the fee third party processor charge fee is the third party processor. Now I'm going to pause for a minute and explain to people that the addition here was they added, if you don't unders, if not you, but I would say me, if I was confused about what they meant by prohibiting a charge on recurring transactions, they expanded the definition of recurring transaction to include this statement. And it applies for any single purchase of goods or services or the repayment of a single debt.

Rozanne Andersen, Ontario Systems:

So that is where we land with regard to the visa rules and the, the card brand rules, I should say. And the charging of a third party processor charge fee. But before I move on, what I wanted to explain is that there are many names for, or, or, or marketing terms used for the third party processor charge fee. One could have a re could actually refer to who is paying the fee, the card holder, the merchant, the biller, whatever. There's no that sometimes they talk about it as a no fee or a lack of a fee, or, or they might say it alternatively like a card holder C as opposed to anybody else's fee. But regardless of what we call this thing, when, when we are, when it is a charge for, for purposes of understanding the rules and how they apply to you as a third party debt collector, or as anyone else in the processing chain card processing chain, if it's, if you're the third party processor, if you're not the debt collector or the merchant, and you're charging the fee, then you're, this is happening under your status as a merchant.

Rozanne Andersen, Ontario Systems:

And that's why the law is applied, or the regulations apply to you that way. Now kind of just summarize merchants in submergence are legally permitted to charge consumers, a convenience fee to process credit and debit card payments. But third party debt collectors are the only category of merchant I can find or submergent who can not charge the convenience fee, but it's not because of the card brand rules is because of the FTC PA third party process or charge fee model. That model is a business model where the payment facilitator or another party in the processing chain is actually presented to the consumer so that they, the card processor or the facilitator charges, the fee to the consumer gets their permission. And before they have final, before the consumer says, go, yes, go do it. Yes, I'll pay this way that the processor gives them a chance to back out.

Rozanne Andersen, Ontario Systems:

Now, the other thing I wanted to mention we'll cover it in one or other side, but the third party processor is the one that owns decision rights regarding the amount of the convenience fee. Guess why? Because they're charging the fee. Now, obviously, if their fees are, I'll just say goofy, cause that goes with my personality. If their fees are goofy, no one's going to want to use them. No, you know, it's not going to be all that appealing if it's like a \$5,000 convenience fee. I mean, that's just ridiculous fees do need to be reasonable. Remember you DAP, if it doesn't smell right, if it doesn't play right, if it causes material harm or the consumer basically has no other choice. I mean, you're going to get nabbed if the fee is unreasonable, but there's no definition of reasonable. We do know there's one case where a party was charging a \$17 95 cents convenience fee for processing the credit card payment.

Rozanne Andersen, Ontario Systems:

And the CFPB did not ding them for that. It wasn't the amount it's because they forgot to present the free option. Now that's a different case, a different, but the dollar amount is what I want to emphasize, not a complete rundown of the facts of that particular case. Unless of course you want to reach out to me and I can provide it to you anyway. So what do we know to date? We know these bullet points and we know that the convenience fee cannot be charged on a recurring transaction. We know that in a third party processor charge fee, the merchant, the processor is a merchant and therefore the merchant can not charge a processing fee on the recurring transaction, which includes an installment payment, which is a series of transaction for the payment of a, of an amount or for a single purchase of goods or services or the repayment of a single debt.

Rozanne Andersen, Ontario Systems:

And so they can't charge those. Let's say the convenience fees on all of those recurring payments as the third party processor, nor does anyone else for that matter because the card brand rules prohibited, the Caribbean rules do not express the prohibit, the charging of that convenience fee on the first payment, in the series of a pre-authorized recurring electronic funds transfer, or the first payment in a secured payment arrangement. For example, one that is secured by a credit card, if you were talking about, if some of you are wondering, but, but, but we don't even do those secured payment arrangements. Oh, we do. We have, we have consumers set. Well, we have consumers, debt collectors still cannot charge the fee, but oftentimes debt collectors set up unsecured payment arrangements with the consumer when those payment arrangements at once. So what that would mean is that if I'm the consumer, I agree.

Rozanne Andersen, Ontario Systems:

All right. I agree. I will pay \$200 a month on the 15th day of the month, beginning October 15th for the next six month months. And, but I don't give you a credit card or debit card or anything else to go with it. I just say, I promise, I promise I'll do that. Yes. You can send me a reminder by text. I love that. Great. That's not a secure transaction. So that means that when the card processor comes into the picture, they could present each time, the opportunity, if the consumer chooses to pay that by credit card or debit card, they could present the third party processor charged me fee model in that instance, because it is not a secured series of transactions by which the card processor, for example, will not have any other interaction with the consumer. They will actually have interactions for all of those payments, if they want to charge, if we want to set up a third party processor change fee.

Rozanne Andersen, Ontario Systems:

So let's moving on, do the visa rules permit a payment facility to charge a convenience fee? Yes, but they do place those conditions on it. And it can only be charged for if it's a real convenience. And if there's an alternative payment channel outside of the customary payment channel, and it can't be charged solely for the acceptance of a card, do the recent MasterCard rules or any law or regulation prohibited, restrict the amount of the convenience fee? Well, this a MasterCard do not play conditions on the amount of a convenience fee. There are some instances where some calculations come into play when you're talking about a service fee, but I will tell you meaning the reference at the very bottom of the slide, the visa MasterCard rules do allow service providers in some instances to charge a convenience fee equal to a flat fee or a percentage of the payment.

Rozanne Andersen, Ontario Systems:

So for example, there are instances where a percentage or a flat fee can be charged. For example, if you're a third party processing a payment for a governmental body, I think there's a university schools, universities, there are about nine different categories of people that fall into a special, unique category where a percentage may be charged, including the charge for the convenience. FEMA, that's not for the audience today. In fact, when we described our service population for Ontario Systems at the outset, we said that we service the army industry in the health care industry. I specifically excluded the governments industry that we serve, but at both the federal and state level, because I do not want any confusion about the, this information as it relates to government collection activity. And they do under the vast visa MasterCard rules, they do require a convenience fee charged by the merchant to be a flat fee.

Rozanne Andersen, Ontario Systems:

So as we talked about this as a January 20th, the rules made clear that the merchant is prohibited from charging that flat fee on each payment and the recurring payment rearrangement, but he only get to that rule if you can charge the fee in the first place. Let's see covered that. Just explained it. Now we're going to take a breath, the breathing, if you will. And I would like to know Ben or Mike, my compatriots on this particular presentation, if we would like to pause if there are any questions before I get into the topic of electronic payments, which may be a review for our audience in some instances, which I'm welcome to have you join me in the review, but I thought I'd stop right now for just a second. Ben or Mike, do we have any,

Mike Bevel, insideARM:

Yeah, we have three questions that I can actually four questions four questions and two comments. I'll start with the questions first. So someone asks, so I have provided a service of managing a payment plan for a consumer and have a packet of accounts, multiple debts from multiple creditors predators. It is not a single debt. Now what's confusing for me is there's not a question Mark at the end. I think it might be a question

Rozanne Andersen, Ontario Systems:

Under our analysis, when you tie accounts, package accounts provide that service of managing accounts as a third party debt collector, they interpretation is that it is nonetheless a single debt because the payment arrangement has turned it into a single day. It's not because if you broke it out and set up five payment arrangements, I would probably response, which is just my, our interpretation of that law. But the rationale is, is that you have taken five deaths, put them into one, then set up a payment plan and it

becomes effectively a single debt, the more daring perhaps adventuresome person, they interpreted differently, but we do not. And that's the reason

Mike Bevel, insideARM:

What if they are paying multiple debts in a payment arrangement. And I think you sort of just answered that a second ago.

Rozanne Andersen, Ontario Systems:

It is, it's kind of the same answer. Yup. Yup.

Mike Bevel, insideARM:

And then what are the rules around the third party processor sharing the convenience fee with the merchant sub-merchant third party collection agency.

Rozanne Andersen, Ontario Systems:

Okay, good question. And then I'm going to go back to that multiple deaths. Cause I want to comment on something the third party processor sharing in that fee. Legally, the third party processor could do whatever they want with that fee. Now you make, I I'm, I'm using this as an example. I'm not seriously giving a legal answer in this manner, but I want you to get my point. The third party processor has made a decision to offer a service where on these certain convenient types of payments, this is what, this is what happens. They would say. Yeah, you know, we charge consumers when they want to check process of payment through us, we charge convene consumers, a convenience fee, mr. Debt collector. So the debt collector says, well, what's, I'll say it this way. What's in it for me for a split second, I'm going to say nothing.

Rozanne Andersen, Ontario Systems:

And this is why I want to say it this way. The third party debt collectors out there in the marketplace offering it services. And if the debt collector wants to hire that third party processor or the payment facilitator, if it wants to work with that this is really what's happening. And I want, I didn't mention this in the taco, what you would be effectively doing. This is the talk off with the D whether it's in a portal and IVR and IVA or a live agent talking to a consumer, this is effectively how it's coming across. Oh, hi Mike. You've agreed. Oh, would you like to pay by credit card today? Well, yes. I think that would be most efficient and convenient for my purposes. And then I would say as the agent, well, we use a third party to process payments card payments, but they do charge a fee.

Rozanne Andersen, Ontario Systems:

The fee is fill in the blank and you will you need to consent to that fee. Should you want to proceed with hitting this card payment or setting up, you know, whatever, making this payment today and then Mike would say yes. And so I want you to understand it's a third party processor. I would like to say the name of the pay FAC that that I'm not, I'm just going to say it. The name of the third party that's going to charge this fee is actually the name of it is happy payments and it's. And then the consumer says, okay. And then the agent says, the reason I tell it, by the way, you can shorten this. So you wouldn't make any money if I was your debt collector. But anyway, the idea is, is that then the, then the agent says, well, just want you to understand this payment that you processing, that you're paying today, Mike and he run to you.

Rozanne Andersen, Ontario Systems:

You've agreed to pay this convenience fee to the third party that will show up on your statement as \$100. In my example, to ABC collection agency, who I worked for and the other \$5 fee that I just disclosed, you will show up as a separate item on your chart, on your statement. Do you understand that Mike? Yes. Now the reason as an aside and whispering to you as an audience, the reason is, is because we do not want to see in our industry, excessive chargebacks. Now, chargebacks are not good for anyone's reputation, not the merchant, the origin, the payment facilitator, the acquiring bank. Nobody, no way, no, we don't want excessive chargebacks. And one way to mitigate the risk, the excessive chargebacks caused by confused consumers where you're literally presenting them with an extremely cogent opportunity here. The one way to do, to mitigate that in the third party processor church fee model is for the debt collector to actually tell the consumer that.

Rozanne Andersen, Ontario Systems:

So they're not surprised like who the heck charged me \$5, even if it's only 30 days, I don't necessarily remember that. So that's an awfully long answer, but that's the reason now at the end of the day, can that payment facilitator make an arrangement with the parties, such as the debt collector to reduce the amount of the transaction fees, it would normally be paying for processing its payments through that third party, the pay FAC yes, they can. As to the amount the cut, the pay, the how it's set up that varies by do you know what it really varies by your line of business, your client's line of business, et cetera. Now, I just want to throw in here a couple of real tidbits. I have heard people say, Oh, Oh, Oh, our clients will not let us charge convenience fees. Okay. I know that I'm not in your shoes, but you're not charging the convenience fee.

Rozanne Andersen, Ontario Systems:

So if they, if you really have the pay FAC or the third party processor, you know, the third party is charging the convenience fee. That's what I've gone through. All this explanation. If I were targeted the creditor, I could say to the creditor, I understand you may, you may feel that your consumers have been presented with enough hard knocks. And this year with Colvin that you don't even want them presented with the third party processor charge fee model, but that's a different state. That's a different than saying the co the creditor saying, well, you can't charge it because you are not charging it. So some people will say for some of their clients, they absolutely use the third party process or charge fee model. And there is no issue, but you may have a few clients that say either we don't understand it, or we're not ready for it.

Rozanne Andersen, Ontario Systems:

Or we simply don't want are whatever the category client, the consumer is. We don't want those people to even have to pay it. We would, we would prefer that you eat that charge if you want our business, mr. Collection agency, that's the honest answer, but yes. Can there be a fee arrangement that reduces the amount that you, the agency would pay that pay FAC or processor for moving processing those payments sheets month? Yes. The other thing I wanted to mention, nobody in Ontario really agrees with me on this, but I'm not. I get why we package and tie accounts believe me. I do. But if anyone has read the new rules for debt collection, you will notice that week. If, if they go through as presented, for example, you can attempt to call seven times per day per week per debt. Alright. I think we're going to have a hard time saying that if you package five debts into one, that you can still call 35 times a week.

Rozanne Andersen, Ontario Systems:

No, I'm not even saying I'm a proponent of calling 35 times a week. I'm just saying the way in the worlds are presented as it's a safe Harbor to call seven as presented, please hear me. These are not the final rules yet. We're waiting at the edge of our chair for the final rules to drop, but as proposed, it was seven attempts per week per debt. So I'm going to, what's the word postulate, or just opine. It is possible that we may be moving into a completely different way of organizing and collecting our accounts. Not sure just throwing it out there. And so when you reach your own conclusions about whether it's this payment facilitator model, whether it's the third party charge process or charge fee, or whether it's how you package present and call your, your accounts and call your consumers, you really need to internally wrestle with these decisions. But as it is there is, in my mind, the third party processor fee model done properly is absolutely permitted under these card brand rules. It's acceptable for the, with done properly for your payment facilitator to assess that fee. And you need to get consumer approval.

Rozanne Andersen, Ontario Systems:

Sorry. Excellent. Next question. Make sure.

Mike Bevel, insideARM:

Or I think you just answered that one. So let's move on to the one that showed up here. Can you provide the name of the CFPB guidance bulletin?

Rozanne Andersen, Ontario Systems:

Yes, it is. If, while we're on the phone, I'm sure even Ben may be are coast from Ontario may be able to Google it, but if you Google C F P B, that's not that hard CFPB pay by phone fees, bet money, it'll pop up. And, and, and, and if I, before we close, if, if Ben doesn't find it, it's, it's called you got it. Yep. From 2017, what do they call it?

Mike Bevel, insideARM:

Phone Pay Fee Compliance Bulletin 2017-01 for attendees and everyone. I am putting it into the chat if you would like to read it.

Rozanne Andersen, Ontario Systems:

Reading.

Mike Bevel, insideARM:

So we have you have a permissible or no consumer promises agrees to a monthly payment of \$50 on the 15th of each month. We through our payment processing partners, send them a text email on the 15th, alerting the consumer that it is time for their promise to payment, quote, read this convenient fee language and click the approved box, allowing us to process the single payment. If no, what is your opinion? If our collectors call that consumer each month for approval?

Rozanne Andersen, Ontario Systems:

My opinion though, I think it's right. It is normal. Was my opinion. That's all it is. You get what you paid for. You know my opinion is that I have to put a huge caveat on the fact that you have consent to text. So assuming you have consent to text the, and, and this, and you described an unsecured transaction, it's the kind where the person has to remember to make their payment. Every month you can do a text to pay text. And if the wording is proper SAS have the third party processors fee assessed because those

are single payments. They just happen to be agreed upon, but they're not secured. You do need to talk to the consumer every month. You don't have the right to just process that payment. Some people, some processors and paybacks have the card on file. So it's very easy.

Rozanne Andersen, Ontario Systems:

The consumer will agree to the fee or they have the option to pay some other way. You know, quite honestly let's say their maximum credit card bath, they've agreed to pay \$50 a month as you described. It's not secured, but they do have a credit card and Oh dear, it's January 15th and they maxed out their credit card and they've got this golden payment arrangement they've agreed to, they should have the option to still pay you by writing a check. But if they choose to click pay now, you know, the convene and we'd work on the language, but pay now, click here to pay using your credit card like he did the last five times or something. That's, that's fine. It's disclosure, disclosure, disclosure, and it's an unsecured arrangement. It's the same answer for the debt collector who has his age, his or her agent called the consumer each month.

Mike Bevel, insideARM:

Rozanne, I just have a quick, a quick question of my own. On top of this, the way the question is asked is the payment is due on the 15th of each month. And they send a text on the 15th. I thought that kind of notification at some point before,

Rozanne Andersen, Ontario Systems:

Well, that's it, there's two ways. We have kind of a trick question because I was focused on the text and the agent conversation. The it is true. It is true. And I'll get to that later. If you choose to stay on until know until the half hour point, it is true that a third party debt collector, well, no, wait a minute. It's not a posted payment, cause you didn't have the right to do anything without calling the consumer and the text. No, you can do that. Why couldn't you do that? There's an, it might be nicer to do it two days in advance of the day of the agreement for them to pay. Is that what you were getting at Mike, but this is, it's not secured and there's nothing technically the consumer should remember to just pay all by themselves, but the reminder of the text and the agent, isn't it, doesn't, it doesn't trip the FTC CPA because it's not a post date of payment.

Mike Bevel, insideARM:

Gotcha. Okay.

Rozanne Andersen, Ontario Systems:

Okay. Anyway, so next quick, next com comments, quick comments are scary. I'm a kind of a sensitive soul. So yeah

Mike Bevel, insideARM:

Sort of I'm not entirely sure someone wrote the word wrong with three exclamation points and linked to a visa.com visa payment facilitator model.

Rozanne Andersen, Ontario Systems:

I know what they're referring to. I bet it's, I want, we're going to take this offline, but it's the million dollar limit it, the million dollar limit is for there's a distinction between processing. There is a distinction

and in today's world, the visa massacre Cardinals do allow the payment facilitators to process in excess of that amount. And if the person would like to directly email me at Rozanne, R O Z a N N E dot person with an E m@ontariosystems.com, I would be happy to oblige.

Mike Bevel, insideARM:

Gotcha. And that's it that I have right now for questions and comments. Okay.

Rozanne Andersen, Ontario Systems:

So some people have dropped off, but we did agree, Mike, that will go on for those people who may want to just give a review of electronic payments. So I will jump into that. What I really am talking about, I think that this particular audience, by this point in this presentation and all the other ones you've heard you probably are well-schooled that the, you know, an electronic payment is clearly a credit card or a debit card it's. So what we're really talking about oftentimes is the nuances between a single payment or multiple payment or a secured payment, or an unsecured payment as a review. If we are talking about moving money from the consumer's account to the merchant's account, let's say, or the debt collectors account, whomever, when you're moving money, that's a, that's called L that's that's. Those are that's called funds transfer.

Rozanne Andersen, Ontario Systems:

And the act that controls that would be the electronic funds transfer act and the corresponding reg II regulation E so when you set up an electronic funds transfer of more than one payment, meaning it's a series now there's two, at least two payments or more, you need to obtain the consumers authorization in order to debit and move money from their account sequentially on a recurring basis. Without there, like we talked about a second ago without their consent for that individual payment. And that authorization is is Erie includes a number of data points that I will cover, but it does require the consumer to sign or similarly authenticate the authorization and the authorization by saying, similarly, I authenticate that means so sort of a digital signature. And we'll talk about that in a second. The copy of the authorization has to be provided promptly to the consumer.

Rozanne Andersen, Ontario Systems:

I know there's a case that says 48 hours. I like the authorization to be provided within 24 hours to consumer does not have to receive the authorization or a copy of that authorization. In order for you to begin to process those recurring preauthorized funds transfer payments, the FTC VA posted a payment reminder must be provided per payment if you're a third party debt collector. So if that fact pattern of the question had changed that might pose about, can we send the text today? The answer would be no. If that had been a pre-authorized electronic funds transfer, because under the FTC BA you have to send a reminder to the consumer about that payment no more than 10, nor less than three days before that transaction will be processed. Also, if the preauthorized transfer is very significantly in amount or timing then the party that's processing those payments.

Rozanne Andersen, Ontario Systems:

I mean, the, the debt collector who has the right to to launch the you know, to move the money launch the payment, if you will, from the, from the, from the consumer you do have to provide reasonable advanced notice. It's typically at least 10 days, and then you have to provide the consumer with an oral stop payment notice. And that's true with your, if you're in a portal, IVR, IVA live, talk off, et cetera, you have to tell this person that if he, any time, if they want to change your payment, stop a payment or

even cancel the payment plan they may need, they may do so in a couple of ways, easiest way that I like is to tell the person they can do so orally or in writing, they could send you an email too, that's quick or a letter, but that it has to be that you have to have it at least three business days before that cancellation or change will take effect.

Rozanne Andersen, Ontario Systems:

And then there's an option for a written step payment, but it's a little bit more complicated, rarely used in our space. The authorization is valid if it's identifiable as an authorization and the terms are clear and understandable to the consumer, as I said, a similarly authenticated document would be one where it's a signed document, but it's signed electronically. Now, whenever we start to move into the world of signing anything electronically, or even presenting an authorization electronically, we now move into the world of e-sign electronic signatures and global global content commerce act. Before we get into that, let's just refer. Somebody wants to know what is not legal advice, but which, which would be, if you'd like to set up a recurring electronic funds transfer using, let's say the person's bank account or the debit card, you would have to have language in the authorization that says, I meaning the consumer authorized company aid to debit or transfer funds from my account.

Rozanne Andersen, Ontario Systems:

I'd have to say the amount of each transaction, effective date of each transaction. So I can plan for when that will happen. As a consumer, I'd have to include the consumer's financial institution, ABC bank, the account number and the routing number. If you're using a bank transfer if you're using a debit card, you would need to include the debit card number and then revocation language that I just talked about in terms of canceling three days in advance. So this gives you kind of a stop payment. This gives you kind of a checklist for what you should have in your authorization. It's either going to happen in your website and the talk off with your agent. And then you could either pull all these fields into a letter that is generated and sent. Like I said, within 24 hours, does it have to be received?

Rozanne Andersen, Ontario Systems:

Or if you have proper Eastside consent, you could put it in the body of an email, or you could even use a URL associated with a text. Now, the November guidance bulletin, November, 2015 guidance bulletin, which is not the bulletin I was talking about with the fees by phone that make so kindly found and put in the chat. This is a different D that was a 2017 bulletin. This is a 2015 bulletins. And this bulletin is where the CFPB came out and addressed. How, what are the, what are, what is their interpretation of the electronic fence, freight tones, funds transfer act, its requirements, and the requirements for Reggie. I will tell you that I do not associate the guidance bulletin as a legal, as has having the force and effect of law. The court may say, that's all, it's a guidance, it's guidance. It's good for an exam by the CFPB, but it's still just guidance.

Rozanne Andersen, Ontario Systems:

So you really do need to come consult with your own independent legal counsel about the impact of this CF peoples. But I will tell you, we're going to talk about this as, how do you secure the signature is going to be how you secure an electronic signature. I don't know, electronic authorization is addressed in this guidance bulletin and presents you with an option that I am not going to tell you has the force and effect of the law. Now I mentioned that you have, if the person who obtains that authorization for this electronic pre-authorized electronic funds transfers, plural, you provide the consumer with a copy electronically or in paper form. It should match the information that the consumer either heard in the

IVR and it's response to the prompts. But if you send me electronic, send it electronically, you have to comply with the e-sign act and e-sign is that law.

Rozanne Andersen, Ontario Systems:

And by the way, I know I'm going to check your, how many people are on, Oh, we are losing some people. It's still a large number of you are two thirds are still on this call. And whether you digest you signed today or, or tomorrow, it's a question of just when, not whether, because e-sign does not only pertain to electronic signatures pertains to any situation where you are obligated to provide the consumer a document in writing such as a disclosure, and I'll show you what I mean, if any of you because of time constraints do need to drop off. When you look through the deck. After my final picture was six. So kindly inserted into the deck, I have included additional resources, which includes sample scripts, sample taco offs, sample items for you to look at, to help you really walk through your e-sign consent program.

Rozanne Andersen, Ontario Systems:

But for now we will continue to proceed on the East side act itself. Don't read everything right now, but the gist of this is, is that in paragraph C the magical paragraph C it addresses, how do you provide consumer disclosures electronically? It says that if any statute think FTC, PA regulation thinks CFPB new rules or other rule of law, think the electronic funds transfer act. Reggie, if any other rule of law requires information relating to a transaction or transaction being provided to the consumer in writing, then you can substitute the writing if the consumer consents to the substitution of an electronic version of the writing. And before they tell you that they're, they're cool with receiving everything electronically, you're provided, they're provided with this statement, which basically tells them if you were the consumer, I'd be telling you if you'd like me to provide you with your fill in the blank.

Rozanne Andersen, Ontario Systems:

In this case, we'll stick with electronic payments, with a copy of the authorization for your pre-authorized electronic funds transfer arrangement I can do so by text or email. But first before you agree, I really want to walk you through this. You have an option to receive this information in paper form. We can be on this team. This does this authorization. You're granted to me today will apply to the, each payment in this transaction. And I would add any other transaction you may have with his debt collection agency or creditor or hospital, or fill in the blank. You always have the right to withdraw this consent and here's how you would do so, and the procedures. This is what you do. If you want to update your contact information, and you wouldn't say this part, but the idea is this e-sign consent is worthless.

Rozanne Andersen, Ontario Systems:

If you actually can't send the information to a email, any email, or a mobile number that actually is associated with the consumer, for example, they don't have that email address anymore. So they actually have to, they impose a duty on the part of the consumer, and that gets him to a whole new conversation, but there's a way for the consumer to update their contact information. If during the term of their relationship with you, they would like to substitute the first email address they gave you for e-sign with another one, same with a mobile number, underscore the CFPB new rules expand upon the requirements of Nissan. It, you sign in an interesting way, but nonetheless, they embrace it because you're either going to obtain it for these required disclosures written disclosures to East side directly come from the consumer, or you will be obtaining it from the creditor or a prior debt collector who

otherwise obtain the signed consent for the particular and could have used it for the particular debt you are collecting.

Rozanne Andersen, Ontario Systems:

So sadly I've accidentally memorize the proposals. So now you also have to explain the, if you're going to give me a text number, you need a smartphone that can receive texts, you know, that kind of thing. Now the last thing you need to really make a sign happen, you have to, the consumer has to demonstrate they actually can access the phone. So you could shoot them a text at this point and say, I'm going to shoot you a text to demonstrate that you have that you have access to this mobile number. Mary, will you do that? Yes. Okay. So I, Phil send a text to the mobile number and boom, Mary, while we're on the phone, would you just reply, just send it back to me and boom, I know this text works for you, or you could do that with an email. So that is some substance of electronic payments, preauthorized, electronic funds transfers kind of the, at address, the difference between providing some of these authorizations and required disclosures by snail mail versus when you would like to substitute by email or mobile number. And at this point I would entertain other questions. If we have any,

Mike Bevel, insideARM:

We have a couple. So here we go with a pre authorized payment plan using a credit card, not a debit card, is, is it correct? EFDA would not apply, but do you still need under the merchant agreement to obtain a written authorization and to provide a receipt?

Rozanne Andersen, Ontario Systems:

Great question. And I'm going to ask you for purposes of our audience, not me at this time, but for audience really read each of those words clearly, because this is a super cool question. So just read it one more time, like,

Mike Bevel, insideARM:

All right, with the preauthorized payment plan, using a credit card, not debit, is it correct? EMTA would not apply, but do you still need under the merchant agreement to obtain a written authorization and provide a receipt?

Rozanne Andersen, Ontario Systems:

So the answer is that is the person is correct. The electronic funds transfer act and reg E would not apply to a preauthorized payment arrangement secured by a credit card because it's not an electronic funds transfer. It's a, it's kind of like the consumer is borrowing money, not moving money out of their account to you. So you're right. You don't need that long authorization and you don't need, as you don't need, you don't need to have some sort of a signed document either what you do need at a minimum. And this is true for NACHA rules for NYCHA purposes, as well as credit card brand rules. You, you, you would need some evidence so that you could pull back, pull up and show or explain where on hers, you got the authorization to charge this credit card every month for some amount. And so that can be done through an oral recording. So when we talk about, when it's nice to have an oral recording, it's for a single credit card payment authorization is for a recurring credit card payment authorization it's for a single debit card payment authorization, but it is not good enough for a recurring preauthorized like debit card, you know, electronic funds transfer authorization. So I hope that helps. I think,

Mike Bevel, insideARM:

So this is related and maybe you just answered it and I am a very handsome, but not very smart. Do you need an easy sign consent agreement for each transaction? Are legal documents sent or can you obtain one consent and then continue sending legal documents?

Rozanne Andersen, Ontario Systems:

Well, here's the deal what's wrong with me. Okay. Nope, really is the lot itself. Well, no, I'm not. I took that up anyway. Here's the answer to your question. If I were community, if I were your debt collection agent, and you wanted me to obtain broad consent for e-sign for working with this particular consumer, I would not want any language to come out of the debt collectors mouth that said when, when giving the consent, see on this slide, identify whether the consent relates to a particular transaction and what I should add. And I will, before Mike sends it out or transactions plural. So let's just say, I'm the agent and I'm talking to you. And I would say, Oh, you know, would you like to communicate with our agency about your debts using, using I'll say email or text, and you say yes.

Rozanne Andersen, Ontario Systems:

And I say, well, you know, there's a variety of informal documents that we tend to send you in over the course of our relationship here is we're collecting your hospital bill, for example. You know, sometimes you might just want a copy of your statement for your records. You might want a receipt. Sometimes we have to send you legal disclosures. So that's just has to do with the fact that we're debt collectors. And so can I obtain if I put in order for me to obtain that kind of broad consent in say broad, but in order to obtain that kind of consent from you, I just want you to know that I have to have present a few things to you and then you just simply have to agree. And so I would say that this is going to this kind of consent, cause he signed consent that I'm getting, it applies to this transaction, this debt, all the debts in our agency now or in the future.

Rozanne Andersen, Ontario Systems:

And it applies to a variety of documents such as our validation notice or our post date of payment notice or Reggie confirmations. I mean, you don't have to list all that, but do you have to make it very clear? And I say this to people a lot of times I'll say it this way, what you don't want to do, whether it's consent to email me, just because you want to be able to email me or the person that asked about, can we just text people every month for these unsecured as just kind of a precedent with a text to pay option? What you don't want to do is to get this narrow, narrow consent like Bob, could I have your consent to text you about next month reminder? I mean, that would be insane. That would be, that would be awful because even if you think you were just obtained consent broadly, you just didn't, you just limited to next month reminder. So I liked the question I liked the way you're thinking. I strongly suggest that you work with outside counsel or study this deck or do whatever other than listen to me, but really come to grips with how you want that language to be used, because it could be the biggest savings of postage and envelopes and paper than you can imagine if you can nail e-sign properly.

Mike Bevel, insideARM:

All right. There are two other questions, Rozanne, but I'm going to send those to you and then send them out to the group because we are out of time. But I, we had some great questions and some great participation and I really appreciated all of that. I want to thank everyone for registering and showing up for today's webinar. We really can't do these without an audience because it's weird. I also want to thank Rozanne Andersen from Ontario Systems. I literally always leave a presentation she's on knowing more than I did going in. If you have questions about the content in today's presentation or suggestions

for other webinar topics, you'd like to see covered, you can send those to [en bevel it inside aaron.com](mailto:enbevel@insightarm.com). Rosanne also kindly provided her email address. I put that in the chat. I believe it's also on the final slide and this presentation will be up on insight arm site for you to rewatch. And with that, we did it. You can safely disconnect from this webinar. You princes of Maine, you Kings of Newburgh so much.