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FORECLOSURE AFTERMATH: PREYING ON SENIOR HOMEOWNERS

HEARING

BEFORE THE

SPECIAL COMMITTEE ON AGING
UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

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FORECLOSURE AFTERMATH: PREYING ON SENIOR HOMEOWNERS

WEDNESDAY, FEBRUARY 13, 2008

U.S. SENATE,
SPECIAL COMMITTEE ON AGING
Washington, DC.

The Committee met, pursuant to notice, at 10:30 a.m., in room SD–628, Dirksen Senate Office Building, Hon. Herb Kohl (chairman of the committee) presiding.

Present: Senators Kohl, Lincoln, and Smith.

OPENING STATEMENT OF SENATOR HERB KOHL, CHAIRMAN

The CHAIRMAN. Good morning to everybody. I welcome you to our hearing this morning.

We are going to commence the hearing. But I need to inform you that at 10:45 a.m. approximately, we are told there is a vote on the floor. When that occurs we will have to have a temporary recess, hopefully not for very long.

This morning our Committee will focus on a new type of financial fraud that has sprung forth from our country's mortgage crisis.

As Americans strive for financial security in their later years, many are falling short. Perhaps their retirement dollars are not stretching as far as they had hoped for, or medical expenses are overwhelming them.

Whatever the reason, more and more older Americans are falling behind on their mortgages, and they find themselves facing foreclosure. Across our Nation, foreclosures have increased by 95 percent in just the past year.

Because foreclosure filings are public information, scammers target the already troubled homeowners, contacting them by phone or mail repeatedly with claims that they can help the homeowner stay in their home. These financial predators say that they can help "save" the home of a person or family experiencing foreclosure. They create a sense of urgency and say that there are no other options. They tell the homeowners not to contact their lender or to seek legal advice. In the end, these predators walk away with both the title and equity of the home.

Senior homeowners are particularly vulnerable to rescue scams because many of them are on fixed incomes and rely on the equity in their homes as their primary financial asset. They are also particularly attractive to financial predators because they tend to have a larger amount of equity in their homes.

Older homeowners are also more likely to experience foreclosure in the first place because, according to a study conducted by AARP,

seniors are three times more likely to have subprime mortgage loans than younger borrowers. The foreclosure rate for subprime loans is much higher than prime loans because they carry a much higher risk of default by the borrower.

The mortgage foreclosure crisis is real. Most communities across our country are experiencing both the primary and the secondary effects.

In my own State of Wisconsin, over 17,000 homeowners filed for foreclosure in 2007, an increase of 131 percent from the year before.

Recently, the mortgage giants joined the Administration in announcing a plan to help seriously delinquent borrowers stay in their homes. While this is a step in the right direction, there are concerns that this help will not reach as many troubled homeowners as possible.

Today we will hear from a local man who was the victim of a foreclosure rescue scam. Thankfully, his case was recently settled. But this is a rarity. We will learn about why it is so difficult to litigate cases against these financial predators, and we will hear about limitations of current State and Federal laws.

We will hear from the realtors and the mortgage bankers, who have seen the effects of the foreclosure crisis up close. Our witnesses will also highlight the steps that individuals must take to avoid foreclosure as well as to prevent being victimized if foreclosure is inevitable.

Finally, we will hear testimony from the Federal Trade Commission about their programs designed to assist homeowners in crisis.

We need to determine how Federal and State Governments can best protect seniors and other targeted populations from these ruthless financial predators. I am currently working on legislation that would help homeowners across the country avoid these foreclosure rescue scams, especially in States where no law exists to prohibit or to regulate these practices.

We thank our witnesses for being here to take part in today's hearing. At this time, I will introduce our panel of witnesses.

Our first witness will be Mr. Walter Malone. Mr. Malone has lived in the Washington area since 1953. In 1960 he began a construction business with his brother, and he still works as a contractor under the trade name of Malone & Malone Construction. A devoted member of this community, Mr. Malone lives in Southeast Washington.

Next, we will have Catey Doyle. Our second witness, Mrs. Doyle is not only the sister of Wisconsin's Governor Jim Doyle, but she is also currently the chief staff attorney for the Civil Division of the Legal Aid Society of Milwaukee. She is the lead attorney for the A-LINE Project, which is Advocacy for Low-Income Neighborhood Equity, of the Legal Aid Society. She is supervising a comprehensive study of one recent foreclosure in Milwaukee. As a fellow Wisconsinite, of course, I welcome you, and we look forward to hearing from you.

Thomas Perez, our next witness, is the secretary of Maryland's Department of Labor, Licensing and Regulation. Secretary Perez is a nationally recognized consumer advocate and civil rights lawyer. He has spent over 12 years in public service, the bulk of which was

at the Department of Justice where he prosecuted and supervised some of the Department's high-profile civil rights cases. He later served as Deputy Assistant Attorney General for Civil Rights under Attorney General Janet Reno.

Next, we will have John Anderson. Mr. Anderson has been a licensed realtor with Twin Oaks Realty in Minneapolis since 1980. He has been recognized as the State Realtor of the Year. Mr. Anderson is a long-time proponent of sustainable home ownership and affordable housing finance programs.

Next we will have Rachel Dollar. Ms. Dollar is a California attorney, a certified mortgage banker and a recognized expert in the mortgage lending industry. Ms. Dollar handles mortgage fraud litigation for lenders, and she supervised mortgage fraud and RICO litigation in the Federal courts. Furthermore, Ms. Dollar was recognized in each of the last 3 years by Inman News as one of the 100 Most Influential Real Estate Leaders.

Finally, we will be hearing from Peggy Twohig. Ms. Twohig is currently the associate director for the Division of Financial Practices at the Federal Trade Commission where she is responsible for overseeing enforcement of the FTC Act and other consumer protection laws. Ms. Twohig received her law degree from New York University School of Law and her master's in public policy at the Woodrow Wilson School of Public and International Affairs.

We welcome you all for being here today.

We will start with testimony from Mr. Malone.

STATEMENT OF WILLIAM MALONE, MALONE AND MALONE CONSTRUCTION, WASHINGTON, DC

Mr. MALONE. Good morning, members of the Committee.

My name is Walter Malone. I am 72 years old and have owned my home here in D.C. at 1606 A Street since 1994. I grew up in Sussex County, VA. I moved here in 1953. I have worked in the construction business all my life. I have owned my construction company in D.C. since 1960. I am married, the father of eight children; most of them are grown now.

I bought my house for about $100,000. It is now worth about $400,000. In early 2002, I had a problem in my business. I had been working on a major job for several months but wasn't getting paid at all because there was a problem with a lien on the property. Each week, I thought the payment would clear, but it didn't clear soon enough. I got about 3 months behind in my mortgage payments and got a notice of foreclosure.

I was looking into refinancing my mortgage and even into filing for bankruptcy, when I was visited one day by a man named Calvin Baltimore. Mr. Baltimore told me I didn't need to refinance the mortgage. He promised that he could lend me the money to stop the foreclosure and do some repairs also on the house. He told me, "That is what we are about—helping people."

Even though the offer sounded good, it was hard to understand. Mr. Baltimore promised that the house would stay in my name, and everything would stay just the same. At the same time he talked about how much I would have to pay to buy the property back.

I didn't take Mr. Baltimore up on his offer right away. For one thing, my wife told me she didn't trust him. I kept thinking the construction payment owed to me would come any day. I did consult with a bankruptcy attorney, and I learned that I could stop the foreclosure by filing bankruptcy.

The week went by, and the pressure inside me built up. About a week before the foreclosure, Mr. Baltimore came back. He noticed the religious pictures on my wall. He told me he was a believer himself, that he had been a preacher, and his uncle was a preacher, a pastor in a church in Annapolis. This made me feel connected to him. I trusted him because he said he was a believer. He said things that made me feel like I would be doing something wrong if I filed for bankruptcy. He told me, "Don't mess yourself up like that Mr. Malone."

As the foreclosure date got closer, the pressure built up on me. A week before the foreclosure, I signed some documents Mr. Baltimore gave me. A few days later, I signed some papers at the office of Vincent Abell. I learned later that one of the documents was a deed that signed my house over to Mr. Abell. But all Mr. Abell ever paid was about $10,000 to the mortgage company to catch up the mortgage. Even though the deed says he bought the house for $157,987.00, he gave me no money at all.

The worst part was that, even though he was on the deed to my house, the mortgage was still in my name. The papers said I had to pay my mortgage payment plus a few hundred dollars more to Mr. Abell every month. They also said that, if I made all payments on time, I could buy the house back from Mr. Abell within a year for $215,000.

I got lucky. The lawyers at AARP and Legal Counsel for the Elderly had a lot of folks come to them who had done the same kind of deal with Mr. Abell and Mr. Baltimore. The AARP lawyers joined up with lawyers from Hogan and Hartson. They represented me and five others, older homeowners, in a case against Mr. Abell, Mr. Baltimore, and others. All of us had all been through some hard times. One was a veteran of three wars who suffers from post-traumatic distress. One was a woman who had been in a bad car accident and suffered brain injury. Many of the others had been passed from one dishonest lending company to another.

People's homes are important. One of the folks in our case was born in the house they tried to take away from him. Most of the others have lived in their homes for 30 years or more. They raised their kids there and made their lives there. People like Mr. Abell and Mr. Baltimore make their living by hitting you when you are down, all the while pretending they are helping you.

Like I said, I was lucky to get the help I got. I got to stay in my home. But others aren't as lucky.

I hope you in the Congress can pass laws to stop some of this bad lending and to stop people like Mr. Abell. People who have worked hard in their whole life should not have to fight this kind of thing just to hold on to their house.

Thank you.

[The prepared statement of Mr. Malone follows:]

Testimony of Mr. Walter Malone
Before Senate Aging Committee
February 13, 2008

Good morning Members of the Committee. My name is Walter Malone. I am 72 years old and have owned my home here in DC at 1606 A Street S.E. since 1994. I grew up in the country in Sussex County, Virginia and moved here in 1953. I have worked in the construction business for my entire life. I have owned my own construction company in DC since 1953. I am married and the father of eight children, most of them grown now.

I bought my house for about $100,000. It's now worth about $400,000. In early 2002, I had a problem in my business. I had been working on a major job for several months but wasn't getting paid at all because there was some problem with a lien on the property. Each week, I thought the payment would clear but it didn't clear soon enough. I got about 3 months – about $8,400 -- behind in my mortgage payments and got a notice of foreclosure.

I was looking into the possibility of refinancing my mortgage, and even into filing for bankruptcy when I was visited one day by a man named Calvin Baltimore. Mr. Baltimore told me I didn't need to refinance the mortgage and promised that he could loan me the money both to stop the foreclosure and to do some repairs on the house. He told me, "That's what we're about -- helping people." Even though the offer sounded good, it was hard to understand. Mr. Baltimore promised that the house would stay in my name and everything would stay just like it was but at the same time he talked about how much I would have to pay to buy the property back.

I didn't take Mr. Baltimore up on his offer right then. For one thing, my wife told me she didn't trust him. I kept thinking the construction payment owed to me would come any day. I did consult with a bankruptcy attorney and learned that I could stop the foreclosure temporarily by filing bankruptcy.

The weeks went by – and the pressure inside me built up. About a week before the house was to be sold at foreclosure, Mr. Baltimore came back. He commented on the religious pictures in my home, told me he was a believer himself, that he had been preacher and that his uncle was a pastor in a church in Annapolis. This made me feel connected to him. I trusted him because he said he was a believer. In order to convince me to accept his offer, he said things that made me feel like I would be doing something wrong if I filed for bankruptcy. He told me, "Don't mess yourself up like that Mr. Malone."

As the foreclosure date got closer, the pressure built up on me. Within a week of the foreclosure auction, I signed some documents Mr. Baltimore gave me and some others a few days later at the offices of Vincent Abell. I learned

later that one of the documents was a deed that signed my house over to Mr. Abell. But all Mr. Abell ever paid was about $10,000 to the mortgage company to catch up the payments. Even though the Deed lists the purchase price as $157,987, he never gave me any money for the house. The worst part was that, even though Mr. Abell was on the Deed to my house, the mortgage on the house was still in my name. The papers said that I had to pay my mortgage payment plus a few hundred dollars more to Mr. Abell every month. They also said that, if I made all my payments on time, I could buy the house back from Mr. Abell for $215,000 within the first 12 months.

I got lucky. The lawyers at AARP and Legal Counsel for the Elderly had a lot of folks coming to them who had done the same kind of deal with Mr. Abell and Mr. Baltimore. The AARP lawyers joined up with lawyers from Hogan and Hartson. They represented me along with five other older homeowners in a case against Mr. Abell, Mr. Baltimore, and other people involved in their business. All of us were in the same condition: we had all been through some hard times. One of the others was a veteran of three wars who suffers from post-traumatic distress. One was a woman who had been in a bad car accident in the 1990's and suffered brain injury. Several of the others had been passed from one dishonest lending company to another.

People's homes are important. One of the folks in our case was born in the house they tried to take away from him. Most of the others had lived in their homes for 30 or more years, raised their kids there, made their lives there. People like Mr. Abell and Mr. Baltimore make their living by hitting you when you're down, all the while pretending they're helping you.

Like I said, I was lucky to get the help I got. I get to stay in my home. But others aren't as lucky.

I hope that you in the Congress can pass some laws to stop some of the bad lending and to stop people like Mr. Abell. People who have worked hard their whole lives should not have to fight this kind of thing just to hold on to their homes.

The CHAIRMAN. Very fine testimony, Mr. Malone. Appreciate it.
Mr. MALONE. Thank you, sir.
The CHAIRMAN. Catey Doyle.

STATEMENT OF CATHERINE M. DOYLE, CHIEF STAFF ATTORNEY, CIVIL DIVISION, LEGAL AID SOCIETY OF MILWAUKEE, MILWAUKEE, WI

Mrs. DOYLE. Well, good morning, Mr. Chairman. Thank you for inviting me to testify today at this hearing regarding mortgage foreclosure rescue scams.

I am the chief staff attorney at the Legal Aid Society of Milwaukee, and we represent many victims of these scams. As Mr. Malone pointed out, I consider our clients to be lucky because they have found their way to an attorney. Many of the victims do not find legal representation to help them through this morass.

Mr. Malone's testimony was very compelling. As you can tell, these rescue scammers are very good, and they know exactly what to say to people to get them to participate in the scam. I have seen many, many people who shouldn't otherwise be gullible who are talked into these things by very good fast-talking people.

Legal Aid Society saw its first case more than 2 years ago when an 83-year-old woman and her daughter, Yvonne and Susan Klermund, came to our offices complaining that they were being evicted from their home of 30 years. They were extremely distraught, but they were really unable to explain what had happened to them. Then the word "foreclosure" was used in the intake process, so the intake specialist came and got me.

We began to ask more pointed questions and soon realized that we had on our hands our first case of rescue fraud. We have been litigating this case for more than two years, because these cases are very hard to litigate. They are also quite complicated to prosecute. We have been working extensively with State and Federal prosecutors on some of these cases, but they just take a long time, and they drag on. It is very hard for the victims to be able to right the wrongs or get themselves back in their house or relieve the stress that was caused by this lengthy litigation.

Sadly, Yvonne, our client who was our first client, passed away on Christmas Day of 2007. Our trial is set for June this year, and I know for a fact that stress contributed to her death.

The Klermund story is this: As with most of our clients, many of whom are senior citizens, they were in foreclosure, and they were very isolated and very paralyzed by their circumstances, and they had no idea where to go for help. They were just the perfect victims.

Pamela Johnson, a rescue scammer, contacted them by mail and offered to help them stop a sheriff's sale, get cash from their home and get a fresh start. Pamela came to their home and had them sign a number of documents including a power of attorney. There was no contract she had them sign, no explanation of what services she would perform or what her fees would be.

After the Klermunds signed the documents—they trusted her though; she was a good talker; they did trust her—they didn't hear from her for several months. When we investigated the matter, we discovered that actually Pamela had gone ahead and sold their

home, without their knowledge or consent, to a straw buyer she had recruited, because the straw buyer had good credit and could get a mortgage to finance the scam, and the two of them had kept $58,000—the entire net proceeds from the sale of the Klermunds' home.

The Klermunds got nothing—just as Mr. Malone. They were left penniless, without their home, without any savings to help them relocate, and now they were being evicted. So, so much for the fresh start that Pamela Johnson had offered them.

Legal Aid has filed complaints bringing claims against Pamela Johnson for theft by fraud, theft by a fiduciary, intentional misrepresentation, violations of Wisconsin's UDAP statues. We have brought claims also against the straw buyer for aiding and abetting in these claims, against the closing agent—and the closing agents in these cases, often title companies, I believe, are either very negligent or actually fully aware of the frauds and allow them to proceed. We have also had to bring in the lender from whom the straw buyer got a loan because they now have a lien against the Klermunds' home.

As I explained, these cases are very hard to litigate, and it is also hard to prove the damages because we have to educate the courts on that. Because the perpetrators say, "Well, it was, you know, no harm no foul. They were going to lose their house anyway, and all we are doing now at this point is, you know—they were going to lose it anyway, and they weren't going to get the money anyway from their home, the equity out of their home."

So the goal here really has to be to take a look at what this is and to stop these scams before they occur. Because it is so much better for consumers to prevent the abuses from occurring than trying to go back and recover damages that may be long gone. It takes so many years, and living with the stress and the threat of homelessness or perhaps even homelessness is very hard.

Wisconsin is close to passing a law that strictly restricts the activities of mortgage rescue scammers, and there are approximately 16 States that have statues or are close to getting them passed, have bills introduced. We think that that is a very good state of affairs, that the States would regulate these things. However, 15 States is not 50. So there are a lot of people left out there without anyone attempting to pass legislation or without laws that will assist them.

So we really appreciate the fact that you are giving attention to this issue today and attempting to help consumers and attempting to prevent these scams before they occur. We hope that any legislation which might come of this would supplement the State statutes, most of which are very good, and explicitly preserving the rights that a person might have if they live in a State in which there is State law or the rights they might have under other laws, but as a supplement to that to help those not covered.

I have made several recommendations in my written remarks, which I won't repeat. But, again, thank you very much for allowing me to testify today on behalf of our clients and other people similarly situated.

[The prepared statement of Mrs. Doyle follows:]

Testimony

to the

Senate Special Committee on Aging

February 13, 2008

regarding

Foreclosure Aftermath: Preying on Senior Homeowners

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INTRODUCTION

Mr. Chairman, Senator Smith, and Members of the Committee. Thank you for inviting me to testify today regarding "Foreclosure Aftermath: Preying on Senior Homeowners." Thank you also for holding this hearing to examine the issue of what are now commonly known as "mortgage foreclosure rescue scams." I offer my testimony today on behalf of Legal Aid Society of Milwaukee's low income clients. [1] I appreciate the opportunity to speak about the experiences of victims of these scams in Milwaukee County. Our experience is representative of communities across the United States.

The Legal Aid Society provides legal representation to hundreds of Milwaukee County residents facing foreclosure. There were more than 5,600 mortgage foreclosures filed in Milwaukee County in 2007, an increase of 55% over 2006. With the increase in foreclosures, unfortunately, we have experienced the appearance of "mortgage foreclosure rescue scams." Over the past two years, the Legal Aid Society has seen an increasing number of victims of these scams, a significant percentage of whom are senior citizens.

In late 2005, an eighty-three-year-old woman and her daughter, Yvonne and Susan Klermund, came to our office describing a very disturbing and unusual situation. They had been served with eviction papers in an attempt to remove them from their own home of more than 30 years. These women had great difficulty explaining what had happened to them, but they were distraught. Fortunately, I had just returned from a conference addressing the problem of "mortgage foreclosure rescue scams," presented by the National Consumer Law Center ("NCLC").[2] I had also read a comprehensive report issued by NCLC in June 2005, "Dreams Foreclosed: The Rampant Theft of Americans' Homes Through Equity-Stripping Foreclosure 'Rescue' Scams."

Upon investigation, the Legal Aid Society discovered that through a web of trusts, deeds, and Power of Attorney, the Klermunds had lost their home to a mortgage rescue scam. The perpetrators of the scam had stolen the entire equity in their home -- over $58,000. The Klermunds received nothing, not one dime. The Legal Aid Society has represented the Klermunds for more than 2 years in extensive litigation over these transactions. On Christmas Day, 2007, Yvonne passed away. I dedicate my testimony today to her memory and her courage in continuing her fight against this scam as her health failed.

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[1]The Legal Aid Society of Milwaukee, Inc. was founded in 1916 "to do all things necessary for the prevention of injustice." We are one of the nation's oldest, continuously operating, public interest law firms. Each year the Legal Aid Society provides free legal services to 8,000 of Milwaukee's most vulnerable residents. Since 1916, Legal Aid Society has made it a priority to represent consumers and homeowners in foreclosures.

[2]NCLC is a non-profit Massachusetts Corporation, founded in 1969, specializing in low-income consumer issues. See website: www.consumerlaw.org.

The Klermunds' case was our first involving mortgage foreclosure "rescues" schemes. Since then, Legal Aid Society has been in the forefront of efforts to combat mortgage rescue fraud in Wisconsin. We have litigated numerous cases of fraud and have worked very closely with law enforcement and criminal prosecutors to bring these scam artists to justice. The Legal Aid Society has worked with the Wisconsin Legislature for passage of a bill that will strictly regulate the foreclosure consultant business and the sale of properties in foreclosure.

MORTGAGE FORECLOSURE RESCUE NIGHTMARES

The perpetrators of these scams learn this "business" through late night television infomercials and seminars held at local hotels. The scams are big business and have spread across the country. They range from simple theft to complex schemes involving *inter-vivos* trusts, money laundering, and tax dodges.

Mortgage foreclosure "rescue" scams take many forms, but each scam has one common trigger: the victims are in default on their mortgage loans and face foreclosure. The foreclosure process is traumatic enough, but in a desperate attempt to get out from under foreclosure, homeowners become victims of predators looking to make a fast buck by stealing the remaining equity in their homes. The greed and callous indifference of the "rescuers" is mind-boggling.

In Milwaukee County, as is true throughout the country, the "rescuer" finds his/her victims through on-line services that identify homeowners facing foreclosure. In its simplest form, a "rescuer" charges an outrageous fee to provide assistance to the homeowner that does not materialize. In its more complex forms, through intricate schemes and conspiracies, the rescuer strips the equity out of the victim's home.

There are two loosely identifiable forms of these scams: mortgage foreclosure "consultants" and foreclosure reconveyances schemes. A mortgage foreclosure "consultant" offers to perform various services on behalf of a foreclosed homeowner, such as stopping a sheriff's sale, assisting the homeowner to negotiate a workout plan with the mortgage company, or, if all else fails, at least get the equity in the home.

A foreclosure reconveyance scheme usually involves a transaction (or series of transactions) in which the homeowner transfers title to the "rescuer" who then allows the homeowner to remain living in the home, paying rent, until the homeowner is able to repurchase the home. Under either form of the scam, the homeowners end up worse off than they were before.

Mortgage Foreclosure "Consultants"

Mr. B, an elderly widower, was in default on his mortgage. He was contacted by a man who represented himself as working for a company that provided assistance to individuals in default. The "rescuer" said that he would work with the lender to get a loan modification

agreement or other arrangement that would allow Mr. B to stay in his home. All Mr. B had to do was pay a $1,500 fee, and the "consultant" would negotiate to put his mortgage back on track. Mr. B paid the $1,500, his entire savings. He never heard from the "rescuer" again. Mr. B's many calls went unanswered. His home went through foreclosure and was sold at sheriff's sale. Mr. B had no savings left to pay for his relocation.

Another form of the foreclosure "consultant" scam common in Milwaukee County is theft by the use of a Power of Attorney. Again, the "rescuer" finds victims in foreclosure, but does further investigation of the foreclosed properties to find homes with equity. Once a victim is identified, the rescuer contacts the homeowner by mail, personal solicitation, or telephone, offering to help save the victim from sheriff's sale, preserve the equity in his/her homes, get cash and a fresh start. I am attaching several examples of the types of solicitations sent to potential victims that are designed to engender a sense of sympathy and understanding with the potential victim's financial problems. (See Exhibit #1).

Take, for example, Mr. and Mrs. K. The Ks were the perfect victims. Mr. K was terminally ill. He and his wife had gone into debt to pay for medical expenses. Their house was in foreclosure, but there was equity in their home. The foreclosure "consultant," Pamela, sent them several very sympathetic letters offering to help them stop the sheriff's sale, save the equity in their home, and get them much needed cash. Desperate, they called her and made an appointment for her to come to their home and discuss how she could help them.

Pamela arrived with a Power of Attorney already prepared for the Ks' signatures. She explained that the Power of Attorney would allow her to take care of everything regarding the sale of their home. Trusting Pamela, the Ks moved into an apartment. Several weeks later, they received a call from a former neighbor, advising them that their house had been sold and someone was moving in. Mrs. K called Pamela who told her that the house had indeed been sold and that Pamela was very sorry, but there was nothing left from the sale, only enough to pay Pamela's fee. Expecting to receive $20,000 or more from the sale, the Ks were devastated. Mr. K died soon after the sale, consumed with worry about his wife's financial future.

Two years later, when a Wisconsin Department of Justice attorney visited Mrs. K, she learned the truth. The sale of their house had actually netted $32,000, and Pamela had kept the entire net proceeds, 35% of the sale price, as her "Intermediary Fee." This fee was never disclosed to the Ks. The Power of Attorney the Ks signed did not authorize Pamela to take this fee. It was theft by a fiduciary, pure and simple. I have attached the closing statement from the sale of the Ks' home which shows the net proceeds paid to Pamela as an "Intermediary Fee." (See Exhibit #2).

A similar case is that of Mrs. J, a 65-year-old widow. Under circumstances similar to the Ks, Mrs. J gave a Power of Attorney to a "rescuer," Albert. Albert took the entire net proceeds from the sale of Mrs. J's home: $54,738.91. Attached is a document entitled "Disbursement of Proceeds" prepared by Albert. (See Exhibit #3). It divies up the sale proceeds among a group of

people, most of whom Mrs. J had never heard of. This "Disbursement of Proceeds" is reminiscent of a gang of thieves dividing up the loot, leaving nothing for Mrs. J. The closing agent, a local title company, issued checks payable to these people, apparently without question.

Mortgage Foreclosure Reconveyance Schemes

Ms. D, a low-income disabled mother of two small children, went into foreclosure. Ms. D read an ad in a local shopping guide promoting a company that could help people get out of foreclosure. She called the number in the ad and spoke to a rescuer, Jeffrey, who explained that he could help her save her home. His plan was to find a buyer for her home and rent her home back to her for one year. After a year, Jeffrey assured Ms. D that he would assist her to get a new mortgage so she could repurchase her home.

Jeffrey got his son, Jason, to purchase Ms. D's house. Jason took out a loan against Ms. D's home. After payment in full of Ms. D's mortgage, Jeffrey and Jason helped themselves to the entire net proceeds of the sale, $11,700. After one year, Ms. D contacted Jeffrey to repurchase her home and was told that she did not qualify for a mortgage loan and could not repurchase her home. Jason then sold the home to another buyer for $112,000, making an additional $40,000 on the sale of Ms. D's home. Altogether the rescuers netted $51,000 from the sale of Ms. D's home. Ms. D. has had to find another place for her and her children to live.

Another example is Ms. T. After her home went into foreclosure, she was contacted by Mia. Ms. T had considerable equity in her home. Mia offered to enter into a transaction with Ms. T under the terms of which Mia would loan Ms. T $7,300 to pay the arrearage and reinstate her mortgage. In exchange, Mia had Ms. T sign over ownership to her home to Mia. Mia, a licensed mortgage broker, assured Ms. T that she would be able to repurchase her home with a mortgage Mia would assist her in obtaining. Mia represented to Ms. T that when the refinancing was obtained, Ms. T would have to repay the rescuers $12,300 from the loan proceeds, and title to her home would be returned to her name. The terms of the transaction also provided, however, that if Ms. T was not able to refinance and repurchase her home within 6-months, Mia could sell the home and keep the entire sale proceeds.

It goes without saying that Ms. T was not able to refinance within the 6-month period. She had just had a foreclosure filed against her, and she was unable to qualify for a new loan. This is a fact that would have been well-known to Mia, a mortgage broker. Ms. T came to the Legal Aid Society when the rescuers were about to sell her home and keep the entire profit.

LEGAL THEORIES AND REMEDIES CURRENTLY AVAILABLE TO CHALLENGE MORTGAGE FORECLOSURE RESCUE SCAM TRANSACTIONS

The above stories demonstrate the devastating results of mortgage foreclosure rescue scams. However, these victims were lucky in one respect -- they were able to find legal

representation at the Legal Aid Society. Most victims lack the resources to retain legal representation. Few attorneys are experienced in recognizing these scams and litigating them.

In Milwaukee County, federal and state criminal prosecutors have been investigating the most egregious of these cases, but the scams are complicated, and the resources of prosecutors are already stretched to the limit. Although we look forward to criminal prosecutions in many cases, it is often necessary to pursue civil litigation first in our effort to reclaim the stolen real or personal property within the statute of limitations.

Current Federal and State Claims

Under the current state of the law in Wisconsin, when representing victims, the Legal Aid Society must piece together legal claims from federal statutory law and Wisconsin common and statutory law -- often dusting off old law books -- to bring claims for void conveyances and equitable mortgages. We bring claims of intentional misrepresentation, theft by fraud, breach of fiduciary duty, and similar claims. Where appropriate, we bring claims under Truth-in-Lending, Home Ownership Equity Protection Act, the Wisconsin Consumer Act and Wisconsin's Unfair and Deceptive and Practices Act ("UDAP").

Claims against Affiliates of the Rescuer

In addition to the rescuer, there may be other parties who have participated in the scam to varying degrees.

- "Straw Buyer" - Often the person who purchases the home of the victim has been recruited by the rescuer in order to obtain the mortgage to fund the scam. Legal Aid brings claims of civil conspiracy or aiding and abetting against these participants in the scheme.

- Appraiser - Frequently the financing of the scheme is based on a fraudulent appraisal of the property. We commonly bring claims against the appraiser for fraud.

- Closing Agent - Many of these scams are consummated in the offices of a closing agent. Many closing agents turn a blind eye to the details of the scam, earning fees for the closing and letting the fraud take place without questioning the rescuer's conduct. Legal Aid Society has brought claims of negligence and breach of fiduciary duty against closing agents.

- Mortgage brokers and lenders - The financing of these schemes is through mortgage loans. Occasionally it is clear that the mortgage broker or lender knew or should have known that the transaction was fraudulent, and in such cases, Legal Aid Society has included them as defendants.

Pursuing claims against the rescuers and their affiliates requires complex and lengthy litigation. Many of the claims the Legal Aid Society relies on require proof of intent or other special elements. Other claims are based on archaic common or statutory law with little, if any, recent case precedent. The facts are so strange that judges sometimes have difficulty wrapping their heads around the issues. Proving damages can be very complicated. In other words, litigating these cases is complex, expensive, and challenging.

PROPOSED SOLUTIONS

Seeking redress for these frauds on a case by case basis is impossible. Clearly a better approach is legislation that will prevent the occurrence of the scams in the first place.

Wisconsin's Legislation

Wisconsin is in the process of enacting legislation that will regulate transactions involving real estate in foreclosure. Patterned on legislation passed in several other states, including Minnesota and Illinois, Wisconsin's legislative proposal regulates the two forms of foreclosure rescue scams I have described today: foreclosure consultants and foreclosure reconveyances.

For consultants the bill would require, among other things, that any agreement between a foreclosure consultant and homeowner be in writing and that it include a three-day right to cancel. The law would also: (1) prohibit the consultant from receiving compensation for services until the consultant has fully performed each and every service in the contract; (2) prohibit the consultant from acquiring any interest in the property or becoming a power of attorney for the homeowner; and (3) prohibit the consultant from charging a fee that exceeds 8% of any loan the consultant makes to the homeowner.

In terms of the second type of transaction – reconveyance agreements – the new law would bar any agreement that is unfair or commercially unreasonable, and where an agreed upon reconveyance does not take place, the law entitles the homeowner to at least 82% of the fair market value of the property. The new law would also provide homeowners with a stay of eviction where violations of the act are alleged.

Remedies under this proposed legislation include a private right of action for statutory and actual damages and criminal penalties.

Recommendation Solutions

The testimony presented today demonstrates the need for appropriate legislation and regulation to protect vulnerable homeowners in foreclosure, many of whom are senior citizens. From my experience representing many victims of mortgage foreclosure rescue scams, many homeowners facing foreclosure become paralyzed by fear and embarrassment and become

perfect victims for solicitations from rescuers. It is time to stop these scams and direct foreclosed homeowners to legitimate avenues of assistance.

Federal legislation should be enacted to protect foreclosed homeowners from unscrupulous mortgage rescue "consultants"[3] and should include, among other things:

- A requirement that there be a written contract between the consultant and the foreclosed homeowner prior to the provision of any services and that the contract be subject to a right to a 3-day right to cancel.

- A prohibition against demanding or receiving compensation for services until the services have been fully performed.

- A restriction on the interest and fees which are charged in the event the consultant makes a loan to the homeowner.

- An outright prohibition against the homeowner granting power of attorney or ownership in property to the consultant.

- An explicit clause that preserves remedies and rights otherwise available to the foreclosed homeowner. Fourteen states have laws or regulations which restrict the activities of mortgage foreclosure "rescuers," and several states, including Wisconsin, have legislation pending. Federal legislation should be in addition to state statutes and any other statutes or regulations which might apply in each victim's particular situation.

- Because of the resources for criminal or administrative enforcement are stretched to the limit, it is essential that any federal response authorize a private right of action to enforce federal remedies.

Other remedies might include:

- Encouraging the Federal Reserve pursuant to its authority under the Home Ownership Equity Protection Act to declare that foreclosure rescue scams are an unfair and deceptive practice.

- Declare rescue scams to be unfair and deceptive under the Federal Trade Commission Act.

- Strengthen remedies under Real Estate Settlement Practices Act for failure of the

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[3]Regulation of mortgage reconveyance scams involves individual state property and foreclosure laws and therefore is inappropriate for federal legislation.

rescuer to provide a good faith estimate of costs of the loan as required under RESPA and for submission of fraudulent HUD Settlement Statements. The current remedies under RESPA are very weak and ineffective and need to be strengthened. In addition, RESPA should be amended to provide for a private right of action for violations.

- An investigation into the involvement of closing agents in the scams either through direct participation in the scams or through negligence in conduct of the closing.
- Amend HOEPA so that its provisions would apply to the first scam and eliminate the requirement to prove that the rescue scammer has made two or more such transactions in a 12-month period.

The Legal Aid Society of Milwaukee looks forward to working with Chairman Kohl and other members of this committee to develop a strong, effective response to stop these outrageous scams.

The CHAIRMAN. Thank you, Mrs. Doyle. That was important testimony.

Mr. PEREZ.

STATEMENT OF THOMAS PEREZ, MARYLAND SECRETARY, DEPARTMENT OF LABOR, LICENSING AND REGULATIONS, BALTIMORE, MD

Mr. PEREZ. Good morning, Senator, it is a pleasure to be here in front of you. I am a former Judiciary Committee staffer for Senator Kennedy, and it is a pleasure to be in front of you. I am also an adopted Wisconsinite; my in-laws live in Wauwatosa, and my children's favorite time of the summer is always the 2 weeks in Marinette County at the cabin. So it is a pleasure to be here in front of you.

I have the privilege of serving as the secretary of the Department of Labor, Licensing and Regulation, in Maryland. Among other things, we charter all the State-chartered institutions in Maryland, and we oversee the activity of the mortgage industry in Maryland.

As you well know, the regulation of the mortgage industry will always be a joint venture between the States and the Federal Government. Seventy percent of the loans originated in Maryland are subject to State regulation, while 30 percent are originated by federally chartered institutions and, therefore, are preempted by Federal law. So it always has to be a joint venture.

The foreclosure bug has indeed bitten Maryland, as it has the rest of the country. We had roughly 3,000 foreclosure events in 2006 and 23,000 in 2007. So we have certainly fallen prey to that.

Again, it is a problem that is disproportionately affecting the communities of color and the elderly, and that is because it is predominantly, as you correctly identified, a subprime phenomenon. Fifty-three percent of African Americans are in subprime loans in Maryland, 46 percent of Latinos, 18 percent of nonminorities. Twenty-five percent of subprime borrowers were older than 55, compared with 14 percent of prime borrowers.

So the elderly and people of color have a bull's-eye on their back, regrettably. That is what we have been working very vigilantly on. I co-Chair the Governor's Home ownership Preservation Task Force and, indeed, sustainable home ownership is our goal here.

Rather than describing some of the specific scams—because Mr. Malone really did it quite eloquently, as did Mrs. Doyle—I know I try to put myself in your shoes. What I would really like to talk about is what we are doing and what I would respectfully recommend that the Congress do.

We have seen a proliferation in scams. Again, as you correctly pointed out, they target people who have equity. Many elderly people are cash poor and house rich, and so they have a bull's-eye on their back. We have case after case after case of—I wish they had the ending that Mr. Malone had. The majority of the people that we deal with do not have that ending.

We are working with the Feds right now on what I believe will be the largest rescue scam case in the Mid-Atlantic region involving over 100 victims. So it is very real. It is affecting people who are upper-middle class; it is affecting people who are lower-middle

class; it is affecting people across economic lines as well as age lines.

We are one of the States that have some protections. In 2005 we passed a bill called the Protection of Homeowners in Foreclosure Act—the acronym is PHIFA. It contained a number of consumer protections and a number of disclosure requirements. It has been a good start. I must candidly admit: It is not enough. Part of the Governor's robust and aggressive package of reforms includes one provision that I want to highlight here.

Because what ends up happening to Mr. Malone and others is they are exceedingly vulnerable. The phone rings, or the letter comes in the mail with an offer that sounds too good to be true, and that is because it is. That is that person who is indeed the scam artist that Mr. Malone and Mrs. Doyle described. One of the things that happens is they sign 40 documents. I am a lawyer; I don't read the documents. I shouldn't admit that, probably, in public, but that is just the nature of life. One of those documents that they invariably sign is a quitclaim deed to their home. They have just become a renter.

What we are doing in Maryland—that transaction is inherently fraught with potential for abuse. So in our package of reforms that we are proposing, and that I expect will pass the Maryland General Assembly in the next month, one of the provisions is to actually ban the conveyance of a home in the rescue context. Because I have yet to encounter a situation that wasn't fraught with fraud. The scam artist who says, "Don't worry. When your situation gets better, I will let you get the home back," that is baloney—it doesn't happen. The only way, in our judgment, to regulate this practice is to ban it, with certain commonsense exceptions.

So we are about to become the second State to actually ban that conveyance. If you don't ban it, what you end up doing is you have situations like the Legal Aid Bureau and others coming in after the train wreck has occurred. They are a renter; you are trying to prevent somebody from being evicted as opposed to keeping someone in their home. Disclosure is not enough, I have concluded after way, way, way too many stories.

In conclusion, I wanted to just highlight a few recommendations. If I were in the shoes of a member of this august body, what would I be doing?

First of all, I would respectfully request that you take a very careful look at the proposed acquisition of Countrywide by Bank of America. Currently, we have many Marylanders—and I am confident there are many Wisconsinites—who are now in the soup as a result of a loan that they had with Countrywide.

I am very concerned as a result of this acquisition that States will be preempted from protecting consumers who are victims of foreclosure activity. So I would respectfully and strongly encourage you to take a close look at that. If it is approved, which I expect it will be, that there be some provisions which continue to allow States to protect their residents who had Countrywide mortgages and who may be now preempted as a result of that acquisition.

Second, I encourage you to continue the efforts to assist in building nonprofit capacity. As Mrs. Doyle correctly pointed out, we need to prevent things. The Prevention of Homeowners in Foreclosure

Act, that is when the train wreck is about to happen. We need to prevent these things from happening. We have too few people in our communities, in Maryland and Wisconsin and elsewhere, who are out there advocating for people like Mr. Malone.

What we need is that strong cadre and an infrastructure of nonprofit housing counselors who have no dog in the fight—they have no financial stake in the outcome. The only thing they are looking out for is the best interest of the consumer. Nationally we don't have that infrastructure. NeighborWorks America and others are doing great work, but we need to do more, plain and simple. I think the Federal Government can do a lot.

There are some bad products on the market. There should not be the marketing of these risky ARMs to seniors. I know of one entity that has been doing just that. I encourage the Federal Government to play a very aggressive role in overseeing these products, because a senior who is living on a fixed income has no business getting in on of these risky ARMs. I am sure you are aware in the context of reverse mortgages that there is a counseling requirement before you can reverse mortgages.

At a minimum, if we are going to allow these products to continue to exist, we need to be very aggressive in overseeing how those products are implemented. Because I sure wouldn't want to put an elderly relative of mine into a risky ARM product when they are living on a fixed income and the price of gas and the price of electricity and everything else is going through the roof.

Finally, two final quick thoughts. No. 1, it is critically important to continue to shine a light on the role of the mortgage servicer. These are the folks who collect the payments, and these are the folks who negotiate when you fall behind. As I am sure you are aware, there was a study by Moody's documenting that one percent of people in danger of foreclosure are having meaningful modification. Whereas there is another study from the Center for Responsible Lending showing that 70 percent of people in foreclosure could keep their home if they had meaningful modification.

What we are seeing is that seniors are trying to pick up the phone, if they know who to call, and they can't get through because servicers are overwhelmed. Servicers are, frankly, not regulated at a Federal level. There needs to be much more aggressive oversight than there has been to date.

Finally, I believe it is critically important to simply aggressively enforce the laws that are on the books and to ensure that the States have the authority to enact laws. I am a firm believer in what I call redundancy in law enforcement, and we need redundancy in law enforcement. The States need to have an important role. The Feds need to play an important role. Because at any given moment laws are only as good as the political will of those enforcing them. Without that redundancy, we cannot get the job done in this joint venture between the Feds and the States of protecting people.

So thank you for your time. I appreciate your leadership.

[The prepared statement of Mr. Perez follows:]

Testimony of

Secretary Thomas E. Perez

Maryland Department of Labor, Licensing and Regulation

Before the

United States Senate

Special Committee on Aging

Hearing

On

Foreclosure Aftermath: Preying on Senior Homeowners

February 12, 2008

Foreclosure Aftermath: Preying on Senior Homeowners

Good morning Chairman Kohl, Ranking Member Smith and distinguished members of the Committee. Thank you for inviting me to testify on Maryland's efforts to combat mortgage fraud and provide relief to the foreclosure crisis facing Marylanders.

Effective oversight of the mortgage industry must be a joint venture between state and federal regulators. In Maryland, an estimated 70 percent of residential mortgages are originated by brokers, which means they are regulated by the state.

With the fluidity in the modern mortgage market, secondary markets also require federal regulation. There are clear cut regulatory roles for federal and state regulators, and it is important that the federal government respect the need for partnership and avoid actions that would preempt state oversight. Political will shifts and we never know where it will lie at any given time.

At the state level, we are concerned currently about the Bank of America's acquisition of Countrywide. We encourage federal regulators, as they consider the acquisition agreement, to ensure a continued role for state regulation of Countrywide.

We would also encourage this committee to support a requirement for credit counseling for fixed income seniors who are considering an adjustable rate mortgage. Such a requirement would serve as in important tool to fight fraud, though there would need to be additional resources to increase the capacity for counseling services. We believe such resources would be worthwhile, as older Americans are disproportionately vulnerable to the potentially ill effects of ARMs, as the vast majority of them have fixed incomes.

Federal regulators have traditionally been the protectors of safety and soundness in the banking industry, and we believe consumer protection is sound banking policy.

Foreclosures in Maryland

Despite Maryland's relative wealth and economic stability, we have not escaped the foreclosure crisis that has swept the nation. In Maryland, foreclosure events – or foreclosure related court filings – reported in the third quarter of 2007 grew by 639 percent over the corresponding period in 2006. In the third quarter of 2007, Maryland saw 7,001 foreclosure events, an increase of 6,053 events, according to numbers obtained from RealtyTrac and analyzed by the Department of Housing and Community Development. This dramatic increase is the continuation of a trend seen throughout the year.

Regrettably, Maryland, like many other states, has not seen the worst of this crisis. In 2008, 30,000 ARM loans will reset. Estimates from a 2007 U.S. Joint Economic Committee Report indicate that between the 1st quarter of 2007 and the 4th quarter of 2009, 25,057 subprime mortgages in Maryland will go into foreclosure.

While we do not track foreclosure data by a borrower's age, it is reasonable to assume older Americans have been and will continue to be significantly impacted by this troubling trend. In 2004 this committee heard from the Federal Trade Commission that more than a quarter of subprime borrowers were 55 or older, compared to only 14 percent of prime borrowers.

The Homeownership Preservation Task Force

As foreclosure rates swelled across the nation last year, Governor Martin O'Malley recognized the need to provide protections for Maryland homeowners. Owning a home is the cornerstone of the American dream, and the rising tide of foreclosures not only threatens the stability of individual families, but also of communities. The increase in foreclosures also leaves more homeowners vulnerable to foreclosure rescue scams.

Governor O'Malley formed the Homeownership Preservation Task Force, which brought together representatives from the banking and lending industries, federal, state and local government entities and consumer advocates to study the issue and make recommendations.

The Task Force and its work groups studied the issue, looked at best practices in the industry and examined laws enacted in other states. The report and recommendations of the Task Force, submitted to Governor O'Malley in October, represented broad consensus – all stakeholders at the table were interested in proposals that would reform lending and provide greater protections for consumers while increasing the resources available to deal with foreclosures and prevent future scenarios like the one we face today.

The Governor's Homeownership Preservation Package

Based largely on the work of the Task Force, the O'Malley-Brown Administration has proposed a package of reforms designed to help those families at risk of foreclosure, and create greater protections for future homeowners. The reform package represents a comprehensive approach to dealing with all facets of the current foreclosure crisis. The Administration's suite of four bills focus on ensuring appropriate and effective regulation of mortgage professionals, providing an adequate amount of time for foreclosure proceedings, minimizing opportunities for foreclosure rescue scams, and creating criminal and civil fraud provisions to cover all potential actors engaged in the mortgage fraud process.

In Maryland, it is far more difficult to become a barber than a broker. Homeowners deserve to know that when they are completing the most important financial transaction of their lives, the purchase of their home, they are working with a competent and qualified professional. The Department of Labor, Licensing and Regulation licenses more than 10,000 mortgage brokers and originators, but the licensing system until now was an assembly line process with little quality control and no meaningful protections for consumers.

The Governor has proposed sweeping reforms to raise the bar for licensing, as well as measures to tighten lending standards and eliminate defective products from the market in Maryland.

Meanwhile, an emergency regulation to require loan servicers to report monthly to DLLR all loss mitigation and loan modification efforts is under review. All players in the industry claim they want to avoid foreclosures, but there is a wide gap between their words and their efforts to actually help homeowners. We want to shine a bright light on those individuals to determine whether their actions are in line with their words. Servicers will also be required to report information about all ARMs that will reset in 2008. This will serve as an early warning system for homeowners in danger of foreclosure and will give us a chance to provide those homeowners with information and assistance.

The Administration has also introduced a bill intended to improve the regulation of mortgage industry professionals and reform lending practices by:

- Banning prepayment penalties for sub prime loans;
- Assuring a borrowers ability to repay a loan and verify sources of income; and
- Increasing the mortgage licensing requirements, including the surety bond requirement for mortgage lender licenses and instituting a minimum net work requirement.

Maryland's foreclosure process is among the fastest in the nation – from the time of the first foreclosure filing, a foreclosure sale could conceivably occur within 15 days. The proposed reforms would codify the industry's best practices and lengthen the process while giving homeowners more notice.
Meanwhile, Maryland also currently lacks the tools needed to combat mortgage fraud. The Governor's plan would create a criminal mortgage fraud statute that would include restitution, forfeiture, enhanced penalties for violations involving vulnerable adults, a private right of action and a duty for companies to report convictions to any licensing body.

Addressing Foreclosure Rescue Scams

Investigators in the Division of Financial Regulation have seen an increase in the incidence of fraud both at the front end of the lending process, as well as when borrowers face foreclosure. The enforcement arm of the Division investigates cases that range from charging illegal fees to scamming homeowners out of hundreds of thousands of dollars worth of equity. Older Americans are particularly vulnerable to the latter type of fraud, known as foreclosure rescue scams, as they frequently have more equity to be stripped.

The reconveyance, the most common type of rescue scam, involves a foreclosure consultant arranging the conveyance of a property that is at risk of foreclosure to a third party, often via quit claim deed, with the expectation that at a certain point in the future, often 12 months, the property will be reconveyed to the homeowner. The homeowner

often believes that they are refinancing, or that they will be able to repair their credit, get on firm footing and "buy back" the property as part of a "program" arranged by the foreclosure consultant. The reality is that the homeowner relinquishes title, the property is refinanced to strip out substantial equity and often the third party purchaser, either knowingly or unknowingly, defaults on the refinanced note and the original homeowner is evicted as a tenant. The homeowners are left, when they can access representation, to assert their legal rights through a theory of equitable mortgage. Reconveyance clouds title, has shown to serve no legitimate purpose and has resulted in substantial losses of equity for homeowners in Maryland.

It is very easy for a homeowner to fall victim to one of these schemes when the homeowner's only goal is to keep their home. It is not uncommon for even a sophisticated person to lack understanding of what is really happening in one of these transactions. Our victims have been white collar office workers, blue collar laborers, government employees, and homeowners with advanced degrees.

Protection of Homeowners in Foreclosure Act

The Protection of Homeowners in Foreclosure Act (PHIFA) was passed by the Maryland General Assembly in 2005. It provides consumer protections and disclosure requirements for the activities of foreclosure consultants. There are three types of activities that foreclosure consultants engage in and which are covered by the Act: foreclosure consulting services, reconveyances and foreclosure surplus acquisition.

Since its enactment, there has been substantial fraud and harm inflicted on homeowners through the reconveyance of property in the foreclosure rescue context. Governor O'Malley has proposed a bill to amend the existing statute to ban reconveyances in the foreclosure consultant context.

The proposed bill will extend additional consumer protections to homeowners whose residences are in default and are either being sold as part of a foreclosure consultant contract or by a foreclosure consultant. The administration is seeking to assure through this provision that those who have a stake and profit motive in the unregulated context of foreclosure consulting give homeowners in distress additional time and opportunities to consider and rescind transactions that may not be in the homeowners' best interest. It is not our intention to interfere with all sales in the ordinary course of business, but to limit these additional protections to the foreclosure consultant context.

When enacted, PHIFA exempted certain categories of licensed professionals from the Act. This amendment will remove certain exemptions for real estate agents, brokers and lenders and title companies and agents. Again, experience has shown that some in these professions who have crossed the line to act as foreclosure consultants have been at the heart of the problem of widespread fraud. Their professional license has exempted them from any of the PHIFA requirements, though they are engaging in foreclosure consulting. Where such professionals are engaging in foreclosure consulting services, they should be covered by the Act.

Further, the amendments to PHIFA include granting the Commissioner of Financial Regulation the power to investigate and enforce these cases when they come to the division's attention through the complaint or enforcement process. There is also a provision that will require the Commissioner or other licensing body receive notice about licensees who are convicted under the Act.

The CHAIRMAN. Thank you. Thank you for your testimony. We appreciate it.

Mr. ANDERSON.

STATEMENT OF JOHN ANDERSON, LICENSED REALTOR, TWIN OAKS REALTY, MINNEAPOLIS, MN, OF BEHALF OF THE NATIONAL ASSOCIATION OF REALTORS

Mr. ANDERSON. Chairman Kohl, thank you very much for inviting me to testify today.

I am a licensed real estate broker with Twin Oaks, and I have been doing this, been a realtor, for over 30 years. I have assisted and counseled thousands of buyers and sellers over the years as a residential broker and salesperson, including those facing the foreclosure situation just like Mr. Malone.

Realtors want to protect our Nation's homeowners. We are troubled by the proliferation of foreclosures and the scam artists who are preying on the most vulnerable homeowners, including older Americans.

Today there are more than 87 million Americans over the age of 50. According to NAR research, 43 million Americans age 50 and over own their home and have been a homeowner for more than 20 years. The typical older boomer household has more than $100,000 in home equity. Yet when describing their financial situation, almost half of older homeowners report concerns about their financial security. For those on a fixed income, a spike in just one monthly expense or an unexpected significant cost transforms older boomers into the most vulnerable population in the eyes of abusive lenders and foreclosure scammers.

As we sit here today, my home State of Minnesota has seen foreclosure filings almost double since 2006. Minneapolis and St. Paul, where I work, just last month reported 711 homes lost to foreclosure, which has increased from 560 in October. In fact, in the last week I drove down a two-block neighborhood, and I counted 15 homes in foreclosure, both boarded up and abandoned. There is a chart that will show you the foreclosures.

Someone once said that foreclosures are like mold: Once it starts, it is difficult to get rid of a community of them. Families struggling to make mortgage payments and who live in a neighborhood where homes have already been lost to foreclosure will find it difficult to refinance or sell due to decline in area home values. Far too often the financially stressed family will end up losing their home and feeding the vicious proliferation of foreclosures.

Since you have already heard from some of the witnesses about different types of fraudulent foreclosure rescues, I would like to take a minute to talk about what my State has done to make Minnesota less attractive for scammers.

In 2004 the State enacted a law that sets forth a series of complex requirements applicable to persons who offer to help to stop or postpone a foreclosure. Minnesota requires that the services of foreclosure consultants be detailed in a written contract and must include a consumer notice stating that the consultant cannot ask the homeowner to sign a deed, lien or mortgage. On the monitor you will see a copy of that disclosure.

Another important provision in our State foreclosure law is the additional right of the homeowner who engages the services of a foreclosure consultant to cancel the contract for services within three business days. This statute requires that a separate notice of cancellation be attached to each contract. I have seen this work and be something that happens.

In order for a foreclosure rescue scam to be successful, the "counselor" cuts off the homeowner's access to all legitimate foreclosure prevention options. For older Americans who have been in their home for more than 20 years who do not want to seem like a burden on their family members and who do not understand their available options, the foreclosure rescue seems like a great option, and the counselor seems like they really want to help. But as we know, these predatory rescues are the worst option, and by some measures even more terrible than a foreclosure where equity in the home is returned to the borrower after the mortgage debt is paid.

Similar to Mr. Perez, I agree: Just the laws are not enough. It is critical that mortgage mitigation options be widely advertised, especially in areas where we know that rescue scammers like to operate. NAR strongly believes the private sector has an obligation to help inform homeowners about foreclosure prevention. Last May, NAR partnered with CRL and NeighborWorks on a brochure, which I have here and have available, that focuses on helping financially stressed homeowners understand their options and offers advice on how to avoid foreclosure. The brochure also promotes the 1–888–995–HOPE number, which directly connects homeowners with a trained counselor at HUD-certified nonprofit counseling agencies.

Rarely do foreclosure scams turn out with a happy ending. Rather, the rescue scenario that is played out over and over in communities across this country is in reality the theft of families' wealth, the taking of a homeowner's dignity and stolen home ownership. For older Americans who rely on their home as the foundation of their net worth, this is emotionally and financially crippling.

In conclusion, as a realtor who for many years, like my father before me, has worked hard to help Americans achieve the dream of ownership, I believe now it is the time, the duty and the duty of our industry as well as everyone touched by this crisis to help homeowners protect their dream and the financial security a home brings.

NAR stands ready to work with Congress on the important issue of foreclosure rescue scams, and we are happy to make available to your constituents our foreclosure prevention brochure and any other materials.

Thank you very much.

[The prepared statement of Mr. Anderson follows:]

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HEARING BEFORE THE SENATE SPECIAL COMMITTEE ON AGING

ENTITLED

FORECLOSURE AFTERMATH: PREYING ON SENIOR HOMEOWNERS

WRITTEN TESTIMONY OF JOHN W. ANDERSON, ABR, CRB, CRS, GRI

ON BEHALF OF THE

NATIONAL ASSOCIATION OF REALTORS®
FEBRUARY 13, 2008

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Chairman Kohl, Senator Smith and Members of the Committee, thank you for inviting me to testify today on the issue foreclosure rescue scams and their impact on older Americans. My name is John Anderson, and I am a licensed real estate broker and owner of Twin Oaks Realty in Minneapolis, Minnesota, a family business my father started in 1961. I have been a REALTOR® for almost 30 years and have assisted and counseled thousands of buyers and sellers over the years as primarily a residential broker and salesperson.

I am here to testify on behalf of more than 1.3 million REALTOR® members of the National Association of REALTORS® (NAR) who are involved in residential and commercial real estate as brokers, sales people, property managers, appraisers, counselors and others engaged in all aspects of the real estate industry. Members belong to one or more of some 1,400 local associations/boards and 54 state and territory associations of REALTORS®. We commend the committee for holding today's hearing on the very serious issue of foreclosure scams and recommendations to protect our nation's senior homeowners from harm's way.

REALTORS® Want to Protect our Nation's Homeowners

Irresponsible and abusive lending practices are a major problem for our nation's communities. While responsible subprime lenders have played an important role in helping millions of consumers achieve homeownership, abusive lending occurs much too often in subprime markets. Unfortunately, some lenders have abused their role and taken advantage of vulnerable borrowers, including older Americans, by charging extremely high interest rates and loan fees unrelated to risk, using aggressive sales tactics to steer consumers into unnecessarily expensive or inappropriate loan products, advertising "teaser" interest rates (like the 2/28 or 3/27 adjustable rate mortgage) that steeply increase after the first few years of the loan and basing their lending on artificially high appraisals. Real estate professionals have a strong stake in preventing abusive lending because:

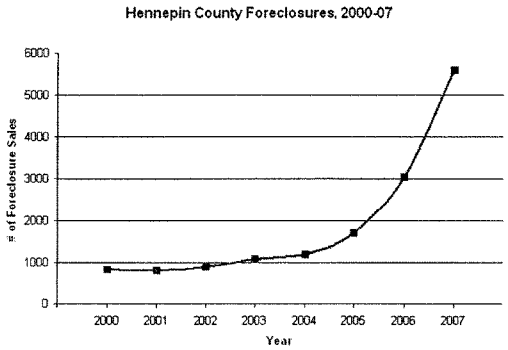
- Abusive lending erodes confidence in the Nation's housing system.
- Legislative and regulatory responses to lending abuses that go too far can inadvertently limit the availability of reasonable credit for prime as well as subprime borrowers in a credit-driven economy. When responses to abusive lending constrain

the ability of the secondary mortgage market to provide liquidity for home finance, consumers will find it more difficult and expensive to buy a home.

- Citizens of communities, including real estate professionals, are harmed whenever abusive lending strips equity from homeowners. This is especially the case when irresponsible lenders concentrate their activities in certain neighborhoods and create a downward cycle of economic deterioration.

Foreclosures Devastate the Strength and Stability of Communities

The consequence of lending abuses is higher rates of foreclosures leading to the loss of families' homes and savings and increased vacancy rates which, in turn, can cause all homes in a neighborhood to lose value. In my own state of Minnesota, 2007 foreclosure filings almost doubled from 2006. Minneapolis-St. Paul (Hennepin County), where I live and work, has the highest rate of foreclosures in the entire state.[1] In January 2008, there were 711 foreclosures in Hennepin County, the highest since October 2007 when there were 560 foreclosures.[2]



Source: Federal Reserve Bank of Minneapolis and Hennepin County Sheriff's Office

I can tell you first hand that the impact of foreclosures on Hennepin County is unmistakable. According to research conducted by the Woodstock Institute, a foreclosed home lowers the price

[1] http://www.housinglink.org/Foreclosure.htm. HousingLink is an independent, nonpartisan, Twin Cities-based organization that specializes in the collection and distribution of affordable housing information.
[2] Hennepin County Sheriff's Office.

of surrounding homes by about 1 percent.[3] The same research also found that each additional foreclosed home within an eighth of mile lowered the values by an additional percent. Just last month, the Center for Responsible Lending (CRL), who more than a year ago warned Congress about the their projection of more than 2 million American families losing their home to foreclosure, released startling research on the spillover effect on our nation's communities and neighborhoods. Specifically, CRL estimates:

- More than 40 million neighboring homes will suffer a decline in property values because of foreclosures in their neighborhood;
- The total decline in property values and reduced tax base because of nearby foreclosures will be $202 billion;
- Homeowners living near a foreclosed home will see their property value reduced by about $5,000.[4]

Recently, the U.S. Conference of Mayors commissioned a report looking at the economic and fiscal impact of foreclosures.[5] The findings were largely consistent with the CRL and concluded that 2008 will bring more foreclosures, curtailed consumer spending and significant financial stresses for state and local government budgets. In Minnesota, for example, the Mayor's report indicates that due to depreciating property values, property taxes in the state could ultimately decline by as much as $20 million.[6] In addition, Minnesota is expected to lose $3 million in sales tax revenues due to weakening consumer spending in 2008, and $13 million in transfer tax revenues because of declining home sales and prices.[7]

State and local governments will immediately feel the impact of the reduced property tax revenue, which goes to fund important county/city services we depend on every day (police protection and fire rescue services, schools, social services, public transportation etc.). Furthermore, what many people do not realize is that foreclosures actually require local

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[3] *There Goes the Neighborhood: The Effect of Single-Family Mortgage Foreclosures on Property Values*, Woodstock Institute (June 2005).
[4] *Subprime Spillover: Foreclosures Cost Neighbors $404 Billion; 40.6 Million Homes Lose $5,000 on Average*, Center for Responsible Lending (January 2008).
[5] *The Mortgage Crisis: Economic and Fiscal Implications for Metro Areas*, Global Insight for the United States Conference of Mayors and the Council for the New American City (November 2007).
[6] *Id.*
[7] *Id.*

governments to *spend* money "for inspections, court actions, extra law enforcement, visits from city utilities and sometimes demolition."[8]

Someone once said that foreclosures are like mold — once it starts, it's difficult to rid a community of it. Families struggling to make mortgage payments and who live in a neighborhood where homes have already been lost to foreclosure will find it difficult to refinance or sell due to declines in area home values. Far too often the financially stressed family will end up losing their home and feeding the vicious proliferation of foreclosures.

Older Americans are Targets for Abuse and Have a Lot to Lose

Today, there are more than 87 million Americans over the age of 50.[9] According to NAR research, 43 million American's aged 50 and over own their home with a typical market value of $186,200.[10] More than half of older baby boomers (50-60) have been a homeowner for more than 20 years and last purchased a home 15 years ago.[11]

The foundation of many older Americans' net worth is the equity in their home.[12] NAR research indicates that among older boomers, the typical household reports home equity of $100,000, with nearly one-quarter having at least $250,000 in equity. Yet, when describing their finical situation, 35 percent of older homeowners consider themselves as having just enough to make ends meet and 14 percent report having financial difficulties.[13]

It is not surprising that half of older boomers are concerned about their financial security given rising medical costs, increasing monthly household bills (utilities) and other age-related expenses. A spike in just one monthly expense or an unexpected significant cost transforms older boomers into the most vulnerable population in the eyes of abusive lenders and foreclosure scammers.

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[8] T.W. Farnam, *As Foreclosures Rise, Mayors Brace for Fallout*, Wall Street Journal (January 28, 2008).
[9] U.S. Census Bureau.
[10] National Association of REALTORS®, *Baby Boomers and Real Estate: Today and Tomorrow* (2006).
[11] *Id.*
[12] *Id.* NAR research shows that older homeowners report that their home accounts for more than 45 percent of their net worth.
[13] *Id.*

Foreclosure "Rescue" Scams

The most pervasive foreclosure "rescue" scam is the "reconveyance" which may or may not involve equity stripping. Generally, the scam goes like this:

- A homeowner falls a few months behind on their mortgage payment and has just received a notice of pending foreclosure from the lender.
- The homeowner responds to an advertisement or a letter that typically says, "Want to avoid foreclosure and stay in your home? Call now. Time is of the essence. The foreclosure timeline has already started. "
- The foreclosure "rescuer" or "counselor" makes promises of a fresh start and rebuilding credit by bringing the mortgage current. In exchange for paying the mortgage arrears, the homeowner is asked to sign a quitclaim deed and told they can remain in the house as a renter.[14]
- The "rescuer" or "counselor" explains that every month, the homeowner makes a payment (i.e. rent) to his company, which will be lower than their current mortgage payment. The homeowner is also told that every payment will be credited to the principle of the original mortgage and will help them to repurchase the home in a few years.
- While the homeowner is making monthly payments to the "rescuer" or "counselor," the scammer is not making payments on the original mortgage; rather the "rescuer" is using their presumed ownership of the property to borrow against the equity built up in the home.
- Soon, the homeowner learns they are further in arrears with the original lender and have the added financial burden of new liens for the scammer's new home equity loans. In almost every case where there is no legal intervention, the homeowner loses the home to foreclosure, loses all the money paid to the scammer as rent, and loses all the home equity than has built up over the years.

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[14] Transfer of ownership generally does not relieve the homeowner of their mortgage debt obligation. Most conventional mortgages have a "due on sale" clause that prevents a transferee (in foreclosure "rescuer" scams, the transferee is the scammer) from assuming the mortgage obligation. Typically, the only way to be released from liability of mortgage debt is paying off the property's mortgage, either from proceeds of a sale or at the end of the term of the mortgage.

Minnesota's "Foreclosure Reconveyance" Statute

In 2004, the Minnesota took a significant step to protect its citizens from becoming victims of foreclosure "rescue" scams by enacting a law that sets forth a series of complex requirements applicable to persons who offer to help stop or postpone a foreclosure ("foreclosure consultant").[15] The mortgage foreclosure law requires that if a transaction falls within the statutory definition of "foreclosure reconveyance,"[16] all details of the transaction must be in a written contract, including the exact nature of the foreclosure consultant's services and the total amount and terms of compensation. The Minnesota statute requires that the following notice be included in the contract and be printed in at least 14-point boldface type:[17]

> **"NOTICE REQUIRED BY MINNESOTA LAW**
>
> **..... (Name) or anyone working for him or her CANNOT:**
>
> **(1) Take any money from you or ask you for money until ..... (Name) has completely finished doing everything he or she said he or she would do; and**
>
> **(2) Ask you to sign or have you sign any lien, mortgage, or deed."**

Probably the most important provision of the state mortgage foreclosure law is the additional right of the homeowner who engages the services of a "foreclosure consultant" to cancel the contract for services within three business days. The statue requires that a separate "Notice of Cancellation" be attached to each contract and include the following statement:[18]

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[15] Minn. Stat. §325N (2004). See Minn. Stat. §325N.01(a) and (b)for complete definition of "foreclosure consultant." Generally, NAR does not take positions on state statutes and does not have a position on Minn. Statute 325N. The Minnesota Association of REALTORS® supported the final version of MN Statute 325N when it was enacted in 2004.

[16] Minn. Stat. §325N.01(c) (2004).

[17] Minn. Stat. §325N.03(b) (2004).

[18] Minn. Stat. §325N.03(e) (2004).

"NOTICE OF CANCELLATION
..... (Enter date of transaction) (Date)

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

To cancel this transaction, you may use any of the following methods: (1) mail or otherwise deliver a signed and dated copy of this cancellation notice, or any other written notice of cancellation; or (2) e-mail a notice of cancellation

to ..... (Name of foreclosure consultant)
at ..... (Physical
address of foreclosure consultant's place of business)
..... (E-mail
address of foreclosure consultant's place of business)
NOT LATER THAN MIDNIGHT OF ..... (Date)
I hereby cancel this transaction ..... (Date)

..... (Owner's signature)"

The Minnesota statute also includes strong remedies for violations by foreclosure consultants including a private right of action and criminal penalties (imprisonment).

Homeowners Have Legitimate Options to Prevent Foreclosures

In order for a foreclosure "rescue" scam to be successful, the "counselor" must cut off the homeowner's access to all legitimate foreclosure prevention options. They do this by preying on the vulnerability of homeowner, often instructing them to not contact the lender or an attorney because it will preempt the "rescuers" negotiations to stay the foreclosure. For older Americans who have been in their home for more than 20 years and who do not want to seem like a burden on family members, the foreclosure "rescue" seems like a great option and the "counselor" seems like they really want to help. But as detailed above, it is the worst option and, by some measures, even more terrible than a foreclosure where equity in the home is retuned to the borrower when the mortgage debt is paid.

It is critical that foreclosure prevention options be widely advertised, especially in areas where we know rescue scammers like to operate. The general nature of a homeowner who is behind on their mortgage payment is to avoid contact with the lender. We are hopeful that these attitudes and behaviors will change now that there is widespread messaging from the President of the United States that help is just a call away: 1-888-995-HOPE.

NAR supports the efforts of the HOPE NOW Alliance, which is a broad-based collaboration between credit and homeownership counselors, lenders, investors, mortgage market participants, and trade associations and endorsed by the Department of the Treasury and the Department of Housing and Urban Development (HUD). HOPE NOW members, who represent the majority of prime and subprime lenders, have engaged in repeated direct mail campaigns that promote and urge borrowers to call the 888-995-HOPE hotline. The hotline directly connects the homeowners with a trained counselor at a HUD-certified, non-profit counseling agency. This counseling service is free and is offered in English and Spanish. The trained counselors have a direct channel to lenders and help identify and present options to the homeowner from a trusted third party perspective. Since May 2007, NAR has actively promoted the 1-888-995-HOPE in numerous publications and on the highly visited REALTOR.org website.

Another foreclosure mitigation option that has also been actively promoted by the Administration and NAR is FHASecure. This program expands the Federal Housing Administration's (FHA) ability to offer refinancing by giving FHA the flexibility to work with homeowners who have good credit histories but cannot afford their current payments. In just three months, FHA has received over 120,000 refinancing applications and has already helped more than 35,000 people refinance. By the end of 2008, the FHA expects this program to help more than 300,000 families.

NAR strongly believes the private sector has an obligation to help educate homebuyers about today's mortgage products. Starting in 2005, NAR worked with the Center for Responsible Lending (CRL) to produce a series of brochures that describe the pros and cons of conventional loans and nontraditional mortgages, give consumers tips on how to avoid predatory loans. In May of 2007, NAR partnered with CRL and NeighborWorks, on a brochure that focuses on

helping financially stressed homeowners understand their options and offers tips on how to avoid foreclosure. Shortly after the brochure was released, NAR's President sent an e-mail to over 1.3 million REALTORS® informing them of the foreclosure prevention brochure and encouraging REALTORS® to put the brochure into the hands of every consumer they help to become a homeowner.

NAR also supports increased funding for programs that provide financial assistance, counseling, and consumer education to borrowers to help them avoid foreclosure or minimize its impact.

Conclusion

Rarely do foreclosure "rescue" scams turn out with a happy ending. Rather, the "rescue" scenario that is played out over and over in communities across this country is in reality the theft of a family's wealth, the taking of a homeowner's dignity and stolen homeownership. For older Americans who rely on their home as the foundation of their net worth, a foreclosure is emotionally and financially crippling.

REALTORS® help families achieve the dream of homeownership. The National Association of REALTORS® supports increased consumer protections to ensure that the "dream" our members help fulfill does not turn into a family's worst nightmare. NAR stands ready to work with Congress on the important issue of foreclosure "rescue" scams and we are happy to make available to your constituents our "Learn How to Avoid Foreclosure and Keep Your Home" brochure, which is attached to the testimony. Thank you.

The CHAIRMAN. Thank you very much, Mr. Anderson.

The vote just started, so we will recess now for perhaps 10 minutes. I will get back just as soon as I can. [Recess.]

Ms. Dollar, we would like to hear your testimony.

STATEMENT OF RACHEL M. DOLLAR, ATTORNEY AND CERTIFIED MORTGAGE BANKER, SANTA ROSA, CA; ON BEHALF OF THE MORTGAGE BANKERS ASSOCIATION

Ms. DOLLAR. Thank you, Chairman Kohl, for the opportunity to discuss foreclosure rescue scams.

The Mortgage Banking Association believes it is important to protect homeowners, especially the elderly, from scams that can result in the loss of people's primary financial asset—their home. The impact of frauds, scams and deceptive practices on the elderly can be both psychologically and financially devastating.

The current increase in foreclosures around the country heightens the concern that borrowers may be lured by bogus offers of help, particularly in the case of older homeowners who may be targeted by fraudsters.

Escalating foreclosures also provide criminals with the opportunity to exploit and defraud vulnerable homeowners. A foreclosure rescue scheme often involves forged or fraudulent deeds. In extreme circumstances, perpetrators sell the home or secure a cash out loan without the homeowner's knowledge, stripping equity for personal enrichment.

In my professional experience, one of the most common frauds is a sale and leaseback transaction, where the homeowner is instructed to transfer the property to a third party. The homeowner is told that the rescuer will pay off the mortgage and will lease the property back to the homeowner. The phony rescuers then have title to the home, fail to pay off the existing mortgage and place additional mortgages against the property, stripping out any equity that may have existed.

Another significant scheme that involves seniors is real property theft, which is targeted at properties with stable ownership histories, typically those owned by older Americans. Unscrupulous contractors also approach elderly homeowners offering to obtain loans and make home repairs.

Homeowners in distress seldom seek assistance from a HUD-approved counseling agency or from their mortgage company, the entity that is best suited to provide a workout.

The best assistance senators can offer to stop foreclosure rescue scams is to educate constituents who find themselves in financial difficulty to call their loan servicer or the HOPE hotline at 1–888–995–HOPE. It is extremely important for people to know that the HOPE hotline is a free service. We have become aware of impostor services looking to scam troubled borrowers.

Although there are no precise statistics available on the extent or cost of mortgage fraud, the Department of Treasury's Financial Crimes Enforcement Network reported that suspicious activity reports, or SARs, related to mortgage fraud increased almost 400 percent from 2003 to 2006. The FBI has also seen its mortgage fraud casework increase over 235 percent and estimates financial losses

to the mortgage industry for 2006 between $946 million and $4.2 billion.

MBA is proactively working with law enforcement in an effort to curb mortgage fraud crimes. On March 8, 2007 MBA signed a memorandum of agreement with the FBI to promote the FBI's Mortgage Fraud Warning Notice. The Notice States that it is illegal to make any false statements regarding income, assets, debt or matters of identification, or to willfully inflate property value to influence the action of a financial institution.

MBA continues to advocate for increasing the investigation and prosecution of mortgage fraud by law enforcement agencies and improving the communication between mortgage lenders and State and Federal agencies. To that end, MBA requests Congress appropriate $6.25 million per year, over a 5-year period, of dedicated funding for the FBI efforts in tracking down and prosecuting mortgage fraud.

To protect a borrower from becoming a victim of a foreclosure rescue or bailout scheme, MBA recommends consumers keep the following six points in mind:

If it sounds too good to be true, it probably is.

Beware of offers to "save" homeowners from default or foreclosure.

If you are having trouble, contact your mortgage servicer or call 888–995–HOPE.

Make every effort to understand the papers and forms being presented.

Never sign any loan documents that contain blanks.

Make sure the servicer is fully aware of and approves any transfer of title to the property.

Thank you for the opportunity to testify. MBA looks forward to working with the Committee.

[The prepared statement of Ms. Dollar follows:]

Statement of Rachel M. Dollar, CMB

Partner, Smith Dollar PC

Before the

Special Committee on Aging

United States Senate

Hearing on

"Foreclosure Aftermath: Preying on Senior Homeowners"

February 13, 2008

Chairman Kohl, Ranking Member Smith, and distinguished members of the Committee thank you for holding this hearing and inviting the Mortgage Bankers Association (MBA)[1] to share its views on foreclosure issues and senior homeowners. My name is Rachel Dollar and I am a partner in the law firm of Smith Dollar PC where I chair my firm's Mortgage Banking Practice Group. In my practice, I focus on representing lenders in mortgage banking related litigation, including the discovery, investigation, resolution and litigation of large-scale mortgage fraud schemes nationwide.

I serve on MBA's Quality Assurance Subcommittee, Fraud and Ethics Working Group, and am a training instructor on the topics of mortgage banking and mortgage fraud prevention. I have been the featured speaker at a number of key conferences and conventions. I have authored many industry articles and trade publications, and recently co-authored the first commercially published book on mortgage fraud, *Protect Yourself from Real Estate and Mortgage Fraud.* I have also earned MBA's distinguished Certified Mortgage Banker (CMB) designation.

I am here today because MBA shares the concerns of this Committee and my fellow panelists in the need to protect innocent homeowners from unscrupulous individuals and their schemes which can result in the loss of one's primary financial asset, their home. The impact of such fraud, scams and deceptive practices on the elderly can be particularly devastating, both psychologically and financially.

The current increase in foreclosures around the country heightens the concern of servicers and lenders that borrowers may be lured by bogus offers of help and, particularly in the case of older homeowners, may be completely unaware they have been targeted by fraudsters. Borrowers in trouble are often reluctant to ask for help. It has been found that 50 percent of borrowers who go into foreclosure never contacted their servicer for help. Some borrowers simply will not respond to repeated attempts by lenders to contact them to see if the situation can be resolved through loan modification or other means. MBA and our foreclosure prevention coalition partners such as HOPE NOW[2] are working to drastically

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[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 400,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 3,000 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mortgagebankers.org.

[2] MBA is a partner in the HOPE NOW alliance, a partnership among counselors, mortgage market participants, and mortgage servicers to create a unified, coordinated plan to reach and help as many homeowners as possible. Since its inception in 2007, HOPE NOW has expand its outreach efforts to include public service announcements that encourage delinquent borrowers to contact the person they send their mortgage payment to, or a qualified housing counselor at 1-888-995-HOPE.

reduce that percentage and help as many troubled homeowners as possible avoid foreclosure. These efforts include homeowner education and outreach on an unprecedented scale, not only to make borrowers aware of potential options that may be available, but to also reach them before they turn to schemes perpetrated by fraudsters.

Mortgage Fraud Defined

Fraud in the mortgage context can be divided into two broad categories: "fraud for property or housing" and "fraud for profit." Fraud for property occurs, typically, when fraud is committed so that a homebuyer can purchase a house for personal use. Historically, such fraud carries a lower financial risk to lenders because the fraud is a one-time occurrence on a loan the buyer intends to repay. Frauds for profit schemes, on the other hand, typically involve a person or a group of people that abuse the system for financial gain. These persons are often well versed in mortgage finance and know how to exploit the system at the expense of lenders, taxpayers, consumers and communities.

Within the context of rising foreclosures and knowing distressed homeowners will not contact their servicers to seek advice, criminals are busily devising often elaborate schemes involving multiple parties (for example, the mortgage broker, real estate broker, appraiser, closing attorney/settlement agent, title company) to rob vulnerable homeowners and lenders alike. Fraud for profit is more costly than fraud for property and can include identity theft, forgery, and a myriad of other deceptive acts. The fraudsters who create such conspiratorial enterprises are savvy and cunning, capable of affecting a large geographic area in one complex scam. Fraudsters are also taking advantage of technology. A large number of Web sites have popped up on the Internet that enable unscrupulous individuals to create false names, boost credit scores, rent assets and create false documentation. With virtually unlimited creativity, mortgage fraud perpetrators often have technology as good as, or better than, lenders.

Foreclosure Fraud Committed Against the Elderly

Recent statistics suggest that escalating foreclosures provide criminals with the opportunity to exploit and defraud vulnerable homeowners seeking financial guidance. The perpetrators convince homeowners that they can save their homes from foreclosure through deed transfers and the payment of up-front fees. This "foreclosure rescue" often involves a manipulated deed process that results in the preparation of forged deeds. In extreme instances, perpetrators may sell the home or secure a second loan without the homeowner's knowledge, stripping the property's equity for personal enrichment.

There are two separate types of foreclosure fraud that are often confused. The first is the "foreclosure bailout." This occurs when a borrower facing foreclosure

gets a family member or close friend to take title to the home and obtain a mortgage – even though the original homeowner intends to continue to live in the home and remain financially responsible for the payments. To the lender, the transaction presents a simple sale transaction. In fact, the person posing as the borrower has no real intention to make the payments and the lender should be underwriting the loan based on the credit of the original homeowner. Most foreclosure bailouts are not successful. Not only is the home eventually lost to foreclosure but the credit of the accommodating friend or neighbor is destroyed.

The second is "foreclosure rescue," which is the term used to refer to third parties that offer to save a homeowner from foreclosure. Generally, these third party rescuers approach homeowners in the last days leading up to the foreclosure sale – when the homeowner is desperate and has few options. The homeowner is presented with a plan whereby the home will be 'saved' from foreclosure and is usually advised not to contact their lender or servicer. The plans take several different forms.

One of the most common scenarios is a "sale and leaseback" transaction whereby the homeowner is instructed to execute a quit claim deed transferring the property to the rescuer or a third party nominated by the rescuer. The homeowner is told that the rescuer will pay off the mortgage, and will then lease the property back to the homeowner for a monthly payment amount that generally exceeds the amount of the prior mortgage. The rescuer often offers to assist the homeowner in repairing their credit over the course of the next year and, at the end of the year, the homeowner will be able to obtain a new mortgage and purchase the home back from the rescuer. These plans are designed to fail. Even if the homeowner is fortunate enough to meet up with an 'honest' rescuer, there is little likelihood that they will be able to meet the heightened payment obligation or improve their financial situation sufficiently to repurchase the home.

Many times, the rescuers do not fully apprise the homeowners of what will occur. As the rescuers have title to the home, they can treat it as if it were there own. Oftentimes, they fail to pay off the existing mortgage and, instead, place additional mortgages against the property, stripping out any equity that may have existed.

Even homeowners without any equity in the property are not safe from rescuers. In cases where the rescuers approach a property owner whose home is mortgaged to or beyond its value, they will claim they can negotiate an agreement with the lender. They obtain a power of attorney from the homeowner and instruct the homeowner to make payments directly to the rescuer. The rescuers then change the address of the homeowner with the lender, collect the mortgage payments from the homeowner and neglect to remit them to the lender. The home continues through the foreclosure process. As the correspondence and notices are sent to the rescuer rather than the homeowner, the homeowner

often does not know the foreclosure is pending until the sheriff shows up to evict them.

While these schemes do not exclusively target the elderly, older Americans often become victims simply because of a confluence of circumstances: they typically have significant equity in their homes but are also more likely to run into short term financial difficulties as a result of living on a fixed income. A home in foreclosure with significant equity is a magnet for these opportunistic rescuers.

Another type of fraud that inordinately victimizes the elderly is real property theft. In real property theft, the operator targets homes that have stable ownership histories and a lack of refinancing activity – typically these are homes owned by older people. Sometimes they will specifically choose homes where the owners have been hospitalized or are in residential care facilities. The operator will simply forge the name of the homeowner on a quit claim deed, transferring the property to themselves or to a nominee. They also often record forged satisfactions of outstanding mortgages. The operator then either obtains cash out refinance loan or sells the property to an unsuspecting third party.

Scams involving home improvement loans also victimize the elderly. In these schemes, unscrupulous contractors approach elderly homeowners offering to obtain loans and make home repairs. The contractors often do not complete the repairs or complete them in a substandard manner. The loans are generally arranged through related companies and often carry high interest rates or unreasonable payment terms. Foreclosure becomes a very real possibility when the homeowner is unable to meet the terms of repayment. Criminals often see older people as easy marks for real estate fraud schemes, and target them based on a perception that they are more vulnerable. While foreclosure scams vary, they may be used in combination with other fraudulent schemes. For instance, perpetrators may view foreclosure-rescue scams as a new method for fraudulently acquiring properties to facilitate illegal property-flipping and equity-skimming.

The Extent of Mortgage Fraud

No authoritative statistics are available on the extent or the cost of the mortgage fraud problem. Investigations by law enforcement and Suspicious Activity Reports (SARs) are two indicators that are often used to gauge the extent of the problem. The Financial Crimes Enforcement Network of the Department of the Treasury (FinCEN) is the agency that collects SARs.

FinCEN reported that over 37,000 SARs related to mortgage fraud were filed in 2006, an increase of almost 400 percent since just 2003.[3] The Federal Bureau of Investigation (FBI) has also seen its mortgage fraud caseload increase

[3] FinCEN, "The SAR Activity Review Trends, Tips and Issues," p. 15, May 2006, http://www.fincen.gov/sarreviewissue10.pdf

significantly. In September of 2002, the FBI had 436 mortgage fraud investigations. In 2006, that number has grown to well over 1,000, an increase of over 237 percent in less than five years.

Historically, we know that a high propensity of fraud occurs in urban markets. The more notable markets at the current time include Las Vegas, Atlanta, Salt Lake City, and Miami – to name just a few. Regional analysis by the FBI indicates the West region of the U.S. led the nation in mortgage fraud incidences with 35.9 percent of Mortgage Fraud-related SARs filed during FY 2006. The Central, Southeast, and Northeast regions had 24.7, 22.6 and 16.9 percent respectively. However, FBI pending cases indicated that the Central region had the majority of mortgage fraud cases with 33.3 percent during 2006. The West, Southeast, and Northeast had 26.7, 27.2 and 12.8 percentages respectively.

The FBI estimated industry losses resulting from mortgage fraud in 2006 to be between $946 million and $4.2 billion. Unlike credit and economic risk, the responsibility for mortgage fraud is borne fully by mortgage lenders. Secondary market investors generally require the repurchase of loans where fraud is discovered. Lenders, in turn, often have no practical recourse against those who perpetrate fraud, as these persons are either out of business, have little capital that a lender can draw on to compensate itself, or cannot be easily tracked down. Though the lender is one victim of mortgage fraud, fraud harms honest homeowners and homebuyers as well. Homeowners that fall victim to fraud often lose the title to their properties and remain liable for their mortgage debts. Homebuyers often see increased housing costs. Schemes that involve artificially inflated appraisals, for example, drive up property tax assessments for homeowners and prices for prospective homebuyers. Foreclosures resulting from fraud can depress surrounding home prices and contribute to the deterioration of a neighborhood.

Contact Your Servicer First

Mortgage servicers and mortgage holders want to preserve homeownership and, in fact, have economic incentives to avoid foreclosure. Borrowers who find themselves in financial distress should first turn to their mortgage servicer to discuss foreclosure prevention options. Borrowers can also reach out to trusted advisors, such as a HUD-approved housing counselor. Borrowers should be wary of third parties seeking title to their properties without paying for them.

Servicers have been helping borrowers cure their delinquencies for decades. Servicers use a variety of "loss mitigation" tools including both home retention options, such as forbearances, repayment plans, modifications, delinquent refinances, and home relinquishment options, such as short sales and deeds in lieu of foreclosure, when the borrower can no longer support the debt. Of course, servicers strive to provide home retention solutions whenever possible.

Servicers make significant attempts to contact each borrower that becomes delinquent to discuss work out options.[4] Unfortunately, despite all of the servicers' efforts, a significant number of borrowers who reach foreclosure never respond to the servicers' offers of assistance. Equally troubling is that 57 percent of the nation's late-paying borrowers still do not know that their lenders may offer alternatives to help avoid foreclosure.[5] The industry is working hard to change this statistic.

Last year, the servicing industry in partnership with NeighborWorks and the Homeownership Preservation Foundation launched the nationally available hotline; 1-888-995-HOPE. Borrowers can call the toll free hotline and obtain free telephonic or face-to-face foreclosure prevention counseling from anywhere in the country. The hotline is manned 24 hours a day and provides a neutral party to call if the homeowner is reluctant to call the servicer. Counselors work with borrowers and their servicers to explore and execute loss mitigation options that cure the borrower's delinquency.

The HOPE hotline has proven successful, and MBA is proud to help sponsor it. To date over 323,904 people have called the hotline since its inception in 2003. Of those calls, 124,357 resulted in counseling sessions of which 25 percent lead to a recommendation from the counselor for a workout. In total, servicers have provided 869,000 modifications and formal repayment plans just in the second quarter of 2007 alone through direct efforts and the hotline. Efforts are ramping up to make sure this number rises.

In addition to the HOPE hotline, the industry has formed the HOPE NOW Alliance, a broad-based collaboration between credit and homeownership counselors, lenders, investors, mortgage market participants and trade associations, including MBA. HOPE NOW's mission is to establish a coordinated, national approach to enhance the servicing industry's ability to reach out to borrowers who may have or expect to have difficulty making their mortgage payments and to offer them workable options to avoid foreclosure. The

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[4] The following are the notices/solicitations typically provided by servicers: a payment reminder that payment is past due (from 2-16th) (this is typically for high risk borrowers); late charge notice notifying the customer that payment is past due and late charge has been assessed; monthly account statement reflecting either the current and/or total amount past due; notice of availability of counseling and state/local payment assistance programs at 45 days (Federal Law); mail "How to Save Your Home" pamphlet at 60 days (Federal Law for FHA loans); mail internally created documents on how to save the home for non-FHA loans; separate letters soliciting for loss mitigation; and multiple calls each month to solicit alternative collection/loss mitigation. Additional notifications are sent pursuant to state statutory requirements or preconditions to foreclosure including: the breach (or demand letter); letter announcing acceleration of the debt; service of process notices, and foreclosure sale date.

[5] Freddie Mac (2008, January), *Foreclosure Avoidance Research II: A follow-up to the 2005 benchmark study,* found at:
http://www.freddiemac.com/news/archives/corporate/2008/20080131_07ropersurvey.html

Secretaries of the Treasury and Housing & Urban Development support our efforts.

I would like to take this opportunity to highlight some of the efforts undertaken by HOPE NOW:

- Devising an approach to streamline loss mitigation options to consumers;
- Alerting homeowners of work out opportunities and the HOPE hotline through more than 700,000 mailings to delinquent borrowers;
- Financing additional counselors to handle increased call volume; and
- Funding public service announcements.

The industry will continue to seek ways to educate borrowers about loss mitigation and help borrowers in distress. We need your help to promote our efforts.

The best assistance that this Committee can offer to stop foreclosure rescue scams is to educate your constituents to call their servicer or the HOPE hotline. If the borrower can find a legitimate way to cure his or her delinquency, there is no need to turn elsewhere or to become prey to criminals.

MBA and Law Enforcement Respond to Escalating Mortgage Fraud

MBA is proactively working with law enforcement in an effort to curb mortgage fraud crimes. On March 8, 2007, MBA signed a memorandum of agreement with the FBI to promote the FBI's Mortgage Fraud Warning Notice. The Notice states that it is illegal to make any false statement regarding income, assets, debt or matters of identification, or to willfully inflate property value to influence the action of a financial institution. Under the agreement, the MBA and the FBI has made the notice available to mortgage lenders to use voluntarily as a means of educating consumers and mortgage professionals of the penalties and consequences of mortgage fraud.[6] See illustration below.

Illustration 1: Industry Mortgage Fraud Warning Notice

[6]FBI_Mortgage_Fraud_Warning.pdf. (2007). 334K. FBI Mortgage Fraud Notice. Retrieved February 9, 2008 from http://www.mortgagebankers.org/FBIMortgageFraudWarning.htm

MORTGAGE FRAUD IS INVESTIGATED BY THE FBI

Mortgage Fraud is investigated by the Federal Bureau of Investigation and is punishable by up to 30 years in federal prison or $1,000,000 fine, or both. It is illegal for a person to make any false statement regarding income, assets, debt, or matters of identification, or to willfully overvalue any land or property, in a loan and credit application for the purpose of influencing in any way the action of a financial institution.

Some of the applicable Federal criminal statutes which may be charged in connection with Mortgage Fraud include:

18 U.S.C. § 1001 - Statements or entries generally
18 U.S.C. § 1010 - HUD and Federal Housing Administration Transactions
18 U.S.C. § 1014 - Loan and credit applications generally
18 U.S.C. § 1028 - Fraud and related activity in connection with identification documents
18 U.S.C. § 1341 - Frauds and swindles by Mail
18 U.S.C. § 1343 - Fictitious name or address
18 U.S.C. § 1344 - Fraud by wire
18 U.S.C. § 1344 - Bank Fraud
42 U.S.C. § 408(g) - False Social Security Numbers

Unauthorized use of the FBI seal, name, and initials is subject to prosecution under Sections 701, 709, and 712 of Title 28 of the United States Code. Title adornments may not be changed or altered without the specific written consent of the Federal Bureau of Investigation, and is not an endorsement of any product or service.

MBA continues to advocate for increasing the investigation and prosecution of mortgage fraud by law enforcement agencies, improving the communication between mortgage lenders and the state and federal agencies that investigate and prosecute mortgage fraud, and developing better industry tools and intra-industry communication to combat fraud. To that end, MBA has requested Congress appropriate $6.25 million per year, over a five-year period, of dedicated funding for the FBI's efforts in tracking down and prosecuting mortgage fraud. The funding would provide for new FBI field investigators; additional prosecutors dedicated to mortgage fraud; and support for the operations of FBI Interagency Task Forces in the areas with the 15 highest concentrations of mortgage fraud.

MBA has also provided a number of resources to lenders in support of their efforts to protect themselves from mortgage fraud. On April 1, 2005 MBA launched the Mortgage Fraud Against Lenders Resource Center Web site (http://MBAFightsFraud.MortgageBankers.org). The Web site serves as a one-stop resource with comprehensive information on mortgage fraud, including: fraud alerts; legislative and regulatory updates; industry news; and fraud detection and prevention resources.

MBA Recommends Tips to Protect Consumers from Becoming a Victim of Mortgage Fraud

As described above, fraudsters mislead homeowners into believing they can help them avoid foreclosure in exchange for a transfer of the deed, usually in the form of a quit-claim deed. The crooks then profit from the scheme by remortgaging the property or selling it without preventing foreclosure. The victim loses the

property and any fees they may have put up. Because the lender is not paid as promised, the borrower remains responsible for the mortgage debt. To protect a borrower from becoming a victim of a foreclosure rescue or bailout scheme, MBA recommends consumers bear the following in mind:

- If it sounds too good to be true, it probably is;
- Beware of offers to "save" homeowners from default or foreclosure, they often come in the form of unsolicited contacts and high-pressure sales techniques;
- The moment you realize you may have troubles paying your mortgage, contact your mortgage company. The sooner the better. The longer you wait, the worse your problems will become and the fewer the options you will have;
- If you are unwilling or unable to contact your mortgage company, seek a qualified credit counselor or an attorney to assist you;
- Open all your mail from your servicer. Servicers send multiple offers to assist delinquent borrowers. Borrowers who are 45 days delinquent will receive information on how to contact a HUD-approved counselor. Moreover, every borrower is eligible to call (888) 995-HOPE, a toll free counseling service that is free to borrowers;
- Make every effort to understand what you are signing and to what you are agreeing;
- Never sign any loan documents that contain blanks. This leaves you vulnerable to fraud; and
- Make sure that your servicer is fully aware of and approves any transfer of title (deed) to your property. Failure to do so will trigger the due on sale clause in your mortgage, which makes the debt immediately due and payable. Moreover, you will remain liable for any debt that was not paid off upon sale or transfer of the property.

Conclusion

On behalf of MBA, I would like to thank the Committee for the opportunity to present our views on protecting older homeowners from falling victim to fraud schemes. Regardless of the lack of authoritative statistics, MBA's members continue to report that mortgage fraud is a growing problem that is becoming more expensive. MBA believes that increased enforcement, better communication, and further innovation is required in order to adequately protect

the industry, as well as consumers, taxpayers, and communities from the costs of mortgage fraud.

Though the current economic climate presents a number of challenges in battling consumer fraud schemes, particularly those aimed at older homeowners, it has also brought about a very promising increase in the level of cooperation not only among lenders, but also between the real estate finance industry and law enforcement. I fully believe that as these efforts continue, the industry will significantly enhance its ability to not only identify and catch fraudsters, but to also prevent homeowners from becoming victims in the first place.

The CHAIRMAN. Thank you very much, Ms. Dollar.

Ms. TWOHIG.

STATEMENT OF PEGGY TWOHIG, ASSOCIATE DIRECTOR, DIVISION OF FINANCIAL PRACTICES, FEDERAL TRADE COMMISSION, WASHINGTON, DC

Ms. TWOHIG. Chairman Kohl, I am Peggy Twohig, associate director of the Division of Financial Practices at the Federal Trade Commission. I appreciate the opportunity to appear before you to discuss what the FTC is doing to address foreclosure rescue scams.

In the past year, as you noted, there has been a sharp increase in delinquencies and foreclosures. There were 75 percent more foreclosure filings in 2007 than in 2006. Unscrupulous actors, therefore, now have more opportunities to take advantage of people facing serious financial hardship.

Although foreclosure rescue scams take various forms, as you have heard, at the heart of each is a false promise that the rescuer will save the consumer's home. The Commission, partnering with other Federal agencies and State and Local Governments, is working to address the problem of foreclosure rescue frauds through law enforcement and consumer outreach.

I will briefly describe the FTC's authority in the financial arena, the nature of foreclosure frauds, and recent activities to protect consumers from these frauds.

The Commission has wide-ranging responsibilities regarding consumer financial issues. In particular, the FTC enforces Section 5 of the Federal Trade Commission Act, which prohibits unfair and deceptive acts and practices in commerce. The FTC protects consumers from unfair and deceptive practices at every stage of the consumer credit lifecycle—from the advertising and marketing, through the loan servicing, through the debt collection—and, unfortunately, foreclosure occurs at the end of the lifecycle for many consumers. That is where foreclosure rescue scams step in.

Foreclosure rescue frauds take many different forms, as you have heard, and I won't go into detail here because you have heard this already from other panelists. But there are some common types.

In some scams the homeowner is told that he is signing documents for a new loan when, in fact, he unknowingly signs over the deed to his house.

In another type, the homeowner knows he is signing over title to his house based on promises that he will be able to stay as a renter and get the house back, repurchase it later. However, rather than allowing the homeowner to repurchase the property, the rescuer typically asserts ownership outright and evicts the homeowner.

Or rescuers sometimes promise various types of assistance that will stop the foreclosure in return for a hefty fee, such as promises to help them negotiate a loan workout or a loan modification. But these promises are typically false. The assistance does not stop the foreclosure, and the consumers end up losing their homes anyway.

Foreclosure rescue scams are widely dispersed geographically and often local in nature. Indeed, historically State and Local law enforcement agencies have prosecuted foreclosure rescue scams because these scams are typically in States and Cities and sometimes even in particular neighborhoods.

In light of the recent increase in foreclosures, the FTC through its regional offices is working with Federal, State and Local partners to enhance its efforts in preventing foreclosure rescue frauds and has a number of ongoing nonpublic investigations of these scams. Commission staff members are leading or participating in various State and Local task forces around the country that are sharing information and working to identify solutions to the problem.

The Commission also works to empower consumers to prevent harm by educating them about their options when facing foreclosure and other credit problems. The FTC has published more than 50 credit-related educational brochures for consumers, including an alert that I have with me here with guidance on steps borrowers can take to avoid foreclosure. This publication, called "Mortgage Payments Sending You Reeling? Here is What to Do," warns consumers that companies may say they can offer services to help consumers avoid foreclosure but that often these promises are false. It also tells them about what options they may have in terms of working out their loan, different loan modification or workout options.

Commission staff have participated in a number of public meetings recently to provide homeowners with information and resources to help them avoid foreclosure. The Commission is also planning a stepped-up consumer outreach initiative on foreclosure rescue fraud. In particular, the FTC will submit radio public service announcements to stations in cities hardest hit by foreclosures as well as publish classified ads for free in free publications.

The Commission will also send information to community libraries, unions and other organizations warning consumers about foreclosure rescue scams. The Commission is committed to working with our partners to combat foreclosure rescue fraud and to protect consumers from unfair and deceptive practices generally in the financial services marketplace.

Thank you for the opportunity to testify at this hearing today.

[The prepared statement of Ms. Twohig follows:]

PREPARED STATEMENT OF

THE FEDERAL TRADE COMMISSION

on

FORECLOSURE RESCUE FRAUD

Before the

SENATE SPECIAL COMMITTEE ON AGING

Washington, D.C.

February 13, 2008

I. INTRODUCTION

Chairman Kohl, Ranking Member Smith, and Members of the Committee, I am Peggy Twohig, Associate Director of the Division of Financial Practices at the Federal Trade Commission ("FTC" or "Commission").[1] I appreciate the opportunity to appear before you today to discuss what the FTC is doing to prevent foreclosure rescue scams.

In the past year, there has been a sharp increase in delinquencies and foreclosures in the mortgage market. In 2007, there were an estimated 2.2 million foreclosure filings in the United States, a 75% increase from 2006.[2] (Because not every foreclosure filing results in foreclosure, the number of foreclosures was significantly lower.) Given the increase in filings, unscrupulous actors now have greater opportunities to take advantage of people facing serious financial hardship.

Foreclosure rescue scams are implemented in various forms. The core of each one, however, is a false promise that the firm will save the consumer's home. The Commission, partnering with other federal agencies and state and local governments, is working to prevent the problem of foreclosure rescue frauds through law enforcement and consumer outreach. This testimony will discuss in more detail (1) the FTC's authority in the consumer financial services industry; (2) the nature of foreclosure rescue frauds; and (3) recent activities to protect consumers from these frauds.

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[1]The views expressed in this statement represent the views of the Commission. My oral presentation and responses to any questions you have are my own, however, and do not necessarily reflect the views of the Commission or any particular Commissioner.

[2]Associated Press, *Home Foreclosure Rate Soars in 2007*, N.Y.TIMES, Jan. 29, 2008, *available at* http://www.nytimes.com/aponline/us/AP-Foreclosure-Rates.html.

II. THE COMMISSION'S LEGAL AUTHORITY AND RESPONSIBILITIES

The Commission has wide-ranging responsibilities regarding consumer financial issues.[3] The FTC enforces Section 5 of the Federal Trade Commission Act ("FTC Act"), which broadly prohibits unfair or deceptive acts or practices in commerce.[4] The Commission also enforces statutes that address specific aspects of lending practices, including the Truth in Lending Act[5] and the Home Ownership and Equity Protection Act.[6] Moreover, the Commission enforces a number of other consumer protection statutes that govern financial services providers, such as the Consumer Leasing Act,[7] the Fair Debt Collection Practices Act,[8] the Fair Credit Reporting Act,[9] the Equal Credit Opportunity Act,[10] the Credit Repair Organizations Act,[11] the

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[3]The Commission's June 13, 2007 testimony before the House Committee on Financial Services described in detail the agency's activities in the financial services sector. The Commission's statement is available at http://www.ftc.gov/os/2007/06/070613statement.pdf.

[4]15 U.S.C. § 45(a).

[5]15 U.S.C. §§ 1601-1666j (requiring disclosures and establishing other requirements in connection with consumer credit transactions).

[6]15 U.S.C. § 1639 (providing specific protections for consumers who enter into certain high-cost refinance mortgage loans).

[7]15 U.S.C. §§ 1667-1667f (requiring disclosures, limiting balloon payments, and regulating advertising in connection with consumer lease transactions).

[8]15 U.S.C. §§ 1692-1692o (prohibiting abusive, deceptive, and unfair debt collection practices by third-party debt collectors).

[9]15 U.S.C. §§ 1681-1681x (imposing standards for consumer reporting agencies and information furnishers in connection with the credit reporting system and placing restrictions on the use of credit reporting information).

[10]15 U.S.C. §§ 1691-1691f (prohibiting creditor practices that discriminate on the basis of race, color, religion, national origin, sex, marital status, age [provided the applicant has the capacity to contract], receipt of public assistance, and exercise of certain legal rights).

[11]15 U.S.C. §§ 1679-1679j (requiring disclosures and prohibiting unfair or deceptive advertising and business practices by credit repair organizations).

Telemarketing and Consumer Fraud and Abuse Prevention Act,[12] and the privacy provisions of the Gramm-Leach-Bliley Act.[13]

The Commission's authority extends to only some of the entities that provide financial goods and services to consumers. The FTC Act and the other statutes that the FTC enforces specifically exempt banks, savings and loan institutions, and federal credit unions from the agency's jurisdiction.[14] The Commission, however, does have jurisdiction over nonbank financial companies, including nonbank mortgage companies, mortgage brokers, and finance companies. The FTC generally engages in law enforcement investigations but does not engage in regular examinations of entities within its jurisdiction.

The FTC protects consumers from unfair and deceptive practices at every stage of the consumer credit life cycle, from advertising and marketing of mortgages to servicing and debt collection. The Commission targets many types of entities in its enforcement work, from mortgage brokers to consumer lenders to debt "relief" companies.[15] The FTC's enforcement actions have involved companies large and small in various regions of the country. In the last

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[12]15 U.S.C. §§ 6101-6108 (protecting consumers from telemarketing fraud and abuse).

[13]15 U.S.C. §§ 6801-6809 (imposing requirements on financial institutions with respect to annual privacy notices, procedures for providing customers an opt-out from having certain information shared with nonaffiliated third parties, and safeguarding customers' personally identifiable information).

[14]*E.g.*, 15 U.S.C. § 45(a)(2).

[15]The Commission has prosecuted over a dozen companies that allegedly purport to offer relief from credit card and other consumer debt but misrepresent the cost or nature of the relief. *FTC v. Debt-Set*, No. 07-558 (D. Colo. 2007); *FTC v. Select Personnel Mgmt., Inc.*, No. 07-0529 (N.D. Ill. 2007); *FTC v. Dennis Connelly*, No. 06-701 (C.D. Cal. 2006); *FTC v. Express Consolidation*, No. 06-61851 (S.D. Fla. 2006); *United States v. Credit Found. of Am.*, No. 06-3654 (C.D. Cal. 2006); *FTC v. Debt Solutions, Inc.*, No. 06-0298 (W.D. Wash. 2006); *FTC v. Debt Mgmt. Found. Servs., Inc.*, No. 04-1674 (M.D. Fla. 2004); *FTC v. Integrated Credit Solutions, Inc.*, No. 06-00806 (M.D. Fla. 2006); *FTC v. National Consumer Council, Inc.*, No. 04-0474 (C.D. Cal. 2004); *FTC v. Better Budget Fin. Servs., Inc.*, No. 04-12326 (D. Mass. 2004); *FTC v. Innovative Sys. Tech., Inc., d/b/a Briggs & Baker*, No. 04-0728 (C.D. Cal. 2004); *FTC v. AmeriDebt, Inc.*, No. 03-3317 (D. Md. 2003); *FTC v. Jubilee Fin. Servs., Inc.*, No. 02-6468 (C.D. Cal 2002).

decade, the agency has brought 21 actions against companies in the mortgage lending industry, collectively returning more than $320 million to consumers.[16] In attacking potentially deceptive marketing by mortgage lenders, the Commission recently warned over 200 mortgage brokers and lenders, and media outlets that carry their advertisements for home mortgages, that their advertising claims may violate federal law.[17] The Commission has ongoing investigations of mortgage advertisers and will continue to monitor the claims made in mortgage advertising.

The FTC also fights unfair and deceptive practices in the mortgage servicing area. For example, in 2003, along with the Department of Housing and Urban Development, the Commission charged Fairbanks Capital Corp. (now called Select Portfolio Servicing, Inc.) with violating federal law in connection with mortgage servicing.[18] The settlement agreement included a $40 million redress fund for consumers, as well as strong injunctive provisions, including specific safeguards to prevent the company from foreclosing on consumers without cause.[19]

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[16]*FTC v. Mortgages Para Hispanos.Com Corp.*, No. 06-00019 (E.D. Tex. 2006); *FTC v. Ranney*, No. 04-1065 (D. Colo. 2004); *FTC v. Chase Fin. Funding*, No. 04-549 (C.D. Cal. 2004); *United States v. Fairbanks Capital Corp.*, No. 03-12219 (D. Mass. 2003); *FTC v. Diamond*, No. 02-5078 (N.D. Ill. 2002); *United States v. Mercantile Mortgage Co.*, No. 02-5079 (N.D. Ill. 2002); *FTC v. Associates First Capital Corp.*, No. 01-00606 (N.D. Ga. 2001); *FTC v. First Alliance Mortgage Co.*, No. 00-964 (C.D. Cal. 2000); *United States v. Action Loan Co.*, No. 00-511 (W.D. Ky. 2000); *FTC v. NuWest, Inc.*, No. 00-1197 (W.D. Wash. 2000); *United States v. Delta Funding Corp.*, No. 00-1872 (E.D.N.Y. 2000); *FTC v. Barry Cooper Prop.*, No. 99-07782 (C.D. Cal. 1999); *FTC v. Capitol Mortgage Corp.*, No. 99-580 (D. Utah 1999); *FTC v. CLS Fin. Serv., Inc.*, No. 99-1215 (W.D. Wash. 1999); *FTC v. Granite Mortgage, LLC*, No. 99-289 (E.D. Ky. 1999); *FTC v. Interstate Res. Corp.*, No. 99-5988 (S.D.N.Y. 1999); *FTC v. LAP Fin. Serv., Inc.*, No. 99-496 (W.D. Ky. 1999); *FTC v. Wasatch Credit Corp.*, No. 99-579 (D. Utah 1999); *In re First Plus Fin. Group, Inc.*, FTC Docket No. C-3984 (2000); *In re Fleet Fin., Inc.*, FTC Docket No. C-3899 (1999); *FTC v. Capital City Mortgage Corp.*, No. 98-00237 (D.D.C. 1998).

[17]FTC Press Release, *FTC Warns Mortgage Advertisers and Media That Ads May Be Deceptive* (Sept. 11, 2007), *available at* http://www.ftc.gov/opa/2007/09/mortsurf.shtm.

[18]*United States v. Fairbanks Capital Corp.*, No. 03-12219 (D. Mass. 2003).

[19]*United States v. Fairbanks Capital Corp.*, No. 03-12219 (D. Mass. 2003) (Order Preliminarily Approving Stipulated Final Judgment and Order as to Fairbanks Capital Corp. and Fairbanks Capital Holding Corp., Section XII). Last year, after conducting a compliance review of the company, the

III. TYPES OF FORECLOSURE RESCUE FRAUDS

Foreclosure occurs when consumers are past due in making payments on their mortgages. When a consumer defaults on a loan, the creditor executes on the security by foreclosing on the mortgage lien.[20] Foreclosure usually means loss of a home and any equity that the borrower might have accrued.[21]

As noted above, foreclosure filings in 2007 increased sharply from 2006.[22] December was the fifth consecutive month in which foreclosure filings topped 200,000.[23] Borrowers facing foreclosure often have few options. By the time a delinquent loan goes into the foreclosure process, borrowers typically are behind many months in payments, and the debt has grown with late fees and other charges. Because of late payments, the borrowers' credit histories have deteriorated. As a result, the consumers' ability to borrow money from other lenders to pay back past due payments is often severely curtailed, especially if they have little or no equity in their homes.[24] Firms engaged in foreclosure rescue schemes then step in to take advantage of the fact that borrowers fear they may lose their homes. They promise consumers a way out, typically for

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Commission filed a joint motion with defendants to modify the 2003 consent order. The modified order provides substantial benefits to consumers beyond those in the original order, including additional refunds of fees paid in certain circumstances. *United States v. Fairbanks Capital Corp.*, No. 03-12219 (D. Mass. 2003) (Modified Stipulated Final Judgment and Order, entered Sept. 4, 2007).

[20]In about half of the states, the process of foreclosure includes a public posting. Foreclosure may then proceed either by "judicial" means, which involves a court proceeding, or a "non-judicial" process, which does not involve a court proceeding, depending on the provisions of state law.

[21]Home equity is the difference between the market value of a home and the total amount of debt on the property.

[22]Associated Press, *Home Foreclosure Rate Soars in 2007*, N.Y.TIMES, Jan. 29, 2008, *available at* http://www.nytimes.com/aponline/us/AP-Foreclosure-Rates.html.

[23]*Id.*

[24]If a consumer facing financial hardship and foreclosure does not have equity in his home, it often is impossible to fund the fees charged in a refinance.

a few thousand dollars.

There are many varieties of mortgage foreclosure rescue fraud. But in each case, the perpetrator makes misleading promises that consumers' homes will be saved from the pending foreclosure permanently.[25] Consumers, however, ultimately lose their homes and lose the money they paid to scammers.

The types of mortgage foreclosure rescue fraud are as varied as the imaginations of the perpetrators. However, there are several recurring types:

- **Title Transfer:** The fraudulent operators orchestrating the fraud may in fact take title to the homeowner's property. Two variations on this scheme are:

  - The fraudster represents that the homeowner is signing documents for a new loan to bring the mortgage current. The scam artist may forge the deed or slip the deed into a large stack of documents with extensive fine print as part of a purported loan closing. Ultimately, the fraudster ends up with a deed granting ownership of the house, even though the consumer believed he was only signing documents for a refinance loan.[26]

  - In other situations, the firm informs the borrower that he needs to sell the home to the rescue company to remain in the home as a renter. The firm then promises the consumer that he will be able to repurchase the house over the next few years. However, rather than allow the homeowner to repurchase the property, the fraudster typically asserts ownership of the home outright and evicts the homeowner. In other instances, the terms of repurchase are so onerous that the firm knows the consumer will never be able to repurchase the house.[27]

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[25]Prentiss Cox, *Foreclosure Equity Stripping: Legal Theories and Strategies to Attack a Growing Problem,* CLEARINGHOUSE REVIEW JOURNAL OF POVERTY LAW AND POLICY, Mar.-Apr. 2006 at 607, 608.

[26]*E.g.*, News Release, Missouri Office of the Attorney General, *St. Joseph Foreclosure Consultant Service Will Cease Offering Such Services Under Agreement Obtained By Nixon* (Jun. 1, 2006); Press Release, Florida Office of Financial Regulation, *CFO Gallagher Announces Multiple Arrests in Predatory Lending Scheme* (Apr. 28, 2005); *see also* Cox, *supra* note 25, at 607, 622-23 (describing variations on the misrepresentations used to obtain the title transfer).

[27]*E.g.*, Press Release, District of Columbia Office of the Attorney General, *AG Singer Sues Metropolitan Money Store, Others, Alleging They Stripped More Than $2 Million In Equity From DC Homeowners* (Aug. 30, 2007); Press Release, Massachusetts Office of the Attorney General, *Attorney General Martha Coakley Obtains Consent Judgment Against Newburyport Man for Operating Foreclosure Rescue Schemes* (Aug. 3, 2007); Press Release, Illinois Attorney General, *Madigan: New Law Protects Vulnerable Homeowners From Mortgage "Rescue" Fraud Schemes* (Dec. 28, 2006).

- **Mortgage Negotiation:** Firms promise borrowers that, for a fee, they will "save your home from foreclosure" by negotiating with the loan servicer. This negotiation is promised to yield either a temporary decrease in the payment amount or a permanent loan modification. In the end, however, these firms charge thousands of dollars and rarely stop the foreclosure.[28] In some cases, the company promises a full range of options: credit counseling, debt negotiation, emergency lending – whatever the consumer needs; homeowners pay fees for each of these "solutions" in turn, even as the lender sends continued notices of default and begins the foreclosure process.

  Frequently, the firms instruct the victims to have no further contact with the loan servicer, even though servicers will agree to loan workouts or modifications to avoid foreclosure in some circumstances. Most consumers report that when they try to get in touch with the mortgage foreclosure rescue company, they are unable to reach anyone to determine how the process of negotiation is going or to complain. A great number of consumers report that after a long period of reassurance from the firms, they are at last told to file for bankruptcy or grant a deed in lieu of foreclosure to the lender. The vast majority of consumers find to their shock that their houses end up being foreclosed on. Indeed, many consumers find after their homes are foreclosed upon that some scammers' "money-back guarantees" were also fraudulent.[29]

In all of these scenarios, consumers typically believe that the promise to "stop foreclosure" and "save your home" means a permanent solution that will allow them to keep their homes and save their equity. Yet, they still end up losing their homes.

IV. RECENT ENFORCEMENT RESPONSES

The rapid increases in mortgage delinquencies and foreclosures within the past year create a target-rich environment for rescue scam operators. The Commission is working to address the problem of foreclosure rescue frauds through law enforcement investigations and

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[28] *See, e.g.*, STEVE TRIPOLI & ELIZABETH RENUART, NATIONAL CONSUMER LAW CENTER, DREAMS FORECLOSED: THE RAMPANT THEFT OF AMERICANS' HOMES THROUGH FORECLOSURE "RESCUE" SCAMS (2005), at 14, 34-36 *available at* http://www.consumerlaw.org/news/content/ForeclosureReportFinal.pdf.

[29] *E.g.*, Press Release, Florida Office of the Attorney General, *McCollum Sues "Rescue Foreclosure" Company, Announces Legislation to Fight Mortgage-Related Fraud* (Jan. 28, 2008); Press Release, Iowa Office of the Attorney General, *Miller Offers Laws to Protect Home Buyers* (Jan. 18, 2008); Press Release, Minnesota Office of the Attorney General, *Swanson Sues Two Out-of-State Mortgage "Foreclosure Consultants" For Charging Fees But Not Delivering Promised Services* (Dec. 6, 2007); Press Release, Ohio Office of the Attorney General, *Foreclosure Rescue Scams Sweep: Attorney General Dann Files 6 Suits Against Companies For Foreclosure Rescue Scams* (Aug. 8, 2007).

consumer outreach, with a particular emphasis on providing assistance and support to state and local officials.

A. Law Enforcement Investigations

The Commission has a number of ongoing, non-public investigations of foreclosure rescue scams. The foreclosure rescue scams are widely dispersed geographically and often local in nature. Thus, the FTC – through its regional offices – is working with federal, state, and local partners to enhance its efforts. Historically, state and local law enforcement have prosecuted foreclosure rescue scam operators because these scams typically operate in a particular state, city, or even neighborhood.[30] Often, scam operators target specific areas with advertisements in local publications or posters, or contact distressed homeowners who are listed in public records of foreclosure filings. Indeed, a consumer group with extensive experience in mortgage lending issued a report in 2005 finding that no national companies engaged in systematic foreclosure rescue fraud operations.[31]

There have been several recent reports of a rise in foreclosure rescue scams and complaints against mortgage rescuers.[32] Even states which traditionally have not seen many foreclosure rescue scams have begun to receive complaints from consumers.[33] State and local

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[30]STEVE TRIPOLI & ELIZABETH RENUART, NATIONAL CONSUMER LAW CENTER, DREAMS FORECLOSED: THE RAMPANT THEFT OF AMERICANS' HOMES THROUGH FORECLOSURE "RESCUE" SCAMS (2005), *available at* http://www.consumerlaw.org/news/content/ForeclosureReportFinal.pdf.

[31]*Id.*

[32]*E.g.*, Press Release, Iowa Office of the Attorney General, *Miller Offers Laws to Protect Home Buyers* (Jan. 18, 2008); Press Release, Illinois Attorney General, *Madigan: New Law Protects Vulnerable Homeowners From Mortgage "Rescue" Fraud Schemes* (Dec. 28, 2006); *see also* Better Business Bureau, Alert, *Foreclosure 'Rescue' Scams on the Rise* (Jul. 7, 2005), *available at* http://www.bbb.org/alerts/article.asp?ID=593.

[33]Press Release, Iowa Office of the Attorney General, *Miller Offers Laws to Protect Home Buyers* (Jan. 18, 2008).

authorities have responded to the problem with law enforcement[34] and legislation.[35] For example, in Florida, the attorney general filed a lawsuit asserting a foreclosure rescue company defrauded at least 80 homeowners out of approximately $1.7 million in home equity. The alleged scam operator would approach homeowners being foreclosed upon and offer to hold title to the homes for a year, refinance the loan, and provide credit repair counseling. The company allowed homeowners to remain in the home, and promised to deed the property back to homeowners after paying off the overdue loan. Instead of providing these services, however, the scam operator would strip the equity from the home by refinancing the mortgage with a larger loan based on an inflated appraisal, as well as assessing fraudulent fees and costs. Then, homes were sold to investors or "straw buyers" who leased the homes to the homeowner at inflated

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[34]*E.g.*, Press Release, California Office of the Attorney General, *Attorney General Lockyer Wins Court Order Freezing Assets of Firm That Unlawfully Exploits Homeowners in Foreclosure* (Jul. 29, 2004); Press Release, District of Columbia Office of the Attorney General, *AG Singer Sues Metropolitan Money Store, Others, Alleging They Stripped More Than $2 Million In Equity From DC Homeowners* (Aug. 30, 2007); Press Release, Massachusetts Office of the Attorney General, *Attorney General Martha Coakley Obtains Consent Judgment Against Newburyport Man for Operating Foreclosure Rescue Schemes* (Aug. 3, 2007); Press Release, Minnesota Office of the Attorney General, *Swanson Sues Two Out-of-State Mortgage "Foreclosure Consultants" For Charging Fees But Not Delivering Promised Services* (Dec. 6, 2007); News Release, Missouri Office of the Attorney General, *St. Joseph Foreclosure Consultant Service Will Cease Offering Such Services Under Agreement Obtained By Nixon* (Jun. 1, 2006); Press Release, Ohio Office of the Attorney General, *Foreclosure Rescue Scams Sweep: Attorney General Dann Files 6 Suits Against Companies For Foreclosure Rescue Scams* (Aug. 8, 2007); News Release, Texas Office of the Attorney General, *Attorney General Abbott Takes Legal Action Against Foreclosure Rescue Firm's Unlawful Texas Operation* (Dec. 14, 2007); Press Release, Washington Office of the Attorney General, *Attorney General McKenna Sues, Settles With Real Estate Investors For Mortgage Foreclosure "Rescue" Violations* (Mar. 14, 2007).

[35]A number of states have enacted legislation to address foreclosure rescue fraud with legislative action. For example, on January 1, 2007 Illinois enacted the Mortgage Rescue Fraud Act, Pub. Act 94-0822, 94th Gen. Assem. (2005-2006), and on August 30, 2007, Massachusetts banned predatory, for-profit foreclosure rescue transactions, 940 MASS. CODE REGS. 25 (2007). *See also* CAL. CIV. CODE §§ 2945.0-.11 (foreclosure consultant); CAL. CIV. CODE §§ 1695.0-.17 (home equity purchaser); GA. CODE ANN. § 10-1-393(b)(20)(A); MINN. STAT. ANN. §§ 325N.01-.18; MO. ANN. STAT. §§ 407.935 - .943. In addition, other state legislatures are currently reviewing proposed mortgage foreclosure rescue fraud legislation which would protect distressed homeowners. *E.g.*, Arizona, S.B. 1616 (creating Mortgage Rescue Fraud Protection Act and regulating foreclosure consultants); Connecticut, H.B. 5222 (protecting homeowners from equity skimming and regulating foreclosure consultants); Hawaii, H.B. 1332, S.B. 1418 (creating a Mortgage Rescue Fraud Act), *available at* http://www.ncsl.org/standcomm/sccomfc/Foreclosures_2007.htm.

rental rates, which eventually led to eviction. Homeowners were left without a home or the equity that belonged to them.[36] In an Illinois case, the Cook County State's Attorney fined a company which charged consumers $300 to $6,670 to secure private funding for loans to save the homes of persons who were in foreclosure, but never obtained the funding.[37]

The Commission routinely works with other federal, state, and local law enforcement officials. Because of the increasing breadth and depth of the mortgage foreclosure rescue fraud problem, the FTC is committed to expanding these cooperative efforts. As part of this effort, Commission staff members are leading or participating in various task forces that are addressing the problems of increasing foreclosures and foreclosure rescue fraud.

FTC staff are participating in task forces in seven geographic areas. Task force members in each local area share information about trends in consumer complaints and work to identify solutions. For example, the Southeast Regional Office of the FTC is working with a state attorney general's office to identify, investigate, and prosecute cases. These efforts include daily coordination on cases under investigation. In some cases, the two agencies have divided responsibility for law enforcement actions; in other cases, the two agencies are working cooperatively on particular targets. The East Central Regional Office is partnering with a local task force to implement various consumer education and outreach strategies to help consumers. The Southern California Foreclosure Fraud Task Force, in which the FTC's Western Region participates, has facilitated the coordination of prosecutions by civil and criminal authorities at various levels.

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[36]Press Release, Florida Office of the Attorney General, *McCollum Sues "Rescue Foreclosure" Company, Announces Legislation to Fight Mortgage-Related Fraud* (Jan. 28, 2008).

[37]Press Release, Cook County State's Attorney's Office, *$250,000 Fine Levied Against Fraudulent Foreclosure "Rescue" Business* (Apr. 18, 2006).

B. Consumer Education and Outreach

Although law enforcement cases are an essential component of the FTC's work in this area, the Commission also works to empower consumers to avoid harm by educating them about their options when facing foreclosure and other credit problems. The FTC has published more than fifty credit-related educational brochures for consumers.[38] Recently, in the wake of reports of rising mortgage delinquencies, the Commission published an alert with guidance on steps borrowers can take to avoid foreclosure.[39] The publication warns consumers that companies may say they can offer services to help consumers avoid foreclosure, but some of the firms may be scam artists that may even fraudulently induce consumers to transfer title to their homes.[40]

In addition, FTC staff have participated in public meetings addressing the rise of foreclosures over the last few months in numerous cities, including Savannah, Georgia; Augusta, Georgia; Oakland, California; and Detroit, Michigan. Commission staff have used these opportunities to provide homeowners with information and resources to help them avoid foreclosure, including advice for contacting loan servicers to learn about available options and warnings to avoid mortgage foreclosure rescue scams. During these public meetings, consumers have provided valuable information to FTC staff, including information about the conduct of specific realtors, brokers, lenders, servicers, and foreclosure rescue operators.

The Commission is planning a stepped-up consumer outreach initiative on foreclosure rescue fraud. In particular, the FTC will submit a series of radio public service announcements

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[38]Topics range from abusive lending practices to secured credit cards to fair debt collection. All of the Commission's credit-related publications, many in both English and Spanish, are available online at http://www.ftc.gov/bcp/menus/consumer/credit.shtm.

[39]*Mortgage Payments Sending You Reeling? Here's What to Do, available at* http://www.ftc.gov/bcp/edu/pubs/consumer/homes/rea04.shtm.

[40]*Id.*

to stations in cities hardest hit by mortgage foreclosures, as well as publish classified advertisements for free publications. The Commission also will send information to community libraries, unions, and other organizations warning consumers about foreclosure rescue scams.

V. CONCLUSION

The Commission is committed to working with our partners to combat mortgage foreclosure rescue frauds. This work is part of the FTC's broad and vigorous law enforcement and consumer education program to protect consumers from deceptive, unfair, and otherwise illegal credit practices. The FTC will continue to seek to prevent deceptive and unfair practices in the financial marketplace.

The CHAIRMAN. Thank you, Ms. Twohig.

We would like to turn now to the distinguished Ranking Member of this Committee, Gordon Smith from Oregon.

OPENING STATEMENT OF SENATOR GORDON SMITH, RANKING MEMBER

Senator SMITH. Thank you, Senator Kohl, Mr. Chairman, I appreciate your holding this very timely hearing. My wife and I happen to live in a home that is down a hill which was iced over this morning, and it took a little time to get up that hill.

But I am glad to be here because this issue, as we talk about the economy and stimulus and all of these things, at the core of it, at the center of the problem, is obviously the housing crisis. In 2007, the number of foreclosures hit an all-time high in this country, with over 400,000 homeowners losing their homes. In my State of Oregon, the number of foreclosures increased 57 percent between 2005 and 2007.

Obviously, the cons that you are focusing on in this hearing, Mr. Chairman, they don't necessarily focus on the elderly, but the fact of the matter is it is a target rich environment because the elderly do have a lot of their equity, a lot of their life savings, tied up in their real estate, in their homes.

It is a situation that is intolerable. It is a problem that I think calls upon State, Local and obviously the Federal Government as well to enforce our consumer protection laws and prosecute those who would target anyone, but in particularly elderly who may be vulnerable in a special way to these kinds of schemes.

We need to do more to educate people as to what their options are to prevent foreclosure and how to protect themselves from fraudulent schemes. An educated consumer is the first line of defense against fraud and abuse. So I am very pleased with objectives to the HOPE NOW initiative and the way it proactively reaches out to borrowers.

To that end, to the end of helping put a brake on this situation, Senator Kerry and I introduced in the Finance Committee legislation that would give people who are at risk of default the option to obtain safe, fair and obtainable mortgages.

Under current law, State and Local Governments are permitted to issue tax-exempt bonds to finance new mortgage loans to first-time homebuyers. Our bill would temporarily expand the use of the program to include refinancing of existing subprime loans.

I really believe, Mr. Chairman, that people want—not a handout or a bailout—they want a workout. They want the dignity of that. That is the spirit of the bill that Senator Kerry and I have introduced. We want to help people who may face foreclosure to stay in their homes and at the same time provide needed stimulus to the housing industry.

So I thank all of our witnesses for their presence here today and the contribution they are making to the understanding of this Committee and the Senate as to what more we can and should do.

So, my first question, Ms. Dollar, is to you. I thank you for what you do at MBA, and I wonder if you have evaluated or know of the legislation that we are proposing. It is actually legislation that President Bush spoke favorably of in his State of the Union Ad-

dress. I had hoped it would have been part of the stimulus package. I do hope that it will soon be included although it was not included in the stimulus package, in a measure that will get to the President. Because I know he will sign it.

What impact do you see this bill having on homeowners, including seniors who are at risk of foreclosure?

Ms. DOLLAR. Thank you, Ranking Member Smith.

MBA applauds the bill that was introduced by yourself and Senator Kerry. We believe that all effort to bring financing options to people that are in foreclosure or that are facing payment distress are necessary and appropriate in this particular marketplace. The MBA and lenders and services are, as you are well aware, reaching out to borrowers in an unprecedented way in order to try and modify loans, to create workouts, and to keep people in their homes. So any legislation that assists with that ultimate goal, the Mortgage Bankers Association is very much in favor of.

Senator SMITH. Are you aware of States unilaterally trying to do this on their own—increase the caps so that they can extend these kinds of services to those who otherwise don't qualify, aren't first-time homebuyers?

Ms. DOLLAR. I am not personally aware of any State-based initiatives. It wouldn't surprise me if those were being made on various different levels and in different States. I know especially on the foreclosure rescue side that many, many States are moving toward trying to put specific legislation and to address that issue.

Senator SMITH. Right.

Thomas Perez, the home I spoke of is in Maryland, and I am curious about what the State of Maryland is doing to reach out to seniors to inform them of potential foreclosure scams.

Mr. PEREZ. In short, first of all I want to apologize for your icy beginning to the day. I used to serve on the Montgomery County Council, and I hope it wasn't in Montgomery County.

Senator SMITH. It is in Bethesda.

Mr. PEREZ. Oh, my gosh. Well, OK, as soon as I leave here today, senator, I will be in touch with the Department of Public Works and Transportation.

Senator SMITH. Montgomery County had a 2-hour school delay today.

Mr. PEREZ. Yes, as we found out this morning, absolutely.

Senator SMITH. Very justifiably so.

Mr. PEREZ. I would agree wholeheartedly.

We have quite a range of things that we are attempting to do as it relates to the very important questions that you raised. Let me outline just a few.

We have put together some new products through our Department of Housing and Community Development to assist people, lifeline products. There is one product—for instance, what we are finding is that there are a lot of people who could climb out if they could get a short-term loan of maybe $10,000. They have fallen behind, but their situation is sufficiently stable such that if they could just get that little assistance they could climb out.

So we have established this program—interest-free, payment-deferred program—and we are finding that that is very helpful. Al-

though I don't want to overstate. We are helping dozens of people. We need to be helping thousands of people.

On the regulatory front, we are now, I think, the second State in the country—we issued an emergency regulation that is requiring loan servicers to document on a monthly basis, with precision, the precise nature and extent of the modifications that they are doing. Because as you—I am a kleptomaniac, so I was stealing your line about "not a handout or a bailout but a workout." As I said in my testimony, the data show that there is, regrettably, still a very wide gulf between the stated aspirations of loan servicers—and I have no reason to doubt the sincerity of their desire to help people—but there is a disparity between the stated aspirations and the actions. You are, I am sure, well aware of the study from Moody's documenting that one percent of people in danger of foreclosure are getting help. The National Association of Attorneys General just released some data last week showing that only 3 in 10 people in distress are even contacting the servicer—they are having so much trouble getting through.

So we are working hard to, frankly, hold servicers accountable. We are one of a handful of States that actually licenses loan servicers. So we have regulatory authority to hold them accountable. Most States actually don't have that regulatory authority to hold them accountable. I think that is unfortunate. We are using that regulatory authority in an effort to bring them to the table. I believe that is the elephant in the room.

We are doing a ton of aggressive, proactive things like banning prepayment penalties—those are very important prospective steps. But the most difficult nut to crack in this is the here and now of the people that are staring foreclosure in the eye. We are going to need—there is no silver bullet for that; it is more like silver buckshot. Both the States and the Federal Government and, frankly, and I would argue, most importantly, the servicers need to come to the table in a meaningful way with modifications that are taking it to scale.

Senator SMITH. Well, I commend you for that. I also commend Montgomery County. It is a great place to live.

Mr. PEREZ. Thank you.

Senator SMITH. The condition of this particular place was nobody's fault—it was nature.

Mr. PEREZ. Well, thank you.

Senator SMITH. Thank you.

Mr. Chairman.

The CHAIRMAN. Thank you, Senator Smith.

We now turn to the great Senator from the State of Arkansas, Blanche Lincoln.

OPENING STATEMENT OF SENATOR BLANCHE LINCOLN

Senator LINCOLN. Thank you, Mr. Chairman. As always, thank you for your leadership and bringing us together to discuss this issue. The Aging Committee is one of my favorite Committees because it really does focus on the issues that concern the constituencies that we represent in our elderly population. The chairman brings forth great issues.

We know across the Nation that foreclosures have increased by 95 percent in the past year due to the rising interest rates and declining housing prices, predatory lending. In our State of Arkansas, there were 14,310 foreclosures in 2007, which was up about 10 percent from 2006. But we also know and hear from so many across our country that it is going to get worse this year and that we are going to see more and more, and it is going to be more devastating if we don't do something to really start taking a handle on things and setting things straight.

I know Senator Kohl is working on something right now, and we appreciate that. I look forward to working with him on that and the Mortgage Rescue Fraud Act. Again, his leadership in, whether it is the Elder Justice Act or a host of other things where he has been looking out for our seniors, is great leadership, and I appreciate that. Mr. Chairman, you do a wonderful job at that.

Just a couple of questions—I know you all have already covered some things before I got here in terms of the outreach and better information and understanding of what exists out there to help seniors particularly.

But Mr. Malone, we appreciate you coming before the Committee and sharing with us your experience. I am not sure if you have answered this or not, but did you try to contact your lender during the time you were unable to make your payments to try to negotiate some kind of an arrangement?

Mr. MALONE. Yes, I tried several times, but I never was able to talk with anyone about it.

Senator LINCOLN. They never responded to you?

Mr. MALONE. I left messages for them to call me, and they never called back.

Senator LINCOLN. Of course that is such an issue. I know particularly with seniors, as we went through the transition into the Part D in Medicare, the prescription drugs and the dual-eligibles, we had a really tough time getting the folks, the agencies, that we needed to work on those issues. So really being able to just make contact with folks needs to be a big part of the steps so that you can understand what your options are available to you.

Ms. Dollar?

Ms. DOLLAR. Yes?

Senator LINCOLN. Yes. Secretary Paulson has recently announced a new agreement through the Hope Now Alliance that is called Project Lifeline. . .

Ms. DOLLAR. Yes.

Senator LINCOLN. . . . where lenders agree to halt foreclosure proceedings for 30 days if the homeowner contacts their lender and attempts to put out a payment plan. It is only available to people who are more than 90 days behind their payments and that are facing immediate danger of foreclosure.

How much can realistically be done in 30 days? I mean, it seems like that is not an awful lot of time. When you are having a hard time getting in touch with people and putting all those bits and pieces together, 30 days can tick away pretty quickly.

What sort of arrangements do lenders expect to work out with those homeowners, do you think?

Ms. DOLLAR. Well, lenders have a number of different that they can provide to homeowners, whether it is a temporary forbearance plan—something that probably would have assisted Mr. Malone when he was having problems with his loan—where a lender will look at the amount that is outstanding and maybe set it for payment over a longer period of time so the arrearage can be paid, or reduce payments temporarily, or reduce the interest rate, or completely modify the loan so that a borrower can actually meet the payment obligation, and it is a different payment obligation that they can meet.

Project Lifeline is intended as an immediate stop to the foreclosure process. Because at 90 days you are really heading toward sale at that point in time. So this is a breath to stop that foreclosure process—and that is the time when these rescuers come in and really victimize people. So it gives the borrower a chance to talk to their servicer, to talk to their lender, to submit financials. . .

Senator LINCOLN. If they can get in touch with them.

Ms. DOLLAR. Yes.

Senator LINCOLN. If they can get in touch with them.

Ms. DOLLAR. The HOPE hotline is manned by HUD-approved counselors. If borrowers cannot get in touch with their lender or servicer or have problems, they can call the HOPE hotline, and the HOPE hotline has access into those servicers and a manner of getting in touch with them. So there is that telephone number that we are publicizing as well.

But Project Lifeline just allows breathing room in order to look at the mortgage, look at the payment options and see whether there is a way the borrower can be helped into saving their home.

Senator LINCOLN. So you think that 30 days is adequate?

Ms. DOLLAR. I think the 30 days provides an additional window and a stop on a proceeding that is already probably nearing its conclusion at that point in time. It should provide servicers with enough time to look at the financial information.

I don't think that the 30 days is a limit, that if they are not working toward something a servicer can't voluntarily continue it longer if there is discussion going on. But this is just what they have agreed to is this 30-day pause.

Senator LINCOLN. Well, so when we hear about the concerns about these mortgages, particularly the ones that have been, you know, divided up and sold into other secondary markets and a host of other things, is that enough time to realize who actually holds those bits and pieces of that mortgage in order to be able to bring it back together and figure out how you are going to do that?

Ms. DOLLAR. Well, the servicer has the ability to act on behalf of any securitizer that is holding ownership of the loan. The servicer is the point of contact who generally has the authority from the holder of the loan in order to modify the loan or in order to make payment options or workouts. So that servicer is the point of contact and is the correct entity to discuss it with.

Senator LINCOLN. They keep that authority?

Ms. DOLLAR. Yes, they do.

Senator LINCOLN. Do you think there is any problem—I just, I try always to apply as much of my own life to the practicality of

what I am asking others to do and participate in. My mom, who is a widow, she is a Lifeline Partner. Do you think there is any confusion for seniors in terms of the title of that?

Ms. DOLLAR. I don't know that there would be. . .

Senator LINCOLN. Has anybody else asked that?

Because there is a woman even more elderly than my mother that lives across the street from her, and she has one of those Lifeline buttons that, you know—I just wonder if there any con—.

I just know that we had a hearing in the Finance Committee last week, and we were talking about choices on health care and other things like that, and one of the gentlemen that was testifying about his personal experience was saying that, you know, when there are so many names and so many choices it is difficult for our elderly population to kind of keep all that going, keep all that in one place. But I am just not. . .

Ms. DOLLAR. When you may just be looking for two different forms of relief in medical versus mortgage, and hopefully that is. . .

Senator LINCOLN. I hope.

Ms. DOLLAR. . . . looking for the relief they find the program.

Senator LINCOLN. I just was—it occurred to me because it would have confused me if somebody had said that, and of course we are faced with millions of acronyms up here every day that we have to keep apart.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Lincoln.

Mr. Malone.

Mr. MALONE. Yes, sir?

The CHAIRMAN. What kind of advice would you give to future homeowners who might find themselves in a similar situation as you?

Mr. MALONE. First, I would advise them to see a lawyer. I think that is the best thing to do—find a lawyer and talk the situation over with the lawyer, and they can guide them right.

The CHAIRMAN. Thank you.

Mr. MALONE. Thank you.

The CHAIRMAN. Mrs. Doyle, in the case of Ms. J in your testimony, you pointed out that the title company issued checks without question to the various parties involved in the sale of Ms. J's home. Do you find that there are third parties involved in these transactions that enable the scams to move forward, as in the case of Mrs. J?

Mrs. DOYLE. Yes, I do. That is a very good question.

Because one of the things we have learned in representing our clients in these scams is that many of them are funded by loans that are closed through closing services, many of which are title companies. We just had—there is the case of Mrs. J and then another case I mentioned, Mrs. K, where we just got discovery in our legal proceedings and learned that on the HUD–1 for the sale of her home it did indicate that the scammer was going to get the $32,000 of equity in the home.

But as it turned out in discovery, that wasn't even correct—that the HUD–1 did not reflect the actual checks cut at the closing. In this particular case, a check was cut for a great deal of that

$32,000 to Wells Fargo Acceptance Corporation, and we believe it was to pay a car loan for the scammer. So as Mrs. Kirk's husband lay dying, and they were desperate for money, the title company cut a check to pay off a car that belonged to the scammer.

In Mrs. J's case, it was so interesting, because on the HUD–1 it showed $58,000 to go to Mrs. J as the seller. Instead, the scammer gave a disbursement notice to have it divided up, I think among maybe six different people, most of whom my client had never heard of. It seemed to me when I looked at it, it was as if a den of thieves was dividing up the loot, and some people would get—just somebody got $8,000, somebody got $10,000. She didn't know who these people were. She had never met them before. The title company cut those checks.

Now, under RESPA, a HUD–1 has to clearly, correctly reflect who is getting the checks out of the closing, where the proceeds are going. So there is violation No. 1. But RESPA has no enforcement. The penalties are nonexistent in that situation.

Now, we have filed claims for negligence and breach of duty against these title companies, but they fight us very hard. The state of the law in Wisconsin is such that there is great deference given to closing agents. They don't want them to become the police officers of these.

On the other hand, these things just shock me. How could they—so they get her car paid for, the title company writes a check, and then she just went home and slept and knew that the Kirks were destitute. So, yes, that is one example.

In addition, appraisers, sometimes the lenders knew or should have known that they were getting involved with a scam. So there are many other parties that we looked to.

It might be an area in the RESPA act to look, maybe enhance—extremely enhance—the penalties for violations by these closing companies.

Thank you.

The CHAIRMAN. Thank you very much.

Ms. DOLLAR. Can I address this issue, very quickly, with the third party. . .

The CHAIRMAN. Ms. Dollar, go ahead.

Ms. DOLLAR. Thank you.

On the mortgage fraud front, we run into these same issues dealing with third parties within the transaction, undisclosed transfers on the HUDs, and it is costing the lending industry billions of dollars every year in losses. The schemes, even though they target different victims, they are often perpetrated in much the same way. So we see these same types of parties, whether it is inflated appraisals or it is falsified issues on the HUD–1 coming through foreclosure rescue as well as other mortgage fraud schemes.

There is a lot of Federal law out there that addresses the ability to go after this type of conduct criminally. I don't necessarily see that enhancing penalties under a statute that is designed to inform consumers about real estate settlement addresses the very, very criminal conduct that we see in these cases and that we have Federal and State criminal laws that address.

The CHAIRMAN. Thank you.

Mr. Anderson, since the passage of the Minnesota law restricting scam artists taking advantage of troubled homeowners, have you seen a downturn in these types of scams?

Mr. ANDERSON. That is a terrific question, Mr. Chairman.

There has been a downturn, but what we have seen is that these people, the scammers, have gone underground. They can get lists of the foreclosures—instead they used to boldly advertise on telephone poles and different places, but now they just direct mail.

Just recently there was a case where one of these scammers came in on an elderly person, fixed income, had $50,000 in equity, was only $4,000 behind on her payments, and three days before the sheriff's sale was told by this scammer, "If you don't sign it over to me now, you will be out of the house at the sheriff's sale." That is the big part of—I appreciate the Lifeline program, and all the different programs will help a certain amount of people—but we have got to get the word out. We have got to, either through the servicers do direct mailings, through advertisement in papers and different things working with the bankers, get this information out.

In that case, luckily, that person met up with an attorney, and because of the 3-day right of cancellation got out of that deal, and the equity was saved. So that was a win. But only fortunately because she got a hold of someone.

I met with someone just last week—and I just share this story—she is facing cancer, she is out of her job, 62 years old, and just not very far behind in her payment. An exact same question: She won't answer the calls from her lender or from other people because they are being nasty and, you know, she is doing the best she can. So what happens is they turn to other means of someone they think they trust.

Again, fortunately, I was able to meet with her and say, "Look, here are your options. Here are some counseling agencies. If we sell, I can get your equity back out of the house." But the key is—even the enforcement is good, the law is fantastic, but unless we catch them, we can't do anything about it.

That is where the education becomes so, so important, and getting the word out of all the options to people and figuring out creative ways to work with the servicers and everyone to get this information out.

The CHAIRMAN. Thank you.

Ms. Dollar, do loan service companies, or mortgage lenders, have any safeguards in place to help homeowners avoid these scams?

Ms. DOLLAR. Mortgage lenders try to educate as much as we can, and we are involved in a concerted effort to reach homeowners at this point in time just in unprecedented ways.

There is door-to-door, you know, knocking door-to-door for troubled homeowners at this point in time. They are ramping up the call lines. They have established the hotline. So they are putting out as many feelers as they can to people who are distressed and who are having problems with making their mortgage payments.

The thing is is that the people who do this are engaging in criminal conduct. These are criminals who are out there trying to steal from people. The lenders end up being as much victims as the homeowners are.

A lot of time the lenders are the ones who do the next loan, and the next thing you know the lender is involved in a lawsuit by the prior owner when they have a new person in the home.

Or in the case of a scheme that there were just indictments on in New York, six people were indicted, they went out and they saved 80 homes from foreclosure. They did it by getting straw buyers and telling these people you are going to help someone in foreclosure, and then obtaining big loans from banks to pay off the other loans based on falsified income and asset data of the new borrowers.

So now the banks have over $20 million in bad loans, and we have a situation where people have lost homes and a whole other group of people who now acted as the front person for a fraudulent loan. So this affects lenders as much as it does consumers. These are criminal acts.

The CHAIRMAN. Thank you.

Ms. Twohig, in your testimony you cite several laws which the FTC enforces to combat predatory or deceptive financial practices. Would you comment on the adequacy of these laws to address the foreclosure rescue scam issue?

Ms. TWOHIG. Our primary tool—. The number of laws that we enforce include—in addition to the FTC Act we enforce the Truth in Lending Act, which contains the Home Ownership and Equity Protection Act, which goes to very high rate loans, which sometimes comes into play here if it is basically a refinancing scheme that might be covered by that law, which is HOPA. We also enforce the Credit Repair Organizations Act and a number of other particular credit statutes.

I think the main tool that we will be using to address the foreclosure rescue scams will be Section 5 of the Federal Trade Commission Act which prohibits unfair and deceptive acts and practices. Under that Act, in our cases we can get equitable remedies, monetary remedies, not only of the particular injury to the consumers, but we also get disgorgement of ill-gotten gains.

So to the extent that it was commented earlier it may be difficult to prove up specific injury to consumers, we have another tool in our arsenal, and that is to make sure that the fraud artist disgorges their ill-gotten gains. So we think right now we have quite a few tools to address these problems.

The CHAIRMAN. All right.

Generally, to the panel, I would like to ask this question: I am considering legislation that would create a Federal floor regulating foreclosure rescue transactions. Legislation I am considering would limit a foreclosure consultant from engaging in certain practices like collecting any fees or compensation prior to completion of the contract and prohibiting a consultant from obtaining the power of attorney from a homeowner. In addition, the bill would allow States to take action against scammers with FTC notification.

Do you believe that this would be a good idea to protect people in States without foreclosure rescue scam laws?

Mr. Perez, would you like to comment?

Mr. PEREZ. Sure.

My first point would be to ensure that there would be no preemption of State laws. As long as that were the case, as I pointed out

in my testimony, I am a strong believer in redundancy in law enforcement. We need Federal and State Governments working together because, again, at any given point, the laws are only as good as the political will of those enforcing them.

I would note, as I mentioned in my testimony, one thing that we have done at a State level—and this is about to pass in the next few weeks—is we are actually banning the conveyance of property during this stage. Because I have concluded, based on dozens and dozens and dozens of conversations with victims that the transfer, the conveyance, of the property is inherently ripe with so much potential for fraud that it should simply be disallowed.

We have a number of what I would call commonsense exceptions, but the transaction has been so fraught—and, again, it gets back to this, "Just sign the document," and you are signing 50 documents and you don't realize that you have signed over a quit claim deed. There are those conversations that are occurring: "Yeah, you are signing over your loan, but don't worry—you will get it back in six months when you are back on your feet." That is baloney, as I said before.

So I applaud your efforts, Mr. Chairman, to try to have the Federal Government play a role. As long as the States can continue their efforts to be these laboratories of democracy in protecting consumers, I think having that wonderful one-two punch would make all the sense in the world.

Mr. ANDERSON. I would tend to agree, and again, with the preemption. But I think just passing a bill like that would bring it to more notice to the United States, you know, to the people out there that there is this availability. Which in that case, if they called and said, "Hey, I have this problem going on," and then they are going to be seeking out help, which there will be State and local help as well as the Federal help.

So I think anything to bring the notice out so people have more information—the more we can educate the consumer, the more they are protected. There is no question about it.

The CHAIRMAN. Mrs. Doyle.

Mrs. DOYLE. I certainly would applaud your efforts in doing so and feel that could play a very positive role in trying to bring this particular scam and this element, this really bottom-feeder element, to the whole mortgage foreclosure crisis.

I like the idea to deal directly with the consultants. As Mr. Perez said, these mortgage reconveyance schemes really deal a lot with individual State property laws and very—so I think that they might not be as appropriate for Federal legislation. But certainly the consultants are. They are the people like Mrs. Klermund met who said, "I will help you get out of your jam and get you some money." So having a contract, having specific statement of services, having to sit down and go through that with them, having a 3-day right to rescind that contract, and also having the opportunity to limit the amount of fees or what might be taken out of it are very important elements and would be very helpful.

I also would echo, however, the concern we have about preemption of State laws that might be more restrictive or provide strong remedies, and also preserving a, or including a, private right of action for people who have been victimized.

Law enforcement has been pushed to the limit. I, really, in Wisconsin I very much respect the prosecutors who are taking on these cases. It takes them a long time to put together a good case. We had talked earlier about the fact that there are criminal penalties and so on, but it takes years. It is not a solution. It is better to prevent in the beginning than put people in that position.

The CHAIRMAN. Thank you.

Mrs. DOYLE. Thank you.

The CHAIRMAN. Ms. Dollar.

Ms. DOLLAR. The principles are wonderful, and anything that we can do to assist homeowners in distress is laudable.

On the law enforcement funding issue as well, that is very, very important. Any law that is enacted, or even the ones that are on the books, one of the biggest issues that we have is that there is not funding in order to enforce them. A lot of laws that are out there do reach the conduct that underlies the mortgage foreclosure schemes, and there just isn't the resources in order to prosecute or investigate it. That is just so important in anything that is considered.

But the MBA looks forward to working with you on the terms of any bill you might propose.

The CHAIRMAN. Thank you so much.

Ms. Twohig.

Ms. TWOHIG. Well, as I mentioned previously, from the Commission's perspective, we already have quite a few tools at our disposal to address this problem. Nevertheless, we would be happy to take a look at anything you proposed and consider it and work with you and your staff.

In terms of the State perspective, I would defer to them on whether the States feel like that would be helpful for them. As I mentioned in my remarks, the States are very important actors in this arena.

The CHAIRMAN. Thank you.

Ms. Lincoln.

Senator LINCOLN. Thank you.

Just one quick question of Secretary Mr. Perez. The reverse mortgage issues. I was just wondering if you all have seen the same kind of—we have heard about abuses in that arena—what abuses you have seen there and how they are similar in what we have discussed here today and maybe some of the ways that you have looked at that.

Mr. PEREZ. Sure. We have seen—we are beginning to see more people from the reverse mortgage context who are in trouble. A lot of them are because they have lived well and there is no more equity left in their home because they took out a mortgage, and now they are 87 years old, and so they are running into difficulty.

One of the provisions that I think has had some degree of success is the mandatory counseling requirement before you can get a reverse mortgage. I think that is something that is very useful.

We have a first-time homebuyer's program. We have a mandatory counseling requirement. The foreclosure rates of those programs are infinitesimally small. So that is, I think, very, very useful.

But one of the challenges is that there is a capacity problem. By that I mean there are not a sufficient number of counselors to address the need. So part of my set of recommendations was to continue the efforts at a Federal level to build capacity in nonprofit communities so that people have someone to go to.

Because we are beginning to hear more people in the reverse mortgage context. I don't think those products are sufficiently, well, consumer-friendly yet. I think, you know, there are so many costs involved. My mother—we had that discussion with her. Her annual income was about $17,000, and she owed her home free and clear—that was her only asset. We ultimately decided not to go with one because the costs were just—the entity was getting rich, and it just wasn't a good deal for her.

I am fearful that there aren't enough people who are having the benefit of that advice, and so it continues to be a challenge.

I just wanted to say one thing. You asked a really good question before—and all the questions have been great—but you asked about the proposal regarding people who are 90 days behind, and I just couldn't resist the urge to say, I don't think that is nearly enough.

Anecdotally, and through data that has been presented by, again, Moody's and so many other entities, the National Association of Attorneys General, it is taking weeks just to get through to a servicer. The notion that there is going to be a 30-day period—well, it is better than nothing, I guess, but not by much.

The problem is the servicing industry is built on a model that is designed for a trickle of people coming in the door or calling on the phone. We now have the tsunami, and they haven't yet adjusted. The problem before was there was shoddy underwriting by all sorts of underwriters, that you are well aware of.

Now they are overcompensating. So when someone comes in and they are in trouble, they are looking at every little thing, and they are saying, "Sorry. We can't help you." That is why we have one percent of the people who are in danger of foreclosure getting meaningful assistance. Thirty-day forbearance is not meaningful assistance. So we have now got that "porridge is too hot-porridge is too cold" thing going, and we need to develop a better balance.

I strongly urge the Senate and the Congress to really exercise its authority to hold servicers accountable because all too frequently they have these contracts with the hedge funds, and they look at themselves as only accountable to the hedge fund that they have contracted with. We are trying to make the case at a State level that a half a loaf or a third of a loaf is better than no loaf at all, and that is what you are going to get if you continue to move people to the precipice of foreclosure.

Senator LINCOLN. Well, the reason I asked that question is our experience with the prescription drug piece because some of my seniors thought they had been on hold for 30 days.

Mr. PEREZ. Right.

Senator LINCOLN. You know, they would call in, and they couldn't find anybody to help them or answer their questions, and what have you. So that was the reason for the question.

Mr. PEREZ. Well, it is. . .

Senator LINCOLN. Glad to hear your side of that.

Mr. PEREZ. Thank you.

Senator LINCOLN. Thank you.

Ms. DOLLAR. Can I make a quick statement?

The Moody study is, or the article was, it is not timely information at this point in time. Even the footnotes to the study indicate that that one percent is probably not accurate, and that at that time it was probably more 30 percent of homeowners were getting assistance. But this was also many months ago when the foreclosure flood just started, and servicers were not ramped up yet to deal with it.

Servicers, as I said, have been taking unprecedented measures to try and not only field calls that are coming in but to reach out proactively to borrowers in all types of ways in order to assist them to modify their mortgages. So, the servicing industry is reacting, and. . .

Senator LINCOLN. What is the average time, then? What is the average time that you are saying that people are being serviced?

Ms. DOLLAR. I don't have that information, but the MBA can provide that to you afterwards, and I will ask them to do that.

Senator LINCOLN. That would be helpful.

Ms. DOLLAR. Thank you.

Mr. PEREZ. Senator, I commend your attention to the, this is now last week, report released by the National Association of Attorneys General who got data from servicers showing that less than 3 in 10 people in distress were even able to get ahold of a servicer. So, the Moody study is a couple months old. Now I commend your attention to last week's study.

There are people who are trying—I don't have any doubt—but they are not nearly where they need to be, and they haven't built the model that deals with the scale and scope of the challenges before us.

The CHAIRMAN. Thank you, Senator Lincoln.

I would like to thank all the members of the panel for journeying here and making an appearance before this Committee to detail your experience and your expertise in this serious issue of foreclosure rescue scams that is plaguing our country.

Obviously, there is a lot of work that needs to be done, legislation that needs to be passed, education that needs to be pushed ahead. With your help and your assistance I think we can make a lot of progress. I think we will. To a large extent we thank you for helping us achieve these goals. So, appreciate your appearance. Thank you so much.

This hearing is adjourned.

[Whereupon, at 12:18 p.m., the Committee was adjourned.]

APPENDIX

PREPARED STATEMENT OF SENATOR SUSAN COLLINS

The deceptive and abusive practices that have caused so much personal heartache and economic distress in the national mortgage markets are especially outrageous when they are directed against senior citizens. Seniors on fixed incomes who have been talked into unsustainable mortgages can face foreclosure when interest rates reset.

In that situation—often alone, lacking knowledgeable advisors, unaware of government or non-profit services that might help, fearful of contacting their lender, and ready to trust anyone who appears to be offering a way to avoid foreclosure—seniors may find themselves victimized by criminals who take money for negotiations that are never made, or who offer a sale-leaseback arrangement that will lead to the homeowner's eviction, or who slip a quit-claim deed for signing into a stack of papers osentsibly for refinancing.

We know from numerous accounts in the financial press that some people in the foreclosure process have made calculated decisions to be there. Having acquired properties with little or no cash investment in hot real-estate markets like Florida or California, some people have simply chosen to walk away when market prices fell below the level of their mortgages and let the lenders foreclose. Such deliberate speculators deserve little sympathy and have no moral claim on taxpayers for assistance.

Senior citizens are another matter. Few of them have the means or the inclination to gamble in real estate as an investment. Even fewer have the time horizon needed to reconstruct their lives are losing their homes, which typically represent their main financial asset.

We need to make sure that we are taking all appropriate steps to prevent foreclosure-rescue fraud against seniors—including the fundamental step of helping victimized people avoid foreclosures in the first instance. Consumer-education efforts by government, private-sector, and non-profit organizations are essential for both objectives.

We also need to consider whether laws and regulations at state and federal levels are well coordinated and well targeted to control foreclosure-rescue efforts, distinguish the legitimate from the abusive, and provide stern punishment and restitution for violations. The State of Maine has a new predatory-lending law that addresses some of the problems we will learn about today, and I am told that additional focused measures are in development.

As we take up the issue of foreclosure-rescue fraud, however, we should take note of an observation from Will Lund, Maine's director of consumer credit protection. Mr. Lund points out that it is the past few years onslaught of bad loans—non-standard loans with deceptively low initial rates, lax underwriting, poor documentation, serial rate resets, and punitive fees for pre-payment—that create the demand for the services of the foreclosure-rescue operations that so often lead to fraud and heartbreak as well as foreclosure. Both problems call for more action. We need to make special efforts to protect seniors from deceivers, and we need to continue sharpening state and federal protections against deceptive and abusive lending practices.

I know the Federal Trade Commission, which has a witness at this hearing, is cooperating with state agencies as well as exercising its authority to prosecute deceptive trade practices. As we consider new federal responses to this problem, I hope we can draw on the lessons accumulated in such federal-state collaboration, and on predatory-lending initiatives already adopted in Maine, New Hampshire, and other states. We should be careful of displacing or preempting state and local authority because they are the legal first responders who are in closest touch with the perpetrators and victims of these heartless frauds.

I commend the Chairman and Ranking Member for conducting this hearing. It is tragic that many senior citizens have been led into loans that are triggering foreclosures, and it is outrageous that criminals should add to their distress with fraudulent offers of aid.

BITS

FINANCIAL SERVICES
ROUNDTABLE

MORTGAGE FRAUD PREVENTION: AN EDUCATION AND AWARENESS TOOLKIT FOR CONSUMERS

A PUBLICATION OF THE
BITS FRAUD REDUCTION STEERING COMMITTEE

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EXECUTIVE SUMMARY

Mortgage fraud continues to be a concern for consumers, financial institutions, and law enforcement. While the overall economic loss to the lending industry is substantial[1], the personal and financial loss experienced by consumers who fall victim to these scams can be even more devastating.

This toolkit was developed by the BITS Mortgage Fraud Reduction Project Group to provide financial institutions with information to use as part of their efforts in educating consumers on what mortgage fraud is and how to protect against it. The toolkit contains simple and comprehensive examples of the various types of mortgage fraud schemes currently targeted towards consumers and provides tips on how consumers can identify these scams. Also included are recommended "dos and don'ts" for consumers to consider when getting a mortgage and resources they can refer to for more information.

We hope financial institutions will the use information contained in the *Mortgage Fraud Prevention: An Education and Awareness Toolkit for Consumers* and, as appropriate, incorporate it into fliers, closing documents, and websites as a means of educating consumers about this alarming and devastating dilemma.

[1] In March, 2007, the Federal Bureau of Investigation (FBI) reported that fraud cost mortgage lenders between $946 million and $4.2 billion in 2006. (Source: "Mortgage Fraud: New Partnership to Combat Problem.")

INTRODUCTION

The following is based on a true story; however, the names of the people and locations have been changed:

> *John Smith lost his job and decided to sell his home. After contacting a local real estate agent, he discovered that his four-bedroom colonial home was worth only $80,000 - just 44% of the $183,750 he paid for the new home a year before. Smith could not afford the monthly mortgage payment, nor could he afford to sell the house and pay off the remaining $147,000 mortgage. Having few choices to relieve himself of this situation, Smith's home was foreclosed upon.*
>
> *Many others in the same county where Smith lived experienced this hardship which was attributed to several local home builders and mortgage brokers. In this scheme, builders and mortgage brokers colluded to inflate appraisals and exploit unknowing buyers who purchased homes well above their real market value.*

Mortgage fraud is on the rise and the above story is just one example of how consumers are being targeted by this crime. Mortgage fraud may never be eliminated, but it can be mitigated through increased consumer awareness. In an effort to educate and protect consumers from becoming victims of mortgage fraud, financial institutions worked collaboratively to develop this toolkit.

For the purposes of this toolkit, "property buyers," "purchasers," and/or "borrowers" are collectively referred to as "consumers." In addition, the scope of mortgage fraud within the context of this document considers any mortgage-related transaction, including first mortgages, second mortgages, and home equity lines of credit (HELOCs).

This toolkit does not address predatory lending or abusive lending practices by brokers or lenders. Predatory lending is often used to describe the practices of lenders who target low-income borrowers or those with negative credit histories with the intent of deceiving them about loan terms and/or providing them with loans they cannot afford to repay. For information on how to protect yourself against predatory lending, please visit the Federal Trade Commission website for Protecting America's Consumers at http://www.ftc.gov/bcp/conline/pubs/credit/risky.shtm.

What is mortgage fraud?

Mortgage fraud occurs when a consumer or mortgage industry professional provides or intentionally uses incorrect information that is relied upon by an underwriter or lender to cause them to fund, purchase or insure a mortgage loan which they otherwise would not have approved. The intentional omission of certain information, such as the borrower's self employment status or true source of funds used for the down payment, earnest money deposit and/or closing costs, can also be considered an act of mortgage fraud. Mortgage fraud may occur with or without the knowledge or active participation of the borrower.

There are two basic motives for fraud:

Fraud for Property: The primary motivation is the borrower's desire to own their own home, but something in their credit profile - or a lack or assets or verifiable income - prevents them from meeting lender requirements. The intent is to occupy the subject property and repay the mortgage as agreed.

Fraud for Profit: The primary motivation is profit or financial gain. Oftentimes, the perpetrators are well organized and multiple loans are involved. The ringleaders often receive a large portion of the profit while others may be paid several thousand dollars for their part in the fraud. This type of fraud is a major concern for consumers and lenders because this is where the highest losses are incurred.

How can mortgage fraud affect me?

As detailed in the introductory example, mortgage fraud can have many adverse consequences for both the consumer and the community. Specifically, mortgage fraud can result in:

- higher interest rates;
- identity theft[2];
- compromised credit ratings;
- higher property taxes;
- defaulted loans and foreclosed properties; and/or
- the inability to sell a home due to factors such as lower property values and deterioration of neighborhoods caused by increased crime and abandonment of nearby properties.

Mortgage fraud is investigated by the Federal Bureau of Investigation (FBI) and is punishable by up to 30 years in federal prison or $1,000,000 fine, or both. It is illegal for a person to make any false statement regarding income, assets, debt, or matters of identification, or to willfully overvalue any land or property, in a loan and credit application for the purpose of influencing in any way the action of a financial institution[3].

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[2] 1.3% of 246,035 consumers who reported identity theft to the FTC in 2006 reported that a fraudster took a real estate loan in their name (includes both mortgage and home equity loans). Source: "Consumer Fraud and Identity Theft Complaint Data January – December 2006," Federal Trade Commission, February 2007, http://www.consumer.gov/sentinel/pubs/Top10Fraud2006.pdf.

[3] See Appendix A for FBI's Mortgage Fraud bulletin.

COMMON MORTGAGE FRAUD SCHEMES

While there are an infinite number of mortgage fraud schemes, the following describes some of the most common:

Property Flipping

This term is often misunderstood due to popular TV shows such as "Flip This House" or "Property Ladder" where houses are acquired, improvements are made and the houses are legitimately resold quickly for a profit. Property flipping fraud begins when property ownership is transferred multiple times in a short period and becomes illegal when the mortgage for the subsequent sale(s) is obtained using an appraisal that overstates the property's market value and/or does not disclose these recent transfers. Oftentimes, the borrower is not aware of the flip. Typically, the property is in poor condition and was acquired through a distressed or foreclosure sale. If repairs are made, they are cosmetic only and do not truly improve the property's state of disrepair.

Examples of Fraudulent Property Flipping:

- Sarah is a real estate agent and her neighbor, Jack, is an appraiser. They learn of several properties in the city that are in foreclosure and purchase them for pennies on the dollar. Sarah immediately lists the properties for three times the amount she just paid. Jack agrees to provide an appraisal for each property that would support this higher amount while Sarah finds people willing to buy them.
- Adam relocates from another state and wants to purchase a home for his family. A friend refers him to John, a real estate broker who pressures him into purchasing a specific property that John claims to be the perfect house. When Adam closes on or attempts to refinance the home, he discovers that the property's value is not only inflated far above the current market value, but the house has been sold four times within the past two months by the same real estate company. Now Adam's mortgage far exceeds the value of the property.

Property Flipping Red Flags[4]*:*

- The date of the appraisal is prior to the sales contract and/or application date.
- The seller identified on the sales contract does not own the property according to real estate tax assessment[5] records.
- The seller recently acquired the property for a significantly lower price or there have been several transfers of the property according to the real estate tax assessment record.

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[4] "Red flag" is a warning term used to signify the need for further analysis or investigation when inconsistencies within the loan file are identified. Examples of inconsistencies that may fall into the "red flag" category are typographical errors, mathematical errors, inconsistent information from one document to another, etc. Finding one or more red flags does not confirm fraudulent intent; however, the potential for fraud increases in relation to the number and severity of red flags detected.

[5] This coincides with the following recommendation, as contained on page 14, "**DO** be an informed buyer. Know what market values in the neighborhood are or should be. Consult the local tax assessor regarding recent sale prices and review the sales history of the property as several sales within a short period of time could indicate inflated values…"

- The seller will acquire ownership through a Quit Claim deed[6] at closing.
- The seller's signature is inconsistent throughout the transaction documents.
- At closing, the HUD-1 Settlement Statement[7] reflects unusual and/or previously undisclosed fees.
- Realtor, broker, or loan originator advises against obtaining a property inspection or requires you to use a particular inspector.

Appraisal Fraud

Appraisal fraud is a component of most large mortgage fraud schemes. An appraiser may overstate the property value and/or omit material information that would negatively impact the property's marketability. The appraiser is compensated for his assistance in the fraud. In some cases, the seller may use the money obtained at the closing to pay off the appraiser and anyone else involved in the scam. Oftentimes, the borrower loan is foreclosed because he/she is neither able to afford the mortgage payments nor able to sell the home because the fair market value is not sufficient to offset the mortgage debt.

Another motivation for appraisal fraud occurs when a sales contract is written for more than the listed price or true market value for the purpose of providing cash from the sale to the purchaser or other third party. This may occur when an oversupply of homes for sale encourages sellers to be creative and offer excessive incentives to a realtor, third party or directly to a buyer to facilitate the sale of their property. This is also known as "puffing."

Example of Appraisal Fraud:

- Todd signs a contract to purchase a new home, but needs the equity from his current home to close the deal. Due to a downturn in the market, Todd is unable to find a buyer for his current home and he is not qualified for the mortgage debts on both properties. Todd's friend, Paul, is a real estate appraiser and recommends that Todd refinance his current home as a way to cash-out the equity. Paul advises Todd that if he performs the appraisal, Paul would provide the value needed for Todd to get enough cash proceeds to buy his new home. Paul performs the appraisal and inflates the value by $20,000. Todd applies for refinancing at a different lender and requests the lender to use the completed appraisal from Paul. Todd does not disclose that the house is already listed for sale. Todd closes on both homes, but after several more months he is still unable to sell his previous home or make the mortgage payments on both properties.

Appraisal Fraud Red Flags:

- The consumer, whether acting as the buyer or seller, is pressured into signing documents changing the loan terms at or near the time of closing.

---

[6] A Quit Claim deed is a legal document in which the seller only transfers whatever interest he or she has in the property, which may be only a partial interest in the property or no interest at all. Although the interest is transferred, no warranty is made on the rights which others may claim from the property.

[7] An HUD-1 Settlement Statement is a loan document which is signed at closing and itemizes expenses, disbursements, and adjustments relating to the purchase of real property.

- The appraiser is associated with or is physically located in the realtor's or broker's office.
- You are encouraged to misrepresent your intent to occupy the property.
- You are restricted from visually inspecting the property's interior prior to purchasing.
- The property is located in a high-risk area and nearby homes are in poor condition, have recently foreclosed, etc.
- The tax assessment for the current year is well below the asking price for the property.
- Characteristics of the property (lot size, photographs, square footage, room count, amenities, etc.), as reflected on the appraisal report, are inaccurate.

Straw Buyers

A straw buyer is an individual that allows the use of his credit profile to help someone else obtain a mortgage they are unable to obtain on their own. A straw buyer is used when the potential homeowner cannot qualify for a mortgage or the true identity of the actual borrower must be kept secret to obtain loan approval. Typically, the straw buyer is a paid participant in a larger fraud scheme. The lender qualifies the straw buyer and the loan closes in the straw buyer's name. The straw buyer does not intend to occupy the property or make the mortgage payments.

Example of a Straw Buyer:

- Bob's daughter, Jeanne, would like to purchase a home but doesn't qualify for the loan. Bob agrees to help Jeanne by applying for the mortgage loan in his name with the understanding that Jeanne will live in the house and make all of the payments. At application, he leads the mortgage lender to believe that he will occupy the property and make the mortgage payments on his own, even though he had no intention to do so. Shortly after closing, Bob completes a Quit Claim deed and assigns the property rights over to Jeanne.

Straw Buyer Red Flags:

- A relative or friend with credit difficulties asks you to apply for a mortgage on their behalf.
- Another party to the transaction asks you to sign a power of attorney to conduct business on your behalf.
- You have little or no interaction with the lender. Communication is only between you and the builder, realtor, or another third party.
- Names have been added to or deleted from the sales contract.
- The person identified as the seller on the sales contract is not the owner of the property according to tax assessment records.
- A Quit Claim deed is used immediately before or soon after loan closing.

Borrower Identity Theft

Borrower identity theft is the act of unlawfully using one or more pieces of another individual's personal identifying information to obtain a mortgage.

Examples of Borrower Identity Theft:

- Maria has lived in the U.S. for several years but has not obtained a Social Security number (SSN). A friend offers to help her "purchase" an SSN which Maria then uses to obtain financing for a new home. Unbeknownst to Maria, the SSN she purchased was actually issued to someone else.
- Sam knows that, due to his negative credit history, he will most likely be denied for a mortgage. Therefore, he provides his deceased father's personal information on the application and uses fake documentation to represent his income and job title.
- Stan begins receiving calls from a collection agency regarding an unpaid second mortgage. Upon review of his credit report, he learns that someone applied for and received a mortgage using his personal information without his knowledge.

Borrower Identity Theft Red Flags:

- Your SSN is not represented accurately on the loan application or on other documents in the loan file.
- You are asked to "lend" your SSN to someone.
- Someone offers to sell you an SSN.
- You have an Individual Taxpayer Identification Number (ITIN)[8] but are encouraged to use another person's SSN to apply for the mortgage.
- You receive calls or mailings regarding a mortgage loan that you are not aware of and did not enter into a contract to finance.

Silent Seconds

In this fraud, the buyer is able to obtain the property with little or no money down. The primary lender believes the source of the down payment is from the borrower's own funds. In most cases, the buyer borrows the down payment from the seller through the issuance of an undisclosed second mortgage. The fraud occurs when the information has not been disclosed to the lender.

Example of Silent Seconds:

- Paul and Cathy have been living in an apartment for years and want to purchase a newly constructed home. They find a house that was recently finished, but do not have enough money saved to pay the required down payment. The builder offers to increase the sales price enough to lend them the money they need for the down payment and advises them not to disclose this loan to their lender because he will be repaid with the loan proceeds. Although Paul and Cathy obtained their loan, now they owe more for the house than it is really worth.

Silent Seconds Red Flags:

- The difference between the sales price and the loan amount (referred to as the required down payment) is more than you are able to save before closing. The seller,

[8] An ITIN is a tax processing number issued by the Internal Revenue Service to individuals who are required to have a U.S. taxpayer identification number, but are not eligible to obtain a Social Security Number from the Social Security Administration.

or someone else involved in the transaction, offers to provide assistance with the money needed, but the lender is not notified of this.

- The seller, builder, realtor or other interested party offers to lend you the down payment amount and requires you to sign a promissory note, the terms of which are not disclosed in the sales contract.
- The seller requests you to sign an addendum to the purchase agreement disclosing other financing terms, but the lender is not provided with a copy. Or you are asked to execute two different purchase agreements; one for the lender to see and one to be kept from the lender because it reflects terms that the lender would not allow.
- Information disclosed on the HUD -1 or Settlement Statements do not accurately reflect the terms of the transaction (i.e., incorrect down payment, sales price, funds to close).

Foreclosure Bailout Schemes

These schemes prey on the desperation of people who have fallen behind in their mortgage payments and are in danger of losing their home. The fraudster may contact the homeowner in the beginning stages of foreclosure and offer to eliminate the debt and save the house for a fee. The fraudster collects the fee and disappears without providing any real assistance to the homeowner. In another scheme, the homeowner is approached by the fraudster who offers to help refinance the loan. The homeowner is then asked to sign documents that they later learn transferred ownership of their home to the company supposedly helping them.

Examples of Foreclosure Bailout Schemes:

- Anna lost her job and has fallen behind in her mortgage payments. Worried that her house will go into foreclosure, she contacts a company listed on a neighborhood flyer that advertises financial counseling to those who are having trouble paying their mortgage. The company counselor offers to help her for an upfront fee of $300. However, the information provided by the company is insufficient and does not help Anna in any way. Now she is out $300 and even further behind in her mortgage.
- A long illness has caused Michael to fall behind on his mortgage payments. Instead of contacting his lender to discuss his situation, he contacts a representative from a foreclosure service company that held a seminar at his church. This representative, Tom, offers to help Michael by assuming the title to the home and the mortgage payments while allowing Michael to live there as a tenant until he is back on his feet and able to buy the house back. However, once Michael tries to buy the house back, Tom inflates the price of the home far beyond what Michael can afford to pay. Michael loses the house as well as any equity he had built up over the years[9].
- Mary is approached by Steve who offers to help save her property from foreclosure. Steve instructs Mary to sign the property over to his company using a Quit Claim deed and his company will assume all debts and liabilities, allowing Mary to walk away free and clear of payments on her mortgage. Steve's company rents the house to another party, but makes no payments on the house. After a year of non-

[9] This is also an example of equity stripping and can be a form of predatory lending. For information on how to protect yourself against predatory lending, please visit the Federal Trade Commission website for Protecting America's Consumers at http://www.ftc.gov/bcp/conline/pubs/credit/risky.shtm.

payment, the house is foreclosed upon. However, unbeknownst to Mary, even though the house was deeded to Steve's company, Mary's name remained on the mortgage. Steve's company and the renters walk away from the house and Mary is still left with the responsibility for the mortgage.

Foreclosure Bailout Scheme Red Flags:

- Unsolicited offers of help from individuals who claim to be "mortgage representatives," but are actually from foreclosure service or counseling companies. These companies target consumers whose homes are at risk of foreclosure and oftentimes advertise their services through leaflets or the Internet.
- Companies that require upfront fees for their services.
- Companies that request you (as a distressed homeowner) make your mortgage payments directly to the foreclosure service company rather than your mortgage company.
- Companies that request you to execute a Quit Claim deed to transfer your interest in the property into their name.

Consumers who are in danger of losing their homes should contact their lenders first for assistance. Consumers may also contact the Homeownership Preservation Foundation which provides free phone counseling by HUD-approved agencies and is available 24 hours a day, 7 days a week. The foundation provides the Homeowner's HOPE™ Hotline[10] (888-995-HOPE) where specially-trained foreclosure prevention counselors listen to the homeowner's situation and then offer a customized, written action plan with budget analysis and recommendations. If more counseling or contact with the lender is needed, the counselors will link their callers to their lenders, to local NeighborWorks® organizations and to other nonprofits for specific help. For more information, please visit http://www.995hope.com.

Real Estate Investment Schemes (also known as "chunking")

Consumers are regularly targeted or recruited for participation in investment property schemes. Many of these begin with seminars, programs or advertisements that purportedly show borrowers how to get rich by investing in rental properties. While owning real estate may be a smart investment with proper guidance from a tax professional, consumers should research thoroughly before joining an "investment club" or purchasing multiple properties simultaneously. Fraud is committed when the purchasers apply to multiple lenders for financing without disclosing that multiple properties are being acquired and/or financing is requested for owner occupied properties or second homes, when the properties are actually for investment purposes.

Example of Real Estate Investment Schemes:

- Dave and Ellen attend a seminar on how to get rich through purchasing real estate. At the seminar, a salesman, Victor, convinces them to purchase several rental

[10] The Homeowner's HOPE™ Hotline is a product of the Homeownership Preservation Foundation, a national non-profit working to prevent foreclosures. The hotline is staffed 24 hours a day, 7 days a week by HUD-certified homeownership counselors and the counseling is free for all consumers.

properties in another state. Victor says these properties already have tenants paying rent which would help cover the mortgage. In addition, Victor offers to pay them $15,000 for each home that they purchase. He offers to take care of all of the paperwork and details. All Dave and Ellen have to do is provide their personal information (SSN, address, employer name, etc.). Several months later, the couple receives phone calls and letters from different mortgage companies notifying them that their mortgage loans are in default and payments are necessary. Dave and Ellen are unable to contact Victor and, upon traveling to the rental properties, they discover that all are vacant and in substandard condition. There is no way they can afford to repair these properties or continue to make the mortgage payments. Eventually, all of the properties are lost to foreclosure and the couple's credit is ruined.

Real Estate Investment Scheme Red Flags:

- Newspaper advertisements or online solicitations intended to attract "investors."
- You have little or no interaction with the lender. Communication is only between you and the builder, realtor, or another third party.
- You are pressured to purchase properties "sight-unseen."
- You are offered payment for the use of your personal/credit information.
- The seller or other party to the transaction requests that pre-existing relationships between you, the appraiser, and/or the seller not be disclosed to other parties to the transaction, such as the mortgage lender.

Reverse Mortgage Scams

Reverse mortgages are a new product offered to eligible senior citizens who have accumulated a sizeable amount of equity in their home. With a reverse mortgage, qualified senior citizens can turn the value of their home into cash without having to move or to repay the loan each month. No matter how this loan is paid out to you, repayment is typically not required until you die, sell your home, or permanently move out of your home. Once any of these events occur, the property is relinquished to the mortgage lender who may sell it to recoup the loan balance, fees and interest. While there is nothing illegal with this type of loan, which can actually help some senior citizens who face unexpected costs, the process can be complex and homeowners must carefully review all of the terms and conditions (preferably with family members and an attorney[11]) before signing anything. Often, senior citizens can be taken advantage of by unscrupulous estate planners who charge fees for information that is available at no charge from the U.S. Department of Housing and Urban Development (HUD)[12] or by "mortgage consultants" who insist that unnecessary renovations be done to the home in order to qualify for the loan and specify which contractor should be used to make these repairs.

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[11] Seniors may contact their local Attorney General's office to determine what free legal services and/or clinics may be available to them.

[12] For more information, visit http://www.hud.gov/offices/hsg/sfh/hecm/rmtopten.cfm.

Senior citizens interested in obtaining a reverse mortgage are encouraged to contact HUD at 1-888-466-3487 where you will be referred to a HUD-approved housing counseling agency. You may also ask to receive a list of HUD-approved reverse mortgage lenders.

Example of a Reverse Mortgage Scam:

- To qualify for a reverse mortgage, Walter hired a consultant, Mary, who had delivered leaflets in his neighborhood. Mary charged $500 as an initial consulting fee to review information about the reverse mortgage process. Upon hiring an appraiser recommended by Mary, the appraiser inspects Walter's home and says that the kitchen needs to be renovated in order to qualify for the loan. Mary then suggests Walter contact a local contractor that has done several upgrades for homes in the area. Trusting Mary, Walter called the contractor who required a $2,500 deposit. However, once paid, the contractor never returned and Mary also disappeared. After learning that he was out $2,500 for the repairs that were never performed, Walter also learned that the information Mary had provided him, for the $500 fee, was available at no cost from HUD.

Reverse Mortgage Red Flags:

- Unsolicited offers of reverse mortgages.
- Consultants who insist that you use specified appraisers to inspect your house and then recommend contractors to perform costly renovations in order for you to qualify for a loan.
- Attempts by the lender to exclude your family or attorney from the information gathering, application, or closing process.
- Lenders who are not on the approved reverse mortgage lenders list, as maintained by the HUD.

To receive a free copy of the American Association of Retired Persons (AARP) brochure, "Home Made Money: A Consumer's Guide to Reverse Mortgages," please call 1-888-687-2277, or write to AARP Fulfillment #EE01492, 601 E Street, NW, Washington, DC 20049. You may also download the brochure from the AARP website at http://assets.aarp.org/www.aarp.org_/articles/revmort/homeMadeMoney.pdf.

RECOMMENDED "DOs and DON'Ts" FOR GETTING A MORTGAGE[13]

When entering into a mortgage, consumers must take reasonable steps to protect themselves and their identity and provide accurate and truthful information. The following "Dos and Don'ts" are simple steps that consumers may take to protect themselves.

Recommended DOs

- **DO** be an informed buyer. Know what market values in the neighborhood are or should be. Consult your county tax assessor regarding recent sale prices and review the sales history of the property, as several sales within a short period of time could indicate inflated values. Further, an appraisal should be ordered and provided by the lender and not the seller or real estate agent.
- **DO** provide your confidential financial and personal information only to someone you trust and know works for the Lender. Get referrals for real estate and mortgage professionals[14]. Check the licenses of the industry professionals with state, county, or city regulatory agencies.
- **DO** be honest when completing the loan application and answering questions during the application process, regardless of whether others are pressuring you to do otherwise.
- **DO** proceed with caution if you are encouraged to become a real estate investor of multiple properties in a short period of time, especially if you are not required to put money down or, even worse, if another party offers to pay you for your participation in the transaction.
- **DO** obtain a property inspection, especially if you are unsure about the soundness and safety of the property.
- **DO** request a copy of the property appraisal before closing. (Note: you are entitled to a copy of the appraisal if you paid for it.)
- **DO** read and understand all of the documents presented to you before you sign them. Carefully review all loan documents[15] signed at closing or prior to closing for accuracy, completeness, and omissions. Do not sign anything that contains blanks or provisions that you did not originally agree to. Ask questions about anything you do not understand, especially as they relate to fees that are paid to parties that you do not know.
- **DO** request and keep copies of everything you provide to the Lender and everything you are required to sign. Do be leery of lenders who are unwilling to meet this request.
- **DO** be wary of offers to "save" you from foreclosure. Work with your mortgage service instead or contact the Homeowner's HOPE™ Hotline (888-995-HOPE).
- **DO** file complaints of fraud with your local Attorney General's office as well as with your county or state's Department of Consumer Affairs.

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[13] Sources include Georgia Real Estate Fraud Prevention and Awareness Coalition (GREFPAC) and the FBI's "Financial Crimes Report to the Public, Fiscal Year 2006."

[14] Consumers may check organizations like the Better Business Bureaus or their local Chamber of Commerce (see http://www.entrepreneur.com/worklife/travelcenter/resources/article39714.html for a list of state chambers of commerce).

[15] One example of a loan document is a HUD-1 Settlement Statement.

Recommended DON'Ts

- **DON'T** provide, or pay anyone else to provide, false information about your employment, income, credit, bank accounts or any other documentation submitted with your loan request[16].
- **DON'T** let anyone convince you to borrow more money than you can afford to repay.
- **DON'T** accept payment for the use of your personal information, such as your name, credit or social security number.
- **DON'T** close a loan that you know has false or misleading information such as an appraisal reflecting an inflated value, down payment or earnest money deposit that did not come from you, rental leases that you believe to be inaccurate, etc.
- **DON'T** pay your earnest money deposit to anyone other than your real estate agent or the seller of the home you are purchasing. If you have doubts about who really owns the home you are purchasing, contact the real estate tax assessor to verify the current owner and find out when they took ownership and how much they paid.
- **DON'T** expect to get "paid" for purchasing a home. YOU should be bringing a certified check to closing in order to buy the home.
- **DON'T** agree to pay anyone additional fees or costs associated with the loan closing or application process after the loan closes. If someone asks you to do this, refuse and obtain legal advice.
- **DON'T** sign documents that are incomplete. Never sign a blank document or a document containing incomplete information and do not allow someone else to complete or sign documentation on your behalf. Take time to consider the risk associated with authorizing another person to execute legal documents on your behalf.
- **DON'T** sign final *closing* documents without a notary present, if required. Most documents will specify when a notary signature is required.

[16] It is illegal for a person to make any false statement regarding income, assets, debts or matters of identification, or to willfully overvalue any land or property, in a loan and credit application for the purpose of influencing in any way the action of a financial institution. See Appendix A for FBI's Mortgage Fraud bulletin.

RESOURCES

Learn more about mortgage fraud and where to report it.

Mortgage Fraud Blog
http://www.mortgagefraudblog.com
Central clearinghouse for information on recent mortgage fraud schemes, indictments and prevention.

FraudProblem.com
http://www.fraudproblem.com
Real estate and mortgage fraud information and assistance center. This website offers an on-line resource of national and state governments where consumers may report mortgage fraud.

FBI Financial Crimes Website[17]
http://www.fbi.gov/publications/financial/fcs_report2006/financial_crime_2006.htm#Mortgage
List of the various financial crimes the FBI investigates. It includes a list of the common fraud schemes and "do's and don't's."

Georgia Real Estate Fraud Prevention and Awareness Coalition (GREFPAC)[18]
http://www.grefpac.org
Source for articles, news, contact information and links related to real estate fraud prevention and awareness.

US Department of Justice Consumer Alert — Mortgage Foreclosure Scams[19]
http://www.usdoj.gov/ust/eo/public_affairs/factsheet/docs/fs06.htm
Press release regarding bankruptcy scam operators.

Mortgage Fraud Against Lenders Resource Center
http://mbafightsfraud.mortgagebankers.org/
Offers consumers a link of where to report mortgage fraud by state.

Flipping Frenzy
http://www.flippingfrenzy.com
Source for news, information and commentary about real estate and mortgage fraud along with a fraud reporting center.

Homeownership Preservation Foundation
http:// www.995hope.org
Website for a 501(c)(3) nonprofit which creates partnerships with local governments, nonprofit organizations, borrowers and lenders to help families overcome obstacles that could result in the loss of their homes.

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[17] Used as a source for the "Dos and Don'ts" section.
[18] Used as a source for the "Dos and Don'ts" section.
[19] Used as a source for foreclosure bailout scheme red flags.

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General Electric Company
GMAC Financial Services
Harris Bankcorp, Inc.
HSBC North America Holdings, Inc.
Huntington Bancshares Incorporated
JPMorgan Chase & Co.
KeyCorp
National City Corporation
Popular, Inc./EVERTEC, Inc.
Regions Financial Corporation
Sovereign Bancorp, Inc.
State Farm Insurance Companies
SunTrust Banks, Inc.
USAA
Wachovia Corporation
Washington Mutual, Inc.
Webster Financial Corporation
Wells Fargo & Company

ABOUT BITS AND THE BITS FRAUD PROGRAM

About the BITS Fraud Reduction Program

Established in 1998, the BITS Fraud Program is one of BITS' flagship programs. The BITS Fraud Steering Committee was created to:

- Identify successful strategies for reducing fraud and make those strategies available to the industry;
- Assess fraud-risk exposure and develop strategies to minimize losses; and
- Reduce payments-related fraud losses.

Current Working Groups and projects under the BITS Fraud Program include:

- ACH Risks
- Debit Card/ATM Fraud
- Mortgage Fraud Reduction
- Remote Channel Fraud
- Rising Fraud Risks

About BITS

BITS was created in 1996 to foster the growth and development of electronic financial services and e-commerce for the benefit of financial institutions and their customers. A division of The Financial Services Roundtable, BITS works to sustain consumer confidence and trust by ensuring the security, privacy and integrity of financial transactions. BITS provides intellectual capital and addresses emerging issues where financial services, technology and commerce intersect, acting quickly to address problems and galvanize the industry. BITS' efforts involve representatives from throughout our member institutions, including CEOs, CIOs, CISOs, and fraud, compliance and vendor management specialists. For more information, go to www.bitsinfo.org.

About The Financial Services Roundtable

The Financial Services Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. Roundtable member companies provide fuel for America's economic engine, accounting directly for $65.8 trillion in managed assets, $1 trillion in revenue, and 2.4 million jobs.

APPENDIX A: FBI MORTGAGE FRAUD WARNING

MORTGAGE FRAUD IS INVESTIGATED BY THE FBI

Mortgage Fraud is investigated by the Federal Bureau of Investigation and is punishable by up to 30 years in federal prison or $1,000,000 fine, or both. It is illegal for a person to make any false statement regarding income, assets, debt, or matters of identification, or to willfully overvalue any land or property, in a loan and credit application for the purpose of influencing in any way the action of a financial institution.

Some of the applicable Federal criminal statutes which may be charged in connection with Mortgage Fraud include:

18 U.S.C. § 1001 - Statements or entries generally
18 U.S.C. § 1010 - HUD and Federal Housing Administration Transactions
18 U.S.C. § 1014 - Loan and credit applications generally
18 U.S.C. § 1028 - Fraud and related activity in connection with identification documents
18 U.S.C. § 1341 - Frauds and swindles by Mail
18 U.S.C. § 1342 - Fictitious name or address
18 U.S.C. § 1343 - Fraud by wire
18 U.S.C. § 1344 - Bank Fraud
42 U.S.C. § 408(a) - False Social Security Number

Unauthorized use of the FBI seal, name, and initials is subject to prosecution under Sections 701, 709, and 712 of Title 18 of the United States Code. This advisement may not be changed or altered without the specific written consent of the Federal Bureau of Investigation, and is not an endorsement of any product or service.

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BITS

FINANCIAL SERVICES
ROUNDTABLE

BITS FRAUD PROTECTION TOOLKIT
PROTECTING THE ELDERLY AND VULNERABLE FROM FINANCIAL FRAUD AND EXPLOITATION

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INTRODUCTION

This *BITS Fraud Prevention Toolkit: Protecting the Elderly and Vulnerable from Financial Fraud and Exploitation* is designed to address special needs for which financial institutions are uniquely suited to assist. The *Toolkit* provides information to support the implementation or improvement of a financial institution internal program for education and awareness about abuse of, and exploitation against, the elderly and vulnerable (vulnerable adults). For purposes of this *Toolkit*, vulnerable adults includes those either over the age of 60 – 65, depending on the state, or disabled individuals over the age of 18. Often vulnerable adults lack the physical or mental capability to care for themselves.

The 1998 National Elder Abuse Incidence Study found that Adult Protective Services (APS) agencies substantiate more cases of financial abuse than they do of physical abuse each year and that only one in five cases of abuse, neglect and exploitation is reported to authorities. While these data are relatively old, there is no evidence that they are outdated, particularly in proportion to incidents of physical abuse and particularly in an aging society.

More current, the 2001 study by the National Association of Adult Protective Service Administrators (NAAPSA) reported 38,015 documented cases of financial exploitation of vulnerable adults. The study also states that only one out of 14 cases of domestic elder abuse incidences is reported, which could mean that numbers of cases of abuse exceed 850,000 annually.

According to the National Center on Elder Abuse (NCEA), financial exploitation can include "the illegal or improper use of an elder's funds, property, or assets." Examples include, but are not limited to, "cashing a vulnerable adult person's checks without authorization or permission; forging an older person's signature; misusing or stealing an older person's money or possessions; coercing or deceiving an older person into signing any document (e.g., contracts or will); and the improper use of conservatorship, guardianship, or power of attorney."[1]

Financial exploitation can be devastating to the victim. Compounding the devastation is that the exploitation is often traced to family members, trusted friends, or caregivers. Financial abuse often occurs with the implied acknowledgment and/or consent of the elder person, even when that person is mentally capable, and therefore can be more difficult to detect or prove.

The financial services industry often may be the first to detect changes in the behaviors of customers with whom they have regular contact. This places institutions in a unique position to assist in protecting customers, upholding their inherent trust relationship with clients. Misconceptions and misunderstandings of privacy laws may cause institutions to avoid reporting suspected financial exploitation even though many states mandate such reporting. The National Adult Protective Services Association (NAPSA) July 2003 survey

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* "Elder Mistreatment: Abuse, Neglect and Exploitation in an Aging America" 2003, Washington, DC: National Research Council Panel to Review Risk and Prevalence of Elder Abuse and Neglect

[1] The National Center on Elder Abuse (http://www.elderabusecenter.org/default.cfm?p=basics.cfm)

found that financial institutions accounted for only 0.3% of reports of financial exploitation.**

Financial institutions are encouraged to broaden dialogue and report suspected fraud to Adult Protective Services (APS). In turn, APS will conduct investigations, prepare assessments and arrange for services needed to help victims correct or eliminate financial exploitation. Financial institutions are not responsible for monitoring for the potential financial exploitation of customers, however, this is an area in which they may make a positive contribution to the well-being of vulnerable customers.

This *Toolkit* was developed by BITS. BITS is a non-profit industry consortium whose members are 100 of the largest financial institutions in the United States. The CEOs of The Financial Services Roundtable established BITS in 1997. BITS is the strategic business and technology division for The Financial Services Roundtable and works on key issues where industry cooperation serves the public good, such as critical infrastructure protection and the safety of financial services. Major purposes for BITS are to develop and disseminate industry best practices for improving information security programs, reducing fraud, managing third party providers, managing risk and fostering innovation. BITS seeks to sustain consumer confidence and trust by ensuring the security, privacy and integrity of financial transactions. BITS works as a strategic brain trust to provide intellectual capital and address emerging issues where financial services, technology and commerce intersect, acting quickly to address problems and galvanize the industry. BITS' activities are driven by the CEOs and their appointees—CIOs, CTOs, Vice Chairmen and Executive Vice Presidents—who make up the BITS Advisory Board and BITS Advisory Council. For more information, go to www.bitsinfo.org.

** "State Adult Protective Services Program Responses to Financial Exploitation of Vulnerable Adults," NAPSA, July 2003

ROLE OF THE FINANCIAL SERVICES INDUSTRY

The financial services industry is uniquely positioned to assist in detecting and preventing financial fraud and exploitation of the elderly and vulnerable. Following are some of the reasons this role is so critically important.

- A primary role of financial institutions is the protection of assets and prevention of financial losses. Experts from the BITS financial institution members develop and share best practices and other voluntary guidelines to safeguard consumer information.

- Financial institutions have for decades been at the forefront of fraud detection utilizing sophisticated technology, modeling, training and education and are often the first to detect patterns of fraud. These proactive measures help to promote goodwill within the financial institutions' communities.

- Using a variety of safeguards, financial institutions ensure the reliability and security of financial transactions as well as protect financial privacy. While some of these safeguards are required of financial institutions by federal regulators, financial institutions often exceed the minimum standards of such regulation for the benefit of their customers, shareholders and employees. In some states financial institutions are mandated to report instances of abuse or financial exploitation and are provided immunity from civil or criminal liability if acting in good faith in such reporting.

- Financial institutions educate employees and customers on steps to secure accounts against the lure of fraudsters. Often, fraud is committed by trusted third-parties, family or friends and may be committed with the implied consent of the customer. The ability to detect changes in behavior places financial institutions in a unique position to assist in protecting customers and uphold the inherent trust relationship with their clients.

TYPES OF ABUSE AND SCAMS

NCEA recognizes seven types of abuse. In addition to signs of financial abuse, financial institution personnel may recognize, identify and report other forms of abuse. Identification of non-financial abuse may indicate that financial abuse is also occurring. The types of abuse below may be independent of each other:

- **Self neglect** – Failure by oneself to provide goods or services essential to avoid serious threat to one's physical or mental health.

- **Neglect** – Failure to fulfill any part of a person's obligations or duties to an elder. Neglect can be willful/intentional (e.g., deliberately withholding food or medicine) or unintentional (e.g., untrained or "burnt out" caregiver).

- **Physical abuse** – Infliction of physical pain or injury, etc.

- **Sexual abuse** – Non-consensual sexual contact of any kind with a vulnerable adult.

- **Abandonment** – Desertion of a vulnerable adult by an individual who has assumed responsibility for providing care.

- **Psychological abuse** – Infliction of mental anguish by demeaning name calling, threatening, isolating, etc.

- **Financial abuse** – Illegal or unethical exploitation by using funds, property, or other assets of a vulnerable adult for personal gain irrespective of detriment to the vulnerable adult.

Financial exploitation can be classified into two broad categories. These categories of exploitation may affect more than vulnerable adults, however they are highlighted for purposes of understanding the direct risk they pose to the vulnerable:

- **Theft of income** – Most common form of financial exploitation and fraud; is typically less than $1,000 per transaction.

- **Theft of assets** – Often more extensive and typically involves abuse associated with Powers of Attorney, real estate transactions, identity theft or tax manipulation.

Some forms of exploitation may be considered "scams," in which a person or persons attempts to trick the victim for financial gain. Vulnerable adults, who may be more trusting, gullible, or less financially sophisticated, are often the preferred targets of scams. There are numerous variations, all of which are not attempted to be represented below. These scams, which may also affect the general public, include, but are not limited to:

- **Power of Attorney fraud** – The perpetrator requests a Limited or Special Power of Attorney, specifying that legal rights are given to manage funds assigned for investment

to the perpetrator, a trustee, an attorney, an asset manager, or other title that sounds official and trustworthy. Once the rights are given, the perpetrator uses the funds for personal gain.

- **Phone company scam –** While pretending to be a representative from a local phone company, the perpetrator purports that a problem exists on the telephone line. The perpetrator asks the victim to call back under the guise of conducting a test. This allows the perpetrator to make long distance phone calls and bill them to the victim.

- **Charitable donation scam** – Scam artists claiming to represent charitable organizations use e-mails and telephone calls to steal donations and in some cases donors' identities.

- **Advance fee fraud or "419" fraud** – Named after the relevant section of the Nigerian Criminal Code, this fraud is a popular crime with West African organized criminal networks. There are a myriad of schemes and scams—mail, email, fax and telephone promises are designed to facilitate victims' parting with money, ostensibly to bribe government officials involved in the illegal conveyance of millions outside the country. Victims are to receive a percentage for their assistance.

- **Pigeon drop** – The victim puts up "good faith" money in the false hope of sharing the proceeds of an apparent large sum of cash or item(s) of worth which are "found" in the presence of the victim.

- **Financial institution examiner fraud** – The victim believes that he or she is assisting authorities to gain evidence leading to the apprehension of a financial institution employee or examiner that is committing a crime. The victim is asked to provide cash to bait the crooked employee. The cash is then seized as evidence by the "authorities" to be returned to the victim after the case.

- **Inheritance scams** – Victims receive mail from an "estate locator" or "research specialist" purporting an unclaimed inheritance, refund or escheatment. The victim is lured into sending a fee to receive information about how to obtain the purported asset.

- **Financial institution employee fraud** – The perpetrator calls the victim pretending to be a security officer from the victim's financial institution. The perpetrator advises the victim that there is a system problem or internal investigation being conducted. The victim is asked to provide his or her Social Security number for "verification purposes" before the conversation continues. The number is then used for identity theft or other illegal activity.

- **Itinerant fraud** – Victims are coerced, intimidated or otherwise conned into paying unreasonable amounts for poor quality work. Door-to-door solicitations occur where perpetrators offer services such as roofing or paving, auto body repair, etc. Often the work is fully paid for, but only partially completed, never started or of such poor quality that the victim must pay legitimate contractors to repair the work.

- **International lottery fraud** – Scam operators, often based in Canada, use telephone and direct mail to notify victims that they have won a lottery. To show good faith, the perpetrator may send the victim a check. The victim is instructed to deposit the check and immediately send (via wire) the money back to the lottery committee. The perpetrator will create a "sense of urgency," compelling the victim to send the money before the check, which is counterfeit, is returned. The victim is typically instructed to pay taxes, attorney's fees and exchange rate differences in order to receive the rest of the prize. These lottery solicitations violate U.S. law, which prohibits the cross-border sale or purchase of lottery tickets by phone or mail.

- **Misappropriation of income or assets** – A perpetrator, often a family member or caregiver, obtains access to a vulnerable adult's Social Security checks, pension payments, checking or savings account, credit card or ATM, or withholds portions of checks cashed for an elder adult.

- **Identity theft** – Using one or more pieces of the victim's personal identifying information (including, but not limited to, name, address, driver's license, date of birth, Social Security number, account information, account login credentials, or family identifiers), a perpetrator establishes or takes over a credit, deposit, or other financial account ("account") in the victim's name.

- **Telemarketing scams** – The victim is persuaded to buy a valueless or nonexistent product, donate to a bogus charity or invest in a fictitious enterprise.

- **Fictitious relative** – The perpetrator calls the victim pretending to be a relative in distress and in need of cash and asks that money be transferred either into a financial institution account or wired.

- **Fake prizes** – A perpetrator claims the victim has won a nonexistent prize and either asks the person to send a check to pay the taxes or obtains the credit card or checking account number to pay for shipping and handling charges.

- **Internet sales or online auction fraud** – The perpetrator agrees to buy an item available for sale on the Internet or in an online auction. The seller is told that he or she will be sent an official check (e.g., cashiers check) via overnight mail. When the check arrives, it is several hundred or thousand dollars more than the agreed-upon selling price. The seller is instructed to deposit the check and refund the overpayment. The official check is subsequently returned as a counterfeit but the refund has already been sent. The seller is left with a loss, potentially of both the merchandise and the refund.

- **Government grant scams** – Victims are called with the claim that the government has chosen their family to receive a grant. In order to receive the money, victims must provide their checking account number and/or other personal information. The perpetrator may electronically debit the victim's account for a processing fee, but the grant money is never received.

- **Unsolicited work** – A perpetrator arrives unexpectedly at a residence and offers to perform work for a reasonable fee. After starting the work, the perpetrator insists that the victim pay more than originally agreed before the work will be completed.

- **Phishing** – Technology or social engineering is used to entice victims to supply personal information such as account numbers, login IDs, passwords, and other verifiable information that can then be exploited for fraudulent purposes, including identity theft. Phishing is most often perpetrated through mass emails and spoofed websites.

- **Spoofing** – An unauthorized website mimics a legitimate website for the purpose of deceiving consumers. Consumers are lured to the site and asked to log in, thereby providing the perpetrator with authentication information that the perpetrator can use at the victim's legitimate financial institution's website to perform unauthorized transactions.

- **Pharming** – A malicious Web redirect sends users to a criminal's spoofed site even though the user entered a valid URL in the browser's address bar. This redirection usually involves worms and Trojans or other technologies that attack the browser address bar and exploit vulnerabilities in the operating systems and Domain Name Servers (DNS) of the compromised computers.

- **Stop Foreclosure Scam** – The perpetrator claims to be able to instantly stop foreclosure proceedings on the victim's real property. The scam often involves the victim deeding the property to the perpetrator who says that the victim will be allowed to rent the property until some predetermined future date when the victim's credit will have been repaired and the property will be deeded back to the victim without cost. Alternatively, the perpetrator may offer the victim a loan to bridge his or her delinquent payments, perhaps even with cash back. Once the paperwork is reviewed, the victim finds that his or her property was deeded to the perpetrator. A new loan may have been taken out with an inflated property value with cash back to the perpetrator, who is now the property owner. The property very quickly falls back into foreclosure and the victim, now tenant, is evicted.

- **Investment Property** – Property is sold to the vulnerable as a guaranteed investment with high yield returns. The victim is convinced to buy investment property through, or in conjunction with, a property management firm that will handle all the loan documents, make all the loan payments, place the tenants, collect the rents and maintain the property. The victim is told that he or she has to do nothing other than be the buyer and borrower. The property then falls into foreclosure. The victim finds that the property was inflated in value, payments at the closing were made to the property management company or affiliated parties, no loan payments have ever been made, and any collected rents have been stolen as well.

Relatives and Caregivers

Unlike strangers, relatives and caregivers hold a position of trust and have an ongoing relationship with the vulnerable adult. Financial exploitation occurs when the offender steals, withholds or otherwise misuses the victim's money or assets for personal profit. Methods can include:

- **Theft of the victim's money or other cash-equivalent assets** (e.g., stock, bonds, savings bonds, travelers checks), both directly and through establishing joint accounts or signatory authority on existing accounts.

- **Borrowing money** (sometimes repeatedly) with no intent to repay.

- **Cashing or keeping some portion** of the person's pension, Social Security or other income checks without permission.

- **Using the victim's ATM, debit or credit card** without permission.

- **Transferring title on, or re-encumbering, real property** of the vulnerable adult. Financial exploitation utilizing real property is particularly appealing to family members or caregivers who may feel they are "owed" something for their efforts, however meager those efforts may be in reality. For many vulnerable adults, their most significant economic asset may be the equity they have built in their real property over decades of ownership.

The tactics used by these types of offenders may include intimidation, deceit, coercion, emotional manipulation, psychological abuse and/or empty promises. The offender may try to isolate the victim from friends, family, and other concerned parties who would act in the victim's best interest. By doing so, the perpetrator prevents others from asking about the person's well-being or relationship with the offender and prevents the person from consulting with others on important financial decisions.

According to the Missouri Department of Health and Senior Services (DHSS) Division of Senior and Disability Services[2], **the top 10 "red flags"** associated with scams include:

1. Signature seems forged, unusual, or suspicious.
2. A set of "out-of-sync" check numbers.
3. Allegations of "missing funds" from a vulnerable adult's account.
4. A vulnerable adult fails to understand recently completed transactions or repercussions of his or her actions.
5. Financial institution or credit card statements start being sent to an address other than the vulnerable adult's home.
6. Unusual cash withdrawals from a checking account in a short period of time.

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[2] Missouri Department of Health and Senior Services (DHSS) Division of Senior and Disability Services is available at http://www.dhss.mo.gov/MOSAFE/index.html.

7. Abrupt increase in credit card activity or a sudden flurry of "bounced" checks.
8. Vulnerable adult's account shows ATM activity even though he or she is physically unable to leave home.
9. Vulnerable adult is accompanied by a third party who encourages the withdrawal of a large sum of cash and may not allow the vulnerable adult to speak.
10. Abrupt and unexplained change in a financial Power of Attorney; new names added to signature cards; new joint account.

DEVELOPMENT OF AN INTERNAL AWARENESS AND TRAINING PROGRAM

The following outline is intended as a guide for use by financial institutions when creating awareness and detection programs to protect the elderly and vulnerable from fraud and financial exploitation.

Program Design and Employee Training

- Internal Sources:
  - Branch Administration
  - Loss Prevention/Security Department
  - Legal
  - Compliance
  - Public Relations
  - Training
- External Sources:
  - Adult Protective Services (APS)
  - Local and/or State Law Enforcement
  - Local and/or State Prosecutorial Authorities (e.g. Attorneys General, District Attorneys)

Role of Customer Contact Staff

Customer contact staff are in a unique position to identify potential abuse of vulnerable populations through greater awareness and recognition of "Red Flags" in customer behavior. Signs of abuse or financial exploitation of vulnerable adults include, but are not limited to:

- Sudden changes in accounts or practices, such as unexplained withdrawals of large sums of money, particularly with a vulnerable adult who is escorted by another (e.g., caregiver, family member, "friend") who appears to be directing the changing activity patterns.

- Recent changes in authorized signers on a vulnerable adult's financial institution signature card, particularly additions.

- Withdrawals of funds using an ATM card, particularly repetitive withdrawals over a short period inconsistent with prior usage patterns or at times, or on days, that appear unlikely to have been done by the customer (e.g., late night or very early morning withdrawals by elderly customers, withdrawals at ATMs in distant parts of town by customers who don't drive, or use of an ATM card which was only recently ordered commensurate with the addition of a new authorized signer).

- Abrupt changes in a will or other financial documents.

- Unexplained disappearance of funds or valuable possessions.

- Substandard care being provided or bills unpaid despite the apparent availability of adequate financial resources.
- Discovery of a vulnerable adult's signature being forged for financial transactions or for the titles of his or her possessions.
- Sudden appearance of previously uninvolved relatives claiming their rights to a vulnerable adult's affairs and possessions.
- Vulnerable adult has a companion who seems to be "calling the shots."
- Vulnerable adult has no knowledge of newly-issued ATM, debit or credit card.
- Vulnerable adult is confused about the account balance or transactions on his or her account.
- A caregiver appears to be getting paid too much or too often.
- Significant increases in monthly expenses being paid from an account (which may indicate that expenses for persons other than the customers are being paid).
- Request for a new Power of Attorney that the vulnerable adult does not appear to understand.
- Vulnerable adult reports concerns about giving out personal and account information to a solicitor via the phone or email.
- Unexplained sudden transfer of assets, particularly real property, to a family member or someone outside the family.
- Excitement about winning a sweepstakes or lottery.
- Provision of services that are not necessary.
- A vulnerable adult's report of financial exploitation[3].
- Sudden appearance of credit card balances with no prior history of using credit.
- Change in the vulnerable adult's appearance (hair or clothes disheveled or lack of hygiene).

[3] The National Center on Elder Abuse (http://www.elderabusecenter.org/default.cfm?p=basics.cfm)

- Refinance of the vulnerable adult's property, particularly with significant cash out or with the addition of new owners on the deed and, most particularly, without the new owners shown as co-borrowers on the loan.

What to do if you "**suspect fraud**" with your vulnerable adult customer:

- Carefully verify anyone's authority acting on the customer's behalf.

- Avoid confrontation and attempt to separate the vulnerable adult from the individual accompanying him or her.

- Use probing questions to determine the customer's intent. It is important to let the customer tell you using his or her own words without prompting. Examples include:

  - *Power of attorney (POA) request*: "Mr. Jones, do you want Ms. Smith to be able to withdraw money from your account at any time without needing your permission?"

  - *Home repair or 419 scam*: "Mrs. Green, $4,000 is a lot of cash to be carrying around. For your safety, I can make a check out to the other party if you have the receipt with the correct spelling of the name."

- If your customer has asked for a large cash withdrawal which appears out of pattern, consider an "awareness" document, and potentially ask the customer to sign it prior to receipt of funds. The form could include:

  - Brief overviews of common fraud schemes.

  - Warnings that perpetrators of such schemes could present themselves as an FBI agent, financial institution examiner, police officer, detective or financial institution official.

  - Warning that customers should use caution if they are asked for information about their account, or asked to withdraw money to help "catch someone," or provide money to show "good faith."

  - Notice that the financial institution does not conduct investigations or verification of accounts by telephone (since swindlers often use this method to gain information on accounts, as well as the confidence of their victims) nor will local, state or federal law enforcement authorities, financial institution regulatory authorities or financial institution officials conduct investigations by asking individuals to withdraw cash from their account for any reason.

  - Phone numbers for the appropriate agencies, if any of the circumstances listed about are in evidence, with instructions to customers that they should contact

their branch, local police department, Adult Protective Services or the Federal Trade Commission to investigate before they withdraw money.

  - Reminders that swindlers nearly always are friendly and have "honest" faces and that they particularly tend to take advantage of older individuals.

  - The amount the individual has requested, with a request to read and sign the document.

- Delay the suspicious transaction, if possible, by advising the customer that additional verification of the transaction is required.

- Contact loss prevention and/or legal departments for assistance and guidance.

- Report the incident to law enforcement following your institution's normal protocol.

Role of Loss Prevention/Security

- Document the situation.

- Take immediate protective action on accounts by placing holds or restraints and follow normal prevention and recovery steps to follow the money as needed.

- Make a verbal report to the local APS and provide investigative research and services as needed. Financial institutions should consult with legal departments on the specific reporting guidelines for the states in which they do business. In some cases, a written request from APS is sufficient to release customer statements and transaction copies, while other states require a subpoena or written consent from the customer. To locate the APS office that serves the customer, call 1-800-677-1116 or use their web database located at ww.eldercare.gov/Eldercare/Public/Home.asp.

- Continue to monitor the account during legal proceedings, if necessary.

- Advise customer contact staff and document files of final outcome.

Role of Legal Departments

Financial institutions may be reluctant to report suspicious activity to APS due to concerns with federal and state privacy laws. According to the American Bar Association Commission on Aging, The Right to Financial Privacy Act of 1978 applies only to federal agencies requesting consumer information from financial institutions. Further, the Gramm-Leach-Bliley Act applies to federal, state and local agencies, but it contains several exemptions that permit disclosure, including "to protect against or prevent actual or potential fraud, unauthorized transaction, claims, or other liability." In addition, 49 states

and the District of Columbia include immunity provisions in their APS laws that protect individuals who make reports in good faith. These immunity provisions may be interpreted as overriding the restrictions in the state's privacy law.

In 2003 the American Bar Association published the document, "Can Bank Tellers Tell? Reporting Financial Abuse of the Elderly," which outlines state laws associated with elder abuse. A link to the paper is provided in the appendix of this document. Note: The ABA is currently revising the document to bring it up to date with changes in the law. It is expected to be released early in 2006.

As stated above, financial institutions should consult with legal departments on the specific reporting guidelines for the states in which they do business. In some cases, a written request from APS is sufficient to release customer statements and transaction copies, while other states require a subpoena or written consent from the customer.

The Role of Law Enforcement and Communities

Triads – This is a partnership of law enforcement, senior citizens and community groups to promote senior safety and reduce the unwarranted fear of crime that the elder community often experiences. Tools for creating triads can be found at ***http://www.nationaltriad.org***.

WORKING WITH STATE AND FEDERAL AGENCIES

Adult Protective Services (APS)

The role of APS is to receive and investigate reports of vulnerable adult abuse, and offer services when the abuse is confirmed. APS works with legal service providers to offer protection to victims through the legal system and with the criminal justice system to prosecute those responsible for abuse. While financial institutions are often the first to identify suspected fraud and in turn contact APS directly, APS may also be notified by other external sources. When this occurs, APS contacts financial institutions to assist in confirming the fraud. Further APS works to educate the elderly and vulnerable community and beyond of the problems facing consumers. APS also promotes the development of needed legislation and public policy. APS confidentially investigates each case, making contact with and interviewing the customer. If financial abuse is confirmed, steps are taken to eliminate the abuse. Further, law enforcement may be contacted. If the financial institution is the abuse reporter, APS will advise the financial institution of the final determination.

U.S. Administration on Aging (AoA)

The Administration on Aging was created by the Older Americans Act (OAA), originally signed into law by President Lyndon B. Johnson on July 14, 1965. The Act authorized grants to states for community planning and services programs, as well as for research, demonstration, and training projects in the field of aging. Later amendments to the Act added grants to local agencies on aging for local needs identification, planning, and funding of services, including nutrition programs in communities as well as for those who are homebound; programs to serve native American elders; health promotion and disease prevention activities; in-home services for frail elders; and services to protect the rights of older persons.

Efforts to protect seniors' financial security from fraud, scams, and exploitation support AoA's primary goal of keeping seniors independent in their homes and communities. AoA administers formula grants for state activities designed to protect seniors, such as to train law enforcement officials and other professionals, develop and distribute educational materials, conduct public awareness campaigns, and create community coalitions. Formula grants to states also fund approximately 1,000 OAA legal services providers nationwide who serve low-income seniors. These legal providers help older Americans and their caregivers to address threats to home ownership such as predatory lending and consumer scams, and to obtain financial powers of attorney or guardianships that can prevent or stop financial exploitation.

To augment and enhance these consumer protection efforts, AoA funds a number of other projects. The National Center on Elder Abuse (NCEA) is a gateway to resources on elder abuse, neglect, and exploitation. Among its activities, NCEA makes available news and materials; provides consultation, education, and training; answers inquiries and requests for information; and operates a listserve forum for professionals. NCEA also facilitates the exchange of strategies for uncovering and prosecuting fraud in areas such as telemarketing

and sweepstakes scams, and has produced a number of telemarketing fraud alert and elder fraud alert newsletters (www.elderabusecenter.org).

The AoA also provides funding for the National Consumer Law Center (NCLC), one of five National Legal Resource Centers, to improve the quality and accessibility of legal assistance for vulnerable older Americans with consumer problems. Major topics of specialization at the NCLC include consumer credit, bankruptcy, debt collection, unfair and deceptive practices, sales and warranties, foreclosure prevention, energy assistance, and public utility practices. NCLC has several products related to older consumer fraud available on their website http://www.consumerlaw.org/initiatives/seniors_initiative/.

In addition, AoA supports special projects like the Philadelphia APS-Wachovia collaboration and the Stetson University Consumer Protection Education Project. These projects developed collaborations between APS, law enforcement, banks, and other community members to identify, prosecute, and prevent fraud and financial exploitation of seniors.

CONSUMER AWARENESS AND EDUCATION

Consumer education is critical to preventing fraud. Most individuals will take action if they believe it will decrease their chances of being victimized by fraud, as long as the action does not significantly inconvenience them. By educating customers, financial institutions can decrease fraud losses.

Included in the **Appendix of Resources and Recommendations to Consumers** are resources to assist institutions with communicating to customers as well as a list of consumer tips to prevent fraud. Institutions can share this information with customers through various channels, such as postings at the branches, flyers sent with monthly statements, emails, through a Web site, and/or by request to a call center.

THE BITS FRAUD REDUCTION PROGRAM

The BITS Fraud Reduction Steering Committee was created to:

- Reduce payment-related fraud losses.
- Secure a critical mass of financial institutions to participate in a shared account database and standardized data collection process.
- Identify successful strategies for reducing check fraud and make those strategies available to the industry.
- Assess fraud risk exposure to electronification and develop strategies to minimize losses.

Working Groups under the BITS Fraud Reduction Program include:

- Debit Card/ATM Fraud
- Electronification
- Emerging Fraud Risks
- Identity Theft
- Internet Fraud
- Prevention of the Exploitation of the Elderly and Vulnerable
- Shared Databases

This Toolkit was created with the assistance and expertise of Linda Mill, Senior Vice President, Wachovia, Joe Snyder, Director-Older Adult Protective Service, Philadelphia Corporation for Aging, and Brandt Chvirko, Aging Services Program Specialist, U.S. Administration on Aging. Please contact Robin Slade, Senior Consultant, at rmslade@sbcglobal.net for more information.

About BITS

BITS (www.bitsinfo.org) was created in 1996 to foster the growth and development of electronic financial services and e-commerce for the benefit of financial institutions and their customers. A nonprofit industry consortium that shares membership with The Financial Services Roundtable, BITS seeks to sustain consumer confidence and trust by ensuring the security, privacy and integrity of financial transactions. BITS works as a strategic brain trust to provide intellectual capital and address emerging issues where financial services, technology and commerce intersect, acting quickly to address problems and galvanize the industry. BITS' activities are driven by the CEOs and their appointees—CIOs, CTOs, Vice Chairmen and Executive Vice Presidents—who make up the BITS Advisory Board and BITS Advisory Council.

APPENDIX OF RESOURCES AND RECOMMENDATIONS TO CONSUMERS

RESOURCES

AGENCIES AND ASSOCIATIONS
National Center on Elder Abuse (NCEA) 1201 15th Street, NW, Suite 350 Washington, DC 20005 Ph: (202) 898-2586 Fax: (202) 898-2583 Email: ncea@nasua.org http://www.elderabusecenter.org
Department of Health and Human Services Administration on Aging (AoA) Washington, DC 20201 Ph: (202) 619-0724 Fax: (202) 357-3555 http://www.aoa.gov
National Adult Protective Services Association (NAPSA) 1900 13th Street Suite 303 Boulder, CO 80302 Ph: (720)-565-0906 Fax: (720)-565-0438 http://apsnetwork.org

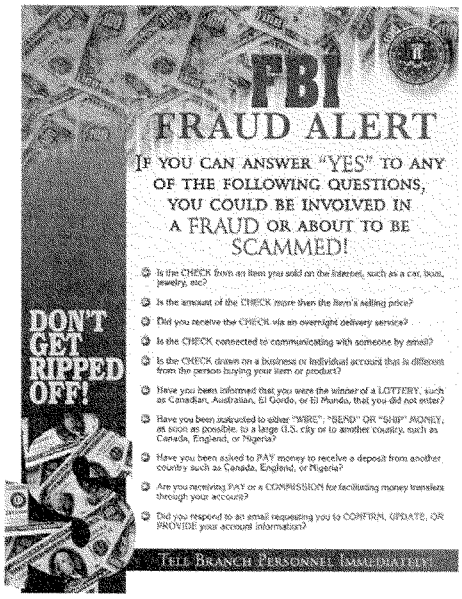
TRAINING MATERIALS AND TOOLKITS
California Banker's Website includes training materials on elder abuse, including a free training video, which can be downloaded at: http://www.calbankers.com/content/education_trainingmaterial.asp.
Financial Institution Elder Abuse Training Kit developed in conjunction with the Oregon Department of Human Services. Includes videos, manuals and other materials. For more information contact: Marilyn Muller Senior & Disabled Services Division Abuse Prevention Unit P.O. Box 14750 Salem, OR 97309 503-378-2529
Elder Financial Protection Network (EFPN): Works to prevent financial abuse of elders and dependent adults through community education programs, public awareness campaigns and coordination of financial institution employee training. Financial institution statement stuffers, brochures and posters can be ordered via the website at http://bewiseonline.org.

Elder Abuse Training Program, developed in conjunction with the Oregon Department of Human Services, is a 2-hour educational curriculum that teaches professional and family caregivers about the complexities of domestic elder abuse and neglect. More information on this program, including cost, can be found at: http://www.homecarecompanion.com/eatp.html.
Missouri Department of Health and Human Services – Missourians Stopping Adult Financial Exploitation (MOSAFE) Project. The MOSAFE website includes training materials for financial institution employees to help spot the warning signs of financial exploitation, and take steps to stop it. The materials include a video, brochure, PowerPoint presentation, resource manual and eight articles, which can be viewed and/or downloaded from this site. http://www.dhss.mo.gov/MOSAFE/index.html
Stetson University Consumer Protection Education Project: developed an elder consumer protection education program to educate elder consumers, their families, law enforcement, and other professionals about consumer fraud and how to minimize the risk of becoming victims. In addition to community presentations and educational programs, they have created a series of PowerPoints for presentations and re-enactment videos to show elders how various scams work. These PowerPoints and scam videos will be available beginning January 2006. Details and contact information can be found at http://elder.law.stetson.edu/professional/."
The Massachusetts Bank Reporting Project: An Edge Against Elder Financial Exploitation: The Massachusetts' Executive Office of Elder Affairs, in collaboration with the Executive Office of Consumer Affairs, the Attorney General's Elderly Protection Project, and the Massachusetts Bank Association, developed the bank reporting project to provide training to bank personnel in how to identify and report financial exploitation. The project has been successfully replicated in numerous communities. Sample materials, including model protocols, procedures for investigating and responding to abuse, and training manuals are available. Contact: Gillian Price One Ashburton Place, 5th Floor Boston, MA 02108 (617) 727-7750 ext. 222 (617) 727-9368 (fax)
AARP Foundation: In conjunction with the Colorado Attorney General the AARP Foundation has created the Colorado ElderWatch Project (http://www.aarpelderwatch.org/) to fight the financial exploitation of older Americans through collection of data, extensive outreach and education, a free hotline for the elderly, and the provision of technical assistance. Training materials for financial institutions located in Colorado is also available at: http://www.aarpelderwatch.org/public/training/before_the_money_is_gone.pdf

Fiduciary Abuse Specialist Team (FAST): The Los Angeles FAST team was developed to provide expert consultation to local APS, Ombudsman, Public Guardian and other case workers in financial abuse cases. The team includes representatives from the police department, the district attorney's office, the city attorney's office private conservatorship agencies, health and mental health providers, a retired probate judge, a trust attorney, an insurance agent, a realtor, an escrow officer, a stock broker and estate planners. The FAST coordinator and consultants have also provided training to bankers and police officers across the state of California. They have developed a manual and have helped other communities start up FAST teams.

Contact:
Rena R. Fountain-MSG
Director of Elder Abuse Prevention Program
WISE Senior Services
1527 Fourth Street, Ste 250
Santa Monica, CA 90401
(310) 394-9871
www.wiseseniors.org

Federal Bureau of Investigation (FBI) – free fraud alert poster can be placed in branches to help alert customers. The poster can be found at http://www.fbi.gov/becrimesmart.htm.



ADDITIONAL RESOURCES
The state of Texas has launched a statewide outreach campaign to raise awareness for protecting senior Texans. More information can be found at the Texas Attorney General website: http://www.oag.state.tx.us/elder/elder.shtml
Can Bank Tellers Tell? – Legal Issues Relating to Banks Reporting Financial Abuse of the Elderly. American Bar Association 2003 Publication available at http://www.abanet.org/aging/bank_reporting.pdf
TRIAD Handbook – designed to assist law enforcement and senior citizens in implementing a comprehensive crime prevention program for older adults http://www.nationaltriad.org/tools/Draft_Triad_Handbook.pdf

BITS' Recommendations for What Consumers Should Know and Can Do to Protect Themselves

What Consumers Should Know

- Hundreds of millions of financial transactions—both online and offline—occur each day.
- On the whole, Internet banking and other online financial transactions are safer than paper-based transactions.
- Identity thefts that occur online are generally smaller and take less time to resolve than paper-based thefts.
- Identity theft is a highly complex issue with many players and no simple solutions.
- Incidents of identity theft and identity fraud are often mis-characterized in the popular media.
- Fraudulent credit and debit card transactions are not identity theft and seldom lead to identity theft.
- Most cases of identity theft do not occur online. Where the method is known, most theft of personal information is through traditional rather than electronic channels—68.2% obtained offline versus 11.6% obtained online. (Source: 2005 Identity Fraud Survey Report by Javelin Strategy and Research)
- Resolving identity theft requires coordination among multiple federal, state and local agencies, and industry.
- Consumers are protected against financial losses from fraud by laws and regulations.
- Customers will be held harmless in almost all circumstances in which fraud occurs and is reported to their financial institution timely and accurately.
- Financial institutions use sophisticated systems to flag unusual activity and protect consumers against fraud. These systems allow financial institutions to monitor activities in real time.
- Many of these controls are kept "invisible" for security reasons.

What Consumers Can Do

- **Know what you are signing**. Ensure you understand the documents you are signing and the authority you may be granting.

- **Never allow unsolicited contractors into your home.** Check with the Better Business Bureau or obtain references from trusted family and friends before hiring contractors to perform services.

- **Never give money to a stranger.** Regardless of what is promised as a reward, such as in cases of found valuables or cash, you should never provide cash to people you do not know. Never send money to win or inherit money. Legitimate lotteries do not require up-front payment. Consult your attorney if contacted regarding an inheritance.

- **Be careful of requests by phone.** Scammers can use the telephone as a means to reach victims. Be careful of charitable requests and solicitations. The phone company will never call you and ask you to call them back to conduct a test. The series of numbers the scammer asks you to dial may allow him/her to make long distance phone calls and bill them to you.

- **Know your merchant.** Ensure you know the person or entity to which you are giving information over the Internet, phone, or fax. Do not provide your personal information unless you have initiated contact with the merchant. Only do business with Internet companies that use a secure form, often indicated by a padlock in the lower corner of the website, to capture private information such as account numbers or credit card numbers.

  Order copies of your credit report at least once a year from each of the three major credit bureaus and ensure all of the information is accurate. Stagger the process so you can check your records three times each year. You are entitled to receive one free credit file disclosure every 12 months from each of the nationwide consumer credit reporting companies – Equifax, Experian and TransUnion. This free credit file can be requested through the following websites and phone numbers:

  Equifax www.equifax.com 1-800-685-1111
  Experian www.experian.com 1-888-EXPERIAN (397-3742)
  Transunion www.transunion.com 1-800-916-8800

- **Monitor your accounts and statements frequently and thoroughly,** ensuring that all activity is accurate. If your account statements are late, immediately contact your financial institution(s) to ascertain if and when the statements were mailed. If your institution offers online banking, check your account frequently and regularly, rather than waiting for monthly statements. Reporting fraud as soon as possible helps stop further occurrences of fraud.

- **Always thoroughly tear or shred documents with personal information,** such as pre-approved credit offers, **unused instant credit offers** which may contain account information, Social Security numbers, date of birth, etc. Shredding such documents protects you against "dumpster diving."

- **Always protect your account information.** Don't write your personal identification number (PIN) on your ATM or debit card. Don't write your Social Security number and/or credit card number on a check. Never give out your account numbers or social security numbers to someone claiming to be from your financial institution.

- **Safeguard your checkbook, receipts, identification card or driver's license information, account numbers and account expiration dates.** Don't leave your checks or credit card records, including your transaction receipts, or anything else with credit card numbers and expiration dates in unsafe locations.

- **When using your ATM, cover your hand when entering the PIN number** to protect the information from "shoulder surfers."

- **Carry only those pieces of identification you absolutely need**, and keep them secure.

- **Check merchant privacy policies** and only shop at those that publish privacy policies with which you agree.

- **If you suspect your identity has been stolen or you have shared any personal financial data, including your account username and password, contact your financial institution and the authorities immediately.** U.S. consumers should:
  - File a police report with their local police department and call the Federal Trade Commission at 1-877-ID-Theft, or www.ftc.gov.
  - Complaints can also be reported to: the Internet Fraud Complaint Center (IFCC), www.ifccfbi.gov.
  - Contact the three credit reporting agencies to place a fraud alert on your record. Contact information can be found above.
  - Maintain a log of all contacts you make with the authorities regarding the matter, including the name, title, phone number and police case number, in case future contact is required.

- **Watch your wallet.** The most frequently reported source of information used to commit fraud was a lost or stolen wallet or checkbook; computer crimes accounted for just 11.6 percent of all known-cause identity fraud in 2004 – and half these digitally-driven crimes stem from spyware, software the computer user unknowingly installs to make ads pop-up when the consumer is online. The use of anti-virus, anti-spam or anti-spyware software may help to prevent such fraud.

- **Be careful who you trust.** Among cases where the perpetrator's identity is known, half of all identity fraud is committed by a friend, family member, relative, neighbor or in-home employee – someone known by the victim.

- **Keep your eyes open.** The majority of actual identity fraud crimes in the United States are self-detected. This reinforces the benefits of activity monitoring through electronic review of transactions, statements and credit reports allowing consumers to check their account activities quickly and efficiently – without waiting for a paper bill or statement.

Victims of identity theft who detected the crime by monitoring accounts online experienced financial losses that were less than one-eighth of those who detected the crime via paper statements.

- **If you do business on the Internet:**
  - Use firewalls and anti-virus software to detect messages with malicious payloads, or hackers attempting to take control of your computer
  - Bookmark all of your financial services web sites and only access them using your "Favorites" menu
  - Never click on a hyperlink provided in a e-mail
  - Consult with a computer expert for advice on the best technology available
  - Delete unsolicited or unknown e-mails
  - Report suspicious e-mails to your financial institution
  - Be diligent – Don't respond to any request for personal information and monitor your accounts regularly