



**Statement of Rachel M. Dollar, CMB
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**Before the
Special Committee on Aging
United States Senate**

**Hearing on
“Foreclosure Aftermath: Preying on Senior
Homeowners”**

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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 NOW² are working to drastically

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 expanded 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 their 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.

The servicing industry in partnership with NeighborWorks and the Homeownership Preservation Foundation are promoting 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 half 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

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_07roppersurvey.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.

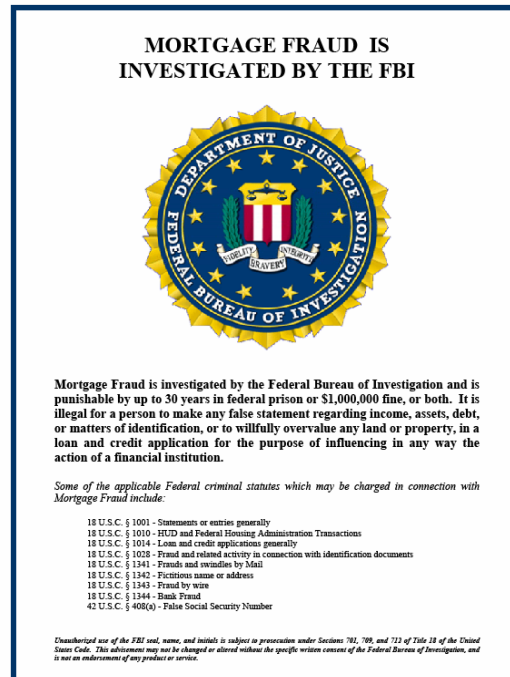
The best assistance that this Committee can offer to stop foreclosure rescue scams is to educate your constituents to call their servicer or the HOPE hotline. If the borrower can find a legitimate way to cure his or her delinquency, there is no need to turn elsewhere or to become prey to criminals.

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

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



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.