Department of Consumer Affairs

40 years of ensuring a fair and vibrant marketplace

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Hearing on:
Proposals to Fight Fraud and Protect Taxpayers

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Good morning. Thank you, Chairman Conyers and Ranking Member Smith, for the opportunity to testify today on behalf of Mayor Michael Bloomberg and for shining a spotlight on a national crisis.

Given your full schedule and the urgent nature of these hearings, I'll skip the extensive background on DCA's 40-year history of enforcing and litigating against deceptive and misleading practices in NYC. And I'll forego the in-depth stories about the damage inflicted on consumers by foreclosure and mortgage scams. This matter necessitates cutting to the chase. Put simply, mortgage restructuring scams not only prey upon vulnerable people already in crisis, they also undermine critical federal efforts to prevent foreclosures and avoid further destabilization of our neighborhoods and our economy. This malignant industry warrants a systematic and overarching response at the federal, state and local level.

I'd like to use my brief testimony to give you a ground-level view of the anatomy of the scam, diagnose from a consumer affairs perspective why these scams are so virulent, and finally suggest some practical, immediate outreach and enforcement interventions that must occur in the coming days and weeks.

The New York City Department of Consumer Affairs (DCA) enforces the City's aggressive Consumer Protection Law and other business regulations.[1] DCA regularly prosecutes businesses engaged in illegal and misleading conduct, from cell phone companies engaged in deceptive advertising, to tax preparers, process servers, employment agencies, and dozens of other

[1] Chapter 64, Section 2203(a)

industries. We stop illegal practices, garner millions of dollars in fines, and recover millions more in consumer monies owed.

Through targeted outreach, partnerships with community and trade organizations, informational materials, and large-scale public awareness campaigns, DCA also educates consumers and businesses about their rights and responsibilities. Through the Department's Office of Financial Empowerment, we also coordinate Mayor Bloomberg's efforts to help New Yorkers grow and protect their assets. Our many large-scale initiatives include our leadership, for the past seven years, of Mayor Bloomberg's extensive Earned Income Tax Credit outreach campaign, more than doubling the number of people receiving free tax preparation over that time period and making a significant dent in the number of New Yorkers who had yet to claim their EITC and other credits. Last year, nearly 40,000 people called the City's 3-1-1 information and referral line to seek tax preparation help alone.

This combination of enforcement and education is exactly what is needed to intervene and disrupt the tide of foreclosure prevention and loan modification scams sweeping across our cities and stripping those who can least afford it of their last chance to save their homes and keep their family finances stable. The numbers are alarming: nearly 5,000 homes in New York City were auctioned off last year and nearly 14,000 homeowners had official, public notices, or *lis pendens* filings.

The national foreclosure crisis has created a formidable demand for rescue and refinancing. Unfortunately, the shadow industry aimed at profiteering from both the enormity of the crisis and the federal resources is moving very aggressively.

This shadow industry – referred to as loan modification companies, mortgage modification assistance or, more aptly, foreclosure rescue scams – varies widely. At their most outrageous, these are outright criminals who engage in deed theft. Others are con artists who offer homeowners assistance in negotiating with lenders or help refinancing, collect an upfront fee and then simply disappear. While the financial impact of these swindles is, of course, devastating for homeowners (we've seen upfront fees of $1,500 to $5,000), the more pernicious component of these scams is that these businesses dissuade homeowners from contacting their own lenders or servicers, thereby wasting opportunities for homeowners to negotiate directly with their lenders. By the time the homeowner realizes the swindle, generally too much time has elapsed for the lender or servicer to modify the loan.

The less fraudulent companies, which are just as costly and dangerous, convince struggling homeowners to pay for a service that ultimately has no value. With millions of dollars streaming into HUD-certified housing counseling organizations and free legal services providers throughout the country, there is simply no reason for a homeowner behind on mortgage payments also to pay someone precious dollars to contact the lender on his or her behalf.

Regardless of the particular type, these scams are undermining the admirable emergency efforts of this Administration as well as states and local governments to restore stability to our economy. States such as New York for example, have given homeowners additional time to pay lenders and even require conferencing before a foreclosure can take place. But such rescue efforts are worthless if time is consumed by ineffective or non-existent third party-negotiations, or if funds owed to lenders end up in the hands of shadow players. These scams leave homeowners right where they started before any of our interventions.

This shadow industry thrives for three reasons all too familiar to consumer protection agencies: first, the intense demand for loan modifications; second, a captive, vulnerable, and often unsophisticated population; and third, the lack of a single, clear, trustworthy, and tamper-proof source to which people can be directed as their sole source of help. I've said enough about the intense demand. Exploration of the second and third factors, however, reveals clear, feasible steps the federal government can take to turn the tide.

The second factor: a vulnerable population. Many of the same people who were deceived by the marketing tactics used for subprime loans – people with limited experience with financial services, without legal representation or good advice from friends and family – are the targets now. Adding fuel to this fire is that these "easy targets" can be easily and precisely identified. *Lis pendens* lists – readily available for purchase online – make it simple to get the names, addresses, and phone numbers of consumers in mortgage distress. Scam artists can also access critical information on the loans, like servicers and payment histories, so they can employ a disarming familiarity.

And the third factor: lots of attention, but no tamper-proof conduit. The public hears daily about the Federal government's determination and efforts to help distressed mortgage holders. The media is abuzz with terms like "Economic Stimulus Plan"; "foreclosure prevention"; "HUD"; "FHA"; and the like. But homeowners in foreclosure don't know what that means for them individually or where they can turn. Information is channeled through multiple conduits – from every level of government and from non-profit sector partners. Simply put, it is this diffuse messaging and multiple doorways which facilitate swindles.

Foreclosure rescue scams take advantage of our failure to provide a clear path to good options for loan modification. Modifiers pose as "messengers" from government agencies, lenders and services. Advertisements take on an official veneer for example, stating, "Your loan is eligible for a special conversion by the Governmental Economic Stimulus Act of 2008" or, "The Federal Government has ordered a mandate stating that all toxic loans *MUST* be modified". Others use FHA seals or include legal citations to provisions of the Community Reinvestment Act. Some companies imply that they are already working on the homeowner's behalf by referencing the mortgage broker that originated the loan or the servicer, or including official-sounding titles such as "National Financial Benefits Advisor."

Given this diagnosis, let's zero in on solutions. We believe that three feasible steps can effectively intervene to protect people in foreclosure from these scams and get them to the right help:

1. First, a targeted, multi-media messaging campaign that directs the public to official municipal "311" and "211" call centers, tamper-proof conduits that could then directly link consumers to legitimate resources;

2. Second, coordinated investigation and a centralized information repository through a national enforcement task force; and

3. Third, a federal statutory ban on fee-based foreclosure rescue activities.

1. Use municipal 311 and 211 systems as the single, tamper-proof number to which consumers are directed to legitimate rescue resources through a national outreach campaign.

While so-called "loan modifiers" are located throughout the country, their targeting and marketing is usually local in nature. In New York City, the neighborhoods most dramatically impacted by the foreclosure crisis are papered with flyers offering rescue from foreclosure – on lampposts, on trees, at grocery stores, and at local businesses. In the last three months alone, NYC's Sanitation Department removed 64 different illegally-posted foreclosure rescue posters in just two of the highly-affected neighborhoods. The scam artists are even inside homes, with robo-calls and dozens of letters showered on the doorstep of every person on the *lis pendens* list.

And so to combat this flood of marketing, the national response needs to be clear and simple in messaging, yet local in delivery. Scammers take advantage of the public's inability to distinguish one hopeful sounding phone number or web site from another, the legitimate from the one that only looks or sounds legitimate. Simplifying the conduit to well-trusted and tamper-proof "311's" or "211's" is an ideal intervening fix.

More than 60 cities across the U.S. – covering 78% of the American population – have "311" or "211" information and referral systems, generally available 24 hours a day, seven days a week, in dozens of languages. These systems are well-known and appropriately trusted resources. Local governments have invested millions of dollars to popularize these free and multi-purpose hotlines as safe, reliable information sources – and we stand ready to utilize this incredible resource for the present emergency.

In New York City, residents who call 311 regarding foreclosure are directed to the specially-trained call-takers who triage and assess their needs at the Center for New York City Neighborhoods (CNYCN), a non-profit created by Mayor Bloomberg, in partnership with the New York City Council and private sector funders. The Center coordinates and expands services to New York City residents at risk of losing their homes to foreclosure and funds a network of more than 19 non-profit legal service and housing counseling organizations to which it refers thousands of New Yorkers. More than 90% of people contacting the Center come through the City's 311 system.

The federal government has the unique power to mobilize tens, if not hundreds, of thousands of civic leaders and community partners to carry a unified message. Loan servicers, lenders, mortgage brokers and real estate agents should all be required to include references to 311 or 211 in their communications to homeowners. All federally-funded social and housing programs, federal benefits offices, the Postal Service, and others should all carry the same simple message: "don't talk to anyone about helping you avoid foreclosure unless you got to them through 311 or 211."

2. Coordinate and streamline information sharing and enforcement

We applaud Chairman Conyers' proposed "Fight Fraud Act," and the additional resources he intends to direct to federal law enforcement agencies such as the FBI and the Postal Service. Given the local nature of the marketing of these scams and the accompanying wealth of local information and leads, these federal agencies will be most effective when meaningfully partnering with local enforcement and consumer protection agencies. We have the information – we just need to get it into the right hands.

We propose the establishment of a national task force which includes local, state and federal enforcement and investigation agencies. Coordination among enforcement agencies is critical to identifying egregious scams and tracking down perpetrators who take the money and run –

usually without respect for geographical boundaries. Local enforcement is often thwarted by our inability to pursue bad actors across state borders. A comprehensive database and tips-line would allow local enforcement agencies immediately to relay critical data to help federal agents track down elusive businesses that too easily shut down and reincorporate.

3. Enact a federal ban on fee-for-service mortgage relief advocacy.

There is no reason for distressed homeowners to pay unqualified, for-profit actors to negotiate with their servicers or their lenders on their behalf. No for-profit enterprise is better positioned than a qualified, not-for-profit HUD counselor, or an attorney acting in a legal capacity, or an individual homeowner, to work with mortgage servicers. This includes mortgage brokers, some of whom have reshaped their businesses from subprime mortgage swindles to foreclosure rescue scams. Akin to the banning of fee-based debt counseling services in New York, Congress has the power to curb abusive scams immediately, with the enactment of a simple ban on fee-for-service foreclosure prevention businesses. Moreover, state and local governments must be empowered to enforce such legislation. Congress has the ability to eliminate these practices now by enlisting the army of local and state enforcement agencies.

We applaud this Committee's recognition of the critical importance of this problem. We must act immediately: marshal a clear message with an unmistakable phone number, coordinate enforcement with local data-rich agents, and enact aggressive legislation to outlaw the for-profit industry within which scammers hide.

Thank you. I would be pleased to answer your questions.