AARP SOLUTIONS FORUM:

PROTECTING YOUR HOME, CAR & RETIREMENT SAVINGS:
HOW CONSUMERS AND POLICYMAKERS CAN STOP FINANCIAL FRAUD

THURSDAY, OCTOBER 22, 2009
WASHINGTON, D.C.

WELCOME

Gene Gary Williams, Chair, Consumer & Livable Communities Committee, AARP National Policy Council
Jane King, Chair, Board of Directors, National Consumers League

INTRODUCTION

Sally Greenberg, Executive Director, National Consumers League
George J. Gaberlavage, Policy Integration Director, Consumer & Livable Communities, AARP

STOPPING FORECLOSURE RESCUE SCAMS AND MORTGAGE FRAUDS

Chuck Harwood, Deputy Director, Bureau of Consumer Protection, Federal Trade Commission
Marietta Rodriguez, Director of National Homeownership Programs, NeighborWorks
William D. Gruhn, Chief, Consumer Protection Division, Office of the Attorney General, State of Maryland
Kathleen E. Keest, Senior Policy Counsel, Center for Responsible Lending, Moderator

PREVENTING USED CAR FRAUD: NEW TECHNOLOGIES AND STRATEGIES

Jim Burch, Acting Director, Bureau of Justice Assistance, U.S. Department of Justice
Larry Gamache, Communications Director, CARFAX
John Van Alst, Staff Attorney, National Consumer Law Center
Ivette Rivera, Executive Director for Legislative Affairs, National Automobile Dealers Association
Jackie Gillan, Vice President, Advocates for Highway and Auto Safety, Moderator

FIGHTING INVESTMENT FRAUD: FOSTERING COMPLIANCE AND ASSURING ENFORCEMENT

Jeff Cruz, Senior Policy Advisory, U.S. Senate Special Committee on Aging
Hon. David Massey, President-elect, North American Securities Administrators Association,
Deputy Securities Administrator, State of North Carolina
Andres Castillo, Project Manager for Financial Security, Education & Outreach, AARP
Len Bach, AARP Volunteer, Free Lunch Monitoring Program
Cristina Martin-Firvida, Director, Government Relations for Economic Security, AARP, Moderator

LUNCHEON

The Honorable Mary L. Schapiro, Chairman, U.S. Securities and Exchange Commission
WELCOME AND INTRODUCTION

SPEAKERS:
GENE GARY-WILLIAMS,
CHAIR, CONSUMER & LIVABLE COMMUNITIES COMMITTEE,
AARP NATIONAL POLICY COUNCIL

JANE KING,
CHAIR, BOARD OF DIRECTORS, NATIONAL CONSUMERS LEAGUE

SALLY GREENBERG,
EXECUTIVE DIRECTOR, NATIONAL CONSUMERS LEAGUE

GEORGE J. GABERLAVAGE,
POLICY INTEGRATION DIRECTOR,
CONSUMER & LIVABLE COMMUNITIES, AARP

MS. GARY-WILLIAMS: I am Gene Gary-Williams, chair of the Consumer and Livable Communities Committee of the AARP’s National Policy Council. I’m very pleased to welcome you today to this forum on “Protecting Your Home, Car & Retirement Savings: How Consumers and Policymakers Can Stop Financial Fraud.” Now, I wish I could keep my eye contact the whole time, but I am reading so I will not make a mistake – (laughter) – so as I go bobbing like this, you will understand, okay?

It is also my pleasure to recognize the National Consumer’s League, which has collaborated with AARP in developing this forum. The league, founded in 1899, is America’s oldest consumer organization and is home to NCL’s Fraud Center. AARP is excited to be working with the league on an issue of such critical importance to our members and to all consumers. Fraud has been and continues to be a key element of the ongoing economic crisis facing our nation. From the Madoff scandal to foreclosure-rescue scams, the effects of fraud on our citizens and institutions have been widespread, costly, and often personally devastating.

Finding ways to reduce consumer vulnerability to fraud and stopping those who seek to profit from the desperation of others has become a public-policy imperative. Identifying solutions that strengthen our nation’s ability to combat and prevent fraud has particular importance for midlife and older Americans. In addition to being prime targets for many frauds and scams, older persons have fewer options for making a financial recovery if they are victimized. They have less time to start over and rebuild assets. In particular, their opportunities for employment are often limited.

AARP’s goal in sponsoring this forum is – with the National Consumers League – is to reduce that vulnerability by raising awareness of the impact of financial fraud on American consumers, especially the financial security of older consumers, fostering vigorous dialogue
among thought leaders such as yourselves about ways that anti-fraud policies and practices can be strengthened and enhanced, and encouraging increased enforcement of anti-fraud statutes, particularly in this time of economic difficulty and uncertainty.

Today’s forum focuses on three key areas where consumers make major financial decisions: their homes, their cars and their savings. We are especially excited about the distinguished panelists that – who have been assembled to present on these compelling issues. Again, let me extend a warm welcome to all of you in the audience and to our speakers. I look forward to your participation and vigorous discussion.

I’d like to turn now to my colleague Jane King, chair of the board of directors of the National Consumers League, to say a few words. Here’s Jane. (Applause.)

JANE KING: Thank you. On behalf of the board and staff of the National Consumers League, I would like to welcome all of you to this forum, and I would like to thank AARP for collaborating with NCL on this issue. AARP’s work in consumer protection is so important, not only for older Americans but for all of us of whatever age, and I would like to express our gratitude to the Bank of America and CARFAX for sponsoring this event. And we owe a special thank you to George Gabarlovach, director of policy integration, consumer and livable communities for AARP and John Breyault, who is an NCL vice president. They have both worked very hard to bring this forum to fruition.

This is obviously a very stressful economic time in our nation, with a steep recession causing great economic pain to millions of Americans. In these periods, frauds tend to flourish, as people are more desperate and more likely to fall for schemes that they hope will resolve their plight. The NCL Fraud Center’s role in fighting fraud is especially important now. It serves both consumers and law enforcement in the fight against fraud. Annual visits to the award-winning “Fraud Information” Web site have topped 1.3 million – shows you the size of the problem.

We have been the leader in identifying new scams, such as phishing, fake checks and sweetheart swindles, helping consumers to avoid them and assisting law-enforcement efforts to investigate and prosecute swindlers and scammers. The Fraud Center is a hub for anti-fraud activities. We provide education directly to consumers via the content on fraud.org, accept complaints and do consumer outreach to help people understand and avoid fraud. NCL’s Fraud Center is an early-warning system for law enforcement. The center sorts reports daily and fast-forwards them to the right agency for action. Local police, state attorneys general, consumer-affairs regulators, the FBI, the U.S. Postal Inspection Service, the Federal Trade Commission, the Securities and Exchange Commission and the Royal Canadian Mounted Police all receive these reports.

On the issues to be covered at the fraud forum, we are hearing directly from consumers who are impact by fraudsters of all kinds, including mortgage fraud, investment fraud and used-car fraud. The Fraud Center has an interest in promoting better enforcement of existing anti-fraud statutes, and we will work with other organizations to the raise the voice of consumers in
Washington and elsewhere so that policymakers understand the impact of fraud on consumers and make pro-consumer anti-fraud policies that better protect them.

Again, I would like to thank all of you for coming, thank our panelists for their careful preparations for this meeting, and we expect we will be a starting point – this meeting will be a starting point in curbing the incidence of fraud in this country. I’d like now to hand over the microphone to Sally Greenberg, executive director of the National Consumers League, to say a few words. Thank you. (Applause.)

SALLY GREENBERG: Well, good morning, everybody, it’s really a pleasure for NCL to be sponsoring this fraud forum with AARP. I can’t thank AARP enough for all of the collaboration, and certainly George Gabarlawach and John Breyault on our staff have just done a terrific job of setting up the panels today.

I also want to acknowledge that we have with us James Perry, who is here – James, raise your hand. This is the man – he is the man – when you have a fraud problem, you want to call James, because he’ll tell you, yeah, it’s a scam. About a week ago, my 89-year-old uncle called me and said, you know, I’m really upset about this, my wife got a call, my aunt got a call, and they said it was from Medicare, and she went and gave them our bank-account number and her Social Security number. And he said, you know, we’re not sure if it’s a fraud or not. So I said, you’ve got to call James; James will tell you the story; call him on Monday.

So then my uncle called me, he said, James Perry was terrific, and of course he said it was a scam, but what he did advise us is when they call back to say, we have no other information to tell you and just hang up. And so they were very comforted – they had also taken some steps to protect themselves, and James said, well, these are these additional things that you need to do, but you’ve really – you know, you’ve already done some very important things to make sure that they don’t get anymore of your personal information, including putting credit freezes on accounts and things like that. So we’re really proud of our Fraud Center and the work that John and James do at NCL, and I just want to make sure that James gets proper credit for all the daily calls that he takes and all the e-mails that he gets out to people.

Americans are clearly concerned now with the economic situation, Jane mentioned that, about the link between the recession and consumer fraud. According to a recent study, three in four Americans believe that the world financial crisis will increase the risk of identity theft and fraud, and actually, the numbers are staggering. The FTC estimates that 30.2 million consumers were victims of fraud in a single year. In 2008, consumers reported $1.8 billion in fraud loss, as they reported that to the FTC, and that was likely only a small fraction, because so much of fraud goes unreported. People are embarrassed about it, they don’t want to come forward, they’ve lost money, they’ve given away life savings, and it’s just something that goes under – flies under the radar screen so often. So the fact that we have these statistics suggests that there are many multiples of those numbers, are what is actually being taken out of American’s pockets through fraud.

And it’s not a problem that’s going away. In 2000, when the FTC launched the Consumer Sentinel complaint-reporting system, and we at NCL in our Fraud Center reports into
that system, we received approximately – they received approximately 230,000 complaints. Only eight years later, they now are reporting that they’re getting 1.2 million reports, which is more than a five-fold increase. So given these sobering statistics, we think it’s imperative that policymakers at all levels of government, and particularly the federal level, redouble their efforts to educate consumers about the threat of fraud and vigorously enforce the statutes that are out there and the regulations that are pertaining – that are out there pertaining to fraud.

And one of the things that we’ve seen over the last couple of years is, because of the economic recession, a lot of the local – state and local consumer offices have been forced to close or cut back dramatically, which means that there’s more pressure on the federal government agencies, the FTC and the other agencies, the SEC, that deal with fraud to ramp up what they do, and that’s really why we’re all here today.

Before coming to NCL, I actually spent a lot of time working on auto fraud and auto issues as a staffer at the Consumer Reports. In the Consumer’s Union, they publish consumer reports. It’s one of the reasons I’m really excited about the auto-fraud forum, because auto fraud is just a huge issue, and it turns up on the attorneys general list always at the number one or number two area for fraud. According to Consumer Reports, there are 400,000 rebuilt wrecks less than five model years old that are sold annually in the United States. In addition, there were 185,000 instances of vehicle-title fraud that were reported to the National Motor Vehicle Title Information System – I know that’s a really long name, but it’s the system that keeps all the information about titles, what are good titles, what are flood cars, the kinds of things that you want to see when you’re researching a used car.

Used-car fraud hits low-income people harder, it hits communities of color particularly hard, and the fraudsters that commit used-car fraud are not only stealing money, but they’re also putting ticking time bombs on the road. These cars can be extremely dangerous, they can be slapped together with duct tape and painted over, and they do an excellent job of making these cars look very sellable and safe, and they’re not. So the used-car fraud – the forum that we’re going – or, the session that we’re going to have on used-car fraud I think is going to be really, really interesting and hopefully set the stage for more discussions on used-car fraud, because it’s a particular area of concern to the NCL.

The negative effects of the economic crisis on consumer fraud have been exacerbated certainly by the decline, and in some cases, as I mentioned, the disappearance of state and local protection agencies. So this forum is really a call to step up what we do on the federal level. We need – we certainly need more boots on the ground in the consumer-protection movement, and since so much has been cut back because of the economic recession, we’re really here to say to people like the SEC chairman, Mary Schapiro, and others, you really need to step up what you do, you need to protect seniors, you need to protect others and do a far better job than has been done in the past.

So NCL believes we can and do must – we join with AARP in believing that we can and we must do more to protect consumers from fraud in these very trying economic times, and we’re going to work with Congress and we’re going to work with all of you to give fraud-protection agencies the resources they need to meet the challenge of fighting consumer fraud.
Thank you all very much for being here, I’m looking forward to an exciting day, and at this point, I’d like to ask George Gabarlavach to come up, and you’re going to be introducing our panel, George? Okay, great. (Applause.)

GEORGE GABARLAVACH: Thank you, Sally. I’d like to follow up on Gene Gary-Williams’ comments concerning the impact of fraud on older Americans. In March, MetLife Mature Institute – Market Institute released a report that estimates that the financial abuse of persons age 60 and older robs victims of over 2.6 billion annually. So that’s – and that’s – they think that that might be an underestimate.

Sometimes the threat is not readily apparent, though, and mortgage fraud and foreclosure scams are a good example. The conventional wisdom is that older Americans have paid off their mortgages and are not threatened by this type of fraud. The reality is that over half of homeowners age 62 to 69 were paying a mortgage in 2007, and that’s compared to just 29 percent in 1987. In our Public Policy Institute, in the first-ever analysis of mortgage – of the mortgage crisis by age found that Americans age 50 and older represented 28 percent of all delinquencies and foreclosures for the period July to December of 2007.

In addition, older African-Americans and Hispanics had higher foreclosure rates than white homeowners of all ages, and this isn’t really surprising because earlier research that was conducted by the institute found that older minority and female borrowers were more likely to get sub-prime loans than younger borrowers under age 35. So we have at the end of 2007 almost 700,000 older Americans either in delinquency or in foreclosure. Our friends at NeighborWorks, who run the National Foreclosure Mitigation Counseling Program, have found that it’s critical to reach borrowers before they are 60 days or more delinquent if foreclosure and the loss of the home is to be avoided.

And the great danger to these older homeowners is that the scammers will get there first. It’s really sad, but many of the people who are being foreclosed on never even speak to their servicer or their mortgage company, and these scammers really rob these people of any chance to save their homes, which typically are their largest financial asset. Now, over half of the states have passed laws prohibiting a variety of fraudulent practices in this area. State attorneys general, the Federal Trade Commission, the Departments of Justice and Housing and Urban Development, the FBI and other federal and state agencies have stepped up their enforcement efforts, but the problem is really huge. This year alone, some 2.4 million foreclosures are expected and over 8.1 million will occur by 2012, according to a recent report by Credit Suisse.

A major and sustained effort is desperately needed to address the danger of fraud in the mortgage crisis. Unlike foreclosure-rescue scams, the targeting of older persons for investment frauds and abusive practices has long been recognized by federal and state securities regulators as a major enforcement and investor-education challenge. The Securities and Exchange Commission estimates that 5 million older citizens become victims of financial abuse and fraud each year, and they attribute this to the fact that older investors hold a relatively high amount of wealth and that one-third of all investors are between the ages of 50 and 64.
Further, FINRA, the Financial Industry Regulatory Authority, reports that the most frequent victims of investment fraud are college-educated males age 55 to 65, people like myself – (laughter) – who think that they know something about investing, and they don’t take precautions. The Madoff and Stanford Financial Group scandals justifiably have received major media coverage because of their unprecedented scope and scale and because they signified significant weaknesses in market oversight. But many investment frauds are smaller in scale but nevertheless wreak havoc that is equally destructive in terms of the losses sustained by individual older persons who are victimized. If allowed to go unchecked, such abuses can reduce confidence in the integrity and fairness of our investment markets and the efficacy of saving and investing for the future.

AARP believes that our investment-oversight and enforcement capabilities at the federal and state levels must be strengthened to deter fraud and to maintain the confidence of investors. Sally noted the decline, and in some cases, the disappearance of state and local consumer-protection agencies due to the effects of the economic crisis. I’d like to close with a couple of numbers that touch on the capacity of our major federal consumer-protection agencies to conduct oversight and enforcement activities.

The Federal Trade Commission Staff is 63 percent of the size it was in 1979, even though its responsibilities have increased significantly. With approximately 3600 staff, the SEC is currently responsible for 12,000 public companies, 11,300 investment advisers, 950 fund complexes, 5,500 broker dealers, 600 transfer agents, 11 exchanges, five clearing agencies, 10 rating – credit-rating agencies and oversight of the Financial Accounting Standards Board, and I left out a couple of things.

In comparison – and this is important – in comparison, the Federal Deposit Insurance Corporation, FDIC, has a staff of 5,000 to oversee 5,100 FDIC-insured banks. The number of tips and complaints received by the FCC between 2003 and 2008 increased by 146 percent, but the enforcement staff has expanded by only 23 percent. I look forward to hearing some discussion from our panelists and you about these issues and how, working together, we can reduce fraud in the marketplace. Thank you for coming out and participating, and now I’d like to ask the Mortgage Fraud and Foreclosure panel to come up. And is Kathleen here? There she is, okay. Kathleen Keest, from the Center for Responsible Lending, is our moderator for this panel. (Applause.)
KATHLEEN KEEST: Good morning. I’ve never been in one of these rooms in this station, which is – I’ve always loved this building. This is a nice venue. I wanted to start just by letting you know who all is going to be here, and then I’ll make a few opening remarks, because I can never not, and then turn it over to them. To my immediate right is Chuck Harwood, who is just a few months into his job as deputy director of the Bureau of Consumer Protection at the Federal Trade Commission, and before that you were in the Seattle office, which has been a very highly respected, very active office, and they also probably have the distinction of having the best food available to them. I think we met at a training that we did out there on predatory mortgage lending some years ago.

Next to him is Bill Gruhn, who is the chief of the Consumer Protection Division at the Maryland Attorney Gen.’s Office, which has been very active in the – in doing enforcement actions and other issues in the mortgage market. Maryland’s been a real active state in trying to get things done. Sometimes not always with the help of the Fed – of the, shall we say, some of the federal regulations, not the – federal regulators, not the FTC, thank heavens.

And then finally, we have Marietta Rogers, who is the director of the National Homeownership Program at NeighborWorks, which, as you all know, works with nonprofit homeownership counselors around the country. And for the last five years, getting ahead of the curve, like a lot of other people did, she was – she’s headed the Center for – the NeighborWorks
Center for Foreclosure Solutions, and I’m really looking forward to having her, shall we say, boots-on-the-ground perspective today.

George wanted me to just sort of set the stage a little bit to talk a little bit about sort of the foreclosure crisis. I think for a lot of people who hadn’t been paying attention, this foreclosure crisis jumped out like some – like a sort of a tiger that had been hiding in some cave. But if I had a nickel for every time I – somebody said, nobody saw this coming, I could be a rich person. But if I had actually been able to react every time I said, there’d be a lot of people that had some embarrassed faces, because there were actually a lot of people who saw this coming; it was just that nobody was paying any attention to them.

And one of the things that sort of our – the Center for Responsible Lending started doing something which I really wish the regulators had been doing much earlier on. We looked at six million sub-prime loans originated beginning in 1998. And what we found was that for each year in which sub-prime loans were originated, if you counted either going into foreclosure or prepaying and distressed – in other words, kind of having to borrow your way out before you got into foreclosure, sort of what we call the distress refinancing, if you looked at those outcomes of those loans, these loans every year since 1998 had been failing within the first four years.

So that is something that people – a lot of people talk about, you know, well, borrowers should be paying more attention and they should take care of themselves, but as one of my friends said, if you had one-in-four or one-in-five cars failing on the road within the first four years, would you blame the drivers or would you be looking for a design flaw. And the fact is that from the get-go, these loans were set up to fail. So if you’ve got a 20 to 25 percent failure rate, you got a problem. And that data was there for anybody to have looked at beginning in 1998 – well, give them a couple years to start failing. But so beginning in 2000. But instead, nobody did, and those distressed prepay were actually looked at as a sign of health – wow, look at all this demand out here for mortgages, let’s get more of them. So things just really got worse.

And part of the issue specifically with the elderly people is that in the beginning, in those early years, they were – the elderly homeowners were targeted because they had a lot of equity, and the beginning of it was a lot of equity theft. And then when people’s equity pretty much got tapped out, I had thought maybe that’s when the predatory mortgage lending was going to stop, but, no, in fact what happened was that they stopped caring about anything – whether there was any equity there, whether there was any ability to pay. It’s just, let’s keep this origination machine going, and started mortgaging the air over the roof.

And then sort of what happened as that got later, sort of later on in the last few years since about 2005, some of these exotics, like the payment options ARMS, which negatively amortize, I started seeing those kinds of loans going back to being targeted to the elderly because negatively amortizing loans when – which is where the principal balance grows, even when you’re making your payments, the amount you owe gets bigger instead of going down – that turns out to be a really good tool to steal equity. So we started seeing people, and some of the older people in some of the bubble regions who had homes that they’d bought in the ‘70s and had a lot of equity on them because of appreciation, they got targeted for those kind of loans, because, boy, you can really steal a lot of equity that way.
So that brings us to where we are. It was all very predictable, it was all very predictable in terms of the evidence, if anybody had bothered to look at it. But here we are with foreclosure numbers, as George said, that are rather staggering. In 2006, we had predicted 2.2 million foreclosures coming out of the subprime market in the next few years. And the mortgage industry just said, oh those are the most pessimistic, worst-case scenario assumptions they’ve got built into that.

Would that it had been the most pessimistic worst-case scenarios because now we’re facing four times that. And it is a, sort of, a rule that cannot be – just, kind of, a rule of life, I guess – that as the foreclosure rates go up, the foreclosure scammers come out of the woodwork. It’s ants at picnic. And, sort of, ultimately the best solution to dealing with foreclosure scammers is to bring the foreclosure rates down.

But in the meantime, when we have a foreclosure crisis that, as George said, is projected to go for yet another three years, we have to do something in the meantime. And that’s what we want our panelists to talk a little bit about.

And I’m going to start with Marietta because she’s been, sort of, the person that’s closest to the ground on what’s happening with the homeowners and at the local level. She can tell us what she’s been seeing and what she’s been doing about it.

MARIETTA RODRIGUEZ: Thanks, Kathleen. I thank AARP and NCL for inviting us to be a part of this very important forum. For those of you that may not be fully aware of who NeighborWorks America is, just to brief, we are a congressionally chartered public non-profit. We provide support to a network of 235 locally based non-profits across the country. We also provide a very robust training program for the community development field at large.

And we’ve been focused, amongst a variety of housing-related programmatic areas, on the promotion of home ownership to low- to moderate-income families and keeping those families in their homes for the last 15, 16 years. So you can imagine when the foreclosure crisis started, as Kathleen described, to really start to impact some of those neighborhoods, some of those communities where we were really promoting home ownership – we became very concerned.

And as we dug a little bit deeper, began to understand the dynamics and the impact that certain financing products, certain lending practices were having on those communities. And we’ve been working on the foreclosure crisis since about 2004 with various coalitions and task forces across the country. The problem is staggering. It’s problematic. I think we all understand the scope and the scale of the foreclosure problem.

But what is, perhaps, more disturbing and more pervasive, now, is the proliferation of loan modification and rescue scams. And we feel like there is a lot that we can do, not only to educate the borrower, but also arm our communities with really solid information so that scammers are not preying on vulnerable populations and people.
With the foreclosure rate at an all-time high, almost 8 percent, rescue scam companies are becoming very prevalent and very visible in communities. The challenge has been, and continues, that these scamming enterprises morph very quickly into different kinds of scams, into different names, into shadow companies. So even if you have a well-educated borrower who is trying to do their research and goes on the Better Business Bureau, for example, Web site, they could have no complaints against this particular company because it may be that new or it could be a new name, the principals could have changed.

So it’s very, very difficult just to do that kind of due diligence research on individual companies. They also use very slick advertising pitches. They’re very aggressive. We’re finding a variety of things being promulgated in communities: calling, working through social networks, particularly in elderly communities they use slick marketing pieces that have a lot of, sort of, government-like jargon, for example. Many of you may have seen the late night infomercial called Fedloan.com, which has nothing to do with the federal government, quite frankly.

There’s one that even uses the president’s image to lure people in, to build trustworthiness. We’ve had scammers use the NeighborWorks site and skin it and drive people to their sites on the Web. So they’re very aggressive, they’re very slick and they use what looks like government logos and jargon to confuse people and to hoodwink people. And it’s very difficult to figure out who’s reputable and who’s not.

I think for the constituency we’re focused on here today, on America’s seniors, I think they’re particularly vulnerable. And we’re seeing this in a couple of different ways. Certainly, we’re hearing it from our community groups. We also, along with the Hope Now Alliance, manage all of the borrower outreach events that happen across the country. We’ve had roughly 48 over the last 18 months or so, touching 40,000 home buyers.

And as we meet with them individually we hear these stories. And many of them are elderly. Seniors are telling us that they’re being targeted in their communities by these scammers. Primarily, I think, because seniors are most likely to have home equity. In this market of declining home values, seniors have lived in their homes for quite some time. We have more seniors aging in place and so they make very prime customers for scammers because they’re looking to strip the equity out from under them.

Secondly, we know that many seniors are on fixed-incomes and they rely on their home equity as the major asset for them in these years of retirement. And again, I think that preys upon their vulnerabilities. And I would say, thirdly, we’ve seen some scammers utilize the reverse mortgage program to, again, lure folks in, bring them in under that program, potentially cross-sell them other, if they’re delinquent or at risk of foreclosure, sell them other services that they don’t necessarily need or necessarily need to pay for in order to get them.

So the situation is bleak. There is a lot of danger out there. What do we do about it? NeighborWorks America was asked by Congress to launch a national public awareness campaign, which is officially launching on Monday, so this is excellent timing for this. We
really feel that empowering people on the kinds of scams that are out there and the early warning signs is a borrower’s best defense.

So learning what those warning signs are. What are they? If someone is asking you to pay them money before rendering any services, regardless of what they are, I think that’s a huge warning sign, particularly if they are related to your home, your home equity, a loan modification or a reverse mortgage. Secondly, I think that if anyone is guaranteeing you, an entity is guaranteeing you, that they can deliver a loan modification, that they can guarantee you to avoid foreclosure and that you need to pay them to do so, again, that’s a huge warning sign because nobody can really guarantee that.

You need to work with your lender, with your servicer. We encourage people to look for a HUD-approved housing counseling agency which offer their services free of charge. You don’t need to pay for this kind of intervention – is really the best way to go. And certainly an entity that tells you to stop paying your bank for your mortgage and to pay them instead or to stop talking to your bank and to only talk to them, again, are other warning signs.

So given that information, given what we already know about the foreclosure crisis, we have built a fairly robust public awareness campaign. It’s built around the look and feel of the – I don’t know if you all can see that – but essentially it’s the Alert campaign, loan modification scam alert. All of the material will have these very brightly engaged colors. They’ve been tested in a variety of markets amongst a variety of demographics. People feel like it’s fairly responsive.

The campaign has a couple of different strategies and components to it. There are radio PSAs, there’s a Web site, www.loanscamalert.org, which will go live on Monday where consumers can get more information about the scams out there. If they feel like they’ve been a victim of a scam or they know someone who’s been a victim, they can report directly on that Web site and that report form will be given to the FTC through a Lawyers’ Committee database. And The Lawyers’ Committee is also working with us to recruit some pro-bono attorneys that might be able to work with folks who have also been victims.

They will also be encouraged to report this activity at their state AG and there will be a way to search for that contact information on there as well. There will always be a variety of flyers and publications and postcards and door knockers that folks will be able to download and customize in their own communities from that Web site. So it’s both a consumer Web site as well a practitioner Web site. All of the materials are currently translated into five languages. And these languages were determined by looking at mortgage and delinquency data across the country and where we’re seeing some high instances of foreclosure scam activity.

So they’re available in English, Spanish, Korean, Chinese and Vietnamese. Certainly, there are a lot of other populations that are being targeted but those seem to have the highest incidences in certain markets and where we think we can get the greatest penetration. So if you’re interested in the campaign, I would encourage you, on Monday, to take a look at that Web site or contact us and we can get you a package of materials. We know that this problem will be with us for at least another 12 to 18 months and the more we can do to empower and educate consumers, borrowers, homeowners, particularly the elderly – these scams exist.
They’re looking to strip equity and money and properties away from you and you need to be mindful of that and that there are people out there that are reputable and reliable and that are free of charge that you can go to – those being, HUD-approved housing counseling agencies that can assist you. And if you, again, have been a victim or know someone, there is reprisal, there is a process to report those scams. So that gives you a little bit of what NeighborWorks is doing with regard to this issue.

MS. KEEST: Thanks so much Marietta. We’re going to hear from the other two panelists and we hope to have some time left over, then, to have questions. So if you have some questions for Marietta, jot them down so you don’t forget them. We’re going to move next to Bill to talk a little bit about what’s going on at the state level. His attorney general, Gansler, and my former boss, Tom Miller of Iowa, along with a number of other attorneys general were also, sort of, early warriors about the foreclosure crisis and started a taskforce to worry about modifications and servicing issues and the foreclosure crisis.

So they’re trying to focus both on, kind of, what to do with the servicers to help prevent foreclosures but now they’ve got to fight – they have the extra drain on their resources of having to fight the scammers at the same time. So Chuck, can you tell us a little bit about the – I’m sorry not Chuck. (Chuckles.) I’ve had too much – we’ve been having this, the markup for the Consumer Financial Protection Agency has been draining my brain cells. Blah. So Bill? (Chuckles.)

WILLIAM D. GRUHN: Sure. Before I talk about the foreclosure rescue fraud and loan modification fraud and loan modification fraud I thought I’d follow up on Marietta’s comment about deceptive marketing. This past year, we brought an action against a mortgage broker who had taken one of our press releases announcing a settlement concerning a lender and added, in the same font as the press release, in what looked like a part of the press release, a statement that if you have a loan with them, you should contact that mortgage broker.

When I looked at it, the only reason I knew that was not a part of our press release is because I’d seen our press release. And then they sent this press release to people who land record showed had loans through this lender. We were unhappy about that (laughter) and brought an action against them. With respect to foreclosure rescue fraud and loan modification fraud, it’s one of the most important issues facing state attorneys generals today.

To try to combat it, the attorneys generals have taken a multifaceted approach. Most important, attorney generals have been aggressive in bringing enforcement actions against these scam artists. And I’ll talk about some of what we’ve done in a little bit but you need to remember that in connection with those enforcement actions, while we’ve been spending – our office has spent a third of our general enforcement resources in the past two years combating foreclosure rescue fraud. We didn’t get additional people to do that.

This is something that – the statute we’re enforcing didn’t exist 6 years ago and we’re spending a significant amount of resources fighting this but that necessarily means that there are other things that we’re not doing because of that and that’s an unfortunate reality. Some states,
in fact, their offices are shrinking because, as you all know, the states are facing substantial budgetary problems. But I don’t know of anybody whose staffs are growing in order to confront this problem.

So while we’re devoting significant resources to combat it, we’re doing so with either the same resources or for some states, actually less resources. And in addition to our spending a third of our time, the attorney who represents our commissioner of financial regulation has been very aggressive in this area, is spending the vast majority of his time dealing with mortgage related fraud. Of course, previously, he would have spent it on other regulatory enforcement actions.

Another component of the approach to try to combat the problem is legislative fixes, or in the case of Massachusetts, a regulatory effort at fixing. And then, in addition, we’ve been coordinating efforts. And we’ve been coordinating efforts both nationally and locally. I mean, nationally, there have been meetings between states’ attorney general and federal officials. There were a few meetings during the summer. Just one month ago exactly, Gen. Gansler, my attorney general, arranged a meeting with Treasury Secretary Geithner and various AGs.

The states have been sharing information with federal agencies and have been sharing information among themselves on a national level and on a local level. And our experience is replicated throughout the state. And we’ve been meeting formally with federal agencies: the local FBI, local HUD, local U.S. Attorney’s Office, local, local agencies like county agencies, the nonprofits – to try to share information about what we’re seeing so that we can more effectively combat foreclosure rescue and loan modification fraud.

And even before those formal coordination efforts, we were informally meeting with nonprofits, other state agencies and federal agencies and, in fact, some of the enforcement actions that I’ll talk about have resulted from either other state agencies providing us with information or nonprofits providing us with information. And I know that the U.S. Attorney’s Office in Maryland has taken action based largely on what was given to them by our Commissioner of Financial Regulations Office.

So there has been a coordination of state attorney generals’ efforts both locally and on a national level. There are two basic types of – and I’m probably telling you what you already know – but there are two basic types of foreclosure rescue or loan modification-type fraud. One type of fraud, you’re in default or you’re in foreclosure and I come to you and I say, I can save you from foreclosure. And you may think, based on what I tell you, that this is a refinance. Or you may believe, which is closer to the truth but still not true, that for a period of time we’re going to add me to the title of your house and I’m going to pay off that loan and then after a period of time you are going to be able to get your house back.

Now, no one that I know of has gotten their house back. And some people thought they were refinancing, in fact, they were signing over the deed to their homes. One of the ways, I’ll mention some of the actions we’ve taken, but one of the things that we’ve done to try to help prevent this is a number of states have foreclosure rescue statutes. Last year, not this current
year, but in 2008 our statute was modified to prohibit this type of transaction. And we’re not alone; Massachusetts has prohibited it by regulation.

So now, the foreclosure re-conveyance transaction where you’re taking someone’s title to someone’s house is itself, illegal. In addition, we have a right to cancel any contract of sale for a house that’s in default. So if you sign a contract of sale with anybody, you have a right to cancel that contract for a period of time – whether it’s a foreclosure rescue person or not. Of course, this is designed to help prevent these types of scams. And it appears that the statute has been very, very helpful.

Now, one of the things that have also happened is that housing prices have fallen and so there’s less incentive to steal the peoples’ homes or strip their equity. Because one of the ways that the equity would be stripped is when I take your house, I will get a purchase-money mortgage, mortgaging it up to the hilt or, even better, I have Marietta take the purchase-money mortgage because I convince her this is in her interest too. So I’m helping – well, I’ll give her $10,000 to do it.

And then I walk away. She’s stuck with this high-interest mortgage that no one’s ever going to pay. So her credit score goes down and I walk away with a lot of money.

MS. RODRIGUEZ: But I have the $10,000.

MR. GRUHN: Yeah. But she gets her $10,000. (Laughter.) The homeowner, of course, ends up in a very bad way. Another legislative fix is that Maryland has statutes to prohibit the advance fees. Many states have prohibitions on advance fees for foreclosure rescue activities. Most foreclosure rescue statutes prohibit the taking of advance fees for foreclosure rescue purposes. Maryland, at least we’ve interpreted our statutes, to also prohibit advance fees for any loan modification effort.

And now moving to enforcement actions – with respect to those loan modification efforts, our commissioner of financial regulation, this year, has brought more than 20 cease and desist actions against folks who are charging advanced fees for loan modifications. And one of the nice things about having a bright line that you can’t charge advance fees is you know up front that it’s a scam. Most people find out later it’s a scam. And, in fact, even a decade ago we had an early foreclosure rescue operation that was operating in a, we take your money and then we’ll do nothing for you, scheme.

But you only find out about that after you don’t receive the services that were promised. With statutes that prohibit the taking of any money upfront, Marietta’s absolutely right, you know it’s a scam if they’re asking for the money upfront. But statutes that provide a bright line test, that say, if you’re asking for the money – that’s illegal – that makes it much easier to bring actions. Because all you have to do is you see, oh they’re asking for money and you can bring action based on that fact alone. You don’t have to wait until people are actually harmed.

With respect to foreclosure rescue scams, we’ve sued 23 individuals and companies who offered foreclosure rescues and our experience, as I mentioned, has been replicated across the
country. Attorneys generals are being very aggressive in attacking these problems. And the types of scams that we’ve attacked have varied a little bit. Sometimes they have the straw buyer. Sometimes the foreclosure consultant is taking title to the house. But we’ve been successful through enforcement actions – we just obtained an order last month, more than a million dollars in restitution and most of the people, we were able to restore title.

Now, one of the problems with restoring title is the lean that’s on the house that the person committing the fraud has put on the house – we were able to work that out with the lenders – one of our arguments is that they didn’t have a good lean. But we were able to work it out that with the lenders, in many instances, and get them to reduce the amount of the loan. And switch the loan from the scam artist name to the consumer’s name. So these people went from facing the loss of their homes – the last woman that we did this with, she was a woman in her 50s who had a daycare in her house – she was facing the prospect of, she wasn’t, certainly, that old, but toward later in her years, she was facing the prospect of losing her livelihood and her home.

And she was distraught, obviously, by that and we were able to have title converted back to her and work out a loan modification so that she was able to have a loan that she actually could pay. And the day after settlement she called us and she said that it was the first good night’s sleep she had gotten in years. And this has a very real impact on people and when you see the people that it’s having an impact upon, it’s quite distressing.

We also have other actions where people, where they’ve put the names in straw buyers, in the names of the straw buyers and we’ve tried to also undo those. But through the combination of legislation and enforcement, although it’s not – certainly, we face many challenges. We’re trying to attack this problem.

MS. KEEST: Thank you. Chuck, you have 50 states to deal with.

CHUCK HARWOOD: Yeah.

MS. KEEST: What’re doing with them?

MR. HARWOOD: That’s a good question, Kathleen, thank you.

MS. KEEST: With your 40-percent staff reduction. (Laughter.)

MR. HARWOOD: Yeah, right. Well, first of all I want to thank AARP and NCL for sponsoring this. I actually am the proud possessor of an AARP Fraud Fighters pin, which I happen to have here with me. (Applause.) Actually, I carry this in my briefcase all the time, I just happened to remember I had it today. This reflects years of outreach with AARP folks in places like Anchorage, Alaska, Sydney, Montana which you’ve probably never been to, I bet, Roseburg, Oregon – all over the West Coast where I used to hang my hat.

As for NCL, I’m a proud consumer of NCL’s services, both through the FTC’s Consumer Sentinel System and then I also, for year, received the NCL Fast Alerts, which were intended to help me spot scams as they emerged. So I’m proud to be able to say I’ve worked
with both organizations and respect them both. So the FTC and foreclosure rescue scams – first of all, just say, that my views are my own and not those of the commission.

As we know, foreclosure rescue scams target consumers who are either in immediate foreclosure or otherwise in financial distress. And historically, and this is, I think Bill and Marietta talked about this, historically foreclosure rescue scams typically involve trying to strip equity from somebody’s house or get the equity away from them, steal their equity.

Why is that? That’s because, for many years, consumers had substantial equity in their houses. There was something there to take. But with the economic downturn, what’s happened? The equity is no longer there. It’s gone. But scammers, ever flexible, ever able to transmogrify their operations and change, realize that and so they switch to a new kind of foreclosure rescue scam.

And that’s the kind of foreclosure rescue scam we just heard Bill talking about. So essentially what we’re seeing in today’s economy is not the effort to strip equity or steal houses, rather it’s the effort to simply steal money – steal money through the use of advance fee loans or advance fee charges, the kind of thing that Bill was just talking about. Essentially, the way this has worked and what we’ve been seeing the last couple years is, particularly in last year, is that scammers tell consumers that they have a deal. They can cut a deal with them to help them save their house because they’re facing foreclosure. But first the consumer has to pay a fee.

Typically they’ll tell the consumer, don’t contact a lender, don’t contact your lawyer, credit counselor – we’ll handle all the details, this is a scammer saying this to the consumer, just pay us an upfront fee. Once a consumer pays the fee, the scam artist does little to attempt to negotiate better terms. Instead, they essentially just keep the money. Sometimes, a scam artist insists the consumers make mortgage payments directly to him or her, which, of course, is extra money on top of the advance fee. They also get whatever mortgage payments the consumer might otherwise made to their lending institution.

So combating this kind of mortgage fraud, in addition to the other earlier kinds, the equity stripping, is an FTC top-priority right now. We’ve devoted substantial resources to law enforcement, consumer ed and regulatory initiatives in this area. We brought, actually, we brought 22 mortgage relief scam cases in the past 20 months. We’ve sent numerous warning letters to companies we believe are engaging in these kinds of things.

Let me give you an example of one case we filed recently. This was a case filed last month against an entity called Nation’s Housing Modification Center. The defense allegedly violated the FTC – and I stress allegedly because this case is still in court – allegedly violated the FTC Act and the FTC’s telemarketing sales rule by misrepresenting themselves as the federal government, much like what Bill was talking about with regard to the state.

These folks represent themselves as being like the federal government, they had an official-looking envelope, a Washington, D.C., address, used a name similar to a government agency. They falsely claimed that in return for a $3,000 fee – so that was the advance fee they were charging, $3,000, half due up front, half due in two weeks – they would obtain mortgage
modification that would make consumer’s loan payments substantially more affordable in virtually every instance.

They falsely claimed a 90-percent success rate, so if you sign up with us, you’re 90 percent likely to get out of trouble, they falsely claimed they only – they select customers only based on certain qualifications – guess what, they took anybody who offered them money. (Laughter.) They falsely claimed they had attorneys and accountants on their staff; they had neither. And of course, not surprisingly, few if any consumers got any help from these folks. We have a preliminary junction placed against this particular company, but we’re still litigating them. There are more cases like this in the FTC pipeline right now.

Secondly, we have launched a new federal-state mortgage taskforce with – or, part of a new federal-state mortgage taskforce that includes a variety of agencies and organizations. Among the ones we’re working with are – is an entity called the Special Inspector Gen. for Troubled Asset Relief Program, or SIGTARP, which is part of the – I know, it’s a scary-sounding name, but it’s a great organization. It’s part of the – they’re basically looking at how assets are being – basically, the money the government gave in grants and things is being utilized.

We’re also working with the Department of Treasury’s Financial Crimes Enforcement Network, and we’re also working with many state partners, including AGs, congresses, state bank supervisors and others, to try – for example, this initiative: In July, we joined with California attorney general governor – hoped to be governor, I should say – (laughter) – California attorney general Jerry Brown and the U.S. attorney’s office in Los Angeles to announce 190 state and federal civil and criminal actions against mortgage-relief assistance scams out in Los Angeles.

And I want to mention one thing about the criminal side of this. The FTC is not a criminal agency or a civil agency. Nevertheless, as I’m sure many of you are thinking, there’s something criminal going on here; there ought to be criminal law-enforcement action. And the good news is, there is criminal law-enforcement action. Many U.S. attorneys are taking this very seriously, the FBI’s taking this very seriously. In addition, the FTC realizes that we need to work more closely with criminal law enforcement, so we’ve set up a – what we call our Criminal Liaison Unit to work more closely with criminal law enforcement on a variety of areas, including mortgage foreclosure rescue scams, and I’m pleased that Betsy Broder, who is the head of our Criminal Liaison Unit, is out there in the audience.

And if you’re interested in find out more about what we’re doing to try to encourage criminal law enforcement in this area, I would encourage you to talk to Betsy – and she’s raising her hand right there. She’d be happy to chat with you about that, and we’d love your help if you are a criminal law enforcer and would like to work with us on this area.

Consumer Ed: Marietta’s already talked about that. I’ll just note that with regard to the thing in Los Angeles, we’ll be there –

MS. RODRIGUEZ: Excellent.
MR. HARWOOD: And in fact, we’re pleased to be working with that. Another one of our Consumer Ed initiatives is something called “Real People, Real Stories”. This is a video that we launched earlier this year. It’s a very compelling piece that we’ve sent out to thousands of housing counselors around the country that talks about the kinds of problems consumers face in this area. There are some real stars in this video, and they are in fact folks from Orange County who are actually housing counselors with Marietta’s organizations, along with our clients, who talk about the problems they’re experiencing – these are NeighborWorks housing counselors.

On the regulatory side, finally, and I’ll wrap up with this, Bill talked about some state laws that are intended to address this area. And in fact, there’s no similar federal law at this time that would do that. In July – or in June, however, the FTC initiated a rulemaking called the Mortgage Systems Relief Services rulemaking, or MARS rulemaking for short, to address the mortgage – the problems we’ve been discussing here today. As part of this rulemaking, we issued a request for comments on cost and benefits prohibiting and restricting the payment of, in particular, advance fees for loan modification foreclosure-rescue services.

Now, Bill talked about what Maryland has. In fact, 20 states already have this kind of rule. It started in California, as so many things do, with their legislation. Minnesota is actually one of the leaders in this area. Maryland has it, Iowa has it, Kathleen’s former employer has it. Many states have it. We’re now looking at whether in fact there should be a law – this sort of provision regulation should be applied across the United States.

So we’ve launched this rulemaking initiative. If you want to look at it, you’ll find it on the FTC’s Web site. We took comments for 45 days, we asked questions about how we should address the problems in this area, particularly with things like advance fees and other things. We hope by the end of the year to actually unveil a draft rule or draft proposal that was – presumably, it will look a lot like what we’ve been hearing from some of the state regulations. We’re moving forward in that area. And with that, I will stop.

MS. KEEST: Okey-doke, thank you very much. It’s nice to know that there’s a lot going on, even if there’s still left a lot to combat. So we’re going to move to the questions now. We’ve got a remote mike, I don’t know who’s got it. Okay. So if – for those of you with questions, if you’d like to raise your hand so that you can get the mike? If you could identify yourself before you –

Q: Sure. Peggy Sand with the Baltimore Homeownership Preservation Coalition, that sounds right. Two questions: One is, Kathleen mentioned that the best way of reducing foreclosure scams is to reduce foreclosure. I’d say the second-best way is to increase the capacity of the nonprofit housing counseling agencies, so I wanted to see what’s in the works around that. And then I also wanted to ask if the fees, paying up front, applies to retainers for attorneys.

MR. HARWOOD: Bill, you might want to answer the second – the fees for attorneys part. I can answer that part, actually. Typically, these regulations at the state level exclude attorneys. I don’t know what – (inaudible, cross talk).
MR. GRUHN: Yeah, that is generally true, although there are – the ones we’ve seen, there are problems with what the attorneys are doing.

Q: (Inaudible, off mike) – as we try the message, it makes them much more complicated, because – sorry – as we try to message around scam prevention, it makes it much more complicated because you say, don’t pay upfront, except for – (inaudible, cross talk).

MR. GRUHN: Oh, I wouldn’t give – I wouldn’t say, except for attorneys. In the message, don’t pay upfront, I’d say, don’t pay upfront. I haven’t seen any attorneys who are providing legitimate services.

MR. HARWOOD: In fact, California in the last week or two actually announced that the state bar there has taken action against a number of attorneys who were actually part of these schemes, and disbarred a number of them in recent weeks.

MS. RODRIGUEZ: And they’ve published their names. I mean, it was unprecedented, actually.

MR. HARWOOD: Amazing, yeah. So I can’t help you with the second part of your question –

MS. RODRIGUEZ: So I’m happy to answer that question. It’s a good question. I mean, certainly there’s a lot of stuff that’s being pushed to housing counselors across the country, and capacity is a huge issue. I can tell you a little bit of a couple of things that NeighborWorks is doing. We are developing a new course to help housing counselors modify their programs and increase their knowledge on mortgage-rescue scams. I believe that is going to be debuted at the December NeighborWorks Training Institute here in D.C., and we can certainly share more broadly that information. I believe – but I could be wrong on this – that much of that information will also be online as well in learning course.

The second thing – or the third thing, I guess, I would say is, we – out of the $6 million that Congress gave us for this effort, we did allocate $2 million of that, and it’s – realized it’s still not enough for some capacity-building grants to nonprofit organizations, both locally, regionally and nationally to help promulgate this message more broadly about being – making consumers aware and how to report scams.

MR. GRUHN: Could – I’d like to amend the attorney message. The exclusion generally is for attorneys practicing law. One of the things that we said, that the attorneys we’ve seen, they’re having non-attorneys engage in this activity. You can’t have non-attorneys practicing law, so the exclusion of – we don’t think the exclusion applies to the schemes that we’ve seen, but I – in terms of message, the message should be, don’t pay.

MS. KEEST: Betsy, right?
Q: Thank you. Betsy Broder from the Federal Trade Commission. In his introductory remarks, George said that messages to consumers are most effective when they’re before their 60 days behind in their mortgage, so I was wondering what role the banks and the lenders are playing with – I mean, they’re the ones who are going to see this first, and whether they have been receptive to being advocates as well as all of you in letting consumers know how to spot a fraud before it happens.

MS. RODRIGUEZ: I can respond to that. As we’ve been working with the HOPE NOW Alliance, which is mostly made up of mortgage servicers and lenders, they have been responsive, and in many cases, they have shared with us some customers that they think may be victims. I think that there is much more that needs to be done there, but I know both the MBA and the HOPE NOW Alliance are educating their members. I think some of them have started to send out information about how to spot mortgage-rescue scams to their borrowers. I think a lot more needs to be done, but it is something they are working on.

Q: Thank you for putting this together. My name is Lev Bogramian (ph) from the United States Senate Banking Committee, and I have a question probably to Chuck, or anyone else that would like to answer. Has there been any discussion to have an insurance modeled after SIPC, Securities Investment – pardon me – Protection Corporation to perhaps cover some of these foreclosure scam victims, and maybe the mortgage lenders would pay into that insurance fund? Thank you.

MR. HARWOOD: I actually don’t know the answer to that question. Maybe – do you know if any of the states have looked at some kind of a – or, Kathleen, maybe you know some kind of a – (inaudible, cross talk).

MS. KEEST: I have not heard of that. I think it would be something of a problem, because the notion of those kinds of funds are legitimate. Among legitimate businesses, there are occasional bad apples, and so whether it’s attorney’s fees or investors or something like that, it’s sort of an assessment to make sure that the few bad apples among your brethren don’t do it. But the foreclosure scammers are – it’s pretty much an industry that’s – there’s not much – there’s not a legitimate industry tax, so I don’t think they’re going to be paying any assessments. (Chuckles.)

MR. HARWOOD: I assume you’re thinking of something like mandatory insurance that all attorneys pay for malpractice, and your insurance may go to what you do or may go to what another attorney does. But I haven’t heard of anything like that with regard to this area.

MS. KEEST: I think it would be difficult to make it a workable concept for the – it might work for servicers if there’s a few servicers that go up, but for the foreclosure-prevention scams I think it would be very difficult, because they’re pretty much all crooks, and they come and they go.

Q: Gordy Gusterson (ph), National Organization for Women. While going after sort of these scam artists and these fly-by-night operations is great, but isn’t there a larger problem in – for the foreclosure crisis where everything is perfectly legal to encourage people to refinance in
the home-equity market, as well as having it legal for the large and powerful banks to jack up insurance – I mean, interest rates and fees whenever they wanted?

MS. KEEST: Yes. (Laughter.)

MR. HARWOOD: I’d just add one thing. There is – we talked about how much longer this problem’s going to go on. Potentially, there’s another wave of problems here, and that is with the home-equity loan type situations that people got in the last couple of years and are going to come do in the next year or two. We may see another round of these kinds of scams when those come around.

MS. KEEST: We’ve got time for one more question, and the gentleman back there had his hand up.

Q: Yeah, hi, I’m Jim Vitarello. I’m a housing specialist with GAO. I’m on the TARP oversight team; we’re overseeing the HAMP, the loan program. We’ve heard about this talking across the services. My question is if any of you found – I’ve got to be careful how I say this now – evidence of borrowers who have been scammed who attempted or did not attempt to contact their servicers beforehand. Is there any kind of correlation there? I mean, I realize some borrowers just simply don’t contact their servicers.

On the other hand, we’ve heard from NeighborWorks and others that there’s been a lot of frustration on the part of borrowers who have attempted to contact their services, including these HAMP servicers, and have been given the runaround. So my question is, is there any trends that you see where these borrowers had a particularly – and particularly ugly, been scammed, and they have or have not attempted to contact their servicer, and maybe they got the runaround, maybe they couldn’t get through, whatever. Have you seen any of that?

MS. RODRIGUEZ: What I would say is I don’t think we have any analytical information on that. We have seen, certainly anecdotally, folks become frustrated, and they’re desperate, they keep getting foreclosure notices and they need to do something, and then along comes a very promising, encouraging enterprise that says, we can solve your problems, just write us a check for three grand. You can understand why that – you know, if it’s a matter of becoming homeless and taking the last cash advance on your credit card, folks are desperate and people are preying on them.

What I would say is that the information regarding foreclosure out there and the process to get help and understanding what you may and may not qualify for is very, very complex and it’s very fractured. For example, I recently got a call from someone I went to college with saying – you know, educated woman, has her master’s degree, used to work at a former bank in Chicago and was on the verge of foreclosure. She said, I just – I was denied for HAMP, I was denied for Obama’s plan based on the NPV test, which is the net present value test. That she even knew that much – I mean, here’s an educated person. But what was going on in here is her mortgage was securitized in a mortgage-backed security pool, and therefore she could not be eligible for a loan modification under HAMP. And having to explain to her that the government can’t undo contracts that govern mortgage-backed securities, it’s unconstitutional.
So it’s very complex, and folks don’t necessarily know where their – if their loan is securitized, if it’s a Freddy or Fanny loan, what an NPV test is. So what I – I’m saying all of that to say that this is very complex, to determine a solution that is correct and appropriate for a borrower is very hard and it’s very frustrating, and you’re talking about their shelter at risk here. So people are very desperate, they get frustrated by a lot of the information out there and they’re going to go to the one that is most hopeful and most promising, even if that means writing them a check.

MS. KEEST: Thank you very much. I’m sure there’s a lot more questions; I don’t know if anybody would be around at a break or not. I have to leave, but I don’t have the answers anyway, so – (laughter). Thank you very much. (Applause.)

PANEL 2: PREVENTING USED CAR FRAUD: NEW TECHNOLOGIES AND STRATEGIES

MODERATOR:
JACKIE GILLLIAN,
VICE PRESIDENT,
ADVOCATES FOR HIGHWAY AND AUTO SAFETY

SPEAKERS:
JIM BURCH,
ACTING DIRECTOR, BUREAU OF JUSTICE ASSISTANCE,
U.S. DEPARTMENT OF JUSTICE

LARRY GAMACHE,
COMMUNICATIONS DIRECTOR, CARFAX

JOHN VAN ALST,
STAFF ATTORNEY, NATIONAL CONSUMER LAW CENTER

IVETTE RIVERA,
EXECUTIVE DIRECTOR, LEGISLATIVE AFFAIRS,
NATIONAL AUTOMOBILE DEALERS ASSOCIATION

JACKIE GILLIAN: Could we ask everybody to take their seats? We’re about ready to start our second, fascinating panel. I promise you, too, that if anybody goes beyond six minutes, you’re more than welcome then to stand up and get more coffee. That will be the signal to all of us that they’re going on way, way too long.
Anyway, good morning and welcome to the second session of the Solutions Forum this morning, “Focusing on Protecting Your Investment and Preventing Used Car Fraud.” My name is Jackie Gillian and I’m vice president of Advocates for Highway and Auto Safety. We are a coalition of the leading consumer health, safety and insurance companies and organizations working together to reduce motor vehicle deaths and injuries.

And I want to thank the National Consumers League and AARP for putting this panel together and asking me to be the moderator. The nice thing about moderating a panel like this is that you get to learn a lot of information about the subject, even if you don’t know that much going into it because I first started working on this issue in 1992. But I did some research and I was really amazed to find out that according to the Bureau of Transportation Statistics, there were over 36 million used cars and light trucks sold in the United States last year.

And that represents three out of four vehicles that were sold in the United States. It’s over 70 percent of the vehicles sold were used car. While there’s never a better time to get a great deal on a used car, it may turn out to put both your wallet and your life at risk if you make the wrong decision. Some estimates indicate that one out of every 10 used cars has a problem in its history such as serious hidden and deadly damages or extra mileage.

Every year, consumers are losing billions of dollars, as well as jeopardizing their lives when rebuilt, patched-up wrecks with compromised or missing safety systems are sold to unwitting victims. Frequently, consumers are overpaying for vehicles that do not accurately reflect the real mileage because the odometers have been rolled back thousands of miles. So what can consumers do to protect their investment and protect their safety? This is exactly what we hope to find out this morning and discuss with our panel of experts.

We want to explore what government and private-sector information and resources are available to consumers to protect them from used car fraud and are they enough? What is the responsibility and role of the auto dealers in policing their own industry and protecting consumers from the so-called bad apples? And how do we enhance and strengthen anti-fraud and anti-lemon protections and enforcement, particularly for vulnerable consumers who have been ripped off.

Let me briefly introduce our panelists in the order that they’ll be appearing this morning. First of all, I became involved in the issue of vehicle fraud and theft in 1992, when then-Congressman Chuck Schumer asked advocates to help pass the Anti-Car Theft Act of 1992. Before the panel started, Jim Burch from Department of Justice and I were talking about how there’s no legislative history to this bill and that’s because it really almost set a record for enactment of legislation.

It was introduced at a time when there was a rash of car jackings nationwide. Congressman Schumer had this legislation and, literally, it passed through the House and Senate in less than three months and was finally passed by the Senate about 15 minutes before they adjourned, sine die, without ever having a hearing in the Senate or a markup or anything. So it
just shows you, with a lot of consumer activism and media attention can do to get an important bill passed.

While the overall purpose of the legislation was to prevent and deter auto theft, a provision in the bill was intended to address automobile title fraud. The legislation required the federal government to establish the National Motor Vehicle Title Information System, to address automobile title fraud. Seventeen years and one public interest lawsuit later, the government has finally established an electronic database for verifying and exchanging title, brand theft and other data amongst states and purchasers. Jim Burch, the acting director of the Bureau of Justice Assistance as the Department of Justice will discuss this initiative.

He has been with the Department of Justice for 15 years, overseeing efforts to provide leadership and criminal justice policy training and technical assistance. And he has extensive experience working with national organizations and state local governments. Many of us in this room, including myself, have purchased a used car, many of them, in fact, and relied on information about the history of the vehicle from CARFAX. But is it fool proof, that information that you’re getting?

This morning we’ll also hear from Larry Gamache, communications director of CARFAX. Larry is primarily responsible for coordinating the company’s public education initiatives. He is CARFAX’s spokesperson and an expert on used car shopping and has more than 15 years experience working on consumer marketing campaigns and customer support activities.

Most of the used vehicles purchased by consumers are sold through dealerships. While some unscrupulous auto dealers are the heart of the problem, all of the auto dealers are a part of the solution. We are pleased to have on this panel, Ivette Rivera, who has been with the National Automobile Dealers Association for over 20 years. In fact, there’s a handout on the table that Ivette brought with her. It’s not identified as coming from NADA, but it is from her organization.

And providing our consumer perspective and discussing what consumer protections are still needed, is our final panelist, John Van Alst. John is a staff attorney with the National Consumer Law Center. He has extensive experience working on auto fraud and consumer fraud. He has published several publications on consumer fraud, auto fraud and domestic violence. Before he joined the center, he was a legal aid attorney in North Carolina. So with that, we will begin with Jim Burch, and again, thank you very much panelists for joining us this morning.

JIM BURCH: Thank you so much, Jackie and good morning to everyone – still morning isn’t it – it’s morning. It’s great to be here and I want to thank the folks that put the conference on today for allowing us to squeeze in to this panel. We thought it was important that we make an effort to be here and share with you the latest information about something that, as Jackie talked about, was big news many, many years ago but for a long time had really fallen beneath the radar. But that’s changed. And the National Motor Vehicle Title Information System, NMVTIS as we refer to it, is alive and well. And I’m proud to be here today to share with you a little bit about what we’re doing.
The purpose of the National Motor Vehicle Title Information System as it was originally articulated back in ’92, was to prevent stolen motor vehicles from re-entering commerce. But there was Title II, in the Anti-Car Theft Act that also talked about preventing and reducing fraud, consumer fraud related to automobiles. And so we took that seriously. When it came time to write the design of NMVTIS and the purpose of NMVTIS, we made sure that fraud prevention and the elimination of fraud, consumer fraud, was built in to the purpose and the functioning of the National Motor Vehicle Title Information System.

So it still is, very much, a national database that connects all of the state DMVs and provides consumers and others with comprehensive information about a vehicle’s history. It is, though, designed with the purpose of preventing stolen vehicles from re-entering commerce, as well as reducing and preventing fraud. Now, some of you may say, my goodness, why is the Department of Justice involved in motor vehicle titling information systems? And I ask that same question.

But I’m here to tell you that while most people think of the Department of Justice as the agency that deals with counterterrorism issues and violent crime issues on a daily basis, and we certainly are, most people don’t know that the number three goal in the Department of Justice includes several objectives related to reducing fraud and protecting consumers. And so this project very much does fit with among the top priorities within the Department of Justice.

As Jackie mentioned, that this was initially the creation of Congress in 1992 and at that time it was put in to the Department of Transportation. But in 1996, as the bill was reauthorized, the program was moved from the Department of Transportation into the Department of Justice. And so my office really became involved in NMVTIS in about 1997, by the time things were said and done.

And part of the reason why this was created, in addition to preventing stolen vehicles from re-entering commerce and in addition to preventing consumer fraud was that Congress realized that the DMVs don’t talk to one another. And that’s really a shock to a lot of people. You think that when you take a car from Maryland and you go to Virginia and re-title the vehicle into Virginia, you think the folks in Maryland know and you think the folks in Virginia know that the vehicle was titled in Maryland. But they really don’t.

What they know is what you show them on the piece of paper that you give to the clerk in order to re-title your vehicle. And that is where fraud is introduced and that’s where the problem lies. And so this system is designed and is currently connecting DMVs so that that information is verified electronically before a new title is issued. So the clerk not only sees the piece of paper that’s being presented to them, but also can look at NMVTIS and see that the vehicle was previously titled, for example, in Florida and here were the brands previously associated with that title – not only from Florida, but from every other state that has had that vehicle titled in its system.

So NMVTIS does provide brand carry-forward, if you will, and brand history from state to state. And the good thing for states is, that when a state issues a title in NMVTIS, NMVTIS
automatically notifies the previous state that their title has been canceled or that it can be retired. And so NMVTIS does also provide a benefit to states in terms of sharing information.

It also does prevent fraud. We know that, as I talked about just a moment ago, that many times when that paper is introduced, the brand history is missing from that documentation. With NMVTIS that can’t happen because the requirement that Congress set forward is that states provide their titling information to NMVTIS on a daily basis, if not in real-time. And many states do provide it in real-time.

But also that states check NMVTIS before issuing a title on an out-of-state vehicle. And so that verification process in NMVTIS is what prevents a fraudulent title document from being used as the basis for a new title to be made. The Anti-Car Theft Act also required several things in terms of access to information. The law requires that consumers have access to this information and the information be made available as broadly as possible to those consumers.

It also talks about information being available to law enforcement and information being available to the insurance industry for their investigative purposes as well as, obviously, information being available from state to state. The Anti-Car Theft Act also requires that this system be self-sustaining. It specifically says that the system should not be funded with federal funds but instead, should be sustained through a system of user fees – which is pretty unique. We don’t often see those kinds of systems being developed at the national level. But this is one that has that feature.

But it also says, very importantly, that the system cannot be operated at a profit. The statute specifically says that the operator of the system cannot make a profit off of the operation. And so that is a key feature of NMVTIS and I think it’s designed to go hand-in-hand with its consumer protection mission. The statute also lends support to the idea that this information would be available to consumers at low cost. The idea of no-profit mode of being involved suggests to us that this information was meant to be very affordable, and affordable in many different way, not just through one method of accessing that information.

So what’s in NMVTIS today? And where are we? Well, as of today we have 75 percent of the nation’s DMV data in the system and plans are underway now, we have states that are coming on-line, other states that are prepared to come on-line in the coming months. We expect to be at 80 percent here very shortly and we expect to surpass 80 percent on our way up to 100 percent in the coming months.

At the same time, however, we do currently have nationwide junk, salvage and insurance information in the system including all total loss determinations by every insurance carrier in the U.S. And that is a requirement of the statute and the regulations – that insurance carriers, once they determine a vehicle to be total loss – not on the basis of state law but on the basis of their policies – that that information be provided to the system. In addition to that, the auction companies that handle total loss vehicles or dispose of total loss vehicles for insurance carriers are also required to report.
And they are required to report vehicles of any age or any year that are determined to be salvage or total loss – they report those into the system. And then further down the line, there is additional reporting by the entities that receive the vehicles from the salvage pools, whether it be a parts yard or a crusher or a salvager or some other recycler. They also have to report information to NMVTIS.

Another example of the way NMVTIS provides information to consumers is currently all Cash for Clunkers trade-ins are branded within NMVTIS. And so we have an arrangement with the Department of Transportation. Any time they approve an application for a “cash for clunker” vehicle, that information is put into NMVTIS and there’s a brand associated with that then that says, this vehicle should not be resold or re-titled for operation on roads. It is, essentially, a junk vehicle. And we worked together with that with the Department of Transportation.

So what does a consumer see when they search NMVTIS and get a history report from NMVTIS? Well, they know the current state of title. They know previous states of title. They know the odometer readings that each of the states have documented in their files, to the extent that they have been documented. They’re aware of the brands that have been associated with that vehicle, not only in the current title environment but also previous brands that have been associated.

And so the scenario that we’re aware of where a brand in one state does not carry forward to another state because we know the states do business differently, NMVTIS addressed that by retaining that history. And so NMVTIS has a brand file for each VIN that it maintains. And it’s not affected by state law. So if a state does not carry the brand forward, NMVTIS will still carry the brand forward and make that information available to consumers.

Total loss information is available. The consumer will know the date on which a vehicle was determined a total loss and they’ll also know which carrier it was that determined that vehicle total loss. Salvage information, as I talked about earlier, and again, title history, would also be made available to consumers. So what’s different about NMVTIS from some of the other services that are available?

Well, NMVTIS, as I mentioned, was created to prevent fraud and to keep stolen vehicles from re-entering commerce. It was created with the idea that the DMVs would be able to talk through NMVTIS, and that is happening today in a number of states. NMVTIS is designed to provide the basic information that consumers need and to provide it inexpensively. So the most expensive vehicle history report that you can get today from NMVTIS is $4.50. Other reports are available for about half that price. And so again, it is meant to be affordable and is meant to be available and accessible by as many people as possible.

I mentioned the nonprofit motive; that is also what sets NMVTIS apart. And NMVTIS is the only database in the country that all junk, salvage and insurance carriers are required to report to within 30 days of acquiring a vehicle or determining a vehicle to be total loss. I’m happy to report to you today that some of the insurance carriers were among the very first to begin reporting. And they told us and they followed through in saying that we’re not going to wait 30 days to report vehicles. We are going to report to you on a regular basis and, in fact, we
have many entities that are reporting to us on a daily basis. And probably would report to us more frequently if they had the ability to do so and it’s certainly something that we’re looking at.

Some of the private providers that we commonly talk about, the CARFAX folks and the folks at Experian have excellent data. I’ve used it myself and folks in my office have used it and we tell other people that they should use it as well. They have data that NMVTIS is not designed to capture: the repair history, for example, the maintenance history. Those kinds of things are things that are not within the scope of NMVTIS, not within the purpose of NMVTIS. And it’s not in our plans to capture that information.

And so they have a, what I would call, a broader set of data whereas NMVTIS maintains a focus on a very key set of data and trying to be as comprehensive as possible with that data. There was an article recently in the July issue of Consumer Reports Magazine, which I happen to subscribe to and it talked about the different types of vehicle history reports that are available and it did an analysis of what was contained differently in those vehicle history reports.

We have copies of that article here. We’ve received permission from the folks at Consumers Union, I think it was, to reproduce that article and we have them at the front desk outside. As everyone leaves, you’ll get a copy of that article. And I think it’s very informative about some of the differences here.

The current status – the states are working towards compliance. We currently have a little more than half of the states that are involved in the system in some way. They’re either fully participating and providing data in real time or they’re working toward that process. There are a handful of states that, still, at this point, don’t know in which method they will be providing data to the system – whether it be in real-time or whether it be in batch uploads on a daily basis.

And then there are a small number of states that we’re currently talking to now about how to get them to move forward in the way that’s best for them. They either have fiscal challenges or some other kinds of challenges in the state that we’re trying to help them through at this point. In fact, the department now, for the last three years in a row, has provided funding to states to help them connect with NMVTIS. And I’m proud to say that because I want you to know that we have not received a single appropriation for the NMVTIS program in any recent year.

The funding that we’re providing for NMVTIS is funding that we’re taking from other programs to support the implementation. And so I say that because I want you to know that NMVTIS is a priority of the department. It is something that we’re committed to and committed to supporting. There’s nearly 10 million junk salvage records and total loss records that have been submitted just since April. So the data is literally flowing in every single day.

In fact, in our nationwide reporting from junk, salvage and insurance we have over 1,500 insurance-related entities – this is national, this is regional, this is local – reporting into the system on a regular basis. In addition to that, we have well over 6000 entities that are considered junk or salvage yards – including some individuals that may receive over five salvage vehicles a year to rebuild, that are currently reporting into the system on a regular basis.
I’m happy to report to you that later this week, hopefully by tomorrow COB, we will actually have a searchable database up on our Web site so that you can go in and see who exactly is reporting into the system. And so if you want to know if your insurance carrier is reporting and following their responsibilities, you can go in, enter that name and it will tell you the name of the insurance carrier, their location and it will tell you the last time they have reported into the system. And you can do that also for junk and salvage yards. And expect that that will provide important information for consumers wanting to know who’s reporting.

Law enforcing is using this system. And we are currently talking to many commercial and nonprofit and public agencies about providing NMVTIS information. We are looking for partners. And so we are open to anyone, anywhere, including our friends at CARFAX and Experian to making NMVTIS information available to consumers. That is the best way to prevent fraud, is for everyone to have this information at their fingertips. And that is our commitment.

NMVTIS is a hard thing, phonetically, to get right so vehiclehistory.gov is the Web site. I encourage you to visit. We have brochures outside and a pamphlet on little question and answer thing that you can take back with you to get more information. Thank you very much for your time. (Applause.)

MS. GILLIAN: Thank you, Jim. Of course, there’s nothing subtle about leaning over when the speaker’s next to you when they’ve exceeded their time, so I apologize. We are now going to hear from Larry Gamache, who is from CARFAX.

LARRY GAMACHE: Thank you. I thought I’d start –

MS. GILLIAN: I’m going to have to do a much longer reach for you. (Laughter.)

MR. GAMACHE: Yeah, no, no, no. Six minutes, right?

MS. GILLIAN: Yes.

MR. GAMACHE: I thought I’d give you a brief overview on what’s been happening at CARFAX and share something that I personally find very compelling that I think we all need to be working together on. CARFAX was started, as many of you know, approximately 25 years ago. We started as a branded title company with approximately 10,000 title brands from the state of Missouri. Today our database includes title brands from all 50 states and the District of Columbia and the provincial governments of Canada. And they’re all reported into the CARFAX database. And we back those with the very first ever buy-back guarantee.

If a consumer buys a vehicle and CARFAX fails to disclose one of those title brands, we’ll actually buy the vehicle back for up to 110 percent of Kelley Blue Book value. When we first started out, we thought that information from the states would be our plateau. It would be the place at which our database was complete. But we very quickly realized that the information
that consumers so desperately need when they’re buying a used vehicle is not contained in the state Departments of Motor Vehicles or the State Departments of Transportation.

That thousands, millions, of vehicles are damaged every day unbeknownst to the states or even insurance companies. So CARFAX began an initiative to gather information from as many sources as possible, to share both damage information and information about vehicles’ service and repair. Every time we’ve discovered a new source of data, it’s led us to yet another source of data and another.

Today, the CARFAX database receives information from more than 22,000 different sources. We add approximately three-and-a-half million pieces of new information to the database every night. And I’m happy to report that as of this past weekend, our database includes more than 7 billion unique pieces of information about the 250 million cars that are in operation on U.S. roads.

CARFAX began by offering our services through dealers. It was a back office operation and hence our name, CARFAX. Dealers would fax us VIN numbers and we’d fax back vehicle history reports. But over the past 10 years, technology has changed and evolved and we’re able now to provide vehicle history reports in real-time, online, direct to consumers through carfax.com. And more importantly, free of charge on places where consumers are shopping for used cars; places like autotrader.com, cars.com, vehix.com and the short-lived but now part of autotrader, automarkato.com. In both Spanish and English, with a simple click of the mouse, consumers can get access to real-time information from the CARFAX database, provided by the people who have the largest financial stake in the sale of the vehicle, the seller; this year will deliver 80 million free CARFAX reports to consumers in the used car market.

So CARFAX has been investing, you know, pretty aggressively over the past 25 years to try and build our data base and make that information accessible. And that’s kind of where we are today.

One of the biggest things that CARFAX discovered as we were investing and growing our data base was this challenge that we all face in odometer fraud. Odometer fraud still costs consumers in the United States more than $1 billion.

And odometer fraud is one of the things that I find personally abhorrent. It not only affects the sale price of the vehicle; it’s not only a financial crime but, as many people can attest, the odometer, the mileage of a vehicle, as cars have stayed on the road longer, the mileage is directly linked to the proper surface and maintenance of the safety systems of a vehicle. Every vehicle that has its odometer rolled back is no longer going to be serviced properly.

And the people buying those cars, in addition to the inflated costs that they pay for the vehicle that they think has 35,000 fewer miles, are also going to face increased costs associated with servicing those vehicles and, as many have alluded to, the peril that comes with driving vehicles that have been improperly maintained.
So as we gathered information, we realized that getting regular and routine odometer readings from disparate sources and adding those into our database were key to alerting consumers to both odometer inconsistencies and actual cases of odometer rollbacks.

So that’s one of the reasons why we’ve expanded the scope of our data to include a new program we launched in approximately 5 years in which we gather service information. We currently have more than 1 billion pieces of service information in our database. We gather that from approximately 9,000 different locations throughout the United States. We add new service information every day, and key to that information is collecting accurate and ongoing odometer readings.

However, I did want to spend a minute talking to you about a fraud –

MS. GILLIAN: You have about 30 seconds, actually. (Laughter.)

MR. GAMACHE: I have 30 seconds, and I just wanted to alert everybody to the fact that airbag fraud, airbag theft, has now become the number one used car crime in the United States. People no longer steal radios and the oft-championed theft of catalytic converters is not really as big of a problem as the theft of airbags and the fraudulent replacement of airbags after accidents.

And I believe that we all must start working together to alert consumers about airbag deployments and making sure that airbags are properly replaced after they’ve been deployed. They’ve become a key part of the safety equipment on which we all rely.

MS. GILLIAN: Thank you, Larry. Appreciate that. (Applause.) And now we’ll hear from Ivette Rivera. Thank you.

IVETTE RIVERA: Hi, I’m with the National Automobile Dealers Association, and it’s great to be with you.

A lot of times, people don’t look at auto dealers as part of the solution, but we’re very much interested in making sure that deals and consumers can make better decisions about used cars even though we represent new car dealers – about 18,000 now and, unfortunately less and less every day.

All these dealers also sell used vehicles, and there’s this wide web of vehicle sales. There’s a wholesale market that a lot of people aren’t familiar with because oftentimes, dealers are both the buyers and sellers of used vehicles. So when they sell a new car, they get an old car in on trade-in. A lot of these vehicles actually go through these – they’re called wholesale auctions; they’re not the salvage auctions.

And so with the new car dealers, then you have used car dealers. There’s another – we generally in good years would sell about 20 million used vehicles. Last year it was only 16. And then the used car dealers sell about another 20 million vehicles. But a lot of these cars are trading back and forth amongst each other and going to the auction, and then you also have a lot of individual and private buyers, and now, the Web sites.
So a few years ago, there were some defining moments. Unfortunately, with Katrina, we became very aware of a lot of these because vehicles travel and it was very easy for a lot of these cars with the limitations of the DMV systems to be able to wash these titles. And we also recognize that NADA had supported the NMVTIS and been a leader in that effort. But I think that technology really offered a lot of opportunities that didn’t exist in 1992.

And so there’s a handout at your table, and part of that – we started talking about potential legislation in terms of – because one of the other big difficulties is the time delays of getting information. So even if information is done correctly and everybody does what they’re supposed to do legally and morally, there are still time-delays in the system that allow for unscrupulous people to take advantage of that window of opportunity.

So we had worked on some legislation a couple years back talking about trying to get some of these VINs of these totaled vehicles and severely damaged vehicles from the insurance companies electronically. And that all – I think it was constructive; there’s still legislation pending. But it did allow for a constructive dialogue between the private sector and DOJ. And I think that people started saying, well, we do have this existing system of NMVTIS that is here; why don’t we try to work on that and try to develop that system, and then work forward from there?

So I think what NMVTIS has done, and under Jim Birch’s leadership, has really been tremendous what they’ve accomplished. However, we still see gaps and so what they’ve done, though, by making it electronic, having some consumer access has been wonderful.

And focusing on the VINs because what we saw before was that there was too much focus on paper titles. And that the DMV system is still somewhat, you know – there’s a lot of funding issues, but a lot of the structure of it is still very paper-based. And what we were trying to do is say, you know, there’re a lot of solutions out there where this should be on the Web. So now I think what’s being done is very, very helpful, especially from the consumer side, and there can be improvements there in terms of making that information more widely available.

But from the wholesale auto market, dealers rely on vehicle history reports. That’s the way they conduct their business. And they want one-stop shopping. They want to look at all the different sources and they all want it in one piece.

They also don’t get it – from NMVTIS, we don’t have commercial availability yet, and that’s something that’s very important. You still can only do single VIN look-ups. And as someone said to me, which I thought was very interesting, on a commercial basis, let’s say at an auction, you can have hundreds of vehicles going through where you want to be able to put all the VINs in and get that information.

And so we sort of equate a single VIN look-up – while it’s very helpful and it’s good from a consumer standpoint – it’s not as workable in a commercial setting where you have a tremendous number of VINs and you have to keep pressing enter, enter, enter. Usually, you know, technology allows now for being able to put all those VINS in.
And so with a single VIN, it’s almost like having a flashlight, but we equate having more commercial access to being more like putting a kluge light on it. And we think that a major part of all of this is that transparency; is putting light not just for consumers but for the whole auto wholesale industry, which then allows us for people to try to keep these cars that should be in the marketplace out of the marketplace for consumers.

And then timing: We just think that with so much being done in real time, we would like to get – and we think that there’s been tremendous strides made in making this information more closer to real time and we know that real time is going to be difficult – but 30-day delays; you know, there are still too many lengthy delays, and we’d like to shorten up that time period.

So while we’re still looking at legislative attempts, we also think that there are a lot of nonlegislative things that could occur. And even looking at this diagram, you know, the way that we envision it, we think that we should be able to – with that green box – if there’s some way to get that information from NMVTIS into the CARFAX and the autochecks so that it helps the commercial industry. As another example, it’s almost like you have, for a TV set – you know how now you have all these different remotes – you have the TV remote; you have the cable remote; sometimes you have the speaker remote. But you do have that universal remote where you can put everything all in one place – and that’s what we’re looking for; we’re looking for something that will give dealers, consumers, law enforcement one-stop shopping. And we look forward to working with you in partnership.

MS. GILLIAN: Thank you, Ivette. Now we’ll hear from – (applause) – now we’ll hear the consumer perspective from John Van Alst from the National Consumer Law Center.

JOHN VAN ALST: Thank you, and I want to thank NCLC and AARP as well – both for holding this event and, specifically, for addressing auto issues, which I think are so oftentimes ignored. I think there’s a belief that fraud is so rampant that people just expect to be defrauded at the time they’re buying a car, and that isn’t the way it should be, and certainly something we want to combat.

I’m going to real quickly address databases, since we spent a lot of time talking about the databases and prior wreck damage and whatnot. And while I really can see the promise of NMVTIS and think that there’s a great opportunity that CARFAX or Experian or whatnot could be a real tool, unfortunately right now, instead of being a tool to prevent fraud, oftentimes these reports are actually a tool used to commit fraud.

We see dealers who are waving, you know, a CARFAX report as a clean bill of health in front of consumers enticing them to buy this car on the belief that there isn’t prior damage, which, unfortunately – because the databases are currently incomplete and they aren’t being reported timely and they aren’t getting complete information, you know.

Larry and Jim both mentioned, you know, getting this information from the insurance companies. Right now, in Canada, insurance companies are required to report this information. Here in the United States, they aren’t. NMVTIS is getting the total loss information, but an
awful lot can happen to a car that can really damage the car and even make it unsafe that wouldn’t wind up being a total loss. So we need more complete information; we need it reported much more quickly.

And at present while these databases are incomplete, we need to make sure that consumers understand that, you know, a false negative on this report saying that this car is clean doesn’t really mean that much. You need to take it not just to a mechanic; you need to take it to an auto body shop where somebody can actually recognize this prior wreck damage.

But I want to look a little bit more broadly at fraud, as well. You know, it’s not just the prior wreck damage in cars. There are other condition issues, certainly, as well. a lot of my clients walk into a dealership and get told, this car’s in great condition, when in fact, the dealer knew the transmission was about to go out or whatever else was happening.

And the problem is that right now in most places, dealers have no duty to disclose this sort of information before a car’s being purchases. And they’re allowed to sell a car, basically, as is, and all the onus is on the consumer.

A few states – I live in Massachusetts now – I’m, in case you can’t tell from my accent, I’m not from there originally – (laughter) – but actually prohibit these as-is used car sales. And, you know, require folks to go ahead and honor the implied warranties that would be in the transaction were it not for the as-is sale.

Looking even more broadly though – not just the condition of the vehicle – in the financing of the car, as well, there’s an awful lot of fraud that goes on. We’ll talk – I don’t know that I’ll have time – but about, you know, yo-yo sales, basically, where somebody is buying a car; they think that the car is sold; they think that they’ve purchased it; take it home, they get a call back that you’re going to have to come back in and, unfortunately, the financing didn’t go through and you’ve got to give us a higher down payment or you’ve got to pay our higher interest rate.

Dealer mark-ups: A few years ago, NCLC, where I worked, was involved in a number of class actions against the largest lenders in the United States in the auto business, and it was on the issue of dealer markups. Basically, it’s akin to a yield spread premium – those of you familiar with the mortgage market – where what’s happening, because most people finance their car at the dealer, when you go into the dealership, you think the dealership’s going to try to find you the best terms on financing. What they’re actually doing is trying to find the one that will make them the most money. You go in, your credit report would mean that you could get an interest rate of, say, 8 percent; the dealer will charge you 12 percent, and they’ll split that – they’ll get a kickback from the finance company and they’ll split that with the lender at the expense of the consumer.

Unfortunately, it’s all legal. We had to attack it on the basis that it was actually being applied in a discriminatory manner. And under the Equal Credit Opportunity Act, we were able to show that minorities were actually paying these higher dealer mark-ups.
We wound up settling most of these. Unfortunately, the settlement just capped the dealer mark-ups at a lower rate because we shouldn’t show consideration below that rate. I’m pleased to say that recently, the Department of Justice and the FTC, actually; they had an enforcement action in California against Nara Bank and two auto dealers there who were charging people higher rates who were non-Asians.

But it’s incredibly difficult to do this because we don’t have access to all this information. You know, there’s no HMDA-style data that you’d get in the mortgage market where you can track what’s happening and whether people are being discriminated against auto market. We certainly urge that there ought to be a collection of data like that so that the FTC and the DOJ, who are charged with stopping discrimination in this area, can do so.

And then finally, even if it weren’t discriminatory – like I say, that’s the basis we had to attack it on – but it’s an awful practice even if it’s not discriminatory; you know, even if they size you up not based on your race, but just say, how much can I take this guy for? It’s pure opportunity pricing. We want to see the practice brought to a halt.

CRL Kathleen Keest was here earlier from the Center of Responsible Lending. They did a study earlier this year. Their estimate is over $20 billion in dealer mark-ups in 2007 – that’s $20 billion that consumers are being charged in excess of what they should be charged based upon their credit history, credit report and everything else.

I know my time is short here today – I was mentioning to Bill Gruhn earlier before – he was on the previous panel – that I’m from North Carolina and I speak slowly, so I’m at a disadvantage when the time is short. (Laughter.)

But we’ve got a number of recommendations on a policy level that we think would really end a lot of these horrible, horrible practices. And we came out with a report earlier this year in conjunction with some testimony I was able to give before the House. And it’s “Fueling Fair Practices;” it’s a roadmap to improved public policy for used car sales and financing. It’s available on our Web site. Check it out and, like I say, I’m glad that we had this opportunity to talk today, and I really hope this is something that both states and federal agencies and – federally, we can move on. (Applause.)

MS. GILLIAN: Thank you, John. Since I lost my wrap-up note to one of the other panelists, you just saved yourself from a kick under the table – (laughter) – so thank you very much for doing that.

We’re now going to open it up for some questions. We have remote mikes and so if you could stand up, ask your question and identify where you’re from, that would be great. (Pause.) Any questions out there? Okay, if not I have about five questions, so I’m going to go right to it. (Chuckles.)

Q: Okay, well, John really laid out some of the issues that consumers face. I thought you did a very good job, and you talked very fast for a North Carolinian. (Laughter.)
MR. VAN ALST: Oh, thank you!

Q: And I think, you know, this is an opportunity for Larry and Jim – I mean, you both oversee databases. We know they have holes in them. Are we doing a good enough job of letting consumers know? Are we doing a good enough job of telling – since you supply a lot of information to dealers – are we insisting that they also make the case that there are holes in the system, it’s just the nature of the system; we don’t have all the data.

How do we prevent the problem that John’s talking about? Which is having this very important information – it’s just not complete. And so you really, as a consumer, have to do due diligence. And I guess I would say to Ivette, you know, what’s the dealer response on this? You know, you’ve got good dealers; you’ve got bad dealers. So how do we make sure dealers are doing their part, too, and not being on the bad side of this but being on the good side of this issue?

MS. RIVERA: I mean, we’ve really taken the lead, and you know that we’ve spent a lot of time on this over the last few months – I mean, there’s a complete restructuring of the auto industry but otherwise, this is really still one of our top priority issues.

One of the things, for instance, that we did do when we working on the cash for clunkers law is there had been discussion about setting the information to the state DMVs, and we thought that it was very important that information go to NMVTIS and, actually, even within that law, were able to get something that said that that information should be made commercially available to the CARFAXs.

Because part of the problem is that this information isn’t necessarily available. We think that compliance and education information, we’re taking a lead role in trying to education our members, whether it’s Webinars and that type of thing. And we see this as a priority for our membership.

I think that right now, the NMVTIS Web site – I think it took so long for NMVTIS to get up and running that people don’t necessarily view that as quite the answer. But we hope that once – because of the state participation – that once that occurs earlier next year, that people will start looking to that a little bit more. And we plan on doing more on that, as well.

MR. GAMACHE: And I think you hit on a very important part of this, and that’s consumer participation. Consumers have to do their due diligence – and when I say this, Jim, I think, will probably attest – we are chasing a moving target.

There are 250 million cars out on the road today – 1.4 cars per American consumer. We love our cars. Forty million cars are going to be bought and sold this year. Good people are working day and night to gather this information and add it to our system.

And I’m probably one of the few spokespeople in the United States who goes out and says, but our system is better than it was yesterday; but it’s nowhere as good as it’ll be tomorrow. We’re adding new information every day.
And finding new information leads to more information, but consumers have to do their part. And I would, maybe, have a different stance if every vehicle in the United States had an NMVTIS report, or every vehicle in the United States had a CARFAX report; if every dealer in the United States was providing vehicle history information; and if every consumer, as a part of their purchase, said, I must see a report before I purchase this car.

But we have to do our part. When we buy a car, the average purchase price of that, correct me if I’m wrong, is still about 12 to $15,000 for a used vehicle, right; 12 to $15,000 for a used car. 12 to $15,000. And many consumers don’t even bother to take the car to a mechanic; many consumers don’t even bother to say, will you show me the CARFAX vehicle history report? Many consumers don’t even bother taking the vehicle for a test drive. We have to do our part. It’s the only way that the system is going to change.

MS. GILLIAN: Thank you. Any other? I’m told that we have time for one more question.

Q: I’m Diane Freeman from the Administration on Aging, and somewhere in this discussion, I’ve heard you say from CARFAX there are 22,000 sources to find information and you get 3.5 million pieces of information – well, how do I find any of it? (Chuckles.) I know how to find CARFAX; I know how to find NTSA; I just heard about NMVTIS today. If I don’t know about even those things, where do I start?

MS. GILLIAN: John, do you want to take that one?

MR. VAN ALST: Well, like I say, at present, I don’t think there is anywhere that the consumer can actually get all this, unfortunately. I think NMVTIS has wonderful promise, and Larry pointed out we aren’t getting complete information from the states yet. We’re getting that information from the insurance companies, which is great.

However, unfortunately, it’s mostly on a going forward basis, and so it’s still not going to do you a whole lot of good today as a consumer. But I’ll be the first to say that I think it’s just a tremendous possibility of really stopping a lot of this fraud. But it’s not going to be available to you privately and it’s not going to be something that you can go out and sort of do.

You know, I used to do title searches as part of litigation when I was looking at these, and it’s a time-consuming, lengthy process to get this information. So it’s not something that a consumer’s going to be able to go out and get themselves.

But I think, hopefully, you know, I know there’s a lot of disagreement on our panel about some things but hopefully we can all agree that one thing that really needs to be done is to get this insurance information, and not just the total loss data, but more complete insurance information. My preference would be that it goes to NMVTIS because I think that’s more accessible to consumers at a low cost. But I think anywhere where it goes so that consumers can get a hold of that at a timely manner to really stop some of this fraud is what’s so important.
MR. BURCH: We are also, in the department, looking at—in part of our mission of crime prevention, looking at working with other organizations, partnering on consumer education, public service announcements kind of things; using infrastructure that exists today—could be the cooperative extension services; it could be neighborhood watch programs around the country; but there’s all sorts of grassroots infrastructure that we need to get this information out to.

And so we’re certainly pursuing that; not necessarily as an NMVTIS piece, but as a consumer education piece around fraud, and particularly around the issue of VIN cloning. You know, Larry talked about the airbag piece, which is right on, but there’s the VIN cloning issue, as well, that’s pretty hot today.

And so we want to educate consumers and citizens just generally about these issues, and that’s something we’re going to be doing in the next year.

MS. GILLIAN: I just got a very serious wrap-up sign from—(laughter).

MS. RIVERA: May I just add one thing quickly?

MS. GILLIAN: You have five seconds.

MS. RIVERA: Okay, okay, and also from an education piece, one of the things that we’ve been taught to do on auto finance is—we’re part of a group that has a Web site; it’s called aware—and it’s www.autofinancing101.org. And that’s sort of a mechanism to try to help people walk through auto finance. It’s on the NADA Web site, and it’s an effort to try to—if anyone wants to work in partnership on that, we would like to do that, as well.

MS. GILLIAN: Okay, we are done, and my wrap-up consists of two words: thank you. (Applause.) The next session will begin and it’s: “Fighting Investment Fraud, Fostering Compliance and Assuring Enforcement.” Thank you.

**PANEL 3: FIGHTING INVESTMENT FRAUD: FOSTERING COMPLIANCE AND ASSURING ENFORCEMENT**

**MODERATOR:**
CRISTINA MARTIN-FIRVIDA,
DIRECTOR, GOVERNMENT RELATIONS FOR ECONOMIC SECURITY,
AARP

**SPEAKERS:**
JEFF CRUZ,
SENIOR POLICY ADVISORY,
U.S. SENATE SPECIAL COMMITTEE ON AGING
DAVID MASSEY,
PRESIDENT-ELECT, NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION; DEPUTY SECURITIES ADMINISTRATOR, STATE OF NORTH CAROLINA

ANDRES CASTILLO,
PROJECT MANAGER FOR FINANCIAL SECURITY, EDUCATION AND OUTREACH, AARP

LEN BACH,
AARP VOLUNTEER, FREE LUNCH MONITORING PROGRAM

MR. : Good afternoon.

CHRISTINA MARTIN FIRVIDA

We’re going to try and start our panel right away since we know the chairwoman is coming very soon. This panel is really going to look at investors – we think of our home as our investments, but there’s some very specific instruments out there obviously that folks invest in as part of their nest egg and as part of a larger saving strategy. And for us at AARP it’s very important that we have – particularly that we have protections for older investors who tend to – just because they’ve had a lifetime of savings – tend to have more wealth built up. So our panel today includes a couple of folks who are from AARP. I’ll introduce them first. They’ll be the first to speak.

Andres Castillo, who is the project manager for financial security education and outreach at AARP – he is responsible for developing and executing national and state-level consumer focused campaigns for AARP and his area of expertise is in financial security. His specific remarks are going to be about our Free Lunch Monitoring program.

And we have as a complement to his remarks Len Bach, who is an AARP volunteer, who will be speaking about his experience as a volunteer in the Free Lunch Monitoring program. Len is a Vietnam era Air Force veteran. He has a degree in finance from Hofstra so he also has a background in finance. And he has spent 10 years as an AARP volunteer. He presently chairs AARP’s Pennsylvania Consumer Issues Task Force.

We also have the Honorable David Massey, who is the president-elect of the North American Securities Administrators Association and the deputy securities administrator in the state of North Carolina. He has been the director of the North Carolina Securities division since June, 1997, and prior to that he served as general counsel for the department of the secretary of state of North Carolina and as general counsel for the North Carolina securities division, a division within the department of the secretary of state.
He will be discussing the role of states in securities regulation. And we all know that overall the role of states has been a very hot topic lately. So we always are interested in the role of states and AARP has always enjoyed a very strong relationship with the State Attorney Gen.’s offices. And we always want to look for ways to strengthen – all the ways that states can help with enforcement.

Finally, we have Jeff Cruz, who is senior policy adviser to the U.S. Senate Special Committee on Aging. He is going to be speaking to us about two pieces of legislation which are both supported by AARP that will look at how we can take some steps to further protect seniors and their investments. He serves with the Senate Special Committee on Aging, who is chaired by Senator Herb Cole of Wisconsin. He focuses on economic and retirement security issues for the senator. And in the past year, he worked on the president’s campaign in the Chicago headquarters as the national deputy seniors vote director and also in Florida as the state’s seniors vote director. So he’s very, very familiar with the things that matter a lot to AARP’s membership and to seniors in general.

Thank you all and I’ll let Andreas begin.

ANDREAS CASTILLO: Thanks, Cristina. I’m from New York so I should keep it under six minutes. And I’m scripted. So anyway, I want to say good morning to everyone and I’d like to thank the National Consumers League and my colleagues at AARP’s Public Policy Institute for helping organize the Thought Solutions Forum and inviting me to speak on investor protection today.

AARP has worked on consumer protection issues for many years, but more recently investor protection has become the top priority in our consumer protection portfolio.

As the trend moves to greater individual responsibility for financial security and retirement, we’re very concerned that there will be greater numbers of abusive practices against 50-plus investors in the future.

Why? Three-quarters of the nation’s consumer financial assets amounting to nearly $16 trillion are controlled by a household where someone is 50-plus. This is a fact well known to unscrupulous individuals who are targeting and pitching unsuitable or fraudulent investment products to seniors.

And AARP is also responding to our consumers, whose stories don’t often make the headlines, such as Luis and Emanuela Corona (ph) from Miami who were living off a small pension, Social Security and some savings. They received an invitation to a free lunch seminar. They started to attend. They wanted to make better financial decisions. They were persuaded by the presenter to invest in viaticals. And they invested a good portion of their nest egg: $75,000. They lost it all.

Or Dorothy, a 74-year-old widow whose only monthly income was $900 from Social Security. She attended a seminar and she was persuaded to invest her entire savings, $143,000 in promissory notes guaranteeing 10-percent interest. She lost it all. This type of fraud is
particularly heinous because seniors who worked so hard to secure – build a secure retirement
don’t really have the years to make up those losses.

And right now, I’d like to speak briefly about what AARP is doing to combat investment fraud.

AARP has partnered with reputable organizations, many who are in this room, representing SEC, NASAA, Investor Protection Trust on various activities and events throughout the country to inform and protect consumers.

For example, as part of the campaign for wise and safe investment, AARP and its state offices partnered with state securities regulators in 35 states through a grant from the Investor Protection Trust. This comprehensive multi-media bilingual initiative was largely shaped through focus groups held with victims of investment fraud. All the messaging contained the red flags to help avoid investment fraud and, just as important, where to go for help when they need it.

The campaign continues and so far we’ve sponsored over 500 events, trained hundreds of volunteers to conduct community presentations, such as Len, and reach millions through print and radio.

And a woman who attended one of these events in Michigan was listening to the presentation about the red flags and she became alarmed. The day before the event she had invested $50,000. And at that moment, she knew that some of the red flags should have been raised the day before. Luckily, the Michigan securities regulator was one of the presenters. They quickly found out that this person was not registered and she was able to get her money back. Unfortunately, that’s not always the case.

Last year, AARP in cooperation with NASAA launched a Free Lunch Monitor program. I’m sure many of you have received invitations to attend a delicious free meal. I know our parents get them all the time and I’m sure I’ll get them at some point soon.

Although these seminars are marketed as purely educational and informational, a study by the SEC, FINRA and NASAA found that 100 percent of these seminars are in fact sales presentations; 50 percent featured exaggerated or misleading advertising claims; 23 percent involve possibly unsuitable recommendations.

So with the Free Lunch Monitor program we’re attempting to reduce the sale of fraudulent and unsuitable investment products at these seminars by encouraging individuals who receive these invitations, are interested in attending – because we have to face it – people are looking for good, solid information and sometimes these seminars can offer that but we just have heard too many stories where people lose their money at these seminars. So we’re not completely discouraging people from attending, but if they decide to go take a checklist that was developed by NASAA and AARP.
So armed with this checklist, the free lunch monitor is able to record his observations, send them to AARP, we share that information with the respective securities regulator for possible follow-up action.

So the checklist along with educational resources available at our Web site, aarp.org/nofreelunch, we aim to help potential investors feel safer, more confident and empowered to help make the financial marketplace safer for others.

Since the launch of the program almost a year ago, 100,000 people have visited the Free Lunch Monitor Web site, hundreds of completed checklists have been received from monitors, like Len, from 31 states. In addition, nearly 2,300 investment seminar invitations have been sent to AARP. And what we do with these invitations – we obviously scan them and track what products are being sold at these seminars and what language is being used to lure potential investors.

Another way that AARP helps its members is by giving financial service professionals an informed perspective on how to work with older clients. We work with the Financial Planning Association to develop the financial professional’s guide to working with older clients. It addresses what older clients want to know about financial professionals and it describes how financial professionals need to effectively work and communicate with older clients, take into account issues such as social issues, family dynamics, or any impairments.

AARP also continues to work closely with legislators and regulators at the federal and state level to strengthen suitability standards, to make sure that confusing senior designations that are used sometimes to the disadvantage of older investors don’t continue to happen, and implementing plain language and standardized document disclosure requirements that makes investing easier for the average person.

We’re in a time where it’s critically important to continue to provide consumers with good, solid information and continue programs like the Free Lunch Monitor program to help them make good decisions and have a financially secure retirement.

I’m happy to say we’re going to continue this program, continue to partner with legislators, regulators and other partners to make sure consumers are wiser and more confident about participating in the financial marketplace.

Thank you.

LEN BACH: Thank you, Andres. I hope everybody can hear me. I’ve already had about seven-and-a-half minutes of fame, so this won’t be more than seven-and-a-half minutes, I can guarantee you.

Good morning, Washington, D.C., and warmest regards from the city of champions, Pittsburgh, Pennsylvania. (Laughter.) By the way, I think this is a city of champions, too. Applaud yourselves. You’re doing a great job.
I am both delighted and honored to join you today as a guest of AARP and the National Consumer League to share with you my personal grassroots look at what goes on at those free luncheons and dinners where many from the senior community become the focus of both legitimate and illegitimate hucksters.

Before my wife, Mary, and I broke our cover as AARP free lunch monitors by going on Pennsylvania Regional Network Television and AARP’s national Web site with a video of our experiences, we had done more than 10 of the free meal seminars.

AARP now invites seniors, as Andres has told you, nationally to join the program by affording them a check list with which to evaluate the seminars and to forward their results. The form creates awareness in the monitor and helps to minimize the actual potential for victimization. The program has been reported as so successful that some dinner arrangers open their talks by inviting any AARP attendees to let them help fill out their check lists.

I would like to preface my remarks about my actual experiences with a footnote that my wife and I always accept the follow-up visit to our home or to the sales person’s office because we found that this is where you discover both the hucksters’ intentions and the actual product, products, and/or services they are promoting.

My background in finance and contracts and my wife’s ability to pretend to be the ever abiding naïve spouse – (laughter) – make us perfect foils for uncovering the hucksters’ objectives and their end game forprofiting from us.

The meals we’ve received are usually very good and the area restaurants are among the most highly rated. We often see familiar faces at these events and have on occasion noted that there may even be shields there to ask the right questions. It almost goes without saying – no one would trust someone who arranged a seminar around a bad meal. That’s why seniors look forward to getting the invitations.

The programs presented at the actual meals are consistently laid back with the only objectives being to peak your curiosity about the retirement security blankets that the presenters may offer and for you to warm to the salesman himself and develop a degree of trust.

The sales people always remind attendees of their insecurity and the fears that feed it. These might be outliving your nest egg, being hit with a costly medical catastrophe, facing estate tax issues or dealing directly with the probate courts and lawyers, et cetera, among others.

When you feel vulnerable, that is when you sign up for the critical second meeting with the huckster. That is the real goal of the free meal. This is where I say seniors should not venture. I say, take the meal and split.

It is in the follow-up meeting where the rubber meets the road, so to speak, when the legitimate sales person or the thief meets you on turf where you feel comfortable and he can make his real pitch. This is where they use their charm and (fame divinity ?) with you to convince you their help is essential to your future wellbeing.
Some present only products and services for estate planning using revocable living trusts. Some offer every variety of long-term variable and indexed annuity imaginable. And many just offer to manage your nest egg with a customized and balanced portfolio.

You look at their credentials and wonder, what is a CSP? What’s an SFA? You’re told that he’s a certified senior planner or a senior financial adviser respectively. An Internet search I did revealed some of these titles could be bought and delivered in 24 hours without any qualifications.

We let one pitchman into our home who was by all measures a thief. He asked for a $100,000 check without so much as showing us a contract, a prospectus, or a proposal for the variable annuity he was planning to sell us. We later found out that he was not licensed in Pennsylvania to sell annuities nor was the product he was peddling registered in Pennsylvania.

We found a hitch in almost everyone’s pitch as we tangled with the hucksters. The living trusts were costly to start with – $2,000 to $3,000 – and not really appropriate for a relatively modest estate. We also discovered that the legal fees for making changes to those trusts were exorbitant.

The legitimate portfolio management services we were offered by a number of the salespeople from reputable banks and investment firms were laden with fee-on-fee transfers to specialist brokers that required double-digit earnings in order for the client to net single-digit returns.

The annuity peddlers used a one-size-fits-all approach which usually related to the longest term and highest commissionable products with very many penalties if you took your cash early.

No one we dealt with want either our trust or any of our liquid assets. No one we met made any case or analysis on the suitability of the offered products to meet out determined needs.

My experiences with Free Lunch Monitoring have been eye opening in addition to being mouth opening. The experiences have convinced me and my wife that there is a real need for suitability analysis to accompany investment offers especially with seniors, who, when confronted with the enormous variety of investment products in the market, are usually unable to decide what is best for their unique circumstances.

Until such time as suitability needs are directly addressed, we clearly say go for the meal and don’t make the deal, okay?

Thanks again, AARP and the National Consumers League for allowing me to share these experiences. I’d be glad to answer any questions. (Applause.)
DAVID MASSEY: Hello, folks. I’m David Massey. Can you all of you hear me back there? Thank you for the invitation.

I’m here to talk a little about red flags of investment fraud, how to check out the salesman who’s trying to sell you an investment and how to check out the investment, and some of the business practices or some of what I call the “homework” that every investor really needs to do in order to at least start on the road to protection against investment frauds.

I’m also from North Carolina. And we run a law enforcement agency down there that’s focused primarily on securities fraud. What we see over and over again and what I think represents the greatest threat to the average perhaps unsophisticated investor are investment products that are not registered with any securities regulator either federal or state and that are sold by salesmen who are also not registered to sell investment products.

And if an investor would avoid those two things – unregistered products and unregistered salesmen – you would cut out a lot of the investment fraud that is targeting your life savings.

Some red flags to look out for: whenever you cannot find information about the salesman or the investment floating around in a public domain that is a big red flag. Generally, the less information there is available about the salesman or a product, the higher the risk of the investment.

As a general rule, investments that are going to be sold to a large segment of the public are required to – or legally required to disclose details of what the investment is all about. That information is out there for people who know how to analyze it, to read it and make a rational investment decision.

If you cannot find any information in the public domain, it is a big, red flag. A lot of scam operators are going to hand you sales materials that they have prepared themselves as a substitute for what you should be able to find in the public domain. You have to be very leery of that.

What we see in the context of bad deals, high risk investment opportunities – for lack of a better term – or situations that promise what I call bigger, better deals – unrealistically high profits, guaranteed profits, little or no risk – all investments involve some degree of risk but they shouldn’t involve the risk of having your money stolen from you.

These people who are selling these opportunities want you to make an instant decision, right now. They want you to take a vow of secrecy so that you don’t tell anybody else even the law enforcement agencies about the opportunity that you’re being pitched. Anything that has an offshore component to it, offshore accounts, big, red flag, really big, red flag.

You hear fantastic stories about international investment networks that have offshore accounts set up for you so you don’t have to pay Uncle Sam taxes. It’s a fiction. They do not exist. Vagueness on details from your salesman, any kind of inside information or secret
information that is going to generate profits for you, these are signs that you should just leave the room as fast as you can.

Affinity fraud we see a lot with senior citizens, with senior investors. Affinity fraud is a type of fraud that appeals to some common characteristic of a group so that the crook can get the entire group together and make one sales pitch and achieve efficiency in marketing a scam. Be careful.

Now, how do you be careful? Nobody is born into this life knowing how to evaluate investments or how to check out sales people. I’m going to tell you.

With the sales people, as a general rule, as a general rule, people who are in the business of selling investments and securities are supposed to be licensed, or as we say in the business, “registered,” with some governmental agency. Now, all of that licensing for the U.S. is done through a common computer network called the Central Registration Depository, or CRD.

You cannot get access directly to the CRD. Only the government agencies can. However, there are a number of places on the Internet and there are a number of telephone calls that you can make to get information about a deal that is being offered to you.

FINRA, the Financial Industry Regulatory Authority, runs a Web site called saveandinvest.org on which you can access something called Broker Check. Broker Check will give you an easy to access instant snapshot of whether some individual you’re dealing with is currently registered.

A better way, in my opinion representing the state regulators, of getting that same information is pick up the telephone and call your local state regulator. Your local state regulator is going to have access to everything that is on the entire CRD system all the way back in time even for people who are not currently registered to sell securities. And we see a lot of unregistered salesmen trying to sell deals.

For the product – the product, the investment product itself as a general rule is supposed to be registered with some governmental agency. You can access the SEC’s Web site and get information on securities offerings that have been registered with the SEC. You can call your local securities regulator and ask them about a particular deal or opportunity and have a live human being answer any questions that you may have about any facet of that investment opportunity.

I’ll give you one caveat, and that is just because you find a person who is registered to sell securities and is attempting to sell a product that is registered does not mean that the person is honest and does not mean that the product is legitimate or a good investment for you, sort of like buying a pair of shoes – you want get some shoes that fit your need and don’t pinch your feet. That’s the concept of suitability. There are a lot of – there’s just tones of different kinds of products floating around out in the investment world. You need to have a suitability determination done so that the product that you purchase fits your needs rather than the needs of the salesman.
Let me close by saying, there’s a certain amount of responsibility an investor has to take on. It’s doing your own homework. You have to do it. You have to read your account agreement before you sign it. You have to check out the sales end of product before you make the investment. And you have to read the account statements that are sent to you regularly. If you don’t, you are dead meat in the eyes of a crook because they’re going to know that you’re not watching what they are trying to sell you.

Develop a refusal script where you can say, if you get a call in the middle of the night from somebody you don’t know – I’m sorry. I’m not interested in buying anything from you. Please take me off of your calling list, click. Just hang up.

Final words of wisdom, if it sounds too good to be true, it is too good to be true.

And second final word – and final word – is it’s your money and you do not have to apologize to anybody for asking the questions necessary to protect your own interest.

Thank you. (Applause.)

JEFF CRUZ: Okay. Thank you everyone for having me here today. I want to begin with the typical staff disclaimer that I’m speaking on behalf of myself and not necessarily my boss unless it’s something you agree you. Then it’s my boss.

I want to take a second to talk a little bit about the big, large, demographic changes that make seniors particularly susceptible to fraud and these are trends that are going to continue into the future.

Thirty years ago, in the pension world, most people had a defined benefit pension plan. You’d work for Gen. Motors or Ford or whoever and at the end of your career, you would have your pension and you would have a monthly payout of 2,000 a month or whatever the total is. You didn’t have a lot of decisions as an individual. The company’s pension plan was open for fraud but you had professionals managing it. You had the PBGC guaranteeing it. So there’s very little risk for an individual.

We’ve seen over the past 30 years a shift to 401(k) plans and for the majority of Americans, working class, middle class Americans, their investments are their 401(k) plan. The majority of Americans don’t own stocks outside of their 401(k) plan.

Because of this shift, a lot of the decision is on the individual. They have to decide to invest. They have to decide where to invest. They have to make sure that they don’t have loans or withdrawals, something you couldn’t take money out of defined benefit pension plan. And then when you finally retire, you have to make the decision on what to do with that money.

One area of fraud is actually into the 401(k) plans themselves. Now, this isn’t very common but nevertheless, when I get calls from constituents in Wisconsin who have just lost
their lifetimes of savings, it’s not easy for me to tell them, sorry, this isn’t a widespread problem. This is very important for every individual.

The Department of Labor, we believe if we strengthen their compliance efforts for 401(k) plans, we can minimize and reduce the cases of companies defrauding people through their 401(k) plan. And I kind of have three brief recommendations on that front.

One, I think the Department of Labor needs to work closely with the Treasury and the SEC. The SEC is an enforcement agency. That’s what they do. They have highly skilled investigators and so I think it’s very important that the Department of Labor continues to work closely with them. And I think they’ve done a pretty good job, the new administration on this front, on working together.

Second, the Department of Labor Office of Inspector Gen. criticized the Department of Labor, the compliance for 401(k) plans for really focusing on client-back money versus being outcome based.

And to give an example of this, you know, the most efficient way to get money for the IRS would be to dedicate all their resources to tips they get and complaints but they still do random audits.

They don’t do random audits because they think they’re going to find a whole lot of money and the vast majority of people pass the audit perfectly fine. They do it because it’s a deterrent, because it scares the heck out of people who think they may face an audit. The Department of Labor currently doesn’t do any audits so we feel if they audit 401(k) plans they could help reduce fraud within these. They also use – (inaudible) – data which tends to be old. So we think random audits will help.

And finally, it’s important to recognize that the Department of Labor – they’re not an enforcement agency. They do a lot of other issues. They work with companies. They really lack the resources and they lack the investigators that the SEC and other agencies have. My boss was able to get five million in additional funding for him to hire investigators to make sure 401(k) plans are in compliance and that people’s money aren’t at risk.

So for the vast majority of people who aren’t frauded within their 401(k), they reach retirement with a large sum of money. And this is fairly new. We’re just getting to the tip of the iceberg of people who started 401(k) plans 30 years ago, 40 years ago and have really had their whole life savings in 401(k) plans.

You know, these people are just getting to retirement age. And so you’re going to see a lot of folks – you know, maybe they were a plumber making $30,000 a year – all the sudden they reach 65 retirement age and they have $800,000 in their 401(k) plan and they have to figure out how to make that last their lifetime.

One area that our committee is potentially looking into to the spend down period, how seniors make this decision, right now, within 401(k) plans, very few companies offer advice or
the option to purchase an annuity and help on that. Mostly it’s because of liability, fiduciary reasons. They don’t want to take responsibility.

We’ve been encouraging the Department of Labor to look at ways we could encourage companies to offer annuities and advice and help take some of the decision making away from the individual to make them less susceptible for fraud. And we hope the Department of Labor issues a regulation and call for comments shortly, something to keep an eye out for maybe in the next couple of weeks or months that will be out. We’ll see.

But for the vast majority of Americans’ 401(k) plans, when they reach retirement, they’re kind of on their own, and just like Jesse James used to rob banks because that’s where the money is, that’s why you see a lot of fraudsters gravitate towards seniors. That’s why they’re very susceptible to fraud in the first place.

Some of my colleagues – I’ll talk about our two bills specifically to address this. We held a hearing in September on ‘07 called “Advising Seniors about Their Money,” who is qualified and who is not. You know, we found, as my colleagues have mentioned, a lot of people go online and then get a fancy title, retirement planning specialist or something to that effect.

Oftentimes, as my colleague said, they could pass this test and get it within a day. We had one of our interns for summer – to be sure he was a smart kid but no financial background whatsoever was able to pass this test in one day. It was an open book online test and he could have gone around calling himself a certified retirement planning specialist or whatever the label is. There’s hundreds out there.

To fight that, we introduced the Senior Investor Protection Act and that’s Senate 1661. And what this would do – would a couple of things.

First of all, it’s a grant. States need more money to enforce fraud. It’s one thing to have a law on the books. It’s another thing to have people out there listening to complaints, tracking it down and making sure that it’s being enforced. And so we would give funds to states to fight fraud and we intentionally made it very broad. States could use it for a variety of purposes, education, equipment, investigators. That’s on purpose.

But to qualify for the money, they would have to do a couple of things. The states would have to adopt the senior designation model rule for the sale of security products developed by the North American Securities Administrators Association.

They recently developed their model about two years ago and it’s a solid model. It separates designations like certified financial planners who have quite rigorous training and quite rigorous standards from these operations on the Internet that are just more to sell a product.

We also encourage NAIC. When we originally introduced this last Congress, we encouraged the NAIC – National Administration of Insurance Commissioners – to develop a senior designation model rule for the sale of annuity products. We’re glad that they did this, and
in fact, had a model rule similar to NASAA that we feel is very strong. When we reintroduced
the bill this Congress, we made specific reference to the NAIC model rule on these senior
designations.

Now, part of us introducing the bill – and I’ll go quickly here – was to encourage states to
adopt these standards. Eighteen states so far have adopted it for securities and 17 states have
adopted it for the insurance side. You know, you all, advocates in the room who have large
organizations, you know, it’s worth reaching out to your state representatives to get your state to
adopt this. So I would encourage you guys all to do that.

The last thing I want to talk about real briefly is suitability standards which is raised in
last year we sent a letter to the NAIC asking to strengthen their suitability standards. They’re
currently going through the process. We encourage the NAIC to adopt strong suitability
standards and in fact to get grant money in our language, we listed several provisions to
strengthen suitability standards that state would have to adopt that we hope the NAIC adopts as
their standard model, suitability standards.

Since my time is up, I’ll just end there.

MS. FIRVIDA: Thank you, Jeff. And of course, we’d like to thank the rest of our panel
as well. (Applause.)

We’re very mindful that we’ll be joined very shortly by the chairwoman so we’d like to
take just a few minutes if we can for questions. We have remote microphones. Please identify
yourself when you ask a question. There’s one over here.

Q: Naomi Karp from AARP. This is for Jeff. Maybe I just missed it but you said you
were going to talk about two bills and I heard S1661 but I missed what the other one was.

MR. CRUZ: Sure. Yes. I didn’t mention it. I ran out of time. The other bill is a Senior
Investor Protection Enhancement Act and that’s a bill that was introduced with Senator Casey
and Cole, both introduced it. And that would actually increase the penalties for people who are
defrauding seniors. It’s based off of some of the laws that Hawaii did as a model to really go
after people.

And I should mention Rep. Paul Hodes of New Hampshire has also introduced two
months ago House versions of both those bills.

MS. FIRVIDA: I have a question – I don’t know if there’s another question, but I have a
question for two of our panelists – well, all of our panelists but especially David and Jeff,
especially given our keynote speaker coming up.

What would you say could be done to improve the coordination between the SEC, other
federal regulators and then the State Security Administrators? What can we do to improve that,
that relationship and those efforts?
MR. MASSEY: To improve the coordination requires a commitment on both sides to do a lot of work, and do it regularly, and do it in a fashion that is constructive and efficient. Everybody in the regulatory business these days is working full tilt.

But there is value in having multiple regulators, especially with respect to investment activities in the United States.

We work with other regulators including the SEC and regulate in Canada and all the states, all the time on enforcement activities. The question is how to have a dialogue that is directed toward improving the regulatory system for the benefit of the investors.

And in order to do that, there are a number of regulatory gaps that need to be addressed. I think everybody in this room has probably read recently about various types of regulatory gaps that – what I view as the crooks tend to exploit my favorite is Regulation D of rule 506, transactions which the federal regulators don’t examine and the state securities regulators are currently prohibited from examining until such time as the crooks have left town with the money.

The states work and have been working with the SEC for a long time. It’s been done primarily on a rather regional local lines level because that’s how you get things done. You get things done by knowing human beings and knowing who to call up and building a network.

We need to have ongoing communications about some shortcomings that the SEC has admitted that it is experiencing – it is understaffed, it is underfunded, it doesn’t have enough to go around. A lot of the states are also understaffed and underfunded.

So there needs to be an attempt to identify the areas of common interest and work on a coordinated plan rather than an uncoordinated plan in which you may have multiple regulators looking at the same things, spending resources on something in an ineffective process.

MR. CRUZ: You know, I’ll just add – you know, people have ideas on what we should be doing to encourage them to work closer. By all means, I don’t have all the answers so please come and talk to me afterwards. As an oversight committee, we’ve during our normal oversight work, we’ve been trying to encourage them to work together.

For example, we wrote a letter to both the SEC and DOL on target date funds earlier this year. And we asked some to hold a join hearing analyzing several issues within target date funds which were delighted that they were able to successfully work together and have that hearing.

And in fact, we’re having a follow-up hearing next week on Wednesday afternoon regarding target date funds in which both the DOL and SEC will be testifying and so we’ll hopefully probe them a little bit more about ways they could work together next week.

Q: Thank you. We’ve heard today about mortgage fraud and we’ve heard about car fraud. This one I think is one of the most – securities fraud is one of the most difficult things for consumers to deal with, and this is how I see it.
You’re told you should invest your money. You shouldn’t keep it under the pillow. So where do you find investment people? Well, they come to you. There’s no place where people say, oh, well, go to this place. These are all good, registered investment people.

With a car at least you can check a car facts report, then you can go drive the car, then you can have it checked by a mechanic. Those are fairly simple consumer steps.

But I’ve got to tell you, when I get stuff in the mail – I invest my money with somebody that I trust who comes from a socially responsible investing background, all that kind of thing. But I get something in the mail that’s 350 pages of – and I know the chairman of the SEC has tried to deal with this too, simplifying all this. And you really don’t know where to look for somebody who’s good, look for somebody who’s registered, but there’s no A list. B, the stuff is so complicated and you know you’re supposed to invest but where do you start?

So these robber barons come and find us and should we have a list of the things that you shouldn’t do? Should you never go to lunch at one of these investment lunches where they’re trying to get your money? I mean, do we have those kind of simple tips for investors, for consumers and investors?

My experience as a consumer advocate is the simpler that you can make it and the more – you know, five bullet points, the dos and don’t, the red flags. You said, I’ve got to tell you I know that everybody was registered, who were supposed to be registered or the product was registered – never knew that.

So I guess what I’m saying is we’re doing a lousy job of getting the information out to people and you’re told you should invest at these gatherings where they tell you, these are some things you can invest in – they’re very tempting because you don’t invest, you’re an idiot, right?

But on the other hand, it’s just such a trap for consumers and there’s so little clarity about what you’re supposed to do as an investor/consumer.

MR. MASSEY: My suggestion, to start with, this country needs to do a lot better job of teaching its children financial literacy as they’re going through the public school systems so that it doesn’t come as a shock when you get into college and you’ve got your first credit card and you go wild.

Secondly, with respect to what I call normal people, the general public, you have to figure out a way to push out fundamental information about the decision-making process that relates to choosing advisors and choosing products to invest in. And that is tough.

People want to invest their faith first and foremost. They don’t want to do the homework necessary to check out the details of a transaction. They’ve never had an education and had to do that.
Nasaa.org has – that’s the Web site for the North America Securities Administrators Association – that and other Web sites – FINRA has also a lot of information on its Web site that is directed to persons that do not live in the securities regulatory environment. It is tough.

It is a wise move though for someone who doesn’t know what they are getting into to not pull all the eggs in one basket, don’t deal with just one person, don’t – that way, if you get hit by a crook, you won’t have 100 percent of your life savings taken. And I’ve seen that happen.

You also need to have an ongoing campaign in which like this free lunch monitor process. I like this and the reason why is because all regulators, both state and federal, are underresourced. And if you can develop a system where you encourage members of the public to work with the regulatory agencies and to bring information about suspicious situations to the attention of the regulators, you’re going to increase the effectiveness and the response time that those agencies can take with respect to these scans that are being run. That’s what I like about free lunch monitoring system.

It can be perfected. One thing that is always important once you create a solution for a problem, you need to go back and revisit that solution periodically to see if it’s still working or it can be improved. And I hope that we have a chance to do that with this free lunch monitoring system.

MR. BACH: I have a comment that I’d like to add. In Pennsylvania, we work very closely with the Pennsylvania Securities Commission under the investment protection trust grant.

We go around preaching the by words of investigate before you invest, which means there’s a phone number you can call and get the licensing and registration particulars on any broker and on any product and if you get a negative return, you don’t invest. I mean, it’s that simple to stop. If you lose, it could be devastating.

But most recently, in terms of knowledge about investment, we’re now considering embarking on a program through the trust, funded by the trust in partnership with PSE to do the wise side of investment, which means teaching seniors about what is a wise investment so that they know going in what they should be involved with.

And we’re looking forward to not only spreading the word on the fraud side but also educating seniors on learning how to invest. That’s the best thing we can do.

MS. FIRVIDA: Well, we would like to thank our panel and all of our panelists today. I know the chairs are looking forward to her remarks.

Thank you all and I know that we’ll be in the room if there are folks with specific questions I’m sure Jeff and David as well as Len and Andres would be happy to answer your questions afterwards. (Applause.)
GENE GARY-WILLIAMS: Good afternoon. Good afternoon. I hope everyone has been able to get lunch. If not, keep going and get it while I do my introduction. It gives me great pleasure to introduce Mary L. Schapiro, chairman of the U.S. Securities and Exchange Commission. Ms. Schapiro is the 29th chairman of the commission. She was appointed by President Barack Obama on January 20, 2009, unanimously confirmed by the U.S. Senate and sworn in on January 27, 2009.

Ms. Schapiro is the first woman to serve as the agency’s permanent chairman. Prior to becoming SEC chairman, she was the CEO of Financial Industry Regulatory Authority, the largest non-governmental regulator for all securities firms doing business with the U.S. public. Chairman Schapiro joined the organization in 1996, as president of NASD regulation and was named vice chairman in 2002. In 2006, she was named NASD’s chairman and CEO. The following year, she led the organization’s consolidation with NYSE member regulation to form the Financial Industry Regulatory Authority.

Chairman Schapiro previously served as a commissioner of the SEC from December 1988 to October 1994. She was appointed by President Ronald Reagan, reappointed by President George H.W. Bush in 1989, and named acting chairman by President Bill Clinton in 1993. She left the SEC when President Clinton appointed her chairman of the Commodity Futures Trading Commission, where she served until 1996.

A 1977 graduate of Franklin and Marshall College in Lancaster, Pennsylvania, Chairman Schapiro earned a juris doctor degree with honors from George Washington University in 1980. Please join me in welcoming Chairman Mary L. Schapiro to the floor. (Applause.)

MARY L. SCHAPIRO: Good afternoon, everyone. Gene, thank you so much for that nice introduction. I am so pleased to be with you this afternoon to talk about the solutions for fraud. And this is such an important issue because well, it is often easy to identify the problems that need to be solved. Focusing on the solutions is the hard part. So I really applaud the AARP Policy Institute and the National Consumers League for hosting today’s event and bringing so many of you together.

I also want to congratulate, if he is still here, Chairman Leibowitz, for the work he is doing at the Federal Trade Commission to protect consumers. In so many ways, our two agencies have remarkably similar missions. The FTC protects consumers. The SEC protects investors. And both of our agencies work to keep hard-earned savings out of the hands of fraudsters and in the pockets of those who earned it.

The fact is that regardless of whether you are a consumer or an investor, fraud is fraud. It comes in many shapes and sizes. It occurs in good times and in bad times. And its victims can
be first-time investors, as well as seasoned experts. Importantly, regardless of the form it takes, fraud undermines the confidence we have in our markets. In the securities arena when fraud occurs, it leads the most experienced investors to question market integrity. And it causes everyday investors to wonder whether they should put their dollars in the stock market or stuff them into stockings.

In a downturn like we have just had, when fraud occurs, ordinary Americans really become quite fearful. They become disillusioned and they become angry and rightfully so. But this distrust that grows of our securities markets is really in no one’s interest. When fraudsters win, real people lose. And we simply cannot let that happen.

So 75 years ago, Congress in response to very similar conditions established the Securities and Exchange Commission to protect investors. And today the men and the women of the SEC are working very diligently to do just that. When I became chairman in January, I set out to really revitalize the agency and refocus it on its core mission of protecting investors. We have embarked on a very aggressive rule-making agenda, intended to address problems exposed by the financial crisis and to begin to restore investor confidence in the markets.

We have embraced the most difficult issues from corporate governance to the regulation of credit rating agencies to market structure. One of the first areas of focus was our enforcement program, where I streamlined procedures for opening investigations and for setting penalties against corporate defendants. In addition, I brought onboard a tough prosecutor to head our enforcement division, Rob Khuzami, who has engaged in the most significant reorganization of the division in decades.

And the newly reorganized division will include highly specialized units that will enable our staff to concentrate the expertise in focused areas and help detect patterns, links and motives in fraud and securities violations. And by reducing bureaucracy, we will speed up the enforcement process and put more seasoned investigators back on the street, all in an effort to better detect and prevent fraud.

One type of fraud that has been a great focus of the SEC is fraud against seniors. It is not always a large headline-grabbing type of fraud you have read so much about in the past year. But for the SEC, the size of the case is not the only important variable. Fraud against seniors is particularly pernicious because the money that is lost usually comes from retirement savings, savings that have grown over a lifetime and can no longer be easily replenished.

In the case of seniors, the fraud often involves smaller groups or relies on personal relationships that are exploited for monetary gain. Just today the SEC filed a case against a promoter and a group of brokers charging that they coaxed about 90 individuals, mostly seniors, to invest $12 million in a real estate investment program. According to our complaint, the defendants literally handed out free lunches to pitch investments that they knew full well were risky, unregistered real estate securities. And later, even after the real estate venture started to crumble, we allege that the defendants continued to line their pockets with the investors’ money while falsely assuring them that all was well.
Today’s case is just one of nearly 70 cases targeting senior citizens that the SEC has brought in the past 3 years alone. Many of these cases involve supposedly profitable and secure investment programs that are really nothing more than Ponzi schemes. Last month, we filed a suit against a Michigan man charging that he lured elderly investors into refinancing their homes to fund investments in a phantom company. We allege that he used so-called investor seminars to persuade 800 investors, mainly senior citizens and retirees, to invest more than $70 million in the company. But the victims’ money was being piped right into a Ponzi scheme.

We also have filed cases against investment advisors who promise security for retirees, but deliver only risk and catastrophic losses. And finally, this past spring, we sued seven members of a church in New York charging them with orchestrating an investment scheme that targeted elderly parishioners. We allege that they swindled scores of investors out of more than $12 million by promising returns as high as 75 percent. But rather than investing the money as promised, they simply stole it.

These, as well as the other cases involving seniors, are significant successes for the agency in our efforts to stop fraud, but they require significant resources. And with only 3700 employees overseeing more than 35,000 registered entities, I know we cannot do it alone. And that is why one of my constant refrains is to leverage the resources of others wherever and whenever possible. And to collaborate with everyone from state regulators to federal agencies to advocacy and consumer groups like those of you here today.

One place where I am committed to improving the way we leverage third parties is in the area of tips and complaints. Currently, we get anywhere from 750,000 to a million-and-a-half tips and complaints every year. And we have reached out to the FTC and other agencies to identify the best system and the best technology for handling those complaints. But we also recognize that sometimes the most actionable complaints are the ones that come from insiders or whistleblowers. So I have strongly advocated for a whistleblower program at the SEC that would encourage more insiders to come forward. In fact, in devising the right program, we reached out to agencies like the IRS and the Justice Department to learn how their whistleblower programs work and to imitate their best features.

And I am pleased that Congressman Kanjorski recently introduced legislation that would enable us to compensate whistleblowers who provide valuable information that exposes a securities fraud. The benefits of a whistleblower program are that it gives the SEC potentially many more eyes and ears inside institutions that are cooking up new ways to defraud seniors. And because fraud is always evolving, it is important for us to look ahead to tomorrow’s fraud as well.

One area of emerging interest to us at the SEC relates to life settlements. Life settlements involve the purchase of life insurance policies from those who no longer want the policies or who can no longer afford to pay the premiums. After paying out a lump sum to the insured, the purchaser generally assumes the responsibility of paying the premiums on the policy and then receives the payout when the insured dies. What that means is that someone is actually hoping and banking on another person’s early demise. As unsettling as this might sound, life
settlements are a rapidly growing market. And there is a belief that this potentially could become the next big securitized product offered by Wall Street.

Unfortunately, we have learned that many seniors may not fully appreciate the implications of selling their life insurance policy to someone who is purchasing it for investment purposes. For instance, it is possible that seniors may lose the ability to obtain life insurance in the future. They may lose certain tax benefits. And they may find that certain personal information about their health is being shared with and monitored by strangers.

On the other side of the transaction, investors may not have a complete understanding of the investment risks associated with a life settlement policy, including the risks related to the health and life expectancy of the insured. The growth in the life settlements market, the potential harm that could come to seniors from aggressive and unscrupulous actors and the emerging prospect of the securitization of life settlements caused us to establish an SEC taskforce on life settlements. And our taskforce is already meeting with outside representatives to understand the range of issues presented by this market.

We are also working with fellow regulators to figure out whether there is sufficient regulation of this market and whether any gaps exist. The fact is we need to be out in front as much as we can on this issue so that seniors who sell their policy and those who may invest in securitized pools of life settlements are well-protected as this market grows.

Now, enforcement activity, although we are very proud of it and actively engaged in it, that alone will not fully restore investor confidence. Curtailing fraud is critical, but just as critical is curtailing industry practices that do not put the interest of the investor first. And this is particularly important as an ever-increasing percentage of America’s workers are relying on their own investment decisions to fund their retirements. And the statistics surely bear this out.

During the three decades between 1975 and 2005, the number of active participants in traditional defined benefit plans dropped from 26 million to 21 million. Meanwhile those who actively participated in defined contribution plans increased fivefold from 11 million to 55 million. In my view, financial service firms need to engage in responsible product development in the retirement market. Barraging investors with retirement products that feature the latest financial gimmick or marketable fad will not ultimately serve investors’ interests.

America’s future retirees deserve products that they can understand and evaluate. This means that complex fee arrangements or product descriptions should be discarded in favor of simple, clear disclosure. Our future retirees should have access to products that will help them meet their retirement goals without imposing inappropriate risks. Products offering enhanced leverage and avant-garde investment techniques may be appealing to speculators. But they shouldn’t be in the portfolio of our retirees and those seeking security in retirement.

In addition, extolling the eye-popping results of the short-term performance of certain investment products without focusing on the long-term implications or risks can result in disappointed investors and potentially angry plaintiffs, not to mention an SEC prepared to be aggressive in enforcing the investor protection rules. These types of disclosures, product
development and marketing issues surrounding retirement products will be areas of focus in the coming year for those of us at the commission. The burden imposed on those investing for retirement is already significant, especially after the market events of the last year. And we must be committed to assisting them and being prepared for retirement.

Another area of particular focus is target-date funds, which are products specifically designed for the retirement market. These funds and other similar investment options are financial products that allocate their investments among various asset classes. And as the target date approaches, these funds automatically shift that allocation to more conservative investments. This set-it-and-forget-it approach of target-date funds is very appealing to investors, especially for retirement investors who are overwhelmed by more complicated investment options.

In fact, in 2007, immediately before the market turndown, nearly 10 percent of 401(k) assets were in target-date funds. And those numbers will inevitably grow because 70 percent of U.S. employers now use the target-date fund as their default investment option. And in some sense, this isn’t surprising. Target-date funds, after all, were expected to make retirement investing easier by eliminating the need for investors to constantly monitor market movements and realign their personal investment allocations. But the performance of these funds over the last year was really quite surprising.

It has been reported that the average loss in 2008 among 31 funds that had a 2010 target date was almost 25 percent. But even more surprising were their widely varying performance results. In 2008, target-date funds for 2010 suffered losses of as little as 4 percent or as much as 40 percent, all funds with the exact same target date. So I share the concerns of many investors who were surprised by these results and particularly the wide disparity of returns for funds with that same target date. And in fact, these concerns led us to hold a joint hearing with the Department of Labor earlier this year.

And now we are currently focusing on the use of the target date in the funds’ name and how the meaning of that date and the nature of the funds’ investments can be better communicated to investors. We are also closely reviewing advertising, marketing materials and related disclosure to determine whether investors are getting accurate messages about their target-date funds.

Our focus on retirement investing, however, is not limited to specific products. We are also committed to and we all have to be committed to enhancing our financial literacy efforts. Earlier this month, I named a new head of our investor education office, which I believe can play a significant role in empowering investors planning for retirement. Lori Schock, who I know has worked with some of you in her previous positions at the SEC, is returning and already getting more feedback from investors and user research-based findings to enhance our investor education program. And that cannot happen too soon.

According to one survey, only 44 percent of workers or their spouses have taken the time to estimate their financial needs for retirement. And nearly one-half of retirees have left the workforce before they have done any planning at all. So it is particularly important for the SEC
and other groups to reach individuals at or near retirement and give them effective tools and materials to make informed financial decisions.

In the coming weeks, our education efforts will begin work on a soup-to-nuts financial handbook with an emphasis on research-supported information on key financial decisions during various life stages, including saving for and managing money during retirement and strategies for avoiding fraud.

In approaching this project, we will try to make critical information and tools in these areas as accessible as possible to reach investors of all ages. And today we are launching a new Web site, investor.gov that is entirely investor focused with a dedicated section for seniors. It is a site that pulls from the vast body of existing materials at the SEC and reshapes it to be more reader friendly and usable.

All of these initiatives, as well as all the other items on our agenda, take significant resources, especially for an agency of 3700 people and especially for an agency whose staff size and budget for investments and technology are significantly less than they were in 2005. That is why in addition to leveraging third parties, I have been advocating for significantly more resources and staff at the SEC. We have seen large ups and downs in our budget over the past 10 years, making it difficult to do long-term planning, develop adequate technology or have a sustained commitment in areas like investor education.

In my view, it is critical that if the SEC is to become the kind of regulatory agency that the American people have a right to except, we have sufficient, stable, long-term funding. So in short, I am committed to using all of the resources at my disposal and relying on whatever additional resources I can get to tackle investor fraud among the elderly. By rooting out fraud, incentivizing whistleblowers, pressing for understandable retirement-oriented products and enhancing our financial literacy program, we can make it harder for the next fraudster to succeed and we can clear up the climate of confusion that so many investors face today.

The stakes are very high for America’s future retirees and they are all counting on all of us. Thank you very much and I would be happy to take some questions. (Applause.)

MS. GARY-WILLIAMS: The first question is how can we secure sufficient resources for enforcement at SEC? (Laughter.) That is a big one.

MS. SCHAPIRO: I did not plant that question – (laughter) – but I am more than happy to answer it. You know, the agency – every agency, I think, feels very constrained by the budgets of the last several years. Many agencies were more focused on competitiveness issues than they were on core investor protection kinds of issues. But for the SEC, it has been a particularly painful process over the last several years.

And as I said, we are significantly below our 2005 staffing levels and our discretionary technology budget is, in fact, 50 percent below where it was in 2005. So we are making the case in every quarter, certainly all over Capitol Hill that the agency needs to be supported at a much higher level in order to give the American public any sense of confidence that there really is a
cop on the beat doing what needs to be done to protect their interests. So you know, spreading the word and making sure that if you believe that a strong SEC is important for the protection of seniors and others that Congress – who and I have to say been enormously supportive and constructive in this process – funds the agency at an appropriate level.

We will be good stewards of the assets and the resources that we are given. But there is a huge job to do out there. And we are not capable to do all the things that we would like to do. And under regulatory reform, we may, in fact, be given additional responsibilities, which will pull us to be spread even more thinly.

MS. GARY-WILLIAMS: Thank you. If you have questions, would you write them on cards that are available at your table and just hold them up and someone will pick them up. Okay. Could you discuss SEC reforms made in the wake of the Madoff fraud?

MS. SCHAPIRO: Sure, I would happy to because it is something that has been a driving issue for us since I walked in the door at the end of January, just six weeks or so after Madoff had been arrested. And so there are multiple components to that and how we are responding to what is clearly one of the great tragedies.

In the first instance, refocusing our enforcement efforts. We took a layer of bureaucracy and management out of our enforcement division, so we could put significant numbers of additional people right on the front lines fighting fraud and bringing enforcement cases. We took the handcuffs off the division so that they could launch investigations and issue subpoenas and get documents and testimony much more quickly than had been happening for the prior several years because we have to do these things fast.

And then we are organizing our enforcement division into specialized units, so that everybody doesn’t bring every kind of case, insider training, accounting fraud, market manipulation. But people develop deep expertise in particular areas like Ponzi schemes, like structured products, like OTC derivatives manipulation. And because you will have deeper expertise, they will be able to go more quickly and they will be more expert at what they are doing. So those are the enforcement kinds of structural things. We take a very hard and deep look at our examination function as a result of missing the Madoff problems over a period of years. And we won’t hesitate to make the kinds of structural changes in examinations that we have made in enforcement.

And then we have engaged in a number of rule makings, as well as bringing in the Center for Enterprise Modernization to help us figure out how to manage a million-and-a-half tips a year. There is undoubtedly great information in some of those, but an agency of our size can’t handle that kind of information coming in all across the country. So we brought them in to help us redefine our business processes, develop technology that will help us sort and rank and apply some basic analytics to the tips that are coming in, so that we can follow up on those that seem to be the most promising and the most fruitful for uncovering problems.

We have engaged in a lot of new training for our employees. We have a significant number of our examiners now going through an external course offered by the Association of
Certified Fraud Examiners. And finally, we have done some very specific rules to make it harder for an investment advisor to abscond with the assets of their customers by requiring that either an investment advisor use a truly independent custodian of those assets, a bank or broker dealer that is regulated or if they use one that is affiliated in any way, they have to get an independent public accounting firm to do both a surprise examination of the advisor and to do a custody controls review called a SAS 70 of the custodian to ensure there are adequate controls over the assets.

So we have really tried to think of everything we can whether it is structural to the SEC, cultural to the SEC, technological as in the tips and complaints system that we are building or with respect to concrete rulemaking that will try to limit the possibilities that we can ever have a fraud of this magnitude go on for this many years. And we are highly committed to it. And as I say, it has been driving a lot of our agenda over the last several months.

MS. GARY-WILLIAMS: Do regulators and Congress have adequate data on the scope of consumer investment fraud? And what additional information is needed?

MS. SCHAPIRO: Well, I think all the regulators collect information, the bank regulators as well as the SEC and the CFTC on fraud, on the investigations they do, the enforcement actions they bring. We all receive both complaints directly. And I know in the securities world, brokerage firms are required to collect all customer complaints and report them to their self-regulatory organizations.

So I think I can speak only really to the securities side. I think there is a fair amount of information. And I think it is enough to overwhelm anybody with the fear that fraud is a serious problem in some parts of our marketplace. I can’t speak as knowledgeably, I am afraid, to what is happening on the banking side.

MS. GARY-WILLIAMS: How does the SEC manage the effectiveness of its investor education programs?

MS. SCHAPIRO: Well, as I mentioned, we are really re-launching investor education at the SEC? We have hired two senior people who joined us just a couple of weeks ago to really rethink the entire function. There is no reason in the world why the Securities and Exchange Commission should not be the leading government agency and perhaps the leading entity in educating investors, alerting them to risks, providing them with the tools necessary to make smart and informed decisions and conducting basic research, focus groups and so forth.

So we have very broad ambitions for our new office as it gets up and running. And we will have to see how those play out. Today, the first day is the launch of our new Web site, which I think is a great step forward for us. And we hope all of you will take a look at it.

We are also very concerned, frankly, about shareholder education and whether people understand why it is important to vote your proxy and influence the direction of the corporations whose shares you own. So we will also have a parallel focus on shareholder education as well.
MS. GARY-WILLIAMS: How can coordination between the SEC and other federal regulators and state securities administrators be improved?

MS. SCHAPIRO: Well, you know, we have in fits and starts, I think, over the years, we have had great cooperation among all the federal regulators and the state regulators. And it is a high priority for us. We do a high percentage of our enforcement cases, for example, with federal prosecutors with DOJ. We do a number of cases with state securities regulators. We do lots of joint training on fraud with state securities regulators, insurance commissioners and the SEC.

We work closely with the CFTC because we find particularly in affinity fraud cases, there is often the overlap of securities fraud and commodities fraud, particularly in the foreign currency area. So we do a lot of work jointly with the CFTC as well.

So I think it is the kind of thing that I don’t have a magic prescription for how to do it better. I think it is something that everybody has to be committed to doing and working on every single day. We are clearly much stronger and more effective when we are working together and when we are leveraging each other’s resources because we can’t all be doing exactly the same thing and be effective.

MS. GARY-WILLIAMS: Okay, thank you. What are the legislative obstacles to passing stronger protections against investment fraud?

MS. SCHAPIRO: Well, we have a lot of tools at the SEC at our disposal. We have some areas where we would like the law to be strengthened. In fact, we sent up to Congress a list of 42 legislative items that we think would bolster our ability to bring certain kinds of aiding and abetting cases with respect to investment advisors and in some other areas. And we will see how those – some of those will be marked up over the next couple of weeks in House Financial Services. And we will see how those play out.

But we have, again, got a very positive reception on Capitol Hill to using our authority as expansively and as aggressively as we can. So I think from the perspective of the SEC, we have pretty significant authority and we need the resources in some cases to be able to utilize those authorities as effectively as we would like.

MS. GARY-WILLIAMS: Are there any other questions? Well, please join me in thanking Chairman Schapiro. (Applause.) For all of you who have been here all day, I don’t know about you, but I have been here and I have learned so many things and been alerted to so many things. But probably the most important thing that I am taking away from this is the need for us to educate ourselves and consumers.

When I really think about what will happen to older adults and all Americans, when we think about the fact that if you don’t know, you can’t do anything about it. And if you aren’t alerted to the kinds of things that you need to be aware of, you can’t do anything about it. So I take away the fact that we need more education. And I think someone on the panel up here said that we need to start educating our children about finances when they are very, very young and in
school. I guess we could add a lot to the curriculum. But that, too, would be so very, very important.

And as people, as we grow older, probably the Internet will help, so that we can have more sources where we can get information because we are lacking information. That is apparently – that is so patently clear today that we are lacking information. And it becomes very, very important that we are informed and that we inform others. So I will be going out informing people. (Laughter.) The little bit that I know, I am going to share it. And so I encourage you to do that and to encourage people to be aware of where they are, whom they are with and what people are bringing to them. And to be, I guess, healthily suspicious, if you will, to always feel that it may be too good and let’s investigate it and see if it is because then we will know it is not true.

Are there any other housekeeping kinds of things that we need to do? Thank you all so very, very much for coming. (Applause.)

(END)