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# FINANCIAL SECURITY ISSUES FACING OLDER AMERICANS

## HEARING

BEFORE THE

SUBCOMMITTEE ON
FINANCIAL INSTITUTIONS AND CONSUMER PROTECTION

OF THE

COMMITTEE ON
BANKING, HOUSING, AND URBAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

ON

CONSIDERING THE FINANCIAL SECURITY AND HEALTH SECURITY OF AMERICA'S SENIOR CITIZENS

NOVEMBER 15, 2011

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# C O N T E N T S

## TUESDAY, NOVEMBER 15, 2011

# FINANCIAL SECURITY ISSUES FACING OLDER AMERICANS

**TUESDAY, NOVEMBER 15, 2011**

U.S. SENATE,
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER PROTECTION,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
*Washington, DC.*

The Subcommittee convened at 3:07 p.m., in room 538, Dirksen Senate Office Building, Hon. Sherrod Brown, Chairman of the Subcommittee, presiding.

## OPENING STATEMENT OF CHAIRMAN SHERROD BROWN

Senator BROWN. The Subcommittee on Financial Institutions and Consumer Protection will come to order of the Senate Banking Committee.

Thank you for joining us today as we consider the financial security and the health security of America's senior citizens in this age of widening inequality. I want to thank our witnesses for being here today, Ms. Nepveu and Mr. Humphrey, whom I will introduce in a moment, and to thank Senator Corker, who has worked on these issues in his role as Ranking Member of the Special Committee on Aging, a committee chaired by Senator Kohl of Wisconsin. He has done significant work in the area of fighting against senior scams.

Earlier this year, I attended a seniors financial education workshop in the city of East Cleveland, a generally low-income area where it seems financial institutions, especially nonbanks, have preyed on seniors, perhaps more than most places in my State. I heard firsthand how institutions like KeyBank are partnering with nonprofits to help elderly Americans avoid mail and telemarketing and Internet fraud. And I heard firsthand how the financial security of our seniors is threatened by a number of financial predators.

This Subcommittee in October examined the state of household wealth for middle class Americans. We learned more about how middle class wages and household wealth have remained relatively stagnant over the past decade while household debt more than doubled. Too many seniors have seen retirement savings vanish in the financial crisis and the ensuing recession. Many seniors are living on fixed incomes, relying principally on Social Security, and literally cannot afford to pay these outsize fees and interest associated with credit cards and mortgages.

In Cuyahoga County, where Cleveland and East Cleveland are located, a senior living on Social Security Disability had her first trial mortgage modification payment double-billed, causing the bank to tack on $150 in overdraft fees. That is simply too much money for a senior living on a modest Social Security check and living from one modest check to another.

Other seniors suffer from health issues exacerbated obviously by the stress of struggling to meet their obligations, or so often just to hold on to the family home. A recent study by the University of Maryland found that seniors who fall behind on their mortgages reported in far too many cases symptoms of depression, more food insecurity, all of the things that afflict people in their later years with that kind of anxiety and pressures on them. They are more likely to respond they were not taking their prescription medicines as prescribed because of the cost.

I received a letter yesterday from an elderly couple in Geauga County, Ohio, who had worked to obtain a mortgage modification from their lender. Let me just quote from the letter. "How does one measure," they wrote, "two years of waiting for a resolution, the cost of mental anguish, the health issues revealed in the loss of the ability to sleep, depression, and anxiety over the worry of losing a spot on this earth we have called home for 40 years. All this in search for a lower interest rate."

As Ms. Nepveu will attest to today, this is an unfortunate story that too many Americans face daily. In addition to the housing crisis, too many seniors struggle to meet the unfair terms of unscrupulous lenders looking to take advantage of their vulnerable state. Congress created the Consumer Financial Protection Bureau with the sole mission of protecting consumers from these bad actors. Unfortunately, many of these activities, as we have heard many times here in this Subcommittee and elsewhere, are perpetrated by nonbanks and the Consumer Financial Protection Bureau does not have authority over these nonbank lenders until a full-time lender is confirmed. So I again urge my colleagues to confirm Rich Cordray, a former colleague of Attorney General Humphrey and an Ohioan and former Attorney General of Ohio, so that the Bureau can use its full authority over nonbank lenders.

Yesterday, the other Senator Brown, Scott Brown from Massachusetts, told the Boston Globe that he supports Rich Cordray and believes he deserves an up or down vote. I am confident on an up or down vote he will be confirmed. No one has expressed any real doubt about his qualifications. It is a political statement made by some 40 Republicans in this body. Never in the history of the Senate, the Senate Historian told me, has one party blocked someone's nomination simply because they do not like the agency or they want to rewrite the rules governing the agency.

I look forward to hearing from Mr. Humphrey, who will share his plans for the CFPB's new Office of Older Americans. Mr. Humphrey comes from a distinguished family of public servants, one of my heroes, Hubert Humphrey, who may have been, I would say with Senator Kennedy, perhaps the two best Senators of the last century. I was proud to have met your father a couple of times, of course, never had the opportunity to serve with him, but was an admirer from afar for many years.

As our seniors increasingly become targets of more and more financial predators, we must empower the CFPB with all the tools necessary to protect our seniors. We look forward to hearing from you today and I will introduce the two panelists.

Hubert Humphrey III, Skip, joined the Consumer Financial Protection Bureau as the Assistant Director of its newly established Office of Older Americans in October, just a month or two ago. Mr. Humphrey has spent much of his professional life working to protect consumers, serving as a Minnesota State Senator for 10 years and as Minnesota's Attorney General for 16 years. He then initiated broad-ranging educational initiatives that helped reduce crime targeting consumers, especially those who are older and more vulnerable. He worked on behalf of seniors as President of the Minnesota AARP and until recently served on that organization's national board.

Julie Nepveu is testifying on behalf of that organization, the AARP, a nonprofit, nonpartisan organization that helps people age 50 and older. I do not quite get this 50 thing. I was even more amazed by how you found me, like, every third day after my 50th birthday——

[Laughter.]

Senator BROWN.——and I will not ask you about that, but—well, I was not that amused, but that is OK.

[Laughter.]

Senator BROWN. She focuses on consumer protection, housing, disability, and low-income issues as Senior Attorney, AARP Foundation Litigation. She formerly practiced law with the Lawyers' Committee, a great organization for civil rights under law, and Legal Services of Northern Virginia on fair housing, race discrimination, Federal housing, predatory lending, and community accountability.

I want to welcome both of you. Mr. Humphrey, if you would begin.

**STATEMENT OF HUBERT H. "SKIP" HUMPHREY III, ASSISTANT DIRECTOR, OFFICE OF FINANCIAL PROTECTION FOR OLDER AMERICANS, CONSUMER FINANCE PROTECTION BUREAU**

Mr. HUMPHREY. Thank you very much, Chairman Brown. I also want to thank Ranking Member Corker and the other distinguished Members of your Committee for the opportunity to speak——

Senator BROWN. Let me interrupt for a moment. Mr. Corker will be here shortly. He is on a call with his leadership. Just sorry I did not mention that. Please proceed.

Mr. HUMPHREY. All right. As you mentioned, my name is Hubert Humphrey and I joined the Consumer Financial Protection last month to serve as its Assistant Director of the Office of Older Americans. The CFPB was created by the Dodd-Frank Act and launched in July of this year. The mission of the Bureau is important to all Americans to ensure that markets for consumer financial products or services are fair, transparent, and competitive, and that all consumers have access to those markets. We will fulfill this statutory charge by making rules more effective, by consistently and fairly enforcing those rules, and by empowering consumers to take more control over their economic lives.

The Dodd-Frank Act specified certain populations that needed focused attention. Among them, students, service members, and older Americans. Older Americans have been hit hard by the economic crisis, Mr. Chairman, as you mentioned. Many over 62 are not financially prepared for retirement, and financial exploitation of senior citizens is growing.

When our Office for Older Americans at the CFPB launched last month, it did so with a focus on ensuring that seniors have the information that they need to make sound financial decisions, and it launched with an emphasis on helping seniors identify and avoid unfair, deceptive, and abusive practices targeted at them. Both of these focus areas were mandated by the Act.

The need to help older Americans is great. As seniors top 50 million and soon will make up 20 percent or more of the population, they will face more challenges to maintaining economic security, supporting long anticipated retirement plans, and exerting control over financial decisionmaking.

Though I have been on the job for less than a month, I have already seen the critical need for the CFPB when it comes to older Americans. Take, for example, Mr. Chairman, Suzanne of Kentucky. The CFPB helped Suzanne. Now, she is 81 years old. They helped her to reach an agreement with her credit card company after she had been trying to do so for herself for more than 6 months. After losing her job in 2010, Suzanne realized that she could not keep up the minimum payments on her longstanding credit card debts. She asked the credit card companies to cut the minimum monthly payments. One issuer did not agree.

After repeated appeals after the many phone calls, she simply could not keep up the payments. She said that she was at a point of tears. The company started to charge her $25 in late fees and her interest rates spiked. She said that she had hit a wall and just did not know what to do. Well, eventually, she wrote her Congressman and he advised her to contact the CFPB.

Ten days after the CFPB contacted the credit issuer, the company credited back all of the interest charges and late fees. Suzanne told the CFPB that she was elated with the results. Her balance now is zero. So while the Bureau has much work to do, we are already starting going forward.

I have spent my first few weeks with the Bureau listening and learning from older Americans like Suzanne. I traveled to California, Florida, Massachusetts, where I met with seniors, State law enforcement officials, and other concerned groups. They asked me to help build awareness about one of the biggest financial issues facing seniors, elder financial abuse and exploitation. It has been called a hidden epidemic, the crime of the 21st century, and it is a serious growing problem that we need to address. According to one survey and study, Americans over the age of 65 lost more than $2.9 billion in financial abuse and exploitation in 2010. That is a 12 percent increase from the $2.6 billion estimated in 2008.

Now, as I listened, many talked about the shame and embarrassment people feel when they are tricked or taken advantage of. People need to feel comfortable speaking about these issues. At the CFPB, we want to raise public awareness. We want to give people a forum and to help them have the courage to speak up about this underreported problem. We do not want them to hide anymore.

I am honored to have this opportunity to help older consumers navigate their way to better financial decisions and a more secure financial future.

Thank you, Mr. Chairman. I look forward to your questions and the Committee's questions.

Senator BROWN. Thank you, Mr. Humphrey. I should add, I was a great admirer of your mother, too, and not just talk about your father. Thank you.

Mr. HUMPHREY. Thank you.

Senator BROWN. I am and was. Thank you.

Ms. Nepveu.

**STATEMENT OF JULIE NEPVEU, SENIOR ATTORNEY, AARP**

Ms. NEPVEU. Chairman Brown, Ranking Member Corker, and distinguished Members of the Subcommittee, good afternoon. I appreciate this opportunity to offer the views of AARP on financial security issues facing older Americans. AARP would like to thank Chairman Brown and Ranking Member Corker for holding this hearing.

Financial fraud is becoming increasingly sophisticated and harder to combat. Older consumers, as Mr. Humphrey has mentioned, lose billions of dollars every year to fraudulent, abusive, or deceptive practices. Consumer fraud is listed by every State as the major nonviolent crime perpetrated against older people. Many consumers do not know how or where to complain to seek a remedy for fraud. Embarrassment, fear of being deemed competent and losing control and independence of their financial abilities may make them reluctant to pursue a remedy when an abuse occurs. Reduced capacity to make financial decisions is a significant problem for many older people. Therefore, we must commit to increasing consumer protections to prevent harmful financial services and practices.

AARP has identified numerous practices that continue to threaten the financial security of older people. These include mortgage lending fraud and deception regarding fees and interest rates and disclosures, leading to higher payments when borrowers would qualify for more favorable terms. Such mortgage lending practices ultimately lead to foreclosure, an area itself rife with fraud and abuse, and they make people vulnerable to mortgage rescue scams that cost older homeowners millions of dollars in fees but do not save their homes.

Practices of the credit card industry using complicated terms and hidden fees that hide the true cost of credit make comparison shopping impossible. Prepaid debit cards that do not provide protection against theft, loss, or unauthorized use and that charge high fees to access funds, check balances, or even to decline a transaction. Other high-cost loans, with interest rates that can exceed 400 percent, seriously threaten the financial security of the most vulnerable borrowers. These include bank overdraft fees, live loan checks, auto financing, payday loans, auto title loans, and tax refund anticipation loans.

AARP would like to thank Senators Merkley and Brown for introducing the Deceptive Loan Check Elimination Act.

Older consumers, in particular, are highly vulnerable to the increasingly aggressive and often illegal debt collection tactics used to collect disputed or stale debts or debts caused by identity theft. Complaints about debt collection abuse have topped the charts of the State AGs and the FTC for over a decade. Rampant fraud by debt collectors is taxing the resources of State courts and State Attorney Generals and must be addressed comprehensively.

Forced arbitration makes it impossible for consumers to obtain a remedy for violations of the law, essentially giving businesses a "get out of jail free" card and allowing them to keep their ill-gotten gains. The Federal preemption of State law that would protect a consumer's access to meaningful, effective court remedies places an unsustainable burden on cash-strapped public enforcement systems to monitor harmful and deceptive action practices.

Additional examples are provided in my written testimony, and I would be happy to supply you with real-life examples of some of these problems if you would prefer.

Now, Chairman Brown asked me to address the role of the Consumer Financial Protection Bureau in restoring consumer financial protection. AARP supports an independent CFPB that has the sole mission to ensure that American families can trust the financial products they use to help them achieve their goals and to avoid traps that lead to financial distress. Surveys conducted by AARP demonstrate that Americans age 50-plus, regardless of their party affiliation, want Congress to act to hold financial institutions accountable.

The full potential for the CFPB to be an effective cop on the beat, protecting Americans from deceptive and unfair financial practices, will not be realized until there is a leader in place and the agency can use all the powers it has been granted. We appreciate that the Senate Banking Committee has moved forward to fill this critical leadership position and we urge the full Senate to move quickly to continue this confirmation process.

Of particular interest to AARP has been the creation of the Office for the Financial Protection of Older Americans. This office is tasked with improving the financial decisionmaking of older people and preventing unfair, deceptive, and abusive practices that are targeted at them. AARP is particularly pleased that former AARP board member, Hubert Humphrey, has been selected as the head of this office. As the former Attorney General for Minnesota and an ardent and successful consumer advocate, we are assured that the financial security needs of our members will be identified and addressed.

AARP looks forward to continuing to contribute to the effort of protecting older consumers from financial fraud and abuse. Thank you for the opportunity to share AARP's views with you today.

Senator BROWN. Thank you, Ms. Nepveu.

We hear about a lot of financial products, some newly created, some that have been around for a while, some slightly changed, that are used in these scams. One, the product of reverse mortgages, which is not by definition or by nature necessarily an abusive kind of product or one that can create scams necessarily, but we hear banks that have typically offered these, some of these banks are exiting this whole idea of doing reverse mortgages. We also hear reports about alternative nonbank lenders gaining access to seniors' Social Security and other Government benefits.

What do you make of this, that nonbank lenders, if you will, have gotten into the reverse mortgage and have access to this Social Security information? Ms. Nepveu, why do you not start. What do you make of this, where this is going?

Ms. NEPVEU. Well, the reverse mortgage market has long been problematic for seniors. It provides an amazingly lucrative field for scammers and for high fees to be sucked away from people's homes. But it is also a source of equity for folks to tap when they are retiring and they do not have income but they have their home asset. So it is a very important area that needs to be available for seniors to use, but it also needs to have special protections because of the serious harm that can affect seniors.

Now, the alternative finance markets and the mainstream banks both are in the same boat in that they each can charge high fees for this process. They both can cause seniors to lose their homes. They can both make the value of the property that would be available to seniors to tap for their equity less than they otherwise would have available to them.

And so we are very concerned with the reverse mortgage market and——

Senator BROWN. And concerned, too, about banks, not just nonbanks——

Ms. NEPVEU. Banks and nonbanks, that is right.

Senator BROWN. And some of the abuses have also been—if not abuses, the lack of perhaps financial literacy has played a significant role in making these more attractive to seniors than maybe in reality they are, even with banks?

Ms. NEPVEU. Well, you know, the financial literacy problem with reverse mortgages is somewhat different because in a reverse mortgage situation, each person who gets one of these mortgages is required to have counseling. And in the counseling process, they are given quite a lot of information, and these counselors are usually HUD-certified counselors. The problem is that sometimes the game changes in the middle. They are told for many years that people will be protected, and then at the end of the day, they are not protected.

So there is more to be done on that score and I think that even with the counseling, there are still a lot of very high-cost loans out there. At the moment, I am not sure that there are many loans being made in the reverse mortgage area because the lending markets are so poor, the home values are dropping, and that makes it more difficult for people to tap any equity.

Senator BROWN. OK. Thank you, Ms. Nepveu.

Mr. Humphrey, the Wall Street Journal a couple of years ago reported there are no publicly available statistics on the proportion of payday loans that are backed by Social Security and other Government benefits. Treasury is charged, as you know, with ensuring that Social Security payments reach beneficiaries, but Treasury will say that there is a long, proud history in this country of never being late and these benefits always being whole and all. But privacy rules prevent Treasury, they will tell you, from monitoring recipients' bank accounts without cause.

The Social Security Administration says it is not responsible once benefits have been paid out. Of course, they say that, and I understand that.

How do you envision—I know you have only been there a month, but how do you envision CFPB and specifically the Office of Older Americans filling these information gaps for seniors as this moves forward?

Mr. HUMPHREY. Mr. Chairman and Members of the Committee, thank you for that question. I think it is a very important point. As I receive my Social Security checks, I want to make sure that they are safe and secure and that the information is not shared with anyone that I do not want it shared with.

But may I just say that, obviously, Members of Congress have learned that this is a very important area, particularly in the area of the reverse mortgages. That is why there is a study that has been requested and we are in the process of that review. Part of some of the things that you are talking about, I am sure will be taken up in that review, and I look forward to the results because the Bureau is really operating on the basis of facts, on data, on the research that is available and will be available in order to come forward with rules, regulations, and proposals which we have been charged to give in the future to Congress.

Senator BROWN. Thank you.

Senator Merkley.

Senator MERKLEY. Thank you very much, Mr. Chair, and thank you for convening this gathering. I appreciate the testimony from both of you and the work you are doing to protect older Americans, senior Americans.

I wanted to start by asking, if I could, Ms. Nepveu, if you could expand a little bit on the issue involving live loan checks. Obviously, it is something the Chair and I are very concerned about, but you bring a national perspective to this, and if you could fill us in a bit, that would be helpful.

Ms. NEPVEU. Certainly. Thank you for the question, sir. AARP supports the bill that you and Mr. Brown have both—the Deceptive Loan Check Elimination Act. Essentially, what this is is that banking entities will send a check to a person unsolicited and tell them that they have access to this money. What they do not necessarily tell the people is that they have access to a loan at a very high interest rate, that once they cash that check will cause them to be on the hook for the full amount.

It is a growing problem. In the 1970s, when credit cards started sending out credit cards to folks and saying, this is now your credit card, that practice was stopped because it is so dangerous. People's checks get lost. They get charges sent against them. They do not necessarily want the money. They are not necessarily capable of using the money wisely. But most importantly, it is deceptive. People do not understand what it is.

So this bill will go a long way to helping to prevent that kind of problem.

Senator MERKLEY. Thank you, and I will tell you, some of the things that I have noticed on these, sometimes there is a statement in very small print on the back that many seniors would be unable to read. I have seen it in light gray print that makes it difficult to read. And even if you could read it, a lot of folks assume that this is a refund of some sort if it is coming from anyone they might have had a business relationship in the past with. Do you see those kinds of issues around the country?

Ms. NEPVEU. We have been seeing them, and this is not unlike a few years ago when people were sending checks for $2.50 and cramming their cell phone bills with all kinds of membership fees for a variety of things. This is not unlike that practice except we are talking about enormous amounts of money and we are talking about very high interest rates and the harm to people is much greater. It is not just a couple of dollars and they can get out of it. This is once they are on the hook for it, they are on the hook for it forever.

Senator MERKLEY. You know, as you all were doing your initial presentation, you were mentioning things such as mortgage rescue scams, credit card deception, prepaid credit cards with high and unexpected fees, the live loan checks, and so forth. I was wondering if there is any sort of estimate of these type of amount of resources we are talking about around the country.

Right now, we are having this discussion in Congress in the supercommittee and in the appropriating committees about resources for safety net, resources for this program or that program. But it seems much better to help people have strong financial lives so that they never have to resort to a safety net in the first place.

Ms. NEPVEU. Right.

Senator MERKLEY. And so do we have a sense of the scale? And I realize maybe you are just looking at it from the viewpoint of the seniors, but that is fine, too, kind of the scale of the impact of predatory practices in shifting funds out of the pockets of seniors.

Ms. NEPVEU. I think Mr. Humphrey mentioned $2.9 billion in 2010, but I have—the Lawyers' Committee recently did a mortgage scam study, and as of July 2011 found that about $40 million had been taken out of the pockets of consumers in mortgage rescue scam fees, where the folks think they are going to save their homes and, of course, they are not. About 41 percent of that was for older folks, $16 million. And that is only the tip of the iceberg because most people would not know to report these kinds of activities.

We also know that the bank overdraft fees are taking enormous, millions of dollars of people's Social Security benefits every year, tens of millions of dollars. It is not a small problem at all. It is significant, and that is why AARP is working on these issues.

Senator MERKLEY. Mr. Humphrey.

Mr. HUMPHREY. Senator, let me just mention, the $2.9 billion, I think, is referencing the abuse and exploitation, which the point that you are talking about goes beyond that. And I have to tell you, I have only recently moved here, but I am waiting for that nice new mail to come in, and I guarantee you, I guarantee you, Mr. Chairman and Senator, there will be at least four letters telling me about all the money that is available, with checks already printed out ready to go, just as you have mentioned, and it is a tragedy because it is the same thing as you have mentioned, Senator, in the gray, small print, legal terms. Those are the kind of things that confuse seniors, that we need to have provide helpful information.

And what I would like to do is, as charged by the Act, I want to help bring together, to collaborate together with other State and Federal agencies as well as private and nonprofit organizations to see that we are able to provide the information for a very active and robust literacy, financial literacy. That is really what is important.

And then if when you combine that, Senator, if you combine that literacy so that individuals can make these crucial decisions in a well informed way, if you combine that with good supervision and strong enforcement, then I think you have the kind of impact that will allow good and honest businesses to compete in the marketplace with a fair set of rules and regulations and laws and will remove those that are causing the trouble, because they cause trouble not only for seniors and for the consumer, they cause trouble for honest businesses.

Senator MERKLEY. Robust competition within fair rules sounds tremendous. Thank you for dedicating yourself to that. Thank you.

Senator BROWN. Thank you, Senator Merkley.

Mr. Humphrey, I mentioned in my remarks I attended a senior financial education conference in East Cleveland some months ago. You noted in your testimony that consumer education is one of the tools that the Bureau would be able to use to protect consumers and especially your Office of Older Americans will have a focus on ensuring that seniors have the financial information they need prospectively.

What is the role for financial education? Would you just talk about sort of your philosophy there, including collaboration by banks, not-for-profits, working with them and not always in some sense working against their practices, particularly for the nonbanks but for anybody, but how you work with them to sort of promote financial literacy for their customers and for the people you work for.

Mr. HUMPHREY. Well, Mr. Chairman, thank you. I think we have to recognize that there are many very good actors out there that are doing good work. They are trying to provide the information, the training, the advice, the good work that needs to be done to help seniors really have the tools to make important decisions as they age.

So the first and most important thing of our office is to help bring that together, and that is one of the charges that the Act calls for, is for us to help coordinate and collaborate together to find the best practices, to inform those so that we can work together. And I see that as something that I have tried to do all of my public career. When I was Attorney General, I can tell you that, for the most part, it was very helpful to have a Federal presence as we were taking enforcement actions and as we were taking preventive actions and working with other organizations.

I see that as somewhat the same role. You asked my own personal view. I think it is very important that we have the combination, as I mentioned to the Senator, that you have the combination of education for prevention and for proper individual decisionmaking and enforcement that provides then for an honest marketplace where these financial transactions can take place and be helpful, not only to the businesses but to the customer.

Senator BROWN. Where does the not yet confirmation of Attorney General Cordray—how does the fact that he has not yet been confirmed hamper your efforts to do that?

Mr. HUMPHREY. Well, I think that, obviously, having a Director will help us in the nonbank area. That will allow for greater supervision. In order to take on these whole questions along the framework of deceptions and scams and others, you need to have that fullness of supervision and enforcement, and I think that would be helpful.

There are a lot of things we could do. As I said, we have a lot of work to do with colleagues and with the partners that we have around the country. As I spoke and I visited with friends in California and Florida and Massachusetts, I asked them the question, what will a Federal presence—what do you see as the Federal partner act in your role, and I asked them to share that with me as they have an opportunity to think about that, and I am getting information back. We have not gotten all of it yet. We are going to look and find out what that role and relationship, that partnership, that strong partnership will be.

Senator BROWN. Thank you.

Ms. Nepveu, I mentioned two elderly Ohioans who had such trouble navigating the whole mortgage modification process. What do you hear from your members about their experiences with mortgage modification, and include in your answer recommendations on how this Committee, this Subcommittee, this full Government, the Government generally, can help in this process.

Ms. NEPVEU. The mortgage modification process has been a disaster, frankly. The approximately 40 to 50 percent of the folks who seek modifications are deterred even before they get in the door because they are not yet in default. They cannot change anything until they step over that cliff. And then once they are in that cliff, 30 percent find that their paperwork gets lost, or they get it sent back because they filled it out in the wrong language, or they get it sent back because the people have decided their home is not worth enough money anymore, or it is sent back because they are in default, of all things.

We also see problems with dual tracking. People's homes are being foreclosed at the same time that their mortgage modifications are going through.

There have been a number of cases in litigation recently where the homeowners have been led to believe that they are getting a modification, they have met all the terms of the trial modification, and then the bank says, no, never mind. We are not going to do it.

Senator BROWN. Led to believe by whom, by the banks——

Ms. NEPVEU. By the banker. By the servicers.

Senator BROWN. By the servicer?

Ms. NEPVEU. So the servicer says, OK, if you will follow this, make these payments at this rate for 3, 6 months, that is your trial modification period. They meet all those terms, and then at the end of that time, they said, well, we are going to foreclose on you anyway.

Senator BROWN. Would the servicer know that was what he or she was going to do 3 or 4 months before the foreclosure, in your mind?

Ms. NEPVEU. It is difficult to know what the servicers know and do not know. We know that they earn money by servicing these loans and they earn money by having—some of them earn money having these properties go into foreclosure.

Senator BROWN. Then they are not——

Ms. NEPVEU. So the incentives are not in the—they are not aligned with the interests of the homeowners. The incentives of the servicers are not the same as the incentives——

Senator BROWN. The servicers in these cases where they say to the homeowner, if you pay this amount for the next 6 months, then we will work this out, the servicer is not violating a contract when they still send—the servicer is not violating the law——

Ms. NEPVEU. Well——

Senator BROWN.——or are they when they foreclose at the end of the 6 months?

Ms. NEPVEU. That is an open question at this point. There have been some cases where courts have held they are in violation. They are allowing those cases to go forward in saying that the banks do have some kind of obligation——

Senator BROWN. Who is able to put it in a court of law to bring suit in that case?

Ms. NEPVEU. The person seeking the modification.

Senator BROWN. Can——

Ms. NEPVEU. So they say, here is a contract claim. You made us a promise and we are challenging——

Senator BROWN. Who has the financial wherewithal to do that if they are about to be foreclosed on?

Ms. NEPVEU. Well, a lot of times, these are done by attorneys who are seeking to protect homeowners. They are legal services attorneys. They are consumer law attorneys. They will only get paid at the end of the day if they win the case.

Senator BROWN. And it is a relatively small percentage of these cases, I assume, that they end up in court like that.

Ms. NEPVEU. Very few. Very few cases end up in court. And right now, as I said, there is a big problem with courts saying, just because there was a HAMP program protecting you does not mean that you have a right to enforce that. So they are saying that the fact that there is a HAMP program does not provide any protection to these folks, and there is no contract claims above that. There are several cases in several of the circuits at this point where that is a huge problem and we are watching those cases very carefully.

Senator BROWN. Thank you, Ms. Nepveu.

Senator Merkley.

Senator MERKLEY. Thank you, Mr. Chair.

I want to continue on this because I just want to affirm that these are the stories we hear every day, and so many people feel the modification program was turned into an additional scam. That is, they were told to stop making their payments so they would qualify. Then huge fees were run up which diverted their funds. And then they were told, you have not made your payments, so you do not qualify. That is—it is just obscene that Americans should be subjected to that by the one major program designed to assist them escape from the predatory mortgages they already had or other impacts of the economy on working families.

Ms. NEPVEU. That is right, sir. And in addition, what we are doing is kicking the can down the road because we are going to have—even where we have some kinds of modifications, the kinds of modifications that are being made are going to explode. Again, they are entering into more adjustable rate mortgages or ending up with balloon payments at the end of the day that people will not be able to pay.

Senator MERKLEY. I wanted to ask you all about a completely different form of problem, and this is one that came to light, because I remember my family experienced it, in which a grandchild called, only it was not really the grandchild, it was a scammer calling the member of the family and putting a young man, or at least a young male voice on the line saying, "It is me, Grandma. I have been stopped at the border with illegal drugs. They are holding me and they are not going to allow me out of here until I post bail."

And then the police get on the line—in this case, it was Canadian police—saying, "well, you know how rough the treatment is of folks who are detained in this type of situation with drugs at the border, and, of course, I know you do not want your grandson submitted to that sort of rough treatment and so you need to go down and immediately, as soon as you post bail, we will release him." Meanwhile, the young man gets back on and is sobbingly asking the grandmother not to tell the parent because he is so embarrassed by the situation. Terrible, terrible, stressful situation.

After this happened within my family, I heard about it happening often. Is this type of telephone scam something you see a growing amount of? What tools do we have to counter it? What should we be doing to protect our retired Americans, especially now that so much information about family relationships is available on the Web? There are genealogical sites that tell you who is who. There is all kinds of information the scammers can bring to bear to make it seem very real.

Mr. HUMPHREY. Senator, if I could just respond, you describe very aptly the tragic situation that happens all too often. And now with the detailed information that seems to be available on the Internet, it becomes very convincing over the phone to a person who may be isolated, who has strong feelings about family, is concerned, and so this is the exact kind of situation we hope in working together with partners and bringing together and figuring out the best practices for financial education to help give seniors the tools, the courage to give a call and say, I will get back to you. Let me get hold of someone that I can find out how we can go ahead with this so that they can make the call to the proper authorities and find a way to stop that kind of a scam. That is absolutely crucial.

And unfortunately, it happens all too often, and it happens to all of us. I was sitting in a meeting in Florida and I received an email that said that, unfortunately, there had been a delay in payment that was supposed to be made from a bank in London and that all I had to do was give the authority to go forward with someone in South Africa to get all this money. I mean, the scams are unbelievable that are out there and we have to do something to not only provide the education and the effort of good knowledge about the marketplace, but we also need to follow up with the enforcement to see that these things do not happen.

Senator MERKLEY. Thank you.

Mr. HUMPHREY. It is tragic. It is tragic.

Ms. NEPVEU. I agree, sir, and one of the problems is the enforcement side of it, and when Grandma gets the call, she is going to call her bank and try to create a remotely—create a check. She is going to use the banking process to get the money to this scammer. The banks need to be partners with consumers in these scams, not to allow this to happen, because the bank should know that this is bizarre. The bank should know that Grandma never sends money to Joe Scammer in Canada or in Nigeria or anywhere else. The bank should be alert to these and help the consumers avoid these, because Grandma may be isolated. She may also have limited capacity to understand what is going on. She also may be bullied into doing some of this stuff.

You know, sometimes the family members are the ones creating the problem. Sometimes Grandson is calling Grandma and getting her to send money. Whether it is really Grandson or not really is not the point. The point is, she is being abused financially and the banks need to do more to protect, and there are some regulations. Regulation CC was amended several years ago to improve the ability of banks to stop these practices, but more needs to be done in this.

Senator MERKLEY. Thank you. Well, all we can do to help folks on that, it is a terrible situation. They prey on every good instinct of our senior citizens to back up their family and help someone in trouble.

You mentioned remotely created checks, and it is my understanding that these played a more important role before credit cards. But now, often, are utilized—my understanding is they are being utilized to bypass. We have in Oregon State something that I was involved in when I was Speaker there, a protocol that puts a 36 percent interest rate cap, not just on payday loans but all consumer loans to avoid the payday loans kind of finding a way to bypass the payday loan legislation under consumer loans. And we also had Internet legislation to close that loophole.

It appears that the way that folks are getting around that, because the legislation essentially makes it so people cannot legally collect on Internet payday loans, is remotely generated checks done in advance. Is there still a legitimate role for remotely generated checks that outweighs their use in a number of predatory situations?

Ms. NEPVEU. Did you want to—I think there is still a legitimate reason to use those. For example, if my credit card bill is due this afternoon, I am, like, oh no, I forgot to pay it. I would like to be able to pay it and avoid the $35 late fee. But banks need to be alert to who is—you know, if Discover calls up and says, I have got this remotely created check and I want to process it, that is one thing. If the "telemarketers are us" call up and say it, then the bank should be a little bit more suspicious.

For example, Wachovia got in trouble with this several years ago because they were allowing telemarketers to take money out of older persons' accounts and the OCC entered into a settlement with them to stop this practice.

We can be a little more selective. We do not have to get rid of remotely created checks altogether to solve this. We do not have to get rid of prepaid debit cards altogether to solve these problems. But we have to be careful about how we allow these different programs to go forward and whether or not appropriate protections are in place before they get out there and do harm.

Mr. HUMPHREY. Senator, I would like to just add on to say that I think, also, that there are some legitimate uses. I can tell you that when I pay electronically my property taxes back in Minnesota, I usually do it by giving the information or the routing number and the rest. I have been asked other times to not do that, or to give it out, and I have absolutely refused. In fact, just 2 days ago, I was asked and I said, I am sorry. I do not give that information out.

Now, we need to make sure that it is used properly, and I think your point is very well taken. One of the things that the Bureau has is a good research component, and I would hope that they will be looking at these kinds of uses, the proper uses, the improper uses. One of the challenges and one of the charges that we have in the Office for Older Americans is to make sure that when rules and regulations, when research is done throughout the Bureau, that there is a sensitivity to the senior concerns and needs so that these kinds of situations are taken into account, not just for a person who is 40-, 50-, 60-years old, but for someone is 75 to 80 years old. So I would hope that we would be looking carefully at those things and obviously respond to your concerns on that.

Senator MERKLEY. Thank you. If we have time, I will ask one more question.

Senator BROWN. Proceed.

Senator MERKLEY. This goes back really to where Senator Brown started in talking about reverse mortgages. One feature that I had not previously been familiar with is that sometimes loan originators really push to have a younger spouse deed over their share of the house to the older spouse in order to provide larger draws, and then if the older spouse dies, the younger spouse does not own the house and would have to pay off that reverse mortgage in order to stay in the house. I had not heard about this before and was wondering if either of you had any insight on that particular strategy.

Ms. NEPVEU. Yes, sir. There are two parts of that. The first thing is that the reverse mortgage statute provides protection for spouses so that they are not supposed to be kicked out of their homes at the end of the—at the death of the spouse who took out the mortgage. That particular provision is not being enforced by HUD and AARP currently is involved in litigation against lenders and HUD to make that actually happen.

But AARP also recently settled a lawsuit against HUD to require that when the surviving spouse—because for 17 years, people were told, if your spouse dies, you will still be protected. You will still be able to stay in the home. You will never have to pay more than that house is worth. It was fine until the mortgage market, the bottom dropped out, and now homes are not worth what the mortgages were paying. Now these spouses, surviving spouses, usually older women, are being told they have to pay back the entire amount of the loan when the house is only worth a fraction of what it used to be worth.

So AARP filed a lawsuit to get them to reverse course, again, to go back to where they were for 17 years, and say they never have to pay more than 95 percent of the value of the home because it is a non-recourse loan.

Senator MERKLEY. Mm-hmm.

Ms. NEPVEU. And people were promised that if the one spouse was not on the deed, they still would get to stay in the home and they still would not have to pay back more than that 95 percent, because the lender could pay the 95 percent. The neighbor could pay the 95 percent. But the person who has been living in that home for 40 years is being required to pay 150 percent if that is what the value of the home was and it has fallen that much and that is just not fair.

Senator MERKLEY. Mm-hmm.

Ms. NEPVEU. It is not what the legislation required, either.

Senator MERKLEY. Thank you.

Mr. HUMPHREY. Senator, I would just add that this, I think, makes it clear how important it is to have good advice given, to have a counselor that you can trust. One of the challenges and charges of the Act is for our office to monitor the certifications and the designations of senior advisors and we are working with States who already have some model legislation in this area to make sure that when these complicated situations are explained, that it is really coming from a person that has the certification, that knows the information and can provide the proper advice to seniors.

So it is terribly important in these rather complex situations, particularly as they are aggravated by the current market. You know, I am sure that most of your constituents, their primary asset, as mine is, is my home. And so we are talking about the absolutely vital interest of the people in this country and of older Americans.

Senator BROWN. Thank you, and Senator Merkley——

Senator MERKLEY. Thank you, Mr. Chairman.

Senator BROWN.——thank you very much. I wanted to add on to something sort of precipitated by your comments, Ms. Nepveu, and then I will wrap the hearing up.

In your written statement, Mr. Humphrey, you had said the CFPB Office for Older Americans will pay special attention to the problems facing older women.

Mr. HUMPHREY. Yes.

Senator BROWN. Women live longer, as we know, and according to one estimate, nearly half of women over 62 outlive their savings, and that makes, obviously, what you do and what you both do, really, about these reverse mortgages especially important.

So thank you. Senator Merkley, thank you for joining us. Thanks to both witnesses.

I wanted to enter one thing in the record. I just got notice that, as you know, one of the provisions in Dodd-Frank is that there be aggressive oversight of this Consumer Financial Protection Bureau, partly because some Members of the Senate and House are not so supportive of this agency and this bureau and want to make sure that we do the right oversight. In this result, the law required—Dodd-Frank required the GAO to do an annual financial audit.

The GAO released its annual financial audit recently, and I would like to read three points that were made. The GAO's financial audit released this week found three things—primarily three things: That CFPB's financial statements were, quote, "presented fairly in all material respects in conformity with U.S. Generally Accepted Accounting Practices;" two, that CFPB, again, I quote, "maintained in all material respects effective internal control over financial reporting as of September 30 of 2011;" and three, and I quote again, "CFPB had no reportable noncompliance with laws and regulations."

That tells me a lot. That is not always the case in a GAO audit. Congratulations to that bureau. More importantly, it speaks to me of the importance of finally confirming a Director.

Senator BROWN. Thank you both again. If any Members of the Committee, Senator Merkley or others who were not here, have questions they submit to you, we would appreciate an answer. We will submit them to you, if there are any, in the next 5 days, say, and if you would, get an answer to us as quickly as possible.

Thank you for testifying. Thank you especially for your public service, both of you, and your good work.

The hearing is adjourned.

[Whereupon, at 4 p.m., the hearing was adjourned.]

[Prepared statements supplied for the record follow:]

## PREPARED STATEMENT OF HUBERT H. "SKIP" HUMPHREY III

ASSISTANT DIRECTOR OF THE OFFICE FOR OLDER AMERICANS
CONSUMER FINANCIAL PROTECTION BUREAU

NOVEMBER 15, 2011

**Financial Security Issues Facing Older Americans**

Thank you Chairman Brown, Ranking Member Corker, and distinguished Members of the Subcommittee for the opportunity to speak with you today about the Office for Older Americans at the Consumer Financial Protection Bureau (CFPB).

My name is Hubert Humphrey and I joined the Bureau last month to serve as its Assistant Director of the Office for Older Americans. As an Attorney General and State Senator in Minnesota, I became keenly aware of the many financial challenges that consumers face. Then, as a national board member of the AARP, I learned about the hardships of older Americans. Now I look forward to putting these past experiences to good use in helping our Nation's senior consumers in the financial marketplace.

The mission of the Bureau is important for all Americans: To ensure that markets for consumer financial products or services are fair, transparent, and competitive, and that all consumers have access to those markets. We will fulfill this statutory charge by making rules more effective, by consistently and fairly enforcing those rules, and by empowering consumers to take more control over their economic lives.

The CFPB was created by the Dodd-Frank Wall Street Reform and Consumer Protection Act. The law created the CFPB as a point of accountability for consumer financial protection. The statute also provided the Bureau with a wide range of tools to do this—research, supervision, rulemaking, enforcement, and consumer education. Having this full range of tools means that the Bureau can use the appropriate one in the smartest way possible—matching problems to solutions.

Since launching the Bureau in July of this year, Bureau staff have been traveling across the country to meet and listen to consumers, consumer and civil rights organizations, big banks, community banks, investors, and trade organizations. The Bureau has also begun many important projects and programs, including taking and resolving consumer credit card complaints, supervising large banks, streamlining two federally required mortgage disclosure forms, and establishing a private education loan ombudsman to help students and their families with student debt problems. And, importantly, the Bureau launched its efforts to help older American consumers—well before the statutory deadline of January 21, 2012 to set up this office.

When the Dodd-Frank Act created the CFPB, it specified certain populations that Congress felt needed focused attention—students, the underserved, servicemembers, and older Americans. Through the Consumer Education and Engagement Division, the Bureau is working on serving all these groups. In the Division's Office for Older Americans, we are hiring a highly experienced and competent staff. Our work and planning is underway. We have an Older Americans home page on the CFPB Web site, *www.consumerfinance.gov,* where people can go to find information and resources. And most critically, we are engaging with older consumers and already helping them.

Take, for example, Suzanne, of Lawrenceburg, Kentucky. The CFPB helped Suzanne, 81, reach an agreement with a credit card company that saved her more than $7,000 and put her on firmer financial footing. She lost her job in 2010 and has not been able to find work since. After being unemployed for 9 months, she realized she could not keep up the minimum payments on her longstanding credit card debts that she had been steadily paying off for years. She asked the card issuers to cut the minimum monthly payments. One issuer agreed but the other only offered a modest reduction. After repeated appeals over many months and many phone calls, she sent what she was able to afford anyway. The issuer started to charge her late fees and her interest rate spiked. Eventually, she wrote a local Congressman who advised her to contact the CFPB. Ten days after the CFPB contacted the credit card issuer, the company credited all of the extra interest charges and late fees. "I was elated," she said. Suzanne's balance is now zero.

This is just one of the CFPB's success stories helping older Americans in the first several months of operations. As the Bureau moves forward, it hopes to help more people like Suzanne.

Older Americans have been hit hard by the economic crisis. Many of those in the 62-plus population are not financially prepared for retirement, and financial exploitation of older Americans is growing. When the Office for Older Americans launched last month, it did so with a focus on ensuring seniors have the financial information they need to make sound financial decisions, and it launched with an emphasis on helping seniors identify and avoid unfair, deceptive, and abusive practices targeted at them. Both of these focus areas were mandated by the Dodd-Frank Act.

The need to help older Americans is great. As seniors top 50 million in number and soon will make up 20 percent of our population, they will face more and more challenges to maintaining economic security, supporting long-anticipated retirement plans, and exerting control over financial decisionmaking.

One of the tools that the CFPB has to help older Americans is the unique opportunity to enhance, help coordinate, and promote efforts of senior groups and community organizations, faith-based groups, financial services providers, adult protective services agencies, and State and Federal regulators. There is great work being done by many of these groups right now—the CFPB can coordinate and streamline those efforts and help amplify them where needed.

Under the Dodd-Frank statute, the CFPB's Office for Older Americans is specifically tasked with several functions, including addressing the concerns of seniors being misled by deceptive certifications or designations of financial advisors. The CFPB will fulfill this mandate by monitoring certifications and designations and alerting Federal and State regulators about those that are unfair, deceptive, or abusive. In addition, the Office will submit to Congress and the Securities and Exchange Commission legislative and regulatory recommendations on best practices for disseminating relevant information and enabling seniors to identify those advisors that best meet their needs and to verify a financial advisor's credentials.

The Dodd-Frank Act also mandates that the CFPB promote sound financial management and decisionmaking of seniors, with a particular focus on the areas of long-term savings and planning for retirement and long-term care. To this end, the Office for Older Americans will work with the other divisions within the CFPB to conduct research and identify best practices and effective methods and tools to educate and counsel seniors. This is a common approach we take at the CFPB—because research and market analytics is an important component to what we do.

Indeed, throughout the Bureau—not just with our Office for Older Americans—we are fact-based, pragmatic, and deliberative. The CFPB will diagnose problems carefully and intelligently after examining all the evidence. Because we have different tools to choose from when we address a problem, we can be strategic in how we deal with problems. Maybe a problem is best addressed through education. Maybe it is best addressed through rule writing. Or maybe it is best addressed by examining relevant market actors and shining a brighter light on the issue.

I would like to add that the CFPB Office for Older Americans will pay special attention to the problems facing older women. Women live longer and, according to one estimate, nearly half of women over 62 will outlive their savings. They are more likely to be living in poverty than men, and are more likely than men to be victims of financial abuse and exploitation. Congress understood this need and directed the Office for Older Americans to work with a center run by the Women's Institute for a Secure Retirement, which provides financial education and retirement planning for low-income women, women of color, and women with limited English-speaking proficiency. We look forward to that work.

Though I have been on the job less than 1 month, I have already seen the critical need for an office tasked with looking out for and educating older Americans in their financial decisions. While the Office for Older Americans has much work to do, I want to draw attention to one of the biggest financial issues facing seniors and this country today—elder financial abuse and exploitation. Whether you call it a hidden epidemic or the Crime of the 21st Century, as some have, it is a serious problem that we need to address.

The numbers paint a sobering picture. According to a study by the MetLife Mature Market Institute, Americans over the age of 65 lost more than $2.9 billion to financial abuse and exploitation in 2010, a 12 percent increase from the $2.6 billion estimated in 2008. Seniors are a highly targeted group for financial fraud in part because they tend to be wealthier. The most recent available data from the Survey of Consumer Finances show that the median net worth of families headed by somebody 55 or older is about three and a half times the median for other families.

More disturbing is the $2.9 billion the MetLife study estimated represents only a fraction of all instances of financial exploitation against older Americans because elder financial abuse and exploitation is underreported. By its nature, it is difficult to measure how much financial fraud is not reported. Although estimates vary widely, studies suggest that only a small fraction of elder financial exploitation is reported. One of the reasons for underreporting is that many times, financial exploitation occurs in a person's home. Indeed, studies typically find that elder financial abuse or exploitation is sometimes committed by family members, caregivers, and trusted advisors.

These numbers are shocking, but when I hear from real victims I become even more convinced of the need in America for an office like the CFPB. I have spent my first few weeks with the Bureau listening and learning from seniors and those who serve them. I travelled to cities in California, Florida, and Massachusetts where I met with seniors, State law enforcement officials, adult protective services workers, and groups that work with seniors. They all said the same thing—we need help building awareness about elder financial abuse and exploitation. Some of the specific problems they raised include the underreporting of fraudulent and other abusive practices, the need for more robust centralized reporting of such practices, the guardianship process, and the need for more training on elder abuse and exploitation for law enforcement, financial institutions, and others.

While I was in Ft. Lauderdale, I listened to a heartbreaking story from a daughter about how her mother was placed into a guardianship without her knowledge. The guardian had virtually no qualifications to act as a fiduciary and it was months before the daughter even knew that her mother's finances were being administered by a court-appointed guardian. During the guardianship, her mother was moved to a nursing home, unbeknownst to her daughter, where she died 78 days later. Over $375,000 of the mother's estate was gone, most of it to guardianship "fees." The daughter spent 6 years in litigation to try to remedy the wrongs suffered by her mother. She now fights to help prevent this from happening to others.

Many talked about the shame people feel when they are tricked or taken advantage of, especially when it is done by family members. People need to feel comfortable speaking about these issues. At the CFPB's Office for Older Americans, we want to raise public awareness and give people a forum to speak up about their experiences and speak out to help prevent them.

I spent my public service career in State government and having the Federal Government as a partner was a great asset. I joined the CFPB because I have been struck by the response from outside the Beltway to this Bureau and specifically the Office for Older Americans. We do not yet know all the specifics of how the CFPB will address the issue of elder abuse, but the Office for Older Americans will work with other agencies such as the Administration on Aging, and it will work with elder abuse groups that have been working on these issues. We want to help stop this growing and horrible epidemic.

As Marie-Therese Connolly, a recent recipient of the MacArthur Foundation "genius" grant for her work on elder abuse, said in testimony before the Senate Special Committee on Aging earlier this year, citing a case of abuse where the son had worn ear plugs to mute his mother's cries: "We as a Nation also have been wearing earplugs. It is time that we remove them." I, along with the CFPB, will help to make the voices of seniors heard.

As a former State attorney general, I know the importance of laws and the enforcement of those laws to protect consumers and to weed out bad practices and players. But until consumers have the information, skills, and confidence to make decisions that make financial sense for them—including the courage to say no—we cannot move this country forward and we may be doomed to repeat the mistakes of the past decade. In the end, the best defense against deceptive practices and elder financial abuse and exploitation is not only tough enforcement, but also effective prevention through good education and training of all our consumers, not just older Americans.

I am honored to have this opportunity at the Bureau to help older consumers navigate their way to better financial decisions and a more economically secure financial future. I, speaking on behalf of the Office for Older Americans, look forward to working with you in the years ahead to help serve our Nation's seniors.

Thank you and I look forward to your questions.

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## PREPARED STATEMENT OF JULIE NEPVEU

Senior Attorney, AARP

November 15, 2011

Chairman Brown, Ranking Member Corker and distinguished Members of the Subcommittee, good afternoon.

As the largest nonprofit, nonpartisan organization representing the interests of Americans age 50 and older and their families, AARP would like to thank to Chairman Brown and Ranking Member Corker for holding this hearing. AARP appreciates this opportunity to appear before the Committee to offer our views on financial security issues facing older Americans.

**CONSUMER FINANCIAL PROTECTION AND OLDER AMERICANS**

A major priority for AARP is to assist Americans in accumulating and effectively managing adequate retirement assets. A key to achieving this goal is helping individuals better manage financial decisions and protecting consumers from financial fraud and abuse that can erode retirement savings and financial assets.

Although older households have long been considered among the most frugal and resistant to consumer debt, changing economic conditions—particularly declining pension and investment income and rising costs for basic expenses such as prescription drugs, health care, housing, food, and utilities—have forced many older people to rely increasingly on credit to make ends meet.[1]

To meet the challenges of this dynamic marketplace and ensure the economic security of older persons, AARP has recommended that the quality of consumer information in the marketplace be improved. We must increase the level of consumers' financial literacy, particularly among baby boomers, minorities and low-income people.

But education alone is not enough. The terms and conditions that govern credit products are often obscured because the required legal documents and consumer disclosures are beyond the understanding of a large portion of the population. When coupled with bad advice, abusive practices, or fraud, the variety and complexity of credit products can be intimidating and confusing for even the most well informed consumers. As such, we must also commit to increasing consumer protections to prevent harmful financial services and practices that—as the recent economic turmoil clearly demonstrates—threaten not only individual financial security, but also that of the Nation.

The scope and extent of the harm perpetrated against consumers by fraudulent, abusive or deceptive practices is astounding. Billions of dollars are lost every year through these practices and older Americans are disproportionately affected. Although older people make up just 12 percent of the population, they constitute a full 30 percent of the victims of consumer fraud crime. Women, who make up an increasingly larger percentage of the older population by virtue of a longer life expectancy, are the majority of the victims.

Consequently, consumer fraud is listed by every State as the major non-violent crime perpetrated against older citizens.[2]

Not only are older people more likely targets of consumer fraud, they are also different from younger consumers in the intensity of the overall impact of such abuse on their lives. Having lower or fixed income and fewer years of work to recover from a financial setback makes older people particularly vulnerable. Many consumers do not know how or to whom to complain even if they do want to seek a remedy. Fear of being deemed incompetent and losing independence and control over their finances may contribute to their reluctance to pursue a remedy when an abuse occurs.

AARP has identified the following practices that continue to threaten the financial security of older people:

**Mortgages**

The mortgage marketplace must be safe and fair for all borrowers. Practices that steer consumers into higher priced loans than they qualify for, that strip equity from their homes through higher fees and interest rates, and that result in foreclosure when a borrower has the ability to retain a home must be prevented and the harm rectified. Lenders should be required to apply consistent rules that consider the borrower's ability to repay a loan and provide them access to the best priced product for which they qualify. To remedy the unfair practices of the mortgage marketplace that significantly contributed to the foreclosure crisis, borrowers should have access to fair servicing and loan modifications where they have the ability to pay. Force placed insurance and unwarranted servicing fees should be prohibited. Nonbank mortgage lenders also must be supervised.

It has long been understood that older homeowners were all too often the targets of the predatory lending practices that began in the early 1990s. Older homeowners were key targets because they often were "house rich and cash poor." Older homeowners typically had equity in homes they had owned for decades but because they lived on fixed incomes, raising money for maintenance, repair and property tax bills

[1] Deborah Thorne, Elizabeth Warren, Teresa A. Sullivan, *"Generations of Struggle"* (June 2008). Available at *http://www.aarp.org/money/budgeting-saving/info-06-2008/2008_11_debt.html.*

[2] See "Top 10 List of Consumer Complaints of 2008 Resource List (March 2010), available at *http://naag.org/top-10-list-of-consumer-complaints-of-2008-resource-list.php.*

could be difficult. Others suffered from some diminished capacities making it difficult to resist predatory offers.

Experience with countless older homeowners over the years repeatedly demonstrated that despite good—often sterling—credit ratings, these borrowers were steered to subprime lenders whose unscrupulous practices are now well documented.[3] Despite legal and legislative advocacy by AARP and countless others, far too many older Americans who entered into questionable mortgages currently face foreclosure and eviction from the homes they have lived in for decades.

**Credit Cards**

Despite enacting important protections in 2009, more must be done to protect consumers from unfair or predatory practices, hidden fees, and complicated terms and conditions in credit card agreements. Consumers need protection from efforts to evade the protections of the CARD Act, as well as the marketing of expensive and predatory credit card products, and complex fee structures that hide the true cost of credit and make it difficult for consumers to shop for the lowest priced credit card products that meet their needs.

**Overdraft Fees**

Despite new rules requiring consumers to "opt in" before being charged overdraft fees on their ATM and debit cards, many consumers continue to be charged abusive and unfair overdraft fees by banks. The most vulnerable consumers—those with the least amount of money—are often hardest hit by practices such as aggressive or deceptive inducement to opt in to overdraft protection, reordering of transactions to increase fees, and steering consumers into accounts or fee structures that maximize imposition of fees without informing them of less expensive overdraft protection options. Consumers must be protected from banking practices that unfairly siphon off their limited income.

**Prepaid Debit Cards**

Consumers increasingly use prepaid debit cards for purchases. In part this has resulted from Government benefit administrators utilizing prepaid debit cards to help reduce the cost of benefits disbursement. Despite the convenience provided by such cards, they can be very costly to consumers. Many charge high fees for periodic statements or transaction information, to check balances, decline transactions, to access funds at an ATM, or to load funds onto the card. Moreover, consumers do not understand that prepaid debit cards carry less protection than other payment instruments such as ATM or credit cards. Prepaid cards do not give consumers full protection from loss, theft or unauthorized charges. They may also open unbanked consumers to the risk that payday lenders may seek to secure loans with the receipt of public benefits deposited onto prepaid cards. In light of the increasing use of such cards, protections should be enhanced to ensure that consumers are not harmed by high fees, inappropriate assignment of exempt public benefits, and misrepresentations of the terms and conditions for use of such cards. In particular, Government benefits administrators must take additional steps to protect beneficiaries against high costs and fees.

**Other Abusive Loans**

High cost lending practices by both mainstream and alternative financial services providers that charge fees and interest costs that can exceed 400 percent seriously threaten the financial security of the most vulnerable borrowers.[4] Borrowers who cannot meet their most basic needs of food, shelter, or healthcare are most often the targets. Deceptive practices include those by payday, auto and auto title lenders who often exact high tolls on those who can least afford it. At tax time, many consumers are targeted by tax preparation companies to get a quick or instant refund—really a loan—for which consumers are unknowingly charged hefty tax preparation and loan fees. Billions of dollars of Earned Income Tax Credits, intended to keep hard working families out of poverty, are siphoned off in high fees and tax preparation charges. Sadly, most of the borrowers are eligible to have their taxes prepared for free, with quick refunds through electronic deposit, without paying all the fees. Federal preemption of State consumer protection laws has opened the door to in-

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[3] See Alison Shelton, *AARP Insight on the Issues 9* (September 2009). Available at *http://www.aarp.org/money/credit-loans-debt/info-09-2008/i9_mortgage.html*.

[4] See Ann McLarty Jackson, Donna V.S. Ortega, Elizabeth Costle, George Gaberlavage, Naomi Karp, Neal Walters, Vivian Vasallo, *A Portrait of Older Underbanked and Unbanked Consumers: Findings from a National Survey* (September 2010). Available at *http://www.aarp.org/money/credit-loans-debt/info-09-2010/D19394.html*.

creased abuse, leaving consumers further exposed to unregulated and often deceptive lending practices.

**Credit Reports**

Fair and accurate credit reporting is essential to protecting the financial security of consumers. A consumer's credit report impacts not only the price and availability of credit but also of auto and homeowner's insurance, access to housing, and opportunities for employment. Unfortunately, consumers have difficulty correcting their credit reports when they contain significant inaccuracies that result from mistakes, incorrect and outdated information, fraudulent accounts due to identity theft, and mixed up files of different consumers. Consumers also need better guidance on how to check and correct their credit reports. Because so few consumers understand what will cause a decrease or increase in their scores, or the magnitude of the impact of particular actions such as closing a credit card account, making a late payment or filing for bankruptcy, more consumer education is needed to give consumers the tools they need to improve their financial outlook. Lack of information and the wide variety of credit scores in the marketplace makes consumers more vulnerable to predatory lending, credit repair scams or higher priced lending and insurance than that for which they should qualify. Much more needs to be done to ensure credit reporting is fair, accurate, and transparent.

**Debt Collection**

The Federal Trade Commission and State attorneys general, for longer than a decade, have received more complaints about the debt collection industry than any other industry, and the number of complaints is on the rise. As more and more consumers carry even higher levels of debt, the debt collection industry, assisted by technological advances in data storage and communications capabilities, has been transformed into a trillion dollar debt buying industry over the span of a decade.

Debt once considered to be uncollectible is charged off by creditors and sold at auction for pennies on the dollar. Using increasingly aggressive and often illegal collection tactics, collectors pursue alleged debtors well after the statute of limitations has run, often with little or no documentation to prove the ownership or amount of a debt. Unrepresented debtors who do not understand how to protect their interests or assert valid defenses have little, if any, ability to protect themselves. Some may unknowingly agree to extend the time a debt may be collected by making a minimal payment in an attempt to end harassing collection attempts.

Abusive collection tactics have caused significant harm and suffering to consumers, as well as taxed the resources of State attorneys general. The high level of fraud inherent in the current collection environment must be addressed comprehensively.

**Forced Arbitration**

Consumers who purchase financial products or services routinely are required to give up their access to justice if the company violates the law. By inserting a forced arbitration agreement in a standard contract, a business can exempt itself from legal avenues to hold it accountable for violations of the law. Forced arbitration clauses are already ubiquitous in contracts of adhesion for every type of consumer service and product. The recent Supreme Court decision in *AT&T v Concepcion* [5] undermines consumer challenges to forced arbitration clauses because the Supreme Court has held that Federal law preempts such State contract law defenses. Forced arbitration creates an unlevel playing field for consumers and causes further erosion of consumer protections. The ability of corporations to include a forced arbitration clause in a standard form contract places an even higher burden on already cash strapped public enforcement systems to monitor harmful and deceptive acts and practices.

**THE ROLE OF THE CFPB IN RESTORING CONSUMER FINANCIAL PROTECTION**

It is well established that the failure of the regulatory system to rein in abusive types of consumer loans in areas where Federal regulators had clear authority to act, and either chose not to do so or acted too late to stem serious problems in the credit markets, was a major factor in the recent financial crisis. As such, a key goal for AARP in the Wall Street Reform and Consumer Financial Protection Act ("Dodd-Frank Act") was strengthened consumer protection to restore market accountability and responsibility, rebuild confidence, and ensure the stability of the financial mar-

[5] *AT&T Mobility, LLC v. Concepion,* 131 S. Ct. 1740 (2011).

kets. Surveys conducted by AARP demonstrate that Americans age 50+, regardless of party affiliation, want Congress to act to hold financial institutions accountable.

AARP supports an independent Consumer Financial Protection Bureau (CFPB) that has as its sole mission the development and effective implementation of standards that help protect the financial security of Americans so that they can get the information necessary to make responsible, informed financial choices. Congress created the Bureau to ensure that American families can trust the financial products they use to help them achieve their goals and avoid traps that lead to financial distress. The full potential for the CFPB to be an effective "cop on the beat," protecting Americans from deceptive and unfair financial practices, will not be realized until there is a leader in place and the agency can use all the powers it has been granted. We appreciate that the Senate Banking Committee has moved forward to fill this critical position, and urge the full Senate to move quickly to expedite the process.

**Office of Financial Protection for Older Americans**

Of particular interest to AARP has been the creation of an Office for Financial Protection for Older Americans within the structure of the CFPB. This office is tasked with improving the financial decisionmaking of seniors and preventing unfair, deceptive, and abusive practices targeted at seniors.

Seniors have been hit hard by the economic crisis. Even if they planned well, they have seen their retirement savings and home equity shrink. The growing epidemic of elder financial abuse has exacerbated these problems,

The Office of Financial Protection for Older Americans will help seniors navigate these financial challenges by:

- Educating and engaging seniors about their financial choices;
- Reaching out to and coordinating with senior groups, law enforcement, financial institutions, and Federal and State agencies to identify and prevent scams targeted at seniors;
- Using all available information to identify trends and bad practices; and
- Protecting seniors from fraud and deception in financial counseling service.

AARP is particularly excited that a former AARP Board member, Hubert H. (Skip) Humphrey III—a former Attorney General of Minnesota, and an ardent and successful consumer advocate—has been selected to head up this office. AARP has provided input into the broad range of initiatives that the Bureau will pursue, and we look forward to continuing this effort on an ongoing basis to serve the needs of our members.

**CONCLUSION**

It is clear that consumers need help to protect themselves in an increasingly complex financial marketplace. As was so painfully demonstrated just a few short years ago, the threats to personal financial security are threats to the Nation's financial stability and security. The CFPB creates a centralized forum for addressing recent wrongdoing and protecting current and future generations from a re-occurrence of these financial woes.

Thank you for this opportunity to share AARP's views.