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United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION

WASHINGTON, DC 20510-6125

WEB SITE: <http://commerce.senate.gov>

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January 16, 2014

The Honorable J.B. Van Hollen
President
National Association of Attorneys General
2030 M Street, NW, 8th Floor
Washington, DC 20036

Dear Attorney General Van Hollen,

The Senate Committee on Commerce, Science, and Transportation is investigating mortgage modification and foreclosure relief companies—companies that take payments from struggling borrowers in exchange for false promises to help them negotiate new terms with mortgage lenders and servicers. State Attorneys General have been leaders on investigating and shutting down these companies and, more generally, in examining mortgage foreclosure problems and potential solutions. I am writing you today in the hope that we can find ways to partner to stop foreclosure relief scams that can cause so much harm to financially vulnerable consumers.

As you well know, since 2007, there have been an unprecedented number of mortgage loan defaults and foreclosures across the country. While this trend appears to be tapering, millions of troubled mortgages remain outstanding and many homeowners continue to struggle to make their monthly mortgage payments while meeting their other financial obligations.¹

At the same time, there has been a surge in the number of companies offering struggling homeowners foreclosure rescue services. Advertisements for companies offering to help consumers negotiate with their mortgage lender or servicer abound on the radio, internet, television, and in the mailboxes of consumers across the country. Unfortunately, as you know, many of these companies have promised to serve as advocates for the homeowner in the complex arena of mortgage loan modifications – while charging high fees for such purported services – but ultimately produce little-to-no

¹ Consumer Federation of America, *Best Intentions: The Highs and Lows of the Home Affordable Modification Program* (Jan. 2013) (online at <http://www.consumerfed.org/pdfs/Best%20IntentionsHome%20Affordable%20Modification%20Program.pdf>).

results for homeowners. Many also mislead consumers further by falsely claiming affiliation with government or a preferred status with lenders.²

In 2009, Congress sought to eliminate these practices in legislation that I sponsored requiring the Federal Trade Commission (FTC) to promulgate rules related to unfair and deceptive trade practices by mortgage assistance providers.³ While this law provided important new tools for state and federal law enforcement agencies,⁴ and enforcement is as vigorous as ever,⁵ it appears that consumers are continuing to fall victim to these scams.

In fact, a recent report by the U.S. Government Accountability Office (GAO) found that “foreclosure rescue schemes remain at historically high levels and have become more complex.”⁶ This report also found that these companies are targeting specific populations, such as minorities and the elderly⁷ and may be taking advantage of exceptions in the law to make it time- and resource-intensive for law enforcement officials to investigate and prosecute these cases.⁸

² Better Business Bureau, *Avoiding Mortgage Modification and Foreclosure Rescue Scams* (Mar. 8, 2013) (available at <http://www.bbb.org/blog/2013/03/avoiding-mortgage-modification-and-foreclosure-rescue-scams/>).

³ Omnibus Appropriations Act, 2009, Public Law 111–8, 123 Stat. 524 (Omnibus Appropriations Act), as modified by Credit Card Accountability Responsibility and Disclosure Act of 2009, Public Law 111–24, 123 Stat. 1734 (Credit CARD Act). The resulting Mortgage Assistance Relief Services (MARS) Rule, 12 CFR part 1015, among other provisions: (1) prohibits up-front payment for services; (2) prohibits instructions to consumers to cease communications with their lender; (3) prohibits mortgage assistance companies from falsely claiming or implying an affiliation, enforcement or approval of the government or government programs; and (4) mandates certain disclosures to consumers regarding the service that will be provided. 16 CFR 322 (2010). The FTC also promulgated rules prohibiting certain deceptive advertising practices related to mortgage products. 16 CFR Part 321 (2011).

⁴ Prior to enactment of the MARS rule, the FTC brought enforcement actions against fraudulent mortgage relief companies using its authority pursuant to Section 5 of the Federal Trade Commission Act. See, e.g. List of MARS Law Enforcement Actions, 75 Fed. Reg. 230, (Dec. 1, 2012), p. 75140. State Attorneys General have pursued similar cases under state unfair and deceptive trade practice laws. See Comments to the Federal Trade Commission, Office of the Attorney Generals of Illinois, Minnesota, and Ohio (available at <http://www.ftc.gov/os/comments/mars-nprm/index.shtm>).

⁵ Mortgage modification scams have been the focus of a number of joint state-federal enforcement sweeps. See, e.g., Department of Justice Press Release, *Financial Fraud Enforcement Task Force Members Reveal Results of Distressed Homeowner Initiative* (Oct. 9, 2012) (online at <http://www.justice.gov/opa/pr/2012/October/12-ag-1216.html>).

⁶ U.S. Government Accountability Office, *Foreclosure Rescue Schemes Have Become More Complex, and Efforts to Combat them Continue*, GAO-14-17 (Oct. 2013).

⁷ *Id.* at 20.

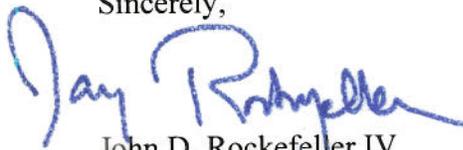
⁸ *Id.* at 11.

Letter to Attorney General Van Hollen
January 16, 2014

I remain very troubled by these fraudulent schemes and am looking for ways to both promote consumer education and stop these harmful practices altogether. I know that we share these goals. To that end, I am respectfully requesting that you and your colleagues provide the Committee with any information or suggestions that may be helpful in combating mortgage relief scams, including consumer complaint data, identification of particularly troubling businesses engaged in these practices, and other concerning trends you have detected. Please ask anyone interested to reach out to Kristin Amerling or Melanie Tiano of my Committee staff, at 202-224-1300, for further discussions on this topic.

Thank you for all that you do to protect consumers in your state. I look forward to working with you.

Sincerely,

A handwritten signature in blue ink that reads "Jay Rockefeller". The signature is fluid and cursive, with the first name "Jay" and the last name "Rockefeller" clearly legible.

John D. Rockefeller IV
Chairman

Cc: John Thune
Ranking Member