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United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION

WASHINGTON, DC 20510–6125

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

January 16, 2014

Brenda L. McCann
Managing Partner
McCann Law Group, LLP/Consumer Attorney Services
7960 Baymeadows Way, Suite 2000
Jacksonville, Florida 32256

Dear Ms. McCann,

The Senate Committee on Commerce, Science, and Transportation is investigating practices of foreclosure rescue companies that promise homeowners assistance in negotiating new mortgage terms with mortgage servicers and lenders. Through this investigation, I have learned that your company has recently generated a significant number of complaints from consumers, and I am writing to seek information about your company, The McCann Law Group, and the services it provides struggling homeowners.

The recent mortgage crisis spurred tremendous growth in the industry of mortgage modification and foreclosure relief companies.[1] Advertisements for companies offering to assist struggling homeowners negotiate with their mortgage lender or servicer abound on the radio, internet, television, and in the mailboxes of consumers across the country.[2] Unfortunately, at the same time, there has been a surge in troubling schemes where these businesses take advantage of financially vulnerable homeowners.

Early on in the mortgage crisis, the Federal Trade Commission (FTC) and other law enforcement entities identified a range of harmful and prevalent practices by foreclosure relief companies including making false and misleading advertising claims regarding affiliation with the government or preferred status with the consumer's lender, and taking consumer fees upfront while providing little to no assistance in return.[3] In 2009, Congress sought to eliminate such conduct by enacting legislation that I sponsored

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[1] Federal Trade Commission, Press Releases, *FTC Proposed Rule that Would Bar Mortgage Relief Companies from Charging Up-Front Fees* (Feb. 4, 2010).

[2] *See* 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] *See* Federal Trade Commission, Notice of Proposed Rulemaking: Mortgage Assistance Relief Services, Federal Register, Vol. 75, No. 45, at 10710-10712 (Mar. 2010) (discussing reported abuses).

requiring the FTC to promulgate rules related to unfair and deceptive trade practices by mortgage assistance providers.[4]

The new law and resulting rule provided important new tools for addressing foreclosure rescue schemes,[5] and state and federal agencies have continued to vigorously pursue wrongdoing in this area.[6] However, foreclosure rescue companies that engage in practices harmful to consumers continue to emerge and flourish.

In fact, a recent report by the U.S. Government Accountability Office found that "foreclosure rescue schemes remain at historically high levels and have become more complex."[7] This report also found that some companies are targeting specific populations, such as minorities and the elderly 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]

As millions of troubled mortgages remain outstanding and many homeowners continue to struggle to meet monthly mortgage obligations,[9] it is important to understand

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[4] 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 making false or misleading claims regarding material aspects of mortgage assistance relief service, including claims concerning affiliation with government or private entities, or whether the company will provide legal representation; 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).

[5] 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 (online at http://www.ftc.gov/os/comments/mars-nprm/index.shtm).

[6] 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).

[7] Government Accountability Office, *Foreclosure Rescue Schemes Have Become More Complex, and Efforts to Combat Them Continue,* at 11, 18-20 (Oct. 2013) (GAO-14-17) (hereafter "GAO Report"); *See also* Better Business Bureau, *Avoiding Mortgage Modification and Foreclosure Rescue Scams*, *supra* n. 2.

[8] GAO Report at 11, 19.

[9] Consumer Federation of America, *Best Intentions: The Highs and Lows of the Home Affordable Modification Program* (Jan. 2013) (online at

the nature and extent of foreclosure rescue company practices that may be harmful to consumers. A Committee staff review of complaints to the FTC, Better Business Bureau (BBB), and other online sources underscores the continuing need for attention to practices of these companies. Over the past year, thousands of consumers reported that they have fallen victim to foreclosure relief scams during a very financially vulnerable time in their lives.

Your company was the subject of a substantial number of recent consumer complaints. Specifically, these complaints charge that consumers paid your company high fees, that your company had little to no communication with their mortgage lender or servicer, and that ultimately they received little to no benefit from your services.

To better understand your business practices, I request that you provide the Committee with the information and documents requested below. Please provide the information and documents by Friday, January 31, 2014.

In each of the requests below, "company" refers to The McCann Law Group, LLP, any of its parents, subsidiaries and affiliates, and any other company you have fully or partially owned, and any company for which you have served as an officer or director. "Company" further includes trade names, operations under assumed names or DBAs, fictitious business names, corporations, limited liability companies, unincorporated divisions, joint ventures, partnerships, sole proprietorships, associations, cooperatives, and other legal entities.

1. Identify any company under your control that provides mortgage modification or foreclosure relief services to borrowers for a fee. For each company, provide:

    a. An organizational chart listing all executives and managers;

    b. Total number of employees, or contractors, grouped by work function;

    c. Total number of attorneys your company employs or retains and the average number of hours each devotes to individual customer cases;

    d. Any employee training materials;

    e. Addresses for all physical locations from which any employee or contractor of the company does work;

    f. Date the company was established; and

    g. Information about any state licenses or registrations held by the company or individuals employed or retained by the company.

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http://www.consumerfed.org/pdfs/Best%20IntentionsHome%20Affordable%20Modification%20Program.pdf).

2. For each year since January 1, 2009, provide the following information (by year) for any company listed in Request 1:

   a. The number of customers who retained the company for the purposes of mortgage modification or foreclosure relief services;

   b. The number of customers that ultimately received a loan modification from their lender or loan servicer; and

   c. The average time it takes one of your customers to receive a loan modification from their mortgage lender or servicer, beginning at the time in which the consumer agrees to retain your company for these services.

3. For each company listed in response to Request 1, describe in detail the services you provide for your company's mortgage modification and foreclosure relief customers, and list all mortgage services and lenders that your company contacted or negotiated with on behalf of the company's customers.

4. For each company listed in response to Request 1, describe the fee structure for customers, including the schedule for customer payments to the company.

5. For each company listed in response to Request 1, provide copies of all contracts or agreements required to be executed by customers to begin your services, and copies of all written disclosures given to customers and potential customers regarding mortgage modification and foreclosure relief services.

6. For each company listed in response to Request 1, indicate whether that company engages in marketing, advertising, or solicitation through the following mediums or mechanisms. If the answer is yes, provide a description or physical copy of any and all such advertisement or marketing, the period each such advertising ran, or marketing materials were used, and approximate annual expenditures, for each year since January 1, 2009, that your company spent on marketing or advertising in that medium.

   a. Print media, including newspaper, magazines and circulars, or inserts placed in newspapers or magazines or circulars;

   b. Radio;

   c. Television;

   d. Internet, including the domain name of all websites the company has used to advertise its services;

   e. Roadside signs or billboards;

f. Direct mail solicitation of customers. If yes, describe how your company identifies the recipients of such mail;

g. Solicitation of customers via telemarketing. If yes, describe how your company identifies the recipients of such calls and provide copies of any company scripts for such calls; and

h. Any other marketing or advertising mediums or mechanisms.

7. Has any company listed in response to Request 1 purchased contact information for potential customers from any third party since January 1, 2009? If yes, provide the following:

a. Names and contact information for all such third parties;

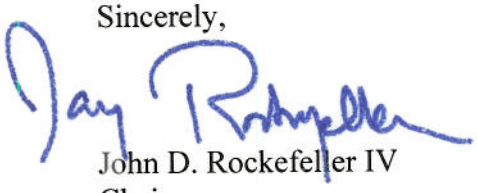
b. Copies of any contracts your company has entered into with such third parties since January 1, 2009;

c. Methods used by your company to verify the accuracy of all contact and personally identifiable information received from such third parties; and

d. Describe how your company protects personally identifiable information received from such third parties.

The Committee is conducting the investigation under the authority of Senate Rules XXV and XXVI. An attachment to this letter provides additional information about how to respond to the Committee's request. If you have any questions please contact Melanie Tiano of my Committee staff at 202-224-1300.

Sincerely,



John D. Rockefeller IV
Chairman

Enclosure

Cc: John Thune
Ranking Member