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TESTIMONY

BEFORE THE SUBCOMMITTEE ON

FINANCIAL INSTITUTIONS AND CONSUMER PROTECTION

of the

SENATE COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS

On

Financial Security Issues Facing Older Americans

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WITNESS:

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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.

[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.

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 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.

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[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.

[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

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% 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

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[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

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 increased 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 dect 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 markets. 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 decision making of seniors and preventing unfair, deceptive, and abusive practices targeted at seniors.

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

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.