

DECEPTIVE MAILINGS PREVENTION ACT OF 1987

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HEARING BEFORE THE SUBCOMMITTEE ON POSTAL PERSONNEL AND MODERNIZATION OF THE COMMITTEE ON POST OFFICE AND CIVIL SERVICE HOUSE OF REPRESENTATIVES

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

H.R. 939 and H.R. 1550

S PREVENTION ACT OF 1987 AND DECEPTIVE MAIL-
TIZENS PREVENTION ACT OF 1987, RESPECTIVELY

OCTOBER 1, 1987

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DECEPTIVE MAILINGS PREVENTION ACT OF 1987

THURSDAY, OCTOBER 1, 1987

**HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON POSTAL PERSONNEL
AND MODERNIZATION,
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
*Washington, DC.***

The subcommittee met, pursuant to call, at 10:22 a.m., in room 311, Cannon House Office Building, Hon. Frank McCloskey, Chairman, presiding.

Mr. MCCLOSKEY. This hearing of the Postal Personnel and Modernization Subcommittee is now in session.

Today the subcommittee is holding a hearing on H.R. 939, the Deceptive Mailings Prevention Act of 1987, introduced by the Honorable Olympia Snowe, and H.R. 1550, the Deceptive Mailings to Senior Citizens Prevention Act of 1987, introduced by the Honorable Brian Donnelly.

This hearing will focus on the important issue of misleading and deceptive mail solicitation practices. The vast majority of companies and organizations which use mailing techniques to reach potential customers and members are responsible organizations which provide legitimate products and services. Unfortunately, a few companies, through misuse of these techniques, have given the false impression that they represent the Federal Government or offer services endorsed by the government.

This has resulted in consumers paying for products or services which are not needed or which the government can provide for free.

The majority of these mailings target our nation's elderly, focusing on Medicare or Social Security benefits, the most important issues to senior citizens. The issues of health care and economic security for the seniors are among the most complex aspects of the Federal Government's social programs. The combination of the complexity of these issues and their importance to most people has resulted in increasing abuse of mass mailing practices.

In preparation for this hearing, I contacted the senior citizens of my district, the Eighth District of Indiana. Sixty-five percent of those I questioned indicated that they had received commercial mail with an emblem or seal which resembled a governmental or official seal. Seventy-two percent said they had been sent mail which included on the envelope the suggestion that the communication was from a government agency. Ninety-four percent had re-

ceived mail with the statements on the envelopes "important tax information" or "information about your Social Security or Medicare benefits."

Many of these organizations which use questionable mailing practices are merely interested in generating mailing lists from those who respond. These names are then sold to insurance companies for \$7 to \$24 per name to use to solicit for Medigap insurance. Thus, by responding to one mailing, individuals may be placed on new lists which generate more mailings and sometimes even personal visits by insurance salesmen.

Clearly, it is imperative that senior citizens be afforded the greatest protection from fraudulent, deceptive or misleading mailing practices which seek needless donations from individuals with fixed incomes and limited resources.

On the other hand, mass mailing practices are widely used by legitimate companies and organizations. In investigating this matter, we must recognize the rights of the elderly to protection from false advertising and the rights of legitimate companies to have easy and uncomplicated access to mass mailing practices.

I'd like to thank our witnesses in advance for taking the time to appear today. I am sure their testimony will be most beneficial.

Ms. Snowe and Mr. Donnelly, it is really great to have you here. I know of your concern on these issues as both of you have talked to me several times. I thought we might start with a statement or an observation from Ms. Snowe.

Ms. SNOWE. Thank you, Mr. Chairman.

Mr. McCLOSKEY. Excuse me. I had not realized that my colleague from California, Mr. Dymally, has arrived and I would ask him if he has a statement.

Mr. DYMALLY. Thank you very much, Mr. Chairman.

First, I commend you for bringing before the Subcommittee on Postal Personnel and Modernization an important issue affecting postal customers nationwide. Deceptive mailings are a problem which potentially touch every American household because of our universal postal system. The mail service represents, I believe, the most cost effective means of communication in today's modern society.

The right to communicate one's ideas is one of the most cherished constitutional freedoms, and we must be ever vigilant in our protection of this right, even as we make commendable efforts to protect the public from deception and fraud in the communication of ideas.

I support the efforts of the sponsors of H.R. 939 and H.R. 1550 to ensure, in particular, that the official weight of government authority is not invoked fraudulently in the name of a non-government communication. The government plays a special role in the lives of the elderly and the poor, and we must not let their already fragile trust in government be undermined by deceptive representations.

Mr. Chairman, as the subcommittee reviews the legislation before it, I hope it will remember the delicate balance which we must strike between the protection of First Amendment rights of free speech and protecting the public from speech which has utterly no redeeming value in a democratic society.

This is the standard consistently applied by the Supreme Court, and it would be wise to keep it in mind when considering legislation which seeks to restrict in any manner the ability to communicate.

Finally, I note the Postal Service in the testimony it will present this morning expresses concern about its ability to enforce the provisions of the Deceptive Mailings Prevention Act, as presently drafted. We should ensure that any action taken by the subcommittee to strengthen the protections against fraudulent or deceptive mailing has teeth to it.

Mr. Chairman, I again commend the sponsors of these bills, Representatives Snowe and Donnelly, for their leadership on this issue, and I look forward to working with you as we further consider this very important piece of legislation. I thank you very much.

Mr. McCLOSKEY. Thank you, Mr. Dymally.

Mr. Myers, my distinguished Hoosier colleague, do you have a statement?

Mr. MYERS. Thank you, Mr. Chairman.

Thank you for the opportunity to be here today and thank you for holding this hearing. I apologize to you and the witnesses for being a little late. We had another hearing at ten o'clock that it was absolutely necessary that I attend.

But I do commend you for having this hearing. We are all painfully aware of the occurrences with our older Americans who receive these letters through the mail, often looking very official and carrying messages that their Social Security is in jeopardy or their Medicare is in jeopardy and all of these things are in jeopardy, and it does frighten the older Americans.

As I get closer to that age group, I get more aware of it, and it hits closer to home. Young folks do not know about this, but it is very necessary that we do something about this. H.R. 939, as we all know, is the Deceptive Mailings Prevention Act, and it is very much in need. I am sorry to say that it is, but as long as we have organizations who prey upon the older Americans and often falsify fact, it is necessary to bring this correction.

So I commend you for the hearings today and look forward to the testimony the witnesses will provide.

Mr. McCLOSKEY. Thank you, Mr. Myers.

Ms. Snowe, if you would proceed.

STATEMENT OF HON. OLYMPIA J. SNOWE, A REPRESENTATIVE FROM THE STATE OF MAINE

Ms. SNOWE. Thank you, Mr. Chairman.

I want to thank you, Mr. Chairman, for your leadership on this important issue concerning misleading and deceptive practices, and members of the subcommittee, as well as your comments here this morning.

I am pleased to have the opportunity to testify on the legislation I am introducing, the Deceptive Mailings Prevention Act of 1987. I am also pleased to be here with my colleague, Mr. Donnelly, who has also introduced legislation on this issue.

I do ask unanimous consent to submit my entire statement into the record, Mr. Chairman.

Mr. McCLOSKEY. Without objection.

Ms. SNOWE. Thank you.

[The prepared statement of Hon. Olympia J. Snowe follows:]

STATEMENT BEFORE THE
SUBCOMMITTEE ON POSTAL PERSONNEL AND
MODERNIZATION
HEARING ON DECEPTIVE AND MISLEADING MAILINGS

Mr. Chairman, I want to commend you for your leadership in holding this important hearing on the issue of misleading and deceptive mailing practices. I am pleased to have the opportunity to provide testimony on a bill that I introduced, H.R. 939, the Deceptive Mailings Prevention Act of 1987.

The problem that we are addressing today first came to my attention in May, 1986. A constituent called my office wanting information about an organization, the Federal Record Service, which had offered to obtain his small daughter's Social Security card for a \$10.00 fee. At that time, the "BIRTH RECORDS DIVISION" of an organization called the Federal Record Service indicated in official sounding language that "your newborn child has not been registered with the Social Security Administration. It is important that your child be issued a Social Security card immediately." Both the tone of the document and the name not only implied that this came from an official office, but also imparted a note of urgency in complying.

In the process of investigating this case, I became aware of how common it is to receive mailings from organizations that either

provide a service which is already available free of charge from a government office or which use seals, symbols, trade or brand names or other terms which imply a Federal Government connection. Many of these solicitations and offers come in envelopes which could reasonably be construed to be an official mailing from the Federal Government and most use titles which imply association with the Federal Government.

Unfortunately we are not dealing with an isolated incident. Indeed, the variation and creativity of these mailings is surprising. During the period from April to July, 1987, there were over 200 complaints on the issue we are addressing today. I want to recognize Mr. Roybal's efforts in highlighting this problem.

First, let me assure you, that clones of the Federal Record Service are alive and well. One such organization is the Federal Information Registry and Assistance Service which has as a logo the Statue of Liberty and comes in a brown, official looking envelope. They offer to get a Social Security card for all children under five at a cost varying from \$12.00 to \$20.00 for the first child, with a supplemental charge for each child thereafter. Their materials state:

"DO NOT PUT THIS OFF. Federal Law REQUIRES that you MUST have this completed before your 1987 taxes are filed".

If you have any questions as to the impression these mailings give and what occurs when one replies, let me read you a few of the comments that were attached:

"One on my husband's co-workers recently responded to such an advertisement to obtain a social security number for a newborn son. When he received his 'Federal Legislation Compliance Kit,' it was a standard application form from the Social Security Administration with the child's name and date of birth typed in, and instructions to take it to Social Security." The charge for the service is \$17.00 plus \$3.00 postage and handling.

"You really have to read the letter carefully to not be taken in. This is probably legal, but seems horrible, as it aims at people with children who might not read every word and send in \$20.00 for something that is free when supplied by the government."

"The mailing clearly appears to be an official government document ...There is no record of the company in the Atlanta telephone book and the only way to communicate with the company is through their post office box."

"The impression my wife and I got was that if we didn't order these kits we would be breaking the law."

An interesting variation on this theme comes under several organization names, including the Document Service, the Federal Document Preparatif and the National Records Advisory. These inform women that because they have recently married they must have a new Social Security card with their married name on it.

One company indicates that if a woman wishes to retain her last name, "the proper procedure is to use your last name followed by a hyphen and his last name." While there is no federal law requiring such a change, and as far as I know no preferred method other than personal preference, if a woman is convinced this is the proper way to keep her own name, she will be persuaded to buy a service she doesn't need. By the way, the fee for these services range from \$10.00 to \$12.50.

One organization, the Social Security Protection Bureau encloses sweepstake tickets designed to look like a Social Security card. The recipient is told that for a fee of \$7.00 you not only have the chance of winning \$50,000, but you can get a gold embossed Social Security card, an earnings statement, a guide to retirement, and representation in Washington to protect your Social Security Benefits. I am not aware of any such representation.

Often, quotations are taken out of context, seeming to imply the endorsement of the service. One mailing quoted a Senator suggesting that he must be endorsing the service. Finally, as another tactic, there is a guaranteed mystery gift. One person thought their tax money was going to a Social Security lottery. An interesting aside is that an organization called the Center For Alternative Research has the exact same lottery scheme and envelope as the Social Security Protection Bureau suggesting that that this approach is being expanded.

There are also numerous mailings targeting Medicare recipients. On the outside, envelopes indicate they pertain to "Supplemental 1987 Medicare Benefits". On the inside, the reader is informed that Medicare benefits have been reduced by Congress by 50 percent. The point of these is to sell Medigap insurance policies. As one complainant said, "The first paragraph of the advertisement uses scare tactics, such as 50 percent loss of Medicare benefits, which causes some people to submit their name. Consequently, they get themselves involved in an expenditure they do not fully understand."

Social Security and Medicare are not the only targets for misleading mailings. There are numerous other government agencies and products that are mimicked. For example, there is the Environmental Testing Agency which provides charcoal cannisters for radon testing for the sum of \$25.00. An eagle logo makes the recipient think this is a branch of the Federal Government. Others organizations send look-alike government envelopes appear to contain government checks inside. When the recipient opens the envelope, the "checks" are really promotions for rebates on automobiles. Still others warn of important IRS information such as those from the Internal Review Service.

I introduced H.R. 939 because I believe it is an important step toward addressing these types of deceptive and misleading mailings. H.R. 939 requires a bold disclosure both on the envelope and on the face of the materials in order that

individuals receiving and reading the materials understand fully that these are not official mailings. For example, where services are offered for a fee which are available from the Government either free of charge or at a lower price, there would be two disclaimers: on the face of the envelope a disclaimer would indicate "This is not a Government Document" and on the face of the materials the disclaimer would indicate "The products or services offered in this advertisement are also provided either free of charge or at a lower fee by the Federal Government" or some similar language.

In a similar vein, there are numerous nongovernmental organizations that use a seal or insignia, or which use terms such as Medicare or Social Security that imply a Federal Government connection. In these cases, these organizations would have to indicate on the face of their materials "This product or service has not been approved or endorsed by the Federal Government and this offer is not being made by an agency of the Federal Government. Similarly, envelopes would have to bear the statement, "This is not a Government Document". These disclaimers would also apply when nongovernmental organizations using such names as Medicare or Social Security or misleading emblems, seals or insignias are asking for contributions.

It is really a very simple concept. H.R. 939 does not interfere with free trade, but neither does it permit consumers to be misled or misinformed. Indeed, as I envisioned it, H.R. 939 is a

consumer's bill in which we use disclosures to assure that individuals are warned about certain types of mailings.

The Post Office has been very helpful and informative in providing suggestions that would strengthen what is already a strong bill. Based on those comments, I have introduced an amended bill which I have already shared with the Subcommittee. This bill will further improve H.R. 939. Briefly, this amended bill would give the Post Office a greater ability to determine the extent to which products or services offered at a fee are substantially the same as those offered by the Federal Government. The operative language, substantially the same, means that small modifications would not invalidate the need to inform consumers of products that are almost the same. A parallel change would indicate that seals, symbols, names or terms which could be interpreted or construed as implying Federal Government connection would fall under the provisions under the provisions of this new bill.

Further, these amendments give the Post Office latitude in describing how the disclaimer would be laid out both in terms of placement and format on the envelope and the face of the material. Finally, the Post Office would be given authority to make prima facie assumptions that certain mailed matter is in violation of the law -- that is, it could be reasonably construed to be an official mailing but does not include the required disclaimer. This permits the Post Office to go directly to an

Administrative Law Judge for sanctions without gathering any further proof or witnesses.

In the examples that I have presented here today, companies deceive by nuance and innuendo. The mailings are deliberately confusing and deal in half truths. They employ great creativity in appealing to a broad range of persons, but perhaps the most vulnerable are the elderly. Many times, letters to the Post Office from adult children tell of how a vulnerable or ill older persons who was taken in by these scams, sometimes for substantial sums of money. In fact, names are sold to other such organizations for similar purposes. Thus, while one scheme may only cost an individual a small sum of money, this may be multiplied time and again. For an individual on a fixed income, the expense can be considerable. Taken in the aggregate, the loss to older persons for schemes and misleading mailings is no doubt considerable.

In this year of the 200th birthday of the Constitution, we are even more aware than usual of first amendment protections of freedom of speech. But that in no way invalidates the rights of the consumer. Individuals who have been fooled by deceptive schemes are less likely to believe honest advertisements. Thus, to the extent that we expose disreputable organizations, we can be assured that those that provide a real service are protected from being "tarred with the same brush."

I want to thank you, Mr. Chairman, for the opportunity to provide testimony today. If I can further clarify any part of my statement, I will be happy to do so.

FEDERAL RECORD SERVICE
2021 L STREET, SUITE 250
WASHINGTON, D.C. 20036

BIRTH RECORDS DIVISION

Important Notice:

~~New Federal Legislation~~ may require that all dependents be listed by Social Security Number on your income tax return.

County records indicate that your newborn child has not been registered with the Social Security Administration. It is important that your child be issued a Social Security Card immediately.

Federal Record Service, a non-government agency, will handle the paperwork and clerical details for you.

If you will fill out the information requested right now on the enclosed form and return it with a check or money order for \$10, we will begin to process your application immediately. The fee is our assistance charge.

If you have other dependents who do not have Social Security numbers, we will process their applications at the additional fee of \$5 for each extra applicant.

You will receive a confirmation that your application is being processed in two weeks. A Social Security Card and number registered in your child's name will be mailed to you within seven weeks.

Please return the enclosed form immediately with a check or money order made payable to:

Federal Record Service



005-0000045344

IMPORTANT NOTICE:

New Federal Legislation (SEC. 1524 of the Tax Reform Act of 1986 P.L. 99-514) requires that all taxpayers show Social Security numbers for each dependent age 5 or older on your income tax return filed for 1987.

Federal Information Registry and Assistance Service, a non-government agency, has prepared a Compliance Kit which contains ALL the necessary forms, letters, and easy instructions for you to have each of your children issued a Social Security number.

THE COMPLIANCE KIT CONTAINS:

- * Easily understood, step by step instructions for all requirements and forms.
- * All forms necessary for applying to the Social Security Administration.
- * All forms and/or letters necessary for obtaining birth records for each child with U.S. Citizenship regardless of where they were born.
- * Completed sample forms for your reference to be sure everything is accurately and properly provided to each government agency.
- * Addresses and phone numbers of all state and federal locations where documentation must be sent.

DO NOT PUT THIS OFF! Federal Law **REQUIRES** that you **MUST** have this completed before your 1987 taxes are filed. Further, the Social Security offices and State offices will be swamped with millions of applications and requests for information which will result in inevitable long delays.

To order your compliance kit, simply print the names and birthdates of your children on the order form on the back of this letter, and return it to us with your check or money order made payable to "FIRAS" in the enclosed postage - paid envelope. Your compliance kit and appropriate forms will be sent to you within 14 days of receipt of your order.

Your basic Compliance Kit is complete for one child. You must also order a supplemental kit for EACH additional child to have the necessary documents.



NATIONAL PROCESSING CENTER
AC 214 252-5323

**Read Carefully:
Important Facts about Your Social Security Card**

County marriage records indicate that you have or will soon change your marital status. As a result you will need to have this data changed in regards to your Social Security Card.

The Social Security Law requires every applicant for a change of name on their Social Security Card to furnish certain documents before this can be done.

Should you prefer to retain your last name, the proper procedure is to use your last name followed by a hyphen (-) and his last name. This will serve to update your records with both the Social Security Administration and the Internal Revenue Service for purposes of filing joint income tax returns.

The procedure for handling all this is not particularly hard or complicated; but because of the paperwork necessary, it is easy to neglect or postpone and can be time consuming as well.

If you will fill out the information requested right now on the enclosed form and return it immediately along with your check or money order for ten dollars (\$10.00)

We will as a non-government agency, handle the clerical details for you to get your records corrected with the Social Security Administration, which must be done before a new card can be issued to you. The fee is our assistance charge and is not made by the Social Security Administration.

We urge you to do this immediately to help avoid possible problems in the future where your Social Security benefits or joint income tax returns might be questioned.

Your check or money order for ten dollars (\$10.00) must be included for your application to be processed by us, and made payable to:

DOCUMENT SERVICE



FEDERAL DOCUMENT PREPARATIF

Social Security Card Request Division
397 Dal-Rich Village, Suite 323
Richardson, Texas 75080

PLEASE READ CAREFULLY

RECEIVED
JUN 01 1981
REGIONAL CHIEF INSPECTOR
SOCIAL SECURITY REQUESTS

IMPORTANT FACTS ABOUT YOUR SOCIAL SECURITY NUMBER

Our records indicate that you have recently married (or intend to be married). It is important that you be issued a Social Security card reflecting your married name as soon as possible. These numbers are used when you file your joint tax return. Your name on that return must match your Social Security number. Your Social Security number is also used when you establish an IRA beneficiary, or bank account. You will also use it when establishing joint credit accounts. Notifying the Social Security Administration of your marriage will also insure you of entitlement to any future Social Security benefits you may be eligible for.

The paperwork necessary is not especially complex, but can be time consuming and easily put-off. In addition Social Security laws require certain returnable documents to be furnished before a change can be made and a new card issued.

FEDERAL DOCUMENT PREPARATIF, a non-governmental agency, will handle the clerical details for you so that a Social Security card can be issued in your married name.

Fill out the form attached to this letter and return it to our office along with a check or money order for \$12.50 made payable to FDP. This is our processing fee, not a Social Security charge. We will then handle the clerical details which will be submitted to you for approval before submission to the Social Security office.

**NATIONAL RECORDS ADVISORY**

1000 Connecticut Avenue, N.W. Suite 9
Washington, DC 20036

NATIONAL PROCESSING CENTER

County records indicate that you may have recently changed your name.

It is important that this change be processed as quickly as possible so that you may be issued a new Social Security card.

While the procedure is not particularly complicated and can be handled at no charge if you go direct to Social Security, you will be required to submit certain documents; since the paperwork will require some of your time and attention, it is a chore that can be easily postponed or neglected entirely.

National Records Advisory, a non-governmental agency, will handle the clerical details for you. Just fill in the enclosed DATACARD and return it to us together with your check or money order for \$10. This is our service fee, and is not a Social Security charge.

National Records Advisory will then secure the proper forms, complete the application for your new Social Security card, and return the completed application for you to check for accuracy before submitting it to SS.

For most Americans, Social Security is the single most important insurance package they have. It provides retirement and disability benefits, hospital Medicare coverage, survivor benefits, and other financial protection. Your name change will help protect these benefits by keeping your records up to date.

We will handle the details for you. Fill in the DATACARD now. Return it promptly to us along with your check or money order for \$10 made payable to

National Records Advisory

NATIONAL SENIOR ADVISORY CENTER

DC #5411

* IMPORTANT NOTICE: NEW MEDICARE CHANGES FOR FLORIDA RESIDENTS *

Your Medicare benefits have been reduced by Congress as of 1987. Now Medicare pays less than 50% of your health care costs and you are responsible for all of the unpaid balance.

Mail this postage paid card by March 31, 1987 for free information on a special plan now available that will pay 100% of DOCTOR CHARGES, 100% of HOSPITAL COSTS and 100% of "AL-OUTPATIENT-CARE" not paid by Medicare.

Plans also available that will pay long term nursing care at home.

Name:.....

Husband's age:.....

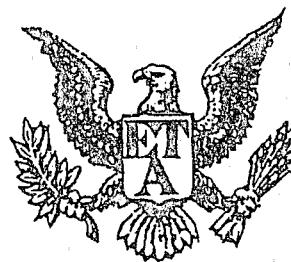
CAR RT SORT **CR 01

L20418BB

Wife's age:.....

Phone:.....

ENVIRONMENTAL TESTING



AGENCY

RADON TESTING Citizens of Ann Arbor

The E.T.A. has determined that Michigan Residents are at increased risk to **HIGH RADON RADIATION LEVELS.**

The American Cancer Society estimates 20,000 people died of lung cancer attributed to Radon Radiation in 1986. You and your family are at increased risk if high radiation levels are found in your home.

You cannot see, smell or taste Radon...you Can test for Radon.

The E.T.A. recommends the reliable charcoal canister method for ease, convenience and low cost.

Charcoal canisters are available through **RAD Industries** for the sum of \$25.00. Includes testing, postage and handling.

Concerned Citizens...Remit \$25.00 to:

Sol RAD Industries
P.O. Box 16
East Detroit, MI 48021

Ms. SNOWE. The problem we are addressing here today first came to my attention back in May of 1986, when a constituent of mine called my office to get some information concerning the organization by the name of Federal Record Service, which had offered to obtain his small daughter's Social Security card for a \$10 fee.

At that time, the Birth Records Division of this Federal Record Service stated in official sounding terms that "your newborn child has not been registered with the Social Security Administration. It is important that your child be issued a Social Security card immediately."

So both the tone of the document and the organization's name implied that this came from an official agency of the United States Government.

In the process of investigating this case, I also became aware of the plethora of mailings from other organizations that either charged for a service which is already available free of charge by the government or provided at a lesser cost, or also which use seals, symbols, trade or brand names and other terms which imply Federal Government connection.

Many of these solicitations and offers come in envelopes which are similar to the Federal Government's or use titles which would imply connection to a Federal Government agency.

Unfortunately, clones of the Federal Record Service are alive and well. One such organization is the Federal Information Registry and Assistance Service, which uses the Statue of Liberty as its logo. They offer to provide a Social Security card for all children under age five at a cost ranging from \$12 to \$20 for the first child, with a supplemental charge for others.

Their materials state, "Do not put this off. Federal law requires that you must have this completed before your 1987 taxes are filed."

If you have any doubts as to the impressions these mailings give and what reaction they generate, let me read you two comments that were sent to the Post Office concerning these mailings. I quote:

One of my husband's co-workers recently responded to such an advertisement to obtain a Social Security number for a newborn son. When he received his federal legislation compliance kit, it was the standard application form from the Social Security Administration with the child's name and date of birth typed in, and instructions to take it to Social Security.

The charge for this service, of course, was \$17, plus \$3 for postage and handling.

A second person wrote, and I quote, "The impression my wife and I got was if we didn't order these kits, we would be breaking the law."

Another variation on this practice surfaced under several organizations' names, including the Documents Service, and I have copies and examples of all of these individual organizations' literature; the Federal Document Preparatif; and the National Records Advisory. They all inform recently married women that they are required to have a new Social Security card with their married name on it.

One company stated that if a woman wishes to retain her maiden name, the proper procedure is to use your last name fol-

lowed by a hyphen and his last name. There is, of course, no federal law for such a requirement. By the way, the fee for this so-called service ranges from \$10 to \$12.50.

There are also numerous mailings targeting Medicare recipients, and the outside envelopes declare they pertain to supplemental 1987 Medicare benefits. On the inside, the reader is informed that Medicare benefits have been reduced by 50 percent and then, of course, they are given a pitch for the Medigap insurance policy. This, again, is another example of the kind of literature that has been sent through the mail.

As one complainant said, "the first paragraph of the advertisement uses scare tactics, such as a 50 percent reduction in Medicare benefits, which causes some people to submit their name. Consequently, they get themselves involved in an expenditure they do not fully understand," end quote.

Unfortunately, Social Security and Medicare are not the only fodder for misleading mailings. Numerous other government agencies and products are mimicked for greed and profit. For example, we have the Environmental Testing Agency, which provides charcoal canisters for radon testing for the sum of \$25. They use the eagle logo, making the recipient think that this is a branch of the Federal Government.

Other organizations send government envelope-look alikes with what appears to be government checks inside. When the recipient opens the envelope, the checks are actually promotions for rebates on automobiles.

There is still another mailing that comes in a brown envelope from the accounting department of the IRS. It is actually the Internal Review Services.

Finally, we have another real estate promotion that is rather interesting. It is from a real estate agency on the outside, and it looks like it is coming from the Internal Revenue Services. It says "miscellaneous income," and then down here it says "Internal Revenue Services Form 1099."

Finally, I have another one that came to our subcommittee, incidentally, the other day from the National Taxpayers Union, and it shows "private and confidential, official document enclosed, Postmasters, deliver promptly per Postal Regulation 12232." And, again, it is a ballot. It is an official ballot for voting on a national referendum on the balanced budget.

Mr. McCLOSKEY. Is there any sort of disclaimer on that, Ms. SNOWE? Have they gotten that sophisticated with the small print on the back?

Ms. SNOWE. I have not found one. From what I can see in looking through this, it does not show a disclaimer.

Mr. McCLOSKEY. Thank you.

Ms. SNOWE. So as a result of these kinds of mailings, I introduced the legislation, H.R. 939, that I know this subcommittee is familiar with, to begin effectively addressing this problem of misleading mailings.

It requires a bold disclosure on the envelope, as well as on the face of the materials, so that the recipients fully understand that these are not official documents.

I think it is a very simple concept. I do not think it interferes with the rights to mail. It is consumer legislation so that people are aware of these kinds of mailings.

The Post Office has been very helpful to me, and they made several recommendations. As a result, I introduced a bill this week with those revisions in mind. I would like to just give you a review of what is involved in the changes in my legislation.

One, of course, is to give the Post Office a little more latitude in establishing the disclaimers on the face of the envelope, as well as on the face of the material, because some organizations might try to make it less visible over time. So rather than coming back and changing the statute, the Post Office would have the flexibility in making sure that their restrictions are applied through regulations.

Second, of course, I think it is important to understand that we do not also want to make sure that they are identical to the services offered by the Federal Government. We are saying that they are services that are substantially the same or could be reasonably construed to imply Federal Government connection. We think this is important to incorporate into the legislation to, again, provide some flexibility so that we are not trying to create absolute identity to what the Federal Government offers.

Mr. McCLOSKEY. Would you state the procedures again, Ms. Snowe, for the benefit of everyone here as to what would be the case when a service is identical or similar to that provided for free or lesser cost by the Federal Government? What does happen if the Post Office thinks that may be the case?

Ms. SNOWE. Well, first of all, they would have to provide the disclaimer on the face of the envelope and on the face of the material not only for services that are identical to what is offered by the Federal Government free of cost or at a lesser charge, or logos that could be reasonably construed to have a Federal Government connection, for example, the United States seal. It could have variations of that so that it does not have to be identical to the United States Government.

For example, in this National Taxpayers Union logo, it is not identical to the Federal Government, but obviously it bears some resemblance that would imply that it has a connection.

Mr. McCLOSKEY. So if there were to be a disclaimer, a fully complying disclaimer, it would be mailable. Without the disclaimer, it would be certified nonmailable.

Ms. SNOWE. Exactly, and then, according to my legislation, we would allow the Post Office to use that nonmailable item as *prima facie* evidence to be submitted to an Administrative Law Judge, who then could seek an injunction and keep the mailing from taking place.

Mr. McCLOSKEY. Thank you.

Ms. SNOWE. And this is already established in law for lottery schemes under false representation. So this would establish another category under false representation.

I think this is the better way of addressing this issue in accordance to the Post Office.

Mr. McCLOSKEY. I think Mr. Dymally would like to ask some questions.

Mr. DYMALLY. Would you apply those same standards for political mailings of candidates?

Ms. SNOWE. It never occurred to me.

Mr. DYMALLY. Why not? Members use the state capital, the congressional seal for political mailings to imply that this is sort of an official mailing when, in fact, it is just something from a political committee.

Ms. SNOWE. We currently do use a disclaimer on the bottom. We cannot use it for nonofficial purposes. I mean we could use the Capitol as others do, but you have to say that this is paid for by the campaign.

Mr. DYMALLY. The testimony which I am reading here suggests that any look-alike, any inferences would be an infraction of the law, and it seems to me we need to apply those same standards to political mailings.

Mr. MYERS. If the gentleman would yield, the rule of the House now provide that you cannot use the seal of the House or a facsimile thereof. The rules are very explicit on this.

Mr. DYMALLY. Fine. I am not just talking about the seal. I am talking about this legislation as addressed to deceptive mailing. It is not a particular kind of seal. I am talking about deceptive political mailings which infer that this is an official communication by using a state capital, an eagle or giving the impression that this is something coming from the President himself.

So my question is: if we are going to apply this to people who are soliciting funds, maybe we ought to apply it to ourselves, too.

Ms. SNOWE. Some might think it is all deceptive.

Mr. DYMALLY. Yes.

Mr. McCLOSKEY. I might be wrong, but I think Ms. Snowe's bill covers all such deceptive mailings.

Ms. SNOWE. That is right.

Mr. DYMALLY. But, Mr. Chairman, if I may correct you, and I apologize for so doing, but Ms. Snowe just said she had not thought about applying it to political mailing.

Ms. SNOWE. Well, these mailings, interestingly enough, a lot of these organizations have surfaced as a result of some of the changes in 1974 with respect to political action committees and the effectiveness of many direct mailing organizations. There is no question that these people have been successful in making money, in deceiving people that this is a letter from the United States Government or that it is a requirement of the United States Government.

They are deceiving people, and it is costing individuals money. In the end it represents a considerable loss to the American people.

Mr. DYMALLY. The same thing with political mailings. Some of them are deceptive. They deceive people. I see no difference between the deception of some people interested in Social Security and others interested in raising political funds.

If you apply certain standards to people raising money for Social Security, you ought to apply it to those who are raising money for political causes, too.

Ms. SNOWE. Well, my legislation would allow the Post Office to ascertain which mailing is in violation of this law.

Mr. McCLOSKEY. It is my understanding that Ms. Snowe's legislation would pertain to political cases. Mr. Donnelly's legislation, which is similar to Ms. Snowe's, would pertain primarily to senior citizens. I am sure, however, that all of this can be worked out.

I might note that my two distinguished colleagues from the Ways and Means Committee, have a mark-up at 11:00. So with regard to that, why don't we move to Mr. Donnelly and then to Mr. Jacobs, who recently arrived.

**STATEMENT OF HON. BRIAN J. DONNELLY, A REPRESENTATIVE
FROM THE STATE OF MASSACHUSETTS**

Mr. DONNELLY. Thank you, Mr. Chairman and members of the subcommittee, for holding hearings this morning on legislation that I have filed, H.R. 1550 and the legislation filed by my colleague from New England, Congresswoman Snowe, H.R. 939.

Mr. Chairman, these bills are necessary to end the outrageous and scandalous deceptions practiced against vulnerable senior citizens and other citizens of this country. Attached to my testimony this morning are examples of deceptions we are talking about: offers to sell copies of individual Social Security records, informational kits on how to obtain Social Security numbers, and advertisements for a so-called Social Security sweepstakes.

If you would look at some of the examples that I have included with my testimony, you will see a postcard with a facsimile of the great seal of the United States in one corner, a picture of Uncle Sam pointing directly at the recipient on another, in bold print on the top headline, "Are your Social Security records accurate?" which is followed by, "By an act of Congress, you are responsible for your Social Security deposits," and for a simple processing and handling fee of \$9.50 this organization, which sadly to say is located in the Commonwealth of Massachusetts, will provide full information and instructions, plus the necessary form.

Of course, we know that that information is available to all citizens of the United States free of charge from the Social Security Administration by simply sending a letter or visiting your local Social Security office.

One of the most egregious representations that has been brought to my attention by my constituents is an offer for a low fee of \$87 to be represented in Washington by some organization to protect Social Security benefits, and included in that will be a so-called Social Security sweepstakes, where if you send your \$87, this organization will monitor proposed legislation in Washington to make sure that you will not lose any of your Social Security or Medicare benefits to which you are entitled.

These promotional materials are for sale, but are items provided for free by the Federal Government. They lie. They frighten elderly Americans into spending their limited resources on items they do not need and they can get at no charge.

H.R. 1550 would prohibit this promotional material from being sent through the U.S. mails unless it carries a statement that the material is provided for free by the Federal Government. The statement would have to be in clear, legible print, and would have to say, "This is not a government document."

In addition, the promotional material would have to say, "This product or service has not been approved nor endorsed by the Federal Government, and this offer is not being made by any agency of the Federal Government."

Violation of this legislation would be severe. For each incident, the violator would be subject to a \$1,000 fine or one year in prison, or both.

In addition, I propose that the proceeds from these fines be deposited into the Medicare trust fund. As a member of the Committee on Ways and Means, I know all to well the precarious situation of these trust funds.

Mr. Chairman, I would also like to mention briefly an amendment I offered in the Committee on Ways and Means that is relevant to today's hearing. I offered an amendment to this year's reconciliation bill that would require any entity that has tax-exempt status under Section 501(c) of the Internal Revenue Code to include a statement similar to the one I just described on promotional materials of this type.

Many of these unscrupulous organizations have exempt status under Code Section 501(c)(4). The Donnelly amendment gets at a large part of the problem. Those exempt organizations would have to include the notice requirement that is in H.R. 1550 when they offer for sale items or services provided for free by the Federal Government, and I might say that my amendment was adopted unanimously by the Full Committee.

Still, there is the need for stronger action, which H.R. 1550 and H.R. 939 provide. I urge the subcommittee to move quickly on these two pieces of legislation and give these bills serious consideration and attention with the intention of protecting senior citizens and, in fact, all Americans from deceptive mail practices.

In conclusion, let me state very briefly, Mr. Chairman, although my legislation is directed in title to protect senior citizens, I support language to protect all Americans. I think you would agree with me, however, that senior citizens fall prey easier to these sorts of scare tactics than other members of our society.

Second, the question of the limitation of free speech has been mentioned here this morning. Let me state for the record that the Supreme Court has ruled in a long line of cases that commercial speech, which these advertisements certainly are, are subject to less constitutional protection than other types of speech, such as political speech. In the Supreme Court decision of the *Central Hudson Gas and Electric Corporation* versus the *Public Service Commission*, the Court suggested that the government could regulate commercial speech if in doing so it furthered a "legitimate government purpose."

Clearly, the protection of senior citizens or any citizen, for that matter, is a legitimate government purpose.

I thank the committee, and I applaud the committee for having this public hearing this morning on a type of egregious activity that is becoming more commonplace all of the time.

Thank you.

Mr. McCLOSKEY. Thank you, Mr. Donnelly, for an excellent statement.

There is a vote underway on the House Floor. Perhaps my distinguished Hoosier colleague would like to speak for about five minutes at your pleasure. Andy if you want to come back after we vote, that will be great; but please offer us your thoughts, now.

**STATEMENT OF HON. ANDREW J. JACOBS, JR., REPRESENTATIVE
FROM THE STATE OF INDIANA**

Mr. JACOBS. I am here to support this legislation. I might point out that when we did the Social Security bailout a while back, one of my colleagues on the Ways and Means Committee sent out a solicitation which said, "Save your Social Security: send money." And I said to him, "That is really wonderful, what you are doing, to protect the Social Security Trust Fund. How much money have you raised so far? How soon are you going to turn it over to the Trust Fund?"

And while he stammered, I said, "Have you heard about that country and western hit about television ministers? They say send your money to God, but they give you their address."

That, in essence, is what the problem is here. When I was practicing law an organization sent a payment demand to my sister. She had mailed in for something, maybe a coat hanger and got a back a nail. And now they were demanding their \$130, including interest and attorney's fees. They said, "You have three options to pay this, one, two and three." They called themselves the *Federated Bureau of Investigators*, FBI. I think Marge wrote back to them on the foot of their own letter, telling them to go fly a kite, and added "none of the above, all of the below." But she is a little faster than some of us, and I think that this legislation is necessary.

Now, I think disclaimer requirement ought to be the law, but I would not depend on it entirely because we all know that cigarette packages have disclaimers on them, and they do not mean much. I know some people who are very intelligent who smoke and ought to quit, but they do not even notice the printed warnings. I suppose if they would read them rather than smoke them they would be better off, but people usually do not read these things.

It used to be that a walking district policeman would go past a fruit stand and, according to standard operating procedure, pick up an apple. It was considered a gratuity. A civilian over at the city market one day was caught stealing an apple, and they charged him with impersonating a police officer.

That is exactly what this legislation is about. We do not want people impersonating the Federal Government, and I think you should go further than the bills before you prohibit envelopes which look like U.S. government mail.

When the Social Security Committee had hearings on deceptive mail solicitations over at Social Security, there was an outfit called "Social Security Benefit Protection Service," and I understand they collected a lot of money and then went out of business.

The Postal Inspectors told us, well, it does not make any difference what the envelope looks like. If you open it up, you can plainly see it is a private message. I said that is baloney, because if someone represents himself as a police officer to you, no matter

what he says after that, the chances are you are still going to believe he is a police officer and speaking for the authorities.

So I think the law ought to provide that good, common sense should be applied, and if the Postal Inspectors see an envelope that is clearly imitating mail from the Federal Government, it ought to be prohibited, and somebody ought to be thrown in the pit over it.

Thank you.

Mr. McCLOSKEY. Thank you, Mr. Jacobs, for an excellent statement.

I think we will vote and resume the hearing in about 15 minutes when Mr. Visclosky and Ms. Kaptur and others are here.

[Whereupon, a short recess was taken.]

Mr. McCLOSKEY. Let us resume the hearing now.

Before we hear from Ms. Kaptur and Mr. Visclosky, Congressman Coelho reports that he very much endorses the sum derivative or the basic structures of the Snowe-Donnelly legislation.

With that, let me say it is very enjoyable to have Ms. Kaptur and Mr. Visclosky here. I know of their interest in this issue also.

Marcy, why don't you give us your statement or your views?

**STATEMENT OF HON. MARCY KAPTUR, A REPRESENTATIVE
FROM THE STATE OF OHIO**

Ms. KAPTUR. Thank you, Mr. Chairman, and I want to commend you for calling this hearing. It is good to see Mr. Dymally and Mr. Myers and other members who have expressed interest to us in these hearings.

I have a full statement that I want to submit for your inclusion in the record, and I would like to talk informally also as a part of my testimony here today.

Mr. McCLOSKEY. Without objection, it will be included in the record.

[The prepared statement of Hon. Marcy Kaptur follows:]

TESTIMONY OF
THE HONORABLE MARCY KAPTUR
OCTOBER 1, 1987
BEFORE
THE SUBCOMMITTEE ON POSTAL PERSONNEL AND MODERNIZATION
SUBCOMMITTEE ON POST OFFICE AND CIVIL SERVICE

Mr. Chairman, I commend you for calling this hearing on H.R. 939 and H.R. 1550, two pieces of legislation that will go a long way to curbing direct mail solicitation abuses, especially those aimed at the elderly. I am testifying today out of my strong conviction that, every day, elderly Americans are being bilked out of hard-earned retirement dollars by clever organizations falsely claiming to be advocates for seniors.

These shoddy organizations prey on some of the most deeply held fears seniors have about their retirement security. They are doing it through the U.S. mail. This is precisely why this hearing is so important and why legislation in this area is so vital.

It's time to cut the lifeline of these groups which have built sizable financial war chests by exploiting the fears and anxieties of the elderly. We in the Congress have the power to do so.

There are several organizations which can be put in this category. However, the practices of one group in particular, the National Committee to Preserve Social Security and Medicare, deserve special examination because they are so illustrative of the abuses that need to be eliminated.

Through clever mailing tactics that engender fears about losing Social Security and Medicare as well as by invoking in their mailings the names of well-known elected officials such as myself and other colleagues, this organization has raised \$75 million from seniors throughout the nation over the last three years. Of some \$2.5 million reportedly spent on lobbying efforts in 1985 by this organization, 96% of that amount went for direct mail expenses and not for legitimate Congressional lobbying and advocacy activities.

From my observation, the only thing this organization does with the money it raises is provide Social Security recipients with information that is already available to them, free of charge, from the Federal government, or jump on the bandwagon of Congressional legislation already introduced.

The slick, deceptive direct mail strategy of this organization and others like it is highly effective largely because of the physical appearance of the mailings themselves. I would like to point out to the Committee what some of these mailings look like.

I provide one that is typical. It is from the Social Security Benefit Protection Service. The words "SOCIAL SECURITY" are in bold capital letters. So is the portion of the address, "CAPITOL HILL OFFICE BUILDING." The organization even goes so far as to stamp the back of the envelope, "BUY AND HOLD U.S. SAVINGS BONDS." The envelope clearly looks like government issue.

Because of the official-looking nature of these mailings, the use of the names of prominent elected officials and the dire language used, seniors are scared into believing that they must make contributions in order to protect their Social Security and Medicare benefits. Each time my District is inundated by the National Committee's latest mailing or that of any similar organization, my office receives distressed calls from frightened and confused seniors wondering whether or not their next Social Security check will be delivered or their next hospital visit will be covered by Medicare.

Having met with the directors of my District's senior centers and nutrition sites, I am keenly aware of the anguish, uncertainty, and health problems brought on by these mailings. I have made a concentrated effort through the media and special mailings to alert the seniors and their families in my community about these organizations and their mailing tactics. This has been successful to a certain degree. But each of us knows the power of direct mail.

The only way to put an end to the cruel hoax perpetrated by these organizations is through the enactment and enforcement of legislation such as that offered by my colleagues, Ms. Snowe and Mr. Donnelly. I commend both of them for their efforts in this important area.

Seniors and their families must know that these mailings are NOT from the Federal government, that their elected representatives are NOT associated with these organizations, and that many of the benefits offered through these mailings are already available, FREE OF CHARGE, from the Federal government.

Though organizations like the ones I've described will continue to use the mails to prey upon the most vulnerable in our society, as elected officials we can limit their success. By enacting fair and legitimate safeguards such as proposed in these two bills, we are helping to protect innocent citizens.

I want to thank the Committee for providing me this opportunity and I would be happy to answer any questions you and other Members may have.

Ms. KAPTUR. This has been a long effort, spanning a couple of years now. I am really here because of my strong conviction that there are so many organizations in our country, and one in particular that I am going to highlight today, that every day bilk elderly Americans out of their hard earned retirement dollars, and what I have found is that they prey on senior citizens's deeply held fears that if they do not give money, they are going to lose their Social Security and Medicare, and, frankly, I am really tired of it.

I first got involved in this over two and a half years ago when I attended a church meeting in my district, and I opened the session up for questions, and a woman raised her hand, a senior in the back of the room at St. Vincent De Paul Church, which I will never forget, and she said, "Ms. Kaptur, I sent you the money."

I said, "What do you mean, ma'am, that you sent me money?" It was not an election year. There was no reason to be sending money around.

She said, "So I wouldn't lose my Social Security," and I could not understand what she was talking about, and then the other people in the neighborhood spoke up on her behalf and said, "Well, what she really means is that we have been getting these mailings," and then some of the people started to giggle, and they said, "Well, you know, we put it in File 13. We threw it in the waste basket."

But then there were others that obviously had sent money, and that is how I first learned about one of the groups I am going to talk about today, this National Committee to Preserve Social Security and Medicare.

After that particular incident, I realized that my district was being barraged by mailings through this particular group, and after them, over the last two and a half years other groups were cloned and spawned, and have now begun mailing in to the district as well. I think one of the previous members here this morning mentioned one of their names.

I think that when it first happened I tried to find who the group was because I had never heard of them before, and I tracked them down here in Washington, and it turned out to be a post office box, and it took us over six months to get the person who was the head of the organization, Mr. Roosevelt, into my office in order to confront him with the mailings that were being sent out at that time.

I did not bring those mailings to this hearing. I have brought the most recent ones, but I asked him why he was presenting himself as a Congressman and signing the letters that way, when in fact he was retired. That resulted in them putting in parentheses on subsequent mailings, including the most recent ones, the word "retired," and they changed the symbol that they were using from the U.S. Government symbol to look almost like it, but not quite. The eagle faces in a different direction or the pillars on the Capitol are turned a different way, but they were attempting to water down a little bit the impact of their mailings.

I, however, found that unlike other organizations which had local, elected boards and chapters which then elected national officers here at the national level so that there was some accountability, this particular group was purely a post office box that raised money here in Washington, which did not have the normal checks and balances that a membership organization would have because,

in fact, their board was an appointed board. Some of the board members benefitted financially from participation in the organization, and it was truly a different organization than the others that have existed for several years in our country, which would never use these types of tactics in order to raise money, and in fact, most of those groups, I think in fact all of them, do not testify at these types of hearings, and they really feel, I think, uncomfortable in commenting on another group's activities.

But this particular group is the only one we have ever gotten complaints about, the only one incidentally that raises the volume of money that they have raised over the last three and a half to four years. They have raised about \$75 million, most of which has been plowed directly back into direct mail techniques.

Just think about the amount of money we have to allocate ourselves to send newsletters out, and then imagine what mailings like this cost. This is the most recent one in my district. I call it the bed sheet ballot, and it says at the top, "Urgent notice to Social Security recipients," those born between certain years. "You may be losing benefits," and so forth, and then it has got their return address, National Committee to Preserve Social Security and Medicare, National Administration Office, they have got the address, and then Washington, D.C. Then it has got at the bottom here, "Attention Postmaster. Time dated official National Committee documents enclosed. Expedite for immediate delivery."

Now, when this comes to a senior citizen who, on average, has less than an eighth grade education, and it says Washington, D.C., and it says Social Security and Medicare, regardless of what the enclosures may say, which incidentally are very lengthy; they have lots of words on them; what do you think their first reaction would be, especially when one of the says "Petition" at the top and it has got numbers on it? It is very, very confusing.

Now, the organization argues that they have cleaned up their act because they have——

Mr. McCLOSKEY. Ms. Kaptur, just out of curiosity, what is the date on this latest mailing in your district?

Ms. KAPTUR. This was earlier in the summer. It was right after Easter.

Mr. McCLOSKEY. Is there any sort of disclaimer on the material that it is not governmentally related?

Ms. KAPTUR. That is what I wanted to point out to you because they will argue, and I do not know if they are testifying today, that they have cleaned up their act. At the very bottom in red letters, and my vision is not that good, but if I was 80 years old or 90 years old, in teeny, weeny, little letters at the bottom it says in red, "The National Committee is independent of Congress, every government agency and all political parties."

They claim that this little thing here at the bottom exempts them from all further responsibility. Then they claim that in these materials, and you see, what is happening is that many members of Congress are getting contributions because our names happen to be listed up here, and some of the seniors have made the mistake of sending us the money rather than this group the money, and what they do to try to say that they have changed that, on this petition they say:

The names of your Senators and Congressmen appear on this petition because it is directed to them for their consideration. No endorsement of the National Committee to Preserve Social Security and Medicare by these members of Congress is intended.

It is in the way of a disclaimer, but I think you need a Ph.D. to find it and probably some type of telescope to be able to read it.

In general, it has been sent out like this. They have had in the past envelopes like this one, which also state, "Urgent, Social Security and Medicare information included," and then one of the other groups, and I brought this along also, calls themselves the Social Security Benefits Protection Service. They have Capitol Hill Office Building, Washington, D.C. It says, "Do not forward." And then on the back, and I love this one, it says, "Buy and hold U.S. Savings Bonds," which is really where the seniors should be putting their money, not sending it to these groups, in order that they can really make the best use of their hard earned dollars.

Mr. McCLOSKEY. You would say you are very much for Ms. Snowe's and Mr. Donnelly's requirement for a disclaimer?

Ms. KAPTUR. Absolutely.

Mr. McCLOSKEY. I would assume that the Postal Service, from what I have heard from Ms. Snowe, will likely require a much larger disclaimer.

Ms. KAPTUR. I would also. I do not know who designs those things over there, but I do not think that this meets the test at all. Seniors ought to know that this is not from the government of the United States, and that little thing down there they are really not going to see. So I do not think you can leave it up to the organization in order to police themselves.

I think the final thing I would like to say, Mr. Chairman, is that for those members of this particular organization that are in the audience, if they have any shred of heart and of compassion for the seniors of this country, if they were to come to the senior centers in my district, which try to reach out to the people that receive these mailings and get upset, and some people are sending on the average of over \$300 a year in small checks every month because they are worried that they will not get their money; I cannot see how any organization, although they may not be illegal, I consider them completely immoral in what they are doing, raising the vast amount of money that they are raising. I do not see any benefit to seniors in my district, and if they could see the concern that they cause, in spite of some of the minor modifications that they have made in their mailings, I do not see how they can continue to do their jobs.

That is what I would like to enter on the record today. I totally support the legislation and any strengthening language you can include to make sure that the design of the material and so that it is clear that this is not a mailing from the United States Government, and I would hope that the people who are in this audience would clean up their act and stop bilking the senior citizens of this country. It is just not right.

Mr. McCLOSKEY. Ms. Kaptur, if I could ask a question, was that \$300 yearly contribution provided by some of the people in your district who said they sent that much?

Ms. KAPTUR. Yes. I have gone on television. Every time a mailing goes out, I go on television and tell people they do not have to contribute, and seniors call me. One person came to my mobile office, when I took it out, and brought all of their canceled stubs from a whole year, and that is not unusual.

I talked to two members of Congress yesterday, one from Massachusetts, not the sponsor of the legislation, Mr. Chairman, and also one from South Carolina, who have had the very same experiences in their districts, and they have received money just as we have, which is how they found out about this organization.

They do not take political action contributions from this particular organization, which incidentally is getting very powerful in terms of contributing here in the Congress, and I think it is up to members to really check out who these groups are, but I think you have to go to the basic fact of how they raise the money and what they do in order to get it.

Mr. McCLOSKEY. Do you have any ideas, not pertaining particularly to the committee that you have emphasized, regarding the analogies to the FBI and the Internal Review Service, which uses this gimmick. We will also be talking to the Post Office later about this matter. Mr. Visclosky and Mr. Boehlert, you are certainly welcome to comment on this question. Pete, I know particularly of your excellent Georgetown legal training, but is there any way to get at that similarity in the initials and the words, and the emphasis on "national" and "IRS" for Internal Review Service, and that sort of thing?

Mr. VISCLOSKY. Mr. Chairman, I would not brag about my law school record. [Laughter.]

Mr. McCLOSKEY. But you did pass, and you are a member of the Bar.

Mr. VISCLOSKY. That is absolutely correct, Mr. Chairman, and having said that, I think you do have a very serious First Amendment question that would have to be resolved, but I would echo Congresswoman Kaptur's comments about making sure that a disclaimer is disclosed in any type of communication, and that it is not ambiguous.

I think one of the problems is that many organizations now, really at the insistence of members such as Ms. Kaptur, have put in a disclaimer, but it is very ambiguous. It is followed immediately by additional verbiage that would create a doubt again in your mind as far as the sincerity, and I think, again, that might potentially be a key.

Mr. McCLOSKEY. Would you give us your statement, Mr. Visclosky, on this situation overall?

Mr. VISCLOSKY. I would be happy to, Mr. Chairman.

Mr. McCLOSKEY. Please proceed.

STATEMENT OF HON. PETER J. VISCLOSKY, A REPRESENTATIVE FROM THE STATE OF INDIANA

Mr. VISCLOSKY. I would ask the committee's permission to insert my remarks in their entirety and would like to relate to the committee essentially a personal experience I have had.

Mr. McCLOSKEY. Without objection.

[The prepared statement begins on p. 104.]

Mr. DYMALLY. Mr. Chairman, just a point of information. Are you going to take all of the witnesses and then questions, or are we going to have a chance to ask questions individually?

Mr. McCLOSKEY. However you would like, Mr. Dymally.

Mr. DYMALLY. I do not want Ms. Kaptur to leave before I have an opportunity to ask her questions.

Mr. McCLOSKEY. I would hope that she would be here. Are you going to be able to do that, Marcy?

Ms. KAPTUR. I will be here.

Mr. McCLOSKEY. Yes.

Mr. VISCIOSKY. Mr. Chairman, a number of witnesses prior to myself have talked about the impact on senior citizens, and I would again add my voice to theirs, but I would like to talk about another aspect to the problem.

The common theme utilized by deceptive mailers is "the assistance for a fee" scheme. While this is also targeted to senior citizens, it is not limited to them, and I speak from personal experience.

On February 12 of this year, my son was born. Shortly thereafter I received a letter in the mail, which I would also like to submit for the record. It is a letter from the Federal Record Service Corporation, Birth Records Division of Washington, D.C. The letter tells me that records indicate that my newly born child does not have a Social Security card, and that it is important that he have one immediately.

For a fee of \$10, the Federal Record Service Corporation will handle the paper work and clerical details necessary when applying for their Social Security card. In fairness, I must state that it is indicated in the letter the Federal Records Service Corporation is a nongovernment agency. It is also stated that new federal legislation requires that all dependents reaching age five by the end of the tax year must be listed by Social Security number on my 1987 income tax return.

However, this letter sends a confusing message. If I have five years to apply for my child's Social Security card, why is it stated in the letter that it is "important that your child be issued a Social Security card immediately"?

Furthermore, I am told that if I "fill out the information requested right now and return it, we will begin to process your application immediately." The payment of the \$10 fee will enable the Federal Record Service to secure proper application form, complete the appropriate application, return the application to me to check for accuracy, and finally provide instructions to me regarding what documents I must submit to Social Security.

However, it is not indicated anywhere in the letter that these services are provided by Social Security free of charge. Furthermore, one can be left with the impression that applying for a Social Security number is a time consuming, difficult process. It is not. To receive a Social Security card for a child, all a parent has to do is to contact the local Social Security office and request an application. The application is clearly written and easy to understand.

After it has been returned with a copy of the child's birth certificate and one other documents verifying birth, the Social Security

number is normally issued within ten days. All of this can be done through the mails. It is easy. It is efficient.

In conversation with the Social Security Administration, I was further informed that by going through a service, such as the Federal Record Service Corporation, the turn-around time would be increased due to the use of a middle man.

I would conclude, Mr. Chairman, by suggesting that I am particularly enamored with provisions of the pending legislation that not only would have a disclaimer in the contents of any mailing, but would also indicate to the recipient that if there is a fee charged, that the service is either provided free by the Federal Government or at a reduced cost so that people are not misled that they would in this instance at least have to pay for a Social Security card.

Mr. McCLOSKEY. Could you elaborate on that again, Mr. Visclosky? Are you asking for a change in the bill that in effect tightens it up or are you satisfied with the bill?

Mr. VISCLOSKY. No, I believe in Ms. Snowe's legislation there is an inclusion that you would have to indicate that if there is a fee involved for the service to be provided, that, again, you would have to notify the recipient that the government provides that service for free or at a reduced cost, and I do believe that is a very valuable portion of the pending proposals before the subcommittee.

Mr. McCLOSKEY. Thank you for an excellent statement.

Mr. Boehlert, it is good to see you today, sir.

**STATEMENT OF HON. SHERWOOD L. BOEHLERT, A
REPRESENTATIVE FROM THE STATE OF NEW YORK**

Mr. BOEHLERT. Thank you, Mr. Chairman.

If there is a single thing that has emerged from this year's dismaying run of scandals, it is the need for public accountability. Secrecy breeds abuse. That axiom is pointed out by another scandal that has not received nearly enough scrutiny: the proliferation of deceptive, direct mail, fundraising campaigns. That is why hearings like this one today are so important.

Both Congress and the general public will benefit by learning about the practices used by direct mail groups—from the exemplary to the suspect.

Direct mail solicitation can be a gold mine for worthy causes. But more and more it seems that anyone with a computer and a post office box, can claim to be in need of a small fortune to continue their good works. Current law does not require that tax exempt groups speak truthfully or demonstrate to anyone that the money they raise is used for the stated, noble purpose.

That is why enactment of H.R. 939 and H.R. 1550 would be an important first step toward restoring some accountability in the direct mail fundraising business. These bills respond to specific instances where a tax exempt group claims to be providing a unique service to people as a cover for milking donations from them.

That is inexcusable and I fully support efforts to swiftly enact this legislation as a first step toward protecting Americans from these tax exempt money making machines.

But to be frank, I think we need to go a step further. Whether the issue is senior citizens, abandoned animals or cancer research, shady, tax exempt mailings are growing in number and sophistication. They exploit, for example, the ever-present fear of senior citizens that their hard earned retirement benefits will be swept away. They cloak their organization with references to the U.S. Government, use popular older celebrities to tout their efforts and portray themselves to the casual observer as an official representative from Washington. Some even employ a facsimile of the great seal of the United States on their mailings.

The most successful group to use these methods is the National Committee to Preserve Social Security and Medicare, nominally headed by former Congressman James Roosevelt. Most of my colleagues are probably sick and tired of bringing up this group. So am I, but they deserve to be exposed at every opportunity.

In nearly five years of existence, the National Committee has raised more than \$70 million from 4.5 million members through direct mail campaigns based on a hysterical and deceptive presentation of the facts. The group has been the target of numerous congressional, federal agency, state and journalistic investigations because it claims to be something it is not: a power lobbying force on Capitol Hill.

The group opened its first campaign in 1983 with a letter that drew the ire of the Social Security Administration. The National Committee offered to obtain the Social Security record of anyone who paid a \$10 membership fee. In fact, those records are available, as we all know, for free from the government.

After a reprimand—a copy of which I will submit for the record—from the U.S. Postal Service, the Committee had to write their members again to explain the offer more fully. It is ironic that some of the Committee's recent mailings have been critical of other groups who tried this ploy, as if their own experience disappeared into the memory hole.

Later in 1983, the committee claimed to have assembled a "blue ribbon panel of experts," to "review the landmark Social Security Amendments of 1983" and distributed a transcript of the panel's discussion. It turned out though that no such discussion had ever taken place. Six of the 11 experts had never heard of the panel or the report and did not even give permission for the use of their names.

The group's pattern of deception has continued unabated since its inception in 1982. They have claimed credit for accomplishments that have taken place before the group was formed. They have used variations of the great seal of the United States on their masthead to make their documents look like official government mailings. They have mailed requests to their membership to sign urgent petitions to Congress that sat for months in California warehouses.

The National Committee's basic premise is that they are an active, respective lobbying group on Capitol Hill. This claim began appearing in the group's mailings more than a year before it had registered to lobby or even obtained a listed phone number. The group's tactics usually involve undertaking a massive fundraising mailing right before noncontroversial votes on Social Security—

times when legitimate senior citizens advocates are silent—and then claiming credit for the results.

One is forced to conclude that the National Committee has decided to solicit from the elderly not for any benevolent purpose, but rather for the reason Willie Sutton gave for robbing banks: "because that's where the money is."

The organization has, in its own words, never changed a single member's vote. Although the group continually claims credit for saving Social Security and Medicare, it cannot conceal the fact that over four million dues paying members are not getting any "bang for the buck."

Two prime examples of this occurred before the vote to eliminate the inflation trigger for cost-of-living adjustments and the vote to repay money the Treasury had borrowed from the Social Security Trust Fund. Before the COLA vote, the National Committee went so far as to suggest that seniors donate a percentage of their COLAs to the group. Tithing is certainly an innovation in direct mail fundraising, but it does not do much to help the elderly.

Prior to the noncontroversial vote on Social Security Trust Funds, the organization sent out a solicitation pleading for money to battle those who would oppose the legislation. They raised \$600,000 with this mailing. The vote in the House, to no one's surprise, 401 to zero.

Would senior citizens give so readily to this organization if they realized where their money went? I doubt it, and I would like the chance to find out.

Groups like this will continue to spring up like mushrooms in the dark unless they are forced to disclose their fundraising and spending habits. In fact, similar groups already have sprung up using the aforementioned causes of cancer research and rescuing abandoned animals as the emotional hook.

It is time to turn on the light, Mr. Chairman. Congressman Bob Wise and I have offered H.R. 1566, legislation which complements H.R. 939 and H.R. 1550, and would require increased disclosure of fundraising activities by nonprofit, tax exempt organizations like the National Committee. This is not an onerous requirement.

Politicians must disclose their campaign finances and spending, and that is good. Public corporations must publish annual reports. That, too, is good. Disclosure would not interfere in any way with the exercise of anyone's First Amendment rights.

Fundraising groups with tax exempt status should be required to tell more about how their money is spent. Where their accountability might not deter every deceptive claim or hyperbolic phrase from fundraising letters, it would enable donors to know where their money is going. Decent, honest groups have nothing to fear from disclosure, and it would be a strong weapon against others who are little more than perpetual money machines.

Armed with the facts, Americans can accomplish more than a congressional investigation and end the manipulative tactics of political hucksters.

Thank you, Mr. Chairman.

Mr. McCLOSKEY. Thank you very much, Mr. Boehlert.

Mr. Dymally.

Mr. DYMALLY. Mr. Chairman, thank you very much.

First, let me preface my questions with a couple observations. I support the legislation. I am troubled, however, by the fact that we need to be careful that we do not trample on First Amendment rights, and there is an echo of elitism in some of the statements, which suggest that senior citizens are some sort of victims because of their ignorance and they do not know what to do and they need us to protect them, as if they all cannot read and make decisions for themselves.

Mr. BOEHLERT. If I might respond to that.

Mr. DYMALLY. Let me finish, and I will come back to you. Thanks.

Third, there has been a great deal of fear generated by the President and the former Majority Leader in the Senate about Social Security. That is no secret. The Democrats have made great hay out of this issue in past elections during the seven years that I have been here. This has been our major, frontal attack on the President, the fact that he has been trying to take away the Social Security benefits. So it is not just the National Committee that does that. The head of our own Democratic Party has made great hay out of the fact that the leadership of the Republican Party from time to time has given senior citizens cause to fear.

Of the six witnesses who have testified, two, Ms. Kaptur and you, Mr. Boehlert, have centered your criticism on one organization, and I am troubled by that because the legislation addresses a critical issue, not just an organization, and to single out one organization makes it difficult for me to support legislation that directs the entire Congress's energies on one organization.

So I am troubled by that fact. You did not address, although you did, in part, Mr. Boehlert, but Ms. Kaptur addressed grievances against one organization rather than the larger picture as addressed by the other witnesses, and I suspect her own personal grievance and her own personal experiences motivated such criticism, but I would like to deal with the issue of deceptive mailing, including politicians who use state capitals and other deceptive mail.

Indeed, one of my staff members was defeated because of deceptive mailings, and so I feel very sensitive about that. By the way, the guy did some time for it, you know, in my district. So I am very, very sensitive. Were it not for that deceptive mailing, that woman would have been on the City Council in Compton. So I am sensitive.

But I am also very, very concerned about trampling on First Amendment rights. If this issue were in a throw-away rag, would we have brought the newspapers up here and attacked them? We would have said that that newspaper is protected by First Amendment rights. So one has to be very careful as we proceed.

Finally, let me say this to you: that I do support the legislation, but I am troubled by zeroing in on one single organization, and this has become a national issue.

Now, finally, I have seen some of these mailings, and they are no worse than some of the stuff that I get. What I usually do, and I suspect we have suggested that senior citizens do not have the sophistication of Members of Congress, I usually do that (indicating) in the trash can, but I do not see anything in this piece of mail, if

we may use it, that suggests that it comes from the government. You know, you may not like it, but not liking something does not make it illegal, and it may not be popular, but being unpopular is not being illegal, and one has to be careful that because we have a personal dislike, you know—I mean I do not like the fact that a Republican runs as a candidate against me, but I cannot outlaw the Republican Party in my district.

So we have to be careful as we proceed in this that we review the broad, general issue of legal violation rather than deception because we all are deceptive in our speeches.

Thank you very much.

Mr. BOEHLERT. Mr. Chairman, may I respond?

Mr. McCLOSKEY. Certainly, Mr. Boehlert.

Mr. MYERS. Be careful of that "all" bit, too.

Mr. BOEHLERT. Mr. Chairman, first of all, I want to thank you about your comments about the First Amendment rights because I consider nothing to be more sacred. I carry a copy of the Constitution in my pocket to constantly remind me about how important First Amendment rights are.

Secondly, you suggested that some panelists have suggested that the elderly are ignorant.

Mr. DYMALLY. Oh, no, I did not say that.

Mr. BOEHLERT. No one has suggested that. But I do believe the elderly are vulnerable. My 86 year old grandmother lives with me. She is not ignorant. To be very blunt about it, she is a hell of a lot smarter than me, with all of her life-long learning experiences. But she is very vulnerable. She worked 60 years—60 years—and when she retired, they said, "Thank you very much," nothing more. All she has that allows her to hold her head up high in dignity is that monthly Social Security check, and when she gets mailings—scare type mailings like she has repeatedly received from the National Committee—that bothers her. It makes her nervous. She is upset.

One time I actually had to take her to the doctor because of that. That disturbs me.

The only reason I single out an organization like the National Committee is because they are the most guilty of those who are guilty of deceptive and misleading mailing practices that are frightening one of America's most vulnerable groups, and I want truth in mailing. I do not want to abridge anyone's First Amendment rights, but let's be honest with the American people.

Ms. KAPTUR. Mr. Chairman, may I respond since I was also referred to by our good friend and colleague, Mr. Dymally?

Mr. McCLOSKEY. Yes.

Ms. KAPTUR. In my remarks, I did specifically mention two groups. I did talk about the Social Security Benefit Protection Service, and I talked about other clones and other organizations, and were happy to provide the committee with envelopes and materials.

I, like Mr. Boehlert, however, have found the National Committee to Preserve Social Security and Medicare creating the most havoc, the most confusion, the most high blood pressure, the most hypertension, the most diarrhea, the most headaches of seniors in my district. Now, that tells me something. It is the only group that

causes checks to be sent to me, with people thinking that they have to send money in order to get their Social Security.

And, quite frankly, it is a bother. It is a bother to have to go out and to have to calm people down and have to return checks, try to get their money back. So there is something unique and rather repugnant about this particular organization, and perhaps as we try to protect First Amendment rights and we should try to help all Americans to live in dignity in their retirement years, this group should go further to cleanse its mailings and not to create this kind of upheaval among seniors across this country.

So I do think they are worse offenders. So I would have to say that in my five years of experience, they are the worst offenders I have found in this regard.

Mr. DYMALLY. You are aware that the chairman of the Committee did testify before the Ways and Means Committee and subsequently wrote members of Congress outlining a set of standards that they have adopted to avoid this deception?

Ms. KAPTUR. I received one of those letters, which I did refer to in my testimony, and pointed out different sections are in living color, and I think rather unreadable and very small, which in no way to me would convince anyone that, in fact, this is not a federal mailing.

Mr. DYMALLY. Thank you.

Ms. KAPTUR. I think that they are very good writing letters.

Mr. McCLOSKEY. Thank you, Mr. Dymally.

Mr. Myers.

Mr. MYERS. Well, Mr. Dymally is troubled. I am troubled somewhat by Mr. Dymally's statement, to be honest with you.

When you say all politicians are deceptive, I——

Mr. DYMALLY. I did not say "all." I said "some."

Mr. MYERS. I believe you said the word "all" because I took you on right at that moment.

There is deception sometimes by some. I quite agree with you.

Mr. DYMALLY. I stand corrected.

Mr. MYERS. But to say "all" is, again, just the same thing you are saying here about First Amendment rights. I do not think anyone who is author or supporting this is wanting to take away the First Amendment rights guaranteed by our Constitution or could we. We could not if we wanted to. That is why we have the Constitution. It would be defended.

But, also, those people have First Amendment rights to tell the truth, and that is all anyone has been saying here this morning. These people are vulnerable. That is a good word to use. We all are vulnerable. We can see both sides, but often people do not have access to the information we have, and they are more vulnerable, and these are the people we are trying to protect, not that they are ignorant. Of course not, but they need to be protected as all of us need to be protected by the Constitution and by laws, and that is the intent of the various legislation that have been discussed here this morning: to defend these people, their rights, too, to be told the truth.

Thank you for your testimony.

Mr. DYMALLY. Would the gentleman yield?

Mr. MYERS. Yes.

Mr. DYMALLY. The gentleman does understand that I support the legislation?

Mr. MYERS. Yes, but then you said all are deceptive, and all are not.

Mr. DYMALLY. Did the gentleman hear me withdraw that statement? I stand corrected on that, and the gentleman understands that the First Amendment protects not the receiver, but the person who is speaking.

Mr. McCLOSKEY. Was it Johnny Carson who said the other day we can only lie about the future now?

Mr. MYERS. I will make some quotations here, and I am quoting from a letter: "improperly use the Social Security Trust Fund to finance part of the massive federal debt."

"Propose a shocking 74 percent increase in the monthly premiums paid by Medicare."

Another quotation, "Republicans worked and got the Social Security and Medicare programs."

All of the deception is not necessarily to get monetary gain. Every year I am frightened and discouraged by people using again Social Security against Republican candidates for Congress, that we are going to take it away from them. I am a Republican, and I certainly have no intention of taking away Social Security benefits, but yet this letter that I am quoting from here, which is, incidentally, the Speaker of the House, and I have been getting dozens of these from my district, frightened people that unless you vote Democrat, you are going to lose your Social Security, and that is not true either. That is as false as what we are talking about here, organizations working to get money.

I am a Republican, and I resent letters going to my district saying Republicans will work to gut the Social Security.

I am not about to, and I do not know of any Republican in the House who is going to, nor the Senate.

Mr. DYMALLY. Would the gentleman yield?

Mr. MYERS. Certainly, I will yield.

Mr. DYMALLY. Would the gentleman concede that there were statements made by the President and Mr. Dole that give rise to fear about Social Security?

Mr. MYERS. Only if you misquote. You know, Social Security has to be protected from rising costs because we have gone through that. You have got the Congress. We had to raise Social Security contributions from every American paying into Social Security because we had abused Social Security.

Now, I have heard statements like that, but Social Security recipients are vulnerable to that, and we in Congress have the responsibility to protect them. But because we do not stand on a street corner offering double the amount of money we pay to Social Security recipients, are we anti-Social Security recipient? Heavens no. We are trying to protect them.

Mr. McCLOSKEY. Mr. Myers, you said a few minutes ago that you would never be deceptive or lie.

Mr. MYERS. That is exactly right.

Mr. McCLOSKEY. So think about what you are saying now.

Mr. MYERS. I am using an example, to increase Social Security benefits—

Mr. McCLOSKEY. No one has said they are going to double Social Security payments.

Mr. MYERS. I did not quote anybody saying that, but I said it was wrong to stand on a street corner and propose this, too, and it would be whether it is a Democrat or a Republican. I did not say Democrats were doing that. Anybody would be wrong in doing this.

What I am saying I do not appreciate every two years, and that is another deceptive way, and so all of the deception is not necessarily organizations who are trying to pry money out of the senior citizens. Deception can come elsewhere, too, and is morally just as wrong.

Thank you for listening.

Mr. McCLOSKEY. Thank you, Mr. Myers.

Mr. Dymally, do you have anything else?

Mr. DYMALLY. No.

Mr. McCLOSKEY. I thank this illustrious panel. Does anyone have anything else they want to add?

[No response.]

Mr. McCLOSKEY. Thank you so much.

I might add that the subcommittee will accept without objection, statements for the record from Congressman Claude Pepper, who is basically, I would say, endorsing the National Committee to Preserve Social Security and Medicare, and from Congressman Edward Roybal, who talks about the need for legislation such as this.

Mr. Myers, I think there is general agreement here, despite all of the talk, that there likely is a need for a bill, regardless of targeting any one or two organizations.

We will turn to the Postal Service now, Mr. George Davis and Mr. Donald Davis, if they are here.

Mr. George Davis is Assistant General Counsel of the Consumer Protection Division of the United States Postal Service.

Now, which is which Davis?

Mr. DONALD DAVIS. Good morning.

Mr. McCLOSKEY. Are you any relation to each other?

Mr. DONALD DAVIS. No.

Mr. McCLOSKEY. Okay. Donald J. Davis, on the left there, is Manager of the Fraud and Prohibited Mailings Branch, Postal Inspection Service, United States Postal Service.

We really appreciate the expert testimony that we are about to hear, gentlemen. So I will let you decide as to how you want to proceed.

Mr. Myers.

Mr. MYERS. Do we have a statement from Mr. George Davis? I see Donald Davis. Do we have a prepared statement?

Mr. DONALD DAVIS. No, just one statement.

STATEMENT OF DONALD J. DAVIS, MANAGER, FRAUD AND PROHIBITED MAILINGS BRANCH, POSTAL INSPECTION SERVICE, AND GEORGE C. DAVIS, ASSISTANT GENERAL COUNSEL, CONSUMER PROTECTION DIVISION, U.S. POST OFFICE

Mr. DONALD DAVIS. With your permission, Mr. Chairman, I would like to offer my written testimony as part of the record.

Mr. McCLOSKEY. Without objection.

[The prepared statement of Donald J. Davis follows:]

TESTIMONY OF DONALD J. DAVIS
MANAGER, FRAUD AND PROHIBITED MAILINGS BRANCH
U.S. POSTAL INSPECTION SERVICE
BEFORE THE
SUBCOMMITTEE ON POSTAL PERSONNEL
AND MODERNIZATION
COMMITTEE ON POST OFFICE AND CIVIL SERVICE
OCTOBER 1, 1987

MR. CHAIRMAN:

WE APPRECIATE THIS OPPORTUNITY TO TESTIFY REGARDING A WIDE VARIETY OF MAILINGS WHICH ARE REGARDED AS MISLEADING AND DECEPTIVE. WITH ME TODAY IS MR. GEORGE DAVIS, ASSISTANT GENERAL COUNSEL - CONSUMER PROTECTION DIVISION, U. S. POSTAL SERVICE LAW DEPARTMENT.

WE NORMALLY BECOME AWARE OF PUBLIC CONCERN ABOUT A SOLICITATION THROUGH COMPLAINTS WE RECEIVE FROM THE RECIPIENTS. SINCE WE DEVELOPED A COMPUTERIZED COMPLAINT RESPONSE SYSTEM IN JULY 1985, THE INSPECTION SERVICE HAS RECEIVED CLOSE TO 400,000 CONSUMER COMPLAINTS OR INQUIRIES. WHILE WE DON'T CATEGORIZE THE COMPLAINTS AND INQUIRIES WITH SUFFICIENT SPECIFICITY TO IDENTIFY PARTICULAR ADVERTISING PRACTICES, WE KNOW FROM EXPERIENCE THAT CERTAIN PRACTICES GIVE RISE TO COMPLAINTS FROM THE PUBLIC.

ONE SUCH PRACTICE IS THE SO-CALLED "LOOK-ALIKE ENVELOPE" WHERE THE MAILING ENVELOPE IS DESIGNED TO RESEMBLE OFFICIAL GOVERNMENT CORRESPONDENCE. MANY RECIPIENTS--PARTICULARLY ELDERLY AMERICANS--ASSUME THE MAILINGS ARE OFFICIAL AND ARE THEREFORE PRONE TO PAY MORE ATTENTION TO SUCH MAILINGS THAN THEY MIGHT OTHERWISE.

ANOTHER PRACTICE INVOLVES SOLICITATIONS TO SELL SERVICES THAT CAN BE OBTAINED FROM THE GOVERNMENT FREE OF CHARGE. MANY OF THESE SOLICITATIONS ARE LIKEWISE TARGETED TO SENIOR CITIZENS. AS IN THE CASE OF "LOOK-ALIKE ENVELOPES", THESE PROMOTIONS ARE SOMETIMES CONFUSING AS TO THEIR ORIGIN. WE RECEIVE COMPLAINTS ABOUT THE POSSIBILITY THAT SOME RECIPIENTS COULD INCORRECTLY CONCLUDE THAT THESE MAILINGS CAME FROM THE GOVERNMENT. PAYING A PRIVATE AGENCY TO OBTAIN A SOCIAL SECURITY NUMBER OR SOCIAL SECURITY EARNINGS RECORDS ARE EXAMPLES OF THIS TYPE OF SOLICITATION. WE HAVE EVALUATED 18 SOLICITATIONS OF THIS NATURE WHICH WERE REFERRED TO US BY THE SOCIAL SECURITY ADMINISTRATION. WE CONCLUDED THAT TWO VIOLATED THE POSTAL FALSE REPRESENTATIONS STATUTE, AND WE INITIATED CIVIL ACTIONS. TWO OTHER PROMOTIONS WOULD PROBABLY HAVE BEEN THE FOCUS OF CIVIL ACTIONS, BUT THEY WERE FOUND TO BE OUT OF BUSINESS.

I WOULD LIKE TO EXPLAIN WHAT THE POSTAL SERVICE CAN AND CANNOT DO BY DESCRIBING OUR CURRENT AUTHORITY AND ITS LIMITS.

WHEN WE RECEIVE COMPLAINTS ABOUT A MAILING, WE MUST FIRST DECIDE WHETHER OR NOT THE SOLICITATION THAT IS GENERATING COMPLAINTS IS MERELY CONFUSING OR PROVOCATIVE, OR WHETHER IT MAY BE IN VIOLATION OF THE CRIMINAL MAIL FRAUD STATUTE (18 U.S.C. §1341) OR THE POSTAL FALSE REPRESENTATIONS STATUTE (39 U.S.C. § 3005). TO PROVE A VIOLATION OF THE MAIL FRAUD STATUTE, WE MUST SHOW THAT THE DEFENDANT USED THE MAILS AS AN ESSENTIAL PART OF AN INTENTIONAL SCHEME TO DEFRAUD. TO PROVE A VIOLATION OF THE FALSE REPRESENTATIONS STATUTE, WE MUST PROVE THAT THE DEFENDANT IS ATTEMPTING TO OBTAIN MONEY OR PROPERTY BY MAIL THROUGH MISREPRESENTATION OF A MATERIAL FACT. OUR AUTHORITY IS NOT BROAD ENOUGH TO PERMIT US TO CHALLENGE MAILINGS

WHICH ARE MERELY CONFUSING, DECEPTIVE, OR UNFAIR; NOR DO WE HAVE AUTHORITY TO PUBLISH TRADE PRACTICE RULES OR GUIDES WHICH MIGHT CURTAIL SUCH ADVERTISING TECHNIQUES.

WHERE WE HAVE REASON TO BELIEVE THAT EITHER STATUTE IS BEING VIOLATED, AN INVESTIGATION IS UNDERTAKEN. IN THE CASE OF MAIL FRAUD VIOLATIONS, IF OUR INVESTIGATION RESULTS IN EVIDENCE THAT THE LAW IS BEING VIOLATED, OUR FINDINGS ARE PRESENTED TO THE APPROPRIATE U. S. ATTORNEY FOR DETERMINATION AS TO WHETHER THE PERSONS CONDUCTING THE PROMOTION SHOULD BE PROSECUTED. PERSONS CONVICTED OF MAIL FRAUD CAN BE IMPRISONED, FINED, OR BOTH. IN THE CASE OF A VIOLATION OF THE FALSE REPRESENTATIONS STATUTE, OUR INVESTIGATION FORMS THE BASIS FOR AN ADMINISTRATIVE PROCEEDING WITHIN THE POSTAL SERVICE AND POSSIBLE CIVIL INJUNCTIVE PROCEEDINGS IN THE FEDERAL COURTS. THIS MAY RESULT IN THE RETURN TO SENDERS OF MAIL SENT IN RESPONSE TO THE SOLICITATION AND THE ISSUANCE OF A CEASE AND DESIST ORDER AGAINST THE PERSONS CONDUCTING THE SOLICITATION.

THESE STATUTES DO NOT, HOWEVER, AUTHORIZE US TO DO A NUMBER OF THINGS THAT ARE OFTEN ASKED OF US BY THE PUBLIC. FOR INSTANCE:

- WE CANNOT REQUIRE THE PAYMENT OF REFUNDS TO VICTIMS.
- EXCEPT IN CRIMINAL CASES WHERE A SUBPOENA HAS BEEN ISSUED, WE CANNOT REQUIRE THE SOLICITOR TO PRODUCE BOOKS OR RECORDS.
- FINALLY, WE CANNOT TAKE LEGAL ACTION AGAINST A SOLICITATION MERELY BECAUSE IT MAY BE CONFUSING OR OFFENSIVE TO SOME RECIPIENTS.

WHEN A SOLICITATION RESULTS IN A SIGNIFICANT NUMBER OF COMPLAINTS FROM THE PUBLIC BUT DOES NOT APPEAR TO INVOLVE A VIOLATION OF THESE STATUTES, WE OFTEN CONTACT THE PROMOTER, RELAY THE CONCERN EXPRESSED BY OUR CUSTOMERS AND REQUEST THAT THEY TAKE VOLUNTARY ACTION TO RESOLVE THE SITUATION.

THE MAJOR PORTION OF OUR ENFORCEMENT EFFORT IN THE FRAUD AREA INVOLVES CRIMINAL INVESTIGATIONS. IN 1986 ALONE WE OBTAINED 1,435 ARRESTS FOR VIOLATIONS OF THE MAIL FRAUD STATUTE. WE PLACE A HIGH PRIORITY ON FRAUDS AGAINST THE ELDERLY AND FREQUENTLY DISCOVER MAJOR FRAUDS TARGETED AGAINST THIS GROUP.

ONE SUCH INVESTIGATION WAS OF THE GOLDEN PLAN OF CALIFORNIA, WHICH WAS AN \$80 MILLION MORTGAGE BROKERAGE FIRM BEFORE IT COLLAPSED IN 1982. MOST OF ITS INVESTORS WERE LEFT WITH NOTHING, WHILE THE PROMOTERS, THE MONACO BROTHERS, LINED THEIR POCKETS WITH PERSONAL GAINS OF OVER \$3 MILLION.

THE BROTHERS DEFRAUDED 7,200 INVESTORS, MANY OF WHOM WERE ELDERLY, BY FALSIFYING GOLDEN PLAN PROSPECTUSES AND EMBEZZLING MONEY FROM THE FIRM'S ESCROW ACCOUNTS. IN THIS CASE WE WERE ABLE TO PROVE THAT THE DEFENDANTS INTENDED TO CONDUCT A SCHEME TO DEFRAUD.

FIVE MEMBERS OF THE MONACO FAMILY WERE SENTENCED TO PRISON TERMS IN FEBRUARY OF THIS YEAR. AS IS OFTEN THE CASE, HOWEVER; BY THE END OF THE TRIAL, THE DEFENDANTS HAD FEW REMAINING ASSETS WHICH COULD BE USED FOR RESTITUTION. THIS IS ONE WEAKNESS OF THE MAIL FRAUD STATUTE. IF THE MAIL FRAUD STATUTE HAD SEIZURE AND FORFEITURE PROVISIONS, ASSETS COULD HAVE BEEN

FROZEN EARLY IN THE PROCEEDINGS TO ENSURE THAT THEY WOULD BE AVAILABLE FOR RESTITUTION.

WE HAVE ALSO HAD SUCCESS IN ENFORCING THE FALSE REPRESENTATION STATUTE. OVER THE PAST SIX YEARS, WE HAVE INCREASED THE NUMBER OF CASES PRESENTED TO THE POSTAL SERVICE LAW DEPARTMENT FROM 226 IN 1980 TO 644 IN 1986.

I WOULD LIKE TO SHARE WITH YOU SOME FACTS SURROUNDING TWO MISREPRESENTATION CASES WHICH INVOLVE THE KINDS OF PRACTICES THAT ARE BEING CONSIDERED TODAY BY THIS COMMITTEE. ONE CASE WAS PRESENTED TO THE POSTAL SERVICE LAW DEPARTMENT, WHILE THE OTHER WAS HANDLED THROUGH THE VOLUNTARY COOPERATION OF THE PROMOTOR.

OUR INVOLVEMENT IN THE FIRST CASE CAME ABOUT IN 1985 AFTER AN OHIO MARKETING ORGANIZATION CONDUCTED A NATIONWIDE MAILING TO THE HOMES OF 1.9 MILLION AMERICANS. BECAUSE OF THE DESIGN OF THE MAILING ENVELOPE AND THE CONTENTS OF THE SOLICITATION LETTER, MANY OF THE ADDRESSEES BELIEVED THAT THE ORGANIZATION WAS AFFILIATED WITH THE GOVERNMENT. FOR A \$19.00 FEE, THE ORGANIZATION OFFERED TO VERIFY THE ADDRESSEE'S ELIGIBILITY TO RECEIVE UNCLAIMED FUNDS BEING HELD BY A GOVERNMENT OR PRIVATE ORGANIZATION.

BASED ON OUR INVESTIGATION, AN ADMINISTRATIVE COMPLAINT WAS FILED ALLEGING THAT THE MAILER WAS ATTEMPTING TO OBTAIN MONEY THROUGH THE MAIL BY MEANS OF FALSE REPRESENTATIONS.

A FEDERAL COURT ORDERED THE POSTAL SERVICE TO DETAIN THE PROMOTER'S MAIL, PENDING THE ADMINISTRATIVE CASE. THE CASE ULTIMATELY RESULTED IN THE

ISSUANCE OF ORDERS DIRECTING THE PROMOTER TO CEASE AND DESIST NOT ONLY FROM FALSELY REPRESENTING ITS ASSOCIATION WITH GOVERNMENT AGENCIES, BUT ALSO OTHER ASPECTS OF ITS PROMOTION, AND REQUIRING THE RETURN TO SENDERS OF THE MAIL RECEIVED IN REPLY TO THE ORIGINAL SOLICITATION. THIS MAILER HAS REQUESTED JUDICIAL REVIEW OF THE POSTAL SERVICE'S DECISION, AND THE CASE IS NOW PENDING IN FEDERAL COURTS.

WE BECAME INVOLVED IN THE OTHER CASE IN EARLY 1983, BASED UPON COMPLAINTS INVOLVING A FUND-RAISING APPEAL THAT HAD BEEN MAILED TO THE HOMES OF 400,000 ELDERLY AMERICANS BY A WASHINGTON-BASED LOBBYING ORGANIZATION.

MANY PEOPLE WHO RECEIVED OR HAD ACCESS TO THE ORGANIZATION'S MAILINGS FELT THAT THE ENVELOPE AND LETTERHEAD GAVE THE APPEARANCE OF BEING FROM THE GOVERNMENT. HOWEVER, A CLOSE EXAMINATION OF THE ENTIRE MAILING REVEALED THAT THE IDENTITY OF THE ORIGINATOR WAS SUFFICIENTLY DISCLOSED TO AVOID VIOLATION OF THE MAIL FRAUD OR FALSE REPRESENTATIONS STATUTES. THEREFORE, ALTHOUGH CERTAIN ASPECTS OF THE LETTER AND ITS ENVELOPE WERE CONFUSING TO SOME OF THE RECIPIENTS, IT DID NOT VIOLATE OUR STATUTES. AFTER POSTAL INSPECTORS BROUGHT THESE COMPLAINTS TO THE ATTENTION OF THE ORGANIZATION, IT TOOK VOLUNTARY ACTION TO RESOLVE SOME OF THE ISSUES.

WHILE MANY CONSIDERED THE MAILING ENVELOPE USED IN THIS PROMOTION TO BE MISLEADING, IT ILLUSTRATES AN IMPORTANT POINT IN CASES BEING PURSUED UNDER THE FALSE REPRESENTATIONS STATUTE. AN ADMINISTRATIVE LAW JUDGE MUST CONCLUDE THAT THE MAILING, WHEN READ IN ITS ENTIRETY, WOULD FALSELY REPRESENT A MATERIAL FACT TO THE ORDINARY PERSON. IN MANY CASES WHERE MEMBERS OF THE PUBLIC HAVE COMPLAINED TO US ABOUT SOLICITATIONS IN ENVELOPES

THAT LOOK LIKE GOVERNMENT ENVELOPES, A READING OF THE ENTIRE MAILING CLEARLY REVEALS THAT THE SOLICITATION CAME NOT FROM THE GOVERNMENT BUT FROM A PRIVATE ORGANIZATION.

"LOOK-ALIKE ENVELOPES" ARE DEFENDED BY MAILERS AS A DEVICE TO GET THE ADDRESSEE TO OPEN AND READ ADVERTISING MAIL. HOWEVER, IT IS A POTENTIALLY DECEPTIVE TACTIC AND VIOLATES THE FALSE REPRESENTATIONS STATUTE UNLESS THE MAILING IN ITS ENTIRETY REVEALS ITS TRUE ORIGIN TO THE ORDINARY PERSON. WHILE WE ARE AWARE THAT MANY PEOPLE REGARD THE PRACTICE AS OFFENSIVE, WE HAVE ONLY A FEW EXAMPLES WHERE CONSUMERS WERE DECEIVED AS TO THE TRUE ORIGIN OF THE MAILING. SINCE WE DO NOT HAVE THE AUTHORITY TO HOLD A FACT-FINDING HEARING TO EXPLORE THE ACTUAL IMPACT OF THIS TYPE OF MAILING, WE ARE UNABLE TO PROVIDE YOU WITH MORE SPECIFIC INFORMATION ON THE IMPACT OF THESE KINDS OF MAILINGS ON THE PUBLIC.

I WOULD LIKE TO OFFER SOME SPECIFIC COMMENTS ON H.R. 939 AND H.R. 1550.

H.R. 939, THE "DECEPTIVE MAILINGS PREVENTION ACT OF 1987," PROPOSES TO AMEND SECTION 3001 OF TITLE 39, UNITED STATES CODE, TO DESIGNATE THESE OBJECTIONABLE MAILINGS AS NONMAILABLE. AMENDING 39 U.S.C. § 3001 ALONE IS NOT LIKELY TO BE AN EFFECTIVE RESPONSE TO THE PROBLEM, BECAUSE THAT SECTION IS NOT READILY ENFORCEABLE. THERE IS NO LAWFUL WAY FOR THE POSTAL SERVICE TO DETERMINE WHETHER SEALED MATTER DEPOSITED IN THE MAILS COMPLIES WITH PROPOSED 3001(f), (g) AND (h). THE MOST THAT WE COULD EXPECT TO ACCOMPLISH WOULD BE TO DETERMINE THAT THE MATTER IS "NONMAILABLE" LONG AFTER IT HAD BEEN MAILED. THE SAME LIMITATION PREVENTED ENFORCEMENT OF 3001(d)--WHICH DECLARES FALSE BILLS NONMAILABLE--UPON WHICH H.R. 939 IS CLOSELY MODELED.

CONGRESS CORRECTED THIS PROBLEM BY AMENDING 39 U.S.C. §3005(a) TO DECLARE VIOLATIONS OF 3001(d) PRIMA FACIE VIOLATIONS OF 3005, THEREBY ALLOWING THE POSTAL SERVICE TO STOP MAIL IN REPLY TO FALSE BILLS AND ISSUE CEASE AND DESIST ORDERS AGAINST FUTURE MAILINGS. VIOLATIONS OF THE CEASE AND DESIST ORDERS COULD RESULT IN \$10,000 PER DAY PENALTIES. THE APPLICABILITY OF THESE MORE SIGNIFICANT SANCTIONS WOULD BETTER DISCOURAGE VIOLATIONS.

BASED UPON OUR EXPERIENCE IN ENFORCING 3001(d), IT WOULD BE BENEFICIAL TO AMEND H.R. 939 TO AUTHORIZE THE POSTAL SERVICE TO PRESCRIBE BY REGULATION THE PLACEMENT, AND CONSPICUOUSNESS OF THE WARNINGS REQUIRED BY PROP. ED SECTIONS 3001(f)(1), (g)(1) AND (h). USING SIMILAR AUTHORITY UNDER SECTION 3001(d), WE HAVE AMENDED OUR REGULATIONS SEVERAL TIMES IN RESPONSE TO ATTEMPTS BY CON ARTISTS TO EVADE THE STATUTE BY FINDING NEW WAYS OF MAKING THE REQUIRED WARNING LESS VISIBLE TO THE PUBLIC.

FINALLY, IN SECTION 3001(g) IT MAY AID IN PROVING VIOLATIONS TO FOLLOW THE SAME STANDARD AS THAT USED IN 3001(d). TO THIS END, THE SECTION SHOULD PROHIBIT SYMBOLS "WHICH REASONABLY COULD BE INTERPRETED OR CONSTRUED AS IMPLYING" A CONNECTION WITH THE GOVERNMENT.

H.R. 1550, THE "DECEPTIVE MAILINGS TO SENIOR CITIZENS PREVENTION ACT OF 1987," SIMILARLY PROPOSES TO AMEND SECTION 3001 OF TITLE 39, U.S. CODE TO DESIGNATE CERTAIN OBJECTIONABLE MAILINGS AS NONMAILABLE. THIS ACT WOULD ONLY RELATE TO THE SOCIAL SECURITY ADMINISTRATION OR THE HEALTH CARE FINANCING ADMINISTRATION. BY LIMITING H.R. 1550 TO TWO ORGANIZATIONS, HOWEVER, IT MAY ALLOW AN OPENING FOR A CLEVER CON ARTIST TO EVADE ITS SANCTIONS.

ANY FURTHER COMMENT WE WOULD OFFER ON H.R. 1550 WOULD BE SIMILAR TO THOSE ON H.R. 939. I MIGHT ADD THAT H.R. 1550 DOES CLEARLY AUTHORIZE THE POSTAL SERVICE TO PRESCRIBE BY REGULATION THE PLACEMENT AND CONSPICUOUSNESS OF THE WARNINGS REQUIRED BY THE PROPOSED ACT.

I BELIEVE THAT CONGRESSIONAL HEARINGS LIKE TODAY'S CREATE AN IMPORTANT FORUM FOR THE EXPOSURE OF SCHEMES AGAINST THE ELDERLY. THESE HEARINGS HELP TO PROMOTE THE MOST EFFECTIVE DEFENSE AGAINST FRAUD AND DECEPTION--NAMELY, AN INFORMED PUBLIC. MR. CHAIRMAN, WE WOULD BE PLEASED TO ANSWER ANY QUESTIONS YOU OR OTHER MEMBERS OF THE COMMITTEE MAY HAVE.

Mr. DONALD DAVIS. I would like to advise you of a case that was just filed today that illustrates some of the points that this committee is interested in.

This was a matter that was brought to our attention on September 22nd of this year. It is a mailing by an organization that calls itself the Homeowner Services Administration, Department of Homestead Assistance, in Sacramento, California, and has an official looking seal with an eagle on it that says, "Official Business. Penalty for Private Use. Urgent. Official Documents Enclosed."

What it purports to do is offer citizens of the State of California assistance in getting a special homestead declaration to protect their equity in their property to prevent it from falling victim to liens. This particular offer requested \$25, when, in fact, individuals can get that service free in the State of California.

We filed a civil complaint against that today, seeking civil remedies against that firm. I will offer a copy of this file for the record, also for your information.¹

At that point we could either summarize our testimony or open ourselves to questions and answers the committee might have.

Mr. McCLOSKEY. I would prefer for you to summarize your testimony, and then I am sure we can have a positive discussion.

Mr. DONALD DAVIS. Basically the Postal Inspection Service receives complaints from consumers. We received about 400,000 complaints in the past two years. We review those complaints and determine whether or not we can take action against them under either of our statutory remedies.

Our statutory remedies at this time are the mail fraud statute, which is a criminal statute, and the false representation statute. To prove a violation of the mail fraud statute, we need to prove that an individual intentionally devised a scheme to defraud. The sanctions for a conviction for mail fraud are imprisonment and/or a fine.

The false representation statute requires that we prove an individual is attempting to obtain money or property through the mail through the misrepresentation of a material fact. The sanctions for violation of the false representation statute include a provision for returning mail to the sender in response to the solicitation, as well as the issuance of a cease and desist order against the promoter. If a promoter violates a cease and desist order, we have the ability to go into federal court and seek \$10,000 a day penalties for the violation of that cease and desist order.

The majority of our fraud investigative work is in the criminal area. In 1986, we obtained over 1,400 arrests for violations of the mail fraud statute.

Last year in the area of the false representation statute we presented in excess of 600 cases to the Postal Service Law Department for civil administrative action against the promoters.

In our testimony we talked about two cases that we wanted to highlight that relate to this type of practice. One case involved an Ohio firm. They sent out a solicitation which led the consumer to believe that the organization was connected to the government and

¹ Retained in official file.

that an individual had to remit a fee to get this service. In that particular case, we filed a civil action, obtained a mail stop order, and also a federal district court ordered us to hold their mail while we were seeking administrative sanctions.

That particular case is now pending in the federal courts as the mailer has asked for a judicial review, which is one of the safeguards available to a promoter accused of violating the false representation statute.

The other case mentioned involved a fundraising appeal that was sent out to a large number of elderly Americans. In that particular case, we concluded that even though the mailing envelope appeared to be a government related organization and some of the wording in the solicitation was not totally clear, it did not fall under either of our statutes.

In that case we approached the organization, advised them of our concerns, and asked that they take voluntary action, which is the extent of our authority if a particular mailing does not violate our statutes. In that particular case, the mailer redesigned his envelope and took some other actions to clean up some of our concerns.

The one point that I would like to emphasize from the example is that under the false representation statute, we must prove or we must show enough evidence that an Administrative Law Judge will conclude that the mailing in its entirety is a material misrepresentation. For that reason a look alike envelope per se is not actionable under our current statutes, if the contents of the mailing clearly indicate that it is not a government agency.

In the case we just took action against today not only was the envelope a look alike envelope, but the material within the mailing was, in fact, government related or similar to government documents.

On the two bills you are considering today, we have some comments that I might offer for you. H.R. 939, the Deceptive Mailings Prevention Act of 1987, proposes to amend Section 3001 of Title 39 of the United States Code to designate these particular objectionable mailings as nonmailable. That includes the look alike envelope mailings and the solicitation for services offered for no charge by the Federal Government.

Amending that statute alone is not likely to be an effective response to this problem because the statute, as such, is not readily enforceable by our agency. There is no way we can determine whether sealed matter deposited in the mail is nonmailable until substantially after the mailing.

In response to a similar problem with what is referred to as false billings, Congress amended Title 39, U.S. Code, 3005, to declare violations *prima facie* violations of 3005.

The false billing situation is somewhat similar and apparently served as a model for H.R. 939. That fraud, which was a very common fraud a few years ago, involved promoters sending out solicitations for goods that appeared to be bills. Many people would pay the bill without questioning it, thinking that they already incurred some liability. Some promoters would furnish goods, while some would not even furnish goods at all at that point.

What we are able to do under that provision now is once we get a complaint that does not have the required disclaimers and warn-

ings on it, we are able to file for a 3005 action immediately, without developing a case and without determining the extent of the mailing.

Amending H.R. 939 to include this provision would bring these more significant sanctions into effect.

The other bill that is before you, H.R. 1550, proposes similar amendments to 3001 of Title 39. This Act would only relate to the Social Security Administration or the Health Care Financing Administration.

One possible concern would be that by limiting H.R. 1550 to two organizations, it may allow an opening for clever con artists to evade its sanctions by mimicking some different government agency.

We are pleased to participate in your hearing today. We feel that our most effective defense is an educated public.

We would be pleased to answer any questions you or members of the committee may have.

Mr. McCLOSKEY. Thank you, Mr. Davis.

You say there has been a problem as to needing a complaint in that it is hard to make a judgment on a mailing before it is sent out, just on the basis of the external cover. Is that correct? So in effect, you are going out there after the horse is out of the barn. Even going out then, has that had a tendency to wise any of these people up, to make them more cautious or more ethical the next time they get involved?

Mr. DONALD DAVIS. Well, I do not know if it makes them any more ethical, but it certainly puts them on notice that we have filed one action, and we have alleged that they have misrepresented a product.

That does two things for us. One is that if they do the same or similar practice again, we have a better chance of making a criminal mail fraud case on that person since they are on notice that what they have done is misleading.

The second thing is that when we take action under 3005, we get a cease and desist order against the promoter, and the cease and desist order will prohibit substantially similar conduct by that promoter. If the promoter does engage in substantially similar conduct, we can go into federal district court and ask for penalties.

Mr. McCLOSKEY. In your prepared statement you state that it may aid in proving violations that follow the same standards as that used in 3001(d), and this section should prohibit symbols which reasonably could be interpreted or construed as implying a connection with the government.

Is there any enforcement or—I hate to say it—free speech problem there? How would a symbol in this case, in dealing with definition, differ from the words "national" or "capitol" or "IRS," "Internal Review Service"? Those designations bother me very much. I just wonder if there is a way to police it.

Are you implying it would be easier to police the logo type symbol abuses than word abuses?

Mr. DONALD DAVIS. I think the advantage you would have with this bill would be the initial burden to decide that would fall on the mailer, and the mailer would have to decide if his symbol or wording is close enough that it requires the disclaimer, and then when

complaints came to us that people were misled or confused by this particular logo or term, then it would be a matter for us to consider, consider the entire mailing, and it might be a situation where an Administrative Law Judge would have to make the final decision.

Mr. McCLOSKEY. And as you indicated, you would prefer the Postal Service be able to prescribe regulations as to the disclaimer size, placement and so forth. Given all of that, do you think there is a need for the Donnelly-Snowe type of legislation? Could it be functional and enforceable?

Mr. DONALD DAVIS. I think if the legislation as proposed had those provisions in it, I think it could be enforceable. The false billing amendment, 3001(d), is a corollary, and that has been successful. We have been able to enforce that.

The ability for us to change our regulations has been important because promoters, over the years, have decided or realized that if they could put the disclaimer on a two-part form that tore apart and you mailed in the part with the disclaimer or you threw away that part, and on the other half of the bill, which was really a solicitation, the disclaimer would not appear, or they would hide the disclaimer with very small print or they would put the disclaimer in a print that did not Xerox, and someone would Xerox the bill, and someone else who got it would not see the disclaimer.

So we have amended our regulations over the years to address those types of practices.

Mr. McCLOSKEY. Mr. Myers, do you have any questions?

Mr. MYERS. Just an observation, Mr. Chairman. I was a little concerned, Mr. Davis, when you said that the two bills this morning being discussed were not enforceable. I believe you qualified it later as a fact that it would be difficult to know what was inside the mail or inside that envelope, and that is very true. But any criminal act, we pass laws all of the time prohibiting criminal activity and certain civil activities, but it is not a crime or a civil violation until after an occurrence, and so I think it would be a deterrence for future use.

I am troubled with this First Amendment question. You know, everyone has a right with the First Amendment to make any statement they want to make. It is how they make it.

I think we as citizens have a right also to be told the truth. I think under the First Amendment they have a right to make these statements, but when they make it and it looks like it is an official document from the Federal Government I think is what really this legislation addresses itself to.

If Jimmy Roosevelt or anyone else wants to make a statement, I think he has every right to be wrong and to make any statement, as long as he does not use the wrong means and a deceptive way of convincing people of his authority or anyone else's authority. I think that is what we are getting to, is how they do it.

I think they have a right. In our little colloquy a moment ago, the Speaker of the House has a right to his opinion and has a right to share it. I am not saying he did not have the right to do it. I am concerned because of how it is interpreted, but I think as long as he says this as a Democrat and the campaign committee, and he says this in his statement here, "This is paid for by the Democratic

Congressional Campaign Committee." It is on Speaker's stationery and all of that, but there is a disclaimer on it. I think that he meets the responsibility.

I object because it is not always quite straightforward. It may be true to a point, but that is what I think the trouble is, and with the First Amendment, everyone has a right to their statement, but it is how they do it and how they are misleading in making it look like an official document.

I may be wrong, but that is how I interpret the legislation we are considering here, not taking away their First Amendment rights, but how they do it.

Mr. GEORGE DAVIS. Well, the Supreme Court has held at least twice that I am aware of that the First Amendment does not protect fraudulent speech.

Mr. MYERS. A few years ago CBS aired "The Selling of the Pentagon," and we had quite a discussion in the House over whether CBS had a right to ask one question and interpose when they showed it an answer to a different question, and the First Amendment is what that hinged on, the media's right for the First Amendment. They have a right, but they also have a responsibility with that right, and that is what we are discussing here, I think, to be honest about it.

Mr. McCLOSKEY. Thank you, Mr. Myers.

Gentlemen, do you have anything else you would like to add that you have not been able to bring up?

Mr. DONALD DAVIS. I do not think so.

Mr. McCLOSKEY. I thank Mr. Davis and Mr. Davis.

We will now go to our next panelist Mr. John Denning, from the American Association of Retired Persons.

Good afternoon, Mr. Denning.

STATEMENT OF JOHN T. DENNING, PRESIDENT, AMERICAN ASSOCIATION OF RETIRED PERSONS

Mr. DENNING. Yes, sir, Mr. Chairman.

AARP is a membership organization of more than 26 million Americans age 50 and over. I appreciate the opportunity to participate in this hearing concerning misleading mailings and solicitations.

AARP recognizes the need to enact legislation to correct some current abuses and practices which result in misleading, incorrect or deceptive mailings. We are delighted the subcommittee is addressing this issue today.

AARP is particularly concerned that many of the mailings mentioned herein are targeted toward the older population. Since some of these mailings appear to prey upon the sensitivity and the vulnerability of such individuals, we fear that the elderly are being particularly exploited by some current practices.

We believe the following practices are questionable and, thus, may warrant federal legislation to correct.

First, the use of look alike envelopes that oftentimes mislead people into believing the mailing is a form from a government agency. Documents bearing an official-looking seal or insignia, often with the Washington, D.C. return address, sometimes give the impres-

sion of official government correspondence which warrants extraordinary consideration or an immediate response.

And, second, the solicitation of a fee for rendering services which may be available from the Federal Government.

Both of the bills under consideration by the committee today, H.R. 939, Deceptive Mailings Prevention Act of 1987, and H.R. 1550, Deceptive Mailings to Senior Citizens Prevention Act of 1987, address the above issues.

H.R. 939 designates as nonmailable the following kinds of solicitations by non-governmental entities:

(a) Solicitations for the purchase of products or services which are provided either free of charge or at a lower price by the Federal government;

(b) Solicitations for the purchase of products or services that contain a seal, insignia, trade or brand name, or any other term or symbol implying Federal Government connection, approval, or endorsement; and

(c) Solicitations for the contribution of funds that contain a seal, insignia, trade or brand name, or any other term implying Federal Government connection, approval or endorsement.

In order for any of the above to become mailable, conspicuous notice must be given on the outside covering or envelope that "THIS IS NOT A GOVERNMENT DOCUMENT." In addition, the face of the correspondence itself must indicate one of the following (respectively);

(a) "The products or services offered in this advertisement are also provided either free of charge or at a lower price by the Federal Government";

(b) "This product or service has not been approved or endorsed by the Federal Government, and this offer is not being made by an agency of the Federal Government"; or

(c) "This is not a government document".

The requirements of H.R. 939 should correct many of the current abuses, because it has a broader base.

In fact, fairness dictates that such information is required so as not to mislead or deceive recipients of such mailings.

In addition, the notices required by H.R. 939 are minimal and do not, in our opinion, impose any undue economic hardship or inconvenience upon the mailers of such items, and 939 also recognizes that federal agencies and programs are frequently mentioned in private organizational mailings.

For example, a mailing could educate the public about recent changes in Medicare, such as the prospective mailing payment system. This type of mailing would not trigger the disclaimer requirement unless the language was designed to imply Federal Government connection with, approval for or endorsement of an organization's product, services or solicitation of funds.

H.R. 1550 requires precisely the same conspicuous notice requirements as those contained in H.R. 939. However, the scope of H.R. 1550 is specifically limited to mailing intimating a relationship with either the Social Security Administration or the Health Care Financing Administration.

We prefer the bolder approach of H.R. 939, given our belief that any mailing which either directly or indirectly creates the illusion

of being mailed under the auspices of the Federal Government, regardless of which agency or department involved, should be subject to H.R. 939's notice requirements.

Why should a fake tax bill, which looks as if it has been sent by the IRS, or a bogus mailing resembling a U.S. Treasury check not be subjected to the same notice requirements as mailings supposedly coming out of SSA or HCFA? We believe that all such mailings should be held to the same standards.

Since some mailings abuse simply cannot be rectified through the use of disclaimers, AARP urges postal authorities to diligently enforce their existing powers regarding fraudulent mailings.

As a result of inadequate current federal law concerning disclaimers, states and the Better Business Bureau are moving to protect the public from misleading solicitation.

The written statement we have submitted discusses how five different states, Texas, Oregon, Pennsylvania, Tennessee, and California, are addressing the misleading mailing issues. The disclosures mandated by H.R. 939 would correct most of the problems being confronted by these states.

AARP believes that most reputable mailers would probably not be affected by the enactment of H.R. 939 since most such mailers do not engage in the type of activity sought to be proscribed by the Act. Rather, H.R. 939 would apply only to those mailers whose activities have a tendency to mislead within the parameters of the Act.

AARP looks forward to working with the subcommittee toward mark-up of H.R. 939 and other similar legislation to protect older Americans and the general public from misleading mailings.

A recent Sylvia Porter article entitled "Beware of Mail Fraud" should have been attached to our written statement. I have copies of this article for inclusion in the record with our statement, as well as for distribution to the members of the subcommittee and others. If anybody needs them, we have plenty of copies here.

Thank you very much for the opportunity to appear before this subcommittee for and allowing us to participate in the hearing. Thank you very much.

[The material on five States referred to follows. The article, "Beware of Mail Fraud," also follows:]

Texas

The state of Texas has a Deceptive Trade Practices and Consumer Protection Act which makes it unlawful to "represent that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not." Texas successfully challenged a sweepstakes mailing that looked like a check but could not be cashed, had a misleading refund policy for its layaway plan, and other problems.

Oregon

The state of Oregon stopped insurance companies from using promotional material to seniors which had envelopes similar to those used by the federal government and which implied that official government documents were inside. The Insurance Commissioner said three of the four challenged mailings falsely indicated that they had been sent because of changes in Medicaid law.

Pennsylvania

The Insurance Commissioner in Pennsylvania has been responding to complaints about advertisements designed to look like government announcements regarding Medicare, Social Security or veterans' benefits. These mailings were actually nothing more than life and health insurance solicitations.

Tennessee

The Better Business Bureau in Nashville challenged envelopes with the statement, "Supplement to 1984 Medicare benefits as dictated by federal statutes." The envelope did say on the back that the product was "not affiliated with or endorsed by any government or Medicare program," but in small letters which were barely noticeable.

California

The California Department of Insurance has recently instituted proceedings against several mailers whose names and content, style, shape and color of the physical materials presented, confuse or mislead prospective responders into believing that the solicitation is in some manner connected with an agency of the State or Federal Government.

The disclosures mandated by H.R. 939 would correct most the problems addressed in the examples above.

Beware of mail frauds

When 63-year-old Agnes received notification in the mail that she could be an instant cash winner in the "Social Security \$100,000 lottery," she was overjoyed. All she had to do was send \$10 to join the organization sponsoring the sweepstakes and she would receive a silver-plated Social Security card and a statement of her Social Security records as well as the opportunity to win big money.

What a scam!

Despite the official-sounding name, the lottery was not affiliated with the federal government, although Agnes did not notice the fine print in the brochure mentioning that fact. She mailed her \$10 check to the U.S. Social Security Administration. When the Social Security office who received her letter figured out what had happened, he contacted Agnes and refunded her money. Otherwise, she would have been among the countless numbers of older Americans defrauded every day.

Nationwide reports of deceptive mail solicitations that prey on the desperation of older Americans have been overwhelming. Groups with impressive names are coming people into sending money to aid in their fictitious fight against nonexistent efforts to dismantle programs such as Medicare and Social Security or participating in phony drawings or sweepstakes.

Shock! The activities of many of these organizations are not criminal. Due to legal loopholes and the way many of these advertisements are worded, the solicitations are not considered technically fraudulent.

"All kinds of trash is being gen-



erated to mislead and confuse the public," John Trollinger, spokesperson for the Social Security Administration, explained.

"We are deeply concerned about individuals and businesses whose solicitations and promotional practices are intolerably misleading and deceptive," Dorcas Hardy, commissioner of Social Security, said in a statement before the Select Committee on Aging of the U.S. House of Representatives in February 1987.

"These solicitations feed on the vulnerability of the nation's elderly and disabled and damage confidence in our Social Security system."

The level of sophistication of the schemes varies. For example, one phony mailing advertised an official-sounding organization giving away cash prizes. Individuals who sent in membership fees received a check for 8 cents. "Often it's not a legal wrongdoing. Ethically, it's another matter," Trollinger stressed.

Several members of Congress have begun to dig into the problem. Rep. Olympia Snowe (R-Me.) introduced a bill in the House which would require all mailings that imply government affiliation to state clearly that the advertisement is not a government document or

that the product is not endorsed by the government.

In the meantime, since you are not protected by the law, you must guard against these rip-offs:

If you receive any questionable literature and want to find out more, contact your local Social Security office and ask. Legitimate guides to Social Security or Medicare are often advertised.

Don't allow scare tactics to persuade you. Particularly common — and deceptive — are ads stating that your Social Security and Medicare benefits are about to run out and your donation will help.

Many of these swindlers are shrewd, often smart enough to stay just within the boundary line, so they can't be legally prosecuted. Be wary of brown envelopes that are marked "urgent" or "important federal information" or that refer to Social Security or Medicare. Some even have logos resembling government seals or slogans such as "Buy and hold U.S. Savings Bonds" on the envelopes.

Avoid phony companies that call themselves "document service, agencies" and that promise to help you get official records or update your records if your name changes. Typically, these intermediaries merely forward the paperwork you fill out to the Social Security Administration and you are left to deal with the problem on your own.

You can, for free, obtain a Social Security card, replace a lost card, check records, receive an estimate of your benefits, update documents and the like.

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Mr. McCLOSKEY. Thank you, Mr. Denning, for an excellent statement.

Mr. Myers, do you have any questions?

MR. MYERS. No.

Mr. McCLOSKEY. I think your excellent statement speaks for itself, and we appreciate your comments and your endorsement, sir. Thank you very much.

Mr. DENNING. Thank you.

Mr. McCLOSKEY. Mr. Barton, please, Direct Marketing Association.

Mr. Barton, welcome today. I will let you proceed as you would like. You can either summarize and we can accept your formal statement for the record or if you have a reasonably succinct and straightforward formal statement, you can read that, whatever you are most comfortable with.

**STATEMENT OF RICHARD A. BARTON, SENIOR VICE PRESIDENT,
DIRECT MARKETING ASSOCIATION**

Mr. BARTON. I think I can summarize.

Mr. McCLOSKEY. We appreciate it. Then we can ask you any questions and get out for lunch.

Mr. BARTON. It is a real pleasure to be here today back in my old stomping grounds to represent the Direct Marketing Association, and to testify in favor of the two bills to which we are referring today, H.R. 939 and H.R. 1550.

My name is Richard Barton, and I am the senior vice president for Direct Marketing Association, an international trade association that has about 3,000 corporations as members who are involved in all aspects of direct mail and direct marketing. So we have a very great interest not only in this bill, but in any legislation which affects mail and the ability of direct marketers to use mail.

The Direct Marketing Association has a very long history of deep involvement in ethical matters concerning the business. We, I think, probably have as extensive and, I think, probably more extensive for a trade association involvement in this. We have two committees that develop guidelines for the industry, and a committee which actually enforces the guidelines in investigations, studies and in contacting people who we think are violating our ethical codes and ask them to change.

Most of the time we get the changes. Sometimes we do not, and often we refer cases to the Postal Inspection Service, to Mr. Davis who was here and who we work closely with in this area.

So I am trying to place us in the "good guy" category in this one. We have had a lot of concern about misleading and deceptive envelopes through the years. But we have a little bit of ambivalence here which I would like to explain, which I think has been brought out here, in fact, on the panel. We agree that there should not be misleading copy on envelopes. We agree that envelopes should not obviously or attempt to mislead the public into thinking that a government agency is sponsoring it, and in fact, probably in the last 10 years we have had 11 or 12 specific investigations, if I can use that term, or cases in which we have in some cases found the use

of these envelopes a violation of our own ethical codes, generally because of what is inside, as well as what is outside the envelope, as was mentioned by Mr. Davis.

About half of the cases that have come before us have been resolved immediately when the offending parties, if we can say this, have agreed not to continue. Several we have actually found to be unethical practices, and two or three cases we have referred to the Inspection Service for further study.

I hope you will appreciate though the privacy rules of the committee and our own general counsel have warned me about mentioning any specific companies that have appeared before the committee. So I cannot do that at the present time.

So because of this concern that we have, we agree in principle with the thrust of H.R. 939 and H.R. 1550. We just raise some concerns and some questions, as I say, most of which have been raised here today.

We do think that there is a First Amendment problem, not necessarily a problem with the bills, but that we need to consider the First Amendment when we are drafting regulations. We would agree that the First Amendment does not apply to overtly misleading statements. We think that there is a possibility that if you have over broad drafting of regulations, and the Postal Service, frankly, has been involved in this in the past and we have had some difficulties with them drafting very broad regulations, for example, prohibiting specific words from appearing on envelopes which they have finally withdrawn, largely because of some First Amendment problems.

Mr. McCLOSKEY. Could you mention those words, Mr. Barton?

Mr. BARTON. They are words like "urgent," "important," any word implying urgency. There was a broad regulation proposed around a year and a half ago which the Postal Service withdrew after a great deal of controversy. Part of the regulation was a specific prohibition of specific words on envelopes.

Mr. McCLOSKEY. Has there been any discussion, and maybe I am the only one who knows what I am getting at, regarding the issue I brought up several times today, about the use of such words as "national" and "federal" and "Internal Review Services," "IRS," and things like that?

Mr. BARTON. I was going to say no, but then the string got into IRS and FBI and things of those nature, and yes, there has been discussion in our own ethics committee of that. To the extent that I can say it, we have found that some of the uses of that to be an unethical, misleading practice, but not the word "national." In fact, that is one thing that gave me a little difficulty with the presentation of the envelope from the National Committee to Prevent Social Security.

Without saying anything about whether it is a good piece or a bad piece or whether it is right or wrong or whether it is a good organization or not a good organization, I do not believe if you look at that envelope that it would fall under the strictures of this bill, unless you say that the word "national" or "national office" or "national administrative office" are implying something as an endorsement by the Federal Government.

If you do that, then a lot of us are in trouble like the Democratic National Committee.

Mr. McCLOSKEY. I think there are different ways to use "national," some which would imply or possibly imply governmental jurisdiction and some not, but I just wondered if that came up very much.

Mr. BARTON. In some of the cases, yes, they have come up. I would say really almost in conclusion, you are asking questions that I was going to cover here, and I am just about finished, but in conclusion, all we would recommend with this legislation, having brought up some of these questions, is that the Postal Service be given a little more flexibility in determining what specific language should be on the envelope and where it should be placed.

We would just recommend—

Mr. McCLOSKEY. You are talking about disclaimers now, right?

Mr. BARTON. Yes. We recommend, for example, that the bill just say—I do have another statement—"this is not a government document" or the equivalent language, to be determined by the Postal Service. It does not have to say "this is not a government document," which brings up the point I was supposed to open with.

There was an egregious, terrible typo on page 3, and it reads, "This is a government document," and it is supposed to read, "This is not a government document," if we can change that in the testimony. It is one of your classic examples of where you drop out a key word.

Mr. McCLOSKEY. Nothing Freudian here or anything.

Mr. BARTON. No, I hope not.

Having seen the Postal Service's testimony today, I think we agree basically with the Postal Service in some improvements in the bill in order to give them more flexibility and the ability to enforce the law.

That is my statement. I am also authorized, by the way, to say that the Third Class Mail Association supports this statement.

[The prepared statement of Richard A. Barton follows:]

**Testimony of
Richard A. Barton, Senior Vice President
Direct Marketing Association**

Mr. Chairman and members of the Subcommittee on Postal Personnel and Modernization:

My name is Richard Barton and I am Senior Vice President for Government Affairs of the Direct Marketing Association (DMA).

DMA is an international trade association with more than 3,000 corporate members involved in all aspects of direct marketing.

Of course, the mail is the bloodstream of a very substantial number of our members. Because of this, DMA has a deep and abiding interest in promoting high ethical standards among its members and the mailing community at large.

I am also authorized to say that the substance of this testimony is endorsed by the Third Class Mail Association.

The Direct Marketing Association has developed guidelines for ethical behavior in several areas of direct marketing including list usage, broadcast and print advertising, telephone marketing, and personal information protection. Our mail order ethics "bible" is our Guidelines for Ethical Business Practices which forms the foundation of the association's investigation into various charges of ethical misconduct. A copy of these guidelines is included with the testimony. There are 40 articles in the guidelines, several of which could pertain to envelope copy and misrepresentation in advertising.

DMA has not one but two committees which deal with the ethical conduct of direct marketing. Both consist of members nominated by the committees themselves and elected by DMA's board of directors.

Our Ethics Policy Committee is charged with developing appropriate guidelines and keeping them up to date. The committee also conducts studies relating to ethical practices throughout the industry and develops programs to promote two DMA-sponsored consumer programs, the Mail Preference Service (MPS) and the Mail Order Action Line (MOAL). MPS is a nationally promoted service to assist consumers in having their names removed from national mailing lists. MOAL is our complaint handling service. We handle approximately 1,000 complaints a year.

Our second committee, the Committee on Ethical Business Practice is the front line of DMA's efforts to promote high ethical standards. Meeting nine times a year, the committee investigates specific allegations of unethical conduct and, if it finds a particular mailing piece or practice to be in violation of the guidelines, contacts the company to persuade it to cease whatever activity which is in violation. We are successful in about 90% of the cases.

If the committee believes a law has been violated and the company is not responsive to its concerns, the complete file is turned over to the appropriate Federal or state agency, such as the Postal Inspection Service or the Federal Trade Commission.

DMA shares the subcommittee's concern about envelopes which bear a strong resemblance to government envelopes containing government documents or checks. During the past few years, some eleven such cases have been investigated by DMA's Committee on Ethical Business Practices. Several companies had ceased the practice by the time we contacted them expressing our concern. At least one disagreed with our characterization, and in

another case we turned the material over to the Postal Investigation Service because we believed there to be a violation of the false representation statute. In that case, the Postal Service had already begun an independent investigation and ultimately issued a mail stop order against the company. Our committee's confidentiality rules prevent me from discussing the specific cases.

Although we have been concerned about the misleading nature of some of these envelopes, the committee has never declared that use of a "look alike" envelope alone is necessarily an unethical practice. It is the use of these envelopes in conjunction with misleading material inside which cause a particular mailing piece to be in violation of our guidelines. For example, a government "look alike" envelope with what is stated to be a check in its window, but which is no more than a discount coupon, has been held to violate our guidelines.

Our experience with this issue led us to issue one of our periodic releases to all action editors in the country. The release urges consumers to beware of:

- * Brown envelopes that look like Social Security check envelopes, or envelopes bearing symbols that closely resemble the U.S. official seal. Some even say "Buy U.S. Savings Bonds."
- * Groups masquerading as government agencies with titles like "official" or "national" and incorporating the words "Social Security" and "Medicare."
- * Envelopes marked "Urgent" or "Time-dated legal documents."
- * Melodramatic accusations that the government or "powerful forces" have "robbed" or "illegally invaded" Social Security trust funds.
- * Sweepstakes offers depicting a Social Security card as a sweepstakes ticket and requiring an entry fee.
- * Implications that a plastic Social Security card offered for a fee by the soliciting group is "required" by the U.S. government. There is no such requirement.
- * Solicitations in the form of a reminder to pay an insurance premium, or offers of "insurance policies" that will safeguard the policyholder's Social Security or Medicare benefits.
- * Ads for guidebooks to "government giveaway" programs supposedly unknown to the general public -- for instant cash, free cars, etc.

DMA and TCMA endorse H.R. 939 and H.R. 1550 in principle. However, the Subcommittee should know that envelope copy is not something that the direct marketing industry takes lightly. No sale can be made, no funds can be raised, no votes solicited, no cause endorsed unless the envelope is opened and the contents are perused. Imaginative envelopes and envelope copy are an important part of the business, and Congress and the Postal Service should tread warily in crafting legislation or regulation on envelope copy. Ill-considered or poorly thought out requirements could have serious effects on the business of legitimate companies. Just such an ill-considered regulation was proposed by the Postal Service a little more

than a year ago and quickly dropped when the scope of the proposal became fully understood. The bills pending today are far more limited in scope than the original Postal Service proposal. However, there are words in the legislation which can cause concern if they get in the hands of a misguided regulator. For example, what exactly do the words "implying any connection with or approval or endorsement..." mean? We may know what we are getting at, but when the broad brush of regulation goes to work, it may be difficult to limit the impact of regulation only to transgressors.

We urge caution on the Subcommittee in considering any legislation that would unduly restrict free speech. Any effective means to avoid confusion or deception should be permitted and not be limited to any particular language when alternative or equally effective measures can also achieve the Subcommittee's objective.

For example, we would suggest that "words which the Postal Service shall prescribe" in numerous places in the bills be changed to "words which the Postal Service may approve." A minor, but meaningful change. We would also suggest that "or its equivalent" follow "THIS IS NOT A GOVERNMENT DOCUMENT," wherever it appears in the bills.

We would be happy to work with you and the Postal Service to help assure that any required language resulting from legislation or regulation not hurt the interests of legitimate direct marketing firms or cross that fine line into government control of the creative process and infringement of First Amendment rights.

Thank you Mr. Chairman, it was a pleasure to appear here today.

Mr. McCLOSKEY. Mr. Barton, the National Committee to Preserve Social Security and Medicare has gotten a lot of coverage here today. If you cannot answer this, I understand, but has your ethics board ever had problems with them or anything they talk about?

Mr. BARTON. We have never had a case or complaint presented to our ethics board about the National Committee, no. I am told by my lawyer I can say what we have not done.

Mr. McCLOSKEY. As an expert in the field, how big a problem do you think is the problem of deceptive mailing practices? Is it massive or just an occasional group?

Mr. BARTON. I personally do not think it is massive. We obviously have a lot of problems. In any business you are going to have problems with it, but I think it appears massive to some of the people testifying today because a lot of it seems to center around a specific group of people, elderly, senior citizens, who tend to get mail like this more. I think when we look at it as an overall national problem, it is a problem, but I do not think it is gigantic.

Mr. McCLOSKEY. Mr. Myers.

Mr. MYERS. I have no questions. Thank you, Mr. Chairman.

Mr. McCLOSKEY. Mr. Barton, do you have anything else you want to add?

Mr. BARTON. No, sir.

Mr. McCLOSKEY. Thank you for your testimony, sir, and I do believe that concludes the hearing, and I do have a feeling we will be working on some legislation shortly.

Thank you.

[Whereupon, at 12:26 p.m., the subcommittee was adjourned, subject to the call of the Chair.]

[The following statements were received for the record:]

STATEMENT OF THE HONORABLE CLAUDE PEPPER October 1, 1987

The National Committee to Preserve Social Security and Medicare is becoming one of the most effective of all of the organizations representing the interests of older Americans.

I have watched the National Committee to Preserve Social Security and Medicare from its beginning. Yes, they have made some mistakes but they have also acted to correct any problems and, under the leadership of our former colleague Jim Roosevelt have added new distinguished capable leadership like that of former social security commissioner Martha McSteen, Landis Neal, Peter Hughes and others to make sure that this organization continues to grow in viability and effectiveness.

The National Committee has grown rapidly, experienced some growing pains but now is a mature and effective voice for millions of senior citizens.

And an effective organization like the NCPSSM is needed. Over the last several years there have been numerous assaults on social security and medicare. Student benefits have been eliminated, the minimum benefit was killed, the Senate has voted to freeze the social security COLA, disability beneficiaries have been heartlessly cut off from their only source of income, medicare premiums and deductibles continue to skyrocket in cost and there are numerous other proposals to weaken social security and medicare.

These events inspired the founding of the NCPSSM and the Committee has been very effective in mobilizing seniors to stand together to protect the integrity of the social security system.

The NCPSSM is now a most effective and credible advocacy organization for seniors and I encourage them to continue their fine work on behalf of America's senior citizen population.

TESTIMONY BY CONGRESSMAN BOB WISE**RE:****POSTAL GUIDELINES FOR MAIL SOLICITATIONS****September 30, 1987**

MR. CHAIRMAN: I want to thank you for this opportunity to testify before the Postal Modernization Subcommittee today about an issue which is of real concern to me.

Because of a large population of senior citizens in my district I have had to focus on the area of direct mail deception and abuse. My major focus has been those groups which target senior citizens - particularly James Roosevelt's "National Committee to Preserve Social Security and Medicare." Not only have I spoken out on the floor against this group's questionable mailings, but I have also introduced legislation, along with my colleague Rep. Sherry Boelhert, requiring that tax exempt organizations such as this provide full financial disclosure.

I am encouraged by this Subcommittee's efforts to combat misleading mail solicitations. The legislation which has been proposed regulates mail solicitations by requiring disclaimers on materials imitating government documents. This measure goes one step further in protecting senior citizens and others from intrusive, confusing and alarming fund-raising tactics.

Regretably, The National Committee to Preserve Social Security and Medicare was one of the most noticeable offenders. In some of its initial mailings, The Committee sent out material carrying a marking almost identical to the seal of the Social Security Administration. This facsimile misled senior citizens into believing the envelope contained government

information. Another envelope had printed "ATTENTION POSTMASTER: OFFICIAL NATIONAL COMMITTEE DOCUMENTS ENCLOSED. EXPEDITE DELIVERY." On the back it claimed to enclose "DATED MATERIAL."

These examples are clearly deceptive and confusing. Further, they violate the basic trust and importance that U.S. citizens, particularly senior citizens, place in government information. I have received various letters from confused constituents asking me which mailing is a government document and which is not. Due to the wording of the documents, some constituents have not only sent me the petition they signed, but the \$10 "donation" as well.

This, however, is not the only fund-raising organization that has employed this practice. The Social Security Benefit Protection Service promises in one of their mailings to obtain a statement of the recipient's Social Security earnings. No mention is made of the fact that the Social Security Administration provides this information for free. The same mailing also offers a Social Security and Medicare Assurance Policy, promising to "make certain" that inaccurate records or faulty information do not deprive recipients of "hard-earned Social Security benefits." These "assurances" are offered "free of charge" but a \$10-\$25 donation is requested.

I must admit that these tactics are effective. I really have to hand it to the direct mail organizations - they certainly get people to open their mailings. Not only that, they convince the confused contributor that without their money, Medicare and their "hard-earned Social Security" benefits are in jeopardy. At the same time they undermine the public trust and exploit the importance citizens place on government documents.

I am not a proponent of excessive government regulation and control. But when direct mail firms resort to such exploitative tactics to solicit money, I see the need for Congress to intervene. Direct mail firms should not be allowed to betray the public trust, nor should they be allowed to mislead recipients into paying money for services which are already provided, free or at a reduced subsidized rate, by the government.

The legislation you are considering today would not prohibit the companies from putting anything on a mailing that they wish, it would simply require that they be truthful and include a disclaimer.

The groups which I have mentioned are just two examples of organizations which use deceptive mailings. As a result of pressure from members of Congress, these groups have cleaned up their act a bit. The disclaimers now used by the Roosevelt Committee have resulted from years of congressional pressure. But much more still needs to be accomplished. The National Committee now includes disclaimers in their mailings and on their envelopes, but these are so small that most people, much less an elderly person, can not read them. They are usually printed in the same color as the rest of the type, and appear at the end of the document or at the very bottom of the envelope. In one example the disclaimer appears in minute type at the very bottom of the envelope. The type is the same color as the ornate design above it. For senior citizens who often have vision problems, reading this tiny type can be very difficult. Short of three sets of refracting lenses or an electron microscope, some will simply never see it. Further, the statement that "The National Committee is independent of Congress, and every government agency, and all political parties" appears below very large bold type which reads: "ATTENTION POSTMASTER: TIME DATED OFFICIAL NATIONAL COMMITTEE DOCUMENTS ENCLOSED." Question - what is "dated" or time sensitive about these documents?

I feel that this amended legislation would be an important step in remedying the larger mail fraud problem. This measure would expand the current Postal Statute's definition of fraudulent or misleading mailings, and would give the Postal Service the ability to get more deceptive mailings out of circulation faster. The bill would save many people time, frustration and money.

I support H.R. 939, as well as the amended version, and I urge the Subcommittee to give it favorable treatment.

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES

October 1, 1987

The Honorable Frank McCloskey
Chairman
Subcommittee on Postal Personnel
and Modernization
A603 House Annex One
Washington, D.C. 20515

Dear Mr. Chairman:

I am writing to express my interest in the issue of deceptive mailings currently under review by your subcommittee, and to provide you with additional evidence on this problem.

I share the concern over the increasing number of mailings which solicit fees for a product or service already available free or at a lower cost from the government. In addition, these mailings often imply Federal approval or endorsement of their product or service. Such deceptive practices must be ended and I want to express my strong support for H.R. 939, and urge the subcommittee to act favorably on this legislation.

I am enclosing information on a mailing from a California company that calls itself the "Home Owner Services Administration" and uses a facsimile of the Department of Defense shield on its letterhead. As the enclosed news accounts relate, this company blanketed homeowners in San Diego County with a solicitation for a \$25 "homestead declaration". In essence, \$25 dollars buys the "service" of having a simple form filled out by the company that an individual could fill out himself. In addition, the individual then has to have it notarized and file it at an additional cost of \$7. This service does not provide any protection that is not already available to the home owner.

I support your examination of this issue, and would appreciate it if this information would be incorporated in the record of today's hearing. Thank you for your consideration of this request.

Sincerely,

Bill Lowery
BILL LOWERY
Member of Congress

BL/pl
Enclosures

DA to sue firm over homestead mailer

By Valerie Alvard, Staff Writer

The District Attorney's office is preparing an unfair business practices suit against a Sacramento company that has blanketed county mailboxes with an official-looking form asking homeowners to mail in \$25 for a "homestead declaration."

The form, which reportedly was mailed to thousands of people, including every homeowner in the District Attorney's fraud division, carries a round seal with an eagle in the center. Deputy District Attorney Don Canning has concluded that the letter looks suspiciously like a state of California

document.

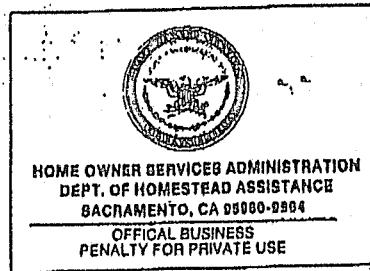
"They weren't being very selective in whom they mailed it to," Canning added.

The document has nothing to do with any government entity, despite a form and a seal strongly reminiscent of a state or federal government body. Furthermore, the homestead declaration offers only limited financial protection against debt. The declaration also carries a required county recording fee of \$7 which is not included in the \$25 payment.

The letter carries instructions to:

1. Fill out and complete all information.
2. Make out check, cash or money order to Home Owner Services Administration for \$25 for document preparation.
3. Place check and information form in envelope and return to us.
4. To insure prompt homestead, reply within 15 days."

The form is accompanied by a letter explaining the so-called "home protection benefits of declared homestead."



The San Diego Union

This seal appeared on letters that were sent to homeowners in San Diego County by a Sacramento company.

The major benefit, according to the letter, is that once the declaration is filed with the County Recorder, a certain amount of home equity — between \$16,000 and \$60,000 — is protected from certain liens against a homeowner's principal residence.

The protection does not apply to already established liens, mechanics liens, notes secured by deeds of trust, vendors liens, back child support, alimony or taxes.

In small print at the top of the letter is a disclaimer stating that the company, Homeowner Services Administration — Dept. of Homestead Assistance, is not associated with a governmental agency and that the law does not require one to fill out the form.

Even so, Canning said, the letter is misleading. "It gives the impression that it is an official form, and it implies that you will receive protection that you wouldn't get otherwise under the law," Canning said.

Citing state codes dealing with unfair or misleading business practices, Canning said he will file suit this week in San Diego Superior Court asking for an unspecified amount in punitive damages and an injunction to halt the mailings.

Additionally, Canning said, the state Attorney General's office may join the suit to prohibit the company from continuing its mailing statewide.

Al Shelden, supervising deputy attorney general for the consumer law division of the state Attorney General's office, said yesterday that he is reviewing the matter.

Shelden has seen the letter, he said, and agrees that, "It does have all the trappings of an official-looking (form). We have had many questions from people who did believe it was a state of California letter."

In the past, Shelden said, his office has brought suit against companies "that were doing this very thing." He said if this company were found guilty of misleading business practices, it could be fined up to \$1,000 for each letter it sent out.

Lawrence Freeman, owner of the Homeowner Services Administration, who was reached yesterday at his office in Sacramento, said he is surprised the letter has caused so much concern.

"I'm a businessman and I intend to be in business for a long time," Freeman said. "When you're in business, you try to please your customers. If people have problems (with the mailing), we'll change it."

"The important thing is, we offer a good service," Freeman said.

The service offered, according to Freeman's letter, is that the company will take information

supplied by a homeowner and use it to fill out a "homestead declaration" form. The form, which can be purchased at any stationery store for \$1, is then returned to the homeowner with a stamped envelope addressed to the County Recorder.

What is not clearly spelled out, however, is that once the form is returned, the homeowner still must have it notarized and still must pay a county recording fee of about \$7.

Furthermore, according to Deputy Attorney General Shelden, the benefits of a homestead declaration are dubious.

"(The company) makes it appear that you will get some extra protection by filling the homestead, when in fact most homeowners are protected under consumer laws that mirror the protection in the homestead declaration," Shelden said.

Freeman said there are benefits to the homestead declaration. "If there were no benefits, then why did the state enact the law?" he asked.

Bill Parker, a title insurance officer for Fidelity National Title Insurance Co. of San Diego, said the homeowner declaration is a two-edged sword.

"There could be benefits for people who are having financial problems or who anticipate that lawsuits will be filed against them," Parker said. "With a homestead declaration on file, a certain amount of equity in your principal residence can be protected."

The declaration, however, is considered "a stigma, a red flag on your credit rating. Many lenders look at it as an indication that you could be having financial problems."

Furthermore, Parker said, many people do not understand that the declaration does not apply to second homes or to an entire building complex when the owner of the building lives in only one unit.

"A lot of people are going to pay the \$25 and it will be worthless," Parker said. "Others will pay the money and later, when they go to get a second mortgage, for instance, they'll have to abandon the declaration in order to get the loan."

Parker added that he believes \$25 is a very high fee for "a simple form that you can fill out yourself and which you have to mail in yourself anyway."

Freeman conceded that the form is simple but he does not believe \$25 is an exorbitant fee. "What is your time worth?" he asked. "For someone who wants the homestead and who has the money, \$25 is not expensive."

He added that he has stopped sending out the forms and that further questions should be addressed to his attorney.

Select Committee on Aging**Washington, DC 20515**

Telephone: (202) 226-3375

October 1, 1987

The Honorable Frank McCloskey
Chairman, Subcommittee on Postal Personnel and Modernization
Committee on the Post Office and Civil Service
603 HOB Annex No.1
Washington, D.C. 20515

Dear Chairman McCloskey:

On February 4, 1987 the House Select Committee on Aging conducted a hearing concerning direct mail solicitation practices targeting the elderly. The Committee's follow-on activities included a request that the U.S. Postal Inspection Service collect for a period of several months any complaints (and accompanying samples of mail solicitations) forwarded to postal inspectors around the country.

To assist your Subcommittee in its consideration of bills addressing deceptive direct mail practices, I would like to make available for your examination and use the complaints and samples compiled by the Postal Inspectors for the Aging Committee. I have also enclosed with this letter a fact sheet, written by the General Accounting Office (GAO) at the request of the Select Committee on Aging, which describes the scope of jurisdiction and enforcement authority of Federal regulatory agencies with respect to deceptive mail practices. A more technical analysis of this authority, provided by GAO to Aging Committee staff, is also included.

We live in a world where the influence of print and electronic media are greater than ever before. Many legitimate fundraisers and direct marketing concerns have developed highly refined techniques to elicit responses from their targeted recipients. There is a growing consensus, however, that some of the techniques used by a minority of direct mailers — look-alike envelopes, confusing names and logos that create the impression of government affiliation, and related practices — are inappropriate.

Americans of all ages are being subjected to ever increasing waves of mail solicitations; most of them are responsible, but some of them are deceptive or confusing. Older Americans in particular are vulnerable to exploitation. In my view, a reconsideration of current statutory limitations on deceptive mail practices is a crucial part of a larger coordinated effort that is needed to assist members of the public to become more informed consumers. Only through public education efforts and an appropriately crafted legislative response, in conjunction with parallel efforts by State regulators and the direct mail industry itself, will these questionable practices be curtailed.

I commend you and the Members of the Subcommittee for taking up this important issue. I look forward to working with you in the future to safeguard the interests of our constituents.

Sincerely,

Edward R. Roybal
EDWARD R. ROYBAL
Chairman

United States
General Accounting Office
Washington, D.C. 20548

Human Resources Division

B-226668
August 26, 1987

The Honorable Edward R. Roybal
Chairman, Select Committee on Aging
House of Representatives

Dear Mr. Chairman:

By letter dated March 9, 1987, you stated your concern that certain "aging organizations" have attempted to solicit funds, sell insurance, and offer direct mail advertising of products in a manner that may frighten, threaten, or otherwise coerce the elderly into contributing money or buying products from these organizations. This was the subject of hearings entitled, "Direct Mail Solicitations to the Elderly," before your Committee on February 4, 1987.

We agreed with your office to (1) identify federal agencies with jurisdiction in reviewing the activities of organizations that use direct mail advertising, (2) identify federal statutes or regulations these agencies may use to protect the elderly, (3) determine current activities of these agencies to protect the elderly, and (4) determine agency educational activities to prevent possible abuses of the elderly. As part of our review, our Office of General Counsel reviewed pertinent federal legislation related to protecting individuals from deceptive business practices. We also discussed with officials of the United States Postal Service, Federal Trade Commission, and Department of Justice activities of their agencies relative to protecting the elderly and reviewed agency documents concerning these activities.

The United States Postal Service and the Federal Trade Commission share the major role in investigating and acting against violators of laws established to protect the general public from fraudulent and deceptive business practices through the use of the mails. However, applicable laws make no special reference to the elderly, and the enforcement activities of only one of the agencies we reviewed are directed at problems of the elderly in particular. The Postal Service specifically reviews fraudulent schemes directed against the elderly; but it could not give us the number of cases it had received or acted on that relate to the elderly because their case files are not indexed so as to permit identification of specific types of victims, such as the

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elderly. While the Postal Service and the Federal Trade Commission have educational programs dealing with fraudulent and deceptive business practices, these programs are not routinely directed at the elderly.

Other federal agencies play a role in protecting the public against various types of fraud and misrepresentation relating to specific items, for example, the Food and Drug Administration (food, drugs, medical devices, or cosmetics), the Securities and Exchange Commission (securities), and the Commodity Futures Trading Commission (commodities). However, sellers of the products regulated by these agencies do not use direct mail solicitation as their main method of doing business. The Department of Justice is also involved, but its role is generally one of bringing civil or criminal action to cases referred to it by the Postal Service, Federal Trade Commission, or other federal agencies.

Further, the Internal Revenue Service and the Postal Service can examine the applications made by organizations for the purpose of deciding whether to grant, withhold, or revoke preferential tax treatment and reduced postage rates reserved for organizations of a charitable, educational, or social welfare nature.

This fact sheet provides information in some detail on the role and activities of federal agencies in examining or reviewing organizations that use direct mail to sell to or solicit from the elderly.

As arranged with your office, unless its contents are announced earlier, we plan no further distribution of this fact sheet until 30 days from the issue date. At that time, we will send copies to interested parties and make copies available to others on request.

Should you need additional information on the contents of this document, please call me at 275-5451.

Sincerely yours,

Janet L. Shikles

Janet L. Shikles
Associate Director

PROTECTING THE ELDERLY:
FEDERAL AGENCIES' ROLE CONCERNING
QUESTIONABLE MARKETING PRACTICES

UNITED STATES POSTAL SERVICE

Pertinent Legislation

The United States Postal Service investigates potential violations of two laws that protect the elderly and others from fraudulent use of the mails: (1) the Mail Fraud Act (18 U.S.C. 1341) and (2) the Civil False Representation Statute (39 U.S.C. 3005). The Postal Service does not have a specific legislative mandate to protect the elderly, but does place special emphasis on reviewing fraudulent schemes directed against them.

Under the Mail Fraud Act, those who use or cause the mails to be used to further a fraudulent scheme can be criminally prosecuted and receive penalties of up to 5 years in prison and a \$1,000 fine. The purpose of this statute is to prevent the Postal Service from being used to carry out fraudulent schemes. The Department of Justice through the United States Attorney's Office for the district in which the fraudulent scheme occurred can prosecute this criminal offense. By agreement between the agencies, however, the Postal Service conducts investigations of such criminal activity and refers the cases to Justice for prosecution.

Under the Civil False Representation Statute, the Postal Service, after complying with the Administrative Procedures Act (5 U.S.C. 551) may withhold and return to the sender all mail addressed to anyone who solicits monies through the mails by false representation. The purpose is to protect the public from practices that use the mail to obtain money through false representations. The Postal Service is authorized to investigate the activity in question and issue an order that (1) directs the return of mail sent to such person or his representatives marked as in violation of the law, (2) forbids payment by a postmaster to such person or his representatives of any money order or postal note, and (3) requires such person or his representative to cease and desist from engaging in such schemes or devices. Also, the Postal Service may apply for a temporary restraining order and a preliminary injunction directing the detention of the violator's incoming mail. The purpose of these misrepresentation orders is not punishment of the violator, but prevention of future injury to the public by denying the use of the mails to aid in fraudulent schemes. Failure to comply with such orders can result in civil penalties of up to \$10,000 per day imposed upon the violator by federal district courts in actions litigated by the Department of Justice (39 U.S.C. 3012).

Enforcement

To enforce the above mentioned laws, the Postal Service uses postal inspectors to (1) investigate violations and seek enforcement from the appropriate federal and state agencies and (2) work with consumer groups to educate and inform the public. The responsibilities of the postal inspectors include activities designed to protect the public from acts of fraud in which the postal system was used in the conduct of an improper activity and other postal-related crimes. In addition, inspectors investigate burglaries and theft of mail and postal assets and physical attacks on postal employees and patrons. Inspectors place special emphasis on fraudulent schemes that have the greatest impact on the public and that target and victimize highly vulnerable groups such as the elderly and minorities.

The Postal Service has authority to grant preferential mail rates to charitable and educational organizations and/or organizations operating for the promotion of the social welfare. It is a crime, punishable by a fine of not more than \$500, to submit to the Postal Service any false evidence for the purpose of obtaining a preferential mailing rate. Recently, the Postal Service amended its requirements applicable to third-class bulk-rate mail to require that the words "Bulk Rate" or "Non Profit Crg." are accorded greater prominence. It is hoped this will offset other design features that may mislead recipients as to the origin of the mailing. Because it is difficult to determine which business organizations may be directing their efforts to the elderly, we did not attempt to determine the number of organizations that may have received preferential mail rates from the Postal Service.

In fiscal year 1986, Postal Service efforts resulted in 6,606 convictions; 1,548 or 24 percent involved fraud, while the remaining cases were for other crimes against the Postal Service. According to Postal Service officials, it places a special emphasis on fraudulent cases involving the elderly. But, as these cases are not indexed in a manner that allows identification, the Postal Service is unable to determine how many of the above cases relate solely to the elderly.

Educational Activities

By law, the Postal Service is responsible for developing and disseminating information to educate consumers on false representation concerning products and/or services purchased through the mails. This task includes disseminating information on practices commonly associated with fraudulent schemes and appropriate measures an individual may take upon receiving mail he or she believes may be part of a fraudulent scheme. The Postal Service is active in many efforts, such as television announcements, to bring more awareness to the public concerning misleading advertising for various products.

FEDERAL TRADE COMMISSIONPertinent Legislation

The Federal Trade Commission is responsible for protecting the general public, including the elderly, from deceptive acts or practices of companies selling products or services. Under the Federal Trade Commission Act (15 U.S.C. 45, 52-55), the Commission is empowered to prevent persons, partnerships, and corporations from using unfair or deceptive acts or practices in or affecting commerce, and is specifically directed to prevent the use of false advertisements regarding food, drugs, devices, or cosmetics. As with the laws dealing with the Postal Service, the Federal Trade Commission Act does not make special provision for the elderly.

Enforcement

The Commission has the authority to initiate civil proceedings in cases involving unfair or deceptive practices, seeking such remedies as consumer restitution, temporary and permanent injunctions, and civil penalties (up to \$10,000 per violation). It can issue administrative sanctions, including orders to cease and desist and orders for corrective advertising by a company, and refer violations of cease and desist orders to the Department of Justice for initiation of civil actions.

In 1986, the Commission conducted studies of and investigated both health-related and nonhealth-related activities affecting older Americans. For example, the Commission began a study of the extent and form of competition among hospitals in order to assist in the development of an effective antitrust policy for hospital mergers. Also, after an investigation by the Commission, an administrative law judge ruled that advertisements claiming that a company's dietary supplement reduced the chances of contracting cancer were false. The administrative law judge issued an order prohibiting false and unsubstantiated advertising claims for any product marketed for its ability to prevent or reduce the risk of disease in humans.

While such studies and investigations can benefit the elderly, Commission attorneys told us that problems of the elderly do not receive special enforcement emphasis and the Commission does not maintain statistics on the number of complaints received that specifically concern the elderly.

Educational Activities

Through its Office of Consumer and Business Education, the Commission is involved in preparing and disseminating numerous publications, public service announcements, and fact sheets of significant interest to older consumers. For example, the Commission in 1986 worked with the American Association of Retired Persons in distributing How to Write a Wrong, a booklet that explains how to complain effectively about consumer problems and get results.

OTHER FEDERAL AGENCIES

We identified other federal agencies that administer programs to protect individuals, including the elderly, from fraudulent and deceptive practices. We did not attempt to obtain information on agency enforcement or educational activities for these programs, because the sellers of the products regulated by these agencies do not use direct mail solicitation as their main method of doing business.

The Food and Drug Administration has responsibility for investigating violations of the federal Food, Drug and Cosmetic Act (21 U.S.C. 301 et seq.), which prohibits misbranding any food, drug, medical device, or cosmetic in interstate commerce and introducing or receiving such an item in interstate commerce. A food, drug, or medical device is misbranded if its labeling is false or misleading in any particular. Penalties of up to 1 year imprisonment and a \$1,000 fine may be imposed for a first offense. Violations are reported to the United States Attorney for institution of criminal proceedings.

The Securities and Exchange Commission has jurisdiction, under the Securities Act of 1933 (15 U.S.C. 77a et seq.) and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), to investigate various fraudulent and deceptive activities involving the sale of securities, seek injunctions and writs of mandamus, and refer matters to the Department of Justice for the institution of criminal proceedings. Violators of these laws may be fined up to \$10,000 and/or imprisoned for up to 5 years.

The Commodity Futures Trading Commission has jurisdiction over fraudulent and deceptive practices involving the sale of commodities, as set forth in the Commodity Futures Trading Commission Act (7 U.S.C. 951 et seq.). It is a felony, punishable by a fine of up to \$100,000 and/or up to 5 years imprisonment for an individual to disseminate false or misleading information affecting the price of any commodity in interstate commerce. A person convicted of a felony may be suspended from any registration under the act or denied registration for 5 years or such longer period as the Commission shall determine.

The Internal Revenue Service can exempt from federal taxation any corporation, community chest, fund, or foundation organized and operated exclusively for charitable or educational purposes, and civic leagues or organizations not organized for profit but operating exclusively for promotion of social welfare. However, the organization must apply for this exemption by providing evidence to the Commissioner of the Internal Revenue Service that it qualifies for such treatment. Because this exemption is available to all organizations that are eligible and we did not have any specific organization on which we were seeking information, we did not determine from the Internal Revenue Service the number of organizations receiving the exemption.

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FEDERAL AGENCIES
PROTECTING THE ELDERLY
Analysis of Pertinent Legislation and
Related Court Cases

U.S. POSTAL SERVICE

What the law requires

The Department of Justice has jurisdiction over various types of misrepresentations and schemes to defraud involving solicitation/advertisements through the mail. By interagency agreement, however, the Postal Service has been given authority to investigate such violations of the Mail Fraud Statute, after which the case is referred to the Department of Justice. Section 1341 of Title 18 of the U.S. Code authorizes imposition of up to \$1,000 in fines and up to 5 years imprisonment, or both, against

"[w]hoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises . . . places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service . . ."

The requisite scheme to defraud is not defined according to a technical standard; rather, the standard is a "reflection of moral uprightness, of fundamental honesty, of fair play and right dealing in the general and business life of members of society."

United States v. Van Dyke, 605 F.2d 220, 225 (6th Cir. 1979), cert. denied, 444 U.S. 994 (1980). It is not necessary that the scheme be fraudulent on its face, but the scheme must involve

some sort of fraudulent misrepresentations or omissions reasonably calculated to deceive persons of ordinary prudence and comprehension. United States v. Van Dyke, 605 F.2d at 220. The prosecution need not prove that the scheme actually succeeded in defrauding anyone. United States v. Schaffer, 599 F.2d 678 (5th Cir. 1979). Proof of pecuniary loss to the victim is not essential to conviction (United States v. Dick, 744 F.2d 546, 550 (7th Cir. 1984)), nor is it required that the perpetrator enrich himself (United States v. Weiss, 579 F.Supp. 1224, 1243 (S.D.N.Y. 1983)), aff'd, 752 F.2d 777 (1985)). Although the government must prove a specific intent to defraud (United States v. Martin-Trigona, 684 F.2d 485, 492 (7th Cir. 1984)), the intent may be inferred from the facts and circumstances surrounding the defendant's act (United States v. Fuel, 583 F.2d 978, 983 (8th Cir. 1978), cert. denied, 439 U.S. 1127). Each use of the mail in furtherance of the fraudulent scheme constitutes a separate violation. United States v. Toney, 598 F.2d 1349, 1352 (5th Cir. 1979), cert. denied, 444 U.S. 1033 (1980).

A similar proscription exists in 39 U.S.C. 3005, which authorizes the Postal Service, based upon satisfactory evidence that "any person is engaged in conducting a scheme or device for obtaining money or property through the mail by means of false representations," to take certain action. The aim of this statute, however, is to protect the public from fraudulent practices through use of the mail, not to impose personal

punishment on violators. See Commissioner v. Heininger, 320 U.S. 467, 474 (1943). Express misrepresentations are not required so long as the advertisement is artfully designed to mislead those responding by conveying a misleading impression. See Robertson-Taylor Co. P.S. Docket Nos. 16/98, 16/101, 16/120 (October 25, 1983), aff'd, July 12, 1984. The Postal Service is authorized to conduct an investigation of the proscribed activity (39 U.S.C. 404(a)(7), 3005(e)(1)) and to issue an order which: (1) directs the return of mail sent to such person or his representative marked as in violation of the law, (2) forbids payment by a postmaster to such person or his representative of any money order or postal note, and (3) requires such person or his representative to cease and desist from engaging in such scheme or devise (39 U.S.C. 3005(a), 39 C.F.R. 233.4(a)). Again, the purpose of mail fraud orders is not punishment, but prevention of future injury to the public by denying the use of the mails to aid in fraudulent schemes. Rules of practice applicable to proceedings under this statute have been codified in 39 C.F.R. Part 952. Evasion, attempted evasion, or failure to comply with such orders can result in civil penalties of up to \$10,000 per day imposed upon the violator and, in specified circumstances, anyone who assists him in such conduct. 39 U.S.C. 3012(a). The Postal Service is authorized to commence a civil action to enforce these penalties. 39 U.S.C. 3012(b)(1). Additionally, the Postal Service has authority to apply for a temporary restraining order and a preliminary injunction

directing the detention of the violator's incoming mail by the postmaster in preparation for or during the pendency of proceedings under section 3005. 39 U.S.C. 3007; 39 C.F.R.

952.6. Provision is also made for "test purchases" by duly authorized agents conducting investigations to determine if a person is engaged in conducting a scheme or device for obtaining money or property through the mail by means of false representations. 39 U.S.C. 3005(e); 39 C.F.R. 233.6.

Educational responsibility

In conjunction with the prohibitions and sanctions set out in 39 U.S.C. 3005, Congress has mandated a consumer education program on schemes involving false representations:

"As soon as practicable after the date of enactment of this Act [enacted Nov. 30, 1983], the Postmaster General or his designee, following consultation with representatives of the mail order industry, shall develop and carry out a program designed to provide consumer education to the public on schemes involving false representations through use of the mails, including the dissemination of information on recognizing practices commonly associated with such schemes, as well as appropriate measures which an individual may take upon receiving mail matter which the individual believes may be part of such a scheme." Pub. L. No. 98-186, 4(a), 97 Stat. 1315, 1317 (1983).

Investigative activities and preferential mailing rates

The Postmaster General is also directed to submit semiannual reports to the Board of Governors of the Postal Service containing information relating to the investigative activities of the Postal Service and proceedings instituted pursuant to

sections 3005 and 3007; the Board in turn must, after approval, submit such reports to Congress. 39 U.S.C. 3013; 39 C.F.R.

3.4(x). The Postal Service also has exclusive authority to initially determine whether to grant an application for preferential mailing rates, and may thereafter suspend or revoke such privileges. 39 C.F.R. Part 954. It is a crime, punishable by a fine of not more than five hundred dollars (\$500), to submit to the Postal Service any false evidence for the purpose of obtaining a preferential mailing rate. 18 U.S.C. 1722.

FEDERAL TRADE COMMISSION

What the law requires

The Federal Trade Commission (FTC) has broad authority to investigate and act against a wide range of unfair and deceptive acts or practices and the dissemination of certain false advertisements either in or having an effect upon commerce, which would encompass both mail solicitation and direct consumer sales to the elderly. Specifically, 15 U.S.C. 52(a) (1982) makes it unlawful for a person, partnership or corporation to disseminate, or cause to be disseminated, any "false advertisement"(as defined in 15 U.S.C. 55(a)):

"(1) By United States mails, or in or having an effect

1"Corporation" is defined, for purposes of the Act, as including any company, trust or association organized to carry on business for it's own profit or that of it's members (15 U.S.C. 344); however, in exceptional cases, non-profit corporations may be subject to Commission authority if it can be shown that a significant part of the organization's activities are engaged in for the profit of it's members.

upon commerce, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly the purchase of food, drugs, devices, or cosmetics; or

"(2) By any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in or having an effect upon commerce of food, drugs, devices, or cosmetics."

If the use of the commodity advertised "may be injurious to health because of results from such use under the condition prescribed in the advertisement thereof, or under such conditions as are customary and usual, or if such violation is with intent to defraud or mislead" (emphasis added), the offender is chargeable with a misdemeanor. Upon conviction, a fine of not more than \$5,000 and/or not more than 6 months imprisonment is authorized for a first offense; a second offense carries a penalty of not more than \$10,000 and/or up to one year imprisonment. 15 U.S.C. 54(a). Upon certification of facts by the commissioner, the Attorney General has the responsibility to see that appropriate criminal proceedings are brought. 15 U.S.C. 56(b).

This statute(15 U.S.C. 52(a)) was enacted to abolish the rule of caveat emptor ("let the buyer beware"), which traditionally defined rights and responsibilities in the world of commerce, and replace it with a rule which gives consumers the right to rely on representations of fact as truth. FTC v. Sterling Drug, Inc., 317 F.2d 669, 674 (2nd Cir. 1963). In order to best implement

the prophylactic purpose of the statute, it has been consistently held that the advertising falls within its proscription not only when there is proof of actual deception but also when the representations have a capacity or tendency to deceive, i.e., when there is a likelihood or fair probability that the reader will be mislead. Id.

It is also unlawful for a person, partnership or corporation to engage in any "unfair or deceptive acts or practices in or affecting commerce." 15 U.S.C. 45(a)(1). This broad classification includes a host of deceptive sales approaches and misrepresentations as to a product or service, and expressly encompasses any false advertisement 15 U.S.C. 52(b). See also 65 A.L.R. 2d 225. The language of 15 U.S.C. 45 is so general that the FTC has developed an extensive body of administrative law to identify the types of practices which violate this provision. FTC v. Simeon Management Corp., 532 F.2d 708, 716 (9th Cir. 1976). The FTC also has authority to prescribe interpretive rules and general policies with respect to unfair or deceptive acts or practices in or affecting commerce and rules which define with specificity acts or practices which are unfair or deceptive acts or practices in or affecting commerce. 15 U.S.C. 57a. See 16 C.F.R. Part 13 for a codified listing of prohibited trade practices and affirmative corrective actions. While the rulemaking approach to the formulation of general standards of conduct for industry is generally desirable,

Congress did not, by conferring rulemaking power on the FTC, "reduce the Commission's power to proceed on a case-by-case basis under section 45. Beltone Electronics Corp. v. FTC, 402 F. Supp. 590, 602 (N.D. Ill. 1975). See discussion infra.

Violations are not limited to precise practices which can be readily catalogued, but take their meaning from the facts of each case and the impact of particular practices, their scope being left for case-by-case resolution. FTC v. Colgate Palmolive Co., 380 U.S. 374, 384-5 (1965); Pan American Airways, Inc. v. United States, 371 U.S. 296, 307-08 (1963).

Investigative activities

As part of its mandate to prevent the above abuses, the FTC is authorized, upon service of a complaint and an opportunity for the violator to be heard at a hearing, to issue orders requiring offending parties to cease and desist from using such unfair or deceptive acts or practices. 15 U.S.C. 45(a)(2), (b). Preliminary to such proceedings, an inquiry conducted by a Commission investigator for the purpose of ascertaining whether violations are or have been occurring is authorized and governed by the provisions of 15 U.S.C. 57b-1. Rules governing FTC investigations and inquiries have been promulgated and codified. See 16 C.F.R. 2.1-2.9. Additionally, the FTC has the power to require production of documents and testimony of witnesses relating to any matter under investigation. 15 U.S.C. 49.

Whenever the Commission has reason to believe any person, partnership, or corporation is engaged in, or is about to engage in, the dissemination of any false advertisement in violation of 15 U.S.C. 52, it may bring suit to enjoin the dissemination of such advertisement, pending the issuance of a complaint under 45, and until the complaint is dismissed or set aside or the cease and desist order becomes final. 15 U.S.C. 53(a). Preliminary injunctions may also be sought whenever the Commission has reason to believe that any person, partnership or corporation is violating, or is about to violate any provision of the Federal Trade Commission Act. 15 U.S.C. 53(b). Moreover, in proper cases a permanent injunction, which constitutes a potent weapon, may be obtained. 15 U.S.C. 53(b). The Commission is further empowered to commence a civil action in district court against any person, partnership or corporation which violates any rule promulgated under 15 U.S.C. 41 et seq. respecting unfair or deceptive acts or practices, or any final cease and desist order. 15 U.S.C. 57b(a). The FTC has exclusive authority to commence, defend, and supervise the litigation of actions, under 15 U.S.C. 53(a) and 57b(a), unless the Commission has authorized the Attorney General to do so. 15 U.S.C. 56(a)(2). Types of relief available under this statute include: rescission or reformation of contracts, the refund of money or return of property, the payment of damages, and public notification respecting the rule violation or the unfair or deceptive act or

practice. 15 U.S.C. 57b(b). These remedies are expressly decreed to be in addition to, and not in lieu of, any other remedy or right of action provided by state or federal law. 15 U.S.C. 57b(e).

Finally, 15 U.S.C. 45(m) renders any person, corporation or partnership who violates any rule under the Federal Trade Commission Act (15 U.S.C. 41 et seq.), with actual knowledge fairly implied on the basis of objective circumstances that the act in question is unfair or deceptive and is prohibited by such rule, liable for a civil penalty of not more than \$10,000 for each violation.

The FTC is vested with broad oversight authority to gather information and investigate the organization, business, conduct, practices, and management of any person, partnership, or corporation engaged in or whose business affects commerce.

15 U.S.C. 46(a). In connection with such investigations, the Commission may require the filing of reports and/or answers to specific questions. 15 U.S.C. 46(b); 16 C.F.R. 2.12. Failure to file such report within the time fixed by the Commission and continuing for 30 days after notice of default, as well as willfully making false entries or statements of fact in a required report, are crimes, subject to fine and/or imprisonment.

15 U.S.C. 50. The information obtained as a result of such investigations may be made public (with certain specified

exceptions) to the extent it would be in the public interest.' 15 U.S.C. 46(f). Section 46 of Title 15 of the U.S. Code specifically provides that subsections (a), (b), and (f) do not apply to the business of insurance, but that the FTC may, upon request by a majority of the members of the Committee of Commerce, Science, and Transportation of the Senate or the Committee on Interstate or Foreign Commerce of the House of Representatives, prepare reports relating to the business of insurance.

Pursuant to the McCarran - Ferguson Act (15 U.S.C. 1011 - 1015), the Federal Trade Commission is barred from prohibiting insurance companies from engaging in false, misleading, and deceptive advertising within the boundaries of states which have their own legislation proscribing unfair insurance advertising. 15 U.S.C. 1012(b); FTC v. National Casualty Company, 357 U.S. 560 (1958), aff'd 243 F.2d 719. The provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) may be applied to the business of insurance only to the extent that it has not been regulated by State law.



OFFICE OF
THE CHAIRMAN

FEDERAL TRADE COMMISSION
WASHINGTON, D. C. 20580

October 7, 1987

The Honorable Frank McCloskey
Chairman
Subcommittee on Postal Personnel
and Modernization
Committee on Post Office and Civil Service
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for the invitation to submit comments to the Subcommittee on Postal Personnel and Modernization for its hearing on H.R. 939, the "Deceptive Mailings Prevention Act of 1987," and H.R. 1550, the "Deceptive Mailings to Senior Citizens Prevention Act of 1987." I hope that the following general comments and observations, which I am submitting for the record, will be of some assistance to the Subcommittee as it considers this legislation.

These bills would regulate certain types of promotional material in connection with the sale of goods or services offered free or at a lower cost by the government and solicitations for sales or contributions where there is a false implication of government affiliation or endorsement. I understand the Subcommittee is concerned, for example, about: i) offers to provide information about an individual's social security or medicare benefits for a fee when such information is available free from government offices; ii) the use of government look-alike envelopes and mailings using the words social security and medicare that may create an impression of government affiliation as a means of selling products or services; and iii) mailings that solicit contributions through representations that social security or medicare programs and benefits are in imminent danger of being abolished.

Although the United States Postal Service is charged with enforcing the proposed legislation, the FTC and the Postal Service have long shared the mission of preventing misleading and deceptive practices. Under Section 5 of the FTC Act the Commission has jurisdiction to challenge the "unfair methods of competition ... and unfair or deceptive acts or practices in or affecting commerce" of "persons, partnerships or corporations." 15 U.S.C. § 45. A substantial percentage of the Commission's resources are devoted to combatting unfair or deceptive promotional practices, including bringing law enforcement cases

The Honorable Frank McCloskey -- Page 2

against mail-order marketers. Frequently, however, the FTC defers to the Postal Service in cases involving mail-order solicitations. In some instances, the FTC and the Postal Service have worked jointly to stop deceptive mail-order practices.

Under the FTC Act, however, the Commission does not have jurisdiction over certain non-profit organizations.¹ Because of the McCarran-Ferguson Act, the Commission also does not generally have jurisdiction over firms or individuals engaged in the business of insurance except to the extent that such business is not regulated by state law.² Thus, the mail order practices of some entities are outside the Commission's jurisdiction.³

¹ Section 4 of the FTC Act limits the FTC's jurisdiction over corporations to those organized to carry on business for [their] own profit or that of [their] members. Under this standard, a non-profit organization's activities may be within the Commission's jurisdiction if they provide a benefit (financial, promotional or otherwise) to the organization's members. Thus, for example, the Commission has jurisdiction over professional organizations such as the American Medical Association, see e.g., American Medical Association, 99 F.T.C. 440 (1982) (modifying 94 F.T.C. 701 (1979), modified 100 F.T.C. 572 (1982), and industry trade associations. See e.g., National Commission on Egg Nutrition, 88 F.T.C. 89 (1976), aff'd, 570 F.2d 157 (7th Cir. 1977), cert. denied, 439 U.S. 821 (1978).

² 15 U.S.C. § 1012(b). In addition, the Commission does not have the authority to study or prepare reports relating to the business of insurance except at the request of the majority of the members of the Committee on Commerce, Science and Transportation for the Senate, or the Committee on Energy and Commerce of the House of Representatives. 15 U.S.C. § 46(h). The House Committee on Energy and Commerce recently directed the Commission to study, *inter alia*, "the use of potentially unfair, deceptive or misleading practices in the sale of policies marketed as supplements to coverage under title XVIII of the Social Security Act" (commonly referred to as medigap policies), and such practices in the sale of health insurance policies for cancer. The Committee's Resolution directs the Commission to complete the study by July 14, 1988. In response to a Congressional request, the General Accounting Office (GAO) is also looking at these issues.

³ In recent testimony before Congress, I advocated repeal of the McCarran-Ferguson Act because unimpeded competition in
(continued...)

The Honorable Frank McCloskey -- Page 3

Those entities within the Commission's statutory jurisdiction must comply with FTC case law and rules defining and implementing the FTC Act's prohibition of deceptive and unfair business practices. Thus, such firms and organizations must satisfy the Commission's requirements that advertising not be false or misleading, and that advertisers have a reasonable basis for all objective claims.

The Commission has the authority to enforce Section 5 by bringing law enforcement actions either administratively or in federal district court under Section 13(b) of the FTC Act. Violations of trade regulation rules, which are punishable by a federal court through civil penalties, are referred to the Department of Justice.⁴ Violations of Commission orders also are punishable by a court with civil penalties of up to \$10,000 per violation per day. Court orders can be enforced through civil or criminal contempt actions, depending upon the circumstances.

In determining whether to initiate an enforcement action the FTC assesses the degree, type and pervasiveness of the alleged deception or unfairness, as well as the severity of the actual or potential resulting injury.⁵ We also consider the particular circumstances involved. Thus, for example, in assessing advertising directed at the elderly, we construe it as it would be construed by members of that particular audience before determining whether any potentially false or misleading claims have been made. Deception Policy Statement, 103 F.T.C. at 177-78. Similarly, a marketing scheme that may attempt to exploit the special fears or concerns of the elderly would be assessed by the Commission on the basis of its impact on elderly consumers rather than on consumers generally.

³(...continued)
the insurance industry would undoubtedly benefit consumers. Repeal would also give us jurisdiction to bring law enforcement actions against insurance companies who may be engaging in deceptive or unfair mailing practices.

⁴ For example, violations of the Commission's mail order rule, which requires that deliveries be made in a timely fashion or that consumers be given a right to a prompt refund, can be punished by civil penalties. Mail Order Merchandise, 16 C.F.R. Part 435 (1975).

⁵ Deception Policy Statement, appended to Cliffdale Associates Inc., 103 F.T.C. 163, 174 (1984); Unfairness Policy Statement, appended to International Harvester Co., 103 F.T.C. 949, 1070 (1984).

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The types of practices that are prohibited by Section 5 and that the Commission has the authority to challenge are extremely varied. For example, businesses may not materially mislead consumers as to the value, cost or availability of goods or services. In addition, under Section 5 of the FTC Act the Commission can initiate a law enforcement action if consumers are materially misled by the use of packaging or promotional claims falsely implying that a product is connected with the government. In fact, the Commission has challenged the practice of suggesting government affiliation when no such affiliation existed. See e.g., U.S. Association of Credit Bureaus, Inc., 58 F.T.C. 1044 (1961), aff'd, 299 F.2d 220 (7th Cir. 1962).⁶ Two more recent FTC cases against mail-order marketers in federal district court also have included, *inter alia*, counts charging that the companies misrepresented certain products as government surplus. Such claims could mislead consumers into believing that although the products were inexpensive, they were of high quality. U.S. v. Encore House, Inc., Civ. Action No. 85-7385 (S.D. N.Y. 1985) (consent decree providing injunctive relief and \$350,000 in redress and penalties); U.S. v. Sheldon Friedrich Marketing, Inc., et al., No. 85-130 (S.D. N.Y., Aug. 13, 1987) (stipulated permanent injunction and order for civil penalties of \$600,000).

Also subject to FTC challenge are promotional practices using alarming or confusing language that misleads consumers. Thus, if a firm leads consumers to believe that by purchasing its product consumers will receive (or protect) a benefit that, in fact, they will not receive, the FTC would have the authority to prohibit the practices. See U.S. v. Reader's Digest Ass'n, 662 F.2d 955 (3d Cir. 1981), cert. denied, 455 U.S. 908 (1982) (upholding enforcement of a Commission order that prohibited, *inter alia*, "using or distributing any confusingly simulated item of value" to induce participation in sweepstakes).

Based on our experience in policing advertising and mail-order solicitations, I offer the following comments on the legislative proposals before the Subcommittee. Specifically, these bills would designate as nonmailable matter: i) solicitations for the purchase of products or services provided free or at a lower cost by the government; ii) solicitations implying affiliation with or endorsement by the federal government; and iii) solicitations for contributions implying

⁶ Similarly, under Section 807(9) of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, which the Commission enforces, the use or distribution of documents falsely purporting to be authorized or issued by the courts or the government is prohibited.

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affiliation with or endorsement by the federal government, unless all such solicitations contain specified disclosures.

First, I raise for your consideration whether the proposal to prohibit the Postal Service from delivering mail soliciting the purchase of goods or services that are offered free or at a lower cost by the United States government may unintentionally sweep too broadly. When consumers are misled into believing that they must purchase a product, such as a social security number, for a dependent, from the firm that is soliciting them, although social security numbers are available from the government free, the disclosures specified by the legislation would correct that misrepresentation and prevent further misrepresentations. Under Commission law it has long been recognized that omission of material information can make a representation or advertisement unfair or deceptive.⁷

At the same time, the Commission has recognized that this principle must not be interpreted or applied so as to stifle truthful advertising.⁸ In the absence of a misrepresentation, or where there is no reason to believe consumers are being misled through a material omission, the disclosures could impose a costly regulatory burden that does not address any unfairness or deception.

There are many services and products available free or at a low cost from the government that are also sold by the private sector where, to my knowledge, there are no indications of impropriety or wrongdoing requiring regulatory intervention. For example, the government, through the Internal Revenue Service, offers free assistance in calculating tax obligations. The private sector also offers tax assistance for a fee. Theoretically, under H.R. 939, mail-order solicitations of such companies could not be delivered by the Postal Service unless they disclosed that the service was available free from the government. Because I am not aware of any allegations of misrepresentation or deceptive omission of this type by private tax services generally, I am especially concerned about the regulatory costs in this and similar situations where there are unlikely to be any offsetting benefits.

The second provision concerns misrepresentation of government affiliation or endorsement through the use of a seal, insignia, trade or brand name or any other term or

⁷ See, e.g., International Harvester Co., 104 F.T.C. 949, 1055-62 (1984).

⁸ Id. at 1062.

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symbol. The Postal Service would be prohibited from delivering solicitations implying a government connection unless the solicitations contain specified disclosures. In general, when the FTC considers alleged misrepresentation of government affiliation by entities within its jurisdiction, it evaluates the entire advertisement, including headlines, text, pictures, footnotes, etc., to determine the ad's net impression on consumers. Such a review may conclude that although the advertisement contains, for example, a government-type seal, no legally actionable deception occurs because the text of the ad negates any impression of government affiliation, or a disclosure included voluntarily by the advertiser corrects any confusion. In some instances, government look-alike envelopes are used but the contents clearly indicate a private sector enterprise, such as a car dealer's auto sale. While this technique may lead the recipient to open mail that might otherwise be discarded unopened, outside of momentary inconvenience there is no consumer harm. In other instances, when the Commission concludes there is reason to believe that a representation misleads consumers acting reasonably in the circumstances to their detriment, it will initiate a law enforcement action. As I have previously noted, the FTC has in the past taken action against such misrepresentations.

It is also possible that this legislation could introduce uncertainty about when consumers may believe that government affiliation is implied, and thereby chill legitimate promotional practices. There are many instances where trade or brand names include terms that might be construed to imply government connection. In the extreme this could include such firms as "Federal Express," "US Air," and "Congressional School." It is highly unlikely that the advertisements for any of these organizations could mislead consumers. However, the proposed legislation could chill the advertising of these and similar legitimate firms. Similarly, mail-order promoters may hesitate to use brown envelopes or seals with eagles on their envelopes for fear of implying government affiliation and the non-delivery of their mail.

The complaints we recently have received about government look-alike practices usually have involved solicitations for medigap insurance policies offered by insurance companies that are not within the FTC's statutory jurisdiction. As I mentioned previously, although the Commission lacks jurisdiction to bring actions against unfair or deceptive mailings by insurance companies, at Congress' request the Commission and GAO are now looking at the promotional practices used to sell medigap (and cancer) insurance policies. As part of this project we expect to obtain information about the types of practices used to sell these policies and their prevalence. Further, this effort will include an evaluation of the

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effectiveness of state laws governing these practices. At the conclusion of this project we may be in a better position to evaluate and develop possible remedies.

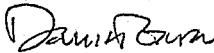
Finally, the third provision concerns solicitations for contributions implying government endorsement or approval. It is highly probable that contributions are being sought by not-for-profit organizations. I would like to explain briefly how the FTC staff approaches such practices.

The Commission's staff has, for example, received complaints from consumers regarding alleged misrepresentations about the viability of the social security program from groups seeking contributions. Before investigating the merits of these allegations, it has been necessary to determine whether the FTC has jurisdiction. Consequently, in response to those complaints, the staff conducted a preliminary review to determine whether the FTC has jurisdiction. The staff's initial review indicated that the organizations involved appear to be not-for-profit groups that are outside the Commission's jurisdiction.

However, if the Commission had jurisdiction over such groups, in determining whether law enforcement action was appropriate we would, of course, consider the group's First Amendment rights. As you know, the Supreme Court has established that commercial speech is due First Amendment protection, and non-commercial speech, including that of religious or political groups, is entitled to an even greater measure of First Amendment protection. This protection properly limits the FTC's ability to regulate speech. Consequently, we examine each particular situation carefully to ensure that possible FTC regulatory action is consistent with constitutional law. Because this section of the proposed legislation addresses solicitations for contributions, it seems particularly likely that it could affect religious or political groups and therefore raise serious First Amendment concerns.

I hope that these observations are helpful. If I can provide further assistance to the Subcommittee please let me know.

Sincerely,



Daniel Oliver
Chairman

STATEMENT OF
LANDIS NEAL
EXECUTIVE DIRECTOR OF THE
NATIONAL COMMITTEE TO PRESERVE SOCIAL SECURITY AND MEDICARE

I am Landis Neal, Executive Director of the National Committee to Preserve Social Security and Medicare. The National Committee endorses legislation (H.R. 939 and H.R. 1550) to prevent deceptive mailings which is being considered by this Subcommittee. As an organization that uses direct mail extensively in communication with its 4.5 million members and the general public, we believe in strong standards to protect the recipients of direct mail. In fact, we urge the Subcommittee to strengthen the legislation with additional protections for all Americans.

The main thrust of the legislation is to require disclaimers to disassociate the mailing organization from any endorsement by or connection with the government. For some years, the National Committee has voluntarily included such a conspicuous disclaimer, usually in contrasting color, on its mailings. The disclaimer reads:

Prepared and mailed by the National Committee to Preserve
Social Security, a non-profit, tax-exempt organization,
2000 K Street, N.W., Washington, D.C., 20006

The National Committee is totally independent of Congress,
every government agency, and all political parties.

Some months ago, we strengthened our disclaimer to include other information valuable to our readers regarding both contributions and expenditures. These additional disclaimers go far beyond the disclaimers that would be required by the legislation you are considering. Our additional disclaimers read:

Contributions to the National Committee are not tax deductible, and you need make no special contributions other than annual dues.

The National Committee spends its budget in approximately the following way: legislative advocacy 38%, educational activities 25%, fund raising 15%, administration 20%, other 2%. Detailed financial reports are available from the National Committee and the charitable solicitations department of most states.

Finally, about a year ago, at the urging of some Members of the House and Senate, we added an additional disclaimer to our petitions to clarify that Members of Congress, to whom the petitions are addressed, do not necessarily endorse the National Committee. That disclaimer reads:

The names of your senators and congressman appear on this petition because it is directed to them for their consideration. No endorsement of the National Committee to Preserve Social Security and Medicare by these Members of Congress is intended.

It is our experience that the appearance of an envelope or the color of its paper is not as important in catching the attention of the public as are the simple facts of a good message, so long as an organization is really serving the needs of its members. Our use of disclaimers has not affected the operation of the National Committee, except in a positive way. It is convincing evidence to any detractors that National Committee members are committed to our organization, not to our envelopes.

As an organization primarily representing senior citizens, we are particularly concerned about deceptive mailings to seniors. And frankly, we are disturbed that other senior organizations have not voluntarily adopted appropriate disclaimers.

H.R. 1550 would only affect mailings which imply a connection with the Social Security Administration or the Health Care Financing Administration. H.R. 939, however, would affect all mailings that imply a connection with any government agency. We endorse the broader protection of H.R. 939.

We believe that both H.R. 939 and H.R. 1550 would apply not only to commercial and non-profit mailings but also to political mailings by candidates, campaign committees and political parties. We suggest that the Committee report reflect this interpretation.

We finally urge you to expand the legislation to require a disclaimer setting out how a non-profit organization spends contributions to it. This was the purpose of legislation introduced by Rep. Pete Stark in the last Congress.

In conclusion, I would like to commend the Subcommittee for holding this hearing and urge you to act quickly on legislation to prevent deceptive mailings.

Thank you.

TCMA THIRD
CLASS
MAIL
ASSOCIATION

1333 F Street, N.W. • Suite 710 • Washington, D.C. 20004-1108 • Tel.(202) 347-0055

October 1, 1987

The Honorable Frank McCloskey
Chairman
Subcommittee on Postal Personnel and Modernization
603 House Office Building Annex I
Washington, DC 20515

Dear Chairman McCloskey:

The Third Class Mail Association is a national organization that represents the postal interests of all who use third class mail as an advertising, marketing, or fund raising medium, and we appreciate the opportunity to share our views regarding two pieces of proposed legislation currently under consideration by your subcommittee (H.R. 939 and H.R. 1550) regarding deceptive mailings.

We appreciate quite well the legitimacy of the concerns raised by the sponsors of both of these bills. We and others within our industry disapprove of the use of deceptive and misleading solicitations. The testimony submitted before the subcommittee by the Direct Marketing Association and endorsed by TCMA explains the efforts undertaken by the direct response industry to self-regulate solicitations practices. Quite frankly, while our preference might be to address through industry self-regulation, we recognize fully the legal limitations that constrain efforts by any industry trade group to control the practices of its members and others within the industry through ethical practice codes. Indeed, the nature of the problems raised by the bills before you today may be ripe for legislative and regulatory remedy.

Our association's history of working with the U.S. Postal Service on matters pertaining to the regulation of mailing practices is a long one. While we believe generally that Congress' confidence in the Postal Service's ability to administer the nation's postal laws is well-placed, we are wary of any effort by the Postal Service to control mailing practices by regulating envelope appearance and design. The Service's past forays in the area of envelope design resulted in proposed regulations which would have, had they been approved, undermined third class mail's advertising, marketing, or fund raising value.

We would note that the Postal Service already has sufficient authority from Congress to control fraudulent mailing practices. To the extent that these practices involve envelope design, the Postal Service is sufficiently empowered to bring such practices to an end. We would prefer, however, that Congress not extend the Postal Service's regulatory prerogatives in other matters governing envelope design, if another equally acceptable alternative is available.

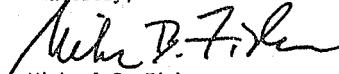
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Page Two
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Envelope copy and design are important elements in any direct mail marketing effort. These elements are designed simply to get the recipient to open the envelope and review the solicitation or offer that's enclosed. We believe strongly that preserving a mailer's legitimate, creative prerogatives over envelope copy and design is vital to the mail's continued utility as a marketing medium.

The abuses of the mail that H.R. 939 and H.R. 1550 are intended to address hinge not on what appears on the outside of the envelope but on what is contained inside the envelope. From our perspective, the remedy for such deceptive or misleading mailing practices more appropriately should focus on the matter contained inside the envelope, since it's through that matter that the offer or solicitation actually is made. Indeed, a precedence for such action exists already in postal regulations regarding solicitations that appear in the guise of bills, invoices, or statements of account (Section 123.4 of the Domestic Mail Manual, a copy of which is attached.) We believe that any effort by this Congress to control specific mailing practices which it finds objectionable can and should be addressed in a similar manner, and we would be most willing to work closely with the Postal Service in the development of appropriate regulations.

We appreciate greatly the Subcommittee's willingness to consider our views on this matter. If you have any questions regarding our comments, or if we can be of service in any other way, please be sure to contact us.

Sincerely,



Michael B. Fisher
TCMA Executive Vice Chairman and
Chairman, TCMA Legislative Committee

PREPARED STATEMENT OF HON. PETER J. VISCOSKY, A REPRESENTATIVE FROM THE STATE OF INDIANA

Mr. Chairman and members of the subcommittee, I would like to thank you for the opportunity to express my views and concerns about deceptive mail fraud and possible congressional action.

As we all know from the correspondence we receive in our offices and the questions consistently asked by our constituents when we go home, deceptive mailings are a problem; and unfortunately, it is most prevalent for our senior citizens.

This worries me. Such deceptive solicitations rely on the economic vulnerability, sensitivity and dependence of many of the elderly. The official looking seals and the impressive sounding organization titles all too often give the impression of being a letter from the federal government. Combined with the dire warnings and obfuscating statements, these messages not only mislead, but worse, needlessly frighten.

We are all too familiar with the situation. An individual will receive a letter that contains statements that, either directly or implicitly, raise doubts about the solvency of Social Security funds or the financial integrity of the Medicare program. However, if the recipient of such a mailing reads on, they are assured that if they immediately contribute financially to the proper group, catastrophe can be averted. Ironically, it has been reported that "tax records of the most prominent of these fund-raising organizations showed that 80% of the many millions of dollars the organization has received in contributions were used for additional fundraising." We can only speculate on the uproar that would occur if the innocent recipients of these mailings only knew that their contribution was most likely going to finance another fundraising campaign.

Another common theme utilized by deceptive mailers is the "assistance for a fee" scam. While this is also targeted to senior citizens, it is not limited to them, and I speak from personal experience.

On February 12 of this year, my son was born. Shortly thereafter, I received this letter in the mail, which I would like to submit for the record. It is a letter from the "Federal Record Service Corp/Birth Records Division" of Washington, DC. The letter tells me that records indicate that my newly born child does not have a Social Security Card and that it is important that he have one immediately. For a fee of \$10, the Federal Record Service Corp will handle the paperwork and clerical details necessary when applying for a Social Security card.

In fairness, I must state that it is indicated in the letter that the Federal Record Service Corp is a non-government agency. It is also stated that "New Federal Legislation requires that all dependents reaching age five by the end of the tax year must be listed by Social Security Number on (my) 1987 income tax return."

However, this letter sends a confusing message. If I have five years to apply for my child's Social Security Card, why is it stated that "It is important that your child be issued a Social Security Card immediately"? Furthermore, I am told that if I ". . . fill out the information requested right now . . . and return it . . . we will begin to process your application immediately."

The payment of the \$10 fee will enable the Federal Record Service to secure a proper application form, complete the appropriate application, return the application to me to check for accuracy and finally provide instructions to me regarding what documents I must submit to the Social Security Administration. However, it is not indicated anywhere in the letter that these services are provided by the Social Security Administration free of charge. Furthermore, one can be left with the impression that applying for a Social Security number is a time consuming, somewhat difficult procedure. It is not.

To receive a Social Security card for a child, all the parent has to do is contact the local Social Security office to request an application. The application is clearly written and easy to understand. After it has been returned, with a copy of the child's birth certificate and one other document verifying birth, the Social Security number is normally issued within ten days. All of this can be done through the mails. It is an easy and efficient process. In conversation with the Social Security Administration, I was informed that by going through a service such as Federal Record Service Corp, the turn around time would be increased due to the use of a "middle-man."

Not all direct mail solicitations are fraudulent. While I do not have any data or studies to cite, I have to believe that most are legitimate concerns, sincerely working to advance their stated goals. Furthermore, I am aware of organizations that have voluntarily worked with various government agencies to correct or modify misleading letters and other information. Yet, there are those that either blatantly mislead or subtly deceive in order to profit financially. Due to the present abuses and the potential for greater misdeeds, it is important that this issue be addressed by

Congress. It is not a local or regional problem, but a national one that can impact anyone, regardless of age, economic status or ethnic background.

That is why I am an original cosponsor of Congresswoman Snowe's "Deceptive Mailings Prevention Act of 1987." I believe that this measure thoughtfully addresses the issue, allowing for legitimate business concerns to use the mails while enabling the Postal Service to have proper enforcement authority over those who seek to abuse the system and take advantage of the unknowing. I particularly endorse the provisions calling for clear notice that the enclosed is not a Government document and that the services being charged for are provided by the Government for free or at a reduced charge.

In closing, I would like to commend the subcommittee for having these important hearings and urge my colleagues to work swiftly in considering this legislation.

Thank you.

A private corporation not
affiliated with any government agency

FEDERAL RECORD SERVICE CORP

2021 L STREET, SUITE 250
WASHINGTON, D.C. 20036

BIRTH RECORDS DIVISION

Important Notice:

New Federal Legislation requires that all dependents reaching age five by the end of the tax year must be listed by Social Security Number on your 1987 income tax return.

Records indicate that your child has not been registered with the Social Security Administration. It is important that your child be issued a Social Security Card immediately.

Federal Record Service, a non-government agency, will handle the paperwork and clerical details for you. If you will fill out the information requested right now on the enclosed form and return it with a check or money order for \$10, we will begin to process your application immediately. The fee is our assistance charge.

If you have other dependents who do not have Social Security numbers, we will process their applications at the additional fee of \$5 for each extra applicant.

Federal Record Service will:

1. Secure proper application form.
2. Complete the appropriate application.
3. Return the completed application to you to sign and check for accuracy prior to your submission to appropriate SSA office.
4. Provide you with simplified instructions regarding which documents you must submit to the SSA.

The SSA will then issue you a Social Security number in your child's name.

Please return the enclosed form immediately with a check or money order made payable to:

Federal Record Service Corp