

July 2010

HOMEOWNERSHIP PRESERVATION

Federal Efforts to
Combat Foreclosure
Rescue Schemes Are
Under Way, but
Improved Planning
Elements Could
Enhance Progress



GAO

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Highlights of [GAO-10-787](#), a report to congressional requesters

Why GAO Did This Study

One of the most devastating aspects of the current financial crisis for homeowners is the prospect of losing their homes to foreclosure, and many homeowners have fallen victim to foreclosure rescue and loan modification schemes. In 2009, the administration created the Financial Fraud Enforcement Task Force (FFETF), which is led by the Department of Justice (DOJ), to combat these and other financial crimes. This report examines (1) the nature and prevalence of these schemes, (2) federal efforts coordinated to combat these schemes and other major efforts, and (3) factors that may affect federal efforts' success in combating these schemes. To address these objectives, GAO obtained information from federal agencies participating in the FFETF and interviewed representatives of five states with high exposure to potential foreclosures and nonprofit organizations undertaking related activities.

What GAO Recommends

GAO is recommending that the U.S. Attorney General direct DOJ to develop clear, long-term strategies and performance measures that DOJ can use to evaluate its progress toward combating mortgage fraud, and consider developing strategies specific to foreclosure rescue schemes. DOJ concurred with these recommendations.

View [GAO-10-787](#) or [key components](#). For more information, contact Mathew J. Scire at (202) 512-8678 or sciremj@gao.gov.

HOMEOWNERSHIP PRESERVATION

Federal Efforts to Combat Foreclosure Rescue Schemes Are Under Way, but Improved Planning Elements Could Enhance Progress

What GAO Found

Although data that would establish the prevalence of foreclosure rescue and loan modification schemes are limited, officials told GAO that these schemes can take several forms—the most active scheme is one in which individuals or companies charge a fee for services not rendered. Agency and nonprofit officials said that the perpetrators of these schemes are likely to be former mortgage industry employees, professional scam artists, and unethical attorneys and that the range of potential victims is wide. Law enforcement officials said that the nature of the schemes makes them difficult to combat because they can easily be conducted by Internet or across state lines. While law enforcement agencies and nonprofits have information, such as research studies and consumer complaints, that supports their belief that these schemes are widespread, there are no nationwide data that can reliably be used to describe their prevalence.

Collaborative federal law enforcement efforts and other coordinated efforts involving federal and private organizations are under way to combat foreclosure rescue and loan modification schemes. The FFETF was established in November 2009 to strengthen the efforts of federal, state, and local agencies to investigate and prosecute a variety of financial crimes, including foreclosure rescue and loan modification schemes. Prior to the FFETF, the administration announced a multiagency effort to combat these schemes in April 2009, for which agencies, notably the Financial Crimes Enforcement Network and the Federal Trade Commission, took supporting actions. The FFETF's Mortgage Fraud Working Group, which has primary responsibility for coordinating activities related to these schemes, has focused on facilitating communication and exchanging information among law enforcement agencies by sponsoring training sessions and conferences. In addition to the FFETF, there are other major coordinated efforts aimed at combating these schemes, such as a public-private effort that focuses primarily on consumer education and outreach.

Several factors may affect federal efforts to combat foreclosure rescue and loan modification schemes, and lack of a clear, long-term strategy could limit the FFETF's effectiveness. Key factors affecting federal success in combating these schemes include educating consumers about them and coordinating federal and state law enforcement efforts. The Mortgage Fraud Working Group has created an action plan that partly addresses these factors but does not fully incorporate certain key practices to enhance and sustain interagency collaboration. In particular, the plan largely focuses on short-term strategies, does not clearly identify members' roles and responsibilities, and does not clearly identify performance indicators that would allow it to measure progress over time. In addition, the plan outlines strategies for addressing mortgage fraud as a whole and identifies few specific approaches to combating foreclosure schemes. Without long-term strategies and performance measures specific to foreclosure schemes, the working group may be limited in its ability to combat these schemes.

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Abbreviations

BSA	Bank Secrecy Act
DOJ	Department of Justice
EOUSA	Executive Office for U.S. Attorneys
FBI	Federal Bureau of Investigation
FFETF	Financial Fraud Enforcement Task Force
FHA	Federal Housing Administration
FinCEN	Financial Crimes Enforcement Network
FTC	Federal Trade Commission
GSE	government sponsored enterprise
HAMP	Home Affordable Modification Program
HUD	Department of Housing and Urban Development
OCC	Office of the Comptroller of the Currency
SAR	Suspicious Activity Report
SIGTARP	Special Inspector General for the Troubled Asset Relief Program
USPIS	U.S. Postal Inspection Service

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United States Government Accountability Office
Washington, DC 20548

July 15, 2010

The Honorable Bobby L. Rush
Chairman
Subcommittee on Commerce, Trade,
and Consumer Protection
Committee on Energy and Commerce
House of Representatives

The Honorable Doris Matsui
House of Representatives

One of the most devastating aspects of the current foreclosure crisis is the prospect that homeowners who cannot afford their mortgage payments will lose their homes to foreclosure. The dramatic increase in the number of homes entering foreclosure since 2005—a record high of over 2 million in the foreclosure inventory in 2009—has presented opportunities for some individuals and companies to take advantage of homeowners through schemes that promise but do not deliver relief from pending foreclosures. These deceptive practices, which typically cost homeowners thousands of dollars that they can ill afford to spend, are broadly referred to as foreclosure rescue schemes. Loan modification schemes are a type of foreclosure rescue scheme in which homeowners are steered away from legitimate free sources of loan modification assistance, such as those provided by both the federal government and private financial institutions.

The concern that homeowners seeking to save their homes from foreclosure can become vulnerable to these schemes has attracted the attention of consumer advocates, regulators, and law enforcement agencies. In April 2009, four federal agencies—the Federal Trade Commission (FTC) and the Departments of Justice (DOJ), the Treasury (Treasury), and Housing and Urban Development (HUD)—and the Illinois State Attorney General announced efforts to coordinate information and resources across agencies to combat these schemes and educate consumers. On November 17, 2009, in response to concerns about a broad range of financial crimes relating to the current financial crisis and economic recovery efforts, including foreclosure rescue schemes, the President established the Financial Fraud Enforcement Task Force (FFETF) under the leadership of the U.S. Attorney General to strengthen the efforts of DOJ in conjunction with federal, state, and local agencies to investigate and prosecute these crimes. In addition, other federal, state, local, private, and nonprofit agencies have launched cooperative efforts to

reach out to consumers who have experienced foreclosure rescue and loan modification schemes and to help others avoid these schemes.

In light of these concerns, as agreed with your offices, we examined (1) what is known about the nature and prevalence of mortgage foreclosure rescue and loan modification schemes, (2) the status and scope of the federal government's multiagency effort to combat these schemes and other major efforts, and (3) the factors that may affect the likelihood that federal efforts will succeed in combating these schemes.

To determine what is known about the nature and prevalence of mortgage foreclosure rescue and loan modification schemes, we contacted representatives of the four federal agencies—DOJ, FTC, Treasury, and HUD—that were identified as participants in the initiative to combat these schemes in press releases issued in April 2009. In addition, we contacted representatives of five states that have high numbers of potential foreclosures—Arizona, California, Florida, Illinois, and New York—and national nonprofit organizations and other associations that we identified as actively engaged in addressing these schemes to discuss the nature and prevalence of the schemes. To identify the status and scope of the federal government's multiagency effort and other major efforts to combat these schemes, we interviewed and obtained related documentation from the FFETF's leadership and Mortgage Fraud Working Group; the four federal agencies that we have previously mentioned; and organizations sponsoring major efforts in this area, including the members of the Loan Modification Scam Prevention Network. To identify what factors may affect the likelihood that federal efforts will succeed in combating these schemes, we analyzed information from federal and state agencies and national nonprofit organizations describing challenges to combating foreclosure rescue and loan modification schemes. We also used our prior work on practices that can help sustain collaboration among federal agencies to assess FFETF planning efforts to date and the likelihood that its efforts will succeed in combating these schemes.¹ See appendix I for more detailed information on the scope and methodology of the report.

We conducted this performance audit from September 2009 to July 2010 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient,

¹GAO, *Results-Oriented Government: Practices That Can Help Enhance and Sustain Collaboration among Federal Agencies*, [GAO-06-15](#) (Washington, D.C.: Oct. 21, 2005).

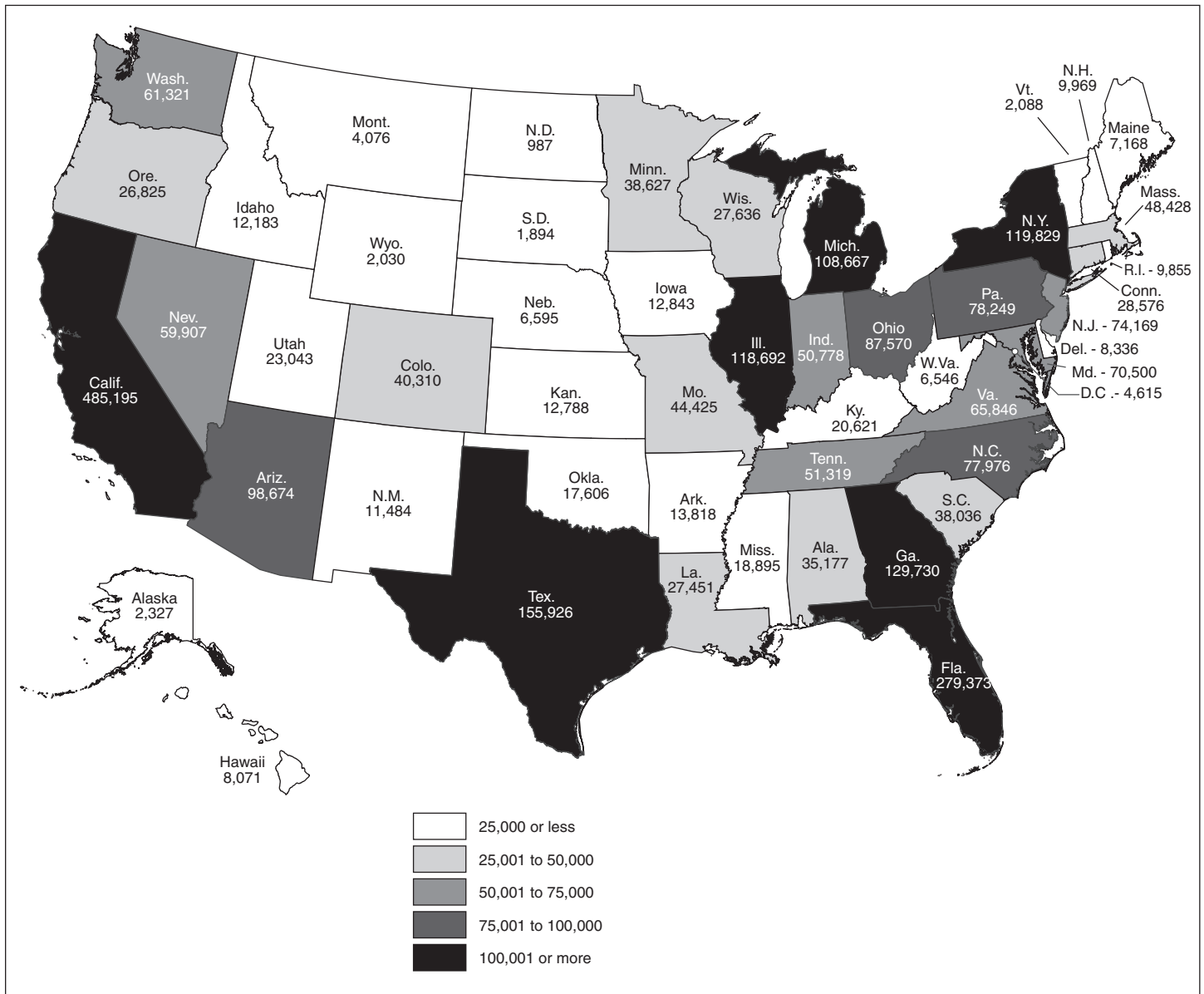
appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

The current foreclosure crisis has provided persons who may perpetrate mortgage foreclosure rescue and loan modification schemes with unprecedented opportunities to profit from homeowners desperate to save their homes. In March 2010, we reported that national default and foreclosure rates rose sharply from 2005 through 2009, to the highest level in 29 years.² The most recent data from the Mortgage Bankers Association, which are for the first quarter of 2010, show that the number of home loans with payments more than 60 days past due, and therefore potentially facing foreclosure, is 2.7 million. As shown in figure 1, California and Florida have the highest numbers of potential foreclosures. The foreclosure process has several possible outcomes, but the homeowner generally loses the property, typically because it is sold to repay the outstanding debt or is repossessed by the lender.

²GAO, *Troubled Asset Relief Program: Home Affordable Modification Program Continues to Face Implementation Challenges*, [GAO-10-556T](#) (Washington, D.C.: Mar. 25, 2010).

Figure 1: Number of Home Loan Payments More Than 60 Days Past Due, by State



Sources: GAO analysis of the Mortgage Bankers Association's *National Delinquency Survey* data (first quarter, 2010); Art Explosion (map).

In response to the rising number of defaults and foreclosures, the administration announced the Making Home Affordable Program in February 2009, which includes a number of programs intended to assist homeowners facing potential foreclosure, including the Home Affordable

Modification Program (HAMP). Under HAMP, Treasury shares the cost of reducing the borrower's monthly mortgage payments with mortgage holders and investors so that homeowners might realize a reduction in their monthly mortgage payments.³ In addition to HAMP, there are other foreclosure prevention programs aimed at providing assistance to homeowners, including both governmental and private programs. For example, the government sponsored enterprises (GSE) Fannie Mae and Freddie Mac have their own loan modification programs. Refinances are also available under the GSE Home Affordable Refinance Programs, and the Federal Housing Administration's (FHA) Hope for Homeowners Program, which permits eligible homeowners to lower their monthly mortgage payments by refinancing their mortgage loans into fixed-term market rate loans. In addition, individual private financial institutions offer their own proprietary loan modification programs for homeowners who do not qualify for HAMP. Moreover, free counseling services, such as those provided by HUD-certified counseling agencies, are available to homeowners seeking to avoid foreclosure. One way that homeowners can access these counseling services is by calling the Homeowner's HOPE™ Hotline (1-888-995-HOPE), which is run by a nonprofit organization that works with a coalition of governmental agencies, financial services institutions, and other nonprofit groups to help homeowners struggling to make their monthly mortgage payments.

A number of federal and state law enforcement agencies perform different roles and use different legal authorities in their efforts to combat various types of financial- and mortgage-related crimes, including protecting consumers from foreclosure rescue and loan modification schemes (see table 1). Within the federal government, FTC, the U.S. Postal Inspection Service, and agencies within DOJ and Treasury all have key roles regarding the investigation and prosecution of persons who have engaged in these types of schemes. As we discuss later in this report, State Attorneys General and regulatory agencies also play key roles in combating these schemes.

³In March 2009, Treasury issued the first HAMP guidelines for modifying first-lien mortgages in an effort to help homeowners avoid foreclosure. HAMP is part of the Troubled Asset Relief Program.

Table 1: Select Federal and State Agencies Involved in Combating Financial Crimes

Agency	Role in combating crime
FTC	FTC enforces the Federal Trade Commission Act—which prohibits unfair or deceptive acts or practices—with nonbank financial institutions, such as mortgage brokers (see 15 U.S.C. §§ 41–58). FTC conducts its own investigations and has civil enforcement authority.
DOJ - Federal Bureau of Investigation (FBI)	FBI conducts investigations into a range of financial criminal activities. Its National Mortgage Fraud Team focuses on fraud schemes that involve financial institutions, particularly in the areas of mortgage fraud and bank failures. FBI also participates in 67 mortgage fraud working groups and 23 regional task forces across the country.
DOJ - U.S. Attorneys	The U.S. Attorneys are the federal government’s principal litigators and are appointed by the President of the United States with the advice and consent of the U.S. Senate. There are 93 U.S. Attorneys stationed throughout the United States and its territories. Each U.S. Attorney’s office has discretion over its distribution of cases and use of resources on the basis of the priorities and needs of local jurisdictions and communities, therefore the types of cases vary. The Executive Office for U.S. Attorneys within DOJ provides the U.S. Attorneys with general executive assistance and direction, policy development, administrative management direction and oversight, and operational support and helps the U.S. Attorneys coordinate with other components within DOJ and other federal agencies.
U.S. Postal Inspection Service (USPIS)	USPIS enforces laws against mail fraud to protect customers from misuse of the postal system, such as when individuals send mailings with deceptive information or use the mail to defraud, endanger, or threaten people.
Treasury - Financial Crimes Enforcement Network (FinCEN)	FinCEN was established in 1990 to provide a governmentwide financial intelligence and analysis network for law enforcement and in 1994, was delegated authority to administer the Bank Secrecy Act (BSA), which resulted in an expansion of its operation to include regulatory responsibilities. To assist more than 275 federal and state law enforcement agencies in their efforts to combat money laundering, terrorist financing, and other financial crimes, BSA authorizes FinCEN to require financial institutions to make reports and maintain records on certain financial transactions that have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism. ^a
State Attorneys General	State Attorneys General investigate and prosecute violations of state laws regarding unfair and deceptive practices and fraud.
State regulatory agencies	State regulatory agencies, such as those regulating the mortgage industry or financial institutions, enforce state laws and requirements and may license individuals and companies engaged in mortgage activities.

Source: GAO.

^a31 U.S.C. § 5311. BSA requires financial institutions to file Suspicious Activity Reports to inform the federal government of transactions related to possible financial crimes. 31 U.S.C. § 5318(g).

Schemes Often Involve Fees for Services Not Rendered, and Although Data Are Limited, Federal and State Officials Consider Them to Be an Important Problem

Officials with whom we spoke described several deceptive practices relating to foreclosure rescue and loan modification schemes that victimize vulnerable homeowners. Most officials are currently concerned with one particular loan modification scheme in which persons engaging in a scheme to defraud homeowners charge a fee in advance (typically, a fee of thousands of dollars) for the service of ensuring the modification of their mortgage loan to a loan with lower monthly payments, but they do not provide this service. Law enforcement officials reported that these schemes are difficult to combat because persons engaging in such schemes can start up or shut down their activities quickly and can do so across state lines. Although data that can provide a reliable indicator of prevalence are limited, information available to federal and state agencies and nonprofit organizations, such as consumer complaints and the number of enforcement actions, suggests that these schemes are a problem.

Methods, Persons Engaging in and Victims of Schemes Vary, Although Schemes Often Involve Fees Charged in Advance for Services Not Rendered

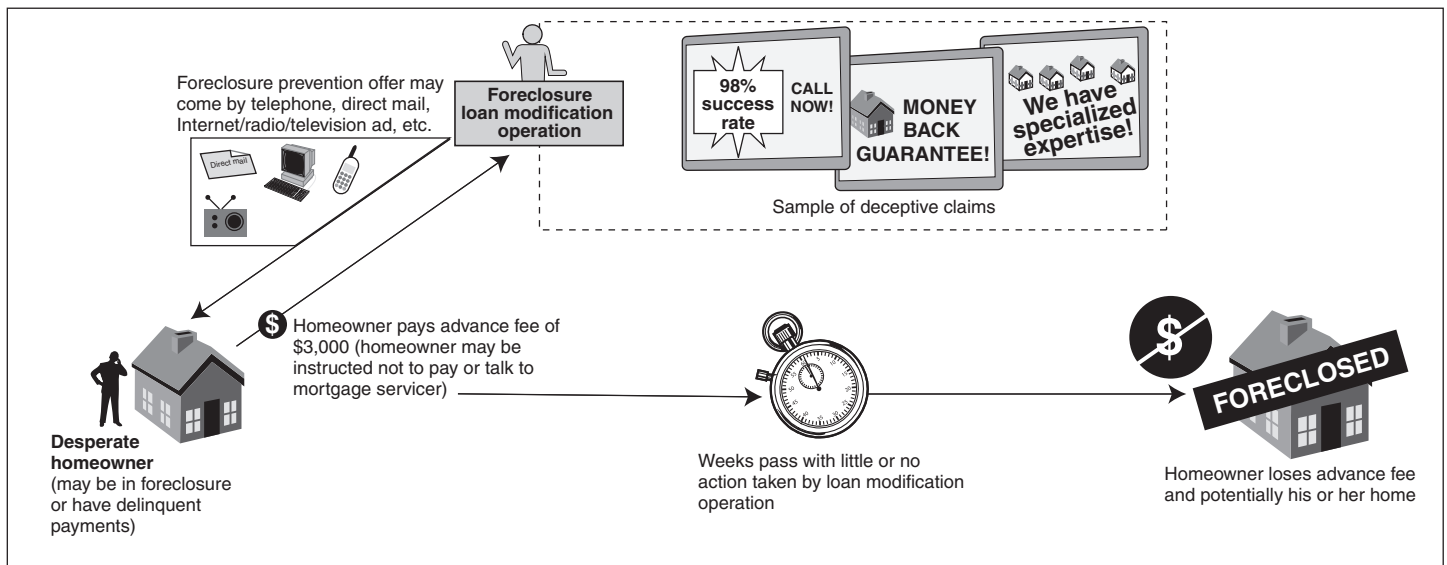
Many federal and state officials that we interviewed identified the following two principal types of foreclosure rescue and loan modification schemes perpetrated against consumers: advance-fee loan modification schemes and sales-leaseback schemes. These officials more often pointed to the advance-fee loan modification scheme as the type currently most prevalent. These schemes are broadly described as follows:

- *Advance-fee loan modification schemes:* Federal and state officials with whom we have spoken, as well as nonprofit studies, reported that these schemes take the form of a person charging a fee in advance to negotiate someone's mortgage with the mortgage lender, often with a money-back guarantee, then providing little or no services and not refunding the fee. In 25 of the 28 enforcement actions that FTC brought in 2008 and 2009 on the basis of foreclosure rescue and loan modification schemes, FTC alleged that the defendants charged an advance fee for services that were not performed. In addition, information that the Lawyers' Committee for Civil Rights Under Law (Lawyers' Committee) provided to us indicated that as of May 7, 2010, the average amount paid by homeowners for services they reported that they did not receive is about \$3,000.⁴ A National Community Reinvestment Coalition—a nonprofit organization—study and an FTC

⁴The average fee amount represents information provided by consumers in complaints collected between October 21, 2009, and May 7, 2010, by the Lawyers' Committee—a nonprofit organization that works to enforce civil rights in a variety of issue areas, including fair housing and fair lending, through its pro bono legal network. This information is based, in part, on data collected by the Homeownership Preservation Foundation, which administers the Homeowner's HOPE hotline.

press release, also indicated that persons engaged in this type of scheme may make misrepresentations to consumers regarding their ability to obtain a loan modification, such as claiming high success rates or special relationships with mortgage lenders.⁵ For example, 9 of FTC's 28 enforcement actions alleged that the defendants misrepresented their affiliation with the federal government, a mortgage servicer or lender, or a nonprofit organization. In addition, as reported by FTC and evidenced by research conducted by the National Community Reinvestment Coalition, these schemes put homeowners in further jeopardy of losing their homes because they were instructed not to pay their mortgage or not to talk with the servicer, thereby increasing the likelihood that they would lose their home to foreclosure. See figure 1 for an illustration of how this scheme may work.

Figure 2: Illustration of an Advance-Fee Loan Modification Scheme



Sources: GAO analysis of information and publications from FTC and nonprofit organizations; Art Explosion (images).

- *Sales-leaseback schemes*: An FTC official, state officials from three of our five case-study states, and two recent nonprofit studies also cited another

⁵National Community Reinvestment Coalition, *Foreclosure Rescue Scams: A Nightmare Complicating the American Dream* (Washington, D.C.: March 2010). The National Community Reinvestment Coalition is a coalition of community groups, including housing counseling agencies, that works to promote access to affordable housing, among other things.

type of foreclosure rescue scheme.⁶ The names used to describe the schemes vary, and the methods vary as well. Federal agencies and nonprofit sources explain that these schemes generally involve someone convincing a homeowner at risk of foreclosure to transfer the deed of their home to them as a means of saving the home from foreclosure. The person then has control of the property and can make money by either taking out a second loan on the home or selling the home. According to these sources, the original homeowner is permitted to lease the home from the person engaging in the scheme and told that he or she may buy the property back in the future. However, the person engaging in the scheme may have no intention of selling the property back to the original homeowner and may make the terms of the buy-back agreement too difficult for the original owner to comply with, thereby resulting in the homeowner losing the property. FTC and state officials believe that these schemes were more predominant before the decline in housing prices because higher housing prices provided more equity for persons engaging in the scheme to take from a homeowner, and the loans needed to refinance the homes were more readily available.

Information provided by federal and state officials indicates that newer schemes have been emerging. For example, a March 2010 FTC consumer alert warned consumers to watch out for a forensic mortgage loan audit scam, which it explained as a “new twist on foreclosure rescue fraud.” In this scheme, someone charges a fee to conduct an “audit” intended to find regulatory violations in the mortgage loan origination in order to allow the homeowner to use the “audit” results to avoid foreclosure, accelerate the loan modification process, reduce the loan principal, or even cancel the loan. According to the FTC consumer alert, there is no evidence that forensic mortgage loan audits will help borrowers obtain a loan modification or any other foreclosure relief, even if the audits are conducted by a licensed, legitimate, and trained auditor; mortgage professional; or lawyer. Similarly, in May 2010, based on information provided in Suspicious Activity Reports (SAR), FinCEN described variations of advance-fee scams in which a person promises to eliminate a homeowner’s mortgage or other debt on the premise that the debts were illegal or the government would assume responsibility.⁷

⁶National Consumer Law Center, *Desperate Homeowners: Loan Mod Scammers Step in When Loan Servicers Refuse to Provide Relief* (July 2009); and *Foreclosure Rescue Scams*.

⁷Financial Crimes Enforcement Network, *Mortgage Loan Fraud: Loan Modification and Foreclosure Rescue Scams* (May 2010).

Federal and state officials and representatives of nonprofit organizations told us that persons who have conducted foreclosure rescue schemes include former mortgage industry professionals who had been involved in the subprime market; career scam-artists; and licensed professionals, such as attorneys who allow their names or licenses to be used by those perpetrating schemes to add credibility to their promises to provide relief. Federal and state officials and nonprofit representatives explained that former mortgage industry professionals who had been involved in subprime lending became involved in these schemes because their businesses had slowed due to the foreclosure crisis and they were looking for new sources of income. In addition, Federal Bureau of Investigation (FBI) officials noted that career scam-artists gravitate toward these types of schemes whenever the federal government creates programs to assist people in desperate circumstances, such as the programs the government began promoting in early 2009, because scam-artists can claim that they are affiliated with a federal program as a way to gain people's trust. As indicated by an official from the Florida State Attorney General's office, because of coverage in the news media and other public sources, federal programs provide scam-artists with a "new script" with which they can attract consumers. Officials from four of our five case-study states also said that attorneys can provide cover for third parties that perpetrate these schemes, particularly in states that have laws that prohibit firms from charging advance fees but have exemptions for licensed attorneys. Most notably, the State Bar of California, according to one of its officials, created an internal task force to investigate consumer complaints related to loan modification companies in California because complaints had increased significantly between December 2008 and March 2009 regarding attorney involvement in loan modification schemes. During this period, according to the official, companies recruited attorneys to circumvent the state law prohibiting advance fees.

Although federal and state officials lack comprehensive information on the potential victims of these schemes, officials believe that potential victims are likely to include anyone desperate to save their home from foreclosure, regardless of their economic status or demographic characteristics. For example, many federal and state officials said that persons engaging in these schemes will target anyone having difficulty in paying their mortgage loan, and an FTC official and officials from two of our case-study states said that even wealthy individuals or professionals may become victims of these schemes if they are unable to pay their mortgage. However, officials from three of our case-study states also said that they were specifically aware of schemes in which a particular ethnic or religious community was targeted. As explained by one state official

and a representative of a local housing nonprofit organization, in these cases, persons engaged in the schemes gained the trust of those within the community because they spoke the same language as the homeowners or had emigrated from the same country.

Nature of These Schemes Makes Them Difficult to Combat, and Legal Approaches Vary by State

State law enforcement officials noted that these schemes are difficult to combat because state law enforcement authorities are often unable to locate the persons who committed the schemes or provide restitution to the victims. Federal and state officials also said that loan modification schemes in particular are difficult to combat because companies can easily start up and shut down and can be run solely on the Internet. In addition, as explained by California and Florida officials, persons engaging in the schemes often run large-scale operations across state lines, using methods similar to those of telemarketing schemes that allow them to solicit customers nationwide. In these operations, a California state official said, most of the employees work in sales, soliciting customers and obtaining payments, while performing no work on behalf of the customers. Because these schemes are operated across state lines, several state officials told us, they are more difficult for state law enforcement to combat. Officials said that pursuing out-of-state companies adds increased difficulties in litigating and enforcing judgments for State Attorneys' General offices because they have no jurisdiction over companies being operated across state lines.

In addition, legal restrictions and authorities vary by state in terms of what are considered to be prohibited practices regarding these schemes. FTC has proposed a rule that would, among other things, prohibit for-profit companies from being paid until they provide the promised services.⁸ Four of our case-study states—California, Florida, Illinois, and New York—have

⁸As instructed by section 626 of the Omnibus Appropriations Act, 2009, Pub. L. No. 111-8, 123 Stat. 524 (2009), on June 1, 2009, FTC proceeded with an advanced notice of proposed rulemaking seeking public comment on the practices of entities other than mortgage servicers who offer assistance to consumers in dealing with lenders or servicers of their loans to modify them or avoid foreclosure. 74 Fed. Reg. 26130 (June 1, 2009). On March 9, 2010, FTC published in the *Federal Register* a proposed rule that, among other things, (1) instructs that companies promising to get mortgage modifications could not be paid until they had provided the consumer documentation of mortgage modification in the form of a written offer from a mortgage lender or servicer and (2) prohibits persons from providing assistance to entities that they know or consciously avoid knowing are engaged in a violation of the proposed rules. The rule also provides a limited exemption for attorneys in connection with certain proceedings. 75 Fed. Reg. 10707 (Mar. 9, 2010).

passed specific laws prohibiting companies that provide these services from collecting fees in advance, and officials from these states noted that these laws have helped them to take action against perpetrators of these schemes, although a Florida official said that these schemes persist despite the existence of the law.⁹ They explained that the existence of these laws generally allows them to cite a violation without having to otherwise prove criminal intent, which they explained can be more difficult to establish.

Although Data That Can Be Used to Describe the Prevalence of Schemes Are Limited, Some Information Suggests That Schemes Are an Important Problem

Federal law enforcement agencies with key roles in combating these schemes—FTC, FBI, and the Executive Office for U.S. Attorneys (EOUSA)—had limited information that could be used to describe their prevalence, but most officials with whom we spoke considered these schemes to be an important consumer protection issue.¹⁰ Of these three agencies, only FTC had data directly pertaining to these schemes. While this data does not serve as a precise indicator of prevalence, FTC officials said that the number of enforcement actions they sponsored in 2008 and 2009 (i.e., 28), as well as the 71 warning letters they sent in response to their 2009 investigation of related Internet advertising indicated to them that these schemes pose a problem for consumers. In response to this concern, FTC provided consumers with the option of identifying these schemes on its 2009 Internet complaint form, but FTC officials stressed that while these data indicated a problem, they could not be used as a measure of prevalence for a number of reasons, one of which is that the data were self-reported resulting in a nonstatistically valid sample that cannot be used to predict the prevalence of the problem.¹¹ FBI officials told us that they considered these schemes to be a problem on the basis of

⁹Cal. Civ. Code § 2945.4(a); Fla. Stat. Ann. § 501.1377(3)(b); 765 Ill. Comp. Stat. Ann. 940/50(a)(1); N.Y. Real Prop. Law § 265-b(2)(b). Arizona, the one state that we contacted without a law specifically addressing loan modification schemes, passed legislation requiring that loan modification officers be licensed and undergo criminal background checks beginning in July 2010. Ariz. Rev. Stat. Ann. §§ 6-991(12)(a)(iii), 6-991.03.

¹⁰We also contacted the HUD Office of the Inspector General and the Office of the Special Inspector General for the Troubled Asset Relief Program (SIGTARP) and learned that the primary focus of these offices is the tracking of loan modification fraud perpetrated against the federal government, such as that associated with HAMP, although SIGTARP has supported cases related to schemes specifically perpetrated against consumers.

¹¹FTC's *Consumer Sentinel Network Data Book for January-December 2009* (February 2010) indicated that FTC received 7,927 consumer complaints that consumers categorized as modification/foreclosure rescue complaints.

information received from their 56 field offices—50 percent of which reported the schemes as prevalent and another 20 percent of which identified them as emerging schemes—as well as their review of SARs that FinCEN collects from financial institutions.¹² However, they could not identify the number of investigations they had undertaken, and FBI only developed plans to modify its case support system to track this information during the course of our investigation.¹³ Because the EOUSA case management system does not differentiate among the different types of mortgage fraud, no statistical information is available regarding the number of cases involving foreclosure rescue schemes in U.S. Attorney’s offices. However, some U.S. Attorneys in our five case-study states provided anecdotal observations that support their belief that these schemes are a problem.

While several law enforcement representatives, including those of FBI and EOUSA, referred us to SARs as a potential indicator of prevalence, FinCEN officials said that these reports had limited use for this purpose due to the many variables associated with SAR filings.¹⁴ FinCEN reported that analyses of SARs could increase law enforcement’s understanding of the crime—for example, by identifying the techniques used by the persons perpetrating the schemes—but FinCEN officials said that these analyses were of limited usefulness for estimating prevalence.¹⁵ The officials noted that the primary purpose of SARs is to provide information on known or

¹²FBI explained that this information provided to us in May 2010 is its most current as of that month, but since the nature of its intelligence-gathering process is ongoing, pinpointing the date of collection from each source would be difficult.

¹³FBI has recently developed 18 codes to track mortgage fraud investigations, including separate codes for foreclosure rescue and loan modification fraud. These codes will be available for implementation by FBI’s field offices no later than fiscal year 2011.

¹⁴31 U.S.C. § 5318(g). FinCEN’s SAR regulations may be found at 31 C.F.R. §§ 103.15-103.21. SARs, which are filed by financial institutions, provide information such as the suspect’s identifying information and relationship to the financial institution, if any; the dates, types, and losses associated with the suspicious activity; and a narrative explanation of the suspected violation of law or activity. FinCEN makes these reports and other analyses available to other federal, state, and local law enforcement agencies to support their investigations into financial crimes.

¹⁵For example, a February 18, 2010, news release indicated that an increasing number of filers submitted SARs noting suspicious activity in connection with actual or purported foreclosure rescue specialists, and that credit card processors noted multiple transaction charge-backs in accounts held by clients later determined to be loan modification or foreclosure rescue specialists, after homeowners complained that the specialist failed to deliver services.

suspected violations of financial laws or regulations—such as those prohibiting money laundering or credit card fraud, rather than, for example, providing information on the specific types of businesses involved. In addition, FinCEN analysts indicated that many of the activities reported in SARs were anywhere from 12 to 18 months old, generally due to a lack of awareness of wrongdoing on the part of the financial institution at the time the activity occurred.¹⁶

Similar to FTC, law enforcement officials from our five case-study states told us that these schemes were a significant problem, based on the number of enforcement actions their agencies have taken pursuant to these schemes or on the number of consumer complaints they have received. The California Department of Real Estate described these schemes as the biggest consumer fraud it faced in 2009 and said that they initiated over 2,000 investigations into potential loan modification schemes in that year. The California State Attorney General's office was pursuing 5 civil and 4 criminal cases as of June 2010, which the official with whom we spoke considers to be a relatively high number for its office. Similarly, a representative of the Florida State Attorney General's office said that in 2009, mortgage foreclosure rescue scams were the most common category of consumer complaint that his office received, although as of March 31, 2010, these complaints had fallen to second position. Representatives of the Arizona, Florida, Illinois, and New York State Attorney General's offices similarly reported taking enforcement actions against mortgage fraud cases in general, with foreclosure rescue cases sometimes accounting for the majority of these actions. The representative of the Illinois State Attorney General's office noted that due to the number of consumer calls related to these schemes, staff members provide responses to general loan modification questions for callers in addition to handling their law enforcement duties.

Representatives that we interviewed of nonprofit organizations involved in housing or related issues (the Homeownership Preservation Foundation, the Lawyers' Committee, the National Community Reinvestment Coalition,

¹⁶In these cases, the financial institution filed the SAR upon receipt of additional information, which may include law enforcement or media interest in a particular type of activity or person, or a default or foreclosure action that precipitates a review of the account or account holder activity. While some of these activities are out of date, they have helped analysts to determine a pattern of fraud, thereby enabling law enforcement agencies and regulators to focus efforts on individuals and groups that engage in repeat, organized activities.

the National Consumer Law Center, and NeighborWorks America®) likewise reported that they did not have data that could be used to reliably describe the prevalence of the schemes, but that they consider them to be a problem on the basis of research they have conducted or information available to them.¹⁷ This information included the following:

- *Reports about potential schemes submitted to the Homeowner's HOPE Hotline:* The Homeownership Preservation Foundation, which sponsors the Homeowner's HOPE Hotline, has tracked the number of times consumers have reported that they believe they have been victims of scams. These statistics indicate that from June 2009, when these statistics were first kept, until May 9, 2010, about 10,500 callers reported their belief that they had been scam victims. While these calls represent about 1 percent of callers to the hotline, the foundation believes they indicate a national problem and in February 2010 dedicated a team to request specific information about the callers' experiences.¹⁸ Homeownership Preservation Foundation representatives told us that this number likely underestimates the number of callers to the hotline who may have been scammed, because some callers may not realize that they have been involved with a scam and therefore may not report it and the foundation has not actively screened calls for possible victims of scams.
- *Mystery shopping by the National Community Reinvestment Coalition:* To address concerns about these schemes, in mid-2009, the National Community Reinvestment Coalition used mystery shoppers—that is, individuals who posed as borrowers delinquent in their mortgage payments—to call national and local foreclosure prevention service providers to ascertain the nature of their services. While this study did not determine whether the assistance would actually have been provided, it did identify practices that would have been very troubling to homeowners. For example, in over 50 percent of the telephone calls, the service providers advised the mystery shoppers not to pay their mortgage and

¹⁷NeighborWorks America® is a national nonprofit corporation created by Congress to provide financial support, technical assistance, and training for community-based revitalization efforts. 42 U.S.C. §§ 8101-8107. NeighborWorks America has a network comprising more than 230 community-based organizations in 50 states.

¹⁸A foundation representative reported that this team utilizes a specific protocol and client management system to capture the specifics of the situation, including information about the alleged foreclosure rescue scam organization, client demographics, and a summary of the situation.

charged fees that ranged from \$199 to \$5,600 for different levels of service.¹⁹

The potential indicators of prevalence used by the agencies we contacted, such as the number of consumer complaints and law enforcement actions, all have limitations. As FTC noted, consumers can file complaints with any number of federal or state agencies, which makes the complaints difficult to aggregate. Furthermore, FTC noted that it does not have the resources to validate the large number of self-reported complaints it receives each year and these complaints may still only represent only a small portion of potential schemes. Also, as explained by several law enforcement officials, information on the number of enforcement actions is an imperfect measure of prevalence because the information is not always timely (i.e., cases may be prosecuted years after a crime has occurred), and the number of actions an agency can prosecute is dependent on its priorities and available resources.

Federal Efforts to Combat These Schemes Are Part of a Broader Focus on Mortgage Fraud, and a Public-Private Effort Focuses on Consumer Education

The primary multiagency effort to combat financial crimes, including foreclosure rescue schemes, is the FFETF, which an executive order established in November 2009.²⁰ According to members with whom we spoke, the FFETF expanded previous federal efforts to combat foreclosure rescue schemes. The FFETF has five working groups, one of which—the Mortgage Fraud Working Group—is focusing on foreclosure rescue schemes as well as other types of mortgage fraud. According to members of the Mortgage Fraud Working Group that we contacted, the group provides a venue for member agencies to share information on best practices and to sponsor activities to enhance understanding of mortgage fraud.²¹ While the working group’s primary focus is on law enforcement activities, members have also expressed interest in supporting consumer education initiatives. Other efforts designed to protect consumers from these schemes involve federal, state, nonprofit, and private organizations and primarily focus on consumer education and outreach.

¹⁹For additional information, see *Foreclosure Rescue Scams*.

²⁰Exec. Order No. 13519, 74 Fed. Reg. 60123 (Nov. 17, 2009).

²¹The Mortgage Fraud Working Group comprises members from 21 federal and state agencies or divisions, 5 of which serve as cochairs.

Current Federal Effort to Combat These Schemes Is the FFETF, Which Incorporated Previous Federal Efforts

As we have previously discussed, in November 2009, an executive order established the FFETF to strengthen the efforts of DOJ in conjunction with federal, state, and local agencies to investigate and prosecute significant financial crimes and violations relating to the current financial crisis and economic recovery efforts. The executive order established DOJ as the lead federal agency for the FFETF. The range of financial crimes and violations for which the FFETF is responsible is broad, including among others, bank fraud, mortgage fraud, securities and commodities fraud, and discrimination. While foreclosure rescue schemes are not specifically listed in the executive order, DOJ told us that such schemes are a type of mortgage fraud that falls within the FFETF's purview. Moreover, the executive order described the FFETF's mission and functions as (1) providing advice to the Attorney General on the investigation and prosecution of financial crimes and violations when the Attorney General determines such cases to be significant; (2) making recommendations to the Attorney General for action to enhance cooperation among federal, state, local, tribal, and territorial authorities responsible for the investigation and prosecution of significant financial crimes and violations; and (3) coordinating law enforcement operations with representatives of these same authorities. The U.S. Attorney General is chair of the FFETF, and DOJ appointed an executive director in February 2010 to oversee its operations.

The FFETF includes 25 federal departments, agencies, and offices, as well as numerous inspectors general, and state and local authorities. Moreover, the executive order encourages the FFETF to invite representatives of state and local law enforcement agencies and specifically the National Association of Attorneys General and the National District Attorneys Association to participate in the task force to coordinate law enforcement operations. In addition, the executive order requires the FFETF to conduct outreach with representatives of other organizations, such as financial institutions and nonprofit organizations.

According to some of the FFETF members that we contacted, the FFETF expands upon the administration's earlier multiagency effort to combat financial crimes, including foreclosure rescue schemes, that was first announced on April 6, 2009. This earlier effort was intended to coordinate the efforts of federal and state agencies, as well as private sector entities, to protect homeowners seeking assistance under the Making Home Affordable Program. According to agency officials, individual efforts established in relation to the April 2009 announcement, particularly those by FTC and FinCEN, continue under the respective agencies. Federal agencies that participated in this announcement—FTC, Treasury

(FinCEN), HUD, and DOJ—undertook various supporting activities that sometimes were a continuation of their previous efforts, including the following examples:

- FTC officials indicated that the agency had coordinated two enforcement sweeps in conjunction with other federal and state agencies against persons perpetrating loan modification schemes, which according to FTC resulted in over 300 independent enforcement actions.²² FTC had undertaken law enforcement actions against companies involved in the sale of foreclosure rescue services and published its first consumer warnings about these practices on its Web site in February 2008. Additionally, FTC officials noted that they had developed a public service video for distribution to community groups and legal aid offices, among others.
- At the time of the April 6, 2009, announcement, FinCEN also issued guidelines to financial institutions identifying and submitting SARs for suspected foreclosure rescue scams that it had been developing prior to the April announcement.²³ FinCEN officials stated that the agency has devoted significant resources to supporting state law enforcement efforts to pursue these schemes—for example, by developing a database with investigative information that could be useful to agencies targeting the same suspects. In addition, FinCEN provides direct research and analytical support to state and local law enforcement agencies on individual cases and provides training to states on how to utilize FinCEN’s law enforcement support functions—for example, by showing them how to query its databases.²⁴

²²On July 15, 2009, FTC announced Operation Loan Lies, which involved 189 actions by 25 federal and state agencies, 4 of which were FTC actions, according to FTC officials. On November 24, 2009, FTC announced additional enforcement actions under Operation Stolen Hope, which consisted of 118 actions by 26 federal and state agencies. According to FTC, the agency filed 6 new complaints under Operation Stolen Hope, none of them jointly with other state agencies.

²³On April 6, 2009, FinCEN issued guidelines to financial institutions instructing them to include the phrase “foreclosure rescue scam” in the narrative of any SARs they file related to these schemes. In May 2010, FinCEN reported that financial institutions had filed a higher number of relevant SARs after the issuance of these guidelines.

²⁴According to FinCEN, the agency has provided state and local authorities with state-specific information on SAR filings and other data to help them develop leads on potential targets of investigation for foreclosure rescue and loan modification schemes. According to FinCEN officials, the agency has conducted training and outreach on the use of its research and analytical support tools in 10 State Attorney General offices since December 2009 and worked with law enforcement officials in these and two other states.

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- In support of the April 6, 2009 announcement, DOJ established four working groups to discuss ways of addressing mortgage fraud, including foreclosure rescue schemes, through information sharing and coordination.²⁵ The groups met several times before the creation of the FFETF, at which point their activities were largely incorporated into the new larger effort.
 - HUD officials stated that while not in direct response to the April 2009 announcement, the agency used its HUD-approved and HUD-funded housing counseling network to help borrowers determine their eligibility for the federal loan modification and refinancing programs we have previously discussed.

Representatives with whom we spoke of participating federal and several state agencies said that they derived value from the additional coordination provided by the April 2009 announcement, noting particularly that they began to collaborate more closely with other agencies. In particular, they noted working more closely with FTC, and some state agencies noted receiving an unprecedented amount of assistance from FinCEN in using information from SARs for their own investigative leads. Moreover, some federal and state officials involved in the April 2009 effort said that the April 6, 2009, announcement was useful in focusing the federal government's and the public's attention on the issue of foreclosure rescue schemes.

FFETF's Efforts to Combat Foreclosure Rescue Schemes Are Part of Its Broader Focus on Mortgage Fraud

DOJ officials told us that while the FFETF's Mortgage Fraud Working Group covers different types of mortgage fraud, the working group has sponsored activities that have contributed to addressing foreclosure rescue schemes. According to DOJ officials, the working group coordinates efforts to combat all types of mortgage fraud, including common "flipping" schemes and organized criminal enterprises preying on government programs, such as FHA loan guarantee programs, as well as

²⁵The four working groups were in the areas of criminal enforcement, civil enforcement, civil rights enforcement, and information sharing. According to DOJ officials, each working group was chaired by a DOJ official at the level of Assistant Attorney General, as well as a State Attorney General.

foreclosure rescue schemes.²⁶ Members of the working group we interviewed indicated that these schemes were discussed at various working group meetings. The Mortgage Fraud Working Group keeps written agendas that describe the presenters and the subjects covered at meetings, as well as presentation materials and attendance sheets. While these materials show that foreclosure rescue schemes are discussed at meetings, the extent of that discussion cannot be determined because the working group does not keep meeting minutes. Working group members told us that the meetings provided them with a venue to discuss broader issues (e.g., best practices on combating mortgage fraud and emerging schemes), as well as operational issues, but that they generally do not discuss individual cases. The working group as a whole has met three times—in December 2009, February 2010, and June 2010—but according to DOJ officials, members also engage in numerous ad hoc meetings, in person or by teleconference.

According to DOJ officials, these working group discussions have resulted in activities that have provided them with additional information about mortgage fraud and promoted best practices in combating this fraud, including foreclosure rescue schemes. According to information provided by the FFETF, the working group hosted mortgage fraud summits during the first half of 2010 in four cities—Columbus, Detroit, Miami, and Phoenix—that are in regions of the country that were experiencing high rates of foreclosure. During these summits, community group members briefed working group members on the types of mortgage fraud that they are experiencing, and federal, state, and local law enforcement officials held separate closed discussions. In early March 2010, the FFETF conducted a 3-day Mortgage Fraud Task Force course at the National Advocacy Center for both federal and state law enforcement officials, which included, among other things, discussions of best practices and enforcement tools as they relate to different types of mortgage fraud, including foreclosure rescue schemes. In addition, in late May 2010, the FFETF conducted another 3-day Mortgage Fraud Seminar at the National Advocacy Center, including a session specifically focused on foreclosure

²⁶ A property flipping scheme, broadly described, is when a person purchases a home, has it fraudulently appraised at a higher value, and sells the house to a straw buyer who obtains a loan amount based on the inflated price. The person engaged in this fraudulent activity pockets the loan amount, leaving the bank holding a mortgage that is more than the home is worth. In the case of FHA-related fraud, a person misrepresents their income and circumstances to qualify for an FHA-insured loan, which can offer more affordable terms than a conventional loan.

rescue schemes. Members of the Mortgage Fraud Working Group that we contacted and others aware of its activities expressed a positive view of its initial efforts to date. For example, several officials involved in the effort indicated that the working group is creating partnerships and opening lines of communication, particularly between state and federal agencies.

DOJ officials also reported that the Mortgage Fraud Working Group was responsible for coordinating Operation Stolen Dreams, a series of federal and state law enforcement actions undertaken by agencies represented on the FFETF between March 1, 2010, and June 17, 2010. DOJ reported that this operation involved more than 1,500 criminal defendants—119 of whom were allegedly involved in foreclosure rescue schemes—and 191 civil enforcement actions, of which more than 100 pertained to foreclosure rescue schemes. According to DOJ officials, the announcement of this sweep to the public reinforced the consumer awareness and deterrence objectives of the working group.

In addition, FFETF's leadership, as well as two of its members, indicated that they are looking for other opportunities to enhance consumer education. For example, the FFETF launched a Web site (www.StopFraud.gov) in April 2010 to provide information about FFETF activities and information for consumers, including descriptions about foreclosure rescue schemes and how to report them. The Web site provides links to consumer advisories, including those posted by FTC, the Board of Governors of the Federal Reserve System, and NeighborWorks America. In addition, according to FFETF agendas, working group members have held specific discussions on how to warn the public about foreclosure rescue schemes.

Other Major Federal, Private, and Nonprofit Coordinated Efforts Focus on Consumer Education and Information Gathering

In addition to the FFETF, there are other coordinated efforts involving federal, state, private, and nonprofit entities aimed at addressing the problem of foreclosure rescue schemes through activities intended to enhance consumer outreach and education. In June 2009, the Loan Modification Scam Prevention Network (the Network) was formed primarily by four organizations—Fannie Mae, Freddie Mac, the Lawyers' Committee, and NeighborWorks America—to coordinate efforts educating homeowners about these schemes and to gather information about their

prevalence.²⁷ According to a representative of Fannie Mae, coordination is important to avoid confusing consumers with mixed messages from different sources. The FFETF Mortgage Fraud Working Group invited a representative of the Network to describe its efforts at the Mortgage Fraud Summit in Detroit, Michigan, on April 23, 2010.

As explained by Fannie Mae and the Network's members, member organizations support the following activities:

- *Consumer outreach and education:* This initiative is primarily led by NeighborWorks America, which was appropriated \$6 million by Congress in March 2009 to develop a national campaign warning the public about loan modification scams.²⁸ NeighborWorks America subsequently launched the campaign—Loan Modification Scam Alert—in October 2009 and is targeting African American, Asian, Hispanic, and senior homeowners in 25 areas with high risk of foreclosure. NeighborWorks America has reported that it has used various media in these areas—print, radio public service announcements, and its campaign Web site (www.LoanScamAlert.org)—to reach people and encourage them to dial the HOPE Hotline for loan modification assistance, find a local foreclosure counselor, or visit the Web site to learn about or report scams.
- *Obtaining and compiling information about schemes from consumers:* As we have previously described, the Homeownership Preservation Foundation gathers information from homeowners who call the HOPE

²⁷In addition to the founding members, the Network includes representatives of government agencies, such as FTC, HUD, DOJ, Treasury, FBI, and State Attorneys' General offices, as well as nonprofit organizations throughout the country. The Network's efforts are supported by a \$6 million federal appropriation in the Omnibus Appropriations Act, 2009, to the Neighborhood Reinvestment Corporation (NeighborWorks America) for a public education campaign, and a \$160,000 grant from the Federal Deposit Insurance Corporation to cover expenses from the media campaign's events in at least four locations. Pub. L. No. 111-8, 123 Stat. 524 (2009). Additionally, Fannie Mae provided \$500,000 and Freddie Mac provided \$150,000 to the Lawyers' Committee for data collection and to support government enforcement efforts; Fannie Mae and Freddie Mac each gave \$150,000 to the National Fair Housing Alliance—a national consortium of nonprofit organizations that work on fair housing and civil rights issues—for investigations of loan modification schemes.

²⁸*Id.* In addition, NeighborWorks dedicated \$2 million from the \$6 million it received under the Omnibus Appropriations Act, 2009, to provide grants to nonprofit organizations engaged in efforts to combat loan scams in targeted communities, such as those with minority populations or senior citizens, and to implement activities under the Loan Modification Scam Alert campaign.

Hotline believing they have been subject to a scam and obtains the homeowner's consent to provide this information to the Lawyers' Committee. The Lawyers' Committee compiles this information, as well as complaints it has received through its Web-based complaint form, into a single database. To make the Web-based complaint form accessible to homeowners, the form is hyperlinked to the Loan Modification Scam Alert campaign Web site as well as to the Web sites for Making Home Affordable and the FFETF, which are sites that also list the telephone number of the HOPE Hotline.

- *Providing Information to FTC:* To support federal and state law enforcement efforts, the Lawyers' Committee began submitting these data from its database to the FTC's Consumer Sentinel complaint database on May 14, 2010. In April 2010, the Lawyers' Committee reported that the primary source of complaints on foreclosure rescue schemes is the HOPE Hotline.

In addition, federal banking regulatory agencies, such as the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation, have issued consumer advisories containing tips homeowners can use in identifying and reporting foreclosure rescue and loan modification schemes and have undertaken other activities to warn consumers about these schemes. For example, officials from OCC indicated that the agency also delivered presentations at foreclosure events that provided homeowners with information about loan modification options, including HAMP, and alerted attendees to ways in which they can identify and avoid foreclosure rescue and modification scams.

Several Factors Could Affect the Federal Government's Success and the Working Group's Efforts May Be Limited by Weaknesses in Its Planning

Our analysis suggests that several factors could be important to federal efforts in combating foreclosure rescue schemes, especially educating consumers about deceptive practices and effectively coordinating law enforcement efforts to combat these schemes. The Mortgage Fraud Working Group has developed an action plan that addresses some of these factors in its planned activities. However, the plan does not address certain key practices that can help enhance and sustain collaboration among federal agencies, such as a clear long-term strategy and results-oriented performance measures. Additionally, the action plan does not identify priorities or strategies for specific types of mortgage fraud schemes. As a result, the working group may not be optimizing its efforts to increase enforcement activities in the area of mortgage fraud, particularly regarding foreclosure rescue and loan modification schemes.

Several Key Factors May Affect the Federal Government's Likelihood of Success in Combating Foreclosure Rescue and Loan Modification Schemes

Our analysis of interviews with representatives of federal and state agencies and nonprofit organizations suggests that several factors may affect the federal government's likelihood of success in combating foreclosure rescue schemes. A broad array of federal and state officials, including law enforcement officials, as well as representatives of nonprofit organizations, indicated that it is essential to make consumers aware of these schemes, to provide them information on legitimate alternatives to using such services, and to encourage them to report suspicious incidents to authorities. As noted by several law enforcement agencies, it is easier to stop a crime from taking place than it is to catch the criminal later and obtain restitution. Representatives of several nonprofit organizations told us that implementation of a widespread media campaign—using newspapers, radio, and television—would be the most effective way of communicating this information. A representative of NeighborWorks America also noted that most local organizations do not have the funds to compete with the money the persons perpetrating the schemes spend on misleading advertising. A representative of Consumers Union noted that it was important to find ways of delivering information to hard-to-reach communities (e.g., those where a large number of the individuals are not native English speakers or do not have ready access to or proficiency with computers).

Another factor we identified in our analysis as being important to the federal government's efforts is coordinating law enforcement activities. Representatives of both federal and state law enforcement agencies said that the coordination of federal and state law enforcement efforts is important for several reasons, including the need to share investigative information, consolidate resources, and decide on the most appropriate legal action and whether a federal or state agency should take the action. Several law enforcement officials, as well as two nonprofit organizations, explained that sharing investigative information across agencies was particularly needed because these schemes are often perpetrated by entities that operate across state lines. Thus, these and other officials commented on the usefulness of information—such as complaint information made available through the FTC's Consumer Sentinel, SARs provided by FinCEN, and information that states may have on emerging schemes—that can be brought to the attention of the federal government. In addition, some officials mentioned that it is important for different agencies working on the same case to coordinate their activities to share information and not duplicate efforts.

The importance of federal and state law enforcement coordination was also supported by how federal and state officials described their

respective roles. The U.S. Attorneys from most of our five case-study states told us that they usually only undertake cases in which the dollar value of the loss is substantial—for example, at least \$1 million in the case of mortgage fraud—or if the nature of the case is particularly complex, such as cases involving attorneys, title companies, straw buyers, and financial service providers. According to DOJ officials, U.S. Attorney offices, given their limited resources, competing demands and differing crime patterns in various districts, may employ loss thresholds, which result in the referral of cases to local prosecutors’ offices. Thus, U.S. Attorneys are less likely to pursue advance-fee schemes, which typically involve much smaller dollar losses (approximately \$3,000 per homeowner). In contrast, most of the State Attorneys General we interviewed referred to state laws or regulations that in their view either discouraged the perpetration of these schemes or made it easier for them to take enforcement actions. However, representatives of each of these states also identified the benefits of federal assistance in investigating and prosecuting these schemes, particularly where they are conducted across state lines. Several of the state representatives also noted the usefulness of federal support for their own investigations, such as the training provided by FinCEN to help understand and interpret Bank Secrecy Act data.

In addition, representatives of several nonprofit organizations and law enforcement officials noted that strengthening laws could be an important factor in combating schemes. There is no federal statute specifically prohibiting foreclosure rescue and loan modification schemes; therefore, federal agencies rely on investigating and prosecuting under general federal laws that may have been violated, such as wire fraud and false advertising, or in assisting state authorities with their investigations and prosecutions. Several officials noted that a federal law prohibiting the charging of fees in advance for loan modification services would be more effective in deterring these schemes than laws enacted as part of a state-by-state approach, and other officials observed that such laws would make filing enforcement actions easier because they would remove any ambiguities about whether a crime was committed. Several state and federal officials also indicated that additional resources were needed to investigate and pursue more cases.

The Mortgage Fraud Working Group has developed an action plan that describes the composition and function of the group and that addresses some of the factors in combating these schemes. The plan articulates the primary purpose of the working group as being “to increase enforcement in the area of mortgage fraud, and to do so through greater coordination among law enforcement agencies, the development and sharing of

enforcement strategies, and training.” The action plan also describes activities undertaken by the working group between November 2009 and June 2010 and activities contemplated for the period between late June 2010 and the subsequent meeting of the full Task Force Committee to be held in late November 2010. Finally, the action plan contains a section that identifies the metrics that the working group is using or considering for use in evaluating its progress in the area of mortgage fraud enforcement. Among these metrics are the proliferation of local mortgage fraud task forces, number of people trained in mortgage fraud, and number of enforcement sweeps conducted.

The activities identified in the working group’s action plan address two of the factors that we identified as being important to the efforts to combat these schemes—consumer education and law enforcement coordination. For example, the action plan lays out various proposals on ways to warn the public about foreclosure rescue schemes but does not specify agreements on the roles and responsibilities of member agencies, as well as those that might be developed with nonfederal agencies already active in this area, in carrying out consumer education efforts.²⁹ The bulk of the action plan items focus on activities to improve coordination between federal, state, and local law enforcement agencies regarding combating mortgage fraud. Specifically, the action plan identifies the following key coordination efforts: mortgage fraud summits to be held in additional cities across the country, and additional mortgage fraud training sessions to be held at the National Advocacy Center for both federal and state law enforcement officials. As we have discussed previously, during the summits, community groups are invited to discuss the types of mortgage fraud that they are experiencing, and separate sessions are held with federal, state, and local law enforcement officials to discuss coordination issues related to mortgage fraud enforcement efforts. The FTC has proposed a rule that, among other things, restricts practices concerning companies collecting an advance fee for loan modification services. The comment period for the proposed rule has closed, and FTC officials said that they are in the process of reviewing public comments and finalizing the proposed rulemaking.

²⁹See the prior section of this report for a description of agencies, such as NeighborWorks America and the Homeownership Preservation Foundation, already active in warning homeowners about these schemes.

The Working Group's Planning Efforts Do Not Include Key Collaborative Practices, Which Could Limit Its Ability to Optimize Its Efforts to Combat Mortgage Schemes

Although the Mortgage Fraud Working Group's action plan addresses some of the factors that could impact the federal government's success in combating mortgage schemes, the plan does not include some key practices that our prior work has found can help enhance and sustain collaboration among federal agencies.³⁰ Of the eight practices that we have found to enhance multiagency coordination efforts, four in particular appear relevant to the Mortgage Fraud Working Group's current efforts:

- defining and articulating a common outcome;
- establishing mutually reinforcing or joint strategies designed to help align activities, core processes, and resources to achieve a common outcome;
- agreeing on roles and responsibilities, including leadership; and
- developing mechanisms to monitor, evaluate, and report on the results of the collaborative effort.³¹

The Mortgage Fraud Working Group's action plan does identify common outcomes or goals for the working group. However, although the goals outlined in the action plan—increasing coordination among law enforcement agencies, developing and sharing of enforcement strategies, and training—appear to be long term in nature, they are supported by activities that do not go beyond 6-month intervals. The working group's action plan also does not discuss the need for the collaborating agencies to establish strategies that work in concert with those of their partners or that are joint in nature. Such strategies help in aligning the partner agencies' activities, core processes, and resources to accomplish the common outcome. Additionally, the action plan does not address agreements on the roles and responsibilities of the working group members regarding activities to be undertaken to achieve the group's goals. Similarly, the performance measurements in the action plan—such as the frequency of, attendance at, and types of mortgage fraud discussed at the summits—are useful for evaluating the activities themselves but not the extent to which the activities have strengthened progress toward the

³⁰GAO-06-15.

³¹The other four practices that we reported can enhance coordination are identifying and addressing needs by leveraging resources; establishing compatible policies, procedures, and other means to operate across agency boundaries; reinforcing agency accountability for collaborative efforts; and reinforcing individual accountability for collaborative efforts. See [GAO-06-15](#).

broader goal of increasing coordination activities. Without performance measures that can be used to measure progress toward the working group's long-term goal, the working group may not be able to evaluate its effectiveness in strengthening law enforcement efforts, including efforts to combat foreclosure rescue schemes, or to determine whether its current activities are the best ones to strengthen law enforcement efforts and address the needs of its federal and state members.

In addition, the action plan does not tailor strategies to the various types of mortgage fraud that the working group addresses. Consequently, the plan does not include strategies or performance measures that relate to foreclosure rescue and loan modification schemes. Planning that reflects the specific nature of these schemes may be important. For example, as we have previously discussed, schemes often operate across state lines. State Attorneys General indicated to us that they need federal assistance in pursuing persons that operate these schemes across the borders of their states. U.S. Attorneys also told us that they generally do not pursue these types of schemes due to the need to focus on schemes involving larger dollar amounts. The lack of strategies to effectively deal with the unique nature of these schemes may negatively impact the efforts of the working group to increase coordination among relevant law enforcement agencies to combat schemes that cross state lines. In addition, the group may be limited in its ability to develop performance measures related to these particular schemes.

Conclusions

Because data on the prevalence of foreclosure rescue schemes are limited, it is difficult to establish a reliable estimate of just how often these schemes are occurring. Nevertheless, available data and views from a wide variety of sources suggest that foreclosure rescue schemes are indeed an important consumer problem and that new types of schemes are emerging. Furthermore, state law enforcement officials have expressed concern that schemes can be difficult to combat because they are often perpetrated across state lines and those engaging in them can relocate the schemes to other parts of the country very quickly.

While the April 2009 announcement signaled the federal government's interest in strengthening efforts to specifically combat foreclosure rescue schemes, it is not clear to what extent that the announcement resulted in significant interagency collaboration among the key federal law enforcement agencies. However, several individual agencies, notably FinCEN and FTC, appear to have undertaken various major initiatives subsequent to the April 2009 announcement that involve extensive

collaboration with state agencies, which they believe added momentum to the federal government's efforts to support law enforcement actions against these schemes. The subsequent creation of the FFETF appears to build on the April 2009 announcement by expanding the focus of the federal government's coordinated efforts to financial fraud in general, including mortgage fraud. However, the focus on foreclosure rescue and loan modification schemes is not as clear as in the April 2009 announcement.

The Mortgage Fraud Working Group has developed an action plan that identifies the working group's primary purpose as increasing enforcement in the area of mortgage fraud. The action plan also, in part, addresses two of the key factors that we identified as important to federal efforts in combating foreclosure rescue and loan modification schemes—educating consumers about deceptive practices and effectively coordinating law enforcement efforts to combat these schemes. Consumer education is a key factor in combating these schemes, since law enforcement agency officials indicated that it is easier to stop a crime from taking place than it is to catch the criminal later and obtain restitution. Greater coordination in the area of mortgage fraud is also particularly important given the wide array of federal, state, and local agencies involved, as well as nonprofit partners. However, the action plan does not address key practices that can help enhance and sustain collaboration among federal agencies, such as the need for a clear, long-term strategy; clear delineation of roles and responsibilities; and results-oriented performance measures. Without an action plan that identifies roles and responsibilities and key metrics, the working group may not be able to optimize the efforts of its members to combat mortgage fraud through enhanced coordination of federal, state, and local agencies. In addition, the working group's action plan does not specify strategies for foreclosure rescue and loan modification schemes, and the distinctive nature of these schemes suggests that they warrant a specific approach, particularly in identifying ways for supporting state-level law enforcement efforts. By developing a strategy that clearly delineates short- and long-term strategic goals, differentiates between types of mortgage fraud, and includes accompanying performance measures, the Mortgage Fraud Working Group could enhance its ability to contribute to law enforcement efforts to combat foreclosure rescue schemes and other types of mortgage fraud.

Recommendations for Executive Action

To develop a comprehensive strategy for the FFETF's Mortgage Fraud Working Group's efforts to combat mortgage fraud, we recommend that the U.S. Attorney General, as the head of the FFETF, do the following: (1) develop clear, long-term strategies and performance measures that the working group can use to evaluate its progress toward achieving its long-term goal of increasing enforcement in the area of mortgage fraud and (2) to the extent that the working group considers foreclosure rescue schemes to be a priority, develop strategies specific to these schemes, including those that enhance coordination of law enforcement agencies and that provide consumer education.

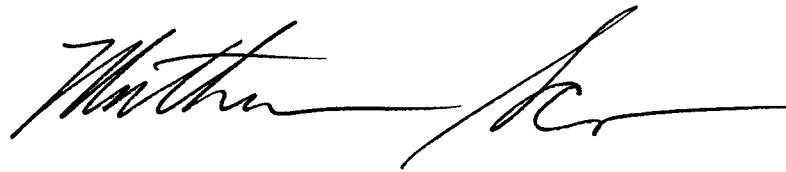
Agency Comments and Our Evaluation

We provided a draft of this report for review and comment to the heads of the Departments of Housing, Justice, and the Treasury and the Federal Trade Commission. We received written comments from the Department of Justice. These comments are summarized below and reprinted in appendix II. DOJ, FTC, HUD, and on behalf of Treasury, the Financial Crimes Enforcement Network and the Office of the Comptroller of the Currency, provided technical comments, which we incorporated in this report, where appropriate.

In its written comments, DOJ concurred with our recommendations that the FFETF develop clear, long-term strategies and performance measures to evaluate its progress in increasing enforcement in the area of mortgage fraud and consider developing strategies specific to foreclosure rescue schemes. DOJ stated that it agreed that incorporating additional long-term strategies and metrics, as feasible, into its action plan, as we recommended, could enhance and sustain the progress to date of the Mortgage Fraud Working Group's efforts to improve federal, state, and local law enforcement agencies' abilities to coordinate and adapt to the everchanging schemes. DOJ also stated that it would provide a detailed plan of action in its response to Congress.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the date of this letter. At that time, we will send copies of this report to other interested congressional committees, the Attorney General of the United States, the Secretary of the Department of Housing and Urban Development, the Secretary of the Treasury, the Chairman of the Federal Trade Commission, and other interested parties. The report also will be available at no charge on GAO's Web site at <http://www.gao.gov>.

If you or your staffs have any questions about this report, please contact me at (202) 512-8678 or sciremj@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs are on the last page of this report. GAO staff who made major contributions to this report are listed in appendix III.

A handwritten signature in black ink, appearing to read "Mathew J. Scire". The signature is fluid and cursive, with a long horizontal stroke at the end.

Mathew J. Scire
Director, Financial Markets
and Community Investment

Appendix I: Objectives, Scope, and Methodology

To determine what is known about the nature and prevalence of mortgage foreclosure rescue and loan modification schemes, we collected available data from and interviewed representatives of the four federal agencies—the Federal Trade Commission (FTC) and the Departments of Justice (DOJ), the Treasury (Treasury), and Housing and Urban Development (HUD)—and their relevant bureaus or divisions that were identified as members of a multiagency initiative to combat these schemes as announced by the administration on April 6, 2009. Within DOJ, we interviewed officials from the Executive Office for U.S. Attorneys, the Federal Bureau of Investigation (FBI), Criminal Division, Civil Rights Division, and Office of Justice Programs. In addition, we analyzed information related to the enforcement actions that FTC brought in calendar years 2008 and 2009 against individuals engaged in foreclosure rescue and loan modification schemes. Furthermore, we contacted national nonprofit organizations that collect consumer information or have conducted studies related to foreclosure rescue and loan modification schemes. These organizations include NeighborWorks America®, the Lawyers’ Committee for Civil Rights Under Law (Lawyers’ Committee), the Homeownership Preservation Foundation, the National Community Reinvestment Coalition, and the Council of Better Business Bureaus. We also contacted other nonprofit organizations knowledgeable about these schemes, including the Consumers Union and the Hope Now Alliance. We interviewed representatives of these national nonprofit organizations, which allowed us to obtain additional information on the nature of the schemes, as well as the likely persons engaged in and potential victims of these schemes. Several of these organizations also provided us with information about the number of potential victims, although we determined the information could not be used for the purpose of estimating the prevalence of these schemes. This information included the number of people who reported that they may have been victimized to the Homeownership Preservation Foundation’s Homeowner’s HOPE™ Hotline (1-888-995-HOPE), and the number of people who had complaints about possible scams reported by the Lawyer’s Committee.¹ Lastly, we obtained information on the characteristics of potential schemes from a study published by the National Community Reinvestment Coalition.²

¹A large number of complaints reported by the Lawyers’ Committee were ones they had received from the Homeownership Preservation Foundation.

²National Community Reinvestment Coalition, *Foreclosure Rescue Scams: A Nightmare Complicating the American Dream* (Washington, D.C.: March 2010).

To obtain additional information on the nature of these schemes, including descriptions of persons likely to engage in them and potential victims, we collected information specific to five states—Arizona, California, Florida, Illinois, and New York. We selected these five states because they featured some of the highest numbers of potential foreclosures, calculated using Mortgage Bankers Association’s fourth quarter 2009 information on the total loans past due by state, and we also considered geographic dispersion.³ In each state, we conducted structured interviews with representatives of the State Attorney General’s office, a U.S. Attorney’s office, and one other agency or nonprofit organization in each state who was knowledgeable about these schemes.⁴ In the absence of information that could reliably be used to assess the prevalence of these schemes, we asked state officials to provide us with information on the indicators that they typically use to assess the likely prevalence of a consumer problem in their states, such as the number of consumer complaints, enforcement actions, or investigations. We also asked state officials to provide us with information on the state laws and regulations that they use to take actions against persons who engage in these schemes.

To obtain information on the activities of the Financial Fraud Enforcement Task Force (FFETF), we interviewed a Deputy Attorney General within DOJ and the Executive Director of the FFETF. To obtain information about the FFETF’s specific activities related to combating foreclosure rescue and loan modification schemes, we interviewed the federal and state agency cochair of the FFETF’s Mortgage Fraud Working Group, which includes representatives of DOJ’s Civil Justice Division, the U.S. Attorneys’ Offices, FBI, HUD’s Office of Inspector General, and the National Association of Attorneys General (state representative). We also interviewed select members of the Mortgage Fraud Working Group—FTC, Treasury’s Financial Crimes Enforcement Network (FinCEN), and the U.S. Postal Inspection Service—we selected on the basis of their roles in combating foreclosure rescue and loan modification schemes and recommendations from the working group’s cochair. In addition, to understand how the FFETF and the working group functioned, we

³The Mortgage Bankers Association’s *National Delinquency Survey* contains data on delinquencies and foreclosures for the fourth quarter of 2009.

⁴The U.S. Attorneys that we interviewed represented the following districts: the District of Arizona, the Eastern District of California, the Southern District of Florida, the Northern District of Illinois, and the Eastern District of New York. With the exception of Arizona, each state has more than one U.S. Attorney district.

obtained and reviewed (1) the executive order establishing the FFETF's mission and key functions and meeting agendas; (2) perspectives from the working group's cochairs and previously listed members; and (3) available documentation on the working group's activities related to these schemes as identified by members (e.g., training, mortgage fraud summits, and meetings). We also attended the public session of the FFETF's Mortgage Fraud Summit in Detroit, Michigan, on April 23, 2010, to determine the extent to which these summits addressed the problem of foreclosure rescue and loan modification schemes. To obtain information about other federal efforts to combat these schemes, we interviewed the federal agencies and state representatives that announced efforts to combat these schemes on April 6, 2009—including FTC, DOJ, Treasury's FinCEN, and HUD—and collected documentation on their activities.

We also interviewed state officials involved in the April 2009 announcement, including State Attorney General representatives who participated in the press announcement and the DOJ working groups that were formed following this announced effort. To identify other major efforts related to combating these schemes, we interviewed federal, state, private, and nonprofit officials, such as those involved in the Loan Modification Scam Prevention Network (the Network), primarily two government sponsored enterprises—Fannie Mae and Freddie Mac—and two national nonprofit organizations—the Lawyers' Committee and NeighborWorks America, about national efforts to combat these schemes. We collected and reviewed descriptive information on what the Network described as its key efforts—primarily the media consumer education campaign run by NeighborWorks America and an effort by the Lawyers' Committee to collect consumer complaint information from victims of foreclosure rescue and loan modification schemes. We also reviewed additional individual consumer education activities that the federal, state, and nonprofit agencies we have previously mentioned described using publicly available information.

To identify what factors may affect federal efforts' likelihood of success in combating foreclosure rescue and loan modification schemes, we analyzed information provided by the representatives of the federal and state agencies and national nonprofit organizations that we interviewed throughout the course of our review. This information largely pertained to what these representatives identified as the challenges to combating these schemes but also included information on factors that they identified as important in combating these schemes, such as the nature of law enforcement coordination. In addition, to assess how factors related to strategic planning could affect the federal effort's likelihood of success,

we considered our October 2005 report on practices that can help enhance and sustain collaboration among federal agencies when assessing how the FFETF's current planning practices could affect collaboration among its many federal agencies and other partners, such as state and nonprofit agencies.⁵

We conducted this performance audit from September 2009 to July 2010 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

⁵GAO, *Results-Oriented Government: Practices That Can Help Enhance and Sustain Collaboration among Federal Agencies*, [GAO-06-15](#) (Washington, D.C.: Oct. 21, 2005).

Appendix II: Comments from the Department of Justice



U.S. Department of Justice

Office of the Deputy Attorney General

Washington, D.C. 20530

July 8, 2010

Mr. Mathew Scirè
Director, Financial Markets and Community Investment
United States Government Accountability Office
Washington, D.C. 20548

Dear Mr. Scirè:

The Department of Justice has reviewed the Government Accountability Office's ("GAO") draft report "*Federal Effort to Combat Foreclosure Rescue Schemes Are Underway, but Improved Planning Elements Could Enhance Progress*," GAO-10-787. The Department concurs with the GAO's recommendations and will provide a detailed plan of action in our response to Congress.

As discussed in the GAO report, the Financial Fraud Enforcement Task Force ("Task Force") was created by Executive Order in November 2009 to strengthen the efforts of federal, state and local agencies and regulators to investigate and prosecute financial fraud. The Executive Order directs the Task Force to address a broad array of fraudulent activities, including: "bank, mortgage, and lending fraud; securities and commodities fraud; retirement plan fraud; mail and wire fraud; tax crimes; money laundering; False Claims Act violations; unfair competition; discrimination; and other financial crimes and violations." To address this mandate, the Task Force has established numerous working groups and committees tailored to specific types of fraud. Mortgage fraud is one of the types of fraud covered by the Task Force, and the Mortgage Fraud Working Group is primarily responsible for focusing on this type of fraud. Foreclosure rescue scams are not specifically identified as a separate priority in the Executive Order, but it is a common type of mortgage fraud and therefore a focus of the Mortgage Fraud Working Group.

As described in the report, since the creation of the Task Force several months ago, the Mortgage Fraud Working Group has been very active in combating mortgage fraud. This effort includes convening regional summits to focus enforcement efforts in areas most impacted by mortgage fraud, conducting national training for both federal and state law enforcement, launching the Task Force's consumer awareness and fraud reporting website StopFraud.gov, and coordinating the recently announced Operation Stolen Dreams – the broadest mortgage fraud sweep in history.

As the report correctly indicates, there are difficulties in prosecuting mortgage fraud schemes: perpetrators and methods of such schemes vary, often preying upon changes in the housing market; data on foreclosure rescue schemes are limited; and perpetrators can start up

Mr. Mathew Scirè

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and shut down quickly. This rapidly changing environment requires a strategy that is flexible and responsive to the evolving problem. To help meet this challenge, the Mortgage Fraud Working Group, as noted in the report, has an action plan tailored to the mandate set forth in the Executive Order. The action plan has focused on cooperation, coordinated enforcement, information sharing, training, and outreach, and identifying common outcomes and performance metrics. This approach has helped to improve federal, state, and local law enforcement agencies' ability to coordinate and adapt to the ever-changing schemes.

We agree with the GAO report that the Mortgage Fraud Working Group's action plan addresses several of the key factors that ensure effectiveness in educating consumers and coordinating state and federal efforts. We also agree that incorporating other long-term strategies and metrics, where feasible, could enhance and sustain the progress to date. Accordingly, the Department concurs with the GAO's recommendations and will provide a detailed plan of action in our response to Congress.

The Department appreciates the work of the GAO and this opportunity to comment on the GAO's draft report. Should you have any questions regarding this topic, please do not hesitate to contact Richard Theis, Department of Justice, Audit Liaison on 202-514-0469.

Sincerely,



Robb Adkins
Executive Director
Financial Fraud Enforcement Task Force

Appendix III: GAO Contact and Staff Acknowledgments

GAO Contact

Mathew J. Scirè, (202) 512-8678 or sciremj@gao.gov

Staff Acknowledgments

In addition to the contact above, Harry Medina (Assistant Director), Meghana Acharya, Sonja J. Bensen, Kristy Brown, Elizabeth H. Curda, Melissa F. Kornblau, Otis S. Martin, Marc Molino, Linda Rego, Jennifer W. Schwartz, Andrew Stavisky, James D. Vitarello, and Heneng Yu made key contributions to this report.

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