



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 21, 2016

The Honorable Charles E. Grassley
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This responds to your letter to Andy Mao, Coordinator of the Elder Justice Initiative, dated May 9, 2016, seeking information regarding the Department of Justice's (the Department) Elder Justice Initiative ("Initiative") and its efforts to combat and deter the financial exploitation of our nation's senior population.

The Department has committed significant resources to pursuing and bringing to justice those who financially exploit seniors, and to strategically dismantling the means by which future scams may occur. In recent weeks, the Department worked collaboratively with Dutch authorities and successfully obtained a temporary restraining order against an individual and two Dutch companies that allegedly engaged in multiple international mail fraud schemes that defrauded elder and other vulnerable U.S. victims out of tens of millions of dollars. The complaint seeking additional relief in this matter is now pending in the United States District Court for the Eastern District of New York, and it illustrates the Department's commitment to pursuing such scams, even when they extend beyond our national borders.

Because the financial exploitation of seniors is a national problem best addressed by coordinated efforts, the Department is actively working with our federal partners and with state and local prosecutors and law enforcement organizations to develop training and resources to enhance their efforts to prevent and combat such wrongdoing. Some of these efforts are highlighted below. And to further protect our seniors, the Department launched ten regional Elder Justice Task Forces this past February to work with prosecutors, civil enforcement attorneys, and law enforcement at the federal, state, and local levels to help ensure that long term care facilities provide Medicare and Medicaid beneficiaries with the care to which they are entitled. These ten offices were chosen based on their experience working on these kinds of cases.

- 1. What specifically is the Department doing to combat and deter elder financial exploitation? Given the often-complex nature of these cases, what specifically is the Department doing to help coordinate a multi-faceted response?**

The Department has been very active in combatting elder financial exploitation, particularly scams that originate overseas. Tackling such schemes often requires close collaboration with our international partners. To this end, the Department is committed to expanding its engagement with law enforcement agencies in the countries in which many of these frauds originate.

As a key component of these efforts, the Department co-chairs the International Mass-Marketing Fraud Working Group. This group includes the Federal Bureau of Investigation (FBI), as well as other U.S. investigative and regulatory agencies, such as the Federal Trade Commission (FTC), the United States Postal Inspection Service (USPIS), the United States Secret Service and the Immigration and Customs Enforcement of the Department of Homeland Security (Homeland Security Investigations) (ICE-HSI). It also includes law enforcement and regulatory personnel from Australia, Belgium, Canada, the Netherlands, Nigeria, Norway, Spain, and the United Kingdom. The members of the group meet to confer on cooperative measures to improve the sharing of law enforcement intelligence, disrupt mass-marketing schemes, enhance public education and prevention measures, and increase the effectiveness of criminal and civil enforcement actions directed against mass-marketing fraud.

The success of such cooperation is illustrated by the recent Dutch matter that is now pending in Brooklyn. The complaint filed by the United States alleges that U.S. residents received fraudulent direct mail solicitations that falsely claimed that the individual recipient had won, or would soon win, cash or valuable prizes or otherwise come into a great fortune. Victims sent payments through the U.S. and international mail systems to defendants that were located, owned, and operated in the Netherlands. Through its action, the United States is seeking an injunction under the Anti-Fraud Injunction Statute to immediately shut down the defendants' role in the fraudulent schemes and to protect U.S. victims from further harm. The injunction sought by the United States would enjoin the defendants from using the U.S. mails, or causing the U.S. mails, to be used to distribute the fraudulent solicitations or to collect victim payments, and from selling lists of American victims who have responded to the solicitations. If granted, a permanent injunction would allow the USPIS to intercept mail heading to the defendants, and return that mail—along with any money being sent to the defendants—to U.S. victims.

At the same time that the Department took its enforcement action in this matter, Dutch law enforcement agents executed search warrants at the business address used by the Dutch companies and the home address of the individual defendant. The Dutch authorities also took control of the Dutch post office boxes used by the defendants to receive victim funds. The coordinated U.S. and Dutch enforcement actions seek to immediately prevent the defendants from benefitting from their scheme and thus to shut down their continuing efforts to victimize the elderly.

Other successful examples of international partnerships include Project Jamaican Operations Linked to Telemarketing, or Project JOLT. As part of this project, United States and Jamaican law enforcement worked together to combat fraudulent lottery

schemes from Jamaica preying on elderly citizens in this country. In 2015, the Department, working with ICE-HSI and the USPIS in Miami, and with the government of Jamaica, successfully extradited the first Jamaican citizen to be prosecuted in this country for conspiracy to commit wire fraud in connection with a lottery scheme. He was ultimately convicted in federal court and was sentenced to 46 months in prison. Moreover, since 2009, Department attorneys have prosecuted or are prosecuting nearly 100 individual defendants linked to Jamaican-related lottery schemes.

The approximately 40 defendants who have been convicted and sentenced thus far have been sentenced, collectively, to more than 145 years in prison.

Another example of the Department's active efforts to combat elder financial exploitation is its successful action to shut down a large scale "psychic" mail fraud scheme. In an amended complaint filed in November 2015, the United States alleged that certain defendants operated a mail fraud scheme in which they sent letters through the U.S. mails to American consumers, purporting to be written by psychics Maria Duval and Patrick Guerin. The letters claimed that the psychics had a specific, personalized vision or psychic reading revealing that the recipient of the letter had the opportunity to achieve great wealth, including winning millions in the lottery. The solicitations urged victims to purchase various products and services to ensure that their predicted good fortune would come to pass. In reality, the solicitations were identical, mass produced form letters sent every month to tens of thousands of recipients throughout the United States. Many of the citizens who received the solicitations were vulnerable victims, including the financially desperate, the elderly, and the infirm. Over one million individual victims were defrauded out of over \$180 million by this scheme.

As a result of the Department's efforts, in May 2016, the U.S. District Court for the Eastern District of New York entered a consent decree that permanently barred eight individuals and entities from operating this psychic mail fraud scheme. In particular, the consent decree barred the defendants from using the U.S. mails to distribute any advertisements, solicitations or promotional materials on behalf of any psychics, clairvoyants or astrologers. Moreover, the consent decree enjoined the defendants from using the U.S. mails to distribute materials representing that services or items offered for purchase would increase the recipient's odds of winning a lottery, would bring the recipient good luck or would entitle the recipient to receive an inheritance.

- 2. Is the Department currently tracking or collecting data on the frequency and prevalence of elder financial exploitation across the country, including the law enforcement and prosecutorial responses to such cases? If so, what data is being collected and from what sources? Does the Department currently have the authority and tools necessary to track and collect data on elder financial exploitation? Please explain.**

Although the Department does not collect data on the prevalence of elder financial exploitation nationwide, it has collected and highlighted certain academic studies on prevalence in its Elder Justice Website ([e.g., www.justice.gov/elderjustice/research/prevalence-and-diversity.html#prevalence-of-financial-exploitation-around-the-world](http://www.justice.gov/elderjustice/research/prevalence-and-diversity.html#prevalence-of-financial-exploitation-around-the-world)) and is also working with other federal agencies to develop a more comprehensive view of what types of scams are occurring nationally. For example, the Department's Civil Division is working closely with the FTC to improve its Consumer Sentinel Network (CSN). The CSN is a secure online database of millions of consumer complaints available only to law enforcement. In addition to receiving complaints from the FTC, the CSN includes complaints from state consumer affairs agencies, state Attorneys General, the Consumer Financial Protection Bureau, the Internet Crime Complaint Center, Better Business Bureaus, MoneyGram, and Western Union. Moreover, the CSN accepts complaints on a wide range of issues including: identity theft, debt collection, credit reports, mortgage assistance scams, Do Not Call violations, imposter scams, telephone and mobile services, prizes and sweepstakes, Internet services, job scams, privacy/data security, auto-related scams, and a variety of other frauds.

While the CSN is the most robust repository of scam-related data, to date, CSN has had limited ability to inform users of repeat offenders or offenders targeting elderly victims. As such, the Department has been assisting the FTC to implement improvements to the CSN in order to help identify those bad actors and types of crimes more easily. The modified CSN will better allow users to identify frauds targeting the elderly in a manner that should enhance the ability of investigators, prosecutors, and civil enforcement attorneys at the federal, state, and local levels to stop them more quickly. Moreover, the Department is currently working with several federal agencies to develop a resource locator to help direct victims to available federal resources and complainants to the appropriate federal agency to report allegations of financial abuse. By making this resource locator available to the public, the Department hopes to channel complaints to the right place, including the FTC's CSN, and hopefully provide as comprehensive a view as possible of elder financial exploitation on the federal level.

3. **The Elder Justice Coordinating Council's 2014 report to Congress states that the United States Attorney's Offices "aggressively prosecute fraud schemes targeting the elderly – from Ponzi schemes, to what are known as 'grandparent schemes,' 'lottery schemes,' 'affinity fraud,' 'phantom debt,' and other 'strike it rich' scams."**
 - a. **How many cases have the United States Attorney's Offices brought against "fraud schemes targeting the elderly" in the past ten years? Please provide specific data on cases initiated, the type of fraud schemes or scams in each case, and the results of each case.**

The Department's case management systems track certain information regarding its criminal and civil matters, such as the statutes involved, the charges brought, and the sentence imposed. Because those systems do not contain the role the defendant played in the offense or the specific scheme, medium, or theory of the crime (*e.g.*, psychic scams, lottery scams, etc.), the Department cannot provide statistical information about the number of cases prosecuted for elder financial exploitation.

But United States Attorneys' Offices (USAOs) across the country have actively prosecuted a wide array of fraud schemes and scams targeting or disproportionately affecting older Americans. In addition to the examples discussed above, the Department provided additional examples of such prosecutions in the February 10, 2016, prepared statement of Jill Steinberg, Senior Counsel to the Deputy Attorney General, to the Senate Special Committee on Aging. These examples included mail-based fraud schemes, telephone-based fraud schemes, embezzlement, and Ponzi schemes. A recent survey of USAOs reflected additional successful prosecutions and resolutions of matters where the elderly were targeted or disproportionately affected. These involved a wide array of schemes and fraud including money services fraud, timeshare re-sales schemes, investment and securities fraud, telemarketing schemes, and deceptive online romance schemes.

Additionally, the Elder Justice Initiative is taking steps to collect press releases issued by the Department and the USAOs regarding federal actions against elder fraud exploitation and to display that information on the Elder Justice Website.

b. What specific role has the Department's Elder Justice Initiative played in the USAO's "aggressive" prosecution of financial fraud and schemes targeted at seniors? Please provide specific examples.

As the Elder Justice Initiative is housed in the Department's Civil Division, the Initiative has focused its efforts on supporting and coordinating the Department's "failure of care" cases brought under the False Claims Act. The Department brings these civil actions against nursing homes and other long term care providers that provide grossly substandard care to Medicare and Medicaid beneficiaries. An example of these efforts is the Department's settlement with Extendicare, one of the nation's largest nursing home chains. In that case, the Initiative led and coordinated a large team of attorneys, investigators, and staff from the Civil Division, USAOs, Medicaid Fraud Control Units, and the HHS Office of Inspector General, through a nationwide, multi-year investigation that culminated in a \$38 million FCA settlement and a five year, chain-wide Corporate Integrity Agreement in October 2014. Building upon that model of federal, state and local cooperation, the Department launched ten regional Elder Justice Task Forces in April 2016, in order to further bolster the Department's efforts to ensure that Medicare and Medicaid beneficiaries receive the nursing care services to which they are entitled. The Initiative has scheduled trainings for certain districts in Washington, Maryland and Kentucky, and will continue to conduct two to three trainings each year for all the other Task Force districts.

4 The Department acknowledges the "broad consensus that elder abuse is underreported." One state level study, for example, estimates that only 1 out of 44 cases of financial exploitation is reported to Adult Protective Services or law enforcement authorities. What specifically is the Department doing to help empower and encourage seniors—and their caregivers, loved ones, and others—to report suspected instances of financial exploitation to authorities?

The Department is empowering and encouraging seniors and others to report suspected instances of financial exploitation in several ways. For example, the Department has provided a wealth of information regarding financial exploitation on its Elder Justice Website (www.usdoj.gov/elderjustice). The first page of the website's financial exploitation section advises victims on how to report financial exploitation and provides a zip code locator to help victims and their families identify nearby resources or law enforcement authorities. The website further identifies various common financial exploitation scenarios (including financial exploitation by spouses, professional caregivers, attorneys, and home repair and lottery scams), and answers frequently asked questions about financial exploitation. The Department also is working on developing template power point presentations and other materials that local leaders or organizations can use to raise public awareness in their communities about elder financial exploitation.

Moreover, the Department, through its Office of Victims of Crime (OVC), has been actively assisting victims and enhancing the capacity of those who work with victims of elder abuse and financial exploitation. For example, the Department has partnered with the National Center for Victims of Crime to support its Victim Connect Resource Center. This resource center, which launched in April 2016, combines a traditional telephone-based helpline with an innovative online chat and web-based information, assistance and referral service. The victim assistance specialists empower elder abuse crime victims to regain control, navigate options, and take next steps by providing confidential resources and referrals by phone, chat, and text message. More information about the Victim Connect Resource Center can be found at <https://www.victimsofcrime.org/media/news-releases/2016/04/26/national-center-for-victims-of-crime-launches-national-helpline-for-victims-of-all-crime>.

In addition, OVC, in collaboration with the Department's Office for Access to Justice and the Elder Justice Initiative, developed a free online elder abuse training for legal services providers. The elder abuse training consists of four modules:

- What Every Lawyer Needs to Know About Elder Abuse;
- Practical and Ethical Strategies;
- Domestic Violence and Sexual Assault in Later Life; and
- Financial Fraud and Exploitation.

In 2015, there were more than 3,400 completions of these four online trainings, including 711 completions of the Financial Fraud and Exploitation online training module.

Likewise, the Initiative and OVC in fiscal year 2015 partnered with the Corporation for National and Community Service – a U.S. federal agency that administers AmeriCorps and other national service programs – to launch the Department’s Elder Justice AmeriCorps, which will support approximately 60 AmeriCorps lawyer and paralegal members to provide legal assistance and support services to victims of elder abuse, neglect, and exploitation, and promote pro bono capacity building in the field. In order to train these lawyers and paralegals, the Initiative has collaborated with the American Bar Association on this year’s National Aging and the Law Conference, which will include a wide array of elder justice topics, including elder financial exploitation.

Also, in 2016, through grant funding from OVC, the National Center for State Courts (NCSC), in partnership with the American Bar Association Commission on Law and Aging and the Virginia Tech Center for Gerontology, will assess the scope of financial exploitation by conservators and will convene a national forum with the goal of improving victim services and enhancing public policies.

Lastly, community outreach is also an important part of the Department’s strategy to combat elder financial abuse. For example, in April 2015, during National Crime Victims’ Rights Week, the U.S. Attorney’s Office for the District of Minnesota partnered with assisted living facilities in St. Paul, St. Cloud, and Duluth to educate seniors on ways to protect themselves against investment fraud. The presentations informed seniors about identifying red flags, and reporting suspicious conduct, and provided other tips for dealing with investment fraud. Likewise, the Department has participated annually in the Rocky Mountain Fraud Summit in Denver. This summit is a collaborative effort of the Colorado U.S. Attorney’s Office, AARP, the SEC, the Colorado Attorney General’s Office, and other federal, state, and local regulators across the Rocky Mountain region. The summit, which is often held at an assisted living facility, consists of interactive presentations about investment frauds that target our communities, including our senior communities.

5. Does the Department currently have the necessary statutory authority to track, investigate, and ultimately prosecute crimes involving the financial exploitation of seniors? Please explain.

As discussed above, the Department is actively working with other federal agencies, like the FTC, to improve tracking of elder related financial scams more comprehensively at the federal level. Although the Department is not aware of any systemic effort to track state and local prosecutions of elder financial exploitation nationwide, the Elder Justice Initiative has begun laying the foundation for such an effort by identifying state elder justice laws (*e.g.*, civil and criminal financial exploitation laws, elder abuse laws) on the Elder Justice Website.

Regarding the statutory framework to prosecute crimes involving financial exploitation to seniors, we should note the interplay between federal statutes and the sentencing guidelines. Section 2326 (Enhanced Penalties) of Title 18 currently provides for enhanced penalties of five additional years when defendants are convicted under the following offenses “in connection with the conduct of telemarketing”: section 1028 (Fraud using identity documents), section 1029 (Aggravated identity theft), section 1341 (Frauds and swindles), section 1342 (Fraud using a fictitious name or address), section 1343 (Fraud by wire), or section 1344 (Bank Fraud) (and conspiracies to commit these). Section 2326 also provides for an enhanced sentence of 10 additional years, not a mandatory minimum, but an increased statutory maximum, if the offense “victimized 10 or more persons over the age of 55, or targeted persons over the age of 55.” Accordingly, section 2B1.1 of the sentencing guidelines provides for a two level enhancement for offenses involving 10 or more victims, and section 3A1.1(b)(1) provides for a two level enhancement for a vulnerable victim, which is determined by age, among other things. It is our understanding that these enhancements are very rarely applied at the same time.

Prior to November 2015, section 2B1.1 also provided for four and six level enhancements for more than 25 and more than 250 victims, and these enhancements have been replaced in the current guidelines, which now provide for four and six level enhancements for offenses involving substantial financial hardship to 5, and 25 or more victims, respectively.

If you are considering amending statutes and or guidelines to address any of these issues, we would be happy to work with you, but we would caution you to be sure that such changes do not make applying the current two level guideline enhancement for 10 or more victims more onerous. For example, we would not want to see an age restriction placed on this enhancement.

Finally the Department has previously expressed support for some of the provisions included in the Robert Matava Elder Abuse Victims Act of 2015, which would, among other things, increase the scope of section 2325 (Definitions) under Chapter 113A (Telemarketing Fraud) beyond telemarketing to also include email marketing. The Department has also previously expressed support for provisions to add to the list of specifically prohibited fraudulent schemes those conducted to induce charitable contributions, investments for profit, commitments to loans, or schemes regarding fraudulent research, by calls, emails, texts, instant messaging, or otherwise.

6. Since January 1, 2010, how much money has the Initiative spent in total (including, but not limited to, salary expenses, operational costs, and litigation support costs)?

Since January 1, 2010, the Elder Justice Initiative has spent approximately \$6.1 million. This total includes, but is not limited to, money spent on litigation support (e.g., medical reviews, data analyses, and forensic auditors), elder abuse research, the Elder Justice Website, and developing training and other resources for prosecutors, law enforcement, and civil legal assistance programs. This total does not include the salaries of any

Department of Justice employees who work on elder justice issues (*e.g.*, Office of Violence Against Women (OVW), OVC, National Institute of Justice, Access to Justice, Bureau of Justice Assistance), but does include consulting or subject matter expert fees incurred for developing content for or providing resources to the Initiative. Finally, while this total includes litigation support costs borne by the Elder Justice Initiative, the total does not reflect additional litigation support costs borne by the Civil Division, the Criminal Division, or the United States Attorneys' Offices.

7. Has the Initiative developed any objective criteria to measure its effectiveness and impact? If so, what are the criteria?

Given its recently expanded role in responding to the recommendations of the Elder Justice Coordinating Council, the Initiative is still in the process of developing criteria to assess the impact and effectiveness of the elder justice efforts and programs of both the Initiative and the Department more broadly. At least one metric the Initiative will likely include will be the number of prosecutors, civil enforcement attorneys and law enforcement who participated in Department funded training. We already know, for example, that since 2002, OVW has supported over 125 communities and provided training to thousands of law enforcement officers, prosecutors, judges, victim service providers and other professionals who work with older individuals to participate in OVW's Abuse in Later Life Program. Likewise, the Department's National Institute on Prosecuting Elder Abuse, which was created in 2013, has trained prosecutors from 26 states and the District of Columbia. As part of last year's White House Conference on Aging, the Department committed to enrolling and training prosecutors from the remaining 24 states by 2017.

8. How many, if any, Full Time Equivalent employees are on staff for the Initiative? Does the Initiative have-or has it had in the past---any detailed employees from other federal agencies? If so, how many and from which agencies?

The Initiative does not have employees dedicated exclusively to the Initiative. Rather, it is staffed primarily by Civil Division attorneys who work with Assistant United States Attorneys throughout the country, as well as employees from various Department of Justice components responsible for elder justice issues, including the Access to Justice Office, OVW, OVC, the Bureau of Justice Assistance, and the National Institute of Justice. Employees from these Department components expend time on Initiative matters in addition to other responsibilities. And although the Department tracks time spent on health care matters, more generally it does not track employee time at such a granular level as to respond to your request with a precise number.

We note that the Initiative also contracts with subject matter experts and consultants to assist with the development of content for the Elder Justice Website, training materials, and other resources. Although the Initiative does not currently have (nor has it had) any detailed employees from other federal agencies, the Initiative works closely and regularly with the staff of multiple agencies (*e.g.*, Department of Health and Human Services,

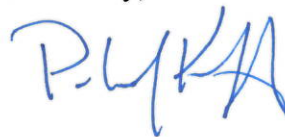
Consumer Financial Protection Bureau, Social Security Administration) through the Elder Justice Interagency Working Group. This group brings together federal staff responsible for carrying out elder justice activities to discuss emerging issues, promising practices, and mechanisms for coordinating efforts throughout the federal government. It also supports the Elder Justice Coordinating Council (EJCC). For example, this working group helped to develop the eight recommendations adopted by the EJCC. It also helped to plan the Elder Justice Forum hosted by the White House in June 2015 and the elder justice component of the White House's decennial Conference on Aging in July 2015.

9. Under what federal statute, if any, does the Initiative receive its funding and spending authority? If it is not specifically authorized by statute, please explain how the Initiative receives funding for its operations.

The Social Security Act Section 1128C(a), as established by the Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191, HIPAA or the Act), created the Health Care Fraud and Abuse Control (HCFAC) Account as the funding mechanism for a far-reaching program to combat fraud and abuse in health care, including in both public and private health plans. The Act appropriates monies from the Medicare Hospital Insurance Trust Fund to HCFAC in amounts that the Secretary and Attorney General jointly certify as necessary to finance anti-fraud activities. The Initiative's activities (including litigation support for the Department's failure of care cases) have been funded by the Civil Division (where the Elder Justice Initiative resides) using funding from the HCFAC, as has been reflected in the Health Care Fraud and Abuse Control Program Annual Report that the Departments of Justice and Health and Human Services jointly submit to Congress. In addition to relying upon HCFAC funding, the Civil Division requested and received supplemental funding from the Department's Collection Resources Allocation Board for fiscal years 2015-2016 to support its elder justice activities. *See*, Pub. L. 103-121, Title I, Section 108, Oct. 27, 1993, 107 Stat. 1164. Lastly, the Initiative has also collaborated on projects with other components with the Department.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,



Peter J. Kadzik
Assistant Attorney General

cc: Patrick J. Leahy
Ranking Member
Committee on the Judiciary