

103
H.R. 4070 AND H.R. 4071

Y 4. P 84/10: 103-48

H.R. 4070 and H.R. 4071, Serial No. . . .

HEARING
BEFORE THE
SUBCOMMITTEE ON
POSTAL OPERATIONS AND SERVICES
OF THE
COMMITTEE ON
POST OFFICE AND CIVIL SERVICE
HOUSE OF REPRESENTATIVES
ONE HUNDRED THIRD CONGRESS
SECOND SESSION

—————
JULY 14, 1994
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Serial No. 103-48

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Printed for the use of the Committee on Post Office and Civil Service



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(III)

HEARING ON H.R. 4070 AND H.R. 4071

THURSDAY, JULY 14, 1994

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON POSTAL OPERATIONS AND SERVICES,
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
Washington, DC.

The subcommittee met, pursuant to call, at 10:15 a.m., in room 311, Cannon House Office Building, Hon. Barbara-Rose Collins (chair of the subcommittee) presiding.

Members present: Representatives Collins and Watt.

Miss COLLINS. Good morning. The Subcommittee on Postal Operations and Services is now in session.

I would like to welcome all of you to this important hearing this morning. Over the past several months, this subcommittee has conducted numerous hearings in an attempt to address the ever-escalating problem of fraud via the U.S. mail system.

We heard from some of the victims of mail fraud, along with consumer advocate groups and law enforcement agencies, including the Postal Service. Needless to say, I was astonished to learn of the magnitude of the problem of fraud through the mail being practiced on the American public, especially the aging. The FBI estimates that it costs consumers approximately \$40 billion annually.

After hearing some of the horror stories and the frustration of law enforcement agencies in cracking down on these scams, it became crystal clear that legislative action was warranted if this problem was ever going to be effectively addressed.

Therefore, today we will be discussing the merits of two pieces of legislation that I have introduced in an attempt to eliminate mail fraud, H.R. 4070 and H.R. 4071.

H.R. 4070 has a twofold purpose. First, it would authorize the seizure and forfeiture of property constituting or derived from proceeds of mail fraud violations, and second, it would enable and require the Postal Service to place in the Postal Service fund the proceeds of all forfeitures which result from its mail fraud investigations.

H.R. 4071 would authorize the U.S. Postal Service to issue subpoenas for the production of documents relevant to the investigation of mail fraud. Currently, the Postal Service has no subpoena authority under its civil mail fraud statute which, in some cases, prevents or delays their investigations.

So I want to thank you all for coming and I look forward to your testimony.

[The prepared statement of Hon. Barbara-Rose Collins follows:]

PREPARED STATEMENT OF HON. BARBARA-ROSE COLLINS, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF MICHIGAN

Good morning, I would like to welcome all of you to this hearing of the Subcommittee on Postal Operations and Services.

Over the past several months, this subcommittee has conducted numerous hearings in an attempt to address the ever escalating problem of fraud via the U.S. mail system.

We heard from some of the victims of mail fraud, along with consumer advocate groups and law enforcement agencies, including the Postal Service.

Needless to say, I was astonished to learn of the magnitude of the problem of fraud through the mail, being practiced on the American public. The F.B.I. estimates that it costs consumers approximately \$40 billion annually.

After hearing some of the horror stories and the frustration of law enforcement agencies in cracking down on these scams, it became crystal clear that legislative action was warranted if this problem was ever going to be effectively addressed.

Therefore, today, we will be discussing the merits of two pieces of legislation that I have introduced in an attempt to eliminate mail fraud, H.R. 4070 and H.R. 4071.

H.R. 4070 which has a two-fold purpose first, would authorize the seizure and forfeiture of property constituting or derived from proceeds of mail fraud violations. Second, it would enable and require the Postal Service to place in the "Postal Service Fund" the proceeds of all forfeitures which result from its mail fraud investigations.

H.R. 4071 would authorize the U.S. Postal Service to issue subpoenas for the production of documents relevant to the investigation of mail fraud. Currently, the Postal Service has no subpoena authority under its civil mail fraud statute which, in some cases, prevents or delays their investigations.

Thank you for coming. I look forward to your testimony.

Miss COLLINS. Our witnesses for the first panel—and we will have two panels—our witnesses for the first panel are Mr. Richard A. Barton, senior vice president, governmental affairs, Direct Marketing Association; and Mr. Douglas Berger, director of public affairs, Advertising Mail Marketing Association.

Mr. Barton, welcome to the committee.

STATEMENT OF RICHARD A. BARTON, SENIOR VICE PRESIDENT, GOVERNMENTAL AFFAIRS, DIRECT MARKETING ASSOCIATION; AND DOUGLAS BERGER, DIRECTOR OF PUBLIC AFFAIRS, ADVERTISING MAIL MARKETING ASSOCIATION

Mr. BARTON. Madam Chair and members of the subcommittee, it is a real pleasure to be here to testify in favor of this legislation. I understand that one of my colleagues in your last hearing got up and nonplused everybody by saying we are in favor of the legislation and that is all and left.

That is all I really need to say, although I would like to add a little bit to your comments. We agree with you that the problem of mail fraud and false representation in the mail is one that we have to combat very strongly.

For people in our business, it is particularly important that the American people and consumer trust the process of ordering through the mail and ordering through other direct marketing channels. The only way that they can trust the process is by having effective and strong ways to combat fraud and misrepresentation. And so we work with and support your efforts and the Inspection Service efforts in doing that, and generally support legislation which would strengthen the Inspection Service's hand in this.

We agree on the forfeiture provisions of H.R. 4070. Our only comment there was that the penalties are very harsh. But as we said, we felt that if they were—and we would assume they were administered in a balanced way—that this would be good for the Postal

Service. We also know—and we know the Justice Department and Postal Service worked on an agreement for this that the Postal Service receive the proceeds from criminal forfeiture cases if it will do nothing but defray their costs in fighting fraud.

We also agree with H.R. 4071 to provide criminal—I beg your pardon, civil investigative demands of subpoenas. We have some suggestions which are in the testimony to tighten up the procedure a bit and provide a few more safeguards that were in the legislation. I will not proceed beyond that because we have had extensive discussions with your staff and with the Postal Service, and I think have reached an agreement with some—a few satisfactory changes in there that everybody seems to accept and I guess will be presented at the markup.

So with that, I would just like to say that we enthusiastically endorse the thrust of these bills and would like to work with you, continue to work with you and the Postal Service in combating fraud.

Thank you.

[The prepared statement of Mr. Barton follows:]

PREPARED STATEMENT OF RICHARD A. BARTON, SENIOR VICE PRESIDENT,
GOVERNMENTAL AFFAIRS, DIRECT MARKETING ASSOCIATION

Madam Chair, members of the subcommittee: It is a pleasure to appear here to testify in favor of H.R. 4070 and H.R. 4071, two bills that would strengthen the hand of the United States Postal Service in combatting the conduct of fraud through the use of the mail.

The Direct Marketing Association is the largest national and international trade association representing the interests of direct marketers. Our membership includes approximately 3,000 companies nationwide involved in all aspects of direct marketing.

COMMITMENT TO COMBATTING FRAUD

Since its founding in 1917, the Direct Marketing Association has maintained a strong interest in combatting fraud and unethical behavior. We work closely with law enforcement agencies such as the Postal Inspection Service, Federal Trade Commission, Federal Communications Commission, and state attorneys general to uncover and eliminate fraudulent activities.

DMA has two committees with the responsibility for monitoring ethical activities in direct marketing. Our Ethics Policy Committee is charged with developing and maintaining our various guidelines for ethical business practices. The Committee on Ethical Business Practices, with representatives from all major segments of direct marketing, enforces these guidelines by investigating complaints of violations of the guidelines and applying peer pressure of the correction of unethical practices. If the complaint involves a violation of the law, the case is referred to the appropriate law enforcement agency.

This work is important to direct marketers since trust between the marketer and customer is essential to the direct marketing process. When a customer is defrauded or otherwise poorly treated in a retail transaction, he or she does not stop shopping in stores. However, if a customer has an unpleasant experience in direct marketing, he or she tends to shy away from the process altogether. Therefore, the fight against fraud is an unusually important one for us.

DMA generally has supported legislation strengthening the Postal Inspection Service's role in combatting fraud. DMA testified in favor of bills in the past that significantly increased the Postal Service's ability to enforce Title 39 of the United States Code. Likewise, DMA is generally in support of H.R. 4070 and H.R. 4071, with some caveats and suggestions for improvement, however.

H.R. 4070

H.R. 4070 allows for forfeiture of property constituting or derived from any proceeds that a person obtained directly or indirectly from a scheme in violation of the fraud statutes. The sanctions are quite harsh in this bill, and some further consideration might be given to the appropriateness of these harsh penalties. However, if

implemented fairly and selectively, and with good judgment, it would be appropriate to support the proposed authority.

The bill would also allow the Postal Service to retain the proceeds from forfeitures in criminal cases. Currently these forfeitures are retained by the Justice Department.

We believe that this provision is only just and proper. The activities of the Postal Inspection Service are funded by postal rates and, therefore, ultimately by mail users, not the general taxpayer. Proceeds from forfeitures brought about by the excellent work of the Postal Inspection Service should be deposited in the Postal Service fund to help defray the cost of investigations and reduce the pressure to raise postal rates. The federal government is already unjustifiably siphoning too much money from the Postal Service. While the amounts in this legislation would be relatively small, it would be a step in the right direction.

H.R. 4071

H.R. 4071 would allow the Postal Service to obtain, prior to the commencement of a civil or criminal proceeding, documents, answers to interrogatories, oral testimony, and the product of discovery from other judicial proceedings. DMA supports granting authority to the Postal Service to issue civil investigative demands in mail fraud investigations.

However, unlike comparable statutes that allow such pre-action discovery only by court order for good cause shown, H.R. 4071 would allow the Postal Service to make such demands on its own, without permission from or review by a judicial body.

Therefore, there is no check or balance on the Postal Service on when it could, or should, employ this extraordinary measure of subjecting a person to discovery absent a legal proceeding. Moreover, it allows the Postal Service to obtain the product of discovery from other litigation and requires that the information be delivered even though it might be privileged. Although the statute indicates that such privilege would not be waived by such disclosure, the fact remains the information must be disclosed.

DMA believes the subcommittee should give consideration to tightening these provisions to provide some judicial check on the issuance of civil investigative demands without unduly hampering the Postal Inspection Service in its investigations.

Also, H.R. 4071 would allow the discovery demand to be served by mail and would not require the personal service that most other statutes require. Although there is nothing inherently wrong with such a relaxed standard, we believe personal service should be required because of the criminal sanctions involved in the bill.

It also should be pointed out that *all* information that is requested must be disclosed or the respondent will be deemed to have failed to comply. Moreover, oral testimony can be noticed in any judicial district in the United States. Accordingly, one could be required to travel 3,000 miles for a deposition even through no formal legal proceeding is pending. Both of these provisions might be somewhat extreme and deserve further consideration before enactment.

Additionally, the Postal Service may deny a witness his own copy of the official transcript of his testimony. However, it may be used by any duly authorized official of the Postal Service or Department of Justice and may be disclosed to either body of Congress and the Federal Trade Commission (which has different, and sounder, legal standards than proposed in this legislation) again, even though no legal proceeding is pending against the witness. It seems to us clear that the ability to share a legal transcript with such a wide variety of federal agencies and Congress and yet deny access to the witness is a fundamental problem in the proposed legislation.

Finally, if no proceeding is commenced within a "reasonable" time, the discovery materials are returned to the witness unless they have been passed on to a court, grand jury or agency. No definition, however, is given to what constitutes a "reasonable" time. The bill could be strengthened with a clear definition.

CONCLUSION

With the caveats outlined above, the Direct Marketing Association supports the basic thrusts of both H.R. 4070 and H.R. 4071. We have met with your staff and the postal attorney assigned to this legislation and believe we have developed satisfactory language to resolve our questions. I understand that this language will be discussed at the mark-up. We look forward to continuing to work with you and the Postal Service on combating mail fraud.

Miss COLLINS. Thank you, Mr. Barton. I almost feel that you are a member of the committee, and so I will ask you, do you have any

recommendations for the penalties? Do you think the ones in the bill—

Mr. BARTON. No. In fact, to tell you the truth, it has been 2 months since I have seen them. I have forgotten what they were. I can come back for some recommendations for the penalties. Our attorney who reviewed this just said he felt that they were a little harsh but he had no recommendations for them specifically that I can remember, but I will come back—come back and—with a recommendation.

Miss COLLINS. And also, we will look at your suggestions for the subpoena powers.

Mr. BARTON. Yes.

Miss COLLINS. It seems that you were concerned about the fact that people can be subpoenaed and forced to travel to another State to give testimony.

Mr. BARTON. Yes, and in informal conversations with your staff and the Postal Service, my indication was that that was not really their intention.

Miss COLLINS. Right.

Mr. BARTON. That in some cases, it might be necessary, but it is not really their intention. I think they were going to present some language that tightened that up a little bit.

Miss COLLINS. And also whether you would be forced to turn over documents that is covered by attorney-client privileges.

Mr. BARTON. Yes.

Miss COLLINS. And you know the answer to that is no, you would not be—

Mr. BARTON. That was my understanding of what was going to occur, yes.

Miss COLLINS. Thank you.

We have been joined by my colleague, Congressman Mel Watt, from North Carolina. Congressman, do you have an opening statement?

Mr. WATT. No, I do not. I just wanted to come and listen to the witnesses assess the bills.

Miss COLLINS. Thank you very much.

In that case, then, we will hear from Mr. Douglas Berger.

Mr. BERGER. Douglas Berger, yes.

Good morning, my name is Douglas Berger, I am the director of public affairs for the Advertising Mail Marketing Association which is a national trade association here in Washington of businesses and organizations that use or support the use of mail for advertising, marketing, or fundraising purposes. We at AMMA applaud you, Chairwoman Collins, for your leadership over the past year to expand the Postal Service's statutory authority over the investigation of and prosecution of mail fraud.

Each year, the perpetrators of mail fraud rip off consumers and businesses throughout our country to the tune of billions of dollars. As the director of the Bureau of Consumer Protection of the Federal Trade Commission told this subcommittee last July, mail fraud is all too prevalent and is a scourge upon consumers.

Unfortunately, this scourge often appears in the guise of sweepstakes and other contests that long have been a hallmark of many

legitimate direct marketing promotions. The perpetrators of mail fraud steal more than money when they bilk on unwary consumers.

The essence of that which exists between the advertising mail industry and mail recipients is a relationship built on trust and consumer confidence is a fragile commodity. Once it is violated, it may never be given again. Therefore, the last thing our industry desires to have is mail fraud ripoff artists apply the legitimate techniques we use to market our goods and services and destroy the fragile trust we work so diligently to establish with our customers and prospective customers.

Mail fraud is a loathsome behavior that deserves prosecution and must be actively shunned. AMMA believes that whenever a member of our association believes a fraud is in the making, we should not facilitate their unethical and illegal schemes by looking the other way. Rather, we urge our members to act definitively and responsibly to help ferret out fraud by bringing any such matter to the attention of law enforcement officials and by doing whatever else we can to assist in its prosecution. Indeed, it is our association's policy to bring any suspect mailing behavior immediately to the attention of the Postal Inspection Service.

In closing, the perpetrators of mail fraud are crooks, plain and simple. Besides the harm they do to consumers, these con artists steal our livelihoods and our good name. We believe your legislation will help strengthen the ability of the Postal Inspectors to uncover and prosecute fraud. Therefore, we heartily endorse these measures and urge their swift enactment.

[The prepared statement of Mr. Berger follows:]

PREPARED STATEMENT OF DOUGLAS BERGER, DIRECTOR OF PUBLIC AFFAIRS,
ADVERTISING MAIL MARKETING ASSOCIATION

The Advertising Mail Marketing Association (AMMA) is a national association of businesses and organizations that use or support the use of mail for advertising, marketing, or fund raising purposes. We at AMMA applaud Chairwoman Collins for her leadership to expand the U.S. Postal Service's statutory authority over the investigation of and prosecution of mail fraud.

Each year, the perpetrators of mail fraud rip off consumers and businesses throughout our country to the tune of billions of dollars. As the Director of the Bureau of Consumer Protection of the Federal Trade Commission (FTC) told this Subcommittee in July 1993: "Mail fraud is all too prevalent and is a scourge upon consumers."

Unfortunately, this "scourge" often appears in the guise of sweepstakes and other contests that long have been a hallmark of many legitimate direct marketing promotions. The perpetrators of mail fraud steal more than money when they bilk unwary consumers. The essence of that which exists between advertising and marketing mail industry and mail recipients is a relationship built on trust. Consumer confidence is a very fragile commodity. Once it is violated, it may never be given again. Therefore, the last thing our industry desires is to have mail fraud rip-off artists ape the legitimate techniques we use to market our goods and services and destroy the very fragile trust we work so hard to establish with our customers and prospective customers.

In addition to supporting legislation such as H.R. 4070 and H.R. 4071, we at AMMA endeavor to do much more. The members of our industry know what it costs to be in business. We know what it takes to make ends meet—let alone make a profit. And we, above all others, can smell the offer that really is too good to be true.

Mail fraud is a detestable behavior that deserves prosecution and must be shunned. AMMA believes that whenever a member of our association believes a fraud is in the making, we should not facilitate their unethical and illegal schemes by looking the other way. Rather, we urge our members to act definitively and responsibly to help ferret out fraud by bringing any such matter to the attention of law enforcement officials and by doing whatever else we can to assist in its prosecu-

tion. Indeed, it is our association's policy to bring any suspect mailing behaviors immediately to the attention of the Postal Inspection Service.

The perpetrators of mail fraud are crooks plain and simple. Besides the harm they do to consumers, these con artists steal our livelihoods and our good name. They poison the well; they spoil the fields in which legitimate mail advertisers and marketers labor.

We believe H.R. 4070 and H.R. 4071 will help strengthen the ability of the postal inspectors to uncover and prosecute fraud. We heartily endorse these measures, and urge their swift enactment.

Miss COLLINS. Thank you very much, Mr. Berger.

When you discover possible mail fraud, you turn it over to the postal inspectors? Or what agency do you notify?

Mr. BERGER. We—in my 6 years with this trade association, I have not experienced where people have turned, to me or to our organization or to our counsel, reporting these sort of things. As I said in this statement, it is our policy, something we stress to our members, that if they suspect such behavior, that they should turn to the Postal Inspection Service, or whatever law enforcement agency may be handy, or to notify us and we, in turn, would contact the appropriate persons.

Miss COLLINS. And actually, these crooks, if you will, would not join your association?

Mr. BERGER. No. I am happy to report.

Miss COLLINS. They are here today and they are over there tomorrow.

Mr. BERGER. You are correct. I was telling Mr. Barton before the hearing that, you know, we represent totally angelic direct marketers and advertisers.

Miss COLLINS. Of course, and I am glad—

Mr. BERGER. You are correct. You are absolutely correct. As you—I believe over the past year, as I noted, have had three hearings and this subcommittee heard many stories from consumers, businesses, the Inspection Service and others, and a recurring theme that you brought out was that many times these are fly-by-night. They are here today and gone by tomorrow, and certainly they are not getting into the established trade associations and other things of that sort.

Miss COLLINS. Yes. You know, to join an association and become identifiable and seen, you know, is not the modus operandi of fraud perpetrators. They really—if they went that far, they would become legitimate.

Mr. BERGER. Right.

Mr. BARTON. I can add something. Our association, as you know, does have an ethics committee which does hear complaints against companies who are engaged in unethical activities—not necessarily illegal, but unethical—in which we use peer pressure to change that. But any time we have a complaint which in fact involves fraud or false representation, we immediately turn it over to the Inspection Service. We have no compunction to do that and we will provide any assistance that we can to them.

Miss COLLINS. Very good.

Mr. Watt, do you have any questions?

Mr. WATT. No, Madam Chairwoman.

Miss COLLINS. OK. Well, I thank you two gentlemen very much for coming.

The second panel is Ms. Mary Lee Warren, Deputy Assistant Attorney General from the Criminal Division, Department of Justice; Mr. Alvin F. Lamden, Manager of Fraud and Prohibited Mailing, U.S. Postal Inspection Service, accompanied by Ms. Jennifer Angelo, Chief Counsel, Consumer Protection Law, U.S. Postal Inspection Service; and Mr. Larry Maxwell, Manager, Forfeiture, U.S. Postal Inspection Service.

Would you please come to the table.

STATEMENT OF MARY LEE WARREN, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE; ALVIN F. LAMDEN, MANAGER OF FRAUD AND PROHIBITED MAILING, U.S. POSTAL INSPECTION SERVICE, ACCOMPANIED BY JENNIFER ANGELO, CHIEF COUNSEL, CONSUMER PROTECTION LAW, U.S. POSTAL INSPECTION SERVICE; AND LARRY MAXWELL, MANAGER, FORFEITURE, U.S. POSTAL INSPECTION SERVICE

Ms. WARREN. Good morning.

Miss COLLINS. Welcome, Ms. Warren. Is it Lee Warren or—

Ms. WARREN. My first name is Mary Lee, last name Warren.

Miss COLLINS. Just like mine, huh? My first name is Barbara-Rose, but people want to call me Rose Collins, but it is Barbara-Rose.

Ms. WARREN. I am happy to hear someone with two first names, and I am pleased to be here for the Department of Justice today. I appreciate the welcome and the invitation.

Miss COLLINS. Thank you. I understand that the Department of Justice has some concerns with the forfeiture, so this is your opportunity to give testimony.

Ms. WARREN. Very well, if I may.

Miss COLLINS. You may proceed.

Ms. WARREN. Madam Chairwoman, the Department of Justice appreciates the opportunity to submit its views on H.R. 4070 and H.R. 4071, two bills intended to enhance the law enforcement programs within the purview of the Postal Service.

Let me speak first about H.R. 4070, a bill to provide for the criminal and civil forfeiture of proceeds of mail and wire fraud. This legislation recognizes the important role that asset forfeiture has come to play in the Federal Government's overall fight against all types of criminal activity, including white collar crime. We welcome the subcommittee's interest in asset forfeiture and are pleased to support the concept set forth in this bill.

No person has any right to retain the proceeds of a criminal act. When a criminal act yields economic gain, that ill-gotten gain should be forfeited. This has long been the rule for crimes like drug trafficking, gambling, racketeering and pornography and even for a narrow group of white color crimes involving bank fraud.

Why should it not be true for all white collar crimes, especially those involving fraud against consumers? A white collar criminal has no more right to retain the proceeds of a fraud perpetrated against the public than a drug trafficker has a right to retain the proceeds from the sale of a planeload of cocaine.

Indeed, the case for forfeiture in the prosecution of white collar crimes is even more compelling. Through forfeiture, the criminal

proceeds can be restored to the victims to whom it rightfully belongs. Current law does not permit this. In a limited number of cases where the perpetrator of the fraud subsequently launders the proceeds in violation of the money laundering statutes, we can forfeit the property involved in the money laundering offense, but the funds laundered may be just a fraction of the proceeds. Moreover, the money laundering forfeiture statutes do not permit the Government to restore the forfeited property to the victims. This clearly needs to be changed.

Thus, we support the notion of expanding the civil and criminal forfeiture laws to cover white collar crime such as mail and wire fraud and to authorize the restoration of the forfeited property to the victims of those crimes. To the extent that H.R. 4070 does this, we support it. In fact, we support civil and criminal forfeiture of the proceeds of any crime, including other fraud offenses, in title 18 of the United States Code.

We are working with Congress to provide not only for the criminal and civil forfeiture of proceeds of mail and wire fraud, but to go further than H.R. 4070 by providing for the civil and criminal forfeiture of the proceeds of any crime, including other fraud offenses, in title 18 of the code.

We would prefer that Congress use this broader, more uniform approach to forfeiture legislation rather than the more limited approach used in H.R. 4070 which would apply forfeiture to mail fraud and wire fraud violations only.

We suggest amendment of already existing forfeiture statutes that appear in chapter 46 of title 18 of the code, to ensure greater due process protection for property owners. These revised forfeiture procedures should be applied uniformly to all forfeiture statutes to ensure fairness and consistency in the application of the forfeiture laws. New forfeiture legislation should be drafted to reflect these reforms and, at a minimum, in a way that does not create multiple forfeiture procedures.

To this end, we believe that forfeiture provisions should be placed in chapter 46 of title 18, or by cross-referencing to chapter 46 forfeiture procedures in those substantive forfeiture provisions that are codified elsewhere.

H.R. 4070 would place substantive and procedural forfeiture provisions in chapter 63 of title 18 and, in doing so, would at least create the potential for inconsistent judicial interpretations of separate statutory forfeiture procedures that are intended to be identical.

Consequently, we believe that if the subcommittee decides to go forward with the provisions of H.R. 4070 regarding forfeiture for the mail and wire fraud offenses, it should codify these provisions in sections 981 and 982 in chapter 46, the general civil and criminal forfeiture statutes, respectively, and not in chapter 63.

As always, the Department of Justice would be happy to assist the subcommittee in drafting such legislation.

Let me now turn to the provisions of H.R. 4071 that would authorize the U.S. Postal Service to issue civil investigative demands in furtherance of law enforcement efforts.

We oppose providing this civil investigative demand authority to the Postal Service primarily because the scope of H.R. 4071 is not

limited to civil matters. As originally proposed, H.R. 4071 would extend to the Postal Service the authority to issue civil investigative demands in all investigations arising under chapter 30 of title 39, United States Code. A review of chapter 30 indicates that this investigative authority covers a variety of items for which criminal penalties are provided in title 18.

We understand that the Postal Service has recently proposed to the subcommittee to limit the civil investigative demand authority to 39 U.S.C. section 3005, false representations and lotteries, and 39 U.S.C., section 3012, civil penalties. But even this proposed limitation on the scope of civil investigative demand authority does not eliminate our concerns.

Section 3005 allows the Postal Service to take various actions concerning a person engaged in, "conducting a scheme or device for obtaining money or property through the mail by means of false representations," that is, a person engaged in mail fraud. We continue to believe that the taking of sworn testimony, obtaining of written interrogatory answers, and compelling the production of documents should be handled by attorneys for the Government, such as assistant U.S. attorneys or trial attorneys in the Department of Justice and not investigators and agents.

We would prefer that Congress authorize assistant U.S. attorneys or trial attorneys in the Department to issue civil investigative demands. It is our view that limiting the authority to issue civil investigative demands to Government attorneys helps to ensure that such legal process is not misused by investigators and agents working without the benefit of legal counsel.

We have opposed extending this authority to other investigative agencies in the past. We recommend that if the subcommittee decides to go forward with H.R. 4071, the authority to issue these civil investigative demands be so limited, limited to assistant U.S. attorneys and trial attorneys in the Department.

Again, I thank the subcommittee for its interest in this legislation and remain happy to answer any questions you may have.

[The prepared statement of Ms. Warren follows:]

PREPARED STATEMENT OF MARY LEE WARREN, DEPUTY ASSISTANT ATTORNEY
GENERAL, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE

Madam Chairman, the Department of Justice appreciates the opportunity to submit its views on H.R. 4070 and H.R. 4071, two bills intended to enhance the law enforcement programs within the purview of the Postal Service.

I. H.R. 4070

Let me speak first about H.R. 4070, a bill to provide for the criminal and civil forfeiture of proceeds of mail fraud (18 U.S.C. §1341) and wire fraud (18 U.S.C. §1343) violations. This legislation recognizes the important role that asset forfeiture has come to play in the federal government's overall fight against all types of criminal activity, including white collar crime. We welcome the subcommittee's interest in asset forfeiture and are happy to support the concepts set forth in this bill.

No person has any right to retain the proceeds of a criminal act. When a criminal act yields economic gain, that ill-gotten gain should be forfeited. This has long been the rule for crimes like drug trafficking, gambling, racketeering, and pornography and even for a narrow group of white collar crimes involving bank fraud. Why should it not be true for all white collar crimes especially those involving fraud against consumers? A white collar criminal has no more right to retain the proceeds of a fraud perpetrated against the public than a drug trafficker has a right to retain the proceeds from the sale of a plane load of cocaine. Indeed, the case for forfeiture in the prosecution of white collar crimes is even more compelling: Through forfeit-

ure, the criminal proceeds can be restored to the victims to whom it rightfully belongs.

Current law does not permit this. In a limited number of cases—where the perpetrator of the fraud subsequently launders the proceeds in violation of the money laundering statutes—we can forfeit the property involved in the money laundering offense. But the funds laundered may be just a fraction of the proceeds; moreover, the money laundering forfeiture statutes do not permit the government to restore the forfeited property to victims. This needs to be changed.

Thus, we support the notion of expanding the civil and criminal forfeiture laws to cover white collar crimes such as mail and wire fraud and to authorize the restoration of the forfeited property to the victims of those crimes. To the extent that H.R. 4070 does this, we support it. In fact we support civil and criminal forfeiture of the proceeds of *any* crime (including other fraud offenses) in Title 18, United States Code. We are working with Congress to provide not only for the criminal and civil forfeiture of proceeds of mail fraud and wire fraud violations, but to go further than H.R. 4070 by providing for the civil and criminal forfeiture of the proceeds of *any* crime (including other fraud offenses) in Title 18, United States Code. We would prefer that Congress use this broader, more uniform approach to forfeiture legislation rather than the more limited approach used in H.R. 4070, which would apply forfeiture to mail fraud and wire fraud violations only.

We suggest amendment of already existing forfeiture statutes that appear in Chapter 46 of Title 18, United States Code, to ensure greater due process protection for property owners. These revised forfeiture procedures should be applied uniformly to all forfeiture statutes to ensure fairness and consistency in the application of the forfeiture laws. New forfeiture legislation should be drafted to reflect these reforms and, at a minimum, in a way that does not create multiple forfeiture procedures.

To this end, we believe that forfeiture provisions should be placed in Chapter 46 of Title 18 or by cross-referencing to Chapter 46 forfeiture procedures in those substantive forfeiture provisions that are codified elsewhere. H.R. 4070 would place substantive and procedural forfeiture provisions in Chapter 63 of Title 18 and, in doing so, would at least create the potential for inconsistent judicial interpretations of separate statutory forfeiture procedures that are intended to be identical. Consequently, we believe that if the subcommittee decides to go forward with the provisions in H.R. 4070 regarding forfeiture for mail and wire fraud offenses, it should codify those provisions in sections 981 and 982 in Chapter 46, the general civil and criminal forfeiture statutes, respectively, and not in Chapter 63. As always, the Department of Justice would be happy to assist the Subcommittee in drafting such legislation.

II. H.R. 4071

Let me now turn to the provisions of H.R. 4071 which would authorize the United States Postal Service to issue civil investigative demands in furtherance of law enforcement efforts.

We oppose providing this civil investigative demand authority to the Postal Service primarily because the scope of H.R. 4071 is not limited to civil matters. As originally proposed H.R. 4071 would extend to the Postal Service the authority to issue civil investigative demands in all investigations arising under Chapter 30 of Title 39, United States Code. A review of Chapter 30 indicates that this investigative authority covers a variety of items for which criminal penalties are provided in Title 18.

We understand that the Postal Service has recently proposed to the subcommittee an amendment to H.R. 4071 which would limit the civil investigative demand authority to 39 U.S.C. § 3005 (false representations and lotteries) and 39 U.S.C. § 3012 (civil penalties). This proposed limitation on the scope of the civil investigative demand authority does not eliminate our concerns.

39 U.S.C. § 3005 allows the Postal Service to take various actions concerning a person engaged in “* * * conducting a scheme or device for obtaining money or property through the mail by means of false representations * * *”¹—*i.e.*, a person engaged in mail fraud. We continue to believe that the taking of sworn testimony and the obtaining of written interrogatory answers should be handled by attorneys for the government such as Assistant U.S. Attorneys or Trial Attorneys in the Department of Justice and not investigators and agents.

We would prefer that Congress authorize Assistant U.S. Attorneys or Trial Attorneys in the Department of Justice to issue civil investigative demands. It is our view that limiting the authority to issue civil investigative demands to government attor-

¹ 39 U.S.C. § 3005(a).

neys helps to ensure that such legal process is not misused by investigators and agents working without the supervision of legal counsel. We have opposed extending this authority to other investigative agencies. We recommend that, if the subcommittee decides to go forward with H.R. 4071, the authority to issue civil investigative demands be limited to Assistant U.S. Attorneys and Trial Attorneys in the Department of Justice.

Again, I thank the subcommittee for its interest in this legislation and am happy to answer any questions you may have.

Miss COLLINS. Well, I thank you very much for your testimony, Ms. Warren, and I thank you for your offer to work with the committee.

Going to H.R. 4070, you are comfortable with the forfeiture language?

Ms. WARREN. Yes, comfortable with the forfeiture language. Our concerns are that it is solely a forfeiture in these two areas, mail and wire fraud.

Miss COLLINS. I know you want the broader. I thought that you had a problem with the forfeiture money going to the U.S. Postal Service. Do you have a problem with that?

Ms. WARREN. That is not a Department of Justice concern that it would enter the Postal Fund.

Miss COLLINS. You do not care where the money goes, then? Right now it goes to the Justice Department.

Ms. WARREN. And then the Postal Service applies through the Department. I would return a more definitive written response to that question, because it is my understanding that is not the basis for our concern with the proposed legislation.

Miss COLLINS. Is there legislation pending that would deal with forfeiture in all criminal cases?

Ms. WARREN. I am sorry. I missed an important word in your question, Madam Chairwoman.

Miss COLLINS. Is there legislation pending dealing with forfeiture in all criminal investigations?

Ms. WARREN. It is still in draft, Madam Chairwoman. We have worked with Members of Congress and with the various departments, investigative agencies, including the Postal Inspection Service, in drafting legislation that would cover forfeiture, civil and criminal, across all title 18 offenses.

Miss COLLINS. That would be similar to an omnibus bill?

Ms. WARREN. Yes.

Miss COLLINS. And that would go through the—a Judiciary Committee?

Ms. WARREN. That is my understanding.

Miss COLLINS. All right. Well, in the meantime, we will go forward with H.R. 4070 and look at the language that you recommend. You recommend limiting it. You recommended that we address certain—wait a minute. I have got it here.

Ms. WARREN. Either codify—

Miss COLLINS. To United States Code—to 39 United States Code, section 3005 and section 3012. That is the false representations and lotteries and civil penalties.

Ms. WARREN. Under—

Miss COLLINS. On your page 4 you have that.

Ms. WARREN. OK. I think that is the proposal of the Postal Service—

Miss COLLINS. Oh, OK.

Ms. WARREN [continuing]. That they are proposing that limitation. We suggest that that limitation does not eliminate our concerns for the civil investigative demands because the same conduct reflected there is conduct that could result in Federal criminal prosecutions.

Miss COLLINS. I am sorry. I was on 4071.

Ms. WARREN. My concern under 4070 was if the committee goes forward with the legislation, we just propose that it be codified within the existing forfeiture statutes to ensure that uniformity of review—

Miss COLLINS. I see. I had the wrong bill. It was chapter 63 of title 18, you want us to make it identical?

Ms. WARREN. Either cross-reference—

Miss COLLINS. Or chapter 46?

Ms. WARREN [continuing]. Into the chapter 46 at sections 981 or 982 or amend those particular statutory sections to include the mail fraud and the wire fraud right there within the sections that now exist, so procedures for all forfeitures will be the same and be reviewed by courts in a consistent manner.

Miss COLLINS. All right. I believe it should be consistent, also, and our counsel is here and perhaps he will get with you on that language. I see we have put it in chapter 63, title 18, and you want it in chapter 46, sections 981 and 982.

Ms. WARREN. Yes. That would be our proposal.

Miss COLLINS. All right. I believe that this would at least remove all ambiguity between the cooperation between the Justice Department and the U.S. Postal Service. Right now, it is a gentleman's agreement, the forfeitures go to you and they apply for it and get it and this would simply clarify it, I think. So we will do that.

Now, on to H.R. 4071. I think that your concerns are valid concerns about attorneys being present and issuing the—taking of testimony, so we will look at those concerns, and I am not saying that we would not have 4071, but we certainly would like to work with you to have the appropriate language. I think at any time an omnibus bill comes through, it would simply incorporate the bill that we have, so it would not be a problem for us to go forward with ours.

Ms. WARREN. I understand the subcommittee's interest in moving forward on this area that has been left unattended and consumers have suffered in the meantime. It is our hope at Justice that the omnibus bill will move swiftly after other things move through the Hill here.

Miss COLLINS. When do you figure? A year or two?

Ms. WARREN. I am sorry. I just do not know. We have had it reviewed at—through, as I said, many departments and with Members of Congress and are awaiting for some final comments, but it is very close to presentation.

Miss COLLINS. Very good. Very good. We will see who gets there first. Mr. Watt, do you have any question of Ms. Warren?

Mr. WATT. Yes, I think so. Let me just say a word or two before I ask a question, though, about the omnibus nature of this. I am on the Judiciary Committee, too, and—

Miss COLLINS. Have you heard anything about it?

Mr. WATT. Actually this whole area of forfeitures is a very, very controversial area, and I think the controversy has to do with the fact that the whole—the primary thrust of forfeiture started with drug seizure forfeitures and assets and gains from drug dealings and a lot of the early forfeiture thinking, and laws were more consumed with the forfeiture of the gains of crime than with the due process aspects of people.

And so the notion that we are going to have an omnibus forfeiture law—

Miss COLLINS. We are not. They are. Not this committee.

Mr. WATT. When I say we, as a Judiciary Committee, I think you are going to find, it is going to be a lot more controversial than this witness may make it sound. I, for one, have very serious reservations about all of these forfeiture areas and you probably know when I was requested to cosign your bill that I communicated that to you, so—but I take it that under the omnibus legislation, anything that we do with forfeitures would come through the Judiciary Committee and this aspect of it would go to the Judiciary Committee also, as you understand it?

Ms. WARREN. One moment, please. That is my understanding. The proposal, as I said, is not yet prepared, although it has been worked with several representatives in Congress, as well as the Departments, as I said before. It tries to take into account, our proposal would, those many concerns that have been raised by the Supreme Court and others in the last few years when forfeiture perhaps developed along a stray course and now needs to be brought back in a better, more responsive way as a law enforcement tool.

And it is for that reason that the Department of Justice wants to ensure that we are not moving under—or setting up possibly inconsistent ways of proceeding under forfeiture. They need to be consistent and sensitive and responsive and responsible.

Mr. WATT. I think I will just defer my—any other questions I have because they are probably broader than the scope of this bill in any event, and I will leave those for another day to be addressed.

Just as a matter of curiosity: If 4070 is passed, would it be referred sequentially to Judiciary, as you understand it?

Miss COLLINS. No, it will not. What I said was, that if the Department of Justice puts in an omnibus forfeiture bill, that bill would go to Judiciary.

Mr. WATT. But this one would not be referred?

Miss COLLINS. This one would not go to Judiciary. We are speaking only of U.S. postal matters, and I agree with you, Congressman, that it has almost been a way to simply punish criminals.

It has worked very well in Detroit, the forfeiture laws for drug dealers, in that we were able to close dope houses in neighborhoods, good neighborhoods, but it also has worked as a sort of punishment when the police do not have sufficient evidence to arrest a drug person—to arrest a drug person. They take the cars and the money and the drug people never complain.

Of course they cannot complain, and I think it is that aspect that bothers you. It does not bother me too much because, you know, they could go to court and complain and say that their gains are not ill-gotten gains, but they do not, so—but I understand. I gave

the wrong information. H.R. 4071 was referred jointly to our committee and the Judiciary.

Mr. WATT. And 4071?

Miss COLLINS. And 4070 also. I should have paid attention. I will try to stop that. OK?

Mr. WATT. Thanks.

Miss COLLINS. Thank you, Ms. Warren.

Mr. Alvin Lamden, Manager of Fraud and Prohibited Mailing, U.S. Postal Inspection Service. And you are accompanied by Ms. Jennifer Angelo, Chief Counsel.

Mr. LAMDEN. Yes.

Miss COLLINS. Would you proceed?

Mr. LAMDEN. Thank you, Madam Chairwoman. I am Al Lamden, Manager of the Fraud and Prohibited Mailings Group of the Postal Inspection Service and, as you said, I am accompanied by Jennifer Angelo, chief counsel for consumer protection law, and Inspector Larry Maxwell, Manager of the Forfeiture Group of the Postal Inspection Service.

I am pleased today to have this opportunity to discuss the legislation you have introduced that would bolster the efforts of the U.S. Postal Service to fight mail fraud.

The Postal Inspection Service enforces a number of statutes which allow us to take action against fraudulent practices involving the use of the mails. Our primary weapons are two statutes originally enacted over a century ago, the mail fraud statute, which provides for criminal prosecution, and the postal false representations statute which is used to proceed civil.

The false representation statute allows the Postal Service, after completing administrative proceedings, to return to the senders all mail sent in response to a false advertisement which seeks to obtain money or property by mail and to order the promoter to cease and desist from conducting their false representation scheme. Failure to obey a cease and desist order can result in civil penalties of \$10,000 per day.

Last year, Inspection Service mail fraud investigations resulted in 1,965 arrests and 1,900 convictions. Over 16,000 false or fraudulent promotions or lotteries were voluntarily discontinued after an investigation was initiated, 192 complaints were filed under the civil false representation statute resulting in 148 consent agreements, 84 mail return orders, and 183 cease and desist orders.

Finally, 88 orders were issued to withhold mail from delivery under the fictitious name statutes. Madam Chairwoman, we strongly support the bills you have introduced, H.R. 4070 and 4071. These two bills not only give the Inspection Service new weapons to protect the public against fraud and false representation schemes, they also enhance the recommendations that currently exist.

H.R. 4070 would amend title 18 to authorize the criminal and civil seizure and forfeiture of property or proceeds constituting or derived from violation of the mail or wire fraud statutes. It also amends title 39 to enable the Postal Service to place in the Postal Service fund the proceeds of all forfeitures.

Forfeiture is now authorized only in those fraud cases where the defendant can be shown to be violating the money laundering stat-

utes or the criminal RICO statute. However, money laundering and RICO violations cannot be proven in all mail fraud cases. If forfeiture were authorized for mail fraud, forfeiture action could accompany virtually all mail fraud cases. Forfeiture of the proceeds of mail and wire fraud would take the profit out of these crimes and provide a substantial deterrent to those hoping to get rich from a fraudulent scheme. Moreover, such authority would be consistent with other statutes governing the same sort of activity.

Section 2 of H.R. 4070 amends title 39 to permit amounts from any forfeiture conducted by the Postal Service and from any forfeiture resulting from an investigation conducted by the Postal Service to be deposited into the Postal Service fund. Currently, title 39 authorizes that the Postal Service may retain only the proceeds of civil forfeitures.

This provision was enacted at a time when the Postal Service's authority to conduct forfeitures was limited to civil forfeitures. Under the Postal Reorganization Act, the operations of the Postal Service are funded by postal revenues rather than appropriated funds. Postal revenues are used to pay the costs incurred in investigating offenses which result in forfeitures.

Unless the Postal Service has the authority to retain these forfeited funds, they will be deposited in a Department of Justice fund. Consequently, postal revenues would be used to enhance a Department of Justice fund. Recognizing the unfairness of this consequence, the Attorney General and the Postmaster General have entered into an agreement which permits the Postal Service to share in the proceeds of the forfeitures it conducts or which result from its criminal investigations. The amendment you have proposed merely clarifies title 39 to permit retention of such funds by the Postal Service.

H.R. 4071 authorizes the Inspection Service to issue civil investigative demands in connection with certain investigations. The civil investigative demand authority provided in the bill would put investigative teeth into the civil false representation statute. Investigative demand authority would vastly enhance our ability to prove the elements of false representation cases, would help us to ensure that all persons responsible for a scheme were made parties to these actions and, most importantly, it would enable us to bring many schemes to much more prompt conclusions, thereby avoiding consumer losses.

Investigations under the false representation statute currently differ from criminal investigations in that the Inspection Service has no subpoena authority and search warrants are not authorized. Thus, investigations are limited in cases which will not be pursued criminally. To gather the evidence necessary to prove a false representations case, inspectors must rely upon test purchases of products, voluntary interviews of subjects, their employees or their victims, and publicly available documents. When essential information is unavailable through these means, investigations may ultimately fall short of the evidence needed to initiate an action under the false representation statute.

Specific circumstances in which we would use the civil investigative demands provided in H.R. 4070 include: To request copies of all advertisements in use by a promoter; to seek the names of the

persons who direct and control the activities of a company; to obtain the names of all persons who have responded to the promoter's advertising; to request that scientific studies or other evidence which support claims made for health related products such as weight loss or sexual potency pills, or antiaging products, to request that persons suspected of running advance fee loan schemes provide the lending agreements they have with financial institutions; to obtain documents from questionable charities to disclose how they make use of the contributions they solicit; to request evidence that supports claims that persons have made hundreds of thousands of dollars using work-at-home or multilevel marketing programs; in prize promotions, to learn the value of all prizes being awarded, and request the names of persons who had been selected to receive the most valuable prizes.

The Postal Service would implement regulations which would ensure that the issuance of civil investigative demands would not be at the discretion of individual postal inspectors. Rather, each civil investigative demand would be reviewed before it was issued. This authority would be delegated either to managers of the Inspection Service operation support groups located in five major cities or to the attorneys in the legal liaison branch of the Inspection Service at Postal Service headquarters.

The procedures provided in the statute for challenging investigative demands would ensure that the demands would be used responsibly and for their intended purpose.

The final section of H.R. 4071 would strengthen the injunctions against fraud statute, title 18, United States Code, section 1345. That statute permits a district court to enjoin ongoing fraudulent activity and has been a powerful tool in mail fraud cases. As the statute currently reads, a court may order an asset freeze in connection with the injunctive action only in cases where the fraud involves a banking law violation.

H.R. 4017 would expressly authorize such asset freezes when the action was based on mail or wire fraud or any other violation against which a 1345 injunction is authorized. This would correct what we believe was an unintentional distinction between banking fraud and other types of fraud when the statute was amended in the Crime Control Act of 1990. Asset freezes are an important part of the relief available under section 1345 because they prevent the defendant from hiding or dissipating assets which could be used to make restitution to victims of the fraud.

The bill further broadens the definition of a fraud under section 1345 so that injunctive actions would be—could be brought under the statute as long as victims of a fraud covered by the statute have not been redressed and the statute of limitations on a violation has not expired. This amendment would provide a remedy in situations where a promoter runs an active fraud scheme and has victimized numerous people but discontinues the scheme before the U.S. attorney can file for an injunction.

While a scheme's conclusion is obviously a good result, it does nothing to redress those who were victimized while the scheme was active. Restitution to victims is one of the most valuable remedies a court can provide in 1345 cases, and this amendment would en-

sure that it will be available even after a fraudulent scheme has run its course.

Madam Chairwoman, we would like to recognize you for the active interest you have taken in consumer protection issues. We believe the bills you have introduced will permit the Postal Service to be more effective in their actions against fraudulent promotions.

At this time, I would be pleased to answer any questions you may have.

[The prepared statement of Mr. Lamden follows:]

PREPARED STATEMENT OF ALVIN F. LAMDEN, MANAGER OF FRAUD AND PROHIBITED MAILINGS, U.S. POSTAL INSPECTION SERVICE

Madam Chairwoman, I am Inspector Alvin F. Lamden, Manager of Fraud and Prohibited Mailings for the Postal Inspection Service. I am accompanied by Jennifer Angelo, chief counsel for Consumer Protection, and Larry Maxwell, Manager of Forfeiture. I am pleased to have this opportunity to discuss the legislation you have introduced that would bolster the efforts of the United States Postal Service to fight mail fraud.

The Postal Inspection Service is the investigative and audit arm of the U.S. Postal Service. The Postal Service employs 2,100 postal inspectors, who are responsible for protecting postal employees, for protecting the mails and postal facilities from criminal attack, and for protecting the American public from being victimized by fraudulent schemes involving the mails. We enforce a number of statutes which allow us to take action against fraudulent practices involving the use of the mails. Our primary weapons are two statutes originally enacted over a century ago: The mail fraud statute (18 U.S.C. § 1341), which allows criminal prosecution, and the postal false representations statute (39 U.S.C. § 3005) which is used to proceed civilly.

The mail fraud statute makes it a felony to use the mails to intentionally defraud. Violators are subject to fines and imprisonment, and where the proceeds of the crime are used to further it or are concealed, we currently have authority under the money laundering statutes (18 U.S.C. §§ 1956, 1957) to forfeit those proceeds or property they were used to acquire.

The false representations statute allows the Postal Service, after completing administrative proceedings, to return to the senders all mail sent in response to a false advertisement which seeks to obtain money or property by mail, and to order the promoter to cease and desist from conducting the scheme. Failure to obey a cease and desist order can result in civil penalties of \$10,000 per day (39 U.S.C. § 3012).

Because these proceedings are time-consuming, two Federal injunction statutes allow us to take prompt, interim action to stop deceptive mail practices: One provides for detention of mail sent in response to a false advertisement, pending conclusion of the administrative litigation (39 U.S.C. 3007); the other allows the Federal district courts to issue injunctions against the continuation of mail fraud schemes (18 U.S.C. § 1345). The former is used for violations of the civil false representations statute, while the latter is based on reasons to believe that criminal fraud is being, or about to be committed. In addition, two other statutes allow us to detain mail addressed to false or fictitious names or addresses used to conduct mail fraud schemes until the claimant identifies himself and proves his entitlement to the mail (39 U.S.C. §§ 3003, 3004).

Last year, Inspection Service mail fraud investigations resulted in 1,965 arrests and 1,900 convictions. Over 16,000 false or fraudulent promotions or lotteries were voluntarily discontinued after an investigation was initiated. 192 complaints were filed under the civil false representations statute, resulting in 148 consent agreements, 84 mail return orders and 183 cease and desist orders. Finally, 88 orders were issued to withhold mail from delivery under the fictitious names statutes.

Madam Chairwoman, we strongly support the bills you have introduced, H.R. 4070 and 4071, and appreciate your leadership in this area. These two bills not only give the Inspection Service new weapons to protect the public against fraud and false representation schemes, they also enhance the remedies that currently exist.

H.R. 4070 would amend title 18 to authorize the criminal and civil seizure and forfeiture of property or proceeds constituting or derived from violation of the mail or wire fraud statutes. It also amends title 39 to enable the Postal Service to place in the Postal Service fund the proceeds of all those forfeitures.

Forfeiture is now authorized only in those fraud cases where the defendant can be shown to be violating the money laundering statutes (18 U.S.C. §§ 981, 1956, 1957) or the criminal RICO statute (18 U.S.C. § 1963(e)). However, money launder-

ing and RICO violations cannot be proven in all main fraud cases. If forfeiture were authorized for mail fraud, forfeiture action could accompany virtually all mail fraud cases.

Forfeiture of the proceeds of mail and wire fraud would take the profit out of these crimes and provide a substantial deterrent to those hoping to get rich from a fraudulent scheme. Moreover, such authority would be consistent with other statutes governing the same sort of activity. For example, direct forfeiture authority is provided for proceeds from bank fraud (title 18, United States Code, section 1344) and credit card fraud (title 18, United States Code, section 1029). Direct forfeiture would also be consistent with the authority for forfeiture of proceeds of violations of drug laws under the controlled substances act (21 U.S.C. § 881(a)(6)).

In cases of civil forfeiture, which do not require a criminal conviction, forfeiture or mail fraud proceeds can be the only practical means to deter future fraudulent activity. In fraudulent schemes involving smaller dollar amounts which are not prosecuted because they do not meet the United States attorneys' thresholds for criminal prosecution, civil forfeiture of profits and proceeds of the fraud would have a substantial deterrent effect, again because it would take away the fruits of the crime from the perpetrator.

While civil forfeiture is based upon a probable cause showing that money or property constitutes the proceeds of a crime, it does not depend upon a criminal conviction for that crime. However, there are strict safeguards in the civil forfeiture laws which protect all parties, including the right to ask the agency to pardon or return the property through a petition for remission and mitigation, and the right to file a claim and bond in district court seeking return of assets. The filing of a claim and bond converts an administrative forfeiture into a judicial forfeiture in which a court determines whether the forfeiture was proper.

The Inspection Service is a member of the Department of Justice assets forfeiture fund component, which vigilantly oversees government forfeiture activities, communicates court decisions, and promulgates policies governing enforcement actions. We understand that the Department of Justice is developing even more stringent guidelines to prevent abuses of the forfeiture laws.

In addition to the forfeiture provisions of H.R. 4070, we would support any legislative effort to authorize the Postal Service, in appropriate circumstances, to make restitution to victims with the funds obtained through forfeiture. For obvious reasons, that additional authority would permit us to fulfill our primary mission: to protect the public. The authority to make restitution to victims exists under the major criminal forfeiture statutes (Controlled Substances Act, 21 U.S.C. § 853 and money laundering, 18 U.S.C. § 982) and one of the major civil forfeiture statutes (FIRREA, 18 U.S.C. § 981(a)(1)(C)). Providing that authority in cases of mail and wire fraud would be consistent with the intent of Congress when they enacted those laws: to protect the interests of victims of crimes.

Section two of H.R. 4070 amends title 39 to permit amounts from any forfeiture conducted by the Postal Service, and from any forfeiture resulting from an investigation conducted by the Postal Service, to be deposited into the Postal Service fund. Currently, title 39 authorizes that the Postal Service may retain only the proceeds of civil forfeitures. This provision was enacted at a time when the Postal Service's authority to conduct forfeitures was limited to civil forfeitures.

Under the Postal Reorganization Act, the operations of the Postal Service are funded by postal revenues rather than appropriated funds. Postal revenues are used to pay the costs incurred in investigating offenses which result in forfeitures. Unless the Postal Service has the authority to retain these funds, they will be deposited in a Department of Justice fund established by 29 U.S.C. § 524(C). Consequently, postal revenues would be used to enhance a Department of Justice fund.

Recognizing the unfairness of this consequence, the Attorney General and the Postmaster General have entered into an agreement which permits the Postal Service to share in the proceeds of the forfeitures it conducts or which result from its criminal investigations. The amendment you have proposed merely clarifies title 39 to permit retention of such funds by the Postal Service.

We recommend two minor changes to section 2 of H.R. 4070: The first would permit the sharing of forfeiture proceeds with local law enforcement agencies as well as State and Federal agencies. The second would make the amendment conform to the language of the Controlled Substances Act relating to the sharing of forfeiture proceeds among agencies (21 U.S.C. § 881(e)(1)).

H.R. 4071

Section one of H.R. 4071 authorizes the Inspection Service to issue civil investigative demands in connection with certain investigations, expands the venues where

civil penalties cases could be brought, and strengthens the statute which provides for injunctions against fraud.

The civil investigative demand authority provided in section one of the bill would put investigative teeth into the civil false representations statute. Where a person is in possession of relevant information or documentary material relating to an investigation under chapter 30 of title 39, a postal inspector could serve a civil investigative demand requiring production of the documentary material, requiring oral testimony concerning such documentary material, or requiring written response to interrogatories.

The Inspection Service would use civil investigative demands primarily in investigations of false representation cases under 39 U.S.C. §3005. This authority would vastly enhance our ability to prove the elements of false representation cases; would help us to ensure that all persons responsible for a scheme were made parties to these actions; and, most importantly, it would enable us to bring many schemes to much more prompt conclusions, thereby limiting consumer losses.

Investigations under the false representations statute currently differ from criminal investigations in that the Inspection Service has no subpoena authority, and search warrants are not authorized. Thus, investigations are limited in cases which will not be pursued criminally. To gather the evidence necessary to prove that persons or entities are responsible for a scheme, and evidence that they are making false representations, inspectors must rely upon test or demand purchases or products; voluntary interviews of subjects, their employees or their victims; and publicly available documents (such as Postal Service permit and box applications and State corporate records). When essential information is unavailable through these means, investigations may ultimately fall short of the evidence needed to initiate an action under the false representations statute.

Specific circumstances which would be appropriate for use of civil investigative demands include

1. To obtain copies of all advertisements in use by a promoter, either directly from the promoter or from his or her printer or presort mailing company. This would permit us to seek orders against all addresses and advertisements used in a scheme. Currently, we must rely only on those advertisements which are sent to us from the public or which we obtain through monitoring of publications and test boxes.

2. To obtain the names of all persons who have responded to the promoter's advertising. These names in turn could be used to develop witness testimony for administrative hearings.

3. To seek the scientific studies or other evidence which support claims made for health related products such as weight loss or sexual potency pills, or anti-aging products.

4. To request that persons suspected of running advance fee loan schemes provide the lending agreements they have with financial institutions.

5. To obtain documents from questionable charities to disclose how they make use of the contributions they solicit.

6. To request evidence that supports claims that persons have made hundreds or thousands of dollars using work-at-home or multi-level marketing programs.

7. In prize promotions, to learn the value of all prizes being awarded, and request the names of persons who had been selected to receive the most valuable prizes.

8. To determine whether elderly or low-income persons were being targeted for a scheme, a demand could be issued for the source of the mailing list to which promotional material was sent.

9. To seek the names of the persons who direct and control the activities of a company. In most states, the corporate documents do not provide this information, and we do not know whether we are naming all the responsible individuals in our administrative complaint.

10. To seek information from third parties, who might not want to give evidence voluntarily, but will do so when served with an investigative demand. For example, we could seek to depose current or former employees of a company, or seek financial records from a bank.

11. To obtain products that are not available through demand purchases, such as yellow pages directories in which a promoter has promised to publish small businesses' advertisements.

The Postal Service would implement regulations which would ensure that the issuance of civil investigative demands would not be at the discretion of individual postal inspectors. Rather, review of each civil investigative demand would occur before the demand was issued. This authority would be delegated either to managers of the Inspection Service operations support groups located in five major cities, or to the attorneys in the legal liaison branch of the Inspection Service at Postal Service headquarters.

The procedures provided in the statute for challenging investigative demands would ensure that these tools would be used responsibly and for their intended purpose. A person who felt a civil investigative demand violated any provision of the civil investigative demand law, or any constitutional or other legal right or privilege, could seek a protective order from a district court. Moreover, the demands could not be used to obtain information that was otherwise protected from disclosure under grand jury investigations or the Federal rules of civil procedure.

The review process within the Inspection Service, coupled with the prospect of time-consuming district court litigation over the scope of a demand, would be strong disincentives to use this authority unless it were the only way to obtain essential information. Those factors would similarly induce inspectors to tailor their demands to the confines of the authority granted to them. In summary, we believe civil investigative demands are a well-designed tool for those circumstances when they would provide the only means to obtain important evidence in false representation cases.

AMENDMENTS TO 39 U.S.C. § 3012

H.R. 4071 would also amend the civil penalties statute, which permits the Postal Service to seek the imposition of penalties on persons who evade or who violate orders issued against them under section 3005. The amendments would increase the number of judicial districts in which penalties actions could be brought. Currently, such actions must be either where the defendant resides or receives mail. The amendments would authorize bringing such an action also in any district in which the defendant conducts business or into which the defendant sends mail. This provision would permit the Postal Service to bring these actions in districts where the United States attorney has the resources available to handle them. It also is in the interest of fairness to permit such actions not only where the defendant is found, but where his victims reside.

We suggest one technical change to this part of H.R. 4071 to eliminate an internal inconsistency. The final sentence of subsection (b)(1) (beginning "any such action * * *") should be deleted, because it is inconsistent with subsection (3), the section which creates the expanded venue provisions described above.

This legislation also makes a technical change in section 3012, to permit the filing of a civil penalties action when the Postal Service believes that its orders are being violated, rather than when it finds that such activity is occurring. This eliminates any possible interpretation that a penalties action must be based on a formal finding by a Postal Service judge that the orders have been violated.

In addition, the bill would amend section 3012 to authorize the payment of penalties collected under the statute into the Postal Service fund. Currently, such penalties are paid into the United States Treasury. The costs incurred by the Postal Service in investigating violations of Postal Service cease and desist orders and in seeking penalties would be recovered in part by allowing these payments to go to the Postal Service.

The final section of H.R. 4071 would strengthen the injunctions against fraud statute, 18 U.S.C. § 1345. That statute permits a district court to enjoin ongoing fraudulent activity, and has been a powerful tool in mail fraud cases.

As the statute currently reads, a court may order an asset freeze in connection with the injunctive action only in cases where the fraud involves a banking law violation. H.R. 4171 would expressly authorize such asset freezes when the action was based on mail or wire fraud, or any other violation against which a 1345 injunction is authorized. This would correct what we believe was an unintentional distinction between banking fraud and other types of fraud when the statute was amended in the Crime Control Act of 1990. Asset freezes are an important part of the relief available under section 1345, because they prevent the defendant from hiding or dissipating assets which could be used to make restitution to victims of the fraud.

A 1993 sixth circuit decision and a recent district court judge interpreting section 1345 found that asset freezes were not expressly provided for in mail fraud cases, but that the court under its equitable powers could order such freezes in order to ensure that the fraud was not continued and that funds would be available for victim restitution. See *United States v. Brown*, 988 F.2d 658 (6th cir. 1993) and *United States v. Weingold*, to be published at 844 F. Supp. 1560 (D.N.J. 1994). While these decisions decided the issue of asset freezes in the Government's favor, it is possible that different courts would read section 1345 more narrowly and conclude that asset freezes were not permitted under the statute as it now reads. Thus, we support the amendment you have proposed that expressly authorizes asset freezes in mail fraud cases.

H.R. 4071 also codifies the probable cause basis for issuing temporary and preliminary relief under section 1345, and a preponderance of the evidence standard

to support a permanent injunction. These standards have been adopted by courts interpreting the statute.

The bill further broadens the definition of a fraud under section 1345 so that injunctive actions could be brought under the statute as long as victims of a fraud covered by the statute have not been redressed and the statute of limitations on the violation has not expired. This amendment would provide a remedy in situations where a promoter runs an active fraud scheme and victimizes numerous people, but discontinues the scheme before the United States attorney can file for an injunction. While a scheme's conclusion is obviously a good result, it does nothing to redress those who were victimized while the scheme was active. Restitution to victims is one of the most valuable remedies a court can provide in 1345 cases, and this amendment would ensure that it will be available even after a fraudulent scheme has run its course.

Without a section 1345 action, victims can be redressed only through a Federal criminal prosecution which results in a restitution order or through state action. The amendment you have introduced would make this statute an even more effective tool against fraud.

Madam Chairwoman, we would like to recognize you for the active interest you have taken in consumer protection issues. We believe the bills you have introduced will permit the Postal Service to be more effective in their actions against fraudulent promotions.

At this time, I would be pleased to answer any questions you may have.

Miss COLLINS. Well, I thank you very much for your testimony, and I believe that we are going to have to do some more work on strengthening the language, and so I welcome your input on that, along with Ms. Warren.

I think that is it for me. Mr. Watt has left. He just left, but I am glad that you feel that we are doing the right thing.

Mr. LAMDEN. Definitely. We certainly appreciate it.

Miss COLLINS. How do you feel about the Department of Justice recommendation to limit subpoena authority to be used only by Government lawyers and would that hinder your USPS investigations?

Mr. LAMDEN. Well, Madam Chairwoman, we—as I have stated, we do have attorneys within the Inspection Service, both at the operation support groups and with the legal liaison branch of the Postal Inspection Service, and we would certainly ensure that any review of the civil investigative demands be made by these attorneys.

Miss COLLINS. And I notice that you had a recommendation that allowed the Postal Service to share in the proceeds with the local authorities who help with the investigations, and that makes sense.

Mr. LAMDEN. Yes.

Miss COLLINS. That makes good sense. So, all right, thank you very, very much.

Mr. LAMDEN. Thank you very much.

Miss COLLINS. I have one more.

Mr. Maxwell, are you testifying?

Mr. MAXWELL. Yes.

Miss COLLINS. Oh, you are testifying?

Mr. MAXWELL. Yes, I am accompanying.

Mr. LAMDEN. He is accompanying me, Madam Chairwoman. He is in charge of our forfeiture group.

Miss COLLINS. Did you have any comments you wanted to make?

Mr. MAXWELL. No, I did not. I was just here to answer questions.

Miss COLLINS. All right then.

Well, I thank you very much, all of our witnesses. Your testimony has been very helpful to me so that we know what we have to do to make this a great piece of legislation and we will call you back. We might have to have another hearing before the bill is marked up. Thank you very much.

This concludes the committee hearing on H.R. 4070 and H.R. 4071. Thank you.

[Whereupon, at 11:03 a.m., the subcommittee was adjourned.]



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