



Testimony of
Charles Bell, Programs Director
Consumers Union
Before the
Subcommittee on Commerce, Trade and
Consumer Protection
U.S. House of Representatives
Hearing on
H.R. 4501, the Guarantee of a Legitimate Deal Act of 2009
May 13, 2010

Introduction

Mr. Chairman, Members of the Committee:

Thank you very much for the invitation to testify on ways to protect consumers who respond to Internet and television offers to exchange precious metals for cash payments through the mail. We commend you for holding this hearing to focus attention on ways to protect consumers and encourage a safer marketplace.

Consumers Union¹ is the independent, non-profit publisher of *Consumer Reports*, *ConsumerReports.org*, and the *Consumerist.com* blog, which empower consumers by informing and entertaining them about the top consumer issues of the day. We directly reach over 4 million print subscribers and 3 million online subscribers, and many more people through pass-along readership, free online content and television and radio. As part of our work, we regularly research and report on misleading and deceptive practices that affect consumers. We report on scams and fraud both to alert consumers, so they can protect themselves; and to alert law enforcement agencies and policymakers, so they can take action to directly curtail and stop these unethical, deceptive and/or fraudulent practices.

¹ Consumers Union, the nonprofit publisher of *Consumer Reports*, is an expert, independent organization whose mission is to work for a fair, just, and safe marketplace for all consumers and to empower consumers to protect themselves. To achieve this mission, we test, inform, and protect. To maintain our independence and impartiality, Consumers Union accepts no outside advertising, no free test samples, and has no agenda other than the interests of consumers. Consumers Union supports itself through the sale of our information products and services, individual contributions, and a few noncommercial grants.

Over the last several years, we have researched and reported about consumer problems related to cash-for-precious-metals services which we think are worthy of attention by your Subcommittee. Beginning in 2008, the *Consumerist.com* published a series of articles and blog-posts regarding cash-for-precious-metal services, including an in-depth investigative article entitled “The Article that Cash4Gold Doesn’t Want You to Read,” on September 2, 2009, which is attached to our testimony. Through research and investigative reporting, Ben Popken and Meg Marco of the *Consumerist.com* uncovered a range of questionable practices that raise concerns that consumers are being misled and/or short-changed by such services, many of which are heavily promoted through TV ads and the internet. Our overriding concern is that when financial circumstances lead consumers to make the difficult decision to part with their gold, silver or other precious metals -- items that may have both economic and sentimental value -- they should be guaranteed a fair process.

Consumers Need Fair Rules of the Road for Online Cash-For-Metal Transactions

Based upon our research, and the negative experiences of a significant number of customers, we believe that additional consumer protections are needed to create fair rules of the road for online cash-for-metal services. As described below, we generally do not recommend that consumers use such heavily advertised services, because high expenses for marketing make it unlikely that consumers will receive fair economic value for their jewelry or other items. In general, we think consumers would be better off to take their jewelry or other items to several local jewelers or pawn shops for appraisal, and solicit competing offers from reputable companies or third-party buyers.

At the same time, however, we believe that consumers who do decide to use online services need to have a fair chance to negotiate a better offer, and to promptly obtain the safe return of their gold or precious metal, with appropriate insurance, if they decline that offer. We would emphasize that consumers who choose to use such heavily advertised services will still be at risk of receiving lower prices, but at least they will have a fair chance to protect their interests and obtain a favorable offer within a proscribed period after submitting the items for appraisal.

H.R. 4501, introduced by Rep. Anthony Weiner, contains strong, pro-consumer provisions that would strengthen consumer rights in online cash-for-metals transactions, and create fairer rules of the road to prevent misunderstandings and complaints. The bill would make it a crime to melt or permanently destroy any proffered items of jewelry or precious metal, before the purchaser has received an affirmative acceptance of the offer from the consumer. HR 4501 would also require a fair return period for consumers who submit precious metals for appraisal and sale through the mail or other delivery services. If consumers decide to reject the offered price, they should be guaranteed the swift return of their jewelry, and proper insurance during shipment. HR 4501 would also give the Federal Trade Commission strong enforcement powers to ensure that these companies act fairly, and do not engage in deceptive marketing and sales practices.

These common-sense protections are consistent with both common sense and what customers have a right to expect from this relatively unique type of business. As mentioned above, the remote, relatively anonymous nature of the online, mail-in, cash-for-metals transactions introduces new types of risks or uncertainty for the consumer. H.R. 4501 creates fair rules of the road that help to address and minimize these risks, and clarify channels of communication so both the consumer and the purchaser have appropriate rules and protocols to

minimize bad outcomes. For these reasons, Consumers Union strongly supports H.R. 4501, and urges its swift passage by the Congress.

Online Cash-For-Metal Transactions: Consumer Protection Issues

Based upon our research, we believe that a significant number of consumers are patronizing online services that offer to purchase gold or other precious metals, to help pay bills or make ends meet. Such services offer to quickly “turn your jewelry into cash,” and invite the consumer to mail or ship their jewelry or other precious metals to a servicing center, and receive a check for its purported value in just a few days.

The precious metals that consumers send in are often gold or silver jewelry, wedding rings, heirlooms, or other items that are dear to the holder. These items were not necessarily purchased in the first instance for investment value. Indeed, the consumer may have little idea how much the items were worth when they were purchased, or what they are worth at current market prices.

Online, mail-in cash-for-precious-metals services are a relatively recent development in the consumer marketplace. The creation and development of this industry has been facilitated by the growth of the Internet, and the ability of the cash-for-metals firms to broadly market their services through print and electronic advertising.

Prior to the advent of online services, consumers would have been more likely to sell such items in person to local jewelers or pawn shops or other local third-party purchasers. The fact that such transactions take place in person is no guarantee that the consumer will get a fair deal, but the consumer can interact directly with a local company or third-party buyer who can

tell them what their items are worth, on the spot, in person. Further, they can retain physical possession of the items until they chose to accept an offer for purchase.

The remote, relatively anonymous nature of the online, mail-in, cash-for-metals transactions -- and the relative lag time in imputing value and receiving payment for the customer's gold or precious metal -- introduces new types of risks or uncertainty for the consumer.

A second challenging aspect of the cash-for-precious-metals business is that the prospective sale may be an impulsive decision for the consumer, who may be responding to well-placed Internet or TV ad. The consumer may be in a hurry to convert his personal assets to cash, and may not have systematically thought through his options to secure alternative offers for the sale of their jewelry or precious metals. While this does not excuse consumers from the responsibility to look out for their own economic interests, it does raise the possibility that large numbers of consumers, particularly in times of high gold prices or economic distress, may be enticed through slick advertisements to sell their items for less than fair market value.

With respect to this point, in general, Consumers Union does not recommend that consumers patronize heavily advertised online precious metals dealers, because these companies tend to pay very little. The large amount of money these companies spend on advertising cuts into their profit margin, which reduces the amount they are able to pay to consumers. Instead, we recommend that consumers have their gold independently appraised and consider comparable local offers before submitting it through the mail, so they will have a good idea how much their gold or precious metals are worth, and what an acceptable offer would be.

However, this still leaves us the question of what baseline protections consumers who use online, mail-in cash-for-precious-metal services should be entitled to. The primary concerns that were raised by our investigations into these services include the following:

1. Cash-for-precious-metal services appear to routinely “lowball” their customers

Company whistleblowers and consumers have reported that the initial offer to purchase the consumers’ jewelry or previous metal items is often very low, as little as one-third of the actual value of the item, or less. This leads to a situation where consumers need to negotiate with the vendor to obtain a fair or mutually agreeable price for their assets -- but such negotiations are not always successful. Company staff representatives may also receive financial incentives to limit payouts to customers, so that even if the offer to the consumer is raised several times, it may still be significantly less than the item is worth.

A 2009 study by *Consumer Reports* found that cash-for-precious-metal services paid between 11% and 29% of the day’s market price for gold, while local jewelers and pawn shops offered significantly higher amounts.² To evaluate the cash-for-precious metal services, *Consumer Reports'* "mystery shoppers" sent 24 identical gold pendants and chains to industry leader Cash4Gold and some of its national competitors. The necklaces were purchased for \$175 each. We calculated their "melt value," which is how much the raw gold was worth, as about \$70 each, based on the market price for gold when the necklaces were received by the companies (during the test period, the price of gold fluctuated, but never dropped below \$900 an ounce).

² Popken, Ben and Marco, Meg. “The Article Cash4Gold Doesn’t Want You to Read,” *The Consumerist.com*, September 2, 2009.

Our tests, which lasted from May through early July, 2009, found that Cash4Gold and its competitors offered simple and relatively transparent service. Online tracking systems were updated promptly, the companies generally mailed out checks within a day or two, and customer service reps were courteous and professional. The actual offers, however, were miserly. Cash4Gold sent back checks ranging from \$7.60 to \$12.72 (or 11% to 18% of melt value), the lowest amounts of any firm. But others weren't far behind: GoldKit offered \$7.81 to \$20.59, and GoldPaq \$8.22 to \$13.11. Each of those deals was worse than what our mystery shoppers could get at local jewelers and pawn shops, which offered anywhere from \$25 to \$50 (or 36% to 71% of melt value).

Other news reports, by ABC's Good Morning America and the Boston Globe, suggest lowball checks are typical.³ These results reinforce our advice that consumers should not use these highly marketed services because the payments they offer are too low. Consumers should also be aware that operators of the cash-for-precious metals services admit that they don't offer the best prices.

1) Cash4Gold CEO Jeff Aronson has said the company pays from as little as 20% to as much as 80% of the gold's value. And in an interview with Good Morning America, he suggested that customers who want more money should take their business elsewhere. "If all you care about is the net dollar, and you're willing to go to the seedy part of town, and you're willing to travel around ... I want you to go there," Aronson said.

2) "We're bridging the gap between couch and consumers," said Daniel Brauser, Chief Financial Officer of Money4Gold. "...We're not going to go out there and say we give you the biggest payout. But you [as consumers] incur zero cost and zero usage of your time."⁴

³ Leamy, Elisabeth and Weber, Vanessa. "All That Glitters Isn't A Good Deal," ABC News Good Morning America, Tuesday, May 11, 2010; and Woolhouse, Megan, "All That Glitters May Not Be Cash," The Boston Globe, March 5, 2010.

⁴ Shah, Nirvi. "Broward Businesses cash in on gold buy-back craze," Miami Herald, March 21, 2010, Page 1.

However, such statements may stand in stark contrast to company marketing claims. For example, one Cash4Gold TV ad boasts that ““With gold, silver and platinum at their highest value in decades, Cash4Gold.com is able to give you top dollar for your unwanted jewelry.” The same ad goes on: "Because we own our refinery, we can cut out the middleman, which means more cash in your pocket.”⁵

There are also issues related to making payouts based on "melt value."

“The ads generally do not talk about how melt value is defined, or list company prices or pricing methodology. A consumer who is new to selling their gold or other precious metals has little or no idea of the vast difference between the retail price of gold (marked up 200-300% already) and melt value,” according to Ben Popken, co-managing editor of the *Consumerist.com*. “In addition, cash-for-metal firms do not make payouts for the large amounts of copper, tin and silver and other alloys found in the jewelry. All that gets melted down and resold as well for pure profit.”

2. Consumers may receive late payments

Our *Consumer Reports* mystery shopper test turned up no problems with mailing time for payments, at least for the period of our study. However, many consumers have complained about this late checks or non-receipt of payment.

In our report on this issue, Brodie White, President of the Better Business Bureau of Southeast Florida and the Caribbean, told the *Consumerist.com* that delayed checks, low payments and lost packages are among the most common complaints he's received about industry leader Cash4Gold. Why were late checks a particular problem? "When [the customer] got the check, the time to execute the refund policy was either over or about to expire."

⁵ Op. cit. #2.

The BBB currently rates Cash4Gold a C- on its A+ -to-F rating scale, but White said the company has been rated as low as a D-, and that the BBB revoked its membership. Complaints about late checks have also been received by the Florida Attorney General, who opened a civil investigation into Cash4Gold.⁶ According to the Attorney General's web site:

“There is a pattern of complaints from consumers who allege that they are not paid nearly enough for the gold they send to Cash 4 Gold, some checks are as small as .07 cents. Consumers also state that they have contacted the company within the 10/12 day period and were not satisfied with their checks and wanted their gold returned, only to be told it was already melted. Others allege that when they send the check back to the company for the return of their gold, the gold never arrives back. Numerous complaints allege that the company says they never received the gold or that the envelope was empty when it arrived. There are many complaints that the "Insurance" offered is totally inadequate.”⁷

Finally, in a report by an ABC affiliate in November 2008, a reporter said she waited two weeks to get a Cash4Gold check, and then got the company to nearly triple its original offer. The final offer was still less than half of what the reporter said a local pawn shop offered her.

3. Consumers may not be able to obtain the secure return of their proffered items,

Related to the above, if the consumer is unwilling to accept the offered price for their jewelry or precious metal items, because he believes it is too low, the consumer may not be able to get his items back because a) the items have been “lost” in shipment to the cash-for-metals company b) the purchaser has already melted them down, or c) the purchaser did not send them back in a secure way, with an appropriate level of insurance.

In some cases, there may also be a lag time in payment or the company's response to the consumer, which contributes to the premature melting and destruction of the jewelry or precious

⁶ Attorney General, State of Florida, announcement of civil investigation at: http://www.myfloridalegal.com/lit_ec.nsf/investigations/A0CC38A2D52881B585257674007087DA

⁷ Op. cit. #6.

metals before the consumer has agreed to the offer. This obviously makes the return of the item impossible, and the consumer also likely has little leverage to improve the offer, as the transaction has been consummated and is now a *fait accompli*.

Also, company return policies may make it difficult or impossible for the consumer to get their items back before the transaction is effectively consummated. As one example, Cash4Gold's has a 12-day return policy for consumers to return the payment check if they choose to decline the company's offer, but the clock starts ticking *on the issue date of the check*. If the check is delayed in the mail, this means that consumers may have relatively few days to decline the offer if they determine they do not want to accept it. Also, consumers who opt for direct deposit of the funds may in effect waive their rights to retrieve their items, if they later determine the offer was too low.

"There are definitely some tragic stories I encountered while reporting this story," said Ben Popken, co-managing editor of the *Consumerist.com*. "In one, an elderly Idaho woman on a fixed income was telling me how, after fighting for a fairer payout for months, she finally accepted one that was only a few bucks more. I asked her why she gave in. 'Because I needed to buy groceries,' she said. Another was a quadriplegic who had a trove of silver and gold antiques, some from the Civil War. Thinking that Cash4Gold service was a convenience, she sent them in, only to get back pennies on the dollar."

Consumers Need Fair Rules of The Road

As mentioned above, Consumers Union believes that additional consumer protections are needed to create fair rules of the road for online cash-for-metal services. Again, we generally do not recommend that consumers use such heavily advertised services, because their business

model makes it unlikely that consumers will receive fair economic value for their jewelry or other items. We think consumers would be better off to take their jewelry or other items to several local jewelers or pawn shops for appraisal, and solicit competing offers from trusted companies or third-party buyers.

At the same time, we believe that consumers who do decide to use online services need to have a fair chance to negotiate a better offer, and to promptly obtain the safe return of their gold or precious metal, with appropriate insurance, if they decline that offer. Consumers who choose to use such heavily advertised services will still be at risk of receiving lower prices, but at least they will have a fair chance to protect their interests and obtain a favorable offer within a proscribed period after submitting the items for appraisal.

H.R. 4501, the GOLD Act, introduced by Rep. Anthony Weiner, contains strong, pro-consumer provisions that would strengthen consumer rights in online cash-for-metals transactions, and create fairer rules of the road to prevent misunderstandings and complaints. The bill would make it a crime to melt or permanently destroy any proffered items of jewelry or precious metal, before the purchaser has received an affirmative acceptance of the offer from the consumer. HR 4501 would also require a fair return period for consumers who submit precious metals for appraisal and sale through the mail or other delivery services. If consumers decide to reject the offered price, they should be guaranteed the swift return of their jewelry, and proper insurance during shipment. HR 4501 would also give the Federal Trade Commission strong enforcement powers to ensure that these companies act fairly, and do not engage in deceptive marketing and sales practices.

These common-sense protections are consistent with both common sense and what customers have a right to expect from this relatively unique type of business. As mentioned

above, the remote, relatively anonymous nature of the online, mail-in, cash-for-metals transactions introduces new types of risks or uncertainty for the consumer. H.R. 4501 creates fair rules of the road that help to address and minimize these risks, and clarify channels of communication so both the consumer and the purchaser have appropriate rules and protocols to minimize bad outcomes. For these reasons, Consumers Union strongly supports H.R. 4501, and urges its swift passage by the Congress.

Conclusion

Mr. Chairman, Members of the Committee, thank you very much for the opportunity to testify here today about this critically important consumer protection issue. We thank you for your efforts to protect consumers in these tough economic times, and we look forward to working with you as you move forward in addressing these issues.