[DISCUSSION DRAFT]

117TH CONGRESS
1ST SESSION
H. R. ______

To amend the Consumer Financial Protection Act of 2010 to authorize grants to States and other eligible entities to protect seniors and vulnerable adults from misleading and fraudulent marketing or sales practices related to the COVID–19 pandemic and other unlawful scams, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. GOTTHEIMER introduced the following bill; which was referred to the Committee on ______

A BILL

To amend the Consumer Financial Protection Act of 2010 to authorize grants to States and other eligible entities to protect seniors and vulnerable adults from misleading and fraudulent marketing or sales practices related to the COVID–19 pandemic and other unlawful scams, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
SECTION 1. SHORT TITLE.

This Act may be cited as the “Senior Investor Pandemic and Fraud Protection Act” or the “Empowering States to Protect Seniors from Bad Actors Act”.

SEC. 2. PROTECTING SENIORS AND VULNERABLE ADULTS FROM MISLEADING AND FRAUDULENT MARKETING OR SALES PRACTICES RELATED TO THE PANDEMIC AND OTHER UNLAWFUL SCAMS.

(a) In General.—The Consumer Financial Protection Act of 2010 (12 U.S.C. 5481 et seq.) is amended by inserting after section 1037 the following:

“SEC. 1038. PROTECTING SENIORS AND VULNERABLE ADULTS FROM MISLEADING AND FRAUDULENT MARKETING OR SALES PRACTICES RELATED TO THE PANDEMIC AND OTHER UNLAWFUL SCAMS.

“(a) DEFINITIONS.—As used in this section—

“(1) the term ‘eligible entity’ means—

“(A) a securities commission (or any agency or office performing like functions) of a State that the Division determines has adopted rules or implemented standards on the appropriate use of designations in the offer or sale of securities or the provision of investment advice that meet or exceed the minimum requirements
of the NASAA Model Rule on the Use of Senior-Specific Certifications and Professional Designations (or any successor thereto);

“(B) an insurance commission (or any agency or office performing like functions) of any State that the Division determines has adopted rules or implemented standards on the appropriate use of designations in the sale of insurance products that, to the extent practicable, conform to the minimum requirements of the National Association of Insurance Commissioners’ Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities (or any successor thereto); and

“(C) a consumer protection agency of a State—

“(i) if—

“(I) a securities commission (or any agency or office performing like functions) of the State is described under subparagraph (A); or

“(II) is an insurance commission (or any agency or office performing
like functions) of the State is described under subparagraph (B); and

“(ii) such agency coordinates with a securities commission described under subparagraph (A) or an insurance commission described under subparagraph (B) on the application described in subsection (e);

“(2) the term ‘financial product’ means a security, an insurance product (including an insurance product that pays a return, whether fixed or variable), a bank product, and a loan product;

“(3) the term ‘misleading designation’—

“(A) means a certification, professional designation, or other purported credential that indicates or implies that a salesperson or adviser has special certification or training in advising or servicing seniors; and

“(B) does not include a certification, professional designation, license, or other credential that—

“(i) was issued by or obtained from an academic institution having regional accreditation;

“(ii) meets the standards for certifications and professional designations out-
lined by the NASAA Model Rule on the Use of Senior-Specific Certifications and Professional Designations (or any successor thereto) or by the Model Regulations on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities, adopted by the National Association of Insurance Commissioners (or any successor thereto); or

“(iii) was issued by or obtained from a State;

“(4) the term ‘misleading or fraudulent marketing’ means—

“(A) the use of a misleading designation or other sales or marketing practice illegal under State securities or insurance laws by a person that sells to or advises a senior or other vulnerable adult in connection with the sale of a financial product; or

“(B) fraud or an attempt to defraud, as those terms are defined under applicable State and Federal law;

“(5) the term ‘Pandemic’ means the Covid–19 pandemic;
“(6) the term ‘NASAA’ means the North American Securities Administrators Association;

“(7) the term ‘Division’ means the Consumer Education and Engagement Division of the Bureau;

“(8) the term ‘senior’ means any individual who has attained the age of 62 years or older;

“(9) the term ‘State’ has the same meaning as in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)); and

“(10) the term ‘vulnerable adult’ means any individual that an eligible entity judges to be at elevated risk to Pandemic-related frauds.

“(b) GRANTS TO STATES FOR ENHANCED PROTECTION OF SENIORS AND VULNERABLE ADULTS.—The Division shall establish a program under which the Division shall make grants to States or eligible entities—

“(1) to hire staff to identify, investigate, and prosecute (through civil, administrative, or criminal enforcement actions), cases involving misleading or fraudulent marketing, including those relating to the Pandemic;

“(2) to fund technology, equipment, and training for regulators, prosecutors, and law enforcement officers, in order to identify salespersons and advisors who target seniors or vulnerable adults with mis-
leading or fraudulent marketing, including those relating to the Pandemic;

“(3) to fund technology, equipment, and training for prosecutors to increase the successful prosecution of persons engaging in misleading or fraudulent marketing, including those relating to the Pandemic;

“(4) to provide educational materials and training to regulators on the Pandemic and misleading or fraudulent marketing, including relating to the Pandemic;

“(5) to provide educational materials and training to seniors and vulnerable adults to increase awareness and understanding of misleading or fraudulent marketing, particularly relating to the Pandemic;

“(6) to develop comprehensive plans to combat misleading or fraudulent marketing of financial products to seniors and vulnerable adults, including relating to the Pandemic; and

“(7) to make referrals to the Bureau, State consumer protection agencies, and other appropriate State and Federal law enforcement and regulatory agencies, as appropriate.
“(c) APPLICATION.—A State or eligible entity desiring a grant under this section shall submit an application to the Division, in such form and in such a manner as the Division may determine, that includes—

“(1) a proposal for activities to protect seniors and vulnerable adults from misleading or fraudulent marketing that are proposed to be funded using a grant under this section, including—

“(A) an identification of the scope of the problem of misleading or fraudulent marketing in the State;

“(B) a description of how the proposed activities would—

“(i) protect seniors or vulnerable adults from misleading or fraudulent marketing in the sale of financial products, including those relating to the Pandemic;

“(ii) assist in the investigation and prosecution of those engaged in misleading or fraudulent marketing of financial products, including those relating to the Pandemic; and

“(iii) deter, discourage, or reduce cases of misleading or fraudulent mar-
keting, including those relating to the Pan-
demic; and

“(C) a description of how the proposed ac-
tivities would be coordinated with other State
efforts; and

“(2) any other information, as the Division de-
termines is appropriate.

“(d) PERFORMANCE OBJECTIVES AND REPORTING
REQUIREMENTS.—The Division may establish such per-
formance objectives and reporting requirements for States
and eligible entities receiving a grant under this section
as the Division determines are necessary to carry out and
assess the effectiveness of the program under this section.

“(e) GRANT AMOUNTS.—

“(1) MAXIMUM AMOUNT FOR RECIPIENTS
ADOPTING CERTAIN RULES.—The amount of a grant
under this section may not exceed $500,000 for each
of 2 consecutive fiscal years, if the recipient is a
State, or an eligible entity of a State, that—

“(A) was or is currently the subject of a
declared state of emergency by a State or Fed-
eral authority on the basis of the Pandemic;

“(B) has adopted rules or implemented
standards on the appropriate use of designa-
tions in the offer or sale of securities or invest-
ment advice that meet or exceed the minimum requirements of the NASAA Model Rule on the
Use of Senior-Specific Certifications and Professional Designations (or any successor there-

to); and

“(C) has adopted rules or implemented standards on the appropriate use of designa-
tions in the sale of insurance products that, to the extent practicable, conform to the minimum requirements of the National Association of In-
surance Commissioners’ Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities (or any successor thereto).

“(2) MAXIMUM AMOUNT FOR OTHER RECIPI-
ENTS.—

“(A) IN GENERAL.—The amount of a grant under this section may not exceed $100,000 for each of 2 consecutive fiscal years, if the recipient is a State, or an eligible entity of a State that is not described under para-
graph (1).

“(B) OPPORTUNITY TO ADOPT RULES.— Notwithstanding subparagraph (A), if a grant
recipient described under subparagraph (A) meets the criteria described under subparagraphs (A) through (C) of paragraph (1) before the end of the 180-day period beginning on the date the recipient receives the grant, the recipient may apply for an increase in the grant amount, up to the maximum amount described under paragraph (1).

“(f) Subgrants.—A State or eligible entity that receives a grant under this section may make a subgrant, as the State or eligible entity determines is necessary, to carry out the activities funded using a grant under this section.

“(g) Administrative and Technical Assistance for Grantmaking.—

“(1) In general.—At the request of the Director, any Executive agency (as defined in section 105 of title 5, United States Code) may detail 1 or more employees to the Bureau on a temporary basis for the purpose of providing technical and other assistance, expertise, or support to the Bureau for administering grants made under this section.

“(2) Terms of detail.—With respect to any Federal employee detailed to the Bureau under paragraph (1)—
“(A) the detail shall be without interruption or loss of civil service status or privilege; and

“(B) the Bureau shall reimburse the Executive agency for any costs incurred by the Executive agency relating to the detail described in paragraph (1).

“(h) APPLICATION DATE.—The Bureau shall begin accepting applications under subsection (c) as soon as practicable, but in no case later than 6 months after the date of enactment of this section.”.

(b) FUNDING.—

(1) NON-APPLICABILITY OF FUNDING CAP.—
Section 1017(a)(2) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5497(a)(2)(A)) is amended by adding at the end the following:

“(D) TREATMENT OF SENIOR PROTECTION GRANTS.—In calculating an amount transferred under subparagraph (A), such amount shall not include amounts transferred for purposes of making grants under section 1038.”.

(2) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to prohibit the Consumer Education and Engagement Division of the Bureau of Consumer Financial Protection from using funds
transferred pursuant to section 1017(a)(1) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5497(a)(1)) to carry out the requirements of section 1038 of such Act (as added by this Act).

(c) Clerical Amendment.—The table of contents under section 1(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act is amended by inserting after the item relating to section 1037 the following:

“Sec. 1038. Protecting seniors and vulnerable adults from misleading and fraudulent marketing or sales practices related to the pandemic and other unlawful scams.”