

112TH CONGRESS
1ST SESSION

H. R. 370

To require financial institutions to offer services to protect seniors from affinity scams, to report suspected affinity scams, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 20, 2011

Mr. BACA introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To require financial institutions to offer services to protect seniors from affinity scams, to report suspected affinity scams, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Preventing Affinity
5 Scams for Seniors Act of 2011” or the “PASS Act of
6 2011”.

7 **SEC. 2. FINDINGS.**

8 The Congress finds the following:

1 (1) Financial exploitation of the elderly is be-
2 coming an increasingly familiar problem. Regular re-
3 view of news headlines reveals that elders and vul-
4 nerable adults are victimized routinely by frauds and
5 scams at the hands of strangers as well as loved
6 ones.

7 (2) Older individuals may be targeted merely
8 because they possess more assets, such as savings,
9 annuities, and retirement accounts, stocks and
10 bonds, insurance policies, and property than younger
11 people. People over 50 years of age control at least
12 70 percent of the net worth of the Nation's house-
13 holds.

14 (3) Those elders with cognitive impairments,
15 mental health conditions, or physical disabilities may
16 be dependent upon others (family members, friends,
17 formal and informal caregivers, or court-appointed
18 representatives) for assistance in making financial
19 decisions or carrying out daily transactions, and
20 therefore may be even more vulnerable to theft, ex-
21 ploitation, or undue influence.

22 (4) Affinity scams on seniors involve trans-
23 actions in which a person trusted by the senior uses
24 the relationship to defraud the senior. Millions of el-
25 derly are scammed each year, losing at least

1 \$2,600,000,000 a year to thieves, many of whom are
2 in their own families (conservative estimate given of
3 the schemes left unreported).

4 (5) Elder financial abuse is commonly linked
5 with other forms of abuse and neglect and threatens
6 the health, dignity, and economic security of millions
7 of older Americans. Elder financial abuse has re-
8 ceived limited attention because it is not regarded as
9 visible, life-threatening, or newsworthy as is the
10 physical or sexual abuse of elders.

11 (6) Financial exploitation can be devastating to
12 the victim and is often traced to family members,
13 trusted friends, or caregivers. Financial abuse often
14 occurs with the implied acknowledgment and consent
15 of the elder person and can be more difficult to de-
16 tect.

17 (7) Elder financial abuse affects elders and
18 their families in significant and long-lasting ways by
19 putting enormous emotional duress on the elders, in-
20 creasing their risk of depression, decreasing their
21 quality of life, and increasing unnecessary institu-
22 tionalization.

23 (8) The financial services industry is often the
24 first to detect a change in the pattern of customers
25 with whom they have regular contact. This puts in-

1 stitutions in a unique position to assist in protecting
2 customers and upholding the inherent trust relation-
3 ship with clients.

4 **SEC. 3. DEFINITIONS.**

5 For purposes of this Act:

6 (1) **AFFINITY SCAM.**—The term “affinity scam”
7 means a transaction in which a person trusted by a
8 senior, such as a caregiver, relative, guardian, “new
9 friend”, or service provider, claims to share similar
10 interests or values with the senior, establishes a rela-
11 tionship with the senior (either on the person’s own
12 initiative or through some other method, such as a
13 court-appointed guardianship), and then uses the re-
14 lationship to defraud the senior.

15 (2) **FINANCIAL INSTITUTION.**—The term “fi-
16 nancial institution” means—

17 (A) an insured bank (as defined in section
18 3(h) of the Federal Deposit Insurance Act (12
19 U.S.C. 1813(h));

20 (B) a credit union; and

21 (C) a thrift institution.

22 (3) **SENIOR.**—The term “senior” means an in-
23 dividual who is at least 65 years of age.

1 **SEC. 4. AFFINITY SCAM EDUCATION AND TRAINING.**

2 (a) **STAFF EDUCATION AND TRAINING.**—Each finan-
3 cial institution shall—

4 (1) educate the staff of the financial institution
5 about affinity scams and how to identify trans-
6 actions that may be part of an affinity scam; and

7 (2) train staff members on educating seniors
8 about affinity scams.

9 (b) **SENIOR CUSTOMER EDUCATION.**—Each financial
10 institution shall provide educational materials and other
11 information to seniors who maintain a deposit account
12 with the financial institution about affinity scams and how
13 to identify transactions that may be part of an affinity
14 scam.

15 (c) **EDUCATION AND TRAINING OVERSIGHT.**—The
16 Bureau of Consumer Financial Protection shall—

17 (1) issue such regulations as are necessary to
18 carry out this section; and

19 (2) periodically audit financial institutions to
20 ensure compliance with such regulations.

21 **SEC. 5. SENIOR PROTECTION ACCOUNTS.**

22 (a) **IN GENERAL.**—Each financial institution shall
23 offer seniors a type of checking account to be known as
24 a “senior protection account”.

25 (b) **SENIOR PROTECTION ACCOUNT REQUIRE-**
26 **MENTS.**—

1 (1) IN GENERAL.—With respect to a senior who
2 maintains a senior protection account with a finan-
3 cial institution, if the financial institution receives a
4 transaction request to debit such account and, be-
5 fore processing the transaction, the financial institu-
6 tion identifies the transaction as possibly being part
7 of an affinity scam, the financial institution shall—

8 (A) not process the transaction; and

9 (B) initiate an investigation in order to de-
10 termine if such transaction is part of an affinity
11 scam or is legitimate.

12 (2) INVESTIGATION.—With respect to a trans-
13 action that is the basis of an investigation described
14 under paragraph (1)(B), a financial institution
15 shall—

16 (A) notify the senior whose account the
17 transaction would debit, if processed, that the
18 financial institution—

19 (i) has identified the transaction as
20 possibly being part of an affinity scam;
21 and

22 (ii) has not yet processed the trans-
23 action, pending the result of an investiga-
24 tion;

1 (B) if the financial institution determines
2 that the transaction is part of an affinity
3 scam—

4 (i) notify the senior of such deter-
5 mination;

6 (ii) refer such transaction to the ap-
7 propriate law enforcement agency; and

8 (iii) report such transaction to the
9 Bureau of Consumer Financial Protection;
10 and

11 (C) if the financial institution does not de-
12 termine that the transaction is part of an affini-
13 ty scam—

14 (i) notify the senior of such deter-
15 mination; and

16 (ii) process such transaction not later
17 than 7 business days from the date on
18 which the investigation was started, unless
19 instructed otherwise by the senior.

20 (3) DESIGNATION OF STAFF PERSON.—Each fi-
21 nancial institution shall designate a single staff per-
22 son who shall be notified whenever a staff person
23 identifies a transaction that is possibly part of an af-
24 finity scam.

1 (4) LIABILITY.—A financial institution that
2 fails to process a transaction or that refers a trans-
3 action to law enforcement pursuant to the require-
4 ments of this subsection shall not be liable to any
5 person under any law or regulation of the United
6 States, any constitution, law, or regulation of any
7 State or political subdivision of any State, or under
8 any contract or other legally enforceable agreement
9 (including any arbitration agreement), for such fail-
10 ure or referral.

11 (c) RULEMAKING.—The Secretary of the Treasury
12 shall issue such regulations as are necessary to carry out
13 this section.

14 (d) TAX DEDUCTION.—

15 (1) IN GENERAL.—The Secretary of the Treas-
16 ury shall by regulation establish a deduction to be
17 allowed in computing the taxable income of financial
18 institutions for purposes of the Internal Revenue
19 Code of 1986.

20 (2) AMOUNT OF DEDUCTION.—Such deduction
21 with respect to any financial institution for a taxable
22 year shall be an amount equal to 0.77 percent of the
23 average of the amount of deposits held by such fi-
24 nancial institution in senior protection accounts for
25 each day during such taxable year.

1 (e) CIVIL LIABILITY.—Any financial institution that
2 fails to comply with any provision of this section with re-
3 spect to a senior shall be liable to such senior in an
4 amount equal to the sum of the following:

5 (1) ACTUAL DAMAGES.—The amount of any ac-
6 tual damage sustained by the senior as a result of
7 such failure.

8 (2) ATTORNEYS' FEES.—In the case of any suc-
9 cessful action to enforce any liability under para-
10 graph (1), the costs of the action, together with rea-
11 sonable attorneys' fees.

12 (f) NONDISCRIMINATION.—A financial institution
13 may not discriminate against seniors in any fees or other
14 charges required by the financial institution in order to
15 cover the cost to the financial institution of implementing
16 the requirements of this Act.

17 **SEC. 6. ADDING AFFINITY SCAMS TARGETING SENIORS TO**
18 **THE SUSPICIOUS TRANSACTION REPORTING**
19 **REQUIREMENT.**

20 Section 5318(g)(1) of title 31, United States Code,
21 is amended—

22 (1) by striking “The Secretary” and inserting
23 the following:

24 “(A) POSSIBLE VIOLATION OF LAW OR
25 REGULATION.—The Secretary”; and

1 (2) by adding at the end the following new sub-
2 paragraph:

3 “(B) POSSIBLE AFFINITY SCAM TAR-
4 GETING SENIORS.—

5 “(i) IN GENERAL.—The Secretary
6 shall require each financial institution, and
7 each director, officer, employee, or agent of
8 such financial institution, to report any
9 suspicious transaction relevant to a pos-
10 sible affinity scam.

11 “(ii) DEFINITIONS.—For purposes of
12 this subparagraph:

13 “(I) AFFINITY SCAM.—The term
14 ‘affinity scam’ means a transaction in
15 which a person trusted by a senior,
16 such as a caregiver, relative, guardian,
17 ‘new friend’, or service provider,
18 claims to share similar interests or
19 values with the senior, establishes a
20 relationship with the senior (either on
21 the person’s own initiative or through
22 some other method, such as a court-
23 appointed guardianship), and then
24 uses the relationship to defraud the
25 senior.

1 “(II) SENIOR.—The term ‘senior’
2 means an individual who is at least 65
3 years of age.”.

4 **SEC. 7. EFFECTIVE DATE.**

5 This Act, and the amendments made by this Act,
6 shall take effect after the end of the 6-month period begin-
7 ning on the date of the enactment of this Act.

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