

HODES
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AMENDMENT TO THE DISCUSSION DRAFT OF OCTOBER 1, 2009 [INVESTOR PROTECTION ACT OF 2009]

OFFERED BY MR. HODES OF NEW HAMPSHIRE

At the end of the bill, insert the following new title:

1 **TITLE VII—SENIOR INVESTMENT**
2 **PROTECTION**

3 **SEC. 701. FINDINGS.**

4 Congress finds that—

5 (1) many seniors are targeted by salespersons
6 and advisers using misleading certifications and pro-
7 fessional designations;

8 (2) many certifications and professional des-
9 ignations used by salespersons and advisers rep-
10 resent limited training or expertise, and may in fact
11 be of no value with respect to advising seniors on fi-
12 nancial and estate planning matters, and far too
13 often, such designations are obtained simply by at-
14 tending a weekend seminar and passing an open
15 book, multiple choice test;

16 (3) many seniors have lost their life savings be-
17 cause salespersons and advisers holding a misleading
18 designation have steered them toward products that

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1 were unsuitable for them, given their retirement
2 needs and life expectancies;

3 (4) seniors have a right to clearly know whether
4 they are working with a qualified adviser who under-
5 stands the products and is working in their best in-
6 terest or a self-interested salesperson or adviser ad-
7 vocating particular products; and

8 (5) many existing State laws and enforcement
9 measures addressing the use of certifications, profes-
10 sional designations, and suitability standards in sell-
11 ing financial products to seniors are inadequate to
12 protect senior investors from salespersons and advis-
13 ers using such designations.

14 **SEC. 702. DEFINITIONS.**

15 For purposes of this title:

16 (1) **MISLEADING DESIGNATION.**—The term
17 “misleading designation”—

18 (A) means the use of a purported certifi-
19 cation, professional designation, or other cre-
20 dential, that indicates or implies that a sales-
21 person or adviser has special certification or
22 training in advising or servicing seniors; and

23 (B) does not include any legitimate certifi-
24 cation, professional designation, license, or
25 other credential, if—

1 (i) it has been offered by an academic
2 institution having regional accreditation; or
3 (ii) it meets the standards for certifi-
4 cations, licenses, and professional designa-
5 tions outlined by the North American Se-
6 curities Administrators Association (in this
7 title referred to as the “NASAA”) Model
8 Rule on the Use of Senior-Specific Certifi-
9 cations and Professional Designations, as
10 in effect on the date of the enactment of
11 this Act, or any successor thereto, or it
12 was issued by or obtained from any State.

13 (2) FINANCIAL PRODUCT.—The term “financial
14 product” means securities, insurance products (in-
15 cluding insurance products which pay a return,
16 whether fixed or variable), and bank and loan prod-
17 ucts.

18 (3) MISLEADING OR FRAUDULENT MAR-
19 KETING.—The term “misleading or fraudulent mar-
20 keting” means the use of a misleading designation
21 when selling to or advising a senior about the sale
22 of a financial product.

23 (4) SENIOR.—The term “senior” means any in-
24 dividual who has attained the age of 62 years or
25 more.

1 (5) STATE.—The term “State” means each of
2 the 50 States, the District of Columbia, and the un-
3 incorporated territories of Puerto Rico and the U.S.
4 Virgin Islands.

5 **SEC. 703. GRANTS TO STATES FOR ENHANCED PROTECTION**
6 **OF SENIORS FROM BEING MISLEAD BY FALSE**
7 **DESIGNATIONS.**

8 (a) GRANT PROGRAM.—The Secretary of the Treas-
9 ury (in this title referred to as the “Secretary”)—

10 (1) shall establish a program in accordance with
11 this title to provide grants to States—

12 (A) to investigate and prosecute misleading
13 and fraudulent marketing practices; or

14 (B) to develop educational materials and
15 training aimed at reducing misleading and
16 fraudulent marketing of financial products to-
17 ward seniors; and

18 (2) may establish such performance objectives,
19 reporting requirements, and application procedures
20 for States and State agencies receiving grants under
21 this title as the Secretary determines are necessary
22 to carry out and assess the effectiveness of the pro-
23 gram under this title.

24 (b) USE OF GRANT AMOUNTS.—A grant under this
25 title may be used (including through subgrants) by the

1 State or the appropriate State agency designated by the
2 State—

3 (1) to fund additional staff to identify, inves-
4 tigate, and prosecute (through civil, administrative,
5 or criminal enforcement actions) cases involving mis-
6 leading or fraudulent marketing of financial prod-
7 ucts to seniors;

8 (2) to fund technology, equipment, and training
9 for regulators, prosecutors, and law enforcement in
10 order to identify salespersons and advisers who tar-
11 get seniors through the use of misleading designa-
12 tions;

13 (3) to fund technology, equipment, and training
14 for prosecutors to increase the successful prosecution
15 of those targeting seniors with the use of misleading
16 designations;

17 (4) to provide educational materials and train-
18 ing to regulators on the appropriateness of the use
19 of designations by salespersons and advisers of fi-
20 nancial products;

21 (5) to provide educational materials and train-
22 ing to seniors to increase their awareness and under-
23 standing of designations; and

1 (6) to develop comprehensive plans to combat
2 misleading or fraudulent marketing of financial
3 products to seniors.

4 (c) GRANT REQUIREMENTS.—

5 (1) MAXIMUM.—The amount of a grant under
6 this title may not exceed \$500,000 per fiscal year
7 per State, if all requirements of paragraphs (2), (3),
8 (4), and (5) are met. Such amount shall be limited
9 to \$100,000 per fiscal year per State in any case in
10 which the State meets the requirements of—

11 (A) paragraphs (2) and (3), but not each
12 of paragraphs (4) and (5); or

13 (B) paragraphs (4) and (5), but not each
14 of paragraphs (2) and (3).

15 (2) STANDARD DESIGNATION RULES FOR SECURITIES.—A State shall have adopted rules on the appropriate use of designations in the offer or sale of securities or investment advice, which shall meet or exceed the minimum requirements of the NASAA Model Rule on the Use of Senior-Specific Certifications and Professional Designations, as in effect on the date of the enactment of this Act, or any successor thereto.

24 (3) SUITABILITY RULES FOR SECURITIES.—A
25 State shall have adopted standard rules on the suit-

1 ability requirements in the sale of securities, which
2 shall, to the extent practicable, conform to the min-
3 imum requirements on suitability imposed by self-
4 regulatory organization rules under the securities
5 laws (as defined in section 3 of the Securities Ex-
6 change Act of 1934).

7 (4) STANDARD DESIGNATION RULES FOR IN-
8 SURANCE PRODUCTS.—A State shall have adopted
9 standard rules on the appropriate use of designa-
10 tions in the sale of insurance products, which shall,
11 to the extent practicable, conform to the minimum
12 requirements of the National Association of Insur-
13 ance Commissioners Model Regulation on the Use of
14 Senior-Specific Certifications and Professional Des-
15 ignations in the Sale of Life Insurance and Annu-
16 ities, as in effect on the date of the enactment of
17 this Act, or any successor thereto.

18 (5) SUITABILITY AND SUPERVISION RULES FOR
19 ANNUITY PRODUCTS.—

20 (A) IN GENERAL.—A State shall have
21 adopted rules governing insurer supervision of,
22 suitability of, and insurer and insurance pro-
23 ducer conduct relating to, the sale of annuity
24 products, including fixed and index annuities.

1 (B) ANNUITY PRODUCTS CRITERIA.—The
2 rules required by subparagraph (A) shall, to the
3 extent practicable, provide—

4 (i) that insurers, and insurance pro-
5 ducers are responsible for, and liable for
6 penalties for, the suitability of each rec-
7 ommended annuity transaction;

8 (ii) that insurers and insurance pro-
9 ducers are required to apply a standard for
10 determining the suitability of each rec-
11 ommended annuity transaction, including
12 fixed and index annuities; that is at least
13 as protective of the interests of the con-
14 sumer as rule 2821(b) of the Financial In-
15 dustry Regulatory Authority (in this para-
16 graph referred to as “FINRA”), as in ef-
17 fect on the date of the enactment of this
18 Act, or any successor to such rule;

19 (iii) that insurers and insurance pro-
20 ducers are required to maintain a process
21 for review of the suitability, and approval
22 or disapproval, of each recommended annu-
23 ity transaction that is at least as protective
24 of the interests of the consumer as the
25 principal review required under rule

1 2821(c) of FINRA, as in effect on the date
2 of the enactment of this Act, or any suc-
3 cessor to such rule;

4 (iv) that insurers and insurance pro-
5 ducers are required to maintain processes
6 for the supervision of direct annuity sales
7 and insurance producer-recommended an-
8 nuity sales (including procedures for the
9 insurer to obtain and confirm consumer
10 suitability information and for the insurer
11 to confirm consumer understanding of the
12 annuity transaction) that are at least as
13 protective of the interests of the consumer
14 as member broker and dealer supervision
15 requirements of FINRA, as in effect on
16 the date of the enactment of this Act, or
17 any successor to such requirements;

18 (v) that insurers are required to verify
19 that each insurance producer successfully
20 completes, and each insurance producer is
21 required to receive, training designed to
22 ensure that the insurance producer is com-
23 petent to recommend each class of annuity;

24 (vi) that insurers are required to
25 verify that insurance producers receive,

1 and insurance producers are required to
2 receive, training regarding the features of
3 each offered annuity product, to an extent
4 that is at least as protective of the inter-
5 ests of the consumer as the FINRA firm
6 element training requirements, as in effect
7 on the date of the enactment of this Act,
8 or any successor to such requirements;

9 (vii) for coordination of such rules
10 with the rules of FINRA governing mem-
11 ber brokers, dealers, and security rep-
12 resentatives, to the extent appropriate,
13 consistent with protecting the interests of
14 consumers, for State insurance regulators
15 to rely on, or to avoid duplication of
16 FINRA rules; and

17 (viii) for exemption from such rules
18 only if such exemption is consistent with
19 the protection of consumers.

20 **SEC. 704. APPLICATIONS.**

21 To be eligible for a grant under this title, the State
22 or appropriate State agency shall submit to the Secretary
23 a proposal to use the grant money to protect seniors from
24 misleading or fraudulent marketing techniques in the offer
25 and sale of financial products, which application shall—

1 (1) identify the scope of the problem;
2 (2) describe how the proposed program will help
3 to protect seniors from misleading or fraudulent
4 marketing in the sale of financial products, includ-
5 ing, at a minimum—

6 (A) by proactively identifying senior vic-
7 tims of misleading and fraudulent marketing in
8 the offer and sale of financial products;

9 (B) how the proposed program can assist
10 in the investigation and prosecution of those
11 using misleading or fraudulent marketing in the
12 offer and sale of financial products to seniors;
13 and

14 (C) how the proposed program can help
15 discourage and reduce future cases of mis-
16 leading or fraudulent marketing in the offer
17 and sale of financial products to seniors; and

18 (3) describe how the proposed program is to be
19 integrated with other existing State efforts.

20 **SEC. 705. LENGTH OF PARTICIPATION.**

21 A State receiving a grant under this title shall be pro-
22 vided assistance funds for a period of 3 years, after which
23 the State may reapply for additional funding.

1 **SEC. 706. AUTHORIZATION OF APPROPRIATIONS.**

2 There are authorized to be appropriated to carry out
3 this title, \$8,000,000 for each of the fiscal years 2011
4 through 2015.

