

ELDER ABUSE PREVENTION AND PROSECUTION ACT

MARCH 23, 2017.—Ordered to be printed

Mr. GRASSLEY, from the Committee on the Judiciary,  
submitted the following

R E P O R T

[To accompany S. 178]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to which was referred the bill (S. 178), to prevent elder abuse and exploitation and improve the justice system's response to victims in elder abuse and exploitation cases, having considered the same, reports favorably thereon, without amendment, and recommends that the bill do pass.

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I. BACKGROUND AND PURPOSE OF THE ELDER ABUSE PREVENTION  
AND PROSECUTION ACT

A. BACKGROUND AND THE NEED FOR LEGISLATION

For a nation that prides itself on institutionalized care and financial support for its older population—with the enactment of the Medicare and Social Security programs, for example—the United States continues to fall short in efforts to end the abuse and exploitation of our nation's elderly population. Congress identified elder

abuse as a serious problem decades ago,<sup>1</sup> but eliminating the problem is difficult, research suggests.

Elder abuse encompasses physical abuse, neglect, financial exploitation, sexual abuse, and emotional or psychological abuse. It can be perpetrated over the phone by a scammer located thousands of miles away (even overseas). It also can be perpetrated at home by a caretaker or family member who is entrusted with a victim's assets or life savings. In all of its various forms, elder abuse can negatively impact victim's health and well-being, increasing the likelihood of their experiencing injuries and developing chronic health conditions.<sup>2</sup> These costs also burden our nation's health care and justice systems at every level of government. Perhaps most troubling, elder abuse robs older Americans of their dignity and quality of life: victims reportedly have a 300 percent higher mortality rate than their peers who were not abused.<sup>3</sup>

At this time, we lack a complete picture of the problem's full impact, not only because data collection is limited, but also because elder abuse in all its forms is believed to be significantly underreported. Some have argued that elder abuse directly impacts at least 10 percent (roughly 5 million) of older Americans each year.<sup>4</sup> Many older Americans are reluctant to report abuse or exploitation due to feelings of embarrassment, a refusal to acknowledge that they were victimized, or, as is often the case, a reliance on the perpetrator as their caretaker. Some estimates indicate that only one in 14 cases of abuse are reported to adult protective services or law enforcement agencies.<sup>5</sup> In the case of elder financial exploitation, underreporting is likely to be even more significant: only one in 44 cases is brought to the attention of authorities, victim advocates maintain.<sup>6</sup> Many victims likely are not receiving adequate help and their abusers are escaping justice.

Compounding these issues, America's elderly population is steadily growing. The U.S. Census Bureau projects that by 2025, more than 62 million Americans will have reached the age of 65 or older, an increase of 78 percent from 2001.<sup>7</sup> By the same time, more than 7.4 million Americans will be age 85 or older, an increase of nearly 68 percent from 2001.<sup>8</sup> As the population of older Americans increases, it is likely that—absent strong, effective, and targeted intervention—the scope and prevalence of elder abuse also will increase.

Of all the forms of elder abuse, financial exploitation probably is the most widespread, costing seniors in the United States an estimated \$2.9 billion annually.<sup>9</sup> Another recent study suggests that

<sup>1</sup>See Subcomm. on Health and Long-Term Care, U.S. House Select Comm. on Aging, *Elder Abuse: A National Disgrace*, Comm. Pub. No. 99-502 (1985).

<sup>2</sup>*Id.*

<sup>3</sup>*Id.* at 2.

<sup>4</sup>Elder Justice Coordinating Council, U.S. Dept. of Health and Human Services, *Report of the Secretary Detailing the Activities of the Elder Justice Coordinating Council for 2012-2014*, 1 (June 2015) available at [http://www.aoa.acl.gov/AoA\\_Programs/Elder\\_Rights/EJCC/docs/EJCC-2012-2014-report-to-congress.pdf](http://www.aoa.acl.gov/AoA_Programs/Elder_Rights/EJCC/docs/EJCC-2012-2014-report-to-congress.pdf).

<sup>5</sup>*Id.* at 1.

<sup>6</sup>Elder Justice Initiative, U.S. Dept. of Justice, *Financial Exploitation Frequently Asked Questions*, available at <https://www.justice.gov/elderjustice/support/faq#is-elder-abuse-underreported> (last visited February 10, 2016).

<sup>7</sup>National Institute of Justice, "Elder Abuse," available at <http://www.nij.gov/topics/crime/elder-abuse/pages/welcome.aspx>.

<sup>8</sup>*Id.*

<sup>9</sup>MetLife Mature Market Institute et al., *The MetLife Study of Elder Financial Abuse: Crimes of Occasion, Desperation, and Predation against America's Elders*, 2 (June 2011) available at

the cost may, in fact, be considerably higher than previously thought, up to \$36 billion annually.<sup>10</sup> Due to its scope and persistently low reporting rates, elder financial exploitation has been dubbed the crime of the 21st century.<sup>11</sup>

Elder financial exploitation encompasses a range of deceitful and criminal acts, including, but not limited to, mail-, telephone-, and Internet-based scams, fraudulent manipulation of wills and other testamentary instruments, the use (or even liquidation) of property or possessions without permission, theft of government benefits, and abuse of powers under a guardianship, conservatorship, or power of attorney. In some cases, it may result in the loss of a lifetime of savings or a family's home.

To date, multiple Federal agencies have taken steps to combat elder abuse and exploitation, yet gaps remain in our understanding of this problem:

**Lack of Training.** According to a report by the Government Accountability Office (GAO), “effectively investigating and prosecuting elder financial exploitation requires special skills and knowledge, which [adult protective services agencies’] workers, law enforcement officers, and district attorneys sometimes lack.”<sup>12</sup> Law enforcement officials at the local level reported receiving little or no training on elder financial exploitation and indicated such training is necessary to build expertise, GAO noted.<sup>13</sup> GAO also indicated that some prosecutors may hesitate to pursue cases of suspected elder financial exploitation “because of competing priorities and limited resources, a continuing belief that elder financial exploitation is primarily a civil issue, or a view of older adult victims as unreliable witnesses.”<sup>14</sup> According to the Department of Justice (DOJ), law enforcement personnel who encounter elder financial exploitation may misclassify it as a civil matter and not respond, if they lack expertise or training in this area.<sup>15</sup>

**Lack of Necessary Data.** Prosecutors, law enforcement, and other practitioners at every level of government continue to be hamstrung by a scarcity of data. According to the Federal Elder Justice Coordinating Council, there is a “significant lack of evidence and data about effective methods and practices to prevent elder abuse,” despite a growing body of evidence about the scope of such abuse and its negative impacts.<sup>16</sup> The National Center on Elder Abuse maintains that knowledge about elder abuse and exploitation lags as much as two decades behind the fields of child abuse and domes-

<https://www.metlife.com/assets/cao/mmi/publications/studies/2011/mmi-elder-financial-abuse.pdf>.

<sup>10</sup>True Link, *The True Link Report on Elder Financial Abuse 2015* (January 2015), available at <http://bit.ly/28JhDBS>.

<sup>11</sup>MetLife Mature Market Institute et al., *The MetLife Study of Elder Financial Abuse: Crimes of Occasion, Desperation, and Predation against America's Elders* 5 (June 2011) available at <https://www.metlife.com/assets/cao/mmi/publications/studies/2011/mmi-elder-financial-abuse.pdf>.

<sup>12</sup>U.S. Gov't Accountability Office, GAO-13-110, *Elder Justice: National Strategy Needed to Effectively Combat Elder Financial Exploitation*, 23 (November 2012) available at <http://gao.gov/assets/660/650074.pdf>.

<sup>13</sup>*Id.*

<sup>14</sup>*Id.*

<sup>15</sup>Elder Justice Initiative, U.S. Dept. of Justice, *Society's Response to Financial Exploitation*, available at <https://www.justice.gov/elderjustice/research/societys-response-to-financial-exploitation.html> (last visited September 19, 2016).

<sup>16</sup>EJCC 2014 Report, *supra* note 2 at 2.

tic violence.<sup>17</sup> Agencies collect some pertinent data (e.g., in some communities, elder abuse incidents are routinely reported to adult protective services agencies), but sizeable gaps remain.<sup>18</sup> If the United States is to effectively fight back against the “silent epidemic” of elder abuse and exploitation, it must arm itself with the tools to do so by closing these knowledge gaps.

**Lack of Coordination among Federal Agencies and with States.** Effectively combating elder abuse requires coordinated efforts. The complex nature of financial crimes against elders, in particular, necessitates a multidisciplinary approach—drawing upon the resources and expertise of multiple agencies and entities at the State and Federal levels. The Elder Justice Act of 2009 (EJA)<sup>19</sup> called for the formation of an Elder Justice Coordinating Council (EJCC), the purpose of which is to make recommendations for the coordination of activities between Federal, State, local, and private agencies and entities relating to elder abuse and exploitation. (Members of the Council include representatives of DOJ, the Department of Health and Human Services (HHS), and other agencies.) Despite this ongoing effort at collaboration, however, GAO has found that the United States lacks a clearly articulated national strategy to prevent and respond to elder financial exploitation.<sup>20</sup>

Coordination efforts also are hampered by breakdowns in coordination and communication. As noted by GAO, some State and local law enforcement officials reported feeling uncertain about how to seek Federal support to respond to interstate and international cases of financial exploitation. (Some reported a lack of contacts at the Federal level for purposes of elder abuse case referrals, while others indicated that the lines of communication between local and Federal agencies tend to be informal, based simply on whom local law enforcement officers know in a Federal agency.<sup>21</sup>) Others voiced concerns to GAO that Federal agencies do not pursue enough of the cases that are referred to them.<sup>22</sup>

In sum, as the nation’s elderly population grows, our families and communities need appropriate tools and resources to prevent further instances of elder abuse and exploitation. Federal resources must be more effectively focused, to better prevent and respond to these incidents.

#### B. THE ELDER ABUSE PREVENTION AND PROSECUTION ACT

The Elder Abuse Prevention and Prosecution Act (“EAPPA”) would help combat elder abuse and financial exploitation in the United States. The legislation promotes the investigation and prosecution of perpetrators who prey upon seniors, enhanced data collection, and robust elder abuse prevention programs.

<sup>17</sup>National Center on Elder Abuse, *Statistics/Data*, available at <https://ncea.acl.gov/whatwedo/research/statistics.html#01>.

<sup>18</sup>The Justice Department, for example, currently “does not collect data on the prevalence of elder financial exploitation nationwide.” U.S. Dept. of Justice response to Chairman Grassley (June 21, 2016) available at <https://www.judiciary.senate.gov/imo/media/doc/2016-06-21%20DOJ%20to%20CEG%20-%20Elder%20Justice%20Initiative.pdf>. Also see “Elder Financial Exploitation Letter to Department of Justice” (May 9, 2016) available at <http://1.usa.gov/28JV5PF>.

<sup>19</sup>See 42 U.S.C. §§ 1320b–25, 1395i–3a, and 1397j–1397m–5.

<sup>20</sup>U.S. Gov’t Accountability Office, GAO–11–208, *Elder Justice: Stronger Federal Leadership Could Enhance National Response to Elder Abuse*, 38 (March 2011) available at <http://www.gao.gov/new.items/d11208.pdf>.

<sup>21</sup>GAO–13–110, *supra* note 12 at 29.

<sup>22</sup>*Id.*

The legislation calls for the designation of at least one Assistant United States Attorney (“AUSA”) to serve as Elder Justice Coordinator in each Federal judicial district. Each such Coordinator would not only prosecute elder abuse cases but also would serve as the judicial district’s point-person on these cases. The Committee expects that each Coordinator also will engage in public outreach to help raise public awareness about abuse and exploitation, ensure the collection of accurate data in elder abuse cases, and serve as an accessible subject matter expert or resource.

This legislation ensures that Federal Bureau of Investigation (“FBI”) agents will receive training on the investigation of elder abuse cases. DOJ would have to establish an elder abuse resource group to facilitate information sharing among Federal prosecutors and, more broadly, to support the prosecution of elder abuse cases. The purpose of such requirements is to ensure that each district’s Elder Justice Coordinator has the necessary investigative and institutional support.

The bill also calls for the influential Attorney General’s Advisory Committee (“AGAC”), which is comprised of leading U.S. Attorneys from across the country, to establish an elder abuse working group for the purpose of providing advice to the Attorney General on DOJ’s elder abuse policies and strategies.

The Attorney General must designate an Elder Justice Coordinator for the entire Justice Department within 60 days of the bill’s enactment. Among other responsibilities, the Coordinator is expected to enhance DOJ’s understanding, prevention, and detection of, as well as its response to, elder abuse. By establishing individual Elder Justice Coordinators in each judicial district that have the support of the FBI, EOUSA, AGAC, and DOJ’s Elder Justice Coordinator, the legislation seeks to ensure that elder abuse investigations and prosecutions will be accorded high priority.

In addition, this bill requires the Chairman of the Federal Trade Commission (“FTC”) to designate an Elder Justice Coordinator within the FTC’s Bureau of Consumer Protection. This individual will be responsible for coordinating and supporting the enforcement and consumer education efforts and policy activities of the FTC on matters related to elder abuse and exploitation. The FTC’s Elder Justice Coordinator also will serve as a central point of contact for victims, State and local government personnel, and others on these matters.

Due to the Committee’s concerns about the harms posed by elder financial exploitation, the bill also ensures that those convicted of financially exploiting seniors through e-mail marketing will be subject to criminal penalties. Mandatory forfeiture and restitution provisions also are included in the legislation.

Successful prevention and prosecution of elder abuse also require the collection of more complete and accurate data on elder abuse offenses. The bill tasks the Attorney General, in consultation with State and local agencies, with developing best practices for data collection. The Attorney General also must furnish technical assistance to State and local partners on the proper implementation of those best practices. The bill also promotes data collection at the Federal level, as it directs HHS to provide DOJ with its annual statistical data regarding adult protective services investigations and findings in elder abuse cases.

Finally, this legislation calls for training and technical assistance for State investigative, prosecutorial, and prevention personnel. Specifically, the Attorney General is charged with creating, compiling, and disseminating materials to State and local agencies regarding the investigation, prosecution, and prevention of elder abuse. The bill also authorizes and encourages States to enter into interstate agreements and compacts to collaborate and share resources and expertise in the fight against elder abuse and exploitation.

## II. HISTORY OF THE BILL AND COMMITTEE CONSIDERATION

### A. HEARING

In the 114th Congress, the Senate Judiciary Committee held a hearing entitled “Protecting Older Americans from Financial Exploitation.” The hearing, which took place on June 29, 2016, examined the growing threat of elder financial exploitation and the adequacy of the Federal government’s response. The hearing consisted of two panels of witnesses.

Witnesses on the first panel included Mr. John A. Horn, Acting United States Attorney, Northern District of Georgia, U.S. Department of Justice, and Ms. Lois C. Greisman, Associate Director, Division of Marketing Practices, Bureau of Consumer Protection, U.S. Federal Trade Commission. Witnesses on the second panel included Mr. Joseph Marquart, Member, AARP Iowa Executive Council and AARP Fraud Watch Network Volunteer; Ms. Nancy Shaffer, State Ombudsman, Connecticut State Department on Aging; and Ms. Donna K. Harvey, Director, Iowa Department on Aging.

Those on the first panel testified to the recent efforts by DOJ and the FTC to combat elder financial exploitation. DOJ’s witness described the Department’s recent efforts to break up international schemes or scams that target and defraud seniors and summarized the work of DOJ’s Elder Justice Initiative as well as its Elder Justice Task Forces. The Committee also heard testimony about the FTC’s elder abuse enforcement and consumer education efforts, including FTC’s prosecution of MoneyGram, whose money transfer service was used in multiple scams that targeted older Americans. Such testimony confirmed the scope of the problem of elder abuse and exploitation in the United States and the need for an improved Federal response.

Witnesses on the second panel testified to their direct experiences with elder abuse and exploitation in Iowa and Connecticut. They described examples of exploitative guardianships, so-called “sweetheart” scams, and lottery scams. They emphasized the widespread nature of elder abuse and financial exploitation and the need to improve public awareness, prevention, prosecution, and victim services. Their testimony highlights the need for improved training, including of judges and law enforcement. Their testimony also reveals that the abuse of guardianships, conservatorships, and powers of attorney—often by those related to the victim—is a problem.

### B. INTRODUCTION OF THE BILL

Chairman Grassley (R-IA) introduced the Elder Abuse Prevention and Prosecution Act, S. 178, on January 20, 2017. Original co-

sponsors included Senators Richard Blumenthal (D–CT), John Cornyn (R–TX), Dianne Feinstein (D–CA), Thom Tillis (R–NC), Patrick Leahy (D–VT), Amy Klobuchar (D–MN), and Michael Bennet (D–CO). The bill was referred to the Committee on the Judiciary. Senators Dick Durbin (D–IL), Susan Collins (R–ME), Sheldon Whitehouse (D–RI), Marco Rubio (R–FL), and Mazie Hirono (D–HI) later joined as co-sponsors of the legislation.

### C. COMMITTEE CONSIDERATION

The Senate Judiciary Committee considered S. 178 on February 9, 2017. The Committee then reported S. 178, without amendment, favorably to the Senate by voice vote.

### III. SECTION-BY-SECTION SUMMARY OF THE BILL

#### *Section 1. Short title: table of contents*

Section 1 cites the short title of the Act as the “Elder Abuse Prevention and Prosecution Act.” It also provides the table of contents for the Act.

#### *Sec. 2. Definitions*

Section 2 defines certain terms used in the legislation (including “abuse,” “adult protective services,” “elder,” “elder justice,” “exploitation,” “law enforcement,” and “neglect”) by reference to section 2011 of the Social Security Act (42 U.S.C. 1397j). It also gives additional definitions of terms used in the bill, including “elder abuse” and “State.”

#### Title I—Supporting Federal Cases Involving Elder Justice

#### *Sec. 101. Supporting Federal cases involving elder justice*

Section 101 requires the designation of at least one Assistant United States Attorney (AUSA) in every judicial district to prosecute (or assist with) elder abuse cases, conduct public outreach, and ensure the collection of the statistical data on elder abuse that’s required under section 202 of this Act. This section also tasks the Attorney General, in consultation with the FBI, with implementing a comprehensive training program for FBI agents on the investigation and prosecution of elder abuse (including specialized communication strategies and relevant forensic training).

Under this section, DOJ, through its Executive Office for United States Attorneys (“EOUSA”), must operate an elder abuse resource group that facilitates information sharing among prosecutors. Further, this section directs the Attorney General, in consultation with the EOUSA Director, to establish an advisory working group or subcommittee of U.S. Attorneys for the purpose of providing advice on DOJ’s elder abuse policies, within 60 days of the bill’s enactment.

This section also calls for the designation, by the Attorney General (within 60 days after this bill’s enactment), of an Elder Justice Coordinator within DOJ and specifies the Coordinator’s duties. It also calls for the chairman of the Federal Trade Commission (“FTC”) to designate (within 60 days after this bill’s enactment), an Elder Justice Coordinator within the FTC’s Bureau of Consumer Protection, and it specifies the Coordinator’s duties. It also requires

that each of the FTC and DOJ annually report to Congress on Federal enforcement actions in which an elder abuse victim was identified. Finally, this section clarifies that no additional appropriations are authorized for the implementation of this legislation.

#### Title II—Improved Data Collection and Federal Coordination

##### *Sec. 201. Establishment of best practices for local, State, and Federal data collection*

Section 201 requires the Attorney General, in consultation with Federal, State, and local law enforcement agencies, to establish best practices for the voluntary collection of government data focused on elder abuse. Such information must be posted online within a year after the legislation’s enactment. This section also calls for provision of technical assistance to State, local, and tribal governments that opt to implement the Department’s best practices.

##### *Sec. 202. Effective interagency coordination and Federal data collection*

Section 202 directs the Attorney General to annually collect statistical data on elder abuse enforcement actions initiated by Federal law enforcement agencies, other agencies as appropriate, and Federal prosecutors. It also specifies the type of data to be collected in such cases. The Secretary of HHS is required to provide statistical data to the Attorney General on elder abuse cases investigated by adult protective services agencies on an annual basis. This section calls for a summary of such data to be posted on DOJ’s website, along with additional recommendations for improved data collection by government agencies at every level of government. This section states that the reported data shall not reveal the identities of specific individuals.

#### Title III—Enhanced Victim Assistance to Elder Abuse Survivors

##### *Sec. 301. Sense of the Senate*

Section 301 expresses the sense of the Senate concerning the problems posed by elder abuse and exploitation as well as the importance of supporting the victims of this crime and developing a multi-pronged approach to elder abuse and exploitation.

##### *Sec. 302. Report*

Section 302 calls for DOJ’s Office for Victims of Crime to report to Congress, within one year after the collection of statistical data in Sec. 202 begins and annually thereafter, on the nature, extent, and amount of victims’ compensation and victims’ assistance received by victims of crime who are aged 60 years or older, under the Victims of Crime Act of 1984 (42 U.S.C. 10601 et seq.).

#### Title IV—Robert Matava Elder Abuse Prosecution Act of 2017

##### *Sec. 401. Short title*

Section 401 cites the short title as the “Robert Matava Elder Abuse Prosecution Act of 2017.”



*Sec. 402. Enhanced penalty for telemarketing and email marketing fraud directed at elders*

Section 402 amends the Federal criminal code to add new definition of “telemarketing or email marketing” and prohibit such conduct under the telemarketing fraud statute. Further, this section makes it mandatory for a Federal court, in sentencing criminals under 18 U.S.C. § 2326, to order the forfeiture of property, equipment, software, or other technology that was used (or intended to be used) in perpetrating a financial exploitation scheme against individuals over the age of 55.

*Sec. 403. Training and technical assistance for States*

Section 403 calls for the Attorney General, in consultation with the Secretary of Health and Human Services, and in coordination with the Elder Justice Coordinating Council, to provide training and technical assistance to States and local governments on the investigation, prosecution, prevention, and mitigation of various forms of elder abuse and neglect.

*Sec. 404. Interstate initiatives*

Section 404 encourages the formation of interstate compacts or cooperative agreements that will promote elder safety and improve the enforcement of elder safety laws. This section also provides congressional consent for such compacts or agreements. Finally, this section directs the State Justice Institute (in consultation with State and local adult protective services, aging, social and human services and law enforcement agencies as well as certain non-profits) as well as the HHS Secretary) to submit proposed legislation to Congress that will facilitate such interstate agreements or compacts.

Title V—Miscellaneous

*Sec. 501. Court-appointed guardianship oversight activities under the Elder Justice Act of 2009*

Section 501 would amend a federal statute that authorizes an existing grant program under which the Secretary of Health and Human Services may award grants to States to establish demonstration projects that promote elder justice. It would clarify that the Secretary has authority, under 42 U.S. Code § 1397m–1(c), to award grants to the highest courts of States for the purpose of assessing and improving adult guardianship and conservatorship proceedings. (Examples of such improvements could include requiring background checks for all potential guardians and conservators or establishing systems that enable electronic filing and review of specified materials). This section also requires any court receiving such a grant to collaborate with the State’s unit on aging and adult protective services agency.

*Sec. 502. Elder justice recommendations*

Section 502 calls for GAO to make recommendations to Congress with respect to elder abuse-related programs and initiatives in the Federal criminal justice system. It also calls for GAO to report to Congress on the extent to which older adults of the United States are being exploited in international criminal enterprises as well as

the extent to which their exploitation has resulted in these older adults' incarceration in other countries. GAO has a deadline of 18 months after enactment of the legislation to meet this reporting requirement and issue the required recommendations.

*Sec. 503. Outreach to State and local law enforcement agencies*

Section 503 directs the Attorney General to report to the Judiciary Committees in each chamber of Congress on the Justice Department's efforts to conduct outreach to State and local law enforcement agencies on appropriate ways to collaborate with the Federal government on the investigation and prosecution of interstate and international elder financial exploitation cases.

*Sec. 504. Model power of attorney legislation*

Section 504 directs the Attorney General to publish model power of attorney legislation for the purpose of preventing elder abuse.

*Sec. 505. Best practices and model legislation for guardianship proceedings*

Section 505 obligates the Attorney General to publish best practices for improving guardianship proceedings and model legislation relating to guardianship proceedings for the purpose of preventing elder abuse.

IV. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

The Committee sets forth, with respect to the bill, S. 178, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, February 17, 2017.*

Hon. CHUCK GRASSLEY,  
*Chairman, Committee on the Judiciary,*  
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 178, the Elder Abuse Prevention and Prosecution Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz.

Sincerely,

KEITH HALL

Enclosure.

*S. 178—Elder Abuse Prevention and Prosecution Act*

CBO estimates that implementing S. 178 would cost \$21 million over the 2018–2022 period for programs in the Department of Justice (DOJ) and the Department of Health and Human Services (HHS) to combat abuse of the elderly, assuming appropriation of the necessary amounts.

Enacting the bill could affect revenues and associated direct spending; therefore, pay-as-you-go procedures apply. However, we

estimate that any such effects would be insignificant in any year and over the 2017–2027 period.

CBO estimates that enacting S. 178 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

S. 178 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

**Estimated cost to the Federal Government:** The estimated budgetary effect of S. 178 is shown in the following table. The costs of this legislation fall within budget functions 500 (education, training, employment, and social services) and 750 (administration of justice).

	By fiscal year, in millions of dollars—					
	2018	2019	2020	2021	2022	2017–2022
INCREASES IN SPENDING SUBJECT TO APPROPRIATION						
DOJ Programs:						
Estimated Authorization Level .....	3	3	3	3	3	15
Estimated Outlays .....	3	3	3	3	3	15
HHS Programs:						
Estimated Authorization Level .....	6	0	0	0	0	6
Estimated Outlays .....	*	2	2	1	*	6
Total Increases:						
Estimated Authorization Level .....	9	3	3	3	3	21
Estimated Outlays .....	3	5	5	4	3	21

Notes: DOJ = Department of Justice; HHS = Department of Health and Human Services; \* = between zero and \$500,000; components may not sum to totals because of rounding.

**Basis of Estimate:** CBO assumes that the bill will be enacted in 2017, that the necessary funds will be provided each year, and that outlays will follow the historical rate of spending for similar activities.

#### *Department of Justice*

S. 178 would direct DOJ to undertake numerous activities to prevent crimes against the elderly and to improve the treatment of elderly victims, including the following:

- Provide training and technical assistance to state and local governments to assist them in investigating, prosecuting, and preventing crimes against the elderly and treating the victims of such crimes;
- Collect data from federal agencies on crimes against the elderly;
- Provide regular training to agents of the Federal Bureau of Investigation on the investigation of crimes against the elderly; and
- Prepare reports on issues relating to crimes against the elderly.

Based on an analysis of information from DOJ about the costs to carry out those additional tasks, CBO estimates that it would cost the department about \$3 million annually and \$15 million over the 2018–2022 period.

*Department of Health and Human Services*

The bill also would require HHS to provide grants to assess the effectiveness and fairness of legal proceedings that result in court-appointed guardianships for elderly people. Those grants, which would be for demonstration projects, would be in addition to other activities supporting elder rights conducted by HHS. Based on the cost of other demonstration projects to support elder rights, CBO estimates that implementing the new provisions would cost HHS about \$6 million over the 2018–2022 period.

**Pay-As-You-Go considerations:** The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending and revenues. S. 178 would amend federal criminal law to make any assets found in connection with telemarketing fraud against elderly persons subject to seizure by the federal government, upon an individual’s prosecution and conviction for such fraud. Proceeds from the sale of such assets are recorded as revenues, deposited into the Assets Forfeiture Fund, and later spent without further appropriation action. Because of the small number of relevant assets likely to be seized, CBO estimates that any additional revenues and associated direct spending would not be significant in any year and over the 2017–2027 period.

**Increase in long-term direct spending and deficits:** CBO estimates that enacting S. 178 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

**Intergovernmental and private-sector impact:** S. 178 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

**Estimate prepared by:** Federal Costs: Mark Grabowicz and Robert Reese (DOJ), Christi Hawley Anthony (HHS); Impact on State, Local, and Tribal Governments: Rachel Austin; Impact on the Private Sector: Paige Piper/Bach

**Estimate approved by:** H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

## V. REGULATORY IMPACT EVALUATION

In compliance with rule XXVI of the Standing Rules of the Senate, the Committee finds that no significant regulatory impact will result from the enactment of S. 178.

## VI. CONCLUSION

The Elder Abuse Prevention and Prosecution Act, S. 178, seeks to promote a more coordinated, effective response to elder abuse and financial exploitation. The bill includes provisions to promote justice for victims, such as mandatory forfeiture in elder abuse cases, increased training of Federal investigators, and the designation of at least one Federal prosecutor in each judicial district to handle cases of elder abuse and exploitation. The bill also includes requirements to promote greater data collection, coordination, and information sharing by Federal officials. Such measures are designed to enhance the nation’s ability to combat elder abuse and financial exploitation.

## VII. CHANGES TO EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 178, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

## UNITED STATES CODE

### TITLE 18—CRIMES AND CRIMINAL PROCEDURE

#### PART I—CRIMES

##### CHAPTER 113A—TELEMARKETING AND EMAIL MARKETING FRAUD

###### § 2325. Definition

【In this chapter, “telemarketing”—

【(1) means a plan, program, promotion, or campaign that is conducted to induce—

【(A) purchases of goods or services;

【(B) participation in a contest or sweepstakes; or

【(C) a charitable contribution, donation, or gift of money or any other thing of value,

by use of 1 or more interstate telephone calls initiated either by a person who is conducting the plan, program, promotion, or campaign or by a prospective purchaser or contest or sweepstakes participant or charitable contributor, or donor; but

【(2) does not include the solicitation of sales through the mailing of a catalog that—

【(A) contains a written description or illustration of the goods or services offered for sale;

【(B) includes the business address of the seller;

【(C) includes multiple pages of written material or illustration; and

【(D) has been issued not less frequently than once a year,

if the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders without further solicitation.】

*In this chapter, the term “telemarketing or email marketing”—*

*(1) means a plan, program, promotion, or campaign that is conducted to induce—*

*(A) purchases of goods or services;*

*(B) participation in a contest or sweepstakes;*

*(C) a charitable contribution, donation, or gift of money or any other thing of value;*

*(D) investment for financial profit;*

*(E) participation in a business opportunity;*

*(F) commitment to a loan; or*

(G) participation in a fraudulent medical study, research study, or pilot study, by use of 1 or more interstate telephone calls, emails, text messages, or electronic instant messages initiated either by a person who is conducting the plan, program, promotion, or campaign or by a prospective purchaser or contest or sweepstakes participant or charitable contributor, donor, or investor; and

(2) does not include the solicitation through the posting, publication, or mailing of a catalog or brochure that—

(A) contains a written description or illustration of the goods, services, or other opportunities being offered;

(B) includes the business address of the solicitor;

(C) includes multiple pages of written material or illustration; and

(D) has been issued not less frequently than once a year, if the person making the solicitation does not solicit customers by telephone, email, text message, or electronic instant message, but only receives interstate telephone calls, emails, text messages, or electronic instant messages initiated by customers in response to the written materials, whether in hard copy or digital format, and in response to those interstate telephone calls, emails, text messages, or electronic instant messages does not conduct further solicitation.

#### **§ 2326. Enhanced penalties**

A person who is convicted of an offense under section 1028, 1029, 1341, 1342, 1343, [or 1344] 1344, or 1347 or section 1128B of the Social Security Act (42 U.S.C. 1320a–7b), or a conspiracy to commit such an offense, in connection with the conduct of telemarketing or email marketing—

(1) shall be imprisoned for a term of up to 5 years in addition to any term of imprisonment imposed under any of those sections, respectively; and

(2) in the case of an offense under any of those sections that—

(A) victimized ten or more persons over the age of 55; or

(B) targeted persons over the age of 55,

shall be imprisoned for a term of up to 10 years in addition to any term of imprisonment imposed under any of those sections, respectively.

\* \* \* \* \*

#### **§ 2328. Mandatory forfeiture**

(a) *IN GENERAL.*—The court, in imposing sentence on a person who is convicted of any offense for which an enhanced penalty is provided under section 2326, shall order that the defendant forfeit to the United States—

(1) any property, real or personal, constituting or traceable to gross proceeds obtained from such offense; and

(2) any equipment, software, or other technology used or intended to be used to commit or to facilitate the commission of such offense.

(b) *PROCEDURES.*—The procedures set forth in section 413 of the Controlled Substances Act (21 U.S.C. 853), other than subsection (d) of that section, and in Rule 32.2 of the Federal Rules of Criminal

*Procedure, shall apply to all stages of a criminal forfeiture proceeding under this section.*

**TITLE 42—THE PUBLIC HEALTH AND WELFARE**

**CHAPTER 7—SOCIAL SECURITY**

**Subchapter XX—Block Grants to States for Social Services and Elder Justice**

**Division B—Elder Justice**

**PART II—PROGRAMS TO PROMOTE ELDER JUSTICE**

\* \* \* \* \*

**§ 1397m—1. Adult protective services functions and grant programs**

\* \* \* \* \*

**(c) STATE DEMONSTRATION PROGRAMS.—**

(1) ESTABLISHMENT.—The Secretary shall award grants to States *(and, in the case of demonstration programs described in paragraph (2)(E), to the highest courts of States)* for the purposes of conducting demonstration programs in accordance with paragraph (2).

(2) DEMONSTRATION PROGRAMS.—Funds made available pursuant to this subsection may be used by States and local units of government *(and the highest courts of States, in the case of demonstration programs described in subparagraph (E))* to conduct demonstration programs that test—

(A) training modules developed for the purpose of detecting or preventing elder abuse;

(B) methods to detect or prevent financial exploitation of elders;

(C) methods to detect elder abuse;

(D) whether training on elder abuse forensics enhances the detection of elder abuse by employees of the State or local unit of government; **[or]**

*(E) subject to paragraph (3), programs to assess the fairness, effectiveness, timeliness, safety, integrity, and accessibility of adult guardianship and conservatorship proceedings, including the appointment and the monitoring of the performance of court-appointed guardians and conservators, and to implement changes deemed necessary as a result of the assessments such as mandating background checks for all potential guardians and conservators, and implementing systems to enable the annual accountings and other required conservatorship and guardianship filings to be completed, filed, and reviewed electronically in order to simplify the filing process for conservators and guardians and better enable courts to identify discrepancies*

*and detect fraud and the exploitation of protected persons;  
or*

*(F) other matters relating to the detection or prevention of elder abuse.*

**(3) REQUIREMENTS FOR COURT-APPOINTED GUARDIANSHIP OVERSIGHT DEMONSTRATION PROGRAMS.—**

*(A) AWARD OF GRANTS.—In awarding grants to the highest courts of States for demonstration programs described in paragraph (2)(E), the Secretary shall consider the recommendations of the Attorney General and the State Justice Institute, as established by section 203 of the State Justice Institute Act of 1984 (42 U.S.C. 10702).*

*(B) COLLABORATION.—The highest court of a State awarded a grant to conduct a demonstration program described in paragraph (2)(E) shall collaborate with the State Unit on Aging for the State and the Adult Protective Services agency for the State in conducting the demonstration program.*

**(4) APPLICATION.—**To be eligible to receive a grant under this subsection, a State *(and, in the case of demonstration programs described in paragraph (2)(E), the highest court of a State)* shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

**(5) STATE REPORTS.—**Each State *(or, in the case of demonstration programs described in paragraph (2)(E), the highest court of a State)* that receives funds under this subsection shall submit to the Secretary a report at such time, in such manner, and containing such information as the Secretary may require on the results of the demonstration program conducted by the State *(or, in the case of demonstration programs described in paragraph (2)(E), the highest court of a State)* using funds made available under this subsection.

**(6) AUTHORIZATION OF APPROPRIATIONS.—**There are authorized to be appropriated to carry out this subsection, \$25,000,000 for each of fiscal years 2011 through 2014.