

PROTECTING ★ THE ★ UNPROTECTED



The Ohio  
Attorney General's



# Elder Financial Exploitation Symposium



Participant Materials



**DAVE YOST**

OHIO ATTORNEY GENERAL



# Letter from **DAVE YOST**



**Dave Yost**  
Ohio Attorney General

**Dear Colleagues,**

Welcome to the Elder Financial Exploitation Symposium hosted by the Ohio Attorney General's Office.

As many of you already know, the financial exploitation of older adults is one of the most underreported crimes. Victims often do not come forward due to embarrassment, fear of losing independence, intimidation by perpetrators and a widespread lack of awareness.

A MetLife study reported that up to 1 million older Americans may be targeted annually, and the cost of addressing exploitation exceeds \$2.9 billion each year.

The fallout for victims can be devastating, both financially and emotionally. Scammers and even loved ones take advantage of victims using deception, coercion and harassment. The key to preventing these scenarios is awareness.

My office's Elder Justice Unit and numerous organizations from across Ohio have gathered today because we are committed to helping older adults avoid the hardships of exploitation.

The symposium has two main goals:

- Heighten professionals' awareness of elder financial exploitation and applicable Ohio laws and regulations; and
- Increase collaboration among professionals and agencies investigating cases of elder financial exploitation.

Today's symposium is an opportunity to discuss emerging issues, share ideas, measure our progress and network with colleagues. The information shared today will strengthen our efforts to make Ohio a safe place for everyone.

Thank you for your participation in today's event and for your dedication to the well-being of Ohio's older adults.

Respectfully yours,

A handwritten signature in black ink that reads "Dave Yost". The signature is written in a cursive, flowing style.

**Dave Yost**  
Ohio Attorney General

# Ohio Revised Code Definitions

## **Elder Abuse and Neglect**

In Ohio, Adult Protective Services is intended to assist adults who are in danger of harm, unable to protect themselves, and have no one else to assist them when the adult:

- Is 60 or older (some counties serve ages 18 to 59).
- Is impaired and/or disabled.
- Is suspected of experiencing abuse, neglect, self-neglect, or exploitation.
- Resides in the community.

**“Abuse”** means the infliction upon an adult by self or others of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical harm, pain, or mental anguish.

**“Adult”** is any person 60 years of age or older who is handicapped by the infirmities of aging or who has a physical or mental impairment that prevents the person from providing for the person’s own care or protection, and who resides in an independent living arrangement.

**“Caretaker”** is the person assuming the responsibility for the care of an adult on a voluntary basis, by contract, through receipt of payment for care, as a result of a family relationship, or by order of a court of competent jurisdiction.

**“Court”** is the probate court in the county where an adult resides.

**“Emergency”** means that the adult is living in conditions that present a substantial risk of immediate and irreparable physical harm or death to self or any other person.

**“Emergency services”** means protective services furnished to an adult in an emergency.

**“Exploitation”** means the unlawful or improper act of a person using an adult or an adult’s resources for monetary or personal benefit, profit, or gain when the person obtained or exerted control over the adult or the resources:

- Without the adult’s consent or the consent of the person authorized to give consent on the adult’s behalf.
- Beyond the scope of the express or implied consent of the adult or the person authorized to give consent on the adult’s behalf.
- By deception.
- By threat.
- By intimidation.

# Ohio Revised Code Definitions

**“In need of protective services”** means an adult known or suspected to be suffering from abuse, neglect, or exploitation to an extent that either the person’s life is endangered or physical harm, mental anguish, or mental illness results or is likely to result.

**“Incapacitated person”** is a person who is impaired to the extent that he or she lacks sufficient understanding or capacity to make and carry out reasonable decisions concerning himself or herself or resources, with or without the assistance of a caretaker. Refusal to consent to the provision of services shall not be the deciding factor that the person is incapacitated. “Reasonable decisions” are decisions made in daily living that allow for the provision of food, shelter, clothing, and health care necessary for life support.

**“Neglect”** means the failure of an adult to provide for self the goods or services necessary to avoid physical harm, mental anguish, or mental illness or the failure of a caretaker to provide such goods or services.

## **Mandatory Reporting**

Any mandatory reporter who has reasonable cause to believe that an adult is being abused, neglected, or exploited, or is in a condition that is the result of abuse, neglect, or exploitation shall immediately report such belief to the county department of job and family services.

Any person having reasonable cause to believe that an adult has suffered abuse, neglect, or exploitation may report, or cause reports to be made of such belief, to the department.

## **Immunity for Reporting**

Any person with reasonable cause to believe that an adult is suffering abuse, neglect, or exploitation who makes a report, or who testifies in any administrative or judicial proceeding arising from such a report, or any employee of the state or any of its subdivisions who is discharging responsibilities under section 5101.62 of the Ohio Revised Code (ORC), shall be immune from civil or criminal liability on account of such investigation, report, or testimony, except liability for perjury, unless the person has acted in bad faith or with malicious purpose.

## **Criminal Theft (ORC 2913.02)**

No person, with purpose to deprive the owner of property or services, shall knowingly obtain or exert control over either the property or services:

- Without the consent of the owner or person authorized to give consent.
- Beyond the scope of the express or implied consent of the owner or person authorized to give consent.
- By deception.
- By threat.
- By intimidation.

# Types of Senior Financial Abuse

Seniors are scammed and defrauded in many ways. Fraud involves someone using a senior's vulnerability to convince him or her to hand over property, money, or valuable information under false pretenses. Theft involves the perpetrator taking property or assets directly from the senior. Specific types of senior financial abuse include:

- **Identity Theft and Credit Card Fraud** — Gaining access to a senior's personal information to take money and property.
- **Power of Attorney Abuse** — Gaining legal representation over a senior and using it to take property or other assets.
- **Reverse Mortgage Scams** — Using a senior's fear of financial insecurity to "sell" fraudulent reverse mortgages.
- **Living Trust and Annuities Scams** — Using a senior's fear of financial insecurity to purchase unneeded, inadequate, unethical, or confusing investments.
- **Deed Theft and Foreclosure Rescue Scams** — Using a senior's fear of financial insecurity to scam them out of money or property.
- **Undue Influence** — Using a senior's trusting nature or dependence to scam them out of property or assets.
- **Health Care Scams** — Getting information about seniors' medical accounts, such as Medicare and Medicaid, in order to submit fraudulent claims or take advantage of the programs.

Who is at risk of being victimized?	Who are the perpetrators?*
<ul style="list-style-type: none"> <li>• People 80 to 89 years of age</li> <li>• Women (They are twice as likely as men to be victimized.)</li> <li>• Adults with cognitive impairments</li> <li>• Adults who are isolated or have limited relationships in the community</li> <li>• Adults with resources (such as Social Security, pensions, savings, real estate)</li> <li>• Adults who are intimidated by financial matters and have others take over their financial affairs or assume an oversight role</li> <li>• Elders who rely on a family member for some type of care</li> </ul>	<ul style="list-style-type: none"> <li>• Strangers — 51%</li> <li>• Family/friends/neighbors — 34%**</li> <li>• Businesses — 12%</li> <li>• Medicare/Medicaid providers — 4%</li> <li>• Sixty percent of known perpetrators are men, usually 30 to 59 years old.</li> <li>• Women perpetrators tend to be younger, usually 30 to 49 years old.</li> </ul>

\*MetLife Mature Market Institute: "The MetLife Study of Elder Financial Abuse 2011"

\*\* The majority of reports to adult protective services involve family perpetrators.

# Types of Senior Financial Abuse

## Why are older Ohioans more susceptible?

- They have trust in family, friends, professionals, and care providers.
- They are expected to provide financial authority to family members or other trusted persons.
- They fear losing their independence.
- They are reluctant to report family members.

## What motivates abusers?

- They may fear that the older family member will get sick and “use up” their savings or inheritance.
- They may feel justified in taking what is “rightfully” or “almost” theirs.
- They may be “getting back” at an elder that they believe wronged them in the past.
- They have rationalized that caring for the elder has become too stressful, burdensome, and without reward, therefore deciding that they are entitled to some kind of “payback.”
- They may feel desperate for some reason, such as being in deep debt.
- They may be greedy.

## What are the tactics of financial exploiters?

- They use joint bank accounts.
- They use deed and title transfers.
- They use power of attorney documents
- They take out a mortgage on the victim’s home.
- They use power as the conservator.
- They steal the victim’s identity, credit cards, medical cards, or Social Security number.

## What are some common characteristics of abusers?

- They often depend on the victim for housing or other financial support (may excessively charge the elder excessive fees for basic care services).
- They may have some kind of substance abuse problem that needs financial support.
- They might promise “lifelong care” to the elder in exchange for money but may not follow through on the promise.
- They may try to explain away questions from the elder or other concerned family members or friends by saying that the elder is confused or is forgetting things.

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## **APPENDIX 1**

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### **Eight (8) Recommendations for Increased Federal Involvement in Addressing Elder Abuse, Neglect and Exploitation**



## **EIGHT (8) RECOMMENDATIONS FOR INCREASED FEDERAL INVOLVEMENT IN ADDRESSING ELDER ABUSE, NEGLECT AND EXPLOITATION**

The following eight (8) recommendations are intended to improve awareness of, prevention of, intervention in, and response to elder abuse, neglect, and exploitation.

### **IMPROVING RESPONSE**

#### **Recommendation 1: Support the Investigation and Prosecution of Elder Abuse Cases**

Support the investigation and prosecution of elder abuse, neglect, and financial exploitation cases by providing training and resources to federal, state, and local investigators and prosecutors.

#### **Recommendation 2: Enhance Services to Elder Abuse Victims**

Support and protect elder abuse victims by improving identification of elder abuse and enhancing response and outreach to victims.

#### **Recommendation 3: Develop a National Adult Protective Services System**

Develop a national APS system based upon standardized data collection and a core set of service provision standards and best practices.

#### **Recommendation 4: Develop a Federal Elder Justice Research Agenda**

Establish a coordinated research agenda across federal agencies to identify best practices for prevention of and intervention in elder abuse and elder financial exploitation.

### **IMPROVING AWARENESS AND PREVENTION**

#### **Recommendation 5: Develop a Broad-Based Public Awareness Campaign**

Develop a comprehensive, strategic, and broad-based national public awareness campaign, with clear and consistent messaging to raise awareness and understanding of elder abuse, neglect, and exploitation.

#### **Recommendation 6: Cross-disciplinary Training on Elder Abuse**

Develop training to educate stakeholders across multiple sectors and disciplines on preventing, detecting, intervening in, and responding to elder abuse, neglect, and exploitation.

#### **Recommendation 7: Combat Elder Financial Exploitation, including Abuse by Fiduciaries**

Prevent, detect, and respond to elder financial exploitation through federal enforcement activities, policy initiatives, coordination, oversight and education, and by collaborating with industry to enhance fraud detection and provide resources for victims.

#### **Recommendation 8: Improve Screening for Dementia and Cognitive Capacity, Financial Capacity, and Financial Exploitation**

Improve the ability of APS and first responders to screen for diminished capacity, diminished financial capacity, and vulnerability to or victimization of financial exploitation.

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**APPENDIX 2**

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**Interagency Guidance on Privacy Laws and Reporting  
Financial Abuse of Older Adults**

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**Board of Governors of the Federal Reserve System  
Commodity Futures Trading Commission  
Consumer Financial Protection Bureau  
Federal Deposit Insurance Corporation  
Federal Trade Commission  
National Credit Union Administration  
Office of the Comptroller of the Currency  
Securities and Exchange Commission**

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**Interagency Guidance on Privacy Laws and  
Reporting Financial Abuse of Older Adults**

**PURPOSE**

The Board of Governors of the Federal Reserve System (Federal Reserve), Commodity Futures Trading Commission (CFTC), Consumer Financial Protection Bureau (CFPB), Federal Deposit Insurance Corporation (FDIC), Federal Trade Commission (FTC), National Credit Union Administration (NCUA), Office of the Comptroller of the Currency (OCC), and Securities and Exchange Commission (SEC) are issuing this guidance to financial institutions to clarify the applicability of privacy provisions of the Gramm-Leach-Bliley Act (GLBA) to reporting suspected financial exploitation of older adults.

Employees of depository institutions and other financial service providers that constitute “financial institutions” for purposes of the GLBA may observe signs of possible financial exploitation of an older adult. Various federal and state authorities either require or encourage reporting of this type of information to the appropriate agency. This guidance clarifies that reporting suspected financial abuse of older adults to appropriate local, state, or federal agencies does not, in general, violate the privacy provisions of the GLBA or its implementing regulations.<sup>1</sup> In fact, specific privacy provisions of the GLBA and its implementing regulations permit the sharing of this type of information under appropriate circumstances without complying with notice and opt-out requirements.<sup>2</sup>

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<sup>1</sup> While this guidance discusses when reporting is allowed under the GLBA, it does not address any other federal or state laws that may regulate such reporting. Also, the guidance does not specifically address risk management expectations for financial institutions related to the reporting of elder abuse.

<sup>2</sup> This guidance’s analysis of the GLBA’s privacy provisions builds on joint guidance issued by several federal agencies in 2002 that specifically addressed disclosures to the Michigan Family Independence Agency. *See* Letter to Hon. Debbie Stabenow, July 3, 2002, *available at* [http://www.americanbar.org/content/dam/aba/administrative/law\\_aging/2011/2011\\_aging\\_ea\\_bank\\_rptg\\_op\\_ltr.auth\\_checkdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/law_aging/2011/2011_aging_ea_bank_rptg_op_ltr.auth_checkdam.pdf).

## BACKGROUND

Elder abuse includes the illegal or improper use of an older adult's funds, property, or assets.<sup>3</sup> Recent studies suggest that financial exploitation is the most common form of elder abuse and that only a small fraction of incidents are reported.<sup>4</sup> Older adults can become targets of financial exploitation by family members, caregivers, scam artists, financial advisers, home repair contractors, fiduciaries (such as agents under power of attorney and guardians), and others. Older adults are attractive targets because they may have significant assets or equity in their homes. They may be especially vulnerable due to isolation, cognitive decline, physical disability, health problems, and/or the recent loss of a partner, family member, or friend. Financial institutions can play a key role in preventing and detecting elder financial exploitation. A financial institution's familiarity with older adults it encounters may enable it to spot irregular transactions, account activity, or behavior.<sup>5</sup> Prompt reporting of suspected financial exploitation to adult protective services, law enforcement,<sup>6</sup> and/or long-term care ombudsmen<sup>7</sup> can trigger appropriate intervention, prevention of financial losses, and other remedies.

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<sup>3</sup> See the National Center on Elder Abuse definitions *available at* [http://www.ncea.aoa.gov/FAQ/Type\\_Abuse/index.aspx](http://www.ncea.aoa.gov/FAQ/Type_Abuse/index.aspx). The Older Americans Act, as amended by the Elder Justice Act of 2009, defines exploitation as "the fraudulent or otherwise illegal, unauthorized, or improper act or process of an individual, including a caregiver or fiduciary, that uses the resources of an elder for monetary or personal benefit, profit, or gain, or that results in depriving an elder of rightful access to, or use of, benefits, resources, belongings, or assets." 42 U.S.C. 1397j(8).

<sup>4</sup> Acierno, R., M. A. Hernandez, A. B. Amstadter, H. S. Resnick, K. Steve, W. Muzzy, and D. G. Kilpatrick, "Prevalence and Correlates of Emotional, Physical, Sexual and Financial Abuse and Potential Neglect in the United States: The National Elder Mistreatment Study," *American Journal of Public Health* 100(2): 292–97; Lifespan of Greater Rochester, Inc., et al., *Under the Radar: New York State Elder Abuse Prevention Study*, (Rochester, NY: Lifespan of Greater Rochester, Inc., May 2011).

<sup>5</sup> Treasury Department rules require recipients of federal nontax payments to receive payment by electronic funds transfer, with an allowance for certain waivers from the requirement. The rule applies to recipients of Social Security, Veterans Affairs, Supplemental Security Income, Railroad Retirement Board, Department of Labor, and Office of Personnel Management benefit payments. Benefit recipients may have payments directly deposited to an account at a financial institution or to a *Direct Express* debit card account. See 75 Fed. Reg. 80315 (Dec. 22, 2010). Financial institutions should be mindful that this change may result in additional electronic funds transfer activity involving the accounts of older adults.

<sup>6</sup> Financial institutions file "Suspicious Activity Reports" with the Financial Crimes Enforcement Network (FinCEN), a Bureau of the U.S. Department of the Treasury, involving money laundering and terrorist financing as well as activities related to elder abuse and other consumer fraud. The reports assist law enforcement in identifying individuals and organizations involved in financial crime. See FinCEN, Advisory to Financial Institutions on Filing Suspicious Activity Reports Regarding Elder Financial Exploitation, FIN-2011-A003 (Feb. 22, 2011), *available at* [http://www.fincen.gov/statutes\\_regs/guidance/pdf/fin-2011-a003.pdf](http://www.fincen.gov/statutes_regs/guidance/pdf/fin-2011-a003.pdf).

<sup>7</sup> Long-Term Care Ombudsmen are advocates for residents of nursing homes, board and care homes, assisted living facilities and similar adult care facilities. Under the federal Older Americans Act, each state has an Office of the State Long-Term Care Ombudsman that addresses complaints and advocates for improvements in the long-term care system. Local ombudsman staff and volunteers work to resolve problems of individual residents. For more information, see [http://www.aoa.gov/AoARoot/AoA\\_Programs/Elder\\_Rights/Ombudsman/index.aspx](http://www.aoa.gov/AoARoot/AoA_Programs/Elder_Rights/Ombudsman/index.aspx). To find your local ombudsman program, search by location at [www.eldercare.gov](http://www.eldercare.gov).

## DISCUSSION OF PRIVACY PROTECTIONS

The GLBA establishes a general rule that a financial institution may not disclose any nonpublic personal information about a consumer to any nonaffiliated third party unless the financial institution first provides the consumer with a notice that describes the disclosure (as well as other aspects of its privacy policies and practices) and a reasonable opportunity to opt out of the disclosure, and the consumer does not opt out. However, section 502(e) of the GLBA provides a variety of exceptions to this general rule that permit a financial institution to disclose information to nonaffiliated third parties without first complying with notice and opt-out requirements. Generally, disclosure of nonpublic personal information about consumers to local, state, or federal agencies for the purpose of reporting suspected financial abuse of older adults will fall within one or more of the exceptions.<sup>8</sup> These disclosures of information may be made either at the agency's request or on the financial institution's initiative.

The following are specific exceptions to the GLBA's notice and opt-out requirement that, to the extent applicable, would permit sharing of nonpublic personal information about consumers with local, state, or federal agencies for the purpose of reporting suspected financial abuse of older adults without the consumer's authorization and without violating the GLBA:

- A financial institution may disclose nonpublic personal information to comply with federal, state, or local laws, rules and other applicable legal requirements, such as state laws that require reporting by financial institutions of suspected abuse. (15 U.S.C. 6802(e)(8) and implementing regulations at \_\_\_\_15(a)(7)(i)).<sup>9</sup>
- A financial institution may disclose nonpublic personal information to respond to a properly authorized civil, criminal, or regulatory investigation, or subpoena or summons by federal, state, or local authorities or to respond to judicial process or government regulatory authorities having jurisdiction for examination, compliance, or other purposes as authorized by law. (15 U.S.C. 6802(e)(8) and implementing regulations at \_\_\_\_15(a)(7)(ii)-(iii)).
- A financial institution may disclose nonpublic personal information to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability. (15 U.S.C. 6802(e)(3)(B) and implementing regulations at \_\_\_\_15(a)(2)(ii)). For example, this exception generally would allow a financial institution to disclose to appropriate authorities nonpublic personal information in order to:
  - report incidents that result in taking an older adult's funds without actual consent, or
  - report incidents of obtaining an older adult's consent to sign over assets through misrepresentation of the intent of the transaction.

<sup>8</sup> See Section 502(e) of the GLBA (15 U.S.C. 6802(e)).

<sup>9</sup> The CFPB's, FTC's, CFTC's, and SEC's implementing regulations are contained in 12 CFR part 1016, 16 CFR part 313, 17 CFR part 160, and 17 CFR part 248, respectively. For ease of reference, this discussion uses the shared numerical suffix of each of these agencies' regulations.

- To the extent specifically permitted or required under other provisions of law and in accordance with the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 *et seq.*), a financial institution may disclose nonpublic personal information to law enforcement agencies (including the CFPB, the federal functional regulators, and the FTC), self-regulatory organizations, or for an investigation on a matter related to public safety. (15 U.S.C. 6802(e)(5) and implementing regulations at \_\_\_\_15(a)(4)).

In addition, a financial institution may disclose nonpublic personal information with the consumer's consent or consent of the consumer's legal representative. (15 U.S.C. 6802(e)(2) and implementing regulations at \_\_\_\_15(a)(1)).

## **POSSIBLE SIGNS OF FINANCIAL ABUSE OF OLDER ADULTS**

The Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) published an advisory in February 2011 that describes potential signs of elder financial exploitation that might trigger the filing of a Suspicious Activity Report (SAR).<sup>10</sup> As described in the advisory, among the possible signs of abuse are:

- Erratic or unusual banking transactions, or changes in banking patterns:
  - Frequent large withdrawals, including daily maximum currency withdrawals from an ATM;
  - Sudden non-sufficient fund activity;
  - Uncharacteristic nonpayment for services, which may indicate a loss of funds or access to funds;
  - Debit transactions that are inconsistent for the older adult;
  - Uncharacteristic attempts to wire large sums of money; or
  - Closing of CDs or accounts without regard to penalties.
- Interactions with older adults or caregivers:<sup>11</sup>
  - A caregiver or other individual shows excessive interest in the older adult's finances or assets, does not allow the older adult to speak for himself, or is reluctant to leave the older adult's side during conversations;
  - The older adult shows an unusual degree of fear or submissiveness toward a caregiver, or expresses a fear of eviction or nursing home placement if money is not given to a caretaker;
  - The financial institution is unable to speak directly with the older adult, despite repeated attempts to contact him or her;
  - A new caretaker, relative, or friend suddenly begins conducting financial transactions on behalf of the older adult without proper documentation;

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<sup>10</sup> See footnote 6 above.

<sup>11</sup> References to "caregiver" or "caretaker" also may apply to other individuals who may be involved in transactions of the type described in the FinCEN advisory.

- The older adult moves away from existing relationships and toward new associations with other “friends” or strangers;
- The older adult's financial management changes suddenly, such as through a change of power of attorney to a different family member or a new individual; or
- The older adult lacks knowledge about his or her financial status, or shows a sudden reluctance to discuss financial matters.

Further information about the use of Suspicious Activity Reports to report suspected elder financial exploitation is available in FinCEN’s “The SAR Activity Review” published in May 2013.<sup>12</sup> In addition, if financial institutions or other organizations are interested in raising public awareness among older adults and their caregivers about preventing, identifying, and responding to elder financial exploitation, *Money Smart for Older Adults*, a financial resource tool, serves as a helpful source of training and information.<sup>13</sup>

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<sup>12</sup> See “The SAR Activity Review: Trends Tips & Issues,” Issue 23, May 2013, available at [http://www.fincen.gov/news\\_room/rp/files/sar\\_tti\\_23.pdf](http://www.fincen.gov/news_room/rp/files/sar_tti_23.pdf).

<sup>13</sup> *Money Smart for Older Americans* (June 2013), available at [www.fdic.gov](http://www.fdic.gov) or [www.consumerfinance.gov](http://www.consumerfinance.gov).

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**APPENDIX 3**

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**ELDER JUSTICE: Strengthening Efforts to Combat  
Elder Financial Exploitation**

**GAO**

Testimony  
Before the Senate Special Committee  
on Aging

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For Release on Delivery  
Expected at 2:00 p.m. EST  
Thursday, November 15, 2012

**ELDER JUSTICE**

**Strengthening Efforts to  
Combat Elder Financial  
Exploitation**

Statement of Kay E. Brown, Director  
Education, Workforce, and Income Security



**G A O**

Accountability \* Integrity \* Reliability

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G A O

Accountability \* Integrity \* Reliability

United States Government Accountability Office  
Washington, DC 20548

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Chairman Kohl, Ranking Member Corker, and Members of the Committee:

I am pleased to have this opportunity to present some of the results from the latest study in our body of work on elder justice issues. According to experts, the illegal or improper use of older adults' funds, property, or assets is reaching epidemic proportions in this country and has far-reaching effects on its victims and society, in general. The money older adults lose in these cases is rarely recovered and this loss can undermine both the health of older adults and their ability to support and care for themselves. One study estimated that financial exploitation cost older adults at least \$2.9 billion in 2010.<sup>1</sup>

Older adults can be exploited by family members and friends, home care workers, legal guardians and other fiduciaries, as well as those in the financial services industry. They also often fall prey to mail, telephone, and internet scams that offer substantial lottery or other winnings in exchange for so-called taxes or fees. Because elder financial exploitation can take many forms, combating it involves state and local agencies, and their federal counterparts, across social services, criminal justice, and consumer protection systems.

My testimony today is based on our November 2012 report, which is being released to the public today.<sup>2</sup> It describes the challenges states face in combating the many types of elder financial exploitation and the actions federal, as well as state and local agencies, are taking to overcome these challenges. To obtain this information we interviewed state and local officials from social services, criminal justice, and consumer protection agencies in California, Illinois, New York, and Pennsylvania—states that vary geographically, and have large elderly populations and a number of initiatives that aim to combat elder financial exploitation. We also identified and assessed the activities aimed at preventing or responding to elder financial exploitation of seven federal

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<sup>1</sup> MetLife Mature Market Institute et al. (2011), *The MetLife Study of Elder Financial Abuse: Crimes of Occasion, Desperation, and Predation against America's Elders*. This estimate is based on a study of media reports from April to June 2010.

<sup>2</sup> GAO, *Elder Justice: National Strategy Needed to Effectively Combat Elder Financial Exploitation*, [GAO-13-110](#) (Washington, D.C.: November 15, 2012).

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agencies;<sup>3</sup> conducted in-depth reviews of six prosecuted elder financial exploitation cases that are a non-generalizable sample of elder financial exploitation cases; interviewed many experts in this subject area; and reviewed relevant documents and published research. We conducted this performance audit from November 2011 to November 2012 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Our investigative activities were conducted in accordance with standards prescribed by the Council of the Inspectors General for Integrity and Efficiency.

We found that state and local social services, criminal justice, and consumer protection agencies face many challenges as they work to prevent and respond to elder financial exploitation. For example

- Officials in each of the four states we contacted cited the need for more safeguards to prevent exploitation by financial services providers, power of attorney<sup>4</sup> agents, and paid in-home caregivers;
- Officials told us that older adults need more information about what constitutes elder financial exploitation and how to avoid it, but social services and law enforcement agencies do not always have the resources to promote public awareness in this area;
- Banks are well-positioned to recognize, report, and provide evidence supporting investigations in elder financial exploitation cases; however, many social services and law enforcement officials we spoke with indicated banks do not always recognize and report exploitation or provide the evidence needed to investigate it; and

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<sup>3</sup> We reviewed the activities of the Department of Health and Human Services' Administration on Aging, Bureau of Consumer Financial Protection, Department of Justice, Federal Trade Commission, Department of the Treasury's Financial Crimes Enforcement Network, Postal Inspection Service, and Securities and Exchange Commission.

<sup>4</sup> An older adult (the principal) can use a legal document referred to as a financial power of attorney to appoint another person (an agent) to manage their finances should they become incapable of doing so.

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- According to experts, collaboration between the social services system—which protects and supports victims—and the criminal justice system—which investigates and prosecutes crimes—can be an effective means of combating elder financial exploitation. However, officials in three of our four states noted that this collaboration can be difficult to achieve. These two systems do not respond to exploitation or carry out their work in the same way, so there can be difficulties communicating across disciplines and different views regarding limits on information sharing.<sup>5</sup>

In many of the locations we contacted, state or local agencies are actively pursuing solutions to at least some of these challenges and there are some federal initiatives as well that could help address them. When it comes to preventing the sale to older adults of unsuitable or fraudulent investments, the Securities and Exchange Commission (SEC) and the Bureau of Consumer Financial Protection (CFPB), have each taken steps to help older adults avoid being exploited. SEC and CFPB have conducted research related to investment fraud that targets older adults, and there is a link on SEC's website to Financial Industry Regulatory Authority (FINRA)<sup>6</sup> information consumers can use to check a financial services provider's qualifications and to understand the many designations used by securities professionals. CFPB also plans to issue a report in early 2013 addressing how information about financial advisors and their credentials should be provided to older adults. To prevent exploitation by power of attorney agents and paid in-home caregivers, 13 states have adopted the Uniform Power of Attorney Act in its entirety,<sup>7</sup> and Napa County, California, now requires paid in-home caregivers to submit to a background check and obtain a permit before they can be hired.

We found that law enforcement authorities in some locations have devoted resources to promoting public awareness of elder financial

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<sup>5</sup> Brandl et al, *Elder Abuse Detection and Intervention*, (New York: 2007).

<sup>6</sup> FINRA is a self-regulatory organization that writes and enforces rules for brokers and brokerage firms.

<sup>7</sup> Among other things, the Uniform Power of Attorney Act (1) explicitly defines the duties of the power of attorney agent, including fiduciary duties such as acting in good faith and keeping careful records; (2) allows a third party to refuse to honor a power of attorney agreement if there is a good faith belief that the principal may be subject to abuse, and requires the third party to report to APS; (3) allows co-agents to be appointed for additional third-party oversight; and (4) imposes liability on agents who violate the law.

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exploitation. For example, the Pennsylvania Attorney General's Office has published a guide on how seniors can avoid scams and fraud, and in Cook County, Illinois, the Senior Law Enforcement Academy within the Sheriff's Department instructs older adults in how to prevent elder financial exploitation. In addition, each of the federal agencies we reviewed independently produces educational materials that could help prevent elder financial exploitation.

We also identified state, local, and federal activities encouraging banks to work with social services and law enforcement, and activities to promote and support collaboration between the social services and criminal justice systems. Illinois, for example, requires bank employees to receive training in how to report exploitation. Although we could identify no federal requirements for banks to train employees to recognize or report elder financial exploitation, the Administration on Aging (AoA) is considering collaborating with one large national bank on a project to develop such training. Financial institutions are required to file Suspicious Activity Reports (SAR) of potentially illegal bank transactions that involve, individually or in the aggregate, at least \$5,000 with the Financial Crimes Enforcement Network (FinCEN), which has issued an advisory to banks that describes elder financial exploitation and its indicators and asks banks to specify "elder financial exploitation" when applicable in their SARs.

In each of the four states we contacted, there are also local initiatives to help bridge the gap between social services and criminal justice agencies. In some Pennsylvania and New York counties, multidisciplinary groups meet to discuss and help resolve all types of elder abuse cases. The Philadelphia Financial Exploitation Task Force and financial abuse specialist teams in some California counties, on the other hand, concentrate only on elder financial exploitation cases. Some steps have also been taken at the federal level to promote and inform collaboration between the social services and criminal justice systems in states. For example, a few grants to combat elder abuse or other crimes from AoA and the Department of Justice have required or encouraged collaboration, such as the use of multi-disciplinary teams, in states.

Elder financial exploitation is a complex, nationwide problem, and combating it effectively requires a concerted, ongoing effort on the part of states and localities, as well as support and leadership at the federal level. Each of the seven federal agencies we reviewed is working to address this problem in ways that are consistent with its mission. However, preventing and responding to elder financial exploitation also

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calls for a more cohesive and deliberate national strategy. The Elder Justice Coordinating Council (EJCC)—a group of federal agency heads charged with setting priorities, coordinating federal efforts, and recommending actions to ensure elder justice nationwide—can be the vehicle for defining and implementing such a national strategy. To this end, we are recommending that the EJCC develop a written national strategy for combating elder financial exploitation. We suggest that this strategy ensure coordination of public awareness activities across federal agencies; address the need to identify and disseminate promising practices and other information states and localities can use to prevent exploitation; educate the public; promote agency collaboration; and promote investigation and prosecution of elder financial exploitation. Our report also recommends a number of actions individual federal agencies should take to better support state and local social services and law enforcement agencies, such as studying the feasibility of requiring that consumer complaints to the Federal Trade Commission’s (FTC) Consumer Sentinel Network database include victim’s age or an indication of whether the complaint involves elder financial exploitation.

We provided a draft of this report to the seven federal agencies that we reviewed. CFPB, FTC, and the Department of Health and Human Services (HHS) provided comments. CFPB and HHS supported GAO’s recommendations. FTC did not believe they should examine the feasibility of requiring victim’s age in complaints. GAO maintains the importance of its recommendation.

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Chairman Kohl, Ranking Member Corker, and Members of the Committee, this concludes my statement. I would be happy to answer any questions you might have.

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## Contacts and Acknowledgments

For questions about this testimony, please contact Kay Brown at (202) 512-7215 or [brownke@gao.gov](mailto:brownke@gao.gov). Contact points for our Office of Congressional Relations and Public Affairs may be found on the last page of this statement. Individuals who made key contributions to this testimony include Clarita Mrena, Eve Weisberg, Andrea Dawson, and Brittni Milam. Also contributing to the report were James Bennett, Gary Bianchi, Jason Bromberg, Alicia Cackley, Paul Desaulniers, Holly Dye, Eileen Larence, Jean McSween, Chris Morehouse, Claudine Pauselli, Almeta Spencer, Kate Van Gelder, and Craig Winslow.

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**APPENDIX 4**

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**Cuyahoga County Division of Senior & Adult Services  
Adult Protective Services Financial Exploitation Risk Form**

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**Division of Senior & Adult Services**  
**Adult Protective Services Financial Exploitation Risk Form**

<b>Client Name</b>		<b>Worker</b>	
<b>Case Number</b>		<b>Date</b>	
<b>WORKER'S OBSERVATIONS</b>			
<ul style="list-style-type: none"> <li>❖ Large amount of mail.</li> <li>❖ Promotional gifts (Say No to Drugs, etc.).</li> <li>❖ Notes near phone about repayments, money orders or Western Union.</li> <li>❖ Checks or payment envelopes lying around.</li> <li>❖ Recent repairs or home improvement proposals</li> <li>❖ Unpaid bills, eviction notices d/t non-payment</li> <li>❖ Does have any documentation about her financial affairs or arrangements.</li> <li>❖ The elder is unaware of, or does not understand, the financial arrangements that have been made for her/him.</li> <li>❖ The elder appears fearful or submissiveness towards the caretaker.</li> </ul>			
<b>QUESTIONS</b>		<b>N/A</b>	<b>COMMENTS</b>
Sources of income? Amount?			
Bank accounts/type: Deposits?			
Who are the authorized signers on the elder's accounts? Physical possession of bank book(s)			
Has anyone recently asked you to add them to your accounts?			
Do you have any ATM cards? Who else knows PIN?			
Are there credit cards? Who has access? Are they used over the phone?			
Have you given any loans or gifts?			
Have you recently paid anyone for repairs done to your property?			
Have you signed any loan or mortgage papers lately?			
Have you been called or told that you have won any prizes or money? How often?			
Do you pay anyone to run errands for you?			
What are your monthly expenses? How are they paid			
Do you own your home? Is it a Joint ownership? Does it list a survivorship?			
Who has the property deed?			
Have you signed your home over to anyone?			
Is anyone using your home without your permission?			
Have you been missing any jewelry or valuables (car, furniture, appliance, collections) lately?			
Do you own any other property besides your home?			
Do you have any Insurance policies/beneficiaries?			
Does anyone take care of you? How do they support			

**Division of Senior & Adult Services**  
**Adult Protective Services Financial Exploitation Risk Form**

themselves?		
Has your house been appraised lately?		
Any stocks, bonds, brokerage accounts or money market accounts? Who is your broker?		
Do you have a will? Where are copies kept?		
Do you have a safe-deposit box? Who has access?		
Do you have a LAWYER, GUARDIAN, and ACCOUNTANT?		
Do you have a power of attorney? Yes/No. If yes, when did you make this arrangement? Has anyone recently ask you to change it?		
Can you please show me your most recent power of attorney papers?		

<b>CLIENT DEMEANOR</b>	<b>N/A</b>	<b>COMMENTS</b>
Volunteers information		
Hesitant to give information		
Refused to give information		
Unable to understand the questions		
Exhibits withdrawn behaviors		
Expresses anxiety about her ability to meet her financial obligations		
Truthful answers?		

<b>CARETAKER'S DEMEANOR</b>	<b>N/A</b>	<b>COMMENTS</b>
Volunteers information		
Hesitant to give information		
Refuses/withhold information		
Unable to understand the questions		
Makes false promises		
This is new relationship with the elder		
Is reluctant to leave the side of the elder during the visit		

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**APPENDIX 5**

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**National Adult Protective Services (NAPSA)  
National Guidelines to Implement the 2013 Federal  
Interagency Guidance on Privacy Laws and Reporting  
Financial Abuse of Older Adults**

**NATIONAL GUIDELINES  
TO IMPLEMENT THE  
*2013 FEDERAL INTERAGENCY  
GUIDANCE ON PRIVACY LAWS AND  
REPORTING FINANCIAL ABUSE OF  
OLDER ADULTS***

DEVELOPED BY THE PHILADELPHIA CORPORATION FOR AGING AND  
THE NATIONAL ADULT PROTECTIVE SERVICES ASSOCIATION

FUNDS WERE GENEROUSLY PROVIDED BY COMMUNITY FUNDS INC.:  
THE HUGUETTE CLARK FAMILY FUND FOR PROTECTION OF ELDER

Updated January 2016



# **National Guidelines to Implement the 2013 Federal Interagency Guidance on Interagency Guidance on Privacy Laws and Reporting Financial Abuse of Older Adults**

## **Background**

Elder financial exploitation is a substantial and complex social, justice and health problem. According to recent research:

- 10%, or about 5 million older persons, are abused, neglected and/or exploited each year, many of them in multiple ways.<sup>1</sup>
- Abused seniors are three times more likely to die prematurely.<sup>2</sup>
- Victims and family lose lifetime savings, often almost overnight, and may suffer physical and other types of abuse related to exploitation.
- Financial institutions lose significant amounts in deposits, money which is seldom recovered.
- Almost one in ten financial abuse victims may have to turn to Medicaid as a direct result of their own monies being stolen.<sup>3</sup>
- Only one in 44 elder financial exploitation case is ever reported.<sup>4</sup>
- Cognitive impairment reduces financial capacity, increasing the risk of financial exploitation.

Financial exploitation causes economic losses for Medicare, Medicaid, the financial services industry, caregivers, and families as well as older people themselves; and can lead to impoverishment and homelessness. As older persons are the fastest growing population group, elder abuse is expected to continue to increase in the coming years.<sup>5</sup>

<sup>1</sup> Acierno, R. e. (2010). Prevalence and Correlates of Emotional, Physical, Sexual and Financial Abuse and Potential Neglect in the United States: The National Elder Mistreatment Study. *American Journal of Public Health*, 100(2): 292-297.

<sup>2</sup> Lachs, M.S., Williams, C.S., O'Brien, S., Pillemer, K.A. & Carlson, M.E. (1998). The mortality of elder mistreatment. *Journal of the American Medical Association*, 280 (5), 428-432.

<sup>3</sup> Gunther, J., The Utah Cost of Financial Exploitation. Utah Division of Aging and Adult Services. March, 2011.

<sup>4</sup> Lifespan of Greater Rochester, Weill Cornell Medical Center of Cornell University, New York City Department for the Aging. (2011). Under the Radar: New York State Elder Abuse Prevalence Study, Final Report. Lifespan of Greater Rochester, Inc.

<sup>5</sup> Vincent, G. &. (2010). The Next Four Decades: The Older Population in the United States: 2010 to 2050. Washington DC: US Census Bureau.

## **Adult Protective Services**

Adult Protective Services, or APS, is statutorily authorized under state and tribal law to receive and investigate reports of elder abuse, including financial exploitation, and to protect the victims. In almost all states, APS serves all adults with significant disabilities age 18 and above; in a few states, any older person may be served based on advanced age alone (i.e., it is not necessary for a person over age 60 or 65 to have a disability); and in a few states APS serves older persons only.

APS' responsibilities include investigating the alleged abuse, determining if it is occurring, and working with the client to stop the abuse and to improve the victim's safety and well-being. APS conducts "authorized civil investigations" as mentioned in the privacy law exceptions in the Gramm-Leach-Bliley Act.

*In order to carry out these responsibilities, APS must have access to current, accurate information about the client's financial situation in order to adequately investigate the alleged financial exploitation and to mitigate the client's future risk.*

Twelve states specifically mandate financial institutions to report suspected elder abuse to APS, and another fourteen require "all persons" to report, so bankers and other financial professionals must report in a total of twenty-six states. They may voluntarily report with immunity for good faith in all states.

## **Financial Institutions**

Financial institutions play an important role in preventing and intervening to stop financial exploitation. Banks and investment advisors are in a position to spot suspicious activities in an older person's account; in over half the states financial institutions are required to report suspected abuse; and financial institutions have a duty and a desire to protect their customers' assets. Partnering with APS creates a significant opportunity to prevent and reduce elder financial abuse while also protecting their customers' assets and funds on deposit.

## **Goals of the Guidelines**

1. Clarify that a report of elder financial exploitation to APS by a financial institution necessitates that the institution also provide requested records promptly and completely; i.e. a report is incomplete without the needed records.
2. Promote standardization of practice by both financial institutions and APS in responding to, and cooperating on, financial exploitation cases.
3. Promote standardization of APS requests for client records from financial institutions through the creation and dissemination of a standard form to be used nationwide.
4. Promote knowledge of the federal guidance on reporting elder abuse, these guidelines and the standard form to as many financial institutions as possible throughout the country.
5. Encourage the submission of SARS on elder abuse cases.
6. Facilitate productive working relationships between APS and financial institutions.

## **Guidelines for APS**

The state or local APS Program recognizes:

1. *The responsibility to carry out thorough and timely investigations of reported elder abuse, neglect and exploitation and to intervene to protect the victims and their assets;*
2. The benefits of using the standardized request for records form in order to promote consistency of practice and to increase financial institutions' understanding of the role and authority of APS;
3. The need to be courteous and respectful of the financial institutions' time constraints;
4. The desirability of forming positive working relationships with financial institutions' personnel and educating the financial services industry about APS and its roles and responsibilities.

## **Guidelines for Financial Institutions**

The financial institution recognizes:

1. The serious problem of elder financial exploitation;
2. The bank's responsibility and authority to report suspected elder abuse, neglect and exploitation to APS;
3. The need to provide as much detailed information as possible in the report, including informing APS of the bank branch, specific teller, etc. who raised the concerns;
4. APS' responsibility and authority to investigate reports of elder abuse, neglect and exploitation;
5. The GLBA exceptions which allow the sharing of records pursuant to an authorized civil investigation by a government authority and to prevent fraud;
6. *The institution's responsibility to cooperate with APS in the investigation by providing the alleged victim's account records, as requested, in a timely and complete manner;*
7. The need to be courteous and respectful of APS' time constraints;
8. The desirability of forming positive working relationships with APS personnel and appointing a liaison person to work with APS whenever feasible;

**APS AGENCY LETTERHEAD**

**OFFICIAL REQUEST FOR CUSTOMER RECORDS**

**Pursuant to Gramm-Leach-Bliley Act (GLBA)(15U.S.C.§6802(e)(8); and 15U.S.C. §6802(e)(3)(B)) and Oklahoma Protective Services for Vulnerable Adults Act §43A-10-105:**

I, \_\_\_\_\_, an Adult Protective Services Investigator operating under the laws of the \_\_\_\_\_, am conducting an authorized investigation of alleged financial exploitation of an older person (vulnerable/dependent adult).

I hereby request records from \_\_\_\_\_ for all accounts relating to \_\_\_\_\_ for the period of \_\_\_\_\_ to \_\_\_\_\_, including but not limited to:

- Bank statements for ALL accounts, including checking, savings, money market, certificates of deposit
- Copies of all checks and withdrawals from the account(s) (front and back) including offsets
- Copies of all deposits and deposit items
- Customer Profile showing all accounts, including opening and/or closing dates All Power of Attorney documents and signature cards
- Statements for any loans, lines of credit, or credit cards and copies of any cash advances
- Other: \_\_\_\_\_

Please provide these records on or before \_\_\_\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Title

\_\_\_\_\_  
Email

\_\_\_\_\_  
Agency

\_\_\_\_\_  
Address

\_\_\_\_\_  
Other Agency ID (if applicable)

\_\_\_\_\_

## **Gramm-Leach-Bliley Act**

### **15U.S.C.§6802-Obligations with respect to disclosures of personal information**

#### **(e) General exceptions**

Subsections (a) and (b) of this section shall not prohibit the disclosure of nonpublic personal information—

(3)(B) to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability;

(8) to comply with Federal, State, or local laws, rules, and other applicable legal requirements; to comply with a properly authorized civil, criminal, or regulatory investigation or subpoena or summons by Federal, State, or local authorities; or to respond to judicial process or government regulatory authorities having jurisdiction over the financial institution for examination, compliance, or other purposes as authorized by law.

**Adult Protective Services (APS) is properly authorized, under the state statute cited below, to carry out civil investigations of elder/vulnerable adult abuse, neglect and financial exploitation.**

### **Oklahoma Protective Services for Vulnerable Adults Act**

#### **§43A-10-105. Investigation of report.**

A. Upon receiving a report of alleged abuse, neglect, or exploitation of a vulnerable adult pursuant to the provisions of the Protective Services for Vulnerable Adults Act, the Department of Human Services shall make a prompt and thorough investigation.



**DAVE YOST**  
OHIO ATTORNEY GENERAL

The Ohio Attorney General's

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Thank you to the members of the Ohio Attorney General's  
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