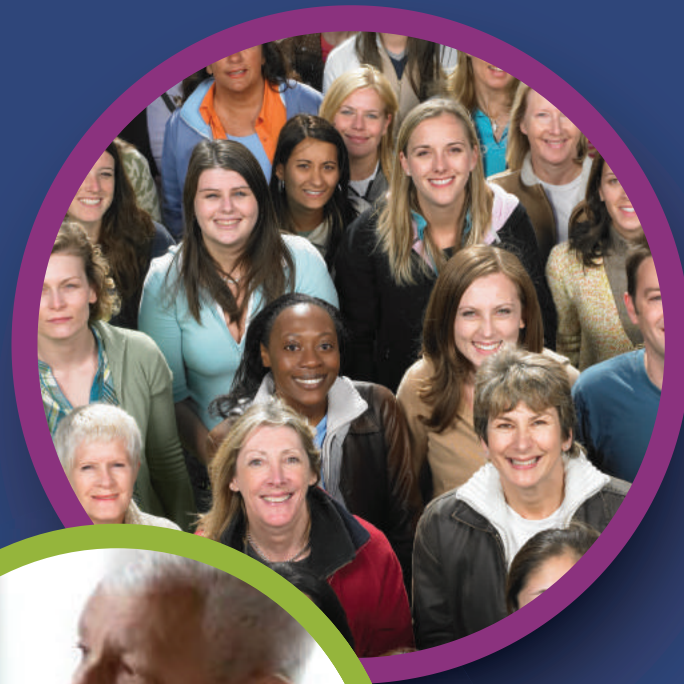
All in This Together:

Adult Protective Services and Financial Institutions' Efforts to Combat Elder Financial Exploitation



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FEAB
Financial Exploitation Advisory Board

NAPSA
National Adult Protective Services Association

NAPSA's Financial Exploitation Advisory Board (FEAB), is pleased to present this comprehensive examination of efforts to prevent elder financial exploitation, along with recommendations that we hope will inspire even greater collaboration among financial institutions and adult protective services in order to protect and serve our nation's growing population of older adults.

FEAB is grateful to all the professionals who contributed to the development of this paper, and we look forward to building on this work with our partners and other leaders in the field. FEAB's goal for this paper is to inspire financial institutions nationwide to implement these proven and recommended strategies to further protect their customers and their assets.

ABOUT NAPSA'S
FINANCIAL EXPLOITATION ADVISORY BOARD

NAPSA's Financial Exploitation Advisory Board (FEAB) was established in 2011 and is comprised of individuals from across the country with diverse expertise in financial exploitation and related fields. Recognizing that solutions lay in partnerships between NAPSA, financial institutions, regulators, researchers, and nonprofits, FEAB promotes cooperation between these entities and seeks to develop new strategies to address the significant and growing problem of elder financial exploitation and abuse.

The advisory board works to increase awareness of and attention to elder financial exploitation and abuse among policymakers, key decision makers, and the public. FEAB sponsors both the Annual Elder Financial Exploitation Summit and the World Elder Abuse Awareness Day Global Summit. These events bring together financial institutions, law enforcement and prosecutors, consumer advocates, government regulators, researchers, educators, and APS to learn from one another and to share innovative and successful promising practices to prevent, identify, and prosecute elder financial exploitation and abuse, while helping to make victims whole.

ACKNOWLEDGEMENTS

Attempting to chronicle a subject as vast and important as this one is always a group undertaking. We were fortunate to work with so many great people from the NAPSA Financial Exploitation Advisory Board (FEAB) as well as subject-matter experts who generously gave their time and expertise.

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We appreciate the individuals who generously gave of their time to help form the thinking on this paper. Marie Cervantes, Rebecca L. Fetters and Billie McNeely from Oregon Adult Protective Services (APS); Ron Long, Anne Larkin and Jason Lewis from Wells Fargo Advisors; and finally, Mike Cullen from the Delaware Valley Securities Officers Group (DVSOG) in Philadelphia who has been providing thoughts and guidance on these issues for many years.

The section of the paper titled, "Discussion and Insights: Interviews with Bank Representatives and APS Professionals" sits at the heart of this paper, and those who gave their time and expertise have our endless gratitude. Thanks to Sam Kunjukunju, ABA Foundation and FEAB member, for arranging interviews with banking industry personnel from across the country, and to APS and banking representatives including: Ali Brown and Chelsey Niklas, North Dakota APS; Tammy Sever and Taylor Yoder, Nevada APS; Shawn Driskell, New Hampshire APS; Melinda Zingg, California APS; Stacy Brashear, Premier Bank; Henry X. Hernandez, HSBC Bank; Wren York, Truist Bank; Kimberly Lane and Bill Muller, MidFirst Bank; and Barbara Graziano, First Seacoast Bank. These individuals helped address questions and provided additional insight to enhance the discussion and ultimately form the recommendations.

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EXECUTIVE SUMMARY

The financial exploitation of older adults has devastating consequences and is becoming more pervasive every year. As the population of older adults in the U.S. grows, so does the number of people intent on stealing their wealth and assets accumulated over a lifetime. Unfortunately, this type of crime is routinely underreported, exacerbating the problem.

Adult Protective Services (APS) and financial institutions (FI) have worked together for decades to combat the economic exploitation of seniors, and that coordination has gained momentum. Yet, despite heightened awareness of the issue and an urgency to address it, challenges exist for both APS and FI in their collaborative efforts to stop financial fraud and exploitation.

This paper highlights the history of cooperation between APS and FI and outlines next steps for addressing the financial exploitation of seniors. It further details the current challenges, opportunities, and tools for strengthening partnerships to better protect older adults and their communities from financial fraud and abuse.

Cooperative efforts and pivotal legislation impacting APS and FI's are noteworthy and include the following milestones:

- **Interagency Guidance on Privacy Laws and Reporting Financial Abuse of Older Adults:** Published in 2013 by the eight federal agencies responsible for regulating these issues, this guidance clarifies how the Gramm-Leach Bliley Act (GLBA) privacy provisions pertain to reports of suspected exploitation.

- **North American Securities Administrators Association (NASAA) Model Act to Protect Vulnerable Adults from Financial Exploitation:** Beginning in 2010, states, working with broker-dealers and FI, began enacting laws to provide the industry with the ability to report, hold, and investigate suspicious transactions and stop losses associated with exploitation. The efforts have resulted in nearly 40 states with these beneficial laws on the books. The North American Securities Administrators Association (NASAA) Model Act to Protect Vulnerable Adults from Financial Exploitation (adopted by NASAA in 2016) provided a roadmap for state regulators to enact legislation that would provide new tools for the financial institutions to stop losses associated with exploitation while requiring them to report suspicions of abuse.

- **FINRA Rules 2165 (Financial Exploitation of Specified Adults) and 4512 (Customer Account Information):** Effective February 2018 and amended March 2022 under the approval of the U.S. Securities and Exchange Commission, FINRA Rule 2165 permits a FINRA member broker-dealer to place a temporary hold on a securities transaction or disbursement of funds or securities from the account of a senior investor or other vulnerable adult customer when the firm reasonably believes that financial exploitation of that adult has occurred, is occurring, has been attempted, or will be attempted. FINRA also amended Rule 4512 in 2018 to require members to make reasonable efforts to obtain the name of and contact information for a trusted contact person for non-institutional customer accounts.

To better understand the barriers to collaboration between APS and FI, APS staff and representatives from national, regional, and community banks were interviewed about their experiences working jointly on suspected or actual elder financial exploitation cases.

Several themes emerged, centered on the following topics:

- Communication between banks and APS offices.
- Understanding each other's role, responsibilities, authority, and limitations.
- Frequency and timing in reporting suspected cases of financial exploitation, as well as knowing which activities should be reported or investigated.
- Documentation and obtaining bank records.
- Accessing information and updates on cases and outcomes.

Recommendations for addressing these issues and strengthening APS and FI's ability to work together also emerged from the interviews, including:

- The National Adult Protective Services Association (NAPSA) and the American Bankers Association (ABA) Foundation can develop, publish, and maintain lists of state and local contacts for APS and financial institutions that can be shared between the two systems.
- APS and FI should use the *HelpVul*™ reporting portal and adopt the *2019 National Guidelines for Financial Institutions and the Official Request for Customer Records* form created by NAPSA to promote standardization and streamline reporting and record requests.
- NAPSA should draft a Model Act or legislation recommending that any financial institution that reports a case of suspected financial exploitation to an Adult Protective Services program must then be required to provide the specific financial records corroborating the referral, when requested in writing by APS. This will help clarify the roles and responsibilities for each industry.
- Ongoing roundtable discussions between banks, firms, credit unions, and APS should take place through state and local working groups and at national and regional conferences.

INTRODUCTION

Elder abuse and elder financial exploitation are problems that affect every community and cut across all races, religions, cultures, genders, and income lines. Scams can affect anyone, but older adults are especially vulnerable to fraud and other predatory schemes. The Association of Certified Fraud Examiners (ACFE) notes that seniors are particularly vulnerable as they may be lonely, willing to listen, and more trusting than younger individuals.[1] They also have more money to lose, and less or no ability to replenish stolen funds with future earned income. Main risk factors for exploitation are isolation and cognitive decline.

Financial exploitation of older adults is widespread, causes immense harm to victims and can even be deadly. It is such a serious and systemic problem that it has been called the "crime of the 21st century"[2] and recent studies suggest that "financial exploitation is emerging as the most prevalent form of elder abuse."[3] The joint publication of the Consumer Financial Protection Bureau (CFPB), the U.S. Department of the Treasury and the Financial Crimes Enforcement Network describes financial exploitation as the most common form of elder abuse in the United States.[4]

Stemming the tide of elder financial abuse requires alliances, and partnerships between Adult Protective Services (APS) and financial institutions (FI) have increasingly become stronger. Regulatory changes and new laws have made it easier to share information across these two systems, strengthening APS' and FI's ability to prevent elder financial exploitation, stop it where it is occurring, and mitigate its many harms. When APS and FI use the tools at their disposal and work together, successful prosecution of the economic exploitation of seniors becomes much more likely.

This paper will examine the scope of the problem, highlight the shared steps APS and FI are taking to prevent elder financial exploitation, discuss ongoing challenges, and make recommendations for improving collaboration.

SCOPE OF THE PROBLEM

AN AGING POPULATION

America is aging rapidly. Adults over age 65 currently make up 16.8% of the population.[5] An average of 10,000 Baby Boomers a day have been turning 65 and will continue to do so until 2030. At that time, 20% of the population will be 65 or older, and their numbers are projected to reach 74 million.[6] Because seniors are the country's fastest-growing demographic, elder financial exploitation is expected to increase in the coming years.[7]

Older adults also own a disproportionate share of the assets in America. The Securities Industry and Financial Markets Association (SIFMA) reports that Americans over age 50 account for more than 77% of the assets in the United States.[8] The American Banking Association says that people over age 50 make up one-third of the population but account for 61% of bank accounts and 70% of bank deposits.[9] Seniors often face the double whammy of having assets but a limited ability to protect themselves from theft and other crimes due to diminished capacity and declining skills.

Financial exploitation is especially harmful to the oldest seniors because they are at

greater risk of acute cognitive decline, which creates opportunities for perpetrators. A 2019 study in *Health Economics* concluded that people in the earliest stages of Alzheimer's disease face a heightened danger of damaging financial outcomes.[10] Wood and Lichtenberg stated in 2017 that "individuals who are mildly impaired prior to AD [Alzheimer's disease] are the perfect victims as they have control of their assets but have impairment that may not be recognized and have broad exposure to the community…"[11]

The 2019 CFPB paper, *Suspicious Activity Reports on Elder Financial Exploitation: Issues and Trends* found that SARS [suspicious activity reports] filings on elder financial exploitation tripled between 2013 (the first year an "elder financial exploitation" checkbox was added to the electronic form) and 2017.[12] One-third of victims who lost money were over age 80, although adults ages 70 to 79 had the highest average monetary loss. Losses were more significant when the victim knew the perpetrator.

The adverse effects of loneliness and isolation on brain health and decision-making as we age are also well documented. A growing body of evidence suggests that loneliness reduces brain health and promotes a reliance on intuition over analytic reasoning. A 2021 study funded by the FINRA Foundation found that loneliness puts older adults with lower cognition at higher risk of poor financial and healthcare decision-making.[13]

Finally, declining financial and health literacy associated with aging also poses a problem. The decline can be brought on by disease or natural changes in the aging brain. Researchers from Rush University Medical Center found that a more rapid decline in financial and health literacy in old age was associated with poorer decision-making, higher susceptibility to scams, and lower psychological well-being.[14] Compromised finances are often the first thing noticed by caregivers, families, healthcare providers and financial institutions—all frontline protectors. This can be a signal that financial exploitation has occurred, and/or cognitive functioning is declining. Unfortunately, abuse typically gets reported to Adult Protective Services only after extensive damage.

THE PERPETRATORS OF ELDER FINANCIAL EXPLOITATION

The main culprits behind elder financial exploitation are family members and professional scammers. Both present overwhelming obstacles because:

- Dysfunction, coupled with changing power imbalance runs deep in many families, and economic and other circumstances lead some family members to steal from their loved ones.
- Scammers, well aware of the many vulnerabilities that humans possess, use this to their advantage to separate victims from assets quickly and aggressively. For example, they know that evoking strong emotions in their victims is effective. Researchers have

found that inducing high-arousal positive and/or negative emotions in older adults increased their susceptibility to misleading advertisements, making them more likely to purchase falsely advertised items.[15]

UNDERSTANDING THE SCALE OF ELDER ABUSE

Experts have sought to answer a frequently asked question: How big is the problem of elder abuse? While there have been many studies and estimates, none have provided a conclusive answer. One of the earliest and most quoted studies, *The National Elder Mistreatment Study* (2010), reported that 10%, or five million seniors, are abused, neglected, and exploited each year, often in multiple ways, and that most perpetrators are relatives.[17] Another early study found that nearly one in 10 victims of financial exploitation end up on Medicaid due to their monies being stolen.[18]

Elder abuse—and financial exploitation of seniors in particular—is vastly underreported, making it difficult to determine its prevalence. It is estimated that only one in 23 cases of abuse are reported to authorities, while only one in 44 cases of financial exploitation are reported, according to the appropriately titled study *Under the Radar.*[19]

No single study can provide the definitive number of people affected by fraud and exploitation or a definitive dollar amount lost, but estimates suggest the damage is staggering. The *New York State Cost of Financial Exploitation Study* found that adults age 60 and older suffer losses ranging from $352 million to $1.5 billion annually.[20] A 2022 report by cybersecurity company Comparitech estimates that 8.68 million cases of elder fraud occur in the United States annually, resulting in more than $113 billion in losses.[21] Comparitech uses aggregated data from multiple studies on elder fraud in every state to measure the total number of cases and total damages in each state, adjusted for the proportion of unreported cases. Although the Comparitech estimates are higher than most studies, the figure is more in line with what professionals in the APS field think the damage really is.

> **“Elder abuse is likely the most widespread problem of older people that is largely preventable (unlike many disease conditions of old age)”**
>
> *-Karl Pillemer and colleagues*[16]

Financial exploitation causes economic losses for businesses, families, older adults and government programs. It can lead to impoverishment, homelessness, and greater use of publicly funded programs such as Medicaid.[22] Elder financial abuse also raises the chances of an earlier death. Of the five types of elder abuse studied by Burnett et al. (caregiver neglect, financial exploitation, physical abuse, emotional abuse, and poly-victimization), financial exploitation ranked second highest in the link to early mortality, ahead of physical abuse.[23]

THE PARTNERS

ADULT PROTECTIVE SERVICES

In the United States, APS is the single, dedicated, authorized victim-service system for elder and vulnerable adult abuse victims in community settings. In about half of the states, APS also investigates abuse in various facility settings. APS has a presence in every community in the U.S. and operates under state law.

APS receives and investigates reports of abuse, neglect, and financial exploitation of older adults and, in most states, of younger adults with disabilities. To qualify for APS assistance in most states, both younger and older adults must have a disability that limits their ability to protect themselves. In a few states, however, older persons may be served based on age alone. In other words, it is not necessary for a person over age 60 or 65 to have a disability to be eligible for APS assistance.

APS' responsibilities include investigating and validating abuse, stopping it, and improving the victim's safety and well-being. To perform their duties, APS professionals must have access to current and accurate information about the client's financial situation, especially when financial exploitation is suspected.

FINANCIAL INSTITUTIONS

Financial institutions as defined in this paper, include banks, credit unions, broker-dealer firms, investment advisers, and insurance companies. Because each of these entities complies with different federal and state laws, it is helpful to know which professionals APS works with in specific cases.

In most cases, APS works with banks, credit unions, and securities firms (broker-dealers and investment advisers). The majority of wealth held by these institutions is concentrated with older customers. As a result, these assets are potentially at risk due to the populations' higher likelihood of cognitive impairment, exploitation, or both. Impaired financial decision-making is one of the earliest indicators of cognitive decline and there are generally no outward manifestations of the impairment until a bad decision is made.[24] The good news is that FI's touch points with clients and systems of supervision can be used for the early identification of financial fraud and abuse.

Banks routinely monitor customer activity to detect anything that might be suspicious both manually and with the help of software-based screening systems. Even if frontline employees do not notice something suspicious, most banks have predictive software that may identify changing patterns and trigger an alert to notify of any suspicious activity. Examples include increased frequency and amounts of withdrawals, deposits of checks from unknown entities out of the area, and first-time requests for payments through wire transfers, money orders, or cashier's checks.[25]

In many states, financial professionals are required by law to report suspected financial exploitation to APS, law enforcement, or regulatory agencies. These professionals are known as "mandated reporters," along with members of many other professions. Because financial service providers frequently have strong ties to their customers, they are often the first to notice changes in financial decision-making and other potential signs of abuse.

Financial institutions want to protect their customers, so they are a natural and essential partner with APS, as both seek to prevent and respond to elder financial exploitation.

ELDER FINANCIAL EXPLOITATION DEFINITIONS

There are many definitions for elder financial exploitation. Below are the ones used by the National Adult Maltreatment Reporting System (NAMRS), the first national comprehensive reporting system for data reported to state Adult Protective Services programs. Led by the Administration for Community Living (ACL) at the U.S. Department of Health and Human Services, this system allows APS in different states to report comparable data. According to the NAMRS data collected from 56 jurisdictions, including all states, the District of Columbia, and U.S. territories, there are three primary definitions in state laws pertaining to exploitation:

Financial Exploitation, defined as the illegal or improper use of an individual's funds, property, or assets for another person's profit or advantage. This is investigated in 87.5% of the states.

Exploitation (non-specific), defined as the illegal or improper use of an individual or individual's funds, property, or assets for another's profit or advantage. This is investigated in 50% of the states.

Other Exploitation, defined as the illegal, improper use of an individual for another person's profit or advantage, including exploitation of person, servitude, etc. This is investigated in 42.9% of the states.[26]

Another common way to define elder financial exploitation is to distinguish between financial abuse where a relationship of trust has been violated by a family member or other close person, and elder fraud where scams are perpetrated primarily by strangers.

Finally, "pure" financial exploitation should be distinguished from poly-victimization, in which financial abuse is accompanied by other types of maltreatment such as physical or psychological abuse, neglect, and undue influence. Older citizens may be poly-victimized and re-victimized. In many cases, poly-victimization is instrumental to financial exploitation (i.e., physical abuse forces the older person to turn over their financial assets).[27]

The form, frequency, and duration of abuse and exploitation may escalate, especially when there is an intimate, long-term relationship between victim and perpetrator. This is often the case with hybrid financial exploitation, when multiple forms of abuse are part of the abuser's strategy. Abuse and exploitation may also occur when (and because) a victim is cognitively and/or physically impaired.[28]

Among all forms of abuse, hybrid financial exploitation, as noted by Jackson and Hafemeister, *"is perhaps the most entrenched (e.g., it is generally the longest in duration) and intractable (because it is characterized by mutual dependency between the elderly person and the perpetrator), the most difficult for APS [Adult Protective Services] to investigate, and with the most draconian outcomes for the victims of this abuse (e.g., the victim is the most likely to be appointed a guardian)."* [29]

DETECTING ELDER FINANCIAL EXPLOITATION

Financial institutions rely primarily on professional training and analytics to detect exploitation, which can include tracking erratic transactions. But it is not always possible for those institutions to know all the contributing, contextual factors that inform clients decisions about their accounts. Perpetrators know this, to their advantage. Once APS is enlisted, they are trained to understand the many contextual factors that surround their client.

APS and FI staff recognize that working together to report and respond to alleged or actual elder financial exploitation is vital. One of the main friction points in the collaboration is the concern over legal issues tied to privacy and fiduciary responsibility. *The greatest barrier to APS's ability to investigate cases is the inability to get financial records,* according to a report by the Oregon Department of Human Services. Yet, there is a positive corollary: when investigators had access to personal documentation and financial records, case rate substantiation jumped from 22.7% to 63%—an astonishing increase.[30]

For too long, it has been assumed that the Federal Privacy Act along with the Gramm-Leach-Bliley Act (GLBA),[31] prohibit financial institutions from sharing information with APS. That assumption is unsound, and there are exceptions to these laws carved out to stop fraud and to assist in investigations. (These exceptions are described in the next section.) Because early detection of financial exploitation can help authorities respond quickly, halt many forms of abuse, mitigate others, and "stop the bleeding" to prevent further loss, understanding these laws is crucial.

HISTORY

OF COOPERATIVE EFFORTS BETWEEN ADULT PROTECTIVE SERVICES & FINANCIAL INSTITUTIONS

1990s

The *Massachusetts Bank Reporting Project* [32] and the *Oregon Bank Reporting Project* launched in the early 1990s.[33] They were groundbreaking initiatives because they set the tone for cooperation among Attorneys General, state banking associations, and Adult Protective Services. These projects served as models for future, similar efforts.

EARLY 2000s

In 2003, the Wachovia Bank and the Philadelphia Corporation for Aging (PCA) model became the first and only partnership between a national bank and an APS program.[34] Starting as a pilot in Philadelphia with a cross-training effort between Wachovia and APS, the model quickly spread to the rest of Pennsylvania and then to the 13 states within the Wachovia footprint. In the five years from 2003 to 2007, the group investigated 3,000 cases, stopped $2.1 million dollars from leaving the bank and protected an additional $62.5 million of at-risk assets. *Notably, Wachovia did not have to defend a single lawsuit based on its information sharing.*

PCA-Wachovia participants addressed the BITS Fraud Committee of the Financial Services Roundtable to discuss these remarkable results. The 100 largest financial institutions in the country participated in this Roundtable. Based on those results, BITS formed a sub-committee. In 2006, that subcommittee produced a toolkit and a paper that encouraged cooperation and partnerships between the two industries.[35, 36] These joint products highlighted FI's role and common types of scams and abuse.

2013

This year saw issue of the *Interagency Guidance on Privacy Laws and Reporting Financial Abuse of Older Adults.* Eight federal agencies whose jurisdiction touches adult financial abuse and fraud published the guidance. The purpose was to strengthen the FI/APS partnership to detect and prevent financial abuse:

"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. 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."[37]

2015 - 2022

National Guidelines for Financial Institutions

In 2015, APS professionals, financial service representatives, legal service professionals, and federal government employees met, supported by a grant from the Huguette Clark Fund for Protection of Elders. They produced the *National Guidelines for Financial Institutions: Working Together to Protect Older Adults from Financial Abuse*.[38] This document provides guidelines for APS and financial institutions and includes an official request for customer records that APS can use to obtain these documents from banks and credit unions. It also includes sample letters to introduce APS to local banks and a reply to banks and credit unions who have refused to release records.

The participants agreed that two general exceptions to the GLBA applied to requests from APS to receive customer records. The first exception is, ***"to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability."*** The second exception is, ***"to comply with a properly authorized civil, criminal or regulatory investigation or subpoena or summons by Federal, State or local authorities…***"

To be clear, this means that banks should not object to APS' information requests based on GLBA privacy concerns, because APS seeks the records (1) "to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability," and (2) APS is authorized under state law to carry out civil investigations of adult abuse, neglect, and financial exploitation. Importantly, APS need not issue a subpoena, as there is no prerequisite for this for banks to provide information pursuant to a properly authorized civil investigation.

NASAA adopted a Model Act to Protect Vulnerable Adults from Financial Exploitation, providing a framework of training, identification, reporting, investigation and communication.

In 2019, there was an update to these guidelines to include securities firms as well as banks. SIFMA (Securities Industry and Financial Markets Association), FINRA (Financial Industry Regulatory Authority), and NASAA (North American Securities Administrators Association) reviewed these changes.[39] The updated protocol included a model letter from APS to securities professionals requesting an extension of a hold on a transaction pertaining to a client's account. This hold is put in place by the financial institution or financial professional. It also references the Senior Safe Act, which is discussed in a later section.

NASAA Model Act

Broker-dealers and other FIs identified a clear need for additional tools to protect their clients, who were increasingly targets for exploitation. In 2010, the first state law was enacted to provide FIs with the ability to report, hold, and investigate suspicious transactions and stop losses associated with exploitation. In 2016, NASAA adopted a *Model Act to Protect Vulnerable Adults from Financial Exploitation*, providing a framework of training, identification, reporting, investigation and communication.[40] This *Model Act* does not have the force of law but did help to socialize these "report and hold" laws to state financial regulators.

The act mandates reporting by FI firms to a state securities regulator and state protective services agency when a qualified individual (as defined in the next paragraph) has a reasonable belief that financial exploitation of an eligible adult has been attempted or has occurred. The act also authorizes disclosure to third parties related to the abuse only in instances where an eligible adult has previously designated the third party to whom disclosure may be made. The disclosures may not be made to the third party if the qualified individual suspects that the third party is involved in the financial exploitation.

"Eligible adults" covered under the NASAA Model Act are adults age 65 or older and those adults who would be subject to the provisions of the state's adult protective services statute. "Qualified individuals" include broker-dealer agents; investment adviser representatives; those who serve in a supervisory, compliance, or legal capacity for broker-dealers and investment advisers; and any independent contractors that may be fulfilling any of those roles.

The committed efforts of industry, state regulators, and APS have resulted in nearly 40 states with these beneficial laws on the books since 2010.[41]

FINRA Rule 2165 and Rule 4512

In February 2017, the U.S. Securities and Exchange Commission (SEC) approved: (1) the adoption of the new FINRA Rule 2165 (Financial Exploitation of Specified Adults)[42] to permit FINRA broker-dealer members to place a temporary hold on disbursements of funds or securities from the accounts of "specified adult" customers where there is a reasonable belief that financial exploitation of that adult has occurred, is occurring, has been attempted, or will be attempted;[43] and (2) amendments to FINRA Rule 4512 (Customer Account Information)[44] to require members to make reasonable efforts to obtain the name of and contact information for a "trusted contact" upon the opening of a non-institutional customer's account or when updating account information for a non-institutional account. New Rule 2165 and the amendments to Rule 4512 became effective on February 5, 2018.

As adopted in 2018, FINRA Rule 2165 gave member firms and their associated persons a safe harbor from certain FINRA rules when member firms exercise discretion in placing a temporary hold of up to 25 business days on disbursements of funds or securities from the account of a specified adult consistent with the requirements of the rule. The hold period could be extended or terminated by a state regulator or agency or court of competent jurisdiction.

Important safeguards were put into place to help ensure that there would be no misapplication of the rule.

In 2019, FINRA conducted a retrospective review to assess the effectiveness and efficiency of its rules and administrative processes that help protect senior investors from financial exploitation.[45] As part of that review, FINRA solicited comments on Rules 4512 and 2165 and whether additional tools, guidance, or changes were appropriate to further address suspected financial exploitation and other circumstances of financial vulnerability for senior investors.

Based on feedback received during the review (from NAPSA and others), FINRA amended Rule 2165 in 2022 to permit member firms to: (1) extend a temporary hold on a disbursement of funds or securities or a transaction in securities for an additional 30 business days if the member firm has reported the matter to a state regulator or agency or a court of competent jurisdiction; and (2) place a temporary hold on securities transactions (as well as disbursements of funds or securities) where there is a reasonable belief of financial exploitation.[46]

Most states adopting report and hold laws since 2019, which generally apply to broker-dealers and state-registered investment advisers, include provisions that allow transaction holds and disbursement holds.

In December 2022, FINRA published a regulatory notice concerning trusted contacts, summarizing member firms' regulatory obligations under FINRA Rule 4512, discussing the benefits of trusted contacts in administering customers' accounts, highlighting customer education resources and sharing effective practices member firms use.[47]

Senior Safe Act

Enacted in 2018, the Senior Safe Act is the only law that has a nationwide footprint and one that applies to broker-dealers, investment advisers and other financial services companies. NAPSA considers this landmark legislation in that it provides immunity from liability in any civil or administrative proceeding for reporting alleged or actual exploitation of a senior citizen to a covered agency.[48]

Immunity is extended to firms and certain eligible employees who receive training about adult financial abuse and exploitation. The financial institutions covered by the Senior Safe Act include credit unions, depository institutions, investment advisers, broker-dealers, insurance companies, insurance agencies, and transfer agents. The Act defines the term "covered agency" as a state financial regulatory authority; **a state or local adult protective services agency**; the SEC; an SEC-registered national securities association (currently, the only national securities association is FINRA); a federal law enforcement agency; or any federal agency represented in the Financial

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Institutions Examination Council. FINRA, NASAA, and the SEC collaborated to issue a Senior Safe Act Fact Sheet to educate financial institutions and employees about the benefits of the legislation.[49]

Centralized Reporting and Data Collection
One issue that has slowed down the partnership between APS and FI is that APS programs are state-run, and each state has different criteria for reporting, protocols, and training. They also lacked a central repository at the federal level where national data can be gathered and analyzed.

Having the NAMRS data allows policy makers and regulators, like FINRA, to use data and analysis, rather than anecdotes, to define the contours of rules and legislation.

The latter has improved with the establishment of the *National Adult Maltreatment Reporting System* (NAMRS) in 2016 by the U.S. Administration for Community Living (ACL). The Adult Protective Services Technical Assistance Resource Center (APS TARC) funded by ACL, provides training and technical support to states to assist with NAMRS submissions. NAMRS produces annual reports with national data on elder and vulnerable adult abuse. These reports represent the first meaningful effort to document the work of APS agencies throughout the country.[50]

The system yields valuable information that, as more data is received, will be refined to give a clear picture of how the partnership can improve with proper allocation of resources and changes in policy. For example, NAMRS data shows that the average investigation duration for reported cases is 54.6 days (the average case duration is 67.4 days). This data underscores why FINRA's Rule 2165 amendment lengthening the time for holds makes sense in practice.

Having the NAMRS data allows policy makers and regulators, like FINRA, to use data and analysis, rather than anecdotes, to define the contours of rules and legislation.

There is also a tool now used in the field for unitary reporting by FI to APS and securities regulators. Called *HelpVul™*, it is a uniform, web-based reporting platform designed to improve the efficiency and security of referrals made by financial service professionals to APS and state securities regulators. The *HelpVul* referral form was designed with input from APS offices, regulators, and financial institutions across the U.S. *HelpVul* streamlines reporting practices, increases efficiency in case investigations, bolsters collaboration across industries and enhances communication between banks, investments firms, credit union, APS, and securities regulators through secure messaging. Originally funded by the Department of Justice's Office of Victim Services, project partners currently include NAPSA, SIFMA, and EverSafe. (Hunter College and University of Texas are partners *emeritus.*) To date, *HelpVul* is used in Missouri, North Carolina, Montana, Pennsylvania, Florida, and California, with plans to extend it

DISCUSSION AND INSIGHTS:
INTERVIEWS WITH BANK REPRESENTATIVES & APS PROFESSIONALS

In the summer and fall of 2021, a select group of APS professionals and members representing national, regional, and community banks from around the country shared their experiences about working with one another on suspected or actual elder financial fraud and exploitation cases. Several themes emerged, with a focus on the following topics:

- **Communication between banks and APS offices**
- **Understanding each other's role, responsibilities, authority, and limitations**
- **Reporting**
- **Documentation and obtaining bank records**
- **Information and updates on cases and outcomes**

COMMUNICATION BETWEEN BANKS AND APS OFFICES

The bank representatives and APS professionals interviewed described challenges in initiating and maintaining good communication levels. Issues included difficulty making and maintaining good contacts, slower rates of resolution due to understaffing and frequent staff changes, and the absence of a workable process for reciprocal reports. Recommendations for improvements include maintaining a list of contacts or key points of contact for both banks and APS, conducting regular meetings or events (not necessarily case-specific) to learn from each other and build relationships, and more face-to-face contact whenever possible.

Many of the issues might be addressed by employing a unified, accessible, and secure portal through which both sides can communicate in real time. The *HelpVul* platform addresses these challenges.

Bank Representatives:

It would be helpful for APS to educate us and give us contacts for follow up. The bank should do the same as the opportunity exists for us to strengthen our partnership. An annual event or meeting would go a long way towards increasing communication.

APS Professionals:

There are so many bank and staff changes within banks that it is hard to figure out who best to talk with on our cases.

We could really benefit from having a contact at each financial institution. We don't always know who is the best person to call.

UNDERSTANDING EACH OTHER'S ROLE, RESPONSIBILITIES, AUTHORITY, AND LIMITATIONS

Alongside the challenges with communications, the banks and APS expressed concerns about the other's understanding of the functions and limitations of their respective roles.

Both agreed there is work to do to better understand how to operate well together, and separately, given their ability to intervene. Paramount for both is to better understand and agree about privacy laws and what is and is not permissible in the field.

Bank Representatives:

There is a lack of understanding on the part of APS about what we can share.

Privacy laws are a barrier in cooperation, we need changes in legislation. We need a safe harbor to report. I know APS can't share certain things and I get it.

We provide as much as possible to APS including funds spent, sources of funds, timeframe of events and summary of cases.

APS Professionals:

Banks have a limited awareness of their role and my role in solving cases of elder fraud...Banks don't understand that we can't stop the bleeding without a legal intervention and that takes time.

Banks would say that there is great risk in sharing information to protect their customer but what about the risk of not protecting their customer by sharing with us.

Bank don't understand that when they report something that we can't always fix it.

REPORTING

According to the banks interviewed, some mystery persists around what APS does with the reports sent to them by the banks. Some bank representatives also noted the lack of clarity around the criteria APS uses to determine which cases will be investigated.

What should be reported and investigated are questions that came up repeatedly in the interviews. At the state level, APS programs have different criteria for which cases they accept and which ones they investigate, and this causes frustration and confusion for financial institutions. Timeliness of reporting is a big issue for APS, as often the money can be gone by the time the report is received. APS staff often find it difficult, if not impossible, to speak to the actual reporter, especially at larger banks.

Bank Representatives:

APS probably feels like we don't report enough and there is a hesitancy to report. There are many tools we have to help and protect our customers and we get APS involved as a last resort. Not knowing the outcome of the case is difficult and we would like to see that change.

One challenge is understanding the criteria for APS as to what cases will be accepted and what will be investigated. This affects what should be reported. We are often told the case does not meet the criteria, but we have to report.

APS Professionals:

We never get to talk to the reporting party, especially with the big banks thus we are operating with secondhand information. When we follow up with [bank] reporters, we often get answers such as, "this is all I have" and "I don't know."

Banks don't report timely and often by the time we get the report, the money is gone.

WELLS FARGO AND APS

In 2020, Wells Fargo launched 50 virtual meetings with APS, expanding upon in-person visits to APS offices that began in 2012. The firm reported that it gained a better understanding of the criteria APS programs use to determine whether a case will be accepted and result in opening an investigation. There was also strong support for the concept of a national, centralized, web-based reporting system.

Wells Fargo is now looking to increase their response time to APS and highlighted the use of the NAPSA request form many states currently use. The company has also been working with APS to encourage sharing the status of reports made. Anecdotally, there is evidence that this type of collaboration is happening in many states. This is another step in strengthening partnerships and protecting mutual clients, which is the ultimate goal.

DOCUMENTATION AND OBTAINING BANK RECORDS

The process for how banks document information and how APS obtains records from the banks also presented challenges from the perspective of both groups. Many bank representatives noted that a more standardized set of questions and documentation would be helpful. APS representatives spoke about the difficulties of getting records in a timely manner and some of the differences they experience working with local, national, and out-of-state banks.

The timely receipt of relevant financial records is the key to a successful investigation and stopping the loss of wealth and health to mutual clients and customers. To make this easier for both parties, the National Adult Protective Services Association (NAPSA) developed a model *Official Request for Customer Records* form with members of financial institutions.[52] The form is included within the *HelpVul* platform. The Gramm-Leach-Bliley Act (GLBA) permits reporting and sharing with APS.

Bank Representatives:

We need something official to document what [APS is] asking and under what authority. Our ability to share information is sometimes difficult but it is vastly improved.

A uniform request form or portal would be great. I would love the questions to be the same for every state.

APS Professionals:

Obtaining bank statements in a timely manner is a huge barrier. We have timeframes in which we have to close a case and banks don't realize it.

It is hard and sometimes impossible to get records from an out-of-state bank.

GRAMM-LEACH-BLILEY ACT (GLBA)

Can state law supersede federal law? This is a question that has been raised in relation to reporting and sharing information under GLBA. A state law that prohibits disclosure of data would supersede federal law as GLBA only *permits* disclosure of information: it does not *compel* it. The unanswered question is if any state laws prohibit the kind of disclosures to APS. This claim has not yet been verified but should be part of continued discussion.

As part of the Huguette Clark Fund for Protection of Elders grant, a survey of APS programs was conducted in 2015. Building relationships, cross-training, and the use of standardized bank request forms were identified as the top methods for improving relationships.

INFORMATION AND UPDATES ON CASES AND OUTCOMES

Many bank representatives said they would like more feedback from APS after reports are made—either about the outcome or any additional threats of financial fraud. But many APS representatives noted that they are limited in what they can share with banks about outcomes. This is an area complicated by laws and state policies limiting the ability of both sides to share information with each other. Best practices and examples of APS and banks cooperating and sharing information have existed for years; the goal should be to make them universal practice. An online portal (like *HelpVul*) makes sharing and updating information seamless and easily adaptable to the needs of both sides.

Bank Representatives:

We get follow up in the form of a letter from APS from certain jurisdictions. We would like to get a notice from [all APS programs] that says that we are closing [the case] and these are our findings.

Some APS programs are a black hole and we never hear when we report. APS would probably say the same thing about us.

APS Professionals:

APS will share information with the bank if we have client consent. We are otherwise limited in what we can share.

We do share information with banks including outcome if it helps protect our mutual client.

RECOMMENDATIONS

Many positive developments have been advanced and accomplished between FI and APS. There are still improvements that need to be made and they are within the abilities of both groups to achieve. Forming and maintaining relationships, a willingness to have open discussions, and the ability to work towards common ground make successful partnerships. There is enough evidence to conclude that all stakeholders are committed to bettering the partnership. With this commitment, the kinds of problems identified in this paper can be solved.

The following are recommendations for moving the collaborative process forward and addressing the issues identified throughout the report. They define reciprocal responsibilities for APS and FI stakeholders.

Recommendations for NAPSA:

- Produce and maintain a list of state and local contacts, published for use by FI.
- Develop a list of state-specific evaluation criteria used by APS when determining whether to accept a case and what cases will be investigated. Share criteria with FI for use as a guide when reporting a case.
- Draft a Model Act or legislation stating that any financial institution who reports a case of suspected financial exploitation to an Adult Protective Services program must then be required to provide the specific supporting financial records when requested in writing by APS.

Recommendations for FI:

- The American Bankers Association (ABA) Foundation should lead in developing and maintaining a list of bank contacts for use by APS, particularly for the larger banks.
- Financial institutions using a centralized reporting system should create an efficient process to retrieve and produce information requested by APS if APS is not given direct access to the actual reporter.
- Prompt reports of suspected exploitation should be made by the financial institution when exploitation is first suspected by a financial professional. The report should be accompanied by corroborating financial records relevant to the allegation of financial exploitation.

- Referrals to APS from financial institutions should be forwarded in a timely, secure, and streamlined manner. Telephone and faxed referrals should be discouraged in favor of secure, more efficient systems such as the *HelpVul* portal.

Recommendations for NAPSA and ABA Foundation:

- Adopt the guidelines and forms created by NAPSA—with input from the banking industry—outlined in the *National Guidelines for Financial Institutions: Working Together to Protect Older Persons from Financial Abuse*. This will standardize processes like reporting and requesting records that are already used by the *HelpVul* platform.
- Take the lead in working with state bankers associations to facilitate discussions, enhance processes, remove barriers, and consider draft legislation aimed at strengthening partnerships to protect mutual customers.
- Support ongoing roundtable discussions between banks and APS, including state and local working groups and at national and regional conferences.

CONCLUSION

In recent decades, significant progress has been made in combating elder financial exploitation and protecting society's most vulnerable adults. The growing partnerships and collaborations between APS and FI are essential in the fight against financial exploitation, fraud, and abuse. There is still work to be done, to build familiarity and trust in these relationships and to strengthen policies and infrastructure that will lead to better efficiencies and greater protections.

New federal funding for APS programs is an encouraging trend because it will allow frontline workers to better respond to these very difficult cases. Almost $400 million—an unprecedented amount—was provided to the Elder Justice Act in bills passed in December 2020 and March 2021. Continuation of this funding, and inclusion of an annual line-item funding in the federal budget are essential to keep momentum going. The President's budget for FY22/23 includes $50 million for money to state APS programs. The House appropriations committee increased this amount to $81 million. While far short of what is needed, including this in the appropriations cycle is a major step forward. The Elder Justice Reauthorization and Modernization Act of 2023 was introduced April 19, 2023 by Representatives Richard Neal and Suzanne Bonameci and Senators Ron Wyden and Bob Casey.

The Elder Justice Reauthorization and Modernization Act of 2023 (HR 2178 in the House and S.1198 in the Senate) would increase funding for APS at the state and local levels for each year through federal fiscal year 2027. In addition to appropriating $400 million per year for states for APS, the bill also includes funding to support tribal APS programs.

This would be a welcome and needed start to properly funding APS programs across the nation.

Technology is a tool that has been used to great effect, creating opportunities for a more comprehensive and timely response to financial exploitation and fraud. The strides made by *HelpVul* have provided a window into how to improve processes and communication between two systems (APS and FI) that clearly want to work together more effectively. Because frontline workers in both sectors are inundated daily with increased cases and new challenges, establishing a national, web-based system is critical.

Cross-training between APS and FI is another essential tool. This approach enhances skills and provides a forum for APS and FI professionals to get to know one another and foster good communication. APS is reaching out to financial institutions to train key staff to recognize and report instances of financial abuse, while financial institutions are offering to train APS investigators to read financial statements. These are two examples of effective cross-training, but many others exist.

The Senior Safe Act presents an opportunity for APS programs to reach out to entities covered under the Act to train financial professionals to recognize and report cases of suspected elder abuse. Although the Act does not specify who conducts the training, APS is fully qualified. APS receives and investigates the very types of cases attached to the immunity offered by the Senior Safe Act.

NAPSA is committed to helping lead the effort with its partners through the work of NAPSA's Financial Exploitation Advisory Board and its administration. NAPSA collaborates with many other stakeholders including the American Banking Association, FINRA, and the North American Securities Administrators Association (NASAA). Collectively we will identify issues and find solutions while modeling and promoting the understanding that we are "all in this together."

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