

# Disrespecting Your Elders: Compliance and Financial Abuse of Elders

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A number of recently released surveys suggest that continues to be a serious issue. Indeed, at a U.S. Senate hearing earlier this year, Kathleen Quinn, executive director of the National Adult Protective Services Association, called the financial exploitation of seniors “a rampant, largely invisible, expensive, and lethal problem.”<sup>1</sup>

In response, states increasingly are requiring financial institutions to report suspected financial abuse of elders, and failure to comply could result in civil or criminal liability. In California, for example, banks must report actual or suspected financial abuse that is observed, evident, or described. Failure to report is a misdemeanor punishable by six months in the county jail and a fine of \$1,000. Willful failure to report is punishable by up to one year in the county jail and a fine of \$5,000.<sup>2</sup>



## Elder Abuse on the Rise

Research indicates that financial exploitation is the most common form of elder abuse.<sup>3</sup> Older individuals with retirement savings, accumulated home equity, and other significant assets make attractive targets for family members, caregivers, financial advisers, fiduciaries (such as those with power of attorney and guardians), and scam artists. They can be especially vulnerable due to isolation, cognitive decline, physical disability, health problems, or the recent loss of a partner, family member, or friend.

Consider the case of one woman in her 70s whose husband died. After his death, a fraudster found his name in the obituaries and, after conducting some searches of public property records, discovered that the couple owned a small parcel of land. He contacted the widow and falsely informed her that outstanding tax payments were due on the land. The perpetrator said that he'd been in contact with the husband before his death and the wife needed to make payment to avoid a lien. The widow wrote a check.

Precise statistics on the financial abuse of elders are hard to nail down, in part because victims frequently are reluctant to report it for fear of embarrassment. Victims also might suffer from cognitive impairments that prevent them from recognizing fraud.

But a study published last year in the Journal of General Internal Medicine found that one in every 20 elderly American adults is being financially exploited, often by their own family members.<sup>4</sup> As the massive wave of baby boomers moves into senior citizen status, greater amounts of wealth could be at risk.

## The Role of Financial Institutions

The federal financial institution regulatory agencies have recognized that banks can play a significant role in preventing and detecting elder financial exploitation.<sup>5</sup> They note that a bank's familiarity with the older adults it encounters might allow it to spot irregular transactions, account activity, or behavior that signals financial abuse. Prompt reporting of suspected financial exploitation to Adult Protective Services (APS), law enforcement, and long-term care ombudsmen can trigger appropriate intervention, prevention of financial losses, and other remedies.

Some banks have registered concern over the privacy considerations implicated by reporting suspected financial abuse, whether required by state law or not. The regulatory agencies, however, have issued guidance making clear that the privacy provisions of the *Gramm-Leach-Bliley Act* (GLBA) generally permit financial institutions to report suspected financial abuse of elders to appropriate local, state, or federal agencies. 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>6</sup>

Moreover, the U.S. Department of Treasury's Financial Crimes Enforcement Network (FinCEN) has emphasized that Suspicious Activity Report (SAR) filers should continue to report all forms of elder abuse according to institutional policies and the requirements of state and local laws and regulations, where applicable.<sup>7</sup> Financial institutions might wish to consider how their anti-money-laundering programs can complement their policies on reporting elder financial exploitation at the local and state levels.

A bank, for example, can use transaction monitoring tools to set up alternative scenarios for clients over a specific age or who have powers of attorney or attorneys-in-fact status. The scenarios could flag transactions such as cash withdrawals or deposits that result in wire transfers and help banks to identify suspicious trends. Banks similarly can scrutinize the transaction codes on credit card purchases to identify suspicious transactions, such as unusual merchants, amounts, or purchase avenues (for example, a sudden onset of online purchases).

In addition, a bank can analyze transactions at the teller level to identify tellers who perform frequent or a large number of transactions for clients over a specific age when compared with the normal distribution of transactions for clients of all ages. Such analysis could help a bank identify questionable activities that might need additional investigation.

According to FinCEN, analyzing SARs reporting elder financial exploitation can provide critical information about specific frauds and potential trends and highlight abuses perpetrated against the elderly. The agency has enumerated several potential signs of financial abuse of elders that might trigger the filing of an SAR, including:

■ **Erratic or unusual banking transactions or changes in banking patterns:**

- Frequent large withdrawals, including daily maximum currency withdrawals from an ATM, occur.
- There is sudden nonsufficient fund activity.
- Uncharacteristic nonpayment for services, which might indicate a loss of funds or access to funds, occur.
- Debit transactions are inconsistent for the elderly.
- There are uncharacteristic attempts to wire large sums of money.
- CDs or accounts are closed without regard to penalties.

■ **Interactions with customers or caregivers:**

- A caregiver or other individual shows excessive interest in the elder's finances or assets, does not allow the elder to speak for him- or herself, or is reluctant to leave the elder's side during conversations.
- The elder 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 elder, despite repeated attempts to contact him or her.
- A new caretaker, relative, or friend suddenly begins conducting financial transactions on behalf of the elder without proper documentation.
- The customer moves away from existing relationships and toward new associations with other "friends" or strangers.
- The elderly individual's financial management changes suddenly, such as through a change of power of attorney to a different family member or a new individual.
- The elderly customer lacks knowledge about his or her financial status or shows a sudden reluctance to discuss financial matters.<sup>8</sup>

## Contact Information

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## Act Now

Sadly, financial abuse of elders probably isn't going away anytime soon. Banks need to stay on top of the trends and types of abuse occurring, applicable reporting requirements, and appropriate transaction monitoring to help identify and manage the risks of exploitation.

<sup>1</sup> Testimony of Kathleen M. Quinn, Senate Special Committee on Aging Hearing: Broken Trust: Combating Financial Exploitation of Vulnerable Seniors, Feb. 4, 2015, [http://www.aging.senate.gov/imo/media/doc/SCA\\_Quinn\\_2\\_4\\_15.pdf](http://www.aging.senate.gov/imo/media/doc/SCA_Quinn_2_4_15.pdf)

<sup>2</sup> California Welfare and Institutions Code Sections 15630, 15630.1. R.

<sup>3</sup> Acierno, 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>4</sup> J. C. Peterson et al. "Financial Exploitation of Older Adults: A Population-Based Prevalence Study," *Journal of General Internal Medicine*, 2014, 29(12): 1615-23, <http://www.springer.com/gp/about-springer/media/springer-select/older-adults-are-at-risk-of-financial-abuse/30696>

<sup>5</sup> Interagency Guidance on Privacy Laws and Reporting Financial Abuse of Older Adults, 2013, <https://www.fdic.gov/news/news/press/2013/Interagency-Guidance-on-Privacy-Laws-and-Reporting-Financial-Abuse-of-Older-Adults.pdf?source=govdelivery>

<sup>6</sup> Ibid.

<sup>7</sup> Advisory to Financial Institutions on Filing Suspicious Activity Reports Regarding Elder Financial Exploitation, Feb. 22, 2011, [http://www.fincen.gov/statutes\\_regs/guidance/html/fin-2011-a003.html](http://www.fincen.gov/statutes_regs/guidance/html/fin-2011-a003.html)

<sup>8</sup> Ibid.