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Consumer Financial Protection Bureau
United States Department of the Treasury
Financial Crimes Enforcement Network (FinCEN)

Memorandum on Financial Institution and Law Enforcement Efforts to Combat Elder Financial Exploitation

Introduction

Elder financial exploitation (EFE), the illegal or improper use of an older person's funds, property or assets, has emerged as one of the most significant frauds against individual persons. It is the most common form of elder abuse in the United States. Despite its growing prominence, however, only a small fraction of incidents are detected and reported. Older Americans are attractive targets in part because of their assets and regular sources of income, increasing the need for effective interventions. Older people may also be particularly vulnerable due to factors such as isolation, cognitive decline, physical disability, health problems, and bereavement. Thus, their ability to protect themselves from individuals seeking to exploit them may be limited. Once victimized, they often experience not only financial insecurity, but also loss of their dignity and quality of life.

Role of Financial Institutions

Financial institutions can play a key role in detecting, responding to, and preventing EFE.¹ Financial institutions are often well-positioned to detect when older account holders have been targeted or victimized. In recognition of this, in 2011, the Financial Crimes Enforcement Network (FinCEN) issued an *Advisory to Financial Institutions on Filing Suspicious Activity Reports Regarding Elder Financial Exploitation* (“Advisory”).² The Advisory provided potential “red flag” indicators and instructions on how to report EFE activity through Suspicious Activity Reports (SARs).

Once such threats have been detected, financial institutions should report to law enforcement and the state or local Adult Protective Service agency (APS).³ Timely reporting of suspicious EFE activity, regardless of whether reporting is mandatory or voluntary under state or federal law, is critical in engaging entities that may have complementary information on the victim or the perpetrator from other sources and may be well positioned to collaborate on investigations. In 2013, eight federal regulatory agencies issued interagency guidance clarifying that reporting suspected financial abuse of older adults to appropriate authorities does not generally violate the privacy provisions of the Gramm-Leach-Bliley Act.⁴

¹ See, CFPB, *Advisory for financial institutions on preventing and responding to elder financial exploitation* (March 2016), available at http://files.consumerfinance.gov/f/201603_cfpb_advisory-for-financial-institutions-on-preventing-and-responding-to-elder-financial-exploitation.pdf; and, CFPB, *Recommendations and report for financial institutions on preventing and responding to elder financial exploitation* (March 2016), available at http://files.consumerfinance.gov/f/201603_cfpb_recommendations-and-report-for-financial-institutions-on-preventing-and-responding-to-elder-financial-exploitation.pdf.

² See, FinCEN, FIN-2011-A003, *Advisory to Financial Institutions on Filing Suspicious Activity Reports Regarding Elder Financial Exploitation* (Feb. 22, 2011), available at <https://www.fincen.gov/sites/default/files/shared/fin-2011-a003.pdf>.

³ Adult Protective Services (APS) are social services programs provided by state and local governments nationwide, serving older adults and adults with disabilities who are in need of assistance. APS frequently serves as first responders in cases of abuse, neglect or exploitation. APS is not necessarily the name of the agency in each state. The National Adult Protective Services Association (NAPSA) website provides contact information for reporting suspected abuse to APS in every state. See, NAPSA, *What is Adult Protective Services?*, at <http://www.napsa-now.org/get-help/how-aps-helps/> (last visited August 23, 2017).

⁴ Fed. Reserve, CFTC, CFPB, FDIC, FTC, NCUA, OCC & SEC, *Interagency Guidance on Privacy Laws and Reporting Financial Abuse of Older Adults* (Sept. 23, 2013), available at http://files.consumerfinance.gov/f/201309_cfpb_elder-abuse-guidance.pdf.

Collaboration among Financial Institutions, Law Enforcement and APS

Prevention and response to EFE is improved when financial institutions, law enforcement and APS develop collaborative relationships. Financial institutions and law enforcement can share information about each organization's policies and procedures for detecting, assessing, and reporting EFE. Such relationships can facilitate timely response to reports and ensure that staff at each stakeholder organization has appropriate points of contact when questions or challenges arise. When appropriate, financial institutions can provide expert consultation on banking and finance documents, processes, and procedures to assist law enforcement and APS with case investigations.

In various locations around the country, key stakeholders convene as multidisciplinary networks to successfully address the problem of elder abuse including financial exploitation.⁵ These networks engage in activities such as education, training, and individual case review. Financial institutions are encouraged to participate in these local networks and can identify such networks in their area by contacting the APS agency, the local Area Agency on Aging (AAA), or a senior information and assistance hotline. The Eldercare Locator, supported by the U.S. Department of Health and Human Services, enables users to search for their local APS agency or AAA and is accessible at www.eldercare.gov. Financial institutions may also provide a list of these points of contact and sources of information to their older account holders and to caregivers.

Law Enforcement Use of Suspicious Activity Reports

One resource that may aid law enforcement investigations of EFE, even at the local level, is Suspicious Activity Reports (SARs) that financial institutions file with FinCEN. A financial institution may be required to file a SAR if it knows, suspects, or has reason to suspect a transaction conducted or attempted by, at, or through the financial institution:

- involves funds derived from illegal activity or attempts to disguise funds derived from illegal activity,
- is designed to evade regulations promulgated under the Bank Secrecy Act (BSA),
- lacks a business or apparent lawful purpose, or

⁵ CFPB, *Report and Recommendations: Fighting Elder Financial Exploitation through Community Networks* (August 2016), available at https://www.consumerfinance.gov/documents/873/082016_cfpb_Networks_Study_Report.pdf.

- involves the use of the financial institution to facilitate criminal activity.⁶

On SAR forms, financial institutions include essential facts about the reported suspicious activity, including dates, location, and transaction amounts. Further, narratives within the SAR may include account numbers and references to supporting documentation, as well as information about individuals suspected to be involved in the suspicious activity. SARs can play an important role in the fight against EFE by providing information and references to any supporting documentation that can trigger an investigation, support an ongoing investigation, or identify previously unknown subjects and entities.⁷

FinCEN's 2011 advisory highlighted the issue of EFE to SAR filers. Additionally, FinCEN's new electronic filing form launched in 2013 includes a specific check box indicating that the filer suspects elder financial exploitation, thereby providing a streamlined process for law enforcement agencies to access SARs filed on this type of suspicious activity.

Access to SARs and their use is restricted under federal law. Knowledge concerning the existence of a SAR is strictly confidential and is generally limited to law enforcement and financial regulatory authorities.⁸ If a law enforcement agency does not have direct access to FinCEN's database through a Memorandum of Understanding with FinCEN, the agency can contact FinCEN at frc@fincen.gov for referral to an appropriate state or regional point of contact, who can assist the investigator with a SAR-related inquiry. Learn more about the limitations on the use and disclosure of SARs by reading FinCEN Advisory FIN-2010-A014, *Maintaining the Confidentiality of Suspicious Activity Reports*.⁹ If an investigator has a question on the use and disclosure of a SAR, they can contact the FinCEN Resource Center at FRC@fincen.gov

⁶ 31 C.F.R. §§ 1020.320, 1021.320, 1022.320, 1023.320, 1024.320, 1025.320, 1026.320, 1029.320, and 1030.320.

⁷ For further information, see FinCEN, FIN-2007-G003, Guidance, *Suspicious Activity Report Supporting Documentation* (June 13, 2007), available at https://www.fincen.gov/sites/default/files/shared/Supporting_Documentation_Guidance.pdf.

⁸ See FinCEN, Confidentiality of Suspicious Activity Reports, 75 Fed. Reg. 75,593, 75,593-75,607 (Dec. 3, 2010), which sets forth clarification on the reach of the statutory language in 31 U.S.C. § 5318(g)(2).

⁹ FinCEN, FIN-2010-A014, Advisory, *Maintaining the Confidentiality of Suspicious Activity Reports* (Nov 23, 2010), available at <https://www.fincen.gov/sites/default/files/advisory/FIN-2010-A014.pdf>.