March 2016

Advisory for financial institutions on preventing and responding to elder financial exploitation

Consumer Financial Protection Bureau

Introduction

The Consumer Financial Protection Bureau (CFPB or the Bureau) provides broad recommendations in this advisory for banks and credit unions to help them prevent and respond quickly to elder financial exploitation.[1] The CFPB has identified the benchmarks provided in this advisory to help financial institutions assess and strengthen their current practices for preventing, detecting, and responding to the financial exploitation of older people.[2]

Elder financial exploitation has been called the crime of the 21st century. Deploying effective interventions has never been more important. Recent studies suggest that financial exploitation—the illegal or improper use of an older person's funds, property or assets— is the most common form of elder abuse and yet only a small fraction of incidents are reported. Older people are attractive targets because they often have assets and a regular source of income. These consumers may be especially vulnerable due to isolation, cognitive decline, physical disability, health problems, and/or bereavement. Elder financial exploitation robs victims of their resources, dignity and quality of life—and they may never recover from it.

Financial institutions play a vital role in preventing and responding to this type of elder abuse. Banks and credit unions are uniquely positioned to detect that an elder account holder has been targeted or victimized, and to take action.

[1] The advisory is not an interpretation of federal consumer financial law or any other statute or rule. It is not designed to implement or prescribe any law or Bureau policy. It is not binding on the Bureau or on financial institutions.

[2] Accompanying this advisory, the CFPB is releasing *Recommendations and Report to Financial Institutions on Preventing and Responding to Elder Financial Exploitation* (hereinafter *Recommendations and Report)*, which provides, among other things, additional background and greater detail on the recommendations contained in this advisory.

Recommendations

The CFPB makes the following recommendations to banks and credit unions:

1. Develop, implement and maintain internal protocols and procedures for protecting account holders from elder financial exploitation.

The protocols for management and staff should include training requirements, procedures for making reports, compliance with the Electronic Fund Transfer Act (EFTA) as implemented by Regulation E, means of consent for information-sharing with trusted third parties, and procedures for collaborating with key stakeholders. Protocols likely will vary depending on the institution's size and risks.

2. Train management and staff to prevent, detect, and respond to elder financial exploitation.

Financial institutions should train employees regularly and frequently, and should tailor training to specific staff roles. Key topics for training include:

- Clear and nuanced definition of elder financial exploitation
- Warning signs that may signal financial exploitation, including behavioral and transactional indicators of risk, and
- Action steps to prevent exploitation and respond to suspicious events, including actionable tips for interacting with account holders, steps for reporting to authorities, and communication with trusted third parties.

3. Detect elder financial exploitation by harnessing technology.

The CFPB encourages financial institutions to ensure that their fraud detection systems include analyses of the types of products and account activity that may be associated with elder financial exploitation risk. Some indicators of elder fraud risk may not match conventionally accepted patterns of suspicious activity, but nevertheless may be unusual in light of a particular account holder's regular pattern of behavior. The CFPB encourages financial institutions using predictive analytics to review their filtering criteria against individual account holders' patterns and explore additional risk factors that may be associated with elder financial exploitation.[3]

4. Report all cases of suspected exploitation to relevant federal, state and local authorities.

- **Be aware of state reporting mandates.** Financial institutions should be aware of state reporting mandates including to whom and when they must report. Reasonable suspicion rather than certainty or proof can trigger the duty to report to state Adult Protective Services, law enforcement, or both.

- **File Suspicious Activity Reports (SARs).** The Financial Crimes Enforcement Network (FinCEN) issued an Advisory in 2011 noting that SARs are a valuable reporting avenue for elder financial exploitation cases. FinCEN now provides a designated category of suspicious activity, "elder financial exploitation," on the electronic SAR form. Although the electronic SAR form includes a checkbox for elder financial exploitation, the narrative remains critical and FinCEN instructs filers to provide clear, complete, and concise description of the suspicious activity.

- **Understand that the Gramm-Leach-Bliley Act (GLBA) is not a barrier to reporting suspected elder financial exploitation.** Financial institutions should be aware of the 2013 Interagency Guidance (the Guidance) from eight federal financial regulators that clarifies that reporting financial abuse of older adults to appropriate local, state and federal authorities does not, in general, violate the privacy provisions of GLBA. The Guidance details the relevant exceptions to the GLBA notice and opt out requirements. Several state regulators issued similar guidance.

[3] The CFPB's *Recommendations and Report* provides a sample of these types of account activity.

- **Understand the roles of first responders.** Financial institutions should understand how Adult Protective Services (APS), law enforcement and the long-term care ombudsmen work, and the actions that they will and will not take.

- **Include core components in reports to state and local authorities.** A list of basic components of a complete report can help financial institutions support the allegation and assist responders.[4]

- **Expedite documentation requests.** When APS, law enforcement and other government entities investigate reports of financial exploitation and request documentation, providing records in a timely manner is essential. FinCEN Guidance clarifies that financial institutions must provide documentation that supports a SAR to certain law enforcement or supervisory agencies when requested, and that service of legal process on the financial institution is not required in such cases. Financial institutions should provide documents to investigatory agencies at no charge.

5. Protect older account holders.

- **Comply with EFTA and Regulation E.** Many older consumers experience financial exploitation involving unauthorized electronic fund transfers (EFTs). EFTA and Regulation E offer important protections to these consumers. Under EFTA and Regulation E, financial institutions are obligated to:

  - Follow rules for extending time limits for consumers for extenuating circumstances such as extended travel or hospitalization.
  - Follow rules for accepting notices of unauthorized EFTs. These rules specify consumer rights regarding the method of providing notice, who provides notice, and the specificity of the notice.

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[4] A sample list of reporting elements is in the CFPB's *Recommendations and Report*.

  - Confirm that all relevant conditions are met before imposing any liability on a consumer for an unauthorized EFT. For example, older consumers with cognitive challenges may write PINs on or near debit cards. Under Regulation E, such behavior may not be used as a basis for imposing greater liability on a consumer.

- **Offer account holders the opportunity to consent to disclosure of account information to trusted third parties when the financial institution suspects financial exploitation.** The CFPB recommends that financial institutions establish procedures for enabling consumers to provide advance consent to sharing account information with a designated trusted third party when the financial institution reasonably believes that elder financial exploitation is occurring, has occurred, has been attempted or will be attempted. GLBA permits disclosure of nonpublic personal information with the consent of the consumer. The CFPB recommends developing a plain language consent form as well as procedures for offering consumers the opportunity to consent at account opening and periodically thereafter.

- **Offer age-friendly services that can enhance protections against financial exploitation.** There are certain services that institutions can offer to their general client base that may be particularly useful to older customers. The CFPB recommends that financial institutions:

  - Provide information about planning for incapacity. Advance planning for the possibility of diminished capacity and illness—by, e.g., naming a trusted person to serve as an agent under a power of attorney or other fiduciary—increases the odds that the person managing finances will act in the best interests of the account holder.
  - Honor powers of attorney. A financial institution’s refusal to honor a valid power of attorney can create hardships for account holders who need designated surrogates to act on their behalf. Financial institutions should establish procedures to ensure that the institution makes prompt decisions on whether to accept the power of attorney, that qualified staff make decisions based only on state law and other appropriate considerations and that frontline staff recognize red flags for power of attorney abuse.
  - Offer protective opt-in account features. Examples of opt-in features that could reduce the risk of elder financial exploitation include cash withdrawal limits, alerts for specified account activity and read-only access to accounts for authorized third parties. A third-party monitoring feature can enable a designated family member or

friend to monitor an account for irregularities without having access to funds or transactions.

- Offer convenience accounts as an alternative to traditional joint accounts. Traditional joint accounts, often used to enable a helper to pay bills, pose several risks. To avoid risks such as the joint owner withdrawing money for his or her own use, exposing account funds to creditors of the joint owner, and subverting an intended estate plan, financial institutions should provide information to consumers about these risks. When implemented properly, convenience accounts can mitigate these risks. The CFPB recommends routinely offering such convenience accounts as an alternative.

6. Collaborate with other stakeholders.

The CFPB recommends that financial institutions collaborate with the array of organizations on the local, regional and state level that play a critical role in preventing, detecting, and responding to elder financial exploitation.

- **Work with law enforcement and APS.** Financial institutions should work with law enforcement and APS to: share policies and procedures for detecting, assessing and reporting cases; develop relationships with specific personnel to facilitate timely response to reports and have a point of contact when questions arise; and provide expert consultation and document review to assist law enforcement and APS with case investigations.

- **Participate in and support coordinated efforts to educate older account holders, caregivers and the public.** Financial institutions should work with an array of agencies and service organizations to offer educational programs and distribute materials.

- **Participate in and support local or regional multidisciplinary network initiatives.** Financial institution personnel can be valuable members of or contributors to local multidisciplinary networks focusing on elder financial exploitation, some of which engage in case review to assist APS and law enforcement. They can assist investigators with identifying and analyzing financial documents and can educate responders on the nuances of banking policy and procedures. Multidisciplinary team members can educate one another and can send representatives to train staff of the other stakeholder organizations.

Conclusion

Financial institutions have a tremendous opportunity to serve older consumers by vigorously protecting them from financial exploitation. The CFPB looks forward to continuing to work with financial institutions and seeing a broad spectrum of financial institutions implement its recommendations so that a greater number of older Americans can have later life economic security.